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The Illinois Brief

All About Marriage

Love and marriage: two concepts so intertwined in our culture and our personal dreams that we often assume that the first can lead to the second. Until recently, that was not always a possibility for everyone living in Illinois; but over the last six months we have witnessed huge changes and significant progress.

On February 21, 2014, Federal Judge Sharon Johnson Coleman ruled that the Illinois ban against same-sex marriage violated the Equal Protection Clause of the U.S. Constitution. In the weeks that followed, county clerks in a number of counties began to issue licenses to same-sex couples. Watching couples apply for marriage licenses put to rest any doubts about the strength of the institution of marriage. Giddy, joyful, nervous electricity surrounds these couples without regard to their age, sex, race, and finally, sexual orientation.

Passage of the Illinois Religious Freedom and Marriage Fairness Act last November, during the legislative veto session, was the fulfillment of a long-time promise for marriage equality. But it was also a promise deferred. That law does not go into effect to supplant existing discriminatory laws until June 1. For a number of ACLU of Illinois clients, this did not just represent justice deferred but, in reality, justice denied because of a life-threatening illness faced by one of the partners. These clients did not expect to live until June to be able to celebrate their love, and to protect one another, through marriage.

Clients from the ACLU of Illinois marriage case and their families.

Suffering from cancer that had spread to her brain and bones, Vernita Gray knew she would not survive long enough to marry her partner, Pat Ewert, if it meant waiting until June. On November 22, two days after Governor Quinn signed the marriage equality legislation, the ACLU of Illinois and Lambda Legal filed suit in federal court on Gray's behalf and requested an emergency hearing to immediately grant Vernita and Pat a marriage license. U.S. District Judge Thomas Durkin agreed and ruled for Vernita and Pat. His prompt, humane decision recognized that this loving couple should not be denied the freedom to marry simply because of the arbitrary effective date of the new law. Vernita and Pat became to first same-sex couple to legally marry in Illinois on November 27. The ACLU and Lambda persisted, filing another suit, *Lee v. Orr*, in December, on behalf of four other same-sex couples charging that the continued enforcement of Illinois' ban on these couples' freedom to marry violated their rights under the U.S. Constitution. The case

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What's At Stake in *Hobby Lobby*

From Executive Director
Colleen K. Connell

The *Hobby Lobby* and *Conestoga* cases argued in the Supreme Court of the United States on February 25 raise the potential of upsetting many areas of law. At first glance, it seems that these cases involve one more battle in the fight for reproductive rights. Upon more careful scrutiny, much more is at stake. If the Roberts court rules that Hobby Lobby, Inc. and the Conestoga Wood Specialties Corporation have the right, under the Free Exercise clause of the First Amendment and/or the Religious Freedom and Restoration Act (RFRA), to refuse to comply with the Affordable Care Act (ACA) requirement that their health insurance plans cover contraception, the First Amendment, RFRA, and corporate law all potentially will have been turned on their respective heads.

[T]he law has never treated the beliefs of the shareholders as one and the same as the beliefs of the corporation.

First, the reproductive rights aspect of these cases: the contraceptive coverage provision of the ACA was intended to help eradicate gender-based disparities in health care and insurance coverage that historically have prevented women from obtaining essential medical care. Safe and effective contraception is one of the top public health developments of the 20th century – ranking next to clean water and immunizations in terms of positive impact on human health. Throughout history women and their children have suffered from the health consequences of pregnancies that were too early, too frequent, and too closely spaced. Without contraception, the average woman could expect to become pregnant twelve to fifteen times during the approximately three fertile decades of her life. Contraception thus has become a critical component of basic preventive health care for women, with more than 98% of American women using birth control at some point during their reproductive lives.

Providing insurance coverage for birth control is essential as a matter of equity. Prior to the ACA, women of child-bearing age spent 68 % more in out of pocket health care costs than did men – primarily because of the cost of contraceptives. Inability to access or to afford contraception places women at a disadvantage in the work force compared to their male co-workers.

Thus, government has an interest in advancing women's health and equity that is compelling enough to support the ACA requirement that employer sponsored insurance plans cover contraception. For decades, federal courts have considered a compelling governmental interest, narrowly tailored, sufficient to allow government to regulate – even in the face of an objection based on the Free Exercise Clause of the First Amendment or RFRA. The very real harm that would be suffered by third parties – women employees in these ACA cases – further supports upholding these regulations.

The arguments of *Hobby Lobby* and *Conestoga* urge a departure from decades of First Amendment Law and RFRA. The First Amendment does not excuse people from complying with generally applicable laws, particularly when those laws are supported by compelling governmental reasons. Courts long have refused to grant religious exemptions from general laws, refusing for example to excuse the Amish from complying with the Social Security Act, even the face of claims that it violated their religious beliefs. Similarly, courts refuse to allow schools and businesses to pay women employees less than men employees, despite such employers' claims that under their religious beliefs men are the heads of their households and need the money more. And, the federal courts refused to accept Bob Jones University's arguments it was entitled to tax-exempt status notwithstanding its discriminatory policies. (The university claimed that its policies against admitting people of color and interracial dating were motivated by their religious beliefs and thus did not violate federal law.)

The further argument that Hobby Lobby and Conestoga can assert a religious exemption based on the religious beliefs of their shareholders also upends basic principles of corporate law. Both Hobby Lobby and Conestoga are secular, for-profit corporations. Neither corporation is a religious

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The Fight for Illinois Children

The Illinois Department of Children and Family Services (DCFS), at its best, reflects the adage that "it takes a village" to raise a child. The department's web site repeatedly seeks public support for its difficult mission which states that by "working together, we can ensure a safe, loving home and brighter future for every child." DCFS children need advocates and, for 26 years, it is a role the ACLU of Illinois has diligently filled. Operating under a 1991 Federal Court consent decree, the ACLU actively monitors and works to keep the DCFS accountable and focused on its obligations to Illinois children.

The department's track record of meeting its mission, at a level that can actually protect children, has dramatically improved over the years; still, maintaining effective standards has been something of a roller coaster ride. In 2005, DCFS won plaudits from around the country for its effective operations, earning praise from the associate dean of the School of Social Welfare at the University of California, Berkeley. Dean Jill Duerr Berrick told the Congressional Quarterly Researcher in April of that year that there had been "tremendous innovation coming out of Illinois." CQ Researcher also quoted Sue Badeau, then deputy director of the Pew Commission on Foster Care, who called the Illinois' system "the 'gold standard' of child care." However, by 2009 and then again in 2012, the ACLU of Illinois saw a system at risk of slipping back on its own reforms.

The high standards of achievement and the hard-earned accolades were the culmination of a long struggle to reform a once very broken system. In 1988, Illinois children unfortunate enough to need DCFS help fell into a system of chaos. The besieged, under-financed, mismanaged department was fundamentally unable to meet the needs of the abused, neglected children under its care. As a guardian and custodian of children without stable, supportive families, the department often put its wards into situations as destructive and harmful as the conditions from which they were removed. The DCFS, at that time, was an out-of-control, unaccountable bureaucracy. Blaring newspaper headlines told horror stories exposing the department's failure to protect at-risk children. Children were dying.

The ACLU of Illinois, together with the law firm Schiff Hardin LLC, filed a class action suit in 1988 seeking Federal District Court intervention on behalf of 10 individual clients and sought class action status on behalf of all of the children who were or would be in DCFS custody. The case, *B.H. v. Johnson*, revealed the horrifying consequences of DCFS incompetence and negligence on the children the department was mandated to protect. Children in DCFS care faced bleak and even Dickensian living conditions with little chance of receiving services that every child requires. Almost a third of all children experienced six or more placements while under DCFS care, and many had extended stays in hospitals for the mentally ill, detention centers, group homes, shelters, and other institutions. Children often were "warehoused" in these institutions where discipline at times was maintained by brute physical force and where few, if any, educational opportunities were provided. The lawsuit exposed incidences of children being victims of physical assault, including rape, while under the care of these

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Bill of Rights Celebration 2014 fetes Reproductive Rights Project

The ability of all people to make fundamental decisions without government interference is at the heart of the upcoming 2014 Bill of Rights Celebration, as the ACLU of Illinois honors the significant accomplishments of the Reproductive Rights Project. The Saturday, May 10, 2014 gala, co-chaired by Sylvia Neil and Carrie Newton will highlight the Project's 35 years of successfully protecting reproductive freedom for women across Illinois. Congresswoman Jan Schakowsky (D-9th) is the guest speaker, bringing her keen insights on how we can work together to protect these hard-won, fundamental rights for women.

The program will highlight the Reproductive Rights Project's decades of critical work to defend women's access to reproductive health care, and celebrate Lorie Chaiten, the Project Director, for her 29 years of dedicated service.

Chaiten's links to the ACLU go back to 1985, when, as a first year associate at Sonneschein Nath and Rosenthal, she began working on an ACLU abortion case as a cooperating counsel. Since that time, Lorie has worked on every major reproductive rights case the ACLU of Illinois has litigated.

The ACLU of Illinois has established a track record lasting more than 35 years of successfully protecting the rights of Illinois women and their families, preserving their rights to make a range of decisions about their reproductive health care, including whether to carry a pregnancy to term without government interference.

Over the years, the Project has increased access to contraception, removed obstacles to prenatal genetic testing and other reproductive health services and beaten back extremist efforts to reduce meaningful access to abortion in Illinois. The Project recognizes the need to remain vigilant and to continue to battle against laws and policies that restrict access to reproductive health care, including abortion and contraception, because, as the United National Convention on the Elimination of All Forms of Discrimination Against Women notes, there is an indisputable "link between women's role in reproduction and the continuing discrimination against women." The Project's work is essential to block such effort to marginalize women and deny them full equality and dignity.

The Project also continues to strengthen and extend the reach of the ACLU of Illinois' Judicial Bypass Coordination Project, seeking to minimize the harm caused by the state's newly-enforced parental notice law. The program educates youth, providers, advocates, and courts about the law and ensures that young women who need a judicial waiver of the notification requirement can receive free legal assistance from the ACLU.

The work of the Project is made more urgent because of the vitriolic, dangerous anti-abortion movement sweeping through state legislatures across the country. We have seen a startling trend in state legislatures across the nation: more laws were enacted to restrict abortion in the past three years than at any other time in the previous decade. This nationwide effort intensified in 2013. The consequences of these draconian laws are now surfacing.

In Texas last year, for example, legislation muscled through the state legislature and signed into law by an anti-abortion Governor forced more than half of the state's women's health care clinics to close their doors.

Lorie Chaiten, Reproductive Rights Project Director

In Illinios, the ACLU Reproductive Rights Project has led efforts to defeat the extreme measures and to maintain Illinois as a state where women are empowered to access a full range of reproductive health care services. This is why the project is being feted at the 2014 Bill of Rights Celebration.

Event co-chairs Carrie Newton and Sylvia Neil have strong ties to the Reproductive Rights Project, and are pleased to be a part of this gala to raise funds and awareness for the ACLU's critical work. Neil, now a Lecturer in Law at the University of Chicago Law School, founded the Project on Gender, Culture, Religion and Law at Brandeis University and previously served as legal counsel and executive director of the American Jewish Congress for the Midwest region. There she focused on programs promoting women's rights, civil rights, religious liberty, and peace in the Middle East.

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Newton, a lawyer, political activist, and consultant to law firms looking to expand pro bono work, champions the Project's efforts. "Think about it," she says: "reproductive health is about choosing if, when, and how to have your family. I know a bit about that." Prenatal complications in Carrie's first pregnancy required a medically necessary abortion. She maintains that without that difficult termination she would likely never have been able to become a mom. Her beautiful daughter Ariella is now 18 months old.

On May 10, the day before Mother's Day, the co-chairs and the entire ACLU will celebrate the Reproductive Rights Project and its efforts to protect every woman's right to decide when and if to become a mom. ◆

Bill of Rights Celebration
Saturday, May 10, 2014

Westin River North
320 N Dearborn
Chicago

brc.aclu-il.org

An Age Old Story of Control

by Patrice Bugelas-Brandt

The scene is as chilling as its setting amidst icy river-rapids: The mother of an impoverished, early 20th century Japanese family clings to rocks immersed in freezing water with the hope that she will abort the baby she is carrying. The blockbuster Japanese film "Oshin" is a 2013 reprise of a popular Japanese TV series and was recently playing, with subtitles, on some United Airlines flights. Looking for entertainment on a long flight, the film's spectacular winter cinematography caught my attention but the storyline kept me watching. Unable to feed their existing brood of children, the father in the film considers renting out their seven-year old daughter, Oshin, as a domestic servant. The mother, wanting to keep her family intact, but with few alternatives available to women of her time and class, turns to the often harsh and brutal form of family planning practiced over centuries.

The movie's cast of strong, wise women quietly but forcefully guiding their families makes this a heart-string-tugging chick-flick. But it resonates because some issues never change. Today's shrill discourse over abortion rights often implies that we are facing the implosion of all morality if, as a society, we allow women the freedom to control when, where and how they will choose to give birth. But women exerting control over their reproductive timing is a song that has no beginning or end. It is an integral part of the human story. In the movie, there is no furious shock or dismay over Oshin's mother's actions; just acceptance that women often must just do what needs to be done, as they always have. Though the film makes no mention of it, it is pertinent to note that abortions had been ruled illegal throughout the Japanese islands in 1869. The mother's desperate gambit to not birth another live baby is

Patrice Bugelas-Brandt is a Volunteer with the ACLU of Illinois Communications Department

unsuccessful. With another mouth to feed, Oshin's father does, sadly, sell his seven-year-old daughter's services, in exchange for rice, to a wealthier family looking for a live-in maid and baby sitter.

In the United States today, forty-one years after the U.S. Supreme Court's *Roe v. Wade* decision, the arguments of pro-choice over pro-life seem to have lost all connection with the fundamental reality that women have always struggled to control when to have children. Being able to give birth is part of a woman's definition and, since time began, having or not having children is part of our personal stories. A 1997 book "When Abortion was a Crime" by Leslie Reagan traces the changing social dynamics behind abortion in the United States. Reagan maps how the basic biological phenomena of reproduction, which used to be completely part of a "woman's world," morphed into an issue of social debate as Americans codified the practice of medicine and imposed laws which shifted reproductive control away from women. Her research reveals that

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State Legislature: Election Year Action

The General Assembly is back in session with budget issues, tangled with election year politics, dominating the agenda in both the House and the Senate. Nonetheless, civil liberties bills, ranging from regulation of drones to school bullying, have gained traction and won passage out of House and Senate committees.

The Freedom from Drone Surveillance Act, passed and signed into law last year, established privacy-protecting regulations over the use of government owned drones. Recognizing the growing prevalence of drones for private and commercial activities, State Senator Daniel Biss (D-Evanston) introduced a follow-up bill to regulate any law enforcement effort to obtain information from privately owned drones. The legislation, which passed out of the Senate Criminal Law Committee and is now up for full consideration in the House, allows law enforcement agencies to request to view data collected by a private drone, but it would require a warrant should a private drone owner choose not to voluntarily comply. In addition, the legislation would prohibit police and law enforcement agencies from directing the acquisition of information by privately owned drones. It would be legal, however, for private owners, at their own initiative, to share collected data with police. All information acquired by law enforcement groups from private drones would be subject to the retention and disclosure requirements established by last year's Freedom from Drone Surveillance Act.

The House Judiciary committee approved legislation which will permanently require police officers to report and compile data on the race of motorists stopped for traffic violations, a program that was due to expire in 2015. The program, established in 2003 in response to concerns over police racial profiling of motorists, generated data which confirmed racial disparities in stops and searches on Illinois highways and roads. Recognizing the program's positive impact, the legislation, sponsored by Representative Monique Davis (D-Chicago), would further promote productive police department assessments of an officer's motivation for stopping a driver. Keeping the program in place serves as a reminder to every officer to self-assess whether or not they are using the same standards for every motorist they stop. The bill passed in the House and now moves to the Senate.

The Senate Criminal Law Committee unanimously supported legislation mandating judicial oversight on law enforcement's use of location tracking data. Sponsored by State Senator Daniel Biss (D-Evanston), the ACLU-endorsed bill would protect law abiding citizens against overreaching government surveillance of their travel activity. The bill, which is being amended

with clarifying language before being passed on for full Senate consideration, would require a court order before law enforcement could monitor an individual's current or future location by accessing tracking information generated by the individual's use of electronic devices.

The House Labor Committee approved legislation that promotes workplace fairness for pregnant workers. The legislation, introduced by Representative Mary Flowers (D-Chicago), is modeled after the Americans with Disabilities Act and analogous state law. It seeks to require employers to make reasonable accommodations for conditions related to pregnancy and childbirth unless they can demonstrate that doing so would cause undue hardship on the ordinary operation of their business. The bill addresses the persistent problem that pregnant workers are denied the kinds of job modifications that are routinely offered to other employees with comparable needs, despite the fact that Illinois and federal law currently require employers to provide pregnant workers the same treatment and benefits – including temporary accommodations – as other workers who are similar in their ability or inability to work. Nothing in the bill treats pregnant women with "special treatment" or "extra" benefits; it only seeks to correct the failure by employers, and the courts, to uphold fair and equal treatment in the workplace.

The House Restorative Justice Committee approved legislation introduced by Representative Kelly Cassidy (D-Chicago) which would decriminalize the use and possession of small amounts of marijuana. The bill, supported by the ACLU of Illinois, would create a statewide, uniform "Cannibas Ticket" and establish a new regulatory, non-criminal penalty of a fine if a person is found in possession of 30 grams or less of marijuana for personal use. It also proposes a process for assuring that once an individual pays the fine associated with the Cannibas Ticket, the record is sealed and is not considered a criminal record for purposes that may hinder future jobs, housing, or educational opportunities.

The House Elementary and Secondary Education Committee passed a school bullying bill after hearing persuasive testimony from parent witnesses, presented by the Illinois School Social Workers, who advocated the need to clarify and strengthen existing Illinois laws on bullying. The legislation, sponsored by Representative Kelly Cassidy (D-Chicago) and supported by the ACLU of Illinois, would complement existing bullying laws by integrating specific recommendations proposed by the 2010 Illinois School Bullying Prevention Task Force. The bill promotes school and school district development, posting, and distribution of anti-bullying policy procedures that clearly define bullying and which establish guidelines for reporting (including anonymous reporting), investigating, and addressing incidences of bullying. It also would provide the Illinois State Board of Education with data related to the prevalence of bullying in schools. ◆

2014 Bill Tracker

Bill Name & Number	Where's the bill now?	What can I do?
Drone trailer bill SB 2937	Waiting to be heard in the House	Learn more: aclu-il.org/drones
Pregnancy Discrimination HB 8	Placed on second reading in House	Take action: aclu-il.org/pregnancy
School Bullying HB 5707	Placed on second reading in House	Take action: aclu-il.org/bullying
Marijuana Reform HB 4299 & HB 5708	Placed on second reading in House	Take action: aclu-il.org/potreform
Racial Profiling Data Collection HB 4442	Waiting to be heard in the Senate	Take action: aclu-il.org/trafficdata
Location Tracking SB 2808	Placed on third reading in the Senate	Learn more: aclu-il.org/location

sign up for emails to stay informed: aclu-il.org/signup

Obituaries

At the end of 2013 the ACLU of Illinois lost two longtime, invaluable supporters.

Bill Weaver, an ACLU of Illinois board member from 2001 through 2012, passed away on November 22, 2013 after a long struggle with emphysema. An attorney renowned for his deal-making skills, Weaver was a technology expert representing start-up tech companies over the course of his 45-year legal career. As a name partner at Sachnoff & Weaver, he was noted and praised for his corporate finance savvy as well as his relaxed style. His former law partners remember him as an early supporter of an informal dress code and a promoter of firm camaraderie after hours, around the office pool table, dart boards and bridge tables. Friends say he knew how to both work hard and play hard.

At the ACLU, Weaver served on the Budget Audit and Investment Committee and the Executive Committee, applying the same negotiating skills he used as an attorney. He made substantial contributions as a board member, promoting systemic internal budget controls and strategic investment policies. Colleen Connell, Executive Director of the ACLU of Illinois, maintains Weaver was "a deal maker who knew how to get to 'yes'. He had an amazing capacity to negotiate a compromise; a solid grasp of the art of the possible." This skill, she points out, was paired with his core values – his belief in fundamental fairness and treating people right. He was, she recalls, "a zealous civil libertarian who unequivocally saw inequality as an injustice." That deep sense of fairness motivated his opposition to any discrimination, whether race or gender based, and made Weaver a great mentor, Connell recalled. "He was one of the first men of his generation to actively promote and mentor women, supporting their career choices and work." He was a great friend to the ACLU. Bill Weaver was 79 and is survived by his wife Frona Daskal, two children, two step-children, and 10 grandchildren.

Janice Oppenheim Meister passed away on December 24, 2013. Meister was appointed to the ACLU of Illinois Board in 1993, and remained a member until her death. She began her career working for Saks Fifth Avenue, because, as she once explained to ACLU staff, that was the only job she could get out of college. Later, during World War II, advertising departments began to hire women as they lost male employees to the war effort, and Meister's advertising career was launched.

In 1978, she succeeded her husband as Chairman of the Board of Bagcraft, now a multi-national, foodservice packaging company. As a corporate leader, Meister was known for her creativity and is credited with conceiving the "doggie bag" so that restaurant patrons could take home any uneaten portions of their meal. In 1991, Jan received a lifetime achievement award from members of her industry. Those nominating her for the award noted "the affection and admiration with which (she) was held by all."

ACLU of Illinois Executive Director Colleen Connell remembers witnessing this affection for Meister first hand at Meister's 90th birthday celebration, which was a gathering of family, business colleagues, and former employees. "It was clear," Connell recalled, "from all the people there, that she was sincerely revered by all."

Meister was passionate about the ACLU's work particularly in regards to civil liberties, women's rights, and the rights of workers. As a board member, she served on the Executive Committee and the Communication Committee. She had, according to Connell, "a keen sense for the value of communications" and advocated for increasing and investing in a professional communications staff at the ACLU. Meister was also "terrifically attentive to details on financial matters," Connell said. "And Jan was insistent on our taking care of ACLU staff. She was firm that we could not preach one set of values to the world but follow a separate set for ourselves. She lived in a world of ideas and experiences and enjoyed life no matter what. She reveled in what was possible rather than focusing on the 'can't.' She was a role model on how to do it: a business owner; a board member; a human being. She was a wise woman, and that is probably how she would want to be remembered." Meister is survived by twochildren and two grandchildren. ◆

An Age Old Story of Control

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abortion in the United Sates has long been a contested, politicized issue even in the years before the Civil War. She maintains that the debates on the issue of abortion were racist and patently anti-feminist even in the 1840's. Yet the reality remains: criminalizing abortion did not stop women from doing what they had always done; it just created a black market for reproductive control.

Culling through data and court convictions as well as police department logs for Chicago between 1902 through 1934 Reagan discovered that the state's attorney's office annually prosecuted very few criminal abortion cases and won fewer convictions. However, annual reports compiled by the Chicago Police Department show that over the same time period, police arrests for abortion related crimes steadily increased. Between 1905 and 1910 police made ten arrests a year. Between 1910 and 1920, the average annual number fluctuated between 25 to 26 arrests. Anti-abortion pressure also increased from the Cook County Coroner's office. . In 1903, the Cook County coroner investigated 18 abortion deaths; by 1917, the number of abortion death inquests had reached 103.

I look back and remember family stories about my grandmothers, who married and started families after World War I. One always slept alone after her doctor warned her that another pregnancy might cost her her life, and the other, a young widow with two pre-school age children was caught lifting heavy bedroom furniture after her husband's funeral. Every woman, every family, is touched at some point in their lives by family planning issues. Modern science has revolutionized our options but not lessened the responsibility women carry. That personal responsibility and desire for personal control have always been intertwined with reproductive rights.

As a society, we do face a group responsibility to tackle issues that determine reproductive health. High rates of sexually transmitted disease, high infant mortality rates, maternal morbidity and incidences of unwanted pregnancies are all social issues. Tremendous strides in medical and pharmaceutical knowledge have altered how, as a society, we can tackle these critical problems. Education and access to up-do-date standards of medical care give women choices and spare them the dilemmas women faced in the past. My grandmothers, and Oshin's mother as well, would rightly consider today's knowledge and medical advances as nothing less than emancipating.

The last five years have seen escalating assaults on women's reproductive rights, with state legislatures enacting more and more restrictions on women's sexual health. Do we, as a society, truly want to deny women the right to safely control their reproductive health? Limiting access to medically safe abortions or making contraceptives unaffordable will not stop abortions. Laws cannot take away a woman's determination to control when and how she will have babies. Women have always and will always exert that control. But if left unchecked, bad laws will force desperate women back into something equivalent to the icy river Oshin's mother sought as a solution to an unplanned pregnancy. ◆

Hobby Lobby

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corporation, such as a church or synagogue. The very nature of incorporation is to create a separate legal entity for the incorporated company, independent from the legal identity of the individual shareholders. Shareholders are not one and the same as the corporation. To treat them as though they were would border on the impossible in many situations – given the rarity of unanimous belief on the part of all the shareholders. A second fundamental principle of incorporation is the concept of limited liability – as a general rule, absent fraud, the individual shareholders of the corporation are not liable for the obligations of the corporation. If the Supreme Court pierces the corporate veil and imputes the religious beliefs of the individual shareholders to the corporate entities of Hobby Lobby and Conestoga, will the Court in future cases pierce the corporate veil and hold these same individual shareholders liable for the liabilities of the corporation?

Hobby Lobby and *Conestoga* present significant challenges to women's rights and first amendment law. If the Court rules in favor of these companies, it will suffer a serious blow to its legitimacy. ◆

Colleen

Protecting Illinois Children

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institutions, causing serious damage to their physical and emotional well-being. It also revealed the DCFS' failure to provide counseling to help children cope with traumatic experiences.

Foster care often similarly failed DCFS children. The lawsuit presented examples of when the DCFS itself undercut efforts by dedicated foster parents by not authorizing needed services and not providing the funds needed to properly provide for their wards. One conscientious foster family was threatened by a DCFS caseworker with losing custody of their ward if they did not stop "causing trouble" by advocating for the critical medical and therapeutic services the child needed.

The DCFS' lack of cooperation often left foster parents with cruel choices: pay substantial sums out of their own pockets for the services the state should provide; ignore their foster child's needs for these services, thereby being negligent parents; or abandon the child to another placement. At times, children were placed without providing foster parents critical information on the child's medical problems and their need for medication, as happened with one diabetic child. The ACLU of Illinois charged that the department regularly placed children in homes without any consideration of the child's personal history and the appropriateness of the foster home. As a result, children and foster homes were poorly matched, leading to inevitable placement failure, driving foster parents out of the system, and further shrinking the pool of good, available foster homes.

The chaos and outright negligence of the system defeated even the best-intended of the DCFS caseworkers by work-overload. The ACLU law suit presented DCFS studies and national social science surveys which showed that assigned follow-up caseworkers should not be given more than 20 cases at any given time. At the time of the suit, many DCFS caseworkers handled 60 cases simultaneously and some as many as 100.

The Court appointed an independent panel of experts, whose report supported the ACLU's claims on behalf of the DCFS children and brokered a court-approved agreement mandating DCFS reforms that would be implemented with federal court supervision and monitored by ACLU attorneys.

By 2005, the court-ordered reforms and the ACLU's relentless oversight had dramatically improved DCFS operations earning the department, as cited earlier, national praise for its effective services to children under its supervision. The reforms enabled the DCFS to find stable adoptive homes for more than 40,000 children while improving services and reducing caseloads. The department obtained adequate agency funding, improved training for caseworkers and private agency staff, and reorganized its information systems. The ACLU's continued advocacy also led to reducing the number of children in Illinois foster care. In 1995, DCFS had more than 50,000 children temporarily placed with foster parents and other caregivers; today there are fewer than 16,000. From a system that was once one of the worst in the nation, Illinois DCFS reform strategies became a model for setting benchmarks and achieving outcomes for the care of children in government-run systems.

However, in June of 2009, the Illinois legislature passed sweeping budget cuts, reducing the department's funds and raising concerns that the DCFS services could again be at risk. ACLU attorneys went back to court to prevent the state from implementing the draconian budget which would have reduced funding for key components of the foster care system, in violation of the terms of the 1991 agreement. This preemptive maneuver protected critical services and standards necessary to effectively meet the needs of children under DCFS care. The cuts would have resulted in caseworkers for wards of DCFS having their caseloads increased from 15 children to as many as 50. Similarly, child protective services investigator caseloads would have nearly doubled under the budget cuts, increasing caseloads from 12 to 20 new investigations of alleged child abuse and neglect every month. The ACLU maintained that, if implemented, the budget cuts would have placed DCFS children at immediate risk of harm. The court agreed.

Further red flags were raised in 2012 as the ACLU received reports that caseloads for investigators were creeping up to levels that violated the court agreement and endangered the safety of children. ACLU attorneys again sought court intervention and, in August 2012, the court ordered DCFS to bring caseloads into compliance with our agreement by the end of the calendar year.

Maintaining consistent, well-structured and well-implemented services for children under DCFS care remains precariously difficult. Department staff turnovers and position vacancies challenge the department's ability to meet its obligation to provide effective services. Significant progress has been made since 1988. Upholding and protecting the progress achieved and continuing to improve DCFS operations requires significant work and effort. The ACLU of Illinois is committed to continue monitoring the state's performance and stand ready to return to court if anything compromises the delivery of services to Illinois children under DCFS care. ◆

All about Marriage

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sought the approval of expedited marriage licenses for two of our client couples, and others like them, whose precarious health conditions precluded waiting for the marriage equality law to go into effect. Judge Coleman allowed the named plaintiffs to marry in early December, and then created a streamlined process for all other couples facing similarly urgent medical circumstances. The ruling eliminated the onerous and costly burden of going to court to seek the right to marry immediately.

The ACLU of Illinois celebrated and cheered as our clients left the Cook County Clerk's office with their marriage licenses in hand, having exercised their basic human right to marry the person they love and with whom they wish to spend their lives. We also grieved. Within weeks of their weddings, three of our clients passed away.

Vernita Gray lost her battle with cancer on March 17, 2014.

Ron Dorfman, a journalist, civil rights advocate, and friend of the ACLU, died on February 10 after a long struggle with heart disease. Ron married his partner of 20 years, Ken Ilio, four days after the December 10 ruling.

Challis Gibbs, another client in *Lee v. Orr*, died of stage 4 neuroendocrine cancer on February 25. After 21 years of waiting, she and her long-term partner, Elvie Jordan, were married on December 12 surrounded by family and friends. She died knowing that her surviving partner Elvie was finally her wife and was left with the crucial legal protections marriage provides to surviving spouses.

On February 21, Judge Coleman ruled on the broader question of whether the current ban against marriage for same-sex couples is unconstitutional. Acknowledging that the case had evolved from seeking immediate relief for plaintiffs suffering from terminal diseases to one on behalf of all gay and lesbian couples, Coleman found unequivocally that Illinois law violated the U.S. Constitution by denying same-sex couples the freedom to marry. In a strongly worded opinion, she wrote that "the marriage ban for same-sex couples violates the Fourteenth Amendment's Equal Protection Clause," and that these laws "discriminat[e] against individuals based on their sexual orientation." Quoting Martin Luther King, Judge Coleman maintained that "the time is always ripe to do right."

Because the case was brought against Cook County Clerk David Orr, its immediate impact was limited to Cook County. The effect of the decision was dramatic and immediate. On February 21, Gay and lesbian couples began to line up in the in Cook County Clerk's office to apply for marriage licenses. Many other county clerks across the state followed suit after determining that they could no longer enforce a law a federal court had declared to be unconstitutional. Within the first week of Judge Coleman's decision, more than 250 gay and lesbian couples applied for licenses in Cook County alone. They included 21 teachers, 10 attorneys, six accountants, six doctors, six police officers, three electricians, one steelworker, one forklift operator and 33 retirees.

The response has been a gratifying reaffirmation of the power of love. Cynics on love and marriage do not line up at Illinois county clerks' offices to wait for a marriage license. Across the state, wedding celebrations seem to be going on everywhere - including our ACLU offices.

Our clients Suzie Hutton and Danielle Cook chose to take their marriage vows and celebrate their wedding in our office conference room. ACLU of Illinois Communications Director Ed Yohnka officiated and noted their dedicated activism on the issue of marriage equality. "Danielle and Suzie worked side-by-side with the ACLU to make marriage equality a reality in Illinois. Their journey led not simply to...a celebration of their love and commitment; (their) journey has led to joy, celebration and basic equality for thousands of gay and lesbian couples across the state of Illinois." Quoting Ghandi, Ed reminded us all that "through history the way of truth and love has always won." ◆

Danielle Cook and Suzie Hutton's marriage ceremony at the ACLU offices

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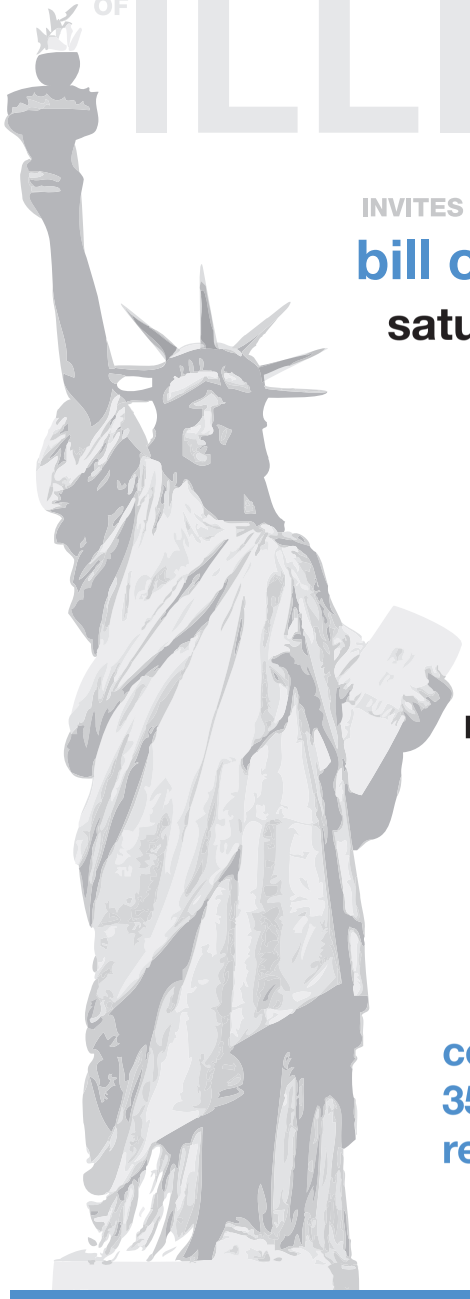

INVITES YOU TO OUR

bill of rights celebration

saturday, may 10th, 2014

Co-Chairs:
Sylvia Neil
Carrie Newton

Westin River North
Grand Ballroom
320 N. Dearborn, Chicago

RECEPTION & SILENT AUCTION
6:00pm

DINNER & PROGRAM
7:30pm
Black Tie Optional • Valet Parking Available

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celebrating the 35th anniversary of our reproductive rights project

AMERICAN CIVIL LIBERTIES UNION of ILLINOIS

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