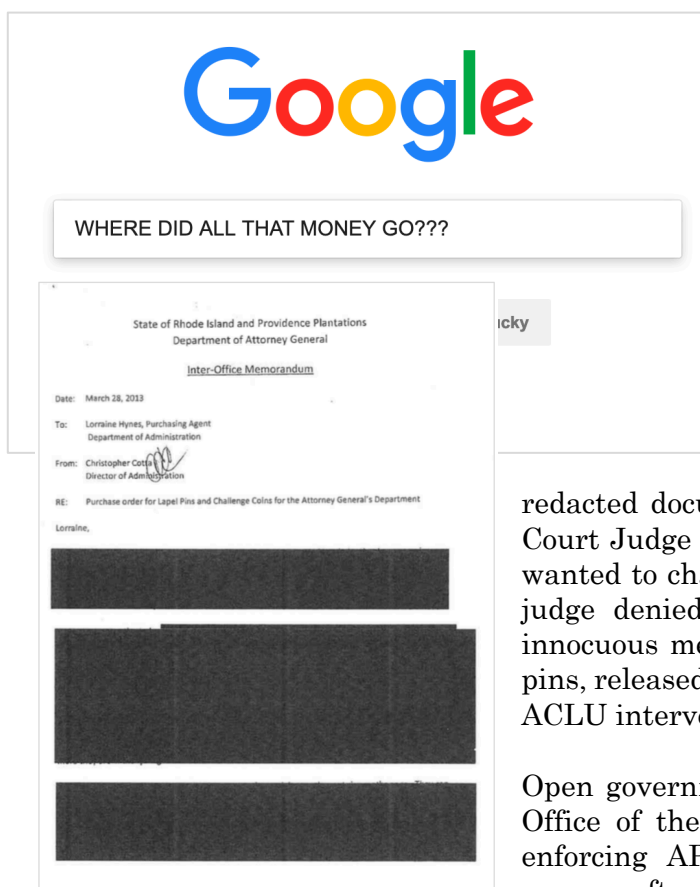


## ACLU ASKS RI SUPREME COURT TO ADDRESS KEY OPEN RECORDS ISSUES IN GOOGLE SETTLEMENT FUND CASE

Calling the controversy one of the most significant challenges to the state's Access to Public Records Act (APRA) since its enactment, the ACLU filed an appeal to the R.I. Supreme Court on behalf of former House Minority Leader Patricia Morgan, whose quest for public documents pertaining to the former Attorney General's expenditure of more than \$50M in funds from the "Google settlement" has been stymied by hundreds of questionable redactions.



Former RI Attorney General Kilmartin used this case, which Morgan filed pro se, to argue that all government "memoranda" were exempt from disclosure under APRA, citing a provision in the law that allows for the non-disclosure of "preliminary drafts, notes, impressions, memoranda, working papers, and work product." Despite an October 2018 "friend of the court" brief filed by the ACLU arguing that the cited exemption was clearly designed to address *unfinished* business documents, the RI Superior Court upheld the AG's actions without explanation.

Morgan initially paid \$3,700 to obtain a set of heavily redacted documents in response to her APRA request. A Superior Court Judge agreed to waive \$4,000 in additional fees that the AG wanted to charge for a second batch of records. Unfortunately, the judge denied Morgan's request to have documents, such as an innocuous memorandum relating to the agency's purchase of lapel pins, released to her in unredacted form. It was at that point that the ACLU intervened in the case on Morgan's behalf.

Open government groups have long complained that although the Office of the Attorney General is responsible for overseeing and enforcing APRA, it has more often been a hindrance to open records requesters, and has repeatedly undermined APRA through its actions and advisory opinions. This ordeal is a clear example of that, and of the need for more safeguards to the public's right to know.

Shortly after the ACLU filed its appeal, RI's new Attorney General agreed to reexamine all the redactions that had been made. However, the agency has not, to this point, formally rejected the former AG's interpretation of the "memorandum" exemption or other redactions being challenged in the appeal.

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## FROM THE DESK OF THE EXECUTIVE DIRECTOR

Many people joined the ACLU of Rhode Island after the 2016 election, and the fear of what was to come was palpable.

Unfortunately, most of us couldn't have anticipated just how damaging things would get for civil liberties. We now know – and **we need to stay strong.**

As we honor our Affiliate's 60<sup>th</sup> Anniversary in 2019, I'm poignantly aware that there are forces at work RIGHT NOW that demand we defend more urgently than ever the principles we hold dear.

We need your support to keep up this fight. Here are just a few ways you can help:

- Renew your membership, and make a special donation.
- Attend this year's events.
- Tell your friends and family about our work.
- Volunteer your time.
- Start a facebook (@riaclu) fundraiser to help support our next 60 years.

Get involved today, celebrate our 60<sup>th</sup> Anniversary, and help prepare us for the next 60 years. I hope we can count on you.

Thank you.

--Steven Brown

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## RI SUPREME COURT ALLOWS FOXY LADY TO RE-OPEN PENDING JUDICIAL REVIEW

Following the ACLU filing of a "friend of the court" brief, the RI Supreme Court agreed to allow the Foxy Lady strip club to resume operations pending further judicial review. After undercover police officers arrested three female employees for allegedly soliciting for prostitution, the Providence Board of Licenses abruptly revoked all of the club's licenses. Although the RI Department of Business Regulation overturned the Board's revocation of the club's liquor license, the only avenue of appeal regarding its entertainment license is through a discretionary petition to the R.I. Supreme Court.



Noting that "exotic" dancing has long been a form of expression protected by the First Amendment, the ACLU's brief, filed by cooperating attorney Jared Goldstein, argued that "courts must be especially vigilant to protect ... unpopular speech precisely because [it faces] the greatest threats of suppression." The brief also contended that the ordinance that gives the Board the power to revoke entertainment licenses is unconstitutionally broad. The brief noted that the Board of Licenses has imposed much less severe punishment on clubs that were the venues of violent incidents. The Foxy Lady is currently open pending the Court's further review of the petition.

## ACLU SETTLES 2ND UHIP-RELATED SUIT OVER MEDICAID TERMINATION

The ACLU has settled a class-action lawsuit filed against the State which claimed that participants in a RI Medicaid program were not being given proper notice before being kicked off, leading to a loss of income that put low-income residents at great risk. The suit tied the issue to the state's infamous UHIP computer system, the subject of another pending ACLU suit regarding food stamp delays. Filed in U.S. District Court by ACLU volunteer attorney Ellen Saideman, this second suit involved the Medicare Premium Payment (MPP) program which provides financial assistance to some individuals who are elderly or have disabilities. The lawsuit alleged that the abrupt and unjust termination of this benefit created substantial hardship for many.

Under the settlement, the State agreed to revise its termination notices and ensure timely advance notification prior to terminating MPP benefits. Additionally, for the next 18 months, the state has five business days to respond to complaints brought to their attention by the ACLU about people allegedly terminated from the MPP without proper notice. In settling the suit, the State admitted no liability.

## ACLU SUES STATE FOR FAILING TO PROVIDE ADEQUATE HEAT AT ACI FACILITY FOR MORE THAN A MONTH

After receiving numerous complaints from inmates at the ACI's Intake Center, the ACLU has filed a class-action lawsuit against the RI Department of Corrections (DOC) claiming that the facility failed to provide adequate heat to at least two cell blocks for more than a month and a half. The lawsuit, filed by ACLU cooperating attorneys Sonja Deyoe and Lynette Labinger, argues that the facility's failure to provide adequate heat during the coldest months of the year made cells "dangerously cold," placing prisoners' health and safety at risk, and constitutes cruel and unusual punishment in violation of the Eighth Amendment of the U.S. Constitution.



The suit alleges that the DOC has known for some time that the facility needs major heating system upgrades. The suit also argues that the DOC was repeatedly made aware of prisoners' suffering, but nevertheless continued to fail to provide sufficient heat. The suit states that it "has been well established for many years through federal case law and through numerous other standards that inmates are entitled to adequate heat." Immediately after the suit was filed, the DOC took actions that at least temporarily resolved the heating problems. The agency is providing the ACLU with daily temperature monitoring reports as the lawsuit proceeds.

## SCHOOL BUS STRIKE SETTLEMENT REACHED

Settlement agreements have been filed in two cases brought last October by the ACLU of RI and RI Legal Services (RILS) to protect the rights of special education students who were harmed by Providence's school bus strike that month. Although some remedies have already been implemented by the district, the settlement agreements, filed with the R.I. Department of Education, establish additional enforceable educational and financial obligations to compensate the students and their families.



One agreement settles a "class administrative complaint" filed by ACLU volunteer attorney Ellen Saideman and RILS attorney Veronika Kot on behalf of four families representing the 725 students with disabilities whose education plans for transportation were disrupted during the strike. Under the agreement, students will receive compensatory services to make up for lost services, and parents will be financially compensated for transporting their children to school.

The second settled case resolves a petition filed by ACLU volunteer attorney Christine Marinello on behalf of twelve-year old Jeremy Young, a student with complex medical, mobility and academic needs and who uses a wheelchair. Under that settlement, the school district is providing Jeremy additional days of service and reimbursing the family for

various transportation-related costs incurred as a result of the strike. Attorneys' fees were also awarded.

Both complaints challenged the school district's failure to comply with students' Individualized Education Plans (IEPs), which include transportation to and from school, as a violation of federal and state laws.



## 2019 LEGISLATIVE PREVIEW: PROACTIVE CIVIL LIBERTIES LEGISLATION

As this newsletter went to press, there were hundreds of bills still to be introduced, and we'll cover many of them – and particularly those that pose a threat to civil liberties – in the next issue. In the meantime, below are a few of the positive civil liberties bills the ACLU is working on. For updates on these and other bills, visit our website at [www.riaclu.org/legislation](http://www.riaclu.org/legislation).



### PRIVACY

#### Abortion Rights (H 5127, S 125)

As the attitude of the U.S. Supreme Court towards abortion rights becomes murkier, pro-choice organizations, including the ACLU, continue to push for the constitutional protections of *Roe v. Wade* to be codified into Rhode Island law. Legislation introduced by Rep. Edith Ajello and Senator Gayle Goldin serves to preserve the status quo of abortion healthcare in Rhode Island, and to ensure that the shifting ideology of the Supreme Court does not impede upon a person's right to choose. In addition to codifying *Roe v. Wade* into state law, the legislation repeals several state laws on the books which have been found over the years to be unconstitutional, such as a spousal notification requirement. The momentum to pass the legislation has been greater than ever before, with close to a majority of Representatives and Senators signing onto the bills as co-sponsors.

### WOMEN'S RIGHTS

#### Gender Rating in Insurance (H 5364)

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 the law allow the practice to continue in some settings. This legislation, sponsored by Rep. Katherine S. Kazarian and Sen. Susan Sosnowski, will ban gender rating in Rhode Island, regardless of any changes made on the federal level. The bill has passed the Senate the last few years, only to die in the House.

#### Sexual Harassment in the Workplace (H 5340 THROUGH H 5346, H 5361, AND H 5439)

In light of the national conversation surrounding sexual harassment and workplace misconduct, a package of bills has been introduced by several legislators to strengthen the state's workplace anti-discrimination laws. H 5341, introduced by Rep. Evan Shanley, would extend the timeframe for bringing action on unlawful employment practices. H 5345 and H 5346, introduced by Rep. Teresa Tanzi, would forbid employers from requiring new employees to sign nondisclosure agreements, and would expand the definition of employees to include volunteers and unpaid interns. H 5439, sponsored by Rep. Camille Vella-Wilkinson, would clarify the jurisdiction of the RI Commission of Human Rights to investigate claims of discrimination by legislative employees and overturn a recent RI Supreme Court decision limiting the liability of employers when their employees engage in discrimination.

### VOTING RIGHTS

#### Voter ID Repeal (S 339)

This bill, sponsored by Senator Gayle Goldin, would repeal the existing statute that requires photo proof of identity to be presented when voting. This barrier to voting disenfranchises the elderly, racial minorities, and other vulnerable groups that are least likely to have identification or the documents necessary to obtain ID. Unfortunately, passage of this repeal bill remains unlikely.





## FIRST AMENDMENT

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### **Book Tax (H 5158)**

This bill clarifies that an existing statute that exempts “a book or writing” from sales tax when sold by the author covers both fiction and nonfiction writings. The Division of Taxation, the body responsible for implementing the law, has, confoundingly, determined that only works of fiction qualify for this exemption. Such content discrimination is not only contrary to the statute, but also raises serious First Amendment problems. In the meantime, the ACLU is considering a lawsuit over the statute’s interpretation.

## CRIMINAL JUSTICE

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### **Juvenile Sentencing (H 5333, S 341)**

Senator Harold M. Metts and Rep. Marcia Ranglin-Vassell have sponsored legislation this year to address the issuance of lengthy prison sentences against juveniles who are charged as adults. As the U.S. Supreme Court has noted, adolescence is marked by “transient rashness, proclivity for risk, and inability to access consequences.” Yet many who commit their crimes as children are viewed as incapable of rehabilitation and incarcerated long into 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 (H 5334)**

This bill would require that a minor have a parent or guardian present during questioning by law enforcement. Generally, juveniles are less able to understand their legal rights while being interrogated, yet law enforcement proceeds as if they are well-informed adults possessing a full understanding of the weight of an interrogation. Rhode Island law protects children who are interrogated while at school, requiring a guardian to be present. However, if the child’s first interaction with a police officer occurs off campus, no such protection currently applies. This bill, introduced by Rep. Rebecca Kislak and Sen. Bill Conley, would ensure that juveniles have this critical right. The bill passed the Senate last year but died in the House.

### **“Civil Death” (H 5491, S 235)**

Rhode Island remains one of only three states to still have on the books a statute declaring as “civilly dead” any person serving a life sentence. It’s a provision so archaic that the Harvard Law Review called it “outworn as a mode of punishment” all the way back in 1937. Rhode Island not only retains this statute but utilizes it; recently, the Department of Corrections sought to bar an inmate from bringing a civil rights suit over his living conditions at the ACI because, as he was civilly dead, he had no standing to sue. Although the ACLU’s intervention prompted the DOC to back off, this legislation, sponsored by Rep. Evan Shanley and Senator Gayle Goldin, would repeal this outmoded and vindictive statute.

## IMMIGRANTS’ RIGHTS

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### **Immigrant Drivers’ Licenses (H 5511, S 153)**

As in past years, the ACLU will be supporting legislation permitting the issuance of driver’s licenses to undocumented immigrants. Current law requires a social security number before obtaining a driver’s license; this legislation would allow for identity verification using a number of other factors. Allowing undocumented immigrants to obtain a license will keep the roads safer by ensuring they have driver’s training and automobile insurance. The legislation, sponsored by Representative Anastasia Williams and Senator Frank Ciccone, further includes a number of protections to ensure that these specially-marked licenses (required because of the federal REAL ID law) cannot be used to discriminate against undocumented immigrants.

## NEWS BRIEFS

### RELIGIOUS AND SECULAR LEADERS APPLAUD NERONHA'S WITHDRAWAL FROM CONTROVERSIAL SCOTUS BRIEF

The ACLU of RI and nine other secular and religious organizations applauded RI Attorney General (AG) Peter Neronha's withdrawal of Rhode Island's name from a U.S. Supreme Court brief which supported the position that Maryland's funding of a 40-foot cross to memorialize veterans did not violate the First Amendment.

The decision in the case could have profound implications for separation of church and state - the legacy of Rhode Island founder Roger Williams. Former AG Peter Kilmartin had quietly signed onto the brief during his last week in office. Following a letter from, and a meeting with, the 10 groups, which included the ACLU, the RI State Council of Churches, the RI Board of Rabbis, and the Humanists of RI, Neronha agreed to the groups' request and formally withdrew Rhode Island from the brief.

### CENTRAL FALLS MOVES TO REPEAL CURFEW ORDINANCE

Responding to a campaign mounted by the ACLU of Rhode Island and Progreso Latino, the Central Falls



City Council has moved to rescind a juvenile curfew ordinance that has been on the books since 2008. Initially enacted following a series of fatal shootings, the ACLU has long opposed the law on the grounds that curfews treat all young people as potential criminals and don't actually reduce crime. Following an open meeting in January, the City Council voted to repeal the ordinance. A second reading, the final step in the repeal process, is expected to take place in the next month.

### ADVOCATES RAISE CONCERN ABOUT SCHOOL RESPONSE TO DISCIPLINE ISSUES

In a letter to Bristol-Warren School officials, the ACLU joined with four other student advocacy organizations in criticizing the district's decision to immediately bring police into Kickemuit Middle School to tackle disciplinary problems that had received public attention, despite numerous suggestions from teachers for increased support services for struggling students instead. In the past two school years, the ACLU's letter noted, approximately 40% of all out-of-school suspensions at Kickemuit were of students with IEPs. The letter argued that financial resources must be used for preventive services and more school counselors and social workers, not a police presence.

### GROUPS OBJECT TO VETERANS' HOME PROPOSAL TO BAN MEDICAL MARIJUANA USE

Citing concerns about the potentially devastating impact on the health of veterans, the ACLU and five other organizations expressed strong opposition to a RI DHS proposal banning the use of "narcotics prohibited by federal law" – including medical marijuana – at the Veterans' Home in Bristol. The organizations cited studies highlighting the use of medical marijuana for the relief of both PTSD and the related suicide epidemic among veterans.

Although the groups argued that no provision in federal law bars the allowance of medical marijuana use at the Home, administrators cited the illegality of marijuana at the federal level for the decision to ban its use at the Home. The ACLU is considering possible legal action.



## 60TH ANNIVERSARY EVENTS



### 60<sup>th</sup> ANNIVERSARY KICK-OFF

On January 24, 2019, we officially kicked-off our 60<sup>th</sup> Anniversary with a trip down memory lane at Ogie's Trailer Park! On display were the fabulous history panels created by Brian Jones Design to commemorate our 60 years of fighting for the rights of all in the Ocean State!



### MOVIE SCREENING: ON THE BASIS of SEX

We hosted two screenings of *On the Basis of Sex* – a major motion-picture about the life of Ruth Bader Ginsburg. Ginsburg founded the ACLU Women's Project and is a major part of our legacy. Thank you to everyone who came out!

## UPCOMING EVENTS:

### WHAT PRESS? WHOSE TRUTH?

Protecting Civil Liberties in a World of  
Unaccountable Sources and Extreme Politics

### WHAT PRESS? WHOSE TRUTH?

Thursday, March 14, 2019, 6-8pm  
*Salomon Hall, Rm 001, Brown University*  
*79 Waterman St., Providence, RI*

A panel discussion about protecting civil liberties in the post-truth era.



### DEMYSTIFYING DEMOCRACY: HOW TO BE A CITIZEN WATCHDOG

Saturday, March 23, 2019, 10:30am-12pm  
*Metcalf Auditorium, RISD*  
*20 N. Main St., Providence, RI*

Learn how to use RI public records and open meetings laws to hold government accountable. Co-sponsored with Common Cause RI, RIPA, LWVRI, NEFAC and Access/RI.

**60**  
YEARS  
OF  
VIGILANCE **ACLU**  
Rhode Island

Visit [www.riaclu.org/events](http://www.riaclu.org/events) for more  
information on upcoming events.



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## ACLU WELCOMES POLICY ASSOCIATE HANNAH STERN

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We are pleased to welcome Hannah Stern as our new Policy Associate. Hannah most recently worked on freshwoman state Representative Rebecca Kislak's successful electoral campaign. She has also lobbied for reproductive rights on behalf of Planned Parenthood in both Rhode Island and Idaho. In her free time, she likes to cook. That may sound unexciting, but that's just because you haven't tried her cakes.

## TUNE IN TO OUR CABLE SHOW: "RIGHTS OF A FREE PEOPLE"

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### PLAYING IN MARCH 2019:

Legislative Preview, with State Representatives  
Edith Ajello (Dist. 1, Providence) &  
Liana Cassar (Dist. 66, Barrington/E. Providence)

### STATEWIDE:

Channel 13 (Channel 32 on Verizon FIOS)

Tuesdays 10:00 pm

Fridays 3:30 pm

### PROVIDENCE/NORTH PROVIDENCE:

Channel 18 (Channel 38 on Verizon FIOS)

Wednesdays 9:00 pm

## IS OUR INFO FOR YOU CORRECT?

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