



# ACLU

AMERICAN CIVIL LIBERTIES UNION  
of TENNESSEE

# The Vigil

Summer 2005

## ACLU-TN Challenges Marriage Amendment

ACLU-TN filed a lawsuit in April challenging a proposed amendment to the Tennessee Constitution that would ban same-sex couples from being able to marry in the state. The lawsuit was filed in the Chancery Court for Davidson County and charges that the state failed to meet notification requirements as outlined in the State Constitution.

"The drafters of our State Constitution put in place very specific safeguards to protect the Constitution from being amended at the whim of politicians. Unfortunately, in their haste to write discrimination into the Tennessee Constitution, the sponsors of this amendment are attempting to undermine the democratic principles guaranteed by the Constitution," said Hedy Weinberg, ACLU-TN executive director. "It's shameful that the politicians who are so eager to prevent gay people from securing the protections of marriage have so little respect for our State Constitution that they are willing to ignore these procedural safeguards."

The ACLU filed the lawsuit on behalf of ACLU members; the Tennessee Equality Project (TEP), a statewide lesbian, gay, bisexual and transgender lobbying organization; State Representatives Larry Turner, Beverly Robison Marrero and Tommie Brown; and a number of private citizens. The suit names a number of government officials, including Secretary of State Riley C. Darnell, Coordinator of Elections Brook K. Thompson, and Attorney General Paul G. Summers.

State Representatives Turner, Marrero, and Brown explained their reason for joining in the lawsuit: "When we took office, we swore that we would uphold the Tennessee Constitution. The Tennessee Constitution is what keeps us honest. When we no longer follow the rules, democracy is sacrificed. We are joining in this lawsuit because it's our duty to make sure that when we consider proposals to amend the State Constitution, we follow the rules. That didn't happen here."

The lawsuit charges that the text of the amendment was not published six months prior to the General Assembly election as required by the State Constitution. Article XI, Section 3 of the Tennessee Constitution sets forth rules for amending the Constitution. Before an amendment can be placed on the ballot for a general election, it must first be agreed upon by a majority of both the Senate and House of Representatives. Then the text of the amendment must be published in Tennessee newspapers at least six months before the next

election of the General Assembly. When the next General Assembly convenes, a second vote is taken, and the amendment must be approved by two-thirds of the members of both the Senate and House. The amendment is put to the citizens for a vote only if it meets all of these requirements.

According to the complaint filed by ACLU-TN, the proposed amendment received the necessary votes to pass the first vote in the House on May 6, 2004 and in the Senate on May 19, 2004. However, the Secretary of State failed to publish the text of the amendment until June 20, 2004—only four months and 12 days prior to the General Assembly elections that took place on November 2, 2004.

"By requiring the state to publish proposed amendments to the constitution six months before the elections, the citizens are given the opportunity to properly debate an issue of such fundamental importance and decide if they want to reelect the legislators who proposed it or choose to elect someone else instead. Failure to meet the six month publication requirement renders the proposal unconstitutional and invalidates the amending process," said Melody Fowler-Green, ACLU-TN staff attorney.

Shortly after the case was filed, the Alliance Defense Fund (ADF) filed a motion to intervene on behalf of 91 state legislators. ADF, a right-wing legal organization founded by such groups as Focus on the Family, has attempted to insert itself into nearly every marriage equality case in the country. While their efforts have been unsuccessful in most places, on August 10, ADF and the 91 legislators were granted a permissive intervention and will now be parties in the pending case. However, the addition of these new parties does not change the substance of the case in any way.

Because this unconstitutional amendment is slated to be on the state-wide ballot next November for ratification, time is of the essence in this case. Everyone involved agrees that the Tennessee Supreme Court must make the ultimate decision, and must do it rather quickly. A decision can be expected by mid-2005.

ACLU-TN Staff Attorney Melody Fowler-Green is lead counsel in the case, assisted by ACLU-TN Cooperating Attorney Abby Rubinfeld of Rubinfeld Law Office.

From the Executive Director...

The retirement of Justice O'Connor ... the nomination of John Roberts .... the 80th Anniversary of the Scopes Trial ... the current battles to teach intelligent design in science classes ... the contentious review of the USA Patriot Act ... the reauthorization of the Voting Rights Act....these events indicate that the fight for civil liberties is far from over. As always, it is only because of the generous support of our members and friends that we can continue to protect and promote our constitutional freedoms.

**Scopes Trial**—On this the 80th anniversary of the Scopes "Monkey Trial," Tennessee continues to be the proving ground for religious right initiatives to thwart the teaching of evolution. "Intelligent design"—the Religious Right's latest effort to disguise religion as science—runs rampant, along with other anti-evolution initiatives in Tennessee and across the country. Presently, religious anti-evolutionists either disguise religion as science or attempt to detract from the scientific qualities of evolutionary theory. For example, in Blount County in East Tennessee, the School Board recently passed a resolution supporting the teaching of "intelligent design" in the science classroom. In Shelby County in West Tennessee, school board members proposed that the school system put disclaimer stickers about evolution in high school biology textbooks. ACLU-TN stands ready to challenge these initiatives if they are implemented.

**Reauthorization of Patriot Act**—The Patriot Act is the centerpiece of the White House's relentless campaign to limit judicial review and erode our due process and privacy rights. The reauthorization of the Act offers an opportunity to make sure these extraordinary powers are used only in rare circumstances and only when we are confident they are vital to ensure our safety. Unfortunately, these unchecked powers are not making us safer. After intense lobbying by the ACLU, the House and Senate passed their versions of the Patriot Act reauthorization, and the

next step is for the conference committee to resolve the differences. The ACLU believes that the Senate version is substantially better than the House version, from a civil liberties perspective. While we are not officially endorsing the Senate version because significant flaws remain, we are urging lawmakers to retain the Senate reforms. Reforms include requiring some individual suspicion and creating time limits on notification for the use of "sneak and peek" powers. We expect the President will sign the Act on or before September 11.

**Renewal and Restoration of Voting Rights Act (VRA)**—Forty years ago the VRA was signed into law, increasing political participation and ensuring the right to vote regardless of race. Some provisions of the law are set to expire in 2007 unless they are reauthorized. ACLU-TN has joined a statewide effort to ensure that these provisions are renewed and that the Act is strengthened to guarantee fairness and equality. We will share more information with you in the coming months on what you need to do to protect the right to vote.

**Back to School**—During the school year, ACLU-TN receives many calls from concerned parents about First Amendment violations in their children's public schools. Frequently, callers report public school-sponsored religious activities or free speech infringements. In order to minimize confusion about these issues, ACLU-TN is distributing information to school administrators about religious activities in school, military recruitment on campus, and the recitation of the pledge of allegiance. Our goal is to share this information in order to avoid conflicts or legal action. Please contact us to receive a copy of the flyer.

**Exciting News**—ACLU-TN just learned that we are one of ten affiliates that will be awarded a \$10,000 grant from National ACLU to expand our youth programming. We plan to organize and sponsor a leadership academy for teenagers across the state. Many thanks to ACLU-TN Program Coordinator Amy Drittler who crafted the grant proposal and to Anthony Romero and National ACLU for providing new opportunities and resources to grow. More information will follow.

**Stay Tuned**—National ACLU and award-winning director Robert Greenwald have announced a new TV series entitled "The ACLU Freedom Files." In ten 30-minute episodes, the series will explore pressing issues that are threatening the civil liberties of all Americans. Shows will air the second Thursday of each month on satellite network Link TV. The first episode is scheduled for Thursday, September 8, and will focus on the Patriot Act. We hope to arrange for the series to be broadcast on local public access television. Please contact us if you work with a public access channel and would be interested in airing the series.

**Special Thanks and Gratitude**— to our wonderful student volunteers who are leaving us after graduating or completing their internships: Skylar King from Vanderbilt, who handled intake calls from individuals seeking ACLU assistance, Becky Cook from Belmont, who conducted our survey concerning the availability of emergency contraception in hospital ERs for rape victims; Rachel Jordan from Vanderbilt Law School, who researched and wrote legal memoranda; and Betsy Cooper from Hendrix College, who prepared a brochure about Tennessee's parental consent law and responded to callers requesting ACLU assistance. In addition, we look forward to the continued services of our wonderful office volunteers Will Akers, Marianne Bentley, and Kelson Bohnet.

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# Reflections of the 2005 Biennial

By Glenn Carter, ACLU-TN Board Member

The 2005 ACLU Biennial Conference was held in late July in New Orleans. I love New Orleans; the food is great, one can walk down the street drinking an alcoholic beverage, and the Garden District is beautiful. But late July? The temperature and humidity competed with each other to reach 100.

The conference began with National ACLU Board President Nadine Strossen introducing National ACLU Executive Director Anthony Romero, who gave a rousing speech concerning civil liberties in the U.S. He was concerned that the bombings in London might cause people to be willing to give up liberties for safety. The next day New York started searching backpacks in the subway system. On a positive note, Anthony announced that before 9/11 the ACLU had 300,000 members nationwide and as of July 20, we now have over 500,000.

President Mary Robinson of Ireland (1990-1997) gave an inspiring speech about Social and Economic Justice. She served as the U.N. High Commissioner for Human Rights from 1997-2002 and now serves as Chancellor of Dublin University. She sparked some controversy concerning whether the ACLU should work for social and economic justice or concentrate on civil liberties. There was fear that this could politicize the ACLU. One speaker said, "Our job is not to speak truth to power but to make it possible for U.S. citizens to speak truth to power." President Robinson drew a laugh when commenting on Justice Scalia's quote concerning GITMO detainees: "Charge them, try them, or let them go." She said, "Even a clock that's not running can be right twice a day."

Matt Coles spoke about progress in the area of LGBT rights. He mentioned three priority issues in K-12 schools: 1. Harassment and Abuse, 2. Ability to Organize, 3. Ability to be Out. He felt the "Employment Non-Discrimination Act" was going nowhere in this Congress. The ACLU has gay marriage cases in California, Washington, New York, Maryland, Oregon, and Tennessee.

The highlight of the conference for me was the keynote speech of Sister Helen Prejean, author of "Dead Man Walking." She has a new book out now, "The Death of Innocents," about two innocent men who were executed. She said a recent poll in Louisiana reported that 80% of people supported the death penalty. I think if everyone in Louisiana could hear her speak, it might be 20%. She was wonderful.

There was a session on "Campus Leadership and Youth Programs" that was useful to me in my role as advisor for the Austin Peay State University student club of the ACLU. I brought back good information to share with our students. There is a push to recruit student members, and Tennessee just received a \$10,000 grant to further our efforts. (Way to go Amy and Hedy!)

Finally, Americans United Executive Director Barry Lynn moderated a fascinating panel discussion on the separation of church and state. He created hypothetical situations and requested comments from the six panel members.

It was a great experience to be around so many liberals and civil libertarians. Maybe it will be in Nome, Alaska in December, 2007.

"The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."—Justice Louis Brandeis

Your tax-deductible contribution directly funds our litigation, public education, and outreach programs to protect and promote the constitutional freedoms of all Tennesseans.

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## In the Courts and...

### Brief Filed in Death Row Inmate's Appeal

Death row inmate Abu-Ali Abdur'Rahman has a pending constitutional challenge to the lethal injection protocol used by the state of Tennessee. The challenge raises some First Amendment claims, as well as the Eighth Amendment "cruel and unusual" argument.

ACLU-TN filed a brief in the case addressing only the First Amendment issues, arguing that (1) the Eighth Amendment and the First Amendment both mandate the public's presence during the entire execution because the public's perception is needed to determine whether an execution protocol meets evolving standards of decency; (2) courts assessing the constitutionality of execution methods partly rely on eyewitness testimony because it is crucial to the review of execution protocols which the courts frequently undertake; (3) the prevailing opinion that lethal injection is the most "humane and painless" available execution method may change with the evolution of technology and society's perceptions; (4) eyewitness media reports provide the documentation needed for society to make its judgments; and (5) the protocol presently used in Tennessee violates constitutional mandates by preventing the public and the press from witnessing the execution through the use of a chemical called Pavulon. This chemical is a paralyzing agent that creates a "chemical veil" that masks suffering of people who aren't fully sedated during execution. Pavulon makes the condemned look serene because of its paralytic effect on the muscles. The face muscles cannot move or contract to show pain and suffering. It therefore provides a chemical veil over the proceedings.

*Sidelines*, the student press at MTSU, also joined on the brief. Oral arguments were on June 8, 2005, and a ruling is pending.

ACLU-TN Cooperating Attorney Stephen Zralek drafted the brief.

### Ten Commandments Litigation Update

In January 2004, ACLU-TN filed a lawsuit challenging the posting of the Ten Commandments in the Monroe County Courthouse. The lawsuit was filed on behalf of ACLU-TN members in the county and K.O. Herston, an attorney practicing in Monroe County. In the lawsuit, ACLU-TN argued that the posting of the Ten Commandments violates the Establishment Clause to the First Amendment, which prohibits government from promoting or supporting a religious doctrine.

Additionally, in April 2002, ACLU-TN filed a lawsuit arguing that a display of the Ten Commandments in the Rutherford County Courthouse violated the Establishment Clause. The display was part of a larger "Foundations of American Law and Government" display, which included several other documents. The lawsuit pointed to the legislative history behind the posting as evidence that the Rutherford County Commission had a religious purpose for the display.

In June 2002, Judge Robert Echols granted a preliminary injunction in favor of ACLU-TN in the Rutherford County Case, ruling that the Ten Commandments plaque was unconstitutional and must be removed. The plaque was taken down on June 24, 2002. Further action in the case was stayed pending a Supreme Court decision in two cases challenging governmental displays of the Ten Commandments. On December 3, 2004, Judge Varlan stayed the proceedings in the Monroe County case for the same reason.

On June 27, 2005, the Supreme Court struck down a display in two county courthouses. In *ACLU v. McCreary County* (an ACLU of Kentucky case), the Supreme Court held that a public governmental display of the Ten Commandments is unconstitutional, even when it was accompanied by other presumably secular documents, when the intent was religious.

In the wake of the *McCreary* ruling, and on advice by counsel, Monroe County officials removed the unconstitutional display—without a court order. The issue of a permanent injunction and attorney's fees still remain. In Rutherford County, ACLU-TN will seek a permanent injunction and attorney's fees.

Attorneys in the Monroe County case are ACLU-TN Staff Attorney Mel Fowler-Green and ACLU-TN Cooperating Attorney K. O. Herston. ACLU-TN Cooperating Attorneys in the Rutherford County Case are George Barrett and Edmund Carey of Barrett, Johnston and Parsley.

## ... In the Communities



### Ensuring Peace Groups' Access to High Schools

Last October, a coalition of activists from Veterans for Peace and the Religious Society of Friends planned to speak to students at high schools in Putnam County about alternatives to military service. After months of rejection, advocacy, and ultimately, ACLU-TN intervention, they have been granted the requested access.

Military access to high schools has increased in the past few years. The No Child Left Behind Act requires high schools that receive Title I federal funding to release the directory information of high school juniors and seniors to military recruiters, unless parents "opt out." In addition, school districts are obligated to provide military recruiters with the same access to secondary school students as is provided generally to post secondary educational institutions or to prospective employers of those students.

Individuals and organizations all over the country are responding to this increased military access in schools by asking for equal time. Activists, religious organizations, and coalitions of interested veterans are asking public school systems to allow them to disseminate information in the schools and to meet with students—just as recruiters do. Several courts around the country have found that if a school allows military recruiters to disseminate material, to meet and speak with students, and to participate in career fairs and the like, the school must allow similar access to those who propose alternatives to military service.

The principal of Putnam County High School initially granted the activists access, but later asked that they not return—citing objections to the information they were disseminating. The coalition then approached the School Board. The Board sent the issue to their attorney. ACLU-TN sent a letter to the Board's attorney, citing relevant First Amendment law and urging him to advise the Board in accordance with that law. Shortly thereafter, the school superintendent asked for a meeting with the coalition, where he granted the coalition full access on the same basis as the military.

### ACLU-TN Fights for Teen's Right Not to Have an Abortion

Late on a Friday afternoon in May, ACLU-TN received a call from a private attorney in Sevierville. The attorney and his firm represented a 14-year-old woman who was about five months pregnant and was being coerced into getting an abortion. The young woman's mother claimed to have found someone in Georgia to perform the abortion, and was going to force the young woman to go the following day. The attorneys called seeking advice and constitutional arguments that might assist them in obtaining a temporary restraining order. We jumped into action, made several phone calls, did some research, and were able to provide the firm with solid advice and arguments. The attorneys were successful in obtaining court protection for the young woman.

### Political Signs in Signal Mountain

A zoning ordinance in Signal Mountain limited the display of political signs on residential property to 30 days prior and no more than a week after an election. Signal Mountain residents and ACLU members Sharon Bandy and Buzz Sienknecht contacted ACLU-TN when the political campaign sign in front of their house, posted more than 30 days prior to the election, was presumably removed by city officials.

ACLU-TN sent written correspondence to the Mayor of Signal Mountain on September 30, 2004, pointing out that the zoning ordinance violated both the federal and state constitutions, and asking for written assurance that the ordinance will not be enforced. We further asked that the law be changed to reflect constitutional standards at the next council meeting.

In October 2004, the Signal Mountain Town Council unanimously voted to amend the ordinance. In the *Chattanooga Times Free Press*, the mayor of Signal Mountain cited the letter from ACLU-TN as one reason for the change.

## Campaign Against Racial Profiling Achieves Another Success

The recent resounding passage of a bill to study racial profiling is the latest achievement in ACLU-TN's "Campaign Against Racial Profiling." Passed by both the House and the Senate by large margins and signed by the Governor, the new law—Public Chapter 193—requires Tennessee Highway Patrol officers to collect data for each traffic stop they make.

"Data collection is critical for discerning any patterned practice of racial profiling by law enforcement," said Hedy Weinberg, ACLU-TN Executive Director. "Data collection takes the racial profiling debate beyond accusations and denials by enabling systematic monitoring of Tennessee highways. We are very appreciative of the willingness of the Department of Safety to collect this data and the State Comptroller to compile and analyze the data."

The type of data collected includes race, ethnicity, gender and age of the person stopped, the reason for the stop, and whether a search occurred and a citation was issued. The data will be collected for one year, beginning January 2006. The State Comptroller's Office will compile and analyze the data and issue a report by March 2007.

The ACLU drafted the data collection bill and recruited Representative Henri Brooks of Memphis and Senator Doug Jackson of Dickson as sponsors. Weinberg praised Representative Brooks for her tenacity in pursuing the issue. "For the last five years, the ACLU has worked closely with Representative Brooks to combat racial profiling in Tennessee."

Racial profiling occurs when group characteristics (e.g., race or ethnicity) rather than behavioral indicators (e.g., reckless driving) become the primary factor prompting law enforcement encounters. The major professional law enforcement organizations oppose the use of racial

profiling as a law enforcement technique.

Launched in January 2000, ACLU-TN's "Campaign Against Racial Profiling" focuses on increasing public awareness of racial profiling; identifying the extent and prevalence of the problem across the state; and seeking solutions to eradicate racial profiling through organizing, community outreach and training.

During the last five years, ACLU-TN has sponsored town meetings; provided training for law enforcement agencies and community groups; drafted and lobbied for state legislation that would combat racial profiling; and partnered with law enforcement officials to develop curricula for community-police training programs.

Weinberg said she views the recent bill's passage as another important step in ACLU-TN's work to combat racial profiling. ACLU-TN has pursued two other legislative initiatives in its effort to eliminate racial profiling. The first, in 2000, was the unprecedented collaboration between ACLU-TN and the Tennessee Association of Chiefs of Police in crafting a one-year voluntary pilot data collection project. Forty-six law enforcement agencies agreed to participate in the study. The State Comptroller's Office compiled and analyzed the data.

Last year, ACLU-TN drafted and successfully lobbied in support of a resolution that declared racial profiling contrary to state policy and called on law enforcement agencies to provide anti-racial profiling training for their officers on a continuing basis.

Building on the momentum of this recent legislative victory, Weinberg said ACLU-TN intends to continue its work with community groups and law enforcement agencies to develop strategies to abolish racial profiling in the state.

### "Choose Life" License Plate Update...

In late May 2003, the Tennessee General Assembly passed a law authorizing a "Choose Life" specialty license plate. The "Choose Life" plate was sponsored by, and benefits, New Life Resources, Inc., a local anti-choice organization. The legislature failed to approve a companion "pro-choice" specialty tag.

In November 2003, ACLU-TN, the ACLU Reproductive Freedom Project (RFP), and Planned Parenthood Federation of America (PPFA) filed suit challenging the "Choose Life" plate and the legislature's general policy and practice of approving specialty plates. Several organizations, including New Life Resources, intervened in the case.

Following summary judgment arguments, U. S. District Court Judge Todd Campbell ruled that the statute creating the "Choose Life" license plate tag was unconstitutional. The Court, however, did not strike down Tennessee's specialty license plate program.

New Life Resources has appealed the decision to the 6<sup>th</sup> Circuit. Final briefs have been filed by both sides. Oral arguments have not yet been scheduled.

Plaintiffs include ACLU-TN, Planned Parenthood of Middle and East Tennessee, Inc., and three individuals. ACLU attorneys include Julie Sternberg, Caroline Mala Corbin, and Carrie Flaxman of ACLU RFP, and Mel Fowler-Green, ACLU-TN Staff Attorney.

## Young Civil Libertarians Unite for Students' Rights

By April Glaser, ACLU-TN Student Intern

A diverse union of students gathered for the Third Annual Students' Rights Conference hosted by ACLU-TN. The event, which was held at Hillsboro High School in Nashville, lasted the entire day and connected high school students from all over Middle Tennessee. The conference, much like years past, focused on civil liberties issues both in schools and off campus.

ACLU-TN provided the students with a colorful and diverse assortment of speakers as a main course for the conference. The various speakers touched on a variety of topics that affect minors and youth rights. The guests included Juvenile Court Judge Betty Adams Green of Metro Nashville and Metro Police Chief Ronal Serpas. Judge Green enlightened students on the process a juvenile goes through when taken into custody as well as a first hand view through the eyes of the court on many common juvenile legal situations. We felt honored that Chief Serpas accepted our invitation to come and speak with the students about his work.

The conference also featured a panel discussion entitled "Your Rights in School." David Hudson of the Freedom Forum First Amendment Center and Susan Brooks of the Vanderbilt University Legal Clinic returned for their second time to speak at the conference and were joined by Melody Fowler-Green, ACLU-TN's new staff attorney. This panel proved to be an engaging and thought provoking as the speakers explored such subjects as separation of church and state, due process, and censorship.

The day continued with a "Shoutout Session: What's Happening in Your School?" which provided a period for

the students to openly discuss various violations they have witnessed throughout their schools. Also, Jerri Mauldin, who is a Metro Nashville Public Juvenile Defender, was a favorite among students with her segment entitled "Street Law: Your Rights and Responsibilities." She covered a variety of topics ranging from racial profiling to student resource officers. This year ACLU-TN added a new and unique element to the format of the conference. Hedy Weinberg, the Executive Director of ACLU-TN, hosted a portion that closed the day entitled "Using Your Voice: How to Create Change." Here the students received a quick lesson of legislative advocacy and a 'how-to' on grassroots organizing.

Throughout the day students were reminded that the conference was also to be used as a safe place for voicing their personal opinions and receiving free professional advice. Students were urged to challenge the speakers with questions. The attendees were more than willing and sparked interesting discussion throughout the conference. One could really sense the empowerment felt throughout the students as they continued to learn about their civil liberties and the system of public education that so often suppresses them.

Hopefully, the conference acted as a catalyst for the students who were in attendance to go out and create a positive change. Many of the students in attendance expressed interest in helping to make next year's conference even better and more successful. Quite a few students inquired about becoming student members of the ACLU-TN and even starting a high school ACLU club within their own school!

### ACLU-TN Defends Murfreesboro Student's Right to Free Speech

Eagleville School Valedictorian Abe Stoklasa had his diploma withheld by school administrators at his graduation ceremony after Abe defied orders to edit his speech. A draft of his speech submitted for prior approval included jokes which the administration saw as critical of the school. One line said: "You have given us the minimum required attention and education that is needed to master any station at any McDonald's anywhere." This was immediately followed by: "Of course, I am only kidding. Eagleville is a fine institute of higher learning, with a superb faculty and staff." Eagleville Principal Rhonda Holton asked him to remove lines to which the administration objected. Abe believed his free speech rights were being violated and delivered his speech as initially proposed. The school shut down the sound system so that his remarks could not be heard and did not give him his diploma. When he didn't receive his diploma along with the other graduates, Abe and his mother sought advice from ACLU-TN. Accompanied by his mother, Gale, and ACLU-TN Staff Attorney Melody Fowler-Green, Abe received his diploma from school officials a week later without further controversy. Ironically, the offending statement was quoted by local and national press, including *Newsweek*.

## Legislative Wrap-Up

The first year of the two-year 104<sup>th</sup> Tennessee General Assembly convened in mid-January with the usual flurry of bills and adjourned in late May amidst scandal and shame with the arrest of several legislators on bribery and extortion charges. We reviewed the over 2,000 bills that were introduced in order to identify bills with civil liberties implications which required ACLU-TN action. The second year of the session will begin in January 2006 and those bills still pending will be considered. Special thanks to Joe Sweat, ACLU-TN board member, who once again generously shared his time and expertise and joined with ACLU-TN Executive Director Hedy Weinberg to serve as the ACLU-TN lobbyist.

This year ACLU-TN worked with legislators and coalition partners to introduce several pro-civil liberties initiatives: 1) mandatory emergency contraceptives in ERs for rape victims; 2) restoration of voting rights for ex-felons; and 3) traffic-stop data collection by state highway patrol. Our energies also focused on preventing the passage of several mean-spirited bills that denied equal protection to the lesbian and gay communities; jeopardized reproductive freedom rights; and chilled freedom of speech. Our legislative agenda was full and varied. The following are the bills ACLU-TN focused its efforts on.

### Students' Rights

SB1117 (Finney) HB432 (Campfield)—specifies students' rights to academic freedom, freedom from discrimination based on political or religious beliefs, and the right to information concerning grievance procedures. Procedures are already in place for students to file complaints against their faculty. S and H: No Action. **Oppose**

SB1184 (Crowe) HB432 (Hargett)—Grants access to certain information about public high school students to recruiting representatives of U. S. armed forces and Tennessee national guard. The bill requires that schools notify parents only after the 10<sup>th</sup> grade of the opt-out provision. ACLU-TN lobbied against the bill because of our concern for students' privacy rights. S and H: No Action. **Oppose**

### Lesbian and Gay Rights

SB0037 (Cohen) HB1682 (Marrero)—Allows transgendered persons to correct the sex designation on their birth certificates. Tennessee is the only state in the country that has a law preventing transgendered people from changing their birth certificate. S: Passed Senate General Committee; H: Failed in Health & Human Resources Subcommittee. **Support**

SB914 (Miller) HB751 (Clem)—Prohibits state from legally recognizing civil unions and domestic partnerships involving individuals of the same sex, and additionally prohibits the recognition of any similar relationship recognized as a legal relationship in any other states. Sponsors chose not to move the bill this year but promise to next year. **Oppose**

SB1615 (Bryson) HB775 (Clem)—Prohibits adoption by

gay men or lesbians and prohibits a parent from consenting to the adoption of their child if they know that the adoptive parent is gay or lesbian. ACLU-TN spearheaded the opposition to this bill, arguing that the initiative violated equal treatment and equal protection under the law and was not in the best interest of the child. In addition to actively lobbying against the bill, we mobilized child welfare groups to speak out, mobilized grassroots letter writing campaigns, and recruited experts to testify at the committee. S: Taken off notice in Judiciary; H: Failed in Children and Family Affairs Committee. **Oppose**

SB1911 (Jackson) HB1839 (Tidwell)—Prohibits the state higher education institutions from using or including sexual orientation, sexual preference or transgender status in admissions criteria, rules or policies. S: Failed in Education Committee; H: No Action. **Oppose**.

SJR31 (Miller)—Proposes a state constitutional amendment to define marriage as a contract between one man and one woman. Passage of this resolution allows the constitutional amendment to be placed on the November 2006 statewide ballot. ACLU-TN has filed a lawsuit challenging the procedure to place the resolution on the ballot. (See article "ACLU-TN Challenges Marriage Amendment.") S: Passed 29-3; H: Passed 88-7-1. **Oppose**

### Reproductive Freedom

SB1670 (Cohen) HB865 (Marrero)—Requires hospital ERs to provide information about emergency contraceptives (EC) to rape victims and requires ERs to either provide EC when requested or refer women to comprehensive sexual assault centers that provide EC. The referral provision protects the rights of hospitals that have religious concerns. Most Tennessee ERs do not provide EC to rape victims. (See "Availability of EC for Sexual Assault Patients" Fact Sheet.) Contrary to information being circulated by Tennessee Right to Life, EC does not cause abortions and will not harm an existing pregnancy. S: No Action; H: passed Health and Human Resource and Finance Ways and Means Committees, Pending on Floor. **Support**

SB2217 (Jackson) HB1901 (Pinion)—Expands the definition of "person" under the assault and homicide statutes to include unborn children at every stage of gestation from conception until live birth rather than from viability of the fetus. The bill seeks to give the fetus from the moment of conception legal rights distinct from the woman who has been assaulted or killed. S: Passed Judiciary Committee and failed in Finance Ways and Means Committee; H: Passed Health & Human Resources Committee, Failed in Finance, Ways, Means Committee for lack of motion. **Oppose**

SJR127 (Fowler)—Adds new provision to Article I to provide that nothing in Constitution of Tennessee secures or protects right to abortion or requires the funding of an abortion. ACLU-TN continues to lobby against this dangerous constitutional amendment which would exempt abortion from the privacy guarantee of the Tennessee Constitution. S: passed Judiciary Committee; H: no action. **Oppose** (cont. next page)



### Legislative Wrap-Up Continued...

#### Civil Rights

SB79 (Finney) HB1383 (Casada)—Enacts the “Pharmacist’s Freedom of Conscience Act,” which would allow pharmacists to refuse to fill a prescription. Refusal clauses deny patients’ access to medications that are prescribed by their physicians because the pharmacist chooses to impose their own narrow ideological beliefs on the patients. ACLU-TN unsuccessfully attempted to work with the sponsors to ensure that there would be a pharmacist on call to fill the prescription. S: no action; H: deferred in Health and Human Services Subcommittee.

#### Oppose

SB1678 (Cohen) HB1722 (Turner, L)—Revises the procedure for voting rights to be restored for ex-felons after they have completed their sentences. Tennessee is one of six states in which every person convicted of a felony today will be disenfranchised indefinitely with no point of automatic restoration. ACLU-TN will continue to work closely with legislators and coalition partners in an effort to make the current cumbersome and complicated process less difficult. S: passed 26-7; H: failed 39-55 (can be brought back to Floor next year). **Support**

SB2214 (Jackson): HB1925 (Brooks, H.)— Requires the Tennessee Highway Patrol to collect traffic stop data over a one year period and requires the Comptroller’s Office to compile and analyze it and issue report. (See article, “Campaign Against Racial Profiling Achieves Another Success.”) S: passed 28-1; H: passed 64-29-2; Public Act 193. **Support**

#### Immigrants’ Rights

SB303 (Ketrone) HB242 (DuBois)—Requires all written driver’s license exams to be given in English. The bill violates Title VI of the Civil Rights Act, which requires all recipients of federal funds (I.e., TN Department of Safety) to provide meaningful access to individuals who have limited English proficiency. S: passed Transportation Committee; H: no action. **Oppose**

SB1595 (Norris) HB195 (Todd)—Includes provision requiring state/local agencies to verify citizenship of applicants prior to receiving any public benefits. This bill is drafted so broadly that it violates equal protection under the law. For example, it would require police and 911 operators to confirm status before dispatching emergency services. S and H: deferred in state and Local Government Subcommittees. **Oppose.**

## Join the ACLU-TN Email Alert Network

We will notify you about pending legislation in the state legislature and Congress and other civil liberties issues and events. Send an email to [aclutn@aclu-tn.org](mailto:aclutn@aclu-tn.org) with “subscribe to email alert” in the subject line. Please include your name and street address in your email so we will know your legislative district if we need to target certain legislators or send you information about events in your area.

## ACLU-TN Hires First Staff Attorney

Last October, ACLU-TN was thrilled to welcome Melody Fowler-Green to our staff as the affiliate’s first-ever staff attorney.

ACLU-TN successfully competed for a two-year grant from National ACLU to fund a staff attorney position. The addition of a staff attorney increases our ability to expand our base of volunteer attorneys across the state and pursue more ACLU-TN sponsored litigation and interventions.

Since Mel’s arrival, ACLU-TN has successfully intervened on behalf of Tennesseans throughout the state. (See “In the Communities.”)

According to Hedy Weinberg, ACLU-TN Executive Director, “Mel brings wonderful legal skills and enthusiasm to the ACLU. She has the perfect combination of skills which will help us build a strong legal program.”

A 2000 graduate of Georgetown University Law Center, Mel comes to the ACLU from Southern Migrant Legal Services

in Nashville and Texas Rural Legal Aid in Weslaco, Texas. For the last four years, she has litigated employment, labor and civil rights cases on behalf of immigrant and migrant workers. At Georgetown, she was the editor of the Journal on Poverty Law and Policy. In addition, Mel has a Masters’ Degree in Women’s Studies from the University of Cincinnati, and majored in theater at the University of Michigan at Flint.

Mel also designs and makes handbags under her own label: Habeas Purses. She has two dogs, Abbey and Blue, and one cat, George. She and her husband, Erik, celebrated their 10th anniversary last September. Erik teaches 4th grade and grows a lovely garden. Above all else they enjoy hiking and camping, and Mel reports that they “find that political debate, intellectual conversation, and rum are best had around a campfire.”

## Dayton, Tennessee: 80 Years Later

*In July 2005, ACLU-TN Program Coordinator Amy Drittler went to Dayton, Tennessee, for the annual Scopes Festival. These are her thoughts on the trip.*

I have wanted to visit Dayton since about five minutes after the ACLU hired me. It took me a while to find my way to Rhea County, but in July I fulfilled my little dream when I spent a Saturday at the 18<sup>th</sup> annual Scopes Festival.

As we all know, high school educator John T. Scopes was put on trial in July 1925 for violating the Butler Act, which prohibited the teaching of evolution in public schools. After Governor Austin Peay signed the Act into law, many divergent groups seized upon the opportunity. The ACLU hoped to test the law's constitutionality. Creationists saw a chance to inject Biblical theory into a broader public debate. And the small town of Dayton hoped the impending clash between these two might provide a much-needed boost for the municipality's struggling economy.

I am always amazed that so many people know of the Scopes trial, but so few know of the ACLU's intimate involvement. Indeed, shortly after the Butler Act became law, the press made it known the ACLU wanted to find an educator to test its constitutionality. This caught the eyes of Dayton engineer George Rappleyea and local druggist F. E. Robinson. They convened an informal meeting in Robinson's Drug Store with city officials, attorneys, and the school superintendent. The group recalled that while John Scopes was not a biology teacher by trade, he *had* substituted in the biology's teacher absence not long ago. Perhaps he would be willing to stand trial....

He was. Soon the ACLU had recruited famed defense attorney Clarence Darrow, fresh off the Leopold and Loeb case in Chicago, to represent Scopes. The state enlisted the help of renowned orator and 3-time Democratic presidential candidate William Jennings Bryan to assist with the prosecution. Bryan came to notoriety for his opposition to the gold standard for currency and his progressive Populist politics, but in his later years he rededicated his public life to promoting Christian ideals.

Dayton is about 40 miles off Interstate 40, nestled in the beautiful East Tennessee mountains. I couldn't help but wonder what Darrow and Bryan must have thought of the place – how remote it must have seemed – when they arrived that July. Except for the Taco Bell on the outskirts of town and the large number of ATMs near the courthouse, I suspected that many of the surroundings remained similar to those of 1925.

Dayton holds a 3-day festival each year to commemorate the anniversary of the Scopes Trial. People convene on the courthouse lawn to buy crafts, listen to live music, eat ice cream, and wilt a little in the oppressive summer heat. There were surprisingly few people milling about that Saturday—in fact, I'm sure any given day of the Scopes Trial saw much more activity on the city streets than I saw during my visit. I

had expected a little more action, given that this was the 80th anniversary of the trial.

The highlight of the Festival is the 2-hour reenactment of the trial, which takes place in the very courtroom where Darrow and Bryan exchanged witticisms and hostilities. While the courthouse grounds were fairly quiet all day, the courtroom was packed for the 3 p.m. reenactment. Local residents, many of whom have participated in the reenactment for all 18 years of the Festival, recreate the 10-day trial from transcripts. This is not a production of *Inherit the Wind*; the words spoken by the actors are the words of Darrow and Bryan themselves.

I found the reenactment riveting, entertaining, and a little disappointing. I sat on the edge of my seat during the scene in which Darrow examines Bryan on the stand. I knew that Darrow's questioning wearied Bryan, and that Bryan eventually conceded he could not prove that the Bible was literally true. But the reenactment stopped short of this point. To me, this very scene was what I had driven 200-plus miles hoping to see, and it felt slightly disingenuous not to include the whole story.

But then again, I felt a little out of place the entire time I was in Dayton. Many things—from the giant "Read Your Bible" sign hung outside the courthouse (a replica of a sign that appeared during the trial) to the large tent where one could pick up a free DVD that "proves" that evolution is wrong—made me careful not to advertise that I am employed by the ACLU. I had hoped to see both sides of the creation/evolution debate represented to encourage dialogue on the issue, for we all know this battle still rages today. Instead, I felt that most folks attending the Festival might be perfectly content with creationism (now being called "intelligent design") being taught in the public schools.

Still, it's a trip I highly recommend. Everyone there—from the Festival officials to the vendors to the local shopkeepers—were incredibly friendly and helpful. The courthouse includes a basement museum with great background information on Darrow, Bryan, Scopes, and the media circus that became "The Great Monkey Trial." I learned many things on my trip, including: the trial was the first trial to be broadcast live nationwide; Bryan did not speak in the courtroom until several days into the proceedings; there were many other attorneys, both local and out-of-state, working on both sides of the aisle; and local prosecuting attorney Sue Hicks became the inspiration for the Johnny Cash song "A Boy Named Sue."

And there's really no way to describe the feeling of sitting in the very courtroom where Darrow and Bryan made history. In fact, I think it is a pilgrimage every civil libertarian should make.

# Availability of Emergency Contraception (EC) for Sexual Assault Patients in Tennessee

An American Civil Liberties Union of Tennessee (ACLU-TN) Fact Sheet

In 2003, 2,114 forcible rapes were reported to Tennessee law enforcement agencies, according to the Tennessee Bureau of Investigation. Presumably, many more rapes went unreported. Nationwide, an estimated 25,000 U. S. women become pregnant each year following an act of sexual violence, according to a 1996 study published in the American Journal of Obstetrics and Gynecology.

Emergency contraception (EC) provides a safe and reliable method for preventing pregnancy after sexual assault. However, most emergency care facilities in Tennessee fail to provide sexual assault patients with this essential and effective treatment.

## What is Emergency Contraception (EC)?

EC prevents a pregnancy after unprotected sex, and is simply a high dose form of oral contraceptive pills. EC is sometimes called the "morning after pill" and it is often confused with mifepristone (RU-486).

EC does not cause an abortion and has no effect on an existing pregnancy. EC works like ordinary oral contraceptives and prevents a pregnancy from occurring. EC is approved by the Food and Drug Administration (FDA), and is commonly known by the brand name Plan B®.

EC reduces the risk of pregnancy by as much as 89% if taken within 72 hours of unprotected sex. It is most effective if taken within 12 hours of unprotected sex, but can be effective up to at least 120 hours. However, most experts agree that EC should be taken as soon as possible.

## Survey Methods

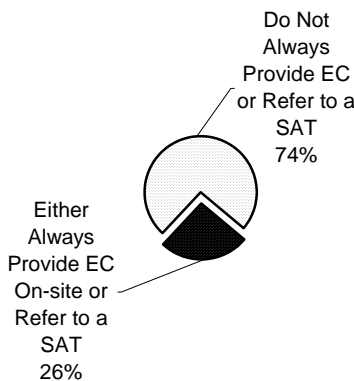
ACLU-TN, in conjunction with the Tennessee Women's Health Safety Network, conducted a telephone survey of 126 hospital emergency room departments (ERs) in Tennessee during February and March, 2005, to determine whether EC was being provided to sexual assault patients. The list of ERs was compiled based on information located on the Tennessee state government website ([ww2.state.tn.us/health/HCF/Facilities\\_Listings/CurrentResults.asp](http://ww2.state.tn.us/health/HCF/Facilities_Listings/CurrentResults.asp)) and based on information provided by the Tennessee Hospital Association (THA). The telephone survey was developed based on surveys previously completed by ACLU affiliates in Pennsylvania, Utah and West Virginia.

Calls were placed to each of the 126 hospitals with ERs in Tennessee. Four hospitals reported that their services did not include an emergency room department, and one hospital facility was closed. The remaining 121 ERs were contacted up to six times in attempt to gain a response. 101 ERs responded to the survey. Targeted survey respondents included: Sexual Assault Nurse Examiners (SANEs), staff nurses, charge nurses, nurse managers, clinical supervisors and/or ER directors in order to obtain the most accurate information.

## Findings

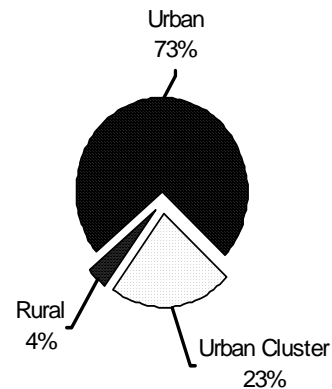
The data shows that only 26 ERs in Tennessee always provide EC to sexual assault patients, either on-site or by referring patients to a Sexual Assault Treatment Center (SAT) (Figure 1). The data also shows that most of these ERs are located in urban areas, making EC more difficult to access for sexual assault patients in rural areas (Figure 2).

Figure 1.



Of the 101 hospital ERs surveyed, 26 (26%) either always provide EC on-site to sexual assault patients or always refer to a SAT, 75 (74%) do not always provide EC on-site to sexual assault patients or refer to a SAT.

Figure 2.



Of the 26 hospital ERs that either always provide EC on-site to sexual assault patients or always refer to a SAT, 19 (73%) are located in urban areas, 6 (23%) are located in urban clusters, and 1 (4%) is located in a rural area. According to the U.S. Census Bureau, urban areas have a population of 50,000 people or more, urban clusters have a population of 2,500 to 49,999, and a rural area has a population of less than 2,500 people.



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## Save the Dates!

◆ **ACLU-TN Annual Membership Meeting**

Saturday, Sept. 24, 2:30 pm  
Owen Graduate School of Management,  
Nashville  
*Free and open to the public*

◆ **"Celebrate the Freedom to Read" Events:**

Memphis: Monday, Sept. 26, 6 pm, Davis-Kidd  
Nashville: Tuesday, Sept. 27, 7 pm, Borders  
Chattanooga: Tuesday, Sept. 27, 7 pm,  
A Novel Idea

Knoxville: Tuesday, Sept. 27, 7 pm, Borders  
*All events free and open to the public*

◆ **"Civil Liberties in the Age of Terrorism"**

Nadine Strossen, National ACLU President  
Tuesday, Sept. 27, 7:30 pm  
University of Tennessee—Martin  
*Free and open to the public*  
Visit [www.utm.edu](http://www.utm.edu) and click on "Event Calendar" for  
more information.

◆ **"The Great Monkey Trial"** (LA Theatre Works  
Production as part of Vanderbilt University's "Great  
Performances" Series)  
Wednesday, Oct. 19 and Thursday, Oct. 20, 8 pm  
Curb Event Center, Belmont University, Nashville  
Visit [www.ticketmaster.com](http://www.ticketmaster.com) for ticket information.

◆ **"The Great Tennessee Monkey Trial: Implica-  
tions for the 21st Century" Panel Discussion**  
Prior to "The Great Monkey Trial"  
Wednesday, Oct. 19, 6:45 pm  
Curb Event Center, Belmont University, Nashville

◆ **ACLU-TN Bill of Rights Celebration**  
Saturday, November 5, 2005  
University Club of Nashville  
\$85 per ticket  
Call (615) 320-7142 for more information.