

**AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA  
LEGISLATIVE DEPARTMENT REPORT  
2005-2006 Legislative Session**

**Submitted by Larry Frankel, Legislative Director**

The ACLU of Pennsylvania enjoyed a number of legislative victories over the last two years. Many of our successes were the result of solid work with coalitions. One thing is abundantly clear; we accomplish more whenever we find partners who are willing to work with us.

The Legislative Department benefited from timely help provided by ACLU staff and volunteers. I want to make special mention of the assistance provided by the ACLU of Pennsylvania's Community Organizers. They helped mobilize our grass roots by making sure our members and friends were kept up-to-date on all of the developments regarding legislative matters. They organized phone banks, town halls and e-mail campaigns. The Community Organizers assisted the staff of the Legislative Department on many fronts during the last two years and their assistance was particularly critical on several issues – Pennsylvania Marriage Protection Amendment, Voting Rights, Academic Freedom, Innocence Commission, PATRIOT Act Reauthorization, and NSA Wiretapping.

Here are the highlights of the 2005-06 legislative session.

**STATE LEGISLATIVE ISSUES**

**Pennsylvania Marriage Protection Amendment**

The ACLU of Pennsylvania played an instrumental role in the successful campaign to defeat the proposed Pennsylvania Marriage Protection Amendment. The proposed constitutional amendment on marriage failed when competing versions of it were not reconciled before the legislature began its 2006 summer recess.

The Pennsylvania House of Representatives passed an extreme version of the constitutional amendment – one that would have barred same-sex marriage, civil unions and possibly even recognition of domestic partnerships. The Senate of Pennsylvania passed a less extreme version – one that only barred same-sex marriage. The version that passed the Senate was unacceptable to the proponents of the version that passed the House. Since both chambers did not pass the exact same version of the proposed constitutional amendment the measure died.

I believe we can learn a lot from this victory. This success is largely attributable to the work of the Value All Families Coalition, which we helped found and in which we play a leadership role. The Value All Families Coalition brings together a range of groups that are committed to fighting for legal recognition of LGBT relationships. We worked on a daily basis with the Center for Lesbian and Gay Civil Rights (which now has a new name – “Equality Advocates Pennsylvania”) to make sure that the members of this Coalition

were letting our State Senators and Representatives know that there was significant and widespread opposition to the proposed amendment.

There were many LGBT organizations involved in this fight, groups like the Human Rights Campaign, Liberty PA, Log Cabin Republicans, Out Front, Pennsylvania Gay and Lesbian Alliance and PFLAG. Each of these groups motivated its members to visit, call, write and e-mail their legislators.

There also were many non-LGBT organizations that worked on the marriage amendment and their contributions to this victory deserve recognition. These diverse organizations have agendas that include LGBT equality as well as a range of other issues. Among the groups that helped us win this victory are the Pennsylvania Service Employees International Union, Pennsylvania Coalition Against Domestic Violence, Women's Law Project, Philadelphia and Pennsylvania Bar Associations, Planned Parenthood of Pennsylvania, and Support Center for Child Advocates.

The efforts of the LGBT organizations and these other groups were outstanding. The significant citizen activism and the incredible number of professional lobbyists in Harrisburg who worked on this were significant. This was a true uniting of a great grass roots effort and insider lobbying that should serve as a model for future campaigns.

### **Voting Rights**

Thanks to Governor Rendell's veto of House Bill 1318, we were able to fight off a bill that would have disenfranchised thousands of Pennsylvanians and made it a lot harder for many Pennsylvanians to cast a vote on Election Day.

When HB 1318 was first introduced in April of 2005, it only made minor changes to the Pennsylvania Election Code. Unfortunately, it became a vehicle for major changes to the Election Code. When the bill was brought to the floor of the Pennsylvania House of Representatives in June of 2005 a number of amendments were adopted.

Two of those amendments turned this legislation into an attack on voting rights. One amendment sought to impose a requirement on every voter to show photo identification at every election. (Under existing law, only first time voters need to show photo identification.) Another amendment sought to take away the right to vote from persons convicted of a felony during the entire period of their sentences. (Under existing law, a felon can vote while he or she is on probation or parole – this amendment would have disenfranchised felons even while they were on probation or parole).

HB 1318, as amended, then went to the Pennsylvania Senate. The Senate stripped the felon disenfranchisement provision from the bill and modified the identification requirements. The Senate passed its amended version of the bill in December of 2005.

The House took up the bill again in January of 2006. The bill was reported from the House Rules Committee, which had further amended it. Under this new version, the

felon disenfranchisement provision was back in and the identification requirements were made tougher. The House voted for this amended version on February 1, 2006.

Because the House and Senate had voted on different versions of this bill, it went to a Conference Committee. The Conference Committee met on February 14, 2006, and voted for a “compromise” report – no disenfranchisement of felons, but some identification requirements. On February 14, 2006, the House voted for the Conference Committee report and the Senate voted for it on February 15, 2006.

Governor Rendell vetoed this bill. Most of the Governor’s veto announcement focused on the legislation’s identification requirements.

The ACLU of Pennsylvania opposed the felon disenfranchisement provision every time it appeared in the bill (ultimately it was not part of the bill that passed both chambers). We believe that a person who is convicted of a felony should be able to vote once he or she leaves prison and that it would be a major step backwards for Pennsylvania to start depriving such persons of the right to vote. There is no evidence that permitting felons on probation or parole to vote has caused any problems. Permitting them to vote is consistent with the goals of rehabilitation and successful reentry into society. Furthermore, there is evidence, from other states (not just Florida), that denying such persons the right to vote leads to a whole host of clerical snafus that result in some non-felons being deprived of the right to vote.

The ACLU of Pennsylvania also opposed all of the versions of identification requirement because such requirements primarily impact on the elderly, poor, and disabled. They create unnecessary barriers for citizens who have voted without problem for years. In addition, there was no credible evidence that the identification requirements would have really prevented fraud. In fact, there are several studies that show there is little, if any, basis for the allegations of fraud that were being cited by the proponents of the bill.

The ACLU of Pennsylvania was involved in fighting this legislation once it became the vehicle for interfering with voting rights. We helped form and lead the “Protect Our Vote Campaign.” That coalition included organizations that advocate for racial and ethnic minorities, people with disabilities, senior citizens, women, the homeless and the poor.

We spent a lot of time and effort lobbying legislators and motivating others to do the same. We worked closely with key legislators, their staff and our allies in the campaign. The Rendell Administration also opposed this bill. We even wrote a letter to the Governor asking him to veto the bill. We also did a lot of media work and helped the media and public understand why the bill was problematic.

## **Immigration**

Having failed in their attempt to legitimize discrimination against committed gay and lesbian couples and in trying to make it harder for some people to vote, several of our state legislators turned their attention to “illegal” immigrants who are “invading”

Pennsylvania. Towards the end of June of 2006, a bipartisan group of legislators introduced several bills that were intended to “crack down” on “illegal immigrants” and to make sure that Pennsylvania would be known as a state that does not welcome “illegals.” The bills would have imposed penalties on employers who hire “illegal immigrants” and denied services and public benefits to “illegal immigrants.”

During the summer the House Majority Policy Committee held hearings on immigration issues in Harrisburg, Allentown, Philadelphia and Pittsburgh. While we did not present oral testimony at any of those hearings, we provided the Committee with our views as well as many documents describing the role that immigrants play in the Pennsylvania economy. We also met with various groups that work with immigrants and encouraged them to participate in the hearings and get their views into the media.

None of the proposed legislation was enacted. We will continue to work to fight these proposals should they reappear. We will also promote a greater understanding of the immigrant population that is here in Pennsylvania and how Pennsylvania would benefit from having even more immigrants.

### **English as the Official Language**

At the end of June of 2006, the Pennsylvania House amended House Bill 1959 by adding provisions making English the official language of the Commonwealth of Pennsylvania. We opposed that amendment because we think that it violates the First Amendment. The Pennsylvania Senate never considered this legislation and this proposal did not become law. During the election campaign, all of the candidates for Governor indicated their opposition to the bill.

### **Academic Freedom**

In July of 2005, the Pennsylvania House of Representatives passed House Resolution 177 establishing a select committee to review issues related to student academic freedom at Pennsylvania’s institutions of higher learning. The select committee conducted a series of hearings to examine the nature of academic freedom and free speech rights of students at Pennsylvania universities and colleges.

We closely followed the hearings as we feared that the real agenda for those conducting this investigation was an attempt to limit the academic freedom of professors.

One of the members of our University of Pittsburgh Law School chapter testified at a hearing in Pittsburgh last November.

On November 21, 2006, the select committee issued its report. The committee found that there was little evidence of infringement of the free speech rights of students in Pennsylvania and that there was no need for legislature to get involved in this area.

The ACLU worked with a coalition called “Free Exchange on Campus.” While we were not the main organizer of this coalition, we played an important role in keeping this investigation from turning into an assault on “liberal” professors. We also helped bring students out to the hearings and were able to show the legislators that there were many students who were troubled by this investigation and the prospect of the legislators micro-managing what is taught at universities and colleges.

### **Lobbyist Disclosure Legislation**

The legislature finally enacted a lobbyist disclosure bill. We participated in many working meetings on this legislation and were fairly successful in helping craft a bill that promotes disclosure of what is spent on lobbying in Pennsylvania without unduly impairing the right to petition the government or the ability of lawyers to zealously represent their clients.

### **Court Interpreters**

During the final week of the 2005-06 session, the legislature put the final touches on a bill that provides for interpreters in judicial and administrative proceedings. The bill, introduced by Senator Costa, was passed by unanimous votes in both the House and Senate. The ACLU did some good behind the scenes work in support of this legislation.

### **Reproductive Rights (CARE Act)**

The Legislative Department and the Duvall Project worked for the passage of the Compassionate Assistance for Rape Emergencies (CARE) Act in Pennsylvania. The CARE Act would require hospitals and health care facilities that provide emergency services to rape victims to provide victims with medically accurate information about emergency contraception and the full regimen of emergency contraception upon request. While there was a lot of support for this bill, the legislation was not enacted this session because of a dispute over an amendment to the bill that would have created an exemption for religiously affiliated hospitals and health care facilities.

The ACLU did not support this amendment because we believe that a rape victim should have the right to decide for herself the kind of care she wants to receive and should not be given inferior treatment just because she was unlucky enough to be transported to a religiously-affiliated hospital.

### **Ecoterrorism**

House Bill 213 creates the criminal offense of “ecoterrorism” and it functions primarily as a sentencing enhancement statute that kicks in when someone commits a property related crime with the intention of intimidating or coercing “an individual lawfully participating in an activity involving animals, plants or an activity involving natural resources.” We believe this legislation violates the First Amendment because it discriminates on the basis of the perpetrator’s viewpoint.

The bill passed the House in March of 2005. The Senate Judiciary Committee held a public hearing on this bill in June of 2005 and I testified at that hearing. As a result of issues raised by me and others at the hearing, the bill was amended and reported from the Senate Judiciary Committee on November 14, 2005.

We continued to oppose the bill, however, because we think it still discriminates on the basis of the perpetrator's viewpoint. No further changes were made to this bill, and the amended version passed and was signed into law by the Governor in the spring of 2006.

## **Criminal Justice**

There are a number of initiatives that relate to criminal justice that we worked on during the 2005-06 legislative session.

### Innocence Commission

Senator Greenleaf, Chair of the Senate Judiciary Committee, sponsored a bill that would create an Innocence Commission. That commission would review cases where a person who had been convicted of a crime has been exonerated. The commission would try to understand why there have been wrongful convictions and make recommendations for changes in laws, procedures, and policies to reduce the risk of wrongful convictions. We supported this bill. It passed the Senate unanimously this spring and was assigned to the House Judiciary Committee. We pursued various strategies to push the House Judiciary Committee to act on this bill including working with local governments to get resolutions passed in support of Senator Greenleaf's legislation.

Towards the end of session, Senator Greenleaf redrafted his bill as Senate Resolution 381. That resolution directed the Joint State Government Commission to set up a committee to study wrongful convictions. That resolution only needed a vote in the Senate. On the final day of session, Senate Resolution 381 passed unanimously. We look forward to the work of this committee and expect that it will come up with some good recommendations.

### Death Penalty and Mental Retardation

We continued our efforts aimed at passing legislation that would implement the United States Supreme Court's decision prohibiting the execution of persons with mental retardation. We worked with other advocates and legislators who support bills that provide for a pre-trial procedure for determining whether a defendant in a capital case is a person with mental retardation. We think a pre-trial procedure is more consistent with due process and provides greater protection against a person with mental retardation being wrongfully executed.

On April 3, 2006, House Bill 698 (which as originally drafted provided for a post-trial determination of mental retardation) was brought up for a vote by the full House of Representatives. Representative Kathy Manderino offered an amendment that would

have replaced the procedure set forth in House Bill 698 with a procedure allowing for a pre-trial determination. A motion was made questioning the constitutionality of this amendment.

Two years ago when the Pennsylvania House of Representatives debated this issue, Representative Manderino offered a similar amendment. Two years ago the Pennsylvania House of Representatives voted that the amendment was unconstitutional. But this year, on April 3, 2006, the Pennsylvania House of Representatives voted that the Manderino Amendment was constitutional (by a vote of 106-87). Debate on the bill was suspended before a final vote could be taken on the Manderino Amendment.

The following day, April 4, 2006, the Senate Judiciary Committee voted Senate Bill 631 out of Committee. This bill sets forth a pre-trial procedure. At the Committee meeting an amendment was offered to substitute a post-trial procedure for the pre-trial procedure but that amendment was defeated by a vote of 9-5.

In June, the House resumed its debate of House Bill 698. The Manderino Amendment was voted down and the House passed HB 698, with a procedure for post-trial determination.

No further action was taken on either of the bills and there has been no resolution of the pre-trial vs. post-trial issue. This means we will be at it again next session on this issue.

### Stop and Identify Legislation

A couple of years ago the United States Supreme Court upheld a Nevada law that allowed police to stop people and require them to identify themselves. We saw two different legislative proposals in this area and we suggested changes to make either (and both) of them as minimally harmful to civil liberties as possible. The legislature did not enact either of the proposals that were before it.

### Urban Violence

A hot topic in the fall of 2006 was the recent wave of urban violence. I testified at a hearing of the Senate Judiciary Committee on September 25, 2006, and discussed why the state should consider more prevention programs, improved services for prisoners after they leave prison, community policing and other ways to combat violence that don't necessarily involve more mandatory sentences.

### Seriously ill and geriatric prisoners

I had the privilege of serving on the Advisory Committee for SR 149 that looked at the problems posed by the large number of seriously ill and elderly people in Pennsylvania's prisons. That committee prepared a report that included several proposed pieces of legislation. While none of the proposed legislation was acted on, the SR 149 report has

been honored with a Notable Document Award by the National Conference of State Legislatures (NCSL).

Each year, NCSL gives Notable Document Awards to reports which it recognizes for excellence in exploring topics of contemporary interest to legislators. This year, the SR 149 report was one of 10 to receive the award. Some of us who worked on this report hope that NCSL's recognition of it will be of some help in pushing the recommended legislation.

### **NATIONAL LEGISLATIVE ISSUES**

Most of our work on the national level focused on lobbying Senator Specter as he was a key player on many of the ACLU's priorities. We worked closely with the staff in the ACLU's Washington Legislative Office in making sure that Senator Specter heard from Pennsylvanians about a range of issues. In the fall of 2006 the Legislative Department and the Community Organizers went down to the Washington Legislative Office to have a full day strategy session focused on coming up with additional ways to try to influence Senator Specter.

**Federal Marriage Amendment** – We met with Senator Specter to urge him to oppose the Federal Marriage Amendment. We also made sure that his offices heard from many Pennsylvanians about this amendment. Although Senator Specter voted for it in the Senate Judiciary Committee, he later cast an important procedural vote that helped lead to the defeat of this proposal.

**PATRIOT Act Reauthorization, NSA Wiretapping, and Military Tribunals** - We generated lots of constituent communications to Senator Specter on each of these controversial issues. Unfortunately, on each of these issues, Senator Specter's initial tough talk about holding the Bush Administration accountable did not match his ultimate actions and he disappointed us with his final positions on these matters.

**Public Expression of Religion Act** – This legislation would have prohibited federal courts from awarding fees in Establishment Clause cases. After the bill passed the House, we worked with several Jewish organizations in Pennsylvania in putting together a letter asking Senator Specter to oppose the bill. The legislation was never considered in the Senate.

**Voting Rights Act Reauthorization** – On this issue we lobbied all of the Pennsylvania delegation in the House of Representatives and both of our Senators. We made sure that all of them knew that there was strong support in Pennsylvania for the renewal of the sections of the Voting Rights Act that were set to expire in 2007. As you know, the reauthorization passed and was signed by President Bush so we will not need to revisit this issue next year.