



On April 14, supporters, friends, and community leaders danced the night away at the Rhythm Room to the music of the Repeat Offenders to celebrate ACLU-AZ accomplishments and to honor Legal Director Dan Pochoda on his 70th birthday and his 45 years of fighting government abuses and representing the unrepresented. The ACLU-AZ would like to thank everyone who attended and supported this event, including law firm sponsors Osborn Maledon and Perkins Coie. Photos courtesy of Lamp Left Media.



As part of our work challenging SB 1070 and copycat laws across the country, the ACLU launched *Estamos Unidos*, or *We Stand United*, a national campaign that asks people to stand with us against discriminatory, anti-immigrant state laws.

As part of the campaign, various ACLU affiliate staff joined the *Estamos Unidos* road tour spanning 3,000 miles from San Francisco to North Carolina to connect impacted communities by sharing the stories of those affected by discriminatory laws and hosting "Know Your Rights" and other educational events. The tour stopped in Phoenix on April 25th to join the ACLU-AZ and community partners in a March for Justice.

Arizonans clearly have an important role in national efforts to end discriminatory laws. There is no better example than local Phoenix resident Dulce Juarez, who spent the first twenty years of her life in Arizona undocumented, and is literally the face of the *Estamos Unidos* campaign. Dulce, who joined the *Estamos Unidos* road tour said, "It's like a dream come true to work for the ACLU, to be part of this campaign."



ACLU-AZ Executive Director Alessandra Soler speaks to community members on April 24 at Carl Hayden High School in Phoenix about how SB 1070 will affect their daily lives. Photo courtesy of Lamp Left Media.

On April 25, the day the Supreme Court heard arguments in SB 1070, ACLU volunteers gathered signatures to send a strong message to President Obama to stop discriminatory laws that target racial minorities.



## Become an ACLU of Arizona Board Member

Are you a visionary leader with experience serving on other non-profit boards? Are you a creative thinker who understands how to leverage resources to respond to emerging civil liberties threats? Do you have experience managing investment portfolios, speaking to large groups or inspiring lay leaders to ask tough questions? If so, we'd like to urge you to consider joining the ACLU of Arizona Board of Directors.

The Board's Nominating Committee is currently meeting to recruit prospective board members. They will recommend a slate of candidates who will run in the annual election of at-large members to the ACLU of Arizona Board of Directors. That election will take place by mail in late September.

If you're interested in being considered for a spot on the board, please contact Beth Thomson Gorman at [lizabethtg@acluaz.org](mailto:lizabethtg@acluaz.org) or (602) 650-1854.

Visit us at [www.acluaz.org](http://www.acluaz.org)

# Civil Liberties in Arizona



★ Standing Up for Freedom ★

Volume 41  
Issue 2

## ACLU Fight Against SB 1070 Continues

SB 1070 at the SUPREME COURT

# We Vow To Fight.

The highest court in the land had its say. Politicians and media pundits have had their news cycle. And in Arizona, we're back to where this all begins and ends – with the people; immigrants and citizens alike whose resolve will again be tested in the coming months as the "show me your papers" provision of SB 1070 is implemented.

Part of that resolve includes just sorting out the facts. In their zeal to claim victory, Governor Jan Brewer and others in Arizona have incorrectly announced that SB 1070 would take effect immediately. Incorrect statements such as these are irresponsible and muddy the already dark waters. Earlier this month, the ACLU sent a letter to the attorneys representing Governor Brewer and other defendants in the *Friendly House* case explaining that SB 1070's racial profiling provision, Section 2(B), cannot be implemented until a federal court dissolves the injunction.

In the meantime, the legal fight – led by ACLU attorneys in Arizona and across the country – is just about to start. We're moving forward in *Friendly House v. Whiting*, a legal challenge that answers the exact questions left open by the Supreme Court – that SB 1070 will lead to

racial profiling, discrimination and the unlawful arrest and detention of people of color, including many people born in America. Several of the plaintiffs in our case have already faced racial profiling and unlawful arrest by local police or are afraid that they will be targets of discrimination once SB 1070 goes into effect. And we intend to bring new "as-applied" litigation on behalf of affected individuals. These new lawsuits – which could include lawsuits to free wrongfully detained individuals or damages to compensate victims – are much more resource intensive to litigate, as they will require factual evidence showing that individuals are being racially profiled or illegally detained.



By Alessandra Soler  
Executive Director

As part of our efforts to collect evidence of civil rights violations under SB 1070, we've staffed a community hotline, which is being advertised through a series of public service announcements on radio, television and the Internet, for affected individuals to report violations. We received close to 400 calls in the first three days following the Supreme

Court decision, with the majority of people asking for accurate information about the law and for referrals to immigration attorneys and family law attorneys. Many of the callers have been mothers looking for help in planning for their U.S. citizen children in case they are arrested and

detained. Each of those calls generates the need for follow-up, which is why it's critical that we have sufficient resources to respond and document each of these violations.

We're hosting community forums and workshops throughout the state and released YouTube videos in English and Spanish informing people about the decision and their basic, constitutional rights – regardless of immigration status. We expect that in the months

ahead, the number of calls will increase and the need for information will turn into a need for legal assistance and representation. We'll be here – on the ground in Arizona – to answer that call.

If the civil rights battles in our country's past have taught us anything it's that the long road ahead will be paved by courageous people who end up on the right side of history for standing up to protect those core American ideals of equality, justice and due process that we all share. Please consider using the enclosed envelope to make a donation to the ACLU today because we will face a tough resource-intensive fight in the coming year that we cannot afford to lose. Thanks for all you do in support of the ACLU!

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# Legal Update From the Desk of Legal Director Dan Pochoda



## Ending solitary confinement

Over the past five years, our greatest number of civil liberties complaints has come from persons confined in the Arizona prison system. We receive horrific reports of failures to treat serious medical and emotional problems resulting in illness, loss of limbs and preventable deaths. Many of the letters describe the destructive and widespread use of “super max” and solitary confinement characterized by being locked alone in a cell with only an hour three days per week to “exercise” in another windowless area. The resources required to investigate and litigate meant that we were not in position to effectively intervene – until now.

With the addition of two new attorneys we have brought together leading prison litigators from throughout the country to challenge Arizona Department of Corrections (ADC) practices

and callous indifference to the rights of the more than 30,000 prisoners confined each day. The National Prison Project of the ACLU, the California Prison Litigation Office, the Arizona Center for Disability Law, as well as the Perkins Coie law firm in Phoenix and the Jones Day firm in California joined us to launch a landmark case. On March 22nd, the litigation began with 14 named plaintiffs seeking class certification on behalf of all persons who are now or will be confined in the ADC. We are asking for injunctive relief to end the inhumane and unconstitutional failures to provide minimally adequate medical, mental health and dental care to persons in the state prisons and to end the abusive conditions in the solitary confinement units.



## Challenging racial profiling by Sheriff Arpaio

More than four years ago, the ACLU of Arizona joined a case involving the racially discriminatory stop of Mr. Ortega-Melendres by Maricopa County Sheriff’s Office (MCSO) personnel pursuant to the policies of Sheriff Joe Arpaio. Our case has since resulted in class certification with a class defined as all Latinos who had been or will be stopped, questioned or searched by MCSO while in a car in Maricopa County. After a lengthy pre-trial discovery period and delays resulting from the destruction of relevant evidence by the MCSO, this important case is set for trial on July 19th. The firm of Covington & Burling has been outstanding lead counsel for the past two years. ACLU attorneys from the Arizona affiliate and the ACLU Immigrants’ Rights Project, together with attorneys from MALDEF, have been part of the legal team and will participate at trial.

The goal of this litigation is a remedial order that prohibits the long-standing discriminatory practices of MCSO including the unreasonable seizures of plaintiffs, and that contains safeguards to monitor and ensure implementation by MCSO. The individual abuses and great harms to Latino communities resulting from MCSO practices must end. This trial will be the first comprehensive hearing on these matters with Sheriff Arpaio and other MCSO officials examined in public about their words and acts. The case has drawn great local and national interest.

Earlier this year, the Department of Justice (DOJ) filed a complaint in federal court in Phoenix against Sheriff Arpaio and MCSO. As announced by the DOJ, the failure of the Sheriff to engage in meaningful settlement talks seeking to improve the situation and community safety in Maricopa County necessitated this filing. The DOJ case also alleges an MCSO policy and practice of racially discriminatory enforcement and of unreasonable seizures of Latinos, as well as abuses of power and retaliatory acts by MCSO against its critics.

## Defending voting rights

In 2012, Arizona became the first state to seek to have the pre-clearance provisions of the Voting Rights Act (VRA) declared unconstitutional. This provision has been instrumental in deterring local and state efforts to suppress the ability of persons of color and poor persons to vote. With the ACLU Voting Rights Project, we acted to join this litigation and not leave the defense of the VRA solely to the federal government. Committed individuals quickly stepped up to join us as defendant-intervenors. They include: Luis Avila, Calvin Goode, Melvin Hannah, Eric Mante, Kathryn Nakagawa, Napoleon Pisano and Dionne Thomas. Shortly after our motion to intervene was granted, in April Attorney General Tom Horne and the State of Arizona announced that they were dismissing their suit and ending the challenge to the VRA.



## What One Letter Can Do: Protecting the 1st Amendment

The City of Tombstone has agreed to end enforcement of ordinance 8-2-3 and ceased the prosecution of busker Ronald Koch, aka Johnny Bones, after an ACLU letter challenging the constitutionality of the ordinance. Johnny Bones, Tombstone’s Master of Frivolous Merriment, has been performing and playing the ebony bones in Tombstone for five years, adding to the sense of history and joy in the Old West Town. Unfortunately, some city officials were determined to drive buskers like Mr. Bones out of town. Tombstone passed ordinance 8-2-3 which violated the 1st amendment by unconstitutionally prohibiting buskers from performing in heavily trafficked tourist areas. Traditional public forums are places where speech, expression, and assembly receive the utmost constitutional protections. Any government regulations must be narrowly tailored to serve compelling state interests. Over the objections of the local marshal, town officials arrested and charged Mr. Bones with violating the ordinance, which carried a possible \$200 fine and six months imprisonment. After our letter, Tombstone officials agreed to permanently end enforcement of ordinance 8-2-3 and the prosecution of Johnny Bones. The ACLU continues to assist city officials in crafting an ordinance that will not violate the 1st Amendment. Photo of Johnny Bones courtesy of Chiricahua Community Health Centers, Inc.



# 2012 Legislative Recap

By Anjali Abraham, Public Policy Director



Roughly three months after Arizona celebrated its centennial birthday, the state’s fiftieth legislature concluded its business and lawmakers went home. Those who care about civil liberties breathed a sigh of relief, considering some of the legislation that became law this year. The willingness of some government officials to abandon the most basic concepts of liberty and to intrude into the private lives of Arizonans was at times breathtaking. But not all was lost. In fact, we enjoyed some heartening and impressive victories this year.

## Arizona’s war on women

This was not a banner year for women and families in Arizona. In 2012, our lawmakers passed one of the most extreme anti-choice bills this country has ever seen. **HB 2036** contains countless provision that rely on a combination of fear, shame, exhaustion, and financial pressure to prevent women from exercising their legal right to seek abortion care. The bill fails to recognize accepted medical standards and inspired major opposition from throughout the country, including public opposition from doctors. The most well-known aspect of the bill is that it bans abortions, except in very limited medical emergencies, after twenty weeks following the first day of a woman’s last menstrual period (“LMP”). *This is the strictest time limitation in the entire United States against seeking abortion care.* Doctors who continue to perform these procedures will be subject to civil and criminal penalties.

Women and families who consider abortion at this stage of a pregnancy almost always do so for heartbreaking reasons. The time at which abortions are now automatically prohibited in Arizona – after twenty weeks LMP – is the time at which serious fetal anomalies and medical complications are first discoverable. Women who pursue abortion care at this stage of pregnancy do so in the face of unanticipated and agonizing news. *These women and their families need compassion, accessible medical care, and honest and reliable advice from their doctors. They do not need the government to make private medical decisions for them.*

Unfortunately, HB 2036 is not the end of the story. **HB 2800** essentially defunds Planned Parenthood by prohibiting the state from sending any public dollars to any entity that performs abortions. Although public funds cannot be used to pay for abortions, supporters of the bill claimed that allowing public funds to support non-abortion procedures, such as cancer screening and the provision of birth control, simply freed up monies that could be used to provide abortions. The legal mechanics of this bill are still being analyzed and debated and we will continue to keep watch over its implementation.

And lawmakers continued to take their campaign against reproductive freedom into unexpected quarters. With the passage of **HB 2627**, the legislature decided to prevent taxpayers from claiming the so-called “working poor tax credit” if they donate to any entity that pays for, provides coverage for, or provides abortion, or to any entity that financially supports another entity that does these things. *This bill was a response to the ACLU’s successful challenge last year of a slightly broader version of HB 2627.* Finally, **SB 1009** requires schools that address the topic of pregnancy to endorse childbirth and adoption over abortion.

## Twists and turns in religious liberty

**HB 2625** simultaneously offended the notions of reproductive freedom and true religious liberty. For the last ten years, Arizona law required any employer that offered a health care plan to cover contraception. HB 2625 allows any employer that can establish itself as a “religiously affiliated employer” – a term whose definition is painfully broad – to refuse coverage for contraception in its health care plan. While the bill that passed was amended slightly from its original version, the changes are largely cosmetic because any employer that wants to deny coverage for birth control can still do so with a few simple changes to its articles of incorporation. Of even greater concern, is that HB 2625 allows employers to use their own religious beliefs to discriminate against women and families who rely on contraception for important reasons, even if contraception use does not offend *the employee’s religious beliefs. In essence, the employer’s religious beliefs take precedence over the employee’s religious beliefs every time.*



HB 2625 was not the only effort to allow some religious beliefs to influence statewide policy-making. **HB 2563** prescribes a regimen by which *public high schools and charter schools can offer Bible studies classes.* While neutral, objective discussion of any religion or religious text is legally permissible – and why this bill was not even necessary – our experience tells us that *these courses rarely remain with constitutionally acceptable parameters.* In addition, **SB 1365** allows licensed professionals to largely avoid discipline by state regulatory bodies for any action they take in accordance with their sincerely-held religious beliefs. Amendment language added near the end of the legislative session softened some of the most dangerous edges of the bill, but still gives licensed professionals considerable leeway to discriminate based on their religious beliefs.

## Pushing back bad bills

Two bills with serious implications for civil liberties stalled during the legislative process and never reached the governor’s desk. **SB 1495** would have required anyone seeking unemployment benefits to pay for and pass a drug test before collecting benefits. The bill was clearly unconstitutional, violated existing federal law, and would have resulted in massive tax increases on businesses. Also, **SB 1083** would have authorized an armed, volunteer military unit to patrol the U.S.-Mexico border and enforce its view of immigration laws. Another pair of bills that would have limited the free speech rights of teachers without justification died in the state Senate.

## Anti-shackling bill passes unanimously

The ACLU of Arizona successfully pursued its own legislation this year. **SB 1184**, effectively bans the practice of shackling pregnant inmates immediately before, during, and after labor. With tremendous help from the bill’s sponsor, as well as backing from the medical and faith communities, SB 1184 received unanimous support in both chambers of the legislature.

Arizona has been a tough climate for civil liberties in recent years. Still, with the help of our members and partners, we have eked out quite a few successes. If we are to preserve our most precious liberties, we need your enthusiasm more than ever. This is a fight that we simply cannot afford to lose.