April 23, 2012

A.T. Wall II, Director
RI Department of Corrections
39 Howard Avenue
Cranston, RI 02920

Dear Director Wall:

Earlier this month, as you know, the U.S. Supreme Court, by a 5-4 vote, held that individuals who are arrested on minor charges may be subjected to intrusive visual strip searches upon their commitment to a correctional facility. *Florence v. Board of Chosen Freeholders of County of Burlington*, 132 S.Ct. 1510 (2012). As you also know, this decision is contrary to case law that has been in existence in Rhode Island for more than ten years, holding that reasonable suspicion was required before a jail or correctional facility could engage in this type of invasive search on persons arrested for minor offenses. *Roberts v. State of Rhode Island*, 239 F. 3d 107 (1st Cir. 2001).

Whatever the Department's views of the *Roberts* decision may have been at the time, it has been in place for over a decade. We are not aware of any pervasive breaches of security that have ensued at the ACI as a result. We are therefore writing to urge you to maintain in effect the current policies and procedures that the Department has been using to comply with the *Roberts* decision, as we have been troubled to learn that you have been considering doing otherwise.

Even without the lengthy history in Rhode Island of maintaining a "reasonable suspicion" standard, Justice Breyer's dissent in the *Florence* case makes compelling arguments for that position. It is hard to argue with his starting point about the privacy interests that are implicated:

> "A strip search that involves a stranger peering without consent at a naked individual, and in particular at the most private portions of that person's body, is a serious invasion of privacy. . . Even when carried out in a respectful manner, and even absent any physical touching … such searches are inherently harmful, humiliating, and degrading. And the harm to privacy interests would seem particularly acute where the person searched may well have no expectation of being subject to such a search, say, because she had simply received a traffic ticket for failing to buckle a seatbelt, because he had not previously paid a civil fine, or because she had been arrested for a minor trespass."

But as he also notes, a reasonable suspicion standard is also in keeping with good correctional policy, not to mention good public policy, and is far from rare:

• The American Correctional Association "has promulgated a standard that forbids suspicionless strip searches." The Department of Justice's National Institute of Corrections' resource guide about sound correctional practices also advises against suspicionless strip searches.

• Many federal correctional facilities apply a reasonable suspicion standard before strip searching inmates entering the general jail population, including the U. S. Marshals Service, the Immigration and Customs Service, and the Bureau of Indian Affairs.

• Many state and local correctional facilities, besides Rhode Island, have abided by a reasonable suspicion standard for years, and even decades, without serious incident. That is because laws in at least ten states specifically prohibit suspicionless searches for minor offenses, and between 1981 and the *Florence* ruling, six other federal Courts of Appeals, besides the First Circuit, required reasonable suspicion that an arrestee was concealing weapons or contraband before a strip search of one arrested for a minor offense could take place.

Under the circumstances, removing the reasonable suspicion standard for arrestees sent to the ACI for minor offenses would be a major step backward for the privacy rights of Rhode Islanders. We fervently hope that you will not take that step. While, as a matter of administrative convenience, it may be easier to strip-search everyone who comes into your custody, interests much greater than convenience are at stake here.

In light of the importance of this issue, we are hopeful for a favorable response, and would be happy to meet with you to discuss this further. For your convenience, Steven Brown from the RI ACLU can serve as the contact person for all the signatories in seeking to arrange a meeting or otherwise responding to this letter. We look forward to hearing back from you about this at your earliest convenience.

Sincerely,

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cc: The Hon. Lincoln Chafee
Patricia Coyne-Fague