



RHODE ISLAND CIVIL LIBERTIES

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LEGISLATIVE ISSUE

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CIVIL LIBERTIES ADVANCE IN 2016 LEGISLATIVE SESSION

When the General Assembly finally concluded its business at 6 a.m. on Saturday, June 18th, the ACLU exited the State House with some reasons to celebrate. This year saw the passage of a number of measures the ACLU has been advocating for years, including some left on the table when the legislature unceremoniously and abruptly ended their 2015 session over chicken coops. The General Assembly set a positive tone just a few days after the session started in January by re-adopting the life-saving Good Samaritan Act, and they ended by passing legislation limiting law enforcement's ability to use your cell phone's location information absent a warrant.



Civil liberties also survived a number of close calls this year, none closer than passage – and subsequent veto – of Attorney General-backed legislation aimed at combatting “revenge porn,” but that threatened the rights of the media and others who post or share information online. Other troubling bills that didn't make it to the Governor's desk, but were in play until the very end of the session, included one giving police warrantless access to the prescription records of virtually every Rhode Islander, and legislation that would have sent shelter social workers to jail if they did not report nightly on the whereabouts of some clients.

SPECIAL INSERT: 2015-2016 CIVIL LIBERTIES VOTING RECORD

See how your legislators voted on key civil liberties-related bills

Of course, the session ended with its share of civil liberties losses as well. The Assembly passed dubious legislation restricting the ability of businesses to engage in certain foreign boycotts to promote social change if they want state contracts. The state's new truck toll program authorizes the widespread surveillance of virtually every vehicle on Rhode Island's highways with few privacy protections in place. The General Assembly also approved a dangerous resolution calling for a nationwide constitutional convention, jeopardizing the rights of women, people of color and other vulnerable groups. And the House leadership refused to act on a number of important consensus-driven measures improving the criminal justice system.

Inside you can read about these and some of the hundreds of other bills the ACLU lobbied on this year. You can learn more about the legislative session – and read some of our testimony – by visiting our legislative page at www.riaclu.org. You can also keep up-to-date with our work throughout the year by liking us on Facebook, or by following @RIACLU on Twitter.

A number of the bills we've highlighted moved – or didn't – because of the push from constituents. We offer a special thanks to all of our members who made their voices heard, and helped protect some of our civil liberties for another year.

FROM THE DESK OF THE EXECUTIVE DIRECTOR

As happens every summer, this month's newsletter summarizes the highs and the lows of the year's General Assembly session.

It includes our bi-annual legislative voting record, which documents an interesting trend – the unanimity or near-unanimity of floor votes, regardless of whether it involves a pro- or anti-civil liberties measure. On the House side, only 3 of the 15 votes we tallied had more than 5 dissenters, and on the Senate side, only 9 nay votes were cast *altogether* on a total of 13 bills we scored.

Whether one praises this trend as a remarkable example of consensus building or criticizes it as an indication of “groupthink” and a pall over raising dissent on the legislative floors, it is something that is hard to ignore.

In any event, as I mentioned in my last column, there are a lot of positive things to report. You – our members – deserve credit for that. I am deeply grateful to those of you who took the time to pick up the phone or email your legislator on one or more of these critical bills. Those calls and messages really can make a difference.

Thanks again to all of you for your support.

-- Steven Brown



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FREE SPEECH

“REVENGE PORN” -- VICTORY

One of the largest victories for civil liberties this year came after the General Assembly concluded their work, with the veto by Governor Gina Raimondo of the Attorney General's “revenge porn” bill. Part of a larger package of computer crimes legislation, the bill would have made the sharing online of certain images – neither vengeful nor pornographic – a crime. The ACLU and other advocates argued, as we have for several years, that the broadly worded legislation criminalized the sharing of newsworthy images, such as those disseminated from Abu Ghraib. In addition, the legislation did not require that distribution of the images actually cause harm to anybody, or even be intended to cause any harm. Fortunately for the First Amendment, and following requests from the ACLU, the RI Press Association and others, Governor Raimondo wielded her first-ever veto pen against this dangerous legislation, citing the bill's potential chilling impact on free speech rights. The ACLU considered the veto especially courageous since only one legislator – civil liberties stalwart Rep. Edith Ajello – had voted against the bill on the floor. (H 7537, S 2540)

STATE CONTRACT RESTRICTIONS ON BOYCOTTS -- LOSS

The First Amendment took a hit, however, when the legislature approved a bill barring the state from entering into contracts with any businesses engaged in a boycott against various “foreign states.” Boycotts by businesses are clearly protected by the First Amendment when they are used to bring about social change; this legislation restricts the ability of state contractors – or those hoping for a state contract – to engage in such boycotts. Discouraging business from engaging in political speech out of fear that it will cost them a state contract, creates an improper – and, the ACLU argued in testimony, unconstitutional – chilling effect. The ACLU unsuccessfully asked Governor Raimondo to veto this legislation. (H 7736)

DUE PROCESS

OVERDUE COURT FEE NOTIFICATION -- LOSS

Individuals owing overdue court fees will soon find their names on a public website shaming scofflaws – even if the fees are minor, decades-old, or inaccurate – without prior notification. Until this year, the law required advance notice before a person's name was placed on the public list of those owing fees; the ACLU raised concerns about changing this requirement, particularly following news reports that individuals were receiving notices when they were unaware these fines even existed. Unfortunately, the legislature approved the bill, now leaving many individuals likely to find out that their names are on these lists only when they are Googled by a family member or potential employer. (H 7830, S 2505)

THE “WAR ON DRUGS”

GOOD SAMARITAN OVERDOSE PREVENTION -- VICTORY

The General Assembly acted quickly in January to restore and expand the life-saving Good Samaritan Overdose Prevention Act, which expired in 2015 when the legislature failed to reauthorize the law. The new law ensures that individuals on probation or parole cannot be considered to have violated the conditions of their release if they call for help in the case of an overdose. (H 7003, S 2002)

MEDICAL MARIJUANA “SICK TAX” -- VICTORY

An Article in the Governor’s budget threatened the state’s medical marijuana program and the ability of patients to afford necessary medication. Among other provisions, the Article originally imposed a tax of between \$150 and \$350 per plant, reduced the number of plants each patient could grow, and eliminated the ability of patients or caregivers to provide their excess marijuana to other patients. Following outcry by patients and advocates, the Article ultimately included in the FY 2017 budget removed the plant restrictions, set the tax at \$25 per plant, and authorized fee waivers for low-income patients. (H 7454 – Article 14)

JUVENILE MARIJUANA USE -- LOSS

When Rhode Island decriminalized marijuana just a few years ago, it did so in part to keep youth possessing small amounts of marijuana away from the lifetime of consequences a drug conviction can bring. Enacted legislation introduced by the Attorney General will undermine those efforts by taking jurisdiction over minors possessing marijuana away from the Traffic Tribunal and putting these youngsters back in front of a Family Court judge. Once a youth is placed there, it can be difficult for them to disentangle themselves from the Family Court system: there are few limits as to the conditions a judge can impose and, contrary to the goals of decriminalization, a Family Court judge has the ability to incarcerate youth if they do not follow through on those conditions. (H 7362, S 2544)

MEDICAL MARIJUANA FOR PTSD -- VICTORY

Individuals, particularly veterans, suffering from post-traumatic stress disorder (PTSD) have reported marijuana use eases their symptoms. Enacted legislation sponsored by Rep. Scott Slater and Sen. Stephen Archambault adds PTSD to the list of conditions for which medical marijuana is approved, hopefully giving relief to individuals currently resorting to the black market for help. (H 7142, S 2115)

RIGHTS OF EX-OFFENDERS

CRIMINAL BACKGROUND CHECKS -- VICTORY

The ACLU helped stem legislative efforts to undermine 2013’s “Ban the Box” legislation, which limits employer consideration of applicants’ past criminal history. These limits help ex-offenders find gainful employment – often the most significant factor in whether a person will return to jail.

Among the bills considered this year that would have undercut that law was H 7007A, requiring criminal background checks for “body works” employees. This legislation originally gave municipalities virtually unrestricted power to grant employers access to a person’s entire criminal record, but was amended before final passage by both chambers to address the ACLU’s concerns.

The Senate was also responsive to ACLU concerns by failing to act on a House-passed measure, H 7636A, requiring volunteers of any agency serving children to receive a criminal background check. The bill included few specifics on what offenses might disqualify volunteers or how such determinations could be contested. Finally, the House took no action on a troubling Senate bill (S 2830A) that would have allowed DCYF to obtain information about the expunged criminal records of job applicants and volunteers.

CELL PHONE LOCATION TRACKING -- VICTORY

Rhode Island's technological privacy laws have finally stepped into the 21st century with enactment of legislation, sponsored by Representative Edith Ajello and Senator Donna Nesselbush, generally requiring law enforcement to get a warrant before accessing cell phone location information. 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. This information paints a complete picture of your life, owned by the telecommunications companies and, until passage of this privacy-protective law, available to law enforcement at their mere request. Rhode Island now joins a number of other states that in recent years have reined in police access to this private information. (H 7167, S 2403)

AUTOMATED TOLL COLLECTION -- LOSS

Drivers on Rhode Island's highways will soon have their movements tracked under the state's RhodeWorks truck toll legislation, signed into law in February. While the legislation itself mentions nothing about the technology authorized by law, testimony by DOT Director Peter Alvitì before the General Assembly revealed that the DOT intends to use automated license plate readers (ALPRs) to track the movements of large 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 that passes by, 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 throughout the day. Despite this incredible intrusion of privacy, the law is silent as to the storage or use of the data; the state can store the data indefinitely, allow police access to it without a warrant, and even sell it to a third party if desired. A last-minute amendment by Representative Blake Filippi to impose some protections was defeated on the floor. Despite assurances by House leadership that privacy protections would be put in place if necessary, no such laws were passed before the legislature concluded its business. The ACLU plans to be back next year promoting the passage of amendments to the law that would address some of these key privacy issues that were not dealt with. (H 7409, S 2246)



ABORTION

NUMEROUS ANTI-ABORTION MEASURES -- VICTORY

Each year the General Assembly considers a spate of abortion-related legislation, both supporting and restricting reproductive freedom, and this year was no exception. At least nine separate abortion-related proposals were considered, most of them designed to restrict women's rights. Pro-choice groups were especially wary after last year's passage by the legislature of strong anti-choice provisions in the adoption of a bill codifying the state's Obamacare-related Health Benefit Exchange.

However, none of the many bills introduced were acted upon. Among them were bills prohibiting women who get an insurance plan tax credit from buying a plan that includes any abortion coverage except when necessary to preserve the woman's life, or in cases of rape or incest; legislation imposing irrelevant and oppressive so-called "informed consent" requirements on women seeking abortions; a ban on abortion "as a means of sex selection"; and a so-called "fetal protection act" that would have significantly eroded the principles underlying *Roe v. Wade*.

MEDICAL PRIVACY

HEALTH INFORMATION EXCHANGE -- LOSS

When Rhode Island created its Health Information Exchange (HIE) in 2008, it did so with explicit promises that it would strictly limit how patients' medical information in the exchange could be shared. In 2016, the General Assembly partly reneged on those promises by greatly expanding the entities that have access to the HIE. This includes granting access to broadly defined health plans for purposes totally unrelated to direct medical care, the original goal of the HIE. The ACLU argued that such disclosure carries serious implications for the medical privacy of all Rhode Islanders whose information remains within the HIE. Unfortunately, interests in medical "efficiency" won the day. (H 7866, S 2898)

POLICE ACCESS TO PRESCRIPTION RECORDS -- VICTORY

Protection of our right to privacy had a close call when House and Senate committees both approved legislation granting law enforcement access to the prescription information of all Rhode Islanders without a warrant. Presently, access to the state's Prescription Drug Monitoring Program (PMP) is strictly limited, and law enforcement must obtain a warrant before viewing prescription information. That's because the PMP contains personally-identifiable information for every scheduled medication doled out in the state, including painkillers, anti-seizure medication, mood stabilizers, diet pills, and sleep aids. The PMP's purpose is to facilitate patient care, not serve as a law enforcement database. The ACLU and members of the medical community, including the RI Medical Society, argued that this Attorney General-sponsored legislation undermined efforts to view the opioid overdose crisis as a medical, rather than law enforcement, issue, and would leave doctors and chronic pain sufferers particularly subject to investigation solely because of out-of-context prescription records. Fortunately, the bills never received a floor vote in either the House or the Senate, preserving prescription privacy for another year. (H 7518, S 2713)



CIVIL RIGHTS

GENDER RATING IN INSURANCE

Nationwide, women have historically been charged more for the same health insurance as men, solely because of their gender. This practice is illegal for certain health care plans under the Affordable Care Act, but gaps in Rhode Island law allow the practice to continue. Legislation sponsored by Representative Katherine Kazarian and Senator Susan Sosnowski sought to close those gaps. The Senate approved the legislation, as they have for the last several years, but the House failed to take any action. On the positive side, the House also refused to take action on a comprehensive executive branch rewrite of the health insurance laws that would have further codified current gender disparities into law. (H 7513, S 2692, S 2774)

CONSTITUTIONAL CONVENTION -- LOSS

Learning little from the state's Constitutional Convention debate of 2014, the legislature approved a dangerous resolution calling for a national constitutional convention. While proponents of the convention claim it would be limited to addressing issues raised by the controversial *Citizens United* decision, legal experts generally agree that once a convention is called, there is no limit to the amendments that could be proposed. The last time Rhode Island called for a nationwide convention was to overturn *Roe v. Wade*. If ever convened, a nationwide convention stands to put up for debate the rights of women and minority groups, in particular, with dangerously high stakes. (H 7670, S 2589)

CRIMINAL JUSTICE

HOMELESS SEX OFFENDERS -- *VICTORY*

Following passage last year of legislation to prohibit some sex offenders from living within 1,000 feet of a school, which left many sex offenders facing homelessness until enforcement of the law was stayed due to an ACLU lawsuit, the Senate approved legislation this session further targeting sex offenders and the shelters that house them. The legislation required homeless sex offenders – who are already required to register their location with local police – to inform shelter staff of their sex offender status. The staff would then have been required to contact law enforcement and disclose the name and information of every sex offender in the shelter every time they checked in for the night. Failure to do so would have been a felony. Social workers testified that such an obligation flew in the face of their professional obligations. Fortunately, the bill died in the House. (S 2319)

JUSTICE REINVESTMENT -- *LOSS*

Among the most disheartening losses this year was the demise of a package of legislation aimed at improving the criminal justice system. The product of the Governor's Justice Reinvestment Working Group – representing nearly a year's worth of work between government officials and community advocates – the bills reduced some criminal penalties, addressed the overuse of lengthy parole and probation sentences, and established a Superior Court diversion program, among other reforms. The package of bills passed the Senate overwhelmingly, but the House failed to act on any of the bills before the end of the session. Similar programs have produced criminal justice reform elsewhere across the country; for at least another year, Rhode Island will remain an outlier. The death of the legislative package was apparently in retaliation for the Senate's refusal to pass some unrelated House bills.

VOTING RIGHTS

ELECTRONIC VOTER REGISTRATION -- *VICTORY*

In March, Governor Raimondo signed into law a new electronic voter registration program. While an increasing amount of business is conducted online, becoming a registered voter or changing your registration in Rhode Island still had to be done in person or through the mail until now. This new law, sponsored on behalf of Secretary of State Nellie Gorbea, will allow voters to easily register and keep their registration up to date, and includes a number of critical protections for the privacy of personal voter information. In addition, thanks to ACLU advocacy, the new law includes the nation's first language specifically ensuring that online registration will be accessible to voters with disabilities, something that the National ACLU has hailed as a "voting precedent every state should follow." (H 7024, S 2513)

COMPUTER CRIMES

"UNAUTHORIZED" COMPUTER ACCESS -- *VICTORY*

As part of a package of computer crimes legislation put forward by the Attorney General's office, whistleblowers or spouses who guessed a computer password could have faced up to five years in prison. The ACLU successfully lobbied against this broadly worded legislation that treated whistleblowers and others the same as malicious hackers, subjecting them to felony penalties for gaining "unauthorized access" to a computer. The ACLU noted that similarly broad wording in federal legislation has been severely criticized precisely because of its vagueness and misuse. National privacy organizations, including Demand Progress and the Electronic Frontier Foundation, joined the ACLU in opposing the legislation. In May, the House Judiciary committee approved an amended version of the legislation that failed to address the ACLU's concerns, but the bill was never brought before the full House for a vote. The bill failed to move in the Senate at all. (H 7406, S 2584)

STUDENTS' RIGHTS

THE SCHOOL-TO-PRISON PIPELINE -- VICTORY

Rhode Island's children may soon spend more time in the classroom and less time suspended for minor behavioral issues such as "disorderly conduct" or "insubordination," thanks to legislation spearheaded by the ACLU, sponsored by Representative Grace Diaz and Senator Juan Pichardo, and signed into law. Experts agree that out-of-school suspensions carry a lifetime of ill effects and should only be used for the most serious offenses. Yet years of research by the ACLU demonstrate that Rhode Island's children have been suspended predominately for minor offenses that could be controlled by other means – and that suspensions are disproportionately levied against students with disabilities and students of color. As a result, they are disproportionately subjected to the serious consequences that follow from even one suspension, including an increased likelihood of dropping out and, later, incarceration, a phenomenon known as the "school-to-prison pipeline." The new law prohibits out-of-school suspensions unless a student is a physical risk to others around them or is seriously disruptive, and requires schools to evaluate their discipline data annually and come up with a plan to reduce any racial, ethnic, or disability disparities they identify. (H 7056, S 2168)

INTERNET FILTERING OF SCHOOL COMPUTERS -- VICTORY

Students may soon find it easier to complete their assignments at school, instead of finding their studies stymied by overzealous filtering software thanks to a new ACLU-promoted law. Statewide, Internet filters used by school districts block considerably more information than is required by federal law, often without prior warning, derailing classroom lessons and hindering the ability of students to complete their work. Enacted legislation sponsored by Representative Art Handy and Senator Adam Satchell will lessen these barriers by requiring school districts to maintain a public written policy regarding the use of their filters, including guarantees that teachers can have websites unblocked in an expeditious fashion. (H 7583, S 2172)

MISCELLANEOUS BILLS THAT DIED THIS YEAR

* No action was taken on a dangerous Attorney General bill that would have vastly expanded the definition of criminal "cyberharassment" to punish individuals who posted items that third parties then used to "harass" others.

* Important legislation to restrict the use of solitary confinement at the ACI had a lengthy and informative committee hearing. Although no action was taken on the bill, the House did pass an alternative measure, sponsored by Rep. Aaron Regunberg, creating a study commission to examine the issue in depth and offer recommendations.

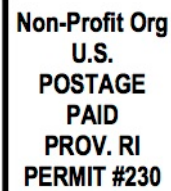
* Despite the efforts of sponsor Rep. Shelby Maldonado, no action was taken on a bill supported by the ACLU and RI NOW to prohibit the shackling of women prisoners to or from court proceedings during their third trimester of pregnancy. Rhode Island currently has a strong law protecting pregnant inmates from being shackled during transport to a medical facility, labor, delivery or post-partum recovery, but it does not address court travel.

* The House took no action on a Senate-passed bill opposed by the ACLU that would have turned soliciting prostitution from a misdemeanor into a felony, imposing extremely harsh penalties on individuals engaged in consensual sexual activity.

* It will be at least another year before undocumented immigrants have a chance to see the passage of legislation, pushed by Sen. Frank Ciccone, granting them the ability to obtain drivers' licenses.

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RETURN SERVICE REQUESTED



2016 ANNUAL MEETING
Thursday, October 13th in downtown Providence

Save the date for our Annual Meeting Celebration at the historic Providence Biltmore Hotel. More details will be coming next month, but mark the date on your calendar now!
Contact Megan at the ACLU office at 831-7171 if you would like to place an ad in this year's program book.

WE'RE MOVING!

The ACLU of Rhode Island is getting a brand new home, but we're not moving very far. Beginning later this month, we will be in the same building, but two floors up, at 128 Dorrance St, Suite 400.

POLL MONITORS NEEDED

The ACLU of Rhode Island is looking for poll monitors for the September and November elections. Shifts and locations are flexible. First-time poll monitors welcome; training will be provided.
Email us at policy@riaclu.org to learn how you can help protect civil liberties at the polls on Election Day!

TUNE IN TO "RIGHTS OF A FREE PEOPLE," OUR MONTHLY CABLE SHOW

Showtimes:

Ch. 13: Tuesdays 10:00pm & Fridays 3:30pm/Ch. 32 on Verizon FiOS
Ch. 18, Providence & N. Providence: Wednesdays 9:00pm/Ch. 38 on Verizon FiOS