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To: ACLU of WA Donors

Fr: Michele Storms, Executive Director

Re: ACLU-WA Program: An Inside Look Back and Forward

I. INTRODUCTION

The ACLU of Washington's work ahead embraces the incredible opportunities 2021 brings. We have a newly elected Presidential Administration, including our first woman and first woman of color serving as Vice President. Control of the U.S. Senate flipped in large part due to Black-led organizations and grassroots activists turning out the Georgia vote, a testament to the power and importance of our work to secure and restore voting rights for all, register and mobilize voters, and reform electoral systems that deny communities the opportunity to vote for a candidate of choice.

Our Washington State Supreme Court is more diverse and unique than ever: a record-breaking seven of nine members are female identified; four are people of color representing Latinx, Native American, Asian American and Black American identities (at least two are mixed race); at least three members are either a naturalized immigrant or a first-generation child of immigrants. Two openly identify as LGBTQ+. Justice Steven González was just elected Chief Justice by his peers and is the first Latino and first Jewish Chief Justice in our state. The court is a growing reflection of the ever-evolving diversity of our state.

At the same time, we have a United States Supreme Court that is the most conservative it has been since 1950. The Federal Courts around the country have also been made significantly more conservative, with 220 of the Article III judges appointed by former President Trump as of November 2020 confirmed by the Senate.¹ Of further concern is that our country faced an attempted coup on January 6, 2021, in which hundreds of Trump supporters stormed the U.S. Capitol in an attempt to overturn Trump's defeat in the 2020 presidential election. Here in Washington State, hundreds marched on our state capitol in Olympia and some successfully got through the gates of the Governor's mansion, also in protest of the alleged stolen presidential election.

¹ Trivia buffs side note: the only president to appoint a greater number of Article III judges as of November 1 of their fourth year in office, at 260 confirmed, was President Jimmy Carter.
<https://news.ballotpedia.org/2020/11/03/trump-has-appointed-second-most-federal-judges-through-november-1-of-a-presidents-fourth-year/>

Although the Electoral College votes were duly confirmed, and we ultimately got through inauguration day peacefully, there remains a significant cross-section of our country that feels there was a stolen election, that the current administration is not legitimate, and that only a “revolutionary” (armed) overthrow of the government will cure the problem. We cannot take this lightly.

Finally, in 2020, with the global pandemic of COVID-19, and the racial reckoning and protests following the police killing of George Floyd and several other police killings in the same time frame, we’ve been forced as a country and as a state to firmly grapple with the institutional racism and the significant inequities in our many systems. People with marginalized identities suffer harms in the justice system, in health care, education and in every conceivable institution that holds power over our lives. If there was ever a time to work for transformative change, racial justice, and the strengthening of civil rights and civil liberties protections, it is now. We are well-poised to do so. What follows is an overview of what we’ve done in the past year, followed by our look forward and the work ahead.

II. KEY ACCOMPLISHMENTS FROM THE LAST YEAR

COURTS

We continued to challenge racial bias within Washington courts. ACLU-WA filed an amicus brief in *Henderson v. Thompson* - a case in which the jury in a civil case requested the court remove the plaintiff, a Black woman with Tourette’s, from the courtroom before they left the jury room. The plaintiff expressed that the request was a sign of racial bias, and the court discounted the allegation and did not conduct further inquiry as they are required to do. This is particularly important because Henderson, who was already at high risk of having implicit bias come into play because of her race, was at an even higher risk because of the intersection of race, gender and disability.

CRIMINAL LEGAL SYSTEM

We continued to fight to protect the most vulnerable in prisons. ACLU-WA was one of many amici in *Colvin v. Inslee and Sinclair*, a case filed early in the COVID-19 pandemic, challenging the state prison system’s failure to release prisoners at highest risk of dying from COVID and failure to take action to improve conditions in the prisons to reduce the risk of an outbreak. A majority ruling from the Washington Supreme Court refused to grant relief, and since that time there have been large COVID outbreaks in the state prisons, leading ACLU-WA to file amicus briefs in additional cases.

On the advocacy side, over the past year, we have also worked with numerous allies and system stakeholders to push for significant releases from our jails and prisons to prevent the spread of COVID-19 and allow for necessary social distancing and improved conditions. Following several weeks and months of advocacy, the statewide jail population was reduced nearly 50% (approximately 5,000 people) in the early months of the pandemic and has remained reduced by

30-40% throughout this year. We continue to document these reductions through our [ACLU-WA jail population tracker](#) and to advocate for these [reductions to be made permanent](#) beyond the pandemic. The prison population was reduced by approximately 1,000 people last year and we continue to push for more releases, including through legislation currently pending. De-carceration strategies in response to COVID-19 have achieved many of the reforms we have been working toward for years, and we will build on this progress in the months ahead.

Decriminalization of Low-Level Offenses – Eliminating Driving While License Suspended 3rd Degree (DWLS 3) as a Crime. We made major progress in the ACLU of Washington’s long-term goal of eliminating the use of debt-based license suspensions for moving violations, which often result in criminal DWLS3 charges. (Learn more about this crime that disproportionately impacts poor people unable to pay their fines in our report [Driven to Fail](#).) There were over 43,000 DWLS3 charges in 2020.

In October 2020, ACLU-WA filed a lawsuit ([Pierce v. Dep’t of Licensing](#)) against the Washington State Department of Licensing challenging the state’s driver’s license suspension practices as violations of the state constitution’s guarantees of due process and equal protection, and its prohibition on excessive fines.

The ACLU of Washington is also fully committed to seeing legislation passed that will solve the problem outright. Working alongside 65+ community organizations from across the state, we are supporting SB 5226 (2021), which would end the use of license suspensions for noncompliance with moving violations, allowing more than 100,000 people in Washington to get their driver’s license privilege back and prevent future suspensions.

Progress Toward Treating Substance Use as a Public Health Issue: ACLU-WA has long endorsed taking drug use out of the criminal justice system and treating it as a public health issue – which was at the heart of our work to legalize marijuana in Washington. Eleven states, including Oklahoma, Tennessee and West Virginia already make user-amount drug possession a misdemeanor. By contrast, in Washington, the possession of any drug other than marijuana is still a felony. Notably, in November 2020, Oregon became the first state to pass a drug possession decriminalization law via Measure 110.

ACLU-WA’s drug policy reform work took major steps forward over the last year in our efforts to decriminalize drug use in Washington. The goal for 2020 was to create a campaign for a fall ballot initiative (I-1715, the [Treatment First Washington Campaign](#) (TFW)) that would reclassify possession of personal-use amounts of all controlled substances from a felony to a civil infraction with a referral to appropriate treatment and services. Unfortunately, due to COVID-19, it was not possible to safely collect signatures for a 2020 ballot initiative, so the campaign pivoted to a 2021 legislative strategy that secured a successful committee hearing and vote, generated positive media coverage, and laid the groundwork for a 2022 push.

FREE SPEECH

We fought for the rights of protesters to speak up for Black lives and against police violence. The summer of 2020 saw nationwide protests against police violence set into motion by the murder of George Floyd in Minneapolis. Seattle police officers responded to local protests with tear gas, blast balls, pepper spray, flash bangs, and 40mm rounds. In *Black Lives Matter Seattle-King County v. City Seattle*, the ACLU-WA, the Korematsu Center and Perkins Coie successfully sought a temporary restraining order enjoining SPD's use of these so called "less-lethal weapons."

We continued to fight for healthcare professionals' right to speak publicly about health and safety concerns without the threat of retaliation or termination. We filed a lawsuit (*Lin v. Peacehealth*) on behalf of Dr. Ming Lin, who was fired after he posted concerns about his hospital's lack of COVID-19 preparedness on social media.

We continue to fight for the First Amendment right of protesters. The ACLU of WA has been working in collaboration with others to file *S.A.F.E. v. Selah*, a lawsuit on behalf of families and advocates in the city of Selah to respond to the city administrator's confiscation and destruction of signs showing support for racial equity and police reform posted in public locations, and erasure of "Black Lives Matter" in chalk on the sidewalks.

We equip protestors with information about their First Amendment rights and amplify their voices. In response to the repeated threats to democracy and free expression in the past year, we built a new Protest Rights and Safety Center on the ACLU-WA website, hosted virtual community conversations regarding the security of our voting rights, policing, and mass incarceration, and adopted a new activist communication platform, rocket.chat, to facilitate networking and information sharing among our People Power activists.

HEALTH CARE ACCESS

We increased patient access to healthcare information and resources. In 2020, we passed ESHB 1608, the Protecting Patient Care Act. This bill ensures healthcare providers can provide medically accurate and comprehensive information and counseling to patients. The bill applies to all healthcare, but specifically calls out medical aid in dying due to the many barriers Washingtonians have experienced when trying to exercise their rights under Washington's Death with Dignity Act.

We published a [Right to Care report](#) to educate the public and lawmakers on the need to protect pregnant patients in Washington state. The report highlights stories of patients in Washington that have had their care delayed or denied when miscarrying or suffering an ectopic pregnancy due to hospital policies that restrict or prohibit abortions. We are using the report as an important tool in our advocacy and legislative efforts to ensure patients are not denied access to care.

We collaborated on a community-led survey and [report](#) on health equity for immigrants.

The survey and report identify the healthcare needs of undocumented immigrants in Washington state and the significant disparities in health coverage and care that currently exist.

We took further steps to ensure access to healthcare services for transgender people

In 2019, we settled our transgender discrimination case against Swedish hospital (*Robbins v. Swedish Hospital, Inc.*). As part of that settlement, Swedish agreed to take steps to improve access to health care for transgender patients. After Swedish failed to implement those steps and refused to take any further action, we brought suit this year for breach of contract. We will continue to hold healthcare systems accountable to provide safe and accessible health care to transgender patients.

HOUSING AND ECONOMIC JUSTICE

We continued to fight for unhoused people's right to privacy. ACLU-WA continues to pursue litigation we have filed on this issue against the City of Seattle for taking the property of unhoused individuals, leaving them without recourse. We are working to ensure governments do not pursue these practices elsewhere. In addition to litigation, we (along with a number of advocates) submitted an amicus brief in *Seattle v. Long*, a case before the Washington State Supreme Court challenging Seattle's impoundment of a houseless resident's vehicle home and imposition of fines and fees for its return.

We continued to advocate for measures that prevent homelessness. ACLU-WA believes that housing is a fundamental and constitutional right. We know that a critical component to preventing homelessness entails working to keep people in their homes, especially during a pandemic that has the potential to displace tens of thousands more Washingtonians from their homes. The state and a number of cities, including Seattle, have adopted eviction moratoriums during COVID-19, which are facing challenges from landlords. The ACLU signed onto two amicus briefs in support of the eviction moratoria which has thus far been upheld.

IMMIGRANTS' RIGHTS

We organized to end the last ICE juvenile contract in the country. Cowlitz County had the last ICE contract to detain immigrant youth at its juvenile detention facility. The facility was not intended to serve as a long-term detention center, however, immigrant youth were being held there for months, and in some cases years. ICE warehoused kids there, from all over the country, until they'd turn 18 and were then transferred to the Northwest Detention Center in Tacoma. Through coalition building, public information, and outreach, ACLU-WA helped build a strong local movement calling for the termination of the contract. Thanks to public pressure, the County decided to terminate the contract in early February 15, 2021.

We led efforts to protect immigrants from ICE arrests at courthouse. Between 2018-2019, over 200 immigrants were arrested near courthouses in Washington. ICE and CBP arrests targeted people going to court to renew their license, pay off tickets, or face charges. They

disrupted court proceedings, created an environment of fear, and deterred noncitizens from coming to court. Community groups sounded the alarm. ACLU-WA led efforts to pass state legislation, advocated for the Washington Supreme Court to adopt a Court Rule, and is supporting the Washington Attorney General's litigation against the federal government's practice of arresting people at court with amicus briefs.

We helped stop immigration interrogations on Greyhound buses and at the Spokane Intermodal Station. Customs and Border Protection agents have long been targeting Latinx-appearing riders traveling on Greyhound buses at the Spokane Intermodal Station for unwarranted questioning, interrogation, detention, and arrest. ACLU-WA worked with local Spokane activists to provide passengers with Know Your Rights information, met with Greyhound executives, sent letters and drafted articles with other border affiliates, and called for the AG's office to investigate and then supported its lawsuit against Greyhound. Because of this pressure, the head of CBP changed its official policy to require consent from bus companies before boarding. Since the change in policy, what had been a daily occurrence disappeared, bringing more liberty and security to those traveling through Spokane.

We fought to ensure overtime protection for agricultural workers. ACLU was amicus in a case (*Martinez-Cuevas v. DeRuyter Brothers Dairy*) that resulted in a great victory for dairy workers, and likely all agricultural workers. The WA Supreme Court held that the statute allowing agricultural employers to fail to pay overtime for work beyond 40 hours per work is unconstitutional.

We continued to fight to protect the most vulnerable in immigration detention. ACLU-WA filed *Castenada Juarez v. Asher*, a case seeking release of detainees at the Northwest Detention Center in Tacoma who are at high risk from COVID-19. The case is a proposed class action and discovery is continuing. Even though the court has not so far directly ordered any detainees to be released, the case has resulted in improved conditions and a large reduction in population at NWDC, changes that have provided some enhanced protection from the virus. We continue to work to get the class certified and to seek release for class members.

POLICING

We fought against practices associated with racial bias in the criminal justice system. ACLU-WA and several other organizations filed an amicus brief in the Washington Supreme Court in *State v. Jackson*. The Court ruled that it was unconstitutional for court and jail policies to require all people in jail to appear in court wearing shackles, without an individualized inquiry. Our amicus brief discussed the history of shackling Black and Indigenous people, in slavery and chain gangs and during the Trail of Tears, and urged the court to strike down current court and jail practices that are a reflection of that racist history.

We helped clarify that police owe a duty of "reasonable" care to people in Washington. The Washington Supreme Court in *Mancini v. City of Tacoma* again ruled that police may be sued for negligence and breaching the duty of reasonable care. The Mancini case involved police executing a search warrant for drugs at the wrong apartment, with little to no investigation, and

subjecting the woman who lived there to significant trauma. Our amicus brief explained the importance of holding police accountable through civil liability.

We fought for a robust inquest process for families who lost loved ones from police violence. In *Family of Damarius Butts v. Constantine*, in response to longstanding problems with inquest procedures which are supposed to shed light on incidents where police take the life of a community member, King County adopted overhauled procedures. The procedures were challenged by police unions. ACLU-WA joined 24 other organizations in supporting the new procedures and supporting the families' arguments for procedures that allow thorough inquiry into how the death occurred.

We worked with community to increase police accountability. We partnered with families leading the Washington Coalition for Police Accountability to draft a suite of accountability legislation for the 2021 session and supported those family and community members in strategy development and preparation for testimony at hearings and direct lobbying.

We launched a multiyear effort to tackle police union collective bargaining of disciplinary matters. Along with our police accountability allies we drafted and supported a groundbreaking bill on collective bargaining of police discipline and accountability. While the bill was not voted out of its policy committee, its prime sponsor Sen. Jesse Salomon is committed to broadening education and mobilization efforts during the interim to get it passed in the 2022 session.

TECHNOLOGY

We introduced the [People's Privacy Act \(HB 1433\)](#), a community-led, people-centric privacy bill that empowers people to have meaningful control over their data. The ACLU-WA drafted this bill in collaboration with the Tech Equity Coalition—a group of civil liberties and civil-rights focused organizations and individuals working to hold technology accountable to people. The People's Privacy Act would prohibit companies from using, selling, or sharing anyone's data without affirmative opt-in consent, make it unlawful for companies and government agencies to use people's personal information to discriminate, ban facial recognition technology and artificial intelligence-enabled profiling in any place of public accommodation, and empower people to take companies to court if they violate our data rights.

We defeated an industry-backed weak data privacy bill in the 2020 session for the second year in a row. SB 6280 would have only provided an illusion of privacy, but not meaningful privacy rights. We defeated this bill last year when it became clear that it could not be improved, but face it again in this year's session. Microsoft, Amazon, and Google are backing this legislation across the country and we are collaborating with ACLU affiliates and national partners to fight the spread of weak privacy regulations.

We introduced a [first-of-its kind](#) algorithmic accountability bill ([SB 5116](#)) that prohibits discrimination via algorithms and requires government agencies to make transparent the automated decision systems they use. Washington agencies are widely and quickly adopting technical systems that aim to automate or replace human decision-making. These systems make

important, even life-or-death decisions about housing, benefits, policing, sentencing, loans, and more. However, because automated decision systems are often inaccurate, they replicate human biases, and exacerbate structural inequities. Furthermore, the public is usually unaware if and how automated decisions systems are used. This bill would hold automated decision systems accountable to people.

We developed and launched two technology toolkits designed to help technical and non-technical community members to mobilize around technology and liberty issues:

- [**The Algorithmic Equity Toolkit**](#) prepares community members to identify surveillance and AI-based technologies, ask policymakers pointed questions about these technologies, and better spot the potential for bias in certain AI-based tools.
- [**The Watching the Watchers Countersurveillance Workshop Toolkit**](#) is designed to provide a “people’s guide to surveillance”—a hands-on introduction to identifying how people are being watched in daily life, and by whom. The guide includes a walking tour around downtown Seattle to identify surveillance infrastructure, a mapping exercise exposing the flows of information and money in our surveillance society, and an exercise demonstrating the disparate impact of surveillance on certain communities throughout history.

YOUTH & EDUCATION

Comprehensive Sex Education and Referendum 90. With Planned Parenthood we co-led a ballot measure campaign to ensure all K-12 public school students across the state receive comprehensive and medically accurate sex education. Last spring, we passed SSB 5395 the bill that originally promised accurate and inclusive sex education to all of Washington’s public school students – and in response our opponents filed R-90 to repeal it. We rose to the challenge and partnered with Planned Parenthood and the Washington Education Association to create, fund, and implement a winning ballot measure campaign.

COVID-19 Pandemic Response. In 2020, together with our allies, we aggressively urged government agencies to proactively ensure the safety and protection of Washington’s youth in both education and carceral settings.

Because COVID-19 brought to the forefront not only the gross inequities embedded in our systems, but the dangers of crowded carceral settings, the Washington Supreme Court sought to decrease the number of youth entering detention. We supported Juvenile Court Rule 7.16 which limited the issuance of warrants unless individual circumstances pose a serious threat to public safety and quashed all existing warrants for juveniles that did not have public safety concerns, thereby ensuring that fewer young people are incarcerated for behaviors like missing a court hearing or failing to pay fees. The Washington Supreme Court voted to quash all warrants issued for juveniles statewide in November 2020.

We helped end Juvenile Solitary Confinement. In 2020, in partnership with the Attorney General's Office we were able to pass HB 2277 which bans juvenile solitary confinement for disciplinary purposes.

We lobbied for the MiChance Dunlap-Gittens' Youth Rights Ordinance. In 2020, the Youth Policy Team working alongside allies and community members successfully lobbied for an ordinance in King County and the city of Seattle that prohibits law enforcement officers from questioning youth age 18 or younger, except in limited circumstances, where a Miranda warning is administered until they've spoken with a lawyer.

We continued to fight against excessive incarceration for crimes committed as a child. ACLU-WA joined as amicus in *PRP of Domingo-Cornelio and PRP of Ali*, that upheld a prior ruling requires consideration of youth as a mitigating circumstance when people are facing long prison sentences as adults for crimes committed while under age 18. We also filed an amicus brief in *PRP of Brooks* which involves the law allowing people given long prison sentences for crimes committed as a child to seek resentencing based on youth as a mitigating factor.

We fought to ensure adequate public defense for juveniles. ACLU-WA filed *Davison v. State*, challenging public defense for juveniles in Grays Harbor County. For years, juvenile defenders in the county left their young clients largely unrepresented. They often didn't even meet with their young clients or advocate for them in court. ACLU-WA and the Stokes-Lawrence law firm claimed that the state Office of Public Defense was aware of the awful deficiencies in the county system and that the state had the constitutional obligation to remedy the situation. A Thurston County judge agreed; however, the Washington Supreme Court disagreed in a 6-3 decision and held that the state did not have to fix the county system so long as the state provided adequate means and authority for the county to provide an adequate system.

We continued to challenge excessive sentencing for juveniles where the sentencing was based on reasoning that implicates race, economic status, and bias. ACLU-WA filed amicus briefs in the Washington Supreme Court in cases in which juveniles were subject to exceptionally harsh sentences because the court reasoned that the youth needed more time in Juvenile Rehabilitation to access treatment. Research demonstrates that detention does not rehabilitate juveniles and, if anything, increases rates of recidivism. In one case, *State v. M.S.*, the court reasoned that a dependent juvenile's need of services and failure to abide by rules in a youth shelter required a longer detention to provide treatment and structure. As a result, he received 52 weeks detention when sentencing guidelines suggest 30 days or less, despite his absence of any prior convictions and offender score of zero.

We deepened our commitment to justice for all students across the state. We brought on a full-time Spokane organizer who collaborates with Spokane community organizations on intersecting priorities, and has a special focus on supporting the continued development and formalization of the Every Student Counts Alliance which advocates for the rights and protections of students.

III. LOOKING AHEAD

CRIMINAL LEGAL SYSTEM

This bucket of work includes our smart justice (reducing mass incarceration) work, drug policy, juvenile justice and policing. Work in the realm of the criminal legal system will continue to be a high priority for us. Many individuals and their families are harmed by unjust laws and practices, and we will work to both ameliorate these impacts and build policy and a legal structure that acknowledges the humanity of all.

FRONT END CRIMINAL JUSTICE REFORM

We will continue our efforts to make sure fewer people end up in the criminal justice system.

Decriminalization of Low-Level Offenses – Eliminating Driving While License Suspended 3rd Degree (DWLS3) as a Crime. If SB 5226 (2021) passes, ending the use of debt-based license suspensions for noncompliance with moving violations, there will be work to be done implementing it. The law allows people with currently suspended licenses to have them reissued on an expedited basis. We would work with community partners to educate people about the new law changes and help people get their licenses back. If SB 5226 does not pass, we will refocus our efforts on winning the litigation against DOL (*Pierce et al. v. DOL*).

The Pathways to Recovery Act and Treatment First Washington. The ACLU of Washington is committed to ending the War on Drugs and implementing public health alternatives instead. Building off the efforts of 2020 and the creation of the [Treatment First Washington](#) campaign, staff worked with multiple coalitions and lawmakers to pass HB 1499, known as the [Pathways to Recovery Act](#) which would create a robust public health alternative to law enforcement for drug possession and use cases. The legislation did not pass in 2021 and Treatment First Washington and coalition partners are considering possible ballot initiatives or future legislative efforts. This work has been and will continue to be led by directly impacted people from across the state of Washington.

Making Medication-Assisted Treatment in Correctional Facilities the Norm. Building off successful litigation against Whatcom County and the federal Bureau of Prisons (*Kortlever et al. v. Whatcom County*) the ACLU-WA will continue to push jails and the state Department of Corrections to offer life-saving opioid use disorder treatment medications. Progress has been made on this issue, but more advocacy must be done to ensure that the medicines are available. This work will include additional research on current practices in Washington state correctional facilities, public education to officials on what the law requires, and possible advocacy via the courts or lawmaking.

Stopping the School to Prison Pipeline. We will continue to support community-based efforts to push for positive, preventative, and restorative discipline in individual school districts throughout the state; to address the use of threat assessments; and to hold the state Office of the

Superintendent of Public Instruction accountable for the excessive discipline of vulnerable child populations.

- **Youth Access to Counsel:** In 2021, we will continue to work alongside the Department of Public Defense and other allies in drafting, negotiating, and pushing forward legislation that provides young people across Washington with access to a lawyer before they waive their constitutional right to remain silent.
- **SRO Removal Toolkit:** In 2021, our Youth Policy Team plans to publish a School Resource Officer (the term for police officers at schools) removal toolkit that provides parents, students, and community members the tools necessary to fight for meaningful and systemic reform around the presence of SROs in their school districts to eliminate the School to Prison Pipeline. A blog series will accompany the launch of the toolkit.
- **Youth Sex Offender Registration:** In 2021, we will continue to work alongside allies and community members to push forward legislation that will develop age appropriate and comprehensive responses to youth sexual offending and eliminate the deleterious effects of the sex offender registry.

Exploring Approaches to Decriminalization of Sex Work. In line with our goal of reducing the number of social issues we treat as crime; we will undertake more focused development of ACLU-WA's position and policy goals in decriminalization of sex work. We have worked with allied organizations in this space from time to time during previous sessions, but not prioritized this issue for sustained engagement as a potential piece of our legislative agenda. Once the 2021 session has concluded, we would like to assess capacity to begin developing an organized approach to examining decriminalization of sex work more closely, which, if we proceed would likely be a multiyear project.

CRIMINAL LEGAL SYSTEM REFORM

We will continue our work dismantling mass incarceration and racial disparities throughout the criminal legal system and removing barriers to successful reentry.

Fighting for vulnerable people facing COVID in Washington prisons. The Washington Supreme Court has granted review in *PRP of Williams*, and we will be arguing as amicus, together with other organizations, that the state constitution supports early release of inmates who are at the greatest risk of dying from COVID, like Mr. Williams, who is a 78-year-old Black man disabled from strokes and in deteriorating health due to the COVID infection he suffered at the Coyote Ridge prison.

Advancing Pretrial Justice and Bail Reform. A key component of our smart justice strategy to dismantle mass incarceration is to reduce the pretrial detention rate in county jails and advance statewide reforms to build infrastructure such as pretrial services, court reminder text messaging, and other community-based and least restrictive alternatives to incarceration. We will continue pushing to significantly reduce the use of money bail through expanding the use of appearance

bond and unsecured bond options, as well as an individualized determination of ability to pay. We will also continue fighting the use of pretrial risk assessment tools—which often perpetuate racial disparity and are not necessary to advance meaningful bail reform in Washington. The reduced jail population and changes in court practices due to the pandemic create a moment in time to further this work.

In late 2020, we achieved an important court rule change in the Washington Supreme Court to reduce the number of times people accused of crimes must appear in person for court. We also passed HB 2231, an important bill to stop the unjust prosecution of felony “bail jump” charges that coerce guilty pleas and lengthen sentences for missing a court hearing. People miss court due to difficulties with transportation, childcare, job disruption, health issues, mental illness and other challenges related to poverty. This rule change and legislative victory will significantly reduce the numbers of missed court hearings, warrants issued, bail jumping charges filed, and the harmful impacts of pretrial incarceration.

Advancing Sentencing Reform. In 2020, we released our ACLU-WA report, [About Time: How Long and Life Sentences Fuel Mass Incarceration](#), with Drs. Beckett and Evans from the University of Washington Department of Sociology. Analyzing 30 years of WA sentencing data, the report identifies the primary drivers of increasingly long and life prison sentences and tells Washington’s story of mass incarceration and the aging prison population. It also provides key policy recommendations to reduce sentences and the prison population that are currently advancing as bills before the legislature this session.

Two of these bills would retroactively increase good time, as well as provide post-conviction review and an opportunity for release for those serving excessively long sentences. A third bill would provide shorter sentences and a more rehabilitative approach for those in the system who were 18-25 years old at the time of the offense.

Ending Solitary Confinement. In February 2021, we released an [advocacy video](#) to expose the torture of solitary confinement and its devastating impacts on those incarcerated. The video was produced in partnership with Disability Rights Washington and centers the voices of solitary survivors. It was screened on TVW this month during a senate hearing on the bill we introduced to ban solitary confinement beyond 15 days. Last session we successfully passed HB 2277 which bans juvenile solitary confinement for disciplinary purposes, and now we are building on this success to also ban solitary for everyone in our prisons.

Restoring Voting Rights. The voices of people living in our communities under DOC supervision, as well as people incarcerated, are silenced in Washington State’s electoral process. Washington prohibits those convicted of felonies from voting while incarcerated or while they remain under Department of Corrections (DOC) community custody. Research shows that access to the ballot increases the chances of a successful transition from the criminal legal system to society and reduces recidivism. One of our continuing legislative priorities this session is to pass HB 1078 which will make Washington the 21st state to ensure the right to vote for all citizens no longer incarcerated. We are working closely with the [Washington Voting Rights Restoration Coalition](#) and several impacted individuals to pass the bill this year. Once the bill is passed, there

will be much outreach and education needed to reach the approximately 20,000 people who will then be eligible to vote.

Indigent Defense Litigation. Ending mass incarceration and achieving sustained criminal justice reform also requires holding the government accountable for a strong system of well-trained and effective public defenders. We continue to work with public defenders in several counties to address right to counsel issues and other systemic issues of concern, especially regarding COVID-19, pretrial detention, and backlogged trials and case filings. And, despite the disappointing ruling from the Washington Supreme Court last year in *Davison v. State* (the case we brought against the state Office of Public Defense last year seeking to improve indigent defense), the case is still pending and we are considering our options and next steps.

Restraint and Seclusion. In 2021, we will continue to work alongside Disability Rights Washington, the Office of the Superintendent of Public Instruction, and school districts to reduce the unnecessary, traumatic, and harmful use of restraint and seclusion practices against youth, the majority of whom are students with special needs, and build a gentler and more trauma-informed practice in Washington Schools.

Juvenile Record Expungement. In 2021, we will continue to work alongside Columbia Legal Services and other allies in pushing forward SB 5339, that will promote the reintegration of young people in their communities by creating effective ways to remove the stigma of juvenile mistakes through the expungement of their juvenile record.

POLICING/ LAW ENFORCEMENT ACCOUNTABILITY

ACLU was founded in large part due to the need to hold law enforcement accountable for violating people's civil liberties. Unfortunately, the need to advocate for and ensure law enforcement accountability has grown no less important since 1920. The scope of our work in this area includes holding Immigration and Customs Enforcement and Customs and Border Patrol officers accountable as well.

Banning the most egregious police tactic, changing police use of force standards, and supporting accountability across the state. In collaboration with the Washington Coalition on Police Accountability (WCPA) we will fight to ban certain police practices and equipment that have been found to be used disproportionately against communities of color and abused by law enforcement, such as chokeholds, no-knock warrants, tear gas, and certain military equipment that turn neighborhoods into warzones. We'll also advocate for a statewide use of force law that limits the circumstances when officers can use force and allows deadly force to only be used when necessary to protect against imminent harm. ACLU-WA is also supporting a bill that would authorize the AG's office to investigate and sue departments where there are patterns of misconduct. Despite a change in the law under I-940, over 100 people in Washington State have been killed by police officers since the laws was enacted, and yet only one officer has been charged with a crime. We will continue working with the coalition to address how the criminal legal system can better hold officers accountable.

Educating supporters and building our case to divest in police and reinvest in community.

Black people, Indigenous people, and people of color and their communities continue to be treated inequitably by the police. In an effort to support the police divestment movement and our allies and partner organizations, we launched a [blog series in fall 2020](#) that helps us explore and examine how a divestment/reinvestment approach may provide a fruitful path towards making our communities safer and more equitable.

We will investigate police abuses, i.e., excessive force, protestor disparate treatment, and chilling free speech through social media surveillance.

After a news article revealed that Tacoma and Pierce County police were engaged in social media surveillance regarding last summer's protests about police violence, community members asked us to investigate the issue further. We have submitted a public records request to learn more. Additionally, we are also working with the Vancouver NAACP and other community members to address the loss of BIPOC lives at the hands of the Clark County Sheriff's office and the Vancouver police department.

Local government elections. We will soon enter the 2021 election season, with special focus on the races for Seattle Mayor, City Attorney, and the two at-large City Council positions. We expect street crime and disorder to be major issues in these races, representing important opportunities to mobilize our supporters and amplify our messages about policing, protest, drug policy, the criminal legal system, and mass incarceration. We will collaborate with our networks of allied advocacy organizations to develop and implement electoral education and engagement strategies that promote the narrative that our communities want elected leaders who value civil liberties, civil rights, and an end to mass incarceration.

INDIVIDUAL/PERSONAL AUTONOMY AND RIGHTS

This bucket of work includes many traditional and significant ACLU priorities: Health care; LGBTQ+ rights; Technology and liberty; Education; Discrimination; Privacy. Borrowing from former ACLU Legal Director, attorney, activist and scholar, [john a. powell](#), currently the Director of the [Othering and Belonging Institute](#), we understand that our current society is built on divisions and exclusion, and that we all share an obligation to bridge across difference to build a truly equitable society where everyone belongs and enjoys their constitutional freedoms. It is not a legal tenet but a philosophical tenet to which we subscribe and use the tool of law to advance.

HEALTH CARE and LGBTQ+ RIGHTS

Ensuring access to healthcare services regardless of religion. We will continue our fight to ensure religion is not used as a vehicle for discrimination that prevents informed consent and access to medical coverage and care. As mentioned earlier, we are currently working to pass the Protecting Pregnant Patients Act which would ensure hospitals could not prevent doctors or nurses from providing necessary care to a patient experiencing a miscarriage or ectopic pregnancy whose health or life is at risk. We will also, through public education, advocacy, and

legislation, work to create greater governmental oversight of health system mergers to ensure patients do not lose access to critical reproductive, end-of-life and gender-affirming healthcare services when secular and religiously affiliated healthcare systems merge.

Ensuring a right to reproductive healthcare. With the current make-up of the United States Supreme Court it is more important than ever that we uphold and build upon Washington state's strong reproductive health laws and policies -- a foundation which the ACLU-WA was instrumental in building. We will support and lead efforts to increase reproductive healthcare access and affordability throughout the state, including through developing and implementing strategies to strengthen the right to abortion and increase access to contraception.

Fighting bias and racism in the healthcare system. We will build on our advocacy and support legislative efforts that allow marginalized communities and undocumented immigrants to obtain health coverage, and we will continue to explore the potential of litigation or an initiative that supports a constitutional right to healthcare. Further, building upon letters we sent to the Department of Health and Governor's office regarding the intersection of racial disparities and COVID-19, we will advocate for increased equity in the government's response to the pandemic.

TECHNOLOGY AND LIBERTY

There is a critical need to ensure people's civil rights and civil liberties are protected in the face of rapidly advancing technology and increasing surveillance. We will continue to fight against the creation of surveillance infrastructures that not only disproportionately harm marginalized communities, but also erode everyone's collective privacy.

Strong laws on facial recognition across Washington. In 2020 we continued our fight for a moratorium on government use and procurement of face surveillance on the state-wide level, and we are continuing to push for local face surveillance bans as many cities across the U.S. have already done. We are continuing to mobilize allies and the public to fight against the deployment of face surveillance technology at the Port of Seattle.

Community-centric privacy legislation. In 2019 and 2020 we defeated weak, industry-backed privacy bills. Over the past year, we have worked with the Tech Equity Coalition to introduce strong privacy legislation that truly empowers people to have meaningful control over their information. We will continue our work pushing for legislation that is truly that gold standard of privacy.

Transparency and accountability measures for automated decision systems. We will continue to fight for laws that allow people to know what technologies government agencies are using to make important decisions about them. We will also fight for these agencies to be held accountable for any discrimination and harm caused by using automated decision systems. We recently conducted a public disclosure request on automated decision system use in Washington state and have found that while many agencies are using these systems, they are often not aware of the disproportionate impacts using these systems may have on historically marginalized

communities. We will continue to work to educate lawmakers on this important issue, both on the state and local levels.

Investment in community capacity-building work. We will continue our work building community power and expertise in tech and liberty issues, as we believe impacted communities are those who should be driving the conversation on how technologies should be used. We will innovate through creative and arts-focused projects that make technology issues more accessible to non-technical audiences.

Growing our collaboration with interdisciplinary and diverse allies. Our collaborative work with tech workers, privacy advocates, community organizations, arts and media organizations, researchers, students, and policy experts will be increasingly important to pressure lawmakers and companies from many different angles. Over the past year, we have grown the [Tech Equity Coalition](#) and have collaboratively worked to draft and introduce the People's Privacy Act.

DEMOCRACY

This includes voting, rights enshrined in the Washington State Constitution and U.S. Constitution, open government and democracy reform.

VOTING RIGHTS

Our work in recent years to enforce voting rights through litigation under the federal Voting Rights Act, and to pass the Washington Voting Rights Act in the state legislature, reflect ACLU-WA's recognition that even when members of a protected class have access to the ballot, they may not have a meaningful opportunity to elect candidates of choice due to the structure of our elections. Washington State has been an all-mail voting state since 2011, providing greater assurance of access to the ballot and slightly increasing turnout over states that do not use vote-by-mail. However, at-large and winner-take-all elections still can result in chronic vote dilution for racial minority populations. This was the case in Yakima, a city with a population over 40% Latinx where no Latinx candidate had ever won a seat on the seven-member city council until the ACLU-WA sued under the federal Voting Rights Act in 2012 and secured a settlement agreement to create district-based elections.

Creating districts, or redrawing district lines, to produce at least one district within a jurisdiction that will have a majority minority population is one way to address vote dilution. Additional options include changing the winner-take-all voting method to a proportional or semi-proportional voting method, and substituting ranked choice voting for plurality voting.

DEMOCRACY REFORM

In consultation with allies led by and serving communities impacted by vote dilution, we will explore development of an ACLU-WA position and policy goals on democracy reform. Some of our allies are already engaged in this work; in the 2021 session, Rep. Kirsten Harris-Talley and

26 co-sponsors introduced House Bill 1156, which would allow local governments to use ranked choice voting for any or all offices in an election.

RACE AND ECONOMIC JUSTICE

As we strive to lead all our work with a race equity analysis, nearly everything could fit in this section. The original idea behind this bucket was to ensure that the needs of those made most marginalized by decades of oppression, exclusion, and structural supremacy (i.e. racial minorities, indigenous people, immigrants, people living in poverty) are foregrounded in the fight for justice and equity. new and groundbreaking approaches to increase equity for groups that have been disadvantaged for too long. We will also take lessons from [National's "Systemic Equality" Racial Justice Agenda](#), as the ACLU overall, seeks to find the best way to articulate the depth of importance of race and economic justice to our fight for civil rights and civil liberties for the people in this country.

HOUSING AND ECONOMIC JUSTICE

We are powerfully aware of the ways in which our state, its municipalities and its policies, egregiously violate the civil liberties of some of our most vulnerable residents: those living unhoused. We will continue to fight until justice is achieved for these individuals.

We will continue to advocate against inequitable legal financial obligations. ACLU-WA is working to end unfair policies and practices for court-imposed debts. Known as Legal Financial Obligations (LFOs), these are fines, fees, and restitution imposed on top of a criminal conviction. LFOs keep poor people tied to the criminal justice system and present a formidable barrier for people to gain employment, housing and cause other long-lasting harm. In some instances, a person's inability to pay off LFOs results in their incarceration – a modern day form of debtors' prison. While significant progress has been made in reforming LFO practices, the ACLU-WA is concerned that a number of jurisdictions continue to refer LFOs to private collections agencies. Such transfers can effectively extend the criminal sentence of formerly incarcerated persons and can result in the imposition of additional fines and fees without adequate notice, a pre-transfer hearing, an ability to pay assessment, or examination as to whether such fees are excessive. The ACLU-WA is preparing to bring litigation to challenge such practices later this year.

We will continue to fight public transit fare enforcement policies that impact the poor disproportionately. In a preliminary Sound Transit fare enforcement survey, household income emerged as the primary demographic characteristic that differentiated those who were able to provide proof of payment and those who were not. Fare enforcement on public transit disproportionately impacts poor people, and Black, Indigenous, and other people of color – often leading to punitive arrests and criminal charges pushing people further into poverty. Police officers are often utilized to ensure transit riders pay, despite growing recognition that our carceral system only exacerbates inequities and fails to address the root causes of social issues – like an inability to pay for a bus ticket. In fact, there is not data demonstrating that fare enforcement even decreases fare evasion enough to cover its costs. The ACLU-WA is working to eliminate the criminalization of poverty and over policing of communities, including through

submitting amicus briefs which highlight the policy and constitutional concerns with such policies and practices.

IMMIGRATION

Ensuring law enforcement in Washington follow the law. We will continue our efforts to limit ICE and CBP's footprint in Washington state by ensuring that local law enforcement and state agencies do not assist those federal agencies. We will continue to work with Columbia Legal Services, and the Northwest Immigrant Rights Project to identify litigation to enforce the [Keep Washington Working Act \(KWW\)](#). We are working with our allies to eliminate civil immigration detention in Washington and are supporting state legislation that seeks to end the NWDC contract.

RACIAL JUSTICE

We continue to advocate against racial inequities in the juvenile legal system. ACLU-WA is on a WA Supreme Court task force charged with researching and writing about the racial inequities that exist at every stage of the juvenile justice system and works with community organizations to submit recommendations to the Supreme Court of Washington.

Education Equity. The COVID-19 pandemic transformed the education landscape, as schools shifted to online learning platforms. While school discipline and truancy-related referral numbers dropped, inequities around access to academic material grew. Despite school district efforts to provide every student with a tech device to access online school, disparities in families' access to high-speed internet continues to divide student learning opportunities. Barriers to high-speed internet access disproportionately affect Black, Indigenous, and Latinx communities in Washington State, particularly those living on rural tribal lands.

- **Broadband Access and the Public Broadband Act.** We will continue our involvement and advocacy within community-driven coalitions to ensure fair access to broadband for all Washingtonians. We operate and push forward with an understanding that high-speed internet is necessary to access critical resources like education, health, jobs – especially during the COVID-19 crisis. We take special effort to listen to tribal government partners and identify ways to amplify those voices and goals in our advocacy.

If passed, the Public Broadband Act (HB 1336) would allow ports, Native American tribal governments, and public utility districts (PUDs) the ability to provide broadband services directly to private consumer households. The bill seeks to waive state restrictions that currently block ports and PUDs from obtaining retail authority.

- **Remote Learning and the Seattle Public School Superintendent's Remote Learning Task Force (RTLTF).** We will also continue our involvement in task forces designed to ensure fairness in the remote learning context. ACLU-WA recognizes that access to physical tech devices is only the first step to ensuring fair access to online academic opportunities – we also must prioritize digital literacy and personalized navigation support for families.

Our participation on the RLTF allows us the ability to serve as a civil liberties watchdog throughout the Superintendent's policy recommendation process. For every policy proposal, our presence and advocacy ensure an eye and ear toward individual students' civil liberties and rights to a fair education.

- **Supporting Media Literacy and Digital Citizenship.** If passed, the Media Literacy and Digital Citizenship bill (SB 5242) would establish a grant program for school districts within OSPI for the purposes of supporting media literacy and digital citizenship. These new grants are aimed to help school districts develop curriculum to increase student digital literacy and ensure more fair access to material requiring a baseline level of online navigation skills.

BUILDING COMMUNITY KNOWLEDGE, ACCESS AND POWER

If we mean to uphold democratic values and fight for equity and justice for all, it will take more than the dedicated and passionate staff at the ACLU-WA. It will require an educated, activated and fully fired-up community of stakeholders. Working shoulder to shoulder with other organizations and individuals, and with race equity principles as our guide, we can build the empowered society we hope for. Our communications and political work are key components of accomplishing this goal.

Lobby Day & Power Up Trainings. Each year we invite supporters and community members to join us in Olympia to participate in legislative advocacy training and meet with state lawmakers to advocate for critical bills. In January 2021, we hosted our first virtual lobby week in which constituents formed virtual teams and participated in over 60 lawmaker meetings. We offer regular trainings to People Power activists to build skills around organizing, race equity, and legislative engagement tactics and will continue to expand these programs in 2021.

Civics Day. Twice yearly, the ACLU-WA partners with King County Public Defense attorneys and school districts for Civics Day – daylong Know Your Rights and criminal legal system workshops for high schoolers. This, too, has moved to Zoom this year. Because it is now in the virtual space, it will be easier for us to scale Civics Day beyond our current partner school districts this fall.

Student clubs. Our team is working to revamp and revive college and high school student clubs. Now that students have similarly found their bearings in a world of remote learning, they are reaching out in hopes of starting ACLU clubs. Clubs will be up and running in weeks to come.

IV. CONCLUSION

This past year was filled with challenges: a global pandemic, a historic racial reckoning, an election, an impeachment and an insurrection. And still the ACLU persists. All of those

challenges shone a bright spotlight on the inequities in our country and the threats to our democracy – and the tremendous opportunities for transformational change. I am so proud of our accomplishments over the past year and hopeful about the work ahead. We at the ACLU are exceedingly grateful for your partnership. We absolutely couldn't do this work without our supporters. This is as much your work as it is ours. Be proud. Be hopeful. We are in this together for the long haul.