



ISSUE 2, VOLUME 49, SUMMER/FALL 2013



Vanita Gupta

ANNUAL MEMBERSHIP MEETING

Mass Incarceration: Race, Justice & Jim Crow

Vanita Gupta, Deputy Legal Director of the ACLU

Thursday, September 26, 2013, 6:30 – 7:30 p.m., reception to follow

Lewis & Clark Law School, 10015 S.W. Terwilliger Blvd., Portland

This event is free and open to the public.

1 CLE credit available for Oregon Lawyers

The 2013 Annual Membership Meeting of the ACLU of Oregon will be Thursday, September 26, at the Lewis & Clark Law School on S.W. Terwilliger Blvd. The event is free and open to the public. The evening's keynote speaker will be Vanita Gupta, Deputy Legal Director of the American Civil Liberties Union and Director of the ACLU's Center for Justice, which houses the organization's criminal justice reform, prisoners' rights, and capital punishment work. Vanita is leading the ACLU's National Campaign to End Overincarceration.

From 2006-2010, Vanita was a staff attorney with the ACLU's Racial Justice Program where she won a landmark settlement on behalf of immigrant children detained in a privately run ICE detention center in Texas. Prior to the ACLU, Vanita was at the NAACP Legal Defense Fund where she successfully led the effort to overturn the wrongful drug convictions of 38 defendants in Tulia, Texas. She will discuss the state of criminal justice reform in Oregon and around the country, as seen through both legislative efforts and current cases.

A reception will follow the membership meeting. Vanita will also participate in the ACLU Northwest Civil Liberties Conference at the law school on Friday, September 27. For more details about the conference, please see page 11.

WINNING THE FREEDOM TO MARRY IN OREGON

In June, ACLU client Edie Windsor made history when the Supreme Court struck down the core of the federal Defense of Marriage Act (DOMA). It was a momentous day for Edie and many couples across the country.

Now, it's our turn to make history – by becoming the first state in the nation to replace a constitutional ban on same-sex marriage with language that would guarantee marriage equality for all couples who want to celebrate their love and commitment with family and friends. The ACLU of Oregon is a key partner in this freedom to marry campaign and we need your help to ensure we win the freedom to marry for all in November 2014.

This campaign is a high priority not only for the ACLU of Oregon, but also for ACLU nationwide. Coming off the 2012 victories in Maine, Maryland, Washington and Minnesota, winning in Oregon in 2014 is a critical next step in advancing LGBT rights nationwide.

The ACLU took on its first LGBT-related case in 1936

when it defended Lillian Hellman's lesbian-themed play, *The Children's Hour*, from censors. In Oregon, we have been a leading advocate for LGBT civil rights since the 1970s and



we are committed to removing the last remaining law in Oregon that explicitly requires discrimination against lesbian and gay Oregonians – the state constitutional ban on marriage for same-sex couples. We have joined the Oregon United for Marriage campaign to collect 116,284 valid signatures from Oregonian voters (like you!) to put the Freedom to Marry and Religious

Protection Initiative on the ballot next year.

There are many ways to help! Visit the Oregon United for Marriage website (oregonunitedformarriage.org) to download an E-petition or go a step further and sign-up as a volunteer signature gatherer.

This is your opportunity to make history in Oregon. Together, we can make it possible for every Oregonian to have the freedom to marry the person they love.

GLENN GREENWALD, EDWARD SNOWDEN AND GOVERNMENT SURVEILLANCE

FROM THE EXECUTIVE DIRECTOR



David Fidanque

The ACLU has been working non-stop for the past twelve years to uncover and then reverse the unprecedented expansion of suspicionless surveillance of millions of innocent Americans by the NSA, the FBI, the CIA and other U.S. intelligence agencies since 9/11. From the beginning of this period, the ACLU has consistently warned that these practices would not only jeopardize the freedoms that Americans hold dear, but that they would also make us less safe.

Virtually all of our efforts to gain greater transparency and to build the pressure for reform have been strenuously resisted by the Bush and Obama Administrations both in the courts and in Congress.

This spring, when *The Guardian's* columnist Glenn Greenwald spoke at our Liberty Dinner in Portland, he praised the ACLU for its steadfast and principled commitment to freedom. Little did we know that within three months of that speech Greenwald himself would be instrumental in reporting dozens of stories outlining the widespread invasions of privacy carried out by the NSA, thanks to documents provided to him by former NSA contractor Edward Snowden.

As the first of Greenwald's stories became front page news worldwide, the ACLU redoubled its efforts to reverse these policies and practices in the courts and in Congress. One case in particular highlights the importance of Snowden's leaks and Greenwald's reporting.

Just days before our Liberty Dinner in Portland, the U.S. Supreme Court had thrown out ACLU's challenge of the FISA Amendments Act of 2008 on the basis that we could not prove that any of our clients – international human rights attorneys, journalists and non-profit organizations – had been subjected to

U.S. government surveillance. Without the revelations of Edward Snowden, that could have been the end of this issue.

However, the first document published by Greenwald was a FISA court order requiring Verizon Business Networking Services to provide massive amounts of data to the NSA outlining all telephone numbers called and received by millions of Americans. Coincidentally, the National ACLU office in New York contracts with Verizon Business Networking Services for all of its telephone and internet services. Thus, Snowden's leak and Greenwald's reporting of that one document made it possible for the ACLU to prove that it indeed has been subjected to just the type of surveillance we had been unable to pursue in *Amnesty International v. Clapper*.

We filed a new law suit – with the ACLU as the lead plaintiff – less than ten days after Greenwald's first story appeared.

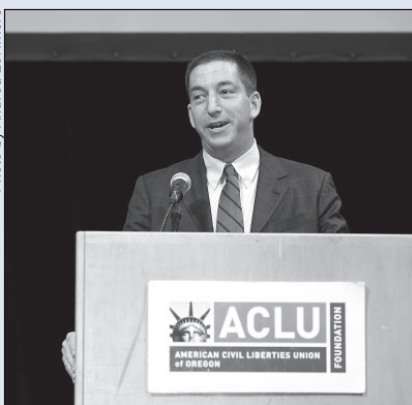
Even as President Obama has now committed himself to modest reforms – and some additional transparency – the Administration continues to minimize the impacts on privacy and freedom represented by the NSA's data collection and intrusions.

Instead of supporting meaningful reform, the Administration apparently approved of the British government's actions when informed in advance that Greenwald's domestic partner, David Miranda, would be detained and interrogated as a terrorism suspect merely because he had visited Greenwald's reporting partner in Berlin prior to returning to his native Brazil.

You can expect us to continue to do everything we can to restore the privacy protections that are guaranteed by our Constitution and to prevent innocent Americans – and foreign nationals – from having their every move and every thought laid bare to unwarranted government snooping. Thanks again for all of your support of our work.



Photo by Andrea Lorrimore



Glenn Greenwald, the journalist who broke the Edward Snowden and NSA surveillance story this summer, was the keynote speaker at the ACLU of Oregon's 2013 Liberty Dinner in March.

Video of his speech is available to view on our website, aclu-or.org.

LEGAL HIGHLIGHTS

Here is a sampling of recent legal work we have engaged in throughout Oregon.

Freedom of Speech

- Urged Taft High School in Lincoln County to resist parental pressure to remove or limit access to a book in the school library; *The Little Black Book of Sex for Girlz: A Book on Healthy Sexuality*.
- We're representing families in Marion, Clackamas and Columbia Counties regarding school infringements of students' free speech rights.
- Successfully represented a college student who was identified for questioning by the local Joint Terrorism Task Force after he engaged in a heated political discussion at a public event in Portland.
- Unfortunately, our challenge to the infringement of a TriMet rider's free speech was dismissed because the punishment, a period of exclusion from TriMet, had concluded. And because the punishment was no longer in force, the court never reached our underlying free speech claims.

Religious Liberty

- In the playground of Mingus Park in Coos Bay, a Latin cross is affixed to the top of a war memorial. We have urged the City of Coos Bay to remove the memorial to private property or to create a memorial that is inclusive of all veterans regardless of religion.

LGBT Equality

- Successfully mediated a good result for a transwoman who was denied access to the bathroom in a bar in Medford. The bar management has committed to changing its policies and providing training for its employees. Oregon's public accommodations law prohibits discrimination based on gender identity and sexual orientation.
- We are full partners in the Oregon United for Marriage campaign to bring the Freedom to Marry to Oregon for loving, committed same-sex couples who wish to marry.

Criminal Due Process

- Advocated before the Oregon Supreme Court that constitutional protections of the criminally accused should not disappear when a prosecutor decides to reduce a criminal misdemeanor to a violation. In the case before the court, several Occupy Portland protestors were arrested on misdemeanors, such as disorderly conduct or criminal trespass charges that were later downcharged to violations, which removed the possibility of jail time if they were found guilty. But the down-charging, argues the state, in practice also means that the defendant no longer has the right to an attorney or a jury trial and does not have to be found guilty with proof beyond a reasonable doubt. We believe if you are charged with a crime you get to maintain your constitutional rights even if the charge is reduced.

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ACLU REPORT: OREGON'S SCHOOL-TO-PRISON PIPELINE UPDATE

Actualización: Camino de la Escuela a la Prisión en Oregon

In July, the ACLU Foundation of Oregon issued a follow-up report confirming that many students of color in Oregon public schools continue to be more frequently expelled or suspended than their white peers. Our report, based on 2011-12 data reported by school districts to the Oregon Department of Education (ODE), indicates that the statewide disparity is most dramatic for African-American students. For example, African-American students represent 2.5% of the student population statewide, but received 6.5% of all out-of-school suspensions.

Following the issuance of our first report on disproportionate discipline in 2010, then-State Superintendent of Public Instruction Susan Castillo agreed to make future statewide and district-by-district data publicly available on the ODE web site. In conjunction with our updated report, we also have released a step-by-step guide designed to help parents and educators locate the discipline information for their districts as well as statewide.

ACLU of Oregon Executive Director David Fidanque said that making discipline data more visible and available is essential to help communities advocate for improvements in policies and practices to address the disproportionate impact of school discipline on students of color.



“We are not saying that teachers and administrators intentionally discriminate against students of color in Oregon public schools,” Fidanque said, “but the numbers for both academic achievement and student discipline consistently have pointed to practices and policies that result in a disproportionate impact on students of color. As a state – and in each school district – our leaders must take responsibility for making changes that are necessary to ensure that these disparities are no longer seen as inevitable. Indeed, the ACLU of Oregon is a member of a new coalition of community and statewide organizations – the Oregon Alliance for Education Equity – that is tackling a broad range of educational equity issues.”

Our report is also critical of changes in how race and ethnicity identity is determined under recent federal rules implemented by the Oregon Department of Education. We note that the new rules are resulting in an unknown number of students of color being “lost” in the data and may be masking even greater disparities than the data currently show.

We are distributing copies of the report widely, in both English and Spanish. We have also created a Step-by-Step Guide to locating the ODE discipline data. Find out how at aclu-or.org.

The ACLU is the one organization that I know and trust to do the right thing.



It's comforting to know that they will take the honored position of defending our most basic principles, even if the winds change and public opinion blows strong against it.

The ACLU has profoundly and positively impacted those principles, individuals and communities. As a member of the LGBT community, I am grateful and recently demonstrated my gratitude with an estate gift to the ACLU.

Harriet Merrick

DEFEND YOUR PRINCIPLES TODAY WITH YOUR GIFT FOR THE FUTURE.

Contact Development Director Gail Anderson: 503-552-2101

DEFENDING CIVIL LIBERTIES & ADVANCING PRIVACY PROTECTIONS

2013 Legislative Session Report

The 77th Oregon Legislative Assembly drew to a close on July 8th, taking 155 days to pass 831 bills, including all of the ACLU's priority bills. Throughout the course of the session, we reviewed close to 3,000 bills and actively monitored hundreds of those that might impact civil liberties. We met with legislators, partnered with allies, testified at hearings, and called on our e-activists to advocate for the issues at the top of our agenda and to scale back or defeat the bills we opposed. With some exception, we were successful on all of these fronts. Though we consider the outcome of our efforts to reform criminal sentencing policy a disappointing missed opportunity, on the whole the Legislature meaningfully advanced civil liberties this session, most notably in the areas of immigrant rights, privacy, racial justice and LGBT rights.

Privacy & Technology

New technology presents the opportunity for ever increasing surveillance over the daily lives of Oregonians. Whether in the form of cameras in the sky or a nosy employer over your shoulder, constant monitoring of everything we do and say will fundamentally reconfigure our concept of privacy and its protection against intrusion without cause. Oregonians are not accepting of this kind of presence in our lives and, at our urging, neither are legislators. HB 2654 and SB 344 prohibit employers and institutions of higher education, respectively, from requiring employees or students to hand over the password to their private social media accounts such as Facebook and email. HB 2710 prevents law enforcement agencies from using unmanned aerial vehicles – otherwise known as “drones” – for indiscriminate mass surveillance, requiring that drones be used by law enforcement only with a warrant based on probable cause or for limited uses such as search and rescue of a missing person. HB 2386 prohibits schools from using radio frequency identification devices (RFID) for location tracking of students,

for attendance or otherwise, without first providing to parents and students notice and the opportunity to refuse tracking.

Immigrant Rights

In the area of immigrant rights, we joined coalition partners across diverse interest areas from business to law enforcement to labor and community advocates on two important victories. The passage of HB 2787 ends a decade-long battle to ensure

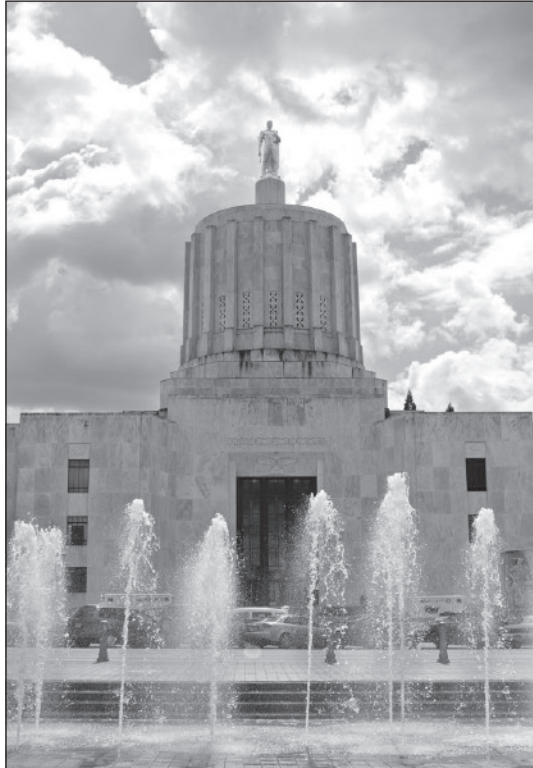


Photo by Kate Horton

access to education for all Oregonians. Known as the Tuition Equity bill, HB 2787 provides for in-state tuition to our colleges and universities to otherwise eligible immigrant youth. And SB 833 restores access to driving privileges to Oregonians who cannot provide proof of lawful presence in the country, a privilege that was taken away in 2007 with an Executive Order signed by Governor Kulongoski. While we work to achieve meaningful immigration reform at the federal level, these bills are examples of what states can do to ensure that immigrant residents are treated with the dignity and respect that should be afforded to all individuals.

Public Safety

HB 3194 was the product of the Governor's Commission on Public Safety that, with support from the Pew Center on the States, met in the year preceding the 2013 session to examine Oregon's criminal justice system and set forth recommendations for reform. The version of the bill that passed abandoned what we believed to be critical, though modest, adjustments to a handful of mandatory minimum sentences – adjustments that were initially recommended by the Commission. Remaining after late-session amendments were merely small changes to sentencing laws that are projected to flat-line prison population growth over the next 5 years and reinvest savings into local public safety infrastructure. These changes are all steps in the right direction but fall far short of the reform that Oregon needs. Judges should have the tools they need to

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JUDGE HEARS ARGUMENT IN NO FLY CASE



In June, we were back in federal court in the U.S. District for Oregon challenging to the government's failure to provide due process to our clients (*Latif v. Holder*). The ACLU is representing 13 individuals on the No Fly List – 4 of them U.S. veterans – asking that the government provide meaningful notice of the grounds for their inclusion on the No Fly List, and an opportunity to rebut the government's charges. The plaintiffs do not know why they are on the No Fly List, or how they may be removed from it. This failure to provide notice or a hearing violates the Fifth Amendment guarantee of procedural due process.

Because notice and a hearing are triggered only when there has been a deprivation of a liberty interest, the State asserts that there is no absolute right to fly.

Further, they argue that our clients' right to travel has not been removed, it has merely been abridged; folks on the No Fly List can still travel by car, for example, or boat, or through other countries, etc., etc.

Fortunately, Judge Brown disagreed with the government and has ruled that flying constitutes a liberty interest and some form of procedural due process is required before the government may restrict that freedom. Now the case turns to what type of procedures the government must provide our clients.

LEGISLATIVE REPORT... CONTINUED FROM PAGE 5

apply discretion in sentencing. And offenders in prison, especially youth, should be better incentivized to take steps to rehabilitate and prepare to reintegrate after prison as contributing members of their community. Unfortunately, HB 3194 is a disappointment.

More Civil Liberties Work

Other victories this session included SB 463 that enables legislators in future sessions to request a racial and ethnic impact statement on pending legislation that will describe the potential effects of specific legislation on the racial and ethnic composition of the criminal offender population or recipients of human services. And HB 2192 requires that school districts revise their policies on student discipline so that suspension and expulsion will be considered only as last resorts and instead prioritize keeping students in school. Our recent update to the School-to-Prison Pipeline Report [see page 4] confirmed that many students of color in Oregon public schools continue to be more frequently expelled or suspended than their white peers and, from that point, more likely to be funneled into the juvenile justice system. We hope that the improvements to discipline policy required by HB 2192 will help to reverse these trends. In the area of transgender rights, HB 2193 repealed an Oregon statute that required surgery in order to update a birth certificate gender marker, even for those transgender people who did not need or want surgery, or were unable to access surgery for financial, medical, or other reasons.

Finally, as with any session, it is our advocacy on "defense" that is just as important as the work we do to affirmatively ad-

vance priority bills. In the area of medical privacy, we were able to scale down but not defeat SB 470, which expands the Prescription Drug Monitoring Program (PDMP). The PDMP collects prescription drug records of Oregonians who are prescribed Schedules II, III, or IV drugs (primarily sleep aids and some pain or anxiety medication). The most significant change authorized by SB 470 is the ability of doctors and pharmacists to delegate access to the database to staff in their offices. We were successful in clarifying that upon such delegation the doctor and pharmacist remain responsible for any misuse or abuse of the system by their staff. We were also successful in removing provisions of the bill that would have authorized the Board of Pharmacy to add any new prescription drug to the list of those monitored and provisions that would have set up an "alert system" to flag for doctors and pharmacists multiple prescriptions or "potentially dangerous" interactions between drugs.

At our urging, HB 2828 to authorize the State Police to retain fingerprint records of innocent people after employment criminal background checks and HB 2595 to create new and significant criminal penalties for forest protestors were defeated, along with dozens of other bills that would have eroded privacy, free speech, or due process and criminal justice rights.

For a complete account of the session and the bills – good and bad – that might impact civil liberties in Oregon, please refer to our 2013 Legislative Report that is posted on our website aclu-or.org. There you will also find links to the bills and samples of written testimony that we provided to legislators.

ACLU 2013 LEGISLATIVE SCORECARD

We like to make sure that legislators know the ACLU's position on important civil liberties bills prior to voting. By the time a bill reaches the floor for a vote, only those legislators who were in the corresponding policy committee are aware of our position. To be sure that all legislators know our position before the vote, we distribute floor statements to all members in the appropriate chamber explaining our position and urging either a Yes or a No vote. When the legislative session is over, we review the key civil liberties floor votes and we strive to include in the scorecard a sample of votes that best represents the full range of civil liberties issues voted on by either the House or the Senate. The scorecard tracks votes by all 90 legislators and tallies an ACLU Percentage Rating.

A GUIDE TO SCORECARD BILLS

BILL	SUBJECT
SB 215	Repeals ban on Native American mascots in Oregon schools that was passed by the Oregon Board of Education in 2012. Perpetuates discriminatory stereotyping by our public institutions. Schools should engage in alternative methods of outreach to Native American communities without having mascots that are so closely connected to the oppression of native people. Passed Senate (25-5) and House (41-19), but was vetoed by the Governor.
SB 344	Prohibits universities from demanding students' social media passwords. Protects in the online world students' personal information that would never be available to schools in the offline world. Passed Senate (28-0) and House (57-1), and signed by the Governor. Takes effect January 1, 2014.
SB 470	Expands collection of and access to Oregonians' prescription drug record data through the Prescription Drug Monitoring Program (PDMP). Amendments on the House side removed provisions posing the greatest risk to medical privacy, but still did not move ACLU to a position of supporting the bill. Passed Senate (22-8) and House (56-2), and signed by the Governor. Takes effect January 1, 2014.
SB 833	Restores access to driving privileges for immigrants in Oregon. Promotes fairness, equality, and road safety. Passed Senate (20-7) and House (38-20), and signed by the Governor. Expected to take effect January 1, 2014.
HB 2654	Prohibits employers from demanding employees' social media passwords. Protects digital privacy of employees from employer snooping. Passed House (56-3) and Senate (28-1), and signed by the Governor. Takes effect January 1, 2014.
HB 2710	Limits and regulates use of surveillance drones by law enforcement agencies, including a requirement that law enforcement get a warrant before invading Oregonians' privacy with a drone. Passed House (56-3) and Senate (24-6), and signed by the Governor. Took effect July 29, 2013.
HB 2787	Provides access to in-state tuition to Oregon universities for otherwise eligible immigrant youth in Oregon. Promotes fairness and equality and makes Oregon a more welcoming place for immigrants. Passed House (38-18) and Senate (19-11), and signed by the Governor. Took effect July 1, 2013.
HB 2962	Repeals Oregon statutes protecting criminal defendant's right to a speedy trial above and beyond protections in the Constitution. Amendments in the Senate moved the date of repeal to 2014 so that stakeholders could negotiate a different solution to be proposed in the February 2014 legislative session. Passed House (42-18) and Senate (27-2), and signed by the Governor.
HB 3014	Requires schools to lead students in daily Pledge of Allegiance. Current law requires Pledge once weekly and is a statute we believe to be vulnerable to a constitutional challenge under the Oregon Constitution's religious freedom provision, as the Pledge includes "under God." This bill would have increased the burden on school age children to set themselves apart from their peers by refraining from reciting the Pledge because of religious, political, or other beliefs. Amendments in the Senate addressed ACLU concerns. Passed House (42-16) and Senate (28-2), and signed by the Governor. Took effect July 1, 2013.
HB 3460	Licenses and regulates medical marijuana dispensaries. Improves safe access to medical care for patients in the Oregon Medical Marijuana Program. Passed House (31-28) and Senate (18-12).

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LEGISLATIVE SCORECARD – SENATORS

Summer/Fall 2013

SENATOR	SB 215	SB 344	SB 470	SB 833	HB 2654	HB 2710	HB 2787	HB 3460	ACLU %
ACLU Position	No	Yes	No	Yes	Yes	Yes	Yes	Yes	
OUTCOME	Vetoed	Passed	Passed	Passed	Passed	Passed	Passed	Passed	
Baertschiger, Herman (R)		Y		Y	Y				37.5
Bates, Alan (D)		Y		Y	Y	Y	Y	Y	75
Beyer, Lee (D)		Y		Y	Y		Y	Y	62.5
Boquist, Brian (R)		Y	N	Y	Y				50
Burdick, Ginny (D)		Y	N	Y	Y	Y	Y	Y	87.5
Close, Betsy (R)		Y			Y	Y			37.5
Courtney, Peter (D)		Y		Y	Y	Y	Y	Y	75
Devlin, Richard (D)		Y		Y	Y	Y	Y	Y	75
Dingfelder, Jackie (D)	N	Y	N	Y	Y	Y	Y	Y	100
Edwards, Chris (D)		Y	N	Y	Y	Y	Y	Y	87.5
Ferrioli, Ted (R)		Y		Y	Y	Y		Y	62.5
George, Larry (R)		Y	N	Y	Y	Y		Y	75
Girod, Fred (R)		Y			Y	Y			37.5
Hansell, Bill (R)		Y		Y	Y	Y	Y		62.5
Hass, Mark (D)		Y		Y	Y	Y	Y	Y	75
Johnson, Betsy (D)		<i>E</i>		<i>E</i>	<i>E</i>		Y		20
Knopp, Tim (R)		Y			Y	Y			37.5
Kruse, Jeff (R)		Y			Y	Y			37.5
Monnes Anderson, Laurie (D)	N	Y		Y	Y	Y	Y	Y	87.5
Monroe, Rod (D)	N	Y		Y	Y	Y	Y		75
Olsen, Alan (R)		Y			Y				25
Prozanski, Floyd (D)		Y	N	Y	Y	Y	Y	Y	87.5
Roblan, Arnie (D)		Y		Y	Y	Y	Y	Y	75
Rosenbaum, Diane (D)	N	Y	N	Y	Y	Y	Y	Y	100
Shields, Chip (D)		Y	N	<i>E</i>	Y	Y	Y	Y	85.7
Starr, Bruce (R)		Y			Y	Y	Y	Y	62.5
Steiner Hayward, Elizabeth (D)	N	Y		Y	Y	Y	Y	Y	87.5
Thomsen, Chuck (R)		Y		Y	Y	Y	Y		62.5
Whitsett, Doug (R)		Y							12.5
Winters, Jackie (R)		<i>E</i>		<i>E</i>	Y	Y		Y	50

LEGISLATIVE SCORECARD – REPRESENTATIVES

REPRESENTATIVE	SB 215	SB 344	SB 833	HB 2654	HB 2710	HB 2787	HB 2962	HB 3014	ACLU %
ACLU Position	No	Yes	Yes	Yes	Yes	Yes	No	No	
Outcome	Passed	Passed	Passed	Passed	Passed	Passed	Passed. Amendments in Senate fixed ACLU concerns.		
Bailey, Jules (D)	N	Y	Y	E	Y	Y	N	N	100
Barker, Jeff (D)		Y	Y	Y	Y	Y		N	77
Barnhart, Phil (D)		Y	Y	Y	Y	Y	N		77
Barton, Brent (D)	N	Y	Y	Y		Y		N	77
Bentz, Cliff (R)		Y		Y	Y	Y			55
Berger, Vicki (R)		Y		Y	Y	Y			55
Boone, Deborah (D)		Y	Y	Y	Y	Y			66
Buckley, Peter (D)		Y	Y	Y	Y	Y		E	75
Cameron, Kevin (R)		Y		Y	Y				44
Clem, Brian (D)		Y	Y	Y	Y	Y			66
Conger, Jason (R)		Y		Y	Y				44
Davis, John (R)		Y	Y	Y	Y				55
Dembrow, Michael (D)	N	Y	Y	Y	Y	Y	N	N	100
Doherty, Margaret (D)	N	Y	Y	Y	Y	Y			77
Esquivel, Sal (R)		Y		Y	Y				44
Fagan, Shemia (D)		Y	Y	Y	Y	Y			66
Frederick, Lew (D)	N	Y	Y	Y	Y	Y	N	N	100
Freeman, Tim (R)		Y		Y	Y				44
Gallegos, Joe (D)	N	Y	Y	Y	Y	Y		N	88
Garrett, Chris (D)	N	Y	Y	Y	Y	Y		N	88
Gelser, Sara (D)		Y	Y	Y	Y	Y			66
Gilliam, Vic (R)		Y	Y						33
Gomberg, David (D)		Y	Y	Y	Y	Y	N	E	87.5
Gorsek, Chris (D)	N	Y	Y	Y	Y	Y	N		88
Greenlick, Mitch (D)		Y	Y	Y	Y	Y	N	N	88
Hanna, Bruce (R)		Y	E	Y	Y				50
Harker, Chris (D)		Y	Y	Y	Y	Y		N	75
Hicks, Wally (R)					E				12.5
Holvey, Paul (D)	N	Y	Y	Y		Y		N	77

Votes marked with an "E" indicate legislator was Excused;
 ACLU eliminates those instances when calculating a legislator's ACLU score.

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LEGISLATIVE SCORECARD – REPRESENTATIVES

REPRESENTATIVE	SB 215	SB 344	SB 833	HB 2654	HB 2710	HB 2787	HB 2962	HB 3014	ACLU %
Hoyle, Val (D)		Y	Y	Y	Y	Y			66
Huffman, John (R)		Y		Y	Y	Y	N		66
Jenson, Bob (R)		Y	Y	Y	Y	E			62.5
Johnson, Mark (R)		Y	Y	Y	Y	Y			66
Kennemer, Bill (R)		Y		Y	Y				44
Keny-Guyer, Alissa (D)	N	Y	Y	Y	Y	Y		N	88
Komp, Betty (D)		Y	Y	Y	Y	Y	N		77
Kotek, Tina (D)		E	Y	Y	Y	Y	N		75
Kruger, Wayne (R)		Y		Y	Y				44
Lively, John (D)		Y	E	Y	Y	Y		N	75
Matthews, Greg (D)	N	Y	Y	Y	Y	Y			77
McKeown, Caddy (D)		Y	Y	Y	Y	Y	N		77
McLane, Mike (R)		E		Y	Y				37.5
Nathanson, Nancy (D)	N	Y	Y	Y	Y	Y	N		88
Olson, Andy (R)		Y		Y	Y				44
Parrish, Julie (R)		Y		Y	Y	Y			55
Read, Tobias (D)	N	Y	Y	Y	Y	Y		N	88
Reardon, Jeff (D)	N	Y	Y	Y	Y	Y	N		88
Richardson, Dennis (R)		Y		Y	Y				37.5
Smith, Greg (R)		Y	Y	Y	Y	E			62.5
Sprenger, Sherrie (R)		Y		Y	Y				44
Thatcher, Kim (R)		Y		Y	Y	E			50
Thompson, Jim (R)		Y		Y	Y				44
Tomei, Carolyn (D)	N	Y	Y	Y	Y	E	N	N	100
Unger, Ben (D)	N	Y	Y	Y	Y	Y			77
Vega Pederson, Jessica (D)	N	Y	Y	Y	Y	Y	N	N	100
Weidner, Jim (R)		Y		Y	Y				44
Whisnant, Gene (R)		Y		Y	Y				44
Whitsett, Gail (R)		Y			Y		N		44
Williamson, Jennifer (D)	N	Y	Y	Y	Y	Y	N	N	100
Witt, Brad (D)	N	Y	Y	Y	Y	Y	N		88

Votes marked with an "E" indicate legislator was Excused;
ACLU eliminates those instances when calculating a legislator's ACLU score.

The legislative scorecard is also available as a PDF at aclu-or.org

TIMELY TOPICS ON AGENDA

ACLU NW CIVIL LIBERTIES CONFERENCE SEPTEMBER 26 - 27

If you have been paying attention to the news lately, you can't help but notice all the civil liberty issues making headlines--a judge declared NYPD's "stop and frisk" policy unconstitutional; NSA broke privacy rules numerous times; Attorney General Eric Holder calls for major sentencing reform--to name a just a few.

How does this news affect us at the state and regional level? Come find out at the fourth annual ACLU Northwest Civil Liberties Conference which will take place on Thursday and Friday, September 26-27 at Lewis & Clark Law School in Portland. The conference is an opportunity to bring together legal professionals, law students, activists and ACLU supporters to explore current issues facing society.

This year's conference will begin on Thursday evening with our annual membership meeting with keynote speaker Vanita Gupta, Deputy Legal Director for the national ACLU. This event is free and open to the public. (See page 1.)

On Friday, panel topics will include Marijuana Reform and the War on Drugs; Fourth Amendment and Privacy: Big Brother is Watching; and Can We Have Police Accountability? The cost for registration to the panels is \$45 general admission and \$10 for students. Continuing legal education (CLE) credits for attorneys are offered for both days. For the complete program schedule, list of speakers and registration, go to aclu-or.org/2013nwconference.

THANK YOU CONFERENCE SPONSORS

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Law Office of Jossi Davidson

Co-sponsored by the Oregon Lawyer Chapter of the American Constitution Society (ACS)

FAILED WAR ON MARIJUANA

A report issued by the National ACLU in June 2013, based on state crime reports provided to the FBI, shows that Oregon law enforcement agencies increased the rate of citations and arrests for possession of marijuana by 45% between 2001 and 2010. Oregon's increase was the fifth highest in the country during that period. Nationwide, African-Americans were 3.7 times more likely to be arrested for possession of marijuana than Whites despite comparable usage rates.

Analysis by the ACLU of Oregon of data made available by the Oregon State Police, shows that 90% of the marijuana possession incidents in 2010 involved less than 1 ounce of marijuana, which is punishable as a violation under state law and does not lead to arrest or jail time. That same data shows that Lane County reported the highest number

of marijuana enforcement actions in 2010 with 16.7% of all marijuana possession citations and arrests statewide. Jackson County was second with 13.2%, Multnomah County was third with 8.32%, and Marion County was fourth with 7.0% of the

statewide total for marijuana possession citations and arrests.

It's time to end the War on Marijuana. The aggressive enforcement of marijuana possession laws needlessly ensnares hundreds of thousands of people into the criminal justice system and wastes billions of taxpayers' dollars. What's more, it is car-

ried out with staggering racial bias. Despite being a priority for police departments nationwide, the War on Marijuana has failed to reduce marijuana use and availability and has diverted resources that could be better invested in our communities.

ARRESTS COST TOO MUCH

ACLU

A BUST CAN MEAN LOSING A JOB OR PUBLIC BENEFITS. — AND — FOR OUR COMMUNITIES, MARIJUANA ARRESTS MEAN WASTING MONEY THAT COULD BE BETTER SPENT.

STATES WASTE \$3,613,969,972 ENFORCING MARIJUANA LAWS EVERY YEAR.

The infographic features a trash can icon with dollar bills being thrown into it, symbolizing the waste of money on marijuana enforcement.

LEGAL HIGHLIGHTS ...CONTINUED FROM PAGE 3

Privacy

- Our request to intervene in a lawsuit against the federal Drug Enforcement Administration (DEA) was granted. The DEA is attempting to obtain protected health information from the Oregon Prescription Drug Monitoring Program (PDMP) without a court order supported by probable cause. The PDMP is a database that contains millions of patient prescription records. We entered the case to address the fundamental Fourth Amendment issue: if the DEA is required to obtain a probable cause warrant to search someone's medicine cabinet for prescription information, the same protection should be afforded to the prescription information stored in the PDMP database.
- Exposed the fast growing use of automatic license plate recognition (ALPR) scanners by police across the country, including Oregon. Four Oregon jurisdictions (Clackamas County, Oregon City, Portland and Salem) are known to be among the hundreds nationwide using ALPR scanners to assemble a "single, high-resolution image of our lives." ALPRs, mounted on police cars or in stationary places, gather information, including time and location of plate scans, at rates of up to 3,000 cars each minute.

Police Practices & Public Records

- Argued to the Oregon Court of Appeals in August that records used by the Eugene Police Civilian Review Board to review the actions of a Eugene police officer should be made public. The records relate to an incident where a police officer was not disciplined for twice using a stun gun on a peaceful protestor, Ian Van Ornum, who was part of an anti-pesticide rally in Eugene.

Women's Reproductive Rights

- Advocated with the Oregon Attorney General to ensure that the ballot title for a proposed initiative to ban the use of public funds for abortions be as accurate as possible given the strict word limitations for ballot titles. This proposal is a constitutional amendment that, if approved, would not only carve out abortion coverage and potentially some contraception coverage from the Oregon Health Plan but would also affect that coverage available under health insurance plans provided to public employees. We are partners in the Pro-Choice Coalition of Oregon and will fight this measure if it qualifies for the November 2014 ballot. Supporters are gathering signatures.

Death Penalty

- We were part of the successful lawsuit arguing that the Oregon Constitution clearly authorizes the Governor with the power to grant a temporary reprieve of a death sentence even if the death row inmate does not accept the reprieve. Gary Haugen waived the remaining appeals of his death sentence in order to bring about his execution. Governor Kitzhaber in 2011 refused to allow that execution by granting a temporary reprieve of that sentence – an action we supported and encouraged. We filed a friend-of-the-court brief with the Oregon Supreme Court in this case and the court upheld the Governor's unconditioned authority.

Prisoners' Rights

- Successfully litigated for a reversal of the Jackson County Jail policy that limited inmates' correspondence to postcards.
- After needing to sue the Jackson County Sheriff to obtain reports from the jail on uses of force against inmates for the years 2008 and 2009, we filed and recently received use of force reports for jail incidents in the years 2010-2012.
- We assisted the mother of an inmate who died in Jackson County Jail in 2009 in obtaining the jail's records related to her son's incarceration and death in custody. It took the Sheriff's office more than 3 years to accommodate this simple request.

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Upcoming ACLU Events

LANE COUNTY

Civil Conversation:

The Many Faces of Censorship

Tuesday, Sept 17

5:30 p.m. – 7 p.m.

Springfield Public Library, 225 5th St, Springfield

Free

Banned Books Reading

Saturday, Sept 21

1 p.m. – 3 p.m.

Springfield Public Library, 225 5th St, Springfield

Free

Banned Books Reading

Saturday, Sept 28

1 p.m. – 3 p.m.

Eugene Public Library, 100 W 10th Ave, Eugene

Free

PORTLAND

Annual Membership Meeting

Mass Incarceration: Race, Justice and Jim Crow with Vanita Gupta

Kick-off of 2013 Northwest Civil Liberties Conference

Thursday, Sept 26

6:30 p.m. – 7:30 p.m.

Lewis & Clark Law School

10015 SW Terwilliger Blvd, Portland

Free

2013 Northwest Civil Liberties Conference Panels

(see details on page 11)

Friday, Sept 27

10 a.m. – 5 p.m.

Lewis & Clark Law School

10015 SW Terwilliger Blvd, Portland

\$10 - \$45

Civil Conversation:

Oregon's School-to-Prison-Pipeline

Tuesday, Oct 15

6:30 p.m. – 7:30 p.m.

The Waypost, 3120 N Williams Ave, Portland

Free

For more information about any of our upcoming events please visit our website at aclu-or.org or call our office at 503.227.3186.

PROTECTING THE RIGHT TO PROTEST & ASSEMBLY

On June 13, we stood before the Oregon Supreme Court to defend the rights of the people of Oregon to protest at the seat of government. At the oral arguments in *State v. Babson*, the ACLU argued against the state's efforts to break up a round-the-clock vigil on the steps of the state capitol by closing the steps at night. The case concerns the state's ability to shut down specific protests by passing broad prohibitions on the use of public space, and how protestors arrested for violating those prohibitions might challenge those laws in court.

The case involves two important rights. The first issue concerns how courts should evaluate laws that restrict protesting and petitioning the government for redress. The state's position would give state and local government wide latitude to pass neutral-seeming laws in order to quash protests that they don't like. Protestors wouldn't be able to challenge the constitutionality of the actual laws, but only the constitutionality of the application of the laws to them. That can be a very difficult proposition, as the second issue illustrates: how much access should defendants have to legislators' testimony, the kind of evidence that an arrested protestor needs in order to challenge the application of a law. The state argues that such access should be very hard to get. Taken together, the state's arguments would make it nearly impossible to challenge laws, like the one here, that use neutral-sounding language to shut down protests and arrest

protestors. We argue that the state constitution does not allow such results—courts should be able to examine whether a law focuses on suppressing speech and assembly, even where the text has been drafted to sound neutral. And people defending themselves against such laws should have access to the information they need to prove violations of their constitutional rights.

It all started with a protest that began back in November 2008. The Iraq and Afghanistan wars were still in full swing, and Oregon National Guard troops were set to deploy to those contentious foreign conflicts. Michele Darr decided that she needed to do something about this, so she went right to the seat of state government to plead her case. She set up on the steps of the state capitol building and began a 24 hour vigil of candlelight and prayer. She intended to remain there, bringing attention to the issue and calling for action, until the Oregon legislature agreed to intervene to prevent the deployments and the governor finally agreed to meet with the families of guard members whose lives would be thrown into distress by the upheaval. Other concerned citizens joined in with Darr, and a small group braved severe weather and the cold of winter to maintain their protest.

Under long-standing rules that governed the capitol steps, people weren't generally supposed to be out on the steps at night, but the building administrator could make



the building administrator could make

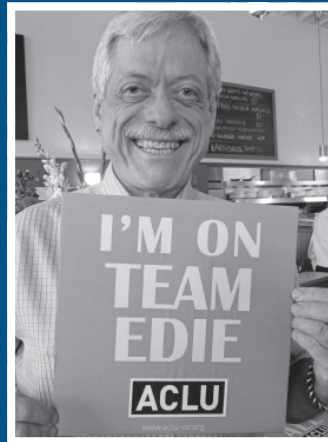
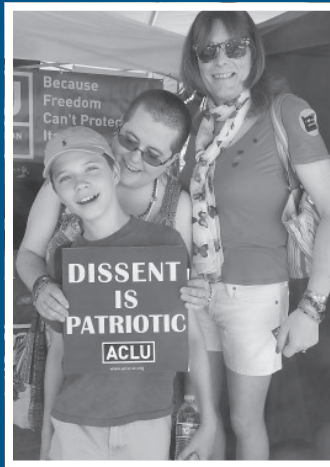
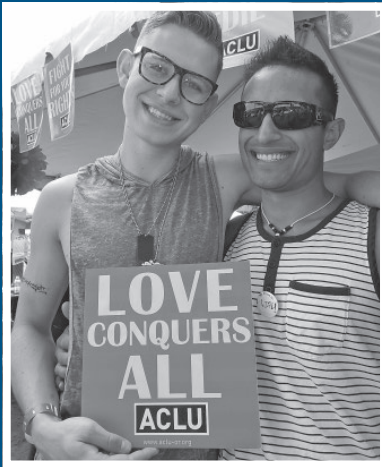
CONTINUED ON NEXT PAGE ...

Did you know?

Every year ACLU of Oregon distributes thousands of "I read banned books" buttons to libraries and booksellers across Oregon in honor of Banned Books Week (Sept 22 - 28, 2013). The annual awareness campaign works to ensure support of the freedom to seek and to express ideas, even those some consider unorthodox or unpopular. Stop by your local library or bookstore to pick up a button!

Can't find a button? Ask your librarian or bookseller to contact us at info@aclu-or.org for information on participating.





Happy Pride 2013!

ACLU supporters celebrated Pride month with us at our Edie Windsor Victory Party in June, Pride Northwest and Eugene-Springfield Pride.

PROTEST & ASSEMBLY... CONTINUED

exceptions, which was done for things like all-night bible reading marathons, and midnight basketball events. Frustrated with Darr's protest, the legislative administrative committee changed the rules—now no-one could use the steps overnight, period. Darr and her companions continued their protest, undeterred, and for that they were arrested and convicted of trespassing.

Before the Oregon Supreme Court we argued that this rule should be struck down because it violates free speech guaranteed by the Oregon Constitution and emphasized the unprecedented nature of this restriction—the state enacted the rule in order to quash Darr's protest. The state constitution doesn't permit the legislature to pass any laws that focus on the content of speech, we argued, and since this law did just that, the whole rule should be struck down.

The Justices challenged us about how, under the usual rules for interpreting legal texts, they might use evidence of the legislature's discussions and intent to figure out whether the rule here, which doesn't expressly mention the content of

speech, was unconstitutional.

We responded saying the only way that a reasonable person could conclude that this rule wasn't obviously about expression is to put on blinders – to only look at the words of the statute. Why would this court decide to put on blinders that would favor the government rather than the speaker?

We also argued to the court that the rule unconstitutionally restricts rights of assembly that are guaranteed by the Oregon Constitution. We stressed the distinction between speech and assembly—speech is about content, about a message, while assembly is about the right of the people to gather together to consult for the common good, and to bring their issues directly to the seat of government to petition for redress. The right of assembly is just as fundamental to our free society as the right to freely express opinions. The capitol steps are a special place and the Oregon Constitution requires that government to leave the space available to the people to apply to their legislature or petition their representatives.

Now we wait for the court's decision.

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Summer/Fall 2013

Presented by the ACLU of Oregon, Lewis & Clark Law School's
ACLU Student Group and Oregon Justice Resource Center

ACLU Northwest Civil Liberties Conference



Thursday & Friday
September 26 & 27, 2013

For more information see page 11.

Save the Date
ACLU Foundation of Oregon Liberty Dinner
Saturday, March 1, 2014

www.aclu-or.org