

ACLU of Pennsylvania 2016 - 2017 Legal Docket



March 2017

Immigrants' Rights

Lancaster Co. – Rights of Refugee Students: We filed a class action lawsuit in July alleging that the School District of Lancaster (SDOL) has been illegally refusing to enroll older immigrant students with limited English proficiency (LEP) or diverting them to an inferior, privately operated disciplinary school, rather than allowing them to attend the district's regular high school. In late January, the U.S. Court of Appeals for the Third Circuit issued a precedential opinion upholding a district court injunction ordering the School District of Lancaster (SDOL) to transfer six recently arrived refugee students from the alternative school, Phoenix Academy, and to admit them to the regular high school, McCaskey, which runs an "International School" designed specifically for newcomer immigrants like our clients. The court agreed with the lower court that SDOL's assignment of refugee students, who don't speak much if any English, to a school that merely seeks to get kids a diploma by giving them credits twice as fast as normal violates the federal Equal Educational Opportunities Act, which requires schools to take "appropriate action" to help English Language Learners overcome their language obstacles so that they can learn the curriculum. We are now working to extend the decision to similarly situated students.

Issa v. School District of Lancaster

ATTORNEYS: Mullen, Schmidt, Gurney, Morley, Aryani, Long (Pepper Hamilton, LLP); McInerney, Moon, Dutton (ELC); Kreimer (U. Penn Law School); Walczak, Tack-Hooper, Cahill (ACLU-PA).

Philadelphia – Challenge to "Muslim Ban": We sued President Trump and Homeland Security officials on behalf of a Syrian family and a retired Iranian teacher who were denied entry into the United States at the Philadelphia International Airport on January 28 and returned on planes to their home countries the morning after the President signed the "Muslim ban" Executive Order (EO), unleashing chaos at airports worldwide. Aided by an injunction won by the ACLU's immigrants' rights project (IRP) in a New York federal court that day and working with a team of lawyers and elected officials, ACLU-PA negotiated with DHS and U.S. Attorney's office lawyers to prevent many other Muslim travelers arriving in Philadelphia over the January 28 weekend from being immediately placed on return flights or being denied access to lawyers. With significant help from Congressman Charlie Dent (R-PA), the Syrian families have since been allowed into the country. The large Syrian family, which started the approval process to obtain green cards in the U.S. in 2003, will join other family members already living in Allentown. The Iranian woman has now also been admitted into the country to visit her daughters, who are doctoral students studying in Delaware and Michigan. The Muslim ban portion of the EO was placed on hold by court rulings from Washington state and the U.S. Court of Appeals for the Ninth Circuit. The ACLU won another injunction in a Maryland federal court blocking President Trump's second EO attempting to institute a slightly revised travel ban. The government has appealed the injunction.

Asali v. Trump

ATTORNEYS: Hohenstein (Landau, Hess, Simon and Choi); Gansallo (HIAS-PA); Grode (Green and Spiegel LLC); Grogan, Diver, Ackelsberg, Leckman (Langer, Grogan & Diver LLP); Messing, Feinberg, Lin (Kairys, Rudovsky, Messing & Feinberg LLP); Roper, Tack-Hooper (ACLU-PA).

U.S./Berks Co. – Habeas Rights of Central American Asylum Seekers: We filed habeas corpus petitions on behalf of women and children fleeing persecution in Honduras, El Salvador and Guatemala challenging lack of due process in the women’s perfunctory asylum denials. A Philadelphia district court judge and the U.S. Court of Appeals for the Third Circuit upheld the Obama administration’s position that the federal courts lacked jurisdiction over the women’s claims. In late December, the ACLU asked the U.S. Supreme Court to review the Third Circuit’s decision ruling that the women, who were apprehended at the border, could not file constitutional challenges in federal court over their asylum proceedings. The narrow legal issue is whether Congress’ restriction of federal court jurisdiction over claims by aliens apprehended at or just inside the border violates the Suspension Clause of the U.S. Constitution, Article I, Section 9, clause 2, which commands that, “The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.” The appeals court granted a stay to prevent the women from being deported until the Supreme Court resolves the dispute. The women and their children are being detained at the Berks County Detention Center. A long and impressive list of constitutional and immigration law professors have filed an amicus brief supporting our certiorari petition, noting that even suspected terrorists at Guantanamo have the right of habeas corpus. The importance of this case has climbed with the Trump administration’s aggressive push to exclude undocumented immigrants.

Castro v. U.S.D.H.S., et al.

ATTORNEYS: Gelernt, Newell, Kang, Nash (ACLU-IRP); Harvey (Steve Harvey Law Firm); Walczak, Roper (ACLU-PA).

Allegheny Co. – Immigration Detainers: We are representing a Mexican-born U.S. citizen who was illegally arrested and jailed overnight on suspicion of being in the United States without authorization. Allegheny County agreed in 2015 to stop holding people at the jail on immigration detainers, but the case continues against the Northern Regional Joint Police Board and the officer who made the arrest. Our motion asking the court to reconsider its dismissal of our claims against the U.S. Department of Homeland Security is still pending.

Davila v. Northern Regional Joint Police Board

ATTORNEYS: Farrell, McNally (Farrell & Reisinger); Rose, Walczak (ACLU-PA).

Criminal Justice Reform

Luzerne Co. – Indigent Defense: In an important precedent-setting decision, the Pennsylvania Supreme Court ruled in September that our lawsuit on behalf of former public defender clients challenging the adequacy of Luzerne County’s funding of the Public Defender’s Office should not have been dismissed by the lower courts and should be allowed to proceed to trial. The Court held that, “We recognize for the first time in Pennsylvania a prospective cause of action enabling indigent criminal defendants to prove that the level of funding provided by a county to operate a public defender’s office has left that office incapable of complying with Gideon [v. Wainwright], creating the likelihood of a systematic, widespread constructive denial of counsel in contravention of the Sixth Amendment to the United States Constitution.” The ACLU has been bringing similar lawsuits challenging the chronic underfunding and understaffing of indigent-defense services for decades, including a successfully settled case against Allegheny County in 1996. Our case attracted supporting amicus briefs from the U.S. Department of Justice and the American Bar Association, among others. We have resumed discovery.

Kuren v. Luzerne Co.

ATTORNEYS: Francis, Yeary, Wigglesworth (Dechert); Rudovsky (Argued) (Kairys, Rudovsky, Messing & Feinberg); Borland (Borland & Borland); Roper, Walczak (ACLU-PA).

PA – Mentally Ill Prisoners: We settled a class action lawsuit in January 2016 on behalf of hundreds of people with severe mental illness who were charged with crimes but have been adjudicated unable to stand trial without mental health treatment. Because of a lack of treatment opportunities, these individuals have been detained in county jails, often in solitary confinement, for months and even years. The settlement agreement requires the Pennsylvania Department of Human Services (“DHS”) to take steps to end the lengthy treatment delays. If the situation does not improve, we will seek court intervention.

J.H. v. Dallas

ATTORNEYS: Gersch, et al. (Arnold Porter Kaye Scholer); Walczak (ACLU-PA).

PA – Debtors’ Prisons: We filed habeas corpus petitions in state court on behalf of two men who were jailed without adequate due process for failure to pay court fines and costs. Constitutional law has long been clear that people cannot be held in jail simply because they are poor, and that anyone assessed financial penalties must receive an ability-to-pay hearing to determine what, if anything, they realistically can afford. Unfortunately, many judges either do not hold the hearings at all or conduct them but insist on unaffordable payments to jail the indigent people anyway. We have been working to address this widespread problem in Pennsylvania via court rule changes and other legal avenues.

- **Lebanon Co.:** In mid-February, we filed a habeas corpus petition in the Court of Common Pleas to release a homeless man detained in jail on minor charges since August 2016 for failure to pay hundreds of dollars in fines and costs. The man has no money or income. Our client was released the day after we filed the petition.

Commonwealth v. Knepp

ATTORNEYS: Langer (Langer, Grogan & Diver); Roper, Christy (ACLU-PA).

- **Cambria Co.:** We filed a habeas corpus petition in early March in the Court of Common Pleas to release a man who was sentenced to jail for two weeks for failing to make timely payments toward court costs and fines he owed. The judge ordered him jailed without a hearing or any other due process protections despite the fact that he had become current on his payments. Our client was released two days after we filed the petition.

Commonwealth v. Mauk

ATTORNEYS: Millstein; Rose (ACLU-PA).

PA – Civil Asset Forfeiture: We filed two amicus briefs in the past year urging the Supreme Court of Pennsylvania to limit the impact of civil asset forfeiture. Pennsylvania’s civil asset forfeiture laws allow law enforcement agencies to take and keep property that allegedly has some connection to a crime and retain 100% of the proceeds for their own use. The property owner does not need to have been convicted of—or even charged with—a crime.

- In a case in which about \$34,000 was taken from a car and forfeited by law enforcement based on the fact that the driver—whom all parties agree is not the owner of the money, or the car—possessed a few grams of marijuana and a couple tabs of ecstasy, we argued that money found in proximity to drugs should not be presumed to represent the proceeds of illegal drug activity.

Commonwealth v. \$34,440.00 U.S. Currency – Appeal of Rafael Falette

ATTORNEYS: Bilus, Hromisin, Bollinger (Saul Ewing); Tack-Hooper (ACLU-PA).

- In a case challenging the Philadelphia District Attorney’s attempted forfeiture of an indigent grandmother’s home and car, as punishment for her adult son’s marijuana exchanges, we argued that allowing the forfeiture would exact too high a penalty in violation of the Eighth Amendment’s Excessive Fines Clause and the Commonwealth’s counterpart, Article I, Section 13 of the Pennsylvania Constitution. We also attempted to demonstrate that the civil forfeiture of homes, cars, and cash has become big business in Pennsylvania and that low-income communities of color disproportionately bear the burden of Pennsylvania’s civil forfeiture laws. ***Commonwealth v. Real Property and Improvements Commonly Known as 416 S. 62nd Street, Philadelphia, PA, and 1997 Chevrolet and contents Seized from James Young***
ATTORNEYS: Rulli, Greenberg (Penn L.S.); Tack-Hooper (ACLU-PA).

U.S. – Judicial Bias: We filed an amicus brief urging the U.S. Supreme Court to rule that former PA Supreme Court Chief Justice Ronald Castille’s refusal to recuse himself from a habeas appeal brought by a death row prisoner—despite the fact that the Chief Justice had personally approved the decision to seek the death penalty in the underlying case in his former role as the Philadelphia DA—violated the Due Process Clause. The Court agreed, holding that the Due Process Clause requires a judge to recuse himself whenever “the likelihood of bias on the part of the judge is too high to be constitutionally tolerable,” and that threshold is crossed “whenever a judge earlier had significant, personal involvement as a prosecutor in a critical decision regarding the defendant’s case.” Our amicus brief stressed the heightened need for reliable judicial decision-making in capital cases.

Williams v. Pennsylvania

ATTORNEYS: Arceneaux, Stubbs, Shapiro (ACLU); Roper, Walczak (ACLU-PA)

Jefferson Co. – Homeless Sex Offender’s Probation Reinstated: The Superior Court reversed a Jefferson County sex offender’s probation revocation in a case in which the ACLU-PA filed an amicus brief. The probationer had been returned to jail four times for failure to find housing and failure to comply with sex offender treatment requirements. Restrictions on where sex offenders can live have made it difficult and sometimes impossible for them to find residences that satisfy their probation requirements. We argued that revoking an ex-offender’s probation for homelessness violated due process and the Eighth Amendment’s ban on cruel and unusual punishment. The appeals court did not reach the homelessness issue, ruling instead that there was no in-prison, sex-offender-treatment requirement to be violated.

Commonwealth v. Grove

ATTORNEYS: Baker (Defender Ass’n of Philadelphia); Roper (ACLU-PA).

Prisoners' Rights

Allegheny Co. – Pregnant Inmates in Solitary Confinement: In mid-December, we filed a class action lawsuit challenging the inhumane way officials treat pregnant women held at the Allegheny County Jail. The lawsuit alleges that jail officials routinely place pregnant women in solitary confinement for extended periods of time without sufficient justification – often for minor infractions or simply to investigate possible misconduct – and do so without due process. The confinement means that the women are allowed out of the cells for maybe an hour once every two or three days, and they do not have access to nutritious meals, healthcare and prescriptions, showers, exercise, and telephone and visitation privileges. The lawsuit claims these conditions are known to be dangerous to the women and their pregnancies. The Jail indicated that it had suspended use of solitary confinement immediately after we filed suit. The case will continue, with a goal of getting a legally enforceable agreement regulating pregnant prisoners' conditions.

Seitz v. Allegheny County

ATTORNEYS: Fawcett, Williams (Reed Smith); Grote (Abolitionist Law Center); Morgan-Kurtz (PAILP); Walczak, Rose (ACLU-PA)

LGBTQ Rights

PA – Transgender Prisoners: We sued the state Department of Corrections on behalf of a transgender woman being housed at a men’s prison. We argue that housing our client, who has been subjected to repeated sexual harassment and sexual abuse by both inmates and guards, in a male prison constitutes cruel and unusual punishment in violation of the Eighth Amendment.

Burton v. Wetzel

ATTORNEYS: Bilus, Richards (Saul Ewing); Morgan-Kurtz (PAILP); Rose (ACLU-PA)

Allegheny Co. – Right to Marry: The Superior Court reversed a Common Pleas Court judge’s refusal to annul a gay adoption. The ACLU-PA filed an amicus brief in support of the gay couple’s effort to annul the adoption of one partner by another, which was done to take advantage of benefits not available to them because of their inability to marry prior to our victory for marriage equality in *Whitewood v. Wolf*. Now that the couple could marry they needed to annul the adoption, but the Allegheny County Court refused, saying there was no statutory basis for doing so. The Superior Court ruled that it was within the lower court’s equity powers to annul the adoption.

In re Bosee

ATTORNEYS: Mahood (Wilder & Mahood); Casale (Hangley Aronchick).

Philadelphia – LGBT Discrimination: We filed an amicus brief in the PA Supreme Court supporting the Philadelphia Commission on Human Relations’ jurisdiction over Commonwealth agencies to enforce anti-discrimination laws based on sexual orientation and gender identity. SEPTA has argued that a municipal commission has no jurisdiction to enforce its broader anti-discrimination law against state and state-related agencies, and the Commonwealth Court agreed. The effort to expand the state’s anti-discrimination statute to include sexual orientation and gender identity has thus far failed, meaning that the only protection for sexual-orientation and gender-identity discrimination is contained in many municipal ordinances across the Commonwealth. One of the underlying claims that prompted the legal battle is made by man kicked off a bus because the driver didn’t think that his appearance conformed with the gender listed on his pass.

SEPTA v. Philadelphia Commission on Human Relations

ATTORNEYS: Chirls (Fineman, Krekstein & Harris); Roper, Tack-Hooper (ACLU-PA).

Allegheny Co. – Sexual-Orientation Discrimination: We joined with the ACLU’s Women’s Rights Project in filing an amicus brief in the U.S. District Court for the Western District of Pennsylvania arguing that sexual-orientation discrimination is a form of sex discrimination that is illegal under Title VII, the federal law that protects employees from discrimination on the basis of sex. The district court judge agreed and denied the company’s motion to dismiss.

U.S. v. Scott Medical

ATTORNEYS: Lapidus (ACLU-WRP); Rose, Walczak (ACLU-PA).

Montgomery Co. – Transgender Minor Wins Name Change: We helped a 17-year-old transgender boy obtain a court order to change his name to be consistent with his gender identity. Last year a judge refused to approve the name change without giving any reason. News of the denial spread quickly through the transgender community and deterred other transgender teens in the county from seeking legal name changes. We filed a new petition and carefully prepared the case to create an appropriate record for appeal, but the court assigned a different judge who granted the change without any objection.

In re Adrian

ATTORNEYS: Long (Reed Smith); Tack-Hooper, Cahill (ACLU-PA).

PA – Birth-Certificate Problem Finally Fixed: After nearly two years of ACLU-PA encouragement, on May 31, 2016, the Pennsylvania Department of Health finally issued guidance to hospitals advising them that, for same-sex female couples who are married at the time one of them gives birth, the hospital should list both spouses as the child’s parents on the birth certificate. This first emerged as a problem shortly after we won marriage equality in May 2014. A number of bureaucratic snafus apparently delayed issuance of the guidance, but in the end we are pleased with the result. *ATTORNEY: Tack-Hooper (ACLU-PA).*

PA – Student GSA Club: We convinced the PA Virtual Charter School to allow a Pittsburgh-based student to form a Gay-Straight-Alliance club (GSA). The school had erected numerous obstacles to the student’s attempts to form a GSA over the past two years. Our demand letter clarified the situation for the school and they immediately recognized the club. *ATTORNEY: Rose (ACLU-PA).*

Rights of Transgender Students

- **Snyder Co.:** We sent a letter to the Selinsgrove School Board countering misinformation from a group called Liberty Council, and supporting the district’s policy of treating all students in accordance with their gender identity, including with respect to use of bathrooms. *ATTORNEY: Roper (ACLU-PA).*
- **Allegheny Co.:** We sent a letter to the Pittsburgh School Board, countering misinformation from the Alliance Defending Freedom, and supporting a proposed policy to treat all students in accordance with their gender identity, including with respect to use of bathrooms. The School Board unanimously passed the policy. *ATTORNEY: Rose (ACLU-PA).*
- **York Co.:** In response to complaints that transgender students at the Spring Grove Area High School were being mistreated (including reports that school staff refused to use the students’ preferred gender pronouns and names and punished transgender students for using the bathrooms that matched their gender identity), we filed a Right-to-Know request asking for any policies regarding transgender students. After learning that the District had no such policies in place, we sent a letter to the Superintendent expressing our concern about the school’s failure to address the needs of transgender students. We are in ongoing discussions with the District. *ATTORNEY: Tack-Hooper (ACLU-PA).*

Religious Liberty

Jefferson Co. – Prayer at School Assembly: At a mandatory school assembly at Brookville High School this past Veteran’s Day, the invited speaker, Pennsylvania Representative Cris Dush, asked the students to bow their heads and pray to the “lord” and “Jesus Christ.” He also told them the destruction in Haiti was caused by Haitians’ “refusal to denounce the devil.” A VFW chaplain then concluded the program with another prayer. We warned the school that sectarian prayers in school, even by invited speakers at student assemblies, violate the First Amendment’s Establishment Clause. *ATTORNEY: Rose (ACLU-PA).*

Allegheny Co. – Town Council Prayer: We sent a letter advising the McCandless Township Council that its practice of allowing council members to give sectarian Christian prayers at council meetings violates the Establishment Clause. *ATTORNEY: Rose (ACLU-PA).*

Philadelphia – Pools’ Restrictions on Clothing: We sent a letter on behalf of a Muslim woman who was refused permission to accompany her young children to Philadelphia public swimming pools because of a rule that prohibits anyone from entering the area without bathing attire, even if they are not swimming. The rule effectively prohibited Muslim women from accompanying their children while dressed in religiously acceptable attire. The Parks and Recreation department quickly agreed to change the policy, retrain staff, update their manual for next summer, and apologize to our client. *ATTORNEY: Rose (ACLU-PA).*

Lebanon Co. – Religious Excusal from Jury Service: We sent a letter requesting that the Lebanon County president judge revise the court’s process for excusing potential jurors for religious reasons. The letter was prompted after a man unsuccessfully sought excusal from state court jury service because of his religious belief that he cannot judge others. At the court’s request, the man submitted a statement from his pastor confirming that the man sincerely held this belief, but that it was not the official view of the church. The judge refused to excuse the man from jury service and then questioned him vigorously in open court and in front of other potential jurors about his religious views. The judge refused to excuse the juror, saying this was not a Christian view familiar to him. *ATTORNEY: Roper (ACLU-PA).*

Montgomery Co. – Religious Teaching in Public School: A second-grade teacher in the Penn Wynne Elementary School, Lower Merion School District gave students a crossword puzzle entitled, “Temptation in the Garden,” that began with the following quote from Genesis 3:4-5: - “You will not surely die,” the serpent said to the woman. “For God knows that when you eat of it your eyes will be opened, and you will be like God, knowing good and evil.” Subsequently, the music class was shown a video about Noah’s Ark. We sent a letter to school warning that inclusion of religious-themed materials in instruction violates the First Amendment’s Establishment Clause and asked them to speak with teachers to assure the teaching does not happen again. *ATTORNEY: Rose (ACLU-PA).*

Freedom of Expression

Right to Record Police

Philadelphia: The ACLU-PA has appealed two U.S. District Court decisions holding that there is “no First Amendment right under our governing law to observe and record police officers” performing their duties in public. Federal courts in other jurisdictions have ruled in favor of First Amendment protection. The U.S. Third Circuit Court of Appeals has scheduled argument in May.

Fields v. City of Philadelphia; Geraci v. City of Philadelphia

ATTORNEYS: Grogan, Leckman (Langer, Grogan & Diver, P.C.); Feinberg (Kairys, Rudovsky, Messing, & Feinberg); Kreimer (U. of Pennsylvania Law School); Tack-Hooper; Roper (ACLU-PA).

Armstrong Co.: The ACLU-PA settled a lawsuit against a Ford City police officer who arrested our client for violating the state Wiretap Law after the officer learned that he had posted a recording on Facebook of his interaction with the officer and a teacher over a parking dispute in front of his home. The suit also named the Armstrong County District Attorney, whom the officer claims advised him that he could charge our client with violating the Wiretap Law. Our client was handcuffed and arrested in front of his young son and spent eight hours in jail before being released on bond. All charges were withdrawn by the District Attorney. Defendants agreed to pay \$40,000 in damages and attorneys’ fees, and the DA will issue a written policy to police departments in Armstrong County advising them that recording police does not violate the Wiretap Law.

Gratteri v. County of Armstrong

ATTORNEYS: Foreman; Rose (ACLU-PA).

Allegheny Co.: We are representing three African-American Pittsburgh residents, including a constable, who were verbally abused by a police officer, threatened with arrest for attempting to record the interaction, and, months later, falsely charged with disorderly conduct in retaliation for filing complaints with official city agencies.

Brown v. Vitalbo

ATTORNEYS: O'Brien; Walczak, Rose (ACLU-PA).

Right to Protest

Philadelphia: We filed suit against the City of Philadelphia one month before the DNC on behalf of social justice advocates who were denied a permit to march from City Hall to the convention site, the Wells Fargo Center. The City had stated that it would grant no demonstration permits for Broad Street, a main thoroughfare and historic route for protest marches, or anywhere in Center City between 3 and 6 p.m. The City eventually lifted the Broad Street ban but held firm on the rush-hour ban until the ACLU's lawsuit, which produced a quick settlement that resulted in our client getting a permit. Thereafter, the City of Philadelphia largely did a good job of allowing protesters to express themselves peacefully in public spaces during the convention.

Poor Peoples Economic Human Rights Campaign v. City of Philadelphia

ATTORNEYS: Roper, Tack-Hooper (ACLU-PA).

Luzerne Co.: A federal judge granted a preliminary injunction ordering the Luzerne County Convention Center Authority to relax restrictions on protesters outside the county-owned Mohegan Sun Arena. The Arena's policy required all protesters to stay in a pen at the edge of the parking lot. The judge ordered the Arena to allow up to 20 protesters to roam the area handing out literature, so long as they didn't block access to the facility. Protesters with signs were still required to remain in the pen. Our clients are animal-rights activists who wanted to protest against Ringling Brothers Circus, which was staging one of its last shows before ending its use of elephants. The case will continue toward a final injunction. We hope to relax further the restrictions on protesters.

Pomictter v. Luzerne Co. Convention Center Authority

ATTORNEYS: Bilus, Kline (Saul Ewing); Roper, Tack-Hooper (ACLU-PA).

Dauphin Co.: The ACLU-PA convinced the Derry Township Industrial Commercial Development Authority, which owns the Giant Center in Hershey, to allow animal-rights protesters to demonstrate outside a circus performance at the Giant Center. *ATTORNEYS: Roper, Tack-Hooper (ACLU-PA).*

Mercer Co.: We sent a letter warning the Mercer County sheriff that he cannot threaten (or file) criminal charges against a man standing on a public sidewalk outside the county courthouse displaying signs criticizing a common pleas judge, including signs claiming the judge is a "pedophile." Such a restriction is an unconstitutional restraint on expression and further threats will draw an ACLU lawsuit. *ATTORNEY: Rose (ACLU-PA).*

Political Speech

Allegheny Co.: We sent a letter to McKeesport (Allegheny Co.) officials, which resulted in the reversal of a ban imposed on voter-registration activities in Renziehausen Park, a public space, during public programs. *ATTORNEY: Rose (ACLU-PA).*

Delaware Co.: An ACLU-PA demand resulted in the county lifting a ban on political activity in county parks that was used to stop a candidate and his supporters from soliciting signatures for a nominating petition in Rose Tree Park. *ATTORNEY: Roper (ACLU-PA).*

Chester Co.: ACLU-PA advocacy convinced the Borough of Phoenixville to reverse its decision that a political candidate would not leaflet during the borough's "First Friday" public gathering. *ATTORNEY: Roper (ACLU-PA).*

Carbon Co.: The county acceded to an ACLU-PA demand by reversing its position that a political candidate could not co-sponsor a rally at a public park. *ATTORNEY: Roper (ACLU-PA).*

Allegheny Co.: We contacted the Harrison Township solicitor after police told canvassers for Planned Parenthood Votes that they could not engage in door-to-door canvassing without first obtaining a solicitation permit. The solicitor provided assurance that the canvassers would be permitted to knock on doors in Harrison Township with a permit. *ATTORNEY: Rose (ACLU-PA).*

Washington Co.: The Borough of Canonsburg responded to an ACLU-PA demand by providing assurance that Bernie 2016! get-out-the-vote canvassers could go door to door without first securing a permit. The preceding evening the Canonsburg mayor had told a Bernie 2016! canvasser that she was not allowed to canvass door to door without a permit. *ATTORNEY: Walczak (ACLU-PA).*

Cumberland Co. – Right to Display Political Lawn Signs: Mt. Holly Spring's Borough held back on enforcing their ordinance banning all political signs on private property after ACLU-PA threatened legal action. The Borough threatened to fine a local resident for posting signs on his property he produced that read, "say no to roundabouts." The First Amendment guarantees the right to display political signs on one's own property. *ATTORNEY: Rose (ACLU-PA).*

Government Accountability

Right-to-Know Law

PA: We represented the Prison Legal News (PLN) in defending an appeal, brought by privately contracted providers of services to prisoners, seeking to overturn an Office of Open Records (OOR) decision that the companies were required to disclose documents attached to their respective contract bids. The Commonwealth Court reversed, holding that financial data of requesters was expressly exempted from disclosure by Pennsylvania's Right-to-Know law. We filed a petition for review, which the PA Supreme Court has not ruled on yet.

Global TI*Link Corp v. Wright, Prison Legal News

ATTORNEYS: *Helper, Titus (Schnader, Harrison); Roper (ACLU-PA).*

PA: We joined an amicus brief filed by the PA Office of Open Records in the Commonwealth Court arguing that court orders maintained by the Philadelphia District Attorney are records of a local agency and therefore subject to disclosure under the Right to Know Law.

Philadelphia District Attorney's Office v. Stover

PA: We joined an amicus brief filed by the PA News Media Association in the PA Supreme Court arguing that records of district attorneys are not judicial records under the Right to Know Law and therefore are not exempt from disclosure under the Right to Know Law.

Miller v. Centre County

Right to Petition

Westmoreland Co.: The ACLU-PA settled a lawsuit against the City of Greensburg on behalf of a lawyer and his client, who were the subjects of a retaliatory lawsuit filed by Greensburg against the men in state court. Robert Owsiany, an experienced Pittsburgh civil-rights lawyer, represented Edward Wisneski in a federal civil-rights case against Greensburg and four of its police officers after Wisneski was struck with a Taser during a vehicle stop. After the judge ruled against him, Greensburg chose not to seek costs or attorneys' fees from the federal court and instead filed a lawsuit in state court seeking reimbursement from Owsiany and Wisneski for its expenses in defending the federal-court lawsuit. Statements by Greensburg officials demonstrate that the lawsuit was filed against the men to chill others from filing civil-rights cases against the City. For example, the Greensburg solicitor told another attorney he would "do the same thing" to him that he did to Owsiany after the attorney said he intended to file a civil-rights suit against the city. Greensburg dropped its state-court lawsuit and paid \$98,000 in damages and attorneys' fees to settle the case.

Owsiany v. City of Greensburg

ATTORNEYS: Nandan, (Reed Smith); Rose, Walczak (ACLU-PA).

Butler Co.: The Court of Common Pleas granted our preliminary objections and dismissed a SLAPP (strategic lawsuit against public participation) suit filed by a developer and several natural gas leaseholders against members of the Mars Parents Group and two environmental organizations. The developer's suit claimed that our clients' opposition in township hearings and before the Zoning Hearing Board to planned fracking a half mile from their children's school and 1000 feet from their homes was a wrongful interference with commercial interests. We argued that the First Amendment protects our clients' right to petition the government for redress of grievances and unless their actions were a "sham," which they clearly were not, the developer's lawsuit should be dismissed as unconstitutional.

Dewey Homes v. Delaware Riverkeeper Network

ATTORNEYS: Healey (Healey & Hornack); Walczak (ACLU-PA).

Internet Speech

Dauphin Co.: The Court of Common Pleas granted our motion to quash a subpoena served on an Internet service provider (ISP) seeking the identity of Jane Doe, a pseudonym for a person who wrote a comment on a news article on the Penn Live website. Jane Doe is not a party to the lawsuit. In pursuing his defamation claims, the Plaintiff sought overly ambitious discovery regarding anonymous commenters, including Jane Doe, whom he mistakenly believed might be the same person as the Defendant. ACLU-PA represented Jane Doe in order to preserve her right to speak anonymously online.

Carney v. Wilson

ATTORNEYS: Roper, Tack-Hooper (ACLU-PA).

Allegheny Co.: A Common Pleas judge granted our motion to vacate an injunction he issued ordering our client to shut down his Internet website criticizing a local lawyer. The lawyer filed a misappropriation and unauthorized-use-of-name-or-likeness lawsuit against our client, an internet poster who created several webpages that used the attorney's name in the website domain name. The websites revealed that the lawyer had been rated unqualified to be a judge by the county bar association and included stories from disgruntled clients. Such websites are often known as "gripe sites." We argued that the injunction, which the judge issued without holding an on-the-record hearing or allowing the webhost to get an attorney, was a "prior restraint" that violated the First Amendment.

Luvara v. Gedid

ATTORNEY: Rose (ACLU-PA).

Washington Co.: The California Borough police department agreed to pay \$6600 to a Washington County man who was prosecuted for terroristic threats and harassment over Facebook posts criticizing, in vulgar but not threatening terms, a local teacher involved in the girls' basketball program. In total, our client published approximately three to four short posts, at which point the police charged him. The charges were dismissed, but he had to pay for an attorney. *ATTORNEY: Rose (ACLU-PA).*

Advertising

Philadelphia: We filed a lawsuit in 2011 over the Philadelphia airport’s refusal to display an NAACP ad that read, “Welcome to America, home to 5% of the world’s people & 25% of the world’s prisoners; Let’s build a better America together.” The City ultimately displayed the original ad, but then adopted a stricter policy to exclude such ads in the future. We then challenged the new policy. The U.S. Court of Appeals for the Third Circuit held that the airport’s rejection of non-commercial ads had no relationship to the claimed goals of increasing revenue or creating a travel-friendly environment. The court refused Philadelphia’s request to reconsider the case en banc.

NAACP v. City of Philadelphia

ATTORNEYS: Magaziner, Wigglesworth (Dechert); Kreimer (U. Penn Law School); Roper (ACLU-PA).

Lackawanna Co.: We are representing the Northeastern Pennsylvania Free Thought Society in its effort to display advertisements related to atheism on Lackawanna County Transit System buses. We have argued that the transit agency’s refusal to display the ads violates the group’s First Amendment free-speech rights.

Northeastern PA Freethought Society v. County of Lackawanna Transit System

ATTORNEYS: Loscalzo, Shapiro, Wanger (Schnader Harrison); Roper; Tack-Hooper (ACLU-PA).

Other Free Expression Cases

Blair Co. -- Flag Desecration: The ACLU-PA settled a lawsuit filed on behalf of an Allegheny Township man who was cited with desecrating and insulting the American flag (two different crimes) for hanging on his house an upside-down flag with “AIM” (standing for American Indian Movement) spray painted on it. The Township passed a policy directing that police not enforce the state’s flag desecration statutes and paid \$54,000 in damages and attorneys’ fees.

Brubaker v. Allegheny Township

ATTORNEYS: Shubin, McGraw (Shubin Law Office); Rose, Walczak (ACLU-PA).

PA – Vanity License Plates: The Pennsylvania Department of Transportation (PennDOT’s) has agreed to our request that they change the standards underlying their vanity license plate program. Under the old policy, plate requests were screened for “unacceptable requests such as profanity, drugs, religion, racial undertones, sexual words, slang words and inappropriate abbreviations.” We argued that this standard was vague and had been applied in a discriminatory fashion: our client’s plate request was rejected for being “anti-religious”, but

many explicitly religious plates had been approved. The new policy only prohibits lewd, lascivious and profane words and messages that may mislead or confuse law enforcement. The policy specifically says that messages will not be denied simply because they relate to religion. Our client is a motorcycle owner and enthusiast who will now be able to obtain a vanity plate with “666” on it.
ATTORNEY: Roper (ACLU-PA).

Tioga Co. – Right to Profane Speech: We sued a police officer from Blossburg Borough for issuing a disorderly conduct citation to a man for using profanity. The man had an argument with a woman over her son’s alleged use of profanity toward him, and in the course of doing so swore at the woman. When both went to the police station to file complaints, the officer issued a citation to our client for admitting to using profanity. The charges were dismissed. The use of profanity is protected by the First Amendment. We have brought a number of these challenges but police refuse to accept the limits on their ability to punish people for using profanity.

Margeson v. Scott

ATTORNEYS: Powers, Magaziner (Dechert); Roper (ACLU-PA).

Allegheny Co. – Pledge of Allegiance: The Gateway School District quickly agreed to our demand that they instruct a teacher on a student’s First Amendment right to remain seated during the pledge of allegiance. The teacher had berated the girl for disrespecting the nation’s soldiers, made her leave the home-room and told her she cannot return until she shows proper respect for the flag.
ATTORNEY: Rose (ACLU-PA).

Voting Rights

PA – Nonpartisan Election Protection: We partnered with the Lawyers Committee for Civil Rights and other nonpartisan organizations to protect voting rights during the 2016 general election. We recruited volunteers to travel to polling stations across the Commonwealth to report any problems and assist voters and lawyers to represent voters in court. Our volunteers investigated reports of long lines, longtime voters whose names did not appear on the rolls, and individuals being asked for ID, among many other issues.

Luzerne Co. – Right to Vote While Expressing Support for Candidate: We sent a letter to the Luzerne County Board of Elections on behalf of a woman who was told on primary election day in April that she could not vote because she was wearing a Trump for President t-shirt, which, she was advised, was illegal electioneering. In an effort to prevent similar violations in the Fall, we alerted the Board that the Department of State had issued a memo in 2008 (at our request) declaring that voters wearing clothing, pins, etc., bearing candidates' names or likenesses were not illegally electioneering at the polls and must, under the First Amendment, be allowed to vote. The voter was eventually allowed to cast a ballot on primary day after arguing her point. *ATTORNEY: Rose (ACLU-PA).*

Due Process

Luzerne Co. – “One Strike” Ordinance: We settled a lawsuit challenging the City of Wilkes-Barre’s “One Strike” ordinance. The ordinance, which had been in effect since September 2013 and was used to close more than 25 rental properties, allowed Wilkes-Barre to close rental properties for six months and immediately evict all the tenants living there even if there was no evidence that the tenants or landlords knew that drug or gun crimes had occurred at their properties. The ordinance provided virtually no due process, with the so-called appeals being heard by proponents of the law who often ruled after the six-month penalty had expired. We claimed that the closures represented unreasonable seizures of property in violation of the Fourth Amendment, violated landlords’ and tenants’ due-process rights, and constituted excessive fines in violation of the Eighth Amendment. Under the settlement, Wilkes Barre has repealed the ordinance, promised not re-enact it, and paid \$225,000 in damages and attorneys’ fees to two tenants who were summarily evicted and three landlords who were barred from using their properties for six months.

Peters v. City of Wilkes-Barre

ATTORNEYS: Fine, Groff (K&L Gates); Walczak, Rose (ACLU-PA).

Allegheny Co. – Candidate Fines: When county council candidate Caroline Mitchell contested a fine levied by the County Elections Division for allegedly filing a campaign report late, the agency’s director sent out the notice, presided at the hearing, acted as the chief witness, and ultimately issued the finding against her to pay a \$390 penalty. The ACLU-PA raised due process concerns in an appeal on Ms. Mitchell’s behalf to the Court of Common Pleas. The County entered into a settlement agreement whereby the decades-old fine collection process would stop, fine-collection cases would be referred to the District Attorney (as is done in other counties), and the County would refund all of Ms. Mitchell’s fines and court costs.

Mitchell v. Allegheny Co. Dept of Elections

ATTORNEY: Walczak (ACLU-PA).

PA – Right to Counsel: The ACLU-PA joined an amicus brief filed by the Juvenile Law Center in the Pennsylvania Supreme Court arguing that the Superior Court erred in holding that appointment of a guardian ad litem, as opposed to a “client-directed attorney,” is satisfactory for a nine-year-old child in a proceeding to determine if parental rights should be terminated. The child vehemently disagreed with the termination but the guardian ad litem insisted on supporting termination because she thought it in the child’s best interest. We argued that the child is old and mature enough that the Court should hear his views. Community Legal Services and Pennsylvania Legal Aid Network also joined the brief.

In re L.B.M.

ATTORNEY: Levick, Shah (JLC); Walczak (ACLU-PA).

Allegheny Co. – Ban from School Property: A former school board member was told he could no longer go on West Mifflin School District property. There was no criminal charge or court order. This prohibited him from voting, since his polling place was at a school. We sent a letter to the school district advising them that their ban was illegal and that our client would vote on election day. The school district agreed that he would be allowed on school property to attend public events. *ATTORNEY: Rose (ACLU-PA).*



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