



ISSUE 2, VOLUME 43, FALL 2008

NOVEMBER BALLOT MEASURES

ACLU TAKES POSITIONS ON MEASURES 56, 58, 61,
64 – AND 57*, WITH AN ASTERISK

The ACLU of Oregon has taken stands on five ballot measures for the November 2008 election, and the connection between two of those measures — 61 and 57* — may present one of the more difficult decisions civil libertarians will face this year.

Ballot Measures 61 and 57 both would expand mandatory minimum sentences. ACLU opposes mandatory minimum prison sentences because they eliminate a judge’s ability to evaluate the facts of a case and consider the defendant’s character and history in determining a sentence.

Measure 61, sponsored by Kevin Mannix, would greatly expand the use of mandatory minimum sentences to include non-violent property and drug crimes. Measure 61 would not allow for good-time credit during incarceration, and it would ensnare many first-time drug offenders in the criminal justice system with no funding or requirement of drug-treatment programs.

According to the state Department of Corrections, Measure 61 would cost close to \$200 million per year in a few years’ time, increasing the already-overcrowded prison population by more than 6,000 new inmates. As a result there would be even more costs, requiring additional prison construction or mass out-of-state transfers.

continued on page 4

ACLU QUESTIONS FPS SURVEILLANCE

The misuse of government surveillance has been a common complaint during the Bush Administration. Recently, the ACLU of Oregon discovered another disturbing wrinkle.

We are greatly concerned about the surveillance by a Federal Protective Service (FPS) agent of private citizens engaged in constitutionally protected activities in Eugene. We have written to U.S. Senators Gordon Smith and Ron Wyden, as well as U.S. Rep. Peter DeFazio, asking them to investigate key questions about the incident.

At issue are news reports that FPS agents were present May 30, 2008, during an anti-pesticide demonstration in downtown Eugene and in fact called the Eugene Police Department to the scene of a peaceful rally taking place in Ken Kesey Plaza. It is alleged that the FPS pointed out a particular individual to Eugene police officers who proceeded to arrest the demonstrator based solely on an FPS agent’s report from the scene.

continued on page 8

RESTORING THE CONSTITUTION IS IN YOUR HANDS

FROM THE EXECUTIVE DIRECTOR



David Fidanque

Given the sheer volume of the personality and gotcha coverage of the Presidential campaign, the U.S. Senate campaign and many state and local races, it’s been easy to lose track of the critical issues that hang in the balance in this year’s election.

Here at the ACLU, we’re doing what we can to give you the information you need to hold elected officials and candidates accountable to the Constitution.

At the federal level, ACLU has launched its “Constitution Voter” campaign to encourage voters nationwide to pledge to support candidates who will support the Constitution — especially for President. We’ve put together a transition plan for the next President that includes two stages.

On Day One, the next President should:

- Ban the use of torture by the government — without exception;
- Close the prison at Guantanamo and try the detainees in criminal court or under the Uniform Code of Military Justice; and
- End the practice of “extraordinary rendition” — the kidnapping and torture of terrorism suspects.

In the First 100 Days, the next President should:

- End warrantless spying;
- Purge government watch lists, including the “no-fly” list;
- Stop political and religious spying on activists;
- Suspend the Real ID Act;
- Enforce civil rights laws;

continued on page 2

STAFF**David Fidanque**
Executive Director**Jann Carson**
Associate Director**Pooja Bhatt**
Volunteer Coordinator/
Office Manager**Teresa Domka**
Development Associate**Andrea Meyer**
Legislative Director/
Counsel**Chin See Ming**
Legal Director**Eryn Mitchell**
Development Associate**James K. Phelps**
Development Director**Bonnie Souza**
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Annabelle JaramilloKeane McGee
Candace Morgan
Kris OlsonRalph Temple
Johnna TimmesHeather Van Meter
Derek Volkart

Leila Wrathall

CONTACT INFORMATIONP.O. Box 40585
Portland, OR 97240
t/503.227.3186P.O. Box 50426
Eugene, OR 97405
t/541.345.6162

WWW.ACLU-OR.ORG • INFO@ACLU-OR.ORG

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of OREGON**

- Ban sexual orientation discrimination in the federal government — including eliminating the “Don’t Ask, Don’t Tell” policy in the U.S. military;
- Implement a moratorium on the federal death penalty; and
- Monitor “faith-based initiatives.”

You probably have other things you’d like to put on the next President’s to-do list. I know that I do. For example, I’d like the next President to pledge to appoint federal judges who have a clear record of upholding the Constitution and the rule of law.

I’d also like a President who won’t pander to the fears of the American people, but who will instead speak honestly to us about the greater dangers to liberty if we allow the government to undermine our fundamental constitutional protections.

Closer to home, the ACLU of Oregon website offers all the information you need to talk to state candidates about critical civil liberties issues that are likely to come up in the 2009 Oregon Legislature. You can also find scorecards that show how current state legislators have voted on some of the tough civil liberties issues in recent legislative sessions.

And in this issue of the newsletter, we’ve also got a rundown on the statewide ballot measures on the November ballot that will affect civil liberties.

But before you rush off to do your homework, I’d like to share a story that illustrates how much work ACLU will have ahead of us even if we do manage to elect a President that will commit himself to reversing many of the abuses of power carried out by the Bush Administration over the past eight years.

On May 30 this year, police were called to the scene of an anti-pesticide demonstration in downtown Eugene by undercover agents of the Federal Protective Service (FPS). The FPS used to be a branch of the General Services Administration and their job is to provide security at federal buildings. In the old days they were the folks who staffed the metal detectors before you enter a federal building or federal courthouse. Now they’re part of the Department of Homeland Security and, apparently, they are the newest secret police for the U.S. government.

So who authorized FPS agents to engage in political surveillance of non-violent demonstrators who were gathered more than a half mile away from the nearest federal building? Since they are part of Homeland Security, the FPS isn’t subject to the Attorney General’s guidelines that are supposed to restrict political and religious surveillance of lawful activity.

(You may have heard that Attorney General Michael Mukasey has proposed to weaken those guidelines. We’re opposing that move because there is plenty of evidence the FBI has been violating the current guidelines; the last thing we should do is weaken them further.)

We’ve written to U.S. Rep. Peter DeFazio and U.S. Senators Ron Wyden and Gordon Smith asking them to investigate the actions of the FPS agents. (For more on this, including our specific demands, see the story on page 1 of this newsletter.)

No matter who is elected President, it will take years to undo all the damage that has been done by the Bush Administration. Nevertheless, vote wisely because your vote will make a difference!

For more information on the Constitution Voter Campaign, check out www.aclu.org. Visit www.aclu-or.org and click on “Legislation — Election 2008” for more info on state issues that you should discuss with candidates.

GUARDING THE BOUNDARIES BY JEFF GOLDEN

This op-ed column originally ran July 21, 2008, in the Ashland Daily Tidings and is reprinted here with permission of the author. Jeff Golden, author and commentator, is a member of the statewide Board of Directors for the ACLU of Oregon. Excerpts of his most recent work, "Unafraid: A Novel of the Possible," can be found at www.unafraidthebook.com.

"Political floats in the Ashland Fourth of July parade will no longer be held to a different standard after the American Civil Liberties Union Foundation of Oregon put pressure on the Chamber of Commerce ... 'Because assessing a higher fee for political entries discriminates on the basis of the content of the entrant's message and thereby burden free speech, it violates both the Free Speech Clause of the First Amendment to the United States Constitution and the Free Expression Clause of the Oregon Constitution,' [the ACLU Attorney's] letter stated."

— Ashland Daily Tidings, July 14 "ACLU: Parade Not Fair"

You could have passed over the lead story in last Monday's *Tidings* without much thought. It might have the look of a small-bore technical issue, a solution in search of a problem that doesn't really exist here. At their core, our constitutional free speech guarantees aim to protect us from repression of political and social opinions. Ashland's not known for repressing opinions. So should we be concerned when the Chamber charges parade entries with political messages a higher fee than apolitical nonprofit entries? Or do some civic zealots just have too much time on their hands?

Questions like this often get hashed out in ongoing battles on the pages of this paper — a certain Naked Lady comes to mind — where different segments of the community whack away at one another for weeks on end. It's not always clear that the value of the discourse outweighs the wear and tear on the community.

That won't happen this time, because the Chamber of Commerce has done something a little unusual. Instead of taking this blunt public challenge to their rules as an insult, rearing up on hind legs to justify themselves and go after their critics, the Chamber seems to have taken a deep breath and asked themselves if this is a battle worth fighting. The article describes their decision to refund the extra fee they charged the complaining party, and to revise fees so that there's no extra premium to pay for political expression in future parades, even though they don't agree with the ACLU's legal reasoning.

Good for the Chamber. They may have recognized that some of our ugliest battles get touched off by adrenaline, the "Oh, yeah? Well, we'll show them!" reflex, which is (to quote NPR's Car Guys) "unencumbered by the thought process." Then comes a downward spiral, where the players get so fired up about winning the argument at any cost that they nearly forget what it's about. I've been there.

The Chamber short-circuited all of that by deciding they could accommodate their critics without losing face or com-

promising any important principle. At the same time they sounded unimpressed with the ACLU's fundamental point that they were violating the constitutional ban on discriminating among various kinds of speech based on content. They don't see themselves as tyrants, and they're not.

What's easy to miss here is the ACLU's role as a kind of early warning system. This organization guards a boundary that's critical to our political quality of life. The first step over a constitutional boundary is often harmless by itself. In this case,

the extra \$70 tagged onto the entry fee of marchers who choose to carry political messages won't quite rank with Darfur and Burma on Amnesty International's next Human Rights Report. But that first step is the easiest one to stop. A "harmless" episode of charging one kind of expression more than another makes it harder to defend the principle when the stakes are higher down the line — which, judging from the ascendancy of most of history's dictatorships, is what tends to happen.

A little disclosure here: I'm not only a "card-carrying member of the ACLU" (and what a commentary it is on our times that that phrase became an insult) but recently joined the Board of its Oregon affiliate. I appreciate how hard-nosed and insistent the ACLU can be while the stakes still seem small. What might sometimes look like making mountains out of molehills is often flattening molehills before they become mountains.

If you see the ACLU step into an issue or legal case, look carefully into what's going on before rolling your eyes. Chances are very good that if you strip the story of political rhetoric and excuses, you'll find an important right in some kind of peril. The ACLU rarely makes a lot of friends when it aggressively points out the danger. But we'd have a very different country if it hadn't been around all these years to challenge and sometimes annoy us. And I don't think we'd like the difference.

Let me give this column's last word to Wes Brain, the Ashland activist whose complaint after the Fourth triggered this whole story. "You can't be charged a different amount for what your content says," Brain told the *Tidings*. "But more than that, it's about our rights. I'd like people to educate themselves about the Bill of Rights and fight for them. They don't just sit on a shelf, they have to be exercised."

Simply true.



Sam Powell, age 5, joins the Ashland parade.

NOVEMBER BALLOT MEASURES, CONTINUED...

Measure 57, a legislative referral in response to Measure 61, would increase mandatory minimum sentences for a more limited number of crimes (manufacturing or dealing methamphetamine, heroin, ecstasy or cocaine in large quantities; and aggravated theft against the elderly). Measure 57 would allow credit for good behavior during incarceration and would increase access to drug treatment programs for those who are incarcerated or on post-prison supervision or probation.

But here’s the rub: Measure 57 was written so that if both measures pass, only the one with the highest number of “yes” votes goes into effect. The best-case scenario would be for both to fail — but the reality is both measures may get more than 50 percent. If that’s the case, the only way to defeat Measure 61 will be if Measure 57 has more “yes” votes.

Why the asterisk? While the ACLU’s state Board of Directors has voted to oppose both measures because both expand mandatory minimum sentencing, that decision acknowledges that the approval of Measure 57 — the lesser of two evils — may be the only way to defeat Measure 61.

The ACLU’s position on the remaining three ballot measures is more straightforward:

VOTING RIGHTS: VOTE ‘YES’ ON MEASURE 56

Ballot Measure 56, a legislative referral, would amend the Oregon Constitution to relax the “double majority” requirement for local property tax measures. Currently, such measures require both a majority of “yes” votes and more than 50 percent voter turnout among registered voters (“double majority”) in all elections except November elections in even-numbered years. Measure 56 would eliminate the double-majority requirement in all May and all November elections. Other elections, including special elections, still would require the double majority.

Under double majority, first proposed by Bill Sizemore, a tax measure fails even if it receives a large majority of “yes” votes if fewer than 50 percent of registered voters participate in the election. That means the “votes” of those who don’t cast ballots have greater weight than the votes of people who return their ballots — which runs counter to the principle of one-person/one-vote.

EQUAL PROTECTION: VOTE ‘NO’ ON MEASURE 58

Ballot Measure 58, sponsored by Bill Sizemore, would significantly limit the time a student who is “not proficient in English” or for whom “English is a second language” would be allowed to participate in “English immersion classes.” The ACLU opposes attempts to deny equal access to education based upon a students’ national origin.

Measure 58 runs the risk of conflicting with federal equal education opportunity requirements and jeopardizing federal funding. Title VI of the Civil Rights Act of 1964 prohibits discrimination based on “race, color or national origin.” Measure 58 would eliminate local control by school boards, educators and families and replace it with a one-size-fits-all approach that would hurt students who are not able to gain fluency in English within a relatively short period of time.

FREE SPEECH & ASSOCIATION: VOTE ‘NO’ ON MEASURE 64

Ballot Measure 64 would mandate that no “public resources” be used to collect or to help collect money used for “political purposes.” This is the fourth time in 10 years that Bill Sizemore has sponsored this or similar measures, and voters have rejected all three previous attempts.

Measure 64 would eliminate public employees’ ability to make decisions about their own payroll deductions. Currently, any public employee may opt-out of the portion of union dues and contributions that are used in election campaigns.

In addition, payroll deductions made to non-profit organizations, such as United Way, would be restricted under Measure 64. Many non-profits speak out on ballot measures and legislative proposals that relate directly to their missions. Even unintended violations of Measure 64 would result in high fines and a future ban on the use of any public facilities or payroll deduction programs.

The definition of “public resources” is very broad and includes the use of “public buildings.” Many public buildings are rented after hours for various uses. If such use is restricted based on the content of the speech of the group using the space (barring candidates or ballot measure events), it raises significant concerns under the Oregon and U.S. constitutions.

ACLU BALLOT MEASURE RECOMMENDATIONS NOVEMBER 2008		
Measure	Subject	ACLU Vote
56	Voting Rights: Would Modify “Double Majority” Requirement	Yes
57	Criminal Justice: Would Increase Mandatory Minimum Sentences and Drug Treatment Opportunities	No, but... * (see story)
58	Equal Protection: Would Impose Arbitrary Limits on English Language Instruction	No
61	Criminal Justice: Would Greatly Increase Mandatory Minimum Sentences Without Drug Treatment	No
64	Free Speech & Association: Would Restrict Rights of Public Employees and Non-Profit Organizations	No

Concerned about other election issues? Visit www.aclu-or.org/election2008 for briefing papers, legislative scorecards and other helpful materials.

WHAT TO WATCH FOR IN THE NEW YEAR

The Oregon Legislature convenes Jan. 12, 2009, and already the ACLU of Oregon knows it will be busy with a number of civil liberties issues. You can help by joining our action alert email list. (Sign up at www.aclu-or.org.) We will alert you when we need you to take action on specific proposals as they move forward in the legislative process.

Here's a sampling of what to expect in Oregon's 2009 legislative session. As we get closer, look for additional ACLU proposals that will need your support (as well as ongoing work to defeat anti-civil liberties legislation):

PRIVACY: REAL ID

Our goal is to bar implementation of this dangerous proposition. The governor continues to support Real ID, and we already know he is planning to introduce legislation that includes scanning and databasing copies of original documents needed to get a license (birth certificate, passport, Social Security card and so on). Real ID requires that states divulge this information in a nationwide shared database. This would create a one-stop shop for identity thieves. In 2007 and again in 2008, the legislature focused on requiring proof of lawful presence to obtain a driver license or identification card. Despite our opposition, the 2008 February legislative session passed the lawful presence requirement into law. Our efforts to stop Real ID in 2007 were tied up in this effort. We know there is opposition to further implementation of Real ID in the legislature, and we hope to pass legislation that prohibits Oregon from further complying with Real ID. If we are successful, we would join more than 10 other states in opposing Real ID. We need your help in stopping Real ID. Our Real ID briefing paper is available on our website, www.aclu-or.org. Read (and copy and share!) it for more information.

PRIVACY: PHARMACY DATABASE

Despite defeating this proposal in each of the last few sessions, once again a bill will be introduced to create a government-operated pharmacy database of all controlled substance prescriptions (schedules II, III and IV). This would cover all codeine-based products, pain medicines and specific prescription drugs such as Ambien, Xanax and Ritalin prescribed to tens of thousands of Oregonians, including children. The proponents estimate 2-5 million prescriptions per year would be databased. Eventually almost all of us would be in the database. The proponents argue that this would be a way to reduce drug-seeking behavior. But in going after those who are abusing drugs, it would treat all Oregonians as potential drug-seeking abusers. Decisions you make in consultation with your doctor, including which medicines to take, should not be second-guessed and monitored by the government. It's important to note that the federal funds attached to this proposal come not from the U.S. Department of Health and Human Services but rather from the U.S. Department of Justice, the law-enforcement arm of the federal government. Proponents

continue to urge passage of this database law with virtually no resources for privacy and security safeguards; that's a recipe for disaster. ACLU of Oregon offers a briefing paper opposing such a database, which can be found at www.aclu-or.org.

DRUG POLICY: MEDICAL MARIJUANA EMPLOYMENT DISCRIMINATION

We expect the return of proposed legislation that would allow employers to terminate an employee who is a medical marijuana cardholder without any evidence of actual impairment at the job. We will again oppose any such measure. Read our briefing paper on the matter at www.aclu-or.org.

DEATH PENALTY: MENTAL RETARDATION

There are renewed efforts to introduce legislation to set a specific statutory scheme to address the U.S. Supreme Court ruling barring the execution of those found to be mentally retarded. In the past, ACLU – along with other groups – has been unable to come to agreement with district attorneys on the legislation. We'd rather leave it to judges on a case-by-case basis, as is currently done, then implement a statutory scheme that limits when a defendant can raise the issue of mental retardation. Stay tuned to see what develops this year.

CRIMINAL JUSTICE: DNA INNOCENCE

After many sessions, we now have a permanent Oregon DNA innocence law. The next step is to address the practices and policies of local and state agencies for the retention of biological (DNA) evidence, especially after a person has exhausted all appeals. Without consistent and appropriate retention policies, the DNA innocence law is close to meaningless. We are considering legislation to create a statewide standardized process.

PRIVACY: COMMERCIAL USE OF OREGON DRIVER LICENSE INFORMATION

Technology now allows the commercial sector to scan driver licenses for personal data, and we are concerned about the ability of third-party commercial use of that information in Oregon. Other states have passed legislation that would prohibit any business from storing and using that information for commercial purposes. We will be working with legislators to implement similar legislation here in Oregon.

The ACLU of Oregon is planning a Lobby Day during the 2009 legislative session. Signing up for our email alerts is the best way to find out the date of that event. We'll need everyone's help and participation with the ACLU Lobby Day to make sure our message of protecting and enhancing civil liberties is heard throughout the Oregon Legislature. Add your name to the email list at www.aclu-or.org.

**MANY RISK CHARGES FOR 'FURNISHING'
LEGITIMATE LITERATURE, ART AND SEX EDUCATION MATERIALS TO MINORS**

BOOKSELLERS, PUBLISHERS, LIBRARIANS AND OTHERS CHALLENGE CENSORSHIP LAW

Should a grandmother have to risk being charged with a crime if she gives her 7-year-old grandson a copy of "It's Perfectly Normal," a sex education book widely regarded as among the best available?

Under a new Oregon law (ORS 167.054), that grandmother could be charged with providing materials that are "sexually explicit" to a minor. And under that and a second new law (ORS 167.057), booksellers, librarians, community-based organizations, health-care providers, parents and other family members also are at risk, potentially facing jail time and hefty fines up to \$125,000.

"For booksellers, the new law is vague and difficult to apply," said Michael Powell, owner of Powell's Books in Portland and a plaintiff in the case. "It says a 13-year-old can legally buy these books, but it's a crime to sell them to a 12-year-old. How do I 'card' a 12-year old?"

The ACLU of Oregon joins Powell's, several other book stores, Planned Parenthood of the Columbia/Willamette, Cascade AIDS Project and others in challenging the new state law. While the Oregon legislature passed HB 2843 in 2007 as a well-intentioned effort to target sexual predators, the law itself is so broad and vague and unconstitutional that it potentially criminalizes many constitutionally protected providers of sex education materials.

"Unfortunately, this new law does not take into account whether someone's intent is to harm the minor," said David Fidanque, Executive Director of the ACLU of Oregon. "It criminalizes all acts of furnishing 'sexually explicit' material no matter who is doing it and no matter for what purpose."

The new statutes improperly criminalize, under varying conditions, the dissemination to minors of constitutionally protected materials that contain visual, text or narrative descriptions of sexual conduct. These laws create a chilling effect on the sale, display, exhibition and dissemination of legally protected speech and expression.

The new laws create widespread problems:

- A health educator with Cascade AIDS Project who provides sex education materials to or discusses safe sexual behaviors with a teenager may be charged with a Class C felony. (And those who can claim an affirmative defense under

the statutes cannot clear their names until after charges are filed, not before.)

- 17-year-old girl who lends her 13-year-old sister a copy of "Forever," by Judy Blume, and tells her to "read the good parts" could be arrested and prosecuted for violating this law.
- If a 9-year-old flips through the pages of "Where Did I Come From?" (a fact-based sex-education book for ages 4-8) at a bookstore, the bookstore is "furnishing" that child with "sexually explicit material" under the new law, and could face misdemeanor charges.

There are some exemptions in one of the laws — public librarians; museum, school or law enforcement agency employees; or medical treatment providers — but those exemptions are not defined. Does a trained Planned Parenthood Peer Educator qualify as a "medical treatment provider"? If public librarians are exempt, what about librarians who work at private schools?

Finally, the laws criminalize constitutionally protected acts. It is not unconstitutional for a 17-year-old to read a sexually explicit book and become aroused. But under this law, it can be a crime to give that 17-year-old such a book. So lending, giving or selling a 17-year-old a health-education book that includes information on sex or sexuality could be criminal even when the actual reading of that book by a 17-year-old is not.

The lawsuit seeks to have all but one provision of the statutes declared unconstitutional and to enjoin their enforcement based on their violation of the First, Fifth and Fourteenth Amendments of the U.S. Constitution.

Plaintiffs in the case include: Powell's Books; Annie Bloom's Books; Dark Horse Comics Inc.; Collette's: Good Food + Hungry Minds; Paulina Springs Books; St. John's Booksellers; Twenty-Third Avenue Books; American Booksellers Foundation for Free Expression; Association of American Publishers; Freedom to Read Foundation; Comic Book Legal Defense Fund; Candace Morgan (librarian and grandmother); Planned Parenthood of the Columbia/Willamette.; Cascade AIDS Project; and the ACLU of Oregon.

Representing plaintiffs are ACLU cooperating attorney P.K. Runkles-Pearson of Stoel Rives LLP in Portland and Michael A. Bamberger and Rachel G. Balaban of Sonnenschein Nath & Rosenthal LLP in New York. Bamberger also is general counsel to Media Coalition Inc., an association that defends the First Amendment right to produce and sell books, movies, magazines, recordings, DVDs, videotapes and video games, and defends the American public's First Amendment right to have access to the broadest possible range of opinion and entertainment.



HARASSMENT STATUTE UNCONSTITUTIONAL

The Oregon Supreme Court in August echoed the arguments made by the ACLU of Oregon in its decision to reverse a Court of Appeals decision involving the “abusive speech” provision of the state’s harassment law.

The case was a difficult one – involving racist and homophobic verbal harassment that tested the constitutional limits of the Oregon Legislature’s power to create a crime based on speech alone – and the ACLU believes the Court decided correctly in labeling a portion of the state’s harassment statute unconstitutional.

State v. Johnson is a Washington County case in which a driver, William Charles Johnson, used amplified sound equipment to hurl both racist and anti-lesbian epithets at two women – one of them an African American – in a vehicle that had moved in front of his truck when the road narrowed from two lanes to one. Johnson was convicted of violating a portion of Oregon’s harassment law, which makes it a crime to “harass or annoy ... by publicly insulting” a person using “abusive words or gestures ... intended and likely to provoke a violent response.”

The ACLU filed a friend of the court brief in the case arguing the law violated protections of free expression contained in the Oregon Bill of Rights.

“This is the first appellate case involving a law that we said was unconstitutional when it was passed more than 20 years ago,” said David Fidanque, Executive Director of the ACLU of Oregon. “We made the same argument in this case that we made back then: Speech alone, without an imminent threat of physical violence, cannot be criminalized in Oregon.”

In its decision, the Supreme Court noted that the law “sweeps too much protected speech within its reach to survive a ... challenge.” Justice W. Michael Gillette, writing for the unanimous court, said that while Mr. Johnson’s “expression may have been offensive ... the state may not suppress all speech that offends with the club of criminal law.... Even when the legislature seeks to prevent violence produced by speech, it has to take care that it does not do so by criminalizing protected speech.”

Fidanque said the ACLU has begun analyzing existing laws that could have been used in this case and whether there are other approaches that would avoid constitutional problems.

State v. Johnson involves the “abusive speech” provision of Oregon’s Harassment law, not the state’s Intimidation (hate crime) statute. The ACLU of Oregon was instrumental in rewriting the Oregon hate-crime law in 1983, ensuring its constitutionality. In 1989, ACLU and others succeeded in expanding the law to include protections for people targeted based on their sexual orientation. When that law was challenged in 1992, ACLU filed an amicus brief in support of the law, and the Oregon Supreme Court upheld it.

ACLU’s volunteer cooperating attorneys for the amicus brief were Nicholle Y. Winters, Julia E. Markley and Michael H. Simon of Perkins Coie LLP in Portland.

TRANSIT AGENCY APPEALS DECISION

ACLU FAVORED IN FREE SPEECH CASE

The Multnomah County Circuit Court ruled in June that

TriMet’s refusal of a

“political” advertisement was unconstitutional, on both state and federal grounds. The ACLU of Oregon’s victory on behalf of the Karuk Tribe of California and the Friends of the River Foundation makes clear that TriMet cannot violate free speech protections as it chooses what ads to accept or deny.

TriMet has appealed the decision, and the case continues in the Oregon Court of Appeals.

According to the June ruling, TriMet does not have to make its buses available for advertisements, but if it does “it places itself in the same position as a government ... (and) may not ... violate the Oregon Constitution.” TriMet’s decision to deny an ad, the judge ruled, may not be based on the content of that ad.

“This is an important victory for free speech in Oregon,” said David Fidanque, Executive Director of the ACLU of Oregon. “No public transit system should be able to put itself above the state or federal constitution.”

The Karuk Tribe and Friends of the River had sought to place an ad on TriMet buses regarding the damage done to salmon runs by electricity-generating dams, owned by Portland-based Pacific Power, on the Klamath River. The ad depicts three salmon facing a wall of electrical sockets, along with the caption, “Salmon shouldn’t run up your electric bill. They should run up the Klamath River.” It also directs the public to a website — www.salmonforsavings.com — for more information.

TriMet’s Advertising Standards Committee rejected the proposed ad on the grounds that it did not constitute an “advertisement” and that the public transit agency did not want its buses or property “to become a public forum for the dissemination, debate, and/or discussion of public issues.” The ACLU appealed the committee’s decision to TriMet’s general manager, who, in a letter dated Jan. 18, 2008, upheld the rejection.

The ACLU argued that both rejections represent an unlawful restriction on speech in violation of Article 1, section 8, of the Oregon Constitution and the First Amendment of the U.S. Constitution. The judge agreed with the ACLU on both counts.

Thomas M. Christ of Cosgrave Vergeer Kester LLP is the ACLU’s cooperating attorney on this case.



ACLU QUESTIONS FPS SURVEILLANCE, CONTINUED...

It is our understanding that the mission of the Federal Protective Service is to provide security-screening services for federal buildings. The rally had been advertised more than a week prior to the event and took place many blocks away from any federal building. The demonstration did not pose any threat to any facility under the jurisdiction of the FPS.

As we explained in the letter to the three lawmakers, the ACLU is unaware of any authority the FPS may have to gather "intelligence," much less any authority FPS officers have to monitor or engage in undercover surveillance of political activity protected by the First Amendment.

Past abuses of the First Amendment by the FBI, CIA, military intelligence and other agencies led to Congressional and other investigations in the 1970s and subsequent reforms. The principal safeguard against such abuses has been the Attorney General Guidelines — which, not surprisingly, have been severely weakened during the Bush Administration.

With our letters, we have called upon these lawmakers to investigate the situation and to seek appropriate legislation to ensure that no federal law enforcement agency may engage in surveillance of lawful political, social or religious activity. ACLU long has supported legislation at the federal level to prevent the chilling effect on First Amendment activity that such political "spying" causes.

Specifically, we posed the following questions:

- What is the current mission of the Federal Protective Service?
- If the mission of the FPS has expanded to include intelligence gathering, what limitations and guidelines govern such activities?
- Is FPS engaging in such activities elsewhere in Oregon or elsewhere in the U.S.?

- Are such activities carried out by the FPS subject to the Attorney General's Guidelines? If not, are such FPS activities subject to any periodic review by the Department of Justice?
- Do other agencies within the Department of Homeland Security have authority to engage in surveillance and intelligence gathering regarding lawful political activity? If so, what guidelines govern those agencies?

According to statements reported this summer in the *Eugene Register-Guard*, a spokesperson for the Department of Homeland Security said that it is "common" for FPS agents to monitor political demonstrations because persons demonstrating might move toward a federal courthouse or other federal building.

As noted above, this particular demonstration had been well advertised in advance, including a story in the *Eugene Weekly* that featured a photo of Ian Van Ornum, the protester who was arrested and Tasered by Eugene police officers after allegedly being pointed out by FPS Agent Tom Keedy.

Our letter concluded:

"We hope that you will provide us, and the community, with the answers to our questions and to any others that you believe should also be asked. Following your inquiries, we would like to discuss what steps need to be taken, including possible legislation, to ensure that federal agencies will not engage in similar political surveillance in the future. The chilling effect that such surveillance has on free speech has the effect of intimidating people who have the constitutional right to participate in such protected activities."

As of this newsletter's deadline in early October, we have not had any reply from the lawmakers.

Why Do You Support the ACLU?



Don Hartsough

"The other evening I attended a meeting on values and voting. I was asked what I experienced during the act of voting – my thoughts, emotions and values. My answer: Voting, for me, is an act of a deep and abiding faith in our democratic form of government and what it stands for. And what is the enduring basis of our democratic government? The Constitution. And who has steadfastly protected the Constitution and Bill of Rights? The American Civil Liberties Union."

Don Hartsough

Bend, Oregon

"A member for 40 years and proud of it!"

ACLU ELECTION WELCOMES NEW AND RETURNING BOARD MEMBERS

Members of the ACLU of Oregon voted in the statewide ACLU of Oregon Board of Directors' annual election last spring. Eight new or returning board members were elected for full three-year terms, and one was elected to complete a one-year term.

CONTINUING MEMBERS OF THE BOARD ARE:

- **Stuart Kaplan** of Portland, who continues as statewide Board President
- **Ralph Temple** of Ashland, who had been a chapter representative from Southern Oregon (completing a one-year term)
- **Janet Webster** of Newport, who continues as statewide Vice President of Policy

RETURNING MEMBERS OF THE BOARD ARE:

- **Annabelle Jaramillo** of Philomath
- **Candace Morgan** of Portland

NEW MEMBERS OF THE BOARD ARE:

Sally Anderson-Hansell of Hermiston, who said in her ballot statement: "The ACLU serves a necessary and important role in preserving our American ideals. Oregonians are aware of the organization's presence in our state and its continued work defending our civil liberties." Sally is an attorney in her hometown of Hermiston and received her bachelor's and law degrees from the University of Oregon. She also serves on the boards of Oregon Women Lawyers and Umatilla-Morrow County Head Start Inc.

Jeff Golden of Ashland, who said in his ballot statement: "If I could have one wish on behalf of my children and theirs, it would probably be to infuse Americans with a clearer understanding of their constitutional rights and liberties, and more urgency about how endangered they are." A Harvard National Scholar with an M.A. in Communications from Stanford University, Golden has been active for 25 years in Oregon politics and media. He is the author of the novel "Forest Blood," the political handbook "As If We Were Grownups," and the political novel "Unafraid."

Matt Friday of Eugene, who said in his ballot statement: "My experience of the last 20 years has been defined mainly by social justice concerns, civil rights, and building successful coalitions. The experience, resources, and networks of the ACLU have proved powerfully useful in this." Prior to moving to Eugene in 2005, Matt was chair of the Coalition of Minority Organizations and the Equal Opportunity Advisory Commission in Monterey County, Calif., where he also was an active member of the ACLU-Monterey County Chapter Board, including four years as chair.

Statewide board members of the ACLU of Oregon are volunteers, meeting every other month to help the Oregon affiliate make policy decisions, set priorities and provide financial stewardship to the organization. Interested in the possibility of serving on the statewide board? Email Associate Director Jann Carson at jcarson@aclu-or.org.

There are many, many other ways to volunteer with the ACLU of Oregon: helping with event planning, tabling at various fairs and festivals, joining our speakers bureau, helping us screen legal requests, attending mailing parties, providing office support and offering a variety of other skills and strengths to the organization. Find out more on the web: www.aclu-or.org/volunteer. Or email Volunteer Coordinator Pooja Bhatt at pbhatt@aclu-or.org.

For a complete list of statewide ACLU Board members, see page 2 of this newsletter.



Pictured above, Sally Anderson-Hansell. Pictured at left, Jeff Golden. Pictured below, Matt Friday.



EVYN MITCHELL JOINS ACLU OF OREGON DEVELOPMENT TEAM



Evyn Mitchell has joined the ACLU of Oregon as Development Associate. She is primarily responsible for event management, assisting with

the Annual Giving Campaign, and donor cultivation and stewardship.

Evyn began her career in non-profit fundraising at the age of 17 when she was hired as the Development Assistant for Planned Parenthood of Southwestern Oregon.

"It was a complete accident," Evyn said when discussing her first development job, "I had volunteered with Planned Parenthood for several years during high school and was offered the position as soon as I graduated. Now I couldn't imagine doing anything else."

Evyn stayed with Planned Parenthood for three years while also attending the University of Oregon. She eventually left the job to focus on completing her double major in Spanish and Comparative Religions. She graduated in 2006 with departmental honors.

After graduation, Evyn joined another development team at the Ounce of Prevention Fund, a Chicago, Ill.-based nonprofit focused on providing early childhood education to low-income children.

Evyn is happy to have returned to Oregon — and to have joined the ACLU.

"I'm overjoyed to be a part of an organization that looks at the big picture and is working not only to protect civil liberties but to build a better future for the generations to come," she said.

Evyn joins Development Associate Teresa Domka and Development Director James Phelps on the ACLU of Oregon's development team.

ACLU OF OREGON WELCOMES LEGAL DIRECTOR

For the first time in the ACLU of Oregon's 50-plus year history, we have a Legal Director who is an attorney. Chin See Ming joined the staff on June 30.

"Ming has extensive experience litigating in federal and state court in Oregon," said David Fidanque, Executive Director of the ACLU of Oregon. "He is very excited to get back to the type of work he has found most rewarding in the past — and we're very excited to have an attorney of his caliber as part of our team."

Ming took time to answer a few get-to-know-you questions.

How have your past work and activities prepared you for this role as the ACLU of Oregon's new legal director?

I grew up in Malaysia and came to the U.S., initially, to go to college. After college, I spent five years chasing a Ph.D. in Social-Cultural Anthropology from the University of Chicago, and left with a master's when I belatedly discovered that the ivory tower was not for me. I headed west to Oregon, got a J.D. from the University of Oregon, and went to work for the Oregon Supreme Court for two years as its Petitions Clerk — truly an incredible experience. Subsequently, I moved to Portland, and became a general litigator at the law firm of Perkins Coie, first as an associate and then as a partner. I had also worked at Perkins Coie during the summers while I was at law school and very early on, in 1991 or 1992, one of my bosses there, long-time cooperating attorney Michael Simon, asked me to help out on a matter he was working on for the ACLU. That was how I started volunteering for the ACLU, first as a cooperating attorney, then a member of the Lawyers Committee and later, as member of the Board of Directors.

My experiences in Malaysia highlighted for me the remarkable degree of civil liberties we enjoy here in this country and how precious they are. Unfortunately, here too, civil liberties are under constant assault by those who wish to exploit our fears and insecurities or who somehow dislike these liberties. My training as a lawyer, my appreciation for the liberties we enjoy and the need to protect them, have all paved my way to this job.

Any exciting cases or causes on the horizon?

I can't, of course, talk about the cases that we're preparing to file in court. But of the cases that have been filed, there's *Powell's Books v. Myers*, where we've brought First and Fifth Amendments challenges, in federal court, against Oregon's statutes prohibiting the furnishing of sexually explicit materials to children and the luring of minors. We think those statutes are badly worded and may ensnare innocent persons who are exercising their free speech rights. (*See story, this newsletter.*) We also just filed in the Oregon Supreme Court a friend of the court brief in *State v. Bowen/Pereida-Alba*, challenging the provision of the Oregon's Constitution that allows felony convictions on less-than-unanimous jury verdicts; we believe this provision violates the U.S. Constitution.

Where do you see the ACLU of Oregon five years from now, in terms of its legal program?

I'd like to see us litigate not only more cases, but more complex cases. I'd also like to see us expand from the areas of our core strength — free speech, religion and equality — into areas like police practices and prisoners' rights. All this will need more volunteer lawyers, so I hope we'll have more of them.

How can someone who cares about civil liberties get involved in the ACLU of Oregon?

First of all, if you're not already a member, you should become one. If you're a lawyer, call me! I'm in the bar directory, and I can always use more cooperating lawyers. And if you're not a lawyer, go to our website at www.aclu-or.org, and hit the button that says "Get Involved!"



ATTENTION ATTORNEYS:

SIGN UP FOR A “§1983” CLE

Beginning Jan. 7, 2009, and running for six weeks, the ACLU of Oregon will offer a Continuing Legal Education (CLE) seminar for attorneys interested in taking on so-called “section 1983” cases.

These 1983 cases, named after a section of the federal statute, allow injured parties to sue state and local officials for violating the U.S. Constitution.

Enrollment will be limited, and details (including cost) are pending.

The 12-hour CLE will be taught by Michelle R. Burrows, Spencer M. Neal and Elden M. Rosenthal.

Contact Chin See Ming, Legal Director of the ACLU of Oregon, at chinsming@aclu-or.org if you are interested in signing up for this class.

MATCHING GIFT ENDS MAY 31, 2009

DEFEND FREEDOM WITH A SINGLE SENTENCE

The power of words is astounding. Entire movements have risen out of inspirational utterances or stringing together words of aspiration on a page:

We the people ...

*Four score and seven
years ago ...*

I have a dream ...

By adding just one sentence to your will, your words can yield great power. You can leave a legacy of liberty for generations to come *and* defend our freedom today. Please consider leaving a bequest to the ACLU through your will.

The time for making a planned gift could not be better. The Robert W. Wilson Trust offered the ACLU a very generous and unique opportunity. The trust will match planned gifts — such as bequests, charitable trusts or charitable gift annuities — with a present day gift of up to 10 percent of the future gift’s value. (The maximum match is \$10,000 per donor.)

Once you have made provisions for a legacy gift, all you need to do to qualify for the matching gift is to fill out a one-page form. This matching challenge expires on May 31, 2009.

For more information, visit www.legacy.aclu.org for estate planning checklists, gift calculators, step-by-step instructions, articles and other resources associated with the Legacy Challenge.

The ACLU also has created a booklet, “Taking Care of What Matters,” which can help you in making decisions and planning your estate. For a free copy of the booklet or to ask any questions, contact James K. Phelps, J.D., CFRE, Development Director, ACLU Foundation of Oregon, at (503) 552-2101 or jphelps@aclu-or.org. Or contact the national ACLU Planned Giving staff at (877) 867-1025 (toll-free) or legacy@aclu.org.

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intentionally blank...*



VOLUNTEER PROFILE

MARY ERBAUGH: SEEKING AN END TO 'FOUL INJUSTICES'



Mary Erbaugh is among the star volunteers who help the ACLU of Oregon in so many ways. A China scholar and semi-retired professor, Mary moved back to Eugene on September 11, 2001, after spending many years working in China and Hong Kong. The Patriot Act heightened her worries about civil liberties and, in November 2001, she answered our newsletter's call for volunteers.

"I figured I could help," she said.

For the past seven years, Mary's volunteer duties have included answering request calls, clipping newspaper articles, recycling our recyclables and serving on the Lane County Chapter Board. No task is too big or too small for Mary; she's a team player.

Many Americans have asked her about China's human rights offenses. "The bigger question," she said, is, "What are we doing to stop our own abuses of power?"

"I support the ACLU because I want Oregon and the U.S. to live up to our Bill of Rights, to keep free speech and due process and freedom of choice a reality — and to close Guantanamo," Mary said. "Since 9/11, we face foul injustices, perpetrated by our own government, paid for by our own taxes."

This summer, Mary moved to Portland where she has begun volunteering as a request counselor. Now the Portland staffers are getting to know Mary and will reap the benefits of her great personality and work. She'll be sorely missed in Eugene.

Why Do You Support the ACLU?

"I'm a third-year ACLU volunteer because I'm a strong believer that everyone needs to understand their civil liberties and civil rights. While handing out ACLU literature at public events, we are able to educate so many people on their freedoms, and the importance of the ACLU. I could volunteer for other organizations, but the ACLU benefits everyone, and that's important to me."

Katie Light
Portland
Real Estate Broker



Katie Light

DO YOU KNOW A STUDENT ACTIVIST?



If so, please contact us about the
ACLU Student Activist Scholarship Program

2009 American Civil Liberties Union Youth Activist Scholarship

We need your help in identifying high school students who have a passion for civil liberties! Sixteen students from across the country will each be awarded a \$12,500 college scholarship for their dedication to preserve our civil liberties. We are seeking teens who have stood up for issues such as racial justice, free speech, human rights, equality and tolerance. The scholarship winners will become part of a group of student activists whose talents and passion will be fostered by the ACLU National Office. Please contact Eryn Mitchell at 503-552-2109 or emitchell@aclu-or.org for more information or an application.

For more information on this scholarship program visit
www.aclu.org/standup/

The deadline to apply in Oregon is Nov. 7, 2008.



Because freedom can't protect itself.

ACLU OF OREGON: OUT AND PROUD THIS SUMMER

BY CLAIRE SYRETT, SOUTHERN DISTRICT FIELD ORGANIZER, CSYRETT@ACLU-OR.ORG



Claire Syrett

ACLU of Oregon has a long history of fighting for the equal rights of gays and lesbians in our state. For the past two decades, we have experienced the pain of watching the passage of anti-gay measures and the joy of securing the right of gays and lesbians to enter into domestic partnerships. These battles, waged in the voting booth and on the floor of the state

Legislature, helped to build ACLU of Oregon's ties with the people for whom we were fighting.

This summer we were out engaging in an alternative, and much more enjoyable way of building those ties by tabling at Pride Day events throughout the state. We have participated in Portland Pride Day for many years, and this past summer we were able to increase our presence at Pride Day events by showing up in Southern and Central Oregon. We also had a booth at the Eugene/Springfield Pride Day celebration in August, which wrapped up the Pride "season" for the summer.

Our presence at any Pride Day allows ACLU of Oregon to educate lesbian, gay and transgendered people and their allies on the wide variety of issues on which we work.

In many cases people visiting our table are not really too sure what ACLU stands for or the many ways in which we protect privacy, the right to organize and the right to due process. One of the most gratifying experiences is seeing that light go on in someone's eyes as they put the pieces of the puzzle together and recognize the connection between their celebration of Pride and the nitty-gritty work the ACLU of Oregon does every day to protect civil liberties and civil rights.

Central Oregon's Pride Day was one of the first this year. Organized by the Human Dignity Coalition, this small but well-attended celebration took place

in McKay Park along the beautiful Deschutes River. While we weathered a couple of wind gusts and the smallest bit of rain, everyone had a great time and made this fourth annual Pride Day a big success.

ACTION NETWORKS

This was ACLU of Oregon's first time tabling at Central Oregon's Pride Day — and part of our larger effort to kick off an ACLU of Oregon Action Network in Central Oregon. Since then we also have met with members in Redmond, Bend and La Pine to plan ACLU activities in those areas.

The importance of this new effort was highlighted for me when one member confessed that, upon receiving our invitation to an ACLU of Oregon meeting in Redmond, he wondered if it were a joke. His feeling of isolation was revealing and shared by the other members at our meeting. They were all astonished and heartened to learn that ACLU of Oregon has about 800 members in Central Oregon. Our Action Network is pulling together quickly. We are joining with Basic Rights Oregon, the Human Dignity Coalition and others to organize an October 21st educational forum about the November ballot measures. Keep an eye out for more from our Central Oregon members. They are revved up and ready for action.



Attendees of the Southern Oregon Pride Day wave ACLU "Get Busy, Get Equal" signs outside the popular dunk-tank attraction. The ACLU of Oregon increased the number of Pride Day events it tabled at this summer.

IN THE CHAPTERS

A CLOSER LOOK AT ACLU OF OREGON'S REGIONAL CHAPTERS

BENTON-LINN CHAPTER

The Benton-Linn Chapter continued its long tradition of hosting a booth at the Corvallis Fall Festival where we connected with supporters and promoted the chapter's upcoming events:

October 15: The chapter will host an appearance by Oregon Federal Public Defender Steve Wax who will be reading from his new book, "Kafka Comes to America: Fighting for Justice in the War on Terror." Mr. Wax will share his experience defending Brandon Mayfield and men held in Guantanamo Bay. ACLU of Oregon Executive Director David Fidanque will join Mr. Wax in taking questions from the audience following the book reading. The event begins at 7 p.m. at Corvallis Public Library, 645 N.W. Monroe St.

October 16: The chapter will co-sponsor a symposium on the upcoming ballot measures featuring Annabelle Jaramillo, ACLU of Oregon board member and Benton county commissioner. The event runs from 7-8:30 p.m. at First United Methodist Church, 1165 N.W. Monroe, Corvallis.

November 19: The Benton-Linn Chapter's Annual Membership Meeting will take place from 7-9 p.m. at the OSU Center for the Humanities, 811 S.W. Jefferson Ave., Corvallis. ACLU of Oregon Legislative Director Andrea Meyer will be the featured speaker, providing a preview of the 2009 legislative session in Salem.

-- Submitted by Claire Syrett

LANE COUNTY CHAPTER

The Lane County chapter has been involved in both civic and educational projects.

In civic actions, we have publicly objected to the Eugene Police Department's use of Tasers on a nonviolent demonstrator in downtown Eugene. We have spoken out against the department's current Taser policy because it does not restrict the use of Tasers to situations that might otherwise escalate into requiring the use of deadly force. We have also joined the effort to strengthen our

police oversight system in Eugene, endorsing and supporting a local ballot measure that, if passed, will ensure the police auditor's office is independent and

fully functional.

To educate the public on our work, we have had information booths at the Creswell Fourth of July celebration, Eugene/Springfield Pride Day and the Eugene Celebration. More than 25 people marched with our float in the Eugene Celebration parade, evoking cheers and thumbs up all along the route. In keeping with the parade theme — "I Dream of Eugenie" — each marcher carried a sign describing a civil liberty that the ACLU works to protect: "I dream that my government won't torture," for example.

The chapter also is co-sponsoring an educational symposium on ballot measures from 6-7:30 p.m. at Whiteaker School, 21 N. Grand St., Eugene. Other co-sponsors include Basic Rights Oregon, CAUSA and Amigos.

-- Submitted by Barbara Gordon-Lickey

SOUTHERN OREGON CHAPTER

Imagine a group of people walking down the street toward you. Children hold pro-civil liberties signs, Uncle Sam strolls with a club, and six hooded, shackled prisoners in orange jump suits shuffle beside them. Uncle Sam stops to waterboard a prisoner.



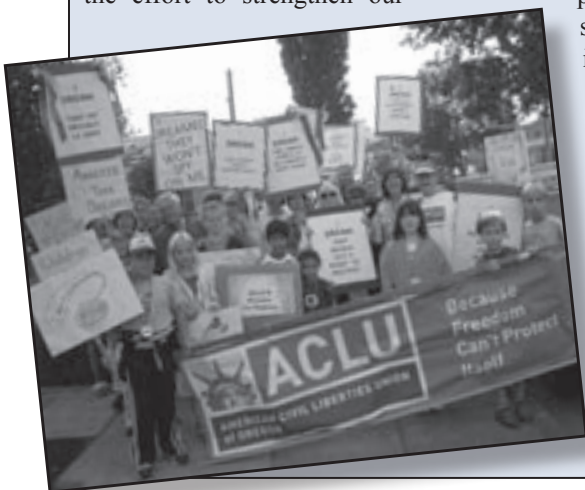
The Ashland Fourth of July Celebration — especially the parade — provides a great platform for expression of free speech and patriotism. Every Independence Day, I think of Mark Twain and his quote, "Loyalty to the country always. Loyalty to the government when it deserves it."

My urge to flee the discouraging nationalism and hubris that accompany many on Independence Day was countered by ACLU supporters who were excited to participate in a Guantanamo protest in the parade. With men, women and children ranging in age from 5 to 70, we made the best of the last July 4th with George W. Bush as President.

Most parade watchers expressed support. One ACLU participant, playing the part of a prisoner, commented on the power of hearing observers along the parade route apologize for their government's actions. Hopefully, next year, Guantanamo Bay will be a memory of a darker era in our history.

Save the date: Southern Oregon Chapter Annual Membership Meeting, 2-4 p.m. October 19 at Ashland Public Library, 410 Siskiyou Blvd., Ashland.

-- Submitted by Derek Volkart



SAVE THE DATE

The ACLU Foundation of Oregon Annual Dinner is set for March 14, 2009, at Portland Marriott Downtown Waterfront.

The annual celebration of civil liberties and civil rights in Oregon will feature keynote speaker Jim Hightower. Hightower is a radio commentator and author. As Hightower puts it, he has spent “three decades battling the Powers That Be on behalf of the Powers That Ought To Be.”

Tickets are available online at www.aclu-or.org/dinner. Call or email Development Associate Eryn Mitchell if you're interested in being a table host or sponsor for the event: (503) 552-2109 or emitchell@aclu-or.org.



ACLU of Oregon supporters enjoying the 2008 annual dinner.