

JUDGE ORDERS DEA TO RELEASE DOCUMENTS SOUGHT BY LOCAL JOURNALIST

In an important victory for public access to judicial records, U.S. District Court Judge John McConnell, Jr. has ordered the U.S. Drug Enforcement Administration (DEA) to release thousands of pages of documents at the center of the ACLU of Rhode Island's Freedom of Information Act (FOIA) lawsuit on behalf of local journalist Philip Eil. The suit was handled by ACLU volunteer attorneys Neal McNamara and Jessica Jewell.



Phil Eil with ACLU attorney Jessica Jewell.

Eil has been stymied for years in his effort to obtain from the DEA evidence disclosed at a major prescription drug-dealing trial. In ordering release of the records, while allowing redactions of certain personal information, the judge wrote: "Public scrutiny of the workings of government – including the judiciary – is vitally important to the proper functioning of our democracy."

Eil's FOIA request involved the evidence used to convict Dr. Paul Volkman, whom the Department of Justice called the "largest physician dispenser of oxycodone in the United States" for a period of time. In 2012, Volkman was sentenced to four consecutive life terms in federal prison – one of the lengthiest criminal sentences for a physician in U.S. history.

After Volkman's trial ended, Eil requested access to the trial evidence from the clerk of the U.S. District Court in Cincinnati, where he was tried. This request was denied, as were Eil's subsequent requests to various other court officials. He then filed his FOIA request in

February 2012, but did not receive a final response until more than three years had passed. Even so, the DEA withheld more than 85% of the pages it processed, and many of the pages released were significantly redacted.

The order allows the DEA to redact certain personally identifiable information contained in the documents, many of which are medical records. However, in ordering release of the bulk of the documents, the judge noted that "the public has a strong interest in staying apprised of the government's investigation and the judicial proceedings that led to" Volkman's conviction.

In response to the ruling, Eil said: "Courtroom transparency is a pillar of American democracy. And, from my very first requests for these exhibits after the Volkman trial ended in 2011, I had a simple goal in mind: make this historically significant trial as accessible to the public as possible. We, the people, have a right to see who we are sending to prison for life, and the evidence that led the jury to that decision."

The DEA must produce the documents or appeal the decision within 60 days.

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FROM THE DESK OF THE EXECUTIVE DIRECTOR

Most of us are rightfully paying an incredible amount of attention to the nation's Presidential campaign, an election that is rife with discussion of innumerable civil liberties issues, like immigration policy, women's rights, police abuse, and technological privacy.

But it is worth remembering just how much these issues actually play out on the local level. It is not in Washington, but on the ground, in states like ours, where, to a very large extent, what civil liberties we get to enjoy actually gets decided.

For example, will local police take on the counter-productive role of enforcing federal immigration law? Will public schools promote sewing classes for girls and science activities for boys? Will policies be adopted to promote, or discourage, transparency when police misconduct is videotaped? Will modern-day whistleblowers face felony penalties for using computers to bring violations of the law to the public's attention?

It is Rhode Island officials – not just those in D.C. – who will decide these issues, and we are dealing with all of them here, proving that not just all politics, but all civil liberties is local. It is an extremely important fact to always keep in mind.

-- Steven Brown



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SETTLEMENT REACHED IN CIVIL RIGHTS COMPLAINT AGAINST RI DMV FOR REFUSING TO ACCOMMODATE LEP CLIENTS

The Rhode Island DMV has settled a federal civil rights complaint filed by the ACLU of Rhode Island last year over the DMV's refusal to provide language interpreter services to clients who spoke languages other than English, Spanish or Portuguese.

Under a "compliance plan" filed with the Federal Motor Carrier Safety Administration, the DMV has acknowledged its obligations under federal law to provide programs and services for all individuals with limited English proficiency (LEP), including translating drivers' license exams into other languages. This serves as an important victory for new immigrants in the state who are still learning English but need to be able to drive.

Since the ACLU's complaint was filed, the DMV plan notes, the agency has translated the state driver's license exam into 14 other languages. Under the plan, the DMV agrees that when it "receives a future request to take the written driver's license examination in a language not currently available," it will translate the exam into the requester's native language "as soon as practicable."

The DMV has further agreed to "commence a review of the services it offers to determine ... if any additional documents require translation" into additional languages "and/or if interpretive services need to be provided."

The ACLU had filed the complaint after hearing from a recently arrived Italian immigrant whom the DMV had barred from taking the written driver's license exam in any language other than English, Spanish or Portuguese. Although he had attended ESL classes since entering the country, he spoke very little English and avoided driving under his valid Italian driver's license – including to his ESL classes – because he feared being stopped by the police.

The complaint charged the DMV with violating Title VI of the federal Civil Rights Act of 1964, which requires agencies receiving federal funding to provide meaningful and adequate services to LEP individuals. Federal regulations implementing Title VI specifically cite driver's license exams as a critical service subject to the law. Yet the DMV claimed it had no obligation to accommodate LEP individuals beyond what it had already done for the Spanish and Portuguese populations, and initially refused to offer any sort of accommodation through oral interpretation or translation services for other LEP persons.

After the complaint was filed and federal officials intervened, the DMV translated the exam into Italian, and then into other languages as it received requests from new immigrants who spoke these languages. The compliance plan formally codifies that practice.

ACLU ADVOCACY ON PRIVACY RESULTS IN RARE GAO REVERSAL

ACLU of Rhode Island inquiries into reported conversations between the RI DMV and the FBI to permit the sharing of Rhode Islanders' driver's license photos has prompted the Government Accountability Office (GAO) to do a rare reissue of a nationwide report. It has also led to a commitment from the Raimondo Administration not to participate in this troubling invasion of privacy being pushed by the FBI.

The initial GAO report, released online in July, showed that a dozen states had agreed to allow the FBI access to driver's license photos for the purposes of using facial recognition software to match, compare, and/or search drivers' images upon request. The report further claimed that 18 other states – including Rhode Island – were in talks to allow the FBI access to driver's license photos for this purpose. The use of such software by police agencies has long concerned privacy advocates both because it is inaccurate and it has been used to monitor constitutionally protected activity.

When the ACLU publicized the report, there was a swift public outcry. The DMV responded they were involved in no such negotiations, and had no plans to be. Governor Raimondo's office reached out to the GAO, who in turn contacted the FBI to clarify the status of the program. It was then determined that, in fact, not one of the 18 states identified were in such talks. The GAO reissued their report clarifying this information. More importantly, the state asserted that the DMV would not participate in any such data-sharing program in the future if requested by the FBI. The ACLU hailed the state's decision as an important victory for the privacy rights of all Rhode Islanders.

DEPARTMENT OF HEALTH POSTPONES REQUIRING DETAILED INFORMATION FROM MEDICAL MARIJUANA PATIENTS

In response to concerns raised by the ACLU and the RI Patient Advocacy Coalition, the Department of Health has agreed to hold off on requiring invasive medical information from medical marijuana patients.

Currently, patients seeking a medical marijuana card need only to submit paperwork from their doctor certifying they have a disease or illness that qualifies them for the state's medical marijuana program. In August, however, the DOH announced new procedures that would require physicians to provide the agency with all relevant medical records documenting the patient's condition. The procedures did not explain who at the agency would undertake the role of reviewing those records and second-guessing physicians' diagnoses, nor did the Department explain how it would protect the confidentiality of all this sensitive medical information.

In a letter to the DOH, the ACLU and RIPAC raised numerous concerns about the revised procedures. In response, DOH director Nicole Alexander-Scott advised the organizations that the new procedures were being put on hold, and that input from affected individuals would first be sought before moving forward with any change in practice.

Best Wishes to Hillary Davis

The ACLU offers its deepest appreciation to Hillary Davis, who is departing this month as the ACLU of Rhode Island's Policy Associate after six years. Hillary was an indispensable part of the ACLU's program during her tenure, and performed an incomparable job lobbying at the State House day in and day (and night) out. This year alone, she helped guide three important ACLU-sponsored bills to passage, including one that bars the use of school suspensions for non-disruptive conduct and another that generally requires a warrant before police can track your cell phone location. We wish her the best of luck in Washington, D.C. and will miss her camaraderie, stamina, poise, skills and humor.

APPELLATE COURT ISSUES DISAPPOINTING DECISION IN CRANSTON “PRISON GERRYMANDERING” CASE

In September, the U.S. Circuit Court of Appeals for the First Circuit overturned a ruling issued earlier this year which 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. The lower court had held that, in drawing district lines in this way for the City Council and School Committee following the 2010 Census, the City created unconstitutional distortions in local representation. The Circuit Court’s decision overturns this ruling and permits the practice of “prison gerrymandering” to impact the voting rights of Cranston residents who live outside of the district housing the ACI.

The lawsuit alleged that residents of the ACI are not actual Cranston constituents, but instead remain residents of their pre-incarceration communities for virtually all legal purposes, including voting. Yet, all persons incarcerated by the State are used to account for 25 percent of Cranston Ward 6’s total “population.” Without the non-resident incarcerated population, Ward 6 has only 10,227 true constituents, yet they wield the same political power as the roughly 13,500 constituents in each of the other wards.

In a statement issued after the First Circuit’s ruling, the ACLU said: “To this day, we have heard no logical basis for the City’s decision to count the entire ACI population as residing in a single City ward even though people incarcerated there who are able to vote generally are barred from voting there according to state law. In addition to the constitutional concerns, the City’s choice is not rational. The prison population is wholly physically and politically isolated from the surrounding community, and local elected officials do not represent those incarcerated at the ACI in any meaningful way.”

The ACLU has petitioned for a rehearing of the case before the entire First Circuit.

ACLU OPPOSES QUESTION 2

The ACLU of Rhode Island opposes Question 2, believing that it undermines the value of the state Constitution’s “speech in debate” clause and gives the RI Ethics Commission dangerously broad powers to investigate and adjudicate the activities of state legislators in representing their constituents.

In essence, the ‘speech in debate’ clause provides certain limited immunity to state legislators for actions they take as part of their core legislative duties, such as speaking, promoting and voting on legislation. The clause is an important protection for elected officials from harassment for their debate and votes on controversial issues. By binding future legislatures to an administrative agency’s unbridled determinations as to what constitutes ‘unethical’ deliberations or voting, this constitutional amendment could have a significant civil liberties impact on the ability of legislators to properly represent their constituents and, even more significantly, on the ability of constituents to elect legislators who will be able to represent them to the fullest.

The ACLU is also deeply troubled by the trade-off involved in the proposal – the adoption by the Ethics Commission of regulations barring members of the public from filing ethics complaints against any candidate for office (not just state legislators) within ninety days of a general or special election. Such a moratorium leaves Rhode Islanders without redress for ethics violations during the time of year when the ability to hold public officials, and those who seek to become public officials, accountable is perhaps at its most critical.

Because this amendment has the potential to cause great mischief and chill legislative speech and legislator-constituent relations, the ACLU opposes Question 2. For more detailed information about the ACLU’s position, visit www.riaclu.org/blog where you can find our full position paper.

ACLU HONORS THE RHODE ISLAND DISABILITY LAW CENTER AS CIVIL LIBERTARIAN OF THE YEAR

On October 13, the ACLU of Rhode Island held “Cocktails and Conversation” at the Providence Biltmore hotel. Members and friends enjoyed drinks, hors d’oeuvres, and each other’s company as we celebrated a successful year in civil liberties.

The ACLU was proud to award this year’s “Raymond J. Pettine Civil Libertarian of the Year” award to our longtime coalition partner, the **Rhode Island Disability Law Center**. In addition, ACLU of Rhode Island attorneys, as well as family members of plaintiffs, gave updates on some of the year’s most notable cases.



Above: RIDLC attorney Kate Bowden discusses a case. Top Right: ACLU volunteer Charlie Feldman congratulates RIDLC Executive Director Raymond Bandusky. Bottom Right: Guests and friends mingle and enjoy desserts.

NEWS BRIEFS

BOARD OF ELECTIONS LEGALIZES “BALLOT SELFIES”

Following ACLU advocacy, the Rhode Island Board of Elections has amended a blanket restriction on any photo-taking or electronic recording in the voting areas of polling places, instead allowing for the taking of “ballot selfies.” Taking pictures of others in the polling booth remains prohibited.

In testimony before the Board of Elections, the ACLU argued that the ubiquity of social media makes ballot selfies an important part of demonstrating one’s participation in the political process, and that there were no compelling reasons to infringe upon people’s First Amendment rights by limiting this activity. The Board of Elections agreed, and the regulation was amended in time for the September state primary elections.

In fact, the Board of Elections was ahead of the game: just a few weeks after the Board amended the regulations, the First Circuit Court of Appeals ruled unconstitutional a New Hampshire ban on ballot selfies.

ACLU COMBATS NEW ANTI-PANDHANDLING PROPOSALS

The debate over panhandling continues as many municipalities, including those that recognized their existing anti-panhandling ordinances to be unconstitutional, seek to introduce new restrictions on panhandling in the vain hope they may meet constitutional muster.

Providence, Cranston, Warwick, and Pawtucket have introduced new ordinances targeting panhandlers; an ordinance has been proposed, but not yet introduced, in Newport. This new flurry of legislation comes after an ACLU lawsuit led Cranston to acknowledge its existing ordinance was unconstitutional, which then prompted a number of other municipalities to voluntarily suspend their enforcement of similar laws.

The ACLU continues to argue that such ordinances violate the First Amendment rights of panhandlers, and ignore the underlying reasons people seek money this way. The Affiliate is prepared to sue the first municipality to pass a new version of a ban.

FOLLOWING ACLU WARNING, WESTERLY YACHT CLUB VOTES TO OVERTURN BAN ON FEMALE MEMBERS

After widespread criticism, including the threat of a lawsuit from the ACLU of Rhode Island, the Westerly Yacht Club voted to reverse a decades-old ban on women serving as full members of the club.

The ACLU first weighed in on the controversy in June, when the club voted to uphold the sex-based membership ban. In a public statement, the ACLU acknowledged that “private clubs have a general First Amendment right to associate without government interference – a right that we support. However, that right is not absolute.

The ACLU statement continued: “In this case, the Club opens some of its facilities to non-members, serves as an important networking opportunity for business people in the community, and has benefitted from state and federal funds over the years. The ban on women members is not because the Club seeks to express some sort of political view about the role of women, but is instead simply an archaic vestige from another era when women were treated as second-class citizens in a wide variety of settings. Based on these facts, we believe that the Club’s actions constitute a violation of both the state’s Civil Rights Act and Rhode Island laws banning discrimination in public accommodations.” Two weeks later, the club members formally voted to rescind the ban.

RECENT EVENTS

LEGISLATIVE WRAP-UP

On August 11, members and friends gathered in Providence for our annual Legislative Wrap Up and Dessert Night.

Rep. Edith Ajello, ACLU staff members Steven Brown and Hillary Davis, and ACLU Board member



Steve DeToy discussed the good, the bad, and the unresolved issues of the 2016 General Assembly legislative session. Members and guests learned about the state of our civil

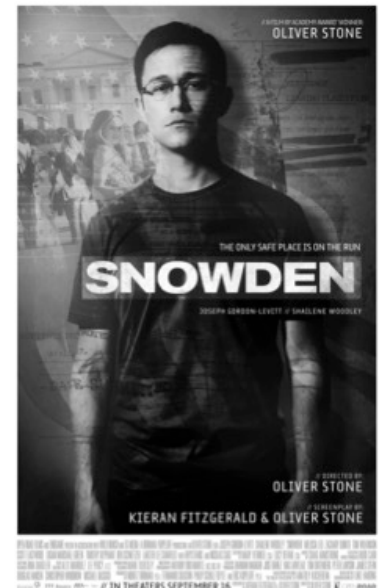
liberties in 2016, asked important questions, and enjoyed delicious desserts from local restaurants.

Special thanks to Au Bon Pain, Coffee Exchange, Seven Stars Bakery, Stop and Shop, and Trinity Brewhouse for supplying the desserts.

“SNOWDEN” SCREENING

On September 12, the ACLU of Rhode Island and Open Road films hosted a private, free screening of Oliver Stone’s “Snowden,” the complex, untold true story of former Central Intelligence Agency employee, whistleblower – and ACLU client – Edward Snowden.

Members and guests joined the ACLU at Providence Place Cinemas 16 for the sold-out showing, held before the film hit theaters, then took home free movie posters and “Know Your Rights” materials to continue their commitment to promoting privacy rights.



STAY INFORMED!

Make sure to stay up-to-date with all of our activities by signing up for our e-alerts at www.riaclu.org; finding “Rhode Island ACLU” on Facebook; and following us on twitter @RIACLU.

OPEN GOVERNMENT GROUPS PUSH FOR RELEASE OF 38 STUDIOS DOCUMENTS

Highlighting the “extraordinarily strong public interest” in the investigation of the 38 Studios scandal and calling “less than compelling” the arguments offered for keeping the records of that investigation secret, the ACLU and other open government groups called on the Attorney General and State Police to publicly release the documents.

A number of legislators have joined that call, and legislation to provide for the release of the documents is expected to be introduced in January.

In a detailed letter sent to Attorney General Peter Kilmartin and then-State Police Superintendent Steven O'Donnell, the five groups – ACCESS/RI, the ACLU of RI, Common Cause RI, the League of Women Voters of RI, and the New England First Amendment Coalition – stated: “[T]he disaster known as 38 Studios happened because of a deeply ingrained culture of secrecy in this state. The official state investigation into that disaster should not perpetuate that culture.”



The letter pointed to two other newsworthy incidents – the Station Fire tragedy and 2000 shooting

of off-duty police officer Cornel Young, Jr. – where grand jury records were released. Noting that “of the 146 witnesses your agencies interviewed, only 11 were called before the grand jury,” the groups stated that there was also “a wide range of independent information gathered by your agencies that would shed light on this incredibly important incident in Rhode Island history if you publicly released the information – which, under the Access to Public Records Act, you have the clear right to do.”

The Attorney General’s office and State Police subsequently released some documents, but only those that had already been made public prior to the conclusion of the 38 Studios investigation. Governor Gina Raimondo has said she will petition for release of the grand jury records, but only after a pending civil suit over the debacle is completed.

ACLU CALLS FOR NEW POLICY FOR PROVIDENCE POLICE BODY CAMERA USE

Following reports that the Providence Police Department plans to adopt the use of body cameras for the entire police force, the ACLU of Rhode Island has called on the Department to publicly re-work its existing body camera policy.

The ACLU noted that under the existing policy, “police have broad discretion in when to turn the cameras on and off, allowing for law enforcement to choose to turn body cameras on after an incident has commenced and the body cameras can no longer shed much-needed light on a situation. Beyond immediate officer safety concerns, any subjectivity in decisions to turn body cameras on or off raises concerns about what is not being captured by cameras, and why.”

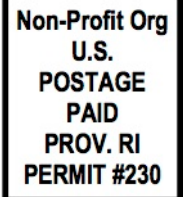
The ACLU further highlighted the need for “clear guidance as to the release of body camera footage,” noting that “[p]articularly in light of recent events in Charlotte, North Carolina and the controversy surrounding the release of footage in other municipalities using body cameras, it is imperative that any body camera policy clearly allow for the release of footage to the public, without delay. The greatest benefit of body cameras to the public is that of transparency in policing – a benefit that is denied to the public if the Providence Police Department can choose to deny access to these videos.”

The ACLU called on the Providence Police Department to promulgate a new body camera policy, with public input and the concerns of the ACLU taken into account.



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RETURN SERVICE REQUESTED



ACLU RELEASES FREE VOTING RIGHTS MATERIALS

In order to keep people up-to-date on their voting rights, the ACLU has released two new documents.



“Let Me Vote: Know Your Voting Rights,” contains details about who can vote, voting early, voter ID, and what to do if there are problems at the polls.

“Know Your Voting Rights: Voter ID and the 2016 Election” is a quick-reference on the state’s photo voter ID law, what IDs are acceptable, and what happens if someone doesn’t have voter ID at the polls.

Both of the documents are also available in Spanish. The ACLU encourages members and friends to download and share these materials, to ensure that all Rhode Islanders can exercise their fundamental right to vote on November 8th.

KNOW YOUR RIGHTS: OPEN MEETINGS

Following an increase in questions about Rhode Islanders’ rights to be present and heard in public meetings, the ACLU has also released “Know Your Rights: Open Meetings in Rhode Island.” The brochure covers questions such as who is subject to the Open Meetings Act, when public bodies can meet in private, how the public can find out about public meetings, whether a public body can limit public comment at meetings, and how to file a complaint when your rights have been violated.

These materials are available for free online at www.riaclu.org/know-your-rights/pamphlets.