



The Vigil

Summer 2016

Access to the Ballot Box: Your Rights at the Polls

ACLU-TN is committed to ensuring that every citizen is able to freely exercise his or her right to vote. In preparation for the upcoming elections, we have prepared free resources to empower voters to protect their rights at the ballot box.

Resources include the 2016 Voter Empowerment Card, a pocket-sized card outlining when and where to vote, getting off work to vote, dealing with problems at the polls, and more; a Photo ID flyer outlining Tennessee's photo ID requirement;



Getting Ready to Vote: What You Need to Know Before Election Day, which provides helpful facts about registration, mail-in ballot deadlines, early voting and address changes; the Get Your Right to Vote Back brochure, which describes the process for people with felony convictions to restore their right to vote, and more.

To place an order or learn more, visit: <http://bit.ly/ACLUTNVoterKYR>.

Protecting Student Speech in Giles County

When Giles County teen Rebecca Young was forced to stand at the front of her crowded high school cafeteria while her principal publicly reprimanded her for wearing a shirt reading: "Some people are gay, get over it," and then banned her from wearing clothes to school that bear the words "LGBT" or "gay," or even a rainbow, ACLU-TN was there for her. After being contacted by the teen's family, ACLU-TN filed a lawsuit against the school system, arguing that the clothing policy was an unconstitutional, content-based restriction on pro-LGBT speech, which violated Rebecca and her peers' First Amendment rights.



A federal district court granted Rebecca a preliminary injunction ordering the ban on pro-LGBT clothing lifted. The school board and principal filed a motion to stop the injunction, arguing that the restriction actually protected Rebecca from bullying — despite the fact that Rebecca never experienced any harassment about her clothing or pro-LGBT message.

The judge kept the preliminary injunction in place, stating "[w]ithout even blinking at the irony of this tactic, Defendants assert that their previous inability to protect Plaintiff from bullying now gives them free rein to restrict her self-expression."

The case is still pending.

66,000 letters to lawmakers from ACLU supporters later...

The 2016 Legislative Session In Review

When the second year of the two-year 109th Tennessee General Assembly came to a close on April 22, a great deal had been accomplished to protect and promote civil liberties in Tennessee. ACLU-TN called on our supporters time and again to take action and contact your legislators championing good bills and condemning bad ones. You rose to the challenge, sending Tennessee lawmakers more than 66,000 messages, helping us change the conversation and putting pressure on our state leaders to do the right thing. We thank you for your passion and support.

For wins, losses & highlights from our legislative lobbying program, see pp. 4-5.

Traveling Hopefully

Hedy Weinberg, ACLU-TN executive director

In April, four children between the ages of nine and twelve were arrested — and two handcuffed — at their Murfreesboro elementary school just as school let out. They were taken to the juvenile detention center for allegedly witnessing an off-campus fight several weeks earlier and not intervening.

ACLU-TN worked with the families involved and the community to address this outrageous incident, including recruiting attorneys to provide pro bono services. Murfreesboro police have since issued an initial investigative report, identifying eleven “areas of concern/opportunities for improvement;” the Office of Professional Responsibility is currently conducting an internal affairs investigation; and on June 2, the district attorney announced he was dismissing the charges. This alarming episode, which sparked national outrage, underscores the importance of ACLU-TN’s current efforts to reform Tennessee’s school-to-prison pipeline.

According to the Tennessee Department of Education’s State Report Card, during the 2014-2015 school year, Black students made up 24% of the school population in Tennessee but accounted for 62% of all school suspensions. In contrast, white students, who made up almost 65% of the school population, accounted for 32% of suspensions. In that same year, 1,388 Black students were expelled, compared to 528 of their white classmates.

This growing trend of criminalizing students — particularly students of color — within our educational system must stop. If police are going to be present in schools, there must be comprehensive training, appropriate oversight, data collection on arrest and use of force, and transparency with the public regarding all of these factors. And once young people enter the juvenile justice system, they must be treated fairly and in a manner that supports rehabilitation.

To that end, ACLU-TN recently joined a lawsuit challenging the use of extended solitary confinement for juveniles, particularly for pretrial detainees and children who suffer from mental illness. The lawsuit was filed on behalf of a 15-year-old pretrial detainee who was held in solitary confinement for five days at the Rutherford County Juvenile Detention Facility — a practice which can be psychologically shattering for young people. We have amended our lawsuit to create a class action complaint, seeking to ban the use of solitary confinement to punish children who are in the state’s custody or held in county detention facilities licensed by the state.

ACLU-TN believes that children should be educated, not incarcerated. We will continue working to challenge policies and practices within public schools and the juvenile justice system that contribute to the school-to-prison pipeline in our state.

6th Circuit Upholds Round-the-Clock Surveillance

In 2013, Rocky Joe Houston was arrested on his Roane County farm and charged with gun possession by a felon. The arrest came after federal agents mounted a surveillance camera on a public utility pole and pointed it at Houston’s farm, constantly watching his property for ten weeks — without a warrant.

The 6th Circuit Court of Appeals refused to suppress evidence gathered by the camera, setting a dangerous precedent authorizing nearly limitless government surveillance without a warrant or probable cause.

ACLU-TN; the ACLU Speech, Privacy and Technology Project; the Brennan Center for Justice; and the National Association of Criminal Defense Lawyers filed an amicus brief in *United States v. Houston* urging an *en banc* review of the panel’s decision, arguing that the opinion in this case is inconsistent with Supreme Court decisions that caution against blindly extending rules designed for the physical world into the digital era. Unfortunately, the 6th Circuit denied the motion.

As technological advancements provide law enforcement with incredible surveillance capabilities, we must reevaluate assumptions about how the Constitution protects us from government intrusion. ACLU-TN will continue to fight for reasonable limits on government surveillance.



Fighting Anti-Refugee Discrimination at the Capitol

In the aftermath of the tragic attacks in Paris last fall, some elected officials attempted to draw a link between the horrendous event and resettlement of Syrian refugees in the U.S. These efforts culminated during the legislative session with the introduction of SJR 467, a thinly-veiled attempt to halt refugee resettlement in Tennessee. This discriminatory and unconstitutional measure directs the attorney



general to file a lawsuit against the federal government for allegedly failing to consult with the state on refugee resettlement.

Disturbingly, lawmakers identified the Thomas More Law Center, known for its extremist anti-Muslim ideology, to represent our state should the attorney general decline to pursue litigation as directed under SJR 467.

Refugee admission is the exclusive province of the federal government. States do not have veto power in this area. SJR 467 violates the Supremacy and Equal Protection Clauses of the U.S. Constitution, the separation of powers articulated in the Tennessee Constitution, and numerous state statutes.

ACLU-TN and our partners worked hard to mobilize grassroots opposition to SJR 467. We also sent Governor Haslam a letter urging him to veto it. While he allowed this dangerous measure to become law without his signature, he acknowledged that it raises constitutional concerns regarding the separation of powers and requested that the attorney general clarify “whether the legislative branch actually has the authority to hire outside counsel to represent the state.” ACLU-TN will monitor implementation of this legislation to ensure that refugees seeking shelter in Tennessee are treated fairly and protected equally.

The Holy Bible: Not Our Official State Book

The Establishment Clause of the First Amendment prohibits government officials from promoting one religion over another, let alone turning their personal religious views into law. However, state lawmakers came dangerously close to making the Holy Bible the official state book of Tennessee this year — despite a state attorney general’s opinion that such a move would have been unconstitutional.

ACLU-TN supporters sent more than 8,500 letters of opposition to the Bible bill to elected officials over the course of the legislative session. ACLU-TN also sent a letter to Governor Haslam urging him to veto this unconstitutional legislation. On April 14, he did just that, ensuring that religious freedom can continue to flourish in Tennessee.

Stopping Discrimination Against Transgender Youth in Sumner County

On May 19, ACLU-TN filed a complaint with the U.S. Department of Education’s Office for Civil Rights stating that Sumner County Schools’ policy prohibiting transgender students from using restrooms that correspond with their gender identity violates the requirements of federal anti-discrimination law and the U.S. Constitution.

The complaint was filed on behalf of a Sumner County high school student who is only allowed to use the faculty or the special needs bathroom. To avoid the stigma of using segregated restrooms, the student either tries to avoid using the restroom at all, or uses the girls’ restroom under fear of punishment. The student’s family tried to find a reasonable solution with the school system for the entire 2015-2016 school year, but ultimately the school system wasn’t willing to alter its restroom policy to conform to the requirements of federal law and the needs of the students involved.

The U.S. Departments of Education and Justice recently released guidance clarifying that schools receiving federal funding are obligated under Title IX to protect all students from sex discrimination, including transgender students. According to the guidance, transgender students must be allowed to access restrooms consistent with their gender identity.

ACLU-TN’s complaint calls for the district to permit the student to use the girls’ restrooms and locker rooms at school, and to create a new policy ensuring that transgender students be treated the same as other students.

“My number one job as a parent is to watch out for my child’s well-being,” the girl’s father said. “To me that means not taking it sitting down when someone tells me...it’s okay to treat her like a second class citizen. All we are asking is for our daughter to be treated like other students — the way federal law says she should be.”



2016 LEGISLATIVE REVIEW

VICTORY: Reducing Penalties for Marijuana Possession. Tennessee spends tens of millions of dollars each year enforcing marijuana possession laws, disproportionately arresting minorities. A new law removes the felony designation for the third conviction for simple possession of a half-ounce of marijuana or less, significantly reducing the costly incarceration rate for this low-level, nonviolent offense. ACLU-TN worked with legislators from both sides of the aisle to advance this legislation. Public Chapter 876.

VICTORY: “Banning the Box.” Working with our allies, we successfully lobbied to pass a law that ensures a fair opportunity to Tennesseans seeking a second chance at employment after serving their sentence for a felony conviction. The new law prohibits most state employers from inquiring about an applicant’s criminal history on most initial job applications. Public Chapter 813.



ACLU-TN's Hedy Weinberg joined politicians from both sides of the aisle and members of the court system to work on reforming the expungement process.

SUCCESS: Ensuring Clean Records for Innocent Tennesseans. In Tennessee, the court does not automatically expunge the records of individuals whose charges have been dismissed — they must file the appropriate paperwork to clear their record. ACLU-TN lobbied for legislation that, as originally drafted, would have required judges to ask individuals if they want their records expunged and provide them assistance in the process. Though the measure did not pass, we are now working with legislators from both sides of the aisle, as well as the Administrative Office of the Courts, to train judges and court clerks on expungement and to provide resources for them, the legal community and the general public to increase awareness about the process.

VICTORY: Protecting Innocent People from Execution. Preserving biological evidence can help ensure that innocent people are not executed. In the U.S., 337 people have been exonerated through DNA testing. ACLU-TN joined with partners and successfully lobbied for a law that ensures that innocent people are not executed by requiring that biological evidence collected for death penalty cases be kept until the individual’s execution or completion of sentence. Public Chapter 988.

VICTORY: Reforming “Policing for Profit.” In Tennessee every year, law enforcement agents seize millions of dollars in cash and property from civilians during traffic stops and other encounters, simply by asserting that they believe the money or property is connected to some illegal activity — oftentimes without ever pursuing criminal charges. ACLU-TN successfully lobbied for a measure that requires the Department of Safety to report annually on the extent and prevalence of seizures — a good first step toward reforming Tennessee’s broken and unfair civil asset forfeiture system. Public Chapter 861.



LOSS: Preventing Youth Solitary Confinement. Solitary confinement, the most extreme form of isolation, involves physical and social isolation in a cell for 22 to 24 hours per day for children as young as thirteen. ACLU-TN supported legislation that would have prohibited the solitary confinement of juveniles except in certain, limited circumstances. While it did not move out of the Senate Judiciary Committee this year, ACLU-TN continues to fight this dangerous practice.



Flickr/West Midlands Police bit.ly/1ZcWkZ

VICTORY: Keeping Body Camera Recordings Accessible. The purpose of police body cameras is to ensure police accountability and transparency but simultaneously protect the privacy of civilians and law enforcement officers. Several body camera bills were filed this session but the one that began to move would have indefinitely closed public access to body camera footage related to excessive use of force or misconduct by police. This measure would have made such footage confidential until the conclusion of any investigation and resulting disciplinary, administrative or judicial actions, which could take months or even years. ACLU-TN and its allies successfully lobbied against this legislation. We will continue to work with law enforcement, the media and legislators to craft legislation that ensures police accountability, transparency and privacy rights as policies related to body camera technology are developed.

VICTORY: Stopping Enhancement Penalties for Undocumented Immigrants. In this country, we value a justice system that treats people fairly. However, legislation filed this session would have unfairly stigmatized and discriminated against immigrants in Tennessee by allowing a court to impose a harsher sentence if the defendant

was undocumented. Working with our partners, we successfully lobbied against this unconstitutional legislation, and it was taken off notice by its sponsor on April 18.

LOSS: Discriminating Against Refugees in Tennessee. See article on page 3.

LOSS: Tuition Equity for Undocumented Students. During the first year of the 109th Tennessee General Assembly (2015), legislation that would have allowed undocumented students who were brought to the U.S. as children to attend state universities and colleges at the same in-state tuition rate as their peers passed the Senate but failed on the House Floor by only one vote. Joining our partners, we returned this year with every intention of passing the House version. As the session progressed, however, it became clear that the bill would probably not pass. It was heartbreaking when the legislature adjourned without passing the bill. We are committed to continue working for fair and equal treatment of students seeking higher education opportunities.



VICTORY: Protecting Transgender Students’ Restroom Access. One of the most controversial and highly-publicized measures this session was a bill that would have prohibited transgender students from accessing restrooms and other sex-segregated facilities that correspond with their gender identity. Such discrimination violates the U.S. Constitution and Title IX and could have cost Tennessee billions in federal funding and revenue for local industries. ACLU-TN joined forces with state and national organizations to fight this measure, lobbying and testifying, mobilizing opposition, placing op-eds, amplifying the issue in the media, sharing legal analysis with legislators and more. Alongside transgender students, we delivered petitions opposing the bill with 67,000 signatures on them to the governor’s office. The same day we delivered the petitions, the bill’s sponsor withdrew the legislation.

VICTORY: Preventing Marriage Nullification. In a blatant attempt to nullify existing marriages between same-sex couples and to stop such marriages going forward, legislation was filed this session which would have limited marriages in Tennessee to those between one man and one woman, “regardless of any court decision to the contrary.” ACLU-TN lobbied against this discriminatory legislation, which failed in the House Civil Justice Subcommittee early on during the session.

LOSS: Counseling Discrimination. On April 27, Governor Haslam signed a bill into law that allows counselors and therapists to discriminate against clients based on the counselor’s own “sincerely held principles.” (The original version of the bill worded this as “sincerely held religious beliefs.”) Another attack on the LGBT community in the wake of marriage equality, this law defies professional standards and could cause significant harm to vulnerable people who are seeking help. ACLU-TN joined with its allies to lobby against this legislation and we urged the governor to veto it. We will continue to raise awareness about this discriminatory law and work until LGBT Tennesseans are treated fairly and equally in every part of their lives. Public Chapter 926.



VICTORY: Preventing the Holy Bible from Becoming Tennessee’s State Book. See article on page 3.

VICTORY: Ending Pregnancy Criminalization. Thanks to coordinated mobilization with our coalition partners, Tennessee’s dangerous pregnancy criminalization law is now scheduled to sunset at the end of June. This law, implemented last year, threatens new mothers struggling with addiction with jail time. ACLU-TN spoke about the dangers of this bill at a statewide conference this year and worked with coalition partners to raise awareness about the law’s devastating impact on Tennessee families. A bill that would have permanently extended this law failed in the House Criminal Justice Subcommittee.

VICTORY: Stopping the 20-Week Abortion Ban. Abortions that occur after twenty weeks are often the result of complex situations — every woman’s circumstances are different and we cannot presume to know them all. A woman should be able to make private medical decisions in consultation with the people she trusts the most — politicians do not belong in the equation. This legislative session, we successfully lobbied against legislation that would have banned abortions after twenty weeks of pregnancy, except to preserve the life and health of the mother. This measure was taken off notice in March.

VICTORY: Preventing Mandatory Ultrasounds. This bill would have inserted politicians into a woman’s private healthcare decisions by requiring health professionals to perform an ultrasound on a woman seeking an abortion and offer her the ultrasound image and audio of the fetal heartbeat. ACLU-TN mobilized supporters to urge legislators to abandon this legislation. It failed and was taken off notice in February.





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ACLU-TN Protects Haywood County Inmates' Right to Read



This past winter, ACLU-TN was contacted by the father of a Haywood County jail inmate who told us that inmates were being denied the right to read any books or magazines except the Bible.

We sent a letter to the jail demanding that the jail's policy be changed and that inmates be allowed access to outside

publications. The Haywood County attorney agreed to draft a new policy to accommodate inmates' free speech right to access information. ACLU-TN is working with the county attorney to draft the new policy.

In the meantime, the father who originally contacted us wrote us again: "I spoke to my son yesterday. Tuesday night the guards wheeled the book cart around, and this time it had actual books that people wanted to read...I again wanted to thank you very, very much for your efforts to accomplish this. My son gets out in 19 days so he doesn't have much time to benefit from the change in policy, but there will be many, many others who will. Men and women who can actually learn something from a book while in jail, and maybe something they read can make some kind of a difference in their lives... So thank you for all you have done for my son, his friends, and all the inmates of the Haywood County Jail."

SAVE THE DATES

Now through Election Day, November 8:
"Let People Vote" Campaign, Statewide

Friday, September 16:
Constitution Day Education Campaign
Schools Statewide

Saturday, October 22:
ACLU-TN Annual Meeting
Nashville Public Library

Thursday, November 17:
Bill of Rights Celebration
The Noah Liff Opera Center, Nashville