

ACLU of PA DOCKET

May 2005-May 2006

(COURT LOCATION IN PARENTHESES; ATTORNEYS IN ITALICS)

FREEDOM OF SPEECH

(Allegheny Co.) Just prior to Election Day 2004, we filed suit on behalf of canvassers from America Coming Together and America Votes challenging Monroeville and Mt. Lebanon ordinances that required permits and fees before anyone went door to door encouraging people to vote. While the restrictions were lifted to enable the canvassers to proceed over the pre-election weekend, the district court subsequently ruled Mt. Lebanon's law constitutional. We argued in our appeal to the Third Circuit that a 2002 Supreme-Court decision prohibits municipalities from requiring "charitable solicitors" (religious, political and other non-profit canvassers) from having to register before proceeding door to door. The Jehovah's Witnesses filed an *amicus* brief supporting our arguments. In April 2006 the Third Circuit reversed the decision, finding Mt. Lebanon's canvassing ordinance unconstitutional. SEIU v. Mt. Lebanon (W.D.Pa., Schwab, J.; Third Circuit), *Healey, McKechnie (Healey & Hornack); Walczak*

(PA, Lancaster Co.) Thong-clad protesters were arrested in the summer of 2004 for recreating, on a roadside, a scene from the Abu Ghraib prison scandal just prior to a visit by President Bush. Disorderly conduct charges were withdrawn by the Lancaster County District Attorney in Fall 2004. The protesters filed suit against the arresting officers in December 2004. We settled with East Lampeter Township for damages and attorneys' fees. In March 2006, Judge Diamond ruled in favor of the remaining defendant, the Pennsylvania State Police, holding that the law was not sufficiently established to hold the police liable for damages. We have appealed to the Third Circuit. Egolf et al. v. East Lampeter Township et al., (E.D. Pa., Diamond, J.; Third Circuit), *Yoder, Hess (Gibble, Kraybill & Hess); Knudsen, Walczak.*

(Indiana Co.) The ACLU submitted an *amicus* brief seeking reconsideration of a recent decision in which the United States Court of Appeals for the Third Circuit held that a preacher could be arrested and charged with disorderly conduct because of remarks he made during a rally at Indiana University of Pennsylvania to a woman, disparaging her for being a lesbian and saying there was no such thing as a Christian lesbian. While offensive,

we think the remarks were protected speech. The Court of Appeals denied the petition for rehearing. Gilles v. Davis (Third Circuit), *Watterson (Reed Smith); Roper; Walczak*

(Allegheny Co.) A December 2004 lawsuit, filed on behalf of an elected Township commissioner, alleged that her colleagues retaliated against her after she publicly disclosed a budget deficit and criticized them for not addressing it. After her disclosure, the other commissioners improperly excluded her from important discussions regarding Township business and erected barriers to her getting information about Township activities. After a three-day trial in May 2005, the Court issued a preliminary injunction, holding that defendants' illegally retaliated against our client, thereby violating her First Amendment rights. After multiple appeals to the Third Circuit and numerous district court proceedings, the case finally settled in November 2005, with Judge Schwab entering a final injunction and the Township paying attorneys' fees. Smith v. Aleppo Township (W.D.Pa., Schwab, J.; Third Circuit), *Strassburger (Strassburger, McKenna, Gutnick & Potter); Walczak*

(McKean Co.) In March 2004 we obtained a federal court order blocking the City of Bradford from fining three residents who displayed signs, some critical of the City's leadership, without first getting a permit. We argued that the people should not have to ask for permission or pay fees to post signs on their own property. The City made significant changes in their ordinance addressing many, but not all, of our concerns. One remaining problem is a permit-requirement for signs displayed in the downtown-historic district. In August 2005, Judge McLaughlin granted judgment for the City, holding that the amended ordinance did not violate the First Amendment. We have filed an appeal to the Third Circuit. Riel v. City of Bradford (W.D.Pa., McLaughlin, J.; Third Circuit), *Friedman (Ambrose, Friedman & Weichler); Walczak*

(Allegheny Co.) Over a four-month period in late '03 and early '04, we won three federal court orders blocking the City of Pittsburgh from charging excessive police fees and requiring onerous insurance coverage for groups wanting to protest on public property. We are representing the NAACP, Thomas Merton Center and People Against Police Violence. After extended negotiations and numerous court proceedings, the City in February 2006 finally presented what we believe is a constitutional ordinance and application procedure. The litigation continues over attorneys' fees. PAPV v. City of Pittsburgh (W.D.Pa., Conti, J.), *Healey, McKechnie (Healey & Hornack); Walczak*

(PA, Butler Co.) In 2004, a Butler county woman was charged with and convicted of violating Pennsylvania's hunter harassment statute, which makes it a crime to interfere with a hunter. Ms. Haagenson was convicted after she told hunters to get off of her property. She was found guilty in Common Pleas Court. In January 2006, the ACLU filed an *amicus* brief in the Superior Court arguing that the hunter-harassment statute was vague and overbroad, thereby unconstitutionally restricting speech. The case will be argued in May 2006. Commonwealth v. Haagenson (Superior Ct.), *Watterson (Reed Smith); Walczak*

(Washington Co.) A 2003 lawsuit against the Bethlehem-Center School District challenged a policy that prohibited employees from speaking directly to board members. The case also included whistleblower claims on behalf of an employee who was disciplined for publicly disclosing computer-related problems in the District. In 2004, the district court dismissed the First Amendment claim on statute of limitation grounds. While we think this is clear error, the judge refused to allow us to appeal. In April 2006, the Court granted the school district's motion for summary judgment, dismissing the remaining claims. We are considering an appeal. Drill v. Bethlehem Center School District (W.D.Pa., Hay, M.J.), *Long, Green (Pietragallo, Bosick & Gordon); Walczak*

(Allegheny Co.) In 2003, we filed a whistleblower-suit against Children & Youth Services on behalf of an employee who was discharged after she complained that a report she was overseeing had been whitewashed by the Director to eliminate negative comments about the agency. The case settled in August 2005 with the client getting back pay of over \$150,000 and a new job within the agency. Fabian v. Allegheny Co. CYF (Ct. Com. Pl.), *O'Brien; Krakoff*

(Allegheny Co.) In 2002, the ACLU filed a lawsuit on behalf of four activists arrested by Pittsburgh police officers outside a Pirates' baseball game at PNC Park for distributing pamphlets criticizing major-league baseball for selling merchandise made by foreign sweat shops. We very quickly secured a court order protecting protesters' rights to engage in political activity on the sidewalks surrounding the stadium. We are awaiting a trial date on the damages claim. Industrial Workers of the World (IWW) v. City of Pittsburgh (W.D.Pa., Lancaster, J.), *Healey, Akers, McKechnie (Healey & Hornack); Walczak*

(Adams Co.) A former school-board director challenged Littlestown Area School District's chain-of-command policy, which prohibited board members from speaking directly to employees. Our preliminary injunction

motion was denied in September 2004. A trial was held in 2005. Following the trial, the Judge granted defendants' motion for judgment as a matter of law. We did not appeal that decision. The Defendants have filed for attorneys' fees, arguing that the case was without merit. Briefing on the Defendants' motion for fees was completed in January 2006; we are awaiting the Judge's decision. Dehoff v. LASD, (M.D. Pa, Kane, J.), *Roper, Knudsen*

(Philadelphia) In February 2006, the ACLU served as a liaison with Philadelphia police and National Park security regarding counter-protestors and other issues for a series of demonstrations organized by immigrant rights groups in response to anti-immigrant legislation. We are reprising our advice and advocacy role for demonstrations in April and May. Day Without an Immigrant, *Roper*

(Wyoming Co.) Robert Barnes, a young man who dresses in the "goth" style, was arrested and charged with disorderly conduct in October of 2005 for listening to music and dancing in a public area of town. He was found guilty by the District Justice and has appealed to the Wyoming County Court of Common Pleas. The trial will be held in May 2006. The ACLU believes police arrested Barnes simply because of his unusual dress and mode of expression. Commonwealth v. Barnes, *Kinchy (Law Offices of Gerald Kinchy); Knudsen*

(Adams Co.) In January 2006, Bruce Davis, his wife and adult daughters drove from York, where they live, to Gettysburg. They had heard that there would be a pro-choice rally in the Gettysburg square that day. They arrived and protested for more than 1/2 hour before a Gettysburg police officer told Mr. Davis that he could not protest without a permit. Eventually, Mr. Davis was handcuffed, placed in a police car and taken to the station, where he was cited for disorderly conduct, resisting arrest and other offenses. The ACLU represented Mr. Davis at a preliminary hearing in April 2006, at which time the resisting arrest charge was dropped, but Davis still must fight the other charges in the Adams County Court of Common Pleas. The ACLU will argue the permit ordinance unconstitutionally restricts speech. Commonwealth v. Davis, *Rice; Knudsen*

(Philadelphia) A local organizing group wished to hold a demonstration in downtown Philadelphia during the 2006 State of the Union speech as part of national wave of protests. Unfortunately, the organizer received incorrect information from City personnel about the permit application and missed the advance-notice deadline, then had the late application denied. ACLU-PA negotiated with local police to arrange for the

demonstration to proceed in the absence of the permit. State of Union protest, Roper

(Allegheny Co.) In January 2006, a coalition of voter-education groups, including the Coalition for Concerned Citizens, the League of Young Voters and the ACLU of PA, asked Allegheny County Port Authority Transit (PAT) for information about the cost of buying advertisements advising ex-offenders of their right to register to vote. The PAT advertising director advised the group that only "commercial" ads are permitted. After being turned down in March, we submitted a public-information request in preparation for likely litigation. Port Authority Advertising, Sternberger; Pushinsky; Sponseller (Kirkpatrick Lockhart Nicholson & Graham); Walczak

(Luzerne Co.) In August 2005, a Luzerne County resident burned a U.S. flag on his property when he became frustrated with a lack of response from the Mayor's office. He was cited for disorderly conduct and for violating two Pennsylvania statutes that prohibit flag-burning. He is awaiting a trial in the Luzerne County Court of Common Pleas. The ACLU believes the two flag desecration statutes violate free-speech rights. Commonwealth v. Astl, Rymsza (Miele & Rymsza); Knudsen

(Allegheny Co.) In late 2005, Ross Township officials advised a man that he could not wear signs or buttons with a political message unrelated to Township business to public meetings. The man wore various political buttons criticizing both local and county government officials and actions. In January 2006, we sent a letter to Ross Township inquiring whether in fact the restriction on signs and buttons was in effect and raised concerns that it was unconstitutional. The Township has advised that our client can wear messages until a new policy is finalized, but that the new policy will make such buttons and signs illegal. We will likely file suit. Ross Township T-Shirts, Walczak

(Lancaster Co.) A 70-year-old Lancaster City resident yelled "cocksucker" at her neighbor and was found guilty of disorderly conduct by a Lancaster County Court of Common Pleas judge. A volunteer lawyer appealed to the Pennsylvania Superior Court and in July 2005, the appeals court vacated the woman's sentence, ruling that the woman's outburst did not breach the public peace. Commonwealth v. Maerz, (Superior Court), Knudsen

(PA) We sent a letter in June 2005 to the Pennsylvania Attorney General's Charitable Organizations Division objecting to a request that a national environmental group turn over membership information and the names

of all people who have written letters to state legislators through the group's website. The AG's office received a complaint that the group allegedly sent a letter to a legislator on behalf of a person who did not authorize the correspondence. While the investigation may be legitimate, the information request is overbroad. The AG's office has not pursued the information request. *Farrell (Reich, Alexander, Reisinger & Farrell)*

(Allegheny Co.) In Fall 2005, Pittsburgh police charged a woman and her friend with disorderly conduct for giving the finger to a passing truck driver who had honked the horn at them. After being found guilty by the District Justice, in January 2006 we convinced the Common Pleas Court to dismiss the charge, arguing that the gesture was a form of protected speech. Commonwealth v. Hart (Ct. Com. Pl), Barber (Strassburger, McKenna, Gutnick & Potter)

(Allegheny Co.) In Fall 2005, Pittsburgh police detained a Pitt student and charged her with disorderly conduct for saying a profanity to a friend as she was walking away from the officers. After being convicted at the District Justice level, in December 2005, we convinced the Common Pleas Court to dismiss the charges, arguing that the expression was protected speech. Commonwealth v. Buncher (Ct. Com. Pl.), Boni

(Allegheny Co.) In August 2005, the Musicians' Union sought permission from the Allegheny County Park Commission to demonstrate and leaflet at a County park, Hartwood Acres, regarding the Pittsburgh Ballet's decision to lay off musicians and use recorded music. The Park Commission denied the request for a permit, citing an old regulation forbidding leafleting. The ACLU contacted the County Solicitor, who gave the green light for the demonstration, saying the ordinance was only intended to apply to commercial leafleting. *Roper; Healey, McKechnie (Healey & Hornack)*

(Allegheny Co.) In May 2005, we received a complaint that Students in Solidarity (SIS), in conjunction with the Pittsburgh Darfur Emergency Coalition, was told by the University of Pittsburgh that they were not allowed to hold a protest on the lawn outside Pitt's Cathedral of Learning, where a Sudanese official was scheduled to give a lecture. Subsequently, the University moved the lecture to David Lawrence Hall. We negotiated with University security officials to secure a protest location on the steps to the building, adjacent to the front door. *Walczak*

(Allegheny Co.) In July 2005 Pittsburgh's mayor, at the behest of downtown business interests, introduced a proposed ordinance that would ban any financial solicitation in public places except during daylight

hours. It would apply not only to the homeless, the apparent targets, but also the Salvation Army and college students collecting for Children's Hospital. After the ACLU expressed concerns that the law unduly restricted homeless people's free-speech rights, Council amended the ordinance to allow solicitation closer to various landmarks (e.g., restaurants and bus stops) and to allow "non-verbal" solicitation even during evening hours. *Feige; Walczak*

(Washington Co.) We represented a woman who was arrested for disorderly conduct in the parking lot of the Post-Gazette Pavilion before a country-music concert, for holding up a sign that said, "Show us your ..." and then had a picture of bare breasts. In late March 2005, the Superior Court, in a 2-1 decision, affirmed the conviction. In August 2005 the PA Supreme Court refused to hear the appeal. Commonwealth v. Frank (PA Supreme Ct.), *Millstein; Watterson (Reed Smith); Rosenfield; Walczak*

(Allegheny Co.) We filed an *amicus* brief in June 2004 with the PA Supreme Court supporting *The Garden Theater*, the last adult-movie theater in downtown Pittsburgh. The City is attempting to use eminent domain not to close the theater but to force it to show non-adult movies. The U.S. Supreme Court's recent decision allowing the use of eminent domain to improve blighted areas may or may not affect this case. We are still awaiting a decision. In the matter of New Garden Realty Corp. (PA Supreme Ct.), *Francis, Sachse, Le Gower & Tolin (Dechert); Brink*

See also, Cyber Liberties (all entries); Students' Rights (Sell, Harbeson, State College Day of Silence, USC Political Activity, Layshock, Smith, Latour, Birch, Schiano, Abughaniyeh and Magano).

CYBER LIBERTIES

(PA, Lackawanna) In November 2005, the ACLU took over a lawsuit on behalf of local political activists whose Internet- political-discussion board was shut down by the Pennsylvania State Police. The Pilcheskys operate www.dohertydeceit.com and a related discussion board, which serve as a forum for criticism of the Scranton city government. When the Pilcheskys made postings about the city's Director of Economic and Community Development, her family involved the city's District Attorney's office and the Pennsylvania State police, each of which pressured the web host of the discussion board to shut down the site. The web host did block the site on October 7, 2005, after receiving a written request from a trooper with the PSP's Computer Crimes Unit. Access to the site was restored on December 27, 2005, after the ACLU threatened a preliminary injunction, and

the State Police agreed to entry of an order barring further police interference with the site. Defendants have filed motions to dismiss the lawsuit, which continues for damages and a permanent injunction. Pilchesky v. PSP (U.S.D.C. M.D. Caputo, J, Blewitt, M.J.) *Larocca, Snyder, Reznick (Kohn, Swift & Graf); Kreimer; Knudsen, Roper, Walczak*

(Philadelphia) In July 2004, a Philadelphia Common Pleas Judge granted a motion filed by the law firm Klehr Harrison and ordered a man to remove a website that criticized the firm. The firm claimed the comments were defamatory. In January 2005, the ACLU filed an *amicus* brief in the Superior Court supporting the web host. We argued that even if the speech were proven defamatory, which it had not been, a court could not censor it because that would be an unconstitutional prior restraint. In March 2006, the Superior Court reversed the injunction on the ground that the law firm had failed to prove that its business had been harmed by the critical website; having found the injunction invalid, the court declined to go further and address the constitutional argument. Klehr Harrison v. JPA Development (Superior Ct.), *Feinberg (Kairys, Rudovsky, Epstein & Messing); Walczak*

(Washington Co.) In April 2004, we obtained a federal court order on behalf of Internet-community-bulletin-board hosts to block a police chief from threatening to arrest people who posted messages on the site criticizing him, and from using illegal subpoenas to try to uncover his critics' identities. The case settled in January 2006 for damages and a court order restricting the police chief, who has since been terminated, from using his authority to unmask his Internet critics. Chavla v. Kavakich (W.D.Pa., Conti, J.), *Barber (Strassburger, McKenna, Gutnick & Potter); Walczak*

See also, Students' rights (Layshock, Latour).

RELIGIOUS LIBERTY

(York Co.) In December 2004, we sued the Dover Area School District on behalf of eleven parents who objected to a policy that required teachers to mention Intelligent Design in biology classes as an alternative to evolution. We alleged that Intelligent Design (ID) is stealth creationism and, therefore, teaching a religious doctrine in science class violates the Establishment Clause. On December 20, 2005, after a six-week trial, the judge ruled that the Board had a religious motivation and, thus, violated the constitution in passing the policy. More importantly, the judge ruled that ID is not science, but rather creationism in disguise that cannot be taught as science. The historic case garnered international media attention and has already played a role in

convincing the Ohio school board to amend a three-year-old policy that would have allowed the teaching of ID. Kitzmiller v. Dover Area School District (M.D.Pa., Jones, J.), *Rothschild, Harvey, Schmidt, Wilcox, et al. (Pepper Hamilton); Katskee, Luchenitser (Americans United for Separation of Church and State); Knudsen, Roper, Walczak*

(U.S., PA & Bradford Co.) In February 2005, we filed suit on behalf of local taxpayers and a former inmate alleging that government agencies were giving money, and not monitoring its use, to a faith-based prison-work-release program that used it for worship activities and to proselytize prisoners. The U. S. government and the Firm Foundation moved to dismiss the case. The court granted the motion in part, but allowed the all-important Establishment Clause claim to proceed. A motion to dismiss by Bradford County is still pending. We expect to begin discovery soon. Moeller v. Bradford County (M.D.Pa., Munley, J.), *Roper, Knudsen, Walczak (ACLU); Katskee, Luchenitser (Americans United for Separation of Church and State)*

(US) In May 2005, the ACLU filed suit against the U. S. Department of Health and Human Services alleging that grants exceeding \$1.2 million over the past three years to The Silver Ring Thing, a Pittsburgh-located faith-based-abstinence program, violated the Establishment Clause. In 2004 the ACLU's Pittsburgh Chapter sent testers to a Silver Ring Thing program, who learned that Christian prayer and teaching pervaded the event. The group's website, twelve-step follow-up program and newsletter all invited young people to "come to Christ" and remain abstinent until marriage. The day after the lawsuit was filed in Boston, Silver Ring Thing (SRT) removed most religious content from the website. After we advised HHS that we were planning to file a preliminary injunction motion to prevent further payments to Silver Ring, the agency issued a letter to SRT suspending payments until corrective action was taken to prevent use of government monies for religious activities. The case settled in February 2006 after the agency withdrew the last grant for \$75,000. ACLU of Massachusetts v. Leavitt (Fed. Ct., Boston), *Sternberg, Corbin (Nat'l ACLU); Wunsch (MA ACLU); Mach (Jenner & Block); Walczak*

(Cumberland Co.) In November 2005, an attorney for the Peace Centre, a Muslim spiritual center and school, contacted the ACLU of PA seeking assistance. The Township had told the Peace Centre to stop using their facility as a place of worship. The Peace Centre filed an appeal with the Zoning Hearing Board. Staff attorney Knudsen testified in favor of the Peace Centre and following the hearing, a variance was granted. *Knudsen*

(Philadelphia) On March 1, 2005, the ACLU obtained a preliminary injunction to halt the City of Philadelphia's termination of a Muslim firefighter who, for religious reasons, refuses to shave his beard, as required by Fire Department policy. The decades-old policy was originally enacted to ensure maximum effectiveness of the negative-pressure respirators then in use and has not been updated despite advancements in respirator technology that, we claim, make the presence of a beard irrelevant. On May 25, 2005, in what we believe to be Pennsylvania's first ruling to interpret the state's Religious Freedom Protection Act, a Court of Common Pleas Judge granted the ACLU's request for a preliminary injunction. At a two-day trial in September 2005 we presented expert testimony that DeVeaux's beard poses no greater danger than any other facial feature and that the city could administer a test to determine if his beard interferes with the use of his respirator. But the trial judge ruled that the City had a compelling interest in requiring clean shaven firefighters. The case is being appealed. DeVeaux v. City of Philadelphia, (Phil. Ct. Com. Pl., Dych, J.), *Roper*

(Clarion Co.) Acting on behalf of local complainants, in April 2005, we requested that the Keystone School District immediately cancel the scheduled prayer at the May 27 graduation. Despite U. S. Supreme Court decisions ruling such prayers unconstitutional, the District had included prayers for many years. We also requested that the District immediately cease beginning school board meetings with prayers. The prayers were given by the Superintendent and ended with the words, "In Jesus' name we pray." On May 10, 2005 the District sent a letter agreeing to the demands. But after seeing media reports quoting the Board president to say he was looking for "a way around it," on May 26 we filed suit. The District agreed to sign a consent order stating that prayers will no longer be recited at graduation and board meetings. At the May 27 graduation, various speakers referred to their religious beliefs, but there were no prayers. Doe v. Keystone School District (W.D.Pa., Lancaster, J.), *Walczak*

(Allegheny Co.) Allegheny County would not give a couple a self-uniting marriage license without verification that they were members of the Quaker or Bahia church. They were not. In May 2005, we met with the Orphan's Court solicitor to resolve the dispute. The County has agreed to give the couple a marriage license. *Litman*

See also, Students' Rights (Central Dauphin Head Scarves, Warren Co.).

STUDENTS' RIGHTS

(Allegheny Co.) In February 2006, a five-member school board majority in the Upper St. Clair School District defied a crowd of 1000 angry, emotional parents and students to cut the widely-acclaimed International Baccalaureate program (IB). Prior to taking the step, board members at various times indicated that the IB program conflicted with their "Judeo-Christian" traditions and that they wanted to retaliate against the IB students and parents who worked against them in last Fall's elections. In March 2006, the ACLU filed suit on behalf of 19 parents seeking an injunction to reinstate the program. The suit alleged various first amendment claims (political retaliation and promotion of religious and political orthodoxy) and state-law violations. In May 2006, the case settled with the school board agreeing to reinstate IB for at least two years and to follow the District's curriculum-review policy in deciding whether to make any changes. Benda v. Upper St. Clair School Dist. (W.D.Pa., Schwab, J.) *McElhinney, Fader, Reiter, et al. (Kirkpatrick, Lockhart, Nicholson & Graham); Gisleson, Titus, et al. (Schnader, Harrison, Segal & Lewis); Walczak*

(Dauphin Co.) In February of 2006, the ACLU received a complaint from concerned parents Bill and Cindy Harbeson. Their daughter, Ellen, was suspended from school for three days because she had written "Free Turk" on her hand. The school district claimed that Ellen and more than 20 students were suspended for "displaying an inappropriate sign/slogans" on their hands and book covers. The Harbesons and five other parents have filed suit requesting that their children's records be expunged and that the school policy be changed in order to allow students to participate in protected free speech. Harbeson et al. v. Central Dauphin School District, (M.D. Pa., Kane, J.) *Lappas (Serratelli, Schiffman, Brown and Calhoun, P.C.); Knudsen*

(Mercer Co.) In January 2006, Justin Layshock, a high-school senior and gifted student, was suspended for ten days and removed from his regular classes and placed in an alternative education program after he admitted to creating, from his home computer, a parody profile of his principal on the Internet. The profile talked about how everything about the principal was big. The ACLU filed suit. After a one-day hearing, Judge McVerry denied a temporary restraining order to reinstate Justin to his classes. The judge ruled that the school district had shown that the website disrupted the school, claims we view as greatly exaggerated. In February, the parties reached agreement that Justin would be restored to classes and other privileges, negating the need for us to ask for a preliminary injunction. The case will continue

for a determination whether the District violated Justin's and his parents' rights, and whether the school's disciplinary rules are overbroad and facially unconstitutional. Layshock v. Hermitage Area School Dist. (W.D.Pa., McVerry, J.), *Walczak; Watterson, Ting (Reed Smith)* (Northampton)

(Beaver Co.) In April 2005, police arrested a 13-year-old Riverside Beaver High School student, Anthony Latour, for allegedly threatening another student. The boys were engaged in a "Rap" music challenge, where they posted their songs on the Internet. A police SWAT team searched the house, seized all computers and recording equipment, but found no weapons. Anthony was detained for six days before being released. All charges were subsequently dismissed. The school then learned that six months earlier Anthony had released a CD that included a song about two boys engaging in a Columbine-type massacre. In May 2005, the District expelled Anthony for two years. We filed suit in August, and after a one-day trial the court granted a preliminary injunction reinstating Anthony to school. While the music lyrics are graphically violent, they do not rise to the level of "true threats," and are, thus, constitutionally protected. If schools can expel students and police can arrest people for simply writing violent lyrics, rap music is in jeopardy. The case settled in November 2005 with the school district agreeing to pay damages and attorneys' fees, change the disciplinary policy to limit administrators' authority over out-of-schools-student speech, and to send a letter to the DA indicating that they no longer wish to press charges. Latour v. Riverside Beaver Sch. Dist., (W.D.Pa., Ambrose, C.J.), *Watterson (Reed Smith); Millstein; Walczak*

(Dauphin Co.) In September 2005, a ninth-grade Muslim student at Central Dauphin High School was told that she could not wear her head scarf. After negotiating with the school, the student was permitted to wear her head scarf, but later was told that it could only be dark colors. In March 2006, the ACLU sent a letter to the school district requesting that Muslim girls be permitted to practice their faith by wearing head scarves, regardless of color. In April 2006, the District agreed that the student could wear any color head scarves. Central Daughin Head Scarves, *Knudsen*

(York Co.) Mitchell Sell, a junior at Red Lion High School was reprimanded in March 2006 after writing an editorial in the school newspaper, *The Leonid*. The editorial was based upon Sell's concerns about the cleanliness within the school. The article -- "Keep it Clean II" -- explained that, in Sell's opinion, the roaches that he had seen over the past several years were multiplying dramatically and something should be done about it. After the article was published, Sell was

told by the administration the he must write a retraction and if he refused he could lose his position at the paper. ACLU PA contacted the school district solicitor and the solicitor agreed that Sell would not have to write a retraction or lose his position at the school paper. Sell v. Red Lion High School, Knudsen

(Centre Co.) In April 2006, students at State College Area High School were encountering difficulties with the school administration in trying to prepare for their "Day of Silence," a nationwide project to show support for LGBT rights. After ACLU-PA contacted the school solicitor, students were ensured that they could wear pins, stickers, ribbons, etc., in support of the "Day of Silence" without fear of discipline. State College Day of Silence, Knudsen

(Allegheny Co.) In February 2006 the Upper St. Clair Board had tentatively approved a new policy that prohibited all employees and students from engaging in any political-campaign activity on school property involving national, state or local elections. We sent a letter to the District advising that application of the policy to students violated free-speech rights and ACLU would file suit if it was passed. The Board tabled the policy. USC Political Activity Policy, Walczak

(Northhampton Co.) In January 2006, a Nazareth Area high school student, Sam Smith, was told he had to have parental permission in order to be excused from participating in a morning Pledge-of-Allegiance ceremony. The ACLU sent a demand letter and obtained a reversal of the policy. When the story was reported in the local papers, some very insulting letters to the editor appeared, questioning Smith's maturity and patriotism. ACLU-PA then issued a call for supportive letters, and the student and the local papers received many. Smith v. Nazareth Area School District, Roper

(Lehigh Co.) In December 2005, the ACLU persuaded the Parkland School District to reverse its decision to prohibit a Palestinian middle school student from wearing a scarf bearing the colors of the Palestinian Authority and promoting the PLO. We viewed this as constitutionally protected expressive activity. Abughaniyeh v. Parkland School District, Roper

(Monroe Co.) In December 2005, a student at Stroudsburg Junior High, was punished for refusing to recite the Pledge of Allegiance. The school reversed its disciplinary action after the ACLU intervened. The District apologized to the student and promised that he would not be harassed, disciplined or otherwise singled out for refusing to say the pledge. Magnano v. East Stroudsburg Sch. Dist.; Roper

(Montgomery Co.) In November 2005, the North Penn High School disciplined a student for wearing a T-Shirt that depicted President Bush with the label "International Terrorist." Our intervention resulted in the removal of the ban and a promise by the school board to review district policy on student expression. This same shirt was the subject of successful litigation by the Michigan ACLU. Schiano v. North Penn School District, Roper

(Armstrong Co.) In September 2005, a high school student was suspended for 10 days and threatened with expulsion for distributing, before classes started, literature criticizing the way school administration was disciplining students. The school reasoned that he engaged in activity that was "deemed in conflict with the normal operation of the educational process." A call from the ACLU explaining the First-Amendment problem with the school's actions resulted in the disciplinary action being reversed. Birch v. Kiski Area Sch. Dist., Millstein

(Warren Co.) In September 2005, the Warren County School District sent fliers home with students advertising a religious-release-time program. While such programs have been ruled constitutional, the flier suggested school endorsement and involvement. Our complaint in October resulted in the district sending a notice home advising parents that the District played no role in the program. Millstein

See also, Religious Liberty (Kitzmiller, Doe v. Keystone)

CRIMINAL JUSTICE

(Erie Co.) The ACLU, in February 2006, 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 argued that the Pennsylvania Constitution requires "probable cause" for such stops. Commonwealth v. Chase (PA Supreme Ct.), *Kohart, Sgrignoli, McInnes (Drinker Biddle & Reath); Roper*

(Montgomery) In January 2006, a father was jailed briefly for inability to pay for court-ordered home evaluation in a custody case, without being offered counsel. Prior to the subsequent hearing on contempt, the ACLU gave him a letter previously sent to the County's President Judge outlining the obligation to provide counsel for contempt proceedings. The court complied. Even though defendants incarcerated for failure to pay child support are held under *civil* as

opposed to criminal contempt, due process requires that they be provided an attorney if they are to receive jail time. Shallow v. Montgomery County, *Roper*

(Allegheny Co.) A nine-year-old lawsuit against the County alleging that the Public Defender's office provided constitutionally deficient services ended in April 2005. Under a consent decree signed in 1998, the County had doubled the size of the office and otherwise improved services. In January 2005 our argument that the County still needed to make more improvements in the quality of representation was rejected by an arbitration panel. While the consent decree's staffing requirements remain in effect until year's end, the rest of the decree's provisions have expired. A termination hearing was held on April 6, 2005, where the judge praised our work to improve the PD office. Doyle v. Allegheny Co. (Ct. Com. Pl., Horgos, J.), *Davidson; Farrell (Reich, Alexander, Reisinger & Farrell); Dahlberg (Nat'l ACLU); Walczak*

(Philadelphia) In 2001, the ACLU took over a lawsuit against the Pennsylvania Department of Probation and Parole charging that requiring Megan's Law fliers to be passed out in the neighborhood of all out-of-state sex offenders paroled to Pennsylvania, even without any evidence the offenders are dangerous, violates the Equal Protection Clause because in-state offenders are not subject to the same treatment. We have also alleged that the failure to give any procedural due process violates the due process clause. In August 2005, Judge Pollak granted summary judgment for plaintiff, holding that the differential treatment of out-of-state probationers was irrational and thus denied equal protection. We await an oral argument date in the Third Circuit. D.T.C. v. McVey, (E.D.Pa., Pollak, J.), *Walczak; Kerrigan*

See also, Prisoners' Rights (all entries); Immigrants' Rights (*In re Pacheco*)

RACE DISCRIMINATION

(York Co.) In August 2003, an African-American off-duty Pennsylvania state trooper was pulled over by two white York County Deputy Sheriffs for what appeared to be pretextual reasons. In May 2004, we filed suit in federal court alleging racial profiling. In July 2005, an all-white jury found in favor of the Defendants. We have appealed the case to the Third Circuit Court of Appeals and await an oral argument date. Christopher v. Nestlerode et al., (M.D. Pa., Conner, J.; Third Circuit) *Gildin; Knudsen*

GAY RIGHTS

(Lehigh Co.) The ACLU joined with the Pennsylvania Human Relations Commission and other groups to

support an Allentown ordinance that prohibits discrimination on the basis of sexual orientation and sexual identity. Gay rights opponents claimed the ordinance was preempted by the Pennsylvania Human Relations Act, which does not regulate discrimination on those bases. The Lehigh County Common Pleas judge struck down the ordinance as it applied to employers and other businesses because of an obscure provision in the Home Rule Act that, the court said, prohibits a Home Rule municipality like Allentown from imposing any obligations on businesses that are not specifically authorized by state law. The ACLU filed an *amicus* brief supporting Allentown's ordinance in the Commonwealth Court, which in August 2005 reversed the trial court, holding the anti-discrimination ordinance was legal under state law. Hartman v. City of Allentown (Commonwealth Ct.), *Posner, Meyerov (Drinker Biddle & Reath); Cahn (Blank Rome); Roper*

See also, Students' Rights (State College S.D. "Day of Silence")

REPRODUCTIVE FREEDOM

(PA) Anti-choice language was included in the state's 2005-06 budget to restrict DPW's ability to apply for a Medical Assistance Family Planning Waiver from the federal government. Specifically, the language restricts any federal Medicaid funds spent on family planning to the same restrictions that apply to state funds – in other words, funds cannot be used to promote, perform or refer for abortions or engage in abortion counseling. That language would have eliminated DPW's ability to draw down up to \$30 million federal dollars. Governor Rendell deleted the limiting language and several Republican legislative leaders filed suit, challenging Rendell's veto. The legal issue in the case is whether Rendell exceeded his line-item veto authority when he deleted limiting language rather than the amounts of money to be spent. The ACLU has filed an *amicus* brief, not on the legislative powers issue, but to alert the court to the underlying reproductive rights and First Amendment issues. Jubelirer v. Rendell (Pa. Commonwealth Court) *Young, Minkoff (Cozen & O'Connor); Frankel*

See also, Religious Liberty (ACLU of Massachusetts v. Leavitt)

GENDER DISCRIMINATION

(Philadelphia) ACLU joined with Women's Law Project, Education Law Center and Public Interest Law Center of Philadelphia in advocacy before the School Reform Commission (SRC) to oppose the application of a private group that wished to start a "Latin" (college

prep) high school for boys only in West Philadelphia. The charter application was denied by the SRC in January 2006. In re Boy's Latin Charter School, *Roper*

CHILDREN'S RIGHTS

(Schuylkill Co.) In Fall 2005, the ACLU represented a mother whose new-born son has been removed from her custody and placed in foster because her husband (with whom she does not live) has a 23-year-old conviction for sexual offenses against minors. After an unsuccessful attempt to obtain preliminary relief from federal court, we represented the mother through the state court dependency proceedings and will now pursue the case on appeal. In re Baby Boy Wolfhawk (Superior Ct.), *Roper*

(Beaver Co.) A 2003 federal lawsuit filed on behalf of a young mother whose two infant children were taken away by Children & Youth Services, in separate incidents, without reasonable justification and with insufficient due process protections, continues in federal court. In 2003, we regained custody of the children for the mother through our state-court litigation. In October 2005, Judge Hardiman denied most of the defendants' summary judgment claims, leaving the case to proceed to trial. The parties are in settlement negotiations. Underwood v. Beaver County CYS (W.D.Pa., Hardiman, J.) *Mahood, McKinley (Wilder & Mahood); Berks, Fader, Pociernicki, Luciano, Lambert, Berkun (Kirkpatrick & Lockhart); Walczak*

See also, Immigrants' Rights (In re Pacheco)

PRISONERS' RIGHTS

(PA, Fayette County) The ACLU is *amicus* in a lawsuit filed against the Pennsylvania Department of Corrections challenging the constitutionality of a policy that prohibits incorrigible prisoners housed in the long-term-segregation unit from receiving all non-religious newspapers and magazines unless they relate to the prisoner or a family member, or from watching television or listening to the radio. The Third Circuit reversed the District Court's grant of judgment for the state, concluding that the restrictions could not be justified. ACLU of PA joined with national ACLU to file an *amicus* brief in February 2006 arguing that the courts should apply a standard of review that is less deferential to prison officials when the alleged justification is "behavior modification" rather than when it is security related. Banks v. Beard (U.S. Supreme Ct.), *Fathi, Monks (ACLU prison project); Shapiro (national ACLU); Walczak*

(PA) The ACLU has joined with court-appointed counsel in a class action on behalf of Pennsylvania inmates who have been denied parole as a result of their refusal to participate in a sex-offender treatment program that requires them to acknowledge guilt for sex offenses for which they have been convicted and to reveal other potentially chargeable sexual conduct, despite the pendency of an appeal or other challenge to the conviction. The district court dismissed the Fifth Amendment claims in Fall 2004. A summary judgment motion on the remaining claims was briefed in December 2005, but no decision has issued. Wolfe v. Corbett (E.D.Pa., Robreno, J.) *Brown, Meyerov, D'Ambra (Drinker Biddle & Reath), Roper*

(Allegheny Co.) In December 2003, the ACLU obtained a federal court order requiring the County Sheriff to allow a mother to visit her son, who had been shot by the police and was in a hospital's intensive-care ward. We also challenged the department's policy of prohibiting family visits to prisoners in the hospital. In separate orders from March and September 2005, the court upheld the Sheriff's policy against our First Amendment association and due process claims. We decided not to appeal. Livingston v. Allegheny Co. Sheriff's Dept. (W.D.Pa., Ambrose, C.J.), *Walczak*

See also, Criminal Justice (all entries)

IMMIGRANTS' RIGHTS

(Luzerne Co.) In January 2004, Luzerne County Children and Youth Services (CYS) removed three children from Ana and Alberto Pacheco's home after a school nurse saw a bruise on their 14-year-old son. Neither the agency nor the court provided the Spanish-speaking Pachecos with an interpreter. Despite no abuse allegations involving the two younger children, the Pachecos were not allowed to see them again for nearly a year. Criminal charges stemming from the alleged abuse of the 14-year-old were dismissed in February 2005. The two younger children began visiting with the parents in February and were returned home in April 2005. An ACLU complaint prompted an investigation by the U.S. Department of Health and Human Services' Office for Civil Rights (OCR), which concluded in December 2005 that the agency failed to provide adequate language-interpreter services to the Pacheco's and others limited-English-proficiency (LEP) clients. OCR indicated that they will do a more thorough review of the Luzerne County CYS office as well as a review of all other County CYS practices statewide. A January 2006 review hearing for the oldest child established a goal to return him home in six months. The ACLU continues to work with OCR in its statewide review of Children & Youth offices' compliance with LEP

policies. ACLU also continues to work with advocacy organizations statewide to promote change within the PA Department of Public Welfare in its provision of services to LEP individuals. In re Pacheco, *Knudsen*

(U.S.) After more than a year of legal wrangling, in September 2004 we lost our attempt to prevent the deportation of a young Jordanian student at LaRoche College, who neglected to register under the now-defunct special registration program. The failure was innocent, due to a crushing school and work schedule. In July 2003, the student was detained for nine days after the government classified him as a "level one security threat." He was released inexplicably after major media outlets began writing about the detention. In March 2006 the Bureau of Immigration Appeals (BIA) reversed the decision. The BIA held that the administrative judge's refusal to conduct a real hearing was a denial of due process. U.S. v. Abu-Snaineh (Board of Immigration Appeals), *Whitehill (Fox Rothschild)*; *Goldfaden & Guttentag (Nat'l ACLU Immigrants' Rights Project)*; *Walczak*

See also, Freedom of Speech (Day Without an Immigrant)

PRIVACY

(PA) The ACLU filed an *amicus* brief in the PA Supreme Court supporting the Pennsylvania State Police in arguing that under PA law, county sheriffs do not have wiretapping authority. In March 2006, the Court agreed with our argument and rejected the Sheriffs' attempt to acquire wiretapping authority. The ACLU's concern was that expanding the number of officers who have wiretapping authority, especially when those officer do not receive the same level of training, threatens citizens' privacy rights. Kopko v. Evans (PA Supreme. Ct.), *Makadon, Rodgers & Wyatt (Ballard Spahr)*; *Brink*; *Frankel*; *Walczak*

(U.S., Montgomery Co.) Our client received a summons from the TSA purporting to assess a \$500 fine for "interference" with a TSA screening during an incident in which the client became frustrated by an unusually extensive airport screening and, when the TSA screener reach into the client's pants to feel inside of his waistband, unzipped his pants and dropped them several inches to permit the TSA screener full access to the area he was searching (the client was wearing boxers). In November 2005 the ACLU negotiated a significant reduction in the fine. The client has been informed that he is now on a TSA "watch list" and will be searched every time he flies. TSA v. Sanders, *Taylor, Roper*

ACCESS TO GOVERNMENT INFORMATION

(U.S.) In December 2005, MSNBC disclosed several pages of a Department of Defense (DOD) database listing anti-war-protest groups around the country that had been under surveillance and had been investigated. The only Pennsylvania group listed was the Pittsburgh Organizing Group (POG). Coordinated by national, on February 1, 2006, Pennsylvania joined ACLU affiliates from several other states in filing FOIA's with DOD requesting files on several groups, including POG, the ACLU of PA, Thomas Merton Center, CODEPINK Pittsburgh, Pittsburgh Raging Grannies, and the Pittsburgh Bill of Rights Defense Committee. *King, Rhodes, Abdulaleem (Ballard Spahr)*; *Roper, Healey (Healey & Hornack)*

(U.S., PA) In May 2005, Pennsylvania joined the National ACLU and affiliates from several other states in filing FOIAs with the FBI and the Joint Terrorism Task Force requesting files on eleven activist groups and individuals, including Coalition for Immigrants' Rights at the Community Level, Lehigh-Pocono Committee of Concern, Lake Erie Region Conservancy, Erie County Environmental Coalition, Allegheny Defense Project, Bread and Roses Community Fund, Thomas Merton Center, and York County Community Against Racism. We have received letters from the FBI denying any information on most of the requesters, but are still waiting for a response on two groups. With respect to one requestor, we received a letter stating that the FBI had some information on the group but would not release it because to do so would interfere with an ongoing investigation. We are appealing that denial. In February we received extensive documentation of FBI surveillance of the Thomas Merton Center and are pursuing additional information. FBI/JTTF FOIAs, *King, Rhodes, Abdulaleem (Ballard Spahr)*; *Roper*

(U.S.) The ACLU is representing a Southwestern PA veterans group, *Coalition of Veterans Advocates (COVA)* in their attempt to get information about the closing and consolidation of Pittsburgh VA hospitals. The Veterans Affairs Department denied a fee waiver and advised the group that they would have to pre-pay \$32,000 to get the documents, and in an administrative appeal reduced the amount to \$17,000, still an unaffordable sum. In July 2005, we filed suit. By February 2006, the agency had produced virtually all the requested documents without charge. The documents support COVA's contention that the VA did not consider patients' best interests in deciding to close a Pittsburgh hospital. COVA v. Dept. of Veterans Affairs, (W.D.Pa, Lancaster, J.) *Whitson, Diedrich (Schnader Harrison)*; *Walczak*