



March 4, 2026

EMAIL ONLY

Hon. Carol Hagan McEntee
Chair
House Committee on Judiciary
HouseJudiciary@rilegislature.gov
State House
Providence, RI 02903

RE: SUPPORT FOR HB 7352 RELATING TO STATE AFFAIRS AND STATE GOVERNMENT – THE RHODE ISLAND CIVIL RIGHTS ENFORCMENT ACT

Dear Chair McEntee,

BuildRI is a domestic non-profit trade association comprised of four (4) contractor associations (the Labor Relations Division of the RI Chapter of the Associated General Contractors, the New England Mechanical Contractors' Ass'n, the RI Mason Contractors' Ass'n, and the RI and Southeast MA Chapter of the National Electrical Contractors' Ass'n), and seventeen (17) Local Trade Unions comprised of approximately 10,000 local tradesmen and women. On behalf of our organization, I write to **SUPPORT** the above referred to legislation for the reasons that follow.

1. We strongly support passage of this bill, the actual and stated purpose of which is to provide a remedy for any harm caused due to a violation of rights secured by the Constitution of the State of Rhode Island.
2. The reason that it is needed and that its passage is absolutely essential is that since the Rhode Island Supreme Court ruled in *Bandoni v. State*, 715 A.2d 580 (R.I. 1998) that there is no right of action to seek relief and compensation for a violation of rights secured by the Constitution of the State of Rhode Island **unless the right is self-executing**, numerous state and federal court decisions have expanded that reasoning to all of our important civil rights and liberties protected under the Constitution of the State of Rhode Island, including freedom of speech, freedom of assembly, due process, freedom from unreasonable search and seizure, and freedom from cruel and unusual punishment, to name a few.¹

¹ **Rhode Island constitutional rights and protections held to be unenforceable.** *Bandoni v. State*, 715 A.2d 580 (R.I. 1998) (no right of action to seek relief and compensation for a violation of rights and protections secured by the Constitution of the State of Rhode Island unless the right is self-executing; rights of victims of crime guaranteed in Article I, Section 23 not self-executing); *see also Folan v. State Dep't of Child., Youth, and Families*, 723 A.2d 287, 292 (R.I. 1999) (Article 1, § 2, anti-discrimination clause); *Smiler v. Napolitano*, 911 A.2d 1035 (R.I. 2006) (Article 1, § 5 guarantee of entitlement to remedies for injuries and wrongs and right to justice); *A.F. Lusi Const., Inc. v. Rhode Island Convention Ctr. Auth.*, 934 A.2d 791, 798 (R.I. 2007) (Article 3, § 7 guarantee that public officials and employees must adhere to the highest standards of ethical conduct, respect the public trust and the rights of all persons, be open, accountable and responsive, avoid the appearance of impropriety and not use their position for private gain or advantage); *Senra v. Town of Smithfield*, 715 F.3d 34, 41 (1st Cir. 2013) Article 3, § 7 guarantee that public employees shall hold their positions during good behavior clause); *Doe Next Friend Doe v. City of Pawtucket*, 374 F. Supp. 3d 188, (D.R.I. 2019) partially vacated on other grounds *Doe v. Pawtucket Sch. Dep't*, 969 F.3d 1 (1st Cir. 2020) (Article 1, § 5 guarantee of entitlement to remedies for injuries and wrongs and right to justice); *Doe v. Brown Univ.*, 253 A.3d 389, 401 (R.I. 2021) (Article 1, § 2, due process clause); *Felkner v. R. I. Coll.*, 203 A.3d 433, 447 (R.I. 2019) (Article 1, § 21, freedom of speech and right to assemble); *Zab v. R.I. Dept. of Corrections*, 269

3. As a consequence, there is basically no longer an “implied right of action” to seek civil relief for a violation of the rights and protections set forth in the Constitution of the State of Rhode Island.
4. Accordingly, at the current time, the rights guaranteed under the Constitution of the State of Rhode Island, aside from possibly declaratory or injunctive relief which is largely discretionary with the court, are little more than suggestions or aspirational ideals.
5. While Rhode Islanders can seek relief for violations of their *federal* civil rights and liberties under 42 U.S.C. Sec. 1983, the enforcement statute passed by Congress over 150 years ago to enforce federal constitutional rights, that statute is of limited benefit because the Rhode Island Constitution contains additional rights not protected under the federal constitution—such as the rights of victims of crime under Art. 1, Sec. 23, the right to a fair and prompt remedy for wrongs under Art 1. Sect. 5, and fishery and shoreline rights under Art. 1, Sec. 17 to name a few. The federal enforcement statute also frequently leaves injured parties without a remedy because it does not apply to conduct by a state government and due to the availability of governmental and individual immunities.²

A.3d 741 (R.I. 2022) (Article 1, § 5 guarantee of entitlement to remedies for injuries and wrongs and right to justice); *Hagopian v. City of Newport*, No. CV 18-283 WES, 2021 WL 4742701, at *1 (D.R.I. Oct. 12, 2021) (Article 1, § 6 freedom from unreasonable searches and seizures clause); *Fosu v. Univ. of R.I.*, 590 F. Supp. 3d 451, 460 (D.R.I. 2022) (Article 1, § 2 due process clause); *Melise v. Salisbury*, No. 1:17-CV-0490-MSM-PAS, 2023 WL 2387677 (D.R.I. Mar. 7, 2023) (Article 1, § 8 freedom from cruel and unusual punishment clause); *Ricci v. Rhode Island*, No. 120-CV-00543-MSM-PAS, 2023 WL 4686025, at *11 (D.R.I. July 21, 2023) (Article 1, § 2 due process clause and Article 1, § 6 freedom from unreasonable searches and seizures clause); *Parente v. Wall*, No. 1:16-CV-0055-MSM-PAS, 2023 WL 8879023, at *6 (D.R.I. Dec. 22, 2023) (Article 1, § 2 due process clause and Article 1, § 8 freedom from cruel and unusual punishment clause); *Kurland v. City of Providence by & through Treasurer*, No. 18-CV-440-MSM-LDA, 2024 WL 81305 (D.R.I. Jan. 8, 2024) (Article 1, § 2 due process clause, Article 1, § 6 freedom from unreasonable searches and seizures clause, Article 1, § 21 freedom of speech and right to assemble clauses).

² **Individual qualified immunity barring remedies for harms caused by violation of constitutional rights and protections.**

Where a court finds that qualified immunity applies, a situation which has occurred frequently and is occurring in increasing frequency, an injured party will be left without a remedy even where there is a court finding that their civil rights were violated. Some of the more egregious cases are set for below, but they are innumerable. This Legislation would change that and provide a remedy in such situations:

Kisela v. Hughes, 138 S. Ct. 1148, 1154 (2018) (Tucson police encountered a woman named Amy Hughes having a mental health episode and hitting a tree with a knife. Without warning, and though his companion officers believed they could diffuse the situation without firing, an officer shot her four times through a chain-link fence, and then handcuffed her. The Supreme Court found the officer entitled to qualified immunity, holding only that there was no clearly established precedent that would have told Officer Kisela that firing at Hughes amounted to unconstitutional excessive force, in part because the most similar prior case involved an officer who shot someone from the top of a hill, not from behind a fence).

Jessop v. City of Fresno, 936 F.3d 937, 942 (9th Cir. 2019) (Ninth Circuit dismissed a suit alleging that Fresno police officers stole over \$225,000 in cash and rare coins during the search of a person’s home. While the court noted that the act was “morally wrong,” it protected the officers from suit—and prevented the victim from recovering what had been stolen—simply because there was no prior case where officers had stolen property in precisely the same circumstances.).

De Boise v. Taser Int’l, Inc., 760 F.3d 892, 898 (8th Cir. 2014) (St. Louis police were called to subdue an actively delusional Black man, Samuel De Boise, who had run naked onto his lawn. Rejecting safer alternatives—and even though the naked man obviously was not carrying any weapon—the officers fired a taser at De Boise repeatedly until he died. The Eighth Circuit threw out his family’s lawsuit on the basis of qualified immunity, finding prior cases prohibiting repeated tasing not sufficiently similar.).

Dukes v. Deaton, 852 F.3d 1035 (11th Cir. 2017) (Dukes was asleep in her boyfriend’s apartment when police officers began a military-style assault on the home based on a tip that her boyfriend was seen with a “small quantity of a green leafy substance.” Without providing any warning, a police officer threw a flashbang grenade through the bedroom window, hitting Dukes and causing severe burns to her arms and legs. The Eleventh Circuit concluded that throwing an explosive device into an occupied bedroom was not a clearly established constitutional violation, and her case was dismissed.).

6. *We suspect most Rhode Islanders would be appalled by the above inconvenient truths.*

Kelly v. Borough of Carlisle, 622 F.3d 248 (3d Cir. 2010). (In 2007, Brian Kelly was arrested for videotaping a police officer during a traffic stop. Although courts around the country had held that the First Amendment protects such recording, the Third Circuit had not yet, and it dismissed Kelly’s suit on qualified immunity grounds—*without addressing whether Kelly’s rights had been violated. With the constitutional question left open, the issue continued to arise. See, e.g., True Blue Auctions v. Foster*, 528 F. App’x 190 (3d Cir. 2013).)

Fields v. City of Philadelphia, 862 F.3d 353, 361–62 (3d Cir. 2017) (In 2012, Philadelphia police pinned Amanda Geraci against a wall to prevent her from filming police at a protest. A year later, Philadelphia police arrested Richard Fields and seized his iPhone for photographing a raid on a house party. In the ensuing lawsuits, the Philadelphia Police Department conceded there was a First Amendment right to record police—a right codified in the department’s official policies. Still, the Third Circuit dismissed the suits against the officers because, under its previous decision, the right was not “clearly established.” Although the Third Circuit ultimately ruled that the Constitution does protect the right to videotape the police, *the earlier qualified immunity decisions held the question open for nearly a decade. Those wrongly arrested for recording the police during that period have no legal redress even though, as the Third Circuit recognized, their constitutional rights were violated.*)

Jamison v. McClendon, No. 3:16-CV-595-CWR-LRA, 2020 WL 4497723, at *25 (S.D. Miss. Aug. 4, 2020) (Clarence Jamison was a Black man driving a Mercedes convertible in South Carolina pulled over by police allegedly because the temporary tag on his car was “folded over to where [the police officer] couldn’t see it.” Jamison was then subjected to two hours of an armed police officer badgering him, pressuring him, lying to him that police had a tip that drugs were in the car, and then searching his car top-to-bottom for drugs, followed up with a canine search when that physical search came up empty, even though a background check performed came back clean and the police officer had no reasonable suspicion that Jamison had committed any wrongdoing. Even though the court found that Jamison’s Fourth Amendment rights were violated, the court ruled that “[g]iven the lack of precedent that places the Constitutional question ‘beyond debate,’ Jamison’s claim cannot proceed” and dismissed the case because the police officer was “entitled to qualified immunity as to Jamison’s prolonged detention and unlawful search claims.”)

Karen M. Blum, Professor Emerita and Research Professor of Law, Suffolk University Law School, a recognized expert in civil rights litigation and qualified immunity, described the problem as follows:

The doctrine of qualified immunity applied to state civil rights claims under Rhode Island law mimics the doctrine invented and applied by the United States Supreme Court to federal Section 1983 claims. 42 U.S.C. §1983, enacted originally in 1871 as the Ku Klux Klan Act, was intended to provide a civil remedy under federal law for persons whose constitutional rights have been violated by state actors. But the Supreme Court [of the United States] has manufactured a defense of “qualified immunity” that makes recovery against an officer very difficult, even when the officer has violated a person’s constitutional rights. The Court requires a showing that the right violated is one that was “clearly established,” such that *every* reasonable officer would understand that the conduct amounted to a constitutional violation. Most courts require a plaintiff to produce a case in which the Supreme Court or Court of Appeals or the highest court of the relevant state has held unconstitutional conduct involving virtually identical facts. The requirement places an overwhelming burden on plaintiffs. It often results in “one free pass,” where the officer who has violated a person’s constitutional rights is absolved of liability because there was no case on point. The Court has made this burden even more difficult to surmount by allowing courts to grant qualified immunity without ruling on the merits of plaintiffs’ claims. In this way, the Court has compounded the injury of “one free pass” with the insult of a “continuing free pass” for defendants who violate the Constitution.

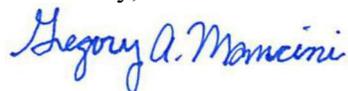
Indeed, the doctrine of qualified immunity, which in essence denies a remedy when a constitutional violation has been found but where the right was not “clearly established,” directly contravenes the “right to justice” and the entitlement to a remedy guaranteed by [Article I, Section 5 of] the Rhode Island Constitution.

Governmental immunities barring recovery. In addition, the Supreme Court of the United States has created similarly insurmountable limits for a plaintiff who wants to sue the local government employer for an officer’s unconstitutional conduct. Although the entity is not able to raise qualified immunity, the Supreme Court held in a 1978 case, *Monell v. Department of Social Services*, that to recover from a local government under Section 1983, the plaintiff must show that the wrongdoing was caused by an *official policy or custom*. In most cases, a plaintiff would have to demonstrate a pattern of very similar constitutional violations and show that policymakers had knowledge of such incidents and failed to address the problem.

7. Accordingly, if Rhode Island Constitutional protections are going to mean anything, the General Assembly must enact an enforcement statute, much like the Congress did when it enacted 42 U.S.C. Sec. 1983.
8. Currently, 23 states either have an enforcement statute or an implied right of action under their state constitutions to provide civil remedies for individuals who suffer injury due to a violation of their constitutional rights.
9. There are no tricks here—what you see is what you get; the enforcement language creating the right to a civil remedy for violation of state civil rights and liberties used in the proposed act is taken directly from the federal enforcement statute, 42 U.S.C. Sec. 1983.
10. The purpose of this bill is simple: to provide civil remedies and compensation for any harm caused due to a violation of rights secured by the Constitution of the State of Rhode Island and thereby also deter future violation of such rights.
11. The necessity and justification of this bill is also simple: to ensure that: 1) consistent with the admonition in Article I, Section 5 of the Constitution of the State of Rhode Island, every right shall have a remedy; and, 2) as between an innocent party whose rights have been violated by acts and/or omissions of the state of Rhode Island or its political and/or administrative units and/or subdivisions, and/or agents thereof, it is the latter that shall bear the cost of any harm caused by such violation of rights.

Our members and indeed all citizens of Rhode Island deserve a constitution that has reasonable enforcement mechanisms for ensuring that the rights enshrined it have meaning, otherwise the document is almost worthless. Therefore, for all the foregoing reasons, we strongly *support* passage of this legislation.

Sincerely,



Gregory A. Mancini

Executive Director/General Counsel