

JOHN DOE, ALSO KNOWN AS MICHAEL
NUGENT, KRISTINA CLAIRBORNE,
FRANK LEONARD, GREGORY WRIGHT,
ROBERT CARMODY, CHARLES
WATSON, JOALENE SCHREFFLER,
LOUIS MEDICO, JERMAINE JOHNSON,
DONNA BOUTHILLIER, LISA HODGES,
ADAM NORTHROP, PAMELA SIVO,
MICHAEL PROCACCIANTI, PHILIP
UNRINE, C.J. MILLER, ALEXANDRIA
GONZALEZ, JOSEPH PAPINEAU,
BRANDON HONG, GAVIN FINNERTY,
CHRISTINA GONZALEZ, RACHEL
JORDAN, HERBERT JORDAN,
KIMBERLY HAAS and MARK McVAY

Plaintiffs

v.

GOVERNOR DANIEL McKEE, RICHARD
ROES ## 1-30

Defendants

PC-2022-06877

AMENDED COMPLAINT

1. This is an action for declaratory and injunctive relief to redress an unconstitutional denial of and threatened interference with Plaintiffs' right of free speech and expression, and their right to peaceably assemble and petition the government for a redress of grievances guaranteed by the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983, and Article I §21 of the Rhode Island Constitution; their rights to be free from unreasonable search and seizure, as guaranteed by the Fourth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983, and Article I §6 of the Rhode Island Constitution; as well as a violation of Plaintiffs' rights under the Homeless Bill of Rights of the State of Rhode Island, R.I.G.L. chapter 37-37.1. Plaintiffs

also seek nominal and actual damages for the interference with their constitutional and statutory rights.

JURISDICTION AND VENUE

2. An action for declaratory and injunctive relief is committed to the jurisdiction of the Superior Court.
3. The actions complained of have occurred and are occurring in Providence County.

PLAINTIFFS AND FACTUAL ALLEGATIONS SPECIFIC TO THEIR CLAIMS

4. Plaintiffs are John Doe, also known as Michael Nugent, Kristina Clairborne, Frank Leonard, Gregory Wright, Robert Carmody, Charles Watson, Joalene Schreffler, Louis Medico, Jermaine Johnson, Donna Bouthillier, Lisa Hodges, Adam Northrop, Pamela Sivo, Michael Procaccianti, Philip Unrine, C.J. Miller, Alexandria Gonzalez, Joseph Papineau, Brandon Hong, Gavin Finnerty, Christina Gonzalez, Rachel Jordan, Herbert Jordan, Kimberly Haas and Mark McVay.
5. Each of the Plaintiffs are residents of the State of Rhode Island and the United States.
6. At all times material hereto, each of the Plaintiffs is a person who has no fixed or permanent place of residence, due to a variety of personal circumstances, including but not limited to lack of sufficient financial resources to be able to obtain and maintain housing at their own expense.
7. At all times material hereto, and for varying lengths of time up to and including several months, each of the Plaintiffs decided to and did locate a tent as their means of daily shelter on the grounds of the Rhode Island State House.
8. At all times material hereto, the individual Plaintiffs selected the grounds of the Rhode Island State House to locate their tent and personal belongings for the following reasons:

- a. some or all of the Plaintiffs selected the State House grounds because they wish to convey a message that they are in need of and unable to access adequate shelter and they believe that the message is best conveyed by their continuing physical presence at the seat of Rhode Island government.
 - b. some or all of the Plaintiffs selected the State House grounds because they believe that it is the most effective way to petition the State, and especially the Governor, to use State resources to provide shelter to themselves personally and the unhoused and housing insecure population generally.
 - c. some or all of the Plaintiffs selected the State House grounds because they believe that it affords them more safety and security from exposure to crime and greater access to social services that they need than more secluded, isolated locations, such as woods and parkland.
9. Plaintiffs seek to remain on the State House grounds but are in fear that they will be subjected to arrest and prosecution or have their personal property seized and destroyed as a result of the announcement and actions of the Defendants.

DEFENDANTS

10. Defendant Daniel McKee is the Governor of the State of Rhode Island. The Governor is charged by Article IX § 2 of the Rhode Island Constitution to take care that the laws of the State of Rhode Island be faithfully executed. Upon information and belief, the Governor has authorized and directed the implementation of the matters complained of herein.
11. Defendants Richard Roes ## 1 through 30 are actual persons whose identity will be determined by discovery. Upon information and belief, said defendants include persons employed by the State of Rhode Island with authority to manage and maintain the buildings

and grounds of the Rhode Island State House, including members of the Department of Administration and the Rhode Island Capitol Police Department. Upon information and belief, acting under the direction and authority of the Governor, defendants Roes ## 1 through 30 have created a notice to vacate containing threat of prosecution and/or delivered the same to some or all of the Plaintiffs and, but for this Court's injunction, will seize the Plaintiffs' personal property and/or subject Plaintiffs to arrest and prosecution.

12. With respect to all matters complained of herein, the Defendants act or have acted under color of state law within the meaning of 42 U.S.C. §1983.
13. Each Defendant is sued herein in his official capacity.
14. In addition, subject to discovery, each defendant who has personally authorized and directed the violation of Plaintiffs' constitutional and/or statutory rights is sued individually.
15. Defendants are hereinafter referred to collectively as "the State."

STATEMENT OF CLAIM

16. For the past several months a group of homeless individuals including Plaintiffs have been encamped on the grounds of the Rhode Island State House engaged in a protest to increase the amount of support, both fiscal and otherwise, that the State invests in them.
17. Upon information and belief, the group of individuals has grown over the months since a single homeless person erected a tent on the State House plaza, accompanied by the sign "RI has over 1000 homeless."¹

¹ <https://upriseri.com/unhoused-michael/>, June 16, 2022, accessed 12/11/2022.

18. Among other things, the physical presence of Plaintiffs and others on the grounds of the State House is designed to express and convey their message to their government and the public, including the following:
 - a. they use the platform to educate the public concerning the living conditions of the homeless in the State of Rhode Island, including but not limited to the lack of adequate housing and shelter and their inability to obtain adequate housing and shelter through the current housing systems operated by the State and non-profit organizations.
 - b. some of the individuals have erected signs specific to their circumstances.

The grounds of the State House are a traditional public forum where the Government's ability to limit protected speech and expression is at its most constrained.

19. The grounds of the Rhode Island State House constitute a “traditional public forum” within the meaning of the First Amendment and Art. I §21 of the Rhode Island Constitution.
20. Public places, including streets and parks, “have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.” *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 515 (1939).
21. “[T]raditional public fora—have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.” *McCullen v. Coakley*, 573 U.S. 464, 476 (2014) (internal quotations omitted), quoting *Pleasant Grove City v. Summum*, 555

U.S. 460, 469 (2009), quoting *Perry Ed. Assn. v. Perry Local Educators' Assn.*, 460 U.S. 37, 45 (1983)).

22. “The government's ability to restrict speech in such locations is very limited. ...In particular, the guiding First Amendment principle that the “government has no power to restrict expression because of its message, its ideas, its subject matter, or its content applies with full force in a traditional public forum.” *McCullen v. Coakley*, 573 U.S. 464, 477 (2014) (internal quotations, citations omitted). “The right to use a public place for expressive activity may be restricted only for weighty reasons.” *State ex rel. City of Providence v. Auger*, 44 A.3d 1218, 1238 (R.I. 2012) (internal quotation, citations omitted).
23. Upon information and belief, the plaza and grounds of the State House have been open to the general public and used for rallies, demonstrations, and protests, both scheduled and unscheduled, for decades. “[T]here is no more appropriate place for citizens to express their views on issues of social and political significance and to communicate their feelings to their elected representatives than at the State Capitol.” *Reilly v. Noel*, 384 F.Supp. 741, 747 (D.R.I. 1974) (Rhode Island State House building is a public forum).

The State has not promulgated any enforceable rules or regulations governing or limiting access to the plaza and grounds of the State House.

24. Upon information and belief, the State has not, at any time to date, duly promulgated or adopted any rules or regulations governing or limiting access to the plaza and grounds of the State House, including but not limited to the establishment of an overnight curfew.
25. Plaintiffs are aware that the State claims it has adopted rules governing or limiting access to the plaza and grounds of the State House.

26. However, upon information and belief, the State has not adopted or promulgated any such enforceable rules.
27. Upon information and belief, control, maintenance, and supervision of the State House and its grounds are placed in the Department of Administration. R.I.G.L. §§ 37-8-1, 37-8-3, 37-8-5, 37-8-10.
28. Upon information and belief, within the Department of Administration, such operations are managed by a division called Capital Asset Management and Maintenance.
29. The Department of Administration and its Division of Capital Asset Management and Maintenance are an “agency” within the meaning of the Administrative Procedures Act of the State of Rhode Island, R.I.G.L. chapter 42-35 (“APA”), §42-35-1.
30. The Department of Administration and its Division of Capital Asset Management and Maintenance are not exempt from the rule-making obligations of the APA. §§42-35-1.1, 42-35-18.
31. All rule-making applicable to the public must follow explicit procedural requirements under the APA, which include, among other things, advance publication of a proposed rule on the agency’s website, notice to the public, a minimum period of time for public comment, hearing and formal adoption, followed by filing with the Secretary of State. §§42-35-2.7, 42-35-2.8, 42-35-4. Emergency rules can be adopted for a limited period of time under specific circumstances but must also be published and filed with the Secretary of State. §42-35-2.10.
32. Whether adopted in the ordinary course or as an emergency rule, no agency rule is “effective or enforceable until properly submitted and accepted by the secretary of state.” §42-35-4(3)(4).

33. In addition, since December 31, 2018, all agency rules, including guidance documents, must be maintained and submitted in a “comprehensive system of codification” called the Rhode Island Code of State Regulations maintained by the Secretary of State. §42-35-5. “Any rule that is not resubmitted by December 31, 2018, and is not published in the code of state regulations, shall not be enforceable until the rule appears in the code of state regulations.” §42-35-5(b).
34. Upon information and belief, neither the Department of Administration, nor its Division of Capital Asset Management and Maintenance, nor any other state agency, has purported to adopt or promulgate any rule, policy or guidance governing public access to the State House grounds in accordance with the requirements of the APA.

The State has a past history of permitting on the plaza and grounds of the State House overnight and symbolic protest of the lack of adequate housing.

35. Upon information and belief, in fall 2021, as reported on September 9, 2021 by the Boston Globe, “[a]dvocates erected 32 tents on the State House lawn on Thursday, calling for Governor Daniel J. McKee and the General Assembly to help find hotel rooms and safe shelters for those without homes before winter hits.”²
36. Upon information and belief, in December 2021, a group of protesters, led by State Senator Cynthia Mendes, began sleeping in tents in front of the State House “for a total of 16 days, and were joined by candidates and activists,” until Governor McKee “announced about 150 new emergency shelter beds and a new quarantine and isolation facility for homeless people.”³

² <https://www.bostonglobe.com/2021/09/09/metro/protesters-pitch-tents-state-house-highlight-homelessness-ri/>, accessed 12/9/22.

³ <https://www.golocalprov.com/politics/brown-and-mendes-draw-national-attention>, accessed 12/9/22.
See also <https://www.providencejournal.com/story/news/politics/2021/12/02/ri-homeless-protest-lt-gov->

37. Upon information and belief, another tent demonstration began in April 2022 “to bring attention to the lack of beds as winter shelters closed.”⁴
38. Upon information and belief, notwithstanding the aforesaid “tent city protests” in 2021, the State did not adopt or promulgate any rules or regulations governing or limiting access to the plaza and grounds of the State House in accordance with the APA.
39. Upon information and belief, the State has not, to date, adopted or duly promulgated a rule or regulation that “camping/sleeping overnight at the State House grounds is prohibited” or that otherwise restricts hours that individual citizens and residents can be present.

The State has announced its intent to involuntary remove and arrest the Plaintiffs and seize the Plaintiffs’ personal property, exposing them to irreparable injury.

40. On or about December 7, 2022, the State distributed a document entitled “Notice” to some persons, including some of the Plaintiffs, to inform them that they had until 9:00 am on Friday, December 9, 2022, to vacate the State House grounds. A copy of the Notice is attached hereto as Exhibit A and incorporated herein.
41. As set forth in the Notice, the State announced that it would provide “a bed in an emergency shelter and transportation to this location.”
42. Notwithstanding that representation, upon information and belief, the State has not secured housing to provide adequate and responsive housing for all Plaintiffs or others to whom the Notice was directed.
43. In an effort to facilitate the State’s intent to secure adequate and responsive housing for all Plaintiffs or others to whom the Notice was directed, counsel for the Plaintiffs provided

[candidate-cynthia-mendes-living-in-tent-outside-ri-state-house/8822872002/](https://www.browndailyherald.com/article/2022/02/exhausting-but-worth-it-advocacy-for-housing-justice-continues-after-ri-allocates-funds/), accessed 12/9/22;
https://www.browndailyherald.com/article/2022/02/exhausting-but-worth-it-advocacy-for-housing-justice-continues-after-ri-allocates-funds, accessed 12/9/22.

⁴ <https://www.abc6.com/rhode-island-state-houses-tent-city-and-how-did-we-get-here/>, accessed 12/9/22.

additional contact information to the State on December 11, 2022, with permission to contact individual Plaintiffs to secure housing. However, as of December 12, 2022, representatives of the State acknowledged that have not been able to contact a substantial number of the individuals but nonetheless intend to seek immediate vacation of the Court's temporary restraining order when hearing resumes on December 14, 2022.

44. In addition, as set forth in the Notice, but for intervention by this Court, the State intends to involuntarily remove the personal property of all Plaintiffs from the State House grounds.
45. Upon information and belief, persons other than Plaintiffs and those to whom the notice is directed are and will be entitled to use the State House grounds, to convey symbolic or express protest, and to carry signs or other personal property thereon.
46. In addition, as set forth in the Notice, but for intervention by this Court, the State intends to arrest and prosecute any Plaintiff who refuses to vacate the State House grounds, on the basis of "trespass."
47. Upon information and belief, persons other than Plaintiffs and those to whom the notice is directed are and will be entitled to continue to be present on the State House grounds without risk of arrest or prosecution for "trespass."
48. Upon information and belief, the State has directed and limited the Notice and its intent to seize property and persons, including the Plaintiffs, to persons considered or regarded by the State as "homeless" or unhoused.
49. Upon information and belief, the State did not attempt to undertake such enforcement efforts directed to those engaging in overnight tent occupancy in 2021 for the reason that

the individuals then engaging in overnight tent occupancy were not homeless or unhoused but acting in their capacities as politicians or housing advocates.

50. Each Plaintiff has a direct and legitimate fear of prosecution and seizure of his or her personal property should he or she continue to remain at the State House grounds in contravention of the State's Notice.
51. The suppression of protected speech, whether by direct government interference or by self-censorship to avoid exposure to prosecution, constitutes irreparable harm.
52. Plaintiffs have no adequate remedy at law.
53. Upon information and belief, any harm to the State on balance if injunctive relief is granted is far less than the harm to the Plaintiffs, in that, among other things, the State, with its resources, has failed to take any mitigating efforts to address hygiene or sanitation that it claims is exacerbated by the presence of Plaintiffs.

COUNT I (First Amendment and RI Constitution)

54. Plaintiffs incorporate the allegations contained in the preceding paragraphs of the Amended Complaint as if fully set forth herein.
55. The First Amendment to the United States Constitution, as applicable to the states through the Fourteenth Amendment, prohibits the making of any law that "abridge[s] the freedom of speech... or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."
56. Article I §21 of the Constitution of the State of Rhode Island provides that "[t]he citizens have a right in a peaceable manner to assemble for their common good, and to apply to those invested with the powers of government, for redress of grievances, or for other

purposes, by petition, address, or remonstrance. No law abridging the freedom of speech shall be enacted.”

57. The State’s Notice to and intended threatening of Plaintiffs with arrest and prosecution and seizure of their personal property if they do not vacate the grounds of the State House violates the rights of the Plaintiffs to free speech, assembly and petition, in violation of the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983.
58. The State’s Notice to and intended threatening of Plaintiffs with arrest and prosecution and seizure of their personal property if they do not vacate the grounds of the State House violates the rights of the Plaintiffs to free speech, and petition, in violation of Article I §21 of the Constitution of the State of Rhode Island.

COUNT II (Fourth Amendment and RI Constitution)

59. Plaintiffs incorporate the allegations contained in the preceding paragraphs of the Amended Complaint as if fully set forth herein.
60. The Fourth Amendment to the United States Constitution, as applicable to the states through the Fourteenth Amendment, provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”
61. Article I §6 of the Constitution of the State of Rhode Island provides that “[t]he right of the people to be secure in their persons, papers and possessions, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue, but on complaint in

writing, upon probable cause, supported by oath or affirmation, and describing as nearly as may be, the place to be searched and the persons or things to be seized.”

62. The State’s Notice to and intended threatening of Plaintiffs with seizure of their person and personal property if they do not vacate the grounds of the State House violates the rights of the Plaintiffs to be free from unreasonable seizure of their person and property, in violation of the Fourth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. §1983.
63. The State’s Notice to and intended threatening of Plaintiffs with seizure of their person and personal property if they do not vacate the grounds of the State House violates the rights of the Plaintiffs to be free from unreasonable seizure of their person and property, in violation of Article I §6 of the Constitution of the State of Rhode Island.

COUNT III (Homeless Bill of Rights)

64. Plaintiffs incorporate the allegations contained in the preceding paragraphs of the Amended Complaint as if fully set forth herein.
65. The Homeless Bill of Rights of the State of Rhode Island, R.I.G.L. chapter 34-37.1, prohibits, among other things, discriminatory treatment by all state agencies on the basis of housing status. §34-37.1-3(2).
66. The Homeless Bill of Rights of the State of Rhode Island, R.I.G.L. chapter 34-37.1, provides, among other things, that a person experiencing homelessness “has the right to use and move freely in public spaces, including, but not limited to, public sidewalks, public parks, public transportation and public buildings, in the same manner as any other person, and without discrimination on the basis of his or her housing status.” §§34-37.1-3(1).

67. The Homeless Bill of Rights of the State of Rhode Island, R.I.G.L. chapter 34-37.1, provides, among other things, that a person experiencing homelessness “[h]as the right to a reasonable expectation of privacy in his or her personal property to the same extent as personal property in a permanent residence.” §§34-37.1-3(7).
68. The State’s Notice to and intended threatening Plaintiffs with involuntary removal from a public place open to other persons, criminal prosecution, and seizure of their person and personal property if they do not vacate the grounds of the State House, violates the rights of the Plaintiffs under the Homeless Bill of Rights.

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants as follows:

- (1) Grant temporary and preliminary injunctive relief restraining the Defendants, their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them, from seizing or removing Plaintiffs from the State House grounds without Plaintiffs’ permission pending determination on the merits;
- (2) After hearing on the merits, issue its declaratory judgment that the Defendants have violated Plaintiffs’ rights under the First, Fourth, and Fourteenth Amendments to the United States and 42 U.S.C. §1983, corresponding provisions of the Rhode Island Constitution, and the Homeless Bill of Rights, and grant corresponding injunctive relief permanently enjoining the Defendants, their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them, from seizing or removing Plaintiffs from the State House grounds without Plaintiffs’ permission;
- (3) Award Plaintiffs their costs, including reasonable attorneys’ fees, and actual and nominal damages; and

(4) Grant such other and further relief as the Court deems just and proper.

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By their attorneys,

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FOUNDATION OF RHODE ISLAND

NOTICE

This is a notice to inform you that you must vacate the State House grounds by 9:00 a.m. on Friday, December 9, 2022. With this notice, you are being provided with a bed in an emergency shelter and transportation to this location. Transportation will be on site and available to you.

Please be aware that all personal possessions must also be removed from the State House grounds within the next 48 hours. Possessions can be stored for up to 30 days if they are properly boxed and labeled. Boxes will be provided. Possessions not boxed and labeled will be disposed. Please contact (401) 222-2080 to follow up regarding boxed and labeled personal items.

Front Side NLO

NOTICE

All persons camping/sleeping must vacate the State House grounds within forty-eight (48) hours of the issuance of this notice. Camping/sleeping overnight at the State House grounds is prohibited.

Be advised that pursuant to R.I. General Laws § 11-44-26, any violation hereof may result in the violator being subject to fine and/or arrest. The State House grounds may be cleared of any violators within forty-eight (48) hours of the issuance of this notice.

Back Side