

2004 RHODE ISLAND ACLU CASE DOCKET

Cases Active January-December 2004

* indicates case opened in 2004; # indicates case closed in 2004

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; the R.I. Supreme Court upheld dismissal of the suit. 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 revised the policy and paid attorneys fees. Cooperating Attorney: Jennifer Azevedo

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. The officer was acquitted, and an appeal has been filed. Cooperating Attorney: Thomas G. Briody

*Bourgeois v. Town of North Smithfield. SEX DISCRIMINATION. Administrative discrimination complaint filed on behalf of a man who, solely because of his sex, was denied a position as the coach for a girls' junior high softball team. Cooperating Attorney: Lynette Labinger

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 Attorneys: Carolyn A. Mannis, Jeanne Scott

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. The defendants agreed to rescind the challenged policies. A motion for attorneys fees is pending. Cooperating Attorney: John W. Dineen

*Carlow and Perry v. Mruk. FREEDOM OF SPEECH. Federal lawsuit challenging actions by Coventry Fire District officials in banning members of the public from videotaping the District's annual financial meeting and preventing certain attendees from speaking. Cooperating Attorney: Gary Berkowitz

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

*Clavet v. Lincoln School Committee. FREEDOM OF SPEECH. Federal lawsuit alleging that a school district failed to hire an applicant for two art teacher positions because of her public criticism over the years, as a parent, of some school district practices. Discovery is proceeding. Cooperating Attorney: Jennifer Azevedo

*Clean Water Action, Inc. v. Town of Johnston. FREEDOM OF SPEECH. Federal lawsuit challenging a town ordinance barring door-to-door charitable solicitation after 6 PM. A temporary restraining order was issued. Cooperating Attorney: Carolyn Mannis

*#Cullen v. Town of Lincoln. RIGHTS OF VOTERS. Lawsuit challenging the legality of a September run-off “preliminary election” for non-partisan at-large school committee seats in Lincoln to be decided in November. A consent judgment was entered, formally declaring null and void both the “preliminary” election results and the town ordinance authorizing this election procedure. Cooperating Attorney: Annie Goldberg

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 the 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 the appellate court affirmed the dismissal. Cooperating Attorney: Thomas G. Briody

*#Gebremichael v. Bureau of Immigration and Custom Enforcement. IMMIGRANTS’ RIGHTS. The ACLU intervened in this *pro se* petition on behalf of a non-citizen who had been detained for three years awaiting deportation. The District Court affirmed a magistrate judge’s ruling that the petitioner should be released, but gave the government ten days to get deportation papers in order. When that time passed without any action, the Affiliate sought the petitioner’s immediate release, which was granted. 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: David Fathi

#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 case was settled for \$65,000 in damages. 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; the appeal was voluntarily withdrawn. Cooperating Attorney: Christopher P. Corbett

*Maddalena v. State of Rhode Island. EMPLOYMENT DISCRIMINATION. “Friend of the court” brief motion filed in this employment discrimination case, challenging the state’s contention that it has sovereign immunity from suit for claims filed under the Rhode Island Civil Rights Act. Cooperating Attorney: Robert Savage

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. After a temporary restraining order was issued, the Court permanently barred the Town from implementing the takeover. A motion for attorneys fees is pending. 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, as did the full court upon reconsideration. The legislature then redrew the district lines, and the suit was voluntarily dismissed. Cooperating Attorney: Jerry Elmer

#Mosby v. McAteer. DUE PROCESS. “Friend of the court” brief filed in this case arguing that the Attorney General must provide applicants certain due process rights in considering requests for concealed weapons permits. In a lengthy opinion, the R.I. Supreme Court ruled that only minimal due process safeguards were required. Cooperating Attorney: Thomas W. Lyons

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. The Court upheld the state’s actions, and an appeal is pending. Cooperating Attorney: Lynette Labinger. National ACLU Attorney: Stephen Pevar

Osediacz v. City of Cranston. FREEDOM OF RELIGION. Federal lawsuit challenging both the display of a nativity scene and menorah on the front lawn of Cranston City Hall and city policies governing what displays may be erected. The Court struck down the policies but upheld the display’s constitutionality. Cooperating Attorneys: Miriam Weizenbaum, Amato DeLuca

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 ordered that some of the claims be returned to state court for resolution, where the matter is 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. The Court agreed with the ACLU’s position. Cooperating Attorney: Lynette Labinger

*R.I. ACLU v. Begin. FREEDOM OF SPEECH. Federal lawsuit challenging the constitutionality of various aspects of Rhode Island’s campaign finance law, and the Board of Elections’ interpretations of the law, that impermissibly restrict the rights of individuals and entities to campaign on ballot referenda questions. Cooperating Attorney: Howard Merten

R.I. ACLU v. Providence Police Department. RACIAL PROFILING. Lawsuit challenging the Providence Police Department’s failure to comply with the state’s racial profiling 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 appealed. The case has been remanded to the lower court for further consideration. Cooperating Attorney: Carolyn A. Mannis

*R.I. ACLU v. State of Rhode Island [Court Interpreters]. ACCESS TO THE COURTS. This is a formal administrative complaint filed with the U.S. Department of Justice, claiming that the state has failed to provide adequate interpreter services to criminal defendants in state court proceedings. A review has been initiated.

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 were awarded, and subsidiary motions are pending. Cooperating Attorney: Lynette Labinger. ACLU Reproductive Freedom Project Attorney: Talcott Camp

*R.I. Parents for Progress v. Board of Elections. RIGHTS OF VOTERS. Lawsuit challenging, as a violation of the First Amendment and federal election law, the Board of Elections’ plan to disqualify the “provisional ballots” cast by voters who registered by mail after January 1, 2003 if they failed to provide acceptable identification at the polling place. Shortly after the suit was filed, the Board reversed its position and agreed to count those ballots. Cooperating Attorney: John W. Dineen

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

#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.

Young v. City of Providence. RIGHT TO COUNSEL. “Friend of the court” brief challenging, on free speech and due process grounds, the 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 district court denied the ACLU permission to file the brief; the brief was later filed in the appellate court, where the case is pending. Cooperating Attorney: Amy R. Tabor

*Young v. City of Providence (II). ACCESS TO THE COURTS. “Friend of the court” brief challenging the validity of a local federal district court rule generally barring motions for summary judgment from including appendices or exhibits more than 20 pages long. The brief argues that the rule, which had a detrimental impact on plaintiff’s ability to respond to defendants’ motion for summary judgment in this case, conflicts with federal law. Cooperating Attorney: John W. Dineen

*Young v. Wall. RIGHTS OF PRISONERS. The ACLU has taken over this *pro se* prisoner’s lawsuit challenging, as an unlawful taking of property without just compensation, a Department of Corrections policy eliminating the right of inmates to obtain interest on their inmate accounts. Cooperating Attorney: Andrew Prescott

*Tiverton School Committee v. McCullough. GAY AND LESBIAN RIGHTS. The ACLU is representing the defendants in this case, a recently-married lesbian couple living in Massachusetts, one of whom is a retired Tiverton teacher. The school district’s collective bargaining agreement provides retired teachers with family health care benefits for spouses. When the defendants applied for coverage, the school district responded with this declaratory judgment action seeking a ruling that Rhode Island does not recognize same-sex marriages solemnized outside of the state. Cooperating Attorneys: Lynette Labinger, Lise Iwon

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