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# RHODE ISLAND CIVIL LIBERTIES

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## ACLU OF RHODE ISLAND SEEKS PENTAGON FILES ON PEACE GROUPS

The Rhode Island ACLU has filed a federal Freedom of Information Act (FOIA) request on behalf of four local peace groups, some of whose lawful activities were monitored by the Pentagon, in order to determine the extent and nature of Pentagon spying in the state. The action is part of a national ACLU effort to uncover details of the Pentagon's recently-uncovered domestic spying program.

The Affiliate filed the FOIA request on behalf of the Rhode Island Community Coalition for Peace, the Green Party of Rhode Island, the South Kingstown Justice and Peace Advocacy Group, and the Providence Branch of the International Socialist Organization. The ACLU is seeking the disclosure of all documents maintained by the Department of Defense on the groups, including how any information about the groups' activities was obtained. The request also seeks information about any other groups in the state that may have been monitored.

In December, the RI ACLU learned that the Coalition for Peace was listed in the Pentagon's Threat and Local Observation Notice (TALON) database. The TALON program was initiated by former Deputy Secretary of Defense Paul Wolfowitz in 2003 to track groups and individuals with possible links to terrorism, but recent leaks exposed that the database also contained information on peaceful activists and anti-war and anti-military recruiting protests throughout the United States.

Only a handful of documents from the secret database have been released thus far. However, one of those documents referred to a peaceful protest that took place at a National Guard recruitment station in downtown Providence in December 2004. The memo lists the incident as a "Threat" and its disposition is marked as "Open/Unresolved." The anti-war protest that day by the R.I. Community Coalition for Peace consisted of a few dozen peace activists.

It is unknown how many other references to political protests in Rhode Island are contained in the full database, or whether local law enforcement has been involved in forwarding information about political activity to the military. The FOIA request seeks to find that out.

RI ACLU executive director Steven Brown said: "As the Bush Administration seeks to clamp down and chill dissent in this country, it is critical for the public to learn just how widespread the Pentagon's illegal spying in Rhode Island has been. The sooner that government officials understand that the monitoring of peaceful anti-war protests is none of their business, the safer we will be from true threats to our country." In response to a request from the ACLU to the state's Congressional delegation, Sen. Jack Reed indicated last month that he would press for an investigation of the Pentagon's spying activities.

*Inside: 2006 Legislative Kick-Off  
See Pages 4-6*

## ACLU Files Brief in McElroy Civil Commitment Case

The ACLU of Rhode Island has filed a “friend of the court” brief addressing whether the upcoming civil commitment hearing of convicted sex offender Todd McElroy should be public. In this highly publicized case, the Governor and Attorney General took steps to invoke the mental health civil commitment process just weeks before McElroy’s 17-year prison sentence was scheduled to end.

In recognition of the competing civil liberties interests involved in the public access issue, the ACLU’s brief, filed in R.I. District Court, first argues that the proceedings should be open at least in part “because of the quasi-criminal nature of Mr. McElroy’s detention and the furtherance of the public policy goal of fostering public trust in the judicial process.” At the same time, the brief argues that McElroy’s “right to privacy in his healthcare services and information is protected by law and should not be forfeited by notoriety or past criminal behavior.” The brief, filed by RI ACLU volunteer attorney Katherine Powell, asks the Court to “fashion a remedy to accommodate the two competing interests.”

Citing the timing and use of the mental health law against McElroy shortly before his release from prison, the brief argues that the “the fact that the State is pursuing his involuntary commitment through a civil process does little to

dispel the perception that Mr. McElroy is being detained because of his alleged criminal propensity.” The brief argues that the “questionable use” of the mental health law in this case “compels the need for this particular hearing process to be open and transparent.”

On the other hand, the brief notes that by a commitment hearing’s very nature, “confidential healthcare information plays a crucial role in the court’s process,” and that since it is an involuntary proceeding, “the individual’s confidential healthcare information is placed at issue without his or her consent or waiver.” Noting that the General Assembly has enacted strict laws to protect the privacy of mental health information, the brief argues it would be “illogical” to conclude that legislators “frustrated their own intentions by allowing public disclosure of that information through the very judicial process they devised to implement” the mental health law.

The brief concludes by calling on the court to “fashion a remedy which allows for an open court process that provides a public ruling on the merits of the civil commitment proceeding itself, including its reasoning and adherence to the civil nature of its intent, while protecting the confidential healthcare information disclosed” during those proceedings.

## RI ACLU Files Appeal on Behalf of Inmate Barred from Preaching at Christian Services

The Rhode Island ACLU has filed an appeal in federal court on behalf of an ACI inmate who has been barred from preaching during Christian religious services at the state prison. The plaintiff, Wesley Spratt, had been preaching for seven years before he was unilaterally stopped from doing so based on vague and generalized “security” concerns. The appeal, filed by ACLU volunteer attorney Carly Beauvais lafrate, argues that the preaching ban violates a federal law designed to protect the religious freedom of institutionalized persons.

Spratt, who considers his preaching a “calling” from God, had been preaching at religious services on a weekly basis under the supervision, and with the support, of clergy at the ACI. The DOC provided no evidence of security problems during, or as the result of, his supervised preaching throughout those seven years. Nonetheless, when a new warden took over the maximum security facility in 2003, Spratt was ordered to stop preaching.

Ruling on Spratt’s *pro se* lawsuit in November, U.S. Magistrate Judge Jacob Hagopian upheld the ban. Notwithstanding the lack of any security problems in the years Spratt had been preaching, Hagopian ruled that he would “defer” to the warden’s judgment that there were no means to accommodate Spratt’s preaching while maintaining institutional security.

In taking over Spratt’s appeal, the ACLU brief argues that the DOC has failed to meet the standards of a federal law, known by its acronym RLUIPA, protecting the exercise of religious beliefs by prisoners and other institutionalized persons. That law bars states from imposing any substantial burden on an inmate’s exercise of religion unless it furthers a compelling interest and is the least restrictive means available.

The brief points out that supervised preaching is the method used in federal prisons to accommodate inmates’ exercise of religion, and is clearly the least restrictive means available in this case to address any security concerns. The brief concludes that the magistrate improperly accepted “the DOC’s unsupported explanations for its sudden and unexplained change of position,” and that the facts establish that “allowing Spratt to continue preaching, as he had for seven years, while supervised, satisfies security concerns and preserves his critical religious exercise.” The brief asks the Court to allow Spratt to resume preaching at religious services. In filing the appeal, ACLU attorney lafrate said: “RLUIPA is an important federal law that was designed to protect the religious freedom of people like Wesley Spratt. That law is undermined if courts give uncritical deference to prison officials in denying inmates the right to practice their religion.”

## RI ACLU Report Questions Calls for Punitive Drunk Driving Legislation

The Rhode Island ACLU released a 35-page report that challenges recent highly-publicized claims about Rhode Island's high alcohol fatality accident rate and the accompanying push for punitive drunk driving legislation at the State House this year. The ACLU was joined by the Drug and Alcohol Treatment Association of Rhode Island (DATA) in echoing the report's findings and calling for an emphasis on treatment and other non-punitive measures to address the problem. No public officials have challenged the factual accuracy of the report, but legislators may nonetheless end up turning a blind eye to its findings.

Based largely on national reports describing Rhode Island as having the worst ranking in the country when it comes to drunk-driving alcohol fatalities, the Attorney General and legislative leaders have called for swift action this year to address the issue. They include bills that would impose criminal sanctions for breathalyzer refusals and allow police to obtain warrants to forcibly extract bodily fluids from suspected drivers for chemical testing, as well as efforts to have the R.I. Supreme Court reconsider a court ruling banning the use of drunk driving roadblocks – all proposals with significant ramifications for civil liberties.

Among the findings presented in the ACLU's report were the following:

\* The particular statistic used to rate Rhode Island as the worst in terms of drunk driving fatalities is a very misleading one. In fact, for over twenty years, the state's alcohol fatality rate has been routinely *lower* than the national average.

\* In addition, Rhode Island's *overall* fatality rate is much lower than the national average, and has been so for more than two decades. It is only because this rate is so low that the state's alcohol fatality *percentage* appears so high.

\* Contrary to popular belief, a driver cannot avoid a DUI arrest (or conviction) by refusing to take a breathalyzer test. In fact, the test isn't offered until after the DUI arrest has already taken place. Thus, police who drop criminal DUI charges against drivers who have refused a breathalyzer test do so by choice, not because of prohibitions in the law.

\* One of the biggest problems in terms of DUI enforcement is not the absence of strict laws, but a failure by some police departments to make drunk driving arrests a priority. In that regard, DUI arrest rates in Rhode Island have been close to the lowest in the nation for more than a decade.

\* Rhode Island's breathalyzer refusal penalties are typical of, or higher than, those in most other states. At the same time, the state's DUI penalties are also generally higher than those in most other states.

\* Few states in the country treat breathalyzer refusal as a criminal offense. Rhode Island's civil penalties for refusal are not a "loophole" unique to the state.

The report concludes by noting that strategies to reduce drunk driving in the state need not sacrifice civil liberties in the process. It emphasizes non-punitive approaches to the drunk driving problem, including increased availability and funding of treatment programs, a suggestion that has virtually gone unspoken during the months of debate on the issue.

RI ACLU executive director Steven Brown called the report "an attempt to correct many misconceptions about the drunk driving 'crisis' in Rhode Island, brought about by a misunderstanding of some of the laws and police practices at issue, and by the unintentionally misleading use of some statistics regarding drunk driving in the state."

Supporting the conclusions of the RI ACLU's report, DATA's executive director Neil A. Corkery said that "research demonstrates that a far more effective method of dealing with this complex issue is to provide much needed treatment strategies that have proved successful in addressing the real issue underlying this public health scourge: alcoholism and drug addiction." He noted that his organization and its substance abuse treatment and prevention service providers have supported measures to remove impaired drivers from the road, including support of .08 legislation, but cautioned against the punitive proposals examined in the report.

The ACLU's report, "Blurred Vision: A Sober Re-Examination of Rhode Island's Drunk Driving 'Crisis,'" is available on-line at [www.riaclu.org](http://www.riaclu.org).

### ***In Memoriam: Jack Finger***

The ACLU notes with sorrow the death of John Finger, Jr. last month at the age of 85. Jack served on the RI ACLU Board of Directors for many years in the 1980's and 1990's, and participated in many capacities on the Board during that time, including as Treasurer and Development Committee chair. In 1991, the Affiliate honored him with our "Civil Libertarian of the Year Award." Jack was always modest about his accomplishments, but he was a key national player for decades in addressing the scourge of school segregation. He served as a court appointed consultant on the issue in lawsuits in Charlotte, Detroit, Oklahoma City, Denver, Dayton and numerous other cities. Locally, he assisted the Affiliate in many legislative battles on key civil rights issues, including working to limit the use of racially discriminatory standardized tests in the employment setting. The Affiliate expresses its condolences to his wife, Mary-el, and his family.

## Legislative Kick-Off

### 2006 General Assembly Session Off to Election-Year Start

Election years at the State House generally do not bode well for civil liberties, and it has quickly become apparent that 2006 will be no exception. Although the House took a positive step its first day back in session – overriding Governor Carcieri’s veto last July of medical marijuana legislation – other actions suggest a much less civil liberties-minded atmosphere. The vast majority of bills have not even been introduced yet, but the House has already signaled its support for two troubling pieces of legislation – a bill to make it a crime for a driver to refuse to take a breathalyzer test, and a series of extremely punitive measures aimed at sex offenders. Those bills and a few others of concern are briefly reviewed below, but this article’s major focus is on some of the *positive* bills the Affiliate will be actively lobbying for in the months ahead. As for the many other anti-civil liberties bills that will be introduced in the coming few weeks, they will be reviewed in next issue’s newsletter.

#### **Civil Rights**

**Racial Profiling:** In 2004, the civil rights community and local police chiefs collaborated to achieve enactment of a comprehensive ACLU bill designed to begin tackling the problem of racial profiling in the state, a problem that was overwhelmingly documented in 2003 with the release of a two-year study of traffic stops data. Among other things, the 2004 law explicitly banned racial profiling, required the continued collection of traffic stops data by police departments for another year, barred the use of so-called consent searches (police “asking” drivers for permission to engage in suspicionless searches), and prohibited the extended detention of cars without cause. Unfortunately, an analysis of the latest round of data collection has shown little change in the prevalence of the problem. As a result, the ACLU is introducing legislation this year that builds upon the 2004 law. The bill, sponsored by Rep. Joseph Almeida and Sen. Harold Metts, would strengthen the remedies available to victims of racial profiling, require continued data collection of stops that result in searches, and mandate formal review of the data to address any problems that are flagged.

**Domestic Partner Benefits:** Although a state law guarantees health insurance benefits to the domestic partners of state employees, recent troubling developments on that front have prompted the ACLU to introduce legislation on the subject. First, the state recently informed its employees that, under federal law, the health insurance benefits it was providing for domestic partners constituted taxable income. As a result, state employees now have to pay taxes on this important benefit for their partners. Since this is an issue of federal law, there is very little that can be done about it in Rhode Island. However, proposed ACLU legislation would specify that domestic partner health insurance benefits are not taxable income for *state* income tax purposes.

Regrettably, to add insult to injury, the RI Department of Administration recently issued a memo stating that domestic partners of state employees will no longer be covered by either COBRA or the Family Medical Leave Act. In response, the ACLU bill would explicitly entitle them to the protections of COBRA and to the state’s version of the FMLA. The bill comprehensively addressing all these issues is being introduced by Sen. Rhoda Perry and Rep. Gordon Fox.

**Gay Marriage:** A well organized state Campaign for Marriage Equality, of which the ACLU is a member, once again will be promoting passage of a bill authorizing same-sex marriage. The legislation is being reintroduced by Sen. Rhoda Perry and Rep. Arthur Handy. Each year the number of co-sponsors on the bill incrementally grows.

#### **“War on Terrorism”**

**Surveillance:** The ongoing revelations at the federal level about unlawful spying of political protests across the country – including here in Rhode Island (see story, page 1) – serve as the backdrop for a major piece of legislation the Affiliate will be promoting this session. Sponsored by Rep. Edith Ajello and Sen. Charles Levesque, the bill would restrict state and local police from collecting or maintaining information about the political, religious or social views, associations or activities of individuals or groups. It would also bar police from using federal homeland security funds to train their personnel in conducting surveillance of or interfering with lawful protests, demonstrations or other First Amendment activities. This latter provision follows from the ACLU’s disclosure last year that the Providence Police Department obtained over \$100,000 in federal homeland security money for police officers to attend a training on how to “handle” protests and “civil actions.”

**Open Records:** A second bill, sponsored by Rep. Edward Pacheco and Sen. Levesque, seeks to repeal a 2002 statute, passed with virtually no debate, that exempts from the open records law various once-public records of water management supply systems. Passage of the 2002 law was apparently based on the theory that it would stop terrorists from dropping toxic chemicals in private wells across the state. The ACLU believes that the secrecy established by the four-year-old law created a dangerous precedent, and its only real effect has been to keep citizens in the dark about environmental problems with the water supply. The repeal measure was first introduced last year and garnered wide support from environmental groups and the state Planning Division. However, opposition from the state Water Resources Board succeeded in killing it.

## Legislative Kick-Off

### *Privacy*

RFID Tags: Last year, a disturbing story from California reported how a school district began requiring students to wear radio frequency identification (RFID) tags, allowing their identity and movement to be tracked electronically. RFID technology has been used to track cattle and commerce, but the privacy implications of its mandatory use on people are unsettling, to say the least. In response, Rep. Charlene Lima introduced an ACLU bill in 2005 to restrict the state or municipalities from making use of RFID technology on students, employees or clients. The bill passed both Houses but was unexpectedly vetoed by the Governor. The ACLU will be actively pushing for its passage again this year.

Social Security Numbers: For over thirty years, a federal statute has made it unlawful (though admittedly with a number of exceptions) for any "federal, state or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his or her social security number." Incredibly, in a feat of legal legerdemain, some courts have recently ruled that, despite the clear language of the provision, the restriction applies only to federal agencies! Rep. Charlene Lima and Sen. Rhoda Perry have reintroduced a state version of the federal law that would explicitly require state and municipal agencies in Rhode Island to abide by that statute's important privacy protections. The General Assembly took no action on the bill last year after state agencies decried the restriction.

Abortion: Early in 2005, the state was ordered to pay ACLU attorneys over \$300,000 in attorneys fees for their successful challenge to the last anti-choice bill passed by the General Assembly, a so-called "partial birth abortion" ban. That didn't stop the Senate last year from passing a dangerous, and constitutionally suspect, bill that would require women to wait at least 24 hours before obtaining abortions and impose onerous and biased "informed consent" requirements unlike those for any other medical procedure. Fortunately, the House took no action on the proposal. The Affiliate will be working with pro-choice groups to prevent the bill's passage again this year.

Medical Marijuana: A major victory was achieved the first day of the session when the House voted to override Governor Carcieri's veto of medical marijuana legislation passed by the General Assembly last June. The bill, a version of which was first introduced by the ACLU five years ago, immunizes physicians from liability for discussing with patients the pros and cons of the use of medical marijuana, and allows 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 Senate had already voted to override the veto before it adjourned for the year last July. The bill was sponsored by Rep. Thomas Slater and Sen. Rhoda Perry.

### *Open Government*

Administrative Procedures Act: The APA is an important state law that requires state agencies to seek public comment on regulations affecting the public before adopting them. For unknown reasons, the state Board of Elections is exempt from that statute, and is thus free to adopt far-reaching regulations affecting elections, campaign finance and the like without any public input whatsoever. An ACLU bill, being introduced by Rep. Fausto Anguilla and Sen. Leo Blais, seeks to correct the current situation by repealing that exemption.

Open Meetings: One bill affecting open government has already been heard, and it was roundly condemned by the ACLU and others. The bill would exempt the Town of Little Compton from a requirement in the open meetings law that school committees publish notice of their meeting agendas in the newspaper. Instead, the bill allowed the Town to post the notice electronically. In addition to noting that many people do not have easy access to the Internet, the ACLU objected to the notion of giving any municipality a special exemption from such an important law.

### *Rights of Immigrants*

Police Enforcement of Immigration Laws: In 2002, the federal government reversed a decades-old policy that had barred local police departments from enforcing federal immigration laws. Because state or local enforcement of federal immigration laws can deter undocumented residents from reporting crime in their communities, many law enforcement officials across the country have expressed concern about the Justice Department's initiative. The ACLU also fears that such involvement is bound to increase racial profiling and other unjustified stops, not only of undocumented workers, but also of legal residents and United States citizens who "look foreign." In response, the ACLU has proposed legislation that would keep that enforcement bar in place in Rhode Island. The proposed bill is sponsored by Rep. Grace Diaz and Sen. Juan Pichardo.

## Legislative Kick-Off

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### ***Students' Rights***

**"Zero Tolerance"**: In response to ludicrous "zero tolerance" policies that some school districts across the state continue to rigidly implement and enforce, the ACLU has introduced a bill, sponsored by Sen. Daniel Issa and Rep. Anastasia Williams, that would require schools to take a case-by-case approach in determining the appropriate discipline for students who are charged with drug, alcohol or weapons violations. The bill has the support of the state Department of Education.

### ***Access to the Courts***

**Sharing of Attorneys' Fees**: Four years ago, in a devastating ruling for the ACLU, the R.I. Supreme Court held that ethical rules and state law barred volunteer attorneys from sharing 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. For three years the Senate has passed legislation, introduced by Sen. Daniel Connors, to make clear that such fee-sharing does not constitute the "unauthorized practice of law." However, the bill has repeatedly died in the House. This year, a House version of the bill has also been introduced by Rep. Amy Rice, and the ACLU is hopeful for more favorable consideration.

### ***Criminal Justice***

**Breathalyzer Refusals**: Ignoring concerns that the bill would significantly erode the privilege against self-incrimination, the House has already passed a measure, and the Senate is expected to soon follow, making it a crime for a driver to refuse to submit to a breathalyzer test if he or she has been cited once before for not taking the test. (See related story, page 3). This is one of a number of troubling drunk driving bills that the Affiliate is monitoring this session.

**Prisoner Rights**: For years, the families of inmates at the ACI have faced an enormous hardship in keeping in touch with their loved ones. Under a special arrangement, inmates must make collect calls to reach anybody on their phone list. However, families have complained for years about the exorbitant rates for these calls.

In fact, unlike any other local phone system, these charges are outside the jurisdiction of the Public Utilities Commission, which otherwise must

generally approve phone rates in the state. The ACLU has proposed a bill, sponsored by Rep. Edith Ajello and Sen. Charles Levesque, that would establish a regulatory process for setting rates and allow prisoners to pay for calls with special debit cards that would reduce the costs to inmates and their families.

**Sex Offenders**: Punitive – and often very counter-productive – legislative measures against sex offenders are sweeping the country, and Rhode Island is no exception.

In response to the Todd McElroy case (see story, page 2), bills have been proposed to give the state the power to force sex offenders being released from prison to go through a civil commitment proceeding, which would allow for their continued, and potentially indefinite, incarceration. At a committee hearing on the bill, a wide array of professional mental health organizations — including the R.I. Psychological Association, the

R.I. Council for Community Mental Health Organizations and the R.I. Disability Law Center — testified against the bill. However, the House sponsor of the bill and Chair of the committee, Rep. Joseph McNamara of Warwick, has indicated that he will be pushing for its passage.

Another wide-ranging piece of punitive legislation would establish lengthy mandatory minimum sentences for certain sex offenders, authorize lifetime GPS monitoring and expand the current community notification laws. In spite of serious legal and fiscal ramifications, this bill has the support of several state agencies, raising concerns about its momentum in an election year.

The bill is based on a statute enacted in Florida, which spent over \$6 million in start-up costs to implement it. The bill was enacted there despite pointed questions about its efficacy raised by the national Association for the Treatment of Sexual Abusers.

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Given that the vast majority of bills had not been introduced as this newsletter went to press, this summary only scratches the surface of civil liberties-related legislation in the 2006 session. 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 bills, members are encouraged to contact the ACLU office, and to also call, write and testify on bills of interest and concern. Members can sign up for legislative e-alerts by visiting our web site at [www.riaclu.org](http://www.riaclu.org).

## Documents Show That DMV Expects New Driver's License Law to Cost R.I. Taxpayers More Than \$20 Million

Newly obtained documents reveal that Rhode Island state officials are concerned that federal legislation, known as the Real ID Act, will require extensive changes to existing practices at the Registry of Motor Vehicles and will carry expenses of more than \$20 million that will have to be absorbed by state taxpayers and license applicants. The Act, passed by Congress last spring without public hearings, imposes federal regulations on the design, issuance and management of state driver's licenses – turning them, for all practical purposes, into a National ID card. The ACLU called the information contained in the documents one of many compelling reasons for Congress to repeal this ill-conceived law.

Since the law was enacted, groups across the political spectrum have voiced concerns about the statute's disturbing impact on both privacy rights and the rights of immigrants. The documents obtained by the ACLU were part of a national survey conducted of state motor vehicle officials by the American Association of Motor Vehicle Administrators (AAMVA). They indicate that RI DMV officials – the people actually responsible for carrying out the law – also have serious problems with Real ID.

In response to AAMVA questions about the state's ability to link its motor vehicle information database with those of other states, as the statute requires, the DMV responded that "simple changes to our computer system require months of programming and are very costly," and that the "estimated cost to update this antiquated system" to comply with the law "is a minimum of \$20 million." The DMV also said it would "need to hire law enforcement personnel" to comply with other provisions requiring the verification of identity documents, and that "another major concern" is the law's impact on "already overworked DMV clerks." In fact, of twenty REAL ID requirements surveyed by AAMVA, the RI DMV responded that ten would have a technological, financial and/or personnel impact on current practices. The national survey responses showed that those concerns are broadly shared by motor vehicle administrators around the country.

The ACLU has objected that the new law will create a national ID system in this country. In addition to that and the costs, the law's implementation is expected to generate longer lines, repeat visits to the DMV, bureaucratic errors and, for a number of people, the inability to obtain a license, while doing little to prevent terrorism, its stated goal. Since the Act's implementation date is 2008, the ACLU and other groups have begun working to press Congress to repeal the statute. Rhode Island's response to the AAMVA survey is online at [www.riaclu.org](http://www.riaclu.org).

## ACLU Responds to Secret Service Investigation of Student Essay

The Rhode Island ACLU criticized as the "criminalization of student thought" the police investigation of a middle-school student in West Warwick who was visited by police and the Secret Service because of an essay he wrote.

The student's one-page essay – in response to an assignment to describe a "perfect day" – involved doing violence to President Bush and various corporate executives. Police officials, asked by the school to investigate, concluded that the hyperbolic comments did not amount to criminal conduct, but nonetheless called in the Secret

Service to interview the student and school officials. The student was also temporarily barred from school while the investigation proceeded.

The ACLU argued that it was "abundantly clear that the student was engaged in a rhetorical, if angry, exercise of speech. Although it may have been appropriate for the teacher to share the essay with the school social work staff, the decisions to also involve the police and the Secret Service marked a significant and inappropriate intrusion on the young student's First Amendment rights. It sends a disturbing educational message to other students – steer away from any violent themes in writing assignments, or else run the risk of being interrogated by the police." The ACLU commended those officials in the town who recognized the essay for what it was, but warned that "as long as students must fear the possibility of police investigations for handing in rhetorical writing assignments, the school district's educational mission is not being well-served."

In a similar incident five years ago, the ACLU successfully represented a Johnston high school student who was summarily suspended from school for handing in a "free write" composition that school officials claimed contained "suicidality, homicidality, mood concerns, non-bizarre delusions of grandeur and narcissistic themes."



Chris Slane 2005

## Affiliate Testifies on State Regulations

The RI ACLU has testified this past month on a number of proposed state regulations affecting civil liberties. Some of them are briefly summarized below.

**Medical Marijuana:** The Affiliate criticized proposed Department of Health regulations implementing the state's new "medical marijuana" law. Under the proposal, likely to be adopted after a public hearing later this month, sick and terminally ill patients seeking a permit from the DOH, which will allow them to grow and possess small amounts of marijuana without fear of criminal prosecution, will need to pay a \$75 application fee. The Affiliate has argued, thus far unsuccessfully, that a smaller fee should be charged, particularly in light of the sick clientele involved and in recognition that some of the applicants will be indigent.

**Driver's Licenses:** The ACLU and numerous immigrant rights' advocates testified against proposed Division of Motor Vehicles regulations that would deny driver's licenses to people who cannot provide a Social Security Number. The hearing was held in response to an ACLU lawsuit filed last year, charging the DMV with violating state law by failing to have any formal, publicly adopted rules governing the licensing process, including its ban on

licenses for undocumented immigrants. In its testimony, the ACLU called the proposal "poor public policy," and further argued that the DMV had no authority under state law to require SSN's. (See related story, page 7.)

**Red Light Cameras:** The Department of Transportation has adopted new regulations governing the implementation of "red light cameras" in the state. For the most part, the new rules establish relatively strict safeguards to protect motorists' interests and rights. However, at least one precaution urged by the Affiliate in testimony before the DOT was ignored: requiring independent evaluations of the traffic systems to ensure that they have been installed pursuant to proper specification. The ACLU will now be monitoring implementation of the law in municipalities planning to take advantage of it.

**Taxicab Licenses:** The ACLU submitted testimony raising concerns about proposed taxicab licensing rules that would ban certain types of clothing for taxi drivers, such as "collarless shirts with logos." While acknowledging the state's interest in neatly-dressed drivers, the ACLU said that the ban on specific types of casual clothing "simply intrudes too far into decisions of personal appearance."

## News Briefs

### School Pledge Dispute Resolved

After ACLU intervention, Coventry school officials agreed to stop attempting to force students to stand for the daily recitation of the "Pledge of Allegiance." The issue was brought to the Affiliate's attention when senior Joseph Marketos, Jr. complained that his homeroom teacher had ordered him to write an essay explaining why he wouldn't stand, and threatened him with detention if he didn't turn it in. In a letter to the school district, the ACLU noted that "a student's right to silently dissent from a coerced patriotic exercise like this lies at the heart of the First Amendment." In response, the school district agreed to expunge any related disciplinary records from Marketos' file. The Affiliate won its first lawsuit on this very issue over 30 years ago, but complaints like Marketos' still periodically crop up. It's no surprise: Raymond Spear, a Coventry School Committee member and former superintendent himself, was quoted as telling Marketos, "If you don't like the United States of America, go somewhere else."

### Court Rules on Cocaine Sentencing

In a decision harshly criticized by the Affiliate, the U.S. Court of Appeals in Boston has limited the right of trial court judges to depart from the notorious 100-to-1 crack/powder cocaine sentencing disparity imposed by Congress some years ago. The controversial ratio relates to the amount of crack versus powder cocaine necessary to trigger mandatory minimum prison sentences – meaning that possession of one gram of crack cocaine mandates

the same minimum sentence as possession of 100 grams of powder cocaine.

Last year, two federal judges in Rhode Island found that the 100-to-1 ratio was inappropriate, and instead used a 20-to-1 ratio recommended by the U.S. Sentencing Commission. However, the appellate court rejected that approach, essentially tying the hands of judges trying to impose fairer sentences in drug cases. On the day the ruling was issued, the Affiliate had been prepared to file a "friend of the court" brief supporting the lower court rulings in a similar appeal that had been pending before the appellate court. The brief had been prepared by Mark Osler, a law professor at Baylor University and a nationally recognized expert on criminal sentencing issues. The defendant in the case is considering an appeal to the U.S. Supreme Court.

### Ruling Issued in Disorderly Conduct Case

Rejecting arguments from the ACLU and the Public Defender, the R.I. Supreme Court ruled that a person can be convicted of violating the state's "disorderly conduct" law even if the conduct takes place in the privacy of one's own home and doesn't disturb anyone outside the home.

A friend of the court brief, filed by ACLU volunteer attorney H. Jefferson Melish, had argued in support of a lower court ruling that interpreting the law in such a broad manner would unconstitutionally involve the state in private domestic matters.

## ACLU Seeks Emergency Order on Campaign Finance Laws

The ACLU has requested a federal court to issue emergency relief to bar the enforcement of state campaign finance laws that are significantly impeding efforts to organize a campaign for a November ballot issue. A hearing on the matter has been scheduled for March 2nd.

The ACLU is part of a coalition seeking the voters' approval this fall of a state constitutional amendment that will restore voting rights to felons upon their release from incarceration. Presently, felons lose their voting rights until their sentence of probation or parole is completed, which can be years or even decades after they have returned to the community and become productive, tax-paying members of society. The restriction has had a particularly devastating impact on racial minorities in Rhode Island, which disenfranchises a higher percentage of blacks than many Southern states.

The ballot campaign is still waiting to get underway, however, because state law forbids any individual or group from contributing more than \$1,000 to a referendum campaign, and completely bars any donations from corporations. The ACLU filed a legal challenge to these and related restrictions back in 2004 (before this question was approved for the ballot) and has been awaiting a decision from the federal court on their constitutionality. With no ruling at hand and time running out for the voting rights campaign to organize for the November ballot vote, the ACLU is seeking a temporary restraining order and preliminary injunction against enforcement of the contested statutes so that work on the question can proceed.

The Rhode Island Foundation, United Way of R.I. and Common Cause have all filed "friend of the court" briefs in support of the ACLU's motion. The R.I. Foundation notes that it has held up a donation of more than \$70,000 to the voting rights campaign while awaiting a court ruling. The United Way points out in its brief that a large coalition of organizations, called HousingWorks RI, wishes to prepare for a major bond issue on November's ballot, but is unsure how to proceed in light of the confusion surrounding the legality of the campaign finance laws.

### ***2006 ACLU Student Media Award***

#### **Purpose**

The Annual Student Media Award is sponsored by the Rhode Island Affiliate of the American Civil Liberties Union to encourage and recognize high school student media in the tradition of First Amendment freedoms. We seek to celebrate courageous public affairs journalism in the school context, including work that addresses civil liberties and First Amendment issues.

#### **Eligibility & Judging Criteria**

Any Rhode Island high school student or student group is eligible, submitting:

- Any example of high school media in Rhode Island published, written or performed during the 2005-06 school year
- All media forms, including but not limited to articles, editorials, cartoons, special selections, websites, radio or television excerpts
- Items from "underground" publications, as well as other publications from students who do not have access to a school newspaper

Professional journalists with expertise in covering civil liberties issues will judge submissions. Judges will evaluate submissions on the basis of: informational value; writing quality; courage in publication; impact; value as investigative reporting; and furtherance of interest in civil liberties

#### **Awards**

Award winners will receive \$500 (to be shared in the event of joint winners), a certificate, and a complimentary ACLU membership. Winners will be honored at the RI ACLU Annual Meeting.

#### **Entry Rules**

Any high school student (or faculty member, with the student's permission) may submit entries for the award competition. Entries must be accompanied by a cover letter that provides the contact information for the student (including email and phone) and the school's name and address. Each student may submit only one article or series of related articles. Please send **five** copies of each entry to: Amy Myrick, RI ACLU, 128 Dorrance Street, Suite 220, Providence, RI 02903. Entries must be postmarked no later than **May 12, 2006**. For more information, contact Amy Myrick at 831-7171.

**American Civil Liberties Union  
Foundation of Rhode Island**  
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Providence, RI 02903

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The R.I. Affiliate encourages you to make use of the Affiliate's website at [www.riaclu.org](http://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.

**ACLU Foundation Legacy Challenge:  
Your Gift for the Future Will Defend Freedom Today**

Throughout the ACLU's history, thousands of Americans have chosen to act as stewards of our constitutional heritage by including the ACLU Foundation as a beneficiary of their estate. Now, through a generous commitment by National ACLU Foundation supporter Robert W. Wilson, a bequest provision in your will or trust will be matched with up to \$10,000 in immediate cash support to ACLU programs. Never before has your commitment to the ACLU been able to accomplish so much.

To request information about how your legacy gift can benefit the ACLU Foundation today, please contact the Office of Gift Planning at the following address: ACLU Foundation — Office of Gift Planning — 125 Broad Street, 18<sup>th</sup> Floor — New York, New York 10004. Or you can e-mail inquiries to: [LegacyChallenge@aclu.org](mailto:LegacyChallenge@aclu.org).

Additional information can be found at the web address: [www.aclu.org/legacy](http://www.aclu.org/legacy).

***ACLU Participates in Eastside Marketplace "Friendship Fund"***

In an effort to give back to the community, Eastside Marketplace has devised an easy way for non-profit organizations to raise money. It's called the "Friendship Fund." Simply save your receipts from Eastside Marketplace and mail them to the RI ACLU office. Eastside Marketplace will issue checks at the rate of 1% of the total Eastside Marketplace register receipts redeemed. The more receipts redeemed, the more money we raise! Thank you Eastside Marketplace!