

# #DRIVING MATTERS FORWARD

## FOR DEMOCRACY AND LIBERTY

2021 ACTION REPORT

ACLU  
Massachusetts





# Message from the Executive Director

The year 2021 began with the promise of change. But just six days in, it became clear that cynical forces intent on damaging the integrity of our elections, maintaining racial injustice, and rolling back reproductive autonomy were gaining momentum in our country.

These threats to our democracy and liberty highlight the importance of the ACLU. Together with you, the ACLU is on the frontlines of the movement to defend, restore, and strengthen civil rights and civil liberties across the country—starting here in Massachusetts.

As you'll see and hear in this report, your ACLU is a strong and steady force for equal justice under the law. Using our powerful combination of strategic litigation, legislative advocacy, and people power, we fight for law and policy reforms that advance our vision of a world in which all people are safe and free. In Massachusetts, we have expanded voting rights, secured and improved abortion access, and protected the privacy rights of Bay Staters—and we're just getting started.

Please join us on this journey: Learn more about our recent civil rights successes, meet our remarkable staff and partners, and join our work to make 2022 a historic year for civil rights and civil liberties in Massachusetts and across the nation.

Looking ahead, Massachusetts must be a beacon for civil rights and civil liberties. Indeed, our Commonwealth has a unique and important role to play in resisting attacks on democracy and liberty. Our history is rich with revolutionaries, abolitionists, suffragettes, and other civil rights heroes. In 2022, the Massachusetts political landscape is once again ripe for revolutionary reforms. Elections for governor, attorney general, secretary of state, district attorneys, sheriffs, and local councils and school boards offer renewed opportunities for public debate over the future direction of our Commonwealth. As a non-partisan organization, the ACLU is well-positioned to advance civil rights and civil liberties priorities with voters and the public who care about defending democracy, promoting equality, advancing racial justice, ensuring reproductive autonomy, and strengthening privacy. We have achieved much together in the past year. But opponents of civil liberties aren't taking a break, and neither will we. Together with you, the ACLU is poised to uphold civil rights and civil liberties in the year ahead. Our democracy and liberty depend on it.

Onward,

Carol Rose  
Executive Director, ACLU of Massachusetts



# 2021 Highlights



## In Communities

Working with grassroots partners and communities across the Commonwealth, the ACLU harnessed the power of We the People to effect change and advance the cause of justice.

Drawing on two years of input from a wide range of students, faculty, and higher education stakeholders, the ACLU of Massachusetts and Bridgewater State University together released a **model policy** for racially just policing on college campuses. To date, several institutions have already pledged to review their policies in light of our recommendations.

After a sustained campaign alongside other immigration advocates, including our local partners and the national ACLU, the Biden administration **ended** its ICE contract with the Bristol County Sheriff's Office. The decision came after revelations of egregious civil rights violations perpetrated by Bristol authorities.

We also continued our "What a Difference a DA Makes" voter education campaign, shedding light on the **power of district attorneys** with community convenings in every county.



## In the State House

Last year, we celebrated the passage of major new bills on police reform and abortion access, and pressed lawmakers to go further in protecting and expanding civil liberties.

In the aftermath of historic police reform legislation, the ACLU participated in nine legislative commissions designed to consider further statewide police accountability efforts—including commissions related to **qualified immunity**, body cameras, and face surveillance.

Building on over two years of success in our campaign against face surveillance, we advocated for a **new bill** that will strengthen regulations on this dangerous, dystopian technology.

We also pushed for new laws like the **VOTES Act**, which would permanently establish several of the best ballot access measures implemented during the pandemic, like widespread mail-in voting and jail-based voting reforms.

We also campaigned for bills that would curb the criminalization of poverty by **eliminating** debt-based license suspensions, and ensure that all eligible drivers can access licenses, **regardless of immigration status**.



## In the Courts

In 2021, we secured major legal victories in areas such as immigrants' rights, racial justice, and criminal legal reform.

In the past year, we've seen the continuing legacy of the ACLU's work on Massachusetts' drug lab scandals. In July, the Suffolk County District Attorney's Office moved to vacate additional drug convictions potentially impacted by government misconduct. Together with legal partners, the ACLU's litigation ultimately secured the dismissal of over 61,000 charges across 35,000 cases.

In April, we filed a lawsuit against the Hampden County District Attorney's Office to seek a full investigation into years of violence and misconduct by the Springfield Police Department, and to ensure that evidence of that misconduct is properly disclosed to criminal defendants.

In December, we won a landmark ruling in the First Circuit Court of Appeals, affirming that immigrants are entitled to fair bond hearings when detained by the federal government. This ACLU victory ended a practice that violated the constitutional rights of detainees in New England for 20 years.



# Protecting Immigrants' Rights



Laura Rótolo  
Staff Counsel and Community Advocate

ACLU  
MA

# Defending Free Speech



Ruth Bourquin is senior and managing attorney at the ACLU of Massachusetts, where she specializes in free speech issues.

**In 2021, the ACLU of Massachusetts secured a legal victory related to the right to display political signs. What was the issue in that case?**

A Massachusetts court ruled that restrictions imposed by a condo association on homeowners displaying signs on or near their own units were

unreasonable. This applied specifically to a person who wanted to post a Black Lives Matter sign in her garden bed. From Holyoke to Plymouth, the ACLU of Massachusetts has successfully challenged unconstitutional local ordinances prohibiting or limiting political signs. But this case is significant because it suggests that the Massachusetts Constitution's free speech guarantee, unlike the First Amendment, prevents restrictions by private—not just public—actors.

**Are lawsuits the only way that the ACLU can help resolve these cases?**

Not necessarily. We commonly resolve free speech issues by negotiating without going to court. Last year, we resolved a dispute with an Amherst condo association without having to sue, and we also recently resolved a matter involving unconstitutional restrictions imposed on street performers by the City of Salem.

**Broadly speaking, what were some of the biggest developments related to free speech in Massachusetts in 2021?**

The U.S. Supreme Court is poised to

decide a case involving the intersection of free speech and exercise of religion. The case arose from Boston's policy of opening a City Hall flagpole to use by private parties but denying that right to a religious group. The ACLU brief in the Supreme Court argues that, although Boston's concerns about flying religious symbols at City Hall are understandable, opening the flagpole to private parties but then excluding this group because of the viewpoint of its message violates the First Amendment.

**The ACLU had a big win in a free speech case at the Supreme Court in 2021. Can you tell us why that case was so important?**

The case was significant because it reaffirmed that high school students have free speech rights with regard to off-campus comments that do not cause disruption or invade others' rights at school. If the case had gone the other way, it would have conferred excessive power on schools to curtail student speech, including speech criticizing school officials and government actors, which is essential to our democracy.

**What do you anticipate will be the next "big fight" in the field of free speech law?**

There are big issues looming with regard to restrictions on what subjects can be taught—and what information students have a right to receive—about the troubled racial history of this country, often framed as a debate over "critical race theory." Fortunately, in Massachusetts this year, the state attorney general agreed with an ACLU brief that a proposed ballot question restricting the teaching of anything that makes certain groups feel guilty or uncomfortable violated free speech, so we have a good foundation for challenging such restrictions here.



# Fighting for Reproductive Freedom



Nicki Nichols Gamble chairs the board of directors at the ACLU Foundation of Massachusetts. She has been involved in the reproductive rights movement for over 60 years, including 25 years as the former president and CEO of Planned Parenthood League of Massachusetts. Jessie Rossman is a staff attorney at the ACLU of Massachusetts.

**2021 was a big year for abortion rights—from Texas, to Mississippi, to our neighbors in New Hampshire. What is the state of abortion rights in our country, right now?**

**Jessie:** 2021 was a historically challenging year for abortion access. State legislatures passed more than 100 abortion restrictions—the highest total in the 49 years since *Roe v. Wade* was decided. This includes SB 8, the Texas law that bans abortion as early as six weeks of pregnancy and creates a bounty-hunting scheme for private citizens who successfully sue anyone who helps a patient get care after this cutoff. The law was designed to evade judicial review, and states are already introducing copycat bills across the country. These restrictions disproportionately burden people of color and low-income people seeking abortion access. At the same time, the Supreme Court heard *Dobbs v. Jackson Women's Health Organization*, a challenge to a Mississippi ban of almost all abortions after 15 weeks. Based on oral arguments, a majority of the Court seems poised to either

entirely overturn *Roe* or significantly gut its protections.

**Looking back on your lifetime of experience in this field, how did we get here?**

**Nicki:** From the beginning in 1973, following the landmark *Roe v. Wade* decision, I have ridden a political rollercoaster regarding the legality and availability of abortion in the United States and throughout the world. I have spent many years “talking to the enemy” regarding the moral, legal, and public health aspects of abortion rights. I have devoted almost all of my professional career debating the importance of and providing safe, legal, affordable abortion care to women regardless of their ability to pay.

I began my Planned Parenthood career in 1974 with a commitment to give five years to the movement and ended up giving closer to 50. Initially, I thought the *Roe* decision was an inflection point that would change the course of history—permanently creating an area of personal privacy for women to make their own decisions about childbearing,

free from government intervention and protected by democratic principles of equality and justice for all.

Within days of my becoming head of Planned Parenthood and a co-conspirator with ACLU, parental consent legislation was approved by the state legislature; Kenneth Edelin was indicted and convicted of manslaughter for an abortion performed at Boston Medical Center (he was subsequently acquitted); Medicaid restrictions on abortion funding for low-income women were defeated in Massachusetts by an ACLU-led state constitutional challenge; heated anti-abortion protests outside of provider offices led to clinic break-ins and vandalism; and extreme violence culminated in the maiming and killing of abortion providers and clinic staff members including two young women in Brookline. One of these women was my staff member, Shannon Lowney.

Hardened facilities included bulletproof glass, electronically-controlled locks at doors, armed guards, identification cards, badges. COVID precautions seem mild in comparison; protections against school shootings are a more appropriate



# Fighting for Reproductive Freedom (CONTINUED)

metaphor. Fear, hate, and intimidation were de rigueur. The assaults ran a spectrum between nuisance challenges and serious blows that could destroy the provision of abortion services for almost all women. Each of them fell into a set of attacks requiring costly, protracted litigation. The external environment became increasingly hostile, dangerous, and demoralizing. Every executive judicial appointment, especially appointments to the Supreme Court, became opportunities to kill *Roe*.

Now, we are on the precipice of having the *Roe* decision either struck down completely or diminished substantially. We have arrived in a place where the battles will be engaged over access to medical abortion, where out-of-state travel becomes essential to preserving reproductive health, where small impediments become immovable objects, where grassroots organizing becomes key to preserving reproductive health and dignity. We must continuously be alert and vigilant. We can never forget the past. We can never rest on our laurels.

**If *Roe v. Wade* is overturned, what would it mean for the already super restricted abortion rights in states like Mississippi? And what would it mean for states that don't have restrictions?**

**Jessie:** Such a decision would have an immediate impact on abortion access in this country. Nearly half of the states are already poised to ban or significantly limit abortion if *Roe* is overturned. Several more states are likely to quickly follow suit. Here in Massachusetts, the ACLU and the ROE Act Coalition worked with leaders in the Massachusetts legislature to pass the ROE Act in December 2020. The ROE Act strengthens access to abortion care and ensures that abortion will remain safe, legal and accessible in Massachusetts—even if the Supreme Court undermines federal protections for reproductive autonomy. Given the nationwide landscape, we are working now to ensure that legal access translates into real-world, equitable access to reproductive health care for all who need it.

**How is the ACLU fighting back?**

**Jessie:** Every step of the way, the ACLU is fighting back. We are challenging abortion bans, including SB 8, and barriers to care in dozens of state houses and courts across the country, including the Supreme Court. And we are achieving some hard-fought victories: In response to a 2017 ACLU lawsuit, the FDA in 2021 permanently repealed its medically unnecessary restriction requiring in-person dispensation of mifepristone, used for miscarriage care and medication abortion, allowing patients to receive the medication by mail or delivery. This decision will increase access to abortion care in many states across the country. Our fight will continue until we can put an end to every restriction that blocks people from getting the care they need.



# Keeping People Safe and Free



Kevin Prussia is the chair-elect of the board of directors at the ACLU Foundation of Massachusetts. He is a partner at WilmerHale.

**In 2021, the ACLU of Massachusetts and WilmerHale filed a lawsuit to help people experiencing homelessness in the area of Melnea Cass Boulevard and Massachusetts Avenue (Mass. & Cass) in Boston—what prompted this lawsuit?**

In October, then-Mayor Janey issued an executive order—targeted at Mass. &

Cass—declaring that the City would clear homeless encampments under threat of arrest. The City then conducted sweeps of those encampments, destroying belongings and removing tents and temporary shelters. However, many of the residents simply have no place to go because they have serious medical needs that render beds in traditional congregate shelter settings wholly unsuitable. The **key issue** is whether the City's policy of forcibly displacing people experiencing homelessness under threat of arrest—without first implementing any meaningful process to identify viable alternative housing options for them—violates the “cruel and unusual punishment” clause of the Eighth Amendment, Article 26, and state common law.

**Setting aside the legal result, do you think the lawsuit has had any broader, positive effects on the situation at Mass. & Cass?**

Yes. For starters, the litigation is continuing, and we remain optimistic. Nevertheless, the case has already had a number of positive impacts. Likely as a result of the lawsuit, the City delayed the removals for months—in which time they were able to secure

more low-threshold housing for affected individuals. The suit also forced the City to take seriously the rights of the unhoused and shifted the public conversation to focus on those rights.

**We've heard a lot of controversy over the past two years about the supposed conflict between civil liberties and public health—are these two always opposed to each other?**

Certainly not. Implemented correctly, public health measures can and should be protective of civil liberties—both are aimed at protecting individuals and communities alike. However, public health programs or initiatives often deploy blunt instruments, designed to protect the broadest number of people—and no instrument is more blunt than the threat of criminalization. This can leave people out at the margins. Organizations focused on civil liberties can help tailor public health responses to protect the rights of those people.

**What would it mean to treat substance use disorder as a “public health crisis,” rather than something that can only be resolved through the criminal legal system? Why would we want to do that?**

Those working in the field, as well as a significant proportion of government officials and the public generally, recognize substance use disorder as a public health issue rather than a criminal justice issue. This approach acknowledges that addiction is preventable and treatable, centers support and compassion, and follows the science that tells us treatment is more successful, more humane, and more cost-effective than incarceration in reducing relapse and overdose rates.

**Has the pandemic taught us anything about the intersections between public health, civil liberties, and criminal legal reform?**

The pandemic has exposed the pre-existing cracks in our current systems and demonstrated how interdependent all of these facets of public life truly are. The successes—and failures—of the pandemic era further highlight the need for comprehensive criminal legal reform. At bottom, public health initiatives must work hand-in-glove with robust civil liberties protections to ensure that the most vulnerable among us are not overlooked in the rush to implement important and necessary programs.

# Protecting Privacy



Kade Crockford is the director of the Technology for Liberty Program at the ACLU of Massachusetts.

**The ACLU of Massachusetts launched its Press Pause on Face Surveillance campaign back in 2019, and it's still going strong. What were some of the campaign highlights in 2021?**

Last year, **Worcester** became the eighth city in the Commonwealth to pass a municipal face surveillance

ban. Thanks to our campaign, over 1.5 million people are protected from this dangerous technology in Massachusetts. We've also been serving on the Massachusetts Legislature's commission to study government use of facial recognition technology. Once that commission issues recommendations, the ACLU will pivot to working closely with lawmakers to strengthen the hard-won regulations established in the 2020 omnibus police reform legislation. Those regulations went into effect in July 2021, but there's still more to do before the law adequately protects civil rights and civil liberties statewide.

**What are some of the most exciting recent developments in the fight to regulate face surveillance nationally, or even internationally?**

One of the most exciting things our work has accomplished is that we've helped to fundamentally change the terms of the debate. We have shown ourselves and the world that we **don't have to accept** a society where tech policy is shaped behind the scenes by

unelected officials, or by self-interested technology companies. We the people can and must shape our future relationship to technology, and bend it towards civil rights, civil liberties, accountability, and justice.

**What's next for the campaign in Massachusetts? What's coming up in 2022?**

The ACLU will continue to work closely with state lawmakers to ensure we strengthen existing face surveillance regulations. Our primary goal for 2022 is to pass **a stronger state law** to ensure all people in Massachusetts are protected from dragnet surveillance and warrantless face recognition searches. We will be calling on our supporters to get involved. We will need your help to get these crucial protections over the finish line!

**What other work has the Technology for Liberty Program done in Massachusetts over the past year? What are you most proud of?**

After four years of ACLU advocacy and organizing with partners, Boston **passed**

a comprehensive surveillance oversight ordinance in fall 2021. The ordinance mandates public disclosure of all Boston police surveillance technologies and requires that the police get City Council approval for all surveillance technologies currently in use, and for future acquisitions. The ACLU launched a nationwide effort in 2016 to pass such laws to ensure people—not police—are empowered to decide if and how surveillance technologies are used. And in 2021, we are proud that Boston marked the 22nd surveillance oversight law passed nationwide.

**What do you say when someone tells you that "privacy is dead"?**

Privacy isn't secrecy; it's control. Everyone cares about their privacy, no matter what they might tell you. That's why they have passwords protecting their online accounts, curtains on their windows, locks on their doors, and clothes on their bodies. Privacy is a prerequisite for human dignity, agency, and functional democracy. It's not dead—but it is in trouble, and that's why the ACLU's Technology for Liberty work is so important.



# Securing Democracy



Gavi Wolfe is the legislative director at the ACLU of Massachusetts.

**In response to the pandemic, the Massachusetts Legislature passed some crucial measures to increase ballot access. Those measures were temporary; the VOTES Act, a bill that the ACLU supports, would make them permanent. Why is that so important?**

The pandemic exposed barriers to voting access that predated the COVID era, and the innovations we adopted in response

to the pandemic have shown us a better way forward. In addition to instituting safeguards to protect public health at the polls, lawmakers extended opportunities for in-person early voting and—for the first time ever—established widespread mail-in voting. Because of mail-in voting, we saw record turnout across the Commonwealth during the last statewide election. Now we need to make these reforms permanent to continue that trend of improving access and increasing democratic engagement.

**We're also advocating for a new reform: Same Day Registration. Why is this a good thing for voting rights?**

Same Day Registration means people aren't barred from voting just because they didn't register before an arbitrary cutoff date, or because of a problem with their registration that they discover when they show up to cast their ballot. It's particularly crucial for communities with a lot of low-income voters, **renters**, and voters of color. No other policy has the same impact on equitable access and racial justice at the polls. Twenty other states have implemented Same Day Registration

and we're late to the party. Where voting is concerned, Massachusetts should be a leader, not a laggard.

**We're seeing a lot of attacks on voting rights nationwide. How is the ACLU fighting back?**

We just had another round of redistricting, which means that states around the country are drawing new legislative maps. Unfortunately, this also means that we're seeing a lot of gerrymandering, with lawmakers drawing districts that deliberately dilute the power of Black voters. Thankfully, the ACLU has filed lawsuits in five states so far—Georgia, Arkansas, South Carolina, Alabama, and Ohio—to challenge these unconstitutional attacks on the principle of “one person, one vote.”

**How can Massachusetts play a bigger role in the fight to preserve our democracy?**

At its best, Massachusetts has always been a beacon of liberty for the nation, from reproductive freedom to marriage equality. The same should be true for ballot access. When we lead the way

with concrete reforms, we provide a model for equity and democratic engagement that other states can replicate. Especially in an era when voting rights are under attack both here and elsewhere, the Commonwealth can showcase a different, better path.

**What's something you wish more people understood about voting rights?**

From the very beginning, the history of voting rights in the U.S. has been about tearing down barriers and bringing us closer to our founding vision of government “of the people, for the people, and”—not least—“by the people.” That process was never just about formally guaranteeing the right to vote regardless of land ownership, race, or gender. It's also about removing arbitrary, systemic impediments to participating in the democratic process at every level.

# Funding Our Future

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## **Our Mission**

For over 100 years, the American Civil Liberties Union has worked every day in the courts, in the legislature, and in communities to defend and preserve the individual rights and liberties guaranteed by the Constitution, Bill Rights, and laws of the United States.

The ACLU of Massachusetts—a private, nonpartisan organization with more than 82,000 supporters across the Commonwealth and over 100,000 online activists—is a state affiliate of the national ACLU. We defend, promote, and extend the civil rights, civil liberties, and constitutional freedoms of all people in Massachusetts through legal action, legislative and community advocacy, and public education and engagement.