



## COMMENTS OF THE RHODE ISLAND REPUBLICAN PARTY

Please accept these comments on behalf of the Rhode Island Republican State Central Committee (RIGOP) for the item posted on the Rhode Island Board of Elections (BOE) April 14, 2020 agenda indicating the “Board may discuss and vote to take all steps necessary to suspend the application of additional provisions of Title 17 of the General Laws to ensure the security and integrity of the June 2, 2020 Presidential Preference Primary and to also protect the health and safety of the public from the transmission of COVID-19 during the election process.” For the record, the RIGOP opposes the suspension of laws that require: (1) valid mail ballots to include the signature of a notary public or two witnesses, such as R.I.G.L. § 17-20-2.1 and R.I.G.L. § 17-20-2.2; and (2) voters to provide proof of identity, such as R.I.G.L. § 17-19-24, and R.I.G.L. § 17-19-24.2. Neither Governor Gina Raimondo through her Executive Order 20-11 nor the BOE has the legal authority under the Rhode Island Constitution or Rhode Island General Laws to suspend laws essential to the integrity of an election. To the extent Governor Raimondo or her appointees has the legal authority to suspend election laws, only limited aspects of election laws should be suspended. Laws essential to ballot integrity, such as those requiring mail ballots to either be notarized or witnessed by two individuals, should not be completely suspended because they can be applied in a manner consistent with public health, especially for what is likely to be a low-turnout election to be held on June 2, 2020.

### Introduction

At the outset, the RIGOP makes the following three points. First, the RIGOP Chairwoman Sue Cienki indicated that the RIGOP would support a predominately mail ballot election for the Presidential Preference Primary (PPP) to be held on April 28, 2020 despite our concerns over the mail ballot process in Rhode Island.<sup>1</sup> However, neither Chairwoman Cienki nor any other member of the RIGOP leadership has ever agreed to any suspension of any laws related to mail ballots for any election.<sup>2</sup>

Second, although the RIGOP questions the legal authority of the Governor or the BOE to change the date of the PPP election from April 28, 2020 to June 2, 2020, the RIGOP does not object to nor will legally challenge the changing of the date for the PPP election. This year’s PPP election and the timing of it is of no material importance to this year’s general election because

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<sup>1</sup> Email of Chairwoman Cienki to Board of Elections dated 3/17/2020.

<sup>2</sup> On March 26, 2020, the BOE voted to suspend statutory witness signature requirements for mail ballots. “R.I. presidential primary moving toward the mailbox” (ProJo 3/26/20). At the BOE meeting of March 26, 2020, Ms. Leeann Sennick, the R.I. Republican National Committeewoman, did not express support for the suspension of any mail ballot signature requirements. Ms. Sennick did indicate that if the election was going to be conducted primarily by mail, proof of voter identification should be provided with the mail ballot.

the presidential nomination for each party is now effectively uncontested. This year's PPP election will only decide who will be elected as delegates to the national conventions of both major parties to be held in August 2020.

Third, although the RIGOP will not legally challenge a predominately mail ballot PPP election on June 2, 2020, we are unconvinced that the PPP election in June 2020 needs to be conducted primarily through mail ballots. The 2020 PPP election is likely to have very low turnout because, as already noted, unlike the 2016 or 2008 PPP elections, the nominations for both parties are now effectively uncontested. In 2004, only about 2,535 votes were cast in the uncontested Republican PPP election and 2012, only about 8,106 votes were cast in the uncontested Democratic PPP election. This year's PPP election is more likely to have turnout comparable to the 2012 PPP election when about 22,000 votes were cast than the 2016 PPP election when about 180,000 votes were cast. As a result, we oppose spending taxpayer money to send mail ballot applications to all Rhode Island voters when many of these voters have very little interest in voting in an uncontested PPP election. Also, based on various news accounts, by June 2020, Rhode Island may be past the peak of the coronavirus pandemic. By June 2020, we may see some of the current restrictions in place to protect public health being relaxed. Therefore, the added expense of promoting and conducting a mail ballot election in June 2020 appears unjustified.

The RIGOP both objects and reserves the right to consider changes to its party presidential delegate selection rules, or to legally challenge<sup>3</sup> the BOE's decision on March 26, 2020, or any subsequent BOE decision, or any gubernatorial executive order which entirely suspends statutory election law requirements essential to the integrity of an election. The PPP election is not of material importance this year but may be used as precedent to suspend statutes in far more consequential elections later this year such as the general election if the Governor continues the state of emergency into the fall of 2020. Such an outcome would undermine the validity of any close race in Rhode Island and undercut the very nature of the democratic process.

Experience has shown that our elections are susceptible to fraud and abuse. Mail ballot abuses have impacted Rhode Island elections in past such as the Providence mayoral election of 1982, and in last few years such as the Providence mayoral election of 2014 and the state representative election of District 15 in 2016.<sup>4</sup> Also, there have been recent instances of voter registration fraud pertaining to a state representative in 2016 and a gubernatorial nominee for Chairperson of the R.I. Public Utilities Commission in 2019.<sup>5</sup> Even if one believes there is currently no fraud or abuses in our elections, suspending statutes that protect the integrity of elections increases the likelihood that fraud and abuse will occur in an election. We recognize the need of conducting an election in a manner that safeguards the public health from the coronavirus, but this does not require entirely suspending various safeguards which protects elections from fraud and abuse.

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<sup>3</sup> Delegate candidates may object to mail ballots being counted that do not conform to Rhode Island statutory laws. R.I.G.L. §17-20-26.

<sup>4</sup> Steven Frias, "Results suggest fraud, benefiting Cianci" (ProJo 12/17/14); Cranston absentee voters alleges intimidation by Mattiello volunteer" (ProJo 11/9/16).

<sup>5</sup> "Former Rep. John Carnevale charged with perjury, filing false docs" (WPRI 1/13/17); "After GOP complaint, R.I. PUC nominee withdraws Barrington voter registration" (ProJo 7/22/19).

## **The Governor Lacks Constitutional Authority under Article IX to Suspend Election Laws**

To justify her Executive Order 20-11, which postponed the April 28, 2020 PPP election, and directed the BOE to work with the Secretary of State to hold a predominately mail ballot election, Governor Raimondo cited “Article IX of the Rhode Island Constitution.” Article IX does not give the Governor the power to suspend election laws. Article IX, Section 7 states that the Governor can, “on extraordinary occasions, convene the general assembly at any town or city in this state” in particular when there is a “danger from the prevalence of epidemic or contagious disease.” Although Article IX, Section 7 specifically references a unique gubernatorial power that can be exercised during an epidemic, it does not indicate that the Governor can suspend any election laws during an epidemic.

Other sections in Article IX set forth the powers of the Governor such as: Section 1, states the “chief executive power of this state shall be vested in a governor;” Section 2, states the “governor shall take care that the laws be faithfully executed;” Section 3 states the governor shall be the “captain general and commander in chief of the military and naval forces of this state;” Sections 4 and 13 give the governor the power to grant reprieves and pardons with certain limitations; Section 5 grants the governor appointment powers with certain limitations; Section 14 allows the governor to veto legislation; and Section 15 gives the governor the power to prepare and present the annual budget. Nowhere in Article IX does the Governor have the extraordinary power to suspend elections laws, not even during an emergency.

The Rhode Island Constitution grants emergency powers to the General Assembly. Under Article VI, Section 21, which was approved in November 1962, right after the Cuban Missile Crisis, states the “general assembly ... in periods of emergency resulting from disasters caused by enemy attack, shall have the power and the immediate duty to provide for prompt and temporary succession to the powers and duties of public offices, ... and to adopt such other measures as may be necessary and proper for insuring the continuity of governmental operations during the period of said emergency.” The concept of the state legislature having emergency powers is consistent with how the Rhode Island Supreme Court has interpreted the Rhode Island Constitution. The Rhode Island Supreme Court has declared that “under the Rhode Island Constitution, ... the General Assembly's power is not limited to the powers specifically enumerated whereas the Governor's authority is so limited. The Rhode Island chief executive has limited authority ....”<sup>6</sup> This is also consistent with Rhode Island’s historical precedent. During the First World War, the Second World War, and the Korean War, Governor Robert Livingston Beckmann, Governor J. Howard McGrath and Governor John Pastore, respectively, needed specific legislation passed by the General Assembly to exercise various emergency powers.<sup>7</sup> Lastly, it is not necessarily flawed to place the emergency powers in the constitution in the legislative branch; in fact, it may be prudent. In 1952, after reviewing the experiences of other nations, U.S. Supreme Court Justice Robert Jackson suggested that “emergency powers are

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<sup>6</sup> Narragansett Indian Tribe v. State, 667 A.2d 280, 282 (R.I. 1995).

<sup>7</sup> See e.g. P.L. 1917, c. 1469; P.L. 1942, c. 1150; and P.L. 1950 c. 2641.

consistent with free government only when their control is lodged elsewhere than in the Executive who exercises them.”<sup>8</sup>

Even if the Governor has implicit emergency powers under the Rhode Island Constitution, these emergency powers do not extend to suspending election laws. Article II, Section 2 states that the “general assembly shall provide by law for the nomination of candidates; for a uniform system of permanent registration of voters; ... for absentee and shut in voting; for the time, manner and place of conducting elections; [and] for the prevention of abuse, corruption, and fraud in voting....” The General Assembly has exclusive power over election laws.<sup>9</sup> Under the Rhode Island Constitution, a “power exclusively conferred upon one department is, by necessary implication, denied to the other.”<sup>10</sup> Therefore, if the Rhode Island Constitution gives the General Assembly explicit and exclusive power of enacting election laws, it would be illogical to assert that the Governor has the implicit power to suspend election laws somewhere in the Rhode Island Constitution. Therefore, the Governor has no power to suspend election laws under Article IX of the Rhode Island Constitution.

### **Governor Lacks Authority under Title 28, Chapter 8 (Quarantine Generally) of Rhode Island General Law to Suspend Election Laws**

To justify her Executive Order 20-11, which postponed the April 28, 2020 PPP election, and directed the BOE to work with the Secretary of State to hold a predominately mail ballot election, Governor Raimondo also cited “Title 23, Chapter 8.” Title 23, Chapter 8 entitled “Quarantines Generally” does not give the Governor the power to suspend election laws. R.I.G.L. § 23-8-18 permits the governor to “place under quarantine the whole state or that portion of the state that he or she may deem necessary,” as well as to “authorize and empower the state director of health to take any action and make and enforce any rules and regulations that may be deemed necessary to prevent the introduction and to restrict the spread of infectious diseases in the state.” However, this statutory provision does not indicate in any way that the Governor has the power to suspend election laws. Even if R.I.G.L. § 23-8-18 is somehow interpreted to implicitly permit the Governor to suspend election laws, the Governor has never declared the entire State of Rhode Island or even a significant portion of its population to be under quarantine. Currently, the Governor requires quarantine only for those individuals who: (1) traveled internationally; (2) traveled by air in the United States; (3) traveled from another state; or (4) have been in known close contact, within six feet, of someone who has been clinically diagnosed with COVID-19.<sup>11</sup> Under Executive Order 20-20 quarantine “separates and restricts the movement of people who were exposed to a contagious disease to see if they become sick” while isolation “separates sick people with a contagious disease from people who are not sick.” In total, there are approximately 2,250 people currently in quarantine or isolation in Rhode Island.<sup>12</sup> This amount of people in quarantine and isolation does not justify the suspension of election laws for the entire Rhode Island population.

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<sup>8</sup> *Youngstown v. Sheet & Tube Co v. Sawyer*, 343 U.S. 579, 652 (1952) (J. Jackson concurring).

<sup>9</sup> *Ball v. Board of Elections*, 102 R.I. 227, 231 (1967)

<sup>10</sup> *In Re: Opinion of the Justices (Dorr)*, 3 R.I. 299, 301 (1854).

<sup>11</sup> Executive Orders 20-03, 20-10, 20-14, and 20-20.

<sup>12</sup> “8 more COVID-19 deaths in RI, including young resident of group home” (WPRI 4/9/20).

The Governor's other powers under Chapter 8 of Title 23 are as follows: (1) the power to authorize mass immunization projects under R.I.G.L. §23-8-2; and (2) the power to approve the Department of Health's expenses for preventing and restricting the prevalence of epidemic diseases under R.I.G.L. §23-8-20. The Director of the Department of Health also has various powers under Chapter 8 of Title 23 including the power to: (1) declare any disease to be a reportable disease under the R.I.G.L. §23-8-1; and (2) require any person suffering, or appearing to be suffering from a communicable disease to be put into isolation or quarantine under R.I.G.L. §23-8-4. Furthermore, under Chapter 8 of Title 23, persons reasonably suspected of having a communicable disease can be required to be examined. Fines can be levied against those who violate quarantine or isolation orders. Railroads, steamboats and vehicles are also required to obey the rules and regulations made by the Director of Department of Health. In all these extensive and intrusive powers, there is no provision in Chapter 8 of Title 23 which remotely suggests that the Governor or any of her appointees has the power to suspend election laws. In conclusion, the Governor has no power to suspend election laws under Chapter 8 of Title 23.

**Governor Lacks Authority under Title 30, Chapter 15**  
**(Emergency Management) of Rhode Island General Law to Suspend Election Laws**

To justify her Executive Order 20-11, which postponed the April 28, 2020 PPP election, and directed the BOE to work with the Secretary of State to hold a predominately mail ballot, Governor Raimondo also cited "Title 30, Chapter 15." Title 30, Chapter 15 entitled "Emergency Management" does not give the Governor the power to suspend election laws. In Chapter 15 of Title 30, there are two statutes which provide extensive lists of the Governor's powers and responsibilities during an emergency.

R.I.G.L. § 30-15-7 lists the Governor's general powers during an emergency as follows: (1) to "issue executive orders, proclamations, and regulations;" (2) to "cooperate with the federal authorities and with the governors and/or officials of the other states in matters pertaining to the common disaster preparedness;" (3) to "consider on a continuing basis steps that could be taken to prevent or reduce the harmful consequences of disasters;" (4) to "prepare a comprehensive plan and program for disasters;" (5) to "procure supplies and equipment, to institute training programs and public information programs;" (6) to "delegate any administrative authority vested in the governor" under Chapter 15 of Title 30; and (7) to "do all other things necessary to ensure adequate preparation for disasters in the state, not inconsistent with other provisions of law." In this long list of the Governor's general powers during an emergency, there is no mention of anything remotely pertaining to elections.

R.I.G.L. § 30-15-9 lists the Governor's responsibilities during an emergency as follows: (1) "meeting the dangers to the state and people presented by disasters"; (2) declaring "a state of emergency;" (3) activating "the state and local disaster emergency plans;" (4) being the "commander-in-chief of the organized and unorganized militia and of all other forces available for emergency duty;" (5) to exercise certain powers "limited in scope and duration as is reasonably necessary for emergency response." These certain powers are quite extensive and extraordinary. They are as follows: (1) to "suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business ... if strict compliance ... would in any way prevent, hinder, or delay necessary action in coping with the emergency;" (2) to "utilize all available

resources of the state government as reasonably necessary to cope with the disaster emergency;”(3) to “transfer the direction, personnel, or functions of state departments and agencies or units thereof for the purpose of performing or facilitating emergency services;” (4) to “commandeer or utilize any private property” if “necessary to cope with the disaster emergency;” (5) to “direct and compel the evacuation of all or part of the population from any stricken or threatened area;” (6) to “prescribe routes, modes of transportation, and destinations in connection with evacuation;” (7) to “control ingress and egress to and from a high risk area, the movement of persons within the area, and the occupancy of premises therein;” (8) to “suspend or limit the sale, dispensing, or transportation of alcoholic beverages, firearms, explosives, and combustibles;” (9) to “make provision for the availability and use of temporary emergency shelter;” (10) to make rules and regulations “for the assigning, detailing, and making available for duty and use ... any of the personnel, apparatus, or equipment of any police or fire department of any other city or town;” (11) to “designate as a special emergency health and sanitation area, any area within the state;” (12) to “regulate the sale, purchase, or distribution” of “food, fuel, clothing, antitoxins, serums, immunizing agents, or any other pharmaceutical agents or medical supplies, or any other necessity of life or defense;”(13) to “do all other things necessary to effectively cope with disasters in the state not inconsistent with other provisions of law;” (14) to “adopt and enforce measures to provide for the safe disposal of infectious waste;” (15) to “adopt and enforce measures to provide for the safe disposal of corpses” and (16) to “compel a person to submit to a physical examination and/or testing as necessary to diagnose or treat the person.”

In an emergency, the Governor has extensive and extraordinary statutory powers. The Governor can commandeer private property, compel evacuations, suspend the sale of alcohol, regulate the sale of necessities, dispose of corpses, compel people to be physically examined for disease, but there is absolutely no mention of the Governor’s power over any aspect of elections. If in enacting Chapter 15 of Title 30, the General Assembly intended the Governor to have some authority over the conduct of elections during an emergency, the General Assembly would have specifically mentioned it among the extraordinary gubernatorial powers and responsibilities listed in R.I.G.L. §§ 30-15-7 and 30-15-9. The fact that the word election is nowhere to be found in either R.I.G.L. §§ 30-15-7 or 30-15-9 makes it clear that the General Assembly did not intend to give the Governor power over elections during an emergency.

Under Rhode Island law, there is a well-known and settled rule of statutory interpretation called “expressio unius est exclusio alterius” which means “the expression of one thing is the exclusion of another.”<sup>13</sup> The Rhode Island Supreme Court has declared that “it is an accepted rule of statutory construction that “an express enumeration of items in a statute indicates a legislative intent to exclude all items not listed.”<sup>14</sup> This point has been reiterated in a Superior Court ruling where the judge has noted that “in the context of statutory interpretation, our Supreme Court has endorsed the maxim expressio unis est exclusio alterius.”<sup>15</sup> Both R.I.G.L. §§ 30-15-7 and 30-15-

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<sup>13</sup> See e.g. Ryan v. City of Providence, 11 A.3d 68, 75-76 (R.I. 2011); Retirement Bd. of Employees' Retirement System of State v. DiPrete, 845 A.2d 270, 287 (R.I. 2004); and Retirement Bd. of Employees' Retirement System of State v. Azar, 721 A.2d 872, 877 (R.I. 1998).

<sup>14</sup> Terrano v. State Dept. of Corrections, 573 A.2d 1181, 1184 (R.I. 1990)

<sup>15</sup> Larisa v. R.I. Ethics Commission, PC-2011-6938 (Superior Court) (9/3/2014) (J. McGuirl)

9 provide extensive and exhaustive lists of the extraordinary powers and responsibilities the Governor has in an emergency. However, these lists make no mention of elections in any way.

It would be contrary to the fundamental rules of statutory interpretation, and simply illogical to assert that the General Assembly intended to give a governor emergency powers over elections, when there is no mention of elections in these statutes. Elections are fundamental to our form of government. If the General Assembly really intended to give a governor authority over elections during an emergency, then it would have included that power in the exhaustive list of extraordinary powers and responsibilities the Governor has under either R.I.G.L. §§ 30-15-7 or 30-15-9. In conclusion, the Governor has no power to suspend election laws under Chapter 15 of Title 30.

**R.I.G.L. § 30-15-9(e)(1) Must Not Be Used to Entirely Suspend Laws  
Essential to Maintaining the Integrity of an Election.**

We anticipate that the Governor or the BOE will focus on a single provision in Chapter 15 of Title 30, R.I.G.L. §30-15-9(e)(1), to claim that the Governor or her appointees can suspend election laws.<sup>16</sup> Under R.I.G.L. §30-15-9(e)(1), if “reasonably necessary for emergency response,” the governor may: “[s]uspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency.” Even if R.I.G.L. § 30-15-9(e)(1) is interpreted to encompass election laws, it does not encompass statutory laws essential to safeguarding the integrity of an election.

At the outset, there is a potential constitutional violation in the General Assembly delegating to the Governor and her appointees the power to suspend statutes pursuant to R.I.G.L. § 30-15-9(e)(1). Under Article 6, Sections 1 and 2, the General Assembly has the power to enact laws. Also, under Article II, Section 2, the General Assembly is responsible for passing laws “for absentee and shut in voting; for the time, manner and place of conducting elections; for the prevention of abuse, corruption, and fraud in voting.” The Rhode Island Supreme Court has explained that the General Assembly “can delegate so-called quasi-legislative power to other bodies pursuant to the exercise of their plenary powers without offending the nondelegation doctrine, provided that they furnish these entities with sufficient guidance.”<sup>17</sup> “Quasi-legislative powers consist in the authority to make rules and regulations having the force of law.”<sup>18</sup> Furthermore, “the General Assembly may not properly delegate to an administrative entity the legislative responsibility for determining, in the exercise of discretion, what the law shall be.”<sup>19</sup> The power to suspend statutes goes well beyond the power to make rules and regulations. The power to suspend statutes goes beyond the exercise of discretion in the enforcement of statutes and instead goes to determining what the law is. The General Assembly cannot “delegate” to the

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<sup>16</sup> R.I.G.L. § 17-7-5 lists the various powers and duties of the BOE. In none of these enumerated powers and duties, is the BOE given the power to suspend statutory election laws. In fact, under R.I.G.L. § 17-7-5(c) the BOE only has “the power to make any rules, regulations, and directives... not inconsistent with law.”

<sup>17</sup> In re Advisory Opinion to the House of Representatives (Coastal Resources Management Council) 961 A.2d 930, 939 (R.I. 2008)

<sup>18</sup> Id., at fn. 13.

<sup>19</sup> Id., at fn. 15.

executive branch or other entities “the power to make law itself, nor to say what the law shall be.”<sup>20</sup> The power to suspend statutes during an emergency is the power to determine what the law is during the emergency. This goes well beyond the administration of a law and instead does to deciding what the law is. The suspension of statutes under R.I.G.L. § 30-15-9(e)(1) appears to be unconstitutional delegation of legislative powers to the Governor and her appointees.

Even if R.I.G.L. § 30-15-9(e)(1) is constitutional, there are a number of reasons why the statutory signature requirements for mail ballots cannot and should not be entirely suspended. First, the power to “suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business” is not intended to pertain to procedures that voters must follow in order to cast a valid ballot. The phrase “procedures for the conduct of state business” relates to the procedures that public officials must follow such as open meeting laws or requests for public records. Under R.I.G.L. § 17-20-2.1, and R.I.G.L. § 17-20-2.2, voters, not public officials, are required to get their mail ballots notarized or witnessed. Under R.I.G.L. § 17-19-24, and R.I.G.L. § 17-19-24.2, voters, not public officials, are required to present proof of identification. It would be beyond the scope of R.I.G.L. § 30-15-9(e)(1) to suspend laws which require voters to follow certain procedures to ensure that the vote is valid.

Second, the power to “suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business” cannot be used to make substantive changes in the law even during an emergency. The exact language conferring the power to “suspend the provisions of any regulatory statute” in R.I.G.L. § 30-15-9(e)(1) was part of model legislation which was adopted by about fourteen other states.<sup>21</sup> But, there is only one case where the power of a governor to “suspend the provisions of any regulatory statute” has been reviewed by a court. In Louisiana Hospital Ass’n v. State, the Governor of Louisiana, through his insurance commissioner, suspended a statute that permitted balance billing by out of network care providers during a state emergency related to hurricane.<sup>22</sup> The Louisiana court declared that La. R.S. § 29:724, which gave the Louisiana Governor the power to suspend the provisions of any regulatory statute during an emergency, “did not intend to convey legislative authority upon the governor during a state emergency” and that the governor “had no authority pursuant to La. R.S. § 29:724 to enact substantive law”.<sup>23</sup>

Similarly, suspending entire laws of a procedural nature enacted to safeguard the integrity of the election is, in effect, a substantive law change which is not permitted by R.I.G.L. § 30-15-9(e)(1). Suspending procedural laws pertaining to elections can have a substantive impact on integrity of elections. For example, requiring voters to be registered at least thirty days prior to an election, signing their name on mail ballot envelopes, and signing their name on the voter list at the polls are all procedural requirements. The suspension of all these procedural laws for voters would certainly have a substantive and negative impact on the integrity of an election.

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<sup>20</sup> Opinion to the Governor (Rhode Island Public Buildings Authority), 112 R.I., 139,150 (1973).

<sup>21</sup> See e.g. Fla. Stat. §252.36; OCGA §38-3-51; and La. R.S. § 29:724.

<sup>22</sup> Louisiana Hospital Ass’n v. State, 168 So.3d 676, 680-681 (La.App. 1 Cir. 2014), writ denied, (La. 5/1/15), 169 So.3d 372.

<sup>23</sup> Id., at 687-688. The Louisiana court applied the statutory canon of *expressio unis est exclusio alterius*.

Third, the laws related to mail ballot signature requirements should not be entirely suspended because the General Assembly has clearly expressed the importance of the mail ballot procedures for safeguarding the integrity of elections. R.I.G.L. § 17-20-1.1 states that the statutory mail ballot “procedures are intended to prevent misuse of the electoral system.” R.I.G.L. § 17-20-24.1 commands that the “the procedure by which mail ballots are obtained and cast shall be strictly applied to assure the integrity of the electoral system.” The R.I.G.L. § 17-20-34 declares that “the procedures” for mail “balloting processes are strictly enforced ....” Even if the Governor and her appointees have the power to suspend procedural election laws during an emergency, the General Assembly in R.I.G.L. §17-20-24.1 emphasized that it wants the procedures for casting mail ballots to be “strictly applied in any way to assure the integrity of the electoral system.”

Fourth, the complete suspension of statutory signature requirements for mail ballots is not reasonably necessary to protect the public health. Under R.I.G.L. § 30-15-9(e)(1), to suspend a statute it must be demonstrated that it is “reasonably necessary for emergency response” and that “strict compliance with the provisions of any statute ... would in any way prevent, hinder, or delay necessary action in coping with the emergency.” Suspension of the entire statutory safeguard related to mail ballot envelopes being signed by two witnesses is not “reasonably necessary for emergency response” and it will not in “any way prevent, hinder, or delay necessary action in coping with the emergency.” Under the Executive Order 20-14 gatherings in private of five or less people are permitted. Under R.I.G.L. §§ 17-20-2.1, and 17-20-2.2, mail ballots are valid if the voter cast his or her ballot in the presence of two witnesses. This procedure only requires three people to be present together. This is permitted under Executive Order 20-14, and the Governor has publicly expressed that she has no intention of further lowering the five-person limitation. Many voters presumably have contact with at least two other individuals. Therefore, the suspension of the two-witness signature requirement for mail ballots is not reasonably necessary for the emergency response to the pandemic.

Also, the entire suspension of the statutory requirement that mail ballot envelopes be signed by a public notary is not “reasonably necessary for emergency response” and it will not in “any way prevent, hinder, or delay necessary action in coping with the emergency.” On April 3, 2020, the R.I. Secretary of State notified notary publics that remote online notarizations are authorized during the coronavirus state of emergency.<sup>24</sup> There is absolutely no logical reason to require remote online notarizations for various legal documents during this public health emergency while suspending the legal requirement for notarization in its entirety for mail ballots. While we recognize that remote online notarization is not in strict compliance with Rhode Island mail ballots laws as required R.I.G.L. §17-20-24.1, at least it is an effort to be in “material conformance” with Rhode Island’s mail ballot safeguards during a public health emergency.<sup>25</sup> Therefore, neither the Governor nor the BOE need to completely suspend the statutory mail ballot signature requirements during this state of emergency.

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<sup>24</sup> Letter of R.I. Secretary of State Nellie Gorbea (4/3/20). The BOE decision of March 26, 2020 related to suspending notary signature requirements occurred prior to this decision.

<sup>25</sup> The RIGOP recognizes the physical impossibility during a pandemic of the BOE sending bipartisan pairs of supervisors to nursing homes and hospitals during this state of emergency under R.I.G.L. §17-20-14. Therefore, voters in these locations could have their mail ballot envelopes notarized remotely or witnessed by two individuals who are already present at the nursing home or the hospital.

Lastly, rather than suspending all mail ballot signature safeguards, a prohibition on mail ballot harvesting by campaign workers and volunteers would do much more to protect public health during a pandemic. Mail ballot harvesting is the practice whereby campaign workers and volunteers collect and submit mail ballots. Although this practice is illegal in other states, it occurs in Rhode Island.<sup>26</sup> During a pandemic, mail ballot harvesters like Edward Cotugno, and Robert Enright could become “super spreaders” of a contagious disease. Prohibiting the practice of mail ballot harvesting would not only help protect public health but it would also help protect the integrity of elections.

### **Conclusion**

Neither Governor Raimondo nor her appointees have the authority under the Rhode Island Constitution or Rhode Island General Laws to suspend election laws. To the extent Governor Raimondo or her appointees have the legal authority to suspend election laws, only limited aspects of the laws ensuring the integrity of an election should be suspended.

The RIGOP recognizes the challenges of conducting an election while there is a public health emergency. However, an election must be conducted in a manner which both safeguards the public health and the integrity of the ballot box. The RIGOP wishes to work in a bipartisan and cooperative manner with the Governor, the BOE and the Secretary of State on conducting the upcoming PPP election. However, the RIGOP feels obligated to state its objection to the complete suspension of various election laws designed to safeguard the integrity of the ballot box. The RIGOP does not want the PPP election to set a precedent for future elections later this year.

The Spanish influenza pandemic struck Rhode Island during September and October 1918, but by the end of October 1918, it had subsided.<sup>27</sup> In early November 1918, Rhode Island conducted a general election without any significant changes to its election procedures or laws and without any reported negative impact to public health.<sup>28</sup> We are hopeful that the elections to be held later this year will be conducted in a manner fully consistent with state election law.

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<sup>26</sup> "Disputed House race puts spotlight on 'ballot harvesting'" (apnews.com12/7/18); "Rhode Island laws relatively lax on mail ballots" (ProJo 10/28/14); and "Witness in Mattiello-Frias voting case claims he's victim of 'set up'" (ProJo 11/17/16).

<sup>27</sup> Steven Frias, "Don't repeat the mistakes of 1918 " (Warwick Beacon 3/19/20).

<sup>28</sup> See Erwin Levine, Theodore Francis Green: the Rhode Island Years, 1906-1936, at 86-88 (1963); see also Providence Journal newspaper articles from November 1918.