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ACLU OF RI POSITION: SUPPORT

TESTIMONY IN SUPPORT OF 26-H 7432, AN ACT RELATING CRIMINAL PROCEDURE -- INDICTMENTS, INFORMATIONS AND COMPLAINTS April 2, 2026

The ACLU of RI supports this legislation, which would, in our view, give full meaning to the constitutional protection against “double jeopardy,” which was designed to bar a person from being tried more than once for the same crime. This ban, enshrined in both our state and federal Constitutions, is intended to protect people from the danger of multiple prosecutions by overzealous prosecutors. Yet, since 1922, the U.S. Supreme Court has undermined this clause with an exception that allows state and federal prosecutors to bring separate charges for the same alleged crime. As a result, people *can* be prosecuted twice for the same offense — so long as the prosecutors are from separate “sovereigns.”

This “dual-sovereignty” loophole should be closed, and the Supreme Court’s questionable logic that having state and federal prosecutors bring the same case against the same person for the same offense in two different jurisdictions somehow makes it permissible should be rejected.

Under the current rules, if a defendant is found guilty of a crime in federal court, state prosecutors, unhappy with the sentence meted out, can still pursue a second case and seek another bite of the apple. Even worse, if a defendant is found not guilty in federal court — meaning she is legally innocent — state prosecutors can still prosecute. This is a betrayal of both the spirit and letter of the Double Jeopardy Clause, which was supposed to protect people from just such successive prosecutions.

To a defendant accused of a crime, it doesn’t matter who is doing the prosecuting — only that it should not happen more than once. With ever-growing federal criminal law, there is tremendous overlap with state law on everything from drug possession to tampering with an odometer. This greatly increases the threat of duplicative prosecutions for a vast and increasing amount of conduct.

In order to restore the spirit and letter of the ban on double jeopardy to its rightful place, the ACLU supports this legislation.