

January 5, 2005

The Hon. Donald Carcieri
Governor
State House
Providence, RI 02903

Dear Governor Carcieri:

We have obtained a copy of the December 30th letter from Attorney General Lynch to you, requesting that you seek an advisory opinion from the R.I. Supreme Court regarding the constitutionality of drunk driving roadblocks. Without delving deeply into the issue at this time, we urge you to reject his invitation. Some of our reasons are briefly summarized below.

1. It is by no means clear that you have proper authority to seek such an opinion under the circumstances. The R.I. Supreme Court has made clear that it will issue an advisory opinion to the Governor only in those instances in which the question propounded has “a bearing upon a present constitutional duty presently awaiting performance by the Governor.” In re Advisory Opinion to the Governor, 472 A.2d 301, 302 (R.I. 1984). Exactly what that present duty is, in the context of this specific question, is unknown to us.

2. As the Supreme Court’s comment above suggests, the special constitutional process for requesting advisory opinions is not one to be invoked lightly. The issuance of advisory opinions is counter to the basic separation-of-power principle that courts should hear only actual cases or controversies, not hypothetical questions where appropriate or necessary facts cannot be properly adjudicated. We think it would be especially untoward to have this unique process invoked in order to request the Court to take away a constitutional right from the residents of Rhode Island. That, however, is precisely the nature of the AG’s suggested request.

3. Many alternatives – most notably the use of roving patrols – exist to try to address the problem of drunk driving in a systematic way, without infringing on fundamental privacy rights. For example, the Attorney General’s letter touts a Tennessee campaign which set up 900 checkpoints and stopped 145,000 vehicles, all for a total of 773 DUI arrests (no indication is given on the number of convictions). In other words, the campaign led to less than one arrest per roadblock, and over 144,000 innocent people stopped. We believe the massive police resources necessary for roadblock campaigns could be much better spent on highly-publicized roving patrols on the highways that focused on erratic driving and other behavior that might indicate an intoxicated driver. This strikes us as not only a better alternative, but one that respects individual rights.

Just as troubling in the Tennessee statistics is that these roadblocks – whose sole purpose was allegedly to find drunk drivers – somehow also led to more than 200 arrests for drug crimes. We fear that roadblocks could become the next opportunity for racial profiling. As you know, the two-year study of traffic stops in Rhode Island documented beyond dispute not only that minority drivers were stopped more often than whites, but – much more troubling – that they were searched much more often as well. Thus, even if roadblock protocol ensures that drivers will be pulled over on a strictly random basis, police will have enormous discretion to decide which drivers deserve further scrutiny. We fear we know what that will lead to.

4. The Attorney General's letter cites a changing legal landscape, and specifically a U.S. Supreme Court decision setting some standards for the operation of roadblocks since the Pimental ruling was handed down. But the R.I. Supreme Court's 1989 decision explicitly assumed that the U.S. Supreme Court would allow such roadblocks under the Fourth Amendment. Thus, this "change" really has no bearing at all on the analysis the Court provided fifteen years ago. In fact, it is worth noting that Rhode Island is not alone in rejecting roadblocks under state constitutional mandates.

Obviously, drunk driving is a very serious problem, and there can be legitimate disagreements over how best to deal with it. However, we certainly do not believe that the Attorney General's letter provides a sufficient, much less compelling, reason for you to exercise the special advisory opinion process authorized by the Constitution in order to have the question of drunk driving roadblocks revisited. We urge you to reject his request.

If you have any questions about this, I hope you will feel free to let me know. Thank you in advance for considering our views.

Sincerely,

Steven Brown
Executive Director

cc: Andrew Hodgkin