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# RHODE ISLAND CIVIL LIBERTIES

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

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## Highlights

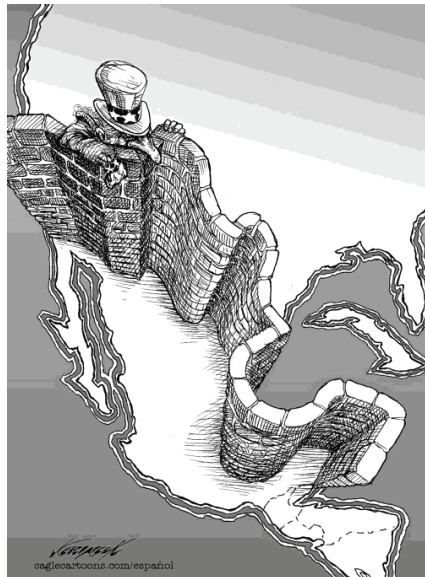
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## Affiliate Responds to Increasingly Ugly Immigration Debate

Spurred by the vitriol of radio talk shows and by actions of an increasingly isolated Governor, a poisonous atmosphere of discrimination, hatred and fear has descended upon Rhode Island in an ugly debate over immigration issues. Although purportedly targeted at “illegal” immigrants, many of the actions being discussed are aimed at, and will affect, any person who looks and speaks a certain way.

The ACLU has been working on a daily basis with community groups to address the current climate, advising people in the community of their rights, and spearheading efforts to educate legislators on the effects of the many mean-spirited proposals that have been introduced on the subject. The Affiliate is also looking at possible avenues of legal recourse on some of the issues that have been generated by this debate.

In the past month alone, we have witnessed a highly-publicized incident where two customers, who were merely talking to each other in Spanish, were confronted by a Providence store owner demanding that they show their Social Security cards to him and threatening to call immigration officials if they didn't. The ACLU is considering taking legal action on their behalf.



Rather than condemn such mindless xenophobia, Governor Carcieri's response to this incident was to instead fan the flames by unilaterally issuing a far-reaching executive order (EO) that has, rightly, generated condemnation from civil rights groups, religious leaders and others. In a detailed analysis of the EO, the Affiliate concluded that it would “encourage and exacerbate racial profiling in the state, create bureaucratic difficulties for many citizens and legal immigrants, burden small organizations and businesses, and cost the state unknown amounts of money.” The ACLU is researching the possibility of legally challenging parts of the EO, which is discussed in more detail on Page 3.

The atmosphere of intolerance is so bad that even religious leaders who have criticized the EO have been the targets of vicious hate mail. Further, the overwhelmingly Democratic General Assembly has generally been silent in responding to all this. Indeed, the only substantive response on the House side has been Committee passage of an anti-immigrant bill that actually takes the Governor's EO one step further, and whose passage would line up Rhode Island with only two other states – Arizona and Mississippi. In addition, the only non-minority public official who has criticized the EO, Lieutenant Governor Elizabeth Roberts, has also been the target of vituperative responses from members of the public.

*Continued on page 3*

## DMV WITHDRAWS SOCIAL SECURITY CARD DEMAND

In settlement of a suit filed in February by the Rhode Island ACLU against the Division of Motor Vehicles, the DMV has agreed to halt implementation of a policy requiring all people renewing their driver's licenses to present their Social Security card. The lawsuit, filed in R.I. Superior Court by ACLU volunteer attorney James Kelleher, had argued that the DMV had no statutory authority to implement the policy and that it violated the due process rights of licensees.

Under a consent judgment filed in the case, the DMV agreed:

- To "immediately cease and desist ... mandating the production of an official social security card" from people renewing their license;
- To allow people whose renewal applications were denied between August 1, 2007 and March 13, 2008 solely for failing to provide a social security card to be renewed without penalty so long as they fulfill all other legal requirements;
- To immediately institute rule-making proceedings to amend its regulations governing the social security card requirement for people applying for and renewing their driver's licenses or identification cards; and
- To pay court costs.

The consent judgment notes that the DMV retains the right to "collect Social Security numbers from individuals seeking license or identification renewal in the event the numbers are not already on record" with the DMV.

It remains unclear whether the DMV, through the rule-making process, will eliminate the card requirement just for renewals or for new applicants as well. Depending on the DMV's actions, further legal action may ensue to address the validity of requiring first-time license applicants to present the card.

## ACLU TESTIFIES AGAINST NEWLY-PROPOSED GRADUATION REQUIREMENTS

The RI ACLU testified last month in opposition to a Board of Regents proposal to increase from 10% to 33% the weight that standardized test scores would be given as part of students' high school graduation requirements. By significantly increasing the import of these test scores, the ACLU argued that it was "increasing all of the dangers that emanate from a reliance on high stakes testing in the school setting." The Affiliate cited many of the documented reasons of how and why standardized testing fails students:

- Studies show a significant racial impact in the reliance on standardized tests.
- English language learners are also at a higher risk of lower test scores for obvious reasons. According to the most current data, students with limited English proficiency accounted for over 8,000 students in RI during the 2004-05 school year, with concentrations in urban and minority districts.
- Whether due to test anxiety or a learning disability such as ADD or ADHD, a standardized test score may not accurately reflect a student's true academic ability.
- High-stakes testing leads to grade retention that is not only emotionally damaging, but often places students at risk for dropping out in lieu of getting a diploma. In fact, standardized testing requirements have generally increased the dropout rate rather than produce the intended effect of academic improvement.

The Affiliate submitted various documents summarizing the increasingly voluminous literature documenting both the dangerous impact of high stakes testing on high school dropout rates, and the significant racial disparities in student passage rates on graduation exit exams. The Board of Regents has taken under advisement the testimony from the ACLU and others who voiced similar concerns.

## ***Immigration Debate...cont. from page 1***

### **The Executive Order**

The Governor's Executive Order consists of three major parts, all of them problematic. First, it requires the Department of Administration to "register and use the federal government's E-Verify program to electronically verify the employment eligibility of new hires in the Executive Branch," and further requires all "grantees, contractors and their subcontractors and vendors doing business with the State of Rhode Island" to use the program.

E-Verify is an Internet-based system operated by the Department of Homeland Security (DHS) whose purpose is to allow participating employers to electronically verify the employment eligibility of their newly hired employees through Social Security Administration (SSA) and DHS databases. However, this system is riddled with significant flaws. For example, the SSA estimates that its database contains 17.8 million errors related to name, date of birth or citizenship status, with 12.7 million of those errors (approximately 70%) pertaining to U.S. citizens.

Further, due to these database errors, foreign-born workers (including those who have become U.S. citizens) are 30 times more likely than native-born U.S. citizens to be incorrectly identified as not authorized for employment. Almost 10% of foreign-born citizens are initially told they are not authorized to work when the E-Verify system is used.

Whether intentional or not, many employers who use E-Verify have been found to do so in a discriminatory manner. An independent evaluation of E-Verify conducted for Congress found that many employers engaged in practices prohibited by the program. The high tentative non-confirmation rate for foreign-born workers – both naturalized citizens and lawful workers – has led to suspicion and discrimination against applicants who are perceived to look or sound foreign.

Amazingly, the R.I. House of Representatives – rather than condemn the Governor's actions – is expected to do him one better in at least one respect. House Labor Committee has approved a bill that would require *all* businesses in the state to participate in E-Verify. The ACLU is actively lobbying against the bill, but its passage remains a real possibility.

A second aspect of the EO requires the Rhode Island State Police and the Department of Corrections to secure so-called 287(g) agreements with the federal government. Under these agreements, state employees from those two agencies will receive training allowing them to assist immigration officials in the enforcement of federal immigration laws. There are both fiscal and moral consequences to this.

At the news conference announcing his executive order, Governor Carcieri was asked whether, in light of the state's enormous fiscal difficulties, he had examined the costs of implementing this proposal. Amazingly, he acknowledged that he had not, but nonetheless insisted that the order would save the state money. In fact, the federal law itself makes perfectly clear that states are responsible for the costs associated with their participation in these agreements.

There are many good reasons why enforcement of immigration law has been left to federal officials. First and foremost, effective policing demands establishing trust between police officers and the community they serve, trust that inspires confidence in victims to come forward and report crimes and that allows investigations to proceed efficiently. If local law enforcement officers become, for all intents and purposes, immigration agents in the minds of the community, victims of crimes, witnesses, and others in the immigrant community will refuse to cooperate with state and local police for fear that they, or close friends and family members, could face deportation due to their interaction with police. Organizations against domestic violence have been particularly vocal in criticizing the impact of these policies because of the way it deters immigrant victims of domestic violence from coming forward. It is for these reasons that many police departments across the country – including Providence – have opposed participating in the enforcement of immigration law.

Finally, though not having the force of law, the EO urges "all law enforcement officials" at both the state and local level to "take steps to support the enforcement of federal immigration laws by investigating and determining the immigration status of all non-citizens taken into custody, incarcerated, or under investigation for any crime." This too is a recipe for increased racial profiling. The EO will only encourage stops, questioning, detentions and searches of drivers and passengers based on their complexion or their accent. This is intolerable, especially when one considers how little the Governor and his administration have done to counter the impact on the community of the racial profiling that presently exists.

ACLU members are encouraged to contact their state legislators and urge them to oppose any bills that will adversely affect the immigrant community, and to instead pass legislation to overturn the Governor's Executive Order. More information about the Order and its impact can be found on the Affiliate's web site.

## Mid-Session Legislative Review

### More Questions than Answers as 2008 General Assembly Session Hits Mid-Way Point

With the General Assembly more than halfway through its session, the fate of civil liberties remains quite uncertain there, due in large part to an extended deadline in both Houses, until the end of April, for initial committee consideration of bills. Even so, it has already been an extremely busy session for the ACLU. As the last newsletter noted, even the state's fiscal crisis has drawn the Affiliate into a number of civil liberties battles, including providing testimony on five major budget articles in the Governor's 2008 supplemental budget proposal. As this newsletter went to press, those articles and the budget bill of which they were a part had only just passed out of committee, despite expectations that the bill would have been approved weeks earlier.

Among other things, this state of affairs means that there may be bills with a significant civil liberties impact that are flying below the radar screen but could become major issues of contention in the final two months of the session. With that caveat, this article summarizes some of the significant bills on which the Affiliate has already lobbied.

#### *Rights of Juveniles*

**Training School:** On a positive note, the 2008 supplemental budget approved by House Finance Committee places a cap on the number of juveniles who can be held at the state's new Training School facilities. This is an effort to address long-standing overcrowding problems that are the subject of an ACLU lawsuit. However, the budget provision does not contain a clear enforcement mechanism to address violations of the cap, nor does it include provisions urged by the Affiliate for the use of risk assessment instruments to reduce the number of youth sent to the Training School in the first place. (H 7204A)

**Juvenile Hearing Boards:** The ACLU has testified against legislation that would generally bar local juvenile hearing boards from hearing any drug and alcohol offenses, and instead require referral of such cases to the Family Court. At a hearing before the House Judiciary

Committee, ACLU volunteer attorney H. Jefferson Melish argued that this would undermine the critical role of hearing boards, which represent an effort to deal with first-time juvenile offenses in a community-based setting rather than the more formal and punitive setting of the courts. The bill is being promoted by the Family Court. (H 7395, S 2875)

**School Bullying:** A bill that would have turned name-calling between students into an offense subjecting a child to a "wayward/delinquent" petition, Family Court jurisdiction and a potential sentence to the Training School was scrapped following ACLU criticism of the proposal. Instead, the bill was amended by House HEW Committee to merely clarify that "harassment" or "bullying" that can lead to internal school discipline includes activities done through electronic means. (H 7213A)

#### *Open Government*

**Public Records:** Rep. Edith Ajello is actively pushing for committee passage of comprehensive legislation to strengthen the state's Access to Public Records Act (APRA). Among other things, the bill shortens the time-frame for public bodies to respond to open records requests, increases penalties for violations of the law, and requires training of public information officers on their APRA obligations. The bill had a generally favorable hearing in House Judiciary Committee, although some state agencies objected to the shortened response time-frame. The ACLU and other groups working on the bill have expressed a willingness to compromise on that issue. It has been ten years since any significant changes were made to the law, and a recent ACLU report, documenting widespread non-compliance with the statute, served as the impetus for this much-needed bill. (H 7422)

**Voting Rights:** Rep. Ajello is promoting another comprehensive bill whose fate is up in the air. Designed to clarify the election statutes and strengthen the franchise in

Rhode Island, the legislation would overturn restrictive Board of Elections' policies that substantially limit the counting of provisional ballots and restrict the rights of candidates to view disputed ballots during recounts of close elections. Because of the Board's strong opposition to the bill, the ACLU is focusing on at least getting passed one provision in the legislation that would require the Board to follow the rule-making procedures of the Administrative Procedures Act, a process that every other major state agency must abide by. (H 7421, S 2749)

In the meantime, the Affiliate has testified against a number of problematic bills introduced on behalf of the Board of Elections. Among others, they include legislation to eliminate a requirement that machine-rejected mail ballots be counted when the intent of the voter is clearly identifiable, and a bill capable of great political mischief, giving unbridled discretion to local Boards of Canvassers to combine two or more voting districts for elections. The bills' prospects remain uncertain.

## Mid-Session Legislative Review

### **Racial Profiling**

**Comprehensive Racial Profiling Bill:** The ACLU and community groups continue to lobby for passage of a comprehensive bill that would strengthen the state's 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. Despite vigorous opposition to the bill from the R.I. Police Chiefs Association, Senate sponsor Rhoda Perry is working diligently to get the legislation passed out of committee. Since the bill was introduced, the ACLU has obtained more recent data from the State Police, documenting that blacks and Hispanics remain about twice as likely as whites to be stopped, and more likely to be searched as well. This mirrors the previous results of three years' worth of statewide data. (H 7706, S 2230)

**"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 other civil rights groups have strongly opposed efforts to change the law, arguing that allowing police to pull over suspected seat belt violators will only increase the extent of racial profiling occurring in Rhode Island. Hearings have been held, and the bill remains in committee for the time being. (H 7417, H 7745, S 2747)

### **Technological Privacy**

**Radio Frequency ID:** The Senate appears poised to once again pass an ACLU bill to restrict the state and municipalities from using intrusive radio frequency identification (RFID) technology on students, employees or clients. The bill, sponsored by Sen. Frank Ciccone and Rep. Charlene Lima, has passed twice before, only to be vetoed by the Governor. The importance of its passage has grown with the recent implementation of the technology in Middletown, where elementary school students' movements on school buses are being tracked by the school district in a pilot program. (H 8027, S 2113)

**Speed Cameras:** Legislation enacted in 2005, giving the City of Providence a trial period to install "red light cameras," expires this year, and the ACLU is lobbying to prevent an extension of the experiment. (H 7195, S 2706, S 2139) The Affiliate has also testified against bills that go one step further and authorize the use of "speed cameras." Much like red light cameras, speed cameras provide an auto-ticketing system for anyone exceeding the speed limit and caught on camera by one of these devices. In testifying against those bills, the ACLU cited many of the same problems found in the red light camera law – due process concerns given the lengthy two-week timeframe before a citation need be mailed, ticketing the owner/lessee instead of the actual driver, privacy issues in regards to storage and destruction of images, and the general concern of putting law enforcement at a desk reviewing tapes and photos rather than on the streets addressing public safety. (H 7891, S 2708)

### **Civil Rights**

**Rights of Immigrants:** As the newsletter's lead article notes, immigration has been a major legislative issue this session. In order to combat the dozens of anti-immigrant bills introduced this year, a coalition of advocacy organizations, which includes the ACLU, introduced a 10-piece legislative package of its own designed to protect immigrants from unfair discrimination in a variety of contexts. Legislation from both sides of the debate was the subject of a marathon hearing in House Judiciary Committee this month. It appears unlikely that any of these bills will pass out of committee.

Instead, the focus will be on one piece of legislation that has been approved by House Labor Committee. The bill would require all employees in the state to participate in a federal program known as E-Verify, designed to determine work authorization for new hires. However, the program contains numerous errors and will likely increase workplace discrimination. If enacted, Rhode Island would join only Arizona and Mississippi with such a law. Though the bill's House passage is virtually assured, the ACLU and civil rights groups are mounting a major lobbying effort to urge the Senate not to enact the measure. (H 7107A)

**R.I. Civil Rights Act:** House Judiciary Committee has approved an ACLU bill, sponsored by Rep. Donna Walsh, which 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. (H 7361, S 2143)

**Lesbian and Gay Rights:** The ACLU has thus far been stymied in pushing a bill, sponsored by Sen. Daniel Connors and House Majority Leader Gordon Fox, to clarify that the Family Court has jurisdiction to grant divorces to validly-married same-sex couples. That legislation is a direct response to a R.I. Supreme Court decision in December denying a divorce to a same-sex couple who had been lawfully married in Massachusetts. However, hearings on the legislation have yet to be scheduled. (H 7939, S 2713)

## ***Civil Rights...continued***

**Women's Rights:** A bill that would put Rhode Island in line with 39 other states by giving women the right to breastfeed in public places appeared close to passage, but has hit a snag over the remedies that should be available for violations of the law. Endorsing language proposed by the ACLU, the House version would allow prevailing plaintiffs to recover their attorneys' fees in a successful suit, but Senate leaders have sought to eliminate that remedy. The ACLU has argued that without it, most women will not be able to afford to vindicate their rights under the statute. As this newsletter went to press, the impasse remained. (H 7467A, S 2283)

### ***Medical Privacy***

**Health Information Exchange:** The Affiliate will have its hands full trying to defeat or significantly modify medical records legislation that raises serious privacy concerns. The bill would formalize the establishment of a centralized health records database in the state, and the ACLU has thus far been relatively unsuccessful in getting meaningful confidentiality safeguards into the proposal. Health care providers strongly support the bill as providing better coordination of health care. The ACLU agrees with that goal, but is concerned that the legislation as written will open the door to widespread access to a patient's full medical records by a variety of third parties and greatly limit a patient's control over those records. (H 7409, S 2679)

**HIV Testing:** In another battle between the ACLU and some members of the medical community, attempts are underway for the third year in a row to expand HIV testing by health providers, while reducing the confidentiality protections in place for HIV-positive patients and severely limiting the HIV counseling that would need to be provided patients. The ACLU will seek significant amendments to the proposal. (S 2960)



**Medical Marijuana:** The sponsors of the state's medical marijuana law, Sen. Rhoda Perry and Rep. Thomas Slater, are back this year with legislation to set up a safe and legal means for patients authorized to use medical marijuana to obtain the drug through compassion centers regulated by the Department of Health. Having large support from advocates and patients alike, the bill has been approved by the Senate Health and Human Services Committee. Unfortunately, its passage in the House is considered less likely. (H 7888, S 2693A)

### ***Criminal Justice***

**Mandatory Sentencing:** Senate Judiciary Committee has approved passage of a bill that would eliminate the harsh mandatory sentences contained in some of Rhode Island's drug laws. The same bill was unexpectedly vetoed by the Governor last year, despite the severe overcrowding crisis at the ACI that he claimed he wanted to address, and a nationwide trend to reject mandatory sentencing. The General Assembly failed to override that veto last year, but the ACLU is hopeful that legislators will take that step this session if the bill is once again vetoed. (H 8025, S 2232)

**Parole:** The House took two steps forward and one step back with passage of a bill – prompted by fiscal concerns over the ACI's burgeoning population – that expands the state's "good time" statute, allowing inmates with good behavior to further reduce the length of their sentence while in prison. Unfortunately, the House also carved out a specific exception for sex offenders. The ACLU had testified that this will only encourage attempts every session to add other offenses to the list, and thus undermine both the fiscal goal of the law as well as the purpose of "good time" itself. "Good time" 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. Unfortunately, it does not appear that those arguments are going to win the day. (H 7751A)

**Internet Subpoenas:** As in past years, the State Police have been pushing a troubling proposal to give law enforcement broad authority to secretly obtain, without a warrant, subscriber information from Internet service providers. The bill has passed the Senate in past years, only to die in the House. ACLU volunteer attorneys Miriam Weizenbaum and Amato DeLuca provided detailed testimony to the House Judiciary Committee against the bill this month, and the Affiliate is hopeful the committee will take no action on it. (H 7762, S 2746)

**Protection from Self-Incrimination:** Another perennial bill that is being given a big push this year by the Attorney General and the State Police would allow for the forced administration of blood tests on persons involved in vehicular accidents resulting in death or serious injury. The ACLU has objected that the forced taking of blood from a person for the purpose of using it as evidence against him or her is a gross violation of the privilege against self-incrimination, and noted that proponents have been unable to point to any instances where lack of this power has hindered drunk driving convictions. However, the House appears under stronger-than-usual pressure to pass the bill this year. (H 7769, S 2517)

## Mid-Session Legislative Review

### *Criminal Justice...continued*

**DNA Testing of Arrestees:** House Judiciary Committee heard testimony on a dangerous piece of legislation providing for the collection of DNA samples from any person who is *arrested* for a felony. Legislation such as this undercuts the fundamental presumption of innocence of our criminal justice system. Its passage would mark an inevitable step towards the creation of a national DNA database on every person. Just this month, the Bush Administration announced a proposal to do the same thing for people arrested for federal crimes, which the ACLU nationally is vigorously opposing. (H 7130)

**Honest Services:** The ACLU has testified against legislation submitted on behalf of the Attorney General that would write into Rhode Island law a flawed federal statute, making it a felony for a public employee to “engage in any conduct that deprives the public of the intangible right of his or her honest services.” The term “honest services” is not defined, leaving it open to wide-ranging interpretations and subjecting every public employee and public official to serious criminal penalties for a variety of relatively innocuous conduct. There has been documented abuse of the law at the federal level. (H 7418, S 2840)

### *Miscellaneous*

**Occupational Licensing:** Most occupational licensing statutes allow licensing bodies to take into account aspects of an applicant or licensee’s criminal record in deciding whether to grant, suspend or revoke a license. Over the years, the ACLU has attempted to limit the offenses that can lead to a revocation of a person’s license – and thus his or her livelihood – to crimes that relate in some way to the license or profession. Otherwise, promotion of ex-offenders’ rehabilitation and reintegration into society is stymied. However, House Corporations Committee has approved a bill that would make *any* felony conviction or guilty plea grounds for denying a real estate license, regardless of the crime’s relevance to the profession. The ACLU fears that passage of this bill would create a domino effect, prompting similar changes in other licensing laws that specify the offenses that can trigger a license denial or suspension. (H 7721)

**Administrative Procedures Act:** House Finance Committee has approved a troubling proposal that may significantly limit the public’s access to state agency rule-making proposals. State agencies will be able to post notices of their rule-making proceedings on the Internet only, as opposed to in the newspaper. The ACLU had opposed the provision, noting that many members of the public do not have easy computer access, the troubles that have plagued 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. (H 7204, Article 19)

**Comprehensive Sexual Education:** Following up the ACLU’s successful three-year battle that led to the demise of Heritage Rhode Island, a federally-funded organization peddling inaccurate and religiously-tinged abstinence only sex education programs, House HEW Committee heard testimony on a bill providing for comprehensive and medically accurate sex education in the state’s public schools. The legislation has the ACLU’s support as well as that of women’s rights organizations such as Planned Parenthood and RI NOW. (H 7814)

**Smoking and the Police:** The Affiliate has testified against two bills that, in the name of promoting public health, inappropriately expand police authority when it comes to smoking. One bill would authorize police officers to stop and ticket persons for smoking in their vehicle if a child required to be in a safety seat is in the car. Despite its good intentions, the bill represents a very broad leap in the expansion of police power on the roads by allowing police car stops for activity that has nothing to do with traffic safety or criminal activity. Because of the dangerous precedent the bill would set, the ACLU has been lobbying against its passage. (S 2089)

**Obscenity in School:** Finally, the ACLU testified against one of the more bizarre bills to be introduced this session. It would make it a crime for school employees to bring any “obscene” materials – from books to sex toys – onto school grounds. The ACLU argued that an English teacher shouldn’t have to risk a criminal penalty because someone decides the copy of James Joyce’s *Ulysses* in his briefcase is obscene. The Affiliate also expressed concerns that the bill could encourage school administrators to rummage through teachers’ belongings. House Judiciary Committee is not expected to take any action on the bill. (H 7588)

In a similar vein, the ACLU has opposed a bill designed to reduce littered cigarette butts on beaches by making smoking on a public beach a criminal offense. The ACLU testified against criminalizing this behavior and instead suggested setting up civil fines more comparable to those for littering generally. (H 7475)

For more information about any of the bills reviewed here, members are encouraged to contact the ACLU office. Members are also urged to call, write and testify on legislation of interest and concern, as the last two months of the session are the most critical ones for lobbying the state legislature.

## A REPORT FROM THE RI ACLU'S LAW SCHOOL CHAPTER

It's been a busy year for the Roger Williams University School of Law Chapter of the RI ACLU! In addition to our general meetings, our Chapter worked (and continues to work) on projects to enrich our student body, and provide opportunities to serve our community now and in the years to come. We also had the privilege to host many excellent presentations addressing a variety of important topics. A few of the highlights of our year include an immigration panel discussion, a Second Amendment debate, a trip to lobby at our nation's capital, a "Due Process" movie night, and a conversation about probation in Rhode Island.

The immigration panel showcased a variety of different problems facing Rhode Island's immigrant population, and the desperate need for positive change here and in America generally. State Sen. Juan Pichardo; Ramon Martinez, President and CEO of Progreso Latino; Ivette Luna, community organizer at Ocean State Action; and Alison Foley and Roberto Gonzalez, prominent immigration attorneys, all spoke to our students. Each panelist provided valuable insights and delivered a message that was both informative and passionate. It was an invigorating call to action and reform to the legal community at the University, and a powerful way to begin the year.

In anticipation of arguments in the U.S. Supreme Court case *Heller v. District of Columbia*, the first Second Amendment case to be argued there in nearly 70 years, our Chapter co-sponsored a debate about the meaning of the Second Amendment. Mark Tushnet, a published expert and well known constitutional law professor from Harvard Law School, graciously came to Bristol to discuss and debate his interpretation of the amendment with our law school's own highly accomplished expert and legal professor, Carl Bogus. The debate was both entertaining and educational, and drew an audience of nearly 150 students, faculty, and community members. This outstanding presentation was recorded, and may be viewed at the University's official web site.

Our chapter also wrote letters to Senators Reed and Whitehouse expressing our frustration with the military's "Don't Ask, Don't Tell" policy, and urged them to support legislation that would repeal the outdated and harmful policy. Several of us traveled down to Washington D.C. to meet with the Senators personally and discuss the issue. We also visited the offices of Representatives Patrick Kennedy and James Langevin to thank them for their support of the Act, and to encourage them to continue vocalizing their opposition to "Don't Ask, Don't Tell." Our mission concluded with participation in a rally on Capitol Hill to end the ban.

David Logan, the Dean of the law school, joined us in hosting a "Due Process" movie night. The event was well attended, and a discussion about the Leonard Peltier case broadened into a general discussion about constitutional rights, due process and issues of discrimination against minorities in our judicial system. Later that month, Representative David Segal joined us for a conversation about Rhode Island probation policies and his proposal for probation reform. The discussion was quite interesting, and the students all greatly enjoyed the opportunity to speak candidly with Rep. Segal about their concerns with current policies.

These are just a few of the events that have helped shape the character and attitude of students at our school. We are grateful for the willingness of leaders and advocates in our community to generously set aside time from their busy schedules to reach out and educate the law students at our school. We are thankful for the active role that the Rhode Island Affiliate has taken in helping us achieve our year's goals, and the encouragement that we continually receive from its members. We are already looking forward to the coming semester with great anticipation and excitement.

Dana E. Steffens - RWU RIACLU President

## News Briefs

### **Prison Mail Policy Revised**

Averting a planned ACLU lawsuit, the R.I. Department of Corrections (DOC) has agreed to repeal a recently-adopted regulation requiring inmates to pay in advance for any publications they receive, thus barring gift purchases or subscriptions from family members. The DOC's stated justification for the ban was to prevent inmates from extorting other inmates to have magazine subscriptions bought for them, but the ACLU pointed out that extortion could just as easily occur if a family member puts money in the inmate's account for the inmate to purchase the publication directly. The ACLU had been prepared to sue over the policy, representing the editor of *Prison Legal News*, a national monthly publication that many inmates receive through family gift subscriptions.

### **Congress Continues to Debate Immunity for Telecoms**

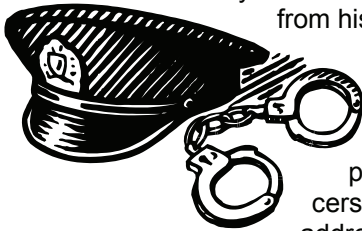
The fate of a RI ACLU privacy complaint against Verizon and AT&T remains in the hands of Congress, which is considering whether to pass a law giving telephone companies retroactive immunity for having illegally shared telephone records with the National Security Agency as part of the Bush Administration's "war on terror." The Senate passed such a bill earlier this year, which would also pre-empt any state investigations of violations of customer's privacy rights by the companies, including the complaint that the Affiliate filed in 2006 with the Division of Public Utilities and Carriers. The House thus far has refused to go along, leading to a stalemate whose resolution remains unknown.

## ORGANIZATIONS RESPOND TO TWO DEATHS IN FEBRUARY AT THE HANDS OF THE POLICE

Responding to the deaths in February of two people with mental disabilities when confronted by police, eight advocacy organizations, including the ACLU, cited a “critical and urgent need for uniform and comprehensive training of all police in Rhode Island to ensure a proper response to persons with mental illness, cognitive impairments or developmental disabilities.” The comments were made in a letter sent to all police chiefs in the state.

Thus far, the letter has met with positive responses from a number of police departments. The organizations have begun working with both the state and municipal training academy, the police chiefs association and some individual departments, including Providence, on comprehensive training programs for officers.

In mid-February, Pawtucket police shot to death Jason Swift after his mother had called for help in getting him to the hospital. She had done this before, apparently without incident, in Massachusetts. A week later, Leonel Farias was killed by East Providence police during an escalating struggle following a request for police assistance from his family.



The letter to the police chiefs noted: “Having two people die at the hands of police in Rhode Island in the space of two weeks is cause for great concern. That both victims had mental illness and met their fate only because their families had called the police for help is cause for even greater alarm.” Not seeking to cast blame on the officers involved, the letter instead called the two tragedies “a siren call to police agencies” to address “more thoroughly, and with dispatch and rigor” the issue of properly dealing with people with mental illness.

The letter pointed out that it “was only recently that the Municipal Police Academy began to provide *any* training to recruits on this matter,” and that officers need to receive “longer-term, more comprehensive training through ongoing in-service and specialized skills instruction.” The organizations offered to provide training guidance to departments, pointing to national police training models available on the use of non-confrontational de-escalation techniques when dealing with these situations.

The letter concluded by stating: “The family members of individuals with mental illness must feel comfortable picking up the phone and calling 911 when help for a loved one is needed. In light of these two deaths, that comfort level is very shaky right now.”

The organizations signing the letter were the R.I. Council of Community Mental Health Organizations, the R.I. Disability Law Center, NAMI Rhode Island, Parent Support Network, Mental Health Association of R.I., National Association of Social Workers R.I. Chapter, Mental Health Consumer Advocates of R.I., and the Rhode Island ACLU. The letter is available online at [www.riaclu.org](http://www.riaclu.org).

### Commission Rules Against Sex Discrimination Exemption

Agreeing with arguments made by the Affiliate, the R.I. Commission for Human Rights has rejected a request by Rhode Island College to discriminate on the basis of sex when hiring for two housekeeping positions at the College’s recreation center. The request had been submitted to the Commission under procedures available for employers to seek exemptions from the state’s Fair Employment Practices Act.

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” with any concrete information about why alternatives to discriminatory hiring practices were not available to address that interest.

In a seven-page opinion, the Commission agreed that the “evidence presented [by RIC] simply is insufficient to meet the decidedly heavy burden of showing that there are no reasonable alternatives to sex-based hiring.”

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## UPCOMING EVENTS

**June 8-10. National ACLU Membership Conference in Washington, D.C.-** With a focus on the abuse of power, this year's ACLU membership conference is expected to include attendance by three U.S. Supreme Court Justices – Antonin Scalia, Ruth Bader Ginsburg and David Souter. Renowned experts will also speak in depth on issues that have become all too familiar to us in a post 9/11 world: government surveillance, torture, the suspension of habeas corpus and increased government intrusion into privacy matters. For more information about the conference, or to register, visit [www.aclu.org/conference](http://www.aclu.org/conference).

**Saturday, June 21. Annual PrideFest.** The event, supporting GLBT rights, drew over 25,000 people last year, and will once again be taking place at Burnside Park in downtown Providence. Come visit the RI ACLU's table at the event.