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ACLU OF RI POSITION: OPPOSE

TESTIMONY IN OPPOSITION TO 25-H 6164,
AN ACT RELATING TO DEPARTMENT OF ATTORNEY GENERAL
April 8, 2025

The ACLU of RI is strongly opposed to this bill which would exponentially expand the authority and powers of the Department of Attorney General (AG) to engage in intrusive investigatory practices, and to do so without the presence of any meaningful guardrails.

Specifically, this extraordinarily broad bill gives sweeping power to the Attorney General to conduct civil investigations and bring court action to enjoin *any* "repeated illegal acts" or "persistent illegality in the carrying on, conducting or transaction of business or governmental activity." In providing this power, the bill would allow the AG to initiate investigations without first seeking court authorization or any input by the agencies already statutorily entrusted to regulate such activities. It thus would allow the AG to supersede, and potentially interfere with, the current jurisdiction of numerous other executive agencies that enforce statutory and regulatory protections over a wide array of business and governmental conduct.

The legislation incorporates procedures of the current Deceptive Trade Practices Act (DTPA), both in concept and in the availability of civil investigative demands. The DTPA, R.I.G.L. § 6-13.1-2, covers "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce" and already allows the Attorney General to sue to enjoin such practices and to conduct civil investigations. But the scope of the new authority being provided by this legislation, whatever its intent, appears almost limitless.

In going well beyond "deceptive practices," this bill covers any type of alleged unlawful practice by business – not just dealings with consumers – and any transaction of undefined "governmental activity." Thus, it would authorize the Attorney General to investigate and seek to enjoin virtually any "repeated" illegal conduct that is civil in nature.[1] From a civil liberties perspective, the opportunity this provides for overreach, for the politicization of investigations, and for prosecutorial abuse is enormous.

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[1] We assume that § 42-9-20(b) is meant to place a minor boundary on the bill's scope by "limiting" the AG's investigatory authority to illegal acts that are in the transaction of business or governmental activity. But the comma after the word "acts" on Page 1, line 8 could be read as applying the AG's powers to *any* illegal act.

We also question the bill's definition of the term "repeated" – in terms of "repeated illegal acts" that authorize the AG's intervention – to include "*an illegal act* which affects more than one person." In other words, "repeated" is defined to mean an act that is *not* repeated.

There are already a host of civil and criminal provisions applicable to individuals and businesses who engage in illegal transactions. In many instances, like the DTPA, state law presently bestows on the Attorney General the power to go after these unlawful practices. But that power is given, appropriately, on an individualized statutory basis. This bill, however, would essentially allow the AG to serve as a roving civil law enforcer.

For example, although decision-making authority is currently in the hands of the Board of Elections, the AG could independently opt to file civil investigative demands (CID) and take legal action against particular candidates who failed to file campaign finance reports on time. Notwithstanding the statutory authority provided to the Department of Environmental Management, the AG could initiate on its own an investigation of a licensed fisherman or business alleged to have violated commercial fishing laws. Despite the state Commission on Human Rights' jurisdiction over bias complaints in the workplace, the AG, without the need for court approval or consultation with the Commission, could issue CIDs against targeted employers alleged to have engaged in discriminatory conduct. The list could go on and on.[2]

In sum, the decisions on when to exercise these powers, despite the concurrent jurisdiction of a relevant state agency, could be made completely arbitrarily or for questionable reasons, with little recourse, and all while potentially disregarding statutory schemes and processes in place that are tailored to the investigation of those offenses. We believe that the proposed legislation would inappropriately provide virtually unconstrained authority to the Attorney General to conduct civil investigations of suspected or alleged illegality in almost every corner of public or private life.

If there are particular areas of the law where the Attorney General's office believes they are currently lacking necessary authority to take action to protect the public, they should be specified so that a more informed determination can be made about their scope, need and value. The General Assembly can then act accordingly. But the blunderbuss approach taken by this bill, and the enormous powers it would put in the hands of that office, allowing the Attorney General to conduct civil investigations in virtually every corner of public or private life, should be rejected.

Submitted by:
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[2] Indeed, one could argue that, under the breadth of this bill, a student advocacy group or an organization that engaged in civil disobedience, such as organizing "repeated" protests that obstructed access to public buildings, could be subject to a CID for interfering with "governmental activity."