

Love Wins

In a historic 5-4 decision, the Supreme Court issued a sweeping ruling granting marriage equality in all fifty states. The Court held that the fundamental liberty and equality protec-



tions of our federal Constitution extends to the freedom to marry. The decision is unquestionably one of the most important civil rights cases of our time.

While this is an incredible, history-changing moment, the fight for true LGBTQ equality is far from over. In West Virginia, it is still legal to fire a person or evict them from their residence because of whom they love. It is also legal for businesses in West Virginia to refuse service to members of the LGBTQ community. And while a recent ruling by the EEOC held that Title VII protects LGBTQ individuals from workplace discrimination, explicit statutory protections are needed because courts may interpret the EEOC ruling unevenly.

A growing number of municipalities across the state are leading the non-discrimination charge and explicitly protecting these basic rights, but a patchwork system of justice is not enough. It is time to update our laws to ensure that no one is refused housing, a job, or goods and services by a business open to the public.

The ACLU of West Virginia will advocate for statewide protections next legislative ses-

sion by passing the Employment and Housing Non-Discrimination Act (also known as "ENDA"). We also support amending the West Virginia Human Rights Act to include LGBTQ as a protected class so that businesses cannot refuse service based upon a person's actual or perceived sexual orientation.

No union is more profound than marriage, for it embodies the highest ideals of love, fidelity, devotion, sacrifice, and family...It would misunderstand these men and women to say they disrespect the idea of marriage. Their plea is that they do respect it, respect it so deeply that they seek to find its fulfillment for themselves.

– JUSTICE KENNEDY

"Religious Liberty" is Not a License to Discriminate

Following the marriage equality decision, questions were raised about its impact on religious liberty. To be clear, it has none. No religious institution in the United States—either before or after the ruling—is required to perform marriage ceremonies for anyone. Religious institutions have the freedom to conduct ceremonies that are in line with their particular doctrines. And clergy have the authority to determine which religious marriages they will solemnize within the traditions of their faith. Allowing same-sex couples to obtain civil marriage licenses doesn't change that.

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. Religious freedom is a cornerstone of

our country and the ACLU works every day to protect the right to religious liberty. But we are suspect when "religious liberty" is used as a license to discriminate.

Some have expressed fears regarding the potential impact on businesses owned by individuals with religious objections to same-sex couples. But no one should be turned away, denied services or employment by a business open to the public just because of who they are. Invidious discrimination is wrong, and it doesn't matter why someone wants to discriminate. And while the LGBTQ community is the current target of the effort to repackage bigotry as "religious liberty," they are hardly the first. Many segregationists justified racial bigotry on the very same grounds that some now hope to justify anti-LGBTQ animus.

Last legislative session, many versions of discrimination-in-the-name-of-religion laws were introduced and we expect to see more next year as opportunists use the marriage equality decision as fuel for their intolerant fires. These religious refusal laws sound innocuous but bills like the First Amendment Defense Act, the Freedom of Conscience Protection Act, and the Intrastate Commerce Improvement Act would allow individuals to discriminate under the guise of religion.

Discrimination should not be the policy of our state. The ACLU of WV will continue to fight for LGBTQ equality. And we do this alongside our faithful efforts to protect and defend religious freedom.

UPCOMING EVENT

Our Children Our Future Policy Summit | September 14TH-15TH | Charleston | www.ocofwv.org/whats happening

Learn about 20+ policy issues affecting children and families, and get a chance to vote on the 2016 platform.

The Director's Chair



Over the last few months, the status of justice and equality has been a portrait of extremes. The Supreme Court's decision granting marriage equality was a joyous peak as the country took a monumental leap forward for

civil rights. Justice Kennedy will be remembered throughout history as a true champion for LGBTQ rights. Yet as we celebrate, it is still legal to fire, evict, or refuse LGBTQ individuals service in West Virginia because of their actual or perceived sexual orientation. All the while, "family values" advocates are suggesting we codify discrimination in the name of religion. Our work never stops.

The horrifying tragedy which sparked the removal of the Confederate flag on the capitol grounds in South Carolina shocked our national conscience. Domestic terrorism on Black churches inspired by an ideology of hate exposed not only violent extremists but is, unfortunately, the most sensational manifestation of society's enduring vestiges of racism. The flag is just a symptom.

The ACLU is fighting back against other vestiges including the over-policing of communities of color, mass incarceration, and tough-on-crime policies. And we are not alone; criminal justice reform is a bipartisan effort. Left-leaning George Soros and conservative stalwarts like the Koch brothers and Newt Gingrich are calling for and funding reform.

In WV, our juvenile justice reform work addresses these issues and more. We've taken great strides to curb the school-to-prison pipeline through truancy reform. But this victory is just the first step. We must meaningfully invest in alternatives to incarceration that not only reduce recidivism but holistically improve life outcomes and address root causes of poverty. Next legislative session we will push for these reforms.

We hope you will continue to support our efforts. Now more than ever we need your financial backing to continue fighting for justice and equality. Every step forward counts but there are many more steps to take. Please take a second and fill out the donation form included in this newsletter to include the ACLU in your philanthropic giving. Give generously, and know that every contribution counts.

Message from the President



Achieving racial justice in West Virginia is an ACLU priority. Working together with many groups and our legislature, progress has been made in this last decade. After the Criminal Justice Statistical Analysis Center

published its 2009 report documenting racial profiling in West Virginia, legislation has been enacted to eliminate this scourge. Now in our state all law enforcement agencies must

- › maintain procedures to eliminate racial profiling, including independent reporting systems to receive, investigate and respond to complaints of racial profiling;
- › provide training to officers on the avoidance of racial profiling;
- › record data on traffic stops, including the reason for the stop and the driver's race or ethnicity;
- › obtain written or recorded oral consent before searching a vehicle stopped for motoring violations.

These policies were not in place when the report found that African Americans (3.6% of our state's population) were 1.64 times more likely than whites to be stopped while driving, and Latinos (1.4% of the population) were 1.48 times more likely than whites to be stopped. Minorities were 2.5% more likely to have their vehicles searched, while offi-

cers found contraband more often in vehicles driven by whites.

Having firm policies in state code that eliminate racial profiling is a positive step, but the key to change comes in implementation. That's why we support officers receiving quality training to overcome stereotypes of minorities. We also sponsor activities of the Race Matters group to educate the public on race.

Racial profiling is evidenced by two cases successfully defended by the ACLU-WV in this decade: one against a South Charleston officer who, without probable cause, forced a young black driver to a road-side strip search (2006); the other in a settlement with the City of Fairmont in the case of a black college student whose vehicle was struck by a white driver (2013). Police asked the victim and his friends if they had drugs or guns. Answering no, the officer then used a police dog to search the vehicle, destroying the student's computer in the process.

Many Muslims, African Americans and Hispanics in West Virginia report being followed by security guards while shopping, by police officers as they walk or drive, and being scrutinized in ways unexperienced by whites.

Our laws have been strengthened. We are working to assure implementation and to increase public education so that racial justice in West Virginia is achieved.

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.acluww.org or facebook.com/ACLUWV.

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2015 Supreme Court Wrap-Up

The Supreme Court addressed many exciting topics this year including marriage equality, religious freedom, and free speech. The ACLU filed briefs and participated in many of these, appearing as counsel or amicus in nearly one-quarter of the cases before the Court.

The marriage equality decision, *Obergefell v. Hodges*, deservedly received the most attention. The ACLU served as counsel for the Ohio and Kentucky plaintiffs. Writing for the 5-4 majority, Justice Kennedy found that the fundamental liberty and equality protections of our federal Constitution extend to same-sex couples' freedom to marry.

Notably, the Court issued this opinion on June 26—the same day that the decisions in *Lawrence v. Texas* (2003 case invalidating a Texas statute making it a crime for same-sex couples to engage in sexual conduct) and *U.S. v. Windsor* (2014 case striking down the federal Defense of Marriage Act) were announced.

Religious liberty also fared well. In *EEOC v. Abercrombie & Fitch Stores*, a Muslim teen was denied a job because the religious headscarf she wore did not comport with Aber-

crombie's "look policy." The Court sided with the teen, finding that religion cannot be a motivating factor in employment decisions.

Women's rights, free speech rights, and fair housing came out ahead. In *Young v. UPS*, the Court ruled that under the Pregnancy Discrimination Act employers cannot impose a "significant burden" on pregnant workers. In *Reed v. Town of Gilbert*, the Court held that Gilbert, Arizona's municipal code which subjected certain signs, including signs that advertised information about religious services, to more stringent regulations was unconstitutional content-based speech restriction. And in *Texas Department of Housing v. Inclusive Communities*, the Court upheld the "disparate impact" test under the 1968 Fair Housing Act, meaning that statistics and other evidence can be used to show that decisions and practices have discriminatory effects—without proving that discrimination is the result of specific discriminatory intentions, which is harder to demonstrate.

But troublingly, in a 5-4 decision written by Justice Alito, the Court rejected a challenge

to the controversial three-drug cocktail used in lethal injections. The decision endorses a state's right to torture people to death absent any other alternative. Capital punishment is unreliable and arbitrary, racially biased and geographically skewed. Much of America has turned away from it, leaving only a handful of counties putting people to death.

Next term already looks to be a nail biter. The Court agreed to hear *Fisher v. University of Texas*, a case examining the constitutionality of the University of Texas's affirmative action admission program. And, there is speculation that the Court will issue its most important decision on abortion rights since *Casey v. Planned Parenthood* (1992). The Court recently stayed the Fifth Circuit's *Whole Women's Health v. Cole* decision. This means that the ruling, which would have immediately closed more than half of Texas's abortion clinics, cannot yet go into affect. The Court is set to decide in the coming months whether it will hear an appeal of that case next term. Stay tuned.

Juvenile Justice Next Steps: Reinvestment

The ACLU of WV led the effort to amend our state's draconian truancy law last session in which a student missing just five unexcused days from school may be referred to court. Under the new law, schools 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. The law also provides much needed clarification on what types of absences are counted as excused.

While this is a positive first step in reforming our state's broken juvenile justice system,

to create lasting change we must meaningfully fund community-based alternatives to incarceration. WV is poised to save \$20 million dollars due to locking up fewer youth for low-level or first time offenses as a result of legislative reforms. These funds should be reinvested into programs that have a proven record of reducing child poverty and keeping kids out of the criminal justice system.

States from Ohio to New York have reformed their juvenile justice systems by investing in programs that match youth with mentors, provide counseling services, and place

youth with mental health and/or drug treatment programs. These services cost less than incarceration and are more effective at reducing recidivism. West Virginia should follow in their footsteps and create a system that provides youth with the tools they need to succeed instead of setting them up for failure. The ACLU of WV will push next session for reinvestment of the savings from the juvenile justice reform legislation into community-based alternatives. Our state's children deserve no less.

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NEWSLETTER
