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The 2009 Legislative Session: The Good, the Bad and Everything In Between

OVERVIEW

Amidst the most severe financial crisis and budget shortfall the state has seen in many years, Florida legislators still found time this legislative session to try to pass several pieces of legislation that would have stripped rights from voters, made reproductive healthcare more difficult and expensive to obtain, created license plates that would have been tantamount to government-sponsored religion, and more. But on key fronts, we won, and we won big.

Thousands of ACLU members and supporters contacted their legislators and Governor Crist, and our voices were heard. Numerous harmful pieces of legislation were defeated – and key civil liberties protected – thanks in large part to the willingness of ACLU supporters to speak out and take action. **Thank you to everyone who made calls and sent e-mails. We couldn't have done this without you.**

Many of the bills we tracked and opposed this session were important, but our energy was focused like a laser on defeating the voter suppression bills that would have curtailed voters' rights at every stage of the electoral process. The efforts of our supporters, combined with our lobbyists' work in Tallahassee, our Voting Rights Project based in Miami, and the critical mass of the over 40 organizations that the ACLU of Florida helped organize to fight for one single cause, brought this legislation to its knees.

In other good news, bills that would have encroached on a woman's right to choose went nowhere. A bill that would have opened the door to the teaching of creationism as science in our public school science classrooms also gained no traction. Bills that would have established license plates with religious depictions came close to passage but were defeated in the end. Some very negative bills did pass, but the largest of the threats either never came to fruition or were soundly defeated.

While our victories in defeating some major threats are to be celebrated, unfortunately the 2009 session offered few opportunities to move forward bills that would have protected and extended Floridians' civil liberties. We supported various important bills, including:

Civil Rights Legislation: Creating statewide protections for lesbian, gay, bisexual and transgender Floridians. We plan to support similar legislation next year.

Adoption: Repealing the ban preventing gays and lesbians from adopting children. Although this legislation didn't come up, we continue to fight this bigoted and unique ban through our lawsuit against the state, which is now in the 3rd District Court of Appeals on behalf of a father of two foster children in North Miami.

(MORE)

Prevention First: Assuring that rape survivors have access to emergency contraception no matter what sexual assault treatment center they utilize, and ensuring that all women with valid prescriptions (if required) are able to access contraception.

Healthy Teens: Guaranteeing that schools choosing to provide sexuality education provide information that is medically accurate.

Civil Rights Restoration: Breaking the link between employment licensing and restoration of civil and voting rights for persons with past felony convictions. In a true sign of progress, this year the Senate voted in favor of this legislation after it successfully passed three committees. We will work for passage by the full legislature next year.

AN IN-DEPTH LOOK AT THE ISSUES

Voting Rights

Voter Suppression Bills

SB 956 by Sen. Alexander (R-17) with Committee Substitute by Ethics and Elections Committee; HB 7149 by Economic Development and Community Affairs Policy Council and Rep. Murzin (R-2)

The defeat of the voter suppression bills was a true victory for civil liberties. Each and every person who sent an e-mail, made a phone call, or spread the word about the true nature of these bills is to be commended. The defeat of these bills is proof that grassroots mobilization can make the difference in whether civil liberties are protected or eroded.

In what is being recognized as the largest group of organizations to ever come together in Florida to defeat a single piece of bad public policy, over 40 groups mobilized their members and created earned media — including editorials in every major Florida newspaper and *The New York Times* — to defeat the voter suppression legislation that was before the legislature. The groups varied from the ACLU to the AARP, Progress Florida to Florida PIRG, the NAACP to the League of Women Voters, and many others.

The House and Senate bills, if passed, threatened to:

- Further limit the number of IDs that voters could use at the polls, without offering a reasonable alternative;
- Further disfranchise disabled voters by adding a four-year extension to the date when paper ballots were to be available for voters with disabilities;
- Restrict voter registration efforts;
- Impose unnecessary restrictions on petition-gatherers;
- Force more voters to vote unnecessarily on provisional ballots, which have a high rejection rate; and much more.

Attempts by the legislature to ram this legislation through with neither reasonable public input nor sufficient debate among legislators further intensified the opposition that had already coalesced around the bills' dreadful content.

Restoration of Civil Rights

SB 910 by Sen. Wilson (D-33)

In a sign of continued progress in the area of restoration of voting and civil rights for persons with past felony convictions, SB 910 made it through three committees and was passed by the full Senate before dying in House messages. SB 910, if passed, would have required state agencies and regulatory boards to identify and evaluate restrictions on licensing and employment. In addition, the bill would have prohibited state agencies from denying an application for a license, permit, certificate, or employment based on a person's lack of civil rights.

Delinking job licensing from restoration of civil rights is an important step in the effort to achieve automatic restoration of civil rights for persons who have completed their sentences. In a sign of bi-partisan support, Senator Wilson and Senator King (R-8) joined forces to participate in a press conference focused on this legislation. While this bill was not passed by the full legislature this year, passage by the Senate constituted significant progress. We will work to support similar legislation in the future.

Reproductive Freedom

Mandatory Ultrasound

SB 1854 by Sen. Gardiner (R-9); HB 983 by Rep. Flores (R-114) and Rep. Burgin (R-56)

During the 2008 legislative session, mandatory ultrasound legislation died in the Senate on a tie vote. The fact that this legislation was fully considered and voted upon last year made it particularly irksome that legislators insisted on wasting taxpayer time and money by reconsidering it this year. Fortunately, the 2009 bills did not get very far. On the House side, HB 983 passed favorably with Committee Substitute out of the Health Care Regulation Policy Committee, but failed to be placed on the agenda in its remaining committees. The Senate bill was not heard in committee. ACLU supporters are to be commended for their fast mobilization in contacting representatives to ask them to oppose the bill prior to the House committee hearing.

Prevention First Act

SB 310 by Senator Rich (D-34); HB 129 by Rep. A. Gibson (D-15)

This was the fourth year that the *Prevention First Act* was introduced in the Florida Legislature. The ACLU of Florida joined with Planned Parenthood and other groups in encouraging hundreds of calls and e-mails from activists in support of this legislation. Unfortunately, both the Senate and House versions of the bill died in committee. The Act would have increased access to birth control and reduced unintended pregnancies by guaranteeing access to emergency contraception for rape survivors, protecting the right to birth control for all women, and protecting the right to have lawful and valid prescriptions filled at the pharmacy.

Florida Healthy Teens Act

SB 220 by Sen. Deutch (D-30); HB 265 by Rep. Keith Fitzgerald (D-69)

Like the Prevention First Act, the Healthy Teens Act did not receive a committee hearing in either chamber, despite good efforts from supportive activists. This legislation would have required any public school that receives state funding and provides information or programs regarding family planning, pregnancy, or sexually transmitted infections to provide comprehensive, medically accurate, abstinence-based, factual, and age-appropriate information concerning sexuality and related decision-making.

Criminal Justice

DNA Database

SB 2276 by Sen. [Oelrich](#) (R-14); HB 1151 by Rep. Synder (R-82)

As anticipated, legislation was introduced to collect DNA samples from all persons who are arrested for felonies, not just from those who are convicted. Despite ample opposition from the ACLU, this legislation passed both houses. SB 2276 provides a phase-in schedule whereby persons arrested for specified felony offenses will be required to provide DNA samples to FDLE until all felony arrestees will provide such samples. It also provides for a statewide system for classifying, matching, and storing analyses of DNA and other data; provides for access; authorizes use of reasonable force to collect samples; and more. When it was clear that the bill was likely to pass, ACLU worked with Senator Siplin to introduce an amendment that would have provided for the automatic expungement of the sample and any related analysis in the case that the person were not convicted. Unfortunately, the amendment failed.

Written testimony against SB 2276 is available upon request.

Safety Belt Law Enforcement

SB 344 by Sen. Rich (D-34); HB 0001 by Rep. Glorioso (R-62)

After several years of being introduced, the Dori Slosberg and Katie Marchetti Safety Belt Law was passed this year by both houses and has already been signed into law by the Governor. The legislation deletes a requirement for the enforcement of the Florida Safety Belt Law as a secondary action – meaning that failure to wear a seat belt is now a primary rather than a secondary offense. The ACLU opposed the bill, which could facilitate racial profiling by law enforcement.

Drug Policy

Prescription Drug Database

SB 462 by Sen. Fasano (R-11); HB 897 by Rep. Llorente (R-116)

ACLU worked hard to defeat this legislation, which would establish an electronic database to track the prescribing and dispensing of certain prescription drugs. Unfortunately, the legislation was passed by both houses. Under the legislation, countless Floridians will be databased without notice solely because they have a lawful prescription. Unfortunately, the legislation provides inadequate privacy and security protections for this sensitive medical information. The legislation also lacks any mechanism by which Floridians can correct erroneous information in the database.

Written testimony against SB 462 is available upon request.

Drug Testing/Unemployment Compensation

SB 2062 by Sen. Bennett (R-21); HB 969 by Rep. Kreegel (R-72)

The original version of SB 2062 would have established random, suspicionless drug testing of a percentage of all applicants for unemployment compensation and – to add insult to injury – would have taken the cost of the testing out of the unemployment compensation of the person being tested. The Senate bill was later amended to remove the random selection provision in favor of an undefined screening process that would supposedly determine whether a person is

“likely to be an illicit drug user.” The Senate bill was also amended to remove the provision requiring the person tested to pay for such testing out of his/her unemployment compensation, since such a payment scheme would have violated federal regulations for unemployment compensation. The ACLU testified against this proposal and also participated in a number of media interviews on the subject. Fortunately, the Senate bill died in Transportation and Economic Development Appropriations after passing two committees.

Use of Confidential Informants

SB 604 by Sen. Fasano (R-11); HB 271 by Rep. Nehr (R-48)

This legislation – referred to as “Rachel’s Law” in memory of Rachel Hoffman who died tragically while being used as a confidential informant in a drug sting – passed both houses and has been signed into law. Rachel’s Law requires law enforcement agencies to disclose certain information to persons requested to be informants – such as that the law enforcement agency cannot promise grants of immunity, etc. – and to provide persons requested to serve as informants with the opportunity to consult with legal counsel if they so request. The bill also requires training for persons involved with recruitment and use of informants and more. Importantly, the legislation notes that any failure to abide by the act does not create any additional right enforceable by the defendant in a criminal proceeding. The bill is greatly watered down from the original language but nonetheless represents a step forward in protecting the rights of confidential informants.

LGBT Rights

Civil Rights/Prohibited Discrimination

SB 2012 by Senator Deutch (D-30); HB 397 by Rep. Skidmore (D-90)

These bills, if passed, would have amended Florida’s civil rights law to include sexual orientation, gender identity or expression, pregnancy, and familial status as impermissible grounds for discrimination in public lodging establishments and public food service establishments. The ACLU partnered with Equality Florida and other groups in our effort to move these bills forward. Despite strong mobilization by ACLU supporters and constituents of our partner organizations, neither bill received a committee hearing this year.

Repealing the Ban on Gay Adoption

SB 500 by Sen. Rich (D-34); HB 413 by Rep. Brandenburg (D-89) – full repeal bills
SB 460 by Sen. Rich (D-34) – allowing judicial bypass

SB 500 and HB 413 would have fully repealed Florida’s prohibition on adoption by homosexuals. Martin Gill, the ACLU’s plaintiff in our lawsuit to overturn the ban, traveled to Tallahassee to speak at the “Rally in Tally” hosted by Equality Florida, as well as at a press conference focusing exclusively on the need to repeal the ban. Despite ample public support and a broad presence of individuals in Tallahassee lobbying in favor of these bills, none of the three received a hearing this year.

Domestic Partnership

SB 1642 by Sen. Sobel (D-31); HB 1067 by Rep. Steinberg (D-106)

These bills, if passed, would have created a statewide domestic partnership registry. Specifically, SB 1642 would have required the Department of Health to create and distribute the Declaration of Domestic Partnership and Certificate of Registered Domestic Partnership forms

to each clerk of the circuit court. Two individuals who wish to become partners in a domestic partnership would have been required under the bill to complete and file a declaration form with the clerk of the circuit court. The ACLU supported these bills but they died in committee.

Freedom of Religion and Belief

“I Believe” License Plate

Attempts were made late in the legislative session to add two religious license plates to “train” bills featuring various new license plates, religious and non-religious. One religious plate, the “I Believe” plate, featured a cross and stained glass church window. The other religious plate, the “Trinity” plate, depicted a crucifix. Both plates – which arguably violated the Establishment Clause due to their tacit endorsement of a particular religion – ultimately died on the floor.

Teaching Chemical & Biological Evolution

Senator Wise introduced new language that would have opened the door to the teaching of creationism as science in our public school science classrooms. A House version, however, was never introduced and the Senate version did not move forward.

Tax Credits for Contributions to Non-Profit Scholarship-Funding Organizations

SB 1310 by Sen. Gardiner (R-9); HB 453 by Weatherford (R-61)

This legislation, which passed both houses, expands and renames the Corporate Income Tax Credit Scholarship Program – a school voucher program that unfortunately directs funding away from public schools.

Immigrants’ Rights

Human Smuggling

SB 502 by Sen. Dockery (R-15); HB 123 by Rep. Synder (R-82)

This legislation provides that a person commits a misdemeanor if he or she transports an individual into this state from another country and knows, or should know, that the individual is illegally entering the United States. The proposal passed both houses. The ACLU opposed the bill, which would have originally criminalized transporting an individual into the state from another country OR from another state. We remain concerned that the bill that was passed could foster racial profiling.

Enforcement of Immigration Laws

HB 915 by Rep. Adams (R-33)

After passing one committee, this bill died in the Economic Development and Community Affairs Policy Council. If passed, the bill – deemed the “Florida Security and Immigration Compliance Act” – would have prohibited agencies from entering into contract for services with contractors not registered and participating in the federal work authorization program (otherwise known as e-Verify) by a specified date. It also would have required a statewide memorandum of understanding between state and certain federal government entities concerning specified matters related to immigration, and would have required agencies to verify the lawful presence in the U.S. of applicants for specified state, local, and federal public benefits, as well as much more. The ACLU opposed the bill.

Written testimony against HB 915 is available upon request.

Anti-Sanctuary Bills

SB 1532 by Sen. Storms (R-10); HB 567 by Rep. Schenck (R-44)

These bills, if passed, would have prohibited restrictions on the reporting of certain immigration status information by public employees. The bills also would have prohibited certain local government restrictions relating to communication or cooperation with federal officials concerning immigration law enforcement. These types of bills are often referred to as “anti-sanctuary” bills.

The House bill passed three committees and was placed on the special order calendar for the House floor before being temporarily postponed. The ACLU opposed this legislation as being unnecessary (federal law already precludes any local municipality or government agency from prohibiting communication between government entities or officials and the federal government regarding the citizenship or immigration status of any individual) and as raising civil rights concerns (state and local public employees cannot be expected to make accurate determinations about individuals’ immigration status given that there is no federal database in existence that can tell a local government employee that information – a situation that could lead to racial profiling).

Written testimony against HB 567 is available upon request.

Prisoners’ Immigration Status/Verification

SB 1848 by Sen. Detert (R-23)

This bill would have required the staff of a jail or other detention center or facility to make a reasonable effort to determine the citizenship status of a person charged with specified crimes. The bill also would have required the facility staff to verify the person's immigration status and notify the United States Department of Homeland Security if the person is not lawfully in the United States. The bill passed the Senate and was referred by the House to the Economic Development and Community Affairs Policy Council, where it died. ACLU opposed this legislation since it would almost certainly result in the unlawful detention of people based on either or both of the following: 1) a person sits in custody while the Department of Homeland Security and local law enforcement try to figure out the person’s status – a determination that can be made only by an immigration court and then an administrative appellate body, and then the U.S. Court of Appeals, or 2) DHS requests or requires local law enforcement to hold people who can lawfully be in the United States.

Written testimony against SB 1848 is available upon request.

Human Trafficking

SB 168 by Sen. Joyner (D-18); HB 811 by Rep. Thompson (D-39)

This legislation, which was passed and has been presented to the Governor, creates within the Department of Children and Family Services the Florida Statewide Task Force on Human Trafficking.

Privacy and Technology

See also Criminal Justice/DNA Database, Drug Policy/Prescription Drug Database and Drug Policy/Drug Testing and Unemployment Compensation.

Facial Recognition Biometrics Database

SB 1096 by Sen. Crist (R-12); HB 899 by Rep. Rouson (D-55)

SB 1096 would have authorized the Department of Highway Safety and Motor Vehicles to release to law enforcement agencies all images from their records for inclusion in a facial recognition biometrics database. Fortunately, this legislation died in committee. According to testimony given during the Senate bill's one committee hearing, the photos might have been used in conjunction with cameras (presumably at intersections, etc.). Testimony also revealed that the Sheriff in Pinellas County received a federal grant to implement this program. The ACLU opposed this bill.

Use of Cameras to Enforce Traffic Laws

SB 2004 by Sen. Altman (R-24); HB 0439 by Rep. Reagan (R-67)

The ACLU monitored this bill, which would have created the Mark Wandall Traffic Safety Program, and which would have provided for counties & municipalities to enforce traffic control signals using traffic infraction detectors. Versions of the legislation were passed by the Senate and House, but the two bodies were unable to reconcile the differences and the proposals died in messages.

Women's Rights

Equal Rights for Men and Women

SB 1008 by Sen. Joyner (D-18); HB 8003 by Rep. Planas (R-115)

These bills did not get a hearing this year. This legislation, if passed, would have ratified a proposed amendment to US Constitution. ACLU supported the joint resolution.