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TESTIMONY OF THE
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS
TO THE HOUSE COMMITTEE ON JUDICIARY
ON HOUSE BILL NO. 401
RELATING TO VOTING

February 3, 2015

Chair Rhoads and members of the House Committee on Judiciary, thank you for the opportunity to testify on House Bill No. 401. The purpose of this bill is to require automatic voter registration for all applicants for a new or renewed driver's license or civil identification card, including a provisional license or instructional permit.

The Office of Elections supports the intent of the bill to encourage voter registration, requiring automatic voter registration does not comply with the National Voter Registration Act (NVRA). 42 USC § 1973gg-3(a).

In order to accomplish the goal of this bill, we propose a shift from the current "opt-in" process for voter registration to a process that requires the applicant to explicitly choose either to register or not. We propose the following language for your consideration:

§11-__ Applications for a Driver's License or State

Identification Card. (a) Notwithstanding any law to the contrary, an affidavit on application for voter registration shall be a part of the application associated with the issuance of a civil identification card under section 286-301 and a driver's license under section 286-109.

(b) Applications for an identification card or driver's license will not be processed until the applicant clearly indicates on the application

that they are declining to register to vote or the portion of the application related to voter registration is completed.

With the enactment of such a law, we would amend the language of the affidavit on application for voter registration to require the applicant to affirmatively decline to register, opposed to the current system in which the applicant needs to only leave it blank to decline to register to vote. For example, the portion of the driver license and civil identification card relating to voter registration could be amended to read as follows:

Do you wish to register to vote?

If Yes, continue on to the Affidavit on Application for Voter Registration.

If No, please sign below indicating that you are declining to register to vote at this time.

Signature _____ Date _____

As a result, driver license and civil identification card applications would not be allowed to be processed by the examiner of drivers until the applicant indicates that they are declining to register to vote, or the applicant completes the voter registration application.

While such a process does not guarantee a hundred percent registration of such applicants, it does guarantee that each applicant will explicitly be given the opportunity to register to vote and the decision by an applicant to register or not register will be unambiguous.

Thank you for the opportunity to testify on House Bill No. 401.



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COMMITTEE ON JUDICIARY

Tuesday, February 3, 2015, 2:00 p.m., Conference Room 325
HB 401 RELATING TO VOTING
TESTIMONY

Susan Irvine, Legislative Committee, League of Women Voters of Hawaii

Chair Rep. Karl Rhoads, Vice Chair Rep. Joy A. San Buenaventura and Committee Members:

The League of Women Voters of Hawaii would like to comment on HB 401 which provides that all applicants for a new or renewed driver's license, provisional license, instructional permit, or civil identification card, who are eligible to register to vote, shall automatically be registered to vote.

The League of Women Voters strongly supports efforts to register potential voters. However, HB 401 requires any eligible citizen obtaining a driver's license or state identification card, be automatically registered to vote. As it stands, this bill is coercive and likely does not comply with the National Voter Registration Act that requires state agencies to offer, not require, voter registration as an option.

The League strongly supports the intent of this bill, but potential voters must have the option of declining to register to vote when they come to a state agency for other business. Rather than mandating that potential voters be registered in this manner, it would be better to ensure that the voter registration process at our department of motor vehicle offices is encouraged and easily accomplished.

To this end, the League encourages you to support the Office of Elections legislative package bill HB 176, which mandates registering potential voters at the DMV, unless the potential voter declines to register to vote. HB 176 provides a good, legal way to encourage increased participation in voting.

We urge you to consider our opposition to this bill. Thank you for the opportunity to submit testimony.

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**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
SEVENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:
H.B. NO. 401, RELATING TO VOTING.

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 3, 2015 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Russell A. Suzuki, Attorney General, or
Valri Lei Kunimoto, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General has serious concerns regarding this bill's provisions requiring the automatic voter registration of driver's license and state identification card applicants and provides the following comments.

The bill provides for the automatic voter registration of applicants for new or renewed driver's licenses or state identification cards who are eligible to register to vote. The bill also provides that every qualified applicant is required to authorize the examiner of drivers to collect and transmit the necessary personal information required to register to vote to the county clerk and requires the examiner to notify all qualified applicants that by submitting an application for a driver's license or state identification card, the applicant consents to automatic application to vote with the county clerk. The bill further deletes existing statutory provisions making applications for voter registration by mail available to every driver's license applicant.

The Department has serious concerns that provisions of this bill are inconsistent with the National Voter Registration Act (NVRA), 42 U.S.C.A. §§ 1973gg – 1973gg-10. The NVRA provides voter registration requirements with respect to elections for federal office and section 5 requires states to offer voter registration opportunities at state motor vehicle agencies, and provides in part as follows:

(a) In general

Except as provided in subsection (b) of this section, notwithstanding any other Federal or State law, in addition to any other method of voter registration provided for under State law, each State shall establish procedures to register to vote in elections

for Federal office--

- (1) by application made simultaneously with an application for a motor vehicle driver's license pursuant to section 1973gg-3 of this title;

42 U.S.C.A. § 1973gg-2.

The NVRA defines “motor vehicle driver’s license” as follows:

As used in this subchapter -

- (3) the term “motor vehicle driver’s license” includes any personal identification document issued by a State motor vehicle authority;

42 U.S.C.A. § 1973gg-1.

Thus, NVRA provisions also apply to applications for a state identification card.

In Hawaii, the examiner of drivers in each county issues driver’s licenses and state identification cards, pursuant to sections 286-101 and 286-301, Hawaii Revised Statutes, respectively, and are subject to the NVRA.

The NVRA, addressing the simultaneous application for voter registration and application for motor vehicle driver’s license, recognizes applicants have the right not to register to vote and provides in part:

- (a) In general
 - (1) Each State motor vehicle driver's license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application.
 -
- (c) Forms and procedures
 - (1) Each State shall include a voter registration application form for elections for Federal office as part of an application for a State motor vehicle driver's license.
 - (2) The voter registration application portion of an application for a State motor vehicle driver’s license –

. . . .

- (C) shall include a statement that –
 - (i) states each eligibility requirement (including citizenship);
 - (ii) contains an attestation that the applicant meets each such requirement; and
 - (iii) requires the signature of the applicant, under penalty of perjury;
- (D) shall include, in print that is identical to that used in the attestation portion of the application -
 - (i) the information required in section 1973gg-6(a)(5)(A) and (B) of this title;
 - (ii) a statement that, if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and
 - (iii) a statement that if an applicant does register to vote, the office at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes; and
[Emphases added.]

42 U.S.C.A. § 1973gg-3.

The Department has concerns that this bill does not permit applicants to decline to register to vote. The foregoing NVRA provision clearly provides that the driver’s license application will serve as a voter registration application unless the applicant fails to sign the voter registration application. In addition, the NVRA provides that a voter registration application must include the statement, “if an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential” Insofar as this bill does not provide an applicant the opportunity to decline to register to vote, the bill is inconsistent with the provisions of the NVRA and is therefore preempted under the Article I, Section 4, Clause 1,

Elections Clause, of the U.S. Constitution and superseded by the federal law. (See Arizona v. Inter Tribal Council of Arizona, Inc., 570 U.S. ____, 133 S. Ct. 2247, 186 L. Ed. 2d 239 (2013), where the U.S. Supreme Court held that the Arizona law requiring proof of citizenship when the applicant registered to vote was preempted or superseded by the NVRA’s mandate that States “accept and use” a uniform federal form to register voters for federal elections; and Ex Parte Siebold, 100 U.S. 371, 384, 25 L. Ed. 717 (1879), when Congress’ power under the Elections Clause is “exercised, the action of Congress, so far as it extends and conflicts with the regulations of the State, necessarily supersedes them”.) Thus, the Department respectfully suggests that the bill be held or amended accordingly to conform to NVRA requirements.

Thank you for the opportunity to provide our testimony.



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**House Committee on the Judiciary
Hearing on HB 401
February 3, 2015**

Testimony of the Center for Popular Democracy

The strength and legitimacy of our democracy is predicated on the participation and engagement of citizens in the democratic process. Yet the United States has one of the lowest rates of electoral participation in the world, ranking 120 in a study of 169 countries.¹ Although roughly 215 million Americans were eligible to vote in the presidential elections of 2012, only about 133 million (or 62 percent of eligible voters) actually cast a ballot. In the 2014 midterm elections, turnout dropped to 36 percent of eligible voters.² Democratic engagement is particularly low in Hawaii: the state ranked *last* in the nation in the percentage of registered eligible voters in the last presidential election.³

Much of the problem lies with our voter registration system itself, a 19th-century relic that prevents continued progress toward truly engaging everyone in our democratic process. The simple fact is that the most effective means of increasing voter participation is to make voter registration more accessible. Individuals that are registered to vote are highly likely to participate. Eighty-seven percent of registered voters nationally and 88 percent in Hawaii went to the polls in 2012.^{4,5} Three times more

¹ Rafael López Pintor, Maria Gratschew, and Kate Sullivan, "Voter Turnout Rates from a Comparative Perspective," *Voter Turnout Since 1945: A Global Report*, International Institute for Democracy and Electoral Assistance (2002), <http://www.idea.int/publications/vt/upload/Voter%20turnout.pdf>, 79. Rankings in this study were based on votes versus registrations, rather than votes versus eligible voters.

² Michael P. McDonald, "2014 General Election Turnout Rates," *United States Election Project*, <http://www.electproject.org/2014g>.

³ US Census Bureau, Voting and Registration in the Election of November 2012, Table 4b, <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2012/tables.html>.

⁴ Kennedy, Liz. "This National Voter Registration Day It's Time for Universal Voter Registration". <http://www.acslaw.org/acsblog/this-national-voter-registration-day-it%E2%80%99s-time-for-universal-voter-registration>

⁵ Kennedy, Liz. "This National Voter Registration Day It's Time for Universal Voter Registration". <http://www.acslaw.org/acsblog/this-national-voter-registration-day-it%E2%80%99s-time-for-universal-voter-registration>.

eligible electors are not registered to vote than registered persons who choose not to vote.

Hawaii has made great strides in expanding voter registration opportunities in recent years, enacting Late Registration in 2013 and online voter registration in 2012. The Center for Popular Democracy applauds Hawaii's continued efforts with HB 401. Government can and should play an affirmative role in ensuring that all eligible electors are added to the voter rolls. The Division of Motor Vehicles and Licensing (DMVL), like other public agencies, is uniquely positioned to help maximize voter registration and participation in our democracy.

We note however that Automatic Voter Registration at the DMVL will still miss some voters. According to the Federal Highway Administration, about 200,000 Hawaii residents were eligible for but did not possess driver's licenses in 2012.⁶

The Center for Popular Democracy therefore proposes that the Committee consider an amendment to HB 401 that would expand Automatic Voter Registration to additional agencies. Under our proposal, the chief election officer would periodically identify state agencies that have the technological capacity to collect and transmit to the county clerk information about their clients necessary for voter registration, such as name, age, address, citizenship, and signature. The clerks would then identify persons who are potentially eligible but are not yet registered to vote, notify them by mail of their potential eligibility, and provide them an opportunity to decline registration; add, change or decline party affiliation; and verify eligibility and personal information. Registration would be activated after sufficient response time had elapsed. New registrants would be required to sign an oath attesting to the accuracy of the voter registration information when voting for the first time, if such attestation had not yet been obtained. See proposed amendment language below.

With the adoption of this expansive system Automatic Registration, Hawaii could achieve near-universal registration of those eligible to vote. Democracies abroad that similarly charge the government with compiling the voter rolls achieve registration rates that approach and exceed 90 percent of the voting age population.⁷ Similar results in Hawaii could result in the registration of as many as 345,000 voters in the state.

The Center for Popular Democracy applauds Hawaii's continued efforts to expand voter engagement. We respectfully proffer the attached Amendment to HB 401, and look forward to participating in these continued reform conversations in Hawaii.

⁶ <http://www.fhwa.dot.gov/policyinformation/statistics/2012/pdf/dl1c.pdf>.

⁷ Jennifer S. Rosenberg with Margaret Chen, *Expanding Democracy: Voter Registration around the World*, Brennan Center for Justice, 2009, <http://www.brennancenter.org/sites/default/files/legacy/publications/Expanding.Democracy.pdf>.

§ 11-2. Chief election officer; duties

(a) The chief election officer shall supervise all state elections. The chief election officer may delegate responsibilities in state elections within a county to the clerk of that county or to other specified persons.

(b) The chief election officer shall be responsible for the maximization of registration of eligible electors throughout the State. In maximizing registration, the chief election officer shall make an effort to equalize registration between districts, with particular effort in those districts in which the chief election officer determines registration is lower than desirable. The chief election officer, in carrying out this function, may make surveys, carry on house-to-house canvassing, and assist or direct the clerk in any other are of registration.

(c) To further the goal of maximizing registration of all eligible electors, the chief election officer shall:

(1) assess on an annual basis the capacity of all state and county public agencies that regularly interact with the public to electronically collect, store, and transmit to the chief election officer or clerk data relevant to registration of persons whom they serve;

(2) designate as data-sharing agencies those public agencies with adequate capacity to electronically transfer such data; and

(3) advise the clerk of such designations.

(ed) The chief election officer shall maintain data concerning registered voters, elections, apportionment, and districting. The chief election officer shall use this data to assist the reapportionment commission provided for under Article IV of the Constitution.

(de) The chief election officer shall be responsible for public education with respect to voter registration and information.

(ef) The chief election officer shall adopt rules governing elections in accordance with chapter 91.

§ 11.4. Rules and regulations

The chief election officer may make, amend, and repeal such rules and regulations governing the process of registration pursuant to sections 11.2 (c) and 11.15.4 and elections held under this title, election procedures, and the selection, establishment, use, and operation of all voting systems now in use or to be adopted by the State, and all other similar matters relating thereto as in the chief elections officer's judgment shall be necessary to carry out this title.

In making, amending, and repealing rules and regulations for voters who cannot vote at the polls in person and all other voters, the chief election officer shall provide for voting by such persons in such manner as to insure the secrecy of the ballot and to Testimony, preclude tampering with the ballots of these voters and other election frauds. Such rules and regulations, when adopted in conformity with chapter 91 and upon approval by the governor, shall have the force and effect of law.

§11.15.4 Automatic Voter Registration

(a) A data-sharing agency designated by the chief election officer pursuant to section 11-2 (c) shall on at least a quarterly basis, or more frequently as the chief election officer instructs, electronically transmit to the county clerk data relevant to registration of persons, in a manner and form established by the chief election officer.

(b) When the clerk receives information from a designated data-sharing agency, and identifies individuals who are not included in the general county register or the statewide voter registration list and there is insufficient information to indicate that the person meets the qualifications to register or pre-register in the State, the clerk shall send each eligible voter notice within seven calendar days that includes:

(1) The person's name, date of birth, residence, citizenship, and social security number, if available;

(2) Notification of the state's residency requirements;

(3) Clearly marked space for completion of all information required pursuant to 11-15;

(4) The option to register with a political party;

(5) The option to decline to register to vote;

(6) A statement of the eligibility requirements to register to vote and that the person must provide the missing information, correct any information included for that person, sign and return the form, or where possible provide missing or corrective information and a signature via electronic means, to complete the registration process;
and

(7) A statement that failure to complete and return the form, or where possible provide missing or corrective information and a signature via electronic means, will not disqualify the person from applying to register to vote in the future, including at any absentee polling place established in the county associated with the person's residence prior to or on the day of an election, or on the day of an election at the polling place in

the county associated with the person's residence, pursuant to section 11-15.2.

(c) When the clerk receives information from a designated data-sharing agency, and identifies individuals who are not included in the general county register or the statewide voter registration list and there is sufficient information to indicate that the person meets the qualifications to register or pre-register in the State, the county clerk shall send such persons a notice within seven calendar days that includes:

(1) The person's name, date of birth, residence, citizenship, and social security number, if available;

(2) Clearly marked space for corrections to any information listed in (1);

(3) An affidavit attesting to an individual's eligibility to register to vote, following the form and content prescribed by section 11-15;

(4) The option to register with a political party;

(5) The polling place that pertains to such person's residential address; and

(6) A statement clearly stating that such person will automatically be registered to vote unless a completed notice is returned to the office of elections within twenty-one calendar days from the date of mailing, via mail or electronic means.

(d) The county clerk shall add to the general register every person who has been duly notified (A) pursuant to subsection (b) and who provides the required additional information necessary to confirm that person's eligibility to register or (B) pursuant to subsection (c) and does not decline voter registration, or does not return notice within twenty-one calendar days. Such person may provide a signed affidavit in accordance with section 11-15 at any absentee polling place established in the county associated

with the person's residence prior to or on the day of an election, or on the day of an election at the polling place in the county associated with the person's residence, pursuant to section 11-15.2, if such signed affidavit was not received. No party affiliation shall be recorded for persons who have not indicated a party preference in a returned notice, or have failed to return such notice.

(e) If the county clerk has evidence indicating that an eligible voter's application for voter registration should be transferred to another county, the clerk shall make such transfer pursuant to section 11-20.

(f) The county clerk shall not add to the general county voter register any person for whom the notice was returned as undeliverable.

(g) This section shall take effect on January 1, 2018.



House Judiciary Committee
Chair Karl Rhoads, Vice Chair Joy San Buenaventura

Tuesday 02/03/2015 at 2:00 PM in Room 325
HB401 Relating to Voting

TESTIMONY OF SUPPORT
Carmille Lim, Executive Director, Common Cause Hawaii

Dear Chair Rhoads, Vice Chair San Buenaventura, and members of the House Judiciary Committee:

Common Cause Hawaii supports the intent of HB401, which would streamline the voter registration process by requiring all eligible voters who are applying for or renewing a Hawaii state driver's license, provisional license, instructional permit, or civil identification card to automatically be registered to vote.

Hawaii has the distinction of being the state with the lowest voter turnout in the nation. Common Cause Hawaii recognizes the need to encourage civic participation in the electoral process. Further, Common Cause Hawaii recognizes that encouraging eligible voters to register to vote is a resource-intensive process – this includes registering people to vote, and the actual voter registration processes in place.

Automatic voter registration in Hawaii could:

(1) Increase voter turnout and participation by automatically registering eligible citizens to vote.

- Once individuals are registered they are highly likely to vote. Nationally, in 2008, 90 percent of those registered voted and in 2012, 87 percent of those registered voted.ⁱ

(2) Increase the efficiency and reduce the total cost of voter registration for the state, the office of elections, and other governmental departments. In addition to moving many more eligible voters onto the voter (registration) "rolls", we anticipate that automatic registration would save Hawaii money in the long run.*

- According to the Presidential Commission on Election Administration, local and county elections offices spend one-third or more of their budgets on maintaining and updating voter registration records.ⁱⁱ Efficient and effective data matching and cleaner voter rolls will result in such efficiencies as less returned mail, fewer provisional ballots on Election Day, and shorter lines at polling places.

*Note: Hawaii has the opportunity to lead the country in implementing transformative automatic registration, so the specifics on cost-savings for this program hard to project.

(3) Prevent the disenfranchisement of eligible citizens

- According to the Pew Election Performance Index, Hawaii ranked 42nd among states on Registration and Absentee Ballot problems. A program such as automatic registration, where the state is proactively using existing databases to update and populate the voter rolls, would significantly help this problem.

Lastly: While we support the intent of HB401, Common Cause Hawaii recognizes that any election law we adopt must comply with the National Voter Registration Act (NVRA), which allows a driver's license applicant not to register to vote.

Thus, **we ask that the committee amend the bill to include an “opt out” option**, to preserve the intent of the bill while making it NVRA compliant.

Thank you for the opportunity to testify in support of HB401, with amendments.

ⁱ Kennedy, Liz. “This National Voter Registration Day It’s Time for Universal Voter Registration”. <http://www.acslaw.org/acsblog/this-national-voter-registration-day-it%E2%80%99s-time-for-universal-voter-registration>

ⁱⁱ Presidential Commission on Election Administration, “The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration,” January 2014, <https://www.supportthevoter.gov/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf>, 26.