



VIRGINIA LIBERTIES

NEWSLETTER OF THE AMERICAN CIVIL LIBERTIES UNION OF VIRGINIA, SPRING 2002

The ACLU of Virginia in the Wake of September 11

Message from Charles Rust-Tierney, President

Long recognized as one of the nation's foremost advocacy groups, the ACLU emerged as the preeminent voice for protecting civil liberties following the attacks by terrorists last fall. While the National ACLU continues to work at the highest levels of public policy, most notably in Congress, the state affiliates, as always, are in the trenches.

In this newsletter, you will find numerous references to the ACLU of Virginia's work on post-September 11 issues, from our op-ed that appeared in newspapers last fall to our defense of the suspended Muslim student attending UVA, from protecting a shopkeeper's right to post an anti-terrorism sign to lobbying against the General Assembly's overreactions to terrorism.

And there are other important efforts you will *not* read about here. You will not see a listing of the scores of speaking engagements and media interviews taken on by staff and volunteers to educate the public on the value of maintaining

constitutional rights in times of crisis. This kind of public education is especially important at a time when so many people seem eager to put aside fairness and freedom to fight terrorism.

You also will not find chronicled in this newsletter the numerous calls to our office from concerned minority groups and individuals seeking guidance as the threats to their privacy and safety mount. Some say that our nation is returning to normal, but that is certainly not true for those who practice the Muslim faith or whose name or appearance even vaguely ties them to the Middle East.

For the ACLU, the words "Equal Justice for All" are more than an inscription above the entrance to the U. S. Supreme Court, they represent the lifeblood of our constitutional form of government. As our new national director Anthony Romero said recently: "After we win the war on terrorism, we all want to be able to recognize our country and our democracy."

ACLU, Rev. Jerry Falwell Join Forces...

Eighteenth Century Disestablishment Law Overturned

Not long after Rev. Jerry Falwell blamed the ACLU, gays and abortionists for the September 11 terrorist attacks, the Lynchburg evangelist and the ACLU of Virginia joined forces to challenge antiquated Virginia laws that prevent religious organizations from incorporating and limit the amount of land they may own.

A quick resolution was obtained on the question of incorporation, when a federal judge ruled in April that Virginia's ban on church incorporation violates the free exercise clause of the First Amendment. The land restriction question has not yet been addressed by the court.

Other than West Virginia, Virginia is the only state that prevents churches from incorporating and limits their land ownership. The Virginia laws were intended to curb the power of the Anglican Church, which was incorporated by the King and held vast amounts of land in Virginia in the 18th century. But in the modern world, these laws unnecessarily restrict religious freedom and treat religious organizations less favorably than similar non-religious groups.

"Know Your Rights" Brochure Available in Seven Languages

The ACLU has produced a brochure advising citizens and non-citizens on their rights when they are stopped by the police, FBI, INS, or Customs Service. It is available in English, Spanish, Arabic, Farsi, Hindi, Pujabi and Urdu. Copies are available by contacting the ACLU of Virginia (see information on back page).

ACLU Lawsuit Supports Gay Adoptions in Virginia

The ACLU of Virginia has filed a lawsuit on behalf of an Episcopal minister who, because she is a lesbian, has been denied the right to adopt an out-of-state child. Although nothing in Virginia law prevents the adoption from occurring, under the Interstate Compact on the Placement of Children, the state into which an adopted child is received must approve the adoption.

The Virginia Department of Social Services has refused for several years to approve Rev. Linda Kaufman for adoption of a Washington, D.C. child. Kaufman, who lives in Arlington, already has one adopted child and by all accounts is a fit and able parent. She has been told that the Department of Social Services refuses to consider her as an adoptive parent because she is a lesbian.

The case has been filed in Arlington Circuit Court in conjunction with the LAMDA Legal Defense and Education Fund. The ACLU and Lambda are asking the court to declare that any policy or practice of excluding gays as adoptive parents is unconstitutional, and that Virginia, under its own laws, must make individualized decisions in regard to adoption approvals.

ACLU OF VIRGINIA LITIGATION...

Federal Judge Declares VMI Prayers Unconstitutional

U.S. District Court Judge Norman K Moon has ruled that school-sponsored prayers at the Virginia Military Institute violate the Constitutional mandate for separation of church and state.

Moon's decision came in response to a lawsuit filed by the ACLU challenging VMI's practice of gathering students together each evening for a prayer immediately before dinner. In his opinion, the judge wrote: "Because of the intense adversarial environment created by the Institute's adversarial method, under which students are instructed to subordinate [their] own desires and well-being to the good of the whole unit, the primary effect

of this practice has been to compel students to participate in a school-sponsored religious exercise. Finally, because the prayers are drafted and recited at the direction of the Institute's Superintendent, the result is that government has become completely entangled with religion."

The Virginia Attorney General has asked the Fourth Circuit Court of Appeals to overrule the lower court decision. The plaintiffs, VMI cadets Neil Mellon and Paul Knick, were represented by ACLU legal director Rebecca Glenberg with the assistance of cooperating attorney Jane Glenn of Roanoke.

Lynchburg Assembly Ordinance Struck Down

The ACLU successfully represented a member of the Lynchburg Peace Education Center who was arrested for protesting without a permit. Jack Payden-Travers, joined by six others, was protesting the bombing of Afghanistan last fall when he was charged with violating a city ordinance that requires all groups of five or more to obtain a permit if they plan to gather in a public place.

ACLU cooperating attorney David Baugh argued that the city's trigger number for requiring a permit to demonstrate is too low. A Lynchburg Circuit Court judge agreed, ruling that the ordinance violates the constitutional guarantee of free speech and assembly.

Court Rules Patients in Mental Institutions Are Entitled to Better Medical Care

Patients in state mental institutions are entitled to a higher level of care than their counterparts in state prisons, the U.S. Court of Appeals for the Fourth Circuit ruled in March. The Court's decision came in the case of a mentally ill woman, Maura Patten, who died in 1997 after Western State Hospital failed to adequately respond to her rapidly deteriorating physical condition

A lower court had earlier ruled that Patten's estate was not entitled to legal recourse because Patten had not been treated with "deliberate indifference," the standard for medical care that applies to state prisoners. Lawyers Stephen Bricker and ACLU legal director Rebecca Glenberg claimed that the standard of care for mental patients should exceed deliberate indifference, as they are in the state's care but have not committed a crime.

The Court agreed, imposing a "professionally accepted judgment standard" on the level of medical care to be provided to state mental patients. As a result, any state patient harmed by medical treatment that substantially departs from accepted professional judgment now has a constitutional claim.

In addition to establishing a higher standard of medical care for mental patients, ACLU lawyers also asked to have Ms. Patten's case retried in the lower court. Unfortunately for Patten's survivors, the Appeals Court refused this request.

Third Parties Gain Label on Ballot

A federal judge in Richmond has ordered the State Board of Elections to list the political party affiliations of minor-party candidates on ballots. The order came in the wake of a challenge by the ACLU of Virginia and the Southern Regional ACLU to a state law that allows only candidates from "recognized" parties to have their party name listed on the ballot.

In order to be "recognized," a political party must have run a candidate for statewide office in at least one of the two preceding elections, and that candidate must have received at least ten percent of the vote. Under this definition, only Republicans and Democrats qualify in Virginia. All other candidates -- including those from the Libertarian, Green or Reform Party -- were labeled as "independents."

In January, the General Assembly followed the courts' order, amending the Virginia law to allow party affiliations of all qualified candidates to be listed on the ballot. Plaintiffs in the case were four Virginia Libertarian Party candidates.

ACLU Argues Pentagon Grounds are Public Forum

The Fourth Circuit Court of Appeals heard arguments recently from ACLU cooperating attorney Sebastian Graber on why the grounds of the Pentagon should be considered a public forum. The case stems from a 1999 protest at the Pentagon that resulted in the arrests of peace demonstrators who refused to leave when asked. The protestors were convicted of refusing to obey a lawful order. But the ACLU argues that the Pentagon grounds are a public forum where protestors have a First Amendment right to assemble. Pentagon officials, therefore, did not have the authority to ask them to leave. A decision is expected sometime this summer.

Muslim Student Who Wrote Letter Allowed to Return to UVA

Under pressure from ACLU lawyers, the University of Virginia agreed recently to allow honor student Abdalmuhssin El-Yacoubi to return to campus. The decision same came less than a week after the student received notice from the university ordering him to stay off campus.

Abdalmuhssin, an American citizen whose family resides in Alexandria, came under federal scrutiny after security personnel at JFK airport found a letter from him in his brother's luggage. In the letter, Abdalmuhssin expressed concerns about his brother's safety while traveling in the Middle East and wished him well on his "jihad." Although the use of the word "jihad" in the context of the letter

only refers to the general struggle for religious perfection expected of all Muslims, it caused airport security guards to become suspicious.

Abdalmuhssin's brother was allowed to proceed from JFK to Israel, but he and a companion were turned back once they reached the airport in Tel-Aviv. Later, Abdalmuhssin himself was detained and questioned by federal authorities, but neither he nor his brother was charged with any crime. However, after articles about Abdalmuhssin's experiences appeared in the University of Virginia student newspaper, Abdalmuhssin received a letter from University officials telling him he could no longer attend classes.

"Here is an excellent student in every respect who merely wrote a letter to his brother wishing him well on his trip to the Middle East," said ACLU of Virginia executive director Kent Willis. "The next thing he knows, he is detained and interrogated by the federal officials, and he is dismissed from school."

"Ultimately, this is about having the wrong name at the wrong time, and it paints a frightening picture of our society at this moment," added Willis. "No matter how we feel after September 11, discrimination on the basis of religion is unacceptable." ACLU of Virginia legal director Rebecca Glenberg represented Abdalmuhssin in negotiations with the University.

Corrections Rescinds Mail Opening Policy

The Virginia Department of Corrections has quietly rescinded a new legal mail policy, after three months of disregarding attorney-client privilege under the pretense of taking anti-terrorism precautions.

For many years DOC opened legal mail only in the presence of inmates so that the inmates could be sure that prison officials were not reading it. A new policy, implemented last November, allowed officials to open legal mail out of the presence of inmates.

The ACLU warned DOC that the policy was unconstitutional if it did not include safeguards to prevent mail from being read by prison officials.

Butt for ACLU, "Terrorists, Kiss This" Sign Would be Gone

Efforts to remove a sign from a sidewalk in downtown Hopewell ceased this winter after the ACLU warned city Mayor Anthony J. Zevgolis that removing the sign would constitute a violation of the First Amendment. The sign, a bent-over mannequin with "Terrorists Kiss This!" emblazoned across its buttocks, was displayed on the sidewalk in front of Pinkleton's Bargain Bazaar. The mayor threatened to pass an ordinance banning signs on sidewalks.

Briefly...

Student Drug-Testing Program Derailed

Fearful of an ACLU lawsuit, Mathews County officials have abandoned plans for a controversial drug testing program for high school students. Under the program, high school students who agreed to submit to drug testing were to have been given rewards, such as free parking and admission to school events. Those who did not submit would get no rewards. ACLU executive director Kent Willis described this approach as "bribing students to sacrifice a constitutional right" not to be drug-tested.

Cohabiting Daycare Provider Gets License Back

Under threat of a lawsuit from the ACLU, the Virginia Department of Social Services reinstated the license of a Norfolk daycare provider accused of violating the state's cohabitation law. DSS told Darlene Davis last year that her license to operate a daycare center might be rescinded because she lives with a man to whom she is not married. Davis, a daycare operator for 30 years, has lived with her boyfriend for 16 of those years. Writing to DSS on her behalf, legal director Rebecca Glenberg pointed out that a refusal to renew Davis' license because of her living arrangements would violate her constitutional rights of privacy and intimate association.

Rehab Program Cannot Require Religious Test

State prisoners compelled to undergo drug abuse counseling in a "therapeutic community" at the Fluvanna Correctional Center for Women are no longer required to submit to a "higher power" or else lose their accumulated good time. Modeled on "12-step" programs, the central tenet of which is surrender to a higher power, the Fluvanna program has changed its approach as the result of negotiations between Fluvanna Warden Patti Lee Huffman and legal director Rebecca Glenberg. The program no longer requires or promotes religion, nor does it prohibit participants from expressing religious beliefs.

AT THE STATE CAPITOL...

By Laura LaFay, Associate Director

Convening in the shadow of September 11, the 2002 session of the Virginia General Assembly was marked by patriotic gestures, a renewed interest in public displays of religion, and a plethora of anti-terrorism measures. Civil libertarians can derive solace from the fact that, when the cannons fell silent and the smoke cleared, the status quo was battered but largely intact.

Anti-Terrorism Bills

Numerous anti-terrorism bills were ultimately consolidated into the *Comprehensive Terrorism Act*, naming and punishing a number of vaguely defined "terroristic acts" and expanding the state's death penalty to include "terrorist masterminds."

House and Senate bills incorporating into the state's Freedom of Information Act (FOIA) an exemption for "all plans to prevent or respond to terrorist activity" sailed through both chambers.

Two anti-terrorism bills implicating privacy rights passed easily. One requires health care workers to tell the state police whenever they treat someone for "injuries associated with terrorism." The other requires colleges and universities to report the extended absences of foreign students to the State Council of Higher Education.

DNA Testing of Arrestees

A bill requiring police to collect the DNA of all persons arrested for violent felonies passed easily. As a result, Virginia will become the first state to actively collect such information, and its DNA databank, already the largest in the nation, will grow even larger

Privacy

Although none passed, several bills pertaining to driver's licenses were introduced, inspired by the news that some of the the September 11 terrorists had obtained their licenses in Virginia. One called for fingerprints on the driver's licenses of all non-citizens. Another called for thumbprints on all driver's licenses. A third bill required police to fingerprint anyone who failed to show them a driver's license

Church, State & Schools

Both houses passed bills requiring the posting of the motto, "In God We Trust" in courtrooms, schools and government buildings. Governor Warner attempted to put the bills on hold by amending them to require state funds before implementation. However, during the veto session legislators rejected the Governor's amendments. A bill intended to permit the posting of the Ten Commandments in public schools was defeated, but only after a Senate Committee bottled up the version passed by the House.

Civil Rights

A racial profiling bill requiring the collection of data on the race and ethnicity of drivers stopped by police was withdrawn in favor of a weaker measure supported by the Governor. The Governor's bill, which passed, requires police to undergo training in "sensitivity to cultural diversity."

A bill intended to prevent the disabled, elderly and gay couples from pooling their funds to obtain low-cost housing passed the House, but died in the Senate General Laws Committee.

Three bills to facilitate the restoration of civil rights to felons went nowhere this session, despite the fact that a legislative task force held meetings throughout the previous year on the subject.

Death Penalty Reform

The post-September 11 mood of lawmakers dampened the death penalty momentum gained last year. Legislators defeated all death penalty moratorium and abolition bills in committee. One bill, outlawing the death penalty for the mentally retarded, made it through the Senate only to be killed in the House Courts of Justice Committee.

Rights of the Disabled

Legislators passed for the third time a bill to make the Department for the Rights of Virginians with Disabilities into an independent agency. Mental Health advocates have complained for years that DRVD has been ineffective at monitoring state agencies because it is one. Although vetoed two year running by Governor Gilmore, Governor Warner has signed the long overdue bill into law.

Free Speech

Lawmakers defeated several bills to control expression in schools. A bill requiring patriotism to be taught by contrasting our freedoms with less free nations passed the House but not the Senate, as did a bill prohibiting discussion of sodomy in family life classes. The Senate also blocked an unnecessary House bill that prohibited school boards from banning Boy Scout meetings on school property.

Virginia became only the second state to pass a "Stand by Your Ad" law, which requires political candidates to identify themselves on all advertising.

Available Now!

ACLU Review of the 2002 Legislative Session

Our review of the 2002 session offers a description of legislative developments in all major areas of concern to civil libertarians, as well as the legislative histories of about 75 bills. If you would like a copy, please contact the office or visit our website (see back page for numbers).

Reproductive Rights

Pro-choice advocates were relieved at the failure of bills requiring minors to obtain parental consent before getting an abortion. Although the House bill passed easily, both versions were killed in the Senate Education and Health Committee.

Several more bills restricting abortion rights also saw narrow defeats. One created a criminal charge for killing or harming a fetus. Another imposed financially prohibitive regulations on abortion clinics. A third placed onerous reporting requirements on doctors who perform abortions.

The so-called "medically-induced infanticide" bill outlawed the same procedure banned by Virginia's so-called "partial birth abortion" law, which was declared unconstitutional last year. The bill passed both chambers, was vetoed by the Governor, revived by an override vote in the House, then narrowly failed in the Senate.

IN CRISIS, CITIZENS MUST BECOME GUARDIANS OF LIBERTY

By Kent Willis, Executive Director

George Bernard Shaw once asserted that for every perplexing, thorny problem society faces, there is a simple solution...and it is wrong. This is particularly true in troubled times like these, when quick-fix answers are being sought for the complex questions spawned by the tragic events of September 11.

History offers us examples of simple solutions that were not only wrong, but also embarrassing to our whole nation. After the bombing of Pearl Harbor, the government wondered what to do with thousands of Japanese-American citizens. The answer--and a simple one it was--was to lock them away in prison camps until the war was over. It seemed to make sense at the time. Now it is regarded as one of the darkest moments of the last century.

Earlier, in the midst of World War I, Congress passed the Sedition Act, which, in short, made it illegal to criticize the government. Thousands were prosecuted under this law. A minister was sentenced to fifteen years in prison for preaching that war was un-Christian, a newspaper editor convicted for questioning the draft.

Until it veered out of control, Senator Joseph McCarthy's massive witch-hunt to root out the threat of communism in the United States was considered a patriotic, nation-saving endeavor. Now, that, too, is an embarrassing blemish on our history.

Six months ago, these aberrations seemed to exist only in an abstract past. But the terrorist attacks on our soil have created an atmosphere so charged with emotion and peril that we risk forgetting these important lessons of history.

We recoil at the Sedition Act of 1918, the internment of Japanese-Americans, and McCarthyism. We know our government leaders in the twentieth century were generally wise and decent people who generally made wise and decent decisions. But we must ask what motivated them to trample so blindly on our rights of expression, association, privacy and equality.

The answer precedes the question. For it was precisely these kinds of actions that Jefferson and Madison sought to curb with the Bill of Rights. They knew well that the main objective of any government is to keep order, and that freedom tends to make society less orderly. Thus, even the most enlightened government, if left unchecked, has a tendency to reduce individual liberties, especially in times of crises.

Right now, government officials are discussing a number of measures--such as national identifiers for all citizens, unlimited detention of some suspects, searches without warrants, unrestricted wiretapping, and racial and ethnic profiling at airports-- that seem awfully attractive in this time of unease. But the wise among us realize that, if our government were allowed to do any of these things, we would be living in a police state, not a free society.

"Civil libertarians have long argued that we are a nation rich and resourceful enough to be both secure and free. The events of September 11 rightly woke us up to the threat of terrorism, but they should not frighten us into being less free."

Every day, we hear public officials say that if we give up our freedoms in order to make our nation more secure, the terrorists have won. This is true, and it is comforting to hear it, no matter how often it is repeated. But when it comes time to act, the same public officials put on their government hats and ask us to give up more liberties.

For example, the Patriot Act of 2001, which was signed into law by President Bush on October 26, expands the government's ability to freeze assets, wiretap, intercept email, and detain suspects. It will be used to fight terrorism, certainly, but it also gives the government unprecedented power to pry into and meddle with the lives of ordinary citizens.

The effectiveness of this new law -- and others that are being proposed -- remains to be measured. Squelching

protests during World War I did not contribute to winning the war. McCarthy's unmasking of a few ragtag communist sympathizers did nothing to topple the Soviet Union. And we now acknowledge that the Japanese-Americans we imprisoned and stripped of their property were simply American citizens with skin of a different color, no more or less likely to undermine the war effort than any other citizen.

Civil libertarians have long argued that we are a nation rich enough and resourceful enough to be both secure and free. The events of September 11 rightly woke us up to the threat of terrorism, but they should not frighten us into being less free.

There is both reassurance and good guidance to be found in the words of Supreme Court Justice Thurgood Marshall. "This country stands tallest in troubled times," he wrote in a 1972 court decision. It is "a country that clings to fundamental principles, cherishes its constitutional heritage, and rejects simple solutions that compromise the values that lie at the roots of our democratic system."

We now look to our government leaders, especially the President and Congress, to take appropriate action to combat terrorism. But we must also remember that the inclinations of these individuals -- regardless of the freedom-embracing language they use -- is to envision the solution through government eyes. This means expanding government power through strategies likely to erode our basic freedoms as they are implemented.

As the citizens of the freest nation in the world, we have not just a right, but a duty, to stand tall as the true sentinels of liberty. We must let our government know that, while we want real solutions, we do not intend to sacrifice our freedom to get them.

If we are fortunate, we will avoid repeating the shameful acts of the past, keep government powers in check, successfully combat terrorism, and maintain our freedoms.

Jefferson, Madison--and even George Bernard Shaw --would be proud.

NOTICES...

Board Candidates Sought

If you would like to be considered for candidacy for the ACLU of Virginia board of directors, please send a brief statement of interest and a resume to the Nominating Committee of the ACLU of Virginia at the address below. Or you may submit a petition for candidacy signed by at least five members of the ACLU of Virginia. Statements of interest and petitions must be postmarked no later than June 15, 2002. Candidates are elected by a vote of the membership.

For more information, contact ACLU of Virginia executive director Kent Willis.

-- Contacting the ACLU of Virginia --

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ACLU of Virginia

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NOVA Chapter Crabfest, June 29, 2002

All you can eat crabs, hamburgers, hotdogs, plus student essay contest winners and guest speakers on the state of civil liberties in Virginia.

1:00-5:00 p.m.

Fort Ward Park, Alexandria,

\$15 single, \$25 for two

Call (703) 360-1096 for details

Death Penalty Rally, May 20, 2002

Virginians for Alternatives to the Death Penalty will hold a rally to observe the tenth anniversary of the execution of Roger Keith Coleman and to demand that the state allow DNA testing of evidence related to his case.

11:30 a.m.

Capitol Grounds , Bell Tower, Richmond

For information, call VADP (434/ 960-7779)

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