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**Testimony for the House Ways and Means Committee
February 22, 2011**

**HB 732 – Elective Franchise - Registration and Voting on Election Day
(Constitutional Amendment)**

SUPPORT

The ACLU of Maryland urges a favorable report on HB 732, which proposes an amendment to the Maryland constitution to permit adoption of Election Day registration in Maryland. The ACLU of Maryland supports Election Day registration because it would remove barriers to voting that we have found in our election protection work that disenfranchise eligible voters. Although opposition to Election Day registration includes concerns about cost, logistics and voter fraud, we note at the outset that any implementing legislation can be crafted with the State Board of Elections and local election officials to address these concerns. However, before Maryland can design an effective Election Day registration program, we must amend our constitution to permit it. This bill is simply such enabling legislation. We urge the committee to keep this in mind in considering the bill and to issue a favorable report to permit Maryland to consider Election Day registration implementing legislation.

Nine states currently have Election Day registration and report no significant increase in cost or administrative burdens and no link between Election Day registration and voter fraud.¹ Maryland has already taken a significant step toward removing arbitrary barriers to voting with its early voting legislation and proposed constitutional amendment. This bill represents the next sensible step to full enfranchisement for all Maryland citizens.

Early voting increases voter turnout ONLY when coupled with Election Day Registration.

The University of Wisconsin released a detailed statistical analysis of voter turnout in early

¹ Minnesota, Wisconsin, New Hampshire, Maine, Idaho, Wyoming, Montana, Iowa and North Carolina. The total is ten counting North Dakota, which has no registration requirement at all. North Carolina has same day registration during the early voting period.

voting states, election day/same day registration states and states that combine the two.² The report identifies two key results:

- (1) Early voting by itself has a negative effect [on voter turnout] and
- (2) EDR by itself has a positive effect.

Combining early voting with EDR with early voting results does result in a significant and positive outcome.³

States that have all three approaches have a significant and sizeable increase in turnout. Indeed, any combination that includes EDR increases turnout. Cumulatively, the results suggest that creating the opportunity for voters to “one-stop shop” offers a way to turn the negative of early voting into a net positive.⁴

If reformers do want to improve turnout, the only consistent way to achieve this is to permit EDR. SDR itself can raise turnout if the window for registration and voting is sufficiently long. It appears that early voting on its own robs Election Day of its stimulating effects on marginal voters, unless EDR is also present to provide a vehicle for their mobilization at the last moment. The most common practice in the states is to offer early voting in isolation. If the goal is higher turnout, our findings show that it should be supplemented with SDR or, even better, EDR. It is only by being combined with “one-stop shopping” that early voting yields positive effects.⁵

Big Gains in Voter Turnout for Maryland with Election Day Registration.

DEMOS just released a report on the predicted increases in voter turnout for Maryland with EDR.⁶ Its findings conclude that with EDR:

- Overall turnout could go up by 4.3 percent.
- Turnout among those aged 18 to 25 could increase by 9.1 percent.
- Turnout for those who have moved in the last six months could increase by 7.2 percent.

These Maryland specific findings are reinforced by the EDR experience in other states. Research consistently shows that EDR boosts turnout.⁷ The early adopters of EDR, Minnesota, Wisconsin, and Maine, consistently lead the nation in voter participation. A sizeable number of voters take advantage of EDR in states that offer it: 15.6% of voters in Minnesota, 16.5% in Wyoming, 13.5 % in Idaho, and 11.4% in Wisconsin registered to vote on Election Day. Estimates of the turnout effects of EDR range from three to seven points.

According to a recent report by DEMOS, “By counteracting arbitrary voter registration deadlines, EDR greatly enhances the opportunity for Americans to participate in the

² “The Turnout Effects of Early Voting, Election Day Registration, and Same Day Registration in the 2008 Presidential Election,” Barry C. Burden, David T. Canon, Kenneth R. Mayer, Donald P. Moynihan, University of Wisconsin-Madison, September 17, 2009.

³ *Id.* at 9.

⁴ *Id.*

⁵ *Id.* at 25.

⁶ “Same Day Voter Registration in Maryland,” R. Michael Alvarez, Jonathan Nagler, DEMOS, February xx, 2010 (forthcoming).

⁷ *Id.* at 3.

electoral process and cast a ballot that will be properly counted. States with EDR have consistently boasted turnout rates 10 to 12 percentage points higher than states that do not offer Election Day Registration.

The top five voter turnout states in the November 2008 election were EDR states:

Minnesota 78.20%

Wisconsin 72.50%

Maine 71.40%

New Hampshire 71.30%

Iowa 69.90%

In 2004, EDR states had voter turnout rate of 70.3%, versus 54.7% in states without EDR. A recent study by DEMOS determined that Massachusetts would boost voter turnout by 5-10% if it enacted Election Day registration, estimating that African American turnout could increase by 5.6% under EDR. North Carolina adopted EDR with its early voting system in the 2008 election. As a result,

- * 236,700 North Carolina citizens became a new voter through Same Day Registration

- * 39% of that 236,700 were African American

- * Same Day registration helped push NC into being the number one state in the nation for the largest increase in voter turnout over 2004.

Young voter turnout can increase as much as 14% with EDR. Other research shows that voting habits develop early; those who start voting as soon as they are eligible are more likely to keep voting throughout life.⁸

One reason voter participation increases with EDR is that many voters do not register to vote until they become engaged in the election. Where voter registration deadlines close before the media and the public fully focuses on elections, potential voters do not become engaged in the issues until after deadlines close. For example, the University of Wisconsin's NewsLab found that over 40 percent of election news stories were aired in the final week before the 2006 election in seven Midwest media markets.¹² A 2000 election poll found that the percentage of people giving "quite a lot" of thought to the election rose significantly as Election Day approached, from 59 percent in September to 75 percent in the first week of November.⁹

Election Protection Experience Confirms EDR Reduces Sources of Voter Disenfranchisement on Election Day.

The ACLU of Maryland has long fought all forms of voting discrimination. We lead an election protection program for every statewide and presidential election that includes responding to and documenting voters' calls and problems encountered during the election. Many of the problems voters encounter on Election Day relate to voter

⁸ *Id.* at 2-3.

⁹ *Id.* at 4 (citations omitted).

registration and provisional ballots. Eligible voters who believe they have registered do not show up on the poll books and must vote a provisional ballot. Voters who are entitled to cast a regular ballot are erroneously required to cast a provisional ballot due to errors in the registration lists or misinformed election judges; voters who are entitled to cast a provisional ballot are denied the provisional ballot. We also have found errors in the handling of provisional ballots. For instance, in the most recent election, some polling sites were using incomplete provisional ballots with pages missing. In all of these instances, eligible voters are disenfranchised.

Adopting Election Day registration would essentially eliminate these sources of voter disenfranchisement. The need for provisional ballots is largely eliminated. Eligible voters who do not appear in the poll books can register on Election Day and cast a regular ballot. A DEMOS analysis of the 2006 election corroborates this conclusion. It revealed that over one-third of the problems with provisional ballots involved voters being denied a provisional ballot when they were entitled to one or forced to vote a provisional ballot when they were entitled to vote a regular ballot; 40% of the provisional ballot problems had to do with errors in the voter registration lists. EDR is one DEMOS recommendation for addressing ongoing problems with voter registration lists and provisional ballots, despite the Help America Vote Act.

EDR is cost-effective and easier for elections officials to administer than provisional ballots.

A DEMOS study indicates that elections are no more expensive to administer in EDR states than elsewhere.¹⁰ Most respondents to a 2007 telephone survey of local election officials in the EDR states of Idaho, Maine, Minnesota, New Hampshire, Wisconsin and Wyoming described the incremental cost of EDR as minimal.¹¹ Non-EDR states are also far more likely to distribute large numbers of provisional ballots. According to Wisconsin's elections director, his state's ability to avoid provisional balloting "alone makes EDR worthwhile."¹²

EDR is cost-effective because cost centers are shifted with EDR, rather than increased. Wisconsin election officials explained to the Maryland legislature in January of this year that the need for increased staff before the close of registration to handle the push to accurately process registration applications before Election Day is reduced. Staff on Election Day designated under the current system to handle provisional ballots can be dedicated instead to handling Election Day registration. Existing resources handle the processing of registrations after Election Day.

¹⁰ *Id.* at n. 21 citing Michael Alvarez, Stephen Ansolabehere, and Catherine Wilson, *Election Day Voter Registration in the United States: How One-Step Voting Can Change the Composition of the American Electorate* (Caltech/MIT, June 2002), http://www.vote.caltech.edu/media/documents/wps/vtp_wp5.pdf.

¹¹ Dēmos, *Election Day Registration: A Ground-Level View* (November 2007).

¹² *Voters Win*. . . at 5.

No Evidence of Voter Fraud.

EDR does not encourage voter fraud. A bi-partisan team of consultants to the Election Assistance Commission reported widespread agreement that very little evidence existed of voter impersonation at the polls.¹³ A recent analysis of 2002-2005 data from EDR states also found very little evidence of voter fraud.¹⁴ And the great majority of local elections officials participating in a 2007 survey in Election Day Registration states rated current fraud prevention measures sufficient to protect the integrity of elections.¹⁵

Election Day registration complements the early voting initiative already undertaken by the legislature. It makes sense for Maryland to have election day registration as an option as it moves forward with early voting and a voting system change so that Maryland can continue to fulfill its commitment to removing artificial barriers to full enfranchisement.

We strongly urge a favorable report.

¹³ United States Election Assistance Commission, *Status Report to the Voter Fraud-Voter Intimidation Research Project*, May 17, 2006,

¹⁴ *Voters Win. . .* at n. 25 citing Lorraine C. Minnite, *Election Day Registration: A Study of Voter Fraud and Findings on Voter Roll Security* (Demos, August 2007)

¹⁵ See Dēmos, *Election Day Registration: A Ground-Level View* (November 2007)