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# RHODE ISLAND CIVIL LIBERTIES

A Bi-Monthly Publication of the American Civil Liberties Union Foundation of RI

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

Phone: 401-831-7171  
Fax: 401-831-7175  
E-mail: [riaclu@riaclu.org](mailto:riaclu@riaclu.org)  
Web: [www.riaclu.org](http://www.riaclu.org)



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## Department of Education Halts “Abstinence-Only-Until-Marriage” Curriculum in Public Schools

Responding to a complaint filed by the Rhode Island ACLU last September, the state Department of Education has issued an advisory to all school districts, instructing them to halt the use of a federally-funded abstinence-only-until-marriage curriculum in the public schools that the ACLU argued raised serious privacy and discrimination concerns.

The curriculum, called “Right Time, Right Place,” was offered in Pawtucket and Woonsocket schools in the past year. In a series of letters to DOE Commissioner Peter McWalters, the ACLU argued that the program, run by a private organization, promoted sexist stereotypes, ignored the state’s comprehensive sex education standards, invaded students’ privacy rights and endorsed particular religious views. The DOE advisory agreed that the curriculum had been “determined to be NOT consistent with the Rhode Island Health Education Standards.”

After obtaining documents relating to the program, the ACLU pointed out to the Commissioner that, among other things, the curriculum:

\* Taught students that “girls have a responsibility to wear modest clothing that doesn’t invite lustful thoughts,” and explained that a man is “strong,” and “protect[ive],” while a “real woman” is “caring”;

\* Included a video whose host explains how abstinence helped him to “honor my relationship with Jesus”; and

\* Required students to provide identifying information about themselves while completing a survey that asked a series of personal questions, including “When was the last time you had sex?”

Claiming that this curriculum “may undermine or contradict – rather than supplement – statewide anti-discrimination policies or comprehensive sex education mandates,” the ACLU called on the DOE to determine both how and where the curriculum was being used elsewhere in Rhode Island, and to advise school officials of its illegality.

The two page memo sent out to school districts by the Commissioner makes clear that the program is not appropriate for use as part of public school health curricula. To avoid similar problems in the future, the advisory also requires all school districts in the state to submit for the Department’s review a copy of their school health education curriculum.

The Affiliate’s investigation of the Heritage program was part of a national ACLU campaign designed to stop the misuse of public dollars to fund medically inaccurate and discriminatory abstinence-only sex education programs. Although studies have raised numerous questions about their effectiveness, the federal government has poured nearly a billion dollars into abstinence-only-until-marriage programs since 1997.

A copy of the ACLU’s correspondence with the Department of Education and the DOE’s advisory memo can be found on the Affiliate’s website.

## ACLU Warns of Misleading Voter Registration Mailing

The ACLU warned residents last month of a misleading flyer sent out to 600,000 registered voters by the Secretary of State. Although mailed as part of a process to clean up the voting rolls, the ACLU argued that the form misled voters into believing they had to disclose personal information and return the form in order to remain registered. In fact, voters whose names and addresses were accurate needed to do nothing.

The self-mailer form had boxes for name, address, date of birth, driver's license number, the last four digits of the voter's Social Security number, phone number and e-mail address. If any items were wrong or missing, voters were told they should "print in the correct information." Fine print indicated that disclosing phone number and email address was optional. However, the form clearly implied that voters had to disclose their driver's license numbers and part of their Social Security number. Under the law, however, neither number is required of any voter registered before 2004. Disclosure of only one of those numbers is required for people who registered to vote for the first time after January 1, 2004, but only if it was not supplied at the time of registration.

The form also told voters to "sign and return this form within 7 days," wrongly suggesting that action would be taken if a voter did not provide the requested information promptly. In response to the ACLU's objections, the Secretary of State's office acknowledged the optional nature of the form, but claimed that voters could find out by calling their local board of canvassers.

### News Briefs

#### Medical Marijuana Regs Revised

Heeding concerns raised by the ACLU at a public hearing in February, the Department of Health has revised its regulations implementing the state's new "medical marijuana" law. The original proposal imposed a \$75 fee on all applicants for the program. At a recent public hearing, the Affiliate argued that a smaller fee should be charged, particularly in light of the sick clientele involved and in recognition that some applicants will likely be of limited means. The Department agreed to establish a \$10 fee for those on public assistance.

#### Judge Keeps McElroy Hearing Closed

Rejecting arguments advanced by the *Providence Journal*, a state district court judge has ruled that the upcoming civil commitment hearing of convicted sex offender Todd McElroy will be kept closed. 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. An ACLU friend of the court brief, filed by volunteer attorney Katherine Powell, had asked the court to adopt a remedy that could accommodate the competing interests raised by the case. The brief argued 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 argued 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 newspaper has appealed the ruling to the state Supreme Court.

#### Disorderly Conduct Charge Challenged

The ACLU has filed an appeal in R.I. Superior Court on behalf of a person who was arrested by Westerly Police for disorderly conduct after complaining about getting a speeding ticket. In arresting him, the police claimed that the driver threatened to "cut the officer's fucking balls off," but a dispatcher's tape of the incident confirms the complainant's version – that he said that the tickets he was being given were cutting *his own* "fucking balls" off. Other than this verbal sparring, there is no evidence in the police report about any conduct on the complainant's part that would constitute "threatening behavior" as prohibited by the disorderly conduct law. Nonetheless, a district court judge still found him guilty. The two officers involved have recently faced internal disciplinary charges for alleged misconduct.

In a series of cases, the R.I. Supreme Court has held that the First Amendment protects profane comments directed at police, and the ACLU hopes to have the guilty finding overturned on that basis.

## General Assembly Update

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### A Mid-Term Look at the 2006 General Assembly Session

As this newsletter went to press, the General Assembly had reached its mid-point, but the fate of many important bills remains very much up in the air. Although, in theory, a deadline for passing bills out of committee has passed, the exceptions tend to swallow the rule. In addition, Senate committees have given themselves an additional week to vote on legislation.

One thing is clear: following a trend across the country, the legislature is virtually certain to enact some extremely punitive, but largely ineffective, measures aimed at sex offenders. On the positive side, each House has already passed an ACLU bill that will extend the reach of state domestic partner benefits' laws, and a number of other Affiliate initiatives remain alive at the half-way mark. What follows below is a brief summary of just a small number of the bills the Affiliate has been working on during the past two months.

#### *First Amendment Rights*

Political Spying: Although its approval on the floor is far from certain, House Judiciary Committee has approved an important bill, sponsored by Rep. Edith Ajello, that would restrict state and local police from collecting or maintaining information about the political, religious or social views, associations or activities of individuals. The bill follows on the heels of revelations that the protests of a Providence peace group were kept in a Department of Defense "terrorism" database, and that the Providence Police Department obtained \$100,000 in federal homeland security money for police officers to attend a training on how to "handle" protests and "civil actions."

Tuition Tax Credits: After holding hearings, legislative committees are not expected to take any action on a bill that would provide tax breaks to people who made donations to a scholarship organization for students attending private and parochial schools. At a recent House Finance Committee meeting, ACLU Board member Vivian Weisman was joined by teacher union representatives in calling the bill a back-door method of providing tuition tax credits to religious schools.

#### *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, House Judiciary Committee has approved an ACLU bill, sponsored by Rep. Charlene Lima, to restrict the state or municipalities from making use of RFID technology on students, employees or clients. The bill passed both Houses last year but was unexpectedly vetoed by the Governor. The Affiliate is hoping for a more positive outcome this year.

Abortion: House HEW Committee took no action on a dangerous 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. Some House leaders had warned liberal legislators that at-

tempts to force a vote on pro-gay marriage legislation would likely lead to a vote on, and passage of, this bill by the anti-choice HEW committee. For the past few years, House committees have held hearings on "waiting period" legislation but not taken any votes. Meanwhile, this bill remains alive in the Senate, which has approved the legislation in past years.

HIV Names Reporting: At present, health care providers are required to disclose the names of patients with AIDS, but not those who are only HIV-positive. However, as a condition of receiving significant federal dollars for AIDS prevention and treatment, states have been told this year that they must begin reporting the names of HIV-positive patients as well. The state Department of Health has introduced legislation to implement this new mandate, and the ACLU has been working with the Department to put into place strong confidentiality safeguards in the revised law to the extent allowable by the new federal mandate.

## General Assembly Update

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### *Civil Rights*

Health Care for Immigrants: ACLU Board member Nondas Hurst Voll testified on behalf of the Affiliate at House and Senate Finance Committee hearings to oppose the Governor's callous and pound-foolish budget proposal to cut approximately 4,000 undocumented children off the Rite Care health insurance rolls. Since those hearings, held amid widespread denunciation, the Governor has begun backing off from the proposal.

"Primary Seat Belt" Law: Once again, the State Police and the Department of Transportation are heavily pushing a bill to make seat belt use in the state a primary offense. At present, police can issue a seat belt ticket only if the driver has been pulled over for another reason. The ACLU, the Urban League of RI and RI Affirmative Action Professionals have strongly opposed efforts to change the law, arguing that allowing police to pull over suspected seat belt violators will only exacerbate the extent of racial profiling occurring in Rhode Island. The bill remains in committee. In the meantime, no action has been taken on the ACLU's bill to address the state's racial profiling problem. Building upon a 2004 law, the bill 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.

### *Open Government*

Administrative Procedures Act: House Judiciary Committee has approved an ACLU bill, sponsored by Rep. Fausto Anguilla, repealing an exemption for the Board of Elections from a law that requires state agencies to seek public comment on regulations before adopting them. The puzzling exemption for such an important public body dates back decades, and the ACLU is hoping the anomaly will be corrected this year.

Open Meetings: The ACLU appears to have succeeded in significantly restricting the reach of a bill that would allow people with disabilities who serve on

public bodies to participate in public meetings by telephone. As originally drafted, the bill essentially allowed any public official claiming to have a disability to make use of this new opportunity. This was of particular concern to the ACLU since just last year the Affiliate successfully lobbied for passage of a bill that generally banned telephone meetings of public bodies. Working with the Governor's Commission on Disabilities and the Disability Law Center, the ACLU helped redraft the bill to authorize phone participation only for people with disabilities as defined in state law and only when the Commission determines that no other reasonable accommodation is available.

### *Drunk Driving*

Breathalyzer Refusals: Rejecting objections that the bill would significantly erode the privilege against self-incrimination, both the House and Senate have passed separate measures making it a crime, instead of a civil offense, 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. This is one of a number of troubling drunk driving bills that the Affiliate is monitoring this session. Earlier this year, the ACLU released a detailed report debunking the myth being perpetuated by a number of officials and organizations that Rhode Island's drunk driving problem is one of the worst in the country, but the ACLU's comprehensive analysis appears to have had little effect on the politics of the issue.

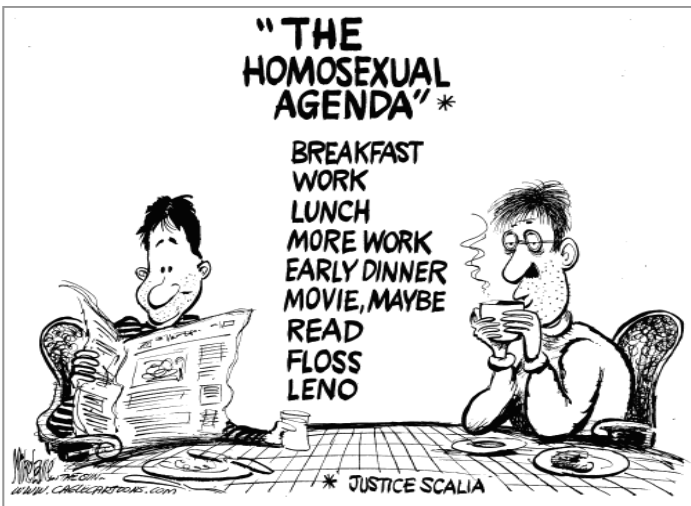
Mandatory Interlock Systems: In another questionable effort to increase the punishment for drunk driving, House Judiciary Committee has approved a bill requiring all twice-convicted drunk drivers to have an ignition interlock system installed on their cars at the cost of almost \$2,000 a year. The device prevents a driver from starting a car until his or her breath is taken by the machine. The most troubling aspect of the bill is a provision that would require the driver's license of the offender to contain a notation that the driver is using the interlock system. The Affiliate strongly opposes the use of a "scarlet letter" on driver's licenses and will be lobbying to have this provision removed from the bill.

## General Assembly Update

### Gay and Lesbian Rights

**Domestic Partner Benefits:** Although a state law guarantees health insurance benefits to the domestic partners of state employees, the state belatedly informed employees earlier this year that, under federal law, those benefits constitute taxable income. As a result, state employees now have to pay taxes on this basic benefit for their partners. Almost simultaneously, the state declared that domestic partners of state employees would no longer be covered by either COBRA or the Family Medical Leave Act. To ameliorate these injustices, the ACLU proposed legislation, sponsored by Sen. Rhoda Perry and Rep. Gordon Fox, to specify that domestic partner health insurance benefits are not taxable income for state income tax purposes, and to explicitly entitle state employees and their partners to the protections of COBRA and to the state's version of the FMLA. The legislation appears headed for passage.

**Gay Marriage:** The Campaign for Marriage Equality, of which the ACLU is a member, has been actively promoting passage of legislation, reintroduced by Sen. Rhoda Perry and Rep. Arthur Handy, authorizing same-sex marriage. In order to test its progress, the campaign had been pressing for a vote on the legislation in House Judiciary Committee. However, in a game of political brinkmanship, legislative leaders warned that a vote on this bill would lead to a vote in another committee on anti-abortion legislation, which would likely pass if voted on. Ultimately, the bill died without a vote being taken, but tying the two issues together understandably angered and frustrated supporters of the marriage bill.



### Criminal Justice

**Sex Offenders:** Punitive – and often very counter-productive – legislative measures against sex offenders are sweeping the country, and Rhode Island is no exception. House HEW Committee is expected to pass a bill in the coming weeks that would authorize the state to initiate civil commitment proceedings against sex offenders shortly before their release from prison, in order to allow for their continued, and potentially indefinite, incarceration. The bill's passage is likely despite its opposition from a wide array of professional mental health organizations.

Another wide-ranging piece of legislation that is virtually certain to pass in some form could potentially authorize lifetime GPS monitoring for some sex offenders, increase the minimum sentences for sex crimes, and further expand the state's current registration and community notification laws. In spite of serious legal and fiscal ramifications, this bill has the support of several state agencies, making its passage in an election year virtually inevitable.

**Prisoner Rights:** Both House and Senate Judiciary Committees have approved an ACLU bill, sponsored by Rep. Edith Ajello and Sen. Charles Levesque, that would limit the costs that could be imposed on inmates in making phone calls. For years, the families of ACI inmates have faced an enormous hardship keeping in touch with their loved ones because of exorbitant charges imposed on the collect calls that inmates must make to reach anybody on their phone list. With the Department of Corrections' contract with the current prison telephone provider expiring next year, the DOC has taken a neutral position on this bill which would eliminate special commissions and charges and allow prisoners to pay for calls with special debit cards.

**Mandatory Minimums:** Although the General Assembly does not appear likely to take action, positive hearings were held on legislation, sponsored by Rep. Joseph Almeida and Sen. Harold Metts, to reduce the current minimum sentences contained in some of the state's drug laws. Rhode Island has the highest minimum sentences for these crimes of any state in New England, and civil rights, prisoner rights and drug treatment organizations all expressed support for this bill to modestly begin rolling back some of the most punitive aspects of the state's "war on drugs."

## General Assembly Update

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### *Election Law*

Ballot Referenda Campaigns: The ACLU and a diverse array of other non-profit organizations, including the United Way, the RI Foundation and Common Cause, have crafted significant amendments to the state's campaign finance law to address numerous problems in the statute, as documented by a pending ACLU lawsuit. Among other things, the current law bans all corporate contributions to ballot referenda campaigns and requires organizations working on such campaigns to form PACs and meet other burdensome obstacles. The legislation approved by House Judiciary Committee would eliminate these burdens.

Free Speech in Elections: Responding to First Amendment concerns that the ACLU raised after the last election cycle, House and Senate committees have approved Board of Elections' legislation to clarify two existing statutes. One change would make clear that only election workers, not voters, are barred from wearing political buttons into the polling place. Some polling officials had interpreted current law as prohibiting voters from wearing buttons or similar paraphernalia into the polling booth. A second bill makes clear that a law making it illegal to tamper with or deface "sample ballots" applies only to the posted ballot at polling places; the Board of Elections had previously interpreted the ban as applying to mock ballots that some candidates had used in political advertisements and flyers.

### *Workplace Rights*

Lie Detectors: The ACLU is lobbying against passage of a bill that would allow police agencies to give lie detector tests to job applicants. Rhode Island's ban on the use of polygraph tests in employment has been in effect for over 30 years, and evidence of its scientific validity has not improved since then. Instead, the tests remain quite inaccurate and can subject many innocent people to intrusive and unnecessary investigations. House Labor Committee approved the bill despite Affiliate arguments that there was no reason to subject law enforcement applicants to a test whose validity is subject to so much question. In 2004, a similar bill passed out of committee, but the ACLU successfully worked on the House floor to have the bill recommitted.

DCYF Background Checks: Ignoring concerns raised by the ACLU and the state Commission for Human Rights, DCYF is pushing legislation that would give the agency and licensed day care agencies direct access to job applicants' entire criminal histories. Presently, applicants apply for a criminal background check with the police, who compare any criminal record with a list of disqualifying offenses. Only if such an offense is found is the employer notified that the person has a criminal record. The proposed legislation would eliminate this carefully-crafted process and give day care agencies carte blanche authority to deny employment to people with any criminal record. Even more disturbingly, the process would give them access to job applicants' *arrest* records, contrary to a state law that bars employers from inquiring about arrests not leading to convictions. For the moment, the bill remains in committee.

### *Students' Rights*

"Zero Tolerance": In response to ludicrous "zero tolerance" policies which some school districts across the state continue to rigidly implement and enforce, Senate Education Committee has approved an ACLU bill, sponsored by Sen. Daniel Issa, that would require schools to take a case-by-case approach in determining the appropriate discipline for students charged with drug, alcohol or weapons violations. The bill is supported by the state Department of Education, but opposed by the teachers' unions.

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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 also sign up for legislative e-alerts by visiting our web site at [www.riaclu.org](http://www.riaclu.org).

## Adoption Reference Form Revised After ACLU Objects

As the result of complaints prompted by the RI ACLU, a national organization is revising a form used by DCYF and similar state agencies around the country to evaluate families interested in adoption and foster care. The form, given to third party references, had been adopted for use in half a dozen states before the Affiliate complained about it.

After receiving a copy of the prototype form last September, the Affiliate raised First Amendment concerns about two particular questions. One question asked whether the person filling out the reference form was aware if the applicant was “affiliated with any cults, groups or organizations that promote beliefs or values that cause you concern and/or seem incompatible with responsible parenting.” In a letter to DCYF officials, the ACLU pointed out that “the fact that a family participates in organizations that ‘promote beliefs or values’ that cause a third party concern should have no bearing on an applicant’s fitness” as a foster or adoptive parent; that “any number of people might consider membership in Planned Parenthood or a gay rights organization ‘incompatible with responsible par-

enting””; and that a cult is, “at bottom, nothing more than the name given to an unpopular minority religion.”

Another question asked the person filling out the form to describe how frequently the applicant attends church. The ACLU emphasized that “this is a question that has absolutely no place on a form, or in a process, like this. An applicant’s religious views, or lack thereof, and prevalence of church-going, or lack thereof, should be completely irrelevant to the Department. There is simply no possible use for this type of information without running afoul of basic First Amendment principles.”

In response, DCYF agreed to make some revisions to the questions. The ACLU in New Jersey, whose state was also using the form, recently followed up with the Consortium for Children, the national group responsible for the form. The Consortium agreed to make some additional revisions, which will apply to the forms being used by DCYF and other agencies nationwide.

## Organizational Notes

**Thank You!** The RI ACLU wishes to thank all its members and donors for the generous support you have provided us in the past two years. As a result of that support, the Affiliate plans to add another staff person to the organization later this year. This increase in staff will allow us to expand our ability to confront the numerous significant challenges we face during these very difficult times for civil liberties. We appreciate our members’ confidence in our work.

**Bar Association Debate on War on Terrorism.** The civil liberties implications of the ongoing “war on terrorism” will be the subject of a debate organized by the Rhode Island ACLU for the Rhode Island Bar Association’s Annual Meeting this June. The debate features ACLU volunteer attorney Jerry Elmer and U.S. Attorney for Rhode Island Robert Corrente. Last year, the two participated in a series of debates across the state addressing the Patriot Act. Those forums were also organized by the ACLU and were very well received.

## In Memoriam: Julia Pell

After a year-long battle with cancer, gay rights activist Julie Pell died this month at the age of 52. While President of the RI Alliance for Lesbian and Gay Civil Rights, Julie was a significant lobbying force in obtaining passage in 1995 of the state law banning discrimination on the basis of sexual orientation, where her passion, dedication and commitment were evident. She was also a long-time and generous supporter of the Affiliate. Her contributions to the cause of fairness and equality will be her legacy. The ACLU expresses its condolences to her partner, Julie Smith, and to her family.

**American Civil Liberties Union  
Foundation of Rhode Island**  
128 Dorrance Street, Suite 220  
Providence, RI 02903

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### ***ACLU Cable TV Show***

The R.I. ACLU's cable access TV show, "Rights of a Free People," airs on Statewide Interconnect Channel A (Channel 13 in most areas) Tuesdays at 10 PM and Fridays at 3:30 PM. In Providence, North Providence and Kent County, the show can also be seen Wednesdays at 9 PM on Channel 18. Airing throughout the month of May: *Prisoners' Rights*, with guests Mimi Budnick and Rosalina Collazo of Direct Action for Rights and Equality and Daniel Schleifer of the Family Life Center; host Dan Weisman.

### ***Reminder: ACLU Seeks Submissions for 2006 Student Media Award***

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.

Eligible for the award are all media forms, including but not limited to articles, editorials, cartoons, websites, and radio or television pieces published, written or produced by a Rhode Island high school student or student group during the 2005-06 school year. Items from "underground" publications, as well as publications from students who do not have access to a school newspaper will also be considered.

Professional journalists 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. 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:** Entries must be accompanied by a cover letter that provides the student's contact information (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.