

Victory at the Statehouse: Juvenile Justice Reform



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West Virginia made historic strides this legislative session reforming our state's broken juvenile justice system. The ACLU of WV led the effort to address our state's draconian truancy law in which a student missing just five unexcused days from school may be referred to court. The harsh five-day threshold was one of the lowest in the country.

Under the old standard, one in three West Virginia children is truant. Truancy accounted for forty percent of all referrals to the court system and helped make West Virginia only one of two states to experience an increase in youth confinement since the year 2000.

With overwhelming bipartisan support in both the House and Senate, the Legislature

voted to increase the threshold and set clear standards for parents and school administrators before referring a child to court. The new law calls for schools to send a letter home to parents after three unexcused absences; meet with the family after five and possibly adjust down the number of unexcused days; and engage the court after ten.

In addition, the law provides much needed clarification on what types of absences are counted as unexcused. Health and disability-related absences are exempt. It also closes the loophole in the law that allowed schools to declare students truant even if their absences were due to a forced suspension.

Although the reform is a meaningful step in the right direction, the ACLU of WV turns its attention to how the law will be implemented so that children don't fall through system cracks. The ACLU of WV will push to educate parents, schools, and those within the juvenile justice system about the legal changes.

Will's Story



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When a chronically sick, honor roll student is referred to court for truancy, that's a problem. Meet Will, a hardworking middle-school student with a 4.0 GPA. His mom, Maria, is the director of a community center in Huntington, WV that provides after-school programming and free evening meals.

Will loves theatre and aspires to become a dermatologist, but he has suffered from asthma and severe allergies his whole life. His mother sometimes foregoes an expensive trip to the doctor's office and treats Will at home. This economic decision means she won't always have a written doctor's excuse validating her son's condition.

Between documented medical absences and absences when Maria keeps Will at home, Maria occasionally receives letters in the mail stating that Will has reached the truancy threshold and may be referred to court. Will has even been called into the principal's office and told he will be assigned a probation officer if his truant behavior continues.

Being a vigilant parent, Maria scrambles to obtain doctor's notes to excuse him for his absences. Eventually, after a time-consuming process, the school accepts the documentation Maria provides. Had she not been persistent or able to successfully obtain medical documentation, Will's story may have had a much different ending.

The ACLU of WV is thankful that, due to the change in the law, students like Will and their families won't face such severe and needless sanctions for missing school. Under the new standard, health-related absences cannot be used to refer a child to court. And, schools and parents are given set guidelines to follow so that they can come up with workable solutions. We are thrilled that the legislature made such historic strides this session to keep kids in school and out of court.

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The Director's Chair



Spring is here and the ACLU staff is invigorated by the warmer weather and longer days. We welcome the inspiration and energy it brings because civil liberties are under attack in the Mountain

State. The threats are very real and the stakes have never been higher.

Over the past few months, the ACLU and our allies staunchly defended your liberties and personal freedoms against efforts to roll back or eliminate fundamental protections. The session brought with it an unmatched fervor to deny rights for the LGBTQ community, limit a woman's constitutionally protected right to choose, restrict access to the voting booth, and to reinstate the death penalty. These are just a few of the many onerous legislative proposals that kept us up at night. Thanks to our strong lobbying efforts and the heavy investment in public education, nearly all of the troubling legislation was defeated.

But this isn't the time to rest on our laurels. Without doubt, next year will bring with it these and other proposals that put your civil liberties on the chopping block. State legislators are already talking about passing a religious liberty bill in 2016 that supposedly won't discriminate against the LGBTQ community. We are skeptical – primarily because the religious liberty bills those same legislators supported this year would have done just that. And the assault on women's rights is only gaining momentum, as evidenced by the fact that, unlike last year, this legislature acted swiftly to pass an unconstitutional bill banning abortion access early enough to override the Governor's veto. Notably, many of the bad bills that failed to pass died during the last week of session's frenzied rush. You can be certain that next year we will see efforts to move these bills sooner and more strategically.

On a very positive note, however, our years-long effort to reform the juvenile justice system came to fruition when the legislature overwhelmingly voted to change our state's draconian truancy law. The ACLU of WV built a coalition of partners dedicated to solving one of the greatest crises facing West Virginia's children. In so doing, we worked with members from both sides of the aisle with one mission in mind: Keep kids in school and out of court. And under the leadership of Governor Tomblin, a comprehensive juvenile justice reform package passed which will help keep low-level and first-time offenders out of juvenile prisons.

These sweeping victories are a meaningful first step in curbing the school-to-prison pipeline that shuttled far too many children into court. Looking forward, our efforts will focus on the implementation of these bills, including educating and monitoring those tasked with their enforcement.

In addition to our policy work, we continue to maintain an active legal docket. Our office receives an ever-growing number of complaints on issues related to transgendered rights, prison conditions, First Amendment violations, and more. We have many open investigations and have successfully resolved a few matters without filing a case.

Whether we are defending your rights at the statehouse or defending them in court, we cannot do this work without you. Your support is critical to our success. In fact, the very scope of what we do is driven by your donations, activism, and membership. Now is the time to contribute to our work. Donating to the ACLU of WV Foundation ensures that the Bill of Rights and the rights guaranteed by the West Virginia Constitution are preserved for each new generation. Support our work and be a champion for liberty and justice for all.

Montani Semper Liberi.

Message from the President



Your membership in the ACLU of WV allows you to protect civil liberties in West Virginia directly and indirectly throughout the year.

The ACLU of WV actively works with the governor and legislators to protect civil liberties. We also monitor the work of out-of-state organizations that draft legislation and pressure legislators to pass bills that, if enacted, would curtail the liberties of West Virginians. Through your membership, you receive email alerts informing you of these bills and providing you with contact information to easily reach legislators and the governor.

We take legal action on behalf of West Virginians whose civil liberties have been infringed and have a good success rate of winning our

cases or settling them with agreements to educate perpetrators so that our freedoms will be protected in the future.

At every opportunity, in newspapers and events throughout the state, the ACLU of WV educates and informs us of better ways to protect ourselves and to be vigilant when our freedoms are threatened. Liberty is nothing to be taken for granted. As we struggle to balance busy schedules and personal demands, it is wonderful to know that the ACLU of WV is actively watching and helping us along the way.

Please help us by telling others about the work of the ACLU of WV and asking them to join in the cause to protect all West Virginians. A quick visit to <http://acluwv.org> will update you on our current work and provide membership forms to your friends.

ACLU OF WV

The American Civil Liberties Union of West Virginia (ACLU of WV) is a non-partisan, non-profit membership organization whose mission is to ensure that the Bill of Rights and rights guaranteed by the Constitution are preserved for each new generation. The ACLU of WV accomplishes these goals through legislative advocacy, litigation, grassroots organizing, and public education. The ACLU of WV is devoted exclusively to protecting the basic civil liberties of all West Virginians. In its more than five decades of existence, the ACLU of WV has become widely recognized as the state's foremost advocate of individual rights.

For more about the ACLU of West Virginia and our priorities please visit www.acluwv.org.

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Top Ten Reasons to Support the ACLU of WV

Bonus: We Support Upcoming Advocates

Since 2010, the ACLU of WV has awarded annually a \$1000 William Denman Youth Activist Scholarship to a young West Virginian recognized for their dedication to civil liberties.

Reason #10: Resisting Efforts to Reinstate the Death Penalty

WV abolished the death penalty in 1965. Since then, the ACLU has year-after-year successfully fought back against legislation to reintroduce the practice. Four of WV's five neighboring states have a death penalty. The ACLU of WV will continue to push back against this racial-biased, vengeful, and inhumane act.

Reason #9: Educating the Public

Since 2009, the ACLU of WV has held seminars throughout the state providing citizens with information about their rights when they encounter law enforcement. Our superb legal staff would be happy to host a seminar at your college or other community event. Know your rights!

Reason #8: Defending the Right to Vote

The ACLU of WV successfully fought back against numerous Voter ID bills introduced during the 2015 legislative session. Voter ID laws purport to protect against voter fraud, but data show that voter fraud is essentially nonexistent. Similar initiatives implemented in other states have had a disproportionate impact on minorities, youth, and the poor.

Reason #7: Protecting Welfare Recipient Rights

Legislation requiring welfare recipients to be

drug tested before receiving public benefits is an unconstitutional search under the Fourth Amendment. The ACLU of WV successfully testified and lobbied against proposed legislation that would have required testing.

Reason #6: Defending Choice

The ACLU of WV worked tirelessly this session to defend a woman's constitutional right to choose. While our efforts helped secure the Governor's veto of the unconstitutional 20-week abortion ban, the legislature overrode the veto. Other bills seeking to limit access to abortion, such as eliminating private or public insurance coverage, were successfully defeated.

Reason #5: Protecting LGBTQ Rights

The ACLU of WV stood strong against efforts to roll-back employment and housing protections for the LGBTQ community. The Abolishing Local Liberty bill would have usurped the power of city and town councils across West Virginia and nullified all standing nondiscrimination ordinances and resolutions. It would have also made any future nondiscrimination efforts of local governments illegal.

Reason #4: Advancing Racial Justice

In WV, youth of color are far overrepresented in our state's juvenile justice system. Although African American youth make up less than 4% of our state's youth population, they comprise 14% of youth in juvenile prison. The ACLU of WV's efforts to reduce truancy court referrals in conjunction with the passage of the Governor's comprehensive

juvenile justice reform efforts are positive first steps toward addressing unacceptable racial inequities.

Reason #3: Fighting LGBTQ Discrimination in the Name of Religion

Legislative efforts to allow businesses and individuals to discriminate against the LGBTQ community in the name of religion were defeated this year. The so-called Freedom of Conscience Protection Act died in committee thanks to our lobbying and mobilizing against the bill. Similar discriminatory legislation was recently signed into law in Indiana and Arkansas.

Reason #2: Curbing the School to Prison Pipeline

West Virginia was a national outlier for its regressive truancy policies which shuttled far too many youth into the juvenile justice system. The ACLU of WV led the successful effort to end the harmful practice of pushing kids into court for missing just five days of school.

Reason #1: Persistent Defense for You, Now and in The Future!

The political winds inevitably shift over time, and the ACLU of WV has and will continue to defend your rights. The ACLU of WV has been engaged in the Mountain State since 1920, while the national ACLU was established nearly 100 years ago. Throughout this time, we have sought to preserve and extend constitutional rights for each new generation. We are here for the long haul.

Make an Annual Gift to ACLU of WV

Please complete and return this pledge card along with your gift of support. Checks should be written to "The ACLU of West Virginia Foundation" and mailed to the address below. If you would like to give using a credit card or you are interested in becoming a monthly sustainer, call our office at (304) 345-9246. All contributions to the ACLU of WV Foundation are tax deductible to the extent permitted by IRS code 501(c)3.

I/We pledge a total of \$_____ to be paid as follows :

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SIGNATURE _____ DATE _____

Please mail this form to: ACLU of WV Foundation, P.O. Box 3952, Charleston, WV 25339-3952. Thank You.

Free Speech Victory in Don Blankenship Criminal Case

On November 13, 2014, Don Blankenship, former Chairman and CEO of Massey Energy, was indicted by the United States Attorney for the Southern District of West Virginia for violating federal mine safety standards in the time leading up to the April 5, 2010 explosion at Massey's Upper Big Branch ("UBB") mine that killed 29 people. The UBB explosion was the most deadly mining disaster in the United States since 1970.

The day after the indictment, without any prompting from the parties, the presiding judge issued an order restricting access to documents filed in the case to the parties' lawyers and prohibiting the parties, their attorneys, court personnel, and any potential witnesses in the case (including family members of UBB victims) from speaking publicly about the case.

This order was a prior restraint on speech. It forbade all potential trial participants from speaking about the case. For decades, it has been recognized in the United States that all

prior restraints on free speech and expression are presumptively unconstitutional.

A prior restraint exists when the government stops something from happening before it actually happens. In this case, the judge issued a prior restraint on the speech of all potential case participants. This violated the First Amendment rights of the potential case participants, the media, and the public. Although it is always important to protect a criminal defendant's right to a fair trial, it is also of utmost importance that speech on matters of public concern not be silenced.

A group of media organizations challenged the scope and breadth of the gag order. Worried about the free speech of those affected by this case, the ACLU of WV filed a friend of the court brief arguing that the gag and sealing order should be lifted.

The district court judge lifted the part of the order dealing with which documents should be restricted, but left the gag order in place.

This meant that parties to the case and victims of the UBB disaster could not speak publicly about the case. UBB victims filed a petition in front of the district court, informing the judge that they wanted to testify in front of the legislature about legislative proposals that could affect people harmed by similar accidents.

The media organizations appealed the district court order to the United States Court of Appeals for the Fourth Circuit. On March 5, 2015, the Fourth Circuit vacated the gag order. The court noted that the public's access to a criminal proceeding cannot be denied without "specific findings demonstrating that, first, there is a substantial probability that the defendant's right to a fair trial will be prejudiced by publicity that closure would prevent and, second, reasonable alternatives to closure cannot adequately protect the defendant's fair trial rights." The ACLU of WV celebrates the Fourth Circuit's decision as a victory for free speech.

ACLU of WV Hopeful the U.S. Supreme Court Will Soon Give Equality to All Couples

On November 6, 2014, the United States Court of Appeals for the Sixth Circuit (the federal appellate court for Kentucky, Michigan, Ohio, and Tennessee) became the first federal appellate court to reject claims that bans on same-sex marriage violate the United States Constitution. All other federal appellate courts – including the Fourth Circuit with jurisdiction over West Virginia – have found that the Constitution protects same-sex couples. The United States Supreme Court, which had previously refused to hear cases striking down

marriage bans, has now agreed to hear an appeal of the Sixth Circuit case.

We expect that the Supreme Court will rule on marriage equality by the end of July. The result of this case has the potential to either require marriage equality nationwide or pave the way for states to enact new bans on same sex partnerships. The ACLU is counsel on the two cases from Kentucky.

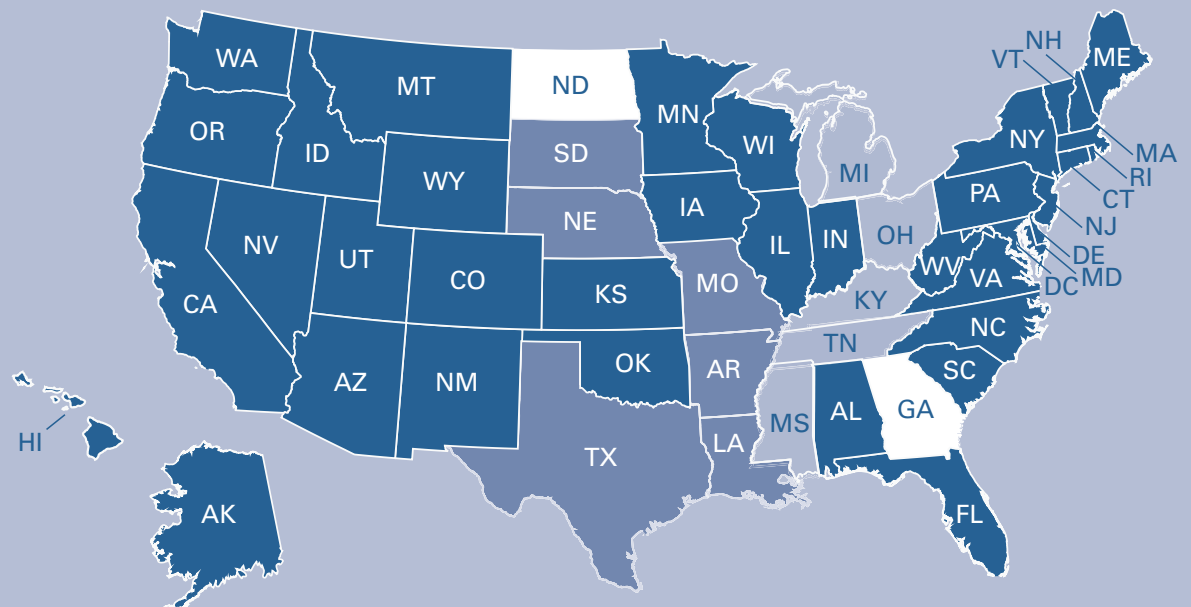
The specific issues the Court will address are: (1) Whether the Fourteenth Amend-

ment requires states to license same sex marriages; and (2) Whether the Fourteenth Amendment requires states to recognize a same sex marriage when it was lawfully licensed and performed out of state.

We are hopeful that the Supreme Court will recognize that we cannot continue to treat same-sex couples as second class citizens and will open the door to true legal equality for all people, regardless of their sexual orientation.

Which States have Equality?

- Freedom to Marry
- Pro-Marriage court ruling
- Marriage Ban, lawsuit filed awaiting ruling
- Marriage case pending before the US Supreme Court



Reproductive Rights Under Attack



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Abortion rights were on the chopping block during the 2015 legislative session. The ACLU of WV invested heavily in the fight to meaningfully maintain our right to choose while also battling regressive and onerous bills that would have curtailed abortion access.

The Legislature acted quickly to pass an unconstitutional ban on abortion after 20

weeks. Similar legislation passed last year but was vetoed by Governor Tomblin. This session, the legislature passed the bill early enough to override the Governor's veto, making it the first veto override since 1987.

The dangerous 20-week ban is by every measure radical and unfair to women. In addition to lacking a real exception to protect

women's health, the bill shockingly does not include an exception for rape or incest. Similar legislation was tabled in Congress because GOP Representatives in the House were appalled at the lack of protections for women.

Legislators did not stop at the 20-week ban. Bills were introduced to limit insurance coverage for abortion so that women would be required to purchase supplemental policies to maintain coverage for their unplanned pregnancies. The practical effect of these bills would have been to preclude coverage in West Virginia because no provider offers it. Other proposed legislation included eliminating Medicaid funding, restricting minors' access, and allowing for religious refusals to provide care or services.

West Virginians need more access to health care, not less. We need solutions that improve a woman's ability to make the best reproductive health decisions for her circumstances. The ACLU of WV will continue to staunchly defend these rights now and in the future. Next session will surely bring another onslaught on women's rights.

Civil Liberties & Legislative Session: A Debrief

The 2015 legislative session kept us busy. Our team monitored nearly 100 bills and actively lobbied on over 20 pieces of legislation. In the end, the ACLU of WV was able to defeat nearly all of the troubling proposals to roll-back or eviscerate civil liberties while simultaneously pass legislation curtailing the school-to-prison pipeline. But our success this year doesn't allow us any leisure. We remain ever-vigilant against threats to your civil liberties. We will surely see many of these and other onerous proposals next year.

Below are a handful of the many bills we lobbied on this year.

English-Only: House Bill 3019 would have made English the official language of WV. America is, and has been since before its founding, a land of linguistic diversity. Discrimination against language minorities implicates our most basic rights of equal protection, free speech, and due process. The English language is not under attack. The law is based on the false premise that today's immigrants will not learn English without government coercion. The bill passed the House but died in the Senate.

Transferring Juveniles to Adult Prison: House Bill 2805 would have required juveniles to be transferred to an adult prison if their sentence ran beyond their eighteenth birthday. Current law allows judges to determine whether transfer is appropriate. Adolescents placed in adult prison are at greater risk of sexual and physical abuse and suicide. Moreover, brain development science is clear – teenagers are different than adults. They are more amenable to rehabilitation and treatment provided in juvenile facilities. The bill passed the House but died in the Senate.



www.flickr.com/photos/puroticorico/5069521031, edited

Drug Testing Welfare Recipients: House Bill 2021 would have required drug testing of welfare applicants, denied state assistance to those testing positive, and created a procedure for subsequent drug testing and treatment that the applicant would have to undergo – and pay for – to receive future benefits. Drug testing is undisputedly a search under the Fourth Amendment and Supreme Court case law. Without demonstrating a special need to conduct drug tests on welfare recipients, the state must follow the standard procedure of demonstrating probable cause and producing a warrant before a drug test can be required. The bill passed out of committee but failed to pass the full House.

Parents' Bill of Rights: House Bill 2258 would have broadly codified rights of parents to direct the upbringing of their children and allow legal challenges to government action based on religious or moral objections. The vaguely-drafted legislation would have opened the door for parents to challenge books or classes taught in public school or to object to minors' rights to access healthcare. The bill passed out of House Health and Human Resources Committee but failed to further advance.

Voter ID: Senate Bill 340 would have required voters to provide photo identification and would have provided provisional ballots for voters without proper ID. Having our voices heard through the vote is fundamental to our democracy. This law would have posed burdens on voters that are unnecessary, especially in a time when we should be encouraging greater voter participation. The bill was placed on the Senate Judiciary Committee agenda but failed to advance.

Constitutional Convention: If Senate Concurrent Resolution 13 passed, West Virginia would have joined 26 other states calling for a constitutional convention to propose a balanced budget to the U.S. Constitution. Thirty four states are needed before a convention can be called. Troublingly, the participants in a constitutional convention are not by law limited to any particular subject matter, regardless of the purported original reason for calling it. Thus, the entire constitution could be amended, placing the very foundation of our system of government into question.

Poverty & the First Amendment: ACLU of WV Defends Disabled Veteran



Dave Mistich, West Virginia Public Broadcasting

Parkersburg City Police arrested Charles Kelly for panhandling. Mr. Kelly is a disabled veteran who is unable to work and relies on disability benefits for survival. When those benefits do not cover his modest monthly expenses, he goes to Parkersburg and peacefully holds a sign that says “Disabled Veteran, Please Help. God Bless.” Many people help Mr. Kelly by giving him food or money, or simply wish to learn more about Mr. Kelly’s service in the military and his current situation. The City issued Mr. Kelly a ticket for \$137.00 for soliciting charity and took his sign. Of course, Mr. Kelly could not afford to pay the fine without begging for money and risking another expensive ticket.

In response to the City’s actions, the American Civil Liberties Union of West Virginia filed an action in the U.S District Court in the Southern District of West Virginia claiming that the Parkersburg anti-solicitation Ordinance violated the rights of individuals to engage in free speech. The Court, speaking through Judge Joseph R. Goodwin, agreed and issued a preliminary injunction, temporarily stopping the City of Parkersburg and the Parkersburg Police Department from ticketing and prosecuting needy people for peacefully requesting charity in public places. According to Judge Goodwin, the First Amendment precludes the government from punishing individuals for the content of their speech

simply because some find the message discomfoting. Following the issuance of the injunction and extended negotiations, Mr. Kelly and the City settled the case. As part of the settlement, the City agreed to repeal the offending ordinance, which it has done.

Simultaneously with the repeal, however, the Mayor of the City of Parkersburg, Bob Newell, unilaterally ordered to be erected a series of road signs around the City saying “Please do not contribute to the drug and alcohol problem by giving to panhandlers.” These malevolent and defamatory signs are an outrageous reliance on stereotype and are false. Mr. Kelly, for example, is neither a drug user nor an alcohol abuser. The signs are a small-minded and retaliatory response to Mr. Kelly’s successful law suit against the City. Any legitimate concerns the City has for unsafe or obstructive conduct by a few individuals can be addressed using existing laws that prohibit traffic obstruction or harassment, rather than punishing people for the words they speak or write on signs.

The First Amendment extends to all citizens regardless of their financial resources. Prosecuting people because they are poor or homeless and in need of charity is not only wrong, it’s illegal. Retaliating against them when they assert their rights is equally wrong. Although Mayor Newell refuses to take down the signs, we hold out hope that Newell and others exercising control over government institutions will soften their rhetoric and policies regarding the neediest among us.

Fighting LGBTQ Discrimination

The country is experiencing a welcome sea-change regarding LGBTQ rights, with an ever-greater segment of the population eschewing discrimination. Yet some state legislators are still hurling last-ditch, small-minded proposals to deny basic rights to others. The ACLU of WV spent the 2015 legislative session actively lobbying against such efforts by speaking at public hearings, meeting with legislators, and organizing key coalition groups to support our work.

Similar to legislation recently passed in Indiana and Arkansas, three bills were introduced in West Virginia during that would have allowed discrimination in the name of religious freedom. The so-called Freedom of Conscience Protection acts would allow people to argue that their religious beliefs exempt them from complying with laws that prohibit discrimination on the basis of religion, gender, marital status, national origin and sexual orientation. They would give private individuals, organizations, businesses, and any legal entity the right to argue that they do not have to follow the law, including basic civil rights laws related to employment, housing, reproductive rights and public accommodations.

The bills were drafted so broadly that they could be used to discriminate against nearly anyone, including the LGBTQ community, unmarried couples, pregnant women and people of all religions. The laws would, for instance, allow a hotel owner who objects to cohabitation out of marriage to refuse a room to an unmarried couple. Or it could allow a waiter to refuse service to a same-sex couple if the waiter claimed it was against their religious beliefs to do so.

Freedom of religion is a cornerstone of our country and the ACLU works every day to protect people’s right to religious liberty. But existing federal and state laws, including the U.S. and West Virginia Constitutions, adequately safeguard the free exercise of religion and allow individuals to follow their religious tenets without infringing on other’s rights.

The House also proposed legislation that would have banned local cities and towns from enacting or enforcing non-discrimination ordinances, and invalidated the ordinances in the West Virginia cities that currently have them. Absent statewide protection, it is legal today to be fired or evicted for being gay or bisexual or transgendered. A growing

number of city councils, from Morgantown to Thurmond to Charleston, have voted to protect people from these discriminatory and regressive actions. The so-called West Virginia Intrastate Commerce Improvement Act, otherwise known as the Abolishing Local Liberty Bill, passed out of House Government Organization but was killed after the nearly-unanimous public outcry against the bill at a public hearing.

Notably, two additional bills were defeated in the House because they contained explicit protections against LGBTQ discrimination. Legislation authorizing the creation of charter schools and the legalization of Uber taxi cabs failed to advance because the House sought to remove language that would have forbade discrimination.

Discrimination should not be the policy of this state. The ACLU of WV will continue to prioritize protections for the LGBTQ community and will work to advance those rights through lobbying, public education, and legal action.

“INJUSTICE

ANYWHERE

IS A THREAT TO

JUSTICE

EVERYWHERE.

- DR. MARTIN LUTHER KING JR.
