



# ACLU

AMERICAN CIVIL LIBERTIES UNION  
of TENNESSEE

# The Vigil

Spring 2009

## A Voice for Liberty: ACLU-TN at the 106th Tennessee General Assembly

The first year of the two-year 106th Tennessee General Assembly (TGA) session has been a particularly lively one for us. The following are highlights of the bills we are lobbying. For a complete list of bills we have been monitoring and lobbying, as well as additional information about the following bills, please visit [www.aclu-tn.org](http://www.aclu-tn.org).



Photo by Casey Fleser

### REPRODUCTIVE FREEDOM Removing the Right to Abortion – Oppose

SJR127, the dangerous constitutional amendment that attempts to place language in the Tennessee Constitution stating there is no right to abortion, lays the groundwork for the State Legislature to ban abortion in Tennessee were *Roe v. Wade* to be overturned. Supporters are so extreme that they refuse to include exceptions for rape, incest or to save the life of the woman. SJR127 passed the Senate by a 24-8 vote in March and is expected to pass the House shortly. The resolution will then be re-introduced in the 107<sup>th</sup> TGA (2011-2012) and, were it to pass in both chambers, it would be placed on the ballot in the 2014 state-wide election. ACLU-TN and its allies will continue to lobby against SJR127 and

plan to mount an aggressive public awareness campaign to defeat the initiative if it is placed on the 2014 ballot. This resolution has been introduced each year since ACLU/Planned Parenthood successfully challenged several restrictive provisions in the Tennessee Abortion Statute. In 2000, the Tennessee Supreme Court issued a momentous ruling, affording women a right to privacy regarding their right to seek an abortion. SJR127 robs women of their right to make choices about their own health, safety and personal welfare.

### Mandated Waiting Period – Oppose

Another attempt to make abortion more difficult, dangerous and expensive is evident in SB 1800/HB 0445,

which require informed consent and a subsequent 24-hour waiting period for “reflection” after a woman receives information about the abortion procedure. These bills particularly harm women with the fewest resources—poor women, minors, rural women, working women without insurance or sick leave and battered women—who have a limited ability to make multiple trips to the nearest clinic, which is, in many cases, hundreds of miles away.

### RELIGIOUS FREEDOM

#### Religious Freedom Restoration Act – Only Support with Amendment

SB 1283/HB 1598 would prohibit the state from “substantially burdening” a person’s free exercise of religion without a compelling governmental interest. However, the bill does not include any language that would prevent the act from being used to justify civil rights violations. Government has an important role to play in guaranteeing religious freedom without permitting religion to be used as a defense to claims of discrimination, abuse or denial of health care. These bills must be amended to include language to protect against civil rights violations.

### LGBT RIGHTS

#### Don’t Say Gay – Oppose

Preventing teachers, school counselors and other school administrators from providing “any instruction or materials discussing sexual orientation other than heterosexuality,” as do

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## Traveling Hopefully...

from Hedy Weinberg, Executive Director

The recent and successful Nashville for All of Us (N4AU) campaign should inspire Tennesseans to achieve a state-wide community based in fairness, justice and equality.

THE N4AU campaign, in which ACLU-TN played a lead role, convened a broad spectrum of the community to defeat a mean-spirited English-Only ballot referendum in January 2009. By a 56-44% margin, Nashvillians voted down the referendum which would have made English the official language and restricted access to a range of government services to non-English speaking residents.

In the face of mounting anti-immigrant backlash, N4AU reaffirmed our core American values of fundamental fairness and equality. It is not surprising that this backlash and reaffirmation is occurring in Tennessee. According to the U.S. Department of Homeland Security, Tennessee had the highest average annual growth rate (20.9%) in the number of new legal permanent residents between 1999 and 2008.

The N4AU campaign mobilized one of the broadest and most inclusive coalitions in recent history. Business, labor, religious, social services and civil rights and civil liberties groups joined together to oppose this divisive initiative. Nashville Mayor Karl Dean, the Metro Davidson County Council and Tennessee Governor Phil Bredesen also actively opposed the referendum.

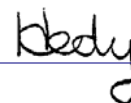
ACLU-TN, with its N4AU partners, strategized at weekly meetings, participated in phone-banking, spoke to com-

munity groups and mobilized its members to organize and vote against the referendum. In addition, ACLU-TN convened a legal team and prepared to file a lawsuit in the event the referendum was approved.

On the evening of January 22, national and international media reported on the defeat of the English-Only referendum and Nashvillians gathered together to celebrate their victory and their diverse and welcoming community.

ACLU-TN, however, continues to battle anti-immigrant backlash in the Tennessee General Assembly. Rather than focusing on the core American values of equal treatment and protection, legislators from across the state have filed over 100 bills during the last two years which would abridge the constitutional rights and human rights of many Tennesseans. These bills include confiscating wages of undocumented persons, preventing the issuance of birth certificates to newborns of undocumented persons, and prohibiting undocumented people from receiving public benefits or attending state colleges.

Across the state we will continue to face crucial community-defining moments like the one we experienced in Nashville. I urge you, our members and supporters, to speak out and make sure your voices are heard. Remind your elected officials that the bond that unites us is not ethnic, racial, religious or linguistic homogeneity, but a shared commitment to pursuing and promoting a fair and just society.



## ACLU-Driven Legislation: Prohibiting REAL ID and Shackling of Pregnant Inmates

This session ACLU-TN proactively partnered with lawmakers to draft and pursue two important pieces of legislation.

### Stop REAL ID in Tennessee – Support

SB 1938 (Johnston), HB 1696 (McDaniel), SB 1934 (Burchett) and HB 1426 (Nicely) would prohibit implementation of the REAL ID in Tennessee. We support this legislation because the standardized national driver's licenses required by REAL ID will become a key part of a system of databases and identity checks that will track and control individuals' movements and activities, violating privacy rights and exposing individuals to identity theft. Furthermore, the notion that REAL ID will make us any safer is a fraud—ID checks are a poor way to enhance security because the bare facts of a person's identity do not indicate terrorist intent. Prohibiting REAL ID's implementation in Tennessee is essential to prevent enormous cost to the state, in terms of both finances and the privacy rights of Tennesseans.

### Prohibit Shackling of Pregnant Inmates – Support

SB1209, sponsored by Senator Woodson, and HB1437, sponsored by Representatives Harwell and Sontany, prohibit the use of restraints on pregnant incarcerated women unless the women present a serious safety or flight risk. We support these bills because it is unconstitutional cruel and unusual punishment to shackle a pregnant woman during labor and delivery and can cause undue health risks to the woman and her pregnancy.

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SB 1250/HB 0821, violates the First Amendment prohibition against viewpoint discrimination, favoring speech about "heterosexuality" and banning speech about gay issues regardless of the educational purpose. Furthermore, teachers, school counselors and administrators should not be hamstrung in their efforts to address all forms of discrimination and harassment, including anti-gay bullying against both gay and straight students.

### **LGBT Adoption Ban – Oppose**

Two bills to prohibit unmarried people from adopting in Tennessee, SB 0078/HB 0605, are flimsily-disguised efforts to prevent LGBT Tennesseans from becoming parents. Such politically-driven efforts to shrink the pool of potential adoptive parents in Tennessee are harmful to the hundreds of children in Tennessee waiting to be adopted, unnecessary given the state's already-rigorous evaluation of potential adoptive parents, and insulting to the 99,000 Tennessee children already living successfully in nurturing, cohabiting families.<sup>1</sup>

## **VOTING RIGHTS**

### **Prove Citizenship Status to Vote – Oppose**

Requirements that voters provide evidence that they are U.S. citizens, as articulated in SB 1999/HB 1838, violate the National Voter Registration Act. In addition, such requirements are tantamount to a poll tax given the costs to obtain a passport or a birth certificate, if such documents are even available to the potential voter. People of color, people with disabilities, the elderly, the young and low-income citizens are the least likely to actually have these documents. Furthermore, in reality, non-citizens intentionally registering and voting has proven to be a virtually non-existent problem.

### **No Photo – No Vote – Oppose**

SB 0150/HB 0639, which would require voters to present a photo ID in order to vote, have similar problems to the bills above. The expense and effort required to obtain a photo ID unfairly burden minorities, seniors and

limited-income and disabled people. Photo ID laws also cause problems at polling places, draining poll workers' time and state resources for training and creating longer lines at the polls which, many people report, stops them from voting. There is no credible evidence to show that photo ID laws prevent fraud. We should be making it easier, not harder, for people to vote.

### **Burden to Restore Voting Rights – Oppose**

In Tennessee, once a person convicted of a felony completes his/her sentence, he/she may have the right to vote restored. All court-ordered restitution must be paid and the individual

Many thanks to those of you who have contacted your legislators to stand up for civil liberties and civil rights. If you would like to be added to our Legislative Alert E-mail list, send us an email at [aclutn@aclutn.org](mailto:aclutn@aclutn.org) with the subject line "ACLU E-Activist." Please include your name, address, zip code and county. This information is crucial when we need to target certain legislators about pending legislation.



must be current on any child support. SB 0440/HB 0969 seek to increase the financial burden on people disenfranchised because of felony convictions by requiring them to pay all fines and court costs associated with their convictions before having their voting rights restored. We oppose these bills because they place a disproportionate burden on low-income people, creating an unconstitutional poll tax. The bills would do nothing to increase the likelihood of fines and court costs being paid, while simultaneously increasing the already widespread confusion over Tennessee's re-enfranchisement law, opening the door to misapplication of the law. Expanding the right to vote helps people rejoin their communities and resume the duties of citizenship,

reducing chances of re-arrest.<sup>3</sup>

## **IMMIGRANTS' RIGHTS**

### **Prohibition of Undocumented Students from State Universities – Oppose**

SB 1237/HB 0808, which bars students presumed to be undocumented from enrolling in public universities or colleges in Tennessee, will lead to students being denied access to education based on flawed assumptions about their citizenship or immigration status. The bills offer no guidance to college administrators on how to make determinations about immigration status, making colleges and universities likely to rely on assumptions about status based on race, ethnicity or national origin, thus exposing public higher education institutions to liability under federal civil rights laws.

## **STUDENTS' RIGHTS**

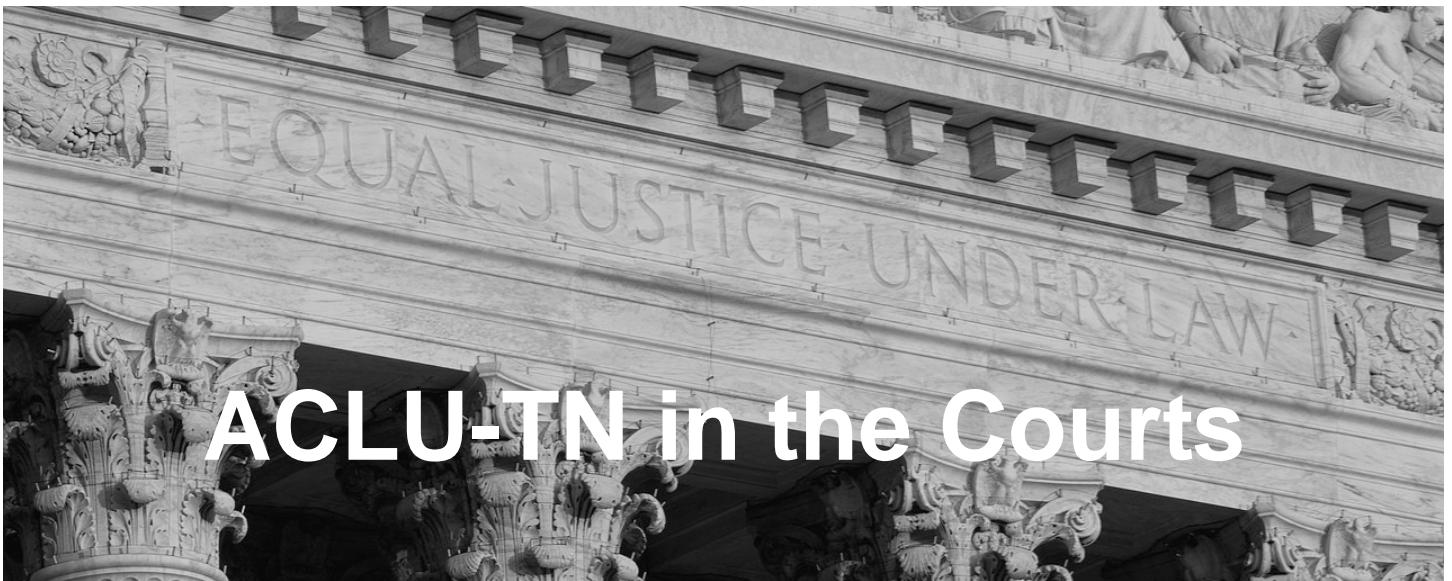
### **Random Drug Testing of Students – Oppose**

We oppose bills that authorize school boards to implement random drug testing policies for all students who participate in voluntary extracurricular activities because they infringe on students' privacy rights. SB 1792/HB 2026 and SB 0074/HB 1508 require witnesses to be present when the students create urine samples and schools often ask students to identify their prescription medications to prevent false positives. Many schools have not taken proper measures to protect this private information. Furthermore, such laws have not only proven ineffective in deterring drug use among young people,<sup>2</sup> they undermine relationships of trust between students and teachers, coaches and administrators. Tennessee already has a law allowing student drug testing when there is a reasonable suspicion that a student might be using drugs. There is no need for additional laws.

<sup>1</sup>Annie E. Casey Kids Count Data Center. <http://datacenter.kidscount.org/data/acrossstates/Rankings.aspx?ind=110>

<sup>2</sup>Journal of School Health, April 2003.

<sup>3</sup>[http://www.soc.umn.edu/~uggen/Uggen\\_Manza\\_04\\_CHRLR2.pdf](http://www.soc.umn.edu/~uggen/Uggen_Manza_04_CHRLR2.pdf).



# ACLU-TN in the Courts

## Fighting a Modern-Day Poll Tax: Voting Rights Statewide

Tennessee law currently requires people who have completed sentences for felony convictions to pay restitution and child support before having their voting rights restored. This proves difficult for people like Terrance Johnson and Jim Harris, who actually gained full custody of their children but who couldn't afford to pay the back child support they owed. In *Johnson, et. al. v. Bredesen, et. al.*, ACLU-TN and the ACLU Voting Rights Project challenged this law on the grounds that making the payment of financial obligations a condition of voting is an unreasonable burden on the right to vote, similar to a poll tax. We also raised additional due process claims relating to the difficulty one plaintiff, Alex Friedmann, was having in ascertaining whether he even owed the restitution the state was contending he pay. Ultimately, the court ruled that former felons do not have the same level of protection of voting rights as other citizens and that the condition of voting on the payment of outstanding financial obligations was not a violation of law. We have appealed the court's decision to the 6<sup>th</sup> Circuit Court of Appeals. Mr. Friedmann's claims, however, were resolved and he was able to vote in the November 4<sup>th</sup> election for the first time in his life. The attorneys in this case are Nancy Abudu of the ACLU Voting Rights Project and Tricia Herzfeld of ACLU-TN.

## "Bush Lied, They Died": Free Speech in Greenville

T-shirts declaring "Bush Lied, They Died" superimposed over the names of all soldiers who have died in Iraq are at the heart of a challenge to free speech currently unfolding in federal district court in Greenville, Tennessee. ACLU-TN is defending Dan Frazier and his company, Lifeweaver, Inc., which operates [www.CarryaBigSticker.com](http://www.CarryaBigSticker.com), a website selling various anti-war and peace themed products, in a \$40 billion class action suit brought against him by the fam-

ily of a soldier who died in the war. This lawsuit is a Strategic Lawsuit Against Public Participation, or SLAPP suit, and an effort to silence Frazier's political speech. The Arizona legislature tried to criminalize Mr. Frazier's production of these t-shirts by passing legislation forbidding the use of a soldier's name for profit, despite the fact that Mr. Frazier makes less than \$25,000 per year, only a small portion of which comes from the sale of these particular t-shirts, and that he donates some of this money to charities that benefit the families of fallen soldiers. After working successfully with ACLU-AZ, he was able to obtain a strongly worded court opinion declaring his actions to be clearly protected core political speech. Building on that decision, ACLU-TN is now representing Mr. Frazier against this latest effort to silence his speech. Erica Greene is ACLU-TN cooperating counsel in this case.

## Forced to Choose Between a Partner and a Child: LGBT Rights in Gibson County

After a family court ruled that Angel Chandler, a lesbian mother, had to choose between having her partner or her child stay overnight in her home, she sought help from ACLU-TN and the ACLU LGBT Project. The family court in Gibson County, Tennessee ruled that a paramour clause, which restricts any paramour to whom a parent is not legally married from spending the night when children are present, must be included in a parenting plan as a matter of law in Tennessee, regardless of whether there is any evidence of harm to the child. Since LGBT people are currently unable to marry in Tennessee, we believe the paramour clause violates the Equal Protection clause and the privacy rights of the mother. ACLU-TN and the LGBT project have appealed this ruling and are awaiting the decision of the Tennessee Court of Appeals. The cooperating attorneys in this case are Brian Faughnan and Lucian Pera.

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## The Sun Shines on Government Contractors Too: Open Records in Tennessee

When Alex Friedmann, associate editor of *Prisoner Legal News*, tried to obtain information about lawsuits that were filed against the Corrections Corporation of America (CCA), CCA told him that as a private corporation they were not subject to the Tennessee Open Records Act. ACLU-TN filed an amicus brief at the Tennessee Court of Appeals in support of Mr. Friedmann's assertion that CCA, a private "for profit" company, is the functional equivalent of a government entity under the Tennessee Open Records Act. ACLU-TN argued that the government cannot shirk its responsibilities to provide transparency in government by subcontracting traditional public functions. ACLU-TN also argued that denying fees to successful litigants in such cases would chill the enforcement of open records laws by limiting lawyers who are willing to take such cases with no chance to recover fees. The brief was filed on behalf of the Reporters Committee for Freedom of the Press, the Society of Professional Journalists, the American Society for Newspaper Editors, the Associated Press, the Association of Capitol Reporters and Editors and ACLU-TN. We are currently awaiting a decision in this case.

## Nominating Committee Considers Candidates

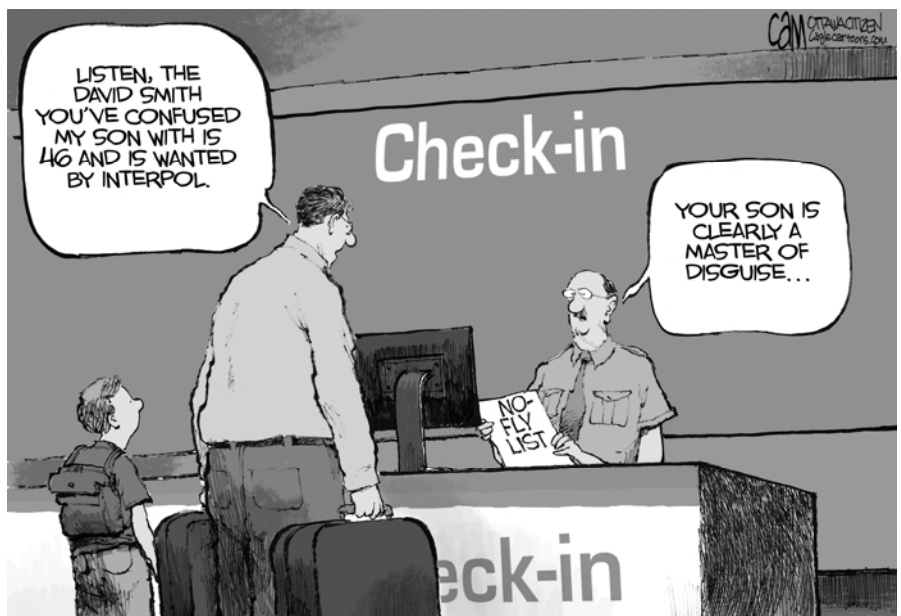
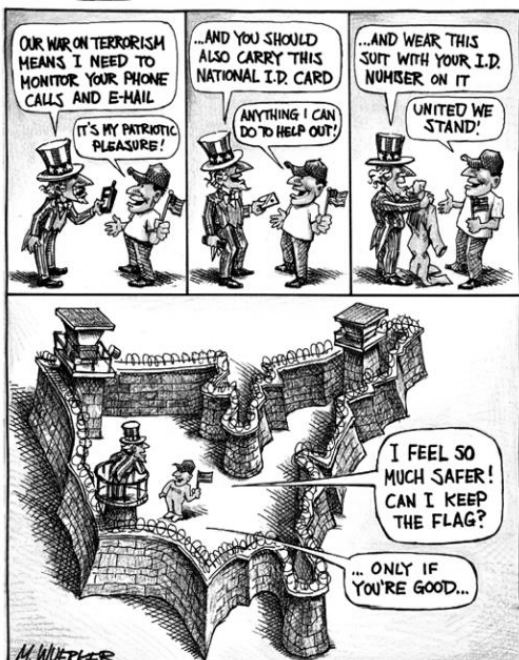
The ACLU-TN Nominating Committee is now soliciting suggestions for new ACLU-TN board members.

The Committee is looking for candidates with a strong commitment to the preservation and promotion of civil liberties and the skills, experience and expertise which will enhance ACLU-TN and its board. Board members have a fiduciary duty to the organizational health of the entire ACLU and ACLU-TN.

Each member is expected to make a major commitment of time and effort to the activities of the ACLU. Board members are expected to attend all quarterly board meetings; serve on at least one standing committee; participate in fundraising activities, including face-to-face solicitations of major donors and special event planning; make a substantial personal gift to the ACLU, depending on one's means; and attend ACLU program activities.

In addition to submitting names for consideration, actual nominations can be made by petition of any twenty (20) current ACLU-TN members. Please include signatures on your petition.

Suggestions for nominations or petitions should be sent to: Nominating Committee, ACLU-TN, P.O. Box 120160, Nashville, TN 37212 and should include confirmation that the nominee is interested in serving on the Board, nominee's background and qualifications and how the nominee can be reached. The deadline for submission is June 15, 2009.





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### *Abstinence-Only Education*

*ACLU-TN has been investigating an abstinence-only curriculum being taught in the Hamilton County Public Schools. If you have a child that attends Hamilton County Public Schools, we would like to hear from you and get your thoughts on this program.*

### *Public Schools Filtering LGBT Websites*

*ACLU-TN has learned that many school districts throughout the state are denying students access to any LGBT-supportive material on the Internet but continuing to allow access to anti-LGBT websites. If you or somebody you know is unable to get to websites like [hrc.org](http://hrc.org), [pflag.org](http://pflag.org) or [glsen.org](http://glsen.org) at school, we want to know about it.*