

April 12, 2025

EMAIL ONLY

Hon. Robert E. Craven
Chairperson, House Judiciary Committee
Rhode Island General Assembly
Email: rep-craven@rilegislature.gov

RE: SUPPORT FOR 2025-H 5223 -- THE RHODE ISLAND CIVIL RIGHTS ENFORCEMENT ACT

Dear Chairperson Craven,

I am sending this letter as a follow-up and in addition to my letter of February 10, 2025 sent to you in support of the above-cited legislation as I feel compelled to respond to certain false and misleading justifications that have been asserted by objectors in opposition to this bill, in particular law enforcement and the Rhode Island Interlocal Trust (“Trust”).

All of the objections are essentially the same and the objectors have one thing in common: ***they do not just oppose this bill, they oppose the establishment of any mechanism to permit the enforcement of our State constitutional rights.*** At its core, this bill would ensure two things: ***justice and accountability.*** The opponents of this bill want neither. Their only concern is their narrowly defined self-interests. This bill would provide that people who are injured by a violation of their State created rights could seek redress and the perpetrator of the wrong, the Government, would bear the cost and ***thereby would be held accountable.*** Accountability leads to changes in behavior to conform to the law. That is the essence of the rule of law on which our entire justice system is based.

Alleged creation of new rights. This bill would create no ***new*** rights, remedial or otherwise. **A mechanism to enforce our State constitutional rights is not something new**—Rhode Islanders ***had*** an implied right to do so until a series of court decisions over the past 25 years now say we have no such right. This bill would merely ***restore*** a mechanism to obtain redress for our existing State constitutional rights that was judicially abrogated thus effectively rendering those rights meaningless. What value do state constitutional rights hold if they cannot be enforced when violated? Indeed, Section 5 of our State constitution states, “Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which may be received in one's person, property, or character,” yet our courts have concluded no remedy exists for violations of state constitutional rights. It is beyond time to correct this baffling legal absurdity.

Alleged increase in litigation and cost. There is no data whatsoever that shows there was more civil rights and liberties litigation, frivolous or otherwise, before the implied right of action to enforce State constitutional rights was abrogated as opposed to after. Even if there were such data, from a policy perspective, ***is it a desirable policy goal that people should not be able to seek redress for a violation of their State constitutional rights because it may cost the Government some money?*** The protection of our State constitutional rights is not budgetary line item. It is not subject to cost benefit analysis. It is the ***right*** of every citizen since our great State was founded. Finally, the 12% state prejudgment interest of which the Trust complains previously applied to State implied right of action claims in both state and federal court before such claims were judicially abolished. Again, this bill would merely restore that remedial component to State civil rights claims. Nor is there any rational reason why merely having a remedy to seek redress for State constitutional deprivations would encourage frivolous litigation or subject law enforcement or any government agent to “unnecessary legal battles,” any more than existing remedies under the federal enforcement statute, Section 1983, do.

Alleged weakening of protection for law enforcement. Under this bill, law enforcement and every governmental agent would retain the protection of all existing immunities from liability, including qualified immunity as well as the protection of full indemnification for any civil liability for their official actions as is currently provided under R.I. Gen. Law § 45-15-16. In addition, by allowing aggrieved parties to bring an action against the Government without including or naming the agent responsible, the bill would make it less likely that law enforcement agents will be named in litigation, particularly if they have a qualified immunity defense. Governmental agents, law enforcement in particular, are fully protected. The bill was expressly designed to ensure this. ***Law enforcement has no dog in this fight.***

April 12, 2025

Page 2 of 3

Alleged lack of necessity for the bill. While it is true that Rhode Islanders can seek relief for violations of their parallel federal civil rights and liberties under 42 U.S.C. Sec. 1983, that statute is ***objectively and irrefutably not sufficient for several reasons:*** 1) The Rhode Island Constitution contains additional rights not protected under the federal constitution;¹ 2) Section 1983 does not apply to conduct by the state government or federal government AT ALL or municipalities (except in limited circumstances); 3) Section 1983 frequently leaves aggrieved parties without any remedy due to the availability of governmental and individual immunities; and, 4) Congress could repeal or limit the scope of the federal enforcement statute at any time---look what is going on now in Washington. Accordingly, Section 1983 often leaves aggrieved parties with no remedies whatsoever for a violation of their constitutional rights.

Why objectors really oppose this bill. There is only one logical reason to oppose this bill: ***so the Government and its agents can continue to avoid being held accountable for their actions.*** Contrary to the characterization of certain objectors, qualified immunity does not only protect against good faith errors in judgment, qualified immunity protects the actions of all “all but the plainly incompetent or those who knowingly violate the law.” *Malley v. Briggs*, 475 U.S. 335, 341 (1986).² This bill will ensure the Government will no longer be able to hide behind the individual immunities of its agents or the wording of Section 1983 which limits its applicability to “person[s],” in order to avoid accountability for violations of the constitutional rights of its citizens. ***This bill ensures someone will be held accountable: the Government,*** including this State or any other state government or the federal government, for the wrongful actions of its agents that deprive people of their constitutional rights and cause them injury. Contrary to the baseless contentions of the objectors, this bill would not open the floodgates to frivolous litigation. What it will do is ensure that there will be an effective remedy available that will hold the Government accountable and thereby deter future conduct because there is a cost to wrongful conduct. A cost the Government will have to bear, and not the innocent victim. A cost that will give them a reason to care about and respect the rights of its citizens. A cost that can be avoided by improving education, training, and supervision to change behaviors to conform to the law. This bill will have zero budgetary impact if the Government and its agents merely conform their conduct to the law. Is that too much to ask? ***Without accountability, the same mistakes, the same deprivations of the rights and liberties of individuals without consequence will continue to occur.***³

¹ The additional protections under the State constitution include the rights of victims of crime under Art. 1, Sec. 23, Art. 1, Sec. 23, the right to a fair and prompt remedy for wrongs under Art 1. Sect. 5, fishery and shoreline rights under Art. 1, Sec. 17, and broader protections against unreasonable search and seizure than under the federal Fourth Amendment.

² See footnote 2, pp. 2-3, in my letter of February 10, 2025 for examples of the more egregious cases where individuals who are seriously injured by deprivations of their constitutional rights were left without any remedy at all because of qualified immunity.

³ **A note on counsel fees.** The bill provides that a successful aggrieved party will be entitled to an award of, among other things, reasonable counsel fees. The same is true under Section 1983. The reason for this is that without this remedy, most aggrieved individuals will elect not to pursue redress for a deprivation of their civil rights and liberties—in which case, no one will be held accountable for the wrongful conduct and behaviors will not change. This is dictated by both common sense and the nature of civil rights. First is the enormous disparity in resources between the Government and an aggrieved individual. A Government determined to avoid liability, regardless of whether an aggrieved party has a legitimate claim, has the capacity to aggressively litigate a case through the exhaustion of all appeals such that the aggrieved party is forced to incur enormous counsel fees and litigation costs that the average person just cannot afford. Second is the fact that many if not most deprivations of civil rights or liberties are such that actual monetary damages to which they may be entitled are grossly insufficient to justify a lawyer taking the case on a contingent fee based on a percentage of the award. The perfect example is the typical freedom of speech case. I have handled about eight cases involving serious and significant deprivations of the rights of political and free speech of my clients, mostly involving the right to display political signs and one involving the distribution of political literature. The are each summarized below. *Fully half provided for no award of damages.* In the other four, damages ranged from only \$500.00 to \$10,000.00. One of those cases was brought less than three years ago on behalf of two first-time candidates and now current members of the General Assembly, who were threatened with legal action for erecting their political signs contrary to restrictions imposed by unlawful municipal ordinances. It is highly unlikely that any of these clients would have challenged these unlawful restrictions—and two individuals in the General Assembly may not be sitting today, but for the availability of the award of counsel fees which allowed me to take on these cases contingent on such an award. Counsel fees ranged from \$3,000.00 to \$75,000.00. The higher counsel fees were the result of the Government—sometimes through the Trust—contesting the litigation in the face of the same free speech case law because they had the resources to do so with the intent to discourage my clients in the hope they would drop the case, not because they had any real prospect of ultimately prevailing. No mechanism to enforce civil rights and liberties can be effective without providing for the award of counsel fees. ***Accordingly, the General Assembly should not bother to pass an enforcement mechanism without providing for such a remedial component.***

Hon. Robert E. Craven; Chairperson, House Judiciary Committee

April 12, 2025

Page 3 of 3

For all the foregoing reasons, I strongly support passage of this legislation.

Very truly yours,



Richard A. Sinapi
ras@sinapilaw.com

RAS/ras

cc: Hon. K. Joseph Shekarchi, Speaker of the House (email only) (rep-shekarchi@rilegislature.gov)
Members of House Judiciary Committee (email only) (HouseJudiciary@rilegislature.gov)
Raymond D. Simone, Chief of Staff (email only) (rsimone@rilegislature.gov)
Nicole McCarty, Esq., Chief Legal Counsel (email only) (nmccarty@rilegislature.gov)

Williams v. City of Warwick, C.A. No. 01-194-L (U.S.D.C., Dist. of R.I.)(consent judgment entered August 8, 2001)(sole attorney in Rhode Island ACLU sponsored action where city was restrained and enjoined from enforcing municipal sign ordinance which placed unlawful content based restrictions on political signs in violation of the First Amendment and agreed to payment of \$3,000.00 in counsel fees and costs).

Driver v. Town of Richmond, 570 F.Supp.2d 269 (D.R.I. 2008)(sole attorney in Rhode Island ACLU sponsored action wherein court held portion of state statute granting unbridled discretion to local authorities over whether to permit posting of political signs within limits of public highway was unconstitutional, leading to consent judgment declaring statute was unconstitutional on its face and as applied, permanent injunction, and payment of a combined total of \$28,000.00 in damages, counsel fees and costs).

Thomas K. Jones v. Town of West Warwick, C.A. No. 08-375T (U.S.D.C., Dist. of R.I.)(consent judgment entered August 24, 2009)(sole attorney in Rhode Island ACLU sponsored action wherein Town was restrained and enjoined from enforcing municipal sign ordinance which placed unlawful content based restrictions on political signs in violation of the First Amendment and agreed to the payment of a combined total of \$30,000.00 in damages, counsel fees and costs).

John O. Matson v. Town of North Kingstown, C.A. No. 10-435-ML (U.S.D.C., Dist. of R.I) (consent judgment entered March 3, 2010)(sole attorney in Rhode Island ACLU sponsored action wherein Town was restrained and enjoined from enforcing municipal sign ordinance which placed unlawful content based restrictions on political signs in violation of the First Amendment and agreed to the payment of over \$10,000.00 in counsel fees and costs).

Judith Reilly v City of Providence, C.A. No. 10-461S, 2013 WL 1193352 (U.S.D.C., Dist. of R.I.)(consent judgment entered October 21, 2013)(sole attorney in Rhode Island ACLU sponsored action wherein declaratory judgment was entered and City was found to have violated free speech and press rights of resident who was ordered under threat of arrest to cease leafleting on public sidewalk in violation of the First Amendment and agreed to the payment of a combined total of \$75,000.00 in damages, counsel fees and costs).

Hunter v. City of Cranston, C.A. No. 17-172 -WES-LDA (U.S.D.C., Dist. of R.I) (consent judgment entered May 6, 2019)(sole attorney in Rhode Island ACLU sponsored action wherein City was restrained and enjoined from selectively enforcing municipal sign ordinance and agreed to enforce ordinance in uniform and non-discriminatory manner in compliance with the First and Fourteenth Amendments to the United States Constitution and agreed to pay \$35,000.00 in counsel fees and costs).

Michael DiPola v. Town of Portsmouth, C.A. No. 21-435-WES-LDA (U.S.D.C., Dist. of R.I) (consent judgment entered April 19, 2021) (sole attorney in Rhode Island ACLU sponsored action wherein Town was restrained and enjoined from enforcing municipal sign ordinance which placed unlawful content-based restrictions on political signs in violation of the First Amendment and agreed to the payment of \$17,500.00 in counsel fees and costs).

Jennifer A. Stewart, et al v. City of Pawtucket, C.A. No. 22-280-MSM-LDA (U.S.D.C., Dist. of R.I) (consent judgment entered Dec. 6, 2022) (sole attorney in Rhode Island ACLU sponsored action brought on behalf of two candidates for state offices wherein City was restrained and enjoined from enforcing municipal sign ordinance which placed unlawful content-based restrictions on political signs, including durational, size, and type, in violation of the First Amendment and agreed to the payment over \$18,000.00 in counsel fees and costs and \$1,000.00 in damages).