

ACLU

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Oregon has the Freedom to Marry

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Contact Information

P.O. Box 40585
Portland, OR 97240
t/503.227.3186

P.O. Box 50426
Eugene, OR 97405
t/541.345.6162

aclu-or.org • info@aclu-or.org



FROM THE EXECUTIVE DIRECTOR

**A Summer of Racial Tension and a
Spotlight on Police Use of Force**



David Fidanque

The death of Michael Brown followed by weeks of demonstrations in Ferguson, Missouri, has highlighted that race still divides us as a nation - especially in the way our criminal laws are enforced.

For most white Americans, sitting safely in their homes watching the events in Ferguson unfold like a reality TV show, the drama was a stark reminder that each of our communities could be just one incident away from lighting a powder keg of racial tension and fear that is just under the surface.

For people of color, many of whom experience every day the disparate impact of the way that police officers are deployed and do their jobs, the death of yet another unarmed African American young man has intensified the resolve to eliminate racial profiling and other discriminatory practices in the criminal justice system.

Ferguson has also highlighted the increasing militarization of local police - especially in their response to public demonstrations critical of their actions.

This renewed national conversation about police practices is timely because all of these issues are present in here in Oregon.

In 2012, when the U.S. Department of Justice released the findings of its investigation of the Portland Police Bureau for civil rights violations and use of excessive force on persons with real or perceived mental illness, they noted that many in communities of color here believe the Bureau engages in bias-based policing. The Bureau's own data on traffic stops shows that African Americans and Latinos are stopped and searched at a significantly higher rate than whites.

Also, like the situation with Michael Brown, the DOJ investigation noted "there is a deep-seated concern" among minority communities that "PPB does not provide timely access to medical care following the use of deadly force."

Changing this dynamic is challenging but important work that this ACLU affiliate has been engaged in for more than two decades.

We have been in the forefront of efforts to push state and local law enforcement to routinely collect data on their interactions with people stopped by police officers, including information on race and ethnicity of the individuals stopped, the reason for the stop, whether there was a search, whether something was found and the ultimate enforcement action taken by the officer (if any).

Some of the largest law enforcement agencies in the state are collecting this data but much more is needed, including increased and reliable state funding for independent analysis of the data. For too long, Oregon law enforcement officials have strongly opposed collecting stop and search data unless it is voluntary, but pressure is mounting for state legislation that would impose this requirement.

We have also worked to reform police use of force policies to put greater emphasis on defusing police encounters rather than escalating them. We have pushed for more restrictions on the use of Tasers, while supporting their use as an alternative to deadly force. We helped get Oregon law changed to allow for dash cams in police cars. And, we are working to change the law again to allow for body-cams - as long as there are policies to protect privacy rights and to prevent them from becoming yet another surveillance tool. This technology has the potential to increase police accountability and decrease incidents of police misconduct, including excessive use of force.

With your support, we will continue all of this important work in Oregon - and nationwide - until we truly achieve the promise of equal justice for all.

Rick Steves: Travel as a Political Act

European travel expert and marijuana policy reform advocate comes to Oregon

Rick Steves is touring Oregon in support of Vote Yes on 91, the ballot measure to legalize, regulate and tax marijuana. You probably know him best from his radio and television shows on OPB. He also produces a syndicated column and revises more than 50 guidebooks a year from his hometown of Edmonds, WA.

So how did Rick Steves become one of the most visible advocates for reform of marijuana laws?

Having traveled extensively through Europe, Rick gained an appreciation for the pragmatic drug policies there, which are measured by harm reduction rather than incarceration. In the United States we arrested 8 million marijuana users between 2001 and 2010, yet Dutch possession arrests have been virtually eliminated. Rick also is motivated by interest for the civil liberties of responsible adult users.

The ACLU of Oregon is an early endorser of YES on 91 and is cohosting the Rick Steves tour. See the back cover for a list of dates and locations, or visit aclu-or.org/ricksteves.



Rick Steves

ACLU of Oregon

2014 ANNUAL MEMBERSHIP MEETING

Thursday, October 9, 7:00-8:45 p.m.

McDonald Theater – 1010 Willamette St., Eugene

Featuring

RICK STEVES

European travel expert and marijuana policy reform advocate

This event is free and open to the public, but pre-registration is required.

Find out more at aclu-or.org/ricksteves

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Measure 89 Oregon Equal Rights Amendment – NO

The ACLU of Oregon has long supported passage of the federal Equal Rights Amendment because we believe that equality under the law for all is a fundamental right to a free people and because the United States Supreme Court has not gone as far as it should to protect Americans against gender discrimination under the Fourteenth Amendment's guarantee of equal protection under the law.

By contrast, the Oregon Constitution already has the strongest possible protection against sex discrimination and the Oregon Supreme Court has enforced that protection. Thus, Measure 89 is unnecessary. Amendments to the Oregon Bill of Rights should only be made if they would add protections that are not already guaranteed. Constitutional amendments shouldn't be purely symbolic; this one would be. For this reason, the ACLU of Oregon opposes Measure 89.

Article I, section 20 of the Oregon Constitution currently provides:

"No law shall be passed granting to any citizen or class of citizens privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens."

Oregon courts have interpreted our state Bill of Rights to view government laws and policies that discriminate on the basis of sex as "inherently suspect" and subject to "strict scrutiny." That is the highest standard of review – one which the federal courts have applied to discrimination on the basis of race and national origin, but not to gender discrimination.

The rights of all individuals and classes of persons who are the targets of unjust discrimination – past, present or future – will be most secure if all targeted groups receive the same strong protections from our state Constitution.

If instead we adopt a piecemeal approach to protecting the rights of targeted classes, the rights of those with the least political clout and financial resources – and therefore the most vulnerable – would be more likely to suffer under the shifting winds of public opinion in times of stress.

Our greatest strength in the struggle to advance fundamental civil rights and civil liberties is our unity. IP 34 would undermine that unity for no useful purpose.



Thank you Val & Will Aitchison

... for raising \$6,380 for the ACLU Foundation of Oregon by hosting a Makana concert.

It was a beautiful evening of music in an incredible setting.

We are so grateful for friends like you!



Measure 90 Top-Two Primary – NO

Measure 90 (the "top-two primary" measure) raises two civil liberties interests: meaningful access to the ballot for minority party and independent candidates and voters, and the right of association for political parties.

Individual opinions on M90 seem to rest on which prediction is most compelling: 1) the top-two primary will enfranchise thousands of voters who, because they do not affiliate with a major party, are currently unable to vote on candidates in the primary election; or 2) the top-two primary system will result in voter turnout rates in the primary remaining the same, but will vastly limit voter choice in the higher-turnout general election.

Experiments in other states with the top-two primary system, including California and Washington, so far, have failed to demonstrate the benefits predicted by proponents, such as increased voter turnout in elections. Instead, the risk that minor party and independent candidates will fail to advance past the primary election, means that those voices will not be heard in the general election and further alienate those voters. For this reason, the ACLU of Oregon finds the latter prediction more likely and opposes the measure.

In the Courts

No-Fly victory - This spring, U.S. District Court Judge Anna Brown ruled the federal government's No-Fly list violates our clients' constitutional rights because it has denied them the right to international air travel without providing them notice that they are on the list, no information about why, and no meaningful process for rebutting their placement on the list. The judge has ordered the government to develop a process and provide our 13 clients a chance to clear their names. ACLU of Oregon cooperating attorney **Steven Wilker** of Tonkon Torp LLP is working with the ACLU National Security Project on this case.

Security Justifies Censorship - In a disappointing decision, the U.S. Supreme Court ruled in May that we cannot sue Secret Service agents for their decision to have peaceful protesters forcefully moved blocks away from, and out of earshot of, President George W. Bush during his campaign visit to Jacksonville, Oregon in October, 2004. Our lawsuit alleged that Secret Service Agents moved our clients further away from the President only because of their vocal criticism of the President's policies and that action violated the protesters' constitutional free speech rights.

The unanimous opinion by Justice Ginsburg stressed that while the Constitution does not allow the Secret Service to treat protesters more harshly because of their viewpoint, the two agents were entitled to immunity because there were "plausible" security justifications for their decisions. Our case will continue against state and local law enforcement officers because we believe they used excessive force in moving the demonstrators. **Steven Wilker** of Tonkon Torp LLP is our cooperating attorney on this case and argued before the Court. Also assisting on the case has been Art Spitzer with ACLU of the Nation's Capital, and National ACLU attorneys Steve Shapiro and Ben Wizner.

Warrant is Required to Access Oregon Prescription Drug Database - For the first time, a federal judge has ruled that patients have a reasonable expectation of privacy in their prescription drug records, and that law enforcement must obtain a warrant in order to search such information. National ACLU and the ACLU of Oregon represent a group of Oregon patients and a physician in the lawsuit against the Drug Enforcement Administration. The DEA has appealed the decision.

Dance Team Censorship - We settled a lawsuit against the Scappoose School District on behalf of a high school student and her mother over a policy that had prohibited any social media communications about the school's dance team by team

members or their families. Under the terms of the settlement, the district agreed that its policy had violated the free speech rights of students and their parents. In response to the ACLU's lawsuit, the school district withdrew the policy in January and worked with the ACLU to finalize an appropriate settlement that included a written apology sent in a recent newsletter to the school community. **Darin Sands, Anthony Stark** and **Whitney Button** of Lane Powell, PC were the ACLU cooperating attorneys.

Protests on the State Capitol Steps - We were disappointed with a ruling by the Oregon Supreme Court which concluded that the rule implemented to end our clients' 24-hour vigil outside the State Capitol did not, on its face, violate our clients' rights to free speech or assembly. The Court said we had a right to go back to trial court to question Legislative leaders to determine if the reasoning for the rule was an impermissible restriction. However, the state has decided not to re-prosecute our clients on the criminal trespass charges. Our cooperating attorneys in this case are **Jossi Davidson**, Silverton Law LLC; **Tim Volpert, Alan Galloway** and **Tim Campbell**, Davis Wright Tremaine LLP; and **Mike**



ACLU plaintiff Michael Moss speaks with NPR's Nina Totenberg outside the Supreme Court.

Swaim, Michael E. Swaim, PC.

Public Agencies Can't Censor Ads, For Now - We have a victory in our challenge to TriMet's refusal to run a paid "political" advertisement on its buses. The Oregon Court of Appeals had ruled in 2011 that TriMet's policy is unconstitutional. That decision is now final because in April of this year the Oregon Supreme Court was evenly split on the case and therefore could issue no opinion. The Court of Appeals said that under the Oregon Constitution "...TriMet's advertising policy violated Article I, section 8, to the extent that it classified speech on the basis of its content, notwithstanding that the policy regulated the use of government property."

That Court of Appeals decision was the precedent relied on in our court win on behalf of Oregon Wild earlier this year. In that case, the Port of Portland did not want to allow Oregon Wild's advertisement showing a clear-cut forest claiming the ad was "political" and controversial. The Port is appealing this decision. The fact that three justices of the Oregon Supreme Court disagreed with the Court of Appeals in the TriMet case is troubling. It could signal that some justices believe free speech rights don't apply when government property is involved. Stay tuned. **Tom Christ** of Cosgrave Vergeer LLP, has been the ACLU of Oregon cooperating attorney in both of these cases.

LOVE WINS

Oregon becomes the 18th state to provide marriage equality

On May 19, 2014, it became legal for same sex couples to marry in Oregon when federal Judge Michael McShane declared Oregon's marriage ban unconstitutional. It was a joyful day of love and marriages - lots of them.

We have worked with allies for more than thirty years to achieve full equality for the LGBT community in Oregon. While our strategies have evolved and changed, our goal never did. On Valentine's Day 2013, our ally Basic Rights Oregon (BRO) launched a ballot measure drive to make Oregon the first state to remove a marriage ban from its state constitution and replace it with an affirmative right to marry. We quickly joined the Executive Committee of Oregon United for Marriage and contributed \$100,000 towards the effort in addition to helping recruit volunteers and donating staff time.

The ballot measure campaign was designed to build on the 2012 marriage victories in Maine, Maryland, Minnesota and Washington. Those elections were won, in part, using important messages developed through BRO's marriage education efforts in Oregon in 2010-11.

In June 2013, when the U.S. Supreme Court struck down the federal Defense of Marriage Act in the ACLU's case on behalf of Edie Windsor, the legal landscape shifted dramatically in favor of marriage equality.

By last fall, federal lawsuits were being filed in numerous states, including here in Oregon (ultimately 79 marriage lawsuits were filed in 32 states). We became convinced that going to court had a real chance of bringing marriage equality to Oregon even sooner than a ballot measure to be voted on in November 2014. We filed a federal lawsuit on behalf of couples Paul Rummell and Ben West and Lisa Chickadonz and Christine Tanner and Basic Rights Education Fund. In January 2014, our case was joined with the earlier lawsuit filed on behalf of couples Deanna Geiger and Janine Nelson and William Griesar and Robert Duehmig.

We are grateful to all of the plaintiff couples for sharing their stories of love and commitment with the court and the public. And we are grateful for the lawyers and law firms that handled these cases and worked together to bring about a wonderful result. Attorneys Lake Perriguet and Lea Ann Easton had the courage and foresight to bring the first lawsuit, *Geiger and Nelson*. The ACLU's incredible legal team worked around the clock to build a solid case on behalf of our clients: **Jennifer Middleton** of Johnson, Johnson & Schaller of Eugene; **Thomas Johnson, Misha Isaak** and **Kristina Holm** of Perkins Coie of Portland, former ACLU of Oregon Legal Director **Kevin Díaz** and ACLU LGBT Project attorneys **Rose Saxe, Amanda Goad** and **James Esseks**.



Marriage equality plaintiffs and lawyers gather on the steps of the U.S. District Court in Eugene, April 23, 2014, after a hearing before Judge Michael McShane on the lawsuits challenging Oregon's ban denying marriage for same sex couples.

Front: Lake Perriguet, Deanna Geiger, Janine Nelson, Christine Tanner, Lisa Chickadonz. **Middle:** Jeana Frazzini, Jennifer Middleton, Ben West, Lea Ann Easton, Robert Duehmig, William Griesar and son, (plaintiff Paul Rummell not shown). **Back:** Misha Isaak, Tom Johnson, Kevin Díaz

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Fall 2014



REGULATE IT
LEGALIZE IT - TAX IT

presents

RICK STEVES: TRAVEL AS A POLITICAL ACT

Ending Marijuana Prohibition in Oregon



EUROPEAN TRAVEL EXPERT AND MARIJUANA POLICY REFORM ADVOCATE, RICK STEVES, COMES TO OREGON:

10/7 – Portland

10/8 – Salem

10/8 – Beaverton

10/9 – Corvallis

10/9 – Eugene, *McDonald Theater* *ACLU Annual Membership Meeting*

10/10 – Medford

10/12 – The Dalles

10/10 – Ashland

10/12 – Gresham

10/11 – Bend

READ MORE ABOUT RICK STEVES ON PAGE 3.

Visit our website for complete event information: aclu-or.org/ricksteves.