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**COMMENTS ON PROPOSED RI DEPARTMENT OF TRANSPORTATION
REGULATIONS RELATING TO “CONTROL AND RESTRICTION OF BILLBOARDS,
SIGNS AND OTHER ADVERTISING DEVICES”
July 2018**

The ACLU of Rhode Island appreciates the opportunity to comment on these proposed amendments to the DOT’S regulations relating to “billboards, signs and other advertising devices.” Because these proposed rules are deeply flawed in a significant respect, we respectfully request that they be withdrawn and rewritten in order to comport with constitutional standards.

We note that, according to the Secretary of State’s website, these regulations were last amended back in 2007. However, two years later, in response to an ACLU of RI lawsuit, a federal court found portions of these regulations to be a violation of the First Amendment. *Vono v. Lewis*, 594 F.Supp.2d 189 (D.R.I. 2009). Surprisingly, however, it appears that the Department never amended the rules to address that court ruling. Instead, this proposal seeks to recodify those unconstitutional provisions. Such an action on the agency’s part would be in clear defiance of the court decision and must be rejected.

In *Vono*, the Court ruled unconstitutional provisions of these regulations (and the statute upon which they were partially based) that limit on-premises advertising. In short, the Court concluded that these regulations violated the First Amendment because they promoted commercial speech over non-commercial speech and made an impermissible distinction between on-premise and off-premise signs.

This proposal does nothing to address those constitutional flaws, but instead perpetuates them. The Court noted potential remedies for these flaws, *id.* at 204-205, but the Department has not attempted to take advantage of them.

Under the circumstances, we believe this proposal should be withdrawn so that the Department can rewrite the regulations in compliance with *Vono* and the First Amendment and submit those revisions for review in accordance with the APA rule-making process.

If the suggestion we have made is not adopted, we request that, pursuant to R.I.G.L. §42-35-2.6, you provide us with a statement of the reasons for not accepting these arguments.

Thank you for considering our views.

Submitted by: Steven Brown, Executive Director