

State of Rhode Island

SENATOR
SAMUEL D. ZURIER
District 3

Committee on Finance

330 Grotto Avenue
Providence, Rhode Island 02906

Committee on Labor

Room 122
Rhode Island State House
Providence, Rhode Island 02903



Senate Chamber

August 19, 2024

CELL: 401-644-0925
OFFICE: 401-222-6655
FAX: 401-222-2967

sen-zurier@rilegislature.gov

DELIVERED BY HAND

Honorable Peter Neronha
Rhode Island Attorney General
150 South Main Street
Providence, RI 02903

Re: Washington Bridge Lawsuit

Dear Attorney General Neronha:

Over the past eight months, my constituents have expressed their frustration with the closure of the westbound side of the Washington Bridge. They have persistently urged me, as their elected representative, to investigate this failure and hold those responsible accountable. To that end, I participated in a joint hearing conducted by the House and Senate Oversight Committees that took place on February 12 of this year. At that hearing, we asked why the Department of Transportation was unable to detect the bridge's structural problems while there was time to address them. The Director declined to answer these questions, stating that the Department and the Governor engaged consultants to prepare a forensic report that would provide the requested answers. The Joint Oversight Committee chairs decided to defer subsequent hearings until the issuance of the promised report.

In the months that followed, media reporters periodically asked the Governor for an update on the publication of the forensic report. To my knowledge, the Governor did not provide a specific date for its publication. According to media reports, the Governor ultimately stated that his office would not release the complete forensic report it prepared, as it might affect the possible financial recovery under the lawsuit. He did state that portions of the report might be released during the course of the litigation.

In my experience, the approach the State has taken to date concerning disclosure of information is entirely consistent with development of a private civil lawsuit, where the paramount goal is to achieve the largest possible recovery. With that said, I do not believe this lawsuit fits comfortably within that template. The plaintiff is the State of Rhode Island. Your office has entered an appearance as co-counsel. The subject of the lawsuit is one of significant and justified public interest.

Honorable Peter Neronha
August 19, 2024
Page Two

I respectfully submit that these circumstances require the State to treat this case differently from a garden variety private civil lawsuit, and that the State conduct it in a way that promotes government transparency and the public's right to know. In its current posture, I doubt further legislative oversight hearings will be productive if the State declines to answer questions by stating that the matter is now in litigation. I also worry the State will deny many possible public records requests on the same basis. As a result, I fear this case will follow the example of the 38 Studios civil lawsuit, in which the public did not learn about how and why that failure occurred until after the case was settled and discovery materials were released. My constituents expect more from their State government (and from me as their representative) than a vague promise they may have the opportunity to learn what happened and why a few years from now.

With that in mind, I offer these suggestions:

- The public will benefit from a web page documenting the progress of the lawsuit. As you know, attorneys can view the dockets of pending civil cases, but the general public cannot. As a starting point, I propose the State develops and maintains a web page that includes the civil case docket with links to case documents.
- Civil case dockets provide an initial source of public information, but they only skim the surface of a civil lawsuit's progress. Dockets typically include motions and objections, but not discovery materials (such as interrogatories and answers, document requests and responses, and deposition transcripts). Unless the Court issues a protective order, these materials are "public" in the sense that the litigants are free to disclose them to the public if they choose. I propose that the State include these materials in the lawsuit web page.
- To my knowledge, the parties in major civil lawsuits often agree to a protective order to block the disclosure of discovery materials in order to facilitate the smooth progress of the lawsuit. I propose that the State refrain from requesting a blanket protective order, but instead seek limited redactions when absolutely necessary. I also propose that the State object to any protective order request from the defendants, instead agreeing to limited redactions when absolutely necessary. I would submit respectfully, that such an approach is consistent with your office's stated policy regarding Access to Public Records Act requests and, more generally, your office's commitment to open government.

I realize that a general policy of public disclosure is not always consistent with the goal of obtaining the largest possible recovery in a civil lawsuit. I also acknowledge that your office has the responsibility to make decisions regarding the management of the litigation of cases you handle, and that it would be inappropriate for me as a legislator to manage, never mind micromanage, your office's litigation decisions.

Honorable Peter Neronha
August 19, 2024
Page Three

With that said, I believe my suggestions are compelled by the nature of this litigation and the policies and mission of your office. Thank you for your consideration and for your public service.

Sincerely,

Samuel D. Zinner