



# ACLU of Utah Reporter

September 2008

Newsletter of the American Civil Liberties Union of Utah

## Take Action! New Regulations Could Jeopardize Women's Health

With health care more expensive and inaccessible than ever, President Bush has launched another attack on Americans' access to reproductive health. On August 21, 2008, the U.S. Department of Health and Human Services (HHS) proposed regulations that could undermine access to basic reproductive health services, including common forms of birth control.

For years, federal law has sought to balance access to reproductive health care with freedom of belief when a doctor has a conflict of conscience. But the proposed regulations ignore patient access to health care and stretch the

"conflict of conscience" exemption to ridiculous extremes. If the regulations are approved, any employee will be able to claim a "conflict of conscience" to avoid cleaning medical equipment, offering referrals, providing birth control, or even disclosing options to a patient.

HHS will accept public comment on the proposed regulations for thirty days and it is vital that they hear from you. Comments can be made by e-mail, mail, or hand delivery. Your comments should specify the subject as "Provider Conscience Regulation" and can be emailed to: [consciencecomment@hhs.gov](mailto:consciencecomment@hhs.gov)

You may also mail them to:

Office of Public Health & Science,  
Dept. of Health & Human Services  
Attention: Brenda Destro  
Hubert H. Humphrey Building, 200  
Independence Avenue, S.W., Room  
728E, Washington, DC 20201

**The deadline for public comments is September 20th. You may find more information on our website [www.acluutah.org](http://www.acluutah.org)**

***Please help us protect reproductive freedom! Send us a copy of any comments you submit. Let's tell this lame duck administration that our religious liberty must be balanced with our right to reproductive health care.***

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## August Open House a Great Success!

On August 12, over 50 members and guests came together at our office to enjoy snacks, drinks and camaraderie while learning about

our history and current work. Join us for future events - like our Annual Membership Meeting (see page 5 for more information)!

# Discriminatory Workers Compensation Proposal Raises Concerns

To comply with a bill that passed during the last legislative session, the Utah Labor Commission is considering whether to implement rule R602-4. This rule creates a procedure for employers or insurance companies to request a hearing to terminate temporary disability benefits if the employee has participated in any illegal activity.

Sponsor Representative Morley claims this new law was a response to a case where an employee received worker's compensation benefits while he was in jail. However, the ACLU of Utah is concerned that the statute and the Labor Commission's proposed rule will have a disparate impact on racial

and ethnic minorities, including undocumented workers.

Under the proposed rule, employers may request a hearing to terminate temporary disability benefits by firing the employee for any illegal activity, which could include working in the United States without citizenship or a visa. Without further clarification, this rule gives employers an incentive to cast doubt on the immigration status of injured employees. It also lacks any penalty for an employer who manufactures false accusations against injured employees and requires a worker to mount a defense in an administrative hearing.

Representative Morley and Labor Commissioner Sherrie Hayashi

agree that marginalizing racial and ethnic minorities was not the intent of the new law. But neither the statute nor the proposed rule include any language that would prevent an employer or insurance company from using this new law to discriminate to avoid disability payments.

The ACLU of Utah encourages the Labor Commission to amend R602-4 so that it more closely matches the statute's intent without penalizing minority employees who are injured. Current Workers Compensation rules for permanent disability exclude the employee's citizenship or status from being considered. The same exclusion should be applied to proposed rule 602-4 for temporary disability.

## The Director's Chair



**Karen McCreary**  
Executive Director

This is an important and exciting time for civil liberties work in Utah. There has been a lot of energy around this year's presidential

election. In the intermountain West, in Montana, Colorado, New Mexico, Arizona, Nevada and Idaho, there is a growing political momentum that is populist, progressive and libertarian focusing on thoughtful, collaborative problem solving that is redefining the political agenda. Utahans are similarly realizing that it is time for a more open, transparent, representative discourse at our state legislature and in our local governmental bodies. Utah is growing rapidly with many new residents

moving into our state; counties such as Washington and Wasatch are booming. Our population is becoming increasingly diverse.

The ACLU of Utah is responding to these dynamics, working to strengthen and expand our capacities to more effectively engage fellow Utahns in the active citizenship so essential to a democracy. The time is indeed now! We are reaching out to young people, to infuse our on-going civil liberties work with their energy and commitment to human rights and dignity.

With the addition of our newest staff member, Public Policy Advocate, William Carlson, we are striving to establish a state wide presence among our members and community partners across the political spectrum so together we can grapple with critical statewide issues such as immigration, racial injustice and disparities, LGBT equality,

transparency in government, privacy rights, religious liberty, and voting system integrity. We are poised to be more active than ever with the legislative process so that we can not only respond to ill-advised legislation but lead forward with bills that will set a new agenda.

At the same time, we are increasing our educational outreach, as we hold monthly public education events, and launch a speaker's bureau. In the legal arena, we are broadening our efforts to investigate and challenge constitutional violations of a systemic nature. We appreciate the steadfast dedication, support and creative engagement of our friends and supporters across the state. We are engaged in hopeful, life and liberty affirming work. What could be better?

*With Warm Regards*

## About the ACLU of Utah

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, expression, and association; freedom of religion, including the separation of church and state; the right to privacy; safe prison and jail conditions; and equal protection and due process of the laws.

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Marina Baginsky Lowe, Staff Attorney  
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William Carlson,  
Public Policy Advocate  
Reinard Knutsen, Office Manager

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## Welcome to William Carlson, Our New Public Policy Advocate!

This summer, William Carlson became the new Public Policy Advocate for the ACLU of Utah. William is a Utah native and a 2007 graduate of the S.J. Quinney College of Law at University of Utah. He has recently returned from Washington D.C. and is eager to help develop and promote the ACLU of Utah's policy priorities through coalition building, implementing legislative strategies, field organizing and mobilizing ACLU members.

"There has never been a more exciting time to be involved in civil liberties, and Utah has the potential to be a leader on several important issues of freedom" says William.



William testifying before the Utah Legislature during his past tenure with Equality Utah.

William brings a fresh positive energy and constitutional insight to the ACLU's work. He has plunged into his work of responding to critical civil liberties issues while developing relationships with state legislators and other government and community leaders. William is also hard at work fulfilling another ACLU of Utah priority to become more visible across the state by participating in and organizing events throughout the state. Before joining the ACLU of Utah, William was Manager of Public Policy for Equality Utah since 2006 and was responsible for drafting three bills and several municipal ordinances. Previously, William also served as a Fellow for Utah Legal Services.

"I'm excited to be able to apply my experience to a whole new range of issues," says William. "One great thing about the work of the ACLU of Utah is that while we address a wide range of issues, all these issues really come down to protecting freedom and empowering Utahns. That kind of work is easy to be passionate about."

## The ACLU is coming to Southern Utah

**Join us at Zion National Park on September 27 for Southern Utah Pride!** March with your fellow ACLU members through Springdale, Utah. We'll be rallying at 12:30 P.M. on Saturday, to prepare for our place in the Parade. After we march, we'll be hanging out at the ACLU of Utah booth, from 2:00 until the end of the festivities. To learn more, contact William at [wcarlson@acluutah.org](mailto:wcarlson@acluutah.org) or 801-521-9862 ext 108.

**You are invited to a Member Party in St. George, Friday September 26, 7 p.m. at the Gun Barrel Steak and Game House.** There is no cost to attend, free appetizers and cash bar, prizes and giveaways from the ACLU, meet ACLU staff and other local members and supporters, learn about the ACLU of Utah's current work and projects throughout the state! RSVP by September 22, (801) 521-9862 ext 100.

# Immigration Hearing Offers One Sided Perspective

Members of Utah's legislature met in Park City on August 27 to discuss issues related to immigration. The Interim Immigration Committee has already met in Logan and will meet in Richfield, St. George, and Salt Lake City in the coming weeks. The purpose of these meetings is for the legislature to find out how Utahns feel about their attempts to address immigration through SB 81, which is scheduled to go into effect in July, 2008.

Regardless of one's views on immigration policy, fundamental civil liberties ensured by the Constitution protect every person in this country, including non-citizens. The government may legitimately control its borders, but the power to exclude and deport people must be exercised

fairly and humanely, subject to our constitutional norms and consistent with U.S. obligations under international law. The issue of immigration reform must be viewed through the lens of the Constitution.

Unfortunately, most of the witnesses on August 27 did not approach immigration from a constitutional perspective. Of the twelve individuals scheduled to testify, ten argued that immigrants were a drain on society and served no purpose. One witness stated that anyone who has compassion for immigrants is suffering from a "compassion fetish." Another claimed that all illegal immigrants drive new Dodge Rams. A third presented a slide show that included photos of the Statue of Liberty on fire. Yet another witness reported

that he could tell whether or not an immigrant is here legally by his or her accent.

As these hearings progress across the state, we encourage you to participate by testifying during public comment periods. As the hearings continue, we remind the legislature of the truth that, regardless of citizenship, all people are endowed with certain inalienable rights.

## Become an ACLU Cooperating Attorney

The ACLU of Utah has limited staff and funding so almost all of our cases are handled by volunteer attorneys who work in cooperation with our staff. If you are interested in working as a Cooperating Attorney visit our website at [www.acluutah.org](http://www.acluutah.org)

# High School Seniors: Become an ACLU Youth Activist Scholar!



Utah youth who have stood up for religious freedoms, immigrants' rights and LGBT student rights

**The ACLU of Utah is offering a \$1,000 and two \$500 college scholarships to high school seniors who have taken a stand to protect civil liberties!**

**These three winners will be forwarded to our national office which is offering 16 of the nation's most committed, young civil liberties activists \$12,500 each toward their first year in college.**

Last year, two of our local affiliate scholarship winners, Cara Cerise of Highland High School and Rachelle Harrison of Hillcrest High School, won national ACLU scholarships.

National winners will also be invited to participate in ongoing activities with the ACLU, including activist trainings at the ACLU offices in New York City and Washington DC.

**To qualify for the scholarship you must:**

- Have demonstrated a strong commitment to civil liberties through some form of activism.
- Be a high school senior planning on entering an accredited college or university as a full-time, degree-seeking student.
- Have attained a cumulative GPA of at least 3.0 on a 4.0 scale at the time of graduation.

If you are passionate about protecting and fighting for Constitutional rights, we want YOU to apply! Look for more details and download an application form on our website [www.acluutah.org](http://www.acluutah.org) or call 801-521-9862 ext 101.

**Deadline for applications: FRIDAY, NOVEMBER 14.**



# Liberties Under Fire: The ACLU of Utah at 50

SALT LAKE



**In the Main Gallery  
50 S. West Temple  
JOIN US FOR THE OPENING!  
Friday, October 17  
6:00 p.m. - 9:00 p.m.  
Exhibit Runs Oct. 18 - Jan. 31  
More info at:  
[www.acluutah.org/artshow.htm](http://www.acluutah.org/artshow.htm)**

In honor of the ACLU's 50 years of struggle defending civil liberties in our great state, the Salt Lake Art Center has organized "Liberties Under Fire." This exhibition features five artists whose artwork relates civil liberties issues addressed by the ACLU.

To provide informed and unique perspectives about each specific civil liberty issue, Utah-based authors have been invited to write short personal essays. And to place these artworks and essays in a legal framework, the ACLU of Utah staff has provided 'legal briefs' – with reference to cases from Utah's recent past – related to each specific civil liberty issue.



**ABUSE OF POWER**  
**ARTIST :: SUE COE**  
*Writer :: Forrest S. Cuch,  
Executive Director, Utah Division of  
Indian Affairs*

**CHURCH & STATE**  
**ARTIST :: ENRIQUE CHAGOYA**  
*Writer :: Terry Tempest Williams,  
Author and Naturalist*

**LGBT EQUALITY**  
**ARTIST :: JOHN TROBAUGH**  
*Writer :: Julie Jensen,  
Award-winning Playwright, Salt  
Lake Acting Company*

**RACIAL JUSTICE**  
**ARTIST :: KARA WALKER**  
*Writer :: Dr. Forrest Crawford,  
Assistant to the President for  
Diversity, Weber State University*

**TORTURE, WAR &  
IMPRISONMENT**  
**ARTIST :: JENNY HOLZER**  
*Writer :: Mary Dickson,  
Director of Creative Services, KUED*

*Left: Crest of Pine Mountain, Where General  
Polk Fell, Harper's Pictorial History of the Civil  
War (Annotated), Kara Walker. Below left:  
Golden Gate with Gloves Off, Double Duty Series:  
Golden Gate, John Trobaugh.*

## 2008 Annual Membership Meeting

*@ the Salt Lake Art Center, 50 S. West Temple in Downtown Salt Lake City*



**THURSDAY, NOVEMBER 20, 6:00 to 8:30**  
**For ALL ACLU of Utah Members!**

**6:00 to 7:00 - Presentation/Membership Meeting**

**7:00 to 7:30 - Reception & Refreshments**

**7:30 to 8:30 - Special Tour of "Liberties Under**

**Fire" with Exhibit Curator Jay Hueman; Meet  
Renowned Artist John Trobaugh (artwork at left)!**

**For more information, visit [www.acluutah.org](http://www.acluutah.org) or  
call (801) 521-9862 ext 100.**

## Controversial Provo Ordinance Proposal Draws ACLU Ire

In June, the city of Provo drafted a controversial proposed ordinance purportedly aimed at reducing crime. In fact, the ordinance would have required landlords to conduct background checks on all prospective tenants (excluding BYU students) and would have mandated eviction within 5 days after a landlord receives "substantial evidence" of criminal or nuisance activity upon the rented premises.

While similar ordinances providing incentives to landlords who conduct background checks are already in place in other jurisdictions around the state and country, Provo's proposed rule would have made such action mandatory. The ACLU of Utah was concerned that the proposed ordinance was not only constitutionally suspect, but was bad policy. The ordinance would have required landlords to comply with vaguely drafted obligations, leaving them open to tenant litigation. Furthermore, while the intent of the ordinance was supposedly to combat crime, the result of its enactment would have been to deny housing to individuals who may have a less than perfect background. This would run contrary to our nation's long-held belief that debts to society can be repaid, and should not be punished ad infinitum. Accordingly, the ACLU of Utah sent a letter to the Provo City Council expressing these concerns.

We were pleased to note that at their next meeting, the Council decided to rework the ordinance to make compliance voluntary. Read our letter at [www.acluutah.org](http://www.acluutah.org).

## Empowering Voters By Protecting Elections

In this presidential election year, the ACLU of Utah is working to protect the voting rights of people across the state. On August 19, we led a group of Utah's election workers on a field trip to Evanston, Wyoming, to explore how Election Day Voter Registration could improve voter turnout across Utah.

During the interim legislative session on August 20, the Association of County Clerks called on the Government Operations Committee to endorse reforms to Utah's voter challenge law. The ACLU of Utah's investigation of how the challenge law was abused to disenfranchise voters in 2007 helped bring this issue to the attention of the Association of County Clerks. Our Staff Attorney Marina Lowe drafted legislation that the Association believes will close the gaping loopholes in the current challenge law.

On September 12, the ACLU of Utah will be co-hosting "Slam The Vote" with Spyhop Productions and Equality Utah. This poetry slam will feature live music and media

by youth that focuses on the voting rights and political empowerment of youth between the ages of 18 and 22.

In the coming weeks, the ACLU of Utah will be distributing "Voter Empowerment Cards." These pocket-sized pamphlets include a summary of the voting rights of Utahns. With five thousand cards in English and Spanish, we will be distributing vital information about the voting process to groups that have been disenfranchised from voting in the past. The Voter Empowerment Cards have already caught the attention of Utah's Office of the Lt. Governor, who has asked us to provide some extra copies for it's distribution.

Remember that your voter registration must be postmarked by October 4 or hand delivered to your County Clerk's Office by October 20. Election Day is Tuesday, November 4, 2008.

Look for our Voter Empowerment Cards and be sure to exercise your right to vote!



### Become an ACLU Activist!

Sign up for the ACLU of Utah Activist email list and receive timely Action Alerts and E-Newsletters so that you can help address critical civil liberties issues as they develop. Find out more at [www.acluutah.org](http://www.acluutah.org)



**Special thanks to XMission for their generous donation of Internet services**

### Upcoming Events:

**Sept. 12:** Slam the Vote! @ Spyhop Productions

**Sept. 26:** Southern Utah ACLU member party in St. George (pg. 3)

**Sept. 27:** Southern Utah Pride Parade and Fest (pg. 3)

**Oct. 17:** Opening of "Liberties Under Fire" (pg. 5)

**Nov. 20:** ACLU of Utah Annual Membership Meeting (pg. 5)

# Learning and Lobbying at the ACLU Membership Conference

By Zain Siddiqui, a summer intern from the Hinckley Institute of Politics. Zain and his family immigrated to Utah from their native Pakistan.

While working at the American Civil Liberties Union (ACLU) of Utah, I have had tremendous opportunities to familiarize myself regarding the most essential of issues we confront today. One such occasion was the National ACLU conference held in Washington D.C., to which I had a distinct honor to attend thanks to the financial support of the Utah affiliate. It attracted individuals from diverse backgrounds, careers, ideological leanings, regions, etc., but one belief that was shared by each person was the unwavering necessity of the preservation of civil liberties.

The conference drew leading personalities like Arianna Huffington, Senator Arlen Specter, Chilean novelist Ariel Dorfman, Adaora Udoji, and others who engaged in various discussion forums to inform and educate the crowd about civil liberties relevant issues. Along with universal discussion forums, the conference also conducted various workshops appealing to

**“But above all what the conference taught me is the grim realism of the lasting need to safeguard our civil liberties, and the fact that an assault on the constitution is indiscriminate of party in power. “**

more specific issues. The topics of the discourse ranged from illegal eavesdropping and retroactive immunity to telecommunications to Ward Connerly’s insatiable thirst to erode the institution of affirmative action.

Like other ACLU activities, this gathering also produced many memorable highlights;

- The emotional account of two teenage brothers, children of undocumented immigrants, who in broken, trembling voices described how their parents were taken into custody while they witnessed in fear.
- The generous donation by philanthropist and human rights activist George Soros; who while referring to his personal history acknowledged the continuing need

to uphold individual rights and the Constitution.

- The attendance of three Supreme Court justices to pay tribute to the retiring ACLU President Nadine Strossen, and the riveting homecoming reception received by Justice Ginsberg.

The final day of the conference was the lobby day, where each ACLU affiliate mobilized their members and stormed Capitol Hill to sway opinion on three principle issues, Torture, Foreign Intelligence Surveillance Act and Real ID. The Utah affiliate was represented by a contingent of 14 staunch members. We met with congressional aides of Representatives Bishop and Matheson, and Senators Orrin Hatch and Robert Bennett. We briefed the aides about each issue, and whether persuaded or not, they at least pretended to take notes attentively.

However before you conceive the conference to be all business, I cite the performance by multi-ethnic hip-hop group Ozomotli and other entertainers, which was able to reveal a rather different side of the organization’s members, a wild side, and yes even we (the ACLU of Utah) participated.

But above all what the conference taught me is the grim realism of the lasting need to safeguard our civil liberties, and the fact that an assault on the Constitution is indiscriminate of party in power. Whether it be Senator Obama or McCain, we must continue to uphold the oath to protect and defend the Constitution of the United States on the local, state and federal level. And not once should we take these individual rights we cherish for granted.



Left: Board member Tarek Nosseir and intern Zain Siddiqui lead the Utah contingent to Capitol Hill. Below: Zain talks to a representative from Senator Bennett’s staff.





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## Protecting Rights of Transgender Inmates

By legal intern **Danielle Hawkes** and staff attorney **Marina Lowe**

In May, the ACLU of Utah received a disturbing complaint from a transgender inmate in a Utah jail. The complaint alleged a violent attack followed by neglect by prison officials. It stated that correction officers failed to prevent the attack and also failed to provide physical, medical or hygienic care. In light of this complaint, the ACLU of Utah resolved to join forces with the Utah Pride Center to investigate the larger issue of how transgender inmates are treated in Utah jails and prisons. Through this investigation, we hope to develop guidelines and procedures for Utah jail and prison officials that address the rights of transgender inmates.

Like other inmates, transgender individuals are afforded rights under the United States Constitution, such as certain privacy rights, the right to be free from cruel and unusual punishment and the right to due process. We hope to develop clear guidelines that will provide prison and jail officials with an explanation of these rights, as well as their legal duties to prevent abuse and provide adequate medical care.

In preparation for this program, the ACLU of Utah has conducted extensive research into the legal issues involved in cases of transgender inmates. We focused our research on several key areas: 1) sexual harassment and physical assault, 2) medical treatment, 3) privacy and 4) housing of transgender inmates. In many of these areas, the courts have made great strides in protecting transgender inmates. Even within our own jurisdiction, courts have led the way on issues of medical

treatment and unreasonable searches. Most often, courts have been more willing to protect transsexual inmates (i.e. those diagnosed with a gender identity disorder) than other members of the transgender community.

The next step of the program will combine the ACLU of Utah's legal knowledge with the Utah Pride Center's extensive awareness and understanding of the Utah transgender community. We also hope to collaborate with prison officials, to better understand logistically what can and cannot be implemented in a prison or jail setting. We are confident that the guidelines we publish will assist prison officials in respecting the rights of transgender inmates and in turn, will better protect prison officials from legal liability. We hope these guidelines can provide the foundation for a comprehensive training experience available to the entire correctional system in Utah to ensure that it is operating in full compliance with the United States Constitution with respect to transgender inmates.

With the ACLU of Utah's legal knowledge, the Utah Pride Center's social perspective and prison and jail officials' logistical understanding, we look forward to creating meaningful and workable policies for prison and jail officials when working with transgender individuals. This program will provide correctional officials with solutions to unique situations created when transgender inmates enter the penal system. In the end, we hope that Utah's transgender community will be better protected and can be confident that their Constitutional rights are respected.

## Attorney General's New Website Features Troubling Video

The Office of Utah Attorney General Mark Shurtleff recently launched a website featuring arrest videos of alleged Internet predators. Shurtleff unveiled the site, which he heralded as a means to deter sex offenses, at a public press conference on August 27, 2008.

At that time, members of the press and public were shown a video of a man being led away in handcuffs; the video also featured interviews with law enforcement officials who commented on the danger that this arrested man poses to society.

The ACLU of Utah is deeply concerned by the Attorney General's actions. At the time of the press conference, the ACLU of Utah issued an official statement condemning the tactics used as part of this new website.

In particular, the ACLU of Utah stated emphatically that fundamental to the United States' legal system is the principle that individuals are innocent until proven guilty; mere arrest does not equate to guilt.

However, widely publicizing an arrest in this sensational manner can cause members of the public to conclude that the arrested man is guilty, particularly when the video is released by an agency of great state authority, such as the Office of the Attorney General. Incidentally, at the time of this statement, the man featured in that video had yet to be charged with any crime.

**Read our press release on our website at [www.acluutah.org](http://www.acluutah.org)**