

ACLU 2001 Report

The Annual Report of the American Civil Liberties Union of Utah

Dear Friends of the ACLU of Utah

On September 10, the state of civil liberties was not all that great. After September 11, it took a turn for the worse. It is in times of crisis, when frightened people seek security and demand protection from their government, that we must be the most vigilant. Historically, the government has taken advantage of the climate of fear and insecurity to enhance its own powers.

The question before us is not whether we will survive or be victorious over the terrorist network that struck our country last September. It is whether we will have the courage to hold fast to the principles of freedom on which our nation is based.

We will be tested in the year ahead as we challenge the knee-jerk response of government to seek security at the expense of civil liberties. Hanging in the balance are the basic guarantees of equal protection, due process, freedom of expression, freedom of association, and the right to privacy.

You will see how our work during 2001 reflected the need for increased attention to issues of freedom of expression, open government, and privacy. We are also concerned at signs of diminishing dissent, spurred by government agencies that threaten, harass, and profile demonstrators.

I hope that as you read this report, you will be stirred by our challenges and inspired by our victories. It is the job of the Government to ensure that Americans are secure, but it is the mission of the ACLU to ensure that we are also free. And, with your help, it is a mission that we intend to carry out.

Thank you for your ongoing support of our work protecting individual freedoms in Utah.

Carol Gnade
Executive Director

According to the law, an individual was guilty of commercial terrorism if “he enter[ed] or remain[ed] unlawfully on the premises or in a building of any business with the intent to interfere with the employees, customers, personnel, or operation of a business.” The definition of “enter” included “the intrusion of any physical object, sound wave, light ray, electronic signal or other means of intrusion under the control of the actor,” and the law applied to any business or building. For example, it made it a crime for demonstrators lawfully assembled on a public sidewalk to engage in verbal conduct targeting an individual business if any visual message (“light ray”) or audible message (“sound wave”) intended to dissuade people from patronizing the business entered the premises. The law did not ensure that speakers would have a reasonable alternative channel of communication. To the contrary, the restrictions required demonstrators to be out of sight and earshot of the businesses they intended to protest, preventing them from reaching their intended audience. In addition, HB 322 specifically exempted speech under the National Labor Relations Act and the Federal Labor Railway Act, and therefore posed equal protection problems since all other individuals were prohibited from exercising their fundamental free speech rights to the same extent as union members.

After legislators and the governor ignored our warnings about these constitutional concerns, we were forced to challenge the law in court. In April, we filed a lawsuit and preliminary injunction to keep the law from going into effect on behalf of the nonprofit organization Utah Animal Rights Coalition. One month later, U.S. District Judge Bruce Jenkins granted our request for a preliminary injunction, and the next day, our clients were able to conduct their weekly anti-fur demonstration on a public sidewalk in downtown Salt Lake City without fear of being arrested and jailed for their free speech activities. In an October hearing, Judge Jenkins agreed that the statute was unconstitutional and permanently enjoined the state from applying or enforcing the law.

Alcohol board sued for secret meetings

Last October, the Utah Alcoholic Beverage Control Commission held two “emergency” meetings by telephone to revise a proposed rule targeting alcohol advertising that depicts religious figures, symbols, or themes. The secret meetings came as a shock to members of the press and public who had been following the reworking of Utah’s alcohol advertising laws. Many argued that because of the controversial nature of the proposed rule, it was especially important that board members conduct the people’s business openly and with fair and adequate notice, rather than shield their actions from public input and scrutiny.

Four days after the illegal meetings, we filed a lawsuit on behalf of plaintiffs *The Salt Lake Tribune*, the Utah chapter of the Society of Professional Journalists, and John Saltas, publisher of the *City Weekly*. Alleging violations of Utah’s open and public meetings law, the lawsuit asked that any action taken in illegal meetings held in the 90 days prior to October 18 (the maximum time period allowed under the law) be declared void. In addition, we asked Utah Attorney General Mark Shurtleff to remind state officials of their responsibilities under the open and public meetings law.

Commercial terrorism statute unconstitutional

During their 2001 session, the legislature passed HB 322 *Domestic Terrorism of Commercial Enterprises*. Targeted at animal rights activists, HB 322 mandated enhanced penalties for “any criminal offense with the intent to halt, impede, obstruct, or interfere with the lawful operation of an animal enterprise or to damage, take, or cause the loss of any property owned by, used by, or in the possession of a lawful animal enterprise,” a designation that included, but was by no means limited to, farms, ranches, rodeos, and research facilities. What was extremely troubling about HB 322 was its definition of a new crime called “commercial terrorism,” which included a substantial amount of constitutionally protected expression.



Members of UARC exercising their First Amendment rights.

The day after we filed suit, the commission met in a properly noticed meeting, in which it revised what it had done in the earlier illegal meetings. The commission later admitted it had violated the open meetings law and promised to adopt proper procedures and to otherwise comply with the law in all future meetings. The Attorney General also promised to take specific steps to ensure that all public agencies and officials covered by the law are aware of its provisions and committed to complying with them.

ACLU files friend-of-the-court brief in personal privacy case

In February, we filed an *amicus curiae* brief in support of appellee Keith Roberts. At issue in the case is the interpretation of the Salt Lake City laws regulating public lewdness. As written, city law appropriately recognizes the right to privacy by criminalizing consensual sexual behavior only when it takes place in “an area capable of use or observance by persons from the general community” and “where an expectation of privacy for the activity engaged in is not justified.”

The controversy currently before the court arose from an incident that occurred in 1999, when Roberts took careful measures to ensure that passersby would not observe his conduct. He and a female companion parked his car in an out-of-the-way lot behind a flatbed trailer. Because of the remote nature of the area and the fact that it was dark outside, Roberts believed they would not be observed. However, Salt Lake City vice officers not only followed Roberts to the parking lot, but crawled under the trailer to get a better view of their activities. Based on the officers’ observations, Roberts was arrested and charged with disorderly conduct for lewd activity.

The Court of Appeals held that in order to sustain a conviction based on conduct “open to public” view, the court must review all the facts and circumstances to determine whether the conduct was “likely to be seen” by a member of the public. The city appealed to the Utah Supreme Court, arguing that consensual sexual behavior that occurs in any place in which a member of the general public is “capable” of viewing the conduct is a crime, with no regard to the likelihood that anyone will actually see the conduct. In our brief, we asked the Utah Supreme Court to uphold the opinion of the Court of Appeals, and consequently, protect the personal privacy rights guaranteed by the Constitution against the prying eyes of law enforcement officials. If the city has its way, then every time consenting adults engage in private sexual relations, they are susceptible to criminal charges simply because a police officer can peer through a window or a gap in the bedroom curtains.

Tenth Circuit asked to review Main Street case

Last May, the Utah district court concluded that Salt Lake City’s sale of one block of downtown Main Street and the LDS Church’s transformation of that street into a restricted religious plaza did not violate our plaintiffs’ free speech rights, the establishment clause, or the Fourteenth Amendment’s equal protection clause. In spite of this ruling, the First Unitarian Church, the Utah National Organization for Women, and Utahns for Fairness felt strongly that the city had overstepped its constitutional authority when it agreed to sale conditions allowing the LDS Church to use the plaza sidewalks to communicate its own messages while prohibiting members of the public from exercising that same right. We have since asked the Tenth Circuit Court of Appeals to review the constitutionality of these conditions and to rule that the plaza is a public thoroughfare, and is therefore subject to the same constitutional protections as other public forums.

In July, our legal arguments were significantly strengthened when the Ninth Circuit Court of Appeals issued a ruling in support of the public’s right to engage in free speech activities on private property serving as a public thoroughfare. In a case brought against the Venetian Hotel in Las Vegas by the ACLU of Nevada and others, the Ninth Circuit considered a set of circumstances nearly identical to those involved in the Main Street sale. In 1999, in exchange for acquiring a public right-of-way it needed to build a new hotel and casino, the Venetian agreed to “construct a private sidewalk connecting to public sidewalks on either side of its property ... for the purpose of providing unobstructed pedestrian access.” When labor organizers held a demonstration in front of the Venetian Hotel, a legal question arose as to whether the sidewalk was a traditional public forum and therefore entitled to First Amendment protections, notwithstanding the fact that it was private property.

The Ninth Circuit agreed with the ACLU and ruled in favor of free speech, stating: “As a ‘thoroughfare sidewalk’ seamlessly connected to public sidewalks at either end and intended for general public use, the sidewalk in front of the Venetian is ‘the archetype of a traditional public forum.’” In addition, the court made clear that although the sidewalk is on private property, “by dedicating the property to public use, the owner has given over to the State or to the public generally ‘one of the most essential sticks in the bundle of rights that are commonly characterized as property,’ the right to exclude others. The private owner can no longer claim the authority to bar people from using the property because he or she disagrees with the content of their speech.”

Like the sidewalks in front of the Venetian, the Main Street plaza is open to the public 24 hours a day 7 days a week and is an integral part of the downtown pedestrian grid. Our hope is that the Tenth Circuit will rule that this property constitutes a public space in which no single voice or viewpoint is allowed to dominate. Briefing on the Main Street appeal closed last December, and the Tenth Circuit Court of Appeals has scheduled oral argument for March 2002.

Court rules on English-language statute

In November 2000, Utah voters approved Ballot Initiative A, *English as the Official Language of Utah*, which provides in part that English is the “sole language of government.” Concerned the measure would be read generally to prohibit the government and the people from communicating in any language other than English, we filed a lawsuit on behalf of elected and appointed officials, government employees, nonprofit organizations, and an individual plaintiff challenging the law’s constitutionality.

After a January trial, the Utah district court issued a 15-page ruling dramatically limiting the new law and declaring it “largely symbolic.” According to the court, in order to pass constitutional muster the law cannot be read to prohibit government employees and elected officials from communicating in languages other than English. Similarly, the court concluded that the law’s exceptions must be broadly construed



Public sidewalk or private religious plaza?

to permit the government to provide essential services, including drivers' license exams, in languages other than English.

The district court's ruling, along with Utah Attorney General Mark Shurtleff's strong commitment to investigate any claims that the statute is being abused, accomplishes the goal of the litigation - namely to ensure that government agencies do not deny language minorities equal access to government processes, programs, and services based on a misreading or misapplication of the statute.

Utah Supreme Court asked to declare the state's criminal libel statute unconstitutional

In January, Fifth District Juvenile Court Judge Joseph Jackson ruled against our motion to dismiss criminal libel charges against high school student Ian Lake. These charges resulted from an Internet web site Lake created in response to other student-created sites that contained disparaging remarks about his friend. As part of an escalating war of words, his site included parodic statements about classmates, teachers, and the Milford High School principal.

In our motion, we argued that Utah's criminal libel statute is unconstitutional, and that the overzealous prosecution he currently faces is precisely the kind of heavy-handed censorship the First Amendment forbids. Almost forty years ago, the U.S. Supreme Court laid out the constitutional requirements for criminal libel laws, and following that decision, many statutes similar to Utah's have been successfully challenged as unconstitutionally overbroad and vague because they purport to punish statements made with "ill will."

While ruling against our motion, Judge Jackson acknowledged that it "raises serious and substantial questions about the facial validity of Utah's criminal libel statute, that there is some merit for the position that the statute is unconstitutional, and that there is no just reason for delay in certifying the court's denial of the Motion to Dismiss for immediate appeal." He referred the case to the Utah Supreme Court, which agreed to hear our arguments. We submitted our brief last August and will appear before the court in March 2002.

ACLU of Utah defends high school teacher

In May, a group of Utah County citizens asked the Utah Supreme Court to reverse a district court decision dismissing their case against Nebo School District teacher Wendy Weaver. Weaver, who is a long-time teacher at Spanish Fork High School, received national attention when she successfully sued the Nebo County School District for requiring her to sign a gag order that prohibited her from discussing her sexual orientation in or outside of the classroom. Because Weaver had the courage to stand up to such blatant discrimination, a group of Utah County citizens filed a lawsuit in 1997 seeking to have her banned from teaching altogether, and in 1998, we defended her from its groundless claims.

As in the initial lawsuit, appellants argue that "Because public teachers are examples for their students, a public teacher is not to support or encourage criminal conduct while in her official capacity or engage in private conduct that is known or should be known would materially and substantially disrupt the academic activities of the school where the teaching occurs." The parents are now essentially asking the Utah Supreme Court to do what the experts at both the Division of Professional Licensing and the state school board refused to do - forbid Weaver from teaching school. At stake in this case is whether parents can sue an individual teacher when the agencies charged with the responsibility of regulating the teaching profession have already dismissed claims against them. In our view, the case amounts to nothing more than continuing harassment against a teacher who asserted her First Amendment and equal protection rights, and our hope is that like the district court, the Utah Supreme Court will correctly view this complaint as being without merit.

ACLU vindicates evangelical Christian church's right to free speech and religious freedom

After years of being arbitrarily excluded from the Utah State Fair because fair patrons complained about the content of their religious message, in 1996, a California-based evangelical Christian ministry was finally allowed to set up a booth to display its religious books. However, unbeknownst to the ministry, its contract contained restrictions not imposed on other vendors, and when fair patrons once again objected to the ministry's message, fair officials with the help of several Salt Lake City police officers used those restrictions as a pretext for forcibly evicting the ministry from the event. In 1998, we filed a lawsuit against fair officials and individual police officers for their unconstitutional and illegal actions, and last November, we were finally able to negotiate an amicable settlement that resulted in full compensation and a promise that the ministry will be invited back to the Utah State Fair on the same terms and conditions as other vendors.

Cooperating Attorneys

Critical to the success of our legal work are our volunteer cooperating attorneys, who are generous with both their time and expertise. In 2001, the following attorneys worked with our staff on ACLU of Utah cases:

Brian Barnard

Nathan Hult

Milo Steven Marsden

Andrew McCullough

Adam Price

Robert Rusky

Richard Van Wagoner

ACLU National Legal Department

ACLU of Northern California

Asian American Legal Defense Fund

Disability Law Center

Legal Aid Society of San Francisco,

Employment Law Center

Mexican American Legal Defense and Educational Fund

Multi-Cultural Legal Center of Utah

www.acluutah.org

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Legal Advocacy

It is always our hope that we can address constitutional concerns without having to rely on litigation - a costly and time-consuming tactic that we consider only as a last resort. Whenever possible, we attempt to resolve problems through different advocacy efforts, such as coordinating meetings with appropriate community leaders or government agencies, providing resources and proper referrals, and drafting letters detailing constitutional concerns. Following are just a few examples of our 2001 advocacy efforts:

Negotiated a settlement with Little America Hotel on behalf of cross-dresser restrained by hotel security.



*Sissy Goodwin
(photo courtesy
of The Douglas
Budget)*

While visiting the hotel gift shop to find a present for his wife, Larry Sissy Goodwin was confronted by hotel security, who handcuffed him and summoned the police after he maintained he had done nothing to warrant their request that he leave the store. Believing this incident occurred because of his appearance - Goodwin was wearing a tennis skirt and blouse - he sought our assistance. After we intervened, Goodwin and the hotel were able to reach a mutually agreeable settlement when hotel officials acknowledged that he had not engaged in any lewd conduct.

Advocated on behalf of a former census bureau employee who was terminated after she refused to take a loyalty oath.

In 2000, Yvonne Bloch contacted us after she was fired by the United States Census Bureau for refusing to swear "to uphold and defend the Constitution" and "oppose the overthrow of the government." We argued that there is no compelling interest for the government to require such language from a census data collector, and that such an oath inhibited Bloch's freedom of belief and expression. Although too late for Bloch to continue her work with the census, we were able to negotiate a settlement in which she received back pay and was allowed to affirm, rather than swear, to an alternative oath to discharge her duties with honesty and integrity, and to maintain confidentiality and other requirements of the office.

Ensured that Davis County Animal Control abides by fundamental due process and open government.

After Davis County Animal Control impounded his sheep that had been found roaming outside of his pasture, Alvin Richins was surprised to learn that he would have to pay the county nearly twice the amount in fees than he had expected. When we reviewed his case, we discovered that when the Davis County Commission set the animal impound fee schedule, it had not properly notified the public, and that for over a year and a half, the county had been charging residents more than it should have. On behalf of Richins, we negotiated a settlement with Davis County that required officials to vote on its fee schedule in a properly notified meeting and provide refunds to anyone who had paid the illegal animal control fees - a possible \$70,000 liability. In addition, the county paid Richins \$4,000 for his sheep, which it had sold at a public auction after he refused to pay the excessive fine.

Helped shape Salt Lake City's proposed ordinance strengthening the police civilian review board.

We have always maintained that effective law enforcement depends upon the trust and cooperation of community residents, and that both are enhanced when citizen review of police activities is possible. This year, the Salt Lake City

administration proposed an ordinance intended to strengthen the current civilian review model. After providing the city with our analysis, the ordinance was amended to address our concerns and recommendations, and the final proposal is a positive step towards a strong and truly independent review of police practices.

Called upon the Attorney General to enforce Utah's prohibition on religious discrimination.

In August, Orem resident Judy Bruyette contacted our offices after Rodizio Grill refused to grant her and her guests - a priest and a deacon of her church - an advertised 15% "missionary" discount. Bruyette's complaint highlighted the all too common practice by local eateries and retail businesses to offer "LDS" or "missionary" discounts to their patrons. On Bruyette's behalf, we contacted the state Attorney General, as well as the head of the Utah Restaurants Association, advising them that these types of discounts result in differential treatment based upon religion and are in violation of Utah's public accommodations law. As the public response to this issue made clear, such policies are not only illegal, but, because the majority of the population is of the LDS faith, they are particularly divisive.

Winter Olympic Games

Our Olympic free speech preparations have been directed by two constitutional requirements: 1) that those who wish to engage in lawful free speech activities have meaningful areas near the Olympic venues that are large enough and within sight and earshot of their intended audiences; and 2) that even during the games, our public streets and sidewalks are traditional public forums, and any restrictions placed on them are therefore subject to the highest constitutional scrutiny.



*ACLU of Utah legal observers gear up for the
Winter Olympic Games*

Despite our constant mantra about free speech and the winter games, it took a lot of persistence and a public records lawsuit against the Utah Olympic Public Safety Command to get venue cities and counties to take their First Amendment obligations seriously. Throughout the year, we worked with officials from Salt Lake City, Farmington, Summit County, West Valley, Park City, and the University of Utah as they drafted various demonstration plans. Much of our review focused on whether proposed free speech restrictions were content neutral, did not unreasonably inhibit demonstrators' ability to get their messages across, and were narrowly tailored to address a compelling government interest. We were especially critical of plans that attempted to prohibit demonstrations solely on the suspicion that a group might engage in unlawful activities or civil disobedience. Eventually, venue officials addressed our recommendations and concerns, and, at least on paper, most of the final plans look reasonable.

We also represented several groups who submitted applications to host demonstrations in areas outside of Salt Lake City's designated free speech zones. For a time, we were worried that the city would not live up to its promise that outside of the venue areas, free speech activities will take place as usual. However, last December, officials granted all permit requests. Currently, we are working with the Utah Animal Rights Coalition to ensure that they have a meaningful demonstration area at Farmington, where the rodeo will be a part of the cultural Olympics.

Public education has been an important component of our Olympic work. In December, we released the *2002 Winter Games Protest Guide*, a comprehensive document listing the various ordinances that apply in each venue area, as well as city and county contact information and possible free speech problems with the ordinances. Also, last year we made all of our Olympic-related materials, including the *Protest Guide*, available on the Internet (see www.acluutah.org/wintergames.htm).

By the time this report is available, the Olympics will be over and we will know just what sort of a host Salt Lake City was for lawful protesters. Our volunteer legal observers will monitor the city's response to free speech activities, and our sincere hope is that they will witness a true American Olympics, in which varying and contradictory viewpoints have a conspicuous place in our messy "marketplace of ideas."

Legislative Report

The decisions made during the annual session of the Utah State Legislature have a lasting impact on our communities. As new laws are created and others repealed and rewritten, we try to ensure that these changes strengthen rather than compromise our constitutional rights. During each session, we address a wide range of issues, and our organizing and lobbying efforts are aimed at educating lawmakers about the civil liberties implications of their proposals.

Lawmakers further restrict family planning efforts.

HB 12 *Provision for Legal Relinquishment of a Newborn*, which establishes drop-off sites for women to give up their newborn babies with few questions asked, garnered much positive publicity. Similar laws have been popular in state legislatures around the country, and they seek to avoid the tragic yet relatively rare incidents in which distraught parents abandon their babies. While commendable, the bill and its counterparts provide only an after-the-fact safety net rather than a solution to the problems of unintended pregnancies or the inability to care for a child. And unfortunately, the legislature made certain there would be little help for family planning efforts that would prevent the need for such drop-off sites. A particularly apt example of this was the Senate's refusal to grant a public hearing for SB 42 *Equity in Prescription Coverage*, which would have required health insurance plans to cover prescription contraceptives at the same level as other prescription drugs. This type of legislation seems especially reasonable in light of the fact that over 95% of health insurance companies cover drugs like Viagra to treat sexual impotence, while less than 50% cover even one form of prescription contraception.

In addition, legislators this year seemed unusually preoccupied with restricting sex education in public schools. SB 75 *Public Education Curriculum Amendments* underscores and exacerbates the lack of complete and accurate information that is essential to making responsible choices. At first, the bill went so far as to prohibit teachers from even responding to their students' spontaneous questions about contraception or sexually transmitted infections. While that portion of the bill was removed and the law was amended to allow teachers to respond to such questions as long as they do not advocate for or promote contraceptive use, the unmistakable message

remains that teachers and students are not to be entrusted with comprehensive sex education programs.

Moreover, new intent language added to the budget prohibits the State Office of Education from accepting any federal grants "specifically used to fund sexual education, including grants currently received, namely AIDS Education and Prevention." Not only does this measure deprive Utah of \$320,000 in HIV/AIDS funds, but, by being unable to apply for these grants, Utah also loses eligibility for another \$450,000 in funds for at-risk youth programs, which include nutrition and physical fitness, as well as smoking cessation programs. Even SB 7 *State Textbook Commission Amendments* - the seemingly innocuous law concerning the commission that approves school instructional materials - potentially impacts sex education in that it makes it possible for local school districts to use human health books that the state has rejected due to medical inaccuracies, incomplete information, or other content problems.

Bill negatively impacts gay-positive viewpoints expressed in the classroom.

SB 75 *Public Education Curriculum Amendments* also places new limits on the discussion of homosexuality in the context of health education. It states: "At no time may instruction be provided, including responses to spontaneous questions raised by students, regarding any means or methods that facilitate or encourage the violation of any state or federal criminal law by a minor or an adult." This carefully crafted language barely conceals the fact that the "crimes" referred to are those outlined in state sodomy laws. More seriously, under this provision even a simple statement that lesbians and gay men can lead healthy and productive lives can violate the law. The unconstitutional prohibition of all gay-positive viewpoints is most explicit in the portion of the bill mandating that instructional materials and teachers' responses to students' questions cannot include "the advocacy of homosexuality." The legislation is part of a national trend to pass sweeping anti-gay policies that prohibit teachers from promoting, encouraging, or portraying in a positive light lesbian or gay lifestyles. The statute has the potential to negatively impact the First Amendment rights of public school teachers, and consequently, we will scrutinize its application.

Enhanced penalties for hate crimes fails.

In one of the many ironies of this legislative session, while legislators had no trouble enhancing criminal penalties for actions against "animal enterprises," they declined to enhance penalties for hate crimes committed against racial, ethnic, and sexual minorities. SB 37 *Hate Crimes Amendments* would have provided enhanced criminal penalties for crimes committed with bias against any "group." This approach is patterned on a Texas statute that the Texas legislature recently repealed in favor of a more specific listing of the protected groups, an approach that is consistent with federal anti-discrimination laws. Regardless of the approach, the ACLU is concerned that as applied, hate crimes laws are likely to compromise protected First Amendment expression. To decrease this possibility, we have advocated that these laws contain provisions prohibiting prosecutors from proving the bias element with evidence of defendants' mere abstract beliefs or their membership in an organization that advocates those beliefs. An amendment to the bill sought to address that concern by requiring that the defendant's bias be "demonstrated by the defendant's actions at the time the offense was committed." Despite repeated attempts to get the legislation out of the House Rules Committee, the House of Representatives refused to vote on the bill. Our hope is that any future efforts to amend the current hate crimes law will be patterned on established federal and state precedent and will not allow enhanced punishments simply because of a defendant's unpopular or even odious beliefs.

Two bills address the rights of prison inmates to due process and safety.

With the passage of SB 172 *Postconviction DNA Testing*, Utah joins those states that have already implemented procedures allowing for post-conviction DNA testing. SB 172 applies to all inmates convicted of a felony offense who assert their innocence and for whom DNA evidence exists. SB 4 *Prohibition of Intimacy with Person in Custody* makes it a crime for prison guards to engage in sexual relations with prisoners. While this law is an important step in ensuring the safety of prison inmates, it is also distressing that it was not on the books until last year.

Individuals granted some protections from SLAPP suits.

The passage of HB 112 *Prevention of Retaliatory Lawsuits* reinforces the principle that democracy requires the active involvement, input, and consent of the public. The bill seeks to discourage “SLAPP” suits - “strategic lawsuits against public participation” - a relatively new litigation strategy used by large companies to silence their critics who exercise their First Amendment rights by speaking out at public meetings, circulating neighborhood petitions, or talking to the press about their concerns. Generally, these types of lawsuits ask for enormous sums of money, and many citizens choose to cease their activist work rather than hire defense attorneys and risk having to pay millions of dollars in damages. Because of the First Amendment issues involved, ACLU affiliates across the country have represented defendants in this type of litigation and advocated for legislation protecting activists from SLAPP suits. We were therefore pleased by the passage of the bill, which provides new legal options for defendants. Under the statute, if a defendant “believes that the action is primarily based on, relates to, or is in response to an act of the defendant while participating in the process of government and is done primarily to harass the defendant,” then the defendant can ask a judge to rule “as expeditiously as possible” whether there is evidence that the case was intended to silence protected expression, thus preventing the accumulation of costly legal fees. If the judge dismisses the case, then the defendant may file a counter claim to receive costs and reasonable legal fees.

Law limits the political ability of labor unions.

While HB 112 strengthens public participation in government proceedings, HB 179 *Voluntary Contributions Act* modifies labor and election laws to restrict the ability of unions to take part in the political process. The new law requires labor organizations to create a separate fund for political contributions, but does not extend this requirement to corporations, which can continue contributing campaign cash from their funds without the approval of their customers or stockholders. It is troublesome that the government is regulating the organizational and financial activities of unions and their members, since as an associational right, union members should be able to govern their own organizations, set their own dues, elect their own leaders, and determine how and where their political contributions will be spent.

Bill that would have had serious First Amendment problems amended.

In an attempt to prevent minors from entering into plural marriages, SB 146 *Performing Unlawful Marriages* modified the state marriage provisions to make it a third degree felony for parents or guardians to allow their underage children to enter into unlawful marriages. The first version of the bill was troubling because it also made it a class A misdemeanor for a parent or guardian to encourage or promote such unlawful marriages. This prohibition could easily have been used to target polygamous families who choose to teach certain religious beliefs to their children, including the advocacy of plural marriage. Thanks in large part to the lobbying activities

of the Women’s Religious Liberties Union, which, like the ACLU, supports the right of consenting adults to make their own relationship choices and live according to their conscience, the sponsor removed that portion of the bill.

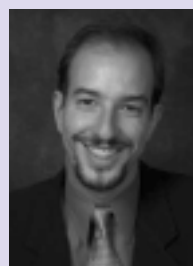
Sex offender registry becomes even more expansive.

Lawmakers passed two bills broadening the scope of Utah’s sex offender registry, already one of the most expansive sex offender databases in the country. HB 237 *Sex Offender Registry* extends registration requirements to individuals convicted by other states or the United States government of an offense, which if committed in this state, would have required registration. The new law applies to any person who is “in the state for over 14 consecutive days, or for an aggregate period exceeding 30 days, during any calendar year,” and also requires registration of individuals found not guilty by reason of insanity. Another successful bill, HB 22 *Sex Offender Lifetime Reporting Amendments*, requires those convicted of certain sexual offenses to register annually for their entire lifetime. According to the new law, the registration “is not subject to exceptions and may not be terminated or altered during the offender’s lifetime.” One bill that failed was HB 93 *Expungement of Certain Felony Records*, which would have prohibited the expungement of “any registerable sex offense” or “any attempt, solicitation, or conspiracy to commit any registerable sex offense.”

Due process rights for highway roadblocks codified.

HB 122 *Administrative Traffic Checkpoint Amendments* puts into state law a February 2000 decision by the Utah Supreme Court restricting the use of roadblocks only for those violations that are directly related to public safety, such as drunken driving. Like the court decision, the new law attempts to decrease the potential for roadblocks to become pretextual stops for any violation of the law by requiring that they have a defined purpose. Importantly, the bill also makes it illegal for law enforcement to erect fake roadblocks by posting signs along a highway warning motorists that a checkpoint is ahead with police and drug-detecting dogs even though no checkpoint exists, and then citing those motorists who maneuver to avoid the inconvenience of the road block.

Save the Date



Anthony Romero

On Thursday, May 2, Anthony Romero, ACLU national executive director, will be speaking at the ACLU of Utah’s

Bill of Rights Celebration. That

evening, we will also present Glenn Bailey with the Renie Cohen Memorial Award for his long-term activism in support of civil liberties. Look for an invitation in the mail shortly, or call

(801) 521-9862 ext 101 or email

aclu@xmission.com for additional information.

Best Wishes Paul!



Paul Wharton

After twenty-two years of volunteer service, Paul Wharton retired from our legal panel last spring - just in time to work in his garden. While his valuable insight on a broad range of issues will be missed, we do know how to reach him when we have questions that only he can answer.

Why We Do What We Do

At times, our work can seem a little abstract. That's why it was such a treat to see members of the Highland High School Gay/Straight Alliance staffing a booth at the 2001 Gay Pride Day. Thanks to an ACLU lawsuit, the GSA, along with other non-curricular clubs, can now meet in the Salt Lake City School District.



GSA member include (left to right): Elizabeth Jones, Adam Collier, Sarah Landes, Genevieve Candelaria, and Micol Rhor.

In Memoriam



Pete Suazo

Along with the rest of the community, we were saddened to hear of Senator Pete Suazo's death. Pete was a strong supporter of civil rights, and was a plaintiff in our lawsuit challenging the English-language statute.

Financial Report

As a private, non-profit organization, the ACLU of Utah receives no government funding and never charges its clients for legal representation. Our existence depends entirely upon private donations, foundation grants, court-awarded legal fees from successful cases, and membership fees from Utahns who are dedicated to preserving fundamental civil liberties. It is no exaggeration to state that our financial and volunteer supporters have enabled us to accomplish everything detailed in this annual report.

The following is the combined ACLU of Utah Union and Foundation unaudited financial report for the calendar year 2001:

Revenue

| | |
|------------------------------|--------------|
| Contributions and Membership | \$257,313.00 |
| Legal Awards | \$13,100.00 |
| Net Events | \$27,357.00 |
| Dividends & Interest | \$4,682.00 |
| TOTAL INCOME | \$302,452.00 |

Expenses

| | |
|------------------|--------------|
| Program Services | \$270,000.00 |
| Operations | \$27,600.00 |
| Fundraising | \$6,348.00 |
| TOTAL EXPENSES | \$303,948.00 |

About the ACLU

Founded in 1920, the American Civil Liberties Union is a nationwide, nonpartisan organization dedicated to working in the courts, legislatures, and communities to defend and preserve the individual rights and liberties guaranteed to all people in this country by both the Constitution and the laws of the United States.

The ACLU of Utah was chartered in 1958 to work on constitutional issues that are pertinent to those living in this state. Our priorities include freedom of speech and expression, the separation of church and state, freedom of religion and association, the right to privacy, safe prison and jail conditions, and equal protection and due process of the laws.

ACLU of Utah Affiliate Staff

| | |
|--------------------|-----------------|
| Executive Director | Carol Gnade |
| Legal Director | Stephen Clark |
| Deputy Director | Cori Sutherland |
| Staff Attorney | Janelle Eurick |
| Legal Intern | Lori Seppi |

ACLU of Utah Affiliate Board Executive Committee

| | |
|-------------------------------|-------------------|
| Chair | Laurie Wood |
| Vice Chair | Tim Chambless |
| Treasurer | Andrew McCullough |
| Legal Panel Director | Lincoln Hobbs |
| National Board Representative | Jill Sheinberg |
| At Large Members | Karen Denton |
| | Janet Wolf |

Affiliate Board Members

| | |
|----------------|-------------------|
| Anita Albright | Sue Marquardt |
| Peggy Battin | Lee Martínez |
| Roberto Culas | Rick Nosseir |
| Beverly Dalley | Colleen Sandor |
| George Henry | David Tundermann |
| Mark Hoenig | Tracy Vandeventer |
| Robert Wood | |

Legal Panel Members

| | |
|------------------|----------------|
| Dianna Cannon | Trystan Smith |
| Andrew Deiss | Karen Stam |
| Russell Hathaway | Phyllis Vetter |
| Linda Jones | Mary Woodhead |
| Derek Langton | |

Contact Information

355 North 300 West #1
Salt Lake City, UT 84103
(801) 521-9862
aclu@xmission.com
www.acluutah.org



Membership Survey

Survey of ACLU of Utah Members and Supporters

We want to hear from you! Please take the time to fill out this brief survey and return it to our offices.

1. Are you a member of the ACLU?

☐ Yes ☐ No

2. If you are a member, why did you join?

3. If you are not a member, why haven't you joined the ACLU?

4. In your opinion, what is the most important role the ACLU plays in Utah?

Nationally?

5. What ACLU issues are you most interested in?

- ☐ Reproductive Rights
- ☐ Separation of Church and State
- ☐ Rights of Prison and Jail Inmates
- ☐ Disability Rights
- ☐ Students' Rights
- ☐ Immigrants' Rights
- ☐ Lesbian and Gay Rights
- ☐ Racial Justice
- ☐ Other _____
- ☐ Religious Freedom
- ☐ Freedom of Speech and Expression
- ☐ Police Practices
- ☐ Rights of People Living with HIV/AIDS
- ☐ Workplace Rights
- ☐ Privacy Rights
- ☐ Women's Rights
- ☐ Death Penalty

6. Can we contact you by e-mail?

☐ Yes ☐ No

E-mail address: _____

7. Have you logged on to our website at www.acluutah.org?

☐ Yes ☐ No

Comments: _____

