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ACLU OF RI POSITION: OPPOSE

TESTIMONY IN OPPOSITION TO 21-H 6269, RELATING TO DISORDERLY CONDUCT – UNLAWFUL INTERFERENCE WITH TRAFFIC May 12, 2021

This bill would, according to its explanation, “criminalize as disorderly conduct the act of interfering with the lawful movement of traffic on any highway.” It appears to be an attempt to address the significant concerns raised by opponents to a similar bill heard earlier this session, H-5001, that contained felony penalties for this type of conduct.

Despite the revisions made by H-6269, the ACLU of Rhode Island continues to strongly oppose the bill. It is either redundant to a prohibition already contained in the “disorderly conduct” statute, in which case the bill is unnecessary, or it is more broadly sweeping, in which case it continues to raise First Amendment concerns and discriminatorily targets individuals engaged in public protest.

The statute that this bill amends already bars obstruction of a highway or street, R.I.G.L. 11-45-1(a)(4), and it has been successfully used in the past by law enforcement to charge people who have engaged in the conduct that H-6269 seeks to prevent.

We can therefore only assume that the bill, by further defining “obstruction” to include any “standing, siting [sic], kneeling, or loitering in any way” on any roadway, seeks to expand the scope of that prohibition. In doing so, we believe it would criminalize peaceful leafletting or panhandling on roadway medians in clear violation of the First Amendment. The legislation’s broadly-worded language about standing or “loitering” on a highway leaves open the possibility that individuals

panhandling on highway medians – a means of survival and a legal exercise of one’s First Amendment rights – could be accused of “distracting” or “delaying” motorists, as could activists standing on a highway median to direct attention to a cause. Only a month ago, we successfully settled a lawsuit against the City of Cranston over its adoption of an ordinance that similarly banned such activity. This expanded definition cannot withstand constitutional scrutiny.

In addition, we are deeply troubled by the bill’s additional amendment of the disorderly conduct statute being made to current subsection (d). That amendment only further confirms our concerns about the bill’s scope. Subsection (d) presently makes clear that the statute does not “prevent lawful picketing or lawful demonstrations including, *but not limited to*, those relating to a labor dispute.” H-6269, however, would have this exemption apply *only* to labor disputes, thus implicitly acknowledging that people engaged in other types of “lawful picketing or lawful demonstrations” could nonetheless be charged with disorderly conduct. Amending the bill in this way would, we submit, potentially make the entire statute unconstitutional by essentially acknowledging its impact on protected free speech activity.

For all these reasons, the ACLU of RI urges rejection of this legislation.