

## 2011 Session Review

At nearly 5:30 a.m. on April 20, 2011, Arizona's 50<sup>th</sup> Legislature adjourned its regular session. The following is a list of bills the ACLU tracked and lobbied either for/against during the 2011 Arizona State Legislative Session:

### ACCESS TO GOVERNMENT

#### **SB 1409 (government publications; English only)—NEUTRAL**

*Passed by the Senate, held in the House of Representatives*

- Requires any publication, document, or material—including voting materials—issued by any Arizona agency or political subdivision to be written in English
- Allows an agency or political subdivision to issue a publication, document, or material in a language other than English if the publication, document, or material is posted on a government website and a printed copy is available in the agency's office

#### **SCR 1035 (English; official language)—OPPOSE**

*Passed by the Senate, held in the House of Representatives*

- Subject to voter approval, constitutionally prohibits any government representative from using offering to use a language other than English in any communication or translation in connection with any official action
- NB: this is also a free speech issue for elected public officials

### CHILD WELFARE

#### **SB 1188 (adoption; marital preference)—OPPOSE**

*Signed by Governor Brewer on April 18<sup>th</sup>*

- Grants a "tiebreaker preference" to married couples in adoption proceedings, if all other factors are equal

### CRIMINAL JUSTICE

#### **SB 1023 (enforcement of pretrial release conditions)—OPPOSE**

*Signed by Governor Brewer on April 18<sup>th</sup>*

- Allows Maricopa County adult probation officers to serve warrants and arrest anyone who has violated a condition of pretrial release while under the supervision of the pretrial services division

### EDUCATION

#### **HB 2581 (STOs; credits; administration)—OPPOSE**

*VETOED by Governor Brewer on April 12<sup>th</sup>; amended onto SB 1186, which was VETOED by Governor Brewer on April 27<sup>th</sup>*

- Allows a tax credit against certain types of luxury tax liability and severance tax liability for contributions to a school tuition organization (STO) for awarding scholarships to low-income, displaced, and disabled students
- The amount of the tax credit equals the total amount of contribution
- Increased the cap on individual contributions to STOs from \$500 to \$750 for individual filers and from \$1000 to \$1500 for joint filers
- The ACLU opposes these types of state-run tax credit programs because they funnel millions of dollars to private, sectarian schools. These dollars could instead be used to help the state's dire revenue situation and

sustain neighborhood public schools. Indeed, 80 percent of students who receive scholarships through tax credit programs are already enrolled in private schools, so there will not even be any net savings to the state.

## **IMMIGRATION**

### **HB 2191 (punitive damages; unlawful entry—a/k/a cosmetologists; applications; qualifications)—OPPOSE**

*Signed by Governor Brewer on April 18<sup>th</sup>*

- Makes retroactive to January 2004 a state constitutional provision prohibiting people who have entered the United States unlawfully from receiving punitive damages in any court action
- Limits a person's ability to seek complete legal redress from the courts based solely on his or her immigration status
- By the bill's sponsor's admission, the purpose of the bill is to assist one person, Douglas rancher Roger Barnett, who was recently found liable by a civil jury on claims of assault and intentional infliction of emotional distress against 16 undocumented plaintiffs. These plaintiffs were awarded punitive damages.

### **SB 1308/HB 2562 (interstate compact; birth certificates)—OPPOSE**

*Failed in Senate, never heard in House of Representatives*

- States that the phrase "subject to the jurisdiction of" in the 14<sup>th</sup> Amendment to the U.S. Constitution means a U.S. citizen, a permanent U.S. resident, or a person without citizenship or nationality in any foreign country, simply to strip the children of undocumented migrants of their constitutional right to U.S. citizenship
- Flouts the plain meaning, legislative history, and Supreme Court review of the 14<sup>th</sup> Amendment by re-defining the phrase "subject to the jurisdiction of"
- Authorizes and directs the governor to enter into an interstate birth certificate compact with other states
- Requires member states to distinguish on birth certificates between children now deemed to have been born subject to the jurisdiction of the U.S. and those who were not

### **SB 1309/HB 2561 (Arizona citizenship)—OPPOSE**

*Failed in Senate, never heard in House of Representatives*

- States that the phrase "subject to the jurisdiction of" in the 14<sup>th</sup> Amendment to the U.S. Constitution means a U.S. citizen, a permanent U.S. resident, or a person without citizenship or nationality in any foreign country, simply to strip the children of undocumented migrants of their constitutional right to U.S. citizenship
- Flouts the plain meaning, legislative history, and Supreme Court review of the 14<sup>th</sup> Amendment by re-defining the phrase "subject to the jurisdiction of"
- Establishes an entirely new concept of "Arizona citizenship," which is conferred on those who were born in the U.S., meet the new interpretation of the phrase "subject to the jurisdiction of" in the 14<sup>th</sup> Amendment, and are domiciled in Arizona

### **SB 1405 (hospital admissions; restrictions)—OPPOSE**

*Failed in Senate*

- Requires hospital personnel to confirm that a patient arriving for emergency or non-emergency medical care are U.S. citizens, legal residents, or lawfully present in the U.S. if the patient cannot provide valid health insurance information
- Requires hospital personnel to immediately contact the local federal immigration office or local law enforcement to report any patient who cannot citizenship or legal status
- Requires hospitals to document compliance with these measures in an annual report to the Arizona Department of Health Services
- Specifies that any hospital that fails to comply with the verification requirements is subject to disciplinary action against its license

**SB 1407 (schools; data; noncitizen students)—OPPOSE**

*Failed in Senate*

- Requires the Arizona Department of Education to collect data from school districts on students who are enrolled in school and who cannot prove lawful residence in the United States
- Allows the Superintendent of Public Instruction to withhold a school’s share of state aid if the Superintendent believes that the school district is not complying with this legislation
- Directs the Arizona Department of Education to submit a detailed annual report to the governor, the president of the Senate, and the speaker of the House of Representatives concerning the “adverse impact” of undocumented students and the cost to taxpayers for the education of such students

**SB 1611 (immigration omnibus)—OPPOSE**

*Failed in Senate*

- Initially advertised as a simple “clean-up” bill, SB 1611 is a sweeping anti-immigrant measure that, if passed, will practically mandate racial profiling, isolate undocumented and legal residents alike, prevent undocumented and legal residents from performing even the most basic activities, and violate several federal laws and legal precedents
- Prohibits undocumented people from driving cars
- Prohibits undocumented people from obtaining a vehicle title and registration
- Prohibits undocumented children from attending school from kindergarten through college
- Prohibits undocumented people from accessing any federal public benefits, even if federal law does not require them to prove citizenship or legal status
- Increases penalties on state and local public employees who fail to report discovered violations of federal immigration law
- Prohibits undocumented people from using public housing and requires public housing authorities to evict all residents from a dwelling unit if one resident allows an undocumented resident to live there
- Tightens regulations requiring employers to use E-Verify and increases penalties for failing to use E-Verify, despite multiple reports from employers who have experienced errors and difficulty with the program
- Expands the ban on issuing a license to someone if that person does not provide documentation of citizenship or alien status to all agency permits, certificates, approvals, registrations, charters, or similar forms of authorization required by law and issued by any agency (currently the ban is limited to business licenses)
- Requires applicants for fingerprint clearance cards to demonstrate citizenship or legal status before they can obtain the card
- Prohibits the state and its political subdivisions from accepting a consular identification card issued by a foreign government as a valid form of identification
- Requires the Arizona Peace Officer Standard and Training Board to revoke the certification of any peace officer who refuses to uphold the U.S. Constitution, the Arizona Constitution, or Arizona state law, in spite of existing disciplinary procedures for peace officers and even if constitutional requirements and state law conflict with each other

**PUBLIC BENEFITS**

**SB 1222 (public benefits; eligibility; required proof)—OPPOSE**

*Passed by the Senate, held in the House of Representatives*

- Requires an applicant for public housing to prove U.S. citizenship or qualified alien status
- Requires a public housing authority to evict all residents of a unit in the authority’s housing facility if any resident of that unit allows an undocumented person to reside in the unit
- Terminates the ability of tribal members, the elderly, and people with disabilities or incapacity of the mind or body to provide citizenship documentation under existing federal law
- Removes certain protections guaranteed by federal law and conflicts with various provisions of federal law

## RELIGIOUS LIBERTY

### **SB 1288 (religion; free exercise; professionals; appointments)—NEUTRAL**

*VETOED by Governor Brewer on April 11<sup>th</sup>*

- For the purposes of this legislation, defines “government” as all courts and administrative bodies or entities under the jurisdiction of the Arizona Supreme Court
- Prohibits government from denying, suspending, or revoking a professional or occupational license, certificate, or registration based on a person’s exercise of religion
- Prohibits government from denying, suspending, or revoking a professional or occupational license, certificate, or registration based on a person’s refusal to affirm any statement that is contrary to the person’s sincerely-held moral or religious beliefs
- Prohibits government from denying a person a position on a board, commission, committee, or public body based on the person’s religious beliefs
- Specifies that a person’s moral or religious beliefs do not have to be espoused by a recognized church or religious body
- States that a person’s exercise of religion is not unprofessional conduct
- States that criminal conduct does not include religious expression or beliefs

### **HB 2565 (postsecondary education; students’ rights)—NEUTRAL**

*Signed by Governor Brewer on April 29<sup>th</sup>*

- Stipulates that universities or community colleges cannot discriminate against a student or adopt any policy that penalizes or punishes a student based on the student’s viewpoint, expression, or beliefs
- Specifies that coursework that requires a student’s viewpoint be evaluated according to ordinary academic standards and whether the student followed the instructions for the assignment; the student cannot be penalized or rewarded on the basis of religious content or viewpoint
- Prohibits a university or community college from withholding any certificate or degree on the basis of a student’s religious viewpoint or expression
- States that a university or community college cannot discipline or discriminate against a student in a counseling, social work, or psychology program if the student refuses to counsel a client about matters that conflict with the student’s sincerely-held religious belief or moral conviction
- Requires universities and community colleges that grant recognition to any student organization or group to recognize and give equal access to other student organizations, regardless of the religious, political, philosophical, or other context of the organizations’ speech, including their worship
- Allows a religious or political student organization to determine that ordering its internal affairs, selecting its leaders and members, defining its doctrines, and resolving its disputes are connected to its religious or political mission and that only people who are committed to that mission should conduct such activities

## REPRODUCTIVE FREEDOM

### **HB 2384/SB 1265 (abortion; public funding prohibition; taxes)—OPPOSE**

*HB 2384 signed by Governor Brewer on April 12<sup>th</sup>*

- Prohibits any public funds, tax monies, funds of any of the state’s political subdivisions, federal funds passing through the state, or tuition money or fees paid by university or community college students from being used for training on how to perform an abortion
- Requires charitable organizations who receive cash donations from individuals to certify to the Arizona Department of Revenue that the organization does not provide, pay for, promote, provide coverage of, or provide referrals for abortions and does not financially support any other entity that does so

**HB 2416/SB 1246 (abortion)—OPPOSE**

*HB 2416 signed by Governor on April 2<sup>nd</sup>*

- Broadens the definition of the term “abortion”
- States that an abortion can only be performed with the voluntary and informed consent, as specified in the bill, of the woman seeking the abortion
- Voluntary and informed consent means the following:
  - The physician or a qualified person working with the physician must perform a fetal ultrasound and obtain the sound of the fetal heartbeat
  - The physician or a qualified person working with the physician must offer the woman the opportunity to view the ultrasound and listen to the fetal heartbeat, must offer to explain what exactly the ultrasound depicts, and must offer to provide the woman with a physical picture of the ultrasound image
  - The woman must certify in writing before the abortion that she has been given the opportunity to view the ultrasound and hear the heartbeat and whether she accepted or declined
  - States that a physician who violates this legislation has committed an act of unprofessional conduct and may end up having his or her license to practice medicine suspended or revoked
  - Describes the terms by which a physician who is accused of violating the legislation may be sued for damages in a civil action
  - Outlaws the practice of abortion by telemedicine, which is often the only way women in rural areas can get an abortion

**HB 2443 (abortion; sex; race selection; prohibition)—OPPOSE**

*Signed by Governor Brewer on March 29<sup>th</sup>*

- Prohibits any abortion if the procedure is based on the sex or race of the fetus or the race of either parent
- Requires a person who performs an abortion to sign an affidavit saying that he or she is not performing the abortion based on the race or sex of the fetus and has no knowledge that the abortion was sought based on the race or sex of the fetus
- States that a physician, physician assistance, nurse, counselor, or other medical or mental health professional who does not report known violations relating to a race- or sex-selection abortion can be fined up to \$10,000
- Allows the Attorney General or County Attorney to bring an action in court to legally prevent a race- or sex-selection abortion from being performed, coerced, or financed

**SB 1390 (abortions; clinical privileges; physicians)—OPPOSE**

*Held in Senate*

- Requires a physician who performs an abortion to have clinical privileges at a hospital that offers OB-GYN care within 30 miles of where the abortion is performed
- Requires physician personnel at a clinic that performs abortions to have admitting privileges at a hospital that offers OB-GYN care within 30 miles of the location where the abortion is performed
- A violation of this legislation will be treated as a class 3 misdemeanor