

ACLUM Builds State-Wide Campaign to "Restore the Rule of Law"

In the wake of revelations that the government has given the National Security Agency the green light to conduct illegal spying on Americans, the ACLU of Massachusetts has launched a state-wide "Restore the Rule of Law" campaign. ACLUM has encouraged Massachusetts Congressmen and thousands of their constituents to place themselves in the front lines of a looming constitutional crisis.

"The impetus for this campaign is the growing evidence that our Government is spying on ordinary Americans," says ACLUM Executive Director Carol Rose. "But we face an even larger question of how we will preserve and defend the rule of law in the face of a President who asserts that he is above it."

Public hunger for holding the government accountable was palpable at the packed town meeting held in Lexington in early January, where Carol Rose addressed the issues with Rep. Edward Markey. ACLUM then geared up for a massive public education effort, and kicked off its campaign on January 30 with an emergency town meeting in

Boston's Faneuil Hall.

Over five hundred people flocked to the "Cradle of Liberty" with only a few days' notice for an exploration of the "myths and realities" behind the NSA spying program. With Rep. Markey serving as moderator and Carol Rose as host, national ACLU associate legal director Ann Beeson and Marc Rotenberg, executive director of the Electronic Privacy Information Center, debunked government arguments about the legality of the spying program and outlined the dangers such overreaching presents to our constitutional system.

Momentum builds across Commonwealth

The Faneuil Hall meeting was modeled around the state, as the campaign was expanded to include unlawful government practices of kidnapping, rendition, torture, and the maintenance of secret prisons where "ghost detainees" are being held beyond the rule of law. Well-attended "Restore the Rule of Law" meetings featuring expert panelists were held with Rep. Marty Meehan in Wayland on March 4 and Rep. Barney Frank in Newton on March 5.

The momentum kept growing. The *Springfield Republican* estimated that there were six hundred people at Elms College in Chicopee on March 23 to hear Rep. Richard Neal, former Member of Congress Bob Barr, Carol Rose and Bill Newman of the ACLUM Western Massachusetts office.

The audience was very receptive to Barr's message that they urge Massachusetts Senators Kennedy and Kerry to stand up in op-



Rep. Ed Markey moderates discussion at Faneuil Hall, where the "Restore the Rule of Law" campaign was launched on January 30.

position to the Senate's Terrorist Surveillance Act of 2006, which would give Congressional authorization to the Administration's warrantless NSA domestic spying program. The former Republican Congressman and Judiciary Committee member also exhorted the audience to urge the Senate Judiciary Committee to initiate a meaningful investigation into the NSA program.

"The Constitution will not survive unless we do it," Barr said. (continued on page 5)



Government Agrees to Settle 'Silver Ring Thing' Challenge

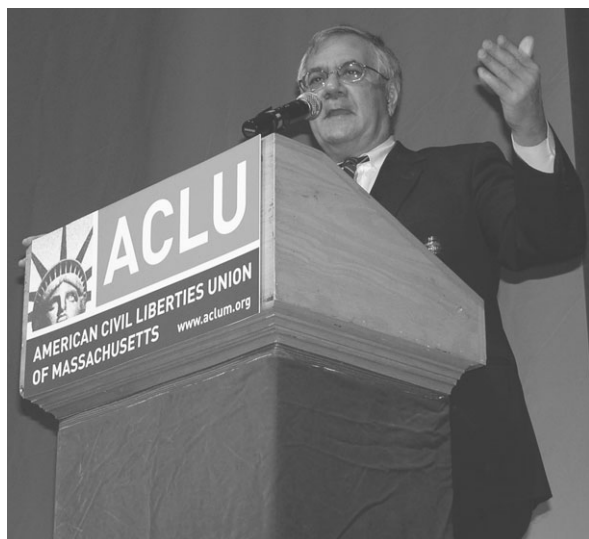
In February 2006 the US government agreed to settle the ACLU's lawsuit against the Department of Health and Human Services (HHS) in a case challenging federal funding of religious activities. The HHS had funded a nationwide "abstinence-only until marriage" program, the "Silver Ring Thing."

"We are pleased that the government has agreed to stop using taxpayer dollars to fund the Silver Ring Thing's religious activities," said Julie Sternberg, a Senior Staff Attorney with the ACLU Reproductive Freedom Project. "The ACLU supports the right of Silver Ring Thing to offer religious programs, but it may not do so using government funds."

Silver Ring Thing to be closely monitored

In the settlement in *ACLU of Massachusetts v. Leavitt* in the federal district court in Massachusetts, HHS agreed that it will not fund the Silver Ring Thing's abstinence-only until marriage education program as it is currently structured, and that any future funding is contingent on the program's compliance with federal law prohibiting the use of fed-

(continued on page 4)



Rep. Barney Frank at Newton meeting

Court Upholds Collection of Racial Profiling Data

The Supreme Judicial Court (SJC) unanimously rejected the efforts of the Boston Police Patrolmen's Association to restrict racial profiling data collection, in a case in which ACLUM participated as *amicus curiae*. The court upheld the requirement that police officers include their identification numbers when filling out racial profiling data collection forms during traffic stops, a position advocated by the ACLU of Massachusetts.

Under legislation enacted in 2000, law enforcement authorities are required to investigate and address the problem of racial profiling in Massachusetts by collecting data on the race and gender of drivers in traffic citations and searches. The first year of data collection showed that 249 law enforcement agencies (out of 365) in Massachusetts showed racial disparities in ticketing and

search patterns, according to an independent analysis by the Northeastern University Institute on Race and Justice. As required by the statute, the Secretary of Public Safety, in consultation with the Attorney General, ordered 247 of these law enforcement agencies (all but 2) to collect data on all traffic stops, as well as citations and searches, for an additional year, starting in September 2005.

The data collection form, designed by the Secretary of Public Safety in consultation with police chiefs, required officers making the stop to include their identification numbers. Officer identification on the form is essential to ensure that officers collect the information as required by law. It also enables police departments to identify "problem" officers in order to provide appropriate train-

(continued on page 6)

BEACON HILL UPDATE



Real ID = Real Nightmare

The federal Real ID Act of 2005 requires states to bring their drivers' license systems into compliance with a complicated and costly set of "standards" by 2008. As a practical and civil liberties matter, the Real ID regime would implement a national identity card system in the US. The Registry of Motor Vehicles would be forced to become a card-issuing agency, following federal mandates.

In order to get a drivers' license, applicants -- including refugees and the elderly -- would have to submit documentary proof of identity, such as an original or certified birth certificate. The RMV would have to verify the validity of the personal identification (which may be in other languages), and scan and store those documents so that they are available in an interstate data-sharing network.

An individual's driver's license would have to contain standardized data elements and security features, including a "machine readable zone" to allow the easy capture of personal data loaded into the license. If stores require the use of an ID to make a purchase, your data would become easily available. The construction of a 50-state interlinked database would make *all* the information in each person's file available to *all* the other states and to the federal government.

Massachusetts and other states have only begun to grapple with -- and protest against! -- this hugely complicated, costly, privacy-destructive mandate from Washington, D.C. Rep. James Sensenbrenner, the Chair of the House Judiciary Committee, had insisted

that it be added to a must-pass appropriations bill, the emergency Supplemental Appropriation for Defense, the Global War on Terror, and Tsunami Relief, 2005.

But the grappling *and* the protesting have begun. For example, in March 2006, the New Hampshire House passed a bill prohibiting our sister state to the north from complying with the Real ID Act, finding the federal directive to be "contrary and repugnant" to the state constitution.

In Massachusetts, where Governor Romney's budget proposal for the new fiscal year contained no extra funding for the RMV to even begin to plan for compliance by 2008, we have started educating the legislature about the dangers of Real ID's unfunded mandate. We ask them -- and *Docket* readers -- to find out more from the ACLU's new REAL ID website: www.realnightmare.org.

"Anti-gang" legislation

This bill arrived on Governor Romney's desk on March 16. As the *Docket* goes to press, the Governor has 10 days to sign the bill, or veto it, or send the bill back to the legislature with amendments. We expect he'll sign it. The legislation has been amended in several revisions in the House and Senate. (An \$11 million appropriation to implement positive youth programs, which was part of the original wide-ranging "anti-gang" bill, was enacted in 2005).

ACLUM's message to the legislature on this bill was to accentuate the positive. We have supported the provision of needed services to participants in the criminal justice system. We have supported the additional grant programs that the new bill would establish for young people.

But we've continued to object to mandatory minimum sentencing provisions, to the creation of some new crimes (such as the adoption of federal perjury laws), and to any "criminalization" of standard criminal defense practices which are essential to proper trial preparation (for example, the careful review of discovery materials, including grand jury minutes, by defense counsel in consultation with his or her client).

Keep Discrimination Out of the Constitution!

Here at ACLUM it's been déjà vu again -- and now again! For the last six years, a ban on gay marriage has been threatening to appear on the ballot. Twice we have been able to defeat the measures before the legislature, *but this time the hurdle is higher and the proposal is meaner!*

The measure is anything but measured. It would place in the state Constitution a requirement that marriage only be between one man and one woman without granting any benefits or civil unions to same-sex couples. It would permit those same-sex couples who have married since the *Goodridge* decision of the SJC to stay married, but no new marriages would be permitted.

Legislators should vote NO on this proposed amendment.

Some legislators are planning to vote yes to "Let the people vote," but that is an abdication of their constitutional responsibility. The Massachusetts Constitution gives legislators the opportunity and the responsibility to vote twice, in two successively elected legislatures. That vote should not be a rubber stamp, just because a petition garnered enough signatures. Legislators should keep in mind the deceptive techniques detected in the signature-gathering drive, and they should also be mindful of the ugly homophobic campaigns that have been waged in other states. Unfortunately, these ballot campaigns have incited harassment and even violence against gay men and lesbians. We do not need this meanness in our Commonwealth.

MassEquality.org, the coalition with which ACLUM works on this issue, uncovered thousands of instances of fraud and deception in the collection of signatures on this gay marriage ban. A subcontractor for the paid signature-gathering firm hired out-of-state
(continued on page 6)



VOLUME 36, NUMBER 1

The Resolution Affirming Civil Rights and Liberties



DOMESTIC SPYING Is this YOUR America?

www.ACLUM.org



A resolution affirming the civil rights and liberties of the people of Massachusetts was offered in the Senate by Sen. Andrea Nucciforo (D-Pittsfield) on March 8, the day after the re-authorization of the USA Patriot Act had been approved by the US Congress. We expect the Massachusetts Senate to vote on the resolution in mid-April.

Another resolution in the Massachusetts House of Representatives failed to move forward in that body. Both resolutions incorporate the threat posed by warrantless domestic NSA spying.

These two resolutions, in both the House and the Senate, were launched because the original state-wide civil liberties legislation, HB 1881 -- filed in December 2002, the subject of a rousing and well-attended hearing and a favorable committee report, and printed on the House Calendar as a matter of pending business -- simply has not been

taken up by the House and voted upon by the members. We wanted official *action* on HB 1881 before the reauthorization of the USA Patriot Act was a *fait accompli*. But regrettably, we achieved no further action on either HB 1881 or the new resolution in the House before the President on March 9 signed the reauthorized Patriot Act.

We still have hopes that our Massachusetts legislature will respond to the Constitutional crisis facing the country by approving the House and Senate resolutions affirming civil liberties.

The resolution may have passed the Senate by the time *The Docket* reaches you. Check www.aclum.org for timely information. If the vote is again delayed, and your Senator is not listed on the website as an endorser, please call and ask for his or her support. Call (617) 722-2000 to get your Senator's phone number.

| | |
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FROM THE EXECUTIVE DIRECTOR'S DESK



by Carol Rose

In America, no one is above the law. At least, that is what the founders of this country believed and what any well-versed eighth-grade social studies student could tell you.

Yet, every so often, Presidents feel compelled to test this basic tenet of American democracy. Remember Richard Nixon's assertion that: "if the President does it, it can't be illegal"?

Of course, Nixon was refer-

ring to a third-rate burglary. In contrast, the current administration in Washington is asserting that it doesn't have to obey laws prohibiting domestic spying on ordinary Americans or torture of people in detention. Following recent revelations in the *New York Times*, the White House reluctantly admitted that executive branch agencies have been secretly spying on ordinary Americans without court orders, in clear violation of both the US Constitution and express federal laws. Days later, the President then defied a Congressional ban on torture by asserting that he, the President, would not be bound by such a law.

Administration officials justify their disregard of the law by invoking the "theory of the unitary executive branch." Actually, the "unitary executive" theory is

just a new name for an attempt by those in power to seize more power. To summarize the theory: if the president does it, it can't be illegal.

Do you smell a Constitutional crisis yet?

Apparently, many in Congress don't. In response to revelations of illegal domestic spying, the Senate staged a one-day show hearing starring Attorney General Alberto Gonzales. Gonzales, who holds the position of the nation's top law enforcement official, didn't want to testify under oath while discussing his administration's disregard for the law. Taking an oath would have meant that Gonzales promised to tell the truth. The Senate apparently didn't expect that from the Attorney General.

Given this charade posing as Senate oversight, it should come as no surprise that Congress also failed to defend fundamental liberties when it reauthorized the USA PATRIOT Act without first fixing it. The new Act permits the government secretly to seize records of ordinary Americans without adequate safeguards. It creates a new National Security Subpoena that will permit the FBI secretly to seize your financial records and internet or phone logs without a court order. The Act also retains gag provisions on people who have received such orders. After a year people can challenge those orders, but if the government says lifting the gag would harm national security or diplomatic relations the court would be forced to uphold it. The reauthorized Act imposes new jail sentences of up to five years for people who violate the gag and disclose demands for records. It also retains secret "sneak and peek" searches of your home without timely notice, and gives

the government a blank or general warrant to eavesdrop on your telephone conversations. It expands the use of the death penalty and makes it harder for death row inmates to seek appeals based on inadequate assistance of counsel. Finally, the revised PATRIOT Act creates a new federal crime for anyone who enters a "no go" zone at any major public event that the Secret Service (which now has a new uniformed police division) deems "nationally significant," thus effectively chilling the right to engage in public protest and political dissent.

Every member of the Massachusetts Congressional Delegation voted NO on the PATRIOT Act reauthorization, with the exception of our two Senators. Why not email your representative and SAY THANK YOU? You can read up on the PATRIOT Act and obtain contact information for your Congressman at: www.aclum.org.

And while you're at it, why not call Senators Kennedy and Kerry and ask them why they voted to reauthorize the Act in its current flawed form – and urge them to vote NO to current efforts to legalize warrantless spying embodied in the misnamed "Terrorist Surveillance Act of 2006." Senator Kerry: (202) 224-2742; Senator Kennedy: (202) 224-4543.

Finally, please join the ACLU of Massachusetts' Campaign to Restore the Rule of Law, part of a nationwide ACLU effort to raise the alarm about the Constitutional crisis in this country. To learn more, go to www.aclum.org. Together, we can let our leaders know that we -- the People -- still believe in that profoundly patriotic American notion that no one is above the law.

Rights Matter: Bill of Rights Education Project Creates New Civil Liberties Curriculum

If the Bill of Rights is to have a future in this country, it is critically important that the ACLU have a presence in our schools.

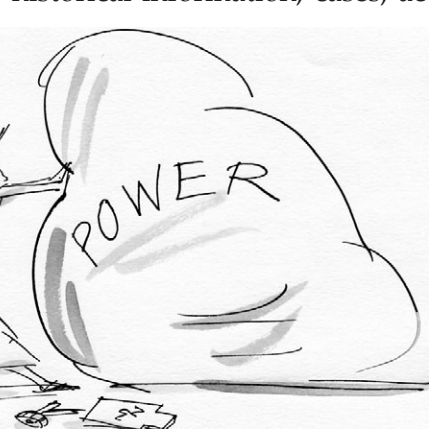
With the help of a grant from the national ACLU, ACLUM's Bill of Rights Education Project is creating a pathbreaking civil liberties curriculum for middle and high schools.

Rights Matter: the Story of the Bill of Rights will give teachers and students across the country an innovative way of learning about the

role played by individuals and movements over the centuries to make the Bill of Rights more than a piece of paper.

The curriculum will take the form of a 90-page published document with an extensive web component (www.rightsmatter.org). Illustrator Alice Briggs is creating drawings to enliven

the text. The web will enable the curriculum to be both interactive and dynamic, as it puts users in touch with stimulating visual primary source material, additional historical information, cases, ac-



tivities and personal stories from young people who stood up for their rights.

Please help us spread the word about this exciting new resource. Teachers who would like to be sent a copy of *Rights Matter* when it is launched in September should email Nancy Murray at nancy@aclu-mass.org.



Drawings by Alice Briggs

ANNUAL MEETING

Because our annual Bill of Rights Dinner is being held in the spring this year (see back page) we are changing our schedule of events for members. The Annual Meeting where new board members are announced will be held on **Monday, May 22**. There will be no public program. For more information, call Gabrielle Kulin at (617) 482-3170 x 335 or email her at gkulin@aclu-mass.org. There will be a membership meeting in mid November with a full program. Date and time to be announced.

Is this YOUR America?
Restore the Rule of Law

www.ACLUM.org

GET MOBILIZED: JOIN THE CAMPAIGN!

We need your help to respond to the Constitutional crisis facing the nation. Please fill in the form below and send it to Brian Corr at ACLU, 211 Congress Street, Boston MA 02110. Or email Brian your contact information at bcorr@aclu-mass.org.

Name: _____

Email _____ Tel. _____

Address _____

I would like to stay informed and receive email alerts _____

I would like to help mobilize people in my community _____

To order an "Is this YOUR America?" bumpersticker: www.aclum.org

ROMNEY ADOPTION BILL HURTS KIDS; DOES NOT PROTECT RELIGIOUS FREEDOM

An adoption bill filed in March by Governor Mitt Romney was drafted to meet the specific requests of the Catholic Church for a religious exemption to state anti-discrimination laws for its nonprofit social services arm, Catholic Charities, in providing adoption services to the public. The church request came after the Vatican declared that it was "gravely immoral" to place children in homes with gay parents. ACLUM announced its opposition to the bill the day after Romney filed it because the proposal would allow religious doctrine to override state laws and would both harm children and violate longstanding principles governing religious freedom.

"The Governor has misnamed this bill 'An Act Protecting Religious Freedom,'" said Carol Rose, ACLU of Massachusetts Executive Director. "The ACLU defends religious freedom on a regular basis, and religious freedom has never meant giving special permission to religious groups to hurt other people. Moreover, everyone's religious freedom is undermined when the government favors one religion over others."

"The Governor's bill also would harm children by allowing Catholic Charities to refuse to even consider or place children in homes that may be the best match for them," said Rose.

Under the bill's terms, Catholic Charities could deny a child a placement with well-qualified parents who are gay or lesbian, even if they are considered by experienced child welfare specialists to be the best family for a particular child. The harm to children of such restrictions on adoption is documented in the just-released second edition of the ACLU Lesbian and Gay Rights Project book, "Too High A Price: The Case Against Restricting Gay Parenting," which can be downloaded at <http://www.aclu.org/lgbt/parenting/24098pub20060207.html>.

Tax dollars should not fund discrimination

Romney's bill also raises religious liberty concerns because government funds - public tax dollars - would be used by certain adoption agencies to discriminate, thereby inflicting harm based on religious views on the general public.

"It is unconstitutional for the state to give public contracts to any religious group to impose religious doctrine in the provision of public services," said Sarah Wunsch, ACLUM staff attorney.

More than anti-gay discrimination

Furthermore, the Governor's bill raises serious legal and factual questions because its terms go far beyond allowing Catholic Charities to discriminate against gay and lesbian adoptive parents. Regardless of any other state law or regulation -- not just civil rights laws -- the bill would allow a religious-associated charitable or educational organization to take *any action* related to providing adoption or foster placement services which "is calculated ... to promote its religious principles" as long as the organization does not discriminate against prospective adoptive parents based on "race, creed, national origin, gender, handicap, or any other classification triggering judicial review under a strict scrutiny analysis under either the Equal Protection Clause" of the federal or state constitutions.

By the omission of "sexual orientation" from the prohibited discrimination list, this

language gives the appearance of only allowing discrimination against gay adoptive parents, but it permits much more than that. For example, the bill raises the question of whether religious-affiliated adoption agencies would be permitted to refuse to place children in single-parent homes if that would violate a religious belief that every child should be in a home with a man and a woman. Many single parents provide excellent homes for adoptive children.

"Could an agency refuse to place a child in a home with parents who use birth control, where one of the parents is divorced in violation of teachings of some religions?" Wunsch asked. "While there is an argument that this kind of discrimination triggers 'strict scrutiny,' and thus would not be allowed, we simply don't know what a court would rule on that question. Even more alarming, since the bill exempts religious organizations from all laws in actions pertaining to foster care or adoption placements, this might well include laws that prohibit child abuse."

This bill is both bad policy for the state's children who are waiting for homes, and bad law for Massachusetts. We are hopeful that state legislators will reject it.



Silver Ring Thing (from page 1)

eral funds to support religious activities. In addition, HHS agreed to closely monitor any future grants to the program. The agreement remains in effect until September 30, 2008.

The ACLU filed the lawsuit with ACLUM as the plaintiff in May 2005, asking HHS to stop using public dollars to support the Silver Ring Thing's religious programming. As a result of the lawsuit, HHS suspended funding to the program in August 2005, citing concerns that the program "may not have included adequate safeguards to clearly separate in time or location inherently religious activities from federally-funded activities."

"Government dollars cannot be used to promote a particular religion," said Daniel Mach, an attorney with the ACLU's Program on Freedom of Religion and Belief. "We will continue to fight any violations we find."

To view the settlement agreement: <http://www.aclu.org/reproductiverights/sexed/24239lg120060223.html>.

Closing the Education Gap

by Norma Shapiro

Every day in Massachusetts we are confronted by our failure to live up to the promise of the 1954 *Brown v. Board of Education* decision. The unanimous US Supreme Court probably didn't envision the increasing segregation of Massachusetts schools, or the vast achievement gaps more than fifty years later. Today, we are confronted by schools unable to provide an education that gives all children the opportunity to (as the Justices put it) "succeed in life" and to participate in our democracy and contribute to our economy and society.

In the 2005 decision, *Hancock v. Commissioner of Education*, the Supreme Judicial Court accepted the "painfully slow" progress the state is making. The Chief Justice stated that the legislature is the place to seek redress. At the present time, ACLUM is helping to develop an approach for the next step in overcoming the neglect of our children in their schools. It is clear that targeted resources are necessary.

Increasing the foundation budget

At the heart of the proposal is an increase in the "foundation budget" developed for the Education Reform Act of 1993. Today, even though increases for growth in the number of students and for some inflation have been made each year, the foundation budget is just not up to actual costs to do the job, including teaching to standards in English and math which are now an MCAS graduation requirement.

The foundation budget needs to have new funds to meet the new standards, for technology -- there wasn't even a category for this in 1993! -- professional development, and all the costs that have changed so dramatically, such as health care or heating. Research demonstrates that in schools with clusters of poverty, being in a classroom with fewer than 20 children and one teacher through the third grade has a permanent impact on children. Shouldn't we also be upgrading the budget to reflect this important finding?

Invest in future generations

Of course the foundation budget cannot be increased so dramatically in one year. But we can make a start. The Governor has proposed making a tax cut, over three years, of \$610 million -- money that would be better spent investing in future generations.

Such monies could enable the foundation budget to address class size, special education, and for programs to help children at risk, including those that would extend the school day or year. These increases would permanently affect all school districts, because each has its own calculated foundation budget.

Two-thirds of the funds could be distributed this way. The remainder could be distributed based on property values and income for those districts that are above the new foundation budget.

Revamping the foundation budget won't be easy. But of all the possible formulae or distribution schemes out there, only a plan targeting the foundation budget is likely to have a long term, permanent effect.

Most importantly, it will focus political attention on the best means available to us to adequately fund the kind of education envisioned by the Supreme Court in 1954 -- so we can make real progress with "all deliberate speed."

ACLUM Responds to Reports of Local Police's Enforcement of Immigration Law

In response to reports that local law enforcement agencies may have begun collaborating with federal immigration officials, ACLUM has been working with local community organizations and advocacy groups to learn more about these policies and practices and to address growing concerns among immigrant communities.

Reports began surfacing in December 2005 that MBTA officials on subway and bus services had been stopping and asking passengers about their immigration status. Since then, various reports involving local police also began circulating amidst growing concern by immigrant communities.

In a letter dated February 1, 2006, from the MBTA Transit Chief of Police Joseph Carter to local community groups including ACLUM, Chief Carter stated, "[T]here has been a suggestion in the media and elsewhere that the MBTA Transit Police Department has embarked upon an on-going program to stop and question transit passengers to determine if they are illegal immigrants. That is not correct."

ACLUM filed public records requests to determine whether local police departments in Massachusetts have entered into any formal agreements with federal immigration officials. ACLUM has learned that none of the towns from which it requested information has entered into any such agreements.

In a document obtained by ACLUM from the Chelsea Police Department dated February 10, 2006, Police Chief Frank Garvin wrote, "[i]t is not our policy to ask people if they are 'legal' or 'illegal' aliens and for them to produce papers to show their status." Requests were also sent to the police departments of Boston, Holyoke, Lawrence, Lowell, New



ACLUM's Racial Justice Fellow Anjali Waikar at a press conference organized by the MIRA Coalition on February 10, 2006 in Chelsea.

Bedford, Springfield, and Worcester.

Until 2002, the Immigration and Naturalization Service was responsible for federal enforcement of immigration law. After the events of September 11, however, local law enforcement agencies across the country have been entering into agreements with federal officials for the purpose of assisting with immigration enforcement. Florida, Alabama, Arizona, Los Angeles and San Bernardino, California are among the locales that have entered into such agreements.

ACLUM released a "Know Your Rights" pamphlet about what to do if you are stopped and asked about your immigration status on the MBTA, which is available for download on the ACLUM website. Individuals who are stopped or detained by the MBTA or local police and asked about their immigration status should contact ACLUM at (617) 482-3170 x 315.

Immigration Ruse Halted

Hector Garcia and Hector Sola-Rosa are immigrants who were subject to deportation, but both had lived in the United States for an extended period while challenges to their deportations were pending. During this period, each of them had married a US citizen and their spouses had filed petitions to classify them as immediate relatives eligible for a permanent resident visa.

After several years, each couple was notified to appear for what is known as a "marriage interview" at which they would have the opportunity to present evidence that the marriage was entered into in good faith. Garcia and his wife were notified to appear in December 2005. Sola-Rosa was directed to appear in January.

Unknown to either party, the notice was a ruse. The Bureau of Citizenship and Immigration Services (CIS) had no intention of conducting the interview.

Instead, when the couple appeared at the CIS office, the non-citizen spouse was immediately taken into custody and transferred to a detention center to await deportation. The marriage interview was never held.

In each case, ACLUM Legal Director John Reinstein, in cooperation with the couples' immigration attorneys, wrote to CIS and to ICE protesting their treatment of the applicants and requesting that the couples be permitted to complete the marriage interview. Immigration officials relented in both cases.

Shortly after, the regional director of ICE announced that the practice of scheduling sham interviews would be discontinued.

Worcester County Chapter Opposes Milford Bylaw

On February 13, 2006 the Milford Town Meeting voted 81-36 to amend the definition of "family" in the town's zoning bylaws in a way that could hurt its poorest residents and undermine key rights to family privacy.

The new bylaw defines a family as "one (1) or more persons occupying a dwelling unit and living together as a single housekeeping unit, not including a group of more than three (3) persons who are not within the second degree of kinship."

Based on the new definition of a family, a family unit that includes more than three aunts, uncles, nieces, nephews, or more-distantly-related people could not live together in a single housing unit. In contrast, the previous definition of a family in Milford was "any number of individuals living and cooking together on a premises as a single housekeeping unit."

"Efforts by Milford town officials to eliminate apartment overcrowding may be well-intended, but the means they are using are misguided," said Ronal Madnick, director of the Worcester County Chapter of ACLUM. "They should not eliminate a living situation that often is the only way poorer residents can afford housing." In an open letter to all Town Meeting members, the Worcester County Chapter stated that the bylaw "would be unconstitutional in that it would give the government extraordinary power to interfere with the personal, private decisions made by families about how they will function as a unit."

Despite vocal opposition, however, the Milford Selectmen, the Board of Health, the Planning Board and the Finance Committee backed the change.

ACLUM Builds Campaign to "Restore the Rule of Law"

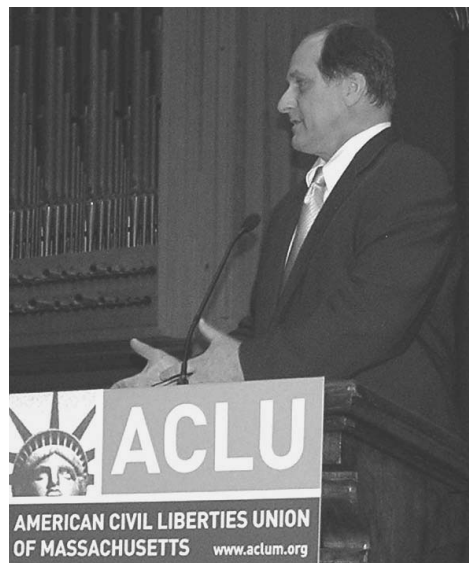


Rep. Richard Neal (left), ACLUM's Carol Rose and former Rep. Bob Barr in Chicopee

(From page 1) Further meetings were held with Rep. Michael Capuano in Cambridge on March 27 and with Rep. Jim McGovern in Worcester on April 11. A meeting on the Cape with Rep. Delahunt is scheduled for April 20.

Similar ACLU town meetings are now being held around the country, based on the Restore the Rule of Law Campaign begun here in Massachusetts.

As the US Senate threatens to "legalize" domestic surveillance without warrants and without effective oversight by passing the Terrorist Surveillance Act of 2006, ACLUM is working to mobilize the public. Check www.aclum.org for details of additional meetings and ways you can get involved.



Rep. Michael Capuano in Cambridge

INTRODUCING

HEIDI BECKER AND BRIAN CORR



Heidi Becker started in December as our Legal Assistant. She grew up in Philadelphia, and attended George Washington University and UMass – Boston. She received her paralegal certificate in 1994.

Heidi served as the first president of the United Way Youth Council in Philadelphia, and began her dedication to human rights as the youngest member of the local Amnesty International chapter.

Formerly the executive assistant at the National Voting Rights Institute for three years, she also assisted attorney Cristobal Bonifaz in a class action suit that sued Texaco over drilling practices in Ecuador that caused widespread pollution and devastating health problems to indigenous communities. She was also the lead plaintiff in *Becker v. FEC*, a lawsuit challenging the exclusion of independent candidates from the nation's presidential debates.

Heidi says she pursued work at the ACLU because she "wants a career that is passionate about the rights of others, especially considering the current climate that we are living in."

Brian Corr came on board as our Community Education Organizer in January. A native of Detroit, Brian studied Russian Literature and Language at the University of Michigan. He came to Boston in 1987 and has since held a variety of jobs in local nonprofits. Brian first worked for Peace Action, starting as a canvasser and eventually becoming their Program Director. He then served as the Associate Director of Grassroots International and directed technical support and training at North East Action.

Brian first became involved in the ACLU of Massachusetts (ACLUM) back in 2002 when he heard Nancy Murray, our Education Director, give a speech on civil liberties. His interest inspired him to join ACLUM's Civil Liberties Task Force, which he has been a member of ever since.

Brian has been the main organizer for ACLUM's "Restore the Rule of Law" Emergency Town Meetings featuring Members of Congress. He will play a central role in mobilizing ACLUM's membership in the months ahead.

Court Opposes Public Access to Police Records

In a defeat for public oversight of police, the Supreme Judicial Court of Massachusetts ruled in January, 2006 that records created by Harvard University police officers were not subject to disclosure under the state's freedom of information law, despite the officers' holding appointments as special state police and deputy sheriffs.

In June, 2003, the *Harvard Crimson*, a student-run daily newspaper, requested documents from the Harvard University police pursuant to the state "public records" law. The journalists also sought records from Boston and Cambridge police departments. Both Boston and Cambridge promptly complied and produced the records, but Harvard refused, claiming that because the university itself was a private institution, its police department was not obligated to disclose the requested documents.

ACLUM brought suit against the university, recognizing that while the university was private, its police officers, like other police officers, held broad gov-

ernmental authority to make arrests, to stop and search people, and to carry and use weapons, if necessary. Because of those important public functions, granted through appointments as state police and deputy sheriffs, we argued the liberal public records law ought to apply to Harvard's police officers just as much as to municipal police departments. The law defines a public record as one which is "made or received by any officer or employee of any agency ... or authority of the commonwealth," and these officers held such authority with their special police appointments.

When the Superior Court dismissed our case, Frances Cohen and Amber Anderson, our volunteer attorneys from the Boston law firm of Dechert,LLP, appealed to the SJC. Unfortunately, the court concluded that the law applies only to documents held by public entities, regardless of the authority bestowed on private sector employees.

The ACLU is supporting bills pending in the legislature which

Racial Profiling (from pg. 1) ing and discipline. If police departments are going to address the issue of racial profiling, they need to know which officers are engaging in the practice.

The Boston Police Patrolmen's Association brought suit in Superior Court seeking an injunction to prevent the Boston Police Commissioner from requiring the recording of names of police officers, and then appealed the case to the SJC. ACLUM filed an *amicus* brief on behalf of 21 other groups and 6 members of the Legislative Black Caucus. The brief argued that individual officer information is essential to the remedial scheme contemplated by the legislation.

The SJC decision paves the way for the collection of race and gender information on forms that include officer identification.

AMICUS CLUB



On Wednesday, May 3rd, Steve Shapiro, National Legal Director for the ACLU, will come to Boston

for his ever-popular Supreme Court Round-Up. Bingham McCutchen LLP is graciously hosting this luncheon event, which is open to all ACLUM Amicus Club members. For more information about joining the Amicus Club and this event in particular, please contact Gabrielle Kulin at gkulin@aclu-mass.org or call (617) 482-3170 x 335.

Keep Discrimination Out of Constitution! (from pg. 2)

collectors and paid them by the signature. There was testimony before the Election Laws Committee by one of the collectors about how she was trained to tell lies about which petition people were signing, to request signers to "sign in two places" for the petition for wine in supermarkets (and even to hide the second petition), and to say, "Sign here to support gay marriage." Unfortunately, the petition still garnered enough signatures to move forward in the amendment process toward being placed on the ballot. But it will be placed on the ballot *only if one-quarter of the legislature approves of the measure.*

The House and Senate will sit in a Joint Session as a Constitutional Convention on May 10 to vote for the first time on this proposed amendment. Only 50 out of a potential 200 votes are needed to advance the amendment to a second vote by a newly elected legislature in 2007. While we believe it is possible to get more than 150 votes against the measure, it is an uphill fight, and the easy votes to get – our great, good friends – are already on our side. We are not very far away, and we need your help.

What you can do

Check www.wheredoIvotema.com to find your state representative and state senator. Please let them both know you oppose the ban on same-sex marriage. And remind them that they are not rubber stamps: they have a constitutional obligation to evaluate the proposal and express their best judgment about what is good for Massachusetts.

Keep up-to-date at www.aclum.org and volunteer to help by checking www.massequality.org. If you discover you have one of the undecided legislators, please let your friends and neighbors know how to help keep discrimination out of the Massachusetts Constitution and our historic Declaration of Rights!

See page 4 for related story.

would achieve the result sought in the lawsuit: both Senate Bill 1735, sponsored by Senator Jarrett Barrios, and House Bill 3449, sponsored by Reps. Alice Wolf, Timothy Toomey, Pat Jehlen, and Byron Rushing, would change the public records law to specify that records created by special state police officers employed by a college, university, or hospital are available to the public.

2006 ACLUM BALLOT

The two spaces are provided for joint members, one person can use the first box and the other the second for voting.

The order of candidates was determined by lot. Ballots must be received in the ACLUM office, 211 Congress Street, Boston, MA 02110 by May 26, 2006.

The Nominating Committee offers the following slate of candidates to stand for election for a three-year term on the ACLUM Board of Directors. (We received no nominations by petition).

BOARD OF DIRECTORS (Vote for 10 or fewer)

- Malick Ghachem
- Chris Pyle
- Heather Wightman
- Pablo Navarro-Rivera
- Nancy Ryan
- Donna Palermino
- Steve Young
- Carl Takei
- Woody Kaplan
- Michael Altman

CANDIDATES FOR ELECTION OF THE CLASS OF '09

Michael Altman - I have been a member of the ACLUM Board since 1988. Before that I was on the Board of the Arizona affiliate for 10 years. I have been an ACLU cooperating lawyer in many cases over the years. In one case I represented 30 Native Americans who were arrested in Plymouth a few years ago while demonstrating on the Day of Mourning which the mainstream calls Thanksgiving. About three years ago I represented a man who was arrested at a temple in Framingham while leafleting and being critical of Pat Robertson who was speaking at the temple as part of the Christian right's efforts to align with the Jewish right. I have served on the Development Committee of ACLUM for many years and I am a former ACLUM VP and former chair of the nominating committee. I am in private practice and devote a portion of my practice to civil rights and pro bono cases. While I am a fierce defender of the entire Bill of Rights, I am particularly passionate about working to reduce racial injustice and discrimination against immigrants, opposing efforts to limit liberty because of the so-called "war on terrorism" and opposing oppression by large institutions, whether private (corporations or universities) or governmental.

Malick Ghachem - is an associate at Zalkind, Rodriguez, Lunt & Duncan LLP in Boston. His practice focuses on criminal defense, employment discrimination, and the First Amendment. He will also serve as a lecturer in the Political Science Department at MIT during the Spring 2006 semester, teaching an undergraduate course on "The Supreme Court, Civil Liberties, and Civil Rights." Malick earned a Ph.D. in history in 2002 with a dissertation on the law of slavery in colonial and revolutionary Haiti, which he is revising for publication as a book. He has published a number of essays on the law of slavery, and has recently co-written an article on the Korematsu decision and the problem of emergency law. Malick is married to Erica C. James, an assistant professor of anthropology at MIT. They live in East Cambridge and are expecting a baby girl in April.

Woody Kaplan - I have been a member of the ACLU since 1960. I have served the Massachusetts Affiliate as a member of the Board of Directors since 1992. I chaired the Board of Trustees, the Development Committee, the Nominating Committee and the By-laws Committee. I have served on the Executive Committee, the Women's Rights Committee and several other committees. I served the National ACLU both as an affiliate representative and was elected nationally as an at-large member. During my tenure I served as a member of the Executive Committee, the Budget, Audit and Investment Committee, the Fund Raising Faculty, Development Advisory Committee and several other committees. I founded the National Endowment and chaired the Endowment Policy Committee. I am a full-time civil rights/civil liberties activist. I lobby the US House and Senate (but no longer the Execu-

tive branch) and to a lesser degree the Massachusetts legislature. My principal work is on Constitutional Amendments. Currently, I am particularly active in the secular movement, the GLBT movement and the right to dissent, but that activity is reactive, and at any other point in time, it might have been voting rights or police practices or drug policy reform or any one of a number of issues, then current. I am a recovering real estate developer and am quite active in electoral politics. I am president of the First Amendment Foundation and chair or on the advisory boards of the Secular Coalition for America, the Secular Student Alliance, the Civil Liberties List, the Godless Americans Political Action Committee and several other organizations.

Pablo Navarro-Rivera - I have worked in higher education, both teaching and as an academic administrator, for almost thirty years. I completed my master's and doctoral degrees at the Harvard University Graduate School of Education. Since 1995 I have been a member of the faculty at Lesley University. Since 2000 I coordinate Lesley's program The Cuban Experience in Education and the Arts. I have authored a book on the history of higher education in Puerto Rico and have written extensively on education. I recently finished an essay, "The ACLU and Civil Liberties in Puerto Rico," which should be published in 2006. My research has been presented at conferences in the United States, England, Spain, Cuba, Dominican Republic and Puerto Rico. I have served on the ACLUM board since the 1990's and have been a member of its Executive Committee since 2005. My main areas of interest have been the history of the ACLU, academic freedom, freedom of speech and freedom of the press. Serving as a board member has been one of my most significant experiences and I could not imagine a better time to do so than today, when our civil liberties and civil rights have been threatened so significantly.

Donna Palermينو is a 13-year veteran of the Attorney General's Office, where she worked in civil litigation, including, for example, a wide variety of consumer protection and antitrust cases; a three-week civil rights trial and Supreme Judicial Court appeal upholding women's privacy rights against Operation Rescue; and a stint as a Supreme Court Fellow at the National Association of Attorneys General. Her legal work in civil rights and liberties dates back to law school, when she worked for the national office of the ACLU as an assistant to the Church-State Committee, and the Special Committee on Nuclear Arms and Civil Liberties. After clerking for Charles Sifton, a federal judge in the Eastern District of New York, she worked at (what was then called) Brown Rudnick Freed and Gesmer, where, in addition to doing primarily business litigation, she had the chance to do some First Amendment work on behalf of the Boston Herald. She divides her time between her young son, and teaching consumer protection law at Suffolk Law School and an introductory law

course for foreign attorneys at BU. She is also active in electoral reform, working with state lawmakers on a state-wide ban on insecure electronic touchscreen voting systems.

Chris Pyle - teaches constitutional law and civil liberties at Mount Holyoke College in South Hadley, MA. In 1970 he disclosed the military's surveillance of civilian politics and worked with the ACLU and three congressional committees to end it. He has been a frequent witness before Congressional committees on civil liberties issues and has published three books: *The President, Congress, and the Constitution* (1984) with Richard Pious, *Military Surveillance of Civilian Politics* (1986), and *Extradition, Politics, and Human Rights* (2001). Pyle has written and lectured on freedom of expression, gender equality, rights of privacy, student rights, the detention of aliens, military tribunals, and torture. Most recently he has been helping to publicize the military's current surveillance of the anti-war movement, NSA's illegal eavesdropping on Americans, and the implications of "unitary executive power." He is also chairman of the Petra Foundation, a national organization that recognizes "unsung heroes" who make extraordinary contributions to social justice. In 2004, Pyle received the Luther Knight McNair Award from the Civil Liberties Union of Massachusetts for his contributions to civil liberties.

Nancy Ryan - The ACLU has been here for me as an activist and feminist, defending and expanding my rights to speak and stand for a humane and just social system. Now, more than ever, I hope to continue building a more powerful ACLU as a member of the ACLUM Board. I serve currently as President of the Board of Directors. As a member of the Board for 15 years (with a two-year "sabbatical"), I've chaired the Women's Rights Committee and been on the Executive and Nominating Committees. I have been working as Executive Director of the Women's Commission of Cambridge for the past 24 years.

Carl Takei is currently a second year law student at Boston College Law School. He graduated from Brown University in 2002 with a bachelor's degree in geology, where he served as president of the Brown University ACLU. During his first term on the ACLUM Board, Carl organized a group of fellow students to found a B.C. Law chapter of the ACLUM, participated in planning for the Bill of Rights Education Project, and continued his activities for the ACLUM's post-9/11 speakers bureau. In addition to his activities with the ACLU, Carl serves as a Board member of the New England chapter of the Japanese American Citizens League, and is incoming Executive Articles Editor for the B.C. Law Review. Carl's writings have been published in *The Boston Globe* and he has co-written articles for *Massachusetts Lawyers Weekly* and *The Boston Phoenix*. Carl is deeply concerned by the expansion of executive power, government secrecy, denial of immigrant rights, and the revival of racial and ethnic profil-

ing as part of the "War on Terror" -- developments that have a particular resonance for him because of his family history. Carl also has an interest in free speech and due process issues in higher education, drawn in part from his own college experiences. Prior to law school, Carl worked as a research assistant and writing collaborator with Harvey Silverglate and was a paralegal at Swomley & Associates, a small criminal defense firm in Boston.

Heather Wightman - As a young woman who grew up in a working-class family from Haverhill, MA, I am the first person in both my immediate and extended families to graduate from college and a proud product and success story of public education. Consequently, I believe strongly that every individual, regardless of race, culture, politics, religion, gender, age, socioeconomic status, sexual orientation etc., should be fully entitled to a decent and competitive education. I have dedicated much of my life's pursuit to advocating on behalf of, and in relationship with, young people and their families who struggle for fair access to education, and other basic rights, such as health care, affordable housing and living wages. Perhaps one of the greatest and most complex injustices in our country today is that young Black and Latino men and women are dropping out of high school at disproportionately high rates compared to Whites, while thousands more are graduating only able to read and write at an eighth grade level or lower. As a public health social worker -- with extensive experience in the human services sector managing youth programs and community development initiatives, as a former Peace Corps volunteer, and as an active member of the ACLU Massachusetts Worcester Chapter Board of Directors, it would be an honor for me to have the opportunity to continue to serve well the people living in the Commonwealth of Massachusetts.

Steven F. Young is a Senior Vice President of Wainwright Bank & Trust Company, a leading socially responsible bank founded in 1987 and headquartered in Boston. Working closely with Wainwright co-founder and co-chairman, Robert A. Glassman, he is a primary architect of the bank's nationally recognized socially progressive agenda. The bank has committed over \$470 million in loans to local nonprofits addressing issues of social justice including affordable housing, immigration services, environmental protection, HIV/AIDS services, GLBT equality, homelessness and civil legal assistance for low-income people. Mr. Young has served on the board of the American Civil Liberties Union of Massachusetts since 2003 and is currently a member of the Development Committee. Mr. Young is the vice-chairman of the American Bankers Association Communications Council and is a member of the Massachusetts Bankers Association. He has served on the boards of the Winchester Interfaith Housing Partnership and Friends of Music, and is a former member of the Social Investment Forum.

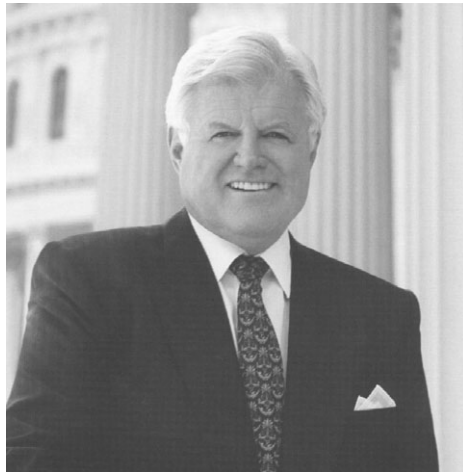
SEE PAGE 7 FOR BOARD OF DIRECTORS ELECTION; BALLOT PAGE 6

ACLU Foundation of Massachusetts Annual Bill of Rights Dinner

Wednesday, May 31, 2006

Westin Copley Place, Boston (Back Bay)

6:00 reception, 6:45 dinner



Senator Edward M. Kennedy



Lewis Black

The Bill of Rights Dinner will bring together ACLU supporters to celebrate the accomplishments of the last year and to present the Roger Baldwin award to Senator Edward M. Kennedy. Comedian Lewis Black (of The Daily Show with Jon Stewart) will be the featured entertainment. Tickets are \$150 per person. Contact Gabrielle Kulin at gkulin@aclu-mass.org or (617) 482-3170 x 335.

Historic Church Wins Right To Fly Equal Marriage Banner

To the United First Parish Church in Quincy, "marriage equality affirms the core values of our Unitarian Universalist faith." To further those values and bear public witness to them, church members decided to hang a large banner from the front columns of the historic church facing the center of Quincy, stating, "People of Faith for Marriage Equality." Little did they know what problems they would encounter in erecting this banner.

Historical and zoning hurdles

First, the building inspector told the church it could not put up the banner without permission from the Quincy Historical Commission and the Zoning Board. When the historical commission refused to sign off, complaining that the horizontal lines of the proposed banner were not in keeping with the vertical lines of the building, the minister, Rev. Sheldon Bennett, and other members of the church contacted ACLUM for help in dealing with the commission and with an up-

coming zoning board meeting to consider whether the church should receive a special permit to display the banner.

Religious freedom laws

ACLUM volunteer attorney Elizabeth Pyle of the law firm of Anderson & Krieger contacted City officials and argued that state law exempted the church from zoning regulations regarding signs and the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) prevented the historical commission from interfering with the church's display of the banner. A preference for vertical as opposed to horizontal lines was an insufficient interest to justify the government's opposition.

These arguments prevailed, and the church banner should be flying by March 31, in time to "bear witness" in support of marriage equality prior to the state constitutional convention in May when legislators will vote on amending the constitution regarding marriage rights.

Where do we draw the line?

How do we reconcile our support for the Quincy church being exempt from local laws on signs, while opposing demands for an exemption for Catholic Charities from the laws prohibiting discrimination based on sexual orientation in adoptions?

We will oppose exemptions for religiously-affiliated groups that operate in the public sphere and frequently receive tax dollars to carry out public functions, particularly where the refusal to follow the law harms third parties, e.g., by denying employee insurance coverage for prescription contraceptives, refusing to provide emergency contraception to rape victims in emergency rooms, or denying children the best possible available home.

Running a social service organization with government contracts and tax dollars is simply not a core aspect of any religion, and neutral laws that protect the public, like our civil rights laws, must be respected.

See related article on page 4.

LEGACY CHALLENGE!

A truly unusual opportunity has come our way. If you notify us that you have included the ACLU Foundation of Massachusetts in your will, we will receive an immediate cash matching gift of 10% of the value of your bequest - with a cap of \$10,000.

For example, if you notify us that you are leaving \$50,000 to the ACLU Foundation of Massachusetts in your will, then we will receive an immediate \$5,000 matching gift. Or, if you prefer to state your bequest as a percentage of your estate, it qualifies for a matching gift according to the estimated present value. Charitable gift annuities also qualify for the Legacy Challenge.

All you have to do is fill out a short Legacy Challenge Matching form, which is available by calling Development Director Bliss Austin Spooner, (617) 482-3170 x 312.

Boston Pride Parade: June 10th

Earlier this year, the ACLU of Massachusetts proudly accepted our nomination to serve as a parade marshal for the June 10th Boston Pride Parade. We welcome all of our friends and supporters to join us on this special day, for both the parade and the festival on the Common. The Flag Raising at City Hall takes place on June 2nd. Now is the time to show your support for truly equal rights!

For all details regarding these dates, times and locations, check out www.bostonpride.com. For information on marching and tabling with us, please contact **Heidi Becker** at hbecker@aclu-mass.org. Thank you!

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