

# ACLU

**AMERICAN CIVIL LIBERTIES UNION  
of MINNESOTA**

## CIVIL LIBERTIES NEWS

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## Wins & Losses in the '06 Legislative Session

The ACLU-MN tracked 140 bills, both good and bad, in the 2006 Legislative session. Five of those 140 bills were passed into law, two of which the ACLU supported.

### ACLU Opposed Bills

*Funeral Disruptions:* The ACLU-MN testified in the Senate that the funeral protest bill violated the First Amendment, and the Senate amended the bill accordingly. However, the House version retained the unconstitutional language. The conference committee removed some issues, but retained an unconstitutional ban on funeral protests within 500 feet of funeral homes.

*Restrictions on Sales of Video Games:* This law prohibits sale or rental of video games to persons under 17 based on MPAA ratings, thereby unconstitutionally delegating a standard of content regulation to a private board which lacks objective criteria and is vague.

*Zoning of Adults-Only Businesses:* This law enables cities and counties to deny zoning for adults-only businesses if another adult entertainment establishment is already located within 50 miles of the city or county, contrary to First Amendment case law.

### ACLU Supported Bills

*Voting Rights:* The Voting Systems law, which the ACLU-MN supported, makes tribal IDs sufficient for voter

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## Got Pride? ACLU-MN Does!

June 24th & 25th was Twin Cities Pride in Loring Park in Minneapolis. ACLU-MN hosted a booth throughout the weekend passing out literature and educating people about what the ACLU does in Minnesota, and how they can become involved. We handed out more than 400 membership brochures and almost 500 pocket sized constitutions.

Despite the fact that it rained on the first day we still thought it was a great success. A big thank you to Linnihan Foy who spearheaded the design for ACLU-MN's new booth which was on display for the first time at Pride. We would also like to thank Lindquist and Vennum LLP for their generous support of the booth. It is a wonderful booth that is easily transportable, so be on the look-out for it! A special thanks to: Andrea Palumbo, Megan Rosenfeld and Jeffrey Keyes, who generously volunteered their time to work at the booth. Without their support this event wouldn't have been possible!

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## Hello & Goodbye

The ACLU-MN went through staffing changes over this past month. They said goodbye to two wonderful staff, and welcome two new ones. Nick Sikon, who was the Public Education Coordinator left to continue his career by attending law school. Fatema Monsour, who was the Office Assistant, left the ACLU in June to concentrate on her undergraduate studies. We wish them both the best of luck with whatever the future may hold!

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# From the President

*Susan L. Jacobson*



## ACLU Board Committee Withdraws Guidelines

In case you somehow missed it, Nadine Strossen, National ACLU Board President, recently issued the following press release relating to the unfortunate controversy generated when an ACLU committee issued proposed guidelines relating to public criticism of Board actions:

A committee of the American Civil Liberties Union's National Board of Directors recently withdrew proposed guidelines that have been criticized as limiting dissent by Board members. We will ensure that any description of Board members' obligations to the ACLU accurately reflects the ACLU's abiding commitment to the free speech rights of all, including ACLU Board members.

Every board of every non-profit organization is called upon from time to time to discuss sensitive, private and confidential matters. No board can function unless its members take seriously their ethical, legal and fiduciary responsibilities to respect the confidentiality of those aspects of its proceedings. A committee created by the ACLU's 83-member Board of Directors proposed guidelines that endeavored to outline Board members' fiduciary obligations consistent with the ACLU's civil libertarian principles, including respect for both free speech and privacy. The Board established this committee on Board members' "Rights and Responsibilities" in order to improve its governance structure and internal functioning. That is a worthy goal for any organization -- and a challenging one.

The committee has now decided to withdraw certain passages from its proposed guidelines that were strongly criticized by many Board members, as well as by Executive Director Anthony Romero and other staff members, on the grounds that those passages might have some chilling effect on Board members' freedom of speech and dissent (even though that was not the committee's intent). Any such impact would fly in the face of core ACLU principles.

The government's current assaults on our civil liberties demand our Board members' full energies. The ACLU is vigorously pursuing litigation against many of the Bush Administration's abuses of power: torture and rendition, illegal domestic spying, and unprecedented secrecy. We are proud of our important work to defend the principles viewed here and around the world as so fundamental to America.

I know from talking to our local board members that there are those who would like the debate to continue—should the guidelines have been proposed; should they have withdrawn. These are important issues since they truly do go to the heart of what the ACLU stands for. But, personally, I hope that Nadine's press release is a sign that the National Board has moved past the controversy and is once again concentrating its attention where it is so urgently needed.

### *Staff*

Executive Director.....Charles Samuelson  
Legal Counsel.....Teresa Nelson  
Public Education Coordinator.....Jana Kooren  
GMRJP Coordinator.....Audrey Thayer  
Assistant to the Executive Director..... Molly Miller

### *Newsletter*

Editor..... Jana Kooren  
Contributors.....Teresa Nelson,  
Charles Samuelson, Susan Jacobson, Rebecca Rand,  
and Carolyn Jackson

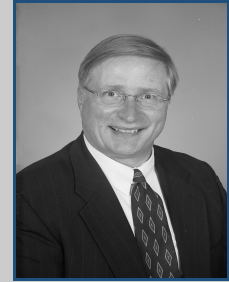
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# From the Executive Director

## *Charles "Chuck" Samuelson*



## Racial Justice in Bemidji & National Issues

For the past two years the ACLU of Minnesota has worked in Bemidji to reduce the racial bias in the criminal justice system in Beltrami County and in the other counties surrounding Bemidji. The area of Minnesota is home to more than 50,000 Native Americans.

They represent the vast majority of those held in the county jails in Beltrami, Mahnomen, Cass, Rock, Clearwater, and Becker counties. We have been successful in some areas and we have been unsuccessful in others. Thanks to our lawsuit in 2004, Native Americans can now vote using their tribal ID cards even off the reservation. More than 600 Native American voters cast their ballots for the first time thanks to that victory.

Because of our court-monitoring program, begun in 2005, fines and bail for Native American and white defendants are more equal than in the past.

However, Native Americans, who make up 18% of the population in Beltrami County, account for over 30% of all adult misdemeanor prosecutions and almost 34% of all juvenile prosecutions.

As a result not only are more Native Americans prosecuted, more are convicted, more are fined, and more poor defendants cannot pay their fines and are jailed. Finally, these people make up "the usual suspects" and are more carefully watched by the police because of their criminal records.

### **National Issues**

#### **If You've Made a Phone Call in the Last Five Years...**

In a two-pronged approach, the American Civil Liberties Union has launched a nationwide initiative to end illegal government spying. First, ACLU affiliates in twenty

states have filed complaints with Public Utility Commissions or sent letters to state Attorneys General and other officials demanding investigations into whether local telecommunications companies allowed the NSA to spy on their customers. Second, the ACLU has sent a letter to the Federal Communications Commission urging the agency to reconsider its refusal to investigate reports that at least three major telecommunications companies- AT&T, BellSouth and Verizon- cooperated with the NSA in an effort to collect calling information and call patterns on every American.

In the complaints sent to state utilities commissions and other officials around the country, the ACLU is calling for investigations into the unlawful sharing of billions of consumers call records with the NSA. If the sharing is found to be in violation of state law, the ACLU is urging that officials issue "cease-and-desist" orders to the telecommunications companies in their state. In addition to the ACLU of Massachusetts, actions were filed by ACLU affiliates in Arizona, Colorado, Connecticut, Delaware, Florida, Iowa, Kansas, Missouri, Nevada, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Virginia and Washington. Other ACLU affiliates are expected to file additional letters and complaints in the coming weeks. When the NSA spying program was uncovered last December, the ACLU was one of the first organizations to bring legal challenge, acting on behalf of a prominent and politically diverse group of journalists, scholars and lawyers. That challenge was heard before Judge Anna Diggs Taylor in Detroit on Monday, June 12; it was the first ever hearing on the legality of NSA spying since the program was disclosed.

#### **What You Can Do**

- Write to Kevin J. Martin, Chairman, Federal Communications Commission, 445 12<sup>th</sup> Street SW, Washington, DC 20554
- Go to [www.aclu.org](http://www.aclu.org) and add your name to the petition being sent to the FCC.

# Legal Updates

## **SAGE v. Osseo Area Schools**

In April, the ACLU-MN won a preliminary injunction requiring the Osseo Area School District to provide equal treatment to the Straights and Gays for Equality (SAGE) student group. The ACLU-MN filed the suit in September 2005 following nearly two years of discussions with the school district over their policy toward SAGE. In her ruling, Judge Ericksen ordered the school to treat SAGE like any other student group when it came to access for meetings, avenues for communication and other rights afforded to other student groups. The judge went on to rule that there is a likelihood that the ACLU-MN suit would ultimately be successful, and issued the preliminary injunction to prevent “Irreparable harm” from befalling the group while the case ran its course.

Groups like SAGE work to promote tolerance and to ensure that traditionally marginalized students feel safe and valued at school. Instead of denying SAGE equal access, the school should be encouraging them, and this order is an important first step toward that happening.

After the ruling, the School District filed an appeal and three separate motions – one with the district court and two in the Eighth Circuit Court of Appeals – to have the injunction stayed pending an appeal. All three motions were denied. The Appeal is pending in the Eighth Circuit.

Volunteer attorneys for the case include Tom Kayser, Michael Okerlund and David Pinto of the law firm Robins, Kaplan, Miller & Ciresi, L.L.P.

## **Challenge to Minneapolis “Photo Cop” Ordinance**

Attorneys for the City of Minneapolis asked the Court of Appeals to overturn the district court decision that invalidated the Minneapolis “Photo Cop” ordinance. The ordinance allows for photographic enforcement of red light violations. The ACLU-MN challenged the ordinance because it imposes liability on the vehicle owner instead of the actual driver who ran the red light. We argued that the shift in liability violates state law and the constitutional right to due process. The district court found that the law was preempted by state law and invalidated it on that grounds. The City appealed and the case was heard by a panel of the Minnesota Court of Appeals in June. A decision is expected by mid September.

Volunteer Attorney Howard Bass is handling the case.

## **Challenge to Owner Liability for School Bus Stop Arm Violations**

The Court of Appeals heard oral arguments in June regarding a challenge to owner liability for vehicles that drive past a school bus with its stop arm activated. The ACLU-MN took up this case on appeal arguing that the portion of the statute that imposes liability on a vehicle owner when the driver cannot be identified violates the right to due process. In effect, the law criminalizes ownership of a vehicle. A decision in the case is expected by early September.

Volunteer attorney Howard Carp is handling the case.

## **Meads v. Best Oil Co.**

The ACLU-MN filed an *amicus curiae* (friend of the court) brief in this important case involving interpretation of Minnesota anti-discrimination laws. The case involves the question of whether an employer can escape liability for discriminatory failure to hire based on evidence that they discover after the discriminatory decision, which would render the applicant ineligible for employment. In this case, the African-American plaintiff alleged that he was passed over for employment when two less-qualified white people were hired for the job for

which he applied. After he filed his discrimination claim, the employer discovered that he lied on his application by stating that he had never been convicted of a felony when he actually had been convicted of a felony ten to twelve years before. The District Court held that the after-acquired evidence would have disqualified him from employment; therefore, the plaintiff’s claim is barred. The plaintiff filed an appeal and the ACLU submitted its brief in late June.

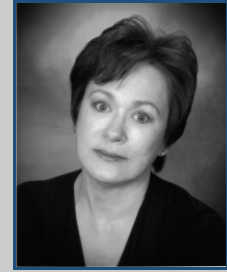
In its brief, the ACLU-MN argued that the “after-acquired evidence doctrine” should not be applied to bar a discrimination claim because it undermines the remedial nature of anti-discrimination laws. To allow discriminatory conduct to escape redress simply because the employer finds newly discovered reasons that might

*(legal updates —Continued on page 6)*

*“Groups like SAGE work to promote tolerance and to ensure that traditionally marginalized students feel safe and valued at school”*

# From the ACLU

*Rebecca Rand*  
*Minnesota's National Delegate*



## National Board Updates

ACLU National Board meetings are long and dutiful, sometimes tiresome, but with enough fireworks and flashing wit to keep one aware, engaged, and even sometimes outraged.

In January, we voted to not oppose the nomination of John Roberts to the Supreme Court, then in April we voted to oppose Samuel Alito. In June we debated policy — should the ACLU be officially non-partisan and never take a position on any elected or appointed office?

Historically we had been non-partisan until opposing the nomination of Robert Bork. The board subsequently declined to oppose William Rhenquist's appointment to Chief Justice after opposing his nomination to the Supreme Court. It declined to oppose Clarence Thomas' nomination, declined to oppose Roberts, but as previously mentioned, did oppose the nomination of Samuel Alito.

At the June meeting the non-partisan policy was reinstated by a slim margin. Because it can be overturned by a simple majority, it cannot be counted on. I'm beginning to understand why so many people don't understand us.

Sally Grant of Maryland was elected to the executive committee to fill a vacancy and I've been cajoled into serving on a committee to review ACLU policy on the right to travel. I'm solidly in favor of the unfettered right to travel.

A committee has been established to write policy on the rights and responsibilities of board members, and a report was given at the June meeting. They recommended that all National Board mem-

bers be given a booklet (yet to be written) of information on what is expected of us, and then asked to sign a statement that we had read and understood it. This would be required for the right to participate in executive sessions. It was explained to us that signing meant we had read and understood it, not that we agreed to be bound by it (the George Bush philosophy of signing), so therefore we shouldn't object.

I'm in favor of disbanding this committee and will not sign. As a matter of substance, this is not significant, but the symbolic value and public relations fiasco is dismissed by those promoting it. They cast themselves as the modern, good governance supporters and their opponents as Ludites overly concerned with public opinion — and allege that if the ACLU made decisions based on what people think we'd "have never marched in Skokie." (I know, we didn't march in Skokie.)

Discussions at National Board meeting often break down along the lines of "the principled versus the pragmatic." If you have a strong opinion on this issue, contact me or Nadine Strossen.

Reports were also given on the budget and fundraising, both in very good shape, and on affirmative action goals, where the organization was a whole is doing a commendable job as well.

We should expect to get contacted concerning the Legacy Campaign, i.e., putting the ACLU in our wills. I hope to see all of you in Washington, D.C. Oct 15 thru 17th, for the Membership Conference: Stop the Abuse of Power, Stand up for Freedom!

**Join us for the 2006 Membership Conference: Stop the Abuse of Power, Stand up for Freedom**  
**October 15th—17th , Washington DC**



# Meet the New Staff!/Legal Updates



## Jana

**Kooren** is the new Public Education Coordinator at the ACLU-MN. A graduate of Hamline University she spent the last two years

as a full time volunteer. She spent the first year in Las Vegas as a Volunteer Residential Counselor for Boys Hope Girls Hope of Nevada. She was a “houseparent” in a group home for adolescent boys. This past year she served as an AmeriCorps\*VISTA volunteer at the Amherst H. Wilder Foundation as a Community Leadership Coordinator. In this position she fostered excitement about civic engagement amongst participants and clients of Wilder’s housing programs.

When she is not being politically active Jana enjoys traveling, and learning languages. So far she can only speak French fluently, but is working on two others. She is excited to start educating Minnesotans about their civil liberties. Welcome Jana!



## Molly

**Miller** joins the ACLU-MN as the Assistant to the Executive Director. She recently graduated from the University of St. Thomas in May

of 2006, with a B.A. in Political Science, and a minor in Communication Studies. As an undergrad, she gained experience with civil liberties and rights by interning with non-profits such as Minnesota AIDS Project, and the Minnesota Women’s Campaign Fund.

Besides working for ACLU-MN, Molly is very active with the Special Olympics of Minnesota as a coach for the White Bear Lake Bears. In the future, she plans on going to law school and continuing the fight for civil liberties. She is very excited to be working at such a great organization for her first “real” job. Welcome Molly!

## Legal Updates

(Continued from page 4)

have justified their decision would reward employers who are engaged in discrimination. The U.S. Supreme Court came to this conclusion over ten years ago in a case called McKennon v. Nashville Banner Publishing Company. The Court rejected a complete bar to recovery for discrimination but did recognize that the amount of damages could be limited based on the after-acquired evidence. Because Minnesota courts are not bound by federal court decisions when they interpret our state Human Rights Act, the district court in this case relied on a pre-McKennon case to find that in Minnesota, after-acquired evidence can bar a discrimination claim.

The defendants in the case have not yet filed their brief in the Court of Appeals. It is likely that oral arguments will be heard in the fall with a decision 90 days thereafter.

## APAC v. Uniprop

The ACLU-MN filed an *amicus curiae* brief in the Minnesota Supreme Court in this case involving the right to freedom of expression on the grounds of manufactured home parks. In its brief, the ACLU-MN took that position that a Minnesota statute granting the right to freedom of expression in manufactured home parks should be interpreted using constitutional Free Speech. Jurisprudence. The case involves rules governing canvassing in a park that were upheld by the lower courts as being “reasonable” under the statute. However, the rules would clearly have been found to be invalid if the courts had analyzed them using First Amendment legal principles. The ACLU-MN brief pointed out the unique situation faced by park residents who generally own their manufactured home but only rent the land that it sits on. Residents are often in a precarious legal situation and could stand to lose their investment if they are not fully informed of their legal rights. We also pointed out the implication of the rules on groups wishing to spread their message to residents including political canvassers and charitable groups.

The defendants in the case will file their brief in late July and it is likely that oral arguments will be heard this fall with a decision 90 days thereafter.

Volunteer Attorneys Elizabeth Melton and Aliana McIntosh of Foley & Mansfiel, P.L.L.P. wrote the ACLU-MN Amicus Brief.

# Legislative Updates/Upcoming Events

## **Legislative Updates**

*(Continued from page 1)*

registration and prohibits deceptive practices in elections and challenges based on returned political mail.

*Data Practices:* This law requires informed consent for the release of private CIBRS Police Database information to be made in person. This law arose from the recommendation of the ACLU-MN supported CIBRS committee.

### **Issues Which Arose But Did Not Become Law:**

*Abortion:* A House bill would have required doctors and judges to report to the State all the instances of judicial bypass of parental notification, would have required doctors to have hospital privileges within 20 miles of where abortions are performed, and would have prevented state funding for abortions for impoverished patients. This bill failed to reach the floor of the Senate.

*Gay Marriage:* The Anti-Gay Marriage Amendment bill died in Senate committee.

*Facial recognition:* Arising from a federal Real I.D. mandate, a House bill introduced a requirement to gather facial recognition data with the issuance of a driver's license or state ID. This language did not reach the floor of either house.

*Immigration:* The ACLU-MN testified along with police and sheriff's associations against an immigration bill which aimed to make local law enforcement officials enforce immigration laws. We opposed this legislation because it would criminalize immigration laws which are civil in nature. In the end, this bill passed the House but died in the Senate.

*Voting Rights:* The ACLU-MN testified in the Senate to expand the forms of identification which can be used for same day registration. In the House, the ACLU-MN opposed a bill requiring driver's licenses or state IDs to vote which would be a poll tax. Neither bill became law.

*Nutrition and Hydration:* The session began with rumors of the resuscitation of a bill directing medical professionals to administer nutrition and hydration; however, the issue died.

*Law Making by Amending the Constitution:* A constitutional amendment directing tax dollars to the environment and humanities received a great deal of attention. Because amendments to the Minnesota Constitution must go to a referendum vote, the ACLU-MN feared this bill was a back door to initiative and referendum. Lawmakers are attracted to the referendum process because it sends difficult issues directly to voters. How-

ever, the referendum process is subject to the tyranny of the majority. Furthermore, because these bills tinker with our State Constitution, a foundational document, they exacerbate the civil liberties problems with initiative and referendum.

*Written by Carolyn Jackson esq.*

*Legislative volunteer for the ACLU-MN*

## **UPCOMING EVENTS:**



## **Save the Date!**

**2006 Membership Conference:**

**Stop the Abuse of Power**

**October 15—17, Washington D.C.**

**STOP! Illegal domestic spying programs**  
**STOP! Government-sponsored torture**  
**STOP! Government intrusion in matters of personal choice**

### **It's time to stand up!**

- \*Voice your concerns about abuses of power to Members of Congress during Hill Visits
- \*Hear Supreme Court Justice Antonin Scalia debate Constitutional issues with ACLU President Nadine Strossen.
- \*Learn with likeminded people how you can protect civil liberties through effective activism.
- \*Have fun and socialize with energetic ACLU members like yourself from all over the country!
- \*Speakers include: Muslim Scholar Tariq Ramadan, New York Times Columnist Bob Herbert, Political Commentator Tucker Carlson and many more!
- \*For more information, please visit [www.aclu.org](http://www.aclu.org)

**ACLU-MN members: This conference will be available to **YOU** at a reduced rate!**

**For more information contact:**

**Jana Kooren**

**651.645.4097 x123**

**[jkooren@aclu-mn.org](mailto:jkooren@aclu-mn.org)**

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