



ACLU

**AMERICAN CIVIL LIBERTIES UNION
of TENNESSEE**

The Vigil

Spring 2008

Voting Rights: Protecting the Cornerstone of Democracy

ACLU-TN has long had an ongoing commitment to ensure that every citizen has the right to vote, as voting is the cornerstone of democracy. Unfortunately, this is still just an ideal rather than a reality. In Tennessee, various groups face obstacles to voting, including former felons and, most recently, full-time RVers. This past year ACLU-TN has been working particularly hard to restore voting rights for these groups.

Protecting Full-Time RVers' Voting Rights

In November 2007, ACLU-TN filed a lawsuit (Teel v. Darnell) to protect the voting rights of those choosing to live full-time in Recreational Vehicles. The plaintiffs in this case, retirees from military and government service, were purged from Tennessee voting rolls because they registered to vote using the street address of a commercial mail forwarding service in violation of a state law passed in 2005.

After repeated attempts to resolve the situation failed, the plaintiffs requested that ACLU-TN intervene. The ACLU-TN-sponsored lawsuit alleges that the plaintiffs have been and continue to be denied their fundamental right to vote in violation of the United States and Tennessee Constitutions. The judge recently dismissed this case. However, ACLU-TN is considering its next action as we believe this case sets an important precedent for future voting rights cases. For more information on the plaintiffs, please see p. 3.

The Right to Vote Campaign

The ACLU-TN Right to Vote (RTV) Campaign helps former felons restore their right to vote as part of its larger commitment to create a functioning, productive and secure community of people whose civil liberties and civil rights are protected. The RTV Campaign has already been successful in reforming Tennessee's felony voting rights restoration law, one of the most confusing and complicated in the United States. For more information on the work that is being done through ACLU-TN's RTV campaign, please see p. 3.

Challenging the Disenfranchisement of Former Felons in the Courts

ACLU-TN is currently working with the national ACLU Voters Rights Project to challenge Tennessee's law requiring former felons to pay restitution and child support before having their voting rights restored. Even after former felons have completed their sentences, including probation and parole, they are prevented from registering to vote if they are not current on court-ordered child support payments or have not fully paid all restitution.

One's right to vote should not be based on financial ability. These provisions prevent former felons with limited incomes from regaining their right to vote, essentially functioning as a poll tax. ACLU-TN filed the case Terrance Johnson et. al. v. Bredesen et. al. on February 25, 2008 to challenge this portion of the law.

Whether fighting for the rights of former felons, RVers or other disenfranchised groups, ACLU-TN works tirelessly to ensure that all eligible citizens in Tennessee have the right to vote because a vote is a voice, and ACLU-TN is committed to ensuring that every citizen has the right to use his or her voice.



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Traveling Hopefully...

from Hedy Weinberg, Executive Director

ACLU founder Roger Baldwin often spoke about “traveling hopefully” in his pursuit of justice and fairness. Not withstanding the daunting challenges we face—the war, nativism, religious crusading—I share his optimism. As I read through this newsletter and review our many initiatives and successes, I can’t help but be energized and hopeful. With this newsletter, I am naming my Executive Director’s column “Traveling Hopefully.” I “travel hopefully” because I am continually inspired by our clients, our allies, and the ACLU-TN team – our staff, board, members and supporters. As always, thank you for joining with us in our embrace of freedom.

Proud Again... ACLU recently announced that it is taking on the Bush Administration’s un-American and unjust military commissions by identifying and providing attorneys to Guantanamo Bay detainees. ACLU is joining with the National Association of Criminal Defense Lawyers to assemble defense teams to supplement the single military attorney assigned to each detainee by the government. We cannot support military commission trials that rely on torture to gain confessions, or on secret evidence that a defendant cannot rebut, or on hearsay evidence. ACLU’s decision highlights our ongoing commitment to protect America’s core values of fairness and justice. For more information, visit <http://www.aclu.org/safefree/detention/johnadams.html>.

Solidarity in the Face of Hate... In the early morning hours on Saturday, February 9, the Islamic Mosque of Columbia was vandalized with swastikas, torched and burnt to the ground.

A week later I stood with over 100 people from diverse backgrounds in front of the charred remains. A vigil, organized by the Tennessee Immigrant and Refugee Rights Coalition, brought together members from the Muslim, Christian, Jewish and atheist communities, including representatives from business and labor, university faculty and students, and members of civil rights and civil liberties communities.

Dauod Abudiab, the president of the Islamic Mosque, told the group that, “the hate crime that occurred...was an assault against the whole community and our civil liberties. The act was not an act against Muslims or the Islamic Center but an attack against the rights of all people to live, work, play and worship freely.”

I was moved by Mr. Abudiab’s remarks and by the statements of support and encouragement that followed. That afternoon I think all of us felt a sense of renewed purpose as we gathered in solidarity. Standing in front of the devastated sanctuary, I could not fathom the

hatred that led to this heinous act of inhumanity. This hate crime is a stark reminder that we must double our efforts to promote tolerance of religious minorities and equal protection and treatment under the law. ACLU-TN stands firmly behind these constitutional guarantees. I hope each of you will speak out to promote religious tolerance and to celebrate the principles of religious freedom and justice for all.

Protecting Reproductive Freedom... Once again, ACLU-TN and its allies successfully lobbied against SJR127, the anti-choice initiative that would have laid the groundwork to take away the right to abortion in Tennessee. Indeed, SJR127 supporters are so extreme that they blocked efforts to add language that would create an exception for victims of rape or incest who became pregnant or for women whose lives are in danger. In late January, the State Senate, by a 23-9 vote, passed SJR127.

In February, five courageous members of the House Public Health and Family Assistance Sub-Committee defeated SJR127 by a 5-4 vote. However, during the last four months, SJR127 sponsors and anti-choice groups aggressively lobbied to have the resolution pulled from sub-committee to the House Floor for a vote. They needed 66 legislators to support that effort. In early May, the Family Action Council of Tennessee and the Eagle Forum engaged in a full frontal attack by sending out misinformation in an effort to intimidate house representatives into pulling the defeated SJR127 from the sub-committee to the House Floor. On May 1, anti-choice legislators spent two hours on political posturing and procedural gymnastics, in a further attempt to pull SJR127 to the House Floor. In the end, however, they did not have the necessary 66 votes. Fortunately the 105th Tennessee General Assembly ends without damage to our reproductive freedom rights.

Special thanks... As the school year comes to an end, it is with much gratitude that I thank our outstanding student interns: Eric Austin, Nicholas Allen, Dani Brody, Adria Brooks, Kelsey Crane, Kristin Davis, Kaylan Dixon, Evie Farnsworth, Michael Finch, Sam Finder, Georgia Hamman, Alex Harris, Amanda Jacobowski, Alex King, Caroline King, Andrew Lewis, Nick Lynton, Jasmine Ma, Stephanie Madden, Abby Mansfield, Molly Marotta, Sara Nau, Lauren Oliet, Nicole Price, Viney Hardit, Jeff Sadler and Sara Beth Weintraub. They were active participants in our exciting work! Thank you also to our excellent administrative volunteers Marianne Bentley and Sandra Hill.

Hedy

Right to Vote Campaign Update

ACLU-TN recently completed the final phase of its Right to Vote (RTV) Campaign, funded by a two-year grant awarded after a 2006 law created a uniform process for restoring voting rights to Tennesseans with felony convictions who have completed their sentences.

Prior to passage of the new law, Tennessee had the most complicated voter enfranchisement process in the U.S. A former felon's ability to regain the right to vote depended on the date and nature of his conviction and his sentence length. Most individuals had to appear before a judge to restore their rights. The new law, while still burdensome and in need of reform, does not require individuals to go to court to be re-enfranchised.

Over the last two years, ACLU-TN spearheaded a three-prong public awareness campaign. Under the excellent leadership of Michele Flynn, ACLU-TN RTV Campaign Coordinator, we first organized town hall meetings in eight cities (Memphis, Nashville, Knoxville, Chattanooga, Jackson, Johnson City, Clarksville and Murfreesboro). Participants received in-depth information about the issue of voter enfranchisement at the international, national, state and local levels and its impact on former felons, their families and communities. The League of Women Voters registered voters there.

Next we hosted a statewide conference titled "Breaking the Chains: From Jail Cell to Voting Booth." Over 75 activists, attorneys, clergy, former felons and state agency representatives attended. They discussed the Tennessee law and how it compares with other locations, learning how attitudes about punishment affect the ability of former felons to reintegrate into society.

In addition, ACLU-TN sent speakers to civic and community groups and universities to heighten awareness about felony enfranchisement reform. We also collaborated with corrections officials to ensure that voter restoration information is provided to individuals leaving their facilities and during probation and parole.

The third and last phase of the campaign focused on surveying Tennessee's 95 election commission offices to determine their understanding of the new law, identify problems with its implementation, and highlight confusing or unclear provisions that may require additional training or legislative reform. Survey findings will be released in the summer of 2008.

ACLU-TN, joined by the ACLU Voting Rights Project, has filed a lawsuit challenging two provisions of the state law (see page 1).

Meet the Teel v. Darnell Plaintiffs

Ronald Teel, 71, served in the Air Force during the Cold War and spent his career as a public servant seeking to reform the welfare system in numerous states. Leone Teel is 79 years old. She spent her career in state government service and as a homemaker. Once the Teels retired, they hit the road in their RV in an effort to see as much of this country as possible. They are great-great grandparents. John Thomas Layton, the other plaintiff, is 69 years old. Mr. Layton served on the DC Police Force for twenty years prior to retiring in 1980. He then worked for his church in suburban Maryland until retiring again in 2000. Prior to his retirement, he rented out his home and moved into his RV full time.



Both Mr. Layton and the Teels established Cleveland, Tennessee as their "central hub," enjoying its proximity to their families, the weather, the tax benefits, the availability of medical resources and the other community residents. They all registered with a Cleveland mail service that provided them with a street address and box number, collected their mail, and forwarded it to wherever they requested when they were on the road. The plaintiffs used this address when they obtained their driver's licenses, registered their vehicles, paid taxes and participated in the federal census among other things. They also used this address to register to vote.

All of the plaintiffs voted in elections using the mail service's address, so they were shocked in early 2006 to be purged from the voter rolls, along with 285 others. Ever since that day, the Teels have been fighting to get their right to vote back. Ronald Teel said, "We live full-time in a motor home, so we may travel this great nation in our retirement instead of rotting away in a rocking chair or a rest home. Our cherished right to vote should not be infringed because of our choice to travel or because we choose to live in a recreational vehicle rather than a structured building." They met little success in regaining enfranchisement on their own, so they contacted ACLU-TN for assistance. For more on the case, see p. 1.

Civil Liberties in the 105th Tennessee General Assembly

In this election year, ACLU-TN was especially vigilant at the Tennessee General Assembly (TGA), lobbying on a wide range of civil liberties and civil rights issues.

Executive Director Hedy Weinberg and Volunteer Lobbyist Joe Sweat serve as ACLU-TN's voice at the Legislature. Our legislative work centers on educating legislators, analyzing bills, lobbying, organizing press conferences, testifying or arranging for testimony, and working in coalitions on legislative initiatives.

The success of our legislative advocacy requires our members' participation. Please sign up for our Legislative Alert E-mail Network and respond to our legislative alerts by contacting your lawmakers. We have heard from legislators that hearing from even a handful of their constituents affects their decisions. To sign up, please see p. 9.

Below are highlights from our legislative work during the 2008 legislative session. The 105th TGA will have adjourned by the time you read this. Please check our website to learn the status of the bills listed below.

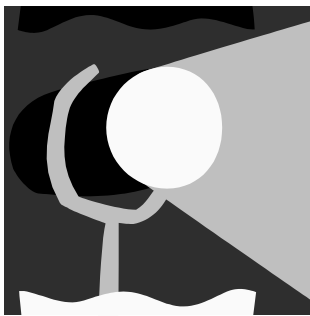
The Importance of SJR 127 to Choice in Tennessee

SJR127, which has been introduced in the last four general assemblies, is the result of the 2000 ACLU/Planned Parenthood victory in the Tennessee Supreme Court. In this momentous decision, the Tennessee Supreme Court found that the Tennessee State Constitution protects a woman's right to privacy regarding her right to seek an abortion. We successfully challenged several restrictions in the Tennessee Abortion Statute, including the mandates that a woman seeking an abortion could only receive state-mandated information and counseling *from a physician*, and that she must then wait 48 hours before having the abortion.

SJR127 is a well-thought-out strategy by anti-choice groups to outlaw abortion. They know that they first need to remove the strong privacy protection afforded women under the State Constitution. Then, were Roe v. Wade to be overturned, and with our State Constitution amended, the TGA could pass a bill banning abortion that would not be susceptible to a state court challenge.

Civil Rights		
SB3459 (Marrero)/ HB4001(Jones, U.)	Enacts the "Racial Profiling Prevention Act" which prohibits racial profiling by law enforcement.	SUPPORT
Reproductive Freedom		
SJR127 (Black)	Amends the State Constitution to add a new provision to Article 1 providing that nothing in the State Constitution secures or protects the right to abortion or funding.	OPPOSE
SB2073(Marrero)/ HB1989 (Sontanay)	Enacts the "Emergency Care for Rape Victims Act of 2007" which requires that hospitals providing emergency care to rape victims provide each rape victim with medically and factually correct oral and written information about emergency contraceptives for preventing pregnancy. Hospitals with religious exemptions can choose not to comply.	SUPPORT
SB3512 (Herron)/ HB3682 (Pinion)	Requires informed consent and a period of reflection prior to an abortion.	OPPOSE
SB3681 (Bunch)/ HB3000(Campfield)	Establishes that persons are human beings with all attendant rights and responsibilities from time of fertilization of human embryo.	OPPOSE
SB4020(Crowe)/ HB3849(Mumpower)	Defines the term "inception of human life" to mean the moment of conception.	OPPOSE
SB4134(Bunch)/ HB4170 (Rowland)	Reenacts two sections of Tennessee Abortion Statute that were found unconstitutional in the successful ACLU/PPEMT challenge to the Tennessee Abortion Statute.	OPPOSE
Criminal Justice		
SB2559(Jackson)/ HB2592 (Gilmore)	Creates the Tennessee Innocence Commission, whose purpose is to investigate cases in which an innocent person was wrongly convicted, identify errors in the criminal justice process and recommend solutions to correct these errors.	SUPPORT
SB2634 (McNally)/ HB2995 (Overbey)	Enacts the "Exclusionary Rule Reform Act of 2008."	OPPOSE
SB2680 (Jackson)/ HB3333 (Coleman)	Enacts the "Tennessee Death Penalty Open File Discovery Act of 2008."	SUPPORT
SB2682 (Jackson)/ HB3334 (Coleman)	Enacts the "Tennessee Death Penalty Representation Services Act of 2008."	SUPPORT

Criminal Justice <i>continued...</i>		
SB2718 (Jackson)/ HB2733(Coleman)	Extends the time period for the special committee to study the administration of the death penalty to report its findings to the governor and general assembly.	SUPPORT
SB3878 (Jackson)/ HB3733 (Coleman)	Requires all custodial interrogations by law enforcement of a suspect in a criminal case be electronically recorded and preserved until the conviction is final.	SUPPORT
LGBT Rights		
SB3733(Bunch)/ HB2997(Campfield)	Prohibits public elementary or middle school instruction or materials discussing sexual orientation other than heterosexuality.	OPPOSE
SB3910(Stanley)/ HB3713 (DeBerry)	Prohibits any individual who is cohabitating in a sexual relationship outside of a marriage that is valid under the constitution and laws of this state from adopting a minor.	OPPOSE
SB3932 (Marrero)/ HB3805 (Kernell)	Deletes prohibition on changing individual's sex on original birth certificate as a result of sex change surgery.	SUPPORT
SB4052 (Marrero)/ HB3907 (Richardson)	Requires amendment of birth certificates upon receipt of a sworn statement from a licensed medical professional that the person's gender has changed.	SUPPORT
Immigrant Rights		
SB252 (Haynes)/ HB66 (Turner)	Criminalizes any labor performed by undocumented workers and allows government to confiscate their wages and property.	OPPOSE
SB2763 (Burks)/ HB2718 (Fincher)	Enacts "Tennessee Taxpayer and Citizen Protection Act of 2008" that requires all government agencies and public schools to check immigration documents prior to issuing IDs.	OPPOSE
SB2849 (Johnson, J.)/HB3096 (Hill)	Clarifies that it is not unlawful employment practice for an employer to require an employee to speak, or an applicant for employment to agree to speak English while engaged in work.	OPPOSE
SB2936 (Bunch)/ HB3257 (Brooks, K.)	Restricts state and local governmental benefits that can be provided to persons over 18 who are not lawfully in the United States.	OPPOSE
Free Speech		
SB2971 (Roller)/ HB3007 (Swafford)	Clarifies that the "Little Hatch Act" does not prohibit an employee from displaying bumper stickers or other campaign or political advertising on the employee's personal vehicle while parked on state property.	SUPPORT
Privacy		
SB2731 (Burchett)/ HB2648 (Pitts)	Requires the Department of Human Services to implement a program of substance abuse testing as a condition for public assistance eligibility.	OPPOSE
SB2963 (Ketron)/ HB3412 (Lynn)	Regulates the use of tracking devices on consumer products or identification documents by regulating labels that inform consumers of their presence.	SUPPORT
SB2958(Ketron)/ HB2915(Maggart)	Prohibits printing a social security number on voter registration cards.	SUPPORT
SB2653 (Tracy)/ HB2858(Winningham)	Authorizes random drug testing of students who participate in extracurricular activities.	OPPOSE
SB3089(Bunch)/ HB2777(Baird)	Adds random drug testing for all teachers, principals and teachers' aides, pre-K through high school, to the governing policies required to be adopted by the school board.	OPPOSE
Religious Freedom		
SB3104 (Marrero)/ HB3263 (Moore)	Prohibits mandatory communications relative to religious or political matters in employment settings.	SUPPORT
SB4104 (Herron)/ HB4089 (Maddox)	Authorizes state board of education to approve a curriculum for a state-funded elective course focusing on non-sectarian, non-religious study of the Bible.	OPPOSE
Voting Rights		
SB2811 (Tracy)/ HB3049 (Mumpower)	Requires a voter to present qualified photographic identification before voting; specifies that such identification includes a Tennessee driver's license, a U.S. passport, a valid U.S. military ID card or a valid government employee ID card.	OPPOSE



SPOTLIGHT ON STUDENTS' RIGHTS

Metro Nashville Public School Students Fight for Safety in Schools

protection for all students, as studies have shown that anti-gay harassment affects students regardless of their sexual orientation. Compared to other students who are not harassed, these students are more than twice as likely to report depression and more than three times as likely to miss school because they feel unsafe or to consider suicide (1).

Every student in America has a constitutional right to equal protection and treatment under the law. If schools fail to protect LGBT students from harassment, federal courts have ruled that they can be held liable. Not only will the proposed policy help MNPS fulfill its constitutional duty to protect the rights of all students, but it also provides guidance and support for school administrators. Further, students will feel safer in a school district with a more comprehensive non-discrimination policy.

On April 8, 2008, a group of students and adults from the Support Student Safety campaign presented the Metropolitan-Nashville Public School Board with their proposal for the adoption of an anti-bullying, non-discrimination policy that prohibits discrimination on the basis of sexual orientation or gender identity, similar to that already implemented in Knox County and Memphis City schools.

The Need for a Comprehensive Non-Discrimination Policy in the Schools...

"I know of teachers who...would allow gay students to be publicly harassed and never make a motion to stop the discrimination," says a former student of Hume Fogg High School in Nashville. Another student says he gave up playing the soccer he loved in his final season because of "the constant [homophobic] nagging of teammates and sometimes even coaches." Another student, currently at McGavock High School, says, "When I attended East Literature Magnet...I was harassed by some students...I always felt uncomfortable after the fact. It was hard to function there, so I transferred." Others report that they or their friends have been teased, bullied, discussed in mass emails regarding their sexual orientation, or called "the gay kid," "ugly dyke," or "fag."

The students, with the assistance of the LGBT Project of ACLU-TN, launched the effort in June 2007 to change the climate in Metropolitan-Nashville Public Schools (MNPS) for all students. The Support Student Safety coalition has one overriding goal: to ensure that all MNPS students have access to public education that is safe and free from discrimination.

The proposed policy change would provide enhanced

To learn more or to find out how you can get involved in the Support Student Safety project, visit www.supportstudentsafety.com.

(1) Page 1 of the Summary Fact Sheet of *Safe Place to Learn*. Available for download at: <http://ncflr.convio.net>.

Tennessee High School Senior Wins ACLU College Scholarship for Youth Activism

Evan "Evie" Farnsworth of Nashville is one of fifteen high school seniors from across the country who will receive a \$5,000 college scholarship from ACLU in recognition of their outstanding work to protect civil liberties, especially for young people.

"Evie embodies the best of the next generation of student activists. She is thoughtful, passionate and committed to her goal of protecting civil liberties and civil rights," said Hedy Weinberg, ACLU-TN Executive Director.

Farnsworth was inspired by the suicide of her gay uncle to become engaged in LGBT issues at her Nashville, Tennessee high school. She is a founding member of the student-led Support Student Safety coalition (see article above), among many other activities.

In her essay, Farnsworth wrote, "I strongly believe that every person in this world is owed the right to embrace his or her individuality... While anger, sorrow and pain have their justifications, hatred has no righteous place among humanity. My deepest desire is that peace can be given to those who have been robbed of it by a misinformed and unkind society. I will fight for that peace with all the power I possess."

Entering the Debate about School Uniforms in Metro Nashville Public Schools



During the 2007-2008 school year, Metropolitan Nashville Public Schools voted to implement the Standard School Attire (SSA) policy. ACLU-TN was alarmed by the policy, as it severely restricted students' rights to free expression, religious freedom and privacy.

ACLU-TN conducted a thorough legal analysis of the policy and its potential pitfalls, both legally and practically, and sent a letter to the school board outlining its concerns about freedom of expression, religious freedom and discrimination based on financial ability. Although the school board voted to implement the policy, it was ultimately changed to eliminate some of our concerns.

ACLU-TN believes that students should be able to protest in school, including protesting dress codes. One way to do this is by wearing armbands. In *Tinker v. Des Moines*, 393 U. S. 503 (1969), the Supreme Court ruled that students can voice their political or religious opinion at school by wearing a black armband. The court found that this means of

protest is not disruptive to school activity. Encourage students opposed to dress codes to protest by wearing armbands, and notify ACLU-TN immediately if a student is made to remove the armband or otherwise punished for this expression.

ACLU-TN remains dedicated to ensuring that students' constitutional rights are not violated. We continue to monitor the situation closely and review opt-out exemption requests to determine if religious bias exists.

Students interested in learning more about what rights exist to protect their expression through clothing and accessories should come to our spring Students' Rights Conference (see our website for more info), or order a Students' Rights Handbook by calling (615) 320-7142.

ACLU-TN Student Advisory Panel

We're looking for motivated high school youth interested in civil liberties and social justice to serve on our first ever Youth Advisory Committee. Members of this group will have the unique opportunity to help build ACLU-TN's youth program in Tennessee. The group will meet once every 4 to 6 weeks.

For more information, please call (615) 320-7142 or visit our website: www.aclu-tn.org.

Protecting One Kindergartner's Right to Religious Expression

One Metro Nashville family's religious beliefs require that their daughter, a kindergartner, wear clothing not in line with the SSA policy.

Her parents followed the rules and requested a religious exemption, with significant documentation supporting the sincerity of their beliefs, prior to the beginning of the school year. However, the family's religious exemption request was quickly denied by school officials. The parents appealed the decision through numerous levels, but were denied on every front.

All the while, their young daughter was subjected to increasingly severe punishment. First, the kindergartner was given multiple days of in-school suspensions during which she was forced to sit alone, with no instruction, writing her name over and over again. Ultimately, the decision was made to expel the five-year-old for the remainder of the semester for noncompliance with the policy.

After exhausting all procedures to try to remedy the situation on their own to no avail, the parents contacted ACLU-TN for assistance. ACLU-TN, committed to protecting religious freedom for all people, negotiated with the school administrators, who ultimately decided to rescind the expulsion, grant the religious exemption and allow the kindergartner to return to school.



Prisoners' Rights in Shelby County

After receiving numerous complaints about conditions at the Shelby County Jail, ACLU-TN began investigating the conditions at this historically troubled facility. A pattern of complaints revealed that some prisoners were not getting enough to eat and that a particular group of inmates were being abused by a specific guard. After working closely with Shelby County Sheriff Mark Luttrell and his staff, ACLU-TN negotiated a change in the stated meal policy and assisted in shedding light on the actions of the correction officer, who was later suspended from his position and criminally charged with abusing an inmate.

Religious Freedom in McMinn County

Real Encounter Outreach Ministry to youth uses motorcycle stunt riding, freestyle motocross, skateboarding, BMX and more as a platform to engage students, "but," according to their website, "make no mistake, Jesus Christ has center-stage in [the presenters'] lives as individuals and in their message as a Ministry." Athens City Schools recently invited Real Encounter to hold a three-day event, including two to three in-school assemblies a day for three days, during which students would be invited to join in the evening Christian Harvest Celebration at the conclusion of the in-school event. ACLU-TN learned of plans for this event and immediately contacted school board lawyers to negotiate a stop to this blatant evangelical proselytizing to public school students. The issue was quickly resolved. The school board officials agreed to cancel the event and not to reschedule it.

Hate Crime in Warren County

"All gays go to hell!" "Fags deserve 2 die!" "Queer son of a bitch!" Neal Anthony, an openly gay man in McMinnville, has been the target of these spray-painted hate messages on his historic family home over the past year. In addition, Mr. Anthony's home has been peppered with rocks, marbles and over 80 paintballs, causing thousands of dollars in damage.

Despite the anti-gay nature of the slurs and graffiti, at first the Warren County Sheriff's Department refused to consider the incidents as hate crimes. Tennessee state

law expressly provides for enhanced penalties for crimes against a person or property that are motivated, in whole or in part, by the offender's belief or perception regarding the race, religion, color, disability, sexual orientation, national origin, ancestry or gender of the victim.

Once Mr. Anthony contacted ACLU-TN, we wrote to the Sheriff's Department to inform it of Tennessee's hate crimes statute and to request that the crimes be considered as such. Subsequently, the Sheriff's Department announced that it was charging the perpetrators of the paint-ball attack with hate crimes. We

also urged the Warren County District Attorney's office to request the assistance of the Tennessee Bureau of Investigation (TBI) and to report the crimes to the FBI. Three teens were arrested and convicted for one attack. Unfortunately, on May 23, 2008, Mr. Anthony's home was vandalized once again. TBI has been notified.

Open Records in Loudon County

A group of citizens in Loudon County complained that there was a \$25/hour fee imposed by their local government to view and/or copy records. There was an additional copy fee assessed of \$0.25 per page. The citizens had already filed for a court order preventing the mayor from imposing the fee. ACLU-TN intervened and contacted the attorney for the County officials. Subsequently, this unconstitutional policy was nullified and a new public records policy was passed.

Day of Silence in Washington County

Senior Curtis Walsh arrived at David Crockett High School last spring prepared to participate in the Day of Silence, an annual student-organized day of action to protest the bullying and harassment of lesbian, gay, bisexual and transgender (LGBT) students and their straight allies. However, after arriving at school, Crockett High's Principal, Henry Marable, called Curtis and the other participating students into his office. Principal Marable told Curtis and his mom, Zina Owens, that Curtis wasn't allowed to go to school that day or the next two, citing District policy permitting discipline for disruptive or harassing student behavior.

ACLU-TN contacted the school district to inform them of Curtis' constitutional right to engage in peaceful expression of his views against LGBT harassment. In the letter, we cited decades of case law establishing that school officials may not censor student expression simply because other students may react hostilely or disruptively to the expression. In response, the school district apologized to Curtis for what had happened and assured us that District policies do not allow school principals to prevent students from peacefully expressing their viewpoints.

Who's New at the ACLU?

Tricia Herzfeld, Staff Attorney

Tricia recently celebrated her one-year anniversary as ACLU-TN staff attorney. She moved to Tennessee from West Virginia where she worked at Flaherty, Sensabaugh & Bonasso pursuing civil litigation. Prior to that position, she was a public defender in Miami, Florida for three years. Tricia graduated from George Washington University Law School where she was the founder of Prisoners' Legal Education Assistance. She is originally from the Detroit area. "I feel so fortunate to have a job that I love. Defending civil liberties in these uncertain times makes my position challenging, but that much more rewarding."

Lindsay Kee, Program Coordinator

Lindsay, the newest staff member, joined ACLU-TN last summer. Prior to joining the ACLU-TN team, Lindsay was the Assistant Director at Vanderbilt's Women's Social Policy and Research Center and Administrative Director at Magdalene, a non-profit program for women in recovery from prostitution and addiction. She has a Master of Social Work from Washington University in St. Louis and a Master of Professional Writing in fiction from the University of Southern California in Los Angeles. During her undergraduate years at Vanderbilt University she was active in outreach to the homeless and to those infected and affected by HIV/AIDS. "My grandmother's boyfriend recently described my job as being a 'freedom fighter,' which made me happy. I'm lucky to be part of the rewarding work of promoting and protecting people's rights, particularly the rights of those most often marginalized in our society."

Christine Sun, LGBT Project Attorney

Christine Sun joined the ACLU-TN staff last spring to lead the ACLU's LGBT work in the south. Prior to that, Sun worked on LGBT and AIDS issues for the ACLU in California. Christine graduated with honors from NYU School of Law, where she was an editor of the *NYU Law Review*. She clerked for Judge Robert L. Carter (former NAACP General Counsel who argued *Brown v. Board of Education*) in the Federal District Court in New York City and then worked for Kecker & Van Nest, a complex litigation firm in San Francisco. "I'm very excited to be in Nashville and to be concentrating my work in the south," said Sun. "While gay people continue to face discrimination in California, the law is more settled in favor of LGBT people there. There is a lot of important work to be done on behalf of LGBT people in the southern states, and I look forward to the challenge."

ACLU-TN Executive Director Hedy Weinberg says the staff is "incredibly gifted—their passion and enthusiasm are contagious and their analytic skills and creativity make ACLU-TN the most effective defender of civil liberties in the state."

Join the Legislative Alert Email List!

Sign up for this free and confidential email service and we'll alert you to civil liberties legislation pending in the Tennessee General Assembly and in Congress, as well as events of interest. Please include your street address should we need to target certain elected officials.

Name _____ Email _____

Address _____

City _____ State _____ Zip _____

Please return to: ACLU-TN, P.O. Box 120160, Nashville, TN 37212

Death Penalty

In July 2007, Casey Stubbs of the ACLU Capital Punishment Project came to Tennessee to represent Richard Taylor, a death row inmate who suffers from schizophrenia, in his direct appeal of his 2003 conviction for first degree murder. Though Mr. Taylor had previously been found incompetent to stand trial, at a competency hearing in the spring of 2003, the state trial court not only found Mr. Taylor competent to stand trial but deemed him able to represent himself. Mr. Taylor represented himself at the two-day capital trial without standby counsel, while wearing his prison uniform and sunglasses. He asked few questions, gave no closing statement and presented no mitigation case. The jury deliberated for less than an hour before imposing the death sentence.

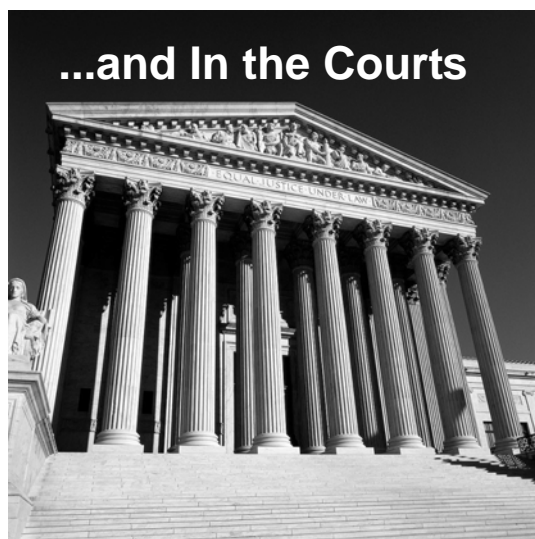
On March 7, 2008, the Tennessee Court of Criminal Appeals reversed Taylor's conviction and death sentence, concluding that a number of significant errors were made during his 2003 trial.

Religious Freedom

In December 2007, ACLU-TN went to court on behalf of a Wilson County family, asking a federal judge to end the religious activities taking place at Lakeview Elementary School in Wilson County. In the lawsuit, *Doe v. Wilson County School System*, ACLU-TN argues that the pattern and practice of promoting and endorsing religious activities by the Wilson County public school system is tantamount to an unconstitutional endorsement of religion.

The plaintiffs allege that the Wilson County school system endorses and promotes a range of religious activities, including the "Praying Parents," "Prayer at the Flag Pole," the National Day of Prayer event and teacher-led classroom prayers. "The Praying Parents" were identified on the school website as a group of parents who meet monthly "to pray for our school, faculty, staff, and children." The group, which meets in the school cafeteria at the start of the school day, is endorsed in the school's monthly newsletter; their flyers are distributed to students; and their members enter the classroom to inform students that "the Praying Parents" have prayed for them. In addition, plaintiffs allege and have evidence of teacher-led prayer and religious songs in the classroom.

The lawsuit was filed only after repeated attempts by the plaintiffs to end the religious activities in their child's school. Despite plaintiffs' requests, Wilson County



School administrators continued to promote and sponsor the religious activities; furthermore, school administrators indicated to the parents that the school intended to continue to support the religious activities. ACLU-TN's lawsuit alleges that the school administrators went so far as to encourage the family to withdraw their child from Lakeview Elementary school.

The defendants in the lawsuit include the Wilson County School System; Dr. Jim Duncan, Director of Wilson County Schools; Wendell Marlowe, Principal of Lakeview Elementary School; Yvonne Smith,

Assistant Principal of Lakeview Elementary School; and Janet Adamson, teacher at Lakeview Elementary School.

The plaintiffs are represented by ACLU-TN Cooperating Attorney Edmund J. Schmidt, III. Currently ACLU-TN is awaiting a ruling from the U.S. District Court.

Students' Rights

Four Jefferson County High School football players were kicked off the team after alleging that their coach abused and humiliated them and signing a petition that stated, "I hate Coach Euerard, and I don't want to play for him." The boys and their parents filed a suit, *Lowery v. Euerard et al.*, alleging that the action violated the student athletes' free speech rights.

The 6th Circuit Court of Appeals issued a scathing decision that essentially stripped students of most free speech protections. Instead of applying the *Tinker* standard, the Court found that student athletes were more akin to government workers than to actual students and, therefore, should only be afforded the First Amendment protections given to government workers. They found that no free speech right existed for a student to pass a petition in school, even if the activity itself was not disruptive. The Court further found that a coach could retaliate against students for such behavior by kicking them off of the team.

In light of the potential precedential value of such a decision, ACLU-TN filed an amicus brief in support of the students' petition for rehearing *en banc*, or in front of the entire federal appellate court as opposed to the panel of three judges who heard the case previously. The amicus brief was drafted by ACLU-TN Cooperating Attorneys Barbara Moss and Sam Zeigler. The Student Press Law Center and the American Center for Law and Justice (ACLJ) joined our brief. In March 2008, the 6th Circuit denied the plaintiffs' petition for a rehearing.

Success on the Hill: Three Pro-Active ACLU-TN Legislative Initiatives

REAL ID — Working with members from both sides of the aisle, ACLU-TN helped draft and lobby in support of a resolution opposing the implementation of REAL ID, the national de facto ID card. The joint resolution (SJR248), which passed unanimously in both chambers, criticizes the federal law's unfunded mandate and its threats to privacy, security and the Tennessee Constitution. Nationwide there is a growing rebellion against REAL ID. Tennessee is one of seventeen states to pass legislation opposing the Act. Passed in 2005 by the US Congress, the REAL ID Act requires the states to produce standardized driver's licenses and to store the drivers' personal information in nationally connected databases – creating a de facto national ID card. By placing this information in one central nationwide database, REAL ID makes the information more vulnerable to identity theft and misuse.

Death Penalty Study Committee — ACLU-TN joined with members of a broad-based coalition to lobby for the creation of a special committee to examine the fairness and accuracy of the administration of Tennessee's death penalty. The successful initiative, which passed last year, represents a major step forward in our work to increase awareness about the serious flaws in Tennessee's death penalty. Our coalition partners include the Tennessee Coalition Against State Killing, the Catholic Public Policy Commission, the Tennessee Justice Project, The Tennessee Association of Criminal Defense

Lawyers and the National Alliance of the Mentally Ill - Tennessee Chapter. Recognizing that more time was necessary to complete the study, we lobbied the legislature to extend the Committee until October 2009. Facing growing opposition from the District Attorneys Conference and fearing they would be seen as anti-death penalty, the TGA decided to only extend the Committee for an additional six months. The final report is due January 1, 2009. We are now monitoring the committee hearings.

Racial Profiling Prevention Act — ACLU-TN continues to pursue legislative initiatives to combat racial profiling in Tennessee. This year ACLU-TN partnered with TIRRC and successfully lobbied for passage of a bill urging law enforcement agencies to adopt anti-racial profiling policies. We will monitor the adoption of these policies. ACLU-TN's Campaign Against Racial Profiling, launched in 2000, focuses on determining the extent and prevalence of racial profiling in Tennessee and seeking solutions to end profiling through community outreach and training. During the last several years, ACLU-TN has organized town meetings and lobbied successfully for laws that urge data collection by law enforcement officers at traffic-stops. The Tennessee Comptroller's Office analyzed the data collected and issued reports concluding that racial and ethnic profiling did take place in certain areas of the state. The report can be viewed at <http://www.comptroller1.state.tn.us/repository/RE/vehiclestops2007.pdf>.

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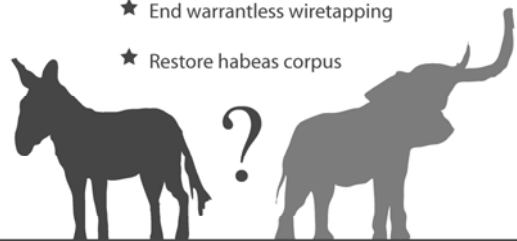
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- ★ Close Guantánamo
- ★ Stop torture and kidnapping
- ★ End warrantless wiretapping
- ★ Restore habeas corpus



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