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## 2007 LEGISLATIVE REPORT

### Reproductive Rights

Early in the legislative session, the House Health and Human Services Committee unexpectedly passed a bill that would have prohibited abortions in Utah except in extremely limited circumstances. HB 235 S1, “Abortion Law Revisions,” was similar to a 1991 law that was eventually held unconstitutional after the ACLU of Utah challenged it and the state spent more than \$1.2 million dollars defending it. This year’s bill included a rare legislative review note stating that there is a “high probability” the legislation would violate women’s constitutional rights. Working with Planned Parenthood Association of Utah, we organized a letter-writing campaign and co-sponsored a public rally against the bill. In addition, ACLU of Utah Legal Director Margaret Plane joined the bill’s sponsor in a panel discussion organized by the Women’s Legislative Council. We also wrote members of the House of Representatives to urge them to vote against the bill. The full House restored the legislation back to its original status as a so-called “trigger” bill, which would ban abortion only after the U.S. Supreme Court overturned *Roe v. Wade*, the 1973 decision upholding a woman’s constitutional right to choose. After all of the hubbub, HB 235 S2 died in the final hours of the session.

### Student Clubs

Lawmakers again considered changes to the laws regulating high school student clubs. HB 236, “Student Clubs Amendments,” underwent an impressive seven substitutions before being passed by both the House and the Senate. The final law requires students to receive parental permission before joining a curricular or non-curricular club, and contains language that some administrators and teachers may mistakenly view as prohibiting Gay/Straight Alliances or other “controversial” student clubs. We maintain that the federal Equal Access Act and the First Amendment guarantee students’ right to form Gay/Straight Alliances, and are concerned that the new legislation may adversely impact the clubs. We sent a letter to Governor Huntsman asking him to veto the legislation; he signed the bill on March 9.

### Immigration

HB 105 S1, “Illegal Immigration Enforcement Act,” would have granted state and local law enforcement officers the power to enforce federal immigration laws. In a letter to the Utah House of Representatives, we noted that the integration of law enforcement and immigration duties is a bad idea because it has a chilling effect on community policing efforts in immigrant communities; diverts scarce resources away from the work of preventing and investigating crimes; and increases the danger of illegal racial and ethnic profiling. The bill passed the House but was never considered by the Senate.

HB 437 S2, “Limitation on Government Benefits to Aliens Unlawfully Present in the United States,” would have prohibited state and local governments from providing benefits to undocumented immigrants unless required by federal law. The bill initially defined benefits broadly as “a grant, contract, loan, or license,” and it required that individuals seeking such benefits prove their

citizenship by showing valid identification and signing an affidavit. The bill also sought to repeal in-state tuition for undocumented immigrants, despite the fact that a bill specifically dealing with this issue had earlier been defeated by the House. HB 437 was similar to a law passed in Colorado last year, which, according to an article in the *Denver Post*, has cost the state \$2 million to implement. The ACLU of Utah lobbied against the bill, which passed the House Law Enforcement and Criminal Justice Committee but was never considered by the full House.

### **Real ID**

The House approved HR 2, “Resolution Opposing Real ID Act,” which urges Congress and the United States Department of Homeland Security to suspend the implementation of or repeal the federal Real ID Act. The ACLU of Utah worked with the bill’s sponsor and was instrumental in facilitating expert testimony in favor of the resolution from the Cato Institute. Among other things, Real ID imposes federal regulations on the design, issuance, and management of state driver’s licenses. The ACLU of Utah opposes Real ID because we believe it is a de facto national identification card that has the potential to pose serious privacy concerns. In addition to these concerns, the implementation of Real ID could cost Utah millions in tax dollars. Utah is the latest state to reject Real ID. Last month, Maine became the first state in the nation to reject participation in the Real ID Act. Following Maine’s lead, the Houses of Representatives in Vermont, Wyoming, Montana, and New Mexico each voted in favor of bills that reject Real ID, and, in the case of Montana, prevent the state from implementing the law.

### **Religious Liberties**

SB 111 S1, “Free Exercise of Religion Without Government Interference,” would have allowed individuals who believe that the government has infringed on their right to religious freedom to go to state court to challenge the government’s action. The initial version of SB 111 would have required the government to prove that its actions could meet a court’s highest level of scrutiny. The ACLU of Utah testified against the bill because of our concerns that it would cause unintended harm to the enforcement of state and local civil rights laws. In our testimony, we also countered the misconception that free exercise of religion is not currently protected in Utah under the First Amendment. The ACLU of Utah works diligently to defend religious liberty, one of the most cherished rights protected by the Constitution. SB 111 S1 failed.

### **Capital Punishment**

While other states are considering abolishing the death penalty, two bills sought to expand capital punishment in Utah in rather startling ways. HB 86, “Increased Penalty for Second Conviction for Certain Sexual Offenses Against a Child,” would have allowed the death penalty for people convicted a second time of certain sexual offenses against children, even if those offenses did not involve murder. The death penalty was removed from the final version of the bill (HB 86 S3), which passed. HB 93, “Capital Offenses Amendments,” would have made it a capital offense if a child died during a kidnapping, or while being abused or sexually assaulted, “whether or not the specified offenses were committed intentionally or knowingly.” The final version of the bill, which passed, was amended so that the death penalty could only be applied if the offender acted with “reckless indifference to human life.” The ACLU of Utah educated legislators and coalition partners about the constitutional and policy problems of the bills.

### **Internet Speech**

HB 5 S1, “Internet Sexual Content – Protection of Minors,” repeals some constitutionally suspect provisions of a 2005 law that attempts to restrict children’s access to harmful material on the

Internet and that is currently the subject of our lawsuit, *The King's English v. Shurtleff*. The bill repeals a state-maintained registry that would have contained the URLs of all Internet sites worldwide that are not "access restricted" and contain material harmful to minors. The bill also repeals a requirement that Internet service providers, at customer request, block access to sites listed on the adult content registry. Governor Huntsman signed the bill on March 19. Although the legislation may eliminate some of the issues in our lawsuit, there are several outstanding problems with the 2005 law that we will continue to challenge.

### **Unconstitutional Statutes**

Three bills sponsored by Senator Scott McCoy sought to repeal laws that remain on the books after a court has found them to be unconstitutional. SB 86, "Repeal of Libel and Slander," will repeal Utah's criminal libel law, which the Utah Supreme Court found to be unconstitutional in the ACLU of Utah case, *Utah v. Lake*. The bill will also repeal criminal slander statutes. Unfortunately, SB 169, "Sodomy Amendments," failed. It would have brought Utah's sodomy law in line with the requirements of the 2003 U.S. Supreme Court decision in *Lawrence v. Texas* by providing that consensual sodomy between adults is not a crime. SB 212, "Revisors Directive on Unconstitutional Statutes," also failed. It would have required the Office of Legislative Research and General Counsel to make an annual report to the Judiciary Interim Committee of any Utah Code provision that has been found to be unconstitutional.

### **Lesbian and Gay Families**

For the second year in a row, lawmakers took up the common law concept of *in loco parentis*. SB 248 S1, "Parent and Child Amendments," sought to define *in loco parentis* as the legal recognition of a voluntary delegation of parental authority to a non-parent or guardian, and to limit the use of *in loco parentis* to grant parent-time, visitation, or custody rights. SB 248 S1 was in response to a visitation case before the Utah Supreme Court, and the sponsor's objective was to prohibit non-biological parents in same-sex relationships from obtaining visitation or custody rights to the children they've raised if those relationships end and the biological parents no longer want them to be a part of their children's lives. The sponsor pulled the bill after the Utah Supreme Court ruled that by itself, *in loco parentis* does not allow a non-biological parent the right to visit a child she has raised. The *in loco parentis* doctrine has long served to ensure that children who are raised by adults who are not their biological or adoptive parents have those relationships protected, and the court's decision may be devastating for some families.

The Senate never considered SB 58, "Wrongful Death Amendments," which would have allowed a domestic partner, once designated as an heir, to bring a suit for damages in the case of his or her partner's wrongful death.

### **School Vouchers**

HB 148, "Education Vouchers," which Governor Huntsman signed into law just three days after its passage, puts into place an expansive, statewide voucher program that will make available scholarships for students to attend private schools. The voucher program is controversial not only because of its broad scope, but also because it allows families to use state scholarships for sectarian schools. After Governor Huntsman signed HB 148, legislators passed House Bill 174, "Education Amendments," which provides the State Office of Education additional money for oversight of the voucher program, requires criminal background checks of teachers in participating private schools, and moves the date for a legislative audit of the program up two years. The amendments do not resolve the state constitutional concerns raised by HB 148, including whether it unconstitutionally

merges church and state by making sectarian schools part of the public school system, in violation of the state constitutional requirement that the public education system be “free of sectarian control.”

### **False Imprisonment**

Legislators did not pass HB 154, “Exoneration and Innocence Assistance,” which would have created a process for inmates to file claims of innocence, and would have provided financial assistance if a petitioner were found to be innocent. Instead, they passed a much more limited bill, HB 356, “DNA Exoneration Amendments,” which requires that the state pay for DNA tests of inmates contesting their conviction only if the tests are court ordered, the inmate is incarcerated and indigent, and the state lab either has a conflict of interest or does not have the capacity to conduct the test.

### **Right to Protest**

Part of a nationwide legislative effort to restrict protests at military funerals, HB 205, “Public Demonstration at Funerals,” makes it a class B misdemeanor for a person to engage in “disruptive activities” within 200 feet of a memorial service, during the period of time beginning an hour before and ending an hour after the service. The definition of disruptive activities is overly broad and includes protected expression, such as displaying posters and distributing leaflets. The bill passed, and we will now monitor how it is applied.

### **Criminal Justice**

HB 375 S1, “Sex Offender Restrictions,” prohibits persons convicted of committing a sexual offense against a minor from being in any “protected area,” except in very limited circumstances. Under the bill, “protected area” includes public swimming pools, parks, playgrounds, and schools. The bill, which passed, treats all people convicted of sex offenses as if they are imminent threats to society, and threatens to disrupt the lives of many people who are productive, law-abiding citizens.

### **Treatment for Drug Offenders**

Lawmakers finally funded a statewide expansion of drug treatment for prison and jail inmates. The Utah State Legislature allocated \$9 million for SB 50 S1, “Drug Offenders Reform Act,” which seeks to place non-violent drug offenders in intensive drug treatment rather than in jail. The *Deseret News* reports that between 70 and 80 percent of all inmates in Utah’s jails and prisons suffer from an underlying drug problem, and, according to state estimates, drug offenders who undergo treatment are half as likely to re-offend as those who do not. Supporters of SB 50 say that drug treatment will cost the state less than housing an inmate in a jail or prison, and that drug-related crimes will decrease as a result of the legislation. The ACLU of Utah supports laws like SB 50 because they are an effective alternative to our punitive drug policies that have caused the widespread violation of constitutional and human rights, as well as unprecedented levels of incarceration.

### **Search and Seizure**

SB 123 S1, “Amendment Regarding Search Warrant Procedure,” would have allowed law enforcement and parole officers to subject parolees to search and seizure of their “person, property, place of residence, vehicle or personal effects” without a search warrant or cause. The bill was in line with a 2005 U.S. Supreme Court ruling upholding a California police officer’s search of a parolee without any basis for suspicion. Fortunately, the Utah State Legislature chose not to codify such extensive search provisions, which would have weakened the Fourth Amendment rights of parolees.

*March 22, 2007*