



ACLU

AMERICAN CIVIL LIBERTIES UNION
of TENNESSEE

The Vigil

Fall 2006

Vote NO on Amendment 1: Join the Fight for Marriage Equality

On November 7, Tennessee voters will go to the polls to decide whether or not to amend the State Constitution to prohibit gay and lesbian marriages. This mean-spirited amendment would write discrimination into the State Constitution. The text of Amendment 1 reads:

“The historical institution and legal contract solemnizing the relationship of one man and one woman shall be the only legally recognized marital contract in this state. Any policy or law or judicial interpretation, purporting to define marriage as anything other than the historical institution and legal contract between one man and one woman, is contrary to the public policy of this state and shall be void and unenforceable in Tennessee. If another state or foreign jurisdiction issues a license for persons to marry and if such marriage is prohibited in this state by the provisions of this section, then the marriage shall be void and unenforceable in this state.”

The fight for marriage equality is taking place across the country. Six other states, including Idaho, Wisconsin, Arizona, Colorado, South Carolina, and South Dakota, also are considering similar amendments in the November elections.

What You Need to Tell People:

Marriage is about commitment, love, sharing, and compromise; it is a private personal choice that should not be denied to couples just because they are the same sex.

Amendment 1 erodes privacy because with rare exceptions, adults should be able to be free to make decisions about their own private relationships without interference from the government.

Civil marriage and religious marriage are different. At issue is civil marriage – a legal institution regulated by the government that grants over 1,000 legal rights and legal obligations. No law recognizing marriages be-

tween gay and lesbian couples will limit the freedom of religions to define marriage as they choose. We are not asking people to change their religious beliefs. No religious group will ever be required to perform same-sex marriages.

Typically, when the Constitution is amended, it is for the purpose of expanding rights, not taking away rights. If this amendment is adopted, it will be the first time discriminatory language will be included that expressly denies equal treatment to a group of Tennesseans.

Without marriage protection, couples do not have the automatic legal rights that are enjoyed by married couples. Denying lesbians and gay couples the right to marry takes away legal rights to hospital visitation and to make medical decisions; the ability to receive survivor benefits and inheritances; and the right to advocate on behalf of a partner regarding legal matters.

The amendment will ONLY be defeated if we can mobilize those who are already against it to get out and vote in November and if we can convince most of those who are now undecided to vote NO.

What You Can Do:

- Talk to your friends, family, and co-workers about the Amendment, and explain why they should vote NO on Amendment 1.
- Volunteer by phone banking, staffing local events, and canvassing your community.
- Host a house party to explain the consequences of Amendment 1. ACLU-TN will provide a 30 minute DVD that tells the stories of couples harmed by being denied the protection of marriage.
- Register like-minded people to vote NO on Amendment 1.
- Make sure to go to the polls and vote NO on Amendment 1 on November 7.

The next two months are crucial if we hope to win our fight to protect marriage equality. Please join with us to protect marriage equality.

From the Executive Director...*Hedy Weinberg*

Amy Drittler, our dedicated program coordinator and tireless advocate of civil liberties, is moving to East Tennessee, beginning an exciting new job, and marrying a wonderful man (see next page). Amy joined ACLU-TN six years ago and has contributed greatly to the wide impact and stature our organization enjoys in Tennessee. In addition to her many administrative responsibilities, Amy single-handedly redesigned our website, birthed our "Celebrate the Freedom to Read" events, and researched and wrote our Student Rights Handbook. She also created an exciting and nurturing setting for the many student volunteers in our office. I am so fortunate to have had her as a colleague and very happy for her as she embarks on her new life. Amy, we will miss you and continue to revel in the momentum you have given to the ACLU and our work. We wish you the very best!

"Had Enough?" – ACLU's new advertising campaign – sums up the attitudes of so many Tennesseans I have met over the last year. Standing in line in grocery stores, at schools and restaurants, and on the street, I often hear the increasing fears and frustrations and growing awareness of the rampant abuse of power in the executive branch of our government.

During the last five years, we have witnessed a total disregard for the Constitution and the Bill of Rights, which protect our freedom. These flagrant abuses of power include secret demands for our library and medical records, evidence of a systematic pattern of torture of prisoners; presidential signing statements, data mining, and warrantless National Security Agency (NSA) wiretapping.

The ACLU continues to challenge these abuses of power. Most recently, the ACLU successfully filed a lawsuit to stop NSA's secret surveillance program. On August 17, the Court ruled that the Bush Administration's program to monitor emails and phone calls without warrants is unconstitutional and violates Americans' rights to free speech and privacy. In Tennessee, the Tennessee Regulatory Authority resisted ACLU-TN's request for an investigation to determine if phone companies cooperated with the government to collect calling information and patterns of Tennesseans. We are now considering other approaches to prevent warrantless disclosure of private consumer information.

We must demand that Congress provide the checks and balances required to protect our democracy. All of us need to be vigilant in protecting our Constitution and Bill of Rights. Please check out ACLU's "Stop the Abuse of Power" site at www.aclu.org/abuseofpower to find out what you can do. Remember...."Freedom can't protect itself."

Special thanks.... to our wonderful interns who spent their summer with us providing administrative support, responding to intake, and researching civil liberties issues. Under the skilled leadership of staff attorney Mel Fowler-Green, law students Rebecca Cohen from University of Michigan, Nate Evans from UT—Knoxville, and Kevin Kelly from Vanderbilt University researched and wrote legal memos on topics ranging from drug testing and military recruitment in schools to parade permit policies. They also participated in strategy discussions concerning pending litigation. Amanda Jacobowski, rising junior at Vanderbilt, reviewed and responded to intake requests. She also compiled survey results on Taser use by Tennessee law enforcement agencies. Amanda returns this fall to complete the analysis and write the report. Our student intern program reminds me that we will be in good hands with the next generation of civil libertarians!!

Make A Difference.... Attend National ACLU's Membership Meeting on October 15-17 in Washington D.C. There is nothing more energizing than being with thousands of like-minded civil libertarians who are committed to protecting our freedoms. Find out how to turn your frustration into positive action! To learn more visit www.aclu.org/conference.

The fight goes on.....As many of you know, our attempt to stop Tennessee's proposed anti-marriage equality through a procedural challenge failed in mid-July. (see page 1), The next two months will be critical as we try to mobilize Tennessee voters to **vote NO on Amendment 1** on November 7th. Please join us in our fight for fairness and equality by taking every opportunity presented to explain the dangers of Amendment 1.

The Vigil

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An ACLU Story *by ACLU-TN Program Coordinator Amy Drittler*

I knew from my first day on the job with the ACLU of Tennessee that my life would likely never be the same. But I had no idea how true that hunch would turn out to be.

Working for the ACLU is a great deal more than “just a job.” I could not believe my extraordinary good luck when I was hired, fresh out of graduate school and all of 24 years old. What an amazing opportunity to work for a nationally-known organization, one that has shaped modern American jurisprudence like no other.

I love my job. But while Hedy and Mel and I delight in what we do, it is hard work, every single day. Our office deals with real issues that affect real people in very profound and troubling ways. When I started, I possessed little knowledge of how the world really worked. Today, I know full well that there is a noticeable difference between how things *should* be and how they actually are, and I have seen first-hand how these differences continue to disproportionately impact the poor, the minority, the disenfranchised, and the vulnerable in our country.

It’s tough work, and sometimes there are unexpected consequences. There are hate calls that say all of our families should have died in the terrible attacks of September 11, or that say we will burn in a fiery hell for all eternity. Once, just a few weeks into my job, a friend introduced me to a guy she thought I should date. The instant he found out I worked for the ACLU, he got rather nasty, becoming so agitated and angry that I had to demand he leave my apartment.

All this aside, I would not trade the last six years of my life for anything. Working at ACLU-TN is the single best opportunity I have ever had, and not entirely for the reasons you might think. Certainly, I have grown as a professional in the past few years. But my life has grown in other ways as well.

I want to tell you about someone pretty special. His name is Ben Pressnell. Ben has been a member of the ACLU-TN Board of Directors since 2001. When he was in junior high, Ben was a plaintiff in ACLU-TN sponsored litigation challenging the Claiborne County School Board’s practice of allowing a group of citizens from two private ministries, collectively referred to as “the Bible Ladies,” to come into the public schools during the school day and conduct Bible classes with the students. The challenge was successful, and the school district was ordered to end the practice. As we all know, religious freedom issues are often difficult and controversial in Tennessee, and Ben’s case was no exception. For this reason, I have always believed that Ben is a great board member, because he brings to the group the unique perspective of having been an ACLU plaintiff.

Ben went to Vanderbilt University and the University of Tennessee College of Law, and then returned to his hometown of Tazewell to open a law practice in the offices formerly occupied by his granddad (also an attorney). Since

being elected to the Board, Ben has been quite active in East Tennessee on ACLU-TN’s behalf. He has served as an ACLU-TN guest speaker and represented ACLU-TN in debates. He also attended National ACLU’s Membership Conferences, held in 2003 in Washington, DC and 2004 in San Francisco.

I went to San Francisco for the 2004 Membership Conference as well.

I had absolutely no notion what would happen next. In San Francisco, at that ACLU conference, in between plenary sessions and with someone who feels and knows the importance of the ACLU in the same intimate way that I do, I found the love of my life.

Ben and I went on our first date during the conference. We had dinner at a lovely Vietnamese restaurant in downtown San Francisco, where we sat out on the patio and talked for hours. Within a couple of days of returning to Tennessee, we had plans to see each other the next weekend. Although Ben and I live 250 miles apart, for almost every weekend since July 2004, one of us has made the journey to see the other.

Ben proposed to me on Christmas Day 2004, less than six months after our first date. Let the record show that contrary to popular opinion, I am one card-carrying ACLU member that absolutely adores Christmas.

It didn’t take long for me to clearly see why Ben was “The One.” We were both born and raised in small Southern towns, and we attended the same big-city college. We both love ethnic food and books and good music and being outdoors and cuddling with our extraordinarily handsome German Shepard, Spartakus. Ben has introduced me to the music of Woody Guthrie and Phil Ochs, and I’ve gotten him hooked on *The West Wing*. After two years of shared dining experiences, Ben now knows that vegetarian hot dogs are pretty tasty, and I now know that calamari is a lot less gross than I originally thought.

Ben and I will be married in October, and will make our home in East Tennessee. The only bittersweet aspect to our ACLU romance is that I will be leaving my position with ACLU-TN. But it’s time for me to pass the torch to some other lucky young soul. It’s a rare privilege to spend every workday fighting to preserve and promote the constitutional rights of all Tennesseans. I am forever grateful to Hedy, Mel, the Board of Directors, and all of our members and supporters across Tennessee for keeping this wonderful organization strong and vital.

While Ben and I plan to take an extended honeymoon next year, our first trip as a married couple will be to the 2006 National ACLU Membership Conference in Washington, DC. The conference starts on October 15, the day after our wedding, and by attending, our romance will truly have come full circle. Maybe we’ll see you there!

Confessions of an ACLU-TN intern *by Shana Hammaker*

MTSU graduate communications student Shana Hammaker interned at the ACLU-TN office during the spring semester of 2006. Shana spent her time at ACLU-TN assisting ACLU-TN Executive Director Hedy Weinberg and ACLU-TN volunteer lobbyist Joe Sweat in their lobbying efforts during the Tennessee General Assembly.

When I decided to intern at ACLU-TN, I had no idea what to expect. I had always had the utmost respect for the ACLU, but I had very little understanding of what the organization really does. If pressed, I would probably have said something lame, like: "The ACLU? That's that cool group of civil libertarians that's always suing the government."

So, at the beginning of my internship when I was asked if there was anything in particular I wanted to get out of the experience, I couldn't answer. At that time, all I knew was that I wanted to be part of an organization that fights to hold onto our constitutional rights. Well, my internship at ACLU-TN gave me the opportunity to be a part of such an organization, and something ultimately more significant: a greater understanding of the role that citizens, through organizations like the ACLU, can play in representative government.

During my internship I accompanied our executive director, Hedy Weinberg, and Joe Sweat, our volunteer lobbyist, to the state capitol to monitor and track the progress of bills, and to lobby for or against particular pieces of legislation. These expeditions in democratic governance taught me more about the political process—and about the need for organizations such as the ACLU—than any political science course I ever took. I witnessed elected representatives of the people argue for special marked, bright pink license plates for convicted sex offenders and special marked, bright yellow license plates for those convicted of driving under the influence. I heard otherwise reasonable people rationalize legislation that would criminalize protests at funerals or memorial services, and I cheered when a subcommittee killed SJR127—a proposed constitutional amendment that would clear the way for a total ban on abortions in the state of Tennessee.

The fight engaged in by the ACLU is difficult, and it is never-ending. Everyone at ACLU-TN, from the Executive Director down to the volunteers, is truly a champion of the people, and I am proud to have had the opportunity to join in their fight. I will never forget my experience.

Welcome, Cassi!

ACLU-TN is pleased to announce that Cassi Johnson has joined our staff as the administrative coordinator. A life-long midwesterner, Cassi recently relocated to Nashville from Iowa, where she served as the Development and Outreach Director for the Women, Food, and Agriculture Network. Cassi received her BA from Indiana University and her MS in Sustainable Agriculture from Iowa State University.

"Cassi bring excellent administrative, computer, writing, and organizational skills to ACLU-TN. In addition, her work in sustainable agriculture and her commitment to empower individuals and provide them with tools to affect change fits well with the mission of the ACLU," said Hedy Weinberg, ACLU-TN Executive Director.

Cassi, we are excited to have you on board!

Help Stop the Abuse of Power!

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

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Saturday, November 4, 2006

Keynote Speaker: **Reverend James Lawson**

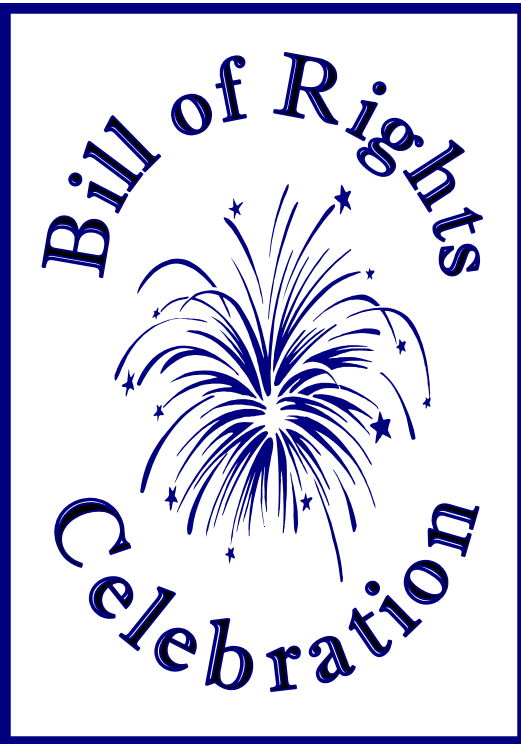
Reverend Lawson's early work in Nashville helped initiate the national movement for desegregation and civil rights. He has continued to pursue non-violence, justice, and equality over the last half-century.

Recipients of the 2006 ACLU-TN Bill of Rights Award:

**Renee Kasman and Nina Pacent
Scott and Jon Hines**

Renee Kasman and Nina Pacent and Scott and Jon Hines are being recognized for standing up for the Constitution, against discrimination, and for the concept of marriage equality. These two courageous couples served as plaintiffs in ACLU-TN's procedural challenge to the so-called "Marriage Protection Act."

Limited Seating. Reserve Your Tickets Now.



Please include me as a sponsor of the **2006 Bill of Rights Celebration**:

_____ **Guardian of Liberty** (\$1500 – includes a *table for 10.*)

_____ **Host** (\$500 – includes *two dinner reservations.*)

_____ **Patron** (\$250 – includes *one dinner reservation.*)

Please reserve: _____ ticket(s) at \$85/person (**\$45/ticket is tax-deductible**)

Please list additional ticket holders.

Please reserve _____ **Salmon dinners** and _____ **Vegetarian dinners.**

I cannot attend, but please accept my tax-deductible contribution of \$ _____

Enclosed is my check for \$ _____

Please make checks payable to: ACLU Foundation of Tennessee.

Please bill my _____ VISA _____ MasterCard

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Name: _____ Phone: _____

Address: _____ City: _____ State: _____ Zip: _____

Please return by Wednesday, Nov. 1, 2006 to: ACLU-TN, P. O. Box 120160, Nashville, TN 37212

Phone: (615) 320-7142

Reservations will be held at the door.

What happened to ACLU-TN's legal challenge to Amendment 1?

The American Civil Liberties Union of Tennessee filed a lawsuit in April 2005, challenging the procedure by which the state legislature adopted Amendment 1. The suit was brought on behalf of ACLU-TN and its members, the Tennessee Equality Project, a gay couple, a lesbian couple, a concerned citizen, and State Representatives Larry Turner, Beverly Robison Marrero and Tommie Brown. The plaintiffs charged that the state failed to meet notification requirements as outlined in the State Constitution when it adopted the proposal to place the discriminatory amendment on the ballot for ratification. After being dismissed by the Davidson County Chancery Court, the case was heard by the Tennessee Supreme Court in June of this year, on an extraordinary and expedited schedule. In addition to legal briefs filed by the parties, the court considered briefs submitted by amicus curiae (friends-of-the-court): Public Notice Resource Center and the Tennessee Chapter of the National Organization for Women.

On July 14, 2006, the Tennessee Supreme Court dismissed the case – without actually ruling on the merits. Rather, the Court ruled on the narrow legal issue of “standing.” Standing is a prudential legal doctrine that limits who may sue for what. Basically, courts have held that a case isn't a case unless the person who is suing can show three things: an “injury in fact”; the injury must be traceable to the defendant; and the injury must be redressible by judicial action. Finding that none of the plaintiffs demonstrated a distinct, concrete injury in fact resulting from the alleged untimely publication of the proposed amendment, the Court dismissed the case for lack of standing.

ACLU-TN Staff Attorney Mel Fowler-Green was joined by ACLU-TN Cooperating Attorneys Abby Rubenfeld and Anne Martin in litigating this important case.



Join Us at the National ACLU Membership Conference in Washington, DC— Confirmed Speakers Include:

Political Strategist **Donna Brazile**
MSNBC Host **Tucker Carlson**
Former Nixon White House Counsel **John Dean**
Producer/Director **Robert Greenwald**
New York Times Columnist **Bob Herbert**
Civil Rights Legend **Reverend James Lawson**
Former U.S. Navy General Counsel **Alberto Mora**
Islamic Studies Scholar **Tariq Ramadan**
Vanity Fair Contributing Editor **David Rose**
Associate Supreme Court Justice **Antonin Scalia**
Former U.S. Ambassador **Joseph Wilson**

Register online at www.aclu.org

ACLU-TN Holds "Get Your Right to Vote Back" Town Meetings

The second phase of ACLU-TN's "Right to Vote" Campaign kicked off with a statewide series of town hall meetings across the state to explain Tennessee's new felony voting rights restoration law. Phase one of the campaign focused on the passage of legislation that would streamline the felony restoration procedure.

"ACLU-TN organized the town hall meetings across the state to educate the community about the new law, to discuss the positive impact of changing the restoration process on individuals and the community, and to inform former felons, their family members and advocates about the new voting registration process," said Michele Flynn, the recently hired ACLU-TN Right to Vote (RTV) Project Coordinator.

Town hall meetings were held in Chattanooga, Clarksville, Jackson, Johnson City, Knoxville, Memphis, Murfreesboro, and Nashville during the summer. Each town meeting began with a clip from "Democracy's Ghosts: How Five Million Americans Have Lost their Rights to Vote. A panel discussion and a question and answer session followed with national experts, representatives from the local Bar Association, NAACP branches, and the local election commission, and former felons sharing their insights. Voter registration was provided by the League of Women Voters.

During the last two years, ACLU-TN spearheaded the Tennessee RTV Campaign in an effort to restore voting rights for former felons. Hedy Weinberg, ACLU-TN Executive Director, explained, "After two years of broad organizational and bipartisan support and legislative advocacy, the Tennessee Legislature passed a law that streamlines the felony restoration procedure. The old law, a patchwork quilt of rules, restrictions, and procedures, was the most confusing and complicated in the United States. The new law is in an important first step towards reforming Tennessee's voting laws for people with felony convictions."

The new law creates a uniform system that allows most persons who have completed their sentence (including probation and parole), paid court ordered restitution, and are current on all court ordered child support payments to apply for and receive a "certificate of voting rights restoration" and to register to vote. (Public Chapter 860).

ACLU-TN and its RTV partners remain committed to additional reforms in order to make the law more user-friendly and to ensure that former felons can regain their full voting rights regardless of their financial situation.

ACLU-TN has serious concerns about one provision in the new law which was attached late in the legislative process. According to Weinberg, "The provision, which prevents restoration of voting rights if individuals are not current in their child support payments, unfairly penalizes poor mothers and fathers who may never have enough money to buy back their franchise."

ACLU-TN is now in the process of identifying individuals adversely affected by this provision in order to pursue a legal challenge. In addition, ACLU-TN is monitoring the law's restitution requirement to determine its impact on excluding people from voting who have completed their sentence but are too poor to pay full restitution upon release.

The RTV Campaign is composed of civil rights and civil liberties organizations working to restore voting rights for people with felony convictions. The Campaign, spearheaded by ACLU-TN, includes the Catholic Public Policy Commission, NAACP, Tennessee AFL-CIO Labor Council, Tennessee Association of Criminal Defense Lawyers, The Restoration Project and the Tennessee Bar Association. ACLU-TN's "RTV" Campaign is funded through a grant from the Tides Foundation at the recommendation of the National Right to Vote Campaign.

Tennessee's New Law Streamlining Restoration of Voting Rights for Ex-Felons ...

May be Unconstitutional

On June 1, 2006, Tennessee implemented streamlined procedures for restoring voting rights to many former felons.

This is good news for thousands of disenfranchised Tennesseans. However, only individuals who have *paid all restitution* and are current on all *child-support obligations* will be allowed to have their voting rights back.

These requirements may violate both the United States and Tennessee Constitutions.

The right to vote should not depend on wealth.

If you or someone you know have attempted to restore your voting rights though the Tennessee Division of Elections, but have been denied because of unpaid restitution or child support obligations, let ACLU-TN know.

... In the Communities



Equal Access for Student GSA Club

Students at Oak Ridge High School wanted to form a Gay-Straight Alliance (GSA), a student organization to combat anti-gay harassment and discrimination. Attempts to have the club recognized were thwarted for two years by the principal and the administration's advisor to the student government. When the student government committee unanimously voted to recognize the GSA and were still rebuffed by the administration, they contacted us. We sent a detailed letter to the principal outlining the school's obligations under the Equal Access Act, which provides that if a public high school allows any student group whose purpose is not directly related to the school's curriculum to meet on school grounds during non-class time, then it can't deny other student groups the same access. In a meeting between the teacher-advisor for the GSA, the principal, and the school superintendent, our letter was the main focus. As a result of that meeting and our swift intervention, the GSA at Oak Ridge High School is now a fully recognized student group with equal privileges.

The Intersection of Free Speech and Immigration Fears

An ordinance considered by the Metro Nashville/Davidson County Council sought to prohibit the solicitation of employment within any public right-of-way (defined as all of the area dedicated to public use including roadways, highways, medians, alleys, sidewalks, driveways, and curbs). The proposed ordinance was ostensibly intended to address safety concerns that arise out of driver inattention to the road as a result of such solicitation. However, the resolution was clearly aimed at groups of day workers waiting to secure employment. Even the language of the resolution stated that "large groups of persons congregate within the public right-of-way in certain areas of Nashville to solicit employment..." The measure was opposed by a coalition of organizations who contacted us seeking legal advice about the constitutionality of the proposed ordinance. We prepared a legal memo for their use in a meeting between Metro Human Relations Commission, the sponsor of the resolution, local activists, and Metro's legal department. We determined that based on present law, a legal challenge to the proposed amendment would likely be successful. Our legal analysis was shared with Metro's legal department and the ordinance was withdrawn after a compromise was made.

Fundamental Misunderstandings About Religious Freedom

Munford High School students have an active ACLU Club, and last year they faced some challenging religious freedom issues. Armed with information and advice from us, students addressed several problems with their school principal, including prayer at school events and religious commentary over the loudspeaker. Knowing that a Christian prayer was included each year at graduation, some of these students sought our assistance. ACLU-TN Cooperating Attorney Scott Kramer worked with the students and was able to reach an agreement with the school: the school agreed to end its practice of sectarian prayer at graduation, opting instead to have a moment of silence. Many students were unhappy with this resolution, and during the moment of silence, a large number of the graduating seniors recited "The Lord's Prayer." In media reports, some students said they felt "discriminated against" when the school chose not to include prayer.

Freedom of Speech: Even if it Makes You a Bit Uncomfortable

For the past three years students at Volunteer State Community College in Gallatin (along with hundreds of other colleges across the country) have performed a production of *The Vagina Monologues* as a fundraiser for a women's shelter. In the past, the college administration allowed them to advertise on the school marquee, as they allow all plays produced on campus to advertise on the marquee. This year they were denied. There is no written policy governing the use of the marquee and, until then, not a single request to advertise a play had been denied. The college president said that there were a few complaints from the public the year before about the use of the word "vagina." The request had been turned down for no other reason than the name of the play. ACLU-TN Cooperating Attorney Barbara Moss contacted the Board of Regents and discussed the problem with them. We were able to reach a compromise. The college agreed to advertise the production on the marquee as The "V" Monologues. This compromise addressed the students' greatest concern (advertising the play to the public), while avoiding a legal battle over the First Amendment status of the marquee.

US Supreme Court Refuses to Take On Specialty License Plate Program

by Melody Fowler-Green, ACLU-TN Staff Attorney

A Tennessee resident would be hard-pressed to avoid news about the state's specialty license plate program this past year—particularly the “Choose Life” plate. The program allows for the production of specialty plates, which cost the consumer around \$35 over the basic cost for registration. A portion of the extra funds benefit the group or organization sponsoring the plate. Approval of plates requires legislative adoption. As such, the state legislature may approve or reject requested plates for any reason, including disapproval of the plate's proposed content. Herein lies the problem. When the state creates a forum for speech or expression, it cannot discriminate among speakers based on the content of the speech. At least theoretically.

Generally speaking, when analyzing First Amendment Free Speech claims, the United States Supreme Court has applied a “forum” analysis. The Court has defined three different categories of public property under that analysis. In traditional public forums, places such as streets and parks which have traditionally been used for public assembly and debate, the government may not prohibit all communicative activity and must justify content-neutral time, place, and manner restrictions as narrowly tailored to serve some legitimate interest. The government may also open property for expressive activity, thereby creating a “limited public forum.” Such a forum may be limited for use by certain groups, or for discussion of certain subjects, but limitations based on content must be justified by compelling governmental interests. Thirdly, the government may reserve a forum for its intended purposes, communicative or otherwise, as long as the regulation on speech is reasonable and not an effort to suppress expression merely because public officials oppose the speaker's view.

In late May 2003, the Tennessee General Assembly passed a law authorizing the production of a “Choose Life” license plate, as part of the state's specialty plate program. The “Choose Life” plate was sponsored by, and benefits, New Life Resources, Inc., a local anti-choice organization. The bill approving the “Choose Life” plate was passed by the state legislature, then became law without Governor Bredesen's signature. On the other hand, on two occasions the legislature failed to approve a proposed “pro-choice” specialty tag.

In November 2003, ACLU-TN, the ACLU Reproductive Freedom Project, and Planned Parenthood Federation of America filed a lawsuit challenging not only the statute authorizing the “Choose Life” plates but also the legislature's general policy and practice of approving specialty license plates. Several organizations intervened in the case, including New Life Resources, Inc. ACLU attorneys argued that the law authorizing the “Choose Life” specialty license plate violates the First Amendment because it discriminates against opposing viewpoints in a public forum without justification. They also argued that the current policy allows the

General Assembly to discriminate against those with viewpoints it does not condone. Resolution of the free speech question depends on whether the state is authorizing or creating a forum through which private parties may speak or whether a state's specialty license plate program represents a form of speech by the state itself. If license plates are viewed as a matter of state speech, then a state is free to express its own message; it need not express or allow the expression of competing or conflicting views. On the other hand, if license plates are viewed as a forum that the state is making available so that others may express their own views (as ACLU argued), then the First Amendment requires the state to allow viewpoint neutral access to that forum.

United District Court Judge Todd Campbell ruled that the statute creating the “Choose Life” license plate was unconstitutional. The court, however, did not strike down Tennessee's specialty license plate program. The intervenors, New Life Resources, Inc. appealed the decision to the 6th Circuit, which overturned the lower court's decision in March – a decision that created two different circuit splits. The 6th Circuit found that license plates expressed pure state speech, and thus ruled that the state could issue “Choose Life” plates while refusing to make available for purchase any license plates expressing pro-choice sentiments. This decision, however is at odds with decisions from the 4th and 5th Circuits. The court majority recognized that its ruling was directly contrary to a 2004 4th Circuit decision, which held South Carolina's “Choose Life” specialty plate program unconstitutional.

Throwing the entire issue into further chaos, in its decision, the 6th Circuit unanimously rejected an intervening 5th Circuit decision from 2005 holding that federal courts are barred from hearing these cases at all under the federal Tax Injunction Act. Pursuant to the Tax Injunction Act, federal constitutional challenges to state taxes must be heard and decided in state courts, not federal courts. The 5th Circuit held that money collected from the sale of specialty license plates were a “tax,” thus the Tax Injunction Act prevented federal courts from adjudicating the merits of a constitutional challenge to Louisiana's “Choose Life” license plate.

Despite the conflicts among the Circuit Courts, the U.S. Supreme Court has declined to resolve the issue, confounding court-watchers. The Supreme Court recently denied ACLU-TN's petition for review. This is the second time the Court turned down the opportunity to address specialty license plate programs; a petition for review of the 4th Circuit case was denied in early 2005. This will likely not be the last attempt to persuade the high court on this issue, however. There are a number of “reverse cases” working their way up. Arizona, New York, New Jersey, and Illinois have all refused to issue “Choose Life” license plates, ironically prompting anti-choice advocates to file lawsuits asserting the very same First Amendment claim made by ACLU-TN. Many of those cases are still pending. Their resolution, however, will not likely make the issue any clearer without guidance from the Supreme Court.



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Constitution Amendment #1

Shall Article XI of the Constitution of the State of Tennessee be amended by adding the following language as a new, appropriately designated section:

SECTION ____. The historical institution and legal contract solemnizing the relationship of one man and one woman shall be the only legally recognized marital contract in this state. Any policy or law or judicial interpretation, purporting to define marriage as anything other than the historical institution and legal contract between one man and one woman, is contrary to the public policy of this state and shall be void and unenforceable in Tennessee. If another state or foreign jurisdiction issues a license for persons to marry and if such marriage is prohibited in this state by the provisions of this section, then the marriage shall be void and unenforceable in this state.

Yes

NO



Join the Fight for Marriage Equality:

Vote NO on Amendment 1

*See front page article
for details.*