

Virginia Liberties

Newsletter of the American Civil Liberties Union of Virginia Summer 2001

Ballot Law Inequities Challenged on Behalf of Minor Parties

Representing four Virginia Libertarian Party candidates, lawyers for the ACLU are challenging a new state law that allows major political party candidates to be labeled on ballots by their party affiliation, but requires all other candidates to be referred to as "independents." As result of the new law, Democratic and Republican candidates will be recognized on ballots by their party affiliation, while candidates for the Libertarian, Green, or any other minor party will be mislabeled as independents.

The lawsuit, filed in late July in federal court in Richmond, claims that the statute infringes on the right of citizens or private organizations not to be forced by the government to say something against their beliefs (in this instance, to be misleadingly labeled). It also violates the equal protection clause by discriminating against minor parties. The ACLU is

asking the court to order the State Board of Elections to identify all qualified candidates on ballots by the name of their party.

"This case is not just about the constitutional rights of political parties," said ACLU of Virginia executive director Kent Willis. "Voters have a right to know for whom they are casting their ballots. Calling a Libertarian Party candidate an independent is grossly misleading."

Under the law, which took effect on January 1, 2001, only candidates for state and federal office from "recognized" political parties will have their names and party affiliation printed on ballots. However, in order to be "recognized," a party must have run a candidate for statewide office in at least one of the two preceding elections, and that candidate must have received ten percent of the vote in one of those elections.

Deceased Mental Patient's Case Taken Up

The ACLU of Virginia has taken up the cause of mental patient Maura Patten, who died of cardiac arrest while residing at Western State Hospital in Staunton. Before dying, Patten had repeatedly complained to hospital staff that she could not breathe, but received no treatment. A federal judge dismissed the case, ruling that the hospital staff had not acted with "deliberate indifference" toward Mrs. Patten. The ACLU claims the district court judge used the wrong standard for determining when the state is legally responsible for a patient's death.

Filed in the Fourth Circuit Court of Appeals, the ACLU brief argues that mental patients in state hospitals are entitled to a higher level of care. If the existing ruling holds, personnel working in state hospitals can only be held responsible for their actions if they consciously decide to ignore a patient they know to be in dire need of medical treatment. The case is scheduled for oral arguments before a three-judge panel in September.

Employee Fired for Letter to the Editor Is Compensated

In a settlement reached shortly before going to trial, Virginia Tech extension agent Dennis Bishop received back pay and legal fees totaling \$22,000, after being demoted for writing a letter to a local newspaper. The letter, published by the Fredericksburg Free Lance-Star, criticized traditional methods of farming while praising organic farming. Bishop wrote the letter on his own time, using his personal computer, and did not identify himself as an extension agent. ACLU Legal director Rebecca Glenberg represented Bishop, arguing that the First Amendment protected his rights to have the letter published.

Empowerment Cards for Virginia Voters to Be Available Soon

A wallet-sized Virginia voter empowerment card will be available from the ACLU in early September. The card provides valuable information on how, when, and where to vote, as well as how to handle potential problems at the polls on election day. Contact us to request your own copy or to receive additional copies for distribution at the polls and to community groups.

Racially Fair Redistricting Promoted

Just as Virginia entered the 2001 redistricting cycle, the ACLU of Virginia produced a manual for promoting racial fairness in the redistricting process at the local level. The 39-page booklet, titled *Fair Redistricting in Virginia: Understanding and Advocating for Racially Fair Redistricting in Virginia's Cities, Counties and Towns*, includes an overview of local redistricting in Virginia over the last twenty years, a discussion of recent developments in the law, and information on how individuals and community

groups can influence the redistricting process. With more than 700 copies in distribution, the manual has been widely used since late April by minority groups and public officials throughout the state.

Through our consultant, Bill Cooper, the ACLU of Virginia also draws election plans for citizens who wish to submit their own designs to town, county, or city officials. For a copy of the manual or more information on the designing of election plans, call (804) 644-8080.

ACLU of Virginia Litigation...

Appeals Court Says City May Not Privatize Streets to Restrict Citizens

The Virginia Court of Appeals has ruled that the City of Richmond may not privatize public streets and sidewalks as a ruse for controlling citizens access. The case stems from a City of Richmond ordinance that deeded certain sidewalks and streets in public housing projects to the Richmond Redevelopment and Housing Authority. The Housing Authority then adopted rules allowing them to ban individuals from the using the streets and sidewalks when they have no "legitimate business" to conduct, even if those individuals have neither broken any laws nor caused any disturbances. We filed an amicus brief with the Court of Appeals, asserting that public streets and sidewalks are public forums from which the city may not unreasonably ban citizens.

Fourth Circuit Court of Appeals Upholds Minute of Silence Law

The Fourth Circuit Court of Appeals has voted 2-1 to uphold the constitutionality of the Virginia law mandating a daily minute of silence for "meditation, prayer or other silent activity" in public schools. Calling the legislation a "Trojan horse," dissenting judge Robert King criticized state legislators for attempting to hide the true intent of the law, which he--and we-- claim is to promote state-sanctioned prayer in public schools. The ACLU initially filed suit in district court in September 2000, arguing that the Virginia law is nearly identical to an Alabama law that was struck down by the Supreme Court in 1986. We will decide soon whether or not to take the case to the U.S. Supreme Court.

Adoption Law Violates Due Process

The Virginia Court of Appeals has struck down a state law creating an absolute six-month time limit on the right of parents to challenge adoptions. Representing a father claiming he was fraudulently deprived of this child, ACLU lawyers argued that the law violated the due process clause by denying him any recourse once the six-month deadline had passed.

Lawsuit Filed Challenging Coerced Student Prayers at VMI Challenged

We have filed a lawsuit challenging VMI's policy requiring all students to be present for a prayer ceremony prior to each evening meal. Under the policy, the entire VMI student body marches in unison to the campus mess hall for supper. After the cadets arrive, but before they are seated, the student chaplain leads them in a prayer provided by the school. Upper class students are not required to attend, but if they do not, they must forgo dinner in the mess hall. The ACLU maintains that by making prayer a condition for eating, VMI violates the principal of separation of church and state.

Appeals Court Upholds Virginia's "Crimes Against Nature" Statute

At a time when other state courts and legislatures are shedding antiquated anti-sodomy laws, the Virginia Court of Appeals has upheld Virginia's "crimes against nature" statute, and the Virginia Supreme Court has declined to hear the case. The case, in which the ACLU had filed an amicus brief, involves ten Roanoke men convicted of solicitation of a felony for asking other men to have oral sex with them. The defendants appealed to the Virginia Court of Appeals, arguing that their convictions should be reversed because the statute is unconstitutional. The Court of Appeals affirmed the conviction, holding that the defendants did not have standing to raise the privacy issue because their conduct took place in a public park.

Lawsuit Spurs Removal of Out of State Inmates from Supermax Facility

Connecticut state officials recently agreed to remove Connecticut prisoners from Wallens Ridge State Prison in Big Stone Gap, Virginia. The action came shortly after the ACLU of Connecticut and the ACLU National Prison Project filed a lawsuit charging Connecticut's top prison official with violating the Eighth Amendment's prohibition against cruel and unusual punishment by allowing the brutal mistreatment of inmates at the Supermax prison facility.

-- Transitions: Kinsey Peeler Departs After Eight-Year Stint --

Public Education and Development Coordinator Kinsey Peeler (formerly Paiste) is leaving the ACLU of Virginia to pursue a new career in landscape design. Kinsey departs having not only done an excellent job in every respect, but also having developed and defined a whole new staff position with the organization. It is hard to believe that her ACLU beginnings were so accidental. They certainly proved to be fortuitous.

After graduating from Randolph-Macon College in the spring of 1993, Kinsey, a native New Yorker, decided to take a temporary job in Richmond while exploring long term employment opportunities. On her first-ever temp assignment, she was sent to perform clerical duties at the ACLU, where she

demonstrated immediately that she was capable of much more. Soon enough, we asked her to join the permanent staff as office manager. Later, when we expanded our public education efforts, Kinsey, with her English degree and positive outlook, was just the person to absorb those duties. Later still, when new board fundraising initiatives demanded more materials, research and staff support, Kinsey took on development duties as well. Of her many accomplishments, one in which Kinsey can take special pride is the original design, continual upgrading, and ongoing maintenance of the ACLU of Virginia website.

We all wish Kinsey the best with in her new career. Thanks for eight great years!

Advocacy...

Proposed VMI Pregnancy Policy Discriminates Against Women

We have strongly advised Virginia Military Institute against adoption of a policy requiring women who become pregnant, or men who cause a pregnancy, to leave school. We maintain that the policy interferes with reproductive freedom and violates pregnancy regulations under Title IX of the Education Amendments of 1972.

Our letter to the Board of Visitors warns that ACLU litigation or loss of federal funds would likely follow the adoption of the policy. VMI has promised to revisit the policy to make certain it does not violate the law in its final form. We will monitor their progress

Richmond Group Allowed to Demonstrate after ACLU Intervenes

When the Virginia Justice Action Coalition (VJAC) ran into a labyrinth of costly, vague and burdensome requirements for holding a small protest rally in a park outside the Virginia Republican Convention in June, they sought assistance from the ACLU. We contacted the Richmond Department of Parks and Recreation and Downtown Presents, a private organization that manages Festival Park and warned them that many of the conditions imposed on VJAC were unconstitutional. We were able to avoid litigation at the last moment when the City of Richmond and Downtown Presents agreed to allow the rally to go forward as planned -- without any permit at all.

ACLU, Arney Join to Fight Facial Recognition Cameras in Va. Beach

The ACLU and Rep. Dick Arney have issued a joint statement opposing the use of facial recognition cameras in Tampa, Florida and Virginia Beach. The cameras take digital photographs of individuals in public places, then compare the photographs to mug shots in a data base to determine if any criminal suspects are among the crowd. The Virginia Beach Police announced last month that they wanted to purchase the cameras, but other public officials -- and the public in general -- have become increasingly skeptical about the highly invasive technology. An independent newspaper poll conducted shortly after the proposal was made public showed 60% support. Three weeks later, after much public discussion on the issue, about 70% opposed the cameras. For now, the decision to purchase has been put off.

ACLU Demands Repeal of Norton Campaign Signs Ordinance

We have told the City of Norton that we will file suit in federal court unless it repeals an ordinance that prohibits residents from placing campaign signs in their yards more than thirty days in advance of an election. Our contention is that the First Amendment protects the right to use one's private property for political speech, absent a compelling governmental reason for creating restrictions. Norton's City Attorney has since announced publicly that the ordinance is unconstitutional, and the City Council will hold a special session in late summer to address the ordinance.

Effort by Pulaski Police to Access Patients' Fingerprints Opposed

The ACLU of Virginia has been highly critical of a proposal by the Pulaski Police Department to collaborate with area pharmacies to take fingerprints of persons who receive prescriptions for Oxycontin. Pulaski police hope the plan will reduce crime that is attributable to illegal trafficking of the popular pain medication. The scheme seems to depend on a loophole in the Fourth Amendment: The police cannot demand the fingerprints from pharmacy customers, but they can train pharmacists to take the fingerprints from customers as a condition of doing business with them. The pharmacists may then give the fingerprints to the police.

Norfolk Day Care Center Threatened by Old Cohabitation Law

We have warned the Department of Social Services that it may not use Virginia's cohabitation law as the basis for refusing to renew the license of a day care center operator. Darlene Davis, who has run a day care center in Norfolk for more than 30 years, was told that her license would not be renewed because she lives with a man to whom she is not married. We have informed Social Services that the Virginia law only prohibits cohabitation that is "lewd and lascivious," and that no one has accused Davis and her roommate of such a relationship. We have also told Social Services that, regardless of the interpretation of the cohabitation law, the decision not to renew the license violates the constitutional right of privacy and intimate association. Parents of children who attend the day care center have unequivocally supported Ms. Davis. Since our communications with Social Services, they have informed Ms. Davis that she may continue to operate the center while they make a final determination.

ACLU Members Help Keep Book on Fairfax County Library Shelves

In response to an emergency mailing in June, ACLU members from throughout Fairfax County inundated school board members with letters, calls and emails opposing the proposed banning of Ken Follett's *Pillars of the Earth*. Although the 973-page historical novel about 12th century cathedral building contained only a few paragraphs concerning sexual encounters and violence, and had been checked out fewer than a dozen times by students in Virginia's largest school district, Parents Against Bad Books In Schools sought to have it entirely removed from school libraries. The book is not assigned for class reading. The Fairfax County School Board ultimately accepted a compromise, voting to restrict access to students in the 10th through 12th grades. Without such strong opposition from ACLU members, the book may have been banned in all Fairfax County Schools.

The Voting Rights Act in 2001: New Rules But Still a Powerful Civil Rights Tool

The following op-ed by executive director Kent Willis, appeared recently in Virginia newspapers.

One hundred years ago at the 1901 Virginia Constitutional Convention, the subject of elected school boards surfaced. Virginia's finest statesman, all of whom were white, debated the issue, but quickly concluded that school boards should be appointed rather than elected to make it easier to prevent African-Americans from serving on them.

Ninety years later, in 1991, Virginia's state and local officials approached the decennial redistricting process in a wholly different atmosphere. The Voting Rights Act of 1965-- thanks to powerful amendments in 1982 and an expansive U.S. Supreme Court ruling in 1986--had finally developed some real muscle. As government officials gathered to draw new election districts, they were also keenly aware of more than a dozen recent voting rights lawsuits striking down racially discriminatory election plans around the state.

So lawmakers began redrawing election boundaries to undo a century of racial gerrymandering. In the process, they added new majority-minority districts in the House of Delegates and the Senate, and created Virginia's first African-American majority Congressional district since Reconstruction. In addition, scores of African-American majority voting districts found their way into local election plans.

The results speak for themselves. In 1983, approximately 75 African-Americans held elective offices in Virginia. By 1993, after the dust had settled from the redistricting process, that number was about 125, an increase of nearly 70%. Virginia seemed to be moving rapidly toward real racial equality in the design of its federal, state, and local election plans.

Now, as the redistricting process begins again in 2001, there is a sense that unfavorable legal developments during the mid-1990's have pushed voting rights so far back that it seems more like 1901 than 2001. That is not true, but this misperception has led to a

fear that voting rights advocates will not come out in full force during 2001, and that even if they do, government officials will not listen to them.

The redistricting rule of thumb in 1991 was straightforward: where local, state, or federal election districts in which minorities comprised a majority of the voters could be drawn, they had to be drawn. This was an oversimplification that gave the Voting Rights Act more punch than it really had. But legislators knew that Virginia was grossly out of compliance with the law, and if they did not draw new majority-minority districts, a federal court would.

Little did anyone know in 1991 that the U.S. Supreme Court was preparing to give the Voting Rights Act a makeover. By the mid-1990s, the nation's highest court had decided, in short, that an ugly looking voting district drawn for the purpose of eliminating racial discrimination violated the Constitution. It was acceptable, the court said, for politicians to twist districts into pretzel-like shapes to assure their own reelection or knock off a rival, but if the district had to look slightly odd to give minorities an equal chance to participate in the political process, it was illegal. The court also ruled that it was unconstitutional for race to be the dominant reason for the shape of a district, no matter how pretty it was.

From these legal developments a new rule of thumb has emerged in 2001: race can no longer be the reason for drawing election district boundaries. But just as the oversimplifications of 1991 exaggerated the power of the Voting Rights Act, the oversimplifications of 2001 are understating it...and dangerously so.

The Supreme Court has ruled only that race cannot be such a dominant factor in the drawing of racial boundaries that it subjugates time-tested redistricting factors such as compactness, communities of interest, and incumbency protection. A majority-minority district is unconstitutional, the court says, only if the government "relied on race in substantial disregard

of customary and traditional redistricting practices."

In truth, very few election districts are ever drawn without taking these traditional factors into consideration. Redistricting is a high stakes political game with numerous competing interests, all of which have some influence over the final design. But because the racial factor can be controversial, it tends to dominate public hearings. Voting rights advocates should not avoid race in their redistricting discussions, but they do need to make sure the record reflects the other factors that contribute significantly to the shape of voting districts.

In addition, Virginia is one of a handful of states covered by Section 5 of the Voting Rights Act. This means that every new redistricting plan must be submitted to the U.S. Department of Justice for its approval before it can be implemented.

The Justice Department will determine if the new plan will make minority voters better off or worse off than they were under the old plan. If minorities are worse off, the plan will be returned to the designers to try again. This part of the Voting Rights Act is the strongest tool available for preserving majority-minority districts in Virginia. But its effectiveness will depend to a large degree on the actions of local civil rights advocates. The Justice Department can examine the census numbers, but other less quantifiable factors used to determine measure the situation for minority votes will have to come from those who live in it.

In a way, Virginia is fortunate. Minority voters saw dramatic advances in the early 1990s, just before the Supreme Court made the redistricting game more difficult. Now, if voting rights advocates play according to the new rules, they can not only protect those gains, but move us still closer to an election system that is truly 100 years removed from the Constitutional Convention of 1901.

The following are candidates for the Board of Directors. Cast your vote now!

Art Albrecht: I have been an ACLU member for more than 25 years and on the board since 1998. During most of my career I was a journalist or was responsible for the work of journalists. That experience gave me many first-hand opportunities to know how extraordinarily valuable the First Amendment is to the flow of vigorous dialogue in this country. In my 25 years as a public television station manager I was all too frequently confronted by angry constituents demanding that a television program they did not like not be aired even though they may not have seen the program.

Kelly Bartges: My association with the ACLU began in 1986, when I served as Associate Director of the Virginia affiliate. Since leaving the staff of the ACLU, I have served as executive director of a non-profit organization serving the families of prison inmates, handled civil rights, criminal, family and juvenile law cases in private practice, and served as an Assistant Public Defender in the Richmond Juvenile Court. For the past seven years, I have taught at the University of Richmond Law School, directing their Youth Advocacy Clinic. Still a loyal "card-carrying" member, I enthusiastically support the work of the Virginia ACLU and would like to continue serving on the board.

Mary Bauer: From 1996 until 1998, I worked as the Legal Director of the ACLU of Virginia. Doing the work of the ACLU day in and out, I came to believe in the principles of this organization passionately. The Bill of Rights is a wondrous document-it is as though someone made a list of all the bad things that governments throughout the ages have done to their citizenry and then created the Bill of Rights to protect the people of the United States. I continue to do civil rights work as a lawyer for farm workers and immigrants throughout Virginia and I am thankful that the ACLU is around to protect all people and I am proud to be a part of the organization.

David P. Baugh: Now, more than ever, all Americans must remember that our country is not soil or a population or even a government. Our country is a philosophy, found in our constitution and bill of rights, which we believe limits our government and ourselves from imposing those natural, but detrimental, inclinations to avoid or limit that which is alien to us. It is the protection of this philosophy and not an allegiance to a flag or blood spilled on a battlefield which is truly American. To belong to and support the ACLU is to dedicate yourself to that philosophy.

Frank Feibelman I was born and grew up in Danville, Va., the son of Holocaust survivor parents, in one of the few homes in the city that was not politically to the right of Ghengis Khan. After graduation from Howard University Law School in 1973, I practiced law in Danville and Richmond and am presently a partner in a four person law firm. I have litigated a few ACLU cases, and am most proud of my first, having represented a kindergarten student with AIDS who was not allowed to attend Fairfax County Public Schools.

Ron Hall Over 14,300 telephone calls ago (I know, because I retain the records) I began coordinating the responses to calls which come to the Northern Virginia Chapter. I bring that perspective into my service to the state affiliate, where I've been a board member since 1979. That perspective also convinces me that we need to concentrate more efforts into ensuring that Virginians have a better understanding of what constitutes a civil liberties violation - and what doesn't.

Howard Gholson I was born and grew up in Lawrenceville, Virginia. After graduating from St. Paul's College, Virginia State University, and Nova Southeastern University, I held an array of education positions at the local, national and international levels. These positions include the Prince William County School System, the U.S. Department of Education, and the International Labor Organization in Geneva, Switzerland. I recently retired as the Dean of Academic Affairs of the College of Continuing Education, Marine Corps University. I am currently a biology teacher at Forest Park High School in Woodbridge, Virginia. During my entire career as a professional educator, I have always supported the goals of the ACLU. I would be honored to continue my services to the ACLU of Virginia as a member of the Board of Directors.

Nicola Laing: Here's your chance to put an alien on the Board--a "resident alien" that is. Having chosen to live in the U.S. after growing up in another country, I believe that I have a special appreciation and respect for the U.S. In spite of the need for some correction and development, over the years I remain impressed with the ideals of "America." I also believe that they get lost all too easily in the day-to-day distractions of life. A watchdog group like the ACLU, willing and able to defend, preserve and continually remind us of just how precious these ideals are, seems to me invaluable. I would be honored to contribute my services to the effort.

Wade Mann: I live in Weems in the Northern Neck and am a retired newspaper editor, publisher and public affairs columnist. I was a Virginia Board member in the recent past. Before coming to Virginia I was a Board member in Indiana. During voting rights litigation in Lancaster County I was both a plaintiff (as ACLU Board member) and a defendant (as Lancaster Electoral Board member).

Sarah Richarson: Having just graduated from William & Mary School of Law after a couple of decades in other careers, I have a fresh appreciation for the legal structure that supports our civil liberties. More than ever, the ACLU's work is crucial in maintaining the bulwarks of freedom, and I welcome the chance to lend my hand to it. I will use the experience I have gained from working with Virginians for Justice and the Chickahominy Watershed Alliance to contribute all I can to the ACLU's board.

Jerry Peters: I have been national ACLU member since the late 1970's and a Va. member since 1991. In 1998 I joined the Board, serving on the development committee and the legal panel, but reluctantly resigned in 1999 to pursue out-of-state opportunities. I was trained as a lawyer and have spent the last 25 years working as an executive and entrepreneur in the information technology industry. My legal training gives me an appreciation for the power and the limitations of the legal system to effect societal change and to protect liberty. My business experience equips me with a set of skills to contribute to the more pragmatic issues that come to the Board. My information technology knowledge allows me to contribute to the discussion regarding electronic information - - the tension that exists between the First Amendment and the right to privacy. My personal commitment to civil liberties instills a passion to use these skills to help the ACLU.

William Coleman: My direct involvement with the ACLU of Virginia began approximately 12 years ago concerning a successful joint effort to eliminate an at-large voting system in the Town of Halifax, the county seat of Halifax County. I was quite impressed with the level of commitment and expertise displayed by Kent Willis, ACLU executive director, and his most able legal staff. Community activism and community/economic development have been my passion and lifetime work. I have witnessed first hand how effective legal advocacy change the quality of life for so many low-income and low-status citizen this Commonwealth and nation. The ACLU has been at the forefront in these efforts. I would like to become an active partner in this organization that has a strong track record in defending and preserving our liberties. I am confident that I can bring a varied perspective to the policy-making functions of the ACLU.

Jerry Thompson: Since my retirement from teaching school in Brunswick County, I have been actively involved with the Brunswick County branch of the NAACP, the Board of Supervisors, the Planning Commission, the local recreation center, and fundraising for St. Paul's College in Lawrenceville. I have been contributing to the ACLU for the last three years and have been involved in fundraising through my association with ACLU of Virginia board member George Smith. *See enclosed resume.*

***To cast your vote,
see the ballot on the next page.***

2001 Board of Directors' Ballot

William Coleman Howard Gholson
 Art Albrecht Kelley Bartges
 Mary Bauer David Baugh
 Jerry Thompson Jerry Peters
 Frank Feibelman Ron Hall
 Nicola Laing Wade Mann
 Sarah Richardson

As a member of the ACLU of Virginia, you may vote for as few or as many of the candidates above as you wish. Joint memberships are allowed two votes each. Terms are three years.

Please detach ballot and mail to the ACLU of Virginia in an envelope that includes your name and return address on the exterior. To insure anonymity, ballots will be separated from the envelope once verification of membership is established. Votes will be counted at the annual membership meeting on September 15th.

You are invited to attend the ACLU of Virginia Annual Membership Meeting

Saturday, September 15, 2000

11:00 a.m. – Noon

Café Olé

2 N. Sixth Street, Richmond

An RSVP is not required, but we would like to know in advance that your are attending.

ACLU of Virginia

6 N. Sixth Street, Suite 400

Richmond, VA 23219

Call us at (804)644-8080

Fax us at (804) 649-2733

E-Mail us at acluva@aol.com

For directions or additional information, please contact the ACLU office.

ACLU of Virginia
6 N. Sixth St., Suite 400
Richmond, VA 23219

Newsletter of the ACLU of Virginia