



ACLU

AMERICAN CIVIL LIBERTIES UNION
of MAINE



2017 LEGAL UPDATE

VOL. 43 NO. 4

The ACLU of Maine Legal Program has been more active than ever in the first half of 2017, and there is more to come. We have filed two new lawsuits, and a First Amendment student speech case we have been working on for years has gone to trial. Follow our legal work online at www.aclumaine.org/cases.

FREE SPEECH.

B.P. V. RSU 75

Status: Currently before a jury
in U.S. District Court

As this update goes to print, we are beginning a trial in U.S. District Court in Portland in our case on behalf of a nonverbal student with disabilities who was denied his First Amendment right to make audio recordings of his school day. We argue the school district violated the student's constitutional right to record his interactions with the government, which includes school officials. The trial comes after several years of quiet litigation, during which the judge ruled in favor of the school district on an Americans with Disabilities Act claim but ruled our First Amendment claim could move forward. We are co-counsel in this case with Richard O'Meara and Kelly McDonald of Murray Plumb & Murray, as well as Esha Bhandari of the national ACLU Speech, Privacy, and Technology Project.



U.S. Customs and Border Protection point of entry

Photo: USCBP

respond to the records requests, so we filed suit, as did other affiliates across the country. The government is now trying to consolidate the lawsuits into a single case in a single court, and we have opposed. We are assisted in our case by attorney Jennifer Archer of the law firm Kelly, Rimmel & Zimmerman.

IMMIGRANTS' RIGHTS.

ACLU OF MAINE ET AL V. U.S. CBP ET AL

Status: Motion to transfer pending

In February, the ACLU of Maine spearheaded an action by 53 ACLU affiliates to simultaneously submit a series of public document requests under the Freedom of Information Act seeking information about the on-the-ground implementation of President Trump's Muslim ban executive orders. In total, ACLU affiliates filed requests with the 18 Customs and Border Protection regional field offices. The government failed to

LETTER ON ICE ARRESTS

Status: Ongoing

In April, we sent a letter signed by 179 Maine attorneys to U.S. Attorney General Jeff Sessions and Homeland Security Secretary John Kelly urging them to immediately end the practice of making Immigration and Customs Enforcement (ICE) arrests at courthouses. The attorneys signed on to our letter after ICE agents on April 6 seized a man at a courthouse in Portland, Maine, who was there for a hearing for an offense unrelated to immigration. The letter stated: "ICE arrests at courthouses undermine the fundamental constitutional

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DESIGN

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guarantee that all people have the right to seek redress from our court system—including people accused of crimes, witnesses to crimes, and victims of crimes. No one should be afraid to seek justice because of his or her immigration status.” The letter urged A.G. Sessions and Secretary Kelly to add courthouses to the existing Homeland Security list of “sensitive locations,” which includes places of worship and religious ceremonies, where ICE arrests should be avoided.

EDUCATION RIGHTS.

LETTER TO LEWISTON SCHOOL DEPARTMENT

Status: Working with school officials on reform initiatives

In February, we sent a letter to the Lewiston School Department expressing our concern about the treatment of students of color and students with disabilities in Lewiston schools. We sent the letter jointly with Kids Legal and Disability Rights Maine. We expressed five areas of concern: (1) students of color or with disabilities are disciplined more frequently than their classmates; (2) students of color are not identified as having disabilities at the same rate as white students; (3) English language learners are stuck in classes that do not provide credits toward graduation; (4) parents who do not speak English are denied means to communicate with teachers and administrators; and (5) the district, which is more than 20 percent black, has no black teachers. The letter is intended to support the Somali community and other immigrant communities in collaborating with the school department.

REPRODUCTIVE FREEDOM.

MABEL WADSWORTH WOMEN'S HEALTH CENTER ET AL V. MARY MAYHEW

Status: Defendant's motion for summary judgment due June 2017

Our lawsuit challenging the state's denial of abortion coverage for women who use Medicaid is moving closer to a possible resolution, with filing deadlines approaching this summer. We argue that by withholding coverage for abortion, but covering a full range of pregnancy-related care for women who choose to carry their pregnancies to term, the state interferes with a woman's fundamental right to decide whether or not to continue a pregnancy and discriminates against women who decide to have an abortion. The lawsuit was brought in Cumberland County Superior Court on behalf



Clients in our case to end the ban on MaineCare coverage for abortion: Kathryn Vezina (MFP), Nicole Clegg (PPNNE), Andrea Irwin (Mabel Wadsworth) and ACLU of Maine executive director Alison Beyea

of Mabel Wadsworth Women's Health Center, Maine Family Planning, and Planned Parenthood of Northern New England. We partnered in this case with the national ACLU Reproductive Freedom Project and Planned Parenthood Federation of America.

PRISONER RIGHTS.

SALCEDO V. VITIELLO ET AL

Status: Pending; discovery due October 2017

In January, we filed suit on behalf of a prisoner at York County Jail, who was denied access to emergency dental care while he was being held pending trial. Despite the recommendation of two independent health care providers, our client was repeatedly denied medical attention for an infection in his face that was causing intense pain and posed potentially life-threatening complications. The case supports the ACLU's national effort to establish constitutional protections for pretrial detainees – who have not been convicted of a crime – as distinct from prisoners who have been sentenced. Although pretrial detainees are entitled to a presumption of innocence and pretrial detainees' rights are protected under a different part of the Constitution from those of sentenced prisoners, courts have long mirrored the rights of pretrial detainees to those of sentenced prisoners. Because pretrial detention is only temporary, it is often difficult to reach the merits of the constitutional issue at stake. We are assisted in this case by James Monteleone and David Soley of the law firm of Bernstein Shur.



PHOTO CREDIT: FLICKR/MICHAELCR

commission members began crafting policy recommendations before the commission launched its investigation. Unlike most of the commission members, Secretary Dunlap has been skeptical about claims of widespread voter fraud in Maine and nationwide. While the Maine Secretary of State's Office complied fully with our records request, the other commission members have yet to comply with the outstanding records requests.

GOVERNMENT ACCOUNTABILITY.

LAUNCHED MAINE GOVERNMENT WATCH ACCOUNTABILITY WEBSITE

Status: Active

In June we launched a new website, Maine Government Watch, to hold those in power accountable when government fails to do its job. The mission of the Maine Department of Health and Human Services (DHHS) is to protect and improve the health and well-being of Maine people and protect and care for those who are unable to care for themselves. Yet in recent years the department has seemed unwilling to protect children, people with disabilities and mental illness, poor people, those suffering from substance use disorder, and refugees and other new Mainers. DHHS Commissioner Mary Mayhew left her position in May to run for governor, but the policies that she and Gov. Paul LePage pursued continue to wreak havoc on Maine people. Maine Government Watch is now an archive of stories about the hurtful DHHS policies under this administration. With time, we will grow this website to include oversight of other agencies as well. Visit www.maine.gov/watch.com

VOTING RIGHTS.

PUBLIC RECORDS REQUEST ON TRUMP'S ELECTION COMMISSION

Status: Compliant documents have been turned over and are under review

In May, we joined ACLU affiliates in Kansas, Indiana and New Hampshire and the national ACLU seeking information on the Trump Administration's new "Presidential Commission on Election Integrity." The requests under the federal Freedom of Information Act and Maine's Freedom of Access Act were sent to commission members who currently serve as secretaries of state, including Maine Secretary of State Matt Dunlap, as well as the commissioner of the U.S. Election Assistance Commission. We aim to discover whether



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