



ACLU OF HAWAI'I

2024

LEGAL
WRAP-UP REPORT

Thank you, everyone, for supporting our work this past year!

This report provides an overview of the Legal program's work during the past 12 months. The report covers 7 major issue areas: reimagining policing, decriminalizing poverty, smart justice, freedom of expression, gender equity, reproductive freedom, and government accountability.

We thank you for continuing to support our work. We have many plans for the coming year, and appreciate your support going forward.

Please stay connected by joining our e-mail list at acluhi.org, following us on social media [@acluhawaii](https://twitter.com/acluhawaii) and taking collective action.

With gratitude,
Wookie Kim, Legal Director
September 2024

ACLU

Hawai'i

ACLU Hawai'i Legal Wrap-Up Report (September 2024)

is a report by the ACLU of Hawai'i

Contributing authors:

Wookie Kim, Taylor Brack, Samantha McNichols

Layout and design:

Nick Armero

Published September 2024. Accessible online at:

<https://www.acluhi.org/en/publications/2024-aclu-hawaii-legal-wrap>

Find more information or contact us at:

ACLU of Hawai'i

P.O. Box 3410

Honolulu, HI 96801

Office (808) 522-5906

Neighbor islands toll-free 1 (877) 544-5906

www.acluhi.org

office@acluhawaii.org



@acluhawaii

ACLU
Hawai'i

TABLE OF CONTENTS

REIMAGINING POLICING ... 4

DECRIMINALIZING POVERTY ... 6

SMART JUSTICE ... 7

FREEDOM OF EXPRESSION ... 8

GENDER EQUITY ... 9

REPRODUCTIVE FREEDOM ... 10

GOVERNMENT ACCOUNTABILITY ... 11

REIMAGINING POLICING

The Legal team has continued to engage in advocacy that promotes police accountability. In the past year, this work around policing has included two lawsuits, three amicus briefs, and providing testimony on proposed policing legislation.

LAWSUITS

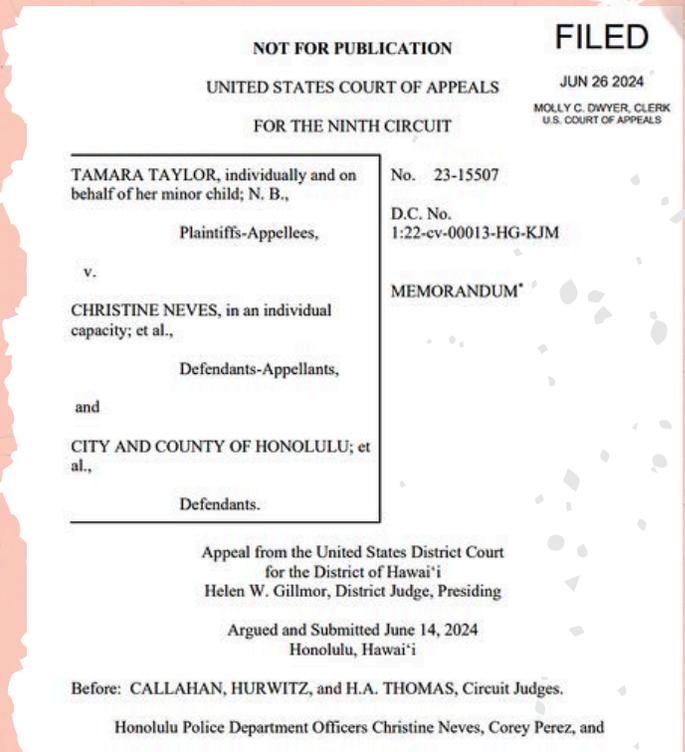
Hall v. City and County of Honolulu, et. al.,

is our case concerning a conflict of interest in an HPD response to a reported crime. Our client, Ms. Hall, called 911 seeking police assistance about a dispute with her former employer, who had attempted to forcibly enter her home. Shockingly, the lead HPD officer who responded to the scene was the employer's close friend and business partner. The complaint alleges that once HPD officers responded, Ms. Hall was prevented from filing a police report and was retaliated against, among other alleged constitutional violations.

In the past year, the parties have continued to engage in pretrial discovery, such as depositions and requests for documents and interrogatories. In the course of litigation, we have continued to brief many important issues, including qualified immunity and access to government records. Trial is currently scheduled for April 2025.

Taylor v. City and County of Honolulu, et. al.,

centers on the arrest of a 10-year-old Black girl at Honowai Elementary School over an offensive drawing. The minor child was interrogated without her mother present, handcuffed, and brought to Pearl City police station, where she remained in HPD custody for several hours. Our clients—this brave child and her mother—challenge the government's actions against them.



In the past year, the parties have continued to engage in pretrial discovery and briefing. The HPD officers filed a motion to dismiss the claims against them on the basis of qualified immunity. The court had partially denied this motion to dismiss, permitting many of the claims against the HPD officers to proceed—a decision that the HPD officers appealed. In June 2024, Legal Director Wookie Kim argued this appeal before the Ninth Circuit. The same month, the Ninth Circuit affirmed in part and reversed in part, holding that the HPD officers were entitled to qualified immunity on Plaintiffs' false arrest claim, but denying immunity on the excessive force claim. This appellate ruling paved the way to continue towards trial against the HPD officers. Since then, the parties have engaged in extensive summary judgment cross-motions in anticipation of trial in October 2024.

REIMAGINING POLICING cont.



That same month, we submitted an amicus brief in Hopson v. Alexander, alongside the National Police Accountability Project and the ACLU of Arizona, urging en banc review of a Ninth Circuit panel decision in a police misconduct case involving qualified immunity. Armed police officers had swarmed a parked car, believing that its occupants were about to commit armed robbery, based solely on the officers' observations that the occupants were parked in a lot, craning their necks to look at a gas station, and acting "abnormally nervous." The brief challenged the application of qualified immunity to the case, and emphasized the foundational flaws of that doctrine in light of recent scholarship.

In November 2023, the affiliate submitted an amicus brief in the Ninth Circuit case, L.B. v. United States, alongside ACLU National and eight other affiliates. The case involved a Bureau of Indian Affairs (BIA) officer who raped a Northern Cheyenne woman after she requested police assistance. To promote police accountability, the brief argued that the officer was acting within the scope of his employment by using his law enforcement authority as an on-duty officer to sexually assault a member of the public. In addition to legal arguments, the brief detailed the importance of police accountability on Indigenous reservations.

AMICUS BRIEFS

Separate from our filed cases, we also participated in the amicus ("friend of the court") brief submission process in several cases involving issues important to police accountability. In August, 2023, we joined an amicus brief filed in the Ninth Circuit case, United States v. Estrella, alongside the ACLU of Northern California, six other affiliates, and the NYU Law Center on Race, Inequality, and the Law explaining the harm done by a trial court ruling that had lowered the legal standard used to conduct suspicion-less searches of people on parole. The brief emphasized how the lower standard would erode civil liberties for everyone—especially former parolees and third parties—and harm people of color, worsening racial profiling and over-policing.



DECRIMINALIZING POVERTY



In the past year, our Legal Team has litigated two cases, sent multiple demand letters, and participated in public education opportunities in an effort to change the way that government actors in Hawai'i interact with people who are houseless. We use the term houseless because, in our work, we encounter many individuals who resist the oppressive stigma that comes with not having access to conventional shelter by asserting that they have a home here in Hawai'i, but they simply lack a house. Our work emphasizes that houseless people are still people deserving of fair and equal treatment by their government.

In October 2023, we issued a demand letter to halt a planned sweep targeting the houseless residents of Lahaina, just months after the deadly wildfires that devastated the area. This followed a separate demand letter we had sent to Hawai'i County officials regarding sweeps in Kona earlier in the summer.

In November 2023, the ACLU of Hawai'i was invited to speak at the annual Homelessness & Housing Solutions Conference. Legal Director Wookie Kim and Staff Attorney Taylor Brack's presentation focused on our present and past litigation aimed at decriminalizing homelessness.

On March 5, we won a significant legal victory against Maui County in Davis, et al. v. Bissen, et al. The Hawai'i Supreme Court's opinion, authored by Justice Sabrina McKenna, affirmed the procedural due process rights of the houseless plaintiffs who had lost everything they owned in an illegal sweep conducted by the County in September 2021. This legal precedent creates momentum in the fight to protect the rights of all houseless people living in Hawai'i.

Separately, in Mahelona, et al. v. City and County of Honolulu, which we had filed in July 2023, we were unsuccessful in our attempt to enjoin the City and County of Honolulu from enforcing anti-houseless ordinances against our houseless neighbors. We fought for and lost the ability to immediately appeal the decision against our houseless clients. On July 8, 2024, the case was dismissed.

We will continue to fight to protect the rights of the houseless community in Hawai'i.



SMART JUSTICE

Smart Justice at the ACLU of Hawai'i is part of a broader ACLU campaign to reimagine our criminal legal system. In Hawai'i, this work has focused on reducing the incarcerated population, reducing racial bias, and centering community safety and the dignity of people who come into contact with the legal system.

As part of this work, in the past year we have continued to study the Hawai'i pretrial system and monitor the use and consequences of money bail within that system. We have engaged in more court-watching, and have consulted with impacted individuals, public defenders, and other stakeholders to unpack the harms caused by a system that unfairly incarcerates people in poverty. While we are unable to share details at this time, we are currently considering ways to advocate for a fairer pretrial system.

Separately, we submitted testimony on HB1601 and HB1603, two pretrial fairness bills. The first bill would have required law enforcement officers to issue citations in lieu of arrest for certain offenses. We submitted testimony in support of the bill, citing the dramatic negative impact of custodial arrests on individuals, families, and communities, the severe overcrowding in Hawai'i jails, and the unfair pretrial bail practices that force people, especially Native Hawaiians and Pacific Islanders, to live behind bars.



We also submitted testimony on HB1603, which would have amended various statutory provisions related to pretrial release. Among other things, the bill would have required courts to enter findings with respect to a detention decision, narrowed the scope of conduct that triggers the rebuttable presumption justifying the denial of bail, and required that any bail set be in an amount the person is able to afford. We pointed out that this bill did not go far enough, and recommended the addition of four provisions that would have further increased access to pretrial freedom and worked to reduce wealth-based detention.

In February 2024 legislators deferred both bills. We continue to be a watchdog on bail and will continue building on advocacy around the pretrial right to liberty.

We have also been investigating a number of issues relating to prison conditions in Hawai'i Department of Corrections and Rehabilitation (DCR) facilities, including at Saguaro Correctional Center. DCR has a contract with Saguaro, a prison in Arizona that is operated by the private, for-profit company CoreCivic. As of July 2024, 1,001 individuals are incarcerated in Saguaro from Hawai'i. While we are unable at this time to share our near-term plans, we will continue to advocate for the safety and wellbeing of individuals who are incarcerated in Hawai'i jails and prisons.

FREEDOM OF EXPRESSION

“Without Freedom of Thought, there can be no such thing as Wisdom; and no such thing as public Liberty, without Freedom of Speech.” – Benjamin Franklin (1722)

Defense of first amendment freedoms has been an ACLU mainstay since its founding. Our commitment to free speech comes from recognizing that these principles form the bedrock of our democracy. This year, we promoted freedom of expression in several ways.

On October 11, Legal Director Wookie Kim and Legal Fellow Samantha McNichols joined Senator Mazie Hirono and other concerned community members in a roundtable talk on banned books. They shared feedback on how harmful censorship is to democracy and how the ACLU fights to protect access to books under threat.



The ongoing war in Palestine has spurred protest activity around the world and Hawai'i is no exception. In response to community requests for training on First Amendment rights, legal staff and board members came together to empower student protestors.



On April 11, Board Member Ken Lawson held for the community a Legal Observer training with the Hawai'i Innocence Project. On April 12, Staff Attorney Taylor Brack held a Know-Your-Rights session on Freedom of Speech. On May 16, Taylor held a Know-Your-Rights session on Freedom of Assembly. The ACLU of Hawai'i also had a presence at a Rally and Teach-in for Palestine held on May 3, organized by two student organizations: Students and Faculty for Justice in Palestine and the Associated Students of the University of Hawai'i.



GENDER EQUITY

Gender bias continues to create barriers to equal opportunities, in classrooms, in the workplace, or other institutions. Gender equity work has remained an important component of our work.

This year we achieved a milestone: we reached a landmark settlement in A.B. v. Hawai'i State Department of Education, et al. Our Title IX lawsuit against the Hawai'i State Department of Education (DOE) and the Oahu Interscholastic Association (OIA) ensures that girls at Hawai'i's largest public school, Campbell High School, have the same athletic opportunities, access, treatment, and benefits as boys.

We, alongside Legal Aid at Work and Simpson Thacher & Bartlett LLP, filed this lawsuit in December 2018 on behalf of brave Campbell High School female student-athletes against the DOE and OIA seeking to finally address decades of unequal treatment in Hawai'i public school athletics.

Title IX requires equal treatment and benefits in athletic programs—things like locker rooms, practice facilities, and competitive facilities; equipment and supplies; scheduling of games and practice times; availability and quality coaching; travel opportunities; medical and training services and facilities; participation opportunities, and publicity and promotion.

It also requires equal participation opportunities, meaning that female students must have the same chance to participate in athletic programs as their male counterparts. This includes ensuring that schools provide an equitable number of sports teams, roster spots, and competition levels for girls, so they have the same opportunities to develop their skills, compete, and experience the benefits of sports as boys do.

But we quickly learned that, at least at Campbell, the DOE was not providing equal treatment or equal opportunities to participate in sports. The disparities we identified included: the boys having exclusive access to a stand-alone locker room near the athletics fields, to a softball field that was far inferior to the boy's baseball facility, as well as a failure to provide coaches and facilities for certain girls' teams. And we also learned that girls' participation rate in sports was disproportionate to their share of the total student body.

After nearly 6 long years of litigation—which involved dozens of motions filed and argued, an appeal and oral argument before the Ninth Circuit Court of Appeals, several dozen depositions, many thousands of documents exchanged, and multiple mediation/settlement attempts—we finally dismissed the case on March 19, 2024, subject to the Court's ongoing enforcement of the settlement agreement.

For the next 7 years, DOE and OIA will work with an independent evaluator to implement and oversee a comprehensive compliance and monitoring plan that will include regular site visits, publicly available reports, comprehensive district-wide training on gender equity and Title IX, and protections for seeking to file complaints and against retaliation.

We also participated in other community events advancing gender equity. At the invitation of Senator Mazie K. Hirono (D-HI), our Legal Director, Wookie Kim—alongside one of the named plaintiffs in our Title IX lawsuit—gave remarks at a press conference announcing the official release of the Patsy T. Mink quarter, which is part of the U.S. Mint's American Women Quarters Program for 2024, and which commemorates Congresswoman Patsy T. Mink, who was the first Asian American to serve in Congress and who contributed greatly to the passage of Title IX.



To inspire and educate our future leaders, Staff Attorney Taylor Brack was invited to present about the Title IX litigation to current Richardson law students in Professor Dora Dome's "Education Law and Policy" class.

REPRODUCTIVE FREEDOM

The ACLU works to ensure that every person can make the best decision for themselves and their family about whether and when to have a child without undue political interference. Our affiliate has continued to advance reproductive freedom.

This year was a topsy turvy year for our ongoing lawsuit, *Purcell v. FDA*, challenging the FDA's restrictions on Mifepristone, which is used for medication abortions. Our lawsuit, which has been pending since October 2017, ended up bogged down in a procedural quagmire. In the intervening years since filing, as advocacy around medication abortion has grown stronger, various parties have filed lawsuits in other jurisdictions challenging FDA's approval and regulation of Mifepristone. Given the interrelationship between these lawsuits (a couple of which made it up to the United States Supreme Court), the case experienced a year of stops and starts. Ultimately, however, the Court rejected the government's attempt to further delay resolution of the case while related issues were pending before the Supreme Court. And, after amending and supplementing our complaint (including the replacement of our lead plaintiff, Dr. Graham Chelius, with new lead plaintiff, Dr. Heidi Purcell), we are now moving full steam ahead with the case, with summary judgment briefing occurring this Fall.

In September 2023, our affiliate co-hosted a film screening of "Plan C," a documentary on abortion pill access in the United States. After the screening, our Legal Director Wookie Kim spoke on a panel about our affiliate's ongoing litigation against the FDA seeking to remove, once and for all, the stigmatizing and burdensome restrictions on access to Mifepristone. We also supported the efforts of Center for Reproductive Rights and Native Hawaiian Legal Corporation in what ultimately led to the filing of a lawsuit challenging a midwifery restriction law that prevented pregnant people from receiving pregnancy and birth care from trusted, skilled midwives, with a particularly devastating impact on Native Hawaiians and families of color. Members of our team also attended the press conference announcing the filing of the lawsuit as a show of solidarity.



Separately, various members of the Legal team and the affiliate attended the International Women's Day Symposium presented by Hawai'i Women Lawyers. At that symposium, Gillian Thomas (senior staff attorney at the ACLU Women's Rights Project) provided a run-down on case law regarding reproductive rights in the workplace and shared insight on the future of those rights.

GOVERNMENT ACCOUNTABILITY

A core part of the ACLU of Hawai'i mission is to hold the government accountable to the people. And sometimes that means challenging government actors when they overreach and potentially violate our civil rights and civil liberties.

In January 2023, Governor Josh Green announced that he had issued an emergency proclamation relating to homelessness. Citing “Hawaii’s dire homelessness crisis,” the Governor declared that an emergency existed. Based on the invocation of that emergency, the Governor suspended roughly 30 sections or chapters of the Hawai'i Revised Statutes, including those relating to historic preservation, public agency meetings, land use, coastal zone management, and environmental impact statements. While the Governor’s intentions were noble—the homelessness crisis is serious and real—the unilateral manner in which he exercised such powers raised several significant questions.

We questioned whether this was a legally valid use of the governor’s emergency powers, especially given that the emergency management statute was intended to address natural disasters such as volcanic eruptions and hurricanes.

We questioned whether the declared “emergency” justified the suspension of such a broad swath of laws, especially since several protected important constitutional rights. Finally, we expressed concern that the use of emergency powers in this context and in this way could set a dangerous precedent for the way we deal with other longstanding social problems. We worried that, if a governor could declare “homelessness” a crisis, and then use that declaration to suspend dozens of democratically passed laws, any pressing societal problem could be governed by executive fiat.



(David Croxford/Civil Beat/2023)

Unfortunately, that is what happened next. In June 2023, Governor Green declared the “lack of affordable housing” an emergency and again cited that “emergency” as a rationale to suspend dozens of democratically passed laws.

We advocated against the governor’s use of these emergency powers, both privately and publicly. And after learning about a broad coalition of community advocates seeking to file a legal challenge, we provided support to that effort, ultimately culminating with our affiliate’s decision to join as a plaintiff in the lawsuit. That lawsuit, [Nā ‘Ohana O Lele Housing Committee et al. v. Josh Green et al.](#), which was filed by counsel from Earthjustice in August 2023, prompted Governor Green to revise the emergency proclamation several times to be less expansive in scope, and ultimately did so in a way that respected principles of democracy and transparency. As a result, the coalition withdrew the lawsuit on October 24, 2024.

As one of the few government watchdog organizations in Hawai'i, we will continue to monitor for overreach by actors in all branches of the government.