

Virginia Liberties

Newsletter of the American Civil Liberties Union of Virginia

Fall 2011

Department of Corrections Loosens Shackles on Pregnant Inmates

ACLU-VA's Women's Rights Project lobbies to protect inmates during labor and delivery

The Virginia Department of Corrections has agreed to new rules that will lessen the likelihood of injury to pregnant women by restricting the use of shackles during labor and delivery. The new policy is the result of lobbying from a broad coalition comprised of medical professionals, religious groups, reproductive rights advocates, and the Patricia M. Arnold Women's Rights Project of the ACLU of Virginia.

DOC now prohibits the use of restraints on female inmates during labor, delivery and postpartum recovery, except in extreme circumstances when the inmate poses a danger to herself or others. Under any conditions, restraints must be removed if directed by medical staff. The policy allows handcuffs during the transport of inmates, but they must be used on hands in front of the inmate.

Virginia joins 14 other states with rules against shackling pregnant women.

The new policy is an important first step, but much work still needs to be done to improve the treatment of pregnant incarcerated women. For example, DOC policy still allows hard restraints in situations where soft restraints are equally effective and significantly lessen the chance of injury.

In addition, DOC's policy only affects pregnant inmates housed in state prisons, leaving those in local and regional jails without adequate protection. Regulations for these facilities are controlled by the State Board of Corrections, which is now being approached about making modifications to their policies.

Del. Patrick Hope, who led the effort to lobby the Department of Corrections, introduced an anti-shackling bill in the 2011 General Assembly. HB1488 was defeated in committee before reaching the floor of the House of Delegates. The ACLU and our allies will be supporting a bill in the 2012 legislature to restrict shackling of all incarcerated women in Virginia.



Pittsylvania Invites (and Gets) Lawsuit over Prayers

Federal court precedents are clear: Legislative bodies may formally open their meetings with a prayer, but such prayers must be nonsectarian to prevent the government from appearing to endorse any particular religion.

In August, after receiving a complaint from a Pittsylvania County resident who regularly attends meetings of the Board of Supervisors, lawyers for the ACLU of Virginia sent a letter to the board explaining the legal precedents and requesting that the practice of opening meetings with a Christian prayer cease.

The board refused, inviting the ACLU to file a lawsuit, which we did. In *Doe v. Pittsylvania County*, we represent the individual who contacted us in August. The lawsuit was filed in federal court in September.

After the ACLU's letter, the board passed a resolution removing the sectarian prayers from its official agenda, instead holding them immediately prior to the meeting. This is no different from the original policy, as a sectarian prayer is still being used to begin meetings of the board.

Anti-LGBT Software Removed from School Computers in Prince William

The Prince William County School Board has removed web filtering software that blocks students' access to educational information about lesbian, gay, bisexual, and transgender communities. The voluntary change in policy--which avoids a lawsuit--came after the ACLU of Virginia informed county officials that public schools violate students' rights when they censor age-appropriate information on LGBT issues. Prince William not only blocked access to pro-LGBT websites, such as the It Gets Better Project, but at the same time allowed access to anti-LGBT websites such as the National Association for Research and Therapy of Homosexuality.

The Prince William County software violated both the free speech rights of students and the Equal Access Act, a federal law that prohibits schools from viewpoint discrimination in the allocation of resources for extracurricular activities.

The ACLU of Virginia discovered the website-blocking software in Prince William through Don't Filter Me, a nationwide ACLU initiative designed to combat censorship of LGBT information on public school computer systems. The program invites students and school officials to attempt access to LGBT websites, both pro and con, from school computers and report their findings. Six months after the initiative began, 96 schools in 24 states have modified their internet filter configurations to grant access to pro-LGBT websites. Also as a result of ACLU complaints, Lightspeed Systems, which provides filtering software to schools across the country, announced it will remove from its products the "education.lifestyles" function that allows schools to censor internet access based on viewpoint.

From the Director

Racial Fairness, Redistricting, and Legislative Lamb Slaughtering

Virginia's congressional redistricting plan is dead, caught in a crossfire between the Republican House and Democratic Senate. Both, it seems, are prepared to let a court decide the outcome.

The problem is a difference of opinion about how minority voters should be divided between two districts, the third and the fourth. I won't argue the merits of either proposal, as neither follows the ACLU's recommendation of two 50% minority districts.

I will argue, however, that what we have here is both the very best and very worst of redistricting.

The best is that racial fairness matters, thanks to the Voting Right Act of 1965, perhaps the most effective and far reaching law of the civil rights movement.

From the late 1980s through 2001, the ACLU used the VRA to transform Virginia's political landscape by filing or threatening lawsuits challenging voting schemes intended to dilute the voting strength of African-Americans. The redrawing of election lines from the City of Newport News to the County of Lancaster to the Town of Lawrenceville and in dozens of other jurisdictions doubled the number of elected minorities in the state.

In 1991 when legislators announced it was impossible to draw an African-American majority congressional district, we took up the challenge and designed a new Norfolk-to-Richmond district with 60% minority voters. I remember the headlines from the Richmond News Leader: "ACLU Says Minority District Can Be Drawn." And, thanks to the threat of litigation under the VRA, it was.

The VRA is still around. Ultimately, through the legislature or the courts, it will force Virginia to adopt a racially fair congressional plan. It took over 100 years, the VRA, and a near lawsuit to produce Virginia's first post-Reconstruction majority-minority district in 1991. Now, only 20 years later, we're getting two, or something close to that.



The process of redistricting is, however, another matter, and it is as bad as the VRA is good. All elected officials draw their own election plans using the same approach: First, they do whatever it takes to protect their own re-election. Second, they protect the re-election of the members of their party. Third, with great glee they politically gore members of the other party.

Redistricting is a lamb thrown to a pack of hungry wolves. Some wolves get fed, some don't, but they all get bloody.

Voters lose when politicians look out only for themselves, but no one has invented a completely fair way to redistrict. This year the governor set up a bipartisan redistricting commission. There was also a contest for college students to submit plans. The ACLU even had a great plan. All were ignored.

The 2011 fiasco will lead to calls to reform the redistricting process. We, the voters, need to help policymakers find a fresh and fair approach to a stale and unjust process...for 2021.

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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 addressed to the ACLU of Virginia Nominating Committee Chair. You may also be nominated by a petition signed by five members of the ACLU of Virginia and submitted with a statement of interest. The deadline for submissions is March 12, 2012. Send to Kent Willis at the main office address in Richmond or email acluva@acluva.org.

~Support The ACLU Foundation~

I would like to support the public education and litigation work of the ACLU Foundation of Virginia. Please find enclosed my tax-deductible donation of \$_____.

Name: _____

Address: _____

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Or visit us online at www.acluva.org and click "Donate."

Litigation and Advocacy

In Brief...

Giles Sued for Posting Ten Commandments

The ACLU filed a lawsuit in September against Giles County for posting the Ten Commandments in public schools. The lawsuit follows a six-month long dispute with the school board over the Ten Commandments, which for many years was posted beside the Constitution on school walls. School officials initially removed the Ten Commandments altogether, but then reposted them, then removed them again after the ACLU threatened to sue, then posted them yet again as part of a larger display of a dozen historical documents. We argue that the county's religious reasons for posting the Ten Commandments are the same whether they stand alone, beside the Constitution, or with other documents.

Judge Grants Gay Couple Change of Name

The ACLU scored a second name-change victory for LGBT rights in six months when a Washington County Circuit Court judge allowed a gay couple to share the same last name. The judge had previously denied the name change, ruling that the couple's aim was to appear married, a violation of Virginia's Affirmation of Marriage Act. The ACLU represented Brian Justice and Michael Dye, now Brian and Michael Dye-Justice. In an earlier case, we successfully represented a lesbian couple who had been denied a similar name change.

ACLU Tells Jails to Assist Ramadan Observers

In August, the ACLU sent notice to local and regional jail officials reminding them to accommodate Muslim inmates during the holy month of Ramadan by allowing observing inmates to take their meals between sundown and sunrise, as the Virginia Department of Corrections does. Generally--and to our surprise-- jails responded positively, some asking for additional information or clarification.

ACLU, Equality Virginia Force State to Reopen LGBT Adoption Debate

In August, the ACLU, Equality Virginia, and at least 23 others forced the Virginia Board of Social Services to re-open its public comment period-- required when 25 or more ask for it -- for a proposed regulation that prevents state-licensed adoption and foster care agencies from discriminating on the basis of sexual orientation, religion, age, gender, disability, political beliefs or family status. The board had initially removed the LGBT nondiscrimination language due to lobbying from the governor's office and faith-based groups, which argued that private adoption agencies should be able to follow their religious beliefs when screening prospective parents. During the new comment period, the board received more than two thousand comments, including one from the ACLU, urging the board to prohibit LGBT discrimination.

ACLU Tracks Police Policies on Cell Phone Location Tracking

In an attempt to strip away some of the secrecy that has surrounded the use of electronic tracking devices by police to conduct warrantless spying, the ACLU of Virginia joined 33 other ACLU affiliates in sending Freedom of Information Act requests to local law enforcement agencies demanding to know when, why, and how they are using cell phone location data to track citizens. The ACLU of Virginia also participated in the defense of a Fairfax County man trailed by police through the use of a GPS tracking device placed on his car without a warrant. The FOIA requests are part of the on-going Demand Your DotRights campaign, which ensures that privacy rights are not diminished when technology advances.

On the Banana Man, "Occupy" and Other Free Speech Skirmishes

The Banana Man episode began as a prank, then morphed into a lesson in free speech with very real consequences. At a Colonial Forge High School football game, a student ran the perimeter of the field costumed as banana, an act with no discernable purpose. The principal suspended him and recommended expulsion.

This prompted fellow students to wear yellow "Free the Banana Man" t-shirts to school, which in turn prompted the principal to confiscate the t-shirts and threaten punishment for students who wore them. We wrote school officials reminding them that students have a right to free expression so long as it does not disrupt the educational process. In the end, the principal who overreacted to the banana man prank and who violated the constitutional rights of student protesters resigned.

When the privately-run Market Building Foundation rented from the City of Roanoke a space that has long been used as a public forum, it assumed it had complete control over the area around the space. To cement that control, the Foundation announced in September that the sidewalks around the area would be off-limits to protesters. We informed the Foundation that the renting of a public space for use by a private entity did not give it authority to ban First Amendment activities in its vicinity. Our actions brought support from Plowshares, which often demonstrates at the market, and the *Roanoke Times* editorial page. If legal action is required, we've announced we're ready to help.

The ACLU regularly assists protesters, adhering to the view that public demonstrations should be inexpensive and free of red

tape. We've helped everyone from the Tea Party to the May Day organizers. So when Virginia-based "Occupy Wall Street" protesters asked for help, we distributed Know Your Free Speech Rights pamphlets, and we worked with city officials in Norfolk and Richmond to allow overnight camping.

Charlottesville's Downtown Mall is about as public as a public space gets, a city-owned street turned into pedestrian mall. It even has, famously, a free speech wall donated by our friends at the Thomas Jefferson Center for Freedom of Expression. People from all walks of life, except panhandlers, are welcome. And there's the rub. With ACLU cooperating attorney Jeff Fogel in the lead, we've mounted a legal challenge to an ordinance that so severely restricts begging on the mall as to make it nearly impossible.

Around Virginia

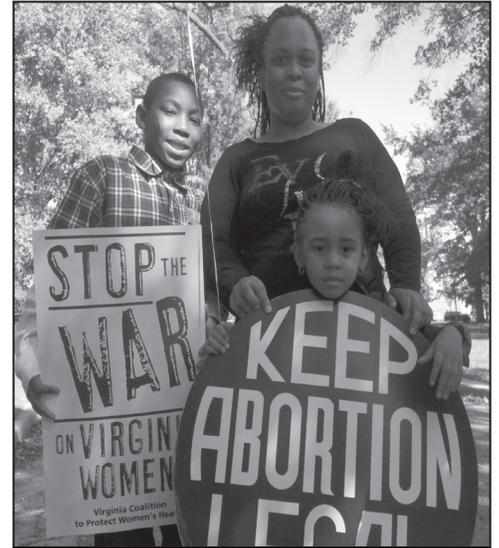
Hundreds Rally in Richmond to Oppose Anti-Choice TRAP Rules

Hundreds of pro-choice supporters rallied at Monroe Park in Richmond on October 15 to oppose new rules imposed on women's health clinics and to urge Virginia's elected officials to stop restricting access to safe and legal abortions.

The rally was one piece of a multi-pronged educational and advocacy effort to oppose the effects of a bill passed in the waning moments of the 2011 General Assembly. SB924 required the Virginia Board of Health to adopt emergency regulations reclassifying as a category of hospitals all women's health clinics that perform five or more first trimester abortions per month.

Passed September 15, the emergency regulations leave Virginia with the harshest rules for abortion providers anywhere in the nation. The regulations, which are not based on need for improved services or safety, require clinics to add costly and unnecessary architectural features. Once approved by the governor, the new regulations will be effective for one year, or longer if extended, beginning in January. In the meantime, the Board of Health will follow the normal process for crafting health regulations, which can take anywhere from 18 months to two years.

The ACLU is a member of the Virginia Coalition to Protect Women's Health, which was organized to oppose the new regulations. For more information or to become involved with the Coalition, go to www.coalitionforwomenshealth.org.



Advocates of all ages attended rally in Richmond.

Hearing -- and Seeing -- the ACLU in Virginia

Over the last six months, ACLU representatives made approximately 300 appearances online or in newspapers and 75 on radio or TV to promote civil liberties in Virginia. But we also do things in the flesh, as this sampling of recent speeches shows. Looking for a speaker? Try Elizabeth Wong at ewong@acluva.org.

IDs and Selective Voter Suppression in Virginia, Constitutional Law Society, University of Richmond Law School, Executive Director Kent Willis

The TRAP Regs: A Threat to Reproductive Freedom, Mary Washington University, Fredericksburg, Women's Rights Director Kathy Greenier

Free Speech Developments in Journalism, University of Richmond, Legal Director Rebecca Glenberg

Using Strategic Litigation to Advance Civil Liberties in the States, Bill of Rights Institute at William and Mary Law School, Williamsburg, Kent Willis

Reforming Virginia's Felon Disenfranchisement Law, Tidewater Libertarian Party, Virginia Beach, Dunn Fellow Tom Fitzpatrick

Voting and the Lingering Legacy of Jim Crow, Northern Virginia Ethical Society, Vienna, Kent Willis

Why I am Optimistic about Civil Liberties in Virginia, ACLU Reception, Alexandria, President Jayne Barnard

Children and Violent Video Games, a Question of Free Speech, The 5400 Club, Richmond, Kent Willis

NoVA ACLU Chapter Draws Big Crowd for Alexandria Crabfest

Thanks to the highly coordinated work of many dedicated volunteers, the Northern Virginia ACLU Chapter held yet another successful Crabfest and Annual Membership meeting at Fort Hunt Park in Alexandria. On June 26, 180 supporters dined on crabs, burgers, and other picnic fixins. NoVA Chapter President Steve Pershing presided, and Kent Willis gave an update on ACLU activities in Virginia, followed by a lively question and answer session. Participants sat in the shade of an outdoor picnic shelter to hear about, and comment on, the latest threats to religious liberty, free speech, reproductive freedom, and privacy rights. To become involved in the busy and always well-organized Northern Virginia ACLU Chapter, send an email to novachapter@acluva.org.

Charlottesville Chapter Revives Annual Civil Liberties Bierfest

The Charlottesville ACLU Bierfest, an annual tradition from the 1970s to the early 2000s, was reborn this year on September 16 with a strong showing of new and old supporters gathering in Peter McIntosh's beautifully landscaped backyard. Thanks to ACLU state board member Jim Heilman, past state board president Herb Beskin and Peter, the 2011 Bierfest picked up right where the old one left off. About 45 Charlottesville area members showed up, consumed beer and wine (a new addition to the festivities), and talked civil liberties. ACLU of Virginia Executive Director Kent Willis offered remarks on the state of civil liberties in Virginia, and ACLU cooperating attorney Jeff Fogel, provided an update on the federal lawsuit challenging the Charlottesville anti-panhandling ordinance.

If you are interested in reviving chapter activities in the Charlottesville area and helping to keep the Bierfest going for another 30 years, contact Jim Heilman at jimheilman@cstone.net.

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Virginia ACLU Reports: Find our annual report, review of the 2011 General Assembly Session, and litigation and legal advocacy report on our website, www.acluva.org.

You're Invited!

**Northern Virginia Chapter of the ACLU
Annual Legislative Issues Brunch**

Sunday, February 19, 1:00-3:30 p.m.

Ernst Cultural Center

**Northern Virginia Community College
8333 Little River Turnpike, Annandale**

**"Civil Liberties and the
2012 General Assembly"**

Hope R. Amezcuita

ACLU of Virginia Legislative Counsel

Q&A to follow

Brunch at 1:00 p.m. Program starts at 2:00 p.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 e-mail to novachapter@acluva.org.