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March 19, 2012

Governor Gary R. Herbert  
Utah State Capitol Complex  
350 North State Street, Suite 200  
PO Box 142220  
Salt Lake City, Utah 84114-2220  
Fax: 801-538-1344

**Re: Second Substitute House Bill 194, "Involuntary Feeding  
and Hydration of Inmates"**

Dear Governor Herbert:

On behalf of the American Civil Liberties Union of Utah, we urge you to veto Second Substitute House Bill 194, "Involuntary Feeding and Hydration of Inmates." This bill authorizes the force-feeding of inmates pursuant to a court order. The ACLU of Utah opposes force-feeding in general because it violates various United States Constitutional and international treaty provisions, and thus urges you to take action against enactment of Second Substitute HB 194.

**I. Force Feeding and Hydrating Inmates Violates United States  
Constitutional and International Rights.**

Second Substitute HB 194 sets up a scheme whereby a court may authorize force-feeding of inmates. Force-feeding against an inmate's will violates the right of that individual to control his or her body. All people, even those who are incarcerated, have a right to determine what happens to their bodies. The United States Supreme Court, in *Cruzan v. Missouri*, upheld the right to deny unwanted medical treatment under the Due Process Clause of the Constitution.<sup>1</sup> Additionally, while the case law on the issue of hunger strikes is not uniform, at least three U.S. courts have decided that an inmate has a constitutionally

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<sup>1</sup> 497 U.S. 261 (1990).

protected right to refrain from eating or drinking.<sup>2</sup>

Moreover, various international conventions and treaties, including the Convention Against Torture and the International Covenant on Civil and Political Rights, which the United States has both signed and ratified<sup>3</sup>, weigh against the practice of force-feeding.<sup>4</sup>

Consistent with these international treaties, the European Court of Human Rights and courts in the United Kingdom and Canada have also found that force-feeding inmates may constitute torture and degrading treatment, in violation of various international and domestic norms.<sup>5</sup>

Hunger striking also remains an important, and often the only, form of political protest for prison and jail inmates, and as such is protected by the First Amendment to the United States Constitution. Hunger striking is an important tactic that was notably used by Mahatma Gandhi and Nelson Mandela to bring their plight to the world's attention. Legislation that seeks to cut off the right of inmates to engage in protected First Amendment behavior is constitutionally suspect.

## **II. Force Feeding Inmates is Unethical and Inhumane.**

The World Medical Association, of which the American Medical Association ("AMA") is part, has stated that "forcible feeding is never ethically acceptable."

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<sup>2</sup> See e.g. *Zant v. Prevatte*, 248 Ga. 832, 286 S.E.2d 715 (1982); *Thor v. Superior Court*, 855 P.2d 375 (Cal. 1993); *Singletary v. Costello*, 665 So.2d 1099, 1101 (Fla.App.1996).

<sup>3</sup> Ratified international treaties constitute "the supreme Law of the Land" under the United States Constitution. Article VI (2).

<sup>4</sup> *International Covenant on Civil and Political Rights*, Dec. 16, 1966, 999 U.N.T.S. 171 (1976); *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, Dec. 10, 1984, 1465 U.N.T.S. 85 (1987).

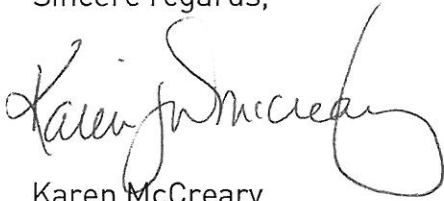
<sup>5</sup> *Nevmerzhitsky v. Ukraine*, App. No 54825/00, ECHR 210 (April 5, 2005); *Ciorap v. Moldova*, App. No 12066/02 ECHR (June 19, 2007); *British Columbia (Attorney General) v. Astaforoff*, [1983] 47 B.C.L.R. 217 (B.C.S); *Sec'y of State v. Robb*, [1995] All. E.R. 677 at 681.

Indeed, the AMA has endorsed and adopted the World Medical Association's Declaration of Tokyo and Declaration of Malta, both of which specifically uphold the right of a competent inmate to refuse food and water, even when doing so compromises his or her health.<sup>6</sup> Many health professionals around the world and in the United States agree that force-feeding contradicts their medical oath to respect the wishes of patients.

For the foregoing reasons, we strongly urge you to veto Second Substitute HB 194. We would be happy to discuss our concerns with you further should it be helpful.

Thank you.

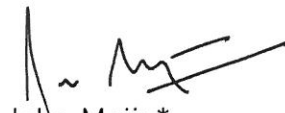
Sincere regards,



Karen McCreary  
Executive Director



Marina Lowe  
Legislative and Policy Counsel



John Mejia\*  
Legal Director

\*Licensed in Illinois, Application for Admission by Motion in Utah Pending

cc: John Pearce, Esq.  
General Counsel

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<sup>6</sup> World Medical Association, *Declaration of Tokyo*, 1975, as revised, 2006, available at <http://www.wma.net/en/30publications/10policies/c18/>; World Medical Association, *Declaration on Hunger Strikers (Declaration of Malta)*, 1991, as revised, 2006, available at <http://www.wma.net/en/30publications/10policies/h31/>.