

FREE FOR ALL



Reform at the State Police — page 3

SPRING 2022

LIVING IN A POST-ROE WORLD



By **Reginald T. Shuford**
Executive Director

The last time I wrote in this space, we were reeling from the U.S. Supreme Court’s decision to not intervene to stop SB 8 in Texas, the draconian law that bans abortion at six weeks gestation and deputizes private citizens to enforce it via civil

lawsuits. I’m returning to the topic of abortion access because the warning signals about the danger of losing the legal right to an abortion are even louder now, six months later.

In December, the Supreme Court heard arguments in a case challenging a Mississippi law that bans abortion at 15 weeks. I previously said that I don’t get into the business of predictions of how a court will rule. But, in the aftermath of the arguments in *Dobbs v. Jackson Women’s*

Health Organization, advocates for access to abortion are talking publicly about the reality that the court is very likely to rule in a way that gives states more power to ban or restrict abortion. Advocates expect that *Roe v. Wade* will be at least rolled back and possibly overturned in its entirety when the court rules in *Dobbs*, which is expected in June.

We have to prepare ourselves for a post-Roe world.

In the immediate aftermath of such a ruling, approximately half the states will either ban abortion automatically, through what’s called a “trigger” law that goes into effect as soon as *Roe* is overturned, or through swift legislative action. We expect some of Pennsylvania’s neighboring states, specifically Ohio and West Virginia, to be among those states. Clinics in our state will see an influx of patients. These clinics and abortion funds - the

mutual aid organizations that provide for patients in financial need – will need our support.

Meanwhile, abortion rights will immediately become a high-profile issue in Pennsylvania’s gubernatorial and legislative elections. It could even be an issue that tips the results. We have an entrenched, anti-abortion majority in the state General Assembly, so further legal restrictions on abortion care could hang in the balance in the gubernatorial and legislative races. Governor Wolf and several of his predecessors who supported abortion rights are the only reason that there are not more restrictions on abortion in Pennsylvania.

In this election year, we must seize the opportunity to make abortion a prominent issue, pressing candidates to support abortion access at forums,

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DEFENDING DEMOCRACY NEVER STOPS

In the aftermath of the 2020 election, protecting the right to vote has become a year-round endeavor for the ACLU of Pennsylvania.

In January, five voters in Lehigh County filed a federal civil rights lawsuit, represented by ACLU-PA, to challenge the disqualification of 257 timely mail and absentee ballots in the 2021 general election because the voters mistakenly forgot to write a date on their return envelopes. Lehigh County had initially intended to count the ballots, but that decision was challenged in state court by a judicial candidate. The Commonwealth Court ruled in the candidate’s favor, and the state Supreme Court opted not to hear the case.

Everyone involved in the case acknowledges that the voters are all eligible, all returned their ballots by the deadline, and all submitted oth-



erwise legitimate ballots. Dating the return envelope is a technicality that is irrelevant to a person’s eligibility to vote, and disqualifying such ballots is forbidden by the Civil Rights Act of 1964.

The implications are significant. One percent of Lehigh County voters forgot to date their return envelope in 2021. For the sake of comparison, one percent of mail and absentee voters in the 2020 election was 27,000 people.

In a high-turnout, statewide election, tens of thousands of otherwise eligible voters could be disenfranchised if the state court ruling stands.

For the latest news on this case, visit aclupa.org/LehighBallots.

Meanwhile, ACLU-PA represents eight voters and three advocacy organizations - Common Cause Pa., League of Women Voters of Pa., and Make the Road Pa. - in challenging state Senate Republicans’ attempt to obtain the personally identifying information of every registered voter, including names, addresses, birth dates, drivers license and non-driving

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FROM THE PRESIDENT



Dear ACLU-PA supporter,

The ACLU is emphasizing a “democracy defense” program at the national level, and Pennsylvania has been identified as one of more than a dozen “battleground” states.

Democracy is founded on every qualified person having an unfettered right to vote. Of course, the ACLU is and always has been rigorously devoted to a nonpartisan stance. We do not prefer any one political party over the others. We believe that everyone who is of age and is a member of our polity should be able to participate equally in choosing representatives to make law and policy that will then govern us all, subject of course to the Constitution’s protections for minority rights.

This policy priority by the ACLU nationwide is in perfect alignment with the strategic framework approved by the board of ACLU-PA to guide staff and volunteer efforts from 2021 through 2024. One of our three top priorities is protecting the right to vote. This includes educating potential voters that they are eligible, defending expanded ballot access, and fighting discriminatory impediments to the ballot.

The ACLU of PA pursues these strategies with our usual multi-pronged approach of public education and organizing, legislative advocacy, and in-court litigation. Your membership dues and donations to the American Civil Liberties Union support the critical legislative work while tax-deductible donations to the ACLU Foundation fund our education, organizing, and litigation.

Through these donations, we’ve added a full-time election law expert to our advocacy staff. And in our education and organizing work, we emphasize coalitions; we work closely with community leaders, especially at the grass roots and with constant input from those most affected by repressive policies.

Teamwork and cooperation among staff, board, and other volunteers make these efforts possible. In this way, we progress toward a more perfect union, with liberty and justice for all.

Peter Goldberger
President, ACLU-PA

Post-Roe, continued from page 1

debates, and when they knock on our doors; in the media, as with letters to the editor; on social media; and, most importantly, with our votes.

As it is, we are fighting to maintain a status quo that is already too restrictive for too many people. Depending upon where someone lives in Pennsylvania, they may have to travel 100 miles or more to the nearest abortion clinic. The ban on Medicaid coverage of abortion care also puts it out of reach for people living in poverty. And these hurdles to care disproportionately impact Black and brown Pennsylvanians.

If this column sounds gloomy, it is only

because I want ACLU-PA’s members to know exactly what we are facing. We have the power to influence what happens from here, by supporting Pennsylvania’s abortion clinics, donating to abortion funds, and pushing elected officials and candidates to be on the right side of this issue, with our voices and our votes.

James Baldwin once said, “Not everything that is faced can be changed, but nothing can be changed until it is faced.” America in 2022 is presenting us with numerous challenges. Together, we will face them.

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ACLU-PA RACIAL PROFILING LAWSUIT LEADS TO REFORM AT THE PA STATE POLICE



ACLU-PA Legal Director Witold Walczak announces the lawsuit against the Pennsylvania State Police at a press conference in Harrisburg in 2019.

Racial profiling and discrimination should have no place in law enforcement and policing. Of course, the sad reality is that people of color have to deal with racial bias from police all the time.

A lawsuit that ACLU-PA filed in 2019 uncovered a pattern of racial discrimination against Latinos and

other people of color by troopers of the Pennsylvania State Police. The lawsuit, filed on behalf of ten individuals who were targeted in six separate incidents, alleged that troopers prolonged traffic stops and illegally detained the plaintiffs so that they could check their immigration status.

To be clear, Pennsylvania State Police and other local and state law enforcement entities are significantly limited in their power to enforce civil immigration law or to detain people for the purpose of checking their immigration status. That state police troopers decided to break these rules based on assumptions rooted in racial bias makes their actions all the more disturbing.

Fortunately, once the facts of the case were on the table, Pennsylvania State Police decided to settle the case, instead of allowing it to play out in court. In settling the lawsuit with our clients, Pennsylvania State Police agreed to prohibit its troopers from

inquiring into a person's immigration status while checking their identification during a traffic stop and to end the practice of prolonging stops for civil immigration enforcement.

In short, the state police agreed, as a matter of policy, that its duties do not include enforcing civil immigration law.

As part of the settlement, Pennsylvania State Police will also pay \$865,000, which includes compensation for our clients and to cover legal fees. We hope that this settlement will put other law enforcement agencies across the commonwealth on notice that racial discrimination and operating outside of the jurisdiction of police duties are unacceptable and will be met with a legal challenge from the ACLU of Pennsylvania.

For more information about this lawsuit and to hear from ACLU-PA client Rebecca Castro (pictured on page one), visit aclupa.org/Marquez-PSP. ■

JAILED FOR LIVING IN POVERTY

On any given day, there are more than 30,000 people in Pennsylvania's county jails, and the majority of them have been accused but not convicted of a crime or a probation violation. Many of them are being detained because they cannot afford the cash bail that would pay for their freedom.

A new report released by ACLU-PA in December, *Broken Rules: How Pennsylvania Courts Use Cash Bail to Incarcerate People Before Trial*, found that courts across the state are using money bail not as a means to guarantee that someone shows up for their court appearances, as it was originally intended, but instead as a tool for pretrial detention. Our research determined that cash bail was the most common form of bail used by magisterial district courts in the commonwealth in 2016-17, that more than half of the people who were given cash bail orders during that time could not afford to pay and were stuck in jail



until their case was resolved, and that money bail was disproportionately ordered for Black defendants.

This is not the way that bail is supposed to work. The Pennsylvania Constitution is clear that pretrial liberty is a right and that bail must be affordable. Bail magistrates and magisterial district judges throughout Pennsylvania are flouting their constitutional responsibility.

You can read the report at aclupa.org/BailReport.

In response to this problem, mutual aid organizations known as bail funds have popped up around the

state. These nonprofit organizations raise funds to pay people's bail orders and exist in Philadelphia, Allegheny, Dauphin, and Lancaster counties.

Apparently, the bail funds have ruffled some feathers in Harrisburg and in the bail bondsmen industry. Legislation has passed the state House and is now before the Senate Judiciary Committee to require the bail funds to follow the same licensing requirements as bail bondsmen, the for-profit actors who will pay a bond to cover a person's bail order, at great financial cost to the person and often their family. In contrast, the bail funds act as charities and charge no fees for their services.

The ACLU of Pennsylvania opposes the bill, House Bill 2046, and more information is available at aclupa.org/HB2046. ■

PA SUPREME COURT: MARSY'S LAW BALLOT QUESTION IS UNCONSTITUTIONAL

The ACLU of Pennsylvania's legal challenge to the process used by the legislature to add a victims' bill of rights known as Marsy's Law to the state constitution ended in victory in December, when the Pennsylvania Supreme Court ruled the 2019 ballot question unconstitutional. The court's decision was based on the constitution's prohibition on presenting voters with a single ballot question to change multiple sections of the state constitution or to address multiple subjects that are not related, a practice known as "logrolling."

ACLU-PA opposed the proposal as it moved through the Legislature and filed the lawsuit to stop certification of the vote due to the constitutional problems with the amendment, on behalf of the League of Women Voters of Pennsylvania and an individual voter, Lorraine Haw of Philadelphia. The case was a voting rights case; the

General Assembly forced voters to vote yes or no on the entire package of changes, rather than giving voters the chance to consider each individual proposal on its merits, as the constitution requires.

Marsy's Law established constitutional rights for a victim of crime at all stages of a proceeding, including initial hearings, before the state had met its burden that a crime had even occurred, that the person who was accused was responsible, and that there was a victim. If it had been enacted, the rights of people accused of a crime would have been severely undermined, including in bail



Lorraine Haw, who challenged the constitutionality of the Marsy's Law ballot question, talks with a reporter after oral argument at the PA Supreme Court in September 2021.

proceedings, the ability to access information to establish their innocence, and in appeals.

More information is available at aclupa.org/ML-lawsuit and aclupa.org/MarsysLaw. ■

THE PROBLEM WITH PROBATION IN PENNSYLVANIA

Probation is meant to be an alternative to incarceration and give people an opportunity to keep their lives on track as they serve a sentence in their community. But in Pennsylvania, our broken probation system can lead to an endless cycle of state supervision and indefinite incarceration. Unlike the vast majority of states, Pennsylvania does not limit the amount of time that a person can be kept on probation. If a person violates the terms of their probation, Pennsylvania law allows judges to restart the probation sentence. For violations as simple as failing to inform your probation officer about a new job or missing an appointment, a person could literally spend decades on probation.

To see just how broken Pennsylvania's probation system is, just look at Montgomery County, where ACLU-PA has filed a class action lawsuit challenging the county's probation (and

parole) practices. Public records show that the county incarcerates nearly every single person who is accused of violating the terms of their probation or parole. Instead of the speedy revocation proceedings guaranteed by the United States and Pennsylvania constitutions, the county probation department incarcerates people charged with violating their probation terms for months while their cases proceed. Moreover, the county provides no meaningful opportunity for a person to challenge their incarceration.

That's why we need meaningful probation reform in Pennsylvania.

Unfortunately, a so-called "reform" bill making its way through the state legislature fails to address the issues listed above and, in some ways, could make probation practices in the commonwealth even worse. Senate Bill 913 does not set a limit on the length of time that a person can be on

probation; when a person is on probation for a long period of time, the supervision terms act like a tripwire, increasing the chances that the person ends up detained in jail for a violation.

SB 913 also creates a new type of "administrative probation" that could keep people on probation indefinitely until their restitution is paid. By definition, that will have a disproportionate impact on people living in poverty.

SB 913 is not the probation reform bill that Pennsylvania so desperately needs. ACLU-PA will continue to push legislators in Harrisburg to craft a meaningful probation reform bill that brings the commonwealth inline with so many other states and the rights enshrined in the Constitution.

Learn more about the case at aclupa.org/Montco and about the bill at aclupa.org/SB913. ■

ID numbers, and partial Social Security numbers. The senators leading the effort have stated their desire to investigate every voter in the 2020 general election and 2021 primary. The constitutional right to privacy of all voters will be compromised if the senators are successful.

The voters and advocates are intervenors in the case, meaning that, while

they are neither plaintiffs nor defendants, they can participate in proceedings because they will be directly impacted by the outcome.

Finally, ACLU-PA, Public Interest Law Center, and Pitt law professor Jessie Allen filed a friend-of-the-court brief on behalf of seven voters and Disability Rights Pa. arguing that vote-by-mail is constitutional, in a

challenge to mail-in voting by Republican lawmakers. That case is now before the state Supreme Court.

Find more information and the most recent updates on these two cases at aclupa.org/Dush and aclupa.org/Act77. ■

FREQUENTLY ASKED QUESTIONS WITH...TERRELL THOMAS

Terrell Thomas is a senior field organizer for ACLU-PA's Campaign for Smart Justice. A lifelong resident of Pittsburgh, Terrell engages with local communities, especially those impacted by mass incarceration, to work toward solutions for decarceration, ending racial disparities in the criminal legal system, and better, fairer policing in Allegheny County.

What are the most pressing issues facing communities in Allegheny County in 2022?

We need policymakers to look at the social determinants of incarceration and focus on the intersections between racism and poverty in our communities. Black men are drastically over-represented in the prison population in Allegheny County and across the state. Post-incarceration, people face barriers in finding employment and housing, many don't trust the democratic process, and many lack access to social services.

To address these obstacles, criminal legal reform must be made a policy priority. The first objective should be to reduce the number of people in the county jail who are there for pretrial

detention and technical violations. We need to look at how we can improve reentry and postconviction policies that hinder returning citizens.

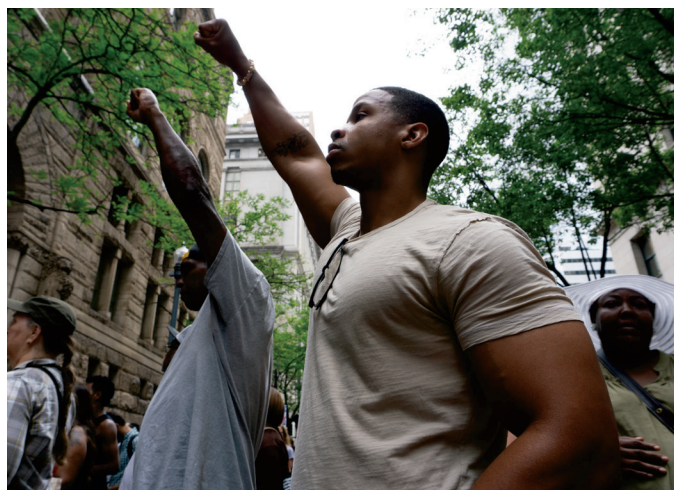
Through the lens of an organizer, how can folks be a part of making Allegheny County a better, more livable place for more people?

Before getting in this work, it's imperative that you are honest about your motivation and examine your beliefs. We need as many people to join and fight for people who have been marginalized. To become a strong ally in a social justice movement, you have to be transparent, open, and authentic. And it requires ongoing self-reflection, learning, and openness to growth.

I suggest going out and learning about the issues within your community by following social justice organizations on social media, watching the news, and going to community meetings. Social media platforms have become extremely powerful tools for sharing messages and receiving feedback from community members.

Become a champion for the people and take time to learn all you can about the mitigating factors to the problem so you can become part of the solution.

In January, Ed Gainey became Pittsburgh's first Black mayor. While ACLU-PA does not endorse candidates, we recognize that his



election was an important milestone in the city's history. What do you think it means for Black Pittsburghers to finally have a Black mayor?

Last year, the Center for Economic Development at the University of Wisconsin Milwaukee released a study comparing urban areas on racial inequality. The report found that the Pittsburgh metro area was among the worst in the nation for numerous quality-of-life indicators for Black residents, including median annual household income, the poverty rate, employment rate, infant mortality, deaths by homicide and deaths of despair (drug abuse, alcohol abuse, or suicide), and the incarceration rate.

We now have a Black mayor from one of the communities that has been impacted the most by these problems. He has an empathetic ear and is from the people. We have a chance to have public policy that reflects the community. ■



VOLUNTEER PROFILE: TARA STEPHENSON

Name: Tara Stephenson

Hometown: Easton, Pennsylvania

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

I am the Greater Lehigh Valley Chapter president. I lead the bi-monthly meetings and usually take the lead in all tabling at events.

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

Freedom and civil rights generally are terribly taken for granted in our society. It is a part of human nature to understand fairness, but there also can be a narrow focus on oneself and one's "tribe." It is necessary to remain vigilant and ensure that all individuals are protected.

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

The group of freedoms listed under the First Amendment (speech, religion, etc.) are foundational. All people must be able to express their true identity without fear of reprisal. Wealthy, white, straight, cisgender men are not the sum of "we, the people," and, though bigotry and



discrimination will continue to disrupt our common lives, we must never allow our government to become an oppressor.

Who is your civil liberties hero and why?

Toss-up between Ruth Bader Ginsburg and John Lewis! I admire their courage and their intense focus on righting injustice. Without them, the legal rights of women and Black Americans might well be more in jeopardy than they are.

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

I have been married for 40 years and have two adult sons. I work as a "lunch lady" in a high school. Hard work, but I like my coworkers. I am the chair of the Elections Committee for a local political organization. I am on the Worship Committee of my church. Finally, I sing second soprano in the Lehigh University Choral Union. Music is my art, and participating in it powers me for everything else I do. □

ACLU-PA'S HAROLD JORDAN LEADS NATIONWIDE WORK ON EDUCATION EQUITY

In the fall of 2021, the ACLU launched a new, two-year pilot program to strengthen the organization's collaborative work nationwide on education equity issues, including ending the school-to-prison pipeline, the right to a quality education, fair treatment of students, protection of student privacy and ending harmful behavioral interventions (such as corporal punishment, seclusion and restraints, and the use of force).

Leading this new initiative is ACLU-PA's Harold Jordan. As the nationwide education equity coordinator, Harold provides program development advice and technical assistance to ACLU staff around the country, organizes internal communications and

collaboration between affiliates, and coordinates cross-affiliate projects on a range of education equity issues.

Harold has had a long career as an advocate for student civil rights, which has included 14 years at the ACLU of Pennsylvania, and as a parent organizer and a school administrator. He has authored and co-authored multiple reports and publications during his tenure at ACLU-PA, including the recently released report *Student Arrests in Allegheny County Schools: The Need for Transparency and Accountability*. Published in January, the report found that students in Allegheny County public schools are arrested on campus at rates several times greater than their counterparts around the



state, with disproportionate impact on Black students and students with disabilities, and that many schools are not properly reporting their arrest data to state and federal agencies, as required. The report is available at aclupa.org/studentarrests.

ACLU-PA looks forward to seeing the growth of the ACLU's education equity work under Harold's leadership. ■

NEW STAFF AT THE ACLU OF PENNSYLVANIA

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



Diona Akens joined the ACLU of Pennsylvania in February 2022 as the major gifts officer. She has five years of nonprofit experience, with a background in fundraising and donor/volunteer engagement. Prior to the ACLU-PA, she worked to support the development team at Mighty Writers, focusing on grant writing for the diaper distribution program, and at Cradles to Crayons, fundraising to help provide children with essential items. She received her B.A. in professional writing from Kutztown University, her M.F.A. in creative writing from Arcadia University, and is currently studying to earn her 200-hour yoga teacher certification. In her free time, Diona enjoys writing, painting, practicing yoga and meditation, and spending time with her four feline fur babies.



Sarah Johnson became director of philanthropy for the ACLU of Pennsylvania in the fall of 2021. Prior to joining the team, she served as an associate director of major gifts for Grinnell College, a private liberal arts institution based in her home state of Iowa. Sarah also spent ten years in financial services, first as a financial advisor and then partnering with insurance carriers as an executive recruiter. Sarah graduated from the University of Iowa in 2006 with a bachelor's degree in economics and earned a master's of business administration as a part of the executive program in 2018. In her spare time, you may find her reading, puzzling (over 100,000 pieces during pandemic!), traveling, and spending time grounded by nature.



Steve Loney joined the ACLU of Pennsylvania as senior supervising attorney in January 2022. Before leaving private practice to pursue civil rights work full time, Steve was the pro bono liaison partner for Hogan Lovells' Philadelphia office and the group manager for the firm's award-winning Philadelphia Litigation Group. Steve's public interest work prior to joining the ACLU included the first modern successful challenge to the Pennsylvania state legislative redistricting plan and over a dozen successful disability claims on behalf of Philadelphians experiencing homelessness. Steve is also an active community volunteer, serving on the board of directors of the Church Farm School, the diverse financially accessible college preparatory school where he got his start. Steve earned his law degree from the New York University School of Law in 2004 and his undergraduate degree from St. Joseph's University in Philadelphia.



After working with ACLU-PA as a consulting attorney during the 2020 election, **Marian K. Schneider** joined the staff in 2021 and is the senior voting rights policy counsel. Marian has substantial subject matter expertise in elections and voting rights policy and has litigated several high-impact voting rights cases in Pennsylvania. From 2015 to 2017, Marian served as the deputy secretary for elections and administration at the Pennsylvania Department of State, where she advanced numerous pro-voter reforms, including implementing Pennsylvania's online voter registration application. Marian earned her J.D. from The George Washington University Law School, where she was a member of the law review, and her B.A. degree in classical studies/Latin from the University of Pennsylvania.



Richard T. Ting joined the ACLU of Pennsylvania as a staff attorney in 2021. Previously, he spent most of his career in private practice with a focus on intellectual property law. Rich spent a year as a volunteer attorney for the ACLU of Pennsylvania and then was a staff attorney for Disability Rights Pennsylvania before returning to the ACLU of Pennsylvania in 2021. Prior to joining as a staff attorney, Rich had long been an active volunteer for the ACLU of Pennsylvania, serving on the Greater Pittsburgh Chapter board and as cooperating counsel in student free speech cases. He earned his law degree from Harvard Law School, a master's degree in toxicology from the Massachusetts Institute of Technology, and an undergraduate degree in biochemistry from Brown University. ■

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BACK TO THE STREETS



Above: ACLU-PA's Julie Zaebst (pictured) and Naiymah Sanchez joined the No215Jail Coalition for the "caravan to end torture" outside the Philadelphia Department of Prisons, protesting unlivable conditions in the county jails.

Right: ACLU-PA joined the city of Philadelphia in recognizing Transgender Day of Visibility on March 31, including the raising of the trans flag at City Hall. ■

