

The Vigil

Newsletter of the American Civil Liberties Union of Tennessee

Fall/Winter 2020

UNPRECEDENTED AND UNPARALLELED:
PROTECTING CIVIL LIBERTIES IN 2020



TRAVELING HOPEFULLY | A SPECIAL MESSAGE FROM THE DIRECTOR

These are unprecedented times. But rest assured that the ACLU is still hard at work doing what we always do, regardless of the moment or the movement. As we have often said, the fight for freedom never stays won, and 2020 has certainly proven that to us.

Over the past nine months, ACLU-TN and our colleagues nationwide have vigilantly monitored the government's response to the COVID-19 outbreak to ensure that it is no more intrusive on civil liberties than absolutely necessary, that any government measure is grounded in science over politics, and that those most vulnerable to COVID-19 – including communities of color, people living in rural areas, and people who are incarcerated – are protected.

We've also joined with millions of people in our state and the nation to demand an end to the oppressive violence that has been inflicted upon Black and Brown people throughout our nation's history, and to think with creativity, clarity and compassion about how we can dismantle and rebuild our government institutions to root out systemic racism – starting with investing in our most disenfranchised and overpoliced communities and divesting from police.

We've been hard at work at the capitol and in the courts defending against lawmakers who, despite cutting their legislative session short due to the pandemic, still found time to attack the reproductive rights of women and transgender student athletes, and to undermine the First Amendment right of protesters raising their voices against hatred, racism and white supremacy.

Most recently, during this election season, we successfully litigated to expand access to voting by mail for those with special vulnerability to COVID-19 and their caretakers, empowered Tennessee voters statewide with information about the election process and their rights at the polls, and bolstered early and mail-in voting in communities of color and rural areas throughout the state – which have been

disproportionately impacted by both voter suppression and the COVID-19 pandemic.

Now, post-election, we stand poised to turn the page on a dark period in American history – a period of polarization and relentless attacks on our rights and our lives. But our work is not done. Because it has never been about one person or one party or who is in the White House, but about holding all of our leaders and institutions – both nationally and across Tennessee – accountable. We know the bulk of civil liberties and civil rights challenges are at the state and local levels. This is certainly true

in Tennessee, as we focus on criminal justice reform, reproductive rights, racial justice, immigrant and refugee rights, and LGBTQ equality.

The passing of Congressman John Lewis and Supreme Court Justice Ruth Bader Ginsburg illuminates their legacy of persistence in the pursuit of human rights and social justice. They taught us that protecting and advancing fairness and freedom requires collaboration, compassion, patience and tenacity.

As Congressman Lewis frequently reminded us, “keep pushing and pulling and find[ing] a way to get in the way.” We fully intend to keep “getting in the way” – and we are grateful you are standing with us.

Sending wishes for joy and justice in 2021,

Hedy Weinberg
Executive Director

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CRIMINAL JUSTICE REFORM

Protecting Incarcerated People During a Pandemic

Reforming our broken criminal justice system has long been one of ACLU-TN's top priorities. During the pandemic, this meant employing every tool in our toolkit – from public education to advocacy to litigation – to try to prevent our jails and prisons from becoming hot spots for COVID-19 outbreaks. People in prisons, jails, juvenile facilities and detention centers – where social distancing is nearly impossible and access to hygiene supplies like sanitizer and soap can be very limited – are uniquely vulnerable to coronavirus. These dangers are compounded for people of color, who are both overpoliced and overincarcerated in Tennessee.

Early on during the pandemic, we **sent letters to the governor, the Tennessee Supreme Court and state and local law enforcement and health officials** urging them to reduce jail and prison populations and provide re-entry services; to develop plans to ensure the health and safety of those who live and work behind bars; to provide access to testing and personal protective equipment; and to collect and release data on infection rates in state and local facilities.

We also released a comprehensive report illustrating all 95 Tennessee counties' efforts – and failures – to decarcerate local jails during the pandemic. Our report found that a quarter of our state jails were still operating at 75% capacity or above at the end of April, including nine that were at or over full capacity. But it also showed how many counties had safely reduced the number of people in their jails, illustrating a path toward reducing our costly reliance on incarceration during the pandemic and beyond. Read our report: <https://bit.ly/38ZlEpQ> (case sensitive).

On the legal front, **we and our partners secured a court order to ensure that the Nashville Community Bail Fund could continue its critical work to get people get out of jail**

as quickly as possible, which is particularly important during the current health crisis. In March, a federal court issued a preliminary injunction blocking implementation of a Davidson County policy that garnished cash bonds to pay future fines, costs and restitution assessed by the courts. We argued that conditioning a person's freedom as they await trial on the payment of fines is not permissible under the U.S. Constitution. The Nashville Community Bail Fund, represented by ACLU-TN, ACLU, Civil Rights Corps and Choosing Justice Initiative, filed this lawsuit, which is still pending.

We also **took legal action to protect people being held and employed at the Shelby County Jail, where hundreds have tested positive for COVID-19** and one person has died. We joined with community partners and the national ACLU to file a federal class action lawsuit against the Shelby County Sheriff's Office asking them to protect and release medically vulnerable people detained at the jail who are at high risk of severe injury or death from COVID-19 and are not considered dangerous to the public. While the judge denied the emergency medical release of medically vulnerable people at the jail, our lawsuit led to an independent inspection. In September, we amended our complaint to seek better protections inside the jail, including improved testing, social distancing and isolation and quarantine measures, as well as consideration of detainees' medical conditions when making bond decisions. The case is ongoing.

REPRO RIGHTS

Defending Access to Abortion

Especially during a pandemic, it is crucial that women have access to a full range of health services, including abortion, to ensure their health and wellbeing. Delaying abortion care or creating additional barriers can make it impossible to access safe, legal care and pose dangerous health risks.

Yet numerous states, including Tennessee,

POLICING & RACIAL JUSTICE

firm Sherrard, Roe, Voigt, Harbison, on behalf of organizations that conduct voter registration activities in Tennessee, including the League of Women Voters of Tennessee, American Muslim Advisory Council, Mid-South Peace & Justice Center, Memphis Central Labor Council, Rock the Vote, and HeadCount. In the fall of 2019, a federal court blocked the law from taking effect as the case was being litigated. Then, in April 2020, a new bill was signed into law that stripped out the unconstitutional provisions that we had challenged and fully **cleared the way for continued voter registration** in the lead up to the presidential election.

With COVID-19 rates increasing, we then pivoted to expanding access to mail-in voting – because no one should ever have to choose between their health and their vote. At the time, only voters who fit a narrow set of criteria qualified to vote by mail in Tennessee. We joined the ACLU Voting Rights Project and Delchert LLP to sue the state to allow any eligible voter who wished to vote absentee for fear of COVID-19 to do so. While we won in chancery court, allowing all eligible voters to vote by mail for the August primary, the Tennessee Supreme Court reversed that decision for subsequent elections. However, we **succeeded in securing a decision that allowed voters with an underlying health condition that makes them especially vulnerable to COVID-19, and their caretakers, to vote by mail** in all 2020 elections.

In September, we **launched our statewide “Vote Like Your Rights Depend On It” campaign** to spread important information about voting safely in the 2020 election. We sought to ensure that every Tennessean understood their options at the ballot box by sharing resources online, over text and through social media, and by advertising our resources on radio, via mail and digitally across the state. We focused our efforts on communities of color in rural counties – not just in Tennessee’s major cities – which have been disproportionately impacted by both voter suppression and the COVID-19 pandemic. We also emphasized the advantages of voting early and voting by mail. Our campaign engaged nearly 150 volunteers, speaking with approximately 150,000 Tennesseans directly and sharing resources with thousands more.

Reimagining the Role of Law Enforcement

Over the past year, thousands in Tennessee and nationwide have joined protests to express their outrage over the police killings of George Floyd, Breonna Taylor, Tony McDade, Elijah McClain and countless others. These powerful protests show the depth of the outrage over the enduring and deep-rooted problem of racist policing, white supremacy and structural racism in the United States, and have served as a collective catalyst for a long-called-for reimagining about the role law enforcement should have in our communities.

In Nashville, the protests were also a reflection of community members’ long-held grievances against policing in the city, and the low level of trust and confidence, especially within Black and Brown communities, in the Metro Nashville Police Department under the leadership of Chief Steve Anderson. In June, we joined with other community leaders in **calling for Chief Anderson’s resignation**, citing the tragic murders of Jocques Clemmons and Daniel Hambrick, the department’s refusal to collaborate with the city’s community oversight board, the dismissal of the Gideon’s Army racial profiling report and MNPd’s long-held resistance to using police body cameras. Chief Anderson announced his decision to step down shortly after and left the MNPd in early August.

In Memphis, we **continued our work to ensure that the police do not spy on community members.** After our successful 2018 lawsuit establishing that police surveillance practices violated a 1978 court order secured by ACLU-TN, we worked closely with the court-appointed monitor and encouraged community members to tell the monitor about their experiences with unwarranted police spying. In September, after collection of public input and a lengthy negotiation between ACLU-TN and the city, the court modified the original 1978 court order that prohibited police surveillance. The modifications expanded the order to include social media, electronic surveillance, body cameras and other modern technology, while still preserving the strength

**JOIN THE TEAM!
BECOME A VOLUNTEER:
bit.ly/ACLUTNVolunteer**

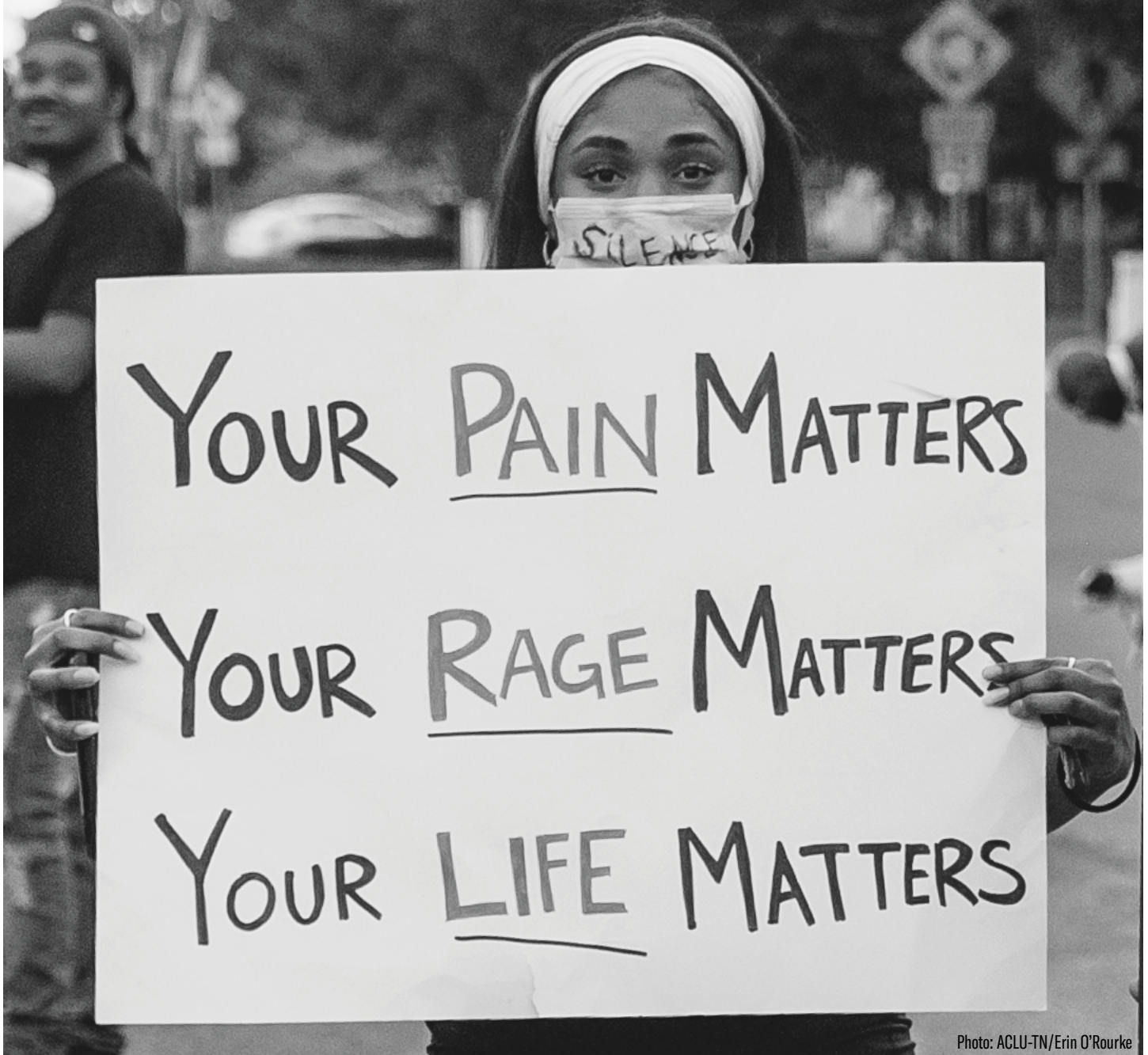


Photo: ACLU-TN/Erin O'Rourke

of the original agreement's protections and ensuring that the city shall not engage in First-Amendment-related intelligence.

Our policing work also included **pushing back on the unnecessary and dangerous militarization of police**. In Shelby County, we recently lobbied in support of an ordinance that would restrict law enforcement agencies' access to military-grade weapons through the federal government's 1033 program. Over \$900,000 worth of military equipment has been given to the Shelby County sheriff's department, including a mine resistant ambush protected vehicle created to protect troops from explosive devices and ambush. Shelby County's proposed ordinance would ensure that Shelby County law enforcement agencies have to meet certain conditions to participate in the 1033 program, allowing county residents

to weigh in on how they are policed and giving commissioners the power to approve or reject future military equipment acquisition. The measure is still pending. If you live in Shelby County, you can tell your commissioners to support the measure at: <https://bit.ly/3iIKbdp> (case sensitive).

As our work to reform policing and the criminal justice system continues, ACLU-TN is committed to proactively reimagining police culture, including government divestment from law enforcement agencies and reinvestment in Black and Brown communities, and to ensuring equal protection and treatment for all Tennesseans, especially those communities that have been historically overpoliced.

RELIGIOUS FREEDOM

Protecting Students' Right to Worship - Or Not - Without Government Interference

ACLU-TN continually strives to safeguard the First Amendment's guarantee of religious liberty by ensuring that laws and governmental practices neither promote religion nor interfere with its free exercise.

In October, we joined with the American Muslim Advisory Council in sending a letter to the Tennessee Secondary School Athletic Association (TSSAA) asking the entity to **remove its requirement that student athletes get prior approval before wearing religious headgear**. The letter was sent in response to a September 15 incident in which a Muslim student at a Tennessee high school was disqualified from competing in a volleyball match because she was wearing a headscarf, or hijab, in accordance with her religion. The TSSAA's process for initiating the rule change is underway.

In September, in another victory for religious freedom, a federal district court issued a permanent injunction **prohibiting the Smith County School System from unconstitutionally imposing religion on students**. The court's order came in the form of an injunction agreed to by the school district to resolve a lawsuit filed last year by ACLU-TN and the ACLU. Brought on behalf of two families, the lawsuit alleged a range of unconstitutional practices, including school-directed prayer during mandatory assemblies; the distribution and display of Bibles during classes; Bible verses posted in hallways and shared in notes from staff to students; prayers broadcast through loudspeakers at sporting events; coaches leading or participating in prayer with student athletes; and a large cross painted on the wall of a school athletic facility.

This legal victory is a reminder to school districts nationwide that public schools have no right to push religion on students or to create a religiously exclusionary and hostile environment.

EDUCATION EQUITY

Judge Strikes Down Lee's Voucher Program

This spring, ACLU-TN and our partners filed a lawsuit challenging the governor's voucher program as an unconstitutional diversion of public education funding to private schools. We also alleged that it violated the state constitution's home rule provision, which prohibits the general assembly from passing laws that target specific counties without local approval.

Our lawsuit, *McEwen v. Lee*, was filed alongside our partners at the Education Law Center, the Southern Poverty Law Center, Public Funds Public Schools and Robbins Geller Rudman & Dowd LLP, on behalf of several public-school parents and community members in Shelby and Davidson Counties. Davidson and Shelby Counties also filed a separate lawsuit.

The voucher law passed by a single vote in May 2019, over the objections of legislators from Shelby and Davidson Counties, as well as others. The program would have siphoned off over \$7,500 per student – or over \$375 million in the first five years – from the Metro Nashville and Shelby County schools' already underfunded budgets, resulting in further cuts to educators, support staff, and other essential resources.

Both our lawsuit and the counties' lawsuit moved forward simultaneously, with the court ultimately ruling in the counties' lawsuit that the voucher program violated the home rule provision of the Tennessee Constitution.

The Court of Appeals has since affirmed this decision, in a significant victory for public school students.

LEARN HOW YOU CAN TAKE ACTION IN
OUR FIGHT FOR FREEDOM:

bit.ly/ACLUTNACTION

ACLU-TN WELCOMES NEW STAFF



Helena Mrema, Criminal Justice Advocate

Helena Mrema, ACLU-TN's criminal justice advocate, is from Moshi, Tanzania and was raised in Uppsala, Sweden before moving with her family to McMinnville, Tennessee. After earning her Bachelor of Social Work from Middle Tennessee State University, Helena worked with underserved communities in various nonprofit, government and hospital roles. While completing her Master of Social Work through the University of Tennessee, Helena interned with ACLU-TN. During her internship, Helena quickly realized that "a more humane criminal justice system is not an inevitability – it requires hard work, dedication and unity," and she looks forward to continued work with ACLU-TN. When not hiking with her dog or participating in Nashville's arts scene, Helena can be found spending time with her three children.

Jack Seigenthaler, Voting Rights Strategist

Jack Seigenthaler joined ACLU-TN in July as a voting rights strategist to head our statewide "Vote Like Your Rights Depend on It" campaign. Jack draws on expertise he gained at Stanford University, where he graduated with a bachelor's degree in political science with a focus on elections and representation. Prior to joining ACLU-TN, Jack worked as a project manager at Nashville's Bone McAllester Norton PLLC.



"Tennessee has enacted suppressive voting laws that threaten access to the ballot box," Jack says. "I'm hoping I can help our organization as we fight to make it easier for disenfranchised Tennesseans to cast their ballots." When he is not collaborating with friends and family on crossword puzzles, Connecticut native Jack plays guitar and sings lead for his band, Sloan Woolly.



Stella Yarbrough, Staff Attorney

Stella Yarbrough joins ACLU-TN as a staff attorney after serving as a Davidson County public defender and in the state's Department of Education Office of Civil Rights, where she enforced Title VI and Title IX at Tennessee public schools, trained school employees on civil rights issues, and advised on state and federal special education laws. Stella clerked for ACLU-TN while earning her law degree from Vanderbilt University. She also attended Pepperdine University for religious studies and has a Master of Theological Studies from Vanderbilt Divinity School. Stella notes, "If the rights of society's most vulnerable members are denied, everybody's rights are imperiled. I look forward to undertaking this important work."



Tennessee

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In an unprecedented time, your support is more important than ever.

Defending civil rights and civil liberties day after day takes a lot of hard work – and financial support.

Please remember to give generously when you can. ACLU-TN receives contributions by mail and online, and we accept gifts of stock, IRA and other retirement assets, and mutual fund shares.

We also offer methods to give via your will, trust or life insurance policy. For more information, please contact Director of Development Sarah Howard at (615) 320-7142 x 308 or showard@aclu-tn.org.

Thank you for your partnership. We are in this together!