



In 2016, Kansas lawmakers launched some of the most ferocious attacks in history on freedom and equality.

The ACLU of Kansas fought back. We mobilized the civil liberties movement—and freedom prevailed.

When the Kansas Legislature convened in January 2016, civil liberties advocates feared that there would be an onslaught of attacks on the rights of Kansans. That fear was well-founded. Extremists dominated the legislative agenda. Although the legislative session nearly set a record for its brevity and the state's budget challenges seized the headlines, legislators found time to push for some of the nation's most radical attacks on immigrants, women, and the LGBT community.

Yet, despite the power wielded by extreme voices, on nearly every substantive measure that came before the legislature, our rights were defended. **Time and time again, the ACLU of Kansas mobilized civil liberties activists—and freedom prevailed.**

Fixing A Broken Criminal Justice System

The criminal justice system in Kansas is broken—too many people are sent to prison, for too long. For decades, the state's prison population has risen even as crime falls to all-time lows. Reversing the trend of rising incarceration requires

Freedom Prevailed

2016 Kansas Legislative Update



Total Bills Affecting
Civil Liberties,
2015-16:

143

75 bills attacked civil liberties

68 bills strengthened civil liberties

7 attacks on civil liberties passed

6 bills that strengthen civil
liberties passed

dramatic reforms, something the Legislature began in 2016.

The most significant of those reforms was an overhaul of the juvenile justice system. Kansas incarcerates and detains juveniles at unusually high rates. Too many young people are permanently harmed by a system that incarcerates those who need treatment, services, and counseling. The ACLU of Kansas strongly supported SB 367, a bill signed into law by Gov. Sam Brownback. The bill dramatically curtails the circumstances in which juveniles may be incarcerated or detained. It also ensures that services for juveniles are prioritized, investing in proven strategies for safer communities and better outcomes for youth rather than pushing juveniles into incarceration.

Another important victory came in sentencing reform. Sentences for drug offenses in Kansas are outrageously harsh, and drug-related offenses are the largest source of admissions to state prisons. In 2016, the ACLU of Kansas organized *Kansans for Smart Justice*, a coalition of civil rights, faith-based, and social service groups to press for smart justice reforms. This effort paid off when HB 2462, a bill to make second-time marijuana possession a misdemeanor rather than a felony, passed with a huge majority. Kansans will no longer go to prison for simple possession of the drug and can avoid the lifetime harm of a felony conviction. Additional sentencing reform is necessary, but the support given to this initial step is encouraging.

Standing Up for Our Shared Values and the Rights of Immigrants

Immigrants came under withering, sustained attack during the 2016 session. A half dozen bills were introduced to trample on the rights of immigrants. The most troubling was HB 2587, a measure to force law enforcement agencies to detain people without probable cause or due process, based simply on a federal agency's unsubstantiated suspicion that they could be undocumented immigrants. Federal courts have repeatedly ruled that process unconstitutional, and Kansas law enforcement agencies have refrained from using it. Secretary of State Kris Kobach and his extremist allies sought to overrule police departments and force them to begin routinely violating the rights of citizens and non-citizens alike. The ACLU of Kansas played a leading role in rallying opposition to the bill, joining with sheriffs and faith-based organizations. Although the bill passed out of the House Judiciary Committee by the narrowest of margins, we stopped it from advancing further.

Legislators also attempted to have Kansas turn its back on people fleeing the world's worst humanitarian

Attacks on Civil Liberties Passed: 2016

SB 22	Limits access to body camera footage
SB 149	Provides tax credits for religious schools
SB 175	Creates right to public funding for religious student groups that discriminate
SB 248	Defunds non-public family planning providers
HB 2501	Criminalizes the sharing of certain images
HB 2615	Prohibits midwives from assisting abortions
HCR 5024	Calls on the president to keep Guantanamo open

Bills Strengthening Civil Liberties Passed: 2016

SB 367	Overhauls juvenile justice system
HB 2008	Protects the privacy of public school students
HB 2447	Reduces size of the incarcerated population
HB 2449	Funds the judiciary, regardless of outcomes
HB 2462	Defelonizes 2nd time marijuana
HB 2558	Free speech rights of campaign workers

crises and persecution, by considering a ban on refugee resettlement in the state. In the fall of 2015, Gov. Brownback reversed his long-standing position as a champion of refugees to unilaterally impose a constitutionally suspect moratorium on resettlement. With HB 2612, a Kansas House committee took that one step further, giving state and local governments the power to ban resettlement—and deny basic public services to refugees—at any time. The bill was drafted by an organization deemed a “hate group” by the Southern Poverty Law Center. Proponents claimed that the measure was necessary because current refugees to the United States are “not Christians or Jews” and “don’t fit in to our culture.” The ACLU of Kansas led the charge against this discriminatory, fear-mongering bill, arguing that it violated federal law and international treaties. Working with a coalition of resettlement agencies and faith leaders, the ACLU maintained that banning refugees runs counter to our Kansas values. The mobilization of strong voices against the bill led to its defeat on the House floor.

Keeping Kansas Courts Fair and Impartial

Last year, lawmakers tried hard to undermine the fairness and impartiality of the Kansas judiciary. They even passed a bill that held the courts hostage—tying funding for court operations to giving the Legislature its preferred outcome in a specific case. This year’s session brought more attacks, with schemes to change the judicial selection process and to impeach judges for disagreeing with the Legislature. These bills were efforts to force judges to rule in ways preferred by legislators, irrespective of what the law or the Constitution demand. Those efforts were rebuffed at every turn in 2016. Not only were the bills to revise the judicial selection and impeachment processes rejected, but the Legislature was forced to swallow its pride and repeal the bill that tied court funding to the outcome of a specific case. Legislators have not given up their fight to undermine the impartiality of Kansas courts. That fight impacts civil liberties issues, so the ACLU of Kansas will remain engaged in protecting the judiciary.

Fighting for Real, Full Equality

The U.S. Supreme Court made marriage equality the law of the land in June 2015, but that does not mean that real, full equality has been achieved for LGBT Kansans. In 2016, the ACLU of Kansas joined with



Micah Kubic, executive director of the ACLU of Kansas, speaking at the launch of Kansans for Smart Justice

other groups to advocate for full equality. We fought back when two bills, HB 2737 and SB 513, were introduced to prohibit transgender Kansans from using school restrooms aligning with the gender they live every day. Advocacy by the ACLU and LGBT equality organizations stopped those “bathroom bills” in their tracks. On the last day of the session the Senate passed a symbolic resolution condemning the federal government for determining that policies restricting bathroom use by transgender students are discriminatory and illegal. Passage of the resolution was unnecessary and puts the Kansas Senate on record as favoring a dangerous and blatantly discriminatory policy. Thankfully, the resolution has no practical impact and the House refused to consider a similar measure.

Not every attempt to protect the rights of LGBT Kansans was so successful. A bill to include sexual orientation and gender identity in the state’s non-discrimination law received a hearing, but no further action. It remains possible for Kansans to be discriminated against in employment and housing based simply on their sexual orientation or gender identity. LGBT Kansans have the freedom to marry—but can be fired or denied housing after displaying pictures from the wedding.



Wichita area ACLU activists meet to mobilize against legislative attacks on civil liberties

Discrimination Is Not Religious Freedom

The biggest civil liberties setback of the year came with the passage of a bill that had been killed in 2015. That bill, SB 175, exempted religious college student groups from non-discrimination policies, mandating that they receive taxpayer funding even if they discriminate in their membership. Proponents claimed that the bill advanced the cause of “religious freedom,” when instead it permits discrimination against anyone—people of color, women, LGBT students, individuals with disabilities, or anyone at all—in the name of religion. The ACLU of Kansas led a diverse coalition in opposition to SB 175, but it passed. Upon passage, Kansas instantly received negative national headlines for providing taxpayer funding for discriminatory behavior.

Promoting Police Accountability

Law enforcement agencies are expanding the use of body cameras as a tool for enhancing accountability and improving police-community relations. In Kansas, legislators sought to change state law to prevent the public or the press from ever gaining access to body camera footage. Such a policy defeats the purpose of having cameras, stripping away the accountability and transparency benefits they are intended to have. The ACLU of Kansas stood alone in testifying against the proposal—and the “compromise” that ultimately passed, which permits public and media access by

obtaining a court order. Legislators did take the ACLU’s recommendation that the law specifically authorize the survivors of deceased individuals caught on camera to access the footage. The bill adopted, SB 22, is better than the alternatives considered, in that it offers the public the option—albeit an onerous one—of obtaining a court order to view footage.

Reproductive Freedom *Still* Under Attack

Several bills to limit the ability of a woman to make decisions about her own reproductive healthcare were introduced, but the only new restriction passed in 2016 was HB 2615, which bans midwives from assisting in abortions. The failure to pass new restrictions does not mean that reproductive freedom emerged unscathed. The Legislature found time to strip away the minimal state funding that Planned Parenthood receives to provide healthcare to Medicaid patients. This means that low-income women who rely on Planned Parenthood for life-saving cancer screenings and other healthcare will be badly harmed. The governor’s termination of Planned Parenthood’s Medicaid provider status is legally suspect and is being challenged in court. Also in litigation is a bill passed in 2015, SB 95, which bans a specific abortion procedure.

Looking Ahead to 2017

Freedom prevailed in the 2016 session, despite the most hostile political climate in Kansas history. This fall, Kansans have the opportunity to change that climate. Every seat in the Kansas Legislature will be up for election. Kansas can elect a Legislature that does not devote its energies to advancing the nation’s most extreme attacks on liberty.

The ACLU of Kansas will work to educate candidates from all parties about civil liberties issues. We are mobilizing now so that we remain an effective force for the defense of constitutional rights when the next Legislature convenes. We will be prepared to beat back the attacks on freedom that will undoubtedly come.

Your support of the ACLU helps us ensure that freedom continues to prevail in Kansas.

Learn more at www.aclukansas.org