

2017

LEGISLATIVE

AGENDA



Defense

On February 8th, the 83rd Legislature convened in Charleston to craft new laws and policies to address the challenges facing the state. This will be the second year in a row that Republicans hold a majority in both chambers of the Statehouse after more than 80 years of Democratic rule. The backdrop for this, of course, is the transition to the Trump

presidency, and to an all-out assault on civil liberties at the national level. Through whatever may come we will continue to be there, fighting for all our rights.

By almost all accounts budget and economic woes are the primary, if not sole focus of the WV Legislature. If so, it will be a relief from the contentious social issue battles in

recent years. However, the response must be increased vigilance, not complacency; issues that implicate civil liberties can fall under the auspices of budget and economy, and may not be immediately obvious. And of course, we cannot discount the possibility of more direct attacks on civil liberties, despite the common wisdom.

SCHOOL VOUCHERS

Notably, education reform is on the agenda, and there is a significant push for some form of “school choice” – which may include school vouchers, charter schools, or education savings accounts. Regardless of the form, these programs raise constitutional concerns. The history of “school choice” is rooted in attempts to reverse school desegregation. When such programs are implemented in a way that allow segregation or lead to disparate racial impacts, they become problematic. Similarly, these programs are often used as a back-door

for government funding of religious education, which violates the Establishment Clause. In private school or charter schools, students may not have the same protections for speech and due process or against discrimination as in the public education system. Finally, these programs siphon money from public schools and make it harder to fulfill the right to an education under the West Virginia Constitution. Accordingly, we will scrutinize all proposals of this nature, and are prepared to offer guidance, and opposition if necessary.

WAR ON DRUGS

The opioid epidemic is likely to get significant attention in the legislature as well. Newly-elected Governor Jim Justice distinguished himself from his opponent during the campaign by promising to focus on rehabilitation over punishment. This contrasts with legislative efforts which have consistently focused on creating new crimes related to the drug epidemic and increasing penalties for existing crimes. We are prepared to oppose all legislation that continues the failed policies of the “War on Drugs”, and to support policies designed to connect those affected by drugs with help.

Drugs and the budget may intersect in the form of proposals for marijuana legalization. Legalization advocates are quick to point out the many ways that West Virginia can save money by no longer enforcing existing prohibitions against marijuana. They also point out that the state stands to make significant gains in jobs and tax revenue. There has been a groundswell of public support for legalization, and we are prepared to help lead that fight. However, the legislature as a whole remains hesitant, and several key legislators are strong opponents. Moreover, uncertainty about enforcement of federal marijuana laws is likely to further temper this proposal.

REPRODUCTIVE JUSTICE

After passing a 20-week ban, and a ban on the safest and most common method of second-trimester abortions in consecutive legislative sessions, the legislature’s assault on reproductive rights would seem to have hit its lowest possible point. Nonetheless, we are prepared for further attacks on women’s health. Likely targets include requiring parental consent for minors, or removing state-Medicaid

funding for abortion services. However, after the Ohio legislature passed a bill banning all abortions after a fetal heartbeat can be detected (vetoed by Governor Kasich), we recognize the possibility that our legislature may try something similar, despite being incontrovertibly unconstitutional. Regardless, we will defend any attacks on reproductive healthcare.

LGBTQ EQUALITY

Last session, the Legislature also attempted to pass a Religious Freedom Restoration Act (RFRA), or license to discriminate bill. While the bill was narrowly defeated, it was just one of many attempts to attack LGBT individuals. Speculation is that the legislature will not make another attempt at this, or similar legislation. However, a growing number of states are attempting to pass “Bathroom Bills” – aimed at the demonstrably false transgender bathroom predator myth.

We are prepared to fight vigorously against such bills. Similarly we will fight against any attempt to undermine municipalities that have passed non-discrimination ordinances of their own in the absence of a state-wide non-discrimination law. We will watch for any other attempt to discriminate, disenfranchise, or marginalize the LGBT community as the session progresses.

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With RFRA and attacks on abortion rights dominating headlines, it's hard to remember that there are still opportunities to make strides on civil liberties in West Virginia. For example, in 2015 the ACLU-WV successfully spearheaded truancy reform. And in 2016 the ACLU-WV took the lead on the Internet Privacy Protection Act, which ensures that employers cannot force employees to give access to their personal social media accounts. In 2017, the ACLU-WV will proactively introduce and advocate for two bills – one regarding juvenile justice, and one regarding hate crimes

Juvenile Justice

Classrooms Not Courtrooms is the working title of our juvenile justice work for the 2017 session. In close coordination with the Mental Health Matters coalition, we have crafted a pilot program aimed at cutting off the school-to-prison pipeline at its source. Currently, school-based discipline (such as detention and suspension) is increasingly feeding youth into the juvenile justice system. System-involved youth overall, have worse outcomes than youth who do not contact the juvenile justice system – even when

controlling for the same demographic and risk factors. Unfortunately a lack of community-based services means that there are limited options for assisting at-risk youth before they become system involved. Classrooms Not Courtrooms seeks to address both problems. It will require participating schools to provide school-based mental and behavioral health services. Simultaneously, participating schools will divert children from traditional school discipline to assessments and, if needed, treatments by mental or behavioral

health professionals. In this way, we are both expanding available services throughout the state, and identifying and linking at-risk youth with services before they become system-involved. The pilot model will focus on schools that already have services available, so the districts and state incur no additional costs, and on data collection to make a stronger case for full implementation.

Hate Crimes and Restorative Justice

Like our juvenile justice initiative, our hate crimes reform bill aims to address multiple problems. First, the legislation will add sexual orientation and gender identity to the categories for which a hate crime can be charged. This is a long-overdue change, and a timely one, as a similar issue is pending before the West Virginia Supreme Court of Appeals. Secondly, the language will enhance civil liberties protections by ensuring that associations or speech protected under the First Amendment cannot be used as the basis of

a hate crimes conviction. Finally, the bill introduces restorative justice as the preferred method for sentencing.

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Restorative justice focuses on rehabilitation and reparations over a retributive model of justice. It focuses on having the perpetra-

tor work with the victim or victims to restore the harm done, and to gain a better awareness of what they did wrong. Successful models have been implemented worldwide for a variety of types of crimes. The model is particularly relevant in the context of hate-crimes which are so often rooted in misunderstanding and fear. For individuals and communities victimized by hate crimes, restorative justice gives them a chance to speak out about the harm they feel, and to look outward for healing.

There can be no denying that 2017 has opened a direct attacked on many of our most cherished liberties. And thus far there can be no denying that we will need to work harder than ever to preserve the progress we have made. But, it is always important to remember that the long arc of history does bend towards justice, and we must also work diligently to keep bending that arc.
