

## 2007 RHODE ISLAND ACLU CASE DOCKET

Cases Active January-December 2007

\* indicates case opened in 2007; # indicates case closed in 2007

#ACLU Foundation v. Lynch. ACCESS TO THE COURTS. Federal lawsuit challenging a R.I. Supreme Court ruling that state law and R.I. Rules of Professional Conduct bar lawyers from sharing attorneys' fee awards with non-profit organizations. A favorable ruling was handed down in a related case in which the Affiliate had raised the issue, so this lawsuit was voluntarily dismissed. Cooperating Attorney: Mark Freel

#Agin v. Portsmouth School Committee. STUDENT RIGHTS. Lawsuit challenging a high school principal's decision, on "zero tolerance" grounds, to ban a student from appearing in medieval garb and holding a prop broadsword for his senior yearbook photo. At the court's request, the matter was referred to the state Commissioner of Education, who ruled in favor of the student. Cooperating Attorneys: Thomas Connolly, George Lieberman

\*Arnold v. Lebel. DUE PROCESS. "Friend of the court" brief, filed with the R.I. Disability Law Center, challenging, on due process grounds, the reliance by Department of Human Services hearing officers in Medicaid eligibility cases on *ex parte* evidence obtained outside the hearing process. Oral argument in the R.I. Supreme Court has been held, and a decision is awaited. RIDLC Attorney: Anne Mulready

Association of Community Organizations for Reform Now (ACORN) v. Town of East Greenwich. FREEDOM OF SPEECH. Federal lawsuit challenging a town ordinance barring door-to-door solicitation after 7 PM and requiring licensing of any solicitors, including those for non-profit organizations. The court upheld the restrictions, but the appellate court remanded the case for further hearings. Cooperating Attorney: Carolyn A. Mannis

Brown v. Providence Police Department. OPEN RECORDS/POLICE PRACTICES. Open records lawsuit seeking police department's 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. Settlement negotiations are proceeding. Cooperating Attorney: Staci Kolb

\*Brown v. Esserman. OPEN RECORDS/POLICE PRACTICES. Open records lawsuit seeking police department's policies governing the use of video surveillance cameras in public street locations. Settlement negotiations are proceeding. Cooperating Attorney: Staci Kolb

Brown v. R.I. State Police. OPEN RECORDS/POLICE PRACTICES. Open records lawsuit seeking access to a State Police cruiser camera videotape of a controversial traffic stop and copies of the agency's traffic enforcement policies and procedures. Cooperating Attorney: Thomas W. Lyons

\*#Chambers v. Ormiston. GAY AND LESBIAN RIGHTS. "Friend of the court" brief filed in the R.I. Supreme Court supporting the jurisdiction of the Family Court to entertain a divorce petition filed by a same-sex couple validly married in Massachusetts. By a 3-2 vote, the court held that the Family Court had no jurisdiction to hear the petition. Cooperating Attorney: Carolyn A. Mannis ACLU GLBT Project Attorney: Rose Saxe

\*#Champlin's Realty Associates v. Tikoian. EXECUTIVE PRIVILEGE. "Friend of the court" brief arguing against the adoption of a "deliberative process" privilege by government agencies in court proceedings. The court ultimately found it unnecessary to reach the issue. Cooperating Attorney: Christopher Corbett

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 held at a private bar. A motion to dismiss the charges is pending. 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 and, in a second appeal, an order requiring defendants to turn over the records at no cost and to pay attorneys' fees. After lengthy negotiations, an award of attorneys' fees was made. Cooperating Attorney: Dennis Grieco II

#Doe v. Dan's Donuts. GAY AND LESBIAN RIGHTS. The ACLU is co-counsel in this lawsuit claiming that the plaintiff was fired from his food-serving job after his employer found out that he was gay and HIV-positive. The case was favorably settled. Cooperating Attorney: Lynette Labinger

\*#Driver v. Town of Richmond. FREEDOM OF SPEECH. Federal lawsuit challenging a town's actions in repeatedly removing a political candidate's signs from private property. Motions for summary judgment have been filed. Cooperating Attorney: Richard A. Sinapi

\*#Drug and Alcohol Treatment Association of Rhode Island v. Tavares. RIGHTS OF EX-OFFENDERS. Lawsuit challenging the legality of state regulations that authorize the denial or reduction of compensation to violent crime victims based solely on their having an unrelated drug-related criminal history or DUI conviction in their past. Settlement negotiations ensued, and the new General Treasurer agreed to repeal the challenged regulations. Cooperating Attorney: Frederic Marzilli

\*#Estrada v. R.I. State Police. RACIAL PROFILING. "Racial profiling" lawsuit challenging the legality of the stop, hour-long detention, and transporting to immigration officials of fourteen Guatemalans, based solely on the ethnicity of the driver and passengers. Discovery is proceeding. Cooperating Attorney: V. Edward Formisano

\*#Fontes v. Gonzalez. RIGHTS OF IMMIGRANTS. "Friend of the court" brief filed in a petition for rehearing in this deportation case, arguing that application of a federal law to bar appellate court jurisdiction of the appellant's habeas corpus claims violates the Constitution. The court ruled that the appellant had not properly preserved this claim for consideration. ACLU Immigrant Rights Project Attorney: Lee Gelernt

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

\*#Horn v. Southern Union Company. SEX DISCRIMINATION. “Friend of the court” brief in R.I. Supreme Court, arguing that the R.I. Civil Rights Act contains an implied three year statute of limitations for suing over discrimination claims. On a 3-2 vote, the Court instead held that a one-year statute of limitations applied. Cooperating Attorney: Lynette Labinger

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. The Court has also ruled in this case that the state cannot enforce in federal proceedings local court rules that bar attorney fee awards to the ACLU. Cooperating Attorneys: John W. Dineen, Mark Freel. ACLU National Prison Project: David Fathi, Amy Fettig

\*#Jessica G. v. Westerly School Department. RIGHTS OF JUVENILES. “Friend of the court” brief in R.I. Supreme Court challenging the lack of due process safeguards in truancy court hearings. The appeal was dismissed as moot when the lower court agreed to dismiss the appellant from the jurisdiction of the court. Cooperating Attorney: Amy R. Tabor

\*#In re Kenneth K. RIGHTS OF JUVENILES. “Friend of the court” brief opposing DCYF appeal seeking a stay of a Family Court ruling requiring court oversight of 18-to-21 year olds who are in DCYF’s care as dependent, neglected or abused children. Cooperating Attorney: Maureen Conroy

#Poe v. State of Rhode Island. RIGHT TO TRAVEL. State court lawsuit challenging a Department of Corrections’ policy that 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 court upheld the policy’s legality. Cooperating Attorney: Richard Sinapi

\*#Rhode Island Affiliate, ACLU v. Moran. OPEN RECORDS. Open records lawsuit challenging police department’s refusal to release the report regarding the fatal shooting of a local resident by police. A court ordered release of the records. Cooperating Attorneys: Howard Merten, Keith Fayon

#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 was remanded to the lower court for further consideration. After lengthy negotiations, the matter was settled with an award of attorneys’ fees. Cooperating Attorney: Carolyn A. Mannis

\*#R.I. ACLU v. Rhode Island Department of Human Services. RIGHTS OF IMMIGRANTS. This is a formal administrative complaint filed with the Office of Civil Rights of the U.S. Department of Health and Human Services, claiming that DHS has failed to provide adequate interpreter services to clients with limited English proficiency.

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 language interpreter services to criminal defendants. A review has been initiated.

In re: R.I. ACLU Complaint Against Verizon and AT&T. RIGHT TO PRIVACY. This is an administrative complaint filed with the Division of Public Utilities and Carriers, seeking an investigation as to whether the two phone companies violated state law by providing telephone customer information to the National Security Agency without either a warrant or notice to customers. The phone companies filed a motion to dismiss, and the parties agreed to a stay of proceedings pending a court decision in California in a case considering whether federal law preempts complaints such as this. Cooperating Attorney: John McConnell, Jr.

R.I. Parents for Progress v. Board of Elections. VOTING RIGHTS. Lawsuit challenging 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. A motion for attorneys' fees is pending. Cooperating Attorney: John W. Dineen

#Spratt v. Wall. RELIGIOUS FREEDOM. Appeal of a federal court ruling upholding a warden's decision to bar an inmate from supervised preaching at religious services even though he had done so for seven years without incident. The appeal argues that the ban violates a federal law guaranteeing religious freedom to institutionalized persons. The appellate court reversed the lower court ruling, and the state subsequently adopted a new policy in accordance with the federal law, and also agreed to pay damages and attorneys' fees. Cooperating Attorneys: Lynette Labinger, Carly Iafrate

Vono v. Capaldi. FREEDOM OF SPEECH. Lawsuit challenging a state ban on industrial zone outdoor advertising unless the advertising relates to "on premises" activity. Motions for summary judgment were filed, and a decision is awaited. Cooperating Attorney: John W. Dineen

#Women's Studies Organization of Rhode Island College v. Rhode Island College. FREEDOM OF SPEECH. Federal lawsuit challenging both the college's censorship of a campus sign display supporting reproductive freedom that was sponsored by a student women's rights group and the constitutionality of a sign policy that the college adopted in response to the incident. In settlement of the case, the defendants agreed to adopt a new uniform sign policy, and to pay damages and attorneys' fees. Cooperating Attorney: Jennifer Azevedo

Young v. Wall. RIGHTS OF PRISONERS. The ACLU took over this *pro se* inmate's lawsuit challenging, as an unlawful taking of property without just compensation, a prison policy eliminating the right of inmates to obtain interest on their inmate accounts. The suit was dismissed initially on procedural grounds, but has been refiled. Cooperating Attorney: Andrew Prescott

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