

FREE FOR ALL



ACLU-PA at the
Supreme Court
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SPRING 2021

WHAT WE DO TODAY SHAPES OUR TOMORROW



By
Reginald T. Shuford
Executive
Director

January 6, 2021, was one of the worst days in living memory in the United States.

Sadly, there's a lot of competition these days for that distinction, and we know those tragic moments by geography. Charleston. Charlottesville.

Pittsburgh. El Paso. Atlanta.

What happened at the U.S. capitol on January 6 was a culmination of four years (and 400 years) of white supremacy terror. Our country's sordid history is stained by the blood spilled by violent white resistance to racial progress and even the mere existence of Black people and other people of color. When a violent mob attacked the capitol that day, its intent

was to disrupt a democratic process in which a multiracial, multigenerational coalition had delivered results that the mob didn't like. And they may have even had murder on their minds, as some in the crowd chanted, "Hang Mike Pence," and were asking Nancy Pelosi's whereabouts.

As a native of Wilmington, North Carolina, I am all too aware of how far white resistance will go to disrupt democracy. Wilmington is where the only successful coup in American history occurred. In 1898, a mob of white supremacist insurrectionists violently overthrew a multiracial coalition of duly elected city officials, killing at least 60 Black people and chasing many others away from the town, only never to return.

I'm writing this mere days after a shooter murdered eight people in

Atlanta, including six people of Asian ethnicities. My heart breaks for their families and for Asian-Americans and Pacific Islanders around the country, who feel this tragedy and the recent uptick in hate crimes in a very real and personal way, including some of our staff. As a Black man, I feel called to stand with my AAPI siblings; our histories may be different, but the reason why we face this struggle is the same - America's deep-rooted addiction to white supremacy.

So what do we do now? Although important, it takes more than passing bills and winning cases to change a culture. Each of us, regardless of our race, ethnicity, gender, or age, can be a part of making change, in whatever way we feel compelled to take action. I have previously mentioned in this

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THE BALLOTS THAT SAVED THE ELECTION, AND OTHER TALES OF 2020

Voting rights is a civil liberties issue that often flies below the radar. Passions are high close to a national election and then typically simmer after the quadrennial election is over. But it is the work that happens in the other three years that determines whether or not a presidential election or any other election will operate smoothly, with access to the ballot protected.

ACLU-PA and its coalition partners have thrived in that space, advocating with election officials and state lawmakers for policies that provide both access and security in voting.

The election reform bill that passed in 2019 was the culmination of years of work by ACLU-PA advocacy staff and our partners in the voting rights coalition Keystone Votes. Of course, when Governor Wolf signed the bill in October 2019, no one knew then how critical mail-in voting would be just a few months later, when the reality of the COVID-19 pandemic hit. In the



general election last year, approximately three million Pennsylvanians took advantage of vote-by-mail, guaranteeing that they could vote while diminishing the chances of contracting COVID-19.

That law, Act 77, included more than vote-by-mail. It also appropriated \$90 million for upgrades to voting machines with paper verification and later deadlines for voter registration and arrival of absentee and mail ballots.

These reforms proved critical in 2020.

It takes more than new laws to protect the vote, though. ACLU-PA staff teamed up with our partners in the Election Protection Coalition to monitor and intervene in situations that threatened to disenfranchise voters and engaged in scenario planning, preparing for worst-case scenarios.

ACLU-PA's advocacy staff and communications team also embraced the task of reaching as many voters as possible with important information about the election process, with a priority on historically marginalized communities, including people with criminal records and Black and brown people living in poverty. With new voting rules in

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FROM THE PRESIDENT



Dear ACLU-PA supporter,

In January, as the ACLU ventured into its 101st year, our national office announced the launch of a major new initiative, called Systemic Equality. This program will be an enhancement of—not a retreat from—our already ambitious agenda. The Systemic Equality initiative seeks a deeper understanding of and strategies for finding solutions to the persistence of racial inequality in American society, including recognition of its economic dimensions in housing, banking, and other areas. While some have asked whether this implies a turning away from ACLU's traditional focus on freedom of expression, I see a turning back toward the roots of that core civil liberties commitment.

A fascinating historical study by Harvard professor Laura Weinrib, entitled *The Taming of Free Speech*, documents how ACLU founders Roger Baldwin, Crystal Eastman, and our other earliest leaders analyzed almost every issue embraced by the ACLU in its first 20 years in relation to its impact on improved economic security for all, which they viewed as the foundation of liberty. They also understood the intimate connection between social inequality and America's painful heritage of racial oppression.

Unsurprisingly, many of those recruited to be ACLU's earliest leaders were actively involved in the NAACP, founded a decade earlier. The second major case behind which the ACLU threw its support (after the *Scopes "Monkey Trial"*) was jointly undertaken with the NAACP. A dozen Detroit residents were charged in 1925 with conspiracy to commit murder for defending a Black doctor's home in an otherwise all-white neighborhood against a violent mob that sought to drive the family out. ACLU-sponsored lawyers won the case. In 1931, the ACLU was the first predominantly white organization to publish a systematic overview and attack on racially discriminatory laws as unconstitutional, while acknowledging that extra-legal lynching worked hand-in-glove with a racist legal structure to deny equal rights.

I am excited to see how our latest Systemic Equality program echoes and carries forward the racial and economic aspects of ACLU's original understanding of the ongoing struggle for liberty.

Peter Goldberger
President, ACLU-PA

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space that ACLU-PA has undertaken a strategic planning process that includes examining how white supremacy impacts our work, both externally and internally. As part of that process, we have overhauled our staff evaluation process, and our staff will now be evaluated on their competency on ABIDE - authentic belonging, inclusion, diversity, and equity. This change is important to me and my colleagues and has the full support of the board of directors.

That's just one small way that we can change the culture, within our own

spheres of influence. Each of us has agency to make anti-racism a guiding principle in our lives.

I say this with eyes wide open. Generations before us have been in this struggle. Generations after us probably will be in it, too. But the world they face decades from now will be shaped by what we do today.

Reggie Shuford, Executive Director
ACLU of Pennsylvania

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Free for All is published twice a year by the ACLU of Pennsylvania, P.O. Box 60173, Philadelphia, PA 19102.

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ACLU-PA GOES (SORT OF) TO THE U.S. SUPREME COURT

The United States Supreme Court hears less than 80 cases each year, about 1% of the total requests. Most lawyers will never have a case heard by the court. And yet, in a rare feat, ACLU-PA is co-counsel on not one but two cases currently before the court, both with serious consequences for constitutional rights.

In November, the court heard arguments in *Fulton v. City of Philadelphia*, a challenge by Catholic Social Services to the city's enforcement of its nondiscrimination policy in foster family recruitment. In 2018, the city ceased referring foster children to CSS after it learned that the agency refused to license same-sex couples as foster parents. CSS sued the city, and ACLU-PA and national ACLU's LGBT & HIV Project intervened on behalf of the Support Center for Child Advocates, a nonprofit that represents and advocates for children in the foster care system, and Philadelphia Family Pride, a nonprofit membership organization of LGBTQ&T people and their families, whose members include same-sex foster parents and prospective foster parents. Although the ACLU's clients are not defendants in the case, their interests could be impacted by the outcome, and, thus, the district court agreed to let them intervene, meaning that they are parties to the case.

ACLU-PA helped the city successfully defend its decision to stop placing foster kids with Catholic Social



After being reinstated, B.L. continued to participate in cheerleading until she graduated in 2020.

Services at the district and appeals court levels, but CSS successfully petitioned the Supreme Court to hear the case. A Stanford law professor presented our oral argument to the court in early November, and we await a decision.

In late April, the court heard arguments in *B.L. v. Mahanoy Area School District*. In 2017, B.L. (who is identified by her initials because she was a minor at the time) posted a "snap" to the social media platform Snapchat with a photo of her and a friend accompanied by the text, "fuck school fuck softball fuck cheer fuck everything". B.L. was in ninth grade at the time and was expressing her frustration over not being named to the varsity cheerleading team. The snap was posted from her own phone on a Saturday while she and her friend were at a mini market.

In response, the school removed B.L. from the junior varsity cheerleading squad. Represented by the ACLU of Pennsylvania, a federal court reinstated her to the team, ruling that the school's action violated her First Amendment rights. The appeals court upheld the district court decision in June 2020, ruling that schools cannot discipline students for off-campus speech merely because school administrators think the speech will be disruptive. How much authority school officials have over what students say off campus, where they supposedly have greater freedom of expression and parents should play a role, is an important issue that has bedeviled school officials and lower courts since the internet's advent.

B.L. continued to participate in cheerleading and graduated from high school in 2020. But the case goes on, after the Supreme Court granted the school's review petition. Oral arguments were held on April 28. ACLU-PA Legal Director Witold Walczak presented B.L.'s case to the court, albeit by phone as the COVID-19 pandemic has forced the court to hear arguments remotely.

Decisions in both cases are expected by the end of June. Learn more about these cases at aclupa.org/Fulton and aclupa.org/BL. ■

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place—rules that changed throughout election season—and the added complexity of the pandemic, voters needed information to empower themselves.

Teaming up with Keystone Votes, ACLU-PA helped prepare a "know your rights" mailing that was sent to nearly one million Black, Indigenous, and people of color in Pennsylvania, with a follow-up mailing to more than 150,000 BIPOC voters in key counties about the election protection hotline. That hotline, 866-OUR-VOTE, fielded more than 22,000 calls in Pennsylvania during election season, including more than 3,000 on Election Day.

Meanwhile, Election Protection Coordinator Donnell Drinks led ACLU-PA's on-the-ground work to connect with marginalized communities. While practicing COVID-related best practices, Donnell had conversations with voters and potential voters wherever people were

gathered in Philadelphia, including food pantries and early voting sites.

Finally, ACLU-PA's volunteer coordinators trained more than 150 people in the Voter Ambassador program, a joint project with Common Cause PA, in which volunteers learned key information about election law in order to combat misinformation wherever they saw it.

Protecting the right to vote goes on in 2021, as new threats arise in the state General Assembly, including a proposal to fully repeal vote-by-mail.

The power of the vote is obvious; if it was meaningless, powerful people wouldn't work so hard to keep people from casting their ballot. The vote is foundational to a functioning democracy, and the ACLU of Pennsylvania is dedicated to protecting it. ■

PROPOSED CONSTITUTIONAL CHANGE THREATENS INDEPENDENCE OF PA COURTS

After a series of rulings by the Pennsylvania Supreme Court, including overturning the distorted maps of U.S. House districts, upholding Governor Wolf's authority to manage the COVID-19 crisis, and expanding the ability of voters to submit their ballots in the 2020 election, some state lawmakers in Harrisburg have responded with a proposal to upend how Pennsylvanians elect judges and justices to the state appeals courts.

Known by opponents, including the ACLU-PA, as "judicial gerrymandering," the proposed state constitutional amendment would end Pennsylvania's practice of electing judges and justices by statewide election and would instead carve the commonwealth into seven geographical judicial districts, requiring candidates to live in the



The judicial gerrymandering constitutional amendment could be on the ballot in the general election in November, if the legislature passes it before August 4.

district that they would represent. Instead of voting for candidates for all seats on the Superior, Commonwealth, and Supreme Courts, Pennsylvania voters would be disenfranchised by only voting in races for the seats that represent their geographical district.

The courts are often the last venues for protecting people's civil rights and civil liberties, especially when the politically inclined legislative and executive branches fail, and this proposal is a threat to that protection. It would also give the legislative branch excessive power and leverage over the judiciary, as legislators would be responsible for drawing and redrawing the geographical districts.

A state constitutional amendment must be passed twice by the General Assembly in consecutive sessions and then must be passed by a majority of voters. This proposal passed the legislature last year and is currently before state lawmakers as House Bill 38. Visit aclupa.org/judicialgerrymander to learn more and to take action to contact your state legislators. ■

THE GUARDRAILS SHOOK. BUT DEMOCRACY HELD.

The 2020 election was as harrowing an experience as any in recent memory. Under immense pressure from extremist politicians and their followers, elections officials delivered an election that was safe and secure. For the staff of the ACLU of Pennsylvania, the months leading up to November 3 meant long hours and hard work. And the weeks after the election provided no respite, as ACLU-PA's lawyers were in court and advocates were supporting people who were in the streets.

ACLU-PA's 2020 election protection work kicked off in earnest in February when a right-wing group filed a lawsuit against Allegheny County in an effort to purge about 15,500 people from the voter rolls. Represented by the American Civil Liberties Union and Demos, the League of Women Voters of Pennsylvania, the League of Women Voters of Greater Pittsburgh, the Pittsburgh chapter of the A. Philip Randolph Institute, and OnePA asked to intervene in the case to protect the interests of voters.

That case ultimately settled with only a handful of the requested purges from Allegheny County's voter list. But that lawsuit was merely the opening salvo in what would be an onslaught of litigation that attempted to disenfranchise voters in the commonwealth. With a long list of partner organizations, including national ACLU's Voting Rights Project, ACLU-PA repeatedly intervened, filed amicus briefs, and was involved in Pennsylvania's most important election cases of 2020, including protecting drop boxes for mail ballots, extending the arrival date



for mail and absentee ballots, and thwarting the Trump campaign's effort to disregard Pennsylvania's results, which would have thrown out the votes of all seven million people who participated in the election.

In court after court—more than 20—the Trump campaign and its allies repeatedly failed to make their case. Judges of all backgrounds, including some of Trump's own appointees, turned away his efforts to suppress the vote.

ACLU-PA has been involved in election protection work since at least 2004, and the 2020 election provided unprecedented challenges. ACLU-PA's commitment to defending the vote is stronger than ever and will continue in 2021 and beyond. ■

THE CRIMINAL LEGAL SYSTEM'S LOW-PROFILE, HIGH-IMPACT ELECTED OFFICIAL

Does the term “magisterial district judge” mean anything to you? If so, you’ve probably either had a connection to the criminal legal system or you’re really into civics.

Police officers are sometimes called the gateway into the criminal legal system. Magisterial district judges, or MDJs, often determine how wide open or closed that gate is. MDJs make critical decisions about whether or not a person should be detained, and those decisions have a major impact on how much damage a person’s contact with the system will do to their life. These judges, who are not required to have a law degree,

are simultaneously some of the lowest profile and most consequential actors in criminal law. They preside over low-level offenses like traffic violations, underage drinking, and shoplifting.

Perhaps most critically, an MDJ is the first judge that a person sees after they’ve been arrested. At that first hearing, the MDJ decides whether or not the person will have to pay cash bail to gain their freedom and, if so, how much they’ll have to pay. As research from ACLU-PA and other organizations has shown, MDJs in Pennsylvania often do not follow the Rules of Criminal

Procedure or the Pennsylvania Constitution and issue cash bail orders without consideration for a person’s ability to pay, effectively incarcerating people for being poor.

If you’re a citizen, you can do something about this. In every county in the state but Philadelphia, MDJs are elected to six-year terms, and 2021 is an election year for many MDJ seats. (In Philadelphia, appointed bail magistrates preside over bail hearings.) Learn more about the role of the magisterial district judge and how you can find more information about who serves your district by visiting aclupa.org/MDJs. ■

GOVERNMENTAL BODIES ARE USING COVID-19 TO SHUT OFF TRANSPARENCY

The COVID-19 pandemic forced government agencies—from courts to city councils to the state legislature—to scramble in determining how to continue their operations in a way that was both transparent and that mitigated the spread of the virus. The ACLU of Pennsylvania took action this year against three agencies that failed to uphold their transparency obligations.

In early March, the ACLU-PA and co-counsel from the law firm Saul Ewing Arnstein & Lehr LLP filed suit in Allegheny County on behalf of members from the community activist group Take Action Mon Valley against the city of McKeesport after the City Council closed its January meeting to the public—and then cancelled its February meeting altogether rather than negotiate a way forward. Take Action Mon Valley had organized concerned residents to speak at the meeting in response to abusive police practices during a search for a shooting suspect in December. Many McKeesport residents felt that the city police engaged in excessive stops and searches in their zeal to find the suspect and wanted to express their frustration to the council.

The lawsuit accused City Council of violating the state Sunshine Act, which requires government agencies to conduct most meetings in public. After two days of court proceedings and a court injunction blocking any meetings until McKeesport fixed its access problems, the city agreed to settle the case and reestablish public access. Until the council can meet in person again, residents will be able to at least listen to meetings via live audio, with the possibility of an online video option, and will be able to offer both written and verbal comments at meetings.

During the same week in March, the ACLU-PA filed a federal lawsuit on behalf of Abolitionist Law Center (ALC) against Allegheny County Judge Anthony Mariani, who

refused to make an online option available to the public in the midst of the pandemic and directed people who wanted to observe his hearings to attend in person at the county courthouse. ALC runs a program called Court Watch, in which volunteers observe court proceedings and document key information about what happens in courtrooms. Court Watch volunteers were understandably wary of going to the courthouse; in a one-month period between January and February, nine court employees had tested positive for COVID-19, including a member of Mariani’s staff.

The lawsuit, which was filed with co-counsel from the Institute for Constitutional Advocacy and Protection at Georgetown University Law Center, accuses Judge Mariani of violating the First Amendment by failing to provide safe public access to his courtroom and asks the court to order him to provide public access to hearings via an online platform, as other county judges have done. For the latest on this case, visit aclupa.org/ALC.

Finally, in mid-March, the ACLU-PA sued the Board of Education of the School District of Philadelphia over its new policy limiting public comment at board meetings to 10 student speakers and 30 non-student speakers, with a two-minute time limit on each speaker. Filing on behalf of concerned community members at the Alliance for Philadelphia Public Schools and UrbEd with co-counsel from the law firm Offit Kurman, the lawsuit accuses the board of violating the Sunshine Act and asks the court to order the restrictions lifted. Ultimately, the goal is to compel the board to continue using the same speaker policies that it has used successfully for years.

Public access to government business is a critical component of a functional democracy, and the ACLU of Pennsylvania will continue to advocate for transparency. ■

VOLUNTEER PROFILE: ISLA CHAPMAN

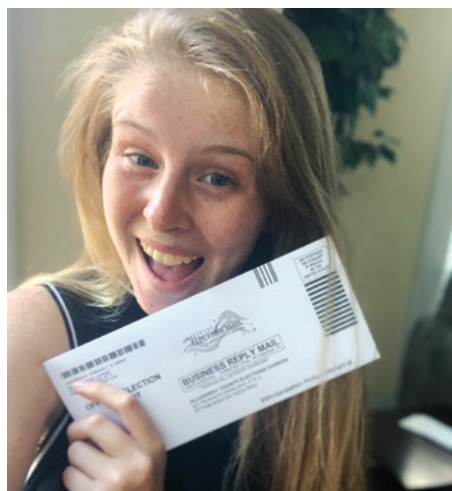
Name: Isla Chapman
Hometown: Pittsburgh, PA

What do you do as a volunteer for the ACLU of Pennsylvania?

I have been in the legal intake department in the Philadelphia office for the past two and a half years, where I have helped process the correspondence the office receives.

Why is volunteering with the ACLU of Pennsylvania important to you?

Volunteering in the office has been a fantastic experience for me as I attend Drexel University to pursue an accelerated BS/MPH focusing on health policy. Listening and reading the stories that each person writes to us demonstrates the need even just to be present to listen. Even though we may refer the individual to other organizations, being able to tell them that we read everything they submitted I think is an important consideration to offer.



What civil liberties issue(s) are you most passionate about and why?

One issue I am passionate about is securing the right to vote. Helping to break down the institutional barriers that continue to be introduced in state legislatures, even within the past month, is a huge issue that needs to

be continued to be fought against.

Who is your civil liberties hero and why?

My civil liberties hero is former Secretary of Health Dr. Rachel Levine. Dr. Levine demonstrates that not all civil liberties are fought in a courtroom. Being one of the first openly transgender individuals in the government has subjected her to horrendous transphobic comments, despite making great strides for the commonwealth's health, including tackling the substance use and the coronavirus.

What do you do when you're not volunteering for ACLU-PA?

When I'm not volunteering for the ACLU, my roommates and I are playing with our newly adopted five-year-old bunny, Milo. We are also doing a 'taco tour' where we are slowly trying all of the taco restaurants in Philadelphia in between our finals! ■

VOLUNTEER PROFILE: DOMINIQUE HOLLY



Name: Dominique Holly
Hometown: Philadelphia, PA

What do you do as a volunteer for the ACLU of Pennsylvania?

I was an intake volunteer. My position entailed receiving and responding to correspondence sent to the ACLU of PA by people who may have had their

civil rights violated. If there was a violation of someone's rights, my job was to either respond directly or refer the prospective client to someone who could more effectively assist them.

Why is volunteering with the ACLU of Pennsylvania important to you?

I have always been very prideful to be a Philadelphian, but, as I grew up, I became increasingly concerned with the way that the city treated certain segments of the population, such as people of color or homeless people. Working at the ACLU empowered me and made me feel like I could play a part in bringing about tangible change in our city. I felt like every day I volunteered was a chance to make someone's life materially better.

What civil liberties issue(s) are you most passionate about and why?

Homelessness and police brutality. This is because these are acute examples of much larger issues that plague our community, namely racism and wealth inequality. I feel that addressing these issues in an open and intentional manner is the best way to take steps on the path to a less socially stratified society.

Who is your civil liberties hero and why?

Angela Davis. I have always admired her because she never censored herself in order to make her ideas palatable to people who refused to understand her. She spoke her truth, unapologetically.

What do you do when you're not volunteering for ACLU-PA?

Currently, I am a student at Temple Law. I love hiking, playing basketball, and music. Pre-pandemic, you could find me at the art museum a few times per week. ■

NEW STAFF AT THE ACLU OF PENNSYLVANIA

ACLU-PA has welcomed two new staffers to our team in recent months.



Tierra Bradford is a criminal justice policy advocate for the ACLU of Pennsylvania's Campaign for Smart Justice and works in the Pittsburgh office. Tierra works to decarcerate Pennsylvania and educate Pennsylvanians about the racial and class bias in every facet of the commonwealth's criminal legal system. Prior to joining ACLU-PA, she worked as a legal fellow at Common Cause on their Mass Incarceration Project and also worked as a policy manager for Common Cause's Maryland affiliate. She graduated from the University of Pittsburgh School of Law in 2018, where she was a member of the Black Law Students Association. Tierra also has a bachelor's degree.



Joshua Dean joined the ACLU of Pennsylvania in March 2021 as a Barrack-Rubin Legal Fellow. He is a class of 2020 Temple Law Graduate. During his time at Temple Law, he interned at the Philadelphia Defender's Association, the Montgomery County Office of the Public Defender, the Philadelphia District Attorney's office, and SEPTA. He has interned with the housing court and small claims court in Philadelphia and is certified in mediation. He also worked as a legal assistant at a private criminal defense firm during his time in law school. Josh completed his undergraduate degree in criminal justice at Temple University and also received his Pennsylvania real estate license.

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Three years after it launched in April 2018, Speaking Freely With the ACLU of Pennsylvania continues to offer podcast listeners the latest updates on civil liberties in the commonwealth. Hosted by ACLU-PA Director of Communications Andy Hoover, the podcast features our staff, allies, clients, and others working to make real our country's highest aspirations and has recently included discussions on cannabis prohibition, judicial gerrymandering, and—in celebration of Women's History Month in March—women of the ACLU-PA. Find the show at aclupa.org/speakingfreely or on your favorite podcast app!

SCRANTON STORE OWNER FIGHTS CITY HALL AND WINS

Grocer and restaurateur Cristian Garcia Torres faced a serious business problem last November; the city of Scranton had issued a zoning ordinance violation against him over the sign outside his store, La Chingada, where he sells Mexican and other Latin American groceries, including tortillas, chilies, and fresh fruits and vegetables, and also serves prepared dishes in a restaurant.

While Mr. Garcia Torres, his family, and other people of Mexican descent consider “chingada” to be a welcoming and familiar term, some Spanish-speaking cultures use the term as a vulgarity, and the city's zoning ordinance included a provision that prohibited “(s)igns or displays that include words or images that are obscene, pornographic or that an average reasonable person would find highly offensive to public decency.”

If La Chingada had to come down, Mr. Garcia Torres would lose the branding that he had spent nearly two years building with his customers.

Mr. Garcia Torres then contacted the ACLU of Pennsylvania, which determined that the ordinance conflicted with the free speech rights guaranteed in the First Amendment and threatened the city with a federal constitutional lawsuit. In communications with the city, ACLU-PA Deputy Legal Director Mary Catherine Roper noted that the city has not objected to other businesses with names with multiple meanings, including Whiskey Dick's and The V Spot.

After the ACLU-PA's intervention, Mr. Garcia Torres and the city reached a settlement, agreeing that the sign can remain. The city has also amended its ordinance to conform with free speech rights.

Sometimes you can fight city hall and change the law in the process. ■



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UN: PHILLY POLICE MAY HAVE VIOLATED INTERNATIONAL LAW IN RESPONSE TO PROTESTS



In December, ACLU-PA and the Community Lawyering Clinic at Drexel University's Kline School of Law submitted a letter to the United Nations Human Rights Council, arguing that Philadelphia police violated international law in its heavy-handed, violent response to last summer's Black Lives Matter protests. In March, the U.N.'s Special Rapporteurs announced that they have opened an investigation into the allegations and that the city could be in violation of treaties signed by the United States. Learn more at aclupa.org/UN-report. ■