



Virginia Liberties

Newsletter of the American Civil Liberties Union of Virginia, Spring 2005

Major Effort Launched to Halt Patriot Act Renewal

New ACLU of Virginia Patriot Act Manual Available for Speakers and Organizers

Unless Congress acts to the contrary, some of the worst parts of the Patriot Act will expire on December 1 -- and the ACLU has set its sights on making sure that happens. Through educational programs, lobbying and membership mobilization, the ACLU is planning an all-out effort to keep Congress from extending the expiring provisions of the Act.

As a way of demonstrating to Congress that opposition to the Patriot Act comes from all walks of the political spectrum, the National ACLU recently joined a coalition of conservative groups in favor of expiration. In addition, the ACLU is supporting the Security and Freedom Enhancement (SAFE) Act, a bi-partisan effort to amend the Patriot Act to rid it of its most problematic provisions. The SAFE Act was announced at a news conference last week sponsored by both Republican and Democratic Senators.

The SAFE Act scales back the government's authority to seize personal information, such as credit reports and communications records, without judicial review. It also narrows the "sneak and peek" provision, which allows federal agents to get court authorization to search Americans' homes without notification. And it refines Section 215, which allows the F.B.I. to obtain a rubberstamped court order giving it access to medical, business, library and even genetic records without probable cause.

You can help with this effort by getting involved. Please contact the ACLU of Virginia to find out more about what you can do. We have produced a manual on the Patriot Act that not only explains it, but also shows you how to explain it to others, including presentations to groups.

- Inside -

ACLU of Virginia

Annual Meeting,

Saturday, May 21

NOVA Chapter

Annual Crabfest & Meeting,

Sunday, June 12

Latino Workers Win Right to Assemble

In an employer-employee balancing act that has become a familiar scene in Virginia in recent years, immigrant laborers gather outside a 7-11 in Woodbridge each morning waiting for employers to pick them up for day work. But last October 19, two-dozen Latino workers were greeted not by prospective employers but by the police, who arrested them for loitering. Some were jailed, some transported to federal immigration authorities, and others were ticketed and released. Representing 11 of the 24 workers, the ACLU challenged the constitutionality of the Prince William County loitering ordinance, claiming that it infringed on the workers' right to peaceably assemble. Prince William prosecutors agreed to dismiss the charges just before trial and to allow the workers to gather at the 7-11 without being subject to arrest.

The case has sparked several protests against the ACLU by a local citizens' group intent on keeping immigrants from the community. The group claims that it will soon expand its protests by "loitering on the front porches of ACLU officials."

Child Visitation Case Tests Anti-Gay State Law

Janet and Lisa Miller-Jenkins entered into a civil union under Vermont law, had a child, separated, dissolved the union, and went through a custody dispute -- much like many couples do every day. But being lesbians -- and with Lisa now living in Virginia and using a state law to argue for sole custody of the child -- their case is shaping up to be anything but ordinary.

Under a Vermont court order, Lisa, the birth mother, was awarded custody of the child, and Janet was given visitation rights. Lisa then moved with the child to Virginia where she filed for a new custody proceeding. Relying on a 2004 state law banning same-sex agreements that "purport to bestow the privileges or obligations of marriage," the Virginia court removed Lisa's visitation rights.

The ACLU of Virginia now represents Janet in the Virginia Supreme Court. We claim that the 2004 state law banning same-sex agreements is unconstitutional and that the lower court in Virginia erred when it ruled that it had the authority to overturn the Vermont court's custody order. Janet's case will be heard by the Virginia Supreme Court sometime this summer.

From the Director - A little diversity goes a long way

Eighteen years with an organization can give a person perspective, but sometimes it takes a singular moment to become aware of it. I had one of those moments a couple of months ago when ACLU employees from around the country gathered in Albuquerque for our annual conference.

Having attended such conferences since the late eighties, I was first struck by the size of the group. Rather than the 100 or so faces that I have come to recognize over the years, I found myself in a crowd of several hundred. And rather than seeing familiar faces, I saw mostly new ones. But mostly I noticed the diversity. My fellow ACLUers were young, old,

men, women, gay, lesbian, and every ethnic and racial group imaginable. The atmosphere was electric.

Some have questioned the emphasis on diversity within the ACLU, saying that we should promote equality and allow diversity to follow at whatever pace it chooses. The drawback to this approach is that it is slow and it fails to take immediate advantage of one of the key benefits of diversity. Diversity is not just the static result of equality; it is also a way of ensuring new, vibrant, and different viewpoints in the organization.

For an organization that has truly practiced what it preaches when it comes to free speech, there is no better way to

guarantee our future vitality than by bringing people of different backgrounds to the decision-making process.

The word 'diversity' will not be found in the Constitution, but the dual promise of free expression and equal treatment is. And these two principles form the foundation on which we can -- and should -- build diversity. It serves the organization -- and the nation -- well.

The ACLU today is a better, more effective organization than it was 18 years ago at least in part because it is a more diverse organization

Kent Willis
Executive Director

ACLU-VA Annual Meeting - You're Invited!

Saturday, May 21, 11:00 a.m. - Noon Café Ole, 2 N. Sixth Street, Richmond

We'd like to know if you will be attending.

Call us at (804) 644-8080 or E-Mail us at acluva@acluva.org

Put the ACLU Foundation in your will now and generate a cash gift of up to \$10,000.

Through a generous commitment from ACLU Foundation supporter Robert W. Wilson, a bequest provision in your will or living trust will be matched with a with a cash gift of 10% of the bequest's value (up to \$100,000). This remarkable time-limited offer will benefit both the national ACLU Foundation and the ACLU of Virginia Foundation.

For more information, contact the National ACLU Office of Gift Planning toll-free at 877-867-1025 or the ACLU Foundation of Virginia at acluva@acluva.org or 804/644-8080.

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ACLU of Virginia in Action

Corrections Department to Treat Transgendered Prisoners

The ACLU and the Virginia Department of Corrections have settled a lawsuit over a DOC policy that prevented transgendered inmates from receiving hormones, surgery, or other medical treatment for their condition. Under the agreement, DOC will identify prisoners with Gender Identity Disorder, or GID, and create individualized treatment plans designed by doctors experienced in caring for transgendered persons. The agreement does not exclude any form of appropriate treatment.

DOC will also train its security staff to prevent harassment of transgendered prisoners and has agreed to house transgendered prisoners "in the most appropriate prison environment reasonably available."

"With this agreement, the Virginia Department of Corrections becomes a national leader in the treatment of transgendered prisoners," said Victor M. Glasberg, Esq., who represented transgendered inmate Ophelia De'lonta for the ACLU of Virginia. "It is a dramatic step forward that will help transgendered prisoners receive enlightened, professional treatment consistent with their medical needs."

The ACLU provided legal representation for De'lonta in the Fourth Circuit Court of Appeals, after a lower court summarily dismissed her case. The ACLU argued that DOC has a legal responsibility to treat De'lonta's condition, and the Fourth Circuit ordered the lower court to go forward with the case. At that point, the case was settled.

Forum Restrictions

Nixed in Va Beach

Free speech is alive and well in Virginia Beach, thanks to the ACLU. "Town Center" was designed to give the sprawling city an urban core. Around a central park bordered by streets is a theater, retail stores and residences. So far, no problem, but then the city's development authority announced that demonstrations and distribution of political literature would not be allowed in the park. We threatened to sue, and soon thereafter the city opened the park

Spotsylvania Adopts New Pledge Policy for Students

Under pressure from the ACLU, the Spotsylvania County School Board has adopted a new policy allowing students to sit in protest during school recitations of the Pledge of Allegiance. A school principal had threatened a seated student with punishment under a school board policy that clearly violated the free speech rights of students and a recent Virginia law. The 2001 law requires all public schools to recite the Pledge, but explicitly gives students the right to be silent and to refuse to stand.

Appeals Court Allows County to Exclude Minority Religions from Prayer

In a disappointing decision, the Fourth Circuit Court of Appeals has upheld the right of Chesterfield County to exclude Wiccan Cyndi Simpson from the list of religious leaders allowed to offer prayers at the opening of Board of Supervisors' meetings. The appellate court's ruling reverses a federal district court decision holding that the barring of Wiccans and other minority religions from the opportunity to pray violates Simpson's constitutional rights.

ACLU of Virginia legal director Rebecca Glenberg had argued that the Chesterfield County policy -- which allows prayers only by persons practicing a Judeo-Christian faith -- violates separation of church and state by preferring some religions over others and also violates free speech by excluding some religious viewpoints.

"Enemy Combatant" Held in Norfolk Finally Freed

Yaser Hamdi, the "enemy combatant" who was held incommunicado in a naval brig in Norfolk for two years before being moved to a South Carolina facility, has finally returned home.

After the Supreme Court ordered the Department of Justice to either bring charges against Hamdi or release him, he was freed -- although only after he agreed to return home to Saudi Arabia and not sue the government for illegally detaining him.

Picked up in Afghanistan in late 2001 and held for more than three years, no charges were ever brought against Hamdi, who was born in Louisiana but raised in Saudi Arabia. Brought to the U.S. after his arrest, Hamdi was labeled an "enemy combatant" and incarcerated without being charged with a crime.

Under the government's "enemy combatant" designation anyone thought to be fighting against the US in the war on terrorism can be detained indefinitely.

A federal judge in Norfolk ordered the government to provide evidence that Hamdi was an enemy fighter before being allowed to detain him, but the government refused and appealed the decision. In a sweeping ruling, the federal appeals court decided that the government did not need to substantiate its findings regarding Hamdi and largely gutted any requirement for due process in war-related cases. Fortunately, the Supreme Court did not agree.

From the Capitol - 2005 Legislative Session

By Aimee Perron Seibert, Legislative Director

Church and State

One of the most controversial bills this session was actually a constitutional amendment that, according to its patron, was introduced to counteract the supposed suppression of religious expression in public places, especially in public schools. We disagreed, and thankfully, so did the members of the Senate Courts of Justice committee where the bill was soundly defeated.

Reproductive Rights

After being deluged for the past three years with anti-choice legislation, we were able to defeat ALL such bills this year. Not a single one of the over a dozen bills survived final passage. Employing new tactics this year in an attempt to get around the anti-choice graveyard of the Senate Education and Health committee, legislators introduced bills that amended the Consumer Protection Act to include abortion services, stripped public universities of immunity if any complications occurred after distributing emergency contraception and tried to make imposing onerous abortion clinic regulations a local option rather than the usual statewide approach.

Equal Rights

Our one-man fight against restrictions on methadone clinics continued this session. Unfortunately, common sense was surpassed by fear and a moratorium on opening new clinics was passed while the government drafts new, more restrictive regulations.

Death Penalty

Except for one amendment slipped into a seemingly unrelated bill at the eleventh hour, we were able to deflect Attorney General Kilgore's "Death Penalty Enhancement" bills by having most of them sent to the Crime Commission to be studied this summer. Unfortunately, one expansion did occur and now gang violence linked with petty drug crimes can be charged as a capital offense.

Criminal Justice

Finding new and embarrassing ways to punish criminals appears to be legislator's issue du jour. For the second year in a row, we helped kill a bill to require DUI offenders to display special yellow license plates on their cars.

Another similar bill would have collected DNA samples from persons merely arrested for solicitation or a drug offense to be put in Virginia's ballooning DNA database.

Voting and Elections

As staunch advocates for making it easier to vote, we were supportive of numerous measures to remove barriers to voting absentee. Currently, Virginia has a list of reasons that one can cite when voting absentee. Numerous bills this session tried to remove such restriction to allow anyone to vote absentee for any reason.

We believe that because voting is a fundamental right and an essential characteristic of democracy, voting laws and policies should be as simple and trouble-free as possible. Another bill would have taken a tiny step in that direction by allowing citizens to apply for absentee ballots online. It was killed in committee as well.

Open Government

A bill that passed over our objections requires that the Judicial Inquiry and Review Commission's ethical advice given to a judge and applicable records be kept confidential.

We believe this is exactly the type of information that should be available to the public. Such broad opinions about the judicial process, as opposed to accusations about judges who acted improperly, should not be excluded from public scrutiny. Simply put, advisory opinions on judicial ethics are precisely the sort of information that should be available to attorneys and to the public.

Free Expression

Once again, we found ourselves in the House Transportation committee arguing against a special license plate, this time displaying the message "Traditional Marriage." As in the case of the "Choose Life" license plate the Governor vetoed two years ago, this license plate also discriminates on the basis of viewpoint. Clearly, it is meant to give opponents of gay marriage a voice while not providing the same opportunity for supporters.

Privacy

The bill heard 'round the world this session—literally—was the infamous "droopy drawers" bill that we opposed. After being reported from committee and then passing the full House, in a long awaited moment of clarity, the Senate recognized the ridiculousness of the bill, as well as its unconstitutionality and killed it quickly in committee. Unlike the House, the Senate realized that Virginia cannot impose a statewide dress code on its citizens.

Gay and Lesbian Rights

As anticipated, a constitutional amendment to prohibit gay marriage and civil unions flew through the legislature. It has to pass in 2006 as well before it goes on the ballot, so we have time to shore up more opposition to the poorly worded, over the top amendment.

On a more victorious note, the ACLU and its allies were able to defeat two especially onerous bills—one to ban gays and lesbians from adopting and another to prohibit high school gay-straight alliance clubs.

Available Soon!

ACLU-VA review of the 2005 General Assembly session. Contact us for a copy.

Around Virginia: People and Events

Screenings of Patriot Act Documentary Draw Crowds

It's been shown in Alexandria, Charlottesville, Richmond and Williamsburg--and may soon be in a theater near you. *Unconstitutional*, the ACLU's dramatic documentary on the USA Patriot Act and other erosions of civil liberties since September 11, 2001, has drawn large and enthusiastic audiences, the kind that leave the theater asking what they can do to help.

In Alexandria, an audience of 100 attended a screening sponsored by the NOVA Chapter and stayed afterwards to share reactions with ACLU board member John Vail, an attorney with the Center for Constitutional Law. In Richmond and Williamsburg, audiences watched the film and remained for lively Q&As with, respectively, Imad Damaj from the Virginia Muslim Coalition for Public Affairs and John Levy, a William & Mary law professor. Imad and John are also on the ACLU board.

The largest audience, topping 200, attended a showing at the University of Virginia Law School late last year. Organized by the law school and Charlottesville ACLU chapters, a mixture of students and townsfolk filled the auditorium for the film and an informative and scintillating lecture from Robert O'Neil, director of the Thomas Jefferson Center for Freedom of Expression.

There have been several showings in smaller venues in other parts of the state, such as Fauquier County and Chesterfield County, and there will be additional showings soon.

If you would like to know more about upcoming showings of Unconstitutional, or you would like to sponsor a showing to a small or large audience, let us know. Unconstitutional is available in DVD format and lasts about an hour.

NOVA Chapter Annual Crabfest, Sunday, June 12

Crabs, Hot Dogs, Burgers, and more!

Don't miss this wonderful annual ACLU gathering. Guest speaker, state ACLU executive director Kent Willis.

June 12, 1:00-5:00 p.m.

Fort Hunt Park, Area D, Alexandria.

\$15/adults - \$5/6-12 - Free/under 6

Call 703/360-1096 for more details.

Student Chapters Form at William & Mary and UVA Law School

The ACLU of Virginia has two new officially-recognized student chapters, and they're both on the move. The UVA Law School chapter has not only sponsored several school events, but also assisted the state office with the screening of the documentary *Unconstitutional* in Charlottesville (see above). The William and Mary undergraduate chapter is only about a month old, but has already brought Congressman Bobby Scott to the school to speak on the Patriot Act. Special thanks to Gena Chieco at UVA and Matt Blair at W&M, who were instrumental in establishing their respective chapters and who now serve as chapter presidents. If you would like to form a student chapter at your college or get in touch with Gena or Matt, contact us at acluva@acluva.org.

Meet George Smith, ACLU VP

He may be soft-spoken and mild mannered, but George "Billy" Smith knows how to stir up trouble. We first met the retired public school teacher in the late eighties when he and friend Charles White spearheaded a movement to bring racial fairness to the Brunswick County electoral process. George ultimately served as a plaintiff in two voting rights cases brought by the Virginia ACLU against the county board of supervisors. The second case, *Smith v. Brunswick County*, bears his name.

We're not shy about asking for help from people we've helped, so we asked George to run for the board. Elected in 1993, he has become a model board member, actively engaged in multiple aspects of organizational governance. George is a vice-president (notice that license plate on his new Mustang!) and chairs both the Nominating and Affirmative Action Committees. He also serves on the Development Committee and has attended the last five ACLU Biennial Conferences, starting in 1995, as a Virginia delegate. Among George's more admirable -- and somewhat mysterious -- accomplishments is his ability to raise money for the ACLU in a rural area of the state where we have almost no members.

Born in 1935, George claims he's slowing down, but we haven't seen any evidence of that yet.



Too Much Zeal for Prayers at Government Meetings?

By Kent Willis

Executive Director, ACLU of Virginia

In his *Memorial and Remonstrance*, James Madison warned Virginia's lawmakers that religion and government do not make a good couple.

The most familiar part of Madison's letter to the Virginia General Assembly in 1784 addresses the harm that government can do to religious freedom. Aware of the religious persecutions in England that brought so many to our shores and having witnessed first hand the Virginia government's dreadful treatment of Baptists and other non-Anglican faiths, Madison wanted to protect religion by removing from government the power to suppress it.

Less familiar but no less prominent in the *Remonstrance* is Madison's notion that public officials tend to act badly when they embrace religion as an organ of the government. Here's an example:

"What influence in fact have ecclesiastical establishments had on Civil Society? In some instances they have been seen to erect a spiritual tyranny on the ruins of Civil authority; in many instances they have been seen upholding the thrones of political tyranny; in no instance have they been seen as the guardians of the liberties of the people. Rulers who wished to subvert the public liberties may have found an established in clergy convenient auxiliaries."

These are strong words, but not the only ones so directed. Madison also writes in the *Remonstrance* that a government official who believes he is a "competent judge of religious truth" participates in "an arrogant pretension," and that to "employ religion as an engine of Civil policy" is "an unhallowed perversion of the means of salvation."

Madison based his warnings on the history he knew and contemporary events, but it is uncanny how they also apply to the slippery scheme cooked up recently by the Town of Culpeper and Delegate Robert Orrick to ensure that Christian prayers will remain part of town council meetings, despite a court ruling prohibiting them.

Culpeper found itself in a quandary last year when the Fourth Circuit Court of Appeals--probably with a nod to Madison's *Remonstrance*--ruled that formal prayers used to open government meetings must be non-sectarian, meaning they may include references to a supreme being but not invoke a particular faith.

Less familiar but no less prominent in the *Remonstrance* is Madison's notion that public officials tend to act badly when they embrace religion as an organ of the government.

A review of news accounts following the court ruling reveals that it provoked lively discussions, but that public officials in most towns, cities and counties went along with it.

The ruling seemed to wake them from a kind of Rip Van Winkle stupor to notice that their constituencies had changed while they slept. The homogenous Christian communities to whom they directed their Christian prayers no longer existed--if indeed they ever did. Not only were there Christians of many different stripes out there, but also Jews, Hindus, Buddhists, Muslims and people of many other faiths.

For most government officials in Virginia, it simply made good common sense to solemnize meetings attended by a diverse audience with a broad inclusive prayer that welcomes everyone, rather than an exclusive prayer that divides people along religious lines and insinuates a government preference for one religion over all others.

Not so in the Town of Culpeper, which began plotting immediately for a way to circumvent the ban on sectarian prayers. To be fair, Culpeper has complied with the court's ruling, first telling the ministers who pray at their meetings to avoid sectarian references and, when that proved unacceptable, substituting a moment of silence format.

But the scheming never stopped, and it took final shape in Delegate Orrick's HB 2615, which has now passed the Virginia General Assembly and has been signed by the Governor. The law takes effect July 1.

This affront to free expression mischievously awards full "First Amendment" rights to everyone present prior to the "actual call to order or convening of business" of a government meeting.

If not for the context, most of us would celebrate any proposed law that expands First Amendment protections. Unfortunately, this bill has nothing to do with the precious expressive rights so brilliantly articulated in the First Amendment.

Rather, its purpose is to use the First Amendment as a vehicle for force-fitting sectarian prayers into a tiny legal cranny left undefined by the court ruling.

Here's how: The Fourth Circuit's ruling prevents government officials from opening their meetings with a sectarian prayer, but is silent on what government officials can do in the time period when everyone is gathered together but the meeting has not officially begun.

Therefore, so the reasoning goes, if local officials merely move the "actual call to order" of their meeting from just before to just after the opening prayer, then the prayer can be sectarian without violating the ruling.

Orrick's bill provides a basis in Virginia law for arguing that the free speech and free exercise clauses of the First Amendment fully protect sectarian prayers prior to the official opening of a government meeting--even when the prayer is for all intents and purposes part of the meeting.

The flaw in the law is that any court with a fully conscious judge will see it for what it really is. HB 2615 may create a First Amendment-protected period before the actual start of government business, but if it results in governing bodies offering the same sectarian prayer in pretty much the same way they always have, the courts will strike it down.

