Fall 2016 Newsletter of the American Civil Liberties Union of Kentucky Foundation



LEGISLATIVE POWER SHIFTS

The 2016 Election ushered in a new era of Kentucky politics. After 95 years, the Democrats lost control of the Kentucky House. When the 2017 General Assembly gavels in, Republicans will have a supermajority in the House. The change in power dynamics in that legislative body along with the existing GOP control of the Senate and Executive Branch will likely result in movement

on major policy items at unprecedented speed. Priorities for the new majority will include a number of civil liberties issues. We know this because for decades some of the same legislation has passed through the Senate year after year only to be blocked in the House. This legislation now has a much clearer path to the Governor's desk for his signature.

REPRODUCTIVE FREEDOM: ABORTION ACCESS

The Kentucky Senate passed over a dozen anti-abortion bills during the 2016 session, including a bill that forces women to have an ultrasound before an abortion. Another bill that passed the Senate reclassified the state definition of what an abortion services provider is, turning people like doctors, social workers

and health department staff into abortion providers for simply providing all-options counseling to their patient or client.

One bill requiring a faceto-face or live video feed consultation 24 hours in advance of an abortion passed through the House to become law. Decades of opposition from Democratic members of the Kentucky House of Representatives have long been credited with stopping anti-abortion bills from moving forward. Without their opposition in enough numbers to block a measure, we can expect all anti-abortion bills to move forward quickly. Most likely, we will see even more radical bills than we have seen in years past.

LGBT: BLOCKING BATHROOM ACCESS FOR TRANSGENDER KENTUCKIANS

Anti-transgender bills that have previously been stalled by the Kentucky House of Representatives will likely pass the full Kentucky General Assembly. Previous measures proposed and passed from the Senate required Kentucky students to use the bathroom of their "biological sex" and not their gender-identity.



"RELIGIOUS LIBERTY"

Bills erroneously described by their proponents as "religious liberty bills" will face little opposition and likely move forward easily in 2017. Bills from the 2016 session included a measure that would allow businesses to legally discriminate against LGBT Kentuckians. Bills like the Bible Literacy Bill, which would prioritize Bible literacy classes in Kentucky's public schools, can also be expected to make a return. While we know there certainly are acceptable ways to teach about the Bible to public school students - such as teaching comparative religion classes or about the Bible's relationship to literature, art or music - the

fact remains that it is difficult, in practice, to do so in a constitutionally permissible manner.

IMMIGRANTS' RIGHTS

Recent legislative sessions have not seen many anti-immigrant bills. We fear the antiimmigrant themes from the presidential race, with a major emphasis on deportation, could trickle down to the state level. We will be keeping a close eye on measures introduced.

CRIMINAL JUSTICE REFORM

With Governor Bevin's commitment to criminal justice reform, it is possible than an update to our penal

code could move through the 2017 General Assembly. But there is high potential for opposition from members of the governor's own party, including members serving on, or as chair, of the Judiciary Committee.

ABOLITION OF THE DEATH PENALTY

The repeal bill sponsor, David Floyd (R), will retire at the end of this year, and it is unclear at this time who will carry the bill moving forward. The only hearing given to a repeal bill since 1976, when the death penalty was reinstated in Kentucky, was provided by Rep. Darryl Owens who had served as chair of the House Judiciary Committee. With the change in power we do not know who the new committee chair will be, nor whether he or she will give the bill a hearing.

PRIVACY RIGHTS

This GOP takeover could spell good news for some bills on privacy rights. It was the VETO of Governor Bevin along with the advocacy of Representative Jerry Miller (R) that stopped Kentucky from moving into compliance with REAL ID. This broadening of power by the GOP could keep REAL ID at bay and even

result in some proactive bills moving forward like a measure from Rep. St. Onge (R) to restrict the use of drones for surveillance.

The upcoming session is a short one - 30 working days - but even in this limited time frame we expect a major overhaul of many of Kentucky's existing laws in addition to the implementation of new ones. Even with our new, historic and unprecedented challenges the ACLU remains committed to defending and protecting your rights. If that can't happen in the capitol, it can in the courthouse. Now more than ever, we need your support. We need you to join us. Use the enclosed envelope to ensure your ACLU-KY membership is up to date. Make sure you are signed up for our email alerts (sign up on our home page at www.acluky.org) to receive the latest information on events, actions, and petitions. We are here to help you raise your voice. See the Save the Date information for our planned Fairness and I Love Repro Rights Rally Days. With your continued support, we can continue on our path to a more fair and just commonwealth for ALL Kentuckians.

WHAT
HAPPENED IN
KENTUCKY
ON ELECTION
NIGHT 2016

Election Day was a historic moment for Kentucky Republicans who rode the Trump wave to gain 17 seats and a super majority in the Kentucky House of Representatives. This is the first time the Republicans have held control over the Kentucky House of Representatives since 1921. This new majority means Republicans control both the legislative and executive branches of state government. Finally the results of this election mean every chamber in the south is now held by the GOP.

Among the state races there were a number of notable wins and losses, starting with House Speaker Greg Stumbo (D) who was ousted by opponent Larry Brown (R). Both of the seats maintained by Democrats during the 2016 special election were lost. Of special notice, incumbent Linda Belcher (D) of Bullitt County was narrowly defeated by Dan Johnson (R), a man who shared images during his campaign that depicted President Obama as an ape. Finally, newcomer and Democrat McKenzie Cantrell unseated Republican incumbent Denver Butler to win a House seat in south Louisville.



BRENT ASSEFF

APPOINTED GENERAL COUNSEL FOR THE ACLU OF KENTUCKY

Brent Asseff has recently been appointed to the role of General Counsel for the ACLU of Kentucky. The General Counsel will provide advice to the ACLU of Kentucky Board of Directors and Executive Director concerning a wide variety of matters, including but not limited to, corporate governance, administrative issues, labor and employment issues, and professional liability duties/ responsibilities.

Brent currently serves as a staff attorney in the Office of General Counsel for the U.S. Department of Veterans Affairs and previously served as General Counsel to the Kentucky Board of Dentistry.

Brent received his Juris Doctorate from the Brandeis School of Law at the University of Louisville. He lives in Louisville with his partner Becca O'Neill, a former member of the ACLU of Kentucky Board of Directors and an attorney with Kentucky Refugee Ministries, and their two children.



LEGAL UPDATE

BY WILLIAM E. SHARP **LEGAL DIRECTOR**



This summer we successfully concluded our litigation on behalf of James Evans, the Muhlenberg County man who was wrongfully charged and arrested with a felony for posting heavy metal song lyrics on Facebook. We represented Mr. Evans in the criminal case which was ultimately dismissed, and we then filed suit on his behalf against Muhlenberg County and its police chief for the unlawful arrest. In August, the defendants agreed to pay \$60,000 and to the entry of a judgment against them in order to resolve the litigation. This result would not have been possible without the able and dedicated assistance of ACLU of Kentucky Cooperating Attorney Brenda Popplewell, and we thank her for her efforts on behalf of Mr. Evans and on behalf of all Kentuckians' civil liberties.



The past several weeks have also seen a great deal of continuing litigation in the S.R. v. Kenton Co. Sheriff's Dept. case in which we are working with the law firm of Dinsmore & Shohl and the Children's Law Center on behalf of two minor children who

were subjected to above-the-elbow, behind-the-back handcuffings by a school resource officer for conduct related to their behavioral disabilities. The parties, having concluded the expert discovery phase, are now in the process of writing and submitting motions to the court on summary judgment arguing why, in light of the evidence, judgment should be granted in their favor. In addition to Dinsmore & Shohl and CLC, we are also working with the national ACLU's Disabilities Rights Project on this litigation.

We also worked with cooperating attorneys Tad Thomas and Lindsy Lopez to draft and file a friend-of-the-court brief in a case currently pending before the Kentucky Supreme Court. In our brief, we argued that the Lexington anti-panhandling ordinance under which the Appellant, Dennis Champion, was convicted violates individuals' free speech rights. Specifically, we argued that because the ordinance outlaws only certain speech, i.e. begging, in designated areas, the ordinance constitutes an impermissible content-based restriction on otherwise lawful speech. In doing so, we highlighted for the Kentucky Supreme Court the recent U.S. Supreme Court decision Reed v. Town of Gilbert in which the Court made clear that content-based speech restrictions are disfavored, and that any "government regulation of speech is content based if [it] applies to particular speech because of the topic discussed or the idea or message expressed." We expect a ruling from the court in the coming weeks. Mr. Thomas and Ms. Lopez are with the Louisville-based firm Thomas Law Offices.



(L to R) Ashley Gray-Ziba, Abby Lewis, Cyndi MacGruder, Jessica Morgan, Sara Price

~~~ RFP Benefit ~~~

In October reproductive freedom supporters converged on Genscape in Old Louisville for the annual benefit for the ACLU-KY's Reproductive Freedom Project (RFP).

This year's event raised over \$64,000 that will support the educational, advocacy and legal work of the RFP. Thank you for your support! We are just a few hundred dollars shy of our \$65,000 fundraising goal for the event. If you made a pledge, or want to make an extra gift for the RFP, mail it to: ACLU-KY, 315 Guthrie Street, Suite 300, Louisville, KY 40202.

The RFP serves as a critical voice in the Kentucky Legislature for reproductive rights. We are proud to work closely with our coalition partners at Planned Parenthood of Indiana and Kentucky, the Clinic Escorts, the Kentucky Support Network, A-Fund, the Kentucky Health Justice Network, the Kentucky Religious Coalition for Reproductive Choice and others.



Legal Director Bill Sharp chats with Corey and Helena Shapiro







From top: Attendees listen to presentation from ACLU-KY Executive Director Michael Aldridge and Advocacy Director Kate Miller; Heather Hart listens to Matt Madden; (L to R) Elizabeth Jent, Shannon Evans, Ann Fangman.

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RESOLVE TO SUPPORT CIVIL LIBERTIES

It is an exciting time to be engaged with the work of the American Civil Liberties Union of Kentucky. We are proud of all that we've accomplished this year, and with the support of donors like you, we are primed to put our human capital to work in the courts, legislature, and public arena to advance our mission. Here are a few of the areas where your support has helped our work gain traction in Kentucky:

Passage of felony expungement legislation through the efforts of our Kentucky Smart on Crime Coalition. The Coalition is currently tackling larger-scale reforms, like updating the commonwealth's penal code by serving on the Governor's Criminal Justice Policy Assessment Council.

Launched, with our Fairness Coalition partners, the Kentucky Competitive Workforce Coalition (KCWC). The KCWC is made up of some of Kentucky's leading employers, large and small, who've come together

to express their strong support for statewide non-discrimination protections for LGBT Kentuckians.

Successfully negotiated a settlement in a federal lawsuit for a Central City, KY man jailed for sharing song lyrics on Facebook.

Added a Community Engagement Coordinator to our staff to handle our statewide public education program and meaningfully engage supporters and members in our policy work. If you believe in our work defending liberty and democracy, please consider supporting us in one or more of the following ways:

Make a donation or renew your membership using the enclosed envelope or online at https://action.aclu.org/secure/support-aclu-kentucky

Give a membership as a holiday gift, or honor/remember someone special with a gift in their name.

Already a member/donor? Become a sustainer and have an automatic monthly or quarterly donation charged to your credit card. Contact Africa at Africa@ aclu-ky.org to learn more.

Follow us on Facebook and Twitter and invite your friends. You can find us at www.facebook.com/ACLUofKentucky and @ACLUofKY on Twitter.

Sign up to receive our action alert emails at www.aclu-ky.org on the right side of the homepage.

Attend our events, held throughout the year across the Commonwealth, and bring friends. Check out the calendar on our website to see what's happening in your area.

Make sure your voice is heard on the issues you care about! Sign a petition, meet with your legislators, write an op-ed, or attend a rally day at the capitol. Contact our Community Engagement Coordinator George at George@aclu-ky.org to get involved.

Co-host a house party and help your friends, family and colleagues learn more about how the ACLU-KY is protecting liberty. Contact Africa for more information.

Share your story! Tell us why do you support the ACLU-KY? Look for the story sharing link on our homepage at www. aclu-ky.org.

After you are finished reading this newsletter, pass it on to a friend or family member. They just might read something that inspires them to join you among our ranks of members/supporters!

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CALL FOR BOARD NOMINATIONS

The ACLU of Kentucky is seeking individuals interested in serving on the Board of Directors. The Nominations Committee seeks candidates who are dedicated to the ACLU mission and willing to dedicate their time, talents and resources to help the ACLU of Kentucky achieve its mission and priorities.

The ACLU of Kentucky seeks potential board members that reflect the diversity of our state. Priority areas include, but are not limited to: individuals with expertise in finance, budget management, and fundraising; individuals who are lesbian, gay, bisexual, queer, cisgender, or transgender; individuals from ethnic or racial minorities groups; individuals with disabilities; and other groups that represent the diversity of our state.

Among the Board responsibilities and requirements are: 1) monitor progress toward goals; 2) develop, review and approve policies and budgets; 3) ensure adequate resources; 4) enhance the ACLU's public image; 5) ensure compliance with legal, ethical, and financial standards; 6) monitor and evaluate programs and services; 7) support the Executive Director and provide a performance review; 8) attend 6 board meetings a year including the Annual Meeting; 9) participate on one board committee; 10) make a financial contribution according to one's ability; and 11) be a member of the ACLU.

The terms for board members are three years with the opportunity for a second term. Elections will be held at the Annual Meeting in April 2017.

Nominations should include the following information: 1) nominee name; 2) nominee email address and telephone number; 3) brief description of nominee's qualifications (profession, community involvement, ACLU involvement (if applicable)); 4) nominator's name, email address and telephone number; 5) high resolution digital headshot; and 6) a short bio and statement on why nominee wishes to serve on the ACLU of Kentucky Board of Directors.

Please note that a nomination does <u>not</u> ensure that a nominee will be selected as a candidate to run for election. Submit nominations by December 31, 2016 to: Patti Minter, ACLU of KY, 315 Guthrie Street #300, Louisville, KY, 40202 or by email to phminter@gmail. com with "Board Nominee" in the subject line.



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WHY THIS VETERAN STANDS WITH THE ACLU OF KENTUCKY

Commentary by **Brandon Sword**, a Veteran and a University of Louisville Law student currently completing an externship with the ACLU-KY Legal Program

Like many of the Post 9/11 enlistees, I remember watching the Towers fall from here in Louisville, Kentucky, during an early morning class at Trinity High School. September 11, 2001 has been the day that has guided and shaped our generation. After the attacks, I enlisted in the United States Army. After all of the training and schooling I became a Team Leader at Task Force 501, a parachute infantry regiment at the time. I deployed to Iraq during 2006 with Task Force 501. Once in Iraq, our platoon was detached and split into two operational teams which would both conduct operations in the Anbar and Babel Provinces.

During an overnight mission in 2007, we were conducting operations in a town that rests along the Euphrates River. The plan was to set up two observation posts in an L – Shaped fashion along a section of land were an IED emplacement cell had been operating. I had chosen the roof of a building as the location for OP1 from its structural and geographical quality to the operation. After clearing the building, and sweeping the location for IED's, I moved the first team to the roof of the building to set up. After about a minute on the roof, an explosion was triggered, killing a close friend and mentor of mine, as well as injuring the remaining members of the team.

The explosion had cut my temporal artery on the left side of my head, torn the ulnar nerve outside of my left arm, cut my left Achilles tendon, and damaged my right leg to the point where a four compartment fasciotomy was needed in order to relieve the pressure. The extent of my injuries led to the Department of Defense retiring me. Military service is something that to this day, I still miss. Regardless of the horribleness, there is something inherently miraculous in actions taken for the protection of others.

After years in recovery, it finally became time to move on with my life. I decided to go back to school to get a Law Degree. Those years I spent laid up in a bed somewhere, I used to read and research. As if by fate, reoccurring issues of social and political dissidence kept appearing. It became clear that with the amount of injustice in the world, a juris doctor degree

would be necessary to be able to affect change. I am now in my third and final year of Law School at the University Of Louisville Brandeis School Of Law. I applied and received an externship at the Kentucky affiliate of the American Civil Liberties Union. Some of my peers found this choice at odds with my prior service in the military. While I do not fall to one side of the political line or another, I do have firm beliefs. I believe in the necessity of a large professional military. I believe that there are horrible actions that militaries must take and that those whose shoulders such burden falls upon, must carry it with profound respect. I also believe in gun ownership and marriage equality. I have long been a supporter of same – sex marriage based on rudimentary principles of fairness and equality. I myself am deeply religious, and do not find my beliefs of faith are contradicted by my involvement here at the ACLU.

Those who rose to service after 9/11 did so from a view that it is right and just to protect the American people and the United States' way of life. Just as those who have fought on the battlefield to provide

protection to the United States and its people the American Civil Liberties Union has, and continues to do so, from the court room and political arena. It is important to remember and embrace the concept of dissent. Those ruling in the majority today may themselves be in the dissent sometime in the future. If living in an open and free society means anything, it is that those in power cannot impose their views on those who are not. This is something that throughout history has toppled great countries, and something that the ACLU strives to protect the United States' people from on a daily basis. There is a quote that I have become fond of that seems to transcend the boundaries of military service and the legal profession:

"I have cherished the ideal of a democratic and free society in which all persons will live together in harmony and with equal opportunities. It is an ideal for which I hope to live for and to see realized. But, My Lord, if it needs be, it is an ideal for which I am prepared to die."

- Nelson Mandela, 1964



WELCOME THE COMMUNITY ENGAGEMENT COORDINATOR: GEORGE EKLUND

My name is George Eklund and I'm the new Community Engagement Coordinator at the ACLU of Kentucky. I'm excited to join you in the work of protecting and advancing civil liberties in the commonwealth.

The ACLU-KY decided it was important to add a Community Engagement Coordinator to the staff team because we know that in order to make real progress in the commonwealth, our members and supporters have to be engaged and active

I was born and raised in Eastern Kentucky and have traveled the state meeting and organizing with a lot of great people over the years. As I settle into this new position at the ACLU-KY, I'd like to hear from you about the direction of our work. Please take 2-3 minutes of your time to take our online survey http://bit.ly/georgeacluky

With your help, the ACLU can continue to have a real impact in Kentucky. Thank you for sharing your voice with us. I look forward to meeting and working with you soon.









Clockwise from top left: Randy Steidl in Lynch, Kentucky as he travels to a community conversation in Whitesburg. Randy Steidl speaks to students at Southeast Kentucky Community and Technical College. Exoneree Tour attendees across Eastern Kentucky signed our traveling petition asking for repeal of the death penalty in the commonwealth. We look forward to deliver these signatures to Frankfort. Students opposed to the death penalty pose before an event in Pikesville, KY.

EXONEREE TOUR

The trees are ablaze with the colors of autumn. Winter is coming and with it the General Assembly will be convening. The ACLU of Kentucky continues working with members and allies to abolish the death penalty in Kentucky. In support of this work, we once again sponsored a Death Row Exoneree speaking tour. From November 14th to the 17th we visited the idyllic communities nestled in the hills of eastern Kentucky with Randy Steidl,

a man who spent 17 years in prison (12 on death row) for a crime he didn't commit. He shared his powerful story of wrongful conviction and exoneration with audiences on college campuses, in front of rotary clubs, in places of worship, and hosted a larger community conversation in collaboration with Appalshop in Whitesburg.

The Death Penalty has proven to be unjust, cruel, costly, and ineffective at deterring crime. These speaking engagements are opportunities to engage a broad audience across the commonwealth to share stories and talk about how the Death Penalty is holding us back as a society.

Want to be more involved with our abolition work? Email our Community Engagement Coordinator George Eklund at George@aclu-ky.org

REMEMBERING **LEE THOMAS**



The Board of Directors, Staff and Members of the American Civil Liberties Union of Kentucky, extend our deepest condolences to the family of Lee B. Thomas, Jr. He was one of the founders of the ACLU of Kentucky affiliate, providing some of the seed money to get the young organization off the ground 61 years ago.

Lee's strength lay in his principled belief in the right of all people to be treated equally. He led by example. Despite his political disagreements with Carl and Anne Braden, he backed their legal defense in response to sedition charges filed because of their assistance to an African-American couple who were denied the opportunity to buy a house in the neighborhood of their choice. Lee realized that if the government allowed this type of disparate treatment of one couple, it was a threat to the liberty of all Americans.

He was a businessman that developed a model for corporate responsibility that will influence generations of future leaders. He created a fully integrated workplace, paid his employees a living wage with benefits, and created an environment that encouraged many to stay with the company for decades.

He and his dear wife Joan passed along their good fortune for the benefit of others. Because of their generosity thousands of women, men and children have been lifted from poverty, moved out of harmful situations, and had the opportunity to live full and rewarding lives.

Lee leaves the ACLU of Kentucky, and the wider community, a legacy of activism guided by a moral compass. His lifelong passion and commitment to social justice has always been, and will remain, an inspiration to those of us working toward a more equitable world.

AWARDS



Just call her a Bill of Rights Enforcer! Congratulations to our Advocacy Directory Kate Miller. The Kentucky Association of Criminal Defense Lawyers recently honored her at their 30th Annual Conference with their Bill of Rights Enforcer award for her work on criminal justice reform efforts in our Commonwealth.



ACLU-KY Executive Director Michael Aldridge received the Ally Award from Transwomen National. He's pictured here alongside honoree Alaina Brennan-Kupec.



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HOLIDAY OPEN HOUSE





ACLU of Kentucky Holiday Open House

Thursday, December 15, 5:30-7:30 PM

ACLU of KY Offices, 315 Guthrie St., Suite 300 Louisville, KY 40202



FAIRNESS RALLY

February 15, 2017 Kentucky State Capitol