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PURSuing JUSTICE

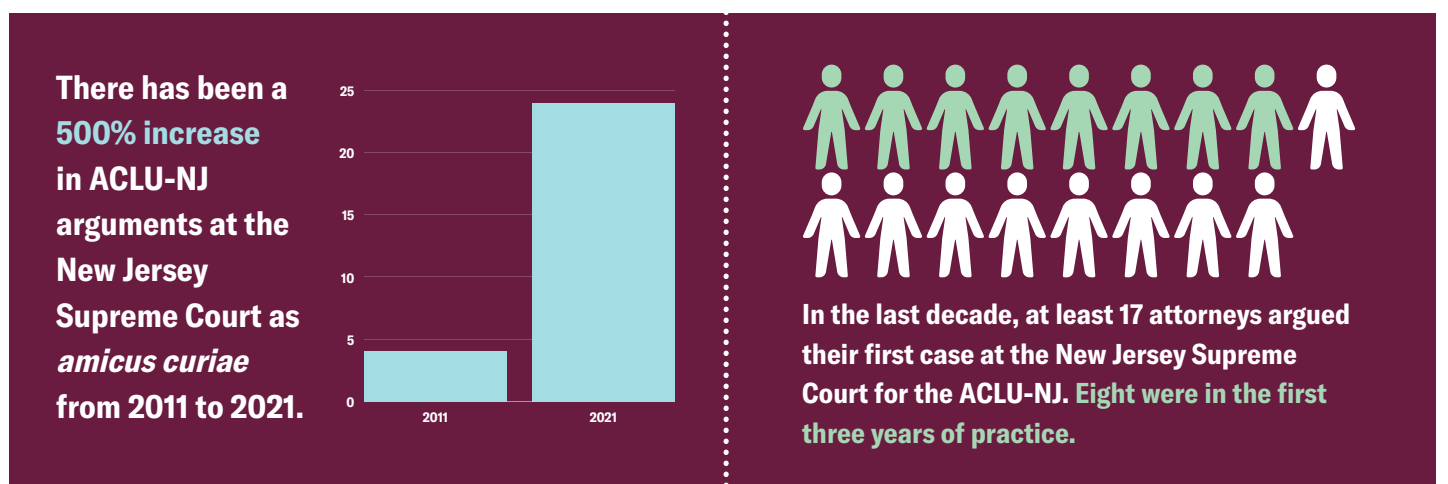
The Real-Life Impact of the ACLU-NJ's Strategic Litigation

How the ACLU-NJ's legal practice advances civil rights and racial justice at the state's highest court

BY AMOL SINHA, EXECUTIVE DIRECTOR

Even after five years as executive director, I feel energized and humbled every time I tell a story about the impact of the work of the ACLU of New Jersey. Whether it's describing courageous individuals challenging injustice or laying out the intricacies of a multi-year legislative campaign, few things underscore the far-reaching effects of this work as powerfully as telling the story of how it happened. That's the premise behind our new quarterly series, Pursuing Justice. This piece, as the first installment, covers an important aspect of our legal work: ACLU-NJ friend of the court briefs submitted in existing cases, where our contributions — often in partnership with stakeholders, like the Office of the Public Defender — provide a framework for supporting legal outcomes that advance civil rights, racial equity, and access to the courts.

The ACLU-NJ has a long history of submitting arguments in existing cases to highlight the civil rights and civil liberties issues at stake and make arguments grounded



in principles that respect individual rights and equity. It's known as an *amicus* brief, from *amicus curiae*, Latin for "friend of the court." We participate as *amicus* in dozens of cases each year in federal and state court, including in nearly one-third of the cases heard in 2021 at the New Jersey Supreme Court.

The ACLU-NJ's impact as a friend of the court, through legal briefs and oral advocacy, has helped to shape the legal landscape in our state and beyond. *Amicus* briefs are efficient by design, allowing us to

pinpoint elements that are most important and relevant to expanding civil rights. Direct cases — which are also a significant part of our practice — often take years and can require hundreds or even thousands of hours of staff time to make their way through the courts. In complement to the depth of direct cases, *amicus* work gives us breadth.

This work has always been a bedrock of the ACLU-NJ, and effective because the New Jersey Supreme Court in particular has been a leader in using the state Constitution as an

independent source for protecting individual rights. Right now, this work has never been more important. With the U.S. Supreme Court issuing decisions eviscerating long-established fundamental rights, we see just how crucial it is to have the bulwark of strong individual rights in the states.

Significant growth in the ACLU-NJ legal team in the last 12 years has allowed us to increase the ACLU-NJ's footprint in the courts. Our frequent collaboration with allies and partners — such as the Office of the Public

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ACLU-NJ Advocacy at the NJ Supreme Court is Raising the Bar

As U.S. Supreme Court rulings eviscerate established civil rights, state-level advocacy is vital. An ACLU-NJ event looked at the big-picture civil rights landscape and the NJ Supreme Court.

BY JEANNE LOCICERO, LEGAL DIRECTOR

As communities across the state and the country grapple with the U.S. Supreme Court's devastating ruling in *Dobbs v. Jackson*

Women's Health Organization, which overturned *Roe v. Wade*, advocates may turn to state courts to protect civil rights and civil liberties — and New Jersey's highest court has been a leader in looking to the state Constitution as a separate and independent

source for protecting the privacy and individual rights of residents.

I had the privilege of joining my colleagues from the ACLU-NJ — along with longtime advocacy

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Visit aclu-nj.org to view the recorded event, with insightful commentary from:



Catherine Weiss, Partner & Chair of the Lowenstein Center for the Public Interest, Lowenstein Sandler (moderator)



CJ Griffin, Partner & Director of the Stein Public Interest Center, Pashman Stein Walder Hayden, and Vice President of the ACLU-NJ Board of Trustees



Lawrence S. Lustberg, Director of Commercial & Criminal Litigation and Director of the John J. Gibbons Fellowship in Public Interest & Constitutional Law, Gibbons P.C.



Alexander Shalom, Senior Supervising Attorney & Director of Supreme Court Advocacy, ACLU-NJ



Karen Thompson, Senior Staff Attorney, ACLU-NJ

PHOTO BY EDWIN J. TORRES/NJ GOVERNOR'S OFFICE

ACLU-NJ Executive Director Amol Sinha delivers remarks at the signing of legislation to implement a licensure scheme for law enforcement officers in New Jersey.



POLICE ACCOUNTABILITY

Licenses Now Required for All New Jersey Law Enforcement

New Police Licensing Scheme Provides Increased Accountability for Officers — Nearly 20 Years After ACLU-NJ’s Leading Advocacy

Nearly 20 years ago, the ACLU of New Jersey led the vanguard of advocates who urged the state to require licenses for all law enforcement officers. On July 21, New Jersey saw that become reality as Governor Phil Murphy signed A4194/S2742 into law.

The bill appropriates \$6 million to establish a licensure program requiring that a person holds a valid, active license to be employed as a law enforcement officer in New Jersey. Without licensing in place, officers removed from duty due to misconduct can still be employed by a different police department, making permanently removing dangerous officers from the force nearly impossible.

“The ACLU-NJ and our advocacy partners have been calling for police licensing for years, and we’re proud that we’re finally able to see it come to fruition. We intend to continue working with the Attorney General and stakeholders to ensure that this new licensing scheme provides necessary accountability and transparency for all New Jerseyans as well as ensures due process and fairness mechanisms for members of law enforcement,” said ACLU-NJ Executive Director Amol Sinha.

This is an important step in increasing transparency and accountability of law enforcement in New Jersey, but there is still much more to be done. The ACLU of New Jersey continues to call for the passage of a slate of bills that would begin to curb excessive police power and place power with communities, especially communities of color that bear the brunt of law enforcement.

In his remarks at the bill signing, ACLU-NJ Executive Director Amol Sinha urged lawmakers to prioritize racial justice by passing legislation that increases accountability and transparency of law enforcement:

“New Jersey belatedly joins the more than 40 other states in having a licensing scheme for police officers. We must now do the hard work of

The ACLU-NJ supports these bills to help protect our communities:

Shining Light on Secret Police Discipline: S371/A996
The public has almost no way of knowing how — or if — police are disciplined for misconduct. This bill follows many other states to make that information available through the Open Public Records Act.

Empowering Communities with Oversight of Police through Civilian Complaint Review Boards: S2295/A1515
This legislation allows communities to set up civilian complaint review boards with subpoena power, the ability to investigate at the same time as internal police investigations, disciplinary authority, and, most importantly, real community representation.

The Right to Sue Police for Individual Misconduct: A1378
A legal principle called qualified immunity makes it almost impossible to hold individual officers liable for misconduct in civil lawsuits. These bills would remove one of the roadblocks that make it difficult to hold police accountable for harms.

Stopping Lethal Police Tactics: S265/A2431 and S2166/A866
These bills would criminalize police use of chokeholds in New Jersey and strictly limit use of other deadly force.

Building Police Accountability by Ending Qualified Immunity: S375/A1006
Until S375/A1006 is passed, qualified immunity remains a failure as a matter of policy, law, and morality. It also erodes faith in the criminal legal system to seek justice for all people. Unlike any other defendant facing litigation when they have harmed another person, police can raise qualified immunity to avoid litigation altogether, even when they have engaged in constitutional, statutory or other civil rights violations. Without action from the Legislature, qualified immunity will continue to allow police officers to avoid accountability even when they engage in harmful misconduct or commit unlawful acts.

delivering meaningful measures of accountability such as police discipline transparency, civilian complaint review boards with subpoena power, and ending qualified immunity. We cannot — and

should not — aspire to merely catch up with states like Alabama and Florida — instead we must lead on issues of police accountability to create a fairer and more just New Jersey for all.” ■

REPRODUCTIVE FREEDOM

An Update on Reproductive Rights in New Jersey

When the U.S. Supreme Court issued its devastating ruling overturning *Roe v. Wade* on June 24, it emboldened anti-abortion politicians across the country to decimate access to abortion and force countless people to remain pregnant against their will. In New Jersey, advocates and lawmakers have taken proactive steps to safeguard abortion rights by passing the Freedom of

health care, including abortion, is accessible for all New Jerseyans regardless of race, gender identity, sexual orientation, immigration status, income, or insurance, and continues to urge lawmakers to pass legislation to ensure meaningful access to reproductive autonomy in New Jersey.

“The decision of when and whether to have a child is a fundamental human right, and the U.S. Supreme

bold action; anything less is unacceptable. We urge lawmakers to immediately take action to ensure New Jersey expands access to abortion for all as nationwide bans loom.”

States like New Jersey that protect the legal right to an abortion will now play an even more critical role in providing care to people from states that ban or severely restrict abortion. The impact of these attacks — being forced to carry a pregnancy against your will, face poverty, stay with an abusive partner, or miss economic and career opportunities — disproportionately impact people of color, immigrants, LGBTQ+ communities, young people, low-income people, and those living in rural areas.

New Jersey can and must be a leader in addressing these systemic health care inequities and take immediate action to tear down the barriers to abortion care that remain in place and harm far too many people in our state.

In June of this year, the Reproductive Equity Act (S2918/A4350) was introduced in the New Jersey Legislature. This bill represents the immediate action needed to remove barriers that stand in the way of accessing the fundamental right to abortion care and ensure that all people who can become pregnant in our state can get the care they need. New Jersey lawmakers must immediately advance and sign the Reproductive Equity Act into law.

On July 18, Vice President Kamala Harris held meetings with New Jersey advocates for reproductive rights in Atlantic City, and ACLU-NJ Legal Director Jeanne LoCicero and Campaign Strategist Alejandra Sorto were in attendance and had the opportunity to provide remarks during the event. During this session, Vice President Harris discussed the ongoing efforts by the Biden-Harris administration to protect the right to abortion and offered the opportunity to discuss how the federal government can support proactive efforts in states like New Jersey. During this event the ACLU of New Jersey emphasized the need for our state lawmakers to immediately take action to expand access and remove barriers to abortion care that continue to stand in the way, particularly for people of color and low-income communities, by passing the Reproductive Equity Act.

We can’t afford to stay quiet when our fundamental rights and freedoms are on the line. That’s why we won’t stop fighting until abortion care isn’t just legal, but accessible and affordable for all in New Jersey. ■



PHOTO COURTESY OF THE WHITE HOUSE

ACLU-NJ Campaign Strategist Alejandra Sorto, center left, joined Vice President Kamala Harris, center front, and partners for a roundtable discussion about reproductive rights in Atlantic City, NJ.

Reproductive Choice Act, but there is much more to do to expand abortion access for all.

The ACLU of New Jersey remains committed to ensuring reproductive

Court’s overturning of *Roe v. Wade* upends core autonomy and privacy rights in many parts of our country,” said ACLU-NJ Executive Director Amol Sinha. “This moment calls for

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Pursuing Justice

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Defender, New Jersey NAACP, and dozens of civil rights organizations — illuminates the real consequences for New Jerseyans, and the media coverage this work often generates conveys the human stories behind struggles for justice.

touched the bottom 10-15 percent of the words “Garden State” — a contortion of a law that prohibited any obstruction on license plates. The ACLU-NJ argued that this violated the Constitution, and the New Jersey Supreme Court agreed. Because of this ruling, we know that there will be fewer stops made on this basis, and thus fewer encounters between New Jerseyans and

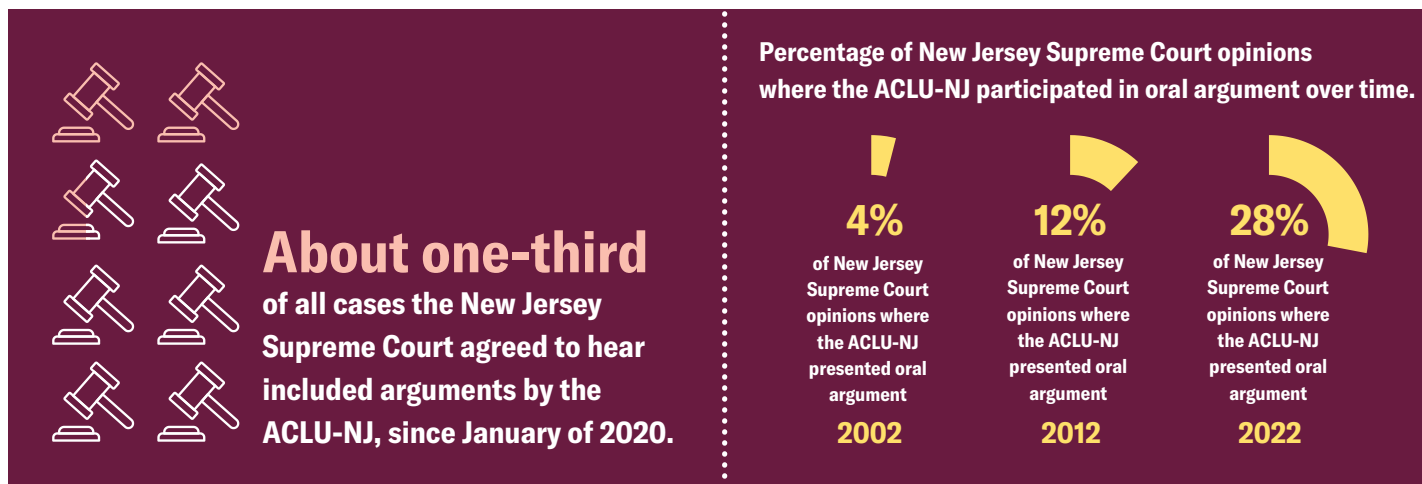
from the jury pool. This case was one of the first to recognize that all racial bias, including implicit bias, is unconstitutional, and this was one of the central arguments of the ACLU-NJ. The case also prompted the New Jersey Supreme Court to convene a judicial conference on jury selection, and to release 25 proposals concerning jury selection procedures to address *voir dire* and peremptory challenges, institu-

subjected to it are never charged with any crime. The result is that people of color — especially young Black men — carry with them the deep trauma of racial profiling, a trauma that courts rarely see.

In our brief in *State v. Myers & State v. Nyema*, the ACLU-NJ represented 66 clergy members of New Jersey who described to the Court the lifelong damage that results from unconstitutional racial profiling. The *amicus* brief forced the judicial system to face a mass trauma that is often rendered invisible, and the New Jersey Supreme Court ruled that the stops that were based on vague descriptions of race and gender were not constitutional.

In other cases, judges and court opinions have reaffirmed many of the arguments highlighted in ACLU-NJ briefs. At oral arguments, our lawyers are often regularly asked follow-up questions by judges and justices.

The fact that the same type of litigation happens at state-level ACLU affiliates across the country gives this work even greater weight. Other states have looked to New Jersey’s *amicus* strategy as a model for their own legal advocacy. In telling the stories of the work of the ACLU, most people think of now-iconic cases that led to the right of interracial couples to marry or equal protections for married lesbian and gay couples under federal law, whose court victories shaped a nation. But, taken together, the steady stream of *amicus* briefs, in New Jersey and nationally, shape the law in ways that make those singular victories possible. ■



Three recent landmark cases in which the ACLU-NJ argued as *amicus* at the New Jersey Supreme Court might more vividly illustrate the influence of this work compared to a 30,000-foot view:

Unconstitutional Car Search Over a License Plate Frame That Touched the Words “Garden State”

When we drive, most of us see more plastic license plate frames than we can count. But officers pulled over Miguel Roman-Rosado because his Honda-branded frame

police that too often lead to unjustified searches or worse.

Racial Bias Driving the State to Perform a Criminal Background Check on a Prospective Black Juror

Edwin Andujar did not have a fair trial because implicit bias infected the selection of his jury, the ACLU-NJ argued in *State v. Andujar*. The New Jersey Supreme Court agreed unanimously.

The prosecution performed a background check only on a Black prospective juror and used it to exclude him

tional and implicit bias, as well as systemic barriers to jury service.

Clergy Share the Trauma of Unconstitutional Racial Profiling in Their Communities

When a case reaches the state’s highest court involving the right of a criminal defendant to be free from unreasonable searches and seizures, it almost always means that the person subjected to the search was charged or convicted of a crime as a result.

But when police engage in racial profiling, the vast majority of those

Raising the Bar

Continued from page 1

partners who have argued precedent-setting cases at the Court, as well as Ret. Supreme Court Justice Jaynee LaVecchia, now a partner at McCarter & English — at “Raising the Bar,” a virtual event on current civil rights cases at the New Jersey Supreme Court, hosted by the ACLU-NJ on June 28.

For more than 50 years, the ACLU-NJ has deployed cutting-edge legal strategies in *amicus* briefs filed in state and federal courts. With the significant growth of our legal team in the last 12 years, that work has expanded. ACLU-NJ litigators file briefs and argue in dozens of cases each year. Last year, our attorneys argued in a third of the cases the New Jersey Supreme Court accepted for consideration.

“Raising the Bar” examined some of the current issues before the Court and the strategy behind the ACLU-NJ’s participation as a friend of the court.

In opening remarks, Justice LaVecchia shared her thoughts on the significance of judicial independence and shared remarkable insight into the Dobbs decision and the role of the state’s judiciary in protecting residents from governmental overreach.

In a panel discussion, attorneys with deep civil rights experience who have litigated for the ACLU-NJ discussed cases that addressed pressing civil rights issues including: police accountability and transparency, abusive police stops, racial profiling, racial bias in jury selection, and extreme sentencing of youth. ■

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Nancy Oxfeld

In honor of Debra Guston
Amy Cores

**In honor of
Justice Gary Stein (retired)**
Alice Harrison

Tributes are contributions made to honor or remember special friends, family, colleagues, and occasions. To have your tribute appear in the *Civil Liberties Reporter*, please contact the ACLU-NJ office at: 973-642-2086 or P.O. Box 32159, Newark, NJ 07102.

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