



# ANNUAL REPORT

*2011*

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# 2011 ANNUAL REPORT OF THE AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF VERMONT, INC.

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## WHAT IS THE ACLU?

The American Civil Liberties Union of Vermont is an organization of Vermonters dedicated to the defense of individual liberties guaranteed by both the U.S. and Vermont constitutions. The American Civil Liberties Union Foundation of Vermont is the legal and educational arm of the ACLU, and it goes to court in defense of these essential liberties.

Both the American Civil Liberties Union of Vermont and its foundation are affiliated with the national ACLU, which was formed more than 90 years ago.

The principles guiding the ACLU are simple and clear:

- The right to free expression — above all, the freedom to dissent from the official view and majority opinion.
- The right to equal treatment regardless of race, religion, sex, sexual orientation, gender identity, national origin, age, or disability.

- The right to be left alone — to be secure from spying, from the promiscuous and unwarranted collection of personal information, and from interference in our private lives.

These guarantees of liberty are not self-enforcing. Those with power often undermine the rights of individuals and groups who lack the political influence, the numerical strength, or the money to secure their birthright of freedom. That is why ACLU programs — in the courts, in the legislature, and in the public forum — have most often been on behalf of people with the special vulnerability of the powerless.

We are all vulnerable. No group or person is permanently protected. That is why the ACLU accepts, as a first principle, the truth — validated by experience — that the rights of each person are secure only if those of the weakest are assured. The ACLU stands on this ground; if it fails to do so, it and liberty may perish.

“The ACLU has stood four-square against the recurring tides of hysteria that from time to time threaten freedoms everywhere. . . . Indeed, it is difficult to appreciate how far our freedoms might have eroded had it not been for the Union’s valiant representation in the courts of the constitutional rights of all people of all persuasions, no matter how unpopular or even despised by the majority they were at the time.”

Former Chief Justice Earl Warren

By Virginia Lindauer Simmon, president

**In June of 2011, I had the good fortune to attend the National ACLU biennial leadership conference in Orlando. It was, as you might expect, a lively,**

informative gathering of some of our country's best advocates and experts on civil liberties.

As we listened to presentations or had conversations with the leaders from other ACLU affiliates throughout the long weekend, one thing became pretty clear: that we in Vermont are darned lucky to have our long history of paying attention to civil liberties, and a friendly environment in which to do so.

And each time that thought arose, a subsequent thought came hard on its heels: that even in such a richly civil libertarian state as ours, without constant attention, those liberties could so quickly and easily erode.

Here in Vermont, for example, the ACLU continues to work on issues of government transparency. On our Web site ([www.acluvt.org](http://www.acluvt.org)), you can find links to materials and documents about our ongoing efforts — via education and/or legal action — related to public records access and student rights and online privacy and open meetings by government entities, among others.

You will also find information on cases we have supported this year, such as the recent suit against a Vermont inn for refusing to host a wedding reception for a gay couple, and our work with the Secretary of State's Office to help town governments ensure they're following Vermont's open meeting and public records laws.

Our education programs have kept

the Bill of Rights in the public eye. We publish a Student Rights Handbook to inform public school students about what their schools may and may not require of them. We hosted conferences for high school students entitled "Bill of Rights 101," and, in the fall, our "Evening Without" Banned Books Week program featured a lineup of writers reading from challenged or banned books. We move it around the state. This year's was in Waitsfield.

We have been paying close attention to the work being done on e-medical records to make sure a tight privacy policy is in place that includes sanctions against violators and ensures security of personal data. You will read elsewhere in this report further details of what we have accomplished this year.

On the national level, our parent organization continues to address civil liberties violations wherever they arise, pressing the case for justice and liberty.

The news every day gives us examples of what the world is like for those who live under repressive circumstances. Hasn't your heart felt a thrill as you watched the events of the Arab Spring evolve into the possibility of genuine transformation?

What these people seek is what our country's founders created for us over 200 years ago: a home where we need not be afraid of speaking out; where laws prevent invasion of our lives by government without just cause; and



where we may gather with those of our choosing to pursue our interests.

It might seem a small thing — to worry about civil liberties in the wake of such tragic events as the floods that flanked our summer. Homelessness and hunger and loss are heartbreaking.

But we at the ACLU know that at the same time our hearts are with those whose lives were devastated by the raging waters, our eyes must be ever paying attention to behaviors that infringe upon our constitutional rights. For it is these rights that have allowed our country to thrive.

The work takes dedication and resources. That you are reading this is an indication that you support our work on these fronts.

This has been a good year for the ACLU of Vermont. It's a constant battle to stay abreast of issues as they arise, even more so these days with digital challenges on many fronts that are being raised by the minute, but our team — our board and our superb staff — are up to the challenge.

From you, we ask the means to continue our work. Without you, we are nothing.

Thank you for joining with us in this important work.

By Allen Gilbert, executive director

**W**e have tried, over the past few years, to shift as many of our resources as possible to the direct defense of civil liberties. I think you'll

see in the “Legal Docket” section of this 2011 report how active our litigation program has been. From fighting gender discrimination to ensuring religion stays out of town government, we’ve been busy.

If I had to point to some broad themes in the work we did this past year — in litigation or advocacy or public education — I would say there have been two. The first is government transparency. The second is privacy rights.

We led the charge this year in lobbying for the revamping of the state’s public records law. We were successful, even in the area of mandatory awarding of fees and costs for plaintiffs who prevail in public records lawsuits. The changing of “may” to “shall” in this section of the law creates an enforcement mechanism that has been absent since the law was passed 35 years ago.

In the fall we co-sponsored the Secretary of State’s “Transparency Tour,” joining the secretary and representatives from other organizations in traveling the state to inform local public officials and citizens about open government laws.

In the courts we pushed for greater access to police records. Twice this year we argued warrant cases before the Vermont Supreme Court.

The second main area of our attention this year was privacy, particularly digital privacy. In recent years it’s felt like there’s been a full-scale assault on individuals’ privacy rights. Police

seem to want everything from our cell-phone tracking data and prescription drug records to the data and images that are on our computers. The state’s data-collecting “fusion center” in Williston continues amassing personal data about Vermonters, and police departments continue to receive federal Homeland Security grants to buy surveillance tools such as video cameras and automated license plate recognition systems.

The threats to our privacy aren’t just coming from government, however. There are also endeavors such as the “behavioral targeting” that the “Ad Men” of the Internet hope will someday allow targeting of specific products to specific people.

To build such a system, you need to know a lot about everyone. That’s not so hard to do anymore, given how most of us spend a lot of time behind our computers, surfing the Web.

The Web sucks up every bit of information about our interests and activities as we visit various sites. Assemble all this information to build profiles of each of us, and you’ve got the Holy Grail of advertising. Detailed ad messages can be targeted to small affinity groups or even to specific individuals.

In this erosion of privacy, we are unwitting accomplices. Because we like the convenience of the Web, we willingly provide all sorts of information about ourselves. It’s just that we don’t expect the information to be used in the ways advertisers do.



“Behavioral targeting” is, in effect, the Ad Men’s surveillance.

Worse, the data about you and me is for sale. Even the government can be a customer, able to learn from say, “Good Reads,” the books you’ve been reading, from “Epicurious” the foods you’ve been cooking, and from “Expedia” the places you’ve been visiting.

Our public education projects this year touched on an array of civil liberties issues. Events included two student Bill of Rights 101 conferences, our Banned Books Week “Evening Without” program, co-sponsorship of a talk by the executive director of the Center for Digital Democracy in Washington, D.C., and numerous speaking appearances before students and civic groups.

We continue to expand our use of social media. We’re also producing short video “stories” about legal cases we’ve undertaken and the people we’ve helped.

The ACLU exists solely because individual, private citizens feel that protecting civil liberties is important. Thank you for the support you give this organization.

## A SUMMARY OF MAJOR LEGAL ACTIONS DURING 2011

All filings available at [acluvt.org/docket](http://acluvt.org/docket)

### Personal Privacy

*In re Appeal of Application for Search Warrants:* In June, we briefed and argued a case in the Vermont Supreme Court that asks whether a trial judge may impose conditions upon a warrant for the seizure and search of a suspect's computer in order to protect the suspect's rights. In particular, prosecutors object to the judge's insistence that the police be limited to searching only for evidence relevant to the crime which they have probable cause to believe was committed.

*Attorneys:* Jay Rorty and Jason Williamson (*ACLU Criminal Law Reform Project*); Catherine Crump (*ACLU Privacy & Free Speech Project*); Hanni Fakhoury (*Electronic Frontier Foundation*)  
*Staff attorney:* Dan Barrett

*In re HS-122:* Each year, the state Department of Taxes calculates how much each homeowner in the state is owed in the way of a property tax prebate (and rebate, if applicable) on the basis of her or his income. The state then sends the calculations and the prebate money directly to each town. However, because the formula used to calculate the prebate is straightforward, it is very simple to determine a household's income if one knows how much of a prebate the household is getting. Therefore, when the town of Manchester took a case to the state Supreme Court over whether the town must divulge prebate figures to the public, we submitted an amicus

brief in support of the town, arguing that a portion of the tax code expressly forbids towns from revealing Vermonter's incomes to the public.

*Staff attorney:* Dan Barrett

*Smart Meters:* Electrical smart meters are small computers that replace the traditional electric meter on the side of houses. The meters are very sensitive, and they continuously communicate with a customer's electric utility to tell the utility how much electricity is being used in the house at that moment. The more advanced meters are even able to tell which appliances are in use at any time in a house. As part of its regulatory approval process for electrical smart metering, Vermont's Public Service Board is investigating what kind of rules should be placed upon smart meter usage in order to protect the privacy of the home. We are participating in the proceeding and urging the Public Service Board to mandate that smart meter data cannot be obtained by police or anyone else without either a warrant or the customer's permission.

*Staff attorney:* Dan Barrett

### Public Records Access

We have three cases currently pending at the state Supreme Court that all pose the same legal question: whether Vermont's public records act requires police to produce investigatory records upon request, unless release of those records would pose concrete harm to an investigation. In the oldest of these cases, *Bain v.*

*Clark*, we have tendered an amicus brief in the court on behalf of a man who wishes to obtain routine radio logs showing where Windham County sheriff's deputies were on a particular date. The Windham sheriff declined Mr. Bain's request, even though his criminal trial had concluded and he had exhausted his appeals. In the second case, *Rutland Herald v. Vermont State Police*, we have also submitted an amicus brief in the state Supreme Court in support of the newspaper, which has been refused records concerning the investigation of child pornography on computers at the state police training academy. The newspaper was refused access even though the attorney general has decided not to pursue a criminal prosecution of anyone involved in the incident. Finally, in *Galloway v. Town of Hartford*, we represent Anne Galloway, editor of *VtDigger.org*, in her efforts to obtain records showing what happened inside a Hartford condominium last Memorial Day. That day, police entered the home in response to a burglary report from a housecleaner. The police located a man inside the house, forcibly handcuffed and pepper-sprayed him and dragged him outside the house, where neighbors told the police that the man was in fact the homeowner. The case was argued at the Vermont Supreme Court in early December 2011.

*Staff attorney:* Dan Barrett

*Prison Legal News v. Prison Health Services, Inc.:* In our final public records act case, we are pursuing the basic question of whether a private



entity should be treated as a part of the government for purposes of the state's public records act where it is performing a government function. In this case, we represent *Prison Legal News* of West Brattleboro. *PLN* is the nation's leading periodical reporting on prison conditions, prisoners' rights, and prison litigation. Our client is seeking details about settlements entered into between injured prisoners and Prison Health Services, a private contractor that provided medical care to prisoners in Vermont from 2005 to 2010.

*Staff attorney:* Dan Barrett

### Public Access to the Courts

*In re Search Warrants:* In this case, we continue to fight for the public's right to see the courts in action. The case poses the question of whether prosecutors may seal — that is, hide from public view — details about search warrants that have been used to search a home. Generally, details of warrants become part of a court's public docket once the search has occurred, but prosecutors in Chittenden County have asked the Vermont Supreme Court to overrule an earlier case and permit sealing of warrants at prosecutors' whim.

*Staff attorney:* Dan Barrett

### Freedom of Expression

*Bellows Falls v. Simmons:* A police officer from the Village of Bellows Falls alleges that he saw George Simmons display his middle finger to the police officer as he drove by one evening. Mr. Simmons denies it, but a more important legal question lurks in the background of the dispute; namely, whether giving a police officer “the

finger” is expression protected by the First Amendment. Countless courts across the country have concluded that it is protected expression, and we hope that the Vermont courts will, as well.

*Attorney:* Stephen Saltonstall (*Law Offices of Stephen Saltonstall, Manchester*)

*Staff attorney:* Dan Barrett

### Equal Rights

*Baker v. Wildflower Inn:* Two women from New York wished to have their wedding reception at a resort in the Northeast Kingdom. The resort turned them away because they are gay and the resort's owners do not wish to host wedding receptions for gay customers — even though Vermont's public accommodations law has required equal treatment for gay people since 1992. We have filed suit to correct the resort's behavior and settle the question of whether the beliefs of a public accommodation's operator can trump Vermont law.

*Attorneys:* Joshua Block and Leslie Cooper (*ACLU Lesbian, Gay, Bisexual, Transgender & HIV Project*)

*Staff attorney:* Dan Barrett

*State police citizenship inquiries:* We have been able to assist Justicia Migrante, a migrant workers' rights group, with advocating for a change in state police policy towards immigration questions. After the video of a traffic stop on I-89 showed state police demanding to know the citizenship of the vehicle's passengers, Justicia Migrante and the ACLU-VT worked with the governor's office to change police policy and forbid inquiries into citizenship in most situations, since states lack the legal authority to enforce immigration law. We will

continue to monitor the situation to see if the change in policy improves relations between the police and Vermont's migrant worker community.

### Religion and Belief

*Hackett v. Town of Franklin:* Marilyn Hackett has lived in Franklin, Vermont, since the mid-'90s, and attends town meeting each year. For at least 10 years, however, the town has insisted on including a Christian prayer during the town meeting over her objection. This year, with our help, Ms. Hackett filed suit against Franklin and its town meeting moderator, arguing that Vermont's constitution and public accommodations act forbid the practice.

*Attorneys:* Bernard Lambek (*Zalinger, Cameron & Lambek, P.C., Montpelier*);

Julie Kalish (*Norwich*)

*Staff attorney:* Dan Barrett

### Complaint Resolution

As we do every year, in 2011 the ACLU of Vermont received hundreds of requests for assistance. Although our small size means that we cannot give assistance to everyone who contacts us, we respond to each request. We would be completely unable to do so without the steadfast efforts of volunteer extraordinaire David Abbott, who devotes one morning a week to managing the flow of requests.

## ACLU-VT and ACLUF-VT STATEMENT OF ACTIVITIES, FY 2011\*

	ACLU	ACLU Foundation
<b>Support and Revenues</b>		
Memberships . . . . .	\$ 59,299	
Revenue-sharing . . . . .		\$ 190,810
National ACLU grant . . . . .		
Gifts:		
Annual campaign . . . . .		44,745
Memorials/Honorariums . . . . .		1,760
Foundation . . . . .		3,408
Bequests . . . . .		33,255
Donated Items and Services . . . . .	1,040	13,529
Events . . . . .		9,949
Public Education . . . . .		500
Fee Awards . . . . .		3,925
Net National Shared Income . . . . .		69,374
Interest and dividends . . . . .	61	15,012
Unrealized gain (loss) on investments . . . . .		(11,223)
Realized gain (loss) on investments . . . . .		39,835
Miscellaneous . . . . .	1,221	131
<i>Total support and revenues.</i> . . . . .	<u>\$ 61,621</u>	<u>\$ 415,010</u>
<b>Expenses</b>		
<b>Program services</b>		
Legal . . . . .		\$ 92,804
Public education . . . . .		33,327
Legislation . . . . .	\$ 20,607	
<i>Total program services</i> . . . . .	<u>\$ 20,607</u>	<u>\$ 126,131</u>
<b>Supporting services</b>		
Fundraising . . . . .	2,241	44,061
Management and general . . . . .	16,519	144,053
<i>Total supporting services.</i> . . . . .	<u>\$ 18,760</u>	<u>\$ 188,144</u>
<i>Total expenses</i> . . . . .	<u>\$ 39,367</u>	<u>\$ 314,245</u>
NET CHANGE IN NET ASSETS . . . . .	22,254	100,765
NET ASSETS – BEGINNING . . . . .	<u>52,586</u>	<u>1,384,254</u>
NET ASSETS – ENDING . . . . .	<u>\$ 74,840</u>	<u>\$ 1,485,019</u>

\*These statements of activities cover the fiscal year beginning April 1, 2010 and ending on March 31, 2011, and were prepared by ACLU staff based on an annual audit report by outside independent auditors.



# THE MIRROR OF A DECADE

By Allen Gilbert, executive director

This year was the 10<sup>th</sup> anniversary of the terror attacks of Sept. 11, 2001. The events that day were seminal moments for the decade that opened this new century. Anniversaries prompt reflection. We need to ask what has happened in the intervening years and whether we're the country we want to be.

We know that during the last 10 years, the National Security Agency has conducted warrantless phone surveillance — looking at the calls we make, whom we call, and how long we talk. The Border Patrol has conducted traffic stops on I-91 south of White River Junction, nearly 100 miles from any international boundary. Peace groups protesting in Williston and Barre have been monitored by government agents. Searches are now routine on Lake Champlain ferries. A whistleblower working for the federal government (and a Vermont resident) was prosecuted under the World War I-era Espionage Act. Police began using cell phone data to track individuals' whereabouts. A "fusion center" was established in Williston to amass information, from government and commercial databases, about Vermonters.

None of these things was conceivable prior to 9/11. The changes reflect the fear we have lived in.

On the federal level, we have built a national surveillance system that includes more than 22 agencies and employs nearly 200,000 people (not counting the CIA and FBI). This

system turns out 50,000 intelligence reports each year and adds 1,600 names to the FBI's Terrorist-Screening Database every day. There are more than a dozen separate terrorism watch lists and databases. It takes only a tip or a mistake for your name to get placed on a list, but it's nearly impossible to get off the list once you're on. The late Sen. Ted Kennedy tried for weeks to get his name off a no-fly list.

More documents than ever are labeled "secret," hidden from public information requests. Approximately 900,000 people now hold top-secret security clearances.

We are perilously close to replacing our transparent democracy, in which the people watch the government, with a national security system in which the government watches the people.

"Top Secret America," a series of articles last summer in the *Washington Post* written by William Arkin (a Vermont resident) and Dana Priest, warned that national security is an industry whose growth has been rapid and chaotic. The industry has evaded any coherent oversight.

Arguments have been made that the events of Sept. 11, 2001, made greater surveillance necessary. No politician wants to be accused of letting another 9/11 happen. But, as the *Post* articles noted, the explosive growth in surveillance, abetted by enhanced technologies, has actually begun to replicate the problem identified as the signal failure in preventing the 9/11 attacks — disconnect among

intelligence agencies. In order to find the needle in the haystack, we have piled on more hay without useful "filters" to sort through the mounds of information.

On top of this cumbersome surveillance system has come a grinding realization that we are capable of the same indignities and injustices practiced by our detractors. We have detained people indefinitely without filing any charges against them. We have grabbed people off streets in the middle of the night and flown them to secret prisons around the world. We have tortured. No one has been held accountable for any of these actions.

From the time of America's founding, we have looked at our country as an unfinished experiment. Now, 10 years after a day recalled with sorrow at our losses and anger at the perpetrators, we need to ask, have those 10 years brought us closer to what we want to be as a nation?

Adherence to the "certain unalienable rights" that we believe all people are born with is a barometer of what we are becoming. We do best as a nation when we respect each others' rights. We do worse when we lose that respect and think it's acceptable to trim corners off the Constitution.

Core to a constitutional system is that truth, and justice, demand rigorous inquiry before they can be found or determined. It is the process in a constitutional system, established by the rule of law, that provides strength. Fear that causes us to abandon the process weakens us.

By that measure, we should beware. If we barter away our rights, we'll never become the country we want to be.

## DEVELOPMENT AWARD and the TIMMY BOURNE AWARD FOR EXCEPTIONAL VOLUNTEER SERVICE

The American Civil Liberties Union of Vermont presented Maida F. Townsend with two awards at the 2011 annual meeting — the 22nd Annual Development Award in recognition of her dedicated and energetic work in assuring that the American Civil Liberties Union of Vermont has the financial resources necessary to accomplish its work, and with the 24th Annual Timmy Bourne Award for exceptional volunteer service in recognition of her contribution of time and energy to the American Civil Liberties Union of Vermont. The citation read:

We are pleased to offer two awards to Maida Townsend. In truth, she deserves more. As noted when she received the Development Award in 2006, Maida has given of her time and talents in measures that exceed what can be expected of even the most dedicated civil libertarian. Called upon to do difficult work or make one more call for support, to chair a meeting or host a summer fundraiser at her home, even to take over the reins of the organization as president, she has never flinched. She has even turned her own personal interests and hobbies into fundraising opportunities, by doing yard work and offering skating and French lessons. Our organization is the richer in energy, dollars, and wisdom because of her work.



Geoff Brumbaugh

## EXTRAORDINARY ACHIEVEMENT AWARD

Only once before in the ACLU-VT's 44-year history has the organization presented an Extraordinary Achievement Award. That award was made in 2001 to honor an employee who had worked with the ACLU for 20 years. At the 2011 annual meeting a second Extraordinary Achievement Award was made. Both awards went to the same person, Andrea Warnke, the ACLU-VT's associate director. Like the first award, the second was made for Andrea's commitment to the organization, this time for her 30 years of service. The award came in the form of a gift, a Kindle "Fire" tablet e-reader. In presentation remarks, Executive Director Allen Gilbert said:

Andrea started work at the ACLU as Ronald Reagan was taking office as president. Gasoline cost \$1.25 a gallon, yearly inflation was 10 percent, and the Dow Jones Industrial Average was 875. The first frequent flyer program was begun by an American airline, MS-DOS was released by Microsoft, Post-It notes were launched, and MTV was born. In the 30 years since then, Andrea has survived five executive directors and four office moves. She has worked gracefully and joyfully with close to 200 board members, and she probably knows — at least by recognition, if not name — about half of our 2,400 members. As the organization has grown, Andrea has faced new challenges and met them with patience, persistence, and good humor. We thank her for her 30 years of service to the ACLU.



Geoff Brumbaugh

## HOW YOU CAN SUPPORT THE ACLU



I want to support the vital work of Vermont's American Civil Liberties Union Foundation.

Enclosed is my contribution of:  \$500  \$100  \$25  Other: \$ \_\_\_\_\_

*Contributions will be recognized in the next annual report, but only with your permission.*

Please list my/our name(s) as follows: \_\_\_\_\_  
\_\_\_\_\_

I prefer not to be listed.

Name(s): \_\_\_\_\_

Mailing address: \_\_\_\_\_  
\_\_\_\_\_

E-mail: \_\_\_\_\_ Phone: \_\_\_\_\_

*Please make checks payable to: ACLU Foundation of Vermont. Gifts are tax-deductible to the fullest extent permitted by law.*

*Clip and return to: American Civil Liberties Union Foundation of Vermont, 137 Elm Street, Montpelier, Vermont 05602.*

**Your support is deeply appreciated.**

# By including the ACLU in your will, you can leave a legacy of liberty for generations to come.

Thousands of passionate civil libertarians have stepped forward and expressed their most cherished values by making a deeply meaningful gift to the ACLU in their estate plans.

We invite you to remember the ACLU in your will and become part of this special group of ACLU supporters who have made freedom, justice, and equality a personal legacy.

To learn more or to take advantage of our estate planning resources, visit [www.aclu.org/legacy](http://www.aclu.org/legacy) or call toll-free 877-867-1025.

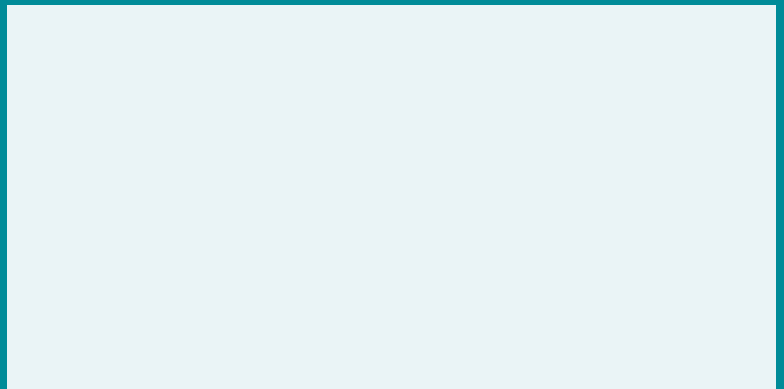


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## *2011 Annual Report*

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