

Always Free??

By Frank Crabtree
Executive Director



Bullying awareness and prevention is on the civil liberties forefront for ACLU-WV, and the nation, in 2011.

Bullying in schools, on school buses, and at school events presents as verbal, physical, or psychological harassment which fosters a climate of fear, anxiety, and disrespect. It seriously impairs the physical and mental well being of children, and lowers their level of academic achievement and self-esteem.

State laws already require county boards of education to adopt policy prohibiting “harassment, intimidation, or bullying.” But it is widely perceived that those policies are non-uniform, or non-existent. Encouragingly, legislation just passed will require the WV Department of Education to adopt a model policy to guide the counties. ACLU-WV, our LGBT allies and others will be monitoring this progress.

At a minimum state policy should:

- ☒ create a strong and clear anti-harassment policy;
- ☒ require that all complaints be taken seriously;
- ☒ provide effective professional development about identifying and stopping all harassment, *specifically including anti-LGBT bullying*;
- ☒ comprehensively explain the harmful impact of bullying to students and staff; and
- ☒ support Gay-Straight Alliances on campus.

Among our other anti-bullying initiatives, our Bill of Rights Celebration on October 8 will feature Wendy Walsh. Wendy is the mother of 13-year-old Seth Walsh, a southern California student who took his life in September 2010 as a result of anti-gay bullying. Seth’s “bullycide” note made clear that his death was directly related to years of abuse directed specifically to his sexual identity.

In December 2010, ACLU National wrote Seth’s school district demanding a stop to the harassment still being reported by students as a result of their perceived sexual orientation. Following close behind, just days ago Wendy endorsed legislation in both California (“Seth’s Law”) and in the U.S. Congress (“Student Non-Discrimination Act”) which would ensure a student’s right to an education free of intolerance and harassment.

Come meet Seth’s Mom at the Charleston Woman’s Club on October 8 and tell everyone you see: **West Virginia is no place for hate – and that includes bullying!**

Leading Freedom Forward

By Sara Bird
President



If you’ve been paying attention to the news coming out of our nation’s capitol and many states throughout the land, then you’re well aware of the all out assault against women today. Lawmakers leading the charge were elected largely based on their limited government positions, yet they’ve embarked on a virulent campaign to inject the government into the private and personal medical decisions between a woman and her doctor. Nearly everywhere you turn, legislatures controlled by misogynist anti-choice lawmakers are devoting the bulk of their efforts not to creating jobs, but to destroying a woman’s constitutionally protected right to choose when and whether to begin or add to her family.

For example, South Dakota’s Legislature just passed a bill that would require a woman seeking abortion services to first visit a “crisis pregnancy center” where she will undoubtedly be inundated with dangerous false and misleading information designed to discourage her from seeking abortion services. Unlike true pregnancy centers, “crisis pregnancy centers” are not required to follow medical standards to ensure that the information they provide is medically accurate, so that a woman’s choice to proceed or not is truly informed. Nor are they required to follow medical privacy standards that would ensure patient confidentiality, thereby subjecting women to further harassment and humiliation. This same legislature is also considering a terrorizing bill that would amend the criminal code to carve out a justifiable homicide defense to the killing of an abortion provider.

Around the nation, legislatures are attempting and succeeding in too many cases to ensure that a woman’s access to safe and legal abortion services is unconstitutionally denied. Further, state legislatures as well as Congress are working to deny poor and working class women the resources necessary to access safe and legal abortions by permanently prohibiting the use of public funds for abortion services for low-income women and by injecting similar unjust provisions into the private sector by prohibiting the purchase of an insurance policy through an exchange that includes abortion coverage.

In West Virginia, however, there is cause to be optimistic. This past session, the Legislature passed a health insurance exchange bill that was completely void of unconstitutional anti-abortion restrictions. The success of the passage of the health insurance exchange bill free of anti-abortion provisions is due in large part to the leadership of WV FREE, its supporters and partners in the struggle, including your ACLU of WV.

(Continued on p. 5)

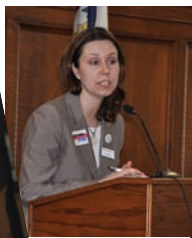
Membership Meeting & Legislative Update

February 20, 2011

THANKS TO ALL THE MEMBERS AND FRIENDS WHO PARTICIPATED!!



Lobby Day



February 21, 2011

2011 LEGISLATIVE SESSION RECAP

By Frank Hartman, ACLU-WV Lobbyist



SB 407/408 - Creating the West Virginia Insurance Exchange. As mandated by federal health care reform, each state has the opportunity to create a state-run insurance plan by 2014. In the event a state does not develop its own plan, the federal government will operate the plan. West Virginia joins Utah and Massachusetts as one of the first states to create a state plan. As expected, a significant effort to derail the plan was mounted including a concerted effort to include in the insurance exchange draconian anti-choice language. Thanks to efforts by WV Free, Planned Parenthood, and the ACLU, no anti-choice amendments were added to this bill.

SB 193 - Creating a registry for police officers who have been removed from office for misconduct and creating a mechanism for revoking the certification of law enforcement officers in certain circumstances. Thanks in part to the Gary Harki series in *The Charleston Gazette* calling attention to this issue, the ACLU earned a major victory in the passage of this legislation.

The ACLU was able to defeat **HB 3044** permitting local law enforcement to seize property if it is suspected to be the instrumentality of a crime of fraud. The bill would have placed the burden of proof upon innocent defendants to obtain possession of their seized property and would have permitted local law enforcement officers to keep a portion of the proceeds of the liquidated property.

The ACLU also defeated **SB 67** requiring a DNA sample from persons arrested – not convicted – of certain felonies.

HB 3144 – Creating a misdemeanor offense for protesting at a funeral or memorial service. The House version that ultimately passed requires protests be conducted at least 500 feet away from the funeral. Senate amendments to the bill designed to comply with time, place, manner restrictions outlined in *Snyder v. Phelps*, which held that such protests are protected by the First Amendment to the U.S. Constitution, were rejected by the House. Ironically, the House of Delegates passed their version of the bill – the version that ultimately became law -- on the same day the U.S. Supreme Court released its opinion in *Snyder*. The ACLU has contacted the Governor’s counsel to urge a veto.

SB 186 - Permitting the State Police to obtain internet records as well as bank and credit card information for someone who is suspected – not charged – of committing certain sexual offenses against minors using an “administrative subpoena.” Upon request by the State Police and as authorized by a magistrate, family court judge, or circuit court judge under a “reasonable suspicion” standard of review, an internet service provider must release certain records to the State Police. Furthermore, the service provider is prohibited from informing its customer about the release of this information to the State Police. While the ACLU fought unsuccessfully to defeat the bill, it was able to modify the introduced legislation authorizing a prosecuting attorney to issue a subpoena to require authorization from a judicial officer to issue a subpoena. The ACLU has contacted the Governor’s counsel to urge a veto of this bill.

SB 338 - Opting out of the federal prohibition from providing SNAP (food stamp) and TANF (cash) benefits to former drug felons. The bill passed the Senate quickly with strong floor speeches on behalf of the bill, but it failed to advance in the House despite numerous conferences with the Chairman of the House Judiciary Committee, where the bill was referenced. Subsequent conversations with members of the House Judiciary Committee and committee staff revealed the House leadership believed the bill was too controversial and was unwilling to move it. The Senate has passed this bill two consecutive sessions.

SB 522 - A bill permitting an exemption to mandated vaccines for children as a condition of school enrollment was introduced in the Senate, but failed to advance.

HB 2161 - Creating the Herbert Henderson Office of Minority Affairs. The bill passed quickly through the House but languished in the Senate until the final few days of the session where the Senate Finance Committee stripped the bill of any funding necessary to create and sustain the office. The bill failed on the final day of the session.

New Board Members Elected



The ACLU of West Virginia is proud to announce our new board members Marybeth Beller, Linda Lyter, and Pearl Reardon. These three women bring to the board a strong commitment to civil liberties.

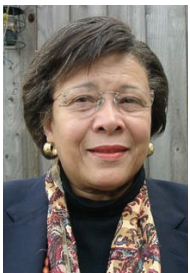
Marybeth Beller is an associate professor and chair of the Department of Political Science at Marshall University.

She believes that the ACLU of WV can work to restore civility to political debate by demonstrating the necessity of respecting differences and fighting to preserve rights to speech and association. She applauds the work the organization has done to further the education of citizens with regard to their civil liberties and the education of legislators so that racial profiling might be brought to an end.

Linda Lyter is executive director of the WV Massage Therapy Licensure Board and WV Board of Acupuncture. Linda has been an employee of state government for over 16 years, and during the past few years she has been more involved with legal issues and due process rights. She believes strongly in protecting the civil rights of all individuals and is pleased to be able to serve on the board to help the organization in all its efforts.



Pearl Reardon first became active in politics and community affairs in the early 1950s in her native country of Jamaica. She has served as a moderator for the State of Maryland Multicultural Statewide Summit for Minorities and Women in Film and is currently a board member of Friends of West Virginia Public Broadcasting. She has published a book of short stories, poems, and staged plays titled "*Little Back Room*." The



mission and the principles of the ACLU are very important to Pearl and she is proud to be serving on the Board.

In the recent election, two current board members, **Sonya Armstrong** and **Bill Denman** were re-elected. Sonya is also the ACLU of WV's vice president for membership, and Bill is the organization's past president who has served on the Board for many years.

Protecting the "thought we love to hate"

By Chuck Smith, ACLU-WV Board Member

Wednesday, March 2, the U.S. Supreme Court ruled to protect the free speech of Fred Phelps and his followers in the Westboro Baptist Church. Phelps and his family — who comprise a large part of his small Kansas congregation — have gained national prominence over the past decade by picketing funerals. They claim the deaths of soldiers (and here in West Virginia, of coal miners) manifest God's judgment on the United States for tolerating gay people.

As one of West Virginia's more openly gay people, I fully support the court's decision that such speech is protected by the First Amendment.

In the opinion of the court, Chief Justice John Roberts wrote, "Westboro believes that America is morally flawed; many Americans might feel the same about Westboro." This statement certainly resonates with an overwhelming number of citizens.

The Phelps family supports itself by a cottage industry which spews their hate-filled message. That message is irrational. It is expressed in offensive, vulgar, and painful ways. Their outrageous method is to proclaim that God has brought death to soldiers defending their country and to miners working to support their families. They claim that this divine discontent is because the United States does not suppress gay people.

Westboro Baptists' picketing at funerals brings untold pain to the families and friends of those who have gathered to grieve for and fondly remember their departed loved ones. Their repulsive methods are nauseating.

Over the past 20 years I have lobbied in three state legislatures and at the U.S. Congress for full civil rights for gay people. I am an active member of local and national gay rights organizations. I am the personification of those the Phelps family detests. Nevertheless, I agree with the court; the government should not and constitutionally cannot suppress their speech.

As a constitutional scholar and a civil libertarian, I contend that free speech and free thought are absolutely essential to our republican form of government. At the dawn of the republic, the American people recognized this and ratified the First Amendment, thereby prohibiting government interference with thought and speech. Speech may be misleading, offensive, vulgar, inane, or just plain stupid. Still, I do not want, and maintain that most Americans do not want, the government to be the judge of what is acceptable thought, speech, or belief.

The ideas of Phelps and his followers do not stand up in a free market of ideas. When they appear in a community to undertake their picketing, within a short time even the most conservative fundamentalists quickly distance themselves from the "Westboro message."

Last spring, Phelps and the Westboro Baptists were in Charleston to spout their venom. They attracted a handful of supporters. At the same time in another part of Charleston,

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Have You Renewed Your ACLU Membership?

Go to www.aclu.org, Click Join and Then Select "Renew"

Keep Your Membership Active!

ACLU of WV Foundation's Bill of Rights Celebration

Saturday, October 8
Woman's Club of Charleston

Reception 5:30 p.m. Dinner 6:30 p.m.

Guest Speakers Anti-Bullying Activists

- **Wendy Walsh**

Mother of 13-year-old "bullycide" victim Seth Walsh

- **James Gilliam**

Deputy Director of ACLU of Southern California

For reservations and ticket information for both the Bill of Rights Celebration and the Wine and Cheese Benefit, call the ACLU of WV at (304) 345-9246. A portion of the price of these tickets will be tax deductible.



Wine and Cheese Benefit With Wendy and James at the 28 Bradford Street Bed and Breakfast in Charleston's East

End on Oct. 8 from 4 - 5 p.m. (prior to the Bill of Rights Celebration). This event is a benefit for the ACLU of WV Foundation.

Leading Freedom Forward (Continued from p. 1)

Abortion has been legal since 1973. A woman's right to choose when and whether to begin or add to her family is protected by our federal and state constitutions. The shameful and wasteful attempts by anti-choice lawmakers to trample on the constitutionally protected rights of women must not endure. Bills that propose to restrict access to safe and legal abortions whether through unnecessary "medical" interventions like forced ultrasounds and false and misleading information, or through outright bans on abortion services, are placing women in grave danger by delaying or denying critical reproductive health care services.

The war is on and we cannot afford to be complacent. We must fight back because we cannot go back. Please join the fight, speak out and support your ACLU of WV, WV FREE and other pro-choice advocates. Women's lives are at stake.

Protecting (Continued from p. 4)

hundreds of people gathered to denounce the Westboro message and tactics. In the Republic of the United States, this, rather than calling for government suppression and censorship of thought, is the way to confront such hateful speech.

In 1929, Justice Oliver Wendell Holmes, in a dissenting opinion in *United States v. Schwimmer*, maintained that the speech of the minority, even despicable minorities, is the expression most in need of protection from government interference.

"If there is any principle of the Constitution that more imperatively calls for attachment than any other," Holmes wrote, "it is the principle of free thought — not free thought for those who agree with us but freedom for the thought that we hate."

In America, the ideas and expression of the majority seldom need protection from government suppression. The majority, after all, elects government policymakers. The First Amendment primarily protects the thought, belief, and speech of the minority: the unpopular, the unusual, the alien.

Chief Justice Roberts, recognized this in the court's opinion. "Speech is powerful" he wrote, "It can stir people to action, move them to tears of both joy and sorrow, and—as it did here — inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate. That choice requires that we shield Westboro from tort liability for its picketing in this case."



March With Us In The WV Pride Parade!!



Sunday, June 12 at 1 p.m.

(Parade lineup begins at noon near Shoney's on the Blvd.)

**For more details about the WV Rainbow Pride Festival,
call (304) 400-3980 or go to pridewv.org**



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