

CIVIL RIGHTS AND CIVIL WRONGS IN

THE GOVERNOR'S OFFICE:

GOVERNOR DONALD CARCIERI'S

FIRST SIX MONTHS IN OFFICE

AND HIS RECORD ON CIVIL RIGHTS

A REPORT PREPARED BY
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INTRODUCTION

When the videotape of the July 14th State Police raid on the Narragansett Indian smoke shop was broadcast nationwide, Rhode Island Governor Donald Carcieri was subjected to a torrent of critical commentary. The images of a line of troopers bursting past tribal members, a police dog nipping at a person sprawled on the ground, and the wife of a tribal council member lying handcuffed in a fetal position with troopers looming over her were impossible to ignore.

But the analogies many people made to images from the civil rights movement in the South in the 1960's and depictions in films like "Mississippi Burning" missed a larger point. Governor Carcieri's ill-advised approval of a raid on tribal land by state police was only the latest in a string of actions he has taken that have demonstrated both an insensitivity to the legitimate rights and expectations of people of color in Rhode Island and an enormous lack of interest in considering their viewpoint before making decisions that may have tremendous negative consequences for them.

If the lapse in judgment demonstrated by the Governor in the smoke shop raid were an isolated one, it would be regrettable. But its real significance is that it was not an aberrant action. As this report documents, the raid was only the latest in a series of decisions made by the Governor in his first six months in office that have seriously denigrated community concerns.

This report discusses not one or two, but *five* widely-publicized race-related issues in the state in which the Governor's actions have been less than inspiring. Considering that they have occurred in merely the first six months of the Governor's four-year term, it should be, and is, cause for considerable alarm in communities of color and for others concerned about human and civil rights. By documenting those incidents, this report is a call for change and a call for action. It is a call for change in the Governor's seeming reflexive action in placing the interests of civil rights groups at the proverbial bottom of the barrel. It is a call for action by the Governor to right the wrongs that he has committed on civil rights issues in his first six months. And, finally, it is a call to action from and to the community itself. In speaking with one voice, we wish to emphasize that the Governor, as a representative of *all* the people, must stop ignoring the legitimate views, interests and needs of the civil rights community. Groups advocating for civil rights should not have to beg to have their views listened to and seriously considered in the making of policy for the state.

The five issues that are addressed in this report are:

1. Judicial Appointments: Governor Carcieri's decision not to appoint Superior Court Judge Rogeriee Thompson to a vacancy on the Rhode Island Supreme Court was a lost opportunity of tremendous magnitude and meaning to communities of color, women and all others concerned about a diverse judiciary. Further, the reasons given by the Governor for bypassing her nomination were, to put it mildly, less than compelling.

2. Racial Profiling: The Governor has failed to demonstrate any leadership at all – indeed, appears to have done or said absolutely nothing whatsoever – on one of the most pressing race issues of our time, the problem of racial profiling by police.

3. North Smithfield and the Fair Employment Practices Act: Perhaps nothing better demonstrates the Governor’s attitude towards civil rights than his decision not to veto a bill opposed by his own anti-discrimination agency and by fourteen other organizations concerned with civil rights. By approving unprecedented legislation allowing a Town a free ride from discrimination lawsuits, the Governor not only ignored the views of civil rights groups, he actively participated in a “compromise” that supported a town’s ability to discriminate so long as the state wouldn’t have to pay for it.

4. The Narragansett Indian Smoke Shop Raid: The Governor’s decision to raid the Narragansett Indian smoke shop – and the attendant consequences caught on videotape – has rightly led to widespread national condemnation as well as the call for a federal investigation. Unfortunately, it is but the latest example of the Governor acting first, and considering the consequences later, when it comes to issues directly affecting people of color. The Governor’s further refusal to address questions raised by an internal review of the raid, which he had commissioned from the State Police, only underscores the problems with his involvement in, and response to, this controversial episode.

5. Immigrants and Drivers’ Licenses: Ignoring three years of collaborative negotiations between the state and groups representing the state’s burgeoning immigrant community, the Governor unilaterally revised DMV policies on the granting of driver’s licenses to people without Social Security Numbers, a decision of enormous consequence to that community. Both the action he took and the way he took it demonstrate, at best, a bland indifference to the needs and lives of people in the immigrant community.

There is something striking about the timing of these issues. While this report is about the governor’s first six months, it more accurately is about his second 100 days. All of the issues described above have arisen in the second half of his first six months in office. At the beginning of his term, hopes were much greater. Certainly the Governor did nothing initially that would lead one to believe that a disturbing pattern like this would emerge. Indeed, at the end of his first week in office, he signed into law a bill of great importance to the immigrant community, requiring criminal defendants to be notified of the potential immigration consequences in pleading guilty or “no contest” to minor offenses.¹ This same bill had been vetoed by Governor Lincoln Almond the year before. After Governor Carcieri signed that bill, unfortunately, an unsettling change has occurred.

Rhode Island has a proud history in the arena of civil rights. But it is being tarnished. We hope that this report will generate positive change so that the Governor and the minority community can work together to promote goals of mutual interest, not the least of which is a society that not only respects people of color, but treats them as equals when important governmental policy decisions are made. To that end, the report concludes with a series of recommendations that we hope the Governor will embrace. In doing so, he will go a long way to promoting a unity that his previous actions have thwarted.

THE ISSUES

1. Judicial Appointments

Governor Carcieri's decision not to appoint Superior Court Judge Rogeriee Thompson to a vacancy on the Rhode Island Supreme Court was a lost opportunity of tremendous magnitude and meaning to communities of color, women and all others concerned about a diverse judiciary. Further, the reasons given by the Governor for bypassing her nomination were, to put it mildly, less than compelling.

Governor Carcieri has made five judicial appointments in his first six months in office, including two to Rhode Island's most important judicial body, the state Supreme Court. All five of those appointments have been of white males. To be fair, the Judicial Nominating Commission presented the Governor with no other choice for three of them. However, for his most recent appointment to the Supreme Court, he had an opportunity to break that streak and to promote some diversity on a court that has never seated a person of color (and has had only three female Justices altogether in its history).

Two of the candidates for the vacancy caused by the sudden death of Justice Victoria Lederberg were extremely qualified and well-respected women. One of them, Barbara Hurst, is Deputy Public Defender and served for many years as a well-regarded appellate attorney. The second woman nominee, O. Rogeriee Thompson, is African-American and presently serving as a Superior Court Judge. The Governor ignored both of them.

Judge Thompson had the support not only of many members of the community, but also of the Presiding Justice of the R.I. Superior Court, Joseph Rodgers, Jr., who stated that in reviewing more than 1,000 evaluations from lawyers and jurors about her performance, he encountered "not a single negative comment, which is quite remarkable."²

Nonetheless, the Governor instead chose white, male Family Court Judge Paul Suttell as his nominee to the High Court. While women's groups and civil rights organizations did not question Judge Suttell's own qualifications for the seat, they rightly wondered why the Governor did not use the opportunity to choose somebody who was clearly as well-qualified for the job and who could also bring some much-needed diversity to the Court. The only answers in the public record provide little confidence to those concerned about the Governor's true commitment to diversity in government.

After the appointment, *Providence Journal* columnist M. Charles Bakst specifically asked the Governor why he chose Suttell over Thompson. The Governor's response, incredibly enough, was to refer to Suttell's "life experience."³ Although it is not *completely* clear what he meant by that, it appears from the article that he was referring to the nominee's role as a Family Court Judge, for the Governor emphasized that the Supreme Court already included two former Superior Court judges like Judge Thompson. But if one is looking for special "life experience" in filling a court vacancy, surely that of an African-American woman judge is much more vital and meaningful than the life experience that a white male Family Court judge brings to an all-white (and 3-1 male)

court. The notion underlying the Governor's comments – that the Supreme Court is more in need of a judge with Family Court experience than one with experience as a woman and African-American – is absurd, and turns a blind eye towards the uncontested discrimination that a person like Judge Thompson has had to deal with in rising to the position she presently occupies.

If Judge Suttell's Family Court experience was a distinction to make or break the Governor's decision, he could just as well have pointed to Judge Thompson's Independent political affiliation, for example, or her "life experience" as a *District Court* judge to support *her* over him.

Just as weakly in his defense, the Governor commented that he was "not interested necessarily in making history."⁴ This is a shocking statement. When it comes to breaking down inappropriate racial barriers, we would expect the highest official in the state to be *especially* interested in making history. Perhaps it is precisely because he (and other officials in power like him) are not "interested in making history" that in the year 2003 our state's highest court can boast of not once ever having a person of color sit on its bench.

It must be noted that the Governor's disinterest in "making history" is somewhat selective. For example, in his "State of the State" address in February, he expressed strong enthusiasm for promoting a very different kind of "historic opportunity" facing him and the General Assembly: passage of a separation-of-powers bill.⁵

Perhaps most distressing of all about this particular decision by the Governor is that it could reverberate long after he is no longer in office. Justice Suttell is 54 years old, and when he was recently sworn in, he was asked how long a term he might serve on the High Court. According to the *Providence Journal*, he "pointed out some long-lived family members at the ceremony, including his mother, 89, and an aunt, 85. 'If genes have anything to do with it,' he said, 'I'm going to be on the bench for a good long time.'"⁶

He's probably right. Further, two of the other four Justices are younger than he is, and the oldest on the Court, Chief Justice Frank Williams, is only 62 years old. Barring any tragedy or unusual circumstances, it could be well over a decade before a Governor gets the opportunity to appoint another Justice to the Supreme Court.

Finally, it is important to respond to those who might suggest that supporters of Judge Thompson are merely "special interest groups" in seeking a woman or person of color to fill the position on the Court. As noted above, no compelling reason was offered by the Governor in making his choice between these two highly-qualified individuals. And it is difficult to understand why supporters of Judge Thompson are "special interest" groups, while supporters of a former legislator and leader in the Republican Party are not.

In any event, a cogent response to that criticism was contained in an op-ed piece that appeared in the *Journal* after the Suttell appointment. The op-ed, in chastising the

Governor for his failure to appoint a woman to the bench, directly addressed the “special interests” criticism in words just as applicable to the need to appoint people of color. The authors of the piece wrote: “Diversity in government is not about appearances or ‘political correctness’; it is about inclusiveness. The judicial branch has the responsibility of ensuring equal protection and fairness, and of remedying discrimination; a judiciary that only nominally includes women [and people of color] does not inspire confidence in its commitment to these constitutional imperatives.”⁷

The symbolism of Judge Carcieri’s decision was especially disheartening in light of a report released less than a year previously by the state courts. That report documented a widespread perception among blacks and Latinos that the courts are biased against people of color.⁸ The appointment of Judge Suttell surely did nothing to dispel that perception.

Perhaps the Governor will make a concerted effort in the future to fill the lower courts with qualified women and people of color. But his failure to use this most recent opportunity to fill the High Court is a devastating blow for those seeking a diverse and representative judiciary.

2. Racial Profiling

The Governor has failed to demonstrate any leadership at all – indeed, appears to have done or said absolutely nothing whatsoever – on one of the most pressing race issues of our time, the problem of racial profiling by police.

On Martin Luther King Day, Governor Carcieri spoke at an event sponsored by the R.I. Ministerial Alliance. Quoting the Reverend King, he said: “Our lives begin to end the day we become silent about things that matter. I am not going to be silent. I intend to speak out about what needs to be done.”⁹ Yet on one of the most pressing racial issues of our time – racial profiling by police – the Governor’s silence on the issue has been deafening.

On June 30th, experts at Northeastern University released a report, over 250 pages long, which documented a widespread pattern of racial disparities by police departments in the state, including the State Police, in the stopping and searching of cars.

The study found that virtually every police department stopped and searched blacks and Hispanics at a disproportionate rate. For most police departments, the disparities were deemed statistically significant, and could not be accounted for by any factor other than race. Further, even though blacks and Hispanics were generally two-to-three times more likely than whites to be searched by police when stopped, contraband was much more likely to be found on white drivers. African-Americans and Hispanics were also twice as likely as whites to be stopped, detained and searched without having a citation issued or arrest made. The study, rejecting the explanations offered by police departments that attempted to justify the disparities, found that the racial differences persisted even when other factors were controlled.

Surely this was an issue of statewide importance worthy of comment from the Governor. But he issued no statement in response to the report, nor have we found *any* reported comments in the media from him expressing any opinion whatsoever on the report's findings, their significance, or what should be done about the problem.

Perhaps the Governor believed that the issue was more appropriately addressed by the Superintendent of State Police. Colonel Pare has in fact spoken publicly about the report. However, this explanation of the Governor's silence is insufficient for at least two basic reasons. First, since the State Police (along with other police departments) was itself being examined and was the subject of the report, it would seem much more appropriate for the public to hear directly from the Governor himself about the issue. Secondly, any deference to the State Police on this issue stands in stark contrast to the hands-on position that the Governor took with the raid on the Narragansett Indian smoke shop, discussed later.

3. North Smithfield and the Fair Employment Practices Act

Perhaps nothing better demonstrates the Governor's attitude towards civil rights than his decision not to veto a bill opposed by his own anti-discrimination agency and by fourteen other organizations concerned with civil rights. By approving unprecedented legislation allowing a Town a free ride from discrimination lawsuits, the Governor not only ignored the views of civil rights groups, he actively participated in a "compromise" that supported a town's ability to discriminate so long as the state wouldn't have to pay for it.

Each year, dozens of so-called "city and town" bills – bills introduced on behalf of a city or town council and affecting only that community – get introduced into, and voted on by, the General Assembly with little fanfare or controversy. That was not the case with legislation introduced on May 15 in the House and May 21 in the Senate on behalf of the Town of North Smithfield. The bills gave the Town an unprecedented special exemption from the Fair Employment Practices Act, the state law prohibiting employment discrimination on such grounds as race, gender and age.

North Smithfield presently has no town fire department, and instead has relied upon a private fire and rescue service. In order to create a town-run fire department, the Town Council offered to take over the private service. The *quid pro quo* that was demanded by the current firefighters and their union was that the town department hire all employees of the private service. However, the town's lawyers warned that hiring the existing private employees *en masse*, without running an open search for qualified applicants, could potentially expose the town to liability by qualified individuals who never got the chance to apply, especially since the current rescue service "employs exclusively white males." In fact, as far back as 1997, prior legal counsel had raised the same concern with the Town.¹⁰

The Town could have chosen any number of responses. It could have decided to have an open hiring process, recognizing that, in light of their experience and knowledge of the

town, the current firefighters would likely be rehired. Even as the bill was pending, at least one Town Councilor was still suggesting that approach.¹¹ Or the Town could have concluded, as its officials and bill supporters claimed, that the chances of a successful discrimination suit in these circumstances was extremely unlikely, and just gone ahead with legislation authorizing the takeover.

Instead, the Town responded by introducing legislation barring any aggrieved firefighter applicant from going into court to claim a violation of the state's comprehensive anti-discrimination law, the Fair Employment Practices Act (FEPA). Apparently, Town officials weren't entirely comfortable with their claim that there was nothing discriminatory about their proposal. As the R.I. Commission for Human Rights, the Governor's own agency charged with investigating complaints of employment discrimination, noted, such a special exemption from the mandates of FEPA was unprecedented in the statute's 54-year history.

Recognizing that an aggrieved job applicant could still bring claims under *federal* anti-discrimination law, the original bill went one step further. It required the state to pay the tab for any damages awarded in such a lawsuit. This indemnification provision prompted an outcry from the Governor. After a round of negotiations with his office, that particular provision was removed. Once the state was taken off the financial hook, though, the Governor apparently harbored few concerns about the bill. The Town's immunity from suit under FEPA remained intact. The Governor allowed the bill to become law without his signature, rejecting a request from fifteen organizations that he veto the legislation.¹²

The bill is an astonishing attack on equal employment opportunity. More importantly, it creates an extraordinarily dangerous precedent. In light of the bill's passage, other employers – wishing to engage in discriminatory actions of their own – will surely be clamoring for their own exemptions in future sessions. Indeed, the bill's sponsor called his legislation a “blueprint” that other communities could use to avoid liability for discrimination.¹³

The Governor's refusal to veto the bill was bad enough. His direct involvement in the legislation – opposing it only to the extent that the discriminatory act might cost the state money – is worse. The Governor's spokesman was quoted as saying that the governor was “concerned about the provision that would transfer any liability for a discrimination lawsuit to the state.”¹⁴ Nowhere did he express any concern about barring a person who was the purported victim of discrimination from being able to sue for redress.

The Governor's own anti-discrimination agency, the R.I. Commission for Human Rights, vigorously criticized the legislation from the start. Yet while the Governor negotiated with the Town and the bill's sponsors, he never consulted with the Commission about the legislation, once again perpetuating a pattern of ignoring the people with something to say about discrimination when an issue directly affecting them arose.

4. The Narragansett Indian Smoke Shop Raid

The Governor's decision to raid the Narragansett Indian smoke shop – and the attendant consequences caught on videotape – has rightly led to widespread national condemnation as well as the call for a federal investigation. Unfortunately, it is but the latest example of the Governor acting first, and considering the consequences later, when it comes to interaction involving people of color. The Governor's further refusal to address questions raised by an internal review of the raid, which he had commissioned from the State Police, only underscores the inadequacy of his involvement in, and response to, this controversial episode.

The Governor's decision to undertake a raid of the Narragansett Indian smoke shop is but the latest example of his attitude towards people of color in the state. Whatever the merits of the "restraint" exercised by the State Police when it met resistance at the smoke shop, the ultimate question is why such a raid was allowed in the first place. The Governor's refusal to address additional questions raised by an internal review of the raid – a review he personally commissioned from the State Police – only underscores the inadequacy of his response to this controversial episode.

Admittedly, some factual disputes still surround the police raid. But even after giving the Governor the benefit of the doubt, the state's actions were inappropriate and excessive. If the Governor believed that the smoke shop was operating in violation of the law, he could and should have done what he did a day later – go into court to seek an order barring the Tribe from continuing the store's operation. And if, as he later claimed, he was intent on avoiding any physical confrontation with the Tribe, this concern provided him all the more reason to seek a civil remedy to the dispute.

The Governor may have been relying on the advice of others in making the decision to raid the shop, but as he has now acknowledged, the decision was ultimately his. Further, one can't help but recall his initial reaction to the raid, in which he focused all of the blame on the Narragansetts.

On the evening of the raid, after the shocking videotape of the melee had aired again and again, the Governor was unequivocal about who was responsible: "I instructed the colonel of the state police to avoid any and all hostilities. *Clearly, those hostilities were provoked by the chief.*"¹⁵ Although the Governor thus squarely placed all the blame on the Tribe for provoking this terrible incident, one was hard-pressed to understand how he expected to defuse a situation by authorizing a few dozen troopers with police dogs to execute a search warrant. The presence of a phalanx of troopers with police dogs is all the more troubling when one considers that the crime of selling tax-free cigarettes – what prompted the search warrant and the raid – is, at least for a first offense, merely a misdemeanor under state law.

The day after those comments, the Governor, apparently chastened by the response he had received, took the stage again to apologize to those injured in the raid. He went on to state in his defense that he had explicitly instructed the state police to withdraw if they

met resistance. He added that he was asking the Superintendent of the State Police to conduct an internal report and respond to two issues: “to ascertain why my instructions [for the police to withdraw if any resistance were encountered] were not followed and, who if anyone, is responsible” and, secondly, “to determine whether the conduct of the state police officers was proper under the circumstances.”¹⁶

Upon release of the internal review ten days later, Governor Carcieri “thanked Superintendent Pare for his prompt and thorough response,” and indicated he was “satisfied” with the report. However, civil rights groups, in a letter to the Governor, expressed bewilderment as to how the Governor could find the report “thorough” since it completely failed to address one of the two issues that he specifically asked that it address – why his instructions to withdraw were not followed.¹⁷

The groups further pointed out that the report left no doubt that, contrary to the Governor’s instructions that police withdraw should they encounter resistance, the state police entered the tribal land fully expecting, and prepared for, resistance, and continued with the raid upon meeting resistance. Indeed, the report itself documented police officials’ decisions prior to the raid to make use of a riot control team, police dogs and even a police bus in the event of mass arrests.¹⁸

In response to the civil rights organizations’ request that the Governor issue a public statement addressing these troubling issues and “blatant inconsistencies,” the Governor demurred. Through a spokesman, he simply said that he stood by the report.¹⁹ Thus, after commissioning an internal review to allegedly get to the bottom of state police actions that countermanded his orders, the Governor showed no interest when the review exonerated neither him nor the police for the consequences of the raid decision.

Nobody is completely blame-free for this unfortunate incident. But the Governor was in no position to talk about provocation by the Narragansett Indians in light of the show of force the state displayed against them. His later refusal to address the transparent inadequacies of the internal review he had ordered once again demonstrated a disturbing indifference to legitimate civil rights concerns. It is easy to understand why the tribe views this raid as but the latest example of our government’s mistreatment of America’s first citizens.

5. Immigrants and Drivers’ Licenses

Ignoring three years of collaborative negotiations between the state and groups representing the state’s burgeoning immigrant community, the Governor unilaterally revised DMV policies on the granting of driver’s licenses to people without Social Security Numbers, a decision of enormous consequence to that community. Both the action he took and the way he took it demonstrate, at best, a bland indifference to the needs and lives of people in the immigrant community.

May 21st was “Latinos on the Hill” Day, an event organized by the Rhode Island Latino Civic Fund. Over 85 Latino residents came to the State House that day to meet the Governor and legislators, and to make their voices heard on issues of special importance to Latinos and the immigrant community in general. Some of them were there in particular to show their support for a bill designed to help undocumented immigrant students who faced problems going on to college because of their immigration status.

Governor Carcieri addressed the group that day and said: “It’s very important that you are here and that your voices be heard. A lot of decisions are made because of who is here, who is making relationships. We need to see you every day.”²⁰

Unbeknownst to them, however, was that on the very next day, the Governor’s office would be notifying a few community leaders about a significant and imminent change in DMV policy that would have tremendous adverse repercussions for immigrants, both lawful and undocumented, in the state. On May 23rd, the shoe dropped. “Effective immediately,” a news release from the Governor’s office announced, the DMV would no longer accept from people applying for a driver’s license an Individual Tax Identification Number (ITIN) if they did not have a Social Security Number.²¹ The May 23rd announcement – made unilaterally by the administration without any input from the affected community – threw the immigrant community into immediate disarray and made the lives of many state residents extraordinarily difficult.

The decision to disallow ITIN’s – reversing a policy that had been put in place by the previous Director of Administration, Dr. Robert Carl, Jr. – was made in the name of “homeland security.” Especially since 9/11, state motor vehicle agencies across the country have been actively seeking to address the problem of fraudulent driver’s licenses. Even though the problem of false driver’s licenses is probably most prevalent among white middle-class teenagers seeking a document allowing them to consume alcohol, motor vehicle agencies have focused on a more convenient scapegoat -- immigrants. This knee-jerk reaction is short-sighted and counter-productive, and until the Governor’s unilateral reversal of policy, Rhode Island and at least a handful of other states had recognized this.

For approximately three years – beginning well before 9/11 – representatives of the immigrant community had been meeting with then-Director of Administration Carl and other state agency officials to deal with the issue of driver’s license fraud. Everybody recognized the need to halt fraudulent ID’s, but there also appeared to be an acknowledgement by all sides that simply pretending the large undocumented population didn’t exist for driver’s licenses purposes was unwise as well.

Over the course of those three years, a number of proposals were adopted to address the legitimate needs of both sides: providing drivers’ licenses to individuals unable to provide a Social Security Number while at the same time protecting the state from fraud. The proposals included stricter limits on the number and types of documents that were deemed acceptable for identification and residency purposes, sending out licenses by mail to ensure that the address given by the applicant was his or her actual residence, and

accepting an Individual Tax Identification Number (ITIN) from those individuals unable to obtain an SSN. The ITIN is a number just like the SSN that undocumented immigrants obtain from the IRS to pay taxes.

In making its decision to disallow ITIN's, state officials pointed to an IRS letter that stated that "ITIN numbers were never intended to be used as a tool for proving identity in obtaining a license."²² Not mentioned, of course, was the fact that an SSN was never intended for that purpose either, but was intended, like the ITIN, to be a "traceable number for someone who has a tax obligation."²³

There were any number of reasons for the previous Department of Administration to have accepted the ITIN compromise. Denying drivers' licenses to people living in the community is quite counter-productive to the entire community, for it makes the roads less safe. At bottom, drivers' licenses promote safe driving. Undocumented immigrants who are unable to obtain a driver's license, but who still need to drive, are likely to simply drive without having passed the required exams, and without carrying auto insurance.

To the extent the state's focus on undocumented immigrants was in response to 9/11, it was unwarranted. Less than a handful of the nineteen September 11th hijackers were in the country illegally; only that small group would have been unable to obtain a driver's license under the state's new policy. Ironically, then, the state's ban on ITIN's will simply make it harder for law enforcement officials to find undocumented immigrants living here, thereby impeding crime prevention and investigation. As long as there is a substantial population of undocumented immigrants in the state, it makes little sense to deprive them of a license solely because of their immigrant status.

The effect of the new policy extends beyond so-called "illegal" immigrants, since there are various lawful immigrants who will not necessarily have an SSN either. Letting the INS, much less the DMV, determine whether a person is in the country illegally is no simple task. There are over 40 different statuses of persons who are lawfully in the country but do not have a "green card." In addition, there are many people whose status has not been determined by INS. Not all these people will have documents to verify their status. In short, given the complexity of immigration law, this policy will likely result in the denial of drivers' licenses to persons who are lawfully present in the country.

At bottom, DMV should not be in the inappropriate role of serving as INS agents. Whether a person should get a drivers' license should be based solely on whether they are qualified as drivers and are residents of *the state*. The previous administration seemed to understand this.

As with the other issues discussed in this report, the Governor's procedures in his decision-making were just as troubling as the substance of his decision. As previously noted, the action taken by the Governor was a *fait accompli* to the immigrant community and its leaders, who were notified of the change in policy as a "done deal." The paternalism did not end there, however. A week after the May 23 announcement,

community groups managed to arrange a meeting with administration officials, who had stated that they were interested in addressing the “unintended consequences” caused by removal of the ITIN option. Missing from the meeting, however, was the Department’s director himself, Robert Higgins. Instead, the meeting was “chaired” by the Governor’s Director of Municipal Affairs and Appointments, Deborah Smith.

The meeting got off to less than an auspicious start. Smith began the meeting with an ultimatum: she objected to the presence of a representative from the ACLU and two legislators active in immigrant issues, and said those three individuals had to leave if the meeting were to continue. They left, but it was a rather rude welcome for those who had hoped, even after the fact, to work in a spirit of cooperation with the Governor’s office.

Over two months later, no resolution of the matter is in sight. The administration did agree, at least for the time being, to “grandfather” those persons who have already obtained a permit or license with an ITIN, but groups working with the immigrant community have complained that this agreement is often not being honored in practice. More to the point, no new licenses at all are being issued to applicants if they fail to present an SSN. In addition, the state has been adamant that any discussion of returning to the ITIN system is off the table. It is thus unclear what sort of compromise can be reached, since use of ITINs is precisely the alternative that other states addressing this issue have used to accommodate their interests in combating fraud.²⁴

Finally, lost in much of the discussion have been the widespread problems documented by immigrant rights groups concerning the discrimination that immigrants face when transacting business at the DMV, including interrogations regarding their status, confiscation of legitimate identity documents and general rudeness. Instead, community groups have been forced to focus on the dilemma facing people who now cannot even apply for a license in the first place.

The Governor’s actions in first implementing a policy that would significantly harm the immigrant community, and only afterwards inviting community groups to the table is hardly a way to show respect for, or an interest in, the community’s views. This incident was particularly egregious since, under the previous administration, these groups *had* been at the table. Like the other issues discussed in this report, this one again shows that the Governor’s indifference applies not only to substantive civil rights issues, but also to civil rights organizations themselves and their opportunity to provide input.

RECOMMENDATIONS

There are many steps that the Governor can and should take to address the concerns that this report has raised about his record on civil rights. We believe that the recommendations that follow, though numerous, are reasonable, moderate and appropriate. We hope that they will be received in the positive spirit in which they are given, and accepted and implemented in recognition of their merit.

1. Judicial Appointments

a. The Governor should exercise his statutory authority to make diverse appointments to the Judicial Nominating Commission (JNC). According to the JNC statute, the “governor and the nominating authorities shall exercise reasonable efforts to encourage racial, ethnic and gender diversity within the commission.” R.I.G.L. §8-16.1-2(a)(3). Sadly, that has not happened. Of the commission’s nine members, eight are white males. The Governor will have the opportunity to make a number of appointments to the Commission in the coming years. We urge him to abide by the statute’s exhortation and appoint people who truly represent the diverse population of Rhode Island.

b. The Governor should encourage applications from women and people of color for future vacancies, and actively choose from those applications well-qualified people to serve on the bench. The JNC statute calls on the commission to “exercise reasonable diligence to encourage racial, ethnic and gender diversity within the judiciary of this state.” R.I.G.L. §8-16.1-4(b). The Governor must do his part as well. If women and people of color do not feel that they have a fair shot, some will not even bother to apply. It is critical that the Governor voice a commitment to seeking well-qualified women and minority applicants.

c. The Governor’s all-white executive cabinet sends a message just as disturbing to the community. In filling any vacancies, he should take affirmative steps to have his cabinet more closely represent the state’s diverse population.

2. Racial Profiling

a. The Governor should immediately issue a statement addressing the findings of the Northeastern University study and pledging to take all necessary and appropriate action within his power to eradicate the problem.

b. The Governor should demand receipt within 60 days from the state police of a plan of action for eliminating the racial disparities in stops and searches uncovered in that agency by the study.

c. The Governor should call on the Superintendent of State Police to carefully examine the data analyzed by Northeastern University to determine whether any individual officers may be particularly responsible for disparate treatment of people of color.

d. The Governor should call on the Superintendent of State Police to review all of that agency’s practices and procedures relating to drug interdiction and traffic

enforcement in order to determine whether any of those efforts are inadvertently leading to racially disparate treatment, and if so, to modify or eliminate those practices.

e. The Governor should commit to working with civil rights and community groups on the passage of comprehensive legislation in the 2004 General Assembly session to address the problem of racial profiling documented by the study and set standards on law enforcement practices to mitigate that problem.

3. North Smithfield and the Fair Employment Practices Act

a. The Governor should formally and publicly renounce *now* any further legislative efforts to create special exemptions to the Fair Employment Practices Act.

b. The Governor should withdraw his opposition to legislation that would allow discrimination victims to sue the state for violations of federal law. Passage of the North Smithfield bill demonstrates just how fragile our state laws' protections against discrimination can be. Especially in light of the Governor's position on this bill, it is intolerable for him to take the position that the state should be immune from suit when it violates the most fundamental federal laws protecting citizens from employment discrimination.

4. The Narragansett Indian Smoke Shop Raid

a. The Governor should express formal support for the convening of a federal investigation to review the raid.

b. As requested from civil rights groups, the Governor should publicly address the questions and inconsistencies raised by the state police internal review of the raid.

c. The Governor should review and make public State Police protocols for use of police dogs in encounters with the citizenry and revise them to limit their use.

d. The Governor should appoint a commission to review and investigate the grievances of the Indian community in Rhode Island insofar as they relate to state action, and adopt a concrete plan to respond to and address those concerns.

5. Immigrants and Driver's Licenses

a. The Governor should reconsider and reverse his administration's present position and join with at least six other states in accepting Individual Tax Identification Numbers (along with other proper documentation) for driver licensing purposes from individuals who do not qualify for a Social Security Number.

b. The Governor should support legislation (previously introduced this year) codifying the DMV's acceptance of ITIN's and specifying the documentation requirements for obtaining a driver's license.²⁵

c. The Governor should investigate and take action on allegations of discriminatory treatment by DMV employees against immigrant applicants.

d. The Governor should require the DMV to promulgate clear and public standards to govern its investigations of fraud, and establish a meaningful complaint process for people who believe they have been unfairly treated by the agency because of their race, ethnicity, national origin or immigration status.

6. Miscellaneous

a. The Governor should formally and publicly commit to engaging in meaningful consultation with representatives of civil rights and community groups before significant action affecting those constituencies is taken. Additionally, he should agree to meet on an on-going and regular basis with these groups to hear their concerns, to advise them on the actions he is taking to promote civil rights and to ensure that a collaborative effort ensues to address these crucial issues.

b. In addition to the drivers' license problem, the other most pressing civil rights issue affecting immigrants in the community is the fear that local police will enforce federal immigration law. Many police departments across the country have recognized that this is a terribly counter-productive idea that can only generate mistrust between the police and the communities they are sworn to serve. This was most recently and disturbingly exemplified by the case of Danny Sigui, an undocumented immigrant facing deportation after he voluntarily testified for the state as a witness in a murder trial.²⁶ The Governor should announce a state policy restricting the State Police from enforcing federal immigration law, and announce his support for legislation (a version of which was introduced in the 2003 session) to codify this principle.²⁷

FOOTNOTES

¹ Public Law 03-001.

² Bruce Landis, "Suttell Endorsed by House Panel Amid Complaints," *Providence Journal*, June 11, 2003.

³ M. Charles Bakst, "Picking Suttell, Carciari Misses an Opportunity," *Providence Journal*, April 29, 2003, Page B-1.

⁴ *Id.*

⁵ *Journal of the House of Representatives*, Volume 130, Number 13, February 4, 2003, Page 11.

⁶ Bruce Landis, "Suttell Sworn in to State Supreme Court," *Providence Journal*, July 10, 2003, Page A-1.

⁷ Barbara Dickinson, Kathie Florsheim and Deb Ruggiero, "Carciari Should Appoint Women Judges," *Providence Journal*, June 30, 2003, Page A-7.

⁸ Gerald Carbone, "Survey: No Legal Bias Despite Minority Distrust," *Providence Journal*, June 14, 2002, Page B-1.

⁹ Scott MacKay, "For King and Country," *Providence Journal*, January 21, 2003, Page B-1; M. Charles Bakst, "Gov. Carciari, Mayor Cicilline on King Day," *Providence Journal*, January 21, 2003, Page B-1.

¹⁰ John Hill, "Council: Study Panel to Explore Fire Force," *Providence Journal*, November 13, 2002, Page C-1, Blackstone Valley edition.

¹¹ John Hill, "Municipal Fire Department Plan Put on Hold," *Providence Journal*, June 13, 2003, Page C-1, Blackstone Valley edition.

¹² Public Law 03-123.

¹³ "Fire Department Bill Goes before General Assembly," *Providence Journal*, May 22, 2003, Page D-1, Blackstone Valley edition.

¹⁴ John Hill, "Carciari's Concerns Postpone Hearing," *Providence Journal*, June 4, 2003, Page C-1, Blackstone Valley edition.

¹⁵ "Carciari: Raid was Regrettable but Necessary," *Providence Journal*, July 16, 2003, Page A-9 (emphasis added).

¹⁶ Mark Arsenault, Michael Corkery, Paul Davis, Scott MacKay and Katie Mulvaney, "Carciari: Police Were Told to Withdraw in Face of Resistance," *Providence Journal*, July 16, 2003, Page A-1.

¹⁷ Mark Arsenault, "Carciari Faulted for His Response to Report on Raid," *Providence Journal*, August 6, 2003, Page A-1.

¹⁸ "The State Police Report on the Smoke Shop Raid," *Providence Journal*, August 2, 2003, Page A-6.

¹⁹ Mark Arsenault, "Carciari Faulted for His Response to Report on Raid," *Providence Journal*, August 6, 2003, Page A-1.

²⁰ Tatiana Pina, "Latinos Have their Day at the State House," *Providence Journal*, May 23, 2003, Page B-1.

²¹ <<http://www.governor.ri.gov/pr.php?ID=70>>

²² *Id.*

²³ *Id.*

²⁴ The states currently accepting ITIN's are Kansas, Kentucky, New Mexico, North Carolina, Pennsylvania and Utah.

²⁵ See, e.g., <<http://www.rilin.state.ri.us/Billtext/BillText03/HouseText03/H5968.pdf>>.

²⁶ Tatiana Pina, "Guatemalan Immigrant to be Deported," *Providence Journal*, August 6, 2003, Page A-1.

²⁷ See, e.g., <<http://www.rilin.state.ri.us/Billtext/BillText03/SenateText03/S720.pdf>>.

LIST OF SUPPORTING ORGANIZATIONS

(List in Progress)

African Alliance of Rhode Island
Cambodian Society of Rhode Island
Cape Verdean American Community Development of R.I.
Center for Hispanic Policy and Advocacy
Direct Action for Rights and Equality
East Providence Affirmative Action Office
Elmwood Community Center
Gambian Association of Rhode Island
Ghana Association of Rhode Island
International Institute of Rhode Island
Laotian Society of Rhode Island
Liberian Society of Rhode Island
NAACP, Providence Chapter
Oasis International
Progreso Latino
Providence Human Relations Commission
Rhode Island Affiliate, American Civil Liberties Union
Rhode Island Affirmative Action Professionals
Rhode Island Black Contractors Association
Rhode Island Civil Rights Roundtable
Rhode Island Coalition for Affirmative Action
Rhode Island Ministerial Alliance*
Rhode Island National Organization for Women

* The Rhode Island Ministerial Alliance takes no position on those aspects of the report addressing the Narragansett Indian smoke shop raid.