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## VICTORY FOR BELLEVUE EAST HIGH SCHOOL GAY-STRAIGHT ALLIANCE

After nearly two years of coaxing, educating and a little bit of threatening, the Bellevue East High School administrators agreed this spring to fully recognize the school's Gay Straight Alliance. The GSA founder, Ashley Moffat, initially contacted the ACLU in 2007. She'd moved to Bellevue East with her family and was surprised the school didn't have a GSA. But she soon discovered that the lack of a GSA probably had something to do with the administrators' resistance to the idea of tolerance and equality on the basis of sexual orientation.

Ashley and other students went through the process outlined in the student handbook to become a student club. They created a constitution, found a teacher who was willing to be their sponsor, and applied for recognition. The reaction was immediate and overtly hostile. One student recalled, "The administrator we started with told us "What's next? Orgies in the hallways?" and also told us the parents would never allow the club because "it might spread gayism."



*Bellevue East GSA members pose for their hard-fought-for yearbook photo in March, 2009.*

The students called the ACLU, and were right to do so. The law is clear: as long as a public school has some extracurricular groups, they have to treat all extracurricular groups equally. Every single court case that has involved the rights of a GSA has been a win for the students so long as there was another extracurricular club on campus. This was one of those rare instances of black and white caselaw protecting the First Amendment.

Yet we didn't run to court to file a lawsuit. Why not? "Several reasons," said ACLU Nebraska Legal Director Amy Miller. "First, lawsuits are expensive. As a small non-profit that tries to use our resources wisely, we try to negotiate a resolution to every case—even the ones as strong as this—before we go to court. Second, lawsuits can take years for a judgment. The students here were all trying to live their lives, go to school, make money in part time jobs, and have a social life. Having a lawsuit to deal with wasn't part of their plan, and we were sensitive to that fact. So going to court was the last option, but we were clear with the school that we would do that if negotiations failed." Talks with the school began slowly producing results.

*(Continued p. 3)*

## VICTORY IN PRISONER MARRIAGE RIGHTS CASE

Becky Rivero and Terry Lewis had to go to court for the right to get married. The couple had held themselves out to be married for nearly a decade to their family and friends, but the truth came out when they were both arrested for dealing drugs. “Our children were shocked,” said Becky. “They had no idea we weren’t really married.” The arrest and conviction was a wake-up call to the couple, who were both first time offenders that had begun to deal drugs to support their own addictions. They decided to put things right by getting married for real. “We knew we would likely get parole,” said Becky, “And we knew that on parole, you can’t have contact with felons unless it’s a family member. As first-time, non-violent offenders,



*Terry Lewis and Becky Rivero*

the parole board would be likely to send us home after serving part of our sentences...but it wouldn’t be home if we were prevented from seeing each other.” The problem was that Becky was in prison in the York Prison for Women, and Terry was in prison at the State Penitentiary in Lincoln, and the prison wouldn’t allow them to get married.

ACLU Nebraska filed suit for the couple last year, asserting the fundamental constitutional right to get married. The couple was willing to get married in person (and pay for the transportation costs) or to get married on the phone (which is how the prison had handled inmate marriages in the past), but the Department of Corrections continued to refuse permission for the wedding on any terms. “No one has suggested that

Becky and Terry were dangerous or needed to be kept apart for any reason,” said cooperating attorney James Beckmann of Lincoln. “The prison just wanted to say ‘It’s our call to permit marriage or not.’ But that’s not what the law is.” Beckmann is referring to a US Supreme Court case, *Turner v. Safley*, where the high court held that the right to marry is so fundamental that it extends even to prisoners.

In December, the prison suddenly reversed itself. Terry Lewis had been upgraded to work release in community corrections and he was able to travel to York to have the ceremony. While the couple will remain separated (Nebraska does not allow conjugal visits for any inmates),

they now will be assured of the right to reunite when Becky is released. “It was an amazing day for us,” said Becky. “We are now allowed to correspond through the mail and are allowed visits every 90 days.”

***“It becomes more clear how much they took from us by denying us the right to be married. I wish we could have been an encouragement to each other before this.”  
—Becky Rivero-Lewis***

But the case isn’t over. The Department of Corrections now wants the lawsuit dismissed, claiming that the only point to the court case was to allow the marriage. ACLU Nebraska is asking the court to rule on the prison’s conduct to prevent such barriers to inmates’ rights in the future. “The case isn’t moot just because this one couple got married,” said ACLU Nebraska Legal Director Amy Miller. “The prison still doesn’t admit they were wrong, and clearly intends to continue to have a no-inmate-marriage policy in the future.”

ACLU also argues that the case remains alive because the couple’s lawsuit asked for damages for the violation of their rights. “It becomes more clear how much they took from us by denying us the right to be married,” said Becky. “I wish we could have been an encouragement to each other before this.” “Of course, there is not a large amount of money being sought here,” said cooperating attorney Beckmann. “But the couple was thwarted from exercising their rights for approximately two years and they merit some acknowledgment of that.” The case is in front of the Lancaster County District Court and a decision on whether the issue will proceed for judgment is expected any day.

## BELLEVUE EAST GSA VICTORY *(Continued from page 1)*

By the end of 2007, the GSA had been granted permission to meet regularly after school in a classroom on campus. The students successfully organized a concert as a fundraiser that was held in the school gym, and they were allowed to distribute flyers to advertise the event. But as the 2008 school year began, the school administrators still said the GSA was not an officially recognized school club. That meant they could not be listed as a group in the student handbook, couldn't be put in the yearbook for photos, and was essentially in school on sufferance.

Negotiations continued, and sophomore Megan Henderson stepped forward to be named as plaintiff in the lawsuit that appeared to be inevitable. Then in March the final good news came: the school was willing to accede to the final demands of the GSA students. One of the last sticking points was whether the GSA would be allowed to have a yearbook picture, and in March the yearbook photos were in fact taken.

The happy ending for the Bellevue East GSA was the right result under the law, but it was also good policy. Studies show that gay/lesbian/bisexual/transgender kids (and those perceived as one of those categories) are more frequently harassed and bullied than other students. Having a GSA is one of the best tools to ensure a supportive and safe environment to counteract anti-gay bias.

**If a student in your life is facing obstacles as he or she attempts to create a GSA in their school, tell them to contact ACLU for our free legal help.**

## BELLEVUE EAST HIGH GSA FOUNDER WINS NATIONAL ACLU SCHOLARSHIP



High school senior Ashley Moffat from Bellevue East will have a little help towards her college plans to attend NYU in the fall. Ashley is one of 16 high school students to be chosen by the national ACLU to receive a \$12,500 "Youth Activist Scholarship" for her work in establishing a GSA despite

fierce opposition. (See article page 1 for full details of that legal battle.)

In her application, Ashley wrote, "No matter what I

have to do, who I have to fight, or how long I have to fight it, I know I will not stop fighting until I, my friends, my family have all the same rights as everyone else."

The other scholarship recipients were high school students from Alaska, California, Florida, Indiana, Kansas, Kentucky, Massachusetts, New Hampshire, New York, Pennsylvania, Texas, Washington state, Washington DC and Wisconsin.

ACLU Nebraska will also receive a grant of \$5,000 to keep our youth outreach work ongoing as an acknowledgment of our work. Congratulations to Ashley!

## **INCLUDING THE ACLU IN YOUR WILL IS WORTH MORE THAN WORDS CAN CONVEY. IN FACT, TODAY, IT'S WORTH \$10,000!**

**Thanks to the generosity of the Robert W. Wilson Charitable Trust naming the ACLU Foundation in your will or trust qualifies us to receive a \$10,000 matching donation today.**

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**So if you have the will, we have the way. The Challenge ends on May 31, 2009, so act now.**

**To learn more, visit [www.aclu.org/legacy](http://www.aclu.org/legacy) or call toll-free 1-877-422-5888.**

## Privacy Rights and the 2009 Nebraska Legislature By Executive Director Laurel Marsh



Individual privacy rights have been recognized by our U.S. Supreme Court. The most definitive statement by a Supreme Court justice on the subject of privacy can be found in Justice Brandeis' dissent in *Olmstead v. U.S.* (1928): "The makers of our Constitution understood the need to secure conditions favorable to the pursuit of happiness, and the protections guaranteed by this are much broader

in scope, and include the right to life and an inviolate personality—the right to be left alone—the most comprehensive of rights and the right most valued by civilized men. The principle underlying the Fourth and Fifth Amendments is protection against invasions of the sanctities of a man's home and privacies of life. This is a recognition of the significance of man's spiritual nature, his feelings, and his intellect."

The Supreme Court, beginning as early as 1923 and continuing through its recent decisions, has broadly read the "liberty" guarantee of the Fourteenth Amendment to guarantee a fairly broad right of privacy that has come to encompass decisions about child rearing, procreation, marriage, and termination of medical treatment. (See *The Right of Privacy: Is It Protected by the Constitution?* [www.law.umkc.edu](http://www.law.umkc.edu)) Thus individuals and couples can use contraception. We can govern our end-of-life decisions through the creation of living wills or durable powers of attorney for health care that recognize such situations. We can choose not only our own medical treatment, but the treatment of our children. We can guide the education of our children by choosing to send them to public schools, private schools, parochial schools, or even teaching them ourselves at home.

Several bills under consideration by the Unicameral encroach upon our personal lives and would affect our privacy. LB 594, introduced by Senator Cap Dierks, and LB's 675 and 676, introduced by Senator Tony Fulton, potentially affect reproductive freedom. The ACLU's Reproductive Freedom Project protects everyone's right to make informed decisions free from government interference about whether and when to become a parent.

LB 594 is the Women's Health Protection Act. On its face, it looks like it just mandates screening and counseling for high risk factors associated with abortion complications. However, if you read the bill closely, you see that it actually takes away a woman's right to make

her own health care decisions and puts those decisions into the hands of politicians and attorneys. In addition, poor drafting of definitions appears to outlaw the use of intrauterine devices as a means of birth control.

LB 675 and 676 take a different approach. LB 675, recently prioritized by Senator McCoy, requires a doctor who uses an ultrasound prior to the performance of an abortion to show the ultrasound image of the fetus to the woman. The bill governs the timing of the ultrasound, and permits a woman to "avert her eyes" from the ultrasound image displayed. LB 676 gives a woman the option to request an ultrasound, but, if requested, the woman is required to view the real-time ultrasound image. ACLU Nebraska opposed these bills in their hearings in front of the Judiciary Committee as intruding upon the doctor-patient relationship.

If you wish to read these bills for yourself, go to [www.nebraskalegislature.gov](http://www.nebraskalegislature.gov). Enter the bill number in the dialogue box. Click again on the bill number and select *Introduced Copy*.

A woman facing an unintended pregnancy needs the opportunity to make the best decision for her circumstances, whether her decision is raising the child, adoption, or abortion. We should make sure as many options as possible are available to every woman. We should ensure that when a woman visits a doctor or clinic, she receives unbiased counseling and accurate education. Counseling, education and information give a woman the tools to understand and think through her options before making this important life decision, so she is best able to care for her health and well-being.

*Roe v. Wade* recognized a person's constitutional right to an autonomous life. It granted women the opportunity for full participation in society. It does not tell women which personal decisions to make; rather it recognizes that women are capable of hard reason not subordinated exclusively to sympathetic feeling.

Women need to be informed about the risks inherent in any medical procedure, including abortion. The information should not be provided with the intent of coercing, shaming, second-guessing or making a woman change her mind. A woman's health and well-being are best supported when she can trust that her doctor will provide medical information that is even-handed, and when her ability to make her own decisions is trusted as well.

## READY FOR ANNUAL DINNER APRIL 2009?

ACLU Nebraska's Annual Dinner and Awards Banquet will be held at the downtown Holiday Inn in Lincoln on April 25, 2009. The keynote speaker is Lucas Guttentag, Director of the ACLU Immigrants' Rights Project in New York City. Guttentag has litigated major constitutional and class action lawsuits throughout the US for more than 25 years, including arguing successfully in front of the US Supreme Court. He currently teaches immigrants rights law at the California Berkeley School of Law and Stanford Law School.

Guttentag will be speaking on "Enduring Principles & Current Challenges: The ACLU's Defense of Immigrants' Rights." His work leading the national ACLU in defense of the constitutional rights of new Americans will inspire you.

In addition to the keynote speech, you'll want to come to join us in recognizing the three award winners:

**Christy Abraham** will receive the Robert M. Spire Founders Service Award. Christy is being honored for her long service on behalf of ACLU Nebraska, including her ongoing advocacy for expanding protection of voting rights for all Nebraskans.

**Nelson Potter** will receive the Defender of the Bill of Rights Award. Nelson is being recognized for his dedicated work on civil liberties, including his service on the board of directors for ACLU Nebraska and Nebraskans Against the Death Penalty.

**Nebraska Appleseed Center for Law in the Public Interest** will be given the Roger Baldwin Civil Libertarian of the Year award. We are honoring Appleseed for their cooperative efforts with ACLU to protect the rights of new immigrants, people living in poverty, and other marginalized communities.

Tickets are \$45. You should receive an invitation in the mail shortly, but if you do not, please contact Megan at the office at (402) 476-8091 or at [mmoslander@aclunebraska.org](mailto:mmoslander@aclunebraska.org) to make a reservation.



*Lucas Guttentag*



*ACLU Nebraska Board members Dwayne Ball (left) and Alan Peterson (right) toasting the crowd.*

*Host Jack Saltzman in front of just one of the many holiday displays in his unique Lincoln apartment.*

## Still Recovering from the ACLU Chocolate Party?

We here in the office are still on a high, even months later, but who can blame us, with so many rich desserts, so many glasses of wine, and so much good company?

Thanks to those who joined us this year at Jack Saltzman's home for the annual ACLU gathering.





## NEW ACLU OFFICE OPENS IN OMAHA

ACLU Nebraska is pleased to announce that we have opened an office in Omaha! The office is located at 1105 Howard Street in the Old Market in Omaha, second floor (elevator is available). The telephone number is 402-398-3027. We share the office with Citizens for Equal Protection (CFEP). We thank CFEP and their Executive Director Michael Gordon for this opportunity to partner together in this way.

The Omaha office is staffed by ACLU Nebraska Community Organizer Tristan Bonn, former Police Auditor for the City of Omaha. Tristan is a graduate of Creighton Law School and continues to work on social justice matters in the Omaha area as well as serve as adjunct faculty at the Nebraska Methodist College. Tristan can be reached at the above phone number and at [tbonn@aclunebraska.org](mailto:tbonn@aclunebraska.org).

Tristan said, "I am honored to be a part of the first Omaha ACLU office. I want to take some time initially and hear from the community about their liberty concerns. I invite all to contact me by phone, email, during office hours, or by appointment to discuss any liberty matter that concerns you."

### THE NITTY GRITTY ON THE OMAHA OFFICE

**WHERE:** 1105 Howard Street, Suite 2, Omaha, NE, 68102. (2nd floor, wheelchair accessible elevator.)

**WHO:** Tristan Bonn, ACLU Nebraska Community Organizer

**WHEN:** Office hours will be Wednesdays, 9 a.m. to 1 p.m. or by appointment

**CONTACT:** (402) 398-3027 or [tbonn@aclunebraska.org](mailto:tbonn@aclunebraska.org)

Since her hire in January, Tristan has been busy settling into the office and attending to some administrative matters. More importantly, she hit the ground running and began work on a project to work more closely in conjunction with the Pro-Choice Coalition. The overall project is to survey Omaha and Lincoln to detect the various areas of interest in reproductive rights. The purpose will be to gather information and data upon which the Coalition can build an action plan for reproductive rights.

The information-gathering stage will run through the end of March and then Tristan expects to write a report to help launch brainstorming among interested parties involved with the Pro-Choice Coalition to formulate and execute an action plan. Already, many interesting ideas and suggestions are spiking up in the data. For instance, there is a great deal of concern about the outrageously high STD rates in Omaha as well as some of the proposed laws currently in front of the state legislature. We will be looking to see if there are any governmental barriers in these areas that we may, as a coalition, assist in removing.

In addition, Tristan will collect and track data on the other types of calls we receive in the Omaha office. We suspect there will be a great deal of interest in policing issues and immigration matters. As this information comes in and is collected, we will begin to strategize how to make an impact in Omaha. As usual, we are constrained by our limited resources and Tristan is currently only funded to work 15 hours per week. But, we are going to make every hour count!

We are also working with faculty at Creighton Law School to establish an ACLU Chapter on campus. Efforts like this should help increase our ACLU presence in Omaha and help us develop some relationships that we would like to see grow well into the future. We have high hopes for this new office.

Tristan can be reached in the office on Wednesdays from 9:00 a.m. - 1:00 p.m. beginning March 25th, as well as by appointment at other times in the week. Additional office hours will be added as projects shift and more hours become available. Please call or stop by and introduce yourself.

## Graduation Prayer Victory at Blair High School



We're still fighting civil liberties battles that have been won for many decades in the law, but sometimes it takes a while for the law to filter down into the real world. The US Supreme Court struck down graduation prayer over 40 years ago, yet ACLU Nebraska continues to get complaints each year from high schools who apparently didn't get the news.

We received a complaint that the 2008 Blair High School ceremony still included invocation and benediction prayers. It took months for the Blair High School attorney and administration to admit they were in the wrong, but we received word a few months ago that they will discontinue the practice. At least that's in time for the graduating class of 2009 to have a ceremony free from unconstitutional endorsement of religion!

## ACLU Legislative Field Director Jeani Murray at Creighton University



On February 20th, National ACLU Legislative Field Director Jeani Murray traveled from Washington DC to address Creighton Law College students about the challenges for civil liberties under the new Presidential administration. Jeani highlighted the need to reverse bad executive orders regarding the closure of Guantanamo and relating to family planning issues.

After her presentation, Jeani invited any interested students to consider being a summer volunteer for ACLU Nebraska.

Apparently Jeani's sales job worked, because two law students have applied to be volunteer law clerks with ACLU Nebraska this summer, pending grant funding from Creighton.

## ACLU Nebraska at the Unicameral

With over 40 bills being actively worked on by ACLU Nebraska staff, there's not room to discuss them all, but here are some highlights:

LB 34 and 335: Would mandate **E-Verify** database use, despite serious concerns about the flawed and racially suspect information in that federal database. We oppose both bills.

LB 35 and 63: Criminalizes "**association**" with a gang member. We oppose because of vague definitions of "association"—would hanging out with your old school chum to play Nintendo be associating?

LB 36: Would make **lethal injection** the new method of execution: we oppose the death penalty in any form and instead are supporting LB 306, which would abolish the death penalty.

LB 67: **Tax credits for private religious schools**, opposed as a violation of church/state separation.

LB 95 and 403: Both **anti-immigrant bills** either seeking to make penalties for employers who hire illegal aliens or outlawing benefits to illegal aliens. We oppose as discriminatory and unnecessary since current laws preventing these things already exist.

LB 125 and 382: Makes **same day election registration** available. We support for increasing the pool of potential voters and expanding the constitutional right to vote.

LB 307: Change **juvenile life without parole** to a term of years—this would not guarantee young murderers would get parole, but would make a second chance available for those who reform. We support this legislation and have issued a report describing the need for this law, available on our website.

LB 443: Limits on **adult and sexually oriented businesses**. We oppose this limitation on adults' right to have materials protected by the First Amendment.

LB 496: **Red light cameras**. We oppose due to privacy concerns with public surveillance methods as well as the due process concerns of ticketing the owner of car rather than the driver.

If any of these bills interest you, visit [www.nebraskalegislature.gov](http://www.nebraskalegislature.gov) to read them and track their progress—and consider adding your own voice with a call or email to your state senator.





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ACLU Nebraska is a proud member of Community Services Fund, a federation of nonprofit agencies improving the quality of life throughout Nebraska by preserving resources, expanding knowledge, encouraging creativity, and protecting rights through worksite giving.

Learn more at the CSF website:

[www.CommunityServicesFund.org](http://www.CommunityServicesFund.org)