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Rhode Island Affiliate, ACLU

Generally Favorable Legislative Session Concludes With Passage of Comprehensive Racial Profiling Bill

When the gavel finally banged down on the 2004 General Assembly session in the early morning hours of June 26th, some important civil liberties initiatives had passed and numerous repressive measures had died. It was an acrimonious session on a number of fronts, but it ultimately turned into one of the more favorable sessions for the ACLU in a number of years.

In particular, the General Assembly approved an historic bill designed to begin to address the pernicious problem of racial profiling; enacted a number of important Affiliate measures to protect the privacy of Rhode Islanders; and took positive action in response to “homeland security” legislation proposed by the Governor.

Of course, the Affiliate suffered its share of defeats, and the passage of three bills in particular stands out: a bill vastly expanding the state’s collection of DNA samples from criminal offenders; a clearly unconstitutional “child pornography” bill that criminalizes the possession and distribution of a wide array of sexual materials; and a 50-page casino regulation bill that totally ignored two dozen civil liberties-protective amendments suggested by the Affiliate.

As the following synopsis shows, though, victories far outweighed the losses. While this summary of Affiliate activities is far from complete, it should provide a good sense of the legislative work that was performed this session.

“War on Terrorism”

The Affiliate achieved its first legislative victory of the session back in February, when the Governor withdrew his extremely dangerous “homeland security” bill just days after he had proposed it. He withdrew the bill just one day after the Affiliate issued a detailed written critique that led to a torrent of criticism over the legislation’s impact on freedom of speech, academic freedom and the public’s right to know.

The Governor’s ill-fated proposal did have an upside, though. His attempt to resurrect two blatantly unconstitutional World War I-era laws barring advocacy of anarchy or revolution prompted the Affiliate to propose – and the General Assembly to enact – legislation to repeal those statutes and more than a dozen other antiquated criminal laws on the books that affect free speech. Sponsored by Rep. Fausto Anguilla and passed unanimously by both Houses, the ACLU bill repeals, among other things, a law banning

the public display of any flag “opposed to organized government or which may be derogatory to morals,” a statute making it a felony to speak or write anything intended to “incite, provoke or encourage” a “defiance or disregard” of the law, and laws authorizing the use of lethal force to break up “tumultuous” assemblies.

Racial Profiling

In an historic collaboration between the civil rights community and local police chiefs, the General Assembly enacted a comprehensive bill designed to tackle the problem of racial profiling in the state, a problem that was overwhelmingly documented last year with the release of a two-year study of traffic stops data. Drafted by the ACLU, the legislation was sponsored by Sen. Rhoda Perry and Rep. Joseph Almeida. Rep. Edith Ajello was also instrumental in smoothing the way for the bill’s passage in the House. The final product was the result of hours of negotiations between civil rights groups and various law enforcement representatives. As enacted, the legislation explicitly bans racial profiling and provides legal remedies for its victims; requires the continued collection of traffic stops data by police departments for another year as well as on-going review of the data; bars the use of so-called consent searches (police “asking” drivers for permission to engage in suspicionless searches); prohibits the extended detention of cars without cause; and establishes uniform procedures for the filing of complaints of police misconduct. Although the legislation will certainly not eliminate racial profiling, it marks an important first step in addressing this serious issue.

First Amendment Rights

Executive Lobbying: A bill that would require any person who “lobbies” the executive branch to submit to various reporting and disclosure requirements was significantly amended to address ACLU concerns before being approved. As originally drafted, the bill’s definition of lobbyist was so broadly worded that it would have subjected to onerous registration and reporting requirements social service workers who contacted a state agency on behalf of a client, non-profit agencies that testified at public hearings, and even a person who went to the Governor’s monthly “open house” and raised a concern on behalf of a neighbor. Working with other non-profit groups, and particularly the consulting organization Cause and Effect, the Affiliate helped persuade the bill’s sponsors to significantly narrow the legislation’s scope.

Child Pornography: Three years ago, ignoring constitutional objections raised by the ACLU, the legislature expanded the state’s child pornography law to ban both the possession and distribution of images that merely “appear to be” of a minor engaged in sexual conduct. This year, in belated acknowledgement that the law could not withstand legal scrutiny, a bill was introduced to revise the statute. Once again, though, the ACLU objected that the bill continued to unconstitutionally ban images that did not involve actual minors. The Media Coalition, a national organization representing most of the booksellers, publishers and periodical distributors in the country, joined the Affiliate in

opposing the bill, but to no avail. The General Assembly passed the legislation with virtually no dissent.

Faith-Based Organizations: The ACLU opposed two Senate bills changing the composition of the state's criminal justice oversight committee to add a member of a faith-based organization. The Affiliate noted that the General Assembly might want to add a community representative to the committee, but limiting a seat to a member of a faith based organization raised First Amendment concerns. The House took no action on the bills.

Civil Rights

Redistricting: Showing that it's never too late to do the right thing, the General Assembly enacted legislation redrawing Senate district lines around the metropolitan Providence area. The legislation settled a lawsuit filed last year by the Urban League of R.I., the NAACP and others that claimed that black voting power on the South Side of Providence was improperly diluted by the legislature's decennial redrawing of Senate district lines in 2002. The Senate's willingness to reconfigure one-third of its districts was aided by two district vacancies caused by the resignations earlier this year of Senators William Irons and John Celona.

Court Interpreters: In a rebuff to the Governor, the legislature restored to the FY 2005 budget funding requested by the state judiciary to hire six Spanish-speaking court interpreters. The lack of adequate interpreter services for criminal defendants has been a source of concern for years. Presently, the courts rely on a hodgepodge of makeshift measures, including bilingual clerks and defendants' family members, to provide interpreters to defendants. The ACLU applauded the legislature's action, but noted that the funding still leaves many other people, especially Portuguese, Cape Verdean and Southeast Asian defendants, without formal interpreter services.

Civil Rights Advocate: The ACLU was not displeased to see the House take no action on a Senate bill to establish a "civil rights advocate" in the Attorney General's office. The ACLU had objected that the bill seemed to be more of a public relations effort than a sincere desire for civil rights advocacy in the AG's office. Except for prosecuting hate crimes, none of the advocate's responsibilities were spelled out in the legislation, and the AG had rejected requests to amend the bill to explicitly give the advocate similar duties and responsibilities to those that other statutorily-created advocates in his office have.

Privacy

Internet Subpoenas: For the third year in a row, Affiliate lobbying helped defeat a bill, based in part on a USA Patriot Act provision, to give local law enforcement authorities broad authority to obtain from Internet service providers information, including bank and credit card information, of subscribers. In opposing the bill, the ACLU noted that the legislation allowed police to issue administrative subpoenas to ISP's for this personal information without providing subscribers any chance to contest the request, and that the

subscriber did not even have to be suspected of a crime in order for police to obtain the data. Passage seemed likely when the Senate passed the bill, and House Judiciary Committee approved it as well. However, the Affiliate mounted a heavy lobbying campaign, and the House ultimately recommitted the bill without voting on it.

Video Voyeurism: Responding to ACLU free speech concerns, the legislature significantly amended a bill to ban “video voyeurism” before approving it. The bill was prompted by a case where a man was accused of using a cell phone camera to take pictures up an unsuspecting woman’s skirt, and police appeared to lack any strong laws to prosecute the suspect. While supportive of the bill’s concept, the ACLU raised concerns about its breadth as originally introduced. It would have made it a crime to take *any* picture of a person without consent, even in public places, if it was for “arousing,” “degrading” or other purposes. Legislative committees accepted amendments proposed by the ACLU to more appropriately narrow the bill’s scope.

Drivers’ Licenses: In the waning hours of the session, the legislature approved an important ACLU bill designed to address privacy concerns raised by the state’s new bar-coded drivers’ licenses. The bill, sponsored by Rep. Charlene Lima, explicitly limits the information that can be stored on the bar code to only that which appears on the license itself. The legislation further limits the ability of third parties to use information contained on the bar code. For example, because the devices that read the bar codes can also capture the digitized information, stores could have swiped driver’s licenses to confirm a customer’s identity but then used the information for marketing purposes. The new law will prevent that.

Red Light Cameras: The legislature took no action on a bill introduced late in the session to allow cities and towns to use “red light cameras.” The cameras take pictures of motor vehicles going through red lights, and the vehicle owners are then ticketed based on the photos. The ACLU has objected to the cameras on both due process and privacy grounds. The bill was introduced on behalf of the City of Providence, which last year passed a “red light camera” ordinance, but belatedly recognized that state legislative approval was needed. In light of the General Assembly’s inaction, it is unclear how the City will proceed.

Medical Privacy

Medical Marijuana: Despite strong lobbying efforts by a local patients’ advocacy group, the General Assembly took no action this year on medical marijuana legislation. The bill, a version of which was first introduced by the ACLU three years ago, would allow patients with specific serious and terminal illnesses to possess small amounts of marijuana for medical purposes, if authorized by a physician, without running afoul of the criminal drug laws. Two years ago, the bill was defeated by a close vote in House committee. Physicians, patients, the R.I. Medical Society and the ACLU joined in testifying in support of the bill, sponsored by Sen. Rhoda Perry and Rep. Thomas Slater,

but election year jitters prompted the legislative leadership to keep the bills locked up in committee.

Contagious Diseases: The legislature passed an ACLU bill that removes from a variety of professional licensing statutes an archaic requirement that licensees be “free from contagious disease.” The language, which is clearly inconsistent with modern anti-discrimination laws, is contained in such diverse licensing statutes as those for veterinarians, massage therapists and optometrists. The repeal bill was sponsored by Rep. Arthur Handy and supported by the Department of Health.

Workplace Rights

Lie Detectors: The ACLU helped galvanize opposition to a bill that would have allowed police agencies to give lie detector tests to job applicants. Rhode Island has had a complete ban on the use of polygraph tests in employment for over 30 years, and evidence of its scientific validity has not improved since then. Although the bill to create an exemption for law enforcement positions passed out of House Labor Committee, it was recommitted due to significant opposition on the House floor.

Students’ Rights

Confidentiality of Education Records: The General Assembly approved an ACLU bill, sponsored by Rep. Edith Ajello and Sen. Elizabeth Roberts, to protect the confidentiality of student school records to the same extent they are protected by federal law. The legislation was prompted by an incident brought to the Affiliate’s attention where a school inappropriately released a student’s records to local police and to the parents of another student. Passage of a state version of the federal law is important because the federal statute provides no remedies to aggrieved victims.

Drivers’ Licenses: As the result of objections from the ACLU and the efforts of Rep. Edith Ajello, the legislature significantly revised a bill that would have denied drivers’ licenses to students who miss a specified number of days at school. While the bill was designed as an incentive for students to stay in school, the ACLU argued that it was inappropriate to use drivers’ licenses as social punishment for matters totally unrelated to driving. As passed, the revised bill instead gives the Family Court the authority to suspend the licenses of minors brought before the court for truancy, but only after weighing the hardships that the suspension might cause.

Due Process

Casino: In agreeing to put the question of a West Warwick casino on the ballot, the General Assembly also approved a 50-page bill establishing a comprehensive regulatory scheme for casino establishments. Unfortunately, the legislature failed to include any of six pages of amendments proposed by the Affiliate. Some of the amendments sought to clarify ambiguities in the bill, while others proposed such things as minimal due process

safeguards for licensees servicing the casino, whose licenses can be revoked for any reason, and patrons, who can be ejected for any reason. The ACLU is considering introducing the amendments as a stand-alone bill next session.

Administrative Proceedings: The legislature approved an ACLU bill requiring administrative agencies, in issuing decisions in contested cases under the Administrative Procedures Act, to notify parties of the appeal period and the procedure for filing an appeal of the agency decision. Because the time periods for filing administrative appeals are extremely short and parties in these proceedings often do not have legal representation, individuals can easily lose their appeal rights by waiting too long. The bill was sponsored by Rep. Fausto Anguilla and Sen. Leo Blais.

Criminal Justice

DNA Samples: In one of the Affiliate's most significant losses of the year, the General Assembly approved legislation, sponsored by Rep. Betsy Dennigan and Sen. Michael Damiani, requiring the taking of DNA samples from *any* person convicted of *any* felony. In Rhode Island, such crimes as defacing a gravestone, larceny over \$500 and two marijuana possession offenses constitute felonies. The bill is a significant expansion of current law, which requires samples only from people who commit crimes of violence. The ACLU considers the bill the latest step towards a universal DNA database, which has serious privacy implications in light of the information one can glean from DNA samples. This was the third time the DNA collection law was expanded to cover more offenders. Although earlier expansions of the law applied prospectively only, the House sponsor of the bill refused to limit the scope of her bill in any way.

Criminal Sentencing: A number of draconian criminal sentencing bills failed to become law this session. Both the House and Senate approved their own versions of bills to get tough on drug crimes, but neither was enacted. The House bill would have doubled the criminal penalties – which already carry penalties of 30 years to life – for various drug crimes if committed within 300 yards of a public library, community center or place of worship. A Senate-passed bill proposed to double the sentences for offenders committing drug crimes in or around public housing projects. Fortunately, neither House took action on the other's legislation. The House also took no action on a Senate bill that would have required many offenders to serve at least 85% of their sentence before being eligible for parole. Although its passage was opposed by the R.I. Parole Board and would have cost the state hundreds of millions of dollars, only Senators Rhoda Perry and Elizabeth Roberts voted against it.

Protection from Self-Incrimination: The House took no action on Senate legislation allowing for the forced administration of blood tests on persons involved in vehicular accidents involving 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. Proponents of the legislation have been unable to point to any cases where the police's current lack of authority to take

blood has hindered drunk driving convictions. However, another bill that did pass both Houses allows the Attorney General to obtain warrants for samples of bodily fluids or tissues, but only to identify the perpetrator of a crime. The bill was passed in response to a recent R.I. Supreme Court ruling holding that the state law authorizing issuance of warrants for the seizure of “property” did not apply to such samples. As originally introduced, the bill allowed the samples to be used for purposes other than identifying the person, but objections from the ACLU and others led to amendments in that regard.

Rights of Ex-Offenders: In an important victory for ex-offenders, the legislature repealed an eight year old law that imposed a lifetime bar to food stamps and cash assistance for people convicted of a drug-related felony. The ACLU had opposed the ban when it was first enacted, criticizing the arbitrary singling out of drug offenses and noting that it could only discourage the rehabilitation of these ex-offenders.

LEGISLATION, THE ACLU AND PRIVACY: AN IN-DEPTH LOOK

Every session the Affiliate lobbies on more than one hundred pieces of legislation, so the newsletter can only highlight a small percentage of our activities. In order to give members a better sense of the scope of the Affiliate’s work, we have picked one topic – privacy – and briefly summarize below how the ACLU helped shape lesser pieces of legislation on the issue, in addition to the more prominent bills summarized elsewhere. Seven examples appear below:

* The FY 2005 budget includes a telephone surcharge to pay for a Geographic Information System (GIS) database, which will allow emergency response personnel to pinpoint exactly where a 911 cell phone call is coming from in case of an emergency. The General Assembly approved an ACLU amendment sponsored by Rep. Charlene Lima that bars this technology from being used for anything other than its stated purpose.

* If you owe any taxes to the state, a new law will prevent you from obtaining or renewing your driver’s license or any professional license. To implement the law, licensing agencies will demand applicants’ social security numbers, which will then be provided to the taxation division for data-matching. An adopted ACLU amendment, also sponsored by Rep. Lima, bars the agencies from using or sharing the SSN’s for any other purpose.

* New legislation establishes a stroke prevention task force, with broad powers to collect data on strokes in order to improve prevention and treatment protocols in the state. An ACLU confidentiality amendment sponsored by Rep. Edith Ajello will ensure that the task force is limited to receiving medical information that is not identifiable to particular patients.

* Another new initiative establishes a health care technology infrastructure fund for the purpose of promoting technologies to “improve the quality, safety and efficiency of health care services” in the state. Noting that the goal of improving the efficiency of health care services can easily come at the expense of confidentiality and security of health care data, the ACLU proposed an amendment requiring that privacy considerations be an integral aspect of the fund’s projects, and expanding the fund’s purpose to include the development of technologies that *themselves* help maintain the security of patient information. The amendment was adopted.

* To provide businesses with a better idea of where their health care costs were going, one of the many health insurance reform bills considered this session proposed to give employers with 50 or more employees the right to obtain information on medical claims paid for by the employer's group health plan. Concerned that the information might enable employers to deduce the medical conditions of some of their employees, the ACLU drafted an amendment, adopted by the legislature, that will provide employers only with aggregate cost figures in four broad categories that cannot be used to identify individuals or their medical conditions.

* To reduce underage drinking, a new law requires sold beer kegs to include a label that contains identifying information about the purchaser. As originally worded, the label would have included the full ID number of any document the purchaser submitted to prove his or her age. Thanks to an ACLU amendment, only the last four digits will be listed.

* In an important initiative to reduce identify theft, bills were introduced to prohibit stores from printing customers' full credit card number on store receipts. However, the bills contained no meaningful remedies against stores that violated the ban. Language suggested by the ACLU to correct this oversight was adopted.

A MISCELLANY OF BILLS THAT DIED THIS SESSION

Listed below are a few other bills of civil liberties interest, most of them reviewed in prior newsletters, that did not make it out of the General Assembly this session:

PRO-CIVIL LIBERTIES BILLS

* A resolution placing the General Assembly on record as opposing various provisions of the USA Patriot Act that are violative of civil liberties.

* A Public Defender bill establishing more accurate procedures for eyewitness identifications in criminal cases.

* Bills authorizing same-sex marriage.

* A bill amending the "unauthorized practice of law" statute to allow attorneys to share attorneys fees with non-profit organizations.

* A trio of pro-immigrant bills that restricted local police from enforcing federal immigration law; authorized the issuance of drivers' licenses to undocumented immigrants who provide appropriate identification documents; and required public universities to allow the matriculation of students regardless of their immigration status.

ANTI-CIVIL LIBERTIES BILLS

* A bill providing tax breaks to people who made donations to a scholarship organization for students attending parochial schools.

- * Bills banning gay marriage.
- * Anti-abortion bills establishing onerous “informed consent” requirements, and making it an independent criminal offense to harm a pregnant woman’s fetus.
- * A bill generally prohibiting lawsuits against food manufacturers and businesses for health-related claims relating to consumption of their food.
- * A bill creating a partisan, wide-ranging commission with subpoena powers to examine “integrity in government.”
- * A bill allowing state agencies to issue statutorily-required annual reports solely in electronic form.