

October 21, 2004

Roger Begin, Chair
RI State Board of Elections
50 Branch Avenue
Providence, RI 02904

BY FAX AND MAIL

The Hon. Matthew Brown
Secretary of State
State House
Providence, RI 02903

Dear Mr. Begin and Secretary of State Brown:

I am writing to express our organization's deep concerns about advice that was given to local elections officials yesterday by the U.S. Attorney's office regarding anti-terrorism preparations for Election Day. Specifically, in anticipation of the "possibility" of a terrorist attack on election day, that advice includes calling upon local elections officials or police to search the bags of individuals who are coming into the polling place to exercise their right to vote. This advice is extraordinarily troubling on a number of levels, and raises fundamental constitutional problems. In order to eliminate any confusion and to prevent improper activity at the polls on November 2nd, we call upon your offices to immediately notify elections officials that such searches are not authorized and should not be conducted.

It is first worth noting that this clear infringement on the privacy rights of voters is based on nothing but unsubstantiated fear. As Major General Centracchio is quoted in the *Providence Journal* as stating: "We have no specific information about anything that will happen in the United States," much less Rhode Island. In other words, the government is suggesting that the personal belongings of individuals can be searched, without a warrant, probable cause, or even reasonable suspicion, solely because we live in an age where the "possibility" of terrorism exists. The consequences of this reasoning are troubling to anyone who cares about the vitality of freedom in this country, for that logic could be used to justify random searches of any person at any time.

The U.S. Attorney's advice is even more disturbing because it has been made in the context of the exercise of one of the most fundamental rights we possess – the right to vote. It is appalling to see the government suggesting that it can condition a person's right to vote on the relinquishment of another constitutional right – the right to be free from unreasonable searches and seizures.

We would also note that the advice provides no objective standards as to when, how or on whom these searches would be conducted. It is perfectly clear to us that, due to manpower shortages and concerns about polling booth delays, any such searches would be performed in an arbitrary and almost-certainly discriminatory manner, based on such inappropriate criteria as the person's appearance or age.

In sum, the idea of forcing citizens to have their personal effects rummaged through in order to exercise the franchise is anathema to basic constitutional principles. Indeed, only last week, a federal appeals court issued a ringing condemnation of even less-intrusive searches in a similar context. That case involved a city policy requiring everyone wishing to participate in a large protest outside an army base to submit to a checkpoint metal detector search. One of the rationales raised by the city for this policy was a concern about terrorist threats. In striking down the city's policy as a violation of both the First and Fourth Amendments, the Court eloquently stated: "We cannot simply suspend or restrict civil liberties until the war on terror is over, because the war on terror is unlikely to ever truly be over. September 11, 2001, already a day of immeasurable tragedy, cannot be the day liberty perished in this country." *Bourgeois v. Peters*, 2004 WL 2320265 (11th Cir., 10/15/2004).

In light of the message that was provided at yesterday's meeting of election officials – essentially authorizing them or police stationed at polling places to deny the right to vote to people who refuse to waive their Fourth Amendment rights – we urge that your offices immediately notify local Boards of Canvassers that, absent appropriate and particularized legal grounds to believe that an individual poses a threat to the safety of others, no searches of voters' belongings shall be conducted.

Thank you in advance for your prompt attention to this. In light of the significant and time-sensitive nature of this matter, I would appreciate receiving your response to this as soon as possible.

Sincerely,

Steven Brown
Executive Director