

ACLU

Kentucky

2020 Legislative Agenda and Legal Update

Media packet

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ACLU-KY ADVOCACY

The ACLU-KY Advocacy Team is preparing for a very active 60-day session. During the legislative session we will focus on promoting common sense justice reforms, fighting attempts to limit access to abortion, and addressing racial disparities in healthcare for pregnant people.

We will also continue our efforts to promote legislation abolishing the death penalty, implementing statewide anti-discrimination fairness protections for LGBTQ Kentuckians, and restoring voting rights for all individuals with felony convictions.

We anticipate fighting back against bills that further restrict access to abortion; limit First Amendment and religious freedom protections; target immigrants; and create harsher prison sentences, further increasing our incarcerated population.

VOTING RIGHTS VICTORY

The Advocacy Team has been fighting to restore voting rights to Kentuckians with past felony convictions for years. The Governor's recent executive order is a step forward, but still leaves behind more than 100,000 others.

The executive order signed by Governor Beshear automatically restores voting rights to more than 140,000 Kentuckians with past felony convictions who have completed their full sentences, probation, and parole. It also applies to people who are still on probation or parole only because of unpaid fines or restitution.

All people whose rights are restored will still need to register to vote.

This order is a step in the right direction, but leaves behind more than 100,000 others who have completed their sentence, probation, and parole. Before this order, the Kentucky Constitution disenfranchised roughly 242,000 people because they had past felony convictions. Kentucky was one of only two states that permanently barred people with past felony convictions from voting. This disenfranchised approximately 9% of otherwise eligible voters and nearly 25% of African-Americans.

We hope the state legislature will start the process to remove this draconian requirement from the constitution.

2020 LEGISLATIVE GOALS

The Advocacy Team will promote legislation in three key areas:



**JUSTICE
REFORM**



**REPRODUCTIVE
FREEDOM**



**JUVENILE
JUSTICE**

SUCCESSFUL SUPERVISION

Kentuckians under supervision need a fair shot at getting back on their feet. Reforming the state's systems of probation and parole will reduce the skyrocketing number of incarcerated people.

THE PROBLEM:

More than 50,000 Kentuckians are on probation or parole and are at risk of returning to jail or prison because of simple technical violations. Violations happen when a probationer or parolee breaks the conditions of their supervision. They can be as simple as arriving late to a meeting because of a wreck on the highway.

THE SOLUTION:

We support legislation reforming Kentucky's community supervision that would allow formerly incarcerated people a fair chance at successfully reintegrating into their communities by:

- Providing alternatives to prison and jails for people who fail to meet all conditions of their release all of the time
- Providing incentives to probationers similar to those offered to parolees (i.e. credit for education, volunteering, or participation in a recovery program)
- Implementing a fairer system for paying fines and fees to offer people released from jail or prison a better chance to get on their feet
- Extending the same due process afforded to Kentuckians accused of a crime to people facing a return to prison or jail for alleged violations

IMPROVING MATERNAL HEALTH

People of color are three times more likely to die from complications during or soon after pregnancy than their white peers in the United States. Kentucky must implement policies that address racial bias in medicine and increase access to doulas, who can provide crucial support to pregnant patients.

THE PROBLEM:

Rates of maternal mortality can be used as an indicator of a population's overall health and the efficacy of healthcare systems. Maternal mortality refers to the death of someone during pregnancy and up to a year after. This only includes causes related to pregnancy.

The United States has one of the highest maternal mortality rates among the world's wealthiest countries, and it is on the rise. In the U.S., people of color are three times more likely to die during or soon after pregnancy than their white peers.

THE SOLUTION:

The ACLU of Kentucky supports legislation that recognizes every person should be entitled to dignity and respect, before, during, and after pregnancy and childbirth, regardless of race, age, class, sexual orientation, disability, language proficiency, nationality, or religion. The legislation also requires healthcare providers to participate in implicit bias training and allows patients to use Medicaid to cover the cost of doula services.

JUVENILE JUSTICE

A variety of Kentucky laws treats kids like adults in our justice system. These laws hurt all families, but have a disproportionate impact on Black kids. We need a system that treats kids like kids, not adults. To make much-needed reforms to reduce racial disparities, we need accurate data to get a better understanding of how we got here and how to address it.

THE PROBLEM:

Juvenile justice reform from past General Assemblies has resulted in significant reductions in the number of detained youth. Unfortunately, racial disparities have increased.

THE SOLUTION (JUVENILE JUSTICE CONT.):

Children who have been accused of acting out should be supported with access to services. We need data to understand where current supports are failing these children and their families.

LEGAL UPDATE

The ACLU-KY legal team works in courts to protect and expand the freedoms guaranteed to all people in Kentucky under the U.S. and Kentucky Constitutions.

The swift and unrelenting attacks on civil liberties in the Commonwealth have meant more action in the courts, and beyond, for our legal team. This past fall, two legal fellows joined our team.

The ACLU-KY legal team has most recently been fighting to protect and expand access to abortion, anti-discrimination protections for LGBTQ Kentuckians, free speech, government transparency, and religious freedom.

2019 LEGAL VICTORIES

HART v. THOMAS

The ACLU of Kentucky recently won a challenge in U.S. District Court against the Kentucky Transportation Cabinet.

The Court granted summary judgment to our client, Mr. Hart, finding that the Transportation Cabinet violated his rights when they denied his request for a vanity license plate reading “IM GOD”.

- Kentucky has asked for an extension of time to decide whether to file an appeal.
- As the prevailing party, ACLU-KY is entitled to attorney’s fees and costs. We have filed a motion seeking \$151,206.74.

ACLU-KY will continue to monitor the Transportation Cabinet to ensure their policies are consistent with the First Amendment.

MILLER v. DAVIS

The Sixth Circuit of the U.S. Court of Appeals affirmed a lower court ruling awarding attorney's fees to a couple denied a marriage license by Rowan County Clerk Kim Davis.

The Sixth Circuit affirmed the District Court's decision awarding us attorney's fees in the amount of roughly \$224,000. The Commonwealth of Kentucky paid the fees.

FREEDOM OF SPEECH

MORGAN v. BEVIN

ACLU-KY challenged the previous gubernatorial administration's policy and practice of blocking individuals from the Governor's official social media pages in Morgan v. Bevin.

Both sides filed motions for summary judgment in U.S. District Court. The case remains pending. We are optimistic that the incoming administration will implement policies that respect the First Amendment on official government social media pages.

FREEDOM OF RELIGION

Matters of religious belief and practice should be left to families and faith communities, not to schools or government entities.

ACLU-KY opposes recent Project Blitz-inspired laws that indicate state endorsement or acceptance of specific religious beliefs, such as:

- Mandated display of 'In God We Trust' in all public schools
- Bring Your Bible to School Day and Prayer Day for Kentucky Students
- Bible Literacy classes

We encourage Kentuckians to contact their legislators and ask them to oppose these unnecessary and discriminatory laws. These laws do not enhance one's ability to practice one's faith and often exclude religious minorities.

VOTING RIGHTS

Every eligible voter should easily be able to vote and all votes should count.

PHOTO ID REQUIREMENTS

Requiring people to present a photo ID to vote is a form of voter suppression.

- This requirement is a solution to a non-existent problem that is based on unfounded claims of “voter fraud”.
- There have only been 31 credible allegations of voter impersonation – the only type of voter fraud a photo ID can prevent – between 2000 and 2017. More than 1 billion ballots were cast in same time.

Photo ID requirements reduce turnout by 2-3% by making it more difficult to vote.

- 11% of Americans do not have a photo I.D., including:
 - 18% people over the age of 65
 - Roughly 25% African-Americans

Acquiring a photo I.D. takes time and money (transportation, lost wages, childcare).

- Even if photo I.D.s are provided at no cost, obtaining documents required to get the I.D. often cost money (e.g. birth certificate).

Providing photo I.D.s at no cost requires significant government resources.

- When Indiana started requiring photo I.D.s to vote, the state offered them at no cost to those without. The state spent \$10 million in taxpayer dollars providing these “free” I.D.s.

PURGING VOTER ROLLS

Removing people from the voter rolls must be done as slowly and as carefully as possible.

- Voting is not a “use it or lose it” right. No registered voter should be removed simply for not participating in elections.
- There is no evidence of duplicate voting in Kentucky.
- Purges remove voters who are not supposed to be removed.
 - Ohio was set to purge 235,000 registered voters and was incorrect 20% of the time.

MARSY'S LAW

This is a well-intentioned but misguided amendment to the Kentucky Constitution.

The amendment is unnecessary and unclear.

- The rights outlined in the amendment are already established in Kentucky statutes.
- It provides no guidance on invocation or enforcement of rights in the amendment or for situations in which provision of the amendment's rights conflict with other constitutional rights.

It does not address the true needs of victims.

- Prosecutors' offices have victims' advocates. If victims feel uninformed or unsupported by these advocates, the advocates should be provided with additional resources. This amendment does not provide any resources.

REPRODUCTIVE FREEDOM

Our legal team is dedicated to protecting and expanding reproductive rights for all Kentuckians and has been involved in litigation for nearly all abortion rights cases in Kentucky over the past four decades.

OVERVIEW

Abortion remains legal in Kentucky and you can still get an abortion at EMW Women's Surgical Center in Louisville. ACLU-KY is currently litigating three challenges to four state laws in federal court. All four laws are enjoined (not in effect) during litigation.

Mandatory Narrated Ultrasound

- Law is in effect and requires doctors to say certain things to patients, even if it is not in the patient's best interest.
- ACLU-KY challenged the law on the grounds that it violated doctors' First Amendment rights. U.S. District Court granted an injunction, keeping the law from taking effect. Sixth Circuit Court of Appeals reversed the decision in April 2019.
- ACLU-KY petitioned the Supreme Court of the United States to review appeals court decision in September 2019. SCOTUS denied petition on December 9, 2019.

REPRODUCTIVE FREEDOM ONGOING LITIGATION

TRANSFER / TRANSPORT AGREEMENT REQUIREMENT IS CURRENTLY NOT IN EFFECT.

WHAT:

Regulation would require abortion clinics to have a transfer agreement with a hospital and a transport agreement with an ambulance company.

HOW:

Clinic cannot obtain a license to operate without the agreements; however, under the previous gubernatorial administration, the guidelines for these agreements shifted often and widely.

BACKGROUND:

EMW Women's Clinic and Surgical Center had these agreements for years. Previous gubernatorial administrations approved EMW's same agreements. Requirements for licensure are regulated by the Kentucky Cabinet for Health and Family Services.

WHY IS THIS LAW UNCONSTITUTIONAL?

This law is an undue burden on patients' ability to access abortion because it directly targets abortion providers with the goal of closing Kentucky's last clinic.

WHERE IS LITIGATION?

U.S. District Court granted a permanent injunction, striking down the transfer/transport agreement requirement. Kentucky appealed to the Sixth Circuit Court of Appeals and arguments were held in August 2019. We are currently awaiting a decision.

D&E PROCEDURE BAN LAW IS CURRENTLY NOT IN EFFECT.

WHAT:

Effective ban on the most common second-trimester abortion procedure.

HOW:

The law would force doctors to perform invasive, medically-unnecessary, often ineffective procedures prior to the D&E procedure. The doctors would not have performed the procedure, preventing them from legally performing the subsequent D&E procedure.

BACKGROUND:

The law (HB454) was passed during the 2018 General Assembly.

D&E PROCEDURE BAN (CONT.)

WHY IS THIS LAW UNCONSTITUTIONAL?

Law would place undue burden on patients' ability to access a second-trimester abortion by effectively banning access to the D&E procedure in Kentucky.

WHERE IS LITIGATION?

U.S. District Court granted a permanent injunction in May 2019, keeping the law from taking effect. Kentucky appealed to the Sixth Circuit Court of Appeals. We are awaiting a date for oral arguments.

SIX-WEEK BAN

LAW IS CURRENTLY NOT IN EFFECT.

Law is being challenged in same suit as Reason Ban.

WHAT:

Ban on abortion after approximately six weeks of pregnancy.

HOW:

This law would ban abortion if a fetal "heartbeat" (fetal pole cardiac activity) can be detected. Cardiac activity can be detected approximately six weeks after fertilization, before many people even know they are pregnant.

BACKGROUND:

The law was passed during the 2019 General Assembly (SB9).

WHY IS THIS LAW UNCONSTITUTIONAL?

Like the Reason Ban, this law would ban abortion prior to viability. Multiple courts have held that bans on abortion prior to viability are unconstitutional.

WHERE IS LITIGATION?

ACLU-KY is challenging this law in the same lawsuit as the challenge to the Reason Ban (HB5), passed in the 2019 General Assembly. Both laws have been enjoined during litigation in U.S. District Court, keeping them from taking effect.

REASON BAN

LAW IS CURRENTLY NOT IN EFFECT.

Law is being challenged in same suit as Six-Week Ban.

WHAT:

This law would ban abortion if the patient's reason for the procedure, in whole or in part, is the race, color, sex, national origin, or disability diagnosis of fetus or embryo.

REASON BAN (CONT.)

BACKGROUND:

The law (HB5) was passed during the 2019 General Assembly.

WHY IS THE LAW UNCONSTITUTIONAL?:

Like the Six-Week Ban, this law would ban abortion prior to viability. Multiple courts have held that bans on abortion prior to viability are unconstitutional.

WHERE IS THE LITIGATION?

ACLU-KY is challenging this law in the same lawsuit as the challenge to the Six-Week Ban (SB9), passed in the 2019 General Assembly. Both laws have been enjoined during litigation in U.S. District Court, keeping them from taking effect.

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