

# ACLU SPECIAL ISSUE 2008 **news**

BECAUSE FREEDOM CAN'T PROTECT ITSELF

VOLUME LXXII ISSUE 3

WHAT'S INSIDE

SPECIAL CAMPAIGN ISSUE: BALLOT INITIATIVES & EDUCATIONAL EQUITY CAMPAIGN

## SCHOOLS FOR ALL: ACLU-NC LAUNCHES CAMPAIGN TO END BIAS AND PUSHOUT IN SCHOOLS

By Diana Tate

One spring day in 2007, officers from the Fairfield Police Department (FPD) entered the Rodriguez High School campus and began rounding up a group of students.

Working in concert with the campus-based police officer—known as the School Resource Officer—members of the FPD approached two groups of Latino students at lunch, lined them up in front of their peers, accused them of being gang members, and photographed them.

Not only did the ten students targeted in the incident have no connections to gangs, but they had done nothing wrong. None had violated any rules. None had criminal records.

Far from being an isolated incident, the racial profiling of the Fairfield students epitomizes a trend—one that has become increasingly apparent over the past few years: aggressive, school-based policing leads to a climate in which students are being subjected to bias and harassment by school authorities.

Now consider the story of a young man at the center of a different ACLU-NC case, in Lake County.

On nearly every day since he began the third grade in Lake County, California, Robby was the target of taunts, bullying, and anti-gay name-calling by peers at his school based on his gender identity and perceived sexual orientation. The verbal abuse escalated in middle school. After gym class, Robby was physically attacked by a group of boys who knocked him to the ground and kicked him in the stomach and head while screaming “fag” and “queer” at him.

Despite repeated calls for intervention from Robby’s parents, the administrators and teachers at Robby’s school failed to take steps to protect him. Finally, after years of abuse and after a comprehensive settlement was negotiated



by the ACLU-NC, Robby and his parents decided that he would be safer and feel stronger by transferring out of the school.

What does Robby’s story have in common with the experience of the students in Fairfield? In both, students’ civil rights were violated. But an even more troubling truth ties the two together: both schools not only failed to protect the students, but were responsible for the violations of their students’ rights. In Fairfield, the school actively partnered with the police department to publicly humiliate the students based on their race and false information. In Lake County, school officials were complacent, year after year, in allowing a climate of anti-gay harassment and intimidation to continue.

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YOUR GUIDE TO PROTECTING CIVIL LIBERTIES AT THE BALLOT BOX  
NOVEMBER 4 2008

VOTE NO

**PROP 4** would put teens at risk by restricting their access to reproductive health services. It would also create permanent barriers to counseling and care for pregnant teens.

**PROP 6** would deepen the budget crisis by diverting billions of dollars needed for schools, hospitals, and violence prevention programs into misguided efforts to incarcerate more and more people, including youth.

**PROP 8** would amend California’s Constitution to exclude a single group of people—gays and lesbians—from the right to marry the person they love.

**PROP 9** would erode the due process protections that currently exist in the criminal justice system, giving broad rights to compensation to anyone who claims to be a victim, without any standards and without proof they were harmed. The measure also would increase spending on prison and jail construction.

VOTE YES

**PROP 5** would provide drug treatment as an alternative to incarceration for non-violent offenders, offer common sense solutions to prison overcrowding, and save taxpayers billions of dollars.

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## LETTER FROM THE EXECUTIVE DIRECTOR



Dear Friends,

We are at a crossroads.

Your vote in the November election will help decide whether our California Constitution protects equal rights for us all—or only for some.

Proposition 8 would eliminate the right of same-sex couples to marry. The California Supreme Court's historic May 15 ruling not only brought great joy to lesbian and gay Californians and their supporters, it also influenced the rest of the country. That influence was evidenced by New York Gov. Patterson's announcement two weeks after the decision that his state would recognize the marriages of same-sex couples performed in California. Proposition 8 would enshrine discrimination into the California Constitution. We can't let that happen.

Another ominous measure, Proposition 4, is the third attempt in four years to amend the California Constitution to restrict teens' access to abortion. This initiative, a virtual replica of the two we defeated in the past, would put millions of young women at risk.

In this focused edition of the ACLU News, you will learn how you can join the campaigns to defeat these dangerous initiatives.

I also want to tell you about a ballot initiative we must support. Proposition 5, perhaps the most ambitious sentencing and prison reform effort in our state's history, is a refreshing shift from excessive punishment and toward meaningful rehabilitation. This vital measure will provide treatment for tens of thousands of nonviolent drug offenders, and dramatically reduce the number of people unnecessarily locked away behind bars.

You will also read how we are strengthening our innovative multidisciplinary approach to advancing priority civil liberties issues. This year our priority is stemming bias and "pushout" in California schools, including the ways too many of our young people of color are pushed out of the educational system and into the criminal justice system. We are engaging all of our strategies—litigation, lobbying, organizing, communications, and even our Friedman high school project—on these issues.

Finally, I want to share some bittersweet news with you. This fall, I will be leaving the ACLU-NC to join the Ford Foundation in New York as the Vice President for Peace and Social Justice.

I feel so blessed to have served at this affiliate and to have worked shoulder-to-shoulder with a dynamic staff, a talented and committed Board of Directors, and thousands of volunteers to keep Northern California on the nation's leading edge of civil liberties. Together we have built a strong and effective organization that is seen as a beacon in these challenging times for civil liberties.

Our Board of Directors is already preparing for the leadership transition. As it searches for a new Executive Director, we are pleased to have as our Interim Executive Director ACLU-NC veteran John Crew, who has nearly 30 years of experience with this affiliate in myriad capacities.

It has been an extraordinary pleasure and privilege to work with you at the ACLU-NC, and I thank you for all the support you have given me.

Maya Harris  
Executive Director

# SCHOOLS FOR ALL CAMPAIGN

## CONTINUED FROM PAGE 1

Over the past ten years, the ACLU-NC has taken on cases in which similar elements resurface, again and again: in Bishop, CA, a School Resource Officer engages in what might be termed aggressive discipline—throwing Native American students to the ground and over a perceived dress code violation. In Modesto, an African American student involved in a fight in which a white student calls him a "nigger" is suspended and forced to transfer to another school, while the white student receives a less harsh punishment. A freshman girl at a Vallejo high school is repeatedly harassed over her gender identity by teachers who see fit to humiliate her in science class ("What are you, a man or a woman?"), and P.E. ("You want to be a boy, so why do you want to be in the girl's locker room?").

Different places, different cases, all involving a school environment that condones harassment based on sexual orientation, race or other characteristics and (or in tandem with) aggressive, disproportionate discipline by school authorities against students based on race or other characteristics.

### THE PROBLEM OF PUSH-OUT

The ACLU-NC has learned a great deal through the resiliency and courage of the young people whom we have represented in these cases. As a result, our staff has developed an expertise in a phenomenon called "pushout." It goes like this: failure to address bias and harassment within a school creates an environment that alienates and ostracizes students, particularly marginalized and vulnerable students.

These experiences lead to a lack of engagement, misbehavior, and discipline that further excludes and alienates students. Many of these young people are pushed out of school and far too many are being pushed into the juvenile or criminal justice systems. Given that inequity and bias have a great deal to do with race, the problem of push-out is having a disproportionate impact on young people of color.

The ACLU-NC has launched a bold new multi-year campaign to challenge pushout. We have decided to marshal the forces within our organization and focus our attention in a concerted way to challenge the push-out phenomenon and end bias and discrimination in schools.



### OUR CAMPAIGN

Through our Schools for All campaign, we aim to:

- Raise public awareness of the problem of pushout in California schools;
- Stem the pushout problem by improving the retention of students of color, LGBT students, English learners, special education students, foster youth, and pregnant and parenting teens in regular (comprehensive) schools; and
- Strengthen the ability of students and parents/guardians to be effective advocates at the school and district levels.

In communities where the problems are the greatest, we need to align with others who will take action at the grass-roots level to call for shifting the culture of schools so that they become supportive, safe, and equitable. In newspapers and on television, we need to inject our concerns about justice in education into public debates over school reform and the well-being of youth. Litigation will be a crucial part of our strategy, but we also need to go beyond the courts to seize other means of social change.

In other words, we need to advocate for a shift in school climates, in public perceptions, and in public policies: away from practices that target, humiliate and exclude students and constrict opportunities. Toward a proactive approach to a culture of respect for all students, a climate of inclusion.

We have a great many allies in this struggle.

In the coming months, the ACLU-NC will step up our investigations of the bias and push-out problem in several counties in our region. We will continue to report on our strategies, the roadblocks that beckon, the doors that open, and the progress we forge. ■

*Your thoughts, ideas and reflections on the ACLU-NC's Schools for All campaign are most welcome. Please write to us via snail mail, or sign up for email updates at [www.aclunc.org](http://www.aclunc.org).*

*Diana Tate is Director of the ACLU-NC's Racial Justice Project.*

## FAMILIAR FACE STEPS IN AS INTERIM EXECUTIVE DIRECTOR

The ACLU-NC welcomes a familiar and experienced colleague as its new Interim Executive Director: John Crew, whose connection to the ACLU spans three decades.

The ACLU-NC Board moved quickly to identify an interim director to ensure that the swift pace of the work continues uninterrupted during the national search for a permanent Executive Director.



Crew began his career at the ACLU in 1978 as an intern with the ACLU of Illinois, moving on to work as a legal intern and then a contract attorney for the ACLU-NC. In 1984, he was named Political Conventions Project Coordinator for the ACLU-NC and the ACLU of Texas. Beginning in 1985, he spent 15 years as the Police Practices Project Director and staff attorney for our affiliate.

Crew left the affiliate to accept a one-year assignment as the founding Coordinator for the National ACLU's Campaign Against Racial Profiling. Since then, he has been a consultant to the ACLU-NC's Executive Director. In that role, he stepped in with aplomb to fill gaps when key staff positions have been vacant and to assist in strategic program development, oversight, supervision, and mentoring. ■

# NO ON PROPOSITION 8—YES ON MARRIAGE EQUALITY FOR ALL

By Elizabeth Gill

The ACLU is one of the country's most dedicated proponents of marriage equality—the right of same-sex couples to commit to the person they love with the same security, dignity, and respect granted to other couples. Right now, thanks to hard-won gains by the ACLU-NC and our allies, we have marriage equality in California. Prop 8 would eliminate this right, and jeopardize the social progress we have worked so long to achieve.

The time to do everything we can to ensure that this does not happen is now.

For defenders of civil liberties, defeating Prop 8 is critical. Prop 8 would amend California's Constitution to provide that only marriage between a man and a woman is valid or recognized in California. Excluding a single group of people—a minority that has traditionally been discriminated against—from a fundamental right is unprecedented, and its effect would be to undermine a foundational principle of our Constitution: equal protection under the law.

The freedom to marry is considered fundamental in the eyes of the law because it implicates core liberty and privacy interests. No less than freedom of speech or freedom of religion, the freedom to marry the person you love is an essential part of what it means to realize the promise of life, liberty, and the pursuit of happiness.

Everyone knows what it means to be married—here, and around the world. When you are married and your spouse is sick or hurt there is no confusion: You get into the ambulance or the hospital room with no questions asked. Stripping lesbian and gay couples of the right to marry would not only deny them dignity and respect; it would leave them vulnerable in times of greatest need.

Prop 8 would also write inequality into the California Constitution. For that reason, individuals and groups across the political spectrum have lined up against it—even if they personally do not support marriage for same-sex couples. Barack Obama and Gov. Arnold Schwarzenegger may not agree on much, but they both oppose Prop 8.

The California Supreme Court's May 2008 decision recognizing the fundamental freedom of gay and lesbian couples to marry was a historic victory for the ACLU and a milestone for civil liberties. Please protect marriage equality by doing all you can to persuade your friends, family, neighbors, and colleagues to vote NO on Prop 8 in November. ■

To connect with others in your area who are summoning the people power to reach every registered voter in California with our No on 8 message, visit [www.aclunc.org](http://www.aclunc.org).

Elizabeth Gill is a Staff Attorney with the ACLU-NC and the National ACLU's LGBT & AIDS Project.



Pali Cooper, left, and Jeanne Rizzo, two of the plaintiffs in California's marriage equality case, are exuberant on their wedding day, Sept. 6.

## NO ON PROP 4—PROTECT TEEN SAFETY

By Maggie Crosby

Proposition 4 will make California history, in an unfortunate way: For the third time in three successive elections, proponents are seeking to restrict teenagers' access to abortion.

Prop 4 is a virtual replica of Prop 73 in 2005 and Prop 85 in 2006, which were bankrolled by the same anti-abortion zealots and which voters had the good sense to reject.

Like them, Proposition 4 would amend the California Constitution to require that state-scripted notification of a teenager's intent to have an abortion be issued to her parents, or impose court hearings and delays before pregnant teenagers under 18 may obtain an abortion.

But Proposition 4 is even more dangerous than its predecessors.

First, Prop 4 would dramatically expand the liability of doctors who care for teenagers, authorizing lawsuits against them decades after an abortion is performed. This reveals the proponents' real motivation: to harass Planned Parenthood and caring physicians at other clinics.

Second, Prop 4 presents a dysfunctional option for teenagers in dysfunctional families who cannot safely notify their parents or obtain court orders. Proponents claim that a teenager living in an abusive home may request that notification be sent to a substitute relative over 21. But the option is illusory. To invoke it, the teen must first write out a history of charges against her parents and provide the document to the doctor. The doctor then must send the teen's written statement to law enforcement and send the state-scripted abortion notice to a designated substitute relative instead of the teen's parents, to-

gether with a letter saying that the parents have been reported to a law enforcement agency.

This provides no real protection for the pregnant teenager: If law enforcement pursues the report, or the relative calls the parents, the parents will find out about the teenager's allegations, her pregnancy, and her abortion.

Of course, parents want to be involved in their daughters' lives. Most pregnant teenagers confide in a parent. But government cannot mandate good family communication—which must start long before a daughter is pregnant. Teenagers who cannot safely talk to their parents about pregnancy and abortion usually have very good reasons for not tossing this explosive news at their parents: the family is in crisis, the parents would force the teen to have the baby, the parents are violent, or a relative has caused the pregnancy.

Parental involvement laws do not transform abusive, dysfunctional families into stable and supportive ones. They simply give pregnant adolescents difficult options at a difficult time in their lives.

Even the most resourceful teenagers have difficulty navigating through the court process. Sending a scared pregnant teenager to court to discuss the most intimate details of her life with a judge is a stressful, humiliating procedure that delays teenagers' access to abortion. (The proportion of second trimester abortions for minors rises in states with parental involvement



laws.) And in some states, the court system does not work. Clerks give teenagers inaccurate information or moralistic lectures; judges refuse to hear abortion cases or deny petitions for arbitrary or ideological reasons.

The ACLU of Northern California spent 10 years examining other states' experiences with parental involvement laws in our lawsuit challenging California's parental consent statute. The California Supreme Court ruled that this evidence "overwhelmingly" showed that these laws are dangerous and unconstitutional. Prop 4 attempts to overturn the Supreme Court ruling and engrave those dangers into the California Constitution.

The ACLU-NC is, once again, at the forefront of the state-wide effort to defeat Prop 4, called the Campaign for Teen Safety. According to the 2000 census, one in eight American adolescents lives in California. The consequences of amending the California Constitution to restrict their access to reproductive health would be devastating. ■

To find out more about the Campaign for Teen Safety and how you can help defeat Prop 4, visit [www.aclunc.org](http://www.aclunc.org).

Maggie Crosby is a Staff Attorney with the ACLU-NC.

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# ASK THE EXPERTS! STUDENT RIGHTS



GIGI PANDIAN

Eveline Chang

**E**veline Chang, Co-Director of the ACLU-NC's Howard A. Friedman First Amendment Education Project, discusses student rights and what justice looks and feels like at school.

For example, an incident of homophobic name-calling should be approached as a “teaching moment.” Rather than banning words, we should encourage dialogue about their history and impact. Educators should focus on building connections and consciousness among students, rather than on punishment. Reasonable consequences should be part of the lesson that homophobia and other forms of bias have no place

at school. This is different from a “zero-tolerance” approach. The curriculum and culture of schools should include the viewpoints, experiences, and contributions of everyone, not just the dominant culture. Material learned should also be relevant to students’ lives and experiences.

## WHAT DO YOU WANT ALL YOUNG PEOPLE TO KNOW ABOUT THEIR CIVIL LIBERTIES IN SCHOOL?

It’s critical for young people to know that they do, in fact, have rights at school, and that those rights have to be asserted. Most importantly, California students have the right to equal educational opportunity and to a respectful environment, free from harassment and discrimination. When harassment and discrimination are brought to their attention, school officials have a legal responsibility to take meaningful steps to end the discrimination and protect the students.

Students retain their constitutional rights in school—they have rights of freedom of expression and freedom from unreasonable searches and seizures, and they retain equal access and due process rights. These rights may be somewhat more limited in certain instances than they are outside of school, but they are still fundamental rights that belong to all students.

Landmark decisions and settlements won by the ACLU and others have established and upheld many of these rights. And they apply to all students, regardless of their immigration status.

## WHICH CIVIL RIGHTS ISSUES ARE OF GREATEST CONCERN TO STUDENTS TODAY?

There is a burgeoning movement of young people who are taking a strong, active stand to demand what we call educational justice. When we look at who actually has access to quality education, it’s clear that youth of color, youth from low income and immigrant communities, and youth with disabilities, for example, are being denied the benefits that students with more resources receive: quality curriculum, well trained teachers, decent textbooks, and facilities that are physically sound and safe.

Racial profiling and the criminalization of conduct that most people would consider ordinary youth behavior have resulted in the discriminatory use of discipline policies and aggressive policing of schools. Students of color and those with disabilities often receive harsher punishment for the same behaviors as their peers, and such incidents are more frequently referred to law enforcement.

LGBTQ youth are often ostracized by students, teachers, and school administrators, creating isolation and distress. Similarly, English-language learners may suffer social and linguistic isolation and be marginalized by schools that neglect their circumstances and needs. Of course, many young people in California fall into several of these categories.

All this treatment denies access to quality education and results in a trend in which young people are pushed out of traditional schools and into alternative schools, the juvenile or adult criminal justice system, the military, or the streets.

## WHAT ARE SOME OF THE WAYS IN WHICH YOUNG PEOPLE ARE STANDING UP TO DEFEND THEIR CIVIL LIBERTIES?

There are a huge number of incredible examples of youth organizing for social and educational justice in Northern California. To give a few examples: A coalition of hundreds of young people went to Sacramento recently to demand a halt to the proposed budget cuts to education. This is part of a growing movement of young people organizing to hold us all accountable for quality and inclusive education. Similarly, youth by the thousands walked out of school last year in support of immigrants’ rights. And daily, students are challenging aggressive treatment by military recruiters on their campuses.

## ABUSIVE POLICING IS A FACT ON SCHOOL CAMPUSES. CAN YOU TELL US ABOUT ALTERNATIVE MODELS FOR DEALING WITH CONFLICTS AND DISCIPLINARY ISSUES?

There’s an exciting model called “restorative justice,” which reflects a commitment to the belief that all students are valuable members of the community who deserve respect and inclusion. Under this model, when an incident occurs, a circle of people—those affected by the incident—come together. The idea is to acknowledge the impact of the action and to restore the community as a whole rather than to punish, exclude, and push out.

Say an item is believed to have been stolen. Rather than calling the police, all those affected come together to figure out what happened, to hear different viewpoints, to acknowledge the impact, and to figure out what can be done to repair or restore balance. This doesn’t mean that students aren’t held accountable for their actions. But this more holistic approach can establish and maintain trust and seeks to address more root causes as a community, rather than to exclude alleged offenders.

Restorative justice stands in sharp contrast to the popular but harmful “zero-tolerance” policies that many schools have adopted. In fact, recent studies have shown that not only has zero-tolerance been ineffective in reducing violence in schools, but it actually makes schools less safe while creating a culture of blame and punishment.

## WHAT ARE SOME OF THE SKILLS THAT YOU FOCUS ON IN THE ANTI-BIAS TRAININGS LED BY THE PROJECT YOU OVERSEE?

First, we clarify the legal responsibilities of educators. Then we work with teachers and administrators to devise a plan to create a truly inclusive school culture that incorporates youth leadership. True inclusion means creating an environment that is inviting, supportive, and respectful of all students and their whole identities. We review effective strategies for addressing incidents that are common and discuss various scenarios for handling conflicts effectively.

## WHAT DOES IT MEAN FOR YOUNG PEOPLE TO LEAD EFFORTS TO ENSURE THAT OUR SCHOOLS BECOME PLACES WHERE ALL STUDENTS CAN EXERCISE THEIR RIGHT TO AN EDUCATION?

We must recognize that young people are experts on how schools have failed them. While adults must hold schools accountable to the law, we must be able to step back, to realize that we don’t have all the answers, and to allow young folks to lead in forming their own equitable solutions. ■

*The Friedman Project works with high school students and teachers to improve student understanding of the principles underlying the Bill of Rights, to make connections between these rights and the issues in their lives, and to build power and leadership among young people so they may take the lead on issues affecting youth and their communities.*

### SAVE THE DATE! BILL OF RIGHTS DAY SUNDAY, DEC. 7

The last issue incorrectly listed the date as Dec. 14.

**Dear readers:** We hope you enjoyed this special issue introducing you to our campaign to stem bias and harassment in schools, and explaining our arguments on the November ballot initiatives. The fall issue of the ACLU News will land in your mailbox later this year and will contain all the features you have come to expect in our regular issues. The fall also marks ACLU-NC Board elections time, so the next issue will include voting forms. As always, we thank you for your dedicated readership.  
—Editor

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