

# Contacting Your Legislators Makes a Difference!

## Three Major Bills at Legislative Hall

The General Assembly has its work cut out for it this year. Not only do they need to find an equitable way to close a multi-million dollar budget gap, they are also considering three significant pieces of legislation that are all top priorities for the ACLU—reinstatement of the death penalty, legalizing marijuana and protecting reproductive freedom.

As we go to press, all of these bills are advancing, but none has a final resolution. Please contact your senator and representative to let them know your views on these bills and others that interest you. This is your opportunity to impact the legislative process. The more you exercise that prerogative, the more frequently your views will be seriously considered.



**SB 5 would protect a woman's access to abortion care in Delaware in case *Roe v. Wade* is overturned.**

Senate Bill 5, legislation that would protect a woman's access to abortion care, has made the most progress thus far. It passed the Senate with a vote of 11-7 and was also heard and passed out of the House Health and Human Development Committee. It will get a vote on the House floor in June.

### **There is hope that HB 125, the bill to reinstate the death penalty, will not make it out of the Senate...**

codifies the protections into Delaware law that women have had for the last 43 years since *Roe v. Wade* was decided.

House Bill 125, legislation to reinstate the death penalty, was introduced by Representative Steve Smyk (R), in early April with bi-partisan support. Opponents turned out in force at the House Judiciary Committee hearing, but the bill made it out of committee nonetheless. The House floor vote was held in the beginning of May and the bill passed 24-16. It has been assigned to the Judiciary Committee in the Senate, but a hearing has not yet been scheduled. Since the

SB 5 is necessary to update Delaware law because President Trump said repeatedly during his campaign that he would appoint U.S. Supreme Court Justices who would overturn *Roe v. Wade*. If that were to happen without SB 5's passage, abortion would be virtually illegal here due to a statute on our books from 1953. SB 5

### **What's Inside**



ACLU-DE Sues Town of Milton.....3  
 A Victory for Democracy, Free and Fair Elections... 4  
 New Castle County Affirms Status as "Safe and Inclusive Community" ..... 6  
*and more!*

connection

**ACLU-DE  
Officers & Staff**

**Kathryn M. Jakabcin**  
President ACLU

**Amy L. Simmerman**  
Vice President

**Rev. Patricia Downing**  
Treasurer

**Desmond Baker**  
Equity & Inclusion Officer

**S. Elizabeth Lockman**  
President ACLF

**Peggy E. Strine**  
National Board Rep

**Kathleen MacRae**  
Executive Director

**Richard H. Morse**  
Legal Director

**David Bever**  
Director of Development

**Ryan Tack-Hooper**  
Staff Attorney &  
Legislative Advocate

**Shannon Griffin**  
Community &  
Project Organizer

**Joyce McCormick**  
Legal Intake Manager &  
Paralegal

**Mindy Bogue, Editor**  
Office Manager &  
Communications Coordinator

We invite you to exercise your free speech rights by sending suggestions, letters, questions, or comments.

aclu@aclu-de.org  
302-654-5326

100 West 10th Street, Suite 706  
Wilmington, DE 19801

 [aclu-de.org](http://aclu-de.org)

 [acludelaware](https://www.facebook.com/acludelaware)

 [@ACLU\\_Delaware](https://twitter.com/@ACLU_Delaware)

 [ACLUDelaware](https://www.instagram.com/ACLUDelaware)

 [aclu\\_de](https://www.youtube.com/aclu_de)

## Executive Director's Notes

### We Must Give Up "Tough on Crime" Approach!



**Kathleen MacRae**  
Executive Director

The tragic hostage situation at James T. Vaughn Correctional Center (JTVCC), which occurred February 1 and 2, has put the work of the ACLU-DE legal department in the

spotlight. In 2016, we received about 725 civil rights violation complaints, 450 of these complaints came from prisoners being held in JTVCC and other state prisons.

These complaints cover a wide range from minor concerns to adverse prison conditions and lack of access to proper medical treatment or mental health care. They also report serious verbal and physical abuse by some guards.

Recently, we shared a database of prisoner complaints (without prisoner identifying information) received in 2016 and January 2017 with the National Lawyers Guild. They analyzed the data and found that during the five months leading up to February 1 and 2 there was a trend towards more complaints about force, living conditions, legal access and mental health care. These trends were evident, although not statistically significant, even though overall complaints during that five month period were down.

One of the most persistent problems with prisoner complaints is the lack of a

credible and effective grievance process within DOC. Without a fair, unbiased disciplinary system and no way to grieve complaints, prisoners suspect that their civil rights are being violated and that the conditions of imprisonment surpass legitimate bounds. In the book *States of Siege* (Oxford University Press, 1989), which analyzed the cause of prison riots, the authors state: "Inmates are not propelled to riot merely because they are deprived of the amenities available outside of prison—for punishment is the purpose of prison—but because the prison violates the standards subscribed to concurrently or previously by the state..." They conclude that prison riots are the product of a breakdown in prison operation and administrative control that cause problems beyond security flaws, including inconsistent and incoherent rules for inmates and guards, conflict between administration and guards, and the disruption of everyday routines for eating, work, and recreation.

Delaware's prison system needs an overhaul. And the first step is reducing the number of prisoners overcrowding our facilities. We incarcerate at almost double the rate of New Jersey and at three times the rate of Virginia. It is time to give up the tough on crime approach. Smart on crime means protecting our community, while also instilling a culture of respect and rehabilitation in our prisons that will protect both the guards and the inmates.



***Selling Off Our Freedom*** is a new report from ACLU and Color of Change that documents the impact of money bail on communities of color and the poor.

Go to [aclu-de.org](http://aclu-de.org) to read the press release and download the full report.

# ACLU-DE Sues Town of Milton to Secure Freedom of Speech

## We Argue that Town Ordinance Regarding Yard Signs is Unconstitutional

*Editor’s note: High school student Caroline McGinnis from Wilmington Friends School wrote the following article as part of her career exploration before entering college. We thank her for her assistance.*

On May 15, 2017, the ACLU of Delaware sued the Town of Milton on behalf of Penny Nickerson, a Milton homeowner, who was asked to remove signs with phrases such as “Love Trumps Hate” and “Women’s Rights = Human Rights” from her property because they were considered political. Milton Town Code restricts the display of political signs to 90 days before and 14 days after a contested election.

The suit argues that Milton is violating free speech rights. Milton claims the code is valid in the interest of minimizing visual clutter. However, the code only imposes restrictions on signs considered to convey political messages and allows the display of any “legally permitted outdoor advertising sign.”

“A town can regulate the dimensions of a sign and the setback, but they can’t regulate the message,” said ACLU-Delaware Executive Director Kathleen MacRae. Ms. Nickerson sees the town’s code as “content-based regulation of speech,” and a direct violation of her right to display opinions about the government, which she considers an essential element of a true democracy.

The day of the filing of her lawsuit, Nickerson displayed new signs in her yard relating to the case. The signs included phrases that defend her position in the case such as “Words Matter,” and a quote from French philosopher Voltaire that reads, “I disapprove of what you say, but I will defend to the death your right to say it.”



**Ms. Nickerson sees the town’s code as a direct violation of her right to display opinions about the government, an essential element of a true democracy.**

### Legislation, cont’d from page 1



**Visit [aclu-de.org](http://aclu-de.org) to learn the top five reasons why Delaware should legalize marijuana.**

Senate voted twice to repeal the death penalty, there is hope that HB 125 will not make it out of the Senate and onto Governor Carney’s desk. Please contact your senator and voice your opposition to reviving the death penalty in Delaware.

Finally, House Bill 110 (HB 110), legislation to legalize recreational marijuana, as has been done in Colorado, Massachusetts and six other states, was introduced by Representative Helene Keely (D) at the end of March. The bill was passed out of the House Revenue and Finance Committee on a 9-2 vote and will be considered by the full House in early June. HB 110 would legalize purchase of up to one ounce of marijuana for those 21 years of age and older. It would also establish a marijuana growing and processing industry that would create products to be sold in stores authorized by the bill.

HB 110 has an uncertain future. Opposition from AAA, the medical community and law enforcement has been considerable. Governor Carney is

not supportive of the measure. Of the nine states that have legalized marijuana, eight have done so by citizen referendum, not legislation. Vermont is the first exception to that rule—they recently sent a legalization bill to the governor’s desk, which he signed.

Delaware legislative action on marijuana legalization may not happen until next year. Since this is the first year of the two year general assembly, bills can take the full two years for passage.

## A Victory for Democracy, Free and Fair Elections! School Districts Cannot Use Power to Rig Elections

Chancery Court Vice Chancellor J. Travis Laster has found that the Red Clay Consolidated School District violated election law when it held 75 events in schools to draw parents to the polls to support a referendum to increase school taxes in February 2015. However, he did not nullify the results of the referendum and require Red Clay to hold a new referendum because of “dysfunction” in the state’s school funding system.

“Today is a victory for democracy and free and fair elections in Delaware,” said Kathleen MacRae, ACLU-DE executive director. “Vice Chancellor Laster in his opinion in our case wrote that the ACLU of Delaware

**All Delaware school districts are now on notice that such tactics disregard the law and will not be tolerated.**

and lawyers from the law firm Shaw Keller LLP proved at trial that Red Clay Consolidated School District violated the Delaware Constitution’s election clause. This decision puts school districts across the state on notice that Red Clay crossed the line with its tactics and similar action in other districts would be willful disregard for the law.”

The ACLU of Delaware pursued this case to protect voters’ rights and access to the ballot box. What Red Clay did by holding events, giving away free pizza, and using

school buses to block handicapped parking spaces prevented many people, especially the elderly and people with disabilities, from accessing the polls.

“Free and Fair elections are a bedrock of our democracy, which cannot be ignored even for a good cause,” MacRae continued. “Government, including school districts, cannot use their power to rig elections in violation of state law. The Vice Chancellor’s opinion fully validates that position.”

Even though the Court found that “the pervasiveness of Red Clay’s conduct weighs in favor of invalidating the Special Election,” the Court decided not to do so. ACLU of Delaware argued for another outcome. Ultimately, however, this lawsuit was never about depriving school districts of the funding they need. ACLU-DE agrees that there is dysfunction in Delaware’s system for funding public schools and they fully support adequate and equitable funding for our schools at a level that allows them to meet their constitutional obligations. Schools should not be forced to choose between holding free and fair elections or facing budget shortfalls that prevent them from fully and efficiently educating our children.

The ACLU-DE will continue to be vigilant in our efforts to protect voting rights in all elections, no matter our opinion on the outcome of the voting process.

## Welcome to Our New Board Members!



**Mark Purpura** is a Director with the Richards Layton & Finger law firm focusing on banking, corporate and personal trust matters. Mark was recently honored by the Delaware State Bar Association’s LGBT Section for his exceptional commitment to improving legal services for the LGBT community. “Over the next four years, our work is cut out for us to defend civil rights. The least I can do is participate as a member of the board of the ACLU of Delaware to help in this fight.”



**Laina Herbert** is an associate attorney at Grant & Eisenhofer, focusing her practice on corporate litigation. Laina has devoted her life to improving the lives of others. “As a member of the board, I will serve our neighbors and work to defend the freedoms that we all expect and cherish as citizens of the United States.”



**Rabbi Yair Robinson** is the spiritual leader and senior rabbi of Congregation Beth Emeth, where he has served since 2009. Rabbi Robinson served on the board of the Philadelphia Anti-Defamation League, advocated for marriage equality and death penalty repeal, and worked on projects that alleviate hunger and homelessness. “In the Passover Seder we read that every person is obligated to see him or herself as having gone out of slavery in Egypt. That means that (as a Jew), I am obligated to help those who may be suffering similarly.”



**Dr. S. Todd Townsend, Sr.** is the senior pastor at the Resurrection Center in Wilmington and Middletown. He has over three decades of experience as a preacher, teacher, lecturer, conference speaker, and a cross-denominational ministry consultant. “The historic fight for freedoms benefiting our nation’s communities requires support. I’m glad to provide such support.”

## The ACLU in the Age of Trump: 2017 Annual Meeting Featured National and Local Resistance

President Trump’s actions since his inauguration provided a plethora of subjects and legislation for Executive Director Kathleen MacRae and Staff Attorney & Legislative Advocate Ryan Tack-Hooper to discuss at the May 17 ACLU-DE Annual Meeting. Referred to as “a one-man constitutional crisis” by ACLU National Director Anthony Romero, President Trump spent his first months in office enacting unconstitutional executive orders (and appointing administration officials ill-suited to lead their departments). Due to these actions, the ACLU has already kept its promise: “We’ll see you in court.”



**Tom O'Brien** is the Managing Director of Strategic Merchant Relationships for JPMorgan Chase in Wilmington. He comes with extensive nonprofit volunteer experience. In his more than 15 years with the MS Society, he held many positions, including head of the national volunteer leadership council.

“I strongly believe in the need to actively defend and protect rights granted by the Constitution, especially for those who may not have a voice.”

## Case Docket



**Free Speech.** This case has been resolved. Please see the full story on page 3.

**Muslim Ban.** Together with the ACLU affiliates in Virginia, Maryland and Pennsylvania, we filed suit against the U.S. Department of Homeland Security and Customs and Border Protection (CBP) for failing to respond to our joint Freedom of Information Act request seeking records and communications concerning CBP's local implementation of President Trump's January 27, 2017 Executive Order. The government is seeking to have the case combined with suits filed by ACLU affiliates in other parts of the country. There has been no ruling.

**Transgender rights.** Our suit against prison officials over mistreatment of a transgender prisoner has been resolved by confidential settlement.

**Privacy.** Our suit seeking access to information about the State Police use of cell phone surveillance technology has also resolved by settlement because the State Police agreed to turn over additional responsive records, including an additional nondisclosure agreement and records demonstrating what kind of legal authority they sought and what they told the Court about the technology. A full analysis of those documents will be presented on our website.

**Fair elections.** This case has been resolved. Please see full story on page 4.

**GPS monitoring.** The Delaware Supreme Court affirmed Chancery Court's decision rejecting our challenge to the statute that requires all Tier III registered sex offenders on probation or

Continued on page 7

## New Castle County Affirms Status as "Safe and Inclusive Community" Ensures Equal Services, Opportunities to All

President Trump and his followers' anti-immigrant rhetoric has instilled fear in immigrant communities throughout the country. Across Delaware, immigrants—documented and undocumented—have avoided encounters with law enforcement and withdrawn from community activities and even necessary services like health care. Not only do Trump's deportation plans threaten immigrants, they endanger the entire community. Regardless of personal legal status, immigrants are less likely to report crimes out of fear that they or their family members will be questioned, detained or even deported.

As residents of New Castle County, immigrants have rights to the public services the community provides, but Trump's deportation campaign isolates immigrants by threatening their livelihood and uprooting families across the state and nationwide.

In order to address these problems, New Castle County Executive Matt Meyer signed the "Safe and Inclusive Communities" Executive Order on Wednesday, May 24, 2017. The order reaffirms that the county police's role is to keep the community safe by enforcing state and county criminal laws, not federal immigration laws, and to ensure that the community provides equal services and opportunities to everyone regardless of immigration status. Under this order, county officers and employees may not stop, question, search, or arrest anyone because of their immigration status, participate in joint immigration enforcement with federal authorities, ask about immigration status unless required by state or federal law, or deny county-funded services to those who are entitled to them.

---

**County Executive Matt Meyer reminds us that local government should help, not threaten, the people.**

---

Official actions like this one to protect Delaware's interests in safe communities and non-discrimination benefit not only immigrants, but the entire community. When residents trust and work with law enforcement, law enforcement can work most effectively to protect everyone.

Meyer's order is not a statement of opposition to federal immigration policy. Instead, it is a recognition of the separate and independent purpose of our local government and law enforcement, which is to keep all members of our community safe.

Other state officials should follow Meyer's lead and preserve the roles of our state and local law enforcement agencies as bulwarks against crime and not deputies for a broken immigration system. The ACLU-DE has urged Governor John Carney to update Delaware's state policy on immigration in light of Trump's radical expansion of deportation efforts. By enacting this order, County Executive Matt Meyer is taking steps to ensure safety to all the members of the New Castle County community and remind people that the local government is an entity meant to help, not threaten, the people.

## Freedom & Justice Challenge: Year Two Thank You for a Successful First Year!

Last year, the Longwood Foundation invested in ACLU-DE through a generous grant to support our growth plan. The award established challenge grants of \$25,000 for each of the two years of the project. Thanks to you, we reached year one's \$50,000 threshold and secured the match for a total of \$75,000!



Year two of the project offers an even bigger challenge: our new goal is to reach a \$65,000 threshold. Once we do, the next \$25,000 will be matched by Longwood dollar-for-dollar!

You made it happen last year—please give now to fulfill year two of the Longwood Freedom & Justice Challenge! Please also consider making a monthly gift. For more information, contact Director of Development Dave Bever at (302) 654-5326, ext. 100 or via email at [dbever@aclu-de.org](mailto:dbever@aclu-de.org).

### Case Docket, cont'd from page 6

parole to wear GPS transmitters 24/7, without regard to whether the offender was considered dangerous. We believe the Delaware statute violates the Fourth Amendment's requirement that suspicion-less search programs be reasonable, because it causes the probation and parole department to attach GPS monitors to people who have been determined to be low risk, while leaving the monitors off of offenders determined to be high risk, thereby invading privacy while decreasing public safety. The court disagreed on that issue. The court also rejected our argument that application of the statute to people convicted before it was enacted violated the Ex Post Facto clause.

**Police Militarization.** Discovery is being completed in our ongoing case on behalf of a quadriplegic woman and her husband who were terrorized by a state police assault team executing a search warrant against two alleged minor drug criminals. Briefing on the defendants' motion for dismissal of the case without trial is underway. The case remains scheduled for trial in October 2017.

**ACLU of Delaware**  
**FREEDOM FUNDRAISER**  
*Enjoy wine & hors d'oeuvre with  
ACLU friends old & new*  
**CAMP REHOBOTH**  
**37 Baltimore Avenue**  
**Rehoboth Beach**  
**Saturday, June 17th**  
**5 - 7 pm**

**There is no minimum contribution to attend; guests will be asked to make a meaningful gift.**  
**Join us!**  
**RSVP to Dave Bever by June 14th**  
**302.654.5326 x 100 or [dbever@aclu-de.org](mailto:dbever@aclu-de.org)**

### Coffee with Dave?

It's no secret that Director of Development Dave Bever loves coffee almost as much as he loves getting to know our incredible supporters.



Whatever your beverage of choice, Dave would love to meet for

coffee and learn more about you and why you stand with the ACLU. What's more, he's buying! Don't hesitate to call him at (302) 654-5326, ext. 100 or send him an email at [dbever@aclu-de.org](mailto:dbever@aclu-de.org)!



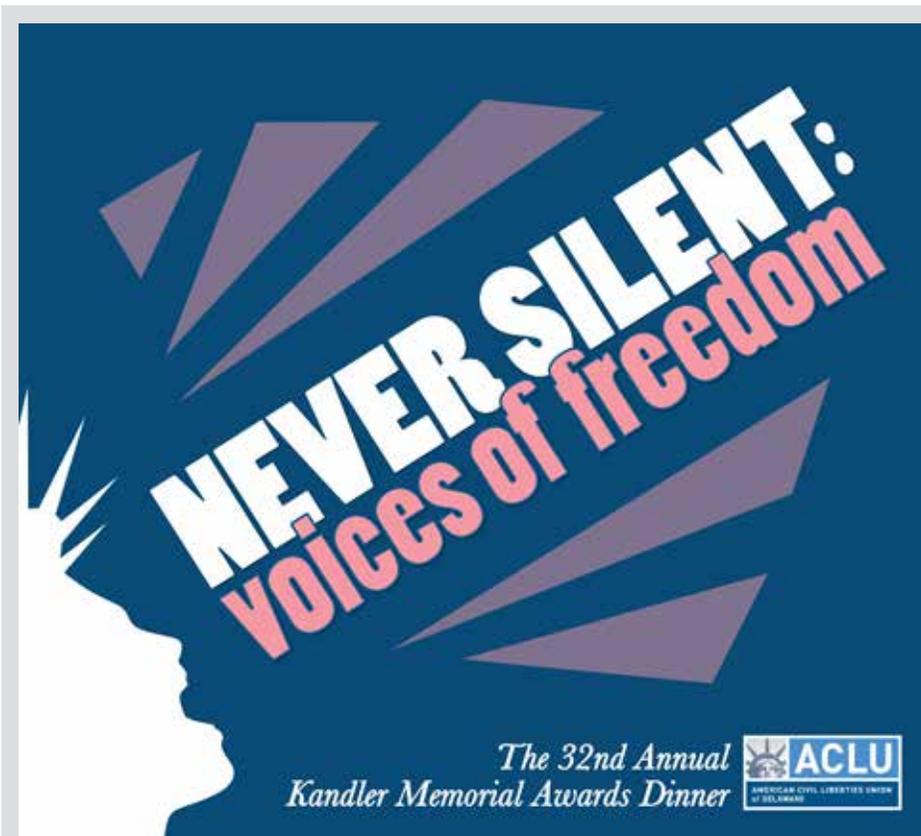
# ACLU

AMERICAN CIVIL LIBERTIES UNION  
of DELAWARE

100 West 10th Street, Suite 706  
Wilmington, DE 19801  
[www.aclu-de.org](http://www.aclu-de.org)

**Return Service Requested**

Nonprofit Organization  
US Postage Paid  
Wilmington, DE  
Permit No. 106



## **Kandler Memorial Award Honorees**

Theopalis Gregory, Sr.  
Sarah, Sally and David McBride

## **Clarence Darrow Award Honoree**

Marion Quirk

5:30 p.m. cocktails  
6:30 p.m. dinner  
Chase Center on the Riverfront

Tickets \$150 (includes one drink ticket)  
Sponsorships \$500 and up

**Purchase online**  
[www.aclu-de.org](http://www.aclu-de.org)