

**TESTIMONY ON 20-S 2585,  
RELATING TO COURTS AND CIVIL PROCEDURE  
June 15, 2020**

While there are many important and laudable goals sought to be achieved by this legislation, and the ACLU of RI is fully supportive of the expansion of categories protected by the legislation to include national ancestry, color, sexual orientation, gender, gender identity or expression, and disability, we do not support passage of Senate Bill 2585 as written. We urge that it be amended to address the concerns we raise below.

We wish to begin with our concerns about Section 3 of the bill, which would create an entirely new sweeping power for the “Office of Civil Rights Advocate” of the Attorney General in conducting non-criminal investigations, outside of the grand jury process, authorize it to summon any person that may have information about *potential* unlawful activities, and compel that person to disclose whatever he or she knows, by production of documents, creation of a “report,” testimony or the like. The person could face a \$10,000 fine and possible contempt of court sanctions for failing to comply.

The notion of a roving commission or the establishment of an “investigating magistrate” who can summon citizens to account “[w]henver it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in, any act or practice declared to be unlawful by this chapter,” is antithetical to notions of privacy, freedom of speech, and limited police powers. The Attorney General has adequate tools at his disposal to initiate and conduct investigations and

to issue subpoenas, which are subject to judicial review where there is an allegation that the Attorney General has overstepped established standards governing criminal process and civil administrative enforcement process.

While the Attorney General, in a statement (<https://www.ri.gov/press/view/38604>) issued today has claimed that he needs these additional powers to conduct investigations of law enforcement personnel, *the actual language of the proposed amendment is neither directed nor limited to law enforcement* – or government agencies at all – but rather to anyone, including the organizers and participants in protests against police abuse and overreach.

To give concrete examples of its reach from recent local headlines, this provision could give the Attorney General broad powers to interrogate individuals who were “believed to have information” about the disturbance that took place in downtown Providence two weeks ago. If the recent vandalism of the Christopher Columbus statue on Federal Hill was deemed to be targeted at Italian-Americans, the Attorney General would have wide-ranging authority to question individuals, including members of organizations involved in protests relating to the topic, whom the Civil Rights Advocate believed might have relevant information to offer.

Though we are sure it is unintended, this section represents a chilling overreach by the Department of Attorney General, empowering it to compel speech from all private persons, not just the target of a civil investigation, about a wide array of activities. The ACLU of RI opposes its adoption as violative of constitutional rights of freedom of expression and privacy.

Similarly, while the Attorney General in today’s statement asserted that the language is required to conduct “pattern-or-practice investigations,” denoting the existence of a systemic practice or formal policy infecting an entire institution, the actual language of the proposed amendment is far broader, allowing investigation of “*any act or practice*” (emphasis added).

We would note that the current statute, in § 42-9.3-1, already authorizes the Office of Civil Rights Advocate “to perform his or her duties as the attorney general may direct, including, but not limited to, training and education, *reviewing complaints and conducting investigations, and bringing civil actions under this chapter.*” (Emphasis added.) The statute, in § 42-9.3-2, also already empowers the Civil Rights Advocate to institute civil actions in the name of the State to enforce its terms, and in such action can utilize existing discovery standards, subject to court review and supervision, to perform these functions. The proposed section has no such standards, leaving it entirely up to the Civil Rights Advocate, who can summon anyone and require them to account to him or her.

The ACLU of RI supports the Attorney General in his efforts to investigate law enforcement agencies and to hold agencies accountable for any act, pattern, or practice which deprives individuals of their civil rights. But this proposed language is too broad and goes well beyond what is necessary to accomplish that goal. In the wrong hands, it could easily be misused, and for that reason it should not be adopted.

The ACLU would be happy to work with the Attorney General on legislation specifically focusing on the problems of police misconduct that this section is designed to address.

Sections 1 and 2 of this legislation amend statutes that are currently in effect. When each of these provisions was enacted, the ACLU supported them in principle but raised concerns about their scope, and particularly their potential impact on First Amendment rights. In seeking to further expand the reach of these two statutes, S-2585 exacerbates those concerns. We therefore urge amendments to these sections to make clear that they do not have that effect.

The ACLU of RI has been clear in its support of statutory provisions protecting individuals at work, in public accommodations, in their personal integrity from discrimination based upon each of these categories, but this statute, if read broadly, could serve as a vehicle to impose liability for an individual's statement of personal or religious belief or expression not accompanied by any threats or acts of violence, stalking or the like, and empowers a court to restrain and enjoin future acts.

Section 9-1-35 currently prohibits more than actions, and its language could be interpreted to prohibit speech protected by the First Amendment to the United States Constitution and Article I §21 of the Rhode Island Constitution, where the speech is considered offensive and upsetting to the individual and therefore could "reasonably be construed" by a jury as "intended to harass," even where an individual is expressing his or her personal or religion-based belief in opposition to, for example, a subject like same-sex marriage.

In further expanding the statute's reach, we therefore believe the legislation should not include the words "reasonably be construed" or should add the words "by the accused" immediately thereafter. We also believe that the statute should clarify that the term "an act or acts" does not include a verbal or print statement or expression not accompanied by physical action or threats against the individual.

Similarly, Section 2 would amend RIGL §42-9.3-2 to add comparable language ("or by any act or acts which would reasonably be construed as intended to harass or threaten any person") to the statute authorizing the Attorney General to bring a civil action to protect individuals from deprivation of their civil rights. Because the statute *already* covers intentional interference or threats to intentionally interfere, by physical force or violence against a person, by damage or destruction of property or by trespass on property, it is clear that the proposed additional language

would substantially expand the scope of prohibited acts or statements to encompass “acts” that encompass speech that is not intended to harm or threaten an individual.

The ACLU of RI believes that the current language is sufficiently robust that the substantial expansion should not be made. Alternatively, the words “act or acts” should be defined to make clear that the terms do not include an offensive or hateful statement, not accompanied by acts of violence or threats.

We thank you for considering our views, and we would welcome the opportunity to work on amendments that would accomplish the goal of protecting the civil rights of Rhode Islanders from unlawful acts based on their status without infringing on other important protected rights.

**Submitted by:**  
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