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Testimony on 23-H 5051, House Resolution Adopting the Rules of the House of Representatives for the Years 2023 and 2024

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The ACLU of RI appreciates the opportunity to submit testimony on these proposed Rules for the 2023-2024 session. Our testimony is divided into three parts. The first addresses two substantive changes being made to the Rules adopted in 2021. The second part suggests reexamination of some of the provisions in Rule 47, the rule adopted in 2021 to address legislative procedures during the Covid 19 pandemic, and which remain unchanged in H-5051. The third part looks more generally at the Rules as they have existed for some time and offers some recommendations for rolling back a handful of changes that have been made over the years.

I. H-5051's Revisions to the Current Rules

1. This resolution proposes to eliminate Rule 12(n), which was first adopted two years ago. We support its elimination. That Rule allows bills introduced in the first-year session of a term to be carried over to the second year, and gives the bill sponsor discretion to request a (second) hearing during the carryover term. In theory, we understand and appreciate the goal of not having to reintroduce and rehear the same bill a second time. But in practice, as we argued in 2021, implementation of this rule could be very problematic for public transparency. To give an example, under this rule, a bill could be heard by a committee in March of this year, have no action taken on it and then be brought up for a vote in June 2024 – almost a year and a half later – without any further public input or discussion. Indeed, the vote taking place in June 2024 could be on a Sub A version of the bill very different from what was the subject of the public hearing the previous year. And since this rule did not appear to be used in any meaningful way last year, we approve its repeal for this new session.

2. We have consistently and previously raised concerns about the shorter timeframe established in past years' Rules for allowing bills to be considered on the floor after passing out of committee. A two-day rule for consideration was replaced in 2005 with a very short one-day rule, *see* Rule 14(c). By allowing a bill to be considered on the House floor after having been made available only at the rise of the previous legislative day, the opportunity for public review or input may be negligible. We recognize that the two-day rule was often waived during the hectic last days of the session, but we continue to see no reason why that should be applied throughout the session. Unfortunately, this problem is heightened by language in 15(d) on page 13-14, which provides that "The Legislative Council may decline

to accept for drafting any proposal for an amendment submitted to it later than 12 p.m. ~~3 p.m.~~ on the day on which the bill or resolution to be amended is to be heard, provided that the speaker or his or her designee may waive this restriction."

No standards are given as to when the legislative council "may" decline to accept amendments for drafting. More importantly, it can be very difficult for legislators, much less members of the public, to ensure an amendment is prepared and submitted by noon when the bill itself, which could be ten or twenty pages long, may only have been posted as a "Sub A" on the calendar the night before. At the very least, we believe the 3 p.m. deadline should remain.

II. Rule 47, Temporary Emergency Procedures

A major addition to the Rules in 2021 was the approval of Rule 47, adopted in response to the Covid-19 pandemic. With legislative proceedings now back to normal, we think it would be worthwhile to reexamine this rule and make some revisions well in advance of the next time an emergency arises that warrants the invocation of these emergency procedures.

a. The preamble to Rule 47 gives the Speaker sole discretion to determine if there is an emergency warranting remote committee meetings and hearings. We believe that the term should be more specifically defined, and there should be an opportunity for committee members to object to a Committee chair's determination to have remote meetings. An "emergency" that "could pose a risk" to "health and safety" could range in scope from a pandemic to a heavy snow day affecting one part of the state. It is important not to allow "emergencies" that authorize remote meetings to become normalized.

b. Rule 47(a)(ii) allows remote participation by members and witnesses "through the use of any means of communications." We believe that, absent extraordinary circumstances, the meetings should require video, not just audio, participation by both members and witnesses. If the past few years have taught us anything, it is that it is quite feasible to have video livestreaming that allows for direct participation by both public officials and members of the public.

c. Rule 47(a)(viii) provides that any "technological failure" that prevents or severely limits public access "shall not invalidate a remote meeting or any action taken at a remote meeting." This is concerning. If technology prevents public viewing of, or participation in, a meeting, the meeting should be rescheduled. Technology problems should not serve as an excuse to allow meetings to essentially be held in secret.

d. Rule 47(b)(iv) provides that a member voting by proxy gives the majority or minority leader the power "to vote on behalf [of] the member on any floor amendment" or parliamentary procedure. We do not believe that giving members the ability to vote by proxy should strip them of decision-making power on floor votes. They should be able to specify that decisions on floor amendments or parliamentary questions can be delegated to a

member of the legislator's choosing, or that they should be deemed as abstaining from any such votes. There have been many situations where a proposed amendment has significantly changed a bill's purpose and scope in ways that might prompt a legislator to reconsider their position. It should not be up to legislative leaders, rather than the voter or voter's direct proxy, to peremptorily decide what their vote should be in those circumstances.

III. Comments on Provisions Being Maintained in the Current Rules

We have gone back over the testimony the ACLU has submitted about House Rules changes over the past decade. Below is commentary on some of those changes about which we raised concerns at the time. We recognize that many people may have gotten used to them since their inception, and the abuses we warned against at the time have not come to pass. But those Rule changes included, and continue to include, powers and procedures that should not be present in the first place. In that respect we believe our earlier objections remain valid and still warrant review. We briefly revisit them below.

1. In 2015, the House adopted language, which currently appears within Rule 9 on page 4, that eliminates a Representative's ability to remove items from the consent calendar for an individual vote. Instead, it is at the Speaker's complete discretion whether to allow the removal of bills for a vote (page 4, line 28). We believe that this is an unfair restriction on legislators and their accountability to constituents. Representatives should not be effectively barred from recording themselves in opposition to a particular bill unless they are willing to also be recorded as voting against every other bill that is on that calendar. Recorded votes are among the most important measures of accountability, and they lose meaning if they can be buried among many other bills in one vote.

It is true that bills are placed on the consent calendar only with the approval of the Speaker, Majority Leader, and the Minority Leader, but most bills transcend party labels, and a Representative should not be prohibited from having a recorded vote on a specific bill merely because the leaders of his or her party have decided against it. To the argument that bills placed on the consent calendar are often minor or duplicate pieces of legislation, that is all the more reason to respect a Representative's wishes on those few occasions when he or she may believe a separate vote on a bill is warranted.

2. Another amendment adopted in 2015 that remains codified in Rule 12(a)(1) on page 7 authorizes denial of a committee hearing on a properly introduced bill if it is introduced after "the hearing of a grouping of bills on the same subject matter." Though this power has not been abused, we believe the rule creates a great potential to undercut a Representative's legitimate right to have a committee hearing on a bill he or she has introduced. First, the term "same subject matter" is not defined and could indiscriminately encompass a wide array of bills. If the finance committee holds a hearing on a variety of tax bills, is any later-introduced bill relating to taxes potentially off limits for a hearing? If there is a hearing on bills to eliminate the sales tax, does a Representative lose their chance to have a hearing on a bill to raise it? We appreciate the intent behind this rule, but it fails to take into account the way it could inadvertently impose premature deadlines on bills. Since

committees begin holding hearings on legislation even before the introduction deadline has passed, the possibility exists under this Rule that a Representative who introduces a bill within the initial deadline period could lose the right to a hearing on it.

3. Rule 12(b), on page 7, addresses committee consideration of bills that have not been previously distributed in print or electronically to its members. In order to promote the public's right to know, we ask that this rule be amended to make clear that members of the public also have a contemporaneous right to access such bills. This is in keeping with the requirement that Sub As be posted in advance of committee meetings. The public's right to attend committee hearings and hear committee deliberations is obviously diminished significantly if people have no idea what is being discussed.

4. Rule 13(a) on page 11 provides that committee votes "shall be public records and available to any member and to any person upon written request." Now that committee votes are posted online, this provision is somewhat outdated. In any event, the requirement that such requests be in writing is burdensome and unnecessary. The Access to Public Records Act specifically provides that a public body cannot require written requests for documents "prepared for or readily available to the public," R.I.G.L. §38-2-3(d). Voting records would certainly fit in that category. We urge the House to abide by the spirit of that law by eliminating this requirement.

In conclusion, we urge the Committee's consideration of our comments on the proposed revisions to Rules 12 and 15(d). We also ask the Committee to use this opportunity to consider reviewing a handful of House rules that have been adopted in the past decade that we believe merit reexamination. The ACLU appreciates your consideration of these issues.

Submitted by: Steven Brown, Executive Director