ACLU OREGON NEWS

AMERICAN CIVIL LIBERTIES UNION of OREGON

BOARD NOMINATIONS, PAGES 8 & 9

ISSUE 1, VOLUME 50, WINTER/SPRING 2014

TIME TO REIN IN THE SURVEILLANCE STATE

We are in the midst of an extraordinary debate in America. Thanks to Edward Snowden's disclosures brought to light by journalist Glenn Greenwald, we have concrete evidence of the extent to which the NSA's surveillance powers have been directed not at terrorists but at ordinary citizens. More and more people are beginning to understand that the NSA's surveillance activities present a very real threat to democracy and individual liberty.

We're doing everything we can to ensure this debate is an informed one. We have filed lawsuits challenging the NSA's call-tracking program, filed Freedom of Information requests that are bearing fruit, pushing Congress to take action and pressing President Obama for more meaningful reform than he has offered so far.

And the ACLU is now representing Edward Snowden with Ben Wizner as lead legal adviser.

Want to hear the latest insider's view? **Ben Wizner is coming to Portland as the featured speaker at our March 1 Liberty Dinner. Glenn Greenwald will be returning via video** (currently he is not traveling from his home in Brazil) **for a quick update on the spying story.**

Join us to learn the latest about the NSA's mass surveillance program and what we can do to reform it. Ben is Director of ACLU's Speech, Technology & Liberty Project and has litigated numerous cases involving post-9/11 civil liberties abuses, including challenges to government watch lists and torture.

For comic relief, the Liberty Dinner will also feature Portland cartoonist, **Matt Bors**. We hope you will join us. To register for the dinner and more details go to aclu-or.org/2014-liberty-dinner.

INITIATIVE CAMPAIGN + LAWSUIT = FREEDOM TO MARRY

The ACLU has been fighting to win the freedom to marry for same-sex couples here in Oregon for more than a decade and we are confident that 2014 will be the year it finally happens.

We are now pursuing a dual track strategy by pursuing a lawsuit on behalf of two loving, committed same-sex couples who wish to be married as well as playing a key role in the initiative campaign to remove the discriminatory marriage ban from our state constitution.

We hope that you have already signed one of the petitions to place the Freedom to Marry Initiative on the November 2014 ballot. The ACLU of Oregon is a part of the leadership team for Oregon United for Marriage, along with Basic Rights Oregon (BRO) and other coalition partners.

In December, we also filed a federal lawsuit in U.S. District Court in Eugene on behalf of two same-sex couples who wish to marry in Oregon and Basic Rights Education Fund, BRO's charitable arm. The lawsuit alleges that Oregon's constitutional ban on marriage for lesbian and gay couples – Measure 36 – violates the U.S. Constitution.

The ACLU volunteer cooperating attorneys in the case are **Jennifer Middleton**, of Johnson, Johnson & Schaller PC, **Thomas Johnson, Kristina Holm and Misha Isaak**, of Perkins Coie LLP. They are joined by ACLU staff attorneys **Rose Saxe and Amanda Goad**, of the ACLU Foundation LGBT Project, and ACLU Foundation of Oregon Legal Director **Kevin Díaz**.

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INSIDE THIS ISSUE:

A TIME OF OPPORTUNITIES, BUT ALSO CHALLENGES

FROM THE EXECUTIVE DIRECTOR

David Fidanque

It's taken years of hard work, but we are on the threshold of achieving some key goals in 2014:

• **Freedom to Marry** – Whether we prevail on the ballot in November, in federal court or both, we are confident that before the end of 2014 lesbian and gay couples will be able to marry in Oregon;

• **Marijuana Legalization** – We expect that at least one proposal to legalize, regulate and tax the cultivation and sale of marijuana to adults 21 and over will appear on the November ballot and be approved by voters;

• **Government Spying** – Thanks to the revelations by Edward Snowden and the fine journalism of Glenn Greenwald and others, the ACLU is building momentum in Congress and increasing public support for meaningful reform of the NSA & FBI's massive surveillance programs to gather and permanently stockpile the personal telephone and e-mail records of millions of Americans;

• **Protecting Privacy in Oregon** – In 2013, we convinced the Legislature to pass strict regulations for the use of drones by state and local law enforcement agencies; this year we're following up that victory with SB 1522 – a bill to regulate the use of automatic license plate readers (ALPRs) by state and local governments and prevent the stockpiling of the location data of innocent Oregonians;

• **Prescription Records Privacy** – When Oregon started a program to create a massive database of millions of prescriptions issued to Oregon patients that includes everything from codeine cough syrup to Ambien to heavy duty pain medicine, we insisted that law enforcement agencies would have to get a court order to access the records; we're now in federal court challenging the federal Drug Enforcement Administration's attempts to ignore that requirement and the Fourth Amendment's constitutional requirements for probable cause and a warrant.

Even as we are optimistic about the outcome on those priority issues, we face big challenges on others:

• **Freedom to Assemble** – Our long running court case challenging the Secret Service's 2004 decision to forcibly move more than 200 peaceful anti-Bush demonstrators in Jacksonville – while leaving in place pro-Bush demonstrators less than 20 feet from the President's motorcade – will be heard in the U.S. Supreme Court on March 26. The federal government is asserting that Secret Service agents can't be sued for violating the First Amendment even when there is evidence the agents were acting to squelch dissent rather than taking actions designed to protect the President;

• **Driver Licenses** – Last spring we convinced a bi-partisan coalition of legislators to create limited duration, limited purpose driver "cards" for Oregonians who can demonstrate their safety behind the wheel, but for a variety of reasons can't qualify for a regular license. Unfortunately, anti-immigrant activists collected enough signatures to prevent the new law from taking effect and it will appear on the November ballot; we are working to convince a majority of voters to vote "Yes" for the measure to pass.

This is an exciting time for civil liberties, civil rights and the ACLU. I hope you'll be able to join us at our Liberty Dinner on March 1 when Edward Snowden's lead lawyer, ACLU's Ben Wizner will be our keynote speaker. If you can't make it to that event, I hope we'll see you either hosting or attending an ACLU house party or at another public event in 2014.

Thanks again for your support!

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Promoting Privacy Rights for Oregon February Legislative Session 2014

by Becky Straus, Legislative Director/Counsel

On February 3rd legislators reconvened in Salem for the start of the one-month 2014 legislative session. Our top priority is to advance the discussion of privacy rights in the face of increasingly advanced government surveillance technology.

SB 1522 is a bill to lay out clear and consistent statewide guidelines for the use of Automatic License Plate Readers (ALPRs) by government actors. ALPRs are high-speed cameras, typically posted on police cars or fixed objects, like bridges, that capture a photograph of each and every passing license plate and then run that plate data against "hot lists" such as criminal warrant databases or stolen car records. ALPR systems capture and store photos that include data, time and location of where each vehicle has been seen. And these systems are retaining private location information of Oregon drivers who have committed no crime, or are not even suspected of having committed a crime. Longer retention periods and the absence of restrictions on sharing allow the government to assemble the individual puzzle pieces of where we have been over time into a single, high-resolution image of our lives.

We know that law enforcement agencies are deploying ALPR surveillance technology with increasing frequency. Before this surveillance becomes even more commonplace, we would like sensible guidelines in place to protect the privacy of our location information. SB 1522 sets out these guidelines with limitations on retention of innocent people's data, restrictions on sharing the data, and mandates for greater reporting and transparency mechanisms so we can take back control of our personal information.

In the course of advocating for the passage of SB 1522, we are pursuing our ongoing work to educate legislators about the importance of privacy rights and the key Privacy Roadmap questions that should guide any discussion of government's use of surveillance technology. Please see our Privacy Roadmap sidebar on this page.

To follow our legislative work in Salem; head to our website for our updates and sign up for our email Action Alerts. We are most effective at protecting and advancing civil liberties when you join us in contacting legislators about civil liberties issues. Thank you for your support!

Privacy Roadmap for Liberty & Technology

We use the following guidelines to help policy makers understand the privacy implications of data-collection – no matter what type of technology is being used.

- **Usage.** In what instances and with what limitations may the technology be used? What type of information is being collected and about whom?
- **Sharing and Retention.** What happens to the data after it is collected? Can it be shared? How long is it kept?
- **Control.** Do individuals have the opportunity to know what information is collected about them and correct any inaccuracies?
- **Accountability.** Are there auditing mechanisms in place to ensure compliance with privacy policy and effectiveness of the technology?
- **Transparency.** How can the public stay informed of usage and policy changes?

Don't Miss the Action

Last month 886 ACLU of Oregon Activists sent messages to our state legislators expressing privacy concerns about the unregulated use of automatic license plate readers.

Don't miss the action. Become an online subscriber for the ACLU at aclu-or.org. Click the "Take Action" button. Sign up today.

JACKSONVILLE PROTEST CASE BEFORE SUPREME COURT

by Michael "Mookie" Moss, ACLU plaintiff

In March of this year, the Jacksonville police riot celebrates its almost-tenth anniversary by taking a trip to Washington D.C. and landing on the desk of the United States Supreme Court. Under review by the high court is whether the respondents (me and my fellow plaintiff demonstrators) sufficiently alleged there was clear First Amendment discrimination on the part of the Secret Service and whether the 9th Circuit Court of Appeals erred when it denied the Secret Service qualified immunity for its role in the events that took place nearly 10 years ago.

For those present that night in Jacksonville, the answer to the question of First Amendment discrimination couldn't be clearer. The large multigenerational group of anti-Bush demonstrators assembled in front of the Jacksonville Inn faced police- fired projectiles which were filled with chemical irritants, canisters of hand held pepper spray, and submission by baton, while the pro-Bush crowd equidistant from the dining President faced not a word of admonishment.

Michael "Mookie" Moss

My experience that night began after finishing evening farm chores and hustling down the hill to join the unwelcoming party already in full swing. George W. Bush, embroiled in controversy and just weeks away from his re-election bid, had spent the day stumping in Medford and rallying his base. With a dubious foreign war gathering steam, and a series of hotly debated domestic policies surrounding resource extraction (which profoundly affected our rural community), the crowd was ready to express it's views. The demonstration, crafted by organizers Shelley Elkovich and Anna Vine, had been billed as a family friendly gathering aimed at sending a strong message to the visiting President. Earlier, Anna and Shelley had cleared this demonstration with Police Chief Towe of Jacksonville and Sheriff Winters of Jackson County. By assuring the police the demonstration would remain on the sidewalk and be law abiding, they received permission from city and county law enforcement. Shortly after my arrival and inclusion in the crowd of 250 plus strong, word circulated that the President had changed his original plans and was now dining in the restaurant adjacent to our rally. This new information only fueled excitement by making it clear that our words and presence could undoubtedly be heard and felt by the President. This enthusiasm was met with ominous signs of what was to come.

With helicopters buzzing overhead, throngs of police clad in full battle regalia arrived on an armored personnel carrier. One particular group wearing balaclavas, with their badges and names covered in black cloth, oriented themselves several lines deep on the same sidewalk we had been permitted to use. As the riot police began sweeping down the sidewalk they created a bottleneck and citizens of all ages began to be pushed off the curb and into the street. This was in direct conflict with what the event organizers had prearranged with police. Order and exuberance were replaced by chaos and fear. In the ensuing melee, an elderly man was pushed to the ground by the first line of police, I was shot multiple times at close range with 'less lethal' rounds and then beaten with a baton. A young mother and her toddler were pepper sprayed, and countless other individuals faced serious physical and later psychological injury. All of this violence was without provocation. On October 14, 2004 the police had come for a fight.

Sadly, it was not the police's escalation of violence that night in Jacksonville that makes this incident unique. What made that night in Jacksonville different was that while we faced police violence under the guise of Presidential protection, the pro-Bush crowd who could have posed an equal hypothetical threat was untouched. We again learned that the criminalization of dissent can still rear its ugly face at any time and when it does, it often is enforced with a violent hand.

Ten years of *Moss v. Secret Service* has been a potent reminder that the process of seeking justice can be as powerful as the outcome of that search. In challenging the immunity and lack of constitutional accountability of individuals operating under the cover of government secrecy, this case continues to set precedent while addressing one of the darker corners of our legal system. If those in power are actively or passively given permission to act without accountability, abuse of our most basic rights will continue to occur.

Moss v. Secret Service (now *Wood v. Moss*) goes before the Supreme Court on March 26, 2014.

Michael "Mookie" Moss raises goats and farms in Jackson County and he is the lead plaintiff in our lawsuit. Mookie plans to attend the argument at the U.S. Supreme Court in March.

MOSS V. SECRET SERVICE UPDATE, CASE TIED TO 2004 ANTI-BUSH DEMONSTRATION

In October 2004, U.S. Secret Service agents directed state and local police in Jacksonville, Oregon to move an anti-Bush picket line of more than 200 peaceful demonstrators while at the same time allowing a group of pro-Bush demonstrators to remain in the same area undisturbed. The state and local police effort turned violent as the officers used excessive force to move the multigenerational group of anti-Bush demonstrators. As a result, the ACLU Foundation of Oregon filed a federal lawsuit against the Secret Service as well as state and local police agencies, and the individual agents and officers, seeking damages and an injunction against such governmental abuse in the future.

The defendants have been trying to have the case thrown out for several years, even before we can get to the merits of what happened that day. The latest attempt by the federal government to have our clients' claims dismissed will be argued before the U.S. Supreme Court on March 26, 2014. The federal government is asking the Supreme Court to overturn the decision of the 9th Circuit Court of Appeals that we have adequately stated a claim against the Secret Service agents for violating our clients' First Amendment rights by treating them differently than the pro-Bush demonstrators and that the Secret Service agents can be sued for damages for their actions because they should have known their actions were unlawful.

Unfortunately, over the past 10 years this Supreme Court has repeatedly issued decisions that make it harder and harder for individuals to get their day in court for violations of their civil rights by federal officers. But we're used to uphill battles for civil liberties. We will continue to pursue claims on behalf of our clients and we look forward to our eventual day in court.

Many thanks to **Steven Wilker** of Tonkon Torp LLP who is our lead attorney and will argue the case before the Court, his colleagues **Paul Conable** and **James Hein**, our Legal Director **Kevin Díaz** and **Art Spitzer** of the ACLU of the Nation's Capital for all of their hard work on this case over the years. National ACLU Legal Director **Steve Shapiro** and **Ben Wizner**, Director of the ACLU Speech, Privacy and Technology Project have also assisted with the briefs in the Supreme Court.

A peaceful crowd, including families with children, gathered in Jacksonville to demonstrate during President George W. Bush's visit to the town during his re-election campaign in October 2004.

For breaking news and events, find us on:

facebook.com/ACLUofOregon **twitter.com/ACLU_OR**

THE TINKER TOUR COMES TO OREGON

Mary Beth was a 13-year-old junior high school student in December 1965 when she and a group of students decided to wear black armbands to school to protest the war in Vietnam. The school board got wind of the protest and passed a preemptive ban. When Mary Beth arrived at school on December 16, she was asked to remove the armband. When she refused, she was sent home.

Four other students were suspended, including her brother John Tinker and Chris Eckhardt. The students were told they could not return to school until they agreed to remove their armbands. The students returned to school after the Christmas break without armbands, but in protest wore black clothing for the remainder of the school year.

Represented by the ACLU, the students and their families embarked on a four-year court battle that culminated in the landmark Supreme Court decision: *Tinker v. Des Moines*. On February 24, 1969 the Court ruled 7-2 that students and teachers do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate."

The Court ruled that the First Amendment applied to public schools, and school officials could not censor student speech unless it disrupted the educational process. Because wearing a black armband was not disruptive, the Court held that the First Amendment protected the right of students to wear one. The "Tinker test" is still used by courts today to determine whether a school's disciplinary actions violate students' rights.

Mary Beth Tinker is on a national tour to educate young people about their First Amendment rights. The Tinker Tour will be in Oregon March 17 - 19. Visit our website for event announcements.

ACLU Members & Law Students Gather

More than 200 civil liberties stalwarts turned out, last September, to listen to Vanita Gupta, Deputy Legal Director of the ACLU Center for Justice. Ms. Gupta's speech was the highlight of the ACLU of Oregon's Annual Membership meeting and kicked off the 4th Annual ACLU NW Civil Liberties Conference at the Lewis & Clark Law School.

Ms. Gupta is an internationally known civil rights attorney and leads the ACLU's efforts to reform our nation's criminal justice system. Under her direction the ACLU Center for Justice has successfully moved several issues into the public's eye and engaged policy and lawmakers at the local, state and federal levels. The issues include over incarceration, solitary confinement, abolition of the death penalty, and the war on marijuana, including the disproportionate sentencing of African-Americans for non-violent, marijuana-related crimes.

Vanita is pictured here with the Civil Liberties Conference coordinator and law student Joseph Westover and ACLU of Oregon Executive Director David Fidanque.

Photos by David Garlock

ACLU FILES LAWSUIT TO DEFEND FREE SPEECH OF STUDENT ATHLETES, PARENTS

Sportsmanship policy restricts all communication about team, violates Constitution

When Marissa Harper planned for her junior year at Scappoose High School, she was excited about participating in the school's Vision Dance Team as she had in her freshman and sophomore years. Since she was a small child, dance has been her primary extra-curricular activity and has always played an important role in her life. However, when Marissa and her mother, Alicia Harper, prepared to sign the required application to participate on the team, they were shocked to see a new policy that prohibited dance team students and parents from any communication regarding any aspect of the dance team made "verbally or written via social media."

Marissa Harper

Alicia was concerned these restrictions went too far. She brought them to the attention of school officials but no steps were made to change the policies. Alicia and Marissa knew that they couldn't sign the agreement giving up their rights to free speech and expression. They also knew it meant Marissa would not be able to try out for the dance team.

Out of options, Alicia contacted us for help to protect her and her daughter's rights. The ACLU protects the constitutional rights of all people, including students. ACLU of Oregon Legal Director Kevin Díaz is very concerned by the dance team policies saying, "The rules are written so broadly and in such vague terms that the effect is to prohibit dance team members and their parents from making any comments about the dance team and face punishment if they do. To condition participation in a school activity with acceptance of these restrictions about speech is called a 'prior restraint' on speech and is unconstitutional."

We, too, reached out to the school officials but received no response. In December, we filed a lawsuit to ask a court to declare that the Scappoose Dance Team policies regulating speech violate the Harpers' First Amendment rights to free speech and to stop the school and dance team coach from enforcing the unconstitutional policies.

As declared in the landmark Supreme Court decision *Tinker v Des Moines* in 1969, neither teachers nor students "shed their constitutional rights... at the schoolhouse gate. … In our system, state-operated schools may not be enclaves of totalitarianism... students are 'persons' under our constitution."

We read the policies in question as preventing those who agree to them from saying anything to anyone about the school dance team, including communications to school administrators related to the treatment or experience of students on the dance team, statements in support of the team, and reporting on recent wins - whether made at school or in the privacy of someone's own home.

We filed this action in the U.S. District Court in Portland. Cooperating attorneys on the case are Darin Sands, Anthony Stark and Whitney Button of Lane Powell, PC, as well as ACLU of Oregon Legal Director Kevin Díaz.

UPDATE: In late January, as this newsletter was going to press, we received word from the Scappoose School District of their intent to repeal the unconstitutional policy. We are encouraged that we will be able to work out a settlement of this lawsuit that honors the free speech rights of our clients.

Share your appreciation.

If you own appreciated stock, you can make a gift to the ACLU Foundation of Oregon, defend freedom, and pay no capital gains tax on the securities you donate.You'll enjoy the added benefit of an income tax deduction for the fair market value of the securities, no matter what you originally paid for them.

Have Questions? Contact Gail Anderson

Phone: 503-552-2101
Email ganderson@aclu-or.org
www.aclu-or.org/content/stock-donations

This information is not intended as tax or legal advice. We recommend that you consult with your legal and financial advisors to learn how a gift would work in your circumstances. Laws and regulations governing all gifts and availability of certain life income gifts vary by state.

2014 SLATE OF NOMINEES FOR THE AC

We would like to thank outgoing board members **Candace Morgan** (Portland) and **Annabelle Jaramillo** (Philomath) for their service and dedication to the ACLU of Oregon. Each has completed two three-years terms on the board and, due to term limits, board members are not permitted to run for a third consecutive term.

We would like to introduce you to the nominees for the ACLU of Oregon Board of Directors. There are eight at-large positions to be filled in 2014, as well as one vacancy. Five of the candidates are incumbents nominated to run for another three-year term.

Our commitment to increasing the diversity of the board is an important reason why the Nominating Committee has proposed an uncontested slate, only nominating the number of candidates as there are vacancies. There are several criteria to balance as it seeks candidates to run for election to the board. For example, ACLU policy requires that we set out affirmative action goals. In Oregon, our affirmative action plan requires that we strive for gender and racial representation on the board in proportion to Oregon's population as well as representation of people who self-identify as lesbian, gay, bisexual or trans-

Candidates nominated for three-year terms are:

Daniel Bartz (Eugene)

A transplant from the Midwest, I grew up in northern Michigan, and earned my B.A. in Political Science in 2006 from Wright State University in Dayton, Ohio. Becoming a civil rights attorney was my primary motivation for earning my J.D. from the University of Oregon School of Law in 2010. After my admission to the Oregon State Bar in 2011, I worked on employment law issues and assisted with an ACLU of Oregon immigrants' rights case. A person with a physical disability, I also serve as Vice Chair of the Board of Directors of Disability Rights Oregon.

Joyce Cohen (Portland)

Past ACLU of Oregon board member and served as vice president for legislation, member of Budget and Executive Committees. Former member Oregon House of Representatives; former member Oregon State Senate and chair of the Senate Judiciary Committee; recipient of various ACLU legislative awards; public member Oregon State Bar; Board of Governors 1997-2000.

Merry Demarest (Corvallis)

Community organizer with more than thirty years of progressive activism, including leadership on state and local campaigns to defeat anti-choice and anti-gay initiatives. Founding chair of Basic Rights Oregon. National, regional, state, and local positions with the National Organization for Women (NOW) since 1971. Twelve years on the Oregon Women's Rights Coalition. Currently on board of small family foundation. Democratic precinct person since 1982; state and local fundraising and special projects; National Convention Rules Committee 2008.

Greg Hazarabedian (Creswell)

I first became an ACLU member in the 1970s as a young adult in the San Francisco Bay Area. While in law school in Eugene I began working with the ACLU, and was invited to become a member of the ACLU of Oregon Lawyers Committee, on which I still serve. Along the way I also served on the Litigation Review and CaseAcceptance Criteria committees.

Stella Manabe (Hillsboro)

I am third generation in the U.S., but raised in "the old country" which created a cultural chasm that later proved professionally helpful. Anthropology studies at the University of Hawaii and a J.D. from Lewis & Clark Law School helped to release pent-up questions. The new found freedom to question prepared me to develop innovative programs to advance Lewis & Clark's and the Oregon State Bar's diversity missions. I now practice Elder

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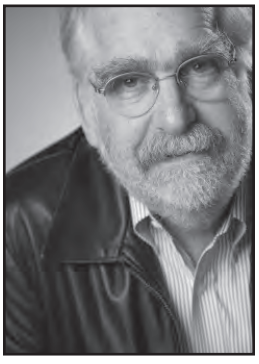
gender and people living with disabilities.

In addition to the affirmative action goals, we also seek candidates who will provide geographic and age diversity, as well as a range of skills and experience. As we seek individuals who meet these criteria, we also ask candidates to meet several expectations, such as attendance at the six bimonthly meetings of the board and to actively participate in the financial stewardship of the organization, particularly fundraising duties.

Additional nominees may be made by a petition of 50 members of the ACLU of Oregon. A petition shall state the term for which a candidate is nominated; it shall also include the candidate's background and qualifications and a signed statement expressing the nominee's willingness to serve if elected. Such a petition must be received in the Portland office no later than 5 p.m. March 24.

Law, focusing to preserve an Elder's autonomy and dignity. I also have the privilege of serving as chair of ACLU-Oregon's Nominating Committee and serve on its Lawyers Committee.



Robert Melnick (Eugene)

I have been a resident of Oregon since 1982, and teach landscape architecture and historic preservation at the University of Oregon. Originally from the east coast, I was raised in a family that believed strongly in the value and worth of each individual.

Surinder Bobbin Singh (Lake Oswego)

I am currently the Executive Director of the Oregon Justice Resource Center, which is an independent non-profit based out of Lewis & Clark Law School that facilitates and supervises pro bono opportunities for law school students primarily in the area of criminal justice. In addition to working with students, the OJRC conducts research on important criminal justice issues and assists with impact litigation. I am 2011 graduate of Lewis & Clark Law School and I received my B.S. from Portland State University."

Dan Winter (Portland)

Dan moved to Oregon from Kansas City in 2011 after retiring as the Executive Director of the ACLU of Kansas and Western Missouri. Before that, he was the president/ceo of a community bank in eastern Kansas. His other non-profit posts include former directorships of Planned Parenthood of Kansas and Mid-Missouri, Midland Hospice, the ALS Association and of a sports organization serving at-risk youth as well as various arts and civil rights organizations.

Nominated to fill a vacancy with two years remaining is:

Stuart Kaplan (Portland)

Former member of the Oregon ACLU Board (Board President, 2006 to 2011) and Oregon's representative on the National ACLU Board from 1998 to 2006; Emeritus Associate Professor of Communication, Lewis & Clark College.

ACLU of Oregon 2014 ballots will be mailed to all members in early April. Has your membership expired? Renew today at www.aclu-or.org.

PORTLAND AIRPORT RUNS ANTI-CLEARCUT AD AFTER ACLU COURT VICTORY

An anti-clearcutting ad began running at the Portland airport on New Year's Day following a Multnomah County Circuit Court refusal to issue a stay on its earlier decision that the Port of Portland had violated the free speech rights of a coalition of conservation organizations when it refused to run the ad.

The rulings came in a lawsuit brought by the ACLU Foundation of Oregon which was handled by ACLU volunteer cooperating attorney **Tom Christ**. The initial Multnomah County Circuit Court ruling on December 13 held that the Port, which manages the airport, had violated the Oregon Constitution's free expression protections when it rejected the ad because it dealt with a "political" issue.

"The court followed well established principles of freedom of expression under the Oregon Bill of Rights," said David Fidanque, Executive Director of the ACLU of Oregon. "We had hoped that this would put an end to censorship at the airport, but unfortunately the Port has announced it will appeal the trial court's ruling."

The ad is part of a statewide campaign funded by Oregon Wild, The Sierra Club, Audubon Society of Portland, and the Center for Biological Diversity. It features a post-card like design and a photograph of a clearcut in Oregon's Coast Range, with the tag line "Welcome to Oregon, Home of the Clearcut!" A version of the ad had run earlier at the Eugene Airport without controversy.

The case raised issues similar to another ACLU case involving a proposed ad rejected by Tri-Met, *Karuk Tribe v. Tri-Met*, which is awaiting a decision in the Oregon Supreme Court. Both the trial court and the Oregon Court of Appeals have held that Tri-Met violated the free speech rights of the conservation groups in that case who had sought to place an ad in Tri-Met vehicles in opposition to effects that dams on the Klamath River have had on salmon runs. Oral arguments before the Oregon Supreme Court in that case took place in February 2012.

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Volunteer with the ACLU!

Volunteers are a vital part of the ACLU family. Help expand our capacity by representing the ACLU at community events, recruiting new members, helping with events, working on our civil liberties hotline, or sharing your professional expertise with us. Interested in getting involved? Email a letter of interest to Sarah Armstrong, sarmstrong@aclu-or.org or call 503.552.2103.

Photo credit: Kate Horton

DEFENDING MEDICAL RECORDS FROM WARRANTLESS SEARCH

On January 15, we were in federal district court in Oregon for oral argument in the ACLU's challenge to the Drug Enforcement Administration's (DEA) practice of obtaining Oregon patients' confidential prescription records without a warrant. We represent patients and a doctor whose prescriptions are tracked in the Oregon Prescription Drug Monitoring Program (PDMP), a state database intended as a public health tool to help doctors and pharmacists avoid and treat drug overdoses and abuse by their patients. Although Oregon law requires police to get a probable cause warrant from a judge before requesting PDMP records in an investigation, the DEA refuses, and instead uses administrative subpoenas to request the records. Unlike a warrant, those subpoenas involve neither prior approval of a judge nor a showing of probable cause.

The DEA argues that they don't need a warrant because people have "no constitutionally protected privacy interest" in their confidential prescription records, but that's just wrong. As we explained in our opening brief in the case:

This case concerns the right to privacy under the Fourth Amendment in some of the most personal and sensitive information people have: prescription records and the confidential medical information they reveal. Prescription records can divulge information not only about the medications a person takes, but also about her underlying medical conditions, the details of her treatment, and her physician's confidential medical advice—all matters that society recognizes as deeply personal and private. Indeed, Oregon law recognizes the need for privacy in this information by specifically requiring that law enforcement obtain a probable cause warrant for such records. Yet, claiming that the State's warrant requirement is preempted by federal law, the federal Drug Enforcement Administration seeks to obtain—and in one case has in fact obtained—Oregon patients' confidential prescription records using administrative subpoenas that do not require a showing of probable cause. Irrespective of whether the State's own warrant requirement is preempted, the DEA's practice violates patients' reasonable expectation of privacy in their prescription records and, therefore, runs afoul of the Fourth Amendment to the U.S. Constitution. A warrant would be required for federal agents to enter the inner sanctum of a person's home and rifle through the contents of her medicine cabinet or bedside drawer; no less protection is required simply because the same information is also stored in a secure database in digital form. As with any other search that infringes on a reasonable expectation of privacy, the DEA must obtain a judicial warrant before perusing a digital archive of patients' confidential health information.

That's why we're in court. When law enforcement wants access to people's most private information, it must comply with the Fourth Amendment. We hope this case will help enforce that rule, and protect the privacy of our most sensitive medical information.

By Nathan Freed Wessler, a Staff Attorney with the ACLU Speech, Privacy & Technology Project and lead attorney on our case. This was first posted on aclu.org.

Pictured outside the federal courtroom in Portland is our legal team fresh from oral argument in our medical record privacy case. Kevin Díaz, ACLU of Oregon Legal Director is flanked (left) by Nathan Freed Wessler, Staff Attorney with the ACLU Speech, Privacy & Technology Project, and (right) Ben Wizner, Director of the Project.

Legal Briefs

You have the right to a jury trial, even if the charges against you are "downgraded."

Picture it: it's 2011 and you're an Occupy Portland protestor. You (and 49 others) are arrested, handcuffed, and booked into jail on criminal charges. If the police had instead issued you a citation (as is the case for a lesser offense) you couldn't have been arrested, handcuffed, and booked – and you wouldn't have the right to a jury trial and by implication, the right to have an attorney appointed to you if could not afford one.

So, what happens if your charges are later downgraded to a citation by the prosecutor? We argued a case (and filed friend-of-the-court briefs in *State v Fuller* and *State v Benoit*) in front of the Oregon Supreme Court about that very question. And the court agreed with us – prosecutors can't deny the right to a jury trial by downgrading charges after-the-fact.

ACLU Foundation of Oregon Cooperating Attorney **Cody Hoesly** of Larkins Vacura LLP worked on the amicus briefs on our behalf and, in an unusual step, argued before the Oregon Supreme Court on behalf of amicus ACLU of Oregon.

Handcuffs Should be Worn Only by Choice

This headline was the gist of a criminal defense attorney's advertisements in Exotic magazine that got him terminated from his contract for legal services with the City of Gladstone. We represented attorney Jared Justice in a wrongful termination action against the city because his advertisements did not mention the City of Gladstone in any way and complied with ethics rules governing attorneys. We were able to negotiate a successful settlement for Mr. Justice that included an agreement by the city to not violate the free speech rights of its employees.

ACLU Foundation of Oregon Cooperating Attorneys representing Mr. Justice were **John Rothermich** and **Kathryn Ball** of Garvey Schubert Barer LLC.

ACLU

AMERICAN CIVIL LIBERTIES UNION of OREGON

Upcoming ACLU Events

Civil Conversation: Marijuana Reform

Tuesday, February 13
5:30 p.m. – 7 p.m.
Eugene Public Library, 100 W 10th Ave, Eugene
Free

Pints & Rights

Wednesday, February 19
5:30 p.m. – 7 p.m.
Rontoms, 600 E Burnside St, Portland
Free

Pints & Rights, an informal gathering for people who are interested in civil liberties and civil rights, will be held monthly on the third Wednesday at rotating locations in Portland. Check our website or Facebook for location information.

Civil Conversation:

Edward Snowden: Traitor or Patriot?
Thursday, February 27
6:30 p.m. - 7:45 p.m.
Hollywood Library, 4040 NE Tillamook, Portland
Free

Liberty Dinner

Saturday, March 1
6 p.m. – Reception, 7 p.m. - Dinner
Oregon Convention Center in Portland
Tickets available online

The Tinker Tour Comes to Oregon

March 17 – Portland
March 18 – Corvallis
March 19 – Eugene

Mary Beth Tinker, plaintiff in the landmark 1969 ACLU case establishing protections for free speech in schools, *Tinker v. Des Moines*, is on a national tour to educate young people about their rights. Read more about her case on page 6. Visit our website for event announcements.

In October, a separate suit, *Geiger v. Kitzhaber*, was filed in the same court that also seeks to overturn Measure 36. The two lawsuits have now been consolidated and are scheduled to be argued before U.S. District Judge Michael McShane on April 23.

"When Paul and I can say we are married, everyone will know and understand we are a family."
– plaintiff Ben West.

It's way too soon to predict what will happen with the federal court cases, but there are reasons to be optimistic. The day after the October case was filed, the Oregon Attorney General's office issued a legal opinion concluding that it is unconstitutional for Oregon to refuse to recognize valid **out-of-state** marriages of same-sex couples. In addition, the 9th Circuit U.S. Court of Appeals recently ruled that government discrimination because of sexual orientation is subject to "heightened" scrutiny – which makes such discrimination much more difficult for the government to justify.

Additionally, across the country a series of recent court decisions now recognize the legal harms that occur when couples

Christine Tanner and Lisa Chickadonz

are denied the ability to marry or recognition for their marriages. These include the ACLU's landmark victory in June before the U.S. Supreme Court in *U.S. v. Windsor*, which held that the federal government must recognize the marriages of lesbian and gay couples who are married under state law, and the Supreme Court's refusal to reverse a California ruling overturning its marriage ban.

The plaintiff couples in our case are Paul Rummell and Ben West, and Lisa Chickadonz and Christine Tanner.

"We have been together for nearly 30 years. We have raised two wonderful children, are involved in our church community

Ben West and Paul Rummell

and are respected in our work. We have done everything we can to legally protect our family and each other," Chickadonz says. "I was raised in a culture where marriage was a very important milestone. When you are lucky enough to fall in love with someone, you get married. I have loved Chris for half of my life and I want to marry her. It's as simple as that."

Plaintiffs West and Rummell have been together for seven years. Early in their relationship, they discovered their mutual goal to be fathers and together they took the steps and training necessary to become foster parents. Their lives were changed when a young boy was placed in their care.

"When you are lucky enough to fall in love with someone, you get married. I have loved Chris for half of my life and I want to marry her. It's as simple as that."
– plaintiff Lisa Chickadonz

"We have been able to help our foster son grow and develop beyond the trauma of his early life and we will do everything to protect him. Soon the adoption process will be complete and we will officially be his dads," West says. "Our son deserves to have a family that is fully recognized and protected by the state of Oregon. I never want our son to feel that his forever-family is less worthy than any other family. When Paul and I can say we are married, everyone will know and understand we are a family."

No matter what the courts decide, it's still important to remove the discriminatory language of the marriage ban from the Oregon Constitution. That can only be done at the ballot box. We continue to need your help to make certain that every Oregonian has the freedom to marry the person they love – this year and forever more.

RELIGIOUS EXEMPTION FROM STATE DISCRIMINATION LAWS PROPOSED

An initiative has been filed to create a religious exemption from Oregon's non-discrimination laws to give corporations and other businesses the ability to refuse to "facilitate, or support any same-sex marriage ceremony or its arrangements."

Since 2007, Oregon's civil rights laws have prohibited businesses that provide services to the public from treating people differently because of their sexual orientation. Just as it long has been illegal to refuse service to someone because of their race, color or national origin, it is already against the law to refuse service to a person because of her or his sexual orientation.

Proponents of the new initiative proposal believe a business owner's or corporation's religious beliefs should make it okay for them to engage in this type of discrimination. Because the proposal is so broad, it would allow giant corporations as well as small businesses to discriminate if the "person" believes providing their service would somehow "support" a same-sex couple's relationship.

While everyone is entitled to hold her or his own religious beliefs (or none at all); those beliefs don't entitle us to discriminate against others in public commerce. Oregon was one of the first states to adopt laws to prohibit discrimination in places of public accommodation, such as restaurants, hotels and movie theaters. Since 1953, it has been against the law for Oregon businesses to discriminate by refusing service because of an individual's race, color, religion or national origin.

In the 1950s, some people felt they had a right to refuse service to African Americans, Asian Americans and Jews. Thankfully, as a society, we agreed that such discrimination was wrong. Discrimination on the basis of sexual orientation is also wrong and we shouldn't be giving a license to discriminate to any business in Oregon.

If the proponents are successful in gathering 87,213 valid signatures, this measure will appear on the November ballot. Our first step is to advocate for a clear and accurate ballot title so that Oregon voters will understand the true effects of the initiative. **Greg Chaimov** of Davis Wright Tremaine is the ACLU Foundation of Oregon's cooperating attorney in this matter.

Take a Stand with the ACLU:

Host a House Party to Help Bring the Freedom to Marry to Oregon

We have an unprecedented opportunity this year to make certain that every Oregonian has the freedom to marry the person they love – and we need your help to make it happen. While a federal judge may soon decide whether Oregon's marriage ban violates the U.S. Constitution, only voters can remove the discriminatory language of that ban from our state constitution. Join us in support of the campaign to bring the freedom to marry to Oregon!

Host an ACLU house party for marriage equality.

House parties and other social gatherings are a critical piece of the path to victory. They help raise crucial funds for the Oregon United for Marriage campaign, help us recruit new ACLU members, identify volunteers, and allow us to have important conversations about the work that we and our coalition partners are doing to expand the freedom to marry to include all Oregonians in November.

Your house party can be as intimate or extravagant as you would like to make it. You open your home to your friends and provide refreshments. We provide you with planning support, materials, and a speaker to make your house party a success. For more information or to sign up to host a house party, email Sarah Armstrong, sarmstrong@aclu-or.org or call 503.552.2103.

OUT FOR FREEDOM
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SATURDAY MARCH 1 7 pm

LIBERTY DINNER

OREGON CONVENTION CENTER

A benefit for the ACLU Foundation of Oregon

Celebrating Freedom and Protecting Privacy

In the wake of the Snowden leaks that have revealed the shocking extent of the NSA's snooping on millions of people

The program will feature:

Special cameo appearance by Glenn Greenwald sponsored by **Morel Ink.**

Keynote speaker Ben Wizner, Edward Snowden's lead legal adviser and Director of the ACLU's Speech, Privacy & Technology Project.

Comic relief by **Matt Bors,** a nationally syndicated editorial cartoonist and a 2012 Pulitzer Prize Finalist.

Special recognition of our **volunteer Cooperating Attorneys** of the past year.

Our Sponsors:
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Table sponsorships still available. Call 503.552.2101
Purchase tickets by February 25 at **aclu-or.org/2014-liberty-dinner**