

Expanding Capacity to Challenge Abuses at the Border

In order to make America's border agencies more accountable to the laws that protect us all, the ACLU launched a new Border Litigation Project in June. The ACLU-AZ's new Tucson office is staffed by attorney James Duff Lyall who will investigate, document and litigate civil and human rights cases along the U.S.-Mexico border.

This important expansion of the ACLU's work is made possible by a generous two-year grant from the Central America and Mexico Migration Alliance (CAMMINA) and allows the ACLU to increase its legal capacity along the Southwest border at a critical time in our nation's debate on immigration reform. The legislation recently proposed by the U.S. Senate would implement new, costly border enforcement measures ranging from hiring additional



James Duff Lyall leads the ACLU-AZ Border Litigation Office in Tucson

border patrol agents, increasing drones and other surveillance technologies in the Southwest and expanding Operation Streamline, a program in the Tucson-sector that prosecutes people en masse for unlawful entry into the United States.

In recent years, the ACLU of Arizona has engaged in joint advocacy with fellow Southwest border affiliates, including filing a complaint with the Department of Homeland Security in May 2012 documenting 13 serious incidents of border patrol abuse at ports of entry. In only one month since opening the Tucson office, we have already received complaints from Arizona residents ranging from excessive use of force, unlawful arrests and detention and abuses at checkpoints and ports of entry.

Civil Liberties in Arizona

★ Standing Up for Freedom ★

Volume 42 Issue 2

ACLU victory against Sheriff Arpaio

By Alessandra Soler, Executive Director



Outside of the courthouse during the Arpaio trial, executive director Alessandra Soler is interviewed by media and protestors gather to voice their opposition to unlawful police practices. Photos courtesy of Lamp Left Media.

When a lawman goes rogue, we all lose. As the elected sheriff of Maricopa County, Joe Arpaio promised to "protect and serve" the Valley of the Sun. But for the past eight years, his high-profile campaign to rid Maricopa County of Mexicans has cost the residents of Maricopa County dearly. Arrest rates plunged even as the number of criminal investigations soared, sex crimes went uninvestigated, and 77,949 outstanding warrants went ignored. Rampant spending on immigration operations intended to vilify brown people – including U.S. citizens and lawful immigrants – drove the Maricopa County Sheriff's Office (MCSO) into a financial crisis, undermining those very same public safety promises made by Arpaio every election cycle.

That misplaced agenda – to place his own political interests above the public interest – recently led to a historic ruling in a class action lawsuit brought by the ACLU and its legal partners more than five years ago. In his May 24th decision, U.S. District Court Judge Murray Snow ruled that Arpaio's practice of using minor traffic stops – a cracked windshield or broken tail light – as a legal cover to stop Latino-looking drivers and interrogate

them about their immigration status amounts to racial profiling and is unconstitutional.

This wasn't a decision that Judge Snow came to lightly. The ACLU has spent the last five years collecting evidence of MCSO's discriminatory policies and practices, culminating in a seven-day trial last summer where the judge heard testimony from nearly a dozen Latinos who were targeted by Arpaio simply because of their perceived ethnicity or immigration status.

The judge found Sheriff Arpaio illegally used race as a proxy for legitimate law enforcement activity, and that racism within MCSO came from the top down. Arpaio didn't just turn a blind eye to racial bias, the judge found, he encouraged it by forwarding racially-charged emails and citizen complaints about "Mexicans speaking Spanish" to members of his top brass and distributing press releases perpetuating anti-Mexican stereotypes to members of the general public. These actions made it clear to everyone who worked under him that his priority was "going after illegals, not the crime."

So, what's next? Will this decision really make an impact? Will it really force Joe Arpaio to change his behavior and comply with the law?

Over the coming months, ACLU lawyers will work with MCSO to negotiate an agreement that ensures Arpaio complies with the judge's order to end racial profiling. We will insist that the county implement measures intended to protect the constitutional rights of Maricopa County residents. Those measures include a demand for an independent court monitor; a requirement that the county begin collecting data on the race/ethnicity of individuals stopped; new training requirements for deputies and volunteer posse members; beefed-up complaint and disciplinary procedures for officers engaged in discriminatory conduct; and clear written policies prohibiting racial profiling.

This victory against Arpaio marks a historic first step toward restoring public trust in law enforcement, upholding racial equality and combating racism in all forms. The ACLU is committed to continue the work ahead and we hope we can count on you to stand with us. Thank you for your continued support of the ACLU. It is individuals like you who make it possible for the ACLU to stand up to Arpaio and his abuses of power.



Report Abuse on the New ACLU-AZ App

On June 18th, the ACLU-AZ launched the *United Against 1070* campaign, which seeks to educate the public on their constitutional rights and advocate for families and individuals who have been unjustly impacted by Arizona's SB 1070. The campaign features a free mobile app – ACLU-AZ STOP SB 1070 – that provides *Know Your Rights* information and allows users to report abuses directly to us. The app is available on Google Play or iTunes. Download it today!

www.acluaz.org/UnitedAgainst1070



A generous gift from an ACLU donor allowed us to expand our United Against 1070 campaign to include statewide Know Your Rights trainings. Community advocates in Flagstaff and Phoenix joined ACLU-AZ Immigrants' Rights Project Coordinator Dulce Juarez for training sessions.

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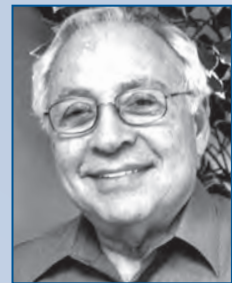
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Legal Update

From the Desk of Legal Director Dan Pochoda



Reproductive Rights and Equal Protection

On May 28, 2013, the ACLU of Arizona with the ACLU Reproductive Freedom Project filed suit challenging an Arizona law, formerly H.B. 2443, that singles out and discriminates against Black and Asian and Pacific Islander (API) women who decide to end their pregnancies. The plaintiffs are the Maricopa County NAACP and the National Asian Pacific American Women's Forum (NAPAWF). Passed two sessions ago, this law requires women to swear that they are not getting an abortion based on their desire to reduce the number of Blacks or women in the population generally. The doctors involved must confirm such declarations or risk criminal penalties. This offensive law is based on racial stereotypes that Black and API women cannot be trusted to make personal health care decisions without scrutiny by the state. During the legislative debate, no evidence was presented of even one woman in Arizona who had or

planned an abortion because of an intent to select out Black or female babies. This unprecedented law is part of a campaign by anti-abortion extremists to control the personal, private decisions made by Black and API women and advance their political agenda. The case is in its early stages in front of Judge David Campbell in the Arizona federal district court.

In re Tyler B.

The ACLU of Arizona, the National College for DUI Defense (NCDD), and Arizona Attorneys for Criminal Justice (AACJ) filed a "friend-of-the-court" brief in support of a juvenile – known in court papers as Tyler B. – who was arrested at school for DUI after school officials searched his car and found marijuana paraphernalia. Although Tyler B.'s parents were present at the school, they were not told that their son was being interrogated by police or that the police drew blood for testing. Before trial, Tyler B. moved to suppress the blood evidence, arguing that the blood draw was involuntary and taken in violation of the 4th Amendment, and that it violated the Parents' Bill of Rights, which requires parental consent before any medical procedure, including a blood draw, may be performed on a juvenile. Although the trial court agreed with Tyler B., the State appealed, and the Court of Appeals reversed the trial court decision. The Arizona Supreme Court then reviewed the case, and on May 30, 2013 held that the 4th Amendment trumps Arizona's implied consent law and requires that a juvenile arrestee's consent be voluntary to allow a warrantless blood draw. The Court also noted that, with respect to consent, the juvenile's age and the presence of parents should be included among the factors to determine whether consent was voluntary. The Court upheld the trial court ruling that the blood evidence was taken without a warrant or voluntary consent, and must be suppressed.

First Amendment and Peaceful Begging

On June 25, 2013, the ACLU of Arizona, with cooperating Flagstaff counsel, filed a lawsuit challenging the constitutionality of a state law that criminalizes peaceful begging. The lawsuit seeks to stop Flagstaff police from arresting, jailing and prosecuting homeless people who peaceably ask for donations from passers-by. The plaintiffs include three people, two of whom are homeless and who are understandably afraid to ask for donations or food in Flagstaff for fear of being arrested or jailed. We also represent Food Not Bombs (FNB), a volunteer-run organization devoted to feeding poor and hungry people in Flagstaff. Some of its members have been targeted by the police and city prosecutors for peaceably asking for a donation in order to eat. The case was filed in federal district court in Phoenix and assigned to Judge Neil Wake. We are seeking preliminary and permanent injunctive relief.

2012 Supreme Court Session transforms civil rights landscape

This Supreme Court session was marked by dramatic highs and lows shaping our country's civil rights landscape, and the ACLU served as counsel, co-counsel or amicus in almost a quarter of the cases heard this session, including six landmark cases involving voting rights, gay rights and gene patents.

- In **United States v. Windsor** we successfully challenged the constitutionality of Section 3 of the Defense of Marriage Act, which discriminates against gay married couples by denying them recognition under federal law.
- In **Shelby County v. Holder** we lost our challenge defending the constitutionality of Section 5 of the federal Voting Rights Act, which has long played a critical role in the battle against voting discrimination by requiring covered jurisdictions to obtain preclearance before implementing changes in their voting practices or procedures.
- In **Arizona v. Inter Tribal Council of Arizona** we successfully challenged Arizona's authority to require new voters to submit documentary proof of citizenship before registering to vote even though federal law does not impose any such requirement.
- In **Association for Molecular Pathologists v. Myriad Genetics** we successfully challenged the validity of patents on two human genes associated with an increased risk of breast and ovarian cancer.
- In **Clapper v. Amnesty International** we lost our challenge defending the rights of our clients to challenge the government's sweeping national security surveillance powers.
- In **Missouri v. McNeely** we successfully opposed the claim that the government can require every person arrested on suspicion of drunk driving to submit to a blood test without a warrant or consent.

Legislative Report

From the Desk of Policy Director Anjali Abraham



When Arizona's 51st Legislature finally adjourned in the earliest hours of June 14th, the outcome for civil liberties was significantly better than in recent years, although some setbacks were unavoidable. In addition to the summaries below, read more about how the Legislature did in our 2013 Legislative Report and Bill Tracker available at www.acluaz.org/capitol.

Separation of church and state

Arizona has proven fertile ground for some of the nation's worst encroachments upon our constitutional right to be free from established religion. Unfortunately, these encroachments have typically come at the expense of some of our most vulnerable populations, such as the LGBT community. In response to the Phoenix City Council's brave decision to expand its anti-discrimination ordinance to cover LGBT individuals, legislators tried to criminalize the use of public restrooms by transgender individuals. When that failed, lawmakers instead tried to override the city council's decision by making the use of public restrooms a matter of statewide concern, which would trump any municipal protection for transgender Arizonans. This endeavor backfired spectacularly and the bill did not proceed. Similarly, lawmakers passed a so-called "**religious freedom**" bill that was simply a means to legalize discrimination against the LGBT community under the guise of religious liberty. Working with other legislative advocates and the Governor's Office, we made an excellent case for a veto. *Because of our efforts, including member calls, Governor Brewer did indeed veto this highly dangerous bill.*

Reproductive freedom

Despite a court ruling declaring that Arizona cannot eliminate qualified medical providers from Medicaid simply because they perform abortions, anti-choice forces tried to use Medicaid expansion discussions to de-fund those providers and eliminate them from Medicaid. The same forces also pushed legislation to allow unannounced, warrantless inspections of health facilities that provide abortion care. These efforts, much like those before them, were designed for one purpose – to limit women's access to safe abortion care and sound medical treatment. *Our recent legislative and legal advocacy in this area helped stop these latest bills in their tracks.* The governor had no interest in pursuing unlawful policies and legislators did not move these proposals forward.

Medical marijuana

We were also especially successful this session in halting efforts to undermine our state's medical marijuana program. When opponents of the program could not invalidate it in the courts, they tried legislation instead. Working with other advocates, *we killed a bill that would have required law enforcement to destroy all seized medical marijuana* after completing an investigation, even if the seized product was lawfully owned. This bill directly violates the state constitution and represents a backdoor effort to eliminate a program that the voters of Arizona have approved three times. We also played a role in defeating a bill that would have burdened responsible dispensary owners with ineffective, nonsensical and onerous labeling requirements.

Voting rights

One area of grave concern this session was voting rights. During the final hours of the session, lawmakers first defeated, then revived and passed, a very troubling elections bill. This legislation will enable county elections officials to purge voters from the state's Permanent Early Voting List (PEVL) if voters do not comply with new requirements. Additionally, this legislation prohibits volunteers from any group, including voter advocacy and community groups, from collecting completed early ballots from voters and submitting the ballots for them. The PEVL and volunteer assistance enabled many people to vote in last year's election and this new law will significantly impede the voting rights of minority, disabled, and elderly voters. **While there were clearly serious problems during last year's election and changes were necessary, ACLU-AZ firmly believes that election reforms should never burden our right to vote.**

Your ACLU membership and contributions to the Union make our work at the Arizona Legislature possible, www.acluaz.org/join.



Thank you to our supporters for joining us at the Heard Museum to toast the historic win in the Arpaio racial profiling lawsuit. Pictured at the event are executive director Alessandra Soler and Dan Magos, a witness who bravely testified about MCSO abuse together with his family and special guest, Abdi Soltani, executive director of the ACLU of Northern California.

2013 Civil Liberties Survey

The Results Are In!

Thank you to all who responded to the civil liberties issue survey! Your responses help us understand what is most important to our members and help ensure that the organization is doing all it can to protect constitutional rights in Arizona. Here are some of your responses:

Defending civil liberties in Arizona is not easy. 64% of members who responded are not optimistic about making progress in protecting civil liberties in Arizona and 93% believe that state by state attacks on fundamental freedoms will prove even more challenging in the coming year.

Criminal justice reform, digital privacy, racial profiling, and immigrants' rights reflect the issues Arizona members are most passionate about.

You have confidence in our legal chops and public campaigns! 93% of respondents cited both litigation and public awareness campaigns as effective strategies for addressing civil liberties abuses.