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Submitted to the

**JOINT COMMITTEE ON GOVERNMENT ADMINISTRATION AND ELECTIONS**

**CONNECTICUT GENERAL ASSEMBLY**

Regarding

**Governor's Bills 5022 and 5024**

**March 2, 2011**

### **Introduction**

We write on behalf of the Brennan Center for Justice at NYU School of Law to submit testimony in support of Governor's Bills 5022 and 5024 in connection with the Public Hearing scheduled for Friday, March 2nd. We applaud the efforts of the Governor, Secretary of State, and this Committee to modernize Connecticut's voter registration system and to prevent voter intimidation and harassment. We also believe that the goals set forth in these two bills will be achieved more effectively if Governor's Bill 5022 is amended to eliminate the possibility of intimidating voter challenges on Election Day and Governor's Bill 5024 is amended to include two complementary and modest reforms—already implemented in several states around the country—which would save Connecticut substantial money *and* increase the accuracy of its voter rolls.

The Brennan Center is a non-partisan public policy and legal advocacy organization whose work focuses, among other things, on promoting political participation and improving election administration. The Center's Democracy Program regularly works with state election administrators to support their efforts to ensure that elections run smoothly and that voters have full and equal access to democracy.

Over the past year, the Brennan Center has documented how state legislatures across the country have enacted a wave of new voting laws that restrict voters' access to the polls and make it more difficult for citizens to register to vote. Eight states, for instance, enacted burdensome voter

identification laws in 2011 that require voters to produce a government-issued photo ID—which one-in-ten voters do not currently possess—when they go to the polls to vote.<sup>1</sup> Three more states have enacted new laws requiring people to produce documentary proof-of-citizenship when they register to vote.<sup>2</sup> And several other states have cut back on early voting opportunities and placed new restrictions on community-based voter registration drives.<sup>3</sup> The Brennan Center estimates that, cumulatively, these new restrictions could make it more difficult for five million voters to cast their ballots in future elections.<sup>4</sup>

Against this rather bleak backdrop of burdensome new voting laws, Connecticut's efforts to protect voters against intimidation and harassment and expand voter registration access serve as a welcome contrast. We support the reforms contained in Governor's Bills 5022 and 5024 and offer additional recommendations below for building upon the excellent progress that this legislation promises to bring.

## **I. Governor's Bill 5022**

The Brennan Center supports the Governor, Secretary of State, and General Assembly's efforts to protect Connecticut voters against intimidation, harassment, and deceptive campaign practices. We believe that the increased penalties for these crimes proposed in Governor's Bill 5022 will help deter illegal voter suppression tactics by private citizens and organizations.

### **A. Governor's Bill 5022 will ameliorate a major problem that Congress has yet to adequately address.**

Federal lawmakers have repeatedly recognized the serious threat that voter intimidation and deceptive campaign practices pose to many voters today. However, while members of Congress have repeatedly attempted to address these problems in recent years,<sup>5</sup> they have yet to pass legislation that explicitly prohibits the harmful practices covered by Governor's Bill 5022. Accordingly, this bill will serve an important purpose by addressing a critical but unmet need.

### **B. The General Assembly should amend Governor's Bill 5022 by placing new restrictions on voter challengers.**

While Governor's Bill 5022 is a useful step in the right direction, we would encourage the General Assembly to take an additional step to prevent voter intimidation and harassment in Connecticut. Specifically, we would urge the General Assembly to amend the state's law governing voter challengers by eliminating the right of private citizens to challenge other voters at the polls. We offer a proposed one-page amendment to Governor's Bill 5022 in Appendix A of this testimony.

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<sup>1</sup> See generally Wendy R. Weiser & Lawrence Norden, Brennan Center for Justice, *Voting Law Changes in 2012* (2011), available at [http://www.brennancenter.org/content/resource/voting\\_law\\_changes\\_in\\_2012](http://www.brennancenter.org/content/resource/voting_law_changes_in_2012).

<sup>2</sup> *Id.* at 16-18.

<sup>3</sup> *Id.* at 19-33.

<sup>4</sup> *Id.* at 1.

<sup>5</sup> For more on these past efforts, see Gilda R. Daniels, *Voter Deception*, 43 INDIANA LAW REVIEW 343, 356 (2010), available at <http://www.iulaw.indy.indiana.edu/ilr/pdf/vol43p343.pdf>.

**1. Voter challengers have caused significant problems inside the polls during recent elections and create the potential for voter intimidation.**

Voter challengers have caused major problems for both voters and election officials around the country in recent years, particularly in states whose voter challenger laws are susceptible to abuse. The following examples illustrate the grave potential that these laws create for discriminatory or intimidating challenges:

- In 2004, a national controversy erupted after political party operatives in Ohio announced their plan to station challengers across in polling precincts across the state.<sup>6</sup> Under their proposed voter challenge plan, 97 percent of new voters in majority-black locations would face challengers compared to just 14 percent of new voters in majority-white voting precincts.<sup>7</sup> The controversy surrounding this plan ultimately led state lawmakers to eliminate the right of private citizens to challenge voters at the polls during the very next legislative session.<sup>8</sup>
- In 2008, political party officials in Michigan announced plans to target voters whose homes had been subject to foreclosure proceedings and who were still registered at their foreclosed home addresses.<sup>9</sup> These efforts were ultimately abandoned after opposing party members filed suit to block the plan.<sup>10</sup>
- College students in Poughkeepsie, NY, were targeted by local political party operatives for a series of voter challenges in 2009. Some students complained that the challenge process was being used to intimidate them.<sup>11</sup>
- In Washington State, a man challenged the voting credentials of hundreds of voters in 2004, claiming they were illegal immigrants. He stated that he created the list by looking for names of voters that appeared foreign, eliminating names that “clearly sounded American-born, like John Smith or Powell.”<sup>12</sup>

These incidents, and many others we did not highlight, demonstrate the need for greater legal safeguards to protect voters against abuse of the voter challenge process, such as requiring evidentiary support for every challenge and limiting challenge authority to elected officials. They also illustrate the administrative headaches—and negative publicity—that Election Day voter challenges can create for state officials while they are trying to run an election.

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<sup>6</sup> See Adam Liptak & James Dao, *G.O.P. in Ohio Can Challenge Voters at Polls*, N.Y. TIMES, Nov. 2, 2004, available at <http://www.nytimes.com/2004/11/02/politics/campaign/02ohio.html>.

<sup>7</sup> Order Granting Plaintiffs’ Motion for Temporary Restraining Order at 3, *Spencer v. Blackwell*, No. C-1-04-738 (S.D. Ohio Nov. 1, 2004).

<sup>8</sup> Act of Jan. 31, 2006 (H.B. 3), at § 1, 126th Gen. Assemb. (effective since May 2, 2006), available at [http://www.legislature.state.oh.us/BillText126/126\\_HB\\_3\\_EN\\_N.html](http://www.legislature.state.oh.us/BillText126/126_HB_3_EN_N.html).

<sup>9</sup> Eartha Jane Melzer, *Lose Your House, Lose Your Vote*, MICHIGAN MESSENGER, Sept. 10, 2008, at <http://michiganmessenger.com/4076/lose-your-house-lose-your-vote>.

<sup>10</sup> Chisun Lee, *Mich. Foreclosure-Based Challenge Ends in Political, Not Legal, Agreement*, PROPUBLICA, Oct. 21, 2008, at <http://www.propublica.org/article/mich-foreclosure-based-voter-challenge-ends-in-political-not-legal-agreemen>.

<sup>11</sup> Mary Huber, *Politics Strain Relations Between Students, Poughkeepsie*, MISCELLANY NEWS, Sept. 14, 2011, available at <http://www.miscellanynews.com/2.1578/politics-strain-relations-between-students-poughkeepsie-1.2627656#.T01N EYH93NI>.

<sup>12</sup> Jim Camden, *Man Says Votes from Illegal Immigrants*, SPOKESMAN-REVIEW, Mar. 31, 2005, at <http://www.spokesman.com/stories/2005/mar/31/man-says-votes-from-illegal-immigrants>.

**2. Connecticut's voter challenger statute is particularly susceptible to abuse and should be amended.**

Connecticut's challenger statute lacks adequate safeguards to protect voters against baseless challenges and can be easily used as a tool for intimidation or harassment. The law currently allows "any elector" to challenge other voters at the polls without furnishing any proof to substantiate the challenge.<sup>13</sup> This lack of an evidentiary requirement for challengers is particularly problematic in light of the fact that Connecticut law expressly permits challenges based upon mere suspicion—rather than actual knowledge—that someone is ineligible to vote. The law's lack of safeguards against frivolous challenges also distinguishes Connecticut from numerous other states, which require challengers to provide evidentiary support for their challenges,<sup>14</sup> mandate that all challenges be made in writing,<sup>15</sup> and place the burden of proof on the challenger rather than the voter.<sup>16</sup>

**3. Connecticut's challenger law serves little purpose and will be rendered further obsolete by the new improvements to Connecticut's voter registration system in Governor's Bill 5024.**

Connecticut's voter challenger statute dates back to at least 1875.<sup>17</sup> At the time the challenger law was originally adopted, however, Connecticut had yet to adopt the secret ballot, a computerized voter registration database, or various other features of its voting system that perform the same function of a challenge law—that is, preventing ineligible voters from casting ballots.

Moreover, the proposed reforms to Connecticut's voter registration system in Governor's Bill 5024 will only further diminish the utility of the state's voter challenger law by making the state's voter rolls more accurate, as described below. As the state takes these important steps to modernize its voting system, it should also take the opportunity to dispense with its antiquated, and potentially suppressive, voter challenger rules.

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<sup>13</sup> CONNECTICUT GEN. STAT. § 9-232.

<sup>14</sup> See, e.g., COLORADO REV. STAT. ANN. § 1-9-101(1) ("The written challenge shall state the precinct number, the name of the challenged registrant, the basis for such challenge, the facts supporting the challenge, and some *documentary evidence to support the basis for the challenge*, and shall bear the signature and address of the challenger." (emphasis added)); RHODE ISLAND GEN. LAWS § 17-9.1-28(a) (requiring challengers to submit "an affidavit prescribed by the state board of elections in accordance with rules and regulations promulgated by the board stating that the voter is not eligible to vote and setting forth *evidence that would create a reasonable cause to suspect that the challenged voter is not in fact eligible*." (emphasis added)).

<sup>15</sup> See, e.g., MARYLAND CODE, ELECTION LAW, § 10-312(c)(1) (requiring challengers to "provide in writing, under penalty of perjury, the reasons for the challenge").

<sup>16</sup> See, e.g., NORTH CAROLINA GEN. STAT. ANN. § 163-90.1 ("No challenge shall be sustained unless the challenge is substantiated by affirmative proof. In the absence of such proof, the presumption shall be that the voter is properly registered or affiliated.").

<sup>17</sup> See CONNECTICUT GEN. STAT. tit. 5, ch. 4, § 9 (Baldwin 1875). The statute's language remains nearly identical today. Compare *id.* ("Each registrar may appoint one or more challengers in his town or district, who may be present at the offering of any vote; and any such challenger, or any elector, may challenge the right of any person offering to vote, on the ground of identity, disfranchisement, or continued non-residence since the completion of the registry list; and the moderator shall decide upon the right of the person challenged to vote."), with CONNECTICUT GEN. STAT. § 9-232 ("Each registrar may appoint one or more challengers in his town or district, one of whom may be present at the offering of any vote; and any such challenger or any elector may challenge the right of any person offering to vote, on the ground of want of identity with the person on whose name the vote is offered, or disfranchisement or lack of bona fide residence, and the moderator shall decide upon the right of the person so challenged to vote.").

## II. Governor's Bill 5024

The Brennan Center supports Governor's Bill 5024, which includes provisions for online voter registration and Election Day registration. Both of these measures represent important steps towards modernizing Connecticut's election system and making it more accessible to voters.

### **A. Governor's Bill 5024 will help improve the accuracy of Connecticut's voter rolls while also increasing voter access.**

Online voter registration increases both the accuracy and efficiency of the registration process and improves access to registration. This reform can be an effective cost-saving program that improves voter roll accuracy by allowing voters to more easily update their registration information when they change residences. States such as Arizona, Colorado, Kansas, Louisiana, Oregon, and Washington have already implemented online registration as a way to streamline the registration process and have enjoyed success with the new systems.

Like online registration, Election Day registration increases opportunities for voters to register and participate. It also serves as an important fail-safe against the unintentional disenfranchisement that can result from administrative error or confusion in the voter registration process. Eight states—Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, Wisconsin, and Wyoming—currently offer Election Day registration. Although Maine lawmakers attempted to repeal Election Day registration in 2011, the practice was so popular that Maine voters ultimately reinstated the practice by ballot initiative last November.<sup>18</sup>

Thus, by implementing these reforms and passing Governor's Bill 5024, Connecticut has the opportunity to enhance and expand its citizen participation in our electoral process.

### **B. Connecticut's voter registration system can be made more efficient and cost-effective by incorporating two modest reforms into Governor's Bill 5024—namely, automated registration and portable registration.**

In addition to the important reforms already included in Governor's Bill 5024, the Brennan Center urges the Committee to consider two additional reforms that will save the state substantial money and increase the accuracy of the voter rolls. These recommendations, "automated" voter registration and "portable" registration, are both components of the Brennan Center's Voter Registration Modernization proposal, available on our website.<sup>19</sup> As discussed below, they have been successfully implemented in several jurisdictions around the country.

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<sup>18</sup> The vote results showed that Mainers overwhelmingly support Election Day registration. See *2011 Maine Election Results*, BANGOR DAILY NEWS (last visited Feb. 29, 2012), <http://maineelections.bangordailynews.com> (showing that 60% of voters rejected the legislative repeal of Election Day registration).

<sup>19</sup> For more detailed information about this policy proposal as well as model reform legislation, please visit: [http://www.brennancenter.org/content/resource/vrm\\_model\\_bill](http://www.brennancenter.org/content/resource/vrm_model_bill).

1. **“Automated” voter registration will save taxpayer money and improve the accuracy of Connecticut’s voter rolls.**

“Automated” registration leverages the state’s existing infrastructures to improve the accuracy of the voter rolls. It does this, in essence, by requiring various state agencies to electronically transmit to election officials information collected from unregistered voting-age citizens who want to register to vote. The election official, in turn, can then add the interested voter to the rolls without processing the paper registration forms currently used in Connecticut. By requiring direct communication between the computer systems used by state agencies and election officials in this way, unregistered and eligible citizens who want to register can do so without filling out a separate paper form, saving election officials time and money. Anyone who is uninterested in registering can opt-out by simply checking a box or expressing a desire to remain unregistered.

Automation is efficient because state agencies regularly interact with eligible citizens and often maintain internal databases with reliable information about those citizens. Many of these agencies—including DMVs, public assistance agencies, and disability service agencies—are already required by federal law to provide the people they serve with an opportunity to register to vote.<sup>20</sup> Under an automated registration system, however, these agencies—and any others that participate in the system—would electronically transmit the information that they routinely collect in the course of their duties rather than requiring these citizens to fill out redundant paper voter registration forms and then mailing those registration forms to the relevant election official. The data transfer process would not supplant any list maintenance or double-check procedures that election officials now undertake whenever they receive a paper registration form, and no one would be registered without the opportunity to decline. These policies would also not be applied retroactively; people who are already in one of the possible agency databases would not be added to the voter rolls without their permission. This new system would simply replace the paper form that is already supplied by these agencies so that the process is easier for the voter and the information transmitted is more reliable since there is no intervening paper form or superfluous data entry requirements.

In addition, the automated system would also facilitate information-sharing between state agencies and the relevant election officials to keep the voter rolls as up-to-date and accurate as possible. Voters who inform the DMV about a change-of-residence, for instance, would automatically have their voter registration information updated to reflect their new address. Similarly, voters who change their legal names after marriage would have their voter registration information updated automatically when the marriage license bureau sends the new information to the relevant election official. Current law giving the voter the option of specifying whether any address changes should be applied for voting purposes would still remain.

This system is both cost-effective and efficient. The available evidence demonstrates that automation increases accuracy, security, and efficiency: the need for costly data entry decreases, the reliability of the information increases, and the flow of registration records is flattened and spread across the entire election cycle rather than concentrated in the final push to Election Day. At least 17 states have fully or substantially automated the voter registration process at their DMVs.<sup>21</sup> Delaware’s paperless voter registration has saved the state more than \$200,000 annually since it

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<sup>20</sup> This requirement is established in the National Voter Registration Act. *See* 42 U.S.C. § 1973gg-5(a).

<sup>21</sup> These states are: Arizona, Arkansas, California, Delaware, Florida, Georgia, Kansas, Kentucky, Michigan, New Jersey, North Carolina, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, and Washington.

adopted the process in the mid-1990s and officials there anticipate further savings.<sup>22</sup> Online and automated registrations at the motor vehicle offices in Maricopa County, Arizona, saved over \$450,000 in 2008. The county spends 33¢ to manually process an electronic application, and an average of 3¢ using a partially automated review process, compared to spending 83¢ for a paper registration form.<sup>23</sup> It cost Arizona less than \$130,000 and Washington just \$279,000 to implement both online voter registration and automated voter registration at DMVs, demonstrating that automated registration systems are a wise investment.<sup>24</sup>

Modernizing Connecticut's voter registration system through automation will lead to more accurate and complete voter rolls, with fewer data errors, handwriting mistakes, duplicate records, and outdated voter files. Current and accurate voter rolls assist poll workers and significantly reduce opportunities for election fraud. Most importantly, automated processes save significant money in both the short and the long run.

**2. Portable registration ensures that voters who move within the state of Connecticut can have their voter registrations updated quickly and efficiently to reflect their new residence addresses.**

Currently, when someone moves within the state of Connecticut outside their town, the voter must re-register or risk losing her eligibility to vote due to a mismatch between her registration address and her new residence. To address this problem, seven states—Colorado, Delaware, Maryland, Ohio, Oregon, South Dakota, and Washington—have adopted systems of “portable registration” that allow a registered voter who moves to cast a valid ballot, even if she failed to update her registration address before Election Day. Given the high mobility rate of Americans—over twenty-five million voting-age Americans, about one in nine eligible voters, change their residences every year<sup>25</sup>—adopting a system of portable registration will protect the rights of eligible Connecticut voters and reduce confusion on Election Day.

When portability is combined with automation, as described in Section II.B.1 of this testimony, the voter registration system becomes more efficient, convenient, and cost-effective. For example, if state agencies transfer relevant voter information to the appropriate election official under an automated system, as described above, a voter who notifies a participating agency of a change in address will be able to vote on Election Day without independently updating her residence for registration purposes. This cuts down on the need for voters to complete multiple redundant forms and eliminates the delays and confusion at the polls that can arise when voters update one government record but forget to update their voter registration status.

Taken together, the reforms currently in Governor's Bill 5024 and those proposed by the Brennan Center would make Connecticut a leader in applying twenty-first century practices to our country's system of registering voters. The Brennan Center has developed a model state bill consisting of all four components of Voter Registration Modernization: (1) automated registration,

<sup>22</sup> Telephone Interview with Elaine Manlove, Delaware State Election Comm'r (Jan. 22, 2010).

<sup>23</sup> Christopher Ponoroff, Brennan Center for Justice, *Voter Registration in a Digital Age* (2010), available at [http://www.brennancenter.org/content/resource/voter\\_registration\\_in\\_a\\_digital\\_age](http://www.brennancenter.org/content/resource/voter_registration_in_a_digital_age).

<sup>24</sup> Telephone Interview with Craig Stender, HAVA Project Manager, Arizona Secretary of State's Office (Dec. 21, 2009). See also Ponoroff, *supra* note 23.

<sup>25</sup> U.S. CENSUS BUREAU, *2011 Current Population Survey* (last visited Feb. 29, 2012), available at <http://www.census.gov/hhes/migration/data/cps/cps2011.html> (Table 1).

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(2) portable registration, (3) online registration, and (4) Election Day registration. The text of that model bill is available on our website: [http://www.brennancenter.org/content/resource/vrm\\_mode\\_l\\_bill/](http://www.brennancenter.org/content/resource/vrm_mode_l_bill/) for your consideration.

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The Brennan Center, once again, applauds the Governor, Secretary of State, and General Assembly's efforts to strengthen Connecticut's election system and we urge the Committee to pass Governor's Bills 5022 and 5024, with the above recommendations—namely, eliminating election-day challenges in 5022 and including automated and portable registration in 5024. These reforms could make Connecticut a national leader in election administration and voter participation. Please do not hesitate to contact us if you have any questions about these recommendations or comments.

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APPENDIX A

Proposed amendment to Governor's Bill 5022

In order to reduce the risks of voter intimidation and polling place disorder caused by voter challengers, the Brennan Center for Justice recommends amending Governor's Bill 5022 by adding the following provisions.

\* \* \*

**Sec. ##.** Section 9-232 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2012*):

(a) Each registrar [~~may appoint one or more challengers in his town or district, one of whom~~] may be present at the offering of any vote; and any such registrar [~~challenger or any elector~~] may challenge the right of any person offering to vote, on the ground of want of identity with the person on whose name the vote is offered, or disfranchisement or lack of bona fide residence, and the moderator shall decide upon the right of the person so challenged to vote.

(b) Challenges shall not be made indiscriminately and may only be made if the registrar [~~challenger~~] knows [~~suspects or reasonably believes~~] such a person not to be qualified and entitled to vote and furnishes evidence to substantiate the challenge. [~~Any challenge by an elector and t~~] The statement of the person challenged and the registrar shall be under oath, administered by the moderator. The registrar shall bear the burden of proving that the challenged voter is ineligible.

**Sec. ##.** Section 9-232c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2012*):

The moderator shall keep an accurate memorandum of the challenge which shall include (1) the name of the challenged voter; (2) [~~his~~] the voter's registry list address; (3) the reason for the challenge; (4) the name and address of the registrar [~~challenger~~]; (5) pertinent facts concerning the challenge; and (6) the result of the moderator's decision. The registrar and the challenged voter shall also sign such memorandum and it shall be assigned the same number as the challenged ballot.

**Sec. ##.** Section 9-232d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2012*):

If the moderator's decision pursuant to section 9-232 is not favorable to the challenged voter, [~~such person may request~~] the moderator must give the voter the opportunity to cast a challenged ballot by submitting an application to the moderator[.]; such application shall include as part thereof an affidavit that such person possesses all the qualifications for voting and is entitled to vote at the election.