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ACLU OF RI POSITION: AMEND

**TESTIMONY ON 21-H 5372,
RELATING TO PRESCRIPTION DRUG AFFORDABILITY BOARD
March 1, 2021**

The ACLU of Rhode Island has no position on this bill's creation of a prescription drug affordability board. However, we do have concerns about some of the language relating to the applicability of open government laws to this board.

Beginning on Page 3, line 32, the bill lists four specific actions by the board that must be made in open session. We are concerned that this language could be erroneously interpreted as requiring *only* those four actions to be done in open session, as opposed to emphasizing that these actions, among others, must be taken in public. To avoid any confusion, we urge that this section be amended to make clear that, except where otherwise specified, the board is subject to all the provisions of the OMA, and that this includes, but is not limited to, the four specified activities.

In a similar vein, we would urge that the provision authorizing the non-disclosure of "trade secrets" and similar information [Page 4, lines 11-12] reference the specific exemption in the Access to Public Records Act that similarly exempts these types of records from disclosure. This will ensure there is no attempt to argue that the exemption in this bill is in any way broader than APRA's exemption.

Finally, on Page 11, lines 28-31, the bill states that any information that is obtained by the board "that is not otherwise publicly available" is considered to be a trade secret and confidential and exempt under APRA. We have two concerns about this wording. First, as a factual matter, it is not necessarily true that any information not publicly available is automatically a trade secret. Second, it is unclear what it means for information to not be "publicly available." The fact that something has not been publicly available does not necessarily mean that it fits within a recognized APRA exemption. We therefore urge that this particular language be clarified or, perhaps more appropriately, deleted since it would appear to be covered by our recommendation, above, about the language on Page 4, lines 11-12.

Thank you in advance for considering these comments.