

# What's Ahead

While Virginia, as a whole, continues to become more centrist, it doesn't mean civil libertarians can rest. States are the battleground for important policy issues, and we are positioned not only to defend, but to advance civil liberties and civil rights.



### Thwarting efforts to use religion to discriminate

Religion once was used to justify separation of the races. Now religion is being used to further discrimination against women and LGBT people in medical care, employment, and social services. Religious freedom means we all have a right to our religious beliefs, but this does not give us the right to use our religion to discriminate against and impose those beliefs on others. Through litigation and public education, we will defend religious liberty to ensure that no one is discriminated against or denied services because of someone else's religious beliefs.

### Protecting voting rights against attacks

In June 2013, the U.S. Supreme Court in *Shelby County v. Holder*, struck down a key provision of the Voting Rights Act. As a result, jurisdictions - like Virginia - with a history of discrimination are no longer required to seek approval from the U.S. Department of Justice for changes to their voting laws. In addition, during the 2013 Virginia legislative session, legislators enacted a stricter voter ID law, which requires voters to show valid photo IDs before casting a ballot. This law will go into effect in July 2014, and we will be advocating at the legislature, in the public square, and if necessary, in the courts to ensure fair access to the ballot.

### Protecting reproductive freedom

Anti-choice measures debated during the 2012 General Assembly session put Virginia in the national spotlight, and legislation in 2013 escalated the attacks on women's health by seeking to ban contraceptive coverage in Virginia's health insurance exchange. As the 2014 session draws near, we do not expect the assault on women's health to end anytime soon. We will continue to advocate for everyone's right to make informed decisions, free from government interference, about whether or when to become a parent.

### Chipping away at Virginia's death penalty

Ten years ago our report, *Broken Justice: The Death Penalty in Virginia*, highlighted the problems plaguing Virginia's broken capital punishment system. While the numbers of new death sentences and executions are down in Virginia, many of the structural problems outlined in our report persist. Building on the American Bar Association's August 2013 report evaluating the fairness and accuracy of Virginia's death penalty system, which included recommendations similar to those made in our report, we are working with a coalition to reform the administration of the death penalty in Virginia until it can be abolished.

### Advancing privacy and free speech rights

As technology advances, laws that protect our privacy and First Amendment rights often fall behind. We successfully became the first state to pass statewide legislation limiting drone usage. We also defended our "right to like" in a case before the Fourth Circuit in which a sheriff allegedly fired a deputy for "liking" his opponent's Facebook page. During the 2014 legislative session, we will build on our successful efforts to ensure that drones are not used to undermine our fundamental privacy rights.

### Securing basic rights for LGBT Virginians

While the Virginia General Assembly may not be ready to repeal the so-called marriage amendment, we are fighting in federal court to secure the freedom to marry for same-sex couples. The ACLU was able to win a major discrimination case against the Library of Congress on behalf of a transgender woman, and with your help, we can do more, including advocating in the legislature for protection for LGBT individuals against discrimination in state and local employment.



701 East Franklin Street, Suite 1412  
Richmond, VA 23219

NON-PROFIT ORGANIZATION  
U.S. POSTAGE PAID  
RICHMOND, VA  
PERMIT NO. 351

### ~Get Involved and Stay Informed~

Become an E-Activist

Raise freedom's voice in Virginia and across the nation. Join the Action Alert e-mail list to stay informed about current issues and campaigns, upcoming events, and how your voice can impact the struggle to protect and expand civil liberties.

Follow Us on the Web and Social Media



**Facebook:** 'Like' us at [www.facebook.com/acluofvirginia](http://www.facebook.com/acluofvirginia)

**Twitter:** Follow us at [www.twitter.com/acluva](http://www.twitter.com/acluva)

**ACLU-VA Blog:** Read our thoughts about current civil liberties issues at [www.acluva.org](http://www.acluva.org).

**Virginia ACLU Reports:** Find our annual report and litigation and legal advocacy report on our website at [www.acluva.org](http://www.acluva.org).

Contact Us

701 East Franklin Street, Suite 1412, Richmond, VA 23219  
Telephone: (804) 644.8022 Fax: (804) 649.2733  
Email: [acluva@acluva.org](mailto:acluva@acluva.org)

### Interested in Serving on the ACLU of Virginia Board?

Would you like to be part of the dynamic group of people who govern the Virginia affiliate of the ACLU? Members of the ACLU of Virginia Board of Directors serve three-year terms and are voted in by the membership. If you would like to be considered for nomination, you must be a member in good standing and submit a brief statement of interest. You may also be nominated by a petition signed by five members of the ACLU of Virginia and submitted with a statement of interest.

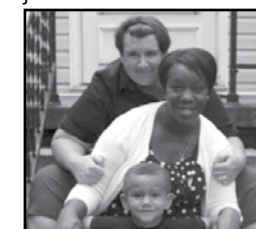
To ensure consideration for election in 2014, please let us know of your interest by November 1. Send your information to Claire Gastañaga by email to [claire@acluva.org](mailto:claire@acluva.org), or by mail to 701 E. Franklin St., Ste. 1412, Richmond, VA 23219.

# Virginia Liberties

Newsletter of the American Civil Liberties Union of Virginia Fall 2013

## All Virginians Deserve the Freedom to Marry

In August, the American Civil Liberties Union (ACLU), the American Civil Liberties Union of Virginia, and Lambda Legal filed a federal class action lawsuit seeking the freedom to marry for all same-sex couples in Virginia as well as an end to Virginia's refusal to recognize marriages legally entered into elsewhere. The case was filed on behalf of Joanne Harris and Jessica Duff of Staunton and Christy Berghoff and Victoria Kidd of Winchester and seeks to represent all same-sex couples in Virginia who wish to marry here or who have married in other jurisdictions.



Jessica Duff and Joanne Harris

"Virginia is home for us. Our families are here, our jobs are here, and our community is a great support for us, but it makes us sad that we cannot get married where we live," said Joanne Harris, a lifelong Virginian and the daughter of Bedford, Virginia farmers. "It hits me in the gut that two hours from our house same-sex couples in Maryland and D.C. can marry. I have a serious medical condition and we've had to spend lots of money to try to make sure that Jessi can make decisions for me if there were ever a crisis."



Victoria Kidd and Christy Berghoff

"I'm an Air Force veteran, and, if Virginia would just respect our marriage from D.C., it would ensure that my spouse and family could access all the benefits I've earned," said Christy Berghoff, from Winchester. "I've been with Victoria for almost a decade now; it hurts to

## Defending Your Right to "Like"

In September, the Fourth Circuit Court of Appeals ruled that "Liking" a Facebook page constitutes protected speech under the First Amendment. The decision reversed the federal district court that ruled that "Liking" a Facebook page is "insufficient speech" to merit constitutional protection.

According to Facebook, the "Like" feature is "a way to give positive feedback or to connect with things you care about on Facebook." When a user "Likes" content or a page, Facebook publicizes that user's "Like" action to that user's friends, essentially announcing the user's interest in or appreciation of that content or page.

In its opinion, the Fourth Circuit held that "Liking a political candidate's campaign page communicates the user's approval of the candidate and supports the campaign by associating the user with it. In this way, it is the Internet equivalent of displaying a political sign in one's front yard, which the Supreme Court has held is substantive speech."

have our home state say we are not married when it recognizes marriages entered into by different-sex couples who may have only recently met."

Joanne, 37, and Jessi, 33, have been together since 2006 and have a four-year-old son. Christy, 34, and Victoria, 35, have been together almost ten years. They have a ten-month-old daughter.

These two families are the face of many in Virginia who want to declare their love and commitment publicly before their family, friends, and community. These individuals also want the certainty that their loved ones have the same rights that are afforded to married heterosexual couples. It is time for Virginia to stop discriminating against our neighbors and friends, simply because of the people they love.

## ACLU of Virginia Launches Reproductive Freedom Project

The ACLU of Virginia is pleased to announce the launch of its new grant-funded Reproductive Freedom Project. Reproductive freedom is one of our key priorities and is the exclusive focus of this new Project. The Reproductive Freedom Project is a collaboration among the ACLU of Virginia and two other education and advocacy organizations that will focus on protecting and advancing reproductive freedom through advocacy, education, and litigation. At the same time, the new funding allows us to expand our work on other crucial women's rights priorities under the Patricia M. Arnold Women's Rights Project.

Policymakers across the country have been laser focused on taking away a woman's right to make private health care decisions, and Virginia is a key part of that trend. From 2011-2013, we saw an aggressive assault on women's health in Virginia. In some cases, such as instituting a mandatory ultrasound and a 24-hour waiting period prior to abortion, Virginia led the nationwide charge, serving as a "model" to other states seeking to pass anti-choice measures.

At the same time, however, scores of women and men went to Richmond to tell their representatives to leave these decisions where they belong: with a woman and her family. Thanks to the outcry of activists, only one of thirteen anti-choice bills passed in 2012, and legislators introduced far fewer anti-choice bills in 2013.

Together, we can stem this tide and stop politicians from interfering in our private health care decisions. The ACLU of Virginia looks forward to continuing as a trailblazer in the reproductive rights movement, and joining our allies across the state to ensure that health care decisions are made by women and their doctors, not by politicians.

# From the Director

**“They who can give up essential liberty to obtain a little temporary safety, deserve neither liberty nor safety.” - Benjamin Franklin 1775**

It is sometimes necessary to remind ourselves that the Constitution is about what the government can do and how, and the Bill of Rights is about what the government cannot do rather than about what we have a right to do. For example, we often talk about our right to free speech when what we have is a right against the government making a law abridging our freedom of speech. The preamble to the Bill of Rights explains that the first ten amendments to the Constitution were offered to “prevent misconstruction or abuse of [the government’s] powers” granted in the main body of the Constitution and to enhance “public confidence in the Government.” In other words, the Bill of Rights was proposed to limit government power and to secure our liberty against the government.

The men who wrote the Constitution and the Bill of Rights were not seers. They could not have imagined the advances in technology that now power our daily lives and offer the government, including law enforcement, almost unlimited means to watch us and to collect and manipulate information about who we are and what we do. Those who wrote our foundational documents understood and embraced a fundamental reality, however; unrestrained and unlimited government power inevitably may be abused.

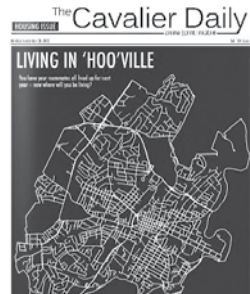
That’s why, as the guardian of liberty, the ACLU is focused on assuring that the government’s use of new technologies is harnessed by rules requiring public oversight and consent to its use, transparency, and accountability. Whether one is referring

to automated license plate readers, drones that can smell bacon cooking in your kitchen or see you smile from miles away, GPS devices planted on your car, real-time tracking of your cell phone, or after the fact analysis of your cell phone records, the public deserves to play a significant and influential role in the development and implementation of policies governing and limiting law enforcement’s and other government agencies’ use of these tools to track you as you go about your daily activities. In addition, people accessing government services should have the right to say whether they want the information they provide the government for one purpose (for example, to obtain a driver’s license) to be stored, catalogued, and used for other purposes (for example, receipt of social services or other benefits). At this point, Fourth Amendment jurisprudence is limited by antiquated notions of privacy not informed by an awareness of the ever-expanding capabilities of our high-tech world. That is why we will be fighting for new laws and regulations that will restore the balance between individual liberty and government power that the Constitution sought to preserve. We can have both liberty and security. Bottom line, if you have not done anything wrong, the government should not be watching you.

Claire Gastañaga, Executive Director



## Victory in Challenge to Ban Alcohol Advertising in College Newspapers



This September, the Fourth Circuit Court of Appeals ruled that two college newspapers must be permitted to carry alcohol advertising, in spite of an Alcohol Beverage Control Board (ABC) regulation prohibiting most alcohol ads in college student publications. The ABC regulation at issue prohibited all advertising of alcoholic beverages in college student publications, “unless in reference to a dining establishment.” The court held that the regulation violated the constitutional rights of The Cavalier Daily, a student newspaper at the University of Virginia, and the Collegiate Times, a student newspaper at Virginia Tech. The majority of readers of both newspapers are aged twenty-one or older. As applied to The Cavalier Daily and the Collegiate Times, the regulation is unconstitutional because “it prohibits large numbers of adults who are 21 years of age or older from receiving truthful information about a product that they are legally allowed to consume,” the court wrote.

## Pittsylvania County Cannot Open Meetings with Sectarian Prayers

In August 2011, the ACLU of Virginia was notified that the Board of Supervisors in Pittsylvania County began each meeting with a Christian prayer, delivered by Board members on a rotating basis. The ACLU of Virginia wrote a letter to the Board explaining that this practice violated the First Amendment under the clear precedents of the Fourth Circuit Court of Appeals, which state that government bodies must not engage in official sectarian prayers. After the Board made clear that it would continue holding sectarian prayers, the ACLU of Virginia filed suit in federal court. After failed mediation attempts, in March 2013 a federal district court judge ruled that the Pittsylvania County Board of Supervisors violated the First Amendment rights of the ACLU of Virginia’s client by opening meetings with prayers that favored one set of religious beliefs over others. On August 2, 2013, the magistrate judge recommended that defendants be required to pay plaintiffs \$53,229.92 in attorneys’ fees. On August 26, 2013, the district court affirmed that award over the defendants’ objections. The Board has filed an appeal.

# Litigation and Advocacy

## Other Victories in the Courts

### Court of Appeals Strikes Down Virginia Sodomy Law, Supreme Court Denies Review

A panel of the Fourth Circuit Court of Appeals held that no person can be prosecuted using Virginia’s “Crimes Against Nature” statute, which criminalizes all acts of oral and anal sex (including private acts between consenting married and unmarried adults). The ACLU of Virginia joined Lambda Legal and University of California, Irvine Law School Dean Erwin Chemerinsky in a friend-of-the-court brief urging the court to invalidate all prosecutions under the statute. The court wrote that the U.S. Supreme Court’s landmark 2003 ruling, *Lawrence v. Texas*, invalidated all state statutes that criminalize sexual activity between consenting adults, and ruled that such statutes may not be the basis of any criminal prosecution. The United States Supreme Court began its fall term by refusing to review the Fourth Circuit’s decision.

### Fourth Circuit Affirms Rejection of State Residency Requirement for Petition Circulators, AG Appeals

We filed a complaint and motion for preliminary injunction on May 14, 2012, challenging the state’s rule that only residents of Virginia can circulate petitions for candidates. On July 30, 2012, the district court ordered the State Board of Elections to stop enforcing the residency requirement. On May 29, 2013, the Fourth Circuit Court of Appeals affirmed the district court’s ruling. On August 16, the Virginia Attorney General filed a petition asking the U.S. Supreme Court to review the case.

### Sheriff Violated First Amendment Rights of Contract Workers Subjected to Strip Searches in Portsmouth

In April 2012, the ACLU of Virginia filed a complaint on behalf of nine female contract health and food services providers for the Portsmouth City Jail, who were subjected to strip searches. Because of the suit, the sheriff revoked our clients’ security clearances and made them leave the jail. After a trial, on April 23, 2013, a jury found in favor of the defendants, but the judge held that the sheriff had violated the plaintiffs’ First Amendment rights by revoking their security clearances in retaliation for filing the suit and ordered the security clearances to be restored. On July 24, the court awarded \$23,743 in attorneys’ fees to the plaintiffs.

## ACLU of Virginia Board of Directors

Jeff Kerr, *President*  
Jayne Barnard, *Immediate Past President*  
Stew Dunn, *Vice-President* Libby Witt, *Secretary*  
Steve Levinson, *Vice-President* Sandy Smith, *Treasurer*  
George Smith, *Vice-President* Ed Rosenthal, *Legal Panel Chair*

### Liz Gilchrist, National Board Representative

Patrick Anderson	James Morton
David Baugh	Stephen Nash
Janet Cook	John Neal
Tom Fitzpatrick	Aida Pacheco
Howard Gholson	Jerry Peters
Lavonda Graham-Williams	Isabelle Richman
Vivian Hamilton	Mona Siddiqui
Jim Heilman	Fay Slotnick
John Levy	Joan Straumanis
Scott Michelman	Joan Vail
Art Miller	Barbara Ziony

## Staff

Claire Gastañaga, *Executive Director*  
Elizabeth Wong, *Deputy Director*  
Valerie Jones-Fleming, *Office Manager*  
Rebecca Glenberg, *Legal Director*  
Hope Amezcua, *Staff Attorney*  
Joseph Montano, *Paralegal*  
Frank Knaack, *Director of Public Policy and Communications*  
Kathy Greenier, *Director, Reproductive Freedom Project*  
Aisha Michel, *Director, Patricia M. Arnold Women’s Rights Project*  
Tamara Mason, *Communications & Development Assistant*

## ~Support The ACLU Foundation~

I would like to support the public education and litigation work of the ACLU Foundation of Virginia. Enclosed is my tax-deductible donation of \$\_\_\_\_\_.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City/County: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Check enclosed (make payable to ACLU Foundation of Virginia).

Please charge my  VISA  MC  AMEX

Card Number: \_\_\_\_\_

Exp. Date: \_\_\_\_\_ (MM/YY)

Signature: \_\_\_\_\_  
(name as it appears on your card)

Or visit us online at [www.acluva.org](http://www.acluva.org) and click “Donate.”

