

## WOONSOCKET POLICE SUED FOR UNLAWFUL ARREST AND DETENTION OF DEAF PERSON

The American Civil Liberties Union of Rhode Island and the R.I. Disability Law Center have filed a federal civil rights lawsuit on behalf of a profoundly deaf person who was arrested and detained overnight in jail by Woonsocket police for allegedly making an obscene gesture, and who was never provided an interpreter to allow him to communicate with the police during his detention. The case raises important issues regarding municipal agency obligations to accommodate residents who are deaf or hard of hearing.

The lawsuit argues that city officials violated plaintiff David Alves's "statutory and constitutional rights by unlawfully arresting and detaining him, charging him with violating an unconstitutional City criminal ordinance, subjecting him to discrimination on account of his disability, and failing to accommodate his disability."



The arrest took place late one night last July, when Alves and some friends were at the City Side Club in Woonsocket to celebrate a friend's birthday. After a verbal altercation between the bouncer and members of the group, police were called. On his way out of the bar, Alves gestured toward the bouncer with the American Sign Language sign for "bullshit," which police who had arrived at the scene interpreted as giving them the middle finger. Immediately after making the gesture, Alves was arrested by the police for violating a city ordinance banning "obscene language or mak[ing] an obscene gesture."

While being booked and held at the station overnight, Alves's requests for a sign language interpreter were ignored. When a deaf friend came to the station to check up on him, a police officer handed the friend a note saying that Alves would "be out in the morning no problem . . . These things happen, he just needs to take it as a learning experience." In the morning, he was released from custody and issued a summons to appear at court on the ordinance violation. A few months later, a Municipal Court judge dismissed the criminal charge.

The lawsuit raises a host of constitutional and statutory claims, including that:

- \* The City's "obscene gesture" ordinance is unconstitutionally overbroad and vague in violation of the First Amendment;

- \* The arrest and overnight detention of Alves without cause violated his rights to due process of law and freedom from unreasonable searches and seizures; and

- \* The police officers' failure to procure an interpreter or provide other means to effectively communicate with Alves violated a number of federal and state laws barring discrimination by municipal agencies on the basis of disability.

### LOOK INSIDE

"Prison Gerrymandering" Struck Down	3
NK Suit Opens Public Comment Period	4
Johnston Panhandling Ordinance on Hold	4
2016 General Assembly Highlights	5
Recent ACLU Events	7

(continued on page 3)

## FROM THE DESK OF THE EXECUTIVE DIRECTOR

The Saturday before I am writing this, my office colleague Hillary Davis and I staggered out of the State House at around 6 o'clock in the morning after an all-night marathon session that closed the 2016 General Assembly. It's no way to run a railroad, but it's the only railroad in town.

Through the session's six months, the ACLU testified on more than 300 bills. As the brief summary on Page 5 highlights, we managed a number of important victories. They included approval of an important bill we have been promoting the last few years designed to address the school-to-prison pipeline, and a significant victory for privacy rights in restricting police access to cell phone location information.

Perhaps the biggest loss was the House's petty decision in the closing hours to deep-six a package of "justice reinvestment" bills that dozens of stakeholders had spent months working on.

In contrast, Governor Raimondo deserves much credit for heeding the ACLU's concerns and vetoing a dangerous and flawed "revenge porn" bill that would have had a chilling effect on the media and led to costly litigation.

With your continued support, we will be back in January to do it all over again.

-- Steven Brown



**ACLU Foundation  
of Rhode Island**  
128 Dorrance St., Ste. 220  
Providence, RI 02903  
P: (401) 831-7171  
F: (401) 831-7175  
[www.riaclu.org](http://www.riaclu.org)  
[info@riaclu.org](mailto:info@riaclu.org)

## ACLU RAISES CONCERNS ABOUT ETHICS COMMISSION CONSIDERATION OF MORATORIUM ON FILING OF COMPLAINTS

In advance of a recent Ethics Commission meeting to discuss a proposed rule to establish a moratorium on the filing of ethics complaints before elections, the ACLU of Rhode Island urged the Commission to give "more thorough consideration of the consequences of such an approach."

In a letter to Commission Chair Ross Cheit, the ACLU acknowledged that "during the heat of election campaigns, some complaints of dubious merit may get filed with the Commission in an attempt to score political points." But the letter went on to "disagree with the premise that a moratorium is the proper response to this scenario."

Although there may be an uptick in complaints to the Commission in the months leading up to an election, the ACLU argued that should not be a surprise since that "is the time when people become most engaged in politics and have the greatest interest in holding politicians accountable and in examining their record and conduct." And even if some of those complaints are filed for political reasons, the ACLU argued:

*The motivation of a complainant should not be relevant to the Commission's deliberations. When, for example, the Republican Party files a complaint against a Democratic office-holder, or vice-versa, one can assume that there are, at least in part, political motivations for doing so, but that says nothing about the validity of the complaint. Politically motivated complaints simply are not synonymous with unwarranted complaints.*

The letter further noted that, even in trying to address complaints without merit:

*[While] a moratorium eliminates the filing of frivolous complaints, it bars the filing of any meritorious complaints as well. It strikes us as strange, to say the least, to have a state agency designed to investigate ethics complaints put up a "Closed for Business" sign during what should be the busiest time of the year. To do so because some of the complaints it receives may not be valid is the quintessential example of throwing the baby out with the bathwater.*

Calling the ability of citizens to file complaints "central to their First Amendment right to petition government for the redress of grievances," the ACLU said "a moratorium would undercut this important principle." The ACLU urged the Commission to instead consider other approaches, such as "quicker dispositive action by the Commission to promptly weed out frivolous allegations, and a public acknowledgement that mere acceptance of a complaint says nothing about its validity. They may not eliminate the problem, but they do much less harm to the public's petition rights and the Commission's mission."

The Commission has scheduled a public hearing in July to receive formal testimony on the issue.

## FEDERAL JUDGE ORDERS END TO “PRISON GERRYMANDERING” IN CRANSTON SCHOOL & CITY COUNCIL DISTRICTS

In a major victory for voting rights, U.S. District Judge Ronald Lagueux held that the City of Cranston violated the one person, one vote requirements of the U.S. Constitution when it allocated the entire incarcerated population of the Adult Correctional Institutions (ACI) as “residents” of one ward of the City when it drew district lines for the City Council and School Committee following the 2010 Census. Although the Judge’s order giving the City 30 days to draft a new redistricting plan meeting constitutional requirements was stayed by an appeals court, that court ordered expedited briefing in the City’s appeal.



Judge Lagueux’s ruling, just the second of its kind in the nation, concluded that the City artificially inflated the population count of Ward 6, where the ACI is located, by treating all incarcerated persons as “residents” of the prison for redistricting purposes. Doing so, said the court, violates the rights of persons residing in other wards to equal representation as required by the Equal Protection Clause of the Constitution.

The plaintiffs had argued that this “prison gerrymandering” was improper because those incarcerated at the ACI are not true constituents of local elected officials, but instead remain residents of their pre-incarceration communities for virtually all legal purposes, including voting.

Judge Lagueux agreed with the plaintiffs’ claims, stating that “the ACI’s inmates lack a ‘representational nexus’ with the Cranston City Council and School Committee.” He noted that “Cranston’s elected officials do not campaign or endeavor to represent their ACI constituents,” and that the majority of incarcerated persons cannot vote, and those who can are required by law to vote by absentee ballot from their pre-incarceration address.

Due to the questionable counting, persons at the only state-run correctional facility in Rhode Island account for 25% of Ward 6’s total “population.” According to Census Bureau data, without the incarcerated population, Ward 6 has only 10,209 true constituents. Yet those constituents now wield the same political power as the roughly 13,500 constituents in each of the other wards.

Cranston residents Karen Davidson, Debbie Flitman, Eugene Perry, and Sylvia Weber joined the ACLU of Rhode Island as plaintiffs in the case. They are represented in the case by Demos, the Prison Policy Initiative, the American Civil Liberties Union, and the ACLU of Rhode Island.

“This is a big win for democracy,” said Adam Lioz of Demos. “Prison gerrymandering distorts representation and should no longer be tolerated. This decision should pave the way for other courts to address this long-standing problem.”

### WOONSOCKET UNLAWFUL ARREST...CONTINUED FROM PAGE 1

Among other remedies sought, the lawsuit asks the court to rule the “obscene gesture” ordinance unconstitutional, declare Alves’ arrest and detention unlawful, order the City to implement policies to prohibit future discrimination against deaf or hard of hearing individuals, and award Alves unspecified monetary damages for violating his rights.

“I need to fight this case,” said Alves, “so that other people don’t have to go through the same thing I went through. Deaf and hard of hearing people deserve the same dignity anyone else deserves. If they violate my civil rights, then they might feel they can violate other people’s civil rights. I want to do what I can to prevent that.”

## ACLU SUES NORTH KINGSTOWN TOWN COUNCIL OVER PUBLIC COMMENT PERIOD; COUNCIL REVERSES COURSE A WEEK LATER

One week after the ACLU of Rhode Island filed a lawsuit against the North Kingstown Town Council for violating a Town Charter provision that gives members of the public “a reasonable opportunity to be heard” at Council meetings, the Town agreed to entry of a court order reversing its position. Under the consent order, the Town acknowledged that resident Richard Welch was “not given a reasonable opportunity to be heard” at a meeting, and that the Town “will hereinafter permit ‘Public Comment’ at all future public meetings.”

Welch attended a Town Council meeting on December 10, 2015 and attempted to speak at the meeting. However, Town Council President Kerry McKay refused to let him do so. Although the Town Charter gives the public an explicit right to be heard at Council meetings, Town officials took the position that it applies only to regularly scheduled meetings, not “special” Town Council meetings. The December “special” meeting included 13 varied items on the agenda that covered such matters as license renewals, adoption of budget policies, and a New Year’s Eve policy for liquor establishments.

The lawsuit, filed by ACLU volunteer attorney H. Jefferson Melish, noted that there “is no distinction made in the Town Charter between regular and special Town meetings to justify the denial of the public’s right to be heard.”

The suit asked the court to find that Welch’s right to speak was violated at the December meeting, and to issue an order requiring the Council “to honor the public’s right to attend and have a reasonable opportunity to be heard at all Town Council meetings.” The Town’s agreement to a consent order made a court hearing unnecessary.

ACLU attorney Melish thanked the Town Council “for its quick in response to this lawsuit to ensure that the Town Charter is followed and the public has the continuing right to participate.”

ACLU of RI executive director Steven Brown added: “It is unfortunate that a suit like this had to be filed in the first place, but it demonstrates both the need for vigilance by residents to protect their rights and the ability that one person can have to vindicate the civil liberties interests of all.”

## JOHNSTON AGREES TO HALT ENFORCEMENT OF ANTI-PANHANDLING ORDINANCE

Responding to the threat of a lawsuit by the ACLU of Rhode Island, the Town of Johnston has agreed to halt enforcement of an anti-panhandling ordinance banning “aggressive begging.” In doing so, the town joins the cities of Providence and Cranston in backing down from enforcement of these unconstitutional ordinances.

In early May, the ACLU wrote Johnston police chief Richard Tamburini, pointing out the ordinance’s “dubious constitutionality” after receiving a complaint from a person who was threatened with arrest while panhandling at an intersection in the town. In a written response, Johnston Town Solicitor William Conley, Jr., acknowledging the court cases striking down similar laws that were brought to his attention in the ACLU’s letter, advised the ACLU that enforcement of the ordinance “in its current form has halted.”

The ACLU hailed the decision as yet another step in reducing the criminalization of poverty in Rhode Island. In February, the City of Providence told the ACLU it would halt enforcement of its anti-panhandling ordinance that had led to the harassment and arrest of homeless individuals, and last month Cranston settled an ACLU lawsuit by agreeing that its ban on “roadway solicitations” violated the First Amendment.

Megan Smith, an outreach worker with the House of Hope CDC, remarked: “I am optimistic that as municipalities are compelled not to criminalize homelessness and poverty, they will instead collaborate with constituents and other advocates on solutions to these issues, including affordable housing and adequate income supports.”

The ACLU is engaged in ongoing efforts to challenge and repeal laws that disproportionately affect the rights of the homeless.

## IN BRIEF: THE 2016 GENERAL ASSEMBLY SESSION

Just days before this newsletter went to print, the General Assembly concluded their 2016 legislative session. When the sun rose and the gavel came down at 6 AM on Saturday morning, June 18th, the ACLU was still there, monitoring important civil liberties legislation until the very last moments of the session. We will provide a more detailed review of the legislative session, along with a 2015-2016 voting scorecard, in our next newsletter. For now, though, here are some of the highlights – and the lows – of the 2016 General Assembly session.

### THE GOOD

The year started off on a high note when the General Assembly restored and expanded the state's life-saving **Good Samaritan** law, which had expired when the General Assembly ended its session in 2015 without reauthorizing it.

The General Assembly also protected students' rights by passing ACLU-backed legislation limiting the use of **out-of-school suspensions**, and enacting a bill establishing procedures for the use of **Internet filters** in Rhode Island's schools.

Joining with the Rhode Island Medical Society and other groups representing medical professionals, the ACLU defeated an Attorney General bill seeking to give law enforcement access to the **prescription records** of virtually every Rhode Islander, without a warrant.

In another great win for privacy, the General Assembly overwhelmingly approved legislation generally requiring law enforcement to obtain a warrant before accessing a person's **cell phone location information**.

The General Assembly rejected a number of problematic expansions of the state's **computer crimes law** promoted by the Attorney General, including one prohibiting unauthorized computer access that treated whistleblowers and spouses the same as those hacking into computers for financial gain.

As it began, the session ended on a high note when, following requests by the ACLU and other free speech and media groups, Governor Raimondo vetoed an Attorney General bill purportedly aimed at criminalizing "**revenge porn**," that instead made criminal the sharing of newsworthy images, like those of prisoners at Abu Ghraib, and photos shared with no intent to harass or harm another person.

### THE BAD

As part of the RhodeWorks program, the General Assembly approved a tolling system that will use **automated license plate readers** to record the information of every driver on the road. Despite assurances that privacy concerns would be dealt with, no protective measures were adopted.

The General Assembly partially undermined the state's marijuana decriminalization law by approving an Attorney General bill putting jurisdiction of **minors arrested for marijuana possession** back into the Family Court. This change allows judges to place extra restrictions on juveniles, increasing the chances they could find themselves in the Training School.

The General Assembly approved a resolution calling for a **national constitutional convention**, purportedly to overturn *Citizens United*. However, there is no limit as to what issues a convention can take on, leaving the entire U.S. Constitution – and the rights of women, minorities, and the LGBT community – at risk if one were ever to convene.

The legislature failed to move on a number of pro-civil liberties initiatives, including a measure to expand the scope of a current law that protects **pregnant inmates** from being shackled, a bill to protect **student press freedom**, legislation addressing **civil asset forfeiture reform**, and a bill to grant **parole eligibility to juveniles** given very long or life prison sentences.

Perhaps most dismaying of all, the House refused to move on any of six "**justice reinvestment**" bills aimed at revamping Rhode Island's criminal justice system in a number of positive ways. The bills were the result of months of consensus-building work from the courts, corrections officials, community groups and law enforcement, but died in the waning hours of the session.

## NEWS BRIEFS

### **Judge Rules Six-Year Seizure of Weapons By Police Unlawful**

U.S. District Judge John McConnell, Jr. has ruled that a North Smithfield man's due process rights were violated when the North Smithfield Police Department refused for over six years to return lawfully possessed weapons that officers had seized from him, and instead demanded that he obtain a state court order if he wanted to get his guns back. The suit, filed by ACLU of RI volunteer attorneys Thomas W. Lyons and Rhiannon Huffman on behalf of Jason Richer, argued that the Town had a constitutional obligation to provide an administrative process that Richer could use to get his weapons returned, rather than force him to file a state lawsuit.

Noting the expense and effort involved in having to file a lawsuit to get one's property returned, the court held that "access to a state court action . . . is insufficient to ensure Mr. Richer an adequate opportunity to challenge the Town's confiscation and retention of his property" and that "some post-deprivation procedures . . . are necessary to meet the standards of due process." Shortly after the ACLU filed suit, the Town agreed to return his weapons, but the judge's ruling allows Richer to proceed with a claim for damages.

The ruling is important not just for Richer, but because other police departments in the state have comparable policies in place. The ACLU has a pending lawsuit against the Cranston Police Department, challenging a similar policy requiring residents go to court to get lawfully-owned weapons returned to them once they are confiscated for any reason.

### **ACLU Points Out Government Hypocrisy on Employment of Ex-Offenders**

In anticipation of a "Road Map to Reentry" conference organized by U.S. Attorney Peter Neronha with support of the Department of Corrections and the Governor's office, aimed at encouraging the employment of ex-offenders, the Affiliate took the opportunity to remind those in attendance the contradictory messages being sent by the state. The ACLU issued a statement affirming the importance of reintegration and how it helps to reduce the recidivism rate, but pointing out that rather than removing barriers, the state has indirectly been erecting them. The statement noted that in the last five years alone, "the Rhode Island General Assembly has approved close to a dozen laws that presumptively bar ex-offenders who have committed crimes from qualifying for certain areas of employment or professional licensing by the state."

Among the occupations for which such restrictions have been imposed in recent years are nurses, interpreters for the deaf and hard of hearing, municipal recreation department employees, massage therapists, firefighters, and nursing home and long term care employees. These laws cover thousands of individual jobs and thousands of ex-offenders. In addition, the "disqualifying offenses" established by law in these statutes, when they are not left open-ended, routinely cover not only so-called "crimes of violence," but also felony convictions for drug offenses, banking violations or larceny, to name a few. The ACLU will be working with others to try to stop, and reverse, this harmful trend.

### DO YOU KNOW YOUR RIGHTS?

Our "Know Your Rights" section of our website has a number of pamphlets, reports, and other helpful links to keep you informed of your rights. All are available to download or you can call the office and request copies. We currently have the following pamphlets:

- 2016 Voting Rights Guide
- Your Rights and the Police (available in Spanish)
- Protests and Demonstrations
- Your Rights in the Workplace
- Transgender Rights
- Know Your Rights to Open Records
- Court Interpreters
- School Discipline & Dress Codes

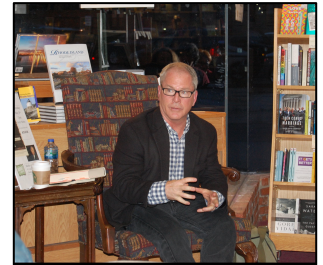


## PAST EVENTS

### “An Evening with *Guantánamo Diary* Editor Larry Siems”

On May 5th, the ACLU of Rhode Island and Books on the Square hosted an informative discussion of "Guantánamo Diary" by Mohamedou Ould Slahi, with editor Larry Siems.

More than 12 years after he was detained by our government, Mohamedou Ould Slahi remains locked up in Guantánamo, trapped in a horrific legal limbo. But his extraordinary account, handwritten over 466 pages from his single cell at Camp Echo in 2005, has been published after years of litigation - and more than 2,500 redactions by the US government. Guests gathered at Books on the Square to hear Slahi's words, and to discuss the situation at Guantánamo and Slahi's future.



Guantánamo Diary editor Larry Siems answers questions from the audience after reading excerpts from the book.

## 2016 PrideFest



and supporters. We look forward to joining the festivities again next year!

Once again the affiliate joined thousands of other Rhode Islanders to celebrate LGBT rights at the state's annual Pride Fest. Our booth along the waterfront was a popular spot to pick up bead necklaces, fans, rainbow heart and "Get A Warrant" stickers, "Protect Your Rights" condoms, and educational materials about LGBT issues and civil liberties. This year's celebration was extra special as it was the 40<sup>th</sup> anniversary of the first parade – an event that required ACLU litigation to allow it to happen! You can see on our Facebook page an album of photos of booth visitors. The ACLU was pleased to see so many people who wanted to know more about their rights and who enjoyed celebrating LGBT rights with friends

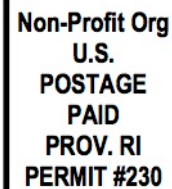
## WE NEED YOUR HELP

In anticipation of high voter turnout in both the upcoming Presidential Primary and General Election, we're looking for people interested in being poll monitors on those days. No prior knowledge or training needed (training will be provided as we get closer to the date). If you are interested in helping with this important Election Day service, you can contact the ACLU office at (401) 831-7171 or email [policy@riaclu.org](mailto:policy@riaclu.org).

Our monthly cable show, "Rights of a Free People" is always looking for volunteers to help with its production. Our cable show volunteers get first hand experience with all aspects of cable access production. Don't know the first thing about television production? No problem – the staff at the studio will provide you with the necessary training. This is a great opportunity for teens and adults to volunteer, and learn about the different issues the Affiliate is involved with. Want to learn more? Call the office at (401) 831-7171 or email [info@riaclu.org](mailto:info@riaclu.org).

American Civil Liberties Union  
Foundation of Rhode Island  
128 Dorrance Street, Suite 220  
Providence, RI 02903

*RETURN SERVICE REQUESTED*



### UPCOMING EVENT

#### **Legislative Wrap-Up and Dessert Evening**

After a marathon last night, the 2016 legislative session is now complete. Join us for our annual panel discussion on how your civil liberties fared during the session. State legislators and advocates will share their thoughts on the successes and setbacks of the 2016 session, and attendees will have an opportunity to ask questions.

Be on the lookout for a formal invitation once a date and location have been confirmed. You can also check our Events page for information.

#### **Got Receipts?**

We need them! The ACLU of RI participates in Eastside Marketplace's Friendship Fund. The Friendship Fund is the store's way of giving back to the community. Simply save your receipts and mail them to the RI ACLU office. *Eastside Marketplace has graciously offered to increase the amount they give back to us from 1% to 2% for any receipts received during the month of July.* The more receipts redeemed, the more money we raise! This is a simple and easy way to help support the work we do. **Please note, we must submit receipts to Eastside Marketplace no later than July 31<sup>st</sup>, so don't wait!**