

**Testimony Presented by the
American Civil Liberties Union of Pennsylvania
On House Bill 1271**

To

Pennsylvania House Committee on Labor Relations

August 23, 2006

Good morning members of the Committee. My name is Larry Frankel and I am the Legislative Director for the American Civil Liberties Union of Pennsylvania. On behalf of more than 19,000 members of the ACLU of Pennsylvania, I would like to thank you for inviting us to address the merits of House Bill 1271.

This legislation would prohibit employment related discrimination against person who use a lawful product or participate in a lawful activity during non-work hours. We support this legislation because it advances every Pennsylvanian's interest in privacy. It also appropriately limits the ability of an employer to control their employees during non-work hours. While we do not doubt that employers have a strong interest in what their employees do during the work day, we think that employers have no right to control the private lives of their employees or impose their views on what employees should or should not be doing when they are at home or elsewhere during their free time.

The legislation appropriately creates an exception if the use of a lawful product or participation in a lawful activity actually impairs the employee's ability to perform the employee's assigned duties. This exception provides sufficient protection for the employer's interest in on the job performance.

This legislation will provide protection to employees who engage in a range of lawful activities. For example, employees who are opposed to the war in Iraq should be able, during non-work hours, to attend protest marches demonstrations and rallies in opposition to the war in Iraq. They should also be able to write letters to the editor and call radio talk shows to express their opinions. An employer, who supports the war, while entitled to have his or her opinion about that conflict, should not be able to discipline employees who engage in the kinds of activities that demonstrate their opposition to this war. This legislation will protect employees from retaliatory action by the employer for their having been involved in the lawful activity of expressing their political views.

A similar analysis would apply in the situation of an employer who supports abortion rights. That employer would be barred from disciplining any of his employees who, on their days off, protest outside women's health care facilities. House Bill 1271 would provide reasonable protection for employees who wish to spend their own time engaged in political advocacy work.

The bill would reach other forms of lawful activity such as recreational pursuits. While some employers might prefer their employees not spend their weekends participating in hang gliding, motorcycling (with or without a helmet), or bungee-jumping, it really is not the employer's business to attempt to control the recreational activities of his employees. House Bill 1271 simply makes it clear that it is not for the employer to decide how employees spend their non-work hours.

Inevitably opponents of this bill will call this a smoker's rights bill. And the ACLU does not deny that this bill raises the issue of whether it is appropriate to limit an employer's ability to treat employees who smoke differently from employees who do not smoke. But it does a great disservice to those who support the bill and who are concerned about the problem of employers attempting to control the off duty activities of employees to characterize this as simply a smoker's rights bill.

Let me be clear this bill does not attempt to limit an employer's right to regulate smoking in the workplace. Rather, this legislation is an attempt to limit an employer's ability to regulate employees' use of lawful products during non-work hours. That lawful product could be cigarettes, over the counter medication or even a competitor's product.

Whatever the lawful product, the issue remains the same in our eyes. We firmly believe that employers should not be permitted to discriminate just because they disapprove of what an employee does during non-work hours. People who come to their job and perform their duties should not be subjected to adverse actions at work because of what they decided to do or consume on the weekend or after they have left work for the day.

Finally, please note that I have attached to my testimony a briefing paper produced by the National Workrights Institute. That report, entitled "Lifestyle Discrimination: Employer control of legal off duty employee activities," provides further arguments as to why this kind of legislation is so necessary.

Thank you again for inviting me to testify. I will try to answer any questions you may have.