

Life After DOMA in Tennessee

In the recent ACLU lawsuit *United States v. Windsor*, the U.S. Supreme Court struck down the core of the Defense of Marriage Act, affirming that all legally-married couples deserve equal respect and treatment under the law (for more on the case, see p. 2). However, what this decision means on a practical level for Tennesseans is still unfolding.



Tennessee's constitution was amended in 2006 to prohibit same-sex couples from marrying. The DOMA decision does not change that. It does, however, mean that same-sex couples living in Tennessee who were legally married elsewhere should be treated as married by the federal government.

There are more than 1,100 places in federal law where a protection or responsibility is based on marital status, including federal student aid, social security, military benefits, health care, taxes, immigration, family medical leave and more.

Federal programs differ in the ways they determine marital status—some look to the law in the state where a couple married, while others look to the law in a state where a couple resides. More information on specific federal programs can be found at <http://www.aclu-tn.org/TNAfterDOMA.html>.

Access to the full range of federal marital protections will take some work and time to achieve, especially since Tennessee's ban on marriage equality will likely pose obstacles for legally-married couples and surviving spouses in accessing federal protections and responsibilities. ACLU-TN's immediate focus is on mobilizing support for the federal Respect for Marriage Act. This legislation would ensure that legally married same-sex couples can enjoy the benefits and protections of marriage for all federal programs even if they live in a state like Tennessee where their marriage is not recognized.

While there is still work to be done in Tennessee, the DOMA victory gives us additional momentum as we continue to mobilize and organize to achieve LGBT equality in our own state.

**Are you in a legal same-sex marriage
and being denied federal benefits?**

**We want to hear from you.
www.aclu-tn.org/gethelp.htm**



From the Executive Director...

Hedy Weinberg

In two landmark decisions, the United States Supreme Court—in the last week of its 2012 term—simultaneously advanced and attacked the civil rights landscape in our country. In *United States v. Windsor*, the Court struck down the last federal law on the books mandating discrimination based on sexual orientation, advancing equality and fairness for gay men and lesbians. In *Shelby v. Holder*, however, the Court removed substantial federal oversight of state election laws, jeopardizing fair and equal elections.



The *Windsor* decision is a ringing victory not only for loving same-sex couples and their families but for all Americans who believe in fairness and equality. In striking down Section 3 of the Defense of Marriage Act, the Court ruled that it is discriminatory for the federal government to treat legally-married same-sex couples differently from legally-married heterosexual couples when determining eligibility for federal benefits and programs. Today 13 states and the District of Columbia issue marriage licenses to same-sex couples. While the Tennessee Constitution prohibits same-sex couples

from marrying in this state, those same-sex couples who married elsewhere should now be eligible to receive federal benefits and protections.

In *Shelby*, the Court effectively gutted the Voting Rights Act (VRA). Its decision removed the VRA's requirement that targeted states with a history of egregious, persistent discrimination obtain federal approval prior to enacting election laws until Congress can determine a new formula to identify which jurisdictions should be subject to such preclearance. The Court said that the existing formula was "outdated," yet it was just in 2006 that the VRA, perceived as one of the most effective civil rights measures the country has ever enacted, was reauthorized by a huge bipartisan majority. Congress' reauthorization of the VRA was crucial to counteracting discriminatory measures such as photo ID requirements, reduced hours at the polls and shortened early voting periods. Though more subtle in their approach to disenfranchisement than the blatant literacy tests or poll taxes of old, these discriminatory measures nonetheless effectively block access to the ballot for seniors, people of color, people with disabilities and limited-income persons. Indeed, in the wake of the *Shelby* ruling, states like Texas and South Carolina, which are no longer required to seek preclearance, are already aggressively pursuing initiatives which threaten free elections.

Both *Windsor* and *Shelby* have important implications for civil rights and civil liberties advocacy. The *Windsor* decision gives further momentum to the mobilization for equal treatment of LGBT individuals in all realms of life, including at school, in the workplace, and at home. The *Shelby* decision compels us to broaden and mobilize state coalitions to lobby against discriminatory voting legislation and to urge Congress to restore the Voting Rights Act to ensure that all citizens can freely cast their votes. These decisions remind us once again that, in the words of ACLU founder Roger Baldwin, "the fight for civil liberties never stays won." I hope you will join us as we continue our pursuit of equality and justice for all Americans.

NOTE: This article is excerpted from an op ed that ran in *The Tennessean* on July 16, 2013.

Defending Religious Freedom in Cumberland County

When a concerned Cumberland County parent contacted ACLU-TN because his son felt pressured to take a Bible during a classroom presentation, we immediately stepped in to protect the family's religious freedom. Members of Gideons International had been allowed into an elementary school classroom and the teacher called students to the front of the class to choose whether or not to take a Bible—a clear violation of the Establishment Clause of the First Amendment.

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VICTORY

for Occupy Nashville

In a ruling underscoring Tennesseans' right to political speech, a federal judge ruled in June that the state of Tennessee's arrest of Occupy Nashville protesters was an unconstitutional violation of their First Amendment rights .

ACLU-TN filed the lawsuit, *Occupy Nashville et. al., v. Haslam et. al.*, in October 2011 after the State of Tennessee met in secret and revised the rules controlling Legislative Plaza and then arrested the Occupy Nashville demonstrators under the new rules.

In the ruling, Judge Aleta A. Trauger wrote, "The First Amendment cannot yield to the enforcement of state regulations that have no legal effect...In choosing to adopt and implement new regulations by fiat without seeking necessary approval from the Attorney General, they made an unreasonable choice that violated the plaintiffs' constitutional rights in multiple respects."

Zimmerman Verdict Must Be a Catalyst

The shooting death of unarmed 17-year-old Trayvon Martin brings to the forefront the tragic consequences that can come from seeing the world through a lens of racial stereotypes. The confrontation that resulted in Trayvon Martin's death occurred because George Zimmerman saw a young African-American male as a threat to his community.

We must use the Zimmerman verdict as a catalyst to seek reforms to a system rife with racial injustice, to ensure that there is not another Trayvon Martin.

In Tennessee and nationwide, ACLU is committed to ending policies in our schools and in our criminal justice system that lead to the removal, arrest and incarceration of people of color at alarmingly disproportionate and discriminatory rates. In the wake of the trial, we must join together to increase awareness about racial profiling and pursue legislation that will prohibit racial profiling and lead to reforms in mandatory sentencing. Our collective task now, indeed, our mandate, is to hasten the end of racial profiling and strengthen the movement to ensure racial justice for everyone.



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ACLU-TN is frequently contacted by families concerned about school-sponsored religious activities taking place in their children's schools. In the past several years, we have successfully challenged such practices in Sumner, Cheatham and Wilson counties in court.



In this case, we were pleased that we were able to work with the school board to come to an agreement stating that all Cumberland County schools would permanently refrain from any such practices on school grounds during school hours. Under the agreement, teachers will also receive training on what is and is not constitutionally-permissible. The agreement ensures that all Cumberland County students will be treated fairly and equally, regardless of their religion, when they go to school.