

## ACLU, ADVOCATES FIGHT CRIMINALIZATION OF THE POOR; REAFFIRM FREE SPEECH RIGHTS IN PROVIDENCE

As part of ongoing efforts to challenge unfair laws that target the poor and the homeless, the ACLU of Rhode Island is challenging an unevenly enforced ban on roadway solicitations in Cranston, and has prompted the City of Providence to both halt enforcement of its anti-panhandling ordinance and to recognize the free speech rights of buskers.

In December, the ACLU filed a federal lawsuit on behalf of Michael Monteiro (right, with homeless rights advocate Megan Smith), a disabled man summoned to court and threatened with arrest for standing on a median on Cranston's Plainfield Pike with a sign that read "disabled, need help, God bless." Mr. Monteiro had violated a City ordinance barring the solicitation of donations from motorists.



The ACLU's lawsuit, filed in U.S. District Court by ACLU volunteer attorney Marc Gursky, argues that the ordinance infringes on free speech rights and improperly bars individuals from standing on or near the road based entirely on the content of their message. The City, the suit alleges, enforces the ordinance selectively by removing "panhandlers" trying to make ends meet while allowing others to solicit motorists while fundraising for various causes.

"All I am doing is exercising my right to express myself, and letting people know of my life and my needs. I should have that right. I'm not harming anybody. If a person can display a sign saying 'Vote for Hillary' and solicit votes, why can't I display my sign?" Mr. Monteiro said.

Mr. Monteiro is not the only person to face punishment or harassment for simply seeking the kindness of others. After the ACLU threatened to sue the City of Providence over its anti-panhandling ordinance, which has led to the harassment and arrest of numerous homeless individuals, the City agreed this month to halt enforcement of the ordinance and dismiss any pending prosecutions under it.

As part of a settlement with the ACLU over a lawsuit filed last year, the City of Providence also acknowledged that "because soliciting donations is protected speech under the First Amendment," musician Manuel Pombo had a constitutional right to perform and solicit donations on public property. The ACLU, with volunteer attorneys Shannah Kurland and John W. Dineen, had sued on behalf of Mr. Pombo after he was arrested for playing his saxophone and accepting donations on city sidewalks.

In response to the ACLU's actions, the City of Pawtucket is also re-examining its ordinances governing solicitation activities. The ACLU of RI plans to continue to challenge similar laws that infringe upon the free speech rights of the poor or homeless.

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## FROM THE DESK OF THE EXECUTIVE DIRECTOR

What is the difference between a firefighter stopping cars on the street for “Fill the Boot” campaigns to raise money for charity and a homeless person holding up a sign on a street median asking for a donation?

The biggest difference is that the firefighter won't get arrested. Nor should she. But neither should the panhandler.

After strategizing with advocacy groups for the homeless, we have embarked on a focused campaign to address the criminalization of poverty that anti-panhandling ordinances and similar laws represent. It's off to a great start.

As the Page 1 story describes, a lawsuit we filed against the City of Cranston has already led to positive results in Providence and Pawtucket. We are very confident our suit against Cranston will be successful as well.

Of course, halting enforcement of panhandling and loitering ordinances solves just a small part of the civil liberties violations that the homeless face. But having been a partner in making Rhode Island the first state in the country to adopt a Homeless Bill of Rights, we look forward, with your support, to many more victories in making civil liberties a reality for some of the most vulnerable among us.

-- Steven Brown



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## PATIENTS IN NEED OF MEDICAL MARIJUANA SPEAK OUT AGAINST GOVERNOR'S PROPOSED "SICK TAX"



Rhode Islanders who use medical marijuana to help manage chronic and debilitating medical conditions are speaking out against a proposal in Governor Gina Raimondo's 2017 budget that would levy heavy taxes on medical marijuana plants grown by patients and caregivers.

Patients at a news conference held by the ACLU of RI and the RI Patient Advocacy Coalition said this “sick tax” on medical marijuana would make it impossible for them to access the medicine they need to manage pain and other symptoms. The proposed tax, the groups, patients, and caregivers said, has generated a palpable fear in the community and should be struck from the proposed budget.

“Medical marijuana gave me my life back and my relationship with my wife and daughter,” said Peter Benson (above, right, speaking at the ACLU news conference), an East Greenwich resident who is paraplegic and uses medical marijuana to control painful and persistent muscle spasms. “If these changes become law, I will be effectively forced out of the medical marijuana program.”

The tax would impose a \$150 per plant charge on patients lawfully growing medical marijuana, and a \$350 per plant charge for caregivers volunteering to grow plants for sick patients. JoAnne Leppanen, executive director of the RI Patient Advocacy Coalition, noted that patients and caregivers grow the plants for medical purposes only and make no money from the plants. She said: “This is a draconian proposal, based on fictional numbers, that undermines the purpose of the medical marijuana program. It will wreak havoc on the lives and health of thousands of Rhode Islanders.”

“I will not only lose my patients, I will lose my purpose in life,” said Ellen Smith (above, left), of Scituate, who is a medical marijuana patient and a caregiver for five other patients. She said the proposed tax would add more than \$8,000 a year to the cost of growing medicine for her patients. “They can't afford it and neither can I. It is breaking our hearts,” she said.

Steven Brown, executive director of the ACLU of RI, added: “The state should treat these patients and caregivers just as they would any other patient using legal medication. Imagine charging sick patients prescribed codeine a special tax based on the street value of the medication if they illegally sold it. We fervently hope the Governor will take this troubling tax proposal off the table.”

## ACLU CHALLENGES HOUSING ORDINANCE RESTRICTING STUDENT RIGHTS

The ACLU of RI is challenging a recently enacted Providence ordinance that prohibits more than three “college students” from living together in certain areas of the city. The lawsuit, filed in R.I. Superior Court by ACLU cooperating attorneys Jeffrey L. Levy and Charles D. Blackman on behalf of a property owner and four of his tenants, argues that the City ordinance is discriminatory and ineffective at its stated purpose of improving neighborhoods, and will likely have the most impact on lower-income students.

The lawsuit claims that “there is absolutely no reason to believe that restricting the number of student tenants in a small subset of available rental housing (i.e., single-family homes) will make the affected neighborhoods any quieter, safer or cleaner. On the contrary, the ordinance is an unconstitutional intrusion into the rights of college and graduate students to choose with whom they wish to live, and the rights of property owners to rent their homes to tenants of their choice.” The suit also notes that “college student” is so broadly defined that it includes anyone enrolled in a college or university, whether they are a full-time undergraduate student, a PhD candidate, or a professional taking classes part-time.

The ACLU raised these concerns before the Providence City Council approved, and Mayor Jorge Elorza signed, the ordinance into law in September. The lawsuit seeks to halt all enforcement of the ordinance and have it declared unconstitutional.

## RI SUPREME COURT ADOPTS BREASTFEEDING ACCOMMODATIONS

The Rhode Island Supreme Court has adopted a new policy that will allow women Bar applicants who are breastfeeding to obtain accommodations when taking the Bar exam. The policy was adopted after groups, including the ACLU of RI, encouraged the state Board of Bar Examiners to revise its policies that offered no accommodations to individuals who were breastfeeding, leaving them at a serious disadvantage during the test. The only accommodations that had been available were for applicants with disabilities.

The new policy explicitly extends eligibility for accommodations to those who are breastfeeding, and allows those applicants to request and obtain accommodations without unnecessary or intrusive burdens. The ACLU of RI, RI Women’s Bar Association, League of Women Voters of RI, Planned Parenthood of Southern New England, Women’s Fund of RI, and RI NOW had sent a number of letters to the Board since July calling for these reforms, leading to the Court’s action.

Not allowing accommodations forced candidates to choose between taking the test under conditions that could risk their health and postponing their test date. Rhode Island now joins all other New England states and many others that provide breastfeeding accommodations for Bar applicants.

## SECOND DISCRIMINATION CHARGE FILED AGAINST FIRE DISTRICT



The ACLU of RI filed a second complaint of sex discrimination against the Harmony Fire District for terminating a female employee who raised concerns about male and female firefighters being treated differently. The ACLU filed this latest charge with the RI Commission for Human Rights and the Equal Employment Opportunity Commission on behalf of Linda Ferragamo, an EMT/firefighter at the department for more than a decade.

At an October 2014 Harmony Fire District Board meeting, Mrs. Ferragamo, along with fellow female EMT/firefighter Kimberly Perreault and several male colleagues, expressed concerns about women not receiving fair treatment in the department. At the meeting, Mrs. Ferragamo expressed the view that the fire department “was a boys club and that the women had no input.”

Ms. Perreault was soon fired for allegedly being “unhappy” with the department. Mrs. Ferragamo was then terminated for allegedly missing shifts without notice, which, the complaint alleges, male members of the department were not punished for. The ACLU also has pending a charge of sex discrimination on behalf of Ms. Perreault.

## ACLU CALLS FOR PRIVACY SAFEGUARDS IN TRUCK TOLL PLAN

Drivers on Rhode Island's highways will soon have their movements tracked under the RhodeWorks toll legislation signed into law in February. While the legislation mentions nothing about the technology authorized by this law, testimony by Department of Transportation Director Peter Alviti revealed the DOT intends to use automated license plate readers (ALPRs) to track the movements of trucks – and, though not for toll purposes, every other vehicle on Rhode Island's highways.

ALPRs are high-powered cameras that capture the license plate, date, time, and GPS location of every vehicle, even across several lanes of traffic and at speeds up to 100 miles per hour. As a result, ALPRs memorialize a comprehensive map of every car's movements. Despite this incredible intrusion on privacy, the law is silent about the storage or use of the information; law enforcement can store the data infinitely, access it without a warrant, and the DOT can even sell it to a third party.

An amendment to put some privacy protections in place was defeated on the House floor. The ACLU is evaluating next steps to ensure privacy protections are codified before the first toll gantry is erected.

## LIFE-SAVING GOOD SAMARITAN ACT REINSTATED

The General Assembly acted quickly in 2016 to restore the life-saving Good Samaritan Overdose Prevention Act. Last July, the law's protection against arrest for certain drug crimes of those who call 911 in the event of an overdose lapsed after the legislature failed to reauthorize the law.

In the first weeks of the 2016 session, the House and Senate approved legislation sponsored by Representative Robert Craven and Senator Michael McCaffrey not only restoring those protections, but expanding them.

The new law ensures that individuals on probation or parole cannot be charged with a violation if they call for help for an overdose. Governor Raimondo signed the bill into law in January, restoring the state's commitment to saving lives instead of prosecuting drug-dependent individuals. The ACLU and community advocates pushed tirelessly for the law's reinstatement and expansion as the state, like the nation, faces an opioid overdose epidemic.

Advocates are now working to further expand the immunity provided by the law to include charges for crimes involving drug delivery.

## OPEN MEETINGS ACT OFTEN VIOLATED; ACLU REPORT CALLS FOR REVISIONS

Public meeting agendas in Rhode Island are “often vague, lacking critical information, and at times entirely unhelpful” to residents attempting to participate in their government, an ACLU of Rhode Island report has found. By reviewing just one week of public meeting agendas, the ACLU discovered numerous violations of a critical portion of the state's Open Meetings Act (OMA), and recommended that the law be strengthened in order to adequately protect the public's right to know.

The report, “Hidden Agendas,” found that many state and local agencies failed to clearly specify in their agendas what was to be discussed at meetings. Instead, they often improperly listed vague, generic items with no explanation. Public bodies also undermined the requirement that they post agendas at least 48 hours before the meeting date by using weekends to comply with that timeframe.

The agenda for a Burrillville Planning Board Meeting, for example, included the vague item “Planning Board Discussion,” while the meeting's minutes show that the discussion included questions about a controversial proposed power plant in the town. As for timing of notices, the Monday agenda for a Jamestown Town Council meeting was formally posted at 4:54 PM on the Friday before.

The General Assembly is expected to consider a bill proposing comprehensive updates to the law that will address the problems found by the ACLU report. Among other things, the ACLU has recommended extending the required notice time by excluding weekends and holidays from the calculation, and requiring all public bodies to post online minutes and audio-recordings of their meetings.



## 2016 LEGISLATIVE PREVIEW: PROACTIVE CIVIL LIBERTIES LEGISLATION

The abrupt end to the 2015 legislative session means that many of last year's bills – both good and bad – are returning this year, but those aren't the only issues the General Assembly will take up. This year's bills are still being introduced, so we'll cover some of them in the next issue. Below is just some of the *positive* civil liberties legislation the ACLU is working on this year. For updates on these and other bills, visit our website at [www.riaclu.org](http://www.riaclu.org). (NOTE: Some of the bills do not yet have bill numbers assigned to them.)

### CRIMINAL JUSTICE

#### Strip Searches

In a Rhode Island case in 2002, a federal appeals court ruled unconstitutional the arbitrary strip searches of persons arrested for minor offenses. In 2012, the U.S. Supreme Court overruled that conclusion, opening the door for law enforcement to conduct intrusive, humiliating, and unnecessary searches on any one in their custody, including those being detained for minor non-violent crimes who are not suspected of carrying contraband. The General Assembly will consider ACLU-drafted legislation to reinstate the policy in place under the 2002 decision by requiring law enforcement to have reasonable suspicion prior to performing a strip search of misdemeanor arrestees, and a warrant based on probable cause before conducting a body cavity search.

#### Juvenile Sentencing

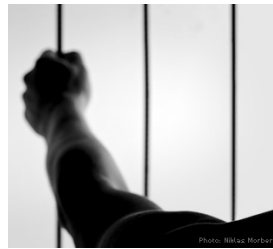
The General Assembly will be asked to consider legislation addressing the long sentences of juveniles who are charged as adults. As the U.S. Supreme Court has previously noted, adolescence is marked by “transient rashness, proclivity for risk, and inability to assess consequences.” Yet many who commit their crimes as children are viewed as incapable of rehabilitation, and incarcerated long into their adulthood. Under the proposed legislation, juveniles who are sentenced as adults would automatically come before the parole board

after fifteen years, regardless of the length of their sentence, giving these young adults the chance to prove their fitness to return to society.

#### Juvenile Interrogation

Despite the general understanding that juveniles are too young to make most legal decisions, they are often assumed to understand their rights during an intimidating interrogation by police. The General Assembly is expected to weigh legislation that will require a parent, guardian, or attorney to be present in most instances during the interrogation of juveniles by law enforcement officers.

#### Solitary Confinement (H 7481, S 2318)



Long-term isolation is expensive, inefficient, and can exacerbate mental illness even in those who were healthy when they began their incarceration. Solitary confinement leaves inmates even less able to reintegrate into society, and yet it is an unrelentingly popular form of discipline in prison. Legislation by Representative Aaron Regunberg and Senator Harold Metts seeks to curb Rhode Island's reliance on solitary confinement by prohibiting its use for certain vulnerable populations, limiting the time any inmate can serve in solitary, and ensuring humane conditions for those who are segregated.

### PRIVACY

#### Location Tracking (H 7167)

Approximately every seven seconds, the cell phone you carry pings the nearest tower to give you the best cellular service. These pings are recorded by your telecommunications provider, and allow your location to be pinpointed within fifty meters, even if your GPS is not on. Access to this information paints a complete picture of your life, and is currently available to law enforcement at their mere request. Legislation sponsored by Representative Edie Ajello would limit the misuse of this information by requiring a warrant before law enforcement can access location information, except in certain emergencies.



## VOTING RIGHTS



### Electronic Voter Registration (H 7024)

While an increasing amount of business is conducted online, becoming a registered voter or changing your registration in Rhode Island still has to be done in person or through the mail. In January, the ACLU testified in support of legislation sponsored for the Secretary of State by Representative Aaron Regunberg to allow for electronic voter registration. The legislation will allow voters to easily register and keep their registration up to date, and, with the ACLU's involvement, includes a number of critical privacy protections and ensures access to the online site by people with visual impairments. The House approved the legislation in February.

### Early Voting (H 7248)

While a majority of states have a process for in-person early voting, Rhode Island's voters generally remain restricted to voting on Election Day. General elections have brought long lines and discouraged voters. In January, the ACLU testified on a slew of election-related legislation, including in favor of a bill sponsored by Rep. Christopher Blazewski to join the 37 other states with an in-person early voting system.

### Prison-Based Gerrymandering (H 7400)

When it comes to drawing new voting districts, any individuals incarcerated at the ACI on the day the Census is taken are recorded as living there, including individuals awaiting trial or serving misdemeanor sentences who are still allowed to vote from their prior address. As a result, Cranston is overrepresented in the General Assembly, while the districts from where the prisoners hail are underrepresented. The ACLU testified in support of legislation sponsored by Representative Anastasia Williams to rectify this disparity and require all prisoners to be counted, for voting purposes only, at their last known address.

## POLICE PRACTICES

### Civil Asset Forfeiture (H 7396)

If you're stopped by the police today, you could lose your money or your home – even if you're never arrested. Currently, police agencies can confiscate, and keep or sell, the assets of a person only suspected of having committed certain offenses. The burden is on the property owner to get the money or property back by proving it was not unlawfully earned. Legislation sponsored by House Minority Leader Brian Newberry will limit this practice by requiring an individual to be convicted of an offense before their assets can be relinquished, and ensuring that co-owners of assets are not unfairly punished.

### Body Cameras (H 7198)

Legislation by Representative Joseph Almeida will dictate how police departments that implement body camera programs may use them. Enactment of a state law is critical to ensure that all police departments use body cameras in the same, appropriate manner. This legislation will dictate when an officer can turn a camera on and off, ensure the public is made aware cameras are in use and that certain individuals can request to have them turned off, and spell out how long the videos can be kept and who can access them.

## CIVIL RIGHTS

### Gender Rating in Insurance (H 7513)

Nationwide, women have historically been charged more for the same health insurance as men, solely because of their gender, leaving women less able to purchase vital health care coverage. This practice is generally illegal under the Affordable Care Act, but gaps in Rhode Island law can allow the practice to continue. Legislation sponsored by Representative Katherine Kazarian will close these gaps and keep gender rating out of Rhode Island, regardless of any changes to federal law.

### Shackling of Pregnant Prisoners (H 7613)

Legislation sponsored by Representative Shelby Maldonado will strengthen the state's limitation on shackling pregnant incarcerated women. A restrained pregnant woman cannot move freely or control her balance, placing both her and her fetus at risk. While state law generally prohibits shackling pregnant women during transport to a medical facility, this legislation will additionally prohibit shackling to or from a court proceeding during an inmate's third trimester, and require state officials to report the number of pregnant women incarcerated – and restrained – during the prior year.

## STUDENTS' RIGHTS

### Internet Filtering (H 7583, S 2172)

Internet filters used by school districts block considerably more information than is required by federal law, often without prior warning, derailing lessons and hindering the ability of students to complete homework. Legislation sponsored by Representative Art Handy and Senator Adam Satchell will lessen these barriers by requiring schools to maintain a detailed written policy regarding the use of filters, guaranteeing teachers can have websites unblocked, and requiring districts to reevaluate requests for unblocking annually. The ACLU testified in support of this legislation.

### School Computer Privacy (S 2171)

Schools statewide have begun handing out school-owned computers for at-home use by students. These devices carry virtually no privacy protections. Some schools have even informed children the computers are subject to monitoring at any time, even by remote access while the child is at home. Legislation sponsored by Senator Adam Satchell will clarify that the devices may only be searched when

there is reasonable suspicion to believe the child has engaged in misconduct, prohibit remote access except in limited circumstances, and allow parents to opt their child out of such programs entirely.

### The School-to-Prison Pipeline (H 7056, H 7057, S 2168)

Out-of-school suspensions carry a lifetime of ill effects, but Rhode Island's students are routinely suspended from school for minor behavioral infractions. The overuse of suspensions disproportionately affects students of color and students with disabilities. Legislation sponsored by Representative Grace Diaz, Representative John Lombardi, and Senator Juan Pichardo tackles this school-to-prison pipeline by requiring that suspensions be served in school, unless the student poses a physical risk or serious distraction to other students, and requiring school districts to examine their discipline data annually and come up with plans to mitigate any disproportionate suspension rates that may exist. The bill came close to passing last year before the session's abrupt end in June.

## WORKPLACE RIGHTS

### Medical Marijuana in Employment

Despite state law prohibiting discrimination against medical marijuana cardholders by employers, many patients still find themselves disqualified from work following pre-employment drug tests. Forthcoming legislation by Representative Scott Slater and Senator Joshua Miller will clarify that cardholders can only be penalized because of a positive drug screening if the patient is under the influence of marijuana while at work or during working hours.



## OPEN GOVERNMENT

### Access to Public Records (S 2308)

Despite updates in 2012, an audit of the state's Access to Public Records Act by the ACLU and other groups found the law insufficient to ensure compliance, leaving people unable to access documents they are entitled to. Legislation sponsored by Senator Stephen Archambault will, among other things, clarify when certain documents can be exempt from release, require public bodies to more clearly note the reasons for withholding any document, require public bodies to prominently feature their public records policies online, and authorize stronger penalties on those bodies that improperly withhold documents.

### Administrative Procedures Act (H 7314)

The General Assembly may soon close a loophole that allows your basic election processes to change behind closed doors. Currently, the state Board of Elections is exempt from the Administrative Procedures Act, which requires state agencies to adopt rules and regulations through an open, public process. As a result, the Board can modify virtually in secret how elections take place. The ACLU has testified in support of legislation sponsored by Representative Carlos Tobon to eliminate this exemption.

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## ACLU HOSTS ADVOCATE TRAINING DAYS



*ACLU policy associate Hillary Davis, former state Senator Rhoda Perry, and former state Representative Maria Cimini led the ACLU's advocate training session in Warwick before a full house.*

The ACLU of Rhode Island recently held two advocate training sessions to teach Rhode Islanders how to stand up for their rights at the State House.

Attendees of the trainings in Warwick and Providence heard from advocates and former lawmakers on how to participate in the legislative process and make their voices heard.

The trainings covered how to track important legislation; how to reach your legislators; how to connect with fellow advocates; and how to testify before committees. Attendees left ready to participate in our state government and make a difference on the issues they care about.

If you'd like to help the ACLU of RI defend the rights of all, consider volunteering for us by visiting <http://riaclu.org/get-involved/volunteer> or calling our office (401-831-7171).