



2017 Legislative Session Wrap-Up

Benjamin Feist, Legislative Director

We went into the 2017 session of the Minnesota Legislature prepared for a tough year. After the election in November 2016, the Minnesota Senate narrowly flipped to Republican control. The ACLU is a nonpartisan organization and we have successful working relationships with members of all political parties, but the priorities of the new legislative majority made it clear that we would be on the defensive this session. Fortunately, the increase in donations to the ACLU since November allowed us to add a contract lobbyist for the session, doubling our presence and capacity at the Capitol. In addition, our network of volunteers and supporters throughout the state was bigger, stronger, and more active than ever before.

We ultimately weighed in on over 20 issues that impact Minnesotans' civil liberties. While we had a few important victories from our proactive agenda, most of our work this session was in defense of core civil liberties, including freedom of speech, separation of church and state, voting rights, and reproductive freedom. We pushed back against and defeated a number of bad bills. Many of these policy provisions were included in omnibus budget bills, but were either vetoed or removed before being sent to Governor Dayton.

On May 11, dozens of ACLU-MN members and supporters filled the Capitol Rotunda to participate in our 2017 Day at the Capitol. Guest speakers included Secretary of State Steve Simon and a bipartisan mix of state legislators. Our long-time Executive Director, Charles Samuelson, received a Senate Resolution in honor of his recent retirement. Sponsored by Republican Senator Warren Limmer, the Resolution highlighted the ACLU-MN's impact on Minnesotans' civil liberties during Samuelson's tenure. After the rally, participants had an opportunity to engage their representatives on ACLU-MN priority issues.

We anticipate many new and returning challenges in the 2018 session, including possible attacks on voting rights, religious minorities, immigrants, and the LGBTQ community. However, with continued engagement and support from our members, we are confident that the ACLU-MN will be in a strong position to face both the challenges and the opportunities that lie ahead.

FREEDOM OF SPEECH AND ASSEMBLY

- **Anti-Protest Bills:** As part of a national trend, Republican legislators introduced several bills this session in response to recent protests of police violence, including the demonstrations against the officer-involved shooting deaths of Jamar Clark in Minneapolis and Philando Castile in Falcon Heights. We strongly oppose protest suppression efforts because they are aimed at quelling dissent and chill free speech.
 - Increased Penalties (HF 390/ SF 676 & HF 1066/ SF 918): *Vetoed by Governor (SF 803)*. This bill would increase penalties for blocking a highway, public transit, or airport access from a misdemeanor to a gross misdemeanor. It was introduced in direct response to recent Black Lives Matter protests, which often disrupt and inconvenience travelers in order to draw attention to important issues. In addition to its chilling effect on speech, we argued that the bill creates punishments that are disproportionate to the offense, and that it was an unnecessary change to protect public safety and clear highways because Minnesota already has ample laws to address demonstrations that get out of hand. Despite strong opposition, the bill passed the necessary House and Senate committees. It was later included in the Public Safety Omnibus bill (SF 803), which passed both the full House and Senate. We are pleased that Governor Dayton vetoed SF 803 and negotiated for the removal of the anti-protest provision from the final Public Safety Omnibus bill (HF 470).
 - The ACLU-MN testified in committee, actively lobbied in opposition, and formally requested Governor Dayton's veto.
 - Vote (HF 896/ SF 803): House (75-54); Senate (34-32).
 - **WIN:** Vetoed by Governor Dayton (Ch. 63/ HF 896/ SF 803) and not included in the final Public Safety Omnibus bill.
 - Civil Liability (HF 322/ SF 679): *Held up in committee*. This bill would allow cities to sue protesters who are convicted of unlawful assembly or public nuisance for the cost of the police response to the demonstration. We argued that the bill is likely unconstitutional because it amounts to an impermissible content and viewpoint based restriction on speech and it would have an unjustified chilling effect on the exercise of constitutionally protected speech. In short, this bill would give the government the ability to distinguish between favored speech and disfavored speech by imposing civil penalties based solely on the content and viewpoint of a person's speech and/or the identity of the speaker. Though the bill passed the House Civil Law Committee on a party-line vote, it was not given a hearing in the House Public Safety Committee or the Senate Judiciary Committee.
 - The ACLU-MN testified in committee and actively lobbied in opposition to the bill.
 - **WIN:** Vocal opposition stopped the bill's momentum in 2017.

- **Anti-BDS Legislation** (Ch. 21/ HF 400/ SF 247): *Signed into law*. This new law prohibits a state agency from entering into a contract with a vendor that “engages in discrimination against Israel, or against persons or entities doing business in Israel.” The intent of the bill was to punish supporters of the Boycott, Divestment, Sanctions (BDS) movement, which, in its own words, seeks to “end international support for Israel’s oppression of Palestinians and pressure Israel to comply with international law.”¹ While the ACLU-MN takes no position on the BDS movement, we oppose bills that would require state and local governments to deny benefits (such as contracts) in retaliation for the exercise of freedom of expression and association. Accordingly, the ACLU-MN strongly opposed the bill as introduced because it explicitly prohibited political boycotts of Israel. While the authors amended the bill in an effort to address the First Amendment issues, we continue to have constitutional concerns that the the new law is both overbroad and vague because those who are subject to the law are left to speculate about whether activities are or are not permitted.
 - The ACLU-MN testified in several committee hearings and raised First Amendment concerns with legislators.
 - Vote: House (103-28); Senate (57-8); signed by Governor Dayton; effective July 1, 2017.

SEPARATION OF CHURCH AND STATE

- **Scholarship Tax Credits** (HF 386/ SF 256): *Vetoed by Governor (HF 4)*. This bill would establish tax credits that act as school vouchers in disguise, effectively allowing public money to go to private and religious schools. The ACLU-MN believes that private school vouchers violate the Minnesota Constitution because: (1) the scheme abandons the State’s obligation to provide a uniform, thorough and efficient system of public schools throughout the state, and (2) the Minnesota Constitution directly prohibits the use of public funds to support schools where doctrines, creeds, or tenants of any religion are promulgated or taught. Despite additional opposition from education and disability advocates, the bill passed all of the necessary committees and both the full House and Senate as part of the original Tax Omnibus bill (HF 4). Fortunately, Governor Dayton vetoed the bill, stating in his veto letter that he would veto any bills that included vouchers or any other mechanisms that will divert public resources to private schools.
 - The ACLU-MN provided written testimony and lobbied in opposition to the bill.
 - Vote (HF 4/ SF 2255): House (76-57); Senate (34-32).
 - **WIN:** Vetoed by Governor Dayton (Ch. 66/ HF 4/ SF 2255) and not included in the final Tax Omnibus bill.

¹ <https://bdsmovement.net>.

POLICING AND CRIMINAL JUSTICE REFORM

- **Civil Asset Forfeiture Reform** (Ch. 12/ HF 389/ SF 151): *Signed into law*. This new law allows for innocent joint-owners to file a claim in court when their jointly-owned vehicle is seized due to the other owner's violation of Minnesota's DWI laws. This reform was in response to the Minnesota Supreme Court's 2009 decision in *Laase v. Chevrolet Tahoe*, which barred joint owners from bringing an innocent owner claim, even if they had no knowledge of the forfeitable offense. The ACLU-MN, along with the Institute for Justice, Minnesota Association of Criminal Defense Lawyers, and U.S. Justice Action Network, lobbied in support of this bill for a number of years. While other civil forfeiture reforms are still needed, we believe this is an important step in the right direction.
 - **WIN:** Vote: House (128-0); Senate (65-0); signed by Governor Dayton; effective August 1, 2017.
- **Police Officer Training** (HF 346/ SF 445): *Signed into law (HF 470)*. This new law requires officer training to cover crisis intervention and mental illness crises; conflict management and mediation; and recognizing and valuing community diversity and cultural awareness, including implicit bias training. The law enforcement lobby supported the provision because it establishes a direct appropriation to cover training costs. The ACLU-MN generally supports increased training and specifically lobbied for inclusion of implicit bias and procedural justice language. This provision, amended to include a specific reference to implicit bias training, passed as part of the final Public Safety Omnibus bill.
 - **WIN:** Vote (Ch. 95/ HF 470/ SF 1098): House (98-36); Senate (46-21); signed by Governor Dayton; training required beginning July 1, 2018.
- **Alternatives to Incarceration** (HF 2176/ SF 2099): *Signed into law (HF 470)*. This new law requires parole or probation agents to identify community options to address and correct technical violations prior to revoking a nonviolent controlled substance offender's parole or probation based on the technical violation. The ACLU-MN generally supports legislation that seeks to reduce incarceration rates. This provision passed as part of the final Public Safety Omnibus bill.
 - The ACLU-MN monitored the bill, provided a written statement to the conference committee, and conferred with allied organizations.
 - Vote (Ch. 95/ HF 470/ SF 1098): House (98-36); Senate (46-21); signed by Governor Dayton.
- **Private Prison in Appleton** (HF 1510/ SF 1322): *Signed into law (HF 470)*. This provision requires an independent assessment of the currently closed private prison Appleton, Minnesota, including an estimate of the costs to the State in upgrading, leasing or purchasing, and operating the facility. The ACLU-MN strongly opposed the bill as introduced because it would have required the State to enter into a contract to either purchase or lease-to-own the Appleton facility. At a time when most other states are implementing decarceration strategies, we encourage efforts to decrease, rather than increase, Minnesota's incarceration rate. The independent assessment requirement

passed as part of the final Public Safety Omnibus bill (HF 470), signaling a compromise between legislative leaders and Governor Dayton. We consider this result a partial win because the effort to reopen Appleton was blocked this session.

- The ACLU-MN closely monitored the bill, provided a written statement to the conference committee, and conferred with allied organizations.
 - Vote (Ch. 95/ HF 470/ SF 1098): House (98-36); Senate (46-21); signed by Governor Dayton; report required by January 15, 2018.
- **Legislative Approval Required for Sentencing Guidelines Modifications** (HF 33/ SF 368): *Stripped out in conference committee (SF 803)*. This bill would require that changes to Minnesota's Sentencing Guidelines receive legislative approval before they take effect. We opposed this change, arguing that the current system, which allows for a legislative override of proposed changes by the Guidelines Commission, is more effective because the Commission and its proposed changes are a step removed from the political process. The bill passed the relevant House committees, but was not heard in the Senate Judiciary Committee. The language was initially included in the Public Safety Omnibus bill (SF 803), but was removed in conference committee.
 - The ACLU-MN closely monitored the bill, provided a written statement, and conferred with allied organizations.
- **Driving Fines and Fees Reform** (HF 1640/ SF 1511): *Stripped out in conference committee (SF 803)*. This legislation includes reforms to Minnesota's current system of driving-related fines, fees, and license suspensions, which can lead to an escalation of consequences for otherwise low-level offenders. The current system has a disproportionate impact on low income communities and communities of color. The ACLU-MN supported this bipartisan bill as a member of a diverse coalition that includes city prosecutors, defense attorneys and public defenders, and racial equity organizations. The bill passed the House Transportation Committee, but was not given a hearing in the Senate Judiciary Committee. It was later included in the House Public Safety Omnibus bill (SF 803), but the provision was stripped down in conference committee to simply maintain the driver diversion pilot program for an additional two years.
 - The ACLU-MN closely monitored the bill, provided a written statement to the conference committee, and conferred with allied organizations.
- **Solitary Confinement Reform** (HF 742/ SF 608): *Stripped out in conference committee (SF 803)*. This bill would require monitoring, reporting, and limitations on the use of solitary confinement in Minnesota prisons. We believe that solitary confinement is overused and often abused in our prison system. A stripped down version of the bill was initially included in the House Public Safety Omnibus bill (SF 803), but was removed in conference committee.
 - The ACLU-MN monitored the bill, provided a written statement to the conference committee, and conferred with allied organizations.

PRIVACY AND TECHNOLOGY

- **Ignition Interlock GPS Privacy Protection** (Ch. 83/ HF 179/ SF 347): *Signed into law.* This new law prohibits warrantless GPS location tracking of ignition interlock devices. In 2016, the Minnesota Department of Public Safety changed its rules to require real-time GPS capabilities on all ignition interlock devices. The potential for undisclosed, warrantless location tracking of the GPS-enabled devices raised significant privacy and Fourth Amendment concerns. The ignition interlock program was intended to keep drunk drivers off the road by disabling their vehicles, not as a secret way to track the movements of program participants. The ACLU-MN testified in committee and lobbied in support of this important privacy protection.
 - **WIN:** Vote: House (129-0); Senate (62-0); signed by Governor Dayton; fully effective August 1, 2017.
- **REAL ID Compliance** (Ch. 76/ HF 3/ SF 166): *Signed into law.* After years of debate, Minnesota passed a law this session repealing its ban on implementation of the Federal REAL ID Act of 2005. The new law authorizes the Department of Public Safety to take immediate steps toward bringing Minnesota into compliance with the Act. We opposed REAL ID in 2009 when Minnesota joined a majority of states in rejecting compliance with the Act. We continue to believe that the REAL ID Act itself is a bad law that should be repealed or significantly modified by the U.S. Congress. However, starting in 2015, the Department of Homeland Security (DHS) increased pressure on Minnesota to adopt REAL ID by threatening that Minnesota-issued licenses would no longer be valid for boarding domestic flights unless the state repealed the prohibition and received an extension for compliance. The ACLU-MN's primary concern with REAL ID has always been its potential function as an internal passport or national ID card that could increasingly be used to track and control individuals' movements and activities. In an attempt to address concerns raised by the ACLU-MN and others, the new law establishes a two-track system to issue both REAL ID-complaint licenses and licenses that could be used for driving, but not for federal purposes, such as boarding domestic flights or entering secure federal facilities. The law also includes several data protections and a mechanism for the Legislature to revisit REAL ID compliance if there is a federal change to the program.
 - The ACLU-MN worked with other stakeholders and testified in committee regarding our concerns.
 - Vote: House (120-11); Senate (57-8); signed by Governor Dayton; effective July 1, 2017.
- **Drone Privacy** (HF 1450/ SF 1094): *Held up in committee.* This bill would require the government to obtain a search warrant before using an unmanned aerial vehicle, or drone, for surveillance activities. The bill was introduced with bipartisan support, but unlike previous sessions, it was not given a hearing in the House Public Safety Committee or the Senate Judiciary Committee.
 - The ACLU-MN drafted language and actively lobbied in support of this bill.
 - We will continue to lead on this issue in 2018.

- **Student Data Privacy Act (HF 1507/ SF 1961):** *Held up in committee.* Personal student information that used to be stored in a file cabinet in the principal’s office is now being uploaded onto remote third party servers called “student information systems” (SIS). Despite its sensitivity, limitations on access to and use of this information by third parties operating SIS are generally weak or non-existent. In addition, many schools are now participating in “1-to-1” technology programs where a third party provides free laptops or tablet computers to students for the school year. While these programs are highly beneficial, they also enable third party device providers and school officials to track and remotely monitor everything a student does with the device, including remotely activating the device’s webcam and reviewing its Internet search history. This bill would retain the benefits of SIS and 1-to-1 programs, while empowering parents and students to reasonably restrict who has access to and use of their personal information. The bill had substantial bipartisan support and was given an informational hearing in the House Civil Law Committee. However, it was not heard in the Senate E-12 Policy Committee.

 - The ACLU-MN drafted language, testified in committee, and lobbied in support of the bill.
 - We will continue to lead on this issue in 2018.

- **Student Tech on Campus Privacy (HF 2118):** *Held up in committee.* When personal tech devices, such as cell phones or tablet computers, are brought to campus, the information on those devices should receive the same legal protections that they are afforded off-campus. While recognizing that schools need to be able to take reasonable steps to investigate and enforce violations of school policies on campus, this bill would provide certain protections, such as requiring a warrant to search a student’s device in cases where the student is suspected of criminal activity.

 - The ACLU-MN drafted language in 2016 and had the bill reintroduced in the House this session.
 - We will continue to advocate for this reform in future sessions.

- **Minnesota Electronic Communications Privacy Act (ECPA) (HF 2009/ SF 2038):** *Held up in committee.* Currently, electronic communications such as emails or text messages that are kept on a server more than 180 days are considered “abandoned” and law enforcement does not need a warrant to access and read them. This bill would provide reasonable privacy protections for Minnesotans’ emails and other electronic information where federal law has failed to do so. The bill was not given a hearing in the Senate Judiciary or House Public Safety committees.

 - The ACLU-MN drafted language in 2016 and had the bill reintroduced in 2017.
 - We will continue to lobby for passage of ECPA next session.

- **Social Media Privacy (HF 2116/SF 2038):** *Held up in committee.* This bill would prohibit employers from forcing or coercing their employees or job applicants into providing access to their personal social media website pages, except under a limited set of specifically defined circumstances. The bill did not receive a hearing in the House Civil Law Committee or Senate Jobs and Economic Growth Committee.

 - The ACLU-MN drafted language in 2016 and had the bill reintroduced in 2017.
 - We will continue to advocate for this reform in future sessions.

- **Internet Service Provider Privacy** (HF 2579/ SF 2309): *Stripped out in conference committee.* This regulation would require internet service providers (ISPs) to obtain written consent in order to collect a customer's personal internet usage information and protects those who refuse to authorize the collection from being denied service. This provision was first introduced and passed as an amendment to the Jobs Omnibus bill (SF 1937) in response to the U.S. Congress's repeal of FCC rules that would have forced an ISP to ask customers before it collected their personal information. Even though identical language passed both the full House and Senate with bipartisan support, the provision was removed in conference committee after the ISPs raised objections.
 - The ACLU-MN supported the bill and conferred with its chief authors.
 - Vote (HF 2209/ SF 1937): House (76-55); Senate (58-9); not included in the final Jobs Omnibus bill.

VOTING RIGHTS

- **Provisional Ballots** (HF 1586/ SF 1225): *Passed the Senate (SF 514).* This effort would introduce the use of provisional ballots into Minnesota's elections process. It would end Minnesota's long-standing system of allowing all challenged voters to swear an oath that they are eligible to vote, with the consequence of a possible felony conviction if they are not eligible. In effect, provisional balloting is a voter restriction that would result in eligible voters being unable to vote on Election Day. The ACLU-MN, along with the League of Women Voters, Secretary of State Simon, and others, strongly opposed the bill. The provision passed the Senate as part of the Elections Omnibus bill (SF 514) on a party-line vote, but did not move forward in the House. Accordingly, the controversial language was removed before the final Elections Omnibus bill was sent to the Governor.
 - The ACLU-MN testified in committee, actively lobbied against the bill, and provided a letter of opposition for the Senate floor vote.
 - Vote (SF 514): Senate (34-33); not included in House companion.
- **Challenged Voter Status Made Public** (HF 2039/ SF 771): *Passed the Senate (SF 514).* This bill would expand the information available in the public information list to include whether a voter's registration is challenged, the history of a voter's status changes, and information on individuals who are no longer an active or registered voter. The available information is often inaccurate and its release could be damaging to a person's ability to secure employment, housing, and other opportunities. The information could also be used to harass or intimidate. The ACLU-MN, along with the League of Women Voters, Secretary of State Simon, and others, strongly opposed the bill. The provision passed the Senate as part of the Elections Omnibus bill (SF 514) on a party-line vote, but was not included in the House omnibus bill. The Senate language was removed before the final Elections Omnibus bill was sent to the Governor.
 - The ACLU-MN testified in committee, actively lobbied against the bill, and provided a letter of opposition for the Senate floor vote.
 - Vote (SF 514): Senate (34-33); not included in House companion.

- **Voting Rights Restoration** (HF 951): *Introduced in House.* This bill would restore voting rights to individuals with a felony conviction immediately upon release from incarceration. Currently, individuals with a felony record must wait until they are fully off parole or probation to vote in Minnesota. The bill was reintroduced in the House this session with 33 authors, including 9 Republicans. It was not given a hearing in the House Public Safety Committee.
 - The ACLU-MN supported the bill as a leader of Restore the Vote Minnesota, a diverse coalition of over 75 organizations.

REPRODUCTIVE FREEDOM

- **Abortion Clinic Licensure** (Ch. 33/ HF 812/ SF 704): *Vetoed by Governor.* This bill would create onerous licensure and inspection requirements for certain clinics that perform abortions. It passed the full House and Senate, but was vetoed by Governor Dayton.
 - The ACLU-MN testified in committee, actively lobbied in opposition, and formally requested Governor Dayton's veto.
 - Vote: House (79-53); Senate (35-29).
 - **WIN:** Vetoed by Governor Dayton.
- **Abortion Funding Ban** (Ch. 31/ HF 809/ 702): *Vetoed by Governor.* This bill would prohibit the use of public funds for abortion services in Minnesota. In 1995, the Minnesota Supreme Court ruled in *Doe v. Gomez* that it was unconstitutional to selectively fund pregnancy and birth-related services while refusing to cover abortion services. Regardless of constitutionality, the bill passed the full House and Senate before it was ultimately vetoed by Governor Dayton.
 - The ACLU-MN testified in committee, actively lobbied in opposition, and formally requested Governor Dayton's veto.
 - Vote: House (77-54); Senate (35-29).
 - **WIN:** Vetoed by Governor Dayton.

IMMIGRANT RIGHTS

- **Statutory Prohibition on Driver's Licenses** (Ch. 95/ HF 470/ SF 1098): *Signed into Law.* This new law prohibits the Commissioner of Public Safety from making changes to the administrative rule from 2003 that bars the Department from issuing driver's licenses or ID cards to undocumented immigrants residing in Minnesota. The ACLU-MN has long advocated in support of immigrant driver's license legislation. The prohibition language was initially included in the REAL ID compliance bill, where it proved to be too controversial for passage. It was then a late addition to the Public Safety Omnibus bill. Despite heavy opposition from advocates, Governor Dayton accepted this provision in the final Public Safety Omnibus bill as part of a global compromise.
 - Vote (HF 470/ SF 1098): House (98-36); Senate (46-21); signed by Governor Dayton; this provision effective May 31, 2017.
 - The ACLU-MN will continue to push for immigrant driver's license legislation in future sessions.