

## Surveillance Technology Shows Need for Changes to Privacy Laws

Our society is increasingly under surveillance by corporations and the government. For example, Governor McDonnell commented that surveillance drones should be used by law enforcement in the Commonwealth. This off-the-cuff comment certainly caught our attention. When it comes to drones, formally known as unmanned aerial vehicles, we are at the forefront of protecting privacy rights for Virginians. The ACLU of Virginia is teaming up with Del. Todd Gilbert to draft a bill for the 2013 General Assembly session that will limit the government's use of drones and protect individuals' privacy rights by having clear usage guidelines and establishing data collection and retention policies.



movements. ALPRs are cameras mounted on patrol cars or stationary objects along roads that snap photos of every license plate that enters their fields of view. Typically, the photos are time, date, and GPS-stamped, stored and sent to a database.

The Virginia affiliate joined with 35 affiliates across the nation in sending information requests to local police departments and state agencies demanding information on how they use ALPRs. We believe the public has the right to know if the government is using this technology for routine location tracking and surveillance, to collect and store information not just on people suspected of crimes, but on all motorists, or to enforce property tax laws.

As our society jumps in leaps and bounds in technological capabilities, we should not have to sacrifice our privacy rights just to make use of those advancements. The ACLU of Virginia continues to work to advance our privacy rights, which are being eroded daily.

Unfortunately, our privacy laws don't always stay ahead of the curve. Localities in Virginia are already using Automatic License Plate Readers (ALPRs) to track and record Americans'

## Protecting Free Speech On- and Off-line

In September, students at Christopher Newport University were denied permission to protest at a Paul Ryan rally on campus because the school required students to give ten days notice before any demonstration. CNU refused to make an exception even though the students knew of the rally just one day in advance.

The ACLU sent a letter to CNU stating that such a denial violated the students' First Amendment Rights and urged policy reform. While some notice of planned demonstrations may be required, exceptions must be made for "spontaneous" protests held in reaction to current events. Without such exceptions, the right to free speech is meaningless. CNU quickly dropped its 10-day notice rule and administrators worked with the Student Assembly to revise the policy to 24-hours notice and expanded the locations students could protest.

Politics, like many other things in life, has moved online. Social media sites have become popular places to express political opinions. One such activity might have cost some employees of the Sheriff's Department in Hampton their jobs. They argue the Sheriff violated their free speech and association rights when they were fired from their jobs because they supported the Sheriff's opponent during an election. One employee "liked" the opponent's Facebook page. However, the federal district court ruled that "liking" a page is "insufficient speech" to warrant constitutional protection. We argue just the opposite as the case goes to the Fourth Circuit.

Whether it's in a public square or on the internet, more speech is always preferable to any censorship or limits, and we're here to defend this fundamental liberty.



## Politics, Not Science Prevail in TRAP Regulatory Process

In 2011, the General Assembly passed a bill directing the State Board of Health to apply hospital rules to all abortion clinics that conduct five or more first trimester abortions a month. The Targeted Regulation of Abortion Providers (TRAP) law singles out abortion providers for unnecessary and burdensome regulations in an effort to make abortion services impossible or too expensive to deliver.

Throughout the regulatory process, politics prevailed over the medical expertise of physicians and other health professionals who think the rules are not needed to protect patient safety. For example, the Board took one vote to "grandfather in" existing women's health centers, treating these centers like every other medical facility. However, after the Attorney General refused to certify the regulations, (the next step in the regulatory process) and some intimidation from his office, the Board took another vote and removed the "grandfather" clause.

Now, the regulations continue in the process, going through executive review and then public comment before the final Board of Health vote. Join our email list ([www.acluva.org](http://www.acluva.org)) to stay updated on what you can do to oppose TRAP.

# From the Director

## The Paradox that is Virginia

Virginians woke up the morning after the 2012 election having voted for the more progressive candidates in the presidential and statewide Senate races, but not having changed the polarized make up of the Virginia members of the House of Representatives. The election results illustrate a fundamental paradox. Virginia, as a whole, is getting more centrist, even edging toward progressive, but the Virginia reflected both in the exit polls and in the geographically constrained Congressional and state legislative districts is more divided than ever.

Demographically, there is a new Virginia emerging. Among other things, the Commonwealth's demography is no longer just a picture in black and white. According to the U.S. Census, black people now make up about 20% of Virginia's population, Asians are about 6%, Hispanic/Latinos are about 8%, and foreign-born nationals of all races are just over 10%. Women are a majority of Virginians (about 51%). And, 23% of Virginians are under 18.

What does this mean for the ACLU of Virginia? First, we need to understand that the Virginia picture is more colorful in some parts of the state than others, and not everyone is happy about the state's increasing diversity. These conditions will likely lead to an increase in tension rather than an easy resolution of the issues that divide us resulting, for a time, at least, in greater likelihood of rights violations.

Second, the polarization of the population reflected in our legislative bodies will limit our ability to effect change through legislative or executive branch advocacy at least until after 2020 when redistricting next takes place. In the interim, we must search actively for opportunities to build coalitions across the divide

where common concerns about policy **can** unite us -- for example, with respect to issues related to the government's increasing use of technology to intrude on our privacy.



At the same time, however, much of what we'd like to accomplish through state legislative or regulatory policy change (e.g., repeal of the so-called marriage amendment, recognition of second parent adoptions, easing restrictions on women's reproductive choices, or enacting a state DREAM act or law requiring police to collect racial and other data on stops and arrests) will have to be accomplished another way, either through changes in federal law or through litigation.

We have to be prepared to make our case for change in the courts. We must enhance our capacity to initiate litigation that, in addition to securing civil liberties for all Virginians, will help move us forward in positive ways by, among other things, securing basic rights for LGBT Virginians and protecting new Virginians and racial minorities from disparate discipline in our schools and discriminatory policing on our streets.

Finally, the paradox that is Virginia requires us to look inward. We must continue to build our membership across, and gain support from, the full diversity of the people who are Virginians. More importantly, we must continue to be true to our founding principles and ensure that we do, in fact, "defend everybody."

*Claire Gastañaga, Executive Director*

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### Virginia Liberties

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# Litigation and Advocacy

## Contract Workers Subjected to Cavity Searches Sue Portsmouth Sheriff and Jail Officials

In April 2011, nine female workers employed by private companies to provide healthcare and other services to the Portsmouth City Jail were forced to strip naked and subjected to invasive visual body cavity searches by jail officials. They were told that if they did not consent to the search they would be forced to leave the premises and have their clearance to access the jail revoked. The contract workers-- six nurses, one mental health counselor and two food service workers-- were searched as part of an ongoing investigation of drugs being brought into the jail. Officials had no reason to suspect these specific individuals of carrying drugs or contraband, or of any other wrongdoing, however. We filed lawsuits against the Portsmouth Sheriff Bill Watson and other jail officials arguing the searches violated the workers' Fourth Amendment privacy rights.

## On the Front Lines for Religious Liberty

In an effort to ensure that all schoolchildren, regardless of religious belief or creed, would feel welcome in Giles County public schools, we challenged the posting of the Ten Commandments on school walls. The judge presiding over the case ordered the parties to mediation in May, and we agreed to a settlement in which the schools will not post the religious document and the court will retain jurisdiction for eight years to enforce the settlement.

Meanwhile, in what should be a settled matter given the precedents set by the U.S. Supreme Court and Fourth Circuit Court of Appeals, local boards continue to offer sectarian prayers before meetings. There is extensive case law stating that legislative bodies may open their meetings with a prayer, however such invocations must not favor one religious sect over another. While the ACLU favors no prayer at all or, at most, a moment of silence, we recognize that nonsectarian prayers are allowed by the courts. We applaud the Dumfries Town Council for adopting the moment of silence earlier this year and hope Roanoke County follows suit. Conversely, we had to ask the courts to enjoin Pittsylvania officials from opening its meetings with Christian prayers. Our lawsuit against Pittsylvania continues. Motions for summary judgment were heard in late September.

In a growing trend here in Virginia, and across the United States, religious organizations are seeking to use religious liberty to cloak discrimination. In the most recent General Assembly session, legislators passed the so-called "conscience clause" adoption bill. This new law allows private adoption and foster care agencies that contract with the state to discriminate against prospective parents and children on the basis of sexual orientation, religious creed, age, disabilities, marital status or gender.

## In the Fourth Circuit...

### ***Challenge to State Residency Requirement for Petition Circulators for Third-Party Candidates***

We filed a lawsuit on behalf of the Libertarian Party of Virginia and an out-of-state petition circulator challenging the state law requiring that persons petitioning for third-party presidential candidates to appear on the general presidential election ballot be Virginia residents. In late July, a federal district court struck down the state's law. The judge recognized that the law reduces the total amount of political speech in the state and ordered the State Board of Elections to stop enforcing the requirement. The state has appealed to the Fourth Circuit.

### ***Challenge to State's Prohibition on College Newspapers to Advertise Alcohol***

On behalf of student newspapers at Virginia Tech and the University of Virginia, we filed a lawsuit arguing that the state Alcoholic Beverage Control Board's prohibition on the advertisement of beer, wine, and mixed drinks in "college student publications" violates free speech and freedom of the press. While the lower court ruled in our favor in 2008, the Fourth Circuit disagreed and found the regulation constitutional in 2010. When the case was sent back to the lower court, we presented an alternate legal theory that the regulation unconstitutionally discriminates against a narrow segment of the media. In September 2012, the court found in favor of the state. We appealed to the Fourth Circuit.

### ***Challenge to State's Refusal to Provide Medical Care for Transgender Inmate***

The Fourth Circuit in late October heard oral arguments in the case of Ophelia De'lonta, a Virginia prison inmate who has Gender Identity Disorder (GID). Since our victory in another case involving Ms. De'lonta six years ago, the Department of Corrections (DOC) has been allowing her to receive hormone treatment and to live as a female to the extent possible in a male prison. However, the hormone treatment has not been successful, and she has felt the compulsion to mutilate herself. Sex reassignment surgery seems to be medically indicated, but DOC refuses to allow her to be evaluated for surgery. We argue DOC has a legal obligation to have De'lonta evaluated by a medical professional with expertise in GID to determine if surgery is necessary, and if so, to provide the surgery.

### ***Challenge to Virginia Sodomy Statute***

The U.S. Supreme Court in *Lawrence v. Texas* (2003) ruled unconstitutional laws that prohibit private, consensual sexual acts between adults. Virginia's Crimes against Nature sodomy statute remains on the books and continues to be enforced. One man charged with violating the law has not been able to challenge the constitutionality of the statute because his offense involves a minor. Along with Lambda Legal, we filed an amicus brief in the Fourth Circuit arguing that the state has other statutes prohibiting sex with minors, and cannot use a patently unconstitutional law to prosecute such conduct.

# Around Virginia

## Talking about Our Civil Liberties

ACLU representatives aren't just discussing civil liberties during radio or TV interviews, or in newspaper or online articles. We also make in-person appearances throughout Virginia, as this sampling of recent speaking engagements illustrates.

*"Virginia Legislative Issues"* by Claire Gastañaga, Sorenson Institute, Alexandria

*"Know Your Rights: Minors' Rights to Reproductive Health Care"* by Kathy Greenier, Petersburg

*"Paycheck Fairness"* by Kathy Greenier, South University, Richmond

*"The ACLU and Individual Rights"* by Rebecca Glenberg, University of Richmond School of Law, Richmond

*"Immigration Legislation in Virginia"* by Claire Gastañaga, Virginia Coalition for Latino Organizations Summit, Annandale

*"Restoration of Rights and Offender Re-Entry"* by Hope Amezcuita, Tidewater Community College, Portsmouth

*"Marriage Equality and LGBT Rights"* by Claire Gastañaga, 8th Annual Gay Appalachia, Blacksburg

*"Voting Rights and Elections"* by ACLU of Virginia Board Member James Morton, Virginia Wesleyan College, Norfolk

*"Criminal Justice Reform and Rights Restoration"* by Hope Amezcuita, Virginia Commonwealth University, Richmond

## ACLU of Virginia: Building on Solid Ground

In the past 25 years, former executive director Kent Willis built the ACLU of Virginia into the effective, efficient, and respected organization that we know today. In honor of the strong foundations he built, a generous donor has issued a challenge to the ACLU Foundation of Virginia.



The donor will match dollar for dollar any increased amount of annual giving a member or supporter makes over last year's gifts, or the entirety of any new gift, up to \$10,000 per gift and \$50,000 total.

This is a terrific opportunity for members and supporters to show their appreciation of Kent, as well as to help ensure the continuing vitality of the organization as we work to protect and advance civil liberties in Virginia. Doubling your gift this year may result in a gift thrice over with matching funds!

## Northern Virginia Chapter of the ACLU Grassroots Advocacy Workshop

Saturday, December 1, 1:00-4:00 p.m.

George Mason Regional Library  
7001 Little River Turnpike, Annandale

### ACLU of Virginia Speakers:

**Claire G. Gastañaga**  
Executive Director

**Hope R. Amezcuita**  
Legislative Counsel

**Katherine A. Greenier**  
Women's Rights Project Director

*Our legislators are charged with the responsibility of representing the people in their district, and the best way for them to vote in the interests of their constituents is for us to alert them to the issues important to us. Learn about the Virginia legislative process, find out how to effectively advocate for civil liberties and discuss the top issues expected for 2013.*

To RSVP or for more information, call (703) 360-1096 or send an e-mail to [novachapter@acluva.org](mailto:novachapter@acluva.org).

## NoVA ACLU Chapter Hosts Alexandria Crabfest

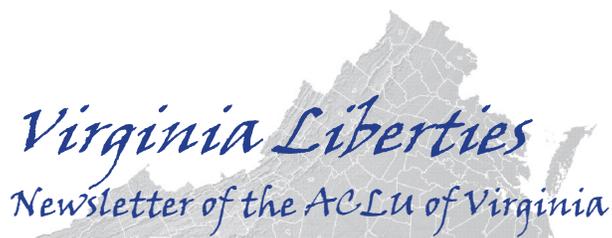
Thanks to the work of many dedicated volunteers, the Northern Virginia ACLU Chapter once again held another successful Crabfest and Annual Membership meeting in Alexandria. On June 3, about 180 supporters mixed business with festivities all while dining on crabs, burgers, and other picnic fixins. NoVA Chapter President Steve Pershing presided and, in his final act as executive director, Kent Willis gave one last update on ACLU activities in Virginia, providing an insightful behind the scenes assessment of various civil liberties issues, lawsuits, victories, and setbacks over his tenure. Afterwards, attendees participated in a lively question and answer session commenting on the latest threats to religious liberty, free speech, reproductive freedom, and privacy rights.

## Group Gathers in Charlottesville for Civil Liberties Bierfest

The Charlottesville ACLU Bierfest tradition, revived last year, continued this year on October 26 with about 35 supporters gathering at Peter McIntosh's home. Thanks to ACLU state board member Jim Heilman, past state board president Herb Beskin and Peter, the 2012 Bierfest was another success with attendees consuming beer and wine, and talking civil liberties. ACLU of Virginia Executive Director Claire Gastañaga offered remarks on the state of civil liberties in Virginia and energized the crowd with comment on the future of the ACLU in the Commonwealth.

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#### Sign Up!

**Grassroots Lobbying:** Help us defend and promote civil liberties in the Virginia General Assembly by joining our grassroots lobbying program. We'll send you action alerts that provide you with the ACLU's position and talking points to use in communications with elected officials.

**ACLU E-News:** Want to know more about what we're doing throughout the year? Sign up for E-News. Not only will you receive email updates on lawsuits, advocacy efforts, and other actions as they happen, but you'll also get e-vites to local events.

#### Stay Informed:



**ACLU-VA Blog:** Read our rants, raves, thoughts and concerns about current civil liberties issues.

**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)

**Virginia ACLU Reports:** Find our annual report, review of the 2012 General Assembly Session, and litigation and legal advocacy report on our website, [www.acluva.org](http://www.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.

The deadline for submissions is March 11, 2013. Send information to Claire Gastañaga by email [acluva@acluva.org](mailto:acluva@acluva.org), or mail it to the main office address in Richmond (530 E. Main St., Ste. 310, Richmond, VA 23219).