

COVID-19 & CIVIL LIBERTIES IN RI

Even in a public health emergency, the government must make every effort to protect our rights. The ACLU of RI has been watching closely to make sure that the government's response to this crisis is scientifically justified and no more intrusive on civil liberties than absolutely necessary. **In this issue, read about some of the issues we are working on to protect civil liberties in response to COVID-19 – as well as news on some of our other, ongoing work to protect the rights of all in the Ocean State.**

ACLU SUIT LEADS TO RELEASE FROM WYATT DETENTION CENTER OF THREE IMMIGRANTS ESPECIALLY VULNERABLE TO COVID-19

Ruling on an emergency ACLU lawsuit, U.S. District Court Judge William Smith issued a temporary restraining order providing for the immediate release of two immigrants being detained at the Wyatt Detention Center who are at high risk for serious illness or death in the event of COVID-19 infection.

The ACLU of Rhode Island and the National ACLU had filed the lawsuit seeking their release, as well as that of one other detainee whom ICE released hours before the judge heard arguments in the ACLU's petition. Detainees like them – confined in very close quarters and without easy access to hygienic supplies – are among the most vulnerable populations to the spread of COVID-19.



The three petitioners suffer from a variety of preexisting health conditions that put them at high risk of severe illness or death from COVID-19. One of them, for example, had been scheduled to have heart surgery for a serious heart condition when he was detained in February, and has had more than one bout with cancer.

Describing in detail “unhygienic conditions” at the facility, the “impossibility of adequate social distancing within Wyatt and the regular cycling of facility staff and guards into and out of a Rhode Island community with rising rates of infection,” the suit argued that the three detainees “are virtually certain to become infected with COVID-19 if they remain detained.”

The lawsuit included testimony from public health experts about the danger posed by the continued detention of people at high risk of illness or death from COVID-19 in facilities like Wyatt. The suit pointed out that the “outbreak of COVID-19 in prisons and detention centers is increasing at an alarming rate.” A number of courts across the country, responding to lawsuits like this one, have released ICE detainees with serious medical conditions.

The lawsuit was filed by ACLU of RI cooperating attorneys Deborah Gonzalez and Jared Goldstein, both professors at the Roger Williams University School of Law, as well as attorneys from the ACLU's National Prison Project and Immigrants' Rights Project.

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FROM THE DESK OF THE EXECUTIVE DIRECTOR

Who could have anticipated that our lives would be so profoundly disrupted by this now far-reaching pandemic? With that in mind, I want to express my hope that **you and your loved ones are safe and healthy** in these difficult circumstances.

Knowing your concern for the well-being of our democracy, I also wanted to share that, despite our office now working remotely, we are closely monitoring and responding to the constantly evolving state and local measures to stem the spread of COVID-19 in the Ocean State. Some of our work on this is detailed in this issue, but for up-to-the-minute info, please visit the COVID-19 section of our website.

And though it may not be getting much public attention, our litigation and advocacy on other critical civil liberties issues continues as well. Some of that work is also detailed in this issue.

Bottom line: know that we are staying vigilant on all civil liberties fronts – and this is only possible because of your ongoing support and commitment to justice and equality.

Thank you as always.

-- Steven Brown

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WITH MOVE TO MAIL BALLOT PRIMARY, ACLU WORKS TO PRESERVE VOTING RIGHTS

The ACLU, Common Cause and the League of Women Voters urged the Board of Elections and the RI Secretary of State to take steps to ensure that the presidential preference primary, rescheduled for June 2nd and to be conducted primarily by mail ballot, will safeguard the right to vote. Among the positive actions the agencies have agreed to:

- Sending every registered voter in the state an absentee ballot application that can be returned postage prepaid.
- Eliminating the statutory requirement of two witness signatures and notarization for submitting a mail ballot.
- Expanding the time frame for accepting mail ballots
- Creating a bilingual voter assistance hotline.
- Ensuring that an adequate number of polling places are operational to accommodate individuals who may not be able to vote by mail.

The ACLU and other groups are already working on ensuring protection of the franchise in September and November, and will be seeking changes to the signature requirements necessary for candidates to qualify for the ballot. **Up-to-date information on voting can be found at the RI Secretary of State's "Voter Information Center":** <https://vote.sos.ri.gov/> or (401) 222-2340.



COVID-19 & FOURTH AMENDMENT RIGHTS

A recent order from Governor Raimondo gives police the power to stop cars with any out-of-state license plates coming into Rhode Island. The ACLU has pointed out that police exercise of this power raises



extraordinarily serious constitutional concerns, and makes little sense from a public health perspective in light of the disease's wide community spread within the state. As the Governor herself was recently quoted as saying: "This virus doesn't care about state borders,

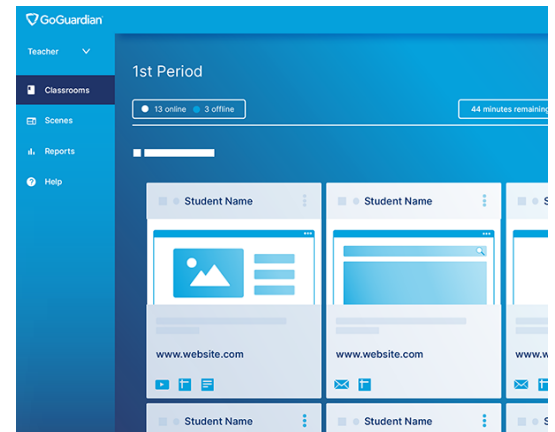
and our response shouldn't either."

However, because the police do not ask for ID at the stops, have disavowed any attempt at law enforcement during them, and take no action against drivers who refuse to provide information, the ACLU has held off on taking any legal action for the time being.

IMPROVED PRIVACY PROTECTIONS NEEDED FOR SCHOOL “VIRTUAL LEARNING” TO PREVENT SNOOPING ON STUDENTS AND FAMILIES

As schools move to remote learning, the ACLU of RI has conducted a review of school district tech privacy policies in the state, finding that many districts allow for widespread computer snooping on both students and families. The review specifically found that many school district policies on this issue allow for remote access to school-loaned computers’ microphones and cameras, and that third-party programs used for remote learning – and which are installed on both loaned devices and personal home computers – allow school officials to view weeks of browsing activity.

This is not a new issue. In fact, the ACLU conducted a similar survey three years ago on these sorts of policies, and since then, little has changed. But with the current move to entirely remote instruction, the issue is more pressing than ever. Currently, at least 26 district policies explicitly note that students have no expectation of privacy in their use of the devices, and 21 policies fail to ban unauthorized remote access to device cameras and microphones. In addition, third-party programs being used by schools, including one called GoGuardian, give school officials broad access to the private search history contained on personal family computers that students use for their schoolwork. The ACLU has already heard from a few school districts that have responded favorably to Affiliate recommendations to strengthen their privacy policies.



BASED ON THE RECENT REVIEW OF SCHOOL POLICIES, THE ACLU SENT A LETTER TO SCHOOL DISTRICTS CALLING FOR:

- A prohibition on schools’ ability to access the microphone or camera of a loaned device except during live teaching activities and with the student and family’s full knowledge.
- A ban on accessing the data on a school-loaned device unless (1) a parent or guardian has signed an opt-in agreement which allows access to explicitly specified data, or (2) a school official has reasonable suspicion that a student has violated school policy.
- A restriction on remotely tracking the location of a school-loaned device without cause.
- Disabling privacy-invasive features on any third-party programs that students are required to download for virtual learning.
- Ensuring that third-party programs used in the course of remote education comply with a state law that the ACLU helped pass three years ago barring commercial use of student data.



GROUPS URGE ACTION TO ENSURE EQUITY IN REMOTE INSTRUCTION PLANS

As schools transitioned to remote instruction in mid-March, a dozen organizations called on the RI Commissioner of Education to make districts’ remote learning plans publicly available. The intent was to make it easier for parents and advocates to review and compare plans, and in particular to ensure they did not exacerbate educational inequity for students with disabilities, English Language Learners and others.

The ACLU, in the interim, compiled all available district plans into one document and shared it with educational equity groups so schools can be held accountable for ensuring vulnerable students receive the education they are entitled to by law.

ACLU URGES PUBLIC BODIES TO ABIDE BY NEW STANDARDS OF GOVERNMENT TRANSPARENCY

In March, Governor Raimondo issued an executive order (EO) suspending certain provisions of the Open Meetings Act (OMA) and the Access to Public Records Act – laws critical for government transparency. Despite acknowledging that some relaxation of the OMA was necessary in light of social distancing requirements, the ACLU was alarmed at the EO's breadth and scope, and with Common Cause RI, immediately called on the Governor to revise it to limit its reach.



Responding to those concerns, the Department of Administration issued additional guidelines suggested by the groups. To reinforce this guidance, the ACLU recently sent a letter to all RI municipal leaders summarizing the requirements imposed on public bodies engaged in remote meetings. The executive order has since been further revised to limit its scope. Among other things, the EO and Guidance specify that:

- Whether meetings are held remotely or in person, adequate alternative and free means for real-time public access, whether audio or video, are required.
- Real-time participation by members of the public must be provided when required by state or local law.
- Meetings must be suspended if the audio or video coverage is interrupted.
- Meeting attendees should identify themselves prior to speaking.
- Whenever possible, documents to be presented at the meeting should be posted in advance on the public body's website.

The ACLU's letter to municipalities concluded by acknowledging the need for some flexibility in governance during this difficult period but noted that "the public's right to oversee the work of its government officials and municipal bodies remains more critical than ever."



COVID-19 AND PRIVACY

The ACLU has been keeping on top of various privacy issues arising from the state's actions in dealing with the COVID-19 pandemic. There are two in particular that the ACLU is monitoring closely. The first is "contact tracing," a very important component of dealing with the disease. However, alarm bells were raised when the Governor indicated she was looking into contact tracing via electronic means, such as monitoring people's whereabouts via their cell phones. No details of the plan have been announced, but after hearing objections from the ACLU and others about the potentially

serious privacy issues raised by the use of such technology, the Governor has said any such tracking would be purely voluntary. The ACLU will carefully examine the plan once it is proposed.

As this newsletter went to press, a second important privacy issue came to the ACLU's attention. The state has begun providing law enforcement agencies and first responders access to a database that contains the addresses of all homes where COVID-19 positive people are residing. The rationale is to allow these personnel to take extra precautions if going to the location for any reason. But since the disease can be spread asymptotically, *every* person needs to be considered a possible carrier, and the ultimate effect of this policy will be to "out" people who are positive for the illness to neighbors and others. The ACLU will be urging state officials to reconsider this decision, which was made without any public input.

FUBAR but not FKGAS: ACLU SUES DMV OVER VANITY PLATE CENSORSHIP

The ACLU has filed a lawsuit challenging the constitutionality of a state law that gives the DMV Administrator carte blanche authority to deny vanity license plates based on whether he thinks they “might carry connotations offensive to good taste and decency.” The lawsuit, filed in federal court by ACLU of RI cooperating attorneys Thomas W. Lyons and Rhiannon Huffman, argues that the statute is overly broad,



and unconstitutionally gives the DMV unbridled discretion to infringe on free speech rights.

The suit was brought on behalf of Sean Carroll, an environmentally conscious Tesla owner who was advised by the DMV that, in response to an anonymous complaint, he had to turn in his license plate “FKGAS” or else have his car registration cancelled.

The DMV has approved over 41,000 vanity license plates and denied dozens of others. The suit highlights the arbitrary nature of the DMV’s decisions: “Defendant’s attempt to ban Plaintiff’s

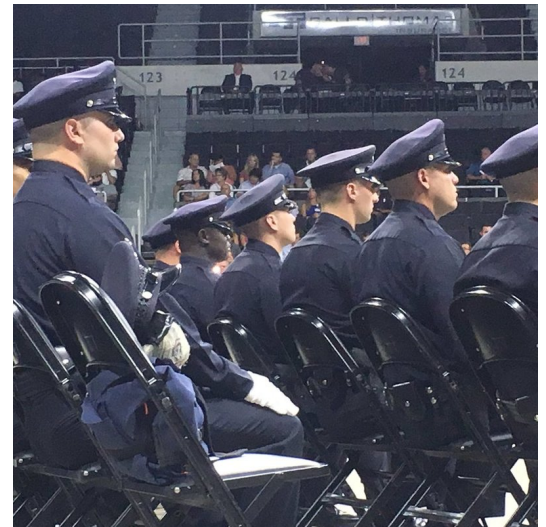
FKGAS plate as offensive stands in contrast to his allowance of such plates as FCCING, FKNFST, FKS, FUBAR, SKCK, and SNAFU, as well as such plates as DOGDOO, FACIAL, and OLDFRT.”

The DMV has agreed not to move forward with its plans to cancel the car’s registration until the court rules on the ACLU’s request for a restraining order against such an action.

LEGAL ACTION ON BEHALF OF AFRICAN-AMERICAN RECRUIT DRUMMED OUT OF PVD POLICE ACADEMY

The ACLU has filed a charge of discrimination against the Providence Police Department on behalf of Michael Clark, an African-American recruit who was involuntarily dismissed from the Police Academy after enduring months of harassment from trainers.

The discrimination charge, filed by ACLU cooperating attorney Laura Harrington with the R.I. Commission for Human Rights, states that throughout his tenure at the Academy, Clark “was subjected to discriminatory terms and conditions, harassed, ostracized and humiliated” based upon his race. He was singled out for this treatment, the charge claims, because of a Christian rap song that he had written and posted on social media before he applied to the Academy. The song “made reference to black men being killed by police, requests to police ‘Don’t shoot,’ calls for unity among all people and a cry out to God.”



The harassment started on the very first day of the Academy, when the training officers directed Clark to put a “do-rag” on his head and told him to sing for the rest of the class. The harassment continued throughout his training. For example, Clark was selected by the training officers as the only recruit subjected to repeated Taser shocks while he was forced to crawl across the floor, leaving him bleeding and with skin burns.

Despite the pervasive harassment, the charge states that Clark “continued to pass all of the academic and physical fitness requirements, attended every day of class, passed the field training units, and was in the elite running squad.” Instead of graduating, however, he was dismissed from the Academy almost five months after he began on the basis that he had accumulated too many “demerits.” The ACLU plans to follow up the charge with the filing of a lawsuit in federal court.

NEWS BRIEFS

Blacks in RI Are 3 Times More Likely to be Arrested for Pot Possession Than Whites

Black people in Rhode Island are 3.3 times more likely than white people to be arrested for marijuana possession despite comparable marijuana usage rates among the two racial groups, according to a new report released by the National ACLU. Similar arrest disparities were documented in a 2013 report, but they have gotten worse, not better, over the past decade in Rhode Island. The report also shows the racial disparities are even more pronounced and way above the national average outside Providence County.

The findings of the new research are especially disturbing given Rhode Island's marijuana reform over the last decade in decriminalizing arrests for possession of small amounts of the drug. The report provides a series of recommendations for state and local officials to address this problem. Among the recommendations that the ACLU of Rhode Island says must be considered here are approval of legislative proposals to legalize marijuana in the state, and requiring police departments to examine their marijuana enforcement policies to address the unwarranted disparities in enforcement.

Appeals Court Bars Feds from Requiring Cities to Collaborate with ICE

In an important victory for immigrants' rights, the U.S. Court of Appeals for the First Circuit in Boston has ruled illegal a U.S. Department of Justice (DOJ) policy conditioning the receipt of federal law enforcement funds on municipal collaboration with immigration officials. The ACLU had filed a "friend of the court" brief in the case in support of the cities of Providence and Central Falls, which had filed the suit against the DOJ, arguing that the agency had no legal authority to attach these strings to the law enforcement grant program.

The requirements imposed by the DOJ included allowing immigration officials unlimited access to police facilities to interrogate detainees at any time, and requiring municipalities, if requested by ICE, to provide 48 hours advance notice before releasing an individual. Last June, U.S. District Court Judge John McConnell, Jr. ruled the federal government's mandate unlawful, and the First Circuit has now agreed. It is likely that the DOJ will appeal the ruling.



Central Falls Mayor James A. Diossa, announcing the filing of the lawsuit against the DOJ last year.

ACLU Files Complaint Against Narragansett for Hiding Records of Police Misconduct

Calling it a "flagrant breach" of the state's Access to Public Records Act, the ACLU has filed with the Attorney General a complaint against the Narragansett Police Department for refusing to release records related to its final investigations of complaints of police misconduct. The complaint to the AG was filed by ACLU cooperating attorney James Cullen on behalf of Dimitri Lyssikatos, a member of the Rhode Island Accountability Project.

In response to an open records request filed by Lyssikatos, the police department claimed that all its internal affairs reports were confidential, despite Rhode Island Supreme Court decisions dating back more than 30 years that have held to the contrary. The AG's office has asked for a response from the Town. The ACLU is currently in court challenging a similar position taken by the Pawtucket Police Department.



RI Legal Services & ACLU Appeal Decision Undermining Rights of English Language Learners

Rhode Island Legal Services and the ACLU of RI filed a lawsuit challenging a decision issued by the Council of Elementary and Secondary Education (CESE) that upholds the so-called “Consultation model” of instruction in the Providence School Department. The groups claim that this method of providing services to English Language Learners (EL) violates federal and state law and shortchanges the educational rights of EL students. According to the lawsuit, the model also

discriminates against children with disabilities by denying them EL services – however inadequate – that are provided to students without disabilities. In 2018, the U.S. Department of Justice (DOJ) independently concluded that Providence’s “Consultation model” was “educationally unsound” and invalid under federal laws, but both RIDE and the CESE concluded that it was nonetheless appropriate under state law and regulations. The lawsuit, calling the CESE decision “patently arbitrary” and “clearly erroneous,” asks the court to overturn the Council’s decision.

South Kingstown Agency Backs Off Effort to Squelch Speech by Local Non-Profit

When a staff member at the Jonnycake Center food pantry in Peace Dale sent an email to commissioners of the South Kingstown Housing Authority (SKHA) about a matter that she felt required the Authority’s attention, she was surprised at the response she received. SKHA’s attorney advised the employee that she was barred from contacting the Board any further and instead had to bring any concerns the Center had to the attention of SKHA management who, if they “deem it applicable,” would inform the Board about it at a Board meeting. Contacting the commissioners via email, outside a meeting of the Board itself, the attorney alleged, was a violation of the Open Meetings Act (OMA).

After receiving a request for help from the Center, the ACLU immediately wrote a letter to Authority officials, calling the attorney’s position a blatant violation of the First Amendment, not to mention an egregious misreading of the OMA. To their credit, the SKHA, upon receiving the ACLU’s letter, put the issue on its next docket and unanimously repudiated their attorney’s position.

ADVOCACY TRAINING A SUCCESS

A sincere thank you to Providence Community Library for the use of their space, and to Seven Stars Bakery and Knead Doughnuts for providing refreshments, for our well-attended 2020 Advocacy Training. The packed training happened on February 29, before we all knew that we should not be congregating in groups of 5 or more. We hope those who attended will stay sharp for when the legislative session finally resumes!

ACLU OF RI OFFICE CLOSED (BUT THE ACLU OF RI IS NOT!)

Our office has been closed since March 16, and will remain so until it is safe to reopen. We have also postponed our planned events. **But, as you can tell from this newsletter, we remain as busy as ever, operating remotely.** You can still contact us at info@riaclu.org – and we are also checking our office voicemail and our postal mail!

PLEASE STAY SAFE, EVERYONE!

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difference. **This newsletter is
proof of that.**

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