



# the TORCH

The Newsletter of the American Civil Liberties Union of New Mexico

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## An End to Policing for Profit in New Mexico

**ACLU of New Mexico and an unlikely group of allies end the notorious practice of civil asset forfeiture**

Stephen and his son Jonathan crested the Raton pass and rolled into New Mexico just as the sun began to rise. They had left Chicago the evening before and drove through the night past the cornfields of the heartland and into the desert southwest. They were headed towards Las Vegas, NV for a casino vacation and then on to California to reconnect with relatives. They never got there.

Just before they hit Raton, a New Mexico highway patrolman pulled them over for going five miles over the speed limit, referred to Stephen—a black man in his 60s—as a “boy,” and searched their luggage, finding nearly \$17,000 in cash and coins that the two had brought to have fun in the casinos and help a relative remodel her new home. After this humiliating and racially charged search, the patrolman released them and called ahead to the Albuquerque Police Department. Minutes after hitting the Albuquerque city limits, Stephen and Jonathan were pulled over again, this time by APD. The detaining officers went straight to the trunk where they kept their luggage and, assisted by a Homeland Security officer who arrived on the scene

minutes later, seized their cash and—because Stephen’s wife forgot to put his name on the rental agreement—their rental car as well.



Officers never charged Stephen or Jonathan with a crime. They just dropped them off at the Albuquerque Sunport, stranded and penniless, and kept their cash. It took two years and a lawsuit by the ACLU of New Mexico to get their money back.

What happened to Stephen and Jonathan back in 2010 is called civil asset forfeiture, and as you read these words, civil asset forfeiture—commonly known as “policing for profit”—is now illegal in the State of New Mexico.

### Civil Asset Forfeiture: Brought to You by the Drug War

Can an inanimate object be charged with a crime? The question sounds silly, but in the world of civil asset forfeiture the answer is a resounding ‘yes.’ Property suspected of

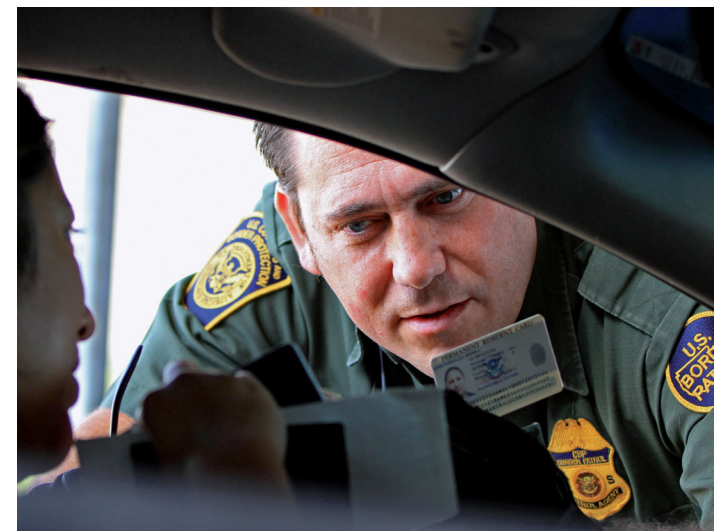
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## Guilty Until Proven Innocent:

### Border Patrol Discrimination in Southern New Mexico

“I feel like discrimination is when people come up to you and judge you because of how you dress, or how you look, or how dark your skin is. And I feel like at the border patrol checkpoints that happens all the time.”

That’s what Luis, a 16 year-old Hispanic high school student from Las Cruces, New Mexico, told the ACLU-NM Regional Center for Border Rights (RCBR) earlier this year. The RCBR heard this same story over and over again as it conducted interviews over the course of several months with people living in New Mexico communities within 100 miles of the U.S.-Mexico border. Inside this ‘100 mile zone,’ U.S. Customs and Border Protection (CBP) claims extraordinary authority with minimal oversight and accountability, stopping and questioning people without suspicion of wrongdoing and erecting checkpoints deep in the interior of the country.



“We found that Border Patrol agents routinely treat New Mexicans as ‘guilty until proven innocent’ in the very communities they call home,” said RCBR Border Policy Strategist Brian Erickson. “ This discriminatory policing of New Mexican communities not only offends American values of fairness and equality, but it makes us all less safe by making victims and witnesses of crimes afraid to come forward.”

The RCBR released their findings in a report entitled Guilty Until Proven Innocent, detailing the Border Patrol’s regular

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## Ending Policing for Profit

*Continued from page 1*

being involved in criminal activity can be seized by law enforcement without ever even charging the property owner of a crime. Instead, the property itself is “accused” of the crime and named as the defendant, leading to bizarre case names like *United States v. \$16,395 in U.S. Currency* (the actual case name for Stephen and Jonathon’s seizure), *New Mexico v. One 1990 Chevrolet Pickup* and *United States v. Approximately 64,695 Pounds of Shark Fins*.

Unlike criminal forfeiture, where an asset is forfeited only after a person has been convicted of a crime in which the prosecution must prove guilt beyond a reasonable doubt, civil forfeiture turns the basic legal principle of “guilty until proven innocent” on its head. In order to reclaim the property, its owner must go to court and prove that the property is innocent.

To make matters even more Kafkaesque, although people in America have a constitutional right to legal representation when accused of a crime, their property does not. The property owner must hire a private attorney, the cost of which often exceeds the value of the asset. The majority of those who have had assets taken through civil forfeiture cannot afford to fight it in court, placing any semblance of due process beyond the grasp of most Americans.

A law enforcement practice so patently unjust could only have come from one place: the War on Drugs. Although civil forfeiture had been used before throughout American history—most notably during the Prohibition Era—civil forfeiture in the modern era was jump-started during the collective anti-drug hysteria of the 1980s. In 1984, Congress established the federal Assets Forfeiture Fund and set up an equitable sharing program that permitted local police departments to keep 80% of the assets seized during drug raids and other investigations. Later amendments drastically expanded what law enforcement could do with these funds, including allowing their use for purchasing new equipment and overtime pay. States were quick to follow suit, tweaking their own civil asset forfeiture laws to funnel the spoils of civil forfeiture into local and state law enforcement budgets.

This clear profit motive, combined with a legal system stacked against the property owner, caused civil forfeitures to skyrocket. In 1986, the Assets Forfeiture Fund took in 97.7 million dollars’ worth of seized assets. By 2013, the Fund held more than two billion dollars outright. According to the Washington Post, state and local police agencies have taken in three billion dollars just since 2008.

### Attempts to Tame the Beast

Policing for profit has taken our justice system into some dark places. For evidence of that you need look no further than the recording of former Las Cruces City Attorney Pete Connolly’s comments last year during a vehicle forfeiture seminar. Speaking to a room filled with local government and law enforcement officials, he laughed about targeting people with expensive property for arrest.

“We always try to get, every once in a while, like maybe a

good car,” Connolly says in the recording. “This guy drives up in a 2008 Mercedes, brand new. Just so beautiful, I mean, the cops were undercover and they were just like ‘Ahhhh.’ And he gets out and he’s just reeking of alcohol. And it’s like, ‘Oh, my goodness, we can hardly wait.’”

Later, referencing a couple in Philadelphia who lost their house to forfeiture because their 22-year-old son made a \$40 dollar drug deal on their back porch without their knowledge, Connolly gleefully told the room of officers, “We could be Czars. We could own the city. We could be in the real estate business.”

New Mexico tried to reduce the harm created by this profit motive in 2002 by amending its state forfeiture act with the intention of preventing state and local law enforcement departments from profiting directly. The amendment set up a state general fund for all forfeited civil assets, which would be used for drug recovery programs and other crime prevention initiatives. Unfortunately, though well-intentioned, this provision had a loophole big enough to drive a forfeited truck through. If a local or state police department collaborated with a federal law enforcement agency, they can make the seizure under federal forfeiture law and take a kickback directly from the federal government under the equitable sharing program.

If you were puzzled at the beginning of this article by why a federal Homeland Security officer was present when Albuquerque police seized Stephen Skinner’s vacation money, perhaps the pieces are now beginning to fall into place.

The Albuquerque Police Department, fully aware that if they seized the money themselves they would have to turn it over to the state general fund, called federal agents to the scene—in this case Homeland Security—so that they could perform an end run around the state general fund and funnel 80% of the proceeds directly into their own budget.

And so, despite attempts to rein in policing for profit, the practice continued not much abated.



*Honest, though perhaps lacking in subtlety.*

### An Unlikely Coalition

A strikingly diverse array of organizations came together to support the goal of ending civil asset forfeiture, so much so that it almost sounds like the beginning of a “walks into a bar joke.” The ACLU of New Mexico and the New Mexico Drug Policy Alliance – two progressive organizations – teamed up with two more conservative organizations, the Institute for Justice and the Rio Grande Foundation, as well as former Republican Attorney General Harold Stratton and former New Mexico legislator Brad Cates, who also served as the director to the Justice Department’s Asset Forfeiture Program in President Reagan’s administration.

Cates, former national asset forfeiture czar, has done an about-face on the issue, writing in an op-ed for the Washington Post, “Over time ... the tactic has turned into an evil itself, with the corruption it engendered among government and law enforcement coming to clearly outweigh any benefits.”

“The diversity and breadth of the coalition really illustrate how strongly people from across the spectrum have come

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## Executive Director's Notes: Not Backing Down and Never Going Away



The recent release of deceptively edited videos designed to disparage and discredit Planned Parenthood's voluntary fetal tissue donation program—a program that is invaluable to medical researchers seeking to cure many deadly diseases—is the latest salvo in the systematic attack on abortion access here in the U.S. It seems that anti-choice extremists will go to any length to stigmatize providers and politicize women's health. It's shameful that they are willing to so distort the truth about tissue donation in order to further their own agenda.

The threat to abortion access is as serious here in New Mexico as it is anywhere in the country. In the summer of 2010, the extremist anti-abortion organization Operation Rescue sent two "missionaries" to Albuquerque to work with the local anti-abortion organization 'Project Defending Life' to expand their efforts to harass doctors and shut down clinics. As you might recall, Operation Rescue was linked to the 2009 murder of Dr. George Tiller, a Wichita, Kansas abortion provider. Under its new leadership, Project Defending Life obtained recordings of 9-1-1 calls made from two abortion-providing clinics in Albuquerque and submitted complaints to the New Mexico Medical Board, claiming the calls were

evidence of unsafe medical practice. After three years of probing and legal wrangling, the Medical Board concluded there was no basis to their claims.

Undeterred, Project Defending Life shifted its strategy in 2013 to passing a municipal ballot measure that would ban abortions after 20 weeks in Albuquerque. At enormous expense to tax payers, the city voted down the measure, but only after the ACLU, Planned Parenthood and other allied groups launched a massive campaign called Respect ABQ Women to mobilize voters.

Finally, abortion opponents took advantage of recent changes in the make-up of the state legislature to push bills in the 2015 legislative session that would have required parental consent for teens seeking abortions and established a 24-week legal standard for recognizing fetal viability. For the first time in history, the bills cleared the House. The ACLU and its allies were able to stop a push to circumvent the committee process and take the vote directly to the Senate floor. But we face significant challenges to stopping these bills in future legislative sessions.

The attacks on Planned Parenthood are a disturbing reminder of the deceitful tactics that anti-abortion extremists are willing to employ to restrict women's access to reproductive health care. We know that New Mexico will continue to experience these attacks because our opponents believe their faith justifies interfering in others' private medical decisions and using any means necessary to achieve their goals. But just as we have done time and time again, the ACLU and its allies will fight back hard with every tool we possess to ensure that anyone who needs abortion care can access it.

We stand with Planned Parenthood, just like we stand every day with New Mexico women. We're not backing down, and we're never going away.

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Like what the ACLU of New Mexico is doing to protect freedom in our state? Generous gifts from supporters like you are what has enabled the ACLU of New Mexico to continue its critical work for more than 50 years. We encourage you to use the envelope provided in this newsletter to invest in the future of freedom here in New Mexico. You can also donate online at [www.aclu-nm.org/secure/support-aclu-new-mexico](http://www.aclu-nm.org/secure/support-aclu-new-mexico).

## CHAPTER NEWS

### Seeking Board Members for Santa Fe Chapter

Civil libertarians with a desire to participate actively in the operations of the Santa Fe Chapter of the ACLU.

The Chapter is seeking new Board members, who are willing to attend bi-monthly meeting held on the second Monday of even-numbered months at 4:00 p.m. at the Rothstein law offices, 1215 Paseo de Peralta in Santa Fe.

There are no age or other qualifying factors, other than being a member of the ACLU and a willingness to share your intelligence, concerns, ideas, wit and opinions with other members of the Board.

If you are would be willing to serve an indefinite term and would like to discuss your participation further, please contact Frank Susman, Chapter President and State Board member:

LTCSusman@Comcast.net or (505) 984-3012.

### Updates from the Southwestern Chapter

The SW Chapter continues to monitor the Grant County and Luna County Detention Centers. After receiving several complaints about an event at the Luna County jail, the SW Chapter was invited to participate in the Detention Center's "Critical Incident Report" event and witness videos of the events. The chapter has also instituted periodic visits to Grant County Detention Center where it is evaluating options for bringing about change at that facility.

The chapter is working with the Immigrant Justice Network to produce a resource brochure that can serve as guide to essential services. This effort began with a coalition building meeting we held last August.

*Continued on opposite sidebar.*

## Ending Policing for Profit

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to feel about this issue," said ACLU of New Mexico Policy Director Steven Robert Allen. "There is just something so fundamentally wrong and unjust about the practice that anyone who has put any thought into this issue whatsoever is bound to be deeply offended by it."

Led by Cates, the ACLU of New Mexico and its collaborators drafted a bill to end civil asset forfeiture and replace it with criminal forfeiture. Under the proposed law, law enforcement officers could still seize assets—but only after they obtained a criminal conviction. Convicted criminals could still be stripped of the fruits of their crime, but innocent people would no longer have to fear that the police could take their property without due process.

The coalition found a sponsor -- Rep. Zachary J. Cook, a Republican from Roswell -- to carry the bill in the New Mexico House. The coalition began lobbying key legislators through the long, torturous committee process. Although the bill was introduced late, it quickly began gathering momentum. With only days left in the legislative session, it cleared one committee, then another, then went to the house for a full vote. The ACLU of New Mexico mobilized hundreds of its members to send in emails urging their representatives to vote yes—and that's what they did.

"It was amazing to watch this piece of legislation start to move," said Allen. "The barriers to passing a good law like this can sometimes feel insurmountable, but over the past few years our work with our partners on this issue achieved critical mass. New Mexicans made it clear that they would no longer tolerate these kinds of unfair and un-American policing practices and their representatives listened."

The ban on civil asset forfeiture cleared the New Mexico House of Representatives unanimously and then, with just two hours left in the session, also cleared the Senate unanimously. On April 10, scant hours from the signing deadline, Governor Martinez signed the bill into law.

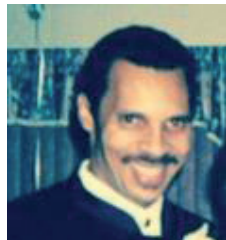
### The New Mexico Guidepost

In one fell swoop, New Mexico gained the strongest protections against civil asset forfeiture in the country. The kind of unjust seizure that Stephen Skinner and his son faced in 2010 is now illegal for state and local law enforcement.

New Mexico now stands as an example to other states, a guidepost on the path to reforming out-of-control drug laws that erode the fundamental rights of Americans. While several states have passed laws restricting the practice, New Mexico has passed the strongest law in the country, an outright ban on policing for profit. We expect other states, inspired by our success, to press this issue in their legislatures in the coming months and years. We are also hopeful that this success will spark game-changing civil asset forfeiture reform at the federal level.

This issue stands as a prime example of how the ACLU of New Mexico's integrated advocacy model, employing legal, legislative, and communications tools together strategically, can create sweeping social change. When we took Stephen Skinner's case three years ago, we didn't just stop at getting his money back in court. We took his case to the court of public opinion, leveraging it to inform and educate New Mexicans about civil asset forfeiture. Having built our base of support, we took the issue to the legislature and held the Skinner case up as an example of why policing for profit does not belong in New Mexico. At the ACLU of New Mexico we are determined to help individuals who have suffered injustice, but we are equally determined to change the system that perpetuates that injustice. Together with our coalition partners, that is what we accomplished.

## An Interview with ACLU-NM Plaintiff Stephen Skinner



*Following the successful attempt to ban civil asset forfeiture in NM, the Torch sat down with ACLU-NM forfeiture plaintiff Stephen Skinner to get his reactions.*

**THE TORCH:** *Did you know civil asset forfeiture existed before police used it to take your money?*

**STEPHEN SKINNER:** I wasn't aware of it. The police told me it was illegal to drive around with that kind of money, but it wasn't. That was just a scare tactic they used against us. We had the money with us to help my sister with her new house that she'd just bought in Las Vegas, Nevada and for me and my son to have some fun. We didn't do anything wrong.

**TT:** *How did the experience affect you?*

**SS:** It set us back for a little while. We didn't have any money to get back from New Mexico. Our wives had to send us money because we didn't have anything to get back. It was just the trauma of the whole thing. The two of us were stuck in an area that we weren't familiar with, and surrounded by police officers who were threatening to lock us up for no reason at all—it was pretty traumatic for me and my son.

**TT:** *Most people never stand up against civil asset forfeiture, because they can't afford it and the deck is stacked against them. What made you decide to fight the seizure?*

**SS:** I've always felt that if I've done nothing wrong, I need to defend myself. I had to go after them and bring out into the open what they were doing. You can't just let people do what they want to do to you. You have to stand up for what's right.

**TT:** *Your experience was used time and time again as an example of how civil asset forfeiture is abused when we lobbied the legislature to ban the practice in New Mexico. How do you feel knowing that your decision to fight your seizure ultimately played a pivotal role in eliminating the practice?*

**SS:** I was elated. I was really elated, I felt that I had some kind of impact on that. It really felt good. It almost brought tears to my eyes when I saw the news. That's how much it touched me.

**TT:** *Anything else you want to add?*

**SS:** What I would really like people to know is that the ACLU is there to help people. We tried to get an attorney at first, but he said there was nothing he could do for us. My son's wife said we should contact the ACLU, so we did. We got our money back and everything was great.



## Guilty Until Proven Innocent

*Continued from page 2*

practice of bias-based policing and reckless disregard for the safety, dignity, and humanity of border residents. The RCBR's investigation uncovered disturbing evidence that Border Patrol agents:

- Abuse innocent residents who are doing nothing more than going about their daily lives.
- Racially profile innocent border residents, making communities less safe and sowing mistrust in the community
- Put the health and safety of border residents at risk by stopping ambulances and patrolling through health centers in violation of their own policy

As a companion to the report, the RCBR released three professionally produced videos featuring interviews with several of the people highlighted in the report, including members of the fire department in Columbus, a small town in southern New Mexico that is separated from the nearest hospital by a Border Patrol checkpoint. Oftentimes, as fire department ambulances transport patients through the checkpoint, Border Patrol agents follow, harass, and even stop them on their way to the hospital. Daniel, a Columbus Fire Department Paramedic recalls one instance in which they stopped an ambulance carrying a stroke victim to the hospital.

"Time is of the essence. From the onset of symptoms, we only have three hours," said Daniel. "If we stop for something that is not important, we're cutting into that time."

"People here in Columbus are afraid of Border Patrol, and a lot of time for good reason," says Bill, the Fire Captain. "A lot of them have family members who are undocumented, and if they're caught, they're going to be deported back to Mexico. And when Border Patrol is driving around town—which they do, every day, 24/7—a lot of times people are not willing to call us,

even when their children are sick. This has to stop. They are hurting innocent people. I don't care what nationality they are, or what border they cross. If they need help, I am licensed and certified to give them that help."

The RCBR is currently using the report to pressure policy makers and legislators to hold U.S. Customs and Border Protection accountable and rein in discriminatory and military-style policing of border communities.

RCBR, in partnership with ACLU affiliates, the ACLU legislative office in D.C., and coalitions on our Northern and Southwestern borders, has called on CBP to finally establish a clear prohibition on all forms of profiling, annual training that includes consideration of implicit bias, data collection of all Border Patrol stops and searches, and public reporting aggregated by demographics to bring sorely needed transparency to border communities.



“If we’re going through a checkpoint and we forget to call ahead, sure as day they’re going to hound us all the way to the hospital.”

-Ken, Columbus Fire Chief

All of these reforms align with recommendations made by the Task Force on 21st Century Policing convened by President Obama in response to the outrage sparked by the recent rash of high-profile instances of discriminatory policing and brutality. Our nation's largest police force, CBP, should be held to the same professional standards. Anything short of embracing systemic police reforms would suggest CBP continues to answer to no one at a time when police departments nationwide are prioritizing accountability and restoring trust to the communities they serve.

"Border Patrol should be on the border, not harassing community members and preventing them from safely and freely going to work, attending school or running errands," said Erickson. "We are asking Torch readers to sign a petition asking Senators Udall and Heinrich to push in Washington for greater oversight and accountability of Border Patrol—part of our nation's largest police force. New Mexicans value diversity, fairness and refuse to tolerate discrimination by law enforcement. Congress and the President should hold Border Patrol accountable to the same standards and reforms as local police to restore trust and transparency."

*Continued from page 4.*

The SW Chapter has continued its outreach efforts through hosting a 4th of July booth in Silver City's Gough park.

Chapter meetings are scheduled for the second Thursday of odd-numbered months, and are open to all. The next two meetings are scheduled for 6:00 PM in Silver City on September 10 and November 12. The chapter will hold its Annual Meeting on Friday, October 23; this year's theme is "The New Normal: How Our Lives Have Changed Since 9/11." We urge the public as well as all ACLU-NM members in Grant, Luna, Hidalgo, and Catron Counties to attend.

If you wish to get in touch with the SW Chapter, contact:

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Visit [www.aclu-nm.org/guiltyuntilproveninnocent](http://www.aclu-nm.org/guiltyuntilproveninnocent)



- Sign the petition asking Sentators Udall and Heinrich to push for greater oversight and accountability for Border Patrol
- Watch video interviews with the Columbus, NM paramedics and other border residents featured in the report.
- Read a full copy of the Guilty Until Proven Innocent report

Scan with your smartphone or tablet to go straight to the website!

## Just Because We Protect Your Right to Be an A\*\*hole Doesn't Mean We Agree with You

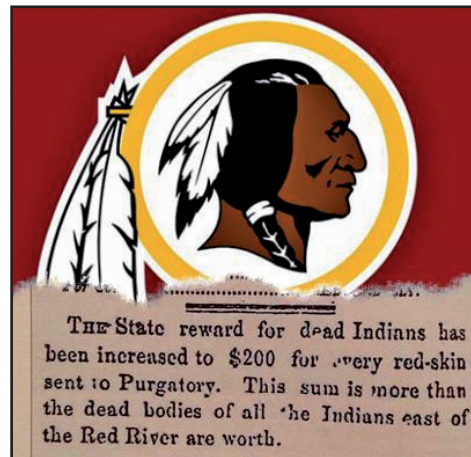
The American Civil Liberties Union has a long, storied history of protecting the right of thoroughly unpleasant people to express their ignorant and repulsive opinions because, at its root, that is what free speech is all about. Our First Amendment wasn't created to protect popular speech—popular speech doesn't need defending—it was by its very nature designed to protect speech that many people find offensive.

And it doesn't get much more offensive than naming a national sports team after a racial slur with genocidal overtones.

We are of course referring to the controversy surrounding the Washington Redskins, the NFL team that calls our nation's capital home. While the United States has long trivialized and demeaned its native peoples by making them into mascots of high schools and professional sports teams, the term 'redskin' is particularly heinous and hurtful to contemporary native peoples.

'Redskin' is one of the strongest pejorative terms one could call a Native American. In modern American English dictionaries, its meaning is described as "usually offensive," "disparaging," "insulting," and "taboo." Many people, including the ACLU-NM board of directors, also consider the term tied to the systematic slaughter of natives, when governments offered bounties for the scalps or "skins" of Native Americans.

Recently, the U.S. Patent and Trademark Office refused to grant the Washington Redskins a trademark because the franchise name violated a federal statute that bars registrations of marks that disparage others. The Washington Redskins filed a lawsuit, alleging that the Patent and Trademark Office violated their First Amendment rights, and the national ACLU filed an amicus brief supporting their free speech claim while repudiating the team's offensive name, writing:



*"Indeed, the ACLU has joined calls for the team to change the name and to stop using a word that perpetuates racism against Native Americans. And there is little doubt that many Native Americans view the word 'Redskins' as at least problematic, if not outright racist.*

*But the question of whether certain speech is distasteful is entirely distinct from the question of whether the government can constitutionally disadvantage it for that reason. Under the First Amendment, viewpoint-based regulation of private speech is never acceptable, regardless of the controversy of the viewpoint."*

This is a particularly sensitive issue for New Mexico, as we have the third highest percentage of Native Americans in the country. Native persons both sit on the ACLU of New Mexico board of directors and work on its staff. While none of us agree with the perpetuation of harmful stereotypes via sports team mascots, we maintain that the Washington Redskins have a constitutional right to continue being a\*\*holes if that is their wish.

It is our hope, however, that the team owners will join the 21st century and recognize that just because you have the right to say something doesn't mean you should say it. Words and symbols have power, and as a diverse, modern society we should strive to use words and symbols that do not marginalize or dehumanize others. Just as we are voluntarily abandoning the display of the Confederate battle flag in public places—even in the depths of the former Confederacy—because of the brutality and injustice that it symbolizes, so too should we abandon the cartoonish and racist depictions of native peoples in sports.

**At its last meeting, the ACLU of New Mexico board of directors voted to stop doing business with FedEx, one of the Washington Redskins' top sponsors.**

### With a Single Sentence, You Can Defend Freedom Now and Forever

Right now, by adding the ACLU to your will, you can leave a legacy of liberty for generations to come and defend our freedom today.

Through the Legacy Challenge, simply including a gift in your future plans can qualify the ACLU to receive a 20% cash matching donation today from our generous challenge donor.

For simple bequest language to include in your will and for information on other gifts that qualify for the Legacy Challenge, visit [www.aclu.org/legacy](http://www.aclu.org/legacy) or call toll-free 877-867-1025.

AMERICAN CIVIL LIBERTIES UNION  
**LEGACY CHALLENGE**

## Real Talk About Abortion: Rachel's Story

*Over and over again, we hear out-of-touch politicians and extremists talk about abortion in ways that do not reflect women's real life experiences with the complex, deeply personal decision to end a pregnancy. At the ACLU of New Mexico, we are not only committed to fighting to defend and extend reproductive freedom in the New Mexico legislature and courts, but also reducing the shame and stigma surrounding abortion. We know that stigmatization creates an environment in which it is easier to pass laws restricting access to basic medical care. We know it makes it more likely that a woman will be harassed for walking into a clinic. We know it makes doctors more likely to be targeted for intimidation, threats, or even physical violence.*

*One of our supporters came forward with her own abortion story, and we share it here with her permission to help center the voices of women on this important issue and reduce the shame and stigma that too often intimidates us into silence.*

**M**y first daughter was born in 2003. My husband and I were thrilled and couldn't wait to grow our family. A few years later, we were overjoyed to welcome our second child, Jordan.

His birth was complicated; he was breached and I needed to have a C-section. Moments after he was born, he began to have serious and unexplained respiratory problems. He was suffering and nobody knew what was wrong with him. It was maddening. Doctors eventually diagnosed him with Surfactant B Deficiency, an extremely rare genetic disorder that affects only one in one million newborns worldwide.

This disease prevents the lungs from functioning correctly, and infants diagnosed with this condition do not survive beyond the first few months.

I couldn't hold or even nurse him. He couldn't breathe on his own. Watching him suffer, powerless to do anything for him, was so excruciating that no words can ever describe it. My husband and I were faced with a heartbreaking decision: opt for a risky lung transplant that would only prolong his suffering—if he survived the surgery at all—or end his

*Continued on next page.*



(and our) agony by removing him from life support so he could pass peacefully. Either way, his fate was the same. Ultimately, we chose to take him off of life support, and five minutes later our beautiful baby boy died in our arms. My husband and I later found out that we are both carriers of this rare genetic disorder, and any child we have has a one in four chance of having the same condition Jordan did.

I had been through so much already, but I knew I wanted more children. Because we now knew we were both carriers, I was able to test for the deficiency during pregnancy. I became pregnant again and took the test that would determine if this was a healthy pregnancy. I knew my odds, and my worst fear was confirmed when I received the results: the test was positive. This baby, just like Jordan, would not survive.

I could not and would not carry another baby to term only to watch him or her die in agony. I decided to end the pregnancy and spare this child the suffering. Unfortunately, that was not the last time I would have to make that decision. I was saddened by these two losses, but I was also grateful

that I could make the best decision for my family and have access to a safe and legal abortion.

We lost Jordan, but what we learned from his tragic death allowed us to go on to have two more children who do not have the same fatal genetic disorder that killed their brother. It was a difficult journey, but I am grateful to have the wonderful family I have today.

What people need to understand is that every pregnancy is different and so are the circumstances that surround it. The decision to end a pregnancy is complex and deeply personal. I would never presume to tell any other woman who found herself in my position what she should do—it's just not that simple. When I had to make this difficult decision for my family, I did not consult any politician in Santa Fe. They were not in my shoes, so how could they possibly make this decision for me? That's exactly why these decisions belong between a woman, her family, and her doctor—no one else."

Rachel P.  
Albuquerque, NM

## Historic Victory: The Freedom to Marry Nationwide

What an incredible moment for our country. On June 26, 2015, millions of Americans rejoiced to learn that the Supreme Court of the United States had ruled once and for all that loving, committed same-sex couples have the freedom to marry in every part of the nation. It was a proud day for America. After centuries of living in the margins of society and decades of struggle, lesbian, gay, bisexual, and transgender people finally won the equal respect, recognition, and dignity for their relationships and families. Together, we took one more big step towards fully realizing America's promise of equality and justice for all.

As counsel for several of the plaintiffs in this case, the ACLU played a key role in this historic victory. The ACLU was also central in many of the cases that laid the groundwork for this final victory, from *Lawrence v. Texas*, the supreme court case that decriminalized gay relationships in Texas in 2003, to *Windsor v. U.S.*, the supreme court case that struck down the federal Defense of Marriage Act in 2013. ACLU affiliates like the ACLU of New Mexico were also instrumental to building the momentum for the freedom to marry by winning marriage equality state by state, pushing the nation towards the tipping point.

It was not so long ago when the ACLU of New Mexico gathered around a conference table with attorneys from the national ACLU and the National Center for Lesbian Rights to plan the lawsuit that would eventually win the freedom to marry in New Mexico. Things were far less certain then, in fact, marriage equality was on a bad losing streak. But we



40 years of ACLU same-sex marriage plaintiffs.

felt strongly that all New Mexico families matter, and it was time to take action. So in March 2013, we filed our lawsuit and, in conjunction, launched a pro-marriage public education campaign with our partner Equality New Mexico, the state's largest LGBT rights organization. Just 9 months later, the New Mexico Supreme Court ruled that same-sex marriage is legal in our state.

Winning the freedom to marry is a tremendous achievement, but it is a milestone, not the finish line. The dignity and liberty of LGBT people is more than a wedding. In many parts of the country, LGBT people can still be legally discriminated against by business or service providers. LGBT people can be fired from jobs or denied housing, just because of who they are. Transgender people, especially persons of color, regularly face not just discrimination, but outright violence. Bitter in their defeat, many anti-gay politicians are moving forward legislation that would allow people to use religion as an excuse to discriminate.

Thankfully, New Mexico is in a much better place than many other states. In recent decades, LGBT advocates, community members, and civil rights organizations have worked together to build strong protections against discrimination into state law and policy. But that doesn't mean that we can let our guard down. Unenforced laws protect no one, and the ACLU of New Mexico remains vigilant in the defense of LGBT New Mexicans rights.

Read on page 8 about the ACLU of New Mexico's recent Denny's anti-gay discrimination case.

*"What people need to understand is that every pregnancy is different and so are the circumstances that surround it. The decision to end a pregnancy is complex and deeply personal."*

- Rachel



Plaintiffs and attorneys outside the New Mexico Supreme Court following oral arguments in the New Mexico marriage case.



## THE TORCH

The Torch is a publication sent to members and supporters of the American Civil Liberties Union of New Mexico. Please send any comments, questions or article submissions to Micah McCoy, Editor and Communications Director at: [mmccoy@aclu-nm.org](mailto:mmccoy@aclu-nm.org)

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## Discrimination No Longer on the Menu at Deming Denny's

In June, the ACLU of New Mexico today announced a positive resolution to a discrimination complaint made by a group of LGBT customers against the Denny's restaurant in Deming, NM. The complaint arose when the individuals alleged that they were refused service because of their sexual orientation and that the group was subjected to discriminatory verbal abuse.

Jim Mathieu, the local franchise owner and operator of the Denny's restaurant in Deming, engaged in settlement negotiations to show his support for the group and that the restaurant values all of its diverse customers.

"We are very pleased to have resolved this matter for our clients," said Brian Moore, cooperating attorney for the ACLU of New Mexico. "It is clear to us that Denny's is committed to ensuring that all people are welcomed in their restaurants."

"Denny's does not tolerate any discrimination in our organization, and we take any

claims to the contrary very seriously," said Jim Mathieu, local franchise owner and operator of Denny's in Deming, NM. "While we disagree with the specifics of the incident, our priority is on ensuring our guests are heard and therefore we worked diligently with Deming Pride and the ACLU of New Mexico to reach this resolution for all. We wish the best for our guests who were involved in this case."



*Deming Pride president Manny Carlos, one of the plaintiffs, at the 2015 Deming Pride Celebration*

Under the terms of the settlement agreement, the restaurant owner agreed to:

- Provide his employees with extra training on non-discrimination
- Confirm that company discrimination policies comply with state law
- Donate \$13,000 to Deming Pride, a local non-profit and charity that promotes diversity and tolerance in the community
- Provide \$3,250 to the woman who alleges she was verbally abused by a Denny's employee.

## New ACLU-NM Staff



### **Erin Armstrong, Reproductive Rights Attorney**

Erin Armstrong is an attorney at the ACLU of New Mexico where she focuses on strategies to protect and expand reproductive rights and increase access to reproductive health care throughout the state. Before joining the ACLU, Erin was a staff attorney and reproductive justice law fellow at the National Health Law Program's (NHeLP) Washington, D.C. office, where she worked at the national level to improve access to reproductive health care for low income and underserved communities. As a law student, Erin held positions at the East Bay Community Law Center's medical-legal partnership in Oakland, California, the Southwest Women's Law Center in New Mexico, and Advancing New Standards in Reproductive Health (ANSIRH) at the University of California, San Francisco. Prior to law school, she coordinated a reproductive health grants and membership program, worked for the New Mexico Department of Health to improve services for people living with HIV/AIDS, and advocated for drug policy reform grounded in compassion and public health. Erin is a current board member and former president of Law Students for Reproductive Justice. She is also the recipient of the 2009 New Mexico Public Health Association Phil Lynch Legislative Award. Erin received her law degree from the University of California, Berkeley, and her B.A. from the University of New Mexico.



### **Rachael Maestas, Communications Associate**

Rachael Maestas joined ACLU NM in 2015 as Communications Associate. Previously, Rachael worked with ProgressNow New Mexico on reproductive rights and drug policy reform. She also served as communications associate in the New Mexico House of Representatives during the 2015 Legislative Session. Rachael has a Bachelor of Arts degree in American studies with a minor in Women Studies from the University of New Mexico, where she graduated cum laude in 2013. While attending UNM Rachael was a founding member and served as President of the Feminist Majority Leadership Alliance at UNM, addressing reproductive rights and sexual assault awareness on campus. When Rachael isn't working towards reducing stigma around reproductive healthcare, she and her dog Toast enjoy sunny patios at local breweries and the beautiful New Mexico landscape that surrounds their home in Duranes.