Decades of housing discrimination led to mass evictions in a pandemic. ACLU client-activists are fighting back.
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I support our freedoms.
With this issue of ACLU Magazine, we’re turning the page. For four years, we’ve weathered an assault on our rights by an administration that has sowed division and injustice. Last fall, the people said, enough. Our country’s electoral system sustained record voter turnout and an avalanche of mail-in ballots—and democracy prevailed.

The struggle to ensure that every vote was counted was hard fought: Before Election Day, the ACLU and our partners’ efforts to combat voter suppression and expand absentee voting, including a lawsuit that challenged the state’s poll tax on mailed ballots. In Michigan, an ACLU-backed ballot initiative in 2018 and our voter mobilization efforts in communities of color set the stage for a surge in voting in 2020.

“we must persevere until the dream of America is a lived reality for all.”

Anthony D. Romero
Executive Director

 Nationwide turnout also enabled positive momentum for criminal justice reform, including huge wins for reform prosecutors in Los Angeles, Chicago, Orlando, and the Detroit suburbs, signaling real change to address some of the worst racial disparities in tough-on-crime strongholds.

As you’ll read in this issue, achieving lasting racial and economic justice requires facing an ugly history: one where people of color have been systematically disenfranchised and denied their right to thrive. “In Drawing the Line” (p. 10), the ACLU’s analytics team uses sophisticated software to thwart racial gerrymandering and voter suppression when states create new district maps this year. “Housing Insecure” (p. 18) describes the exploding national eviction crisis—laid bare by the pandemic and disproportionately impacting Black women—and a federal ACLU lawsuit on behalf of tenants in Kansas City, Missouri. And in “The Road to Reform” (p. 24), the ACLU confronts the racist history of the War on Drugs to clear a new path for marijuana reform with equity at its center.

Time and again during these difficult years, the ACLU community inspired me with its resilience as we fought racism and xenophobia at every turn. And now we must persist. We must confront a raging pandemic, a shifting political and judicial landscape, and a long- overdue racial reckoning. We must uphold the promise of the Constitution for everyone. We must persevere until the dream of America is a lived reality for all.
The early days of 2021 and a new administration mark a watershed moment—a historic opportunity to address racial injustice in America. At the heart of transformative change are reparations to descendants of the enslaved Africans upon whose backs our country’s incredible wealth was built. While no restitution could ever fully compensate for centuries of institutional violence and oppression, reconciliation can be achieved with an honest assessment of how slavery affected economic opportunity, voting rights, and the criminal legal system. The country craves this reckoning, and the time to act is now.

Advancing Racial Justice

The ACLU calls on the new administration to confront our country’s racist legacy.

The Biden-Harris administration has a unique opportunity to prioritize racial justice in its first 100 days.
Militarizing the Police

As people took to the streets last year to protest police brutality, many were met with forces armed with riot gear, tear gas, and rubber bullets. That the police in our communities often look indistinguishable from the military is no accident. Since 1997, the U.S. Department of Defense’s 1033 program has distributed more than $7.4 billion worth of military weapons to over 8,000 law enforcement agencies. Local police in the state of Arizona have a staggering cache of weaponry (pictured) secured through the 1033 program, which has long been used to militarize the southern border. Ostensibly obtained for security, the equipment is often diverted to aggressive community enforcement, frequently terrorizing people of color.

—CLIO CHANG

Join the ACLU in demanding a moratorium on the 1033 program at aclu.org/1033.

More than half of people targeted by local SWAT teams are Black and Latinx. With no evidence that it lowers violent crime or makes officers safer, militarization encourages police to see as enemies those they are sworn to serve.

Call Congress
Contact your legislators today and urge them to support H.R. 40 and reparations for slavery.

No Justice, No Peace

When you’re out on the streets, it’s important to know your legal rights as a protester. Here are some tips:

• You have a right to record, including recording police at work. Video recording from a safe distance is not interfering with legitimate police operations.
• If you’re stopped, the police can’t confiscate photos or videos without a warrant. Keep strong passwords for your devices and disable face or fingerprint recognition.
• If you’re under arrest, you have a right to ask why you are being arrested. Don’t agree to anything without a lawyer present.
• You never have to consent to a search of yourself or your belongings. If you do consent, it can affect you later in court.
• You have the right to a local phone call if you’re arrested. Law enforcement is not allowed to listen in if you call a lawyer for legal advice.

Visit aclu.org/protest to learn more about your basic right to assemble.
Empowered Workers

Decriminalizing sex work has won popular and political support. During a pandemic, it’s urgent.

For more than 40 years, the ACLU has advocated for the decriminalization of sex work. At stake are the health and safety of some of the most vulnerable people—transgender women, people of color, unhoused people, and immigrants—who are regularly targeted and assaulted by the police.

“Sex workers aren’t always a part of the conversation about police brutality, but they should be,” says LaLa B. Holston-Zannell, ACLU trans justice campaign manager. Decriminalization would end thousands of annual arrests and police violence against sex workers—including when transgender women of color are profiled and harassed or subjected to sexual extortion. It would also allow sex workers to seek health care without fear of arrest. While consensual buying and selling of sexual activity remains illegal in most of the U.S., the tide has turned internationally. New Zealand decriminalized both the buying and selling of sexual activity in 2003, while other countries decriminalized the sale of sex but left the purchase a criminal offense (the so-called Nordic model). "More than half of the U.S. supports the New Zealand model, according to a 2020 Data for Progress study co-authored by the ACLU, which empowers workers to turn down undesirable clients and negotiate safer sex practices. COVID-19 has made decriminalization imperative. Already precarious incomes have been destabilized by social distancing mandates. Some workers go online to avoid the virus, only to potentially face censorship by digital platforms held liable for user content by SESTA/FOSTA, a 2018 law purported to crack down on online sex trafficking but interferes with sex workers’ ability to screen clients. Prior to the pandemic, the introduction of legislative reform had expanded at the federal and local levels. In late 2019, Congress introduced the Safe Sex Workers Study Act, a bill to require a national study on the impact of SESTA/FOSTA on the health of sex workers. State and local lawmakers have introduced decriminalization bills in Massachusetts, New York, Vermont, and Maine. The ACLU successfully advocated for a 2020 California law prohibiting the arrest of sex workers when they report violence against themselves and clarifying that condoms cannot be used as probable cause for an arrest. Sex workers already protect themselves and each other. The movement to decriminalize is demanding the government do the same. —SESSI BLANCHARD

Visit aclu.org/sexwork to read the ACLU report Is Sex Work Decriminalization the Answer?

The Court of Public Opinion

David Cole, national legal director of the ACLU, answers your questions about the judicial landscape in the wake of a changed Supreme Court—and why citizen activists are essential.

With a conservative majority on the Supreme Court, how can the ACLU continue to protect civil liberties? It’s worth keeping in mind that the Supreme Court has had a majority of conservative, Republican-appointed justices since 1971. Yet during that 50-year period, in cases brought by the ACLU and its allies, the court recognized that sex discrimination violates the Constitution, upheld the right to abortion, recognized marriage equality, upheld affirmative action, expanded speech rights, limited the death penalty, and expanded criminal defendants’ trial rights.

We have shown that we can win before a conservative-majority Supreme Court. At the same time, we will be looking increasingly to other forums, including at the state and local levels, where much of the work of civil liberties occurs. The ACLU is well situated to do that work with our affiliates’ presence in every state.

What’s to stop the court from overturning Roe v. Wade? Over time, the court has rarely parted dramatically from where the people are on the nation’s fundamental values, so if we can sustain broad support for Roe, it will be more difficult for the court to overturn this nearly 50-year-old precedent. Historically, the court’s rulings tend to reflect changes that took root more broadly in the political and legal culture. The ACLU and its allies, including one that justices serve on, must remain vigilant about more subtle ways of undermining the right to abortion, as those may be more likely than an outright reversal of Roe.

Does the ACLU support efforts to reform the Supreme Court, including its membership? The ACLU has not taken a position on expanding the court. Simply increasing the size of the court when one party is in power risks the same response when the other party takes power and would further politicize the court. Other measures are designed to reduce the politicization of the court, including one that justices serve for as long as they want to. Simply increasing the size of the court is not the answer to our policing crisis. Justice rests with community organizing and groups like the ACLU. But we also must remain vigilant about more subtle ways of undermining the right to abortion, as those may be more likely than an outright reversal of Roe.

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This year marks the beginning of a once-a-decade redistricting process. But as technology has become increasingly sophisticated, it’s easier than ever for lawmakers to manipulate their maps for partisan gain or minority voter suppression. A team of ACLU analysts is generating its own maps to challenge racial gerrymandering.

BY MICHAEL HARDY
ver since some communities of color secured the constitutional right to vote in 1870, state legislatures, especially in the South, have employed a variety of tools to keep them from exercising that right. Poll taxes. Literacy tests. Whites-only primaries. Grandfather clauses. For almost a century, the 15th Amendment was effectively nullified across the South by a combination of discriminatory voting laws and widespread racial terrorism.

The Voting Rights Act of 1965 (VRA), widely considered the most successful civil rights law in American history, banned the most egregious forms of voter suppression, requiring states with a documented history of racial disenfranchisement to obtain federal approval for any changes to their election laws and procedures, including district maps, in a process known as preclearance. In the wake of the VRA’s passage, African American voter registration skyrocketed across the South, and Southern states sent their first Black representatives to Congress since Reconstruction. In 1964, there were just 300 Black elected officials nationwide; today, there are more than 10,000. Bipartisan majorities of Congress reauthorized the VRA in 1970, 1975, 1982, and, most recently, in 2006, when Congress extended the act for 25 years by a vote of 390-33 in the House and 98-0 in the Senate.

The VRA has received widespread bipartisan support in Congress. But recently the Supreme Court is another story. In 2013, the court’s 5-4 decision in Shelby County v. Holder gutted the law’s preclearance requirement. Writing for the majority, Chief Justice John Roberts argued that changes in the South since 1965 had rendered such protections unnecessary. The ACLU intervened in the case on behalf of the Alabama State Conference of the NAACP and several African American residents of Shelby County whose voting rights were impacted by the lawsuit.

What followed the court’s decision was entirely predictable. No longer forced to seek federal approval for their voting laws, state legislatures across the South raced to enact stricter voter ID requirements and redraw electoral district maps to dilute minority voting power, also known as racial gerrymandering. Within hours of the Supreme Court decision, Texas Attorney General Greg Abbott announced that a redistricting map that had been tied up for years in preclearance litigation would take immediate effect. North Carolina enacted a massive voting bill that, as a federal appeals court would later find, “target[ed] African Americans with almost surgical precision.”

o adapt to a post-Shelby world that’s given racial gerrymandering room to thrive, the ACLU’s Voting Rights Project is getting creative. One of its weapons are new statistical methods for simulating redistricting plans, developed by researchers such as Duke University mathematician Jonathan Mattingly, Harvard University political scientist Kosuke Imai, Tufts University mathematician Moon Duchin, and Ben Fifield, a data scientist from Princeton University who is now part of the ACLU’s analytics team.

Using fine-grained census data on the political and demographic geography in each state, ACLU analysts run a computer program that generates thousands of potential legislative district maps, each of which conforms to state and federal laws governing how districts must be drawn. For instance, each district must contain roughly the same number of people, and each district must be geographically contiguous.

The analysts then evaluate each potential map according to a number of variables, including the racial makeup of the representatives likely to be elected if the map were implemented. If most of the maps generated by the computer program have three districts that are over 50 percent African American, but the map adopted by the state legislature contains only one district that is over 50 percent African American, that suggests the map drawn impermissibly dilutes the Black vote.

“‘You can look at any particular implemented map and ask whether it fairly represents all communities.’

There are more possible maps than there are atoms in the universe, so we can’t get to the full set,” says ACLU Chief Analytics Officer Lucia Tian. “A lot of the new technologies are about how to generate a representative sample of the full set. Once you have that...
sample, you can look at any particular implemented map and ask whether it fairly represents all communities, especially communities of color.

To get a head start on the post-census redistricting process, a team of four ACLU analysts led by Tian has already been generating potential maps for the states most likely to engage in illegal racial gerrymanders. “We’ve calculated early statistics on racial representation in those states and then created alternative maps that would correct some of those racial disparities,” she says. The ACLU plans to focus its efforts on state legislative districts previously covered by preclearance and is one of the only national, nonpartisan groups focused on combating racial gerrymandering.

But litigation is just one element of the ACLU’s redistricting strategy, which will rely heavily on data analytics and computer-generated maps from Tian’s team. “We are focused on ensuring we have fair maps, and we’re going to use every tool we have at our disposal,” says every tool we have at our disposal,” says Theresa Lee, ACLU staff attorney. “There are clear, neutral ways to do that.”

“Just because something is constitutional doesn’t mean it should be done.”

Although racial gerrymandering remains a significant threat, redistricting driven by partisan bias is not illegal under the U.S. Constitution. Following the last census, in 2010, GOP-led legislatures in Pennsylvania, North Carolina, Michigan, Ohio, and Wisconsin adopted electoral districts that ensured Republicans would win a disproportionate number of congressional seats. Likewise, Democrat-led legislatures in states such as Maryland and Illinois created maps that favored the election of more Democrats. In 2019, the U.S. Supreme Court heard a series of cases against both Republican and Democratic gerrymanders.

“One of the latest is Colorado, where, in 2018, voters approved a pair of constitutional amendments creating a 12-person commission consisting of four Republicans, four Democrats, and four independents selected from a pool of applicants. Votes eight, including at least two of the four independents, will be required to approve a map, after which the state Supreme Court will provide a legal review.”

But just because something is constitutional doesn’t mean it should be done.”

Other states have adopted different methods— in Michigan, for instance, the 13-member panel of government officials charged with conducting the next redistricting was chosen by lottery in August, a system established by a 2018 ballot initiative.

Before states can start redistricting, of course, they need the 2020 census numbers. The decennial census is the basis for all redistricting efforts across the country. Required by the Constitution, the census is done every 10 years since 1790, this “actual Enumeration” of the population determines how many congressional seats (and thus many presidential electors) are awarded to each state, as well as how congressional districts are drawn within those states.

Last year’s count faced extraordinary challenges thanks to Trump’s politicization of the census and the COVID-19 pandemic, which slowed the work of census workers. Despite the Census Bureau’s request for more time to finish its work, Trump refused to extend the deadline for completing the count.

“The fact that the census count ended early is more than anyone would have wanted, but it raises concerns,” Lakin says. “What happens if we can’t trust the count? There are a lot of questions about the data.”

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The Supreme Court ruled that while partisan gerrymandering is to subverts the democratic principles, federal courts didn’t have the authority to oversee state-drawn maps.

Researchers say partisan gerrymandering lawsuits can’t be heard by federal courts, but the new maps can still influence how their districts are drawn. “The answer to partisan gerrymandering is to create districts that reflect and respond to voters’ choices,” says Theresa Lee, ACLU staff attorney. “There are clear, neutral ways to do that.”

“While the census data will likely be made available to state legislatures this spring, and lawmakers will spend the 2021 legislative sessions drawing new electoral maps, many of these redistricting schemes will be challenged in court, resulting in years of litigation. But all the advocacy and legal battles are worth it to ensure America has fair elections,” Lakin says.

“Our job is to ensure the people are electing their representatives—not the other way around.”

The ACLU filed an amicus brief in Rucho v. Common Cause arguing that gerrymandering subverts the democratic process. But a 5-4 majority ruled that while partisan gerrymandering may be “incompatible with democratic principles,” federal courts didn’t have the authority to oversee state-drawn maps.

Partisan gerrymandering lawsuits can’t be heard by federal courts, but voters can still influence how their districts are drawn. “The answer to partisan gerrymandering is to create districts that reflect and respond to voters’ choices,” says Theresa Lee, ACLU staff attorney. “There are clear, neutral ways to do that.”

Advocating for fair maps through citizen action is one way to make your voice heard and your vote count. Join the ACLU’s grassroots army at peoplepower.org to demand a transparent redistricting process.

Giving America’s long history of gerrymandering, and the cost of defending those gerrymanderson, as well as how congressional districts are drawn within nine states. The ACLU is briefly discussing the conflict among the dates. When the new map violated Section 2 of the VRA, a district court ruled against the county in 2019, the county appealed to the 11th Circuit Court of Appeals, which affirmed the lower court’s ruling in 2020, stating that the maps “impermissibly diluted Black voting strength.” But in the six years that took it took the courts to determine that the new maps violated the VRA, there have been multiple school board elections. “The problem with after-the-fact lawsuits is that they are very time-consuming and can be protracted,” says Sean Young, legal director of the ACLU of Georgia. “So several discriminatory elections can take place, as is the case in the world’s 131 congressional districts.”

For every successful challenge to a discriminatory voting law, dozens of other laws go unchanged because of lack of resources, Young says. “Georgia has thousands of municipalities and over 150 counties. It’s a game of whack-a-mole.”
Decades of discrimination set the stage for a catastrophic eviction crisis in the wake of the pandemic. ACLU client-activists in Kansas City, Missouri, are taking matters into their own hands to secure safe and fair housing for Black residents.

Members of KC Tenants, including Diane Charity (second from right), distribute tenants’ rights materials in Kansas City.

BY TASBEEH HERWEES
WE VIEW THE EVICTION MORATORIUM AS A CIVIL RIGHTS ISSUE.

In 2020, the COVID-19 pandemic triggered an unprecedented nationwide eviction crisis. Landlords evicted tenants who were unable to pay rent, totaling an estimated 4 million in just Kansas City. The eviction moratorium was created to prevent this devastating trend.

The CDC moratorium was flawed from the outset, says Sandra Park, a senior staff attorney with the ACLU’s Women’s Rights Project. It required tenants to seek out its protections, but did not mandate that tenants be given notice of their rights. And it didn’t address the long-term problem. “After the moratorium ends, eviction cases will move forward in unprecedented numbers, as people face back rent of hundreds or thousands of dollars,” says Park, “which most tenants are not going to be able to pay.”

The moratorium was a civil rights issue because “the average person who gets evicted is a 45-year-old Black woman,” says Park. With data from the Eviction Lab, the ACLU’s Women’s Rights Project found that Black women renters had evictions filed against them by landlords at double (or higher) the rate of white renters in 17 of 36 states. When Park first joined the ACLU in 2007, she worked primarily on behalf of survivors of gender-based violence, including domestic violence and sexual assault, challenging lease provisions that punished and evicted survivors. Her work also represented tenants, including low-income and Black women, who experienced sexual harassment from landlords.

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At the ACLU, we view the eviction moratorium as a civil rights issue because “the average person who gets evicted is a 45-year-old Black woman,” says Sandra Park, a senior staff attorney with the ACLU’s Women’s Rights Project. With data from the Eviction Lab, the ACLU’s Women’s Rights Project found that Black women renters had evictions filed against them by landlords at double (or higher) the rate of white renters in 17 of 36 states. When Park first joined the ACLU in 2007, she worked primarily on behalf of survivors of gender-based violence, including domestic violence and sexual assault, challenging lease provisions that punished and evicted survivors. Her work also represented tenants, including low-income and Black women, who experienced sexual harassment from landlords.
Sheila Thomas stands outside her mother’s home in Kansas City. Thomas is facing eviction and is determined to fight for fair housing. **Roger Weaver has lived at Kansas City’s Parade Park Homes, one of the oldest Black-run cooperatives in the country, for 25 years.**
KC Tenants Director Tara Raghuveer, in front of the Jackson County Courthouse, is demanding a future free of housing discrimination and inequities.

grocery stores, laundromats,” says Raghuveer. Now they have a team of 25 people who meet every Saturday to distribute hundreds of pieces of literature informing tenants of their rights. They have a hotline for tenants to call for questions about the eviction process and how to fight it.

Despite the CDC’s national moratorium, which went into effect at the beginning of September, eviction filings continue to rise in Missouri, which has some of the weakest protections for tenants in the country. As of November 14, the Jackson County Court, whose presiding judge failed to extend the local moratorium in May, has allowed more than 2,378 evictions to be filed since then.

“The assumption is that once a tenant has declared that they are eligible for the protection, they should be granted that protection until the end of the year,” says Park. “But what the Kansas City Court has done is create a new procedure that allows landlords to bring their tenants to court to challenge their declarations about whether they’re qualified for the moratorium.” Studies show that a right to counsel can significantly increase a tenant’s chance at successfully fighting an eviction filing, but many of them are denied a right to counsel in such cases.

“Since we have filed, the state court judges have used every procedural tactic they can to delay a ruling and make it harder, if not impossible, for tenants to take advantage of the narrow, time-limited relief the CDC tried to give them,” says Tony Rothert, legal director of the ACLU of Missouri.

Park anticipates mass evictions during and in the wake of the COVID-19 crisis. There is no way to overemphasize how catastrophic this will be to American communities. A study conducted by the Aspen Institute found that 30 million to 40 million people in the U.S. alone are at risk of eviction. The ripple effect of human displacement at that scale is unfathomable; it’s a crisis that will permanently alter the social fabric of our local communities and the nation at large.

“There will be a huge increase in street homelessness, a huge increase in people living with other family members and really doubling, tripling, and quadrupling up,” says Park. “The most common person who is homeless is a child. [We have to think] about all the children whose lives will be completely upended and what that does generationally for our communities.”

There has been no real effort to provide rent relief to tenants or landlords, even though the scale of this crisis has been known since the early days of the pandemic. The CARES Act, passed by Congress in March, included a short-term ban on evictions for federally financed properties and did not cover most tenants. Since then, “people’s financial situations have gotten much more dire,” says Park. “There were many states that had moratoria in place early on. Most of them have expired.”

The ACLU lawsuit on behalf of KC Tenants is an attempt to reduce the impact of this crisis on one Missouri city. The purpose of the moratorium is to allow people to live in their homes, free from the fear of being physically evicted, and to prevent the spread of COVID-19. Moving forward, the ACLU supports new moratoria on all eviction cases during the pandemic, long-term rent relief for tenants and their landlords when those moratoria are lifted, and the right to counsel for tenants in eviction cases.

To address decades of discriminatory housing policies that have been laid bare by the pandemic, a reinstatement of the Affirmatively Furthering Fair Housing rule, first implemented in 2015, would require cities and towns to address segregation and develop plans for affordable, accessible housing. An invalidation of the Trump administration’s gutting of the Disparate Impact Rule, at the center of the ACLU’s federal lawsuit against HUD, would also restore critical housing protections. This, along with legislation to prevent landlords from using past eviction filings in their tenant evaluations, says Park, will protect tenants in the long term and begin to correct systemic inequities in U.S. housing.

KC Tenants is demanding a future where there is a home guaranteed for every family. “Right now, we treat housing like it’s a bag of pens or a carton of milk that you go to the store and buy,” says Raghuveer. “We’re prioritizing private profits over people’s lives. And in order to shift that, we have to guarantee housing as a public good.”
Despite efforts to decriminalize marijuana, arrest rates and racial disparities are still rampant.

The ACLU confronts the racist War on Drugs to chart a new path for marijuana reform and true justice.

BY JAY A. FERNANDEZ

ILLUSTRATIONS BY CELYN BRAZIER
For advocates of marijuana legalization, news in recent years has been very good. Public support has risen to 67 percent. Thirty-six states have now sanctioned the medicinal use of cannabis, and the District of Columbia and Washington, D.C., have legalized its recreational use. Legal markets are springing up around the country, early-adopting states are benefiting from the flow of new tax revenue, and dispensaries in many jurisdictions have been offering legal cannabis products for years. The truth is that despite the genuine support, the medicinal use of cannabis is now legal in 36 states and the District of Columbia.

The Controlled Substances Act that classified marijuana, alongside heroin, as a Schedule 1 drug with no accepted medical use launched the modern era of aggressive policing ramped up during the Reagan and Bush administrations. All along, enforcement has been wildly selective, with Black and Brown populations suffering more arrests and prosecutions, longer sentences, and for immigrants, higher rates of deportation.

“The war on drugs has been a story about the government turning on its own people, targeting the marginalized.” – ACLU’s Justice Division

Drug prohibition as practiced in the United States has been a story about the government vilifying and persecuting Black people and others deemed “degenerate” or “criminal” from the very beginning. It has been about fear and greed. And it’s been about scoring political points, scapegoating, and controlling certain communities that are perceived as threats to jobs, to status, and to white supremacy. The War on Drugs has been a story about the government turning its own people, targeting the marginalized. By design, it has fostered community destruction.”

The drug war has wasted billions of dollars and law enforcement resources. Over-aggressive policing in Black communities has fed mass incarceration with deep collateral consequences. Incarceration separates families and communities, and burdens low-income households. After serving their sentences, those with criminal records face obstacles to employment, voting, housing, student financial aid, and child custody. Even simply a convicted driver’s license for a low-level marijuana offense can impede access to education and the ability to look for a job or get to the courthouse.

“Legalization isn’t enough because of all of the other [effects] that remove the ability to be a self-agent, to be self-determined,” says Cynthia Roseberry, deputy director of policy at the ACLU’s Justice Division. “The trauma is deep within that person, and then it’s broad across children, families, and communities.”

To achieve true, equitable reform, the ACLU and its affiliates are advocating for several key reparatory elements: the expungement of past marijuana convictions, the commitment of tax revenue from cannabis sales to community reinvestment, and guaranteed access to the legal industry for those from communities most impacted by the War on Drugs. States are implementing these ideas.

In 2018, Vermont became the first state to legalize the possession of recreational marijuana through the legislature—Illinois followed suit the following year—and in October 2020 the state legalized the sale of marijuana for recreational purposes under pressure from a coalition that included the ACLU of Vermont. At the same time, Governor Phil Scott signed into law bills that automate the pardon and expungement of past marijuana convictions from criminal records. As of 2019, in California, individuals can petition to get low-level offenses expunged and high-level offenses downgraded, a reform that may affect as many as 220,000 people. Montana’s 2020 Ballot Issue I-190 included a provision that allows for individuals to apply for resentencing or expungement of certain convictions. In June 2020, the ACLU of Nevada successfully persuaded the state government to pardon more than 15,000 people convicted of misdemeanor possession.

Arizona recently passed Proposition 207, which includes social justice provisions pushed by the ACLU of Arizona: earmarked tax revenue for a Justice Reinvestment Fund, an avenue to petition for expungement of certain convictions, and a Social Equity Ownership Program that issues a dedicated number of licenses to cannabis business owners “from communities disproportionately impacted by the enforcement of previous marijuana laws.”

Cannabis is already big business: Sales totaled about $15 billion in 2019, and that figure is expected to hit $30 billion by 2024—Arizona and New Jersey alone are projected to generate at least $700 million and $850 million, respectively, in yearly recreational sales by 2024. Tax revenue will scale accordingly and must be earmarked for investments in schools, public health, job training, housing, and services in communities ravaged by the War on Drugs. Since entering the industry can be expensive and federal prohibition prevents banks and other institutions from granting loans, licenses must be available for entrepreneurs in communities of color. This is especially true for communities of color and those from lower-income neighborhoods need to have access to the economic benefits of the legal cannabis industry.

Several states are leading the way with ACLU-supported racial justice-centered reforms. Since 2014, Colorado has generated nearly $8 billion in cannabis sales, a portion of the hundreds of millions of dollars in annual taxes going to fund vocational programs, business education, and agricultural training, while also making available low-interest loans and grants for entrepreneurs to repair these

**The Controlled Substances Act**

- The Controlled Substances Act classified marijuana, alongside heroin, as a Schedule 1 drug with no accepted medical use. The modern era of aggressive policing ramped up during the Reagan and Bush administrations. All along, enforcement has been wildly selective, with Black and Brown populations suffering more arrests and prosecutions, longer sentences, and for immigrants, higher rates of deportation.

**Drug prohibition as practiced in the United States**

- Drug prohibition as practiced in the United States has been a story about the government vilifying and persecuting Black people and others deemed “degenerate” or “criminal” from the very beginning. It has been about fear and greed. And it’s been about scoring political points, scapegoating, and controlling certain communities that are perceived as threats to jobs, to status, and to white supremacy. The War on Drugs has been a story about the government turning its own people, targeting the marginalized. By design, it has fostered community destruction.”

**The drug war has wasted billions of dollars and law enforcement resources.**

- The Drug War has wasted billions of dollars and law enforcement resources. Over-aggressive policing in Black communities has fed mass incarceration with deep collateral consequences. Incarceration separates families and communities, and burdens low-income households. After serving their sentences, those with criminal records face obstacles to employment, voting, housing, student financial aid, and child custody. Even simply a convicted driver’s license for a low-level marijuana offense can impede access to education and the ability to look for a job or get to the courthouse.

**“Legalization isn’t enough because of all of the other [effects] that remove the ability to be a self-agent, to be self-determined,” says Cynthia Roseberry, deputy director of policy at the ACLU’s Justice Division.**

> The trauma is deep within that person, and then it’s broad across children, families, and communities.

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**In 2018, law enforcement made nearly 700,000 marijuana-related arrests—90 percent for possession only.**

- Black people are 3.64 times more likely to be arrested for possession than white people. The ability to be a self-agent, to be self-determined,” says Cynthia Roseberry, deputy director of policy at the ACLU’s Justice Division. “The trauma is deep within that person, and then it’s broad across children, families, and communities.

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of Arizona, which worked for the successful passage of Prop 207. “You’ll have fewer police-civilian interactions, and since any interaction with the police can turn deadly, reducing those is a very good thing.”

In the new administration, as well as at the state, city, and county levels where governors, mayors, and district attorneys have tremendous impact on policy, the ACLU is advocating for the implementation of a wide range of related reforms: diverting from police department budget and reinvesting in communities that have been marginalized by police policies and practices; non-criminal responses to certain drug offenses; and an end to racial profiling.

Taxpayer dollars spent on police activities that are unproductive and harmful must be reallocated to public health work-ers better equipped to handle them as well as local infrastructure that lifts up affected neighborhoods. Government agencies that collect data about how police resources are used must be stronger, more transparent, and more accessible to the public.

Decreasing the power of prosecutors and rescinding harsh recidivism statutes would also have a positive impact on those trapped in a biased criminal justice system. In Arizona, for instance, prosecutors can charge individuals arrested for first-time marijuana possession with a felony, no matter how small the amount—a felony conviction has severe, long-term impact on a person’s future opportunities. “Removing power from prosecutors is going to go a long way toward fixing some of the problems of our criminal legal system,” says Keenan.

Action taken by Congress would speed the process. New Jersey Senator Cory Booker’s Marijuana Justice Act would decriminalize marijuana at the federal level and incentivize states to change marijuana laws that target minorities and low-income people. A similar initiative, the Marijuana Opportunity Reinvestment and Expungement Act, is an ACLU priority for the new administration.

While we’ve yet to elect a president who fully supports legalization, as progress in the states builds and best practices spread, racial justice–centered marijuana reform is sure to accelerate. Officials and other stakeholders are increasingly accepting that it’s not only a moral imperative to heal these wounds, it’s good public policy, which is why these efforts are gaining bipartisan support.

“The marijuana reform movement is strong,” says Edwards. “There has been fairly broad agreement across America and to some extent across political parties, about the failure of marijuana criminalization. The more people elected at the state and local level understand the history of this country when it comes to race, policing, and the origins of criminalization, the more effectively we’re going to advance marijuana reform centered in racial equity.”

“The War on Drugs was a war against Black people, so when you stop that war, and marijuana is the chief arrow in the quiver, then you necessarily have an impact on racial justice,” says Roseberry. “The work has to be done. It’s our responsibility to push for equity, fairness, and justice, and for America finally to have this reckoning. It’s time. It’s past time.”

SMART JUSTICE

On November 3, 2020, Oregon voters passed the ACLU-backed Measure 110, which decriminalizes personal possession of controlled substances and establishes drug addiction treatment programs to be partially funded by tax revenues from marijuana sales. By reclassifying drug offenses, the ballot initiative shifts drug abuse from a criminal justice issue to a public health issue.

In 1973, Oregon became the first state to decriminalize marijuana; it legalized medical cannabis in 1998 and recreational in 2014. The state now generates more than $130 million in annual tax revenue from marijuana sales, some of which is earmarked for the new Drug Treatment and Recovery Services Fund that will give grants for addiction recovery centers.

Visit aclu.org/smartjustice to learn more about advancing criminal justice reform bills in your state.

“It’s our responsibility to push for equity, fairness, and justice.”

communities. With its 2020 Cannabis Regulation and Tax Act, Illinois baked in social equity programs, a $20 million low-interest loan program to diversify ownership, and a business development fund. San Francisco recently established an equity program to set aside dispensary licenses for people in zip codes that were harassed minority neighborhoods. In October 2020, the first Latina dispensary owner to benefit from this opened her doors.

“Earlier models shut people out,” says Edwards. “And what it cost to pay fees or get a license was exorbitant and unattainable for a lot of people. If we legalize without ensuring that communities whose economic health has been most compromised by prohibition reap the fiscal benefits, then we will have missed a critical opportunity to right the wrongs of the drug war and avoid perpetuating other forms of inequality going forward.”

Shifting our country’s approach to cannabis from one of criminal punishment to one of public health is one reason why police divestment is necessary, and it’s inextricably critical to advancing racial justice. Legalizing cannabis would immediately lower the prison population by hundreds of thousands, an outcome made even more urgent by COVID-19, which by late 2020 had infected nearly 150,000 incarcerated people and killed 1,300 more. It would also reduce stop-and-frisk encounters that too often lead to police violence.

“It’s going to be a lot harder for police to use the alleged smell of marijuana as a pretext to search a car or backpack,” says staff attorney Jared Keenan of the ACLU.

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In the face of the COVID-19 crisis and sinister voter suppression tactics, the ACLU filed 38 legal actions in 21 states and Puerto Rico to protect and expand the right to vote during the 2020 elections—and its corporate partners helped fuel the fight. On October 17, Ben & Jerry’s and Cartoon Network’s Adult Swim teamed up to host a virtual concert with hip-hop duo Run the Jewels, which encouraged viewers to vote and donate to the ACLU. The event was just one in a string of efforts from collaborators including Bumble, Everlane, H&M, Levi’s, Madewell, Puma, PwC, Snap, and Univision to promote access to the ballot. —TOM VELLNER
ON OUR BOOKSHELF

For the Kids
Young readers passionate about racial justice and humane immigration policies will find education, amusement, and encouragement in a number of recent books. Susan Kuklin’s We Are Here to Stay: Voices of Undocumented Young Adults includes the hopeful stories of nine immigrants trying to make the United States their home. In her funny memoir Americanized: Rebel Without a Green Card, Sara Saedi describes trying to survive as an undocumented American teenager after emigrating from Iran. Teens interested in understanding our discriminatory criminal justice system can turn to Bryan Stevenson’s young adult adaptation of his bestseller Just Mercy: A True Story of the Fight for Justice. And younger kids will enjoy Tony Medina’s Thirteen Ways of Looking at a Black Boy, which pairs tanka poetry with celebratory illustrations.

Not Your Parents’ History Book
A remix of Ibram X. Kendi’s Stamped from the Beginning empowers teens to be anti-racist.

The uprisings of 2020 awakened a new generation to the fight for racial justice. Jason Reynolds and Ibram X. Kendi’s Stamped: Racism, Antiracism, and You (Little, Brown) is both a clear-eyed assessment of the history of racism in America and a call to action for young adults hoping to bring about fundamental change. In crafting a lively, accessible, teen-targeted “remix” of Kendi’s National Book Award–winning Stamped from the Beginning: The Definitive History of Racist Ideas in America, Reynolds illustrates how that racist history persists, in ways seen and unseen, in readers’ lives. A thoughtful corrective to the dearth of school materials that address racism’s ugly legacy, Stamped considers everyday manifestations of racism, while highlighting resistance figures such as Angela Davis and William Lloyd Garrison. A historian, author, and professor, Kendi is a leading voice on anti-racism, and Reynolds has long captivated teens with his award-winning novels (Long Way Down). Their collaboration empowers young people to develop a vocabulary for understanding racism, identify racist structures in their lives, and contribute to an anti-racist future.

—JAY A. FERNANDEZ

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Diane Burkley Alejandro leads ACLU People Power in Fairfax, Virginia.

**ACTIVIST SPOTLIGHT**

**NAME:** Diane Burkley Alejandro  
**LOCATION:** Fairfax, Virginia  
**FOCUS:** Immigrants’ Rights  
**ACTIVIST:** Since 2017

A public interest attorney with more than 20 years’ experience in government advocacy, Diane Burkley Alejandro leads the Fairfax, Virginia, group in the ACLU’s grassroots organizing network, People Power. Fairfax has the unfortunate distinction of being a national leader in immigrant detention. In four years, Alejandro and People Power have helped pass nine local policies to limit cooperation between Fairfax County law enforcement agencies and U.S. Immigration and Customs Enforcement (ICE) and protect undocumented communities.

**Why did you first volunteer with People Power’s immigration efforts?**

About 90 percent of deportations start with local law enforcement detaining someone or sharing information. If that work is done at the local level, you can really cut down on the harm. On a moral level, I hated the racist rhetoric and policies. You have a group of folks who aren’t in a position to stand up for themselves because if they do, they risk deportation. When People Power started (in 2017), the timing was right for those of us who wanted to do something specific.

**How does being a lawyer impact your activism?**

You have to focus on where you can change things. Working with [Fairfax], having knowledge of laws is helpful. But not just lawyers can do this. It takes a team of advocates, people who have their ears to the ground. We work with members who bring their personal experiences. It takes all of that together to make this work.

**What are you most proud of?**

We haven’t given up and we’re not afraid to push public officials. When there was a public forum with the board of supervisors, I asked, “We’ve been trying to set up a meeting with you to address our concerns—will you commit to meeting with us?” It’s a televised hearing, so what are they going to say? That got our foot in the door, and we just kept upping the ante.

**What are your goals for Fairfax?**

In Fairfax County, 78 percent of people who are turned over to ICE by the Fairfax sheriff haven’t been convicted of anything. They haven’t been convicted of anything. We’re working to rebuild the trust of the immigrant community and their ability to thrive. We’re not going to solve all of the problems. Our goal is to keep as many people out of deportation proceedings as possible. —ELLY BELLE

**Join People Power**

Become a grassroots activist and help your community by making calls, attending legislative sessions, and translating materials into Spanish.

Learn more at peoplepower.org

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**Reproductive Justice Is Racial Justice**

By Renee Bracey Sherman

Renee Bracey Sherman is the founder and executive director of We Testify, an organization dedicated to telling the stories of people who have had abortions. The following is adapted from her 2020 appearance on the ACLU’s podcast, At Liberty.

Reproductive justice, a human rights framework coined almost 30 years ago by a dozen Black women, is the vision for a world where every person has the rights, resources, and respect to decide if, when, and how to grow their families, free from violence and coercion. It was developed to better encapsulate the lives of those of us who didn’t see our lived experiences represented in the pro-choice movement.

Much of the leadership of the reproductive rights movement has been white women, while the majority of people who have abortions are people of color. What would it look like to have a movement led by Black and Brown people? What catches headlines are Supreme Court wins or abortion bans, which are important, but the work of reproductive justice activists on the ground, particularly in the South, isn’t getting the same airtime. We may go to a reproductive rights rally and not see people who look like us leading the way.

The reproductive freedom movement must work in tandem with other liberation movements. Reproductive justice fits in the national conversation around police brutality because of how much policing is centered in health care. Many people are self-managing their abortions by taking mifepristone and four misoprostol pills within 48 hours. But without a doctor present, that’s a crime in some states. So people go to the ER if they have side effects, and doctors, social workers, or someone who’s anti-abortion might call the police, which has happened in a couple of cases.

It’s important we make that connection between reproductive justice and criminalization, while centering on Black, Brown, and trans people who are being criminalized and murdered. We have to invest in people who have abortions as leaders in this movement, particularly those who are underrepresented—trans men, people with disabilities, lesbian abortion storytellers, undocumented abortion storytellers, incarcerated people—and show what their experiences look like.

Learn more about We Testify at wetestify.org. Find weekly episodes of At Liberty wherever you get your podcasts or online at aclu.org/podcast.
Nearly 67 years ago, *Brown v. Board of Education* determined that racial segregation in public schools is unconstitutional. The ACLU filed a friend-of-the-court brief in the case and celebrated the defining moment it marked in U.S. history. But the promise of *Brown* remains elusive. A new report from UCLA’s Civil Rights Project shows that, since 1988, the number of “intensely segregated minority schools” (those that enroll 90 percent to 100 percent non-white students) has more than tripled. Today, the pandemic continues to exacerbate divides along race and class lines, leaving behind low-income students—disproportionately students of color—who may lack the necessary technology to engage in remote learning. The ACLU is demanding that Congress provide billions of dollars in funding as part of the next COVID-19 relief package to meet students’ technology needs and ensure equal access to education for all. —TOM VELLNER

I can create a just future with a gift in my will to the ACLU.

I believe we can create a more just future. That’s why I’m leaving a gift in my will. With my gift, I’m passing along the values I’ve lived to the next generation of civil rights champions.

To learn more, please return the enclosed reply envelope or visit www.aclu.org/mylegacy.
I imagine an equal future 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 know leaving a gift in my will is the right choice. If you share these values, I urge you to join me in leaving a gift for the future.

To learn more, please return the enclosed reply envelope or visit www.aclu.org/mylegacy.