

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

PROVIDENCE, SC.

SUPERIOR COURT

PAUL E. MOURA; RHODE ISLAND  
AFFILIATE, AMERICAN CIVIL  
LIBERTIES UNION, INC.; AND STEVEN  
BROWN,

Plaintiffs

v.

EAST PROVIDENCE SCHOOL  
COMMITTEE, ANTHONY CARCIERI in  
his official capacity as a member of the East  
Providence School Committee; M. ROBERT  
FARIA, in his official capacity as a member  
of the East Providence School Committee;  
STEVE SANTOS, in his official capacity as a  
member of the East Providence School  
Committee; SHANNON BARBOSA, in her  
official capacity as a member of the East  
Providence School Committee; and LUISA  
ABATECOLA, in her official capacity as a  
member of the East Providence School  
Committee,

Defendants

C.A. No.

**COMPLAINT**

**Introduction**

Plaintiffs seek declaratory and injunctive relief against the East Providence School Committee (the “Committee”) for violating R. I. Gen. Laws § 42-46-1, *et seq.*, (the “Open Meetings Act”). Plaintiffs allege the Committee unlawfully met in executive session on September 8, 2009. The minutes from the Committee’s September 8, 2009 meeting state that it convened in executive session to discuss a “Public Comment Lawsuit.” However, there was not

and never has been any “Public Comment Lawsuit” filed against the Committee. Seeking to discover the details of the mysterious lawsuit that prompted the closed-door meeting of public officials, Plaintiff RI ACLU filed an open records request seeking copies of any documents directly or indirectly related to the so-called “Public Comment Lawsuit.” Defendants responded that there were no such documents. There was no actual or threatened litigation. The Committee could not document the existence of any such litigation. The executive session was improper.

### **Parties**

1. Plaintiff, Paul E. Moura, is a resident of East Providence.
2. Plaintiff, Rhode Island Affiliate, American Civil Liberties Union, Inc. (“RI ACLU”) is a non-profit corporation existing under the laws of the State of Rhode Island with a principal place of business in Providence, Rhode Island.
3. Plaintiff, Steven Brown, is a resident of Barrington, Rhode Island and is Executive Director of Rhode Island Affiliate, American Civil Liberties Union, Inc.
4. Defendant, East Providence School Committee is a municipal body operating and organized pursuant to R. I. Gen. Laws § 16-2-9.
5. Defendant, Anthony Carcieri, is sued in his official capacity as a member of the East Providence School Committee, East Providence, Rhode Island.
6. Defendant, M. Robert Faria, is sued in his official capacity as a member of the East Providence School Committee, East Providence, Rhode Island.
7. Defendant, Steve Santos, is sued in his official capacity as a member of the East Providence School Committee, East Providence, Rhode Island.
8. Defendant, Shannon Barbosa, is sued in her official capacity as a member of the East Providence School Committee, East Providence, Rhode Island.
9. Defendant, Luisa Abatecola, is sued in her official capacity as a member

of the East Providence School Committee, East Providence, Rhode Island.

**Jurisdiction and Venue**

10. This action is brought pursuant to R.I.G.L. § 9-30-1, *et seq.*, and R.I. Gen. Laws §42-46-1, *et seq.*, entitled, “Open Meetings.” Jurisdiction is proper pursuant to R.I. Gen. Laws §42-46-8(c).

11. Venue is proper in the Superior Court for Providence and Bristol Counties.

**The Facts**

12. Over the past several years, the Committee has adopted, reviewed and amended a series of policies directed at controlling public comment at their meetings.

13. Plaintiffs, over the course of these same several years, have monitored and been critical of the Committee’s proposals and handling of the public comment controversy generally.

14. In or about April 2009, the Committee adopted a policy concerning public comment at its meetings. This policy required people desirous of speaking at Committee meetings to submit a “Public Comment-Communications Request” (“Public Comment Request”) at least one week prior to the meeting.

15. This policy, like prior policies and discussions on this issue, created notable controversy in East Providence.

16. Following adoption of the public comment policy in April 2009, the RI ACLU wrote to counsel for the East Providence School Committee to follow up on concerns previously raised with respect to separate restrictions on public comment and to note concerns regarding the new public comment policy.

17. Plaintiff Moura expressed their opposition to this latest policy orally at Committee meetings.

18. The September 8, 2009, Committee meeting agenda states the Committee was scheduled to convene in executive session pursuant to the so-called litigation exception provided in R.I. Gen. Laws § 42-46-5(a)(2) to discuss the “Public Comment Lawsuit.” A true copy of the agenda is attached hereto as Exhibit A.

19. The meeting minutes confirm that the Committee convened in executive session at the September 8, 2009, meeting ostensibly to discuss a non-existent “Public Comment Lawsuit.” A true copy of the meeting minutes is attached hereto as Exhibit B.

20. At the time of this meeting, Plaintiffs were unaware of any pending or threatened lawsuit respecting the Committee’s Public Comment Policy.

21. At the time of this meeting, the RI ACLU had already submitted two open records requests concerning the public comment policy, pursuant to the Access to Public Records Act (“APRA”), R.I. Gen. Laws § 38-2-1, *et seq.*

22. The RI ACLU submitted a third open records request on November 24, 2009, pursuant to the APRA, seeking a copy of the so-called Public Comment Lawsuit referenced in the Committee’s September 8, 2009, minutes and also copies of “any non-privileged correspondence or documents that directly or indirectly relate to the referenced lawsuit, including any letter, email or other documentation which put the school committee on notice about this suit.” A true copy of that letter is attached hereto as Exhibit C.

23. On December 8, 2009, the Committee, through its solicitor, responded to the November 24, 2009 open records request stating, without limitation, that the Committee had no responsive documents. A true copy of that letter is attached hereto as Exhibit D. (The Committee’s response that no responsive documents exist is located at the bottom of page 2 of Exhibit D.)

24. At no time prior to September 8, 2009 did the RI ACLU or any other

Plaintiff threaten to sue the Committee with respect to its public comment policy.

25. To the best of Plaintiffs' knowledge, there was no active or threatened "Public Comment Lawsuit" litigation at the time the Committee convened in executive session on September 8, 2009.

**COUNT I**  
***(Improper Executive Session, September 8, 2009)***

26. Plaintiffs incorporate the averments contained in paragraphs 1 through 25 as if fully set forth herein.

27. The purpose of the Open Meetings Act is to ensure that public business is performed in an open and public manner and that the citizenry is aware of the deliberations and decisions that go into the making of public policy. R. I. Gen. Laws § 42-46-1.

28. Rhode Island Gen. Laws §§ 42-46-4, 42-46-5 and 42-46-6 set forth the procedures by which and the purposes for which a public meeting may be closed. Section 42-46-5 specifically provides, in relevant part, that:

(a) A public body may hold a meeting closed to the public pursuant to § 42-46-4 for one or more of the following purposes:

(2) Sessions pertaining to collective bargaining or litigation, or work sessions pertaining to ... litigation.

...

29. The Committee asserted the litigation exception provided in R. I. Gen. Laws § 42-46-5(a)(2) to justify going into executive session.

30. There was no further description provided in the minutes of the September 8, 2009 meeting with regard to the executive session beyond the cryptic reference to an apparently non-existent "Public Comment Lawsuit."

31. The actions of the Committee in convening in executive session on September 8, 2009 were in contravention of the Open Meetings Act, R. I. Gen. Laws § 42-46-1,

*et seq.*

32. The actions of the Committee in convening in executive session to discuss a non-existent “Public Comment Lawsuit” were in willful violation of the Open Meetings Act, R.I. Gen. Laws § 42-46-1, *et seq.*

WHEREFORE, Plaintiffs Paul E. Moura, Rhode Island Affiliate, American Civil Liberties Union, Inc. and Steven Brown seek a Judgment that provides as follows:

a. Declaring, pursuant to R.I. Gen Laws § 9-30-1, *et seq.*, and in accordance with R.I. Gen. Laws § 42-46-1, *et seq.*, that the executive session convened by the East Providence School Committee on September 8, 2009 was a violation of the Open Meetings Act, R.I. Gen. Laws § 42-46-1, *et seq.*;

b. Directing the East Providence School Committee to unseal and publish the minutes resulting from the September 8, 2009 executive session to the extent they relate to the public comment policy;

c. Awarding of attorneys’ fees and costs to Plaintiffs;

d. Imposing a civil fine against the East Providence School Committee pursuant to R.I. Gen. Laws § 42-46-8(d); and

e. Awarding to the Plaintiffs such other relief as the Court deems just and proper.

PAUL E. MOURA, RHODE ISLAND  
AFFILIATE, AMERICAN CIVIL  
LIBERTIES UNION, INC. AND STEVEN  
BROWN

By Their Attorneys,

---

Howard A. Merten (#3171)

[hm@psh.com](mailto:hm@psh.com)

Keith E. Fayan (#7065)

[kef@psh.com](mailto:kef@psh.com)

PARTRIDGE SNOW & HAHN <sup>LLP</sup>

Cooperating Attorneys, Rhode Island

Affiliate, American Civil Liberties Union

Attorneys for Plaintiffs

180 South Main Street

Providence, RI 02903

(401) 861-8200

(401) 861-8210 FAX

DATED: March \_\_\_\_, 2010

1109473\_1/800056-7