

2003 RHODE ISLAND ACLU CASE DOCKET

Cases Active January-December 2003

* indicates case opened in 2003; # indicates case closed in 2003

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. A motion for attorneys' fees is pending. Cooperating Attorney: John W. Dineen

*Alves v. Palazzo. SLAPP SUIT. "Friend of the court" brief filed in this SLAPP suit appeal in support of a person who was sued by a state Senator for making critical comments about him in letters to the editor of the local paper. Cooperating Attorney: Staci Kolb

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 further court proceedings. 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. Shortly after the suit was filed, the town repealed the ordinance and paid attorneys' fees. 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

*Barros v. Town of Scituate. RACIAL PROFILING. Federal lawsuit challenging two separate incidents of racial profiling in which the plaintiff was stopped, questioned and, in one instance, improperly ticketed by Scituate police. Defendants have filed motions for summary judgment. Cooperating Attorney: Thomas G. Briody

Brown v. Providence Police Department. OPEN RECORDS/POLICE PRACTICES. Open records lawsuit challenging police department's refusal to release policies governing the use of video surveillance cameras in public street locations and in police cars. A court ordered their release, but denied plaintiff's request for attorneys fees. Following an appeal, the lower court was ordered to reconsider that request. Cooperating Attorney: Staci Kolb

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

*Carlow v. Mruk. FREEDOM OF SPEECH. Federal lawsuit challenging a "gag order" issued by a Coventry fire district chief against two firefighters after they publicly expressed fire-department related concerns about school safety. Settlement negotiations are proceeding. Cooperating Attorney: John W. Dineen

#Cesar v. Immigration and Naturalization Service. RIGHTS OF IMMIGRANTS. The ACLU 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 appealed, and the court dismissed the petition based on an intervening U.S. Supreme Court ruling.

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. The City is considering dismissal of the charges. Cooperating Attorneys: Thomas G. 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, but the Supreme Court affirmed those rulings. 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. Discovery is proceeding. Cooperating Attorney: Thomas W. Lyons

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 lower court dismissed the suit, and an appeal is pending. Cooperating Attorney: Thomas G. 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 a federal law requiring such deportation was enacted. An immigration judge granted the petition. 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 been paid. Cooperating Attorney: Mark W. Freel

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

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. Settlement negotiations are proceeding. 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

#Maynard v. Hibbard. OPEN RECORDS. Open records lawsuit filed against Charlestown for refusing to release billing records from, and payments to, attorneys representing the Town in a zoning case. The Court dismissed the suit, and an appeal was filed but dismissed after a favorable ruling in a related case. Cooperating Attorney: Staci Kolb

*Melendez v. Town of North Smithfield. SEX DISCRIMINATION/RACE DISCRIMINATION. Federal lawsuit, on behalf of a female Hispanic firefighter applicant, challenging a state law giving a town a one-time exemption from the Fair Employment Practices Act in order to allow its acquisition of an all white, all male private fire and rescue service. A temporary restraining order was issued. Cooperating Attorneys: Lynette Labinger, John W. Dineen

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. A panel of the appellate court agreed, but the case will be reviewed by the entire appeals court. Cooperating Attorneys: Joseph M. Fernandez, Jerry Elmer

*#In re: Michael P. STUDENTS’ RIGHTS. Administrative due process proceeding filed on behalf of a Chariho special education student who was kept out of school for almost a year due to the school’s failure to accommodate his medical needs. A negotiated settlement was reached. Cooperating Attorney: H. Jefferson Melish

Mosby v. McAteer. DUE PROCESS. “Friend of the court” brief filed in this case arguing that the Attorney General must provide minimal due process safeguards in considering requests for concealed weapons permits. Oral argument has been held in the R.I. Supreme Court. Cooperating Attorney: Thomas W. Lyons

#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 U.S. Supreme Court upheld the law’s constitutionality, while narrowing its scope. ACLU Attorneys: Ann Beeson, Christopher Hansen

*#Narragansett Indian Tribe v. State of Rhode Island. INDIAN RIGHTS. “Friend of the court” brief challenging on various grounds the legality of a state police raid of a smoke shop on Narragansett Indian tribal land. Cooperating Attorney: Lynette Labinger. National ACLU Attorney: Stephen Pevar

#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. After the suit was filed, the DMV agreed to give plaintiff the license. Cooperating Attorney: James Kelleher

*#Osediacz v. City of Cranston. FREEDOM OF RELIGION. Federal lawsuit challenging the display of a nativity scene and menorah on the front lawn of Cranston City Hall. Cooperating Attorneys: Miriam Weizenbaum, Amato DeLuca

#Podoprigora v. INS. RIGHTS OF IMMIGRANTS. The ACLU 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. The court dismissed the appeal as moot in light of further actions by immigration officials on his case.

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. Various motions are pending. Cooperating Attorney: Richard Sinapi

*#Rathbun v. Autozone. SEX DISCRIMINATION. The ACLU is co-counsel in this appeal of a federal sex discrimination lawsuit, addressing the appropriate statute of limitations for filing suit under the R.I. Civil Rights Act. Oral argument has been held. Cooperating Attorney: Lynette Labinger

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 was issued, and the City has appealed. The filing of pre-briefing statements has been ordered by the Court. Cooperating Attorney: Carolyn A. Mannis

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. The court denied defendants’ motion to dismiss the suit, and the case was subsequently settled. Cooperating Attorney: Diana Hassel

*Shakur v. Wall. RIGHTS OF PRISONERS. Representation of an inmate, who had initially filed a *pro se* lawsuit, challenging on First Amendment grounds various prison policies governing inmate access to magazines and other publications. Cooperating Attorneys: Christopher Corbett, Lynette Labinger

#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 and ordered payment of defendants’ attorneys fees. Payment was made. Cooperating Attorneys: Andrew Prescott, Lynda Laing

*State v. Bullivant. FREEDOM OF SPEECH. Defense representation of a person charged with obstructing police for allegedly notifying a restaurant owner that police were engaged in an undercover sting operation for underage drinking at local bars. Without reaching the First Amendment issues raised by the case, a judge dismissed the suit, finding that the defendant’s conduct did not constitute obstruction under the statute. Cooperating Attorneys: Charles Levesque, Nicholas Trott Long.

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 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 dismiss the suit, allow the cow to stay, pay attorneys’ fees and review the sign ordinance for possible amendments. Cooperating Attorney: Carolyn Mannis

*Young v. City of Providence. RIGHT TO COUNSEL. “Friend of the court” brief challenging, on free speech and due process grounds, the proposed imposition of sanctions on plaintiffs’ attorneys in the Cornel Young, Jr. civil rights case for allegedly misstating the judge’s position in court papers. The court denied the ACLU permission to file the brief. Cooperating Attorney: Amy R. Tabor

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