

May 22, 2023

The Hon. Senator Samuel D. Zurier  
Chair, Non-Plurality Voting Commission  
82 Smith St.  
Providence, RI 02903

**RE: Discussion and Comments for Non-Plurality Voting Commission**

Dear Chairman Zurier and Members of the Commission:

Regrettably I am unable to attend the May 31 meeting of the Special Senate Commission to Study Non-Plurality Voting Methods and Runoff Elections for General Assembly and General Officer Primaries, as I am traveling out of the country this week. Because I will be unable to participate in the scheduled discussion, I wanted to provide my comments regarding the Commission's work thus far, in the event it may aid the drafting of the body's findings and final report in the months ahead.

**Objectives and Solutions**

One particular area of note is the discussion offered in some of the testimony the Commission has received regarding the propensity of non-traditional voting methods to affect voter turnout, in the various jurisdictions where such methods have been enacted around the nation. As an elections administrator, low voter turnout is always a concern, and we strive to ensure voters have easy access to the ballot so that they may participate in our elections process with minimal effort. However, we have noted that low-turnout elections most often occur when there are either no opposition candidates, or when those candidates on the ballot have failed to engage or inspire the voters. I am curious if there is any additional data the Commission may acquire that correlates increased turnout to utilizing non-traditional voting methods, to help inform our recommendations.

In particular, I am interested if such data is capable of discerning elections that may have had low turnout simply due to lack of interest in the candidates, or lack of competition, as opposed to those with hotly contested races and issues. If the main objective of considering deploying new voting methods in Rhode Island is to increase turnout, I am looking for data that demonstrates such an increase has a causal and clearly correlated relation to the change in voting methods. In other words, if the state, and election officials, are to go through the expense and administrative lift of switching some election processes to ranked choice or runoff voting, I believe it is important that such an effort be justified as being capable of solving the expressed problem it is seeking to solve: increasing voter engagement and turnout.

If the effect is measurably negligible, then the question that should be asked is whether it is truly worth the effort in replacing one voting system with another, if it demonstrably does not solve that voter engagement problem or substantially increase turnout. I believe that is an important question the Commission should consider in its final report, because different voting methods may very well have the potential to solve different problems, in dissimilar ways. For instance, questions of candidate competition, majority support, and turnout all have different underlying causal factors, and deploying a non-traditional voting method to solve some or all of those problems can have varying or even unintended results. Some voting methods seem more apt at potentially remedying some of those problems, but could exacerbate voter confidence if poorly deployed. Other methods may simply trade one set of problems for another, effectively resolving one issue – majority support, in the case of runoff voting – while creating other problems for elections administration, or restricting the field of eligible candidates (such as a scenario where two candidates possessing similar viewpoints appear on the general election ballot, following a primary runoff, essentially trading a “competition” issue for a “viewpoint choice” issue).

Because of these concerns, I would offer that establishing a clear objective to the Commission's recommendations is critically important for determining the proposed solution, if any, the Commission proposes in its final report. Being able to succinctly answer which problem is the objective to solve – low turnout, candidate competition, majority support, etc. – is integral to determining the most effective solution to apply.

### **Constitutionality**

Another question I have that has not yet been well-defined in testimony the Commission has received is the legal effect of the Rhode Island Constitution's "plurality" elections provision on efforts to enact non-plurality voting methods. I have anecdotally heard different arguments as to the effect of that provision on party primaries, and am curious if there is any case law that has settled the matter in the past. In effect, party primaries are state law-mandated functions of general elections, and they are conducted under the same rules and manner as general elections. For instance, the constitutional provision of the 30-day voter registration deadline has been applied, uniformly, to both party primaries and general elections. As such, my question is whether the plurality provision likewise applies uniformly? In other words, is a primary election, designed to determine ballot eligibility for a general election, considered "part" of the general election process, accordingly making the plurality provision applicable to it?

If that is the case, then a recommendation of the Commission should be for the General Assembly to propose a ballot question to modify this section of the state constitution, prior to the enacting of any legislation establishing non-plurality voting, to avoid potential court challenges that would disrupt the elections process. Perhaps the General Assembly can pose a question to the Rhode Island Supreme Court, to issue an advisory opinion specific to the relationship of the plurality provision to primaries? Article X, Section 3 grants either house of the General Assembly that power to request such an advisory opinion, and doing so in this matter may provide a great deal of clarity and permanence in drafting future legislation, or eschew the need for a constitutional amendment entirely. In any event, a thorough legal review and analysis of this question, either via the state supreme court or otherwise, is warranted to avoid any potential litigation or elections administration complications, particularly in light of the costly and negative experience Maine had, as explained in detail by former Maine Speaker of the House Sara Gideon in her testimony before the Commission on May 10.

### **Timeline, Implementation, Legislation, and Elections Administration Logistics**

Additionally, at the May 10 meeting it was mentioned that it would be helpful to acquire some additional information for the Commission to review directly from the state and local election officials who have had to implement ranked choice voting or similar non-plurality voting methods. While the testimony received to date from various advocates and policy makers has been extremely helpful and informative, I do have lingering questions about what challenges local election officials, themselves, have had in implementing such major changes to the voting system, and what best practices have been developed in doing so that Rhode Island could potentially adopt.

For states like Maine, or Alaska, or individual county and city election offices like New York, San Francisco, or Cambridge, there have been various challenges, some of which were explained to us in testimony from the NCSL. However, I am most interested in hearing directly from the local and state election officials on the ground who have experienced those challenges, and perhaps found some creative ways to overcome and mitigate them that have not yet been shared. If Rhode Island were to implement such a voting system in the future, I believe documenting that information could be particularly helpful to the Department of State Elections Division, state Board of Elections, and the 39 local boards of canvassers and municipal canvassing authority staff, who are collectively charged with the conduct of elections and implementation of election policy decisions as enacted by the General Assembly.

Speaker Gideon, in her testimony, also pointed out that implementing a system like Maine's ranked choice voting could be highly problematic in a jurisdiction like Rhode Island, which notably has among the very latest primary elections in the nation. While most states that previously conducted September primaries have since moved them to the spring or summer months, after Congress passed the MOVE Act, Rhode Island is among the last states remaining that has failed to do so, which already makes it particularly challenging for election administration due to the need to retrieve, retest, and turnaround voting equipment prior to the start of early voting, and prepare, proof, print, and certify ballots. As it is, Rhode Island only meets federal requirements to send out overseas and military mail ballots by a few days at most – a time period already put in jeopardy in the event of any statewide primary issues or recounts. Speaker Gideon mentioned, specifically, that Rhode Island could be put into serious legal jeopardy, in violation of federal law, if overseas ballots are not able to be sent out in accordance with the MOVE Act. Ranked choice voting, in various circumstances, has proven to sometimes cause delays in certifying election results, particularly when there are multiple rounds of voting or the need for recounts.

Legislation proposed this session by Secretary of State Amore, specifically S-0733, could substantially mitigate this problem, by moving the primary to the month of August. Doing so would also resolve a number of other logistical challenges and election administration problems. Due to its potential impact to the viability of enacting ranked choice voting for General Assembly and general officer primaries in Rhode Island, my suggestion to the Commission is to formally support the proposal in its findings and final report to the Senate. Notably, this does not appear to be a concern, however, in terms of “top-two” or other types of runoff voting, in which a finite number of candidates advance to the General Election, as the tabulation of that type of voting does not, at a glance, appear to differ from the processes currently utilized nor does it apparently have the potential to cause additional certification delays.

It may or may not be beyond the scope of this Commission, however, if among the stated goals or efforts to trial non-plurality voting methods is, expressly, to increase voter turnout, there is also legislation pending before the General Assembly this session that could help in that regard. Of particular assistance is S-0115, introduced by Commission member Sen. Leonidas Raptakis, which would allow unaffiliated primary voters to remain unaffiliated when voting in primary elections, without the need to fill out cumbersome disaffiliation paperwork. We have noticed a significant percentage of provisional ballots in party primaries are from voters who insist they are registered in one party, but in actuality failed (or forgot) to disaffiliate after the previous election. Local election officials likewise receive hundreds of phone calls, within the 30-day disaffiliation deadline period, from voters wishing to disaffiliate so they may have a choice in which party primary to vote in, but have contacted us too late to do so. This bill, alone, which has already passed the House of Representatives unanimously, could help moderately increase turnout in party primaries by mitigating these issues.

One other note on implementation timeline is that, per various elements of testimony the Commission received, it was clear that in the jurisdictions that have decided to alter their voting methods, sufficient time was necessary to provide to election officials to educate voters, adjust voting systems, and otherwise prepare for any logistical, procedural, or operational changes needed. If ranked choice voting, or even simple runoff voting, were to be trialed or enacted in Rhode Island, I strongly suggest that the Commission recommends adequate time be incorporated into legislation doing so to ensure the process is enacted as smoothly as possible.

Nothing could hurt voter confidence more than a poor roll-out, or rushed implementation, of such a significant change to the voting process, and in recent years, election administrators have been significantly burdened by important – but nonetheless time-consuming – major changes to the state's election laws, ranging from increased use of mail ballots, to early voting, to automatic voter registration. One possible suggestion for conducting a trial of non-plurality voting methods in Rhode Island could be to do so for the 2028 Presidential Preference Primary, thus giving local and state election officials a full

cycle to develop rules and regulations, educate voters, and adequately prepare. Some of the testimony received seemed to suggest that such a primary, which by default often has a large number of candidates, could be an ideal testing ground for voters in the state to familiarize themselves with non-plurality voting.

## **Conclusions**

As an elections administrator, I have always viewed my role as an agent of policy enforcement, and not as a policy maker. That said, I believe it is important for local and state election officials who have direct experience in running our elections to communicate candidly with our lawmakers about our needs, areas that need improvement or modernization, and how new proposed changes to state election law would practically affect our operations and ability to help voters. So, the reality is election officials often do have an impact on influencing policy making decisions, if begrudgingly so. To that end, I have enjoyed my participation on the Commission and look forward to the continuing work of drafting and finalizing its report back to the Senate this fall. However, I do not feel it is my direct role to advise or advocate for a specific course of action, but merely to illustrate how various proposals would affect our ability to effectively and efficiently serve the voters. As such, I have no direct recommendations to offer the Commission here, aside from the more general commentary and suggestions that I have provided above.

I believe it speaks very highly of the Senate that this Commission has been formed and undergone its charged work with the direct participation of four election officials – a majority of the body – representing the state Board of Elections, Secretary of State’s office, and two from municipalities, representing both a city and town. It has been an honor to be appointed by the Senate President to one of those four seats, and I look forward to the remaining work of the Commission, and am willing to make myself available in whatever capacity the legislature needs to inform its decision-making regarding our election laws.

Thank you, Chairman Zurier, for your stalwart commitment to improving our elections process and for conducting the work of this Commission in such a transparent and accessible manner. Again, I regret not being able to attend this discussion in person, and I hope my comments enclosed are helpful to the Commission’s continuing work.

Very truly yours,

A handwritten signature in blue ink that reads "Nicholas J. Lima". The signature is written in a cursive style with a large, stylized initial "N".

Nicholas J. Lima  
Registrar / Director of Elections  
City of Cranston – Canvassing Authority