

The Mountain Torch

The Newsletter of the American Civil Liberties Union of West Virginia

Summer 2004

Governor Signs Racial Profiling Data Collection Act into Law



Governor Bob Wise, joined by supporters of the bill, signs the Racial Profiling Data Collection Act into law.

The ACLU of West Virginia celebrated a major victory this legislative session when Governor Bob Wise on March 31 signed the Racial Profiling Data Collection Act into law.

"We hope this marks the beginning of the end for the unjust practice of substituting skin color for evidence by law enforcement officers," said Andrew Schneider, Executive Director of the ACLU of West Virginia. "We are pleased and grateful that the Legislature, the Governor, the NAACP, and our allies in law enforcement on this issue, namely the State Police, helped us to advance this significant legislation."

Racial profiling occurs when law enforcement relies on race, ethnicity, national origin, or religion in selecting which individuals to subject to law enforcement investigation. This practice not only violates our nation's basic constitutional commitment to equal justice under the law, but violates principles aimed at eliminating racism. Study after study reveals that profiling by federal, state, and local law enforcement is widespread.

Collecting data during traffic stops can send a message to the community that the department is against profiling, facilitat-

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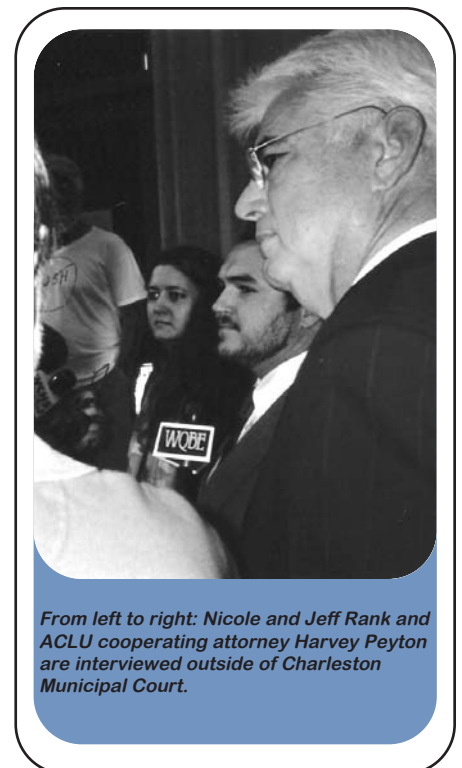


ACLU Applauds Court Decision to Dismiss Charges Against Couple Wearing Anti-Bush T-Shirts at July 4th Presidential Rally

In a victory for free speech, the American Civil Liberties Union of West Virginia applauded a July 15 court decision dismissing trespassing charges against a couple who wore anti-Bush t-shirts to a July 4th rally for the President at the State Capitol.

"It is ironic that two people were arrested on the Fourth of July for expressing their First Amendment rights," said Andrew Schneider, Executive Director of the ACLU of West Virginia, which represented the couple, Jeff and Nicole Rank.

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From left to right: Nicole and Jeff Rank and ACLU cooperating attorney Harvey Peyton are interviewed outside of Charleston Municipal Court.

A Good Year for Civil Liberties in the Legislature

The 2004 legislative session began with all the telltale signs of another inauspicious year for civil liberties. On day one, every legislator received a hand-delivered copy of the Coral Ridge Ministries' publication entitled "A Wolf in Sheep's Clothing: The Intolerable



Aggression of the American Civil Liberties Union's Anti-Christian Agenda." This appeared to be an ominous indication that we'd be headed for a tough session; one further compounded by having to wear those bulky sheep costumes!

The focus of our legislative agenda, approval of the Racial Profiling Data Collection Act, did not seem any more promising. Early on, some police officials who claimed it would deter officers from stopping motorists attacked the legislation. Charleston Mayor Danny Jones added to the chorus of opposition by telling Kanawha County lawmakers "I quite frankly don't think it's any of your business. You all aren't out in the mud and the blood and the beer." And the Charleston *Daily Mail* editorialized "what some call racial profiling, others will call good police work." Fortunately, the proponents of this bill were undaunted by these attacks. Delegate Carrie Webster and Senator Larry Rowe deserve much credit for their relentless advocacy of this legislation and its passage.

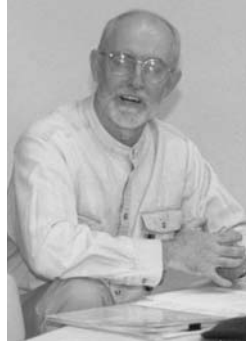
With the unexpected opposition to the racial profiling bill, the session was just warming up. Next, Delegate Randy Swartzmiller introduced a bill that would require sex offenders to drive with specially marked license plates. We joined the public debate by arguing that these offenders would be subjected to a modern day scarlet letter after they had paid their debt to society by serving out their sentences. Equally troubling was the likely prospect that these individuals, and the family members who might operate their vehicle, would be subjected to harassment or even vigilantism. That didn't seem to bother House Roads and Transportation Chair Barbara "Bobbie" Warner who ran the bill twice until it finally passed her committee. Thanks to House Judiciary Chair Jon Amores, the bill was killed in his committee.

Despite the initial omens, the ACLU and civil liberties fared very well in the Legislature this year. Our record was nearly perfect in defeating anti-civil liberties legislation and we scored a victory in the fight against racial profiling. I think that calls for a celebration! Join us on Sunday, September 19 for our Bill of Rights Dinner when we honor Delegate Jon Amores for his pivotal role in making this a good year in West Virginia for civil liberties. Dress: sheep's attire optional.

PRESIDENT'S CORNER -- AUGUST 2004

Addressing Election-related Civil Liberties Issues

The upcoming November 2004 election has brought several election issues to the attention of our affiliate. The arrest of two people wearing tee shirts with a political message at a Charleston speech by President Bush and concerns about the potential for fraud with new electronic voting machines have focused the attention of our affiliate on election issues.



In July we represented Jeff and Nicole Rank. They were arrested while attending the president's July 4 speech at the State Capitol because they wore tee shirts with anti-Bush slogans. The Charleston Municipal Court eventually dismissed these charges; several days later the Charleston

City Council enacted a resolution apologizing for the arrest.

The Charleston police arrested the Ranks at the request of White House security officials. In his capacity as president, Mr. Bush visited Charleston on July 4. White House officials determined that people displaying political messages would not be allowed to attend the non-partisan speech at the capitol.

I spent that morning observing how security people treated people attending the event at the Capitol. I observed that members of Patriots for Peace were not allowed to display a banner on the edge of the capitol grounds. The police required them to move the sidewalk adjacent to the capitol grounds.

The security officers did allow numerous people dressed in Bush campaign tee shirts to enter the event; furthermore, almost all of those who attended wore Bush buttons.

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Legislative Report

ACLU-WV Praises Governor For Vetoing Fetal Homicide Bill

The ACLU and the rest of the pro-choice community breathed a sigh of relief when Governor Bob Wise vetoed the anti-choice Unborn Victims of Violence Act. This bill, supported by large anti-choice majorities in both houses of the Legislature, was the subject of an intense lobbying effort by pro-choice advocates.

The Unborn Victims of Violence Act, or SB 566, would have treated fetuses at any stage of development as independent victims of criminal acts. This would elevate the status of a fetus - even an embryo only weeks old, perhaps before its existence is known - to one equal to that of the adult woman who suffers the primary harm.

SB 566 was unnecessary because violent crimes against pregnant women could be assigned tougher sentences without undermining the legal foundation of reproductive freedom. It was apparent that the true aim of the bill was not to protect women from violence but to define life at conception.

Endowing the fetus with legal rights distinct from those of the woman erodes the reproductive freedoms guaranteed by the Constitution. It creates tension with the Supreme Court's decision in *Roe v. Wade* where the Court ruled that "the word 'person,' as used in the Fourteenth Amendment, does not include the unborn."

The bill also defied the Constitutional guarantee of freedom of religion. Different religions disagree on when life begins; this bill would codify one religious viewpoint at the expense of others.

During the final night of intense debate surrounding SB 566, House Judiciary Chair Jon Amores spoke effectively against the bill. The following is an excerpt of his comments:

"By passing this bill and failing to acknowledge that as much as 60% of all pregnancies end in miscarriages we will inevitably be unjustly punishing people with murder, all in the name, in my opinion, of making a political and religious statement. Now, maybe someone ought to just lop off the top of the dome and replace it with a steeple and be done with it. But until that happens, I cannot abide by this bill and I will vote against it."

ACLU Lauds Demise of English-Only Bill

A bill that would have established English as the official state language was killed in the House.

A nationwide organization called U.S. English has been promoting these laws around the country. "English only" laws declare English to be the official language of a state and require government agencies to communicate and provide assistance only in English. These laws are inconsistent with both the First Amendment right to communicate with or petition the government for a redress of grievances and the constitutional guarantee of equality.

"Current 'English only' laws are based on the false premise that today's immigrants will not learn English without government coercion," said Jennifer Meinig, ACLU-WV lobbyist. "They do nothing to constructively increase English proficiency, yet discriminate against and punish those who have not yet learned English."

The irony is that West Virginia hardly has the level of immigration that usually precipitates such a law. However to our surprise, the bill sailed through the Senate and was opposed by only Senators Randy White, Brooks McCabe and Truman Chafin.

During floor debate, Senator White effectively encapsulated the problems with this bill: "As [immigrants] come across our borders and become new citizens, I don't think we want to send out a statement to them that West Virginia is not friendly, that we are intolerant. I don't think we want to punish those who have not had the opportunity to learn the English language as the result of escaping either political or religious persecution from foreign lands."



Governor Signs Racial Profiling Data Collection Act into Law

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ing trust and respect. Additionally, data provides law enforcement with information about the stops being made by officers and the proportion of time and outcome of high-discretion stops. This information helps to identify potential police misconduct and deter it through the development of training programs to educate officers about racial profiling.

The Racial Profiling Data Collection Act, which unanimously passed the Senate and overwhelmingly passed the House, will require all county and municipal law enforcement officers in West Virginia beginning on January 1, 2005 to collect data on moving traffic stops including but not limited to the perceived racial characteristics of each operator stopped. This is basically the same information that the West Virginia State Police are already gathering voluntarily during their stops. During the Senate hearing on the bill Colonel Howard Hill, Superintendent of the West Virginia State Police, testified that his agency found their data collection to be a helpful tool.

The collected data will be submitted to the Division of Motor Vehicles and then will be analyzed by the Governor's Committee on Crime, Delinquency and Correction and turned into a public report to be issued on February 1, 2006 and every year thereafter.

Legal Briefs

Couple Wearing Anti-Bush T-Shirts

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"The ACLU applauds the City of Charleston's decision to drop the absurd trespassing charges against the Ranks."

The Ranks were arrested at a rally for President Bush at the West Virginia Statehouse after they removed an outer layer of clothing to reveal homemade anti-Bush t-shirts. Local law enforcement officials removed the couple from the event in handcuffs when they refused to cover the t-shirts.

ACLU-WV cooperating attorney Harvey Peyton represented the Ranks before Charleston Municipal Judge Carole Bloom. Judge Bloom dismissed the charges after a city attorney informed the court that the law enforcement officers had no authority to charge the Ranks with trespassing at the Statehouse. According to city officials, the arresting officers were acting under the direction of the Secret Service. Subsequently, the city issued a formal apology to the Ranks presented in a resolution by Councilman Harry Deitzler. The apology stated that the rights of the Ranks "to freely express themselves, as guaranteed by both the United States and West Virginia Constitutions, was directly or indirectly abridged, suppressed or prevented by the City of Charleston."

The incident was not the first time the ACLU has come to the defense of protesters at political rallies. In September, the ACLU asked a federal court for a nationwide injunction barring the Secret Service from directing local police to restrict protesters' access to appearances by President Bush and other senior administration officials. The Secret Service denied engaging in the practice, but agreed with the ACLU that such actions would be inappropriate and unlawful.

"The ACLU will be out there watching and monitoring to make sure free speech rights are not violated by any government agency, regardless of political affiliation," Schneider said.

ACLU-WV's Lawsuit Seeking Marriage Equality in West Virginia is Denied its Day in Court

In a 3 to 2 vote, the West Virginia Supreme Court of Appeals on April 1 refused to hear the lawsuit filed by the ACLU-WV asking the Court to strike down the discriminatory state law denying same-gender couples the right to marry.

"The issue at stake here is whether to honor the Constitution's guarantee of equality by extending to lesbian and gay couples the same protections and safeguards that heterosexual couples and their children currently enjoy through marriage," said Andrew Schneider, Executive Director of the ACLU of West Virginia. "We are disappointed that the Court missed an opportunity to put an end to this harmful discrimination."

The lawsuit was filed on March 6 by ACLU cooperating attorney Roger Forman on behalf of three same-gender couples as the result of Kanawha County Clerk Alma King's refusal to issue them marriage licenses.

"When you hear the stories of the people involved in this lawsuit, it is obvious that lesbian and gay couples suffer real harms when their relationships are not recognized by the state," said Terri Baur, Staff Attorney of the ACLU of West Virginia.

One of these couples, Patricia Link and Sheila Chambers, has been together for 23 years. They have been required to pay thousands of dollars for legal documents that only partially guaran-

tee them some rights. Ms. Chambers worked 30 years in a factory and can provide no benefits or pension to her chosen life mate. When Ms. Chambers had an occupational accident and was hospitalized in critical condition, hospital staff denied Ms. Link access to her life partner, who she feared was dying.

Another couple, David Shumate and Andy Ragland, have lived together as spouses for 12 years. Mr. Shumate is a retired teacher, with 31 years of teaching experience and a pension that he cannot bestow upon Mr. Ragland. They both require separate health insurance coverage. Like Ms. Link and Ms. Chambers, they desire to be married so that they can enjoy the same comfort and security that is bestowed upon committed straight relationships.

The third couple, J. Wade Davis and Jamie Bailey, have been together for several years in a committed relationship. They own a home together. Mr. Davis has two sons who interact as family with Mr. Bailey. Like the other plaintiffs, they too are deprived of the many benefits and protections that are available to families in which adult partners are joined in a civil marriage.

For the time being, the ACLU-WV plans to focus on public education efforts to boost support for gay marriage. Eventually, marriage equality will make its way back into the West Virginia court system and when it does, the ACLU will be leading the charge.

SNAPSHOT



From left to right: Jack Magan, Shannon Riley Berman, Andrew Schneider, and ACLU summer intern Allen Barry march behind the ACLU-WV banner in the June 13 West Virginia Rainbow Pride Parade in Charleston.

Chapter News

Panel Discussion on the Bill of Rights with Harry Belafonte a Success

by Tenley Shewmake

President of the Southeastern chapter of the ACLU-WV

More than 450 people came together on Flag Day, June 14, at Carnegie Hall in Lewisburg for a panel discussion on the Bill of Rights sponsored by the Southeastern Chapter of the ACLU-WV. The program featured keynote speaker Harry Belafonte and eight West Virginians representing a broad spectrum of political thought. The program and Q&A period were compelling enough to keep the audience for a full 3 hours, and to receive prominent press coverage from the media. "Great show last night! It was a wonderful change to have ideas--vital, fundamental principles--live, on stage at Carnegie Hall" was the comment from Lewisburg City Council Member Vivian Conly.

Harry Belafonte "spoke passionately about the need for protection of the Bill of Rights" (Page 1 *Beckley Register Herald* 6/15/04), and the panel of community members moderated by humanities scholar Joan C. Browning shared views about the impact of the Bill of Rights on religious freedoms, the press, politics, law, justice, and social equality. The *Mountain Messenger* story is available online at (<http://mountainmessenger.com/news061904.html#Liberties>).

The participants were Keynote Speaker Harry Belafonte; Moderator Joan C. Browning; Frank Spicer, Editor *WV Daily News*; The Honorable Mary Pearl Compton, former WV State Delegate; Rev. Nelson Staples III, NAACP; Rev. Dexter Taylor, Old Stone Presbyterian Church; Dr. Richard Kerr, Libertarian Party of West Virginia, NRA; E. Lavoyd "J.R." Morgan, attorney; Allen Johnson, Director, Pocahontas County Library; and William D. Turner, attorney.

As part of the Flag Day Celebration, the Southeastern Chapter of the ACLU-WV

sponsored a Bill of Rights Essay Contest. Andrea Robertson, a Monroe County 12th Grader at James Monroe High School, won the \$100 cash prize with her essay about the Second Amendment.

As a community-building, public relations event, the Flag Day Celebration succeeded in forging excellent relationships between the Southeastern Chapter and members of the community. Panelists, Carnegie Hall staff, and the public have all expressed appreciation for this event and hope for future ACLU programs. Moderator Joan Browning said of the Flag Day Celebration, the "quality and dignity of the entire event, from pre- and post-event publicity to the evening itself, elevate the stature of all who participated."

We plan to take a People's Bill of Rights before the Lewisburg City Council, and are considering a public forum on the Patriot Act as part of our ongoing educational mission. Pictures from Flag Day and additional details are available on our chapter website, <http://liberty.alterra-wv.com/>.

In Memoriam

The ACLU of West Virginia is saddened by the recent deaths of David F. Ricks, Leff Moore, and G. Drew Forrester. We extend our sympathy and support to the families and friends of these dedicated supporters of the ACLU-WV.

David Ricks died on April 13. He was 77.

Born in Wyoming during the Great Depression, Ricks, a World War II veteran, escaped a life of subsistence farming by using the G.I. Bill to earn his bachelor's degree and Ph.D. from the University of Chicago.

He went on to become a professor of psychology at Harvard University and other institutions before becoming the chairman of the University of Cincinnati psychology department in 1977. He retired from that school in 1992. A year later he moved to Shepherdstown. There he was active in the Eastern Panhandle chapter

of the ACLU-WV.

Ricks was preceded in death by one son and is survived by his wife Annie, two sons, three daughters, thirteen grandchildren, and one great-grandchild.

Leff Moore died on April 20. He was 60.

Moore was a political visionary, a staunch civil libertarian, a leading advocate of all-terrain vehicle safety, and an activist in Democratic Party politics. He was a generous contributor to the ACLU for many years. Moore was a lobbyist for various organizations and served one term as a county commissioner in Putnam County from 1977-82. For his accomplishments in that position, he received the Putnam County Chamber of Commerce Mayo Lester Award. He is survived by his wife Karen Coria.

G. Drew Forrester died on June 21. He was 51.

He worked for various social service agencies. Forrester also started, owned, and operated his own business, Spectrum Services, and its subsidiaries, Olde Towne Chimney Sweeps and Custom Improvements.

He "very much believed in 'local charities,'" said his brother Randy Forrester of Pittsburgh, PA. This was most evident by his generous bequest to the ACLU-WV. In addition to his card-carrying membership in the ACLU, Forrester served on the Board of Directors of several non-profits. He was a volunteer actor with both the Greenbrier Valley Theatre and Carnegie Hall, was a member of The Men of Greenbrier, and umpired for Little League Baseball for three years.

He is survived by his brother Randy and Jim Huggins (Randy's partner of over 30 years).



Jon Amores

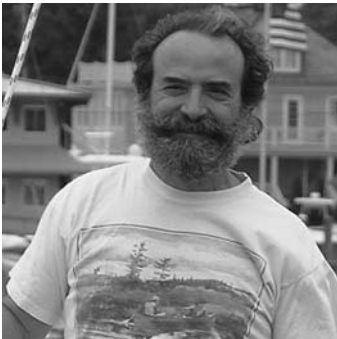
ACLU-WV to Honor WV House Judiciary Chair Jon Amores and Past ACLU-WV Treasurer Louis Lieto

The ACLU of West Virginia will honor West Virginia House Judiciary Chair Jon Amores and past ACLU-WV Board Treasurer Louis Lieto for their contributions to civil liberties at the September 19 Bill of Rights Dinner.

Delegate Jon Amores as Chair of the House Judiciary Committee has emerged as one of the ACLU-WV's staunchest allies in defending the Constitution in the West Virginia legislature. He has been an outspoken opponent of provisions of the PATRIOT Act that threaten our civil liberties - a concern that led him to twice sponsor a bill called the Anti-Government Surveillance Act to safeguard those rights on the state level. In his role as Judiciary Chair, he helped the ACLU-WV this year to kill just about every anti-civil liberties bill that had any chance of going anywhere, and he helped us guide to passage the Racial Profiling Data Collection Act. Thanks in

large part to Amores, this legislative session was the best for civil liberties in recent memory. The Roger Baldwin Founder's Award will be presented to Delegate Amores.

Louis Lieto served on the ACLU-WV Board of Directors from 2000 to 2004, and was Treasurer of the affiliate for the last three years. As Treasurer, Mr. Lieto was a huge asset to the Board. He understood numbers and budgets extremely well and had a knack for explaining the complexities to the Executive Director and to those Board members who hadn't exactly excelled in college math class. His dedication was particularly demonstrated by his development of a long-range budget plan to set the affiliate on a firm financial footing once our new staff attorney was hired. The Sid Bell Memorial Award for service to the affiliate will be presented to Mr. Lieto.



Louis Lieto

D.C. Sniper Investigator to Keynote ACLU-WV Dinner

The ACLU of West Virginia is pleased to announce that Charles Moose, ACLU racial profiling consultant and chief investigator of the D.C. sniper case will be the keynote speaker for this year's Bill of Rights Dinner to be held on Sunday, September 19.

As an African-American male growing up in the racially turbulent 1970s, former Montgomery County, Maryland Police Chief Charles Moose had aspirations of one day becoming a defense lawyer. Moose stated, "I really didn't like the police. I was pretty sure the police made up the things that they did so that they could be mean, to African Americans in particular. So by being a police officer for a couple of years, I would have some tremendous insight about how they did that, how they thought, and then I would be a very good defense attorney." After several years as an officer, however,

Moose came to realize that the police did not simply make up facts, and he eventually abandoned his pursuit of law school. He would rise to police chief in Portland, Oregon and after six years there, Moose became chief in Montgomery County, Maryland, a suburb of D.C., a county that sought out an African-American chief because of charges of racial profiling.

He became one of America's best-known law enforcement leaders because of his role as head of the multi-jurisdictional taskforce that successfully apprehended the serial snipers who terrorized suburban Washington, D.C. during the fall of 2002.

Born in North Carolina, Moose pursued his undergraduate career at the University of North Carolina and his post-graduate master's and doctoral studies at Portland State University.

He is the author of *Three Weeks in October: The Manhunt for the Serial Sniper*, which was released in the fall of 2003 and gives both his biography and an inside look into the sniper investigation which ended with the arrests and convictions of both Lee Boyd Malvo and John Allen Muhammad. Moose is currently a consultant on the ACLU's campaign against racial profiling.



Charles Moose

2004 Bill of Rights Benefit

Please join us for the annual ACLU of West Virginia Bill of Rights Benefit

Saturday, September 19th

Reception 5:30 pm
Dinner 6:30 pm

Embassy Suites Hotel
300 Court Street
Charleston

Honoring
Roger Baldwin Founder's Award Recipient
Jon Amores, Chair, House Judiciary Committee

Sid Bell Memorial Award Recipient
Louis Lieto
Former ACLU-WV Board Treasurer

Keynote
Charles Moose
ACLU Racial Profiling Consultant and
Chief Investigator of the D.C. Sniper Case

TICKET INFO:

Sponsors

- Constitution Circle: \$1,500, full table (ten seats), half page program ad.
- Freedom Circle: \$750, half table (five seats,) quarter page program ad.
- Guardian: \$300, 2 seats, business card program ad.
- Amicus: \$200, 1 seat, listing in program.
- Sponsor: \$70, donor pays ticket price to enable student or limited-income activist to attend in their place, listing in program.

Attendees

- \$70 to reserve a seat.
No tickets will be distributed; a reservation list will be kept at the door.
- Contribution only.
- If attending dinner, please check here if you would like a vegetarian entrée

Advertising Reservation

Please reserve my space in the commemorative program as indicated below:
(Ads must be received by September 9th for inclusion in the program.)

- b/w, full page \$600 b/w,
- b/w, ¼ page \$200 professional/business card ad \$75
- individual listing \$25

- artwork enclosed

mechanical requirements:

Full page 7" wide x 6" high
Half page 7" wide x 3" high
¼ page 3.5" wide x 3" high

Camera ready artwork must be supplied. One color (black),
No bleeds, 133 line screen. We cannot print from color artwork.

Please send to:

**ACLU of West Virginia
Box 3952**

Charleston, West Virginia 25339-3952

Contributions to the ACLU Foundation are deductible to the extent permitted by law under IRS Code 501(c)(3) except for \$24 for each ticket.

Name _____

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Daytime Phone _____

Evening Phone _____

A check is enclosed for \$_____ payable to
ACLU-WV Foundation.

Please RSVP by **September 15th** and provide the names of those who will be attending.

West Virginia residents may obtain a summary of the registration and financial documents from the Secretary of State, State Capitol, Charleston, West Virginia 25305. Registration does not imply endorsement.

President's Corner

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Surprisingly, somehow, the White House officials who ordered that no political messages could be displayed did not recognize those shirts and buttons as having political content, but immediately sensed the political nature of the message on the Ranks' tee shirts.

The legal committee of the ACLU of West Virginia is contemplating suing the government agency (probably the Secret Service) that ordered this content-based denial of free speech. Evidently, similar behavior has drawn suits in other areas of the country.

With the approval of the Board of Directors, I named a committee to develop policy concerning the use of electronic voting machines, often referred to as DREs or touch-screen voting machines. These devices are a completely computerized

voting medium, unlike punch-card and optical-scan systems which are computer-assisted media.

Features of the latest generation of electronic voting machines recommend their use. They can provide easier access for persons with various types of disabilities. Appropriate programming can also display the candidates and propositions in a variety of languages. For these reasons, many advocates for the disabled and minorities advocate a changeover to these machines.

Being certain that they count one's vote, and count it correctly, presents more complex issues. The ways electronic machines register and count votes are less transparent than in the case of paper ballots, mechanical voting machines, punch-card ballots, or optical-scan ballots. It is therefore essential that the systems used in the electronic machines be such that voters have confidence in their accuracy in recording votes and that their count be verifiable.

Generally there is a broad consensus on most of the requirements for voting processes. They should provide for security, voter anonymity and confidence, efficiency and accuracy in counting the votes, and minimal malfunction.

Like other voting mechanisms, an electronic voting machine must have an audit capacity that ensures that voters can vote easily and have confidence that their votes are counted correctly. The most important part, ensuring the integrity of the ballot and the count, requires having a voter-verifiable and auditable record of individual ballots. Questions of how to meet this requirement cause considerable disagreement among critics of electronic voting systems.

The committee is currently addressing these issues and will present a draft policy for the board to consider at its August 21 meeting in Shepherdstown.



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