

FREE FOR ALL



Governor vetoes
abortion restriction —
page 4

SPRING 2020

CIVIL LIBERTIES IN A PANDEMIC



By
Reginald T. Shuford
Executive
Director

These are truly unusual times. The coronavirus pandemic has created a situation unlike any other in living memory.

The civil liberties implications of this outbreak are significant, and I want to assure you that our team at the ACLU

of Pennsylvania has been working tirelessly to protect our constitutional rights during this crisis. Our staff have been juggling new work environments at home and family obligations while analyzing and responding to the urgent civil liberties needs of the day. I am always proud of the work they do but am especially proud in this moment.

People who are incarcerated are among the most vulnerable to a vast spread of coronavirus and the COVID-19 disease. While those of us on the outside are able to practice physical distancing in our homes, people in our jails and prisons are, by definition, confined to an enclosed space. Those who are aging or who have underlying health complications are particularly vulnerable.

In the early days of the outbreak, our

team leaned on corrections officials to implement science-based practices in their institutions to prevent the spread of coronavirus; presented the governor and other state officials a clear outline for expediting the release of people in state prisons who are most vulnerable to this virus and who have served their time; pushed hard on the Philadelphia courts to stop issuing cash bail orders, which we learned they were still doing even after the governor declared a statewide emergency; and filed an emergency request with the state Supreme Court to order county courts to release people who are incarcerated pretrial and haven't been convicted of a crime and people who are at high risk of contracting COVID-19.

When the state Department of Corrections initially denied visits between attorneys and people in the institutions, it was ACLU-PA attorneys who convinced state officials to lift that ban within a day of its start.

Meanwhile, we filed a federal lawsuit on behalf of 13 people who were in immigration detention, who have not been accused of serious crimes, and who are at high risk of contracting COVID-19. On March 31, a federal court ordered immigration authorities

to release them immediately.

Finally, Pennsylvania's primary election, which was scheduled for April 28, has been delayed until June 2. While there are sound public health reasons for this, delaying an election cannot be the new normal, and election officials have plenty of time to prepare for the general election in November. And now voters in Pennsylvania have a new way to vote—through the mail. In the midst of this pandemic, the vote-by-mail option could not be more timely or useful for voters in Pennsylvania. You can learn how to apply for your mail-in ballot by visiting votesPA.com, the Department of State's official website for voter education.

You can find all of our publicly available responses to the pandemic at aclupa.org/COVID-19, and rest assured that so much more work is going on behind the scenes.

Our ability to respond so strongly to the serious civil liberties issues in the midst of this pandemic is only possible because of the support you give to the ACLU. Thank you, as always!

Reggie Shuford, Executive Director
ACLU of Pennsylvania

GOVERNOR SIGNS SWEEPING VOTING REFORMS

In November, the General Assembly passed and Governor Wolf signed the most significant changes to Pennsylvania election law since the election code was formed in the 1930s. The timing could not have been more fortuitous, as the coronavirus pandemic has left voters looking for alternatives to voting in person.

The new law implements changes that the ACLU of Pennsylvania and our allies in the coalition Keystone Votes have supported for years. Reforms include a longer deadline for voter



ACLU-PA Legislative Director Elizabeth Randol joined Governor Wolf, legislators, and other advocates at the election reform bill signing in November.

registration, which has been changed from 30 days before an election to 15 days; a vote-by-mail option available to any voter, without an excuse; a longer deadline for submitting an absentee or mail-in ballot, which has been changed from 5 p.m. on the

Reforms, page 2

IN THIS ISSUE

Q&A with Ellery Schempp	5
Montco public defenders fired	6
Meet our new staff	7

FROM THE PRESIDENT



Dear ACLU-PA supporter,

February 29, 2020, was a night to remember for the ACLU of Pennsylvania. It was my pleasure, as president of the affiliate's board of directors, to meet and speak with many of our members and supporters in Philadelphia's beautiful and inspiring National Constitution Center as we celebrated the 100th Anniversary of the founding of the ACLU. We ate and drank together, enjoyed live music, and were inspired by on-point remarks by keynote speaker Nikole Hannah-Jones and others. I was particularly taken with three short videos—one from the national ACLU and two produced by our own talented Pennsylvania staff—that connected us to our past and pointed the way to our future. You can watch them at youtube.com/aclupa.

In my closing remarks, I paid tribute to ACLU-PA's legendary leader, Spencer Coxe, who served as executive director of the ACLU of Greater Philadelphia from 1952 and eventually of the unified state affiliate until his retirement in 1979. Through an overview of the issues that Spencer championed, I traced the history of our affiliate's achievements: advancing racial justice and defense against McCarthyism in the 1950s; defeating compulsory Bible reading in public schools, support for war protesters, and ending the incarceration of "defective delinquents" in the 1960s; advancing equality of job opportunity for women, opposition to police brutality, and protecting separation of church and state during a Papal visit in the 1970s. We went on to champion reform of the foster family system and to win decriminalization of same-sex relationships in the 1980s, police reform, free speech on the internet, and abortion rights in the 1990s, fighting the resurgence of creationism and anti-immigrant ordinances in the 2000s, winning marriage equality and defeating voter suppression in the 2010s, and so much more.

Our founders in 1920 were young activists who emerged from the anti-war, women's suffrage, anti-lynching, birth control, immigrants' rights, and labor movements. Versions of the same issues are with us today. With your help, we will carry forward their vision and determination to make real for all the promise of our Bill of Rights.

Peter Goldberger
President, ACLU-PA

Reform, continued from page 1

Friday before an election to 8 p.m. on Election Day; and funding for counties to upgrade to more secure voting machines.

The previous absentee ballot deadline was the earliest in the country and was the subject of a lawsuit filed by the ACLU of Pennsylvania, Lawyers Committee for Civil Rights Under Law, and Public Interest Law Center after the 2018 general election.

In the summer of 2019, the governor had vetoed legislation that included

funding for voting machines and elimination of the straight-party voting option on ballots. But throughout the fall, the administration and legislative leaders built upon those two provisions and successfully negotiated a broader list of reforms.

Learn how to vote by mail and about other changes to election law by visiting votesPA.com, the Pennsylvania Department of State's website for voter education. ■

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LAWSUIT SETTLEMENT ENDS PERMANENT SOLITARY CONFINEMENT ON PA'S DEATH ROW

Since Pennsylvania reinstated the death penalty in 1978, people who have been sentenced to death have lived a stark existence in the commonwealth's prisons. A person sentenced to death would be housed in permanent, automatic solitary confinement, confined to their cell, which is approximately the size of an average parking space, for 23 hours per day with no positive human contact. They could shower three times a week. When they were allowed outside to exercise, they were alone in a space that was completely fenced in.

That changed when the ACLU of Pennsylvania, the ACLU National Prison Project, the Abolitionist Law Center, and volunteer attorneys from the law firm Faegre Drinker Biddle & Reath LLP filed a class action lawsuit against the state Department of

Corrections in 2018 challenging the use of automatic and indefinite solitary confinement for people sentenced to death as a form of cruel and unusual punishment, which is banned by the Eighth Amendment. Soon after the filing, the department started improving conditions for these prisoners and eventually agreed to settle the lawsuit in November.

While the department will still house people who are sentenced to death in specific prisons, it has agreed to offer the rights and privileges similar to those afforded people housed in general population in other state facilities, including at least 42.5 hours out-of-cell activity every week, which includes yard and outdoor time, law library time, congregate meal time, individualized treatment or counseling meetings, congregate religious

worship, and work assignments; an end to regular strip-searches, shackling, or other restraints, unless necessary for security reasons; contact visits with family, lawyers, and religious advisors; and resocialization assistance for anyone psychologically damaged by long periods in solitary confinement to help them in the transition to living in a general population setting.

Automatic solitary confinement on death row is common in the nation's death penalty states, and the settlement makes Pennsylvania one of the national leaders in ending this form of torture, which has been shown to have detrimental psychological effects on people subjected to it.

More information, including legal documents and press statements, is available at aclupa.org/Reid. ■

ACLU-PA CHALLENGES COUNTY THAT DENIES MEDICAL MARIJUANA TO PEOPLE ON PROBATION

Melissa Gass suffers from epilepsy and uses medical marijuana to control her seizures. Ashley Bennett uses medical marijuana to control her nausea, chronic abdominal pain, and post-traumatic stress disorder. And medical marijuana helps Andrew Koch manage the chronic pain he experiences as the result of a motor vehicle accident.

All three of them have serious medical conditions and depend on marijuana so they can be present as parents and function in their daily lives. That is why ACLU-PA filed a class-action lawsuit on their behalf against the Lebanon County court in October, after the court announced that people under community supervision, such as probation and parole, were prohibited from using medical marijuana.

All of the plaintiffs are registered patients with the Pennsylvania

Department of Health and are in compliance with the Medical Marijuana Act (MMA) that legalized the use of medical marijuana throughout the commonwealth in 2016. The lawsuit states that Lebanon County's policy penalizes people for using medical marijuana, which blatantly conflicts with the MMA.

After the case was filed, the Pennsylvania Supreme Court ordered the Lebanon County courts to cease enforcing the policy until arguments in the case are heard. The court's order allows patients to continue using their medicine without violating the conditions of their probation.

On January 29, the ACLU-PA filed a brief urging the Supreme Court to permanently strike down the county's directive. Multiple counties have similar policies, so a favorable ruling



ACLU-PA Legal Director Witold Walczak and clients Melissa Gass and Ashley Bennett talk with reporters.

could clarify this issue and positively impact medical marijuana patients who are under court supervision throughout the state.

Learn more about this case at aclupa.org/Lebanon. ■

MARSY'S LAW ON HOLD AS COURT WEIGHS CONSTITUTIONALITY

In November's election, Pennsylvania voters weighed a major change to the Pennsylvania Constitution. Known as Marsy's Law, the proposed constitutional amendment would have made 15 changes to eight different sections and three articles of the commonwealth's governing document, in an effort to give victims of crime "co-equal" rights to people who are accused of crimes.

But because the amendment made so many changes in one vote, a Commonwealth Court judge ruled before Election Day that tabulating and implementing the result had to be delayed, in a lawsuit brought by the League of Women Voters of Pennsylvania and an individual, Lorraine Haw of Philadelphia, who are represented by the ACLU of Pennsylvania and the law firm Dechert LLP. The court's ruling was affirmed by the Supreme Court of Pennsylvania days before the election.



Steven Bizar of Dechert LLP outside the Pennsylvania Judicial Center after arguments in the Marsy's Law case.

The state constitution forbids amendments to that document that change more than one section or that contain more than one subject, a tactic often referred to as "logrolling."

The amendment, which passed the state legislature in consecutive sessions, would have many negative consequences in the criminal legal system. It would undermine the presumption of innocence by establishing the standing in court of a person who says they are a victim of a crime

before the accused person has been convicted; impact a person's ability to have a timely bail hearing, if the court or the district attorney fails to notify the person—or corporation—who says they are the victim of the alleged crime; and undermine a person's right to a speedy trial and access to the appeals process.

The Commonwealth Court's ruling was a temporary delay, known as a preliminary injunction. The court may hear arguments sometime this spring for a permanent injunction, in which the court will consider whether or not the amendment is unconstitutional, though the coronavirus pandemic has impacted the court's schedule. The court could rule based on the briefs that have been submitted and without a hearing.

Learn more about ACLU-PA's position on Marsy's Law at aclupa.org/MarsysLaw. ■

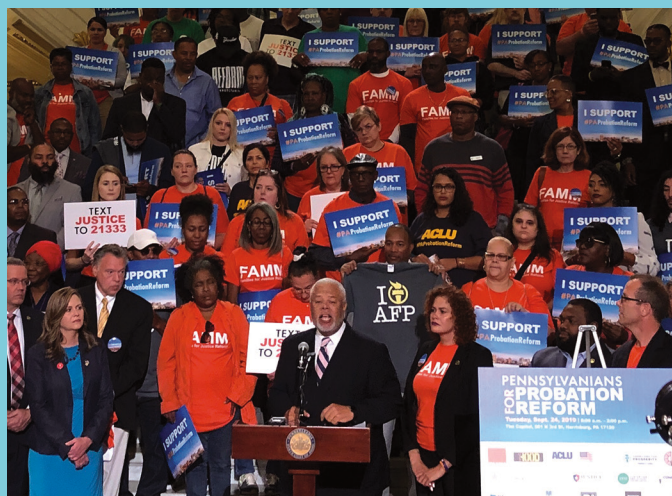
PROBATION REFORM IS NECESSARY FOR SMART JUSTICE IN PENNSYLVANIA

Throughout the 2019-20 legislative session at the Pennsylvania General Assembly, the ACLU-PA and numerous allies have pushed for major reforms to the commonwealth's probation system. Our demands include limiting how long a person can be on probation (there are currently no caps on probation terms in Pennsylvania), the chance for a person to have their sentence reduced if they don't violate their terms, and a ban on incarcerating people who are on probation and cannot afford to pay the fines and fees they owe.

In December, this effort took a dramatic turn for the worse when the state House Judiciary Committee amended a probation reform bill, House Bill 1555, removing its most important provisions and adding language that would actually make the system worse, including suspicionless searches of people on probation and indefinite probation for people who haven't paid their restitution in full. After the committee vote, the ACLU-PA took the unusual step of switching our position from "support" of the bill to "opposed."

The committee's maneuver also led to blowback from people throughout Pennsylvania, including thousands of ACLU members, and the bill stalled in the House. As of early March, it had yet to receive a vote.

Meanwhile, the state Senate has its own version of the



Hundreds of Pennsylvanians joined state legislators at the capitol in September to advocate for probation reform.

legislation, Senate Bill 14, with all of the best reforms intact. Supporters of reform have pushed for a vote on SB 14 sometime this spring.

Stay updated on where these bills stand by visiting aclupa.org/legislation. And to find the most updated actions you can take for probation reform, visit aclupa.org/act. ■

ELLERY'S PROTEST: THE CASE THAT ENDED MANDATORY BIBLE READINGS IN SCHOOL

In 1956, as an 11th grader, Ellery Schempp challenged the mandatory Bible readings at his public school in Abington, Pennsylvania. His protest became a landmark Supreme Court case that ended the practice, and Ellery and his family were represented by lawyers from the ACLU-PA and from the law firm Drinker Biddle. He visited with ACLU-PA staff recently and reflected on the case.

Why did you decide to protest the law that mandated Bible readings in public schools?

It was clearly an imposition of a Christian religious practice on all of the students no matter what their religious beliefs might be. It was also used in a rather bad way by many of the teachers—not all—in which they would cite the Bible as being responsible for their beliefs and for what the school's lesson was. And of course, where the Bible contradicts science, I was very upset about that.

At what point did you decide that this was something you wanted to take on?

I noticed that my Jewish friends were slightly uncomfortable. I noticed that my Catholic friends were reciting



Ellery Schempp (right) with his partner Arlene Germain and ACLU-PA's Reggie Shuford.

slightly different versions of the Lord's Prayer. The whole idea of one-size-fits-all was very annoying to me.

As a teenager, was the concept of separation of church and state something that had crossed your mind?

I was familiar with the First Amendment...it was clearly a violation of the First Amendment. This was clearly a Christian religious practice that was established in the schools. And I was very much influenced by a book called *The Democratic Way of Life*, which talked in an idealistic way about fraternité, liberté, égalité. I believe very strongly in the democratic process...and the

rights of the minority, which is an important constituent to our idea of majority rule.

This was the early days of the civil rights movement, so the idea of civil protest was in the air. I did not have in mind that this would ever become a court case. I had sort of the naive notion that this was simply an oversight, and that, once the adults caught wind of it, they would fix the problem.

*The entirety of this conversation is available as an episode of our podcast, *Speaking Freely With the ACLU-PA*, at soundcloud.com/speakingfreelyaclupa.*

VETO! GOVERNOR REJECTS LATEST ROLLBACK OF REPRODUCTIVE RIGHTS

For the second time in five years, Governor Tom Wolf vetoed legislation to restrict access to abortion care. In November, the governor rejected a bill passed by the legislature that would ban abortion based upon a fetal diagnosis of Down syndrome.

The bill was introduced by Representative Katie Klunk (R-York County) and was previously introduced by House Speaker Mike Turzai. Similar laws in other states have been overturned by federal courts as an infringement on an individual's right to privacy; federal courts have ruled that limiting the reasons why a person can have an abortion is unconstitutional.



The ACLU-PA opposed the legislation, along with numerous advocates for reproductive freedom. The American Congress of Obstetricians and Gynecologists has expressed concerns that laws like this damage the patient-doctor relationship by incentivizing doctors or patients to withhold information from each other about the person's care.

And while the supporters of the bill framed the issue as one of disability

rights, no disability rights organization affirmatively supported the effort. In fact, some parents of children with Down syndrome opposed the bill. In a statement after the bill's passage through the legislature, Jennifer Schrad of Montgomery County said, "The government's role in supporting people with disabilities should be to provide an equitable playing field in housing, education, health care, and other services. Unfortunately, children with Down syndrome have become another wedge to advance some legislators' anti-abortion agenda." ■

VOLUNTEER PROFILE: JIM PALMQUIST



Jim Palmquist was the president of the ACLU Greater Lehigh Valley Chapter for four years and coordinated the chapter's activities for a total of nine years. He stepped down from the president's role in September 2019.

What civil liberties issues do you care about most?

Being a very involved volunteer my whole adult life, I have primarily focused on LGBTQ acceptance for over 20 years. I was arrested for an act of civil disobedience in Cleveland in 2000 in the LGBTQ fight. For four years, I co-led the nonprofit organization called Affirmation, the LGBTQ Caucus of the United Methodist Church, for which I now serve as treasurer. I wish I had the energy to be more personally involved in reproductive freedom, immigrants' rights, racial justice, and voting rights, among other areas. Leading the ACLU chapter locally gave me the ability to work in many of those areas.

You spent many years volunteering with ACLU-PA's

Lehigh Valley Chapter. Why was it important to you to help the ACLU in the ways that you have?

I became a leading ACLU volunteer because of the great LGBTQ work of the ACLU year after year. No matter who leads businesses or the government in the nation, states, or locally, the ACLU is the persistent activist organization powerfully fighting LGBTQ injustice, among other efforts, in every state in the U.S. every year. I knew I had the organizing skills to grow the impact of the ACLU locally while I served as leader.

Who is your civil liberties hero and why?

Harvey Milk committed his life to the LGBTQ movement and led the way when no one knew how to bring about justice. His tenacity in challenging the power structures and prejudice of his time were a model to us, not because he won every battle, but because he lost a lot of battles but learned and came back to challenge the existing structure again and again. He found his life's work in politics and impactful media events. He was a blessing to his oppressed and marginalized community when leadership and support were sparse. ■

MONTGOMERY COUNTY UNFAIRLY FIRED ITS TWO TOP PUBLIC DEFENDERS

After observing thousands of bail hearings in Philadelphia during 2018 and 2019, the ACLU of Pennsylvania and allies determined that bail magistrates were not adequately considering a person's income and ability to pay before assigning cash bail. Failing to consider a person's income criminalized poverty, keeping people in jail only because they couldn't afford to pay to get out. It's also in violation of the Pennsylvania Rules of Criminal Procedure.

The ACLU of Pennsylvania and allies filed a complaint with the state Supreme Court, asking the court to ensure that the rules are followed in Philadelphia.

In Montgomery County, Chief Public Defender Dean Beer and Deputy Chief Keisha Hudson filed a brief in support of the Philadelphia lawsuit and called into question the misuse of cash bail in Montgomery County.

The president judge of the Court of Common Pleas was furious and

threatened to have the chief fired. The county commissioners forced the defenders to withdraw the brief and then fired them.

In the days that followed, the response from advocates and stakeholders in the criminal legal system, legislators and community leaders, and public defenders from across the state and country was deafening as all expressed outrage at the firings.

On March 5, the ACLU of Pennsylvania joined 100 people on the steps of the Montgomery County courthouse demanding that Dean and Keisha be reinstated. Later, the ACLU of Pennsylvania filed a lawsuit alleging that the firing of Dean and Keisha is a violation of the Sunshine Act, which mandates that actions taken by public agencies, such as the Montgomery County Board of Commissioners, be made in public—and the action must be preceded by an opportunity for public comment. In this case, the commissioners did neither.



ACLU-PA's Reggie Shuford at the Defend the Defenders rally in Norristown in March.

The lawsuit asks the court to void the actions of the commissioners, which would reinstate Keisha and Dean and send a message to public defenders across the commonwealth and the nation that they have the authority to be the best advocates possible for their clients and for a fair criminal legal system. ■

NEW STAFF AT THE ACLU OF PENNSYLVANIA

ACLU-PA has welcomed four new staff members to our team in recent months.



Donnell Drinks joined the ACLU of Pennsylvania as the election protection coordinator in March and works in the Philadelphia office. Before joining the ACLU-PA, he was a re-entry specialist for a nonprofit organization in which his role consisted of developing mentoring curriculums and facilitating mentoring programs. He continues to run mentoring groups in partnership with The School District of Philadelphia. He is a community activist and two-time grant awardee of the Philadelphia Targeted Community Investment Grant Program that funds violence prevention efforts. Donnell brings over 20 years of organizational experience and advocacy work.



Marissa Kolarosky joined the development team of the ACLU of Pennsylvania in November 2019 as assistant director of philanthropy in the Pittsburgh office. Prior to joining the ACLU of Pennsylvania, Marissa spent five years working on a number of local, state, and federal political campaigns, including U.S. Senator Bob Casey's 2018 re-election campaign as deputy finance director and Mike Espy's campaign for U.S. Senate in Mississippi as finance director. A Pittsburgh native, Marissa graduated from the University of Pittsburgh with a B.A. in political science and a minor in legal studies. In her spare time, Marissa enjoys playing violin, viola, and piano and exploring the city.



Erika Nyborg-Burch is a staff attorney at the ACLU of Pennsylvania, working in the Philadelphia office. Before joining the ACLU of Pennsylvania, Erika worked as an Immigrant Justice Corps fellow and immigration attorney at the Bronx Defenders and as an immigration attorney with the Asylum Seekers Advocacy Project. Erika received her law degree from Yale Law School and her undergraduate degree from Brown University. After law school, Erika clerked for the Honorable Thomas Ambro of the U.S. Court of Appeals for the Third Circuit. Before attending law school, Erika worked as an educator in New Orleans.



Muneeba Talukder joined the ACLU of Pennsylvania in October 2019 as the immigrants' rights legal fellow in the Philadelphia office. Prior to joining the ACLU-PA, Muneeba was a legal fellow with Public Counsel, where she worked on civil rights and economic justice impact litigation. Muneeba graduated from UCLA School of Law, with dual specializations in the David J. Epstein Program in public interest law and policy and critical race studies. At UCLA, she served as an editor of the UCLA Law Review and participated in the Asylum and International Human Rights Law clinics. Prior to law school, Muneeba worked as a communications associate at Chhaya CDC, a nonprofit working on housing justice in New York City.

THIS WORK HAPPENS BECAUSE OF YOUR SUPPORT

These are unprecedented times, but we can't forget that our collective action holds enormous power. In this moment of heightened concern, we're engaged in critical work to address civil liberties violations during the pandemic.

You can support these urgent advocacy efforts with a generous donation to fight to protect all of our rights. If you can, please act now to protect the civil liberties of the most vulnerable among us. You can donate online at aclupa.org/donate.

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THE ARC OF THE UNIVERSE BENDS TOWARD JUSTICE



Above: ACLU-PA Organizer Alex Domingos spoke in Lancaster at the ACLU-PA South Central Chapter's recent screening of the documentary *True Justice*, which tells the story of lawyer Bryan Stevenson.

Top right: Malcolm Jenkins, then of the Philadelphia Eagles, visited the ACLU-PA office in November to film his *My Cause My Cleats* video with several people who have been impacted by the criminal legal system.

Bottom right: More than 500 people joined ACLU-PA at the National Constitution Center in Philadelphia in February to celebrate the ACLU's centennial.



PHOTOS: TOP LEFT: MARIANNE STEIN; TOP RIGHT, CAMBRIAE BATES;
BOTTOM RIGHT: DOTHWAN PHOTOGRAPHY