



AMERICAN CIVIL LIBERTIES UNION  
of VIRGINIA

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Richmond, VA 23219

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# Virginia Liberties

Newsletter of the American Civil Liberties Union of Virginia

Spring 2014

## ACLU of Virginia: Ensuring Government Respects Our Privacy

### The Misuse of Technology: Automatic License Plate Readers

In January, the Washington Post reported that, despite a clear Virginia Attorney General opinion that it is illegal under Virginia law, a number of Northern Virginia law enforcement agencies continue to collect and store information on the movements and locations of ordinary Virginians gathered using Automated License Plate Readers (ALPR). ALPRs can photograph thousands of license plates per minute, recording the date, time, and location of every license plate they see. They can be used to piece together your life, from who your friends are to whether you were parked in an abortion provider's parking lot. A Freedom of Information Act request submitted by our legal team found that Northern Virginia police officials are storing ALPR records not related to ongoing investigations in databases for extended periods of time, and are sharing that information with other law enforcement agencies in Virginia, D.C., and Maryland. We want to put a stop to this invasion of privacy. Want to know how you can help? Visit [www.acluva.org/alprs](http://www.acluva.org/alprs).

### Should Government Track Cell-Phones in "Real Time?"

Just because our government can track innocent Virginians doesn't mean it should. Law abiding Virginians expect, and deserve to go about their daily lives without fear that our government is watching them. We're committed to protecting the privacy of all Virginians, and we succeeded in securing a bi-partisan victory for privacy during the 2014 legislative session. The new law will create a warrant requirement for law enforcement seeking to track a Virginian's cell phone in real time. While we celebrate this victory, we recognize that it doesn't go far enough – it lacks a warrant requirement for law enforcement to obtain an individual's historical cell site location information, such as the location of their doctor's office, what political rallies they attended, or where their friends live. We look forward to working with the administration and members of the General Assembly to extend this basic privacy protection to include historical data that can be used to map out an individual's past.

### Northern Virginia Chapter Annual Meeting & Crabfest

Sunday, June 1, 2014 - 1:00 - 5:00 p.m. (rain or shine)

**Fort Hunt National Park, Area B, Alexandria**

**"ACLU of Virginia Update" (starting at 2 p.m.)**

**Guest Speaker: Claire Gastañaga  
ACLU of Virginia Executive Director**

- Election of Board Members
- Great food! Served between 1:00 and 3:00 p.m., all-you-can-eat crabs, hot dogs, hamburgers, veggie burgers, traditional picnic side dishes, beer, and soft drinks.
- Bring your family, friends, appetite, and friendship!

#### Directions to Fort Hunt Park:

- George Washington Parkway South, through Old Town Alexandria
- Fort Hunt Park is 5 miles south of Old Town
- Exit to the right at the sign marked "Fort Hunt Road/Fort Hunt Park"
- Look for Picnic Area B- It has a shelter, rest rooms, and plenty of parking.
- The U.S. Park Service strictly enforces its prohibition against parking on the grass. Please do not park on the grass

Questions?

Call 703-360-1096 or email [novachapter@acluva.org](mailto:novachapter@acluva.org).

### RSVP for the Northern Virginia Chapter's Annual Meeting and Crabfest

The U.S. Park Service no longer lets money exchange hands on its property - and it's enforcing that policy. PLEASE register in advance by mail. We can no longer accept payment at the sign-in table. Thanks for cooperating!

Enclosed is \$ \_\_\_\_\_ to reserve places for  
 Adults (@ \$20/per person)  
 Children, ages 6-12 (@ \$5/per person)

Checks must be received by Tuesday, May 27, 2014.

Name(s): \_\_\_\_\_  
 \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

Send this form with your check made payable to "Northern Virginia ACLU" to: NOVA ACLU, Post Office Box 1682, Alexandria, VA 22313-1682.

### The New Ben Franklin Liberty Caucus

The ACLU of Virginia welcomed the announcement earlier this year of the formation of the Ben Franklin Liberty Caucus. The purpose of the bi-partisan, bi-cameral caucus is to protect the privacy and liberty of Virginians against unnecessary intrusion by government agencies and law enforcement.

Protecting the privacy and liberty of Virginians is a priority issue for us and must be a priority issue for the Virginia General Assembly. We look forward to working with the Ben Franklin Liberty Caucus and other interested stakeholders to develop and pass legislation governing use of new technologies that will permit effective law and regulatory enforcement and keep us safe without requiring Virginians to sacrifice our privacy or our liberty.

### Marriage Case Update!

As many of you know, this past August the ACLU, the ACLU of Virginia, and Lambda Legal filed a federal class action lawsuit in Harrisonburg seeking the freedom to marry for all same-sex couples in Virginia as well as an end to Virginia's refusal to recognize marriages legally entered into elsewhere. A similar suit was filed in federal court in Norfolk. The Norfolk judge ruled Virginia's ban on same-sex marriage is unconstitutional, and the Commonwealth and two circuit court clerks have appealed that decision. The Court of Appeals granted our motion to intervene in the Norfolk appeal, which means that we are now parties in that case. We have filed our brief in the Court of Appeals, and oral argument is scheduled for May 13.

## From the Director



The ACLU of Virginia will be 50 years old in 2019. In March, the Board of Directors approved a new strategic direction that establishes an overarching vision of where we would like to be as we complete our first half century and the strategic direction we will follow for the next five years to achieve that vision.

The mission of the ACLU of Virginia remains simple and clear: we promote civil liberties and civil rights for everyone in the Commonwealth through public education, litigation, and advocacy with the goal of securing freedom and equality for all.

In 2019, our vision is that the ACLU of Virginia will continue to be Virginia's premiere guardian of civil liberties and a recognized champion of civil rights. To realize that vision, we will work proactively to expand freedom and equality for all, while also standing ready to defend against violations of rights when they occur. We are committed to ensuring that the ACLU of Virginia will have the necessary resources to continue to respond effectively to unexpected attacks on civil liberties and to identify and pursue new opportunities to protect freedom or advance liberties using an integrated approach that includes litigation, advocacy, and public education as appropriate.

We will focus our proactive work over the next five years in seven key areas including: voting rights; criminal justice; reproductive freedom; privacy; freedom of religion and speech; sex discrimination; and equality, including the freedom to marry for LGBT Virginians. That doesn't mean we won't have

Claire G. Gastañaga, Executive Director

### ACLU of Virginia Board of Directors

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Kathy Greenier, Director, Reproductive Freedom Project

Aisha Michel, Director, Patricia M. Arnold Women's Rights Project

Tamara Mason, Communications & Development Assistant

a portfolio that extends across the full range of civil liberties and civil rights issues. Of course, we will. It does mean, however, that we'll be reaching out affirmatively to find ways to make positive change in each of these key areas. We'll be mission driven, focusing on issues that are closely aligned with our mission, connected to the ACLU's national priorities and where we are the major voice. We'll be searching for opportunities that will allow us to make the greatest impact for the most Virginians while using our resources effectively. Finally, we'll be results oriented, working to attain positive results that are achievable and measurable in a defined period of time.

For us, the exhortation "may you live in interesting times" is not a curse but a promise. The ACLU of Virginia must, out of necessity, be ready to wield both shield and sword. We must stand ready to shield Virginians from government intrusion on fundamental liberties, and we must plan to lead the charge where needed to prevent future intrusions or to remedy discrimination where it threatens our equality before the law. With our strategic direction now set, I am confident that, with your continued support and engagement, we'll turn 50 with pride in our accomplishments and a firm foundation for action as we look ahead to the next 50 years of guarding Virginians' freedom.

Claire G. Gastañaga, Executive Director

### ~Support the ACLU Foundation~

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

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

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

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

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

Please charge my  VISA  MC  AMEX

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

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

Signature: \_\_\_\_\_

(name as it appears on your card)

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

## Ensuring Virginia's Government is Open

### Should Government Use New Technology to Avoid Transparency?

While we want to be sure that our private information is not public, we also want to be sure that public information is not kept private. Text messaging is the new norm, but what happens when text messages are used to conduct public business? Should the public be privy to that information? Of course – it's no different than correspondence via email or snail mail! That is why in January of this year we filed suit against the city of Norfolk on behalf of the People for the

Ethical Treatment of Animals. Norfolk refused to comply with a Freedom of Information Act (FOIA) request for public business text messages. The FOIA and Public Records Act are meant to ensure that Virginians have detailed knowledge of government activity so that they may hold their elected officials accountable. FOIA requires the city to produce all records created in the course of public business, and text messages are "public records" under that principle. This case is about ensuring that text messages do not become a loophole for conducting government business in secret.

### ~Get Involved and Stay Informed~

#### Become an E-Activist

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

#### Follow Us on the Web and Social Media



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

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

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

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

#### Contact Us

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Email: [acluva@acluva.org](mailto:acluva@acluva.org)



**SAVE THE DATE**  
**ACLU of Virginia**  
**Annual Membership Meeting and Reception**  
**Saturday, September 20, 2014**  
**Stay tuned for more details!**

## Making Progress Toward Ending Sex Discrimination

### Patricia M. Arnold Women's Rights Project

It's been an exciting few months for the Patricia M. Arnold Women's Rights Project. Thanks to a grant that allowed us to establish a separate Reproductive Freedom Project, we are now able to dedicate more resources to addressing a broader range of women's rights issues.

### Protecting Trailing Spouses from Discrimination

Our advocacy work has tackled laws that discriminate against trailing spouses by denying them the opportunity to apply for unemployment benefits if they leave their job to move with their family. Initially enacted expressly to disqualify the wives of members of the military from receiving benefits, the trailing spouse provision in the Virginia Code says that if you quit your job to follow your spouse and family to a new location, you are irrebutably presumed to have left your job voluntarily. Though a bill passed this session to resolve the issue for military spouses, in many other families women and men are in jeopardy of being forced to choose between their families and their need for economic stability. In every other case, the determination of voluntariness is made on a case by case basis, and we think this case-by-case process should also apply to trailing spouses.

## Defending Women's Access to Reproductive Healthcare

### Defending Women's Access to Reproductive Health Care

There is no question that Virginia is heading in the wrong direction when it comes to protecting reproductive freedom. Recent General Assembly sessions have seen legislation that does nothing more than insert politicians between women and their doctors and make access to care more illusion than reality. One example of this trend is Virginia's law requiring an ultrasound before an abortion (whether medically needed or not and regardless of the patient's consent). Another is the state law applying medically unnecessary rules to abortion providers.

While we are working to repeal this discriminatory legislation, we are also taking steps to mitigate its impact prior to repeal. For example, to alleviate the cost to the patient of a required ultrasound, the legislature mandated that the Virginia Department of Health (VDH) make available to women a list of free ultrasound providers. The list for-

### Victory for Pregnant Prisoners

After three years of advocacy for the implementation of regulations limiting the use of restraints on pregnant prisoners in Virginia's local and regional jails, we are proud to announce that the Board of Corrections has approved and the Governor

has signed final rules prohibiting the use of restraints on pregnant prisoners. The new rules will go into effect on May 8. Once the regulations are in effect, the health and safety of female prisoners and their babies during labor, delivery, and post-partum recovery will be protected by uniform standards that will be followed by all local and regional jails. While we are excited by this victory, we are concerned that jails are not yet required to report all instances of the use of restraints. Transparency about the use of restraints is vital to ensuring proper oversight and compliance with the new rules, and we will be working to ensure that this level of transparency is realized.



Photo: ACLU of Northern CA

## Fighting for Religious Liberty and Freedom of Speech

### Putting a Stop to Legislation Jeopardizing Religious Liberty in 2014

Two bills were pushed through the General Assembly this year by those who favor the establishment of a state religion. We asked the Governor to veto these bills, and, fortunately, he followed our advice. The legislation would have allowed the government to pick sides on the question of religion. One bill would have granted Virginia National Guard chaplains the right to preach their faith to unwilling service members at official Guard functions. The other would have invited unconstitutional religious speech into our public schools resulting in the religious coercion of students.

### Religion is Not a License to Discriminate

Unfortunately, a bill will become law on July 1 that grants genetic counselors a license to discriminate by allowing them to deny service to anyone if providing the service would conflict with the counselor's "deeply-held moral or religious beliefs." This bill also protects counselors who use their religion to justify their refusal to provide services from any claim for damages, even if they intentionally harm a patient. We are building a campaign to reverse this law and prevent passage of any others like it that justify discrimination under the cloak of religion. No one should be able to use religion as a license to discriminate or to claim the freedom to harm others.

### Capitol Square: The Quintessential Public Forum

The Richmond Chapter of the National Day of Prayer (NDP), The Family Foundation, and the ACLU of Virginia all agreed that it was wrong for the NDP to be denied a permit for a National Day of Prayer event. The regulation used to deny the permit, which provides that demonstrations should be "avoided" during the noon hour, is vague and overbroad. We quickly sent a letter to the Governor explaining that this and other provisions of the Capitol Square regulation are unconstitutional. After our letter was sent, NDP's permit was quickly granted. Nonetheless, the regulation governing demonstrations on Capitol Square that led to the initial denial remains unconstitutional and needs to be revised.



### Virginia Community College Students' Rights Should Not Be Limited by Unconstitutional Policies

The free exchange of ideas is an essential part of higher education. That is why we were shocked to learn that the Virginia Community College System (VCCS) has a policy on demonstrations that allowed Thomas Nelson Community College to hold a student in violation of the policy for standing in a public area of campus and preaching. We sent a letter to VCCS asking it to take swift action to revise its highly restrictive and unconstitutional policy on student demonstrations. Our letter explained that the VCCS policy can be read to require individuals and small groups to register in advance for any speech on campus, a requirement with no legitimate justification. Also, because the policy only allows recognized student organizations to hold demonstrations, it prohibits demonstrating on a large number of topics and viewpoints where no formal group exists. These failures violate the First Amendment. We asked the VCCS to bring its policy in line with the Constitution, and it has made changes that we are now reviewing.

### The First Amendment Protects Freedom of Speech for Everyone – Not Just Virginians

The freedom of speech is a cornerstone of our democracy. That is why in May 2012 we challenged a Virginia law that denied the right of non-Virginians to gather the necessary signatures to place a third-party candidate on the presidential ballot. In July 2012, a federal judge sided with us and struck down Virginia's residency requirement, holding that the statute violated the First Amendment. In March 2013, the Fourth Circuit Court of Appeals affirmed the unconstitutionality of this law, and, late last year, the U.S. Supreme Court refused to hear the case. The circulation of ballot petitions is a form of speech protected by the First Amendment, and the Commonwealth may not limit that right to Virginia residents.



## Reforming Virginia's Criminal Justice System

### Putting an End to the Misuse of Solitary Confinement

Long-term solitary confinement is cruel, expensive, and ineffective. It can create and exacerbate symptoms of mental illness, undermine successful re-entry into society, and jeopardize public safety. That's why we're working to eliminate its use in Virginia's prisons. We've reached out to advocates from across the country to determine effective strategies, participated in a national conference on prisoners' rights issues, and attended a rare congressional hearing on the impact of solitary confinement on human rights, budgets, and public safety. We're bringing these lessons learned home to Virginia. Contrary to public perception, solitary confinement is not used solely on the most dangerous offenders – it is frequently and excessively used as discipline for minor offenses or because of mental health issues. We are working to put an end to this practice in the Commonwealth!

### Death Penalty Reform and Repeal

Last summer the American Bar Association (ABA) issued a report on problems with the application of the death penalty in Virginia – from the law enforcement identification and interrogation process at the beginning to the post conviction process at the end. Sadly, many of the ABA's findings mirrored those in a report the ACLU of Virginia issued ten years ago. Since the death penalty was reinstated, only Texas has executed more people than Virginia. In the states that still permit the use of the death penalty, however, the number of executions and new sentences are down, and Virginia is no exception. This year's Assembly session demonstrated, however, that we are



still far from repeal of the death penalty, or even from making sure that it is applied fairly. Rather than addressing the flaws identified by the ABA, the legislature spent its time debating whether the Department of Corrections should be allowed to default to the electric chair for executions if it cannot secure lethal injection drugs. We successfully argued that it was unconscionable to be debating methods of execution when there is strong evidence that calls into question the basic fairness and accuracy of Virginia's death penalty process. We will continue to build on the momentum begun with the release of the ABA report until we have the support necessary to move toward real reform of the system and, ultimately, its repeal.

### ... Including the Juvenile Justice System

#### Zero-Tolerance for Zero-Tolerance Policies

Overly harsh school discipline policies push kids out of school and into the juvenile and criminal justice systems. This practice has become known as the school-to-prison pipeline. One of the greatest contributors to the pipeline is so-called "zero-tolerance" policies that result in automatic and severe punishment regardless of the facts. During this year's General Assembly, we worked to pass legislation that begins to chip away at our failed zero-tolerance policies. In this case, the legislation will grant school administrators greater discretion over the severity of punishment vis-à-vis drug offenses – they will be able to determine the punishment level by looking at the individual facts, instead of having to follow a one size fits all punishment set in Richmond. While pleased at the success of this legislation, we know there is still much work to do to ensure that Virginia's public schools replace their failed punitive approach to discipline with evidence based discipline approaches such as positive behavioral interventions and supports.



## Seeking to Ensure Equality for All Virginians

### First LGBT Equality Summit is a Success

On April 5 we hosted an LGBT Leadership Summit, along with a number of equality and allied groups. The summit brought together over eighty LGBT and allied leaders and advocates from across the Commonwealth. The summit included panel discussions led by national and state leaders and breakout strategy sessions focused on pressing issues, including marriage equality, workplace non-discrimination, and the use of religion to discriminate. We also discussed how the LGBT community and its allies can come together to make Virginia a more welcoming and fair place to live. The event served as a launching pad for our equality work for the next year, and allowed us to meet and form relationships with advocates from across Virginia. Because of these new connections, we are better positioned to create meaningful change and achieve true equality for all LGBT Virginians.



Photo from L to R: Claire G. Gastañaga, ACLU of Virginia Executive Director and Ian Thompson, ACLU Legislative Representative

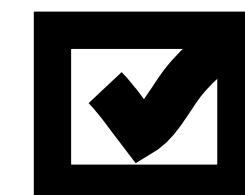
### Immigrants' Rights Work - Moving Forward

Immigrant students living in Virginia, who have been granted the right to reside here legally through the Deferred Action for Childhood Arrivals (DACA) program, have been told by the State Council of Higher Education of Virginia (SCHEV) that they are not currently eligible to apply for in-state tuition rates at our public colleges and universities. As a result, many of these students, who are lawfully present in Virginia and can establish domicile, face an insurmountable financial barrier to higher

education. The ACLU of Virginia worked with legislators and coalition partners to address this gap during the 2014 General Assembly session by advancing tuition equity legislation that would have confirmed that DACA students are eligible to apply for in-state tuition at Virginia colleges and universities. We are now seeking to persuade SCHEV that their ruling is wrong – that DACA students are able to establish and maintain a domicile in Virginia legally and are, therefore, eligible to apply for in-state status.

## Protecting and Expanding Voting Rights

### Restoring Voting Rights: Governor Announces New Reform



We are taking action to restore the right to vote for the more than 450,000 Virginians currently disenfranchised under Jim Crow era laws. While continuing to advocate for passage of a constitutional amendment that would change the law permanently,

we asked Governor McAuliffe to issue an executive order automatically restoring voting rights to all non-violent offenders, or, at least, to reform the current case-by-case process to include non-violent drug offenders and eliminate the requirement that all fines, fees, and financial restitution be paid before a person's rights can be restored -- and he listened! The Governor has announced a significant reform to the restoration of rights policy. All drug related felonies will now be processed under the less onerous non-violent criteria. We will continue to push the Governor to remove the repayment of fines, fees, and restitution as a requirement to restoration of rights. By removing financial conditions, which are nothing more than a mod-

ern-day poll tax, thousands more Virginians would be eligible for restoration. We are also supporting passage of a budget amendment offered by former Governor McDonnell to ensure adequate staffing of the restoration process. It's past time for the Commonwealth to fully reintegrate these disenfranchised individuals back into their communities.

### What's Next for Virginia's Voter Photo ID Law?

As you may recall, Virginia passed a restrictive voter ID law that will disproportionately impact disabled voters, low income voters, and communities of color. Before the law goes into effect on July 1, 2014, the State Board of Elections (SBE) must issue regulations regarding its implementation. To mitigate the impact of this law on Virginian's ability to vote, we've advised the SBE that voters must be able to obtain a free ID easily and without unfair burdens, such as a lack of transportation or disability. We must ensure that this unnecessary law doesn't undermine the right of any Virginian to exercise their fundamental right to vote. Be on the lookout for our call-to-action asking you to contact the SBE to demand that they protect the right to vote.