



ACLU

AMERICAN CIVIL LIBERTIES UNION
of ILLINOIS

The Illinois Brief

Parental Notice of Abortion Act Still on Hold

A law posing real danger to young women remains enjoined thanks to action by the ACLU of Illinois. The Parental Notice of Abortion Act requires a doctor or clinic to notify an adult family member 48 hours prior to providing an abortion to a young woman in Illinois. The law has not been enforced since its passage in 1995, largely because it failed to provide an adequate alternative to notice required by the United States Constitution. After more than a decade of inaction, the past several months have been turbulent and fast-moving.

The U.S. Supreme Court ruled in 1979 that any statute requiring parental involvement in a minor's choice to have an abortion also must allow a young woman an opportunity to persuade a judge that the requirement should be waived in her case. A young woman can seek the waiver in a "judicial bypass" proceeding on the grounds that she is mature and well-informed enough to make this intimate decision on her own, or that notice would not be in her best interest.

"Parental notification laws pose a real threat to the small percentage of young women who feel they cannot involve a parent in their decision to terminate their unintended pregnancy," said Lorie Chaiten, Director of the Reproductive Rights Project at the ACLU of Illinois. "The fact is that most young women who face an unintended pregnancy choose to involve a parent, and the younger a woman is, the more likely she is to do so."

"But, experience shows that for those who feel they can't involve a



The Reproductive Rights Project legal team, Leah Bartelt, Lorie Chaiten and Khadine Bennett, are challenging the Parental Notice of Abortion Act in state court.

parent, it is for good reason – fear of physical, sexual and emotional abuse, fear of being kicked out of the family home, and concerns about other familial circumstances for which this law does not account, for example, a terminally ill parent."

The 1995 Illinois statute provided for judicial bypass proceedings, but left the task of issuing certain essential procedural rules to the Illinois Supreme Court. The Supreme Court declined to issue those rules for more than a decade. As long as there were no rules, there could be no bypass proceedings and no enforcement of the parental notice requirement.

In September of 2006, the Illinois Supreme Court adopted rules for these hearings, leading the State defendants to ask the federal court to lift its decade-old injunction and permit enforcement of the Act. The federal district court refused, agree-

ing with the ACLU's argument that, even with the rules in place, the law continued to fall short of Constitutional standards. The State appealed that decision to the Seventh Circuit, which ruled in July 2009 that the law

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Talking Liberty

From Executive Director
Colleen K. Connell

The words of Lotte Scharfman, a refugee from Nazi Germany, remain relevant today. It is tempting to yield to cynicism and passivity as government officials at all levels essentially refuse to govern by evading tough problems and, in the process, creating a political paralysis that poses a severe threat to our civil liberties. The dysfunctional state of our democracy is marked by these problems:

- permitting the Machiavellian machinations of leaders in the Illinois General Assembly – and their unchecked desire to permanently perpetuate their own political power – to hold hostage the legal needs of gay and lesbian families and block marriage equality;
- placating powerful and wealthy elites –whether financiers or the religious right, thus stymieing economic regulation that protects middle class Americans and health care reform that protects reproductive freedom;
- blocking reform of education funding in Illinois, thus denying our children the quality education that the Illinois Constitution guarantees them – and that is essential to the educated citizenry necessary to maintain a democracy;
- tolerating the racial gerrymandering of government offices in the City of Chicago and Cook County, thus creating “white seats,” “African-American seats,” and “Latino seats,” and a race-based spoils system that ignores the needs of the citizenry;
- acquiescing in the creation of family political dynasties that bequeath offices and power—mounting a quiet but deadly effective political

“Democracy is not a spectator sport.”

Lotte Scharfman

coup that renders elections, and the citizenry, irrelevant;

- ruling, rather than governing, by resorting to fear-mongering rather than reason and to race-baiting rather than discussion, thus silencing the dialogue so critical to representative government and democratic values.

To protect and advance our rights, we must answer the call to action implicit in Lotte Scharfman’s admonition. We must resist cynicism and instead embrace the concept that ours is a government of, by and for the people. Most importantly, “we the people” must demand and assume a more active role in the governing process. For the new year and the new decade that begin in 2010, I aspire to an ACLU membership that will lead the restoration of a more active and informed citizenry that will:

- increase citizen interest in the legislative process and decrease patience with the stalemate that substitutes for problem-solving;
- improve communication with lawmakers at the local, state and federal level, contacting them via phone, mail and electronic communications and urging votes on bills before them;
- demand governmental accountability—refusing to “settle” when government officials decline to meet with members of the public or stonewall by deferring action until

“after the primary,” “after the general election,” or “in the next session,” – the government equivalent of kicking the can down the road;

- remind those who serve in government that there are consequences for their action, and their inaction, the ultimate consequence being removal from office;
- insist that the whole of the citizenry is greater than the sum of its fractured parts, and in voting for the greater good, resisting appeals to race, gender and ethnicity that divide us.

Please answer this call to action. Hit reply when the ACLU asks for your help in contacting members of the General Assembly or Congress. Volunteer to make an in-district visit to your legislator. Write a letter to the editor and bring public attention to a problem and government’s failure to act. Get involved. If we treat democracy as a spectator sport, we do so at our peril.

Colleen

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Policy Shift Means Accurate Birth Certificates

Individuals who seek sex reassignment surgery overseas now can obtain accurate Illinois birth certificates thanks to an ACLU of Illinois lawsuit filed in early 2009. The three individuals the ACLU represented in the case already have received birth certificates with the correct gender listed on them. Two of our clients were denied a corrected birth certificate because they chose a surgeon who practiced overseas and was not licensed in the United States. The third plaintiff was denied a new document because the Department required surgery that was not medically necessary for him.

A new policy adopted by the Illinois Department of Vital Records now permits many transgender individuals in Illinois and across the nation, to receive a new birth certificate that reflects their accurate gender following sex reassignment surgery overseas. The Department also has announced that it will formulate new standards for determining how much surgery will be required before a transgender person will be provided a birth certificate listing the correct gender marker.

"I am a woman and now I have a birth certificate that reflects this reality," said Victoria Kirk, one of the plaintiffs in the lawsuit who recently received a corrected birth certificate. "To see that the State of Illinois now – officially – recognizes this transition, and that I'll never have to fear embarrassment in those circumstances where I present the birth certificate, is a welcome change. I am pleased to see the State make this policy shift."

For more than four decades, Illinois permitted individuals who have sex reassignment surgery to change the gender "marker" on an original birth certificate. A few years ago, the Department's Division of Vital Records started interpreting the relevant law to provide the option of changing the birth certificate only if an indi-

vidual had the surgery performed by a United States-licensed physician. This change in policy created an unnecessary and unfair burden for the growing number of persons who select a surgeon from Europe, South America or Asia, including two women on whose behalf the ACLU of Illinois sued in January 2009. In addition, the Department started in about 2004 to require those female-to-male transgender persons who request an accurate birth certificate to complete surgery for which the vast majority of applicants have no medical need, nor a desire to complete.

The ACLU tried for several years to persuade the State to change its practices prior to pursuing relief in court. Since it filed suit, the State finally reversed itself and changed its policy so that those who have sex reassignment surgery abroad can secure a new, accurate birth certificate. Celebrating the change in policy and the positive development for its clients, the ACLU again noted that the lack of an accurate gender marker on a birth certificate creates unnecessary and dangerous challenges to persons who have undergone sex reassignment surgery, and is antithetical to the advice of medical experts who recommend that persons who undergo sex reassignment ensure that all aspects of their lives reflect their gender identity.

The policy shift also recognizes the large number of persons who seek sex reassignment surgery overseas. A decision about which surgeon to use is made for a variety of reasons, including reputation of the surgeon, available follow-up care, surgical techniques and cost of the procedure. For many persons electing to have sex reassignment surgery, a foreign surgeon is the safest and best option.

The Department's announcement that it will revise its policy regarding

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The News From Springfield

by Mary Dixon, ACLU Legislative Director

The fight for relationship recognition continues into 2010. Representative Greg Harris did not call the **Civil Union bill** for a vote during the brief veto session, planning instead to move forward with a marriage equality bill and a Civil Union bill in 2010. Support for the Civil Union bill is significantly closer to the necessary 60 votes needed for passage of a bill in the House than support for the marriage equality bill. Representative Harris intends to file both bills again in 2010. Senator Heather Steans filed a Marriage Equality bill in the Senate, Senate Bill 2468.

Our motion for House concurrence with senate amendments to the ACLU of Illinois' **Illinois Accuracy in Government Reporting Act** (IAGRA), did not occur during veto session, as we had anticipated. Instead we are negotiating a trailer bill to address new changes to the bill that will proceed in 2010 along with the House motion to concur with Senate amendments passed last Spring. House Bill 4088 is modeled on the federal Privacy Act, and similar laws in 13 other states, including our neighbor state of Indiana. The bill, sponsored by Representative Barbara Flynn Currie and Senator Don Harmon, protects people described in inaccurate government records by allowing a person to obtain a record that describes her, and to correct it if necessary. Additionally the bill limits disclosure of records about a person between government agencies, allowing such disclosure only in certain circumstances. It regulates the way government collects, maintains and uses records about a person and bans collection of information based upon First Amendment protected activity, and creates

a private cause of action to enforce these accuracy rules.

House Bill 2547, sponsored by Representative John Fritchey and Senator Heather Steans, provides a remedy via the Illinois Human Rights Act for victims of severe or pervasive **discriminatory classroom conduct toward minority, disabled or gay students**. The ACLU of Illinois partnered in this effort with lead proponent, the Coalition of Citizens with Disabilities of Illinois. Having passed both chambers of the General Assembly with bipartisan support during the Spring session, the bill became law after motions in both chambers to override the Governor's amendatory veto were passed. The amendatory veto allowed the Illinois Human Rights Department to

choose whether and when to investigate such cases, dependent upon resources. This bill complements an earlier ACLU initiative to reconcile our state's law with federal law that makes public schools places of public accommodation. Under the Illinois Human Rights Act, individuals discriminated against in a place of public accommodation on the basis of race, sexual orientation, gender identity, disability or gender, among others, can sue to vindicate the harm.

Learn more about our work on another important legislative issue, the **Reproductive Health and Access Act**, on page 6.

ACLU Blocks Increased Lobbyist Fee

Just before it was set to go into effect, a federal court judge in Chicago temporarily placed on hold a new law tripling the registration fee required for advocacy at the Illinois State Capitol in Springfield. The lawsuit, brought by the American Civil Liberties Union of Illinois and its chief legislative lobbyist Mary Dixon, challenges the fee as exorbitant compared to the cost to state government to regulate lobbyists. Under the new law, the ACLU of Illinois registration fee for the organization and two full-time lobbyists increases from \$1050 in 2009 to \$3000 under the new law.

The ACLU of Illinois argued in court that the new registration fee far exceeds the actual and reasonable amount of money needed to ensure that advocacy organizations and their lobbyists comply with all ap-

propriate and applicable laws. "There is no evidence that this additional revenue is necessary to ensure compliance with the laws that regulate lobbyists," said Adam Schwartz, senior staff counsel with the ACLU of Illinois. "This fee increase simply is not justified."

The fee increases do not apply, however, to certain lobbying by religious organizations and the media. The lawsuit challenges these specific exemptions as unconstitutional. The ACLU of Illinois argues that in pursuit of its defense of the First Amendment to the U.S. Constitution, the ACLU often defends religious liberty and media freedom. Creating an exemption for religious groups and the media is an unfair favoritism that simply is not permissible under the Constitution.

Keeping the Flame of Liberty Burning

For the ACLU, the Constitution defines what is right: that certain liberties are fundamental and must be defended. Doing right—defending the Constitution—is our imperative, and we are more certain than ever that our work is essential to making this country as good as its constitutional promise for every American.

Defending the Constitution may seem like a luxury in harsh economic times when hunger and homelessness are on the increase, yet only by making the government accountable can we solve the serious problems confronting this country—problems too big for private philanthropy to tackle.

No private organization—no matter how large—can ensure care for the 35,000 people with disabilities in state institutions or the 16,000 children in the care of DCFS. Only the ACLU forces government to live up to its obligations and address the human suffering caused by its actions.

Here are just a few examples of our success this year:

- When the state threatened to slash funding for foster care and services for abused and neglected youth, the ACLU went to court and stopped the cuts.

“The imperative is to define what is right and to do it!”

Congresswoman Barbara Jordan

- Within days of the resurrection of the decades-old Parental Notice of Abortion Act, the ACLU took action, briefing health providers, lawyers and youth advocates across the state, and set up a Bypass Coordination Project to educate teens about the new law, providing free legal help when necessary. On November 3, we filed suit in state court to block this law from taking effect, and the state court blocked enforcement pending a full hearing.

- When the Illinois Traffic Stop Data Collection Law (originally sponsored, at our request, by then-State Senator Barack Obama) was about to expire, the ACLU successfully spearheaded the effort to extend this vital tool in the fight against racial profiling on our highways.

- When our investigations revealed that the state was warehousing people with disabilities in large institutions and nursing homes, we sued to force the state to comply with federal law by funding more cost-effective and humane community-based living arrangements. (The Chicago Tribune now has picked up the mantle and is reporting on the conditions in these facilities.)

- To address the high rate of unemployment in minority communities and the near impossibility of getting a job with a criminal record, we are working to stop discriminatory school discipline practices that push minority youth – particularly boys – out of school and into prison.

- To protect at-risk LGBT youth in school, the ACLU successfully worked to amend the Illinois Human Rights Act, providing a remedy for students who face harassment, bullying and discriminatory treatment at school because of their race, sex, disability, sexual orientation or other protected status. We continue to make marriage equality a legislative priority.

Our agenda has remained vital for nearly 90 years. ACLU of Illinois staff, Board, volunteer attorneys and activists across the state work together to ensure that the freedoms guaranteed by the U.S. Constitution are a reality for everyone.

It takes courage and creativity to stand up and fight for these freedoms. It also takes money. We must meet the ever-increasing costs of mounting complicated litigation to implement reforms that will ensure the well-being of our clients.

Our budget, like most non-profits, stayed flat this year. However, because we have trimmed expenses, our program remains robust and intact. While we fully recognize the difficulty that these economic times present, we hope you will consider making a tax-deductible gift of any amount to the Roger Baldwin Foundation of the ACLU of Illinois. Visit www.aclu-il.org to support this important work.

Donor Spotlight:

“Over the last two years, it’s become clear to me that the ACLU’s priorities locally, and nationally for that matter, are so important. We remain proud of the ACLU’s commitment to the values, attitudes and beliefs that make our nation strong.”

*Matthew Pakula, Director
HMH Foundation*

Notes from the Field

What **YOU** can do to protect the Constitution, defend civil liberties and earn your status as a proud, card-carrying member of the ACLU of Illinois

Are You Committed?

The fight to protect reproductive health and access in Illinois is never-ending, but the ACLU of Illinois' Reproductive Rights Project is committed to ensuring that all women in Illinois have information about and access to as many responsible options as possible when it comes to making important, personal decisions about reproductive health care.

Too often, in all the noise and conflict over abortion and reproductive rights we lose sight of what is really at stake: whether or not the government should be able to interfere with an individual woman's intensely personal decisions about her reproductive health care, based on her own values, and made in consultation with her doctor.

We are committed to ensuring that women in Illinois continue to have a continuum of information and choices throughout their reproductive lives, including: responsible sexual health education, access to quality birth control, access to prenatal care and the right to choose an abortion. As part of the Campaign for Reproductive Health and Access, we work to mobilize support for comprehensive reproductive health care for women.

You can demonstrate *your* commitment to protecting reproductive health and access at **Reproductive Health Lobby Day** on Wednesday, February 10th in Springfield. Join other supporters and activists from around the state to urge lawmakers to stand up for women's health. We'll have transportation available from the Chicago area, as well as carpools from around the state. You

What's an activist to do?

Three actions you can take this week to defend the Constitution:

- **Commit to Call** your legislator on February 11th or **Come to Lobby Day** on February 10th in support of reproductive health care. Visit <http://action.aclu.org/committed> to sign up.
- Tell Congress to **protect women's access to abortion in health care reform**. Send a message to your legislator at <http://action.aclu.org/stopstupak>.
- Urge your Congressperson to support the **Employment Non-Discrimination Act**, ending discrimination against lesbian, gay, bisexual and transgendered workers. Send a message at <http://action.aclu.org/enda>.

can learn more about Reproductive Health and Access Lobby Day, and sign up to attend by visiting <http://action.aclu.org/committed>.

For those people who cannot make the trip to Springfield, you can also sign up for our **Commit to Call** event taking place on Thursday, February 11th. When you register your com-

mitment to call your legislator in support of reproductive health and access, you'll join hundreds of other in making the phones of the Illinois General Assembly ring. We'll email you with your legislator's phone number and talking points to help discuss the issue. You can sign up at <http://action.aclu.org/committed>.

2009 Volunteer Nights a Success, Thanks to You

Nearly 200 people participated in the ACLU of Illinois' monthly Volunteer Nights in 2009 in Chicago, stuffing thousands of envelopes, updating databases, painting signs, and in one instance, building a telephone booth from cardboard.

Started in January of 2009, the volunteer nights have provided a wonderful opportunity to get involved, meet other ACLU supporters and learn the latest about ACLU activities. Thanks to the volunteers, we gained hundreds of new members, mobilized current members for action and showed our ACLU pride

at fairs, parades and festivals this summer.

If you would like to get involved, visit <http://action.aclu.org/ilvolunteer>. The next Volunteer Night is Wednesday, January 20th.



Sign up for the action alert list! Visit <http://www.aclu-il.org>

Parental Notice

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was valid and dissolved the injunction as of August 5.

In the course of the next three weeks, the ACLU of Illinois established the Judicial Bypass Coordination Project, dedicated to informing young women of their rights under the Act and to representing those who choose to seek a judicial waiver. The Bypass Coordination Project recruited forty lawyers from around the state who were willing to provide pro bono representation, and provided extensive training to prepare them. It produced an extensive resource guide for young people facing unintended pregnancy with information about all of their legal options under the Parental Notice of Abortion Act. The guide has been distributed to schools, clinics, healthcare providers and youth advocates throughout the state, and is available at www.ilbypasscoordinationproject.org. The Bypass Project also set up a toll-free hotline (1-877-44BYPASS), and recruited and trained more than two dozen volunteers to provide current information to callers and to connect them to a trained pro bono attorney as needed. The Project also offers information to young people through text messages and Facebook.

As the ACLU of Illinois was working to assist young women and providers in complying with the law, the Illinois Department of Financial and Professional Regulation intervened to delay its enforcement. Noting that the burden of the statute falls on doctors, the Department concluded that more time was necessary to strive to ensure that physicians and their staff were prepared to comply with the Act in a manner that was most protective of their patients.

Notwithstanding the grace period and the efforts of some Illinois courts to prepare to implement the judicial bypass process in accordance with the Act, it was clear from the experience in other states and

from extensive medical, psychological and sociological research that the Act would impose significant and irreversible harms on young women and that even the best-run bypass process could not ameliorate those harms.

In October, just before the Department's grace period was due to expire, the ACLU Reproductive Rights Project filed a new lawsuit in the Circuit Court of Cook County, seeking a temporary restraining order barring enforcement of the law. Representing the Hope Clinic for Women and Dr. Allison Cowett, the ACLU argued that the statute violated several provisions of the Illinois Constitution, and that many Illinois courts were ill-prepared to implement the judicial bypass provisions in a constitutionally-required manner.

The ACLU demonstrated to the Court that irreparable harm would ensue if the statute were enforced and that there was a fair question as to the existence of the state constitutional rights asserted and the likelihood of the plaintiffs' success on the merits. The Court thus issued a temporary restraining order, preventing enforcement of the Act until the completion of a preliminary injunction hearing and further order of the Court.

The State defendants, represented by Attorney General, Lisa Madigan, have argued, among other things, that the Privacy Clause of the Illinois Constitution does not protect the right to choose to terminate pregnancy and that other provisions of the Illinois Constitution do not provide any protection for the right to abortion beyond that afforded under the federal constitution. The defendants have moved to dismiss the entire suit. Oral argument will take place in the next few weeks, after which, we expect to proceed to a preliminary injunction hearing.

For the time being, the State is

enjoined from enforcing the Illinois Parental Notice of Abortion Act of 1995.

Birth Certificate [from page 3]

the surgery required prior to issuing an amended birth certificate to transgender persons is a move in the right direction, since each person's sex reassignment process is different and depends on important personal choices and individualized medical judgment. The old rule conflicted with transgender individuals' fundamental right to make choices about their medical treatment in consultation with their doctors.

"We remain committed to the notion that a birth certificate should be accurate and complete," said John Knight, a lawyer who works for the ACLU of Illinois and the ACLU National LGBT Project. "We are pleased that the Division of Vital Records Act has adjusted its policy on overseas surgeries."

"Moving forward, we will monitor the rules for birth certificate gender marker changes to ensure that these rules do not include onerous surgical requirements – each individual's right to decide which surgical procedures they will undergo, if any, and which they will forgo is guaranteed by the Constitution. That is not a decision to be made by the State of Illinois but rather by an individual and his or her physician."

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PERIODICAL

To Our Members:

I want to personally thank each of you for your membership in the ACLU and for your financial support of our work. The membership dues you pay each year finance our legislative program both here in Illinois and in Congress. Never has that work been more important than recent years, as the courts have adopted narrower constructions of constitutional liberties.

I also want to express my extraordinary gratitude for the financial support you provide in addition to basic membership dues. I have been on the ACLU of Illinois staff for the past 25 years and never have I been more profoundly moved than I was this December by the outpouring of support from members in all parts of Illinois. It always means a great deal to receive year-end financial contributions; it meant even more this year given the challenging state of the economy for all of us. I want you to know that staff take seriously, and personally, our commitment to civil liberties and to ACLU members and are inspired to work even harder because of the support we receive from you.

*Colleen Connell
Executive Director*