

ANNUAL REVIEW 2011



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ANNUAL REVIEW

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A BRIEF HISTORY

The ACLU stands up for ordinary people. We are in every corner of the United States, working to protect civil liberties: fighting on behalf of protestors denied permits to march and immigrants suddenly detained with no charges brought against them; supporting the gay teen threatened by school bullies and the woman abused by her partner whose pleas for help are ignored by the police; defending the rights of the prisoner denied medical care and the girl whose parents would kick her out on the street if they knew she was pregnant and seeking an abortion.

We care about principles—freedom, justice, equality, fairness. Typically, this means that we end up caring for the people who otherwise would have no one in their corner.

Since our founding in 1920, the ACLU has been at the forefront of virtually every legal battle for civil liberties and equal justice in this country. At that time, civil liberties seemed a utopian dream, distant from established legal reality. The U.S. Supreme Court had yet to uphold a single free speech claim under the First Amendment. Activists languished in jail for distributing anti-war literature. Foreign-born people suspected of radicalism faced summary deportation. Racial segregation was the law of the land and lynching was popular as both a means of law enforcement and public entertainment. Women were typically the legal wards of their husbands and fathers, unable to conduct business, get credit, or go to a restaurant unescorted. Constitutional rights for lesbians and gay men, the poor and many other groups were virtually unthinkable.

For ninety years, the ACLU has worked to change that dismal picture. As individuals, groups and movements have struggled to gain rights, the ACLU has joined with them, bringing our nonpartisan legal expertise to bear. We fought the “Palmer raids,” the campaign of harassment and deportation waged by Attorney General A. Mitchell Palmer against politically radical immigrants. We led the legal battle against censorship, defending the teaching of evolution and helping to overturn restrictions on birth control information and James Joyce’s *Ulysses*. We tackled racism, condemning lynching, documenting discrimination, and helping to bring the series of cases that culminated in *Brown v. Board of Education*, the Supreme Court case that put an end to the segregationist doctrine of “separate but equal.”

Characteristically, the ACLU brought two of its most controversial challenges to the federal government during the patriotic fervor of World War II, suing to stop the racial segregation of the draft and the internment of Japanese Americans.



The ACLU was founded in 1920 by activists Crystal Eastman, Roger Baldwin, Albert DeSilver, and others.
(Image courtesy of ACLU archives, Mudd Library, and Princeton University)

Often the ACLU has been in the vanguard, litigating more cases before the Supreme Court than any other non-governmental organization. In 1965, we won *Griswold v. Connecticut*, the landmark birth control case that established a “right to privacy,” and paved the way for *Roe v. Wade*, the decision decriminalizing abortion. In 1967, we brought *In re Gault*, the landmark case that overhauled the juvenile justice system by ruling that young people have due process rights. In 1971, we won *Reed v. Reed*, the landmark decision condemning sex discrimination as a violation of equal protection. Seventeen years before the Supreme Court upheld the privacy rights of lesbians and gay men in *Lawrence v. Texas*, we urged the overturn of sodomy laws in *Bowers v. Hardwick*. And even with a conservative court, we still push the freedom envelope. Our 2009 Supreme Court win in *Safford Unified School District v. Redding*, where the court declared unconstitutional a school’s strip-search of a 13-year-old girl for ibuprofen, not only extended student privacy rights, it potentially curbed public school drug hysteria.

And our advocacy and impact has extended far beyond the courtroom. Over fifty years ago, the ACLU developed the first civilian review board for police misconduct—and followed up with the first “know your rights” brochure for people facing arrest. We published the first documented report on illegal detentions by the police. Combining our research and advocacy with litigation, we developed the arguments that established ground rules for police conduct in landmark decisions such as *Miranda v. Arizona*.

Time and again, across the civil liberties agenda, we have used our litigation, advocacy and public education expertise to create maximum movement for change. The ACLU has played a critical role in nearly every major civil liberties battle of the past century. Today, our role is more important than ever, and we continue our longstanding commitment to make the promises of the Constitution real for everyone in this country.

CENTER FOR DEMOCRACY

The ACLU's Center for Democracy works to strengthen democratic institutions; to deepen the United States' commitment to democratic values, including the values of transparency and accountability; and to strengthen the country's commitment to human rights and the rule of law.

One of our overarching goals is to ensure accountability for torture—a critical issue that goes to the very heart of our country's values. We are working to ensure that the United States is brought back into line with both constitutional and international human rights standards. We are also committed to protecting informational privacy, which has come under attack in recent years due to a perfect storm of technological innovation, post-9/11 anxiety, and a new business model that relies on the collection of vast amounts of customer information. We seek to bring privacy laws and policies up to date in order to maintain our country's long-standing commitment to “the right to be left alone.” On these and other issues, the Center for Democracy brings together the ACLU's unmatched expertise in national security, human rights, free speech, and privacy rights—all to uphold our most fundamental democratic ideals.

National Security

The ACLU's National Security Project is at the forefront of virtually every major legal battle relating to national security, civil liberties, and human rights. We advocate for national security policies that are consistent with the Constitution, the rule of law, and fundamental human rights; and we litigate cases to challenge unlawful detention, torture, discrimination, surveillance, censorship, and secrecy.

Challenging New Authorizations for Worldwide, Limitless War

In spring 2011, the ACLU made a strong effort to sound the alarm on a troubling and breathtakingly broad new authorization for war. The House Armed Services Committee was poised to include language within the National Defense Authorization Act that would give President Obama and future presidents the unprecedented power to use military force without the approval of Congress and conduct worldwide, limitless war.

Together with our coalition partners, the ACLU worked tirelessly to shed light on these disturbing and little-known provisions, lobbying on the

Hill and helping to build a coalition of support from both conservative and progressive legislators alike. A *New York Times* editorial echoed the ACLU's own concerns, noting, "This wildly expansive authorization would, in essence, make the war on terror a permanent and limitless aspect of life on earth, along with its huge potential for abuse."



The House passed the bill with the worldwide war authority provision intact despite our efforts and a veto threat by the President, but we

succeeded in keeping the provision out of the Senate's version of the bill. We will continue to combat this proposed legislation and make known the long-term consequences it holds, if passed, for our soldiers, for the use of indefinite detention and military tribunals, for our national budget, for our international relations, and for fundamental checks on executive power.

Ending Unlawful Detention

In March 2011, the ACLU appeared before the Supreme Court to argue *Ashcroft v. al-Kidd*, one of the most important civil liberties cases of the term. We filed this lawsuit in 2005, after discovering that the Justice Department was misusing the "material witness" statute to illegally arrest and detain individuals for whom the government lacked probable cause to charge with criminal violations, such as our client Abdullah al-Kidd. Though fully cooperative and presenting no flight risk, our client was unlawfully arrested, detained for 16 days, held in a high-security prison, and treated as a terrorist suspect rather than a witness. He was neither charged with a crime nor asked to testify. The Ninth

Circuit sided with us in condemning this travesty in 2009, but in June 2011 the Supreme Court refused to hold former Attorney General John Ashcroft responsible for using preventive detention as a tool in the "war on terror." While the court refused to hold Ashcroft accountable, four of the eight Justices who voted raised serious questions about using the statute to justify preventive detention. In an editorial criticizing the ruling, the *New York Times* noted that the decision "leaves unresolved whether the government's use of the material witness statute in this case was lawful." The ACLU has also filed a lawsuit against two FBI agents in Ohio for their role in al-Kidd's unconstitutional detention and treatment, and that case continues.

Combating the Use of Torture

Torture is wrong, illegal, and un-American. For sixty years the United States led the international fight for humane detention and interrogation practices, but the Bush administration betrayed this proud tradition after 9/11. Employing what is now a years-long Freedom of Information Act (FOIA) lawsuit, the ACLU took up the fight by obtaining and exposing over 130,000 secret documents related to the U.S. torture program—an accomplishment hailed by the *New York Times* as "among the most successful in the history of public disclosure."

We have also launched an "Honor Courage" campaign calling for the Obama administration to bestow official honors on the brave men and women throughout the military and the government who challenged the Bush Administration's immoral torture policies, called out abuses, and worked to end the use of coerced evidence—all at grave risk to their careers and personal lives.

Meanwhile, we continue our campaign to hold accountable those government officials who authorized torture, pressing for an expansion of the Justice Department's far too narrow investigation and for Congressional oversight hearings.

Challenging Discriminatory Post-9/11 Policies

Since 9/11, a steadily growing number of individuals and organizations have been blacklisted by the government, placed on bloated government watch lists, or otherwise deprived of their liberty or property rights without due process. These measures have disproportionately impacted political, ethnic, and religious minorities. The ACLU is challenging these discriminatory programs. For example, we filed a major lawsuit on behalf of people who are prohibited from flying into or out of the United States because they are on the government's secretive and error-prone "No-Fly" list. Our clients have neither been told why they are on the "No-Fly" list nor given any opportunity to clear their names. In May 2011, the District judge dismissed our case against the federal government, saying that she does not have authority to hear the case. The ACLU plans to appeal the decision.

We are also pressing for an official investigation into complaints that U.S. Customs and Border Protection agents have inappropriately questioned travelers about their religious and political beliefs, associations, and religious practices during border screening. Some have been asked about their religious identity, what mosques they attend, how often they pray, their religious charitable giving, and their views on U.S. military engagement in Iraq and Afghanistan. Some have had their electronic devices, such as laptops and cell

phones, searched and data copied. In May 2011, responding to a request from ACLU and Muslim Advocates, the Department of Homeland Security Office for Civil Rights and Civil Liberties announced that it is opening an investigation into the incidents.

Fighting Unchecked Government Surveillance

Since 9/11, the government has stepped up its use of the National Security Agency (NSA) to carry out unchecked spying on ordinary Americans—all without judicial oversight. Shockingly, in 2008, Congress passed the FISA Amendments Act (FAA), which not only legalized the NSA's warrantless surveillance program, but actually expanded the power of the executive branch to conduct suspicionless dragnet surveillance of Americans' international communications. Just hours after President Bush signed the legislation, the ACLU filed a lawsuit to block its enforcement. Although this suit was dismissed in 2009, we recently won a huge victory for privacy and the rule of law when a federal appeals court reinstated our landmark lawsuit, allowing it to move forward. We have also filed a FOIA request in order to get more information about how the FAA has been used, how many Americans are affected by government spying, and what safeguards are in place to protect privacy. We continue to provide testimony before Senate and House committees about the problems inherent in surveillance without suspicion of criminal activity. In addition, we are educating lawmakers and the public about the danger of government-created "fusion centers," where detailed information is collected and shared among local, state, and federal law enforcement—and, increasingly, with the military and private sector—without adequate controls

for accuracy and privacy. Indeed, in December 2010, the Tennessee Fusion Center highlighted as “suspicious activity” an ACLU letter to state school superintendents encouraging schools to be supportive of all religious beliefs during the holiday season.

Human Rights

The ACLU’s Human Rights Project works to ensure that the U.S. government complies with universal human rights principles in addition to the U.S. Constitution. We use human rights strategies to complement existing ACLU litigation and advocacy—issuing human rights reports, advocating before international human rights bodies, and bringing international law claims in U.S. courts.

Advocating for a Domestic Human Rights Agenda

We have taken full advantage of all phases of the United States’ involvement in the United Nations’ Universal Periodic Review (UPR) process to enhance accountability for human rights and bolster the domestic human rights movement. Our advance work and on-site presence helped ensure the U.S. delegation was questioned on (and subsequently shamed by) a range of issues, including Arizona’s radical anti-immigrant law, SB 1070, the death penalty, racial profiling, the school-to-prison pipeline, and torture. In December 2010, on Human Rights Day, we released our expanded UPR report. *Slamming the Courthouse Doors* shows how death row defendants, abused prisoners, immigrants facing deportation, torture victims, domestic violence survivors,

victims of racial discrimination, and others are—contrary to the U.S.’s international human rights obligations—consistently denied access to the courts.

Securing Redress for Victims of Domestic Violence

We welcomed a decision from the Inter-American Commission on Human Rights (IACHR) in a high-profile ACLU case that has enormous implications on the obligation of government to provide protection to survivors of domestic violence. Jessica Lenahan is a survivor of domestic violence whose three young daughters were kidnapped by her ex-husband and subsequently murdered. The police had refused to respond adequately to her pleas to enforce an order of protection and arrest him. Lenahan’s case demanding police accountability made it all the way to the Supreme Court where, after winning in the lower courts, it was dismissed. We filed a petition on her behalf with the IACHR, which held two hearings at which Lenahan was finally able to tell her story. In August 2011, the Commission determined that the U.S. violated her and her children’s human rights by failing to ensure their protection from domestic violence.

This case is the first brought before an international human rights tribunal against the United States by a domestic violence survivor. The Commission’s ruling sets forth comprehensive recommendations for changes to U.S. law and policy pertaining to the government’s responsibilities toward domestic violence victims. Going forward, the ACLU and allied organizations will work to implement these recommendations and to press for real accountability and remedies when police fail to do their job.

On the Trail of Human Trafficking in U.S. Military Zones

More than 70,000 low-wage workers, commonly known as third-country nationals, work for U.S. military contractors to provide the U.S. armed forces with essential services on military bases in Iraq and Afghanistan, including construction, cooking, and cleaning. But many of these workers end up there against their will, through a convoluted system of subcontracting rife with corruption, debt bondage, coercion, and other abuse. Made aware of the abuses, the military issued rules in 2006 meant to curtail the practice—but recent reports indicate those rules are largely ignored. In response, the ACLU filed a Freedom of Information Act request to find out more. And, when scant information was forthcoming, in July 2011 we filed a lawsuit to enforce our request. Our aim is to promote greater transparency about the subcontracting process, with a view to effectively stemming further trafficking and abuse of workers on American military bases.

Challenging Juvenile Life Without Parole

In November 2010, the ACLU filed a lawsuit on behalf of nine Michigan citizens who were sentenced to life in prison without the possibility of parole for crimes committed when they were children. The lawsuit charges that a Michigan sentencing scheme that denies the now-adult plaintiffs an opportunity for parole and a fair hearing to demonstrate their growth, maturity, and rehabilitation constitutes cruel and unusual punishment and violates their constitutional rights. The lawsuit also explicitly challenges the Michigan sentencing regime as a violation of international human rights law and notes that the United States is the only country in the world that continues to sentence juveniles to life without parole. The ACLU argued the case in federal court in April 2011; we await a ruling.

Confronting Human Trafficking

Last year, our *Sabbithi* lawsuit was allowed to move forward. We represent three Indian women brought to this country by a Kuwaiti diplomat and his wife under false pretenses. Each was held against her will, abused, and forced to work as a domestic servant under slavery-like conditions until she escaped, in fear for her life. The suit charges the country of Kuwait, the diplomat, and his wife with trafficking, among other charges. In December 2010, we successfully brought back into the case the individual defendants, who were initially dismissed due to diplomatic immunity. As they are no longer sitting diplomats, we contended that full diplomatic immunity should not apply. In another case where we serve as co-counsel with other groups, we also represent over 500 guest workers from India brought to this country under false pretenses and abused. We are working to have our clients

certified as a class; should we secure certification, the case will be the largest labor trafficking case in U.S. history. We seek to trigger federal oversight of the guest worker program as now there is none, and no federal agency is designated as responsible.

Defending Human Rights in Puerto Rico

In Puerto Rico, where the ACLU has an active and vigilant chapter, police abuse has escalated and free expression has been under threat since Gov. Luis Fortuño came into power two years ago. University students at peaceful protests have been subjected to violent attacks and arrest, government proceedings have been closed to the public, and tens of thousands of workers have been fired and their criticism of government policies repressed.

As repression has escalated, we have launched aggressive advocacy, posting YouTube videos depicting the ongoing violence; publishing a preliminary report on the abuses, which has been entered into Congressional Record; and urging the Department of Justice to intervene. In May 2011, we led a high-level fact-finding delegation that included actor Rosie Perez and baseball legend Carlos Delgado. When President Obama visited Puerto Rico in June, we sent him an open letter and took out full-page ads in major papers highlighting our concerns.

In two positive developments, Puerto Rico's police chief, Jose Figueroa Sancha, stepped down just three weeks after the ACLU released its preliminary findings about police brutality, and the Justice Department issued a blistering condemnation of the police department's civil rights violations and illegal activities. The ACLU will issue a comprehensive report documenting our research findings in September 2011.

Speech, Privacy, and Technology

*The ACLU's Speech, Privacy, and Technology Project is dedicated to protecting and expanding the freedoms of expression, association, and inquiry; expanding the right to privacy and increasing the control that individuals have over their personal information; and ensuring that civil liberties are enhanced rather than compromised by new advances in science and technology. The ACLU has been a leader on these issues for decades—for example, curtailing government restrictions on James Joyce's *Ulysses* and the Pentagon Papers, striking down attempts to censor the Internet in the 1990s, and challenging PATRIOT Act surveillance provisions that severely threaten personal privacy. We work to ensure that our constitutional rights to privacy and freedom are not eroded by the government or by corporations in an era of rapidly advancing technology.*

Standing Up to Big Brother

With the advent of powerful cameras, sensors, satellites, and other technologies, the kind of surveillance society George Orwell warned against in his novel *1984* is now technologically possible. The ACLU is a leader in fighting to ensure that this does not happen.

We are working to make sure that long-established freedoms do not get eroded when they move online. For example, we are a leader in the Digital Due Process coalition that seeks to update the Electronic Communication Privacy Act (ECPA), the law that is meant to maintain Americans' privacy online. ECPA was passed in 1986, when there was no World Wide Web and the only sources for "location information"

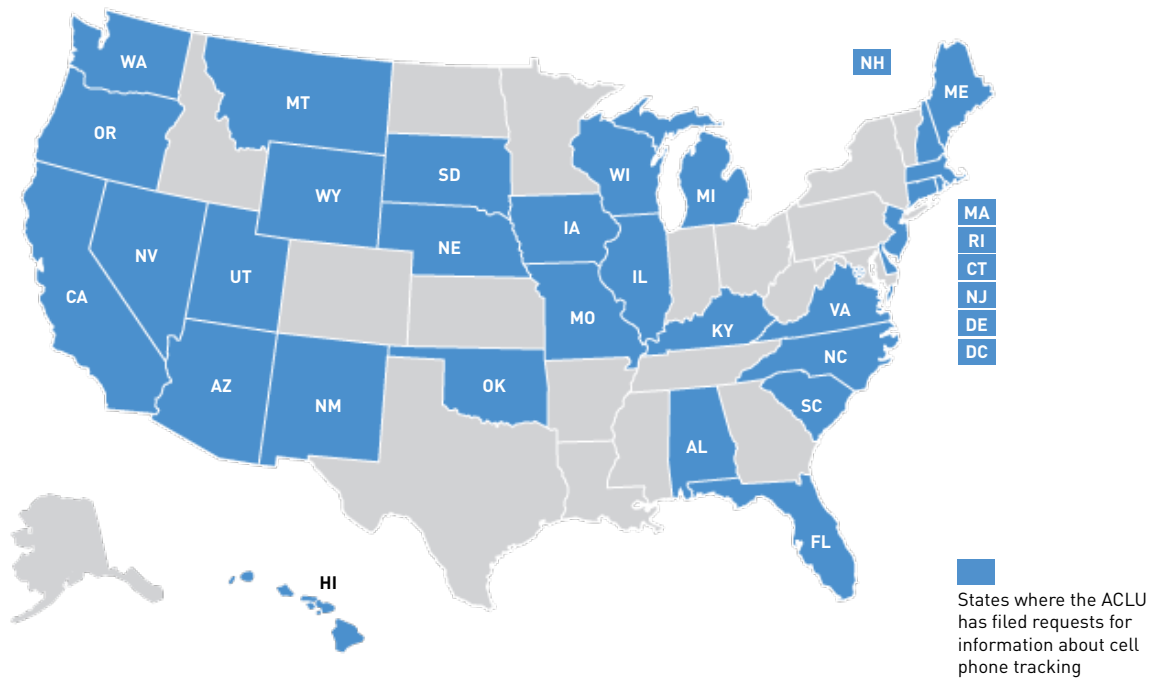
were road atlases and gas stations. Private companies and the government can now track people's locations through their cell phones, laptops, and GPS systems, and collect people's personal information through their email and social networking sites—all, they claim, without a warrant. In an important victory, we recently prevailed against the North Carolina Department of Revenue, which sought personally identifiable information about customers that could be linked to their specific purchases on Amazon.com—including books on the subjects of mental health, alcoholism and lesbian, gay, bisexual, and transgender (LGBT) issues.

The ACLU continues to advocate on pressing privacy issues such as the government's creation of "fusion centers" meant to increase information-sharing between federal, state, and local officials; the use of full-body scanners at airports; the pervasive use of surveillance cameras; and proposals to institute a national ID card. We have led the public fight against Kafkaesque watchlists that trap innocent people and provide no way to get off the list. We have also created research reports to educate the public and the media and to frame policy debates in Washington.

Protecting Freedom of Speech

The ACLU has led the fight for free speech since the end of the First World War, when the battle over the First Amendment began. We continue fighting to maintain and expand free speech rights in the era of the Internet and high technology. For example, we spent ten years tirelessly litigating a challenge to the Child Online Protection Act (a federal law that criminalizes constitutionally protected speech on the Internet under the guise of protecting children)—a landmark case that we finally won in 2009. We also won a settlement against two Tennessee school districts that had blocked access to all websites that presented positive information about LGBT people, but had allowed access to anti-gay websites.

We also stand up for people who are unjustly punished for speaking out. We are representing Morris Davis, a former chief Guantánamo prosecutor, who was fired from his government job because of his public writings concerning the military commissions. In addition, the ACLU protects the people's right to peacefully protest. For example, we currently represent New Mexico residents and advocacy organizations that were forced to stand more than 150 yards away from a presidential fundraising event in 2007, although a separate group of people holding a banner reading "God Bless George Bush!" was allowed to stand only a few feet from the site. We have recently won great rulings allowing both of these lawsuits to move forward.



Tracking the Trackers

In a massive, coordinated information-seeking campaign, 34 ACLU affiliates have filed over 375 requests in 31 states across the country with local law enforcement agencies—large and small—that seek to uncover when, why, and how they are using cell phone location data to track Americans. The requests seek information, including whether law enforcement agents demonstrate probable cause and obtain a warrant to access cell phone location data; statistics on how frequently law enforcement agencies obtain cell phone location data; how much money law enforcement agencies spend tracking cell phones; and other policies and procedures used for acquiring location data.

The information requests are part of the ACLU’s “Demand Your dotRights” campaign, an effort to make sure that, as technology advances, privacy rights are not left behind.

Protecting Public Access to Information

Freedom of expression protects not only the right to free speech, but also the right to freely access information. The ACLU is on the cutting edge of legal theory in this area. For example, we are using the First Amendment to prevent the privatization of knowledge. In 2009, together with the Public Patent Foundation, we filed a first-of-its-kind lawsuit charging that patents on two human genes associated

with breast and ovarian cancer are unconstitutional and should be invalidated. Because Myriad Genetics holds the patent on the Breast Cancer Susceptibility (BRCA) genes, Myriad’s lab is the only place in the country where diagnostic testing can be performed. Myriad’s monopoly on the BRCA genes makes it impossible for women to use other tests or to get a second opinion about their results, and allows Myriad to charge an exceptionally high rate

Resisting Suspicionless Searches and Seizures at the Border

In May 2011, the ACLU filed a lawsuit challenging the suspicionless search and seizure of electronics and personal data belonging to David House, a computer programmer and U.S. citizen who lives in Cambridge, Massachusetts. The lawsuit charges that the government targeted House solely on the basis of his lawful association with the Bradley Manning Support Network—a group that advocates for the legal defense of the soldier who was arrested for allegedly disclosing military information to WikiLeaks. House's laptop contained not only personal emails and passwords, but also information about the support network, including mailing lists, confidential strategy memos, and lists of donors and potential donors.

The ACLU lawsuit asks the court to declare that the government's actions violated House's constitutional rights and challenges the notion that the government has unbundled power to search the personal effects and papers of individuals and groups who are engaged in legal and protected political activity—simply because the government doesn't like one cause or another. This lawsuit is one in a series of legal challenges to the government's practice of suspicionless seizures of electronic devices at the U.S. border.

for its tests—more than \$3,000, which is too expensive for many women to afford. Our suit has received significant favorable media coverage, including the *New York Times* and NBC's *The Today Show*.



Lisbeth Ceriani, a breast cancer survivor and ACLU client in the BRCA case, could not afford necessary genetic tests that only Myriad Genetics offers.

We won a landmark decision in March 2010 from the district court, bolstered by a significant brief from the Obama Administration in support of our case. In July 2011, a divided appeals court partially reversed the ruling, saying that Myriad was entitled to exclude others from testing and conducting research on patented genes. We will continue to pursue this case, all the way to the Supreme Court if needed.

CENTER FOR JUSTICE

The ACLU Center for Justice works to reform our nation's bloated and broken criminal justice system. Today, after 40 years of a failed "war on drugs" and tough-on-crime policies, the United States holds the dubious distinction of being the world's largest jailer, ahead of China and Russia. But budget shortfalls of historic proportions are finally prompting states across the country to realize that less punitive approaches to criminal justice not only make more fiscal sense, but also better protect our communities. The ACLU is seizing this window of opportunity to collaborate with conservatives and progressives alike to push for thoughtful de-incarceration policies. Through litigation, public education, and legislative advocacy, the ACLU is committed to helping America re-envision a criminal justice system that is fair and free of racial bias, that keeps our communities safe, and that respects the rights of all who come into contact with it.

At the same time, we continue to demand humane conditions of confinement for all prisoners and to abolish our country's barbaric use of the death penalty.

Criminal Law Reform

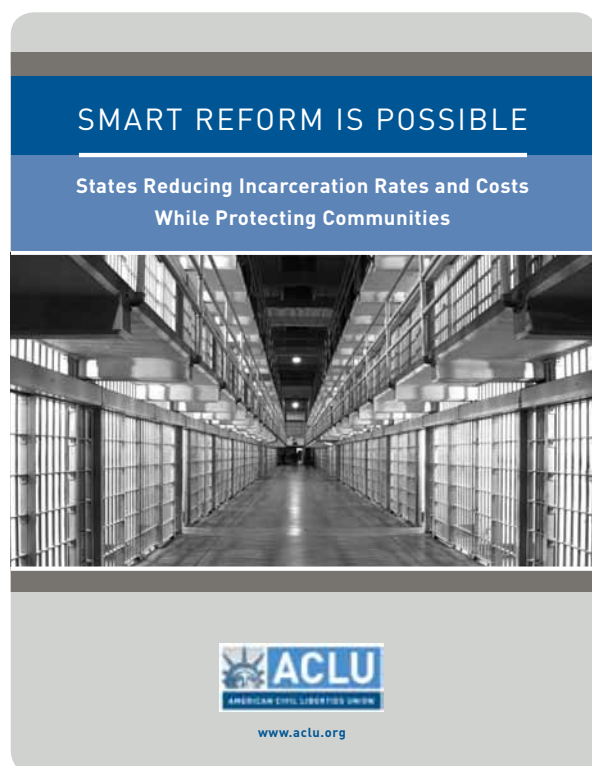
The Criminal Law Reform Project of the ACLU advocates for reforms to the criminal justice system that will address the crisis of overincarceration in the United States and protect the constitutional and human rights of those in the system. We seek to reduce the number of people entering the system by focusing on decriminalizing drug offenses and shortening sentencing schemes. We are challenging selective enforcement and other biased practices to reduce racial disparity in the criminal justice system, and we are confronting police and prosecutorial misconduct and abuses of power.

Sentencing Reform

In 1991, the United States Sentencing Commission (USSC) delivered a report to Congress calling for the abolition of mandatory minimum sentences. The landmark report gathered widespread support from policymakers, judges, and practitioners. But Congress ignored the recommendation and instead increased the number and length of mandatory minimums. One of the most notorious examples is the 100-to-1 disparity between possession of crack cocaine and powder cocaine. Until August 2010, possessing or dealing five grams of crack cocaine (the weight of two pennies) resulted in the same five-year mandatory minimum sentence as dealing 500 grams of powder cocaine (over a pound). These policies contributed to dispro-

Unjustly Sentenced

Fleeing a physically abusive relationship, Hamedah Hasan, a young mother, sought refuge with her cousin. His price: running errands for his crack cocaine business. Despite her peripheral involvement in a first-time, nonviolent drug offense, Hasan was sentenced to life in prison. Though Hasan's sentence has since been reduced to 27 years, she still has ten years left to go. Had she been convicted for the same offense with powder cocaine, she would be a free woman today. However, recent revisions to the crack/powder cocaine sentencing laws—an issue the ACLU has championed for decades—mean that she may soon be able to reunite with her three daughters and grandchildren.



An ACLU report issued in August 2011 highlights how states have lowered their crime rates while also reducing their prison populations and budgets.

portionately severe sentences and prison overcrowding because low-level, nonviolent, often first-time drug offenders were sentenced to jail time instead of to drug treatment programs. The sentencing disparity also exacerbated gross racial inequality in the prison system, since crack arrestees were disproportionately black.

The ACLU has long advocated for the abolition of mandatory minimums, which generate unnecessarily harsh sentences, tie judges' hands in considering individual circumstances, create racial disparities in sentencing, and empower prosecutors to force defendants to bargain away their constitutional rights. Now, after years of advocacy, we are finally seeing movement on this issue. In August 2010, President Obama signed the Fair Sentencing Act into law, eliminating the five-year mandatory minimum sentence for possession of crack and vastly reducing the infamous crack sentencing disparity to 18-to-1. The ACLU is committed to eliminating this disparity completely, as it has no basis in science. In June 2011, the USSC took another step toward creating fairness by retroactively applying the new Fair Sentencing Act guidelines to individuals sentenced before the law was enacted. This decision will help ensure that over 12,000 people—85 percent of whom are African American—will have the opportunity to have their sentences for crack cocaine offenses reviewed by a federal judge and possibly reduced.

Congress also mandated that the USSC provide a new report on mandatory minimums, which it did in January 2011. The ACLU submitted detailed recommendations in response, urging the Commission to seize on this historic opportunity to enhance the fairness of the guidelines and correct the injustices of the past.

Medical Marijuana Law: Successes and Setbacks

The ACLU has long defended the decriminalization of marijuana and its medical use. Despite an increasing number of individual states legalizing it within their own borders, the federal government continues to oppose even prescriptive access. Opposition came from another source recently when two counties challenged California's medical marijuana law. Representing medical marijuana patients, the ACLU asked the U.S. Supreme Court to decline the counties' appeal and leave intact the rulings of California's own courts, which permit the prescriptive use of marijuana. The Supreme Court refused to hear the case, effectively leaving California's medical marijuana laws intact—despite their conflict with federal law.

Eight months later, Attorney General Eric Holder provided an even bigger victory when he introduced new guidelines for federal prosecutors in the 16 states permitting medical marijuana, stating, "It will not be a priority to use federal resources to prosecute patients with serious illnesses or their caregivers who are complying with state laws on medical marijuana." Unfortunately, what the Administration has given with one hand, it has taken away with another. In July 2011, the Department of Justice issued a memo clarifying that while patients and caregivers should be left alone, those who cultivate or distribute marijuana are fair game. This new policy is disastrous for patients and antithetical to public safety because it undermines efforts by states to set up carefully regulated distribution systems designed to help sick people get their medicine while preventing fraud and abuse.

Cancer Patient Fired

Wal-Mart fired Joseph Casias, a legal, registered medical marijuana patient in Michigan, after a drug test. The 30-year-old married father of two takes marijuana on the recommendation of his oncologist to help relieve the pain of sinus cancer and an inoperable brain tumor the size of a softball. Casias had abided by Michigan's law, never using marijuana while on the job, nor working under its influence. In fact, Casias excelled at his job, quickly rising to a managerial role and becoming Associate of the Year in 2008. Wal-Mart, however, violated the Michigan law, which explicitly states that medical marijuana patients "shall not be subject to ... [any] penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business." The ACLU is now representing Casias in his wrongful discharge lawsuit against Wal-Mart, and fighting for the medical marijuana rights of patients nationwide. A federal judge dismissed the case in February 2011. We are appealing the decision.

This development serves as a reminder that the rights of patients will not be fully secure until Congress changes the law to permit the use and regulated distribution of marijuana for medical purposes—thus placing patients’ access to their medicine above the vicissitudes of politics.

The Graying of America’s Prisons

In recent years, the ACLU has drawn attention to the problem of the growing geriatric population in our prisons, most of whom pose little or no risk to public safety, and cost taxpayers three times as much to imprison, on average. As the Justice Department has found, prisoners 55 or older recidivate at a rate of just 2 percent, and additional studies show that there is virtually no recidivism for individuals age 60 or older.

In Louisiana, our advocacy on this issue recently paid off: the legislature passed a bill in June 2011 that will enable some prisoners to go before a parole board upon turning 60. The board can then decide to grant parole to those individuals it determines would pose no danger to the community upon release. Louisiana has the highest percentage of incarcerated citizens of any state in the nation, and half of those behind bars are there for nonviolent offenses. The state has 1,224 people over the age of 60 locked up—three percent of the state’s total prison population. The ACLU hailed the bill as an important model for other states wrestling with our nation’s overincarceration crisis.

Prisoners’ Rights

The ACLU’s National Prison Project is dedicated to ensuring that our nation’s prisons, jails, and other places of detention comply with the Constitution, domestic law, and international human rights principles, and to ending the policies that have given the United States the highest incarceration rate in the world. We are the only national organization litigating for the rights of prisoners, challenging unjust conditions, abusive treatment, and unconstitutional restrictions of the rights of incarcerated people.

Reducing Prison Overcrowding

We work to expose and end prison practices and conditions so extreme that they amount to torture and sometimes tragically result in death. These abuses include overcrowding, inadequate medical and mental health care, isolated confinement and sensory deprivation, flagrant brutality, and all manner of staff misconduct.

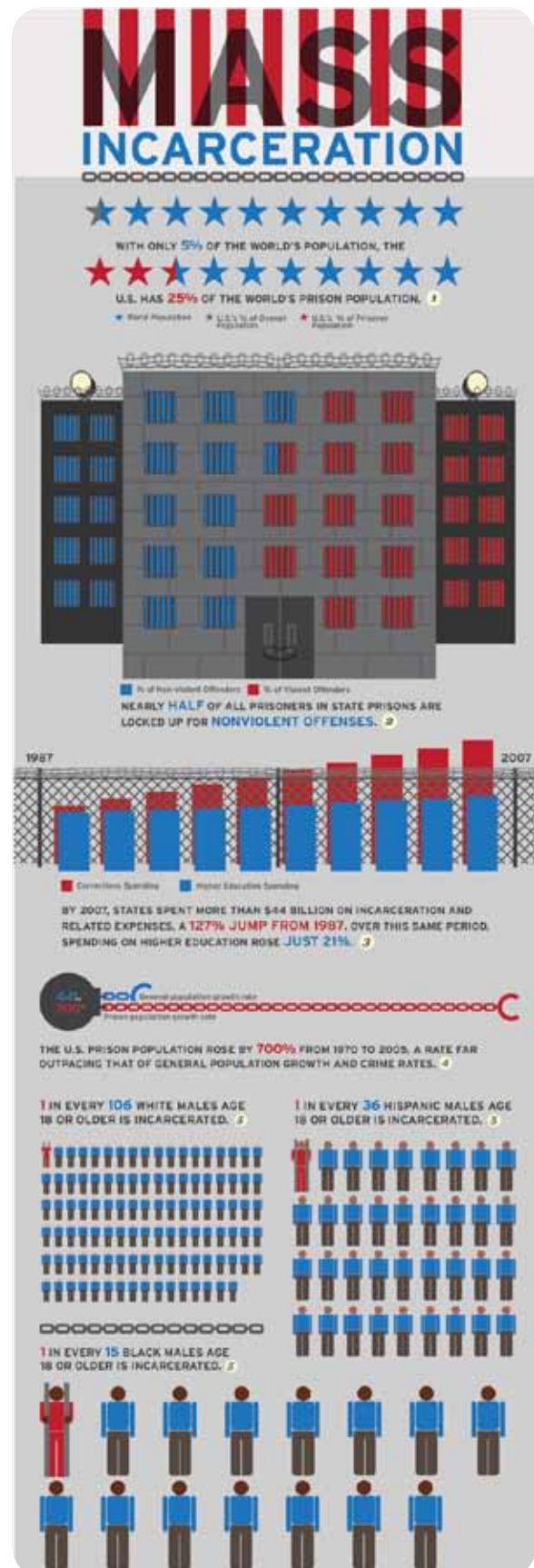
A major victory was achieved with the Supreme Court’s June 2011 ruling in *Brown v. Plata*, in which the Justices ordered the state of California to reduce its prison population in order to alleviate extreme overcrowding that endangers the health and safety of prison inmates and staff. The ACLU filed a friend-of-the-court brief in the case. The Court found that California’s prisons are so overcrowded that they violate the standard of decency required by the Constitution’s ban on cruel and unusual punishment. In multiple op-eds and interviews following this important ruling, the ACLU explained that reducing the number of people in prison would uphold the Constitution, save taxpayers’ money, and would not compromise public safety. Far from being a “blanket release”

for prisoners, the ruling encourages the state to use prisons only when doing so would be cost-effective and increase public safety.

The ACLU knows only too well what can happen in overcrowded jails. In January 2011, our worst fears were confirmed when, on a routine monitoring trip to the Twin Towers Correctional Facility, an ACLU staff member witnessed a brutal beating of an inmate by two Los Angeles County Sheriff's Department deputies. James Parker, detained on a nonviolent marijuana charge, was repeatedly punched, kneed, and Tasered for two minutes while lying on the ground motionless. After so many years of litigation and remedial court orders, we now believe that the only real solution is to find ways to de-populate jails. Low-level, nonviolent offenders and detainees with serious mental illnesses constitute the vast majority of the system's population. We must find alternatives to incarceration for these populations, like drug treatment and community-based programs. The Supreme Court's ruling in *Brown v. Plata* brings us that much closer to our goal.

Stopping Solitary Confinement

Over the last two decades, corrections systems have increasingly relied on solitary confinement as a prison management tool—even building entire institutions called “Supermax prisons” where prisoners are held in conditions of extreme isolation, sometimes for years or decades. Prison officials claim this punishment of last resort is reserved for the “worst of the worst.” However, more and more prisoners are put into “the hole” for minor infractions, often because of untreated mental illness or cognitive disorders resulting in prison rule violations. Solitary confinement is fundamentally inhumane and wastes taxpayer dollars. Through



a new nationwide “Stop Solitary” campaign, the ACLU is insisting on humane and more cost-effective methods of punishment and prison management. We have embarked on legislative battles to reduce the use of solitary in Colorado, New Mexico, Texas and Maine. Initiatives in other states are in the works.

We are also engaged in advocacy at the federal and international levels. In April 2011, we organized the first-ever Congressional briefing on the effects and overuse of long-term solitary confinement, including problems with the practice in the federal prison system. At the international level, we filed a submission to the United Nations Human Rights Council in February 2011 urging the Council to call on the United States to take steps to end the use of solitary confinement in its prisons and jails.

Capital Punishment

The United States is the only advanced Western democracy that does not view capital punishment as a profound human rights violation and a frightening abuse of governmental power. Race, class, and geography play an unacceptable role in who is charged, convicted, and executed. Virtually all current death row inmates are poor, many are mentally disabled, and a disproportionate number are African American, Native American, Latino, and Asian American. Through a combination of litigation, public education, and legislative advocacy, the ACLU's Capital Punishment Project seeks to protect and, where possible, expand the rights of capital defendants. We also educate courts and the public about the unfairness and arbitrariness of our nation's death machinery.

Challenging Execution of the Innocent

The ACLU works to ensure that innocent capital defendants receive the adequate representation guaranteed them by the Constitution, particularly when they are sentenced to death because of the omission of exonerating evidence or the introduction of false testimony. We currently defend Texas death row inmate Manuel Velez, who was convicted of the unexplained “closed-head injury” death of a one-year old child. In attempting to prove his guilt, the state relied on Velez’s purported statement that he shook the baby while playing with him; however, the state’s forensics evidence proved that the baby did not die from shaking. We filed his direct appeal brief last year and more recently concluded a round of briefing. We are currently awaiting a ruling.

In January 2011, the ACLU argued the direct appeal of Montez Spradley, who has always maintained his innocence. Despite a jury’s 10-2 recommendation for a life sentence, an Alabama trial judge sentenced Spradley to death. At his trial, the state presented no physical evidence or eyewitness testimony connecting him to the murder, instead presenting demonstrably false testimony by the lead detective. We continue to await a decision from the Alabama Court of Criminal Appeals.

This case also highlights the need for procedural reforms, especially in jurisdictions like Alabama where elected judges can override even a unanimous jury verdict and impose a death sentence, without having to offer any justification.

Challenging Prosecutorial Overreach

We have had two significant recent victories against prosecutors who dangerously misapplied the law in order to secure death penalty

convictions. Last year, we secured a new trial for Texas death row inmate Adrian Estrada, who was sentenced to death based on the false testimony of a state expert who wrongly claimed that a life sentence would allow Estrada to leave the prison grounds. Our win has impact beyond Estrada: this expert was used by prosecutors throughout Texas and—given how we discredited him—they almost surely will not be able to use him again. The ACLU represented Estrada at his penalty retrial, and, in April 2011, we successfully concluded his resentencing with a plea of life without parole.

In March 2011, the Georgia Supreme Court overturned the death sentence of ACLU client Nicholas Jason Bryant, remanding his case to a lower court for a new sentencing trial. Bryant was put on death row following a highly problematic trial. The ACLU briefed numerous issues arising from the selection and instruction of his jury.

Challenging Execution of Severely Mentally Ill Persons

The ACLU believes that applying the death penalty to individuals suffering from serious mental illnesses is at odds with contemporary standards of decency and violates the Eighth Amendment's prohibition on cruel and unusual punishment. We represent Alabama death row inmate Lam Luong, a child of war born to a Vietnamese mother and black American father, who at the time of his crime suffered from major depressive disorder. Our investigation has revealed profound problems in his extraordinarily high-profile case, including the failure to change the venue despite a flood of prejudicial pretrial publicity, improper jury instructions, and the likely tainting of the jury pool by several potential jurors who called for Luong's execution. These significant issues were pre-

sented in our appeal briefs filed earlier this year. We are currently awaiting the state's reply.

The ACLU is also representing Elmer Ray McNeill, a mentally ill North Carolina man facing the death penalty for a 1993 double homicide in Raleigh, North Carolina. In 1996, a jury found McNeill guilty of murder and sentenced him to death, while his co-defendant and older brother, who was the driving force behind the crime, received a life sentence from a different jury. Currently, the ACLU is litigating McNeill's competence to stand trial.



Addressing Racism

We are currently taking advantage of a huge opportunity to spotlight racism in the imposition of death sentences. North Carolina's Racial Justice Act (RJA) permits capital defendants to challenge their death sentences on the ground that race was a significant factor in the decision to seek or impose the death penalty and to use statistical evidence as proof of racial discrimination, an avenue that had previously been foreclosed.

The ACLU is playing a leading role in a coalition effort to file challenges under the RJA on behalf of over 150 death row inmates. To date

Challenging Junk Science:

Forensic pathologist Paul McGarry

Bogus forensic science testimony, which has contributed to numerous unfair death sentences, has received increasing scrutiny in recent years. In one such case, the ACLU is representing Leslie Galloway in his direct appeal to the Mississippi Supreme Court. Galloway's capital murder conviction hinged on an alleged sexual battery that occurred during the commission of the murder. The prosecution persuaded the jury to find a sexual battery charge by presenting the junk science testimony of notorious forensic pathologist Paul McGarry. Dr. McGarry's testimony has been the subject of extensive controversy, including a PBS Frontline investigation that called his work into question.

one client has had his sentence converted to life imprisonment. In addition to pursuing RJA litigation this year, we also helped beat back a legislative effort to repeal the act. This work could save many lives (North Carolina currently has 166 death row inmates), and become a powerful model for legislation and litigation in other states.



Working to Reform the System

The ACLU is pursuing numerous initiatives designed to promote fairer trials within the existing criminal justice system, to reform death penalty law, and to raise awareness of the inherent injustice of the death penalty. For example, we want to ensure that state death row prisoners maintain their access to federal *habeas corpus*. A growing number of death row inmates, particularly in Florida and Texas, have missed the deadline for filing a federal *habeas corpus* petition because of attorney neglect or error. This issue has gone before the U.S. Supreme Court twice, with one defendant losing and one winning. In both cases, the ACLU filed friend-of-the-court briefs. We are working closely with lawyers in Florida and Texas and national legal organizations to determine how best to respond to this crisis.

CENTER FOR EQUALITY

The Center for Equality aims to create an America in which every person has the access and opportunity to participate fully in all aspects of society. The Center focuses primarily on issues of race, immigration, and voting. We seek to address persistent discrimination and obstacles to equality that confront the most vulnerable populations, including those with disabilities. Priorities include racial profiling, an issue that has become an increasingly dangerous component of the backlash against immigrants, and the “school-to-prison pipeline,” the excessive disciplinary practices that push young people out of school and into the criminal justice system.

Racial Justice

Committed to combating racism in all its forms, the ACLU’s Racial Justice Program uses litigation, advocacy, and public education to address a broad spectrum of issues that disproportionately affects people of color. This includes the push-out of young people of color from the public schools, racial profiling, and economic concerns with a racial impact. The Voting Rights Project continues to be the primary national enforcer of the Voting Rights Act, protecting the full rights of minorities to vote and be represented in government.

Promoting Economic Justice

A report released by the ACLU this year, *Faces of Failing Public Defense Systems: Portraits of Michigan’s Constitutional Crisis*, offers researched accounts of people accused of crimes across Michigan. Mostly people of color, they were unable to afford an attorney, inadequately represented in court, imprisoned, and later exonerated or are awaiting exoneration. The ACLU issued the report with the Campaign for

Justice, a statewide group of 74 coalition partners that is working to educate lawmakers and the public about the inadequacies in Michigan’s public defense system.

The ACLU is also challenging “pay or stay” sentences imposed on five people across the state who were illegally jailed for being too poor to pay court fines. In each instance, the judge failed to hold a hearing that would prove the individual was too poor to pay, or give the defendant the option of a payment plan or community service. While many judges view the collection of legal debt as a critical revenue stream, there is no evidence such sentences increase revenue, as the costs of incarcerating indigent defendants for failing to pay generally exceed the amount owed. The lawsuits, announced in August 2011, are the result of a nearly two-year investigation into modern-day debtors’ prisons in Michigan. At this writing, two individuals have been released as a result of the ACLU’s intervention.

Unequal Justice for the Poor

Dontae Smith, 19, lives in Detroit and has plans for joining the National Guard. He recently obtained his GED and has tried to find work unsuccessfully. In August 2011, he pled guilty to driving with a suspended license and impeding traffic, and was ordered by the judge to pay \$415 in costs and fines or face 41 days in jail. Smith attempted to tell the court that he has no source of income. The court gave him about an hour to come up with the money. He called several friends and family members but was unable to borrow the full amount by the deadline. He was sent to jail that evening for being poor. The ACLU is challenging his pay or stay sentence.

In the area of due process and economic justice, we forced open Florida's foreclosure courts, the secretive temporary courts established to dispose rapidly of hundreds of thousands of Florida foreclosure cases, which disproportionately impacted people of color. Following our November 2011 letter to the state's chief judge, which documented repeated instances of the courts being closed to the public and the press, he took corrective action.

The state legislature subsequently defunded the courts, thanks in part to the attention the ACLU brought to the problem.

Confronting the "School-to-Prison Pipeline"

The ACLU will continue to spotlight and fight against the many ways young people—particularly poor youth of color—are channeled out of public schools and into the criminal justice system.

We have pursued a series of lawsuits in a Mississippi majority-white community where

the police and school officials appear to target black youth. Most recently, we settled two suits on behalf of innocent students whose movements to music were deemed gang-related activity: one whose cell phone showed photos of him dancing in the bathroom and another expelled after singing to himself and bopping his head during a school assembly.

These two cases turned into a dispute over gang policy. During the discovery phase of our litigation, school officials claimed that even letters of the alphabet and the Star of David are gang signs, making students who use them subject to expulsion. These allegedly prohibited gang signs were never disclosed to students or parents, and the policy had been applied almost exclusively to black students. As part of our settlements, the school district agreed to revise, clarify and communicate its gang policy. We will monitor district compliance.



Comedian Elon James White explains your rights on the ACLU website.

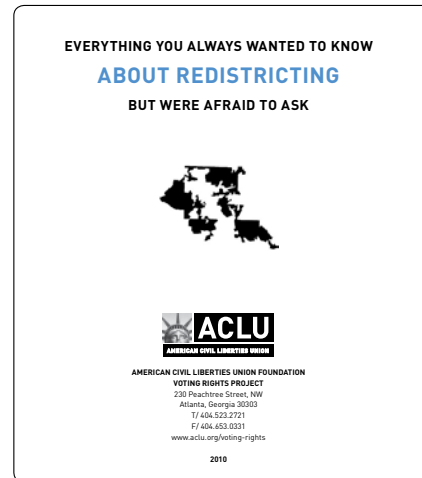
Ending Racial Profiling

Racial profiling takes on new forms with changing times. Following 9/11, we extended our racial profiling work to encompass new law enforcement and private security practices that disproportionately target Arabs and Muslims. And, following the passage of SB 1070, Arizona's radical anti-immigrant law that promotes racial profiling, as well as new copycat versions around the country, we have dramatically stepped up our racial profiling public education work, issuing a new national "Know Your Rights" card, a mini-brochure explaining what to do if you are stopped by police, immigration agents, or the FBI.

We also made racial profiling the focus of an organization-wide campaign. Thirty-two ACLU affiliates, with assistance from the national ACLU, filed coordinated Freedom of Information Act requests with local FBI field offices. The requests seek information about the FBI's efforts to collect information on and to "map" the racial and ethnic demographics, "behaviors," and "life style characteristics" of "concentrated ethnic communities."

Enforcing the Right to Vote

Forty-five years after the Voting Rights Act was first enacted, racial and language minorities continue to confront barriers to full electoral participation—and we continue to lead the battle to overcome those barriers. For example, we are working hard to ensure that redistricting following the 2010 Census maintains "One Person, One Vote," and does not dilute the voting power of minorities for the next decade.



Last year, we published the second edition of our redistricting manual, *Everything You Always Wanted to Know About Redistricting, But Were Afraid to Ask*, to provide citizens with the information they need to understand and play a role in the redistricting process in their states and communities. We made the manual available through our website, and also provided a host of other educational material that includes videos, news, journal articles, blogs, a redistricting Q&A, and court documents. In addition, we organized and sponsored redistricting workshops and participated in forums and other public events.

We are also helping community leaders get involved in redistricting before abuses occur. Since March 2011, the ACLU has provided redistricting assistance and analyzed and/or drawn alternative redistricting plans in state legislatures and local jurisdictions in 13 states, including Georgia, Alabama, and Washington. Most recently, the ACLU's analysis led the San Diego Board of Supervisors to unanimously approve redistricting plans that, for the first time ever, create a district in which the majority of constituents are racial or ethnic minorities. When abusive plans are adopted despite our advocacy, we are prepared to litigate.

Immigrants' Rights

The ACLU was founded to defend immigrants' rights during the Palmer Raids in 1920, and has continued to litigate and advocate on behalf of immigrants ever since. In 1987, the ACLU founded the Immigrants' Rights Project to expand and enhance our work on behalf of noncitizens. We have been at the forefront of virtually every major legal struggle for immigrants' rights. The Immigrants' Rights Project now conducts the largest litigation program in the United States dedicated to enforcing the constitutional rights of immigrants.

Immigration Enforcement: Challenging Ruthless Crackdowns

There has been an explosion in immigration enforcement programs—from federal campaigns (such as the “287(g)” program that grants state and local law enforcement agencies federal immigration enforcement authority) to local workplace raids to statewide laws such as Arizona’s recently enacted SB 1070. The ACLU works to monitor and challenge improper immigration enforcement measures by filing litigation, beating back bad laws, and tracking raids across the country. For example, we led a group of civil rights organizations in bringing critical litigation challenging Arizona’s SB 1070 racial profiling law. This extreme law invites the racial profiling of people of color, violates the First Amendment, and interferes with federal law enforcement. It has attracted widespread press attention and condemnation from across the political spectrum. We have also been working to prevent other states around the country from enacting “copycat”

laws. To date, we have filed lawsuits challenging copycat laws in Alabama, Georgia, Indiana and Utah, and blocked other bills from being passed in 13 states.

Immigration Detention: Caught Between Limbo and Hell

The ACLU has been at the forefront of litigation on behalf of immigrants who are detained for months—or even years—without a hearing, as they await a final determination on their immigration status. We have obtained precedent-setting decisions in the Ninth Circuit confirming the right to a bond hearing where the government must show that their detention is justified. As a result of these decisions, hundreds (if not thousands) of detainees throughout California and the rest of the Ninth Circuit are now entitled to bond hearings.

More recently, the ACLU won a significant ruling that will make it easier for immigrants to bring class action lawsuits in such cases. In *Alli v. Decker*, the Third Circuit Court of Appeals ruled that immigrants in Pennsylvania who have been held longer than six months without a bond hearing while pursuing their immigration cases have the right to challenge their prolonged detention in a class action suit. The ruling immediately affects the 200 Pennsylvania detainees we represent, and clears the way for immigrants to bring class actions challenging unlawful detention, removal, and enforcement throughout the Third Circuit. This ability to bring class actions is critical because the overwhelming majority of immigrants lack counsel and face numerous obstacles to bringing their own individual lawsuits to court, including language barriers.

We are also seeing an increase in the number of people being detained. Unlike the criminal court system, the immigration court system does not provide counsel for immigrants, much less the necessary safeguards for ensuring that the rights of people with serious mental disabilities are protected. This has led to grave abuses. For example, Jose Antonio Franco was “lost” in detention facilities in California for nearly five years because of the government’s failure to account for his mental retardation. As a result of our litigation, Franco was finally released.

Driving While Brown

In 2009, Julian Mora and his son—a legal resident and a U.S. citizen—were stopped without justification while driving, ordered out of their truck, zip-tied, and transported to a worksite immigration raid being conducted nearby by the Maricopa County Sheriff’s office in Arizona. Once taken to the worksite, they were detained for three hours along with about 100 Latino workers until they were permitted to prove that they were lawfully in the United States. In April 2011, a federal court judge ruled that the Maricopa County Sheriff’s Office violated the Fourth Amendment in stopping our clients without cause, and Julian and Julio Mora were awarded \$200,000 in settlement. Our lawsuit has helped to highlight the unconstitutional practices of Sheriff Joe Arpaio, and we’ll continue to call him to account for his aggressive violations of civil rights.

Judicial Review: Giving Immigrants Their Day in Court

The ACLU systematically litigates in courts around the country to preserve the core right to judicial review established by the Supreme Court in *INS v. St. Cyr*. The decision, successfully argued by the ACLU, confirms immigrants’ rights to challenge the legality of their deportation.

Due to changes in federal immigration law, however, many immigrants are still deported without effective access to the courts. The result is that arbitrary or abusive administrative decisions remain in place. ACLU staff are widely recognized as the preeminent experts on this issue, having successfully argued dozens of precedent-setting cases. In fact, the Second Circuit Court of Appeals recently appointed ACLU lawyers to take on major cases involving access to the courts and judicial review for immigrants facing deportation. The cases involved individuals who missed a filing deadline due to either their counsel’s failure or to government obstruction. For example, Worklis Luna was ordered to be deported to the Dominican Republic after his petition for review was submitted 16 days late—solely because his attorney did not notify him of the deadline in a timely manner. The ACLU took on this case, and argued before the court that the principle embodied in *habeas corpus*—guaranteeing everyone a judicial hearing where their liberty is at risk—cannot be denied based on the fault of others. We ultimately won this case. As experts on judicial review, the ACLU also assists and advises immigration lawyers around the country and works to develop new legal strategies to protect the rights of immigrants.

CENTER FOR LIBERTY

The Center for Liberty is dedicated to the principle that we are all entitled to determine the course of our lives based on who we are and what we believe—free from unreasonable government constraint and baseless stereotypes. In particular, we work to enforce the separation of church and state; to advance the rights of lesbian, gay, bisexual and transgender (LGBT) people; to eliminate discrimination against people with HIV; to protect individuals' freedom to make their own reproductive decisions; and to eliminate the gender bias faced by women.

By combining the ACLU's leadership in advocating for privacy, equality, and sexual liberty with our expertise in religious freedom, the Center for Liberty is able to bring a unique, nuanced, and compelling perspective to the fight to protect our personal freedoms and beliefs.

Freedom of Religion and Belief

The ACLU's Program on Freedom of Religion and Belief advances religious liberty: the right to practice religion, or to practice no religion at all, without government interference. As one of America's foremost defenders of religious liberty, the ACLU combines strategic lawsuits, legislative work, and public education efforts to strengthen understanding of the risks to liberty when our government becomes an advocate for a given set of religious beliefs.

Confronting Anti-Islam Fear-Mongering

The national furor over Park51, the planned Islamic Cultural Center two blocks away from Ground Zero in New York, was both a crisis and an opportunity, a “teachable moment” about the meaning of religious freedom. The ACLU immediately published a statement on

our website and a letter in *The New York Times*. We ran ads on the sides of New York City buses declaring, “In America, religious freedom knows no boundaries.” And in March 2011, we debuted a 15-second spot against Islamophobia on a Jumbotron in Times Square. In response to an activist alert email, about 38,000 ACLU members and supporters signed a “thank you” petition to New York City Mayor Michael Bloomberg for speaking out on behalf of religious tolerance.

Responding to a new spate of Islamophobic laws, we won an injunction against the state of Oklahoma, putting on hold the certification of an unnecessary and discriminatory ballot measure that forbids state courts from considering or using Sharia law. In May 2011, we asked an appeals court to permanently strike down the Oklahoma ban on constitutional grounds; a decision is awaited. Also in May, we issued a

report, *Nothing to Fear: Debunking the Mythical “Sharia Threat” to Our Judicial System*.

In addition, the ACLU filed a lawsuit in Georgia on behalf of a Muslim woman, Lisa Valentine, who was told she could not enter a municipal courtroom unless she removed her religious headgear and was jailed for contempt of court when she protested. As a result of this case and ACLU advocacy, the Judicial Counsel of Georgia has since recognized the right of people of faith to wear headgear of their choosing at the courthouse.

Ensuring Public Schools Practice Instruction, Not Indoctrination

The ACLU continues to focus on removing the unconstitutional—but surprisingly common—intrusion of religion into public schools.

We concluded what we hope is the final round in a long-standing battle against public school administrators and teachers in Santa Rosa, Florida, who have repeatedly and openly flouted a 2009 consent decree requiring them to stop all proselytizing and religious activities in the public schools. The high school principal has publicly vowed to “save” students who have not declared Jesus as their saviour, describing them as having “hollow eyes.” In July 2011, we arrived at an agreement with the school district that clarified, with a few minor changes, the essence and language of the original order.

Putting a Stop to Taxpayer-Funded Religion in HIV/AIDS Programs Overseas

In 2009, the ACLU learned that HIV/AIDS programs in Africa, funded by the United States Agency for International Development (USAID) were being used to promote religion—and doing very little to stop the spread of the disease. The ACLU filed a Freedom of Information Act (FOIA) request to learn more

about these constitutional violations. When our requests went unanswered, we filed a lawsuit to compel a response. We have now reviewed over 16,000 pages of documents that show that our government has been wasting taxpayer dollars on ineffective and harmful abstinence-only-until-marriage programs that indoctrinate youth with Christianity. For example, one program urges participants to follow in Jesus’ footsteps and asks them to recite Scripture.

At the ACLU’s urging, USAID has agreed to stop funding these kinds of coercive programs, and will instead focus on innovative strategies for combating HIV/AIDS. We’ll be watching closely to make sure that promise is fulfilled.

Lesbian, Gay, Bisexual, & Transgender Rights

The ACLU’s LGBT Project works on multiple fronts to create an America free of discrimination based on sexual orientation and gender identity. This means an America where lesbian, gay, bisexual, and transgender people can live openly; where LGBT identities, relationships and families are respected; and where everyone can expect fair treatment on the job, in schools, and elsewhere. We also pay close attention to educating the public about LGBT issues—a crucial factor in the fight for equality.

Making It “Official” for Same-Sex Couples

The ACLU is at the forefront of legal, legislative, and public education efforts to secure marriage for same-sex couples and win legal recognition for LGBT relationships. In November 2010, we filed a new federal lawsuit challenging the so-called “Defense of Marriage Act (DOMA),” which precludes the federal

Following Through on “Don’t Ask, Don’t Tell” Repeal

Richard Collins is a decorated former staff sergeant in the United States Air Force who served for nine years until he was discharged under the Don’t Ask, Don’t Tell (DADT) policy. He received an honorable discharge but discovered afterwards that his separation pay had been cut in half on the grounds of homosexuality. The separation pay policy is not part of DADT and the Department of Defense can change it immediately without waiting for congressional approval. However, it has refused to do so. In response, the ACLU filed a class-action lawsuit on behalf of Collins and more than 100 gay and lesbian veterans who are collectively owed upwards of \$2 million. In May 2011, the Justice Department asked the court to dismiss the challenge on the grounds that the policy also applies to those discharged from the military for drug and alcohol abuse or for being deemed a national security risk. The government’s shameful argument only adds insult to injury. We continue to seek justice for gay and lesbian veterans dismissed under DADT.

government from recognizing the marriages of same-sex couples for any federal purpose. The plaintiff is Edie Windsor, a widow who, because the federal government under DOMA does not recognize her marriage, was forced to pay a \$363,000 estate tax following the death of her spouse, Thea Spyer. Windsor and Spyer were together for 44 years and married in Canada in 2007 before Spyer died of multiple sclerosis in 2009.

In a major shift, the Obama Administration announced earlier this year—before it was due to file court papers in response to our lawsuit—that it will no longer defend the constitutionality of DOMA. This left defense of the statute up to Congress. Windsor hailed the announcement,



Martin Gill's two adopted children

saying, “My only regret is that [Thea] isn’t here today to share in this historic moment. But in my heart, I feel that she knows.”

In June, New York’s state Senate put politics aside and passed historic legislation giving lesbian and gay couples the freedom to marry in the Empire State. The passage of New York’s marriage law means that six states plus the District of Columbia now provide the freedom to marry to same-sex couples. In addition, we are lobbying other state legislatures for marriage equality, and we are working for other relationship protections in Missouri, Pennsylvania, Alaska, New Mexico, and Montana.

Fighting for LGBT Families

The ACLU is committed to defending the rights of LGBT parents, not only in custody and visitation arrangements, but also by challenging discriminatory adoption and foster-parenting laws. For example, after five attempts, in September 2010 we succeeded in striking down Florida’s notorious 33-year-old law barring lesbians and gay men from adopting children. The state decided not to appeal our court victory, and in January 2011, our client, Martin Gill, was able to finally adopt the two brothers he and his partner have been caring for as foster parents since 2004.

We also prevailed in a case against Arkansas’ parenting ban, which had stopped any unmar-

ried couple, straight or gay, from serving as adoptive or foster parents. Under the ban, our lead plaintiff, Sheila Cole, was not allowed to adopt her own grandchild because she lived with her longtime partner. This decision is the culmination of a decade-long fight against anti-gay parenting bans in Arkansas. The fact that the supreme court of a conservative state struck down the law after an exacting constitutional review should help us convince legislatures in other states not to pass similar restrictions on parenting by LGBT people. And if the laws do get on the books, this victory will help us get those laws struck down too.

Ensuring the Safety of Youth in Schools

In public schools, the ACLU works to promote safe learning environments that encourage freedom of expression and respect for students' sexual orientation and gender identity. In February 2011, we launched a "Don't Filter Me!" campaign that encourages students to check their public school computers to see if they have access to LGBT-positive websites like LGBT advocacy organizations and support groups, and to contact us with their findings. Many students either don't have computer access at home, or fear visiting LGBT-related sites from their home computers, so that school computers are the only lifeline students have to get information or reach out if they are in need. Some schools have configured their web filters to block access to LGBT-positive websites, while still allowing access to anti-LGBT sites.

As a result of students contacting us, we have sent demand letters to 22 school systems in 12 states, notifying them that blocking student access to LGBT-positive sites is unconstitutional. We have succeeded in 10 schools so far, and we have been negotiating with dozens of others and investigating several more. When schools

don't respond, we take action. In August 2011, we filed a lawsuit against the Camdenton School District in Missouri after officials ignored repeated warnings that its filtering program was unconstitutional. In addition, our campaign has prompted three of the major software companies responsible for producing the filters to change their systems.

Reproductive Freedom

The Reproductive Freedom Project aims to give every woman the opportunity to build a secure, productive, and meaningful life. We employ litigation, public education, and state-level advocacy to advance reproductive rights around the country—fighting abortion restrictions, promoting contraceptive access, advocating for science-based sex education, and protecting the right to parent. For more than three decades, the Reproductive Freedom Project—in collaboration with ACLU affiliates and chapters around the country—has participated in nearly every critical reproductive rights case before the Supreme Court and in other significant federal and state cases too numerous to mention.

Protecting Access to Abortion

Ever since *Roe v. Wade* legalized abortion in 1973, federal and state policy makers have been chipping away at the right by limiting access to abortion through a variety of restrictions. The ACLU challenges these restrictive laws in court—striking down abortion bans, parental involvement laws, funding restrictions, and other policies meant to delay or prevent abortions. Our legal victories have made an important difference in the lives of hundreds of thousands of women around the country.



Andre Cooley

The Best Man for the Job

Andre Cooley, a corrections officer for juvenile detainees at the Sheriff's Department in Forrest County, Mississippi, was raised in the foster care system from birth. He chose to become a corrections officer so he could serve as a mentor and positive role model for troubled teenagers, and his exemplary performance quickly earned him a promotion to senior corrections officer. But all that changed when Cooley's bosses learned that he is gay. In addition to being fired, Cooley was denied unemployment benefits due to alleged—and unspecified—"inappropriate conduct and behavior while off duty." The ACLU sued on Cooley's behalf, and in March 2011 won a settlement that includes reinstatement of Cooley's job, as well as a much-needed update to the department's written nondiscrimination policies.

For example, since 2005, the ACLU has helped block more than 250 bills restricting access to abortion from becoming law.

This year, we have seen the most vicious attacks on reproductive rights in recent history, including the defunding of Planned Parenthood in several states, an attempt to close all clinics in Kansas, and absolute bans on abortion that almost passed in Louisiana, North Dakota, and Alabama.

In June 2011, the ACLU and our allies won a temporary halt to enforcement of a state law that strips Planned Parenthood of Medicaid funding on the grounds that the new law violates the U.S. Constitution and federal law. A hearing on a permanent injunction against the law will likely take place soon.

The following month, we succeeded in blocking enforcement of an extreme abortion law in South Dakota, a state with only one abortion provider and many restrictions. The law would have required women to wait 72 hours after the first counseling session with the doctor. It also required women to first visit "crisis pregnancy centers," which are notorious for providing false and misleading information.

In August 2011, the ACLU filed a lawsuit challenging a Kansas law that bans health insurance coverage of abortions. The lawsuit is the first challenge to a recent slew of similar state laws that have been passed since 2010, part of a nationwide trend to take away insurance coverage for abortion. We will continue to fight this surge of state bills that have a disproportionate impact on low-income women.

Also in August, we filed a lawsuit against an Arizona law that prevents organizations that make referrals to abortion providers from receiving donations from a tax credit program. The law would prohibit domestic violence organizations or other women's health groups from giving women in crisis complete information or risk sacrificing resources. This not only restricts access to abortion, it also violates the First Amendment rights of nonprofit organizations and their clients.

We are developing long-term strategies to build support for abortion access. This includes new

messaging to remove the stigma surrounding abortion and to see it as a necessary part of public and private insurance coverage. If we win the hearts and minds of the public, we ensure that the legal right to abortion stays strong in the years to come.

Defending Reproductive Rights Against Religious Restrictions

Federal law requires all hospitals receiving Medicare funds to provide life-saving care—including abortion—to every patient who needs it. Last year, Bishop Olmsted of Phoenix, AZ, wrote a letter to St. Joseph's Hospital and Medical Center threatening to remove the hospital's Catholic status unless the hospital agreed that it would never again provide a patient with a life-saving abortion, as it had recently done. The hospital refused and the Bishop removed the hospital's Catholic status.

The U.S. Conference of Catholic Bishops defended the position and put out an edict stating that abortion is never allowed in Catholic health facilities, even to save the life of a woman. In response, in July 2010, we wrote to the Centers for Medicaid and Medicare at Department of Health and Human Services (HHS), demanding that they investigate and take appropriate action. We sent a follow-up letter in December 2010.

The incident, and our letters and statement, garnered a significant amount of press and support for the hospital, including a favorable article in the *Washington Post*, an editorial in *The New York Times*, and coverage on ABC's *The View* and *Good Morning America*. We continue to publicize this issue and urge the Obama Administration to take action against directives that prohibit hospitals from providing abortions to women facing medical emergencies.

At the end of the Bush Administration, HHS issued regulations greatly expanding the ability of hospitals, insurance companies, individuals, and others to refuse to provide reproductive health services including abortion and contraception. On behalf of the National Family Planning and Reproductive Health Association, we challenged those regulations. In response to our lawsuit, the Obama Administration moved quickly to issue a proposal to rescind the new regulations. Nevertheless, HHS did not rescind them. In February 2011—after the new judge on the case put pressure on HHS—the department finally repealed the regulations.

Protecting Reproductive Health Rights For Prisoners

The ACLU routinely advocates for women prisoners with prison and jail officials to ensure that women are able to get the abortions they need. Our work makes a difference. For example, a federal public defender called for the ACLU's help with a woman in a New Mexico state jail who had an abortion scheduled, but missed her appointment because the jail refused to transport her. After we provided the necessary materials and legal arguments, her lawyer was able to convince a judge to release her so she could get the abortion care she needed.

We also fight the harmful shackling of pregnant prisoners during labor and delivery, and recently helped pass laws to ban this practice in Colorado, Hawaii, Idaho, Pennsylvania, and Rhode Island.

Sex Education: Applying Science, Not Wishful Thinking

Abstinence-only programs provide inaccurate and misleading information, reinforce gender stereotypes, marginalize LGBT youth, censor

information, and in some instances use taxpayer dollars to promote religion. And they are ineffective in preventing pregnancy and sexually transmitted disease. We have worked to halt abstinence-only programs from the start—bringing the first-ever challenge to an abstinence-only program in the 1980s.

The ACLU works to change sex education policy at the federal, state, and local levels by advocating for comprehensive sex education—lobbying in state legislatures, working with local parents and school boards to get good policies in schools, and bringing legal challenges when programs use public dollars to convey overtly religious messages.

The ACLU has helped change sex education policies in communities around the country. For example, with our assistance, a school board in Kansas made improvements to the district’s sex education curriculum (impacting over 27,000 young people); a school in New Hampshire rejected a harmful abstinence-only-until-marriage curriculum; and several North Carolina counties have agreed to adopt an evidence-based comprehensive sex education curriculum.

Women’s Rights

Through the work of the ACLU’s Women’s Rights Project, we aim to ensure that all women and girls are able to lead lives of dignity free from violence and discrimination, including discrimination based on gender stereotypes. This means an America where all women and girls have access to quality education, employment, housing, and health—regardless of race, class, income, immigration status, or involvement with the criminal justice system.

Institutional Remedies to Violence Against Women

Domestic violence is a primary cause of homelessness for women and their families, especially among low-income women. Now hope is on the horizon, with the news that the Department of Housing and Urban Development (HUD) has issued new regulations implementing the Violence Against Women Act’s (VAWA’s) housing provisions. In the final regulations, HUD emphasized the need to protect domestic violence victims from illegal housing discrimination, acknowledging that stereotypes about victims often lead to their eviction. Instead, housing authorities and owners of Section 8-subsidized properties are instructed to take actions that could include transferring the victim to a different unit, barring the abuser from the property, or contacting law enforcement. The ACLU advocated strongly for these changes and is now drafting pieces of the new VAWA bill, which is up for reauthorization by Congress this year.

We also began investigating an alarming policy trend we are seeing around the country—the enactment of so-called nuisance ordinances, which penalize landlords and tenants if the police are called to a residence more than a set number of times. These ordinances disproportionately affect women and survivors of domestic violence and stalking, who may repeatedly call the police for safety reasons. We are exploring potential challenges in Wisconsin, Missouri and Utah.

Finally, in December 2010, a federal appeals court heard arguments in a challenge to the “anti-prostitution pledge,” contained in the U.S. Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act. USAID grantees en-

gaged in humanitarian work overseas must pledge not to support prostitution as a condition for receiving funding. We have filed friend-of-the-court briefs contending that this violates the nonprofit organizations' First Amendment rights and harms public health. In practice, the pledge requirement has threatened, cut back, or simply ended effective HIV prevention initiatives overseas. A lower court has suspended the pledge twice.

Ensuring Equal Educational Opportunities

The ACLU is committed to ensuring that girls and boys are given the same educational opportunities. In recent years, many school districts throughout the United States have introduced single-sex education programs, often presenting them as solutions to an array of problems facing public schools. In actuality, many of the programs implemented use curricula based on shocking, antiquated gender stereotypes. For example, teachers might be instructed to engage girls in collaborative group work, while boys are encouraged to be more physically active. Teachers are also told not to smile at boys because they are biologically programmed to see this as a sign of weakness, and boys who like to read, do not enjoy contact sports, and do not have a lot of close male friends should be firmly disciplined, required to spend time with "normal males," and made to play sports. Our campaign challenging sex-segregated education in public schools has met with impressive results. Most recently, we won a victory when a school board in Louisiana voted to suspend a sex-segregated program following a favorable appeals court ruling that would have forced it to shut down. The ACLU's lawsuit argued that such programs violate Title IX—the federal law prohibiting sex discrimination in federally funded educational

Combating Sexual Violence Against Service Members

Rape, sexual assault, and sexual harassment are so prevalent in the military that the Department of Veterans Affairs has coined a term to refer to these acts when perpetrated against service members: "military sexual trauma" (MST). Victims who report MST commonly face stigma and retribution. The problem is particularly widespread among servicewomen, many of whom struggle to return to civilian life after suffering sexual assault or harassment while serving. In fact, 40 percent of homeless women veterans have been sexually assaulted while serving in the armed forces.

In response to this shameful state of affairs, the ACLU, along with Service Women's Action Network, has filed a FOIA lawsuit seeking information from the departments of Defense and Veterans Affairs about how each agency responds to the thousands of service members who experience sexual assault, harassment, and domestic violence every year. Our investigation is ongoing.

institutions—and the constitutional guarantee of equal protection.

The school board claimed it was shutting down the program due to lack of parental support, although the timing, on the eve of an ACLU court filing, suggested otherwise. Nonetheless, the lack of parental support indicates that enthusiasm for such programs may be waning. Plans to launch a similar program of sex-segregated classes at a high school in Pittsburgh also recently floundered due to insufficient parental support and low enrollment.

THE ACLU IN THE SUPREME COURT

The ACLU brings more cases before the Supreme Court than any other nongovernmental organization, participating as counsel or friend-of-the-court in 25% of cases during the 2010 term alone. Historically, our cases run the gamut of legal issues, often involving the First Amendment, whose protections the ACLU has been instrumental in advancing since our founding in 1920. The 2010 term was no exception. Below is just a sampling of the cases in which we were involved.

A decade after 9/11, national security issues continue to make their way to the Court. In March 2011, the ACLU argued what one prominent commentator called “the most important case in the term”—*Abdullah al-Kidd v. John Ashcroft*. We represented a former college football player who was arrested as a material witness. The material witness statute is meant only to allow the government to briefly detain a witness to make sure he or she testifies in court. Even though our client was fully cooperative and posed no flight risk, he was subjected to extremely harsh imprisonment for over two weeks, forcing him to abandon a scholarship and eventually leading to the collapse of his career and his marriage. He was never called to testify nor charged with a crime. The question before the Supreme Court was whether al-Kidd could seek damages against former Attorney General John Ashcroft for this clear violation of his Fourth Amendment rights. While the Court refused to hold Attorney General Ashcroft accountable, four of the eight Justices who voted raised serious questions about using the statute to justify preventive detention in future.

Two important free speech cases during the term reflected the Court’s expansive view of the First Amendment. The ACLU demonstrated our clear commitment to free speech through friend-of-the-court briefs in both cases.

Snyder v. Phelps challenged a \$10 million jury award assessed against a radical church group for the allegedly intentional infliction of emotional distress it caused by staging a funeral protest—provocatively expressing its opposition to homosexuality. The church group did so on public streets and in conformity with local law. While we disagree with the stated views of the defendants—who have, in fact, targeted their vitriol at the ACLU numerous times in the past—our friend-of-the-court brief supported their right to free expression. The Supreme Court agreed.

In *Brown v. Entertainment Merchants Association*, the Court ruled that a California law prohibiting the sale of “violent video games” to minors violated the First Amendment. Writing for the majority, Justice Scalia stressed that video games are a form of expression protected by the First Amendment, and that minors have their own First Amendment



Photo Credit: Franz Jantzen, Collection of the Supreme Court of the United States

rights as well as adults. The ACLU's friend-of-the-court brief urged the Justices to strike down the law.

The Establishment Clause did not fare so well in the Court's First Amendment docket this year. In *Arizona Christian School Tuition Organization v. Winn*, the ACLU represented a group of taxpayers challenging Arizona's unique system of funding religious instruction. The state certifies and supervises "School Tuition Organizations" that exist for no other purpose than to distribute taxpayer funds obtained through tax credits for student scholarships—a substantial portion of which are religiously discriminatory. For example, an Arizonan might give \$500 to a nonprofit that gives scholarships only to Catholics, and then receive a \$500 tax credit for doing so—effectively spending the state's own money to fund religious education. In April 2011, the Supreme Court decided 5-4 against the taxpayers' challenge, claiming a distinction between direct expenditures and tax breaks.

The ACLU represented civil rights groups that joined with business and labor in *Chamber of Commerce v. Whiting* to oppose an Arizona law that imposes severe penalties on

employers who do not comply with the state's stringent employment verification program—one that goes far beyond what federal law requires. We were disappointed when the Court narrowly upheld this law in May, which has proven to have serious economic ramifications for Arizona's workers and employers. However, the ruling does not grant states the right to enforce immigration law—the issue at the heart of current legal challenges to SB 1070, Arizona's anti-immigrant law.

This term also saw several notable criminal justice victories in a Court where such victories are often few and far between. In *Brown v. Plata*, the Court upheld an order requiring California to reduce its prison population significantly after the state had failed to correct the unconstitutional conditions resulting from prison overcrowding for more than a decade. And, in *J.D.B. v. North Carolina*, the Court ruled that the age of a child being questioned by the police is a relevant factor in deciding whether the child is "in custody," thus triggering the need for Miranda warnings. The ACLU submitted friend-of-the-court briefs in both of these cases.

LEADING FREEDOM FORWARD: ACLU CAMPAIGN FOR THE FUTURE

In 2010, the ACLU concluded the transformative *Leading Freedom Forward: ACLU Campaign for the Future*. This campaign is leaving an indelible mark on the organization, allowing us to almost double the size of select state-based affiliates where the need for an ACLU presence is great, but local resources are scarce. We have also increased by almost 50% our investment in the smallest 25 ACLU affiliates, allowing them to hire additional staff to meet the growing need to protect and expand civil liberties in an era of state backlash.

The Strategic Affiliate Initiative

Perhaps the most visionary and successful aspect of Leading Freedom Forward has been the Strategic Affiliate Initiative (SAI), an intensive investment in key affiliates to build their long-term capacity to advance freedom in areas of the country where civil liberties violations are especially egregious. As a result of our investments and support, these affiliates are better able to defend civil liberties statewide with a more integrated approach to social justice that includes litigation, media outreach, and advocacy.

Over the past five years, we have invested more than \$11.6 million in nine SAI affiliates, creating over 67 positions for legal, communications, and development professionals dedicated to the advancement and protection of civil liberties. Below are highlights of the important work of the participating affiliates, in order of their SAI association. In April 2011, the ACLU of Colorado joined the SAI as the tenth participating state.



Martin Gill with his two adopted children

ACLU of Florida opened adoption to gay and lesbian Floridians last year, the culmination of five separate state and federal lawsuits. ACLU client Martin Gill—whom the state begged to be a foster parent, but then rejected as an adoptive parent—was finally able to adopt the two young brothers he and his partner have been raising for nearly six years. A special ceremony took place before a juvenile court judge in January 2011. The shift in public opinion on this issue has been so profound that neither the governor nor the state's attorney general chose to appeal the win, making the

appellate court's decision the law of the land. At the same time, the affiliate's legislative and advocacy efforts helped move Florida forward toward better representation and fairer elections through two successful November 2010 ballot measures that limited gerrymandering abuses. For the first time, the ability of politicians to gerrymander districts has been diminished through direct amendments to the Florida Constitution while minority voting rights have been protected.

ACLU of Texas made significant progress in its priority areas of youth, immigrants, and religious minorities. As part of its youth work, in May 2011, the affiliate launched a tool kit "Educate, Don't Incarcerate" to help other advocates and parents put an end to the excessive disciplinary policies that push kids out of school and into the criminal justice system. Notably, 80% of Texas inmates are high school dropouts. Also in May, the ACLU of Texas scored a victory in its "Don't Filter Me" campaign, when officials at two schools agreed to stop unconstitutional web filtering of LGBT content. In July 2010, the affiliate filed a federal class-action lawsuit against Hidalgo County, which essentially creates debtors' prisons by jailing teens for unpaid fines for school attendance violations that are beyond their means to pay. It also secured a major win when a federal judge permanently prohibited enforcement of an anti-immigrant housing ordinance in Farmer's Branch. More recently, the affiliate filed a lawsuit against the federal government and administrators of the Reeves County Detention Center, a West Texas for-profit prison, on behalf of the survivors of Jesus Manuel Galindo, who died after suffering a seizure in solitary confinement. He had been placed in solitary for complaining about the facility's failure to provide medication to control his epilepsy. Finally, the affiliate achieved a huge victory for religious minorities when a federal

appeals court found that the rights of a Texas kindergartner had been violated when his school punished him for wearing his long hair in braids in honor of his American Indian heritage.

ACLU of New Mexico developed an impressive array of important legal challenges, often in collaboration with other affiliates.

Capitalizing on the furor over neighboring Arizona's SB 1070 racial profiling law, the affiliate identified two plaintiffs for the ACLU lawsuit opposing SB 1070. It also joined with the national ACLU and the ACLU of Oregon to file suit in the Federal District of Oregon on behalf of seven essentially expatriated Americans. The clients appear to be on the U.S. government's no-fly list and, as a result, most are stranded overseas, unable to secure alternate means of travel.

The ACLU of New Mexico filed a class-action lawsuit that challenges reduced separation pay, an offensive form of discrimination faced by gay service members dismissed under "Don't Ask Don't Tell." Filed on behalf of a decorated Air Force staff sergeant and more than 100 gay and lesbian veterans, it seeks to strike down the policy and to recover the more than \$2 million in missing separation pay that is collectively owed. It pursued other important LGBT work as well, including a successful, headline-grabbing fight to establish a Gay-Straight Alliance on behalf of high school students in Clovis, a town of 32,000 in eastern New Mexico. ACLU of New Mexico also provides a base for the Regional Center for Border Rights and its work defending immigrants' rights.

Among other work, RCBR has developed the first bi-national abuse documentation database in collaboration with immigrant advocacy groups on both sides of the U.S./Mexico border, spearheaded the formation of Southern

Secure Borders / Secure Rights

Our groundbreaking Regional Center for Border Rights (RCBR) not only guarantees that immigrants will know their rights, but, through outreach, organizing, and policy analysis, it ensures that the most vulnerable are now more secure. Housed with the New Mexico affiliate, it is a collaborative effort among the ACLU's four southern border offices (three of them SAI states) as well as the national ACLU. It is a smart and sophisticated response to the enormous challenges presented along the southern border.

Border Communities Coalition with representatives from the four border states, and published a damning exposé of abuses at an Immigration and Customs Enforcement (ICE) detention facility in New Mexico.

ACLU of Montana won a victory in April 2011 on behalf of Bethany Cajune, who had reported to the Lake County Detention Center in western Montana to fulfill a 24-day sentence for traffic violations. During her incarceration, she was denied medication essential for preventing the serious medical risks (including miscarriage) associated with opiate withdrawal. The settlement that resulted from the ACLU lawsuit ensures that women like Bethany will receive the care they need.

In a case with implications for juvenile and mentally-ill prisoners statewide, the affiliate has continued representing a mentally ill young inmate who, beginning as a minor, had been locked up in solitary confinement, strip-searched in public view, pepper-sprayed, punished by torturous 'behavior management plans,' and otherwise traumatized to the point of attempting suicide multiple times—including

ing by biting through his own wrist. Even as his lawsuit continues, the affiliate has already helped secure the young man mental health care, his GED, and a return to the general prison population.

The affiliate also drafted the language of an LGBT-inclusive nondiscrimination ordinance adopted 10-2 by the Missoula City Council in 2010, making Missoula the first city in Montana to prohibit discrimination on the basis of sexual orientation, gender identity, or gender expression in employment and other areas. In addition, the affiliate recently secured significant wins for prisoners' rights and free exercise in a case involving American Indian inmates seeking to use a sweat lodge who were strip-searched en masse. Thanks to the affiliate's intervention, the Montana State Department of Corrections has since instituted a detailed mandatory policy for the main prison at Deer Lodge and the private prison at Shelby demanding greater respect for religious and cultural concerns for American Indians in the prison system.

ACLU of Mississippi recently resolved five major cases—including two LGBT rights cases with national impact. All of these cases have resulted in both monetary damages and policy change. In *Constance McMillen v. Itawamba School District*—involving a lesbian high school student whose school cancelled the prom rather than let her attend with her girlfriend—the affiliate secured a monetary award and the first-ever school anti-discrimination policy in Mississippi to include sexual orientation and gender identity. The case garnered international attention. The affiliate also successfully challenged Desoto County School District's racially motivated anti-gang policy, the religiously motivated firing of a Muslim woman from the McComb Fire Department, illegal brutality

by the City of Moss Point police department, and the firing of a Forest County Sheriff's Department officer for being gay.

ACLU of Michigan continued to address the civil liberties infringements of victims of Michigan's terrible economy. In a precedent-setting case, the Michigan Court of Appeals ordered a Saginaw County judge to appoint counsel for a man appealing his sentence. Michigan had been the only state denying counsel to poor defendants in appellate cases, and this new right to appellate counsel affects thousands of convicted Michiganders. The ACLU of Michigan is also representing nine people who were sentenced to life in prison



Harold Wells, whose inadequate legal representation led to a wrongful conviction

without the possibility of parole for crimes committed when they were minors. The lawsuit charges that a sentencing scheme that denies our clients an opportunity for release constitutes cruel and unusual punishment and violates their constitutional right to a fair hearing to demonstrate their growth, maturity, and rehabilitation. There are currently 350 individuals in Michigan serving mandatory life sentences they received when they were under 18 years of age.

The affiliate's intervention on behalf of a homeless Upper Peninsula woman jailed for her inability to pay a \$104 lodging fee to the detention facility where her son was housed garnered national attention and was the impetus for the ACLU's report, *In for a Penny: The Rise of America's New Debtors' Prisons*. The affiliate's class action lawsuit filed on behalf of poor criminal defendants in three counties—which argued that the state had failed to ensure that poor people accused of crimes receive constitutionally adequate representation—was recently reinstated by the Michigan Supreme Court after an earlier dismissal. In the latest addition to this active “poverty docket,” the affiliate issued *Faces of Failing Public Defense Systems: Portraits of Michigan's Constitutional Crisis*, a report that offers researched accounts of people accused of crimes across Michigan—people who were unable to afford an attorney, inadequately represented in court, imprisoned and later exonerated, or are awaiting exoneration.

ACLU of Eastern Missouri helped stop two attempts to place a constitutional amendment on the ballot that would ban affirmative action in the state. Both efforts would have attempted to use misleading ballot summaries to convince voters that the amendment would only ban racial discrimination, not affirmative action—tactics that have tricked voters in other states, to catastrophic effect. The affiliate is also currently engaged in a lawsuit challenging a state policy that offers survivor benefits to spouses of state troopers who are killed in the line of duty, but excludes committed same-sex partners from receiving those benefits. The case was filed on behalf of Kelly Glossip, whose partner, Dennis Engelhard, was a state trooper killed in the line of duty while responding to an accident on Christmas Day in 2009. Since Engelhard's death, Glossip has struggled with

paying the mortgage on the home they both owned. While Glossip is not challenging the definition of marriage under Missouri law, he is challenging the benefits policy as a violation of his rights under the Missouri Constitution. The affiliate also recently won a victory for Missouri's Sunshine Law, when an appeals court affirmed a decision requiring the release of investigative documents pertaining to potential police misconduct.

ACLU of Tennessee recently launched the Online Resource Center for Immigrants (www.aclu-tn.org/immigrantresourcecenter.htm), which provides bilingual information to help recent immigrants and their advocates better understand their rights in the justice system. The affiliate also has an active LGBT agenda, and won a notable victory for a lesbian mother in June 2010. The Tennessee Court of Appeals reversed a lower court decision, finding it had abused its discretion in trying to enforce a "paramour clause" in the mother's child custody agreement. This clause forbade her having her children at home if her partner were staying overnight. Over the past several years, the ACLU of Tennessee has brought numerous successful lawsuits across the state challenging the intrusion of religion into public schools. Most recently, on behalf of nine students from four families, the ACLU filed a lawsuit against the Sumner County School System, alleging a pattern and practice of religious activity dating back to 2006. This includes teachers leading students in prayer and Bible study sessions; the opening of one school to a youth minister who proselytized frequently at student lunch tables; the distribution of Bibles during instructional time; and prayers over the loudspeaker, among other things. The ACLU filed the lawsuit after numerous complaints by families were ignored.

ACLU of Arizona, one of the newest participants in the SAI, quickly found itself on the national stage with the enactment of SB 1070, the most far reaching and problematic anti-immigrant law in the United States, with a stated policy of "attrition through enforce-



An ACLU of Arizona report giving voice to detained immigrants

ment" and forced self-deportation. Working with the national ACLU, the affiliate is leading a coalition of civil rights groups in a legal challenge to the new statewide law. A federal judge has already enjoined the most problematic aspects of the law, thanks to a Department of Justice lawsuit, filed with ACLU encouragement. In addition to its leadership on SB 1070, the affiliate issued a report in June 2011 documenting how heavy reliance on immigration detention has led to inhumane conditions in Arizona's five immigration detention centers, including unnecessary and prolonged detention and abusive treatment. The report, *In Their Own Words: Enduring Abuse in Arizona Immigration Detention Centers*, is based on 115 face-to-face

interviews conducted with people detained in Eloy and Florence, Arizona over a two-year period from March 2009 through March 2011.

The ACLU of Arizona also helped prepare and argue two cases before the U.S. Supreme Court, *Arizona Christian School Tuition Organization v. Winn* and *Chamber of Commerce v. Whiting*. The cases, respectively, addressed a school's taxpayer-funded religious instruction program, and a law that levied draconian fines against businesses found guilty of hiring unauthorized immigrants. Unfortunately, the Court in both cases upheld these schemes. In August 2011, the ACLU of Arizona, working with the national ACLU, filed a challenge to a law that would exclude any nonprofit organization that provides abortion referrals or counseling from receiving donations through the state's Working Poor Tax Credit Program. The law is so broad that it could prevent groups from even discussing abortion or other reproductive health services with women in crisis.

ACLU of Colorado enjoyed a highly productive and successful first quarter as part of the SAI. The affiliate helped defeat every anti-immigrant bill that was introduced in the legislature and won significant proactive legislation on criminal justice issues related to conditions of confinement, sentencing reform, and collateral consequences of incarceration. Building upon these legislative victories, the affiliate launched its Race to Justice integrated advocacy campaign to promote comprehensive criminal justice reform in the state, from the first point of police contact to post-incarceration community re-entry.

In addition, the affiliate successfully concluded several significant cases. Two class-action lawsuits challenging county jails' "postcard-

only" mail policies were resolved and a prisoner's 14-year deprivation of sunlight and outdoor exercise was ended. The affiliate also filed an injunction against the Weld County Sheriff's Office and District Attorney for seizing the files of immigrant clients of a tax preparer in search of evidence of criminal impersonation or identity theft. And, in one of the only written decisions of its kind, the affiliate won a court ruling that held a prosecutor liable for her role in approving an application for a warrant that led to an illegal search.



FINANCIAL STATEMENT AND WAYS TO GIVE

FINANCIAL STATEMENT

Consolidated Statement of Activities for American Civil Liberties Union, Inc., American Civil Liberties Union Foundation, Inc. and Subsidiary
Year Ended March 31, 2011 (with summarized comparative information for the year ended March 31, 2010)

		FY2011			FY2010
Support and Revenue	Unrestricted	Temporarily Restricted	Permanently Restricted	Total	Total
Support					
Grants & Contributions	51,740,296	25,343,342	214,555	77,298,193	76,843,957
Donated Legal Services	10,581,619			10,581,619	5,518,497
Bequests	15,398,736	2,450,254		17,848,990	34,051,837
Total Support	77,720,651	27,793,596	214,555	105,728,802	116,414,291
Revenue					
Rental Income	61,128			61,128	610,849
List Rentals	524,366			524,366	61,595
Pamphlet and Book Sales	14,816			14,816	10,657
Other Income	55,078			55,078	49,404
Total Revenue	655,388			655,388	732,505
Net Assets Released from Restrictions	21,195,139	(21,195,139)	-	-	-
TOTAL SUPPORT AND REVENUE	99,571,178	6,598,457	214,555	106,384,190	117,146,796

Expenses

Program Services					
Legislative	2,003,632			2,003,632	2,665,260
Legal	32,890,954			32,890,954	29,084,686
Public Education	20,709,602			20,709,602	21,079,113
Policy Formulation	1,764,347			1,764,347	1,540,904
Affiliate Support	38,423,804			38,423,804	41,876,416
Total Program Services	95,792,339	-	-	95,792,339	96,246,379
Supporting Services					
Management and General	5,001,579			5,001,579	4,958,911
Fundraising	8,174,809			8,174,809	9,486,746
Total Supporting Services	13,176,388	-	-	13,176,388	14,445,657
TOTAL EXPENSES	108,968,727	-	-	108,968,727	110,692,036
Change in Net Assets Before Other Changes	(9,397,549)	6,598,457	214,555	(2,584,537)	6,454,760

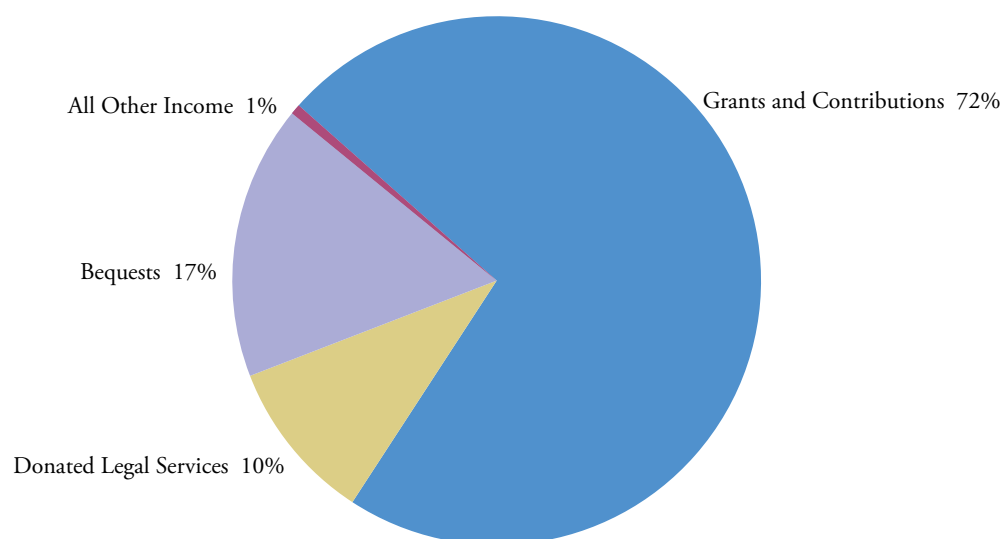
Other Changes in Net Assets

Legal Expenses Awarded, Net	2,189,804			2,189,804	4,246,555
Net Investment Income, Gains and Losses	22,627,520	6,411,607		29,039,127	61,936,685
Changes in Value of Split-Interest Agreements	(262,586)	36,960		(225,626)	(880,437)
Provision for Uncollectible Pledge		(250,000)		(250,000)	(4,622,222)
Minimum Pension Liability Adjustment	(437,161)			(437,161)	2,402,544
Total Other Changes In Net Assets	24,117,577	6,198,567	-	30,316,144	63,083,125
Change in Net Assets Before the Effect of NYPMIFA Enactment	14,720,028	12,797,024	214,555	27,731,607	69,537,885
Effect of NYPMIFA Enactment - Reclassification of Unappropriated Earnings on Endowment	(9,616,373)	9,616,373		-	-
TOTAL CHANGE IN NET ASSETS	5,103,655	22,413,397	214,555	27,731,607	69,537,885

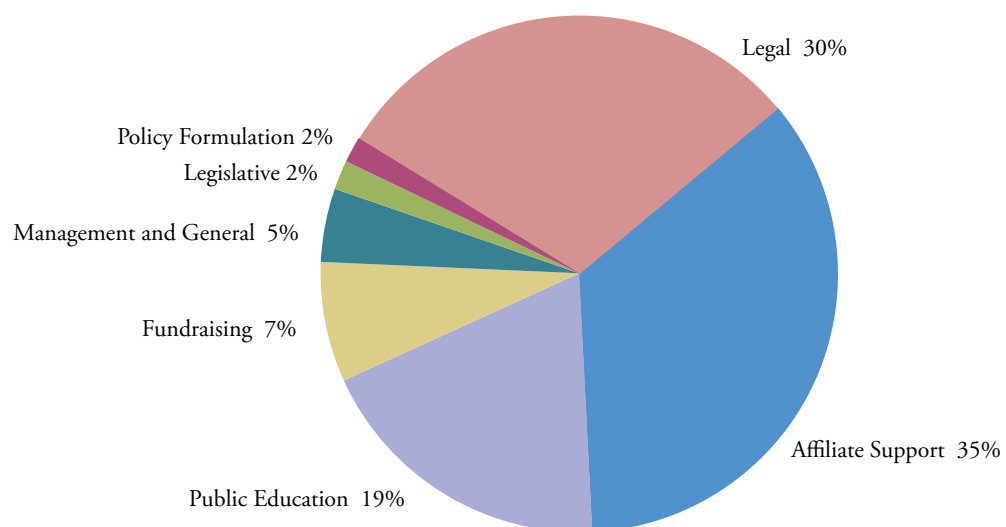
Net Assets

Beginning	168,596,186	46,430,199	38,787,654	253,814,039	184,276,154
Ending	173,699,841	68,843,596	39,002,209	281,545,646	253,814,039

FY11 INCOME



FY11 EXPENSES



WAYS TO GIVE

The ACLU's work to safeguard the individual rights and liberty of everyone in this country would not be possible without the commitment of our generous donors. There has never been a more important time to support our work.

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Gifts by Check: Checks may be made payable to "ACLU Foundation" and mailed to ACLU Foundation, Office of Major Gifts, 125 Broad St, 18th Fl., New York, NY 10004.

Appreciated Stock, Bonds, and Other

Marketable Securities: Please contact Jeffrey Outler at the ACLU with your name and the type and number of shares at 212.549.2573 or via email at fdngift@aclu.org.

You do not report capital gain on securities donated to the ACLU Foundation. In most cases we are able to accept restricted shares that are subject to lock-up periods.

Stock transfer instructions:

DTC #: 0226

Account Name: ACLU Foundation

Account #: AB2-027707

Brokerage: State Street Global Markets,
Boston, MA

IRA Charitable Rollovers and Roth IRA

Conversions: Please check with us about the status of the law that provides for direct charitable rollovers from IRAs, and about whether you may be able to structure a gift to avoid the income tax you would otherwise pay on a Roth conversion.

Non-Tax-Deductible Giving: Please consider making a non-deductible gift to the ACLU's 501(c)(4) arm, which can be used more flexibly for our most pressing priorities, including legislative lobbying. Checks can be made payable to "ACLU" and mailed to ACLU, Office of Major Gifts, 125 Broad St, 18th Fl., New York, NY 10004. Please call for wire or stock transfer instructions.

Donor Advised Funds: You may recommend a donation to the "American Civil Liberties Union Foundation, Inc.," tax ID # 13-6213516, Office of Major Gifts, 125 Broad St, 18th Fl., New York, NY 10004.

Beneficiary Designations: To name the ACLU as beneficiary of a life insurance policy, an IRA, Keogh, 401(k), 403(b) or other qualified retirement plan, please provide the following information to your financial institution: American Civil Liberties Union Foundation, Inc., 125 Broad Street, 18th Floor, New York, NY 10004-2400. Tax I.D.#: 13-6213516.

Life Income Gifts: Make a contribution today and receive lifetime payments in return. In many cases you can increase your income, enjoy a current tax deduction, avoid capital gains taxes, and reduce your potentially taxable estate.

Bequests: For sample bequest language, please visit: www.aclu.org/bequest or call to speak with a member of our Planned Gift staff at 877.867.1025.

Real Estate, Business Interests, Artwork, Royalties, and Other Property: There is a variety of gift arrangements that can be used with a range of property. Possible benefits include structuring estate tax strategies to provide for family inheritance; or funding a stream of payments for your own retirement, the support of a family member, college tuition, or other purpose. Details of plans will vary; please contact us for details.

For further information, contact Mohammad Zaidi, Director of Major and Planned Gifts, at 212.549.2511 or mzaidi@aclu.org



We are proud that the ACLU Foundation holds Charity Navigator's highest rating and meets all 20 standards of the Better Business Bureau Wise Giving Alliance.

This information is not intended as tax or legal advice. We recommend that you consult with your legal and financial advisors to learn how a gift would work in your circumstances. Availability of certain life income gifts, and other laws and regulations governing gifts, may vary by state.