



ACLU NEWS

Newspaper of the
American Civil Liberties Union of
Northern California

Volume LXII, No. 4 - May/June 1998

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ACLU Ballot Card Take This to the Polls!

Proposition 227 - VOTE NO Don't End Bilingual Education

The ACLU-NC opposes this measure which proposes to eliminate bilingual education and replace it with a single year of English immersion in a classroom with children of all ages. The ACLU believes that 227 would have a disproportionate negative impact on racial minorities by denying them the opportunity to an equal education.

Proposition 226 - VOTE NO Limiting Union Political Speech

The ACLU-NC opposes this initiative which would require union members to affirmatively agree every year to have any portion of their union dues used for political activity, severely limiting a union's ability to organize and speak out on behalf of its rank-and-file members. Currently, union members can choose not to pay dues spent on political issues with which they disagree.

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Academics, Contractors Sue Governor for Barring State Information on Discrimination

Charging that Governor Wilson's March 10 Executive Order barring collection of statistics on the participation of women and minorities in California's public contracting system is an illegal suppression of crucial information, civil rights groups on April 2 filed a lawsuit, *Barlow v. Wilson*, in Alameda County Superior Court.

The plaintiffs - who include members of the academic and business communities - charge that Governor Wilson's sweeping Executive Order represents an unlawful attempt to repeal a California law requiring the state to monitor the participation of minority- and women-owned businesses in state contracts. The Order, among other actions, struck provisions instructing agencies to gather data used to monitor the fair and equitable awarding of over a billion dollars in state contracts.

"In order to understand and combat discrimination, policy-makers, community groups and the public must be informed about the state's use of taxpayer funds," said attorney Oren Sellstrom of the Lawyers' Committee for Civil Rights. "If in fact the state does not discriminate, collecting and releasing these numbers will prove that. On the other hand, if discrimination does exist, what better way to hide it than to stop collecting evidence?"

Dr. Andrew Barlow, who has been a Visiting Associate Professor of Sociology at U.C. Berkeley for the last decade and is currently working on a book about the impact of civil rights law on race relations, noted, "This data is crucial for monitoring the impact of government programs on minorities and women. Our ability as researchers to assess the efficacy of government programs and policies depends on the quality of the data that we can work with.

"Until a generation ago, the government erected barriers that prevented minorities and women from achieving equal opportunity and we must remain vigilant against the possibility of that happening again. In addition, even government programs that appear to be race- or gender-neutral can, in reality, present many obstacles to minorities and women especially in awarding public contracts.

"The more light shed on these programs the better," said Dr. Barlow, who also teaches at Diablo Valley College in Pleasant Hill.

Plaintiff Fred Jordan, President of F.E. Jordan Associates, an engineering firm with a long history of public contracts, said,

"The Governor has a responsibility to prevent discrimination in this state. But his order removes an invaluable tool that could reveal that discrimination."

ACLU-NC staff attorney Ed Chen said, "As more and more of the data-gathering structure is dismantled, more and more of this vital information is irretrievably lost. That is why we are asking the court to intervene."

Governor Wilson justified his executive order by the recent Ninth Circuit decision in *Monterey Mechanical v. Wilson*. In that case, the Court struck down a requirement in Public Contract Code 10115.5 that contractors make good faith efforts to reach participation goals for women- and minority-owned firms.

"The case did not declare the state's data-gathering law unconstitutional," said Beth Parker of Equal Rights Advocates. "In fact, it did not refer to the data collection process at all. This suit is aimed at preventing the state from stopping the data collection that is required by law. This data is needed to ensure that state contracts are awarded fairly and equitably."

Although Judge Henry Needham denied the plaintiffs' motion for a preliminary injunction on May 1, the case continues in Alameda County Superior Court.

The plaintiffs are represented by Oren Sellstrom of the Lawyers' Committee for Civil Rights; Ed Chen of the ACLU of Northern California; Beth Parker of Equal Rights Advocates; Julian Gross and William McNeill of the Employment Law Center; Mark Rosenbaum and Dan Tokaji of the ACLU of Southern California; and Professor Karl Manheim of Loyola Law School.

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Affirmative Action Wins Out in State Legislature

In April, civil rights advocates celebrated the defeat of two bills which would have dismantled or greatly weakened over thirty of California's affirmative action programs in public sector employment, education, and state contracting.

The bills originating in the State Assembly and State Senate threatened statutes ranging from the American Indian Early Childhood Education Program, credited with greatly reducing the dropout rate of Native American high school students, to the programs that provide opportunities for women and minority-owned business at the state and local level.

"We're very pleased that the Legislature voted down these harmful bills," said ACLU of California Legislative Director Francisco Lobaco. "The preserved affirmative action programs are, despite the passage of Proposition 209, legally and constitutionally sound and help alleviate discrimination against women and minorities in this state."

Assemblyman Richter and Senator Kopp drafted the measures, AB 1700 and SB 2041 respectively, to implement Governor Wilson's March Executive Order, which listed 31 state affirmative action statutes slated to be repealed or altered to allegedly comply with the requirements of Proposition 209.

The ACLU and others lobbying against the bills charged that Proposition 209 does not require the dismantling of all public affirmative action programs and that the programs listed in the bills do not grant "preferences," but rather provide outreach and recruitment necessary to combat discrimination.

In addition, soon after Wilson issued the March order, a consortium of civil rights organizations - including the ACLU affiliates of Northern and Southern California, Equal Rights Advocates, Lawyers' Committee for Civil Rights, and others - created and widely distributed the booklet, *Reaching for the Dream: Profiles in Affirmative Action*, which examines the programs under attack and introduces individuals who benefited from those programs. Every member of the State Legislature received a copy of the publication.

The Assembly Judiciary Committee cited *Reaching for Dream* in its analysis of Richter's bill and concluded that the named programs "in no way impose quotas or exclude anyone based

on race, ethnicity or gender," and that Richter "has not submitted any evidence these programs violate Proposition 209 in any way."

To order Reaching for the Dream: Profiles in Affirmative Action please call or write Publications Department, ACLU-NC , 1663 Mission Street, Suite 460, San Francisco, CA 94103. Single copies are available at \$3.; Bulk orders are \$25 for each order of ten.

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Students Sue Morgan Hill School District for Harassment

On April, 21, five present and former high school students from Live Oak High School in the Morgan Hill Unified School District in Santa Clara County filed a suit in U.S. District Court in San Jose against the school district. The suit charges that school officials refused to take any action to protect the students from ongoing harassment on the basis of gender and perceived sexual orientation, violating of the school's own sexual harassment and hate violence policies, as well as federal and state law mandating school safety and equal protection for all public school students.

The plaintiffs, four female students and one male student, describe repeated incidents of severe verbal, physical, and sexual abuse against students who are perceived to be lesbian or gay at Live Oak High School, from students yelling "faggot," "dyke," "homo," "queer," "fucking faggot," and "fucking dyke" in hallways and classrooms to threats and incidents of sexual and physical violence. The complaint alleges that school officials fostered an atmosphere of bullying and abuse by refusing to investigate incidents of harassment or to discipline students who engaged in harassing behavior against students who were perceived to be lesbian or gay.

In one incident, a 7th grade student at Murphy Middle School was hospitalized for injuries to his ribs after a group of male students shouted "faggot" and other homophobic epithets while repeatedly hitting and kicking him at a school bus stop. The beating took place in full view of the school bus driver, who took no action. Although the student's mother called the police as well as administrators at the school, no disciplinary action against the perpetrators was ever taken.

In a subsequent incident at Live Oak High School, the student was forced to drop out of a drafting course after the teacher refused to intervene when another student repeatedly referred to him as "homo" in class and eventually threatened him with physical violence, stating that "I want to beat you up after class but I need a baseball bat to hit you because I don't want to get AIDS."

A female student at Live Oak High repeatedly found pornographic literature and obscene notes with graphic and violently anti-lesbian threats placed in her locker, including pictures of women who had been bound and gagged. On one occasion, the student discovered a pornographic picture and a handwritten note taped on the front of her locker. The note read "Die, Die...Dyke

bitch, Fuck off. We'll kill you." When the student sought help from the school, school officials refused take any action to protect her and even denied her request to change lockers, despite the school's practice of allowing other students to change lockers merely to be closer to friends.

Other incidents described in the complaint include:

- a Live Oak High School math teacher refused to discipline a male student for making sexually explicit and harassing comments to a female student in math class, including "you fucking dumb dyke" and "you know you like it up the butt."
- Live Oak High School staff refused to intervene when students harassed a male student by repeatedly yelling "faggot" during school dance recitals in which the student was a participant.
- no disciplinary action was taken after a group of male students sexually harassed and physically assaulted a female student and her girlfriend in the teacher's parking lot at Live Oak High School.

The suit charges that Morgan Unified School District personnel repeatedly ignored or minimized the seriousness of reports of harassment and abuse by students and parents solely because the students were perceived to be lesbian or gay. "I am shocked that a school would allow this kind of behavior, and I am afraid for the students who are still there," stated Diane Ritchie, a San Jose attorney who is representing the students along with the ACLU-NC and the National Center for Lesbian Rights.

"All students have a right to be treated equally and to attend school without fear of violence or hostility," stated Kelli Evans, ACLU-NC staff attorney. "When school officials disregard the law by refusing to protect students who are perceived to be lesbian or gay, it sends a message that violence against lesbian and gay students is acceptable."

Kate Kendell, executive director of the National Center for Lesbian Rights said, "These students and parents repeatedly turned to the school for protection, and the school simply stood by while the violence and the threats of violence escalated."

The plaintiffs, who are seeking declaratory and injunctive relief, as well as monetary damages, are represented by Diane Ritchie of San Jose; Kelli Evans of the American Civil Liberties Union of Northern California; and Shannon Minter of the National Center for Lesbian Rights.

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Judge Upholds San Francisco's Domestic Partners Equal Benefits Ordinance

By Maria Archuleta

Breaking new ground in the struggle for lesbian and gay rights, on April 10, U.S. District Court Judge Claudia Wilken largely upheld San Francisco's Equal Benefits Partners Ordinance. Her ruling in the case, Air Transport Association of America v. City and County of San Francisco, was the first of its kind in the country.

"Judge Wilken's decision represents a major step forward for the effort to get fair treatment for lesbian and gay employees," said ACLU-NC staff attorney Kelli Evans. "Other cities interested in passing similar ordinances have been closely watching this lawsuit. We are hopeful that many will adopt laws that follow the guidelines set out in this decision."

The controversial ordinance which went into effect July 1, requires companies that the City does business with to provide the same benefits to unmarried domestic partners that they provide to married couples.

Challenging their obligation to follow the ordinance, in May 1997, the American Transport Association filed suit against the City of San Francisco on behalf of major airlines.

Wilken's ruling firmly upheld the right of the City to pass and enforce the law. In her opinion she wrote, "...the ordinance effectuates a legitimate local public interest to combat discrimination on the basis of sexual orientation."

However, Wilken also held that the ordinance cannot be applied to out-of-state conduct that is unrelated to the purpose of a city contract. Thus, the City could not force the federally regulated airlines to abide by the Domestic Partners Ordinance.

National ACLU Lesbian and Gay Rights Project Director Matt Coles explained, "Cities across America have been waiting for this decision so that they could know if it is legal for them to demand that the people they do business with will treat lesbian and gay couples fairly. The clear meaning of Judge Wilken's decision is that in most circumstances, they can. It is only

when the city does something that typical consumers do not do, like run an airport, that they may not pick and choose who they will do business with. When they buy things or contract for ordinary services, they can."

Evans added, "While it is true that the City of San Francisco will not be able to demand that airlines operating out of its airport treat lesbian and gay employees like heterosexual employees, Judge Wilken makes it clear that the airlines are an exception. In general, when the City buys goods or services it can refuse to do business with companies that discriminate against gay and lesbian employees, just as ordinary consumers can refuse to do business with companies with which they don't approve.

While the airlines may have won this particular battle, the City - and advocates for equality - have won the war for fair treatment."

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Utah High School "Gay/Straight Alliance" Sues School Board Over Right to Exist

Challenging the Salt Lake City Board of Education's discrimination against gay-related student groups, on March 19 a coalition of civil rights organizations filed suit in U.S. District Court for the District of Utah.

Representing the student club called the East High Gay/Straight Alliance, the ACLU-NC, the ACLU of Utah, Lambda Legal Defense and Education Fund, the National Center for Lesbian Rights and the law firm Heller Ehrman White & McAuliffe charge that the Board is violating the federal Equal Access Act and the First Amendment by banning some non-curricular clubs while allowing others to meet.

In 1996, soon after some previous East High School students formed a gay and straight coalition and sought to meet at the school, the Board declared a ban on all non-curricular clubs. Curricular clubs usually are those directly linked to a school's curriculum and school sponsored, such as most French clubs. Non-curricular clubs are independent of school courses, such as chess clubs.

Since imposing the ban, Board has improperly reclassified some groups as curricular, such as the Future Homemakers of America and allowed other clubs such as the Key Club to meet unofficially even though they have not been reclassified.

The law requires any public secondary school that accepts federal funding to allow all school clubs equal access to its facilities.

"If the Board allows these non-curricular clubs to meet, it must also permit all other appropriate clubs, like the native American Club, the Latino Pride Club, Young Democrats and Young Republicans, and the Gay/Straight Alliance," said ACLU-NC staff attorney Kelli Evans, who is representing the students.

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Ron Wilmot's Legacy of Activism

By Stan Yogi

ACLU supporter Ron Wilmot once said, "Charity, especially giving back to the community, gives me a sense of purpose and a feeling that is invaluable to my survival." Ron's dedication to the San Francisco Bay Area community was manifest not only during his life but also through his estate.

The ACLU Foundation of Northern California is honored to be a beneficiary of Ron's trust. Ron, who died last year at 46, was a tireless advocate and fund-raiser for lesbian and gay and AIDS organizations, and his bequest to the ACLU Foundation will benefit our ongoing efforts to protect the rights of lesbians and gay men in northern California and nationally.

Born in Albany, New York, Ron graduated from Ohio's Miami University in 1972. After college, he accepted a commission in the Navy and during the Vietnam War served as the chief communications officer aboard the USS Enterprise. Ending his tour of duty on Treasure Island after three years of service, Ron received an honorable discharge.

Ron acquired Hartford Properties in 1978 with his late business partner Rick Cohen, and the two built the business into one of the most successful real estate firms in San Francisco. Community service was an integral part of the Hartford business philosophy, which included donations and services to thank the community that supported them.



Ron's community service extended beyond his business. For 20 years, he spent his Wednesday mornings reading to the blind at the Rose Resnick Lighthouse for the Blind in San Francisco, and he was integral, as a donor and a real estate broker, in securing a new building for his synagogue, Congregation Sha'ar Zahav.

Ron was HIV-positive for 18 years and devoted much of his energy raising money for AIDS

organizations and educating himself and others about AIDS and AIDS treatments. He served on the advisory board of the Jewish Family and Children's Services AIDS Project and was the first speaker in their "Putting a Face to AIDS" speakers bureau.

An avid cyclist who credited bicycling with keeping him asymptomatic for most of the years he was HIV-positive, Ron created a bike-a-thon to benefit Project Inform, an organization that provided him and others with accurate and up-to-date information on AIDS treatments. This lasting legacy that bears his name is held each May.

The afternoon before his first bike-a-thon in 1995, Ron was taken to the emergency room after suffering a severe reaction to an experimental drug. Although he was hospitalized overnight, he nonetheless insisted on being at the bike-a-thon when it began at 10 a.m. Television crews had gathered awaiting the fundraiser's creator. Ron's friends got him out of the hospital 20 minutes before the event was to begin, and he appeared at the starting line, dressed in a biking outfit, perched on his bicycle to talk with reporters.

Ron's generous bequest to the ACLU is an ongoing legacy of his vision and commitment to securing equality and freedom for lesbians and gay men. In naming the ACLU a beneficiary of his trust, Ron recognized the important work of the ACLU in fighting for the rights of gay people with the same determination that he brought to his own life.

Ron's partner, Jim O'Donnell, explained that Ron believed "Each life is meant to have a purpose, and it's our responsibility to determine what our purpose is. For Ron, that meant giving back to the community he was part of and making it a better place."

The ACLU Foundation of Northern California is deeply grateful to Ron Wilmot for his commitment and dedication to our community and for helping to make it a better place by ensuring equal rights and equal protection for gay men and lesbians.

If you would like to make a bequest to the ACLU, please contact Stan Yogi, Director of Planned Giving, at 415/621-2493 ext. 30.

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Advocates Challenge Contra Costa's Exclusion of Southeast Asians from Benefits

On April 24, a coalition of civil rights advocates filed a complaint challenging recent policy changes by the Contra Costa County Department of Social Services (CCCDSS) that have resulted in effectively cutting off public benefits and services to limited English proficient and monolingual Southeast Asians in the county.

The Administrative Civil Rights Complaint filed with the Department of Justice Civil Rights Division, Health and Human Services, and the Department of Agriculture's Food and Nutrition Service, asks the federal offices to require CCCDSS to take immediate steps to eliminate the discriminatory language barriers to accessing public benefits and services for Southeast Asian immigrants in Contra Costa County.

CCCDSS made changes to its "Refugee Unit" without first conducting the civil rights impact analysis mandated by federal laws and regulations. Prior to the changes, the Refugee Unit served Southeast Asian clients through a concentration of multilingual interpreters and workers who handled cases from beginning to end, and covered all the different benefits programs. The county originally established the unit after civil rights investigators found that the agency failed to provide sufficient bilingual language services to the vast number of Indo-Chinese immigrants in need of public assistance.

Beginning in October of 1997, CCCDSS effectively dismantled the Refugee Unit by reassigning and relocating bilingual workers and interpreters and transferring many of the cases of monolingual and limited English proficient Southeast Asians out of the Refugee Unit. These changes have left many Southeast Asian applicants and recipients with workers who do not speak their native language.

Jodie Berger, an attorney at the Employment Law Center of the Legal Aid Society of San Francisco, said, "Cutting off people's benefits just because they cannot communicate with their worker is wrong and puts huge portions of the Southeast Asian refugee population at risk of hunger and homelessness."

The claimant, whose primary language is Laotian, is one of a large number of people harmed by the policy changes. She was denied food stamps because she could not communicate the

correct and necessary information to her intake worker who spoke only English. The claimant was misidentified as an "English-speaking" client because she could answer basic questions such as her name and address. After an initial translated interview, the county gave the client forms to fill out in English, and failed to respond to her repeated requests for an interpreter or bilingual worker.

The claimant is represented by Contra Costa Legal Services Foundation, the Center on Poverty Law and Economic Opportunity, the Employment Law Center of the Legal Aid Society of San Francisco, the American Civil Liberties Union of Northern California, Lawyers Committee for Civil Rights for the San Francisco Bay Area and the Asian Law Caucus.

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Say What??!! '98 Students Celebrating Freedom of Expression

By Nancy Otto



At the podium, Say What??!! conference participants share views on the Juvenile Crime Bill. Howard A Friedman Project members (at left) Sabrina Ciaravella and Suemyra Shah moderate the open microphone session.

On March 31, 700 high school students from 30 high schools throughout northern California converged on Sacramento to attend the seventh annual ACLU Say What??!! Students Celebrate Freedom of Expression Conference to speak their minds and organize against several juvenile justice bills in the Legislature.

During the free conference, organized by the ACLU-NC Howard A. Friedman First Amendment Education Project and planned by ACLU student activists, participants held a rally on the Capitol steps and then presented Assemblymember Bob Hertzberg huge postcards signed by all the students protesting the Gang Violence and Juvenile Crime Control Act of 1998. This Act would try more juveniles as adults, remove the confidentiality surrounding juvenile records, provide stricter sentences for gang-related crimes, and increase the number of specific crimes that would count as "strikes" under the "three strikes you're out" sentencing law.

The day-long event also featured live music, street theater, photo exhibits, and the opportunity to lobby elected officials. Conference workshops covered topics such as bilingual education, same sex public schools, the rights of teen parents, special education, sex education, juvenile justice, homelessness, religious clubs on campus, and empowering gay, lesbian, bisexual and transgendered youth. One of the most moving workshops was on the death penalty and featured two family members of murder victims who spoke about their differing views on whether the death penalty helps them to heal.

The ACLU student activists decided to move the Say What??!! conference to Sacramento this year to take advantage of the lobbying and activist opportunities at the Capitol.

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ACLU-NC Board Elections

The ACLU-NC Board of Directors, in accordance with changes adopted in 1996, have an election schedule as follows:

Nominations for the Board of Directors will now be submitted by the September Board meeting;

Candidates and ballots will appear in the November-December issue of the ACLU News;

Elected Board members will begin their three-year term in January.

As provided by the revised ACLU-NC By-Laws, the ACLU-NC membership is entitled to elect its 1998-99 Board of Directors directly. The Nominating Committee is now seeking suggestions from the membership to fill at-large positions on the Board.

ACLU members may participate in the nominating process in two ways:

1. They may send suggestions for the Nominating Committee's consideration prior to the September Board meeting (September 10, 1998). Address suggestions to: Nominating Committee, ACLU-NC, 1663 Mission Street, #460, San Francisco, CA 94103. Include your nominee's qualifications and how the nominee may be reached.
2. They may submit a petition of nomination with the signatures of 15 current ACLU-NC members. Petitions of nomination, which should also include the nominee's qualifications, must be submitted to the Board of Directors by September 30, 1998 (twenty days after the September Board meeting). Current ACLU members are those who have renewed their membership during the last 12 months. Only current members are eligible to submit nominations, sign petitions of nomination, and vote.

ACLU members will select Board members from the slate of candidates nominated by petition and by the Nominating Committee. The ballot will appear in the November-December issue of the ACLU News.

Revised ACLU-NC By-Laws

Article VII, Section 3:

Presentation of Nominations and Additional Nominations. The final report of the committee to nominate members-at-large to the Board shall be presented at the September Board meeting. Members of the Board may propose additional nominations. If no additional nominations are proposed by Board members, the Board by a majority of those present and voting, shall adopt the nominating committee's report. If additional nominations are proposed, the Board shall, by written ballot, elect a slate of nominees with each member being entitled to cast a number of votes equal to the vacancies to be filled; the persons nominated by the Board shall be those persons, equal in number to the vacancies to be filled, who have received the greatest number of votes. The list of nominees to be placed before the membership of the Union for election shall be those persons nominated by the Board as herein provided, together with those persons nominated by petition as hereinafter provided in Section 4.

Article VII, Section 4:

Recommendations and Nominations by Members of the Union. Any fifteen or more members of the Union in good standing may themselves submit a nomination to be included among those voted upon by the general membership by submitting a written petition to the Board not later than twenty days after the adoption by the Board of the slate of Board nominees. No member of the Union may sign more than one such petition, and each such nomination shall be accompanied by a summary of qualifications and the written consent of the nominee. This provision of the By-Laws shall be printed in the first page of the May-June issue of the ACLU News together with an article advising members of their rights in the nominating process.

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