

ACLUNews

AMERICAN CIVIL LIBERTIES UNION of NEW HAMPSHIRE



DEBTORS' PRISON: SENSELESS & ILLEGAL

The ACLU of NH first learned about the illegal practice of jailing people because they're poor from the New Hampshire Public Defender's office over a year ago. After an extensive investigation, this summer we published our findings in a report entitled **Debtors' Prisons in New Hampshire**. This report showed that when poor defendants appeared in court over an unpaid fine, many times judges did not assign them a lawyer. Judges didn't seek to determine whether poor defendants could afford their fine nor did they inform them of their rights. Judges simply put them in jail such as in the case documented below.

"What if I don't have the money?" the man asked the judge. "You go to jail," the judge replied. The defendant could not afford to pay his \$320 fine and was hoping the judge would give him more time to get the funds or to complete his community service. No chance. The man served 7 days in jail.

This method of justice violates the 1983 U.S. Supreme Court ruling that courts could not imprison a person solely because of a lack of resources to pay a fine unless he or she "willfully refused" to pay.

Furthermore, the practice of jailing individuals too poor to pay a fine needlessly places an extra financial burden on counties by requiring them to house individuals who are no danger to society. According to Dartmouth College's Rockefeller Center, New Hampshire jails spend approximately \$110 per day to house a single inmate.

The ACLU of NH has recommended that state judges not impose a fine at sentencing if an individual cannot afford it and if necessary provide a lawyer to advise the defendant. New Hampshire's Administrative District Court Judge Edwin Kelly, who is negotiating rule changes with the ACLU of NH, has agreed that "Even one person going to jail unjustifiably is too many."

In March 2014, the Littleton Circuit Court ordered Richard Vaughan (below) to serve off the \$895 fine he couldn't pay by spending seventeen days in jail for a credit of \$50 a day towards his fine. The ACLU of NH filed a petition arguing that the Court neither held a meaningful hearing on his ability to pay nor made findings that he was willfully refusing to pay the fine. The NH Superior Court agreed and ordered that Richard be released from jail and credited for the seven days he had already served.



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In February, Jeffrey Clay (above) was arrested at an Alton Board of Selectmen meeting for engaging in political, non-disruptive speech on matters of public concern. Despite our letter of objection in March, the Town of Alton decided to prosecute him. The Laconia Circuit Court dismissed the criminal charge against Mr. Clay, calling Alton's actions pure censorship in violation of the First Amendment. In July, the ACLU of NH filed a federal civil rights lawsuit on his behalf.

A MESSAGE FROM THE EXECUTIVE DIRECTOR

JUSTICE WITH A PRICE TAG?

For those who can afford to pay, a fine is an unpleasant, minor inconvenience. But for those who are too poor to pay, a fine for a minor violation can result in incarceration, and mounting unpaid fees can upend their lives and the lives of their family.

Jailing a person because he or she cannot pay a fine is unconstitutional, which is why we launched a year-long investigation into the courts across the state. We are using the conclusions and recommendations in our debtors' prison report to advocate for reforms that will end such illegal practices.

But debtors' prison practices are just one of many serious and difficult challenges that poor people encounter in the Granite State's justice system. An indigent defendant who is appointed a NH Public Defender because they are too poor to afford a private attorney is still required by law to pay for their legal services. Poor people who are low flight risks spend weeks in jail awaiting trial or dismissal for nonviolent offenses because

they cannot afford bail. In a case we handled last year, a homeless man spent 33 days in jail for a nonviolent offense because he could not post \$100 bail. And struggling parents of troubled children are held responsible for the costs of their children's incarceration.

These hidden price tags of justice serve only to exacerbate New Hampshire's recently earned distinction as the state with the fastest growing income inequality in the country. And that is why the ACLU of New Hampshire is committed to joining with you to make sure that justice is available to everyone in our state, regardless of the size of one's bank account.

We have a lot of work ahead of us and we couldn't make positive changes without your support. Thank you for all you do to help.

Devon Chaffee
Executive Director



A BALANCING ACT:

Police Body Camera Video vs. Privacy vs. The Public's Right to Know



This summer the ACLU of NH filed a "friend of the court" amicus brief in support of the disclosure of the four videos depicting the events surrounding the fatal police shooting of Mr. Hagen Esty-Lennon in the town of Bath. The NH Superior Court was asked to decide if body camera footage of a fatal police shooting should be disclosed under the state's open records laws over a family's privacy objections. Body cameras can be a powerful tool for holding law enforcement accountable if the footage is made available to the public. On the other hand, the unfettered collection and release of such footage has the potential to invade a person's privacy.

The judge agreed with many of our arguments and ordered most of the video footage to be released to the public. The press and the public are entitled to examine police body camera footage to independently determine if the police's use of lethal force against someone suffering from a mental health crisis was appropriate, including whether de-escalation techniques should have been used.

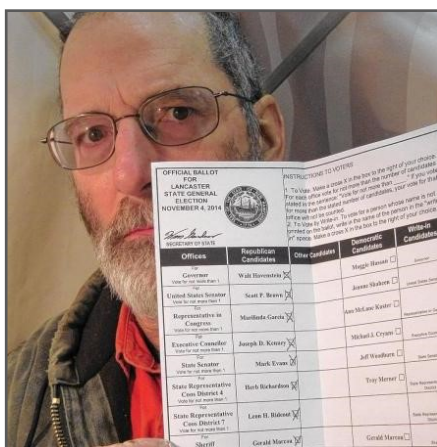
ACLU ON THE FRONT LINES

A BALLOT PIC = POLITICAL SPEECH

The nation's first "ballot selfie" case began in the 2014 primaries when the ACLU of NH brought a lawsuit on behalf of three voters, one of whom had posted a photo of his ballot on his Facebook page. Andrew Langlois wrote the name of his deceased dog as a candidate to express his dissatisfaction with the slate of Republican contenders. After posting a photo of his marked voting ballot, Mr. Langlois was investigated by the Attorney General's office.

This ballot restriction was passed into law in 2014 to prevent vote buying and voter coercion. Assisted by cooperating attorney Bill Christie of Shaheen & Gordon PA, we filed a lawsuit in federal District Court accusing the State of suppressing political speech. The State's countering claim was that the law is only restricting the manner that the speech conveyed, not the content itself. Ultimately, the Court agreed with our argument and struck down the law this summer. This was the first case of its kind in the country.

In doing so, the Court found the State had failed to demonstrate that the government's interests—addressing vote buying and voter coercion—were compelling. Nor did the State



produce evidence that either vote buying or voter coercion are current problems in New Hampshire. And finally, the State

failed to identify one single instance anywhere in the country in which a credible claim was made that digital or photographic images of completed ballots were used to facilitate vote buying or voter coercion.

PROTECTING INTERNET PRIVACY

When the Kilton Library in Lebanon was pressured by local police and the U.S. Department of Homeland Security to stop supporting critical privacy technology this summer, the ACLU of NH stood with them.



This story started months before when the ACLU of NH joined with the Library Freedom Project on a workshop with four dozen NH librarians on protecting the free speech and privacy rights of their patrons. Kilton's librarians were inspired by this forum and decided to host a relay station for Tor, the online privacy network sponsored by the U.S. State Department.

Tor is a volunteer-run relay, meaning that the more people who host it worldwide, the safer and stronger the network becomes. Libraries are ideal locations because of their reliable internet connections and legacy of protecting anonymity and access. For this reason, the NSA was frustrated that it could identify only a small fraction of Tor users, as was documented by Edward Snowden. Conversely, advocates praise Tor for its ability to provide privacy and safety to people who need protection, including reporters, human rights activists and domestic violence victims. The ACLU of NH worked with the Library Freedom Project to create local and national support for the relay station. We are proud of the Kilton Library for standing its ground and turning its Tor relay back on.



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KNOW YOUR VOTING RIGHTS

Learn about NH voter ID laws,
absentee ballots, same day
registration, students rights & more
at our annual meeting

Monday, Nov. 30 @ 5:00 pm

Free and Open to the Public

Southern New Hampshire University
The Last Chapter Pub
2500 North River Road, Manchester

Sponsored by the
ACLU of New Hampshire
NextGen Climate and SNHU

29th Annual Bill of Rights Awards

On October 4th, more than 200 friends joined us at the Puritan Center in Manchester to celebrate long time civil rights champions **Bill Chapman & Arnie Alpert**, this year's recipients of ACLU of NH's annual *Bill of Rights Award*.

Helping to honor Bill and Arnie for their extraordinary efforts and accomplishments was ACLU advocate, friend and keynote speaker **Lew Feldstein**.

