

LEGAL ADVOCACY & ACTION

BUSHCO V. UTAH TAX COMMISSION ONGOING

In 2004, the state Legislature passed H.B. 239, “Sexually Explicit Business and Escort Service Tax,” which imposes a substantial tax on businesses that provide escort services or feature “any nude or partially denuded individual.” We warned legislators that this selective taxation is, in effect, a content-based restriction on constitutionally-protected expression and violates the First Amendment. Even if lawmakers could prove a compelling state interest, the bill’s definition of “sexually explicit business” is so broad that it would fail the courts’ requirement that any restriction on speech be narrowly tailored to address that interest.

ACLU of Utah board member W. Andrew McCullough filed a lawsuit on behalf of several escort services and nude dancing establishments, and in 2007, the Utah Supreme Court agreed to hear the case. On November 16, 2007, the ACLU of Utah filed a friend-of-the-court brief with the Utah Supreme Court in which we asked the court to find the law unconstitutional. Since that time, Mr. McCullough has argued the case before the Court and we are currently awaiting its ruling.

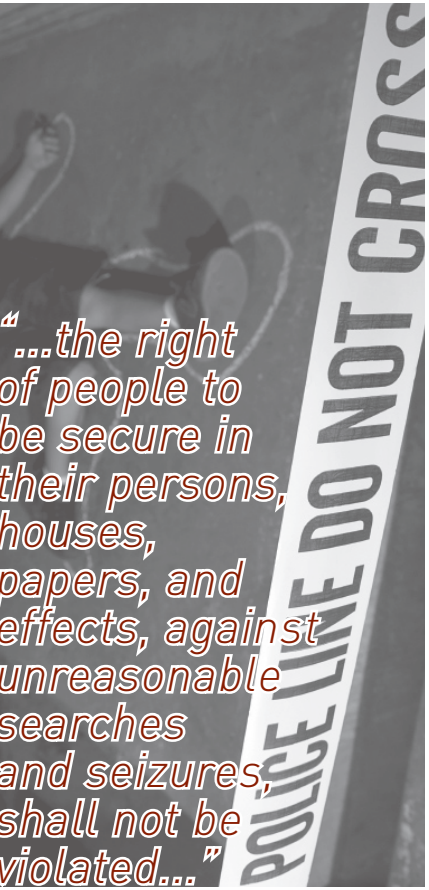
Get the full story at www.acluutah.org/docket.htm#bushco

THE KING’S ENGLISH V. SHURTLEFF ONGOING

In 2005, Utah legislators passed H.B. 260, “Amendments Related to Pornographic and Harmful Materials.” Meant to restrict children’s access to harmful material on the Internet, the law instead unconstitutionally limits the free speech rights of Internet content providers. It also may negatively impact Internet users who have no wish to restrict the sites to which they have access, acts as a prior restraint on Internet service providers’ speech, and violates the Commerce Clause of the United States Constitution.

With Howrey LLP, the Center for Democracy and Technology, and the Media Coalition, we filed a lawsuit challenging the law’s constitutionality, citing free speech and interstate commerce violations. Most recently, several of the listed plaintiffs - including the King’s English and Sam Weller’s Bookstore – were dismissed from lawsuit. We will be working with the state legislature to try to resolve Constitutional issues with the law, but are resolved to continue with the suit as long as those issues persist.

Read the case history up to this point at www.acluutah.org/docket.htm#the



WALKER V. OREM POLICE RESOLVED

On December 29, 1998, David Walker was shot by police at his family’s American Fork home; his parents, two sisters and brother-in-law witnessed the shooting. After the shooting, law enforcement kept the family inside the house for questioning and did not permit them to follow David to the hospital, where he later died.

Represented by Strindberg Scholnick & Chamness, the Walker family filed suit, charging the police with excessive force and unlawful detention. The Tenth Circuit held that the Walkers had been illegally detained, but did not hold the officers’ liable, because they couldn’t have known that the length of the detention violated the Fourth Amendment. In October 2007, the two officers who shot David were also acquitted of the excessive force charges.

Still, the Walker family’s courageous action was not in vain. The case shows that unreasonable officer conduct is not shielded by the cloak of immunity. Additionally, this case set the standard for unlawful detentions by police in similar situations.

Learn more about the case and its important ruling at www.acluutah.org/resolutions.htm#walker



ETSITTY V. UTAH TRANSIT AUTHORITY RESOLVED

In February 2002, Krystal Etsitty was fired from her job as a bus driver at the Utah Transit Authority shortly after she revealed that she is transgender. UTA had received no complaints about Krystal; rather, they told her she was being fired because they could not determine which restroom she should use. The UTA told Etsitty that she would be eligible for rehiring only after getting sex reassignment surgery.

In September 2007, the Tenth Circuit Court affirmed the district court’s decision, holding that: 1) that Title VII of the 1964 Civil Rights Act does not apply to transgender people, and 2) that even if Title VII did apply, UTA’s decision to fire Etsitty was not based on her lack of conformity to sex stereotypes. The ruling clearly demonstrates the need for legislation that specifically prohibits discrimination based solely on the fact that an employee is transgender.

Read the full story at www.acluutah.org/resolutions.htm#etsitty

OGDEN ELECTION IRREGULARITIES

We received numerous complaints from Ogden voters following the November 6 election, alleging inappropriate use of voter challenges, denial of provisional ballots, voter intimidation and electioneering at polling places. In response, we conducted an investigation that concluded that the spirit of the election was violated by inappropriate actions, including unnecessary voter challenges and poll worker error.

We decided against a lawsuit, recommending instead legislative reform, enhanced election oversight and standardized, higher quality training for election officials. We worked with legislators, election officials and coalition partners to draft a bill to tighten up the state’s laws regarding voter challenges; the bill didn’t pass, but we plan to promote it again during the 2009 Session. County clerks throughout the Wasatch Front, as well as other elected officials, supported the bill, saying it would assist them in running efficient, fair elections.

Download the full report at www.acluutah.org/voting.shtml

TASERS USED ON PREGNANT INMATES

We received a complaint from a six-month pregnant inmate from Washington County Jail, who said that during her court appearance, she was forced to wear a remote-controlled stun belt, called a “band-it.” Despite her legitimate concerns about the risks posed to herself and her developing fetus, Washington County Sheriff employees insisted she wear the electroshock restraint while in court.

The impact of tasers on pregnant women – and on all people, actually – are still largely unknown or unproven. Some human rights organizations say that using tasers on vulnerable populations, such as pregnant women, constitutes excessive force, even “cruel, inhuman, or degrading treatment, and torture.”

Thanks to our intervention, the inmate was not forced to wear the “band-it” again during her incarceration. Her complaint also spurred us to inquire as to the policies toward taser use on pregnant inmates throughout Utah’s jail and prison system. We worked with prison and jail administrators to ensure that their policies do not allow for the use of such devices on pregnant women, regardless of their criminal status.

Read more at www.acluutah.org/police.shtml



RELIGIOUS MESSAGES IN PUBLIC SCHOOLS

We received numerous complaints this past year about students receiving unsolicited and inappropriate messages in public schools. These complaints included allegations of overt religiously-themed moralizing by educators, the subjecting of non-LDS students to disproportionate disciplinary action and an inappropriate use of school resources to announce religious release-time classes and activities.

For example, at Eastmont Middle School in Sandy, the school’s yearbook appeared to sponsor LDS seminary events – a situation brought to our attention by an Eastmont student. This sent an improper message that Eastmont Middle School officially endorses study of that particular religion; the ACLU intervened and was pleased with the sensitive and proactive response of the principal.

Learn more about such complaints at www.acluutah.org/religion.shtml

AT THE CAPITOL

VOTING RIGHTS Election Law Reforms

To remedy some of the issues that arose during Ogden mayoral election; died in Rules Committee; will be re-submitted by ACLU and partners in 2009.

Election Day Registration
To institute same-day registration as utilized in Idaho, Wyoming and other states; died in Rules Committee; ACLU continues to research the possibility of EDR in Utah.

Proof of Citizenship to Vote
Opposed by ACLU, as it creates additional and unnecessary barriers to voter participation by those who are lawfully entitled to vote; bill died in Senate.

LGBT EQUALITY Anti-Discrimination Act Amendments
Attempt to protect LGBT individuals from workplace discrimination; assigned to interim committee study; continues to be a high priority for ACLU and coalition partner, Equality Utah.

Utah Adoption Amendments
Sought to end state’s prohibition of adoption or fostering of children by cohabiting (non-married and living together in a committed relationship) individuals; died in Rules Committee; we will strongly support Equality Utah in re-introducing this bill next session.

Revision to Local Government
Legislature’s attempt to undermine Salt Lake City’s domestic partnership registries; ultimately passed both House and Senate, but was revised so as to not adversely affect the substance of the registry.

FREE ASSOCIATION Prohibiting Gang Activity
Purported to lawfully target gang members involved in criminal activity; actually could allow police to profile young people (particularly those of color) who dress in a particular manner and “loiter” together in certain areas; passed the Senate but fortunately died on House floor.

Read our full 2008 Legislative Report at www.acluutah.org/08legrep.htm



IMMIGRATION Illegal Immigration
Legislators’ response to ongoing issues and concerns related to undocumented individuals living and working in Utah; passed into law, with a one-year delay before implementation in 2010; statewide interim meetings and hearings will be held throughout 2008; ACLU is opposed to measures in this law, and will stand strongly against it.

E-Verify
Would require employers to use “E-Verify” system to check employees’ employment eligibility; relies on untested technology that is extremely vulnerable to privacy violations; both bills, strongly opposed by the ACLU because of threats to personal privacy and information security, failed to pass.

OPEN GOVERNMENT Disclosure of Public Employee Disciplinary Actions Amendments
To amend Utah Government Records Access and Management Act to keep all law enforcement disciplinary files secret; ACLU strongly opposed the bill, which died in committee.

REPRODUCTIVE FREEDOM Involuntary Substance Abuse Treatment for Pregnant Minors
Sought to impose mandatory substance abuse treatment for pregnant minors; bill was modified with input from ACLU to give preferential substance abuse treatment to pregnant minors seeking such treatment.

PRIVACY RIGHTS/ SEARCH & SEIZURE Federal REAL ID Act
Despite confusing language, would actually prohibit Utah from participating in national REAL ID program and was strongly supported by ACLU; died in the House; we will work to re-introduce this bill and defeat REAL ID implementation.

DNA Sample - Felony and Certain Misdemeanor Arrests
Would require police to take DNA from people who are simply arrested – not charged or convicted – of a crime; ACLU spoke out against potential Fourth Amendment violations; bill did not pass.

OUTREACH & EDUCATION

Over the course of this past fiscal year, the ACLU of Utah has given dozens of talks, participated on community panels, made presentations to school and civic groups and held community-based discussions on critical, timely civil liberty issues. Below are just a few highlights from our extensive outreach efforts!

THE FIGHT FOR FREE SPEECH IN AMERICA
Christopher Finan, President, National Booksellers’ Foundation for Free Expression
@ Annual Bill of Rights Celebration

TORTURE & THE RULE OF LAW
Jameel Jaffer, Director, ACLU’s National Security Project
@ ACLU of Utah Annual Membership Meeting and CLE

CLOSE GUANTANAMO!
Candlelight Peace Vigil
@ the Federal Building
Film Canvassing
@ the Sundance Film Festival
“Freedom from Abuse of Power”
Film Screening & Public Lecture with Dr. Tim Chamblless
@ the Salt Lake Public Library

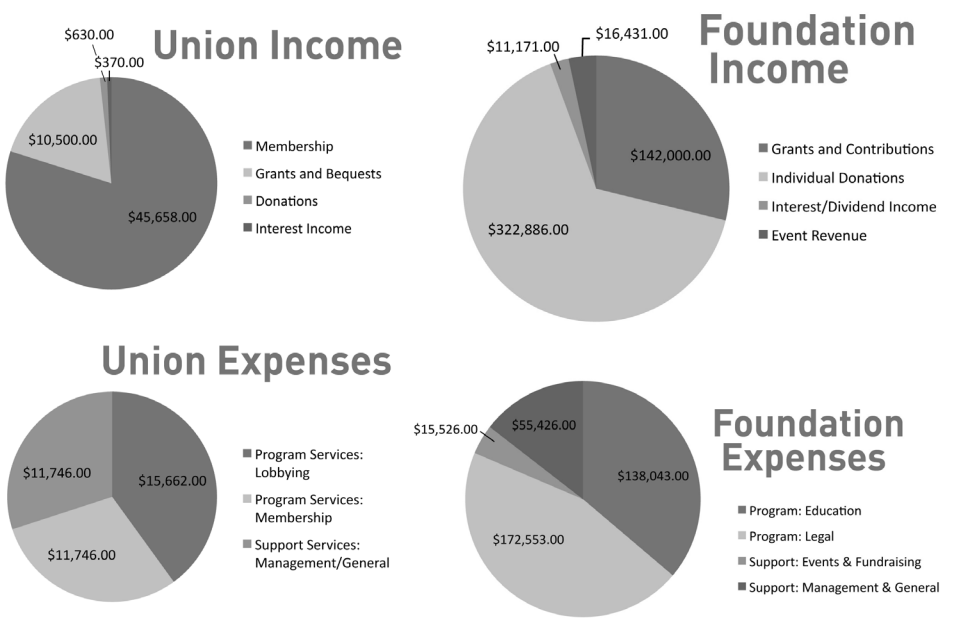
LGBT FAMILIES
“Freedom to Parent”
Film Screening & Public Lecture with Ken Choe, Senior Staff Attorney, ACLU’s LGBT Project,
@ the Salt Lake Public Library

LIGHTS...CAMERA... ACTIVISM!
With Lisa Remington, Line Producer of ACLU’s Freedom Files Documentary Series
@ Spy Hop Productions

YOUTH ACTIVIST SCHOLARSHIPS
Cara Cerise, Highland H.S.
Rachelle Harrison, Skyline H.S.
Michelle Ripplinger, Ogden H.S.
We launched our own local Youth Activist Scholarship program to complement that of the national ACLU. Of our three local winners (listed above), two were entered into the national competition – and both won a national scholarship and a trip to the Annual ACLU Membership Meeting and Youth Leadership Institute in Washington, D.C.! Of only 15 winners across the country, two were from Utah.

Check our website at www.acluutah.org for more information and to apply for a 2009 Youth Activist Scholarship!

ORGANIZATIONAL HEALTH & GROWTH



Time Frame for Annual Report is April 2007 through March 2008.
For more complete audit information, contact our office at (801) 521-9862, ext. 100.

BOARD
Jennifer Allred
Tim Chamblless
Beverly Dalley
Debra S. Daniels
Karen Denton
Erika George
Lincoln Hobbs
Marc Hoenig
Iqbal Hossain
Sue Marquardt
Tarek Nosseir
Elizabeth Paige
Jill Sheinberg
David Tundermann
Raymond Uno
Robert Wood
Laurie Wood
Doug Wortham
W. Andrew McCullough

STAFF
EXECUTIVE DIRECTOR
Karen McCreary
OFFICE MANAGER
Reinard Knutsen
STAFF ATTORNEY
Marina Baginsky Lowe
as of May 2007.
DEVELOPMENT DIRECTOR
Anna Brower
as of December 2007.

GOODBYE & THANKS!
Cori Sutherland
Communications Director
Stephanie Peterson
Legislative Coordinator

LEGAL PANEL
Lincoln Hobbs
Stephen Clark
Roberto Culas
Linda Jones
Laura Kessler
Jensie Anderson
Cathy Roberts
Emily Smith
Trystan Smith
Karen Stam
Mary Woodhead

YOUR ACLU ACROSS THE STATE in 07-08

PROBLEMS AT THE POLLS

When dozens of people encountered serious problems while trying to vote in the Ogden mayoral election in November, they turned to the ACLU. Our investigation revealed voters that were inappropriately challenged, some provisional ballots that were not counted, poorly-trained poll workers and illegal electioneering at polling places, leading to the conclusion that election oversights is greatly needed. Our findings - and the strong response from Ogden residents - spurred our proactive work at the Legislature to make important changes to state election laws. We'll keep pursuing reform through the legislature in 2009.

This Annual Report covers the work of the ACLU of Utah for the period of April 2007 through March 2008; it contains only some of the highlights of the ACLU of Utah's Legal Advocacy, Legislative and Education & Outreach Activities.

We hope this report gives you a sense of our current work and on-going projects, as well as an overview of the financial health of your ACLU. We encourage you to visit our website at www.acluutah.org for greater detail - or, better yet, contact our office and speak directly with a staff person. We hope that you will attend the Annual ACLU of Utah Membership Meeting on November 20, 2008!

ACLU: THE NEXT GENERATION

In 2007-08, we launched the ACLU of Utah Youth Activist Scholarship. The entrants blew us away! Applicants submitted an essay describing why they are civil liberties activists, and our community panel had a hard time picking just three winners: Michelle Ripplinger from Ogden HS, Rachelle Harrison from Skyline HS, and Cara Cerise from Highland HS.

The national ACLU agreed with our picks! Both Rachelle and Cara were selected as national scholarship recipients, in addition to their local awards! Now, as Michelle heads off to Princeton, Rachelle to BYU, and Cara to Paraguay for a year of service work, we can't wait to see what these amazing leaders have to offer in the future!

IN THE COURTS

During 2007-08, we completed our work as amicus counsel in *Etsitty vs. UTA*, which ended with an unfavorable judgment for Krystal Etsitty. The transgender bus driver was dismissed when her employer could not decide which bathroom she should use. The case proves there is much work to do to ensure protection for transgender employees. Our work continues to defeat Utah's non-sensical Harmful to Minors Act, an attempt to control "improper" material on the Internet (*The King's English v. Shurtleff*), and against the discriminatory tax levied on certain adult businesses (*Bush Co. v. State Tax Commission*).

DEFENDING THE DEFENSELESS

We receive hundreds of complaints every year from people in Utah's prisons and jails - addressing everything from religious liberty to the treatment of transgender inmates. In the past year, a trend has emerged that indicates potentially serious deficiencies in the state's indigent defense program. The Constitution guarantees competent legal representation to all people charged with a serious crime - regardless of ability to pay. We have begun an in-depth investigation into whether this critical right is being realized equally by all Utahns ensnared in the criminal justice system.

AT THE CAPITOL

We are committed to having an increased, active presence at the State Legislature, to counteract assaults on our most basic civil liberties. From collecting DNA from even misdemeanor arrests, to doing away with a judicial bypass for minors seeking abortions, to using a leaky national database to hold and track our Social Security numbers for employment verification - the bills proposed by our lawmakers run the gamut of poor policy and thoughtless infringement on our Constitutional rights. With a new public policy advocate coming on board for 2008-09, we anticipate having an even greater impact on the Hill, taking the lead in protecting our fundamental rights.

STATEWIDE STRENGTH

Part of our vision for the next 50 years is to increase the presence and power of the ACLU statewide. We are focusing on a host of critical issues that impact people throughout Utah - in particular, racial justice issues that affect school kids, prisoners and immigrants alike. We are counting on our member and supporters in small towns and urban centers, throughout Northern, Central and Southern Utah, to stand with us as we fight to protect the rights of all Utahns, as guaranteed by the Constitution and the Bill of Rights. Look for us around the state in 2008 and beyond!

AT ISSUE: IMMIGRATION

Immigration is one of the hottest - if not THE hottest - political topics across Utah this year. Dozens of communities and businesses, hundreds of families, and thousands of individuals are affected by the issue. Missing from current plans to address immigration issues are both an understanding of how Constitutional rights apply to undocumented individuals and a basic respect for fundamental human dignity. We are actively involved in community dialogues about the legal rights of undocumented individuals, and have reached out to legislators to educate them, as well. When the issue was assigned to interim study during summer of 2008, the ACLU got on the calendar to participate throughout the state.