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ACLU OF RI POSITION: OPPOSE

TESTIMONY ON 23-H 5828, RELATING TO RHODE ISLAND CANNABIS ACT April 5, 2023

In light of the significant First Amendment concerns the bill raises, the ACLU of Rhode Island opposes this legislation barring any outdoor advertising for the sale of cannabis.

Cannabis is a lawful product in Rhode Island, and as a result, advertising its lawful availability is subject to First Amendment scrutiny. The U.S. Supreme Court has established a standard, known as the *Central Hudson* test, to determine whether commercial speech can be restricted consistent with the First Amendment. Under that test, the court first considers whether the speech at issue concerns lawful activity and is not misleading. If so, then regulation of that speech is allowable *only if* the asserted government interest is substantial; the regulation directly advances the governmental interest asserted; *and* it is not more extensive than is necessary to serve that interest. We do not believe a ban on all outdoor advertising of cannabis can meet any of those standards. Indeed, it is difficult to imagine *any* interest that could justify a total ban on outdoor advertising.

Further, any attempt to equate cannabis advertising with restrictions on tobacco advertising is misplaced for numerous reasons. First, many of those restrictions were voluntarily agreed to by the tobacco companies in settlement of litigation. Further, the serious health hazards related to smoking tobacco that might justify certain advertising restrictions simply cannot be compared to those of cannabis. In addition, the state has recognized that cannabis, unlike tobacco, actually has legitimate medical uses; and the state has set up a complex statutory structure to specifically allow for the sale of the product in Rhode Island.

Cannabis is therefore more akin to alcohol, and in a case emanating from Rhode Island, the U.S. Supreme Court has made clear how limited the government is in regulating the advertising of that product under the First Amendment. In *44 Liquormarts v. Rhode Island*, 517 U.S. 484 (1996), the U.S. Supreme Court struck down as unconstitutional a Rhode Island statute that barred sellers of alcohol from advertising alcohol prices except at the point of purchase. The reasoning in that decision would, we submit, doom the constitutionality of this legislation.

For all these reasons, the ACLU of Rhode Island urges rejection of this bill. Thank you for considering our views.