

ACLU-TN Successfully Defends Christian Services for Homeless in Public Park



Students from Belmont, Middle Tennessee State and Tennessee Tech who hold church services with the homeless in a Metro Nashville park were allowed to continue conducting services after the ACLU of Tennessee successfully negotiated with the Metro Board of Parks and Recreation to revise a policy that unfairly blocked religious groups' regular use of park space.

"I understand the government's desire to enforce the law," said Cory Wigal, "Christ-committed" Belmont student and "Church on Church Street" leader, "but when the law infringes upon our personal right to speak our minds and our human longing to share our hearts, we cannot be silent. I am so grateful for this peaceful resolution."

Beginning in September 2008, Wigal and several other students were led to organize the "Church on Church Street" in the park located across from the downtown library. A mix of students and homeless people gathered to worship together in the public space on Sunday mornings until March 2009, when Metro police shut down the services because they did not have a permit. The Board of Parks and Recreation denied students' subsequent attempts to obtain a permit because of a board policy stating that "No park facility...may be used for a religious activity on a regular or permanent basis."

Frustrated in his attempts to obtain a permit, Wigal contacted ACLU-TN, which sent a demand letter to the Metro Board of Parks and Recreation explaining that the Board's policy unconstitutionally burdened the church's rights to free speech and free exercise of religion. In an effort to avoid litigation, ACLU-TN spent months negotiating with the Board of Parks and Recreation to modify the policy so that it no longer infringed on the free exercise rights of people across the city who want to worship regularly in public spaces, using the parks in the same manner that other groups do.

Ultimately the Board approved ACLU-TN-supported language that allows groups of 25 and fewer people to meet regularly in public parks without having to obtain a permit. The new language also makes the policy uniform for religious and non-religious groups alike.

Rights of Lesbian Mother Protected in Gibson County

In 2008, ACLU-TN client Angel Chandler and her ex-husband appeared before the Gibson County Chancery Court to modify their parenting plan for custody and visitation of their two teenage children. The trial court judge imposed a "paramour provision" barring Angel's long-time lesbian partner from being in the home overnight during visits with her children. Despite a court-ordered psychological evaluation finding Chandler's partner was a positive influence on the children, the trial judge imposed the restriction, claiming that he was required to do so by local court rule.

ACLU appealed and an appellate court made it clear that the mandatory nature of the local rule was improper and that the trial judge should have based his determination on the children's best interests. In March 2010, after another hearing, the trial judge again imposed the paramour restriction. In June, a three-judge panel of the Tennessee Court of Appeals unanimously found that "the record contains evidence demonstrating that a paramour provision is contrary to the best interests of the children."

The rebuke from the appeals court sends a strong message that these kinds of restrictions are unduly burdensome on lesbians and gays who are just as capable of being good parents but who don't have the option of marrying.

Standing Up for Religious Freedom

By Hedy Weinberg, ACLU-TN Executive Director



“Everybody knows [Muslims] are trying to kill us,” said one woman testifying before the Rutherford County Commission about the proposed mosque just outside of Murfreesboro, Tennessee. “I’m afraid we’ll have a training facility in Rutherford County,” said another. Their sentiments were later echoed by a gubernatorial candidate who questioned whether Islam “is actually a religion...or a cult.” On August 28, rhetoric turned to violence as a fire was set at the mosque’s construction site.

Voices of prejudice and hatred are filling the airwaves--many of them, unfortunately, from Tennessee. Now is the time to push back against the demagoguery. Now is the time to let the country, the state, our leaders, and, especially, the Islamic Center of Murfreesboro community, know that many in Tennessee support the right of all people to worship, or not, as they choose.

Religious freedom is one of America’s most fundamental liberties, and a central principle upon which our nation was founded. For over 225 years, even in the face of opposition, religious pluralism and tolerance have sustained and helped to define our nation. Still, today, we must continue to aggressively oppose religious discrimination rooted in cultural stereotyping, and to resist those who seek to trade away our most precious values because of fear or hatred, or to gain political advantage.

Federal law protects the right to build a church, synagogue, mosque or any other house of worship. In fact, in 2000, Congress recognized the need to protect religious freedom by passing legislation against religious discrimination in zoning regulations. The Religious Land Use and Institutionalized Persons Act, passed with overwhelming bipartisan support, prohibits local governments from using zoning regulations to substantially burden religious exercise or to discriminate against houses of worship. This law was passed to ensure that in the face of controversy, local governments do not play favorites with religious groups or prevent certain groups from practicing their religion.

Preventing Muslims or any other group from practicing their faith is unconstitutional and un-American. And denying them a permit to construct a place of worship because of their faith violates the law.

Across the country—from New York to Ohio, from Florida to Kentucky, from Wisconsin to Tennessee— we are confronting rampant xenophobia fueled by the election season and the political posturing that accompanies it. Some fear-mongering candidates are disseminating the erroneous perception that Islamic religious centers are terrorist training camps, exploiting people’s desire for security by creating false dangers to target for their own political gain.

But in times of fear, upholding our values is more important than ever. Our political leaders and the constituents they represent must be reminded that discrimination is a losing proposition and that adherence to the Constitution is not optional. We must ensure that those who have lived and worshipped peacefully in Tennessee for decades have the right to continue to do so.

ACLU-TN will continue to defend the right of all religious groups—from majority faiths to marginalized religions—to establish places of worship and to protect Tennesseans’ right to pray, or not, as they choose. Preventing Muslims or any other group from freely practicing their faith challenges the principles of equal treatment and equal protection and strikes against our core American values.

We must not let those who seek to undermine our constitutional guarantees succeed by forcing us to betray our most fundamental American liberties. It is now time to stand up for religious liberty and the right of ALL Tennesseans to practice their faith.

Together we will ensure that religious freedom can and will flourish in Tennessee.

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**Please join ACLU-TN by signing the
“I Stand for Religious Freedom in Tennessee” petition at <http://bit.ly/cop8zp>.**

The petition will be delivered to the leadership of the Islamic Center of Murfreesboro so that they may know that thousands of Tennesseans across the state support their right to construct a place of worship and to practice their faith.

The Tennessee General Assembly: An All-Out Assault on Civil Liberties

The second year of the two-year 106th Tennessee General Assembly adjourned in early June after an all-out assault on civil liberties. Our work has become even more challenging at the legislature since legislative sessions just prior to primaries (as this was) and a November election always result in a flurry of anti-civil liberties bills and less willingness on the part of legislators to stand up for the Bill of Rights.

ACLU-TN lobbied and monitored over 75 bills focusing on reproductive freedom, LGBT rights, freedom of speech, voting rights, criminal justice, students' rights and immigrants' rights. Most of our efforts were focused on trying to defeat anti-civil liberties bills.

Working in a coalition with the business community and immigrant rights advocates, we succeeded in defeating the English-only driver license bill. Working with the Tennessee Department of Education and the Tennessee Education Association, we were able to garner enough opposition to send the "Don't Say Gay in School" bill to a summer study committee.

Unfortunately, a number of bad civil liberties bills passed which resulted in new laws: 1) requiring the posting of notices in doctors' offices stating that abortions cannot be coerced; 2) allowing random drug testing of public school students participating in extracurricular activities; and 3) effectively forcing all Tennesseans who could be perceived as foreign-born to "carry their papers at all times," similar to Arizona's racial profiling law. This bill requires sheriffs statewide to send booking information to U.S. Immigration and Customs Enforcement (ICE) for all people who are arrested who cannot prove their legal status.

In addition, we urged the Governor to veto a bill which prohibits coverage for abortion services under any health care plan established under the new federal health care reform law. While he did not veto the bill, he let it become law without his signature and he stated his opposition to it. We also sent the Governor

a letter asking him to veto the Arizona-like racial profiling law. We were disappointed that he chose to sign the bill into law, citing his concerns that it would affect Democratic candidates who are running for office.

ACLU-TN is now reviewing these recently enacted anti-civil liberties laws to identify whether there are constitutional challenges we might bring.

Sadly, the two bills ACLU-TN initiated (i.e. drafted, found sponsors for and lobbied) passed on the Senate Floor but failed to get out of the House. The bill prohibiting the shackling of pregnant incarcerated women was gutted on the House Floor with amendments. When we were unable to remove the amendments, we decided with the sponsors not to pursue a final vote. At our request, the Administration also attempted to persuade the amendment sponsor to remove his amendment, but to no avail. The second bill prohibiting the implementation of REAL ID was defeated in the House Transportation Committee after a series of hearings. We lobbied vigorously in support of the bill and testified in committee. Opposition came from the TN Department of Safety and the Airport Authority.

The success of our legislative advocacy program depends on Tennesseans across the state who respond to our action alerts and contact their legislators to vote "the right way," protecting and promoting civil liberties. Please sign up to receive messages from our Alert Network (<http://bit.ly/c7WwNW>). Our new e-advocacy system makes it easy - we send you information on pending bills and all you have to do is put in your zip code and a letter will be generated to your lawmakers that you can edit and send. Legislators have told us that even a handful of their constituents can affect their decision-making.

To learn more about these bills and others that ACLU-TN focused on visit <http://www.aclu-tn.org/legislature.htm>

Please join us for the

Bill of Rights Celebration

Saturday, November 20, 6:30 p.m.
Loews Vanderbilt Hotel, Nashville

Honoree Justice Adolpho A. Birch, Jr.

will receive an ACLU-TN Lifetime Achievement Award for his enduring commitment to equality and justice, from his defense of students at the Nashville lunch-counter sit-ins to his courageous promotion of access to justice and fair treatment for all.

Honoree Marianne Bentley

will be awarded the Heather Harper Volunteer Award in recognition of her outstanding, long-term volunteer service with ACLU-TN in defense of civil liberties.

Special Guest Performer Nanci Griffith

is a Grammy-winning singer-songwriter. Her latest album is *The Loving Kind*.

Guest Speaker Omar C. Jadwat

is co-lead counsel in the recent lawsuit challenging Arizona's law requiring police to demand "papers" from people whom they suspect are undocumented. He is an ACLU Immigrants' Rights Project attorney.

The evening will also include a silent auction and dinner. We look forward to seeing you there. For more information, please visit <http://www.aclu-tn.org/event112010.htm> or call (615) 320-7142.



Please RSVP by November 10 by mailing this to P.O. Box 120160, Nashville, TN 37212
or registering online at <http://www.aclu-tn.org/event112010.htm>

Special Sponsorship Levels

Special Sponsors are listed in the program & invited to a pre-event reception with the honorees.

___ Guardian of Liberty (\$2,500 — includes a table for ten and an invitation for two to the reception)

___ Host (\$600 — includes two dinner reservations and an invitation for two to the reception)

___ Patron (\$300 — includes one dinner reservation and an invitation for one to the reception)

Bill of Rights Celebration Guests

___ Please make ___ additional dinner reservations at \$120 per person.

___ Please reserve ___ additional tables for 10 at \$1200 per table.

\$85 of each reservation or
\$850 per table is tax deductible

Supporters

___ I/we cannot attend; please accept my tax-deductible donation of \$_____

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“Bush Lied...They Died”: Free Speech in Greene County

When peace activist Dan Frazier heard he was being sued in a \$40 billion class action lawsuit for selling anti-war t-shirts over the Internet, he knew just who to call.

The suit was brought by the families of fallen soldiers over a shirt Frazier created that criticized the then president with the phrase “Bush Lied...They Died” superimposed over the names of 4,058 troops killed in Iraq. Through his on-line store, Frazier sold the t-shirts and contributed a portion of each sale to an organization that benefits families of fallen soldiers.

ACLU-TN defended Frazier in federal court in the Eastern District of Tennessee, asserting that his activities are protected political speech and that the lawsuit amounted to nothing more than a Strategic Lawsuit Against Public Participation in an effort to silence his speech.

In December 2008 ACLU-TN filed a Motion to Dismiss. In May 2010, Judge Greer did just that, holding, “The views expressed by the defendants may be unpopular and even offensive to some people, but they do not rise to the level of legal outrageous conduct.” The Court further found that Frazier did not use soldiers’ names to endorse or encourage others to buy the shirts, but “to make a political statement, which is an exercise of free speech.”

When the Chalkboard Becomes a Pulpit: Religion in Cheatham & Wilson County Schools

In the spring of 2009, upset by the Cheatham County school system’s pattern and practice of the promotion and endorsement of religious activity, two former students and two families of current students contacted ACLU-TN. After six months of fruitless negotiations to change school board policy, ACLU-TN filed suit, alleging the distribution of Gideons Bibles in the classrooms, teacher-endorsed prayer before football games and school-sponsored prayer at graduation ceremonies. The complaint also alleged the teaching of creationism and intelligent design as well as the display of a cross on the wall in a high school classroom. In March 2010, four months later, the school district voted to enter into an agreed order with ACLU-TN that ended the unconstitutional pattern and practice of religious activities in the Cheatham County School System.

In Wilson County, the Doe family contacted ACLU-TN after their daughter, Joann, was brought into the gym at the start of school along with all of the fifth-graders. The principal introduced representatives of The Gideons and spoke of the importance of receiving her first Bible. Joann’s teacher informed the students that she would be calling up each row from the bleachers to take a Bible, and that doing so was not necessary or mandatory. However, every student came forward to take one, including Joann, who said she did so only because of peer pressure and fear of ostracism. ACLU-TN sent a demand letter and a copy of the complaint we intended to file to the school board’s attorney to see if a settlement could be reached without the necessity of litigation. Ultimately Wilson County school officials agreed to end the annual, unconstitutional distribution of Bibles to students.



“I Love Lady Gay Gay”: Student Speech in Robertson County

When Cole Goforth, a Greenbrier High School freshman, was sent home from school on April 5 for wearing a T-shirt that said, “I [Love] Lady Gay Gay,” he and his mother contacted ACLU-TN. School officials also told Cole that he could not even wear a T-shirt in support of marriage equality because doing so was inherently “disruptive.”

Goforth had long been subjected to daily anti-gay harassment at school, including threats of physical violence. He was not only unable to get relief from the school, he was told by school employees that he had “brought [harassment] on himself by coming out.”

ACLU-TN immediately began discussions with

school officials and quickly dispelled the notion that the harassment the student experienced at school was sufficient justification for censoring his speech.

Ultimately, ACLU-TN successfully negotiated an agreement with school officials that they will stop censoring students from wearing shirts expressing pro-gay messages. The school will also provide training on its anti-bullying policy to staff and students to ensure that it is clear that harassment of any student, regardless of sexual orientation, is not acceptable.

ACLU-TN would like to thank all of the cooperating attorneys who assisted with the cases in this newsletter: Lucian T. Pera & Brian S. Faughnan of Adams and Reese LLP; George E. Barrett & Douglas S. Johnston, Jr. of Barrett Johnston, LLC; C. David Briley of Bone McAllester Norton PLLC; Joseph Allen Kelly & William N. Helou of MGLAW PLLC; Edmund J. Schmidt III of the Law Office of Edmund J. Schmidt; Michael B. Bressman & the students of the Intellectual Property and the Arts Clinic at Vanderbilt Law School



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Youth in Action: Know Your Rights, Make Some Change

October 30, 9: 30 a.m. - 4:30 p.m.

Youth Opportunity Center,
1702 Charlotte Pike, Nashville, TN

A free conference for high schoolers from across the state to learn about students' rights in public schools and in the community. Topics include: Freedom of Expression, Street Law, Privacy Rights, Religion in Schools, LGBT Students' Rights and Organizing for Change 101

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