

ACLU OF OREGON NEWS

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Debunking the “right to discriminate,” page 4

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FROM THE EXECUTIVE DIRECTOR, DAVID ROGERS



David Rogers

As we enter 2016, it feels like uncertain times in America. Scary ideas have been generated by several presidential candidates. Ideas that seem like a giant step backwards in respect to many of our hard fought victories around civil rights and liberties.

When thinking about the greatest threat we face ahead, it might be the combination of intolerance, prejudice, and fear of people with different backgrounds: different races, religions, and sexual orientations. Those thoughts and feelings are being exploited by politicians and pundits to move a regressive policy agenda and drive wedges between communities.

In this climate, it appears all too easy for politicians, everyday people, and also government agencies to cross the line into dangerous and hurtful territory.

Last November, Oregon's Department of Justice revealed that they were surveilling people expressing support of Black Lives Matter on social media. The surveillance of people based on their political ideas undercuts the fundamental freedoms that our country was founded on. If people can be targeted for speech and activities protected by the First Amendment, then they may be reluctant to speak or write openly about their beliefs. Expressing support for racial justice on Twitter or Facebook shouldn't get you a law enforcement file. Not in any country I want to live in.

We need to remember that once the government has the power to violate one person's rights - or a group of people's rights - it can use that power against any of us. Eighty years ago the targets were labor organizers and foreign "subversives" such as anyone of Japanese ancestry. Sixty years ago, the targets were entertainers, writers and academics suspected of being Communist "sympathizers." Fifty years ago, the targets were anti-war protestors and civil rights activists. Post 9/11, the targets were Muslims, people of Middle Eastern and Arab descent, and "radical" environmentalists. Today, it's not just the Black Lives Matter movement being targeted, but the recent attacks by ISIS have renewed the deeply troubling post 9/11 xenophobia that had never really gone away.

Despite real anxiety about what the elections might bring in 2016, I recognize the importance of the ACLU's non-partisan position. The need for our presence will not disappear with any particular president. The ACLU has needed to step up and tackle very serious issues whether we have had a Clinton, Bush, or Obama in the White House. Edward Snowden's revelation about the U.S. government's mass surveillance of millions of Americans is deeply alarming and is taking place during a Democratic administration.

"...the greatest threat we face ahead is a combination of intolerance, prejudice and fear..."

Organizationally, 2016 will be a year of strategic planning for us. It is clear that the social and political landscape is shifting. The world is changing faster than ever. We need to be nimble if we will be effective at continuing to defend and advance our freedom, and we will be working to identify the ways we can deepen our impact over the next several years.

But strategic planning doesn't mean we are taking a time out from our critical work on the ground. Here is just a short list of some of what we will be tackling in the year ahead.

- **Voting Rights:** We are working to defeat an anti-immigrant ballot initiative that would turn back the clock on Oregon's voting laws and make it harder for everyone to register.
- **Government Overreach:** We can be safe and free. Restricting civil liberties as a response to threats is perilous and ineffective.
- **Criminal Justice Reform:** The War on Drugs and mass incarceration have ravaged communities of color. We may be close to the tipping point for achieving significant and progressive changes, but it won't happen without dedicated work.
- **Advancing Reproductive Justice:** We have successfully defeated numerous attempts to limit abortion rights in Oregon, but simple legality by itself has serious limits. We are working to ensure reproductive health services are actually accessible.
- **Preventing Discrimination:** As a variety of communities struggle for full recognition and equality, we are defending against the backlash and ensuring our anti-discrimination laws are followed.

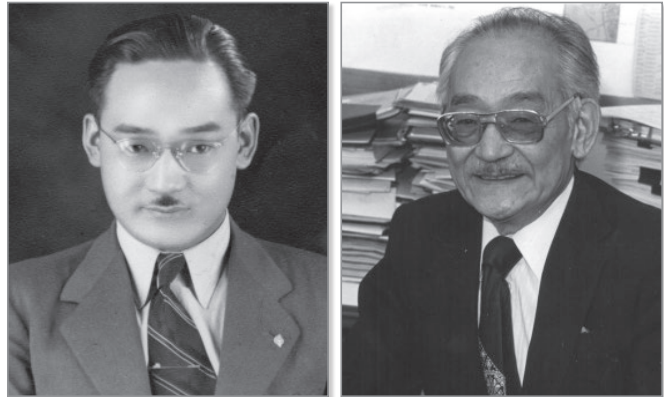
We look forward to working with you to defend and advance our freedoms in 2016 and beyond.



Honoring the Legacy of Oregon's Minoru Yasui

Minoru "Min" Yasui, the son of Japanese immigrant parents, was born 100 years ago in Hood River. He was the first Japanese American to graduate from the University of Oregon School of Law, and the first Japanese American member of the Oregon State Bar. Recently, he was posthumously honored with the 2015 Presidential Medal of Freedom for his achievements for civil liberties, civil rights, and cross-cultural understanding, including bravely fighting against the internment of Japanese Americans during World War II.

In order to bring a court challenge to Executive Order 9066, which led to the incarceration of over 120,000 Japanese Americans, Mr. Yasui deliberately violated a curfew imposed on all persons of Japanese ancestry on March 28, 1942. As a result, he spent nine months in solitary confinement in the Multnomah County Jail. He was released from jail, only to be sent to the Minidoka War Relocation Camp in Idaho. He ultimately lost his appeal to the U.S. Supreme Court, though his conviction was later vacated in 1984. He never lost his faith in the Constitution, though, and went on to lead an



Minoru Yasui in the 1940's (l) and 1980's (r).

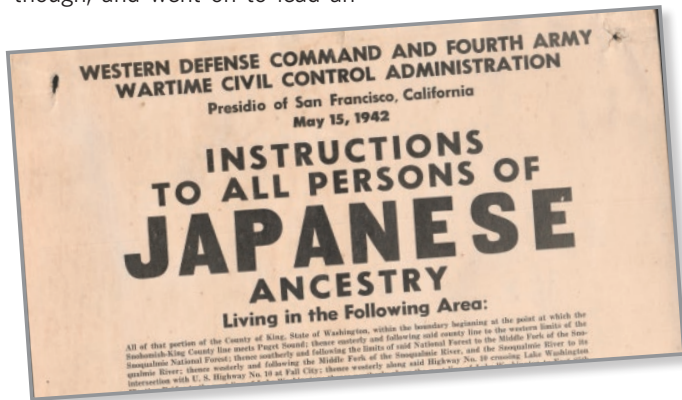
illustrious career dedicated to civil liberties and civil rights for all people.

That same year, the ACLU of Oregon presented Min with the E.B. MacNaughton Civil Liberties Award in honor of his work.

Today, we join a group of advocates who are asking the Oregon Legislature to honor Minoru Yasui by dedicating March 28th in his honor in perpetuity. An annual Minoru Yasui Day would provide an opportunity for students, especially, and all Oregonians, to learn about his work for equal rights and justice that started right here in Oregon.

As President Barack Obama said, "Today Min's legacy has never been more important. It is a call to our national conscience, a reminder of our enduring obligation to be the land of the free and the home of the brave, an America worthy of his sacrifices."

To learn more and to sign a petition in support of the creation of Minoru Yasui Day in Oregon, please visit aclu-or.org.



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Open for Business, Open for All

USING RELIGION TO DISCRIMINATE

With increasing frequency, we are seeing individuals and institutions claiming a right to discriminate – by refusing to provide services to women and LGBT people – based on religious objections. The discrimination takes many forms, including:

- Pharmacies turning away women seeking to fill birth control prescriptions;
- Bakeries and others denying services to same-sex couples planning their weddings;
- Religious schools, that receive public funding, denying admission or employment to LGBT individuals;
- Catholic health systems refusing women basic health care such as birth control, tubal ligations and abortions.

While the situations may differ, one thing remains the same: religion is being used as a justification to discriminate against and harm others.

Religious freedom in America means that we all have a right to our religious beliefs, but this does not give us the right to use our religion to discriminate against and impose those beliefs on others who do not share them. Civil rights, also known as anti-discrimination laws, were established because it is wrong to deny someone employment, housing, education or services because of that person's race, national origin, gender or sexual orientation, disability or religion. Our civil rights laws are an important statement of our society's commitment that no one should be excluded from full participation in everyday life. We need to co-exist in peace with our neighbors, co-workers and employers.

The U.S. Supreme Court's 2014 ruling, in the *Hobby Lobby* case, while narrow, is foreboding. In essence, Hobby Lobby (and others) asked for, and received, express legal permission to use religious beliefs to discriminate against women. (And the Supreme Court is poised to expand the religious exceptions related to the birth control mandate of the Affordable Care Act this year.)

The ruling is foreboding to the extent that it emboldens further efforts to create exceptions for religious beliefs to

existing laws. For example, now that same-sex couples have the freedom to marry throughout America, some business owners are denying wedding-related services to gay and lesbian couples based on the owners' religious beliefs. The ACLU is involved in challenging many of these denials of service and, so far, most courts are finding that the denials violate state non-discrimination laws.

In other words, a business owner's religious beliefs don't get to trump civil rights laws.

Using religion as a justification for discrimination is not a new concept. Many who opposed civil rights legislation in the

1950s and 1960s argued that racial segregation was required because of their religious teachings.

Recently, there has been a lot of debate about the harm caused to religious objectors if exceptions from laws are not granted. But the question less often asked – and the one the Supreme Court failed to address in *Hobby Lobby* – is this: "If we allow these exceptions, what harm do we cause to those who are refused the services?" Some believe the exceptions cause little harm as long as the person can get the services in another way. But the ACLU believes that the harm goes

far beyond the denial of the wedding cake or employer-paid contraceptive coverage. The refusal also comes at the expense of the dignity of the person who is turned away or denied.

As the Senate Commerce Committee noted in the context of the Civil Rights Act of 1964, "Discrimination is not simple dollars and cents, hamburgers and movies; it is the humiliation, frustration, and embarrassment that a person must surely feel when he is told that he is unacceptable as a member of the public..."

Our non-discrimination laws are about reclaiming the dignity taken away when someone can legally say, "We don't serve your kind here." Or in Hobby Lobby's case, "You are shameful for using contraception."

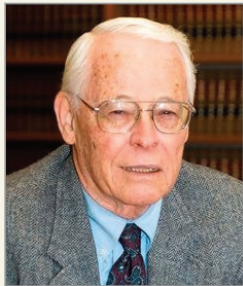
The ACLU, in Oregon and nationwide, is working to defend civil rights laws against businesses who wish to impose their religious beliefs on their employees and on members of the public.



Photo credit: Shutterstock/Winston Link

“...the harm goes far beyond the denial of the wedding cake or employer-paid contraceptive coverage. The refusal also comes at the expense of the dignity of the person who is turned away or denied.”

Honoring Talent and Tenacity



As we celebrate our 60th anniversary, we want to thank all the attorneys who have generously volunteered their time. While too numerous to name all the past and present members of our Lawyers Committee, and all those who have researched, strategized, drafted briefs, advocated or litigated for us, **we know that we have benefitted from the best and the brightest legal minds in Oregon.** Together, we are beating back threats to our liberties and seizing opportunities to advance our rights, especially for the most vulnerable in our society.



We will be honoring three attorneys who have taken ACLU of Oregon cases all the way to the U.S. Supreme Court. As many of you may know, the Court receives about 10,000 petitions each year and grants oral argument to only about 75-80 of those cases.

We hope you will join us at our Liberty Dinner on Friday, February 26th as we honor the three attorneys who argued ACLU of Oregon cases before the U.S. Supreme Court:

- **Carl Neil** asserted a 1st Amendment right to distribute anti-war leaflets at a shopping center in Portland (1972).
- **Thomas Christ** challenged a public school's mandatory drug testing of student athletes (1995).
- **Steven Wilker** argued that Secret Service agents should be held liable for moving peaceful protesters away from the President because of the viewpoint of their speech (2014).



The back cover has additional information on our February 26th Liberty Dinner, including our guest speaker, Hari Kondabolu, who the NY Times calls "one of the most exciting political comics in stand-up today."

Photos top to bottom: Carl Neil, Thomas Christ and Steven Wilker

MEET THE BOARD NOMINEES

Our Nominating Committee has several criteria to balance as it seeks candidates for the 24 member board of directors. For example, our affirmative action plan requires that we strive for gender balance and representation from racial and ethnic minorities, people who self-identify as lesbian, gay, bisexual or transgender, and people living with disabilities.

We also seek candidates who will provide geographic and age diversity, as well as a range of skills and experiences. We ask candidates to serve as ACLU Ambassadors and actively participate in the financial stewardship of the organization.

Additional nominees may be made by a petition of 50 members of the ACLU of Oregon. A petition shall state the term for which a candidate is nominated; it shall also include the candidate's background and qualifications along with statement, signed by the nominees, expressing their willingness to serve if elected. A petition must be received in the Portland office no later than 5 p.m. March 28. Ballots will be mailed in April.

We sincerely thank outgoing board members **Stasia Brownell, Fred Neal** and **P.K. Runkles-Pearson** of Portland and **Jennifer Middleton** and **Harriet Merrick** of Eugene for their service. Each has completed two terms on the board and, due to term limits, is not permitted to run for a third consecutive term.

Here are this year's candidates and you can find out more about them on our website at aclu-or.org/:

- **Jim Arneson** is a civil and criminal defense attorney in Roseburg and has been active with the Oregon Criminal Defense Lawyers Association.
- **Marina Barcelo** identifies as a queer Latina fiercely committed to reproductive, immigrant, and LGBTQ justice who formerly worked as Director of Equity & Inclusion for NARAL Pro-Choice Oregon and currently is the Student Support & Inclusion Specialist at PSU's School of Social Work.
- **Stuart Kaplan** is an incumbent board member from Portland with a strong interest in information privacy and has prior experience on the board of directors of the ACLU of Oregon and national ACLU.
- **Mariana Lindsay** is a former staff member of the Bus Project and currently works at PSU's Center for Women's Leadership.
- **Heather Marek** has been an active ACLU volunteer in Eugene since 2008 and is currently serving on the Civilian Review Board of the Eugene Police Auditor while also pursuing a J.D. and PhD at the University of Oregon.
- **Cathy Travis** joined the ACLU as a high school student and has gone on to serve the ACLU of Oregon in numerous ways, including two terms as president of the board, as well as working to ensure the organization has the financial resources needed to carry out its mission.

Because freedom can't protect itself.

Fighting Regressive Measures

We have more than candidate races to look forward to this election year; living in Oregon means we are likely looking at a range of ballot measure campaigns, as well. Although the ACLU of Oregon won't be involved on every measure, there are already several proposed initiatives we are heavily engaged in.

Initiative 61 is a proposed constitutional amendment that would prevent any public funding of abortions in Oregon. This is a huge step in the wrong direction if you care about reproductive justice and protecting women's right to choose.

Oregon is the only state in the country that we are aware of with no statutory restrictions to abortion access. We are proud that Oregon has been able to successfully defeat numerous attacks on women's reproductive health over the past several decades. But we can't take anything for granted. The proposed ballot measure would have a severe impact on low-income women. And for all the public employees in Oregon who appreciate having abortion covered in their health insurance, you should be concerned as well. The ACLU filed a challenge to the ballot title language, and we will continue to work with a strong group of allies to push back. We are still in the first stage of the process. The initiative has not yet been approved for signature gathering.

There are also three separate ballot measures that have been filed that are steeped in anti-immigrant fervor. The ACLU of Oregon is an active participant in a coalition organized to defeat all three of those measures as well.

One measure, IP 40, aims to make Oregon an "English-only" state and prevent crucial services and programs from happening in other languages. IP 52 would make it harder to work by requiring Oregon businesses to use an inaccurate and cumbersome federal program to check employment eligibility.

And IP 51 would turn back the clock on voting rights and would eventually purge the entire Oregon voter list and force people to re-register showing physical proof of citizenship. Oregon could go from having one of the best set of voting laws in the country to some of the worst.

The sad irony of these xenophobic policies is they would hurt most Oregonians. The prejudice driving these efforts is advanced by a shameful rhetoric flowing from a number of politicians and pundits. The politics of fear is being used to divide us. Part of our work needs to be focused on the kind of culture change that makes attempts to exploit fear, intolerance, and prejudice increasingly less effective. We need to remind ourselves of the strengths of being a country where diverse cultures have come together.

There's no contradiction between a nation where we speak a common language and a nation where many of us remain proud of our ethnic and cultural heritage, including our native languages. There's no contradiction between a nation with a shared culture, founded on the idea of freedom, and a nation whose culture reflects the melting pot that is America.

Our collective well-being in Oregon and this country is very much linked to our ability to recognize that we have a shared fate. We have got to move past thinking in terms of "us" and "them".

We will be sharing more about these ballot measures in the coming months. In addition to court challenges regarding the ballot title language, the ACLU of Oregon along with allies will be promoting a *Decline to Sign* counter campaign. Our best chance of defeating these initiatives is to ensure they never get to the ballot.

"We have got to move past thinking in terms of 'us' and 'them'."



End Profiling

Profiling occurs when police target people for suspicion of crime based not on any evidence of criminal activity but instead on the individuals' real or perceived race, ethnicity, national origin, religion or other characteristics, unless the officer is acting on a suspect description. Profiling is fundamentally unfair, ineffective, damaging to police and community relations, and causes law enforcement to lose its credibility and the trust of community members.

The ACLU has long opposed profiling because it is at odds with our shared American values of fairness and justice.

That's why we supported the End Profiling Bill (HB 2002) and we were pleased with its passage by the legislature in 2015. HB 2002 expanded the definition of profiling in Oregon—which previously only focused on race, color, and national origin—to include targeting individuals based on their age, ethnicity, language, gender, gender identity, sexual orientation, political affiliation, religion, homelessness or disability. It also allocated crucial funding for the Law Enforcement Contacts Policy and Data Review Committee (LECC). LECC is an independent committee which makes policy recommendations and helps to develop training to prevent profiling in Oregon. LECC also analyzes demographic data about police stops and

Profiling is at odds with our shared American values of fairness and justice.

searches (currently, only a few police departments voluntarily collect this data). HB 2002 also set up a process for filing profiling complaints with the LECC. Anyone wanting to file a profiling complaint may visit the LECC's website for more information: www.pdx.edu/cjpri/profiling-complaints.

As important as these changes are, they are not enough to fully address the problem of profiling. That is why HB 2002 also created a task force to study and make recommendations about additional ways to identify and prevent patterns and practices of profiling in Oregon. Our Legislative Director, Kimberly McCullough, is one of nine individuals representing various stakeholders and interests who were appointed to the task force. The task force met from September to November, focusing primarily on accountability, monitoring, data collection and analysis, training, and the complaint process.

In November, public hearings were held in Portland and Medford to allow members of the public to share how profiling affects them and their communities. Dozens of people spoke of their experiences being profiled by police. A Muslim man described being pulled over numerous times while driving and one officer asking him, "Why are you in my city?" A black man shared his experience of being pulled over while driving and told by the officer that "you just don't look like you belong in this neighborhood."

In December, the task force published a report with recommendations for future legislation. The task force's primary recommendations include (a) improved training for police, (b) guidelines to ensure that the complaint process functions properly, (c) creation of model policies prohibiting profiling for adoption by local police departments, (d) development of an accountability structure between the Civil Rights Division of the Department of Justice, the LECC and law enforcement, (e) requirements for collection of data on who is stopped or searched by police in order to identify patterns of profiling, and (f) creation of an annual report with analysis and information about collected data and complaints. If you would like to view the full report, you may view it at <http://www.doj.state.or.us/releases/Pages/2015/rel120215.aspx>.

Because this is such a complex and challenging issue, the task force plans to continue its work in 2016.

Because freedom can't protect itself.

ACLU of Oregon/ ACLU Foundation of Oregon

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PLEASE JOIN US!

Friday, February 26, 2016

5:30–7PM Wine & Cocktail Mixer
7–9PM Dinner & Program

Oregon Convention Center
Portland Ballroom

777 NE MLK Jr. Blvd in Portland

Reserve your seats now at aclu-or.org/Liberty-Dinner-2016 thru Feb. 22nd. For additional information or to purchase tickets by phone contact Gail Anderson at 503.552.2101 or Ganderson@aclu-or.org.