

ACLU OBTAINS THREE FREE SPEECH VICTORIES IN THREE WEEKS

COURT RULES THAT JOHNSTON POLICE VIOLATED FREE SPEECH RIGHTS OF FORMER DETECTIVE

In an important victory for the free speech rights of public employees, U.S. District Judge Mary McElroy has ruled that then-Johnston Police Chief Richard Tamburini violated the First Amendment rights of Detective James Brady. Tamburini had disciplined the detective for speaking in his role as union president to a *Providence Journal* reporter on a matter of public concern.

In September of 2016, Brady, a long-time veteran of the force, spoke to the *Journal* about the recent termination of a fellow police officer. Brady was speaking in his role as the local union president of the International Brotherhood of Police Officers. The article sought to shed light on the circumstances of the officer's termination and suggested that department politics might have been at play.

Several days after the article ran, Tamburini launched an internal affairs investigation and charged Brady with violating multiple department policies regarding "dissemination of information" and "conduct unbecoming an officer." He was given a two-day unpaid suspension.

In her ruling in the case, handled by ACLU cooperating attorneys Elizabeth Wiens and John Dineen, the judge called Tamburini's actions "an unconstitutional effort to stifle protected speech that any reasonable superior officer should have understood violated First Amendment rights." The court further ruled that one of the policies under which Brady was disciplined was facially unconstitutional as an "impermissible restraint on speech," and the others were unconstitutional as applied to Brady's protected speech.

"I WAS JUST DOING MY JOB AS UNION PRESIDENT. I HAD A THIRTY-EIGHT-YEAR CAREER AS A POLICE OFFICER WITH AN UNTARNISHED REPUTATION WHEN I WAS DISCIPLINED."
-Plaintiff James Brady



PORTSMOUTH POLITICAL SIGN BAN PLACED ON HOLD

A federal lawsuit filed by ACLU cooperating attorney Richard A. Sinapi has led to the abeyance of enforcement of a Portsmouth town ordinance banning the posting of political signs on residential property. The lawsuit was on behalf of town resident Michael DiPaola, who recently erected a series of signs on his property that express "his opinions criticizing perceived selective and corrupt code enforcement by the Town."

DiPaola has had a running feud with Town building officials, and the suit claims he "posted the first sign after five years of frustration and perceived harassment" from them, "both in

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FROM THE DESK OF THE EXECUTIVE DIRECTOR

The year is now in full swing, and as you can see from this issue, our work protecting civil liberties in the Ocean State is more robust than ever.

And while things may have recently changed at the federal level, it is still very much “business as usual” in Rhode Island, as evidenced by the abuses of power we repeatedly encounter (highlighted on almost every page of this issue). Without your support, these threats to our civil liberties might go unchecked.

Thank you for your commitment to our work and to civil liberties.

If you are looking for ways to expand your commitment and support this year, here are a few ideas:

- Sign up to make a recurring contribution (see the back page)
- Tell your friends and family about our work
- Sign up for our email alerts
- Volunteer your time with us
- Start a facebook (@riaclu) fundraiser on our behalf.

In any event, I hope we will continue to earn your support as we continue our fight – in the State House, in the courts and behind the scenes – for the rights of all in the Ocean State.

Thank you, as always.

-- Steven Brown

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excessively enforcing codes against him and refusing to enforce building codes against others.” On January 14th, he was issued a notice of violation of the town’s zoning ordinance. The notice alleged that DiPaola failed to obtain a permit required to display the signs, that political signs were not a category of sign allowed to be displayed in residential areas, and that the display also violated a provision banning signs that “interfere with, mislead or confuse traffic.” He was given seven days to remove the signs or else face \$500/day fines for each sign left standing.

The lawsuit argues that the zoning ordinance violates DiPaola’s free speech rights by permitting only signs with specified content; exempting certain signs from the permit requirement; and prohibiting all other speech, including political speech. Further, the suit argues, the ordinance has the unconstitutional effect of regulating political speech more harshly than other types of speech.

After the ACLU filed suit, the Town agreed to withdraw the notice of violation while the case proceeds.

“FKGAS” PREVAILS; STATE BAN ON “OFFENSIVE” VANITY PLATES RULED UNCONSTITUTIONAL

U.S. District Court Judge Mary McElroy has signed a consent judgment declaring unconstitutional a state law that gave the Division of Motor Vehicles (DMV) authority to deny vanity license plates based on whether they “might carry connotations offensive to good taste and decency.”



The judgment came in a lawsuit filed by ACLU of RI cooperating attorneys Thomas W. Lyons and Rhiannon Huffman on behalf of Sean Carroll, a Tesla owner who was ordered by the DMV to turn in his license plate “FKGAS” or else have his car registration cancelled. In October of last year, the Court issued a preliminary injunction against enforcement of the statute. The formal consent judgment, agreed to by all parties in the case, has officially struck down the statute as unconstitutional.

The DMV has denied dozens of vanity plates and maintains a list of more than 1,000 prohibited license plate combinations. The suit pointed out the arbitrary nature of the list – banning CHUBBY and DRUNK, for example, while allowing FATTY and TIPSy.

Under the judgment, the state is barred from relying on that provision of the law in issuing vanity plates in the future, and Carroll is allowed to keep his FKGAS license plate. The DMV has indicated that it plans to revise its regulations governing issuance of the plates, and the ACLU will be monitoring the agency’s actions closely.

OPEN RECORDS LAWSUIT FILED AGAINST RI ATTORNEY GENERAL ON BEHALF OF ROGER WILLIAMS LAW STUDENT



Plaintiff Lindsay Koso

The ACLU has filed an Access to Public Records Act (APRA) lawsuit against the state's Attorney General (AG), challenging a \$225 fee his office charged a Roger Williams University Law School student to provide her public reports that state law requires the AG's Office to prepare and submit annually to the General Assembly.

The lawsuit was filed by ACLU of RI cooperating attorneys Carolyn Medina and Lynette Labinger on behalf of law student Lindsay Koso, who had been doing research for a law review article on the subject of immigration law in the state.

The lawsuit argues that it is unreasonable for a public body to charge search and retrieval fees for "public records that are...mandated to be submitted to another governmental body..." and that it is similarly unreasonable to charge fees for records like these which "should be readily accessible." The lawsuit separately challenges the Attorney General's position, stated in the response to Koso, that if she failed to remit the \$225 pre-payment within 30 days, her request would be closed, forcing her to start over if she wanted to pursue the request. The suit argues there is no basis in APRA for imposing a 30-day payment requirement that otherwise leads to the dismissal of an open records request.

The suit seeks a judicial declaration that search fees cannot be charged – or must be waived – by agencies under these circumstances and that an agency "may not impose a deadline for the prepayment of search and retrieval fees upon the penalty of the closing or dismissal of an APRA request for records."

ACLU FILES BRIEF IN U.S. SUPREME COURT IN MAJOR "SEARCH & SEIZURE" CASE FROM RHODE ISLAND

Joining with groups that span the ideological spectrum, the ACLU of RI filed a "friend of the court" brief in the U.S. Supreme Court in an important case related to the scope of Fourth Amendment protections and police warrantless searches of the home. The brief argues that an unfavorable ruling in the case could "give police free rein to enter the home without probable cause or a warrant, whenever they think it is 'reasonable' to do so." The case involves Cranston resident Edward Caniglia, whose two lawfully owned firearms were seized from his home without a warrant or his consent in a non-emergency situation as a result of a "wellness check" conducted by Cranston police officers.

In 2015, the ACLU filed a federal lawsuit against the Cranston Police Department on Caniglia's behalf, challenging both the warrantless seizure of his weapons and a department policy against returning them without a court order. The court agreed that the policy of refusing to return the firearms was unconstitutional, but upheld the warrantless search and seizure on the grounds that police were engaged in a "community caretaking" function that did not require a warrant.

Relying on private counsel, Caniglia appealed to the Supreme Court, which agreed to hear his case to decide whether the "community caretaking" exception to the Fourth Amendment's warrant requirement can be applied to searches of a person's home. In past cases, it has applied only to searches of impounded cars. The ACLU brief urged the Court to reject a broader standard that would give police free rein to enter the home without probable cause or a warrant. The case is scheduled for argument on March 24.

**"EXTENDING THE
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EXCEPTION TO
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-ACLU Amicus Brief,
*Caniglia v. Strom***

2021 LEGISLATIVE PREVIEW - PART 1: PROACTIVE CIVIL LIBERTIES LEGISLATION

Here's a look at just some of the positive civil liberties bills that the ACLU of RI is lobbying on this session. We'll cover some of the ones that are a threat to civil liberties in Part 2 – in the next issue of our newsletter. More info on these and many other bills is available at www.riaclu.org/legislation.

REPRODUCTIVE FREEDOM

Medicaid Funding for Abortion (H 5787, S 267)

This legislation would extend Medicaid coverage to abortion and also ensure that state employee health insurance provides coverage for the procedure. Restrictions on abortion coverage disproportionately impact low-income individuals, people of color, and younger people, so expanding Medicaid coverage for abortion will provide necessary funding to support a patient's decision making over their health and well-being.



WAR ON DRUGS

Drug Reclassification (H 5384)

The implications of a felony charge versus a misdemeanor are substantial and impact many aspects of an individual's life, including access to employment, housing, and higher education. This legislation would reclassify simple drug possession from a felony to a misdemeanor and ensure that people charged with minor drug offenses will not face long-lasting civil punishments.

Recreational Marijuana & Social Justice (H 5307, H 5451, H 5452)

As support has mounted for legalizing recreational marijuana, so have calls to ensure that social justice initiatives are included in legislation on this issue. The ACLU strongly supports legalization and believes that legislation must confront the harmful impact that marijuana criminalization has had on communities of color for decades. This series of bills would ensure automatic expungement of marijuana-related criminal charges after legalization; apportion funding from marijuana revenue to impacted communities; and mandate equity in licensing for marijuana-related occupations.



This screenshot of a student in his bed captured by school officials from his school-loaned laptop resulted in a major privacy lawsuit in PA.

STUDENTS' RIGHTS

School Computer Privacy (H 5700, S 32)

Distributing computers to students in public schools for home use is now commonplace. Unfortunately, students have virtually no privacy protections using these computers. This legislation would allow school officials to search the devices only if they have reasonable suspicion that the student has engaged in misconduct on the computer, and would also greatly limit remote access to the computers by school officials.

School Discipline Reform (H 5234)

Despite 2016 legislation enacted to reduce out-of-school suspensions, their use has not significantly decreased, nor have the disparities in how the penalty is meted out to

students of color and those with disabilities. This bill would strengthen that law by banning out-of-school suspensions for K-5 students except in very limited instances, and also requiring school districts to submit annual reports documenting their strategies to mitigate disciplinary disparities on the basis of race or disability.

OPEN GOVERNMENT

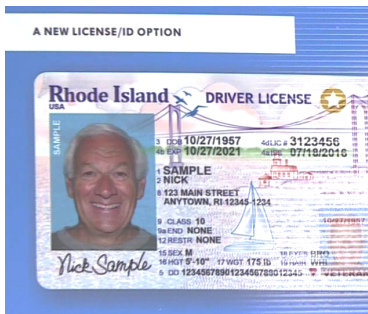
Access to Records of Police Misconduct (H 5859)

In response to a ruling in an ACLU case and recent advisory opinions issued by the Attorney General which significantly limit public access to police misconduct records, this legislation would strengthen the public's ability to obtain those records.

RACIAL JUSTICE

Data Collection on Racial Profiling (H 5653)

The Comprehensive Community-Police Relations Act mandates reporting of traffic stop and search data by race from every RI law enforcement agency. The expiration of this requirement in July 2020 reinforced both the need for its renewal and for significant amendment to the statute to ensure that it can truly achieve its intent. This legislation would reinstate the law while adding more stringent requirements for analysis and including a community advisory board with oversight over the data collection process.



IMMIGRANTS' RIGHTS

Immigrant Drivers' Licenses (H 5305, S 190)

This legislation authorizes drivers' licenses for undocumented immigrants, and would keep the roads safer by ensuring that they have driver's training and car insurance. In the past, the bill has been supported by the Attorney General, the State Police and the DMV, and it includes protections to ensure that the licenses cannot be used to discriminate against undocumented immigrants.

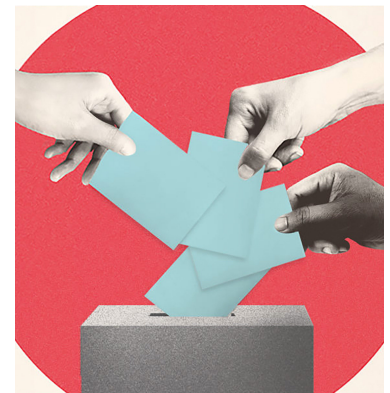
364 Day Misdemeanors (H 5488, S 118)

Under federal immigration law, certain minor offenses carrying a potential sentence of a year or more can lead to harsh immigration penalties, including detention and deportation. This legislation would reduce the maximum sentence for a misdemeanor charge from one year to 364 days, a small tweak that would protect residents from those harsh immigration consequences as a result of minor offenses.

VOTING RIGHTS

Election Reform

Following 2020's extraordinary voter turnout after the implementation of early in-person voting, comprehensive legislation is being introduced to expand the practice for future elections, make all voters eligible to permanently vote by mail, and remove the burdensome two-witness signature requirement for mail ballots.



ADDITIONAL BILLS SUPPORTED BY THE ACLU

The ACLU supports numerous other bills related to civil liberties, including:

- Banning gender discrimination in health insurance rates (H 5763, S 3)
- Repealing the state's voter ID law (S 181)
- Allowing timely parole for young offenders given severe prison sentences (H 5144, S 333)
- Banning the undemocratic practice of prison gerrymandering (H 5285, S 334)

ADVOCACY RESOURCE:

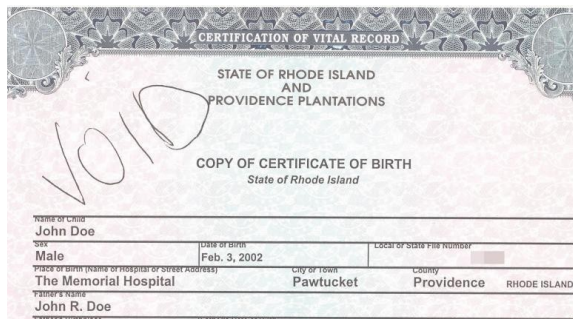
CIVIL LIBERTIES ADVOCACY TOOLKIT

Want to learn how to lobby effectively, contact your legislators, and advocate for the civil liberties issues that you care about? Visit www.riaclu.org/legislation and click on ADVOCACY TOOLKIT for more information.

NEWS BRIEFS

Stronger Action Needed to Address “Persistent” Police Body Camera Violations

Citing repeated instances of police not activating their body cameras in encounters with the public, the ACLU of Rhode Island called on Providence law enforcement officials to take stronger steps, including establishing a more vigorous audit process, to hold officers responsible for violating the Department’s body camera policy. In a letter to officials, the ACLU called the problem “persistent” and “one that severely undermines the transparency the Department is seeking to promote.” An open records request the ACLU filed last year revealed that twenty Providence officers were disciplined for failing to activate their body cameras between January 2018 and June 2020. In no instance has the punishment for the infraction exceeded a verbal reprimand.



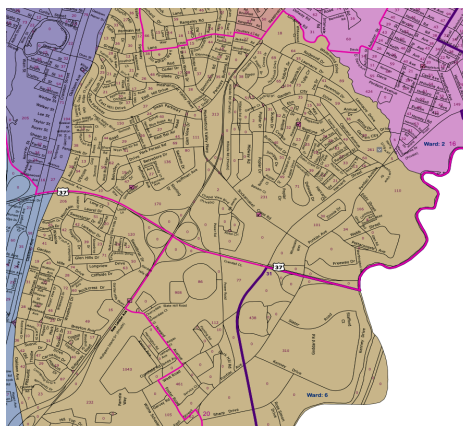
ACLU Submits Testimony on Proposed Health Department Regulations

The ACLU submitted commentary on two very disparate regulations recently proposed by the Department of Health (DOH). The Affiliate expressed strong support for a proposed rule that would no longer require an individual seeking to change the designated sex on their birth certificate to provide an affidavit from a medical professional supporting the change. The ACLU was less complimentary of a DOH proposal

which would significantly expand the circumstances when hospitals must report personal information about opioid overdose patients to the state.

Providence Passes “Source of Income” Housing Ban

The ACLU of RI submitted testimony before the Providence City Council in support of an ordinance that would ban “source of income” discrimination in housing. The ordinance, which has now been approved, prevents landlords from denying a potential tenant’s housing application because their rent payment comes from governmental rental assistance vouchers. That practice has a deeply adverse impact on members of low-income and marginalized communities looking for safe and affordable housing.



Cranston, Ward 6, Home of the ACLU

Cranston Urged to Act on Prison Gerrymandering

The ACLU is urging the Cranston City Council to require a planned Reapportionment Commission to address the critical problem of prison gerrymandering when drawing district ward lines for the Council. Prison gerrymandering refers to the practice of counting all inmates at a prison as living there for purposes of redistricting. The impact of skewing districts this way is that the voting strength of the communities from which the inmates come is diluted, while the political influence of the residents in which the prison is located – in this case, one particular city ward – is grossly inflated compared to the other ward districts. The Council will be considering the measure in late March.

LEGAL BRIEFS



ACLU Intervention Prompts CCRI to Expand Free Tuition Program

In response to a complaint from the ACLU, the State appears prepared to expand CCRI's two-year free tuition program for students with disabilities. Under the "RI Promise" program, any state resident can attend the college for two years at no cost in order to obtain a degree. However, students with disabilities who needed extra time to complete their studies were required to pay for their third year of study. After ACLU attorneys David Cass and Christine Marinello warned of legal action on behalf of an affected student, CCRI officials acknowledged their obligations under anti-discrimination laws to waive the two-year limit when needed to accommodate students with disabilities. The ACLU will be monitoring CCRI's actions to ensure that the policy gets implemented promptly.

Education Commissioner Bars School District from Punishing Children for the "Sins of the Father"

Responding to an appeal brought on behalf of two N. Kingstown students by ACLU of RI cooperating attorney H. Jefferson Melish, the R.I. Department of Education ruled that the school district could not ban the children from in-school learning solely because their parents had let them attend school while their father was awaiting the results of a Covid test. Critical of the parents for allowing their children to attend school when they should have been kept at home while awaiting the father's test results, the school principals barred the two children from in-person learning for the rest of the school year. Concerned about the effect that the lack of in-school attendance would have on their middle school child, whose disabilities reduced the efficacy of remote learning, the parents sought the ACLU's help, which successfully petitioned RIDE to overturn the ban. In ruling in favor of the students, RIDE noted that "it is time, and past time to discredit and repudiate the notion that the sins of the father should be visited upon hapless offspring."

Court Approves Settlement Restoring Equal Opportunities for Women in Brown Univ. Athletics

In a victory for gender equity, a federal court has given final approval to a settlement agreement between Brown University and a class of women student-athletes at Brown, resolving a class-action court challenge to Brown's decision in June 2020 to cut five women's teams from its varsity athletics program. The court action, filed by cooperating counsel from Public Justice and the ACLU of Rhode Island and private counsel, alleged that the cuts violated a 1998 consent agreement that the University entered to comply with Title IX, the federal law that guarantees equal access to athletic programs for female athletes. The settlement agreement reinstates two women's teams and bars elimination or reduction in the status of any women's varsity team for at least the next four years. Twelve students who are members of two women's sports teams that were not directly affected by the 2020 program cuts have nonetheless appealed the settlement agreement, and their appeal will be heard later this year.



Affiliate Joins Brief in Civics Education Suit

The ACLU of Rhode Island has joined with the League of Women Voters in submitting a "friend of the court" brief in the First Circuit Court of Appeals in support of a lawsuit challenging on constitutional grounds the state's failure to provide an adequate education to students in the state's public schools. The suit alleges that the Constitution requires the state to provide students with the necessary basic education and civic-participation skills to participate effectively in a democracy.



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THANK YOU!

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