

AMERICAN CIVIL LIBERTIES UNION OF VIRGINIA

ANNUAL REPORT 2013 – 2014



ACLU of Virginia

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Designed by Shelby Thompson
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This was a year of cheers, jeers, and fears:

Cheers for the progress we've made toward gaining the freedom to marry for all Virginians; jeers for those who have responded to advances in women's and LGBT rights by seeking licenses to discriminate and for those who have enacted new laws that suppress voting rights; and fears that all too often drive the willingness to elevate security over liberty and to limit the civil and political rights of minority groups.

The ACLU of Virginia is proud to be at the forefront of bringing the freedom to marry to same-sex couples in Virginia, as we were in challenging the historical ban on interracial marriage. We are also proud to be leading the way in protecting the privacy of Virginians from government surveillance and attacking the militarization of state and local police.

Sometimes, it's just about being there to protect the right of one anonymous teen to be free from mandatory religious practice in a locality where being different means being bullied. Sometimes, it's about trying to reform an entire criminal justice system -- from stop and frisk, to mandatory minimum sentencing, to the death penalty. Regardless, the ACLU of Virginia is and will be there.



Claire Guthrie Gastañaga

VISION

ACLU of Virginia — 2015 - 2019

The ACLU of Virginia will be Virginia's premier guardian of civil liberties and a recognized champion of civil rights for all Virginians. We will act proactively to enact or change laws and policies that limit the freedom of or discriminate against Virginians. We will also stand ready to defend against deprivations of freedom and violations of rights when they occur. We will:

Pursue significant reforms in Virginia's criminal justice system, focusing particularly on eliminating racial disparities in the system and bias in law enforcement.

Make progress toward ending sex discrimination in Virginia.

Defend and expand women's access to reproductive health care.

Protect and expand voting rights and restore voting rights to those convicted of felonies.

Protect the privacy of Virginians against government surveillance and other intrusive information collection practices.

Protect religious liberty and freedom of speech in Virginia.

Ensure full equality for all Virginians.

FIGHTING FOR RELIGIOUS LIBERTY

For years, Thomas Walker High School in Lee County, Virginia included a Christian hymn as part of its graduation ceremony. After a student's family contacted us, we wrote a letter to the school and the school took the hymn off the graduation program. This family deserves enormous credit for taking action to stop this blatant constitutional violation, but we cannot thank them by name. Here's why, in the student's own words:

"It didn't take me long to realize I felt uncomfortable singing a religious song that included lyrics about reuniting with my classmates at the feet of Jesus. I have always been interested in law, and based on what I was taught about the Constitution, requiring religious practices in a public school is against the First Amendment.

There was a massive witch hunt for the family that contacted the ACLU. I sat in classes where my family was called 'troublemakers' and 'Satanists' by both students and teachers. I heard accusations and threats made against students, teachers, and local families that had nothing to do with the complaint. Students sat around listing suspects and motives, as if a crime had been committed.

Some seniors decided that they were going to orchestrate the singing of the song anyway.

2003

The ACLU wins case establishing that the Virginia Military Institute's supper time prayer is unconstitutional.

2005

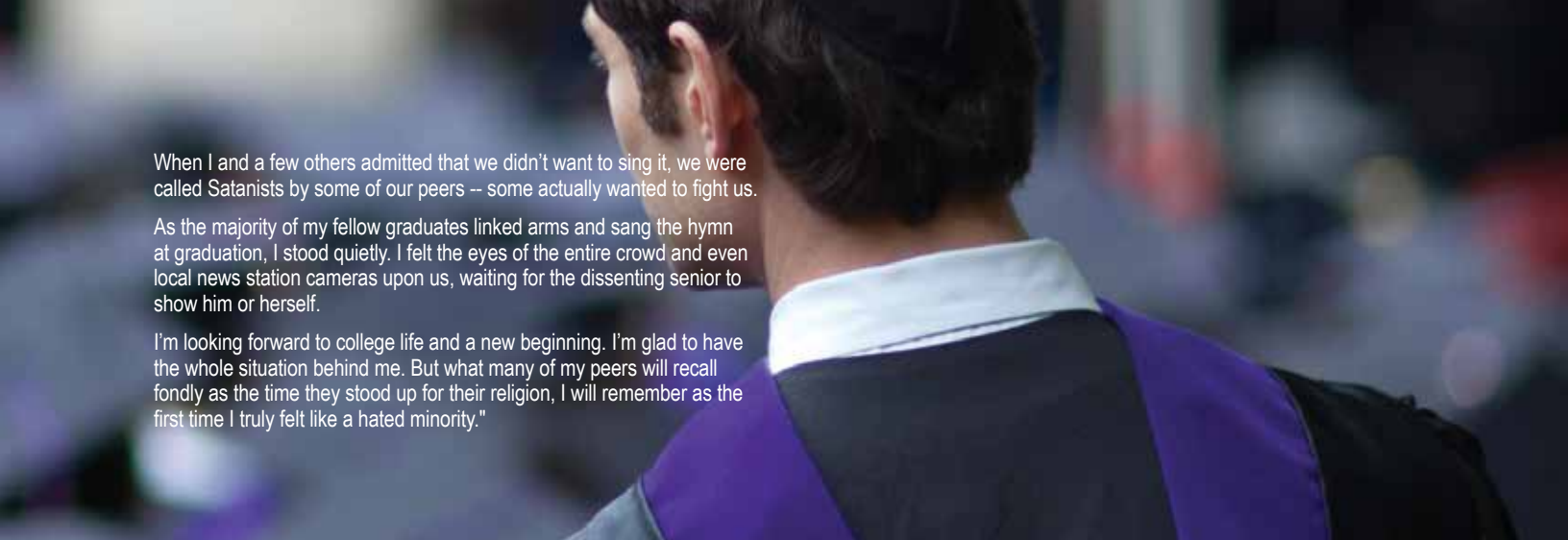
The ACLU supports General Assembly repeal of the "day of rest" statute that makes it easier for employees to get Sunday off than other religious days of rest.

2012

Matoaca Middle School reverses, at the ACLU's request, an unconstitutional policy preventing students from visibly wearing rosary beads.

2013

ACLU wins Federal Court ruling that Pittsylvania County Board of Supervisors may not open meetings with Christian prayers.



When I and a few others admitted that we didn't want to sing it, we were called Satanists by some of our peers -- some actually wanted to fight us.

As the majority of my fellow graduates linked arms and sang the hymn at graduation, I stood quietly. I felt the eyes of the entire crowd and even local news station cameras upon us, waiting for the dissenting senior to show him or herself.

I'm looking forward to college life and a new beginning. I'm glad to have the whole situation behind me. But what many of my peers will recall fondly as the time they stood up for their religion, I will remember as the first time I truly felt like a hated minority."

2013

State judge rules in a case brought by the ACLU that state rules on who may perform marriages may not discriminate against religions that do not have ordained clergy.

2014

A Lee County high school removes the Ten Commandments from a wall outside the principal's office and removes religious hymn from graduation program after the ACLU raises religious freedom issues in a letter.

2014

The ACLU successfully lobbies the Governor to veto two bills that would have allowed the government to promote one religion over others -- a bill to allow government sponsored prayer in Virginia's K-12 public schools and a bill to permit military chaplains, acting as government agents, to push their personal religious beliefs during official National Guard events.

Photograph:
Jens Schott Knudsen

PROTECTING FREE SPEECH

Free speech is a well-known First Amendment right. And, over the years, more and more people have successfully overcome unconstitutional, bureaucratic barriers and obstacles to this right. We must always remain vigilant, however, to ensure that free speech continues to be protected and secured.

Here in Virginia, the ACLU has continued to stand up against encroachments on free speech. In March 2014, we sent a letter to the Virginia Community College System explaining that its policies limiting the right to protest on Virginia's community college campuses violated the First Amendment.

Less than a month later, the ACLU sent a letter that challenged vague and arbitrary restrictions on public prayer and speech in the Capitol Square and asked the Governor to take swift action to revise the unconstitutional regulations governing Capitol Square demonstrations.

Progress is made every day, but we must not let our guard down. Attacks on liberty remain a threat.

2005

Federal court agrees with the ACLU that a blogger who was critical of the Reverend Jerry Falwell may use the domain name "fallwell.com."

2009

General Assembly repeals ban on voters wearing election-related apparel and accessories to the polls after the ACLU sues.

2010

The ACLU wins federal lawsuit on behalf of a blogger establishing that she has a First Amendment right to post public documents on her website.



2012

University of Virginia, with support from the ACLU, successfully challenges subpoenas issued by the Virginia Attorney General for emails and other academic documents of a climate scientist.

2013

Federal appeals court agrees with the ACLU that "liking" someone's Facebook page is speech protected by the First Amendment.

2013

The ACLU wins lawsuit that vindicates the right of college newspapers to run alcohol-related advertisements.

REFORMING VIRGINIA'S CRIMINAL AND JUVENILE JUSTICE SYSTEM

Virginia's criminal justice system is broken. The failed "War on Drugs" and "tough on crime" laws have led to a 735% increase in Virginia's prison population since 1970. This is the result of school policies that feed the school-to-prison pipeline, punitive criminal laws that have no basis in evidence, and policing practices that disproportionately target communities of color and incentivize harsh police tactics. Mandatory minimum sentences and three strikes laws (even for non-violent offenses) have become the norm.

The good news – our General Assembly created this trend and it can reverse it. We'll be working to move Virginia from "tough on crime" to "smart on crime" by advancing evidence-based reforms to our juvenile and criminal justice systems designed to reduce incarceration levels, end the disproportionate impact of our criminal laws on African Americans, and save limited tax dollars.

1995

Parole is abolished. Under the new system, an inmate must serve at least 85% of his or her sentence, regardless of the specific facts or level of rehabilitation.

2000

The Commonwealth adopts new, mandatory minimum sentences for certain drug offenses. The ACLU warns that "the government's escalating War on Drugs has led to massive and continuing civil liberties violations."

2003

Legislation passes allowing defendants convicted of a felony to ask the courts to set aside their convictions based on newly discovered DNA evidence.

2004

ACLU supports legislation passed that allows courts to overturn felony convictions based on any newly discovered evidence.



2006

ACLU supports legislation passed eliminating death penalty for defendants under 18.

2010

Virginia's prison population is 37,410. African Americans make up just 19% of the Virginia population yet make up 58% of the incarcerated population in the Commonwealth.

2010

In ACLU case, Virginia Supreme Court rules that defendants must be given due process before they are sent to jail because of termination from a drug court program.

PRIVACY AND TECHNOLOGY

According to the government, we must give up some liberty to secure our safety. Particularly since September 11, 2001, we've seen an increase in this rhetoric. Today, this false choice is used to justify unchecked NSA surveillance at the federal level and the warrantless use of drones, GPS cell phone tracking, and automatic license plate readers at the state and local levels.

We start from the belief that liberty is essential to securing our safety, and to ensuring our ability to exercise our fundamental rights. From cell phone tracking, to automatic license plate readers, to drone surveillance, we're working to ensure that the government (including law enforcement) has policies in place that protect Virginians' privacy and ensure government transparency before new technology is bought or used.

2001

In the wake of 9/11, Congress passes the USA PATRIOT Act, which expands the government's authority to spy on citizens and reduces basic checks and balances like judicial oversight and the ability to challenge government actions.

2003

ACLU of Virginia successfully advocates for the Government Data Collection and Dissemination Practices Act, which restricts the government's ability to collect, store, and distribute individual's data and requires established "need" for the data before the government collects it.

2013

Edward Snowden leaks information detailing massive US government surveillance programs targeted at all Americans, including those not suspected of any crime, and organizations including the ACLU.

2013

The ACLU leads the effort to establish a two-year moratorium on the use of drones in Virginia. This marks the first statewide legislation in the nation that limits the use of drones.

2013

Attorney General issues an opinion saying passive use of license plate readers to create massive databases violates state law. Northern Virginia law enforcement agencies refuse to comply.

2014

The ACLU leads the successful effort to ensure that law enforcement must first obtain a warrant before obtaining the real-time location of a person's cell phone.

PROTECTING AND EXPANDING VOTING RIGHTS

Virginia has a long, distressing history of discrimination in voting rights. In the 21st century, we have seen an unprecedented change. Nonetheless, we continue to face state laws and practices that attempt to erode the right to vote.

We will continue to defend and protect the fundamental right to vote in Virginia by fighting to revive the Voting Rights Act, amend the Virginia Constitution to repeal the permanent ban on the right of felons to vote, and stop laws and practices that chip away at our fundamental right to vote.

1965

President Lyndon B. Johnson signs Voting Rights Act (VRA) into law, banning racially discriminatory barriers and practices in voting. Jurisdictions with history of discrimination must get federal approval of voting law changes. The law overturned Jim Crow era Virginia laws requiring poll taxes and literacy tests.

2006

With a bipartisan vote, Congress extends Section 5 of the VRA for an additional 25 years, affirming its effectiveness in protecting the right to vote.

2010

ACLU challenges Governor to restore voting rights of felons by executive order. Governor reduces waiting period for non-violent felons and shortens processing time.



2013
ACLU continues to press Governor to restore the voting rights of disenfranchised Virginians by executive order. He agrees to “automatic” restoration of rights for some non-violent felons.

2013
In *Shelby v. Holder*, the U.S. Supreme Court guts preclearance requirement of the VRA, eliminating a critical tool to protect voting rights in jurisdictions like Virginia with a history of discrimination.

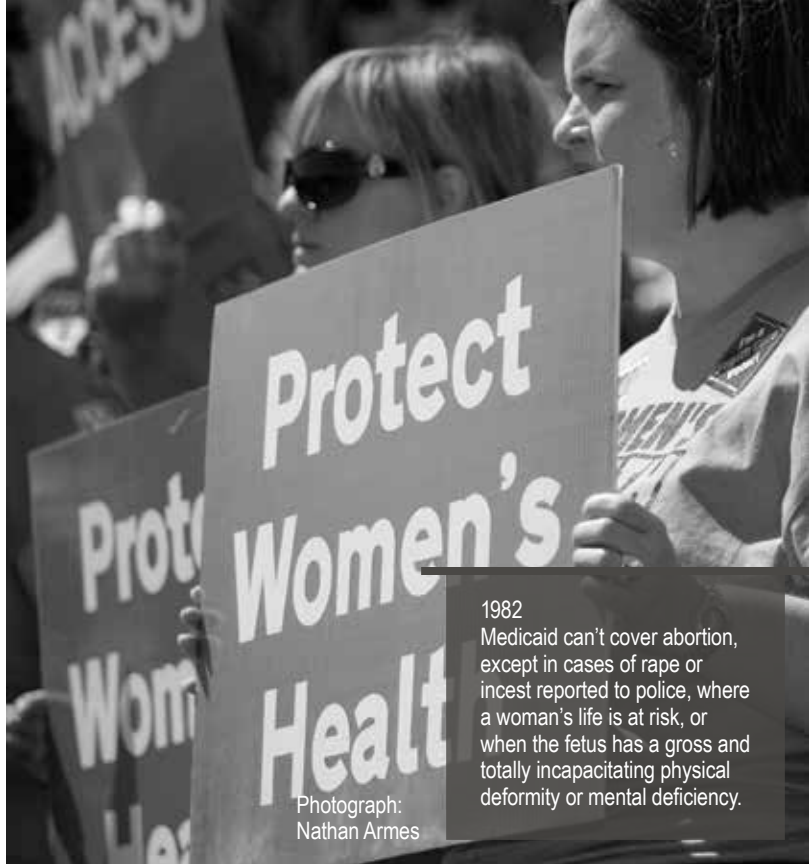
2014
Virginia’s mandatory voter photo ID law is enacted. This marks the second significant voter ID law change in only three years. The ACLU calls it a modern day poll tax.

2014
ACLU pushes Governor to include drug offenses in “automatic” process for restoring voting rights. He does so, and reduces mandatory wait period for those convicted of violent felonies from five to three years.

DEFENDING WOMEN'S ACCESS TO REPRODUCTIVE HEALTHCARE

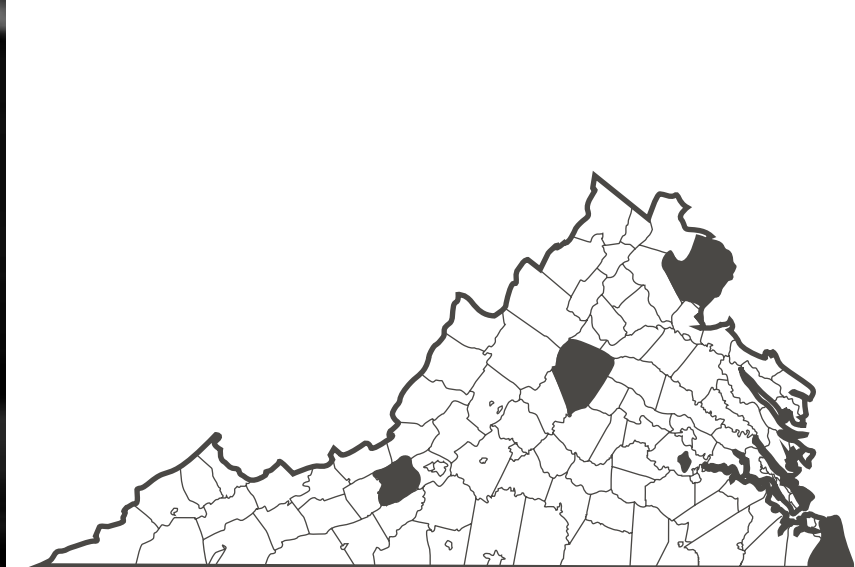
Virginians want a woman who has decided to have an abortion to feel supported. Since the *Roe v. Wade* decision in 1973, however, Virginia has passed 13 laws that restrict a woman's right to make health care decisions about whether and when to become a parent. We're moving in the wrong direction.

We must move forward to protect reproductive freedom by changing the conversation about abortion, making sure women actually feel supported. We must ensure that a woman and her doctor are free to make the best decision for her circumstance without the interference of a politician, and that laws and regulations governing women's health are based in science and medicine, not politics.



1982
Medicaid can't cover abortion, except in cases of rape or incest reported to police, where a woman's life is at risk, or when the fetus has a gross and totally incapacitating physical deformity or mental deficiency.

Photograph:
Nathan Armes



1997

Legislators tell doctors what to say to women seeking abortion, and women are told they must wait 24 hours after getting government written information, including realistic photos of what a fetus looks like at two-week intervals.

2012

Health centers that provide abortion must either meet medically unnecessary building standards designated for new hospitals or close down.

2013

Legislature requires women to have an ultrasound at 24 hours before an abortion and bans some private insurers from providing abortion coverage.

2014

The map above highlights in grey the only counties or cities in Virginia where there is a freestanding abortion provider, all of which are burdened by the medically unnecessary building standards enacted in 2012.

MAKING PROGRESS TOWARD ENDING SEX DISCRIMINATION

Women in Virginia face many forms of discrimination. Although much progress has been made, Virginia's women still don't stand on an equal footing with men when it comes to career and economic matters.

We must continue to fight in our legislature to ensure women have equal pay, work flexibility, and opportunities to compete for state and local contracts.



1964
The Federal Civil Rights Act is signed into law, which includes the prohibition of employment discrimination on the basis of gender.

1997
Virginia Human Rights Act is amended to protect women from being discriminated against by their employer due to pregnancy, childbirth, or other related medical conditions.



2007

Nearly one-third of Virginia businesses are owned by women, but women continue to lack fair opportunities to compete for state and local contracts.

2014

The ACLU successfully advocates for legislation that removes a discriminatory provision barring military spouses who leave their jobs to follow their active duty spouse to a new location from receiving unemployment compensation.

CIVIL RIGHTS FOR IMMIGRANTS

Virginia has been at the forefront of the national effort to undermine the constitutional rights of undocumented immigrants. From mandatory immigration checks on arrest, to limits on bail, to detention without probable cause, the Commonwealth has systematically undermined the civil and due process rights of Virginia's undocumented residents.

The ACLU has always believed that immigrants' rights are civil rights. We're committed to ensuring that the civil liberties and civil rights of immigrants are protected, including ensuring that Virginians are not subjected to detention unless probable cause of a crime exists and ensuring that victims of and witnesses to a crime are not subjected to an immigration status check when they are cooperating with law enforcement.

2003

Virginians are less safe on the roads after the Commonwealth requires proof of legal presence for driver's licenses, resulting in more unlicensed and uninsured drivers on Virginia's roads. ACLU opposes.

2004

A legislative study documents lack of language access to state programs for non-English speakers in violation of Title VI of the Civil Rights Act of 1964.

2005

Virginia requires proof of legal presence to participate in state benefit programs.

2008

Virginia mandates immigration check on arrest and limits bail for undocumented immigrants.



2012

President grants deferred deportation action for some immigrant children. VA DMV, at the ACLU's request, confirms that individuals qualifying for "deferred action" can apply for a Virginia driver's license.

2014

The ACLU asks Virginia's Attorney General to confirm that Deferred Action for Childhood Arrivals (DACA) students are eligible to apply for in-state tuition at all Virginia public colleges and universities, and he does so.

EQUALITY FOR LESBIAN, GAY, BISEXUAL & TRANSGENDER VIRGINIANS

Historically, the Commonwealth has permitted discrimination against certain segments of its population. Lesbian, gay, bisexual and transgender (LGBT) residents have become the Commonwealth's newest targets of intolerance. Legislation and constitutional amendments have passed that forbid marriage between same sex couples; fail to ensure proper safeguards to prohibit discrimination in employment, housing, state services, and public accommodations; and grant certain service providers a license to discriminate.

Fifty years ago, the ACLU embarked on one of the most important cases of the civil rights movement, *Loving v. Virginia*, which established the right to marry a person of a different race. We're now on the cusp of extending the freedom to marry to same-sex couples. But, while marriage equality will be a huge step forward, full equality will not be achieved until discrimination in employment, housing, and access to services also ends.

2004

General Assembly passes statute prohibiting recognition of any civil union or other legal status for same-sex couples over ACLU opposition.

2005

Governor signs executive order barring discrimination based on sexual orientation in state employment. ACLU supported.

2006

Despite ACLU opposition, Virginia voters write discrimination into the Virginia Constitution by banning any and all legal recognition for same-sex relationships.



2013

The Fourth Circuit holds that Virginia's "crimes against nature" law is unconstitutional. The ACLU submitted a friend-of-the court brief arguing that the law should be struck down.

2014

Federal courts rule that Virginia laws prohibiting marriage by same-sex couples are unconstitutional. The ACLU represents 14,000 Virginia same-sex couples in this case.

2014

The ACLU opposes legislation allowing genetic counselors to deny services to LGBT Virginians if doing so would conflict with a counselor's "deeply held moral or religious beliefs," and supports repeal of sodomy law.

2015

The U.S. Supreme Court ruling on marriage expected.