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2006 LEGISLATIVE REPORT

The teaching of evolution in public schools

SB 96, “Instruction and Policy Related to the Origins of Life,” would have directed the Utah State Board of Education to require that instruction on “any theory regarding the origins of life” (i.e. evolution) must stress that “not all scientists agree on which theory is correct.” The bill also would have prohibited the Board from endorsing any one scientific theory. Although the bill did not require the teaching of an alternative, non-scientific, religious theory, such as Intelligent Design, testimony from legislators and others made clear the religious motivations for the bill. The ACLU of Utah sent letters to the Senate and House opposing the bill. SB 96 was amended and substituted multiple times before the House of Representatives voted it down the last week of the session.

Reproductive rights

Lawmakers passed HB 85 S1, “Abortion by a Minor – Parental Notification and Consent,” which requires, except in very limited circumstances, that minors both notify and receive consent from their parents or guardians before obtaining an abortion. The bill ignores the rationale of myriad court decisions, which requires that minors have the opportunity to bypass parental involvement provisions, usually by establishing in court either that parental notification is not in their best interests or that they are sufficiently mature to decide whether or not to continue a pregnancy. The ACLU of Utah testified in opposition to HB 85, which passed the last day of the session.

Legislators did not pass HB 222, “Unborn Child Pain Prevention Act,” which would have required physicians to give women seeking abortions state-produced brochures containing the medically questionable information that fetuses feel pain. And, as in past years, legislators did not approve a prescription parity bill. SB 42, “Prohibiting Health Insurance Discrimination,” would have required health insurance policies and health maintenance organization contracts to provide coverage for prescriptive contraceptives.

Lesbian and gay families

A trio of bills attempted to restrict lesbian and gay couples from receiving the same benefits and protections for their families as straight couples. Lawmakers passed HB 148 S1, “Parent and Child Amendments,” which defined *in loco parentis* as the legal recognition of a voluntary delegation of parental authority to a non-parent or guardian. HB 148 stated that *in loco parentis* may not be legally recognized contrary to the expressed desires of a child’s parent or guardian, and it prohibited courts from using *in loco parentis* to grant parent-time, visitation, or custody rights. The sponsor’s objective was to prohibit non-biological parents in same-sex relationships from obtaining visitation or custody rights to the children they’ve raised if those relationships end and the biological parents no longer want them to be a part of their children’s lives. The bill’s consequences, however, were much further reaching than its anti-gay intent in that it could have adversely affected the court’s ability to determine a child’s best interest. Because of HB 148’s widespread ramifications, Governor Jon Huntsman vetoed the bill.

If passed, HB 327, “Public Employer Benefit Plans,” may have caused problems for Salt Lake City’s proposal to provide domestic partner benefits for its employees. HB 327 would have restricted the definition of “dependent” to an employee’s spouse, child, or stepchild; allowed for the extension of benefit plans to non-dependents only through an action by a legislative body, such as a city council; and prohibited cities from putting any public funds toward benefit plans for non-dependents. The bill failed. And finally, legislators did not approve HB 304, “Voiding Transactions against Public Policy,” which seemed to be an attempt to ban contracts between same-sex couples about such things as property, medical power of attorney, and child custody.

Access to courts

HB 100 S1, “Environmental Litigation Bond,” was drafted in response to the Sierra Club’s successful legal challenge to the Legacy Highway. The bill requires that before initiating “environmental litigation,” all entities registered to do business in Utah, including nonprofit organizations, post a bond with the Division of Corporations and Commercial Code covering all possible costs and damages associated with the delay of a new permit or approval of a project. The bond, which could have been for millions of dollars, would have effectively made it impossible for environmental groups to exercise their First Amendment right to seek judicial review of government actions. Despite a six-page letter from the Office of Legislative Research and General Counsel outlining several of the state and federal constitutional problems inherent in the bill, legislators passed HB 100. Two days after the session ended, the ACLU of Utah sent a letter to Governor Jon Huntsman asking him to veto the bill, which he did on March 21. HB 259 S2, “Division of Air Quality – Bond for Stay of an Order,” and HB 335 S2, “Radiation Control Act – Bond Requirements,” both by the sponsor of HB 100, would have allowed the Air Quality Board and the Radiation Control Board to require a person to post a bond before filing a motion for a stay of an order by either board. Neither bill was approved.

Student clubs

SB 97, “Student Club Amendments,” was a much-publicized attempt to ban Gay Straight Alliances in public high schools, while still allowing other non-curricular student clubs to meet. The bill’s most troubling provision expanded the definition of “involve human sexuality”—one of the non-curricular club topics already prohibited by Utah law—to include “promoting or encouraging self-labeling by students in terms of sexual orientation” and “disclosing attitudes or personal conduct of students or members of their families regarding sexual orientation, attitudes, or belief.” The ACLU of Utah testified that this provision was so broad that it sought to prohibit protected speech and therefore violated both the federal Equal Access Act and students’ First Amendment rights. Those lines were later removed from both SB 97 and from a parallel bill run in the House, HB 393, “Public Education Club Amendments.” Both bills included additional provisions that were troubling from a public policy standpoint, such as a requirement that students receive parental permission before joining curricular and non-curricular clubs, and a prohibition on the use of public funds for non-curricular clubs. Both bills failed.

Material harmful to minors

HB 257 S1, “Material Harmful to Minors Amendments,” sought to add depictions of “inappropriate violence” in interactive video games to the definition of “material harmful to minors” (written or visual expression that is lawful for adults to have but is illegal to intentionally distribute to children). The ACLU of Utah testified that material depicting violence does not fall within the legal definition of obscenity for either minors or adults, and therefore cannot be added to a material harmful to minors statute; that restricting material based on depictions of violence is a content-based regulation

of speech that violates the First Amendment; and that courts have recently struck down similar restrictions on video games. Although HB 257 made it through the House, the Senate chose not to consider it, and it died.

HB 187, “Criminal Law Amendments,” sought to eliminate some constitutionally suspect provisions of a 2005 law that attempts to restrict children’s access to harmful material on the Internet and that is currently the subject of our lawsuit, *The King’s English v. Shurtleff*. The bill eliminated a state-maintained registry containing the URLs of all Internet sites worldwide that are not “access restricted” and that contain material harmful to minors. The bill also did away with a requirement that Internet service providers, at customer request, must block access to sites listed on the adult content registry. The bill never made it to the full House for a vote.

Private prisons

A bill that many felt would have been a first step in the privatization of Utah’s prisons failed. SB 175 S2, “Correctional Facility Bidding Process,” would have required the Department of Corrections to take bids from private companies when it begins the process of determining who will build or operate the state’s next prison expansion. Last fall, the ACLU of Utah testified to the Interim Committee of Law Enforcement and Criminal Justice about the problems with private prisons. We support the DOC’s position that prison operations are a government function that should be well separated from profit motives.

Unconstitutional statutes

The legislature passed SB 164, “Repeal of Ordination by Internet,” which brought Utah law in line with a recent federal trial court decision by repealing the law that prohibited people who have been ordained online from solemnizing marriages. Lawmakers, however, did not pass SB 122 S1, “Repeal of Libel Provisions,” which similarly sought to repeal Utah’s criminal libel law. In 2002, as a result of the ACLU of Utah case, *Utah v. Lake*, the Utah Supreme Court declared Utah’s criminal libel statute unconstitutional.

Resolutions

Joint resolutions from the House and Senate are the true message bills, since they simply express the legislature’s position and, in general, have no force of law. In that spirit, lawmakers passed HJR 7, “Resolution Opposing United States Supreme Court’s Pornography Decision,” which expressed opposition to the national ACLU’s successful legal challenge to the content-based speech restrictions of the federal Child Online Protection Act. Legislators also passed SJR 9, “Resolution Recognizing Right to Participate in Religious Expressions in Public Schools.” While the resolution attempts to clarify students’ rights to voluntarily pray and engage in other religious expression in public schools, its broad statements, such as the characterization of prayer as “fundamental to the exercise of ... free speech,” may actually cause confusion among students and school officials. The ACLU defends students’ rights to engage in religious expression in school, although they may do so only under the same conditions that they may engage in other speech. Administrators and teachers may discourage, or even prohibit, expression that is materially disruptive to the educational process. SJR 9 passed both houses overwhelmingly and is largely impotent; however, it resolves that a copy of the resolution be sent annually to each student and their parents, as well as the PTAs, the Utah Education Association, and others. Finally, there was one message that lawmakers could not stomach. SJR 5, “Joint Resolution Condemning Use of Torture,” never made it out of Senate committee.

Guardian ad litem

HB 174 S2, “Guardian Ad Litem Amendments,” would have limited the appointment of *guardian ad litem* attorneys to criminal abuse cases, and would have prohibited their appointment in civil abuse cases or divorce proceedings. The ACLU strongly supports the right of children to be represented by independent counsel in all cases where the state is intervening in a child-parent relationship, and HB 174 had the potential to seriously undermine children’s ability to access the court system. The bill failed.

Hate crimes

The legislature finally amended Utah’s hate crimes statute, which prosecutors have long said is unenforceable. HB 90 S4, “Criminal Penalty Amendments,” requires sentencing judges and the Board of Pardons and Parole to consider as aggravating factors offenses that “incite community unrest or cause members of the community to reasonably fear for their physical safety or to freely exercise or enjoy any [legal] right.” The bill does not list protected categories, and it therefore bypassed the legislature’s continued resistance to the inclusion of lesbians and gay men in a hate crimes statute. We will monitor how the new law is applied to make sure it lives up to its provision that it not restrict people’s constitutionally protected right to free expression.

Voting rights and election laws

Lawmakers passed several amendments to Utah’s voting rights and election laws. SB 47 S1, “Restoration of Voting Rights Amendments,” clarifies Utah law by allowing people convicted of felonies outside of the state to have their voting rights restored in the same way as those convicted of felonies in Utah. The new law also outlines the conditions under which convicted felons can hold public office. SB 10, “Provisional Ballot Amendments,” repeals the provision that “challenged” voters—voters without identification whom election judges do not know—have to take an oath before receiving a ballot. Now, election judges may give challenged voters a provisional ballot and simply note in the register that the voter did not have adequate identification. Lawmakers did not pass SB 200, “Voter Registration – Proof of Citizenship,” which would have required voters to present proof of identity when they show up at the polls as well as proof of citizenship when registering to vote.

Open government

According to *The Salt Lake Tribune*, legislators considered at least twelve bills that made changes to Utah’s open records law, also known as GRAMA. Late in the session, legislators passed HB 12, “Amendments to GRAMA,” after removing a controversial provision that would have blocked public access to elected officials’ e-mails. HB 258 S1, “GRAMA – Public Records,” was changed at the last minute to allow government agencies to remove employee contact information from public access, and to provide only a single business telephone number or e-mail address for an employee, even if that is the general contact for the agency. Finally, lawmakers considered the difficult balance between personal privacy and the right to public information, by passing HB 28 S1, “Access and Fee Amendments,” which, among other things, restricts access to individuals’ home addresses and phone numbers unless that information is already public. Legislators did not, however, pass HB 281, “Privacy of Records Related to Minors,” which would have classified that portion of a record indicating a minor’s name, age, home address, phone number, or Social Security number as private, unless the information is part of a court record.

Legislators also made changes to the laws regarding the public’s right to track and attend public meetings of elected and appointed officials. Together, HB 14 S2, “Open Meetings Law

Amendments,” and HB 16 S3, “Revisions to Open and Public Meetings Law,” strengthen Utah’s open meetings law by: 1) expanding the definition of meeting to include workshops and executive committee meetings; 2) requiring audio or visual recordings, in addition to written minutes, for all open meetings; 3) requiring the attorney general to provide annual notice to all public bodies of changes to Utah’s open meetings law; and 4) providing criminal penalties for public officials who knowingly violate the open meetings law.

Constitutional review notes

Several times during the session, the ACLU of Utah heard legislators respond to questions regarding the constitutionality of their bills by citing the “legislative review note” found at the end of all draft legislation. All but two of the more than seven hundred bills contained the following review note: “Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.” References to the review note’s authority, especially with regards to bills with clear constitutional problems, were infuriating for people familiar with the law. In its letter outlining the constitutional problems with HB 100, “Environmental Litigation Bond,” the Office of Legislative Research and General Counsel explained that the above phrase complies with a 2005 standard adopted by the Legislature’s Subcommittee on Oversight. Under this standard, “the drafting attorney of a bill will inform the Legislature in a legislative review note of a constitutional issue only if there is a *high probability* that the bill could be held unconstitutional.” Previously, “the drafting attorney would discuss a constitutional issue in a legislative review note if, after a limited legal review, a bill raised obvious constitutional or statutory concerns.” We maintain that it would be better to eliminate the notes altogether, rather than provide our policymakers with a false sense of the constitutionality of their bills.

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