

## *Secret Service and White House Charged with Violating Free Speech Rights in ACLU Lawsuit*

The American Civil Liberties Union filed a lawsuit on September 14 against the United States Secret Service and Greg Jenkins, Deputy Assistant to the President and Director of White House Advance, on behalf of a West Virginia couple who were arrested at a Fourth of July presidential appearance at the state Capitol because they were wearing t-shirts critical of the president.

"This is a simple case," said ACLU Senior Staff Attorney Chris Hansen, who is the lead counsel in the case. "Two Americans went to see their president and to express their disagreement with his policies respectfully and peacefully. They were arrested at the direction of federal officials. That is precisely what the First Amendment was adopted to prevent."

Jeff Rank, 29, who is a registered Republican, and his wife Nicole, 30, had never engaged in political protest in the past, and said that they had no intention to disrupt the president's visit. The Ranks obtained tickets for the event and were admitted to the Capitol grounds without any problems, but drew attention when they removed their outer garments to display t-shirts bearing the international "no" symbol (a circle with a diag-

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ACLU-WV holds a press conference with clients Jeff and Nicole Rank outside the state capitol.

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## *ACLU of West Virginia Sues City of Bridgeport for Banning Political Yard Signs*

The American Civil Liberties Union of West Virginia filed a First Amendment lawsuit on October 18 challenging a City of Bridgeport ordinance banning political signs on private residential property for more than 11 months of the year.

The ACLU of West Virginia filed the suit on behalf of Bridgeport resident Daniel McFadden, who initially placed political signs in his front yard at the end of August, but was later told that a city ordinance prohibited displaying such signs until 15 days before and 48 hours after an election. McFadden, who'd like the freedom to display political signs on his property at other times of the year, can only do so at the risk of having his signs confiscated, a fine of up to \$500, and imprisonment for up to 30 days as stated in the ordinance.

"The ability to express one's political viewpoint is an indispensable condition of a free

democratic society," said Andrew Schneider, Executive Director of the ACLU of West Virginia. "For the city of Bridgeport to decide a resident may speak about a political issue 15 days before an election but not 16 days beforehand is an illogical and unnecessary restriction of our most fundamental freedom."

The lawsuit also asserts that the less restrictive requirements for non-political signs in the Bridgeport ordinance unfairly discriminate against political speech in violation of First Amendment rights.

The ACLU-WV is asking the court to declare the ordinance unconstitutional and prevent the city from enforcing it.

The suit was filed in United States District Court for the Northern District of West Virginia and Robert Bastress is serving as ACLU-WV cooperating attorney.

## Religion Exploited on the Campaign Trail

By Andrew Schneider  
Executive Director

Throughout our nation's history there has been an ongoing debate about religion's proper place in American public life. On one side are those who believe that America is a Christian nation and should be led by Christians. On the other are those like the ACLU who emphasize that the nation is a haven of religious freedom and should separate matters of state and issues of faith. The latter argument prevailed at the constitutional convention of 1787 and resulted in a constitutional ban against religious tests. But while the Constitution guaranteed a secular state, many Americans who considered religion central to their lives, especially defenders of Protestant orthodoxy, felt the issue was not settled. They discovered a means and a forum for attaining their goal: a voter-imposed religious test to be applied in the arena of public opinion. Religion could be ignored by the Constitution, but it could not be removed from politics.



The 2004 election season in West Virginia provided some ugly examples of candidates and their supporters trying to apply a voter-imposed religious test on their opponents.

George W. Bush, Karl Rove, and the Republican National Committee they control, sent out a mailing to West Virginia voters that suggested the Bible would be banned and same-sex marriage allowed if voters didn't support the Republican ticket. John Kerry, the intended target of this attack, never seemed to address the charge himself. Perhaps Kerry should have taken a page from the Jeffersonian playbook: when the Federalists tried to impose a religious test on Thomas Jefferson in his bid for the White House in 1800 (accusing him of being anti-Christian) Jefferson and his supporters threw one right back at them. The Jeffersonian newspaper *Aurora* presented the election choice as "Things As They Have Been" under the incumbent: "Priests and Judges incorporated with the Government for political purposes, and equally polluting the holy altars of religion, and the seats of Justice." Or they could opt for "Things As They Will Be" under a Jefferson Administration: "Good government without the aid of priestcraft, or religious politics." Jefferson prevailed.

On the Democrats' side, a 527 group, West Virginia Consumers for Justice, ran a radio ad on behalf of Democratic state Supreme Court Justice Warren McGraw that attacked his opponent Brent Benjamin for saying it "bothers" him when public officials use the Bible to justify a position. Benjamin called the attack "offensive" and added "I think it's wrong to use the Bible as a prop in a sales pitch. I was taught it was wrong to use the Bible for self-gain, and I believe that. And now, I would probably add to that, I think it's wrong to use the Bible in an attempt to get political gain."

While we consider the mixture of religion and politics to be protected speech in the free marketplace of ideas, mixing it up in the fashion mentioned above is contrary to the spirit of the Constitution and needs to be rejected. Clearly this election tells us we face a serious challenge in the coming years to shift the public debate from religious beliefs back to the traditional American value of religious freedom. If we don't, faith-based campaigns will very quickly become faith-based initiatives and religious freedom will suffer.

## PRESIDENT'S CORNER – NOVEMBER 2004

### After the Election Challenges

By Chuck Smith

As I write this, the election is a week away. Like most Americans, I am speculating about the outcome of the presidential election. Whatever the outcome, we in the ACLU will face plenty of challenges to civil liberties.



enact radical policies seeking to further establish their Religious Right ideology as public policy. The assault on reproductive freedom continues, racial profiling is flourishing, and police will still occasionally execute warrantless searches.

The world is still living under the threat of terrorism and we must continue our vigilance and oppose policies intended to protect from terrorism by unnecessarily compromising basic rights. The entrenched leadership in the U.S. House of Representatives will continue, no matter who is president, to

The fastest growing ACLU affiliate is our own here in West Virginia. You, who join with us and support us with your enthusiasm and financial support, are the champions and defenders of civil liberties in the Mountain State. We appreciate that support. Thank you for all you do to protect the Bill of Rights.

## The Mountain Torch

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## Snapshots from the ACLU-WV Bill of Rights Dinner on September 19, 2004

(right) D.C. Sniper Investigator and ACLU racial profiling consultant Charles Moose delivers keynote address.



(above) ACLU-WV Board President Chuck Smith presents the Sid Bell Memorial Award for service to the affiliate to former ACLU-WV Treasurer Louis Lieto.



(above) WV House Judiciary Chair Jon Amores bares his free speech t-shirt after accepting the ACLU-WV's Roger Baldwin Founders Award.

Photo Credit: Paul Corbett Brown

## In Memoriam

The ACLU of West Virginia is deeply saddened by the recent death of Tom Moses. He died on October 12 at the age of 79. We extend our sympathy and support to the family and friends of this dedicated civil libertarian.

Tom Moses was born in Cleveland, Ohio. He earned his bachelor's degree at Kent State University and graduate degrees in social work/community organization at the University of Wisconsin and Brandeis University. He served in World War II as a medical paratrooper in the 82nd Airborne and was awarded the Bronze Star.

Moses was a longtime member of the ACLU and a tireless civil libertarian who became involved in countless efforts to defend the Bill of Rights throughout his life. Among those, was his involvement in the "Joe Must Go" movement in Wisconsin during the '50s to rid the state of U.S. Senator Joe McCarthy whose name became synonymous with witch hunt. He was active in fair housing and civil rights work in Cleveland and Baltimore. He started the first welfare rights organization in the country in Ohio. Moses also started the Eastern Panhandle chapter of the

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## Secret Service Sued

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onal line across it) superimposed over the word "Bush."

Although the couple stood peacefully on the public grounds with the rest of the audience, two men believed to be working for the Secret Service or White House approached the Ranks and demanded that they remove or cover their t-shirts. When the couple refused, the officials instructed city police to arrest Jeff and Nicole, causing them to be removed from the Capitol grounds in handcuffs, jailed for one to two hours and charged with trespassing. Nicole Rank was also temporarily suspended from her work with the Federal Emergency Management Agency (FEMA).

"We wanted to see the president speak and express our disagreement in what little way we could," said Nicole Rank, who is originally from Corpus Christi, Texas but was assigned to work on a

FEMA flood relief project in West Virginia. "We never imagined that we would end up in jail because of a home-made t-shirt."

The charges against the Ranks were ultimately dismissed in court and the mayor and city council publicly apologized for the arrest. City officials also said that local law enforcement was acting at the request of the Secret Service.

"It seems that our Charleston police officers were acting at the request of federal government officials and would otherwise have respected the First Amendment rights of our residents," said ACLU of West Virginia Executive Director Andrew Schneider. "The Ranks were ejected for wearing t-shirts expressing a dissenting opinion while other attendees wearing Bush campaign t-shirts and buttons were allowed to remain."

In September, the ACLU asked a federal court to bar the Secret Service from directing local police to restrict protesters' access to presidential visits. The Secret Service denied engaging in the

practice, but agreed with the ACLU that such actions would be inappropriate and unlawful.

"The Secret Service has promised not to curtail the right to dissent at presidential appearances, and yet we are still hearing stories of people being blocked from engaging in lawful protest," said Hansen. "It is time for the Secret Service to stop making empty promises."

The lawsuit, Rank v. Jenkins, is seeking unspecified damages as well as a declaration that the actions leading to the removal of the Ranks from the Capitol grounds were unconstitutional.

In addition to Hansen, attorneys in the case are ACLU of West Virginia Staff Attorney Terri Baur, ACLU of Pennsylvania Greater Pittsburgh Chapter Litigation Director Witold Walczak, ACLU of the National Capital Area Legal Director Arthur Spitzer and co-operating attorney Harvey D. Peyton in West Virginia.

*In Memoriam:  
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ACLU-WV and served on the ACLU-WV Board of Directors. In addition, he played an important role in the successful effort to persuade Senator Byrd to oppose the flag desecration amendment.

He is survived by his wife of 58 years, Naomi, and their three daughters, one of whom, Lynn Yellott of Shepherdstown, is also a human rights activist in West Virginia. The family has established a fund in his name at Shepherd University's Byrd Center on Legislative Studies to support an annual lecture series with a focus on constitutional issues and civil liberties.

*ACLU of West Virginia to Hold Election for Board of Directors*

The election for the Board of Directors of the ACLU of West Virginia will be by mail-in ballot in December. Five Board positions are up for election. These positions are for three-year terms beginning in January 2005.

"Our current Board is particularly active in the work of the organization," said Chuck Smith, President of the ACLU-WV Board of Directors. "Committees oversee the finance of the affiliate, fundraising, membership recruitment, legislative agenda, and selection of legal cases."

Members who would like to serve on the Board should send a 200-word biography to the ACLU of West Virginia. The

biography should emphasize why the member wishes to serve and his or her commitment to civil liberties. The letter containing the biography must be post-marked no later than November 27, 2004. Biographies may also be sent by e-mail to [wvclu@aol.com](mailto:wvclu@aol.com).

To qualify for Board membership, one must be a member in good standing of the ACLU, be willing to participate in fundraising both as a donor and solicitor, and be able to attend meetings every two months. The meetings are held at various sites around the state on Saturdays. Election ballots will be mailed to the membership at the beginning of December.



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