



ACLU

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MN Supreme Court approves Legislature's fraud on voters

The American Civil Liberties Union expressed extreme disappointment in Minnesota's Supreme Court for allowing the voter restriction amendment to stay on November's ballot. In a 4 – 2 decision issued at the end of August, the Minnesota Supreme Court rejected the ACLU's argument that the ballot question was misleading and unclear, and upheld the amendment and ballot question as written by the Minnesota Legislature.

The petition was filed in the Minnesota Supreme Court in June on behalf of the League of Women Voters Minnesota, Jewish Community Action and Common Cause Minnesota, as well as five individual plaintiffs: Gabriel Herbers, Shannon Doty, Gretchen Nickence, John Harper Ritten, and Kathryn Ibur.

In its decision the Court did provide clarification to photo ID requirements noting that absentee voters will also have to present photographic identification.

The court also ruled that the Secretary of State must use the title designated by the *legislature*. The ACLU-MN filed an amicus brief in this case arguing that the *Secretary of State* did have the authority to designate a title.

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Religious Institutions and the amendments

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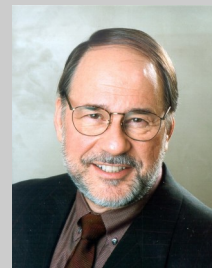
With two hotly contested constitutional amendment proposals on the November 2012 ballot, many non-profit organizations, including the ACLU-MN, have entered the fray on both sides of the proposed amendments. This includes many churches that display "Vote No" and "Vote Yes" signs in prominent view. The ACLU-MN has received numerous calls from individuals concerned that churches are weighing in on the amendments by displaying signs. The most common question that they ask is whether or not that jeopardizes their tax-exempt status. The second concern that people have expressed is that it is improper for churches to weigh in on matters of government because of the notion of separation of church and state.

Both concerns are misplaced. Churches, like other nonprofit organizations, generally enjoy tax-exempt status under §501(c)3

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From the President

Vance Opperman



Nada! Nyet! No!

ACLUers are generally very positive folk, believing as we do in the primacy of individual freedom. However, this election season we should be extremely negative – that’s right, vote NO on the two Constitutional amendments.

Voter ID

It is pretty obvious that voter ID is being urged only for political purposes. You will recall that we offered \$1,000 cash to anyone who would come forward with proof of voter identity fraud in Minnesota – in spite of furious efforts to find such an individual – none were found. Furthermore, the adoption of this amendment would make it impossible, or at least very difficult, for absentee voting, voting by the military serving overseas (or the diplomatic corps). While the Supreme Court has sometimes opined that privacy – the right to be left alone – is fundamental; I would argue that the ability to change government through the ballot box is even more fundamental. That is why the ACLU opposes this amendment.

Marriage Amendment

Pure and simple, this is the use of government power to enforce a tenet of one religious belief on everyone else. Some churches spend money

to push their religious doctrine as matters of state law, e.g. the Catholic Church in Minnesota and the Mormon Church during the California elections in 2008. Let me be pretty clear about this: good for them! Democracy is enlightened when there is more speech, not less. And that is exactly why everyone should vote no on this amendment. The state should not impose one person’s religious belief upon everyone else. It is beyond question that many recognized religions – like Lutherans, Episcopalians, United Church of Christ, some Jewish synagogues, and many others (to say nothing of various non-believers) – celebrate the sacrament of same sex marriage in their religious institutions. A rigorous belief in the importance of state neutrality when it comes to matters of religion has saved this country the civil wars and division that have rent most other societies. Sensible folk, believers in our Constitution, will vote no on this amendment.

As many of you know, we have been active in court on these matters and will be in the future, if required. Have a nice optimistic day and remember to vote negative.

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From the Executive Director

Charles Samuelson



Let's enjoy the vote (and end the campaigning)

We are in the final stages of the political season and political commercials are displacing the commercials for the usual products.

Subscriptions to HBO and Sirius are on the rise. People are fact checking and complaining about the political debates.

We wish that everyone would confine their comments to the truth, the whole truth and nothing but the truth. However, the truth alone doesn't sell as well as innuendo, exaggeration, and frankly, outright lies. This is the nature of political speech. And while we sometimes want to punish those who cross that imaginary line, the reality is that line is not as clear as we imagine it to be. We must be the censors. What can we do about these political ads? What can we do about the negative nature of the campaigns?

What we cannot do is to legislate against them. The First Amendment is clear that Congress shall make no law restricting the freedom of speech, or of the press, or of the people freely to assemble. That seems to be clear to me that the government has little power over political speech. It also seems clear to me that almost all of our schemes to restrict the power of money in a race or in third party advocacy are doomed to fail. Money, like water, will always find a way in; especially when the Constitution is silent about its role in the campaigns.

To counter this perhaps we should focus on our listening skills. Remember the saying that if

something is too good to be true it probably is. Well if something is unbelievable – don't believe it.

We should focus on and discuss what the problems are. If it's jobs, let's talk about it. If it's racism, or the environment, or any of the other big issues of our time; we need to discuss it. We all have opinions about the problems, but we need to agree on facts. If we can agree on the problem and we can agree on the facts, then we can solve the problem.

That's the way our Republic works best. So tolerate the commercials and the phone calls. And don't forget to vote on November 6.

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Voting challenge cont'd

Continued from Front Page

After the loss the ACLU has been spending time talking to voters and educating them on how this will effectively end Election Day registration, place hurdles in front of seniors and active duty military, and negatively impact citizens ability to absentee vote.

Attorneys in the case are: William Pentelovitch, Richard Wilson, Justin Perl, Wayne Moskowitz, Alain Baudry and Catherine Ahlin-Halverson of Maslon Edelman Borman & Brand, LLP; Laughlin McDonald of the ACLU Voting Rights Project, and Teresa Nelson of the ACLU of Minnesota.

Facebook student search case allowed to proceed

In September, Federal District Court Judge Michael Davis ruled that the ACLU-MN's lawsuit on behalf of a student for violation of her First and Fourth Amendment rights could proceed. In *R.S. & S.S. v. Minnewaska Area School District, et al.* the ACLU-MN sued on behalf of a middle-school student who was disciplined twice for non-disruptive, off-campus Facebook posts and was subjected to an intrusive search of her password-protected Facebook account. The school district filed a motion to dismiss the case. In his order, Judge Davis ruled that the majority of the claims could proceed, but he dismissed a claim for intentional infliction of emotional distress and a claim for conspiracy to deprive R.S. of her civil rights. In doing so, he rejected the School District's argument that the law regarding off-campus speech is too unsettled such that a reasonable school official would not know that their conduct was unconstitutional.

"The content of R.S.'s wall postings are a far cry from the statements made by the students

Legal Updates

in cases in which courts have approved of school intervention... R.S. stated that she 'hated' a particular adult school employee because that employee was mean to her, and she then expressed salty curiosity about who had 'told on her.' Such statements were not likely to cause a substantial disruption to the school environment."

The case will now proceed to discovery.

Attorneys on the case include Wallace Hilke and Bryan Freeman, Lindquist & Venum, Professor Raleigh H. Levine, William Mitchell College of Law and ACLU-MN Legal Counsel Teresa Nelson.

Beaulieu v. Ludeman

The Eighth Circuit Court of Appeals has affirmed the District Court's dismissal of our lawsuit challenging the conditions of confinement at the Minnesota Sex Offender Program. The ACLU-MN argued that policies such as forced strip searches and shackling of patients being transported for medical appointments violated their constitutional rights. The District Court concluded that the complained-of policies and conditions were constitutional and the Eighth Circuit Court of Appeals agreed. This decision is disappointing for many reasons but most of all because it allows the state to subject patients to even harsher security policies than prisoners. We believe Minnesota can and should do better.

Attorneys on the case include Brian O'Neill, and ACLU-MN Legal Counsel Teresa Nelson.

For updates on other ACLU-MN cases including *State v. Crawley* and *McCaughtry v. City of Red Wing*, visit our website at www.aclu-mn.org.

GMRJP - North

Contributed by Audrey Thayer

The North Office of the Greater Minnesota Racial Justice Project has spent the past months in high gear getting out the vote. We hit the ground running collaborating with the Wellstone Fellow dedicated to voting, Thomas Sorenson.

Audrey Thayer and Thomas Sorenson have focused on community and colleges to “Get out the Vote”. The staff is making their presence known at forums, community events and strategically laying out the importance of voting no. Polling has shown that both of these amendments can be defeated if you have the conversations with voters.

Thomas has been focusing on explaining to students how the Voter ID amendment would affect them, and the barriers to voting it would create. His organizing efforts have proved very important because many students had not heard of the voter restriction amendment or what it means for students. Once students know about the amendment, they are more likely to vote no.

Recently, Thomas participated in the Theater of Public Policy at Bemidji State University by answering questions about the Voter ID amendment, then actors would do a comedy improvisation using our discussion.

Another big event for our office will be a fun concert on November 2. Mystery Skins, a Native American folk music band will be performing, and bringing together young people and other community members to celebrate getting out the vote.

A parting thought from Thomas Sorenson, “My work with ACLU-MN and the Wellstone Fellows Program has taught me that your voice can be heard louder in numbers.”

GMRJP - South

Contributed by Angel Manjarrez

With the school semesters getting under way, the ACLU has partnered with groups of students at Minnesota State University-Mankato and Gustavus Adolphus College in St. Peter to assist the staff with current projects. These tasks range from court monitoring to tabling during the lunch hours to register voters. We hope to continue this partnership into the spring semester.

Our office continues to work on the Voter Restriction and the Marriage amendment this month while the election season ends. We continue to host tabling events around the colleges as well as selling lawn signs to the community members. A number of our interns are assisting us with phone banking as well. We will be on MSU human rights radio discussing both ballot questions on November 5th.

Our Wellstone fellow, Zukiswa Mpande, has been registering voters in four different colleges in Southern MN – Gustavus, Mankato State University, Southwest Minnesota State University and Winona State University. She has also established networks in those communities that have assisted in trying to raise voter turnout as well as bringing forth civil rights concerns.

October is also Hispanic Heritage Month. The ACLU has been involved with many events around the community as well. We have held clinics for the students in Gustavus as well as MSU discussing what the ACLU does in the community and how they can help. We are working with Centro Campesino and the Immigration Law Center in hosting a clinic dealing with changes made to immigration policy and immigrant children. Then on November 7th, we will be hosting a “Know Your Rights” presentation in St. Peter with the help of Gustavus and their Language Buddies

Looking ahead to the 2013 Legislative Session

Contributed by Carolyn Jackson

As I write this legislative report for the ACLU of Minnesota, I am prompted to quote Donald Rumsfeld:

There are known knowns; there are things we know that we know.

There are known unknowns; that is to say there are things that, we now know we don't know.

But there are also unknown unknowns – there are things we do not know we don't know.

We know that issues of data privacy will arise in 2013 at the Minnesota Legislature. The case of the former St. Paul policewoman whose drivers license data was illegally accessed by over 100 police officers has brought the issue of data privacy and punishment into the spotlight. Additionally, we have been contacted by Minnesota law enforcement advocates to address the issue of criminal intelligence. One of the chief issues is punishment for misuse of data systems. What will deter misuse? How can we best protect Minnesota citizens against these illegal searches of their private information?

Furthermore, other ACLU affiliates have seen legislation on areas of automatic license plate readers, geo-tracking by law enforcement and employers and schools accessing personal social media sites. The time for a discussion of data and privacy is ripe, and the ACLU of Minnesota will be a key player in creating legal protections in this new frontier.

Known unknowns center around the two constitutional amendments on the ballot next month. If the marriage amendment fails, the issue of repealing the Minnesota Defense of Marriage Act will most certainly arise at the Capitol, as will discussions about same sex marriage. Also, the Legislature will be receiving a report on bullying standards, which

we hope, but do not know, will balance the need for safety and the protection of free speech rights.

We also do not know the future of voting rights in Minnesota. If the amendment is defeated, there most likely will be continued discussion of a law on voter identification. But the discussion will be photo IDs versus electronic pollbooks. If the amendment succeeds, it is likely that enabling legislation will use up most of the air in the rooms at the Legislature, trying to find a way to enable this poorly written amendment into a system where we can still hold elections in Minnesota without a constitutional crisis.

Unknown unknowns will come from many sources. We don't know who will control the Legislature in 2013, or what the political fallout will be from putting two highly divisive amendments on the ballot in 2012. Every single legislative seat is up this November, and every single candidate has been running for office in the shadow of these two proposed amendments. Emotions run high on both issues, and the scars left from these fights will change the face of work at the Legislature.

The silver lining here is that data privacy issues put the ACLU in its most non-partisan role. We most definitely know that the Bill of Rights protects all people, regardless of their race, religion, sexual orientation or political affiliation. And we most definitely know that will be a strength now and as long as the Bill of Rights has protectors like you, our ACLU supporters.

Remember that Election Day is Tuesday November 6 and polls are open from 7:00 a.m. - 8:00 p.m. To find out more information about your voting rights visit our website at www.aclu-mn.org and don't forget to Vote NO!

Join Us in Honoring Magistrate Judge Jonathan Lebedoff

Thursday, November 8

Reception begins at 5:30

Minneapolis Club - 729 2nd Ave S, Minneapolis

For the last fifteen years, the ACLU-MN has honored the work of members of the Minnesota legal profession who have excelled in their commitment to preserving civil liberties. The first award winner was Judge Earl Larson, who founded the Minnesota affiliate of the ACLU, and for whom the award was named.

Magistrate Judge Jonathan Lebedoff will be the sixteenth recipient of the Earl Larson Award. Judge Lebedoff's commitment to protecting civil liberties dates back to his graduation from the University of Minnesota Law School. In his years as a young attorney, he took on First Amendment cases. In 1974, he was appointed to the Hennepin County District Court. In 1991, he was appointed to be a U.S. Magistrate Judge, he was Chief Magistrate Judge until his retirement in 2005. He currently works in his own private mediation and arbitration practice in Minneapolis. While serving on the board of directors for ACLU-MN, he helped strengthen the structure of the organization and build a strategically functioning governing body.

Tickets for the Earl Larson Award Event are \$100, and may be purchased online at www.aclu-mn.org, or by sending a check to Carol Stoddart, ACLU-MN, 2300 Myrtle Street, Suite 180, St. Paul, MN 55114.

Sponsors Include: Dorsey Whitney LLP, Lindquist & Vennum PLLP, Robins Kaplan Miller & Ciresi LLP, Thomson Reuters, Johnson Printing & Packaging, Leonard Street & Deinard LLP, Faegre, Baker Daniels LLP and Maslon Edelman Borman & Brand, LLP.

Churches cont'd

of the Internal Revenue Code. The law classifies various activities related to public policy and politics into three categories: General Advocacy, Political Campaign Activity, and Lobbying. General Advocacy includes work to influence public opinion on issues (i.e. the organization's general views on voting rights and/or marriage rights), and to encourage voter participation. General Advocacy is permitted as an educational activity without any limitations. Political Campaign Activity includes activities that favor or oppose candidates for public office. Political Campaign Activity is absolutely prohibited, and 501(c)3 organizations risk losing their tax-exempt status by engaging in activities on behalf of **candidates for public office**. Lobbying includes work to influence legislation by having direct contact with legislators and encouraging members of the public to contact legislators, and **advocating for or against a public referendum**. 501(c)3 organizations may conduct some lobbying activities as long as it is only a small part of the organization's activities . Because advocacy for and against ballot proposals is considered a lobbying activity, churches and other nonprofit organizations may urge support or opposition to the proposed constitutional amendments .

While the Establishment Clause of the First Amendment requires the government to remain neutral when it comes to religion, there is no corresponding requirement that religious groups remain silent about matters of government. In fact, the same First Amendment rights that protect the ACLU of Minnesota's right to urge people to Vote No in November, also protect the rights of churches to urge people to vote their way on the amendments. While it is improper for the government to endorse a particular religion, the rights of religious groups to advocate on issues is firmly protected by the First Amendment.

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