ACLU Rhode Island

RHODE ISLAND CIVIL LIBERTIES

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THE NEWSLETTER OF THE ACLU FOUNDATION OF RI

ON HEELS OF LEAKED DRAFT OF ABORTION OPINION, RI SUPREME COURT RULES RI REPRODUCTIVE PRIVACY ACT IS HERE TO STAY

On the heels of a leaked US Supreme Court draft majority opinion that would overturn the landmark 1973 decision that legalized abortion, the RI Supreme Court has ruled that the Reproductive Privacy Act (RPA) – a 2019 statute codifying *Roe v. Wade* into state law – is constitutional, keeping Rhode Island a safe haven for abortion rights.

The ruling came in a lawsuit filed by three abortion opponents on behalf of themselves and two fetuses, claiming that the RPA violated the state Constitution. The ACLU of RI filed a "friend of the court" brief in the case in defense of the RPA, and the Court agreed that "in no way" was the General Assembly precluded from enacting the statute.

After years of pro-choice advocacy, the General Assembly enacted the law in recognition that abortion rights were at risk at the federal level. The RI Supreme Court ruling ensures that, no matter what the US Supreme Court does, abortion will remain safe and accessible in this state.

WHAT'S NEXT ON ABORTION?

The ACLU of RI and other local pro-choice groups are supporting the Equality in Abortion Coverage Act (H-7442/S-2549), a bill being considered that would ensure that abortion is covered by Medicaid and by state employee health insurance plans, making safe abortions economically accessible to more Rhode Islanders.

TWO CRIMINAL JUSTICE VICTORIES

JUDGE ORDERS RELEASE OF UNLAWFULLY INCARCERATED JUVENILE OFFENDERS

Following ACLU lawsuits filed earlier this year, a RI Superior Court judge this month ordered the release of three people who were convicted of crimes when they were teenagers and were recently granted parole, but who nonetheless continued to be held at the ACI. Cooperating attorneys for the ACLU challenged their continued detention as violating a law enacted last year by the General Assembly which aimed to give young offenders serving lengthy sentences a chance for early release on parole. (Cont'd on p.2.)

COURT (FINALLY) STRIKES DOWN ARCHAIC "CIVIL DEATH" LAW

In an important victory for the principle that the courts should be open to all for redress, the RI Supreme Court declared unconstitutional an archaic state law that declares inmates serving life sentences to be dead with respect to "all civil rights."

The decision came in an appeal brought on behalf of two prisoners serving life sentences at the ACI who filed negligence lawsuits against the prison, but whose suits were stymied on the grounds that the "civil death" law barred them from seeking judicial relief for their alleged injuries. (Cont'd on p.2.)

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FROM THE DESK OF THE EXECUTIVE DIRECTOR

As this issue went to print, Politico reported on a draft SCOTUS ruling overturning precedents that established the constitutional right to abortion.

The news, though not totally unexpected, is heartbreaking. Heartbreaking for so many reasons – including that outlawing abortion will not eliminate it but will put lives at risk, exacerbate inequality and injustice, and encourage even broader attacks on fundamental privacy rights.

It is not a total surprise, though, and is why, in 2019, Rhode Island passed the Reproductive Privacy Act, specifically in anticipation of an ideologically driven Supreme Court taking this very action. Thankfully, that law is here to stay due to the recent RI Supreme Court ruling described on Page 1.

Nonetheless, many of us are still reeling from the national news, and trying to grasp the implications. It feels like a never-ending battle – because it is.

Despite this unfortunate truth – or perhaps more accurately, because of it – I thank you for sticking with us as we continue to fight for justice and equality.

-- Steven Brown

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JUVENILE OFFENDERS (Cont'd from p.1)

The statute, colloquially known as "Mario's Law," provides that "any person sentenced for any offense prior to his or her twenty-second birthday" is eligible for parole after serving twenty years. The petitions noted that the law was intended to give youthful offenders "an opportunity to demonstrate that they have matured from the person who committed the underlying crimes in their early years."

Despite this law, the DOC took the position that the petitioners – who as teenagers were each given life sentences for murder and shorter consecutive sentences for related criminal conduct – weren't eligible for release after 20 years, but instead had to first serve at least 20 years of their life sentence and then get "paroled" to serve additional time for their consecutive sentence before they could be considered for release to the community. Ultimately, the court rejected this interpretation, noting that it "effectively nullified" the purpose of the 2021 law.

The petitions for post-conviction relief were filed by ACLU of Rhode Island cooperating attorneys Lynette Labinger, Lisa Holley, and Sonja Deyoe. Mario Monteiro, whose continued incarceration, despite extensive proof of his rehabilitation, for more than two decades after being convicted of a crime as a juvenile, was the impetus for passage of the new statute which aimed to give youthful offenders a second chance after serving 20 years in prison. Ironically, if the State's position had prevailed, the law would not have benefitted him either.

"CIVIL DEATH" LAW (Cont'd from p. 1)

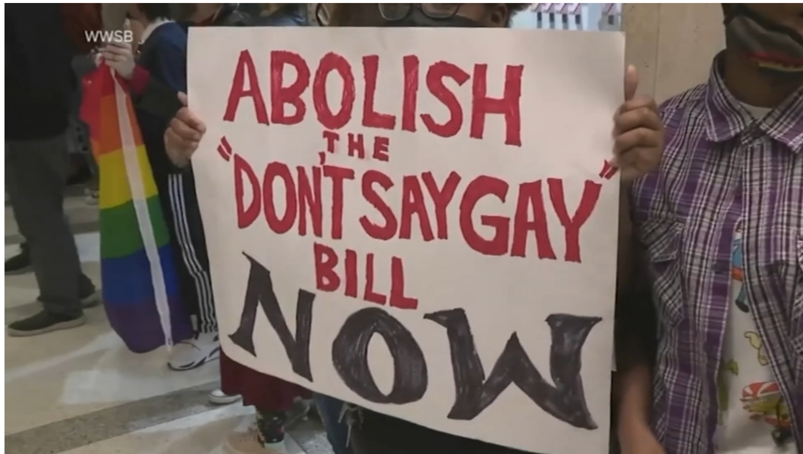
In a 4-1 decision, the Supreme Court held that the "civil death" statute violated a state constitutional provision that guarantees a "fundamental right" of access to the courts. Rhode Island was the only state in the country still enforcing a law like this, whose origins date back to ancient English common law.

In 2015, the ACLU and cooperating attorney Sonja Deyoe challenged the statute as it applied to bar inmates serving life sentences from marrying, but the court in that case said that a 1974 U.S. Supreme Court summary decision, without an opinion, upholding a New York statute barring inmates sentenced to life imprisonment from marrying applied.

ACLU attorneys have pending in federal court a separate suit challenging the constitutionality of the statute, which U.S. District Court Judge William Smith had refused to dismiss last year. In light of the favorable R.I. Supreme Court ruling, the ACLU will voluntarily have the case dismissed.

2022 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 against this session. We covered some of the positive legislation in Part 1, in the Jan/Feb 2022 issue of our newsletter. For up-to-date info on these and many other bills, visit riaclu.org/legislation.



FIRST AMENDMENT RIGHTS

School Curriculum Censorship (H 7539)

Following the pattern of similar bills introduced across the country, such as Florida's "don't say gay" law and legislation attempting to ban discourse around racial discrimination, this bill would ban "racial slurs" like "supremacy" in the classroom, bar the use of schoolbooks that have a "viewpoint," and require school staff to address students by "the pronouns associated with their biological gender." We strongly opposed the bill, calling it blatantly unconstitutional and antithetical to basic tenets of educational discourse and academic freedom. Aside from these concerns, we testified that the bill contained provisions which were impossible to enforce, including a requirement that history be "taught using the standards, customs, and traditions in use at the time of the historical event," which literally meant, for example, that *Brown v. Board of Education* should be taught in segregated classrooms. Fortunately, no action is expected to be taken on the bill.

Workplace Bullying (S 2486)

While ensuring a healthy workplace is a laudable goal, we opposed legislation that would create a far-reaching "civility code" and impose liability on employers or co-workers who are, among other things, "overbearing." We argued that the bill ran afoul of First Amendment protections in seeking to regulate routine personal interactions in the workplace, and also noted that the penalties for violating the law were even stronger than those that could be imposed on employers who engaged in race or sex discrimination under the state Fair Employment Practices Act.

REPRODUCTIVE FREEDOM

Anti-Abortion Rights Legislation

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. That has not stopped some legislators from trying to undermine the law. More than half a dozen anti-choice bills have been introduced this year and, along with various members of the state's pro-choice coalition, we testified in opposition to the bills and their attempt to erode the right of Rhode Islanders to make their own reproductive choices.

CRIMINAL JUSTICE

Statehouse-To-Prison Pipeline (H 7508, S 2228)

Every year, dozens of bills get introduced creating new but unnecessary crimes or arbitrarily increasing the penalties for current criminal offenses. This year has been no exception. One bill, which appears likely to become law, greatly expands the scope of a statute criminalizing the "exploitation of elders," which 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. Another bill would make the misdemeanor crime of simple assault a felony if committed on a taxi driver. 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.

"Reckless Parenting" (H 7807, S 2808; H 7567)

We opposed multiple pieces of legislation subjecting parents to criminal and civil liability if they did not, in the eyes of the bills' sponsors, exercise sufficient control and care over their children. One bill would authorize a civil action against parents who demonstrate "willful or wanton disregard" in their exercise of "supervision and control" over a child who engages in cyberharassment. We testified that it would set a dangerous precedent in making parents accountable civilly for such activities committed by their children. Another bill would make it a felony for a parent to create a "substantial and unjustifiable risk" of serious bodily injury to a child, for which we noted the language was so broad that it would inevitably encompass entirely innocent parental actions.

RI Bureau of Criminal Identification (BCI)

Criminal Record Checks (H 7076, H 7508)

The broadening of criminal record checks as a condition of employment can gravely affect occupational opportunities for formerly incarcerated individuals. Yet, every year the General Assembly considers legislation that places more stringent criminal record check requirements on people seeking employment, regardless of whether the records are relevant to the job being sought.

We opposed multiple bills on this issue, including one involving Medicaid-funded personal care attendants. The legislation could bar immediate family members from serving in that capacity, and would disregard patient autonomy in making decisions about the individuals employed to provide care for them. We also opposed legislation that would greatly expand criminal record check requirements for taxi driver licenses, noting that the bill did not comport with a "fair chance licensing" law passed in 2020 which ensures that people can't be disqualified from a state license unless their criminal record is directly related to the license that they are applying for.

Animal Abuse Registry (H 6624)

We have once again opposed legislation that would create an "animal abuse registry" similar to the objectionable public registration requirements in effect for persons convicted of sex offenses. Like those laws which impose onerous registration burdens and establish broad community notification requirements, this registry would, among other things, undermine rehabilitation by promoting the harassment of ex-offenders seeking to reintegrate into the community. National organizations such as the ASPCA and the American Kennel Club have also objected to the registry due to their ineffectiveness.

NATIONAL ORGANIZATIONS SUCH AS THE ASPCA AND THE AMERICAN KENNEL CLUB ALSO OBJECT TO THE REGISTRIES DUE TO THEIR INEFFECTIVENESS.

DUE PROCESS

Expansion of Civil Commitment Powers (H 7668, S 2762)

This legislation would allow Advanced Practice Registered Nurses (APRN) to attest to a patient's mental health condition and participate in certifying patients for mandatory outpatient treatment, an action which is presently something that only doctors can authorize. Although we acknowledged the important role that APRNs play in the mental health community, we argued that when it comes to medical recommendations for involuntary treatment, patients are stripped of critical elements of due process when the decision is in the hands of anyone other than a physician.

Hotel Ejection of Guests (H 7910, S 2511)

We urged amendments to legislation promoted by the hospitality industry that would give hotels unbridled authority to eject patrons who use "verbally abusive language." We raised concerns about the broad wording of this power and the clear dangers of it being discriminatorily enforced.

STUDENT RIGHTS

Armed Police in Schools (H 7806)

A bill introduced this session would create a "school security committee" charged with facilitating the presence of "armed security personnel" in every school and promoting techniques for student surveillance. In opposing the bill's effort to increase police presence in schools, we also noted that it exempted the security committee from the state's open records and open meetings laws, significantly hindering community oversight of its discussions and activities.

Video screenshot from school altercation between officer and student in *Blanchette v. Narragansett*.

PRIVACY

AG Access To Health Records (S 2766, H 7898)

We opposed legislation that would allow the Attorney General's health care advocate (HCA) to receive unredacted confidential health care information of individuals without their consent. The bill was introduced under the premise that it often takes too long for the HCA to get the records in redacted form, but we noted our concern for patient privacy and the broad authority this could give to the HCA to unnecessarily access sensitive information without permission.

OPEN GOVERNMENT

URI Virtual Meetings (H 7817, S 2372)

As the Affiliate advocates for continued remote public participation in the post-pandemic meetings of public bodies, the General Assembly took a narrow step backward with one bill that has already been approved. It permanently authorizes the URI Board of Trustees to meet virtually. Although the meetings will be livestreamed, we opposed the bill for setting a troubling precedent in undermining the ability of residents to directly interact with a public body if they choose to never meet in person.

MOVEMENT ON POSITIVE LEGISLATION

Although there have thus far been very few votes on bills that were the subject of committee hearings, we can report on positive action by the Senate on four important bills that the ACLU is supporting:

- *The Senate approved the Let RI Vote Act, a bill to make voting easier for residents by repealing the requirement that people voting by mail obtain the signatures of two witnesses or a notary.*
- *The Senate passed a proposed state constitutional amendment that would explicitly guarantee all children a judicially enforceable right to a meaningful and adequate education.*
- *The Senate approved a bill revising the definitions of "felony" and "misdemeanor" with the goal of protecting immigrants who are convicted of minor offenses from being deported on that basis.*
- *A Senate committee has approved legislation that would allow undocumented immigrants to obtain drivers' licenses.*

ACLU SUES PROVIDENCE FOR REFUSING TO RELEASE DOCUMENTS OVER DECISION TO BAR PERFORMANCE BY RAP ARTIST

Is a *New York Times* article a confidential document that the City of Providence can withhold under the Access to Public Records Act (APRA) on the grounds that it would violate copyright law to release it? That is one of the issues raised in a lawsuit filed by the ACLU after the City refused to turn over documents underlying its decision to bar a rap artist from performing at a Providence club. Last October, the Providence Police Department (PPD) requested that the city's Board of Licenses issue a "cease and desist" order to the "LIT Lounge" to prohibit a performance by the rap artist Jeffrey Alexander (known professionally as "22Gz"). Among other things, the PPD told the Board that 22Gz was a member of a gang and that two years earlier, New York police asked an event organizer to remove him from an event because "if they were allowed to perform, there would be a higher risk of violence." The Board issued the order requested by the PPD.

Concerned about the First Amendment implications of banning a rap artist from performing, the ACLU filed an APRA request with the City, seeking "any documents provided to the Board of Licenses" regarding incidents of violence at previous 22Gz performances, and other documents related to the decision to bar 22Gz. The City responded that the documents were being withheld on the grounds that they were "required to be kept confidential by federal law or regulation or state law, or rule of court." As for the NYT article, the City alleged that "copyright law" prevented it from "re-publishing" it in response to the APRA request. The lawsuit, filed by ACLU cooperating attorney Jeff Levy, claims there is no basis for withholding the article under copyright law or for refusing to release any other relevant documents. The suit seeks a court order requiring the release of the documents and imposition of a fine against the City for violating APRA.

ACLU CALLS ON PROVIDENCE CITY COUNCIL TO REJECT INTRUSIVE SURVEILLANCE TECHNOLOGY

After learning that the Providence Police Department is actively pursuing the installation throughout the city of deceptively named automated license plate reader (ALPR) camera systems, operated by the private company Flock Safety, the ACLU of Rhode Island called on the Providence City Council to reject any such effort. In August of 2021, Cranston, Pawtucket and Woonsocket announced that they had unilaterally begun using this new surveillance technology in their communities, and word of Providence's interest was disclosed at a legislative committee hearing.

The ACLU's detailed letter to the City Council offered numerous reasons to reject the surveillance devices, noting that the cameras capture much more than license plate numbers. Flock Safety's website advertises their ability to search by a vehicle's aesthetic characteristics, its bumper stickers, and even by "audio evidence." Further, it is inevitable that the use of these cameras will expand over time to engage in more, and more intrusive, types of surveillance.

Among other issues, the letter notes that in the absence of legislatively established limits on their use, the privacy rights of the public would remain at the complete discretion of the police department and a private company, which can change their policies at any time. The ACLU asked the councilors to "reject the implementation of Flock Safety cameras in Providence and to further enact an ordinance that promotes community engagement, oversight, and extensive transparency for any future potential law enforcement surveillance technology."

WHEN POLICE PROMOTE SURVEILLANCE TECH LIKE ALPRs, THEY OFTEN IMPLY A FALSE CHOICE BETWEEN PUBLIC SAFETY AND PRIVACY. BUT PUBLIC SAFETY IS THE RESULT OF COMMUNITY-BASED TOOLS THAT DIRECTLY SUPPORT RESIDENTS –NOT A CONSEQUENCE OF INDISCRIMINATE 24/7 SURVEILLANCE.

NEWS BRIEFS

ACLU, Cranston Settle Major "Search and Seizure" Case That Went to the U.S. Supreme Court

A seven-year ACLU legal battle over privacy rights in the home has officially ended with the filing of a settlement in the case of Cranston resident Edward Caniglia. The Cranston Police Department's seizure of two lawfully owned firearms from his home without a warrant or his consent led to a precedent-setting Fourth Amendment ruling from the U.S. Supreme Court and has concluded with the City of Cranston paying Caniglia and his attorneys almost $250,000 in damages and attorneys' fees. The settlement follows the Supreme Court's 2021 precedential decision in the case, ruling that the "community caretaking" exception to the Fourth Amendment's warrant requirement – an exception that arose in Supreme Court jurisprudence specifically involving the searches of cars impounded by the police – did not apply to warrantless searches of a person's home. The suit was handled by ACLU cooperating attorneys Thomas W. Lyons and Rhiannon Huffman.

SCOTUS Keeps Brown University Athletics Case Settlement in Place

In an important victory for gender equality, the U.S. Supreme Court has rejected an appeal that sought to overturn a favorable settlement agreement between Brown University and a class of women student-athletes who challenged Brown's decision in June 2020 to cut women's teams from its varsity athletics program. The lawsuit, filed by cooperating counsel from Public Justice and the ACLU of Rhode Island and two private law firms, alleged that the cuts violated a 1998 consent agreement that the University entered to comply with Title IX, the federal law that guarantees equal access to athletic programs for female athletes. The agreement reinstated two women's teams and bars elimination or reduction in the status of any women's varsity team for at least the next four years. The unsuccessful appeal of the settlement was filed by a handful of members of two women's sports teams (gymnastics and ice hockey) that were not directly affected by the 2020 program cuts.

Central Falls Addresses Prison Gerrymandering

After a decade-long battle by the ACLU to address the problem of prison gerrymandering – the drawing of political district lines to include incarcerated individuals as living in the prison facility in which they're housed rather than the community where they come from (and, by law, vote from) – 2022 saw some positive steps. In redrawing state legislative lines based on 2020 census data, the R.I. General Assembly reallocated over 40% of the ACI population back to their home communities. And in a move applauded by the ACLU this month, Central Falls redrew its district lines to exclude the Wyatt Detention Facility's detainee population from the ward where the facility is located.

SAVE THE DATE: **RI PRIDEFEST 2022**
WHEN: **SATURDAY, JUNE 18, 2022**
WHERE: **SOUTH WATER STREET, PVD**

We will be celebrating Pride Month with a table at Pride Fest RI in Providence. The ACLU has a long history at this event; in fact, it was only because of ACLU legal intervention that the first annual Pride parade was able to occur in 1976. We invite you to visit our table and play games to learn more about civil liberties and LGBTQ rights.

ACLU Rhode Island

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MONDAY, MAY 23, 2022
at 6pm via ZOOM

POSTPONED – stay tuned for announcement of new date/time.

Big Brother is watching like never before. New technologies allow law enforcement, public school officials, corporations and others to track our movement and amass detailed personal information on how we live. Join us to hear experts in the field of privacy, technology and civil liberties for a look at what's at stake and what we are doing – in RI and beyond – to protect our privacy.

WHEN: Monday, May 23, 2022, 6pm

WHAT: Privacy & Technology

To register for this free Zoom event, visit riaclu.org/events.

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 to make a one-time gift or set up a recurring donation.