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# RHODE ISLAND CIVIL LIBERTIES

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## Upcoming Congressional Action Will Decide Fate of Affiliate's Privacy Complaint Against Phone Companies

The fate of a RI ACLU privacy complaint against Verizon and AT&T is in the hands of Congress, which is considering whether to pass a law giving telephone companies retroactive immunity for having illegally shared telephone records with the National Security Agency (NSA) as part of the Bush Administration's "war on terror." The Congressional bill could also pre-empt any state investigations of violations of customers' privacy rights by the companies, thus requiring dismissal of the pending complaint that the Affiliate filed in 2006 with the Division of Public Utilities and Carriers (DPUC).

In mid-February, the U.S. Senate passed legislation giving immunity to the phone companies. Thus far, however, the House of Representatives has refused to do so, and Congress recently recessed without resolving the matter. Senators Sheldon Whitehouse and Jack Reed both voted to repeal the immunity language from the bill, but an amendment to that effect was defeated by a 31-67 vote. In the meantime, the ACLU has sharply criticized Attorney General Patrick Lynch, who has expressed support for the Senate bill letting phone companies off the hook.

In 2006, news reports described how AT&T and Verizon allegedly provided the NSA, without either customer consent or court order, the personal calling details of millions of residential phone customers. The RI ACLU's complaint to the DPUC noted that the customer information provided to the NSA could "be easily matched with other databases to obtain the name and residence of each caller. This would enable the government to track virtually every phone call made by Rhode Island residential customers, including the identity of the people they called and the length of each conversation." The complaint called the companies' release of the data a "systematic and flagrant violation" of customers' privacy rights and, citing state laws that the release of the information may have violated, asked the DPUC to investigate the matter.

That complaint was stayed to await the results of court action in a California case examining many of the same issues, including phone company claims that "national security" bars investigation of any allegations of illegal activities on their part.

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## Revised Prison Rules Protect The Public's Right to Know

In an important victory for the public's right to know, the R.I. Department of Corrections (DOC) has significantly modified regulations governing media access that it had proposed last September. At the time, the ACLU had argued that the rules would "allow for a regime of censorship over the news media in their efforts to interview inmates and inform the public." The revised regulations favorably address virtually every concern that the RI ACLU and others had raised in testimony to the DOC.

Among the changes that have been made since a public hearing five months ago:

- \* Revision of a proposal that a DOC public information officer be present for any "filming and/or interview and remain with the news media throughout the entire visit." The new rules now give reporters the right to demand that the officer leave.

- \* Removal of a provision requiring interviews to be limited to an "approved purpose."

- \* Elimination of a provision allowing the DOC to deny a media interview if the Department deemed it not to be sufficiently "sensitive to the feelings and needs of crime victims."

- \* Reinstatement of language providing that any work product prepared by the media during interviews (such as notes, recordings, or videotapes) will not be subject to review by members of the DOC.

The revised regulations will better promote transparency in an agency where openness is particularly crucial. Ultimately, it is the public's right to know that benefits from these changes.

## Questionable Sex Education Program Gets Defunded

Two years after the Rhode Island ACLU first raised concerns about a questionable federally-funded "abstinence only until marriage" sex education program trying to make its way into Rhode Island public schools, the program has been defunded and shut its doors. The demise of Heritage Rhode Island (HRI) is a significant victory for the ACLU and a dozen other local organizations that had joined with the Affiliate in lobbying against the program. The ACLU had argued that it promoted dangerous medical inaccuracies about pregnancy prevention and sexually transmitted diseases and sent an inappropriate message to students from non-traditional households.

Since 2004, HRI had received hundreds of thousands of dollars through a federal "abstinence-only-until-marriage" initiative, and was required to adhere to stringently defined criteria required by that initiative. Among other things, HRI had to teach that sexual activity outside of heterosexual marriage is wrong and harmful to people of any age, and could not teach about contraceptive methods except to emphasize failure rates.

After learning in 2005 that HRI had been allowed into Pawtucket and Woonsocket public school classes, the RI ACLU complained to the Department of Education that the program violated the state's comprehensive health education standards. Among other things, those standards require students to demonstrate the ability to engage in "responsible behaviors such as contraceptive [and] condom use," and to demonstrate an understanding that "gays and lesbians can establish fulfilling committed relationships."

After reviewing the complaint, the Department agreed and held that the program could not be used in public schools. However, less than a year later, after HRI made a few cosmetic changes to the curriculum, the Department reversed itself.

The ACLU then organized a dozen diverse groups – including AIDS Project Rhode Island, the R.I. Academy of Family Physicians, the R.I. Medical Society, R.I. NOW, R.I. Island Teen Pregnancy Coalition, and Youth Pride – in a letter-writing campaign to school districts urging them not to make use

of the program. The letter, while not opposing abstinence education, argued that students deserved information that was "medically accurate, and not based on fear or shame or on stigmatizing teenagers who come from non-traditional households. They deserve information that will help them protect themselves from STDs, HIV and unintended pregnancy when they become sexually active."

The ACLU's campaign succeeded, as HRI was not welcomed in any other public schools to teach its curriculum after the letters went out.

Seeing that the Heritage program was making little headway in Rhode Island schools, the federal government recently decided to no longer fund the group, marking an important civil liberties victory.

Last year, a Congressionally-commissioned report that examined abstinence-only programs like HRI found that teens who participated in such programs were just as likely to have sex as teens who did not participate.

## Board of Elections Rejects Restrictive Rule Changes

At a hearing on proposed rule changes this month, the state Board of Elections acted favorably on a number of comments offered by the ACLU designed to protect the rights of voters. Specifically:

\* The Board rejected a proposed rule that would have barred voters from wearing political buttons into the polling place. Instead, the Board agreed to amend its regulations to explicitly deem such activity not to be illegal "electioneering."

\* The Board rejected a proposed regulation that would have banned any use of cameras or videotape equipment in polling places during voting hours. While expressing support for the proposal's intent to protect the secrecy of the ballot, the ACLU argued that a complete ban on the recording of any images was not narrowly tailored to address that goal.

\* Under current Board regulations, voters who are given provisional ballots because they have come to the wrong precinct generally have only their votes for federal office counted. Under the proposed rules, not even votes for those offices would have been counted, essentially disqualifying the entire ballot of qualified voters who happened to vote at the wrong location. Agreeing with objections offered by the ACLU, the Board rejected that change.

The ACLU has argued in the past that provisional ballots should be counted for all elections for which the person is qualified, by reason of residency, to vote. For example, if a registered voter lives in Warwick but comes to the wrong polling station, there is no reason to ignore his or her clearly valid votes for state and city-wide elections. The ACLU plans on following up with the Board, in light of its actions, to urge that the provisional ballot rules be liberalized to count more than just votes for federal office.

## ACLU Sues DMV Over Social Security Card Demand

The RI ACLU has filed a lawsuit against the Division of Motor Vehicles, challenging the agency's recent implementation of a policy requiring all people renewing their driver's licenses to present their Social Security card.

The lawsuit, filed in Superior Court by ACLU volunteer attorney James Kelleher, argues that the DMV has no statutory authority to implement the policy and that it violates the due process rights of licensees.

The suit was brought on behalf of Providence resident Wendy Becker, whose driver's license was up for renewal in February. She does not have her Social Security card, and on that basis was denied a license renewal when she went to the DMV, even though she provided other documentation containing her Social Security Number.

Although the DMV has claimed that the policy was adopted in order to comply with federal law, the lawsuit points out that there is no legal basis for that claim. The lawsuit seeks a court order declaring the DMV policy unconstitutional and requiring the agency to renew Becker's license if she meets all other lawful requirements for a renewal.

RI ACLU executive director Steven Brown said: "The DMV's requirement imposes a significant burden on many Rhode Islanders who have long since forgotten what they did with their Social Security card. This policy can be extremely onerous for people with disabilities and the elderly, as well as for working adults who must find the time to get to the Social Security office in order to meet this unnecessary demand."

The ACLU expects a court hearing later this month on its request for a temporary restraining order against enforcement of the policy. In the meantime, the DMV agreed to extend Becker's license pending further hearings.

### **Congress Considers Immunity for Phone Companies (...continued from front page)**

The Senate bill, which has been the subject of heated controversy, would shortcut judicial consideration of these claims. It would require courts to dismiss these cases if the U.S. Attorney General merely certifies to a court, in secret, that the phone company did not participate in surveillance activities or that it did so in reliance on a Presidential assertion that the activity was legal. The bill also bars any state investigations into the legality under state law of any warrantless spying facilitated by the phone companies. The RI ACLU's complaint with the DPUC is one of a number that have been filed across the country with state administrative agencies having jurisdiction over phone company practices.

Attorney General Lynch's support for legislation giving immunity to Verizon and AT&T came in a letter sent to Congressional leaders and signed by 20 other Attorneys-General. The ACLU called it "unfortunate that our state Attorney General, who is entrusted with protecting the consumers of Rhode Island, has instead decided that the interests of the telecommunications industry are more important than the privacy rights of our residents."

The ACLU is hopeful that the House will not cave in to the Senate version of the legislation, which is the Bush Administration's latest effort to cover up their violations of the rights of Americans in the name of fighting terrorism.

## **ACLU Brief Supports Attorney General's Free Speech Rights**

The Rhode Island ACLU has filed a brief urging the R.I. Supreme Court to reverse the imposition of \$15,000 in fines against Attorney General Patrick Lynch for public comments he made during the “lead paint public nuisance” case. The brief argues that the fines violated not only Lynch’s First Amendment right to free speech, but also the public’s right to hear the views of attorneys concerning pending litigation in which the attorneys are involved.

Lynch was twice fined by a Superior Court judge for allegedly violating the Rules of Professional Conduct and a “gag rule” the judge had issued against him in the controversial, high-profile case. The comments leading to Lynch being found in contempt of court included a statement decrying what he called the paint companies’ “despicable” tactics in attempting to delay resolution of the case and for referring to the lead-paint makers as “those who would spin and twist the facts.” The ACLU brief, filed by volunteer attorney Amy R. Tabor, argues that the fines and “gag order” were imposed in clear violation of Lynch’s free speech rights and should be overturned.

Regarding the judge’s “gag order,” the ACLU brief argues that the First Amendment “protects the right to express and hear opinions at a meaningful time, place and manner. This includes the right to communicate about social and political lawsuits while those lawsuits are taking place. The trial court’s broad ban on ‘making any subjective characterizations of the defendants’ violates these rights.”

The brief further claims: “Despite repeated protests by defense counsel that they and their clients were wrongfully, outrageously and irremediably publicly smeared with unjust accusations, the Attorney General’s public statements were in fact limited in scope and quantity, and were far milder in nature than attorney speech that the U.S. Supreme Court has found unlikely to undermine a jury’s impartiality, and fully entitled to First Amendment protection.”

The brief notes that the lead paint companies and their attorneys also repeatedly made public comments throughout the course of the trial, among other things describing as unfair the court proceedings that had been brought against them.

ACLU attorney Tabor said: “The public had the right to hear all sides of the lead paint debate, and the public comments of the Attorney General were just one part of that much larger debate. The publicity surrounding this trial, including the public comments made by attorneys for both sides, was well within the norm for a high profile trial in a nation such as ours that has, since its inception, valued free speech and an open public judicial system.”

## **ACLU Issues Alarm About Middletown Plan To Electronically Monitor School Children**

Claiming that the program raises “enormous privacy and safety concerns,” the RI ACLU called on Middletown school officials to halt a pilot program in which elementary school children will be tagged with electronic chips to monitor their whereabouts. The program, using Radio Frequency Identification (RFID) technology, will track the movements of Aquidneck Elementary School students who take school district buses by placing RFID chips on the children’s backpacks.

The only rationale offered by school officials is to allow them to know whether students boarded the right bus. But in a letter to school officials, the ACLU called this a goal that school district procedures can easily address without the need to “tag and track students like cattle. The use of RFID labels on the children is a solution in search of a problem.”

The letter added that this incursion on students’ privacy “could also have the effect of actually making the children less, rather than more, safe” since any information stored on an RFID chip that identifies a particular child can potentially be read from a distance by inexpensive readers that can be easily purchased on the Internet. The letter notes that RFID technology was originally developed to track products and cattle, and that many independent researchers who specialize in RFID technology have raised privacy and security concerns about using this technology for tagging humans.

The ACLU also protested that “encouraging the placement of RFIDs on young children, even in this limited and questionable context, can only have the unintended effect of acclimating them to being monitored by the government in other contexts and wherever they go, as if it were perfectly normal and appropriate. It is not, nor is it a notion that a school district should be encouraging, however unintentionally.”

When a similar, but less intrusive, program was introduced a few years ago in a California school system – requiring students to wear RFID badges while they were in school – an outcry from parents led to its quick abandonment. However, Middletown school officials are plowing ahead with the pilot program, and parents have failed to complain. Not coincidentally, the idea for the tracking was proposed by the school district’s facilities manager whose brother happens to own the company running the program.

**Legislative Kick-Off****2008 General Assembly Session Gets Underway;  
Bleak Fiscal Picture May Bode Poorly for Civil Liberties**

Although it's still very early in the year, things have been extremely busy at the State House. The state's fiscal crisis has already drawn the Affiliate into a number of civil liberties battles, including providing testimony on five budget articles in the Governor's 2008 supplemental budget proposal. Notwithstanding the challenges the session is expected to bring, the ACLU has put together some major legislative initiatives, many of them coordinated with other advocacy groups. They include comprehensive bills addressing racial profiling, election law reform, access to public records, and the rights of immigrants. This article's major focus is on those and other *positive* bills the Affiliate will be actively lobbying for in the months ahead. Since the vast majority of bills have still not been introduced as this issue went to press, some of the major anti-civil liberties bills the ACLU will be fighting will be reviewed in next issue's newsletter.

***Juvenile Justice***

A "cost-saving" budget proposal adopted last June stripped the Family Court of jurisdiction over 17-year-old offenders, sending them to adult court and to the ACI instead of the Training School. Four months later, after a concerted campaign by the ACLU, children's rights advocates and others, the General Assembly reconvened and repealed the ill-conceived proposal.

However, due to vehement opposition from the Attorney General, the House refused to make the repeal retroactive. As a result, there are approximately 500 "gap kids" – juveniles who were arrested for offenses during the four months the statute was in effect – who remain affected by the law. For example, they must acknowledge that they have a criminal record when applying for employment and are subject to adult parole and probation authorities if they were given suspended sentences. The ACLU is working to pass legislation this year to make the repeal retroactive and send these juveniles back to the Family Court system where they belong. (S-2423)

***Racial Profiling***

Sen. Rhoda Perry and Rep. Joseph Almeida have reintroduced a comprehensive racial profiling bill, supported by the ACLU and dozens of other organizations. Among other things, the bill strengthens the state's current racial profiling law by requiring police to document the grounds for conducting car searches; limiting the authority of police to demand identification from innocent passengers; banning so-called "pretext" stops; and reestablishing traffic stop data collection procedures. The bill also limits the ability of police to search minors without cause. (S-2230)

With statistics demonstrating that both blacks and Latinos are disproportionately stopped and searched by police in the state, and that three out of four searches allegedly based on probable cause turn up no evidence of contraband, it is simply a matter of good policing to set stricter standards and protocols for these searches.

Nonetheless, the bill is expected to be vigorously opposed by the R.I. Police Chiefs Association, as it was last year.

***Open Government***

Following up on a report issued by the RI ACLU last fall that documented widespread violations of the state's Access to Public Records Act (APRA) by public bodies, Sen. Michael Lenihan and Rep. Edith Ajello have introduced comprehensive legislation to strengthen the Act. The bill would shorten the timeframe for public bodies to respond to open records requests, increase penalties for violations of the law, and require training of public information officers on the obligations of public bodies under APRA. Passage of the bill is being spearheaded by ACCESS/RI, an open government coalition of which the ACLU is an active member. It has been ten years since any significant changes were made to APRA, and the ACLU's recent report demonstrated a clear need for the legislature to revisit the law and strengthen it. (H-7422)

***Technological Privacy***

Three years ago, a California school district sought to require 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 quite unsettling. In response to that incident, Sen. Frank Ciccone and Rep. Charlene Lima introduced an ACLU bill in 2006 to restrict the state and municipalities from using RFID technology on students, employees or clients. The bill passed both Houses but, unfortunately, was vetoed by the Governor. The bill's necessity has only become more apparent in light of the Middletown school district's recent actions in having elementary school students wear the tags (see story, page 4). The ACLU is hopeful that the legislature will once again approve this important privacy bill and, if necessary, override any Gubernatorial veto of it. (S-2113)

## Legislative Kick-Off

### ***Women's Rights***

Introduced by Representative Edith Ajello in the House and Senator Rhoda Perry in the Senate is a piece of legislation changing the state's mandated infertility insurance coverage to include both unmarried as well as married women.

This legislation passed both Houses last year, only to be vetoed by the governor. The ACLU will advocate for its passage again this session. (H-7239, S-2285)

Senator Perry has also introduced legislation that would give women the right to breastfeed in any public place. If passed, it would not only strengthen current legislation that excludes breastfeeding from the "disorderly conduct" statute, but would put Rhode Island in line with 39 other states that already provide this protection to women. (S-2283)

### ***Voting Rights***

Rhode Island's 2006 elections highlighted significant election law problems generated by restrictive Board of Elections' policies. Board regulations substantially limiting the counting of provisional ballots and the rights of candidates to view disputed ballots during recounts of close elections led to confusion and litigation. With major elections ahead later this year, Rep. Edith Ajello and Sen. Paul Moura have reintroduced an ACLU bill designed to clarify election statutes and strengthen the franchise in Rhode Island.

In a significant display of bi-partisan support, the bill last year was endorsed by three Republican candidates who challenged the Board of Elections' practices in 2006, as well as the Democratic candidate in one of those races, Rep. Amy Rice. The lead sponsors of the bills are also Democrats. (H-7421)

### ***Civil Rights***

An ACLU bill being sponsored by Rep. Donna Walsh and Sen. Daniel Connors would make clear that plaintiffs have three years to bring suit under the Rhode Island Civil Rights Act (RICRA), a major state law prohibiting discrimination in employment and other settings. Presently, RICRA contains no explicit statute of limitations.

Last year, the R.I. Supreme Court, in a 3-2 vote, held that complainants have only one year to bring suit under the law, even though the default statute of limitations for virtually all other personal injury actions in Rhode Island is three years. A longer, rather than shorter, statute of limitations is critical in some discrimination cases, where it may take time for an unsophisticated employee or job applicant to realize that adverse action taken against him or her may have been based on an illegal, discriminatory factor. (S-2143, H-7361)

### ***Lesbian and Gay Rights***

The ACLU is working with Marriage Equality Rhode Island (MERI) to promote a three-pronged legislative platform. In addition to once again advancing a same-sex marriage bill, two new pieces of legislation are being introduced this year. The Compassion for All Families Act would give domestic partners the same statutory protections that married couples have in three crucial family situations: family medical leave, nursing home visitation and funeral planning.

The ACLU will be also be lobbying for passage of legislation to clarify that the Family Court has jurisdiction to grant divorces to validly-married same-sex couples. That legislation is a direct response to the R.I. Supreme Court's decision in December denying a divorce to a same-sex couple who had been lawfully married in Massachusetts. The bill is sponsored by Sen. Daniel Connors and House Majority Leader Gordon Fox.

### ***Rights of Immigrants***

In order to help combat the barrage of negative, anti-immigrant legislation facing the General Assembly, a coalition of advocacy organizations has introduced a legislative package to protect immigrants in Rhode Island from unfair discrimination in a wide variety of contexts. The 10-piece package would keep employers, landlords and local police out of the business of enforcing complex federal immigration law; require the Department of Human Services to offer appropriate interpreter services to clients in accordance with its obligations under federal civil rights law; allow immigrant children to qualify for in-state tuition at public colleges; strengthen many labor laws such as worker's compensation and the whistleblower act to prevent exploitation of workers; and expand RIte Care eligibility for immigrant children. The ACLU is an active member of the new coalition, known as Immigrants United.

## **Legislative Kick-Off**

### ***Criminal Justice***

The Affiliate will once again be supporting legislation to eliminate the mandatory sentences contained in some of Rhode Island's drug laws. A bill to that effect passed overwhelmingly last year, but was vetoed by the Governor, despite a severe overcrowding crisis at the ACI that he was supposedly trying to address. (S-2232)

Meanwhile, the state's fiscal crisis has provided an opportunity for some other positive reforms. Eager to reduce the costs associated with the ACI's burgeoning population, House Finance Committee heard testimony on a budget proposal to expand the state's "good time" statute, allowing inmates with good behavior to further reduce the length of their prison sentence. Unfortunately, it appears that legislative leaders have agreed to carve out an exception for sex offenders. The ACLU testified that doing so will only encourage attempts every session to add other offenses to the list, and thus undermine both the law's fiscal goal and the purpose of "good time" itself. It is designed to reward inmates' behavior while in prison, and so the nature of the offense that brought them to the ACI should be irrelevant. (H-7204, Article 7)

Another positive budget proposal would set a population cap at the Training School which, like the ACI, has been the subject of serious overcrowding in violation of a court order. The ACLU strongly supported the proposal, but decried the absence of an enforcement mechanism in the legislation should the cap be violated. The ACLU also urged the Finance Committee to include provisions that would reduce the number of juveniles sent to the Training School in the first place, by requiring the use of risk assessment instruments. Because of strenuous opposition to the cap from union leaders and others, it remains unclear whether this proposal will survive the committee process. (H-7204, Article 13)

### ***Anti-Civil Liberties Legislation***

This review of favorable civil liberties legislation being introduced in 2008 should not be interpreted as suggesting that dangerous bills are unlikely to be pushed. To the contrary. Among many of the proposals detrimental to civil liberties that are likely to return from last year are: a series of anti-choice bills, legislation giving police broad authority to secretly obtain subscriber calling records and financial information from telephone and Internet service providers; voter ID proposals; and bills authorizing the forced administration of blood tests on persons involved in serious vehicular accidents.

Two particular issues which have already been the subject of committee hearings are noted below:

#### **Students' Rights**

Only last year, the General Assembly passed an ACLU bill eliminating "zero tolerance" policies, by requiring schools to take a case-by-case approach in determining the appropriate discipline for students charged with drug, alcohol or weapons violations. Legislation that would tamper with this approach has already been heard in committee. The proposed legislation would automatically ban all students who violate a school's alcohol policy from any and all extracurricular sports, clubs and activities. The ACLU testified that such punitive legislation would only further put these students at risk for increased substance abuse by taking away much-needed after-school supervision. (H-7079)

Another bill that has been heard would give school principals the ability to indefinitely suspend – without an initial hearing – any student charged with a felony. Not only would this legislation deny students their right to due process, it fails to provide any alternative education, essentially putting them out on the street. (H-7325)

#### **Administrative Procedures Act**

As a way of saving money, the 2008 supplemental budget includes a proposal that could significantly limit the public's access to state agency rule-making proposals. The legislation would allow state agencies to post notices of public rule-making proceedings on the Internet only, as opposed to their current obligation to have the notices printed in the newspaper. The ACLU expressed numerous concerns about the proposal, noting the "digital divide" that makes computer access difficult for some members of the public, the troubles that exist with the state's system of electronically posting current regulations, and the effort that advocacy groups would need to exert to follow dozens of state agency rule-making postings in this fashion. House Finance Committee is expected to take action on the proposal within the next month. (H-7204, Article 19)

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 2008 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 legislation of interest and concern.

## Affiliate Testifies Against Sex Discrimination Exemption for RIC

The ACLU testified this month against a request by Rhode Island College to discriminate on the basis of sex in hiring for two housekeeping positions at the College's recreation center. The College's formal request was submitted to the R.I. Commission for Human Rights under procedures available for employers to seek exemptions under the state's Fair Employment Practices Act (FEPA).

After noting that the Center serves students, faculty, staff and community members, RIC devoted just one sentence to justify its request to the Commission for the exemption: "The way the Center is constructed we are not able to close off part of the men's or women's locker rooms for routine maintenance/cleaning during the course of our 16 hours of operation." In testimony before the Commission, the ACLU noted that "only in the most compelling circumstances and when absolutely necessary should an employer be granted an exemption from the state's anti-discrimination laws. While respect for privacy is certainly a legitimate interest in considering an exemption on the basis of sex, the College has failed to justify its request."

The ACLU pointed out that the College provided no real information to justify an exemption: "Why, for example, can't the locker rooms be closed for maintenance? Exactly how is the Center constructed that makes this impossible? What prevents maintenance from being performed when the facility is closed? How much time does it actually take for housekeepers to clean the facility? We assume that occasions arise when, in fact, men are required to be in the women's locker room during its hours of operation – when a plumbing or electrical emergency arises, for example. How does the Center deal with these situations? Are there truly no alternatives available to women using the facilities during those times?"

The ACLU concluded by arguing that while the request might not be "*per se* unjustifiable," to grant an exemption "on these facts is to potentially justify the sex-based classification of literally hundreds of occupations in Rhode Island, and to significantly undermine FEPA's goals." The Commission has taken the request under advisement, and is expected to rule on it sometime in the next few months.

## News Briefs

### ACLU Supports Southeast Asian Youth Group

The ACLU participated in a news conference hosted earlier this month by the Providence Youth Student Movement (PrYSM), a Southeast Asian youth advocacy group, to address First Lady Sue Carcieri's recent outrageous remarks comparing members of the group to the terrorists who assassinated Benazir Bhutto. Her remarks had been prompted by comments made by PrYSM members at a news conference criticizing Governor Carcieri for laying off the state's three Southeast Asian interpreters at the Department of Human Services. The ACLU has filed a formal civil rights complaint against the layoffs, arguing that they violated the state's obligations under federal law to provide adequate interpreter services to DHS clients. That complaint is pending. In the meantime, the First Lady rejected the group's request for an apology, instead claiming that PrYSM members themselves should apologize to the Governor for their critical comments about his actions.

### Supreme Court Rules in Due Process Case

The R.I. Supreme Court has ruled that Department of Human Services' hearing officers cannot communicate with DHS staff members about disputed facts in a pending proceeding. In support of that position, the ACLU last year joined in a court brief with the R.I. Disability Law Center, challenging, on due process grounds, the reliance by DHS hearing officers in Medicaid eligibility cases on *ex parte* evidence obtained outside the hearing process. The brief was prepared by Law Center attorney Anne Mulready.

The case involved two plaintiffs who had applied for Medicaid assistance, but were initially determined by a DHS review team not to be disabled. The plaintiffs then filed suit challenging a practice by hearing officers of consulting with other staff members about cases. In a unanimous opinion, the Supreme Court held that: "Unless the parties are given notice and an opportunity to respond on the record, including cross-examination, if appropriate, a DHS hearing officer may not communicate with anyone, including DHS staff members, about contested adjudicatory facts – including, but not limited to, test results, specific diagnostic information, opinions concerning the severity of an applicant's medical conditions, or overall assessment of a client's disabilities or disability status."

### Affiliate Investigates Pawtucket Police "Use of Force" Policies

In response to the third fatal shooting of a resident by Pawtucket police in the space of a year, the Affiliate has filed an open records request with the Department, seeking copies of the agency's "use of force" policies and protocols, as well as any training materials received by officers on dealing with people who may have mental illness. In the latest incident, the victim's mother had called police for help in taking her son to a psychiatric hospital because he was having a nervous breakdown. The victim, Jason Swift, got into a scuffle with police and was then fatally shot. Upon receipt of the requested documents, the ACLU will examine the Police Department's procedures to try to determine where the responsibility for so many fatal shootings lies.

## **Organizational Notes**

### **Volunteer Attorney Lynette Labinger Honored**

Long-time ACLU volunteer attorney Lynette Labinger has been chosen by R.I. Lawyers Weekly as one of three "Attorneys of the Year" for 2007. Labinger was profiled in a December issue of the publication, and will be honored at a dinner in March.

She was chosen for her successful work last year as an ACLU attorney in representing Wesley Spratt, an ACI inmate who had been barred from preaching at religious services at the prison. After Labinger obtained a favorable federal appeals court decision on Spratt's behalf, the Department of Corrections agreed to let him resume his preaching and also revised its policies on inmate participation in religious services.

### **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!

### **Notice 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 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 your name from any such arrangements.

### **Condolences**

The ACLU notes with sorrow the passing of two long-time ACLU members in January.

Bernard Schurman, 91, had been particularly active in the Affiliate in the 1960's, working with a local South County chapter on the many issues arising during that contentious time. Providence resident Peter Brousseau, who died last month, had also supported the Affiliate in many ways over the years. The ACLU extends its condolences to the families and friends of these two supporters.

## **Development Coordinator Job Opening**

The RI ACLU has a job opening for a Development Coordinator. The duties for this position include a variety of fundraising, membership recruitment and development activities; database management; assistance with some of the Affiliate's communications activities, such as website management; and related organizational and administrative tasks. Applicants must be committed to the mission of the ACLU and have strong organizational and communication skills.

To apply, send a resume, cover letter and writing sample *by mail* to:

Development Search  
Rhode Island ACLU  
128 Dorrance Street, Suite 220  
Providence, RI 02903

The Rhode Island ACLU is an equal opportunity/affirmative action employer and encourages applications from women, people of color, persons with disabilities, and LGBT individuals.

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

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### UPCOMING EVENTS

**Friday, March 7:** An attorney from the National ACLU's Women's Rights Project will be participating in a panel discussion on Friday, March 7th at 7 PM, as part of a week long festival, "Until the Violence Stops: Providence." The festival is designed to raise awareness about issues surrounding violence against women and girls. The March 7th discussion will examine issues facing women in Rhode Island prisons. It will also include readings composed by women in prisons around the United States, addressing the issue of social justice behind bars. In addition to ACLU attorney Mie Lewis, the other panelists are Sheila Capece from the RI Nonviolence Institute and Sol Rodriguez from the RI Family Life Center. The discussion, called "Any One of Us," will take place at The Met School Black Box Theatre at 325 Public Street in Providence. Tickets are \$10.

**Monday, March 10:** The Rhode Island Press Association and ACCESS/RI, the open government coalition of which the ACLU is an active member, are co-sponsoring a public forum on Monday, March 10 at 7 PM on "The State of Government in Rhode Island." Legislative leaders will be present at the forum to take questions from the audience on the status of open government in Rhode Island and other issues of concern. The event is being held in conjunction with Sunshine Week, a national effort to promote open government. The forum will be at the Community College of Rhode Island's Knight campus, 400 East Avenue in Warwick.

### ***Don't forget to tune in to the ACLU's Cable Access TV Show***

The Rhode Island 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. Watch for this month's upcoming show:

***March: A Look at Immigration in Rhode Island, with Ellen Gallagher of the International Institute of Rhode Island and Fred Ordonez of Progreso Latino, hosted by Dan Weisman.***

If you would like more information on our cable show, or would like to volunteer your time in helping with the production of the show, please contact the ACLU office at 831-7171.