

**Comments of the Rhode Island Affiliate
of the American Civil Liberties Union,
on 12-H-8143, “Category One Memorial Items”**

The ACLU opposes H- 8143 for the following reasons:

1. There is no explanation of how an item “attains” a secular value, other than being “designated” as such by any single Rhode Island elected official.
2. It is unclear how an item that has existed only since December of 2011 could have “attained” a traditional or secular value.
3. The bill seeks to simply “declare” that an item does not violate the First Amendment, or Article I, Section 3 of the state constitution. The Bill violates principles of separation of powers by attempting to convert an individual fact-based determination of how to apply a constitutional provision to a particular set of circumstances, normally a judicial function, into a unilateral act of “designation”, by a single elected official.
4. Section 2 raises concerns about a variety of statutory and constitutional provisions, such as home rule, by permitting a single official, from any community, to designate an item in any community as a Category One Memorial Item. A Woonsocket School Committee member can “designate” a structure in Newport.
5. Section 3(a) again is a violation of separation of powers by usurping a judicial function and simply announcing that a designation, once accomplished, is the final word on whether there has been any establishment of religion.
6. Due process of law is ignored in several ways:
 - a) There is no appeal process at all from a “designation” decision of a single official.
 - b) There are no definitions or standards to guide the decision-maker

in the process of deciding what should be designated as a
Category One Memorial Item.

- c) There is no limit to how many such designations a single elected official may make.
7. Section 4 on “defense” and costs has a number of problems. A local elected official who “designates” will be able to bind the Attorney General to defend every case, even a purely municipal case, a legal and financial burden on that office. Section 4 also purports to invalidate a federal statute, 42 U.S. C. Section 1988, by making the law of Rhode Island exactly contrary to federal law. The Supremacy Clause once more is a large question mark looming over this bill. Section 4(b) would require the state to “initially” fund the defense of this law with One Million Dollars. Not only is this a dubious expenditure in a time when Meals on Wheels is being cut, but the mere existence of the “fund” will only encourage the elected official “designator” to wave the litigation banner since the statewide taxpayers will be footing the tab.
8. The Bill is an example of the worst fears of the founders of the Constitution, who believed that separation of church and state was needed as much, if not more, to protect religion from the state as to protect the state from religion. This Bill allows a single government official to declare that even a sacred religious symbol, icon, inscription, or statue *has attained a secular value*. In short, the government can attack religion in the guise of protecting it, similar to a city government sticking Frosty the Snowman and Rudolph into a public Christian manger

scene in order to “protect” the religious symbols from those advocating separation of church and state. No government official should be permitted to decree that a religious symbol no longer has a religious meaning, that it has become predominantly secular.

Comments submitted on behalf of the R.I. Affiliate of
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