ACLU NEWS

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- Freedom of Expression Art Show: Art Work by High School Students

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ACLU News - The Newspaper of the ACLU of Northern California, Jan/Feb 97

Proposition 209 Cannot be Enforced Court Orders Preliminary Injunction

On December 23, U.S. District Court Judge Thelton Henderson issued a preliminary injunction barring the enforcement of the anti-affirmative action measure Proposition 209. The order came in the case of *Coalition for Economic Equity v. Wilson*, the class action lawsuit filed by the ACLU Foundations of Northern and Southern California, the Lawyers' Committee for Civil Rights, the Employment Law Center and other civil rights groups on November 6 on behalf of a broad coalition of minority and women contractors, employees, students and educators who would be injured if Proposition 209 were enforced.

The preliminary injunction means that Proposition 209 cannot be put into effect until there is a final determination of its constitutionality.

Applies to all public entities

The order applies to all state and local government bodies throughout California. It enjoins Governor Pete Wilson, Attorney General Dan Lungren, the University of California, cities, counties, school boards, transit authorities and all other public entities throughout the state from implementing this unconstitutional law.

ACLU-NC staff attorney Ed Chen praised the ruling. "The federal courts have long stood as a bulwark in the protection of equal rights for women and minorities in this country.

"The Court has correctly noted that Proposition 209 would violate the rights of women and minorities to participate in the political process and would interfere with governmental efforts to comply voluntarily with federal civil rights laws by outlawing all public affirmative action programs in California no matter how necessary they may be to ensure equal opportunity," Chen added.

The injunction came in a 67-page opinion which concluded that the plaintiffs "demonstrated a probability of success on their claim that Proposition 209 violates the Fourteenth Amendment's equal protection guarantee to full participation in the political life of the community," as well as a likelihood of success that the measure violates the 1964 Civil Rights Act.

Judge Henderson stated, "The issue is not whether one judge can thwart the will of the people; rather the issue is whether the challenged enactment complies with our Constitution and Bill of Rights. Without a doubt, federal courts have no duty more important than to protect the rights and liberties of all Americans by considering and ruling on such issues, no matter how contentious or controversial they

may be. This duty is certainly undiminished where the law under consideration comes directly from the ballot box and without the benefit of the legislative process."

In his ruling, Judge Henderson relied on two U.S. Supreme Court rulings: an Akron, Ohio case concerning the repeal of a fair housing law banning racial discrimination and a Washington state initiative banning mandatory bussing of Seattle students to desegregate the schools.

Language masks bias

Like these two measures, the language of Proposition 209 appears "facially neutral," Judge Henderson noted, but it actually masks race and gender bias.

"All three initiatives are facially neutral," the opinion states. "All three grew from controversial efforts aimed at rolling back legislative gains that were intended as remedies for historical discrimination suffered by particular groups. Perhaps most importantly, in the wake of all three measures, those seeking to reenact such remedies could no longer use the same political mechanisms that had been available prior to the passage of the enactments."

"This decision restores to women and minorities the ability to use affirmative action to counteract existing discrimination," said Theodore Wang of the Lawyers' Committee for Civil Rights.

"Proposition 209 would have cut women and minorities out of the political process -- distorting the political process so that women and minorities could not seek from any level of government affirmative action programs designed to remedy discrimination and ensure equal opportunity -- when all other groups are free to seek preferences," Wang added.

"This divisive measure would undermine enforcement of federal civil rights laws which depend upon voluntary compliance by government agencies, compliance which often requires affirmative action to undo the direct and indirect effects of prior discrimination," noted William McNeill of the Employment Law Center.

"This decision gives back to state and local governments the critical tools they need to address discrimination," McNeill said.

The federal challenge was filed on November 6, the morning after the election, in U.S. District Court in San Francisco. After a hearing on November 25, Judge Henderson issued a Temporary Restraining Order (TRO) on November 27 barring Governor Wilson and Attorney General Dan Lungren from implementing the new law. The TRO was later broadened to include the University of California, and further expanded on December 16 to include all state and local government agencies covered by the law. The hearing for the preliminary injunction took place on December 16 in U.S. District Court in San Francisco.

Unfinished business

Mark Rosenbaum of the ACLU of Southern California said, "No statewide measure in American history has ever come close in scope or effect to Proposition 209's chokehold on state and local government. The measure treats the unfinished business of rooting out discrimination as if it were none of the government's. "The careful legal analysis by the federal court preserves the ability of government to remedy past discrimination against women and minorities in ways the Supreme Court has specifically authorized," Rosenbaum added.

A date for the trial has not yet been scheduled. The Governor and Attorney General, as well as a group called Californians Against Discrimination and Preferences who were the proponents of Proposition 209, have appealed the preliminary injunction ruling to the Ninth Circuit Court of Appeals.

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Proposition 209: The Controversy Did Not End -- or Begin -- Here

by Dorothy Ehrlich
ACLU-NC Executive Director

The long political controversy over Proposition 209, the so- called California Civil Rights Initiative, did not end with the November election -- nor could it. The consequences of its implementation would be too devastating to the communities it targets, and too confusing to those meant to do the dirty work of carrying it out.

The day after the election, Governor Pete Wilson blasted the ACLU for "thwarting the will of the people" because we filed a federal lawsuit to stop this insidious measure from turning back the clock on affirmative action in California.

Despite Governor Wilson's rhetoric we find no virtue in standing silently by as California attempts a sweeping repeal of civil rights laws -- the first of its kind in our nation's history. America's core principles of equality under the law are deeply degraded by Proposition 209. The broad coalition of civil rights groups who filed the federal lawsuit had a duty to rush to court to prevent this injustice -- following in the footsteps of civil rights activists and lawyers who have gone before us.

We did not do this out of disrespect for the rule of law, or for the vote of the majority. Rather we take this action out of respect for a cherished democratic principle. It is the principle that recognizes that sometimes the will of the majority -- whether expressed at the ballot booth or in the halls of Congress -- can deeply conflict with the constitutional guarantee that protects the rights of minorities.

That's exactly why civil rights lawyers in the 1950's and 60's went to court to enforce rights under the federal Constitution, when the political majority decided to keep segregation, and why the federal courts stepped in to prevent that majority from undermining the Constitution. The lawsuit against proposition 209 is part of this proud tradition.

Despite Pete Wilson's rhetoric, the Bill of Rights cannot simply be voted away.

Flawed proposition

Our legal challenge is focused on two primary flaws in Proposition 209. First is the question of whether the dismantling of all affirmative action programs, including targeted outreach to minorities and women where they have been traditionally excluded or under-represented, is fair when other "preferences" remain. For instance, the University of California can and does continue to have preferences for students from certain counties, in order to insure geographic diversity, and veterans, to honor their service to the

country, and students from economically disadvantaged households who faced extraordinary obstacles in getting to college. The University could, under Proposition 209, have programs that give a boost to the children of alumni or major donors, or friends of the Regents.

Under this new constitutional amendment, current preferences will remain in place, and new ones can be added.

Yet under Proposition 209, even where women and minorities are grossly under-represented as a result of historical discrimination and segregation, race and gender conscious remedies are barred, no matter how great the need to level the playing field. What is worse, because Proposition 209 bars all state and local governmental agencies from responding to a proven need to remedy the effects of past discrimination, it places special burdens upon women and minorities in the political process; while other groups can approach their city councils, boards of education, or state Legislature for protection, women and minorities cannot. This selective disenfranchisement flies in the face of the recent U.S. Supreme Court decision overturning Colorado's anti-gay rights Amendment 2, which stated that any law "declaring that in general it shall be more difficult for one group of citizens than for all others to seek aid from government is itself a denial of equal protection of the laws..."

We are also challenging Proposition 209 because it will prohibit public employers from complying with federal law which encourages voluntary measures to remedy and prevent race and sex discrimination.

For example, let's look at a city where no woman had ever been hired in the public works department -- and the city wants to fix that problem. Perhaps city officials genuinely believe in gender equality, or perhaps they fear that they are violating federal civil rights laws that require equal treatment. Under Proposition 209, even a carefully designed plan to recruit and hire women to address their historical exclusion would be illegal; and yet under federal law the city is supposed to take action to remedy this glaring wrong.

If taking no action exposes city officials to punishment under federal law, and taking action subjects them to lawsuits under Proposition 209 -- what is the employer to do? That will be the Hobson's choice if Proposition 209 is implemented.

This has already caused great confusion throughout the state. Public employers from school boards to transportation agencies to health clinics are genuinely stymied about how and whether to continue programs which ensure racial and gender equality.

Ironically, confusion was the defining message of Proposition 209, so it is not a surprise to find more chaos in its wake. Voters who support equal rights and affirmative action were confused by language that appeared to be in favor of those values and some of the electorate was even deceived into voting for it, according to post-election polls. Throughout the campaign proponents masqueraded as civil rights supporters, although they had never been seen on a march, a sit-in or a Freedom Ride during the prior 30 years.

Impotent political weapon

If this "Civil Rights initiative" was not a "civil rights initiative" -- what was it?

Proposition 209 was a carefully crafted, but ultimately impotent, political weapon meant to bolster the failing Presidential campaigns of first Governor Wilson during the primary, and subsequently Senator Bob Dole. It was designed to mobilize voters with yet another racially divisive wedge issue, to elect politicians, not to protect equality. If you look at the list of who paid for Proposition 209, both investing the money to collect the signatures to qualify for the ballot, and to wage a more than $3 million media campaign to trick the voters -- you find a veritable "who's who" of right-wing politics. Media magnate Rupert Murdoch gave a million dollars. Far right Pennsylvania publisher Richard Scaife gave $100,000. Republican donors from Newt Gingrich's PAC in Georgia swelled the coffers of the "Yes on 209" campaign. These are not the folks who walked picket lines in front of segregated lunch counters.

Indeed, these are the same people who tell us that we now have a "level playing field" that the bad old days of Mississippi in the 60's are over.

The irony and the tragedy of their willingness to ignore the persistence of racism and sexism was painfully illuminated by national headlines during the very week Proposition 209 was on the ballot in California. The news came from racist whisperings taped in the board room of Texaco, and from the revelations of widespread sexual harassment and rape at the U.S. Army's at the Aberdeen Proving Ground in Maryland. The proponents' mythology of a color-blind, gender equal society was once again shattered.

Those who support equality cannot therefore, simply walk away having waged a strenuous, albeit unsuccessful, fight to expose the truth. Proposition 209 could do real damage, it could prevent a future generation of Latino and African American children from dreaming of a better life where a more equal playing field could mean the difference between success or failure. It could be a step backward for every woman who has started a business and is still ignored when lucrative government contracts are awarded to her white male colleagues, or when her bid is passed over in favor of an "old boy." The list of potential victims is long and depressingly familiar.

In the tradition of those who have fought for equal rights for women and people of color throughout this century, it is our duty to try to stop that damage from occurring and to vindicate the core constitutional rights that cannot be sacrificed for political expedience. The political fight has ebbed, and now real lives could fall victim to the callous manipulation of this deceptive measure -- unless the federal courts take up their historic role, and respond to our call for equality under the law.

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Clinton Administration Joins Proposition 209 Challenge

On December 20, White House press secretary Mike McCurry announced the Clinton Administration's decision to intervene in the challenge against Proposition 209.

After a "meticulous review" of the anti-affirmative action measure's constitutionality, the U.S. Justice Department - in agreement with the ACLU and other civil rights groups opposing the measure - concluded that Proposition 209 unlawfully excludes women and minorities from opportunities open to other groups such as veterans.

The Associated Press reported McCurry as stating "the president as the chief constitutional officer has to act."

The decision came four days after the hearing on the request for a preliminary injunction, and was praised by civil rights groups throughout the country. "This decision is a ringing endorsement of Judge Hendersonþs Temporary Restraining Order against Proposition 209, a measure which disables state and local governments from remedying past and present discrimination," said ACLU-SC staff attorney Mark Rosenbaum.

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Doctors, Patients File Class Action Suit to Block Federal Punishment for Medical Marijuana

A group of physicians and patients filed a class action suit in U.S. District Court in San Francisco on January 14 seeking an injunction blocking federal officials from taking any punitive action against doctors who simply recommend the medical use of marijuana to their patients.

Dr. Marcus Conant, a nationally renowned AIDS specialist and the lead plaintiff in the lawsuit, said, "The federal government has threatened me and doctors like me with dire consequences for simply discussing medical marijuana with my patients. My colleagues and I have seen marijuana work to relieve nausea and stimulate appetite where other drugs fail, and scores of studies support our observations.

"The medical community deserves more respect than having a retired General in Washington tell us how to practice medicine. Physicians should be allowed to discuss medical marijuana without having to risk arrest or other punishment by the federal government," Dr. Conant added.

The plaintiffs -- who include physicians, patients who are being treated from AIDS, cancer and other diseases, and a number of organizations -- are represented by are the San Francisco firm of Altshuler, Berzon, Nussbaum, Berzon & Rubin and the ACLU-NC.

"The federal governmentþs current efforts to insert itself between doctors and their patients when it comes to recommending medical marijuana is contrary to our most fundamental First Amendment values," said ACLU-NC staff attorney Ann Brick at a San Francisco press conference announcing the lawsuit. "The central purpose of the First Amendment is to protect dissent from the governmentþs version of the facts on any particular issue, including the issue of medical marijuana.

"The doctors who are plaintiffs in this lawsuit are asserting their right to tell patients, when they believe it is medically appropriate to do so, that the medical use of marijuana may help in the treatment or management of their disease. The governmentþs recent threats to go after doctors who give such advice is a heavy- handed attempt to silence a group that is particularly well-placed to speak with authority in delivering a message that is different from the governmentþs official line. It is the purpose of this lawsuit to see that the government does not succeed in silencing these physicians.

"Doctors have a First Amendment right to speak on the issue of medical marijuana, not only when speaking to the public, but when speaking to their patients as well," added Brick

Graham Boyd, an attorney with Altshuler, Berzon, Nussbaum, berzon & Rubin, said, "The Supreme Court has said that the government may not bar physicians from discussing contraception or abortion, both controversial topics in their day. By the same logic, federal officials may not use controversy over

marijuana as an excuse to intrude into the sanctity of the physician-patient relationship."

Jo Daly, a former police commissioner of San Francisco and a patient who uses marijuana medically, said, "The federal government is trying to intimidate the doctors who treat me for cancer. Marijuana literally saved my life by stopping the horrible vomiting caused by my chemotherapy. Bureaucrats like Barry McCaffrey want to get in between me and my doctors and make me another victim of their drug policies. This began a was on drugs -- now it's become a war on doctors."

The lawsuit is a direct response to the Clinton administration's December 30 announcement of its plan to fight implementation of Proposition 215 by threatening doctors with a range of punishment if they are found to be recommending medical marijuana to their patients. The defendants -- General Barry McCaffrey, Director of the White House Office of National Drug Control Policy; Thomas Constantine, Administrator of the U.S. Drug Enforcement Administration (DEA); Janet Reno, Attorney General of the United States; and Donna Shalala, Secretary of the Department of Health and Human Services (HHS) -- are key federal officials involved in drafting and implementing the Clinton administration strategy.

Proposition 215, the Compassionate Use Act of 1996 which was passed by 54% of the voters in November, altered California law by creating a new exemption for a specific group of people - seriously ill patients who are using marijuana on the "recommendation or approval" of a physician. If an arrested patient is to be exonerated, he or she must prove that a physician advised that marijuana was medically appropriate for that patient.

However, given the new threats of federal action against physicians who recommend marijuana, doctors face a difficult choice when they observe that marijuana appears to be medically appropriate for a patient. Doctors can inform patients of their truthful medical opinion, and expose themselves and their practice to punitive action that could destroy their livelihood, or censor their discussions with patients, depriving them of useful treatment alternatives and eroding the trust and confidence essential to effective medical care.

"Such a choice is no choice at all," said Dr. Milton Estes, Medical Director and Senior Physician for the Forensic AIDS Project of San Francisco, and former Chair of the ACLU-NC Board of Directors. "The threat against doctors is in fact an unconstitutional intrusion into communications between doctor and patient with the potential to harm both."

The suit argues that the doctor's recommendation to the patient, and his or her public acknowledgement of that recommendation in the context of a criminal proceeding against the patient, both constitute protected speech for which any penalties at all would be impermissible.

"The Clinton administration vastly overreached in deciding to threaten all California doctors. That overly broad threat made this action necessary," added attorney Boyd.

"This lawsuit," said Dr. Conant, the San Francisco AIDS care physician, "directly challenges the federal government's declaration that any doctor making any recommendation for marijuana is committing a punishable act - and it offers real hope of protection for responsible physicians in this state."

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"Failing the Test: Oakland's Police Complaint Process in Crisis"

The Oakland Police Department's internal complaint process is in a "state of apparent collapse," charge PUEBLO (People United for A Better Oakland) and the ACLU-NC in a comprehensive new report released in December.

In a carefully designed and controlled test conducted over a nine-day period in November, 1996, PUEBLO and the ACLU determined that an overwhelming proportion of Oakland police officers were either unwilling or unable to provide basic information about the department's police misconduct complaint process.

"Our report is based on two very simple premises," explained PUEBLO'S Dan HoSang at an Oakland press conference to launch the report. "The first is that Oakland police officers should be willing and able, when asked, to provide accurate information about the complaint process. The second is that if officers consistently fail to provide this information to the public -- either out of ignorance or malicious intent -- the complaint system will be neither effective nor credible."

PUEBLO and ACLU researchers found that an overwhelming proportion of Oakland police officers failed to accurately answer even the most basic questions about the complaint process.

Question 1: Does a complaint about a police officer have to be filed with the police department?

A staggering 95% failed to mention or acknowledge the existence of the independent Citizens Police Review Board (CPRB) as an alternative body to receive a complaint.

Question 2: Can a complaint be filed by phone?

Only 36.8% of the officers correctly answered "yes" per the Department's General Order M-3 governing the complaint process.

Question 3: What is the phone number for the Internal Affairs section?

Fully 37% of the officers could not or would not provide this number when asked.

"The questions asked were exceedingly simple," charged John Crew, Director of the ACLU-NC Police Practices Project, "but potentially crucial to individuals considering whether nor not to file an official allegation of police misconduct. They are questions so simple that every Oakland police officer ought to be able to answer them -- particularly those officers whose assignments specifically require them to handle inquiries from the public.

Falling dominoes

"Like the first falling domino in a long line of dominoes stacked in a row, the failure to provide basic information about the complaint system has far-reaching ramifications for the Oakland Police Department and the people of Oakland," Crew added.

Wilson Riles, Regional Director of the American Friends Service Committee, also spoke at the press conference. "The people of Oakland have long campaigned for the police to be accountable to their concerns. This shocking report shows that we really have an emergency in Oakland -- an emergency that undermines public confidence in the police and that effectively impedes any community-policing partnerships.

"The City Council and the Police Chief must act immediately to remedy this emergency before the public's ability to hold officers accountable is completely destroyed," added Riles, a former City Council member.

Urgent recommendations

To that end, the ACLU and PUEBLO report offers six recommendations for immediate action by the City of Oakland and the Chief of Police. Among those are the following:

1. The Chief of Police should immediately issue a written directive reminding officers that they must provide accurate information regarding the City of Oakland's complaint process.

2. The City of Oakland should design and implement a comprehensive, multilingual public education campaign designed to publicize the right to pursue complaints of police misconduct through the Internal Affairs and Citizens' Police Review Board processes.

The 25-page report "Failing the Test: Oakland's Police Complaint Process in Crisis" is based on research conducted by PUEBLO and the ACLU from November 11 to November 19, 1996. The test was designed to gauge the public's ability to easily obtain basic information about the police complaint process. The test was specifically aimed at those police locations -- Internal Affairs, Eastmont Mall sub-station, the headquarters' front desk, etc. -- where potential complainants might turn for information.

The report is a collaboration between PUEBLO and the ACLU-NC Police Practices Project, who in the last year have pressured the City of Oakland to address its police accountability crisis. PUEBLO is a direct-action community based organization with 600 member families, has organized Oakland residents around police accountability issues for three years and operates a police misconduct hotline. The ACLU-NC Police Practices Project uses policy reform and public education strategies to combat persistent problems of police abuse.

To request a copy of the report, please write to Police Practices Project, ACLU-NC, 1663 Mission

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ACLU-NC Fights Berkeley Anti-Begging Laws

by Maria Archuleta

In separate hearings in November and December, the ACLU-NC defended the First Amendment rights of homeless people and grass roots organizations from two Berkeley City ordinances adopted in 1995 meant to silence and hide its most vulnerable residents. One ordinance prohibited sitting on city sidewalks; the other drastically limited peaceful soliciting, including panhandling and asking for charitable or political donations.

At the request of the ACLU in the class-action lawsuit *Berkeley Community Health Project v. City of Berkeley*, both ordinances had been enjoined by U.S. District Court Judge Claudia Wilken in May 1995; the City appealed the preliminary injunction against the anti-solicitation ordinance to the Ninth Circuit Court of Appeals.

On December 9, ACLU-NC Managing Attorney Alan Schlosser argued before a three-judge panel of the Ninth Circuit that because Berkeley's anti- soliciting ordinance limits the protected First Amendment activities of poor people and grass root organizations, the injunction barring its enforcement should remain in place.

Schlosser told the court that the ordinance is "content-based" attack on free expression, and therefore can only be justified if it meets a strict "compelling public interest" test.

For example, Schlosser said, "Under the Berkeley law, someone holding up a sign stating 'Vietnam vet, support our troops' is engaged in permissible free speech while the same person holding a sign, 'Vietnam vet, please help out,' is engaged in criminal speech."

If Berkeley wants to deal with obstruction, harassment or threats from aggressive soliciting, then they should create a "content-neutral ordinance," Schlosser said. "Berkeley did not want to deal with those problems. It wanted to sweep in an entire group of people who solicit on the streets," he charged.

A ruling is awaited from the Ninth Circuit.

Anti-sitting ordinance

There was a hearing on the anti-sitting ordinance on November 22 in U.S. District Court because the City of Berkeley requested Judge Wilken to vacant her injunction against that city law. The City's request followed a Ninth Circuit ruling that upheld a similar anti-sidewalk sitting law in Seattle in *Roulette v. Seattle.* At that hearing, Schlosser argued that the injunction against the Berkeley þanti-sidewalk-sittingþ law should remain in place because the ordinance limits protected expressive activities

such as charitable solicitation, voter registration, and distribution of political literature as well as panhandling.

However, in light of the ruling in the Seattle case, Judge Wilken vacated the injunction.

The ACLU-NC originally filed the class action lawsuit *Berkeley Community Health Project v. City of Berkeley* in February 1995, in U.S. District Court on behalf of several Berkeley charitable organizations - Berkeley Free Clinic, Copwatch, the Berkeley Green Party - and two physically disabled indigent individuals who solicit donations on the streets of Berkeley.

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ACLU Honors Dolores Huerta at Bill of Rights Day Celebration

"We must reinvigorate the progressive civil rights movement. We must become more creative, more strategic, and more sophisticated than we've ever been.

"We're not ashamed of the progressive liberal tradition. After all, it was the liberal tradition that ended slavery in America, that gave women the right to vote, that created the nation's safety net and injected fairness in the nation's immigration laws. We must pursue aggressive enforcement of existing civil rights laws because we will face these issues again and again."

With this thundering call, Wade Henderson, Executive Director of the National Leadership Conference on Civil Rights, the oldest and largest civil rights coalition in the United States, inspired ACLU-NC members at the 1996 Bill of Rights Day Celebration to carry on the organization's challenging work.

The December 15 event drew more than 800 and supporters to the Sheraton Palace Hotel in San Francisco to hear keynote speaker Henderson and honor United Farm Workers leader Dolores Huerta with the Earl Warren Civil Liberties Award. Tributes were also paid to volunteer activist Rini Chakraborty and to San Francisco high school students who created art work honoring civil liberties, and students who traveled to the Mexican border with the ACLU-NC Howard A. Friedman First Amendment Education Project shared their experiences with a lively video and slide show.

ACLU-NC Executive Director Dorothy Ehrlich's State of the Union presentation began with a video collage of TV news clips ACLU leaders speaking on issues ranging from language discrimination and abortion rights to free speech battles for homeless people and journalists.

"These clips illustrate the central role the ACLU has played in dealing with the most significant issues of the day," Ehrlich said, "and it is a role which could tire out a lot of organizations after more than 70 years of helping to shape the history of social justice. But rather than being worn out -- I think we feel greatly exhilarated by what we've done and the challenges that lie ahead.

Ehrlich examined the many assaults on civil liberties that faced the organization this year -- from Proposition 209 to new federal legislation on immigration, welfare, prisoners, anti-terrorism and the death penalty -- and underscored the viciousness of the attacks on the independence of the judiciary and Congressional efforts to limit the historic role of the courts.

"Our legal fight has not simply challenged the constitutionality of Proposition 209, but it has also made the issue of the role of an independent judiciary as the bulwark against the tyranny of the majority a national news event," Ehrlich said, "and forced us to vigorously defend that important principle.

"Not surprisingly, politicians have responded with a new round of court bashing -- from Pete Wilson's

claim that the ACLU is 'thwarting the will of the people' to personal attacks on the federal district court judge hearing our [Proposition 209] case," Ehrlich added.

Ehrlich also reminded the audience of some exceptional ACLU victories: the U.S. Supreme Court ruling striking down Colorado's anti-gay rights law Amendment 2; the California Supreme Court's agreement to rehear the case on minor's rights to abortion; the Ninth Circuit ban on the gas chamber as cruel and unusual punishment; and the ballot box victory of Proposition 215, legalizing the medical use of marijuana.

ACLU-NC Chair Dick Grosboll, who chaired the event, also noted the key role that the affiliate played in the Campaign to Defeat Proposition 209. "This year our priority was to defeat 209. We played a major role in the campaign, creating and distributing campaign literature, organizing the chapters, raising funds.... it was a great effort. I want to thank all of you for your work on the NO on 209 campaign. It is really heartwarming.

Grosboll also presented the Lola Hanzel Courageous Adovcacy Award to student activist Rini Chakraborty, citing her tireless efforts to involve students and young people in civil liberties exploration and advocacy #[see sidebar]#.

One of those students, Shaffy Moeel, a freshman at Diablo Valley Community College, presented the Earl Warren Award to Dolores Huerta, a determined fighter for workers' rights who -- through her 30 years of activism on behalf of farmworkers, immigrants and people of color -- has changed the political landscape of California forever.

Huerta, who helped lead the statewide campaigns against Proposition 187 and Proposition 209, spoke of the fruits of those bitter campaigns. "What was really amazing about the anti-209 campaign was that students, feminists, labor union, and civil rights organizations were able to come together," said Huerta. "We have a lot of faith in all these parties and ultimately we came together. We are the new civil rights movement -- and the students are leading the way!"

Huerta did more than thank the ACLU, which she called "a great organization which is always there to defend our civil rights and liberties." She asked the audience to include the ACLU as she led them in a list of "Viva!"s -- a spirited cry of praise -- along with Cesar Chavez and Justice. The supportive audience complied.

Keynote speaker Henderson, a former Congressional lobbyist for the ACLU, spoke of the implications of the Passage of Proposition 209 from a national perspective.

Noting that Proposition 209 "was a major target of the Republican Party which lavishly funded the YES on 209 campaign, still the initiative failed miserably in its key strategy: to function as a wedge issue catapulting Republicans into office in November," Henderson said.

"The fight in California and in the nation to save affirmative action is part of a larger picture that has been taking place for many years. It is no secret that our America has become increasingly conservative on issues of fiscal policy, poverty, and racial justice issues. The enduring legacy of President Reagen is that the federal government will never again consider spending more a viable option as part of the resolution of these issues."

The debate on new legislation on welfare and immigration, which Henderson called "devastating blows" demonized affirmative action, Latinos, and the poor in an effort to thwart immigration and racial justice."

Though there are no "easy answers" in the fight for affirmative action, Henderson exhorted the audience to make voter participation an ongoing project and to "lead the way to change the climate of civil rights in the country today," because as W.E.B. DuBois said almost a half a century ago, "The cost of liberty is less than the cost of oppression."

During the reception prior to the event, ACLU-NC supporters were treated to an exhibit of high school student art that was submitted to the San Francisco Chapter's third annual Freedom of Expression Art Show, and to the music of the Christopher Pitts Group.

The Celebration was organized by ACLU-NC Field Representative Lisa Maldonado with assistance from Rini Chakraborty, and David Blazevich.

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Chakraborty Wins Hanzel Award

When I think of how many people went to the polls for the first time, went to the streets, became activists for the first time, people traditionally excluded from the political process.... I am reminded that despite our losses, we do have cause to celebrate," said Rini Chakraborty, as she accepted the Lola Hanzel Courageous Advocacy Award from ACLU-NC Chair Dick Grosboll at the 1996 Bill of Rights Day Celebration. The award is presented each year to recognize and thank volunteers who have provided strength, dedication and leadership to the ACLU-NC by their exemplary efforts; it is given in honor of Lola Hanzel who, before her death in 1980, served as a volunteer at the ACLU- NC for more than a decade, giving of her spirit and devotion in a way that inspired others.

Grosboll called Chakraborty an "exemplary student activist for civil liberties." The U.C. Berkeley student of Rhetoric and Philosophy began her work with the ACLU as a member of the Student Advisory Council of the Howard A. Friedman First Amendment Education Project which later led to summer volunteer work for the Project in the ACLU-NC office. Chakraborty went on to found the ACLU U.C. Berkeley Student Caucus in 1994.

Last summer Chakraborty served as an intern in the ACLU Legislative Office in Sacramento, drafting letters, writing legislative alerts and researching legal and policy issues and volunteered as a chaperon for the Friedman Projectþs high school students on the bus journey to the Mexican border to study immigration.

Chakraborty continues to give generously of her time and talent to the ACLU -- though not as a volunteer. In August, she was hired as the part-time Program Secretary for the ACLU-NC Field and Public Information Departments. Though she began her involvement with the ACLU as a young student, she anticipates her tenure with the organization will be a long one: "We will continue to take to the streets, to the polls, and when they're celebrating the so-called triumph of the wills, we'll still be here," Chakraborty said.

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Legal Services Programs Challenge Restrictions on Non-LSC Funds

In the first sweeping challenge to the new restrictions on legal service agencies that serve the poor, five legal service programs from California, Hawaii, and Alaska - which together serve over a million poor families and individuals - filed a suit challenging those restrictions. The suit, *Legal Aid Society of Hawaii, et al. vs. Legal Services Corporation,* filed in U.S. District Court in Hawaii on January 9, charges that the restrictions on services provided by the agencies from funding given by non-Legal Services Corporation (LSC) sources - including money from states, cities, charitable foundations and private donors - are unconstitutional and must be struck down.

The five agencies which receive a large portion of their funding from non-LSC services are represented by the law firm of Heller, Ehrman, White & McAuliffe, the national ACLU and the ACLU of Northern California.

Under the restrictions imposed by Congress as part of the 1996 and 1997 appropriations, legal services organizations that obtain any portion of their financial support from the LSC are prohibited from using funds received from any other resources for certain purposes, including legislative advocacy, filing class action lawsuits, challenging federal or state welfare laws, or seeking attorneys fees in cases where fees are authorized by statute. In addition, the restrictions prohibit the programs from representing certain clients, including prisoners and many immigrants, and severely limiting access to critical legal assistance for low-income people.

"The restrictions constitute an effort by conservative lawmakers to suppress the expression of certain ideas and limit the legal rights of certain groups that Congress now disfavors for ideological reasons. The government cannot grant a benefit predicated on the condition that the recipients relinquish their constitutional rights," said attorney Stephen Bomse of Heller, Ehrman, White & McAuliffe.

"These unconscionable congressional restrictions come as the number of poor people in need of legal assistance grows rapidly in the face of cutbacks in services and changes in regulations affecting the legal rights and entitlements of the poor," said ACLU-NC staff attorney Margaret Crosby.

In 1995, the five legal services programs filing the suit handled more than 70,000 cases, serving a combined client population of 1.2 million people at the poverty level.

The plaintiffs include the Legal Aid Society of Hawaii, Legal Services of Northern California, San Fernando Valley Neighborhood Legal Services, Legal Aid Society of Orange County, and Alaska Legal Services Corporation. Also named as plaintiffs are: California State Client Council, which represents legal services clients; The Hawaii Justice Foundation and The Impact Fund, which donates funds to legal services programs; and two legal services lawyers whose practices have been affected by the new

restrictions.

They are represented by attorneys Stephen Bomse, Charles Frieberg, Adman Cole, Hope Hudson and Rakesh Anand of Heller, Ehrman, White & McAuliffe; national ACLU attorneys Steven Shapiro and Robin Dahlberg; ACLU-NC staff attorney Margaret Crosby; and other private attorneys.

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High Court Hears ACLU Challenge to San Jose's Anti-Gang Injunction

On November 4, the California Supreme Court heard ACLU- NC cooperating attorney Amitai Schwartz argue that San Jose's anti-gang injunction is unconstitutionally vague and overbroad and is being used against youths without sufficient proof that they had committed any crimes or harassed residents.

The Court heard the City's appeal of an April, 1995 appellate court ruling in *People ex rel. Gallo v. Acuna* which declared that provisions of a Santa Clara Superior Court nuisance injunction obtained in 1993 by the City of San Jose, were unconstitutional.

Closely watched case

This was the first time that a cityþs use of a civil injunction to deal with alleged gang activity was heard before the state high court. It is being closely watched by local governments and civil liberties advocates alike.

On the basis of their purported affiliation with two gangs, the Superior Court banned thirty-eight youths from associating in public with any other defendant or known gang member, making loud noises and from engaging in a variety of other activities in the Rocksprings area of San Jose. The City of San Jose obtained the preliminary injunction based on a public nuisance law.

The defendants could be punished by up to six months in jail or a $1,000 fine or both for violating the injunction by engaging in so-called "gang-related" activities including: gathering together in public, talking to persons in cars, climbing trees, wearing certain clothing, making gang "hand signs" and carrying items like pagers, marbles, screwdrivers, pliers, and marking pens.

Because the injunction came via a civil suit, those declared gang members were not allowed protections ensured in a criminal proceeding such as the right to an appointed attorney, a jury trial or criminal justice standards of proof.

During the oral argument, California Supreme Court Justice Stanley Mosk questioned the use of a civil injunction. "If all of these terrible crimes are being committed, why aren't they being prosecuted criminally?" he asked.

Stripped of rights

"The City of San Jose is attempting to make an end run around the criminal justice system," said cooperating attorney Schwartz. "Simply because these men and women are suspected gang members, they are stripped of a variety of constitutional freedoms, the right to associate, to assemble and the right

to due process. It's guilt by association, without the City showing that the defendants themselves intended to violate the law. If the court upholds this injunction we can expect to see a proliferation of these cases in this state. This will effectively place law-making powers in the hands of judges instead of the Legislature."

In April 1995, the California Court of Appeal found that the injunction did not sufficiently define the prohibited activities or provide definite standards for police enforcement and ascertainment of guilt. These flaws, stated the court, lead to arbitrary and discriminatory enforcement. Ruling that the injunction could go no further than the Constitution allows, the court limited it to prohibit only clearly illegal activities.

The City of San Jose is not alone in using constitutionally questionable injunctions to try to solve gang problems, and in a number of other cities, especially in the Los Angeles area, courts have issued similarly structured injunctions. The ACLU-NC was successful in preventing such an order sought by the City of Oakland in the 1994 civil suit, *Oakland v. B Street Boys.*

According to ACLU-NC staff attorney Ed Chen, who litigated that suit, the success of gang abatement injunctions is not the pivotal issue. "Whether they work in reducing crime or not, they flagrantly violate the rights of groups targeted specifically because of their age, ethnicity and relationships. Illegal searches may also work, but our Constitution doesn't permit them, lest we were to allow the government to impose a complete police state.

In addition to Schwartz and Chen, the team of attorneys challenging the San Jose injunction includes Public Interest Law Firm attorneys Patricia Price and Amanda Wilson; Sara Campos of Lawyers' Committee for Civil Rights; and San Jose lawyers Dan Mayfield and Stuart Kirchick.

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CDC Prison Gag Rules May be Rejected

by Maria Archuleta

On November 7, The California Office of Administrative Law (OAL) issued a formal ruling disapproving the Department of Correctionsþ proposed new regulations aimed at silencing incarcerated men and women. The ACLU-NC had submitted written objections to the regulations as "unsound" and contrary to public policy.

The OAL gave the department 120 days to correct deficiencies in the regulations or see them rejected. The OAL did, however, extend the Department's "emergency" regulations that accomplish the same ends on grounds of unsubstantiated "operational necessity."

The new regulations, filed on March 29 and effective on April 8, eliminated face-to-face interviews and confidential mail between the media and prisoners. Although journalists could still interview random inmates encountered during guided tours and "visit" specific prisoners as members of the general public, the journalists were barred from bringing with them any type of "recording device," including pen and paper.

The Department of Corrections (CDC) claimed the new regulations were necessary to maintain security and to prevent criminals from becoming "celebrities." In addition, CDC officials contended that the interview ban would spare victims emotional distress and that arranging interviews between journalists and inmates is inconvenient.

In written testimony opposing the regulations submitted for a public hearing last June, ACLU-NC Managing Attorney Alan Schlosser stated, "The expansion of the prison system should not be accompanied by an expansion of secrecy about its operations. Public confidence and accountability require that the present system of media access which has worked well over the past twenty years, be maintained.

"The [CDC] proposal is contrary to First Amendment principles and is unsound as a matter of public policy," Schlosser charged, urging that the rules be rejected.

The ACLU was not alone in its opposition. A total of 100 comments were received by the Department: one supported the regulations, 99 opposed.

The OAL rebuked the Department for failing to respond to the criticisms outlined at the public hearing, and in the unusual rejection, demanded that the Department reply specifically to a number of comments that the CDC did not adequately address in its formal submission of the regulations, including objections raised by the ACLU-NC, the Society of Professional Journalists, the American Jewish congress, the

California Fist Amendment Coalition, the Prison Law Office, State Senator Quentin Kopp, the California Broadcasters, and a number of national news organizations, among others.

The CDC's original responses had been breezily dismissive. For example, citing a comment of one man who appears to be a prisoner, the OAL states, "The Department's response simply assumes that mistreatment of prisoners does not occur because it is prohibited by Penal Code sections 2650, 2651 and 2652. That response does not address the commenter's assertions that confidential media access is the only *effective* remedy to protect prisoners from abuse should that abuse occur." The OAL found similar inadequacies in the Department's responses to wide-ranging criticism dealing with everything from the alleged administrative burden of interviews and confidential mail registration to the constitutional justification for the regulations.

The California regulations mirror attempts in several other states to cut off prisoner interviews with the news media and are therefore being closely watched elsewhere.

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Police Chief Can Be Sued for Demonstration Ban

On December 4, the Ninth Circuit Court of Appeals upheld the publicþs right to peacefully demonstrate without fear of arrest. In the case, *Collins v. Jordan et al.* in an opinion authored by Judge Stephen Reinhardt, the Court ruled that former San Francisco Police Chief Richard Hongisto was not entitled to qualified immunity when he banned all protest demonstrations on May 1, 1992.

In support of hundreds of demonstrators who were arrested in San Francisco while assembling to protest the acquittal of the Los Angeles police officers who beat Rodney King, the ACLU-NC filed an *amicus* brief in the *Collins* case in October 1995.

"Chief Hongisto's decision to ban any protest demonstrations on May 1, 1992 violated core First Amendment principles because it prevented speech on an issue of great public controversy from being communicated at the very time when public concern and attention was focussed on the issue," said Alan Schlosser, ACLU-NC Managing Attorney.

"The City was attempting to justify the ban on speech based on the fact that there had been disorder and looting the night before. Because the strength of our commitment to free speech receives its ultimate test when government purports to base actions limiting speech on the exigencies of an emergency, whether national security or a local disorder, we felt it was especially important to file an *amicus* brief in this case," Schlosser added.

The evening of May 1, 1992 - two days after the announcement of the verdicts in the Rodney King beating case, and one day after there had been incidents of looting and disorder in the downtown San Francisco area - Hongisto, former Mayor Frank Jordan and other city officials decided not to permit any demonstrations, peaceful or otherwise, throughout the City of San Francisco. When protesters gathered for a march at 24th and Mission Streets to speak out against racism and police brutality, Police Chief Hongisto ordered them to disperse. By the end of the evening, over four hundred people had been arrested; they were held in the Santa Rita jail for up to 55 hours.

The protesters sued in U.S. District Court charging the City and specific city officials for violating their First and Fourth Amendment rights. The defendants moved for summary judgment based on qualified immunity. In 1995, U.S. District Court Judge Claudia Wilken denied the defendantsþ motion, and Chief Hongisto, the Mayor and other police officials appealed to the Ninth Circuit.

Agreeing with the ACLU-NC *amicus* brief, a three-judge panel of the Ninth Circuit found that the former police chief was not entitled to qualified immunity because he could not have reasonably believed that it was lawful to issue a blanket ban on all protest demonstrations, no matter how peaceful, in view of the fact that with few exceptions the First Amendment prohibits prior restraints on protected speech and content-based restrictions.

The opinion stated, "The law is clear that First Amendment activity may not be banned simply because prior similar activity led to or involved instances of violence. The courts have held that the proper response to potential and actual violence is for the government to ensure an adequate police presence and to arrest those who actually engage in such conduct rather than to suppress legitimate First Amendment conduct as a prophylactic measure."

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Writing Your Rights

by Ogai Haider

More than 400 high school students from throughout northern California gathered in the Martin Luther King Jr. Student Union building at UC Berkeley on October 22 for the ACLU-NC "Writing Your Rights" conference for high school journalists, sponsored by the ACLU-NC Howard A. Friedman First Amendment Education Project.

From the opening event -- a "Great Newspaper Exchange" where students shared copies of their high school papers to the sounds of Youth Radio the rap group 144,000 -- to a question-and-answer panel with working women journalists Brenda Payton of the *Oakland Tribune*, Thuy Vu of KPIX-TV and Rita Williams of KTVU, students were engaged in topics about the media and their own journalism experiences.

A highlight of the conference was an exchange between journalism students and members from the MEChA club from East Union High School in Manteca who led a panel discussion on two controversial articles in an issue of their school newspaper. One of the articles, "Immigrants Deserve More Respect," was pro-immigrant the other, "Close America's Doors," was anti-immigrant. Students angered by the anti- immigrant article led a walk-out, and the school administration took steps to alleviate the problem. The journalism class felt the administration was censoring them, while MEChA students believed the article to be "immigrant bashing," and did not belong in the school paper.

Conference participants lined up at a mike and offered their own opinions to the East Union High students about criticism, address censorship, and the responsibility journalism classes have in addressing racial tension.

In the workshop Exposing Media Biases facilitated by students Jen Giese, Asael Saia and Ogai Haider, participants discussed the creation and perpetuation of stereotypical images by the mainstream media. Resource Speaker Eva Martinez from the Center for Integration and Improvement of Journalism used graphic slides to portray racial and ethnic stereotypes. Martinez asked students their response to cartoon which pictured a well-dressed white girl and an African American girl wearing a maid's outfit. The caption for the comic read, "Getting back into the times." Students in the workshop shared their own experiences with media bias, and discussed what they as students could do to advocate media responsibility.

Other student-led workshops were held on silencing the censors, covering hot news topics, diversity in media coverage and staff, alternative expression, how to obtain inside information, journalistic ethics, libel, and slander. Resource speakers at the workshops included ACLU-NC staff attorneys Margaret Crosby and Ann Brick, and *Bay Guardian* editor Tim Redmond.

At the closing session, Student Advisory Committee member Bryant Tan encouraged the audience, "Remember, we have rights as young people and it's up to us to educate ourselves and to stand up for what we believe in."

The conference was planned by members of the ACLU-NC Student Advisory Committee with the help of Nancy Otto, Director of the Howard A. Friedman First Amendment Education Project.

Ogai Haider is a member of the ACLU-NC Student Advisory Committee and a junior at Ygnacio Valley High School in Walnut Creek.

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Friedman Project Trains Schools in Lesbian and Gay Sensitivity

by Nancy Otto
Director, Friedman Project

An innovative new program to train teachers and administrators in public schools about how to facilitate discussions on lesbian and gay issues in the classroom has been launched by the Howard A. Friedman First Amendment Education Project. This unique mobile training for schools in northern California also helps schools create hostility-free environments for all students on campus.

During the fall semester of the 1996-1997 school year, the Project traveled to four school districts to conduct on-site trainings: Healdsberg Junior High School, Montera Junior High School in Oakland, Valley High School in Dublin, and Ukiah High School. All but the Ukiah training were mandatory for all faculty and staff.

During our training sessions, we show the recently released documentary, "It's Elementary: Talking About Gay Issues in School," by Academy Award-winning director Debra Chasnoff. We follow the screening with an interactive panel discussion on how to create safe environments for sexual minority youth and how to answer difficult questions regarding lesbian and gay issues.

Our panelists include ACLU-NC staff attorney Kelli Evans, Crystal Jang of San Francisco Unified School District's Support Services for Sexual Minority Youth, and when possible, lesbian and gay students who have graduated from the school.

This unique effort has been universally acclaimed by all of the schools that we have visited. We are indebted to Crystal Jang, an innovative leader in this field, for her generous commitment of time and expertise for the training. We would also like to thank Marty Carls of San Francisco's Marina Middle School and Jennifer Lee, a recent graduate from Washington High School in San Francisco for their participation at the Montera Junior High School training.

We are also extremely grateful to the Columbia Foundation and to the PG&E Lesbian and Gay Youth and Education Fund of the Horizons Foundation who have given us generous grants for this program.

The Project plans to continue offering this on-site training to schools throughout the spring of 1997. If your school is interested in learning more about the program, please call the Friedman Project at 415/621-2493.

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Young Artists Paint for Civil Liberties

A highlight of the Bill of Rights Day Celebration reception was the exhibit of art work by high school students who entered the fourth annual Freedom of Expression Art Show sponsored by the San Francisco Chapter.

The exhibit drew hundreds of student entrants who addressed civil liberties and civil rights themes with thoughtful perspectives in paintings, music, poetry and short stories.

During the Celebration, investigative journalist and author Mark Dowie, distributed cash prizes to students and funds for supplies to their classrooms; Dowie served as a judge for the exhibit, along with Frish Brandt, director and owner of the Fraenkel Gallery; Tillie Olsen, novelist and lecturer; and Eduardo Pineda, muralist and coordinator of youth programs for S.F. Museum of Modern Art.

The show was organized by a committee from the San Francisco Chapter led by Roberta Spieckerman and Phillip Mehas with members Angelo Butler, Paul Camili, Irving Hochman, Regina Kleiwer, Julie Pokrivnak, Florence Moore, Eleanor Riordan, Miriam Rothschild and Daniel Saks. Awards, including cash, art supplies and memberships to the San Francisco Museum of Modern Art, were donated by local businesses, organizations and individuals.

During January, the art work is on exhibit at the San Francisco Board of Education Building at 135 Van Ness Avenue in San Francisco.

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