

# The Vigil



American Civil Liberties Union of Tennessee

Summer 2001

## State Legislative Update

The Tennessee General Assembly began slowly and quietly in January and adjourned in July amidst public protest and chaos about legislative budget proposals. Throughout the seven-month session (to be remembered as the longest session in recent history), ACLU-TN remained a tenacious presence.

For the second 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 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. We focused on a range of civil liberties issues, including freedom of speech, religious freedom, privacy, reproductive freedom, and criminal justice. Our two legislative campaigns are:

### **Death Penalty Fairness Study Committee/ Moratorium on Executions (HB1566/SB1805)**

ACLU-TN (on behalf of Tennesseans for a Moratorium on Executions—TME) drafted legislation calling for the establishment of a Death Penalty Fairness Study Committee to examine issues of access to justice and for a moratorium on executions until the General Assembly has considered and acted upon the recommendations.

Representative Rob Briley (Nashville) and Senator Roscoe Dixon (Memphis) sponsored the bills and worked arduously to move the bills through committees. The Sundquist Administration actively lobbied against the bills. HB1566 was sent to a study committee where hearings will be scheduled in the fall. We are now working with the sponsors of the bills and TME to prepare for these hearings.

In order to strengthen our effort to successfully pass the moratorium legislation, we hope to: collect polling data about Tennesseans' opinions on the death penalty and alternatives to the death penalty; implement a media campaign to increase awareness of the moratorium effort and why it is necessary to ensure access to justice; and mobilize grassroots support for a moratorium. If you are interested in assisting with these efforts, please contact our office.

### **Constitutional Amendment on Abortion (SJR110)**

This dangerous constitutional amendment would exempt abortion rights from the privacy protection guaranteed under the State Constitution. This anti-choice legislative initiative is a direct result of the ACLU/Planned Parenthood victory in the Tennessee Supreme Court where the justices agreed that the State Constitution guarantees a woman's right to privacy regarding her right to seek an abortion. Ironically, the amendment's supporters are those legislators who typically support states' rights. Yet, this initiative effectively eliminates the Tennessee Constitution as the independent interpreter of state law.

While we organized grassroots opposition and lobbied vigorously against the amendment, it passed the Senate by a 21-10 vote; however, it did not move out of the House Subcommittee. Next year we will fight to defeat the resolution in the House.

Were it to pass out of the House, the resolution would be re-introduced in the 103rd General Assembly where it would need to receive 2/3 support from both chambers. If that were to happen, the amendment would be placed on the November 2006 election ballot.

If SJR110 passes and Roe v. Wade is overturned (a possibility if a new Supreme Court Justice is appointed), our State Constitution would not provide any additional privacy protection for women and abortion could be outlawed in the state. We are now planning an organizing and public education campaign.

Please let us know if you would be willing to help with this important campaign to protect a woman's right to abortion.

**The Tennessee legislature may have adjourned, but Congress is still in session and still considering bills that could threaten civil liberties. Join ACLU-TN's Legislative Alert Email Network to stay informed of pending civil liberties legislation!**

Send an email to: [aclutn@aclu-tn.org](mailto:aclutn@aclu-tn.org)

with "subscribe to legislative alert"  
in the subject line.

## Tennessee Volunteer Wins ACLU Scholarship for Activism

ACLU-TN is pleased to announce that office volunteer Eli Arnold, a recent graduate of Page High School in Franklin (Williamson County), has been awarded one of 12 National ACLU College Scholarships for Youth Activism.

The scholarships, distributed by the National ACLU office, were established through a gift from an anonymous donor to recognize the efforts of graduating seniors who have demonstrated a strong commitment to civil liberties throughout their careers in secondary school.

"We are delighted that Eli was selected as a scholarship winner and we are very proud of him," said Hedy Weinberg, Executive Director. "Eli sets an example for students across the state that public service and working to protect our constitutional guarantees offer many rewards. I have no doubt that he will bring to the community at large the commitment to and enthusiasm for civil liberties that he displayed while volunteering with us."

In March of this year, *The Tennessean* ran a feature article on Eli and his activism, primarily because Eli's personal beliefs contrast drastically with those of his conservative community and his conservative family. For example, Eli is proud to count himself as a member of many civil rights organizations, including ACLU, Amnesty International, the Southern Poverty Law Center, and NAACP.

Eli began his work with ACLU-TN last fall. Shortly before our Annual Membership Meeting featuring ACLU Death Penalty Project Director Diann Rust-Tierney, Eli, an ardent abolitionist, contacted the ACLU-TN office to make sure he could bring non-members to the pro-

gram. When he was told that non-members were welcome at the meeting, Eli prepared and distributed flyers about the event at his school. A few days later, Eli called the office again, this time interested in becoming an ACLU-TN volunteer. By the time the Membership Meeting rolled around, Eli was able to attend as both an ACLU member and an ACLU-TN volunteer.

For the rest of the school year, Eli made the hour-long round trip to the ACLU-TN office twice a week to volunteer. Eli answered phone calls and letters from people requesting assistance from ACLU-TN and helped with special projects, including our annual Bill of Rights Celebration.

Eli regularly took the ACLU position on issues back to his community. He eagerly asked questions and engaged ACLU-TN staff in discussion about civil liberties issues when he was in the office. Eli then shared what he learned with others through letters to the local newspapers and flyers he made and distributed at school.

"The most important thing I learned at ACLU-TN was that I do not have to look any farther than my own state to find the eradication of civil rights," Eli said. "Before, I saw the ACLU as an organization that helped people in *other* places where liberties were being removed. I now see that we here in Tennessee have a long road ahead of us before we reach a level of equality."

"The time I spent at ACLU-TN has opened new doors for me. Now I see a possible career for myself as an ACLU civil rights attorney. I want to give more than a monthly pledge. I want to actively participate in the restoration of civil rights through our judicial system. "

Eli graduated as valedictorian from Page High in May. He will use his \$4,000 scholarship when he attends St. John's College in Annapolis, Maryland this fall.

### Save the Dates!

**Saturday, September 22:**  
Annual Membership Meeting

**Tuesday, September 25:**  
Banned Books Week event

**Saturday, November 3:**  
Bill of Rights Celebration

More details about these events will be mailed in the upcoming months.

### ACLU on Ashcroft

Learn more about Attorney General John Ashcroft's record on civil liberties in the ACLU's report:

Not Moderate, Not Compassionate, Not Conservative:  
John Ashcroft's Radical Revisionism of Basic  
Constitutional Values in America

The report can be found online at:

<http://www.aclu.org/congress/ashcroftreport.pdf>

## Message from the Executive Director

The hot summer months are not slowing us down in the ACLU-TN office. We have a house full of volunteers who are involved in several exciting projects. Planning is now underway for our first ever Banned Books Week event at Davis-Kidd Booksellers in Nashville on September 25, our September 22 Annual Membership Meeting, and our November 3 Bill of Rights Celebration.

In an effort to expand public awareness of civil liberties, we are researching a range of topics (e.g., right to protest, right to privacy) and will be preparing brochures for public distribution. Also, we are completing a training manual for attorneys who are interested in serving as counsel for young women who need to go to court to seek a waiver to the parental consent requirement. In addition, our summer volunteers respond daily to the many calls and letters from Tennesseans seeking assistance in addressing civil liberties violations.

In June, Board Members Mona Frederick and Joe Sweat, our Administrative Coordinator Amy Drittler, and I attended the National ACLU Biennial in Miami. We enjoyed four days of visiting with civil libertarians from across the country, discussing cutting-edge civil liberties issues

and sharing "war stories." We also had the chance to bid a final farewell to Ira Glasser, who is retiring after 23 years as the National ACLU director.

I first met Ira 16 years ago in NYC, two months after I became ACLU-TN director. He is an extraordinary person - brilliant, witty, creative, and with a passion for civil liberties that is contagious. I always was appreciative of his ability to anchor current civil liberties controversies in the history of civil rights struggles. His annual "State of the Union" addresses to the state directors always re-energized me for my return home where the fight for freedom continues.

At the Biennial we also welcomed our wonderful new National Executive Director Anthony Romero, who begins in September. (see Romero article)

Please check out our website ([www.aclu-tn.org](http://www.aclu-tn.org)) and the exciting pages created by our multi-talented Administrative Coordinator Amy Drittler. Currently, our site averages 1,300 visitors a month. We are still working on our issues pages and hope in the future to include interactive media. Please share with us any comments about our site.

Enjoy the remaining summer months.

—Hedy

## Intern Spotlight

Jennifer Huddleston had seen how legislation affected real people during an internship with Crittenton Services, a Nashville agency dedicated to preventing teen pregnancy. After that experience, Jennifer, a senior social work student at Belmont University, wanted to find an internship where she could witness the formation of legislation. As an ACLU-TN intern during the spring semester, Jennifer received lots of exposure to ACLU-TN's lobbying activities in the Tennessee General Assembly.

Jennifer, who is from Nashville, was an integral part of ACLU-TN's lobbying efforts during the recent legislative session. She was responsible for creating ACLU-TN's legislative calendar each week. In addition, Jennifer also compiled and updated ACLU-TN's legislative charts, which documented the activity on bills we were tracking in the General Assembly. She also had the opportunity to go to the legislature with ACLU-TN lobbyists Hedy Weinberg and Joe Sweat to witness the lobbying process first-hand.

Besides being involved in ACLU-TN's legislative activities, Jennifer also worked with our advocacy program,

answering calls and letters from Tennesseans requesting assistance from ACLU-TN.

"My favorite part of my work at the ACLU was learning about the legislative process," Jennifer said. "It was very interesting to track legislation, chart the information, and go to legislative plaza. The experience of talking with representatives and senators and watching the process of moving legislation showed me how influencing policy provides the opportunity to touch the lives of many – which is my ultimate goal as a social worker."

Jennifer is the 2001 recipient of the Louise Carter Fallis Award for Outstanding Graduate in Social Work at Belmont. After graduating in May, Jennifer entered the graduate program at the University of Tennessee College of Social Work in Nashville. Once she completes her master's degree, Jennifer plans to start her career in Nashville. She hopes to become a lobbyist for a social service agency so she can work with an organization "that stands for a purpose."

## ACLU's Supreme Court Summary

The Supreme Court Term that ended in June included important rulings on free speech and privacy, immigrants' rights, civil rights and states' rights. But, the National ACLU said, the 2000 Term's place in history will inevitably be shaped by the ongoing debate over Bush v. Gore and the Court's unprecedented role in resolving the outcome of last year's presidential election.

"Despite our disagreement with many recent decisions by the Supreme Court, its credibility as an institution that acts on the basis of principle is critical over the long run in preserving civil liberties," said Steven R. Shapiro, national legal director of the ACLU. "If the public perceives that the Court is acting instead on the basis of political calculation, the fallout will damage not only the Court but also the rule of law," Shapiro added.

The question arises after Bush v. Gore because of the seeming disparity between what the Court said and what the Court did. The majority opinion purported to rest on the unassailable principle that every vote in a democracy should be entitled to equal weight. However, the Court never adequately explained how that principle was applied to validate an election plagued by inaccuracies and inequities that were reported on a daily basis in the worldwide press.

Since last fall, the ACLU and other civil rights groups have filed a series of lawsuits in Florida and elsewhere challenging the reliance on flawed electoral systems that not only fail to count every vote equally, but often operate in a racially discriminatory manner.

"The legacy of Bush v. Gore will be shaped in large part by the Court's ultimate response to these other challenges," Shapiro noted. "We will then have a better idea of whether the Court actually announced a constitutional principle in Bush v. Gore, or merely a result."

The Court's record this year shows that it remains generally sympathetic on free speech issues and has become more receptive to privacy claims. The Court also issued a severe rebuke to the immigration service this Term by holding in two landmark decisions that the government may not deport aliens without judicial review, and may not indefinitely detain aliens it cannot deport.

However, with the notable exception of the Court's immigration decisions, "its march through the federal civil rights laws has begun to resemble a scorched earth policy," Shapiro said.

"Just as the Warren Court is remembered for its record on individual rights, the Rehnquist Court will be remembered for its focus on states' rights," Shapiro explained. "By aggressively questioning congressional authority to remedy persistent discrimination in American life, the Court has seriously undermined civil rights enforcement and contributed to the greatest reallocation of government power since the New Deal."

ACLU's Supreme Court Summary is available online at:

[http://www.aclu.org/court/court\\_summary00.pdf](http://www.aclu.org/court/court_summary00.pdf)

## Privacy Under Siege on Our Public Streets

In recent weeks, ACLU has been involved in highlighting the alarming privacy invasion caused by the use of advanced surveillance technology on our public streets.

Officials in Tampa, Florida, have installed a surveillance system with facial recognition capabilities on the streets of the city's entertainment district. The system, which is similar to software tested at this year's Super Bowl, scans the faces of passersby to see if they match photographs of individuals with criminal records. The ACLU of Florida has demanded information from city officials regarding what is being done with the captured video images of the thousands of unsuspecting people on Tampa's public streets.

The growing interest of police departments and city officials nationwide in this type of surveillance prompted a joint statement from National ACLU and House Majority

Leader Dick Armey (R-TX) in July.

In the statement, ACLU and Majority Leader Armey called on the General Accounting Office to study the extent to which the federal government is funding facial recognition technologies. Majority Leader Armey also pledged to ask the relevant House Committees to hold hearings on law enforcement use of surveillance technology, a request supported by ACLU.

In recent tests, facial recognition technology was proven to be ineffective 43 percent of the time. Reliance on this technology will lead the police to stop people who have done nothing wrong, and may lead to high-tech racial profiling should surveillance cameras be placed in areas populated primarily by members of ethnic and racial minority groups.



## Romero Named National ACLU Executive Director

In September, Anthony Romero will become the sixth executive director in the National ACLU's 81-year history. He was selected unanimously by the ACLU Board of Directors at their April meeting.

Romero is currently the Ford Foundation's Director of Human Rights and International Cooperation, the Foundation's largest program with \$90 million in grants last year. He joined Ford in 1992 as a program officer in the Rights and Social Justice Program, and after less than four years, was promoted to become one of the youngest Directors in Ford's history.

Born in the Bronx to Puerto Rican parents and fluent in Spanish, Romero, who is the first in his family to complete high school, graduated from Princeton University and Stanford Law School. He becomes the first Latino and gay man to head the ACLU.

In accepting the position he said, "I hope to begin my

tenure as the leader of this vitally important organization by sparking a new dialogue about the bedrock values of American democracy. Even though we have come so far, our nation faces serious and continuing civil liberties challenges - widespread racial profiling, threats to reproductive freedom, hostility to immigrants, a burgeoning prison population and, most importantly, a generation of young people who do not fully embrace or appreciate the need for constant vigilance and defense of our constitutional freedoms....Leading the ACLU will be a life's dream and aspiration come true."

Outgoing Executive Director Ira Glasser said of his successor, "The ACLU Executive Director is the conductor of an often brassy orchestra. He does not need to play all the instruments, but must be able to envision, organize and lead the performance. I am confident that Anthony Romero is the best person to be the ACLU's next conductor."

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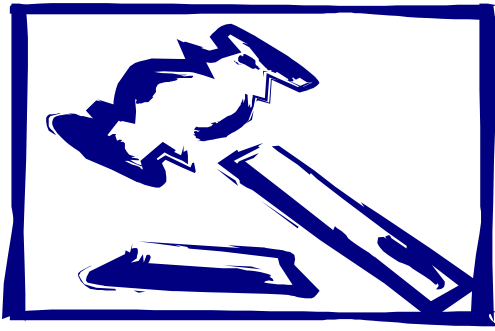
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### Settlement in Wilson County

ACLU-TN and the Wilson County School Board have reached a settlement, ending a year-long lawsuit filed to protect students in the district from being punished for protesting the district's dress code policy.

ACLU-TN filed a lawsuit against the school board in 2000 on behalf of Mt. Juliet High School students Cory and Kista Vinson, who were suspended for protesting the dress code by wearing logos on their dress-code compliant shirts that said, "The school board voted and all I got was this lousy uniform" and "I miss my real clothes."

In early May, the Wilson County School Board voted to amend its dress code policy to permit students to wear 4-by-3-inch logos on their clothing, including protest logos such as the ones Cory and Kista wore.

As a condition of the settlement, the school board has agreed to expunge the disciplinary records of Cory and Kista, and the board is enjoined from taking any further disciplinary action against any students who wear protest logos.

## In the Courts and...

### Eldridge Ruling

On May 2, 2001, the Tennessee Supreme Court ruled in Eldridge v. Eldridge that lesbian and gay parents should not be barred from living with their partners in order to have overnight visitation with their children.

In an unanimous ruling, the Court held that an appeals court erred when it barred Julia Eldridge from having her partner in the couple's home when Julia's daughter was visiting. The Court reaffirmed the principle that there must be some evidence of harm to the child before a parent's visitation can be restricted, including parents who are lesbian or gay.

ACLU-TN filed an amicus brief outlining the privacy concerns raised by the case, and ACLU-TN Cooperating Attorney Abby Rubenfeld was granted permission by the Court to present oral arguments before the Justices.

ACLU-TN's amicus argued that the right to privacy under the Tennessee constitution includes the right to parent without government interference, and that this right cannot be restricted based on the sexual orientation of the parent.

This case is an important victory in the struggle to secure equal protection for children of lesbian and gay parents.

## The New Administration Proves the Slogan: "The Fight for Liberty Never Stays Won"

President George W. Bush and Attorney General John Ashcroft have made it clear that they will drastically alter the make-up of the Supreme Court and the entire federal bench. By appointing anti-civil liberties justices, virtually all personal freedoms could be threatened. A woman's right to choose, affirmative action programs, and advances in gay rights all will be overturned. It is critical that you strengthen civil liberties by doing two things: recruit new ACLU-TN members (memberships begin at \$20 and are not tax-deductible); and

**Make a tax-deductible contribution to assist with our advocacy, litigation and public education programs:**

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# ... In the Communities



## Church and State in Union County

Several Union County parents contacted ACLU-TN this spring concerning a possible violation of the separation of church and state. Each May, Union County is home to a religious Crusade that runs 90 minutes a day for several days and takes place during school time. The Union County School Board allows elementary, middle and high school students to attend the Crusade, which is held in a park adjacent to Union County High School in Maynardville.

The parents we spoke to were concerned that the Union County School District was violating the constitutionally-mandated separation of church and state by being too involved in the organization and promotion of the event. For example, teachers distribute and collect permission slips to attend the Crusade at school. Students also have received flyers at school that explain how to conduct themselves and behave appropriately while at the Crusade.

The Crusade was started in 1998 by Gary Beeler, minister of Fairview Baptist Church in Luttrell. The Crusade has been described by Beeler as an "old-time church revival," where "preaching, singing, praying and worshipping" take place.

Although the majority of Union County students go to the Crusade (this year's attendance was estimated at about 2,000 out of 3,000 students), those that do not wish to attend are required to come to school on Crusade days. However, teachers do not teach as usual due to the large number of absences. Instead, the younger students spend the day coloring and the older students watch movies.

Several parents also contacted ACLU-TN last year about the Crusade. In response, ACLU-TN sent a letter to the Superintendent in Union County expressing our concerns regarding the school's involvement in a private religious event.

ACLU-TN identified a potential plaintiff to challenge the school's involvement in the Crusade and arranged for the family to meet with an ACLU cooperating attorney in Knoxville. After discussing potential litigation, the family chose not to pursue the challenge. However, ACLU-TN is continuing to gather information and is committed to intervening on behalf of other concerned families next year.

## Protecting Free Speech for Students

On March 29, Becky Madsen, a ninth grader at East Literature Magnet High School in Nashville, passed out informational flyers at her school. Becky, a vegetarian, distributed flyers produced by People for the Ethical Treatment of Animals (PETA) which discussed the animal cruelty practices of a major fast food chain and included a disturbing graphic illustrating these abuses. Becky passed out the flyers away from class time and did not pass them out in a disruptive manner.

The next day, Becky was called into the principal's office and told she could no longer distribute the flyers. Becky was never given a specific reason why she had to stop passing out the flyers, only that school board policy prohibited her actions. Becky sensed that the flyer's graphic might be the problem and proposed a compromise plan: she would bring new flyers to school that did not contain the disturbing photo. The principal refused Becky's request.

Becky then contacted ACLU-TN about the situation. ACLU-TN wrote a letter to the principal of East Literature Magnet on Becky's behalf, asking the school to recognize Becky's First Amendment right to distribute informational materials at school in a non-disruptive manner. We also urged the school to honor Becky's proposed compromise to pass out similar flyers with no graphic. ACLU-TN believed Becky's extracurricular interest in social issues and her desire to share information with her peers should be encouraged, not stifled.

As a result of our intervention, Becky was given permission to pass out a new version of the flyer, which she did in late May. Becky also distributed ACLU students' rights flyers entitled "Your Right to Free Expression" at her school.

Currently, a new school board policy is being drafted to clarify students' right to freely distribute literature in their schools.

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# ACLU-TN Around the State

- ACLU-TN Board Member Bruce Kramer discussed criminal justice issues at a meeting of the American Criminal Association at the University of Memphis.
- ACLU-TN Board Member Sheri Lipman spoke about reproductive freedom at a meeting of the University of Tennessee Medical Students for Choice.
- ACLU-TN National Board Representative Joe Sweat talked with young people at the YMCA State Conference about church/state issues.
- ACLU-TN Executive Director Hedy Weinberg discussed religion and government at Issues Day at University School of Nashville.
- Weinberg appeared on CNN's "Talkback Live" to discuss the Pledge of Allegiance and the right of a state legislator not to recite the Pledge.
- Kramer gave a presentation on access to court records at the Federal Practice Seminar in Memphis.
- Weinberg talked to the 8th grade class at The Temple in Nashville about students' rights.
- Kramer spoke on the topic "What is Free Speech?" to Leadership Memphis.
- Sweat discussed students' rights and the ACLU at Blackman and Riverdale High Schools in Rutherford County.
- ACLU-TN held a press conference to voice privacy concerns over legislation being considered in the Tennessee General Assembly which would require any person pawning an item at a pawnshop to submit a thumbprint.