THE POLITICS OF DIVISION:

GOVERNOR DONALD CARCIERI'S RECORD ON CIVIL RIGHTS DURING HIS SECOND TERM IN OFFICE

A REPORT PREPARED BY THE RHODE ISLAND AFFILIATE, AMERICAN CIVIL LIBERTIES UNION

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TABLE OF CONTENTS

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Introduction and Executive Summary

Rhode Island Governor Donald Carcieri is less than a year into his second term of office. However, in a period of just a few months and in a wide variety of contexts, he has shown a virtually complete lack of interest in recognizing, much less protecting, the civil rights of individuals and groups that have been long-standing victims of discriminatory treatment. This report examines five recent, significant civil rights issues in the state and the Governor's almost-reflexive action in pitting himself against the legitimate interests of the civil rights community and minority groups on each occasion.

One of the most troubling aspects of this is the sense of déjà vu that it elicits. In August 2003, more than twenty-five civil rights and community organizations joined in the issuance of a report entitled "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."[1]

That report, in a similar vein to this one, examined the Governor's response to five civil rights issues that had cropped up early in his *first* term in office: his loud silence on the problem of racial profiling as documented in a detailed report issued by Northeastern University; his active support of a law that exempted a town from the state's Fair Employment Practices Act; his responsibility for the ill-fated raid on the Narragansett Indian smoke shop; his appointment of a white male, instead of a well-qualified African-American jurist, to the R.I. Supreme Court; and his unilateral decision to abruptly end negotiations with the immigrant community on drivers' license standards,

an effort that the previous administration had worked on collaboratively for more than three years.

The 2003 report grimly concluded that the Governor's responses had consistently "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."[2]

Four years later, regrettably, little seems to have changed. As was also the case in 2003, one cannot simply ignore the Governor's conduct on a particular civil rights issue as a mere aberration. Rather, there is a clear, coherent and consistent pattern in his actions. This pattern exhibits, at best, a recurring obliviousness to the harm his policies impose on some of the state's most vulnerable populations. At worst, it demonstrates a hostility towards the rights, concerns and needs of those populations.

The five diverse issues addressed in this latest report that prompt this observation are summarized below:

1. The Rights of Immigrants: English-Language Interpreters. Governor Carcieri's public comments enthusiastically supporting the elimination of state-funded English-language interpreters displayed a complete disregard for basic civil rights laws, a disrespect for the many people in Rhode Island with limited English proficiency (LEP), and a crucial lack of historical awareness, while also playing, however unintentionally, into a disturbing xenophobic streak that permeates the immigration debate in our state.

2. The Rights of Women: No-Fault Divorce/Mothers on Welfare. The Governor's gratuitous and anachronistic attack on the state's no-fault divorce laws for, among other things, encouraging women to pursue educational opportunities is an affront to decades of progress in the area of women's rights. His comments on the issue also raise concerns as to whether his numerous and deep proposed cuts to programs that help working families meet basic needs have been based on the view that policies like no-fault divorce are largely responsible for the poverty problems faced by our children, thus reducing the moral obligation of the state to address those problems. Those concerns have been heightened by his sexist verbal attacks against women on welfare as being unfit mothers solely because of their status as single parents.

3. The Rights of Blacks and Latinos: Mandatory Drug Sentencing. In vetoing a bill that would have eliminated the state's draconian mandatory minimum sentences for various drug offenses, the Governor not only ignored the proposal's beneficial impact on the state's ongoing prison population crisis and deep fiscal problems, he closed his eyes to the severe and discriminatory impact of drug sentencing laws on the state's African-American and Latino population. His unwarranted veto also rejected the views of the branch of government most directly affected by the bill, and disregarded the expertise of drug treatment providers.

4. The Rights of Gays and Lesbians: Domestic Partner Benefits. The Governor's veto of a bill to treat domestic partners of state and municipal employees the same as spouses for purposes of certain retirement and death benefits, combined with his rhetoric on other issues affecting the LGBT community, demonstrate a hostility to the non-heterosexual residents of Rhode Island that undermines decades of progress in the state's treatment of gays and lesbians.

5. The Rights of Juveniles: Sending 17-Year-Olds to the ACI. The Governor's support for legislation moving all 17-year-olds out of the juvenile justice system and into adult court, followed by his apathy to the outcry that followed passage of that ill-conceived law that damaged the lives of over 500 teenagers, was cruel in its detachment and demonstrated a bland indifference to the impact of his policies on young people in our community. As with his veto of the mandatory sentencing bill, his nonchalance also showed a troubling lack of concern for the legislation's significant adverse impact on racial minorities.

It is not just the Governor's continued apathy, if not antipathy, towards the civil rights of minority groups in the state that is alarming. The tone of his rhetoric surrounding his positions on these issues is just as troubling. Whether it is congratulating people who demand an end to language interpreters in the courtroom, chastising women for bettering their lives as a result of no-fault divorce laws, demonizing the poor in general, and single mothers in particular, for their financial condition, or denouncing civil unions as "disastrous for future generations," Governor Carcieri's comments and actions can only be seen as promoting a politics of division.

This is a politics that gives official voice to nativist fears, to a "blame the victim" mentality against the poor, and to bias against a range of groups in society that have faced

widely-tolerated discrimination and prejudicial attitudes for decades. This is not what a state leader should exemplify.

A word used more than once in this report is "gratuitous," because the gratuitous nature of some of these attacks on civil rights is also particularly jarring. It is bad enough that, with little concern for federal civil rights law, the Governor denounces the use of state-funded interpreters in the courts and for clients seeking state assistance. It is worse that, in responding to critics of that position, he suggests the state should enact divisive "English-only" legislation as well. It is bad enough that he uses taxpayer money to hire a private attorney to file a court brief to denounce – and denounce unnecessarily – civil unions. It is worse when he uses the brief as an occasion to irrelevantly attack no-fault divorce as well. It is bad enough that he proposes legislation to send all 17-year-old offenders to adult court and the ACI, and then shows little concern when the only rationale provided for enacting the proposal appears to have no validity. It is worse when he refuses to sign a bill repealing the legislation, thus unnecessarily extending for a full week the impact of the ill-advised legislation on juveniles.

In at least a few instances, this "pro-fiscal constraint" Governor even seems to have gone out of his way – particularly on issues relating to criminal justice – to take actions that both harm the minority community *and* cost the state money.

The 2003 report on Governor Carcieri's civil rights record offered twenty recommendations for his consideration to address the civil rights concerns raised by that analysis. As best as we can determine, few, if any, were ever adopted. The report noted that "Rhode Island has a proud history in the arena of civil rights. But it is being tarnished."[3] Four years later, it must unfortunately be noted, that assessment still stands.

The question at this point is whether the Governor will use his remaining years in office to further tarnish that legacy, or instead work with the community to actively promote civil rights for all – and especially for groups that have faced the heaviest burdens of discrimination over the decades. We fervently hope it is the latter.

However, in light of the track record that these two reports document in great detail, we believe it has become incumbent upon the community to work even more vigorously through other channels to undo the damage to "equal justice under the law" that has been, and continues to be, inflicted by Governor Carcieri's policies and practices. Among the most obvious and immediate goals to fill this void are the following:

- The General Assembly, state agencies and the judiciary need to continue to uphold fundamental principles of due process by recognizing the critical importance of language interpreters for people with limited English proficiency.

- Efforts to scapegoat immigrants generally, and those with limited English proficiency specifically, must be denounced and rejected as contrary to the welcoming spirit that Rhode Island has always embraced.

- The General Assembly must re-approve legislation repealing mandatory minimum sentencing and continue to reform the state's criminal justice system in order to eliminate the widespread racial disparities that exist within it. This includes passage of comprehensive legislation addressing the problem of racial profiling by police.

- Continued efforts to recognize equal rights for gay and lesbian residents of the state must proceed apace.

- The state cannot abandon the poor among us. Single women trying to raise children under extremely difficult circumstances need support and help obtaining jobs, not name-calling.

- The rights of the most vulnerable – children and juveniles – need to be better protected through legislation, by making repeal of the law sending juveniles to adult court retroactive and by holding the line against cuts to benefits programs for children that, in the long run, will not only destroy young lives but cost the state, and all of us, much more than the alternatives.

This report's assessment about the Governor's actions is not made lightly. If the length of this report seems daunting, it is only because we felt it critical to document as fully as possible the factual underpinnings for such a claim, something that a summary like this simply cannot do.

I. The Rights of Immigrants: English-Language Interpreters

Governor Carcieri's public comments enthusiastically supporting the elimination of state-funded English-language interpreters displayed a complete disregard for basic civil rights laws, a disrespect for the many people in Rhode Island with limited English proficiency (LEP) and a crucial lack of historical awareness, while also playing, however unintentionally, into a disturbing xenophobic streak that permeates the immigration debate in our state.

Harsh and xenophobic criticism of immigrants to this country, and of their English-speaking proficiency, is as old as the country itself – in fact, even older. Bemoaning the influx of "swarthy" Germans to Pennsylvania, Benjamin Franklin famously complained in 1751:

> "Why should the Palatine Boors be suffered to swarm into our Settlements, and by herding together establish their Language and Manners to the exclusion of ours? Why should Pennsylvania, founded by the English, become a Colony of Aliens, who will shortly be so numerous as to Germanize us instead of our Anglifying them, and will never adopt our Language or Customs, any more than they can acquire our Complexion?"[4]

Of course, those dire predictions, like the similar ones that have routinely been raised with each new influx of immigrants to our nation, did not come to pass. As a *Providence Journal* article reviewing the history of immigration in Rhode Island pointedly noted: "In the warm bath of nostalgia, descendants of European and Canadian immigrants often assert that their forebears came here legally, learned English quickly and stayed to raise stable nuclear families. This is largely myth."[5]

In light of this history, therefore, it is quite unfortunate to note that the same attitudes prevail among some members of the public more than 250 years after Franklin's remarks. It is even more unfortunate, however, when public officials at the highest level of government also continue to play off and promote these nativist fears.

On October 17, 2007, Governor Carcieri appeared on a call-in radio talk show to discuss his announced plans for major layoffs in state employment. During the show, a caller inquired why the state didn't eliminate state-paid court interpreters to save money. The Governor's immediate and unqualified response was: "Amen to you." The Governor went on to criticize the presence of interpreters at the Department of Human Services, saying: "Why are we, at taxpayer expense, providing interpreters for people who want benefits from us?…. I don't think we should be doing that."[6]

The Governor's comments displayed a complete disregard for basic civil rights laws, an incredible disrespect for the many people in Rhode Island with limited English proficiency, and an ignorance of history. As twenty-two community and civil rights groups argued in a letter to the Governor, his comments, however unintentionally, also played into a disturbing xenophobic streak "that permeates the immigration debate in our state and has encouraged a palpable discriminatory attitude towards people of certain ethnicities and races."[7] However, before analyzing the disturbing premises underlying his remarks, it is first worth briefly examining the disingenuous manner in which the Governor responded to the outcry that followed his radio appearance.

After being denounced in a number of quarters, including in a critical editorial in the normally supportive *Providence Journal* editorial pages, the Governor tried to backtrack from the import of his comments or, more accurately, tried to reinvent what he had actually said. Over the course of a week, the Governor put forth at least three different spins on his radio show comments, none of which truthfully reflected his actual remarks. Considering how his advisers have recently noted his preference for appearing on talk radio because "what he says is what you hear" and "he gets his message out in his

words, unfiltered," there is more than a little irony to the Governor's refusal to acknowledge what he actually said.[8]

At the start, therefore, it is critical to review precisely what he was asked on the radio show and how he answered the question. The entire colloquy from the radio show is printed immediately below:

> "BUDDY FROM JOHNSTON: The court systems they have, like, I don't know, maybe a half dozen interpreters. I don't know if that number is accurate or not, but why can't we just eliminate those jobs and have the people that gotta go to court that don't speak English bring a relative or a friend to interpret for them, like our grandparents did many years ago? That's my question, why can't we eliminate those interpreter jobs?
>
> "THE GOVERNOR: Amen to you, Buddy.
>
> "One of the things that we found when I went through our own departments – the department of human services and a number of them – when I looked at the organizational charts, I saw a number of – and there was one department, there had to be eight – eight and these were specifically Spanish – interpreters in our departments – let alone, I know what you're talking about, – the court system when somebody comes in. And I said the same thing to our people. This is part of the process we went through. I said why are we, at taxpayer expense, providing interpreters for people who are trying – who want benefits from us? It seems completely illogical to me because you're right.
>
> "My grandparents emigrated from Italy. My grandmother didn't speak English. She learned it. She lived to 96 and was still speaking broken English, God bless her, but you know, the point is if they needed somebody and they couldn't speak English, they got somebody, a friend or a relative who spoke English, right? So why in God's name [are] we providing, at taxpayer expense, staff whose sole job is to interpret English for people who apparently have no friend and no relative that can speak English. I don't think we should be doing that."[9]

The Governor's comments couldn't be clearer. However, responding to the criticism that poured in from community groups, civil rights organizations, the state head of the Democratic Party, the *Providence Journal* and others, the Governor and his spokesperson, over the course of a week, offered three different – and inaccurate – interpretations of what he had said:

1. The first "spin" to appear came from Gubernatorial spokesperson Jeff Neal who, in a classic *non sequitur,* said that "the governor believes that we should strictly

limit taxpayer funded benefits or services for illegal immigrants in Rhode Island."[10] As is apparent from even a cursory read of the interview, his remarks had nothing at all to do with "illegal immigrants." He was objecting to the use of state interpreters for *any person* with limited English proficiency. (Indeed, if one accepted Mr. Neal's take on those comments, then the Governor, by using his grandmother as an example, could only have been implying that she was an "illegal immigrant," a point that we sincerely doubt he was trying to make.)

2. A few days later, the message from Mr. Neal changed somewhat: "Governor Carcieri stands by the comments he made. In response to a question from a listener, the governor simply noted that he was surprised to see the large number of language interpreters employed by state government."[11] Of course, this is patently untrue as well. The Governor's comments made clear that he was explicitly *objecting to any* state-paid interpreters, not expressing some neutral surprise at how many there were.

3. When the Governor spoke for himself, on a TV news show a few days after his radio appearance, his response was just as revisionist. Because a good deal of the criticism against him had focused specifically on the importance of interpreters for criminal defendants, the Governor now claimed that he had not been "talking about court interpreters . . . I was referring or responding to a question referring to interpreters within state departments outside of the judiciary."[12] As the transcript of the radio colloquy shows, however, *the question that elicited an "Amen" from him was specifically and solely about eliminating funds for court interpreters*.

In fact, the Governor's lack of concern for assisting people with limited English proficiency (LEP) in the courtroom was not new. The debate over his radio comments

generally neglected to note this, but only three years previously, Governor Carcieri sought to do just what he was heard supporting in this radio interview – he cut from the judiciary's proposed budget *all* the money that the courts had sought to hire interpreters for criminal defendants.

In 2004, in anticipation of the graduation of the first set of students from an interpreter program started at CCRI, the state judiciary requested approximately $425,000 in the FY 2005 state budget to pay for six Spanish-language interpreters, an office and support staff. The proposal was designed to begin implementing a law passed in 1999 by the General Assembly – and clearly aimed at meeting constitutional mandates – that specifically required trained court interpreters for a handful of the most common foreign languages spoken by defendants appearing in Rhode Island courtrooms.[13] However, even the limited scope of the judiciary's request was considered too much by the Governor. Citing fiscal constraints, his proposed FY 2005 budget, submitted to the state legislature in March 2004, included none of that money.[14]

After an outcry from the judiciary and others, the Governor two months later partly retreated from that position. Announcing "unexpected increases in state revenues," the Governor indicated a receptiveness to restoring to his proposed budget $220,000 for the hiring of three court interpreters, approximately half of what the judiciary had requested. At the same time, the Governor announced other proposed budget expenditure increases of more than $45 million, $23.1 million of which were for new initiatives.[15] Rejecting the Governor's half-step recommendation, the General Assembly restored the entire $425,000 that had been requested by the judiciary.

It is also worth noting that, as far as we have been able to determine, none of the clarifying remarks the Governor issued following his radio appearance ever expressed support for state-funded court interpreters. Instead, he simply said that his earlier remarks had not been addressed to the issue, noting that "on many cases [interpreters] are mandated. There are these federal rules…"[16]

In other words, if he truly wasn't calling for the elimination of courtroom interpreters, it was only because he legally couldn't do so, not because he felt that, as a matter of basic public policy, such interpreters should be provided.

But to anyone who cares about due process in even its most rudimentary form, the provision of court interpreters *should* be fundamental as a matter of governmental policy. The *Providence Journal*'s editorial on the subject summed it up well:

> One of the central ideals America embraces is the presumption of innocence and the right of the accused to make his or her case in court. That is the reason lawyers are provided to those who are charged with crimes and cannot afford legal help. The government should not be clapping people in jail simply because they do not understand the often arcane and confusing legal system. Simple fairness dictates that those who cannot speak English be provided with a translator to help them understand what is going on in court. . . Rhode Island must live up to this country's high ideals of equal justice, to the greatest extent possible.[17]

Even if one gave the Governor the benefit of the doubt, and concluded that he did not really mean what he said about court interpreters, his comments remained grossly inappropriate and still reflected a totally improper view of the state's obligations under the law. Although he has since correctly noted the legal obligations imposed on the state to provide court interpreters, he managed to ignore the salient fact that, for decades, federal law has *also* required the state to provide interpreters in a variety of other settings, including for people accessing benefits at state agencies like the Department of Human Services (DHS).

In fact, in response to complaints of discrimination filed against the agency, DHS has at least twice entered into formal agreements with the U.S. Department of Health and Human Services' Office of Civil Rights (OCR), requiring that DHS take various steps to protect the rights of clients with limited English proficiency. Under an agreement currently in force between the two agencies, DHS is, among other things, required to "schedule interpreters or bilingual staff when necessary" to communicate with clients who have limited English proficiency (LEP), to have procedures in place "permitting timely and effective telephone communication between LEP persons and DHS staff," to train DHS managers and staff on LEP issues, and to display notices in various languages in DHS offices about clients' rights to interpreter services. OCR further retains the right to pursue sanctions against the state for violations of the agreement's provisions.[18]

Section 601 of Title VI of the Civil Rights Act of 1964 provides that no person shall "on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance."[19] As far back as 1974, the U.S. Supreme Court had interpreted federal regulations implementing this law to bar conduct that had a disproportionate impact on people with limited English proficiency, because such conduct amounts to national origin discrimination.[20]

Federal law requires that recipients of federal funds provide language interpreters for people seeking access to state benefits, as well as in administrative hearings and in similar settings, for the same reason they are provided in courtrooms and for the same reason that *sign language* interpreters are provided for the hearing-impaired – as a matter of fundamental fairness. People should not be denied access to benefits they are

otherwise legally entitled to merely because they have difficulty speaking or comprehending English. Otherwise, the consequences are little different than if the state had decided to impose a literacy test on residents before allowing them to receive various constitutionally or statutorily-mandated services.

The Governor's nostalgic suggestion that LEP residents simply make use of friends and relatives is reminiscent of the dismissive comments he made last year about the children of undocumented parents living in Rhode Island. In proposing to eliminate these children from RIte Care, the state's Medicaid program for low-income families, the Governor was quoted as saying, "I want to take care of Rhode Islanders. We can't take care of the rest of the world's problems," as if these children were somehow living in another dimension.[21]

Even if using friends or relatives as interpreters might have been realistic eighty years ago, times have changed. Friends and relatives are not necessarily able to take time off from work to translate for a person applying for benefits or attending a DHS hearing. More importantly, they almost certainly will not have the knowledge, skills or expertise to address complex questions about a person's legal entitlement to benefits, or understand the obligations that accompany the receipt of benefits, such as reporting changes in circumstances that could affect their receipt.

Federal guidelines implementing Title VI specifically note that while "some LEP persons may feel more comfortable when a trusted family member or friend acts as an interpreter," agencies cannot require applicants to use them as interpreters.[22] In fact, in many circumstances, including accessing the types of benefits that DHS administers, the federal government *strongly discourages* use of family members or friends for a host of

obvious and important reasons. As the guidance provided by the U.S. Department of Health and Human Services notes:

> As with the use of other non-professional interpreters, the [state] may need to consider issues of competence, appropriateness, conflicts of interest, and confidentiality in determining whether it should respect the desire of the LEP person to use an interpreter of his or her own choosing. [The state] should take reasonable steps to ascertain that family, legal guardians, caretakers, and other informal interpreters are not only competent in the circumstances, but are also appropriate in light of the circumstances and subject matter of the program, service or activity, including protection of the recipient's own administrative or enforcement interest in accurate interpretation.
>
> In some circumstances, family members (especially children) or friends may not be competent to provide quality and accurate interpretations. Issues of confidentiality, privacy, or conflict of interest may also arise. LEP individuals may feel uncomfortable revealing or describing sensitive, confidential, or potentially embarrassing medical, law enforcement (e.g., sexual or violent assaults), family, or financial information to a family member, friend, or member of the local community. . . . For HHS recipient programs and activities, this is particularly true, for example, in administrative hearings, child or adult protective service investigations, situations in which life, health, safety, or access to important benefits and services are at stake, or when credibility and accuracy are important to protect an individual's rights and access to important services.[23]

Eliminating state-funded interpreters would have a dramatic effect on a large number of Rhode Island residents. According to the U.S. Census, more than 20% of Rhode Islanders speak a language other than English at home.[24] But contrary to the implications of the Governor's comments, those residents are, on the whole, just as eager as past generations to learn English and assimilate into society. This is perhaps best demonstrated by the enormous waiting lists for "English as a second language" courses across the state.[25] A recent national study has confirmed that the second generation of Hispanic immigrants to this country have overwhelmingly become strong English speakers.[26]

Notwithstanding these facts, Governor Carcieri has since acted on his radio comments by eliminating four interpreter positions at DHS – all three Southeast Asian staff interpreters at the agency and one of two Portuguese interpreters.[27] The propriety of

these actions is subject to question, particularly in light of the previously-mentioned consent agreement between the state and the federal government over this very issue of access to DHS services by LEP clients. Based on the general costs for contracting out interpreter services, it is also unclear exactly how much savings will accrue to the state through these layoffs.[28]

In any event, it is troubling, to say the least, that while he was condemning state-funded interpreters, the Governor made no mention whatsoever of the state's obligations to provide interpreters under a legally-binding agreement with the federal Office of Civil Rights.

Within four days of his radio comments, twenty-two community and civil rights organizations – including the Genesis Center, the International Institute of R.I., the Providence Human Relations Commission and the R.I. Parent Information Network – had sent a letter to the Governor condemning his remarks.[29] As the letter explained, "Your comments – which suggest both that immigrants in Rhode Island have no interest in learning English and that those who do not speak English somehow bear special responsibility for the state's fiscal crisis – are insulting and only feed into the xenophobic atmosphere that permeates the immigration debate in our state and has encouraged a palpable discriminatory attitude towards people of certain ethnicities and races."

The letter concluded by stating: "However unintentionally, your comments can only encourage further discrimination and poisoning of the public debate on the legitimate issues surrounding the presence of immigrants in Rhode Island and the important and positive role that these residents play in our society." If anyone thought these comments to be unduly harsh, Governor Carcieri worked quickly to dispel any such

view. At the same time that the Governor was issuing his "clarifications" while "standing by" his radio comments, his spokesperson gratuitously announced that the Governor was "considering the possibility" of supporting legislation making English the official language of Rhode Island,[30] an unnecessary but extraordinarily divisive proposal.

Rhode Island law already recognizes that "English is and will remain the primary language of the United States, and all members of our society recognize the importance of English to national life, individual accomplishment, and personal enrichment."[31] In considering the passage of special legislation, the Governor was expressing a desire to impose affirmative restraints on helping people with limited English proficiency. He was most likely referring to proposals such as one introduced this year by a Republican state representative, which would have barred any state department or agency from generating any document in a language other than English.[32]

Thus, under the legislation that he is considering supporting, the state health department would be prohibited from publishing educational information in other languages to explain how people can best protect themselves against HIV infection or staph infections. The State Police could not publish brochures in other languages advising victims of domestic violence of their ability to seek help from law enforcement. The Department of Human Services would be barred from publishing notices in Spanish to advise families that their benefits were being terminated or to explain the appeal procedures that were available to them. Such legislation is not only mean-spirited and counter-productive, it is in direct violation of the consent agreement between DHS and the federal government, and likely unconstitutional as well.[33]

Thus, rather than being reflective over the controversy caused by his interpreter comments, Governor Carcieri instead used the episode to further promote assaults on Rhode Islanders who have not yet learned to speak English well. The Governor's needless swipe at immigrants by raising English-only legislation in this context only further demonstrated, just like his radio comments, his all-too-clear and undeniably hostile attitude towards the newest immigrants making their home in Rhode Island. This myopic view also fails to recognize that, just like previous generations of newcomers to this state who faced similar discrimination and prejudice, the positive contributions of the immigrants being criticized today will someday form the backbone of Rhode Island's community and progress.

II. The Rights of Women: No-Fault Divorce/Mothers on Welfare

The Governor's gratuitous and anachronistic attack on the state's no-fault divorce laws for, among other things, encouraging women to pursue educational opportunities is an affront to decades of progress in the area of women's rights. His comments on the issue also raise concerns as to whether his numerous and deep proposed cuts to programs that help working families meet basic needs have been based on the view that policies like no-fault divorce are largely responsible for the poverty problems faced by our children, thus reducing the moral obligation of the state to address those problems. Those concerns have been heightened by his sexist verbal attacks against women on welfare as being unfit mothers solely because of their status as single parents.

Pending before the R.I. Supreme Court is an important case concerning whether the Family Court has jurisdiction to grant a divorce to a same-sex couple who were validly married in Massachusetts. The case involves two Rhode Island women who married in Fall River in May 2004, shortly after Massachusetts became the first state to issue marriage licenses to same-sex couples. Last December, Family Court Chief Judge Jeremiah S. Jeremiah, Jr. asked the Supreme Court whether his court had jurisdiction to hear their petition for a divorce.[34]

Although the case has drawn an enormous amount of attention, the legal issues before the Court are largely technical and arcane. That is why both parties to the lawsuit and most of the other entities that have weighed in on the case – including the Attorney General and the Governor's office – have argued that the Court can decide the particular issue before it without needing to resolve the highly-charged question of whether the state formally recognizes same-sex marriages for all legal purposes.[35]

Notwithstanding this fact, Governor Carcieri's brief still spent a fair amount of time attacking same-sex marriage as detrimental to the fabric of society.[36] What was shocking, however, was the brief's further, and inexplicable, attack on the state's "no-fault divorce" laws.

No-fault divorce has been a fundamental principle of family law for over three decades in Rhode Island, and in much of the rest of the country. These laws "eliminated the moralistic grounds required to obtain a divorce and divided up a marriage's assets based on needs and resources without reference to which party was held responsible for the marriage's failure."[37] The push for these laws came from groups like the American Bar Association, not women's rights groups,[38] although recent research describes the significant benefits that no-fault divorce laws brought for women, including a reduction in domestic violence.[39] That is why the R.I. Coalition Against Domestic Violence and the local chapters of the National Organization for Women and the National Association of Social Workers joined with the R.I. ACLU in writing a letter to the Governor to express concerns about the brief's unexpected attack on no-fault divorce.

Despite its irrelevance to the issue at hand, the Governor's brief went out of its way to anachronistically lament the state's no-fault divorce laws. The brief claimed that no-fault divorce had left "more children ill-equipped to cope in a world already fraught with problems" and had created "a whole new class of inequality" for women and children.[40] The brief even approvingly cited a source who had complained that no-fault divorce led women to take "steps to protect their human capital by entering the work force and pursuing education."[41]

As the groups' letter to the Governor stated, "We know there are some people out there who long for a return to the 'idyllic' 1950s when women knew their place was in the kitchen, but we do not expect to hear echoes of it emanating from a Gubernatorial court brief." The letter called it "hard to imagine why the brief even touches on this issue, other than to turn the brief-writing opportunity into an ideological pulpit."[42]

The letter further raised concerns as to whether, in light of the brief's arguments, the Governor's "numerous and deep proposed cuts to child welfare programs have been based on the view that policies like no-fault divorce are largely responsible for the poverty problems faced by our children, thus reducing the moral obligation of the state to address child poverty."

To add insult to injury, the Governor spent $15,000 in taxpayer dollars to hire a private attorney to write this brief. The attorney he selected has been representing him in an Ethics Commission complaint against him.[43] The Governor gave no explanation as to why he needed to hire a private attorney, at taxpayer expense, to prepare a brief that he had no obligation to write in the first place. In fact, the local counsel who also signed the brief (which was necessary in order for an out-of-state attorney to participate in the case) was not part of the Governor's legal staff either.

The injury felt even greater in light of the comments injected in the brief purporting to express concern for the children of these marriages. As the letter from the ACLU and the other groups noted:

> "There is more than a little irony in paying $15,000 to a private attorney to explain that same-sex marriages could lead to, among other things, 'an increase in the existence of sub-optimal child rearing conditions.' Considering that your proposed FY 2008 budget contained, among other things, a 50% reduction in the amount of maximum amount of child support passed through to parents enrolled in the Family Independence Program, a 57% cut in the state's subsidized child care program, and the elimination of automatic RIte Care eligibility for FIP recipients, it is rather audacious to argue – and to spend tax dollars to argue – that it is same-sex marriage that poses a threat to children, rather than proposed governmental policies like these that have been targeted directly at poor children most in need of state assistance."

The letter to the Governor from the ACLU and others expressed hope that the brief's arguments regarding no-fault divorce "represent the personal views, expressed without your knowledge, of the private attorney who prepared the brief… When a brief

filed in the R.I. Supreme Court appears to put much of the blame of childhood poverty and economic inequality faced by women on modern divorce laws, and further criticizes those laws for encouraging women to pursue educational opportunities, surely the public deserves to know exactly where the dividing line between your official policy positions and those of the private attorney hired to write the brief lies."

Despite the opportunity offered to him, the Governor made clear there was no mistake: he said he stood by the brief in full.[44] In doing so, he took a stand that showcased an embarrassingly paternalistic attitude towards women that one would have thought had long been discarded.

That this was not an aberration has, unfortunately, become even more apparent with recent comments that Governor Carcieri has made regarding women on welfare. His demonization of these women is nothing short of shocking, especially when he attaches his comments to an alleged concern for their children, while both minimizing any state responsibility to assist them and completely ignoring the fathers' role and responsibility for the families' plight.

Specifically, claiming that welfare is "enabl[ing] a lot of bad decisions" by unmarried women "to have children they can't support," the Governor has belittled women receiving public assistance, whom he categorizes as "single women, unmarried with multiple children."[45] Further, in repeatedly chastising these women (four times in the space of a few minutes) on a TV news show for their "bad decisions," the Governor did not *once* mention any responsibility of the fathers of these children, who presumably also had something to do with the situation these unmarried women face, including,

sometimes, failing to pay their child support obligations or subjecting the mothers to domestic violence.[46]

Something similar occurred two days later when the Governor appeared on a radio talk show to discuss this issue. When a caller finally criticized him for his "sexist stereotypical comments," the Governor expressed bewilderment at what she was talking about. After further explanation, he agreed that "the irresponsibility of the men who are fathering these children and taking no responsibility … is disgraceful." But then, after noting that he had raised a son and three daughters, he couldn't help but discuss the advice that he and his wife gave their daughters – "we tried to encourage our daughters to say they need to build the opportunity for themselves and build their futures and avoid decisions and avoid circumstances that you know too many young women are falling into" – without mentioning any similar bracing advice they gave their son.[47] One is only left to speculate whether the Governor would have also accused former Rhode Island First Lady Marjorie Sundlun of making "bad decisions" when at one point in her life she applied for public assistance, following an ex-husband's failure to pay court-ordered child support.[48]

The Governor's repeated "solution" to the problems faced by these families has been to call on the "faith-based, the churches" and groups other than the state to assist women and children in dire financial need. When pressed, though, he acknowledges that he is not asking these groups to aid them financially. In other words, he appears to make the remarkable policy statement – remarkable for a high-ranking government official, certainly – that financial salvation for these families is available if only there were more spirituality in their lives.[49]

The moralistic tone of the Governor's comments is not only cruel and sexist, but it is almost Hooveresque in its expectations. Unfortunately, those comments make crystal-clear that his jarring attack on "no-fault divorce" was no anomaly.

III. The Rights of Blacks and Latinos: Mandatory Drug Sentencing

In vetoing a bill that would have eliminated the state's draconian mandatory minimum sentences for various drug offenses, the Governor not only ignored the proposal's beneficial impact on the state's ongoing prison population crisis and deep fiscal problems, he closed his eyes to the severe and discriminatory impact of drug sentencing laws on the state's African-American and Latino population. His unwarranted veto also rejected the views of the branch of government most directly affected by the bill, and disregarded the expertise of drug treatment providers.

Rhode Island is facing a prison population crisis.[50] On one weekend in May of this year, dozens of inmates slept on mattresses on the floor of the Intake Service Center as the prison population hit an all-time high of 3,881.[51] Only a reprieve from the federal court a few months later saved state officials from having to take emergency measures to alleviate the overcrowding in response to a long-standing court decree addressing prison conditions.[52] Projections make clear, however, that this reprieve will not work for long.[53]

The implications of this overcrowding are significant, both fiscally and constitutionally. Legally, the state is under an obligation to keep the prison population at certain levels or else face potential sanctions. Looking at the issue financially, the Department of Corrections' (DOC) budget has skyrocketed over the past two decades.[54] In addition, the state's generally dire fiscal situation is well-documented.[55]

Governor Carcieri's FY 2008 budget was premised on reducing the inmate population by 500 in order to save about $4 million, but he never revealed his specific plans for achieving that reduction.[56] Not surprisingly in light of this amorphousness, nothing ever came of those plans in the 2007 legislative session. To the contrary, the only initiative from the Governor directly affecting the prison population that was enacted this year was a measure to *increase* the number of prisoners at the Adult Correctional Institutions (ACI): the ill-conceived proposal sending all 17-year-olds into the adult court

system and the ACI.[57] Fortunately, the General Assembly repealed that law only four months after approving it.[58]

In any event, acting on its own, the General Assembly did take one small, but key, step in beginning to address the problems facing the Department of Corrections. It approved modest legislation that would have repealed mandatory minimum sentences in state law for some drug offenses and reduced the maximum sentences for those particular crimes.[59]

In light of both the prison population crisis and the state's burgeoning fiscal crisis, it would have seemed a cause for commendation when the General Assembly overwhelmingly passed the bill this year. Instead of wholeheartedly embracing the legislation, however, the Governor vetoed it. In doing so, Governor Carcieri not only rejected the opportunity to actually do something about the DOC's population difficulties, but he lost the opportunity to begin addressing the unconscionable racial disparities that permeate our criminal justice system.

The legislation, sponsored by Rep. Joseph Almeida and Sen. Harold Metts, amended a law enacted by the General Assembly in 1988, at the height of the "war on drugs" hysteria that was sweeping the country. The law imposed a mandatory minimum sentence of ten years (and a maximum sentence of fifty years) for possession of as little as one ounce of heroin or cocaine or a kilogram of marijuana, and mandatory minimum sentences of twenty years (with a maximum life sentence) for larger quantities.[60] These sentences give Rhode Island the dubious distinction of having the most stringent drug penalties in all of New England.[61] Further, the law allowed a judge to deviate from these mandatory minimums only if he or she found that "substantial and compelling

circumstances exist which justify imposition of an alternative sentence," and stated for the record the particular criteria that prompted an alternative sentence.[62]

The 2007 legislation would have eliminated the mandatory sentence requirements and reduced the maximum sentences to twenty or thirty years, depending on the offense. In its simplicity, the bill helped promote a more effective approach to increasing public safety, allowing judges to place more emphasis on treatment and rehabilitation and to provide for more meaningful consideration of a drug offender's particular circumstances. In terms of addressing the prison population crisis, the Department of Corrections itself has recognized that the 1988 law bears some responsibility for the prison's large population increase since the 1980s.[63]

As a purely objective matter, it is not unreasonable to claim that mandatory minimum sentencing is an idea whose time has come and gone. Across the country, states have recognized that these sentencing practices have inappropriately tied the hands of judges and led to burgeoning and unaffordable prison systems when more reasonable, more effective and less expensive alternatives are available. A majority of states have repealed or significantly modified their mandatory minimum laws in recent years.[64] An American Bar Association commission formed in response to a call by U.S. Supreme Court Justice Anthony Kennedy – never accused of being a "bleeding heart" on criminal justice issues – recommended the elimination of all mandatory minimum sentencing schemes at the state and federal level.[65]

One cannot talk about the prison population problem or the issue of drug sentencing without also addressing the issue of race. Before doing so, however, it is

worth examining some of the staggering statistics that show both the depth of the problem facing the DOC and its connection with drug sentencing laws:

• Over the course of twenty years, between FY 1985 and FY 2005, state spending on corrections increased almost 500% – from $31 million to $146 million.[66]

• Although Rhode Island's general census population grew about 6% from 1980 to 2000, its incarceration rate during that period experienced a 156% increase.[67]

• Between 1976 and 2005, the male inmate population increased 440%, while the female population grew by over 1140%.[68]

• According to the DOC itself, the "increase in both the male and female populations from the mid to late 80's through the early 90's can be primarily attributable to the 'war on drugs' movement that was taking place during the same time period." More specifically, the DOC has noted, the state's prison population grew 85% from 1986 to 1990 directly as a result of increases in the penalties for minor drug violations in 1986 and the passage of the 1988 mandatory sentencing law.[69]

• The percentage of the prison population incarcerated for drug-related offenses nearly tripled from 7% in 1977 to 18% in 2005.[70]

Admittedly, comparing numbers between state agencies over a lengthy period of time is complicated due to changes in responsibilities that occur over time, but it is worth at least suggesting one example of the consequences of these figures. Consider the Department of Children, Youth and Families (DCYF). In FY 1985, DCYF's expenditures from general state revenue (i.e., excluding federal funds) amounted to $42 million, which was about a third more than DOC's $31 million in expenditures. By FY 2005, however, the general revenue expenditures of the two agencies were almost equal.[71]

In short, the state's fiscal crisis and prison crisis are interconnected and, at least in part, clearly and directly traceable to Rhode Island's harsh drug sentencing laws. That should have been more than enough reason for the Governor to sign this bill into law. But there were other reasons to do so as well. Joseph Rodgers, Jr., the Presiding Justice of the

Superior Court – the court directly faced with implementing this draconian law – expressed support for the legislation. In addition, organizations that focus specifically on drug treatment issues, such as the Drug and Alcohol Treatment Association of RI and RICARES, strongly advocated for passage of the bill as a more effective approach to dealing with the state's drug problems.

And, of course, there was the issue of race, which explains why groups such as the R.I. Black Political Action Committee, Direct Action for Rights and Equality, and pastors of South Providence churches lobbied in strong support of the legislation as well. As astonishing as the statistics are regarding the growth of the prison population, the costs associated with it, and the connection these have to drug sentencing policies, so too are the statistics regarding the racial disparities in our state's prison system. One need only consider the following:

• In 1974, 76% of the state's prison population was white. By 2005, that percentage had dropped down to 52%, with black inmates accounting for 28% and Hispanics for 19% of the ACI's "clientele."[72]

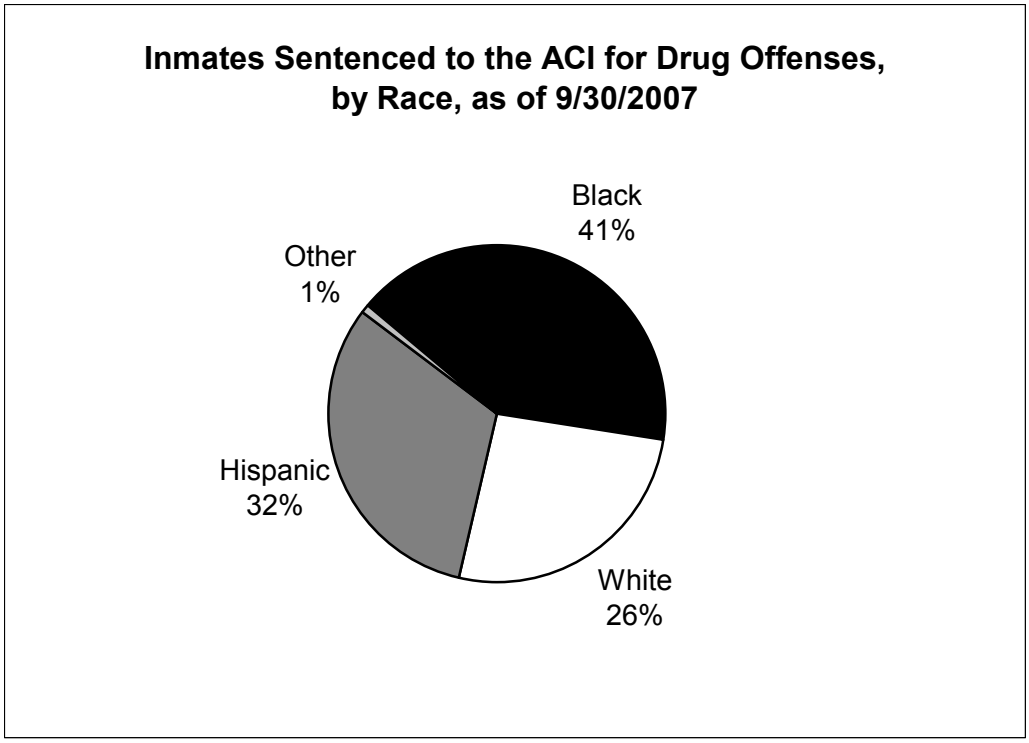
• When examining incarceration rates per population of 100,000 in Rhode Island, the disparities between these rates for whites, blacks and Hispanics stand in stark relief. The incarceration rate for Hispanics is 631 per 100,000, and 1,838 per 100,000 for blacks, while the rate for whites in Rhode Island is only 191 per 100,000. In other words, per population, blacks are 9.6 times more likely than whites to be incarcerated in Rhode Island, and Hispanics are 3.3 times more likely to be incarcerated.[73]

• The prison population racial disparity figures for Rhode Island are also a cause for concern when compared nationally. The disparities noted in the preceding paragraph for blacks and Hispanics are nearly twice the national ratios for the two groups, which are 5.6 and 1.8, respectively.[74]

• According to the 2005 statistics, Rhode Island had the eighth highest ratio in the country of Hispanic to white inmate population, and the ninth highest ratio when it came to blacks.[75]

Studies have consistently shown that whites, blacks and Hispanics use drugs at similar rates, and that most users buy from dealers they initially know outside the dealer-user relationship – someone from their community. Yet, while drug use and dealing are spread proportionately among the races, the relative incarceration rates for drug crimes are wildly skewed.[76]

Indeed, the statistics for Rhode Island are stunning. As the chart below notes, of the inmates currently serving sentences at the ACI for drug offenses, only 26% are white, while 73% are black or Hispanic.[77]



Thus, reform of the drug sentencing laws would not only have been a step in alleviating the state's budgetary problems and addressing its legal obligations, it would have helped to begin reducing the unwarranted racial disparities that lead to such disproportionate sentencing rates.

In general, statistics like these make very clear the consequences of governmental policies and laws that are implemented and enforced in a disparate manner against the minority population in Rhode Island. Another well-publicized example involves statistics on traffic stops in Rhode Island. Those figures have consistently demonstrated that blacks and Hispanics are much more likely than whites to be stopped and searched, even though they are less likely than whites to be found with contraband.[78] If police target particular groups for extra scrutiny, the inevitable effect is a prison population whose racial breakdown mirrors that targeting. In short, statistics like these demonstrate the need for a wide variety of measures, such as passage of comprehensive anti-racial profiling legislation, to address this systemic problem.

So, in light of all these mind-numbing statistics and the racial disparities they reflect, where did opposition to this very modest legislation addressing drug sentencing reform come from? The only public objections emanated from the R.I. State Police, and the arguments it offered were so weak that, if it weren't for the Governor's veto at that agency's behest, one might have considered them half-hearted.

In his one-page written testimony submitted to the Senate and House Judiciary Committees, then-Acting State Police Superintendent Steven G. O'Donnell offered exactly four sentences to explain the agency's opposition to the bill:

> "Although the bill increases potential monetary fines, it does not make sense to totally eliminate the minimum term of imprisonment. The potential loss of freedom is an important deterrent that should not be eliminated. While the current law allows a judge to impose a sentence that is less than the minimum amount, there are specific factors that must be taken into consideration when a sentence is reduced below the statutory minimum. As those factors have also been eliminated in the proposed legislation, there will be no established criteria to determine when it may be appropriate to issue a sentence that includes little or no prison time."

The first argument, that "the potential loss of freedom [provided by the current law] is an important deterrent" is quite meaningless. If the bill had been signed into law, judges would have still had the authority to sentence drug offenders to prison for up to twenty or thirty years. This can hardly be considered the lack of a deterrent (to the questionable extent that prison sentences actually are a deterrent for these drug offenses). And a potential thirty-year prison sentence is hardly a minimal loss of freedom.

The second argument simply boils down to a complaint that the law would no longer require judges to rely on statutorily-specified criteria (of a type which they regularly use in criminal sentencing procedures anyway) for by-passing the mandatory minimums and reducing prison time in particular cases. But that is because the criteria for deviating from the minimums would no longer be relevant with the repeal of those mandatory sentences. This rationale for opposing the bill is particularly striking because Governor Carcieri, in his veto message, essentially made precisely the opposite argument: that the law as it presently existed gave judges "unfettered authority" to reduce prison sentences anyway, making the bill unnecessary.

As this suggests, the Governor's veto message offered little more than Major O'Donnell's letter in the way of logic or reality. Incomprehensibly, as noted, the Governor's major argument was that the bill really didn't change anything, because mandatory minimum sentences "exist more in theory than in reality." The only explanation he provided for this bizarre position was that the current statute "gives the judiciary the unfettered authority to deviate" from what he termed the law's "so-called" mandatory minimums. But as the veto message went on to acknowledge, that "unfettered authority" wasn't "unfettered" at all – the law allowed for a reduction in the mandatory

minimum sentence only if the judge found, on the record, that "substantial and compelling circumstances exist which justify imposition of an alternative sentence." To call this "unfettered authority" is Orwellian. More importantly, it directly contradicts the argument that the State Police made in opposing the bill – that these criteria indispensably *fettered* judges by giving teeth to the law's mandatory sentencing structure.

Even if the mandatory sentencing required by the statute did "exist more in theory than in reality," which it does not, that is an extraordinarily weak rationale for vetoing a bill that had widespread support not only among criminal justice experts, but among substance abuse treatment providers, the civil rights community and the judiciary itself.

But, of course, the law *does* have a real, not theoretical, impact. Even for those offenders who are given suspended sentences, the statute requires that they face inordinately long periods of court, probation and parole oversight. As a result, drug offenders remain subject to re-incarceration for the most minor of offenses or for failure to meet inconsequential or technical conditions of their parole or probation. In fact, according to DOC statistics, more than a third of the people entering the ACI in FY 2007 did so as probation or parole violators.[79]

The veto message also objected to lowering the maximum sentences that could be imposed for these drug offenses. His belief that a drug dealer gets off easy with this bill because he may face "no more than thirty years behind bars" exemplifies exactly why the state is facing the prison crisis it does today, why the state faces the enormous budgetary crisis it does today, and why the state always seems to have money to lock people away but not enough to shelter them, feed them or provide them, at a fraction of the cost of incarceration, the support that would help them stay out of prison in the first place.

The Governor's final objection to the bill was that the General Assembly was "directing the judiciary to ease up on sentences for serious drug offenses …. This law may stop the judiciary from sentencing the worst offenders to appropriate sentencing." His solicitude for the concerns of the judiciary was quite odd. As has been noted, the judiciary itself had expressed support for the bill, so it was the *Governor's* action that was stopping judges from imposing appropriate sentences.

This final argument was especially ironic in light of the Governor's oft-professed concern for the importance of separation of powers. If the judiciary – the branch of government responsible for imposing criminal sentences – believed that a state law hampered that responsibility, and the legislature concurred, where were the governor's separation of powers concerns in interfering with the judiciary's clear role?[80]

Governor Carcieri's position on this issue – and the other prison sentencing controversy discussed in Section 5 – is not only extremely disturbing and disappointing from a civil rights perspective, it is quite puzzling coming from a public official who touts his "fiscal constraint" focus at every opportunity. Enactment of this law could only have saved the state money by beginning to address the DOC's out-of-control budget.[81]

In sum, in vetoing this legislation, the Governor not only ignored the possible beneficial impact of the proposal for the state's ongoing fiscal and prison overcrowding problems, he closed his eyes to the severe and discriminatory impact of the drug sentencing laws on the state's minority population. He also rejected the position of the branch of government directly involved in the execution of the sentencing laws, and disregarded the views of drug treatment providers who fully recognized the law's counter-productive focus.

IV. The Rights of Gays and Lesbians: Domestic Partner Benefits

The Governor's veto of a bill to treat domestic partners of state and municipal employees the same as spouses for purposes of certain retirement and death benefits, combined with his rhetoric on other issues affecting the LGBT community, demonstrate a hostility to the non-heterosexual residents of Rhode Island that undermines decades of progress in the state's treatment of gays and lesbians.

As noted in Section 2, Governor Carcieri took the time – and taxpayer money – to hire a private attorney, at the cost of $15,000, to file a "friend of the court" brief in a R.I. Supreme Court case involving the right of a legally-married same sex couple to obtain a divorce in R.I. Family Court. Even though the Governor's brief conceded that the Court did not have to decide the broad legal issues surrounding the validity of same-sex marriages in Rhode Island, the brief went out of its way to incorporate some highly-charged rhetoric into the legal arguments.

Most notably, the brief opined that recognizing same-sex couples (whether through marriage *or* civil unions) "could be disastrous for future generations" and "would have profoundly detrimental effects [upon] families, children and society."[82] There was something quite unsettling and surreal in reading such dire predictions from a Governor whose state borders another that has had same-sex marriages in place for more than three years, all without any apparent ill effect.

The breadth of his assertions – by condemning *civil unions* as well as marriage for same-sex couples – seemed even more out of place since two other New England states, Vermont and Connecticut, legally recognize the validity of civil unions without any "profound detrimental effects." In addition, New Hampshire will, pursuant to a recently enacted law, begin issuing civil union licenses on January 1, 2008. Even Maine, the only

New England state besides Rhode Island without formal recognition of civil unions or same-sex marriages, has a domestic partner registry for various legal purposes.

The tone of the brief's rhetoric, especially in these geographic circumstances, certainly provided grounds for pause. The import of these comments seems unmistakable: for gay and lesbian residents, Rhode Island is the backwater spot in the New England region.

It is also worth pointing out that the distance the Governor has placed between his policies and those of our surrounding states on issues of gay and lesbian rights stands in stark contrast to his views about the relevance of the region's policies on other matters. For example, when it comes to reducing certain welfare benefits, the Governor has been eager to point to what Connecticut and Massachusetts do, "because they're our neighbors."[83]

The Governor's attitude towards LGBT rights was made all the more apparent by his veto of a bill this year attempting to provide equal rights to gay and lesbian couples in one discrete area of the law.

The vetoed legislation was sponsored by Sen. Daniel Connors.[84] The bill was built upon two other laws enacted by the General Assembly designed to provide the domestic partners of state and municipal employees certain benefits available to spouses of those employees. In 2001, the General Assembly approved a law giving domestic partners of state employees the same right to health insurance coverage that spouses had.[85] In 2006, the legislature passed a law specifying that domestic partners qualified for one-time death benefits, the same as spouses, for deceased police officers, correctional officers, and firefighters killed in the line of duty.[86]

Both of those laws had the same, very specific and narrow definition of who constituted a "domestic partner." In both instances, domestic partners had to certify by affidavit that

> the (i) partners are at least eighteen (18) years of age and are mentally competent to contract, (ii) partners are not married to anyone, (iii) partners are not related by blood to a degree which would prohibit marriage in the state of Rhode Island, (iv) partners reside together and have resided together for at least one year, (v) partners are financially interdependent as evidenced by at least two (2) of the following: (A) domestic partnership agreement or relationship contract; (B) joint mortgage or joint ownership of primary residence; (C) two (2) of: (I) joint ownership of motor vehicle; (II) joint checking account; (III) joint credit account; (IV) joint lease; and/or (D) the domestic partner has been designated as a beneficiary for the employee's will, retirement contract or life insurance.[87]

In the six years that one or both of these laws has been in effect, no problems relating to their implementation have emerged. Sen. Connor's bill, using the same definition, simply sought to provide domestic partners of state and municipal employees the same death, pension and retirement benefits available to spouses of these employees beyond the public safety workers covered in the 2006 statute.

As the advocacy group Marriage Equality RI noted in its written testimony supporting the bill:

> "Retirement security is one of the most important issues our society faces today… Because municipal and state pensions are designed to strengthen families and support elders who have provided service to our communities … it only makes sense to extend pension benefits to domestic partners. This bill is a necessary but small step toward addressing the many difficulties faced by same-sex couples and their families in every day life."

In fact, in pressing for passage of this legislation, supporters were simply doing what many opponents of same-sex marriage had urged as the "solution" to the marriage inequality issue: without amending the marriage laws, allowing domestic partners to have the same legal rights as spouses in the many situations where harmful differential treatment appears.

Nonetheless, Governor Carcieri saw fit to veto the legislation, calling it "an ill-thought-out expansion of employee benefits that will cost the State significant dollars over a long period of time." Giving one specific hypothetical example – involving a judge, no less – his veto message implied that state employees might manipulate the law to inappropriately obtain benefits for another person. Specifically, he stated, "As indicated by the definition of domestic partners . . . a State employee and his or her domestic partner could satisfy the test with as little documented commitment as a joint checking and credit account and the designation of the partner as beneficiary on a life insurance policy." Besides these requirements of financial interdependence, of course, couples were, significantly, required by the law to have lived together for one year. In any event, the veto message never really explained why this benefit was so subject to manipulation by domestic partners – whom he would never allow to marry anyway – but fine and foolproof for heterosexual "couples."[88]

The General Assembly was not persuaded by the Governor's reasoning either, and overwhelmingly overrode his veto during a special session in October.[89]

The Governor's attitude was especially unfortunate in light of Rhode Island's recent progressive history on the issue of gay and lesbian rights and, in particular, how his predecessor, a fellow Republican, dealt with these matters. For example, the 2001 law, providing for domestic partner health insurance benefits for state employees, was enacted with the public *support* of Republican Governor Lincoln Almond and his administration.

That bill had been introduced at the urging of University of Rhode Island President Robert Carothers, who called the legislation an important recruitment tool. In

testifying before the House Finance Committee, he stated: "We are in an extremely competitive labor market. We just can't afford to lose good people because of an inequity in the system." Robert Carl, Governor Almond's Director of Administration, was quoted as saying: "This, to me, is not a controversial bill. This is a very straightforward sense of fairness for people that work for us."[90] The same rationale was clearly just as applicable to the 2007 legislation.

The difference in attitude between these two Republican governors could not be more striking. During his tenure, Almond had also signed legislation repealing the state's sodomy law, and extending the scope of the state's civil rights laws to cover gender identity and expression.

Governor Carcieri, on the other hand, appears intent on sending a different message than his predecessor: that when it comes to living or working in Rhode Island, the welcome mat for non-heterosexuals should stay in the closet.

V. The Rights of Juveniles: Sending 17-Year-Olds to the ACI

The Governor's support for legislation moving all 17-year-olds out of the juvenile justice system and into adult court, followed by his apathy to the outcry that followed passage of that ill-conceived law that damaged the lives of over 500 teenagers, was cruel in its detachment and demonstrated a bland indifference to the impact of his policies on young people in our community. As with his veto of the mandatory sentencing bill, his nonchalance also showed a troubling lack of concern for the legislation's significant adverse impact on racial minorities.

In the report issued in 2003 on Governor Carcieri's civil rights record during his first six months in office, one of the criticisms was that he had 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."[91] Something very similar must be said about his benign neglect on one of the most talked-about and criticized actions taken by the state this year: the adoption of a budget Article (known as Article 22) stripping the Family Court of jurisdiction over 17-year-old offenders and sending them to adult court and the ACI.

This proposal came from, of all places, the Department of Children, Youth and Families (DCYF), which promoted it as a necessary cost-saving measure during difficult fiscal times. When, to the surprise of children's rights advocates, the provision was included in the proposed budget that passed out of House Finance Committee in late June, an outcry arose, but it was too late. The budget passed with Article 22 intact, and it took another four months for the General Assembly to undo this mistake in a special session.[92]

In the intervening period, the legislation had met with virtually universal condemnation. Among the diverse governmental entities expressing vehement opposition to the budget article were the Family Court, Child Advocate, Attorney General, Public

Defender and the R.I. Police Chiefs Association, not to mention private advocacy groups like the ACLU, R.I. Kids Count, the Institute for the Study and Practice of Nonviolence, and the R.I. Psychiatric Society.[93] Dozens of national organizations, including the National Council on Crime and Delinquency, the Campaign for Youth Justice, the Child Welfare League of America, Human Rights Watch, National Council of La Raza, Physicians for Human Rights, and the Southern Poverty Law Center, also joined in the chorus of opposition.[94]

The reasons all these groups opposed the law, which made Rhode Island one of only twelve states to try all 17-year-olds as adults, were plentiful. The statistics were clear that juveniles faced increased physical danger in an adult prison system, were more likely to commit suicide, and were more likely to recidivate upon release.[95] Having an adult criminal record also meant a potential loss of post-secondary financial aid and difficulty in finding jobs where the presence of a criminal record would have to be acknowledged.[96]

As is true with the Governor's veto of the mandatory minimum sentencing repeal bill for drug offenses, the impact of Article 22's passage fell largely on racial minorities. According to a report that examined the 17-year-olds who, because of Article 22, had been committed to the ACI for any period of time, 81% of those juveniles were black or Latino. "In other words, young people of color are even more disproportionately represented in the criminal justice system than people of color in general, who are already overrepresented."[97]

In light of its discriminatory racial impact and all the other compelling reasons that were offered against the law, it therefore came as a shock to many when Department

of Corrections Director A.T. Wall II publicly undermined what had been the state's sole rationale for its passage. At a post-session legislative hearing, the state's top corrections official confirmed what advocates had claimed: that it was questionable whether transferring the juveniles out of Family Court and the Training School and into adult court and the ACI would even save the state any money.[98]

This had been the only reason offered by the state for the passage of Article 22. DCYF had repeatedly justified the transfer of jurisdiction of 17-year-olds as a money-saving measure because the cost of confining a juvenile at the Training School is approximately $50,000 more per year than incarcerating someone at the ACI. However, the cost of incarcerating someone at the ACI's High Security Center (where DOC officials determined that all juvenile offenders had to be held, for reasons of safety) actually costs more than caring for a juvenile at the Training School.[99] In other words, DCYF erroneously relied on overall ACI costs, and failed to account for the difference in costs within the varied ACI facilities themselves.

What was the Governor's reaction to this fiasco? Virtually complete silence. As shocking as the cost revelation was, even more astonishing was the fact that the Governor's office and DCYF had never consulted with the Department of Corrections about the proposal.[100] The Governor offered little in the way of explanation or excuse for such a noteworthy oversight. His spokesperson was merely quoted as saying that "the Governor believed that the proposal had already been fully vetted by all the appropriate state departments."[101] When asked directly why he hadn't talked to the Department of Corrections, the Governor merely replied, "I don't get involved in all of these things, in every conversation."[102]

Data ended up revealing that the General Assembly's failure to apply the repeal retroactively has left in a legal limbo approximately 500 juveniles arrested during the four months the law was in effect.[103] The Governor's distanced tone over his responsibility for this ill-thought-out legislation that damaged the lives of so many teenagers was almost cruel in its detachment.

Further, despite his responsibility for this debacle, the Governor never exerted any effort to support the concerted push by a broad coalition of groups to undo the law once this fiscal information came to light. His presence in the legislative debate to repeal Article 22 at a special session of the General Assembly, and in the more hotly-contested dispute over whether to make the repeal retroactive, was non-existent. In fact, as far as we can tell, the Governor never expressed support for the General Assembly's actions in October repealing the law – he only expressed a lack of objection. In the words of Gubernatorial spokesperson Jeff Neal: "There was a consensus in the General Assembly, certainly, that moving the age back to 18 was something that people wanted to do, and the Governor did not object to that idea."[104]

But the adverse consequences flowing from the Governor's laissez faire attitude did not end there. On October 30th, the General Assembly unanimously passed the bill repealing Article 22's provisions transferring 17-year-olds out of Family Court. Rather than sign the repeal bill into law when it came to his desk on October 31st, the Governor instead allowed it to become law without his signature. What were the consequences of this inaction? The repeal bill did not officially take effect until November 8th, eight days later. That is, Article 22 remained the law for a full extra week, while the bill lingered on

the Governor's desk, and 17-year-olds arrested during that time continued to fall into the adult system, for no good reason.

When asked why he didn't sign the bill into law, the Governor's spokesperson merely stated that the "vast majority" of bills become law without his signature.[105] That comment fails to capture the flavor of some of the bills that he *did* take the trouble to officially sign into law. Among that "small minority" of bills that, unlike the repeal of Article 22, the Governor considered important enough to sign into law this year when they came to his desk were "An Act Renaming The Section Of U.S. Route 6 Between Hartford Avenue And Killingly Street In The City Of Providence,"[106] a bill making technical changes to the "Public Accountancy Act,"[107] and a bill renaming the Chi Phi Fraternity at the University of Rhode Island to the Texas Instruments House.[108]

Conclusion

As the five issues reviewed in this report demonstrate, when it comes to civil rights direction from the State Room, there has been little change from Governor Carcieri's first term in office.

Perhaps most alarming is not just the Governor's continued apathy, if not antipathy, towards the civil rights of minority groups in the state, but the tone of his rhetoric surrounding his positions on these issues. Whether it is congratulating people who demand an end to language interpreters in the courtroom, chastising women for bettering their lives as a result of no-fault divorce laws, demonizing the poor in general, and single mothers in particular, for their financial condition, or denouncing civil unions as "disastrous for future generations," Governor Carcieri's comments and actions can only be seen as promoting a politics of division. This is a politics that gives official voice to nativist fears, to a "blame the victim" mentality against the poor, and to bias against a range of groups in society that have faced widely-tolerated discrimination and discriminatory attitudes for decades. This is not what should be expected from a state leader.

The 2003 report offered twenty modest recommendations for Governor Carcieri's consideration. Since virtually all of them were ignored, the burden for protecting civil rights in Rhode Island at this point must fall on others. More than ever, the civil rights community will need to promote a united front in recognizing the indivisibility of civil rights and the severe consequences to the body politic that flow from actions such as those analyzed in this report. Organizations will need to be extremely vigilant in monitoring any further attacks on civil rights, and be prepared to respond forcefully to

those attacks when necessary. More than ever, it will be important to push the other branches of government to fulfill their mission of promoting "equal justice for all" in Rhode Island.

Some of the specific tasks that must be performed are easy enough to recognize:

- The General Assembly, state agencies and the judiciary need to continue to uphold fundamental principles of due process by recognizing the critical importance of language interpreters for people with limited English proficiency.

- Efforts to scapegoat immigrants generally, and those with limited English proficiency specifically, must be denounced and rejected as contrary to the welcoming spirit that Rhode Island has always embraced.

- The General Assembly needs to re-approve legislation repealing mandatory minimum sentencing and continue work to reform the state's criminal justice system in order to eliminate the widespread racial disparities that exist within it. This includes passage of comprehensive legislation addressing the problem of racial profiling by police on Rhode Island's roads and highways.

- Continued efforts to recognize equal rights for gay and lesbian residents of the state must proceed apace.

- The state cannot abandon the poor among us. Single women trying to raise children under extremely difficult circumstances need support and help obtaining jobs, not name-calling.

- The rights of the most vulnerable – children and juveniles – need to be better protected through legislation, by making repeal of the law sending juveniles to adult court retroactive and by holding the line against cuts to benefits programs for children that, in the long run, will not only destroy young lives but cost the state, and all of us, much more than the alternatives.

In the absence of an executive branch committed to active promotion of civil rights, the burden imposed on the other branches of governments and private citizens and organizations to fulfill this goal is great. We remain hopeful that, one way or another, this challenge will be met and Rhode Island's legacy as a leader in civil rights can continue and move forward.

ENDNOTES

[1] The report is available online at http://www.riaclu.org/misc/carcieri_civil_rights_report.pdf.
[2] *Id*., page 3.
[3] *Id*., page 4.
[4] The quotation appears in *The Papers of Benjamin Franklin,* Ed. Leonard W. Labaree, New Haven: Yale Univ. Press, 1959, vol. 4:234, and can be found online at, e.g., http://ourworld.compuserve.com/ homepages/JWCRAWFORD/anatomy.htm. In later years, Franklin reversed course and became a supporter of bilingual education. *Id.*
[5] Scott MacKay, " 'It's Nothing New': Generations Share Similar Experience of Immigration in Rhode Island," *Providence Journal*, April 2, 2007.
[6] Steve Peoples, "State Workers Wonder 'Who's Targeted,'" *Providence Journal*, October 18, 2007.
[7] The letter is available online at http://www.riaclu.org/documents/Carcieriinterpretors_000.pdf.
[8] Katherine Gregg, "Direct Approach," *Providence Journal*, November 28, 2007.
[9] A link to the audio of the interview can be found at http://www.920whjj.com/cc-common/podcast.html.
[10] Katherine Gregg, "Carcieri Draws Fire for Radio Comments," *Providence Journal*, October 19, 2007.
[11] Scott MacKay, "Carcieri Urged to Retract Comments," *Providence Journal*, October 23, 2007.
[12] A link to the video of the broadcast can be found online at http://www.turnto10.com/northeast/ jar/politics/10_news_conference.html. The *Providence Journal* editorial page also allowed the Governor to clarify that he "did not mean to include court interpreters in his recent radio comments denouncing taxpayer-funded interpreters for immigrants." "Editorial: Carcieri Clarifies," *Providence Journal*, October 31, 2007.
[13] R.I.G.L. §8-19-1 *et seq*.
[14] Edward Fitzpatrick, "Adios to Money for Interpreters," *Providence Journal*, March 4, 2004.
[15] "Carcieri Unveils New Health Care & Property Tax Initiatives," May 26, 2004, News Release from Governor's Office.
[16] *See* footnote 12, *supra*. He made a similar response to a *Providence Journal* reporter, stating, "I understand that in the courtroom, [interpreters] are mandated." Karen Lee Ziner, "State Welcomes New Immigration Facility," *Providence Journal*, November 2, 2007.
[17] "Editorial: Justice and Translators," *Providence Journal*, October 24, 2007.
[18] The OCR docket number for the current "Resolution Agreement" is 01-94-3042. *See* also, Karen Lee Ziner, "ACLU Questions Cutting Interpreters," *Providence Journal*, November 29, 2007.
[19] 42 U.S.C. §2000d.
[20] *Lau v. Nichols*, 414 U.S. 563 (1974).
[21] Karen Lee Ziner, "Plan to Cut Children from Rite Care Draws Fire," *Providence Journal*, February 19, 2006.
[22] "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," U.S. Department of Health and Human Services, available online at http://www.hhs.gov/ocr/lep/revisedlep.html.
[23] *Id.*
[24] http://quickfacts.census.gov/qfd/states/44000.html.
[25] Katherine Gregg, "Carcieri Draws Fire for Radio Comments," *Providence Journal*, October 19, 2007.
[26] Julia Preston, "Latino Immigrants' Children Found Grasping English," *New York Times*, November 30, 2007.
[27] Steve Peoples and Katherine Gregg, "Layoff Notices Sent to State Employees," *Providence Journal*, November 16, 2007.
[28] Contract services for interpreters can easily run to $60 an hour. Karen Lee Ziner, "ACLU Questions Cutting Interpreters," *Providence Journal*, November 29, 2007.
[29] The organizations signing the letter were: African Alliance of R.I., Center for Hispanic Policy and Advocacy, Comite de Inmigrantes en Accion, Direct Action for Rights and Equality, The Genesis Center, Immigrant Students in Action, International Institute of R.I., International Charter School, Jobs with Justice RI, Ocean State Action, Olneyville Neighborhood Association, The Poverty Institute, Progreso Latino,

Providence Human Relations Commission, PrYSM, R.I. Affirmative Action Professionals, R.I. Affiliate, American Civil Liberties Union, R.I. Coalition for Affirmative Action, RILPAC/RILCF, R.I. Mexican-American Association, R.I. Parents Information Network, and the Urban League of R.I. The letter can be found online at http://www.riaclu.org/documents/Carcieriinterpretors_000.pdf.

[30] Scott MacKay, "Carcieri Urged to Retract Comments," *Providence Journal*, October 23, 2007.

[31] R.I.G.L. §42-5.1-1(8).

[32] 2007-H 5830, available online at http://www.rilin.state.ri.us//BillText07/HouseText07/H5830.pdf.

[33] *See*, e.g., *Alaskans for a Common Language v. Kritz*, 2007 WL 3227583 (Alaska, November 2, 2007) (striking down provisions of a state English Only Initiative); *Yniquez v. Arizonans for Official English*, 69 F.3rd 920 (9th Cir. 1995) (same), vacated as moot sub nom. *Arizonans for Official English v. Arizona*, 520 U.S. 43 (1997); *Ruiz v. Hull*, 957 P.2d 984 (Ariz. 1998) (same); *In re Initiative Petition No. 366*, 46 P.3d 123 (Okla. 2002) (same).

[34] For some background on the case, *see*, e.g., Edward Fitzpatrick, "Same Sex Divorce in R.I. – Question for the Court," *Providence Journal*, December 7, 2006.

[35] Edward Fitzpatrick, "Officials: R.I. Can Grant Gay Divorce," *Providence Journal*, August 2, 2007.

[36] This is further discussed in Section 4, *infra.*

[37] Susan Faludi, *Backlash: The Undeclared War Against American Women*, page 19, Crown Publishers, Inc., 1991.

[38] *Id.* at 20.

[39] *See*, e.g., Betsey Stevenson and Justin Wolfers, "Bargaining in the Shadow of the Law: Divorce Laws and Family Distress," November 2003. Available online at https://gsbapps.stanford.edu/researchpapers/library/RP1828.pdf.

[40] *Chambers v. Ormiston*, No. 06-340-M.P., Brief of Amicus Curiae Governor Donald L. Carcieri, page 25. The Governor's brief is posted online at http://www.glad.org/GLAD_Cases/Amici/Chambers_Ormiston/Carcieri.pdf.

[41] *Id.*

[42] A copy of the letter can be found online at http://www.riaclu.org/documents/Govdivorceletter2_000.pdf.

[43] Steve Peoples, "Lynch Criticizes Use of Public Money for Brief," *Providence Journal*, August 9, 2007.

[44] Edward Fitzpatrick, "Governor's Stance on Divorce Decried," *Providence Journal*, August 16, 2007.

[45] Despite the picture the Governor was attempting to draw, the statistics show that 77% of families on the Family Independence Program have only one or two children. Steve Peoples, "For Many, Welfare Help Exceeds Limit," *Providence Journal*, November 28, 2007.

[46] Katherine Gregg, "Carcieri Chastises Welfare System," *Providence Journal*, November 20, 2007. The Governor's November 18 appearance on "10 News Conference" where these comments were made can be viewed at http://www.turnto10.com/northeast/jar/politics/10_news_conference.html.

[47] An audio of the November 20th interview is available online at http://www.630wpro.com/sectional.asp?id=18074.

[48] Tracy Breton, "The Reluctant First Lady," *Providence Journal*, February 3, 1991.

[49] *See* "10 News Conference," fn. 45, *supra*.

[50] To be fair, it could be said that Rhode Island's prisons have been in a crisis mode for decades. *See*, Leo Carroll, *Lawful Order: A Case Study of Correctional Crisis and Reform*, Garland Publishing, Inc., 1998. The court decisions in the three-decade lawsuit challenging unconstitutional living conditions and overcrowding at the ACI could themselves fill a book: *Palmigiano v. Garrahy*, 443 F.Supp. 956 (1977); 448 F.Supp. 659 (1978); 466 F.Supp. 732; 599 F.2d 17 (1979); 616 F.2d 598 (1980); 707 F.2d 636 (1983); 639 F.Supp. 244 (1986); 700 F.Supp. 1180 (1988); 710 F.Supp. 875 (1989); 737 F.Supp. 1257 (1990); 887 F.2d 258 (1990); 59 F.3d 164 (1995)(table).

[51] Tom Mooney, "R.I. Prison Census Soars Over Weekend," *Providence Journal*, May 16, 2007.

[52] Tom Mooney, "ACI Gets Approval to Add 150 Beds," *Providence Journal*, July 26, 2007.

[53] "Population Report FY2007," R.I. Department of Corrections, page 17, estimating that Rhode Island's prison population will grow by 23% in the next ten years. Available online at http://www.doc.ri.gov/administration/planning/docs/FY07%20Population%20Report.pdf.

[54] "Report on the Rhode Island Correctional Population, FY1976 – FY2005," R.I. Department of Corrections, July 2005, page 13. Available online at http://www.doc.ri.gov/administration/planning/docs/FY07%20Population%20Report.pdf.

[55] *See*, e.g., Steve Peoples, "Forecast: Gloomy – R.I.'s $450-Million Headache," *Providence Journal*, November 10, 2007.
[56] Elizabeth Gudrais, "Advocates for Prison Reform Take their Case to Lawmakers," *Providence Journal*, April 27, 2007.
[57] This issue is discussed in more detail in Section 5 of this report, *infra*.
[58] 2007 P.L. 532, 07-S 1141B. Available online at http://www.rilin.state.ri.us//BillText07/SenateText07/S1141B.pdf.
[59] 2007-H 5127; 2007-S 207. Available online at http://www.rilin.state.ri.us//BillText07/SenateText07/S0207.pdf.
[60] R.I.G.L. §§21-28-4.01.1 and 21-28-4.01.2.
[61] "Policy Brief: Restoring Judicial Discretion by Repealing Rhode Island's Mandatory Minimum Drug Sentences," R.I. Family Life Center, 2005, page 2. Available online at http://www.riflc.org/pagetool/reports/DrugPolicyBrief.doc.
[62] R.I.G.L. §§21-28-4.01.1(b) and 21-28-4.01.2(b).
[63] "Report on the Rhode Island Correctional Population, FY1976 – FY2005," *supra*, page 7.
[64] "Policy Brief: Restoring Judicial Discretion by Repealing Rhode Island's Mandatory Minimum Drug Sentences," *supra*, page 3.
[65] http://www.abanet.org/media/kencomm/reportintro.pdf.
[66] "Increasing Public Safety and Generating Savings: Options for Rhode Island Policymakers," Council of State Governments, February 2007. Available online at http://www.csgeast.org/pdfs/justicereinvest/RIJR.onepager.FINAL.pdf.
[67] "Report on the R.I. Correctional Population," *supra*, page 5.
[68] *Id*., page 13.
[69] *Id*., page 7.
[70] *Id*., page 14. Nationally, Human Rights Watch reported that in 1998, 30% of all new sentenced admissions to state prisons and 58% of those to federal prisons were for drug charges. *Id*., page 8.
[71] The figures are taken from state budget documents for those fiscal years. DCYF's general revenue expenditures in FY 2005 were $155.4 million, and DOC's expenditures were $146.8 million.
[72] "Report on the R.I. Correctional Population," *supra*, page 14.
[73] Marc Mauer and Ryan S. King, "Uneven Justice: State Rates of Incarceration by Race and Ethnicity," July 2007, The Sentencing Project. Available online at http://www.sentencingproject.org/Admin/Documents/publications/rd_stateratesofincbyraceandethnicity.pdf.
[74] *Id*.
[75] *Id*.
[76] "Policy Brief: Restoring Judicial Discretion by Repealing Rhode Island's Mandatory Minimum Drug Sentences," *supra*, page 3. *See* also David Cole, *No Equal Justice*, pp. 141-146. The New Press, 1999.
[77] These figures were obtained from the DOC's Planning and Research office. In a similar vein, of 172 inmates awaiting trial on drug offenses as of September 30, 2007, approximately 62% were black or Hispanic.
[78] *See*, e.g., "The Persistence of Racial Profiling in Rhode Island: A Call for Action," R.I. ACLU, January 2007, pages 12-14. Available online at http://www.riaclu.org/documents/RacialProfilingReport0107.pdf.
[79] "Population Report FY 2007," *supra*, page 10.
[80] The Governor expressed a much more solicitous concern for separation of powers, however, in vetoing a bill this year strongly supported by the minority community that would have required him to prepare an annual utilization analysis of executive branch appointments. In short, the Governor's concern about the importance of separation of powers seemed to depend on which branch's powers were at stake.
[81] Unfortunately, for reasons unknown, the General Assembly chose not to override the Governor's unwarranted veto of this bill.
[82] *Chambers v. Ormiston*, No. 06-340-M.P., Brief of Amicus Curiae Governor Donald L. Carcieri, *supra*, page 24.
[83] He made this comment on a November 20, 2007 call-in radio talk show. The audio of the interview is available online at http://www.630wpro.com/sectional.asp?id=18074.
[84] 2007-S 619. Available online at http://www.rilin.state.ri.us//BillText07/SenateText07/S0619.pdf.
[85] R.I.G.L. §36-12-1(3).

[86] R.I.G.L. §45-19-4.3(b).
[87] *Id*.
[88] The Governor's veto message can be found on page 81 of the October 30, 2007 *House of Representatives Journal*, available online at http://www.rilin.state.ri.us/Journals07/HouseJournals07/HJournal10-30.pdf.
[89] 2007 P.L. 510.
[90] *Insurance Times:* Employee Benefits & Managed Care, July 4, 2000, Vol. XIX No. 14. Available online at http://www.insurancejournal.com/pdf/InsuranceTimes_20000704_37262.pdf.
[91] "Civil Rights and Civil Wrongs in the Governor's Office," *supra*, page 4.
[92] Steve Peoples, Katherine Gregg and Cynthia Needham, "Assembly Overrides Vetoes in One-Day Session," *Providence Journal*, November 2, 2007. Article 22, as it was enacted in June, is available online at http://www.rilin.state.ri.us/BillText/BillText07/HouseText07/Article-022-SUB-A-as-amended.pdf. The repeal bill passed in October is 2007 P.L. 532 (07-S 1141B), and available online at http://www.rilin.state.ri.us//BillText07/ SenateText07/S1141B.pdf.
[93] Steve Peoples, "Critics of Juvenile Crime Law Fill Hearing," *Providence Journal*, September 20, 2007.
[94] *See*, e.g., Edward Fitzpatrick, "Plan to Try Teens as Adults Decried," *Providence Journal*, June 19, 2007.
[95] http://www.campaignforyouthjustice.org/national_statistics.html. *See* also, "The Consequences Aren't Minor: The Impact of Trying Youth as Adults and Strategies for Reform," Campaign for Youth Justice, March 2007; available online at http://www.campaignforyouthjustice.org/Downloads/NEWS/ National_Report_consequences.pdf.
[96] Alexa Eggleston, "Perpetual Punishment: The Consequences of Adult Convictions for Youth," Campaign for Youth Justice. Available online at http://www.hirenetwork.org/pdfs/perpetual_punishment.pdf. *See* also http://www.riaclu.org/20070918.htm.
[97] "Real Impacts: The Actual Results of Rhode Island's New Policy that Charges 17-Year-Olds as Adults," R.I. Family Life Center, October 2007, page 3. The statistics were as of October 8, 2007. Available online at http://www.riflc.org/pagetool/reports/RealImpacts.pdf.
[98] Steve Peoples, "Critics of Juvenile Crime Law Fill Hearing," *Providence Journal*, September 20, 2007.
[99] American Correctional Association, *2004 Directory: Adult and Juvenile Correctional Departments, Institutions, Agencies, and Probation and Parole Authorities*.
[100] Steve Peoples, "Critics of Juvenile Crime Law Fill Hearing," *Providence Journal*, September 20, 2007.
[101] Steve Peoples, "500 R.I. Teens Fall Into 'Gap' As Adults," *Providence Journal*, November 11, 2007.
[102] M. Charles Bakst, "Assembly Right to Move Up Primary," *Providence Journal*, November 4, 2007.
[103] Due to vehement opposition from the Attorney General, the legislature did not make the repeal of the law retroactive. Steve Peoples, "500 R.I. Teens Fall Into 'Gap' As Adults," *Providence Journal*, November 11, 2007.
[104] Katie Zezima, "Rhode Island to Reclassify 17-Year Olds," *New York Times*, November 10, 2007.
[105] *Id.*
[106] 2007 P.L. 196.
[107] 2007 P.L. 238.
[108] 2007 P.L. 195.