

2019 ACLU of RI LEGAL DOCKET

Selected Active Cases, January-November 2019

* indicates case opened in 2019; # indicates case closed in 2019

In Re 38 Studios Grand Jury. OPEN GOVERNMENT. “Friend of the court” brief supporting a motion filed by the Governor seeking the release of records from the grand jury’s investigation of the 38 Studios scandal. The R.I. Supreme Court heard oral argument, and a decision is awaited. Cooperating Attorney: Jared Goldstein

* ***Aguasvivas v. Pompeo.*** RIGHTS OF IMMIGRANTS. “Friend of the court” brief challenging the federal government’s plans to deport a person back to his native country despite an immigration board’s findings that he will likely be tortured if he is returned there. The court barred the petitioner’s extradition, and the government has appealed. ACLU Attorney: Cody Wofsy Cooperating Attorney: Roberto Gonzalez

*# ***Association of Rhode Island Authors v. Savage.*** FREEDOM OF THE PRESS. Federal lawsuit challenging the state Division of Taxation’s position that a statutory sales tax exemption for Rhode Island authors applies only to works of fiction, and not to non-fiction. Shortly after suit was filed, the state reversed its position and granted a tax exemption to the plaintiffs. Cooperating Attorney: Lynette Labinger

* ***Barrington School Committee v. Student E. Doe.*** STUDENTS’ RIGHTS. Defense in Superior Court of a student sued by the school committee in seeking to reverse R.I. Department of Education rulings that found unlawful a three-day suspension given the student. Cooperating Attorney: Aubrey Lombardo

* ***Benson v. Raimondo.*** ABORTION RIGHTS. “Friend of the court” brief in support of the State’s motion to dismiss this lawsuit challenging the constitutionality of the Reproductive Privacy Act, which codified *Roe v. Wade* into state law. A judge dismissed the suit. Cooperating Attorneys: Lynette Labinger, Faye Dion

Borrelli v. Premier Entertainment. SEX AND AGE DISCRIMINATION. Lawsuit against the Newport Grand Casino on behalf of a female employee who, for a decade, was paid significantly less than a younger male employee performing the same duties. The casino paid the plaintiff monetary damages and attorneys’ fees in settlement of the suit. Cooperating Attorney: Lynette Labinger

Brady v. Tamburini. FREEDOM OF SPEECH. Federal lawsuit challenging the two-day suspension of a Johnston detective after he publicly criticized the police department in his role as president of the police union. Motions for summary judgment are pending. Cooperating Attorneys: John W. Dineen, Elizabeth Wiens

Calderon v. Nielsen. RIGHTS OF IMMIGRANTS. Successful habeas corpus petition, filed by the ACLU of Massachusetts with initial ACLU-RI assistance, that has since been amended into a class-action lawsuit, on behalf of a Providence mother of two who was detained by ICE officials after appearing at an interview to pursue a change in her undocumented immigration status. Numerous protective orders have been issued by the court as the case proceeds. ACLU of Massachusetts Attorney: Adriana Lafaille

Callaghan v. Darlington Plastics. MEDICAL MARIJUANA/WORKPLACE RIGHTS. Lawsuit on behalf of a graduate student who was denied employment as a paid intern at a fabrics company because of her status as a registered medical marijuana user. The court ruled that the company’s actions violated the state’s medical marijuana law. Various follow-up motions are pending. Cooperating Attorney: Carly Beauvais lafrate

Caniglia v. Strom. DUE PROCESS. Federal lawsuit challenging a Cranston Police Department policy of requiring individuals to obtain a court order in order to recover lawfully owned firearms that were seized and retained without a warrant. The court ruled the policy unconstitutional, but upheld the initial seizure of the weapons. The latter ruling has been appealed. Cooperating Attorneys: Thomas W. Lyons, Rhiannon Huffman

City of Cranston v. Morton et al. FREEDOM OF SPEECH. Appellate representation of protesters found guilty of violating an anti-panhandling ordinance for distributing literature to drivers from a roadway median. The appeals are on hold pending the outcome of a separate ACLU challenge to the constitutionality of the ordinance. Cooperating Attorney: Jason Knight

* ***City of Providence v. Barr.*** RIGHTS OF IMMIGRANTS. "Friend of the court" brief in the U.S. Court of Appeals in support of a legal challenge by two cities to a U.S. Department of Justice policy conditioning the receipt of federal law enforcement funds on municipal collaboration with immigration officials. ACLU attorney: Cody Wofsy Cooperating Attorney: Nicholas Trott Long

Cox v. Goncalves. OPEN RECORDS/POLICE MISCONDUCT. Open records lawsuit against the Pawtucket Police Department for refusing to release reports relating to alleged police officer misconduct. Cooperating Attorney: James Cullen

*# ***Davis v. Coyne-Fague.*** PRISONERS' RIGHTS. Emergency lawsuit challenging the lack of adequate heat in the middle of winter at one of the ACI's prisons. Immediately after the suit was filed, the Department of Corrections addressed the heating problems and provided daily temperature monitoring reports for a month, leading to the suit's voluntary dismissal. Cooperating Attorney: Sonja Deyoe

Doe v. Providence School District. STUDENTS' RIGHTS/RIGHTS OF IMMIGRANTS. Administrative complaint, filed with R.I. Legal Services, charging the Providence School District with violating laws and regulations that require the provision of appropriate educational services to English Language Learner students. The complaint is awaiting a hearing date. Cooperating Attorney: Ellen Saideman

Federal Hill Capital, LLC v. City of Providence. PRIVACY. Lawsuit challenging an ordinance that prohibits more than three college students from living together in certain areas of the city. The court upheld the ordinance, and an appeal has been filed. Cooperating Attorneys: Jeffrey Levy, Charles Blackman

Ferragamo and Perreault v. Harmony Fire District. SEX DISCRIMINATION. Consolidation of two federal lawsuits on behalf of two EMT/firefighters who were terminated after they alleged that the fire district discriminated against female workers. The fire district paid monetary damages to settle the lawsuit. Cooperating Attorney: Sonja Deyoe

Freitas v. Kilmartin. CRIMINAL JUSTICE. Federal lawsuit challenging the constitutionality of a state law barring certain sex offenders from residing within 1,000 feet of a school. A temporary restraining order against enforcement of the law was issued, and discovery is proceeding. Cooperating Attorneys: Lynette Labinger, John MacDonald

* ***Gaines v. State of Rhode Island.*** DISABILITY DISCRIMINATION. Lawsuit challenging the R.I. Department of Education's failure to reasonably accommodate the plaintiff's disability while employed there. Discovery is proceeding. Cooperating Attorneys: Lynette Labinger, Georgi Vogel-Rosen

Gemmell v. R.I. Department of Human Services. DUE PROCESS. Federal class-action lawsuit over the state's systemic failure to provide food stamp benefits in a timely manner. A special master was appointed to oversee compliance with a detailed court-approved settlement agreement, and after a year of compliance, the suit was voluntarily dismissed. Cooperating Attorney: Lynette Labinger

*# ***Gulliver's Tavern v. City of Providence.*** FREEDOM OF SPEECH. "Friend of the court" brief arguing that the Providence Board of Licenses' revocation of an adult club's entertainment license for allegedly allowing prostitution to take place there, and its failure to issue a stay of the decision pending full judicial review, violated the club's First Amendment rights. The case was ordered to mediation, where the appeal was settled by the parties. Cooperating Attorney: Jared Goldstein

*Hunter v. City of Cranston*. FREEDOM OF SPEECH. Federal lawsuit challenging the selective enforcement against the plaintiff of a city ordinance banning signs on public property. The city agreed to a consent decree barring such conduct in the future and awarding attorneys' fees. Cooperating Attorney: Richard A. Sinapi

***Kurland v. City of Providence*.** FREEDOM OF SPEECH. Federal lawsuit on behalf of two protesters who were forced to move from the site of a political fundraiser where they were picketing. Motions for summary judgment are pending. Cooperating Attorney: Richard A. Sinapi

***Lacoste v. R.I. State Police*.** DUE PROCESS/POLICE MISCONDUCT. Federal lawsuit challenging state police actions that resulted in the plaintiff's loss of employment at Twin River Casino after she refused to serve as a police informant in a criminal investigation. Discovery is proceeding. Cooperating Attorney: James Musgrave

*** *Liberty v. R.I. Department of Corrections*.** DISABILITY RIGHTS/RIGHTS OF PRISONERS. Federal lawsuit, filed with the ACLU National Prison Project and Disability Rights RI, challenging the Department of Corrections' use of solitary confinement on individuals with severe and persistent mental illness. Cooperating Attorney: James Rollins ACLU NPP Attorney: Amy Fettig

*** *Lombardi v. Raimondo*.** RIGHTS OF PRISONERS. Federal lawsuit challenging the constitutionality of a state law that declares inmates serving life sentences "civilly dead" with respect to their civil rights. Defendants have filed a motion to dismiss. Cooperating Attorneys: Sonja Deyoe, Lynette Labinger

***Lyssikatos v. King*.** OPEN RECORDS. Lawsuit against the Pawtucket Police Department over its refusal to release reports of alleged police officer misconduct generated by its Internal Affairs Division. The court's denial of plaintiff's motion for summary judgment has been appealed. Cooperating Attorney: James Cullen

*Morgan v. Kilmartin*. OPEN RECORDS. Open records appeal challenging the imposition of thousands of dollars in fees and the heavy redaction of documents pertaining to the Attorney General's expenditure of funds received from a major class-action settlement. As a result of the appeal, the AG agreed to waive the fees and released most of the documents unredacted. Cooperating Attorney: Lynette Labinger

*** *Narcisi v. Turtleboy Digital Marketing*.** FREEDOM OF SPEECH. Defense representation of a Massachusetts blogger ordered by a R.I. Superior Court judge, without prior notice, to immediately remove from his website "any and all posts, blogs, and comments" regarding a person who had sued him for libel. Defendant has removed the case to federal court. Cooperating Attorney: Lynette Labinger

*** *Paiva v. R.I. Department of Corrections*.** PRISONER RIGHTS. Contempt motion over the DOC's failure to comply with a decades-old consent decree known as the "Morris Rules," establishing procedures for handling disciplinary and segregation matters. Cooperating Attorneys: Sonja Deyoe, Lynette Labinger

*Parkhurst v. State*. RIGHTS OF JUVENILES. Federal lawsuit on behalf of an individual serving a lengthy sentence for a crime committed while a juvenile, challenging Parole Board practices governing the length of time between Board reviews of the inmate's parole eligibility. The Board revised its procedures, allowing for the plaintiff's consideration for parole. Cooperating Attorneys: Miriam Weizenbaum, Matthew Provencher

***In Re R.I. Department of Labor and Training*.** LANGUAGE DISCRIMINATION. Federal complaint, filed with R.I. Legal Services, challenging the state DLT's failure to provide adequate language interpreter services. Cooperating Attorney: Jennifer Doucleff

***R.I. Housing Advocacy Project v. City of Cranston*.** FREEDOM OF SPEECH/RIGHTS OF THE POOR. Federal lawsuit challenging an anti-panhandling ordinance that bars standing on a roadway to receive anything from, or distribute anything to, a motor vehicle occupant. A temporary restraining order was issued, and discovery is proceeding. Cooperating Attorney: Lynette Labinger

**** R.I. Legal Services v. City of Providence.** OPEN RECORDS. Access to Public Records Act suit challenging the Providence School District's failure to release a U.S. Department of Justice report documenting the district's violation of the federal rights of English Language Learners. A day after the suit was filed, the school district released the document. Cooperating Attorneys: Ellen Saideman, Lynette Labinger

R.I. Legal Services et al. v. Providence School District. DISABILITY RIGHTS/STUDENTS' RIGHTS. This class administrative complaint seeks various forms of relief for students with disabilities whose education plans were disrupted as the result of a school bus strike in Providence. The district agreed to provide compensatory educational services to the students and reimbursed privately-incurred transportation costs to the affected families. Cooperating Attorney: Ellen Saideman

R.I. Patient Advocacy Coalition v. Town of Smithfield. MEDICAL MARIJUANA. Lawsuit challenging an ordinance imposing numerous restrictions on the growing of medical marijuana by patients and caregivers. The court ruled that the ordinance violated the state medical marijuana law, and the Town repealed the ordinance and paid attorneys' fees. Cooperating Attorney: C. Alexander Chiulli

Richer v. Parmalee. DUE PROCESS. Federal lawsuit challenging a police department's refusal over the course of six years to return to the plaintiff lawfully owned firearms that were seized from him without a warrant. A court ruled the practice unconstitutional, and a jury awarded the plaintiff damages. Cooperating Attorneys: Thomas W. Lyons, Rhiannon Huffman

Richer v. Town of North Smithfield. DUE PROCESS. Federal lawsuit challenging a police department's refusal to remove from its files a note falsely claiming that the plaintiff is "psychologically unstable" and has numerous weapons at his house. In settlement of the case, the department agreed to remove the note and pay attorneys' fees. Cooperating Attorneys: Thomas W. Lyons, Rhiannon Huffman

In Re R.V. TRANSGENDER RIGHTS. Probate Court petition on behalf of a transgender ACI inmate seeking to change her name to reflect her identity. The petition was granted. Cooperating Attorney: Sheila Cooley.

Scherwitz v. Beane. DUE PROCESS/RIGHTS OF THE POOR. Federal lawsuit challenging the lack of proper notice given participants in a state-run Medicaid program before being removed from the program. The state substantially revised the notices and paid attorneys' fees. Cooperating Attorney: Ellen Saideman

Sojourner House v. City of Woonsocket. FREEDOM OF SPEECH/DUE PROCESS. Federal lawsuit challenging the City's withholding of grant funds to a social service agency without cause, and then retaliating against the agency after it petitioned other government agencies for help. The City agreed to release the funds and remove restrictions on future grant requests. Cooperating Attorneys: Matthew Oliverio, Stephen Prignano

SouthCoast Fair Housing v. Saunders. ACCESS TO THE COURTS. Federal lawsuit challenging a state Supreme Court rule that bars non-profit organizations from obtaining a license to practice law unless they serve only "indigent" clients and are incorporated in R.I. After a motion to dismiss the suit was denied, the R.I. Supreme Court favorably revised the rule. Cooperating Attorneys: Mark Freel, Jeffrey Ankstrom

*** United States v. Jonas.** PRIVACY. "Friend of the court" brief filed by all the ACLU Affiliates in the First Circuit, arguing that a judicial warrant is required for law enforcement access to patient information in state prescription drug databases. Oral argument has been held, and a decision is awaited. ACLU Attorney: Nathan Freed Wessler Cooperating Attorney: Robert Mann