

ACLU news

SUMMER 2011

VOLUME LXXV ISSUE 2

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BREAKING CALIFORNIA'S PRISON HABIT SENTENCING REFORM KEY TO 'REALIGNMENT'

EDITORIAL

In May, in *Brown v. Plata*, the U.S. Supreme Court spoke definitively: California must stop imprisoning so many people. The High Court concluded that California's prison system is so bloated that it poses extreme risks to prisoners and to staff, and that reducing the number of people in state prisons is the only way to end grossly inadequate health care and "needless suffering and death." The Court invoked the Constitution's ban on cruel and unusual punishment under the Eighth Amendment.

The *Plata* decision, 10 years in the making, has arrived at the apex of the most significant state budget crisis in decades. As legislators enact massive cuts to public education, healthcare and social services, the ACLU and criminal justice advocates across the state are calling attention to the need to cut wasteful spending within the prison system, and enact reforms that will cure California's incarceration crisis for good.

Solutions are within reach. California's extraordinarily harsh sentencing laws, including mandatory minimums, should come to an end. We should reduce the penalty for low-level nonviolent crimes – like petty theft or simple possession of drugs – from a felony to a misdemeanor, thus reserving felony sentencing for serious



An ACLU billboard in San Francisco

Photo by Gigi Pandian

crimes. And we should stem California's appalling recidivism rate by investing in evidence-based programs, like drug treatment, that are proven effective in keeping people out of the system.

Imagine the costs and misery that could have been avoided for people like David Moss – a Berkeley playwright whose struggle with cocaine addiction put him behind bars no less than 14 times, all for nonviolent, low-level crimes. Moss was never offered drug treatment a single time, but managed to

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BOARD ELECTION NOTICE

The ACLU-NC Board of Directors, in accordance with the bylaws, have an election schedule as follows:

Nominations for the Board of Directors are to be submitted by the September Board meeting; elected board members will begin their three-year term in January.

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HELP CORRECT CALIFORNIA'S PRIORITIES

AB 109, the governor's realignment plan, presents a historic opportunity for CA counties to adopt alternatives to incarceration, one critical step in solving the state's incarceration crisis. The question is whether they will seize this opportunity to make better use of tax dollars, or simply seek new jail beds.

Your county officials – including the chief probation officer – *need to hear from you*. August and September are critical months to weigh in, as each county must implement an AB 109 plan by October 1st.

Will you speak up in favor of alternatives to incarceration, and let the ACLU know that you did?

Contact organizing@aclunc.org

COURT UPHOLDS RACE AND GENDER-CONSCIOUS GOALS IN FEDERAL CONTRACTING

**Civil rights groups win major victory
Pacific Legal Foundation appeals**

by Laura Saponara

While studying for a doctorate, San Francisco-based engineer Satinder P. Singh chose to specialize in the retrofitting of bridges. He joined a team charged with evaluating the structural soundness of the Bay Area's bridges following the Loma Prieta earthquake. Soon thereafter, Singh was hired as a Caltrans engineer. And in 1999, he founded his own structural engineering firm.

"At the time, I did not believe that there was discrimination in the engineering sector," recalled Singh.

Singh's firm, SPS Engineering, sought certification from Caltrans as a Disadvantaged Business Enterprise (DBE) in hopes that the agency's DBE program, created to encourage large, well established firms to contract with smaller minority and women-owned firms, might open new doors. His experiences with the program surprised him.

To score points for partnering with a DBE, one prime contractor listed Singh's firm as a subcontractor during the bidding process, but never contacted Singh after winning the contract. And Singh discovered that primes would often wait to put a call out for bid solicitations until a day or two before bids were due, rather

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LETTER FROM THE EXECUTIVE DIRECTOR



Bob Hsiang Photography

In 1995, UC Regents voted to ban affirmative action in the UC system, and Governor Wilson and Ward Connerly were leading the effort at the ballot box with Proposition 209. Fresh out of college, my first job as a community organizer was to get out the vote in

Richmond, California to defeat Proposition 209. We lost, and affirmative action programs throughout California were pared back to those required by federal law.

Fast forward 15 years, and I am proud of the ACLU's relentless pursuit of equal opportunity. This edition of the *ACLU News* highlights two examples of the ACLU's current work against discrimination.

Our Caltrans litigation addresses discrimination against women and minority contractors. Under federal requirements, state transit agencies must take steps to ensure equal opportunity. When Caltrans suspended its equal opportunity programs, the share of contracts awarded to women and minority-owned firms dropped from 10.5 % to 2.9%. These are qualified, capable firms, but they do not have the same access to capital or contacts needed to compete on a level playing field.

Our lead story deals with discrimination in another context. Studies show that a fairly consistent share of the population uses illegal drugs, across racial and ethnic lines. Yet walk into any jail or prison, and we can see how the selective enforcement of these drug laws has resulted in widespread racial inequality and an incarceration crisis. The ACLU is now seizing the opportunities presented in a new law – AB 109 – to advocate for counties to focus on rehabilitation and treatment instead of jail for low-level offenses such as simple drug possession.

Discrimination based on race and gender is not what it used to be during the era of slavery, or during the long stretch of time when women and people of color could not vote, or even during the Jim Crow period of poll taxes and segregated schools. The abolition, suffrage and civil rights movements struck down those legal barriers to discrimination. The obstacles were significant, and these movements surmounted them. So are ours, and so will we.

Abdi Soltani

Abdi Soltani
Executive Director

CAMPAIGN FOR THE FUTURE



1

1 Ruth Vurek stands beside A Tribute to Free Expression, which showcases an array of literary works that have been banned at various points in U.S. history. The large, colorful poster was created to highlight the arbitrary nature of censorship and underscore the need for ongoing public education about the First Amendment. The tribute is named for Ruth and her husband Gerald Vurek in recognition of their support.

2 Our final Campaign For the Future event on May 18th honored Fran Stauss' involvement with the ACLU, which began in 1953. She has served as a leader in our affiliate at every level. Fran's contributions continue as a treasured member of our Development Committee and skilled volunteer solicitor. Marlene De Lancie, Andy Grimstad and Dorothy Geoghagen stand beside The Frances Strauss Wing, home of the ACLU-NC's Development and Organizing staff, which was supported by the generosity of Fran's many friends and admirers.



Photos by Tyler Georgeson



3 Tiffany Richardson, Talmera Richardson, Hon. David Krashna, Gina Krashna and Dorothy Richardson were delighted to have the ACLU of Northern California memorialize Carroll Richardson, organizer extraordinaire and beloved family member. Mr. Richardson worked for community empowerment primarily through the organization Californians for Justice and was especially instrumental in advancing affirmative action and racial equity. He passed away in 2010. The Carroll Richardson Organizing Office is home to Organizing and Community Engagement interns, and was supported by the generosity of Abdi Soltani and Grace Kong.

JULIA MENDOZA



Photo by Gigi Pandian

After attending law school at UC Davis and receiving a Master's degree in Human Rights at Columbia University, **Julia Mendoza** comes to the ACLU-NC as our new Racial Justice Project Fellow. Mendoza is assisting in the movement to ensure that all eligible voters understand their voting rights and are able to exercise them, including individuals currently incarcerated in jail. She is also investigating how to minimize racial disparities within disciplinary measures in public schools for the ACLU-NC's *Schools for All Campaign*.

"I SEE FREEDOM AS A HUMAN RIGHT THAT IS UNIVERSAL. THE ACLU IS PART OF A COMMUNITY OF ADVOCATES WHO UNDERSTAND THAT JUSTICE ENABLES FREEDOM. AND THAT COMPASSION SHOULD BE EXTENDED TO EVERYONE AS WE SEEK JUSTICE, EVEN TO THE PEOPLE WHO OPPOSE US. I FEEL VERY AT HOME HERE."

ACLU news

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**BILL OF RIGHTS DAY
SAVE THE DATE!
SUNDAY, DECEMBER 11**

ACLU OF NORTHERN CALIFORNIA'S
BILL OF RIGHTS DAY CELEBRATION 2011
PROGRAM AT 2 P.M. FOLLOWED BY RECEPTION
SAN FRANCISCO

THE OTHER FRONT: U.S. SERVICEWOMEN DENIED ABORTION COVERAGE

We are defending a Constitution that doesn't apply to us. This was a phrase I heard often after I joined the U.S. Army in 2005.




Photo by Jessica Kenyon

I was raped by a fellow soldier when I was stationed in Korea. I found out I was pregnant as a result of the rape when my commander called me into his office one day to charge me with adultery. A doctor at the medical center had told my

due to the trauma of the rape . . . and ended up miscarrying.

Denying abortion coverage to rape survivors is a serious injustice to those who are honorably serving our country. This is especially true when a woman's risk of being sexually assaulted more than doubles when she joins the military. Women who are deployed overseas or to remote areas of the U.S., like Alaska, face an added burden when there are no other safe medical facilities. The military is effectively asking women who serve to completely disregard their health and rights, no matter the circumstances. The blatant sexism and lack of accountability in the military has created an environment in which women are treated as if they are less than men.

Our elected leaders should not deny military women access to the same care available to the civilian population we protect. 

*Jessica Kenyon served in the U.S. Army and is the founder of BenefitingVeterans.org and MilitarySexualTrauma.org, two online support networks. This commentary was adapted from Jessica's recent post on the ACLU's *Blog of Rights*.*

commander — but not me — that I was pregnant. I hadn't reported the rape because I was trying to "soldier on" and I didn't trust my chain of command. As it turns out I was not charged, not because I was raped, but because I was divorced.

Then I faced the fact that military health insurance doesn't allow abortion coverage in cases of rape, and I was unable to have a safe abortion off-base, so I was stuck. I was discharged from the military

The ACLU is leading efforts to pass the Military Access to Reproductive Care and Health (MARCH) Act, which would overturn barriers to abortion care for women in the armed services by, among other advances, allowing privately-funded abortion to be performed at military treatment facilities. The MARCH Act has particular significance for California,

which sends more women into the military than any other state and has the highest number of female veterans. ACLU-NC staff reached out to women veterans to ask them to share insights about the challenges they face. Here are the words of one woman who has been generous in sharing her story.

—ACLU


BOARD ELECTION NOTICE

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The ACLU-NC membership is entitled to elect its 2011-2012 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. Address suggestions to: Nominating Committee, ACLU-NC, 39 Drumm Street, San Francisco, CA 94111. 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 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. No member may sign more than one such petition.

ACLU members will select Board members from the slate of candidates nominated by petition and by the nominating committee. Candidates and the ballot will appear in the fall issue of the ACLU News. 

LEGAL BRIEFS

By Laura Saponara

Defending the Right "to Exist" in SF

Working together, the San Francisco public defender's office and the ACLU-NC have achieved an important victory for civil rights and due process by exposing a wildly unconstitutional practice that flew under the public's radar for years. In May, the groups challenged the San Francisco Housing Authority's (SFHA) use of city-wide "nuisance injunctions" that banish people whom SFHA officials deem to be nuisances, permanently prohibiting them from coming within 150 yards of any of the 53 housing authority properties in the city. The injunctions were based on arrest reports, not on criminal convictions.

In the past four years, SFHA has obtained these banishment orders against over 70 individuals. None of these individuals were entitled to an appointed lawyer.

In May, San Francisco Superior Court Judge Richard Ulmer concluded that the injunctions are unconstitutional, vague and restrictive to the point of infringing on an individual's ability "to exist in San Francisco." Judge Ulmer also decried the stay-away orders' effect of preventing fathers from being able to visit their children. Ulmer dismissed all the charges of criminal contempt that were based on violating this invalid stay-away order.

The ACLU-NC, together with the public defender's office and the Lawyers Committee for Civil Rights, is

seeking assurance from the SFHA that it has changed its policy and will no longer use this type of injunction.

Teaming Up With Tea Party to Protect Speech

The ACLU-NC and the North State Tea Party joined forces to stop the City of Redding from enforcing a new policy intended to restrict peaceful leafleting in front of the library.

In response to parallel lawsuits filed by the ACLU and the Tea Party, Superior Court Judge Monica Marlow issued a preliminary injunction against the policy in June, explaining at length that given the library's role as a public forum that "occupies an important center of the City's intellectual, cultural, and political consciousness," placing unnecessary limits on speech would violate the Constitution. Judge Marlow rejected the city's notion that the government can choose to cordon off public space it deems unsuitable for the exchange of ideas.

In addition to her discussion of the First Amendment, the judge made several references to robust free speech guarantees in the California Constitution, citing cases in which courts have protected free speech in parking lots in front of sports stadiums and a state prison, and at the visitor center at the Lawrence Livermore Lab.

The judge also said that the city lacks evidence that leafleting results in congestion or causes public safety problems, and said that requiring leafletters to remain


inside a small area set aside for free speech serves no reasonable purpose.

Stopping Censorship of LGBT Websites

A Northern California high school district has agreed to stop restricting access to lesbian, gay, bisexual and transgender advocacy websites after the American Civil Liberties Union recently intervened on behalf of a student.

In May the Oroville Union High School District agreed to remove software filters that block sites such as the Gay Straight Alliance Network, Campus Pride, Day of Silence, and the National Gay and Lesbian Task Force, but allows students to view sites that condemn homosexuality or oppose civil rights for LGBT people, such as the Family Research Council or People Can Change.

In a letter to the district, the ACLU-NC explained that censoring LGBT content violates students' First Amendment rights and the Equal Access Act.

The switch marks an early victory in a new national ACLU campaign called "Don't Filter Me," which encourages students to check to see if educational web content geared toward LGBT communities — a frequent target of censorship in schools — is blocked by their schools' web browsers, and then report instances of censorship to the ACLU LGBT Rights Project. 

To learn more, please visit: action.aclu.org/dontfilterme

SACRAMENTO REPORT

By the ACLU's Sacramento Legislative Office

The Legislative office is tracking over 700 bills this session and sponsoring ten bills ranging from free speech rights to smart phone privacy. This summer, all ten sponsored bills passed their first hurdles in the legislature!


Criminal justice: Faulty eye witness testimony is one of the leading causes of wrongful convictions. AB 308 (Leno) would require the Department of Justice and the Commission on Peace Officer Standards and Training to develop "best practices" guidelines in order to ensure the reliability of eyewitness identifications.

Education: AB 9 (Ammiano), also known as Seth's Law, would ensure that schools in California address bullying. The bill would empower students and parents to know what their rights are, how to advocate, and how to access a complaint process if bullying occurs. AB 165 (Lara), arises from the ACLU's *Doe v. California* lawsuit, and would provide families a mechanism to file complaints about illegal school fees charged by public schools, giving students equal opportunity to participate in classes and other educational activities.

Free speech: SB 337 clarifies that tenants may exercise their free speech rights through the placement of political signs on their rental property.

Health: The ACLU is reintroducing several bills that were vetoed last year. AB 472 (Ammiano), known as 9-1-1 Good Samaritan, aims to end deaths that occur when witnesses to an overdose hesitate to contact emergency services because they fear that they or the overdose victim will be arrested. The bill would provide limited criminal immunity from being under the influence of drugs or alcohol, simple possession of drugs or alcohol, and possession of drug paraphernalia for those involved in a life-threatening situation. And in an attempt to reduce the frequency with which pregnant incarcerated women are shackled, AB 568 (Skinner) would ensure that incarcerated pregnant women are restrained in the least restrictive way possible.

Immigration: AB 353 (Cedillo) would limit the impoundment of cars driven by sober, undocumented drivers. Also dealing with checkpoints, AB 1389 (Allen) would require advance notice of checkpoint locations and prohibit a law enforcement agency from stopping a motorist who chooses to avoid a checkpoint. AB 1081 (Ammiano) honors local governments' right to decide whether and how to participate in the "Secure Communities" Program (S-Comm), an Immigration and Customs Enforcement (ICE) program that has raised serious public safety concerns and has resulted in the separation of thousands of families.

Privacy: SB 602 (Yee), the Reader Privacy Act, would update California's privacy law for the digital age by applying the privacy and free speech guarantees of the California Constitution to ensure that book records are adequately protected. The bill would prohibit sharing of readers' personal information related to their reading, browsing or buying of books on the internet without the person's informed consent. Access by the government or third parties to individual's book records would only be permitted through a court order. SB 914 (Leno) would require law enforcement officers to obtain a warrant before searching the internal private data of an arrestee's digital device. Under existing law, an arrestee's digital device – including a mobile phone, smart phone or tablet – may be subject to search without a warrant or other judicial supervision. 

BREAKING CA'S PRISON HABIT

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find his own way to a 12-month rehabilitation program, and is now writing and performing again, while acing college classes and looking for a steady job.

Stories like Moss's show that not only does our overly punitive criminal justice system extract a huge financial and emotional toll. It also furthers racial inequalities and poverty and, as the *Plata* decision demonstrated, violates Constitutional rights.

'Tough on Crime' Time Has Passed

The failure of our legislators to solve the incarceration crisis is generally attributed to a fear of appearing soft on crime. But evidence is mounting that the familiar emotional draw of "tough on crime" has lost much of its appeal to voters. For example, the candidates who campaigned with that rhetoric in 2010, including Meg Whitman for governor, Carly Fiorina for U.S. Senate and Steve Cooley for attorney general, lost by sizable margins.

And Gov. Brown's decision at the beginning of his term to cancel the construction of a new death row facility would seem to signal that massive new investment in the state's machinery of death is no longer tenable.

Responding to the budget crisis and anticipating the *Plata* decision, Gov. Brown's realignment plan, AB 109, transfers the supervision of low-risk inmates sentenced after Oct. 1, 2011 from state prisons to counties. AB 109 may be the most significant reform of California's criminal justice system in 30 years. But implementation of the plan now rests on the shoulders of leaders at the county level.

The Potential of AB 109

The governor's realignment plan could reduce the number of inmates in state prisons by sending low-risk people convicted of non-serious, non-violent offenses to county jails or community supervision instead. The new law will also significantly overhaul the parole system by ending the decades-long practice of sending technical parole violators – who have not committed a new crime – back to prison. This means that county officials will have more control over funding, and greater decision-making authority to assign individuals to alternatives to incarceration and to reentry programs with a strong track record, as AB 109 encourages them to do.

Many county sheriffs are understandably concerned about how they will handle the influx of inmates. County jails throughout the state are already at or above capacity, with many currently under court-ordered population caps themselves. Nearly four hundred million dollars, derived from sales tax revenues, have been allocated by the state to help counties to handle their new responsibilities.

AB 109 AT A GLANCE Takes effect Oct. 1

- Shifts newly sentenced low-level offenders from state prison to county supervision
- Encourages, but does not require, counties to seek alternatives to incarceration
- Encourages counties to adopt evidence-based rehabilitation and reentry programs
- Provides funding for counties to implement the plan
- Appoints an executive committee in each county, of seven members, to develop the plan by Oct. 1. The committee is chaired by the probation chief and includes the sheriff, district attorney, presiding judge, and public defender.

County Leadership – Direct Advocacy by ACLU Members Will Make a Difference!

Just 12 days after the state budget and AB 109 were adopted by the state legislature and the governor, the ACLU of California sent a letter to all of the local officials in all 58 counties who are in

charge of AB 109 implementation – including the chief probation officers, presiding judges, district attorneys, sheriffs and public defenders – urging that they maintain a "focus on evidence-based solutions for reentry and alternatives to incarceration." Each county is responsible for developing the local implementation plans to be submitted to each county's Board of Supervisors by Oct. 1, 2011.

As an ACLU member, you can play a valuable role by advocating directly to leaders in your county who are responsible for drafting and implementing their AB 109 plans, starting with your chief probation officer. **Time is of the essence, as August and September are the critical months in the planning process.**

SAMPLE LETTER FOR YOUR COUNTY OFFICIALS RE. AB 109 IMPLEMENTATION

Please search online to find the name and contact information for your county's probation chief. Your letter will make a big difference.

Dear Probation Chief _____,

As a taxpayer and resident of _____ County, I am writing to urge you to develop your AB 109 implementation plan to adopt alternatives to incarceration and evidence-based reentry programs, instead of adding jail beds.

Like every resident of this county, I want a safe community and wise use of tax dollars. That can best be achieved if your plan includes:

- 1) an alternative to jail for people too poor to post bail while they await trial
- 2) alternative sentences that focus on rehabilitation and treatment, instead of jail sentences
- 3) reentry programs that are evidence-based and proven to work in helping people to get back on track and stay out of the system.

Please forward my letter to the other members of the Executive Committee of your Community Corrections Partnership, including the sheriff and district attorney.

These recommendations will save scarce tax dollars and yield better public safety outcomes.

Sincerely,

[Your name]

[Your address and contact information]


The Next Frontier: Sentencing Reform

Although AB 109 is a promising step toward reducing state prison populations, it does not go far enough. Changing California's sentencing laws is one of the complementary reforms needed to relieve the pressures caused by over-incarceration at the state and county levels.

The ACLU of California is asking state legislators to enact two simple sentencing reforms that would save California taxpayers hundreds of millions of dollars annually:

- Make possession of small amounts of drugs a misdemeanor instead of a felony.
- Make low-level, non-violent property offenses misdemeanors instead of felonies.

These reforms will mean shorter jail sentences of a few months or up to a year, instead of up to three years which is typical for these non-serious felonies, freeing up jail and prison space for those who have committed more serious crimes. A recent poll commissioned by the ACLU and our partners found that 72 percent of voters back these reforms.

California is on the road to significantly reduce its prison population to comply with *Plata*, but it will take a great deal of grassroots advocacy in our counties and in Sacramento to encourage our lawmakers and local government officials to seize the opportunity for meaningful reform. The incarceration crisis is one of the defining civil rights issues of our time. There is a great deal at stake. With your help, the ACLU can make a real difference. 

COURT UPHOLDS RACE AND GENDER-CONSCIOUS GOALS IN FEDERAL CONTRACTING

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than allowing the several weeks or even months that are generally needed to assemble a thorough and competitive bid. These were token gestures to substantiate that they have made a “good faith effort” to team up with DBEs, as Caltrans requires them to do.

Singh’s experience is familiar to thousands of women – and minority-business owners who would like to get in the game when it comes to the more than \$3 billion in federal dollars received by Caltrans each year. Anecdotal testimony of Singh’s experiences fill more than 150 pages of a disparity study commissioned by Caltrans to help explain the gap between the numbers of minority and women-owned DBEs available to work and the numbers that are actually employed to do so.

Among the most common obstacles cited in the disparity study are difficulties in securing credit lines, loans, bonding and insurance. Many minority and female subcontractors also mentioned their lack of connections to important decision-makers in both public and private sectors, which leaves them out of the loop when it comes to hearing about bidding opportunities and sealing the deal.

Others shared examples of hostility from male primes who don’t think that women should have a role in the construction industry – and say so.

But while the study was completed in 2007 and the findings were clear and significant, Caltrans officials refused to utilize the data to bolster Caltrans’ DBE program. Instead, Caltrans did nothing, a decision that came at great cost to women and minority business owners, and that may have resulted from pressure from the Associated General Contractors of America (AGC) of California and the association’s San Diego affiliate, part of the largest national trade organization representing commercial contractors.

This is the story of the battle over the fate of Caltrans’s DBE program, one that, despite a significant recent court victory by civil rights advocates, remains far from settled.

Caltrans’s Civil Rights Responsibilities and *Western States Paving*

A core question is this: What is the role of a public agency like Caltrans in opening up opportunities for minority and women-owned businesses? If one were to sum up 30 years of case law in this arena it would go something like this: The U.S. Supreme Court and the Ninth Circuit Court of Appeals have recognized that discrimination can distort access to opportunities, systematically preventing minority – and women-owned businesses from competing on equal footing. The government and its agencies have a compelling interest in taking affirmative steps to do better, and ensuring that tax dollars are not used to perpetuate patterns of discrimination. Any remedy must be *narrowly tailored* so that it addresses discrimination that is substantiated by concrete anecdotal and statistical evidence.

In a 2005 decision in the case *Western States Paving Co. v. Washington State Department of Transportation*, the Ninth Circuit provided criteria to define “narrowly tailored”: DBE contracting goals set by the state must be limited to minority groups that evidence shows have actually suffered discrimination, and that evidence must be state-specific.

At the time of the *Western States Paving* decision, Caltrans had a DBE participation goal of 13.5 percent, to be achieved through a combination of race-neutral and race and gender-conscious measures. (The goal was not and has never been – mandatory. No agency or contractor can be punished for failing to meet it. The goal is more aspirational in nature.)

In 2004-2005, with the 13.5 percent goal in place, DBEs received 10.5 percent of Caltrans’s contracting dollars.

Caltrans Pulls Back

But in 2006, Caltrans officials decided to remove the race – and gender – conscious component of the goal, ignoring pleas from seasoned civil rights lawyers like Oren Sellstrom of the Lawyers Committee on Civil Rights (LCCR), who warned that

the results would be disastrous for DBEs. This decision was made relying on guidelines issued by the federal Department of Transportation (DOT), whose attorneys wanted to ensure that states covered by the *Western States Paving* decision did not violate the ruling.

Caltrans employed a firm called BBC to undertake the new disparity study. Specific evidence of discrimination, if found, would then be used to re-implement its DBE program with a narrowly tailored goal.

The BBC study was completed in June of 2007 and found statistically significant disparities for African American, Asian American, Native American and women-owned firms. But rather than putting the new evidence to work for DBEs, Caltrans began dragging its feet.

In August of 2007, using the data in the study, Caltrans proposed to the federal DOT that it resume its prior goal of 13.5 percent. In the months that followed, DOT questioned why the agency did not specify a higher goal, based on the number of DBEs found to be available for work in California. A year later, Caltrans was still delaying the re-implementation of any goal, and the DOT was still asking questions. Finally, in December 2008, with no goal in place, the DOT threatened sanctions against Caltrans, warning that the agency “appears not in good faith” and implying that its federal funding may be at risk.

But by that time, the result of Caltrans’ inaction was already severe. DBE participation in contracting dropped to 4.6 percent by 2008, and eventually fell below 3 percent by 2009.. Minority and women business owners were effectively shut out of millions of dollars in contracts that would likely have been awarded them if Caltrans had reinstated its program in 2007. And the door began to close as the Great Recession took hold.

The Lawsuit

Finally in 2009, Caltrans re-implemented its old goal. Almost immediately, the Pacific Legal Foundation (PLF) filed suit against Caltrans in U.S. District Court on behalf of the Associated General Contractors of America, San Diego Chapter (SDGCA), calling the disparity study “stale,” “useless and irrelevant.” The plaintiffs discounted the disparity study entirely, claiming that Caltrans’ program was based on “some nebulous claim of unidentified discrimination” that does not meet the narrowly tailored standard.

Of particular intellectual interest is the fact that the briefs filed by PLF reflect a wholly unique interpretation of the case law. A number of pages are devoted to the argument that discrimination does not exist unless one contractor is found to be guilty of an overt, intentional act of discrimination against another, as evidenced by a specific incident tied to a specific contract. PLF argues that because Caltrans has failed to identify any discrimination that fits this criteria, its DBE program is “unconstitutional as a matter of law.”

Three advocacy organizations, the LCCR, the Equal Justice Society and the ACLU of Northern California joined forces with the firm Bingham McCutchen to defend the Caltrans DBE program on behalf of a network of minority and women business owners called the Coalition for Economic Equity, and the San Diego Chapter of the National Association for the Advancement of Colored People. The civil rights groups have never been satisfied with Caltrans’ DBE program – the organizations believe its goals should be higher and that they should be met. But defending the program’s existence is paramount if minority and women-owned DBEs are to have a meaningful opportunity to compete and grow in California’s transportation industry.

The civil rights team drew on key arguments from a wealth of precedent. The Ninth Circuit, in *Western States Paving*, held that state governments have a compelling interest in remedying discrimination, as Caltrans’ DBE program seeks to do. Not only was the methodology of the disparity study sound, but researchers found exactly the type of evidence that courts have required: statistical evidence of disparity from which discrimination can

be inferred combined with anecdotal evidence supporting the statistical analysis.

And by applying race-conscious goals only to the groups that the BBC study found to be significantly under-utilized, Caltrans created a program narrowly tailored in precisely the way the Court specified in *Western States Paving*.

In the process of acquiring documents from the parties in the case, the civil rights lawyers learned that during the years when Caltrans was dragging its feet on reinstating its goals, the former director of the agency, Will Kempton, was holding meetings with the Associated General Contractors of California and their San Diego affiliate (AGCSD), apparently to assuage their concerns about the DBE program.

The ACLU and partners also learned that the AGC California has been a consistent funder of the Pacific Legal Foundation for more than 20 years.


The Ruling

In March of this year, the civil rights team moved for summary judgment, asking the judge to uphold Caltrans DBE program. The U.S. District Court granted the motion, permitting the race – and gender-conscious component of the DBE program to remain in place.

The ruling marks a major victory for equality of opportunity.

“The Court has signaled that race – and gender – conscious goals are an invaluable and effective tool to combat discrimination in federal contracting, whether it be direct and explicit or subtle and pervasive,” explained ACLU-NC attorney Jory Steele.

PLF has appealed, and the next hearings will take place in 2012. The civil rights team will be ready.

If the arguments in favor of the race and gender conscious approach prevail, the people who are building and maintaining California’s transportation infrastructure will look more and more like the people of California. And Mr. Singh, and thousands of other minority and women business owners, will know that when it comes to contracting opportunities, one important door will remain open. 

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ZERO TOLERANCE = ZERO HELP

By Bethany Woolman

Would it surprise you to hear that almost 85% of LGBT students are verbally harassed at school? Or that 40% are physically harassed? Perhaps you've already heard these troubling statistics, and know that when it comes to stopping bullying, "zero tolerance" is the new catchphrase.

But contrary to popular belief, zero tolerance anti-bullying policies don't actually improve school safety and can end up doing more harm than good to LGBT kids and other vulnerable students. Under zero tolerance policies, students are usually suspended or expelled, no questions asked, for prohibited actions. Sometimes these policies mandate automatic involvement of the police.

According to a task force of the American Psychological Association, zero tolerance "has not been shown to improve school climate or school safety." This is partly because under zero tolerance policies, school administrators lose the ability to use their own best judgment or consider extenuating circumstances.

The surprising truth is that across the nation, too many LGBT kids are already being unfairly subjected to harsh discipline like suspension and expulsion.

New data from the American Academy of Pediatrics shows that nonheterosexual students are facing more severe discipline than their heterosexual peers. This unjust trend holds true for students of color as well. They are punished more severely than other students, often for behaviors that are less serious. Imagine, therefore, how damaging such disproportionate

punishment must be for LGBT youth who are also of color.

Take for example, the case of Carl Walker-Hoover. Carl was 11 years old when he committed suicide after enduring months of harassment from students who perceived him as gay. He was a Boy Scout who played three sports and loved school.

On the day he died, Carl came home very upset, convinced he was going to be suspended over an incident at school. He had accidentally knocked a TV stand over onto a bully at school, who then threatened to kill him. His mother tried to comfort him, but a few hours later Carl was dead.

The ACLU wants schools across California to know that they have tremendous power and responsibility to protect students from bullying and harassment.


To create a school-wide culture of inclusion and respect for difference, all schools should create clear anti-harassment policies so that students know what kind of behavior is expected of them. Additionally, school leadership needs to provide ongoing professional development for staff so they have the skills to spot and stop bullying.

There must also be a clear reporting system in place to ensure that all reports of harassment are taken seriously and addressed quickly. Once bullying has occurred, punishment alone isn't the answer. School discipline should also help a student who bullies understand and take responsibility for the harm caused.

LGBT PRIDE



The ACLU contingent in the 41st annual San Francisco Pride Parade.

All schools should have strong, robust policies to protect students from harm and create a community free of harassment. But zero tolerance policies, as they currently operate in schools, completely miss the mark. And they will continue to miss the mark until we reimagine what it means to protect students from bullying and harassment. 

A recent graduate of Stanford University, Bethany Woolman has just completed her tenure as a John Gardner Fellow at the ACLU of Northern California. Follow her on Twitter @besaly

STANFORD POETS EMBRACE MYACLU CAMPAIGN



By Bonnie Akimoto

The ACLU of Northern California launched the MyACLU Campaign in the fall of 2010 with the vision of engaging new members to join the ACLU and reach out to their networks to do the same, all while benefiting the causes and organizations they care about most.

A group of students at Stanford University has taken this vision to the next level. The Stanford Spoken Word Collective, a group for performance poets on campus, had a goal. This spring, they wanted to send a team to represent Stanford at College Unions Poetry Slam Invitational (CUPSI), a prestigious national poetry competition – but needed to scrape together the cash.

They also had an interest in the principles of the ACLU.


"CUPSI is a true free speech summit – a chance for students from all over the country to come together, celebrate freedom of expression, and talk about the issues we feel deeply passionate about. So we wanted to partner with the ACLU to help us get there," said Brian Yoo, the student coach of Stanford's team.

In January, the entire Spoken Word Collective became members of the ACLU of Northern California, and began reaching out to their friends on campus to do the same. For every ten new members they signed up, each poet received an ACLU donation to the Spoken Word Collective. All in all, they recruited 100 new members for the ACLU.

"In March, we learned that we had raised a total of \$3,900.00 – enough to get our team to CUPSI. It was an amazing feeling!"


reported Kyle Lee-Crossett, the group's financial manager. The team prepared for weeks, critiquing each other's writing and helping each other work on performance. Then they flew to Ann-Arbor, Michigan, for the big competition.

Alok Vaid-Menon, one of the Stanford poets competing, recounted his experience, saying, "This was my second time competing at CUPSI, but this year, there was a fire in our belly. We really brought some fierce, radical poems to the stage." The five Stanford poets competed in four rounds of competitive poetry bouts, with poetry topics that ranged from the War on Terror, to indigenous spirituality, to a young woman's identity as a queer woman of color, to an immigrant mother's sacrifices for her son.

After 3 days of competing, the Stanford team made it to the second to last round of the competition, semi-finals. Yaa Gyasi put it this way – "Even though we didn't make the final four, we went home elated. This was the first time the Stanford team has made it to the semi-final round in our entire history. And we met poets from all over the country who cared about art and politics as much as we do. It was incredible." 

MECHA IN MOTION

This May, ACLU-NC organizing staff attended the California MEChA (Movimiento Estudiantil Chicano de Aztlán) conference held in Chico, California. Participants included over 200 MEChA members, including high school and college students from around the state. Community leaders joined with grassroots organizers and students to share inter-generational knowledge about the ties that bind Chicanos in contemporary movements for social justice, with an eye to the roots of local struggles. ACLU-NC organizers Daniel Galindo and Nicole Gamble led a workshop on students' rights with the police, and gave a talk about the importance of defending the rights of immigrants, and the need to cut wasteful spending in the prison system to free up funds for public schools and universities. If you know of a

youth or student conference or organization that the ACLU-NC should connect to civil liberties activism, please contact organizing@aclunc.org 

"Mechistas" mix and mingle during a break between sessions →




← Instagram: MEChA student joins the ACLU-NC's photo campaign, calling for sentencing reform and a balanced budget
Bethany Wolman

CAMPAIGN FOR JUSTICE TOUR CONTINUES

By Gigi Pandian

Sixteen days on the road, averaging four stops in each area visited across northern California. Multiple visits to local legislators. Dozens of “Know Your Rights” trainings. Numerous meetings with community and student groups. Hundreds of conversations.

This is a taste of what Executive Director Abdi Soltani and numerous ACLU of Northern California staff were up to this spring as part of the Campaigns for Justice Tour, as staff have shared information about ACLU resources and heard from the communities about their needs.

One of the community groups ACLU-NC staff met with was ACT for Women and Girls, an organization committed to eradicating oppression in Tulare County and the wider Central Valley region. ACT empowers women to engage in leadership activities that will impact our society, and has worked with the ACLU-NC on reproductive justice and LGBT issues over several years. 



A snapshot from one of the tour stops in Tulare County.

LOCATIONS VISITED

| | |
|----------------|------------------|
| Palo Alto/East | Solano County |
| Palo Alto | Monterey/Salinas |
| Merced | Tulare County |
| Stockton | Marin County |
| Modesto | Redding |
| Santa Rosa | |
| San Jose | |
| Sacramento | |

ORGANIZATIONS THE ACLU MET WITH IN VISALIA

LULAC – Chapter 3124 – Dinuba
 ACT for Women and Girls
 Proyecto Campesino – Tulare
 Proteus Inc.
 El Quinto Sol de America
 Community Services and Employment Training, Inc. CSET – Visalia
 Proyecto Campesino – Tulare
 Women With Visions Unlimited
 Queer Visalia
 Gay Central Valley
 Visalia Pride Lions
 Alliance for Teen Health/Pregnancy Prevention – Tulare County
 NAACP
 Kings Community Action Organization

Gigi Pandian is the Graphic Designer & Publications Manager at the ACLU of Northern California.

VOLUNTEER OPPORTUNITY

The ACLU is seeking photo-journalist volunteers in the Central Valley



Interested in taking photos on assignment in your region once or twice a year? Contact photos@aclunc.org for more information.

CHAPTER EVENTS

Members of the Berkeley North East Bay Chapter who wish to serve on the chapter board should notify Jim Hausken.

You may call (510) 558-0377, email jhausken@redshift.com, or write, P. O. Box 11141 Berkeley, Ca 94712-2141.

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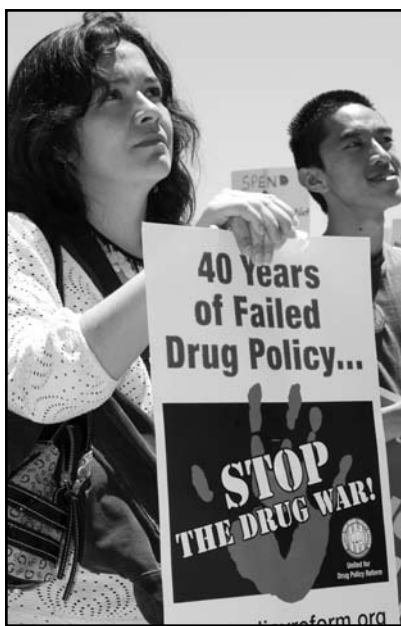
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Above: ACLU staff member Laila Fahimuddin (right) collects signatures for the ACLU-NC's petition to change California's drug sentencing laws at a rally in San Francisco organized by Californians United for a Responsible Budget.

Right: A participant in the rally, held on the 40th anniversary of the failed War on Drugs. Photos by Anaïs Dodson




ROCKIN' OUT FOR CIVIL LIBERTIES

On May 20, the ACLU's Sacramento County Chapter brought three local bands together to provide a vibrant backdrop to a festive evening dedicated to raising awareness of a few of the region's most pressing civil liberties concerns at the chapter's first ACLU Concert for Civil Liberties.

Chapter Chair Kris Berrien and Chapter activist Nikos

Leverenz spoke to the audience between sets about what may be the most significant civil rights issue of our time: the opportunity to stem over-incarceration by changing California's sentencing laws. Leverenz told the enthusiastic crowd about the ACLU's Bring Back Balance campaign to reform the criminal justice system and redirect hundreds of millions of

dollars away from prisons and into public schools and universities. “We have a criminal justice system fueled by the War on Drugs,” Leverenz said. “The state of California spends more on corrections than on the University of California and California State University systems combined. This is not the way it should be.” 

ASK THE EXPERTS!

COMPREHENSIVE SEX EDUCATION

Abstinence-only-until-marriage instruction is still taught in a surprising number of Northern California school districts, despite an ACLU-sponsored state law that prohibits it in public schools. Sex Education Policy Director Phyllida Burlingame discusses the challenges of enforcing the law and what the ACLU is doing to help young people get the information they need to protect their sexual and reproductive health.

Why is sex education a civil liberties issue?

Sex education addresses many of our most deeply held rights and freedoms: the right of girls and boys to be treated equitably, the right to engage in a loving relationship with the person of one's choice, the freedom to decide whether and when to have children. How schools approach this subject and the information they provide is vitally important.

Abstinence-only-until-marriage instruction is firmly based in political and sometimes religious ideology, not public health. Curricula tell girls “watch what you wear — if you don't aim to please, don't aim to tease,” promote “purity” and “secondary virginity” for youth who have been sexually active, and are rife with anti-abortion bias. By teaching that sexual activity is only positive and acceptable in the context of heterosexual marriage, abstinence-only-until marriage instruction is inherently biased against LGBT youth and students with LGBT parents.

Comprehensive sex education, in contrast, provides information about the benefits of delaying sexual activity while also providing medically accurate information about condoms and contraception that young people will need at whatever age they become sexually active. Grounded in science, its goal is to provide young people with important information that will help them make healthy decisions about sexuality and relationships.

Your sex education work spans state policy advocacy and local organizing. Why is it important to do both?

When policy work and community organizing are connected, they inform and strengthen each other, creating a powerful feedback loop that is essential for both winning and sustaining change.

In 2003, California passed the Comprehensive Sexual Health and HIV/AIDS Prevention Act requiring that sex education taught in public schools be comprehensive. The ACLU-NC sponsored this law, along with Planned Parenthood Affiliates of California, and it has become a model for other states.

But winning policy change isn't enough. Many school districts won't follow the law without being pressured by parents, students and community members.

For example, until 2009 the Fremont school district was using an abstinence-only-until-marriage curriculum. After an organizing effort by the ACLU-NC that involved a cross-section of the community, a mobilized opposition, and a four-hour school board debate, the district finally agreed to adopt a comprehensive sex education program.



What do you mean when you say that sex education should be approached from a reproductive justice perspective?

Sex education advocacy sometimes focuses exclusively on the need to prevent teen pregnancy and sexually transmitted infections. A reproductive justice perspective is broader. It takes into account all the factors that can negatively affect young people's health — including racism, sexism, homophobia, poverty, immigration status, and language barriers — so that the goal of sex education advocacy expands from preventing unintended pregnancy and disease to promoting a holistic vision of well-being for young people.

Approaching sex education from a reproductive justice perspective compels us to challenge the dominant narrative that teen parents are an economic and social drain on our country. Instead, we advocate that young people need access to reliable, accurate health education, as well as access to services, support to stay in school, and future opportunities.

How has the California budget crisis affected this issue?

A \$20 million state program that provided grants to community partnerships for teen pregnancy prevention was entirely eliminated in the current budget proposal. This will result in a dramatic decline in the number of agencies that provide sex education in both schools and community settings. Programs that provide supports to pregnant and parenting teens have also been eviscerated.

In addition, funding pressures on school districts, combined with increasing testing requirements, mean that districts are de-emphasizing sex education and reducing or eliminating health classes.


What is happening on the national level, and how does it affect sex education in California?

Opponents of reproductive freedom have launched a juggernaut of attacks in Congress and in state legislatures across the country. In the first half of the year, states enacted 162 new provisions related to reproductive health and rights, nearly all restrictive. This has been described as a battle over abortion, but in fact these attacks are aimed at the entire spectrum of programs critical to reproductive freedom, including contraception for low-income Americans and sex education.

California's legislature, in contrast, has moved forward this year on progressive reproductive justice legislation that would prohibit the shackling of pregnant inmates and allow minors to consent to preventive treatment for sexually transmitted infections, such as the Gardasil vaccine against human papillomavirus (HPV).

Our major roadblock in California is the state budget, not negative legislation. However, we have a huge stake in what happens nationally: Congressional Republicans are seeking to eliminate federal funding for comprehensive sex education, with a vote on one program currently pending in the House of Representatives. If they were successful, it would remove one of the last remaining sources of public funding for sex education in California. It is therefore a critical time to write to California members of Congress to ask that federal funding for comprehensive sex education be preserved.

What's next on your agenda?

In the next year we plan to expand our work in the Central Valley, which has high levels of poverty, limited access to reproductive health services, and widespread abstinence-only-until-marriage instruction in schools. In our work to support youth in the Valley, we will partner with organizations including Fresno Barrios Unidos, ACT for Women and Girls of Tulare County, and California Latinas for Reproductive Justice. We will continue our efforts to pressure state agencies such as the Department of Education and Department of Public Health to take a greater leadership role on this issue. And we look forward to working with more parents who are ready to challenge their school districts and demand comprehensive sex education. 

This interview was conducted and compiled by ACLU-NC volunteer Jessie Seyfer.