



ACLU

FOUNDATION

AMERICAN CIVIL LIBERTIES UNION
of PENNSYLVANIA

2008 Legal Docket

The ACLU of Pennsylvania's 2008 Legal Docket reflects another busy year challenging the abuse of power by government officials across the Commonwealth. The docket contains the typically large number of First Amendment cases, involving freedom of speech, association and religion. In addition to a rise in student-rights and criminal-justice cases, perhaps the most dramatic change in our docket over the past several years has been the increase in national-security-related and immigrants' rights work, which reflects a nationwide trend. Ultimately, the ACLU-PA helped defend rights and liberties on a host of varied and important issues involving people from all walks of life throughout the state.

ACLU of Pennsylvania 2008 Legal Cases

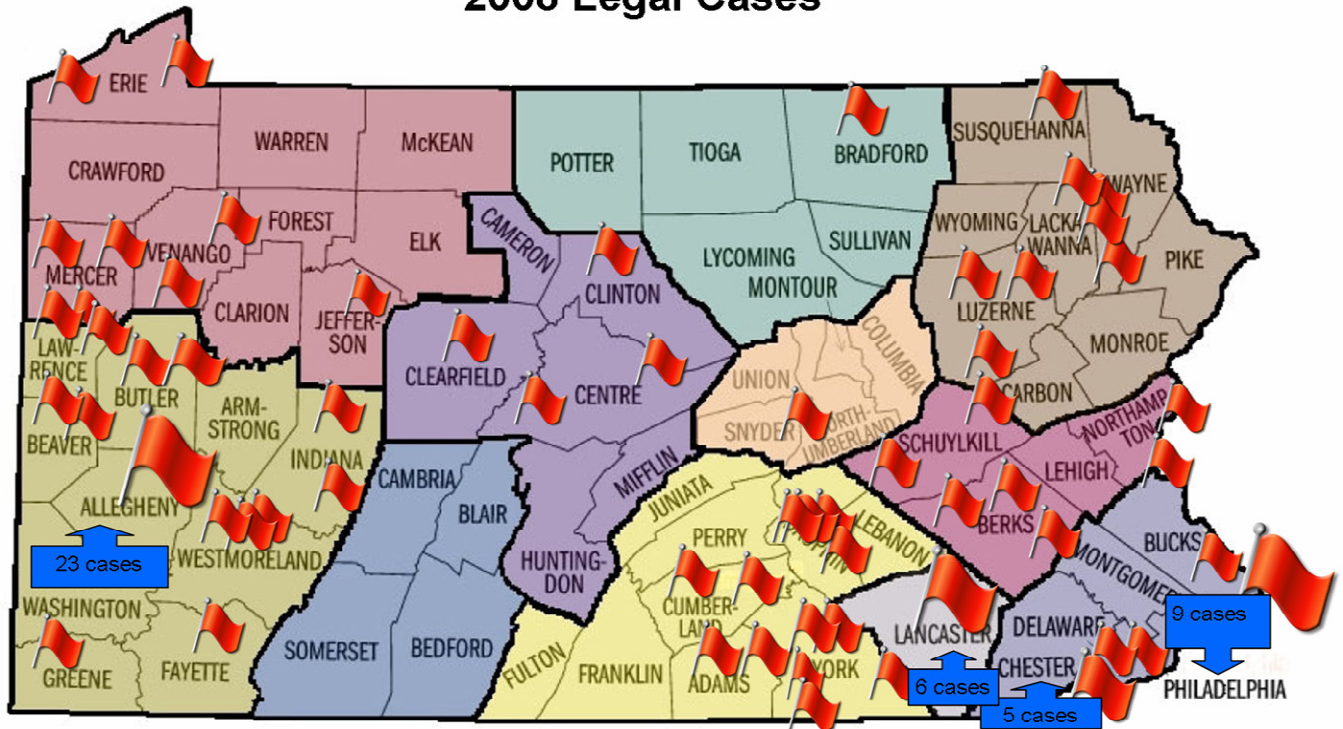


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NATIONAL SECURITY

Pilot on No-Fly List Regains Job (Schuylkill Co.) –The ACLU-PA’s lawsuit in August on behalf of a Muslim pilot and his wife, alleging that their listing on a government terrorist watch list violates due process and constitutes retaliation and discrimination because the listing is based on their religion, resulted in the TSA allowing the pilot to resume flying. Erich Scherfen is an American-born Gulf War veteran who served in the military for nearly 16 years and converted to Islam after his exposure to the religion in the Middle East. His wife, Rubina Tareen, was born in Pakistan but has been a U.S. citizen for nearly 30 years. They are both active in their Mosque and Rubina sells literature and gives presentations about Islam and its similarities to other faiths. Since 2006 they have been delayed by security checks at airports, resulting in missed flights, and have been detained for up to 5 hours when returning to the U.S. from Canada. In April, Scherfen’s commercial-airline employer suspended him without pay because of a “positive match” with his name on a watch list, which meant that he could not fly. Although TSA has an administrative complaint process for people who believe they are on a watch list, it is virtually impossible to be removed from the list. The watch lists have been widely criticized as ineffectual and error-filled by the Justice Department’s Inspector General and most recently in a congressional report. After Judge Vanaskie refused the Justice Department’s request to dismiss the suit and scheduled a preliminary injunction hearing for mid-September, Scherfen mysteriously got his job back. Since Scherfen and Tareen still appear to be on the watch list, the case continues in an effort to explore the workings of the government’s watchlists. *Scherfen v. U.S. Dep’t. of Homeland Security, et al.*, M.D.Pa. (Judge Vanaskie). ATTORNEYS: Foerster and Damron (Saul Ewing); Burch and Walczak.

Egyptian-born Physicist Loses Security Clearance and Job (Allegheny Co.) – The ACLU-PA filed suit in June against the U.S. Department of Energy (D.O.E.) on behalf of an Egyptian-born U.S. citizen, Dr. Moniem El-Ganayni. His security clearance was revoked in May, costing him the job he held as a physicist at Bettis Laboratories for eighteen years. El-Ganayni, who had never received a negative evaluation, was discharged after D.O.E. and F.B.I. questioned him about speeches he gave at his Mosque criticizing America’s involvement in the Iraq war, the F.B.I.’s handling of a raid on a Pittsburgh Mosque, and his Muslim beliefs. When El-Ganayni invoked his right to challenge the revocation of his security clearance in an administrative proceeding, D.O.E. — for the first time in at least 24 years — relied on national security to halt all of its due process protections for our client. Instead, the Deputy

Secretary of Energy invoked a provision in an old Executive Order to claim that the administrative proceedings could not continue because of unspecified national-security reasons. Thereafter our client was refused an explanation of why his clearance was revoked along with his right to a hearing to contest the decision. The ACLU-PA filed suit in June, but in October the Court dismissed our claims, ruling that it did not have authority to second-guess the Administration’s invocation of national security. Our appeal to the U.S. Court of Appeals for the Third Circuit is pending. *El-Ganayni v. U.S. Dep’t. of Energy*, W.D.Pa. (Judge McVerry). ATTORNEYS: Whitson, Titus and McGrann (Schnader Harrison); Walczak.

Adverse Decision in Warrantless Wiretapping Challenge -- In May 2006 the ACLU-PA filed a complaint with the PA Public Utility Commission (PUC) on behalf of 20 organizations and individuals who were concerned about the privacy of their telephone records. The action was filed in the wake of news reports that telephone companies were sharing customer-calling information with the National Security Agency (NSA) without customer permission. On July 9, 2008, the full Commission issued a decision affirming the ALJ. We will not appeal the case further since recently passed federal law gives the telephone companies immunity and limits challenges. *ACLU of PA, et al v. AT&T, et al., Pa. Utilities Comm’n.* ATTORNEYS: Trujillo (Trujillo Rodriguez & Richards); Roper.

IMMIGRANTS’ RIGHTS

Hazleton’s Anti-Immigration Ordinance Struck Down and Now on Appeal (Luzerne Co.) – In July 2007, U.S. District Judge James Munley declared the country’s first *municipal* ordinance targeting illegal immigrants unconstitutional. The 2006 law, which never went into effect because of court injunctions, requires employers to verify all employees’ immigration or citizenship status, for landlords to do likewise with tenants, and requires all tenants to register with the City and provide proof of immigration status. If an undocumented immigrant is found on the payroll or in a rental unit, the employer and landlord are subject to loss of their business license, which means they can no longer operate in the city. The district court agreed with our claims that the law intrudes on the federal government’s authority to regulate immigration, fails to give aggrieved parties adequate notice and opportunity to contest adverse findings, discriminates based on race and ethnicity, and is inconsistent with Pennsylvania law on employment and housing. The case is being watched closely across the country as about 100 other cities have either passed or expressed a desire to pass similar laws. Hazleton appealed the decision and oral argument was

held in the Third Circuit in late October. ***Lozano v. City of Hazleton***, 3d Circuit (Judges McKee, Nygaard, Siler); M.D. Pa. (Judge Munley); ATTORNEYS: Wilkinson, Fiddler, Kaiser, Trujillo, Park and Rosenberg (Cozen O'Connor); Puerto Rican Legal Defense and Education Fund; Community Justice Project; Barron; Vaida; Jadwat, Chang, Lee and Guttentag (ACLU IRP); Walczak.

No Deportation for Egyptian, Coptic Christian Man Facing Likely Torture Upon Return to Home Country (Lancaster Co.) – In 1998 Sameh Khouzam, an Egyptian Coptic Christian, escaped from Egyptian police custody after he had been tortured. The State Department and International NGO's have documented Egypt's mistreatment of Coptic Christians. Upon arriving in the U.S., however, Khouzam was detained based on a scant claim by Egyptian authorities that he was wanted for murder. In 2004, a federal appeals court ruled that the U.S. could not return Khouzam to Egypt because he was likely to be tortured and thus his return would violate the U.S. obligations under the Convention Against Torture (CAT). Khouzam began life anew in Lancaster, where he was gainfully employed as an accountant and active in his church. But in May 2007, he was detained in the York County Prison and advised that the U.S. had received "diplomatic assurances" from Egypt that he would not be tortured upon his return and therefore the U.S. was sending him back. The ACLU filed for and secured emergency injunctions and then in January 2008 a final order prohibiting the U.S. from deporting Khouzam. In December the Third Circuit affirmed the lower court's ruling that the government could not return Khouzam to Egypt without due process. ***Khouzam v. U.S.***, 3d Circuit (Judges Rendell, Smith & Fisher); M.D.Pa. (Judge Vanaskie); Singh, Rabinovitz and Gelernt; (ACLU IRP); Pell; Walczak.

Naturalization-Delay Class Action (PA) – In April 2008 we filed a class-action lawsuit in federal district court in Philadelphia on behalf of all Pennsylvania residents whose applications for citizenship have been pending more than 180 days, including some as long as several years. The suit was designed to address a widespread and growing problem caused by an illegal "extra step" added by the U.S. Citizenship and Immigration Service after 9/11 to the citizenship-application process. While the FBI has always conducted background checks of people applying for U.S. citizenship, USCIS now requires that applicants' names be compared to names held in a broad array of FBI files, including the names of people who have never been suspected of a crime, such as witnesses and crime victims. When an applicant's name is similar to a name in the FBI database, the FBI often will let the name-check process stall for months or years because clearing

the "match" would require a manual review of paper files that may be scattered across the country. We hope to force USCIS to impose firm deadlines for processing citizenship applications and/or suspend the expanded name-check procedure. ***Ignatyev v. Chertoff***, E.D.Pa. (Judge Diamond). ATTORNEYS: Grogan and Diver (Langer Grogan & Diver); Gansallo and Bernstein-Baker (HIAS & Council); Roper (ACLU-PA); Wang (ACLU IRP); Mehok (Nationalities Services Center).

Prolonged Immigration Detention Challenged (York Co.) – ACLU-PA and IRP represent a Jamaican man who has been in prison for more than 28 months while he appeals a deportation order. He has already served his sentence for his criminal conviction and is challenging the decision to deport him based on that conviction. We filed an appeal to the Third Circuit to argue that the Due Process Clause limits the government's ability to detain the man for such a prolonged period pending a decision on the deportation order, a legal precedent that is sorely needed in this circuit. After granting our request to expedite the proceedings, the circuit court then dismissed the appeal and remanded to the district court for more proceedings. In November the district judge granted our habeas petition, ordering the government to release the man or hold an impartial hearing before an immigration judge. Although the man won his hearing before an immigration judge in York, the government filed an appeal and he thus is still detained. ***Wilks v. U.S.***, M.D.Pa. (Judge Caldwell). ATTORNEYS: Rabinovitz, Singh and Tan (ACLU-IRP); Burch.

Deportation of Moroccan Man Halted Based on Likely Torture (York Co.) – In February 2003, Moroccan national Faysal Snoussi was detained and placed in immigration-removal proceedings for overstaying his student visa and distributing drugs. Snoussi claimed that he should not be removed to Morocco because he was likely to be tortured upon his return since the U.S. had identified him as a terrorism suspect. The government has already determined that Snoussi is not a danger to this country. The important legal issue in these proceedings was whether the immigration court should permit Mr. Snoussi's lawyers to subpoena and question U.S. agents about whether they advised Moroccan officials that they considered Snoussi a terrorism suspect, a fact that would increase the likelihood Snoussi would be tortured. In March, the Bureau of Immigration Appeals (BIA) affirmed the immigration judge's decision that the government could not return Snoussi to Morocco because U.S. agents had created a heightened risk of torture by suggesting to Morocco that Snoussi was being investigated for suspected terrorism. ***In re Faysal Snoussi***, B.I.A. ATTORNEY: Burch.

The Right of Undocumented Immigrants to Marry (Luzerne Co.) – In April 2007, the ACLU-PA filed a federal lawsuit on behalf of a West Hazleton couple, Heather Buck and Jose Arias-Maravilla, who were denied a marriage license because of a policy instituted by the Register of Wills for Luzerne County banning the issuance of marriage licenses to non-citizens unless they provided proof of legal residency. Although Ms. Buck is a U.S. citizen, Mr. Arias did not have a current visa. The couple, who have a four-month-old son, hoped to marry before Mr. Arias had to leave the country pursuant to an order of voluntary departure issued by an immigration court. After a one-day trial in May, the court issued a preliminary injunction requiring the Register of Wills to issue a marriage license to the couple, ruling that the policy violated the couple's fundamental right to marry because it was not narrowly tailored to fulfill any compelling government interest. The couple obtained their marriage license and were wed in front of family and friends in Philadelphia 5 days before Arias-Maravilla's scheduled departure. In February 2008, the court entered a consent order permanently barring the Register of Wills from requiring foreign nationals to show proof of lawful presence in the United States to obtain a marriage license. The consent order also requires the Register of Wills to publicize the change in policy and to pay the plaintiffs \$10,000. *Buck v. Stankovic*, M.D. Pa. (Judge Caputo); ATTORNEYS: Grogan and Diver (Langer Grogan & Diver); Kreimer; Jadwat, Chang and Guttentag (ACLU Immigrant Rights Project); Roper and Walczak.

Undocumented Prisoner's Right to Marry (Susquehanna Co.) – In February 2008, the ACLU-PA secured an order from a Common Pleas Court judge ordering the county jail to transport an undocumented-immigrant detainee to the clerk's office so that he and his U.S. citizen wife could obtain a marriage license. The couple, who had one child and another on the way, wished to get married before the man was deported. PA law requires both parties to appear in person to apply for a marriage license, something the man could not do because he was incarcerated. *In re Stoll and Valle*, Ct. Com. Pl. ATTORNEY: Burch.

Man Released on Bond Pending Deportation Hearing (Lackawanna Co.) – In December 2005, the Department of Homeland Security detained Emmanuel Dalegrand, a citizen of Haiti, and sought to deport him based on a string of minor, nonviolent offenses. He applied for relief from removal under the U.N. Convention Against Torture. His case had been pending before the Board of Immigration Appeal and the Third Circuit for nearly 2 and a half years. He had been granted a \$14,000 bond, but he could not afford to pay it. ACLU-PA filed a habeas corpus petition arguing that Dalegrand's

continued detention violates both substantive and procedural due process, the excessive bail clause of the 8th Amendment and U.S. statutes. ICE subsequently reduced the bond, and in June he posted it and was released. *Dalegrand v. Donate*, M.D.Pa. (Magistrate Judge Blewitt). ATTORNEYS: Kalantry (Cornell Univ. Law Clinic); Burch.

FREEDOM OF EXPRESSION

SLAPP Suit Over Pax Christi Report on Lackawanna County Jail Dismissed (Lackawanna Co.) – After confirming disturbing stories about poor medical conditions at the Lackawanna County Jail, the Northeastern PA Chapter of Pax Christi issued a report documenting problems and suggesting a fuller investigation. The medical care contractor for the jail, Correctional Care, Inc. (CCI), sued Joseph Rogan, one of the Pax Christi members who prepared the report, claiming defamation and interference with economic advantage. The ACLU-PA viewed the action as a SLAPP, an acronym for Strategic Lawsuit Against Public Participation, a common tool of developers and corporations to chill critics' speech. After ACLU-PA convened a team of lawyers and entered the case, we suggested to CCI's counsel that their client could be faced with significant sanctions and penalties unless they discontinued the case. CCI withdrew the claims in October. *Correctional Care, Inc. v. Rogan*, Lackawanna Ct. Com. Pl. ATTORNEYS: Cohn, Fox, Rossi, Wilkinson, Jesuit, Wineburgh, Knapp and Rosenberg (Cozen O'Connor); Quigley (Loyola U. School of Law); Roper.

Bridgeville Man Appeals Criminal Conviction for Complaining to Borough Official (Allegheny Co.) – Marshall Pappert didn't like the cement-manufacturing plant operating near his house because it created too much pollution and noise. After borough officials ignored his complaint letters, he left several non-profane, non-threatening messages on the municipal manager's office voicemail demanding that something be done. The police chief filed criminal charges for harassment against Pappert. We represented Pappert in the common pleas court where the judge upheld the conviction. We have filed an appeal to Superior Court, contending that Pappert's complaints were protected by the First Amendment and thus could not be subject to criminal punishment. *Comm. v. Pappert*, Superior Ct. ATTORNEYS: Boni and Rose.

ARTISTIC EXPRESSION

Pole-dancing Studio Gets Occupancy Permit (Butler Co.) – Stephanie Babines is a young woman who leased and began remodeling a building to open a dance and

fitness studio to teach pole dancing and other forms of dance to women. The classes contain no nudity or sexual activity and prohibit spectators. Indeed, pole dancing is a new fitness craze, not only in the U.S. but also in places like China. The Adams Township zoning hearing board refused to issue her an occupancy permit because they classified her dance studio as an “adult business.” The Board thought Babines’ advertising was too provocative because she used the colors pink and black and called an aerobics class Sexxxercise. After unsuccessfully attempting to negotiate a resolution, we filed a lawsuit against the township in August, claiming that the zoning board’s decision was an unconstitutional restriction on Babines’ right to teach dance, which is an expressive activity protected by the First Amendment. After we filed a motion for preliminary injunction, the Township agreed to grant Babines an occupancy permit for the studio. She opened the studio to fully subscribed classes on November 1. The township settled the case in January for \$75,000, including \$25,000 in attorneys’ fees. *Babines v. Adams Township*, W.D.Pa. (Conti, J.). ATTORNEYS: Healey and Downey (Healey & Hornack); Rose and Walczak.

MASS TRANSIT ADVERTISING

Trial in Bus-Ads Case (Allegheny Co.) – In August 2006, the ACLU-PA filed suit on behalf of the League of Young Voters and the ACLU of Pennsylvania against the Allegheny County Port Authority Transit challenging PAT’s rejection of the groups’ request to display on buses an advertisement informing ex-felons of their right to vote. PAT had claimed that it permitted only “commercial” ads, but many people had observed similar know-your-rights ads displayed by other non-profit groups on area buses. In August the judge rejected cross motions for summary judgment, ruling that there was a factual question whether PAT had engaged in unconstitutional viewpoint discrimination. A 6-day bench trial was held in December to determine whether PAT’s rejection of the ad violated the First Amendment. A decision is expected later this year. *League of Young Voters v. Port Authority*, W.D.Pa. (Judge McVerry). ATTORNEYS: Pushinsky; Rose and Walczak.

FLAG DESECRATION

Lawsuit Filed Challenging Pennsylvania’s Flag “Insult” Statute (Northampton Co.) – Joseph Yamrus flew an American flag upside down on his front porch as a signal of distress to protest America’s involvement in the Iraq War. After the flag had flown for a month, a neighbor complained, and in June 2007 a Bangor Borough police officer cited Yamrus under a PA statute that makes it a crime to “insult” the American flag. The

District Attorney dropped the charges in July after ACLU-PA cooperating counsel entered the case. The ACLU-PA filed suit in April to have the “insult-the-flag” statute declared unconstitutional. *Yamrus v. Bangor Borough*, E.D.Pa. (Judge Stengel). ATTORNEYS: Saint Antoine and Williams (Drinker, Biddle & Reath); Roper.

“OFFENSIVE” LANGUAGE

City Pays Damages to Woman Prosecuted for Swearing at Her Toilet (Lackawanna Co.) –A case that drew international attention to a Scranton woman who was charged with disorderly conduct for cussing at an overflowing toilet in her home was settled. In October 2007, Scranton City police cited Dawn Herb for using profanity in her own home. In December 2007 a district magistrate threw out all charges, ruling that even though the speech may have been “offensive, vulgar and imprudent,” it was nevertheless constitutionally protected. In October 2008, Scranton agreed to settle the case for \$19,000. *Commonwealth v. Herb*. ATTORNEYS: Dyller; Burch and Walczak.

Man Wins Appeal of Disorderly Conduct Conviction for Bumper Sticker (Lawrence Co.) – The ACLU-PA represented Brad Nelson in his appeal of a disorderly conduct citation for displaying a bumper sticker on his car that said “Go fuck yourself.” After being found guilty by the magistrate judge, a Court of Common Pleas judge ruled in August that, although offensive, Nelson’s speech was protected by the First Amendment and did not constitute disorderly conduct. *Commonwealth v. Nelson*. ATTORNEYS: Hazlewood (Reed Smith); Rose.

Challenge to Pittsburgh Police’s Practice of Issuing Citations for Protected Speech (Allegheny Co.) – In our lawsuit against Pittsburgh Police on behalf of a man who was cited for showing an officer his middle finger, we discovered that Pittsburgh Police had issued more than 180 citations for “obscene language or gestures” in a 30-month period. Based on this history of citations we are claiming that the City has a custom or practice of violating people’s free-speech rights. Cross motions for summary judgment are pending before the U.S. District Court. *Hackbart v City of Pittsburgh*, W.D.Pa. (Judge Cercone). ATTORNEYS: Farrell and Antonette (Farrell, Reisinger & Stallings); Rose and Walczak

Superior Court Overturns Conviction for Using Profanity around Women and Children (Lawrence Co.) – Rocky Grim Jr. attempted to request a hearing concerning a child-support order entered against his son’s mother at the Lawrence County Domestic Relations Office in April 2006, but the clerk refused to accept the paperwork, claiming that the request was too late. Mr. Grim requested a copy of his file instead, uttered a few choice words about how this wouldn’t be happening if he was a woman, and left the office. He was followed to his car by a police officer, who issued him a citation for disorderly conduct for using obscene language in a public building in front of women and small children. Mr. Grim was convicted of the offense in district court and in the court of common pleas. The ACLU-PA appealed the verdict to Superior Court, which in June held that the speech was protected by the First Amendment and dismissed the charges. *Commonwealth v. Grim*, Pa. Superior Court; Ranjan and Reiter (Kirkpatrick Lockhart & Gates); Rose.

PROTESTERS

Hugs For Puppies’ Foie Gras Protests Against Philly Restaurants (Philadelphia) – This was the third in a series of lawsuits brought by Philadelphia restaurants to block protests by an animal-rights group, Hugs for Puppies, concerning the treatment of geese in the making of foie gras. The two other cases have been settled. In this case, after the Philadelphia Court of Common Pleas entered an ex parte emergency order essentially preventing any protests within sight of the London Grill restaurant, the ACLU-PA became involved and succeeded in persuading the court to reduce the most extreme restrictions. Nevertheless, ACLU-PA has appealed some of the court-set limits, namely, ones that establish a 50-foot-buffer zone; limit protests to no more than two persons at a time and only twice a week; limit protests to sixty minutes; and bar protests during the dinner hour and all weekends – the best times to reach patrons and neighbors alike; and banned all protests in the neighborhoods of the restaurants’ owners and manager. Our appeal to Superior Court was argued in October. *London Grill, v. Hugs for Puppies*, Superior Ct (Judges Shogan, McEwen and Kelly). ATTORNEYS: Rudovsky and Messing (Kairys Rudovsky Messing & Feinberg); Roper.

Voice of the People Rally Opposing Illegal Immigrants (Schuylkill Co.) – In response to pro-immigrant sentiment in Shenandoah following the beating death of a Mexican immigrant there in July, Voice of the People, a political organization opposing illegal immigration, sought to hold a late-August rally in a local park. Borough officials played games with the permit application and failed to take action to approve

the request. Under a last-minute threat of suit by the ACLU-PA, the Borough immediately granted necessary permission. ATTORNEY: Burch.

Anti-Bush Protesters’ Disorderly Conduct Convictions Upheld (Luzerne Co.) – On St. Patrick’s Day 2006, Kurt Shotko and Victor Brobrzyk attended a community parade in Luzerne County. They stood in the crowd along side the parade route with their signs and made no attempt to disrupt the event. Nonetheless, they were arrested and charged with disorderly conduct and with resisting arrest. Half the charges stemmed from the defendants’ alleged use of profanity when they were taken into custody by the police (which, even if true, cannot constitutionally support a charge of disorderly conduct). In January 2007, Shotko and Brobrzyk were convicted by a Luzerne County jury. ACLU-PA appealed to the Superior Court. In August the Superior Court affirmed the convictions. We then filed a petition for leave to appeal to the PA Supreme Court. *Commonwealth v. Shotko and Brobrzyk*, Superior Court (Judges Ford-Elliot, Popovich & Donohue ATTORNEYS: Welsh (Welsh & Recker); Roper.

“Healthcare for All PA” Rallies in Wilkes Barre (Lackawanna Co.) – In June ACLU-PA helped the organization Healthcare for All PA overcome Wilkes Barre’s demand that it pay \$590 for insurance coverage in order to hold a small rally. The fee was waived after we threatened suit. ATTORNEYS: Burch.

Case Against Gettysburg Over Arrest at Roe v. Wade Protest Settled (Adams Co.) – A lawsuit involving a 2006 incident at a Gettysburg National Organization for Women (NOW) Roe v. Wade Anniversary rally was settled in January 2008 after Gettysburg passed a revised demonstration ordinance and paid our client \$22,500 in damages and attorneys’ fees. The case stemmed from a planned January 2006 rally that was cancelled at the last minute when the group couldn’t navigate the City’s onerous demonstration permit requirements. Not having heard about the cancellation, Bruce Davis showed up with his wife and child. He stood on the sidewalk with a sign that read, “Dad for Choice.” The police came and ordered people to disperse; when Davis demurred, he was arrested and charged with disorderly conduct and resisting arrest. The ACLU-PA represented Davis and succeeded in getting all charges dismissed. We then filed a civil rights lawsuit against Gettysburg to challenge Davis’ arrest and to invalidate unconstitutional portions of the permit ordinance, including 60-day-advance-notice and liability-insurance requirements. *Davis v. Gettysburg*, M.D. Pa. (Chief Judge Kane). ATTORNEYS: Rice; Knudsen, Roper and Walczak

“Smoketown Six” Case Over Abu-Ghraib Protests Dismissed (Lancaster Co.) – Thong-clad protesters were arrested by East Lampeter Township and Pennsylvania State Police for disorderly conduct in summer 2004 for re-creating on a roadside a scene from the Abu Ghraib prison scandal just prior to a visit by President Bush. The protesters stripped down to thong underwear and re-created the infamous pyramid depicted in a widely viewed photograph. The charges were withdrawn by the Lancaster County District Attorney in fall 2004. The ACLU-PA filed suit in December 2004 against East Lampeter Township and the PA State Police for arresting the protesters in retaliation for exercising their First Amendment free speech rights. The claims against East Lampeter Township were settled with a damages payment, but the district court in March 2006 dismissed our claims against the state police officers. In April the Third Circuit upheld the lower court, ruling that the law was not clear at the time of the protests and thus the officers could not be held liable. Our request for reconsideration *en banc* was denied. *Egolf v. Witmer*, 3d Circuit (Judges Nygaard, Smith & Hansen); E.D. Pa. (Judge Diamond)). ATTORNEYS: Yoder and Hess (Gibble, Kraybill & Hess); Knudsen and Walczak.

Animal-Rights Protester’s Lawsuit Against Philadelphia Leads to Protest Guidelines (Philadelphia) – In March 2007, the ACLU-PA filed a civil rights complaint on behalf of Marianne Bessey, an animal-rights activist who was arrested while standing on a public sidewalk outside a circus performance. She was holding a sign and handing out literature about the circus’s treatment of animals when two Philadelphia police officers demanded that she move to a nearby street, where most of the arriving circus patrons would not see her. When Bessey refused, she was handcuffed, placed in a police van, and taken to a police station, where she was held in a cell for nearly three hours before being released with a citation for disorderly conduct. The lawsuit charged that the Philadelphia Police Department knowingly fails to train its police officers about the rights of people who engage in public protest and instead allows its officers to retaliate against and discourage peaceful protestors from exercising their First Amendment rights. The case has settled with Philadelphia agreeing to issue protest guidelines and provide appropriate training to officers. The City also paid \$22,000 for damages and attorneys’ fees. *Bessey v. City of Philadelphia*, E.D. Pa. (Judge Robreno). ATTORNEY: Roper.

Lancaster Peace and Justice Coalition Challenges Restrictions (Lancaster Co) – Anti-war groups have encountered problems trying to get permits in the City of Lancaster. The ACLU-PA’s analysis of the underlying ordinance revealed numerous constitutional problems,

including excessive fees, indemnification and insurance requirements, too much discretion in deciding who gets permits, and otherwise unnecessarily onerous application requirements. In response to ACLU-PA’s concerns, the mayor agreed in July 2008 to suspend enforcement of the old ordinance and the City is working to draw up another one that comports with the First Amendment. ATTORNEY: Roper.

Lancaster Harasses Justice 4 Fathers’ Protests (Lancaster Co.) – Justice 4 Fathers is a group that advocates for fathers’ rights. In August and September they were harassed by local police for standing on the side of the road holding signs. The police at various times insisted that they needed a permit or couldn’t hold signs saying honk if you support fathers. ACLU-PA’s threat of suit has ended, at least for now, Lancaster’s harassment of these protesters. ATTORNEY: Roper.

Videographers at Pigeon Shoot Regain Rights (Berks Co.) – SHARK, which stands for Showing Animals Respect and Kindness, is a group that has been videotaping pigeon shoots at the Strausstown Rod & Gun Club for more than a decade. They stand on the berm adjacent to a public roadway and document what they believe to be a cruel practice. In November a state trooper threatened to arrest the videographers unless they left the area, claiming they were trespassing. ACLU-PA intervened to help establish that the strip alongside the roadway, where our clients stood, was within an easement and thus a public space. ATTORNEYS: Walczak.

Immigrant-Workers’-Rights Rally Proceeds (Chester Co.) – Casa & Kaolin Workers’ Union are immigrant-workers’-rights groups that planned a May Day rally in Nixon Park in Kennett Square. But three days before the rally they were informed by the Park Authority that they would have to pay a \$300 usage fee and a \$300 security deposit for the use of the Park, which the groups could not afford. The ACLU-PA sent a letter to the Park Authority and Borough Solicitor in late April requesting an immediate waiver of the fees and explaining why they were unconstitutional. The next day the Park Authority granted the waiver and the rally went forward as planned. ATTORNEY: Roper.

Anti-War Protest in Pittsburgh Proceeds as Planned (Allegheny Co.) – The Thomas Merton Center applied for a permit from the City of Pittsburgh to hold a rally and march to protest on the 5th anniversary of the Iraq war. The City wanted the group to move their preferred rally site because it was in front of a church and the City was concerned about access to the church during the rally. ACLU-PA’s meeting with city police and

officials, resulted in issuance of a permit for a rally at the requested site. ATTORNEYS: Rose.

Anti-Racial-Profilng Protest Proceeds and York Ordinance Amended (York Co.) – In April 2008, the International People’s Democratic Uhura Movement, an organization concerned with issues facing the African community, applied for a permit to hold a rally at a York City park. The rally, entitled “I Ain’t No Gangsta,” was aimed at protesting police profiling techniques. Participants were to wear baggie pants and white T-shirts. In response to InPDUM’s permit application, city police demanded that InPDUM pay for 4 officers at a rate of \$44/hour during the entire 9-hour-long event. ACLU-PA’s threat of suit resulted in York waiving the fees. The City Council also amended the ordinance to fix some problems, but others remain and may lead to litigation in the near future. ATTORNEYS: Burch and Walczak.

PARADES, ASSEMBLIES & MEETINGS

ACLU Helps Rescue Mummer’s Parade (Philadelphia) – The annual “Mummers Parade” has been an important cultural event in Philadelphia for years. In 2008, however, the City’s fiscal crisis led it to insist for the first time that the Mummers pay thousands of dollars in police fees, a sum the group could not afford, and scale back on other parts of the day’s events. Whether the parade would actually be allowed to take place was an open question. The ACLU-PA lent its First Amendment expertise to help the Mummers negotiate a resolution whereby the Mummers contributed a much smaller, affordable amount of money and the parade proceeded, but on a slightly smaller scale than usual. ATTORNEYS: Roper.

Library’s Arbitrary Restriction on ACLU meeting Challenged (Clinton Co.) – Several days before the ACLU-PA’s Central Chapter was to hold a voting rights program in the community room of the Ross public library, the Librarian informed the ACLU that proof of \$1,000,000 in liability insurance coverage must be presented, or a waiver must be obtained pursuant to Library policy. ACLU members reported that other community groups, of which they were members, had not been asked to meet the insurance requirement. The insurance requirement allowed for discretionary enforcement based on the content of the speech. We made an oral and written request for a waiver and warned the Library that the insurance requirement violated the First Amendment. The Library granted a waiver for the entire calendar year of 2008. ATTORNEY: Burch.

SIGNS

Borough Amends Unconstitutional Sign Ordinance after ACLU-PA Files Suit (Adams Co.) – Kenneth Frock placed a sign in the front yard of his Littlestown home that read, “We refuse to yield to ‘Gestapo’ tactics of the Littlestown Borough” to express his frustration with how the Borough had handled a discrepancy in his water bill. In response, Littlestown Borough sent Mr. Frock a letter threatening to fine him for every day that the sign remained up, because it violated the Borough zoning ordinance. The Borough failed to respond to the ACLU-PA’s warning letters, which led to a March lawsuit. The Borough quickly amended its ordinance to eliminate unconstitutional restrictions and paid nearly \$16,000 in attorneys’ fees. *Frock v. Borough of Littlestown*, M.D.Pa. (Judge Rambo). ATTORNEYS: Burch and Walczak.

Township Settles Case Challenging Temporal Restrictions on Lawn Signs (Allegheny Co.) – In March 2007, South Park Township officials directed a man to remove a political sign, which supported his son’s candidacy for district magistrate, from his yard or face sanctions. The ACLU-PA sent a letter to the township explaining that the township’s rules requiring permits and restricting the time during which political signs could be displayed on private property violated the First Amendment. The township immediately suspended all enforcement activities related to its sign ordinance. In September 2007, however, the Township alerted the complainant that it would resume enforcing the 30-day limit on campaign signs. The ACLU-PA filed suit in March 2008, secured a quick injunction against enforcement, and then settled the case, forcing the Township to amend its ordinance and pay nearly \$17,000 in attorneys’ fees. *Rudolph v. South Park*, W.D.Pa. (Judge Lancaster). ATTORNEYS: Reiss and Ramsey (Morgan Lewis); Walczak.

Townships Remove Limits on Political Signs (Delaware Co.) – Easttown Township agreed to amend its ordinance, which restricted political signs on private property to 30 days before an election, in response to the ACLU-PA’s request on behalf of an aggrieved homeowner. ATTORNEY: Rose.

(Chester Co.) – In August Springfield Township agreed to amend its ordinance, which restricted political signs on private property to 30 days before an election, in response to the ACLU-PA’s request on behalf of an aggrieved homeowner. ATTORNEY: Rose.

SPEECH ON COLLEGE CAMPUSES

Temple University’s Speech Code Declared Unconstitutional (Philadelphia) – The ACLU-PA joined with FIRE (Foundation for Individual Rights in Education) and the Christian Legal Society to file an *amicus* brief in the Third Circuit supporting a student, Christian DeJohn, who was being represented by the Alliance Defense Fund (ADF). DeJohn was an armed services veteran taking classes towards a graduate degree at Temple University. He claimed that Temple’s overbroad anti-harassment policy, which prohibited “generalized sexist remarks and behavior,” prevented him from voicing views about women’s roles in combat and the military. The district court ruled that the provision was overbroad and unduly restricted free-speech rights. In August the Third Circuit affirmed, holding the code to be an unconstitutional restraint on speech. *DeJohn v. Temple University*, 3d Circuit (Judges Smith, Hardiman & Roth); Lukianoff (FIRE); Rose and Walczak.

College Free-Speech Zones Rejected (Dauphin Co.) – In September 2007, The Harrisburg Area Community College (HACC) Board of Directors was set to approve a campus speech policy creating “free speech zones,” which would require outside groups to give 2 weeks advance notice to obtain a permit to speak or distribute literature anywhere on campus, even outdoors. The ACLU-PA sent a letter expressing concern that the proposed zones were located in inadequate and remote areas of some of the HACC campuses, and that the policy otherwise unjustifiably restricted political and religious expression. The letter led HACC administrators to postpone a vote on the policy and prompted an extended discussion of the issue by faculty and staff. After a subcommittee was formed to study the matter, in March HACC dropped the idea of creating “free-speech zones.” ATTORNEYS: Burch, Walczak.

DOOR-TO-DOOR CANVASSING

Pennsylvania still seems to lead the nation in municipal laws that unconstitutionally restrict the rights of charitable, religious and political organizations to canvass door to door. Restrictions include vague and onerous permit requirements, high fees, background checks, waiting periods and highly restrictive hours. A 2002 U.S. Supreme Court case and a 2006 victory by ACLU-PA in the Third Circuit have not resolved the problems. In the past year ACLU-PA sent warning letters to stop unconstitutional municipal restrictions on door-to-door canvassing on behalf of environmental groups and political candidates in the following communities:

- › (Allegheny Co.) Emsworth Borough

- › (Allegheny Co.) Franklin Park
- › (Allegheny Co.) O’Hara Township
- › (Allegheny Co.) Pleasant Hills
- › (Allegheny Co.) Sewickley Township
- › (Allegheny Co.) Upper St. Clair Township
- › (Allegheny Co.) Jefferson Boro
- › (Westmoreland Co.) Murrysville
- › (Westmoreland Co.) Penn Township
- › (Indiana Co.) Indiana Township
- › (York Co.) Hanover Township (York Co.)
- › (Cumberland Co.) East Pennsboro
- › (Lancaster Co.) Elizabethtown Borough

We expect that one of these disputes will in the near future result in a lawsuit that will clarify the law and relieve charitable solicitors of onerous restrictions on their ability to communicate with people in their homes (unless the homeowners have posted no-solicitation signs, which they have the right to do).

See also Cyber Liberties (all entries); Students’ Rights (Expression – all entries); Religious Liberty

CYBER LIBERTIES

Internet Censorship Case Finally Ends. In July the U.S. Court of Appeals for the Third Circuit ruled that the federal Child Online Protection Act (“COPA”), which purported to restrict Internet speech that was “harmful to minors,” was unconstitutional because it censored socially valuable information related to sex and because the ability of parents to install filters and set limits for their children was a readily available and more appropriate means of safeguarding minors. In January 2009 the U.S. Supreme Court denied the government’s request for review, finalizing the Third Circuit decision. The battle to stop the federal government’s attempts to censor the Internet has been fought since 1996. *Mukasey v. American Civil Liberties Union*, (Judges Greenberg, Ambro & Chagares). ATTORNEYS: Hansen, Crump, Fine and Wizner (National ACLU).

See also Students’ Rights (Layshock v. Hermitage Sch. Dist., Trosch v. Layshock, et al., J.S. v. Blue Mountain Sch. Dist.).

VOTING RIGHTS

The ACLU-PA became much more involved in 2008 election-protection efforts than it had been in earlier elections. Our four most important contributions were to

(1) educate election and prison officials about ex-felons' voting rights, (2) force an examination of several counties' bans on voters wearing partisan messages to the polls on t-shirts or buttons, (3) recruit cooperating attorneys to handle election-day problems in counties outside of Philadelphia and Allegheny (Pittsburgh), and (4) promote cooperation and communication between the various non-partisan election-protection programs.

By all accounts, the election-protection efforts in 2008 were more effective than in past years. A nonpartisan, toll-free hotline, which ultimately became a cooperative effort that included the Lawyers Committee for Civil Rights, the Advancement Project, Common Cause, NAACP, Committee of Seventy, ACLU-PA and others, fielded nearly 5000 calls in Pennsylvania. Many involved simple information requests, like whether the caller was in fact registered to vote or where their polling place was located. But other complaints helped identify significant problems, many of which we managed to address. Staff members Harold Jordan and Sara Rose spearheaded the ACLU-PA's election-protection efforts. Additional election-related areas on which ACLU-PA focused are discussed below.

Misinformation About Voting Rights Given to Probationers – Pennsylvania has one of the most liberal laws regarding offenders' right to vote; only felons actually serving time in prison cannot vote. After hearing complaints that ex-felons were wrongly told they cannot register to vote, ACLU-PA sent letters to the heads of all 67 county probation departments requesting that they distribute legally accurate information to their agents. Our educational efforts were aided by widespread media coverage of the issue. Many county election directors responded to our letters with gratitude for our efforts. ATTORNEY: Rose.

Election Day Dress Code for Voters – After receiving complaints during the past several elections about people being turned away from the polls because they were wearing campaign T-shirts or buttons, the ACLU-PA and the League of Women Voters asked the Secretary of State to clarify that the state-law ban on "electioneering" did not prohibit voters who simply wear a partisan message into the polling place from voting. After the Commonwealth issued a memo in early September to all county elections boards agreeing with ACLU-PA's interpretation, the Republican Party of Pennsylvania sponsored a lawsuit against the Commonwealth to force all elections boards to institute a dress code for voters. ACLU-PA's attempt to intervene to help the Commonwealth contest the lawsuit, which was supported by the Secretary of State, was summarily denied by a Commonwealth Court judge. We subsequently filed an *amicus* brief in opposition to the

Republicans' request for summary relief. ACLU-PA argued not only that the case involved voters' right to express their political views, but also that imposing a dress code on voters would cause disenfranchisement and confusion on election day. And in an argument that the court ultimately adopted in its Order denying the Republican Party's requested relief, we contended that numerous disputes over the Party's claimed facts precluded a ruling without first allowing for discovery and a trial. In the end, ACLU-PA's efforts resulted in nearly a dozen counties reversing bans on voters' ability to wear political messages. These counties included Montgomery, York and Centre. ***Kraft v. Harhut***. ATTORNEYS: Harvey, Oltman, Taylor and Schmidt (Pepper Hamilton); Rose and Walczak.

Here are some of the more significant problems we helped to address on Election Day itself:

- We managed to stop a polling place in Westmoreland County from erroneously requiring *all* voters to produce identification, as opposed to just *first-time* voters, which is what the law requires;
- We managed to suppress overzealous constables at polling places in several Eastern Pennsylvania counties, mostly in African-American-dominated precincts, who were allegedly intimidating voters;
- In Centre County our effort to force several polling places to give provisional ballots, mostly to student voters whose names were not on the registration rolls, was unsuccessful, but our encouragement to students to return to the line and be more insistent that they be given the ballots was successful;
- In Allegheny County we helped to get emergency absentee ballots for nearly a dozen women who were in labor at local hospitals. The effort involved negotiating with hospital officials (UPMC), who initially refused to allow our lawyers to meet with the women to get their signatures on ballot applications, and then fighting with Republican lawyers who insisted that the absentee-ballot requests had to be notarized by attending physicians. The judges agreed with the Republicans, which resulted in a frenzied effort to find notaries and connect them with hospital staff. In the end, the judges dispatched sheriffs to deliver and return the ballots, and extended the deadline for submission. We managed to help nearly a dozen laboring moms vote; and
- Voting-rights advocates had been trying for months to convince Chester County election officials to expand the polling place at Lincoln University, a

predominantly African-American college, but without success. As expected, on Election Day lines at the school were 6-7 hours long. Nevertheless, county officials refused our demands to add alternative polling places. At 9:00 p.m. we managed to get a court order forcing the county to set up an alternative polling place. Voting still went past 11:00 p.m.

Processing of Prisoners' Absentee Ballots Improved (Philadelphia) – ACLU-PA joined with the Advancement Project, PA Institutional Law Project and others to address serious flaws in the existing voting procedures for Philadelphia County jails. During the May 2008 primary, less than ten of more than 100 absentee ballots mailed to the jails made it back to the County Board of Elections. We worked with City Law Department, Board of Elections and Prison administration to establish a better system for collecting and transmitting completed absentee ballots. ATTORNEY: Roper.

RELIGIOUS LIBERTY

FREEDOM OF RELIGION (FREE EXERCISE CLAUSE AND RELIGIOUS-FREEDOM STATUTES)

Lawsuit Filed Over Borough's Refusal to Allow Church to House Homeless People (Jefferson County) – First Apostles' Doctrine Church is a non-denominational, evangelical church located in Brookville, eighty miles northeast of Pittsburgh. The defining aspect of the church has been its homeless outreach ministry, the "Just for Jesus Challenge Homeless Outreach," where the church staff and congregation shelter, feed, clothe, and minister to the less fortunate in the community. Since 2004 the church has temporarily housed a handful of different homeless guests in the five-bedroom parsonage attached to the church, giving them a place to stay as they attempt to get back on their feet. The Church runs a similar but larger program in Brockway, about thirty miles away. In the summer of 2008, Brookville officials began an effort to shut down the homeless shelter, issuing a zoning citation and conducting an illegal, warrantless search of the church. As a result of these actions, and out of fear of further retaliation by the Borough, the church was forced to evict its homeless guests who were living there. After the Borough refused the ACLU-PA's demand that they allow the ministry to resume operations, we filed a federal lawsuit in November alleging that the Borough was substantially burdening the church's ministry and discriminating based on religion and that it had violated the Fourth Amendment when police forcibly entered the church without a warrant. Within a day the Borough agreed to allow the church to re-open the shelter. The

case continues to determine damages. *First Apostles Doctrine Church v. Borough of Brookville*, W.D.Pa. (Chief Judge Ambrose) ATTORNEYS: Ranjan (K & L Gates); Walczak.

Case Over Church's Ministry to Homeless and Ex-Offenders Settled (Allegheny Co.) – In 2001 two former Texas corrections officers started a predominantly African-American church in Munhall and focused their ministry on the homeless and ex-offenders. As part of their ministry they housed between 8 and 14 people, a mix of homeless and misdemeanants placed by the Allegheny County courts, in the church. In Fall 2007 the Munhall Borough zoning officer cited the church for running a "transitional dwelling" in violation of the zoning code. The church applied for a variance, but was denied even though there were other similar dwellings nearby. In June the ACLU sent a letter to the Borough and Zoning Board threatening a federal discrimination lawsuit unless they allowed the ministry to continue operating. Municipal officials agreed and in September the parties signed a Consent Agreement in the Allegheny County Court of Common Pleas allowing the ministry to operate. *Cleft of the Rock Ministries v. Borough of Munhall*, Ct. Com. Pl. (Judge James). ATTORNEYS: Ranjan (K&L Gates); Rose and Walczak.

Victory in Lawsuits Challenging Limitations on Marriage – On Valentines Day 2008, the ACLU-PA filed three declaratory judgment actions intended to confirm the validity of marriages performed by clergy who do not regularly preach in a church or to a congregation. In September 2007, a York County judge had invalidated a marriage performed by a Universal Life Minister on the grounds that the minister did not regularly preach in a church or to a congregation, although PA's Marriage Law only requires that officiants be "of any regularly established church or congregation." In response to that ruling, Registers of Wills across the Commonwealth have been telling couples married by clergy who do not have a congregation that their marriages are not valid. In November and December we received rulings in all three cases declaring the marriages valid. Unfortunately, none of the cases will be appealed, which means we are still looking for a decision from a Pennsylvania appellate court that will overrule the decision in York County. The cases are *In re Marriage of Jason and Jennifer O'Neill* (Bucks Co.), *In re Marriage of Peter Goldberger and Anna Durbin* (Philadelphia), and *In re Marriage of Ryan and Melanie Hancock* (Montgomery Co.). ATTORNEYS: Brown, Kaplowitz and Barndt (Drinker Biddle & Reath); Roper.

Right of Muslim Policewoman to Wear Head Scarf Defended (Philadelphia) – Kimberlie Webb is a Philadelphia Police Officer and a devout Muslim. After being denied permission to wear a head scarf beneath her police cap, which she would tuck into her uniform, Officer Webb filed suit under Title VII, demanding accommodation of her religious beliefs. The district court entered summary judgment against Officer Webb and she appealed. The ACLU of PA teamed with the ACLU's Program on Freedom of Religion and Belief and Women's Rights Project, as well as many other amici, to argue to the Third Circuit that such accommodations are made by many police, military and other law enforcement agencies across the country and the globe. The case was argued in September. *Webb v. City of Philadelphia*, 3d Circuit (Judges Scirica, McKee & Smith). ATTORNEYS: Magaziner and Ghose (Dechert); Mach and Dilg (Program on Freedom of Religion and Belief); Lapidus and Migdal (Women's Rights Project); Roper.

Religious Rights of Parents to Home-School Their Children (Indiana Co.) – In January 2007, the ACLU-PA filed an *amicus* brief in a case brought by home schooling parents under the state Religious Freedom Protection Act, contending that state supervision of their home-schooling program substantially burdened their ability to fulfill their religious duty to educate their children. The district court had granted judgment for the school districts, holding that there was no interference with the parents' religious views because the districts did not dictate the parents' religious observance or forbid the parents from using religious materials. The ACLU-PA argued that the district court's analysis – in the first published decision under the RFP – would severely restrict the intended protections of the Act by applying an improperly narrow view of the kinds of religious observance protected by the Act. The Third Circuit affirmed the lower court but did not reach the important RFP issue. *Combs v. Homer Area School District*, 3d Circuit (Judges Scirica, Ambro & Jordan); Baughman and Lund (Dechert); Roper.

Imam Reinstated to Jail Post (Allegheny Co.) – After receiving complaints about the Allegheny County Jail's revocation of security clearances for three Muslim men who either volunteered or worked as Imams in the Jail, we met with the warden and county solicitor to discuss the problem. The warden explained that the security clearances were revoked or denied based on inflammatory writings by the men. We requested that the Jail reconsider and the one man who still wanted to volunteer at the Jail was reinstated in July. The "writing" that caused concern was a 2003 interview the man did with a journalist who wrote a web story about his rap album. ATTORNEYS: Rose and Walczak.

FREEDOM FROM RELIGION (ESTABLISHMENT CLAUSE)

Challenge to Football-Coach Initiated Prayer (New Jersey) – A New Jersey high school football coach who had prayed with team members before games and at pre-game dinners for twenty-three years sued his school district after school district officials prohibited him from participating in prayer with students. The coach sued, arguing that he had a right, based on his academic freedom, to pray with the players. The district court held that the coach's silent participation in prayer with football players did not violate the Establishment Clause and that the school district's directive prohibiting the coach from participating in student prayers violated the coach's constitutional rights. The school district appealed. The ACLU-PA, along with the American-Arab Anti-Discrimination Committee, the American Ethical Union, the American Jewish Committee, the Hindu American Foundation, and the Unitarian Universalist Association, submitted an *amicus* brief to the Third Circuit in support of the school district, arguing that allowing the coach to engage in silent prayer with football players would coerce players into participating in religious activity, in violation of the Establishment Clause. The court ruled in April that the school's prohibition on prayer was, under the circumstances of this case, constitutional and thus did not violate the coach's religious liberty, free-speech or academic-freedom rights. *Borden v. East Brunswick Sch. Dist.*, 3d Circuit (Judges McKee, Barry & Fisher). ATTORNEYS: Goldberg and Lustberg (Gibbons, Del Deo, Dolan, Griffinger & Vecchione); Rose.

Pittsburgh Legislative Prayer –We received a complaint regarding a Christian prayer that was delivered at the beginning of the March 2008 Pittsburgh City Council meeting by a new Council member. We sent a letter to the Council member, with a copy to the Council President, informing him that such sectarian prayers are unconstitutional when delivered at meetings of legislative bodies. We have not received any further complaints. ATTORNEY: Rose.

Challenge to Teachers Attending Student's Religious Event (Cumberland Co.) – In November the ACLU-PA sent a letter to the Carlisle School Board expressing concern about a new policy that would allow teachers to participate in a once-a-year national program called See You at the Pole, where students gather before school to pray around the school's flagpole. The ACLU-PA believes that allowing teachers at this event will give students the impression that the school, or at least the teachers, supports the prayer, which would violate the ban on government-sponsored religion. The Board

adopted the policy anyway. We will monitor next year's event. ATTORNEY: Rose.

RACE DISCRIMINATION

RACIAL PROFILING

State Trooper Settles Racial-Profilng Case (York Co.) – In August 2003, an African-American off-duty Pennsylvania state trooper was pulled over by two white York County Deputy Sheriffs, verbally abused, humiliated, and issued a traffic citation for a tinted window for which he had a PennDOT exemption. All charges were subsequently dismissed. The ACLU-PA filed suit in federal court, claiming racial profiling. In July 2005, an all-white jury found in favor of the Defendants. In June 2007, the Third Circuit reversed the decision in part, requiring a re-trial on the Fourth Amendment illegal-stop claim, but affirmed dismissal of the race-discrimination count. A confidential settlement of the civil rights case was reached in January 2008. *Christopher v. Nestlerode*, 3d Circuit (Judges Scirica, Barry & Aldisert); M.D. Pa. (Judge Conner). ATTORNEYS: Gildin; Knudsen and Burch.

See also Police Misconduct (Kyeame v. Buckheit); Students' Rights, School-to-prison Pipeline (A.C. v. Upper Darby School District).

LGBT RIGHTS

Decision Upholding Anti-gay Harassment at Workplace Challenged (Butler Co.) – Brian Prowell sued his employer under Title VII for religious and gender discrimination after suffering severe anti-gay harassment from co-workers and supervisors, whose essential message was that he is going to hell for failing to conform to *their* religious beliefs. The district court dismissed Prowell's claims, reasoning that it was merely a discrimination claim based on sexual orientation, which is not protected under federal law. The ACLU-PA teamed up with various national ACLU Projects to file an *amicus* brief in which we argued that the district court's focus on the fact that Prowell's supervisors and co-workers did not object to Prowell's religious beliefs was improper. The key consideration is that Prowell suffered adverse employment actions because he declined to comply with his employer's religious beliefs, which is illegal discrimination based on religion. *Prowell v. Wise Business Forms*, 3d Circuit (Judges Fisher, Chagares & Hardiman); W.D.Pa. (Judge McVerry). ATTORNEYS: Chan and Mendelsohn (Hangley Aronchik); Mach and Dilg (ACLU Project on Religious Belief); McGowan (ACLU LGBT and AIDS Project); Roper.

See also Students' Rights (all entries under *LGBT-Students' rights*).

WOMEN'S RIGHTS

See Reproductive Rights (all entries).

REPRODUCTIVE RIGHTS

CYS Takes Newborn from Hospital After Mom (but not baby) Tests Positive for Marijuana (Lawrence Co.) – In June 2008, after a Lawrence County hospital surreptitiously performed a urine test on a young woman admitted to the hospital in labor, hospital officials told the county CYS that she tested positive for marijuana. While still in the hospital, the healthy baby girl was taken into emergency custody by CYS and subsequently adjudicated dependent based solely on the unconfirmed positive drug screen. The juvenile court master placed the baby with the father's mother, and the first-time mother was permitted only an hour of supervised visitation with the baby every other week. We have since learned that this is a routine practice in Lawrence County. ACLU-PA petitioned the court to reconsider the dependency finding, and in mid-August, after the baby was nearly two-months old, the court vacated the original order and returned the child to her mother on the condition that she be drug tested for six months, which she agreed to. *In re A.S.*, Ct. Com. Pl. Lawrence Co. (Judge Hodge). ATTORNEYS: Maines (Reed Smith); Rose.

PRIVACY

Challenge to U.S. Government's Efforts to get Location-Tracking Data – The ACLU-PA joined with the Electronic Frontier Foundation, Center for Democracy and Technology and Electronic Information Privacy Center in filing an *amicus curiae* brief to urge the federal court in Pittsburgh to affirm a magistrate's order denying the government's application for a court order to seize stored cell site location information ("CSLI") from a cellular telephone provider without a showing of probable cause. The judge affirmed the order. The ACLU and the other groups will be filing another *amicus* brief in the third circuit. *In the Matter of the Application of the United States of America for an Order Directing a Provider of Electronic Communication Service to Disclose Records to the Government*, W.D.Pa. (Judge McVerry). ATTORNEYS: Zimmerman (EFF); Crump (Nat'l ACLU); Walczak.

Ordinance Requiring Tenant Registration (Bradford Co.) – In April, the Borough of Towanda proposed an ordinance requiring occupants of rental properties to list

their names with the Borough and submit to property inspections by Code Enforcement Officers “anytime . . . for cause or if written complaints have been filed.” In response to ACLU-PA’s concerns about tenants’ privacy rights, the Borough council tabled the ordinance. ATTORNEYS: Burch and Walczak.

See also, Students’ Rights, National Security (ACLU of PA, et al v. AT&T, et al., Pa. Utilities Comm’n)

RIGHTS OF THE HOMELESS

See Religious Liberty (First Apostles Doctrine Church v. Borough of Brookville; Cleft of the Rock Ministries v. Borough of Munhall)

STUDENTS’ RIGHTS

SCHOOL-TO-PRISON PIPELINE

Challenge to Student Expulsion Procedures (Delaware Co.) The ACLU-PA represented an African-American girl in seventh grade who had been expelled after her second fight at school (the first having been six months previously) even though she was not the aggressor. A review of the District’s history of disciplinary action suggested that it exercised disproportionately harsh punishment against minority students and that the disciplinary process itself suffered from serious procedural-due-process problems, including restrictions on participation at hearings by students’ lawyers or representatives. We appealed the expulsion to the Delaware County Court of Common Pleas in June. In September the judge remanded the case with the barest of directions to correct the procedural errors. Subsequently ACLU-PA (1) negotiated for the student’s return next year without penalty (she’s now in a cyber school); (2) cleared her record to reflect an agreed withdrawal, not an expulsion; and (3) compelled the District to work with ACLU-PA and the Education Law Center (ELC) to draft a guide to the expulsion process that will correct the problems we have identified and help parents to prepare for and be effective at expulsion hearings. *A.C. v. Upper Darby School District*, Ct. Com. Pl. (Judge Zetusky). ATTORNEYS: Bireda and Klehr (ELC); Roper.

RELIGIOUS LIBERTY

Saturday Detention for Orthodox Jewish Student (Allegheny Co.) – In March, an Orthodox Jewish student in Pittsburgh was required to attend Saturday detention as punishment for skipping an after-school detention. Because he would be required to travel by means other than walking to the school where Saturday detention is held, attending Saturday detention would violate his

religious beliefs. He was willing to attend Saturday detention at his regular school so long as he did not have to write or use electricity. After the student’s mother informed school officials of her religious objections to the Saturday detention, school officials said that no religious accommodation would be made and the student would be suspended for three additional days if he failed to attend Saturday detention. A call to the Pittsburgh Public Schools solicitor resulted in the school giving the student an alternative to Saturday detention. ATTORNEY: Rose.

Procedures for Religions-Release-Time Program Refined (Greene Co.) – An 8th grade student at the Jefferson-Morgan School District was mistakenly taken to a religious release-time program during the school day even though his parents denied permission for him to attend. The problem was a confusing system for securing parental permission. The School District agreed to the ACLU-PA’s request that it put in place procedures to prevent students from being mistakenly released from school to attend religious instruction. Now, every parent who wants their child to attend the religious program must return the slip and the school subsequently calls to verify the permission. ATTORNEY: Rose.

EXPRESSION

Students’ Speech Rights on Internet While at Home (Mercer Co.) – The problem of public-school districts punishing students for out-of-school-Internet speech mocking or criticizing school officials has become widespread. While the courts have given school officials latitude to restrict students’ rights in school, including free-speech rights, the issue raised by these cases is whether the school can punish students for off-campus speech and if so how much First Amendment protection should students enjoy. The ACLU has taken the position that students enjoy full First Amendment protection in the community, subject to whatever restrictions the parents may impose. This Lawrence County case is the fourth out-of-school-speech case handled by ACLU-PA, with the first three resulting in victories at the district court level. This case began in 2006 and involves Justin Layshock, who at the time was a high-school senior and gifted student in the Hermitage School District. During non-school hours and using his grandmother’s computer, Justin created a parody profile of his principal on MySpace, a popular Internet website. The profile discussed how everything about the principal was “big,” contained mild profanity and suggested the principal drank and smoked pot. School officials confronted Justin, who admitted to being the profile creator and apologized, and suspended Justin for ten days, placed him in an alternative education program where he couldn’t attend his AP classes, and banned him

from other interscholastic academic activities. After trying unsuccessfully to reinstate Justin, the ACLU-PA filed suit. Although the district court refused to issue an emergency injunction, the suit helped reinstate Justin to his classes within a month. The case continued for damages. In 2007 the district judge ruled that the school's punishment violated Justin's free-speech rights, but did not violate Justin's parents' rights to direct and control their child's upbringing. The school district and the Pennsylvania School Boards Association appealed, arguing that school officials have the authority to punish students for simply saying offensive and vulgar things about school officials, even if they are said outside of school. The case was argued in the Third Circuit in December and is being watched closely across the country by both civil libertarians and educators. **Layshock v. Hermitage Area School Dist.**, 3d Circuit (Judges McKee, Smith & Roth); W.D. Pa. (Judge McVerry); Watterson, Ting and Sheridan (Reed Smith); Walczak and Rose.

MySpace Parody Draws Defamation Case (Mercer Co.) – In a companion case to the preceding entry, the ACLU-PA is defending Justin Layshock against a defamation action filed by the principal. The principal sued four students, including Justin, who independently had created parody profiles of him on MySpace. The Common Pleas Court refused our motion to dismiss the case on the ground that the principal should have filed his claim in the federal case. The case is pending. We will argue that Justin's website is a "parody" and thus protected by the First Amendment from a defamation claim. **Trosch v. Layshock, et al.**, Mercer Co. Ct. Com. Pl. (Judge St. John); Watterson and Quesnelle (Reed Smith); Walczak.

Court Upholds Middle-School Student's Suspension for Mocking Principal on the Internet from Home Computer (Schuylkill Co.) – In yet another out-of-school-Internet-speech case, which is similar to Layshock (discussed above), in September a federal judge in Scranton ruled that school officials did not violate a middle school girl's free-speech rights when they suspended her in 2007 for creating, on her home computer, a parody profile of her principal on MySpace. The judge ruled that school officials have the authority to punish "lewd and vulgar speech" about the school or officials, even if the speech occurs outside of school. We have appealed the case to the Court of Appeals for the Third Circuit. **J.S. v. Blue Mountain School District**, M.D. Pa. (Judge Munley). ATTORNEYS Kohart, Nissan, Littman and Sarosiek (Drinker Biddle & Reath); Roper, Rose and Walczak.

Student Internet Case Settles (Beaver Co.) – The mother of an 8th grade student at Monaca School

District contacted us after her son was suspended from school for seven days and not permitted to attend regular classes because of comments he made from his home computer on his MySpace page about another student. A letter from the ACLU-PA resulted in the student's immediate return to classes. **B.D. v. Monaca School District**. ATTORNEY: Rose

Court Rules Against Student Who Made Columbine Quip (Beaver Co.) – In September a federal judge granted judgment for the school district in a First Amendment case brought by a student who was suspended after being overheard telling another student that if he was Osama bin Laden he would already have pulled a Columbine. The student, Cory Johnson, made the remark in response to teasing by students and even a teacher who repeatedly referred to him as Osama bin Laden after a motivational speaker called him Osama bin Laden at a school assembly the day before. The ACLU-PA argued that the statement was protected by the First Amendment because it was not a "true threat" (and the school didn't respond as if it was by taking common-sense safety precautions) and the school never informed students that uttering the word "Columbine" was forbidden. The court disagreed. **Johnson v. New Brighton Area School District**, W.D.Pa. (Chief Judge Ambrose). ATTORNEYS: Rose and Walczak.

Student's Right Not to Stand for Pledge of Allegiance Defended (Chester Co.) – In January a Downingtown School District student was removed from class because she did not participate in the Pledge of Allegiance. The right of students to refuse to participate in the Pledge has been established since 1943. The ACLU-PA requested that the school district allow the student to sit quietly during the Pledge, and that the teacher who singled her out as well as all other teachers be instructed that students are not required to stand for or participate in the Pledge. The principal apologized to the student and instructed his staff accordingly. **S.C. v. Downingtown Area School District**. ATTORNEY: Roper.

LGBT-STUDENT RIGHTS

School Interferes with Day of Silence and Students' Right of Expression (Venango Co.) – For several years students in the Oil City School District have participated in the Day of Silence without incident. The Day of Silence, a nationwide effort to express support for LGBT youth, usually involves students staying silent in school (except when called upon in class to answer questions) and wearing messages promoting tolerance on t-shirts and stickers. This year, a new high school principal threatened to suspend and send home students who wore T-shirts promoting tolerance for LGBT youth. The next day the administration allowed students to wear T-shirts

bearing anti-gay messages. In mid-May we sent a letter threatening to sue the District unless it immediately agreed to allow the students to wear expressive T-shirt. The District, through its lawyers, complied. *G.M. v. Oil City*. ATTORNEY: Rose.

Gay Student Harassed by Peers and Officials Settles Case (Venango Co.) – In March 2006, a ninth-grade Franklin High School student suffered a game of “smear the queer,” which consisted of boys throwing wet, wadded paper towels at him while he sat on the toilet. This was the latest of many incidents where he suffered harassment based on his perceived sexual orientation, some of which had been witnessed and ignored by teachers and administrators. When the assistant principal refused to take action against the perpetrators this time, our client purposely swore at the official in order to get suspended. He was not only suspended, but also criminally charged with disorderly conduct. The mother withdrew the boy from school and entered him in cyber school. The ACLU-PA entered the case to provide representation for a complaint filed with the Pennsylvania Human Relations Commission. The PHRC assumed jurisdiction over the case because the boy has a disability. The case settled with the District agreeing to provide appropriate anti-harassment training, through a consortium of groups headed by the F.B.I., to school teachers, administrators and students. The District, while not conceding wrongdoing, also paid damages. *K.S. on behalf of C.J.B. v. Franklin Sch. Dist.*, Pa. Comm’n Hum. Rel. ATTORNEY: Walczak.

PARENTS’ RIGHTS

Fayette County Restriction on Parents’ Contact with Children (Fayette Co.) – A Fayette County Children and Youth Services’ (FCCYS) policy dictates that no person who in the past has been convicted of a sex offense against a child or “indicated” for child sex abuse (based solely on an investigation by the agency) may have contact with any children, including their own, until they have “successfully completed” sex-offender treatment. In June ACLU-PA filed suit against FCCYS on behalf of a father who had not been allowed to communicate with his three children for a year, or live with them for nearly two years, because at age twenty-six he had consensual sex with a sixteen-year-old girl, which is legal in Pennsylvania. The police declined to prosecute him, and no one has ever alleged that he abused his own children. But that didn’t stop FCCYS from threatening to place his three young children – whom he had sole custody of at the time because their mother was institutionalized – in foster care if he did not agree to place them with his parents. Since September 2006 the children have been living with their grandparents. Although the district court denied our

requested temporary restraining order to reinstate contact between father and children, just prior to a preliminary injunction hearing the parties reached agreement allowing Doe to resume visits with his children so long as he was supervised by his mother. In August we signed a settlement agreement reinstating Doe’s full parental rights. The case will proceed to assess how many other alleged sex offenders have been subjected to this policy and to determine damages. *Doe v. FCCYS*, W.D.Pa. (Chief Judge Ambrose). ATTORNEYS: Millstein, Rose and Walczak.

POLICE MISCONDUCT

Pittsburgh’s Summary Eviction of Students from Commune Reversed (Allegheny Co.) – In November unspecified complaints from neighbors resulted in Pittsburgh Police ordering a group of young people living in the Hill District as part of a farming commune to immediately vacate the premises. There was no notice and no court proceedings were held. Public Works Department workers immediately nailed boards over the doors and windows and put up no-entry yellow tape. The ACLU-PA’s threat of legal action later that same day over the City’s failure to follow constitutionally required due process resulted in the City Solicitor ordering DPW to unboard the building and to allow the tenants to return. This was accomplished by day’s end. *Landslide Community Farms v. City of Pittsburgh*. ATTORNEY: Walczak.

African Man Beaten and Detained by State Police Files Suit (Centre Co.) – In July 2006, a PA State Trooper stopped Mr. Nana Kyeame and his wife as they were driving through Centre County on their way home to Canada. Kyeame is a Canadian citizen born in Ghana. The trooper demanded cash for an alleged speeding violation. When Kyeame couldn’t pay on the spot, the officer handcuffed and then beat him, called him a “Canadian nigger” and imprisoned him for 3 days. All charges were dismissed as soon as Kyeame appeared before a magistrate three days later. The ACLU-PA filed a lawsuit in July 2007 seeking compensatory and punitive damages. The case has been suspended because the state trooper has been deployed to Iraq, but will resume upon his return. *Kyeame v. Buckheit*, M.D. Pa. (Chief Judge Kane); Lappas (Serratelli, Schiffman, Brown & Calhoon, PC); Walczak and Burch.

Decision Denying Malicious Prosecution Claim Appealed (Allegheny Co.) – In 2001, Michael Kossler, an x-ray technician with no arrest record, was leaving a Pittsburgh night club when he witnessed a fight. An off-duty police officer mistakenly thought Kossler had touched him. The officer arrested Kossler and charged him with a felony — aggravated assault on a police

officer — and various other crimes. Kossler took the case to trial and was acquitted on all charges, except for a summary disorderly conduct charge. Kossler filed suit, through private counsel, alleging malicious prosecution on the felony charges, which landed him in jail. The federal court threw out the malicious prosecution claim because the criminal court had found Kossler guilty of the relatively minor disorderly conduct charge. We filed an *amicus* brief in January 2007 in support of Kossler, arguing that a conviction on a summary offense should not bar a malicious prosecution claim against the filing of more serious charges. Otherwise, police officers would be effectively immunized from filing false and inflated charges. Late in the year the Third Circuit notified that parties that the case would be reargued *en banc* (before the entire court) in January 2009. **Kossler v. Crisanti**, 3d Circuit. ATTORNEYS: Lee and Winkelman (Schnader Harrison); Rudovsky (Kairys, Rudovsky, Messin & Feinberg); Roper and Walczak.

Man Vindicated over Videotaping of Police (Chester Co.) – A concerned citizen video taped local police engaged in various activities, in public, that he believed were improper. In January and February 2007 he received four citations and was briefly arrested by police who did not like his documentary efforts. All charges were dropped at a preliminary hearing. Videotaping the police in public is not, and cannot be, a crime under Pennsylvania’s wiretapping statute or any other law. After many months of negotiating with East Vincent and Spring City police, ACLU-PA filed a lawsuit and simultaneous settlement agreement whereby the municipalities agreed to respect photographers’ rights to take photographs and video of encounters in public places and to pay damages. **Hookway v. East Coventry and Spring City**, E.D.Pa. (Judge Davis). ATTORNEYS: Freiwald, Fritch and Haendler (Dechert); Roper.

Homeowner’s Right to Decide Who Enters Dwelling (Erie Co.) – In 2002, City of Erie police entered a Karen Kirley’s house without her consent (and over her objections) in order to allow her 18-year-old son, who had recently left the home after he and his mother had an altercation, to retrieve some personal belongings. Kirley was arrested for her continuing objection to the search of her own home. She suffered a permanent injury to her wrist as a result of the arrest. The harassment charge was dismissed by the magisterial judge. A federal judge dismissed Kirley’s civil rights suit, ruling that the police entry into the home was relatively minor and well intentioned. ACLU-PA has filed an *amicus* brief in the Third Circuit supporting Ms. Kirley. We argue that her Fourth Amendment right to prevent the police’s entry into her home cannot be overcome by her son’s consent to their entry, and that the right to privacy applies even if the police are well-intentioned. **Kirley v. Williams**, 3d

Circuit. ATTORNEYS: Watterson and Sheridan (Reed Smith); Walczak.

See also, Race Discrimination (Christopher v. Nestlerode)

CRIMINAL JUSTICE

Lawsuit Filed Over Allegheny County’s Sex-Offender-Residency Ordinance – In October the ACLU-PA filed suit challenging Allegheny County’s ordinance prohibiting convicted sex offenders from living within 2500 feet of a school, day-care center, recreation facility, or park on behalf of six convicted sex offenders affected by the ordinance. We alleged that the ordinance violated the Ex Post Facto Clause of the U.S. Constitution, the Fair Housing Act, and the Due Process Clause and that it was preempted by state law. The Allegheny County ordinance is one of the most restrictive sex-offender-residency laws in the country. Virtually the entire City of Pittsburgh is off-limits and the only places in Allegheny County where sex offenders can live are either uninhabitable or unaffordable. In November the county agreed to suspend the effective date of the ordinance for 6 months or until federal litigation is concluded, whichever is longer. **Fross v. County of Allegheny**, W.D.Pa. (Judge Lancaster). ATTORNEYS: Strassburger (Strassburger, McKenna, Gutnick & Gusky); Driscoll (Community Justice Project); Rose and Walczak.

MEGAN’S LAW – EQUAL PROTECTION

Court Holds Treatment of Out-of-State Offenders under PA Megan’s Law Unconstitutional (Philadelphia) – The ACLU-PA filed suit in 2001, on behalf of a first-time sexual offender who received no jail time, challenging a Pennsylvania statute that subjected *all* out-of-state sexual offenders, regardless how minor their offense, to community notification procedures. The notification included police officers going door-to-door in the neighborhood distributing “Megan’s Law Offender” fliers. Similarly situated in-state sexual offenders who committed relatively minor offenses were not subject to community notification unless they were adjudicated by a judge, after a full trial, to be a “sexually violent predator.” The ACLU-PA challenged the disparate treatment of offenders, based on where they committed the offense, under the Fourteenth Amendment’s Equal Protection, Privileges and Immunities, and Due Process Clauses. In 2005, the district court declared the law unconstitutional. In January the Third Circuit agreed with the lower court, declaring that the differential treatment of similarly-situated offenders was irrational and therefore violated the Equal Protection Clause. **Doe v. McVey**, 3d Circuit

(Judges McKee, Ambro & Nygaard); E.D. Pa. (Judge Pollak). ATTORNEYS: Kerrigan and Walczak.

TRAFFIC STOPS – PROBABLE CAUSE

Only Reasonable Suspicion Required for State Police Traffic Stops (Erie) – The ACLU-PA submitted an *amicus* brief to the Supreme Court of Pennsylvania urging affirmance of an Erie Court of Common Pleas decision striking down a Pennsylvania statute that would permit vehicle stops for “reasonable suspicion” that a traffic violation has occurred. We argue that the Pennsylvania Constitution requires “probable cause” for such stops. In November, the Pa. Supreme Court held that vehicle stops for investigative purposes based on reasonable suspicion did not violate the provision of the State Constitution protecting against unreasonable searches and seizures. *Commonwealth v. Chase*, PA Supreme Ct. ATTORNEYS: Kohart, Sgrignoli and McInnes (Drinker Biddle & Reath); Roper.

RIGHT TO COUNSEL

Due Process for Defendants Accused of Failing to Pay Child Support (Clearfield Co.) – ACLU-PA continued its efforts to ensure that people jailed for failure to pay child support are assigned attorneys and given timely hearings by writing a letter in March to the Clearfield County President Judge to complain that the court held a Bucks County man without appointing counsel or even conducting a hearing. The judge initially refused to change the system based on the fact that the man had signed a waiver of his rights when he first began paying child support. We responded with another letter, copied to the Administrative Office of the Pennsylvania Courts (AOPC), explaining how even requesting that people sign such a waiver was unconstitutional. The judge quickly responded that the court would change the process. Since 2002 we have challenged and corrected similar due-process deficiencies in Lawrence, Westmoreland, Beaver, Montgomery and Lehigh Counties. ATTORNEY: Rose.

Pennsylvania Establishes Inter-governmental Indigent Defense Commission – The ACLU-PA has been appointed to serve on a Commission to study improvements to the Commonwealth’s indigent-defense system. Members of the Commission include a representative from the Governor’s office, the Administrative Office of the Pennsylvania Courts (AOPC), the County Commissioners’ Association, the District Attorneys’ Association, the Public Defenders Association, and state legislators. The inaugural meeting was held in October. The first step will be for the Commission to send out information requests to all

67 counties. The requests will be patterned on ones sent out by ACLU-PA and NACDL several years ago. Walczak is the ACLU’s representative on the Commission.

DUE PROCESS

Excessive Fines for Late Payment on Trash-Removal Bill (Lancaster Co.) – Mr. Marvel and his wife had accumulated several hundred dollars worth of charges for Elizabethtown’s trash services (which the couple did not use). But when Mr. Marvel attempted to pay the charges due, he was told he also owed a \$1000 per day fine for the late charges, for a total of over \$52,000! ACLU-PA negotiated a settlement that permits the Marvels to pay their past-due trash charges over time without penalty. *Elizabethtown Borough v. Marvel*. ATTORNEYS: Brown (Dechert); Roper.

PRISONERS’ RIGHTS

(PA-statewide) An investigation conducted by the Disability Rights Network (DRN) has revealed serious deficiencies in the mental-health services provided and available to prisoners in the Pennsylvania Department of Corrections. The main problems involve delays in identification and treatment of inmates with mental illness, many of whom end up in disciplinary custody because of lack of treatment; the scarcity of specialized units for treatment of the seriously mentally ill; and the lack of mental-health services for inmates housed in Restricted Housing Units. The ACLU-PA has joined with DRN and others to press the DOC to make improvements to the system. ATTORNEYS: Meek (DRN); Walsh (Institutional Law Project); Rudovsky; Roper and Walczak.

ATTORNEYS’ FEES

Important Legal Principles Established Regarding Attorneys’ Fees – In March the Third Circuit issued a strong decision in *PAPV v. City of Pittsburgh* upholding ACLU-PA’s award of attorneys’ fees. The underlying case involved a multi-year challenge to Pittsburgh’s troubled system of approving permits for protesters. The issue clarified by the Third Circuit opinion involved attorneys’ fees, namely, that plaintiffs winning preliminary injunctions could receive fees, and that post-judgment monitoring of court orders was also compensable activity. *PAPV v. City of Pittsburgh*, 3d Circuit (Judges Rendell, Stapleton & Irenas); W.D.Pa. (Judge Conti). ATTORNEYS: Healey and McKechnie (Healey & Hornack); Walczak and Rose.

