



ACLU

OREGON NEWS

AMERICAN CIVIL LIBERTIES UNION
of OREGON

IN THIS ISSUE: 2008 INITIATIVE WATCH, CHAPTER UPDATES

ISSUE 1, VOLUME 41, FALL 2007

ACLU CALLS FOR STRICTER GUIDELINES ON POLICE TASER USE

ADVOCACY EFFORTS HELP SHAPE LAW
ENFORCEMENT POLICY IN ASHLAND AND EUGENE

For more than a decade, the American Civil Liberties Union, at the national and affiliate level, has been concerned about the potential abuse and misuse of conducted energy devices (CEDs, also known as Tasers or stun-guns) by law enforcement.

In Oregon, community outrage and discussion regarding the Jan. 22, 2006, death of Nicholas Ryan Hanson, a 24-year-old Southern Oregon student, following Taser use by Ashland police officers, prompted an investigation by the ACLU of Oregon and its Southern Oregon Chapter into police Taser use in Ashland.

The ACLU of Oregon and its Southern Oregon Chapter concluded the investigation and presented our report in September, outlining several key recommendations. The report — “Taser Use by Ashland Police Officers and Recommendations for Reform” — finds that in only one of six documented incidents of Taser use by Ashland police in the past three years was use of a CED justified.

“There is no federal regulation of the Taser industry, and there is no medical consensus regarding either the short- or long-term medical effects of CEDs,” said David Fidanque, Executive Director of the ACLU of Oregon. “Given the risk of unintended fatalities, we believe the use of Tasers needs to be limited to situations that most likely would otherwise lead to the use of deadly force.”

The report was released at a Sept. 12 press conference in Ashland, attended by three Medford television stations. The *Ashland Daily Tidings* published a story about our report that same day, under the headline, “ACLU: Ashland police ‘misused’ Tasers.” That story also ran in the *Daily Tidings’* sister newspaper, the *Medford Mail Tribune*. The Associated Press and Oregon Public Broadcasting also covered the story

Our first recommendation — that the Ashland Police Department adopt standards, restrictions and guidelines set out in our report — already has been accepted. Ashland Police Chief Terry Holderness has proposed a Taser policy that conforms to our recommendations.

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Christopher Furlong/Getty Images

THOUSANDS JOIN ACLU OF OREGON

ORGANIZATION REDOUBLES
EFFORTS TO PROTECT
CONSTITUTION IN
POST-9/11 AMERICA

FROM THE EXECUTIVE DIRECTOR



David Fidanque

If you are one of the 3,000 new ACLU members in Oregon who have joined this calendar year, I want to welcome you to the premier civil liberties and civil rights organization in the U.S.

If you’re one of the additional 7,000 ACLU members

who joined in the previous five years — since 9/11/2001 — I want to thank you again for everything you have done to resist the erosions of civil liberties that have resulted from the actions of the Bush Administration and Congress since the terrorist attacks six years ago.

If you are one of the 5,500 members in Oregon who joined before 9/11, I want to thank you again for your steadfast support.

I want to remind all of you that your membership dues and other financial contributions support ACLU activities nationwide.

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SPECIAL REPORT!

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And, yes, those numbers are accurate: ACLU membership in Oregon has almost tripled since 9/11. We have the highest per capita ACLU membership of any affiliate in the country.

We're proud that Oregonians are standing up for the Constitution and the rule of law, but we also recognize that we need to ramp up our efforts to mobilize all Americans who care about protecting civil liberties and civil rights if we are to be successful in turning around the erosion of basic freedoms since 9/11.

We've had a lot of success in using the courts to shine a light on various unconstitutional and illegal actions of the Bush Administration. Our Freedom of Information Act lawsuits have helped uncover thousands of pages of documents and photos related to the torture and abuse of detainees in Guantanamo, Iraq and Afghanistan.

We've filed literally dozens of lawsuits around the country challenging the USA-Patriot Act, the CIA's secret kidnapping program and the NSA's warrantless surveillance program. We recently won a big victory in our challenge of the FBI's power to issue so-called "national security letters" demanding information about the private activities of U.S. citizens from internet service providers, libraries and other third parties.

But we know we can't count on the federal courts alone to stand up to the Bush Administration. The courts are reluctant to directly challenge the Administration on more than just a few issues — especially now that the Supreme Court under Chief Justice John Roberts is increasingly hostile to core civil liberties.

Even more disappointing is that we apparently can't count on Congress to do what's right either — as proven most recently by the gutless Congressional approval of the NSA's warrantless wiretapping program at the end of July.

That's why we have been working so hard to mobilize ACLU members and our allies to put pressure on Congress and the courts to turn these policies around.

In the past few years, National ACLU has often taken out ads in *The New York Times*, *Washington*

Post and other publications attacking the unconstitutional actions of the Bush Administration. Following the Congressional action on the NSA warrantless surveillance program, we put out the attached ad blasting the cowardly leadership of the Democrats who now control Congress. If you haven't



CANVASSING FINDS GREAT SUCCESS IN THE PORTLAND AREA

EFFORT ADDS 3,000-PLUS CARD-CARRYING MEMBERS TO THE ACLU OF OREGON

Last year, the American Civil Liberties Union tried a new technique to reach potential new members by hiring Grassroot Campaigns, a canvassing firm that goes door-to-door or stands in public places asking people to support the ACLU. The original trial run was in Los Angeles, New York City, San Francisco and Seattle. The results from that trial run were positive so the program was rolled out in several additional cities including the Portland Metropolitan area.

Grassroots Campaigns hired local workers and started knocking on doors in May. As of September 1, they had spoken to 33,222 people in the Portland Metropolitan area. More than 14 percent of those who answered the door became members or made a contribution. They are wrapping up in Portland and have begun canvassing in some outlying areas including Beaverton and Salem. The results locally have been phenomenal, bringing a dramatic surge in membership.

Compare, for example, the summer of 2006 to the summer of 2007. In June, July and August of last year, ACLU of Oregon added almost 600 new members. In the same period this year, the ACLU of Oregon added almost 3,300 new members, largely due to the canvassing. Membership in Oregon has grown to more than 15,800 members.

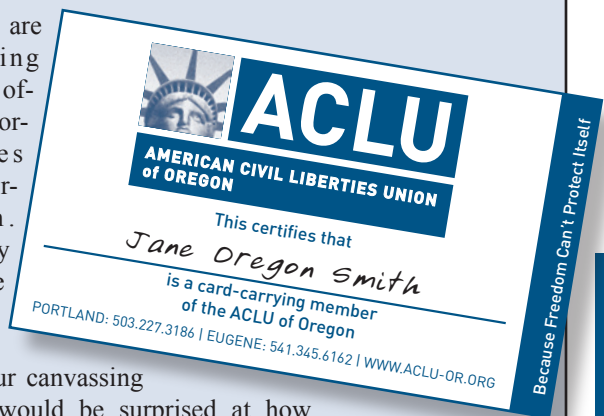
This surge in ACLU membership presents both opportunities and challenges. This increased membership means that the organization may carry more clout in advocating for civil liberties in Oregon. The additional revenue also allows us to do more. The challenge is that with more members, we need to provide more opportunities for members who want to be engaged and more involved.

We are exploring ways to offer opportunities for interaction. Many of those who responded to our canvassing

efforts would be surprised at how many ACLU members live on their block or in their ZIP code. We now have six ZIP codes with 500 or more members (97202, 97211, 97212, 97214, 97219 and 97405) and another nine ZIP codes with 250 or more members (97206, 97213, 97215, 97217, 97225, 97229, 97239, 97330 and 97520).

While guaranteeing the confidentiality of our members, we would be happy to facilitate house or block parties by sending invitations to people in your area and providing materials on current topics, book club reading lists, or civil liberties film lists.

If you are interested in organizing a local house or block party, please contact Teresa Domka, Development Associate at tdomka@aclu-or.org or (503) 552-2108.



visited the ACLU website recently, you should check out the animated video that calls the “leader-sheep” to task. (It’s available at www.aclu.org/site/PageNavigator/sheepadanimated.)

ACLU always has been non-partisan, and we’re proud of it. Anytime civil liberties issues become partisan, our liberties are in danger. That’s why we’ve put so much effort since 9/11 into reaching out to supporters of the constitution across the political spectrum, as well as urging Congressional leaders to restore lost liberties.

Political leaders of both parties acted out of fear this summer. There weren’t enough members of Congress who understand that the Constitution already grants government all the powers it needs to keep us safe and free.

The departure of former Attorney General Alberto Gonzales, and the almost-certain confirmation of former judge

Michael Mukasey to replace him, is not likely to change the political dynamics around these core issues. Nor will the Presidential campaigns be likely to make a big difference — unless more Americans speak out on these issues.

ACLU is doing everything we can to transform the political landscape, but we will continue to need your help — and your activism — to win these battles for the Constitution and the rule of law in the coming months and years. We’re counting on you, just as I know you are counting on ACLU to lead the way. Thanks again for all your support.

David Fidanque
Executive Director, ACLU of Oregon

ACLU OF OREGON 2007 LEGISLATIVE REPORT

With an unexpected change of leadership in the House to the Democrats, this session allowed ACLU to move forward with a number of priority issues. However, the mere fact that both chambers were controlled by Democrats does not make it less challenging for us when it comes to protecting and preserving civil liberties at our state Capitol.

The good news is that we were able to finally pass legislation adding gays, lesbians, bisexuals and transgendered people to protections under Oregon's anti-discrimination law and to pass a domestic partnership bill as well. And after years of previous procedural blocks by House leadership, we passed a contraceptive equity law.

Yet there were many challenges. We lost on the Senate side a proposal that allowed the State Board of Pharmacy to database and monitor many of our prescription drugs and another proposal to allow employers to discriminate against medical marijuana cardholders. Fortunately, after much work, neither of these proposals passed the House. We also were not successful in adding Oregon's voice to opposing Real ID.

This session brought a special victory, namely the passage of a bill with our name as the sponsor. It's been years since we even considered introducing legislation with our name attached. Our proposal, which streamlined the school discrimination law for K-12 students, passed with overwhelming bi-partisan support.

As you read this, bills are being drafted for the short February 2008 session. Although there will be a very limited number of proposals, we have no idea what challenges we face. All of you can be a part of future legislative sessions by joining our action alert. Sign up at www.aclu-or.org. When we identify civil liberties issues that are moving forward, be they good or bad, we will call on you to contact your state representative and senator. Despite our presence in the building, grassroots lobbying plays an important role in the Oregon legislative process.

SEXUAL ORIENTATION DISCRIMINATION

Anti-Discrimination Legislation (HB 2007)

The 74th Oregon legislative session was historic for many reasons, not the least of which was the passage of HB 2007, which after 34 years of unsuccessful legislation finally added protection based on sexual orientation to Oregon's anti-discrimination laws. ACLU has been there since the beginning, and this year we were pleased that cooperating attorney Charlie Hinkle was present to testify on this bill before both the House and Senate committees. Charlie first testified for this legislation in 1973. Although times have certainly changed since the early 1970s, we know that this law is needed now, just as it was in decades past. Now, when someone in Oregon is discriminated against based on actual or perceived sexual orientation and gender identity, Oregon law will provide the necessary protections.

Passed House: 34-26; passed Senate: 21-9

Governor signed ☒ *Scorecard Vote, see pages 8-9*

Unfortunately, those who oppose this protection are seeking to put HB 2007 on the ballot and are collecting signatures for a referendum (Initiative Petition 303). They were required to collect 55,179 signatures by September 26. Signature verification began as this newsletter went to press, and we are

cautiously optimistic that there are not enough signatures to qualify. If they do qualify either measure, we will work with our coalition partners to re-pass this law and Senate Bill 2 (see below) on the November 2008 ballot. If they have failed to collect enough signatures, the law takes effect January 1, 2008. If our opponents do collect enough signatures, HB 2007 will not go into effect until the voters have had a chance to weigh in.


After all these years, it is disappointing to put the rights and dignities of Oregonians up for a popular vote again. We will work tirelessly to implement the protections of HB 2007.

Domestic Partnerships (SB 2)

Another major victory this year was the passage of SB 2, which establishes domestic partnership laws for same-sex couples. While this legislation will not provide all the rights and responsibilities that Oregon marriage laws provide, it will guarantee many legal protections for same-sex couples and their families. Unlike marriage statutes, which all states recognize regardless of where one is married, domestic partnership laws are not honored outside the home state. And, of

course, no state civil union or domestic partnership law can provide the protections the federal government reserves only to married couples. The opponents to HB 2007 also filed a referendum on SB 2 (Initiative Petition 304) and the same requirements to qualify HB 2007 for the ballot apply to the referendum on SB 2.

Passed Senate: 21-7; passed House: 35-25

Governor signed  *Scorecard Vote, see pages 8-9*

PRIVACY

This session, like many others, offered opportunities for the ACLU to weigh in on legislation that would reduce privacy protections. Some of the proposals we outright oppose as invasive to our rights of privacy. With other legislation, the effect on privacy is an unintended consequence and when we bring our concerns forward, we are successful in obtaining amendments to address privacy violations.

Pharmacy Database (SB 34)

For the third time in as many sessions, the Board of Pharmacy introduced a bill that would have allowed the state to database and monitor lawful prescriptions from controlled substance schedules II, III or IV. This would cover all codeine-based products, many pain medicines, and specific prescription drugs such as Ambien, Xanax and Ritalin prescribed to thousands of Oregonians, including children. Proponents testified that they expect 2 million to 5 million — “if not more” — prescriptions databased annually. Proponents, including the Board of Pharmacy, Sen. Bill Morrisette (D-Springfield) and Sen. Jeff Kruse (R-Roseburg), argued that the database is necessary to deter drug abuse from a relatively small number of drug-seeking patients. In actuality, however, the database would treat all Oregonians as suspected drug abusers.

The ACLU of Oregon led the effort to oppose this law. We unsuccessfully argued on the Senate side that our private and personal medical information should not be databased by the state government, at risk for security breach. Despite the Board of Pharmacy’s desire to collect this type of information, it refused to take any steps to provide adequate protection, arguing that a \$350,000 federal two-year grant would cover all the costs related to establishing and operating the program. We challenged this claim in light of Washington’s state’s analysis that a similar proposal there would cost \$2.1 million.

After the bill passed the Senate with only nine votes in opposition, we picked up the support of the Oregon Medical Association. Unlike the Senate Health and Human Services Committee, which was not at all sympathetic to ACLU’s concerns, the House Health Care Committee was receptive to our various objections. After the committee adopted a significant number of amendments, many of which we were asked to draft, as well as a requirement that the database be operated in “real time” (allowing access by physicians and pharmacists 24/7 with a report available immediately by computer, rather than fax or mail), the bill went to the Joint Ways and Means Committee.

The Board of Pharmacy and the sponsoring senators, ar-

guing that the federal grant was all the money necessary to fund the law, made numerous attempts to remove the referral to Ways and Means. But the addition of various amendments, particularly the “real time” requirement, convinced the House that there were significant fiscal implications to this law, and the Ways and Means referral remained.

After much hard work behind the scenes — with particular recognition to the Ways and Means Co-Chair, Rep. Mary Nolan (D-Portland) — we are pleased to report that SB 34 was never heard again and died in committee.

Passed Senate: 19-9; died in Ways and Means

 *Scorecard Vote, see pages 8-9*

Real ID (HB 2827, HB 2270, HJM 11, and SB 424)

Real ID turned out to be a *Real Nightmare* this session.

Some background: Congress passed the Real ID Act in May 2005 without a single hearing as part of a must-pass supplemental funding bill tied to the Iraq war and tsunami relief. Real ID would federalize state driver licenses by imposing broad regulations on how they are issued and verified. They would become, for all practical purposes, America’s first national identity cards. Every American would need this new federal identity document to enter federal buildings or fly within this country on commercial airlines.

What happened this session is at best, complicated and, at worst, simply makes no sense. The Governor was adamant about passing Real ID, the House turned Real ID into an issue around immigration, and both parties on the Senate side opposed Oregon’s compliance with Real ID. What follows is the convoluted route that each Real ID proposal followed this session, leading to the demise of all of them in various committees at the end of session.

ACLU drafted HB 2827 which, based on Washington state’s proposal, prohibited Oregon from complying with Real ID. But by the time it moved out of the House Transportation Committee, HB 2827 was amended to remove our language and replace it with language that would allow the Oregon DMV to move forward with compliance with Real ID — including purchasing equipment, entering into state and federal contracts and collecting personal information on Oregonians. The changes stemmed from the House Democratic leadership’s apparent need to provide the opportunity for some House Democrats to vote “in support” of Real ID. (A side note: Because Oregon does not require proof of lawful presence before issuing driver licenses but Real ID does, one change necessary to Oregon law is to add that requirement. The irony of the amended HB 2827 was that although it allowed DMV to move forward with Real ID, it did not include the lawful presence requirement.) ACLU strenuously opposed this final version, HB 2827 A-Eng., which passed the House 44-16. Fortunately, the Senate never heard HB 2827, where it died in committee.

At the outset of the session, ACLU opposed SB 424, which required compliance with Real ID in Oregon. (SB 424 was almost identical to HB 2270, the Governor’s bill to comply with Real ID, which was never heard this session.) How-

ever, after hearings in the Senate Business, Transportation and Workforce Development Committee, SB 424 was amended to prohibit Oregon from coming into compliance — using almost identical language to our proposal in the original HB 2827. Unfortunately, the two Republicans in the committee issued a minority report that was identical to the committee's change to SB 424 but *also* called for Oregon to require proof of lawful presence before issuing Oregon driver licenses.

When the bill came to the Senate floor, SB 424, as passed by the committee, was heard first. After a presentation by the carrier of the bill, there was a motion to adopt the minority report. Again, because of the politics of immigration, all but one Senator voted to adopt the minority report and then move the bill to the Joint Ways and Means Committee with the expectation that it would die there. We were greatly frustrated because we not only had to oppose the final version of SB 424 A-Eng., due to the lawful presence requirement, but also because any chance to have Oregon join other states in opposing Real ID vanished. Other than Sen. Avel Gordly (I-Portland), all senators voted for the Minority Report on SB 424.

Back on the House side, we also introduced HJM 11 at the beginning of session, a memorial that urged Congress to fix and fund Real ID. Although we would have preferred a law prohibiting compliance, we pushed a memorial so that Oregon could join the many states speaking out in opposition to Real ID. (Eleven states have passed laws rejecting Real ID in some form, and more than 35 states have taken steps to stop it.) Although memorials generally have no significant effect, we supported this effort as part of a broader national campaign.

Discussion around HJM 11, however, was a mess. While Senate Republicans had gone so far as to refuse to comply with Real ID, House Republicans refused even to support the memorial that simply called for Congress to fix the law. Although the memorial had nothing to do with immigration, the floor debate focused on lawful presence issues. The end result was that all but one House Republican (Rep. George Gilman of Medford) voted in opposition, and all House Democrats voted in support of HJM 11 — a passing vote of 32-27. Unfortunately, after the Senate had handled SB 424, there was no interest in holding any more hearings on Real ID when HJM 11 reached the Senate. It was never heard and died in committee.

The end result is that while Oregon did not join the growing number of voices in opposition to Real ID, it also did not prematurely move forward on this law. Whether this issue comes back in 2008 special session (which the Governor is urging) or in subsequent sessions, ACLU will continue to work against Real ID. If Oregon moves forward with compliance, we will insist that the legislature place a priority on providing assistance with access to required identification documents (such as “certified birth certificates”) as well as to add privacy and security safeguards.

HB 2827 passed House: 44-16; died in Ways and Means
HJM 11 passed House: 32-27; died in Senate

SB 424 passed Senate: 27-1; died in Ways and Means

 *Scorecard Vote, see pages 8-9*


DNA Innocence Law (SB 244)

This session we were successful in putting the “DNA Innocence” law permanently in statute. This law, first passed in 2001, originally allowed defendants who had gone to trial (but maintained their innocence) and who had completed all post-conviction relief, to have DNA testing of evidence to prove their innocence. There are a number of limitations on this process, including that the evidence must have been obtained in the course of the original investigation and that the defendant file a motion before a court to obtain an order to allow testing. With continuing advances in DNA testing technology, it was important that Oregon have a process available for those who had been convicted prior to the availability of such technology. The original law had a four-year sunset clause, set to expire in 2005.

In 2005, with ACLU taking the lead, we successfully passed an extension to the law. Over the objections of the District Attorneys Association, we added a provision allowing for those who had pled guilty also to be able to use this process. (There are cases, including in Oregon, where innocent people have pled guilty to avoid harsher punishment, including the possibility of a death sentence.) We also agreed to a two-year extension, requiring that the law be renewed in the 2007 session. We did this to allow for an opportunity to examine any problems or abuses of the law with the change in place. Just as there was no evidence of abuse of this law from 2001 to 2005, we found no evidence of abuse in the past two years. This session, we successfully removed the sunset provision, making it a permanent part of the Oregon statutes.

Despite this success on paper, there have been few defendants who have used this law. While we do not know all the reasons why, there are a few facets of the law that limit its application. First, the biological evidence has to be retained by the government. We hope in the next year to convene a meeting of all stakeholders to find out how evidence is retained in Oregon and how that affects this law. Also, the use of DNA evidence to exonerate an innocent person arises in only very limited circumstances where it is undisputed that the evidence was left by the perpetrator. We need to continue to look for all opportunities to provide avenues for individuals who are incarcerated to establish innocence even if it is years later. There are too many cases around the country for us to believe that this is not also happening in Oregon.

Passed Senate: 23-4; passed House: 51-3

Governor signed  *Scorecard Vote, see pages 8-9*

Additional DNA Legislation (HB 2949 and SB 846)

Although the power of DNA to exonerate or convict is a powerful tool for the criminal justice system, we have increasingly seen legislation that takes this technology too far. Six years ago when legislation was approved to require the taking of DNA samples from those convicted of sex crimes and felonies, we raised concerns that the next step would be to seek DNA samples from those arrested, prior to any determination of guilt. At the time, those in law enforcement suggested that

our concerns were farfetched and no one would be seeking such power. It turns out, however, that our concerns were valid.

Legislation was introduced in this session to require taking DNA samples from some individuals at the point of arrest, rather than conviction (HB 2949 and SB 846). Fortunately, neither bill was even heard, but we know there will be those who want to use the power of this technology in ways that bypass the due process guarantees we all have. If a person is suspected of a crime, with the appropriate showing of cause, law enforcement can obtain a court order.

Proposals such as HB 2949 and SB 846 are similar to many we saw this session, giving government the authority to obtain information from us without appropriate judicial oversight. ACLU will continue to argue that our judicial branch, and the role it plays in providing the appropriate checks and balances on the executive branch, is critical to ensuring that our rights are protected and our constitution is followed.

Social Security Numbers (HB 2090)

This proposal, filed by the Secretary of State's office, gave that office the authority to refuse to accept certain documents if they contain a Social Security number that is not, in some form, redacted. However, the original proposal also contained an immunity provision for the Secretary of State if there were a "good faith" release of personal identifying information. With our assistance, that section was removed, and the bill was passed and signed by the Governor.

Consumer Protection (SB 583)

This is an important piece of privacy legislation that ensures consumers the right to be notified when their personal information is compromised by a security breach and also provides individuals the right to freeze their credit reports following a breach in order to prevent fraudulent credit cards being issued to identity thieves. Although the bill is not perfect, we testified in support, and it was approved by wide margins in both chambers and signed by the Governor.

Criminal History Information (HB 2179)

Introduced by the Department of Human Services, HB 2179 dealt with requirements around notice when seeking criminal history information during a child abuse investigation. Under the law, DHS already had the authority to obtain this information but was required to give notice to the individuals whose information DHS obtains. This proposal, as originally drafted, attempted to remove any form of notice (prior to or even after obtaining someone's criminal history information) and to expand the scope of whose information DHS can obtain to not only an alleged perpetrator of child abuse or neglect but also from household members. We worry that with this type of legislation, DHS will focus investigations solely on the basis of a person's criminal history, raising the real possibility that with limited resources the fact that if no one in the house has a criminal history, the investigation of an allegation of child abuse might be delayed or ignored entirely. Although we were

Legislative Report continued on page 10

Why Do You Support the ACLU?

"I support the ACLU because I empathize with the people in our community who are put in situations that feel 'wrong.' For instance, a Silverton resident was told that he could not put up political signs in his own yard at his own home and was threatened with large fines if he did not remove his signs immediately. That sounded wrong to him, and he called the ACLU. Sure enough, the constitution prohibits what Silverton was doing, and after the ACLU filed a lawsuit in federal court the City of Silverton agreed it had violated a citizen's constitutional rights. The case settled with an admission and apology, and the City of Silverton had to pay the ACLU's attorney fees. The City of Silverton would never have acknowledged it was violating residents' constitutional rights without that one citizen calling the ACLU, and the ACLU responding."



Heather Van Meter

Heather Van Meter

*Portland attorney, ACLU of Oregon board member and member of the
ACLU of Oregon Lawyers Committee*

A GUIDE TO ACLU SCORECARD BILLS

BILL	SUBJECT	ACLU POSITION	OUTCOME
SB 2	Domestic Partnerships	Supported	Passed, signed by Governor
SB 34	Pharmacy Database	Opposed	Passed Senate, died in House
SB 244	DNA Innocence Law	Supported	Passed, signed by Governor
SB 424*	Opposing Real ID, but adding lawful presence	Opposed	Passed Senate, died in Ways and Means
SB 465	Medical Marijuana Discrimination	Opposed	Passed Senate, died in House
HB 2007	LBGT Anti-Discrimination Protection	Supported	Passed, signed by Governor
HB 2700	Contraceptive Equity	Supported	Passed, signed by Governor
HB 2827	Enacting Real ID	Opposed	Passed House, died in Ways and Means
HB 2843	Regulating Sexually Explicit Material	Opposed	Passed, signed by Governor
HB 2906	Fixing Appeal Process in Education Discrimination Law	Supported	Passed, signed by Governor
HJM 11	Memorializing Against Real ID	Supported	Passed House, died in Senate

* SB 424 became a procedural vote. This version was put forward by the Senate Republicans to force a vote on the requirement that Oregon driver licenses be limited to citizens. The Democrats ended up supporting this version at the last minute knowing it would go to Ways and Means to die. While the ACLU supported the portion of SB 424 on Real ID, we opposed the bill because of the change to Oregon driver licenses, requiring citizenship. We were disappointed that this legislation became an immigration litmus test

REPRESENTATIVE	ACLU Position	HB 2007	HB 2700	HB 2827	HB 2843	HB 2906	HJM 11	SB 2	SB 244	ACLU %
Barker (D)		Y	Y	Y	Y	Y	Y	Y	Y	75
Barnhart (D)		Y	Y	N	Y	Y	Y	Y	Y	88
Berger (R)		Y	Y	Y	Y	Y	N	Y	Y	63
Beyer (D)		Y	Y	Y	Y	Y	Y	Y	Y	75
Bonamici (D)		Y	Y	N	Y	Y	Y	Y	Y	88
Boone (D)		Y	Y	Y	Y	Y	Y	Y	Y	75
Boquist (R)		N	E	Y	Y	E	N	N	E	0
Bruun (R)		N	Y	Y	Y	Y	N	N	E	29
Buckley (D)		Y	Y	N	Y	Y	Y	Y	Y	88
Burley (R)		Y	Y	Y	Y	E	N	Y	E	50
Butler (R)		N	N	Y	Y	N	E	N	Y	14
Cameron (R)		N	Y	Y	Y	Y	N	N	Y	38
Cannon (D)		Y	Y	N	Y	Y	Y	Y	Y	88
Clem (D)		Y	Y	Y	Y	Y	Y	Y	Y	75
Cowan (D)		Y	Y	Y	Y	Y	Y	Y	Y	75
Dallum (R)		N	N	Y	Y	Y	N	Y	Y	38
Dingfelder (D)		Y	Y	N	Y	Y	Y	Y	Y	88
Edwards, C (D)		Y	Y	Y	Y	Y	Y	Y	Y	75
Edwards, D (D)		Y	Y	Y	Y	Y	Y	Y	Y	75
Esquivel (R)		N	Y	Y	Y	Y	N	N	Y	38
Flores (R)		N	N	Y	Y	Y	N	N	Y	25
Galizio (D)		Y	Y	Y	Y	Y	Y	Y	Y	75
Garrard (R)		N	Y	Y	Y	Y	N	N	N	25
Gelser (D)		Y	Y	N	Y	Y	Y	Y	Y	88
Gilliam (R)		N	Y	Y	Y	Y	N	N	Y	38
Gilman (R)		N	Y	Y	Y	Y	Y	N	Y	50
Girod (R)		N	Y	Y	Y	N	N	N	Y	25
Greenlick (D)		Y	Y	N	E	Y	Y	Y	Y	100
Hanna (R)		N	N	Y	Y	Y	N	N	Y	25
Holvey (D)		Y	Y	N	Y	Y	Y	Y	Y	88
Hunt (D)		Y	Y	Y	Y	Y	Y	Y	Y	75
Jenson (R)		Y	Y	N	Y	Y	N	Y	E	71

SENATOR	SB 2	SB 34	SB 244	SB 424	SB 465	HB 2007	HB 2700	HB 2843	HB 2906	ACLU %
ACLU Position	YES	NO	YES	NO	NO	YES	YES	NO	YES	
Atkinson (R)	N	Y	N	Y	Y	N	Y	Y	Y	22
Avakian (D)	Y	N	Y	Y	Y	Y	Y	Y	Y	67
Bates (D)	Y	Y	Y	Y	Y	Y	Y	Y	Y	56
Beyer (R)	N	Y	N	Y	Y	N	N	Y	Y	11
Brown (D)	Y	Y	Y	Y	Y	Y	Y	Y	Y	56
Burdick (D)	Y	N	Y	Y	Y	Y	Y	N	Y	78
Carter (D)	Y	N	Y	Y	N	Y	Y	Y	E	75
Courtney (D)	Y	Y	Y	Y	Y	Y	Y	Y	Y	56
Deckert (D)	Y	Y	Y	Y	Y	Y	Y	Y	Y	56
Devlin (D)	Y	Y	Y	Y	Y	Y	Y	Y	Y	56
Ferrioli (R)	N	Y	Y	Y	Y	N	Y	Y	Y	33
George, G (R)	N	N	E	E	Y	N	N	Y	Y	29
George, L (R)	N	N	Y	Y	Y	N	N	E	Y	38
Gordly (I)	Y	N	Y	N	N	Y	Y	Y	Y	89
Johnson (D)	Y	Y	E	Y	Y	Y	Y	Y	Y	50
Kruse (R)	N	Y	N	Y	Y	N	N	Y	Y	11
Metsger (D)	Y	N	Y	Y	Y	Y	Y	Y	Y	67
Monnes Anderson (D)	Y	Y	Y	E	Y	Y	Y	Y	Y	63
Monroe (D)	Y	Y	Y	Y	E	Y	Y	Y	Y	63
Morrisette (D)	Y	Y	Y	Y	N	Y	Y	Y	Y	67
Morse (R)	Y	Y	Y	Y	Y	Y	Y	Y	Y	56
Nelson (R)	Y	Y	Y	Y	Y	Y	Y	Y	Y	56
Prozanski (D)	Y	N	Y	Y	N	Y	E	Y	Y	75
Schrader (D)	Y	E	E	Y	E	Y	Y	Y	Y	67
Starr (R)	N	Y	Y	Y	Y	N	Y	Y	Y	33
Verger (D)	Y	Y	Y	Y	Y	Y	Y	Y	Y	56
Walker (D)	Y	N	Y	Y	N	Y	Y	Y	Y	78
Westlund (D)	Y	Y	Y	Y	Y	Y	Y	Y	E	50
Whitsett (R)	N	Y	N	Y	Y	N	N	Y	Y	11
Winters (R)	Y	E	Y	Y	Y	N	Y	Y	Y	50

Komp (D)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	75
Kotek (D)	Y	Y	Y	N	N	Y	Y	Y	Y	Y	Y	100
Krieger (R)	N	Y	Y	Y	Y	Y	Y	N	N	Y	Y	38
Krummel (R)	N	N	N	Y	Y	Y	N	N	N	N	N	0
Lim (R)	N	Y	Y	Y	Y	Y	Y	N	N	Y	Y	38
Macpherson (D)	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	88
Maurer (R)	N	Y	Y	Y	Y	Y	Y	N	N	Y	Y	38
Merkley (D)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	75
Minnis (R)	N	E	Y	Y	Y	Y	Y	N	N	Y	Y	29
Morgan (R)	N	Y	Y	Y	Y	Y	N	N	N	Y	Y	25
Nathanson (D)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	75
Nelson (R)	N	N	N	Y	Y	Y	Y	N	N	Y	Y	25
Nolan (D)	Y	Y	Y	N	N	Y	Y	Y	Y	E	Y	100
Olson (R)	N	Y	Y	Y	Y	Y	Y	N	N	Y	Y	38
Read (D)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	75
Richardson (R)	N	N	N	N	Y	Y	N	N	N	N	N	13
Riley (D)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	75
Roblan (D)	Y	Y	Y	Y	Y	Y	Y	Y	Y	E	Y	71
Rosenbaum (D)	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	88
Schaufler (D)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	75
Scott (R)	N	N	N	Y	Y	Y	Y	N	N	Y	Y	13
Shields (D)	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	88
Smith, G (R)	N	Y	Y	N	Y	Y	Y	N	N	Y	Y	50
Smith, P (R)	N	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	38
Thatcher (R)	N	N	N	Y	Y	Y	Y	N	N	Y	Y	25
Tomei (D)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	75
Whisnant (R)	N	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	38
Witt (D)	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	75

**This scorecard is available
as a PDF at
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Legislative Report continued from page 7

not able to stop the proposal, ACLU successfully urged that, at a minimum, individuals receive notice, if not prior, then after the fact. The bill passed both chambers and was signed by the Governor.

Criminal Background Checks (HB 2659)

Introduced to deal with concerns about construction contractors, HB 2659 would have allowed the Construction Contractors Board to become authorized to make FBI fingerprint criminal history checks on applicants. We opposed that provision as an unnecessary privacy intrusion. Based on our opposition, that provision was removed. We also joined others expressing significant concern with another provision that would have allowed the Board to issue a criminal citation to any contractor suspected of “shoddy construction work” requiring a person to appear before a judge. We know of no other provision in Oregon law that allows an agency to obtain a criminal citation against a person. This section also was removed. In the end, an amended version of HB 2659 passed out of committee that raised no civil liberties concerns. It died in Ways and Means.

Motor Vehicle Data Records (HB 2568)

We supported and worked with Rep. Larry Galizio (D-Tigard) to help pass HB 2568, which gives owners of vehicles with “motor vehicle event data recorders” some basic rights. “EDRs” (sometimes called black boxes) are installed in certain models of newer vehicles to keep track of certain vehicular operations. The information is stored and can be used after an accident to determine what a driver and vehicle were doing immediately up to the accident. Although federal law preempts Oregon’s ability to require notice to consumers buying vehicles that contain EDRs, we clarified that the vehicle owner owns information from the EDR except for very limited circumstances, most of which still would require a court order before such information would be released.

Passed House: 57-3; passed Senate: 28-0
Governor signed

Use of Polygraphs (SB 530)

This session, legislation was introduced to allow law enforcement agencies to use polygraphs for pre-employment screening of police officers. ACLU, along with the Oregon Council of Police Associations (representing police officers), testified against SB 530 in the Senate Judiciary Committee. Polygraphs are not only unreliable for determining the truthfulness of an individual, but a recent study shows their use in pre-employment screening is the least reliable use of polygraphs (compared with post-employment situations and criminal situations). We support the use of aggressive pre-employment interviews and screening by law enforcement agencies but not the use of a technology that is unreliable and, in at least one study, has shown to disproportionately affect minority populations. After much discussion, SB 530 died in committee.

RACIAL JUSTICE

Racial Profiling Data Collection (HB 2102)

This legislation made permanent the statewide committee that works to prevent racial profiling by law enforcement agencies. ACLU of Oregon Executive Director David Fidanque has been a member of the Law Enforcement Contacts Policy and Data Review Committee since it was formed and has helped lead efforts to encourage traffic stop data collection by state and local police departments. The Committee, appointed by the Governor, also includes former Oregon Supreme Court Justice Edwin Peterson and former ACLU Board member and Benton County Commissioner Annabelle Jaramillo. The Committee also is working to improve training of police officers and command personnel to help them identify and eliminate unconsciously biased actions and to improve relations between communities of color and the police agencies that serve them.

Passed House: 57-11; passed Senate: 26-0
Governor signed

DEATH PENALTY

This session saw little advancement on issues around the use of the death penalty in Oregon. Neither the House nor the Senate showed much interest in hearing any death penalty bills, with one exception.

Application of Death Penalty (HB 3336)

This legislation was intended to address the U.S. Supreme Court’s decision of a few years ago prohibiting the use of the death sentence for those who are deemed to be “mentally retarded” (as defined by the Court). Originally aiming to establish a judicial process for determination of mental retardation, the bill eventually was amended to create a task force to address this issue. HB 3336 passed out of House Judiciary but died in Ways and Means.

This is a complicated area of law, one that the ACLU, Oregon Criminal Defense Lawyers Association, Oregon Advocacy Center and the District Attorneys Association have tried in past sessions to resolve. However, agreeing on the process to be used in the courts has proved too difficult, and we were not able to come to any agreement during session. As a result, the issue of whether or not someone has mental retardation and the process to be used during the criminal proceedings to determine that will be left to the courts to resolve on a case-by-case basis. Although not ideal, we see this as a better practice than any watered-down legislation that may result in the loss of a defendant’s rights.

Expansion of Death Penalty (HB 2738 and SB 520)

One positive that came from the lack of focus on the death penalty this session was that two bills that have been introduced and passed out of the House in past sessions were not given a hearing this session. HB 2738 and SB 520 would have expanded the death penalty to include the aggravated murder of witness in a juvenile proceeding and reserve officer, respec-

tively. ACLU, along with our coalition partners, has opposed these bills each session, and we were pleased not to have to fight this one again.

FREE SPEECH: CRIMES

Providing 'Sexually Explicit' Material to Minors (HB 2843)

One of our greatest challenges this session was to work on HB 2843, which created two new crimes directed at the distribution of material deemed sexually explicit to minors.

One section aimed to address those who use sexually explicit material to lure minors for sexual assault. We attempted to work on that section, believing that arguably there is a gap in the law if a person does not complete the sexual assault but has criminal intent. The other section creates a new crime if a person intentionally gives a child, 13 years of age or younger, sexually explicit material, even if there is no criminal intent. While there are affirmative defenses for parents, librarians, doctors and others, that defense may be invoked only after someone is charged. And minors providing material to younger siblings could be charged with this crime.

Although this is a difficult issue, we believe that the definition of what is sexually explicit is overly broad and can include lawful material. As a result, ACLU opposed HB 2843.

Along with the Media Coalition and the Motion Picture Association of America, we believe that HB 2843 violates both the First Amendment of the U.S. Constitution and Article I, section 8 of the Oregon Constitution. The only silver lining of this bill was its repeal of a number of statutes that were long ago held unconstitutional by the Oregon courts. The removal of those laws was long overdue.

Passed House: 57-2; passed Senate: 28-1

Governor signed ☒ *Scorecard Vote, see pages 8-9*

FREE SPEECH

Funeral Protests (HJR 52 and HB 3443)

HJR 52, a constitutional amendment (requiring a referral to the voters), and HB 3443, the implementing statute, would have weakened the Oregon Free Expression provision by amending Article I, section 8 to allow exceptions for "disturbances at or disruptions" at funerals and memorial services. Although these proposals have been introduced around the country in an attempt to deal with the anti-gay activities of the Rev. Fred Phelps and his followers (who have targeted funerals of armed service members), the testimony in committee focused solely on "anti-war" protesters. We testified in opposition, pointing out that in the past 12 years, Oregonians have been asked to weaken our Free Expression provision four times (including

CIVIL RIGHTS

Discrimination in Education (HB 2906)

This session ACLU introduced a bill on its own behalf to fix a problem discovered in our years of litigation on behalf of Nancy and Remington Powell regarding the recruitment efforts of Boy Scouts in Portland Public Schools.

Oregon's school discrimination law prohibits discrimination on the basis of religion (as well as the other protected classes). The law applies to both K-12 and higher education. While the law requires the aggrieved party to first complain to the school, if the school does not resolve the problem, the law for higher education allows the aggrieved party to file a claim in circuit court. Unfortunately, the law did not allow the same for parties in K-12 complaints. Instead, those appeals went to the Superintendent of Public Instruction (SPI). At that point, K-12 cases would become entwined in the state's Administrative Procedures Act (APA), which creates significant hurdles and lengthy delay.

In the Powell case, because the SPI issued a decision without a hearing, we appealed to the circuit court. But instead of the court having the opportunity to evaluate the case anew, it was limited to review the decision of the SPI under the APA. In Powell, although the trial court found that there was significant evidence of discrimination, the Judge returned the case to the SPI for a hearing. We never had the hearing because the defendants appealed that decision, and eventually the Oregon Supreme Court ruled

against us. Not only did the review of this case under the APA limit what the court could do and slow down the process, it also turned the SPI into a defendant instead of a neutral decision maker. After the SPI denied us a hearing at the outset, we had to appeal that decision to the trial court, not only naming the school district but now adding the SPI as a defendant. If we had ever returned to the SPI for a hearing, we would have had to appear before an agency that had just been our adversary — a very problematic process.

HB 2906 changes the K-12 process to bring it into alignment with the higher education appeal process. If a discrimination case cannot be resolved informally at the school district level, the aggrieved party may appeal directly to the circuit court and will be entitled to all the rights a party has in litigating a civil claim in circuit court (including discovery and the right to call witnesses). The Oregon School Board Association, Department of Justice, and the Superintendent of Public Instruction were neutral on our bill. As a result, we faced no opposition to this law, and it passed the House overwhelmingly and the Senate unanimously.

Passed House: 52-6; passed Senate: 28-0

Governor signed ☒ *Scorecard Vote, see pages 8-9*

DRUG POLICY

Medical Marijuana Discrimination (SB 465)

This session, legislation was again introduced to discriminate against medical marijuana card holders. SB 465 presumed that medical marijuana patients are impaired simply by virtue of being card holders and would have allowed employers to terminate the employment of card holders. We believe that a person who shows up to work and is actually impaired (from lawful or unlawful drugs, alcohol, emotional distress or any other reason) can be sanctioned by the employer. And employers who run high-risk equipment should always be determining each day whether an employee is safe to operate machinery. But relying on a drug test, often urine analysis, does not address this issue of actual impairment. Such tests can take days to get results and will not accurately determine if someone is actually impaired. Likewise, such tests may detect residual components of legally ingested marijuana that may remain in the system up to 30 days.

While unsuccessful on the Senate side, which passed SB 465 by a 23-5 vote, we met with a more sympathetic House Elections, Ethics and Rules Committee, chaired by Rep. Diane Rosenbaum (D-Portland) and committee member Rep. Peter Buckley (D-Ashland).

After a lengthy public hearing, including a great deal of moving testimony from card holders who are trying to remain gainfully employed while battling medical conditions, Chair Rosenbaum chose not to move the bill forward. Unfortunately, at the 11th hour, Majority Leader Rep. Dave Hunt (D-Gladstone), a strong proponent of SB 465, attempted to move the bill out of committee to the House floor over the objection of the Chair. He submitted a letter signed by him and every Republican on the House Elections, Ethics and Rules Committee, demanding a committee vote (work session). Under House rules for this session, if a majority of committee members requested a hearing, the committee chair was required to comply. If this proposal had made it to the House floor, it would have likely passed with overwhelming support by the Republicans and divided support by House Democrats. We were most fortunate that Reps. Rosenbaum and Buckley held strong to their opposition and promised to issue a minority report if the bill passed out of committee. The issuance of a minority report would have slowed the bill coming to the House floor and potentially delayed the end of session. As a result, Rep. Hunt decided not to insist on pushing the bill out of the committee, and it died there at the end of session. However, this issue will return.

Passed Senate: 23-5; died in House Committee

✓ Scorecard Vote, see pages 8-9

Drug Testing (SB 606)

This proposal would have required individuals receiving public assistance to take drug tests. ACLU testified in opposition to this proposal before the Senate Health and Human Services Committee. Government drug testing of individuals without probable cause and a court order violates their rights against unlawful search and seizure. After a brief hearing, we were pleased that no further efforts were made to move SB 606 out of committee.

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two times by legislative referral), and each time Oregonians have said no. Not only does ACLU oppose weakening our Free Expression provision, this particular proposal was incredibly broad and would have been subjected to a challenge under the First Amendment. Despite a less than sympathetic committee, Chair Jeff Barker (D-Aloha) made sure neither bill advanced out of committee.

Regulating 'Strip Acts' (HJR 56)

We also had a hearing on HJR 56, another constitutional referral, which would have amended our Free Expression provision to allow for state and local governments to restrict "strip acts." HJR 56 is based on Initiative Petition 54 (2008), a constitutional initiative sponsored by Kevin Mannix, which we are currently challenging as a multiple amendment violation to the Oregon Constitution. We testified in opposition to HJR 56 before the House Judiciary Committee and were successful in stopping this proposal, renewing the argument we made on HJR 52, that Oregonians have rejected this attempt in the past. The committee moved the bill to the House Elections, Ethics and Rules Committee, and the bill died in committee.

Cyberbullying (HB 2637)

HB 2637 expanded the statute that was passed a few years ago regarding bullying in schools. Because of the increasing use of technology (from the Internet to cell phones), proponents wanted to expand the anti-bullying statute to specifically include "cyberbullying." The ACLU opposed the original version of HB 2637 as too broad. We worked with the proponents to narrow the scope of cyberbullying to be consistent with current anti-bullying law. Although we believe that the law already covered this form of bullying, we supported the amended bill because it provides guidelines to schools on the definition of cyberbullying and helps provide more education to schools, parents and students about the potentially harmful uses of cyber technology.

ACLU believes that schools already have the authority to regulate some level of speech in schools, as long as there is clear evidence of a disruption. (This harkens back to the Vietnam-era *Tinker* case that permitted students to wear black armbands in protest of the war, despite the school's attempt to ban the practice.) However, the ACLU opposes attempts to allow schools to regulate student speech that occurs entirely off campus. While parents — and if appropriate, law enforcement — have a role in regulating this off-campus activity, schools should not be allowed to discipline

students for speech that occurs outside of the school. At the same time, we understand the widespread problem of bullying, and we encourage schools to discuss these issues with students and parents.

Passed House: 56-0; passed Senate: 22-7
Governor signed

REPRODUCTIVE FREEDOM

This year saw quite a change from past sessions when we had to battle anti-choice legislation, particularly on the House side. Although many anti-choice bills were introduced this session, none was heard. But for one procedural attempt to pull an anti-choice bill to the House floor from committee in the waning hours of session (which failed 30-30), we were for the first time able to focus on pro-active, pro-choice legislation.

Contraceptive Equity (HB 2700)

A successful campaign to defeat Measure 43, the so-called “parental notification” measure, and a change in the makeup of the House made all the difference in finally getting contraceptive equity passed into law. HB 2700 requires insurance companies to provide contraceptive prescription coverage if it provides other prescription coverage. Oregon joins 23 states in requiring some level of contraceptive equity law. In addition, HB 2700 also requires hospitals to inform and make available emergency contraceptive to victims of sexual assault. Although many hospitals already provide this, the practice has been neither uniform nor universal in Oregon.

Passed House: 49-9; passed Senate: 24-5

Governor signed ☒ *Scorecard Vote, see pages 8-9*

CIVIL PROCEDURE

Judicial ‘Mootness’ (HB 2324)

One of the most frequent procedural hurdles ACLU encounters in litigating cases in Oregon is the problem of mootness. Oregon is the *only* state that does not recognize the exception to mootness when a case is “capable of repetition but evading review.” This exception is important because it allows the courts to resolve the underlying issues raised in a case even if the court could dismiss the case as moot. This issue arises most frequently for us in student rights and ballot measure litigation. Because students graduate or initiatives fail to qualify (or fail at the ballot box) before judicial review is concluded, Oregon courts can dismiss a case because there is no live controversy. And they regularly do. However, these are the types of cases where state and local governments very much need guidance on whether or not their actions are constitutional. Even if it is not the same parties, the same issues continue to arise (capable of repetition) and we believe everyone is benefited if the court can address once and for all the constitutionality of the action at issue in the litigation.

In student cases, when the students who challenge the constitutionality of a school district’s action graduate from school (seniors subject to graduation school prayer, for example), the court will stop the litigation, determining that the case is moot because the graduated student would no longer be subjected to the constitutional violation. For initiatives, the issue arises when we challenge them for violation of the constitutional procedural requirement. A good example was Lon Mabon’s OCA initiative that amended Oregon discrimination law but did not include the whole text of the discrimination law. The Oregon constitution requires that the “full text” be

Why Do You Support the ACLU?

“I support the ACLU because I believe we are currently in the most comprehensive ‘turning back of the civil rights clock’ period in our history. The eroding of our civil liberties cries out for an organization to take a stand for all citizens and say, ‘We will not go backwards anymore.’ The ACLU does this in their fight for social justice every day.”

Johnna Timmes

newly elected member of the ACLU of Oregon Board



Johnna Timmes

ANTI-IMMIGRATION

This session, there were dozens of anti-immigration bills introduced, including requiring proof of citizenship to vote (already a crime to register to vote when a person is not eligible) (HB 2680); making English the official state language (HB 2684); and requiring state employees, including law enforcement, to contact immigration authorities if a person cannot produce citizenship documents (HB 3426). Fortunately, only a few of these bills were heard, and none was successful.

Unfortunately, the equivalents to HB 2680, HB 2684 and HB 3426 have all been filed as initiatives for the 2008 general election. ACLU will work in opposition to these proposals, already having filed ballot title comments.

Specifically:

- We do not believe it is necessary to change the Oregon voter registration law which already makes it a crime for someone to register who is not eligible to vote.
- We oppose the so-called English-only measure because it would prohibit government from providing translators for non-native English speakers in judicial and administrative hearings, in schools and in other interactions with government officials when their basic rights are involved.
- And we oppose any attempts to repeal ORS 181.850, Oregon's law that prohibits law enforcement from detaining a person *solely* because the person may not be here lawfully.

In the 2003 session, we organized a 60-group coalition — including law enforcement groups — known as the “181 Coalition” to preserve ORS 181.850. Oregon's law is very narrow in its application. It only prohibits law enforcement from contacting immigration officials in situations where it is not otherwise detaining a person (a good example is traffic stops). However, if local law enforcement arrests someone for *any* crime and believes the person is not lawfully present, the officer is authorized to contact immigration authorities. Likewise if there's a warrant for arrest on a federal immigration criminal violation, law enforcement can detain a person.

The reason the majority of Oregon law enforcement supports Oregon's law is that it allows them to engage in community policing, encouraging individuals who are victims of crimes or who might know of ongoing criminal activity to feel safe to report it to law enforcement without the threat that they will be detained. A good example is a person who is a victim of domestic violence. If the abuser can threaten the victim with deportation if law enforcement is called, the victim likely will never report the violence. By making it safe for victims to contact law enforcement, those persons engaged in criminal activity can be stopped.

provided, and we have argued voters should see the whole discrimination statute being amended not just a portion. However, as has happened in the past, if the initiative does not qualify or if the voters reject the initiative while the litigation is ongoing, the court will dismiss the matter as moot because there is no longer a case in controversy.

This problem does not arise if there is also a claim for monetary damages. However, ACLU runs into this problem because our claims focus on whether something violates the constitution and there is no right to damages for violations of the Oregon constitution. More often than not, we seek only declaratory and injunctive relief, asking the court to stop the unconstitutional violation. However, without a claim for damages, once the student has graduated or the initiative has failed, the case has effectively concluded whether or not the court has determined the constitutionality of the issue.

While every other state recognizes the “capable of repetition” exception, the Oregon Supreme Court has rejected creating this exception to Oregon law. This session, the Oregon legislature passed HB 2324 as an attempt to correct this problem. It provides that if the party alleges a constitutional violation against a government entity and the particular events are no longer ongoing, but the issue is capable of repetition and likely to evade full judicial review, the court may resolve the ongoing case to final judgment. While there is no guarantee that the Oregon courts will hold that this statutory change is sufficient, we are hopeful that this law will be upheld, and we will be able to obtain final determination in some of our cases. If not, the only way to address this will be a constitutional amendment, and we will explore that option during future legislative sessions to seek an appropriate referral to the voters to fix this uniquely Oregon problem.

Passed House: 46-0; passed Senate: 26-0

Governor signed

DUE PROCESS

Public Health Emergencies (HB 2185)

Even before session started, we were asked to work with the state's Public Health division and various stakeholders on addressing the many gaps in Oregon law related to public health emergencies. We were most pleased not only to be included at the onset but that almost all of our concerns were addressed and suggestions were adopted. Overall, we focused on ensuring significant due process for those who might be subject to quarantine and isolation procedures. Although many states focus on criminal sanctions for failure to comply, Oregon's law moved away from that approach and provides a good deal of judicial oversight throughout a public health emergency.

The law makes every effort to obtain voluntary compliance. Additionally, before the state can move to non-voluntary compliance, it must show that there is a serious risk of harm to others and that non-voluntary restrictions are the only means available. A person's religious or conscientious objection also must be taken into account. Throughout the process, the state is required to give detailed notice and explanation, the ability for a person to obtain and confer with an attorney and judicial

oversight. Prior to this, Oregon law was silent on this process or approached it in piecemeal fashion. We are pleased that the state not only sought but accepted our suggestions and moved forward in a manner that provides more, not fewer, due process protections.

Passed House: 46-2; passed Senate: 25-1
Governor signed

CRIMINAL DUE PROCESS

This session, after we testified along with the Oregon Criminal Defense Lawyers Association on legislation regarding new crimes or criminal procedural issues, we were frequently asked to work on the legislation to address our concerns. There are times when this approach works successfully and we are able to work with other stakeholders to make an appropriate narrow change to a law rather than the often sweeping proposal that was introduced.

Law Enforcement Video Taping (HB 2651)

In general, Oregon law prohibits recording any part of a conversation without obtaining consent from all parties. We were approached by the City of Portland and Chiefs of Police to address a concern they had with current Oregon law. Because it is lawful to use a vehicle-mounted video camera, law enforcement officers were running into problems when they were not able to obtain consent from everyone who came within the range of the camera. Although no officer had ever been subject to sanctions, under Oregon law these officers faced po-

tential criminal charges. We worked with the City of Portland and the Chiefs of Police to make a very narrow change to their original proposal in HB 2651.

As amended, HB 2651 allows that if an officer is in uniform, displaying a badge, and operating a vehicle-mounted video camera that records the scene around the police vehicle, that officer will not be subject to criminal liability if he or she has made a reasonable effort to obtain consent from everyone. We wanted to make sure that there was the continued requirement that notice be given, but we understood that in fluid situations (such as a traffic stop where other persons unexpectedly enter the scene) that officers do not face punishment if they are not able to first give notice of the taping.

In addition, we agreed to a change in the law that allows the use of recording devices on Tasers without giving the parties prior consent. Newer technology allows some Tasers to record when the Taser is turned on (prior to being used). We understood that in those situations, there would not be an opportunity to give prior notice, but we also believe that recording these events provides more protection for the individual being Tasered and the public to review and monitor the type of use of this equipment.

Passed House: 56-0; passed Senate: 29-0
Governor signed

**This report is also available online
at www.aclu-or.org.**

2008 INITIATIVE WATCH

More than a year away from the 2008 general election, Oregon's initiative process is busy. As of this writing, more than 130 initiatives have been filed on a wide range of subjects, including proposals to weaken free speech rights, limit or eliminate access to abortion, provide educational tax credits to religious schools, reduce our privacy rights, repeal the medical marijuana law, impose mandatory minimum sentences for many crimes, as well as several anti-immigrant and anti-gay measures.

The ACLU of Oregon has been monitoring the proposals, filing comments on the accuracy of ballot title language and urging rejection of some proposals because the initiative petitions do not follow the state constitution's procedural requirements. In a few instances, we have gone to court to enforce the initiative requirements. While the first initiative for the 2008 election cycle was filed in February 2006, much of the ACLU's actions on 20-plus proposals have occurred in the past six months. Although petitioners have until July 2008 to submit the required number of signatures to qualify for the ballot,

several initiative petitions are close to qualifying already, including a proposal sponsored by Kevin Mannix (author of Measure 11) to create mandatory minimum sentences for property and other crimes.

It is important to note that 14 initiative petitions were rejected by the Secretary of State because those proposals did not comply with Oregon's initiative requirements. Most of those rejections were either the result of case law developed by ACLU lawsuits or the direct result of ACLU's comments, such as our letter pointing out that a proposed constitutional amendment to require "English only" as the official language of Oregon would result in amending at least five other sections of the Oregon constitution. As such, the proposal violates the requirement that voters have the right to vote on each constitutional amendment separately.

If you want to monitor Oregon's initiative activity yourself, the Secretary of State maintains an online initiative log at: http://egov.sos.state.or.us/elec/web_irr_search.search_form.

TICKETS NOW ON SALE

2008 ACLU FOUNDATION OF OREGON DINNER



Saturday, March 8, 2008

Pavilion Room
Portland Hilton & Executive
Tower
Reception and Hosted
Reception at 6 p.m.
Dinner at 7 p.m.

John W. Dean was White House Counsel to President Richard Nixon. He was involved in the Watergate scandal and became a

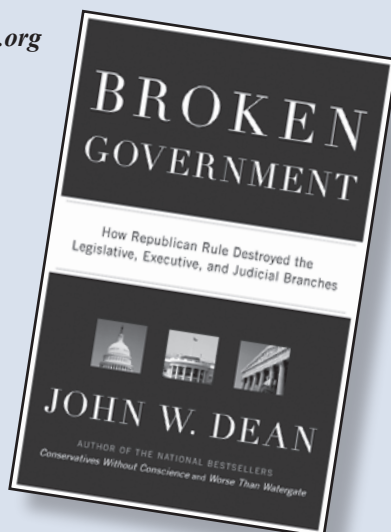
key witness for the prosecution. He is currently an author, columnist and commentator on contemporary politics. His most current book is *Broken Government: How Republican Rule Destroyed the Legislative, Executive, and Judicial Branches*. Other titles include *Conservatives Without Conscience*, *The Rehnquist Choice: The Untold Story of the Nixon Appointment that Redefined the Supreme Court* and *Warren G. Harding*.

Dinner Tickets: \$125/person

Dinner and Hosted Reception with John Dean: \$200/person

If you are interested in hosting a table or becoming a sponsor, contact Development Director James K. Phelps at jphelps@aclu-or.org or (503) 552-2101.

Tickets also available
online at www.aclu-or.org



'KNOW YOUR RIGHTS'

CARDS AVAILABLE IN
ENGLISH AND SPANISH

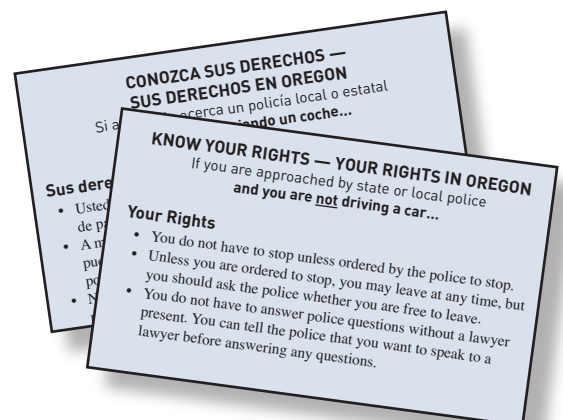
The ACLU Foundation of Oregon's popular "Know Your Rights" cards have been updated and are now available in both English and Spanish.

These wallet-sized cards set out individual rights in Oregon for those people stopped by the police when not driving a car — either as passengers or as pedestrians. (A guide to rights of drivers would be far more complex and would be impossible to reduce to a wallet-sized card.)

The Eugene Human Rights Commission is stocking both versions of the card, and additional copies are being distributed by the ACLU's Southern Oregon Chapter. Thousands also are being distributed to immigrant families throughout the Willamette Valley by CAUSA, Oregon's statewide immigrant rights coalition, and Centro Latino Americano in Eugene.

If you would like a free supply of cards to share with students, clients, family, friends or other members of the community, please contact either our Portland or Eugene office — (503) 227-3186 in Portland or (541) 345-6162 in Eugene. Orders may be placed through our website, where the card also may be downloaded and printed (www.aclu-or.org).

We'd like to especially thank attorney Robert Homan, certified Spanish translator John Morrell and Centro Latino Americano for their invaluable expertise in the creation of these cards.



ACLU Monitors Taser Policies ...

In addition, we strongly urge that:

- Ashland police use Tasers only under limited, monitored and supervised use for a three-year trial period;
- All Ashland police officers undergo extensive training in techniques of crisis intervention and de-escalation of potentially violent situations, with particular focus on those who are mentally disturbed or under the influence of drugs or alcohol, in order to further reduce the need for Tasers; and
- Full reports of all instances of Taser use be made public.

At the end of the three-year trial period, we ask the Ashland City Council to review the record of police Taser use and decide whether to permit continued use of CEDs by the Ashland Police Department.

In addition, in light of unresolved doubts in the Ashland community, the ACLU of Oregon and its Southern Oregon Chapter call for an independent investigation, including an independent medical review, regarding police and medical support actions surrounding the death of Nicholas Ryan Hanson.

“Our review of Taser use in Ashland indicates that police officers have used Tasers to coerce compliance in situations where there was no likely threat of significant injury or death to the officer or to others,” said Ralph Temple, member of the state and Southern Oregon Chapter boards of the ACLU of Oregon. “The threshold has been far too low, and we are pleased that Chief Holderness agrees this must change.”

The ACLU of Oregon policy, and our recommendation in Ashland, were guided by a lengthy discussion of these issues at the July meeting of the statewide ACLU Board of Directors.

TASERS IN EUGENE

The ACLU of Oregon, in conjunction with its Lane County Chapter, has submitted almost identical recommendations regarding Taser use to the Eugene Police Commission. The Eugene Police Department is planning to launch a pilot project for the use of Tasers this fall.

Lane County Chapter members, along with Fidanque and Southern District Field Organizer Claire Syrett, have spoken to the commission and at other public hearings and forums, regarding the need for police policy guidelines that would limit Taser use.

In mid-September, the 12-member Eugene Police Commission offered a draft Taser policy to Eugene Police Chief Robert Lehner. Members could not agree on several key issues: whether to limit the number of times an officer can apply a Taser to one person; whether officers may use a Taser on a fleeing subject or on someone who is displaying so-called “static resistance” by holding on to a fixed object.

Fidanque and Syrett told the Commission that the policy should limit Taser use to three five-second applications against any one individual. The language the Commission adopted — that officers “weigh the circumstances involved” in

determining how many times to Taser someone — is far too broad, the ACLU argued.

The final decision on these issues rests with Chief Lehner, but the Commission will review Taser policy and use following a trial period to determine if guidelines need to be modified.

“The Commission took our input very seriously,” Syrett said. “They adopted a number of our suggestions, and we are hopeful that Chief Lehner may adopt the rest before he takes final action to begin the pilot project.”

LOOKING AHEAD

The ACLU will continue to monitor Taser use in Ashland and Eugene. We expect our report and policy recommendations also will help prompt review of Taser policies in other jurisdictions in Oregon, including the City of Portland.

In addition, we’ll share our report with other affiliates around the country who also are working to address undisciplined and overly frequent use of Tasers by law enforcement officials.

Special thanks to Adam Clanton of the Portland law firm Williams, Kastner & Gibbs, a volunteer cooperating attorney of the ACLU of Oregon, who helped draft our Taser report.

The ACLU of Oregon’s Taser report calls for a two-part standard in determining when an officer should consider Taser use.

Tasers should be used only by authorized trained personnel to subdue or control a person whom the officer reasonably believes:

- 1) *Creates an immediate, credible threat to the physical safety of the officer, another person, or the individual himself/herself; and*
- 2) *Unless prompt action is taken to immobilize the person, there is a substantial likelihood the situation could lead to the death or physical injury of the officer, another person, or the individual himself/herself. (ORS 161.015(7) provides that “Physical injury” means impairment of physical condition or substantial pain.)*

In any case of Taser use, both standards must be met.

For a complete explanation of this two-part standard, download the full report at www.aclu-or.org.

TIME IS RUNNING OUT...

TAX LAW EXPIRES DECEMBER 31

Under the Pension Protection Act of 2006, taxpayers who are 70 ½ and older have until December 31 to take advantage of a tax law that is beneficial to both the taxpayer and charities.

The law allows qualified individuals to transfer up to \$100,000 from an Individual Retirement Account (IRA) or Roth IRA directly to qualified charitable organizations without creating taxable income. Without further congressional action, the law is set to expire December 31, 2007.

In the past year, the ACLU received more than \$45,000 from individuals in Oregon who took advantage of this opportunity.

According to the National Council on Planned Giving (NCPG), donors have made more than \$100 million in gifts since the law passed in August 2006. NCPG is leading a coalition of groups who are lobbying Congress to extend and expand these provisions, but unless they are successful, time is running out.

If you are 70 ½ or older and have an IRA, consider making a gift to the ACLU Foundation of Oregon before December 31. Those who will benefit the most are people age 70 ½ and older who:

- Do not itemize their deductions;
- Face the phasing out of tax deductions as their adjusted gross income increases; or
- Are subject to the 50 percent annual charitable deduction limitation.

The requirements of these provisions are very specific, so be sure to consult your tax planner before proceeding.

To find out more, contact your IRA administrator or James K. Phelps, CFRE, ACLU Foundation of Oregon Development Director, at (503) 552-2101 or jphelps@aclu-or.org.



Fall festival in Corvallis, with Benton Linn supporters —
John Huyck, Ryan Lambert and Amanda La Pine

THE LEGACY CHALLENGE: DEFEND FREEDOM TODAY WITH YOUR GIFT FOR THE FUTURE

You may have seen the mailings or even read the “Legacy of Liberty” brochure. The news that a major donor in New York had offered to make a cash donation of up to 10 percent of any bequest to the ACLU Foundation included in or added to a will during 2005 and 2006 was exciting indeed. Equally newsworthy, however, is the fact that 45 generous ACLU donors in Oregon notified us to say they were leaving more than \$10.3 million to the ACLU Foundation through planned gifts. As a result, the ACLU Foundation of Oregon received \$77,000 in matching donations — funds that were put to immediate use — from the Robert W. Wilson Charitable Trust.

We would like to extend our heartfelt thanks to every Oregonian who joined in that effort. Their foresight in planning for a future gift has helped to ensure that the ACLU will always be able to defend the Constitution and the Bill of Rights. What’s more, in providing for future support of the ACLU, each of those individuals enabled us to receive a matching gift that we put to work right away.

The news gets better: We are thrilled to report that the Legacy Challenge has been renewed for another two years, with a retroactive start date of June 1, 2007. Now, when a donor notifies us for the first time that a planned gift has been established, the Robert W. Wilson Charitable Trust will once again make a cash donation of up to 10 percent of the future gift’s value, with a maximum match of \$10,000. ACLU Foundation has already had two donors participate in the renewed challenge, creating more than \$3,000 in matching donations for the ACLU Foundation of Oregon.

How does it work?

- Complete your bequest provision for the ACLU Foundation in your will or trust.
- Tell us about it. (Matching forms are available from our office or online at www.legacy.aclu.org.)
- A cash donation of up to \$10,000 will be made by the Robert W. Wilson Charitable Trust.

If you would like more information, you can visit www.legacy.aclu.org for estate planning checklists, gift calculators, step-by-step instructions, articles, and more information about the Legacy Challenge itself. You can also contact James K. Phelps, J.D., CFRE, Development Director, ACLU Foundation of Oregon, at (503) 552-2101 or jphelps@aclu-or.org. You can also contact the national ACLU Planned Giving staff at (877) 867-1025 (toll-free) or legacy@aclu.org.

IN THE CHAPTERS

A CLOSER LOOK AT ACLU OF OREGON'S REGIONAL CHAPTERS

BENTON-LINN

The Benton-Linn Chapter table at the recent Corvallis Fall Festival featured the ACLU of Oregon's updated "Know Your Rights" wallet cards as well as a handout on national issues involving civil liberties.

In preparing for our Annual Membership Meeting, chapter members have been recruiting new nominees to stand for election to the board. The Annual Meeting begins at 7 p.m. November 14 at the OSU Humanities Center, 811 SW Jefferson Ave., Corvallis. ACLU of Oregon Executive Director David Fidanque will be the featured speaker. The event is free and open to the public.

Nominees for the chapter board will be announced at the meeting, with additional nominations taken from the floor. In order to make a nomination from the floor, you must be a member in good standing — as must the person who is being nominated. Ballots will be mailed within 10 days following the Annual Meeting.

LANE COUNTY

In the past few months, chapter members have worked with the staff and state board to develop an ACLU of Oregon policy on Taser use by our police agencies (see the cover story in this newsletter). Chapter members also gathered signatures to restore Habeas Corpus and rallied at the Federal Courthouse on the June 26th National Day of Action. Many chapter board members also have volunteered for the Annual Giving Campaign, attending the training offered by Development Director James Phelps and venturing into the world of fundraising for the ACLU Foundation of Oregon.

With so many critical issues to address, the chapter has created an issues survey asking people to tell us which issues they find most pressing. The survey was popular with people who visited the Lane County Chapter booth at the Eugene Celebration.

The chapter's table at Eugene Springfield PRIDE Day helped connect with more volunteers who later staffed the booth during the Eugene Celebration. The highlight of that event was marching in the parade with a colorful and patriotic float, complete with the Bill of Rights, banners and costumes — Uncle Sam and Lady Liberty included! People stood to cheer and applaud as the ACLU group chanted "A-C-L-U, a light for rights and justice, too!" Adding to the chapter's visibility, the *Eugene Register Guard* highlighted our float in its feature on the parade.

SOUTHERN OREGON

The Southern Oregon Chapter of the ACLU, comprised of members from Klamath, Jackson, and Josephine counties, will hold its Annual Membership Meeting from 2-

4 p.m. October 21 at the Headwaters

Environmental Center, 84 Fourth St., at the corner of Fourth and C streets, Ashland. This is a great opportunity to get more involved in the work of the ACLU. Board elections will take place at this meeting, which will feature a short educational program on current civil liberties issues.

The 12-member board is engaged in several projects, reflecting a diversity of interests and the breadth of issues faced in Southern Oregon:

- One of our board priorities is to actively recruit younger members, and as such board members Sarah Bacon and Maud Powell are planning a youth forum for this fall.
- ACLU of Oregon Executive Director David Fidanque and chapter board member Ralph Temple held a press conference in mid-September to release an ACLU of Oregon report on the use of Tasers by the Ashland police. This work has resulted in changes to the Use of Force policy of the Ashland Police Department.
- The chapter also joined a coalition of community groups to ask the City of Ashland to accommodate greater community participation in the selection of a new city attorney, a position that wields great influence in terms of civil liberties enforcement. The city granted this request, and the mayor of Ashland praised the coalition's suggestion for increasing democratic participation in city affairs.
- Chapter board member Jo N. Murillo-Hannon is spearheading a grassroots education/awareness effort with the goal of having an ACLU of Oregon table at as many community events as possible in the three counties that make up the chapter. As a result, for the first time in chapter history, the Southern Oregon Chapter hosted an information table at "Campesino Day" (Farm Workers' Day) in Medford at the end of September.

Reporting for Chapter Updates was done by Brook Meakins, Jo N. Murillo-Hannon, Ralph Temple and Claire Syrett.

Join the fight to protect and enhance civil liberties through chapter work with the ACLU. Contact Claire Syrett at csyrett@aclu-or.org or (541) 345-6162.



Lane County ACLU supporters take part in the Eugene Celebration.

Web Exclusive!

Claire Syrett's "Report from the Field"
online at www.aclu-or.org