

2005 RHODE ISLAND ACLU CASE DOCKET

Cases Active January-December 2005

* indicates case opened in 2005; # indicates case closed in 2005

Abdullah-Odiase v. Begin. VOTING RIGHTS. Appeal on behalf of a legislative candidate for office whose name was stricken from the ballot by the Board of Elections because one of her nomination papers allegedly contained signatures not witnessed by her. At an emergency hearing, a single justice of the Supreme Court ordered her name back on the ballot. A motion for attorneys' fees is pending. Cooperating Attorney: John W. Dineen

*ACLU Foundation v. Lynch. ACCESS TO THE COURTS. Federal lawsuit challenging a R.I. Supreme Court ruling that state law and the RI Rules of Professional Conduct bar lawyers from sharing attorneys fees awards with non-profit organizations. At the court's suggestion, the parties agreed to pursue the issue in another pending case where attorneys fees for the ACLU have been withheld due to the ruling. Cooperating Attorney: Mark Freel

#Barr v. Public Utilities Commission. FREEDOM OF SPEECH. Lawsuit challenging a cable company's plans to relocate a public access studio to a facility where the public's ability to tape public access programming would be severely limited, in violation of state law. A restraining order against the move was issued, and all plans for the relocation were dropped. Cooperating Attorney: Miriam Weizenbaum

#Barros v. Town of Scituate. RACIAL PROFILING. Federal lawsuit challenging two separate incidents of racial profiling in which the plaintiff was stopped, questioned and, in one instance, improperly ticketed by Scituate police. While an appeal was pending, the case was favorably settled. Cooperating Attorney: Thomas G. Briody

#Bourgeois v. Town of North Smithfield. SEX DISCRIMINATION. Administrative discrimination complaint filed on behalf of a man who, solely because of his sex, was denied a coaching position for a girls' junior high softball team. Under a settlement agreement, the plaintiff was given the job. Cooperating Attorney: Lynette Labinger

Brown v. Providence Police Department. OPEN RECORDS/POLICE PRACTICES. Open records lawsuit challenging police department's refusal to release policies governing the use of video surveillance cameras in public street locations and in police cars. A court ordered their release, but denied plaintiff's request for attorneys fees. Following an appeal, the lower court was ordered to reconsider that request. Cooperating Attorney: Staci Kolb

*#Butterfield v. Gemma. OPEN RECORDS. Open records lawsuit challenging Town of North Smithfield's requirement that a person provide his or her name and e-mail address in order to gain access to an on-line database of tax assessment records. The Town agreed to eliminate the requirement. Cooperating Attorney: Karen Davidson

Caianiello v. Mruk. OPEN RECORDS. Open records lawsuit against the Anthony Fire District in Coventry for failing to provide various documents requested by the plaintiff, inappropriately redacting documents that were provided, and charging various "copying" fees unauthorized by law. Cooperating Attorney: Jeanne Scott

Carlow v. Mruk. FREEDOM OF SPEECH. Federal lawsuit challenging a "gag order" issued by a Coventry fire district chief against two firefighters after they publicly expressed fire-department related concerns about school safety. The defendants agreed to rescind the challenged policies. A motion for attorneys fees is pending, as is a contempt motion against defendants for failing to abide by the agreement. Cooperating Attorney: John W. Dineen

Carlow and Perry v. Mruk. FREEDOM OF SPEECH. Federal lawsuit challenging actions by Coventry Fire District officials in banning members of the public from videotaping the District's annual financial meeting and preventing certain attendees from speaking. Discovery is proceeding. Cooperating Attorney: Gary Berkowitz

City of Newport v. Ducharme and Roman. FREEDOM OF SPEECH. Defense representation of two exotic dancers charged with violating the City's "anti-nudity" ordinance at a bachelor party held at a private bar. The City is considering dismissal of the charges. Cooperating Attorneys: Thomas G. Briody, John W. Dineen

#Clavet v. Lincoln School Committee. FREEDOM OF SPEECH. Federal lawsuit alleging that a school district failed to hire a teacher applicant because of her public criticism over the years, as a parent, of some school district practices. After a bench trial, the court ruled for the defendants. Cooperating Attorney: Jennifer Azevedo

#Clean Water Action, Inc. v. Town of Johnston. FREEDOM OF SPEECH. Federal lawsuit challenging a town ordinance barring door-to-door charitable solicitation after 6 PM. A temporary restraining order was issued, and attorneys fees and damages were awarded in settlement of the case. Cooperating Attorney: Carolyn Mannis

Direct Action for Rights and Equality (DARE) v. Gannon. OPEN RECORDS/POLICE MISCONDUCT. Open records suit against the Providence Police Department for refusing to release internal records of police brutality complaints. The R.I. Supreme Court affirmed a lower court ruling that the records were public and, in a second appeal, an order requiring defendants to turn over the records at no cost and to pay attorneys' fees. The fee award remains outstanding. Cooperating Attorney: Dennis Grieco II

Doeg v. Ferguson. RIGHTS OF THE POOR. Class-action suit challenging the procedures used by the Department of Human Services in food stamp fraud hearings. A preliminary injunction, preventing DHS from taking action against most class members, was issued, and a proposed settlement agreement has been filed with the court. Cooperating Attorney: Thomas W. Lyons

*In re: FBI-JTTF FOIA Request. POLICE PRACTICES. This is a Freedom of Information Act request seeking documents regarding FBI Joint-Terrorism Task Force activity in Rhode Island. A few heavily redacted documents have been released thus far. Cooperating Attorney: Jerry Elmer

Global Waste Recycling, Inc. v. Mallette. SLAPP SUIT. Defense representation of a couple sued for defamation for statements they made to the media expressing environmental concerns about the plaintiff's recycling activities. A ruling dismissing the suit under the state's anti-SLAPP suit law was upheld by the state Supreme Court; attorneys fees were also awarded but have not been paid. Cooperating Attorney: Mark W. Freel

Inmates of the Rhode Island Training School for Youth v. Lindgren. RIGHTS OF JUVENILES. The ACLU has taken over this long-running class-action lawsuit challenging the constitutionality of conditions at the Training School. A comprehensive revised consent decree was submitted to the court and approved. Ongoing monitoring of the decree is proceeding. Cooperating Attorney: John W. Dineen. ACLU National Prison Project: David Fathi

*#In re: J.C., Jr. and In re: N.S.V. RIGHTS OF JUVENILES. These two separate Family Court appeals challenge the validity of Truancy Court procedures and conditions imposed on the juveniles. The Family Court dismissed the cases against the juveniles shortly after these appeals on their behalf were filed. Cooperating Attorney: Amy R. Tabor

*#Laffey v. Begin. FREEDOM OF SPEECH. "Friend of the court" brief challenging a state Board of Elections' ruling that the hosting of a radio talk show by Cranston's Mayor constituted an illegal campaign contribution under state election law. The defendant agreed not to enforce the ruling pending lower court consideration of state law issues raised by the case. The suit was then voluntarily dismissed after the plaintiff formally declared his candidacy for a U.S. Senate seat. Cooperating Attorney: Carolyn A. Mannis

Maddalena v. State of Rhode Island. EMPLOYMENT DISCRIMINATION. "Friend of the court" brief filed in this federal employment discrimination case, challenging the state's contention that it has sovereign immunity from suit for claims filed under the Rhode Island Civil Rights Act. The court rejected the sovereign immunity claim, and the case is proceeding. Cooperating Attorney: Robert Savage

#Melendez v. Town of North Smithfield. SEX DISCRIMINATION/RACE DISCRIMINATION. Federal lawsuit, on behalf of a female Hispanic firefighter applicant, challenging a state law giving a town a one-time exemption from the Fair Employment Practices Act in order to allow its acquisition of an all-white, all-male private fire and rescue service. After a temporary restraining order was issued, the Court permanently barred the Town from implementing the takeover. Attorneys fees were awarded. Cooperating Attorneys: Lynette Labinger, John W. Dineen

Narragansett Indian Tribe v. State of Rhode Island. INDIAN RIGHTS. “Friend of the court” brief challenging on various grounds the legality of a state police raid of a smoke shop on Narragansett Indian tribal land. The Court upheld the state’s actions, and the appeals court reversed in part. The full appellate court is reviewing that ruling. National ACLU Attorney: Stephen Pevar

#Osediacz v. City of Cranston. FREEDOM OF RELIGION. Federal lawsuit challenging both the display of a nativity scene and menorah on the front lawn of Cranston City Hall and city policies governing what displays may be erected. The court upheld the display’s constitutionality but struck down the policies, but an appellate court ruled the plaintiff didn’t have standing to challenge the policies. Cooperating Attorneys: Miriam Weizenbaum, Amato DeLuca

Poe v. State of Rhode Island. RIGHT TO TRAVEL. State court lawsuit challenging a Department of Corrections policy which bars most out-of-state travel by sex offenders on probation, including casual in-and-out trips to neighboring states. The state removed the case to federal court, but that court ordered that some of the claims be returned to state court for resolution, where the matter is pending. Cooperating Attorney: Richard Sinapi

*#In re: Proposed Amendments to Local Rules. ACCESS TO THE COURTS. The ACLU filed detailed comments in response to the U.S. District Court’s proposed comprehensive revision to local court rules. The comments raise concerns about a number of provisions, including ones that would restrict note-taking in the courtroom, establish strict page limitations on the filings of various memoranda, and impose a “gag rule” on attorneys and parties under broad circumstances. The final rules favorably addressed most, but not all, of the ACLU’s comments.

R.I. ACLU v. Begin. FREEDOM OF SPEECH. Federal lawsuit challenging the constitutionality of various aspects of Rhode Island’s campaign finance law, and the Board of Elections’ interpretations of the law, that impermissibly restrict the rights of individuals and entities to campaign on ballot referenda questions. Briefs have been filed. Cooperating Attorney: Howard Merten

*#R.I. ACLU v. Cirillo. OPEN RECORDS. Open records lawsuit against the Foster-Glocester School District for failing to respond to requests for copies of policies and forms governing the release of student directory information to military recruiters. The defendants turned over the documents the day after suit was filed, and the case was voluntarily dismissed after defendants agreed to a monetary settlement. Cooperating Attorney: Karen Davidson

*R.I. ACLU v. Najarian. DUE PROCESS. Lawsuit challenging the Division of Motor Vehicles’ failure to formally adopt any rules and regulations governing the issuance of drivers’ licenses, such as the eligibility of immigrants to obtain licenses, the documentation required to obtain a license, and the procedures for denying a license or hearing appeals of such denials. Defendants have filed a motion to dismiss. Cooperating Attorney: Thomas W. Lyons

R.I. ACLU v. Providence Police Department. RACIAL PROFILING. Lawsuit challenging the Providence Police Department’s failure to comply with the state’s racial profiling data collection law. Comprehensive court orders requiring independent monitoring of the agency, at its expense, were entered. A contempt finding against the Department for non-compliance with those orders was issued, and the City appealed. The case has been remanded to the lower court for further consideration. Cooperating Attorney: Carolyn A. Mannis

R.I. ACLU v. State of Rhode Island [Court Interpreters]. ACCESS TO THE COURTS. This is a formal administrative complaint filed with the U.S. Department of Justice, claiming that the state has failed to provide

adequate interpreter services to criminal defendants in state court proceedings. A review has been initiated.
#Rhode Island Medical Society v. Whitehouse. REPRODUCTIVE FREEDOM. Federal lawsuit challenging the constitutionality of a state law banning so-called “partial birth abortions.” A court ruling striking down the statute was affirmed on appeal. Attorneys’ fees were awarded. Cooperating Attorney: Lynette Labinger. ACLU Reproductive Freedom Project Attorney: Talcott Camp

R.I. Parents for Progress v. Board of Elections. RIGHTS OF VOTERS. Lawsuit challenging, as a violation of the First Amendment and federal election law, the Board of Elections’ plan to disqualify the “provisional ballots” cast by voters who registered by mail after January 1, 2003 if they failed to provide acceptable identification at the polling place. Shortly after the suit was filed, the Board reversed its position and agreed to count those ballots. A motion for attorneys’ fees is pending. Cooperating Attorney: John W. Dineen

Shakur v. Wall. RIGHTS OF PRISONERS. Representation of an inmate, who had initially filed a *pro se* lawsuit, challenging on First Amendment grounds various prison policies governing inmate access to magazines and other publications. Cooperating Attorneys: Christopher Corbett, Lynette Labinger

*State v. Russell. RIGHT TO PRIVACY. “Friend of the court” brief in support of a lower court ruling construing the state’s disorderly conduct statute as not applying to purely private conduct in the home that does not disturb others outside the home. Cooperating Attorney: H. Jefferson Melish

*#Tiverton School Committee v. McCullough. GAY AND LESBIAN RIGHTS. The ACLU is representing the defendants in this case, a recently-married lesbian couple living in Massachusetts, one of whom is a retired Tiverton teacher. The school district’s collective bargaining agreement provides retired teachers with family health care benefits for spouses. When the defendants applied for coverage, the school district responded with this declaratory judgment action seeking a ruling that Rhode Island does not recognize same-sex marriages solemnized outside of the state. The case was favorably settled, with the benefits being provided. Cooperating Attorney: Lynette Labinger

*Vono v. Capaldi. FREEDOM OF SPEECH. Lawsuit challenging a state ban on industrial zone outdoor advertising unless the advertising relates to “on premises” activity. Cooperating Attorney: John W. Dineen

#Young v. City of Providence. RIGHT TO COUNSEL. “Friend of the court” brief challenging, on free speech and due process grounds, the imposition of sanctions on plaintiffs’ attorneys in the Cornel Young, Jr. civil rights case for allegedly misstating the judge’s position in court papers. The district court denied the ACLU permission to file the brief; the brief was filed in the appellate court, which overturned the sanctions. Cooperating Attorney: Amy R. Tabor

#Young v. City of Providence (II). ACCESS TO THE COURTS. “Friend of the court” brief challenging the validity of a local federal court rule setting page limits on motions for summary judgment, including appendices or exhibits. The brief argues that the rule adversely affects access to the courts and conflicts with federal law. The court, addressing other aspects of the appeal, did not reach this issue. Cooperating Attorney: John W. Dineen

Young v. Wall. RIGHTS OF PRISONERS. The ACLU has taken over this *pro se* inmate’s lawsuit challenging, as an unlawful taking of property without just compensation, a prison policy eliminating the right of inmates to obtain interest on their inmate accounts. Discovery is proceeding. Cooperating Attorney: Andrew Prescott

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