

# RHODE ISLAND CIVIL LIBERTIES

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## ACLU SUES OVER CRANSTON SCHOOL POLICY BARRING MOTHER FROM VOLUNTEERING

The Rhode Island ACLU has filed a lawsuit on behalf of a mother who has been barred from volunteering at her child's elementary school because she has a past criminal history of drug addiction. The ban applies even though the mother's drug problems predate her child's birth and she has been involved since then in promoting drug abuse prevention.

The lawsuit, filed in Superior Court by RI ACLU volunteer attorney Carly Beauvais Iafrate, is on behalf of Cranston resident Jessica Gianfrocco. The suit challenges a Cranston School Committee policy, adopted last year over the ACLU's objections, requiring all school volunteers to undergo a criminal records check, and disqualifying parents with any felony drug offenses.



From L-R: RI ACLU attorney Carly Beauvais Iafrate, Jessica Gianfrocco and Neil Corkery of DATA

Ms. Gianfrocco was a heroin addict for about five years in her early 20's. During that time, she was twice convicted for felony drug possession related to her addiction. Her criminal record predates the birth of her daughter, which occurred in late 2003, and who is attending first grade. As part of her recovery, Gianfrocco sought professional treatment and continues to participate in a 12-step program. She has served as a "team mom" for her daughter's cheerleading team, volunteered at her daughter's day care for three years, and even traveled to Washington D.C., as part of a Brown University program, to speak to members of Congress to promote drug prevention funding. She is presently taking classes to earn a Licensed Chemical Dependency Professional certificate.

When her daughter enrolled in kindergarten last fall at Arlington Elementary School, she applied to be a school volunteer so that she could participate in school activities with her child, such as PTO events which require volunteers. Although she provided numerous letters of recommendation, school officials denied her application based solely on her criminal record. As a result, she remains active in her child's school PTO, but cannot help out at any event involving school children.

The school committee adopted this stringent policy requiring BCI checks even though the policy also provides that volunteers "shall not be in a one-on-one situation with a child" *continued on page 4: Cranston School Policy*

### ACLU HAS INFORMATION FOR NOVEMBER ELECTIONS

Two new publications with useful information for the November 2nd elections are available now on the Affiliate's website:

1. **2010 Voter Empowerment Brochure** - This gives up-to-date information for voters about their rights at the polls.
2. **2010 Candidate Surveys** - We surveyed candidates for statewide office on major civil liberties issues and have posted their responses, including from three of the four candidates for Governor.

Be sure to log on to [www.riaclu.org](http://www.riaclu.org) to check out these informational materials! If you don't have Internet access, call the ACLU office for hard copies.



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## FROM THE DESK OF THE EXECUTIVE DIRECTOR

Major elections at the local, state and federal level are just around the corner. While many of us will be watching the results with a keen eye, I believe a great strength of the ACLU is its strict non-partisanship.

There are many reasons that this electoral neutrality is important. Civil liberties principles transcend party labels, and much of our organization's integrity derives from being available to protect the civil liberties of all, regardless of political ideology. Certainly our record in Rhode Island substantiates that view: over the decades we have represented the Green Party, the Moderate Party, Republican Town Committees, the Communist Party, the Libertarian Party, Democrats, Independents and innumerable individual candidates for office.

But that leads to another critical point as to why the ACLU's non-partisan role is so crucial: *regardless of what political party is in power, civil liberties are in constant need of defense.* It is the nature of the political beast that the rights of the unpopular, the minority, the "others" will always be in danger, to one extent or another, no matter who or what party is in control.

Indeed, in this newsletter alone, you will find stories providing recent updates on no fewer than *thirteen* Affiliate cases. I hope this will help remind you why you support the ACLU, and will encourage you to continue to provide as much financial support as you can to help us fulfill our important mission.



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## JUDGE DENIES MOTION TO DISMISS

In an important procedural ruling, R.I. Superior Court Judge William Carnes this month denied a motion by Family Court judges to dismiss the ACLU's class-action lawsuit challenging various Truancy Court practices and procedures. In a 67-page opinion, the Judge found there was a sufficient basis for the ACLU to begin limited discovery against the judicial defendants. In the meantime, the Judge called on the parties to assist with a schedule to keep the case on track.

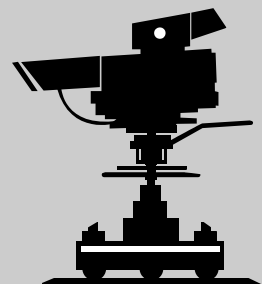
The ACLU's lawsuit charges that the truancy courts are frequently punitive in nature, and that truancy court magistrates threaten vulnerable children and their parents with baseless fines and imprisonment, remove children from the custody of their parents without legal justification and fail to keep adequate records of court hearings. The lawsuit also charges that the court system disproportionately impacts children who have difficulty attending school or doing their schoolwork because of special education or medical needs.

Since the suit was filed against the Family Court judges and six school districts participating in the Truancy Court program, four of those districts – Coventry, Cumberland, North Providence and Woonsocket – have settled the case by agreeing to no longer refer students to the Truancy Court. At a recent hearing, RI ACLU volunteer attorney Thomas W. Lyons indicated that a fifth district, Westerly, was also on the verge of settling. That would leave only the Providence School District as a school defendant in the suit, although the Affiliate is planning to add new defendants in the coming weeks.

Judge Carnes also scheduled for a hearing on November 8th the Family Court judges' motion to remove two National ACLU attorneys from the lawsuit, based on the attorneys' exercise of their free speech rights. The judges claimed that National ACLU attorneys Robin Dahlberg and Yelena Konanova engaged in "reckless professional misconduct" by publicly commenting about the lawsuit at the time it was filed. The ACLU has called the family court judges' motion "nothing more than a heavy-handed attempt to stifle the kind of criticism of governmental activities inherent in our democratic system." In August, twenty professors of legal ethics across the nation joined in a "friend of the court" brief also criticizing the judges' motion. At this month's hearing, Judge Carnes encouraged the defendants to reconsider pursuing the motion.

## VOLUNTEER OPPORTUNITY: CABLE TV SHOW

The Affiliate is always accepting volunteer forms to keep on file for whenever we may need a little extra help around the office. We are currently looking for people who are interested in learning about TV production to help with our cable access program. We are on a break from filming until January, but will be needing people to help operate cameras, the sound board and the director's board beginning after the first of the year. We film on the evening of the fourth Tuesday of each month and volunteers would need to first attend a training to familiarize themselves with the equipment. If this interests you, please call the office for more details!



## RI ACLU CHALLENGES WOONSOCKET SCHOOL UNIFORM POLICY

The Rhode Island ACLU is awaiting a decision from the Commissioner of Elementary and Secondary Education on a complaint that challenges on numerous legal grounds the implementation of a mandatory school uniform policy in Woonsocket public schools.

Among other restrictions, the new policy allows students to wear only black or khaki pants; white, brown or black shoes; and only maroon or gray shirts with no writing on them except for school logos. School principals are given discretion to waive the policy for "specific purposes" or to "specific groups for events."

The administrative complaint was filed by RI ACLU volunteer attorney John W. Dineen on behalf of four parents and their children. The policy

was scheduled to take effect September 1, but the school district approved a 30-day grace period, and is still withholding punitive enforcement.

On behalf of the named plaintiffs, the appeal summarizes their arguments against the policy as follows:

*"Plaintiffs and their minor children object to any mandated school uniform; they agree with the statement in the prior Woonsocket policy that "dress is a matter of taste"; they object to the additional costs that will be imposed on limited budgets to purchase numerous items that will be worn only at school and will therefore be an addition to clothing expenses; they object to the restrictions on expression and choice inherent in a uniform, the restriction of writing to only school related or approved expression such as ROTC, and to the undefined and unrestricted discretion of administrators to grant waivers."*

The appeal claims that the new policy amounts to "a de facto educational fee" since the "addition of numerous required items of clothing specifically for school imposes a significant financial burden." The appeal further argues that the students' "rights to freedom of expression and choice in their dress are unduly restricted by a uniform policy, which goes beyond legitimate and minimum safety and educational concerns," and that "enactment of a uniform dress code only for the students of Woonsocket, restricting what would otherwise be their freedom of expression and dress," denies them their right to equal protection of the laws. The appeal seeks invalidation of the dress code.

ACLU attorney Dineen said: "When times are tough, there is the urge to enforce conformity, to enforce uniformity, even uniforms. It doesn't work, and it leads down a dangerous road."

## ACLU SETTLES SUIT OVER DMV DRIVER LICENSE SUSPENSIONS

The Rhode Island ACLU has favorably settled its federal lawsuit against the Division of Motor Vehicles for advising thousands of motorists earlier this year that their license and registration would be suspended due to alleged unpaid fines that sometimes went back decades. The lawsuit called the DMV notices "facially unconstitutional," as they gave recipients no information about the nature of the alleged offense leading to the suspension, the penalty for the offense, or even the date that the offense purportedly took place.

Key aspects of the settlement agreement in the case, which had been filed on behalf of Warwick resident Gerald Carbone by RI ACLU attorney James E. Kelleher, include:

- A proviso that all future license suspension notices will contain specific language about the driver's right to a hearing to contest the suspension, as well as information about the hearing procedures.
- Upon receipt of a request for a hearing to contest a license suspension, the DMV agrees to immediately stay the suspension until a decision is rendered.
- The DMV agrees to pay attorney's fees and costs to ACLU attorney Kelleher.

In addition, the consent agreement acknowledges that a revised notice was sent out in April, after the ACLU's lawsuit was filed, to Carbone and more than 1,500 other residents who received similar notices, offering them more information about their suspension, an opportunity for a hearing, and a stay of any suspension in the interim.

As for Carbone's case which started it all, he appealed his case before the Traffic Tribunal earlier this summer, and the judge summarily threw out the charge.

Carbone's "notice of action" from the DMV had told him that his license would be suspended in a week. In giving a reason for the suspension, the notice unhelpfully advised him that the "date of incident" was "00/00/0000," that the reason for the suspension was that he was "not entitled to lic. issue," and that the fee he owed was "\$0.00." In addition to arguing that the notices themselves violated basic principles of due process, the ACLU lawsuit had contested the DMV's efforts to suspend the alleged violator's license first and provide a hearing only at some indefinite point after suspension. The questionable suspension notices were generated when the DMV began consolidating and updating various agency computer database systems.

## CIVIL LIBERTIES CASES HEARD BY FIRST CIRCUIT

The U.S. Court of Appeals for the First Circuit heard oral arguments this month in two important civil liberties cases.

The first case was the ACLU's appeal of a lower court ruling upholding the constitutionality of Narragansett's highly-publicized "orange sticker" ordinance. The ordinance gives police the power to charge tenants and landlords with allowing – and to place orange stickers on houses that have allegedly been the site of – "unruly gatherings." The lawsuit, filed by ACLU volunteer attorney H. Jefferson Melish, is on behalf of the URI Student Senate, as well as four students and three landlords who have been affected by enforcement of the ordinance. The suit argues that the ordinance violates their rights to procedural and substantive due process, privacy and freedom of association.

The ACLU had filed a "friend of the court" brief in the second case, supporting the appeal by Central Falls High School soccer team players who were indiscriminately searched by Coventry Police after a school soccer game. Leaving the field after a match with Coventry High School, the Central Falls team was followed by an angry crowd accusing them in loud, sometimes racially-tinged, tones of stealing iPods and cell phones from the boys' locker room. Shortly thereafter, four police officers in cruisers arrived. Although the team's coach advised the police that he had personally checked the students and their belongings for any stolen items, the officers asked the coach for permission to search the Central Falls players themselves, and he agreed. Without regard to which players had actually used the locker room prior to the match, the officers searched the bags of every player, and asked some of them to empty their pockets, lift up their shirts, and stretch open their pants. Nothing was found. A lower court upheld the legality of the search, prompting the ACLU to file a brief in support of the students.

Decisions in both cases are expected in a few months.

## ACLU SETTLES PAWTUCKET LAWSUIT OVER ILLEGAL DRUG TESTING

The Rhode Island ACLU has favorably settled a suit filed earlier this year against the City of Pawtucket, charging city officials with blatantly violating a state law that restricts random drug testing in the workplace.

The lawsuit, filed in R.I. Superior Court by ACLU volunteer attorney Richard A. Sinapi, was on behalf of Romana Ramos, a veteran 17-year city employee who works as a police matron and court interpreter. In April, she was advised by city supervisors that she had to immediately submit to a random urine drug screen test or else face a 30 day suspension. Faced with that choice, Ramos agreed to take a urine test as well as a breathalyzer test, both of which tested negative.

Rhode Island law allows drug testing in the workplace, but in recognition of its invasiveness, intrusion on basic privacy rights and potential inaccuracy, it authorizes testing of employees only when there is a reasonable suspicion that the person is impaired on the job. The law further sets procedures for how such tests can be conducted. Random drug testing is strictly prohibited.

In settling the case, the City agreed to pay \$5,000 in attorney's fees, and provided Ramos a letter of apology for requiring her to take the test. In addition, the City has agreed to formally adopt a drug testing policy that complies with the state statute and to take "reasonable action" to ensure that supervisory personnel are familiar with the statute's various restrictions and safeguards. Ramos, who sought an apology instead of monetary damages, said she was pleased with the settlement and its assurance that other employees would be protected from any further illegal testing.

### CRANSTON SCHOOL POLICY (FROM COVER)

and that volunteering should only take place in the presence of other school personnel. At the time the policy was proposed, the ACLU called it intrusive and unnecessary. The lawsuit notes that, under state law, school teachers themselves are not automatically disqualified from employment based on a criminal record or drug-related disability, and that commercial vendors and others are exempted from the policy's requirements as long as they are accompanied by school personnel.

The lawsuit claims that Cranston's policy violates Gianfrocco's equal protection rights and various state laws barring discrimination on the basis of disability. Those laws protect recovering addicts from discriminatory treatment. The suit seeks a court order declaring the school district's actions unlawful. At a news conference announcing the lawsuit, Neil Corkery, executive director of the Drug and Alcohol Treatment Association of RI (DATA), spoke about the many barriers facing people who have past drug problems. The ACLU is awaiting the City's formal answer to the complaint.

## ACLU ADDS MEMORIAL HOSPITAL AND OTHERS AS DEFENDANTS IN CASE OF WYATT DETENTION CENTER DETAINEE WHO DIED IN CUSTODY

In response to thousands of pages of discovery documents turned over to ACLU attorneys by the Wyatt Detention Facility, the RI ACLU has named eight additional defendants, including Memorial Hospital, in its federal lawsuit on behalf of the family of Hiu Lui "Jason" Ng, who died while in the custody of immigration officials at the Central Falls detention center. Ng, a 34-year-old Chinese detainee, died in August 2008 after complaining for months to prison officials about being in excruciating pain. Guards and medical personnel at Wyatt had continually accused Ng of faking his illness and denied him medical care; he was only diagnosed with terminal liver cancer and a broken spine less than a week before he died.

Besides Memorial Hospital and an emergency room doctor, the newly named defendants include three correctional officers who participated in dragging the debilitated Ng, screaming in pain, to a van for a trip to Hartford, Connecticut a little more than a week before his death; a Wyatt medical officer who visited him in his cell shortly after this episode and apparently did nothing to care for him properly; and two nurses who also failed to provide him care.

On July 26, 2008, per order from a prison doctor three days earlier, Wyatt Staff transported Mr. Ng to Memorial Hospital to have an x-ray and MRI. A doctor told him that

they could not perform the MRI because it was a Saturday, and discharged him without further tests or treatment. In adding the Hospital as a defendant in the suit, the amended complaint states: "The Memorial Hospital and its staff ignored Mr. Ng's obvious severe medical condition in the emergency room, sending him back to Wyatt with the astounding diagnosis of sciatica." A week later, doctors quickly diagnosed him as having a fractured spine and terminal liver cancer that had spread throughout his entire body. Mr. Ng's medical records also indicate that he incurred multiple bruises when Wyatt Staff dragged him from his cell at Wyatt the week before.

After reviewing the materials obtained through discovery, RI ACLU attorney Robert McConnell, from the law firm of Motley Rice LLC., said: "The addition of more Wyatt staff as defendants demonstrates just how widespread the misbehavior at the facility was. Jason's treatment cannot be attributed to merely a rogue officer or two." McConnell added that it was also "incomprehensible, given Jason's condition at the time, how Memorial Hospital could have sent him back to Wyatt without keeping him, caring for him, and properly diagnosing him." In July, the federal judge hearing the case refused to dismiss the federal Immigration and Customs Enforcement agency (ICE) from the lawsuit for its involvement in his treatment and untimely death.

## JOB APPLICANT OBTAINS DAMAGES FROM EAST PROVIDENCE OVER DISCRIMINATORY TREATMENT

The Rhode Island ACLU has settled a federal lawsuit on behalf of former state Senator Michael Damiani against the City of East Providence, which in 2007 conditioned his appointment as an Assistant Harbormaster on passing a "vigorous" physical exam. The lawsuit, filed by ACLU volunteer attorney Carolyn A. Mannis, had argued that the requirement violated Damiani's rights under various employment anti-discrimination laws. Under the settlement agreement, the City agreed to pay Damiani \$7,000 in damages, as well as \$15,000 in attorney's fees.

In April of 2007, Damiani, a former police officer who had retired due to cardiovascular problems, was recommended for the position of Assistant Harbormaster by the City's Harbormaster. He met all the requirements for the position under state and city law and had completed all the training requirements for the post. At the time, there was no requirement that assistant harbormasters undergo a physical exam before appointment. However, a City Councilman and the City Manager persuaded the City Council to appoint Damiani only upon successful completion of a physical because they knew "he has a heart condition." A month later, the City Council approved two other nominees for the position without this stipulation.

The lawsuit argued that the "physical exam" requirement unlawfully subjected Damiani to discriminatory treatment because of his disability "and/or because Defendants regarded [him] as having a disability." Before the suit was filed, the R.I. Commission for Human Rights had already issued a finding that there was "probable cause" to believe that Damiani's rights had been violated under state anti-discrimination laws. Those laws limit the circumstances under which employers can demand physical examinations of job applicants, and further require that they be imposed uniformly on all applicants for a particular job category, not just of selected applicants.

## ACLU SEEKS DISMISSAL OF “CYBERSTALKING” CHARGES FILED AGAINST TWO NARRAGANSETT RESIDENTS ON BEHALF OF LOCAL POLITICIANS

Claiming that the Narragansett Police Department has “set a very dangerous precedent that could have a significantly chilling effect on freedom of speech by town residents,” the Rhode Island ACLU has called on the town’s Police Chief to drop criminal “cyberstalking” charges recently lodged against two town residents in separate incidents. The charges stem from vulgar comments the residents made about two local politicians on a Craigslist website devoted to “rants and raves.”

Themistocles Faraone was charged for posting comments on Craigslist about Douglas McLaughlin, a retired police officer and current and past Town Council candidate. Michael Handrigan was charged for his postings about James Durkin, a three-term member of the Town Council.

RI ACLU executive director Steven Brown said: “We do not think it is a coincidence that both of the alleged ‘victims’ leading to these charges are politicians. While the comments that were posted are nasty, crude and offensive, they were not threatening in any way. We believe the police department’s decision to press criminal charges against these two residents is itself a troubling form of governmental bullying designed to stifle speech against public officials.” Brown noted the complainants were free to bring civil suits if they felt they were libeled by the offensive comments.

In a three-page letter sent to Police Chief Dean Hoxsie, the ACLU’s Brown said the charges not only raised serious free speech issues, but were baseless because the “cyberstalking” statute is limited to electronic communications that the alleged offender transmits directly to the “harassed” person or that “cause” the person to be contacted, not to passive posting of information on a website. The letter said this distinction was made for good reason: “To expand the notion of ‘cyberstalking’ or ‘cyberharassment’ to cover any communication on the Internet, and not be limited to those actually directed to an individual, would run headlong into fundamental free speech problems. ... For good or for bad, postings such as those allegedly made by Mr. Faraone and Mr. Handrigan are part and parcel of the rough and tumble of the World Wide Web.”

Both Faraone and Handrigan are being represented by private counsel on the charges. The ACLU has offered to file a “friend of the court” brief on their behalf if the cases against them proceed.

### ORGANIZATIONAL NOTES

#### *Tune in to the ACLU’s Monthly Cable Access Show*

During the month of November, the ACLU’s cable access show “Rights of a Free People” will feature Bruce Reilly from Direct Action for Rights and Equality, Nick Horton from Open Doors, and RI ACLU plaintiff Jessica Gianfrocco (see cover story) who will all be discussing the issues faced by those with a criminal record, including obstacles to employment, housing, and volunteering.

#### Showtimes:

Channel 13: Tuesdays 10:00pm & Fridays 3:30pm (Channel 32 on Verizon FIOS)  
Channel 18: ( In Providence & N. Providence) Wednesdays 9:00pm (Channel 38 on Verizon FIOS)

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#### *ACLU Board Elections*

The ACLU Nominating Committee has proposed renominating the following officers for one year terms in next month’s Affiliate Board elections: Anne Mulready – Chair; H. Jefferson Melish – Vice-Chair; Christine Lopes – Treasurer; and Jenn Steinfeld – Secretary. Among those being nominated for regular Board terms are John Blakeslee, Daniel Scott III, Karen Davidson, Steve DeToy, and Charles Feldman.

You will receive a ballot only if you are a current ACLU member; contributions to events or special donations do not renew your membership. Additional nominations may be made by petition of any ten members, provided there is attached to the petition a signed statement expressing the nominee’s willingness to serve if elected. A biographical sketch, no greater than 100 words, should also be submitted. Such a petition must be received at the ACLU office no later than November 16th.

## THE QUIET WORK OF THE RHODE ISLAND ACLU



Although the Rhode Island ACLU is perhaps best known (for good reason) for rushing into court to redress violations of constitutional rights on a regular basis, it is worth emphasizing that the vast majority of civil liberties complaints brought to the Affiliate's attention get resolved informally, with just a letter or a meeting with government officials. They may not generate headlines, but they are an important aspect of the Affiliate's day-to-day work in protecting civil liberties. A few examples of this work from the past month are summarized below:

- The ACLU has come to the assistance of Marriage Equality Rhode Island (MERI) in five communities this year — and twice this past month — when police unlawfully sought to restrict the group's political canvassing activities. Court decisions make clear that political canvassers have a First Amendment right to engage in door-to-door canvassing without being subject to onerous registration or licensing requirements. However, officials in Bristol, Middletown, Warwick and, most recently, East Providence and North Kingstown, threatened to fine or arrest MERI canvassers if they failed to register with the police under local ordinances. The communities have all backed down after the ACLU contacted municipal officials and advised them of the canvassers' clear constitutional right to canvass without a permit. In the meantime, in light of the prevalent nature of the problem, the ACLU has asked the R.I. League of Cities and Towns to send an advisory to municipalities to make them aware of their constitutional obligations on this issue.
- After the ACLU threatened legal action, a Family Court judge immediately rescinded an order she had issued that forbade a woman from talking about her pending custody case with anyone, including the media, or posting anything about the matter on any blogs or other sites on the Internet. The "gag order" had been imposed at DCYF's request on Faith Torres shortly after she contacted a reporter at the *Providence Journal* to talk about her struggle to regain custody of her children. Torres called the ACLU for help after the gag order was entered. One day later, after the Affiliate indicated that the order was a blatant violation of Torres' First Amendment right and threatened suit, Judge Debra DeSegna lifted the order.
- Responding to an ACLU complaint, the Division of Motor Vehicles agreed that it may not bar a person who owes back taxes from obtaining a state ID card. State law does prevent a person who owes taxes from getting his or her driver's license renewed, and that is why the complainant applied for an ID card instead. However, the DMV initially refused to provide him an ID card for the same reason. In a letter to DMV officials, the ACLU noted that the fact that a person owes back taxes should have no bearing on his or her ability to obtain an ID card, and that very serious consequences flow from denying ID cards to persons for reasons unrelated to proof of identity. The ACLU pointed out that there was no basis in law for the refusal. The DMV reconsidered its position and agreed.
- The Attorney General's office reversed a finding it had made in an Open Meetings Act (OMA) complaint after the ACLU pointed out that the finding directly contradicted a provision in the Act itself. In a written opinion, the AG had ruled that the Albion Fire District did not violate the OMA on two occasions when it went into executive session to discuss "legal matters" even though it had only cited the so-called "personnel" exemption in the statute as the basis for the closed meeting. However, the ACLU pointed out that a provision in the Act explicitly addressed this very scenario, barring public bodies from discussing in closed session any item that was not specifically referred to in declaring the executive session. The AG's office reconsidered and revised its decision, acknowledging that these closed sessions violated the statute. The reversal satisfied the complainant who had initially filed the violation complaints with the Attorney General's office.
- Superior Court Presiding Justice Alice B. Gibney issued an administrative order to halt a questionable practice of some judges that the ACLU and the Public Defender brought to her attention. State law authorizes judges to impose a hefty "warrant assessment fee" on criminal defendants who are apprehended for failure to appear in court. However, the ACLU learned that some judges were routinely imposing the fee on defendants who *voluntarily* surrendered to the court. In response, the Affiliate asked Justice Gibney to issue a clarifying directive to Superior Court judges that, in the case of voluntary surrenders, no warrant fee should be assessed. After discussing the matter with other members of the Court, Justice Gibney did so, resolving the problem.

## EVENTS

The Affiliate has been keeping busy these last few months with community events. Take a peek at some of our most recent events below!

### BARRINGTON HOUSE PARTY

Longtime members and current Board Members Vivian Weisman and Carolyn Mannis graciously co-hosted on September 20th the third in a series of house parties aimed at increasing awareness of the Affiliate in various communities. Guests enjoyed light refreshments as they listened to and shared stories of their experiences with the RI ACLU. House parties have previously been held this year in Woonsocket and Pawtucket.

### BANNED BOOKS WEEK

The RI ACLU celebrated Banned Books Week (Sept. 25-Oct. 2) with two book reading events.

The first, held on September 24th before a packed crowd at the Providence Athenaeum, featured Rhode Island authors Adam Braver, Thomas Cobb, Rosemary Mahoney, Stephen O'Shea, Mike Stanton, and Ted Widmer reading excerpts from such classics as *To Kill a Mockingbird*, *Lolita*, *The Adventures of Huckleberry Finn* and *Catcher in the Rye*.



RI authors (seated in back) read to a full house at the Providence Athenaeum on Friday, September 24th.

The next day, September 25th, five local children's books' authors read from banned children's books at the Knight Memorial Library in Providence. The authors — Natalie Babbitt, Mary Jane Begin, Anika Denise, Janet Taylor Lisle and Naomi Zucker — focused on such beloved children's books as *Winnie the Pooh*, *In the Night Kitchen* and *Charlotte's Web* for their readings.



From L-R: Mary Jane Begin, Anika Denise, Natalie Babbitt, Naomi Zucker & Janet Taylor Lisle

The authors expressed interest in participating in another banned books reading next year, and the Affiliate hopes to accommodate them. The ACLU offers its appreciation to Christine Bevilacqua at the Athenaeum, and particularly to Board member Nondas Hurst Voll, without whose vision and hard work these events would not have occurred.

### 2ND ANNUAL FOLK CONCERT

After last year's rousing success, the Affiliate held another folk concert this year on October 17. This year's show featured the popular Rhode Island group, The Gnomes. Their eclectic mix of world-folk-fusion lived up to the dance party it proved to be! Many thanks to John Blakeslee for his work in organizing the event, and especially to The Gnomes for graciously volunteering their talents for the concert.



Members of The Gnomes, (from L-R) Michael Fischman & Peter Breen.



The other members of the band, Cathy Clasper-Torch, Phil Edmonds, & Ron Schmitt.



Some of the younger attendees help the audience participate in a specially written song about the ACLU, sung to the tune of "YMCA".

## LEGAL BRIEFS

- **SPECIAL EDUCATION COMPLAINT FILED**

The ACLU has joined with Rhode Island Legal Services in filing a class-action administrative civil rights complaint challenging a Pawtucket school district practice of routinely destroying evaluation and test protocols of children used to determine their eligibility for special education services. The complaint, filed with the Office for Civil Rights of the U.S. Department of Education, argues that the policy is a violation of federal regulations and has the improper effect of preventing parents from forming an independent judgment about the accuracy of the school evaluations. The evaluation reports form the basis on which a child's eligibility for services and the nature of services provided are determined, yet the parent never has the opportunity to review the underlying documents leading to those determinations.

- **AG LYNCH OPPOSES VIDEO GAME BAN**

The ACLU and other civil liberties advocates have found an unlikely ally in a First Amendment challenge pending in the U.S. Supreme Court – Attorney General Patrick Lynch. He has taken the lead, on behalf of nine other Attorneys-General, in filing a “friend of the court” brief urging the High Court to strike down a California statute that restricts the sale of “violent” video games to minors. The ACLU has also filed a brief in the case. The Rhode Island General Assembly considered passage of a similar bill this year, but it died in committee due to opposition from the ACLU and video game industry lobbyists.

The Attorneys-General claim that the law “would not enhance law enforcement but would hinder it” by leading to “an expensive new enforcement regime, in which law enforcement personnel would become culture critics charged with policing games containing simulated violence but judged to be lacking sufficient redeeming artistic or political value. This unnecessary incursion into issues of speech perversely would deplete resources and distract from law enforcement’s task of policing actual violence.” A decision from the U.S. Supreme Court is expected by June 2011.

- **STATE PAYS FOR DENYING PUBLIC RECORDS**

The RI ACLU has prevailed in an open records suit against Governor Carcieri. Filed after a December 2007 snowstorm that left the state in gridlock at a time the Governor was out of the country, the lawsuit challenged the Governor’s refusal to release documents relating to his publicized decision to put Major General Robert Bray, head of the National Guard, in charge should a similar situation occur in the future. Superior Court Judge Patricia Hurst ordered the Governor to release some of the requested documents and also awarded attorney’s fees to the Affiliate.

- **TAX CHECK-OFF SCHEME CONTINUES**

A federal judge denied the Affiliate’s request to temporarily halt the state from distributing to the two major political parties the funds contained in a so-called “nonpartisan account” consisting of “donations” made by taxpayers on their tax return. The law authorizing the account excludes disbursement to independent candidates and new political parties, like the Moderate Party of Rhode Island, on whose behalf the suit was filed.

The suit argued that the statute unconstitutionally “grants windfalls to the parties that least require public funds to compete politically” and that “no government interests justify sponsoring the political operations of some qualified parties but not others.” The ACLU is awaiting release of the judge’s formal opinion in the case.

- **CENTRAL FALLS FIGHTS ACLU WIN**

Despite the City of Central Falls’ dire financial straits, the state-appointed Receiver running the city has authorized payment of tens of thousands of dollars in fees to outside legal counsel who unsuccessfully fought the ACLU in an election case last year. A federal judge agreed with the ACLU that a city ordinance barring electors from signing more than one nomination paper for the same political office was unconstitutional. Despite that ruling as well as passage of a state law rescinding the contested ordinance, the City’s retained attorneys continued to appeal the case and are now contesting the ACLU’s right to recover its attorneys fees. The City attorneys themselves have been paid more than \$50,000 thus far to defend the case.

- **FBI “ETHNIC MAPPING” RECORDS SOUGHT**

The RI ACLU has asked the FBI to turn over records related to the agency’s collection and use of race and ethnicity data in local communities. According to an FBI operations guide, agents have the authority to collect information about and map “ethnic-oriented” businesses, behaviors, lifestyle characteristics and cultural traditions in communities with large ethnic populations. ACLU affiliate offices across the nation filed coordinated Freedom of Information Act (FOIA) requests to uncover records about this activity from their local FBI field offices.

The FBI’s power to collect and use this data in order to assist in “domain awareness” and “intelligence analysis” activities is described in a Domestic Intelligence and Operations Guide (DIOG). The FBI released the DIOG in heavily redacted form in September 2009, but a less-censored version was not made public until January of this year, in response to a lawsuit filed by Muslim Advocates. Although the DIOG has been in effect for more than a year and a half, very little information is available to the public about how the FBI has implemented this authority.

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## 2010 ANNUAL DINNER CELEBRATION: THURSDAY, NOVEMBER 4TH

IT'S NOT TOO LATE TO PURCHASE TICKETS FOR OUR ANNUAL DINNER MEETING. This year's meeting promises to be a fun event, as national radio commentator, public speaker, and author **Jim Hightower** will be the guest speaker.

We will be honoring **Elizabeth V. Earls**, President and CEO of the Rhode Island Council of Community Mental Health Organizations as our Civil Libertarian of the Year. Also receiving an award is attorney **Richard Sinapi** for his work to uphold the First Amendment. Contact the office for more information — 831-7171.

## JOB OPENING AT THE ACLU

**POLICY ASSOCIATE:** Duties in this position include assisting the executive director in various day-to-day and long-term programmatic and organizational activities, including extensive lobbying at the General Assembly, research and report writing, serving as a liaison with other community groups, representing the ACLU in public forums, and various other programmatic and administrative tasks. Applicants must be committed to the mission of the ACLU.

To apply, send a resume, writing sample and cover letter to: Search Committee— ACLU of Rhode Island — 128 Dorrance Street, Suite 220 — Providence, RI 02903. Additional information about the position can be found on the Affiliate's web site, [www.riaclu.org](http://www.riaclu.org).