



THE DEFENDER

April – August
2009

Newsletter of the American Civil Liberties Union of Iowa
Vol. 37 • No. 2

Marriage Equality Decision Highlights String of Successes

The year 2009 began with a string of successes for the ACLUF of Iowa legal program. Following our work on the Postville immigration raid, we were victorious in challenging the constitutionality of an ordinance in Davenport that punished parents whenever their children were suspected of breaking the law or violating the town's curfew. In an era of increasing governmental paternalism, this scheme threatened the rights of parents everywhere to be left alone and treated fairly. The decision is now on appeal.

In another case, we won an important first round in our effort to open up a statewide debate on authorizing medical use of marijuana for terminally and chronically ill patients when a Polk County judge ruled that the Iowa Board of Pharmacy had shirked its statutory duties to re-evaluate the proper scheduling of marijuana under Iowa's Controlled Substances Act. The pharmacy board's response to this decision has been disappointing, and we are likely to go back to court on this important medical issue. Over 13 states have authorized the medicinal use of marijuana under a physician's supervision, while Iowa continues to prosecute desperately ill and dying patients. Again, this is a fight that has only just begun.

But the big news lies with Iowa's Marriage Equality decision – a victory we shared with Lambda Legal Foundation, who actually brought the case, and many other Amici,

who like ourselves, filed targeted friend-of-the-court briefs at both the trial court and appellate court levels. The ACLUF of Iowa is proud to have had the honor of filing not



ACLU of Iowa supporters march in the Iowa Pridefest parade in Des Moines on June 14. It was reported to have a record turnout.

one, but two briefs that addressed key issues and historical arguments.

We enjoyed the fact that elements of our "Iowa Courage Brief" found its way into the Court's published opinion. On appeal, we "spun-off" the Courage Brief,

which highlighted Iowa's historical 75-year history of being on the forefront of civil rights advances, and concentrated on the technical ins and outs of obtaining meaningful scrutiny of the state's "justifications" for a ban on same gender marriages.

In the end, we think the Iowa Supreme Court heard both messages. The final opinion shows the Court's understanding of Iowa's historical position in the fight for social equality, and the Court's unwillingness to accept mere rationalizations as justification for discrimination. Our briefs are posted in the "Legal" section of our website at www.aclu-ia.org

The victory in *Varnum v. Brien* is especially sweet, since it affects such a large class of people and means so much both symbolically and in terms of real substantive rights.

What Lies Ahead?

Iowa is isolated as the only state outside of New England to currently recognize marriage between same-sex couples. Of the six

states that border Iowa, four have constitutional amendments banning same-sex marriages. In Iowa, it will take a constitutional amendment to overturn our High Court's decision, but that is just what the opponents of equal marriage have vowed to do. Republican gubernatorial nominees have been calling openly for a constitutional amendment to ban same sex marriages in an effort to find a wedge issue that would propel them into office.

In this environment, we expect to have our work cut out for us as we work to counter the arguments of equal marriage foes and win the battle for public opinion and votes. In this effort, we need the support of you, the readers. Please talk to your friends and state legislators and let them know of your support for gay marriage and fairness for all!

WANTED:

Civil liberties organization seeking interested individuals who would like to keep up-to-date about the activities and news of the organization. Any interested party should immediately share their email address.

To receive the latest action alert, notice of an upcoming meeting, parade, forum, press release, legislative update, et al – we need your email address!

Just email info@aclu-ia.org and put "add me to your list" on the subject line. Please provide your name, city, and contact phone number in the body of the message. Your email address will then be added to our list and used solely to communicate ACLU-IA information to you. We won't overwhelm you with daily doses of drivel – and your email address (or address/phone number too, for that matter!) will NOT be shared or sold to anyone or any other organization. WE PROMISE!

What a Year!

by Marty Ryan, Legislative Director

This year's session of Iowa's General Assembly can be summed up in one word – WILD! So many strange things happened that it's impossible to relate all of the occurrences in a short article. It could take volumes.

One of the largest of these “wild” concerns for civil libertarians was the bill that would have changed many aspects of Iowa's Public Records/Open Meetings law. While HF 777 started with the creation of an enforcement board, it added only one sensible exception to the current 61 (exceptions) – which would have determined which documents were or were not public information in the course of public employment, and it placed reasonable time limits on government to fulfill requests for open records. By the time the bill made it out of committee, the proposal creating an enforcement board was diluted to an advisory committee and the list of exceptions remained the same; but the sensible employment exception was scrapped, and in its place was a broadly written exception for drafts, memoranda and notes, and the five-day time period for a turnaround on Freedom Of Information requests was doubled to ten days.

While numerous meetings on Open Meetings were being held, a group of ten lawmakers were meeting behind closed doors to craft a bill that would comply with the federal Adam Walsh Act. In the end, what emerged from the darkened caverns of Capitol was a bill that did very little to conform to federal guidelines, but did drastically change some of Iowa's sex offender registry laws. The final result, SF 340, is a mixed bag. The most significant result is yet to come. The law appears to be ripe for challenges – a consistent problem with making laws in the dark.

House Republicans introduced an amendment that would require the pledge of allegiance to be said each day of school in every classroom throughout Iowa. Republicans, who are usually adamant about allowing local folks to have control of educational decisions instead of state government interjection, cannot see the irony in this ridiculous political maneuver. The House accepted the amendment, and the Senate stripped it out. It was not included in items salvaged from a conference committee.

There are so many bills of interest that were not reported on by the media, or even the ACLU of Iowa, throughout the session. But

here's your chance to gain a little inside information.

Summary

Some issues didn't make this year's Voting Record because a vote was never taken on the bill. In the instances below, the ACLU-IA had an impact on the demise of the legislation:

SSB 1030 and HSB 113 – These are companion bills sponsored by the Iowa Attorney General (AG) prohibiting sex by deception. It's not what you think. This attempt at amending the definition of sexual abuse in the third degree is not necessary. Read more at www.aclu-ia.org

HF 657 – Sigh! [Another AG proposal.] This bill will further define the definition of “indecent exposure.” Again, the AG feels this action is necessary because the current definition was not sufficient to earn the AG a successful court appeal.

SF 97 – This bill requires the DNA testing of aggravated misdemeanants. Iowa already requires DNA samples be taken from felons and misdemeanants convicted of sex crimes. Read more at the ACLU-IA's website.

SF 205 – This bill, sponsored by the Dept. of Corrections, requires testing for infectious diseases of persons under supervision of the state's judicial district departments of correctional services (CBCs). The ACLU-IA worked hard to convince legislators and others that testing of a third party (probationer or parolee) would provide a false sense of security only. In order to protect one's health, the person affected should have periodical testing conducted on themselves to avoid the potential of false negative test results of the third party.

SF 100 – A high priority of the County Attorneys Association, this bill pertains to the disposition of minors with mental illness or mental retardation. Under current law, a minor adjudicated to have committed a delinquent act (who is also determined to be mentally ill or mentally retarded) shall have the order set aside if the child is civilly committed for treatment. This bill eliminates the requirement.

HF 4 – Another juvenile justice issue, this is a bill that would make a truant a juvenile delinquent if the child failed to complete the terms of a mediation settlement. The ACLU opposes all “status crimes.” A status crime is

one that is committed only because of the person's status (i.e. anti-vagrancy statutes, curfews, etc.). Status crimes lack due process.

Of course, we had our disappointments, too. The following bills were part of a proactive effort by the ACLU-IA, but efforts that came up short.

HSB 99 – This bill was suggested by the ACLU of Iowa to fix a discrepancy in marijuana possession laws. Read more about this proposal at www.aclu-ia.org

SSB 1063 and HSB 79 – These companion bills were intended to adjust the egregious discrepancy between penalties for crack and powder cocaine. Unfortunately, they were introduced by the Governor's Office of Drug Control Policy, a.k.a. “The Drug Czar.” The movement toward equalization was heading in the wrong direction. For more insight, go to www.aclu-ia.org

HF 43 and SF 74 – These companion bills by Rep. Beth Weessel-Kroeschell (D-Ames) and Sen. Pam Jochum (D-Dubuque) would allow a person who was sent to prison for life as a juvenile to apply for a review of sentence after 15 years. There was a lot of confusion about what these bills would do. It will not allow an automatic commutation of a life sentence, and not every person convicted of a class “A” felony while a juvenile would qualify to apply.

SF 393 – This bill, which dealt with modifying the definitions of “child abuse” and “child in need of assistance” as it pertained to providing obscene material to a minor, originated as a bill that the ACLU-IA adamantly opposed. In the course of subcommittee meetings, the ACLU-IA legislative director, working closely with the ACLU-IA legal director, presented language to legislators and the Dept. of Human Services that was more in line with constitutional protections. All parties agreed to the language and the bill moved easily out of the Senate, but became stalled in the House prior to adjournment *sine die*. SF 393 is eligible for consideration in the House next year.

Voting Record

To learn more about the session, check out the 2009 ACLU of Iowa Voting Record, which can be found on our website at www.aclu-ia.org — click on the “Legislative” tab at the top of the Home page. After reviewing the results, please thank your senator and representative, if appropriate. If your state legislator didn't do so well with civil liberties, ask why!

Hammond Presented Noun Award



Johnie Hammond of Ames was presented the Louise Noun Civil Liberties Award at the ACLUF of Iowa's 2009 Annual Dinner. This award has been presented annually for the

past six years to a person or persons that excel in their work toward freedom and civil liberties advocacy. The Noun Award is named in honor of ACLU-IA matriarch Louise Noun of Des Moines – herself a champion of the equality and compassion that Senator Hammond worked hard for throughout her political career.

Senator Hammond served twenty years in the Iowa General Assembly – twelve years in the House and eight years in the Senate. During her two decades as a public servant at the Capitol, she maintained an average of voting with the ACLU position over 80% of

the time [for the years 1984-88, her voting record with the ACLU-IA was a perfect 100%]. She jokingly claims that her average dropped off once Legislative Director Marty Ryan began his career at the Capitol.

While in the Iowa Senate, Johnie also spent six very active years on the ACLU of Iowa Board of Directors, participating on the Nominating, Legal, and Membership Committees. She was chair of the Nominating Committee for two years and brought balance and diversification to the board. Affirmative action is a way of life for Johnie, not just a policy.

In addition to serving on the ACLU-IA board, she has served on boards of directors for the League of Women Voters, Legal Services of Story County, Center for Creative Justice, the Iowa Board of Corrections (DOC) – just to name a few! While serving on the DOC board, she was simultaneously serving as a member of the National Advi-

sory Council of Americans United for the Separation of Church and State, when it sued the Dept. of Corrections in questioning the constitutionality of the Innerchange Freedom Initiative Program at the Newton Correctional Facility. It provided for an interesting conflict; one that Johnie handled with dignity and fairness to both parties.

Hammond was born in 1932 in Eupora, Mississippi. She is an active American Baptist (which historically has strongly supported church/state separation) and is deeply committed to her family including her husband, Earl, their four children and eleven grandchildren. Hammond was also inducted into the Iowa Women's Hall of Fame in 2005.

Johnie acknowledged she is grateful for this tribute; has known and admired both Louise Noun and the individuals who have previously been honored – and is equally grateful that her award was not given posthumously, as some have been!

Annual Dinner Held

The ACLU Foundation of Iowa, and co-sponsor Hawkeye Chapter, held its Annual Dinner on Saturday, May 2, at the University Athletic Club on the campus of the University of Iowa – a “change in venue” that didn't need a court order. Previous annual dinners have traditionally been held at the U of I Memorial Union (with the exception of Old Brick a couple years ago). Some long-time members may remember the cramped quarters of the basement of the Unitarian Church back in the 1980s and early 1990s.

The featured speaker for the evening was Iowa Supreme Court Justice David

Wiggins, who spoke on “Judicial independence.” In keeping with the Court's rules, Wiggins was not able to talk about the recent *Varmum v. Brien* case, in which the court ruled that Iowa's Defense of Marriage Act (DOMA) was unconstitutional. This case gained national attention, as Iowa became one of six states to legalize the marriage between same-sex couples – either by statute or, in Iowa's case, by judicial decree.

Justice Wiggins was humorous, witty, articulate, educational and knowledgeable. He criticized the thinking of persons associated with the “far-right” on some issues, and did not hold back on some criticism of the

ACLU either. He explained the process of how cases are assigned justices; and many in attendance were enlightened and amazed.

There apparently is no consistent process for assigning cases, but every method has been used – from drawing numbers out of a hat to using justices' tenure or ages.



Justice Wiggins addresses those gathered.

It appeared as though everyone enjoyed themselves and left with a memorable experience and a well-satisfied tummy. As always, the ACLUF of Iowa extends a BIG thank you to Sondra Smith, IMU Catering & Event Coordinator, for her event planning expertise.

We thank everyone for their attendance and participation and look forward to celebrating the next Annual Dinner already scheduled to be held in Iowa City on May 1, 2010 – during our 75th Anniversary Year!



Executive Director Ben Stone greets our guests.

Mannheimer Civil Liberties Essay

by Anna Miller

The United States Constitution is the foundation of our country. It was established by our founders with the intent to maintain order and preserve the liberties of the American people. With the passage of time, however, comes change. Our nation is constantly developing, and so is the way our society views the world. As change occurs, reform becomes necessary. Because of this, the Constitution has been amended to remain compatible with the progress of its people. Though every amendment to the Constitution is valuable, my favorite is the Eighth. Because the Eighth Amendment restricts excessive bail or fines and outlaws cruel and unusual punishment, it is key to preventing dictatorship.



If a citizen refuses to give up freedoms, resisting all threats or coercions, a dictatorial government may resort to physical force in the form of torture. Torture is a tool that robs an individual of the very essence of personhood and their will. It victimizes both the body and the spirit, and is therefore the most direct and enduring manner of stealing one's freedom. Through the Eighth Amendment, the Constitution makes clear that this gross exploitation of power will neither be tolerated nor practiced. Excessive bail, another injustice the Eighth Amendment prevents, takes away one's freedom to move, as well as restricts citizens' ability to take action against a dictatorial force or prepare a legal defense. Bail provides for the assumption of innocence until proven guilty and defers punishment until after trial. Excessive fines give an oppressive government a method of taking away citizens' livelihood and their fi-

ancial means to resist. In essence, the Eighth Amendment acts to protect the American will and freedom against oppressors who would practice immediate punishment based on their capricious desires.

A recent event that made me aware of and passionate about the importance of the Eighth Amendment was the torture and confinement of prisoners that occurred in detention centers controlled by Americans. When photos of extreme forms of torture, including sexual humiliation, emerged from these detention centers, I was deeply disappointed in my government and its blatant violation of the rights our Constitution, specifically the Eighth Amendment, protects. I was grateful that civil libertarian groups such as the ACLU immediately came to the defense of the Constitution in this situation.

The Eighth Amendment was formed to protect Americans' rights and to prevent their suffering under an exploitative government. Having suffered injustices at the hands of European royalty, America's founders were aware that tyranny can be inflicted by one's own rulers. With the creation of the Constitution, the early leaders of our nation wanted to ensure that the injustices that they, and their ancestors, experienced while living under tyranny would never be a part of life for future Americans. Their goal was to provide the freedom and opportunity to coming generations that those who came before us so often lived without; they strove to make our future a little less desolate than our past and ultimately to give us the gifts of life, liberty, and happiness.

Meet Shams Ghoneim



First elected to the ACLU of Iowa Board of Directors in 2007, Shams was born and raised in Cairo, Egypt. "I was always an activist," she says, noting that in Egypt there is no equivalent to the ACLU – so activists must work "one on one."

Ghoneim led the University of Iowa Council On Disability Awareness for ten years and was part of the UI Committee on Diversity as well. In 2001, she became the Coordinator of the Muslim Public Affairs Council, Iowa Chapter. She serves on HARRT (Hate Acts Rapid Response Team) of Johnson County.

Shams states, "My passion for the rights of minorities, women, persons with disabilities, eliminating torture, and the intrusion of government on our civil liberties made ACLU a natural evolution for me. I still recall the national ACLU convention in Seattle during my first year on the board. The former Guantanamo Bay Muslim chaplain spoke; later, I was able to talk to him personally. It was an enriching experience, but also a rude awakening on the abuses of our government."

Ghoneim serves on the ACLU-IA committees for Communications/Outreach, Nominating, and the special 75th Anniversary planning committee. Recently retired from the University of Iowa, she lives in Iowa City, where she raised her son and daughter.

If you are interested in learning more about becoming an ACLU-IA board member, contact the Des Moines Office at 515.243.3576, x13, and ask to be put in touch with the Nominating Committee. Board terms cover three years. There are six board meetings per year, usually held on Sundays in Des Moines.



Your tax-deductible contribution directly funds litigation, public education, and outreach in this state to keep all Iowans safe and free.

Here is my tax deductible gift of \$ _____ toward the work of the ACLUF of Iowa.

0902NWS

Name _____

Address _____

City / State _____ Zip _____

Email _____

Clip and mail to: ACLUF-IA, 505 - 5th Avenue., #901, Des Moines, IA, 50309-2316
OR Visit our website at www.aclu-ia.org and click on "Donate Now"

Second Annual Mannheimer Prize Awarded

The ACLU of Iowa has awarded the 2009 Robert Mannheimer Civil Liberties Essay Prize to Anna Miller of Mount Pleasant. The prize, worth \$500, is awarded each year in honor of Des Moines attorney Robert Mannheimer, who passed away in 2007.

Ms. Miller is the daughter of Bert and Laura Miller of Mount Pleasant and a junior at Mount Pleasant High School. Her essay was chosen from among those submitted from across the state of Iowa by high school students, grades 9-11.

The theme of this year's contest was: "Which constitutional amendment means the most to you?" Miller chose the Eighth Amendment, which forbids cruel and unusual punishment. "Anna's essay is impressive because it reveals her deep understanding of how tolerance for torture can quickly erode democracy and ultimately lead to the creation of a dictatorial system," said Ben Stone, ACLU of Iowa Executive Director. "This is an especially important observation in America today," he added.

Ms. Miller, who has earned a 4.0 GPA, is a member of the National Honor Society, and has attended the Junior Scholars Academy and National Scholars Academy through the University of Iowa's Belin-Blank Center.

Her musical talents have been displayed through her participation in the Chamber and Show Choirs, the symphonic and marching bands, and the Southeast Iowa vocal and instrumental ensemble contest. She has been an active volunteer for the Obama campaign, Rotary Youth, the Iowa Governor's Institute, Kids Against Hunger, Relay for Life and the local community theatre. She is also a lifeguard and has volunteered at her church's Vacation Bible School.

Anna was unable to read her essay at the recent ACLUF-IA Annual Dinner, because the date conflicted with her junior-senior prom – a priority the ACLU understands!

In addition to the financial award, Ms. Miller will receive a one-year membership in the ACLU.

Her essay is published on page 4.

Volunteers Needed to Help Promote Immigration Reform

The Iowa Immigration Education Coalition (IIEC) is seeking assistance from its members and others interested in promoting immigration reform at the federal level. As a volunteer entity, the IIEC has grown to the point where it needs additional resources – both financial and human – in order to educate the public, community, policy makers, and the media about the value of immigrants and immigration to Iowa and the U.S., and why our current immigration laws are neither in our best interests nor represent our welcoming tradition.

Would you like to take part in creating change that will improve the lives of immigrants and enhance Iowa's economy and quality of life via common-sense immigration reform? We are seeking persons willing to volunteer with the IIEC's Data Collection/Research Committee. This committee will be asked to recommend topics for issue briefs; issue brief updates; oversee personnel involved in conducting data collection, literature reviews, research and writing of issue briefs; and compile evaluations from forums and presentations.

Please RSVP your interest ASAP to the ACLU of Iowa Office at 515.243.3576, x12, or email legis.program@aclu-ia.org. Please provide your name, address, contact phone number – and we will get back to you with further details.

CHAPTER NEWS

Quad Cities Chapter Calendar of Events:

Coming this Fall: The chapter's Education Committee is developing a three-part First Amendment series on the "abridging the freedom of speech" clause, with the emphasis on how well educational institutions equip our youth with knowledge of their speech liberties.

Dates for this educational series have been set for September 24, October 6, and October 7 beginning at 7:00 p.m. at the Bettendorf Public Library. During the upcoming months, check the chapter's website at www.acluqc.org for further details.

2nd Tuesday—Chapter Meetings

The chapter meets on the second Tuesday of each month at 7:00 p.m. at the Unitarian Church, 3710 Eastern Avenue, Davenport, IA.

Last Monday—Bill of Rights Discussions

At 7:00 p.m. on the last Monday of every month, an open discussion about the Bill of Rights is held at Steve's Old Time Tap at 223 – 17th Street, Rock Island, IL.

All the meetings and events of the Quad-Cities Chapter are free and open to the public. For more details, visit the chapter website at www.acluqc.org OR contact Jose Bucksbaum at 563.355.0901 or jlbusa@mcleodusa.net

Iowa affiliate among those cutting staff

Due to the current economic recession, the national ACLU office – as well as many state affiliates – has had to lay off staff. The ACLU of Iowa is among those affiliates, having reduced its staff from five to four persons this past March. While unfortunate, the elimination of the Development/Outreach Director position will provide the organization the opportunity to aggressively pursue a new model of civil liberties advocacy. Stay tuned for more in the months ahead!

RELATED NOTE:

To help reduce expenses, it has been decided that the *DEFENDER* will be published every four months – not quarterly, as before. So, this issue covers April-August 2009 and the last issue this calendar year will be September-December 2009. Beginning in 2010: January-April; May-August; September-December.





ACLU

AMERICAN CIVIL LIBERTIES UNION
of IOWA

Published by
**AMERICAN CIVIL LIBERTIES UNION
of IOWA**

505 Fifth Avenue, Suite 901
Des Moines, Iowa 50309-2316

Phone: 515.243.3576

Email: info@aclu-ia.org

Visit ACLU-IA on our website at
www.aclu-ia.org

Vol. 37, No. 2 April–August 2009

© 2009 American Civil Liberties Union of Iowa

ACLU-IA STAFF

R. Ben Stone, Executive Director

Randall C. Wilson, Legal Director

Marty Ryan, Legislative Director

Ellen L. Simmons, Executive Administrator
& Editor

THE DEFENDER

In This Issue:

Marriage Equality Decision.....1

2009 Legislative Session.....2

Noun Award Presented3

Annual Dinner Held.....3

Civil Liberties Essay.....4

Meet a Board Member4

Mannheimer Prize Awarded.....5

Volunteers Needed5

Chapter News5

Printed on 30% PCW

ACLU-IA BOARD OF DIRECTORS

- Sarah Garst, West Des Moines, President
- Nick Drees, Ankeny, Vice-President
- Theresa Walker, Grinnell, Secretary
- David Muller, Iowa City, Treasurer & Hawkeye Chapter Rep
- Sally Frank, Des Moines, Affirmative Action Officer
- Richard "Dick" Woodward, Exec. Comm. At-Large
- Wendy Barth, Cedar Rapids
- Eddie Broders, Stockton
- Susan Cory, Muscatine
- Jerry Depew, Laurens
- Thomas Frerichs, Waterloo
- Shams Ghoneim, Iowa City
- Steve Hanken, Cedar Rapids
- John Harper, Iowa City
- Arthur Heyderman, Bettendorf
- Darryl Lipscomb, Cedar Rapids
- Jesse Martinez, Cedar Rapids
- Kelley Putman, Iowa City, Nat. Bd. Rep
- Janet Rosenbury, West Des Moines
- David Russell, Ames
- Doty Simpson-Taylor, Cedar Rapids
- Pamela Smith, Emmetsburg

Non-Profit Org
US POSTAGE
PAID
DES MOINES, IA
PERMIT NO. 843

*Prizing liberty and maintaining rights
since 1935.*

AMERICAN CIVIL LIBERTIES UNION
of IOWA
505 Fifth Avenue, Suite 901
Des Moines, Iowa 50309-2316
515.243.3576