

The Vigil

Newsletter of the American Civil Liberties Union of Tennessee

Spring 2021

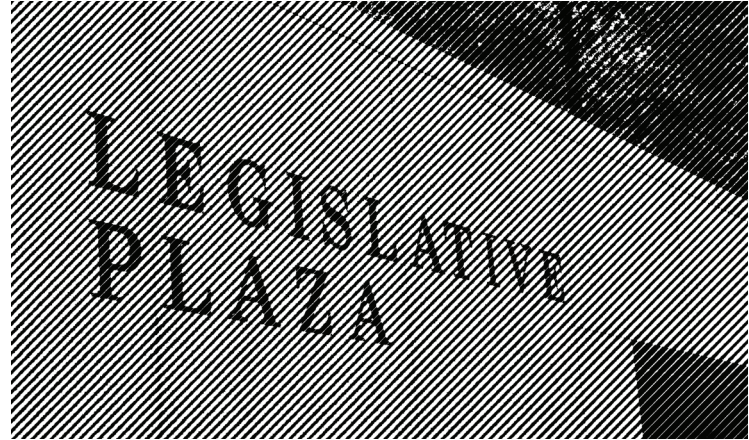
2021 LEGISLATIVE HIGHLIGHTS

ACLU-TN focused on a wide range of civil liberties and civil rights issues during the first year of the 112th Tennessee General Assembly. With your help, we secured many victories and defended against numerous attacks on our civil liberties and civil rights. ACLU-TN supporters contacted legislators thousands of times this session, urging them to uphold the Constitution and to keep Tennessee fair and equal for all. Without your voices, we would not have been as successful – thank you!

POLICING AND CRIMINAL JUSTICE

Alongside our partners, ACLU-TN continued to push aggressively for fundamental changes to the criminal justice system this session.

In the wake of George Floyd’s murder, legislators from both parties recognized the need for significant policing reform. With a collective budget of more than \$100 billion a year, America’s police departments are responsible for too much violence and abuse, for which there is too little oversight or accountability. We supported a bipartisan bill, SB 1380/HB 1406, that **banned no-knock search warrants, required departments to adopt duty to intervene policies, and increased reporting obligations for use-of-force incidents.** ACLU-TN members and



supporters made this bill a top priority during our first ever Virtual Day on The Hill. This legislation passed the General Assembly, and, if signed by the governor, will constitute a modest but important step toward improving police practices.

Other victories included passage of legislation that **improved the standard for intellectual disability in capital cases** (SB 1349/HB 1062), the **defeat of a bill that would have criminalized unhoused people in Tennessee** (SB 1610/HB 978), and the passage of legislation that **closed a dangerous loophole that allowed for juveniles to be held in solitary confinement** (SB 383/HB 1126). Additionally, the governor signed two major pieces of legislation that sought to **provide more alternatives to incarceration and improve the reentry process for formerly incarcerated people.**

Despite reform efforts, too many *Continued on p.3*

LEGAL UPDATES

PROTECTING PEOPLE IN SHELBY COUNTY JAIL FROM COVID-19. In April, a federal judge approved a settlement agreement and consent decree in our lawsuit to improve conditions in the Shelby County Jail and protect people from widespread infection, serious injury and death from COVID-19. The agreement guarantees that the jail will implement rigorous monitoring and reporting; additional jail inspections; improved airflow and ventilation measures to keep people safer from airborne transmission of COVID-19; better quality protective equipment for people being detained in the jail; continued efforts to expedite release for those who are disabled and medically vulnerable; improved social distancing; and other enhancements that will better protect people living and working in the facility. Our partners in filing this lawsuit include the ACLU Foundation; Just City; Paul, Weiss, Rifkind, Wharton & Garrison; and attorneys Brice Timmons and Steve Mulroy.

BLOCKING TENNESSEE’S MEDICALLY UNSOUND ‘ABORTION REVERSAL’ LAW. In February, a federal court issued a preliminary injunction blocking a state law that would have forced doctors to provide false and misleading information to their patients about the potential to “reverse” a medication abortion. This law was an attempt by

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TRAVELING HOPEFULLY | A MESSAGE FROM HEDY WEINBERG, ACLU-TN EXECUTIVE DIRECTOR

During a time when Black and Brown individuals have endured violence and death at the hands of law enforcement, while simultaneously being disproportionately impacted by the COVID-19 pandemic, the Tennessee General Assembly has gone out of its way to perpetuate racial injustice.

In its final hours, lawmakers rushed through an education bill seeking to erase America's painful history of racism and oppression. This legislation is part of a national trend of state legislative actions to eliminate conversations critical of slavery, Jim Crow, and contemporary issues of systemic racism.

SB 623 bans discussion in K-12 classrooms about the white-supremacist roots of racial injustice. It outlines a series of 14 "concepts" that cannot be taught in the public-school classroom, including that "this state or the United States is fundamentally ... racist or sexist." The bill also requires "impartial" instruction on our nation's history of racial oppression. If teachers cross this line – intentionally or not – the local school district risks the state withholding funding.

This dangerous education policy marginalizes Black and Brown students by whitewashing history and erasing their families' lived experiences. This legislation could ban discussion of both experiences of racial discrimination and challenges to white supremacy – from the Jim Crow system of racial injustice reinforced by state-sanctioned violence, to efforts to disenfranchise Black and Brown voters, to Tennessee's rich history with the civil rights movement.

The legislation not only restricts and controls historical interpretations of race and racism, it also normalizes white supremacy, thereby justifying racial inequality and injustice today. We cannot allow schools to become vehicles for perpetuating racism.

Students are the next generation of leaders who will move us through the journey to a more just and inclusive democracy. We cannot rob them of the requisite historical knowledge for eradicating systemic racism.

We have a lot of work ahead. Thank you for joining with us in our fight to dismantle white supremacy and realize a just society.



(ACLU-TN and our partners are urging Governor Lee to veto SB 623 as this newsletter goes to print).

ACLU-TN BOARD NOMINATIONS

ACLU-TN is now soliciting recommendations for individuals to serve on the ACLU-TN board. Please confirm that the individual is interested in serving on the board and share their background, qualifications, why you think they would be a good board member, and contact information. Nominations to the slate can be made by submitting a petition signed by twenty current ACLU-TN members. Please send submissions by Monday, July 12 to: **ACLU-TN, Nominating Committee**
Post Office Box 120160
Nashville, TN 37212.

Legal Updates, from p.1 politicians to erode the trust between patients and their providers by forcing doctors to lie to patients and share misinformation that isn't backed up by credible science, or risk being charged with a Class E felony, punishable by up to six years in prison, and receiving a \$10,000 daily fine for failure to display the required signs. Everyone should be able to get the care they need, including an abortion, without politicians interfering. We filed this case with the ACLU, the Center for Reproductive Rights and Planned Parenthood Federation of America. The lawsuit is ongoing.

ENDING GARNISHMENT OF CASH BAIL IN DAVIDSON COUNTY. In December, a federal judge approved a consent decree between the Nashville Community Bail Fund and the Davidson County Criminal Court Clerk's office that will put an end to the garnishment of cash bonds to pay future fines, costs and restitution assessed by the courts. The ruling applies to all third parties posting bond in Davidson County. We argued that conditioning a person's freedom as they await trial on the payment of fines is not permis-

sible under the U.S. Constitution. The Nashville Community Bail Fund was represented by ACLU-TN, ACLU, Civil Rights Corps, Choosing Justice Initiative, and Bass Berry & Sims.

2021 TGA AT A GLANCE

Legislative Updates, from p.1

legislators remain convinced more offenses and longer sentences will improve life for Tennesseans. ACLU-TN **recently released a report on legislation that would increase criminal penalties.** We found if all the proposed bills still pending as of May 2 were to become law, incarceration costs would have increased by nearly \$60 million annually and resulted in thousands of years of additional incarceration. By the end of the session, not all of these bills had passed, but many remain active for next session and, more importantly, they illustrate the need to continue to show lawmakers that increasing criminal penalties just wastes taxpayer dollars without increasing public safety. We continue to advocate for a reduction in mass incarceration.

LGBTQ RIGHTS

Tennessee's lawmakers targeted transgender students repeatedly this session, stripping them of fundamental rights and access to crucial healthcare. Despite the efforts of ACLU-TN and our coalition partners, lawmakers succeeded in passing a slate of hateful bills, including:

- Banning middle- and high-school trans athletes from playing sports in accordance with their gender identity (SB 228/HB 3)
- Prohibiting student use of bathrooms and locker rooms that match the student's gender identity (SB 1367/HB 1233)
- Requiring businesses to post offensive signs outside of restrooms to "notify" the public that people may use a restroom in accordance with their gender identity (SB 1224/HB 1182)
- Requiring schools to notify parents of curriculum concerning sexual orientation or gender identity and allowing parents to opt their children out of the lessons (SB 1229/HB 529)

We will advocate for the repeal of these offensive, harmful pieces of legislation in sessions

to come. In the meantime, **if you are the parent of a child being excluded from participating in school sports due to gender identity, please contact us at <http://bit.ly/gethelpACLUtn>.**

GOVERNMENT SURVEILLANCE

ACLU-TN advocates for reduced government surveillance of Tennesseans' lives, especially as technology improves and makes it easier for police to spy on us. We actively opposed two surveillance bills: an **expansion of the police's capacity to use drones to watch community members,** and the creation of a program to **install invasive license plate readers across the state.** Ultimately, the drone bill passed the assembly (SB 258/HB 924), but the license plate reader bill was deferred to summer study (SB 1571/HB 1212). We will continue to oppose the expansion of surveillance technology in Tennessee.

FREE SPEECH AND PROTEST

Lawmakers continued to attack the First Amendment this session, proposing legislation that would have **turned protest in our state into a felony if you blocked anyone's way,** and also giving **drivers immunity from prosecution for hitting demonstrators.** ACLU-TN advocated heavily against the bill – mobilizing members, working in coalition, and testifying in opposition – and successfully slowed down this undemocratic legislation (SB 843/HB 513). It will be heard again next year, when we will continue to fight against its passage.

INDEPENDENT COURTS

The majority party launched repeated attacks on the rule of law in Tennessee during this session. First, lawmakers proposed **removing Chancellor Ellen Hobbs Lyle of Davidson County after her ruling in a successful ACLU-TN lawsuit to expand absentee voting rights** in Tennessee (HR 23). This measure failed, but lawmakers were not done. The legislature then introduced a partisan bill to create a new statewide court, which would wrench authority over constitutional challenges from the Davidson County Chancery Court (SB 868/HB 1130). This bill ultimately passed in an amended form that creates a **new legal process for constitutional challenges to state laws,** requiring that the Tennessee Supreme Court appoint judges from each of the state's three grand divisions to hear these cases.

While it stops short of creating *Continued on p.4*



Tennessee

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*Legislative Updates,
cont. from p.3*

a new court, this new panel of judges will hear all constitutional challenges, including those which may involve redistricting.

The effect of the amended bill – undermining fair and independent courts – remains the same. This bill reflects an effort to politicize the judiciary and devalue the role of the courts in our state.

We will continue to oppose legislative efforts to undermine the separation of powers and weaken the courts.

ACLU-TN LAUNCHES STORY COLLECTION PROJECT HIGHLIGHTING IMPACT OF MONEY BAIL IN RURAL TENNESSEE

This spring, ACLU-TN launched its story collection project, funded by a grant from the Vera Institute of Justice, shining a light on how money bail creates a two-tiered justice system in our state, where Tennesseans who have limited incomes – particularly those who live in rural communities – are effectively punished more harshly than their neighbors who have access to money.

ACLU-TN interviewed community members in McMinn, Warren, and Obion Counties to help Tennesseans better understand the dangerous and predatory ways the bail system disproportionately impacts people who live in rural communities across the state.

While bail is a driver of mass incarceration statewide, its impact on rural communities is more severe than it is in Tennessee's city centers. In recent years, small cities and rural counties in Tennessee have been those with the highest rates of incarceration per capita, and since 2000, the pretrial incarceration rate has increased 163% in the state's 53 rural counties, compared to only 2% in the state's urban counties.

This winter, ACLU-TN shared the project in a statewide community forum series in the counties where it was filmed, as well as Putnam, Haywood and Greene counties. The storytellers' video interviews, resources about the bail system, and a survey where community members can share their own experiences with money bail, can be found at: <http://bit.ly/IOBBail> (case sensitive).