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The 49th Legislature, 2nd Regular Session Adjourned on Thursday, April 29, 2010 at 11:07 p.m.

The following is a list of bills the ACLU tracked and lobbied either for/against during the 2010 Arizona State Legislative Session:

## CHILD WELFARE

**Adoption Preference for Married Couples (HB 2148) – OPPOSE** – This bill requires that state agencies give “primary consideration” for adoptions to married couples, and prevents single individuals from adopting unless a married couple is not available, except in specific circumstances. The ACLU opposes this bill because it discriminates against qualified singles, and also may delay permanent placement for children. As of Sept. 2009, there were 2,505 children in foster care with a case plan goal of adoption. Given the desperate shortage of adoptive parents to meet the needs of the many children waiting to be adopted, Arizona cannot afford to turn away qualified parents. This bill is similar to one defeated in the 2006 legislative session. Passed House on February 23, 2010. Held in the Senate.

**“Married Only” Adoption Restriction (SCR 1029) – OPPOSE** – This legislative referendum asks Arizona voters to amend the Arizona Constitution to prohibit gay and lesbian couples, as well as non-married persons, from adopting or fostering a child whose birth parents were married. The amendment would exclude from adoption not only gay and lesbian couples, but also singles, including single relatives of the birth parents (such as the child’s grandparent or aunt.) This proposed amendment is discriminatory and unfair, as it denies individuals and couples the right to adopt outside of marriage. Furthermore, reducing the pool of available families from which caseworkers can choose provides no conceivable benefit to children and it creates harms that are all too real. By categorically excluding a group of potential adoptive or foster parents – whether gay couples, single people, older people or any other group, the state would prevent caseworkers from making decisions based on the best interests of children, denying them access to stable, permanent homes. Given the desperate shortage of parents who are available to meet the needs of the many foster children, Arizona cannot afford to ignore any good candidate. If approved by voters, this referendum would force children to languish for longer periods in foster care where the state remains financially responsible for them. Held in committees.

## CRIMINAL JUSTICE

**Ban on Teen “Sexting” (SB 1266) – OPPOSE** – This bill would prohibit juveniles from sending sexually explicit materials through an electronic device. It criminalizes both the transmission and possession of electronic images depicting nudity. Furthermore, the language of the bill is so vague and broad that it criminalizes the possession of constitutionally protected images, including art history slides and medical diagrams. The bill makes the first violation a petty offense; a subsequent violation carries a class 2 misdemeanor charge, which would allow courts to commit juveniles to the Arizona Department of Juvenile Corrections until 18 years of age. While the ACLU does not condone “sexting,” pursuing criminal charges against teens who exercise poor judgment is not the answer. This statute punishes children, rather than protecting them from harm, and will do little to teach them to respect themselves and others. Parents – not the government – are ultimately responsible for teaching teens that “sexting” is reckless and can have serious negative consequences. Signed by the Governor on May 7, 2010.

## EDUCATION

**Censoring Ethnic Studies (HB 2281) – OPPOSE** – This bill would prohibit schools from teaching subjects that promote “the overthrow of the United States government” or that “promote resentment toward a race or class of people.” The intent of the bill is to prohibit classes that foster ethnic solidarity, identity or pride; it excludes classes for Native American and African-American students. School districts or charter schools could lose up to 10 percent of their state aid if they’re found to be non-compliant. This law violates the First Amendment rights of students and teachers and limits their right to access information. Dictating politically acceptable course content and banning ideas that one official does not like are antithetical to the mission of educational institutions and sends a message to schools that criticism of government will lead to sanctions. Transmitted to the Governor on April 30, 2010.

**Comprehensive Sex Education (HB 2361) – SUPPORT** – This bill will require public schools in Arizona to teach comprehensive and medically accurate sexuality education, instead of promoting harmful abstinence-only-until marriage programs. Evidence shows that stressing the importance of waiting to have sex while providing accurate, age-appropriate, and complete information about how to use contraceptives can help teens delay sex and reduce sexual risk taking. Yet, there is currently no state program dedicated to supporting this approach, despite the fact that Arizona has the second highest teen pregnancy rate in the country. Since 1996, the federal government has funneled more than a billion dollars into abstinence-only-until-marriage programming in states throughout the country, including Arizona, even in the face of clear evidence that these programs do not work. In addition to censoring vital health care information, abstinence-only-until-marriage programs raise other serious civil liberties concerns: they create a hostile environment for gay and lesbian teens; reinforce gender stereotypes; and in some instances use taxpayer dollars to promote one religious perspective. Assigned to committees, but never heard.

**Individual and Corporate Tuition Tax Credits (HB 2663, HB 2664) – OPPOSE** – HB 2663 reorganizes the current statutory provisions regulating school tuition organizations (STOs) that accept corporate tuition tax credits and implements additional regulatory measures for STOs based on the recommendation from the Ad Hoc Committee on Private School Tuition Tax Credit Review. HB 2664 modifies the requirements for STOs that accept individual income tax credits. The bill includes an annual inflationary adjustment to the maximum amount of the credit. At a time when the state is struggling to close its multi-billion dollar budget deficit, these bills are fiscally irresponsible. They cost the state around \$100 million per year. The Joint Legislative Budget Committee (JLBC) estimates that HB 2664 would reduce state General Fund revenues by roughly \$15.9 million in FY 2010-2011. The state claims this bill will decrease state expenditures by reducing the number of pupils attending public schools. However, 80% of students who receive scholarships through tax credit programs are already enrolled in private schools, which means there will be no net savings to the state resulting from public-to-private transfers. The ACLU opposes both state-run tax credit programs because they funnel millions of dollars to private, sectarian schools – money that would have otherwise gone to beef up the state’s general fund, which goes to support neighborhood public schools. A recent appeals court found that the individual tax credit programs discriminate against students on basis of religion, in violation of the First Amendment. Both bills were signed by the Governor on May 10, 2010.

## FREE SPEECH

**Regulations on Labor Protests (SB 1242) – OPPOSE** – This bill would expand the definition of harassment in the context of protests and limits the rights of labor groups and individuals to engage in activities that are constitutionally-protected. The bill also specifically prohibits labor organizations from engaging in picketing to “coerce or induce an employer or self-employed person to join or contribute to a labor organization.” While it’s absolutely permissible for the state to impose reasonable time, place and manner restrictions on the right to protest, this language seems to ban certain kinds of labor-led protests based on the content of speech, which strikes at the heart of the First Amendment and labor organizing efforts. Held in the House.

**Anti-Solicitation Legislation (HB 2042) – OPPOSE** – This bill prohibits drivers from stopping on streets or roadways and “hiring” or “picking up passengers” for the purposes of employment. The ACLU has serious First Amendment concerns with this piece of legislation. Solicitation is protected free speech whether by prospective employers or day laborers. Targeting the acts of “hiring” or “picking up passengers” is simply a pretext for targeting solicitation, which is

impermissible under the First Amendment. This bill also is unnecessary because there are already laws prohibiting individuals from obstructing car or pedestrian traffic. This is similar to another anti-solicitation bill that failed to generate support during the 2008 session. Passed the House and held in Senate committees. Similar anti-solicitation language incorporated into SB 1070, which was signed into law on April 23, 2010.

## IMMIGRATION

**Immigration Enforcement (SB 1070 & HB 2162) – OPPOSE** – These bills would make any non-citizen who has entered the United States without permission guilty of failing to “carry their papers.” They also require immigration status verification upon reasonable suspicion, allow arrest without a warrant for any offense that would require deportation, and contain numerous other provisions that have onerous racial profiling consequences. These bill severely tie the hands of city and county police departments by requiring them to prioritize immigration over their other public safety responsibilities. Rather than going after serious, dangerous felons, local police departments will be forced to arrest people for the civil immigration violation of “illegal presence.” This is particularly harmful at a time when Arizona’s local governments are already making difficult choices about how to allocate their limited resources for arresting and detaining violent and serious offenders. As the Goldwater Institute found last year, the Maricopa County Sheriff’s Office’s efforts to prioritize immigration enforcement have greatly compromised response times for violent crimes. The bills are also unconstitutional because the Constitution gives the federal government the exclusive power to regulate the nation’s borders, and with very few exceptions, states are not free to create their own laws regulating immigration. A similar attempt to give local police additional powers using a trespassing statute in 2005 in New Hampshire was found to violate the Supremacy Clause of the U.S. Constitution. What Arizona is trying to do with these companion bills would be an even more direct attempt to regulate immigration, and would therefore be even more likely to be preempted by federal law. SB 1070 was signed into law on April 23, 2010. HB 2162, which amended SB 1070 to include a provision allowing local police to ask people about their perceived immigration status while enforcing municipal laws, was signed by the governor on April 30, 2010.

**School District Reporting (SB 1097 and HB 2382) – OPPOSE** – These bills would require school districts to gather information on the citizenship status of students, including the number of students who cannot prove lawful status, and report this information to the Department of Education. Any school district that fails to comply may have their state funding withheld. Any policy requiring school districts to ask for this type of information is a violation of right of privacy and is in conflict with an Arizona Attorney General opinion prohibiting the collection of student immigration information. These bills also raises serious constitutional concerns by running counter to Supreme Court precedent that guarantees public education for all young people, regardless of immigration status. Even gathering the information will have the effect of deterring immigrant families from enrolling their children in school, resulting in the loss of sorely needed federal education dollars. Read an ACLU of Arizona press release on this issue at: [http://www.acluaz.org/press\\_releases/04\\_29\\_09.html](http://www.acluaz.org/press_releases/04_29_09.html). Held in the House.

**Felony Charge for Re-entry (SB 1394 & HB 2773) – OPPOSE** – These bills would make it a Class 4 felony if a person who was previously deported re-enters the country unlawfully. In the same way that the other trespassing proposals (SB 1070) are likely preempted by federal law, this attempt to impose penalties and sanctions over and above the federal scheme regulating immigration would likely be found by a court to be preempted by federal law. As the federal district court in a New Hampshire trespassing case found, such attempts to directly regulate immigration by states are prohibited. Under SB 1394, the undocumented immigrant accused of illegal re-entry would be ineligible for bail. Held in committee.

## OPEN GOVERNMENT

**Prison Transparency (HB 2674) – SUPPORT** –The ACLU of Arizona believes that government officials should not shield information from the public because that is the only way government can be held accountable for its actions. This bill ensures that private prisons that enter into contracts with “any governmental entity” must make any records pertaining to costs, operations, staff and inmates publicly available upon request – to the same extent that is required of government prisons or jails. Assigned to committees, but never heard.

## **PUBLIC ACCOMMODATIONS**

**Bilingual Public Accommodations (SB 1183) – OPPOSE** – This bill makes it lawful for a “place of public accommodation” to ignore the federal requirement regarding bilingual services. Under Title VI of the Civil Rights Act of 1964 and federal regulations, any entity that receives federal funds must provide bilingual interpreters to assist “limited English proficiency” persons. This includes all facilities that accept Medicare or Medicaid, social service agencies, hospitals, etc. Places of accommodation bound by Title VI that fail these federal requirements will forfeit their federal funding. The bill creates an exemption allowing state agencies to ignore federal law and could have a disproportionate impact on individuals with “limited English proficiency.” Signed by the Governor on May 3, 2010.

## **RELIGIOUS LIBERTY**

**Ten Commandments on State Capitol (SB 1213) – OPPOSE** – This bill mandates that a copy of the Ten Commandments be placed at the front entrance of the old Capitol building. The courts have struck down government-sponsored Ten Commandment displays in other parts of the country, ruling that they advance sectarian religious principles in violation of the First Amendment’s prohibition against government endorsement of religion. The best way to ensure religious freedom for all is to keep the government out of the business religion. Held in Rules.

## **REPRODUCTIVE FREEDOM**

**Abortion [Health Insurance] Coverage Ban (SB 1305) – OPPOSE** – This bill would prohibit the use of public funds to pay the costs associated with a health insurance policy that provides abortion-related benefits, except in very limited circumstances. This is government interference in a woman’s most personal, private medical decisions. This bill singles out abortion – a part of basic health care for women – from all other services. The ACLU of Arizona opposes this legislation because it seriously interferes with a woman’s ability to obtain comprehensive health care coverage. With so many people at risk of losing their health insurance coverage in these difficult economic times, legislators should be finding ways to increase access to health care, not cutting coverage that women already have. Signed by the Governor on April 24, 2010.

**Abortion Reporting Requirements (HB 2649/SB 1304) – OPPOSE** – HB 2649 requires abortion providers to report to the state a variety of details about the patient, including age, race, marital status, educational background, number of previous abortions, and her reason for the procedure. The bill also requires data collection on judges who allow teens to obtain an abortion without parental involvement. Any person who violates these requirements would be subject to criminal sanctions and possible license suspension or revocation. The ACLU of Arizona opposes this legislation because it is not necessary for a woman’s health and well-being, and compromises patient confidentiality. Existing Department of Health regulations already require the collection of data regarding abortion care in Arizona. The additional information required by HB 2649 not only threatens a woman’s confidentiality, but singles out abortion by creating unnecessary requirements that are not required for any other health care procedure. Signed by the Governor on April 20, 2010.

**Restricting Minors’ Medical Access (SB 1309) – OPPOSE** – The bill prohibits any individual or organization from performing a mental health screening or mental health treatment on a minor without the written consent of the child’s parent or guardian. In addition, a provision of the bill seems explicitly directed toward providing parents with notification of the existence of GSA clubs. Policies requiring parental permission for GSAs would discourage students from engaging in extra-curricular activities and could lead to anti-gay harassment or discrimination. Signed by the Governor on May 10, 2010.