



ACLU

**AMERICAN CIVIL LIBERTIES UNION
of MINNESOTA**

CIVIL LIBERTIES NEWS

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Spring Newsletter 2013

Hill v. Federal Protective Service

The Federal Protective Service filed a motion to dismiss our client, Melissa Hill’s claims against them for violating her First and Fourth Amendment rights arising out of an incident in which security guards at a federal building took her into custody, handcuffed her, searched her belongings and interrogated her regarding an anti-war message that was written in chalk on the public sidewalk in front of the building. Our lawsuit argues that the chalked political message was constitutionally-protected speech and did not violate any laws. Therefore, her unlawful seizure and search by security guards and an agent of the Federal Protective Service violated her First and Fourth Amendment rights.

The motion to dismiss was referred to the Magistrate for a Report and Recommendation (R&R) to the District Court. While the Magistrate recommended that most of our claims should remain intact, he also recommended that some of the claims in the case, including a claim for injunctive relief against the Federal Protective Service as a Federal agency, be dismissed. We filed an objection to that portion of the R&R; however, the District Court adopted it in full, dismissing our case against the entity but leaving the claims against the agent intact.

Attorneys working on the case are Bill Pentelovitch, Nadege Souvenir and Melissa Muro LaMere from Maslon Edelman Borman & Brand, LLP.

Annex Medical et al. v. Sebelius et al.

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The ACLU Reproductive Freedom Project and the ACLU of Minnesota filed a joint *amicus curiae* brief in this lawsuit challenging the contraceptive mandate included in the Patient Protection and Affordable Care Act as a violation of the right to free exercise of religion. In our brief, we argued that the law does not impose a substantial burden on religion when the mandate is applied to private non-religious businesses.

We argued that the link between the contraceptive coverage requirement and the religiously prohibited behavior is simply too attenuated to amount to a substantial burden on the employer. We also argued that the central issue for the court is really whether religious objections can trump neutral laws designed to eradicate discrimination and that courts have generally recognized that religious liberty is not absolute and cannot automatically trump laws that were passed to further a compelling government interest such as laws that promote equality and eradicate discrimination. Because the ability to access contraception is essential to women’s ability to participate fully in society, the mandate furthers the

From the President

Vance Opperman



Farewell

This is my last column as President. The two years has gone too quickly, but I'm happy to say that the Minnesota Chapter of the ACLU is in good shape to be passed on to our next President. The state of our Bill of Rights is strong. There are many highlights of the last two years; first and foremost, the opportunity to deal with committed staff, supportive members, and an outstanding Board. It has been an absolute joy to sit in on many of our meetings and watch American citizens apply their birthright of the Bill of Rights to our current society. Working at the State Fair booth is a positive kick that everybody should experience at least once.

We finally came to the end of the TiZA case. The commitment of the Dorsey Law Firm to seeing this case through to conclusion and their tremendous sacrifice of millions (yes, I said that correctly) of dollars worth of time was truly inspiring. Approximately \$22 million in taxpayer's money was spent illegally and in violation of the Constitutional separation of church and state. We put an end to that. The charter school statute was somewhat strengthened as a result of our lobbying efforts – thank you Carolyn Jackson for your years as our lobbyist.

We also saw the last of the RNC 2008 lawsuits, with the successful conclusion of DeMuth v. Fletcher. The illegal arrest and seizure of DeMuth's property ultimately led to a small financial recovery, a return of the seized literature, and the dropping of a citation. Free speech is always under attack and hopefully when that is the case, the ACLU is present. We were successful in the chalking case (using water-soluble chalk to post non-vulgar protests in front of the Hennepin County Government Center), and the Facebook case in Glenwood, Minnesota (thank you, Wally Hilke). The Facebook case received national publicity and hopefully school administrators in less urban areas will be more respectful of their students' First Amendment rights.

Civil asset forfeiture (your money or your freedom) has been an area of open abuse. There have been a number of media stories and some corrective action in the legislature to address this problem. One of our talented volunteer attorneys, Howard Bass, testified at length at the legislature about this abuse. Terri Nelson, our amazing General Counsel,

coordinated the volunteer attorneys, wrote briefs and drafted a number of result-producing letters.

I want to single out the great work that the Minnesota Chapter of the ACLU did on the Voter ID Amendment and the Marriage Amendment. We worked the educational angle on these amendments at the State Fair booth, made frequent speeches and appearances, wrote guest editorials and made selected appearances on television and radio. Our energetic Executive Director, Chuck Samuelson, crisscrossed the state debating and talking to anyone who would listen on why the citizens of this state should reject both of these ill-founded amendments. We filed major lawsuits, well-drafted briefs, and oral arguments (thank you, Bill Pentelovitch) before the Minnesota Supreme Court on the Voter ID Amendment. We were prepared to go into court on either or both of these amendments had either of them passed. The fact that the citizens of Minnesota voted both of amendments down (and resoundingly) is testimony to why many of us live in this state and cherish our neighbors. This was a good fight and it was great to be part of it.

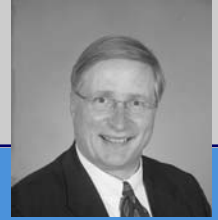
Turning briefly to the business end of our "business"; for the first time we broke the \$1,000,000 barrier (at least on the expenditure side). With tremendous help from a wide number of volunteers, members of our Board, and most particularly Paul Redleaf and the Redleaf Family Foundation, the Minnesota Chapter of the ACLU has been able to maintain the Greater Minnesota Racial Justice Project office in Bemidji (ninth year), open a new Greater Minnesota Racial Justice Project office in Mankato (second year), staff our state headquarters in the Twin Cities and maintain a full complement of activities in the educational, legislative, and judicial spheres of our polity. All of this on \$1,000,000! There are not a lot of groups that get this kind of bang for this kind of buck.

In closing, I look forward to remaining an active member. The Constitution does not defend itself, but we do. Don't forget to continue to financially support this great work because it is essential to keeping Minnesota a place we all enjoy living.

Yours in the fight,
Vance

From the Executive Director

Charles Samuelson



Election Fallout

Last November, about three-quarters of all of us who could vote; did vote. As a result, the legislature, both houses of which had been controlled by the Republican Party were now controlled by the DFL party.

The issues we had been fighting for the past two years were now solved. The voter ID bill failed because Minnesotans saw through it and rejected the cynical attempt to disenfranchise older and poorer voters.

Also, for the first time in US history, voters in Minnesota rejected a proposed constitutional amendment that would have changed the constitution to ban same sex couples from the same rights enjoyed by heterosexual couples.

This session is a perfect example of the consequences of elections. Senator Dibble and Representative Clarke introduced bills in their respective houses that would allow loving same sex couples to marry. The ACLU and the ACLU of Minnesota are excited to be involved in this effort. It is particularly pleasing to the ACLU of Minnesota because we started this fight in 1971 (Baker v Nelson) when we were the first to sue for the right of same sex couples to marry.

Please write your state Senators and Representatives and ask them to vote for marriage. This will truly protect and expand marriage.

Carolyn Jackson, our lobbyist who spent so much time fighting for civil liberties for the past seven years will not be in the capitol when the bill is passed and signed. Although she retired from lobbying in December, her influence is still felt at the Capitol.

Not everything is rosy in the legislature, however. While the House and Senate are moving toward increasing individual freedoms in one area, they are

restricting them in others. The ACLU was able to stop the red light cameras but we have had more difficulty in getting the state to be more transparent in their policing. The license plate reader data will be made private but the police want to keep the data for three to six months in order to be able to keep tabs on all of us. We believe that this flies in the face of the constitution, but to this point we've been unsuccessful in convincing the legislature of the correctness of our opinions.

Please call or write your legislator, and ask them to vote for the House *license plate reader* bill but not the Senate's bill. The House bill will require the police to destroy all the license plate data as soon as they collect it, except in the case of a crime, when the data would be investigative data and not subject to seizure by data harvesters. The Senate version allows the police to keep the data for 90 days and makes everything about the license plate readers private.

The ACLU is concerned about the continuing driving of technology that is eroding our privacy and we see the license plate readers as a new invasion of privacy that we need to manage.

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From the Legal Briefcase

Annex Medical et al. v. Sebelius et al. continued...

government's compelling interest in eradicating gender discrimination.

That interest is the least restrictive means of serving that interest because it draws a line between employers whose mission is religious and whose employees generally share those religious beliefs, and for-profit employers with religiously diverse workforces. The former are exempted while the latter are not. To exempt for-profit employers from the regulation's requirements based on their owner's religious objections to contraception, would result in the imposition of the owner's religious beliefs on his or her workforce and would significantly undermine the government's purpose in enacting the regulation.

The District Court granted the ACLU's request to participate at oral argument on the Plaintiffs' Motion for a Preliminary Injunction and attorney Bill Pentelovitch argued on our behalf at the hearing. The District Court denied the Plaintiffs' Motion and they have filed an appeal to the 8th Circuit Court of Appeals. The 8th Circuit then granted the Plaintiffs' motion for an emergency injunction while their appeal is pending.

Attorneys working on the case are Bill Pentelovitch and Haley Schaffer of Maslon Edelman Borman & Brand, LLP and Brigitte Amiri from the National ACLU Reproductive Freedom Project.

*"I'm glad that the ACLU sometimes makes decisions I find hard to accept. That doesn't make me mad. It challenges me to think. It also makes me glad to be a member of an organization that can be counted on to stick to principles."
- Francis Galt, life-long ACLU supporter*

Protecting the Future



Meet Francis Galt, life-long supporter of the American Civil Liberties Union. His support of the ACLU actually extends beyond his own lifetime.

How is that possible?

Protecting the Future continued

For starters, the Galt family support extends back to his father, who joined the ACLU before Fran was born. Consequently, Fran was raised on dinner table discussions of the beauty of democratic principles and the importance of sticking to these principles, even when doing so is neither convenient nor easy. The senior Mr. Galt's life was full of examples of this, as has Fran's life. Now his support extends into the future, beyond his own lifetime, since he's added a bequest to the ACLU in his will.

Fran and his wife, Margot, are philanthropic folks who make annual gifts to several organizations. Adding a bequest to his will was a much bigger decision for Fran than these regular gifts, since he wants to leave a lasting legacy to his children, as well. By

carefully reviewing his financial situation, he realized that he can do that as well as leave a legacy supporting the work that addresses the core values of his life. The ACLU is the only organization that Fran Galt has named in his will.

If you have considered, like Fran did, including the ACLU in your will, the Lu Esther T. Mertz Charitable Trust is providing an incentive to do so right now. The Trust has set aside \$2 million in matching funds which will be used to make a cash donation today equal to 10% of your future gift's value, up to a maximum match of \$10,000.

"Our American founding documents are remarkable. The Preamble to the Constitution is a marvelous statement. The Bill of Rights is astonishing. They represent thinking that makes a strong basis for any civilized society," says Fran.

This is the basis for his yearly support of ACLU and for adding us to his will, since our mission is to protect the integrity of these founding documents. If you are interested in making a bequest now to take advantage of the matching gift available through the Lu Esther T. Mertz Charitable Trust, contact Carol at 651.645.4097, x126 or cstoddart@aclu-mn.org.

GMRJP - North

We've had a real winter in Northern Minnesota this year, but our Greater Minnesota Racial Justice Project-North office has pulled through so far and we've accomplished a great deal.

We have expanded our territory to Walker, Grand Rapids and Bagley. In Walker, the ACLU-MN became involved in the racially biased discipline in the Walker school system. Not only were Native youth disciplined much more frequently than their white schoolmates, but the police were also called more frequently when Native young people were disciplined. This is true even when white students instigated fights and Native youth fled. The ACLU-MN sent a strong letter to the Walker school district pointing out that state law forbids discriminatory treatment because of race. The district made some management changes and the GMRJP North is involved with the community in restoring a strong learning environment within the Walker school district.

We have also expanded our court monitoring program to Mahnomen and Clearwater counties. Court monitoring has proven to be one of the best methods we have to ensure that the criminal justice system treats Native and whites equally. We are now monitoring courts in four counties in Northern Minnesota.

We have been in Bemidji for ten years this June and we have made a great difference not only in registering voters and reducing the number of Natives in jail, but also in working with other organizations to make Northern Minnesota a better environment for civil liberties.

Finally we are looking forward to our fourth annual *Art from Within* exhibit. The *Art from Within* show features artwork that gives a personal and compelling view into the lives of real people whose civil liberties have been challenged, violated or tested in some way by the criminal justice system.

The art will be on display from April 5 - 27, 2013, at Headwaters School for Music and Arts in Bemidji. The opening reception is April 5, at 5 p.m., at Headwaters School of Music and Arts in Bemidji, and is free and open to the public. For more information please call 218.444.2285.

GMRJP - South

With the New Year behind us, the GMRJP South has begun its preparations for a busy 2013. We have participated with the internship fair at Minnesota State University-Mankato and are preparing for the job fair at Gustavus Adolphus College in March. The ACLU was invited to train and speak to two Hispanic World classes at Gustavus. This involved training the students on the Latino community and the importance of having a line of communication with other cultures. Our next presentation will be about the GMRJP to a social justice class.

On March 9th, ACLU's legal director Terri Nelson participated on a panel at Gustavus Adolphus College, speaking on the issue of mass incarceration.

We continue to see involvement from students around the area looking to volunteer and intern with the ACLU. Many students from the Corrections department at MSU-Mankato have met with us, looking to fulfill their service-learning requirements. Most of these students will be taking part in our court monitoring program.

Recently, our work in Southern Minnesota was mentioned in the Star Tribune by columnist Jon Tevlin. Mr. Tevlin highlighted our concerns with Gaylord Police Officer Eric Boon and the high number of stops he makes of minority drivers. The report was mentioned in several other venues, including the Hispanic press and progressive websites.

The ACLU-MN filed suit against the Gaylord Police Department, among others, for the arrest and imprisonment of Jesus Mendoza Sierra, a lawful permanent resident. The case was the first to come from the Mankato office and was the result of outreach to the Hispanic community in Gaylord. Board member Albert Goins called the arrest, "*The most blatant disregard of an individual based on ethnicity and national origin by police that I have seen.*"

Annual Meeting

The American Civil Liberties Union of Minnesota will hold its 2013 Annual Meeting of the Members on Saturday, April 27, 2013 at 10:00 a.m. The meeting will be held at William Mitchell College of Law in the Kelley Board Room, 875 Summit Ave, St. Paul, Minnesota, for the purposes of electing directors and any other appropriate business. All members in good standing are welcome to attend. For more information contact Molly at mmiller@aclu-mn.org, 651.645.4097 x127.

BYLAW INFORMATION

NOMINATION PROCEDURES

Current voting members have the right to nominate directors by mailing such nominations to the President. Nominations must be accompanied by:

- a petition signed by at least twenty-five (25) voting members for each individual nominated;
- a statement by the nominee that she/he is willing to serve as a director; and
- an accurate, written biographical statement of the nominee no more than eight (8) typed lines of no more than sixty (60) characters per line.

COMMUNICATING WITH THE MEMBERSHIP

An ACLU-MN member may, at his or her own expense, have a designated commercial mailing house mail information to all or some of the Voting Members. Communications to the membership must be conducted by a blind mailing. There will be no censorship of the mailing piece either by the board or staff of the ACLU-MN.

AMENDMENTS TO THE BYLAWS

Both the Board of Directors and the Voting Members shall have the power to amend these Bylaws as follows:

Amendment by the Board. The power of the Board of Directors shall be subject to the power of the members with voting rights under Section 8.1.4 to adopt, amend or repeal Bylaws adopted, amended or repealed by the Board. The Board of Directors may amend the Bylaws by adopting a resolution setting forth the amendment by the affirmative vote of a majority of the members of the entire Board of Directors then in office. The Board of Directors may not adopt, amend, or repeal a bylaw fixing a quorum for meetings of members, prescribing procedures for removing directors or filling vacancies on the Board of Directors, or fixing the number of directors or their classifications, qualifications, or terms of office.

Proposal by the Board. The Board of Directors may also propose an amendment to the Bylaws by adopting a resolution setting forth the proposed amendment and directing that it be submitted for adoption at a meeting of the members.

Proposal by Minority of the Board. An amendment to the Bylaws may also be proposed upon the (a) written resolution signed by any five (5) members of the Board or (b) written resolution signed by any two (2) members of the Board accompanied by the written endorsement of one hundred (100) Voting Members, and delivered to the Secretary.

Voting Member Proposal. An amendment to the Bylaws may also be proposed by written resolution by a Voting Member accompanied by the written endorsement of at least 150 Voting Members and delivered to the Secretary.

We would like to thank the following Board Members for their service as they end their terms: Nate Dybvig, Leslie Sandberg and Robert Sykora.

New nominees

Mary Young

Mary Young is a long time community volunteer. She practiced bankruptcy law in California before she moved to Minnesota. She volunteers for the Minneapolis Institute of Arts and works with educators and young students.

Joel Kramer

Joel Kramer is CEO & Editor of MinnPost. He is the former Star Tribune editor, publisher and president. He was involved in editing two Pulitzer Prize winning investigative projects. After leaving the Star Tribune, he was a senior fellow in journalism at the University of Minnesota, led the progressive think tank Growth & Justice and co-founded MinnPost. He is past board chair of the Children's Theatre Company, Achieve! Minneapolis, and Growth & Justice, and current board chair of Minnesota Jewish Media.

Timothy Griffin

Tim Griffin is a shareholder at Leonard Street and Deinard. He has been a long time member of the ACLU and has taken a number of cases for the ACLU of Minnesota including representing the Coalition to March on the RNC, students being surreptitiously videotaped in the locker room of their school, Occupy Minnesota and a number of other civil liberties cases.

Board members up for re-election

Ronald DeHarpporte

Ron DeHarpporte is a long-time member of the ACLU-MN. He bought a small manufacturer's representative firm in the consumer electronics industry in 1975, and it grew to be one of the largest rep companies in the state. He currently serves as the board secretary.

Sandra Feist

Sandra Feist is a Partner with the law firm Grell & Feist, where she specializes in immigration law. Sandra is an immigration law specialist with over 12 years of experience. She received her J.D. from William Mitchell School of Law in 2007. As a law student she co-founded the William Mitchell chapter of the ACLU. Since graduating, she has continued to take on leadership roles on committees within local organizations, including Minnesota Women Lawyers, the YWCA, and the Hennepin County Bar Association.

Board members up for re-election continued

Thomas C. Kayser

Tom Kayser is Partner at the law firm of Robins, Kaplan, Miller & Ciresi. His practice focuses on complex employment, antitrust, corporate, constitutional and negligence litigation. He has donated hundreds of pro bono hours to numerous nonprofit legal aid and advocacy groups, including the ACLU-MN. He was a lead attorney for the landmark ACLU-MN case SAGE (Straights and Gays for Equality) vs. Osseo School District which established rights of non-traditional extra-curricular clubs and associations.

Carolina Lamas

Carolina Lamas is the Executive Director at the Neighborhood Justice Center which provides legal representation on criminal cases to low-income persons with a focus on persons of color. She previously was an attorney at the Ramsey County Office of the Public Defender. She received her J.D. from the University of Minnesota Law School and a B.A. from the University of Minnesota. She currently serves as the board Affirmative Action Officer.

William Pentelovitch

Bill Pentelovitch is a trial lawyer at Maslon Edelman Borman & Brand, LLP who has practiced exclusively in the area of business-related disputes for more than 35 years. He was part of the *Pinstripe Brigade*, which was a contingent of attorneys who donated thousands of hours over the months leading up to and after the Republican National Convention in St. Paul.

Tributes

In memory of Thomas Field

From: Prime Timers - MSP Chapter

Tributes are contributions made to honor or remember friends, family, colleagues and occasions. To have your tribute appear in Civil Liberties News, please contact Carol at 651.645.4097 x126; cstoddart@aclu-mn.org or go online to www.aclu-mn.org.

Civil Liberties News

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