December 14, 2023

Kimberly Ahern, Chair
Cannabis Control Commission
560 Jefferson Boulevard
Warwick, RI 02886

VIA EMAIL

Dear Commissioner Ahern:

On behalf of the American Civil Liberties Union of Rhode Island and the Black Lives Matter RI PAC, we are writing to bring to your and the Commission's attention a troubling issue regarding the implementation by some municipalities of a provision in the State's new cannabis legalization law. Because we are deeply concerned that this implementation is in direct conflict with the statute and, furthermore, that it would inappropriately expand police enforcement of the law in a way that is bound to adversely affect people of color and poorer communities, we ask that the Commission take prompt steps to respond to, and work to halt, these municipal efforts.

As you know, the new state law has a section dealing with "Local Control" that specifically provides municipalities some limited authority over cannabis-related matters in their community. One particular provision authorizes cities and towns to "adopt ordinances that ban or impose restrictions on *the smoking or vaporizing of cannabis* in public places, including outdoor common areas, parks, beaches, athletic and recreational facilities and other public spaces." R.I.G.L. §21-28.11-16(b) (emphasis added).

Our concern is that we have discovered that some municipalities, in taking up this offer, are adopting ordinances that go beyond what the statute authorizes, by prohibiting not only the smoking or vaping of cannabis in public, but also its "use," which would presumably ban, for example, the consumption of cannabis in edible form. The Westerly Town Council, for instance, is considering passage this month of a proposed ordinance to do just that. Responding to a letter sent by the ACLU of Rhode Island raising concerns that the language's scope exceeded what was authorized by the Rhode Island Cannabis Act, the Town Solicitor rejected the view that the statute limited municipalities in this way and further claimed that the more expansive language the Town was proposing had been adopted by other municipalities.[1] This enlargement of the statute's specific language to regulate more than smoking and vaping is extremely troubling for a number of reasons.

First and foremost – leaving aside the legal arguments for the moment – the policy ramifications of Westerly's broader reading of the statute are of most concern to us. The language proposed by the Town, and presumably already adopted in some other municipalities, authorizes the scenario of police stops and searches of individuals on the street based solely on the belief that they are under the influence of cannabis, and thus may be "using" (or "consuming") cannabis in public. One of the key goals of the Cannabis Act was to address the long-standing and unconscionable discriminatory impact that marijuana criminalization has had on poorer communities and communities of color. Westerly's

[1] We are unaware of how many other municipalities have dealt with this issue, but we assume the solicitor is correct that some have adopted the language being proposed in Westerly. Unlike Westerly, earlier this year the Glocester Town Council, on advice of its solicitor, favorably responded to a similar ACLU letter by revising its proposed ordinance which, in addition to smoking and vaping, had initially banned the "consumption" of cannabis in public.

proposed action, and that of any other municipalities adopting similar ordinances, flagrantly flouts that goal. Our organizations have absolutely no doubt who will bear the brunt of an ordinance, if vigorously enforced, that bans the "use" of cannabis in public. It is the same class of people who were victimized by the drug laws that the Cannabis Act replaced. The Commission should not, and cannot, allow municipalities to undermine the equity goals of the new law through this indirect route.

Leaving the policy issues aside, we also firmly believe that the Town's interpretation of the Act simply cannot withstand scrutiny. It is directly counter to the statute's limited authorization to municipalities, and it violates basic rules of statutory construction.[2] If the state had wanted to give local officials the ability to broadly limit the "use" or "consumption" of cannabis in public, it could have easily done so, but did not. The General Assembly very clearly and deliberately specified *vaping and smoking* in public as the narrow conduct that municipalities could address.

Limiting a ban to smoking or vaping cannabis, as opposed to more broadly barring its "use" or "consumption" is also a matter of common sense. Unlike the "consumption" of cannabis, a prohibition on smoking or vaping is easily enforced, as the unlawful conduct is plain for anyone to see. More to the point, such a ban also fits in with public health concerns regarding second-hand smoke that often drive these prohibitions, which are simply not present with other "uses" of cannabis (or tobacco).

In short, the statute's limited preemption carve-out is unambiguous. A contrary position by any municipality is not only wrong, it would perpetuate the discriminatory application of marijuana restrictions the Cannabis Act was designed to halt. We therefore ask the Commission to exercise its broad powers to "implement[], administ[er] and enforce[]" cannabis policy, R.I. Gen. Laws § 21-28.11-2(a), by advising municipalities that any efforts to ban public use of cannabis beyond the explicit statutory restrictions governing smoking and vaping are unlawful.

Thank you in advance for your consideration of this important matter. We would be happy to answer any questions you have about our position, and I look forward to hearing back from you about it.

Sincerely,

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cc: Commission Members

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[2] The statute's carve-out is precise and limited, and a paradigm of the basic principle of statutory construction, *expressio unius est exclusio alterius* ("the expression of one thing is the exclusion of the other"). By essentially making the explicit statutory references to smoking and vaping superfluous, the Town's interpretation also undermines another cardinal principle of statutory construction, that every word in a statute should be presumed to have a purpose.