

American Civil Liberties Union of Tennessee

### In the Courts...

## **Protecting Religious Freedom in Tennessee**

This spring, ACLU-TN successfully filed lawsuits challenging the posting of the Ten Commandments in public buildings in Hamilton and Rutherford counties, ensuring religious freedom for residents in these counties and across Tennessee.

On January 29, ACLU-TN filed suit in federal district court challenging the posting of the Ten Commandments in the Hamilton County Courthouse, the City County Courts Building, and the Juvenile Courts building. Our suit argued that the postings violated the Establishment Clause to the First Amendment of the U. S. Constitution.

ACLU-TN filed the suit on behalf of a coalition of clergy and concerned residents, including Reverend John W. Mingus, Sr., Rabbi Philip Posner, Reverend Melanie Morel Sullivan, Rabbi Josef Davidson, Reverend Roland Johnson, Jr., Tom and Nancy Bibler, Brad Guagnini, William David Jones, Robert and Priscilla Siskin, and Tracy and Donna Knauss. ACLU-TN also was a named plaintiff on behalf of our members in Hamilton County.

An expedited trial was held April 29. On May 13, Judge R. Allan Edgar ruled that the postings of the Ten Commandments in the Hamilton County Courthouse and the City County Courts Building were unconstitutional and ordered the postings removed. Judge Edgar ruled our plaintiffs did not have standing to challenge the posting in the Juvenile Courts Building, meaning that none of the plaintiffs had regular business in the building that gave them the right to challenge the posting there.

Hamilton County officials chose not to appeal the ruling. On June 13, after ACLU-TN publicly stated its intention to file suit with new plaintiffs to challenge the posting in the Juvenile Courts Building, county officials took down all three Ten Commandments postings. Judge Edgar has ordered the county to pay almost \$38,000 in attorney's fees and expenses. ACLU-TN cooperating attorneys were Susan L. Kay of Nashville and Hubert E. Hamilton of Chattanooga.

In his ruling, Judge Edgar said, "Courts are places where there must be equality and justice, and where persons of all religious or non-religious persuasions in this diverse nation of ours must have confidence that they are getting fair treatment. This is reason enough for the government to refrain from giving the appearance that courthouses are only for those who adhere to the Ten Commandments."

ACLU-TN filed a similar lawsuit on April 18 challenging the posting of the Ten Commandments in the Rutherford County Courthouse as part of "The Foundation of American Law and Government" display. In addition to the Ten Commandments, the display included the Magna Carta, the Bill of Rights, the lyrics to "The Star-Spangled Banner," the Mayflower Compact, the National Motto, the Preamble to the Tennessee Constitution, and a drawing and explanation of Lady Justice.

ACLU-TN filed the suit in federal district court on behalf of concerned residents Leann Anderson, Steve Cates, Joan Hill, Dawn Weiss Montgomery, Leon Nuell, Joseph Shaw, and Dale Tipps. ACLU-TN once again was a named plaintiff on behalf of our members in Rutherford County. ACLU-TN cooperating attorneys were George Barrett, Ted Carey and Susan L. Kay of Nashville.

Our lawsuit argued that posting the Ten Commandments in public buildings with or without accompanying documents violates the Establishment Clause. The lawsuit also pointed to the legislative history behind the posting as evidence that the Rutherford County Commission had a religious purpose for the display. As early as 1999, the Commission considered the first in a series of resolutions authorizing the posting of the Ten Commandments alone.

A preliminary injunction hearing was held on May 6 before Judge Robert Echols. On June 21, Judge Echols granted our request for a preliminary injunction and ordered the Ten Commandments plaque removed from the display. The plaque was taken down by county officials on June 24. The trial date for the permanent injunction has not yet been set.

In his ruling, Judge Echols pointed to the legislative history behind the posting, saying, "normally, courts are deferential to the government's articulated purpose; however, the purpose must be sincere and not a sham." He went on to say, "Our nation's founders knew of the persecutions suffered under religious tyranny and intended to insulate this great nation from such fearful predicaments. The First Amendment, therefore, wisely prohibits the establishment of religion by the government."

## . In the Communities

#### **Public Art Problems in Memphis**

When ACLU-TN was notified that two Shelby County Commissioners and a Memphis City Councilman wanted to remove a portion of artwork outside the new Memphis Central Library because it included the phrase "workers of the world unite" from *The Communist Manifesto*, we strategized with the artist and offered our support should steps be taken to remove or alter the artwork.

ACLU-TN also learned that a Baptist youth group had painted a mural on the Overton Park Shell without permission or consent from the city of Memphis. The mural depicted many religious symbols, including a cross, the star of David, a crown of thorns, and two purple cloaks.

ACLU-TN Board Member and General Counsel Bruce Kramer sent a letter to the Memphis city attorney asking the city to notify ACLU-TN of its plans for the mural. The city attorney responded promptly and notified ACLU-TN that the park shell would be repainted.

#### The Vigil

is published by the American Civil Liberties Union Foundation of Tennessee

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#### **Gideon Bible Distributions**

Last fall, ACLU-TN was contacted by parents in Sequatchie, Washington and Warren counties after members of the Gideons International distributed Bibles to fifth graders in public schools in those counties.

Based on the parents' complaints, ACLU-TN has renewed its commitment to contacting public schools in Tennessee at the beginning of each school year to provide information on current laws affecting church/state issues. We are planning our next mailing for the near future.

In the meantime, we have identified school systems and notified them that distribution of Gideon Bibles is unconstitutional. We are now working with several families to discuss further action.

#### "Executing the Mentally III" Program

ACLU-TN and other organizations sponsored a panel discussion on executing the mentally ill. Dwight Lewis, columnist and editorial board member for *The Tennessean*, served as moderator. Panelists discussed the inequities of applying the death penalty to mentally ill individuals and specifically focused on the case of Abu-Ali Abdur'Rahman, a mentally ill inmate on death row. In April, the U. S. Supreme Court granted a stay of execution for Abdur'Rahman and will hear his case this fall.

#### Nashville Becomes First City in Tennessee to Support Moratorium

On March 19, the Nashville Metropolitan government became the first municipal body in the state to pass a resolution in favor of a moratorium on executions and a comprehensive and independent study of the application of the capital punishment system.

Nashville Metro government joins 62 other municipalities across the county to pass such a resolution. This victory, championed by council member Brenda Gilmore, hopes to inspire activists in other communities, from large to small, to move similar resolutions through their local governments.



#### Message from the Executive Director

I recently returned from a four day conference in Austin, Texas, with my ACLU colleagues from across the country. Anthony Romero, our new National ACLU Director, presided. We are very fortunate he is at the helm – his breadth of vision, astuteness, and boundless energy will move us into the next era as we fight to ensure a safe and free society.

ACLU staff shared strategies and information on a range of issues – post 9/11 civil liberties concerns, religious freedom, reproductive freedom, gay and lesbian rights, racial profiling, and moratoriums on state killing. The conference highlight was an impromptu gathering in Molly Ivins' backyard. I am very lucky to work with a wonderful group of people who, like our members, are committed to protecting and promoting equality, justice and freedom.

Since 9/11, National ACLU and the state affiliates have joined together to ensure that civil liberties for citizens and non-citizens alike are protected. Our message is that America can be both safe and free and that civil liberties need not be jeopardized in the name of national security.

Highlights of ACLU-TN's post 9/11 work include: 1) compiling a statewide database of community leaders, organizations and mosques who represented constituents most likely to be affected by the backlash of 9/11; 2) contacting organizations and leaders within the Arab-American and Middle Eastern communities and law enforcement agencies to discuss anticipated backlash and ways to ensure tolerance and fairness; 3) distributing hundreds of copies of the ACLU brochure "Know Your Rights – What To Do If You're Stopped by the Police, the FBI, the INS or the Customs Service" at town meetings, to immigration attorneys, civil rights and social service advocates, and to law enforcement; and 4) participating in numerous public education programs discussing civil liberties and national security and responding to media inquiries about the anti-terrorist legislation and executive orders.

To stay up-to-date on the civil liberties implications of the Bush Administration's homeland security proposal and anti-terrorist legislative initiatives, check out the special web feature "Safe and Free in Times of Crisis" by visiting our website at www.aclu-tn.org and clicking on the "Safe and Free" icon.

The stay of execution for Abu-Ali Abdur'Rahman by the U. S. Supreme Court 36 hours before his execution and the release of the 100<sup>th</sup> innocent man on death row indicate the serious flaws in the implementation of the death penalty. It is clear the only acceptable solution is a moratorium on executions. Tennesseans for a Moratorium on Executions (TME) is spearheading the call in Tennessee. TME's goal is to pass legislation calling for a moratorium on executions while a study committee examines the alarming inequities and injustices demonstrated in capital cases. We are committed to increasing public awareness and support for this initiative.

While we can celebrate our pro-choice victory in the State Legislature (see "Civil Liberties in the 103rd TGA"), there is no question pro-choice advocates have their work cut out for them. Years ago ACLU-TN spearheaded the formation of the Tennessee Alliance for Choice (TAC); now we need to reactivate. If you would like to help us mobilize opposition to the anti-choice initiatives, please contact me at aclutn@aclu-tn.org.

Welcome, New Members In 2001, 754 new members joined ACL your help. Chances are the civil liberties co by your family and friends. Please send us We will send them one recruitment letter - sell or share their names with any organiza recruitment letter ("You were suggested to will use your name unless you write "NO" r your help!	oncerns that prompted you to two names of individuals you we will not send them endle tions. Also, we would like to us by, who is all	nat in 2002. And we need to join ACLU-TN are shared ou think might want to join. ess mailings, and we won't o mention your name in the ready an ACLU member"). We
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## Intern Spotlight

During the 2001-2002 academic year, the ACLU-TN office was fortunate to have not one, but two full-time interns: Cheryl Demers and Alycia Carter. Cheryl and Alycia in effect doubled the ACLU-TN staff and were invaluable resources both individually and collectively.

Alycia, a Memphis native, came to ACLU-TN during her senior year at Peabody College at Vanderbilt University majoring in Human and Organizational Development. During the fall semester, Alycia's work with ACLU-TN focused primarily on church/state issues.

In recent months, many county commissions across Tennessee—including Hamilton, Bradley, Williamson and Wilson—have considered resolutions authorizing the posting of the Ten Commandments in public buildings. (See "The Ten Commandments in Tennessee.") Alycia researched the status of public postings of the Ten Commandments in all 95 counties in the state. Her tireless work yielded a detailed chart outlining which counties have posted the Ten Commandments, which counties have authorized such postings but have failed to do so, and which counties have rejected resolutions authorizing such postings.

As the statewide impetus to post the Ten Commandments in public buildings continues, Alycia's research has proven to be a powerful public education tool and a valuable resource for ACLU-TN Executive Director Hedy Weinberg when she speaks to the media about these unconstitutional postings.

In addition, Alycia also monitored Metro Nashville Council meetings regarding redistricting issues, assisted with preparations for the annual Bill of Rights Celebration, and worked with our advocacy program, answering calls and letters from Tennesseans requesting assistance.

"There are so many things that I enjoyed while working with ACLU-TN," Alycia said, "I hardly know where to start!"

"I wanted to intern at ACLU-TN because I have always had a keen interest in civil rights issues, and I knew that this organization would be the ideal place to work closely with such issues. From the first day, it was apparent to me that everyone in the office shared a sincere interest in issues dealing with civil liberties and a passion about fulfilling the mission of the ACLU," Alycia said.

"The best of part of my internship was working with wonderful people who cared deeply about ACLU's goals and who helped to create an optimal learning environment and a 'safe place," Alycia said. Cheryl was born in England and raised in Orlando, Florida. She came to ACLU-TN during her final year of the Master's of Science in Social Work program at the University of Tennessee's Nashville campus.

In the fall, Cheryl worked closely with the coalition group Tennesseans for a Moratorium on Executions (TME) - a group whose formation was spearheaded by ACLU-TN to recruit new members and strengthen the group's public education presence. She also developed a statewide database of Arab-American groups to help ACLU-TN's outreach efforts following the September 11 attacks.

In the spring Cheryl worked with ACLU-TN's legislative program, preparing a weekly legislative calendar and tracking legislation of civil liberties concern. Cheryl also monitored legislative meetings and worked with ACLU-TN lobbyists Weinberg and Joe Sweat at the General Assembly.

In addition to these substantive pursuits, Cheryl worked on the preparations for the annual Bill of Rights Celebration and answered intake phone calls.

"I have been fortunate enough to be part of ACLU-TN for the entire school year," Cheryl said. "My field placement has been an integral part of my education. Hands-on experience as well as the support of Hedy and Amy has fed my desire to become a professional social worker."

"As a social worker it is imperative to work toward economic, environmental and social justice. At ACLU-TN I have had an opportunity to be part of an agent of change. I have discussed issues of concern with Tennesseans and offered assistance through information and referrals," Cheryl said.

"I also have been involved with monitoring and lobbying different bills introduced in the legislature. I am amazed at the enormous power legislators hold that can affect such change for the people of Tennessee. I also am aware of the negative impact that legislation may have on our civil liberties and that ACLU-TN is greatly needed in in such an environment," Cheryl said.

Cheryl and Alycia both graduated in May. Alycia will begin law school at Duke University in the fall. Cheryl and her husband have relocated to Toledo, Ohio, where she works with the elderly as part of the Regional Long Term Care Ombudsman Program of Northwest Ohio.

## ACLU-TN to Read From "Literature of Troubled Times"

Last September, ACLU-TN held its first annual Banned Books week events in Nashville and Memphis. At the events, local celebrities read from books that had been banned or challenged in Tennessee, including Charles Darwin's *Origin of the Species* and John Steinbeck's *Of Mice and Men*.

Based on the success of last year's events, we are expanding our programs this year and will hold three Banned Books Week events in Nashville, Memphis and Knoxville. Readings will take place at Davis-Kidd Booksellers in Nashville and Memphis on Tuesday, September 24, from 6:00 p.m. to 7:00 p.m., and at Borders in Knoxville on Thursday, September 26, from 6:00 p.m. to 7:00 p.m.

This year's events will feature readings from books that have been challenged or banned in public libraries and public schools in Tennessee and across the nation. In recognition of the first anniversary of September 11, we will read from works that recognize the social, political and emotional impact of times of crisis.

## The Ten Commandments in Tennessee

ACLU-TN recently completed a survey of all 95 counties in the state to determine how many county commissions have passed resolutions authorizing the posting of the Ten Commandments in public buildings and how many counties actually have posted the Ten Commandments.

Our findings indicate that 66 counties in Tennessee have passed a resolution authorizing the posting of the Ten Commandments. To date, 29 of those 66 counties have posted the Ten Commandments in public buildings.

ACLU-TN plans to file more lawsuits challenging the posting of the Ten Commandments in public buildings. We currently are strategizing with our cooperating attorneys on how to effectively proceed to ensure that religious freedom is protected for all Tennesseans. If you are a resident of a county that has posted the Ten Commandments in public buildings and would be interested in participating in a lawsuit, please write us a letter with complete contact information; a brief bio (including education, employment, and religious affiliation—if any); how long you have been a resident of the county; on what occasions you go into public buildings where the Ten Commandments are posted; and if you are willing to have your name listed as a plaintiff or prefer to be a Jane or John Doe.

Please pass this information along to other concerned residents in your community. We especially would like to hear from attorneys, members of the clergy, and from those who work in public buildings.



## Whose 10 Commandments?

There are many versions of the Judeo-Christian 10 Commandments. Here are three as they are often published in standard works of reference:

bold =	passage not present in one or both of the other versions <i>italics</i> = commandments in different order <u>underline</u> = different wording
<b>Catholic Version</b>	<ol> <li>I am the Lord your God. You shall not have <u>strange</u> gods <u>before me</u>.</li> <li>You shall not <u>make wrongful use of the name of the Lord your God.</u></li> <li>Remember the Sabbath day, <u>and</u> keep it holy.</li> <li>Honor your father and <u>your</u> mother.</li> <li>You shall not <u>murder</u></li> <li>You shall not commit adultery</li> <li>You shall not steal</li> <li>You shall not bear false witness <b>against your neighbor</b></li> <li>You shall not covet your neighbor's wife</li> <li>You shall not covet your neighbor's <u>house</u></li> </ol>
Jewish Version	<ol> <li>I am the Lord your God, who brought you out of the land Egypt, out of house of bondage.</li> <li>You shall have no other gods before Me. You shall not make a graven image.</li> <li>You shall not take the name of the Lord your God in vain.</li> <li>Remember the Sabbath day, to keep it holy.</li> <li>Honor your father and thy mother.</li> <li>You shall not murder</li> <li>You shall not commit adultery</li> <li>You shall not steal.</li> <li>You shall not bear false witness against your neighbor</li> <li>You shall not covet your neighbor's house, you shall not covet your neighbor's wife.</li> </ol>
Protestant Version	<ol> <li>You shall have no <u>other</u> gods <u>besides</u> me</li> <li>You shall not <u>make</u> strange gods before me</li> <li>You shall not <u>take the name of the Lord your God in vain</u></li> <li>Remember the Sabbath day, <u>to</u> keep it holy</li> <li>Honor your father and <u>your</u> mother</li> <li>You shall not <u>kill</u></li> <li>You shall not commit adultery</li> <li>You shall not steal</li> <li>You shall not bear false witness</li> <li>You shall not covet your neighbor's <u>home</u></li> </ol>

Please join ACLU-TN in fighting to ensure that, in the wake of September 11, our nation is both SAFE AND FREE. Make a tax-deductible contribution to assist with our advocacy, litigation and public education programs:
ACLU Foundation of Tennessee
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## **Civil Liberties in the 103<sup>rd</sup> TGA**

Civil liberties was one issue in the Tennessee General Assembly not gridlocked by the budget crisis. Bills jeopardizing civil liberties received serious consideration in the second session of the 103rd Tennessee General Assembly, which convened on January 8 and adjourned July 4. Religious freedom, freedom of speech, reproductive freedom, and access to justice continue to be challenged, and ACLU-TN remains committed to ensuring that these guarantees are protected.

For the third year in a row, ACLU-TN board member Joe Sweat generously volunteered his expertise and time to join Executive Director Hedy Weinberg as the ACLU-TN lobbyists. Our efforts were enhanced by ACLU-TN members who participated in our legislative e-mail alert network. Many thanks to those of you who responded to our emails and contacted state senators and representatives, making clear that there is support for ACLU's positions.

ACLU-TN's legislative work centered on educating legislators about ACLU positions, lobbying on bills affecting civil liberties, testifying or arranging for testimony on bills, and building coalitions to pursue legislative initiatives.

Here is a brief summary of some of our work:

#### **Church-State**

Once again this year we saw attempts by the Legislature to undermine religious freedom. Several bills were considered which supported prayer in the public schools. ACLU-TN successfully lobbied against these initiatives by explaining current law to legislators. Efforts to mandate the recitation of the Pledge of Allegiance in classrooms before the recent 9th Circuit decision (SB2599/HB2549) and to allow use of school property for student-led prayer (SB2294) were not successful. ACLU-TN explained to legislators that these activities already were permissible and that these initiatives would create confusion. In addition, two resolutions urging Congress to pass a voluntary school prayer amendment to the U.S. Constitution (HJR635; HJR682) were taken off notice.

#### **Moratorium on Death Penalty**

ACLU-TN joined with Tennesseans for a Moratorium on Executions (TME) to work toward ensuring access to justice for those facing the death penalty. On behalf of TME, we drafted legislation (SB1805/HB1566) and identified Senator Roscoe Dixon (Memphis) and Representative Rob Briley (Nashville) to spearhead the call for a moratorium on executions in Tennessee while a Death Penalty Fairness Committee studied the following issues: adequacy of counsel and investigative support in all stages of capital cases; the process for judicial review of the merits of claims in post conviction and federal habeas corpus proceedings; any disproportionate racial impact upon any aspect of capital case proceedings; whether mentally ill persons should be executed and what criteria should be used in judging the level of illness; prosecutorial misconduct or judicial error as a factor in the imposition of the death penalty; and the presence of innocent persons on death row in Tennessee.

The legislation stalled in committee. We are using the next six months to build additional support for the moratorium effort and plan to introduce new legislation calling for a moratorium next year.

#### **Reproductive Freedom**

A dangerous constitutional amendment exempting abortion from the privacy guarantee of the Tennessee Constitution (SJR110) was pursued vigorously by antichoice forces. ACLU-TN and coalition partners successfully lobbied against the initiative in the House. SJR110 had passed the Senate by a 21 (y) -10(n) - 2 (not voting) last year.

The introduction of SJR110 was the result of ACLU-TN's victory in the Tennessee Supreme Court. We successfully challenged several restrictive provisions in the Tennessee Abortion Statute. In September 2000, the Tennessee Supreme Court ruled these provisions were unconstitutional and that the Tennessee Constitution afforded women a right to privacy when seeking abortions. The decision is momentous because it reaffirms the right to privacy found in our state Constitution.

ACLU-TN and Planned Parenthood strategized to prevent SJR110's passage. Joined by NOW, the Tennessee Bar Association and the Women's Political Caucus, we organized grassroots opposition against the resolution. In addition, at a committee hearing former Tennessee Supreme Court Chief Justice Lyle Reid and Vanderbilt University Law and Medical Schools Professor Ellen Clayton explained to legislators why carving out an exception to the privacy right in the state Constitution was so dangerous. ACLU-TN will continue to work with coalition partners to raise awareness of these types of initiatives.

#### **Other Issues**

ACLU-TN lobbied against bills restricting access to government records, targeting foreign students in state universities, denying drivers licenses to individuals without social security numbers, and videotaping conversations in the halls of Legislative Plaza. ACLU of Tennessee P.O. Box 120160 Nashville, TN 37212

**Change Service Requested** 

# ACLU-TN Around the State

- ACLU-TN Board Member Glenn Carter spoke with members of the Clarksville branch of the Tennessee chapter of the National Association of Social Workers (NASW).
- ACLU-TN National Board Representative Joseph Sweat made several visits to Riverdale and Eaglesville High Schools in Murfreesboro to speak about ACLU issues.
- The Chattanooga Chapter of ACLU-TN sponsored two public forums on religious freedom issues in Hamilton County.
- Former ACLU-TN Board Member Sheryl Lipman spoke with students at Germantown High School and at the University of Memphis about First Amendment issues.
- ACLU-TN Executive Director Hedy Weinberg spoke about anti-immigrant backlash after September 11 at the Tennessee Immigrants' Rights Conference in Nashville and about threats to civil liberties after September 11 at the Cumberland Greens Bioregional Council Winter Gathering.

- Weinberg gave a public lecture about religious freedom issues and spoke at a leadership seminar about the ACLU and leadership issues at Volunteer State Community College in Gallatin.
- Weinberg participated in a public program titled "Terrorism, Security, and the Public's Right to Know" at Middle Tennessee State University in Murfreesboro. The program was moderated by John Seigenthaler and included Michael Gartner, former president of NBC News, Judge Gilbert Merritt of the Sixth Circuit Court of Appeals, and Brigadier General Wendell Gilbert, deputy to Governor Sundquist for homeland security in Tennessee.
- Sweat participated in a panel discussion on religion in public schools at the annual Tennessee School Board Association meeting.
- ACLU-TN Social Work Intern Cheryl Demers staffed an anti-death penalty table at the annual African-American Churches Day on Capitol Hill.