

DEFENDING THE FIRST AMENDMENT IN RI: Woonsocket Settlement; Suit on Behalf of Non-Fiction Authors



LAWSUIT SETTLED AGAINST WOONSOCKET FOR RETALIATING AGAINST DOMESTIC VIOLENCE AGENCY

The ACLU of RI has settled a federal lawsuit against the City of Woonsocket for unlawfully withholding grant funds from Sojourner House, a social service agency that helps victims of domestic violence. Filed last year by ACLU volunteer attorneys Matthew Oliverio and Stephen Prignano, the suit alleged that the City withheld the funds without cause or due process, and then retaliated against the agency –

barring it from seeking any future funding – after it petitioned other government agencies for help in resolving the dispute.

Sojourner House helps victims of domestic violence through a number of programs, including the operation of an emergency shelter in Woonsocket. For many years, the agency has applied for and received funds via two City grant programs which support its work and the shelter's operation. The City's abrupt and arbitrary rescission of these grants led to the lawsuit. Under a consent order filed in federal court, the City agreed to withdraw its suspension of Sojourner House from participating in the City's Community Development Block Grant Program and to pay the agency the \$35,000 in grant funds that had been unlawfully withheld.



ACLU FILES 1ST AMENDMENT SUIT OVER STATE'S DISCRIMINATION AGAINST NON-FICTION AUTHORS

Should the RI Division of Taxation get to decide what writing is “creative and original”? That is the question at the crux of a federal lawsuit filed by the ACLU of RI, challenging the Division's position that a special sales tax exemption for RI-based authors applies only to works of fiction, and not to non-fiction – apparently because non-fiction is not “creative and original.” Filed by ACLU of RI cooperating attorney Lynette Labinger on behalf of four plaintiffs, including the Association of Rhode Island Authors (ARIA), the suit argues that making a distinction based on the content of the work violates the First Amendment's guarantees of freedom of speech and the press.

The law is intended to promote the work of local writers and artists and exempts from the sales tax “original and creative works” sold by them. At some point, however, the Taxation Division, in consultation with the RI State Council on the Arts (RISCA), determined that non-fiction books didn't qualify. Last October, the ACLU of RI wrote to the Division and RISCA about the issue, saying their position raised “serious and significant constitutional concerns.” The two agencies responded vaguely by saying that they would “work together to ensure” that their procedures comply with the law. The lawsuit seeks a court order barring the state from excluding non-fiction works from the sales tax exemption.

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FROM THE DESK OF THE EXECUTIVE DIRECTOR

I hope that, in reading this newsletter – or any edition of our newsletter – you are struck by the breadth of the issues that we handle on a regular basis: freedom of speech, students' rights and access to public education, privacy, criminal justice, and open government, to name just a handful.

Also impressive is the enormous reach that our Affiliate has in the Ocean State with a small staff and a dedicated corps of volunteers.

It can never be said enough that all of this work happens only thanks to your support and the support of others like you. Members, donors and volunteers make ALL of our work possible – and I really can't thank you enough for that.

This year, we are honoring our 60th Anniversary with a series of events and activities to educate, engage and inspire civil liberties supporters in RI.

I hope to see you at some of them so I can thank you in person. Be sure to attend – and bring a friend!

--Steven Brown

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ACLU SETTLES SUIT OVER SELECTIVE ENFORCEMENT OF CRANSTON SIGN ORDINANCE

The ACLU settled a federal lawsuit against Cranston, successfully challenging its selective enforcement of ordinances barring the placement of commercial advertisements on city property. The suit was filed two years ago by ACLU volunteer attorney Richard A. Sinapi on behalf of Stephen Hunter, a lawyer who was threatened with fines if he did not take down signs advertising his business – even though there were dozens of other advertising signs posted at the same locations, which were left untouched and not cited. Under the consent agreement approved by the Court, the City must uniformly enforce the ordinance and pay attorneys' fees.



ACLU APPEALS DENIAL OF ACCESS TO PAWTUCKET POLICE MISCONDUCT RECORDS

In a major blow to the public's right to know, Superior Court Judge Melissa Long ruled that the Pawtucket Police Department is not required to release reports of police officer misconduct generated by its Internal Affairs Division (IAD). Instead, the court concluded that additional hearings are necessary to determine whether the records



must be released under the Access to Public Records Act (APRA). The ACLU of RI has appealed that ruling to the state Supreme Court.

The judge's ruling was in response to a lawsuit filed by ACLU of RI cooperating attorney James Cullen on behalf of Dimitri Lyssikatos, a member of the RI Accountability Project (RIAP). RIAP promotes transparency and accountability in government and law enforcement, and maintains a publicly available database of reports generated by the IADs of police departments across the state, information it routinely obtains through APRA requests.

However, the Pawtucket Police Department refused to release internally generated reports investigated by the Department's IAD that were not the result of citizen complaints. The request was denied on the grounds that the records, even if redacted to protect the identities of individuals involved, were nonetheless "personal individually-identifiable records" and that they would shed no light on "official acts and workings of government." The ACLU had noted that the R.I. Supreme Court has twice ruled that redacted IAD final reports were public records. Pawtucket police seized upon the fact that both cases involved reports generated by citizen complaints, not internally-generated ones, but the ACLU called that a distinction without a difference.

WYATT AGAIN HOUSING ICE DETAINEES DESPITE SPECTRE OF JASON NG

Immigration and Customs Enforcement (ICE) has moved detainees picked up at the southern border of the United States to the Wyatt Detention Center in Central Falls. Wyatt's involvement is of particular concern to the ACLU given the case of Jason Ng, an immigration detainee who died tragically in Wyatt custody in 2008.



A glimpse inside Wyatt.

Ng died following months of abuse and lack of adequate medical care. At the time of his death, Ng was found to have a broken spine and terminal liver cancer. Following Ng's death and an extensive investigation into the circumstances, the ACLU of RI sued more than two dozen officials and employees of both the Wyatt facility and ICE for "cruel, inhumane, malicious and sadistic behavior" and multiple violations of Ng's constitutional rights. The suit led to a multi-million dollar settlement on behalf of Ng's family. ICE also cancelled its contract with Wyatt to hold immigrant detainees. Recently, however, the Wyatt Facility, eager to fill its empty beds, convinced ICE to start using the detention center again to hold immigration detainees.

When the ACLU publicly disclosed the return of ICE detainees, an uproar ensued. With a newly constituted membership appointed by the City, the Wyatt Detention Facility Board voted to terminate its contract with ICE and have all ICE detainees moved out. Bondholders then sued and obtained a court order restoring the contract between the facility and ICE. The ACLU is monitoring developments in the case and considering if there are other steps that can be taken by opponents of the collaboration between ICE and the detention center.



ADEQUATE HEAT RESTORED AT ACI

The ACLU dismissed a lawsuit filed against the Department of Corrections (DOC) in January, which challenged the lack of adequate heat for more than a month in cell blocks at the ACI's Intake Center. Immediately after the suit was filed, the DOC addressed the heating problems and began providing to ACLU attorneys daily monitoring reports documenting the temperature in the cellblocks. Those reports, as well as information received from inmates, confirmed

that the problem was resolved, prompting the suit's dismissal.

The lawsuit, filed by ACLU of RI cooperating attorneys Sonja Deyoe and Lynette Labinger, had argued that the facility's failure to provide adequate heat during the coldest months of the year had made cells "dangerously cold," placing prisoners' health and safety at risk, and constituted cruel and unusual punishment. The dismissal stipulation does not prevent the ACLU from suing again should similar complaints arise in the future. Concurrent to the dismissal of this case, the ACLU of RI received several complaints establishing that inmates in a certain section of Medium Security had been without hot water for weeks. The problem was resolved without legal intervention, after the ACLU of RI reached out to ACI officials demanding they fix the problem immediately.

2019 LEGISLATIVE PREVIEW: ANTI-CIVIL LIBERTIES LEGISLATION

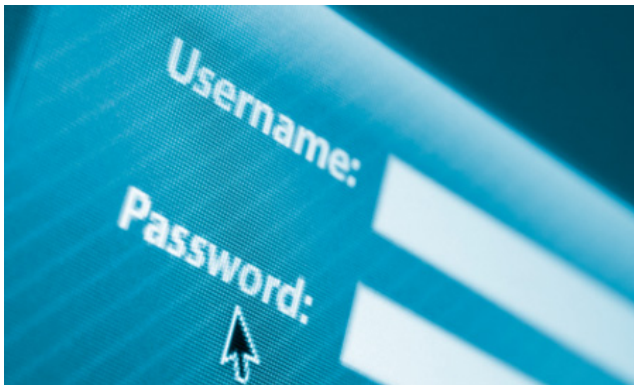
Our last newsletter looked at some of the proactive civil liberties bills introduced this session. Below is a snapshot of some of the bills that pose a threat to civil liberties. For updates on these and other bills, visit our website at www.riaclu.org/legislation.



TECH PRIVACY

Computer Verification (H 5255, S 125)

Although introduced as a bill that would hold state contractors accountable for their paid work, this Orwellian legislation would virtually ensure significant violations of personal privacy. The bill would require software to take screenshots of a contractor's computer every three minutes, which would be available to the state in "real time" in order to verify a contractor's billed hours.



MEDICAL PRIVACY

Opioid Overdose Notification (H 5383, S 139 Sub A)

The ACLU has been vigilant in opposing "solutions" to the opioid epidemic that compromise patient rights, including the right to confidentiality. It is for that reason we oppose both S 139 Sub A and H 5383, which would allow hospital emergency physicians in unspecified circumstances to notify the emergency contacts of a patient, without his or her consent, who has experienced a drug overdose. Critically, we noted that some patients may go to dangerous lengths, such as avoiding medical help altogether, in order to avoid having their condition disclosed against their wishes. The bill has passed the Senate.

Immunization Registry (H 5541, S 676)

These bills would authorize the Department of Health to create an adult immunization registry upon which the burden to opt out would rest on each individual. In objecting to the bill, we noted that databases containing private medical information should instead require patients to opt in. We also expressed concern over the proposed expansiveness of the data that the registry would be authorized to collect and maintain.

RIGHTS OF EX-OFFENDERS

Sex Offenders (H 5488, H 5755)

H 5488 would allow innkeepers to kick out a Level III sex offender who had lived in the establishment for more than 30 days, and H 5755 would allow a court to raise a sex offender's community notification level in an appeal seeking a lower level. In opposing these bills, we noted that harsh restrictions on the rights of sex offenders are counterproductive and often make it extremely difficult for them to reintegrate into the community.

School Psychologist Licensing (H 5228, S 267)

The ACLU continues to be concerned about the barriers that broad criminal-record background checks place on a person's ability to obtain an occupational license. H 5228 and S 267 exemplify these concerns by requiring candidates to provide evidence that they are of "good moral character" when applying for a school psychologist license. With no standards in place, this requirement could disqualify competent applicants based on irrelevant past criminal convictions. The ACLU is fighting a dozen other similar licensing bills.



VOTING RIGHTS

Presidential Tax Returns (H 5727, S 342)

The ACLU has long opposed legislative efforts to impose added qualifications for candidates to appear on the ballot in Rhode Island. For that reason, we oppose this bill, which would require presidential candidates to publicly disclose their federal tax returns in order to be listed on the ballot. We argued that the ability to vote for an individual's preferred candidate is a critical part of the fundamental right to vote.

Counting of Write-In Candidates (H 5709, S 477)

Regardless of who a vote is for, even if it is for an inevitably losing cause, all voters fundamentally deserve the right for their votes to be counted. For this reason, we oppose H 5709 and S 477, which would eliminate the counting of write-in votes for any person who had not filed in advance a "declaration of intent."

DUE PROCESS

Mandatory Minimum Sentencing Gun Bills (H 5022, H 5703, H 5739, H 5741, S 464, S 635, S 637)

The ACLU has consistently opposed the imposition of mandatory minimum sentencing terms on the grounds that they are ineffective, costly, eliminate individualized consideration of the offender and the circumstances of the offense, and place too much power in the hands of prosecutors instead of neutral judges. Numerous “gun bills” up for consideration this session contain provisions which would impose such sentences for new criminal offenses relating to weapons, and we have argued against all of their proposed sentencing schemes.

Emergency Commitment of Substance Use Disorder Patients (H 5751)

Similar to legislation introduced in previous years, H 5751 would allow a physician to request a hold on a substance-abusing patient and provide a process for a court hearing to determine if emergency commitment would be appropriate for the patient. We argued that although the bill is well-meaning, it raises massive due process concerns and could be counterproductive to the goal of recovery.

CIVIL LIBERTIES ADVOCACY TOOLKIT

Concerned about a vote on a particular issue? Contact your legislators!

Visit www.riaclu.org/legislation and click on ADVOCACY TOOLKIT for more information on legislative advocacy and ways you can get involved.

FIRST AMENDMENT RIGHTS

Anti-Panhandling (H 5330)

Rather than confronting the issues that cause individuals to engage in panhandling, H 5330 seeks to ban the practice instead. The bill would fine a motorist for passing anything out of their window to another individual while in an “active lane of travel.” While H 5330 penalizes the motorist rather than the panhandler, the right for individuals to peacefully exercise their First Amendment right to solicit donations is violated regardless of which side is punished. We testified in opposition to this bill. A similar bill was defeated in committee last year, and we hope to see the same outcome this session.



STUDENT RIGHTS

Threat Assessment Teams (H 5538, S 818)

A heightened fear of violence on school campuses has led to legislative efforts intended to mitigate potential threats. Unfortunately, those efforts often impinge on civil liberties; H 5538 is one of these bills. This legislation would create “threat assessment teams” for each school in RI and allow individual school boards to adopt relevant policies for their implementation. The ACLU of RI is concerned that these teams will be heavy on law enforcement and light on staff who provide mental health support. We also noted that enforcement protocols like this would disproportionately affect students of color and students with disabilities, whose behaviors, actions, and words are often perceived as more threatening than those of other students. This bill passed the House in April.

With only about a month left in the session, what is most striking is how little legislation has yet been voted on, meaning there will be a flood of legislation getting considered in the coming weeks. Check our website to stay informed.



IN MEMORIAM: Daniel M. Scott, III

Daniel M. Scott III, 58, passed away in April 2019. A professor at Rhode Island College for more than twenty-five years, Dr. Scott also published widely on the topics of African-American literature and gay literature. He was a very active ACLU of RI volunteer and Board Member, serving as the Affiliate’s Treasurer for many years. He was also an early Board member of Youth Pride. He will be remembered here for both his steadfast commitment to civil liberties, and his dignified, unpretentious, and welcoming presence.

STUDENT and YOUTH RIGHTS – IN THE NEWS

Central Falls Repeals Youth Curfew Ordinance

The Central Falls City Council has rescinded a juvenile curfew ordinance that had been on the books for more than a decade. The ACLU has long opposed the law on the grounds that curfews treat all young people as potential criminals and don't actually reduce crime. The laws also divert law enforcement resources away from real public safety issues. The repeal followed a December 2018 letter sent by the ACLU of RI and Progreso Latino to Central Falls Mayor James Diossa, urging he work with the City Council to eliminate the unjust ordinance.



Groups Applaud Commissioner of Ed Ruling Barring Schools from Charging for Field Trips

The ACLU of RI and RI Legal Services (RILS) applauded a “guidance document” issued by (now former) RI Department of Education (RIDE) Commissioner Ken Wagner, barring school districts from charging students fees for school-sponsored field trips. The guidance was issued in response to an inquiry from the East Greenwich School Committee. In October 2018, the ACLU and RILS sent Commissioner Wagner a letter urging him to reject the East Greenwich request, which sought to impose the fees as a means of dealing with the district's deficit. RIDE has a long-standing history of rebuffing similar efforts to charge students for a variety of activities, citing as grounds for that stance that districts have no authority under state law to impose the fees and that they interfere with a student's right to a free and equal public education.

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

The ACLU and RI Legal Services have also teamed up to appeal another RI Department of Education (RIDE) ruling upholding the Providence School District's method of providing services to English Language Learners (EL). The groups charge that RIDE has interpreted the state regulations as mandating less support to EL students than that which is actually required by federal law. The two groups had filed an administrative complaint with RIDE in April 2016 on behalf of parents of EL students in Providence whose children were



provided few or no direct services by a certified EL teacher. Providence claimed that these children were being adequately served by educators who consult with an EL certified teacher as infrequently as once every two months and for no specified amount of time. This “Consultation” model required no additional training for the non-certified teachers. Ironically, the U.S. Department of Justice (DOJ) last year concluded that this model was invalid under federal laws. Despite the DOJ's findings, the former Commissioner approved a decision upholding the Consultation model as valid under state regulations – which has prompted the appeal.

Woonsocket Revises Its Trans Student Policy After ACLU Intervention

After the ACLU raised red flags about the district's inadequate transgender policy, the Woonsocket School District changed course and implemented a comprehensive policy that models RIDE guidelines on the matter. Woonsocket was one of the last districts to comply with a statewide mandate by RIDE to have policies in place that protect the rights of transgender and gender non-conforming students.

60TH ANNIVERSARY EVENTS



BIRTHDAY BASH AT THE PUMP HOUSE

Thanks to everyone who came out to the Pump House on April 28th to hear live music from members of The Gnomes and Greyhound Dream! Thank you also to the musicians!! The Bash was a blast.

DEMYSTIFYING DEMOCRACY: HOW TO BE A CITIZEN WATCHDOG

On Saturday, March 23rd, five local open government groups – including the ACLU of RI – co-sponsored a hands-on demonstration of how to use RI public records and open meetings laws to hold government accountable.



WHAT PRESS? WHOSE TRUTH? (PANEL DISCUSSION)

On March 14th the Brown University Chapter and the ACLU of RI coordinated an engaging panel discussion with several well-known journalists and academics. Moderated by Brown professor David Eslund, the panel included Karen Bordeleau, CJ Chivers, Scott MacKay, and Francesca Procaccini.

UPCOMING EVENTS:



RI PRIDE FEST 2019

SATURDAY, JUNE 15, 2019, 12-5pm, S. Water Street, Providence, RI

One of the ways we're honoring our 60th Anniversary: a table at RI Pride Fest 2019 in downtown Providence. Of course, we always have a table, but this year is particularly special. Did you know: It was only because of an ACLU of RI lawsuit that the first annual Pride parade was held in 1976. Be sure to stop by!

JOIN US:

2019
LEGISLATIVE
WRAP-UP



LEGISLATIVE WRAP-UP (and DESSERT)

WEDNESDAY, JULY 24, 2019, 6-8pm at The Weaver Library,
41 Grove Street, East Providence

Who says politics can't be sweet? We hope you will join us for this popular annual event featuring YOUR lawmakers talking about the 2019 Legislative Session's important civil liberties bills. Free and open to all. Lots of dessert and coffee as usual.



Visit www.riaclu.org/events for more information on upcoming events.

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YOUR SUPPORT MAKES OUR WORK POSSIBLE. **THANK YOU.**

You, and supporters like you, enable all the work we do at the ACLU of RI. Take that in. Everything you read about in this (and every) newsletter is only possible because you care about civil liberties, and you show you care by donating, renewing your membership and/or volunteering your time. **THANK YOU.** To learn more about how you can get involved or **to make a special contribution in honor of the ACLU of RI's 60th Anniversary**, visit www.riaclu.org.

TUNE IN TO OUR CABLE SHOW: "RIGHTS OF A FREE PEOPLE"

PLAYING IN JUNE 2019:

What Press? Whose Truth? Panel Discussion on Free Speech

STATEWIDE:

Channel 13 (Channel 32 on Verizon FIOS)

Tuesdays 10:00 pm

Fridays 3:30 pm

PROVIDENCE/NORTH PROVIDENCE:

Channel 18 (Channel 38 on Verizon FIOS)

Wednesdays 9:00 pm

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