



# Annual Report

April 1, 2009 - March 31, 2010

**Roger Baldwin, the founder of the American Civil Liberties Union, often said, "There are no new civil liberties issues, just the same civil liberties issues over and over again."**

*The past year has been one of building momentum for our organization. The year ahead will require the full force of our legal expertise, experience, resources and vast network of support as the ACLU of Utah finds itself in the middle of explosive battles over immigration, equal protection for racial minorities and members of the LGBT community, and government intrusion into our most personal information and choices.*

# AT THE CAPITOL

## Policy and Legislative Advocacy

The ACLU of Utah observes the state legislative process closely and actively participates to advance legislation that protects civil liberties, and to stop legislation that threatens those rights.

### Equal Treatment & Protection

During the 2010 Legislative Session, elected officials proposed amending our State Constitution to ban any equal opportunity programs in state hiring, contracting and college admissions. HJR 24, "Joint Resolution on Equal Treatment by Government," was a carbon-copy of measures that have been pushed in other states as part of a national effort started and funded by Ward Connerly. Mr. Connerly is a Californian millionaire who succeeded in banning Affirmative Action programs at California's public colleges and universities.

We worked with community partners to educate policymakers about the enduring importance of equal opportunity programs, and the consequences of banning such programs. Thanks to our intense lobbying effort, the stalwart dedication of some legislators, and vocal mobilization by hundreds of young people, this bill did not come to a vote. If the legislature had

approved the resolution, it would have been placed on the ballot, to be voted on by the general public.

Unfortunately, this bill will be re-introduced next year. We are mobilizing now for that coming fight by spearheading a coalition of advocates, organizations and community leaders invested in preserving equal opportunity programs in our state.

### Immigrants' Rights

In an effort to better respond to an onslaught of anti-immigrant legislation, policies and practices, the ACLU of Utah played a pivotal role in the creation of the Enriching Utah Coalition. The EUC is a large group of community organizations, churches, legal advocates and individuals who work in or on behalf of immigration communities.

Through the coalition, we have been the voice for preserving fundamental American values such as due process, equal protection and individual privacy. These values are all too often discarded in the stampede of simplistic and ineffective efforts to address the complex issues presented by illegal immigration.

ACLU members and community partners question the staff at the 2009 Member Open House, where members are invited to visit the ACLU of Utah office and learn about the organization's work and plans.



20+ COMMITTEE  
HEARINGS ATTENDED

legislation **ONE**

30+

BILLS TRACTED AND  
ACTIVELY LOBBIED  
AGAINST

CITIZEN LOBBY NIGHT  
HOSTED AT THE ACLU  
OF UTAH

**EIGHT**

ANTI-CIVIL LIBERTIES BILLS STOPPED OR NEUTRALIZED

**2** by  
the  
numbers

ACLU OF UTAH  
BILLS PASSED

**8** BILLS  
TESTIFIED  
IN SUPPORT  
OF

**TEN+** FACTS SHEETS AND LETTERS  
CIRCULATED TO LEGISLATORS

Earlier this year, we fought to prevent the adoption of a new law that expands an existing requirement for employers to use the federal “E-Verify” system to verify that workers have legal immigration status. Previously, only PUBLIC (government) employers and contractors were required to use E-Verify. The new law will require private Utah businesses with 15 or more employees to use the system, which relies on porous databases filled with erroneous information.

We lobbied against the adoption of this law - not only because the E-Verify system is inherently flawed, but also because immigration regulation is the role of the federal government. Though the law did go into effect, it was amended so that there are no penalties for non-compliance. This makes the law, for all intents and purposes, voluntary. But this law could easily be amended in the future to make participation mandatory.

State lawmakers also once again proposed that Utah no longer allow undocumented college students to pay in-state tuition at Utah colleges and universities. This program - which makes possible the education of hundreds of immigrant college students each year (students were brought to the United States through no choice of their own) is constantly under fire by immigration foes. This year, the bill was introduced too late in the session to have any hearings - but we have no doubt that the issue will reappear in future legislative sessions. Along with partners in the Enriching Utah Coalition, we will continue to work against this effort if and when it next emerges.

## Privacy and Technology

The pace of technological advancement has engendered unprecedented challenges to individual privacy rights. While still concerned with the vulnerability of our electronic medical records and Social Security information, we now must also worry about government accessing the private information encoded on our DNA! In 2010, we finally succeeded in our push to have Utah opt out of the Federal REAL ID Act, which would require, among

other things, that U.S. citizens carry a national ID card and provide sensitive documents to be stored in a nationwide, shared database.

We also fought against a new law that allows the state to collect DNA samples from people who are only arrested of certain crimes - whether they are ever convicted, or even charged of committing a crime. Though a clear violation of the Fourth Amendment, and an affront to the fundamental American belief that we are all “innocent until proven guilty,” the law was adopted.

Over our strenuous objections, the state also broadened its own power to engage in executive warrantless searches. The legislation expanded the category of crimes that allow for warrantless searches by law enforcement, showing a blatant disregard for citizens’ right to be free from secret government intrusion, without sufficient probable cause.

## Reproductive Freedom

Bills attempting to limit reproductive freedom dominated the session, most notably HB 12, “Criminal Homicide and Abortion Amendments.” HB 12 radically changes Utah’s abortion law by threatening to criminalize women for their behavior during pregnancy.

Specifically, the bill removes immunity for women who seek to obtain an unlawful abortion, defined as any action, resulting in the death of a fetus, that is not considered a medical procedure done under a physician’s care. This bill changed the presumption that abortions obtained by a woman in this state are legal - forcing Utah women to prove that the abortions they obtain (or miscarriages they suffer) are not unlawful.

We worked with Planned Parenthood and other partners to halt - or at least amend - this bill. We testified in multiple committee hearings, gave media interviews and lobbied individual legislators with warnings of the bill’s likely consequences. In the end, Gov. Herbert signed a substitute bill, HB 462, “Criminal Homicide & Abortion Revisions,” which only marginally improved upon the original.



ACLU of Utah’s Legislative and Policy Counsel Marina Lowe testifying before the Utah Legislature.



Vik Malhotra, state strategist for the ACLU’s National Immigrants’ Rights Project, guides local immigrant advocates and community leaders through a discussion of Utah’s anti-immigrant laws and policies.



College and high school students from all over the Salt Lake area descended on the Capitol on the final day of the 2010 Legislative Session to speak out against HJR 24 - an attempt to ban, through constitutional amendment - the use of Equal Opportunity programs in state hiring, contracting and admissions. The effort was ultimately defeated.



# IN THE COURTS

## Legal Advocacy & Intervention

We receive hundreds of civil liberties complaints each year from across the state. Part of our on-going and daily work is to respond to these complaints. Sometimes, we can find a solution by just picking up the phone and educating public officials about the constitutional implications of their actions. Often, we can achieve resolution through a strongly worded letter to an errant government agency, signed by the ACLU of Utah. However, there are times when relief for our clients can only be found through the courts and other legal channels. We consider all possibilities to bring the most swift and conclusive resolution.

### First Amendment Rights

In April 2010, Jason Osmanski, a sophomore at Snow Canyon High School, was called to his vice principal's office to discuss an application to start a Gay Straight Alliance (GSA) club at the school. Fearing the worst, Jason walked into the office with his ACLU "Know Your Rights" card for students, ready for a battle. To Jason's surprise, the principal told Jason that his application, previously denied, was now approved – after a crash-course in the free speech rights of students, courtesy of the ACLU of Utah.

The approval of a GSA at Snow Canyon High School, and at three other Washington County high schools, was the culmination of months of work, travel and training by the ACLU of Utah. But this victory was only the first step in our efforts to support students across the state.

Since then, students from Tooele and Davis Counties have filed complaints about restrictive club-formation policies, similar to those used in Southern Utah to halt the formation of high school GSAs. In the year ahead, we aim to continue to defend students' right to form non-curricular clubs, regardless of the majority's opinion of those clubs.

The Utah Supreme Court ruled in favor of a law that taxes businesses that feature "any nude or partially denuded" individuals. The ACLU of Utah filed a friend-of-the-court brief in support of businesses against this law, contending that it restricts speech by unfairly targeting content that the state does not approve of.

Unfortunately, the court disagreed, in a decision that is a clear blow to free speech. The law is just one of many examples of how the state can effectively restrict expression by masking it in the guise of another issue.

### Indigent Defense Reform

Every person accused of a crime the right to an attorney for his or her defense, regardless of ability to pay, and the Fourteenth Amendment guarantees all citizens equal rights regardless of race or national origin. Yet all too often, these rights are violated by indigent defense systems that leave low-income people, including many people of color, without adequate representation.

Such is certainly the case in Utah, which is one of only two states that provide no state funding for indigent defense services at the trial or appellate level. The state simply delegates all financial and administrative responsibility to counties, resulting in fundamentally inadequate provision of services. While there are three public defender programs in the state, the majority of counties use contract or assigned counsel to represent indigent defendants.

Utah's statutes create no boards or commissions to regulate the provision of indigent defense services; rather, funding and oversight of these services are left to individual counties (and several counties appear to exercise very little of the oversight responsibility passed along to them). Utah ranks 48th out of 50 states in per-capita spending on indigent



Students from high schools in Washington County - with supporters from the community - met with us during a trip to Southern Utah in 2009, and explained the difficulties they faced in trying to start Gay-Straight Alliances in their schools.



Graham Boyd, director of the ACLU's National Drug Policy Reform Project, discusses the film "American Violet," shown as part of a film series presented by the ACLU of Utah and the Salt Lake Film Center. The film shows some of the many problems faced by low-income people when they do not have access to adequate public defense.





Rachel Maddow speaking at the ACLU of Utah's 2009 Bill of Rights Celebration.



Executive Director Karen McCreary discusses the First Amendment rights of high school and college students with a packed house at Dixie State College in Saint George.

defense; with \$5.22 spent per prisoner, Utah spends less than half the national average.

In 2009, the ACLU of Utah began its third year of an on-going effort to reform the state's system of indigent defense delivery. Our staff - assisted by partners at the University of Utah College of Law and local law firm Howrey LLP - has conducted research and interviews in Washington, Weber, Carbon, Grand, Duchesne and Iron Counties.

The issues we discovered in Weber County are indicative of problems throughout the state. Public defenders in that area are carrying client loads far in excess of ABA recommendations (200 to 300% above the ABA's guidelines). Defenders regularly maintain large private client loads, in addition to their public defense clients. Public defender contracts are negotiated through a non-profit entity of dubious nature, with extreme disparities in pay for lawyers of different levels of experience and influence with the non-profit entity. Last

but not least, we found that there was not a single suppression motion filed by a public defender on behalf of an indigent client in juvenile court over a four-year period.

Shortly after we conducted interviews in Weber County, the public defender association there was re-organized, and several experienced (including capital) defenders were excluded from county contracts. The County touted that the move saved about \$100,000. Months later, the ACLU of Utah filed an amicus brief in a capital case in Ogden, when the county attempted to replace a defendant's experienced attorneys with public defenders who had never tried a death penalty case. The judge agreed, and the original, experienced attorneys were retained by the defendant.

Our work toward reform will continue in 2010 and 2011, as we seek plaintiffs statewide whose constitutional right to an attorney has been compromised by Utah's woefully inadequate indigent defense system.

# THE FACES OF CIVIL LIBERTIES IN UTAH THIS YEAR

For 90 years, and for more than 50 years in Utah, the ACLU has stood alongside countless individuals, as their faces became the faces of the latest embodiment of civil liberties violations, challenges and triumphs.

*The ACLU of Utah is the only organization in our state* that is working full-time to protect and expand the civil rights and individual liberties of these people, and of all Utahns. For more than fifty years, as the same complex civil liberties issues have emerged, with new names and faces, the ACLU of Utah has been here to respond.



Utah state representatives have already indicated that an anti-immigrant bill mimicking Arizona's SB1070, and a resolution asking the U.S. Congress to rescind birthright citizenship (as guaranteed in the Fourteenth Amendment), will be put before the State Legislature in 2011.



The City of Salt Lake's new anti-pandhandling ordinance threatens the First Amendment rights of homeless and indigent people.



Independent candidates for state office are required to collect 1,000 signatures to be placed on the ballot - a requirement that is not placed upon major party candidates.

## IN THE COMMUNITY Public Education & Outreach

### FREEDOM TO DREAM: The Rights of Immigrants

Film screening and panel discussions about the rights of immigrants, both before and after the effective date of SB81 (July 1, 2009). Held in:

SALT LAKE CITY  
PROVO  
LOGAN  
OGDEN

### BEYOND THE DIVISION: Balancing Religious Liberty with Equality for Gay and Transgender People

Community conversations led by a panel of faith leaders and legal scholars in the aftermath of the passage of Proposition 8 in California. Held at, and in partnership with:

SALT LAKE COMMUNITY  
COLLEGE  
UTAH VALLEY UNIVERSITY  
UNIVERSITY OF UTAH  
COLLEGE OF LAW  
WEBER STATE UNIVERSITY

### STATEWIDE OPEN HOUSES: Meet *Your* ACLU of Utah

Part of our on-going efforts to connect with ACLU members throughout the state, and to learn first-hand about the civil liberties issues facing Utah's distinct communities. Held in:

SAINT GEORGE  
MOAB  
SALT LAKE CITY

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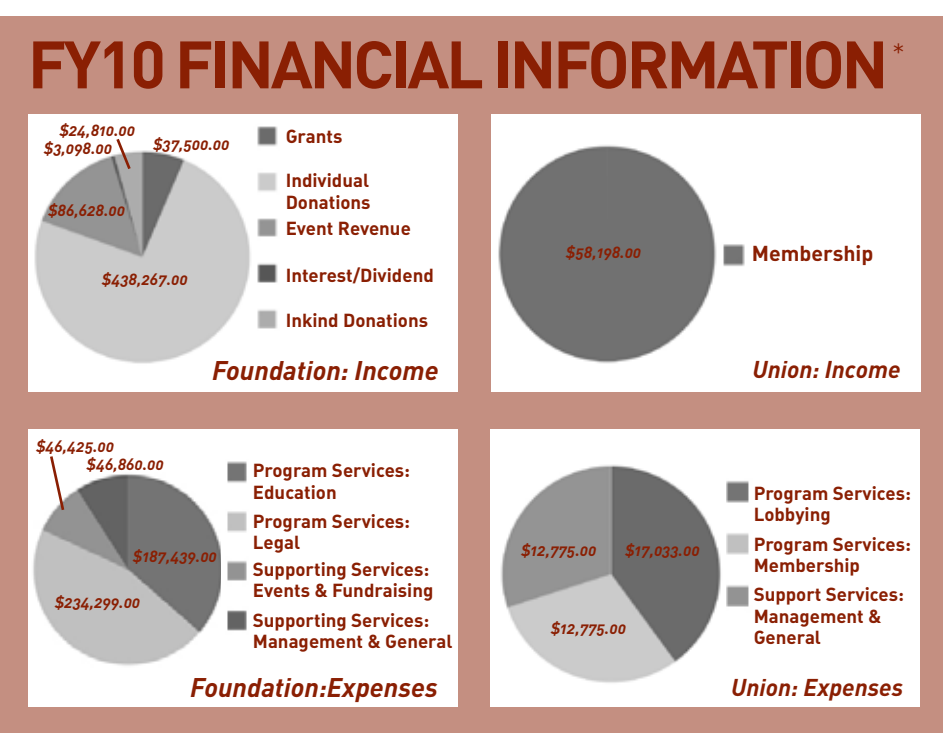
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National ACLU Board President Susan Hermann discusses the breadth and importance of the ACLU's work after September 11 at a Sundance Film Festival reception in Park City.