

ACLU magazine

**THE STAKES
COULDN'T
BE HIGHER.**



How voting by mail preserves our bedrock right.



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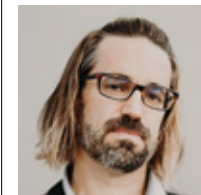
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On the cover: Photo illustration by New Studio

PHOTOGRAPHS (CLOCKWISE FROM TOP LEFT) BY MICHAEL NOBLE, JR./GETTY IMAGES; SCOTT MCINTYRE; NOOR SALIM; JULIE PEPIN



As I introduce this issue of *ACLU Magazine*, the country is in a state of collective protest and mourning. The continued persecution and murder of Black people by the police and the disproportionate cost of COVID-19 on communities of color are unceasing points of pain—a crisis within a crisis—exposing systemic racism’s deep roots in all aspects of our society and its institutions.

When the ACLU was founded in 1920, during a tumultuous moment scarred by the flu pandemic and a depression, its leaders and supporters summoned great strength to move forward. There is hope in this history. And there is hope today: In June, the U.S. Supreme Court blocked the Trump administration’s efforts to end the Deferred Action for Childhood Arrivals program and jeopardize the lives of 700,000 young immigrants. The court also ruled in a trio of cases, two of which were brought by the ACLU, that it is against the law to fire people for being LGBTQ. These are huge victories. Yet our work is not done, particularly on behalf of Black transgender women, who for years have been leaders in the fight against LGBTQ discrimination and police brutality.

“We will persist—and push for a fairer, more equitable country.”



As you’ll read in this issue, the ACLU has launched a new plan to divest from the police and amplify the demands of protest movements. Police kill Black people with near impunity, and police violence cannot be effectively addressed without completely reimagining the role of law enforcement.

Any overhaul of policing requires the commitment of elected officials, again shining a spotlight on the importance of voting. Long before the coronavirus, we saw securing everyone’s right to vote as the best way to safeguard democracy. These pages reflect our efforts to expand voting by mail during the pandemic and our push for early processing of absentee ballots to avoid unnecessary delays on Election Day.

Our ongoing work also continues, as described in this issue, whether it’s demanding reform to an unjust bail system, fighting for the equality of trans youth, or litigating to ensure reproductive health care remains open to all.

In my 19 years as executive director of the ACLU, I have never been more concerned about the future of civil liberties. With our government attacking peaceful protesters, President Trump fanning the flames of racial division and partisan acrimony, a pandemic still raging, and a national election looming on the horizon, I have never been more worried about what lies ahead.

At the same time, I have never felt more inspired by the strength and resiliency of the ACLU community. With resolve, we will persist—and push for a fairer, more equitable country, one where “We the People” truly means all of us.

Anthony D. Romero
Executive Director

PHOTOGRAPH BY VINCENT TULLO

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Exchanging Mailing Lists: The ACLU defrays the cost of our new-member recruitment by renting or exchanging our list with other nonprofit organizations and publications, but never to partisan political groups or to groups whose programs are incompatible with ACLU policies. All lists are rented or exchanged according to strict privacy standards. We never give our list directly to any organization; instead, we send the list to a letter shop that prepares the mailing for the organization that is participating in the rental or exchange. That organization never sees our list and never knows what names are on it unless an individual responds to the organization’s mailing. The ACLU always honors a member’s request not to make his or her name available. If you do not wish to receive materials from other organizations, write to the ACLU Membership Department, and we will omit your name from list rental and exchange. Thank you for your understanding.

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The Winter 2020 issue of *ACLU Magazine* includes a feature on the racist use of facial recognition technology.

Re: “We Gather”

Jesmyn Ward’s depiction of racial and gendered prejudice as “the great American Gorgon,” with the consequence that those “myriad heads” freeze us in stone, has a powerful and disturbing truth.

Thomas Bonner Jr.
River Ridge, LA

Re: “The Tarnished Arches”

I can’t thank you enough for the portrayal of McDonald’s workers in the Winter issue. The seven employees who told their stories are worthy of all of our admiration and thanks, as are all those whose cases you took on.

Patricia Meloy
Marengo, IL

Re: “The Trouble with Facial Recognition”

There is a principle known to software people as Conway’s law. It states that the structure of a product reflects the structure of the organization that built it. If [software like facial

recognition] works on test cases—people like the developers—it must be perfect. When faced with situations unlike those it was designed for, it doesn’t work nearly as well. This is separate from the question of how or whether it should be used, even if it worked perfectly. But knowing it doesn’t work very well should be enough to severely limit its use.

Merlin Dorfman
San Jose, CA

Re: “Women of the ACLU”

Thank you for highlighting the legacy left behind by the late, great Lenora Lapidus, who, as you noted, “expanded the organization’s work to include advocating for women in the criminal justice system and fighting gender-based violence.” The world is a better place thanks to Lenora’s steadfast advocacy. A fearless warrior for civil rights, she will be deeply missed.

Paula Bernstein Orkin
Portland, OR

We love your feedback! Let us know what you think about this issue: ACLUmagazine@aclu.org



FRONT LINE

PRIORITIES

Divesting the Police

The country confronts systemic racism and demands immediate change for law enforcement.

In late May, the country convulsed with uprisings to demand justice in the police killings of Breonna Taylor, Tony McDade, George Floyd, and countless others from the Black community, and to insist on fundamental changes to the role of law enforcement. In violation of demonstrators' rights, local police and federal troops—backed by the authoritarian urgings of the Trump administration—responded with even more brutality, attacking protesters and journalists with vehicles, tear gas, pepper spray, rubber bullets, batons, arrests, and lies. As America reckons anew with its long history of racial injustice, the ACLU is launching its vision for the future of policing.

Militarization, lack of accountability, and runaway spending have all corrupted the modern police force, but white supremacy is embedded in its DNA. Policing's 19th-century origins were to protect commercial

Garvenchy Nicolas leads demonstrators in New York City to protest long-standing and unchecked police violence against Black people.

CONTINUED FROM PAGE 5

interests, which in the South manifested as vigilantes deputized to enforce slavery laws and terrorize enslaved people. Through Reconstruction and the Jim Crow era, these forces evolved to menace and control communities of Black people and immigrants, while protecting white power and privilege. This over-policing has bred an unchecked mass incarceration crisis and a lawless culture in which murdering unarmed Black people goes unpunished.

The ACLU's commitment to combating police violence and addressing systemic racism is nearly as old as the organization itself. In 1931, the ACLU was instrumental in producing the government report *Lawlessness in Law Enforcement*, and subsequent historical flashpoints—the Watts Rebellion, unrest after the Rodney King beating—resulted in nationwide advocacy against racial profiling and abusive law enforcement tactics. But it is clear that new, more aggressive strategies are needed.

The ACLU is working with Black- and Brown-led organizations to limit law enforcement's authority by prohibiting arrests for nonserious offenses, ultimately cutting the number of annual arrests—10.3 million—by half. Police budgets collectively total more than \$115 billion annually. The ACLU supports divesting departments of funding and redirecting the savings to community-based initiatives that bolster public health and safety in communities historically targeted by the police. Furthermore, the ACLU advocates for enforceable legal constraints whereby the use of deadly force by police is proscribed in all but the most absolutely necessary cases. Taking these actions will increase stability and resources in these communities, better aligning our social investment with our national values and constitutional ideals.

“Together with our partners and allies,” says ACLU Executive Director Anthony D. Romero, “the ACLU will help reimagine an effective and far more limited role for police in our country; implement changes that will save lives, advance civil rights, and safeguard liberties; and create the conditions to start repairing decades of harm and violence inflicted on over-policed communities of color.” —JAY A. FERNANDEZ

Contact Congress

Contact your legislators today and demand they end federal programs that arm local police with military-grade weapons and put excessive numbers of police on the streets and in schools.

Visit aclu.org/divestpolice to take action.

Litigation

Alabama is one of nine states where the ACLU and partners have filed lawsuits challenging COVID-19-related emergency orders to ban abortion. Others include Arkansas, Iowa, Ohio, Oklahoma, Louisiana, Tennessee, Texas, and West Virginia.

Logistical Roadblock

The average one-way driving distance to a clinic would increase by 315 percent if Alabama shut down abortion clinics. That means 65 percent of Alabamians would have to travel 100-plus miles for out-of-state services.

Waiting Time

A patient is required to wait a minimum of 48 hours before abortion services may be provided. The patient must receive state-directed counseling, including information designed to discourage having an abortion.

Limited Access

The state had 953,000 women* of reproductive age in 2018. Alabama restricts access to abortion for those younger than 18 without parental consent. Telemedicine to administer medication abortion is prohibited in Alabama.

Unemployment

There were 66,432 initial unemployment claims filed between April 12 and April 18, 2020, to the Alabama Department of Labor. Out of those claims, 59,527 were related to the coronavirus.

No Coverage

The state's hostile abortion policy restricts Medicaid and private insurance coverage for abortion, except in extremely limited circumstances.

How Alabama Is Blocking Access to Abortion

Long before the pandemic, the state of Alabama has been intent on trying to prevent people from getting abortion care. The ACLU has challenged seven laws in seven years aimed at shutting down clinics in the state, and just last year, successfully challenged Alabama's near-total abortion ban. Now, as families struggle to make ends meet and remain healthy during the COVID-19 crisis, Alabama, like other states, is at it again—attempting to restrict access to abortion. That's why the ACLU's fight for reproductive freedom is as essential and urgent as ever.

BY FAYE CHIU | ILLUSTRATION BY NISHAT AKHTAR

Primary source: Guttmacher Institute

*The referenced source uses the term *women* and does not account for trans or non-binary individuals who can become pregnant.



Your Rights, Your Vote

This November, whether you choose to vote by mail or at your polling place, you have rights when making your voice heard. Here are a few things to keep in mind if you decide to cast your ballot in person:

- If the polls close while you're in line, stay in line. You can still vote.
- Under federal law, you have the right to receive help at the polls if you're a voter with a disability or have difficulty reading or writing in English.
- If an election worker can't find your name on the list of registered voters, you're still entitled to a provisional ballot.
- If you experience voter intimidation (a federal crime), such as aggressive questioning about your citizenship status, criminal record, or voting record, you can report it to the nonpartisan Election Protection Hotline at 866-OUR-VOTE.

To learn more about your rights while traveling, working, protesting, and more, visit aclu.org/kyr.

ILLUSTRATION BY LAN TRUONG

Unconscionably Detained

An ACLU report shows how the immigrant detention system is deteriorating—even as it expands—in a crisis.

In late April, as the COVID-19 pandemic raged past 1 million confirmed cases in the U.S., the ACLU, Human Rights Watch, and the National Immigrant Justice Center released a report titled *Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration*. Based on government documents, firsthand accounts, and visits to facilities in Arizona, Louisiana, and Mississippi, the report paints a harrowing picture of how conditions for immigrants have deteriorated in a for-profit system that has grown substantially in recent years.

The Trump administration has opened more than 40 new detention centers, many of them former prisons situated in remote locations and operated by private companies. With due process obstacles and diminished access to attorneys, immigrants and asylum seekers are often doomed to long-term detention. Inhumane conditions, including unavailable medications, delayed medical care, mistreatment, and abuse, are widespread.

The report makes a series of urgent recommendations, beginning with a dramatic change in operating procedures and the immediate reduction of the detained population by releasing people most at risk of contracting the coronavirus.

Since March, the ACLU has filed more than 50 lawsuits and petitions to address the crisis, leading to the release of 400 clients. But with prisons, jails, and detention centers becoming vectors of infection—three of the facilities studied for the report already had confirmed cases of the virus—the untenable situation is reaching tragic, unconscionable dimensions.

“Even before this crisis, detained people were unable to receive basic care and were held in a culture of fear,” says report co-author Eunice Cho, senior staff attorney for the ACLU’s National Prison Project. “In a global pandemic, these conditions become especially deadly. This is not the kind of country we want to be.” —J.A.F.



ILLUSTRATION BY LO COLE; PHOTOGRAPH BY LAUREL GOLIO



Q:

Is it possible to implement nationwide voting by mail in time for the 2020 election?

Absolutely. The good news is that more than two-thirds of states already permit “no excuse” absentee voting, and a few automatically mail ballots to every voter. The ACLU is calling on election officials to distribute absentee ballots, to permit early absentee ballot processing, and to eliminate unnecessary restrictions on requesting ballots. Read more about how you can help these efforts through information sharing on page 13.

Is voter suppression still happening during a pandemic?

Unfortunately, yes. Suppression efforts range from the superficially neutral, like voter ID laws and cuts to early voting, to mass purges of voter rolls and systemic disenfranchisement. People of color, students, the elderly, and people with disabilities are especially susceptible to these cynical efforts and sometimes directly targeted. In Montana, the ACLU is fighting a law that makes voting nearly impossible for Native Americans by effectively ending organized ballot collection in rural tribal communities. And in New Hampshire, we’re challenging a law that requires registered voters to have an in-state driver’s license, which penalizes college students,

more than a third of whom use an out-of-state ID to vote.

What can you do? Join efforts in your state to fight voter suppression! Voters in Florida, Michigan, and Nevada helped pass sweeping reforms to expand access to the ballot in their states. Those successes began with grassroots lobbying efforts and petitions, of which anyone can take part.

How much will COVID-19 affect the 2020 census?

Even with a first-ever online census, the pandemic may depress response rates, particularly among immigrant communities and people of color. We must ensure that communities in need aren’t unfairly deprived of resources and representation, including billions of dollars for local schools, hospitals, libraries, businesses, and aid programs.

Last year, the ACLU defeated the Trump administration’s attempt to add a citizenship question to the census. Now we’re working to promote an accurate count—through text and phone banking, Zoom training for community-based organizations, and multilingual messaging. You can help, too: Fill out your census before the extended deadline on October 31. ■

Please send your questions to ACLUMagazine@aclu.org.

**Voting
by mail
isn't
partisan.**

It's common sense in a pandemic.

The coronavirus threatens to disrupt the presidential election this fall. Potential limits on in-person voting mean broad access to voting by mail is more essential than ever. The ACLU is expanding that access in dozens of states—and ensuring that voters who choose to vote by mail know how and when to cast their ballots.

by **MARISA TAYLOR KARAS**



WHEN COVID-19 grew to epidemic proportions in the U.S. this spring, during the early weeks of primary season, the act of voting absentee or by mail was suddenly thrust into the spotlight. States instituted shutdowns, while public health officials cautioned against group gatherings to avoid spreading the virus. Because of the crisis, now at risk was one of the public's most important contributions to democracy: visiting a neighborhood polling site to make their voice heard—and vote.

Soon, states such as Iowa, Michigan, and Pennsylvania actively encouraged residents to avoid polling places and vote absentee in their primary elections, while Idaho, Kansas, and Nevada decided to hold their primaries entirely by mail. Multiple states rescheduled their primaries for later in the summer, and in some states, there were so many absentee ballot requests that it overwhelmed election officials, foreshadowing what could occur in November.

In Wisconsin, which opted to hold its primary election on April 7 as originally scheduled, nearly 1.3 million people requested absentee ballots from the state election commission, a fivefold increase from 250,000 in 2016. The U.S. Supreme Court struck down a federal court order that would have counted the absentee ballots that were postmarked up to a week past Election Day. In her dissent, Justice Ruth Bader Ginsburg wrote that “tens of thousands of absentee voters, unlikely to receive their ballots in time to cast them, will be left quite literally without a vote.”

To add to the turmoil, many polling places were closed—in Milwaukee alone, only five out of 180 polling places remained open for in-person voting, with hours-long lines for voters—but even so, more than 50 voters and poll workers tested positive for the coronavirus in the two weeks after the election.

While not everyone will avoid the polls in November, an April survey conducted by Pew Research showed that 70 percent of Americans supported allowing any voter to cast mail-in ballots, with 67 percent saying it was likely that the coronavirus outbreak will “significantly disrupt” voting.

“One way or another, more people are going to vote by mail than ever before in American history because of the pandemic,” says Dale Ho, director of the ACLU’s Voting Rights Project. “So the question isn’t, ‘Are we going to have more voting by mail or

not?’ The question is, ‘Are we going to be prepared for it, are we going to make it as simple as possible so that people are not faced with the choice of risking their health and exercising the right to vote?’”

Fortunately, 34 U.S. states and the District of Columbia already allow anyone to cast a vote by mail or absentee. The 16 remaining states all call for a valid “excuse,” such as illness or disability, in order to do so. Many states have suspended the excuse requirement during the pandemic or expanded their definition of illness or disability to include COVID-19, but others have not. In June, the ACLU secured a victory in Tennessee, which previously required an excuse from a narrow list of criteria to vote absentee. The court ruling ordered the state to make absentee voting available to all eligible voters in 2020.

“The more people who are able to use vote-by-mail, the safer it will be for individuals who either need to or want to go vote in person,” says Thomas Buser-Clancy, a senior staff attorney with the ACLU of Texas.

For instance, voters with disabilities or limited English proficiency may need to go to the polls for assistance with their ballot, or because absentee materials are sometimes sent out only in English. And people of color, who have historically experienced voter suppression, may prefer to vote in person.

“We’re eliminating unnecessary requirements,” says Ho. “About a dozen states have absentee requirements, like requiring a witness to watch you fill out your ballot and sign your ballot envelope for extra verification. Some states require a notary or two witnesses. Obviously with social distancing protocols, that doesn’t make a whole lot of sense.” (See sidebar, “Witness Requirement.”)

And then there is the postage issue. “Most states say that you’re required to put postage on your mail-in ballot materials,” Ho notes. “We think that needs to be fixed. If that’s the safe way to vote right now, no one should have to pay for it.” (See “Poll Tax.”)

“Many states are well prepared to administer an election during COVID,” says Bobby Hoffman, deputy director of campaigns for the ACLU’s Democracy Division. “But for some, the culture of voting is going to change. And for those places, the ACLU is making sure they’re as successful as possible to allow more people to cast a ballot by mail.”

The ACLU’s affiliates are working with election administrators at the state and local levels to provide universal distribution of ballots—or absentee



“One way or another, more people are going to vote by mail than ever before in American history.”

Let People Vote

Public education is an important part of ensuring that everyone can exercise their right to vote by mail this November. To support voters, the ACLU has created an online tool on how to vote by mail.

FIRST LAUNCHED during primary season, the tool is a state-by-state breakdown that includes:

- Information about who is eligible to vote absentee
- Deadlines for requesting an absentee ballot
- How to apply for an absentee ballot
- Final dates to return a mailed ballot

“MANY PEOPLE have never voted by mail, and they’re turning to the ACLU,” says Molly McGrath, voting rights attorney at the ACLU. “Voter-to-voter [information sharing] is going to be incredibly important in the fall.”

Learn how you can help others secure and submit absentee ballots at [aclu.org/votingbymail](https://www.aclu.org/votingbymail).

request forms—to all registered voters. Recent advocacy successes in Michigan and California mean millions of voters will automatically receive absentee ballot request forms or absentee ballots this fall.

“Ideally, we would like administrators to mail out ballots to every registered voter,” says Hoffman. “We’ve been pushing on election administrators to make changes so that they can process ballots faster—and most importantly—educate the public about the option to vote by mail.” (See “Let People Vote.”)

WHILE THE ACLU is fighting for broader access to voting by mail in 2020, absentee voting is far from new. The first absentee ballots were cast in the U.S. Civil War era, during the 1864 presidential election between incumbent President Abraham Lincoln and General George McClellan. “Lincoln wanted to make sure that soldiers would be able to vote for Abraham Lincoln,” says Paul Gronke, a political science professor at Reed College and founder of the nonpartisan Early Voting Information Center.

tee or by mail in the 2016 presidential election, an increase from 12.1 percent in 2004, according to the U.S. Election Assistance Commission.

While politicians on both sides of the aisle have fought bitterly about what the expansion of voting by mail will mean for base voters, neither Democrats nor Republicans appear to benefit more from increased access to vote-by-mail.

“Claims that vote-by-mail fundamentally advantages one party over the other appear overblown,” according to a May 2020 study by Stanford University’s Democracy and Polarization Lab. “In normal times... vote-by-mail modestly increases participation while not advantaging either party.”

The experts agree that fraud happens only rarely with vote-by-mail—just 491 alleged incidents of fraud from absentee ballots were documented from 2000 to 2012 by the investigative database News21, out of more than 1 billion votes cast.

Of the five states that are primarily vote-by-mail, “they haven’t reported a higher instance of voter fraud than other places and have been able to conduct elections in a secure and safe manner,” says Michael McDonald, a political science professor at

the University of Florida and director of the United States Elections Project.

Whether or not more states open access to voting by mail, all signs point toward a massive increase in absentee ballot requests for the November election. States such as Connecticut, Georgia, and New York are preemptively mailing absentee ballot request forms to all registered voters in advance.

But in other states, voters will have to request absentee ballots themselves, an added step that can disenfranchise those who don’t have access to printers, the internet, or stamps. Add in a bottlenecked capacity to mail out a vast amount of absentee ballots on time and problems getting them postmarked by Election Day, as occurred in Wisconsin, and the perfect storm of election dysfunction could arise.

“Some of the deadlines are difficult to meet, especially if you’re dealing with a huge influx of absentee ballots where they don’t typically get a lot,” says Sophia Lin Lakin, deputy director of the ACLU’s Voting Rights Project. “All of a sudden you have many more people asking for absentee ballots, so there are delays in processing and burdens on the postal service to get this unprecedented number of ballots.”

Witness Requirement

In Virginia, a witness is required to sign each voter’s absentee ballot envelope, an impossibility for the segment of the population living alone in the era of social distancing.

In April, the ACLU of Virginia and the League of Women Voters of Virginia sued the Virginia State Board of Elections and individual members of the board, challenging “the extreme burden the witness requirement places on voters in the current environment.”

Plaintiff Erikka Goff, a resident of Scottsville, Virginia, who lives alone, feared that asking a witness to sign her absentee ballot envelope could jeopardize her health, especially because some of her neighbors exhibited symp-

toms of the virus in March.

“I would have to violate social distancing practices and expose myself to another person outside my home in order to vote or have my ballot counted,” Goff says.

As a result of the ACLU’s case, Virginia agreed to waive the witness signature requirement for the June 23 primary election, but at press time, hadn’t done so for the national election in November.

The ACLU is also pursuing litigation in Minnesota and North Carolina, which both require witness signatures, and secured a victory blocking a witness signature requirement on absentee ballots for South Carolina’s primary this past June.

The printing, tracking, and processing of so many more absentee ballots will require vendors to create them and staff to handle machinery and technology. And that will require a huge cash infusion to make it all happen.

The \$2 trillion stimulus bill approved by Congress in March allocated \$400 million to the states for election administration—a mere fraction of the \$4 billion that the Brennan Center for Justice at New York University Law School projected would be necessary to account for both the widespread use of mail-in ballots and for increased protection for in-person voters and poll workers.

The ACLU is “doing advocacy on the federal level to try to make sure that subsequent rounds of legislation include funds for the states and for the postal service,” says Ho. “You can’t vote by mail if you don’t have a functioning postal service.”

Another potential issue that could disenfranchise voters has to do with the higher rate of mistakes made on mail-in and absentee ballots, likely because voters can’t ask poll workers for assistance. In the 2016 presidential election, 91.8 percent of mail-in ballots were counted and 1.4 percent were rejected, often due to mistakes such as a missing signature, the ballot not being received in time, or the lack of a matching signature to the one on file. A report from the ACLU of Florida found that the signature-match problem happens disproportionately to young voters and voters of color—and what’s more, many states won’t notify voters of signature issues, meaning they won’t have a chance to correct their ballots in order for their votes to be counted.

“This is why [we’re asking] Congress to act, to help prepare for this new way of doing elections during the pandemic that’s going to be a reality,” says Lakin. “We believe strongly that there is time to do it and that states can do this well and will be able to carry it out, but they need resources.”

It’s also why it’s important to protect in-person voting, while still preparing for the inevitable influx in absentee. “There’s a whole range of people who are going to need to have some kind of safe, in-person [voting] option,” says Ho, “and the key is a surge in federal funding.”

Securing people’s right to vote by mail isn’t a partisan issue—it’s simply common sense during a public health crisis. People shouldn’t be forced to choose between their well-being and their vote. “It’s our democracy,” Ho says. “It’s the most vital part of civic society. It’s the foundation on which everything else gets filled.” ■

Neither Democrats nor Republicans appear to benefit more from increased access.

Some 19 of the 25 Union states allowed an estimated 230,000 soldiers fighting in the war to cast absentee ballots from the field.

After that, absentee voting laws were passed by some states in the late 1800s for people who were seriously ill or out of the country. For members of the military who were stationed abroad, the issue re-emerged during World War I and was codified into law during World War II. Then the landscape was quiet until 1978, when California became the first state to pass a no-excuse absentee ballot law, allowing anyone to apply to vote absentee. “It fundamentally transformed the election system in the United States,” Gronke explains.

In 2000, Oregon became the first state to adopt entirely vote-by-mail elections after 69 percent of citizens approved a ballot measure in 1998. Washington and Colorado followed, with Utah and Hawaii more recently making the switch for a total of five states that conduct elections primarily by mail.

Amid these legislative changes, the U.S. population has been gradually trending toward voting absentee and away from voting in person. More than 23 percent of voters cast their ballots either absen-

Poll Tax

In advance of the state’s primary election this spring, Georgia Secretary of State Brad Raffensperger announced that Georgia would mail absentee ballot request forms to all active registered voters in order to encourage them to stay home—but that they’d have to use their own stamps to send their completed ballots.

In April, the ACLU and voting rights group Black Voters Matter filed a federal lawsuit against the state, since the postage requirement amounted to a poll tax. “A poll tax remains unconstitutional even if there are free alternatives to voting, such as voting in person,” the suit states.

While many people can afford a stamp, going to the

post office is unsafe during a pandemic, and the postage requirement disproportionately affects low-income communities that lack transportation or internet access.

“It creates a burden, and it’s not to say that it’s an insurmountable burden for 95 percent of voters,” says Cliff Albright, co-founder of Black Voters Matter. “But what percentage of it being insurmountable are we okay with? 10 percent? 5 percent? Communities that face the biggest challenges with this [burden] also happen to be the communities that are being hardest hit by the coronavirus. There is some percentage of our population this is going to impact to the point of not being able to cast a ballot.”

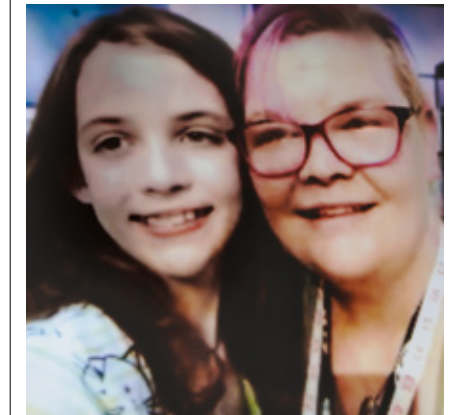
“I need to do what I have to do to get him the medical treatment he needs.”

remote portraits by **JUSTIN J WEE**



State lawmakers introduced a near-record number of anti-transgender bills this year, including legislation that criminalizes children’s health care. The kids—and their parents—are fighting back.

[Sam DeVisser, a 14-year-old trans boy, lives with his family in Meridian, Idaho.](#)



Cameron Wasco, pictured with her mother (above), spoke at a rally for trans rights in South Dakota earlier this year.

More than anything else, Cameron Wasco wants to be a NASCAR driver.

A 12-year-old transgender girl, Cameron has gone through several favorite drivers but the first to catch her eye was the now-retired Danica Patrick, the first woman to win a major race in a field dominated by men.

“I was just born loving NASCAR,” said Cameron over a Zoom call with her mom, Krista. “I don’t want to end up in trucks or the Xfinity or any other thing. I want to be in the Stock Car Cup.”

When Cameron was younger, she and her mom would sit on a footbridge over a highway near their Sioux Falls, South Dakota, home and watch the traffic go by. “We could sit right in the middle, and she could see the cars coming at us and going under us,” said Krista. “Before she could talk, I knew she was going to like NASCAR because she liked watching the cars zoom under us.”

Cameron is autistic and was a late talker, not speaking her first words until age 3. She remembers being in preschool, when the teacher divided the class

between boys and girls, and she hesitated, lingering in the middle of the room. “I was born thinking I was a boy,” she said. When she was a little older than 7, she asked her mom for a dress for the first time. “I wanted a twirly dress, and one year later she made one for me. She knows that I am trans, and here I am today.”

Along with an estimated 150,000 transgender youth between the ages of 13 and 17 in the United States, Cameron now finds herself in the middle of a nationwide culture war over the identities of trans adolescents. Late last year, in response to a story about a 7-year-old Texas trans girl, Luna Younger, who was caught in the middle of a bitter custody battle, anti-LGBTQ politicians began to openly express their displeasure with the existence of trans children. Despite Luna being years away from any potential medical treatment and never meeting her in person, politicians in Texas voiced their concern that Luna was too young to know if she’s transgender.

In response, state lawmakers across the country started introducing legislation that would ban or even criminalize transition care for minors, including puberty blockers for prepubertal youth or gender-affirming hormones for older teens. Some bills even criminalized mental health care and forced school officials to disclose a young person’s trans or questioning identity to their parents.

“There’s really no way that [these bills] could have passed and not immediately cut off care to kids who needed care in the future, and to young people who were receiving care as part of ongoing treatment—not just blockers, [but] affirming hormones as well,” says Chase Strangio, deputy director for transgender justice at the ACLU.

The first state to advance such legislation was Cameron’s home state of South Dakota. Earlier this year, Rep. Fred Deutsch introduced HB 1057, which sought to criminalize doctors and medical provid-

ers for administering gender-affirming care for trans minors. The bill was personal for Cameron. If HB 1057 passed, Krista would have to drive 250 miles just to provide her daughter with basic transition care.

“She has her routine, she knows her doctor,” said Krista. “She would have to see an unfamiliar doctor. It’s hard enough [with] the doctor that you already know.”

Even as LGBTQ equality has progressed nationally, including the U.S. Supreme Court’s June ruling in an ACLU case that it is against the law to fire people for being transgender, the state has become a bellwether for anti-trans legislation. In 2016, South Dakota passed a bill, ultimately vetoed, that would have required trans students to use the school restroom and locker room facilities corresponding with their birth certificate.

In 2019, South Dakota legislators introduced four different bills targeting trans people, but none passed. The repeated legislative fights spurred the small but vocal trans community in South Dakota, and the state’s targeting of trans children brought parents and their networks into the fight fully for the first time. “By going after trans kids, it has galvanized many parents who before were either afraid to speak out or afraid to be public,” says Libby Skarin, campaigns director for the ACLU of South Dakota. “Here in South Dakota, if you’re on the front page of the newspaper, everybody knows about it, and they know that you go to this church or you go to this school, and they know who your kid is. It’s personal in a way that I think prevents some people from wanting to speak publicly. It’s the fact that we’re seeing these attacks year after year that parents are starting to get to a point where they’re like, ‘We’re sick of this.’”

A similar bill targeting gender-affirming care for trans youth was also introduced in Idaho this year, which became a worry for Elizabeth Allred and her son, Sam DeVisser. Sam is a 14-year-old trans boy living with his family in Meridian, Idaho. He’s been on hormone blockers for a few years and recently started testosterone. The legislation would block Sam from receiving the care he needs and has relied on for years.

Despite having been born and raised in the state and having an Idaho-based business, Elizabeth said that if the trans care ban passed, she’d have no choice but to uproot her family and move to a more affirming state. “We won’t be able to live here,” she said. “My son has already begun his transition. ... I need to do what I have to do to be able to get him the medical treatment that he needs.”

Moving is just not something she or her family wants. “My businesses are rooted here in Idaho,” Elizabeth said. “I’d have to start all over. We’d have to



Wyatt Williams (above) wrote an eight-page letter to his family when he was about 10, explaining how he needed to live according to his gender identity. His mother, Susan, founded the Transformation Project, a nonprofit storytelling project for trans youth.

The Sioux Falls-based Williams family were outspoken advocates against HB 1057, which would have criminalized care for trans minors (family Polaroids, left, by Susan and Wyatt Williams).

start at a new school. My older daughter is 18. She’s not ready to leave. She would have to come with us.”

It’s a calculation that many families with trans kids in conservative states are facing as more and more states look to impose control over their medical decisions. With so much intrusion, many young people themselves are beginning to speak out about their lives and rights, even to hostile state legislators.

Increasingly, having trans teens and young people speak directly with legislators has proven to be one of the most successful lobbying methods against bills like HB 1057. That is “the most powerful and effective lobbying that we have,” Strangio says. “I think it’s finding that balance between allowing parents and doctors to speak for trans youth versus figuring out ways to center the voices of the trans young people themselves.”

Another family in the middle of the South Dakota fight is Susan Williams—founder and executive director of the Transformation Project, a South Dakota-based nonprofit dedicated to lifting up the stories of transgender kids—and her 13-year-old trans son Wyatt, who both live in Sioux Falls.

Wyatt has always been different, according to his mom, rejecting any gender roles associated with being female. “At the time, he would [talk about] when he grew up, and said things like, ‘I’m gonna be a policeman,’” said Susan. “And I would say, ‘Oh, that’s great. You’ll be a policewoman.’ And he would be like, ‘No, I’d be a man.’”

According to Susan, Wyatt started to suffer from depression and would have angry outbursts starting in about third grade. And then one day he came home and burst into tears. “He came home from school and said, ‘I can’t do this anymore. I can’t be a girl anymore.’ And we [were] just bawling,” she said.

At that point, Susan and her husband brought Wyatt to therapy, where he was diagnosed with gender dysphoria, a medical condition where a person develops clinically significant distress because the person’s gender identity doesn’t match their sex assigned at birth.

But even after this diagnosis, the family resisted a social transition for their son. “I had never heard the words *gender dysphoria* before,” she said. “If you would’ve asked me what the word *transgender* meant, I wouldn’t have been able to give you a good answer. I had never knowingly met a trans person in my life.”

About a year later, Wyatt wrote an eight-page letter to his mom explaining who he is and how he needed to live. After reading it, the family decided to let him socially transition and go to school as Wyatt.

Susan recalled that during recess on Wyatt’s first day at school, the teacher couldn’t find him in one of

his usual spots off to the side, where he would often sit or play by himself, away from the other kids. So the teacher went looking for him, asking the other teachers on the playground if they had seen Wyatt. They couldn't find him anywhere.

Eventually, the teacher made her way over to the largest group of boys playing in a field, and there, right in the middle of everyone, was Wyatt, with a huge smile on his face. Later that day, one of his schoolmates asked Susan if they could have a playdate.

Susan remembered the day she told Wyatt's sister, who is three years younger than him, about his transition and how he's always felt like he's had the brain and soul of a boy.

The daughter's response was, "duh," before turning right back to the game she had been playing.

But even with a relatively smooth transition, the South Dakota state legislature made it clear that children like Wyatt were doing it wrong, that they probably shouldn't exist in the first place—or they should at least wait until adulthood to make "permanent decisions." When HB 1057 was first introduced, it had more than 40 co-sponsors in the House, and it was clear to Susan that Deutsch had been building support for the bill months ahead of time.

"He had been doing his background work since the summer," said Susan. "He had been sending legislators their materials and talking with them about this bill he wanted to bring. We had definitely not been working on it as long."

Deutsch introduced the bill in the House on the first day of the session, Wednesday, January 15, and his committee, the House State Affairs, scheduled a hearing for that Friday. Nevertheless, the local trans community quickly sprung into action.

"We were of course freaked out—like we've got Wednesday and Thursday to get people to [the state capital], Pierre, which is in the middle of a rural state," said Susan. "From where I live, it's a three-and-a-half-hour drive."

A massive snowstorm hit the state Thursday evening, pushing the hearing to the following week and giving advocates more time to organize. Susan knew that as a parent of a trans kid on puberty blockers, she had to be there to testify.

Most of the bill's proponents testified via video chat from out of state, and most of the bill's opponents—doctors, parents, and young people—were from South Dakota. The bill passed out of committee and was passed in the full House by a 46-23 vote on January 29. The following Saturday, there was a statewide rally for trans rights with thousands of people, including the Wascos, turning out to protest for the rights of trans kids. Cameron spoke at her local rally in Sioux Falls.

"I remember my speech turned some people around," said Cameron.

"I felt scared," said Krista about her daughter speaking at the rally, before her daughter interrupted to ask why.

Krista turned toward her daughter. "I always feel scared when you're going to tell somebody that you're trans because [you] never know how people are going to react," Krista said.

"But it was a whole group of trans [people] protesting against that bill," replied Cameron.

"I know," said Krista. "I was scared, but I was also very, very proud."

In the meantime, trans adolescents descended upon the capitol in Pierre to lobby their lawmakers face-to-face. When HB 1057 reached the state Senate, it failed to advance out of committee. The bill in Idaho also failed to pass.

However, two other anti-trans bills, one banning trans girls from girls' interscholastic and women's intercollegiate sports, and another banning gender changes for trans people on birth certificates issued in Idaho, both passed and were signed into law on March 30.

The ACLU filed a lawsuit challenging the anti-trans sports bill on April 15, while the birth certificate bill was already subject to a previous federal ruling that the state must allow trans people to change their gender on key identity documents.

Skarin credits the lobbying work done by trans youth themselves for preventing passage of HB 1057. "Something that I think about a lot with South Dakota is that even though these bills have been defeated year after year, there is still a real burden that these bills place on trans youth and on their families," she says.

That may be the point of repeatedly introducing these bills—to make trans people aware that they aren't welcome in places like South Dakota and Idaho. The constant political debates about every minute detail of these children's lives alone can have a deleterious effect on the mental health of trans youth, who are much more likely to suffer from depression and anxiety than their peers who are not transgender.

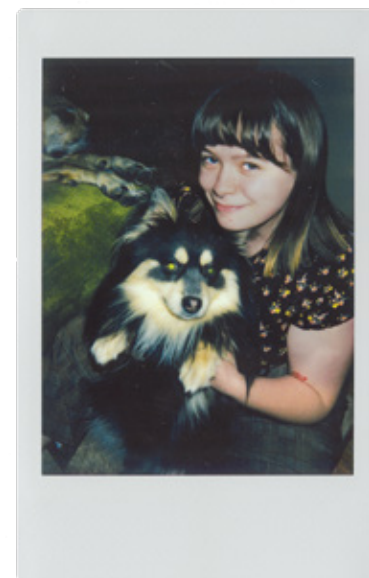
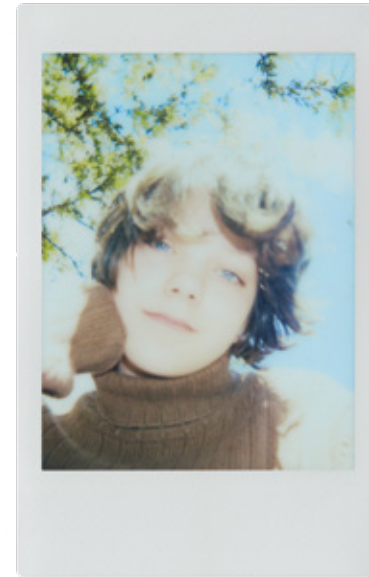
"I think it would be wrong to say that the bill was defeated and nobody got hurt, because people definitely got hurt," says Skarin. "Kids shouldn't have to be fighting for their rights and begging their elected officials to recognize their basic humanity, and that's exactly what they had to do this year. ... These kids are willing to stand up, and their families are willing to be public about how wrong these bills are. If the intent of these legislators in bringing these bills [was to make kids feel unwelcome], I think they have failed." ■



Legislation introduced in Idaho this year would prevent Sam DeVisser (right) from receiving the health care he needs (family Polaroids, far right, by Sam DeVisser).



Take Action
Urge your senators to pass the Equality Act (H.R. 5), which provides comprehensive, nationwide protections for LGBTQ people in health care, housing, and other areas of public life. Visit [aclu.org/equalityact](https://www.aclu.org/equalityact).



The U.S. bail system is a racist, profitable machine that preys on people of color. Now, in a pandemic, it's a driver of a public health crisis.



Criminal Conditions

by JAY A. FERNANDEZ

THE UNITED STATES

has many distinguishing traits, but its most damning distinction is that it imprisons the most people on Earth: 2.3 million, or nearly 25 percent of the world's incarcerated population. Environmental, judicial, and institutional factors feed this unconscionable bloat, filling jails and prisons with people who can't afford fines or bail while disproportionately punishing Black and Brown communities. Billions are spent to perpetuate a system corrupted by police violence and racism at all levels, which impacts who gets stopped and arrested, how they're treated and sentenced, and, in too many instances, whether they live or die. Plagued by overcrowding, abuse, and inadequate access to hygiene products and health care, mass incarceration is a daily assault on the dignity of those imprisoned.

Driving this national tragedy is an exploitative cash bail system that funnels hundreds of thousands of people into local jails. More than 70 percent of those incarcerated—about half a million people—are pretrial detainees who have not been convicted of any crime, and many are only there because they could not afford bail. It's a profitable, prejudiced machine that targets poor people and people of color, who are jailed at higher rates and charged higher bail amounts.

Through litigation, advocacy, and education, the ACLU has been fighting for substantive remedies to the race- and wealth-based inequities of our criminal legal system. The onset of COVID-19 and ongoing police violence against Black people have thrown these racial disparities into ever harsher relief, as the existing public health crisis has become a human rights disaster. Since February, the ACLU has accel-

erated the release of more than 35,000 people from prisons and jails to help stop the spread of COVID-19 and is calling on policy makers to reduce jail and prison populations even further to prevent thousands of fatalities.

Because the two key actions health officials recommend for halting the spread of the coronavirus—social distancing and good hygiene—are nearly impossible in jails and prisons, they have become hotbeds of illness. The infection rate inside jails and prisons is about 2.5 times higher than in the general population, and testing is extremely low. Where testing is being done more widely, contraction rates can run as high as 80 percent. By late April, eight of the top 10 outbreak clusters were in jails and prisons, including the Marion Correctional Institution, in Ohio, where 78 percent of people in prison and on staff were confirmed to have COVID-19.

"That is the canary in the coal mine," says Udi Ofer, ACLU deputy national political director and director of the ACLU's Justice Division. "We're going to see that all over the country. The responsible thing to do—and it's not about political opportunism, it's



about public health—is to get people out of jails and prisons right now before they die.”

Almost 40 percent of those incarcerated have at least one chronic health condition, while mass detention and extreme sentencing have created an aging prison population—the population over age 55 has tripled in the past 20 years to nearly 200,000. In jails, most people sleep in dormitory-style bunk beds and have to fight for soap in communal bathrooms, so spreading the infection is inevitable. The arrest and detainment of thousands of protesters in recent months has only increased the severity of the situation.

In late April, the ACLU released a model built in collaboration with epidemiologists and statisticians that determined that nearly 100,000 more COVID-19 deaths will occur in jails than the government estimates unless radical action is taken. In the United States, jails see approximately 10.7 million admissions a year—one every three seconds—with an average stay of 25 days. On any given day, 700,000 people are detained there, and turnover is high.

“With people cycling in and out of jail all day throughout the country, each person becomes a vector for the potential spread of the pandemic,” says Ofer. “You’re exposing that individual to incredible health risks, you’re exposing their families, and you’re

Here’s how it works: After an arrest, most people are required to pay an amount of money in order to maintain their freedom until they’ve fulfilled all court obligations. If the individual shows up to future court dates as required, the bail money is returned; if not, it may be forfeited. If someone can’t pay bail, they are detained until their required appearance. In many jurisdictions, judges have the discretion to lower or waive bail, trusting that the individual will return as expected, but this practice varies widely from state to state and in some counties is never used.

The private bail-bonds industry preys on these circumstances. If an arrested person can’t afford the court’s bail amount, they or their family can pay a bail-bonds company typically 10 percent to 15 percent of the bail fee in exchange for that company taking on the full obligation to the court. But this bond premium is nonrefundable, and often bail-bonds companies will charge interest on installment plans or hold assets as collateral, which ensures that the individual suffers financially even if the original charge is dismissed. The industry, which includes more than 25,000 bail-bonds companies and the handful of global insurance outfits that underwrite them, earns close to \$2 billion in profit annually.

Both court-assigned bail amounts and bail premiums are applied unevenly across race—studies have shown that Black and Latino men are on average assigned substantively higher amounts than white men for similar crimes—and those who cannot afford either land in jail. Trapped there, they are subject to a system that perpetuates negative outcomes: Defendants are four times more likely to be sentenced to prison if they

spend their pretrial time in jail; they are more likely to take guilty plea deals for lesser charges to obtain release, even if they are innocent; they suffer the psychological trauma of being cut off from family and friends for weeks, months, or even years; they are exposed to violence, abuse, and poor health conditions; and they risk losing homes, jobs, and custody of their children.

For many already living in poverty, they are presented with terrible choices. The cash bail system drives everyone down the economic ladder, which is why there is often bipartisan support for criminal law reform that decreases incarceration rates and the financial waste of maintaining them.

“No one should be in jail because of inability to afford cash bail.”

exposing the broader community. *No one* should be in jail because of inability to afford cash bail. That was true before COVID-19 and it’s even more true after COVID-19. Because that pretrial detention could essentially become a death sentence.”

The cash bail system is the fuel that keeps the engine of mass incarceration running in overdrive. Bail has a simple intent: It is collateral to guarantee an arrested person’s appearance at future hearings. But in practice, it targets the poor by encouraging invested parties to increase arrests and assign higher bail amounts, which drive up incarceration rates, underline racial inequities, and perpetuate poverty.

Because reforming, diminishing, or eliminating the cash bail system would have a dramatic impact on incarceration rates and make things more racially equitable, the ACLU has focused much of its litigation and advocacy there. One potential precedent-setting case involves the Nashville Community Bail Fund (NCBF), a nonprofit organization that pulls from a pool of donated money to pay bail on behalf of low-income people to secure their release. Local for-profit bail bondsmen lobbied Nashville judges to institute a rule that allows the court to extract money posted as cash bail to pay future fines and fees, which taxes money posted by anyone on another's behalf and depletes the NCBF's resources. The ACLU sued on behalf of the NCBF to establish that the purpose of bail is not to generate revenue for the government and that criminalizing poverty by garnishing cash bail is unconstitutional.

In March, the Nashville district court granted a preliminary injunction in favor of the NCBF, and a future favorable ruling may encourage other nonprofit bail-fund organizations to grow, easing the

says Andrea Woods, a staff attorney on the ACLU's Criminal Law Reform Project who is lead counsel in both the Nashville and Montana cases. "We're still litigating that case, but we've survived a lot of difficult stages, and no other case in the country has done that."

After studying bail determinations in all 67 Pennsylvania counties over a two-year period, the ACLU of Pennsylvania released a report in May that shows how cash bail is being imposed excessively and how its misuse disproportionately impacts communities of color. The affiliate has taken a multipronged approach to the problem: educating district judges, advocating alongside community partners such as the Philadelphia Community Bail Fund and the Youth Art & Self-Empowerment Project, and litigating on behalf of those incarcerated for their inability to afford cash bail. The ACLU of Pennsylvania filed a lawsuit last year that demands an end to illegal bail-setting practices in Philadelphia and includes recommendations made jointly with the DA's office and the public defenders' office for how to improve the city's bail-setting system. That case is pending before the Pennsylvania Supreme Court.

"Given the agreement from all of the stakeholders, we think it's likely that the Supreme Court would order those recommendations implemented," says Hayden Nelson-Major, Independence Foundation fellow at the ACLU of Pennsylvania. "We see that as potentially setting up a model for change that we can then bring to the other 66 counties."

"The ultimate goal is to end pretrial detention, to ensure that prior to someone having their day in court they never sit in a jail cell, for any reason," says Woods. "The [other] goal is to end wealth-based pretrial detention, which is what cash bail perpetuates. So we're trying to support the actors who are reducing harm and moving toward that world, and we're trying to fight bad actors tying us to the status quo to protect their bottom line."

Securing the release of large numbers of people is an essential first step, but how we treat those re-entering their communities is no less important, especially in terms of containing the spread of the virus. While the health crisis in jails and prisons is devastating, the economic damage to vulnerable communities is even more far-reaching. COVID-19 has further laid bare the injustice of a system that compounds the punishment of those already hit hardest.

"Cash bail has always been a matter of life and death for communities of color."

burden on friends and family members striving to pay bail for detained loved ones.

In another case, in Montana, the ACLU is suing on behalf of a Missoula family that was terrorized at home by six armed bounty hunters sent by a bail bondsman because the husband, who'd been arrested on a charge of driving with a suspended license, mistakenly went to the wrong courthouse on his assigned hearing date. The amount in dispute with the commercial bondsman was \$115. For the first time, the ACLU is suing all the players that thrive in the cash bail ecosystem—the bounty hunters, the bail bondsman, and the backing insurance company.

"The case has the potential to radically alter what accountability looks like for the for-profit bail industry, which makes millions of dollars off incarcerated people and their families, generates profits for large insurance companies that bear no risk, and subjects people to intrusive and often violent conditions,"

Advocating Decarceration

Good hygiene and social distancing are nearly impossible in jails, prisons, and detention centers, making them deadly vectors for the spread of COVID-19. To meet this urgency and protect vulnerable populations, the ACLU and local advocates have been pressuring state actors across the country, including governors, judges, prosecutors, and police, to reduce incarceration in two significant ways: by dramatically decreasing the number of arrests and ending cash bail practices.

BY THE END of May, ACLU advocacy efforts had helped result in more than 23 executive actions in 15 states and led to the release of more than 35,000 people from jails and prisons (or kept them from entering the system in the first place).

POLICE MAKE more than 10 million arrests a year, most of which lead to jail, even though only 5 percent are for offenses that the FBI categorizes as violent. Curtailing arrests and halting prosecutorial practices of requesting cash bail would cause an immediate drop in jail populations by hundreds of thousands of people.

TO SUPPORT your state's efforts toward rapid decarceration and an end to cash bail practices that funnel tens of thousands of people into an unjust system, volunteer for the ACLU's Smart Justice Campaign.

Visit aclu.org/smartjustice.

In April, the ACLU released a report, *Reentry in the COVID-19 Era*, that addresses the multitude of problems associated with formerly incarcerated people returning to mostly Black and Brown communities that are highly susceptible to the spread of the virus, because of inequities in health care systems. These communities are made up of essential workers with inadequate access to testing and an inability to work remotely. And with unemployment skyrocketing as a result of the economic downturn, even fewer will be able to afford bail or secure solid income, which threatens to swell jail populations anew.

"Detention of any length has profound impacts on people's families and their ability to pick up when they're released, and trying to do that in the context of massive unemployment is impossible, especially for those communities that were already struggling to access the resources and opportunities they deserve," says Nelson-Major.

Together, the recent surge of protests in support of racial justice and the persistent advance of the pandemic have accelerated the movements for bail reform and decarceration. Pre-coronavirus, incarceration rates in the United States had already fallen close to 15 percent over the last several years, but recent shifts in prosecutorial practices, cash bail policies, and policing procedures have led to sharp reductions in jail populations (see sidebar). In Colorado, where in 2019 the ACLU pushed through an end to cash bail for low-level offenses, the county jail population has dropped 42 percent since COVID-19, the equivalent of 5,600 fewer people. Kentucky has seen a 28 percent reduction, or about 3,200 people. Both Los Angeles and San Francisco have seen substantive drops as well.

"In some ways, the pandemic demonstrates to stakeholders that not only is decarceration possible, it's actually safer," says Nelson-Major. "And that it's not only possible, but possible quickly. The pandemic has brought some moral clarity to just how important decarceration is and how the misuse of cash bail has always been a matter of life and death for poor people and communities of color."

"What we're working for is to make sure that this is a permanent change in the way Americans view the problem of mass incarceration," says Ofer. "In many ways, this is bringing renewed attention to the [problem] and to the impact it has on people's lives, their families, and communities. So, if we do our job right, two to three years from now, everyone will look back at the ferocity of this moment as the tipping point in the fight to end mass incarceration in America." ■



VOICES



Newly spray-painted graphics designed by Shepard Fairey promote ACLU voting rights messaging at Art Basel in Miami Beach.

ART BASEL

The Art of Democracy

Shepard Fairey teams up with the ACLU and Levi's to get out the vote.

If you know the 2008 Obama “Hope” poster, you know artist and activist Shepard Fairey. He created that iconic image—as well as a poster of Lady Liberty for the ACLU’s 90th anniversary in 2010. Now he’s launched a partnership with Levi’s to mobilize voters during this critical election year. At the Art Basel art fair in Miami Beach last December, Fairey and Levi’s kicked off their collaboration with an event to benefit the ACLU. Guests made voting rights-themed posters using stencils of Fairey’s graphics, boosting awareness of the ACLU’s fight to ensure access to the ballot for all. —TOM VELLNER



Behind the Battles

A new documentary follows ACLU attorneys as they fight on the front lines.

How far would—and could—you go for a cause? This is the question behind *The Fight*, a new documentary showcasing four pivotal ACLU cases during the Trump administration. Directed by Elyse Steinberg, Josh Kriegman, and Eli Despres (the team behind 2016's acclaimed *Weiner*), the film is a timeline of constitutional crisis. At the heart of *The Fight* are its tireless protagonists: Lee Gelernt, deputy director of the ACLU's Immigrants' Rights Project, challenging the administration's family separation policy; Brigitte Amiri, deputy director of the ACLU's Reproductive Freedom Project, litigating the Jane Doe case against a ban on abortion for unaccompanied immigrant minors; attorneys Joshua Block and Chase Strangio battling the transgender military ban; and Dale Ho, director of the ACLU's Voting Rights Project, blocking the proposed inclusion of a citizenship question on the 2020 census. The documentary, which debuted at this year's Sundance Film Festival, offers behind-the-scenes insights into how civil liberties battles are fought and won, and illuminates the relentless, exhaustive work of litigation—its long nights and abundance of hope. —LAURA FEINSTEIN

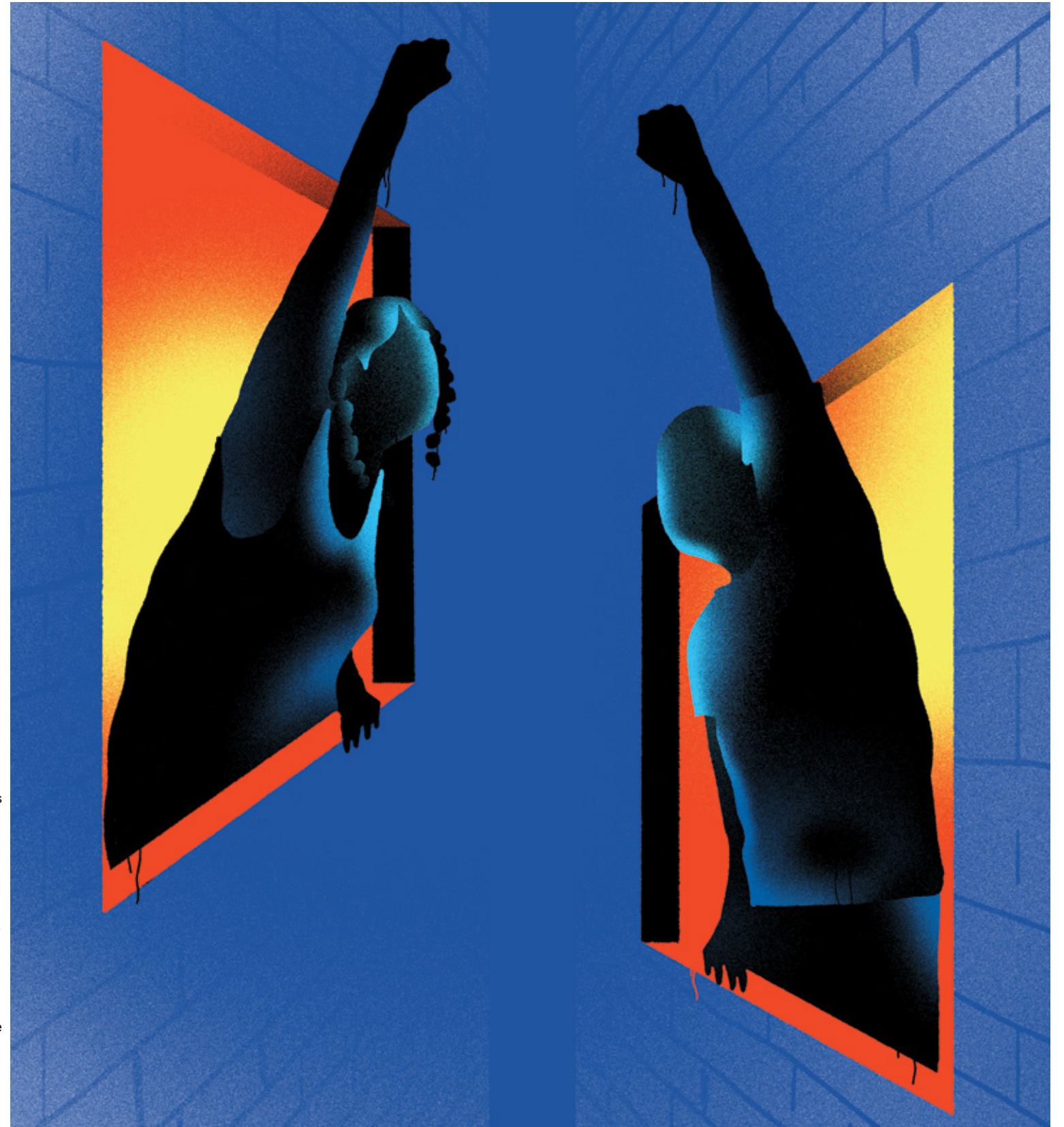
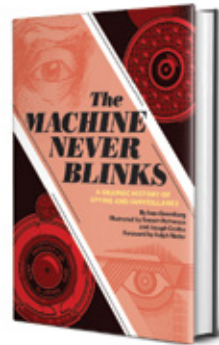
Dale Ho, director of the ACLU's Voting Rights Project, pauses outside the Supreme Court in *The Fight*, which features his path to blocking the 2020 census citizenship question.

Surveillance Society

In *The Machine Never Blinks: A Graphic History of Spying and Surveillance*, writer Ivan Greenberg and illustrators Everett Patterson and Joseph Canlas deliver a raging primer on how the information age became twisted into the surveillance society. Their work of comics journalism details how governmental authorities and corporations abuse the security apparatus, facial recognition software, data harvesting, biometrics, and other surveillance tech in ways that suppress dissent and threaten our privacy, civil liberties, and sanity—without any real oversight. But, the authors stress, we the people have the power to resist. As Ralph Nader says in his foreword, "Our information can be either the currency of democracy or the profitable inventory for corporate coercion and government oppression. We must be stingy in what and how we give it away." —JAY A. FERNANDEZ

Get the ACLU Newsletter
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What does activism look like today? As the pandemic shines a harsh spotlight on widespread institutional failures and systemic racism, the public is answering the call for collective action and responsibility in new ways. Artist **Daniel Zender** explores how activism can take many forms—and serve as an energetic promise for a changed and fair future.

Breaking Barriers on Broadway

Ali Stroker is making history and advocating for youth with disabilities.

NAME: Ali Stroker
LOCATION: New York
FOCUS: Disability Rights
ACTIVIST: Since 2011

Ali Stroker broke barriers when she won a Tony Award for her role as Ado Annie in *Oklahoma* in 2019—making her the first Broadway star who uses a wheelchair to win a Tony.

Stroker didn't think of herself as a trailblazer when she started

her acting career at NYU. "When I set out to do this, I didn't know that I was going to be the first—I just wanted to do it," she says. Even before her Tony win, Stroker made history in 2015 as the first actor who uses a wheelchair to appear on a Broadway stage, when she starred in *Spring Awakening*.

Now, she believes it's past due for people with disabilities to be represented authentically in

the arts. On advocating for others, she says, "I was raised on the idea that if you are given a certain amount of help, it's important to give back, and I have a lot to give." Stroker lends her voice to young people through Be More Heroic, an anti-bullying initiative, and speaks with fans every day to remind them that they have the power to overcome obstacles and that "having a limitation can be an opportunity." She's an ACLU supporter, too.

"I am so proud of and grateful for the work the ACLU does to protect people's civil liberties—my civil liberties."

Though Stroker has achieved enormous success, she notes how difficult it's been finding patience while trying to prove herself as an actor with a disability. "But it's so powerful to use the skills you've had to develop being a disabled person in the world, and to use those in your work," Stroker explains. "Part of this is also finding your team and finding the people who, when you're around them and talk about your ideas, make you feel good. You can't do this alone." —ELLY BELLE

Ali Stroker takes in the sunlight in Manhattan, where she's made her mark on Broadway.

Become an Activist

Sign up to be a People Power volunteer and dive into grassroots action by making calls, sending texts, or translating materials into Spanish.

Join a volunteer team at peoplepower.org/volunteer.



DeRay Mckesson is at the center of an important ACLU case that threatens the right to protest.

After George Floyd was killed by a police officer in Minneapolis on May 25, protests erupted across the country demanding justice for Floyd and the countless Black people murdered at the hands of American law enforcement. Thousands filled the streets, while lists of Black-led organizations to support, petitions, and calls to divest from police departments flooded social media. What follows are Black Lives Matter activist DeRay Mckesson's thoughts on modern protest, adapted from his appearance on the ACLU's podcast, At Liberty, 10 days before Floyd's death.

Protest is telling the truth in public. We're saying, *This is a truth that you tried to hide, that you tried to tell us we weren't supposed to talk about, and we refuse to let you do that.* Protest opens space for the solution; protest is not *the* solution.

The method has to meet the moment. In St. Louis, after Ferguson police killed Mike Brown in 2014, it was important that we protested in the street because if we didn't, people would have acted like we didn't exist. It took our bodies on the line. We had to remove the possibility that they could ignore us. But there are some places where being in the street isn't necessary.

I'm mindful that like protest, voting is one tool in the toolkit, and the only way to build a house is to use all the tools. I tell people to vote, not because it'll automatically change the world, but because we're trying to build a house. It's the same with running for office: We can't always be the people on the outside fighting those on the inside. We have to be the person on the inside sometimes. It makes it easier to move things we care about. The goal isn't to fight the system forever. The goal is to make a system that works for people.

I see people organizing in new ways every day. I see people who don't identify as activists who've pushed us to think more deeply. Some of the most incredible ideas come from high school students, college students, people who feel called to something. And I'll never lose hope because I've seen that. I've been in church basements, I've been in living rooms, I've been on porches. I've seen it happen in beautiful ways that don't often make TV but have changed the world. ■

How We Protest

By DeRay Mckesson

Find weekly episodes of *At Liberty* wherever you get your podcasts, or online at aclu.org/podcast.

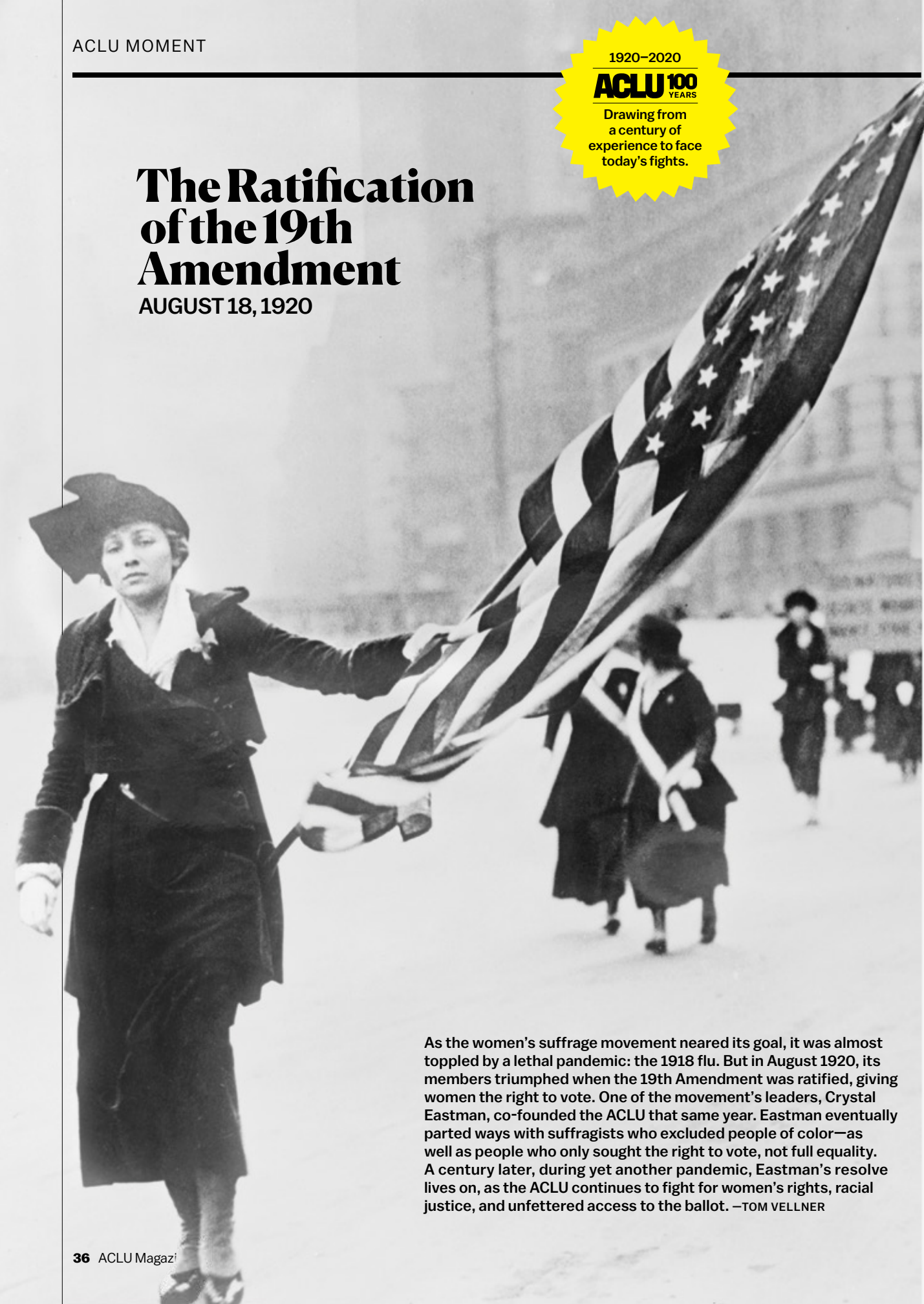
1920-2020

ACLU 100
YEARS

Drawing from
a century of
experience to face
today's fights.

The Ratification of the 19th Amendment

AUGUST 18, 1920



As the women's suffrage movement neared its goal, it was almost toppled by a lethal pandemic: the 1918 flu. But in August 1920, its members triumphed when the 19th Amendment was ratified, giving women the right to vote. One of the movement's leaders, Crystal Eastman, co-founded the ACLU that same year. Eastman eventually parted ways with suffragists who excluded people of color—as well as people who only sought the right to vote, not full equality. A century later, during yet another pandemic, Eastman's resolve lives on, as the ACLU continues to fight for women's rights, racial justice, and unfettered access to the ballot. —TOM VELLNER



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with a gift in my will to the ACLU.

I imagine a more equal future passed along to the next generation. As a believer in equality and justice, I knew leaving a gift in my will was the right choice. If you share these values, I urge you to join me in leaving a gift for the future.

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