

**AMERICAN CIVIL LIBERTIES UNION OF PENNSYLVANIA
LEGISLATIVE DEPARTMENT REPORT
August 16, 2006**

Submitted by Larry Frankel, Legislative Director

Victory on Pennsylvania Marriage Protection Amendment

The proposed Pennsylvania constitutional amendment on marriage is dead for this legislative session because competing versions of it were not reconciled before the legislature began its summer recess. The PA House of Representatives passed an extreme version of the constitutional amendment – one that would have barred same-sex marriage, civil unions and possibly even the 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 by the time the legislature broke for the summer, the measure is over and done for the year.

I think 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 to make sure that the members of the Coalition were showing the Pennsylvania General Assembly that there was significant and widespread opposition to the proposed amendment.

There were lots of 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 a lot of non-LGBT organizations that worked on the marriage amendment and they deserve recognition. These organizations have agendas that include LGBT equality as well as a range of other issues. Among the groups that really 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 the efforts of these other groups were really outstanding. The significant citizen activism and the incredible number of professional lobbyists in Harrisburg who worked on this were sights to behold.

This really was a wonderful uniting of great grass roots efforts and insider lobbying that carried the day and should serve as a model for future efforts.

Immigration

Having failed in their attempt to legitimize discrimination against committed gay and lesbian couples, some of our state legislators then turned their attention to the “illegal” immigrants who are “invading” Pennsylvania. Towards the end of June, 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 impose penalties on employers who hire “illegal immigrants” and deny services and public benefits to “illegal immigrants.”

At the end of June, the Pennsylvania House did pass a bill that makes English the official language of the Commonwealth of Pennsylvania. We oppose this bill and are working with others to keep the Senate from passing it. All of the candidates for Governor have indicated their opposition to the bill.

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 did provide the Committee with our views and lots of documents that provide a wealth of information on the role that immigrants play in the Pennsylvania economy. (Attached at the end of this report is the text of the letter I submitted.) We also mobilized lots of groups that work with immigrants and encouraged them to participate in the hearings and get their views into the media. We are continuing to work with those groups to both fight bad legislation and to promote a greater understanding of the immigrant population that is here in Pennsylvania and how Pennsylvania would benefit from having even more immigrants.

Criminal Justice

There are a number of initiatives that relate to criminal justice that are pending:

Death Penalty and Mental Retardation

We are continuing to work on the legislation that would implement the United States Supreme Court’s decision prohibiting the execution of persons with mental retardation. We are working closely with the 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.

On April 3, 2006, House Bill 698 (which as currently drafted provides 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 before the summer recess. We are now focusing on lobbying Senators to pass SB 631 and will continue to fight for a bill that includes pre-trial determination.

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 are now faced with two different legislative proposals in this area and we are trying to figure out how we can make either of them as minimally harmful to civil liberties as possible. This issue will be revisited when the legislature comes back in after its summer break.

Mandatory Reporting of Child Abuse

The Pennsylvania General Assembly is considering bills that would change the current law governing the mandatory reporting of child abuse. The bills have significant problems and could result in more questionable reports being filed, leading to more people being wrongly accused of child abuse without any indication that more real cases of child abuse will be reported and properly investigated. I am working quietly to see what can be done to stop these bills or minimize their negative impact. In the meantime, the Philadelphia District Attorney and the Catholic Conference are fighting about these bills in the media.

Urban Violence

Another hot topic this fall will be responding to the recent wave of urban violence. I am planning to testify at a hearing of the Senate Judiciary Committee on September 25, 2006. I intend to talk about why the state should also 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. I am reaching out to a variety of folks I know who can guide me to a wealth of good ideas that I hope to present to the Committee as well as our friends in the Pennsylvania House of Representatives. The House will also be debating proposals that are intended to deal with urban violence.

Innocence Commission

Senator Greenleaf, Chair of the Senate Judiciary Committee, is the sponsor of 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 support this bill. It passed the Senate unanimously this spring and has been assigned to the House Judiciary Committee. We have been working in various ways to push for the Judiciary Committee to act on this bill and will keep applying pressure throughout the remainder of this session.

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 has been acted on, I am pleased to inform you that the report has been honored with a Notable Document Award by the National Conference of State Legislatures (NCSL). According to the NCSL website: "NCSL is a bipartisan organization that serves the legislators and staffs of the nation's 50 states, its commonwealths and territories. NCSL provides research, technical assistance and opportunities for policymakers to exchange ideas on the most pressing state issues."

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.

July 18, 2006

The Honorable Mario J. Civera, Jr.
Chair
Majority Policy Committee
PA House of Representatives
Harrisburg, Pennsylvania 17120

RE: IMMIGRATION REFORM

Dear Representative Civera:

Thank you for allowing the American Civil Liberties Union of Pennsylvania to submit, for the record, this letter and attachments on the issue of immigration reform. We appreciate having the opportunity to present our views to the Policy Committee.

We hope that these hearings provide a forum for lawmakers and the public to learn more about the significant contributions that immigrants are making everyday here in Pennsylvania and throughout the country. We also hope that members of this Committee and the public will come to appreciate the fact that policies and laws that truly welcome immigrants to Pennsylvania are critical to this Commonwealth's future.

At the outset, let me make it absolutely clear that the ACLU believes that immigration reform is primarily and fundamentally a federal issue. Immigration law is a complex area of the law. It is important that it be approached in a manner that is uniform throughout the country. You should bear in mind that many proposals put forth on the state or local level will inevitably be preempted by existing federal law or whatever may come from the current efforts at the federal level.

The ACLU also believes that immigration reform must be approached in a comprehensive manner. It is not enough to only talk about enforcement and securing our borders. Consideration must also be given to how we deal with people who are already in this country and address the needs that our society has, and will continue to have, for a consistent flow of immigrants to this country and this state.

In order to better illustrate the need for comprehensive reform, let me refer you to several of the documents I have attached to this letter. In my opinion, these documents support the ACLU's view that immigration reform must be addressed in a comprehensive manner:

“Bordering on Disaster” – This is an article by Jonathan Walters from the July 2006 edition of *Governing* in which the author discusses the need for a coordinated national effort to deal with the problems associated with immigration.

“Conservatives and Immigration” – This is an editorial from the July 10, 2006, edition of the *Wall Street Journal*. Please take note of the final sentence of that editorial: “The real choice is between throwing more resources at an enforcement-only policy that has failed, or a larger reform that’s had some past successes in reducing illegal border crossings and meeting the demands of our economy and human dignity.”

“Enforcement Isn’t Enough” – An open letter supporting comprehensive immigration reform from 33 prominent conservatives that was also published in the *Wall Street Journal* on January 10, 2006.

“Bloomberg: U.S. Can’t Stem Immigration Tide” – This article from the July 6, 2006, edition of the *Philadelphia Daily News*, describes the testimony presented by New York City’s Mayor at the Senate Judiciary Committee hearing in Philadelphia on July 5, 2006. Mayor Bloomberg talked about the need for the United States to give immigrants a chance to earn permanent residency and remain with their families.

I would also like to bring to your attention the fact that recent polling data demonstrates that Americans are actually more supportive of a comprehensive approach to immigration reform than they are of an enforcement only approach. A Los Angeles Times poll conducted from June 24-27, 2006, found that 58% of those asked preferred an approach that includes both tougher enforcement of immigration laws and the creation of a guest worker program while only 32% preferred an approach that solely focuses on tougher enforcement. An NBC News/Wall Street Journal poll conducted from June 9-12, 2006, found that 50% favored immigration reform along the lines passed by the United States Senate while 33% favored the House’s approach. A poll conducted from June 14 to 19 in New Jersey found by a 2-1 margin that voters in our neighboring state favor legalizing undocumented immigrants who have worked in the United States for at least two years.

One proposal for immigration reform that the ACLU strongly opposes is giving local law enforcement the responsibility for enforcing immigration laws. Law enforcement is already burdened with significant responsibilities for enforcing local and state laws. Each year, the Pennsylvania General Assembly passes bills that impose even more responsibilities on them. Asking our police officers and District Attorneys to learn the complexities of immigration law and apply that ever changing body of law seems to be both an unreasonable expectation and a costly proposition.

Attached you will also find a report issued last month by the Major Cities Chiefs that discusses that association’s recommendations for enforcement of immigration laws by local police agencies. I urge you to read that report so that you will understand that the position of local law enforcement on this matter is similar to the ACLU’s position.

We also urge defeat of any proposal that would make English the official language of the Commonwealth and require official business to be conducted in English. The state of Arizona already tried to force state employees to conduct official state business in

English. That law was struck down in 1998 because it interfered with the First Amendment rights of state employees who were forbidden from conducting business in a language other than English even when it would have been the most efficient and effective way of communicating with the person seeking government services.

I have also attached letters from the Philadelphia Bar Association and the Korean American Lawyers Association of the Delaware Valley with respect to House Bill 2089 that set forth sound arguments as to why Pennsylvania should not enact legislation designating English as the official language for state acts.

The fact is that there is a tremendous demand for English language classes. People coming to this country want to learn English. The problem is not their lack of desire to learn English. The problem is our lack of supply – there are not enough classes and teachers. (Please see attached article, “A Lesson in English,” published in the *Philadelphia Inquirer* in June of this year.) One positive recommendation that should be made by this Policy Committee would be support for a dramatic increase in funding of English as a second language instruction in Pennsylvania.

While our principal concerns relate to the legal and constitutional issues raised by immigration reform, we also worry about Pennsylvania’s future. We think that policy makers should be considering Pennsylvania’s economy and demographics and how policies regarding immigrants will impact on Pennsylvania in the coming years.

Immigrants continue to come here to work and build a better life for themselves and their families. All of us will benefit from careful consideration of how these newcomers can be part of a new Pennsylvania – a state that is growing and prospering.

I think that some of the testimony presented at the United States Senate Judiciary Committee hearing on July 5, 2006, makes this final point far better than I can. Therefore, I refer you to the following attachments:

Testimony of the Honorable Arthur Hershey, Chairman of the Pennsylvania House Agricultural and Rural Affairs Committee. Chairman Hershey discusses the important role that immigrant workers play in the agricultural industry.

Testimony of Carol Green Rossi, Corporate Director, Human Resources, Harrisburg Hotel Corporation. Ms. Rossi discusses the important role that immigrant workers play in the hospitality industry.

Testimony of Dan Eichenlaub, President of Eichenlaub, Inc. Mr. Eichenlaub discusses the important role that immigrant workers play in “the green industry” (landscape contractors, nurseries, garden centers).

Thank you again for allowing the ACLU of Pennsylvania to submit this testimony. Please do not hesitate contacting me should you have any questions about our testimony or any of the materials we are submitting.

Very truly yours,

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