

H.B.6045 H.B.5818 – Support – With Suggested Improvements

**Government Administration and Elections Committee
Testimony – February 15, 2019**

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Chairs and members of the Committee, my name is Luther Weeks, Executive Director of CTVotersCount, a Certified Moderator, and a Computer Scientist. For two elections, I led the Election Day Registration team in Glastonbury.

Today I have submitted five pieces of testimony on six bills: H.B.5817, H.B.5818, H.B.6045, H.B.6047, S.B.265, and S.B.479. I will focus my three minutes on H.B.6045 and H.B.5818 addressing Election Day Registration (EDR). After that, I would be pleased to address any of my written testimony.

I thank the Committee for proposing these bills which would cure a serious civil rights violation that has in fact happened in 2014, 2016, and 2018! I brought this to the attention of the Committee in 2018 and 2016. Reference: My testimony in 2016 on S.B.250: <https://tinyurl.com/EDR2016> for details on why this is a clear civil rights violation.

Voting Rights and Civil Rights demand that all citizens and voters be treated equally and have an equal right to vote!

The main objection to similar bills in the past has been from officials who are challenged by the difficulties in complying with the Cross-Check requirements in the law after 8:00pm. Those Cross-Check requirements are also the prime cause of the long, slow EDR lines.

I prefer H.B.6045 as it would extend Election Day Registration to primary elections. That would be an important component of increasing citizen participation in elections. As Moderator in a polling place for the 2016 Presidential Primary, I was saddened by voters I had to turn-away, and that they were so accepting of that. I wonder if they will ever be motivated to attempt to vote again?

There is a solution to maintaining Cross-Check after 8:00pm. The solution lies in a law passed in the last few years that allows officials to defer some counting for up to 48 hours after the polls close, Section 9-309. Those statutes and the EDR statutes need some adjusting to accommodate these changes. Attached is text I provided. It has been summarized as H.B.6058 submitted by Representative Fox. It would hold EDR ballots cast after 8:00pm, give registrars until 9:45am the next morning to call back if the Cross-Check requires it, and allow counting the EDRs after 10:00am.

There is another problem with Section 9-309 that I have also addressed in that text. It contains no mechanism or requirement for the public, candidates, or parties to know when counting will resume. At worst the existing law is misleading, at worst it opens the door for officials to count in secret – that is a bad idea and would violate the Connecticut Constitution.

Connecticut Constitution: SEC. 9. At all elections for members of the general assembly the presiding officers in the several towns shall receive the votes of the electors, and count and declare them in open meeting.

To be clear, I ultimately would prefer that Connecticut eliminate the Cross-Check altogether and join the vast majority of states that have EDR and which allow voters to register at their polling place. Those states accept voters' word under threat of perjury that they have not already voted. Years of experience in those states and common sense show that the significant penalties and the likelihood of double voting being discovered are a sufficient deterrent.

Thank you

AN ACT ENHANCING ELECTION DAY REGISTRATION, ELECTION TRANSPARENCY, AND ELECTION SECURITY.

To guarantee the civil right of anyone in line at 8:00pm to have the opportunity to register and vote. To expand election day registration to primaries. To provide officials additional time to accept and count election day registration ballots. To provide candidates and the public opportunity to observe delayed counting activities. Corrects an ambiguity and oversight in the law with regard to sealing of voted ballots.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 9-174 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Notwithstanding the provisions of any general statute, special act or municipal charter to the contrary, at any regular election, or at any special election held to fill a vacancy in a state, district or municipal office, the polls shall remain open for voting from six o'clock a.m. until eight o'clock p.m. No elector shall be permitted to cast his vote after the hour prescribed for the closing of the polls in any election unless such elector is in line at eight o'clock p.m. An election official or a police official of the municipality, who is designated by the moderator, shall be placed at the end of the line at eight o'clock p.m. Such official shall not allow any electors who were not in such line at eight o'clock p.m. to enter such line.

(b) Notwithstanding the provisions of any general statute, special act or municipal charter to the contrary, at any regular election, or primary the location designated for election day registration pursuant to subdivision (1) of subsection (c) of section 9-19j shall remain open for election day registration and voting from six o'clock a.m. until eight o'clock p.m. No applicant for election day registration shall be admitted as an elector or permitted to cast such applicant's vote after the hour prescribed for the closing of the location designated for such purposes in any regular election unless such applicant is in line at eight o'clock p.m. An election official or a police official of the municipality, who is appointed by the registrars of voters, shall be placed at the end of the line at eight o'clock p.m. Such official shall not allow any applicants for election day registration who were not in such line at eight o'clock p.m. to enter such line.

Sec. 2. Section 9-19j of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) As used in this subsection and subsections (b) to (i), inclusive, of this section, "election day" means the day on which a regular election **or primary**, as defined in section 9-1, is held.

(b) Notwithstanding the provisions of this chapter, a person who (1) is (A) not an elector, or (B) an elector registered in a municipality who wishes to change his or her registration to another municipality pursuant to the provisions of subdivision (2) of subsection (e) of this section, and

(2) meets the eligibility requirements under subsection (a) of section 9-12, may apply for admission as an elector on election day pursuant to the provisions of subsections (a) to (i), inclusive, of this section.

(c) (1) The registrars of voters shall designate a location for the completion and processing of election day registration applications on election day, provided the registrars of voters have access to the state-wide centralized voter registration system from such location.

(2) The registrars of voters may appoint one or more election officials to serve at such location and may delegate to such election officials any of the responsibilities assigned to the registrars of voters. The registrars of voters shall supervise such election officials and train such election officials to be election day registration election officials.

(d) Any person applying to register on election day under the provisions of subsections (a) to (i), inclusive, of this section shall make application in accordance with the provisions of section 9-20, provided (1) on election day, the applicant shall appear in person **not later than eight o'clock p.m., in accordance with subsection (b) of section 9-174, as amended by this act,** at the location designated by the registrars of voters for election day registration, (2) an applicant who is a student enrolled at an institution of higher education may submit a current photo identification card issued by [said] such institution in lieu of the identification required by section 9-20, and (3) the applicant shall declare under oath that the applicant has not previously voted in the election. If the information that the applicant is required to provide under section 9-20 and subsections (a) to (i), inclusive, of this section does not include proof of the applicant's residential address, the applicant shall also submit identification that shows the applicant's bona fide residence address, including, but not limited to, a learner's permit issued under section 14-36 or a utility bill that has the applicant's name and current address and that has a due date that is not later than thirty days after the election or, in the case of a student enrolled at an institution of higher education, a registration or fee statement from such institution that has the applicant's name and current address.

(e) If the registrars of voters determine that an applicant satisfies the application requirements set forth in subsection (d) of this section, the registrars of voters shall check the state-wide centralized voter registration system before admitting such applicant as an elector.

(1) If the registrars of voters determine that the applicant is not already an elector, the registrars of voters shall admit the applicant as an elector and the privileges of an elector shall attach immediately.

(2) If the registrars of voters determine that such applicant is an elector in another municipality and such applicant states that he or she wants to change the municipality in which the applicant is an elector, notwithstanding the provisions of section 9-21, the registrars of voters of the municipality in which such elector now seeks to register shall immediately notify the registrars of voters in such other municipality that such elector is changing the municipality in which the applicant is an elector. The registrars of voters in such other municipality shall notify the election officials in such municipality to remove such elector from the official voter list of such

municipality. Such election officials shall cross through the elector's name on such official voter list and mark "off" next to such elector's name on such official voter list.

(A) If it is reported that such applicant already voted in such other municipality, the registrars of voters of such other municipality shall immediately notify the registrars of voters of the municipality in which such elector now seeks to register. In such event, such elector shall not receive an election day registration ballot from the registrars of voters of the municipality in which such elector now seeks to register. For any such elector, the election day registration process shall cease in the municipality in which such elector now seeks to register and such matter shall be reviewed by the registrars of voters in the municipality in which such elector now seeks to register. After completion of such review, if a resolution of the matter can not be made, such matter shall be reported to the State Elections Enforcement Commission which shall conduct an investigation of the matter.

(B) If there is no such report that such applicant already voted in the other municipality, the registrars of voters of the municipality in which the applicant seeks to register shall admit the applicant as an elector and the privileges of an elector shall attach immediately.

(C) Except that if at the time of notice to such other municipality in (B) is after 8:00pm, and the voter is otherwise eligible, the voter will be given a ballot and allowed to complete it as in (f) and (g), such ballots and envelopes will be segregated from other election day registration ballots and envelopes, the registrar in such other municipality will have until 9:45am on the day after the election to respond to the registrar of voters in the municipality where the applicant seeks to register if the applicant has voted in such other municipality, without such notice the registrars of voters will accept the registration and count the ballot of the applicant.

(f) If the applicant is admitted as an elector, the registrars of voters shall provide the elector with an election day registration ballot and election day registration envelope and shall make a record of such issuance. The elector shall complete an affirmation imprinted upon the back of the envelope for an election day registration ballot and shall declare under oath that the applicant has not previously voted in the election. The affirmation shall be in the form substantially as follows and signed by the voter:

AFFIRMATION: I, the undersigned, do hereby state, under penalty of false statement, (perjury) that:

1. I am the person admitted here as an elector in the town indicated.
2. I am eligible to vote in the election indicated for today in the town indicated.
3. The information on my voter registration card is correct and complete.
4. I reside at the address that I have given to the registrars of voters.

5. If previously registered at another location, I have provided such address to the registrars of voters and hereby request cancellation of such prior registration.

6. I have not voted in person or by absentee ballot and I will not vote otherwise than by this ballot at this election.

7. I completed an application for an election day registration ballot and received an election day registration ballot.

.... (Signature of voter)

(g) The elector shall forthwith mark the election day registration ballot in the presence of the registrars of voters in such a manner that the registrars of voters shall not know how the election day registration ballot is marked. The elector shall place the election day registration ballot in the election day registration ballot envelope provided, and deposit such envelope in a secured election day registration ballot depository receptacle. At the time designated by the registrars of voters and noticed to election officials, the registrars of voters shall transport such receptacle containing the election day registration ballots to the area, either district or central, where absentee ballots are counted and such election day registration ballots shall be counted by the election officials present at such location. A section of the head moderator's return shall show the number of election day registration ballots received from electors. The registrars of voters shall seal a copy of the vote tally for election day registration ballots in a depository envelope with the election day registration ballots and store such election day registration depository envelope with the other election results materials. The election day registration depository envelope shall be preserved by the registrars of voters for the period of time required to preserve counted ballots for elections. **Except that election day ballots and envelopes segregated under (2) (C) may be sealed, accepted later, and counted later, in a manner consistent with the temporary interruption provisions of section 3-309.**

(h) The provisions of the general statutes and regulations concerning procedures relating to the custody, control and counting of absentee ballots shall apply as nearly as possible, to the custody, control and counting of election day registration ballots under subsections (a) to (i), inclusive, of this section.

(i) After the acceptance of an election day registration, the registrars of voters shall forthwith send a registration confirmation notice to the residential address of each applicant who is admitted as an elector on election day under subsections (a) to (i), inclusive, of this section. Such confirmation shall be sent by first class mail with instructions on the envelope that it be returned if not deliverable at the address shown on the envelope. If a confirmation notice is returned undelivered, the registrars shall forthwith take the necessary action in accordance with section 9-35 or 9-43, as applicable, notwithstanding the May first deadline in section 9-35.

(j) No person shall solicit in behalf of or in opposition to the candidacy of another or himself or herself or in behalf of or in opposition to any question being submitted at the election, or loiter or peddle or offer any advertising matter, ballot or circular to another person within a radius of seventy-five feet of any outside entrance in use as an entry to the registrars' of voters designated

location for election day registration balloting or in any corridor, passageway or other approach leading from any such outside entrance to such registrars' of voters designated location or in any room opening upon any such corridor, passageway or approach.

Sec. 5. Section 9-309 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

Upon the close of the polls, the moderator in the presence of the other election officials, shall immediately lock the voting tabulator against voting and immediately cause the vote totals for all candidates and questions to be produced. The moderator shall, in the order of the offices as their titles are arranged on the ballot, read and announce in distinct tones the result as shown, giving the number indicated and indicating the candidate to whom such total belongs, and shall read the votes recorded for each office on the ballot. The moderator shall also, in the same manner, announce the vote on each constitutional amendment, proposition or other question voted on. The vote so announced by the moderator shall be taken down by each checker and recorded on the tally sheets. Each checker shall record the number of votes received for each candidate on the ballot and also the number received by each person for whom write-in ballots were cast. The moderator shall make preliminary list from the vote totals produced by the tabulators and shall prepare such preliminary list for transmission to the Secretary of the State pursuant to subsection (a) of section 9-314, as amended by this act. After such preliminary list has been transmitted to the Secretary of the State, the canvass may be temporarily interrupted, during which time the moderator shall (1) return the keys for all tabulators to the registrars of voters, (2) seal the tabulators against voting or being tampered with, (3) prepare and seal individual envelopes for all (A) write-in ballots, (B) absentee ballots, (C) moderators' returns, and (D) other notes, worksheets or written materials used at the election, **(4) seal the materials and ballots in approved containers and numbered tamper-evident seals and for such period, as described in section 9-310 (b), as amended by this act,** and ([4]5) store all such tabulators and envelopes in a secure place or places directed by the registrars of voters. **Such temporary interruption, resumption of counting and unsealing may resume no earlier than 10:00am the day after the election, primary or referendum, and no later than one hour after the registrars of voters post the date time and location of such resumption at the main entrance of their office and at the main entrance to town hall, whichever is later.** At the end of such temporary interruption, the moderator shall receive such keys from the registrars and shall take possession of and break the seal on all such tabulators and envelopes for the purpose of completing the canvass. The result totals shall remain in full public view until the statement of canvass and all other reports have been fully completed and signed by the moderator, checkers and registrars, or assistant registrars, as the case may be. Any other remaining result of the votes cast shall be publicly announced by the moderator not later than forty-eight hours after the close of the polls. Such public announcement shall consist of reading both the name of each candidate, with the designating number and letter on the ballot and the absentee vote as furnished to the moderator by the absentee ballot counters, and also the vote cast for and against each question submitted. While such announcement is being made, ample opportunity shall be given to any person lawfully present to compare the results so announced with the result totals provided by the tabulator and any necessary corrections shall then and there be made by the moderator, checkers and registrars or assistant registrars, after which the compartments of the voting tabulator shall be closed and locked. **The moderator shall seal the materials and ballots in**

approved containers and numbered tamper-evident seals and for such period, as described in section 9-310 (b), as amended by this act, In canvassing, recording and announcing the result, the election officials shall be guided by any instructions furnished by the Secretary of the State.

Sec. 9-310. Sealing of tabulator and ballots¹ by moderator. (a) As soon as the count is completed and the moderator's return required under the provisions of section 9-259 has been executed, the moderator shall place the sealed tabulator in the tabulator bag, and so seal the bag, and the tabulator shall remain so sealed against voting or being tampered with for a period of ~~[fourteen days]~~, either sixty days or fourteen days prior to the use of such tabulator at a subsequent election, primary, or referendum whichever is less except as provided in section 9-309 or 9-311 or pursuant to an order issued by the State Elections Enforcement Commission.²

(b) The moderator shall place all cast ballots in container(s) approved by the Secretary of the State, or as many such containers as may be necessary, and affix a numbered and numbered tamper-evident seal approved by the Secretary of the State, or as many such seals as may be necessary, upon such container or containers. The moderator shall record such seal number or numbers in the moderator's return, and the ballots shall remain so sealed against tampering with for a period of sixty days^{3,4} after the election, primary, or referendum, except when ballots or materials are required to be accessed in compliance with other applicable laws, court order, or pursuant to an order issued by the Secretary of the State, or the State Elections Enforcement Commission. During such 60 days, whenever containers are unsealed, the opening must be noticed to the public and candidates, they must be opened and be in the presence of both registrars of voters or a representative of each registrar, until such ballots and materials are resealed in approved containers using approved numbered tamper-evident seals as described in this paragraph. Once resealed the broken seals, new seals, date and times of unsealing, date and times of resealing, reason for access, and the signatures of the registrars or their representatives shall be recorded on a form approved by the Secretary of the State, which shall be filed with the municipal clerk, who shall record the date of its receipt and file it with the associated moderator's return.

¹ The current statute was never updated after the advent of optical scanning, to recognize that polling place voting with a tabulator involves paper ballots that must be preserved.

² This is less stringent than current law, in the case of an election, primary, or referendum etc. closely following another election etc. It is less stringent than the often ignored, Secretary of the State's Official Audit procedures which state:

"Whenever ballots are outside of secure storage they should at all times be under the supervision of at least two election officials of opposing parties (or candidates in a primary): This includes when they are stored and transported from the polling place after the election; When they are transported to the audit facility and room; and during and after the audit until they are returned to the secure storage.

Ballots, memory cards, and tabulators must remain under seal and in secure storage from the time of pre-election testing until they are no longer needed for potential audits or audit investigations and they are released by the Secretary of the State. This includes districts not selected for audits, since the ballots and equipment may be needed for further investigations. Tabulators should remain under seal and in secure facilities, even between elections. The exceptions to these procedures are for use of ballots and the equipment for pre-election testing, election, and auditing requirements."

³ Ballots should be preserved under seal, at least until there is no need for investigations based on official audit report analysis by UConn. Even with this proposed revision, seals and security as customary in Connecticut is inadequate and should be

addressed and strengthened more at some point in the future (e.g. Ballot access should require two officials of opposing interests to access stored ballots; a third party should log all such access; and physical security mandated which would sufficient to provide confidence that unauthorized access would likely to be detected.)

⁴ Although most registrars interpret current law that ballots can be unsealed on the 15th day after an election or primary and often do unseal them on that date or shortly thereafter for the purpose of reusing containers, the Secretary of the State's Office maintains that they must remain sealed until six months or twenty-two months after the election, see next to last paragraph in <https://tinyurl.com/SOTSbsec>