

2002 RHODE ISLAND ACLU CASE DOCKET

Cases Active January-December 2002

* indicates case opened in 2002; # indicates case closed in 2002

*Abdullah-Odiase v. Begin. VOTING RIGHTS. Appeal on behalf of a legislative candidate for office whose name was stricken from the ballot by the Board of Elections because one of her nomination papers allegedly contained signatures not witnessed by her. At an emergency hearing, a single justice of the Supreme Court ordered her name back on the ballot. Cooperating Attorney: John W. Dineen

#In re: Ang Souvannaphavoung. RIGHTS OF IMMIGRANTS. Appeal before the Executive Office for Immigration Review to halt deportation proceedings against a Laotian immigrant who fears persecution if returned to Laos. An immigration judge ruled that the claimant qualified for asylum and ordered his release. Cooperating Attorney: Susan Mills

*Arcouette v. Tiverton School Committee. FREEDOM OF SPEECH. Federal lawsuit challenging a school committee policy barring members of the public from making "charges" or "complaints" against school employees during the public comment portion of committee meetings. The defendants agreed not to enforce the ban pending a court hearing. Cooperating Attorney: Jennifer Azevedo

*Arruda v. Town of Bristol. FREEDOM OF SPEECH/PRIVACY. Federal lawsuit challenging a town ordinance which bars adults between the ages of 18 and 21 from being tattooed. Cooperating Attorney: Carolyn A. Mannis

*Barr v. Public Utilities Commission. FREEDOM OF SPEECH. Lawsuit challenging a cable company's plans to relocate a public access studio to a facility where the public's ability to tape public access programming would be severely limited, in violation of state law. A restraining order against the move was issued. Cooperating Attorney: Miriam Weizenbaum

#Bonas v. Town of North Smithfield. VOTING RIGHTS. Federal lawsuit challenging a town's decision not to hold regularly-scheduled local elections in 2001, based on a 1998 referendum which authorized changing elections from odd to even-numbered years "beginning in the year 2002." An appeals court upheld a lower court ruling that ordered that an election be held. Cooperating Attorney: Howard Merten

Brown v. Providence Police Department. OPEN RECORDS. Open records lawsuit challenging police department's refusal to release copies of its policies governing the use of video surveillance cameras in public street locations and in police cars. A court ordered their release. The court denied plaintiff's request for attorneys fees, and that ruling has been appealed. Cooperating Attorney: Staci L. Kolb

*Cesar v. Immigration and Naturalization Service. RIGHTS OF IMMIGRANTS. The ACLU has joined in a "friend of the court" brief in support of a petition filed by a lawful permanent resident facing deportation removal proceedings, challenging a federal law providing for mandatory detention during the pendency of such proceedings. A Magistrate Judge held that the federal statute is unconstitutional. The government has appealed.

*Caianiello v. Mruk. OPEN RECORDS. Open records lawsuit against the Anthony Fire District in Coventry, for failing to provide various documents requested by the plaintiff, inappropriately redacting documents that were provided, and charging various "copying" fees unauthorized by law. Cooperating Attorney: Carolyn A. Mannis

*#In re: C. H. STUDENTS' RIGHTS. Defense of a student charged in a wayward petition with "disorderly conduct" after he drew on a piece of paper in school a picture of a stick figure with a dynamite device blowing up the building. The parties agreed to have the charge filed. Cooperating Attorney: Thomas Mirza

*City of Newport v. Ducharme and Roman. FREEDOM OF SPEECH. Defense representation of two exotic dancers charged with violating the City's "anti-nudity" ordinance at a bachelor party being held at a private bar. Cooperating Attorneys: Thomas Briody, John W. Dineen

Direct Action for Rights and Equality (DARE) v. Gannon. OPEN RECORDS/POLICE MISCONDUCT. Open records suit

against the Providence Police Department for refusing to release internal records of police brutality complaints. The R.I. Supreme Court affirmed a lower court ruling that the records were public. After the lower court ordered defendants to turn the records over at no cost and to pay attorneys' fees, defendants filed a second appeal. Cooperating Attorney: Dennis Grieco II

Doeg v. Ferguson. RIGHTS OF THE POOR. Class-action suit challenging, on due process grounds, procedures used by the Department of Human Services in food stamp fraud hearings. A preliminary injunction, preventing DHS from taking action against most class members, has been issued. Cooperating Attorney: Thomas W. Lyons

#In re Ethics Advisory Panel Opinion No. 2000-05. ACCESS TO THE COURTS. Petition for review of a Supreme Court Ethics Advisory Panel opinion which held that the R.I. ACLU's fee-sharing policy with cooperating attorneys violates a Rule of Professional Conduct that bans the sharing of fees with non-lawyers. After the petition was filed, the ACLU and the Panel jointly proposed a rule change to explicitly allow such a policy. The Supreme Court rejected the proposal and upheld the original Panel opinion. Cooperating Attorney: Lauren Jones

#Fischbach v. Zurier. FREEDOM OF SPEECH. Lawsuit challenging a Providence School Board policy barring members of the general public from mentioning the name of any person during the public comment portion of School Board meetings. A permanent injunction barring enforcement of the policy was issued, and attorneys fees were awarded. Cooperating Attorney: Amy R. Tabor

Flowers v. Fiore. RACIAL PROFILING. Federal lawsuit on behalf of an African-American man who was stopped in his car and detained at gunpoint by Westerly police in a case of "racial profiling." The suit seeks declaratory relief and compensatory and punitive damages. Cooperating Attorney: Thomas Briody

Garcia-Nunez v. Reno. RIGHTS OF IMMIGRANTS. Habeas corpus petition filed on behalf of an immigrant facing mandatory deportation for a criminal offense committed before the federal law requiring such deportation was enacted. Proceedings are pending. Cooperating Attorney: Randy Olen

Global Waste Recycling, Inc. v. Mallette. SLAPP SUIT. Defense representation of a couple sued for defamation for statements they made to the media expressing environmental concerns about the plaintiff's recycling activities. A ruling dismissing the suit under the state's anti-SLAPP suit law was upheld by the state Supreme Court; attorneys fees were also awarded, but have not yet been paid. Cooperating Attorney: Mark W. Freel

#Hometown Properties v. Fleming. SLAPP SUIT. Successful defense representation in R.I. Supreme Court of a SLAPP suit victim who was sued for defamation based on a letter she had sent the Department of Environmental Management raising concerns about a local landfill. In settlement of the victim's privately-counseled counterclaim, the plaintiffs agreed to pay \$400,000 in damages and attorneys fees. Cooperating Attorney: Amelia Edwards

Inmates of the Rhode Island Training School for Youth v. Lindgren. RIGHTS OF JUVENILES. The ACLU has taken over this long-running class-action lawsuit challenging the constitutionality of conditions at the Training School. A comprehensive revised consent decree was submitted to the court and approved. Ongoing monitoring of the decree is proceeding. Cooperating Attorney: John W. Dineen. ACLU National Prison Project: Mohamedu Jones

#Kessler v. City of Providence. FREEDOM OF SPEECH. Federal lawsuit challenging a Providence police department "gag rule" barring police officers from speaking to the media without approval of the chief. The court struck down the policy, and attorneys' fees were awarded. Cooperating Attorney: John W. Dineen

*Lanoue v. City of Woonsocket. PRIVACY. Federal lawsuit challenging a police department's actions in strip-searching the plaintiff and leaving her naked in a holding cell for over five hours after being arrested for "driving under the influence." The suit seeks monetary damages and a court order declaring the police department's conduct unconstitutional. Cooperating Attorney: V. Edward Formisano

*Lariviere v. Lariviere. FREEDOM OF SPEECH. "Friend of the court" brief in support of a Family Court decision denying the request of a father with joint custody of two children, ages 11 and 13, for an order restraining the mother from taking them to a rap concert. The brief argues that First Amendment considerations prevent the Court from interfering in such a decision. Cooperating Attorney: Christopher P. Corbett

#Lonardo v. Town of Smithfield. FREEDOM OF SPEECH. Federal lawsuit challenging a Town's decision to deny a Sunday sales license to an adult video store. The Court ordered issuance of the license. Damages were also paid. Cooperating Attorney: John W. Dineen

Maynard v. Hibbard. OPEN RECORDS. Open records lawsuit filed against the Town of Charlestown for refusing to make public the billing records from, and payments to, attorneys representing the Town in a zoning case. The Court dismissed the suit, and an appeal has been filed. Cooperating Attorney: Staci L. Kolb

*Metts v. Almond. VOTING RIGHTS. "Friend of the court" brief filed on appeal in this redistricting lawsuit, arguing that the lower court used an improper legal standard in dismissing claims that black voting power on the South Side of Providence was improperly diluted by recently redrawn Senate district lines. Cooperating Attorney: Joseph M. Fernandez

Multnomah County Public Library v. USA. FREEDOM OF SPEECH. Federal lawsuit filed by the National ACLU, in which a Rhode Island-based web site is a named plaintiff, challenging the constitutionality of a federal law requiring libraries receiving federal funds to install "technology protection measures" on all their Internet access terminals in order to block access to sites that are "harmful to minors." The Court struck down the statute, and the U.S. Supreme Court has agreed to review the case. ACLU Attorneys: Ann Beeson, Christopher Hansen

*Nestell v. State of Rhode Island. DUE PROCESS. Federal lawsuit challenging the Division of Motor Vehicles' denial of a chauffeur's license based solely on the person's past criminal record. A motion for a restraining order was denied. Cooperating Attorney: James Kelleher

*Podoprigora v. INS. RIGHTS OF IMMIGRANTS. The ACLU has joined in a "friend of the court" brief filed in the federal appeals court in this lawful permanent resident alien's *pro se* appeal of his habeas corpus petition. The brief supports his challenge to a federal law mandating his detention while undergoing deportation proceedings.

Poe v. State of Rhode Island. RIGHT TO TRAVEL. State court lawsuit challenging a Department of Corrections policy which bars most out-of-state travel by sex offenders on probation, including casual in-and-out trips to neighboring states. The state removed the case to federal court, but that court has ordered that some of the claims be returned to state court for resolution. Cooperating Attorney: Richard Sinapi

*In re: Providence Journal Company. ACCESS TO THE COURTS. "Friend of the court" brief filed in response to court's refusal to publicly release various briefs submitted in the "Operation Plunder Dome" corruption case, asking appeals court to overturn the district court's long-standing practice of not placing *any* court briefs in the public file. The appellate court overturned the no-filing policy. Cooperating Attorney: Jerry Elmer

R.I. ACLU v. Providence Police Department. RACIAL PROFILING. Lawsuit challenging the Providence Police Department's failure to comply with the state's "Driving While Black" data collection law. Comprehensive court orders requiring independent monitoring of the agency, at its expense, were entered. A contempt finding against the Department for non-compliance with those orders has been issued. Cooperating Attorney: Carolyn A. Mannis

*R.I. ACLU v. Woonsocket Police Department. RACIAL PROFILING. Lawsuit challenging the Woonsocket Police Department's failure to comply with the state's "Driving While Black" data collection law. In light of compliance steps taken after the ACLU provided the Department notice of its suit, a request for a temporary restraining order was denied. Cooperating Attorney: Carolyn A. Mannis

#R.I. Brotherhood of Correctional Officers v. R.I. Airport Corporation. FREEDOM OF SPEECH. Federal lawsuit challenging the airport's censorship of an issue-oriented advertisement on the grounds that it was "political" and "negative." The Airport agreed to allow the ad. Cooperating Attorneys: Lynette Labinger, Christopher Corbett

Rhode Island Medical Society v. Whitehouse. REPRODUCTIVE FREEDOM. Federal lawsuit challenging the constitutionality of a state law banning so-called "partial birth abortions." A court ruling striking down the statute was affirmed on appeal. Attorneys fees motions are pending. Cooperating Attorney: Lynette Labinger. ACLU Reproductive Freedom Project Attorneys: Catherine Weiss, Talcott Camp, Caitlin Borgmann

Sarro v. Donald Wyatt Detention Center. RIGHTS OF PRISONERS. “Friend of the court” brief arguing that prison guards at the Wyatt Detention Center are “state actors” who can be sued for violating inmates’ constitutional rights. A motion to dismiss the case is pending. Cooperating Attorney: Diana Hassel

South County Sand and Gravel, Inc. v. The South Kingstown Neighborhood Congress, Inc. SLAPP SUIT. Defense representation of a community group and its members sued for defamation by a developer for statements made at a Town Council Meeting and in the group’s newsletter. The court dismissed the suit. Proceedings to obtain payment of attorneys fees have been instituted. Cooperating Attorneys: Andrew Prescott, Lynda Laing

*State v. Fritz. DUE PROCESS/EQUAL PROTECTION. “Friend of the court” brief in this criminal appeal in which a father was charged with willfully failing to pay more than \$30,000 in child support accrued after his parental rights were terminated, even though the state had never before interpreted the law to apply under such circumstances. The brief argues that the defendant is being selectively prosecuted in violation of his equal protection rights. The Court remanded this issue back to Family Court for further consideration. Cooperating Attorney: Diana Hassel

State of Rhode Island v. United States. RIGHTS OF WHISTLEBLOWERS. “Friend of the court” brief supporting Department of Environmental Management employees who filed whistleblowing and retaliation complaints with the U.S. Department of Labor. After a DOL Administrative Law Judge ruled in favor of one employee, the state filed this federal lawsuit arguing that the DOL proceedings violated “sovereign immunity,” which the brief challenges. The appeals court has upheld a lower court ruling siding with the state. Cooperating Attorney: Jonathan Gutoff

*Town of Barrington v. Calandrelli. FREEDOM OF SPEECH. Defense representation of gift store owners sued for violating town’s sign ordinance by displaying a life-sized cow statue outside their store. Defendants filed a counter-claim, arguing that the sign ordinance is unconstitutional. The Town agreed to entry of an order barring enforcement of the ordinance against the defendants pending further hearings. Cooperating Attorney: Carolyn A. Mannis

#United States v. Brown. SEARCH AND SEIZURE. The ACLU joined in a “friend of the court” brief filed by the Federal Defender in this appeal, seeking to limit the circumstances under which no-knock entries by police are lawful. On a tie vote, the appeals court upheld the police entry in this case. Cooperating Attorney: John A. MacFadyen

#Whitehouse v. Moran. RIGHTS OF EMPLOYEES. Representation of a school teacher facing removal from the local Board of Canvassers under a state law barring Board members from being employed by any branch of government. The Court upheld the statute’s constitutionality. Cooperating Attorney: Charles Levesque

*Hall v. INS. RIGHTS OF IMMIGRANTS. A motion to file an amicus brief has been filed in this habeas corpus petition, seeking to address the constitutionality of a federal law providing for the automatic detention of most immigrants undergoing deportation proceedings. The petitioner in this case is not a lawful permanent resident. Cooperating Attorney: Randy Olen

#Martinelli v. Hopkins. FREEDOM OF SPEECH. “Friend of the court” brief opposing a Superior Court ruling holding a Town liable for damages for granting an entertainment license to a music festival at which a person was injured. The brief argues that imposing unreasonable investigatory burdens on towns before the issuance of such licenses would likely lead to inquiries, and license denials, that violate the First Amendment. The Court upheld the ruling. Cooperating Attorney: John A. Glasson

*Mosby v. McAteer. DUE PROCESS. The ACLU has moved to file an amicus brief in this case involving due process for the granting or denial of concealed weapons permits by the Attorney General’s office. Cooperating Attorney: Thomas W. Lyons

*#State v. Raymond Garcia. DUE PROCESS. Representation of a driver given a speeding ticket, who unsuccessfully sought to have the ticket dismissed under the “good driving record” statute. The court had advised the defendant that because he had a commercial driver’s license, he had to present proof from all 50 states of a clean driving record. At a second arraignment, represented by ACLU counsel, the charge was dismissed based on his clean Rhode Island driving record. Cooperating Attorney: Andrew Horwitz