

In the Courts

Courts Again Uphold Vermont Lesbian Custody Order

In tortuous litigation that began in 2004 and continues to this day, courts in Virginia and Vermont --joined by the U.S Supreme Court -- continue to confirm what the ACLU has been arguing all along: that Vermont has jurisdiction in a custody dispute over a child born during a Vermont civil union of two women.

In 2000, Janet Jenkins and Lisa Miller entered into a civil union under Vermont law. They had a child, separated, dissolved the union, and went through a custody dispute. A Vermont court awarded custody to Miller, the birth mother, and visitation rights to Jenkins. Miller then moved with the child to Virginia where she relied on a new state law banning marriage-like contracts between people of the same sex, to argue for sole custody.

The ACLU, Equality Virginia, and Lambda assisted Jenkins, but in 2004 a Frederick County Circuit Court granted Miller the authority to deny Jenkins her visitation rights. In

August 2006, the Vermont Supreme Court ruled that Vermont held jurisdiction over the case, and that Miller was in contempt of court for refusing to allow Jenkins to visit. A few months later, the Virginia Court of Appeals agreed with the Vermont court, overturning the decision of the Circuit Court.

In June 2008, the Virginia Supreme Court let stand the Court of Appeals' decision, but Miller has now asked the U.S Supreme Court to review the case. Including both the Virginia and Vermont cases, this is the fifth time Miller has sought U.S Supreme Court review, four of which have been denied.

Meanwhile, Miller initiated a new action in Virginia, asking the Frederick County Circuit Court not to enforce Vermont's custody orders because of the state's constitutional amendment banning same-sex marriage. In August the court dismissed Miller's claims, and she has now appealed that decision to the Virginia Court of Appeals.

Citizen May Publicly Criticize Developer

A Montgomery County Court has ruled in favor of Christiansburg blogger Terry Ellen Carter, who was sued by a developer for complaining about a large mound of dirt left near her neighborhood. The developer, Roger Woody, claimed that Carter's website injured him by referring to his dirt pile as "Mount Woody" and publishing a picture of the pile on which the word "Woodyville" was superimposed. ACLU lawyers argued that the First Amendment protected Carter's right to criticize the dirt pile. Woody's action was a classic SLAPP suit, or Strategic Lawsuit Against Public Participation, wherein someone with considerable means attempts to silence critics through costly litigation.

Virginia SPAM Law Overturned

The Virginia Supreme Court has struck down a state law banning anonymous unsolicited bulk emails on grounds that the law is an overly broad violation of the First Amendment. The ACLU submitted a friend-of-the-court brief on behalf of Jeremy Jaynes, the first person to be convicted under that statute, arguing that the statute criminalizes not just unsolicited commercial emails but non-commercial bulk emails containing political and religious messages. In our brief, we noted that there is a long history of protecting anonymous non-commercial speech in the United States.

4th Circuit Agrees with ACLU, Upholds Prayer Policy

The Fourth Circuit Court of Appeals has upheld Fredericksburg City Council's policy requiring that prayers opening its meetings be non-sectarian. The city's policy--the result of pressure from the ACLU after a citizen complained about the prayers-- is consistent with a 25 year-old Supreme Court case holding that legislative bodies may formally open their meetings with a prayer, but that such prayers must be broad statements of faith that do not demonstrate a preference for one religion over others. City Councilman Hashmel Turner, who is challenging the policy, recently asked the U.S. Supreme Court to review the case.

Craig County Drops Controversial Bible Course

The Craig County School Board has decided to drop a proposed Bible course that has been widely criticized as promoting particular religious beliefs in public schools. The decision comes after the ACLU of Virginia, which does not oppose objectively taught religion courses in public schools, launched a public investigation into the course and began seeking plaintiffs for a lawsuit. In this case, there was no need to file a lawsuit.

Privacy Advocate Can Post Public Records on Website

A federal court judge ruled in August that Virginia's new law prohibiting the dissemination of Social Security Numbers, including those taken from government websites made available to the public, is unconstitutional as applied to the website of privacy rights advocate B.J. Ostergren.

The law appears to have been passed expressly to prevent Ostergren from displaying Social Security Numbers on her website. Ostergren takes the numbers from government websites available to the public to demonstrate to legislators how easy it is for businesses to violate the privacy rights of citizens and for criminals to steal identities.

Both Ostergren and the ACLU support laws that prevent Social Security Numbers from being placed online, but the U.S. Supreme Court has made it clear that the government cannot make information available to the public and then restrict its dissemination without violating free speech.

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*Virginia Liberties
Newsletter of the ACLU of Virginia*

Become a Grassroots Lobbyist!

Help us defend civil liberties at the Virginia General Assembly- join our grassroots lobbying program! We'll update you about bills in the legislature and send you action alerts that require immediate action. Action alerts provide you with the ACLU's position and talking points to use in communications with legislators, and identify key legislators to be contacted.

Letters, phone calls, and emails from voters have a significant impact on the actions of elected officials. Sign up today by visiting our website at www.acluva.org, and help us protect our fundamental rights.

E-News, Get Your ACLU E-News!

If you'd like to know what we're doing throughout the year, then sign up for E-News. As a subscriber, you will receive about one email update a week on lawsuits and other actions by the ACLU of Virginia, as they happen. On occasion, we'll also send you TV alerts, information on upcoming events in your area, and important national news. Subscribe today at www.acluva.org.

You're Invited!

Northern Virginia Chapter of the ACLU

Annual Legislative Brunch

Sunday, February 1, 12:00-2:30 p.m.

Ernst Cultural Center

Northern Virginia Community College
8333 Little River Turnpike, Annandale

**"Civil Liberties and the
2009 General Assembly"**

Hope R. Amezquita

ACLU of Virginia Legislative Counsel

Q&A to follow

Brunch at noon. Program starts at 1:00p.m. The Northern Virginia Chapter would like to know if you'll be attending. To RSVP or for more information, call (703) 360-1096 or send an email to novachapter@acluva.org.

Virginia Liberties
Newsletter of the American Civil Liberties Union of Virginia

Fall 2008

Voter Restoration Project Seeks Reforms

Sign up now to help pass historic legislation in 2009 General Assembly

Virginia is one of only two states--Kentucky is the other-- that permanently disfranchise all individuals with a felony conviction, requiring an act of the Governor to restore their right to vote. As a result, more than 300,000 individuals in Virginia cannot vote, despite having completed their sentences.

A product of the Jim Crow era, felon disfranchisement was intended to prevent African Americans from voting, and it still disproportionately affects minorities. Indeed, more than half of Virginia's disfranchised population are African Americans.

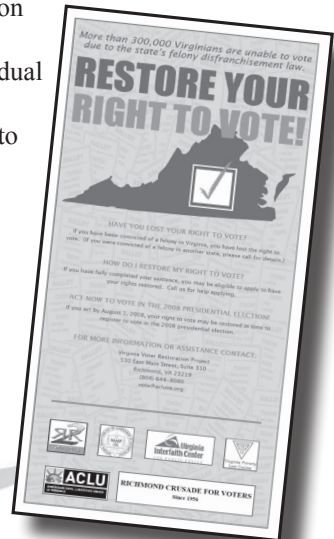
Although nearly every other state has reformed its felon disfranchisement law in recent decades, and despite polls showing a clear majority of Virginia voters favor automatic restoration of voting rights once sentencing is completed, Virginia's legislators have failed to pass the needed legislation.

A serious obstacle is that felon disfranchisement is part of the Virginia Constitution, which can only be amended by passing identical resolutions two years in a row with a state election in between, after which the amendment must be agreed on by a majority of Virginia's voters. There will be bills in the House and Senate this year, but that is barely the beginning of our work. Virginia's legislators need to understand that voters from across the political spectrum support felon disfranchisement reform.

Felon disfranchisement has racial origins, amounts to an ongoing punishment after one's debt to society has been paid, and according to studies, undermines the rehabilitation process.

The ACLU and our allies -- which range from the conservative Rutherford Institute, to the Virginia Interfaith Center for Public Policy, to the Virginia NAACP -- will be out in full force to educate legislators on this issue and to pressure them for reform. But in the end, it is individual constituents, voters like you and your neighbors, who hold the key to reform. Virginia's elected officials must hear from you.

Please contact the ACLU of Virginia to find out what you can do to help. We have written materials, a video documentary on voter disfranchisement, and are available to speak to civic, religious, and community groups interested in learning more about this important issue.



Lawsuits Protect Rights of Immigrants

CNU Grants In-State Tuition to Legally Present Son of Undocumented Immigrants

In the first case testing the Virginia Attorney General's proclamation that Virginia colleges are free to deny in-state tuition to legally present Virginia residents if their parents are illegally present, Christopher Newport University has agreed to allow a U.S-born, five-year state resident to pay the same rate of tuition as other in-state students.

CNU originally denied an in-state tuition rate to the student, but relented after the ACLU warned the school's attorney that a lawsuit was being filed. Officials at CNU had apparently based their denial of in-state tuition rates on a memo issued by the Attorney General earlier this year in which he advised that a student's residency status, even when the student is born and raised in Virginia, is determined by his parents' immigration status. If the parents are not legal residents, the AG wrote, then their offspring are not entitled to in-state tuition. The ACLU immediately wrote to every college president in Virginia urging them not to deny in-state tuition to such students and offering legal representation to any such student denied in-state tuition.

Suit Seeks Data on Denial of Reproductive Health Services to Teen Immigrants

The ACLU of Virginia and the National ACLU's Reproductive Rights Project have filed a lawsuit to force the U.S. Department of Health and Human Services to release documents pertaining to the denial of reproductive health services to undocumented immigrant teenagers in HHS's custody.

Concern about HHS reproductive policies and practices surfaced this summer when four social workers employed by a private HHS contractor in Virginia were fired after assisting an immigrant teenager who was seeking a legal abortion. The young woman was one of more than 10,000 undocumented, unaccompanied teenage immigrants picked up by government officials and placed in the custody of HHS. Most await deportation, but they are entitled to fundamental constitutional protections, such as due process and reproductive freedom, while in government custody.

The ACLU initially sought the documents through the Freedom of Information Act but received no response from HHS.

Special Election Protection Page Inside!

Obama Must Dig Deep into Federal Regulations to Undo Bush's Damage

Over the past eight years, our nation has been greatly weakened. In particular, our fundamental freedoms have been undermined by the policies of the Bush Administration. On Election Day, Americans indicated loud and clear that they want a change in direction.

But what, exactly, must President-elect Barack Obama do to restore our freedoms when he is sworn in next January?

Some of what must be accomplished is self evident. As president, Mr. Obama must stop the torture of so-called enemy combatants. He must close Guantanamo Bay and hold fair trials for the prisoners held there. He must also end "extraordinary renditions" in which suspects are kidnapped by the CIA and sent to countries where physical abuse is legal.

Other priorities are almost as obvious: ending warrantless spying on Americans, fixing the nation's "watch list" system in which innocent people and organizations are designated as terrorist suspects, stopping the monitoring of peaceful political activists, and restoring the Justice Department's Civil Rights Division as a meaningful and effective organ of the government.

But if the full damage done by the Bush administration is to be reversed, perhaps the hardest work will take place in the bowels of the federal bureaucracy, where hundreds of rules and

regulations have been amended, initiated, or ignored in ways that quietly but significantly diminish all our lives.

As president, Mr. Obama must push the Federal Communications Commission to curtail media consolidations that threaten viewpoint diversity in our newspapers and on radio and television. He will need to pass new regulations to prevent the Real ID Act from becoming a national ID law. He must reverse recently imposed government rules that inhibit free scientific inquiry. He must eliminate Medicaid rules that discriminate against lesbians and gay men. And, he needs to stop promoting local enforcement of federal immigration laws, a policy that has introduced unprecedented fear and intimidation into our immigrant communities.

Restoring America's legacy of freedom is not just a matter of fixing a few big items. The new president will have to dig deep into a broad array of ill-conceived government policies and regulations to undo the damage done to our civil liberties by the Bush Administration. As I am sure you know, the ACLU will be there to help him.

Kent Willis, Executive Director



ACLU Celebrates Banned Books Week with Censorship Event in Richmond

The ACLU of Virginia teamed up with the Virginia Holocaust Museum to kickoff Banned Books Week with "Censorship: The War over Words." Eight Richmond-area actors, authors, and poets read the works of scholars and authors who had either been barred from entering the U.S. because they held ideas with which the government disagreed or who have had their writings challenged or banned. The censored authors included Dr. Tariq Ramadan, Pablo Neruda, Dario Fo, Lois Lowry, and Jack London. The audience of 75 was also able to walk through the Museum's temporary exhibit explaining how censorship has been used as a tool of genocide.



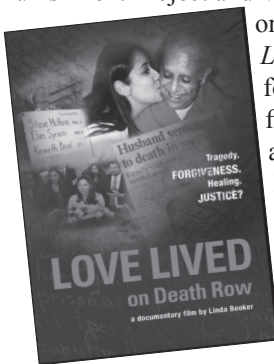
Felicia Winston recites Nelson Mandela speech

100 Activists Trained in Arlington

In September, more than one hundred activists from throughout the state participated in a grassroots activist training organized by the National ACLU Washington Legislative Office and ACLU of Virginia. The training was designed to provide activists with the basic skills necessary to work effectively with elected officials and the media to advocate for civil liberties. Attendees practiced these skills by using the issue of restoration of voting rights for felons as an example.

Film on Death Penalty Screened in Harrisonburg, Roanoke and Norfolk

This fall, the ACLU of Virginia, the National ACLU Capital Punishment Project and Virginians for Alternatives to the Death Penalty organized three screenings of the documentary *Love Lived on Death Row*, each of which was followed by a panel discussion featuring the film's director and producer, Linda Booker, and death row exoneree Michael Graham. Linell Smith, whose parents were murdered in 2001, also spoke to the audience in Harrisonburg. In Norfolk, Ryan Nixon, whose sister was killed in 2005, joined the panel to tell of his experiences with the death penalty.



ACLU's Top Lobbyist Caroline Fredrickson Addresses Supporters in Mason Neck

In late October, Caroline Fredrickson, Director of the Washington Legislative Office, addressed 85 supporters gathered at the home of Philip Hirschkop in Mason Neck. Ms. Fredrickson informed the audience of what they could expect for civil liberties after the elections and explained the ACLU's priorities for the upcoming year. In addition to being responsible for starting the ACLU of Virginia, event host Hirschkop represented Richard and Mildred Loving when they challenged Virginia's law banning interracial marriage in 1967.

Student Chapters Keeping Busy on Campus

UVA Law School students held three events this fall. During a panel discussion for 100 law students, ACLU National Security Project Staff Attorney Hina Shamsi discussed the ramifications of the recent U.S. Supreme Court decision, *Boumediene v. Bush*, which recognized Guantanamo detainees' rights to habeas corpus in U.S. federal courts. The group also co-sponsored an event about careers with human rights organizations and screened the ACLU's *Freedom to Vote* video at a voting rights event.

The undergraduate **UVA Chapter** collected 2,000 signatures in a petition drive to end the ban on signs at athletic events, and with other campus groups, they applied enough pressure to cause the athletic department to lift its ban! The Chapter also had a display explaining comprehensive sexual education during Voices of Planned Parenthood's "Sexual Arts and Crafts" night. The Chapter distributed voter empowerment cards to students and encouraged them to participate in the ACLU's "I'm a Constitution Voter" campaign.

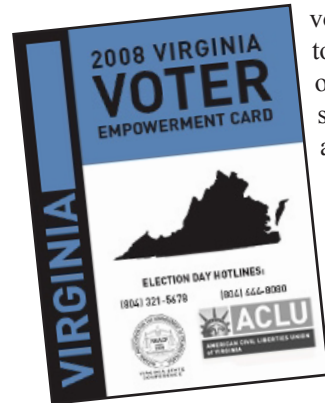
Christopher Newport University students were also active during the election season, hosting a Voter Awareness Forum with campus political groups, where chapter members distributed voter empowerment cards and "I'm a Constitution Voter" pledge cards. Earlier in the semester, students held a panel discussion on voting rights and screened parts of an ACLU video on the subject. The CNU chapter plans to host an event on gay, lesbian, bisexual, and transgender rights before the end of the semester.

In nearby Williamsburg, **William and Mary** students co-sponsored an event on drug policy reform for LEAP (Law Enforcement against Prohibition), an organization of law enforcement officials opposed to the War on Drugs and supporting legalization. The group's speaker was a U.S. marshal who addressed issues of racism and police brutality.

Meanwhile at **W&M Law School**, students co-hosted a discussion on student voting rights, during which Chapter President Thomas Fitzpatrick spoke about the ACLU of Virginia's efforts on behalf of students' right to register to vote where they attend school. In October, the chapter held a training workshop to teach students how to help disfranchised felons complete the necessary paperwork to restore their voting rights--they now have twenty chapter members trained. The group also co-hosted a rally with Students for the Innocence Project, Black Law Students Association, and Amnesty International in support of Troy Davis, a death row inmate in Georgia.

Record Number of Voter Empowerment Cards Distributed

In collaboration with the National ACLU Voting Rights Project, the ACLU of Virginia produced and distributed 55,000 Voter Empowerment Cards in English and Spanish -- nearly three times as many as for past elections. The cards, a joint project with the Virginia State Conference of the NAACP, answer thirty basic questions for voters, including how to register to vote and to vote absentee, and provide information on handling common Election Day issues, such as ID requirements, poll accessibility, and provisional ballots.



The cards were distributed to political campaigns throughout the state, numerous community organizations and churches, legal services organizations, social service departments, and individuals who made them available to others through their personal networks.

Students' Right to Register to Vote Defended

The ACLU sent letters to 33 registrars in college towns throughout the state warning that they must allow students to register to vote where they attend college. The letters were mailed after it was reported that the Montgomery County Registrar told Virginia Tech students their parents may no longer be able to claim them as dependents for tax purposes or they may lose their scholarships if they declared a separate college address for voting purposes. The Montgomery County registrar later retracted his statement.

In Norfolk, the registrar refused to accept a Norfolk State University coded address as a substitute for a street dorm address. The ACLU worked with local groups in the area to advocate on behalf of students. The registrar has now indicated that she will accept the dormitory code as a legitimate address in the future.

In Radford, the registrar rejected applications with dorm addresses, sending postcards back to applicants asking for their "home address." Although we could not find a plaintiff to challenge the practice, the registrar later joined advocacy groups in asking the General Assembly to amend the law to clarify the right of students to register for local elections.

Lawsuit to Challenge Ban on Political Apparel

The ACLU of Virginia will soon file a lawsuit challenging the State Board of Elections' policy prohibiting the wearing of campaign t-shirts and buttons in polling places. Virginia law addressing this subject is vague, prohibiting electioneering -- typically interpreted to mean an active attempt to persuade voters to support a particular candidate -- within 40 feet of a polling place, but not making it clear that the electioneering ban applies to silent, passive political expression worn by individual voters.

On the eve of the November elections, the Board of Elections adopted a policy and guidelines that prohibit political apparel at the polls. The guidelines directed poll workers to allow voters who refused to remove their political apparel to cast their ballots anyway, but then to file an incident report with the local Commonwealth's Attorney, who would be free to prosecute the offense. The offense constitutes a class 1 misdemeanor and is punishable by up to one year in jail and a fine of up to \$2,500.

The ACLU of Virginia will be joined by Thomas Jefferson Center for the Protection of Free Expression and the Rutherford Institute in our First Amendment challenge to the policy.

ACLU Warnings Protect Political Canvassers

After receiving complaints from door-to-door canvassers that local police officers were interfering with their voter registration drives, the Virginia ACLU sent letters to every police chief in the state telling them to educate their officers on the constitutional right to go door to door to register voters. In most cases, police officers incorrectly cited local anti-solicitation ordinances as the basis for prohibiting voter registration drives.

The ACLU received similar complaints about public housing officials who blocked voter registration drives on properties under their jurisdiction, claiming, again incorrectly, that such efforts violated local or federal housing policies. These complaints led to a letter being sent to every housing authority in the state.

After the ACLU letters were sent, we did not receive any additional complaints.

Hotline Helps Virginia Voters

More than 200 voters contacted the ACLU of Virginia's hotline to seek assistance on a wide variety of voting issues in the days leading up to Election Day.

On the day before Election Day and Election Day, we provided assistance to more than 70 individuals, the largest number ever to seek our assistance during this time frame.

The main complaints from voters involved the voter registration process, access to polling places, and misleading information about ID requirements.

There were also numerous inquiries about implementation of the State Board of Elections' ban on political apparel in polling places.

On Election Day, the hotline was staffed from 6:00 a.m., when the polls opened, until 8:00 p.m., an hour after the polls closed. Advice was available in English and Spanish.

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Virginia Liberties

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Save The Date!

NOVA ACLU Chapter's Annual Legislative Brunch, February 1

Join ACLU of Virginia Legislative Counsel Hope Amezcuita for the Northern Virginia Chapter's annual winter issues brunch. The focus of the discussion will be on bills in the Virginia General Assembly that impact civil liberties.

Sunday, February 1, 12:00 to 2:30 p.m.
Ernst Cultural Center
Northern Virginia Community College,
8333 Little River Turnpike, Annandale.

Contact the NOVA Chapter at novachapter@acluva.org or (703) 360-1096 if you would like to attend. Admission is free.

Interested in Serving on the Board?

Members of the ACLU of Virginia Board of Directors serve three years terms and are voted in by the membership. If you are interested in serving on the Board of Virginia's premier civil liberties organization, you must be a member in good standing and must submit a brief statement of interest addressed to the Nominating Committee Chair at the main office address in Richmond by March 16, 2009. You may also be nominated by membership petition signed by five members of the ACLU of Virginia and submitted by the same date. For more information, contact Kent Willis at (804) 644-8080 or kwillis@acluva.org.