Know Your Rights:
Demonstrations and Protests

General guidelines

Can my free speech be restricted because of what I say—even if it is controversial?
No. The First Amendment prohibits restrictions based on the content of speech. However, this does not mean that the Constitution completely protects all types of free speech activity in every circumstance. Police and government officials are allowed to place certain nondiscriminatory and narrowly drawn "time, place and manner" restrictions on the exercise of First Amendment rights. Any such restrictions must apply to all speech regardless of its point of view.

Where can I engage in free speech activity?
Generally, all types of expression are constitutionally protected in traditional "public forums" such as streets, sidewalks and parks. In addition, your speech activity may be permitted to take place at other public locations that the government has opened up to similar speech activities, such as the plazas in front of government buildings.

What about free speech activity on private property?
The general rule is that the owners of private property may set rules limiting your free speech. If you disobey the property owner's rules, they can order you off their property (and have you arrested for trespassing if you do not comply).

Do I need a permit before I engage in free speech activity?
Not usually. However, certain types of events require permits. Generally, these events are:

- A march or parade that does not stay on the sidewalk, and other events that require blocking traffic or street closure
- A large rally requiring the use of sound amplifying devices; or
- A rally at certain designated parks or plazas

Many permit procedures require that the application be filed several weeks in advance of the event. However, the First Amendment prohibits such an advance notice requirement from being used to prevent rallies or demonstrations that are rapid responses to unforeseeable and recent events. Also, many permit

ordinances give a lot of discretion to the police or city officials to impose conditions on the event, such as the route of a march or the sound levels of amplification equipment. Such restrictions may violate the First Amendment if they are unnecessary for traffic control or public safety, or if they interfere significantly with effective communication with the intended audience. A permit cannot be denied because the event is controversial or will express unpopular views.

Specific problems

If organizers have not obtained a permit, where can a march take place?
If marchers stay on the sidewalks and obey traffic and pedestrian signals, their activity is constitutionally protected even without a permit. Marchers may be required to allow enough space on the sidewalk for normal pedestrian traffic and may not maliciously obstruct or detain passers-by.

May I distribute leaflets and other literature on public sidewalks?
Yes. You may approach pedestrians on public sidewalks with leaflets, newspapers, petitions and solicitations for donations without a permit. Tables may also be set up on sidewalks for these purposes if sufficient room is left for pedestrians to pass. These types of free speech activities are legal as long as entrances to buildings are not blocked and passers-by are not physically and maliciously detained. However, a permit may be required to set up a table.

Do I have a right to picket on public sidewalks?
Yes, and this is also an activity for which a permit is not required. However, picketing must be done in an orderly, non-disruptive fashion so that pedestrians can pass by and entrances to buildings are not blocked.

Can government impose a financial charge on exercising free speech rights?
Some local governments have required a fee as a condition of exercising free speech rights, such as application fees, security deposits for clean-up, or charges to cover overtime police costs. Charges that cover actual administrative costs have been permitted by some courts. However, if the costs are greater because an event is controversial (or a hostile crowd is expected)—such as requiring a large insurance policy—then the courts will not permit it. Also, regulations with financial requirements should include a waiver for groups that cannot afford the charge, so that even grassroots organizations can exercise their free speech rights. Therefore, a group without significant financial resources should not be prevented from engaging in a march simply because it cannot afford the charges the City would like to impose.

Do counter-demonstrators have free speech rights?
Yes. Although counter-demonstrators should not be allowed to physically disrupt the event they are protesting, they do have the right to be present and to voice

their displeasure. Police are permitted to keep two antagonistic groups separated but should allow them to be within the general vicinity of one another.

Does it matter if other speech activities have taken place at the same location?
Yes. The government cannot discriminate against activities because of the controversial content of the message. Thus, if you can show that similar events to yours have been permitted in the past (such as a Veterans or Memorial Day parade), then that is an indication that the government is involved in selective enforcement if they are not granting you a permit.

What other types of free speech activity are constitutionally protected?
The First Amendment covers all forms of communication including music, theater, film and dance. The Constitution also protects actions that symbolically express a viewpoint. Examples of these symbolic forms of speech include wearing masks and costumes or holding a candlelight vigil. However, symbolic acts and civil disobedience that involve illegal conduct may be outside the realm of constitutional protections and can sometimes lead to arrest and conviction. Therefore, while sitting in a road may be expressing a political opinion, the act of blocking traffic may lead to criminal punishment.

What should I do if my rights are being violated by a police officer?
It rarely does any good to argue with a street patrol officer. Ask to talk to a supervisor and explain your position to him or her. Point out that you are not disrupting anyone else's activity and that the First Amendment protects your actions. If you do not obey an officer, you might be arrested and taken from the scene. You should not be convicted if a court concludes that your First Amendment rights have been violated.

ACLU Defense of Religious Practice and Expression

The ACLU vigorously defends the rights of all Americans to practice their religion. But because the ACLU is often better known for its work preventing the government from promoting and funding selected religious activities, it is sometimes wrongly assumed that the ACLU does not zealously defend the rights of all religious believers to practice their faith. The actions described below – over half of which were brought on behalf of self-identified Christians, with the remaining cases defending the rights of a wide range of minority faiths – reveal just how mistaken such assumptions are. (The list below includes only recent examples.)

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The ACLU successfully represented Airman 1st Class Sunjit Singh Rathour in obtaining a religious accommodation from the Air Force to wear his turban, beard, and unshorn hair in compliance with his Sikh religious beliefs. A1C Rathour became the first Airman to complete both basic training and advanced technical training while wearing his Sikh articles of faith.
https://www.aclu.org/press-releases/airman-becomes-first-sikh-american-complete-basic-and-technical-training-religious

The ACLU, ACLU of Oklahoma, and the Prison Law Office sent a demand letter to the Oklahoma Department of Corrections, objecting to the prison's death row conditions and ban on congregate worship for death row prisoners, a violation of the Religious Land Use and Institutionalized Persons Act, which provides heightened protections for prisoners' religious exercise.
https://www.acluok.org/sites/default/files/field_documents/demand_letter_re._conditions_for_death-sentenced_people_incarcerated_at_h-unit.pdf

The ACLU called for an investigation into religious freedom violations by the Department of Homeland Security after numerous reports of religion violations from detained immigrants of various faiths, including Muslims, Sikhs, Hindus, and Christians.
https://www.aclu.org/blog/immigrants-rights/ice-and-border-patrol-abuses/border-patrol-and-ice-routinely-violate

The ACLU successfully petitioned the Air Force for a religious accommodation allowing our active-duty Sikh client to wear a turban, beard, and unshorn hair.
https://www.aclu.org/blog/religious-liberty/free-exercise-religion/air-force-approves-historic-religious-accommodation

The ACLU and ACLU of Arizona sent a letter to an Arizona school district on behalf of a Native American student who sought a religious accommodation to wear beadwork and an eagle feather on her graduation cap in accordance with her religious beliefs.

https://www.aclu.org/letter/aclu-urges-dysart-unified-school-district-allow-graduation-dress-accommodations-native

The ACLU of Hawaii wrote a letter to the Hawaii DMV in support of a Muslim woman who was wrongly told she would have to remove her hijab in order to obtain a driver's license photo.
https://acluhawaii.files.wordpress.com/2018/10/acluhi-tobosa-hawaii-dmv-letter.pdf

The ACLU and ACLU of Oregon filed a friend-of-the-court brief supporting the religious-freedom rights of Christian, Sikh, Muslim, and Hindu asylum-seekers detained at an Oregon federal prison, where their ability to practice their faith was unlawfully restricted.
https://www.aclu.org/news/aclu-files-brief-support-religious-freedom-detained-immigrants-sheridan-prison
https://aclu-or.org/sites/default/files/field_documents/proposed_amicus_iso_motion_emergency_relief_07312018.pdf

The ACLU and allies filed suit on behalf of Christian, Sikh, Muslim, and Hindu asylum-seekers detained at a federal prison in California, where their religious-freedom rights were repeatedly violated by prison officials.
https://www.aclu.org/blog/immigrants-rights/immigrants-rights-and-detention/trump-administration-preventing-detained
https://www.aclusocal.org/sites/default/files/aclu_socal_victorville_20180621_tro_granted.pdf

The ACLU and the ACLU of North Carolina filed a friend-of-the-court brief on behalf of a Rastafarian prisoner who sought to observe certain holy days in accordance with his religious beliefs.

The ACLU and ACLU of Southern California (2018) vindicated the rights of an ordained Baptist minister whose parole officers prohibited him from attending church.
https://www.aclu.org/legal-document/manning-v-powers-settlement-agreement

https://www.aclu.org/legal-document/manning-v-powers-order-granting-preliminary-injunction

The ACLU and ACLU of Michigan (2018) secured an accommodation for an Air Force JAG officer to wear hijab.
https://www.aclu.org/blog/religious-liberty/free-exercise-religion/aclu-client-makes-history-first-air-force-jag-corps

The ACLU of West Virginia (2018) ensured that the city of Wheeling continued to allow a Catholic woman to offer her home for hospitality and fellowship to those in need.
https://www.ncronline.org/news/people/catholic-worker-house-allowed-stay-open

The ACLU of Indiana (2017) won a preliminary ruling in favor of a Muslim prisoner seeking halal meals with meat.
https://www.prisonlegalnews.org/news/2018/apr/2/indiana-prisoner-entitled-kosher-meals-under-rluipa/

The ACLU of Florida (2017) secured a settlement for Muslim prisoners denied halal meals while other prisoners received faith-based diets.
https://www.aclufl.org/en/press-releases/aclu-florida-and-cair-florida-file-lawsuit-challenging-policy-denying-religious-meals

The ACLU and ACLU of Delaware (2017) reversed a school's decision to suspend a Muslim high school student who wears a kufi. The school agreed to allow the student to wear his kufi in school, amend district policy, and provide training on students' religious freedom rights.
https://aclu-de.org/news/aclu-de-protects-students-rights-to-religious-freedom/2018/01/09/

The ACLU and ACLU of Minnesota (2017) joined a friend-of-the-court brief supporting a Seventh-day Adventist whose employer revoked her job offer after she asked for a religious accommodation.
https://www.aclu.org/legal-document/eeoc-v-north-memorial-health-care-amicus-brief

The ACLU and ACLU of Georgia (2017) advocated for the rights of a Christian woman who was forced to remove her religiously motivated head covering when she visited her brother in prison. An officer told her that only Jews and Muslims would be allowed to enter with a head covering worn for religious reasons.
https://www.acluga.org/en/news/aclu-georgia-and-aclu-program-freedom-religion-belief-demand-united-states-penitentiary-atlanta
https://www.aclu.org/blog/religious-liberty/free-exercise-religion/federal-prison-illegally-bans-christian-head-scarves

The ACLU and ACLU of Louisiana (2017) won the right of a Rastafarian prisoner to wear dreadlocks in accordance with his sincerely held religious beliefs.
https://www.laaclu.org/en/cases/ware-v-ladoc

The ACLU of Idaho (2017) secured kosher meals for Jewish prisoners.
http://boisestatepublicradio.org/post/idaho-prisons-ordered-provide-kosher-meals-inmates#stream/0

The ACLU of West Virginia (2017) contacted school officials on behalf a Muslim student who said his classmates and teacher harassed him for his faith.
http://www.wvva.com/story/34638967/2017/03/Wednesday/aclu-cair-call-for-investigation-into-harassment-of-muslim-student-at-raleigh-county-school

The ACLU and ACLU of Virginia (2017) filed a friend-of-the-court brief in support of a mosque for which the County Board of Supervisors denied a pump and haul permit.
https://www.aclu.org/legal-document/united-states-america-v-county-culpeper-va-aclu-amicus-brief

The ACLU, with affiliates and allies across the country (2017), brought suit against President Trump's Muslim ban.
https://www.aclu.org/legal-document/complaint-declaratory-and-injunctive-relief-0

The ACLU and the ACLU of Alabama (2017) favorably settled the case of a Christian woman who was forced by the DMV to remove her headscarf, which she wears for religious reasons.
https://www.aclu.org/cases/allen-v-english

The ACLU of Michigan (2016) represented a prisoner claiming that the vegan diet provided to him was not kosher, in violation of his religious beliefs.
http://www.aclumich.org/article/jewish-inmates-deprived-kosher-food

The ACLU and ACLU of Arizona (2016) secured an accommodation for a Muslim woman who, for religious reasons, did not want to reveal her hair color on her driver's license.

The ACLU and the ACLU of South Carolina (2016) supported a Muslim student's request to wear hijab as part of her uniform at a public military college.
https://www.aclu.org/blog/speak-freely/denying-cadet-her-right-wear-hijab-will-not-make-america-great

The ACLU of Nebraska (2016) backed a mosque for which the City Council denied a conditional use permit.
http://www.omaha.com/news/nebraska/lexington-islamic-center-has-aclu-s-backing-in-zoning-fight/article_81a9a1f5-a313-5954-b4b7-9270cb14a7c2.html

The ACLU of New Hampshire (2015) filed suit on behalf of a prisoner's mother and three-year-old son against a prison policy that prohibits Christmas cards, prayer cards, and drawings sent through the mail.
http://aclu-nh.org/aclu-of-nh-challenges-state-prison-ban-on-mailed-christmas-cards-prayer-cards-and-childrens-drawings/

The ACLU of Hawai'i (2015) secured the rights of a pastor and his wife to hand out religious literature on a public sidewalk.
http://acluhi.org/2015/11/19/pastor-and-maui-county-settle-1st-amendment-lawsuit/

The ACLU of Pennsylvania (2015) interceded on behalf of a Christian inmate seeking to have a communal prayer during the Christmas holiday.
http://www.pennlive.com/news/2015/11/settlement_gives_camp_hill_chr.html

The ACLU of Northern California (2015) represented a Native American public high school student who wanted to wear a ceremonial feather in his graduation cap. https://www.aclunc.org/news/native-american-student-challenges-ban-ceremonial-feathers-during-graduation

The ACLU and ACLU of Florida (2015) successfully persuaded Walt Disney World to accommodate a Sikh mail carrier who wanted to perform his regular job duties with his religiously mandated beard and turban intact, regardless of the company's "Look Policy." https://www.aclu.org/blog/speak-freely/happily-ever-after-religious-freedom-prevails-walt-disney-world

The ACLU and the ACLU of the Nation's Capital (2015) won a lawsuit allowing a Sikh student to enroll in ROTC while still wearing his articles of faith. https://www.aclu.org/cases/singh-v-mchugh

The ACLU of Indiana (2015) challenged a state law preventing sex offenders from attending religious worship services. http://www.aclu-in.org/news/329-state-law-banning-sex-offenders-from-religious-worship-violates-rfra-and-the-u-s-constitution

The ACLU of Virginia (2015) defended students' right to wear rosary beads in a public high school.

The ACLU of Michigan (2015) backed Christian evangelists' right to protest at a street festival. http://www.mlive.com/news/detroit/index.ssf/2014/12/aclu_backs_evangelists_in_detr.html

The ACLU, the ACLU of Alabama (2014), and a cohort of former corrections officials filed a brief in support of a Muslim prisoner who was denied the right to grow a half-inch beard in compliance with his religious beliefs. https://www.aclu.org/religion-belief/holt-v-hobbs

The ACLU and the ACLU of Alabama (2014) filed a lawsuit to protect a pastor's right to provide housing and ministry to those in need. http://aclualabama.org/wp/aclu-files-lawsuit-protect-pastors-right-practice-christian-faith/

The ACLU of Texas (2014) spoke out against overly broad subpoenas served on pastors. http://www.christianpost.com/news/aclu-liberals-express-concern-over-houstons-subpoenas-of-sermons-128256/

The ACLU of New Jersey (2014) defended a man's right to wear a religious head-covering in court.

https://www.aclu-nj.org/news/2014/08/19/nj-appellate-division-dismisses-contempt-finding-against-acl

The ACLU of Louisiana (2014) secured a student's right to maintain his religiously mandated hairstyle.
https://laaclu.org/press/2014/082814.htm

The ACLU of Nebraska (2014) supported a man's right to hand out the gospel of Jesus Christ outside an arena.
https://www.aclu.org/news/charges-dropped-case-against-aclu-client-handing-out-religious-pamphlets?redirect=religion-belief/charges-dropped-case-against-aclu-client-handing-out-religious-pamphlets

The ACLU of Virginia (2014) decried the state's denial of a permit for a National Day of Prayer event on Capitol Square.
http://acluva.org/14973/aclu-of-virginia-to-governor-capitol-square-demonstration-regulation-is-unconstitutional/

The ACLU of Tennessee (2014) defended an elementary-school student's right to read his Bible during a free-reading period.
https://www.aclu.org/religion-belief/aclu-tn-protects-students-right-read-bible-school

The ACLU of Virginia (2014) supported the right of Christian students to proselytize on a community college campus.
http://acluva.org/14911/aclu-tells-virginia-community-college-system-that-campus-demonstration-policies-are-unconstitutional/

The ACLU and the ACLU of Florida (2014) filed a friend-of-the-court brief supporting Jewish prisoners' right to receive a Kosher diet.
http://www.becketfund.org/wp-content/uploads/2014/05/CA11-Kosher-Amicus-Brief-as-filed1.pdf

The ACLU of New Jersey (2014) defended an orthodox Christian man's right to wear his religious head-covering in a municipal courtroom.
http://www.pressofatlanticcity.com/news/press/atlantic/aclu-appeal-filed-over-man-s-hat-in-egg-harbor/article_8c1999fe-4a54-5612-8459-66d4083a4ed6.html

The ACLU and the ACLU of Wyoming (2014) sent a letter protesting the Wyoming Department of Corrections' practice of prohibiting prisoners from wearing religious headgear outside of their cells.
https://www.aclu.org/blog/prisoners-rights-religion-belief/why-wyoming-discriminating-against-jewish-prisoners

The ACLU and ACLU of Eastern Missouri (2013) sought access to religious websites that had been blocked at the public library.

https://www.aclu.org/news/court-orders-missouri-library-stop-illegal-censoring-online-research

The ACLU of Alabama (2013) represented a prisoner seeking to wear his hair unshorn in accordance with his Native American faith.
http://www.aclualabama.org/WhatWeDo/LegalDockets/2004%20Docket%20page%202.pdf

The ACLU and the ACLU of Oklahoma (2013) filed a brief in support of a Muslim job applicant who faced religious discrimination in the hiring process.
https://www.aclu.org/religion-belief/eeoc-v-abercrombie-fitch-amicus-brief

The ACLU of Washington (2013) supported the right of Orthodox Christian, Hindu, and Muslim employees to an accommodation for their religious dietary needs.
https://aclu-wa.org/cases/kumar-v-gate-gourmet-0

The ACLU and the ACLU of Mississippi (2013) defended the right of a Sikh man to wear a turban and carry a kirpan, without being subjected to harassment, in encounters with the Mississippi Department of Transportation and a Pike County judge/ during a traffic stop and courtroom appearance.
https://www.aclu.org/blog/religion-belief-racial-justice/judge-sikh-man-remove-rag-or-go-jail

The ACLU and the New York Civil Liberties Union (2013) filed a lawsuit challenging the New York City Police Department's practice of targeting entire Muslim communities for discriminatory and suspicionless surveillance.
https://www.aclu.org/national-security/raza-v-city-new-york-legal-challenge-nypd-muslim-surveillance-program

The ACLU and ACLU of Florida (2012) submitted a brief in support of prisoner's request for kosher meals.
https://www.aclu.org/legal-document/rich-v-florida-department-corrections-aclu-amicus-brief

The ACLU of North Carolina (2012) advocated for allowing a 6-year-old to read aloud a poem with the word "God" in it at her school's Veterans Day assembly, in response to school officials' decision to remove the word.
http://www.charlotteobserver.com/2012/12/12/3722569/divining-the-tricky-line-on-god.html

The ACLU of North Carolina (2012) objected to a decision by the presiding deputy of a Lenoir County courtroom to eject a man observing court proceedings after he refused to remove his kufi – a knitted skull cap commonly worn by Muslim men.
http://acluofnc.org/index.php/blog/report-man-removed-from-lenoir-courthouse-for-wearing-religious-attire.html

The ACLU of Pennsylvania (2012) filed a brief in support of a fifth grader's right to share her religious beliefs with classmates by distributing invitations to a Christmas party hosted by a local church.
http://www.ca3.uscourts.gov/opinarch/121728p.pdf

The ACLU of Virginia (2012) represented four Sikh men challenging a law that allows ordained ministers to receive a license to perform marriages without posting a bond, but requires representatives of religions that have no ordained ministers, like Sikhism, to post a $500 bond.
https://acluva.org/wp-content/uploads/2013/01/InReSingh_petitionersbrief.pdf

The ACLU of Louisiana (2012) filed a lawsuit on behalf of a member of Raven Ministries, a Christian congregation that regularly preaches the Gospel in New Orleans's French Quarter. The lawsuit challenged a city ordinance that restricts religious speech on Bourbon Street after dark. As a result of the lawsuit, a federal judge issued an order that blocks enforcement of the law.
https://www.laaclu.org/press/2012/092112.htm

The ACLU of Michigan (2012) successfully represented Muslim and Seventh-Day Adventist prisoners in a religious class action challenging two Michigan Department of Corrections policies: one which accommodated Jewish inmates by providing kosher meals while denying Muslim inmates halal meals, while the other failed to excuse inmates from their prison jobs on the Sabbath.
http://www.aclumich.org/courts/legal-dockets#9religion
http://www.aclumich.org/issues/halal/2013-11/1894

The ACLU of Virginia (2012 and 2010) opposed bans on students' right to wear rosary beads at two public middle schools. The schools dropped the bans after receiving letters from the ACLU.
http://www.aclu.org/religion-belief/letter-matacoa-middle-school
http://www.aclu.org/religion-belief/letter-fairfield-middle-school

The ACLU of Utah (2012) filed a lawsuit on behalf of members of the Main Street Church, a non-denominational Christian church in Brigham City, who were denied access to certain city streets for the purpose of handing out religious literature. An agreement was reached with the city allowing church members to distribute their literature.
http://www.acluutah.org/legal-work/resolved-cases/item/239-main-street-church-v-brigham-city-settled-2013

The ACLU of New Mexico (2012) filed a lawsuit on behalf of two Christian street preachers who were arrested multiple times for exercising their First Amendment rights by preaching in public.
http://aclu-nm.org/aclu-sues-roswell-for-violating-christian-preachers%E2%80%99-right-to-free-speech/2012/04/#.T4wzkIVURLM.email

The ACLU and the ACLU of Texas (2012) filed a brief in support of an observant Jewish prisoner's right to receive kosher meals.
http://www.aclu.org/religion-belief/moussazadeh-v-tdcj-amicus-brief

The ACLU of Texas (2011) opposed a public high school's policy prohibiting students from wearing visible rosaries and crosses in the Brownsville Independent School District.
http://www.aclutx.org/2011/11/18/aclu-of-texas-demands-brownsville-isd-disclose-policies-banning-rosaries-and-crosses-at-school/

The ACLU of Nebraska (2011) opposed a policy at Fremont Public School that would prevent students from wearing Catholic rosaries to school.
http://www.torontosun.com/2011/10/04/nebraska-girl-told-she-cant-wear-rosary-to-school-because-its-a-gang-symbol

The ACLU of Texas (2011) filed a brief in support of students in the Plano school district who wanted to include Christian messages in their holiday gift bags.
http://www.aclutx.org/blog/?p=706

The ACLU of Virginia (2011) defended the free religious expression of a group of Christian athletes in Floyd County High School who had copies of the Ten Commandments removed from their personal lockers.
http://acluva.org/7333/floyd-county-high-school-students-allowed-to-post-religious-messages-on-lockers/

The ACLU and the ACLU of Southern California (2011) filed a lawsuit on behalf of a Sikh inmate who has faced multiple disciplinary sanctions for refusing to trim his beard on religious grounds. Keeping unshorn hair is one of the central tenets of the Sikh faith.
http://www.aclu.org/prisoners-rights-religion-belief/aclu-files-lawsuit-behalf-california-inmate-subjected-baseless-reli

The ACLU of Connecticut (2011) filed a lawsuit on behalf of a Naval officer who sought recognition as a conscientious objector because of his Christian convictions against war. After a period of intense religious study, reflection, and prayer, he had come to realize that his religious beliefs were in conflict with his military service. The officer's request was subsequently granted and he received an honorable discharge.
https://www.acluct.org/updates/naval-officer-seeks-conscientious-objector-discharge/
http://www.nytimes.com/2011/02/23/nyregion/23objector.html?_r=1&scp=2&sq=ACLU&st=cse

The ACLU of Southern California (2011) filed a lawsuit against the FBI alleging that an agent had infiltrated a California mosque and violated the constitutional rights of hundreds of Muslims by targeting them for surveillance because of their religion.
http://www.aclu-sc.org/releases/view/103067

http://www.washingtonpost.com/wp-dyn/content/article/2011/02/22/AR2011022206975.html

The ACLU of Colorado (2010) supported the rights of students in Colorado Springs School District 11 to wear crosses, rosaries, and other religious symbols. A middle school had announced a policy forbidding students from wearing certain Christian symbols unless they were worn underneath their clothing.
http://aclu-co.org/news/aclu-supports-students-right-of-religious-freedom

The ACLU and the ACLU of Kentucky (2010) appealed the denial of a zoning permit for a Muslim prayer space in Mayfield. After ACLU involvement, the permit was granted.
http://www.aclu.org/religion-belief/muslim-prayer-space-granted-permit-kentucky

The ACLU of San Diego and Imperial Counties (2010) wrote a letter in support of a church in El Centro, California, that was prohibited from relocating to a building in the downtown district.
http://www.aclusandiego.org/religion-belief/news-for-religion-belief/christian-church-discriminated-against-says-aclu-el-centro-is-breaking-federal-law-that-protects-religious-freedom/

The ACLU of Washington (2010) sued the Pierce County Jail in Tacoma, Washington, for religious discrimination against two Muslims who were forbidden from participating in group prayer, denied dietary accommodations, and refused religious clothing.
http://blog.thenewstribune.com/crime/2010/09/22/two-men-sue-pierce-county-claiming-jail-discriminates-against-muslims/

The ACLU and the ACLU of Georgia (2010) sued the City of Douglasville on behalf of a devout Muslim woman who was restrained, arrested, and jailed for several hours after refusing to remove her religious head covering.
http://www.aclu.org/religion-belief-womens-rights/aclu-files-lawsuit-behalf-muslim-woman-forced-remove-head-covering-geo

The ACLU of Florida (2010) filed a lawsuit on behalf of a local homeless ministry, the First Vagabonds Church of God, challenging an Orlando ordinance that prohibits service of food to groups in the same public park more than twice per year. The U.S. Court of Appeals for the Eleventh Circuit eventually enjoined the city from enforcing the ordinance, allowing the church to resume providing food to the homeless.
http://www.orlandosentinel.com/news/local/breakingnews/os-homeless-feeding-ruling-20100831,0,6714611.story

The ACLU and the ACLU of Texas (2010) filed a brief in the U.S. Supreme Court in support of a Texas state prisoner seeking damages after prison officials denied him the opportunity to participate in Christian worship services.
http://www.aclu.org/prisoners-rights-religion-belief/christian-prisoner-entitled-seek-monetary-damages-violation-his-rel

The ACLU of Alaska (2010) advised the Alaska Department of Education to respect the religious freedom of Russian Old Believer families by arranging alternate testing dates for the High School Graduation Qualifying Exam, which conflicts with Holy Week for Russian Old Believer students. Students may now take the test on different testing dates.
http://homernews.com/stories/022410/news_1_004.shtml

The ACLU and the ACLU of Maryland (2010) filed an amicus brief in the U.S. Court of Appeals for the Fourth Circuit on behalf of Steven Kanai, a conscientious objector who self-identified as a Christian but also found meaning in the non-violent and compassionate teachings of Buddhism.
https://www.aclu.org/legal-document/kanai-v-mchugh-amicus-brief

The ACLU of Maryland (2010) came to the defense of a practicing Muslim woman who was denied a foster care license simply because she does not allow pork products in her home. The woman was fully qualified and made clear that she allows foster children to worship as they please.
http://www.aclu.org/blog/religion-belief/pork-or-parents

The ACLU, its national chapter in Puerto Rico, and its affiliates in New Hampshire, Maine, Massachusetts, and Rhode Island (2010) filed a friend-of-the-court brief opposing restrictive laws that effectively ban Jehovah's Witnesses from freely expressing their faith on the streets of Puerto Rico. The brief supports a challenge by the Witnesses to Puerto Rico statutes authorizing local neighborhoods to deny citizens access to public residential streets.
http://www.aclu.org/religion-belief/aclu-brief-affirms-right-jehovahs-witnesses-carry-out-public-ministry

The ACLU of Arizona (2010) successfully challenged a Maricopa County policy restricting religious head coverings worn by detainees and inmates in county custody. The ACLU of Arizona brought the case on behalf of a Muslim woman who was denied the right to wear a head scarf while detained by the Maricopa County Sherriff's Office. MCSO now allows Muslim women to wear head scarves during the intake and booking process after a brief initial search.
http://www.acluaz.org/issues/religious-liberty/2010-02/357

The ACLU of San Diego and Imperial Counties (2009) wrote a letter in support of a family's right to host a home bible study after the family was cited for violating a county zoning code.
http://www.aclusandiego.org/free-speech-expression/news-for-freespeech-expression/san-diego-couple-should-be-free-to-host-bible-study-sessionsaclu-says-county-should-rescind-citation/

The Maine Civil Liberties Union (2009) filed suit against the City of Portland on behalf of the Portland Masjid and Islamic Center, a group of Muslims seeking to use a former television repair shop they had purchased for prayer services and religious study. In response, Portland amended its land-use ordinance, and the Portland Planning Board granted approval to the project. The new mosque will primarily serve as a religious and cultural center for Muslim families who came to this country from Afghanistan fleeing religious persecution following invasion of their country by the Soviet Union.
http://www.aclu.org/blog/content/mosque-maine

The ACLU of Maryland (2009) successfully settled a lawsuit on behalf of a Christian ministry for the homeless in the town of Elkton, Maryland, which had purchased a site for a religious day center to help the local community through job training, food, showers, and religious services. Though the site is legally zoned for the use of churches and centers that provide those services, the zoning board had refused to recognize the religious nature of the center, placing unreasonable limitations on the ministry. The ACLU of Maryland reached a favorable settlement with the town, affirming the church's right to operate its day center for the homeless.
https://www.aclu.org/religion-belief/aclu-maryland-champions-religious-liberty-christian-ministry-homeless-elkton

The ACLU and the ACLU of the National Capital Area (2009) filed suit on behalf of a young Quaker whose religious beliefs prevent him from registering for the draft without some official way to record his claim of conscientious objection in the registration process. He is a birthright Quaker and does not believe that he can offer himself as a candidate for the military.
http://www.washingtonpost.com/wp-dyn/content/article/2009/07/29/AR2009072902625.html

The ACLU and the ACLU of New Jersey (2009) filed a successful lawsuit on behalf of a New Jersey prisoner – an ordained Pentecostal minister – to restore his fundamental right to preach to other inmates. The minister had preached at weekly Christian worship services at the New Jersey State Prison in Trenton, New Jersey for more than a decade when prison officials suddenly banned that activity without any justification. As a result of the ACLU lawsuit, state officials agreed to allow the minister to resume preaching and teaching Bible study classes under the supervision of prison staff.
http://www.aclu.org/religion-belief/ordained-pentecostal-minister-can-preach-prison-after-aclu-lawsuit

The ACLU of Florida (2009) filed a lawsuit on behalf of two families from the Dove World Outreach Center, defending their constitutional right to express themselves in public school with t-shirts stating, "Islam is of the devil." The suit claims that the school has been inconsistent in enforcing restrictions on free speech.
http://www.gainesville.com/article/20091124/ARTICLES/911241001/1118?Title=ACLU-files-suit-over-Devil-shirts&tc=autorefresh

The ACLU of Michigan (2009) filed a friend-of-the-court brief on behalf of the First Baptist Church of Ferndale after local residents cited a zoning ordinance to prevent the church from providing social services to the poor and homeless on church property. The ACLU argued that zoning boards may not burden the free exercise of religion simply because neighbors object. The Oakland County Circuit Court denied the request of the residents, allowing the church to continue providing services.
http://www.aclumich.org/issues/religious-liberty/2009-09/1395

The ACLU of Tennessee (2009) came to the defense of a group of student teachers who conduct church services with the homeless in a public park. The ACLU successfully negotiated with the Metro Board of Parks and Recreation to revise a policy that had unfairly blocked religious groups' regular use of park space.
http://www.aclu.org/religion-belief/aclu-tn-successfully-advocates-behalf-student-preachers

The ACLU and the ACLU of Virginia (2009) argued against the censorship of religious materials being sent to detainees in the Rappahannock Regional Jail. The ACLU wrote a letter to the superintendent of the jail, asking that the jail stop removing Christian-themed materials and biblical passages from letters written to detainees. As a result of ACLU involvement, the prison agreed to change its policies and allow religious mail.
http://www.aclu.org/prison/restrict/40258prs20090709.html

The ACLU of Michigan (2009) submitted a comment and testified before the Michigan Supreme Court on a proposed court rule that would give judges the discretion to bar women who wear religious veils, or niqabs, from testifying. The ACLU argued that denying women their day in court because of their religious dress violated the Michigan Constitution's Religious Freedom Clause.
http://www.aclumich.org/issues/religious-liberty/2009-04/1362

The ACLU of Louisiana (2009) argued for the right of Christian preachers to distribute pamphlets at the Breaux Bridge Crawfish Festival. The ACLU wrote a letter to the mayor in support of the preachers, who had been ordered to stop handing out religious material.
https://www.laaclu.org/press/2009/051509.htm

The ACLU of Louisiana (2009) filed a federal lawsuit on behalf of Donald Leger, a devout Catholic and prisoner on death row at Angola State Prison. The lawsuit challenged a prison policy mandating that all televisions on death row be tuned to predominately Baptist programming on Sunday mornings. Under the terms of a settlement in the case, Mr. Leger was able to view Catholic Mass regularly and was permitted private confessional visits with a priest.
https://www.laaclu.org/press/2009/070109.htm

The ACLU of Texas (2009) filed a friend-of-the-court brief in support of a Christian pastor and his faith-based rehabilitation facility in Sinton, Texas. The ACLU urged the court to reverse a decision that had prohibited the pastor from operating his rehabilitation program

near his church and also had sharply limited the reach of the Texas Religious Freedom Restoration Act. In June 2009, the Texas Supreme Court agreed and ruled in favor of the pastor.
http://aclutx.org/article.php?aid=726

The ACLU of Maryland (2009) filed discrimination charges with the E.E.O.C. on behalf of three Orthodox medics who were told that they could not ride on calls with the Pikesville Volunteer Fire Company (PVFC) unless they shaved their religiously required beards. The PVFC claimed that the beards might prevent the medics from wearing specialized safety masks that the PVFC hopes to purchase in the future.
https://www.aclu.org/religion-belief/orthodox-medics-aclu-challenge-religious-discrimination-pikesville-fire-company

The ACLU of Georgia (2009) drafted a policy that was adopted by the Georgia Judicial Council, the policy-making body for Georgia courts, which clarified that religious head coverings can be worn in Georgia courthouses. The ACLU of Georgia advocated for the adoption of this policy after learning about troubling reports of incidents at the Douglasville Municipal Court, where Muslim women were faced with the choice of removing their headscarves or being barred from the courtroom.
http://www.acluga.org/issues/religion-and-belief/valentine-v-city-of-douglasville/

The ACLU of Delaware (2009) represented the Episcopal Diocese of Delaware in a threatened eviction action against a congregation that was meeting in an elementary school on Sunday mornings. Because the school district permitted a wide variety of other groups to use its facilities, the ACLU wrote to the school district explaining that, as a general rule, public buildings must be made available to religious groups on the same terms that they are made available to the general public. In January 2009, the parties reached an amicable resolution permitting the church to continue using the facilities.

The ACLU of Pennsylvania (2009) filed a lawsuit on behalf of the Shenkel United Church of Christ, objecting to North Coventry Township's refusal to allow the church to house homeless people for one month out of the year. The case is similar to several earlier actions brought by the ACLU on behalf of churches in the Pennsylvania towns of Brookville and Munhall.
http://www.aclupa.org/news/2009/04/30/aclu-defends-church-prevented-from-providing-shelter-for-the-homeless

The ACLU of Kentucky (2009) represented several members of the Swartzentruber Amish, an Old Order Amish sect, in an attempt to overturn their criminal convictions for failing to display slow-moving vehicle emblems on their horse-drawn buggies. The Swartzentruber Amish object to displaying the emblems because they perceive them as worldly symbols that are to be avoided.
https://www.aclu.org/religion-belief/kentucky-supreme-court-upholds-convictions-amish-buggy-dispute

The ACLU of the National Capital Area (2009) brought suit on behalf of Christian, Muslim, and Jewish firefighters and paramedics who wear beards as a matter of religious observance. The district court agreed with the ACLU that the District of Columbia's policy prohibiting these individuals from wearing beards violated their religious freedom rights, and the Court of Appeals affirmed in 2009.
http://aclu-nca.org/docket/accommodation-for-religious-beards

The ACLU of Arizona (2009) filed a lawsuit on behalf of a Maricopa County Sheriff's Office detention officer who was demoted and eventually forced to leave for failing to abandon his practice of wearing a beard in accordance with his Muslim faith.
https://www.aclu.org/religion-belief/aclu-arizona-files-lawsuit-protect-religious-liberty-former-mcso-officer

The ACLU of Michigan (2008) filed a successful lawsuit on behalf of a Benton Harbor minister who was sentenced to 3 to 10 years in prison for writing an article both criticizing the judge and predicting what God might do to the judge who presided over his case – actions protected by the constitutional guarantees of freedom of speech and religious expression.
http://www.aclumich.org/article/aclu-michigan-demands-release-benton-harbor-minister-jailed-retaliation-activism

The ACLU of Southern California (2008) filed suit on behalf of members of a faith-based charity organization after park rangers threatened to arrest the members for serving hot meals and distributing Bibles to the homeless on Doheny State Beach.
http://www.aclu-sc.org/releases/view/102880

The ACLU of Louisiana (2008) filed a brief in the U.S. Court of Appeals for the Fifth Circuit supporting an individual's right to quote Bible verses on public streets in Zachary, Louisiana.
https://www.laaclu.org/press/2008/060408.htm

The ACLU of Pennsylvania (2008) filed several declaratory judgment actions to confirm the validity of marriages performed by clergy who do not regularly preach in a church or to a congregation.

The ACLU of North Carolina (2008) assisted an individual who had been banned from riding the bus in Raleigh for reading his Bible aloud. As a result of the ACLU's intervention, he was permitted back on the bus system.

The ACLU and the ACLU of Texas (2008) filed a friend-of-the-court brief in the Texas Supreme Court in support of mothers who had been separated from their children by the Texas Department of Family and Protective Services (DFPS). The DFPS seized more than 450 children from their homes in Eldorado, Texas, following vague allegations about child abuse by some members of the Fundamentalist Church of Jesus Christ of Latter-day Saints. While fully supporting the state's commitment to protecting children from abuse,

the ACLU argued that Texas law and the U.S. Constitution required that the children be returned unless the state could provide the requisite evidence of abuse. In May 2008, the Texas Supreme Court unanimously ruled, consistent with the ACLU position, that the state must return the children to their homes pending further investigation of allegations of abuse.
http://www.aclu.org/religion/gen/35468prs20080529.html
http://www.aclu.org/religion/gen/35500prs20080602.html

The ACLU and the ACLU of Wyoming (2008) represented a Wyoming prisoner who was prevented from possessing bald eagle feathers, the single most sacred religious symbol of his Native American tribe.
http://www.aclu.org/religion-belief/aclu-fight-religious-freedom-american-indian-incarcerated-wyoming

The ACLU (2008) struck an agreement with officials at the Wyoming State Penitentiary over new prison dining policies that more fully accommodate their religious practices and beliefs.
https://www.aclu.org/racial-justice/aclu-secures-religious-freedom-muslim-prisoners-wyoming-state-penitentiary

The ACLU of Missouri (2008) sued the City of Poplar Bluff after the City's public library disciplined a part-time employee who objected to participating in the promotion of a Harry Potter book. The employee, a devout Southern Baptist, had religious objections to the promotion, which she believed encouraged children to worship the occult. The lawsuit argued that the city violated federal law by refusing to accommodate her sincerely held religious beliefs.
http://www.aclu-mo.org/newsviews/2008/05/27/suit-filed-behalf-librarian-over-harry-potter

The ACLU of Delaware (2008) came to the defense of a Muslim nurse who was told she could not wear her religious head covering to work at the New Castle County Detention Center. After the ACLU's intervention in the matter, the nurse received her requested religious accommodation.

The ACLU and the ACLU of Texas (2008) came to the defense of a five-year-old Native American boy who was forced into in-school suspension for wearing long braids as an expression of his religious beliefs and cultural heritage. A federal judge ruled that this policy violated the U.S. Constitution and state law, and the school district was required to provide the child an exemption from its restrictive dress code. The case is now on appeal.
http://www.aclutx.org/article.php?aid=672

The ACLU of Florida (2007) argued in favor of the right of Christians to protest against a gay pride event held in the City of St. Petersburg. The city had proposed limiting opposition speech, including speech motivated by religious beliefs, to restricted "free speech zones." After receiving the ACLU's letter, the city revised its proposed ordinance.

http://www.aclufl.org/pdfs/StPeteLetter.pdf

The ACLU of Oregon (2007) defended the right of students at a private religious school not to be pressured to violate their Sabbath day by playing in a state basketball tournament. The Oregon School Activities Association scheduled state tournament games on Saturdays, the recognized Sabbath of students and faculty of the Portland Adventist Academy. The ACLU argued that the school's team, having successfully made it to the tournament, should not be required to violate their religious beliefs in order to participate. http://www.aclu-or.org/content/nakashima-v-board-education

The ACLU of Colorado (2007) came to the defense of a Jewish law student who needed to reschedule the first day of her bar exam because of a conflict with a day of religious observance. After a letter from the ACLU, she was granted the requested religious accommodation.

The ACLU of Texas (2007) represented a Texas man who was ordered out of the courtroom by a Justice of the Peace and threatened with arrest when he refused to remove his turban – worn in accordance with his Sikh faith – while defending himself against a traffic citation.
http://www.aclutx.org/chapters/article.php?aid=506&cid=6

The ACLU of Michigan (2007) filed a lawsuit in Wayne County Circuit Court against Old Redford Academy, a public charter school in Detroit, for violating a ninth grade student's right to wear his hair long in accordance with a verse in Leviticus. Despite the religious basis for his long hair, the school suspended him and referred him for expulsion for violating its "closely cropped" hair policy. The judge issued an injunction ordering the Academy to let the student return to school.
http://www.aclumich.org/issues/religious-liberty/2007-10/1232

The ACLU of West Virginia (2007) sued on behalf of a Church of Jesus Christ of Latter-day Saints (Mormon) university student who won a prestigious scholarship to West Virginia University. Although the state scholarship board provided leaves of absence for military, medical, and family reasons, it denied the ACLU's client a leave of absence to serve on a two-year mission for his church.
http://www.acluwv.org/Newsroom/PressReleases/07_19_07.html

The ACLU of North Carolina (2007) challenged a North Carolina Department of Corrections policy making all religious services in prison English-only, thereby denying access to many inmates. The North Carolina Division of Prisons agreed to review the policy and the need for religious services in languages other than English in the state correctional system.

The ACLU of Colorado (2007) defended the rights of prisoners in the Teller County Jail to receive a proper diet consistent with their religion. After jail officials determined that prisoners would not have "certain religious articles or diets," the ACLU wrote a letter of

inquiry which resulted in a revision of the jail's policy to allow for religious accommodation.

The ACLU of Pennsylvania (2007) came to the defense of a second-grade student who, in response to a class assignment to write a story, submitted a story about Easter and redemption. After the teacher rejected the submission because of its religious content, the ACLU wrote a letter to the school on the student's behalf. The principal and teacher subsequently apologized, and the principal agreed to instruct his teachers on the law.

The ACLU of New Jersey (2007) defended the right of an elementary school student who was prohibited from singing "Awesome God" in a voluntary after-school talent show for which students selected their own material. The ACLU submitted a friend-of-the-court brief. After a favorable settlement was reached for the student, the federal lawsuit was dismissed.
http://www.aclu.org/religion/schools/25799prs20060605.html

The ACLU and the ACLU of Pennsylvania (2007) prevailed in their case on behalf of an Egyptian Coptic Christian who had been detained and who claimed he had been tortured by the Egyptian government because he refused to convert to Islam. After permitting Sameh Khouzam to stay in the United States for nine years based on evidence that he would probably be tortured if he returned to Egypt, the U.S. government changed its position in 2007 and sought to deport Mr. Khouzam based on diplomatic assurances from the Egyptian government that Mr. Khouzam would not be tortured upon return. As a result of the ACLU's advocacy, a federal court granted Mr. Khouzam an indefinite stay of deportation to Egypt.
https://www.aclu.org/immigrants-rights/khouzam-v-chertoff

The ACLU of North Carolina (2007) wrote a letter to the Dismas Charities Community Correction Center on behalf of a former resident who was told he could not drink wine during communion services while confined at the Center. After the ACLU advised the Center of its obligations under the Religious Land Use and Institutionalized Persons Act of 2000, the Center revised its communion policy to comply with federal law.

The ACLU of Colorado (2007) came to the defense of a Seventh-Day Adventist who was being refused a religious diet in prison. After the ACLU communicated with prison authorities on the prisoner's behalf, the diet was provided.
http://aclu-co.org/case/seventh-day-adventist-prisoner-receives-proper-religious-diet

The ACLU of Georgia (2007) filed a federal lawsuit to help obtain a zoning permit for a house of worship on behalf of the Tabernacle Community Baptist Church after the city of East Point denied the request. The city has since repealed the ordinance and churches are now allowed to occupy buildings that were previously used for commercial purposes.
http://www.aclu.org/religion/discrim/25518prs20060419.html

The ACLU of Delaware (2007) prevailed in a lawsuit brought on behalf of Christians, pagans, and Wiccans, alleging that a department store violated a Delaware public accommodations law by canceling community courses after individuals complained about the religious beliefs that were being taught in the centers.

The ACLU of Missouri (2007) represented Shirley L. Phelps-Roper, a member of the Westboro Baptist Church, whose religious beliefs led her to condemn homosexuality as a sin and insist that God is punishing the United States. The protests in which she has been involved have been confrontational and have involved funerals of soldiers killed in Iraq. While the ACLU does not endorse her message, it does believe that she has both religious and free-speech rights to express her viewpoint criticizing homosexuality. The Supreme Court recently refused to overturn a court of appeals decision in Phelps-Roper's favor. http://www.aclu.org/freespeech/protest/26265prs20060721.html

The ACLU of North Carolina (2007) assisted with the naturalization of a Jehovah's Witness who was originally denied citizenship based on his conscientious refusal to swear an oath that he would be willing to bear arms on behalf of the country.

The ACLU of Rhode Island (2007) prevailed in its arguments on behalf of a Christian inmate, Wesley Spratt, who had been preaching in prison for over seven years before administrators told him to stop based on vague and unsubstantiated security concerns. After the ACLU prevailed in the Court of Appeals, the parties reached a settlement under which Mr. Spratt is free to preach again.
http://riaclu.org/court-cases/case-details/spratt-v-wall/

The ACLU and the ACLU of Southern California (2007) filed suit on behalf of Jameelah Medina, a Muslim woman who was forced by local deputies to remove her religious head covering while she was in custody in San Bernardino County's West Valley Detention Center. Despite her repeated requests to keep her head covered during her day-long incarceration, Medina was forced to remove her hijab in the presence of men she did not know and to remain uncovered for much of the day. In October 2008, the county agreed to adopt a policy accommodating the right of Muslim women to wear headscarves in accordance with their religious beliefs.
http://www.aclu.org/womensrights/gen/35300res20071206.html

The ACLU of North Carolina (2007) won its lawsuit against the state of North Carolina to permit witnesses at trial to take oaths on the religious scriptures of their own religious beliefs (in this case, Islam) rather than on those approved by the state.
http://www.aclu.org/religion/govtfunding/29872prs20070524.html

The ACLU of Southern California (2007) represents Calvin Chee Keong Lee, a Buddhist-Taoist conscientious objector who enlisted in the U.S. Army shortly after arriving in the United States from Malaysia. Currently stationed in Ft. Irwin, California and scheduled for imminent deployment to Iraq, Lee sought discharge from the Army based on his

religious beliefs, which compel him not to kill or cause injury to others. When he enlisted, Lee believed that he would be able to remain in his civilian construction job.
http://www.aclu-sc.org/releases/view/102655

The ACLU (2007) argued that veterans and their families should be able to decide for themselves which religious symbol is placed on a deceased veteran's headstone at federal cemeteries. The ACLU challenged the constitutionality of a U.S. Department of Veterans Affairs policy that had restricted religious symbols only to those that had been approved by government officials. The Department of Veterans Affairs settled the case by agreeing to allow a Wiccan symbol to be included on the plaintiffs' loved ones' military headstones.
http://www.aclu.org/religion/discrim/26970prs20060929.html

The ACLU of West Virginia and the ACLU of the National Capital Area (2007) represented a Muslim Iranian-American couple, both of whom were terminated from the National Institute for Occupational Safety and Health (NIOSH) because of their religion and without due process. The ACLU negotiated an agreement with NIOSH under which the husband and wife were reinstated to their previous positions with back pay, benefits, and damages.
http://www.acluwv.org/Newsroom/PressReleases/12_18_06.htm
http://www.acluwv.org/Slideshow/AfshariSlideshow.htm

The New York Civil Liberties Union (2007) successfully brought suit on behalf of a Muslim prison guard who was told that he had to remove his head covering (known as a kufi) while working, even though he had worn it while on duty for many years. A federal judge ordered the New York Department of Corrections to allow the guard to resume wearing his head covering on the job.
http://www.nyclu.org/node/1062

The ACLU of Michigan (2007) came to the defense of a devoted Muslim woman who was forbidden from riding a public bus in Grand Rapids because of her religious veil. After the ACLU met with county officials, the bus system repealed its no-face-covering rule and agreed to conduct diversity training.
http://www.washingtonpost.com/wp-dyn/content/article/2007/01/19/AR2007011901421.html

The ACLU of Alabama (2007) represented Native American inmates in their successful lawsuit requiring the state of Alabama to permit sacred sweat lodge ceremonies at designated correctional facilities on holy days. After winning that case, the ACLU of Alabama represented some of the inmates again when the State attempted to transfer them to a correctional facility in Louisiana that does not allow such religious ceremonies.

The ACLU and the ACLU of Georgia (2007) wrote a letter to the Centers for Disease Control and Prevention on behalf of a Sikh physician. The doctor had been instructed that he must, contrary to his religious beliefs, shave his beard and remove his turban in order to work at the Public Health Commissioned Corporation of CDC. After receiving the

ACLU's letter, the CDC implemented a new, individualized process for requests for religious exemptions that creates a general presumption in favor of religious accommodation.

The ACLU of West Virginia (2007) brought suit challenging a company's refusal to permit one of its employees to wear a skirt to work. The employee's religious beliefs prohibited her from wearing trousers. The employer refused to accommodate these beliefs despite the employee's offer to pay for a uniform skirt with her own funds.

The ACLU of Missouri (2007) sent a letter to the Kansas City Water Department demanding that a Muslim employee be permitted to attend Friday prayers. The Department responded by extending the employee's Friday lunch to accommodate her religious observance.

The ACLU of Nevada (2007) appeared before the Nevada Equal Rights Commission and the EEOC on behalf of a Jewish Orthodox employee of the Las Vegas Metropolitan Police Department whose request to wear a trim beard and yarmulke while at his non-uniform desk job was denied. When the Department still refused to grant the employee a religious accommodation, the ACLU brought a successful suit in federal court.
http://aclunv.org/aclu-wins-victory-orthodox-jewish-police-officer-seeking-wear-beard

The ACLU of Virginia (2007) filed a complaint under the Religious Land Use and Institutionalized Persons Act challenging a Virginia Department of Corrections policy requiring inmates to be clean-shaven and to keep their hair short. The policy infringed on the beliefs of Muslim and Rastafarian inmates who have religious objections to cutting their hair.

The ACLU of New Jersey (2007) filed a religious discrimination case on behalf of a Muslim student who had to choose between following his religious beliefs that forbid him from entering buildings with foreign religious symbols and attending his public high school graduation that was scheduled to be held in a church. The ACLU argued that the school's decision unlawfully forced the student to choose between attending his graduation and violating his faith.
https://www.aclu.org/religion-belief/aclu-new-jersey-sues-newark-public-schools-holding-graduation-church

The ACLU of Louisiana (2007) filed a Religious Land Use and Institutionalized Persons Act lawsuit in federal court after the David Wade Correctional Facility refused to permit a Muslim inmate to receive a religious newspaper.
https://www.laaclu.org/press/2007/050907.2.htm

The ACLU of Southern California (2007) filed claims under the Religious Land Use and Institutionalized Persons Act, the First Amendment, and several state law provisions on behalf of Souhair Khatib, a practicing Muslim woman who was forced to remove her hijab, a religious headscarf, when taken into custody at an Orange County courthouse

holding facility. In accordance with her religious beliefs, Mrs. Khatib wears her headscarf whenever she is in public or in the presence of men who are not part of her immediate family, and she does not permit any physical contact with men who are not her immediate relatives.
http://articles.latimes.com/2007/sep/05/local/me-hijab5

The ACLU of Louisiana (2006) reached a favorable settlement after filing a federal lawsuit against the Department of Corrections on behalf of an inmate who was a member of the Church of Jesus Christ of Latter-day Saints (Mormon). The inmate, Norman Sanders, was denied access to religious services and religious texts, including *The Book of Mormon*.
https://www.laaclu.org/press/2007/032307.htm

The ACLU of Louisiana (2006) prevailed in its lawsuit defending the right of a Christian man to exercise his religious and speech rights by protesting against homosexuality in front of a Wal-Mart store with a sign that read: "Christians: Wal-Mart Supports Gay Marriage and Gay Lifestyles. Don't Shop There."
https://www.aclu.org/news/louisiana-court-affirms-christian-protesters-free-speech-rights

The ACLU of Nevada (2006) defended the free-exercise and free-speech rights of evangelical Christians to preach on the sidewalks of Las Vegas. When the county government refused to change its unconstitutional policy, the ACLU filed suit in federal court.

The ACLU of Southern California (2006) filed suit on behalf of a Vietnamese Buddhist Temple (Quan Am Temple) against the City of Garden Grove and its officials for violating the congregation's First Amendment rights to free religious exercise and the Religious Land Use and Institutionalized Persons Act. The lawsuit challenges the constitutionality of the city's zoning codes, as well as the city's application of the zoning codes to Quan Am Temple. A federal judge issued a preliminary ruling requiring the city to allow "the Temple, the Abbot, and his congregation [to] peaceably practice their Buddhist faith at the Chapwood Property immediately."
https://www.aclu.org/religion-belief/aclu-and-orange-county-buddhists-challenge-discriminatory-city-ordinance

The ACLU of Massachusetts (2006) helped a Rastafarian baggage screener wear his hair in accordance with his religion. The screener had been employed for three years by the Logan Airport for the Transportation Security Administration. The ACLU filed a complaint before the Equal Opportunity Employment Commission defending his religious rights.

The ACLU of Michigan (2006) called the U.S. attorney on behalf of a Muslim woman who was being pressured to have her photograph taken without her headscarf by the FBI. While she was willing to be photographed, it would have been a violation of her faith for

men who were not members of her family to see her without her religious head covering. The U.S. attorney directed the FBI to accommodate the woman's religion.

The New York Civil Liberties Union (2006) filed a federal lawsuit in Manhattan defending the right of people wearing religious head coverings not to have them removed for identity photos. The case was brought against a Coast Guard regulation denying merchant marine licenses to those who would not remove the coverings for photographs. http://www.aclu.org/religion/discrim/24780prs20060328.html

The ACLU of Virginia (2006) filed a friend-of-the-court brief supporting an inmate's allegation that the Virginia Department of Corrections violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) by refusing to provide him with meals consistent with his religious beliefs.

The ACLU of Nebraska (2006) brought a free-exercise claim on behalf of followers of the Church of Scientology, who alleged that Nebraska's mandatory testing of newborn infants for metabolic diseases violated their religious liberty by preventing them, as new parents, from exercising their belief that a newborn should be kept quiet and serene during the first days of life.

The ACLU of Michigan (2005) file a friend-of-the-court brief on behalf of a Sikh student at Wayne State University, who was charged with violating a Detroit knife ordinance for carrying a ceremonial sword called a Kirpan as required by his faith. http://www.unitedsikhs.org/docs/kirpan_cases_cited.pdf

The ACLU of Florida (2005) represented Christian and Jewish cemetery plot owners in a challenge to the city of Boca Raton's restrictions prohibiting vertical grave markers, memorials, monuments, and other structures, including Christian crosses and Stars of David.
http://www.aclu.org/religion-belief/aclu-defends-florida-families-fighting-removal-religious-symbols-cemetery

The ACLU of Iowa (2005) defended the rights of two teenage girls who were threatened with punishment by school officials after seeking to wear, for religious reasons, anti-abortion t-shirts to school.
http://www.aclu.org/studentsrights/expression/12852prs20050429.html

The ACLU of New Mexico (2005) helped release a street preacher who had been incarcerated in Roosevelt County jail for 109 days. The case was brought to the ACLU by the preacher's wife and was supported by the American Family Association.
http://www.aclu.org/religion/gen/19918prs20050804.html

The ACLU of Michigan (2005) filed a federal lawsuit on behalf of Joseph Hanas, a Roman Catholic who was punished for not completing a drug rehabilitation program run by a Pentecostal group whose religious beliefs he did not share. Part of the program required reading the Bible for seven hours a day, proclaiming one's salvation at the altar, and being tested on Pentecostal principles. The staff confiscated Mr. Hanas's rosary beads and told him Catholicism was witchcraft.
http://www.aclu.org/religion/govtfunding/22354prs20051206.html

The ACLU of Southern California (2005) defended an evangelical scholar who monitored the fundraising practices of several ministries and their leaders after a defamation suit was brought against him in order to silence him.

The ACLU of Michigan (2005) wrote a letter on behalf of a small Pentecostal church which was issued an eviction notice by the city of Ypsilanti. Under the city's zoning ordinance, secular groups are permitted to meet downtown but religious groups must meet outside the downtown area. After the ACLU's letter, the city reversed its position, allowing the church to remain.
http://www.aclumich.org/issues/religious-liberty/2005-08/1136

The ACLU of Pennsylvania (2004-2005) won two cases on behalf of predominantly African-American churches that were denied permits to worship in churches previously occupied by white congregations. In 2005, the ACLU of Pennsylvania settled a case against Turtle Creek Borough brought on behalf of the Ekklesia Church. After the ACLU's advocacy, the Borough of West Mifflin granted Second Baptist Church of Homestead an occupancy permit in 2002 and, in 2004, agreed to pay it damages and compensate it for its losses.
http://www.post-gazette.com/pg/04111/303298.stm

The New York Civil Liberties Union (2005) filed a federal lawsuit to stop the Department of Homeland Security from enforcing a policy of detaining, interrogating, fingerprinting, and photographing American citizens at the border solely because they attended Islamic conferences.
http://www.nyclu.org/node/1097

The ACLU of Michigan (2005) came to the defense of a Muslim 7th-grader who was told that she could not swim in clothing that covered her body in accordance with her faith. After negotiations with the ACLU, the county adopted a model policy that does not deny access to individuals because of their religious garb.
http://www.aclu.org/files/pdfs/womensrights/lettertoroberttetenswashtenawcounty.pdf

The ACLU of Washington (2005) represented The Islamic Education Center of Seattle, a small Muslim nonprofit organization that holds prayer services, education programs, and cultural activities, after the city of Mountlake Terrace denied the Center a conditional land use permit. The City denied the Center permission to operate even though it granted an

allowance to a Christian church next door to the Center. With the aid of the ACLU, the Center eventually received its permit from the City.
http://aclu-wa.org/news/islamic-center-allowed-mountlake-terrace

The ACLU of New Jersey (2005) settled a lawsuit with the New Jersey Department of Corrections on behalf of Patrick Pantusco, an inmate who was denied religious books and other items while in prison. Although it permitted persons of other religions to obtain materials for their religious practices, it denied Mr. Pantusco's requests because it did not recognize Wicca as a legitimate religion. In the settlement, the state agreed to permit Mr. Pantusco access to all requested items and pay damages.
http://www.aclu-nj.org/news/2006/01/09/aclu-nj-protects-inmates-right-to-receive-religious-items-in-prison

The ACLU of Northern California (2005) filed a lawsuit in federal court challenging restrictions on an asylum seeker's right to wear a religious head covering. The plaintiff, Harpal Singh Cheema, a devout Sikh, had been imprisoned since 1997, while awaiting a decision on his asylum application. The Sikh faith requires men to cover their heads at all times, but Yuba County jail authorities would not allow Mr. Cheema to leave his bed with his head covered.
http://www.aclu.org/immigrants/asylum/11736prs20050518.html

The ACLU of Wisconsin (2005) filed suit on behalf of a Muslim woman who had been required to remove her headscarf in front of male prison guards in order to visit her husband at the Columbia Correctional Institution. Ms. Rhouni offered to be searched by a female guard, but the prison would not accommodate her request and respect her religious belief that her head should not be uncovered in the presence of unrelated males.
http://www.aclu.org/religion-belief/muslim-woman-sues-prison-forcing-her-remove-headscarf-front-male-guards-and-prisoner

The ACLU of Pennsylvania (2005) sued on behalf of a devout Muslim firefighter, Curtis DeVeaux, who was suspended for refusing, for religious reasons, to shave his beard as required by city regulations.
http://www.aclu.org/religion/gen/16268prs20050601.html

In response to a lawsuit filed by the ACLU of Colorado (2005), the Department of Corrections agreed to resume providing kosher meals to Timothy Sheline, an Orthodox Jewish inmate, whose kosher diet was revoked for one year as punishment for allegedly violating a dining hall rule.
http://www.aclu.org/prison/restrict/21226prs20051013.html

The ACLU of Nebraska (2005) settled a lawsuit against the city of Omaha on behalf of Lubna Hussein, a practicing Muslim woman who wore a headscarf and long sleeves for religious reasons. Hussein was twice denied entry to Deer Ridge pool property to watch her children swim because she refused to wear a swimsuit. The city changed its policy to allow for medical and religious exceptions.

http://www.aclu.org/religion/discrim/16248prs20050218.html
http://www.wowt.com/news/headlines/822012.html

The ACLU of Southern California (2005) represented a Native American inmate who refused, for religious reasons, to cut his hair. Prison officials punished the inmate by revoking his visitation rights and extending his time in prison. The U.S. Court of Appeals for the Ninth Circuit held that the prison ban on long hair violated the prisoner's religious freedom and ordered the prisoner released immediately.
http://www.aclu.org/religion/frb/16223prs20040526.html
http://www.aclu.org/religion/gen/16235prs20040331.html

The ACLU (2005) filed an amicus brief in the U.S. Supreme Court supporting a group of Ohio prisoners who were denied religious items and literature, as well as time to worship, in violation of federal law. The Supreme Court decided in favor of the prisoners, upholding the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA).
http://www.aclu.org/content/aclu-applauds-supreme-court-ruling-protecting-religious-liberty-prisons

The ACLU of Southern California (2005) supported Jewish residents of Orange County after a special election was scheduled on the first day of the Jewish holiday Rosh Hashanah. The ACLU called on the county to make accommodations for Jewish residents who wished to vote early in the election.

The ACLU of Virginia (2005) filed suit on behalf of Cynthia Simpson, a Wiccan woman whom county leaders refused to include in a list of religious leaders invited to give invocations at meetings of the Chesterfield County Board of Supervisors. The Board's reason for refusing to add her to the list was that "Chesterfield's non-sectarian invocations are traditionally made to a divinity that is consistent with the Judeo-Christian tradition."
http://www.acluva.org/docket/simpson.html

The ACLU of Louisiana (2005) successfully represented a Rastafarian mother and her fourth grade son before the Lafayette Parish School Board. The Board seized the child's books and suspended him for having dreadlocks. The nine-year-old child was allowed to return to school.
https://www.aclu.org/free-speech/aclu-says-louisiana-dress-code-denies-rastafarian-children-right-education

The ACLU of New Jersey (2004) appeared as a friend of the court to argue that a prosecutor violated the New Jersey Constitution by striking individuals from a jury pool after deciding that they were "demonstrative about their religion." One potential juror was a missionary; the other was wearing Muslim religious garb, including a skull cap. The ACLU-NJ also argued that permitting strikes based on jurors' display of their religion would often amount to discrimination against identifiable religious minorities.

https://www.aclu.org/religion-belief/aclu-new-jersey-successfully-defends-right-religious-expression-jurors

The ACLU of Nebraska (2004) defended the Church of the Awesome God, a Presbyterian church, from forced eviction under the City of Lincoln's zoning laws. The ACLU of Nebraska also challenged city ordinances requiring religious organizations to meet safety standards not imposed on non-religious groups.
http://www.aclu.org/religion/frb/16347prs20040811.html

The ACLU of Pennsylvania (2004) prevailed in its arguments that the government had to allow Amish drivers to use highly reflective gray tape on their buggies instead of orange triangles, to which the drivers objected for religious reasons.
http://www.post-gazette.com/localnews/20021020amish1020p6.asp

The ACLU of Virginia (2004) threatened to file suit against the Fredericksburg-Stafford Park Authority after the Park Authority enacted an unconstitutional policy prohibiting religious activity in the park and the Park Manager stopped a Cornerstone Baptist Church minister from conducting baptisms in the park. Under pressure from the ACLU, the Park Authority revoked the prohibition and allowed baptisms in the park.
http://www.aclu.org/religion/discrim/16230prs20040603.html

The ACLU of Michigan (2004) wrote a letter on behalf of a student at Central Michigan University whose Hanukkah candles were seized from his dorm room by campus officials. Although the university allowed students to smoke in the same dorm, it claimed that the candles posed a fire hazard. After the letter was sent, the university changed its policy.

The ACLU of Washington (2004) reached a favorable settlement on behalf of Donald Ausderau, a Christian minister, who wanted to preach to the public and distribute leaflets on the sidewalks around a downtown bus station in Spokane, Washington.
http://aclu-wa.org/news/settlement-protects-freedom-speech-spokane-transit-plaza

With the help of the ACLU of Pennsylvania, Greater Pittsburgh Chapter (2004), an Episcopal social services group was able to keep its program of feeding the homeless running. The County Health Department reversed its decision that meals served to homeless people in a church must be cooked on the premises, as opposed to in individual homes. Had the decision not been reversed, the ministry would have been forced to cease the program.

The ACLU of Nevada (2004) represented a Mormon high school student, Kim Jacobs, whom school authorities suspended and then attempted to expel for wearing t-shirts with religious messages.

The ACLU of Michigan (2004) represented Abby Moler, a student at Sterling Stevenson High School, whose yearbook entry, a Bible verse, was deleted because of its religious content. A settlement was reached under which the school placed a sticker with Moler's original entry in the yearbooks and agreed not to censor students' yearbook entries based on their religious or political viewpoints in the future.
http://www.aclu.org/studentsrights/expression/12845prs20040511.html

The Indiana Civil Liberties Union (2004) filed suit on behalf of the Old Paths Baptist Church against the City of Scottsburg after the city repeatedly threatened to cite or arrest members who held demonstrations regarding various subjects dealing with their religious beliefs.
http://www.aclu.org/freespeech/protest/11484prs20040716.html

The ACLU of Massachusetts (2003) intervened on behalf of a group of students at Westfield High School who were suspended for distributing candy canes and a religious message in school. The ACLU succeeded in having the suspensions revoked and filed a friend-of-the-court brief in a lawsuit brought on behalf of the students against the school district.
http://www.aclu.org/studentsrights/expression/12828prs20030221.html

The ACLU of Rhode Island (2003) interceded on behalf of an interdenominational group of carolers who were told they could not sing Christmas carols on Christmas Eve to inmates at the women's prison in Cranston, Rhode Island.

The ACLU of Michigan (2003) defended the right of a pastor to erect a large sign on the lawn of the Wesley Foundation in Mt. Pleasant stating, "We Value All Life; End the Cycle of Violence." The city claimed that the church had violated a city sign ordinance, but after the ACLU's involvement, the city allowed the sign to stay up and stated that the ordinance would be reviewed.
http://www.cm-life.com/2003/05/14/aclusayscityordinancewasunconstitutional/

The ACLU of Florida (2003) represented a Muslim homemaker whose driver's license was revoked after she declined on religious grounds to remove her veil for a driver's license photo. Noting that the state allowed others to obtain driver's permits without photographs, the ACLU argued that the photograph requirement imposed a needless burden on the woman's exercise of her religion with no benefit to public safety.
http://www.aclu.org/religion/gen/16218prs20030527.html

The ACLU of Virginia (2002) and the late Rev. Jerry Falwell prevailed in a lawsuit arguing that a Virginia constitutional provision banning religious organizations from incorporating was unconstitutional.
http://www.aclu.org/religion/frb/16040prs20020417.html

The ACLU of Ohio (2002) filed a brief in support of a preacher who wanted to protest abortion at a parade, but was prohibited from doing so in an Akron suburb.
https://www.aclu.org/legal-document/tatton-v-city-cuyahoga-falls-amicus-brief

The Iowa Civil Liberties Union (2002) filed a friend-of-the court brief supporting a group of Christian students who sued Davenport Schools asserting their right to distribute religious literature during non-instructional time.
http://www.aclu.org/studentsrights/religion/12811prs20020711.html

The ACLU of Nebraska (2002) filed a friend-of-the-court brief challenging a Nebraska Liquor Control Commission regulation that defined "church" in a manner that excluded all religious organizations that do not own property. The ACLU argued that the "definition of a church established by the Liquor Control Commission violated the rights of members of the House of Faith to the free exercise of their religion."
http://www.libertymagazine.org/article/a-church-by-any-other-name

The ACLU of Massachusetts (2002) filed a brief supporting the right of the Church of the Good News to run ads criticizing the secularization of Christmas and promoting Christianity as the "one true religion." The Massachusetts Bay Transportation Authority had refused to allow the paid advertisements to be posted and refused to sell additional advertising space to the church.

The ACLU of Pennsylvania (2002) supported the members of Congregation Kol Ami in their fight to use a former Catholic convent as a synagogue. The ACLU of Pennsylvania argued that the Abington Township Board of Commissioners' opposition to the proposed use of the convent violated the Religious Land Use and Institutionalized Persons Act.
http://www.aclu.org/religion/discrim/16057prs20020107.html

The ACLU and its affiliates (2000-2011) have been instrumental supporters of the Religious Land Use and Institutionalized Persons Act (RLUIPA), which gives religious organizations added protection in erecting religious buildings and enhances the religious freedom rights of prisoners and other institutionalized persons. The ACLU worked with a broad coalition of organizations to secure the law's passage in 2000. After the law was enacted, the ACLU (2005) defended its constitutionality in a friend-of-the-court brief before the United States Supreme Court and the ACLU of Virginia (2006) opposed a challenge to the law before the Fourth Circuit Court of Appeals.
http://www.aclu.org/scotus/2004/20956res20041230039877/20956res20041230.html
http://www.aclu.org/religion/frb/26018prs20060612.html

Written Statement of the Record
American Civil Liberties Union

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Hearing on "H.R. 51: Making D.C. the 51st State"
March 22, 2021

Submitted to the U.S. House of Representatives
Committee on Oversight and Reform

On behalf of the American Civil Liberties Union (ACLU) and the ACLU of the District of Columbia, we submit this written statement to the House Committee on Oversight and Reform for its March 22, 2021 hearing on D.C. statehood in support of the Washington, D.C. Admission Act (H.R. 51). Since the last hearing on statehood, the COVID-19 pandemic, protests in D.C. after the killing of George Floyd, and the insurrection attempt at the U.S. Capitol building have all highlighted how the lack of full statehood rights continues to cause serious harm to the health and safety of D.C. residents, underscoring the urgency with which our country must immediately stop denying full and equal rights to the 712,000 residents of Washington, D.C.

Historically, Congress has treated Washington, D.C. in the same manner as the states when it comes to federal financial assistance, such as federal grants, Medicare reimbursement, and funding for highways, education, and food assistance.[1] However, when Congress passed a $2 trillion COVID-19 stimulus bill in March of 2020, members of Congress opted to treat the District of Columbia as a territory, shortchanging D.C. residents a full $755 million in relief at a time when D.C. had more COVID-19 cases than 19 other states.[2] During this critical public health crisis, D.C. was left at the mercy of Congress, a body in which its residents hold no voting representation, and Congress chose to withhold more than half of the aid it provided to every other state. The $755 million was retroactively made whole in the American Rescue Plan Act of 2021 (H.R. 1319) passed by Congress in March 2021, over a full year after passage of the first stimulus bill.[3] The 712,000 residents of D.C. need test kits, hospital supplies, and emergency relief for businesses as much as every other American trying to survive the COVID-19 pandemic, but without statehood, the residents of D.C. lack full representation in the representational democracy making key life-or-death decisions, such as timely federal funding during a global health crisis.

Other recent examples show the harm caused by D.C.'s lack of full authority over its own National Guard and law enforcement due to lack of statehood. In the wake of the killing of George Floyd, D.C. residents and others from around the region exercised their right to free speech and protested against police brutality. These demonstrators were met with brutal force by military personnel when the president used his uniquely exclusive control over the D.C. National Guard to deploy those troops to the area, in addition to scores of law enforcement officers. On June 1, 2020, President Trump ordered those federal officers to forcefully clear peaceful protestors out of Lafayette Park and the surrounding streets in Washington, D.C., using batons, rubber bullets, and pepper spray–literally tear gassing civil rights protestors in front of the White House so he could take a photo in front of a church.[4] Additionally, the president has the ability to take over D.C.'s own local police force

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[1] Fenit Nirappil, *Aid Bill Expected To Pass This Week Doesn't Include $700 Million Sought By D.C.*, Washington Post (Apr. 21, 2020), https://www.washingtonpost.com/local/dc-politics/aid-bill-expected-to-pass-this-week-wont-include-700-million-sought-by-dc-city-says/2020/04/21/f28ac89a-83d7-11ea-ae26-989cfce1c7c7_story.html.
[2] Meagan Flynn, *D.C. Was Denied $755 Million In Coronavirus Relief Last Year. Now It May Get That Money*, Washington Post (Feb. 12, 2021), https://www.washingtonpost.com/local/dc-politics/district-covid-relief-maryland-virginia/2021/02/12/c2e051cc-6cad-11eb-9ead-673168d5b874_story.html.
[3] Press Release, Congresswoman Eleanor Holmes Norton, Norton Hails House Passage of American Rescue Plan Act, Sending Bill to President's Desk for Signature (Mar. 10, 2021), https://norton.house.gov/media-center/press-releases/norton-hails-house-passage-of-american-rescue-plan-act-sending-bill-to.
[4] Tom Gjelten, *Peaceful Protesters Tear-Gassed To Clear Way For Trump Church Photo-Op,* NPR (Jun. 1, 2020), https://www.npr.org/2020/06/01/867532070/trumps-unannounced-church-visit-angers-church-officials; *see* Barbara Sprunt, *'Scared, Confused And Angry': Protester Testifies About Lafayette Park Removal*, NPR (Jun. 29,

for 48 hours, and that time period may be extended with mere notification to members of Congress who oversee District affairs–something President Trump threatened to do repeatedly in 2020.[5]

Another striking example is from January 6, 2021 when a violent mob successfully entered the U.S. Capitol Building during the tallying of Electoral College votes for the 2020 presidential election to overturn the results on behalf of Donald Trump. Unlike every state in the country, D.C. does not have the authority to deploy its own National Guard troops; instead, D.C. must rely on the Department of Defense, as the D.C. National Guard always remains under federal control. During the attack on the Capitol Complex, approval for National Guard troops to stop the violent mob came after a lengthy delay by the Trump Administration, long after the attack was underway and in a manner that put D.C. residents and everyone in the building in danger. Five people died in the course of the mob's assault on the Capitol. While restraint should be exercised in deploying National Guard troops and uncertainties remain around the exact reasons for the delay, what is clear is that the delay in the use of the National Guard on January 6, 2021 stands in stark contrast to the extensive and aggressive deployment of the D.C. National Guard on the streets of D.C. by the federal government during Black Lives Matter demonstrations during the summer of 2020.[6]

In 1788, James Madison wrote that the inhabitants of the yet-to-be-chosen federal district should have a "voice in the election of the government which is to exercise authority over them." More than two-hundred years later, residents of the District of Columbia still lack full representation in Congress, and events over the past year reinforce how D.C.'s lack of statehood continues to wreak havoc on the health, safety, and daily lives of its 712,000 residents. The continuing denial of representation for District residents is an overt act of voter suppression with roots in the Reconstruction era. It is beyond time to rectify this by giving D.C. the true autonomy and self-governance that comes with statehood.

H.R. 51 would grant statehood to the residential areas of the current District of Columbia as the State of Washington, Douglass Commonwealth. The bill outlines a process to elect two senators and one representative for the new state. It sets the state's physical boundaries and the transfer of territorial, legal, and judicial jurisdiction and authorities to the new state. In addition, it defines the reduced federal territory that would remain the District of Columbia and serve as the seat of the federal government.

Our statement covers two points. First, D.C. residents deserve full representation in our national government. Decisions on policies that impact D.C. residents' rights, liberties, health, and welfare are routinely made by Congress—a body that neither represents their interests nor is politically accountable for its decisions regarding the District. D.C. residents

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2020), https://www.npr.org/2020/06/29/884609432/scared-confused-and-angry-protester-testifies-about-lafayette-park-removal.

[5] Peter Hermann, Fenit Nirappil, and Josh Dawsey, *Trump administration considered taking control of D.C. police force to quell protests*, Washington Post (Jun. 2, 2020), https://www.washingtonpost.com/local/public-safety/dc-police-takeover-george-floyd/2020/06/02/856a9744-a4da-11ea-bb20-ebf0921f3bbd_story.html.

[6] Mark Mazzetti and Luke Broadwater, *The Lost Hours: How Confusion and Inaction at the Capitol Delayed a Troop Deployment*, N.Y. Times (last updated Mar. 3, 2021), https://www.nytimes.com/2021/02/21/us/politics/capitol-riot-security-delays.html.

pay taxes, serve on juries, fight in wars, and contribute to our country's prosperity; they deserve equal representation in their own government. Second, in granting statehood through an act of Congress, H.R. 51 is a valid and defensible exercise of congressional power. The Constitution says that a state's government must be "republican in form" for admission, and the Supreme Court held in the 1849 case of *Luther v. Borden*, that the decision of whether or not that requirement has been met "rests with Congress."

By any measure, H.R. 51 ensures that the State of Washington, Douglass Commonwealth passes this test.

I. Congress Should Grant D.C. Residents Full and Equal Representation

In 1867, President Andrew Johnson vetoed a bill granting all adult male citizens of the District, including Black men, the right to vote.[7] Congress overrode that veto, which—along with an increase in D.C.'s Black population from 19% in 1860 to 33% in 1870[8]—granted "significant influence in electoral politics" to Black Washingtonians.[9] District residents elected the first Black municipal office holder by the late 1860s, and Black men like Lewis H. Douglass were given a platform from which to spearhead the fight against segregation. But just as activists like Douglass began to exercise their power, Congress replaced D.C.'s territorial government, including its popularly elected House of Delegates, with three presidentially appointed commissioners in 1871.[10]

The goal of this move was unmistakable: disenfranchising an increasingly politically active Black community.[11] In his filibuster against the Federal Elections Act of 1890, Senator John Tyler Morgan of Alabama, one of the most prominent, outspoken white supremacists of the Jim Crow era, cited D.C. as a model for a national segregationist policy:[12]

> [T]he negroes came into this District from Virginia and Maryland and from other places . . . and [] took possession of a certain part of the political power . . . and there was but one way to get out . . . [by] deny[ing] the right of suffrage entirely to every human being in the District and have every office here controlled by appointment instead of by election . . . . in order to get rid of this load of negro suffrage that was flooded in upon them.[13]

To Morgan, it was necessary to "burn down the barn to get rid of the rats."[14] "[T]he rats being the negro population and the barn being the government of the District of

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[7] Andrew Glass, *Congress expands suffrage in D.C. on Jan. 8, 1867*, Politico (Jan. 1. 2008), https://www.politico.com/story/2008/01/congress-expands-suffrage-in-dc-on-jan-8-1867-007771.
[8] *Demographic Characteristics of the District and Metro Area*, D.C. Office of Planning (May 23, 2012), https://planning.dc.gov/sites/default/files/dc/sites/op/publication/attachments/Chapter%25202.pdf.
[9] Kate Masur, *Capital Injustice*, N.Y. Times (Mar. 28, 2011), https://www.nytimes.com/2011/03/29/opinion/29masur.html.
[10] *History of Local Government in Washington, D.C.*, DC Vote, https://www.dcvote.org/inside- dc/history-local-government-washington-dc (last visited Sept. 12, 2019).
[11] *See* Masur, *supra* note 9.
[12] Thomas Adams Upchurch, *Senator John Tyler Morgan and the Genesis of Jim Crow Ideology, 1889- 1891*, Alabama Review 57, 110-31 (April 2004).
[13] Harry S. Jaffe and Tom Sherwood, *Dream City: Race, Power, and the Decline of Washington, D.C.* 8 (2014 ed.).
[14] *Id.*

Columbia."[15] The continued disenfranchisement of D.C. residents perpetuates both a shameful policy of a racist past and Morgan's legacy.

The Home Rule Act of 1973 gave District residents the power to elect a mayor and council for the first time.[16] Today, residents elect 13 councilmembers who exercise legislative authority over the District.[17] The council and the mayor serve as co-equal branches of government and council committees conduct oversight of D.C. executive agencies.[18]

D.C. residents also elect Advisory Neighborhood Commissioners who advise the council on hyper-local concerns in each of the District's eight wards.[19] A democratically elected attorney general helps enforce the laws of the District, provides legal advice to District agencies, and is charged with upholding the public interest.[20] And "[t]he judicial power of the District is vested in the District of Columbia Court of Appeals and the Superior Court of the District of Columbia."[21] Finally, D.C. has one seat in the House of Representatives.[22] This representative, currently Congresswoman Eleanor Holmes Norton,[23] has the "right of debate." She is not a voting member of the chamber.[24]

Notwithstanding D.C.'s fully functioning local government, Congress essentially exercises authoritarian rule over the District and its residents. Indeed, several features of Congress's understood authority over the District ensure that Congress will routinely encroach on its autonomy. In general, legislation passed by the D.C. Council and signed by the mayor into law must still go through congressional review before taking effect.[25] And even when it does, Congress can repeal it.[26] In this way, representatives from other states, elected by other constituents with no ties to D.C., are free to impose their own policy preferences on the District, leaving District residents with no recourse to hold them accountable through a democratic process.[27] Oftentimes, the policies forced upon D.C. advance polarizing ideologies to score political points that gravely impact the lives of residents. For example:

- In 1981, the D.C. Council repealed the death penalty. However, in 1992, at the request of a Senator from Alabama, Congress ordered a voter referendum to reinstate the death penalty. At the time, D.C.'s population was 70% Black. It was not lost on D.C. residents and lawmakers that the referendum would have disproportionate consequences on Black residents.[28] D.C. residents voted against

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[15] *Id.*
[16] D.C. Code Ann. § 1-201.01 *et seq.*
[17] *Id.* §§ 1- 204.01, 204.04.
[18] *About the Council*, Council of the District of Columbia, https://dccouncil.us/about-the-council/ (last visited Sept. 12, 2019).
[19] D.C. Code Ann. § 1-309.01.
[20] *Id.* § 1-204.35.
[21] *Id.* § 1-204.31.
[22] *Id.* § 1-401.
[23] *About Eleanor*, Congresswoman Eleanor Holmes Norton, https://norton.house.gov/about (last visited Sept. 12, 2019).
[24] D.C. Code Ann. § 1-401.
[25] *How a Bill Becomes a Law*, Council of the District of Columbia, https://dccouncil.us/how-a-bill-becomes-a-law/ (last visited Sept. 12, 2019).
[26] D.C. Code Ann. §§ 1-206.01-03 (discussing Congress's plenary power over the D.C. Council).
[27] *Id.* §§ 1- 204.01, 204.04.
[28] Neil Lewis, *Issues of Race and Home Rule Confound Death Penalty Vote in Washington*, N.Y. Times (Nov. 1, 1992), https://www.nytimes.com/1992/11/01/us/issues-of-race-and-home-rule-confound-death-penalty-vote-in-

reinstatement and ultimately defeated the referendum.

- In 1989, Congress inserted a provision known as the Armstrong Amendment into the D.C. Appropriations Act. The Amendment permitted religiously affiliated schools to discriminate on the basis of sexual orientation. In 1990, Congress codified the policy into D.C. law. The provision remained in effect until 2015, when the Council repealed it.
- In 1998, Republicans in Congress prevented the District from using its own funds to pay for needle exchange programs to stem the spread of HIV/AIDS. By the time legislation lifted the needle exchange ban in 2007, D.C. had the highest rate of HIV/AIDS in the country.[29] It is estimated that hundreds[30] of District residents died (and continue to die) because of this deadly instance of congressional meddling.[31]
- In 2010, two senators from Arizona and Montana sought to loosen D.C.'s gun laws with a bill repealing the District's ban on assault weapons and high-capacity magazines and lifting gun registration requirements.[32]
- In 2016 alone, there were "25 different attempts by Members of Congress to overturn, overrule, or change local Washington, D.C. laws."[33]
- In 2018, House Republicans led by a Representative from Utah attempted to repeal D.C.'s death with dignity law,[34] which passed the D.C. Council with a vote of 11-2 and which two-thirds of D.C. voters supported.[35]
- Congress regularly attaches a rider known as the Dornan Amendment to an annual appropriations bill, blocking the District from using its own local tax dollars to provide abortion coverage for individuals enrolled in Medicaid—something states are free to do. Bans on insurance coverage for abortion disproportionately harm poor women, and particularly poor women of color.[36]

The District's lack of control over its courts and criminal system has also had profound impacts on the lives of thousands of D.C. residents. The federal government has controlled D.C.'s courts and criminal justice system since 1997. Unlike states, where judges are either appointed by state officials or elected, D.C. Superior and Appeals Court judges are appointed by the President and confirmed by the U.S. Senate, where District residents have

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washington.html.

[29] *DC Needle Exchange Program Prevented 120 New Cases of HIV in Two Years*, George Washington University (Sept. 3, 2015), https://publichealth.gwu.edu/content/dc-needle-exchange-program- prevented-120-new-cases-hiv-two-years.

[30] Lauren Ober, *Once-Controversial D.C. Needle Exchange Found To Save Money — And Lives*, WAMU (Sept. 25, 2015), https://wamu.org/story/15/09/25/dc_needle_exchange/.

[31] New HIV and AIDS cases from intravenous drug use began declining in 2008, but they fell more sharply in 2009. Lena Sun, *AIDS remains an epidemic in District, but new cases on decline, report finds*, Washington Post (Jun. 15, 2011), https://www.washingtonpost.com/local/aids-infection-rate- remains-epidemic-in-district-report-finds/2011/06/15/AGpHyuVH_story.html?utm_term=.3b73c6fe331e.

[32] *Norton Releases First Details of Tester-McCain / Childers Gun Bill in Preparation for Meeting Wed.*, Press Release, Congresswoman Eleanor Holmes Norton, (May 4, 2010), https://norton.house.gov/media-center/press-releases/norton-releases-first-detalis-of-tester-mccainchilders-gun-bill-in.

[33] *2016 Attacks on DC's Home Rule*, DC Vote, https://www.dcvote.org/2016-attacks-dcs-home-rule (last visited Sept. 12, 2019).

[34] DC Code § 7-661.01 *et seq*.

[35] Mikaela Lefrak, *'Death With Dignity' Law Goes Into Effect In D.C. As Congress Pushes To Repeal It*, WAMU (Jul. 18, 2017), https://wamu.org/story/17/07/18/death-dignity-goes-effect-d-c-congress-pushes-repeal/.

[36] *Research Brief: The Impact of Medicaid Coverage Restrictions on Abortion*, Ibis Reproductive Health (Nov. 2015), https://ibisreproductivehealth.org/sites/default/files/files/publications/ResearchBriefImpactofMedicaidRestrictions.pdf.

no representation at all.[37]

The courthouses in which these judges sit are guarded by U.S. Marshals. This has consequences for District residents who interact with the local court system. A particularly serious one: unlike D.C.'s local law enforcement agencies, U.S. Marshals cooperate with ICE detainers. Thus, despite the fact that its elected representatives have declared it a "Sanctuary City," D.C. cannot effectively protect immigrants from deportation if they visit or appear in its courts.[38]

Perhaps the most significant criminal justice consequence of D.C.'s lack of statehood is the District's lack of control over local prosecutions. D.C. has a locally elected attorney general who serves as the chief juvenile prosecutor for the District. However, all juvenile felonies and various adult misdemeanors are prosecuted by a federally appointed U.S. Attorney who has little incentive to be transparent with the D.C. community. Moreover, as in many other cities and states, D.C. residents have elected district attorneys seeking to reform criminal justice policies in progressive ways, but the U.S. Attorney is not accountable to voters in the way district attorneys are in states. For that reason, prosecutorial reform—key to combating mass incarceration—has proved unattainable. In September 2019, the District's U.S. Attorney took steps, even going as far as spreading misinformation, to aggressively oppose effective sentencing reforms backed by locally elected officials.[39] Today, as a state, D.C. would have the highest incarceration rate in the country.[40]

Additionally, because D.C. is not a state and has no prisons, persons convicted of D.C. offenses are placed in the custody of the Federal Bureau of Prisons, which may house them as far away as California and Arizona, making it difficult to maintain close family ties due to the distance and expense for family members to travel to visit. Maintaining these familial and community bonds is essential to successful rehabilitation both during and after incarceration. One person from the District held in a New Jersey prison reflected: "Not being able to see your family in some years can make you forget about life. It can make you think your life is in prison, there's no hope outside that wall."[41]

D.C. also lacks control over its parole system. All parole and supervised release decisions for D.C.'s returning citizens are made by the federal U.S. Parole Commission instead of a local agency (as it is in states), making local reform impossible. In 2018, about 76 percent of the U.S. Parole Commission's caseload, or 6,521 people, were D.C. Code offenders. The Commission is a major driver of over-incarceration in the District.[42] It has been known to

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[37] D.C. Code Ann. § 1-204.33.

[38] Martin Austermuhle, *Marshal Law: D.C. Is A Sanctuary City, But That Status Stops At The Courthouse Door*, WAMU (Sept. 20, 2018), https://wamu.org/story/18/09/20/marshal-law-d-c-sanctuary-city-status-stops-courthouse-door/.

[39] Mark Joseph Stern, *D.C. Residents Aren't Buying a Trump-Appointed Prosecutor's Campaign Against Criminal Justice Reform*, Slate (Sept. 6 2019), https://slate.com/news-and-politics/2019/09/dc-us-attorney-blocks-community-from-community-event.html.

[40] *District of Columbia and NATO incarceration comparison*, Prison Policy Initiative (2018), https://www.prisonpolicy.org/graphs/NATO2018/DC.html.

[41] Martin Austermuhle, *D.C. Inmates Serve Time Hundreds Of Miles From Home. Is It Time To Bring Them Back?*, WAMU (Aug. 10, 2017), https://wamu.org/story/17/08/10/d-c-inmates-serving- time-means-hundreds-miles-home-time-bring-back/.

[42] Philip Fornaci *et al.*, *Restoring Control of Parole to D.C.*, The Washington Lawyer's Committee (Mar. 16 2018), http://www.washlaw.org/pdf/2018_03_16_why_we_need_a_dc_board_of_parole.PDF.

hold people longer than intended[43] and to deny parole due to non-completion of rehabilitative programs—even if the facility in which the person is being held does not offer such programs. The Commission can also revoke supervised release and send people back to prison for minor technical violations or for reasons that go against District policies. For example, Tyrone Hall was sent back to prison for 13 months even though he was acquitted of the misdemeanor charge that triggered his parole violation.[44] Another federal agency, the Court Services and Offender Supervision Agency (CSOSA) monitors D.C. Code offenders after they have been released, and a third federal agency, the Pretrial Services Agency runs all of D.C.'s pretrial services, including drug treatment programs, mental health services, and referral to social services in the District.[45]

The fact that these federal agencies, and not the local D.C. government, make these important decisions has had a devastating impact on the lives of D.C. residents and their families. Statehood would allow the District to delegate these crucial services and enact locally supported reforms to state agencies accountable to local lawmakers and residents.

II. H.R. 51 is a Valid Exercise of Congressional Authority

D.C. residents deserve statehood, and Congress is empowered to grant it. The Washington, D.C. Admission Act is a valid and defensible exercise of congressional authority and is constitutionally permissible. The following pages offer a legal analysis of the bill. It begins by summarizing the bill's relevant provisions, reviews the bill's constitutional and legal bases, and makes the following findings:

First, H.R. 51 is constitutional under the District and Federal Enclaves Clause, which provides for a federal district that "may" serve as the "Seat of Government." H.R. 51 reduces the size of the District but preserves a small area consisting of federal buildings as a redrawn federal district and national seat of government. Thus, it does not violate the clause. Furthermore, the District Clause affords Congress broad plenary powers over the District, including authority to change its boundaries and size so long as it is smaller than ten square miles.

Second, there is no Admission Clause problem. That clause provides that "no new State shall be formed or erected within the Jurisdiction of any other State," and vests Congress with the authority to admit new states to the Union. And Congress may grant D.C. statehood without first obtaining consent from the state of Maryland, because Maryland does not retain a reversionary interest in the land it ceded to the federal government for creation of the District.

Third, H.R. 51 is not at odds with Twenty-Third Amendment, which provides the District with three electoral votes. While the Twenty-Third Amendment raises important policy considerations by giving the residents of a smaller federal district outsized influence

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[43] Letter from the Council for Court Excellence to the United States Court of Appeals for the District of Columbia Circuit, (Aug. 31, 2015), http://www.courtexcellence.org/uploads/publications/Restoring_Local_Control_of_Parole_Sign_On_Letter.pdf.

[44] Mitch Ryals, *Local D.C. Courts Acquitted Him, But He Still Went to Prison*, Wash. Cty. Paper (May 15, 2019), https://www.washingtoncitypaper.com/news/loose-lips/article/21068873/advocates-say-dcs-federally-controlled-parole-system-needs-reform.

[45] *What PSA Does*, Pretrial Services Agency for the District of Columbia, https://www.psa.gov/ (last visited Sept. 12, 2019).

in presidential elections, it does not bear on the constitutionality of H.R. 51. In any event, the bill avoids these problems in two ways: (1) by repealing the statute that provides for the District's participation in federal elections—thus leaving it without appointed electors—and (2) kickstarting expedited procedures to repeal the Twenty-Third Amendment.

Fourth, arguments that the new State of Washington, Douglass Commonwealth fails to meet the minimum requirements of statehood fail because such requirements are policy concerns, not constitutional limitations.

a. Summary Analysis of H.R. 51

The Act would admit most of the District of Columbia's currently populated areas into the Union as a new state, preserving a small area consisting of federal buildings (e.g., White House, Capitol, U.S. Supreme Court Building) as a redrawn federal district. The bill directs the process for admission, describes with particularity the territorial bounds of the newly constituted state, regulates the transfer of real and personal property held by the former District of Columbia to the new state, establishes the jurisdiction and powers of the new state, outlines the responsibilities and legal interests of the federal government, and establishes expedited procedures for repealing the Twenty-Third Amendment, which assigns Electoral College votes to the District of Columbia.

i. Summary of Title I—Procedures for Admission

Subtitle A of Title I of the bill generally issues three directives that guide the admissions process of the State of Washington, Douglass Commonwealth. Section 101 states that upon proclamation by the President and the certification of elections for federal representation, the State of Washington, Douglass Commonwealth will be a state on equal footing with all other states. Section 102 outlines the elections process for two federal senators and one representative (until the next reapportionment) in Congress. It also directs the transfer of offices of the mayor and members and chair of the D.C. Council to the new governor, legislative assembly, and speaker of the legislative assembly, respectively, and also orders the continuation of authority and duties of judicial and executive offices to the respective executive and judicial offices of the new state. Section 103 directs the President to proclaim the election results of the first election held pursuant to this section not later than ninety days after receiving the certification of the election results, and directs that upon the President's proclamation the state will be admitted into the Union.

Subtitle B describes the new territory of the State of Washington, Douglass Commonwealth. Section 111 directs that the state will include all of the current territory of the District of Columbia minus the area of the "Capital," which would remain as the District of Columbia for purposes of serving as the seat of the federal government. The territory that remains as the Capital would be determined pursuant to the specific geographic boundaries established by the bill. It also requires the President, in consultation with the Chair of the National Capital Planning Commission and in accordance with the boundaries established by the bill, to conduct a technical survey of the metes and bounds of the District of Columbia and the new state.

Section 112 specifies the specific street boundaries of the Capital that will remain as the District of Columbia, and expressly includes the principal federal monuments, the White

House, the Capitol Building, the U.S. Supreme Court building, and the federal executive, legislative, and judicial office buildings located adjacent to the National Mall and the Capitol Building. Section 113 directs the continuation by the state of title to (or jurisdiction over) all real and personal property held by the former District of Columbia for purposes of administration and maintenance. It also directs the District of Columbia, on the day before it's admitted as a state, to convey to the federal government all interest held by it in any bridge or tunnel that connects Virginia with the current District.

Subtitle C establishes the jurisdiction and powers of the new state. Section 121 establishes the legislative jurisdiction and powers of the state and extends the force and effect of federal laws to the state. Section 122 establishes parameters for the continuation and transfer of all judicial proceedings of District of Columbia courts to the appropriate newly established state courts, and the continuation of judicial proceedings of the U.S. District Court for the District of Columbia. Section 123 prohibits the new state from imposing any taxes on federal property, except to the extent permitted by Congress. Section 124 directs that no provision of the act will confer U.S. nationality, terminate lawful U.S. nationality, or restore U.S. nationality that has been lawfully terminated.

ii. Summary of Title II—Responsibilities and Interests of the Federal Government

Title II assigns responsibilities, jurisdiction, and legal interests of the federal government in relation to the grant of statehood. Subtitle A describes the treatment of federal property. Section 201 establishes exclusive congressional jurisdiction of lands within the new state that were controlled or owned by the federal government for defense or Coast Guard purposes prior to admission of the state. It also prohibits congressional jurisdiction to operate in a manner that prevent such lands from being a part of the state, and permits concurrent jurisdiction by the state in matters it would otherwise have jurisdiction over and which are consistent with federal law. Section 202 establishes that the state and its residents disclaim all right and title to any unappropriated lands or property not granted to the state or its subjurisdictions under the act, the right or title of which is held by the federal government. It also clarifies that the act does not affect any pending claims against the United States.

Regarding elections, Subtitle C Section 221 outlines registration procedures and voting requirements to allow individuals residing in the revised District of Columbia to vote absentee in federal elections in the state where the voter was domiciled before residing in the District of Columbia. It gives the Attorney General authority to enforce this section. Section 223 repeals the law providing participation of the District of Columbia in the election of President and Vice President of the United States. Finally, Section 224 outlines expedited procedures for the House and Senate to consider a constitutional amendment to repeal the Twenty-Third Amendment.

iii. Summary of Title III—General Provisions

Title III contains general provisions, including definitions for terms in the bill, and directs the President to certify enactment not more than sixty days after the date of enactment.

b. H.R. 51 is a constitutional exercise of congressional power.

Critics—including the Department of Justice under several presidential administrations—have raised concerns about the constitutionality of admitting the District of Columbia as a state through an act of Congress, rather than by a constitutional amendment. However, H.R. 51 is a valid and defensible exercise of congressional authority. It complies with the District and Federal Enclaves Clause, the Admission Clause, and the Twenty-Third Amendment. Concerns about D.C.'s viability as a state are policy considerations that should be appropriately addressed, but they are not constitutional limitations on Congress's authority to pass H.R. 51.

i. The District and Federal Enclaves Clause

The District and Federal Enclaves Clause states:

> [Congress shall have power . . .] [t]o exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall for, the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.[46]

Courts have consistently interpreted this provision to find that Congress has broad "plenary" powers over the District and other federal enclaves.[47] H.R. 51 is consistent with Congress's broad authority because the clause provides for a federal district that "may" serve as "the Seat of Government."[48] Because the Act only reduces (instead of absorbing) the District of Columbia, it does not violate the clause.

Critics, however, assert that the District and Federal Enclaves Clause permanently fixed the size of the District, thereby depriving Congress of the power to shrink the District from its current size.[49] Neither the language of the clause nor its history supports these interpretations.

1. The "Fixed Boundaries" Argument

Critics have charged that the District Clause deprives Congress of authority to dispose of lands currently part of the District of Columbia. This argument posits that once Congress determined the amount of land required for the District and accepted those ceded lands from the states, it cannot dispose of any of it. In essence, the argument goes, Congress may not reduce the District's now "fixed" boundaries.[50]

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[46] U.S. Const. art. I, § 8, cl. 17.
[47] *See O'Donoghue v. United States*, 289 U.S. 516, 539 (1933); *Atl. Cleaners & Dyers v. United States*, 286 U.S. 427, 435 (1932); *Shoemaker v. United States*, 147 U.S. 282, 300 (1893); *Kendall v. United States ex rel. Stokes*, 37 U.S. 524, 619 (1838).
[48] U.S. Const. art. I, § 8, cl. 17.
[49] *See* Office of Legal Policy, U.S. Dep't. of Justice, Report to the Attorney General on the Question of Statehood for the District of Columbia iii, 18, 36 (1987) [hereinafter OLP].
[50] *See id.* at iii; *see also* Letter and Memorandum from Robert K. Kennedy, Attorney General, to Rep. Basil L.

This argument has drawn on analogies to Article IV, section 3—the Admission Clause—which gives Congress the power to admit new states but makes no provision for one's expulsion or secession.[51] Just as the Supreme Court has held that the relationship between the Union and a state is "indissoluble,"[52] so too, the argument goes, Congress's acceptance of ceded lands to create the District "contemplates a single act" and "makes no provision for revocation of the act of acceptance or for retrocession."[53] Put another way, the argument is that Congress exhausted its authority to change the boundaries or size of the District when it accepted land to create it, and those boundaries are now fixed.

However, as noted above, it is sufficiently well-settled that Congress's power over the District of Columbia is sweeping—or "plenary." Its authority "relates not only to national power but to all the powers of legislation which may be exercised by a state in dealing with its affairs."[54] The District Clause, unlike the Admission Clause, grants Congress authority in the most expansive language possible, giving it power to exercise "exclusive Legislation in *all Cases whatsoever*."[55] This sweeping and exclusive authority should include the power of Congress to contract the District to less than its current size.[56] Indeed, Congress's authority to alter the boundaries and size of the District is supported by the language of the District Clause, its legislative history, and its historical application.

First, the District Clause provides no textual limitation preventing Congress from reducing the size of the District. Its only explicit limitation is that Congress shall not establish a district *larger* than ten square miles; it says nothing about a lower limit.[57] Furthermore, Congress's authority is conferred by the same operative language—"The Congress shall have Power . . . [t]o"—as all other powers listed in Article I, section 8, none of which are exhausted by exercise of that authority.[58] There is no reason to believe that the District Clause is somehow different.

Second, the clause's history supports an interpretation that recognizes Congress's power to move or change the size of the District. During the Constitutional Convention, Charles Pinckney of South Carolina urged the Committee on Detail to adopt language that would authorize Congress "to fix and ***permanently*** establish the seat of Government of the [United States]."[59] While some of Pinckney's language was eventually incorporated into the

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Whitener (1963), in *Home Rule, Hearings on H.R. 141 Before Subcomm. No. 6 of the H. Comm. on the District of Columbia*, 88th Cong., 1st Sess. (1964), *reprinted in* OLP, *supra* note 49, at 128 [hereinafter Kennedy letter]. *But see* Raven-Hansen, *The Constitutionality of D.C. Statehood*, 60 Geo. Wash. L. Rev. 160, 167-69 (1991) (rejecting argument).

[51] *See* Kennedy letter, *supra* note 50, at 128.

[52] *See Texas v. White*, 74 U.S. 700, 726 (1868).

[53] Kennedy letter, *supra* note 50, at 128; *see also* OLP, *supra* note 49, at 36.

[54] *Dist. of Columbia v. John R. Thompson Co.*, 346 U.S. 100, 108 (1953); *see also Neild v. Dist. of Columbia*, 110 F.2d 246, 249 (D.C. Cir. 1940) (Congress's District Clause authority "is sweeping and inclusive in character").

[55] U.S. Const. art. I, § 8, cl. 17 (emphasis added).

[56] *See Equality for the District of Columbia: Discussing the Implications of S. 132, the New Columbia Admission Act of 2013: Hearing on S. 132 Before the S. Comm. on Homeland Security and Governmental Affairs*, 113th Cong. 2d Sess. 82 (2014) (prepared statement of Viet D. Dinh, Professor, Georgetown University) [hereinafter Dinh] ("Just as a state may consent to the creation of a new state from within its borders, so too should Congress be permitted to carve a state from the District of Columbia, over which it enjoys sovereign control.").

[57] *See id.* at 83 ("[T]he presence of an upper, not lower, limit on the geographical size of the District in the Constitution at least suggests that the Framers were, if anything, more concerned with the latter.").

[58] *See* Raven-Hansen, *supra* note 50, at 168.

[59] James Madison, The Debates in the Federal Convention of 1787 Which Framed the Constitution of the United States

District Clause, the adverb "permanently" was dropped.[60] Similarly, a proposal that Congress be granted exclusive jurisdiction over an area no less than three, and no more than six, miles square for the purpose of a permanent seat of government was abandoned in favor of the language now enshrined in the District Clause, which establishes a maximum size for the District but no minimum.[61] The failure of these proposals suggests that the Framers intended for Congress to have flexibility to move or change the size of the District.[62] Indeed, had the District Clause required a permanent and fixed capital, a constitutional amendment would be needed to move the capital even in cases of invasion, insurrection, or epidemic—all significant concerns at the founding.[63]

Third, history undermines arguments that the District Clause permanently fixed the District's form, as Congress changed its boundaries twice since the Constitution's ratification. The first change occurred in 1791, less than one year after Virginia and Maryland ceded land for the District and less than four years after the Constitutional Convention, when the First Congress—including James Madison—voted to change the District's southern boundary to include all of the area that is now known as Anacostia, Arlington, and Alexandria.[64] That measure significantly bolsters H.R. 51, because the Supreme Court has observed that "an Act 'passed by the first Congress assembled under the Constitution, many of whose members had taken part in framing that instrument . . . is contemporaneous and weighty evidence of [the Constitution's] true meaning."[65]

Similarly, in 1846, Congress reduced the District's area by roughly one third when it returned to Virginia the entirety of the land the state ceded to the national government in 1789—*i.e.*, what is now Arlington County and Alexandria.[66] Congress only did so after specifically considering and rejecting the fixed form interpretation of the District Clause. The House Committee on the District of Columbia concluded:

> The true construction of [the District Clause] would seem to be that Congress

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of America 420 (1920) (emphasis added).

[60] As Peter Raven-Hansen noted: "Congress itself subsequently resurrected 'permanency' when it accepted the cessions of Maryland and Virginia 'for the *permanent* seat of the government,' but it did not and could not thereby with a single statute either amend the District Clause or prevent future Congresses from enacting further legislation on the subject." Raven-Hansen, *supra* note 50, at 168 (quoting Retrocession of Alexandria to Virginia, House Comm. on the District of Columbia, H.R. Rep. No. 325, 29th Cong., 1st Sess. 3 (1846)).

[61] *See* H.P. Caemmerer, *Washington: The National Capital*, S. Doc. 332, 71st Cong., 2d. Sess. 5 (1932) (cited in OLP, *supra* note 49, at 54).

[62] *See* The Federalist, No. 43 (James Madison) (Clinton Rossiter ed., 1961) ("[T]he gradual accumulation of public improvements at the stationary residence of the government would be both too great a public pledge to be left to the hands of a single State, and would create . . . *many obstacles to a removal of the government*. . . .") (emphasis added).

[63] *See* Raven-Hansen, *supra* note 50, at 168.

[64] An Act to amend "An act for establishing the temporary and permanent seat of the Government of the United States," ch. 17, 1 Stat. 214 (1791).

[65] *Marsh v. Chambers*, 463 U.S. 783, 790 (1983) (quoting *Wisconsin v. Pelican Ins. Co.*, 127 U.S. 265, 297 (1888)); *see also* Raven-Hansen, *supra* note 50, at 170 ("Neither the 'permanency' of the seat of government nor the District Clause gave pause to any of the thirteen original Framers, including James Madison, who voted for the amendment.").

[66] *See* An Act to Retrocede the County of Alexandria, in the District of Columbia, to the State of Virginia, ch. 35, 9 Stat. 35 (1846); *see also* Dinh, *supra* note 56, at 82 ("Only half a century removed from its acceptance of lands to create the District, Congress was convinced that there was no restriction on its ability to alienate large portions of that land.").

> may retain and exercise exclusive jurisdiction over a district not exceeding ten miles square; and whether those limits may enlarge or diminish that district, or change the site, upon considerations relating to the seat of government, and connected with the wants for that purpose, the limitation upon their power in this respect is, that they shall not hold more than ten miles square for this purpose; and the end is, to attain what is desirable in relation to the seat of government.[67]

The constitutionality of the 1846 retrocession did come before the Supreme Court in *Phillips v. Payne*.[68] However, the Court found that, because 30 years had passed between the retrocession and the constitutional challenge, the plaintiff was "estopped" from bringing his claim.[69] While the Court did not reach the merits of the case, it did state in dictum that, "[i]n cases involving the action of the political departments of the government, the judiciary is bound by such action."[70] Thus, *Phillips* should not be read to raise questions about the retrocession's constitutionality.

Finally, returning to the language of the District Clause itself, it is worth noting that it is immediately followed in the same paragraph by a grant permitting Congress "to exercise ***like Authority*** over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."[71] This authority has been construed consistently to allow Congress to both acquire and convey such places.[72] Further, Article IV, section 3, clause 2 of the Constitution provides that Congress shall have "[p]ower to dispose of . . . Property belonging to the United States."[73] Indeed, there are numerous instances where the United States has ceased to exercise ceded jurisdiction over federal enclaves, either by retrocession or transfer of lands to another state.[74] As George Washington University Law Professor Peter Raven-Hansen has reasoned, "Congress does not exhaust its authority by using it to acquire these places. If it can thus change the form of such federal places, then it has 'like authority' to do the same to the District itself."[75]

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[67] Retrocession of Alexandria to Virginia, House Comm. on the District of Columbia, H.R. Rep. No. 29-325, at 3-4 (1846).
[68] 92 U.S. 130, 132 (1875).
[69] *Id.* at 134.
[70] *Id.* at 132.
[71] U.S. Const. art. I, § 8, cl. 17 (emphasis added); *see generally*, Cong. Research Serv., *Equality for the District of Columbia: Discussing the Implications of S. 132, the New Columbia Admission Act of 2013: Hearing on S. 132 Before the S. Comm. on Homeland Security and Gov. Affairs*, 113th Cong. 2d Sess. (2014) (Statement of Kenneth R. Thomas, Legislative Attorney, American Law Division), *available at* https://norton.house.gov/sites/norton.house.gov/files/CRS.pdf [hereinafter Thomas].
[72] *See* U.S. Interdepartmental Comm. for the Study of Jurisdiction over Federal Areas Within the Sates, *in* 2 Jurisdiction Over Federal Areas Within the States: A Text of the Law of Legislative Jurisdiction 273 (1957) (stating that "[b]y reason of article IV, section 3, clause 2, of the Constitution, Congress alone has the ultimate authority to determine under what terms and conditions property of the Federal Government may or shall be sold").
[73] U.S. Const. art. IV, § 3, cl. 2.
[74] *See, e.g.*, Pub. L. 83-704, 68 Stat. 961 (1954) (retroceding jurisdiction over Atomic Energy Commission land at Sandia Base, Albuquerque to New Mexico); 81 Pub. L. 14, 63 Stat. 11 (1949) (retroceding jurisdiction over Los Alamos Energy Commission area to New Mexico); Act of Feb. 22, 1869, 44 Stat. 1176 (1921) (ceding to Virginia the authority to police land originally ceded to the United States by Maryland).
[75] Raven-Hansen, *supra* note 50, at 171; *see also* Retrocession of Alexandria to Virginia, House Comm. on the District of Columbia, H.R. Rep. No. 325, 29th Cong., 1st Sess. 3 (1846) (stating "[t]here is no more reason to believe that [Congress's power to locate the District], when once exercised and executed, is exhausted, than in any

2. The "Fixed Function" Argument

Second, opponents of D.C. statehood have argued that reducing the size of the District to an area comprising federal monuments and buildings only and largely devoid of people would undermine the *intent* of the District and Federal Enclaves Clause.[76] This argument, in effect, posits that the District Clause fixed the "function" of the whole District and no change in form or size that would impinge on that essential function is constitutional absent a constitutional amendment.[77] However, it is doubtful that a reduction in the size of the District would, in fact, impede the function of a separate federal capital.

D.C. statehood detractors highlight the fact that the reduced District—comprising the Capitol and surrounding buildings—would be entirely within the new State of Washington, Douglass Commonwealth and so would be akin to any other federal enclave, wholly dependent on the new state for essential services.[78] They argue that this would undermine the District's independence and give the new state outsized benefits and outsized influence on federal policy.

One answer—most strongly advanced by Professor Raven-Hansen—is that the reduced District would be no more an enclave within a state than the existing District.[79] The current District is a contiguous federal territory surrounded on three sides by Maryland. The proposed reduced District would be a contiguous federal territory surrounded on three sides by the new State of Washington, Douglass Commonwealth. "Geographically speaking, the only difference is size; to say that one is 'outside' Maryland and the other 'inside' [the State of Washington, Douglass Commonwealth] is an exercise in semantics."[80]

Furthermore, as Professor Raven-Hansen has argued, the current District has "long since ceased to be self-sustaining in any practical sense of the word."[81] The District is already inextricably connected to the surrounding metropolitan areas, including parts of Maryland and Virginia, which are home to many federal employees and several important federal buildings.[82] This level of interconnectedness has not undermined the independence and authority of the federal government within the District, nor should the proposed change in the size of the District.

Finally, Congress's plenary authority under the District Clause has never been territorially limited to the District. The Supreme Court has recognized that "the power in Congress, as the legislature of the United States, to legislate exclusively within [the District], carries

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other of [Congress's enumerated powers]").

[76] OLP, *supra* note 49, at 25, 55.

[77] *Id.* at 25.

[78] *Id.* at 57-58 ("In a very real sense, the federal government would be largely dependent upon the [State of Washington, Douglass Commonwealth] for its day to day existence. . . . In short . . . the Congress would lose control over the immediate services necessary to the government's smooth day to day operation. The national government would again be dependent upon the goodwill of another sovereign body.").

[79] *See* Raven-Hansen, *supra* note 50, at 174-75.

[80] *Id.* at 174.

[81] *Id.* at 175.

[82] *See id.* (citing Phillip W. Buchen, *Time for the Sun to Set On Our Imperial Capital*, Legal Times 26, 27 (Feb. 18, 1991) (remarking that the placement of the Department of Defense, the Central Intelligence Agency, the National Security Agency, and the Social Security Administration in surrounding states has not undermined the independence of the federal government)).

with it, as an incident, the right to make that power effectual."[83] This means that Congress has the power to legislate against state encroachments on the independence of the District. It would surely retain that power even if the District were reduced in size.

ii. Admission Clause

The Admission Clause provides:

> New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.[84]

Congress thus is the branch of government imbued with the power to admit new states through legislation. The Supreme Court has construed this power expansively.[85] Indeed, aside from the Admission Clause, the Constitution imposes only one textual limitation on congressional power to admit new states. Article IV, section 4—the Guarantee Clause— of the Constitution requires that the United States must "guarantee to every State in this Union a Republican Form of Government."[86] Section 101(b) of the bill meets this substantive prerequisite.[87]

Still, some critics of D.C. statehood argue that Congress lacks the authority to admit the new State of Washington, Douglass Commonwealth without the express consent of Maryland because the new state would be "formed or erected within the Jurisdiction of [an]other State."[88]

The Admission Clause prohibits the creation of new states from "within the Jurisdiction of any other State" without the existing state's consent.[89] Opponents of D.C. statehood argue that Maryland ceded to the federal government the lands that now make up the District of Columbia solely to create such a District.[90] They argue that, if the ceded land is not used for that purpose, Maryland holds a "reversionary interest" in the current District and, thus, an

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[83] *Cohens v. Virginia*, 19 U.S. 264, 428 (1821); *see also id.* at 429 ("The American people thought it a necessary power, and they conferred it for their own benefit. Being so conferred, it carries with it all those incidental powers which are necessary to its complete and effectual execution."). *Cohens* established the Supreme Court's jurisdiction to review state criminal proceedings. Having established jurisdiction, the Court found that there was no conflict between Congress's authorization of a lottery in the District of Columbia and a Virginia statute prohibiting lotteries in the state. However, it recognized that "[w]hether any particular law be designed to operate within the District or not, depends on the words of that law. If it be designed so to operate, then the question, whether the power so exercised be incidental to the power of exclusive legislation, and be warranted by the constitution, requires a consideration of that instrument. In such cases, the constitution and the law must be compared and construed." *Id.*

[84] U.S. Const. art. IV, § 3, cl. 1.

[85] *See Luther v. Borden*, 48 U.S. at 42 ("[I]t rests with Congress to decide what government is the established one in a State[.]").

[86] U.S. Const. art. IV, § 4.

[87] *See* H.R. 51 § 101(b) ("The State Constitution shall always be republican in form[.]").

[88] *See* R. Hewitt Pate, *D.C. Statehood: Not Without a Constitutional Amendment*, The Heritage Lectures 5 (1993). *But see* Raven-Hansen, *supra* note 50, at 177-83 (rejecting argument).

[89] U.S. Const. art. IV, § 3, cl. 1.

[90] *See* OLP, *supra* note 49, at iii.

act like H.R. 51 would be unconstitutional without Maryland's permission, as triggered by the consent requirement of the Admission Clause.[91]

But as Professor Peter Raven-Hansen explained, this argument "treats use of the ceded land for the district as a condition subsequent to the cession and assumes that the condition would be defeated by any other use of the ceded lands."[92] For the reasons discussed below, no such reversionary interest exists.

The principal problem with the Maryland "reversionary interest" argument is that an asserted condition subsequent or reverter has been neither expressly made nor implied. Maryland's legislature originally authorized its delegation to the House of Representatives "to cede to the congress of the United States any district in this state, not exceeding ten miles square, which the congress may fix upon and accept for the seat of government of the United States."[93] After legislation determining where such land was to be situated passed in Maryland and Congress, Maryland passed another statute ratifying the cession of those specific lands. That cession stated:

> That all that part of the said territory, called Columbia, which lies within the limits of this state, shall be and the same is hereby acknowledged to be **for ever ceded and relinquished to the congress and government of the United States, in full and absolute right, and exclusive jurisdiction**, as well of soil as of persons residing, or to reside thereon, pursuant to the tenor and effect of the eighth section of the first article of the constitution of the government of the United States.[94]

The language of this statute does not appear to contemplate a reversionary interest.[95] Indeed, its express terms—"*for ever ceded and relinquished . . .* in *full and absolute right*, and exclusive jurisdiction"—appear to signal the exact opposite: an unconditional grant of land to the United States.[96] This language should control and Maryland should retain no authority over the land it ceded because "the . . . cession of the District of Columbia to the Federal government relinquished the authority of the States."[97] Thus, the consent provision in the Admission Clause should not apply.[98]

Still some may argue that, while Maryland's statute ratifying cession did not expressly state a reverter interest, it implied one by making the transfer of land "pursuant to the tenor and

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[91] *See* Pate, *supra* note 88, at 5.

[92] Raven-Hansen, *supra* note 50, at 178.

[93] 2 Laws of Maryland 1788, ch. 46 (Kilty 1800).

[94] 2 Laws of Maryland 1791, ch. 45, § 2 (Kilty 1800), as quoted in *Adams v. Clinton*, 90 F. Supp. 2d 35, 58 (D.D.C. 2000) (per curiam) (emphasis added).

[95] *See* Thomas, *supra* note 71, at 3-4.

[96] 2 Laws of Maryland 1791, ch. 45, § 2 (Kilty 1800) (emphasis added); *cf. Van Ness v. Washington*, 29 U.S. 232, 285 (1830) (construing a private land grant to the District "for use of the United States forever" as vesting "an absolute unconditional fee-simple in the United States").

[97] *Downes v. Bidwell*, 182 U.S. 244, 261 (1901); *see also Reily v. Lamar*, 6 U.S. 344, 356-57 (1805); *Hobson v. Tobriner*, 255 F. Supp. 295, 297 (D.D.C. 1996); *Albaugh v. Tawes*, 233 F. Supp. 576, 578 (D. Md.), *aff'd*, 379 U.S. 27 (1964) (per curiam).

[98] This follows the precedent of the Enabling Act of 1802, which did not require consent from Connecticut, even though the Act formed the state of Ohio partially from territory ceded to the United States by Connecticut in 1786. *See* Dinh, *supra* note 50, at 75 (citing The Enabling Act of 1802, 2 Stat. 173 (1802)).

effect of the eight section of the first article of the constitution of the government of the United States," thereby suggesting that the transfer was only made for the limited purpose of creating the District of Columbia under the District and Federal Enclaves Clause.[99] However, even if the language of Maryland's statute ratifying cession of the District were not expressly prohibitive of a reverter interest, one cannot infer any such reverter. Reverter would presumably be determined under Maryland common law[100] and Maryland property law does not favor implied reversionary interests.[101] The Maryland Court of Appeals has gone to "great lengths in refusing to imply a condition subsequent which would result in a forfeiture," instead insisting on "words indicating an intent that the grant is to be void if the condition is not carried out."[102] Here, there are no words indicating intent that Maryland should retain any interest in the District once it ceded such land to the United States. Again, the operative language of the statute—"for ever ceded and relinquished . . . in full and absolute right, and exclusive jurisdiction"—denotes the exact opposite. The statute's statement of purpose that the land be used to create the District of Columbia is "no more than an expression of personal trust and confidence that the grantee will use the property so far as may be reasonable and practicable to effect the purpose of the grant, and not . . . a condition subsequent or restraint upon the alienation of the property."[103]

Finally, as James Madison explained in The Federalist No. 43, the consent provision of the Admission Clause was adopted as a "particular precaution against the erection of new States, by the partition of a State without its consent."[104] As the lands comprising the District of Columbia have not been a part of Maryland since before 1790, it is hard to imagine how Congress's exercise of its valid authority to alter the size of the District would undermine the original intent of the Admission Clause. Thus, D.C. statehood is both consistent with and constitutional under the Admission Clause and does not require Maryland's consent for Congress to change the boundaries and size of the District.

In any event, a textual reading of the Admission Clause precludes any reverter interest, implied or otherwise. The Admission Clause forbids the "form[ing] or erect[ing]" of a "new

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[99] *See* Pate, *supra* note 88, at 5. *But see* Thomas, *supra* note 71, at 4-5 (rejecting argument).
[100] This seems intuitively correct, but it is an understandably open question.
[101] *See generally* Raven-Hansen, *supra* note 50, at 178-82; *see Gray v. Harriet Lane Home for Invalid Children*, 64 A.2d 102, 110 (Md. 1949) ("Conditions subsequent [are] not favored in the law, because the breach of such a condition causes a forfeiture and the law is averse to forfeitures."); *Faith v. Bowles*, 37 A. 711, 712 (Md. 1897).
[102] *Gray*, 64 A.2d at 108; *see also Estate of Poster v. Comm'r*, 274 F.2d 358, 365 (4th Cir. 1960) ("[U]nyielding insistence upon language expressly voiding the gift in case of diversion from the declared use is an established Maryland rule in the construction of written instruments; in the absence of language expressly stating that such diversion shall effect a forfeiture, the gift is absolute and not conditional."); *Kilpatrick v. Baltimore*, 31 A. 805, 806 (Md. 1895) ("[A] condition will not be raised by implication, from a mere declaration in the deed, that the grant is made for a special and particular purpose without being coupled with words appropriate to make such a condition.").
[103] *Columbia Bldg. Co. v. Cemetery of the Holy Cross*, 141 A. 525, 528 (Md. 1928); *see also* Raven- Hansen, *supra* note 44, at 181 n.96 ("Even when a statement of purpose was accompanied by the proviso that if the grant was used for any other purpose it 'shall at once become void,' the Maryland Court of Appeals refused to find a reverter because the proviso did not expressly state that the grant was effective for only 'so long as' it was used as provided.") (quoting *McMahon v. Consistory of St. Paul's Reformed Church*, 75 A.2d 122, 125 (Md. 1950)); *cf. Selectmen of Nahant v. United States*, 293 F. Supp. 1076, 1078 (D. Mass. 1968) ("The mere recital in the deed of the purpose for which the land conveyed was to be used is not in itself sufficient to impose any limitation or restriction on the estate granted.").
[104] The Federalist No. 43, at 274 (James Madison) (1961).

State . . . within the Jurisdiction of any other state."[105] But the District of Columbia, in its current form, is neither part of Maryland nor within its jurisdiction.[106] The enactment of H.R. 51 would not change that. Once passed, the Mayor of the District of Columbia would issue a proclamation for the election of two Senators and one Representative in Congress within thirty days.[107] Upon certification of that election, the President would "issue a proclamation announcing the results of such elections" within ninety days,[108] at which point the State of Washington, Douglass Commonwealth would immediately become a separate, new state by operation of law.[109] At no point in this process would the new state be "within the Jurisdiction" of Maryland.

iii. Twenty-Third Amendment

The Twenty-Third Amendment was proposed by Congress in June 1960 and ratified in March 1961. It states:

> Sec. 1. **The District constituting the seat of Government of the United States shall** appoint in such manner as the Congress may direct:
>
> A number of electors of President and Vice-President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State . . . .
>
> Sec. 2. The Congress shall have power to enforce this article by appropriate legislation.[110]

The purpose of the amendment was to provide all those living in the District of Columbia with the right to vote in national elections for President and Vice President. There is discernable tension between it and H.R. 51.

The Twenty-Third Amendment practically means that residents of the District of Columbia hold three votes in the Electoral College. Under H.R. 51, the few residents who live in the reduced District—*including the President and their family*—would therefore have outsized influence in presidential elections. Critics have argued that this anomaly would violate the Twenty-Third Amendment's intent, thus foreclosing a statutory reduction in the size of the District.[111] Critics have also argued that the Twenty-Third Amendment, by giving the District three electoral votes, contemplates the continued existence of a large populated federal district.[112]

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[105] U.S. Const. art. IV, § 3, cl. 1.
[106] *See Downes*, 182 U.S. at 261 ("[T]he . . . cession of the District of Columbia to the Federal government relinquished the authority of the States . . . ."); *see also Hobson*, 255 F. Supp. at 297 ("[T]he effect of cession upon individuals was to terminate their state citizenship and the jurisdiction of the state governments over them."); *cf. Brennan v. S & M Enters.*, 362 F. Supp. 595, 599 (D.D.C. 1973) (noting "unique geographic status of Washington, D. C."), *aff'd*, 505 F.2d 475 (D.C. Cir. 1974).
[107] H.R. 51 § 102(a).
[108] *Id.* 103(a).
[109] *Id.* 103(b).
[110] U.S. Const. amend. XXIII (emphasis added).
[111] *See* Kennedy letter, *supra* note 50, at 132.
[112] *See id.* at 134 ("[A] persuasive argument can be made that the adoption of the 23d Amendment has given

However, these arguments are not supported by the text of the Amendment or any other part of the Constitution. The Twenty-Third Amendment, like the District Clause, makes no mention of a minimum geographic size or population in the federal district and it applies regardless of changes in the District's population. "[I]n general, the Constitution is not violated anytime the factual assumptions underlying a provision change."[113] Thus, changing the factual premise underlying the Twenty-Third Amendment—that there will be a large populated district—does not violate its terms granting electoral rights to residents of that district.

Indeed, there is no inherent *conflict* between H.R. 51 and the text of the Twenty-Third Amendment. Although peculiar, this result does not pose a constitutional obstacle to H.R. 51. The concerns raised by the interaction of H.R. 51 with the Twenty-Third Amendment are policy considerations, not constitutional limits.

The most significant concern is with the allocation of three electoral votes to residents of the reduced District, including the President and their family. This may be bad policy, but not unconstitutional. Moreover, H.R. 51 seeks to avoid the problem in two ways: (1) by repealing 3 U.S.C. § 21,[114] which presently provides for the District's participation in federal elections—thus leaving it without appointed electors—and (2) by kickstarting "Expedited Procedures for Consideration of Constitutional Amendment Repealing 23rd Amendment."[115] While these measures do not likely escape the Amendment's mandatory language (i.e., "The District . . . ***shall*** appoint" electors), neither does the Amendment foreclose the Act from a constitutional standpoint.[116]

Other policy solutions include proposals that there be no voting residents in the reduced District. H.R. 51 already provides for Capital residents to be allowed to vote in federal elections in their last state of residence.[117] The President and their family could vote in their home state, as they do customarily already.[118] The few other residents of the reduced District could vote in Washington, Douglass Commonwealth. Professor Raven-Hansen has argued that Congress has the authority to enact legislation entitling residents of the reduced District to vote in the new state for elections to federal office, much as citizens living overseas may vote in federal elections in their previous state of residence even if they

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permanent constitutional status to the existence of a federally owned 'District constituting the seat of government of the United States,' having a substantial area and population."). *But see id.* ("This is not to imply that the existing boundaries of the District of Columbia are immutable or that Congress could not move the seat of government to a different location. . . .").

[113] *See* Dinh, *supra* note 56, at 84 (citing *Adams*, 90 F. Supp. 2d. at 50).

[114] *See* H.R. 51 § 223.

[115] *Id.* § 224.

[116] *See* Kennedy letter, *supra* note 50, at 132 ("[The Twenty-Third] amendment does not leave it up to Congress to determine whether or not the District of Columbia shall cast three electoral votes in a particular presidential election. It contains a clear direction that the District 'shall appoint' the appropriate number of electors, and gives Congress discretion only as to the mechanics by which the appointment is made."). *But see* Phillip G. Shrag, *The Future of District of Columbia Home Rule*, 39 CATH. U. L. REV. 311, 348-49 (1990) (arguing Twenty-Third Amendment is not self-executing, so Congress can simply decline to provide electors for the District); *see also* Raven-Hansen, *supra* note 50, at 187-88.

[117] *See* H.R. 51 § 221.

[118] Brian Pamer, *Why Are the Obamas Still Eligible To Vote in Illinois?*, Slate (Nov. 6, 2012), https://slate.com/news-and-politics/2012/11/where-does-obama-vote-shouldnt-the-president-vote-in-washington-rather-than-illinois.html.

do not have a current home there or intend to return.[119] These solutions would render the Twenty-Third Amendment inoperative. "The result is untidy—an obsolete yet unrepealed constitutional provision—but it is neither unprecedented nor unconstitutional."[120]

As a separate practical matter, it is worth noting that repealing the Twenty-Third Amendment will itself require a constitutional amendment. Thus, despite the appeal of H.R. 51 as a legislative resolution to D.C. statehood, the Act would not foreclose the need to engage in the amendment process. However, given the interest in ensuring fairly appointed electors, Congress should have a strong incentive to begin the expedited procedures for repealing the Twenty-Third Amendment.

iv. Minimum Requirements of Statehood

One final argument has been made against D.C. statehood, namely that the new state "effectively lacks the minimum requirements to become a state."[121] This argument takes the premise that "[t]here are . . . certain effective minimum requirements defining a 'state eligible for admission to the Union, which are not found in the Constitution."[122] For example, statehood detractors argue that a state must have a large enough population and enough resources to support a state government and uphold its share of the cost of the federal government.[123] Second, critics argue that any new state must have sufficiently diverse interests to function as "a proper Madisonian society."[124] Only then, in this view, could the state serve as an appropriate counterweight to federal authority.[125]

In essence, opponents of D.C. statehood argue that it is "too small, too poor, and too identified with the federal government" to satisfy these requirements.[126] However, as explained, there are no explicit requirements for statehood other than states should not be formed from within or by joining lands of states without those states' consent and must have "a republican form of government." This has led Professor Raven-Hansen to characterize the argument as "strictly a political one, dressed up in constitutional garb."[127]

To the extent there is any authority requiring sufficient population and financial viability for statehood, it can only be found in a House Committee report on Alaskan statehood prepared in 1957.[128] That report describes these requirements as "historical standards" and "traditionally accepted requirements for statehood."[129] However, they are not implicit

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[119] *See* Raven-Hansen, *supra* note 50, at 185-6.
[120] *Id.* at 186 (referencing "U.S. Const. art. II, § I (procedures for selection of President by electors), impliedly superseded by amendment XII (providing new procedures for selection of President by electors), itself impliedly superseded by amendment XX, § 3; article IV, § 2, clause 3 (Fugitive Slave Clause), impliedly repealed by amendment XIII (outlawing slavery and involuntary servitude); cf. U.S. Const. art. I, § 2 (describing initial entitlements of original states to representatives); U.S. Const. art. 1. § 9 ($10 limitation of tax or duty on imported slaves); U.S. Const. art. V (limitation on certain amendments prior to 1808).")
[121] OLP, *supra* note 49, at 59. *But see* Raven-Hansen, *supra* note 50, at 191-92 (rejecting argument).
[122] OLP, *supra* note 49, at 59.
[123] *See id.* at vi, 59-62.
[124] *See id.* at v, 62-63; *see also* The Federalist No. 51 (James Madison) (Clinton Rossiter, ed., 1961).
[125] *See* OLP, *supra* note 49, at 63-67; *see also* The Federalist No. 51, at 323 (James Madison).
[126] Raven-Hansen, *supra* note 50, at 166.
[127] *Id.* at 189.
[128] *See* H.R. Rep. No. 624, 85th Cong., 1st Sess. 11 (1957).
[129] *Id.*

constitutional requirements. They have not even been strictly applied as historical standards.[130]

Second, Congress has not articulated a "multiplicity of interests"[131] standard. Indeed, according to Professor Raven-Hansen, "[t]he ideal Madisonian society was actually a construct which Madison directed toward American society as a whole, not each component state."[132] Had that concept been applied to the original thirteen colonies—or Utah for that matter, with an overwhelmingly Mormon population now and at the time it was admitted to the Union—they might have failed to gain statehood.

Furthermore, it is not even clear that a new State of Washington, Douglass Commonwealth would lack this "multiplicity of interests." While the federal government is undeniably the primary economic driver in the District, it is simply "untrue and patronizing" to assert that there are no competing interests in the District or that its identity is wholly wrapped up with the national government.[133] Regardless, these considerations are nothing more than policy considerations—for Congress to decide—not constitutional limits on D.C. statehood.[134]

III. Conclusion

Continued congressional control of the District of Columbia and its residents undermines the fundamental principle of self-government and is antithetical to a free society. Congressional interference in D.C.'s autonomy has had disastrous consequences for the health and welfare of District residents. Congress has an opportunity to rectify a great injustice that has left hundreds of thousands of Americans in the District of Columbia unable to fully participate in our representative democracy. Disenfranchised District residents deserve full representation in Congress, and the true autonomy and self-governance that comes with statehood.

If you have any questions, please contact Kristen Lee, Policy Analyst, at klee@aclu.org.

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[130] *See* Northwest Ordinance of 1787, *reprinted in* Act of Aug. 7, 1787, 1 Stat. 50, 53 n.(a) (1789) (setting the first population standard for statehood at 60,000 people; however, that standard was subsequently disregarded on five occasions); General Accounting Office, Experiences of Past Territories Can Assist Puerto Rico Status Deliberations 12 (1980) (listing states with "dubious economic potential" at the time of their admission); *see generally* Raven-Hansen, *supra* note 50, at 191.

[131] The Federalist No. 51 (James Madison) (1961).

[132] Raven-Hansen, *supra* note 50, at 191.

[133] *See id.* at 192.

[134] Indeed, though multiple Departments of Justice have raised these concerns, even they have recognized that these are political, not constitutional concerns. *See* OLP, *supra* note 49, at v ("The District of Columbia lacks this essential *political* requisite for statehood.") (emphasis added); *see also District of Columbia Representation in Congress: Hearing on S.J. 65 Before the Subcomm. on the Constitution of the S. Comm. on the Judiciary*, 95th Cong., 2d Sess. 17-18 (1978) (testimony of Assistant Attorney General John M. Harmon), *reprinted in* OLP, *supra* note 49, at 92, 94 ("At this point, a *practical* problem is presented.") (emphasis added); *Representation for the District of Columbia: Hearings on Proposed Constitutional Amendment to Provide for Full Congressional Representation for the District of Columbia Before the Subcomm. on Civil and Constitutional Rights of the H. Comm. on the Judiciary*, 95th Cong., 1st Sess. 126 (1977) (testimony of Assistant Attorney General Patricia M. Wald), *reprinted in* OLP, *supra* note 49, at 98, 100 ("This presents *practical and even theoretical* problems.") (emphasis added).

BANNED BOOKS WEEK
September 24-October 1, 2005

American Civil Liberties Union • www.aclu.org/banned2005

Defending First Amendment Rights

When the framers of our Constitution insisted on Freedom of Speech rights, one of their aims was so that all Americans — no matter their social class or position in our society — could vigorously examine and criticize our government. These rights have throughout our history nurtured our democracy and made us a beacon to the whole world. But, as history has played out, they've been hard-won rights that we have to continually fight for and renew. Take the case of John Blair. When he mounted his solitary vigil some winter night a few years ago to protest an appearance by Vice President Dick Cheney, local cops first tried to shunt him aside. They tried to position him 500 feet away from the site of the event. Authorities at the local and federal levels became adept in recent years of using security concerns to create the so-called "protest zones" far away from official events. Both Democrats and Republicans used them at their most recent political conventions.

Blair crossed the street instead and held up his banner criticizing Cheney. Cops arrested him for disorderly conduct. The Indiana Civil Liberties Union filed a suit on Blair's behalf.

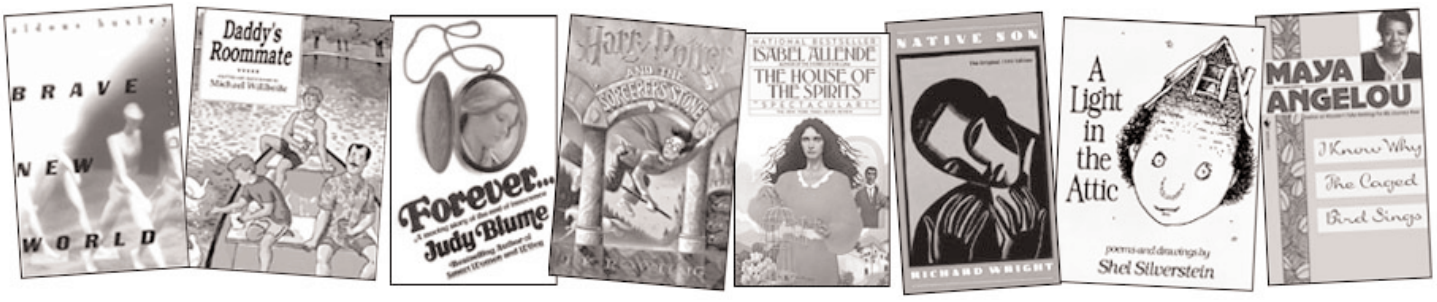
A United States District Court Judge, Larry J. McKinney, earlier this year vindicated Blair's free speech rights by ruling that the authorities violated his constitutional rights by restricting his movement and arresting him before the 2002 event.

"The restriction of protesters to an area 500 feet away from the only entrance used by attendees, and on the opposite end of the building from where Vice President Cheney would enter the facility . . . burdened speech substantially more than was necessary to further the Defendants' goals of safety," Judge McKinney wrote.

NOTABLE FREE SPEECH ISSUES IN THE PAST YEAR

Free Speech

- Attorneys for the American Civil Liberties Union of Massachusetts declared a First Amendment victory when a federal appeals court ruled in December 2004 that the Massachusetts Bay Transportation Authority violated free speech rights by refusing to display subway advertisements encouraging public discussion about marijuana policies and laws. However, the ACLU criticized a separate ruling that upheld the transit agency's decision to reject ads submitted by a Christian church group.



- A month later, the U.S. Department of Justice — Perhaps heeding the federal district court's ruling that its controversial statute was unconstitutional — notified Congress that it would not defend a law prohibiting the display of marijuana policy reform ads in public transit systems. "The government does not have a viable argument to advance in the statute's defense and will not appeal the district court's decision," Solicitor General Paul Clement said in a letter to Congress.

- The ACLU of Washington joined Public Citizen in April to file a lawsuit backing free speech rights of a union member running for office. The Union member, Joseph Hughes, was challenging a rule that forbade candidates from discussing the union election or having political paraphernalia — including buttons or bumper stickers — anywhere on union premises.

- The ACLU of Michigan challenged a "gag order" imposed by a college president prohibiting board members from talking to students, faculty and employees without first obtaining clearance from the college president. The ACLU filed the suit on behalf of Thomas A. Hamilton, a St. Clair County Community College Trustee.

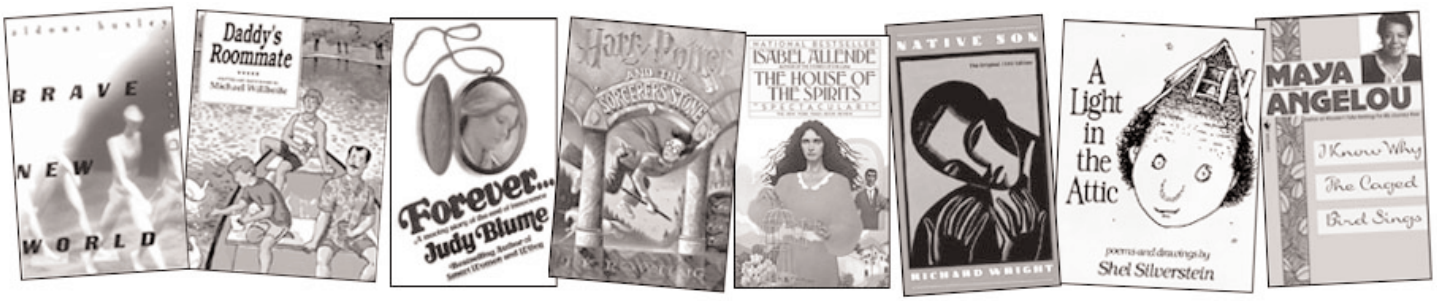
- In a victory for free speech and protest rights, the ACLU of Pennsylvania settled a lawsuit it brought on behalf of activists famously known as the "Smoketown Six." The activists had been arrested when they, during a campaign rally for President Bush, stripped down to thong underwear to recreate the infamous image from the Abu Ghraib torture scandal.

- Evansville police violated a protester's constitutional rights when they restricted his movement and arrested him for disorderly conduct before a 2002 appearance by Vice President Dick Cheney, a federal judge ruled. John Blair, a Pulitzer-prize winning photographer and writer, had held a sign stating "Cheney, 19th Century Energy Man" as he stood across the street from the arena where Cheney was to appear. His ultimate arrest was a violation of his First Amendment rights, Judge Larry K. McKinney ruled.

Students' Speech

- A U.S. District Court ruled in favor of free speech for students and found Oceanport school officials liable for violating the rights of an eight-grade student whom it punished for creating a website on his home computer that included student comments criticizing the school.

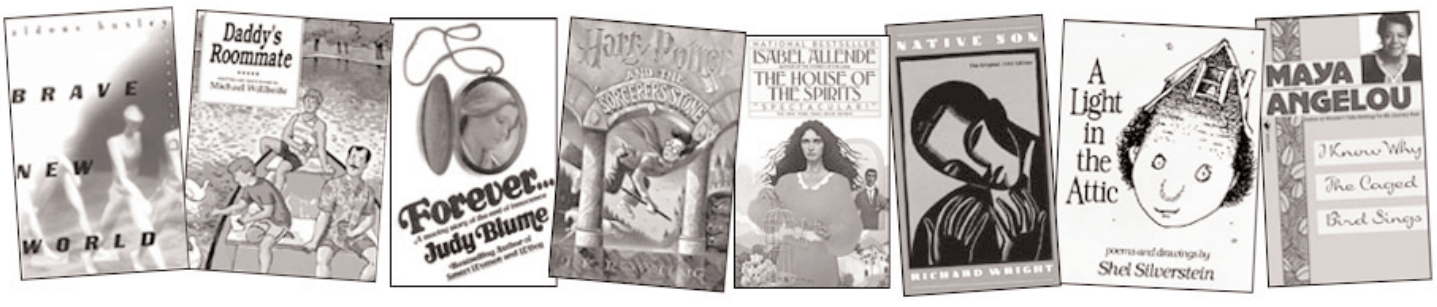
- A federal court ruled that school officials violated the rights of a high school students when they disciplined him for wearing a t-shirt bearing an image of the Confederate flag. The ACLU of West Virginia filed the suit against the school on behalf of the student.



- In settlement of a federal lawsuit brought by the ACLU of Illinois on behalf of two activists who sought to broaden opportunity to effectively communicate with people attending conventions at the McCormick Place in Chicago, all people and all organizations gained the right to hand out leaflets to conventioneers at public entry and exits at the center.

Internet Speech

- The ACLU of Utah, joined by a broad-based group of bookstores, artistic and informative Websites, Internet service providers, and national trade associations, filed suit in federal court challenging the constitutionality of a Utah law targeted at restricting children's access to material on the Internet.



American Civil Liberties Union

The **American Civil Liberties Union** (**ACLU**) is a nonprofit organization founded in 1920 "to defend and preserve the individual rights and liberties guaranteed to every person in this country by the Constitution and laws of the United States".[6][7][8] The ACLU works through litigation and lobbying, and has over 1,200,000 members, with an annual budget of over $300 million. Affiliates of the ACLU are active in all 50 states, the District of Columbia, and Puerto Rico. The ACLU provides legal assistance in cases where it considers civil liberties to be at risk. Legal support from the ACLU can take the form of direct legal representation or preparation of *amicus curiae* briefs expressing legal arguments when another law firm is already providing representation.

In addition to representing persons and organizations in lawsuits, the ACLU lobbies for policy positions that have been established by its board of directors. Current positions of the ACLU include opposing the death penalty; supporting same-sex marriage and the right of LGBT people to adopt; supporting reproductive rights such as birth control and abortion rights; eliminating discrimination against women, minorities, and LGBT people; decarceration in the United States; supporting the rights of prisoners and opposing torture; and upholding the separation of church and state by opposing government preference for religion over non-religion or for particular faiths over others.

Legally, the ACLU consists of two separate but closely affiliated nonprofit organizations, namely the American Civil Liberties Union, a 501(c)(4) social welfare group; and the ACLU Foundation, a 501(c)(3) public charity. Both organizations engage in civil rights litigation, advocacy, and education, but only donations to the 501(c)(3) foundation are tax deductible, and only the 501(c)(4) group can engage in unlimited political lobbying.[9][10] The two organizations share office space and employees.[11]

Contents

American Civil Liberties Union

Predecessor	National Civil Liberties Bureau
Formation	January 19, 1920[1]
Founders	Helen Keller · Jeannette Rankin · Roger Nash Baldwin · Crystal Eastman · Walter Nelles · Morris Ernst · Albert DeSilver · Arthur Garfield Hays · Jane Addams · Felix Frankfurter · Elizabeth Gurley Flynn
Type	501(c)(4) nonprofit organization
Tax ID no.	13-3871360
Purpose	Civil liberties advocacy
Headquarters	125 Broad Street, New York, New York, U.S.
Region served	United States
Membership	1.84 million (2018)[2]
President	Deborah Archer
Executive Director	Anthony Romero

Budget	$309 million (2019; excludes affiliates)[3]
Staff	Nearly 300 staff attorneys[4]
Volunteers	Several thousand attorneys[5]
Website	www.aclu.org (https://www.aclu.org)

Overview

The ACLU was founded in 1920 by a committee including Helen Keller, Roger Nash Baldwin, Crystal Eastman, Walter Nelles, Morris Ernst, Albert DeSilver, Arthur Garfield Hays, Jane Addams, Felix Frankfurter, Elizabeth Gurley Flynn, and Rose Schneiderman.[12] Its focus was on freedom of speech, primarily for anti-war protesters.[13] It was founded in response to the controversial Palmer raids, which saw thousands of radicals arrested in matters which violated their constitutional search and seizures protection.[14] During the 1920s, the ACLU expanded its scope to include protecting the free speech rights of artists and striking workers, and working with the National Association for the Advancement of Colored People (NAACP) to mitigate discrimination. During the 1930s, the ACLU started to engage in work combating police misconduct and supporting Native American rights. Many of the ACLU's cases involved the defense of Communist Party members and Jehovah's Witnesses. In 1940, the ACLU leadership voted to exclude communists from its leadership positions, a decision rescinded in 1968. During World War II, the ACLU defended Japanese-American citizens, unsuccessfully trying to prevent their forcible relocation to internment camps. During the Cold War, the ACLU headquarters was dominated by anti-communists, but many local affiliates defended members of the Communist Party.

By 1964, membership had risen to 80,000, and the ACLU participated in efforts to expand civil liberties. In the 1960s, the ACLU continued its decades-long effort to enforce separation of church and state. It defended several anti-war activists during the Vietnam War. The ACLU was involved in the *Miranda* case, which addressed conduct by police during interrogations, and in the *New York Times* case, which established new protections for newspapers reporting on government activities. In the 1970s and 1980s, the ACLU ventured into new legal areas, involving the rights of homosexuals, students, prisoners, and the poor. In the twenty-first century, the ACLU has fought the teaching of creationism in public schools and challenged some provisions of anti-terrorism legislation as infringing on privacy and civil liberties. Fundraising and membership spiked after the 2016 presidential election and the ACLU's current membership is more than 1.2 million.[2]

Organization

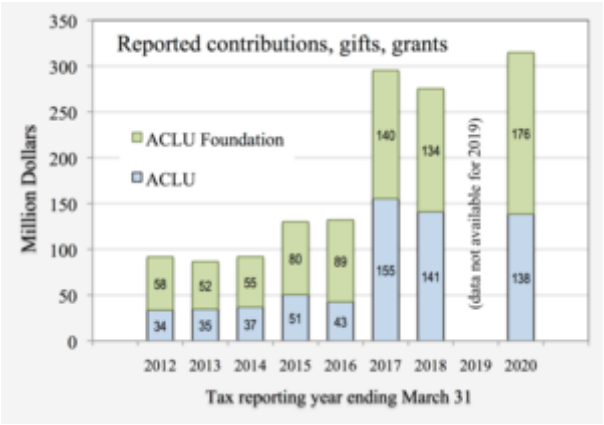
Leadership

The ACLU is led by a president and an executive director, Deborah N. Archer and Anthony Romero, respectively, in 2021.[15][16] The president acts as chair of the ACLU's board of directors, leads fundraising, and facilitates policy-setting. The executive director manages the day-to-day operations of the organization.[17] The board of directors consists of 80 persons, including representatives from each state affiliate, as well as at-large delegates. The organization has its headquarters in 125 Broad Street, a 40-story skyscraper located in Lower Manhattan, New York City.[18]

The leadership of the ACLU does not always agree on policy decisions; differences of opinion within the ACLU leadership have sometimes grown into major debates. In 1937, an internal debate erupted over whether to defend Henry Ford's right to distribute anti-union literature.[19] In 1939, a heated debate took place over whether to prohibit communists from serving in ACLU leadership roles.[20] During the early 1950s and Cold War McCarthyism, the board was divided on whether to defend communists.[21] In 1968, a schism formed over whether to represent Benjamin Spock's anti-war activism.[22] In 1973, as the Watergate Scandal continued to unfold, leadership was initially divided over whether to call for President Nixon's impeachment and removal from office.[23] In 2005, there was internal conflict about whether or not a gag rule should be imposed on ACLU employees to prevent publication of internal disputes.[24]

Funding

In the year ending March 31, 2014, the ACLU and the ACLU Foundation had a combined income from support and revenue of $100.4 million, originating from grants (50.0%), membership donations (25.4%), donated legal services (7.6%), bequests (16.2%), and revenue (0.9%).[27] Membership dues are treated as donations; members choose the amount they pay annually, averaging approximately $50 per member per year.[28] In the year ending March 31, 2014, the combined expenses of the ACLU and ACLU Foundation were $133.4 million, spent on programs (86.2%), management (7.4%), and fundraising (8.2%).[27] (After factoring in other changes in net assets of +$30.9 million, from sources such as investment income, the organization had an overall decrease in net assets of $2.1 million.)[29][30] Over the period from 2011 to 2014 the ACLU Foundation, on the average, has accounted for roughly 70% of the combined budget, and the ACLU roughly 30%.[31]



Amounts reported to IRS as "Contributions, Gifts, Grants and Other Similar Amounts" by ACLU and ACLU Foundation.[25] Graph reflects an increase in donations following U.S. President Trump's January 2017 executive order barring millions of refugees and citizens of seven Muslim-majority countries.[26]

The ACLU solicits donations to its charitable foundation. The ACLU is accredited by the Better Business Bureau, and the Charity Navigator has ranked the ACLU with a four-star rating.[32][33] The local affiliates solicit their own funding; however, some also receive funds from the national ACLU, with the distribution and amount of such assistance varying from state to state. At its discretion, the national organization provides subsidies to smaller affiliates that lack sufficient resources to be self-sustaining; for example, the Wyoming ACLU chapter received such subsidies until April 2015, when, as part of a round of layoffs at the national ACLU, the Wyoming office was closed.[34][35]

In October 2004, the ACLU rejected $1.5 million from both the Ford Foundation and Rockefeller Foundation because the foundations had adopted language from the USA PATRIOT Act in their donation agreements, including a clause stipulating that none of the money would go to "underwriting terrorism or

other unacceptable activities." The ACLU views this clause, both in federal law and in the donors' agreements, as a threat to civil liberties, saying it is overly broad and ambiguous.[36][37]

Due to the nature of its legal work, the ACLU is often involved in litigation against governmental bodies, which are generally protected from adverse monetary judgments; a town, state or federal agency may be required to change its laws or behave differently, but not to pay monetary damages except by an explicit statutory waiver. In some cases, the law permits plaintiffs who successfully sue government agencies to collect money damages or other monetary relief. In particular, the Civil Rights Attorney's Fees Award Act of 1976 leaves the government liable in some civil rights cases. Fee awards under this civil rights statute are considered "equitable relief" rather than damages, and government entities are not immune from equitable relief.[38] Under laws such as this, the ACLU and its state affiliates sometimes share in monetary judgments against government agencies. In 2006, the Public Expressions of Religion Protection Act sought to prevent monetary judgments in the particular case of violations of church-state separation.[39]

The ACLU has received court awarded fees from opponents, for example, the Georgia affiliate was awarded $150,000 in fees after suing a county demanding the removal of a Ten Commandments display from its courthouse;[40] a second Ten Commandments case in the state, in a different county, led to a $74,462 judgment.[41] The State of Tennessee was required to pay $50,000, the State of Alabama $175,000, and the State of Kentucky $121,500, in similar Ten Commandments cases.[42][43]

State affiliates

Most of the organization's workload is performed by its local affiliates. There is at least one affiliate organization in each state, as well as one in Washington, D.C., and in Puerto Rico. California has three affiliates.[44] The affiliates operate autonomously from the national organization; each affiliate has its own staff, executive director, board of directors, and budget. Each affiliate consists of two non-profit corporations: a 501(c)(3) corporation–called the ACLU Foundation–that does not perform lobbying, and a 501(c)(4) corporation–called ACLU–which is entitled to lobby. Both organizations share staff and offices[45][46][47]

Howard Simon, executive director of the ACLU of Florida, joins in a protest of the Guantanamo Bay detentions with Amnesty International

ACLU affiliates are the basic unit of the ACLU's organization and engage in litigation, lobbying, and public education. For example, in a twenty-month period beginning January 2004, the ACLU's New Jersey chapter was involved in fifty-one cases according to their annual report – thirty-five cases in state courts, and sixteen in federal court. They provided legal representation in thirty-three of those cases, and served as amicus in the remaining eighteen. They listed forty-four volunteer attorneys who assisted them in those cases.

ACLU state affiliates		
State	**ACLU state affiliate**	**Notes**
Alabama		
Alaska		
Arizona		
Arkansas		
California	ACLU of Northern California ACLU of Southern California ACLU of San Diego & Imperial Counties	
Colorado	ACLU of Colorado	
Connecticut		
Delaware	ACLU of Delaware	
District of Columbia		
Florida	ACLU of Florida	
Georgia		
Hawaii	ACLU of Hawaii	
Idaho		
Illinois		
Indiana		
Iowa		
Kansas		
Kentucky		
Louisiana		
Maine	ACLU of Maine	
Maryland		
Massachusetts	ACLU of Massachusetts	
Michigan		
Minnesota		
Mississippi		
Missouri	ACLU of Missouri	
Montana		
Nebraska		
Nevada		
New Hampshire		
New Jersey	American Civil Liberties Union of New Jersey	
New Mexico		
New York	New York Civil Liberties Union	
North Carolina		
North Dakota		

Ohio		
Oklahoma		
Oregon		
Pennsylvania	ACLU of Pennsylvania	
Puerto Rico	ACLU of Puerto Rico National Chapter	
Rhode Island		
South Carolina		
South Dakota		
Tennessee		
Texas	ACLU of Texas (https://www.aclutx.org/)	
Utah		
Vermont		
Virginia	ACLU of Virginia (https://acluva.org/)	
Washington		
West Virginia		
Wisconsin		
Wyoming	ACLU of Wyoming	

Positions

The ACLU's official position statements included the following policies:

- Affirmative action – The ACLU supports affirmative action.[48]
- Birth control and abortion – The ACLU supports the right to abortion, as established in the *Roe v. Wade* decision. The ACLU believes that everyone should have affordable access to the full range of contraceptive options. The ACLU's Reproductive Freedom Project manages efforts related to reproductive rights.[49]
- Campaign funding – The ACLU believes that the current system is badly flawed, and supports a system based on public funding. The ACLU supports full transparency to identify donors. However, the ACLU opposes attempts to control political spending. The ACLU supported the Supreme Court's decision in *Citizens United v. FEC*, which allowed corporations and unions more political speech rights.[50]
- Criminal law reform – The ACLU seeks an end to what it feels are excessively harsh sentences that "stand in the way of a just and equal society". The ACLU's Criminal Law Reform Project focuses on this issue.[51]
- Death penalty – The ACLU is opposed to the death penalty in all circumstances. The ACLU's Capital Punishment Project focuses on this issue.[52]
- Free speech – The ACLU supports free speech, including the right to express unpopular or controversial ideas, such as flag desecration, racist or sexist views, etc.[53] However, a leaked ACLU memo from June 2018 said that speech that can "inflict serious harms" and "impede progress toward equality" may be a lower priority for the organization.[54][55]
- Gun rights – The national ACLU's position is that the Second Amendment protects a collective right to own guns rather than an individual right, despite the 2008 Supreme Court decision in *District of Columbia v. Heller* that the Second Amendment is an individual right.

The national organization's position is based on the phrases "a well regulated Militia" and "the security of a free State". However, the ACLU opposes any effort to create a registry of gun owners and has worked with the National Rifle Association to prevent a registry from being created, and it has favored protecting the right to carry guns under the 4th Amendment.[56][57][58]

- HIV/AIDS – The policy of the ACLU is to "create a world in which discrimination based on HIV status has ended, people with HIV have control over their medical information and care, and where the government's HIV policy promotes public health and respect and compassion for people living with HIV and AIDS." This effort is managed by the ACLU's AIDS Project.[59]
- Human rights – The ACLU's Human Rights project advocates (primarily in an international context) for children's rights, disability rights, immigrants rights, gay rights, and other international obligations.[60]
- Immigrants' rights – The ACLU supports civil liberties for immigrants to the United States.[61]
- Lesbian, gay, bisexual and transgender rights – The ACLU's LGBT Rights Project supports equal rights for all gays and lesbians, and works to eliminate discrimination. The ACLU supports equal employment, housing, civil marriage and adoption rights for LGBT couples.[62]
- National security – The ACLU is opposed to compromising civil liberties in the name of national security. In this context, the ACLU has condemned government use of spying, indefinite detention without charge or trial, and government-sponsored torture. This effort is led by the ACLU's National Security Project.[63]
- Prisoners' rights – The ACLU's National Prison Project believes that incarceration should only be used as a last resort, and that prisons should focus on rehabilitation. The ACLU works to ensure that prisons treat prisoners in accordance with the Constitution and domestic law.[64]
- Privacy and technology – The ACLU's Project on Speech, Privacy, and Technology promotes "responsible uses of technology that enhance privacy protection", and opposes uses "that undermine our freedoms and move us closer to a surveillance society".[65]
- Racial issues – The ACLU's Racial Justice Program combats racial discrimination in all aspects of society, including the educational system, justice system, and the application of the death penalty.[66] However, the ACLU opposes state censorship of the Confederate flag.[67]
- Religion – The ACLU supports the right of religious persons to practice their faiths without government interference. The ACLU believes the government should neither prefer religion over non-religion, nor favor particular faiths over others. The ACLU is opposed to school-led prayer, but protects students' right to pray in school.[68] It opposes the use of religious beliefs to discriminate, such as refusing to provide abortion coverage or providing services to LGBT people.[69]
- Sex education – The ACLU opposes single-sex education options. It believes that single-sex education contributes to gender stereotyping and compares single-sex education to racial segregation.[70]
- Vaccination policy - The ACLU supports vaccine mandates for people using public facilities and businesses on the grounds that there is no right to harm others by spreading infectious diseases. Hence, the ACLU states, mandates are "permissible in many settings where the unvaccinated pose a risk to others, including schools and universities, hospitals, restaurants and bars, workplaces and businesses open to the public."[71] The organization supports a public health-based approach to pandemic management and is opposed to criminalizing or jailing people with infectious diseases.[72]
- Voting rights – The ACLU believes that impediments to voting should be eliminated, particularly if they disproportionately impact minority or poor citizens. The ACLU believes

that misdemeanor convictions should not lead to a loss of voting rights. The ACLU's Voting Rights Project leads this effort.[73]
- Women's rights – The ACLU works to eliminate discrimination against women in all realms. The ACLU encourages government to be proactive in stopping violence against women. These efforts are led by the ACLU's Women's Rights project.[74]

Support and opposition

The ACLU is supported by a variety of persons and organizations. There were over 1,000,000 members in 2017, and the ACLU annually receives thousands of grants from hundreds of charitable foundations. Allies of the ACLU in legal actions have included the National Association for the Advancement of Colored People, the American Jewish Congress, People for the American Way, the National Rifle Association, the Electronic Frontier Foundation, Americans United for Separation of Church and State and the National Organization for Women.

The ACLU has been criticized by liberals such as when it excluded communists from its leadership ranks, when it defended Neo-Nazis, when it declined to defend Paul Robeson, or when it opposed the passage of the National Labor Relations Act.[75][76] Since the 1990s, the organization has come under heavy criticism from feminists for taking political positions that primarily serve corporate interests at the expense of women's civil rights.[77] Conversely, it has been criticized by conservatives such as when it argued against official prayer in public schools, or when it opposed the Patriot Act.[78][79] The ACLU has supported conservative figures such as Rush Limbaugh, George Wallace, Henry Ford and Oliver North as well as liberal figures such as Dick Gregory, Rockwell Kent and Benjamin Spock.[22][80][81][82][83][84][85][86]

A major source of criticism are legal cases in which the ACLU represents an individual or organization that promotes offensive or unpopular viewpoints such as the Ku Klux Klan, neo-Nazis, the Nation of Islam, the North American Man/Boy Love Association, the Westboro Baptist Church or the Unite the Right rally.[87][88][89] As of 2000, the ACLU has historically responded to this criticism by stating "[i]t is easy to defend freedom of speech when the message is something many people find at least reasonable. But the defense of freedom of speech is most critical when the message is one most people find repulsive."[90]

Early years

CLB era

The ACLU developed from the National Civil Liberties Bureau (CLB), co-founded in 1917 during World War I by Crystal Eastman, an attorney activist, and Roger Nash Baldwin.[91] The focus of the CLB was on freedom of speech, primarily anti-war speech, and on supporting conscientious objectors who did not want to serve in World War I.[92]

Three United States Supreme Court decisions in 1919 each upheld convictions under laws against certain kinds of anti-war speech. In 1919, the Court upheld the conviction of Socialist Party leader Charles Schenck for publishing anti-war literature.[93] In *Debs v. United States*, the court upheld the conviction of Eugene Debs. While the Court upheld a conviction a third time in *Abrams v. United States*, Justice Oliver Wendell Holmes wrote an important dissent which has gradually been absorbed as an American principle: he urged the court to treat freedom of speech as a fundamental right, which should rarely be restricted.[94]

In 1918, Crystal Eastman resigned from the organization due to health issues.[95] After assuming sole leadership of the CLB, Baldwin insisted that the organization be reorganized. He wanted to change its focus from litigation to direct action and public education.[1]

The CLB directors concurred, and on January 19, 1920, they formed an organization under a new name, the American Civil Liberties Union.[1] Although a handful of other organizations in the United States at that time focused on civil rights, such as the National Association for the Advancement of Colored People (NAACP) and Anti-Defamation League (ADL), the ACLU was the first that did not represent a particular group of persons, or a single theme.[1] Like the CLB, the NAACP pursued litigation to work on civil rights, including efforts to overturn the disfranchisement of African Americans in the South that had taken place since the turn of the century.


Crystal Eastman was one of the co-founders of the CLB, the predecessor to the ACLU

During the first decades of the ACLU, Baldwin continued as its leader. His charisma and energy attracted many supporters to the ACLU board and leadership ranks.[96] Baldwin was ascetic, wearing hand-me-down clothes, pinching pennies, and living on a very small salary.[97] The ACLU was directed by an executive committee, and it was not particularly democratic or egalitarian. The ACLU's base in New York resulted in its being dominated by people from the city and state.[98] Most ACLU funding came from philanthropies, such as the Garland Fund.[97]

Free speech era

In the 1920s, government censorship was commonplace. Magazines were routinely confiscated under the anti-obscenity Comstock laws; permits for labor rallies were often denied; and virtually all anti-war or anti-government literature was outlawed.[99] Right-wing conservatives wielded vast amounts of power, and activists that promoted unionization, socialism, or government reform were often denounced as un-American or unpatriotic.[99] In one typical instance in 1923, author Upton Sinclair was arrested for trying to read the First Amendment during an Industrial Workers of the World rally.[100]


Norman Thomas was one of the early leaders of the ACLU

ACLU leadership was divided on how to challenge the civil rights violations. One faction, including Baldwin, Arthur Garfield Hays and Norman Thomas, believed that direct, militant action was the best path.[100] Hays was the first of many successful attorneys that relinquished their private practices to work for the ACLU.[101] Another group, including Walter Nelles and Walter Pollak felt that lawsuits taken to the Supreme Court were the best way to achieve change.[101]

During the 1920s, the ACLU's primary focus was on freedom of speech in general, and speech within the labor movement particularly.[102] Because most of the ACLU's efforts were associated with the labor movement, the ACLU itself came under heavy attack from conservative groups, such as the American Legion, the National Civic Federation, and Industrial Defense Association and the Allied Patriotic Societies.[103]

In addition to labor, the ACLU also led efforts in non-labor arenas, for example, promoting free speech in public schools.[104] The ACLU itself was banned from speaking in New York public schools in 1921.[105] The ACLU, working with the NAACP, also supported racial discrimination cases.[106] The ACLU defended free speech regardless of the opinions being espoused. For example, the reactionary, anti-Catholic, anti-black Ku Klux Klan (KKK)

was a frequent target of ACLU efforts, but the ACLU defended the KKK's right to hold meetings in 1923.[107] There were some civil rights that the ACLU did not make an effort to defend in the 1920s, including censorship of the arts, government search and seizure issues, right to privacy, or wiretapping.[108]

The Communist Party USA was routinely hounded by government officials, leading it to be the primary client of the ACLU.[109] At the same time, the Communists were very aggressive in their tactics, often engaging in illegal conduct such as denying their party membership under oath. This led to frequent conflicts between the Communists and ACLU.[109] Communist leaders sometimes attacked the ACLU, particularly when the ACLU defended the free speech rights of conservatives, whereas Communists tried to disrupt speeches by critics of the USSR.[109] This uneasy relationship between the two groups continued for decades.[109]

Public schools

Scopes trial

When 1925 arrived – five years after the ACLU was formed – the organization had virtually no success to show for its efforts.[110] That changed in 1925, when the ACLU persuaded John T. Scopes to defy Tennessee's anti-evolution law in *The State of Tennessee v. John Thomas Scopes*. Clarence Darrow, a member of the ACLU National Committee, headed Scopes' legal team. The prosecution, led by William Jennings Bryan, contended that the Bible should be interpreted literally in teaching creationism in school. The ACLU lost the case and Scopes was fined $100. The Tennessee Supreme Court later upheld the law but overturned the conviction on a technicality.[111][112]

The Scopes trial was a phenomenal public relations success for the ACLU.[113] The ACLU became well known across America, and the case led to the first endorsement of the ACLU by a major US newspaper.[114] The ACLU continued to fight for the separation of church and state in schoolrooms, decade after decade, including the 1982 case *McLean v. Arkansas* and the 2005 case *Kitzmiller v. Dover Area School District*.[115]

Baldwin himself was involved in an important free speech victory of the 1920s, after he was arrested for attempting to speak at a rally of striking mill workers in New Jersey. Although the decision was limited to the state of New Jersey, the appeals court's judgement in 1928 declared that constitutional guarantees of free speech must be given "liberal and comprehensive construction", and it marked a major turning point in the civil rights movement, signaling the shift of judicial opinion in favor of civil rights.[116]

The most important ACLU case of the 1920s was *Gitlow v. New York*, in which Benjamin Gitlow was arrested for violating a state law against inciting anarchy and violence, when he distributed literature promoting communism.[117] Although the Supreme Court did not overturn Gitlow's conviction, it adopted the ACLU's stance (later termed the incorporation doctrine) that the First Amendment freedom of speech applied to state laws, as well as federal laws.[118]

Pierce v. Society of Sisters

After the First World War, many native-born Americans had a revival of concerns about assimilation of immigrants and worries about "foreign" values; they wanted public schools to teach children to be American. Numerous states drafted laws designed to use schools to promote a common American culture, and in 1922, the voters of Oregon passed the Oregon Compulsory Education Act. The law was primarily

aimed at eliminating parochial schools, including Catholic schools.[119][120] It was promoted by groups such as the Knights of Pythias, the Federation of Patriotic Societies, the Oregon Good Government League, the Orange Order, and the Ku Klux Klan.[121]

The Oregon Compulsory Education Act required almost all children in Oregon between eight and sixteen years of age to attend public school by 1926.[121] Associate Director Roger Nash Baldwin, a personal friend of Luke E. Hart, the then–Supreme Advocate and future Supreme Knight of the Knights of Columbus, offered to join forces with the Knights to challenge the law. The Knights of Columbus pledged an immediate $10,000 to fight the law and any additional funds necessary to defeat it.[122]

The case became known as *Pierce v. Society of Sisters*, a seminal United States Supreme Court decision that significantly expanded coverage of the Due Process Clause in the Fourteenth Amendment. In a unanimous decision, the court held that the act was unconstitutional and that parents, not the state, had the authority to educate children as they thought best.[123] It upheld the religious freedom of parents to educate their children in religious schools.

Early strategy

Leaders of the ACLU were divided on the best tactics to use to promote civil liberties. Felix Frankfurter felt that legislation was the best long-term solution because the Supreme Court could not (and – in his opinion – should not) mandate liberal interpretations of the Bill of Rights. But Walter Pollak, Morris Ernst, and other leaders felt that Supreme Court decisions were the best path to guarantee civil liberties.[124] A series of Supreme Court decisions in the 1920s foretold a changing national atmosphere; anti-radical emotions were diminishing, and there was a growing willingness to protect freedom of speech and assembly via court decisions.[125]

Free speech expansion

Censorship was commonplace in the early 20th century. State laws and city ordinances routinely outlawed speech deemed to be obscene or offensive, and prohibited meetings or literature that promoted unions or labor organization.[85] Starting in 1926, the ACLU began to expand its free speech activities to encompass censorship of art and literature.[85] In that year, H. L. Mencken deliberately broke Boston law by distributing copies of his banned *American Mercury* magazine; the ACLU defended him and won an acquittal.[85] The ACLU went on to win additional victories, including the landmark case *United States v. One Book Called Ulysses* in 1933, which reversed a ban by the Customs Department against the book *Ulysses* by James Joyce.[126] The ACLU only achieved mixed results in the early years, and it was not until 1966 that the Supreme Court finally clarified the obscenity laws in the *Roth v. United States* and *Memoirs v. Massachusetts* cases.

The ACLU defended H. L. Mencken when he was arrested for distributing banned literature

The Comstock laws banned distribution of sex education information, based on the premise that it was obscene and led to promiscuous behavior[127] Mary Ware Dennett was fined $300 in 1928, for distributing a pamphlet containing sex education material. The ACLU, led by Morris Ernst, appealed her conviction and won a reversal, in which judge Learned Hand ruled that the pamphlet's main purpose was to "promote understanding".[127]

The success prompted the ACLU to broaden their freedom of speech efforts beyond labor and political speech, to encompass movies, press, radio and literature.[127] The ACLU formed the National Committee on Freedom from Censorship in 1931 to coordinate this effort.[127] By the early 1930s, censorship in the United States was diminishing.[126]

Two major victories in the 1930s cemented the ACLUs campaign to promote free speech. In *Stromberg v. California*, decided in 1931, the Supreme Court sided with the ACLU and affirmed the right of a communist party member to salute a communist flag. The result was the first time the Supreme Court used the Due Process Clause of the 14th amendment to subject states to the requirements of the First Amendment.[128] In *Near v. Minnesota*, also decided in 1931, the Supreme Court ruled that states may not exercise prior restraint and prevent a newspaper from publishing, simply because the newspaper had a reputation for being scandalous.[129]

1930s

The late 1930s saw the emergence of a new era of tolerance in the United States.[130] National leaders hailed the Bill of Rights, particularly as it protected minorities, as the essence of democracy.[130] The 1939 Supreme Court decision in *Hague v. Committee for Industrial Organization* affirmed the right of communists to promote their cause.[130] Even conservative elements, such as the American Bar Association began to campaign for civil liberties, which were long considered to be the domain of left-leaning organizations. By 1940, the ACLU had achieved many of the goals it set in the 1920s, and many of its policies were the law of the land.[130]

Expansion

In 1929, after the Scopes and Dennett victories, Baldwin perceived that there was vast, untapped support for civil liberties in the United States.[126] Baldwin proposed an expansion program for the ACLU, focusing on police brutality, Native American rights, African American rights, censorship in the arts, and international civil liberties.[126] The board of directors approved Baldwin's expansion plan, except for the international efforts.[131]

The ACLU played a major role in passing the 1932 Norris–La Guardia Act, a federal law which prohibited employers from preventing employees from joining unions, and stopped the practice of outlawing strikes, unions, and labor organizing activities with the use of injunctions.[131] The ACLU also played a key role in initiating a nationwide effort to reduce misconduct (such as extracting false confessions) within police departments, by publishing the report *Lawlessness in Law Enforcement* in 1931, under the auspices of Herbert Hoover's Wickersham Commission.[131] In 1934, the ACLU lobbied for the passage of the Indian Reorganization Act, which restored some autonomy to Native American tribes, and established penalties for kidnapping Native American children.[131]

Although the ACLU deferred to the NAACP for litigation promoting civil liberties for African Americans, the ACLU did engage in educational efforts, and published *Black Justice* in 1931, a report which documented institutional racism throughout the South, including lack of voting rights, segregation, and discrimination in the justice system.[132] Funded by the Garland Fund, the ACLU also participated in producing the influential Margold Report, which outlined a strategy to fight for civil rights for blacks.[133][134] The ACLU's plan was to demonstrate that the "separate but equal" policies governing the Southern discrimination were illegal because blacks were never, in fact, treated equally.[133]

Depression era and the New Deal

In 1932 – twelve years after the ACLU was founded – it had achieved significant success; the Supreme Court had embraced the free speech principles espoused by the ACLU, and the general public was becoming more supportive of civil rights in general.[135] But the Great Depression brought new assaults on civil liberties; the year 1930 saw a large increase in the number of free speech prosecutions, a doubling of the number of lynchings, and all meetings of unemployed persons were banned in Philadelphia.[136]

The Franklin D. Roosevelt administration proposed the New Deal to combat the depression. ACLU leaders were of mixed opinions about the New Deal, since many felt that it represented an increase in government intervention into personal affairs, and because the National Recovery Administration suspended antitrust legislation.[137] Roosevelt was not personally interested in civil rights, but did appoint many civil libertarians to key positions, including Interior Secretary Harold Ickes, a member of the ACLU.[137][138]

The economic policies of the New Deal leaders were often aligned with ACLU goals, but social goals were not.[138] In particular, movies were subject to a barrage of local ordinances banning screenings that were deemed immoral or obscene.[139] Even public health films portraying pregnancy and birth were banned; as was *Life* magazine's April 11, 1938, issue which included photos of the birth process. The ACLU fought these bans, but did not prevail.[140]

The Catholic Church attained increasing political influence in the 1930s, and used its influence to promote censorship of movies, and to discourage publication of birth control information. This conflict between the ACLU and the Catholic Church led to the resignation of the last Catholic priest from ACLU leadership in 1934; a Catholic priest would not be represented there again until the 1970s.[141]

The ACLU took no official position on president Franklin Delano Roosevelt's 1937 court-packing plan, which threatened to increase the number of Supreme Court justices, unless the Supreme Court reversed its course and began approving New Deal legislation.[142] The Supreme Court responded by making a major shift in policy, and no longer applied strict constitutional limits to government programs, and also began to take a more active role in protecting civil liberties.[142]

The first decision that marked the court's new direction was *De Jonge v. Oregon*, in which a communist labor organizer was arrested for calling a meeting to discuss unionization.[143] The ACLU attorney Osmond Fraenkel, working with International Labor Defense, defended De Jonge in 1937, and won a major victory when the Supreme Court ruled that "peaceable assembly for lawful discussion cannot be made a crime."[144] The De Jonge case marked the start of an era lasting for a dozen years, during which Roosevelt appointees (led by Hugo Black, William O. Douglas, and Frank Murphy) established a body of civil liberties law.[143] In 1938, Justice Harlan F. Stone wrote the famous "footnote four" in *United States v. Carolene Products Co.* in which he suggested that state laws which impede civil liberties would – henceforth – require compelling justification.[145]

Senator Robert F. Wagner proposed the National Labor Relations Act in 1935, which empowered workers to unionize. Ironically, the ACLU, after 15 years of fighting for workers' rights, initially opposed the act (it later took no stand on the legislation) because some ACLU leaders feared the increased power the bill gave to the government.[146] The newly formed National Labor Relations Board (NLRB) posed a dilemma for the ACLU, because in 1937 it issued an order to Henry Ford, prohibiting Ford from disseminating anti-union literature.[19] Part of the ACLU leadership habitually took the side of labor, and that faction supported the NLRB's action.[19] But part of the ACLU supported Ford's right to free speech.[19] ACLU leader Arthur Garfield Hays proposed a compromise (supporting the auto workers union, yet also endorsing Ford's right to express personal opinions), but the schism highlighted a deeper divide that would become more prominent in the years to come.[19]

The ACLU's support of the NLRB was a major development for the ACLU, because it marked the first time it accepted that a government agency could be responsible for upholding civil liberties.[147] Until 1937, the ACLU felt that civil rights were best upheld by citizens and private organizations.[147]

Some factions in the ACLU proposed new directions for the organization. In the late 1930s, some local affiliates proposed shifting their emphasis from civil liberties appellate actions, to becoming a legal aid society, centered on store front offices in low income neighborhoods. The ACLU directors rejected that proposal.[148] Other ACLU members wanted the ACLU to shift focus into the political arena, and to be more willing to compromise their ideals in order to strike deals with politicians. This initiative was also rejected by the ACLU leadership.[148]

Jehovah's Witnesses

The ACLU's support of defendants with unpopular, sometimes extreme, viewpoints have produced many landmark court cases and established new civil liberties.[145] One such defendant was the Jehovah's Witnesses, who were involved in a large number of Supreme Court cases.[145][149] Cases that the ACLU supported included *Lovell v. City of Griffin* (which struck down a city ordinance that required a permit before a person could distribute "literature of any kind"); *Martin v. Struthers* (which struck down an ordinance prohibiting door-to-door canvassing); and *Cantwell v. Connecticut* (which reversed the conviction of a Witness who was reciting offensive speech on a street corner).[150]

The most important cases involved statutes requiring flag salutes.[150] The Jehovah's Witnesses felt that saluting a flag was contrary to their religious beliefs. Two children were convicted in 1938 of not saluting the flag.[150] The ACLU supported their appeal to the Supreme Court, but the court affirmed the conviction, in 1940.[151] But three years later, in *West Virginia State Board of Education v. Barnette*, the Supreme court reversed itself and wrote "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." To underscore its decision, the Supreme Court announced it on Flag Day.[151][152]

Communism and totalitarianism

The rise of totalitarian regimes in Germany, Russia, and other countries who rejected freedom of speech and association had a large impact on the civil liberties movement in the US; anti-Communist sentiment rose and civil liberties were curtailed.[153]

The ACLU leadership was divided over whether or not to defend pro-Nazi speech in the United States; pro-labor elements within the ACLU were hostile towards Nazism and fascism, and objected when the ACLU defended Nazis.[154] Several states passed laws outlawing the hate speech directed at ethnic groups.[155] The first person arrested under New Jersey's 1935 hate speech law was a Jehovah's Witness who was charged with disseminating anti-Catholic literature.[155] The ACLU defended the Jehovah's Witnesses, and the charges were dropped.[155] The ACLU proceeded to defend numerous pro-Nazi groups, defending their rights to free speech and free association.[156]

In the late 1930s, the ACLU allied itself with the Popular Front, a coalition of liberal organizations coordinated by the United States Communist Party.[157] The ACLU benefited because affiliates from the Popular Front could often fight local civil rights battles much more effectively than the New York-based ACLU.[157] The association with the Communist Party led to accusations that the ACLU was a "Communist front", particularly because Harry F. Ward was both chairman of the ACLU and chairman of the American League Against War and Fascism, a Communist organization.[158]

The House Un-American Activities Committee (HUAC) was created in 1938 to uncover sedition and treason within the United States.[159] When witnesses testified at its hearings, the ACLU was mentioned several times, leading the HUAC to mention the ACLU prominently in its 1939 report.[160] This damaged the ACLU's reputation severely, even though the report said that it could not "definitely state whether or not" the ACLU was a Communist organization.[160]

Elizabeth Gurley Flynn was voted off the ACLU board in 1940 because of her Communist Party membership, but reinstated posthumously in 1970

While the ACLU rushed to defend its image against allegations of being a Communist front, it also worked to protect witnesses who were being harassed by the HUAC.[161] The ACLU was one of the few organizations to protest (unsuccessfully) against passage of the Smith Act in 1940, which would later be used to imprison many persons who supported Communism.[162][163] The ACLU defended many persons who were prosecuted under the Smith Act, including labor leader Harry Bridges.[164]

ACLU leadership was split on whether to purge its leadership of Communists. Norman Thomas, John Haynes Holmes, and Morris Ernst were anti-Communists who wanted to distance the ACLU from Communism; opposing them were Harry F. Ward, Corliss Lamont, and Elizabeth Gurley Flynn, who rejected any political test for ACLU leadership.[165] A bitter struggle ensued throughout 1939, and the anti-Communists prevailed in February 1940, when the board voted to prohibit anyone who supported totalitarianism from ACLU leadership roles. Ward immediately resigned, and – following a contentious six-hour debate – Flynn was voted off the ACLU's board.[20] The 1940 resolution was considered by many to be a betrayal of its fundamental principles. The resolution was rescinded in 1968, and Flynn was posthumously reinstated to the ACLU in 1970.[164]

Mid-century

World War II

When World War II engulfed the United States, the Bill of Rights was enshrined as a hallowed document, and numerous organizations defended civil liberties.[166] Chicago and New York proclaimed "Civil Rights" weeks, and President Franklin Delano Roosevelt announced a national Bill of Rights day. Eleanor Roosevelt was the keynote speaker at the 1939 ACLU convention.[166] In spite of this newfound respect for civil rights, Americans were becoming adamantly anti-communist, and believed that excluding communists from American society was an essential step to preserve democracy.[166]

Contrasted with World War I, there was relatively little violation of civil liberties during World War II. President Roosevelt was a strong supporter of civil liberties, but – more importantly – there were few anti-war activists during World War II.[167] The most significant exception was the internment of Japanese Americans.[167]

Japanese American internment

Two months after the Japanese attack on Pearl Harbor, Roosevelt authorized the creation of military "exclusion zones" with Executive Order 9066, paving the way for the detention of all West Coast Japanese Americans in inland camps. In addition to the non-citizen Issei (prohibited from naturalization as members of an "unassimilable" race), over two-thirds of those swept up were American-born citizens.[168] The

The ACLU was internally divided when it came to defending the rights of Japanese Americans who had been forcibly relocated to internment camps

ACLU immediately protested to Roosevelt, comparing the evacuations to Nazi concentration camps.[169] The ACLU was the only major organization to object to the internment plan,[167] and their position was very unpopular, even within the organization. Not all ACLU leaders wanted to defend the Japanese Americans; Roosevelt loyalists such as Morris Ernst wanted to support Roosevelt's war effort, but pacifists such as Baldwin and Norman Thomas felt that Japanese Americans needed access to due process before they could be imprisoned.[170] In a March 20, 1942, letter to Roosevelt, Baldwin called on the administration to allow Japanese Americans to prove their loyalty at individual hearings, describing the constitutionality of the planned removal "open to grave question."[171] His suggestions went nowhere, and opinions within the organization became increasingly divided as the Army began the "evacuation" of the West Coast. In May, the two factions, one pushing to fight the exclusion orders then being issued, the other advocating support for the President's policy of removing citizens whose "presence may endanger national security," brought their opposing resolutions to a vote before the board and the ACLU's national leaders. They decided not to challenge the eviction of Japanese American citizens, and on June 22 instructions were sent to West Coast branches not to support cases that argued the government had no constitutional right to do so.[171]

The ACLU offices on the West Coast had been more directly involved in addressing the tide of anti-Japanese prejudice from the start, as they were geographically closer to the issue, and were already working on cases challenging the exclusion by this time. The Seattle office, assisting in Gordon Hirabayashi's lawsuit, created an unaffiliated committee to continue the work the ACLU had started, while in Los Angeles, attorney A.L. Wirin continued to represent Ernest Kinzo Wakayama but without addressing the case's constitutional questions.[171] Wirin would lose private clients because of his defense of Wakayama and other Japanese Americans;[172] however, the San Francisco branch, led by Ernest Besig, refused to discontinue its support for Fred Korematsu, whose case had been taken on prior to the June 22 directive, and attorney Wayne Collins, with Besig's full support, centered his defense on the illegality of Korematsu's exclusion.[171]

The West Coast offices had wanted a test case to take to court, but had a difficult time finding a Japanese American who was both willing to violate the internment orders and able to meet the ACLU's desired criteria of a sympathetic, Americanized plaintiff. Of the 120,000 Japanese Americans affected by the order, only 12 disobeyed, and Korematsu, Hirabayashi, and two others were the only resisters whose cases eventually made it to the Supreme Court.[169] *Hirabayashi v. United States* came before the Court in May 1943, and the justices upheld the government's right to exclude Japanese Americans from the West Coast;[173] although it had earlier forced its local office in L.A. to stop aiding Hirabayashi, the ACLU donated $1,000 to the case (over a third of the legal team's total budget) and submitted an *amicus* brief. Besig, dissatisfied with Osmond Fraenkel's tamer defense, filed an additional *amicus* brief that directly addressed Hirabayashi's constitutional rights. In the meantime, A.L. Wirin served as one of the attorneys in *Yasui v. United States* (decided the same day as the Hirabayashi case, and with the same results), but he kept his arguments within the perimeters established by the national office. The only case to receive a favorable ruling, *ex parte Endo*, was also aided by two *amicus* briefs from the ACLU, one from the more conservative Fraenkel and another from the more putative Wayne Collins.[171]

Korematsu v. United States proved to be the most controversial of these cases, as Besig and Collins refused to bow to the national ACLU office's pressure to pursue the case without challenging the government's right to remove citizens from their homes. The ACLU board threatened to revoke the San Francisco branch's national affiliation, while Baldwin tried unsuccessfully to convince Collins to step down so he

could replace him as lead attorney in the case. Eventually Collins agreed to present the case alongside Charles Horsky, although their arguments before the Supreme Court remained based in the unconstitutionality of the exclusion order Korematsu had disobeyed.[171] The case was decided in December 1944, when the Court once again upheld the government's right to relocate Japanese Americans,[174] although Korematsu's, Hirabayashi's and Yasui's convictions were later overturned in *coram nobis* proceedings in the 1980s.[175] Legal scholar Peter Irons later asserted that the national office of the ACLU's decision not to directly challenge the constitutionality of Executive Order 9066 had "crippled the effective presentation of these appeals to the Supreme Court."[171]

The national office of the ACLU was even more reluctant to defend anti-war protesters. A majority of the board passed a resolution in 1942 which declared the ACLU unwilling to defend anyone who interfered with the United States' war effort.[176] Included in this group were the thousands of Nisei who renounced their US citizenship during the war but later regretted the decision and tried to revoke their applications for "repatriation." (A significant number of those slated to "go back" to Japan had never actually been to the country and were in fact being deported rather than repatriated.) Ernest Besig had in 1944 visited the Tule Lake Segregation Center, where the majority of these "renunciants" were concentrated, and subsequently enlisted Wayne Collins' help to file a lawsuit on their behalf, arguing the renunciations had been given under duress. The national organization prohibited local branches from representing the renunciants, forcing Collins to pursue the case on his own, although Besig and the Northern California office provided some support.[177]

During his 1944 visit to Tule Lake, Besig had also become aware of a hastily constructed stockade in which Japanese American internees were routinely being brutalized and held for months without due process. Besig was forbidden by the national ACLU office to intervene on behalf of the stockade prisoners or even to visit the Tule Lake camp without prior written approval from Baldwin. Unable to help directly, Besig turned to Wayne Collins for assistance. Collins, using the threat of habeas corpus suits managed to have the stockade closed down. A year later, after learning that the stockade had been reestablished, he returned to the camp and had it closed down for good.[178][179]

End of WWII in 1945

When the war ended in 1945, the ACLU was 25 years old, and had accumulated an impressive set of legal victories.[180] President Harry S. Truman sent a congratulatory telegram to the ACLU on the occasion of their 25th anniversary.[180] American attitudes had changed since World War I, and dissent by minorities was tolerated with more willingness.[180] The Bill of Rights was more respected, and minority rights were becoming more commonly championed.[180] During their 1945 annual conference, the ACLU leaders composed a list of important civil rights issues to focus on in the future, and the list included racial discrimination and separation of church and state.[181]

The ACLU supported the African-American defendants in *Shelley v. Kraemer*, when they tried to occupy a house they had purchased in a neighborhood which had racially restrictive housing covenants. The African-American purchasers won the case in 1945.[182]

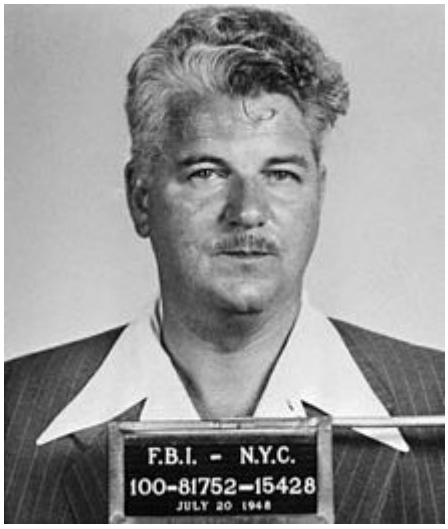
Cold War era

Anti-Communist sentiment gripped the United States during the Cold War beginning in 1946. Federal investigations caused many persons with Communist or left-leaning affiliations to lose their jobs, become blacklisted, or be jailed.[183] During the Cold War, although the United States collectively ignored the civil rights of Communists, other civil liberties – such as due process in law and separation of church and state – continued to be reinforced and even expanded.

The ACLU was internally divided when it purged Communists from its leadership in 1940, and that ambivalence continued as it decided whether to defend alleged Communists during the late 1940s. Some ACLU leaders were anti-Communist, and felt that the ACLU should not defend any victims. Some ACLU leaders felt that Communists were entitled to free speech protections, and the ACLU should defend them. Other ACLU leaders were uncertain about the threat posed by Communists, and tried to establish a compromise between the two extremes.[184] This ambivalent state of affairs would last until 1954, when the civil liberties faction prevailed, leading to the resignation of most of the anti-Communist leaders.[21]

In 1947, President Truman issued Executive Order 9835, which created the Federal Loyalty Program. This program authorized the Attorney General to create a list of organizations which were deemed to be subversive.[185] Any association with these programs was ground for barring the person from employment.[186] Listed organizations were not notified that they were being considered for the list, nor did they have an opportunity to present counterarguments; nor did the government divulge any factual basis for inclusion in the list.[187] Although ACLU leadership was divided on whether to challenge the Federal Loyalty Program, some challenges were successfully made.[187]

Also in 1947, the House Un-American Activities Committee (HUAC) subpoenaed ten Hollywood directors and writers, the *Hollywood Ten*, intending to ask them to identify Communists, but the witnesses refused to testify. All were imprisoned for contempt of Congress. The ACLU supported the appeals of several of the artists, but lost on appeal.[188] The Hollywood establishment panicked after the HUAC hearings, and created a blacklist which prohibited anyone with leftist associations from working. The ACLU supported legal challenges to the blacklist, but those challenges failed.[188] The ACLU was more successful with an education effort; the 1952 report *The Judges and the Judged*, prepared at the ACLU's direction in response to the blacklisting of actress Jean Muir, described the unfair and unethical actions behind the blacklisting process, and it helped gradually turn public opinion against McCarthyism.[189]



The ACLU chose not to support Eugene Dennis or other leaders of the US Communist Party, and they were all imprisoned, along with their attorneys

The federal government took direct aim at the US Communist Party in 1948 when it indicted its top twelve leaders in the Foley Square trial.[190] The case hinged on whether or not mere membership in a totalitarian political party was sufficient to conclude that members advocated the overthrow of the United States government.[190] The ACLU chose to not represent any of the defendants, and they were all found guilty and sentenced to three to five years in prison.[190] Their defense attorneys were all cited for contempt, went to prison and were disbarred.[180] When the government indicted additional party members, the defendants could not find attorneys to represent them.[180] Communists protested outside the courthouse; a bill to outlaw picketing of courthouses was introduced in Congress, and the ACLU supported the anti-picketing law.[180]

The ACLU, in a change of heart, supported the party leaders during their appeal process. The Supreme Court upheld the convictions in the *Dennis v. United States* decision by softening the free speech requirements from a "clear and present danger" test, to a "grave and probable" test.[191] The ACLU issued a public condemnation of the *Dennis* decision, and resolved to fight it.[191] One reason for the Supreme Court's support of Cold War legislation was the 1949 deaths of Supreme Court justices Frank Murphy and Wiley Rutledge, leaving Hugo Black and William O. Douglas as the only remaining civil libertarians on the Court.[192]

The *Dennis* decision paved the way for the prosecution of hundreds of other Communist party members.[193] The ACLU supported many of the Communists during their appeals (although most of the initiative originated with local ACLU affiliates, not the national headquarters) but most convictions were upheld.[193] The two California affiliates, in particular, felt the national ACLU headquarters was not supporting civil liberties strongly enough, and they initiated more cold war cases than the national headquarters did.[192]

The ACLU also challenged many loyalty oath requirements across the country, but the courts upheld most of the loyalty oath laws.[194] California ACLU affiliates successfully challenged the California state loyalty oath.[195] The Supreme Court, until 1957, upheld nearly every law which restricted the liberties of Communists.[196]

The ACLU, even though it scaled back its defense of Communists during the Cold War, still came under heavy criticism as a "front" for Communism. Critics included the American Legion, Senator Joseph McCarthy, the HUAC, and the FBI.[197] Several ACLU leaders were sympathetic to the FBI, and as a consequence, the ACLU rarely investigated any of the many complaints alleging abuse of power by the FBI during the Cold War.[198]

In 1950, Raymond L. Wise, ACLU board member 1933–1951, defended William Perl, one of the other spies embroiled in the atomic espionage cases (made famous by the execution of Julius Rosenberg and Ethel Rosenberg).[199]

Organizational change

In 1950, the ACLU board of directors asked executive director Baldwin to resign, feeling that he lacked the organizational skills to lead the 9,000 (and growing) member organization. Baldwin objected, but a majority of the board elected to remove him from the position, and he was replaced by Patrick Murphy Malin.[200] Under Malin's guidance, membership tripled to 30,000 by 1955 – the start of a 24-year period of continual growth leading to 275,000 members in 1974.[201] Malin also presided over an expansion of local ACLU affiliates.[201]

The ACLU, which had been controlled by an elite of a few dozen New Yorkers, became more democratic in the 1950s. In 1951, the ACLU amended its bylaws to permit the local affiliates to participate directly in voting on ACLU policy decisions.[202] A bi-annual conference, open to the entire membership, was instituted in the same year, and in later decades it became a pulpit for activist members, who suggested new directions for the ACLU, including abortion rights, death penalty, and rights of the poor.[202]

McCarthyism era

During the early 1950s, the ACLU continued to steer a moderate course through the Cold War. When leftist singer Paul Robeson was denied a passport in 1950, even though he was not accused of any illegal acts, the ACLU chose to not defend him.[203] The ACLU later reversed their stance, and supported William Worthy and Rockwell Kent in their passport confiscation cases, which resulted in legal victories in the late 1950s.[204]

In response to communist witch-hunts, many witnesses and employees chose to use the fifth amendment protection against self-incrimination to avoid divulging information about their political beliefs.[205] Government agencies and private organizations, in response, established policies which inferred communist party membership for anyone who invoked the fifth amendment.[206] The national ACLU was divided on

whether to defend employees who had been fired merely for pleading the fifth amendment, but the New York affiliate successfully assisted teacher Harry Slochower in his Supreme Court case which reversed his termination.[207]

In the 1950s the ACLU chose to not support Paul Robeson and other leftist defendants, a decision that would be heavily criticized in the future.

The fifth amendment issue became the catalyst for a watershed event in 1954, which finally resolved the ACLU's ambivalence by ousting the anti-communists from ACLU leadership.[208] In 1953, the anti-communists, led by Norman Thomas and James Fly, proposed a set of resolutions that inferred guilt of persons that invoked the fifth amendment.[202] These resolutions were the first that fell under the ACLU's new organizational rules permitting local affiliates to participate in the vote; the affiliates outvoted the national headquarters, and rejected the anti-communist resolutions.[209] Anti-communist leaders refused to accept the results of the vote, and brought the issue up for discussion again at the 1954 bi-annual convention.[210] ACLU member Frank Graham, president of the University of North Carolina, attacked the anti-communists with a counter-proposal, which stated that the ACLU "stand[s] against guilt by association, judgment by accusation, the invasion of privacy of personal opinions and beliefs, and the confusion of dissent with disloyalty."[210][211] The anti-communists continued to battle Graham's proposal, but were outnumbered by the affiliates. The anti-communists finally gave up and departed the board of directors in late 1954 and 1955, ending an eight-year reign of ambivalence within the ACLU leadership ranks.[212] Thereafter, the ACLU proceeded with firmer resolve against Cold War anti-communist legislation.[213] The period from the 1940 resolution (and the purge of Elizabeth Flynn) to the 1954 resignation of the anti-communist leaders is considered by many to be an era in which the ACLU abandoned its core principles.[213][214]

McCarthyism declined in late 1954 after television journalist Edward R. Murrow and others publicly chastised McCarthy.[215] The controversies over the Bill of Rights that were generated by the Cold War ushered in a new era in American Civil liberties. In 1954, in *Brown v. Board of Education*, the Supreme Court unanimously overturned state-sanctioned school segregation, and thereafter a flood of civil rights victories dominated the legal landscape.[216]

The Supreme Court handed the ACLU two key victories in 1957, in *Watkins v. United States* and *Yates v. United States*, both of which undermined the Smith Act and marked the beginning of the end of communist party membership inquiries.[217] In 1965, the Supreme Court produced some decisions, including *Lamont v. Postmaster General* (in which the plaintiff was Corliss Lamont, a former ACLU board member), which upheld fifth amendment protections and brought an end to restrictions on political activity.[218]

1960s

The decade from 1954 to 1964 was the most successful period in the ACLU's history.[219] Membership rose from 30,000 to 80,000, and by 1965 it had affiliates in seventeen states.[219][220] During the ACLU's bi-annual conference in Colorado in 1964, the Supreme Court issued rulings on eight cases in which the ACLU was involved; the ACLU prevailed on seven of the eight.[221] The ACLU played a role in Supreme Court decisions reducing censorship of literature and arts, protecting freedom of association, prohibiting racial segregation, excluding religion from public schools, and providing due process protection to criminal suspects.[219] The ACLU's success arose from changing public attitudes; the American populace was more educated, more tolerant, and more willing to accept unorthodox behavior.[219]

Separation of church and state

Supreme Court justice Hugo Black often endorsed the ACLU's position on the separation of church and state

Legal battles concerning the separation of church and state originated in laws dating to 1938 which required religious instruction in school, or provided state funding for religious schools.[222] The Catholic church was a leading proponent of such laws; and the primary opponents (the "separationists") were the ACLU, Americans United for Separation of Church and State, and the American Jewish Congress.[222] The ACLU led the challenge in the 1947 *Everson v. Board of Education* case, in which Justice Hugo Black wrote "[t]he First Amendment has erected a wall between church and state.... That wall must be kept high and impregnable."[222][223][224] It was not clear that the Bill of Rights forbid state governments from supporting religious education, and strong legal arguments were made by religious proponents, arguing that the Supreme Court should not act as a "national school board", and that the Constitution did not govern social issues.[225] However, the ACLU and other advocates of church/state separation persuaded the Court to declare such activities unconstitutional.[225] Historian Samuel Walker writes that the ACLU's "greatest impact on American life" was its role in persuading the Supreme Court to "constitutionalize" so many public controversies.[225]

In 1948, the ACLU prevailed in the *McCollum v. Board of Education* case, which challenged public school religious classes taught by clergy paid for from private funds.[225] The ACLU also won cases challenging schools in New Mexico which were taught by clergy and had crucifixes hanging in the classrooms.[226] In the 1960s, the ACLU, in response to member insistence, turned its attention to in-class promotion of religion.[227] In 1960, 42 percent of American schools included Bible reading.[228] In 1962, the ACLU published a policy statement condemning in-school prayers, observation of religious holidays, and Bible reading.[227] The Supreme Court concurred with the ACLU's position, when it prohibited New York's in-school prayers in the 1962 *Engel v. Vitale* decision.[229] Religious factions across the country rebelled against the anti-prayer decisions, leading them to propose the School Prayer Constitutional Amendment, which declared in-school prayer legal.[230] The ACLU participated in a lobbying effort against the amendment, and the 1966 congressional vote on the amendment failed to obtain the required two-thirds majority.[230]

However, not all cases were victories; ACLU lost cases in 1949 and 1961 which challenged state laws requiring commercial businesses to close on Sunday, the Christian Sabbath.[226] The Supreme Court has never overturned such laws, although some states subsequently revoked many of the laws under pressure from commercial interests.[226]

Freedom of expression

During the 1940s and 1950s, the ACLU continued its battle against censorship of art and literature.[231] In 1948, the New York affiliate of the ACLU received mixed results from the Supreme Court, winning the appeal of Carl Jacob Kunz, who was convicted for speaking without a police permit, but losing the appeal of Irving Feiner who was arrested to prevent a breach of the peace, based on his oration denouncing president Truman and the American Legion.[232] The ACLU lost the case of Joseph Beauharnais, who was arrested for group libel when he distributed literature impugning the character of African Americans.[233]

Cities across America routinely banned movies because they were deemed to be "harmful", "offensive", or "immoral" – censorship which was validated by the 1915 *Mutual v. Ohio* Supreme Court decision which held movies to be mere commerce, undeserving of first amendment protection.[234] The film *The Miracle*

was banned in New York in 1951, at the behest of the Catholic Church, but the ACLU supported the film's distributor in an appeal of the ban, and won a major victory in the 1952 decision *Joseph Burstyn, Inc. v. Wilson*.[234] The Catholic Church led efforts throughout the 1950s attempting to persuade local prosecutors to ban various books and movies, leading to conflict with the ACLU when the ACLU published it statement condemning the church's tactics.[235] Further legal actions by the ACLU successfully defended films such as *M* and *la Ronde*, leading the eventual dismantling of movie censorship.[234][236] Hollywood continued employing self-censorship with its own Production Code, but in 1956 the ACLU called on Hollywood to abolish the Code.[237]

The ACLU defended beat generation artists, including Allen Ginsberg who was prosecuted for his poem "Howl"; and – in an unorthodox case – the ACLU helped a coffee house regain its restaurant license which was revoked because its Beat customers were allegedly disturbing the peace and quiet of the neighborhood.[238]

The ACLU lost an important press censorship case when, in 1957, the Supreme Court upheld the obscenity conviction of publisher Samuel Roth for distributing adult magazines.[239] As late as 1953, books such as *Tropic of Cancer* and *From Here to Eternity* were still banned.[231] But public standards rapidly became more liberal though the 1960s, and obscenity was notoriously difficult to define, so by 1971 prosecutions for obscenity had halted.[221][231]

Racial discrimination

A major aspect of civil liberties progress after World War II was the undoing centuries of racism in federal, state, and local governments – an effort generally associated with the civil rights movement.[240] Several civil liberties organizations worked together for progress, including the National Association for the Advancement of Colored People (NAACP), the ACLU, and the American Jewish Congress.[240] The NAACP took primary responsibility for Supreme Court cases (often led by lead NAACP attorney Thurgood Marshall), with the ACLU focusing on police misconduct, and supporting the NAACP with amicus briefs.[240] The NAACP achieved a key victory in 1950 with the *Henderson v. United States* decision that ended segregation in interstate bus and rail transportation.[240]

In 1954, the ACLU filed an amicus brief in the case of *Brown v. Board of Education*, which led to the ban on racial segregation in US public schools.[241] Southern states instituted a McCarthyism-style witch-hunt against the NAACP, attempting to force it to disclose membership lists. The ACLU's fight against racism was not limited to segregation; in 1964 the ACLU provided key support to plaintiffs, primarily lower-income urban residents, in *Reynolds v. Sims*, which required states to establish the voting districts in accordance with the "one person, one vote" principle.[242]

Police misconduct

The ACLU regularly tackled police misconduct issues, starting with the 1932 case *Powell v. Alabama* (right to an attorney), and including 1942's *Betts v. Brady* (right to an attorney), and 1951's *Rochin v. California* (involuntary stomach pumping).[218] In the late 1940s, several ACLU local affiliates established permanent committees to address policing issues.[243] During the 1950s and 1960s, the ACLU was responsible for substantially advancing the legal protections against police misconduct.[244] The Philadelphia affiliate was responsible for causing the City of Philadelphia, in 1958, to create the nation's first civilian police review board.[245] In 1959, the Illinois affiliate published the first report in the nation, *Secret Detention by the Chicago Police*, which documented unlawful detention by police.[246]

Some of the most well known ACLU successes came in the 1960s, when the ACLU prevailed in a string of cases limiting the power of police to gather evidence; in 1961's *Mapp v. Ohio*, the Supreme court required states to obtain a warrant before searching a person's home.[247] The *Gideon v. Wainwright* decision in 1963 provided legal representation to indigents.[248] In 1964, the ACLU persuaded the Court, in *Escobedo v. Illinois*, to permit suspects to have an attorney present during questioning.[249] And, in 1966, *Miranda v. Arizona* federal decision required police to notify suspects of their constitutional rights, which was later extended to juveniles in the following year's *in re Gault* (1967) federal ruling.[250] Although many law enforcement officials criticized the ACLU for expanding the rights of suspects, police officers also used the services of the ACLU. For example, when the ACLU represented New York City policemen in their lawsuit which objected to searches of their workplace lockers.[251] In the late 1960s, civilian review boards in New York City and Philadelphia were abolished, over the ACLU's objection.[252]

Civil liberties revolution of the 1960s

The 1960s was a tumultuous era in the United States, and public interest in civil liberties underwent an explosive growth.[253] Civil liberties actions in the 1960s were often led by young people, and often employed tactics such as sit ins and marches. Protests were often peaceful, but sometimes employed militant tactics.[254] The ACLU played a central role in all major civil liberties debates of the 1960s, including new fields such as gay rights, prisoner's rights, abortion, rights of the poor, and the death penalty.[253] Membership in the ACLU increased from 52,000 at the beginning of the decade, to 104,000 in 1970.[255] In 1960, there were affiliates in seven states, and by 1974 there were affiliates in 46 states.[255][256] During the 1960s, the ACLU underwent a major transformation tactics; it shifted emphasis from legal appeals (generally involving amicus briefs submitted to the Supreme Court) to direct representation of defendants when they were initially arrested.[255] At the same time, the ACLU transformed its style from "disengaged and elitist" to "emotionally engaged".[257] The ACLU published a breakthrough document in 1963, titled *How Americans Protest*, which was borne of frustration with the slow progress in battling racism, and which endorsed aggressive, even militant protest techniques.[258]

African-American protests in the South accelerated in the early 1960s, and the ACLU assisted at every step. After four African-American college students staged a sit-in in a segregated North Carolina department store, the sit-in movement gained momentum across the United States.[259] During 1960–61, the ACLU defended black students arrested for demonstrating in North Carolina, Florida, and Louisiana.[260] The ACLU also provided legal help for the Freedom Rides in 1961, the integration of the University of Mississippi, the Birmingham campaign in 1963, and the 1964 Freedom Summer.[260]

The NAACP was responsible for managing most sit-in related cases that made it to the Supreme Court, winning nearly every decision.[261] But it fell to the ACLU and other legal volunteer efforts to provide legal representation to hundreds of protestors – white and black – who were arrested while protesting in the South.[261] The ACLU joined with other civil liberties groups to form the Lawyers Constitutional Defense Committee (LCDC) which subsequently provided legal representation to many of the protesters.[262] The ACLU provided the majority of the funding for the LCDC.[263]

In 1964, the ACLU opened up a major office in Atlanta, Georgia, dedicated to serving Southern issues.[264] Much of the ACLU's progress in the South was due to Charles Morgan Jr., the charismatic leader of the Atlanta office. He was responsible for desegregating juries (*Whitus v. Georgia*), desegregating prisons (*Lee v. Washington*), and reforming election laws.[265] The ACLU's southern office also defended African-American congressman Julian Bond in *Bond v. Floyd*, when the Georgia congress refused to formally induct Bond into the legislature.[266] Another widely publicized case defended by Morgan was that of Army doctor Howard Levy, who was convicted of refusing to train Green Berets. Despite raising the defense that the Green Berets were committing war crimes in Vietnam, Levy lost on appeal in *Parker v. Levy*, 417 US 733 (1974).[267]

In 1969, the ACLU won a major victory for free speech, when it defended Dick Gregory after he was arrested for peacefully protesting against the mayor of Chicago. The court ruled in *Gregory v. Chicago* that a speaker cannot be arrested for disturbing the peace when the hostility is initiated by someone in the audience, as that would amount to a "heckler's veto".[268]

Vietnam War

The ACLU was at the center of several legal aspects of the Vietnam war: defending draft resisters, challenging the constitutionality of the war, the potential impeachment of Richard Nixon, and the use of national security concerns to preemptively censor newspapers.

David J. Miller was the first person prosecuted for burning his draft card. The New York affiliate of the ACLU appealed his 1965 conviction (367 F.2d 72: *United States of America v. David J. Miller*, 1966), but the Supreme Court refused to hear the appeal. Two years later, the Massachusetts affiliate took the card-burning case of David O'Brien to the Supreme Court, arguing that the act of burning was a form of symbolic speech, but the Supreme Court upheld the conviction in *United States v. O'Brien*, 391 US 367 (1968).[269] Thirteen-year-old Junior High student Mary Tinker wore a black armband to school in 1965 to object to the war, and was suspended from school. The ACLU appealed her case to the Supreme Court and won a victory in *Tinker v. Des Moines Independent Community School District*. This critical case established that the government may not establish "enclaves" such as schools or prisons where all rights are forfeit.[269]

The ACLU contends that the Bill of Rights protects individuals who burn the US flag as a form of expression

The ACLU defended Sydney Street, who was arrested for burning an American flag to protest the reported assassination of civil rights leader James Meredith. In the *Street v. New York* decision, the court agreed with the ACLU that encouraging the country to abandon one of its national symbols was constitutionally protected form of expression.[270] The ACLU successfully defended Paul Cohen, who was arrested for wearing a jacket with the words "fuck the draft" on its back, while he walked through the Los Angeles courthouse. The Supreme Court, in *Cohen v. California*, held that the vulgarity of the wording was essential to convey the intensity of the message.[271]

Non-war related free speech rights were also advanced during the Vietnam war era; in 1969, the ACLU defended a Ku Klux Klan member who advocated long-term violence against the government, and the Supreme Court concurred with the ACLU's argument in the landmark decision *Brandenburg v. Ohio*, which held that only speech which advocated *imminent* violence could be outlawed.[271]

A major crisis gripped the ACLU in 1968 when a debate erupted over whether to defend Benjamin Spock and the Boston Five against federal charges that they encouraged draftees to avoid the draft. The ACLU board was deeply split over whether to defend the activists; half the board harbored anti-war sentiments, and felt that the ACLU should lend its resources to the cause of the Boston Five. The other half of the board believed that civil liberties were not at stake, and the ACLU would be taking a political stance. Behind the debate was the longstanding ACLU tradition that it was politically impartial, and provided legal advice without regard to the political views of the defendants. The board finally agreed to a compromise solution that permitted the ACLU to defend the anti-war activists, without endorsing the activist's political views. Some critics of the ACLU suggest that the ACLU became a partisan political

organization following the Spock case.[22] After the Kent State shootings in 1970, ACLU leaders took another step towards politics by passing a resolution condemning the Vietnam War. The resolution was based in a variety of legal arguments, including civil liberties violations and a claim that the war was illegal.[272]

Also in 1968, the ACLU held an internal symposium to discuss its dual roles: providing "direct" legal support (defense for accused in their initial trial, benefiting only the individual defendant), and appellate support (providing amicus briefs during the appeal process, to establish widespread legal precedent).[273] Historically, the ACLU was known for its appellate work which led to landmark Supreme Court decisions, but by 1968, 90% of the ACLU's legal activities involved direct representation. The symposium concluded that both roles were valid for the ACLU.[273]

1970s and 1980s

Watergate era

The ACLU supported *The New York Times* in its 1971 suit against the government, requesting permission to publish the Pentagon papers. The court upheld the *Times* and ACLU in the *New York Times Co. v. United States* ruling, which held that the government could not preemptively prohibit the publication of classified information and had to wait until after it was published to take action.[274]

The ACLU was the first national organization to call for the impeachment of Richard Nixon

On September 30, 1973, the ACLU became first national organization to publicly call for the impeachment and removal from office of President Richard Nixon.[275] Six civil liberties violations were cited as grounds: “specific proved violations of the rights of political dissent; usurpation of Congressional war-making powers; establishment of a personal secret police which committed crimes; attempted interference in the trial of Daniel Ellsberg; distortion of the system of justice and perversion of other Federal agencies.”[276] One month later, after the House of Representatives began an impeachment inquiry against him, the organization released a 56-page handbook detailing “17 things citizens could do to bring about the impeachment of President Nixon.“[277] This resolution, when placed beside the earlier resolution opposing the Vietnam war, convinced many ACLU critics, particularly conservatives, that the organization had transformed into a liberal political organization.[278]

Enclaves and new civil liberties

The decade from 1965 to 1975 saw an expansion of the field of civil liberties. Administratively, the ACLU responded by appointing Aryeh Neier to take over from Pemberton as executive director in 1970. Neier embarked on an ambitious program to expand the ACLU; he created the ACLU Foundation to raise funds, and he created several new programs to focus the ACLU's legal efforts. By 1974, ACLU membership had reached 275,000.[279]

During those years, the ACLU worked to expand legal rights in three directions: new rights for persons within government-run "enclaves", new rights for members of what it called "victim groups", and privacy rights for citizens in general.[280] At the same time, the organization grew substantially. The ACLU helped

develop the field of constitutional law that governs "enclaves", which are groups of persons that live in conditions under government control. Enclaves include mental hospital patients, members of the military, and prisoners, and students (while at school). The term enclave originated with Supreme Court justice Abe Fortas's use of the phrase "schools may not be enclaves of totalitarianism" in the *Tinker v. Des Moines* decision.[281]

The ACLU initiated the legal field of student's rights with the *Tinker v. Des Moines* case, and expanded it with cases such as *Goss v. Lopez* which required schools to provide students an opportunity to appeal suspensions.[282]

As early as 1945, the ACLU had taken a stand to protect the rights of the mentally ill, when it drafted a model statute governing mental commitments.[283] In the 1960s, the ACLU opposed involuntary commitments, unless it could be demonstrated that the person was a danger to himself or the community.[283] In the landmark 1975 *O'Connor v. Donaldson* decision the ACLU represented a non-violent mental health patient who had been confined against his will for 15 years, and persuaded the Supreme Court to rule such involuntary confinements illegal.[283] The ACLU has also defended the rights of mentally ill individuals who are not dangerous, but who create disturbances. The New York chapter of the ACLU defended Billie Boggs, a mentally ill woman who exposed herself and defecated and urinated in public.[284]

Prior to 1960, prisoners had virtually no recourse to the court system, because courts considered prisoners to have no civil rights.[285] That changed in the late 1950s, when the ACLU began representing prisoners that were subject to police brutality, or deprived of religious reading material.[286] In 1968, the ACLU successfully sued to desegregate the Alabama prison system; and in 1969, the New York affiliate adopted a project to represent prisoners in New York prisons. Private attorney Phil Hirschkop discovered degrading conditions in Virginia prisons following the Virginia State Penitentiary strike, and won an important victory in 1971's *Landman v. Royster* which prohibited Virginia from treating prisoners in inhumane ways.[287] In 1972, the ACLU consolidated several prison rights efforts across the nation and created the National Prison Project. The ACLU's efforts led to landmark cases such as *Ruiz v. Estelle* (requiring reform of the Texas prison system) and in 1996 US Congress enacted the Prison Litigation Reform Act (PLRA) which codified prisoners' rights.

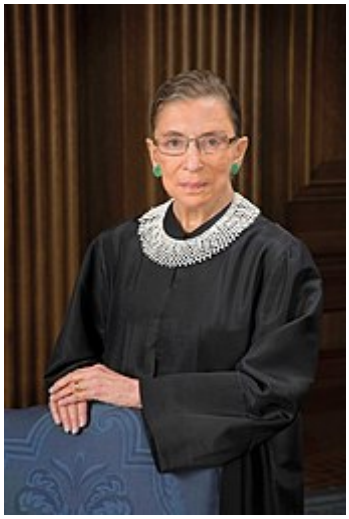
Victim groups

The ACLU, during the 1960s and 1970s, expanded its scope to include what it referred to as "victim groups", namely women, the poor, and homosexuals.[289] Heeding the call of female members, the ACLU endorsed the Equal Rights Amendment in 1970[290] and created the Women's Rights Project in 1971. The Women's Rights Project dominated the legal field, handling more than twice as many cases as the National Organization for Women, including breakthrough cases such as *Reed v. Reed*, *Frontiero v. Richardson*, and *Taylor v. Louisiana*.[291]

ACLU leader Harriet Pilpel raised the issue of the rights of homosexuals in 1964, and two years later the ACLU formally endorsed gay rights. In 1972, ACLU cooperating attorneys in Oregon filed the first federal civil rights case involving a claim of unconstitutional discrimination against a gay or lesbian public school teacher. The US District Court held that a state statute that authorized school districts to fire teachers for "immorality" was unconstitutionally vague, and awarded monetary damages to the teacher. The court refused to reinstate the teacher, and the Ninth Circuit Court of Appeals affirmed that refusal by a 2 to 1 vote. *Burton v. Cascade School District*, 353 F. Supp. 254 (D. Or. 1972), aff'd 512 F.2d 850 (1975). In 1973, the ACLU created the Sexual Privacy Project (later the Gay and Lesbian Rights Project) which combated discrimination against homosexuals.[292] This support continued into the 2000s. For example,

after then-Senator Larry Craig was arrested for soliciting sex in a public restroom in 2007, the ACLU wrote an amicus brief for Craig, saying that sex between consenting adults in public places was protected under privacy rights.[293]

Rights of the poor was another area that was expanded by the ACLU. In 1966 and again in 1968, activists within the ACLU encouraged the organization to adopt a policy overhauling the welfare system, and guaranteeing low-income families a baseline income; but the ACLU board did not approve the proposals.[294] However, the ACLU played a key role in the 1968 *King v. Smith* decision, where the Supreme Court ruled that welfare benefits for children could not be denied by a state simply because the mother cohabited with a boyfriend.[294]



Ruth Bader Ginsburg co-founded the ACLU's Women's Rights Project in 1971.[288] She was later appointed to the Supreme Court of the United States by President Bill Clinton.

Reproductive Freedom Project

Mission

The Reproductive Freedom Project was founded by the ACLU in 1974 to defend individuals who are obstructed by the government in cases involving access to abortions, birth control, or sexual education. According to its mission statement, the project works to provide access to any and all reproductive health care for individuals.[295] The project also opposes abstinence-only sex education, arguing that it promotes an unwillingness to use contraceptives.[296][297][298]

Accomplishments

In 1929 the ACLU defended Margaret Sanger's right to educate the general public about forms of birth control. In 1980, the Project filed *Poe v. Lynchburg Training School & Hospital* which attempted to overturn *Buck v. Bell*, the 1927 US Supreme Court decision which had allowed the Commonwealth of Virginia to legally sterilize persons it deemed to be mentally defective without their permission. Though the Court did not overturn *Buck v.Bell*, in 1985 the state agreed to provide counseling and medical treatment to the survivors among the 7,200 to 8,300 people sterilized between 1927 and 1979.[299] In 1977, the ACLU took part in and litigated *Walker v. Pierce*, the federal circuit court case that led to federal regulations to prevent Medicaid patients from being sterilized without their knowledge or consent.[300] In 1981–1990, the Project litigated *Hodgson v. Minnesota*, which resulted in the Supreme Court overturning a state law requiring both parents to be notified before a minor could legally have an abortion.[301] In the 1990s, the Project provided legal assistance and resource kits to those who were being challenged for educating about sexuality and AIDS. In 1995, the Project filed an amicus brief in *Curtis v. School Committee of Falmouth*, which allowed for the distribution of condoms in a public school.[302]

Initiatives

The Reproductive Freedom Project focuses on three ideas: (1) to "reverse the shortage of trained abortion providers throughout the country" (2) to "block state and federal welfare "reform" proposals that cut off benefits for children who are born to women already receiving welfare, unmarried women, or teenagers"[303] and (3) to "stop the elimination of vital reproductive health services as a result of hospital mergers and health care networks".[304] The Project proposes to achieve these goals through legal action and litigation.

Privacy

The right to privacy is not explicitly identified in the US Constitution, but the ACLU led the charge to establish such rights in the indecisive *Poe v. Ullman* (1961) case, which addressed a state statute outlawing contraception. The issue arose again in *Griswold v. Connecticut* (1965), and this time the Supreme Court adopted the ACLU's position, and formally declared a right to privacy.[305] The New York affiliate of the ACLU pushed to eliminate anti-abortion laws starting in 1964, a year before *Griswold* was decided, and in 1967 the ACLU itself formally adopted the right to abortion as a policy.[306] The ACLU led the defense in *United States v. Vuitch* (1971) which expanded the right of physicians to determine when abortions were necessary.[307] These efforts culminated in one of the most controversial Supreme Court decisions, *Roe v. Wade* (1973), which legalized abortion throughout the United States.[308] The ACLU successfully argued against state bans on interracial marriage, in the case of *Loving v. Virginia* (1967).

Related to privacy, the ACLU engaged in several battles to ensure that government records about individuals were kept private, and to give individuals the right to review their records. The ACLU supported several measures, including the 1970 Fair Credit Reporting Act, which required credit agencies to divulge credit information to individuals; the 1973 Family Educational Rights and Privacy Act, which provided students the right to access their records; and the 1974 Privacy Act, which prevented the federal government from disclosing personal information without good cause.[309]

Allegations of bias

In the early 1970s, conservatives and libertarians began to criticize the ACLU for being too political and too liberal.[310] Legal scholar Joseph W. Bishop wrote that the ACLU's trend to partisanship started with its defense of Spock's anti-war protests.[311] Critics also blamed the ACLU for encouraging the Supreme Court to embrace judicial activism.[312] Critics claimed that the ACLU's support of controversial decisions like *Roe v. Wade* and *Griswold v. Connecticut* violated the intention of the authors of the Bill of Rights.[312] The ACLU became an issue in the 1988 presidential campaign, when Republican candidate George H. W. Bush accused Democratic candidate Michael Dukakis (a member of the ACLU) of being a "card carrying member of the ACLU".[313]

The Skokie case

It is the policy of the ACLU to support the civil liberties of defendants regardless of their ideological stance. The ACLU takes pride in defending individuals with unpopular viewpoints, such as George Wallace, George Lincoln Rockwell, and KKK members.[314] The ACLU has defended American Nazis many times, and their actions often brought protests, particularly from American Jews.[315]

In 1977, a small group of American Nazis, led by Frank Collin, applied to the town of Skokie, Illinois, for permission to hold a demonstration in the town park. Skokie at the time had a majority population of Jews, totaling 40,000 of 70,000 citizens, some of whom were survivors of Nazi concentration camps. Skokie refused to grant permission, and an Illinois judge supported Skokie and prohibited the demonstration.[76] Skokie immediately passed three ordinances aimed at preventing the group from meeting in Skokie. The ACLU assisted Collin and appealed to federal court.[76] The appeal dragged on for a year, and the ACLU eventually prevailed in *Smith v. Collin*, 447 F. Supp. 676.[316]

The Skokie case was heavily publicized across America, partially because Jewish groups such as the Jewish Defense League and Anti Defamation League strenuously objected to the demonstration, leading many members of the ACLU to cancel their memberships.[76] The Illinois affiliate of the ACLU lost about 25% of its membership and nearly one-third of its budget.[317][318][319][320] The financial strain from the

controversy led to layoffs at local chapters.[321] After the membership crisis died down, the ACLU sent out a fund-raising appeal which explained their rationale for the Skokie case, and raised over $500,000 ($2,135,365 in 2020 dollars).[322][323]

Reagan era

The ACLU defended Oliver North in 1990, arguing that his conviction was tainted by coerced testimony.

The inauguration of Ronald Reagan as president in 1981, ushered in an eight-year period of conservative leadership in the US government. Under Reagan's leadership, the government pushed a conservative social agenda.

Fifty years after the Scopes trial, the ACLU found itself fighting another classroom case, the Arkansas 1981 creationism statute, which required schools to teach the biblical account of creation as a scientific alternative to evolution. The ACLU won the case in the *McLean v. Arkansas* decision.[324]

In 1982, the ACLU became involved in a case involving the distribution of child pornography (*New York v. Ferber*). In an amicus brief, the ACLU argued that child pornography that violates the three prong obscenity test should be outlawed, but that the law in question was overly restrictive because it outlawed artistic displays and otherwise non-obscene material. The court did not adopt the ACLU's position.[325]

During the 1988 presidential election, Vice President George H. W. Bush noted that his opponent Massachusetts Governor Michael Dukakis had described himself as a "card-carrying member of the ACLU" and used that as evidence that Dukakis was "a strong, passionate liberal" and "out of the mainstream".[326] The phrase subsequently was used by the organization in an advertising campaign.[327]

1990s


A California affiliate of the ACLU sued to remove the Mt. Soledad Cross from public lands in San Diego

In 1990, the ACLU defended Lieutenant Colonel Oliver North,[328] whose conviction was tainted by coerced testimony – a violation of his fifth amendment rights – during the Iran–Contra affair, where Oliver North was involved in illegal weapons sales to Iran in order to illegally fund the Contra guerillas.[329][330]

In 1997, ruling unanimously in the case of *Reno v. American Civil Liberties Union*, the Supreme Court voted down anti-indecency provisions of the Communications Decency Act (the CDA), finding they violated the freedom of speech provisions of the First Amendment. In their decision, the Supreme Court held that the CDA's "use of the undefined terms 'indecent' and 'patently offensive' will provoke uncertainty among speakers about how the two standards relate to each other and just what they mean."[331] In 2000, Marvin Johnson, a legislative counsel for the ACLU, stated that proposed anti-spam legislation infringed on free speech by denying anonymity and by forcing spam to be labeled as such, "Standardized labeling is compelled speech." He also stated, "It's relatively simple to click and delete."[332] The debate found the ACLU joining with the Direct Marketing Association and the Center for Democracy and Technology in 2000 in criticizing a bipartisan bill in the House of Representatives. As early as 1997, the ACLU had taken

a strong position that nearly all spam legislation was improper, although it has supported "opt-out" requirements in some cases. The ACLU opposed the 2003 CAN-SPAM act[333] suggesting that it could have a chilling effect on speech in cyberspace. It has been criticized for this position.

In November 2000, 15 African-American residents of Hearne, Texas, were indicted on drug charges after being arrested in a series of "drug sweeps". The ACLU filed a class-action lawsuit, *Kelly v. Paschall*, on their behalf, alleging that the arrests were unlawful. The ACLU contended that 15 percent of Hearne's male African-American population aged 18 to 34 were arrested based only on the "uncorroborated word of a single unreliable confidential informant coerced by police to make cases." On May 11, 2005, the ACLU and Robertson County announced a confidential settlement of the lawsuit, an outcome which "both sides stated that they were satisfied with." The District Attorney dismissed the charges against the plaintiffs of the suit.[334] The 2009 film *American Violet* depicts this case.[335]

In 2000, the ACLU's Massachusetts affiliate represented the North American Man Boy Love Association (NAMBLA), on first amendment grounds, in the *Curley v. NAMBLA* wrongful death civil suit. The organization was sued because a man who raped and murdered a child had visited the NAMBLA website.[328] Also in 2000, the ACLU lost the *Boy Scouts of America v. Dale* case, which had asked the Supreme Court to require the Boy Scouts of America to drop their policy of prohibiting homosexuals from becoming Boy Scout leaders.[336]

Twenty-first century

Free speech

In 2006, the ACLU of Washington State joined with a pro-gun rights organization, the Second Amendment Foundation, and prevailed in a lawsuit against the North Central Regional Library District (NCRL) in Washington for its policy of refusing to disable restrictions upon an adult patron's request. Library patrons attempting to access pro-gun web sites were blocked, and the library refused to remove the blocks.[337] In 2012, the ACLU sued the same library system for refusing to disable temporarily, at the request of an adult patron, Internet filters which blocked access to Google Images.[338]

In 2006, the ACLU challenged a Missouri law that prohibited picketing outside of veterans' funerals. The suit was filed in support of the Westboro Baptist Church and Shirley Phelps-Roper, who were threatened with arrest.[339][340] The Westboro Baptist Church is well known for their picket signs that contain messages such as, "God Hates Fags", "Thank God for Dead Soldiers", and "Thank God for 9/11". The ACLU issued a statement calling the legislation a "law that infringes on Shirley Phelps-Roper's rights to religious liberty and free speech".[341] The ACLU prevailed in the lawsuit.[342]

The ACLU argued that a Massachusetts law, later unanimously struck down by the Supreme Court, was constitutional.[343] The law prohibited sidewalk counselors from approaching women outside abortion facilities and offering them alternatives to abortion but allowed escorts to speak with them and accompany them into the building.[344] In overturning the law in *McCullen v. Coakley*, the Supreme Court unanimously ruled that it violated the counselors' freedom of speech and that it was viewpoint discrimination.

In 2009, the ACLU filed an amicus brief in *Citizens United v. FEC*, arguing that the Bipartisan Campaign Reform Act of 2002 violated the First Amendment right to free speech by curtailing political speech.[345] This stance on the landmark *Citizens United* case caused considerable disagreement within the organization, resulting in a discussion about its future stance during a quarterly board meeting in 2010.[346]

On March 27, 2012, the ACLU reaffirmed its stance in support of the Supreme Court's *Citizens United* ruling, at the same time voicing support for expanded public financing of election campaigns and stating the organization would firmly oppose any future constitutional amendment limiting free speech.[347]

In 2012, the ACLU filed suit on behalf of the Ku Klux Klan of Georgia, claiming that the KKK was unfairly rejected from the state's "Adopt-a-Highway" program. The ACLU prevailed in the lawsuit.[348]

LGBTQ issues

In March 2004, the ACLU, along with Lambda Legal and the National Center for Lesbian Rights, sued the state of California on behalf of six same-sex couples who were denied marriage licenses. That case, *Woo v. Lockyer*, was eventually consolidated into *In re Marriage Cases*, the California Supreme Court case which led to same-sex marriage being available in that state from June 16, 2008, until Proposition 8 was passed on November 4, 2008.[349] The ACLU, Lambda Legal and the National Center for Lesbian Rights then challenged Proposition 8[350] and won.[351]

In 2010, the ACLU of Illinois was inducted into the Chicago Gay and Lesbian Hall of Fame as a Friend of the Community.[352]

In 2011, the ACLU started its Don't Filter Me project, countering LGBT-related Internet censorship in public schools in the United States.[353]

On January 7, 2013, the ACLU reached a settlement with the federal government in *Collins v. United States* that provided for the payment of full separation pay to servicemembers discharged under "don't ask, don't tell" since November 10, 2004, who had previously been granted only half that.[354] Some 181 were expected to receive about $13,000 each.[355]

Second amendment

In light of the Supreme Court's *Heller* decision recognizing that the Constitution protects an individual right to bear arms, ACLU of Nevada took a position of supporting "the individual's right to bear arms subject to constitutionally permissible regulations" and pledged to "defend this right as it defends other constitutional rights".[356] Since 2008, the ACLU has increasingly assisted gun owners in recovering firearms that have been seized illegally by law enforcement.[357] In 2021, the ACLU supported the position that the 2nd Amendment was originally written to ensure that Southern states could use militias to suppress slave uprisings, and that Anti-Blackness ensured its inclusion in the Bill of Rights. [358] [359]

> The gun violence epidemic continues to spark debate about the Second Amendment and who has a right to bear arms. But often absent in these debates is the intrinsic anti-Blackness of the unequal enforcement of gun laws, and the relationship between appeals to gun rights and the justification of militia violence. Throughout the history of this country, the rhetoric of gun rights has been selectively manipulated and utilized to inflame white racial anxiety, and to frame Blackness as an inherent threat.

[360]

Anti-terrorism issues

After the September 11 attacks, the federal government instituted a broad range of new measures to combat terrorism, including the passage of the Patriot Act. The ACLU challenged many of the measures, claiming that they violated rights regarding due process, privacy, illegal searches, and cruel and unusual punishment. An ACLU policy statement states:

> Our way forward lies in decisively turning our backs on the policies and practices that violate our greatest strength: our Constitution and the commitment it embodies to the rule of law. Liberty and security do not compete in a zero-sum game; our freedoms are the very foundation of our strength and security. The ACLU's National Security Project advocates for national security policies that are consistent with the Constitution, the rule of law, and fundamental human rights. The Project litigates cases relating to detention, torture, discrimination, surveillance, censorship, and secrecy.[361]

The ACLU represented Internet service provider Nicholas Merrill in a 2004 lawsuit which challenged the government's right to secretly gather information about Internet access

During the ensuing debate regarding the proper balance of civil liberties and security, the membership of the ACLU increased by 20%, bringing the group's total enrollment to 330,000.[362] The growth continued, and by August 2008 ACLU membership was greater than 500,000. It remained at that level through 2011.[363]

The ACLU has been a vocal opponent of the USA PATRIOT Act of 2001, the PATRIOT 2 Act of 2003, and associated legislation made in response to the threat of domestic terrorism. In response to a requirement of the USA PATRIOT Act, the ACLU withdrew from the Combined Federal Campaign charity drive.[364] The campaign imposed a requirement that ACLU employees must be checked against a federal anti-terrorism watch list. The ACLU has stated that it would "reject $500,000 in contributions from private individuals rather than submit to a government 'blacklist' policy."[364]

In 2004, the ACLU sued the federal government in *American Civil Liberties Union v. Ashcroft* on behalf of Nicholas Merrill, owner of an Internet service provider. Under the provisions of the Patriot Act, the government had issued national security letters to Merrill to compel him to provide private Internet access information from some of his customers. In addition, the government placed a gag order on Merrill, forbidding him from discussing the matter with anyone.[365][366][367]

In January 2006, the ACLU filed a lawsuit, *ACLU v. NSA*, in a federal district court in Michigan, challenging government spying in the NSA warrantless surveillance controversy.[368] On August 17, 2006, that court ruled that the warrantless wiretapping program is unconstitutional and ordered it ended immediately.[369] However, the order was stayed pending an appeal. The Bush administration did suspend the program while the appeal was being heard.[370] In February 2008, the US Supreme Court turned down an appeal from the ACLU to let it pursue a lawsuit against the program that began shortly after the September 11 terror attacks.[371]

The ACLU and other organizations also filed separate lawsuits around the country against telecommunications companies. The ACLU filed a lawsuit in Illinois (*Terkel v. AT&T*) which was dismissed because of the state secrets privilege[372] and two others in California requesting injunctions against AT&T and Verizon.[373] On August 10, 2006, the lawsuits against the telecommunications companies were transferred to a federal judge in San Francisco.[374]

The ACLU represents a Muslim-American who was detained but never accused of a crime in *Ashcroft v. al-Kidd*, a civil suit against former Attorney General John Ashcroft.[375] In January 2010, the American military released the names of 645 detainees held at the Bagram Theater Internment Facility in Afghanistan, modifying its long-held position against publicizing such information. This list was prompted by a Freedom of Information Act lawsuit filed in September 2009 by the ACLU, whose lawyers had also requested detailed information about conditions, rules and regulations.[376][377]

The ACLU has also criticized targeted killings of American citizens who fight against the United States. In 2011, the ACLU criticized the killing of radical Muslim cleric Anwar al-Awlaki on the basis that it was a violation of his Fifth Amendment right to not be deprived of life, liberty, or property without due process of law.[378]

On August 10, 2020, in an opinion article for *USA Today* by Anthony D. Romero, the ACLU called for the dismantling of the United States Department of Homeland Security over the deployment of federal forces in July 2020 during the George Floyd protests.[379] On August 26, 2020, the ACLU filed a lawsuit on behalf of seven protesters and three veterans following the protests in Portland, Oregon, which accused the Trump Administration of using excessive force and unlawful arrests with federal officers.[380]

Trump administration

Following Donald Trump's election as president on November 8, 2016, the ACLU responded on Twitter saying: "Should President-elect Donald Trump attempt to implement his unconstitutional campaign promises, we'll see him in court."[381] On January 27, 2017, President Trump signed an executive order indefinitely barring "Syrian refugees from entering the United States, suspended all refugee admissions for 120 days and blocked citizens of seven Muslim-majority countries, refugees or otherwise, from entering the United States for 90 days: Iran, Iraq, Libya, Somalia, Sudan, Syria and Yemen".[382] The ACLU responded by filing a lawsuit against the ban on behalf of Hameed Khalid Darweesh and Haider Sameer Abdulkhaleq Alshawi, who had been detained at JFK International Airport. On January 28, 2017, a US District Court Judge Ann Donnelly granted a temporary injunction against the immigration order,[383] saying it was difficult to see any harm from allowing the newly arrived immigrants from entering the country.[384]

Abdi Soltani, executive director of Northern California ACLU, speaks at a San Francisco protest of the US immigration ban

In response to Trump's order, the ACLU raised more than $24 million from more than 350,000 individual online donations in a two-day period. This amounted to six times what the ACLU normally receives in online donations in a year. Celebrities donating included Chris Sacca (who offered to match other people's donations and ultimately gave $150,000), Rosie O'Donnell, Judd Apatow, Sia, John Legend, and Adele.[385][386] The number of members of the ACLU doubled in the time from the election to end of January to 1 million.[386]

Grants and contributions increased from $106,628,381 USD reported by the 2016 year-end income statement to $274,104,575 by the 2017 year-end statement. The primary source of revenue from the segment came from individual contributions in response to the Trump presidency's infringements on civil liberties. The surge in donations more than doubled the total support and revenue of the non-profit organization year over year from 2016 to 2017.[387] Besides filing more lawsuits than during previous

presidential administrations, the ACLU has spent more money on advertisements and messaging as well, weighing in on elections and pressing political concerns. This increased public profile has drawn some accusations that the organization has become more politically partisan than in previous decades.[388]

Miscellaneous

The ACLU submitted arguments supporting Rush Limbaugh's right to privacy during the criminal investigation of his alleged drug use

During the 2004 trial regarding allegations of Rush Limbaugh's drug abuse, the ACLU argued that his privacy should not have been compromised by allowing law enforcement examination of his medical records.[80]

In June 2004, the school district in Dover, Pennsylvania, required that its high school biology students listen to a statement which asserted that the theory of evolution is not fact and mentioning intelligent design as an alternative theory. Several parents called the ACLU to complain, because they believed that the school was promoting a religious idea in the classroom and violating the Establishment Clause of the First Amendment. The ACLU, joined by Americans United for Separation of Church and State, represented the parents in a lawsuit against the school district. After a lengthy trial, Judge John E. Jones III ruled in favor of the parents in the *Kitzmiller v. Dover Area School District* decision, finding that intelligent design is not science and permanently forbidding the Dover school system from teaching intelligent design in science classes.[389]

In April 2006, Edward Jones and the ACLU sued the City of Los Angeles, on behalf of Robert Lee Purrie and five other homeless people, for the city's violation of the 8th and 14th Amendments to the US Constitution, and Article I, sections 7 and 17 of the California Constitution (supporting due process and equal protection, and prohibiting cruel and unusual punishment). The Court ruled in favor of the ACLU, stating that, "the LAPD cannot arrest people for sitting, lying, or sleeping on public sidewalks in Skid Row." Enforcement of section 41.18(d) 24 hours a day against persons who have nowhere else to sit, lie, or sleep, other than on public streets and sidewalks, is breaking these amendments. The Court said that the anti-camping ordinance is "one of the most restrictive municipal laws regulating public spaces in the United States". Jones and the ACLU wanted a compromise in which the LAPD is barred from enforcing section 41.18(d) (arrest, seizure, and imprisonment) in Skid Row between the hours of 9:00 p.m. and 6:30 am. The compromise plan permitted the homeless to sleep on the sidewalk, provided they are not "within 10 feet of any business or residential entrance" and only between these hours. One of the motivations for the compromise was the shortage of space in the prison system. Downtown development business interests and the Central City Association (CCA) were against the compromise. Police Chief William Bratton said the case had slowed the police effort to fight crime and clean up Skid Row, and that when he was allowed to clean up Skid Row, real estate profited.[390] On September 20, 2006, the Los Angeles City Council voted to reject the compromise.[391] On October 3, 2006, police arrested Skid Row's transients for sleeping on the streets for the first time in months.[392][393]

In June 2020, the ACLU sued the federal government for denying Paycheck Protection Program loans to business owners with criminal backgrounds.[394] At least two ACLU affiliates in Montana and Texas obtained PPP loans, according to the SBA.[395][396]

Allegations of diminished support for free speech

Beginning in 2017, some individuals claimed the ACLU was reducing its support of unpopular free speech (specifically by declining to defend speech made by conservatives) in favor of far-left identity politics and political correctness,.[397][398][399] Former ACLU director Ira Glasser stated that "the ACLU might not

take the Skokie case today."[400]

One basis of these allegations was 2017 statement made from the ACLU president to a reporter after the death of a counter-protester during the 2017 Unite the Right rally in Virginia, where Romero told a reporter that the ACLU would no longer support legal cases of activists that employed violence in their protests.[401]

Another basis for these claims was a leaked ACLU policy memo from June 2018, which stated that free speech can harm marginalized groups by undermining their civil rights. The memo discussed "Conflicts Between Competing Values or Priorities" and included the statement "[s]peech that denigrates such groups can inflict serious harms and is intended to and often will impede progress toward equality". Some analysts viewed this as a retreat from ACLU's historically strong support of first amendment rights, regardless of whether minorities were negatively impacted by the speech, citing the ACLU's past support for certain KKK and Nazi legal cases.[402] [403][404][402][405][55] The memo's authors stated that the memo did not define a change in official ACLU policy, but was is simply intended as a guideline to assist ACLU affiliates in deciding which cases to take.[406]

In 2021, the ACLU filed a brief in opposition to a teacher who refused to use a transgender student's preferred pronouns, and who attempted to use the student's name in all cases instead.[407] Leading ACLU attorney Chase Strangio released a tweet calling for an effort to stop the circulation of Abigail Shrier's book *Irreversible Damage*.[408] The ACLU also modified a quote by Ruth Bader Ginsburg on the subject of pregnancy, removing all references to "Women" and replacing them with "Person" in a tweet, and subsequently apologized for it.[409]

In 2021, the ACLU released a statement denying that they are reducing their support for unpopular first amendment causes, pointing to recent cases in which they challenged college restrictions on racist and homophobic speech, and defended antisemitic protesters who marched outside a synagogue in Michigan.[410]

See also

- American Civil Rights Union
- British Columbia Civil Liberties Association
- Canadian Civil Liberties Association
- Institute for Justice
- Liberty, a British equivalent[411]
- List of court cases involving the American Civil Liberties Union
- National Emergency Civil Liberties Committee
- New York Civil Liberties Union
- Political freedom
- Southern Poverty Law Center

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127. Walker, p. 85.
128. Walker, p. 90
129. Walker, p. 91.
130. Walker, p. 112
131. Walker, p. 87.
132. Walker, p. 88.
133. Walker, p. 89.
134. The Margold Report was named after its principal author, Nathan Ross Margold, a white attorney.
135. Walker, p. 92.
136. Walker, p. 95.
137. Walker, p. 96.
138. Walker, p. 97
139. Walker, p. 100.
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141. Walker, p. 98.
142. Walker, pp. 105–06.
143. Walker, p. 106.
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145. Walker, p. 107.
146. Wagner, p. 101.
147. Walker, p. 103.
148. Walker, p. 104.
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151. Walker, p. 109.
152. Justice Robert Jackson quoted by Walker, p. 109.
153. Walker, p. 115.
154. Walker, pp. 116–17.
155. Walker, p. 117.
156. Walker, pp. 117–18.
157. Walker, p. 118.
158. Walker, p. 119.
159. Walker, p. 120.
160. Walker, p. 121.
161. Walker, p. 122.
162. Walker, p. 123.
163. The Smith Act was ruled unconstitutional in 1957.
164. Walker, p. 133.
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182. Walker, p. 164.
183. Walker, pp. 173–75.
184. Walker, pp. 175–76.
185. walker, p. 176.
186. Walker, p. 177.
187. Walker, p. 179
188. Walker, p. 181.
189. Walker, p. 183.
190. Walker, p. 185.
191. Walker, p 187.
192. Walker, p. 195.
193. Walker, p. 188.
194. Walter, pp. 188–89.
195. Walker, p 190. The case was *Speiser v. Randall*.
196. Walker, photo caption of Flynn, page following 214.
197. Walker, pp. 193, 195–96.
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202. Walker, p. 208.
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205. Walker, p. 201.
206. Walker, pp. 201–02.
207. Walker, p. 202. The case was *Slochower v. Board of Higher Education of New York City*, 350 US 551 (1956).
208. Walker, pp. 208–11.
209. Walker, p. 209.
210. Walker, p. 210.
211. Graham's proposal quoted in Walker
212. Walker, pp. 210–11.
213. Walker, p. 211.
214. Corliss Lamont, in particular, portrayed that era as a major lapse of principle.
215. Walker, p. 212.
216. Walker, pp. 213–14, 217–18.
217. Walker, pp. 240–42.
218. Walker, p. 246.

219. Walker, p. 217
220. Membership numbers are from 1955 and 1965.
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228. Walker, p. 223.
229. Walker, p. 224
230. Walker, p. 225.
231. Walker, p. 227.
232. Walker, p. 229.
233. Walker, p. 230.
234. Walker, p. 231.
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248. Walker, pp. 252–53.
249. Walker, p. 250.
250. Walker, pp. 250–51.
251. Walker, p. 252.
252. Walker, p. 274.
253. Walker, pp. 257, 261–62.
254. Walker, pp. 262–64.
255. Walker, p. 262
256. The count of affiliates is of affiliates with a permanent staff.
257. Walker, p. 263. Characterizations by Samuel Walker.
258. Walker, pp. 263–64.
259. Walker, p. 261.
260. Walker, p. 263.
261. Walker, p. 264.

262. Walker, pp. 264–65.
263. Walker, p. 266.
264. Walker, p. 267.
265. Walker, pp. 268–69.
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External links

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- American Civil Liberties Union Records (https://archive.today/20121215000319/http://findingaids.princeton.edu/getEad?eadid=MC001.01&kw), Princeton University. Document archive 1917–1950, including the history of the ACLU.
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- De-classified FBI records on the ACLU (https://vault.fbi.gov/ACLU)

WIKIPEDIA

Category:Civil liberties advocacy groups in the United States

Subcategories

This category has the following 7 subcategories, out of 7 total.

A

- Alliance Defending Freedom (2 C, 5 P)
- American Civil Liberties Union (2 C, 12 P)

N

- NAACP (5 C, 31 P)
- National Rifle Association (1 C, 24 P)
- Niagara Movement (2 C, 7 P)

P

- People for the American Way (1 C, 2 P)

S

- Southern Poverty Law Center (13 P)

Pages in category "Civil liberties advocacy groups in the United States"

The following 72 pages are in this category, out of 72 total. This list may not reflect recent changes (learn more).

A

- Algorithmic Justice League
- Alliance Defending Freedom
- Alums for Campus Fairness
- American Center for Law & Justice
- American Civil Liberties Union
- American Civil Rights Union
- American Muslims for Palestine
- American-Arab Anti-Discrimination Committee

- Anti-Defamation League
- Anti-Mask League of San Francisco
- Arkansas Time After Time

B

- Becket Fund for Religious Liberty
- Brennan Center for Justice

C

- Catholic League (U.S.)
- Center for Constitutional Rights
- Center for Human Rights in Iran
- Center for Individual Rights
- Chinese for Affirmative Action
- Constituting America
- Constitution Project
- Council on American–Islamic Relations

D

- Defending Rights & Dissent
- Demos (U.S. think tank)

E

- Electronic Frontier Foundation
- Ella Baker Center for Human Rights
- Equality Utah

F

- Families Advocating an Intelligent Registry
- Families Civil Liberties Union
- First Amendment Center
- First Amendment Coalition
- Talk:First Liberty Institute
- Flex Your Rights
- Florida Action Committee
- Foundation for Individual Rights in Education
- Clemens J. France
- Free Muslim Coalition Against Terrorism

G

- Giffords Law Center to Prevent Gun Violence

H

- Hindu American Foundation

I

- Illinois Voices for Reform
- Indivisible movement
- Institute for Justice

J

- Jewish Council on Urban Affairs
- Jewish on Campus

L

- Lawfare Project
- Legal Aid Justice Center

M

- Mexican American Legal Defense and Educational Fund
- Michigan Citizens for Justice

N

- NAACP
- National Association for Rational Sexual Offense Laws
- National Alliance of Latin American and Caribbean Communities
- National Center for Lesbian Rights
- National Committee for the Defense of Political Prisoners
- National Conference of Black Lawyers
- National Gun Victims Action Council
- National Rifle Association
- National Transgender Advocacy Coalition
- New York Lawyers for the Public Interest
- North American Religious Liberty Association

O

- Open Communities

P

- Pacific Legal Foundation
- Palestine Legal
- People for the American Way
- People's Freedom Union

- Press Uncuffed

R

- Restore the Fourth
- Rutherford Institute

S

- Sapling Foundation
- Seattle Privacy Coalition
- Southeastern Legal Foundation
- Sex Workers Outreach Project USA

T

- Texas Freedom Network

W

- Women Against Registry
