

RHODE ISLAND CIVIL LIBERTIES

A Bi-Monthly Publication of the ACLU Foundation of RI

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D.C. PRO CHOICE RALLY

Pro-choice groups are preparing a March for Women's Lives on Sunday, April 25th in Washington, D.C. Show lawmakers that they must stop chipping away at reproductive freedom. If you're interested in marching in the rally under a Rhode Island ACLU banner, call or e-mail the ACLU office.

Major Civil Liberties Challenges Ahead As 2004 General Assembly Proceeds

As this newsletter went to press, the vast majority of bills to be considered by the General Assembly had not yet been introduced. It is thus unclear what many of the major civil liberties battles will be this session, although a few are already known. However, the Affiliate is pushing ahead with an ambitious pro-active legislative agenda of its own. What follows is a preview of some of those positive bills – and a few not-so-positive ones – on which the Affiliate will be actively lobbying in the months ahead.

The “War on Terrorism”

Last year's biggest civil liberties defeat was the legislature's last-minute passage, with little debate and no opportunity for floor amendments, of an incredibly broad “bioterrorism” bill. Unfortunately, the worst is not over. This year, Governor Carcieri has introduced a “homeland security” bill which restricts civil liberties even further in the name of fighting the “war on terrorism.”

Last year's law gave the Governor broad powers to declare a “state of emergency” and unilaterally suspend state laws and regulations. The law also gave the Health Department broad powers to obtain access to identifiable health care information, to coercively treat, examine and immunize people without consent, and to quarantine them with virtually no procedural safeguards. If last year's law seriously damaged due process and privacy rights, this year's bill is a frontal assault on freedom of speech and the public's right to know.

Under the Governor's proposal, any political protest that “involves a violent act” could be deemed an act of terrorism punishable by life imprisonment. His bill also resurrects two archaic and blatantly unconstitutional World War I-era laws barring advocacy of anarchy or revolution and amends them to make it a felony to advocate “acts of terrorism.” These provisions send a truly chilling message to

The bill also contains new and troubling exemptions to the open records law, generally barring access to a wide range of “infrastructure” information and “school safety audits,” which “identify and analyze recurring student safety concerns.” However, the bill gives a nod to the public's right to know by allowing these audits to be released *after* any school building “has been subjected to fire, explosion, natural disaster or other catastrophic event”!

The ACLU will be vigorously opposing the legislation. In light of the bioterrorism bill's passage last year, though, success in stopping this measure is by no means assured.

Freedom of Speech

The Governor's “homeland security” bill isn't the only legislation being pushed this year with implications for free speech rights. In response to the Governor's drumbeat of criticism about ethical lapses by legislators, General Assembly members appear eager to push a bill subjecting people who “lobby” the executive branch to burdensome reporting and disclosure requirements. Unfortunately, as drafted, the bill would make any social service worker who contacts a state agency on behalf of a client a “lobbyist” subject to onerous registration mandates. In light of the incredible burden the bill would impose on many non-profit organizations, the ACLU is vigorously lobbying against passage in its present form.

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ACLU SUES OVER CRANSTON RELIGIOUS DISPLAY

In its latest battle over church-state separation in Roger Williams' back yard, the ACLU filed suit in December to challenge the placement of a life-sized nativity scene and menorah in front of Cranston City Hall, as well as the policy that Mayor Stephen Laffey implemented to authorize those displays. The suit, filed by ACLU volunteer attorneys Miriam Weizenbaum and Amato DeLuca on behalf of life-long Cranston resident Grace C. Osediacz, argues that both the display and the policy violate the First Amendment. The lawsuit seeks a court order barring both the future erection of religious displays in front of City Hall and further implementation of the policy. In response to the suit, a number of national right-wing groups have offered free legal services to the City.

The displays were erected with the approval of the Mayor pursuant to a city policy promulgated in December designating the front lawn of City Hall a "limited public forum open for the purpose of appropriate seasonal and holiday displays" from December 5 to January 1, and giving the Mayor sole authority to approve all "appropriate holiday and seasonal decorations, appropriate being defined as being suitable and proper for the holiday occasion."

The lawsuit makes a number of points in arguing that the display and the mayoral policy violate the First Amendment, including the following:

** The menorah and the nativity scene are religious symbols and deliver an overtly religious message. In view of the placement of these religious symbols "at the threshold of the seat of government for the City of Cranston, between a public school and the School Administration Building, these displays have the principal and primary effect of advancing religion, and deliver a plain message that the Defendant Mayor and Defendant City endorse, sanction, promote, support and approve of the overtly religious message."*

** The Mayor's effort "to legitimize these religious displays by declaring the lawn a 'limited public forum' that exists only during the time of these Jewish and Christian religious holidays is pretextual. The front lawn of City Hall is not available as a public forum at any time other than Chanukah, the winter holiday of the Jewish religion, and Christmas, the Christian holiday that celebrates the birth of the Christian savior."*

** In light of the absence of a public forum on City Hall lawn during any non-sectarian holidays "or during any other time of the year for any other purpose, the creation of a 'limited public forum' from December 5 to January 1 further violates the First Amendment as it contributes to the appearance that the City of Cranston endorses two dominant religions in particular, Christianity and Judaism, and in general favors religion and religious holidays."*

** The policy, by giving a government official the authority to decide what are and are not "appropriate" religious symbols of a holiday, violates the First Amendment.*

After the controversy erupted, a number of City Council members expressed opposition to the Mayor's actions, and, in an attempt to water down the religiosity of the display, the Mayor approved the erection of other displays, including fifteen flamingos in Santa Claus hats representing the "Church of the Flamingos."

Plaintiff Osediacz said: "I feel very strongly that religion simply is not the business of government. Rhode Island was founded on the principle that religion and government should be separate. I'm outraged that any public official would invite the placement of religious symbols right in front of City Hall."

ACLU attorney Weizenbaum added: "The religious displays on the threshold of the seat of city government in Cranston require all who have business in city hall to see the City's display of religion. The presence of flamingos and snow men doesn't change that. While we are fortunate to live in a country where freedom to practice religion is protected by the Constitution, every person is also entitled to feel secure that when they go to their government, religion is not a factor. Mayor Laffey has changed that for the people who pass and conduct business in Cranston City Hall. The city's policy gives the Mayor complete authority to choose whatever he considers 'appropriate,'

CIVIL LIBERTIES CHALLENGES IN 2004 GENERAL ASSEMBLY (continued from front page)

Racial Profiling

Following up on last summer's expert study that documented widespread racial profiling by police departments in Rhode Island, the ACLU has introduced a comprehensive bill designed to address this serious problem. Last summer's report by Northeastern University, analyzing two years worth of data, found that, even when controlling for other relevant variables, a majority of police departments stopped and searched blacks and Hispanics at a much higher rate than whites, even though whites were more likely to be found with contraband.

Sponsored by Sen. Rhoda Perry and Rep. Joseph Almeida, who were the proponents of the original legislation requiring the two year study of police traffic stops data, the new bill contains a number of proposals. Among other things, it explicitly bans racial profiling and provides legal remedies for its victims; requires the continued collection of traffic stops data by police departments; mandates on-

in traffic stop enforcement as they become known and to ensure that officers are submitting accurate traffic stop forms; restricts the use of so-called consent searches (police "asking" drivers for permission to engage in suspicionless searches) and "pretext stops" (police using a minor traffic violation as an excuse to pull over a driver for other reasons); prohibits the extended detention of cars without cause; sets standards for police cruiser cameras; and establishes uniform procedures for filing police misconduct complaints.

In the same vein, the ACLU and other civil rights groups will continue to oppose attempts to pass a "primary seat belt law" unless protections against racial profiling are added. Law enforcement agencies, though claiming that the seat belt law is only about safety, have refused to add language that would bar police from using seat belt violation stops to engage in suspicionless searches. Presently, a driver can be charged with a seat belt violation only if he or she has been

Students' Rights

Confidentiality of Education Records: In 1974, Congress passed a law known as the Buckley Amendment that gives parents and students the right to view and correct their educational records, and that generally protects the confidentiality of those records. Unfortunately, the law provides no meaningful remedies if a student's rights are violated. Ten years ago, the Rhode Island General Assembly passed its own version of the federal law, with remedies, but it only addressed parents' rights to have access to and correct records. This year, the ACLU has proposed a bill that would, like the Buckley Amendment, also protect the confidentiality of education records to the same extent they are protected by federal law. The legislation was prompted by an incident brought to the ACLU's attention where a school inappropriately released a student's records to local police and to the parents of another student. The bill has the support of the R.I. Department of Education, and is being sponsored by Sen. Elizabeth Roberts and Rep. Edith Ajello.

Drivers' Licenses: The Attorney General has reintroduced a bill that would deny drivers' licenses to students who miss a specified number of days at school. While the bill is designed as an incentive for students to stay in school, the ACLU has

Privacy

Abortion: As in recent years, over a dozen anti-choice bills have been introduced this session. No action has been taken on such bills since 2001, when the Senate passed a so-called "informed consent" and waiting period bill. The Affiliate will be working with pro-choice groups to prevent their passage again this year.

License Bar Codes: For a number of years, the ACLU defeated legislation authorizing the DMV to place bar codes on drivers' licenses. Undeterred, the DMV decided last year to implement the system without formal legislative authority. As a result, Rep. Charlene Lina has reintroduced an ACLU bill that limits the information that can be stored on the bar

Access to the Courts

Sharing of Attorneys Fees: Two years ago, in a devastating ruling for the ACLU, the R.I. Supreme Court held that it was a violation of both ethical rules and state law for volunteer attorneys to share court-awarded fees with the ACLU (or similar non-profit organizations) to fund its legal work. No other state faces this prohibition, and the Court's opinion rejected the recommendation of its own Ethics Advisory Panel. Legislation sponsored by Sen. Teresa Paiva Weed would make clear that such fee-sharing does not constitute the "unauthorized practice of law" and would put Rhode Island's practice in line with every other state. The bill, supported by Save the Bay, the R.I. Bar Association and others, passed the Senate last year but

CIVIL LIBERTIES CHALLENGES IN 2004 GENERAL ASSEMBLY (continued from page 3)

Criminal Justice

The extremely conservative Senate Judiciary Committee got off to a quick start this year, passing at its first meeting two "law and order" bills opposed by the ACLU. One would increase by ten years the amount of time certain inmates would have to serve before being eligible for parole. With only Sen. Rhoda Perry dissenting, committee members brushed aside concerns that the cost of keeping just *one* offender incarcerated an extra ten years was close to \$500,000. Fortunately, the bill is expected to have a tougher time on the House side.

The Committee also speedily passed a bill making "eluding a police officer" a felony (while maintaining as a misdemeanor reckless driving that endangers the public). The ACLU, which has long been concerned about the dangers of police high-speed chases, noted that police too often engage in unnecessary high speed pursuits that endanger the public. Studies have shown that these chases are most often started impulsively by teenagers and young

Medical Marijuana

A major effort is underway this year to enact medical marijuana legislation. The bill, a version of which was first introduced by the ACLU three years ago, would immunize physicians from liability for discussing with patients the pros and cons of the use of medical marijuana. The bill would also allow patients with specific serious and terminal illnesses to possess small amounts of marijuana for medical purposes, if authorized by a physician, without running afoul of the criminal drug laws. The bill contains a number of safeguards to prevent fraudulent applications or the public use of marijuana.

Two years ago, the bill was defeated by a close vote in House committee. This year, a national organization, the Marijuana Policy Project, has hired a lobbyist to work for passage of the bill. The bill is being introduced by Rep. Thomas Slater and Sen. Rhoda Perry. Ten states now

Anti-Discrimination

Gay Marriage: A legislative debate on gay marriage appears virtually inevitable in light of the actions taking place in neighboring Massachusetts. The ACLU will be supporting legislation by Sen. Rhoda Perry and Rep. Arthur Handy that would authorize same-sex marriage. A bill explicitly prohibiting such marriages has already been introduced in the House.

Contagious Diseases: The Affiliate is hoping for favorable passage of an ACLU bill that would remove from a variety of professional licensing statutes an archaic requirement that applicants be "free from contagious disease." The language, which is clearly inconsistent with modern anti-discrimination laws, is contained in such diverse licensing statutes as those for veterinarians, massage therapists and optometrists. The repeal bill is supported by the Department of Health, and is being sponsored by Rep. Arthur Handy and Sen. June

Open Records

Working with a coalition of open government advocates, the ACLU has reintroduced legislation, sponsored by Rep. Elizabeth Dennigan, to strengthen the state's open records law. Responding to a recent incident, the Affiliate will also be proposing an amendment to require police departments to release copies of arrest reports within 48 hours of a request. This month, after the Providence Journal requested from the North Kingstown Police Department the arrest report of a man who died while in police custody, police officials said they would wait ten days, as the law allows, to release the records. Since the open records law explicitly provides that arrest reports are public, the ACLU believes

Given that the vast majority of bills had not yet been introduced as this newsletter went to press, this summary only scratches the surface of civil liberties-related legislation in the 2004 session. It also does not include all ACLU-initiated legislation, such as the reintroduction of two important bills promoting the rights of immigrants. The next issue of "Civil Liberties" will provide an update on these bills and others being considered by the General Assembly. For more information about particular pieces of legislation, members are encouraged to contact the ACLU office, and to also call, write and testify on bills of interest and concern.

PROVIDENCE SEEKS TO AVOID LIABILITY IN RACIAL PROFILING CASE

In a brief filed in the R.I. Supreme Court, the ACLU of Rhode Island is challenging the Providence Police Department's efforts to avoid any liability for its admitted contemptuous behavior for almost two years in failing to comply with both the state's racial profiling law and court orders that had found the Police Department in contempt for non-compliance with that law.

In appealing Judge Stephen Fortunato's 2002 order finding the City in contempt of court, the City argued: that the Court had no authority to order it to continue to collect racial profiling data for an additional seven months; that the ACLU never should have been allowed to sue the City in the first place for violating the law; and, therefore, the ACLU's volunteer attorney, Carolyn Mannis, should not be entitled to recover the attorneys fees she incurred in successfully bringing the lawsuit.

In response, the ACLU noted that, while the City seeks to eliminate any liability for itself or the imposition of any formal remedies for its lengthy misconduct, the City nowhere contests Judge Fortunato's finding of contempt. The ACLU brief states that the racial profiling data collection law was specifically designed to allow private civil rights groups to enforce it, and if the City's argument against the ACLU's standing prevailed, police departments could have easily circumvented the law.

While the City claims that the Attorney General adequately represented the public's interest in the case, the ACLU brief argues that the organization played a crucial role in ensuring the City's compliance with the law, and in pursuing contempt proceedings against the police department that finally led to some minimal compliance with the statute.

Finally, the brief takes issue with the City's argument that the ACLU filed the suit for the sole purpose of obtaining fees, pointing out that "if the City began complying with the law when it received notice [from the ACLU before filing suit], there would be no basis for an award of attorney's fees." In any event, the brief notes that any fee awards go to the volunteer attorney, not the ACLU.

The ACLU's brief concludes: "Contempt is a serious matter left to the discretion of the trial judge. In this case, given the facts and circumstances involved, the lower court acted reasonably in meting out justice. This Court should not disturb the lower court decision absent some compelling reason given the gravity of the issues involved. This is especially true here, where the Providence Police have not offered one iota of evidence to contradict the lower court's finding of contempt." When the report on Providence's data was finally completed, it documented widespread racial profiling by the department. A hearing date on the appeal has not yet been set.

REDISTRICTING BRIEF FILED

The ACLU has filed a "friend of the court" brief in the U.S. Court of Appeals in Boston, challenging the state's attempt to overturn a recent decision from a panel of that court which held that the Urban League of R.I., the NAACP and other plaintiffs have the right to pursue a claim that black voting power on the South Side of Providence was improperly diluted by recently redrawn Senate district lines.

Last October, the court panel rejected state arguments that a racial group which claims the ability to "influence the election" of candidates but whose members constitute less than a majority of the population in a proposed voting district cannot maintain an action under the federal Voting Rights Act. In a 2-1 vote, the court agreed with arguments made by the plaintiffs and the ACLU in an earlier brief that the historic Act was designed to address not only redistricting plans where racial minorities are deprived of the ability to constitute a voting majority in a district, but also plans that deny smaller groups of minorities the possibility of electing the candidate of their choice with the assistance of cross-over votes.

In its latest brief to the full court, the ACLU buttresses its arguments with an analysis of the legislative history of the Voting Rights Act and court cases examining vote dilution claims over the decades. The brief was filed by Neil Bradley from the ACLU's Southern Regional Office in Atlanta, which has been involved for decades in pursuing litigation under the Act.

In challenging the state's position, the brief states: "There is no theory consistent with the reality of how vote dilution operates that would justify barring claims brought by minorities who can achieve the ability to elect only with the benefit of some crossover votes. [The Act] is designed to reduce the effectiveness of majority bloc voting along racial lines, and that is exactly what the remedy sought here is designed to do."

Board Officers and Directors Elected

The following are the results of the Year 2004 elections for the Rhode Island ACLU Board of Directors. The new officers are: John Blakeslee, Chairperson; Carolyn Mannis, Vice-Chair; Daniel Scott III, Treasurer; and Judy Jones, Secretary. Nominees elected to the Board are: Kemal Ahmed, Judith Anderson, Jennifer Azevedo, Karen Davidson, Steven De Toy, Andrew Horwitz, Barbara Meek, H. Jefferson Melish, Katherine Powell, Amritjit Singh and Merith Weisman-Ross.

Leaving the Board as official members at this time are Sona Aronian, Wendy Becker, Christopher Corbett, William C. Dimitri, Elizabeth Earls, Lawrence Frank and Lloyd Matsumoto. They provided invaluable assistance to the Board during their terms, and the Board expresses its appreciation for their service. The Affiliate is also extremely grateful to Elizabeth Earls for her two years of service as Affiliate Chairperson.

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JOB ANNOUNCEMENT: PROGRAM DEVELOPMENT COORDINATOR

The Rhode Island ACLU has an opening for a program development coordinator. This is a full-time position assisting the executive director in programmatic, development and organizational activities, including lobbying, fundraising, educational projects, representing the ACLU in public forums, and assisting with legal intake and administrative tasks. Applicants must be committed to the mission of the ACLU. To apply, send a resume, writing sample and cover letter to: PDC Search Committee – ACLU of Rhode Island – 128 Dorrance Street, Suite 220 - Providence, RI 02903.

Attention State Employees and United Way Payroll Donors!

The ACLU Foundation of Rhode Island is participating in this year's State Employees Charity Appeal (SECA) Campaign. The ACLU's designated SECA number is **3980**. Also, private employees can give via the United Way by writing in "ACLU Foundation of R.I." and our address in the space provided on the UW form. We hope you'll contribute to us in this painless but important

Visit the Affiliate's Web Site: www.riaclu.org

The R.I. Affiliate encourages you to make use of the Affiliate's website at www.riaclu.org. At the site, you can review recent news releases and court documents, access recently released Affiliate reports, and more. If you have any suggestions for improvement, or you just like what you see, e-mail us and let us know.

Notice to Members on Label Exchanges

The Rhode Island ACLU does not rent the names of members to other organizations. However, we occasionally arrange to send members a mailing piece from another organization, either because of its relevance to civil liberties or as part of a membership recruitment exchange. We guard the anonymity of our membership very carefully, and other organizations never actually see your name. However, if you object to having your label used for non-ACLU mailings even in this fashion – or if you don't wish the National ACLU to similarly exchange your label with other organizations – just let us know and we can eliminate