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Criminal Justice Issues and Prisoners' Rights

<https://solitarywatch.org/2015/05/01/pennsylvania-law-aimed-at-silencing-people-convicted-of-crimes-is-declared-unconstitutional/>

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by [Vaidya Gullapalli](#) | May 1, 2015

On Tuesday, a federal judge struck down a Pennsylvania law that had the potential to severely curtail free speech for people convicted of crimes. The Revictimization Relief Act, enacted last fall, was initially aimed at silencing Mumia Abu-Jamal, who is serving a life sentence for the 1981 murder of a police officer, and whose case and writings have made him an international figure. The plaintiffs who brought suit opposing the law, including Solitary Watch, argued that it infringed on the free speech rights both of people who had been convicted of certain offenses in Pennsylvania and of those who might rely on information from people whose speech was blocked.

The law, in the words of Judge Christopher Conner, *in toto* comprises four sentences. It gave victims (loosely defined) the right to bring a civil action against an offender for an injunction or other relief, including payment of attorney fees, for conduct which perpetuates the continuing effect of the crime on the victim. This conduct was further defined only as conduct which causes a temporary or permanent state of mental anguish. The term offender was never defined.

Obscene Celebrity

On September 29, 2014, Goddard College, a tiny liberal arts college in Vermont [announced](#) that its graduating class had chosen Abu-Jamal as their commencement speaker. In the announcement, the President of Goddard said of the choice, Choosing Mumia as their commencement speaker, to me, shows how this newest group of Goddard graduates expresses their freedom to engage and think radically and critically in a world that often sets up barriers to do just that. Abu-Jamal, who was a political journalist and prominent member of the Black Panther Party prior to his arrest, is considered by some to have been deprived a fair trial due to his activism.

The day after the announcement, Maureen Faulkner, the widow of police officer Daniel Faulkner, whom Abu Jamal was convicted of killing, [appeared on Fox News](#), saying at one point, Why doesnt the justice system say hes not able to speak? Days later, Pennsylvania State Representative Mike Vereb introduced a bill to do just that allowing crime victims to petition courts to ask for injunctions on acts that would cause them mental anguish. In his memo seeking co-sponsors Rep. Vereb [said](#), A convicted murderer is still traumatizing the victims family and it needs to stop.

Pennsylvania state elections were only a month away when Vereb introduced his bill and legislators lined up behind the legislation. The bill was fast-tracked to ensure passage before the end of the legislative session and sped through both the House (unanimously) and the Senate (with 38 votes out of 50). Governor Tom Corbett, who was up for reelection and whose poll numbers were [described](#) in the Washington Post as epically bad, [signed the bill](#) into law at the Philadelphia intersection where Daniel Faulkner had been killed. He described the law as a way to strengthen victims and curb the [obscene celebrity](#) of those convicted of crimes.

Abu-Jamals commencement address at Goddard on October 5 was a recorded [speech](#), played along with a slideshow. Abu-Jamal did not discuss his case. Instead, he [reminisced](#) about his time at Goddard, the green hills of Vermont, and talked about how Goddard reawakened his love of learning. At the time that this speech was being played in Vermont, members of the Fraternal Order of Police gathered in Philadelphia at the site of Daniel Faulkners killing to register their protest.

This is not the first time Pennsylvania law enforcement has fervidly pushed its views of Abu-Jamal and the advocacy around his case. Last March, the Senate rejected the Presidents nominee to head the Department of Justices Civil Rights Division, Debo Adebile. Adebile was litigation director of the NAACP Legal Defense and Education Fund when it represented Abu-Jamal in an appeal of his death sentence. The national Fraternal Order of Police had sent a letter to President Obama to express their vehement opposition to Adebile immediately after his nomination; a number of Democrats refused to vote for him; and Pennsylvanias Democratic Senator, Bob Casey, sealed the nominations fate by [voting](#) against it after deliberation that included a [meeting](#) with the Fraternal Order.

The Silencing Act

The swift support for the Revictimization Relief Act was followed by a groundswell of opposition and it was quickly dubbed the Silencing Act. First, *Jamal v. Kanewas* was filed in November. In addition to Mumia Abu-Jamal, the plaintiffs included two other writers in

state prisons, Prison Radio, the Human Rights Coalition, and Educators for Mumia Abu-Jamal. The plaintiffs were represented by the Abolitionist Law Center in Pittsburgh, the Amistad Law Project in Philadelphia and the MacArthur Justice Center at Northwestern Law School.

At the time, David M. Shapiro, director of the MacArthur Justice Center, expressed confidence that the plaintiffs would prevail, [saying](#), This law is unconstitutional. The facts are on our side and the law is on our side. The Silencing Act targets a huge amount of constitutionally protected speech based on who is speaking.

In January, the ACLU of Pennsylvania along with other legal firms and organizations filed another federal lawsuit on behalf of journalists, news outlets, advocacy organizations, and community leaders who were formerly incarcerated, [arguing](#) that the law stifled public debate on critical issues because reporters covering these issues now fear they will be prevented from or even penalized for publishing interviews where can i purchase phentermine hcl from kvk tech with prisoners. Solitary Watch was among the eleven plaintiffs represented by the ACLU in *Prison Legal News v. Kane*.

Both lawsuits asked for a temporary and permanent injunction against the law and that it be declared an unconstitutional infringement on the free speech of plaintiffs. The plaintiffs argued that the law was unconstitutionally vague and overbroad and was a content-based restriction on speech. A joint stipulation filed with the court contained figures from the Pennsylvania Commission on Sentencing showing that just between 2004 and 2012, over 180,000 people were convicted in Pennsylvania of personal injury offenses all potentially subject to the Silencing Act.

Sara Rose of the ACLU addressed the specific fears of media outlets and reporters. With respect to publications, she said, they also are concerned, and not only about people not speaking to them. Some of the publications that represent reporters do in-depth, time-consuming investigative pieces, put months into a story. What if they put all that time into that story, and the victim finds out that it is coming out, and seeks an injunction and all of a sudden all that time is for nothing. Its a hastily drafted and very poorly written law.

Additionally, a provision that would allow for the recovery of attorneys fees from the people or organizations targeted was a source of disquiet. Not only does somebody whos been convicted of a crime have to be worried that that victim is going to take them to court, Rose said, but if that victim is successful youll have to pay the attorneys fees. That just multiplies the chilling effect on speakers.

Both sets of plaintiffs sued the office of the Attorney General as well as that of the Philadelphia District Attorney, but the case against the District Attorney was dismissed because of his guarantee that he would not make an application under the law until the court ruled on its constitutionality. The Attorney General, making no such guarantee, was the sole remaining defendant when the case went to a hearing and a trial.

The First Amendment Does Not Evanesce at the Prison Gate

On Tuesday, Chief Judge Christopher Conner of Pennsylvanias Middle District ruled that the Revictimization Relief Act was manifestly unconstitutional. Judge Conner, an appointee of President George W. Bush who [ruled](#) in 2011 that the Affordable Care Acts individual mandate was unconstitutional, declined to accept the proposition that criminal convictions eroded free speech rights. He wrote, the fact that certain plaintiffs have been convicted of infamous or violent crimes is largely irrelevant to our First Amendment analysis. The First Amendment does not evanesce at the prison gate.

Both the plaintiffs and the defendants agreed that no actions had been brought under the Act, but the judge recognized that because of the Act a number of the plaintiffs had decided against writing and speaking projects that they would have otherwise pursued.

Pennsylvanias Attorney General ended up arguing that the Act targeted behavior rather than speech. The courts decision dismissed this argument, reasoning that neither the four sentences of the Act, nor the legislative history behind it, supported the argument that it was intended to limit conduct instead of expression.

The court found that the Act was unconstitutional on all three of the grounds argued by the plaintiffs: unjustified content-based restrictions on speech, vagueness, and overbreadth.

It rejected revictimization as a ground on which to restrict expression. It also noted the Acts wholesale lack of definition, making it impossible to know what and to whom it could be applied. The court referenced discussions of the law in the legislature suggesting third-party expression, like that of journalists, could be restricted. It also referenced indications by lawyers for the Attorney Generals office that even people who had been arrested but not convicted could be silenced under the law. In the courts words, Taken to its logical conclusion, the Attorney Generals statutory interpretation would limit an accused persons right to profess his innocence before he is proven guilty.

Finally, the court was troubled by the sweeping reach of the law, which could potentially encompass protected and critically important speech, such as pardon applications, clemency petitions, public expressions of innocence, confessions, or apologies; legislative testimony in support of improved prison conditions and reformed juvenile justice systems; programs encouraging at-risk youth to avoid lives of crime; or any public speech or written work whatsoever, regardless of the speakers intention or the works relation to the offense.

The Right to Free Expression

In classic First Amendment fashion, Judge Connors response to the pleas to silence Abu-Jamal was a recommendation to fight speech with speech.

The right to free expression is the shared right to empower and uplift, and to criticize and condemn; to call to action, and to beg restraint; to debate with rancor, and to accede with reticence; to advocate offensively, and to lobby politely.

As for the Goddard students who listened to Abu-Jamals speech last October, a representative from the college had this to say in his appearance on the same Fox News show that had featured Daniel Faulkners widow: The graduating students believe that Mumia has a

message, coming from prison from a unique perspective and speaks to issues that are important to them that are important in a world where we have Ferguson. where we have police brutality; where these issues are real and in their lives.

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October 13, 2022

by [Vaidya Gullapalli](#)

September 29, 2022

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