

# RHODE ISLAND CIVIL LIBERTIES

A BI-MONTHLY PUBLICATION OF THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF RI

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## AFFILIATE ADDRESSES VARIOUS FIRST AMENDMENT CONCERNS AT PUBLIC MEETINGS

Over the past few months, the Rhode Island ACLU has seen a variety of attempts to stifle the free speech rights of residents in public forums. As noted below, they have ranged from the ability of the public to comment at Board of Regents' and Town Council meetings to restricting passive speech in polling lines on Election Day. All these efforts demonstrate the subtle and diverse ways that government agencies can chill the exercise of First Amendment rights.

\* *Board of Regents.* In response to objections raised by the ACLU, the Board of Regents for Elementary and Secondary Education is expected to revise proposed rules addressing the public's opportunity to make comments at Regents' meetings.

Among other things, the Board initially proposed closing the opportunity for public comments on any item "where public comment has been received either at a public hearing, at a Regents meeting or both." Under this provision, someone could be barred from making a public comment simply because another speaker had addressed a topic at a previous meeting. In testimony before the Regents, the ACLU argued that "the fact that other people may have previously commented on an item should hardly serve as grounds for preventing another person from doing so," especially considering that Regents' by-laws already allow the Chair to limit repetitive, off-topic, or lengthy comments.

The ACLU criticized another proposal that would bar speakers from "indulging in personal attacks." The ACLU acknowledged that the Board "certainly can prohibit disruptive behavior," but that a ban on "personal attacks" was overly broad and raised significant First Amendment problems. In fact, the Affiliate has successfully sued other public bodies that imposed similar restrictions on public comment. After receiving the ACLU's testimony, the Board's legal counsel agreed to work with the Affiliate in revising the proposal.

\* *North Providence Town Council.* With little fanfare, the Town Council adopted a policy this month requiring residents to formally take an oath to swear to tell the truth before addressing the Town Council during the public comment period at meetings. The ACLU called

the new policy, which has since generated an uproar, a blatant attempt to intimidate residents from speaking their mind at Council meetings. The only justification offered for the swearing-in policy was to address "raucous" behavior that has occurred at some prior meetings. Ironically, last year three (now-former) members of the Town Council were indicted on criminal charges. Not surprisingly, however, the new policy does not apply to the Council members themselves. The ACLU is investigating whether grounds exist for a legal challenge.

\* *State Board of Elections.* After hearing ACLU testimony, the Board of Elections has postponed until January a vote on a proposed regulation that would bar voters from wearing political buttons or clothing with political messages into polling places. At a public hearing, the ACLU argued that in addition to raising First Amendment concerns, such a restriction was inconsistent with state law provisions defining improper "electioneering."

The ACLU argued that a person's passive and silent display of a political button while waiting in line to vote hardly represented the sort of undue influence or intimidation that electioneering laws were designed to prevent. The Affiliate also pointed out the practical problems that would arise from enforcement of such a ban: "Will a voter wearing a button that says 'Help the Homeless' be ordered to take it off if the ballot contains a bond referendum for low-income housing? Is an Amnesty International T-shirt an illegal expression of opposition to any candidates running on a pro-death penalty platform?" The Affiliate noted that election officials had more important responsibilities and concerns to deal with on election day than censoring political buttons. In agreeing to postpone the vote, Board members appeared divided on the proposal. The ACLU will continue to monitor the Board's actions.

## From The Desk of the Executive Director

Included in this month's newsletter is our annual legal docket. As in past years, it shows we were involved in over 30 cases. This is an extremely impressive number considering that all these lawsuits are handled by volunteer attorneys, and even more impressive for our Affiliate's size. We have lots of reasons to be proud of our legal program.

For a change, though, the rest of the newsletter is litigation-free. Instead, this month we document some of the Affiliate's unceasing advocacy work *outside* the courtroom — at administrative hearings and town council meetings, in coalitions, and through educational activities.

In the past month alone, we've testified before such diverse state agencies as the Regents for Elementary and Secondary Education, Board of Elections, Department of Business Regulation, Department of Administration, the Secretary of State, and RIPTA!

We also had our say at the General Assembly's special November session on pension reform: the only floor amendment that was added to the controversial bill was in response to ACLU testimony.

If sometimes we seem to be everywhere, it's because we are (almost). And that accomplishment happens only because of your support. Thanks, and happy new year!

— Steven Brown



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## ACLU CRITICIZES NEW NARRAGANSETT ORDINANCE TO CHARGE RESIDENTS FOR "POLICE RESPONSE COSTS"

Calling it "the latest in the Town's continuing, and increasingly draconian, actions aimed at students and landlords," the RI ACLU unsuccessfully urged the Narragansett Town Council to reject passage of an ordinance allowing the Town to recover "police response costs" for responding to alleged "disturbances" in the community. After it was approved by a 4-1 vote, the Affiliate is now considering the possibility of legal action.

Under the new ordinance, homeowners, landlords, tenants, guests or other "responsible parties" will be required to pay "response costs," including the salaries of police officers, if police investigate a "disturbance" at the same property twice in one year.

In a letter to the Town Council sent before the vote, the ACLU expressed a "fundamental" disagreement with the ordinance's underlying premise: "that special costs should be imposed on residents to re-pay police simply for doing the job they are already getting paid to do. If a person is engaging in conduct that violates any of the innumerable town ordinances relating to disorderly conduct, there are financial and other penalties already associated with those violations. That is the proper way for the Town to address the issue." The proposal, moreover, would require people to pay even if they are not charged with a crime. In fact, once a warning is issued to "responsible parties," every person is on the hook for paying the "response costs" if police return thereafter.

The ACLU letter argued that the ordinance will "turn alleged disturbances of the peace into a fundraising activity for the Town." The ACLU also suggested the ordinance could be used to escalate neighborhood feuds, since a party will know that by merely calling the police about a "disturbance," he or she can ensure that their neighbor will be left with a hefty bill to pay.

Even more importantly, the ACLU pointed out that the proposal could "actually deter the reporting of crimes that should be reported," such as "victims of domestic violence thinking twice before picking up the phone to call the police, knowing that by doing so, they might find themselves responsible for paying a bill for the police response or, just as problematic, creating a situation for their landlord who will also be on the hook for paying the police and will therefore not look kindly on the victim's plight." Echoing that concern, the R.I. Coalition Against Domestic Violence also testified against the ordinance before the Town Council.

The ACLU letter also stated that the ordinance leaves it "completely within the discretion of the responding officer to decide whether a 'disturbance' occurred," and the appeal process, "which occurs only after costs have been imposed, and thus provides no opportunity whatsoever for contesting the validity of the original warning — is also completely arbitrary, providing no standards at all for the Town to use in determining whether to uphold or void a response cost charge."

In recent years, the Town has passed a plethora of punitive ordinances designed to crack down on loud parties and other instances of disorderly behavior, including the so-called "orange sticker" ordinance, which a federal court upheld only after placing some limitations on its use.

## GROUPS WORK TO HALT FEDERAL DEATH PENALTY EFFORTS AGAINST JASON PLEAU

Claiming violations of the Department of Justice's own standards, the RI ACLU and four other organizations have asked the United States Solicitor General to "halt any further efforts" by the U.S. Attorney's office in Rhode Island to seek to impose the death penalty on Jason Wayne Pleau. The letter follows actions by that office to appeal a federal court ruling which held that Governor Lincoln Chafee acted lawfully in refusing to transfer Pleau's custody to the federal government. The U.S. Attorney is seeking to prosecute him even though he has already agreed to serve a life sentence without the possibility of parole on state charges.

Calling local U.S. Attorney Peter Neronha's efforts "troubling," the letter to Solicitor General Donald Verrilli, Jr. argues that "it is not only directly contrary to, and an undermining of, Rhode Island's strong and long-standing policy and practice against the imposition of capital punishment, it is fundamentally at odds with the Department of Justice's own guidelines and standards. Under the circumstances, any continuing efforts to impose the death penalty in this case create an impression of governmental vengeance, a role ill-befitting the U.S. Attorney's Office and the notion of what a prosecutor's role in our criminal justice system should be." The letter was signed by the ACLU, the RI State Council of Churches, Progreso Latino, Providence Youth Student Movement, and the American Friends Service Committee.

The groups denounced the effort as "especially appalling" because "the Department of Justice's own standards offer no basis for this course of conduct." The letter cites various sections of the DOJ's United States Attorney's Manual in support of that point. For example, one policy emphasizes that death penalty cases should be brought "only when the Federal interest in the prosecution is more substantial than the interests of the State or local authorities." Another policy, dealing more generally with dual and successive prosecutions where the federal government and the state share jurisdiction to prosecute an offender, precludes federal prosecutions unless the matter involves "a substantial federal interest," and the state prosecution "must have left that interest demonstrably unvindicated."

Acknowledging the "heartrending" loss that the victim's family has suffered and their interest in pursuing capital punishment against Pleau, the letter states that the federal government "has a much different and more dispassionate function to play in cases like this, and it is not one of retribution." As this newsletter went to press, the U.S. Court of Appeals for the First Circuit had not made a decision as to whether it would reconsider its earlier ruling supporting the Governor's refusal to hand over Pleau. The ACLU's letter can be found at [www.riaclu.org](http://www.riaclu.org).

## RI ACLU MONITORS "OCCUPY PROVIDENCE" PROTEST



A sign at Occupy Providence reads, "Dance for our 1st Amendment rights!"

The Rhode Island ACLU has closely monitored the Occupy Providence protest since activists first arrived in Burnside Park on October 15. In addition to distributing hundreds of "Know Your Rights" brochures to protesters, the ACLU assisted the group in drafting an ordinance designed to better protect the free speech rights of demonstrators.

For example, some of the particular rules and ordinances that were cited by the City in an October 27th letter to protesters – including an apparent ban on any protest activity in the park after 9 PM – may be constitutionally problematic if they were to be enforced against members of Occupy Providence. The proposed ordinance would eliminate those problematic provisions.

In addition, upon learning that the police department had surreptitiously used special infra-red technology to determine whether people have been sleeping overnight inside the tents in Burnside Park, the ACLU swiftly issued a statement questioning the Fourth Amendment implications of such a practice. Police have since publicly stated that they do not plan on using the technology again at the site. The ACLU continues to closely monitor the protest. In the meantime, unlike many other cities across the country, the City has continued to take a wait-and-see approach.

## BETTER ACCESS TO VOTER ID CARDS URGED

The Rhode Island ACLU and nine other organizations jointly submitted written testimony to the Secretary of State's Office, urging significant revisions to proposed rules dealing with procedures for issuing voter ID cards to people who do not have the photo identification required, under a new state law, to vote on Election Day. The testimony pointed out that the proposed rules do not adequately address the specific needs of the groups that will be most in need of voter ID cards, including the elderly, people with disabilities, the poor and the transient.

In June, over the objections of dozens of civil rights and community groups, Governor Lincoln Chafee signed into law a bill that will require voters, beginning in 2014, to present specified forms of photo identification in order to vote. The law requires the Secretary of State to make available at no charge special voter ID cards for individuals who do not have any of the specific forms of identification, like driver's licenses, listed in the statute.

The proposed rules contain two lists of acceptable documents that can be used to obtain a voter ID card: eight that need to be "current and valid" and another nineteen that must include a person's address and "dated since the

date of the last election." The testimony asserted that almost all of the eight documents in the first list – which includes health club ID cards, insurance cards, and commercial establishment ID cards – are "much more likely to be held by people who are not poor, elderly, or disabled, thus defeating the purpose of trying to promote easy access to voter ID." Rather, those documents "are precisely the type of cards that people already possessing acceptable photo ID are likely to have."

As for the second list, the testimony pointed out:

"Requiring these acceptable documents to include a current date and address will severely limit their availability for people needing to qualify for a voter card. Public housing cards, student ID, insurance and drug discount cards, RIPTA bus passes, and ID documents by government homeless shelters, for example, are unlikely to have a current date or address or both. Indeed, the mere fact that an address is required largely eliminates their availability for anybody who is homeless."

The testimony also claimed that crucial aspects of the proposed regulations were far too vague. For example, although the Secretary of State will have a "mobile voter ID unit" available

to go across the state to provide cards to residents, the regulations provide no

details about the unit's availability or accessibility. The rules also do not contain any details about the Secretary of State's plans to educate voters about the new photo ID requirement. The testimony noted that "many voters will be confused by implementation of the law, and a vibrant public education plan is critical to avoid misunderstandings on Election Day."

The other organizations signing on to the testimony were Common Cause RI, National Association of Social Workers/RI Chapter, Ocean State Action, The Poverty Institute, RI Council of Community Mental Health Organizations, AARP Rhode Island, RI Coalition for the Homeless, League of Women Voters of RI, and the RI Disability Law Center. In the meantime, the ACLU is awaiting action from the state Board of Elections, which also must adopt implementing regulations but has thus far taken no steps to do so.



## ACLU OPPOSES PHOTO ID REQUIREMENT FOR RIPTA REDUCED-FARE BUS PASSES

The RI ACLU has submitted testimony objecting to regulations proposed by the RI Public Transportation Authority (RIPTA) requiring the elderly and patrons with disabilities to present photo identification in order to qualify for a reduced-fare bus pass. Presently, individuals need to only provide written documentation of their age or disability status.

The ACLU noted that "seniors and disabled individuals are among those least likely to have access to photo identification or the documents required to obtain it." In pointing out the potential hardships, the ACLU emphasized that "where they once only had to provide proof of their age, seniors will now be required to possess citizenship and other documents necessary to obtain a state or federal identification, to pay to obtain a photo ID, to take time off from work and other responsibilities, and to secure transportation – which RIPTA's own policy now limits for them – to get to a DMV office to obtain this identification." Ironically, proposed Secretary of State regulations establishing procedures for residents to get voter ID cards (see above) list RIPTA bus passes as an acceptable form of non-photo ID to qualify for a voter ID card.

## 2011 ANNUAL DINNER CELEBRATION



Anne Mulready,  
Chair of the Board

On November 3rd, the Affiliate gathered to honor Former State Representative and Senator Charles J. Levesque as the "Raymond J. Pettine Civil Libertarian of the Year," and to present Cranston High School West student Jessica Ahlquist with the "William G. McLoughlin First Amendment Award."

During his State House tenure, Chuck Levesque led the fight for dozens of important civil liberties bills, and persistently and indefatigably reminded his colleagues – in committee, on the floor and in personal conversations – about the civil liberties implications of questionable legislation they were considering. He also found time to serve as an ACLU volunteer attorney in a handful of lawsuits, including a First Amendment case on behalf of a person who was charged with obstruction merely for telling a restaurant owner that police were doing undercover sting operations to check for underage drinking. The award was presented by Rep. Edie Ajello and Sen. Rhoda Perry.



Charles J. Levesque,  
Civil Libertarian of the Year

Jessica Ahlquist is the plaintiff in this year's highly publicized ACLU legal challenge to a "school prayer" banner hanging in the high school. Ms. Ahlquist's courage and commitment to the First Amendment values of church-state separation in the face of public hostility exemplify what the William G. McLoughlin First Amendment Award is all about, and the RI ACLU was privileged to honor her with it.

The evening drew to a close with a question and answer session during which members had the opportunity to ask thoughtful and engaging questions of this year's honorees.

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## GENERAL ASSEMBLY UPDATES

While the 2011 legislative session largely ended months ago, the General Assembly has been keeping itself (and the ACLU) busy with a few lasting items.

The ACLU has attended meetings of, and testified before, the Special Commission on Reapportionment since October. In particular, the Affiliate has expressed concerns with "prison gerrymandering." During the Census, individuals who are incarcerated are counted as living at the prison, and in Rhode Island, legislative districts are drawn as if all incarcerated individuals live in Cranston, though few of them do. This gives Cranston residents disproportionate representation in the General Assembly, and takes representation away from prisoners' home neighborhoods. In addition to providing solutions for the prison gerrymandering issue, the Affiliate has been advocating for districts to be drawn so as to accurately represent the needs and voting strength of ethnic minority groups.

Last month, the ACLU also submitted amendments to the monumental pension bill, and they were the only ones to be added on the floor. The ACLU identified loopholes which could have impacted the receipt of benefits by domestic partners, and also obtained amendments to clarify issues relating to public access to pension records.

## ACLU OFFERS FREE BOOKLET ON WORKPLACE PRIVACY RIGHTS

The ACLU of Rhode Island is offering to the public a free 36-page booklet entitled "Your Rights to Workplace Privacy in Rhode Island." As its title indicates, the booklet answers commonly-asked questions about employees' privacy rights in the state.

Among other things, the handbook answers such questions as:

- *Can my employer require me to take a drug test?*
- *Are there any limits on the types of questions I can be asked when I apply for a job?*
- *Can my employer monitor my phone or private conversations?*
- *Can my employer tell me how to dress or wear my hair on the job?*
- *Does my employer have the right to physically search me or my belongings at the workplace?*

The handbook is available online at [www.riaclu.org](http://www.riaclu.org). Free copies of the booklet are also available by calling or writing the ACLU office.

## LATEST STATISTICS SHOW NEW CIVIL UNION LAW IS "STILL A FIASCO"

Following up on a detailed report it issued two months ago, the Rhode Island ACLU has found that the latest statistics show that Rhode Island's civil union law, enacted over the strong protests of the community it was designed to benefit, remains "a fiasco" that highlights the need for passage of true marriage equality legislation. The newest statistics show that in the first four months since the law took effect, only thirty-nine gay and lesbian couples have taken advantage of the statute to obtain "civil union" status.

Although the twenty-five couples obtaining civil union status in September and October were an increase from the fourteen that took advantage of the law during the first two months of its enactment, the figures remain "ridiculously low," said RI ACLU executive director Steven Brown. In September, the RI ACLU issued a report examining the twelve other states that in recent years have enacted marriage, civil union or domestic partnership legislation for gay and lesbian couples. The report noted that the initial rate of license issuances in those states, adjusting for population, often exceeded Rhode Island's rate by a factor of tenfold or more.

Brown said that the latest figures, obtained by the ACLU from the RI Department of Health, only confirm that the law is "still a fiasco." In Illinois, for example, the only other state this year to also implement a civil union law, over 1,600 licenses were issued in the first month alone. Taking into account the population difference between the two states, the disparity is still more than tenfold, and one that mirrors the data from other states.

The ACLU report, available at [www.riaclu.org](http://www.riaclu.org), cited a number of reasons why the new statute is being shunned by couples, including the presence of an extremely broad "religious" exemption that significantly undercuts the law's purpose. Brown said: "The incredibly underwhelming response to civil unions after four months demonstrates how poorly conceived this legislative 'compromise' was. The statistics lead to only one conclusion: Rhode Island needs to join its New England neighbors and provide true marriage equality to gay and lesbian couples."

## A BUSY SEMESTER FOR ACLU CHAPTER AT BROWN UNIVERSITY



Left, Ian Eppler, President, with Bradley Silverman, Vice President, at this year's Banned Books Event

It has been an exciting and productive semester for Brown's ACLU chapter. We began the semester by welcoming a number of new members to our chapter. The chapter disseminated copies of our "street law" brochures on legal issues relevant to college students by working with a fraternity and distributing them at various locations on campus. We also began a campaign to reform Brown's privacy policy for electronic services, which grants school administrators and University police access to student and staff email accounts. Our campaign has included an op-ed in the Brown Daily Herald and extensive campus-wide petitioning, and we are currently working to secure a statement of support from the student council. Tom Bender, one of the attorneys representing Jessica Ahlquist in the Cranston High School West school prayer case, spoke to our chapter about the case and First Amendment law. Members of the chapter were appointed to the university's Public Safety Oversight Board and Officer Conduct Review Board, wrote a Brown Daily Herald op-ed in support of Jessica Ahlquist, and attended the Rhode Island ACLU's Banned Books event and gala dinner.

Next semester, we plan to continue our email privacy and street law education campaigns. We are also working to arrange a lecture by a Roger Williams law professor who has defended Guantanamo detainees, and a panel discussion on mass incarceration in America with Brown faculty and ACLU National Prison Project staff.

-Ian Eppler, President

## GIVE THE GIFT OF ACLU MEMBERSHIP

The need has never been greater for new supporters of the ACLU. Help protect the Constitution in the state and nationwide with a unique gift opportunity this season: give an ACLU membership to your friends and family.



Your gift membership will make a real difference in the fight to defend our cherished and endangered civil liberties. You can gift an ACLU membership by calling the office at 831-7171.

## YOU'RE INVITED...



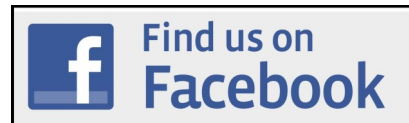
**House Party on Providence's  
East Side!**

**Sunday, January 8th  
3:00-5:00 PM**

Meet others who share your passion for civil liberties, and learn more about how the ACLU is defending freedom in Rhode Island and nationwide.

*Space is limited. For more information, call the office at 831-7171.*

## JOIN THE CONVERSATION



Become a fan of the RI ACLU on Facebook, and keep up to date on our events, news releases, court cases, and our work at the State House.

## ORGANIZATIONAL NOTES

### Tune into the ACLU's Monthly Cable Access Show, "Rights of a Free People"

Every month the RI ACLU's long-running cable access show "Rights of a Free People" features a discussion on key civil liberties issues. During the months of December and January, we will be airing this year's Annual Dinner in two parts. Check it out!

**Playing in December: Annual Dinner Celebration, Part One**

**Playing in January: Annual Dinner Celebration, Part Two**

#### *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)**

### In Memoriam: Frank Stewart

The Affiliate notes with sorrow the death of long-time ACLU member and activist Frank Stewart, at the age of 93. He and his late wife, Caroline, were staunch supporters of civil liberties and the Affiliate for decades. Frank, a professor of mathematics at Brown University for more than 40 years, became actively involved in the struggle for civil rights after he spent a semester in 1966 teaching at Tougaloo, a historically black college in Mississippi. As an especially vocal opponent of capital punishment, Frank was an energetic participant in the Rhode Island Coalition Against the Death Penalty during the times it was activated when legislative threats to return capital punishment to our state arose. We express our deep condolences to his son William.

**American Civil Liberties Union  
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## REMEMBER THE ACLU FOUNDATION OF RHODE ISLAND THIS DECEMBER



As we look back on the past year, we are reminded of the wide breadth of issues, lawsuits, advocacy, and events that make up our program. This year we lobbied on hundreds of bills, hosted five successful events, took on a variety of new lawsuits, testified before dozens of public agencies, published three comprehensive reports and booklets, produced twelve television programs, and worked in coalition with countless other organizations on a wide range of key civil liberties issues.

In order to allow us to continue at this pace, your special support of our work is critical. Please help us continue our efforts in 2012 in the midst of this tough economic climate. With the end of the year drawing near, consider making a special, tax-deductible contribution to the ACLU Foundation of Rhode Island.

You can donate on our website at [www.riaclu.org](http://www.riaclu.org) or by sending a check to:

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

If you are looking for a way to give year-round, consider participating in a payroll deduction plan. If you're a state employee, you can contribute through the State Employees Charity Appeal Campaign (SECA). Our designated SECA number is 3980. If you're a private employee, you can give via the United Way or the Fund for Community Progress by writing "ACLU Foundation of R.I. in the space provided on either pledge form. Thank you!