

## Seaweed collector sues over beach-access rights

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A man who was arrested while collecting seaweed on the beach in South Kingstown is suing the town and the police officer.

Scott Keeley's trespassing arrest in June rekindled a debate over the boundary between private property and public access along the Rhode Island coast. In a lawsuit filed Thursday in federal court, he alleges that the town and the police officer, David Marler, violated his rights in the Rhode Island and U.S. Constitutions.

His goal, he said, is to prompt change across the state and expand shoreline access.

"This is the only thing they'll listen to," Keeley, a Charlestown resident, said in an interview.

"We understand we have these constitutional rights, and they are to be liberally construed. But we'd like to know where they are to be liberally construed."

Keeley said he will put any money he gets from the suit toward protecting shoreline access.

Michael Ursillo, town solicitor for South Kingstown, issued this statement: "I can tell you that the town vehemently denies the allegations and the complainant's statement of the circumstances leading to his arrest. The town will vigorously defend its actions and those of the officer involved."

Police Chief Joseph P. Geaber Jr. referred questions to Ursillo; Geaber said in June that the department felt the officer was acting within the scope of his duties.

Police dropped the charge against Keeley not long after his arrest, apologizing to Keeley and acknowledging the difficulty of proving a case when it's so hard to figure out property lines along the beach.

Under the Rhode Island Constitution, people have the right to do things like collect seaweed and walk along the shore. A state Supreme Court decision says they can do so as long as they're closer to the water than the so-called mean high tide line. And as it's applied now, Keeley said, the law is so vague and the line so hard to place that it makes exercising constitutional rights practically impossible, or at least so difficult you can end up in cuffs for doing it.

The tangled saga began on a warm Sunday in June. Keeley was collecting seaweed on the beach in South Kingstown, just over the line from Charlestown Town Beach — and just past a looming “no trespassing” sign. The sign marks the end of the town beach and the supposed beginning of beachfront belonging to the private homes dotting the coast.

Disputes have long simmered about where that private property ends and where the public's right of access begins.

Keeley is on the pro-access side, pointing to Article 1, Section 17 of the Rhode Island Constitution, which says, among other things, that people will be able to freely exercise their traditional rights, including “fishing from the shore, the gathering of seaweed, leaving the shore to swim in the sea and passage along the shore.”

A 1982 state Supreme Court case, *State vs. Ibbison*, put the boundary for those rights at the mean high tide line. The public's rights extend from that line to the water. From that line toward land could be private, and if the police can prove someone knew he or she was on the wrong side, he or she could be convicted of trespassing, the decision said.

But the mean high tide line is more complicated than looking just where the wet sand is or where the seaweed reaches. It's an average of the high tides, calculated over over 18.6-year cycles, changing with the shifting sands of the coast.

It can sometimes seem like everyone with a stake in the issue has a slightly different opinion on what those rights mean and how to draw the line.

That was on vivid display June 9.



Keeley believed he had the right to walk and collect seaweed there. Private homeowners hired a security guard to patrol the beach, which Keeley considered provocative and unnecessary. Keeley sat down to shake sand from his seaweed. The security guard summoned a police officer, who, Keeley said, told him he was on private property and had to move along.

Keeley was about to grab his stuff and go, he said, but he spotted a huge chunk of seaweed that he wanted to pick up. The officer placed him in cuffs and took him into custody.

"His job was to come down there and say, 'Hey, Mr. Security Guard, he's here collecting seaweed, just like it says he can do in the Constitution,'" Keeley said. "But instead he arrested me."

That was an unreasonable search and seizure, a violation of his due process and privacy rights, and an "intentional infliction of emotional distress," Keeley's suit alleged.

The officer and the town, Keeley's suit said, also violated the public trust doctrine, defined by the Cornell Law School's legal dictionary as "the principle that certain natural and cultural resources are preserved for public use."

Whether Keeley was below or above the mean high tide line when he was arrested will likely feature in the town's defense; some private homeowners in the area have apparently asserted that the mean high tide line as it's currently calculated over an 18.6-year cycle is under water at all times, meaning the whole beach is theirs. One maritime law expert, Read Porter of the Roger Williams University School of Law, said that can't be true "as a matter of law."

That lack of clarity is part of the reason that when he was arrested, Keeley had a copy of Article 1, Section 17 with him; he really wanted the seaweed to fertilize his garden, he said, but he also wanted to make a point.

Point made: A formal protest took place a month later on that same spot. Meanwhile, the South Kingstown police changed their policies to avoid on-site arrests for trespassing along the beach, an acknowledgement of how challenging the issue is for a department trying to balance multiple interests. The Town of Charlestown passed a nonbinding resolution asking for legislation to clarify the issue.

So far, the effort has gained what Keeley considers only limited traction among state leaders. Gov. Gina Raimondo's staff has not responded to interview requests from The Providence Journal for her opinion on the matter. Republican state Rep. Blake Filippi has suggested a study commission. That's not strong enough for Keeley, who wants legislation guaranteeing a 20-foot swath of dry sand from the water inland where the public can exercise its rights.

If he wins money from his suit, he plans to hire a person to follow around any security guards with a sign saying, "Ignore this guard and enjoy this shore."

"Scott wants to clarify what the rights of the public are with respect to beach access," his lawyer, Brian R. Cunha, said in a phone interview. "It's muddled at the present time, and the police are acting unconstitutionally in arresting and removing people from what we claim are the public's rights to beach access."