



128 DORRANCE STREET, SUITE 220
PROVIDENCE, RI 02903
401.831.7171 (t)
401.831.7175 (f)
www.riaclu.org

March 20, 2015

The Hon. Sarah Taft-Carter
R.I. Superior Court
250 Benefit Street
Providence, RI 02903

HAND-DELIVERED

RE: In re PENSION CASES

Dear Judge Taft-Carter:

On behalf of the American Civil Liberties Union of Rhode Island, I am writing to respectfully request that you rescind the “gag order” that the Court issued earlier this month in response to the appointment of a Master to help negotiate a settlement in the Pension Cases. We have deep concerns about the ongoing implementation of this Order, particularly in light of the status of the case, and trust that, upon consideration, you will agree.

In making this request, we fully recognize and appreciate all the difficulties you have had to deal with -- substantive, procedural and logistical -- in handling this massive lawsuit. But any gag order, however well intentioned, has significant consequences for the vitality of freedom of speech. It can erode trust in the judicial process, unfairly limit the public’s right to know and, as evidenced in this instance, unnecessarily generate widespread confusion.

We understand that your broadly written Order was issued to protect the confidentiality of the mediation process being undertaken by Master Williams, but there can be little question that this task is, for all intents and purposes, completed. The plaintiffs in these consolidated lawsuits are asking their leaders or members to vote in a very expedited fashion on what has been termed the “state’s final offer.” They are being told that this is the last chance to settle the case before the imminently scheduled trial begins. Various versions and explanations of that offer are circulating around the Internet. Yet both the individuals on whose behalf this offer has been made and members of the taxpaying general public who will be responsible for the costs associated with any settlement are at a distinct disadvantage: they cannot hear directly from the individuals most knowledgeable on this “final offer” settlement about what it includes and what it means.

Assuming the Order’s validity at its inception to protect the negotiation process, we believe – and hope you will agree – that at this point, in light of the status of that process, it is counter-productive and unduly intrusive on basic First Amendment values to allow it to remain in effect “until such time as the Order appointing the Master dated March 9, 2015 is suspended or terminated.”

Page Two
The Hon. Sarah Taft-Carter
March 20, 2015

As you know, over the decades, in recognition of the general disfavor with which judicial gag orders are viewed, Rhode Island has seen its fair share of such orders rejected upon further court review. See, e.g., *Ruggieri v. Johns-Manville*, 503 F.Supp. 1036 (D.R.I. 1980) (gag order to prevent plaintiff's attorney from making extrajudicial comments on highly publicized case rejected), *United States v. Providence Journal*, 820 F.2d 1354 (1st Cir. 1987) (contempt action against media for violating judicial gag order overturned), *dismissed for want of jurisdiction*, 485 U.S. 693 (1988); *Secretary of Labor v. General Dynamics*, 859 F.2d 1043 (1st Cir. 1988) (administrative law judge gag order against union representatives in ongoing OSHA enforcement proceedings overturned).

The intent of this letter, however, is to emphasize the important *policy* reasons for withdrawing the Order at this point. Although made in a slightly different context, concerning a challenge in the U.S. Supreme Court to a state ethics rule limiting attorney speech, Justice Anthony Kennedy's comments ring true here as well in articulating those reasons:

Because attorneys participate in the criminal justice system and are trained in its complexities, they hold unique qualifications as a source of information about pending cases. . . . To the extent the press and public rely upon attorneys for information because attorneys are well informed, this may prove the value to the public of speech by members of the bar. If the dangers of their speech arise from its persuasiveness, from their ability to explain judicial proceedings, or from the likelihood the speech will be believed, these are not the sort of dangers that can validate restrictions. *Gentile v. State of Nevada*, 501 U.S. 1030, 1056-1057 (1991).

Under all these circumstances, we urge you to help advance the public's right to know about this extremely significant public lawsuit by expeditiously repealing your March 17th Order.

Thank you in advance for your prompt consideration of this request.

Sincerely,

Steven Brown
Executive Director

cc: The Hon. Chief Justice Frank Williams (Ret.)
Attorneys in In re: Pension Cases (by email)