

## TWO VICTORIES FOR THE FIRST AMENDMENT

### COURT CONSENT JUDGMENT STRIKES FROM THE BOOKS CRANSTON ANTI-PANHANDLING ORDINANCE

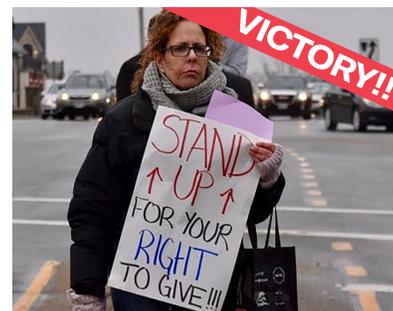
In a major victory for the First Amendment and the rights of the poor, U.S. District Court Judge William Smith has signed a consent judgment declaring Cranston’s anti-panhandling ordinance unconstitutional. As a result, the city is barred from enforcing it or enacting any similar ordinance.

The ordinance, enacted in 2017, barred any person from entering a roadway “for the purpose of distributing anything to the occupant of any vehicle or for the purpose of receiving anything from the occupant of any vehicle.” ACLU of RI cooperating attorney Lynette Labinger filed suit against the ordinance, arguing that it violated the First Amendment right of individuals to solicit donations and to distribute literature on Cranston roadways. In response, the Court issued a temporary restraining order against the ordinance’s enforcement, and that order remained in effect while discovery in the case proceeded.

Although City officials had claimed the 2017 ordinance was adopted as a “public safety” measure, discovery conducted for the lawsuit found absolutely no correlation between panhandling and pedestrian or motor vehicle accidents. In the consent judgment filed with the court, the City acknowledged that fact.

In April 2016, the ACLU had favorably settled a lawsuit against Cranston over a very similar ordinance which City officials acknowledged violated the First Amendment. Undaunted, the City Council nonetheless went ahead a year later to adopt the anti-panhandling ordinance at issue in this case.

Plaintiffs in the lawsuit were the R.I. Homeless Advocacy Project; two Cranston residents who wanted to leaflet on roadway medians but were barred from doing so under the ordinance; and Francis White, Jr., a person with disabilities who occasionally relies upon panhandling to support himself.



Plaintiff Debbie Flitman protesting.



### FIRST AMENDMENT VICTORY OVER PORTSMOUTH ATTEMPT TO BAN SIGNS ON PRIVATE PROPERTY

A federal judge has approved the settlement of a First Amendment lawsuit filed earlier this year which challenged the constitutionality of Portsmouth ordinance that banned political signs on residential property. The favorable settlement, which permanently bars enforcement of the ordinance, was on behalf of resident Michael DiPaola, who put up a series of signs on his lawn criticizing the Town’s enforcement of its zoning code. *(Continued on next page.)*

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## FROM THE DESK OF THE EXECUTIVE DIRECTOR

I am old enough to vividly remember the Rodney King beating and the injustice so many of us felt with the verdict. And I was heartened to see that history did not repeat itself this year with Derek Chauvin. But real justice for George Floyd is forever out of his reach, and the legacy of systemic racism is still very much with us.

In Rhode Island, we have been pushing for police reform for decades. And despite modest advances, the trends – of police traffic stop data, for example – are frustratingly stagnant. But we must stay the course, no matter how glacial the change. We must keep fighting – at the national level, but even more importantly at the state and local levels, where the harsh consequences of police misconduct are directly felt in communities on a daily basis.

Your support helps us defend Tre'sur Johnson, an innocent Black honors student in Pawtucket unlawfully arrested by a school resource officer. It allows us to fight widespread police department secrecy. It enables our decades of coalition work to end racist policing on our motorways.

Your commitment to civil liberties, to equality and to the rule of law makes all this work possible. Thank you, as always.

-- Steven Brown

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(...cont'd) Under the consent judgment approved by the federal court, the Town is permanently restrained from “enforcing and/or threatening to enforce” provisions of the Town’s sign ordinance as it relates to (1) any posting of signs by DiPaola on any property he owns in Portsmouth and (2) “any non-commercial speech signs” in the Town.

Di Paola has had a running feud with Town building officials over zoning issues, and the suit claimed he “posted the first sign after five years of frustration and perceived harassment” from those officials, “both in excessively enforcing codes against him and refusing to enforce building codes against others.” Over the course of a few days in January 2021, he erected additional signs, and he was then issued a notice of violation of the town’s zoning ordinance. He was given seven days to remove the signs or else face \$500 per day fines for each sign left standing.

The lawsuit, filed by ACLU cooperating attorney Richard Sinapi, argued that the zoning ordinance violated DiPaola’s free speech rights and had the unconstitutional effect of regulating political speech more harshly than other types of speech. The consent judgment entered in the case acknowledges the ordinance’s unconstitutionality.

## JUDGE REFUSES TO DISMISS “CIVIL DEATH” LAWSUIT; CASE WILL PROCEED

A federal judge has refused to dismiss a lawsuit challenging the constitutionality of a century-old statute declaring inmates serving life sentences to be “dead in all respects” with regard to their civil rights.

The lawsuit, filed two years ago by ACLU of RI cooperating attorneys Sonja Deyoe and Lynette Labinger, was brought on behalf of two ACI inmates who are barred from pursuing legal actions against the Department of Corrections because of the “civil death” law.

In rejecting the state’s motion to dismiss the lawsuit, the court wrote: “Plaintiffs’ inability to assert civil actions by virtue of this statute burdens their fundamental right of access to the courts because they are unable to challenge the conditions of their confinement, namely, the physical harm they allegedly suffered while confined.”

One of the plaintiffs, Joshua Davis, claims that a DOC nurse recklessly administered insulin from a contaminated vial of medication, but the civil death statute bars him from bringing claims alleging medical negligence or other violations of his rights. The ACLU also filed a “friend of the court” brief in the R.I. Supreme Court this month in a separate lawsuit challenging the statute’s legality.



ACCORDING TO THE LAWSUIT, RHODE ISLAND IS THE ONLY STATE IN THE COUNTRY STILL ENFORCING A LAW LIKE THIS, WHOSE ORIGINS DATE BACK TO ANCIENT ENGLISH COMMON LAW.

## 2021 LEGISLATIVE PREVIEW - PART 2: ANTI CIVIL LIBERTIES LEGISLATION

Here’s a look at some of the anti-civil liberties bills that the ACLU of RI is lobbying on this session. All of them are pending in committee. We covered some of the positive legislation in Part 1 – in the last issue of our newsletter. For up-to-date info on these and many other bills visit [riaclu.org/legislation](https://riaclu.org/legislation).

### FIRST AMENDMENT

**THIS BILL WOULD MAKE “LOITERING” ON A HIGHWAY A FELONY PUNISHABLE BY THREE YEARS IN PRISON.**

#### **Traffic Protests (H 5001, S 404)**

We opposed legislation which would make interference with traffic by standing, sitting, kneeling, or otherwise “loitering” on a highway a felony punishable by three years in prison. Our testimony objected to the bill’s clear targeting of BLM protests and individuals engaged in First Amendment activity, and pointed out that the penalty provisions were more severe than the statutory punishment for drunk driving or “driving so as to endanger” offenses.

#### **“Child Erotica” (H 5614, S 502)**

Child pornography is a serious crime with strong penalties, but we opposed this legislation which would carve out a new exception to the First Amendment and criminalize the possession or display of vaguely defined “child erotica” when used for the “specific purpose of sexual gratification...from viewing the visual portrayals.” We noted that the possession of constitutionally protected material cannot be elevated to a criminal offense based on how the person viewing it reacts, yet this bill could unconstitutionally subject individuals to punishment based on a prediction of their reason for purchasing a DVD of an “erotic” movie like *The Blue Lagoon*.

### CRIMINAL JUSTICE

#### **The Statehouse-to-Prison Pipeline (H 5390, S 670)**

Every year, dozens of bills get introduced creating new, but unnecessary, crimes or increasing the penalties for current criminal offenses. This year has been no exception. One bill would create a new crime aimed at “porch pirates,” individuals who commit larceny by stealing packages from the front of a house or other dwelling. Despite preexisting penalties for theft, which this activity would certainly fall under, the legislation would also provide for confiscating any car used in the commission of this offense, which would ultimately also harm the lives of the offender’s family members. Another bill, expanding the scope of a law criminalizing the “exploitation of elders,” could subject a person to a five-year prison sentence for stealing any amount of money or property from a person over the age of 60. We vigorously opposed both bills.

In RI, being a serial graffiti artist could get you a **LONGER PRISON SENTENCE** than being a serial drunk driver.



#### **School Volunteer Criminal Record Check (H 5748, S 393)**

In a move that would prevent some parents and guardians from meaningfully engaging in their student’s education, this legislation would require a federal criminal background check before they could volunteer at their child’s school. We noted this could prevent engaged parents from volunteering solely on the basis of minor or outdated criminal charges, and additionally expressed concerns that the fingerprinting requirement would almost certainly deter undocumented families from volunteering at their child’s school.

## 2021 LEGISLATIVE PREVIEW - PART 2: ANTI CIVIL LIBERTIES LEGISLATION (cont'd)

### REPRODUCTIVE FREEDOM



#### Anti-Abortion Rights Legislation (H 5037, H 5582, H 5552, H 5579, H 5865, H 5996)

In 2019, the General Assembly passed the Reproductive Privacy Act, which ensured that the tenets of *Roe v. Wade* were codified into state law and that safe, legal abortion access was protected for all Rhode Islanders. The importance of this legislation was made especially clear in light of a slew of anti-choice bills introduced this session. We testified in opposition to all these bills which, among other things, would ban many abortions before fetal viability and override the health needs of patients requiring termination of their pregnancy for medical reasons.

### STUDENTS' RIGHTS

#### Prohibition on Teaching “Divisive Concepts” (H 6070)

Testifying that this bill was not only an assault on free speech but that it would inappropriately quash important teaching and conversation around such issues as institutional racism or sexism, we opposed legislation that sought to ban the teaching of “divisive topics” in public schools. Among other things, the bill barred teaching subjects that could cause “discomfort, guilt, anguish, or any other form of psychological distress” to an individual on account of their race or sex, language so vague and subjective that it was inherently unenforceable and a direct attack on academic freedom.

### RACIAL JUSTICE

#### Police PTSD Disability Benefits (H 6010)

Particularly in the context of the egregious and highly publicized police killings of unarmed civilians across the country, police accountability has never been more important. In addressing legislation designed to permit police officers to apply for disability benefits based on occupationally related PTSD, we opposed a provision that could allow them to recoup disability benefits stemming from their own misconduct. We urged amending the bill so that police officers could not seek compensation following these types of incidents.

WE URGED AMENDING THE BILL SO THAT POLICE OFFICERS COULD NOT SEEK COMPENSATION FOLLOWING INCIDENTS OF THEIR OWN MISCONDUCT.

AS WORDED, THIS LAW COULD BE USED TO ENHANCE THE PENALTIES AGAINST BLACK LIVES MATTER PROTESTERS CHARGED WITH A MINOR OFFENSE RESULTING FROM A PROTEST.

#### Office of the Civil Rights Advocate (H 5860, H 6147, S 729, S 803)

The ACLU was forced to oppose two Attorney General bills designed to beef up the role of that office’s Civil Rights Advocate (CRA) and address hate crimes. One bill, though purportedly intended to provide the CRA more power to address police misconduct, instead broadly expanded that office’s investigatory powers that could just as easily be used against those protesting or organizing against police abuse. The ACLU was joined by a number of community groups in opposing the bill for that reason. The Affiliate also opposed separate legislation that would expand the scope of the Hate Crimes Sentencing Act – a law that, over ACLU opposition, carries mandatory minimum sentences – in a way which could establish a hate crime based solely

on the defendant’s speech without a finding of animus. We noted that, as worded, the broadly written law could be used to enhance the penalties against Black Lives Matter protesters charged with a minor offense resulting from a protest against systemic racism.

**OPEN GOVERNMENT**

**APRA Exemption for Police Officer Residency (H 5417)**

This legislation would amend the open records law to make confidential the municipality where police officers reside. We opposed the bill, noting that the public has a right to know whether their law enforcement personnel live in the communities they serve. Ironically, police officials lobbying for this exemption for themselves are pressing for passage of another bill that would give all officers the ability to obtain from phone companies, without a warrant, the unpublished names, addresses and phone numbers of any individual (H 5869).

IRONICALLY, POLICE LOBBYING FOR THIS EXEMPTION ARE ALSO PRESSING FOR PASSAGE OF ANOTHER BILL THAT WOULD LET OFFICERS OBTAIN FROM PHONE COMPANIES, WITHOUT A WARRANT, THE UNPUBLISHED NAMES, ADDRESSES AND PHONE NUMBERS OF ANY INDIVIDUAL.

**WORKPLACE RIGHTS**

**Worker’s Compensation and Intoxication (H 5473)**

We opposed legislation that would create a presumption of intoxication if a person is injured or dies on the job and is found, through a blood test, to have in their system any alcohol, an unlawfully prescribed drug, or a prescribed drug that has not been used properly. We argued that not only would this provision be harmful to lawful users of medical marijuana and other medications, but it could make it all too easy for employers to get off the hook for workplace injuries by imposing the burden of proof on the injured employees to demonstrate that they were not impaired on the job.



**Workplace Bullying (S 196)**

While ensuring a healthy workplace is a laudable goal, a piece of legislation already passed by the Senate would create a far-reaching employee “civility code” and impose liability on employers or co-workers who were “pestering” others or disturbed an employee’s “emotional tranquility in the workplace.” We testified that such vague standards raised basic First Amendment and due process concerns, and also pointed out that the legal remedies the bill contained were broader than those available to victims of race or sex discrimination under the state’s Fair Employment Practices Act.

**MEDICAL PRIVACY**

**Health Insurance Exchange (H 6210, S 495)**

For over a decade, our organization has maintained that the inclusion of personal health care and medical information through the RI Health Insurance Exchange (HIE) must be on a strictly voluntary basis through an opt-in, rather than an opt-out, system. We opposed this legislation which would seek to reverse and undermine this opt-in procedure and impose an opt-out system instead. When it pertains to patient autonomy, opt-in procedures more appropriately place individual patients in the best position to control where and how their personal medical information is stored or disclosed. Amending this statute to instead provide for an opt-out procedure shifts the privacy burden on the wrong party for the sake of bureaucratic convenience.

**Senate Oath Requirement (S 336)**

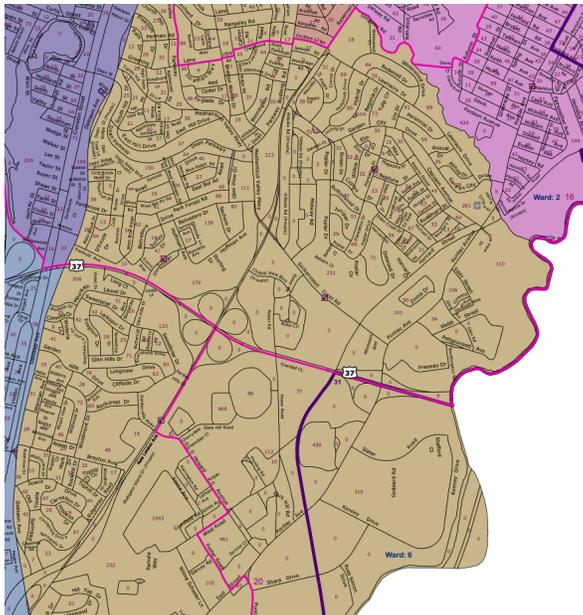
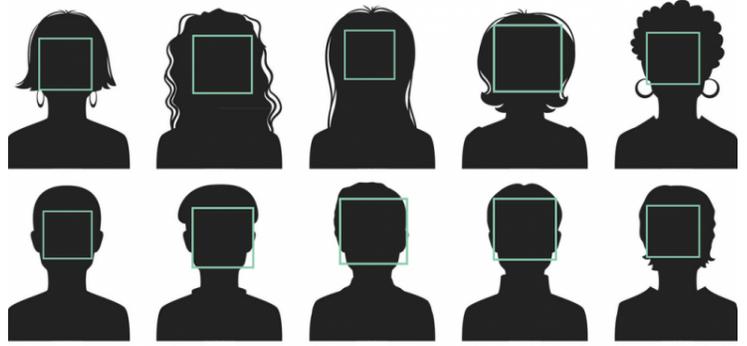
A substitute version of the 2021-2022 Senate rules that has passed includes a troubling provision giving committee chairs complete discretion to require witnesses to testify under oath. As a result, a person alleged to have testified untruthfully could be criminally charged with perjury. The League of Women Voters RI, Common Cause RI and the ACLU of RI strongly opposed this provision and argued that it would have a chilling effect on free speech and the right of residents to petition the government by allowing legislators to inappropriately hold the threat of a perjury charge over them for any misstatements. Unfortunately, an amendment that would have repealed this provision was defeated by a vote of 9-28.

## NEWS BRIEFS

### Does RI Law Enforcement Use Facial Recognition?

Amidst national reports of increased law enforcement use of facial recognition technology, the ACLU of RI has submitted open records requests to every police department in the state for documentation of any policies and contracts they have related to this controversial tool.

A recent *Buzzfeed* news story indicated that more than 20 police departments in Rhode Island may have made use of the technology to a greater or lesser extent in the recent past. The ACLU's broad inquiry comes as government officials continue to expand digital surveillance tools without court or legislative oversight.



Cranston, Ward 6, Home of the ACI

### Cranston Fails to Act on Prison Gerrymandering

Despite the urging of the ACLU and many local ACLU members, the Cranston City Council will not require a planned Reapportionment Commission to address prison gerrymandering when drawing district ward lines. Prison gerrymandering refers to the practice of counting all inmates at a prison as living there for purposes of redistricting. The impact of skewing districts this way is that the voting strength of inmates' home communities is diluted, while the political influence of the residents in the prison's district is grossly inflated compared to the other ward districts.

A motion by City Councilor John Donegan to require the Commission to address prison gerrymandering in drawing city ward lines was defeated on a 5-4 party line vote. Despite this unfortunate loss at the municipal level, the ACLU continues to fight in the General Assembly for passage of a state law to ban the practice.

### Coalition Testifies in Support of Permanent Use of Drop Boxes for Elections

The ACLU, joined by the RI Voting Access Coalition, a group of more than two dozen organizations focused on providing better access to the ballot, submitted testimony in support of proposed state Board of Elections' rules that would make the use of "drop boxes" a permanent feature of state and local elections. Drop boxes are receptacles placed in front of city and town halls that allow a voter to cast their completed mail or emergency ballots without having to go inside the building or a polling place. Throughout the pandemic, the Board adopted emergency regulations requiring a drop box in each municipality 20 days prior to a scheduled election. In expressing support for the regulation making drop box use a regular feature of future election, the coalition testimony also suggested some amendments to further the rule's goals.



LEGAL BRIEFS



Plaintiff Lindsay Koso

**APRA Lawsuit Against AG Resolved**

In response to our Access to Public Records Act (APRA) lawsuit against the state’s Attorney General (AG), the AG’s office has agreed to waive a \$225 fee they charged a Roger Williams University Law School student for providing her with public reports that they are required by law to prepare and submit annually to the General Assembly. The ACLU of RI had sought a judicial declaration that search fees must be waived by agencies under these circumstances and that an agency may not dismiss an APRA request if someone fails to prepay the search fees. Ultimately, the AG’s action preempted court intervention or consideration of those issues.

**SCOTUS Hears Oral Argument in 4<sup>th</sup> Amendment Case from RI**

The U.S. Supreme Court heard oral arguments in an important Rhode Island case related to the scope of Fourth Amendment protections and police warrantless searches of the home. Earlier this year, the ACLU of RI filed a “friend of the court” brief which argued that an unfavorable ruling in the case could “give police free rein to enter the home without probable cause or a warrant, whenever they think it is ‘reasonable’ to do so.” The case involves Cranston resident Edward Caniglia, whose lawfully owned firearms were seized from his home without a warrant or his consent in a non-emergency situation as a result of a “wellness check” conducted by Cranston police officers. The ACLU won a partial victory for Caniglia in the lower courts. In the appeal to the Supreme Court, the issue being considered is whether a court-created “community caretaking” exception to the Fourth Amendment’s warrant requirement can be applied to searches of the home. In past cases, it has been applied only to searches of impounded cars.

**RILS & ACLU File Brief Arguing that State Education Policy Undermines Rights of English Language Learners**

Rhode Island Legal Services and the ACLU filed a brief in R.I. Superior Court seeking to overturn a decision issued last year by the Council of Elementary and Secondary Education that the groups claim violate the rights of English Learners throughout the state. The brief was submitted as part of a lawsuit filed last year by the two groups, arguing that the Council and the Department of Education have interpreted state regulations governing EL instruction to provide less support to those students than federal law requires. The brief claims that the “inequities and failures” generated by this flawed policy “have only been exacerbated by the pandemic,” and the urgency to address the problem has “never been greater.”



Plaintiff Dimitri Lyssikatos

**AG Opinion Muddies Access to Police Misconduct Records**

The ACLU is considering next steps after the Attorney General issued an opinion addressing public access to reports of investigation of police misconduct. The Affiliate had filed a complaint on behalf of open government watchdog Dimitri Lyssikatos after the Narragansett Police refused to release copies of any reports of internally generated police misconduct complaints. While the AG ruled that the department had to release in redacted form 14 of the 15 requested reports, the ACLU found the “balancing test” used by the AG in making those decisions extremely problematic. The Affiliate is currently in court on behalf of Lyssikatos over a similar denial of records by the Pawtucket Police Department.

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**YOUR SUPPORT has a real impact. The proof is on every page of this newsletter.**

THANK YOU.

**Here's how you can have an even greater impact:**

**MAIL A DONATION**

Use the return envelope in this newsletter to mail a check made out to "ACLU Foundation of RI." Your donation is tax-deductible, and you don't even need a stamp!

**MAKE A GIFT ONLINE**

Visit [www.riaclu.org/get-involved/donate](http://www.riaclu.org/get-involved/donate) to make a one-time gift or set up a recurring donation.

**SAVE THE DATE & RSVP TODAY!**

**Thursday, May 13, 1-2pm via ZOOM**

Should there be police in public schools? How can we fix racial disparities in school discipline rates? What happens when schools can spy on student computers?

**WHEN: Thursday, May 13, 1-2pm**

**WHAT: School Suspensions, SROs, & Student Privacy – A (virtual, via Zoom) Town Hall on 2021 Education Legislation**

Join us via Zoom for a closer look at current legislation involving public education in the General Assembly. Learn what they mean for civil liberties and what YOU can do.

**To register for this free Zoom event, visit [riaclu.org/events](http://riaclu.org/events).**