July 2, 2014

The Hon. Lincoln Chafee
Governor
State House
Providence, RI 02903

RE: VETO REQUESTS
H-7764A, RELATING TO "CHILD SAFE ZONES"
H-7610A, RELATING TO MEDICAL MARIJUANA
H-7766A/S-2610A, RELATING TO "INDECENT MATERIAL"

Dear Governor Chafee:

I am writing to request your vetoes of a series of Attorney General bills that are soon to be transmitted to you for action, if they have not already.

Particularly in light of the controversial nature of these bills and their subjects, and your apparent general deference to the legislature on other legislation that has raised civil liberties concerns, we felt it important for you to at least be aware of our objections so that you could make fully informed decisions.

Separately enclosed are fact sheets summarizing our concerns about the following bills:

* H-7764A, dealing with "child safe zones";

* H-7610A, relating to medical marijuana; and

* S-2610A/H-7766A, dealing with "transmitting indecent material to minors"

We appreciate the opportunity to share our views for your consideration.

Sincerely,

Steven Brown
Executive Director

Enclosures

OBJECTIONS TO 14-H 7764A,
RELATING TO "CHILD SAFE ZONES"

H-7764A would bar employers of certain broadly defined "child safe zones" from employing any person who is a registered sex offender for a crime involving a minor. Our concerns are as follows:

* "Employees" are defined to mean not just sex offenders who actually work in so-called "child safe zones," but also *any* individual hired by the entity, individuals hired by third parties who have contracted with the entity, and independent contractors or volunteers of the entity. Thus, an employer could not contract with an accountant, or accept a person wanting to volunteer as an accountant, if he or she was a disqualified offender even though he or she would have no contact at all with minors.

* The bill requires employers to fire *current* employees who meet the definition of a covered offender – no matter what his or her record or how long he or she had been working at the business. Ironically, the bill contains a grandfather exemption for facility owners and operators, but not for employees.

* The bill contains a broad legal immunity clause. Employers who fire somebody or fail to hire a person based on their erroneous or reckless belief that the person is a disqualified sex offender could not be held accountable for their actions.

* The bill does not take into account the nature of the offense, the time that has elapsed since the offense, the type of job, or provide any other individualized consideration of the offender. In this regard, the bill is inconsistent with numerous other laws the General Assembly has passed over the years dealing with criminal records and employment, including the "ban the box" law and others that establish individualized procedures for deciding whether a person should be hired based on his or her criminal record.

Bills like this only perpetuate the myth that most sex offenses are conducted by strangers, when in fact the overwhelming majority of these offenses are committed by family members, acquaintances or other people the minor knows. These bills further perpetuate the inaccurate impression that sex offenders are more likely than other types of offenders to recommit their crimes, and put unnecessary obstacles in the way of an offender's reintegration into the community.

Certain sex offenders certainly don't belong in jobs involving minors. However, by failing to take into account the specific circumstances surrounding an offender or the offense, such as how long ago the offense occurred, whether the offender may have been a minor himself at the time, or other extenuating factors, this bill serves only to make it more difficult to promote the rehabilitation of ex-offenders. For these reasons, the ACLU opposes this legislation.

OBJECTIONS TO 14-H 7610A,
RELATING TO MEDICAL MARIJUANA

The ACLU opposes this legislation, as we believe its passage would significantly undermine the state's current medical marijuana program. It would undoubtedly deter some patients from participating in the program, and make it more difficult for others to do so.

We understand that the RI Patient Advocacy Coalition and numerous patients have pointed out many of the problems with the bill's new standards governing "cooperative cultivations" and the plant limits established for these co-ops, so we wish to focus our concerns on a few other problematic provisions that may not have received as much attention:

1. By requiring documentation from the municipality where marijuana is being cultivated in a non-residential co-op that "the location and the cultivation has been inspected by the municipal building and/or zoning official and … is in compliance with any applicable state or municipal housing and zoning codes" [Page 2, lines 2-6], this bill would give local cities and towns the opportunity to place numerous obstacles in the way of individuals seeking to grow marijuana for medical purposes. One can easily envision municipalities adopting special housing or zoning ordinances designed solely for the purpose of preventing the cultivation of medical marijuana. This provision would have another damaging consequence: it would largely destroy the confidentiality protections that are written into the law, making many people aware of the places where the medicine is being cultivated.

These problems are not ameliorated in the situation of residential co-ops, which require the involvement of a licensed electrician, rather than a municipal official. [Page 2, lines 7-10] In addition to the concerns expressed above, we have no idea how a medical marijuana grower is going to find an electrician who feels qualified to inspect the cultivation and determine its compliance with all housing and zoning codes, not just electrical requirements.

2. By allowing landlords to discriminate in their rental practices against cardholders who cultivate this medicine, [Page 5, lines 15-19], the bill treats patients who need medical marijuana in a very troubling fashion. A tenant with emphysema who uses an oxygen tank could also be deemed a "safety concern," yet we don't believe anybody would suggest that a landlord should be allowed to discriminate against a tenant for that reason. Safety concerns about growing medical marijuana should be treated the same way as any other safety concern that a tenant's activities might create. It should not serve as an automatic excuse for a landlord to kick out, or not rent to, a tenant. There is no reason to single out this particular medical activity for such discriminatory treatment. Instead, it

creates a very troubling precedent by essentially establishing an exemption to the fair housing laws for patients with disabilities who need a certain type of medicine.

3. By eliminating the discretion that currently exists in the law and now barring any individual, except immediate family members, from being a primary caregiver if he or she has *ever* been convicted of a felony drug offense (or a number of other designated felonies), no matter the circumstances [Page 9, lines 12-22], this bill will unduly and unfairly restrict some patients from having people they know and trust serve as their caregivers.

For these reasons and others that have been presented to you, the ACLU urges a veto of this legislation.

OBJECTIONS TO 14-S 2610A/H-7776A,
RELATING TO CRIMINAL OFFENSES

This bill makes it a crime to transmit an "indecent visual depiction" to a minor. As originally introduced, this bill raised a host of constitutional concerns. Most of its problems were resolved when an amendment was added, seeking to limit the definition of "indecent" materials to material that is already prohibited as "obscene." In at least one crucial respect, however, the bill fails to meet that intent and therefore creates serious constitutional problems.

Specifically, the bill defines "sexually explicit conduct" to include "*graphic* … exhibition of the genitals or public area of any person." However, the mere graphic display of genitals or pubic area, without more, does not constitute "obscenity" under the law. That is for good reason, since such a scope could encompass films containing full frontal nudity, art pieces, and even sex education texts, subjecting any individual who transmits these images to a minor to felony charges, five years in prison, a $5,000 fine, and mandatory sex offender notification requirements. [We note that "graphic" exhibition of the genitals is included in the definition of *child pornography*, but that restriction is allowable because it is a photo *of* a minor, not a photo provided *to* a minor.]

As a result, the bill is not only quite confusing, but it could have a chilling effect on certain types of speech, such as with the items noted above. While it is true that a jury is likely to find in those situations that the speech has "serious literary, artistic, political, or scientific value," and is therefore not "indecent," no person should have to fear being charged in the first place with a crime that will severely damage his or her reputation and life, regardless of the ultimate outcome.

Because this bill could, however unintentionally, criminalize a wide range of speech protected by the First Amendment, we urge its rejection.