

THE NEWSLETTER OF THE ACLU FOUNDATION OF RI

SAFEGUARDING VOTING RIGHTS & VOTERS' HEALTH

DESPITE RNC VOTER SUPPRESSION EFFORT, CHALLENGE TO MAIL BALLOT WITNESS REQUIREMENT PREVAILS IN SUPREME COURT

In a major victory for voting rights, the U.S. Supreme Court rejected efforts by the Republican National Committee and the RI Republican Party to block the state from eliminating mail ballot witness requirements for this fall's elections due to the COVID-19 pandemic. Rhode Island is one of a small minority of states with onerous witness requirements that are in addition to existing voter fraud safeguards.

The 6-3 decision came in response to an emergency class-action lawsuit filed jointly by the ACLU, the Campaign Legal Center, and the law firm Fried Frank, challenging the state's witness requirements for mail voting throughout the 2020 elections. The suit sought to block the requirement that those who vote by mail must have two witnesses or a notary sign their ballot envelope. The lawsuit noted that the signature requirements necessitate face-to-face and hand-to-hand interaction, forcing voters to choose between exercising their right to vote or protecting their health in the middle of a pandemic where such interaction has been actively discouraged by public health officials.

The suit was filed on behalf of Common Cause RI, the League of Women Voters of RI and several voters with serious pre-existing medical conditions who had been self-isolating and expressed fear for their health if forced to interact with witnesses in order to cast a mail ballot. The ACLU filed the suit after the General Assembly killed a bill waiving the requirement and the Governor abstained from issuing an executive order to do so, an act she had taken for the June Presidential primary.

Shortly after the suit was filed, the ACLU and state elections officials reached a formal agreement to suspend the witness/notary requirement for the September and November elections, but at the 11th hour, the RNC and the RI Republican Party intervened in the case, alleging that suspending the requirement would lead to voter fraud. The district court rejected that argument, as did the First Circuit Court of Appeals, which called the fear of voter fraud "dubious as a matter of fact and reality."

In response, the Republicans appealed to the Supreme Court which, in a short unsigned order, rejected the appeal over the dissents of Justices Alito, Thomas and Gorsuch. It was the first, and only, emergency election lawsuit out of seven that SCOTUS considered during the pandemic and did not overturn. The ruling has now been successfully used in a handful of other states to vindicate similar emergency election actions.



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FROM THE DESK OF THE EXECUTIVE DIRECTOR

Here in Rhode Island and across the country, we are witnessing extraordinarily serious threats to democracy.

Throughout times of unrest, the principles of the Bill of Rights have provided a roadmap for a just and equitable way forward. But now, more than ever, those principles are under attack. Voter suppression is the most obvious current example and, as our cover story shows, we have not been immune to it in the Ocean State.

We must do everything in our power to challenge that. To that end, we will actively monitor the polls to ensure a fair election. We will continue challenging behind-the-scenes abuses of power, including efforts to weaken public accountability and transparency.

And we will continue fighting for racial justice on behalf of people like Michael Clark, whose lawsuit is described on the following page. **We will not let our guard down.**

The next few months are absolutely critical. We must watch closely and act quickly. With your ongoing support and partnership, that is precisely what we will do. Thank you as always.

-- Steven Brown

ACLU FOUNDATION of RI
128 Dorrance Street, Suite 400
Providence, RI 02903
(401) 831-7171
info@riaclu.org

MORE VOTING RIGHTS NEWS

ELECTRONIC SIGNATURES OK'ed FOR CANDIDATES TO QUALIFY FOR BALLOT IN RI

As a result of a successful lawsuit filed in June by ACLU of RI cooperating attorney Armando Batastini, candidates were able to gather electronically the signatures needed to qualify to appear on the ballot in RI. The authorization for electronic signatures supplemented a state law requirement for “in-person solicitation and receipt of signatures, an in-person witness, and use of a common petition.” Similar to the ACLU’s “mail ballot witness” case, the lawsuit claimed that the in-person signature process was, in the context of a pandemic, unconstitutional in light of public health guidance. U.S. District Judge Mary McElroy agreed, and ruled that an alternative electronic signature gathering process could be used for this year’s elections. The lawsuit was filed on behalf of six Senate candidates, all of whom ended up obtaining the necessary signatures to qualify for the ballot.

POLL MONITORS WANTED

Poll monitors play an important role in ensuring fair elections. Are you interested in being an ACLU of RI poll monitor for the November 3rd election? Email us at info@riaclu.org and put “poll monitor training” in the subject line to be invited to our next (virtual) training session.

VOTING RIGHTS COALITION PROMOTES CHANGES TO ELECTION PRACTICES

The Voting Access Coalition, of which the ACLU of RI is an active member, helped secure a number of changes to election laws and practices this election season in conjunction with the Secretary of State and Board of Elections. They included:

- Promoting the passage of legislation (see page 4) that allows for early voting at local boards of canvassers.
- Ensuring the availability of drop boxes at every polling location and city or town hall for voters to be able to drop off their mail ballots.
- Successfully lobbying for the sending of a mail ballot application to every qualified voter in the state for November.

KNOW YOUR (VOTING) RIGHTS

For more info on voting in RI in 2020, including vote-by-mail and early in-person voting, visit:

<http://www.riaclu.org/issues/voting-rights>

The site includes downloadable “know your rights” pamphlets in English and Spanish.

ACLU OF RI SUES ON BEHALF OF BLACK RECRUIT DRUMMED OUT OF PROVIDENCE POLICE ACADEMY

Amidst ongoing nationwide calls for racial justice and police accountability, the ACLU of RI has filed a lawsuit charging the Providence Police Department with violating the rights of a Black recruit who was dismissed from the city's police training academy after enduring months of harassment from trainers.

Filed on behalf of Michael Clark by ACLU cooperating attorneys Sonja Deyoe and Georgi J. Vogel-Rosen, the suit states that throughout his time at the Academy, Clark was subjected to "retaliatory, punitive, discriminatory, demeaning and humiliating treatment" based upon both his race and an earlier exercise of his First Amendment rights. Specifically, the lawsuit claims he was singled out for discriminatory treatment because of Christian rap songs that he wrote and posted on social media a year before entering the Academy. One of the songs referred to Black men being killed by police and included lyrics denouncing police violence.

The harassment began on Clark's very first day at the Academy, when the training officers directed him to put a "do-rag" on his head and told him to sing for the rest of the class. Despite the pervasive harassment that continued, Clark passed all academic and physical fitness requirements, attended every day of class, and was in the elite running squad. However, he was dismissed from the Academy just weeks before he was scheduled to graduate. The lawsuit seeks numerous forms of relief from the City to address the various issues raised by Clark's case.

TITLE IX LAWSUIT AGAINST BROWN UNIVERSITY RESOLVED AFTER RELEASE OF EXPLOSIVE DOCUMENTS

In response to an ACLU lawsuit, Brown University has agreed to restore two women's sports varsity teams that it had initially cut in violation of a long-standing consent decree – the result of a landmark 1998 settlement – that forced the school's compliance with Title IX gender equity laws in its athletics programs. The case was settled after a series of internal communications made public in the litigation revealed an intentional plan by Brown University officials to undermine the consent decree.

Those damaging documents were revealed in the ACLU's court brief challenging the university's decision to cut five women's varsity teams and only three of the men's teams. Referring to the 1998 agreement in internal correspondence, school officials expressed a desire to "kill this pestilential thing" and force a dispute over the decades-old settlement rather than comply with its terms.

Under the 1998 decree, if Brown eliminates any women's varsity team, it must offer women and men student-athletes opportunities to participate in intercollegiate athletics within 2.25% points of women's and men's undergraduate enrollment rates. The cuts Brown initially proposed would have resulted in a disproportionate impact on women's representation in the athletics program in violation of the agreement, something Brown President Christina Paxson publicly acknowledged. In addition to restoring the two women's teams, the latest settlement requires the 1998 decree to stay in effect for four years, and continues to subject the University to Title IX requirements thereafter.



PLAINTIFF MICHAEL CLARK

TITLE IX GUARANTEES

- Freedom from gender-based violence and harassment
- Gender equality in dress codes, and freedom from sex stereotyping
- The rights of pregnant and parenting students
- Equality in athletic opportunities

ACLU
RI

LEGISLATIVE UPDATE

Though the 2020 legislative session has been severely hindered by the COVID-19 pandemic, the ACLU of RI has continued to pay close attention to Statehouse activities. After cancelling sessions in March, April, and May, the General Assembly briefly reconvened for a few days in June and July and passed some positive civil liberties legislation. Since then, the state has been stuck in limbo as the legislature waits for federal action on additional stimulus funding and does not plan to reconvene until November. In the meantime, the ACLU of RI has continued to advocate on two budget provisions. Here is a very brief look at some legislation that recently passed and what we continue to monitor.

PENDING BUDGET ARTICLES

School Mental Health Counselor Funding (Article 10):

Since 2018, Rhode Island has incentivized the introduction of school resource officers (SROs) to schools by reimbursing districts who hire new ones. The ACLU has consistently opposed SROs as they often inappropriately turn normal adolescent behaviors into issues of criminal justice. A provision in the FY2021 budget would expand this reimbursement structure to support the hiring of mental and behavioral health counselors. The ACLU is supporting this effort to ensure that students have personnel on their campuses whose training is conducive to their social-emotional and behavioral needs.



Insurance “Gender Rating” (Article 20): While a number of critical protections from the Affordable Care Act were included in the Governor’s draft budget for codification into state law, an additional ACA provision which would ensure that patients cannot be charged disparate rates for health insurance based on their gender was not included. The ACLU, along with other organizations, is actively lobbying for its inclusion before final passage of the budget.

PASSED

Uniform Parentage Act (H 7541A, S 2136B): Among the important bills passed in June was the Uniform Parentage Act, which cleared up ambiguities in family law statutes and guaranteed that LGBTQ families can establish parentage in a manner consistent with all other families. The passage of this bill was a huge victory for the LGBTQ community and an important one for the legislature to have acted upon.



Early Voting (H 8102A, S2598A): Seeking to avoid a crush at the polling places in the midst of a pandemic, the General Assembly approved in July significant legislation providing for early voting at city and town halls in the 20 days preceding an election.

Commission to Review Law Enforcement Officer Bill of Rights (S 2867): In response to the Black Lives Matter movement, the Senate created a commission to review the RI Law Enforcement Officer Bill of Rights, a law that often shields police misconduct from public scrutiny. The ACLU is monitoring the commission’s work and plans to recommend revisions to the statute to make police departments more accountable.

NEW REPORT: LACK OF PRIVACY PROTECTIONS ON SCHOOL-LOANED COMPUTERS

In a follow-up to a June 2017 survey of district policies for school-loaned computer programs, a recent review found that an alarming lack of privacy protections persists. The situation is particularly concerning given that all RI schools rapidly transitioned to use of loaned devices for virtual learning at the outset of the COVID-19 pandemic.

The survey specifically found that most school districts continue to give officials the power to access the contents, microphone and camera of the devices at any time. The survey further revealed that most policies explicitly advise students that they have no expectation of privacy on the devices even if they are available for both academic and personal use at home. The report also raised concerns about schools' use of third-party remote learning platforms without ensuring that the programs comply with a state law prohibiting the commercial use of student data. The report, which is available on the ACLU of RI's website, calls on school districts and the General Assembly to enact policies that address these privacy concerns.

OPEN GOVERNMENT NEWS

Open Government Groups Call for Reversal of Executive Order Undercutting Public's Right to Be Heard

The ACLU, Common Cause, and the League of Women Voters have sent a letter to General Assembly leaders asking them to repeal an Executive Order (EO) issued by Governor Raimondo that undercuts government transparency. The EO is related to the Administrative Procedures Act (APA), which governs the creation of administrative rules that have the force of law. One provision of the APA allows for the adoption of emergency rules that do not have to go through an otherwise-required public comment period. Rules adopted under that provision normally expire after four months, but the EO allows unlimited extensions for such rules. As a result, executive agencies can postpone indefinitely the need to accept, or respond to, public comment. The letter calls on the legislature to overturn the EO and reinstate the public's role in the administrative rule-making process.

Another Disappointing AG Opinion Shields Public Records of Police Misconduct

In a major blow to police accountability, the RI Attorney General's office has issued an Access to Public Records Act (APRA) opinion which makes it more difficult for the public to monitor allegations of misconduct by police officers in the state. This setback for open government came in response to an APRA complaint filed by ACLU of RI cooperating attorney James Cullen against the Narragansett Police Department for refusing to release any copies of its final investigations of complaints of police misconduct.



In 1982, the R.I. Supreme Court ruled that similar reports constituted public records relating to the "management and direction of a law enforcement agency" and were required to be disclosed under APRA. In recent years, however, Attorney General advisory opinions, including this newest one, have continued to narrow the scope of that ruling. While the Attorney General's opinion strongly suggests that at least some of the records would need to be turned over to the R.I. Accountability Project, the local watchdog group on whose behalf the ACLU filed the complaint, the decision gives the Police Department broad leeway in determining which ones should be released. The ACLU plans to pursue this issue to the RI Supreme Court and seek reaffirmation of the 1982 decision.

NEWS BRIEFS

South Kingstown Amends Executive Order Restricting Gatherings of URI Students

In response to the ACLU's strong objections to a South Kingstown Executive Order barring gathering of 15 or more people, and creating "public nuisance" penalties for gatherings attended by URI students, the town quickly amended the Order to address the Affiliate's significant concerns. In a letter to town officials, the ACLU called the original executive order "an extraordinary abuse of municipal power that went well beyond the thoughtful restrictions put in place by the Governor and the Department of Health." By its own terms, the Order banned classes at URI or any other school in the town with more than 15 people, no matter what social distancing practices were in place, and prohibited a wide array of other activities, such as religious services, that were allowable elsewhere in the state. The ACLU had also objected to the order's singling out of URI students for punitive treatment. The completely revised order, adopted after the ACLU's objections, simply mirrors the social distancing requirements that are already in effect under Gubernatorial executive orders.

Groups Applaud Dept of Ed Guidance on Providing Services to Students with Special Needs

Due to COVID-19 related school closures in the spring, some students with disabilities were not able to access all of the services required by their individualized education plans (IEPs) and, as a result, did not make progress on their goals. In response, several organizations, including the ACLU of RI, called on Education Commissioner Angélica Infante-Green to address the situation. As a result, Infante-Green issued important policy guidance to school districts confirming their obligation to provide in-person services to these students and outlining specific measures schools should take to fulfill this mandate. The groups that wrote the Commissioner will be monitoring school district compliance with the guidance as the fall school year begins.

Court Dismisses Libel Lawsuit Against Massachusetts Blogger

Agreeing with ACLU arguments, a federal judge has dismissed a libel lawsuit that was filed against a controversial Massachusetts blogger who had initially been ordered by a Rhode Island Superior Court judge to remove all blog content about the person who sued him. Last year, the blogger, Aidan Kearney, reposted a video and numerous Facebook comments originally posted by Hopkinton resident Kathryn Narcisi, who had requested media coverage of an incident where she claimed a hospital refused to treat her for an autoimmune disease. Kearney mocked her request with a blog titled, "Failure Swift Gets Kicked Out of Warwick's Kent Hospital for Faking Sickness, Posts Facebook Video Whining in Lobby, Tries to Get National News Attention ..."

Narcisi sued Kearney, claiming she had been "defamed and discredited." At a court hearing held without Kearney's knowledge, a RI Superior Court Judge initially issued an order requiring Kearney to remove all references to Narcisi from his website. Kearney contacted the ACLU, and cooperating attorney Lynette Labinger had the case removed to federal court, where she filed a formal motion to dismiss Narcisi's lawsuit. U.S. District Judge Mary McElroy granted the motion in September, concluding that any lawsuit against Kearney needed to be filed in Massachusetts, not Rhode Island.

ACLU OF RHODE ISLAND BOARD ELECTIONS

If you are interested in serving on the ACLU of RI's Board of Directors, let us know and we will provide you additional information about Board Member duties and responsibilities. Send your name and contact information to us at info@riaclu.org by October 8th, and your name will be reviewed by the Affiliate's nominating committee when it meets in the fall.

2020 ANNUAL MEETING PROGRAM BOOK

Advertisement Form

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Please send this form along with your check made payable to ACLU Foundation of Rhode Island (or provide your credit card info below) to:

**128 Dorrance Street, Suite 400
Providence, RI 02903**

Questions? Call the ACLU office at 831-7171.

DEADLINE:
**Please submit your ad by
October 16, 2020.**

Note: Due to the COVID-19 pandemic, the 2020 Annual Meeting will be held virtually.

Stay tuned for more info!



NOTE: The grid below represents the ad sizes (in inches) and corresponding rates:

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1/8 page: 3 ¾ x 2 ½

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**YOUR SUPPORT MADE OUR RECENT
VOTING RIGHTS VICTORIES
POSSIBLE.**

**HERE'S HOW YOU CAN CONTINUE TO
HELP BY GIVING TODAY:**

MAIL A CHECK:

Use the return envelope in this newsletter to mail us a check made out to "ACLU Foundation of RI." *You don't even need a stamp!*

GIVE ONLINE:

Visit www.riaclu.org/get-involved/donate to make a one-time gift or set up a recurring donation.

**YOU ARE INVITED!
OCTOBER 7th TOWN HALL**

Join us – via Zoom - for an ACLU of RI virtual town hall. Learn more about some of the civil liberties battles we are facing in Rhode Island.

WHAT:

ACLU of RI Town Hall (Via Zoom)

WHEN:

Wednesday, October 7, 2020, 5:30-6:30 pm.

TO RSVP:

To RSVP, send an email to director@riaclu.org, and we will send you the link to register.

JOIN US VIA ZOOM on OCT 7!