# FREEFORAL



Reducing Racial Disparities in Stop-and-Frisk – page 3

**FALL 2021** 

## **LEGAL ABORTION CARE IN PERIL**



At midnight on September 1, the right to legally access abortion care in the United States took a perilous turn for the worse when the Supreme Court allowed an extreme Texas law to go into effect. As you may know by now, that law prohib-

its abortion at six-weeks gestation and deputizes anyone, anywhere, to take a civil action against any other person connected to an abortion, except for the patient.

While courts will hear arguments on the merits of the law, the damage is done. And extremist state legislators around the country are rushing to pass copycat laws.

For decades, those who believe in

criminalizing abortion have methodically reshaped the courts in their image. Activists have campaigned for it, and elected officials have done their bidding, leaving them with a Supreme Court that seems ready to end the constitutional right to abortion, despite 48 years of legal precedent. Even putting the Texas law aside, the court is scheduled to hear a challenge to Mississippi's 15-week ban in its upcoming session.

Here in the commonwealth, the ACLU of Pennsylvania has fought every restriction that members of the General Assembly could think of, mostly with success. That success can largely be attributed to the hard work of advocates and activists, some of whom have bravely shared their own abortion stories publicly. We are also mindful that elections matter; for 15

of the last 19 years, Pennsylvania's governor has been someone who rejected further restrictions on abortion access. At the same time, the General Assembly has repeatedly passed legislation to make it increasingly difficult to have an abortion, succeeding twice between 2011 and 2015 when the governor was someone who agreed with its position.

There is another harsh reality that is important to face and name. For many Pennsylvanians, abortion care is already out of reach. Most counties in the commonwealth do not have an abortion clinic, and the existing clinics are entirely in the southern half of the state. The federal and state bans on Medicaid coverage of abortion also makes it extremely burdensome

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#### U.S. SUPREME COURT UPHOLDS STUDENTS' RIGHT TO FREE SPEECH OFF CAMPUS

After a four-year odyssey through the federal court system, Brandi Levy of Schuylkill County claimed a final victory in June when the Supreme Court of the United States ruled that her high school improperly punished her for a profanity-laced "snap" that she posted on the social media platform Snapchat. In an 8-1 ruling, the justices reaffirmed students' right to free speech when they are out of school and on their own time.

As a ninth grader at Mahanoy Area High School in May 2017, Levy posted a picture of herself and a friend with their middle fingers extended accompanied by the text "fuck school fuck softball fuck cheer fuck everything," which was visible for 24 hours to about 250 people who followed her on Snapchat. That week, Levy had learned that she was not named to the varsity cheerleading team. She and her friend created the snap on a weekend while hanging out at a local convenience store.



One spicy "snap" on Snapchat led Brandi Levy all the way to the U.S. Supreme Court, where she prevailed.

Her cheerleading coaches obtained a screenshot of the snap and responded by suspending her from the junior varsity cheerleading team for a year. Represented by the ACLU of Pennsylvania, Levy was reinstated to the team in September 2017 after a federal district court ruled in her favor. Every court that heard her case thereafter ruled in her favor.

"Young people need to have the

ability to express themselves without worrying about being punished when they get to school," Levy said after the Supreme Court decision. "I never could have imagined that one simple snap would turn into a Supreme Court case, but I'm proud that my family and I advocated for the rights of millions of public school students."

In the majority opinion, the court wrote, "[T]he school itself has an interest in protecting a student's unpopular expression, especially when the expression takes place off campus. America's public schools are the nurseries of democracy."

Levy graduated from Mahanoy in 2020 and is now a college sophomore. Learn more about her case at **aclupa.** org/BL.

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#### FROM THE PRESIDENT



Dear ACLU-PA supporter,

In previous editions of this newsletter, we've referenced the strategic planning process that our staff and board of directors un-

dertook, beginning in 2020. I'm pleased to announce that our new, three-year strategic framework was approved by the board in June.

This visionary document, which you can find online at aclupa.org/ strategicplan2021, embraces the values of the multicultural democracy that we all want. It prioritizes some of the most pressing civil liberties issues of our times, specifically: (1) reducing the number of people in prisons, jails, immigrant detention centers, and under other federal, state, and local governmental control; (2) minimizing police and other law enforcement interaction with Black and brown communities and holding police accountable for grievous harm; and (3) protecting and expanding voting rights and access.

While a great deal of the staff's time and our financial resources will be committed to these three top priorities, ACLU-PA's dedication to other fundamental civil liberties issues remains steadfast. Our commitment to the protections of the First Amendment, reproductive rights, and LGBQ&T equality are rock solid. We made it a point to write the strategic plan to give our team the ability to respond to emerging civil liberties challenges as they arise, even when they fall outside of our priority issues.

Throughout the strategic framework, we've made clear that ACLU-PA is recommitting to racial justice, in the context of the ABIDE principle—authentic belonging, inclusion, diversity, and equity. Racial inequity permeates many civil liberties issues, particularly in the criminal legal system and the right to vote. Embracing an end to white supremacy is about more than our public-facing work; it's also a value that we carry with us in how the organization functions internally. We will strive to apply these same principles at the board level, as well as in all volunteer activities.

This was a long process but was well worth the effort. I believe this strategic framework will make a great organization even better.

Peter Goldberger President, ACLU-PA **Peril**, continued from page 1

for people living in poverty—disproportionately people of color—to get the care they need. That's why ACLU-PA has filed a friend-of-the-court brief in a case in state court brought by reproductive healthcare centers that challenges the ban.

Is the constitutional right to an abortion doomed? I don't get into the business of predictions. What I am interested in is what we, as defenders of that right, can do now. In Texas, providers and advocates are picking up the pieces, continuing to use every legal maneuver possible to stop the law and supporting abortion funds and other mutual aid groups that can

assist people who are in need of care.

At the ACLU of Pennsylvania, our recently completed strategic plan prioritizes criminal legal reform, ending abusive policing, and voting rights. But we explicitly included space for other priorities and emerging issues, for just this type of situation. While there are numerous reproductive rights and reproductive justice organizations leading the way, the ACLU of Pennsylvania will continue to be a part of defending abortion access wherever necessary.

Reggie Shuford, Executive Director ACLU of Pennsylvania

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Director

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## **DEESCALATING POLICE ENCOUNTERS TO REDUCE** RACIAL DISPARITIES IN STOP-AND-FRISK IN PHILLY



Rev. Michelle Simmons, founder and CEO of Why Not Prosper, speaks in support of the new pilot program at a press conference in July.

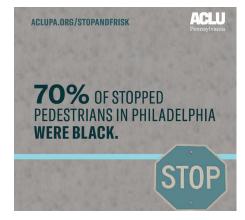
On August 1, Philadelphia police began a pilot program to test significant reforms to how officers engage with people committing minor offenses. For three months in some neighborhoods in Northwest Philadelphia, police who encounter a person engaged in a petty offense, such as public consumption of alcohol or marijuana, loitering, or

disorderly conduct, will first ask the person to stop the offending behavior and move along. At that point, the person is free to leave. The police will only conduct a formal stop—when the person is detained and police ask for identification, with the possibility of searching the person—if that person does not comply.

The pilot program stems from the case Bailey et al. v. City of Philadelphia et al., which ACLU-PA and civil rights lawyers Kairys Rudovsky Messing Feinberg and Lin filed in 2010 on behalf of ten Black and Latinx men who alleged that they were repeatedly stopped by Philadelphia police officers without legal justification because of their race or ethnicity. As part of the Bailey settlement, the city of Philadelphia and the plaintiffs' attorneys file public reports on the use of stop-and-frisk by Philadelphia police. Even as the overall number of stops and frisks has dropped over the past decade, the racial disparities persist to this day.

The data also shows that the vast majority of pedestrian stops and frisks conducted by Philadelphia police yield no information about or evidence of serious crime. With a gun violence epidemic roiling the city, police should prioritize stopping violent crimes and only conduct formal stops regarding petty offenses when a person refuses to stop such behavior.

If this pilot program proves successful, ACLU-PA and our team will advocate to expand these reforms citywide and make them permanent policy for Philadelphia police. For more information about the pilot program, visit aclupa.org/stopandfrisk.



## **NEW RESEARCH SHOWS ALLEGHENY COUNTY SCHOOLS FAILING TO REPORT STUDENT ARRESTS**

When schools excessively rely on police as enforcers of discipline, students suffer. A school-based arrest can derail a student's academic career and lead to an increased likelihood that they will not complete high school.

New research from the ACLU of Pennsylvania shows that too many schools in Allegheny County are deploying police to arrest students at a higher rate than other counties in the commonwealth, often for minor offenses with disproportionate impact on Black students and students with disabilities. And too many schools in the county are failing to report arrests that occur on campus, obscuring how deep the problem is.

It is critical to have reliable data to expose problems and give stakeholders

the opportunity to fix them and course correct. And while our research does that, it was limited; many more students are arrested than are reported to the public by school officials. For example, the Pittsburgh Public Schools, which is a major driver of arrests in the county, reported zero school-related arrests during the 2017-18 school year. The district claims it's a "clerical error."

What we do know is that schools in Allegheny County are allowing far too many students to be arrested. Youth in Allegheny County are more than twice as likely to be arrested at school as other students in Pennsylvania and more than three times as likely to be arrested at school as youth in Philadelphia. During the 2018-19

school year, 20 of the 43 districts in the county had student arrest rates that were higher than the statewide average.

The numbers become even more damning when broken down by race. Black students in Allegheny County were arrested at school at eight times the rate of their white classmates during 2018-19.

Kids can't learn this way. Schools have an obligation to provide a safe and equitable education. But that education is disrupted when a child is arrested. And it is difficult to address the roots of the problem when arrest numbers are not reported accurately. Learn more about this research and our work on student and youth rights at aclupa.org/studentyouthrights. ■

#### STATE LAWMAKERS CONTINUE THEIR FIGHTS OVER VOTING RIGHTS

The fallout from the 2020 election continues with election administration roiling politics at the state capitol in Harrisburg.

In June, Governor Wolf vetoed legislation that passed the General Assembly on a nearly party-line vote; most Republicans voted in favor of the bill and nearly every Democrat voted no. While that bill included some positive changes to election law, it included a noxious voter identification mandate, required signature verification for mail ballots, instituted earlier deadlines for voter registration and mail ballot applications, and banned the one-stop, in-person mail voting that some counties implemented in 2020.

ACLU-PA joined the coalition Keystone Votes in opposition to the legislation.

In anticipation of Governor Wolf's veto, some members of the state Senate introduced a proposed amendment to the state constitution to require voters to show "valid" government-issued identification at every election.



That bill passed the Senate in June and is awaiting consideration in the state House, as of this writing.

A constitutional amendment must pass the legislature in two consecutive sessions and then be passed by a majority of voters at the next election. It does not have to be approved by the governor. The earliest that this legislation, Senate Bill 735, could appear before the commonwealth's voters is in the primary election in May 2023.

The ACLU-PA joins other voting rights advocates in opposition to this voter ID proposal.

Finally, this summer, Senate Republicans undertook what they described as a review of the 2020 general election and 2021 primary, despite the fact that elections officials already conducted their own audits. After every election, counties are mandated to perform statistically relevant recounts to confirm results. And after the 2020 general election, 63 of Pennsylvania's 67 counties participated in a risk-limiting audit with the Department of State, a pilot program that is considered a best practice for reviewing election results. These reviews determined that the commonwealth's election results were accurate. The Senate, meanwhile, tasked its review to a committee with no expertise in election oversight.

The team at the ACLU of Pennsylvania has been monitoring the developments in the Senate. In October, our legal team filed a motion to join a lawsuit filed by the state attorney general, on behalf of several advocacy groups and individual voters. Visit aclupa.org/Dush to learn more.

# U.S. SUPREME COURT REJECTS BLANKET LICENSE TO DISCRIMINATE IN FOSTER CARE

In a closely watched case with major implications for the LGBQ&T community and anti-discrimination law more broadly, the United States Supreme Court narrowly ruled in favor of Catholic Social Services in its lawsuit against the city of Philadelphia over the agency's refusal to license same-sex couples as foster parents. But the court did not establish a broad right to discrimination for religiously affiliated public contractors, as CSS had advocated.

When the city learned in 2018 that CSS refused to license same-sex foster parents, the city stopped referring children to the agency, citing its non-discrimination policy in contracts with foster care agencies. CSS then sued, claiming that the city violated its First

Amendment right to religious expression. The ACLU and the ACLU of Pennsylvania became involved in the case representing Philadelphia Family Pride, a community organization that supports LGBQ&T families, and Support Center for Child Advocates, a nonprofit that represents and advocates for children in the foster care system. PFP and Child Advocates advocated for the city's ability to enforce its nondiscrimination policy in public contracts, as CSS's position would be harmful to their members and clients.

Before reaching the Supreme Court, both the federal district court and appeals court ruled in favor of the city and ACLU-PA's clients. In its unanimous decision, the Supreme Court found that the city improperly



cancelled the contract because the contract allows for individual exemptions for agencies, an opportunity that it did not extend to CSS. More information about this case, including the court's opinion, is available at **aclupa.org/**Fulton.

### FREQUENTLY ASKED QUESTIONS WITH...MARIAN SCHNEIDER

As a consulting attorney during the 2020 election, Marian Schneider advised ACLU-PA's legal, advocacy, and communications teams on strategy in defense of democracy. After a brief break, she rejoined the ACLU-PA in August. Marian was deputy secretary of state for elections and administration from 2015-17 and, as an attorney with Advancement Project, was co-counsel in ACLU-PA's challenge to the voter ID law in 2012.

## How would you assess the state of democracy right now in the U.S.? What are the threats?

Misinformation that leads a significant portion of the electorate to refuse to recognize the legitimate winners is the biggest threat to our democracy. Its proponents distrust reasonable explanations of the ways election officials work to authenticate voters and ensure that only legitimate ballots are accepted and counted. And the hyper-partisan Big Lie, as it is known, barely conceals its true underpinnings: anger that voter turnout among voters of color increased substantially in 2020.

Elections officials have ramped up security around computers since 2016, and post-election tabulation audits of paper ballots make sure the computers counted correctly.

#### There's a lot of hyperbole about elections, much of it overblown. What are the actual improvements Pennsylvania needs in election administration?

Pennsylvania made huge strides when the General Assembly passed election reforms in 2019 and 2020, which included mail-in voting, a later deadline for voter registration, and funding for new voting machines. Implementation of such wide-ranging reforms during a presidential election year would have been challenging in any environment, but counties were thrust into the pandemic accelerator.

We learned a great deal from 2020. For example, counties need more time in advance of Election Day to process mail ballots to minimize or even eliminate delays in the vote count. Currently, counties are not allowed

to start processing those ballots until Election Day.

Despite the reforms passed in 2019 and 2020, Pennsylvania still lags behind other states in ensuring that all eligible voters can vote easily. Inperson early voting, vote centers that serve multiple election districts and Election Day or same-day registration are examples of reforms that could help voters.

### What can people reading this do to support the right to vote?

I urge everyone to contact their county leadership and express support for measures that encourage voting, remove obstacles, and make voting easier for everyone. They should also contact their state legislators and tell them to stop wasting time and money on revisiting the 2020 election and work towards strengthening our democracy. Finally, sign up to be a poll worker in your local precinct! We need good people to serve on Election Day! And if you are bilingual, even better!



Marian Schneider (right) with the legal team, including ACLU-PA's Reggie Shuford and Vic Walczak (second and third from left), and lead plaintiff Viviette Applewhite (seated) who challenged PA's voter ID law in 2012.



Marian hard at work during the voter ID trial. PA's voter ID law was ultimately overturned.

## **VOLUNTEER PROFILE: ANJELICA HENDRICKS**

Name: Anjelica Hendricks Hometown: Richmond, Virginia

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

As a vice president of the Philadelphia Chapter board of directors, I discuss local issues that impact Philadelphians and help brainstorm ways the chapter can assist residents.

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

It is important for me to volunteer to assist the staff and other board members in developing and executing effective campaigns. I support the strategic plan of the ACLU of Pennsylvania and will work to dismantle mass incarceration, reimagine policing, and protect voting rights for all.

## What civil liberties issues are you most passionate about and why?

I am most passionate on issues impacting criminal justice. I draw on my experiences as a former public defender and former senior policy analyst for the Police Advisory Commission to advocate for issues that will



drastically reform policing, detention, and criminal law.

## Who is your civil liberties hero and why?

Ella Baker is my hero. I am encouraged by her strength in combating sexism, racism, and mass incarceration in the 20th century. Even though she was a valuable leader in the movement, Ella Baker highlighted that movements do not need leaders; movements need people who understand that they each have a role to play in countering oppression.

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

I am currently a faculty member at the University of Pennsylvania Carey Law School. At Penn, I research and write on the intersection of policing and criminal law and assist the Quattrone Center in identifying errors within the criminal justice system. In addition, I am an appointed board member of the Barristers' Association, and I was recently appointed by City Council to serve on the selection committee for the Citizens Police Oversight Commission.

#### PA GENERAL ASSEMBLY IS A FACTORY FOR NEW CRIMINAL OFFENSES

In June, the ACLU of Pennsylvania released a new edition to our report More Law, Less Justice, covering the 2019-20 legislative session in Harrisburg. The report tracks the introduction and passage of new legislation that duplicates laws that are already part of the Pennsylvania crimes code. When duplicative laws are passed for the same offense, police, prosecutors, and judges gain leverage over individuals charged with a crime and can more easily coerce plea deals by threatening long terms of incarceration.

According to the report, during the 2019-20 session, the General Assembly passed 15 new criminal offenses and suboffenses, with 26 new penalties, all with bipartisan support. The vast majority of "new" offenses created

by the legislature covers behaviors already captured by laws that existed in 1972, when the current crimes code was established. In the past decade, the crimes code has more than doubled because of duplicative, unnecessary legislation passed by lawmakers in Harrisburg.

This report also examines the nearly 900 collateral consequences that Pennsylvanians with a criminal conviction face as a result of the ever-expanding crimes code, including restricted access to government benefits, college financial aid, housing, and employment. Collateral consequences can also prohibit a person with a criminal conviction from sitting on a jury or running for public office.

The ACLU of Pennsylvania will



continue to call on state lawmakers to stop introducing and/or supporting any proposed legislation that adds new criminal offenses, penalties, or sentencing enhancements and instead begin repealing the laws and offenses contributing to our mass incarceration crisis.

You can read the report on our website at **aclupa.org/MLLJ2**. ■

### **NEW STAFF AT THE ACLU OF PENNSYLVANIA**

In recent months, the ACLU-PA has welcomed three new staff members to our team.



Rodney Anderson joined the ACLU of Pennsylvania staff in 2021 as the people and benefits manager. Before becoming a part of the ACLU-PA team, he was the human resources generalist for SeaWorld Parks & Entertainment and worked at Sesame Place, a theme park based on the world-renowned television series Sesame Street. Rodney has over 12 years of experience working in all facets of HR, from onboarding and recruiting to compliance and benefits. With 15+ years of customer service experience, he holds a wealth of knowledge on how to impact individuals to achieve the best versions of themselves. As a fan of Philly sports, he is also a guy who knows how to "Trust the Process." Networking and building genuine connections are key components of Rodney's daily mantra.



Connor Hayes joined the ACLU of Pennsylvania in August 2021 as a Stanford postgraduate public interest fellow. Connor received his B.A. in political science, gender studies, and peace studies from the University of Notre Dame and holds a J.D. from Stanford Law School. During law school, he was involved with the Stanford Community Law Clinic and Housing Pro Bono Project and was co-editor in chief of the Stanford Journal of Civil Rights & Civil Liberties. While at Stanford, he externed for Judge L. Felipe Restrepo of the U.S. Court of Appeals for the Third Circuit and was a summer associate with Cohen Milstein Sellers & Toll, a plaintiffs' class action firm.



Ari Shapell is the new Toll public interest legal fellow at the ACLU-PA and started in September. Ari's work will focus on reducing probation-related incarceration by reforming Pennsylvania's probation detainer practices. Ari graduated from the University of Pennsylvania's Law School in 2021 and has an undergraduate degree from Washington University in St. Louis. At Penn Law, Ari conducted research with the Quattrone Center for the Fair Administration of Justice on probation revocation practices in Philadelphia. A long-time volunteer and legal intern with the ACLU-PA, Ari co-authored our report on cash bail in Allegheny County and also supported our Philly bail litigation. Prior to that, he mentored formerly and currently incarcerated young men and received the 2018 Volunteer of the Year Award from "Getting Out and Staying Out" NYC.

## **LIBERTY NEEDS AN ADVOCATE. THAT'S YOU!**

Whatever one thinks of the state of American politics, and there's a lot to be said about that, there is one sure way that civil liberties will erode — if good people do nothing. You already play an important role as a member of the ACLU. Now, you can take your passion a step further by participating in ACLU-PA's Advocate Academy.

ACLU-PA's legislative staff has

created a virtual training program that will help you become a stronger, smarter, and savvier advocate on behalf of civil liberties. We have designed tiered training modules so supporters can progressively build their advocacy skills and have opportunities to deepen their policy knowledge through issue briefings.

In these trainings, ACLU-PA Legislative Director Elizabeth Randol and Legislative Associate Marianne Stein give an issue snapshot of the 2021-22 session at the Pennsylvania General Assembly, an intro primer to the legislature, a master class on lobbying basics, and action steps on how to stay engaged.

Contact us at **hbginfo@aclupa.org** for more information.



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## THANK YOU, MARY CATHERINE!





For more than 16 years, ACLU-PA Deputy Legal Director Mary Catherine Roper has been involved in some of our most consequential cases, including challenges to the use of stop-and-frisk by Philadelphia police, the Defense of Marriage Act, and the Marsy's Law ballot question.

In September, Mary Catherine left her position at ACLU-PA for a new opportunity at a law firm in Philadelphia. We will miss her and are grateful that her new position will allow her to continue her fierce defense of civil liberties! ■

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