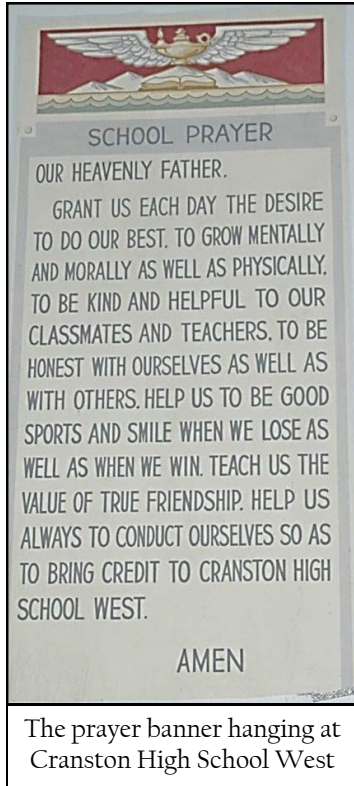


# RHODE ISLAND CIVIL LIBERTIES

A BI-MONTHLY PUBLICATION OF THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF RI

SEPTEMBER/OCTOBER 2011 VOLUME XVII, ISSUE 4

## COURT HEARS ARGUMENT IN CRANSTON PRAYER BANNER CASE; DECISION AWAITED



The prayer banner hanging at Cranston High School West

Oral argument in the ACLU's lawsuit challenging the constitutionality of the public high school display of a "School Prayer" addressed to "Our Heavenly Father" was held before U.S. District Judge Ronald Lagueux this month.

The suit is on behalf of Jessica Ahlquist, a 16-year-old student, who has objected to the mural that is painted on a Cranston High School West auditorium wall. She has been the subject of personal attacks and intimidation from students and adults in the community ever since publicly opposing the display.

The ACLU is seeking the permanent removal of the banner. ACLU volunteer attorney Lynette Labinger argued in court that the prayer, a gift from the school's first graduating class in 1963, violates the Establishment Clause of the First Amendment, which prohibits the government from promoting religion.

The school district's attorney argued that the prayer is "not forced upon anyone," but the ACLU has noted that the U.S. Supreme Court has consistently ruled that "even if schools do not actually impose pressure upon a student to participate in a religious activity, the Establishment Clause proscribes public schools from conveying or attempting to convey a message that religion or a particular religious belief is favored or preferred."



Plaintiff Jessica Ahlquist

In response to the school's argument that the prayer is a "historical document" and "a tradition of the school," the ACLU has noted, among other things, that a similar school prayer mural that had been on display in the auditorium of Bain Middle School for over seventy years was quietly removed after the ACLU's lawsuit was filed, despite that display's presumably even greater historical value.

Last July, after learning of the prayer mural, the ACLU called on school officials to remove it. Hoping to avoid litigation, the Affiliate and Ms. Ahlquist waited months for the school committee to act. By a 4-3 vote in March, however, the school committee decided to keep the prayer, and the Affiliate filed suit a month later.

On the day of the hearing, Judge Lagueux visited the school's auditorium to see the prayer for himself. A ruling from the court could come at any time. In the Affiliate's last major foray into a school religion dispute, the U.S. Supreme Court ruled unconstitutional the City of Providence's practice of having invocations and benedictions at school graduation ceremonies.

In recognition of the courage she has displayed throughout the litigation, Ms. Ahlquist will be receiving the RI ACLU's William G. McLoughlin First Amendment Award at this year's annual dinner celebration on November 3rd.



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## From The Desk of the Executive Director

Rhode Island may have been founded by a man who essentially invented the concept of separation of church and state, but you would never know it from our legal docket over the years.

It is not just that the principle remains so sorely misunderstood; it is the governmental hypocrisy often accompanying opposition to it that always amazes me. Roger Williams understood that allowing government to promote religion would inevitably cheapen and degrade religion itself, and every church-state case we handle proves his prescience.

In the 1980's, when Pawtucket defended its sponsorship of a life-size nativity scene every Christmas, it compared the creche to a Thanksgiving turkey and said it helped lure shoppers downtown to spend money. In the 1990's, when the City of Cranston encouraged the display of a crèche on the front lawn of City Hall, it welcomed the addition of pink flamingos to surround the holy scene.

And in Cranston again, in our latest challenge to government sponsorship of religious displays — this one in a public school — the City's major legal argument is that the larger-than-life auditorium display of a document that is actually labeled "School Prayer" has no religious significance at all.

Yet each time it is *the ACLU* that is denounced as being anti-religious! We are hopeful that the judge will protect dissenters and religion by reaffirming the principle that underlies Roger Williams's great legacy.

— Steven Brown

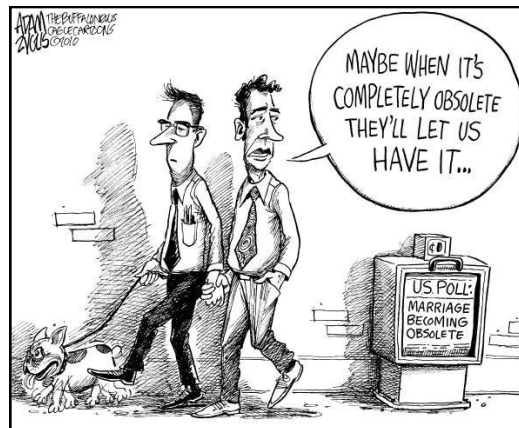


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## RI ACLU ISSUES REPORT CALLING NEW CIVIL UNION LAW FOR GAY AND LESBIAN COUPLES "A FIASCO"; CITES EXPERIENCES OF TWELVE OTHER STATES WITH SIMILAR LAWS

The Rhode Island ACLU has issued a report calling the state's new civil union law, enacted over the strong protests of the community it was designed to benefit, "a fiasco" that highlights the need for passage of true marriage equality legislation. The report states that "it is difficult to think of another 'civil rights' bill that has generated so much attention, yet done so little for so few."



In the first two months of its enactment, only fourteen gay and lesbian couples have taken advantage of the new statute to obtain "civil union" status. The report notes that "no other state that has passed a law formally recognizing gay and lesbian couples has seen such a paltry and lackluster response to its passage." In fact, taking a close look at the twelve other states that in recent years have enacted marriage, civil union or domestic partnership legislation for gay and lesbian couples,

the report notes that the initial rate of license issuances in those states has often exceeded Rhode Island's rate by a factor of tenfold or more, while even taking into account population differences among the states. The report also stresses that the statistics for Rhode Island are unlikely to get better, pointing out that "it is precisely in the immediate aftermath of these laws' enactments" that couples are most apt to make use of them.

The report cites three major reasons why the new statute is being shunned by couples: the inclusion of an incredibly broad "religious" exemption, called the Corvese Amendment, that significantly undercuts the law's purpose; the dashed expectation that, after twelve years of effort, a vote on a marriage bill would finally take place this year; and the prevalence of states throughout New England with marriage equality laws, such that "Rhode Islanders can travel a few hours in just about any direction and be in a state that recognizes full marriage equality."

Calling the data from twelve other states "irrefutable," the report argues that "Rhode Island needs to pass true marriage equality legislation." Acknowledging that the General Assembly is unlikely to do so in 2012, the report encourages two interim actions by the legislature next session. One is the repeal of the "Corvese amendment" that was unexpectedly added on the House floor and that Governor Chafee acknowledged "eviscerates the important rights that enacting a civil union law was meant to guarantee for same sex couples in the first place." Taking this action, the report states, "will at least keep the law from actually undermining any statutory protections that gay and lesbian couples already have, and may encourage more people to apply for licenses." The report also urges the Assembly to pass legislation allowing same sex couples who live in Rhode Island and have been lawfully married elsewhere to get a divorce, something that a R.I. Supreme Court decision prohibits. The court ruling has led to an "absurd situation where people live in a state that refuses to recognize their marriages, yet requires them to stay married even if they wish to divorce." The full report is available online at [www.riaclu.org](http://www.riaclu.org).

## ACLU REVIEWS AND ACTS ON CIVIL LIBERTIES A DECADE AFTER 9/11

### AFFILIATE SEEKS DETAILS ON PHONE TRACKING BY STATE AND PROVIDENCE POLICE

In a campaign coordinated with the National ACLU, the Affiliate has sent open records requests to the RI State Police and the Providence Police Department to obtain information as to how and the extent they are using cell phone location data to track the movements of Rhode Islanders. The requests are an effort to strip away the secrecy that has generally surrounded law enforcement use of cell phone tracking across the country.

The agencies are being asked for such information as: their procedures for obtaining cell phone location records; statistics on how often such records are sought and the outcome of their use; documents indicating whether the agencies seek records to identify all of the cell phones at a particular location; and invoices reflecting payments for obtaining cell phone location records.

Law enforcement's use of cell phone location data has been widespread for years, although it has become increasingly controversial. The general counsel of the National Security Agency has suggested to members of Congress that the NSA had the authority to collect the location information of American citizens inside the U.S. In a case in which the National ACLU was involved last year, the FBI sought and received tracking information without a warrant, not just for the criminal defendant, but for about 180 other people.

Cell phone technology has given law enforcement agents the unprecedented ability to track individuals' movements. Cell phones can be tracked in real time, and cell phone companies frequently retain records on the past travels of their customers. The ACLU believes that police should not be able to track the location of cell phones without obtaining a warrant and demonstrating probable cause, since records of a person's travels can be very revealing. As one court recently explained, "A person who knows all of another's travels can deduce whether he is a weekly church goer, a heavy drinker, a regular at the gym, an unfaithful husband, an outpatient receiving medical treatment, an associate of particular individuals or political groups — and not just one such fact about a person, but all such facts."

Congress is currently considering a bill that would require police to get a warrant to obtain personal location information, and to require customers' consent for telecommunications companies to collect location data.

### RI ACLU ISSUES REPORT EXAMINING CIVIL LIBERTIES IN THE STATE TEN YEARS AFTER 9/11

The RI ACLU issued a report examining some of the civil liberties battles that have taken place in Rhode Island in the past decade in response to the government's "war on terrorism." Noting that the tenth anniversary of 9/11 offers a time for reflection on the "devastating and horrific loss of life that occurred that day," the report adds that it also presents an opportunity to reflect on the government's response and how "all too often, it has acted in ways inimical to basic civil liberties."

One aim of the report is to note how the government's "war on terrorism" has permeated almost every facet of life "in small, but meaningful, ways and has left significant marks on the civil liberties of Rhode Islanders." An examination of a sample of local incidents, activities and policies serves to demonstrate "the breadth and depth of 9/11's effect on our freedoms in Rhode Island, and Rhode Island's own role in protecting or eroding those freedoms."

Among the varied issues and events reviewed in the report are: the very public arrest of a devout Sikh one day after 9/11 who was singled out as a "terrorist" solely because of the way he looked; the placement of information about a peace protest in downtown Providence in a federal terrorism database; the RI ACLU's efforts to hold two telephone companies accountable for unlawfully sharing the personal phone records of thousands of residents with the National Security Agency; the passage of a state bioterrorism law in 2003 that carries "the potential of enormous risk to our civil liberties at some indefinite point in the future"; the presence of a state "fusion center" at State Police headquarters, representing a "new normal" where "widespread surveillance and secrecy now almost go unnoticed like the air we breathe"; and the defeat of an extraordinarily dangerous "homeland security" bill, based in part on the USA Patriot Act, proposed by Governor Donald Carcieri in 2004.

The report concludes: "We can be both safe and free. A healthy respect for our Constitution and a commitment to the rule of law it embodies, and a deep recognition of the importance of our civil liberties even in times of crisis are the best responses to violence and to those who advocate it."

A copy of the report is available online at the Affiliate's web site, [www.riaclu.org](http://www.riaclu.org).

## RI ACLU IN THE DRIVER'S SEAT

Over the past few months, the RI ACLU has, purely coincidentally, confronted a series of issues having to do with automobiles. The issues themselves, described below, deal with varying civil liberties concerns, including due process, open government, and privacy rights. An ACLU Motor Vehicles Project can't be far behind!

### AS CAR TAX CRITICISM SIMMERS, ACLU CALLS ON STATE COMMISSION TO ADOPT FAIRER SYSTEM IN VALUING MOTOR VEHICLES

In written testimony, the ACLU has called on the RI Vehicle Value Commission to adopt a fairer methodology for establishing the "presumptive value" by which cars are assessed for tax purposes. The assessment process has taken on particular significance in light of a recent state law change that has substantially increased both the size of the car tax that can be imposed by municipalities and the number of previously-exempt cars that are now subject to the tax.

Years ago, the Affiliate routinely testified at the Commission against the methodology it continues to use. In setting "presumptive values" for most cars, the Commission relies exclusively on the highest possible book value (the "clean retail value") suggested by the National Automobile Dealers Association (NADA). As a result, almost every used car owned by a Rhode Island resident, whether it is one year or seven-teen years old, is treated for tax purposes as if it were almost "like new."

The fact that the "presumptive value" set by the Commission is irrebuttable raises due process concerns. There is no meaningful appeal process to aggrieved car owners. The Commission's consideration of appeals consists solely of checking the NADA figure to make sure no clerical mistake was made by the local assessor in setting the tax. Thus, adjustments are made only when an incorrect NADA car value was inadvertently imposed, not when the taxpayer challenges the NADA figure itself based on, for example, local selling conditions.

State law requires the agency to consider other factors it "deems appropriate," but it doesn't do so. Previous versions of the law went further and required specific consideration of such things as the retail prices advertised in local newspapers. When the Commission failed to do so, the ACLU successfully sued in the mid-90's over the agency's failure to abide by the statute.

### AFFILIATE SUES DMV OVER LICENSE REINSTATEMENT RULE

The ACLU has filed a lawsuit against the Division of Motor Vehicles for refusing to reinstate a person's driver's license based on a "policy" that appears nowhere in the agency's rules and regulations. The lawsuit, filed in R.I. Superior Court by volunteer attorneys Albin Moser and Melissa Braatz on behalf of Marc Lavik, argues that the DMV's actions are in violation of the Administrative Procedures Act, a state law that requires agencies to provide advance notice and a public comment period before adopting policies that affect members of the public.

State law authorizes agencies to deny license renewals to people who owe taxes. Under that law, Lavik was unable in 2005 to get his driver's license and registration renewed because he owed back taxes. Last year, he finally paid off his taxes, but was told by the DMV that, because more than three years had elapsed, he would need to apply for a new license and retake both a written and road test. The DMV referred Lavik to the agency's web site which, in a section on license reinstatement, states that: "If your license has expired for a period of three years or more during the time of suspension, a written exam and road test is [sic] required to obtain a new license."

This "policy" has never been the subject of any public notice or hearing. To the contrary, the statute under which Lavik was unable to get his license renewed requires agencies to reinstate licenses "within five business days of receiving the certificate of good standing" from the taxation division. The suit seeks a court order declaring the DMV policy null and void and ordering reinstatement of Lavik's license.

### ACLU RAISES PRIVACY CONCERNS OVER PROVIDENCE LICENSE PLATE SCANNING PLAN

The ACLU has urged the Providence City Council to reject a proposal by Mayor Angel Taveras to authorize a private company to use car-mounted license-plate scanners to enforce overnight parking laws. Under the proposal, part of a plan for an overnight parking permit program, the vendor would use specially-equipped vehicles to automatically scan license plates, checking them against a registration database and flagging those cars parked overnight without a permit.

In a letter to Council members, the ACLU asserted that the scanners raised "significant privacy and other concerns," stating that their use, "particularly when an officer or traffic-enforcement official is easily capable of looking for a sticker in a window, represents another step towards an increased focus on surveillance and recording the movements of individuals." The ACLU also questioned whether "any significant discussions of controls" had occurred to protect the private motor vehicle information that the company would have access to, or to limit retention, storage or dissemination of the images captured by the scanners.

## ACLU URGES STATE REAPPORTIONMENT COMMISSION TO ADDRESS PROBLEM OF PRISON GERRYMANDERING

The Rhode Island ACLU has called on the state Reapportionment Commission to address the critical problem of prison gerrymandering when drawing legislative district 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 the communities from which the inmates come is diluted, while the political influence of the city residents in which the prison is located is inflated.

The ACLU's testimony noted that the allocation of all prisoners to Cranston for redistricting purposes is particularly problematic and flawed because it is in conflict with state voting law, which explicitly provides that incarceration does not change a person's residence. Thus, even though inmates at the ACI are counted as residents of Cranston for redistricting purposes, they are statutorily denied the right to vote from there even if they want to. The ACLU's testimony argued that "this inconsistency is unconscionable."

The testimony added that Rhode Island's small population, combined with the fact that all its inmates are located in one concentrated area of land "provides one of the most dramatic examples of how prison populations distort representation." Citing data from the Prison Policy Initiative, a national group that focuses on prison gerrymandering, the ACLU testimony noted: "If the entire Cranston prison complex was put within the same legislative district, 24% of that district would be incarcerated, all but guaranteeing that Rhode Island would have the most dramatic instance of prison-based gerrymandering in a state legislative district in the country."

In the past two years, four states have passed laws to end prison gerrymandering by counting incarcerated individuals at their last home address. The ACLU called on the Commission to urge the General Assembly to pass similar legislation. In the interim, the ACLU proposed greatly reducing the impact of prison-based gerrymandering by having the Commission remove the prison population from the redistricting data or by treating inmates as the Census Bureau treats over-seas military personnel for allocating populations: at large. The prison population would then not skew any individual legislative district. The testimony pointed out that "mathematically, counting incarcerated people at the prison location has a larger vote dilutive effect than simply failing to count them at the correct home address."

### Organizational Notes

#### **Tune into the ACLU's Monthly Cable Access Show, "Rights of a Free People"**

Every month the RI ACLU's cable access show "Rights of a Free People" features a discussion with experts on key civil liberties issues. Check it out!

**Playing in November: Workplace Privacy**

ACLU volunteer attorney Jennifer Azevedo and Robert Ellis Smith, publisher of "Privacy Journal" and one of the country's leading experts on privacy rights, will discuss workplace privacy laws in the state of Rhode Island.

#### *Showtimes:*

Channel 13: Tuesdays 10:00pm & Fridays 3:30pm (Channel 32 on Verizon FIOS)

Channel 18: (In Providence & N. Providence) Wednesdays 9:00pm (Channel 38 on Verizon FIOS)

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#### **ACLU Board Election**

The ACLU Nominating Committee has nominated the following people to run for office in next month's Board elections: Christine Lopes – Chair; Karen Davidson – Vice-Chair; and Carl Krueger – Treasurer. Those presently nominated to run for regular Board terms include Christine Lopes, Jenn Steinfeld, Daniel Scott III and Maureen Dunnigan. Please note that you will receive a ballot only if you are a current ACLU member; contributions to benefit events or special donations do not renew your membership. Additional nominations may be made by petition of any ten members, provided there is attached to the petition a signed statement expressing the nominee's willingness to serve if elected. A biographical sketch, no greater than 100 words, should also be submitted. Such a petition must be received at the ACLU office no later than November 18th.

## RI DEPARTMENT OF PUBLIC SAFETY WITHDRAWS CHALLENGED OPEN RECORDS REGULATIONS

The state Department of Public Safety (DPS) is withdrawing recently-proposed and controversial regulations, relating to public access to police records, which the ACLU sued over last month. The ACLU's suit argued that the agency violated the Administrative Procedures Act by failing to provide the public an appropriate opportunity to comment on the open records regulations.

In August, after issuing public notice of proposed revisions to its Access to Public Record Act regulations, DPS scheduled a public hearing on them. However, at the hearing, DPS instead announced that a revised set of proposed regulations, made public only that day, would be the subject of the hearing. This left the ACLU and other interested groups, including Common Cause Rhode Island and the Rhode Island Press Association, unable to provide meaningful testimony on the proposal. Although the groups objected to the last-minute changes, DPS went ahead with the hearing and later advised the ACLU it was rejecting the objections that had been made to the rules. This prompted the ACLU's lawsuit.

However, upon filing an answer to the ACLU's complaint, the state indicated that the challenged rules would not be formally adopted after all; instead, a further review of the regulations will be taking place. As a result of the state's decision not to formally adopt the rules, the ACLU plans to hold the suit in abeyance and await further rule-making activities by DPS. If the regulations had been adopted, they would have further expanded the agency's power to withhold arrest reports and other documents from public scrutiny.

### NEWS BRIEFS

#### ACLU AND CVS/PHARMACY RESOLVE DISCRIMINATION COMPLAINT

The ACLU has settled a complaint against CVS/Pharmacy that challenged the company's use of a pre-hire questionnaire that the Affiliate claimed could have a discriminatory impact on people with certain mental impairments or disorders. The company uses an online job application process, prepared by an outside vendor, for many of its retail store positions. One component of that process requires applicants to indicate whether they "strongly disagree, disagree, agree, or strongly agree" with about 100 "attitudinal" statements. The statements to which applicants were required to respond included: "You change from happy to sad without any reason," "You get angry more often than nervous," and "Your mood is steady from day to day." Under the agreement, CVS agreed to permanently remove those and fourteen other questions from the online application, and to reimburse the ACLU for its legal fees. The settlement specified that the agreement did not constitute an admission of wrongdoing by CVS.

#### PROPOSAL TO BAN SIGNS AT CITY COUNCIL MEETINGS WITHDRAWN

Responding to strong objections from the ACLU and local residents, a proposed Warwick City Council resolution to ban the display of signs or posters at City Council meetings has been withdrawn by the sponsor. Introduction of the proposal followed a lengthy and raucous Council meeting attended by hundreds of residents concerned about an increase in the motor vehicle excise tax. The resolution, in seeking to justify the ban, asserted that it would "enhance proper decorum at the meetings." However, in a letter sent to City Council members, the ACLU argued that sign displays "represent a core exercise of free speech rights that strengthens the democratic process." At least for the time being, the Council agreed.

#### ACLU OBJECTS TO BCI CHECKS OF POLITICAL CANDIDATES

The Affiliate has raised concerns about a legislative proposal to require a state criminal background check for all candidates certified by the state Board of Elections to run for office. The proposal was prompted by revelations about the past criminal history of state Rep. Daniel Gordon after he was arrested last month on a motor vehicle violation. The ACLU argued that "a candidate's past history is something for political and party opponents, the media and other interested individuals or groups to inquire about and investigate during the course of a political campaign. State elections officials have no business demanding a BCI check, any more than they should be demanding access to a candidate's divorce records, bank statements or Facebook account." The ACLU also pointed out the chilling effect a BCI check requirement could have on potential candidates with minor arrest records from their teen years, or with expunged convictions and even dropped charges.

## RECENT EVENTS

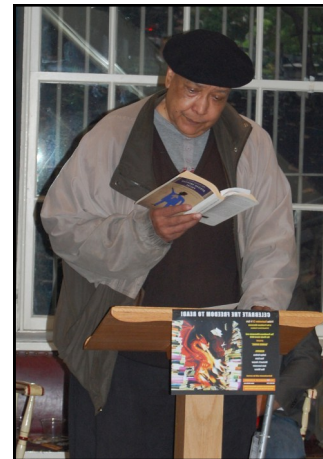
### “RHYTHM AND REBELLION” JAZZ CONCERT

On Friday, August 19th, jazz musicians Kim Trusty (top photo) and Tish Adams (bottom photo) entertained an enthusiastic audience at an ACLU fundraiser at the Roots Cafe in downtown Providence. A great time was had by all.



### BANNED BOOKS EVENT A SUCCESS

The Providence Athenaeum was standing room only as we celebrated banned and challenged books on the evening of September 23rd. The event, co-hosted for the second year in a row with the Providence Athenaeum, kicked off National Banned Books Week with five Rhode Island authors reading from banned or challenged books. Indigo Bethea read from *The Color Purple*, by Alice Walker; Jane Lancaster read *Noddy at the Seaside*, by Enid Blyton; Michael S. Harper read from *Jubilee*, by Margaret Walker; Tina Cane read from *Brideshead Revisited*, by Evelyn Waugh; and Max Winter read from *The Things They Carried*, by Tim O'Brien.



### 2011 LEGISLATIVE WRAP-UP AND DESSERT EVENING

On August 3rd we held our annual Legislative Wrap-Up and Dessert Evening to discuss how the 2011 General Assembly session impacted our civil liberties. Legislators Christopher Blazewski, Rhoda Perry, Art Handy, Edith Ajello, and Frank Ferri participated in a panel discussion about voting rights, racial profiling, marriage equality, internet subpoenas, and more.

We would like to extend special thanks to our generous sponsors who provided desserts for the evening: The Coffee Exchange, Johansson’s Bakery, Stop N’ Shop, Trinity Brewhouse, Au Bon Pain, and Whole Foods. Thanks also to the RI Council of Community Mental Health Organizations for use of their space.

Top to Bottom: Indigo Bethea; Michael S. Harper; guests visit an exhibit featuring historically banned books.

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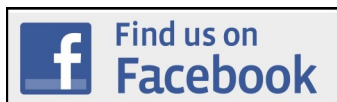
These remain tough economic times, but with the end of year only two months away, please consider making a special, tax-deductible contribution to the ACLU Foundation of RI. The breadth of issues, lawsuits, advocacy and events that are summarized in this month's newsletter alone should remind you of the broad scope of our program and just how busy we have been — and why your support continues to be critical.

Please help us meet the growing need for our assistance. Send your checks to:

ACLU Foundation of Rhode Island  
128 Dorrance Street, Suite 220 -- Providence, RI 02903

*If you're looking for a way to give year-round*, consider participating in a payroll deduction plan. If you're a state employee, you can contribute through the State Employees Charity Appeal (SECA) Campaign. Our designated SECA number is 3980. If you're a private employee, you can give via the United Way or the Fund for Community Progress by writing "ACLU Foundation of R.I." in the space provided on either pledge form. Thank you!

**FIND US ON FACEBOOK!**



Join the conversation! Become a fan of the RI ACLU on Facebook, and keep up to date on our events, news releases, court cases, and our work at the State House.

**ARE YOU INTERESTED IN HOSTING A HOUSE PARTY?**

House parties offer an opportunity for ACLU members to socialize with each other, and give potential ACLU members an opportunity to learn more about the ACLU's work. If you would like to learn more about hosting an ACLU house party in your community, please contact Meg Armstrong at the Affiliate office at 831-7171.