
2020 Election - Extending Days of Election Violation

In July 2020 the Rhode Island General Assembly passed an act, which was signed into law by Gov. Raimondo converting emergency mail ballots into in-person cast ballots. This extended numerous days of voting versus the specific date of election violating R.I. Constitution Article IV – of Elections and Campaign Finance, Section 1 and is therefore subject to R.I. Constitution Article VI – of the Legislative Power, Section 1, indicating “any law inconsistent therewith shall be void.” The following document provides a summary of the essential details on this issue.

Sources

Public sources are available here listed in order of supremacy and conformance:

U.S. Constitution: <https://constitution.congress.gov/constitution/>

R.I. Constitution: <http://www.rilin.state.ri.us/riconstitution/Pages/constintro.aspx>

R.I. General Law Titles: <http://webserver.rilin.state.ri.us/Statutes/>

R.I. Governor Executive Orders: <https://governor.ri.gov/newsroom/orders/>

It helps knowing how R.I. Law is organized and referenced.

The R.I. Constitution is the supreme law of the State of Rhode Island (RI Const. Art. 6, Sec. 1) and is only alterable by an explicit and *authentic* act of the whole people of RI. (R.I. Const. Art 1, Sec. 1). All RI General Laws must conform to the R.I. Constitution. “Any law inconsistent therewith shall be void.” (R.I. Const. Art. 6, Sec. 1)

R.I. General Laws are a collection of 47 books known as “Titles”

Each Title “book” is composed of Chapters and within each Chapter, sections.

A Section is abbreviated with this: §

Multiple sections use: §§

Each fully referenced section is a “statute” typically found on a single page.

Title-Chapter-Section work as an address path to the statute/law.

Example: R.I. Title 30, Chapter 15, Section 9 is abbreviated as RI 30-15-9.

Iterated/listed statute items are referred to within parenthesis: RI 30-15-9(e)

Other Sources

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essential to a critical public discussion that impacts the entire State of Rhode Island.

Rhode Island Constitutional Law

NOTE: The following portions are copied directly from the R.I. Constitution. It has been incorporated to ease reader comprehension. Italic emphasis has been added.

ARTICLE IV - OF ELECTIONS AND CAMPAIGN FINANCE

Section 1. Election and terms of governor, lieutenant governor, secretary of state, attorney-general, general treasurer, and general assembly members.

The governor, lieutenant governor, secretary of state, attorney general and general treasurer shall be *elected on the Tuesday after the first Monday in November*, quadrennially commencing A.D. 1994, and every four (4) years thereafter, and shall severally hold their offices, subject to recall as provided for herein, for four (4) years from the first Tuesday of January next succeeding their election and until their successors are elected and qualified. No person shall serve consecutively in the same general office for more than two (2) full terms, excluding any partial term of less than two (2) years previously served.

The senators and representatives in the general assembly *shall be elected on the Tuesday after the first Monday in November*, biennially in even numbered years, and shall severally hold their offices for two (2) years from the first Tuesday of January next succeeding their election and until their successors are elected and qualified.

ARTICLE VI – OF THE LEGISLATIVE POWER

Section 1. Constitution supreme law of the state.

This Constitution shall be the supreme law of the state, and any law inconsistent therewith shall be void. The general assembly shall pass all laws necessary to carry this Constitution into effect.

Legislature extended time of voting beyond a day

In July 2020 the Rhode Island General Assembly met via Zoom for legislative purposes and passed H8102 which amended R.I. General Laws Title 17 Elections, Chapter 20 Mail Ballots, Section 2.2 Requirements for Validity of Emergency Mail Ballots (RI 17-20-2.2). This was signed into law by the Governor. (Reserve the

legal question if such cyberspace activities are authentic, constitutional adhering lawmaking for now.)

H8102 made 3 changes, described below.

The first change modified RI 17-20-2.2(a) allowing emergency mail ballot application at local boards of canvassers on “electronic poll pads.” These electronic devices are based on an Apple iPad with communications capabilities, specific software applications and a plastic mounting stand. These devices allow immediate communications with a centralized voter database system and provide for digital signature capture on a writing surface. These low resolution, awkward signatures lack significant maker’s marks.

The second changed RI 17-20-2.2(d) as follows with the change indicated in blue and with italics, added to distinguish the change if printed on a B&W only printer:

- (d) In addition to those requirements set forth elsewhere in this chapter, an emergency mail ballot *except those emergency mail ballots being cast pursuant to § 17-20-2.2(g)*, in order to be valid, must have been cast in conformance with the following procedures:

This change provided a “fork” - a branching, alternate path that skips subsequent procedures in (e) and (f).

The third change appended a new item: RI 17-20-2.2(g), listed entirely here:

- (g) *An emergency mail ballot application may be completed in person using an electronic poll pad provided by the board of canvassers upon presentation by the voter of valid proof of identity pursuant to § 17-19-24.2. Upon completion of the poll pad application, the voter shall be provided with a ballot issued by the secretary of state and upon completion of the ballot by the voter, the voter shall place the ballot into the state-approved electronic voting device, provided by the board of elections and secured in accordance with a policy adopted by the board of elections.*

The Emergency Mail Ballot eligibility in RI 17-20-2.2(a) provides for an additional twenty (20) days of voting when extenuating “emergency” circumstances remove the option of voting in-person on the date of election. This was enacted because the traditional mail ballot process would exclude the voter on the basis of time for the local board of canvassers to process the ballot application, convey the ballot to and from the voter via mail and validate the certifications and attestations made once the ballot was received at the local board of canvassers. This is “emergency” absentee voting. It had nothing to do with a state-imposed lockdown/shut-in.

The established constitutional means for accommodating absentee voting in the past was provided through a clever subdivision of “casting” a vote via mail-ballot. Effectively a mail ballot began the “cast” prior to the election but was suspended mid-flight in a holding box at the local board of canvassers. Then the “mail ballot cast” was completed by proxy on election day at the precinct by a bipartisan team which merged mail ballots into the random stream of in-person voters. This process effectively made all electors/voters equal *on the day of election*. See illustration of this process in Figure 1 below.

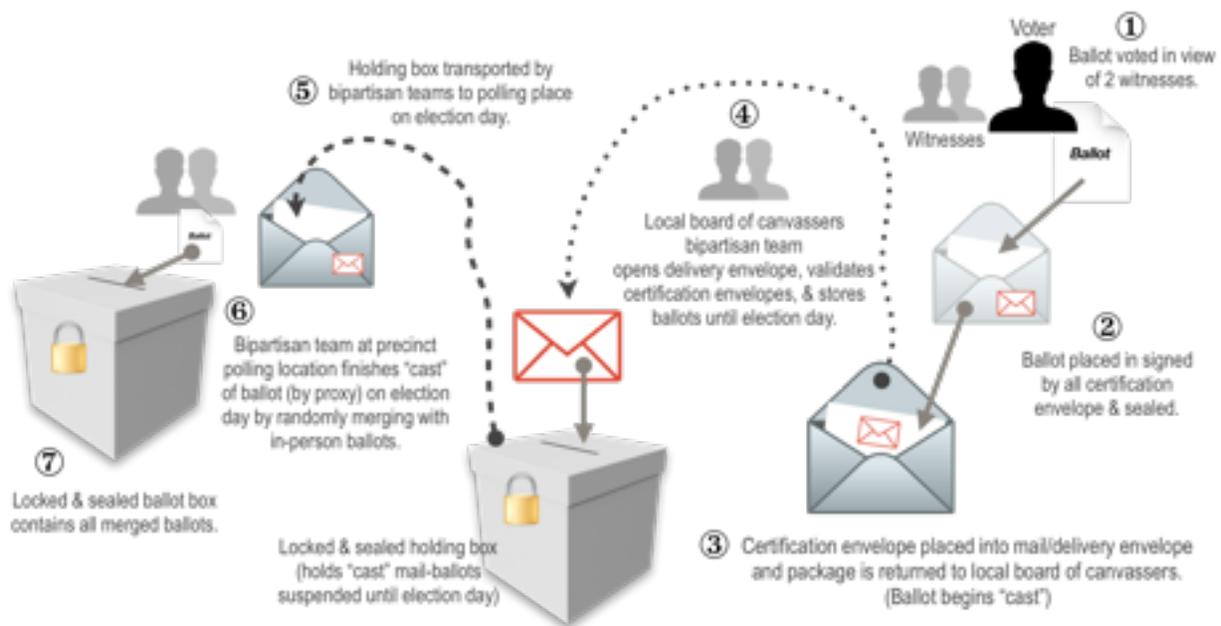


Figure 1. How mail ballots worked prior to 2020. The holding box contained ballots “mid-cast,” but these were not yet merged with in-person ballots until election day. These “active ballots” required bipartisan oversight at all stages once received through the mail.

RI 17-20-2.2(g), as enacted, skipped witnesses, certification envelopes, delivery envelopes, holding boxes and the completion of ballot casting by proxy. No

mailing was ever done. The submission of a ballot through the DS 200 scanning device itself into the box completes the cast. RI 42-127.1-15(a)(3) indicates that upon digital scanning the ballot document is then completely in the possession of the state. *The paper ballot is no longer retrievable, nor can the voter alter the submission.*

Impacts of 2020 H8102

For all practical purposes, RI 17-20-2.2(g) *by its own wording* simply placed the entire normal in-person voting method into the time frame of the emergency mail ballot law. This provided for 20 additional days of in-person voting *prior to the constitutionally specified date of election* (in other words: “early-voting”).

In fact, this understanding is so clear, that R.I. Board of Elections produced a public document indicating this as such, and voters themselves followed this guidance.

The following paragraph was retrieved from public document from RI Board of Elections <https://elections.ri.gov/voting/emergency.php> Printed to a PDF: Emergency Mail Ballot- Board of Elections 11/19/20, 11:12 PM

Important Change

In person Emergency Ballots will now be voted and inserted into the voting machine at the Board of Canvassers. The process now requires emergency voters to check in on the electronic poll book using an acceptable form of photo ID. The voter then completes their ballot and casts it in the DS 200. These ballots will be tabulated on election night at 8:00 p.m. when polls close.

The clarity of what happened through H8102 was expressed by the RI Board of Elections themselves which characterized Mail Ballots (Chapter 20) as “In person Emergency Ballots.” This legislation said it wasn’t even necessary to use any form of “mail” but simply redefined the meaning of a mail ballot. As noted above, ballots were “cast” into the DS 200 electronic scanner indicating a completion of the cast.

With media coverage and state prompting, the electors(voters) lined up for early voting in town and city halls as if it were election day long before the constitutionally specified date. Approximately 30% of the total electorate chose to

use this “emergency” voting on the 2020 General Election, given their understanding of the COVID “emergency.” (30% was arrived at by Secretary of State’s election results ballot breakout for Presidential Electors for the entire state.) The questionable health risks introduced as an unintended side effect of the legislation require additional research, but are not germane to the issue presented.

Why R.I. 17-20-2.2(g) is Unconstitutional

The constitutionality of absentee voting and voting by mail has a considerable amount of established case (decided) law. This issue is not against absentee or shut-in voting, or their rights to participate in the election. The issue of state-enforced shut-in/lockdown due to COVID is a wholly different issue! The matter is one of the legislature simply extending time beyond a single date to hold the election; that is, early voting.

Rhode Island’s mail ballot holding process came about from a 1956 legal case when Democratic Governor Dennis J. Roberts ran against Republican Christopher Del Sesto. Del Sesto won the election with mail ballots, but Roberts challenged this result in RI Supreme Court and won. Roberts even had a hand in signing the faulty mail ballot legislation into law! (Hmmm...)

The constitutionality issue of early voting was addressed in RI 129 A.2d 330 (1957) Dennis J. ROBERTS v. BOARD OF ELECTIONS et al. M. P. No. 1198. Supreme Court of Rhode Island. (Found here: <https://law.justia.com/cases/rhode-island/supreme-court/1957/129-a-2d-330-0.html>).

In their opinion, the Rhode Island judges referred several times to the following quote:

“...the people saw fit, in their determined intention that all elections should be regulated by constitutional provisions, unalterable by the General Assembly, to prescribe in the clearest manner when, where, and how the elective franchise should be exercised, and these provisions must control the General Assembly in all exigencies, until changed by the supreme will of the people, expressed in a new or amended constitution.” – Opinion of the judges of the Supreme Court, 1862, 30 Conn. 591, 600

The judges concluded:

*“Our conclusions may be summed up in a few sentences. The people of this state have the **sole power** to say when and where the votes for officers on the state ballot may be cast. ... If we were to give effect to that part of the statute which permitted them to vote before election day and allow such ballots to be counted, notwithstanding that we hold such portion of the statute unconstitutional, **we would be usurping the power which the people have reserved to themselves.**”*

“And further on the same page of 320 Mass., 69 N.E.2d at page 136, that court stated: “The people by the Constitution created the legislative branch of government as well as the executive and judicial branches, and conferred and at the same time limited the powers of each of them. Each must act pursuant to the Constitution and within the authority conferred by it. Once the idea of enactments at different levels of authority is grasped, it becomes clear that a provision contained in a statute cannot have any force as law if it conflicts with any provision contained in the higher law of the Constitution.” Later in applying this principle they said at page 245: “When one party relies on some provision of a statute, and the other relies on some provision of the higher law of the Constitution, with which, it is alleged, the statute conflicts, the court, in order to determine what the law really is, must first decide whether there is conflict. If there is, its duty is to apply the higher law of the Constitution, and disregard the statute.””

This appears to be the case.

People who voted early relied on the veracity of RI 17-20-2.2(g) unaware of the RI Constitution specified election date upheld in the Roberts vs Board of Elections case. However, given each house has numerous lawyers, how is it possible that H8102 passed committee constitutionality checks, or were those also abandoned? How are “authentic” acts of the People determined if there isn’t full accountability and authenticity in the election process itself, among the legislature and elected officials?

Most disturbing is the fact that the Rhode Island 2020 General Election contained an alteration of the Rhode Island Constitution.

Setting aside the blatant mischaracterization and abuse of existing law, this unconstitutional legislative act disenfranchised legal voters who, through tradition, knowledge of law, etc. chose to vote on the constitutionally established day of election of their sacred right to observe the authentic will of the people.

Early voting created two classes of voters: those who voted constitutionally, in person on the within a limited time window with a specific closing of polls on the date of election and those who used the multi-date “emergency” in-person voting method, with extensive options of when to “cast” their vote. Effectively, the only hard deadline established was the actual closing of the polls on the constitutionally specified date.

Early voting introduces numerous authentication and security issues. To a great extent it eliminates the transparency and authentication achieved by the one day town-meeting approach with in-person voting by increasing the burden for bipartisan teams to observe polls.

This abuse caused grievous harm to the election process, election integrity and the People’s right to self-government.

The only fail-safe position is reliance upon the RI Constitution being upheld for everyone.