

# ACLUnews

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## ACLU UNCOVERS SECRET MISSION TO ACQUIRE LETHAL INJECTION DRUGS

By Miriam Gerace

California's massive waste of time and money on a dysfunctional death penalty system was brought into high relief when the ACLU of Northern California uncovered a global, desperate scramble by the state to acquire lethal injection drugs. The story captured national and international headlines and resulted in editorials calling for replacement of the death penalty with life imprisonment without parole from the *New York Times*, *San Jose Mercury News*, *Stockton Record*, *Vallejo Times Herald*, *Long Beach Press Telegram*, *San Gabriel Valley Tribune*, *Pasadena Star News*, and *Whittier Daily News*. A spoof on Comedy Central's "Colbert Report" reached millions of viewers.

The story begins in late September 2010, after a failed attempt by the state to push through an execution before the expiration of its last batch of a court-mandated anesthetic. California's execution supplies seemed to be dwindling or gone. The only U.S.-based manufacturer of the drug stopped making it and said it would not make any more until 2011. Meanwhile, litigation on the constitutionality of the process was wending its way through the courts.



The spoof on Comedy Central's "Colbert Report" reached millions of viewers.

But in early October, the gears turned again in the state's machinery of death. The California Department of Corrections and Rehabilitation (CDCR) revealed that it had mysteriously

**CONTINUED ON PAGE 3**

## ACLU PROTECTS PREGNANCY COUNSELING AT CLINICS ACROSS THE COUNTRY, VIA AMERICORPS

By Laura Saponara

Within weeks after he was sworn in, President Obama rescinded the global gag rule, which prohibited organizations overseas that receive U.S. federal dollars from providing abortion counseling or services.

But a new domestic version of the gag rule popped up last year, when the federal agency that oversees community health centers declared that AmeriCorps members working at health clinics are prohibited from providing "direct education or information on abortions."

Because clinicians are ethically required to advise clients of all pregnancy options, the gag rule would have barred volunteers from engaging in pregnancy counseling.

ACLU-NC attorney Maggie Crosby and volunteer attorney Shannon Leong analyzed the law that created AmeriCorps, the Serve America Act (SSA), and its legislative history. They wrote to the Corporation for National and Community Service (CNCS), which oversees AmeriCorps:


THE ACLU-NC'S  
LETTER RESULTED  
IN A VICTORY FOR  
REPRODUCTIVE  
FREEDOM AND  
FREE SPEECH.

[The ban] will prevent pregnant women from obtaining information and counseling that is crucial to their health and their decision-making, especially clients from economically disadvantaged communities [who are] ...the people SAA is designed to assist.

The response resulted in a victory for reproductive freedom and freedom of speech.

Lawyers for the CNCS agreed that the restriction did not reflect Congress' intent when it passed the SAA. New guidelines were issued clarifying that AmeriCorps volunteers serving in health

clinics may provide pregnant clients with information on all of their options, including abortion.

Now, AmeriCorps volunteers who work in clinics are free to provide their clients with the full range of information they need to make fully informed decisions about their reproductive health. 

Laura Saponara is the ACLU-NC's Communications Director.

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# ACLU

AMERICAN CIVIL LIBERTIES UNION  
of NORTHERN CALIFORNIA



## LETTER FROM THE EXECUTIVE DIRECTOR

Bob Hsiang Photography



As I write this column, Governor Brown is working to find a way through the state fiscal crisis. Billions of dollars in cuts have already been made, the fate of the tax extensions is unclear, and the prospect of an all-cuts budget is looming.

By the time you read this column, we may know better what will happen when. A lot hangs in the balance.

And the ACLU is at work—pressing for sentencing reforms that improve public safety and also ensure greater fairness and equality. Reforms that help balance the budget, and balance the scales of justice.

A recent poll commissioned by the ACLU and allied organizations shows that nearly three-quarters (72%) of California voters support reducing the penalty for simple possession of drugs from a felony to a misdemeanor. And our campaign to convert all death sentences to life without parole is gaining momentum. These two reforms alone would save hundreds of millions of dollars per year that could be redirected to public safety priorities and educational opportunities.

I recently spent a full day in each of 12 Northern California and Central Valley cities. I met with community leaders, student activists, and ACLU members to talk about sentencing reform and other civil liberties issues.

Let me share one highlight. At Cal State Stanislaus, in the Central Valley, we met a group of brothers from NAK, a Latino public service fraternity. Working with the ACLU, these dynamic young leaders are now stepping up to educate their community about Constitutional rights and advocate for smart sentencing reforms.

If there is one bright spot in these tough economic times, it is the opportunity to work with ACLU members, NAK brothers, and other active community members and civic leaders to bring some balance back to our criminal justice system.

*Abdi Soltani*

Abdi Soltani  
Executive Director

P.S. Please visit [www.aclunc.org](http://www.aclunc.org) for the latest information on the state budget and sentencing reform. Write to Governor Brown or sign our online petition.

## BILL OF RIGHTS DAY: OUR ACLU TOGETHER

On December 5, the ACLU of Northern California celebrated Bill of Rights Day, honoring Ramona Ripston with the Chief Justice Earl Warren Civil Liberties Award for her three decades leading the ACLU of Southern California, Louise Rothman-Riemer and Davis Riemer with the Lola Hanzel Courageous Advocacy Award for their volunteer service, and the Sonoma County Chapter with the Dick Criley Activism Award for their wide-ranging work in their community.



Louise Rothman-Riemer and Davis Riemer (above); Sonoma County Chapter leaders Judith Volkart, Rick Coshnear, and Marty McReynolds receiving their award (top); and former ACLU-NC Executive Director Dorothy Ehrlich with Ramona Ripston (right).



Photos by Mary Lunetta



## BENEFACTORS DINNER



Susana Millman

Rochelle Hamilton (left), ACLU client and student who fought anti-LGBT Harassment and discrimination in her school district, spoke at the 2011 Benefactors Dinner on March 15. Hamilton is pictured with ACLU-NC Board Chair Michelle Welsh.

## MAGGIE CROSBY HONORED



Matthew Izzi

On March 1, ACLU-NC staff attorney Maggie Crosby was honored by the Bay Area Lawyer Chapter of the American Constitution Society.

## BOARD ELECTION RESULTS

Congratulations to ACLU-NC's new board members, officers and executive committee members!

### Election Results: Board of Directors

The membership of the ACLU-NC has elected the following people to serve on the Board of Directors for the 2011 term [an asterisk (\*) denotes an incumbent]: \*Cherri Allison, \*Farah Brelvi, \*Christy Chandler, \*Shelley Curran, \*Yohance Edwards, Cynthia Carey-Grant, \*Ajay Krishnan, \*Niki Solis, \*Ken Sugarman and \*Natalie Wormeli. We also thank our outgoing at-large Board member Lisa Honig and BNEB Chapter rep Elliot Halpern for their valuable contributions to our work and mission.

### New Officers & Executive Committee Members

The ACLU-NC Board of Directors elected Mickey Welsh as Board Chair, Ken Sugarman as Finance Committee Chair (Secretary/Treasurer), Cherri Allison as National Board Representative, and Simran Kaur as Affirmative Action Officer. The Board has also re-elected Susan Mizner as Development Committee Chair, Farah Brelvi as Legislative Policy Committee Chair, Jahan Sagafi as Legal Committee Chair, and Allen Asch as Field Activists' Committee Chair. The 2011 Executive Committee will also include the following "at-large" members: Nancy Pemberton, Elizabeth Zitrin and Frances Strauss (*member emerita*); as well as Marin County Chapter representative George Pegelow.

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Membership (\$20 and up) includes a subscription to the *ACLU News*. For membership information call (415) 621-2493 or visit [www.aclunc.org](http://www.aclunc.org)

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# ACLU UNCOVERS “SECRET MISSION” TO ACQUIRE LETHAL INJECTION DRUGS

## CONTINUED FROM PAGE 1

acquired 12 grams of the drug. A bulk order for 521 grams was announced in late November. The price, source, process and details of the transactions were kept secret.

Because transparency is paramount in government, especially when it comes to the state's most extreme act, the ACLU-NC requested all related public records. When CDCR officials stonewalled, we filed a lawsuit. The results were astounding.

Documents handed over by court order revealed a global “secret mission” by state corrections officials to acquire lethal injection drugs. California looked for the drugs from Sacramento to Pakistan, eventually buying supplies from a wholesaler operating from the back of a driving school in London. State employee emails and attachments also reveal that the CDCR paid a total of \$36,415 for the drugs ordered from the U.K. - \$16,590 for the actual drugs and almost \$20,000 in various fees. The explanation behind one \$10,000 fee has been blacked out. (In contrast, the CDCR paid only \$1,121.10 for an August 2010 shipment of all three execution drugs.)

Other records show five other states got drugs from the United Kingdom: Arizona, Arkansas, Georgia, South Carolina and Tennessee. Since the quality of the imports is unclear, the CDCR sent samples out for laboratory testing.

Questions also abound about the legality of the drugs and the role of the U.S. Food and Drug Administration (FDA).

IT SEEMS POSSIBLE THAT  
ILLEGAL ACTION WAS TAKEN TO  
OBTAIN THE DRUGS, AS IS THE  
POSSIBILITY OF PRESSURE FROM  
POLITICIANS IN CALIFORNIA TO  
EXECUTE FIRST AND ANSWER  
QUESTIONS LATER.

One email from an official at the FDA states that drugs were being held at a port of entry while the agency worked on “developing a blanket policy”. This would appear to contradict the FDA's later statements to reporters that the drugs were released according to a long-standing policy stipulating that the FDA does not intervene in the law enforcement activities of states.

Staff attorneys Linda Lye and Michael Risher, and Death Penalty Policy Director Natasha Minsker have filed Freedom of Information Act requests for more records from the Food and Drug Administration (FDA), the Drug Enforcement Administration, and Customs and Border Protection to trace where the drugs are from and the highly irregular process used to obtain them. It seems possible that illegal action was taken to obtain the drugs, as is the possibility of pressure from politicians in California to execute first and answer questions later.

As more information is brought to light, more questions are raised about the conduct of state and local officials, including the enormous amount of resources being wasted and the failure to follow the law. In the face of shrinking budgets, it is clearer than ever that we must replace our costly and ineffective death penalty system with real solutions for public safety.

Legal challenges and related efforts continue. 

## TAKE ACTION ON THE DEATH PENALTY!

**WRITE TO GOV. JERRY BROWN  
AND TELL HIM:**

- ✓ Cutting the death penalty will save California \$1 billion over five years without necessitating the release of a single prisoner.
- ✓ By converting California's 710 death sentences to permanent imprisonment, we would ensure that each of those 710 prisoners would remain in prison with absolutely no possibility of parole and would be accountable to victims' families through work and restitution to them.
- ✓ Prioritize effective law enforcement and the needs of victims over our state's dysfunctional death penalty. Cut the death penalty today, save money, and keep our communities safe.

**Governor Jerry Brown  
c/o State Capitol Suite 1173  
Sacramento, CA 95814**

## LEGAL BRIEFS

**By Rebecca Farmer**

### Political Signs = Free Speech for Condo Residents

A week before the November 2010 election, Dr. Elliot Greg Kamin, a local optometrist who was born in Russia and came to the U.S. as a child, posted two political signs inside the window of the condo he rents – one in support of a judicial candidate, and the other opposing Proposition L, known as the “Sit/Lie” ordinance. To his surprise, the homeowners association for his condo complex instructed him to remove the signs immediately, or face steep fines.

The ACLU stepped in to convey to the Ocean Beach Homeowners Association that the free speech rights of condominium residents are protected by a law approved by the California Legislature in 2003. (The ACLU was instrumental in the passage of the law.)

Facing a potential court order requiring it to obey the law, the association entered into a settlement with the ACLU and Dr. Kamin, allowing him to put his two signs back up immediately, and without fear of triggering onerous fines.

The 2003 law specifically protects the free speech rights of residents of condominiums. But the law does not extend these same protections to renters of apartments.

This year, the ACLU in California has teamed up with state Sen. Christine Kehoe (D-San Diego) to pass a new bill, SB 337, which would grant all tenants the right to

display political signs on or around their residences. An estimated 40 percent of California households are renter-occupied.

### Keeping Digital Tracking Out of the Schoolyard

Controversy—and a host of questions about privacy and safety—erupted last fall when news broke that a Head Start program in Richmond planned to track preschoolers with radio frequency identification (RFID) chips. RFID chips are tiny computer chips that are embedded as tracking devices in identification cards, and in this case, in preschoolers' uniforms.

The ACLU-NC joined forces with the Electronic Frontier Foundation to call into question the use of invasive surveillance technology with young children.

In addition to privacy concerns, placing chips on children raises a safety issue. Devices that read the information on RFID chips can glean data from quite a distance if they are not properly secured. This means that someone who possesses a reading device and has no relationship to the school could gain access to information about the children's whereabouts.


The ACLU and EFF have asked local and federal officials for information about why the government decided to track these students, and about how the data collected is used and stored. The ACLU and EFF have also called on school officials to ensure that there is a process in place to

protect the privacy and safety of schoolchildren, to make sure parents are fully informed about the privacy and safety risks of RFID technology, and to provide an opt-out program for concerned parents.

The Richmond Head Start program modified its RFID plan to eliminate long-range tracking. The ACLU-NC will continue to be on alert for potential misuse of RFID in schools and other government programs. The ACLU has opposed the use of the chips in government-issued ID cards, including driver's licenses.

### Victory for Tuition Equality

The ACLU applauded a unanimous California Supreme Court ruling in November declaring that students who attend at least three years of high school in California before graduating are eligible for in-state tuition rates at public colleges and universities, regardless of their immigration status. The Court found that federal law did not bar California from offering tuition equality to students.

The ACLU joined the National Immigration Law Center, the ACLU of Southern California and the ACLU of San Diego and Imperial Counties in filing a friend-of-the-court brief in the case, *Martinez v. Regents of the University of California*. 

*Rebecca Farmer is the ACLU-NC Media Relations Director.*

# ACLU PRESENTS CA'S NEW ATTORNEY GENERAL WITH TOP RECS. FOR REFORM

By Kelli Evans

The ACLU is working on an ambitious policy agenda for California this year, and recently presented the new attorney general, Kamala Harris, with a series of recommendations to help make California a safer and more just state for all of its residents. The ACLU's recommendations cover three critical areas: criminal justice reform, immigrants' rights, and online privacy.

## Criminal Justice Reform

California has the dubious honor of being the world's leader when it comes to locking up its residents. State spending on corrections has skyrocketed and now outpaces the amount spent on our public universities. In addition to consuming enormous resources at a time when the state is struggling to provide its residents with the most basic services, California's criminal justice system is ineffective, unfair, and racially discriminatory.

The ACLU recommends the following changes, which will increase public safety, accountability and fairness, and will enhance the effectiveness of the criminal justice system.

1. *Stop sending non-violent offenders to prison.* Utilize alternatives to incarceration. Simple, smart-on-crime sentencing reforms—such as making possession of small amounts of drugs a misdemeanor instead of a felony—would save taxpayers hundreds of millions of dollars without compromising public safety.
2. *Emphasize rehabilitation.* Transfer a portion of existing dollars in the corrections budget to local authorities to provide rehabilitation and drug treatment programs.
3. *Ease the way for people with past criminal convictions to move forward and lead productive lives—to find jobs, housing, loans and scholarships.* Criminal convictions can carry negative consequences for many years—barriers that make it difficult to re-enter society and succeed.
4. *Support efforts to provide services to all victims of crime, even those with felony convictions.* At present, people who are victims of serious crimes are often denied assistance from the California Victim Compensation Fund if they have a felony conviction, no matter how minor. This means that many crime victims are deprived of basic supports like grief counseling or financial support for funeral services for a loved one.
5. *Issue guidelines to regulate police surveillance and intelligence-gathering that targets individuals or groups engaged*

*in political or religious activities.* This is one way to help prevent law enforcement from engaging in racial or religious profiling or targeting political activists.

6. *Investigate and begin to remedy patterns of police misconduct in California.* The attorney general has the authority to intervene when police departments engage in a pattern of misconduct such as using excessive force or falsely arresting people. Historically, the attorney general's office has not prioritized ending police misconduct among its enforcement goals, and the ACLU believes that it should.

## Immigrants' Rights

When local police officers act as immigration agents, the public safety of our communities suffers. People, including crime victims, become afraid to report crime for fear of the possible immigration consequences, resulting in lawbreakers being free to commit additional crimes. Scarce law enforcement resources are much better spent focusing on violent crimes than being diverted to enforcing federal immigration laws.

The ACLU recommends the following to limit the fiscal and human costs of unfair policing of immigrant communities:


7. *Work with local law enforcement agencies to encourage them not to engage in federal immigration enforcement unless it is necessary in individual cases to ensure public safety.*
8. *Issue guidance to local law enforcement agencies to stop checkpoint and vehicle-impoundment policies that do not further public safety.* At present, checkpoints intended to deter drunk driving result in the impoundment of vehicles of drivers who are unlicensed but pose no dangers. Such practices have a heavy and disproportionate impact on poor and immigrant communities.
9. *Review implementation of the so-called "Secure Communities" program in California.* This program, which requires local law enforcement agencies to provide the federal government with the fingerprints

of individuals who are arrested, was intended to target the "most serious criminal aliens." The effect has been the opposite: Of nearly 20,000 people arrested and deported in California in the first year of the program, 25 percent were never convicted of any offense. If a review determines that the program has not been an effective tool for increasing public safety, take steps to modify the implementation of it or to terminate it.

## Free Speech & Online Privacy

The Internet has transformed the way we communicate and has enhanced our ability to access information and engage in both public and private discourse. At the same time, our online activities speak volumes about each of us, including what we read or browse, what we like or buy, what medical conditions we may have, where we go and who we know. Companies are eager to collect this detailed information, and the information is frequently combined, used, shared, and sold—often invisibly. Laws protecting our privacy have not kept pace with technological advances.


The ACLU recommends the following as ways to upgrade our much-needed privacy protections:

10. *Hold a conversation among industry leaders, the public, and speech and privacy advocates to reinforce the idea that the Internet is a necessary and powerful platform for free speech that benefits all Californians.*
11. *Ensure that companies doing business in California comply with laws requiring them to inform customers about sharing their personal information with other companies.* The ACLU is supporting SB 602, the Reader Privacy Act, in order to safeguard reader privacy in the digital age. This law would help ensure that the government and third parties cannot access our private digital reading records without proper justification. 

Kelli Evans is the ACLU-NC's Associate Director.

## THE ACLU-NC'S 2011 CONFERENCE AND LOBBY DAY

From March 19-21, ACLU activists, community partners, and student leaders spent time learning, inspiring, and getting to know one another. With workshops on a range of current civil liberties issues, the ACLU-NC 2011 Conference focused on opportunities for common sense criminal justice reform amidst the California state budget crisis.

Monday's Lobby Day at the State Capitol included an energetic rally to call on legislators to stop sending non-violent offenders to prison and instead devote resources to higher education, health care, social services, and re-entry programs. 



At right, Fresno State graduate student and ACLU activist Hector Cerda speaks to the crowd at Lobby Day. Far right, Berkeley activist Linda Halbern in action in Sacramento.



# THREE NEW POLICY REPORTS FROM THE ACLU-NC

## Costs and Consequences: The High Price of Policing Immigrant Communities

In April 2010, Arizona Gov. Jan Brewer signed a law allowing police officers to ask people for their identification even if the officers have only a “reasonable suspicion” people are in the U.S. unlawfully. Almost overnight, fundamental American values of fairness and equality before the law took on renewed urgency.

In addition to eroding fairness and equality, police practices with immigration consequences also take a significant toll on local budgets and communities. Many encounters with police that funnel individuals into the federal immigration system—arrests for suspected unlicensed driving, for a lack of state ID, and at checkpoints, for example—are paid for on the local dime. And local police are rarely reimbursed by the federal government for the costs of custody, food or medical care of persons held at Immigration and Customs Enforcement’s request.

Costs and Consequences puts forth specific recommendations that allow local police to enforce the law without diverting precious public safety dollars or violating the rights of California residents. For example, local officers have the discretion to “cite and release” rather than to arrest individuals who don’t have a state driver’s license.

The ACLU-NC recently sent a letter making this case to sheriffs across the state, asking them to cease costly and harmful practices that target immigrant communities while not making our communities safer. The affiliate is also working with immigrant community groups to understand their constitutional rights and to meet with local sheriffs to revise policies.

## Racial and Ethnic Disparities in Alameda County Jury Pools

Despite the diversity of Alameda County, jurors are being selected from pools with insufficient representation from communities of color. The disparities are striking: while African Americans represent approximately 18 percent of the eligible jury pool, they comprised 8 percent of the people who appeared for jury duty in 11 recent felony trials examined in this study. One-third of eligible Latino jurors did not appear for service.


The composition of a jury can have a significant impact on the fairness of a trial. This report recommends updating the jury pool computer program used by the courts, and instituting a “failure to appear program,” among other simple steps to help create jury pools that more accurately reflect the racial and ethnic diversity of the community. ACLU-NC staff requested a meeting with Presiding Judge Jon Rolefson, who has the authority to institute these improvements. He declined. The ACLU-NC continues to inquire as to whether changes are underway.

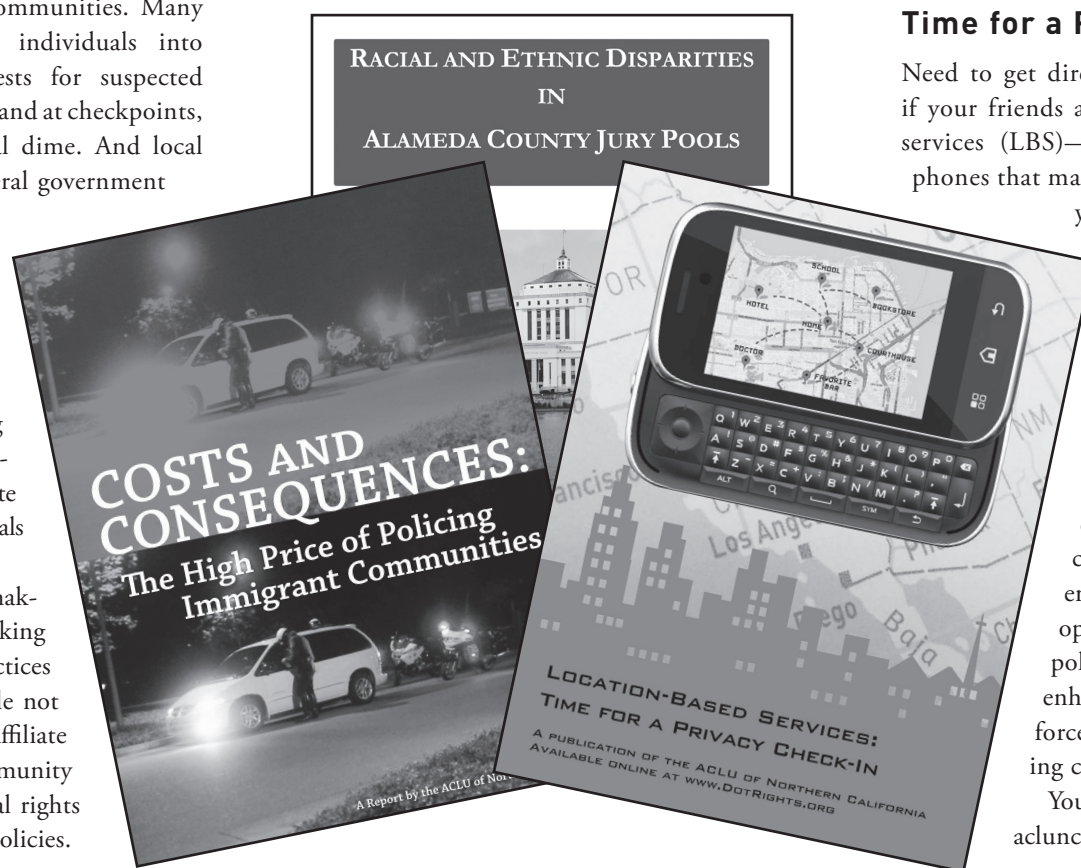
## Location-Based Services: Time for a Privacy Check-In

Need to get directions when you’re lost? Want to know if your friends are in the neighborhood? Location-based services (LBS)—applications for computers and smart phones that make use of your current location to provide you with information—can put knowledge like this in the palm of your hand.

But outdated privacy laws mean that sensitive information about who you are, where you go, and what you do may end up being shared, sold, or turned over to the government.

This new guide outlines privacy considerations for LBS, including a side-by-side comparison of the privacy practices of several popular products. Also highlighted are opportunities for consumers, businesses, and policymakers to work together to update and enhance privacy protections so that you’re not forced to choose between using LBS and keeping control of your private information.

You can read all of these reports at [www.aclunc.org](http://www.aclunc.org). 



## ACLU-NC MAILING PREFERENCES

### To Our Members:

Mailings to our members and the general public provide opportunities to describe complicated legal and political issues in ways not possible in other media and to describe strategies we plan to use for future actions. They enable us to explain, in detail, the benefits and provisions of the Constitution and the Bill of Rights, the ways our rights can be protected in today’s world, and the costs of preserving those rights. We use the mail to inform people of the importance of our legal work and to solicit funds that enable us to continue our litigation, public education, and legislative lobbying.

Sometimes, as part of our program to find and recruit members, we exchange or rent our list of members’ names to like-minded organizations and publications. We do this so that we will be able to send our membership letters to their lists.

The ACLU never makes its list available to partisan political groups or those whose programs are incompatible with the ACLU’s mission. Whether by exchange or rental, the exchanges are governed by strict privacy procedures, as recommended by the U.S. Privacy Study Commission. Lists are never actually given into the physical possession of the organization that has rented them or exchanged for them. No organization ever possesses our list and no organization will ever see the names of the members on our list unless an individual responds to their mailing.

While mailings—under strict privacy guidelines—form the basis of our new member acquisition program, and are key to our growth, we understand some members do not wish to receive solicitations from other groups and we gladly honor requests from our members to be removed from the process. Once you make this election, you do not need to do so again unless you wish to change your preference back.

If you do not wish to receive materials from other organizations, please complete this coupon and send it to:

ACLU Membership Department  
125 Broad Street, 18th Floor  
New York, NY 10004

☐ I prefer not to receive materials from other organizations. Please eliminate my name from membership exchange/rental lists.

Member # \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_



# HELPING SCHOOLS TACKLE BULLYING

By Rebecca Farmer

California has some of the best laws in the country to protect students who are lesbian, gay, bisexual or transgender (LGBT), or who are perceived to be. But the unfortunate reality is that anti-LGBT harassment is still far too widespread. Schools don't always have the tools or knowledge to adequately protect students from bullying, harassment and discrimination.

## Seth's Story

Seth Walsh was a sweet, intelligent boy who loved his family and did well in school. He was also gay. And for this, he endured years of relentless bullying and verbal abuse at his school in Tehachapi, a small town outside Bakersfield. On Sept. 19, 2010, Seth hanged himself from a tree in the family's backyard. He was on life support for nine days before he died on Sept. 28. He was only 13 years old.

Wendy Walsh, Seth's mother, teamed up with the American Civil Liberties Union to help make a difference in the lives of LGBT youth who are bullied at school. After investigating, the ACLU found that officials in the Tehachapi Unified School District knew about and largely ignored the harassment Seth faced. The U.S. Department of Education also launched an investigation of the school district. The ACLU is urging the district to take immediate steps to create a safer environment for students who are LGBT, or who are perceived to be. (Read more online at [aclu.org/sethwalsh](http://aclu.org/sethwalsh))

"Public schools have tremendous power and responsibility to protect students from bullying and harassment," said Elizabeth Gill, staff attorney at the ACLU. "Better school procedures and policies to prevent and address bullying will make a safer environment for students who are suffering, and can even save lives."

In a recent national survey, nine out of 10 LGBT students reported being harassed at school. The problem persists in California as well, with LGBT students reporting significant harassment. The California Safe Schools Coalition reported in 2010 that 42 percent of California students who identify as lesbian, gay or bisexual and 62 percent who identify as transgender reported being harassed at least once based on gender non-conformity.

What's more, young people often face bullying and harassment based on what their peers perceive to be their sexual orientation, regardless of whether they identify as being LGBT. According to the most recent California Healthy Kids Survey, 12 percent of seventh graders and 10 percent of ninth graders reported being harassed based on their actual or perceived sexual orientation.

The consequences of bullying and harassment can include falling grades, depression and risk of suicide. LGBT youth are three times as likely to seriously consider suicide as heterosexual youth.



Seth Walsh

## "Seth's Law"

The ACLU is co-sponsoring a new bill in the California Legislature, AB 9 ("Seth's Law"), which would strengthen existing state laws by requiring every school district to do the following:


Create strong and clear anti-harassment policies and programs, if they don't have them already.

Have a system in place to ensure that all reports of harassment are taken seriously, addressed quickly, and that parents and students

understand the process of making these complaints.

Explain the harmful impact of bullying and discrimination to students and staff.

Provide ongoing professional development for teachers, school counselors and administrators about identifying and stopping harassment and discrimination, and creating a school-wide culture of inclusion and respect for difference.

Join the ACLU-NC's action alert network and become part of the statewide effort—led by a strong, cohesive and determined coalition of LGBT rights organizations—to see this bill through. Visit [www.aclunc.org](http://www.aclunc.org) and click on "sign up" in the right-hand corner. 


# YOUTH TAKE A STAND FOR ETHNIC STUDIES

By Bethany Woolman

This spring, the ACLU-NC's Friedman Youth Activist Committee partnered with the Bay Area-based activist organization Youth Together to sponsor the Tenth Annual Ethnic Studies Conference. Amid the hateful wave of anti-immigrant rhetoric and lawmaking in states like Arizona, where legislators have also effectively outlawed ethnic studies, the Ethnic Studies Conference is an expression of solidarity among young people who believe that cultural diversity and intellectual freedom are strengths to be celebrated and defended.

The conference, held at UC Berkeley on March 16, brought together hundreds of youth from across Northern California to discuss critical issues in higher education, social justice organizing, and cross-cultural solidarity.

Attendees got a chance to develop their leadership skills and learn about the critical role of ethnic studies. In addition to co-sponsoring and helping organize the conference, Friedman youth showed their video on immigration from their summer trip. In creating the video, the youth highlighted the ways they had learned and grown from their summer experiences.

The Friedman Youth Activist Committee has also developed a special curriculum for a workshop on immigration and ethnic studies that invites students to tell their own immigration story and reflect on the power of their unique American experience. Several Friedman youth began conducting the workshop at their schools in advance of the conference, and plan to make the curricula available to more schools and students in the future. 



At left, Shadin Awad participated in the conference as an Emcee. Above, Sophie Chen holds up a poster made during the Friedman summer trip on immigration.

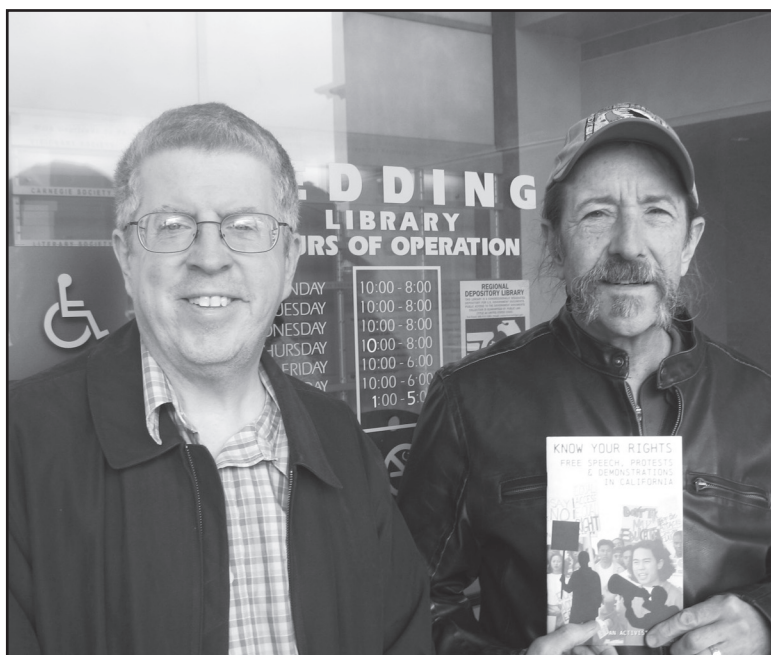


# ACLU, TEA PARTY TEAM UP FOR FIRST AMENDMENT

When the city of Redding attempted to impose new restrictions on where, when and how residents may hand out leaflets in front of the public library, leaders of the Shasta-Tehama-Trinity Chapter stepped in to wage a vigorous defense of the First Amendment. So did activists in the North State Tea Party Alliance, and the convergence of convictions has sparked an utterly civil exchange of ideas.

Chapter Chair Don Yost was featured on a local radio talk program with Tea Party activist Tim Pappas, who also serves as Shasta's assistant public defender.


Then Yost was invited to one of the local Tea Party's weekly meetings to talk about the ACLU's views on the leaflet controversy. He accepted, and with fellow ACLU member



Chapter leaders Oertel (left) and Yost in front of the Redding Public Library, with the ACLU-NC's Know Your Rights guide to free speech in California.

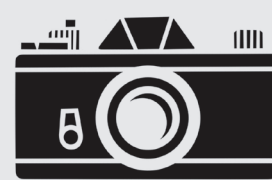
John Oertel, spoke to a receptive audience of 150 Tea Party activists gathered in a church sanctuary. Oertel read excerpts from ACLU-NC primer *Know Your Rights: Free Speech, Protests and Demonstrations in California* and free copies were eagerly received.

Recounted Yost, "We explained our belief that speech is for everyone, regardless of whether one agrees with their point of view. Everyone listened with interest and respect. There seemed to be lots of agreement."

The Shasta Public Library Advisory Committee is in the process of reviewing the public's objections to the new restrictions. One proposed restriction that would require a librarian to preview material before it is allowed to be distributed, has already been shelved. 

## VOLUNTEER OPPORTUNITY

The ACLU is seeking photo-journalist volunteers



Interested in taking photos on assignment in your region once or twice a year? Contact [photos@aclunc.org](mailto:photos@aclunc.org) for more information.

## CHAPTER EVENTS

**Sonoma County Chapter's  
2011 AWARDS CELEBRATION &  
ANNUAL DINNER  
FRIDAY MAY 6TH 5:30 PM**

Friedman Center, 4676 Mayette Ave., Santa Rosa

Keynote speaker: RAINEY REITMAN of the Electronic Frontier Foundation, speaking about Your Privacy Under Attack: The Internet and You

A 3-course dinner will be served.

For Reservations, Sponsorships, Program Ads, Tabling or other information:

(707) 765-5005 [aclu@sonic.net](mailto:aclu@sonic.net)  
[www.aclusonoma.org](http://www.aclusonoma.org)

# THE ACLU CAMPAIGNS FOR JUSTICE TOUR

This spring, Executive Director Abdi Soltani and other staff are travelling throughout northern and central California to meet with community leaders, campus leaders, legislators, and civil liberties activists as part of the Campaigns for Justice Tour.

At Right, Organizer Daniel Galindo (far left) and Senior Organizer Ashley Morris (far right) met with student leaders during a lunch-time student meeting at Sacramento State.

Below, ACLU-NC Executive Director Abdi Soltani (far right) met with student leaders at San Jose State during a lunch-time briefing as part of the Campaigns for Justice Tour.



Below, Abdi Soltani with UC Merced students.



## GET INVOLVED! CHAPTERS AND CLUBS IN YOUR COMMUNITY

### Northern California Chapters

Berkeley/North East Bay  
Chico  
Greater Fresno  
Mt. Diablo  
Marin County  
Mid-Peninsula  
Monterey County  
North Peninsula (Daly City to San Carlos)  
Paul Robeson (Oakland)  
Redwood (Humboldt County)  
Sacramento County  
San Joaquin  
Santa Clara Valley  
Santa Cruz County  
Shasta-Tehama-Trinity Counties  
Sonoma County  
Stanislaus County  
Yolo County

### Campus Clubs

Golden Gate University  
Santa Clara University Law  
Stanford University  
UC Berkeley  
UC Davis King Hall Law

Get contact information at  
**[WWW.ACLUNC.ORG/ACTION/CHAPTERS](http://WWW.ACLUNC.ORG/ACTION/CHAPTERS)**  
or by calling (415) 621-2493 x369

# ASK THE EXPERTS!

## FREE SPEECH IN SCHOOLS

Social media and other emerging technologies are fundamentally altering how students interact and express themselves in school. Staff Attorney **Linda Lye** explains the history of student free speech, and discusses technology's modern twist on the First Amendment.

### Can you give us an example of a landmark student free speech case?

In December 1965, a group of Iowa residents decided to wear black armbands in protest of the Vietnam War. The local schools in Des Moines adopted a policy in response, banning armbands in school. But three students, John and Mary Beth Tinker and their friend Christopher Eckhardt, stood up for their beliefs and wore their armbands to school nonetheless. They were suspended.

In *Tinker v. Des Moines Independent Community School District*, the U.S. Supreme Court famously explained that neither "students [n]or teachers shed their constitutional rights to freedom of speech or expression at the school-house gate." School officials can only regulate student speech if it materially or substantially disrupts the school environment, or invades the rights of others.

The ruling was a historic victory for students' rights. The Court affirmed that school authorities cannot use their disciplinary power to censor speech simply because it is controversial or critical. As the Court explained, censoring of student speech must be "caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint."

### What rules apply to student speech rights in public school today?

*Tinker* still applies. The *Tinker* case nicely illustrates the First Amendment values at stake because it involved classic political speech that contributes to robust debate in a democratic society, that is, exactly the sort of speech that the First Amendment was designed to protect. But *Tinker* is not limited to political speech. This is important because young adults need to be able to express themselves on a range of issues, whether they relate to politics, a student's sexual orientation, or a favorite musician.

The doctrine has evolved somewhat since *Tinker*. The general rule now is that schools can only prohibit or regulate speech if it is lewd or obscene, advocates illegal drug use, causes a substantial disruption to the school environment, or invades the rights of others.

Unless one of these conditions applies, schools may not stop students from discussing a controversial topic, chronicling or fueling controversy by writing for the school newspaper, or criticizing school rules.

### Couldn't one argue that controversial speech substantially disrupts learning?

The First Amendment always requires us to balance competing interests. Controversial speech is exactly the kind of speech that the First Amendment was



designed to foster. So schools cannot censor speech based merely on anticipating a listener's reaction to the speech.

California has even more robust free speech protections for students than is the case in federal law, especially when it comes to student newspapers. *Smith v. Novato Unified School District*, a case that arose nearby, involved a student who published an editorial in the student newspaper staking out a very controversial and even offensive position on immigration. What's important to emphasize is that his speech was not targeted at specific students; he was weighing in on the overall immigration debate. But students were really upset by what he said and there was a huge uproar on the campus. The California Court of Appeal ruled that his statements were absolutely protected.

### Students these days are "digital natives"—born into the world of personal computers and social media. How is new technology challenging the way we think about free speech rights in schools?

The facts and circumstances change but the legal principles don't. So, for example, let's go back to the *Smith v. Novato* case. The student published the editorial about immigration in the school newspaper and it was protected, even though it was controversial and some students were offended. If he then posted it on his Facebook page, and more students read it, and more students got offended, it should still be protected. The fact that his words are featured in a new platform, and can travel swiftly and reach a wider audience, doesn't alter the law, which protects his right to speak his mind.

### What is cyber-bullying, and how does it relate to the limitations on student speech?


Bullying can happen in person or online. Electronic bullying, also known as cyber-bullying, is a real and troubling phenomenon. Schools can and should act swiftly to intervene when traditional or cyberbullying happens. Schools have a legal and moral obligation to ensure that all students can learn in a safe and welcoming environment and that they have equal access to educational opportunities.

We're hearing about the problem with increasing frequency because a lot of the bullying that happens these days is cyberbullying. But it's an age-old problem schools have had to confront: When does speech cross the line from the merely controversial or offensive, to the harassing and bullying? In our view, speech, whether cyber or not, loses its constitutionally protected status once it targets and harasses a particular student, and actually affects the educational environment.

### Linda, you recently worked on a case in which a student was suspended for saying insulting things about a teacher on Facebook. Tell us a little more about that.

In this recent case, Donny, a high school sophomore in the Sacramento area, got upset when his biology teacher assigned three times the normal amount of homework. He blurted out on his Facebook page that his teacher was a "fat ass" and a "douche bag."

Donny apologized to the teacher and even removed the posting, but the school still suspended him. Donny's parents were not thrilled about his language. But they stood up for the principle that young people have the right to voice criticisms of authority figures, and they are absolutely correct. We informed the school district that the suspension violated Donny's free speech rights under state and federal law, and asked that the suspension be expunged. The district quickly agreed to do so.

We are seeing many similar cases taken up by ACLU affiliates in other parts of the country. The technology changes, circumstances change, but the legal principles don't. It's up to all of us to be aware of our rights, and to understand the significance of the First Amendment, irrespective of the media we use to express ourselves. 

*This interview was conducted and compiled by ACLU of Northern California Communications Fellow Bethany Woolman.*