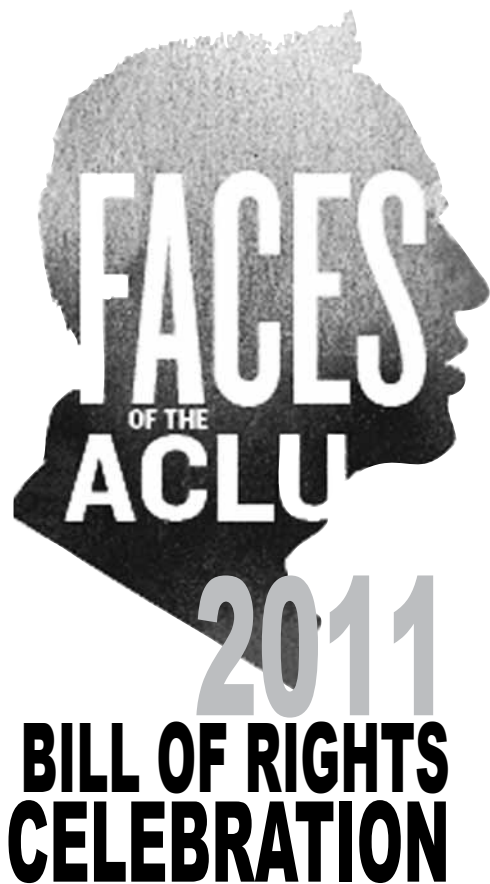




ACLU of Utah *Reporter*

Spring 2011

Newsletter of the American Civil Liberties Union of Utah



LOOK FOR DETAILS
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6:00 - 7:00 SOCIAL HOUR &
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People, Power & Passion Take Center Stage May 11

The theme of this year's Bill of Rights Celebration, our major annual fundraising event, is "FACES OF THE ACLU." Who are the faces of the ACLU? The Ogden grandmother whose grandkids appear, without reason, on an injunction against gang members! A gay high school student in Saint George, trying to start a Gay-Straight Alliance with his friends! The cooperating attorney who believes so strongly in the First Amendment that she will work – for free – to challenge ordinances that clamp down on free speech! The ACLU works for, with, and on behalf of them all.

We are excited to announce this year's keynote speaker: Darryl Hunt, the founder of the Darryl Hunt Project for Freedom and Justice.

Wrongfully convicted – not once, but twice – of a horrific crime he did not commit, Mr. Hunt spent 18 years in prison before the work of the ACLU and others saw him exonerated. After his release just six years ago, Mr. Hunt decided to spend the rest of his life being a voice for the voiceless. He now helps ex-convicts adjust to life outside the prison system, and advocates for changes in the justice system so other innocent people will not spend time in prison.

We will be honoring several local civil liberties champions at the Celebration, as well.

Kent Hart, executive director of the Utah Association of Criminal Defense Lawyers, will receive the Mickey Duncan Award for Advancing Civil Liberties through Legal Advocacy. Under Mr. Hart's



DARRYL HUNT
KEYNOTE SPEAKER

leadership, the UACDL has become an indispensable partner in several key ACLU of Utah projects. Specifically, the UACDL worked with the ACLU to successfully challenge Salt Lake County's policy of charging discovery fees in criminal cases, and has offered support in our legal challenge of Ogden's so-called "gang injunction." Mr. Hart has been a vocal advocate of our work to reform the state's woefully inadequate system of indigent defense, and publicly spoke against the application of the death penalty in the case of Ronnie Lee Gardner last year.

Continued on page 3

The President's Corner



Robert Wood
President

As members of the ACLU of Utah, we can all be extremely proud of the work of Marina Lowe, our legislative and policy counsel, supported by all of the staff including our Executive Director, Karen McCreary, our Legal Director, Darcy Goddard, and Public Policy Advocate, Esperanza Granados, for the excellent work they performed during the recent session of the Utah Legislature. We know the presence of the ACLU on the hill during the legislature is appreciated and respected.

Despite our efforts, I am sure you know our legislature passed some bills during this session that are not conducive to the civil liberties that we as Americans and individuals on American soil are entitled. There are three areas of concern that I believe deserve a closer look: immigration, open government, and reproductive freedom. (More detailed information can be found on pages 4 and 5.)

Last year the ACLU of Utah joined with several other community organizations in signing the Utah Compact. The Compact encourages a compassionate approach to immigration based on a series of principles including: an

acknowledgement of the need for federal solutions, law enforcement's primary focus being on criminal activities and not civil violations of federal code, the importance of supporting immigrant families, and the important role immigrants play in the economy. The new legislation that Governor Herbert recently signed into law (a package of 4 immigration related bills) does not comport with the principles of the Compact. Utah has clearly joined the ranks of Arizona through its extreme immigration legislation that is strong

Because of your important support the ACLU of Utah is, and will continue to be, the collective voice in this state for those civil liberties we all hold as precious.

on enforcement and very short on compassion. It also attempts to assume immigration responsibilities that are federal, contrary to the Constitution and federal law, and pushes local law enforcement to take a role in immigration enforcement that could encourage racial profiling at the expense of community trust and local resources. Immigration is clearly an issue that should be left to the federal government.

The ACLU of Utah, along with a majority of the citizens of the state, is appalled (no other word does the reaction justice) at the legislature move away from, instead of toward, open government with its passage of

the law limiting GRAMA access. One would think that if the legislature is so proud, as it states, of its work it would want the people of the state to be able to witness and examine that work. In addition, the legislature moved swiftly to erase the gains we made last summer for the use of e-signatures in citizen petitions and initiatives via our successful *Anderson v. Bell* case before the Utah Supreme Court. We are quickly moving to challenge both bills through the filing of a writ of extraordinary relief before the Utah Supreme Court, seeking to overturn the e-signature bill and thus enable those that are sponsoring citizen referenda on behalf of GRAMA to obtain the requisite number of signatures in the statutorily mandated brief period of time.

Finally, the continued pressure by the Utah legislature to limit the reproductive freedom of its citizens is discouraging. Three bills that were passed target health care providers and impact doctor-patient relationships, and make it more difficult for individuals and families who are already struggling by imposing more costs and increased restrictions on their ability to make decisions regarding their health needs.

The ACLU of Utah does not have limitless resources, although thanks to many of you it does have resources. The job now becomes examining what and how we can counter these recent encroachments upon the civil liberties of the citizens of Utah. Because of your important support, the ACLU of Utah is, and will continue to be, the collective voice in this state for those civil liberties we all hold as precious.

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Continued from page 1

Stephen P. Smoot, one of the founding members of the ACLU of Utah in 1958, will be recognized with a Torch of Freedom Lifetime Achievement Award, for his enduring leadership and lifelong commitment to civil liberties. Mr. Smoot, in partnership with Mickey Duncan and Spencer LeVan Kimball, petitioned to have the ACLU of Utah chartered by the national ACLU more than 50 years ago, in response to the rampant McCarthyism threatening Americans' First Amendment rights. Mr. Smoot was also greatly concerned by persistent racial inequity and the lack of quality indigent defense - issues which still challenge our state today. Mr. Smoot continues to work for balance, compassion, and equality through his community and church engagements.

We also will be recognizing the winners of our 2010-2011 Youth Activist Scholarship Awards, funded this year by a generous grant from the Semnani Family Foundation.

The winners are: Luissana Gomez of Pine View High School in Saint George, and Elizabeth Lopez Medina and Nathan Goodman, both of the Academy for Math, Engineering & Science in Salt Lake City (see article on PAGE 7 for more information on these amazing young activists).

In short, expect an evening full of inspiring stories, excellent music (provided by the S.P. Coltrane Jazz Combo) and great company. We anticipate a huge crowd, with many long-time ACLU supporters as well as plenty of new faces.

The Bill of Rights Celebration will take place on the evening of Wednesday, May 11, 2011, at the Rail Event Center. The Rail is located at 235 N. 500 W. There is ample free parking in lots near the venue, as well as on-street parking. The Rail is



KENT HART
MICKEY DUNCAN AWARD



STEPHEN SMOOT
LIFETIME ACHIEVEMENT AWARD

easily accessed from 300 North, and is immediately west of the railroad tracks crossing 300 North. Tickets are available now, and can be purchased online at www.acluutah.org, or by calling ACLU of Utah staff at (801) 521-9862 x100. Checks can also be mailed to ACLU of Utah, 355 N. 300 W., SLC, UT 84103. Official invitations will be in the mail the first week in April.

If you are not able to attend the Celebration, **we encourage you to "Sponsor a Student"** by paying for a seat that is then offered to a young person who might not otherwise be able to attend.

2011 BILL OF RIGHTS CELEBRATION PLANNING COMMITTEE

Amanda Conner, Jessica Elliott - Barlow, Kathleen Euston, Alexander McDonald, Joel Morris, Rosio Suarez, Jill Sheinberg, Zain Siddiqui, Herta Teitelbaum, Robin Wilks-Dunn, and Dana Wilson.



ON THE HILL: 2011 LEGISLATIVE REPORT

IMMIGRANTS' RIGHTS

The issue of immigration took center stage during the legislative session with no fewer than 16 immigration related bills introduced. The discussion centered on enforcement and guest worker bills. The end result was the passage of an enforcement only bill, **HB 497**, along with work permit and guest sponsorship bills, **HB 116**, **HB 466**, and **HB 469**. The ACLU of Utah finds the passage of the laws extremely concerning. The enforcement only bill encourages racial profiling while the "benefits" in the work permit and guest sponsorship bills are illusory and unconstitutional - states do not have the authority to grant immigration benefits.

HB 497, "Utah Illegal Immigration Enforcement Act," is based on the controversial Arizona law, SB 1070. It requires individuals in Utah to carry proof of lawful presence at all times or risk being subjected to lengthy detention and investigation, a decidedly un-American "show me your papers" approach to law enforcement. This bill will create an atmosphere of dangerous racial profiling.

HB 116, "Utah Immigration Accountability and Enforcement Amendments," is an alleged immigration "benefits" law which requires a federal waiver in order to work. No such waiver has ever been granted and there is currently no law in existence that would grant such a waiver.

HB 469, "Utah Pilot Sponsored

Resident Immigrant Program," allows Utah citizens to sponsor an immigrant. The State of Utah does not have the authority under the Constitution to establish such a program.

The ACLU of Utah testified during the legislature, vocalizing our opposition to the bills. In addition, letters were sent to the Governor asking for a veto. Nonetheless, the Governor signed the bills along with HB 466 (below) into law as a package deal on March 15, 2011. With their passage, Utah opens itself up to costly legal challenges over the constitutionality of these laws. There is on-pending litigation in Arizona over the constitutionality of Arizona's SB 1070, the model for Utah's HB 497. In addition, the federal government has exclusive jurisdiction over immigration. Therefore, the "benefits" for undocumented individuals in these laws are illusory and provide a false sense of hope for our immigrant community.

HB 466, "Migrant Workers and Related Commission Amendments," establishes a Utah Commission on Immigration and Migration and authorizes the establishment of a Migrant Worker Visa Pilot Project. This law requires the State of Utah to work with the federal government in establishing the program.

The ACLU of Utah diligently fought back efforts to preclude instate tuition for undocumented Utah high school graduates through the defeat of **HB 191, "Nonresident Tuition Waiver Amendments."**

REPRODUCTIVE FREEDOM

Representative Carl Wimmer introduced three bills that further limit reproductive freedom of women. The three bills passed and are before the Governor who has indicated his intention to sign them despite strong and vocal opposition by the ACLU of Utah and our allies.

HB 171, "Abortion Clinic Licensing Fees," unfairly subjects Utah's three existing women's health clinics which offer abortions to twice a year inspections and higher government fees. Many abortions take place in hospitals which would be exempt from these new regulations. Placing unnecessary regulations on physicians and the clinics in which they practice is bad public policy that stifles the doctor - patient relationship.

HB 353, "Abortion Freedom of Conscience," allows institutions the right to refuse performance of abortion procedures on moral or religious grounds. With this law any hospital could refuse to provide reproductive health care. This broad ability to refuse care is particularly troubling in emergencies. Federal law requires all hospitals to provide emergency care, including emergency abortion care.



BY THE NUMBERS

- 1** ACLU of Utah bills passed
- 10** Anti-civil liberties bills stopped or neutralized
- 50+** Bills tracked and actively lobbied for or against
- 20+** Committee hearings attended
- 13** Bills testified in support of
- 10+** Fact sheets and letters circulated to legislators
- 2** Citizen Lobbyist Trainings

HB 354, “Insurance Amendments Relating to Abortion,” bans health policies that cover abortions. Currently, most insurance plans provide coverage of abortions along with other pregnancy related services, such as prenatal care, labor and delivery, and miscarriage care. This restriction on insurance plans means that a woman would



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online at www.acluutah.org/2011legreport.htm

be forced to continue a catastrophic pregnancy if she cannot afford the high out-of-pocket costs to pay for an abortion.

RACIAL JUSTICE

SB 44, “State Commission Amendments,” changes the way in which the Constitutional Revision Commission (CRC) may convene to review and advise on proposed amendments to the Utah Constitution. The CRC is a quasi-legislative body that provides advice to legislators about proposed constitutional amendments. The ACLU of Utah is particularly concerned about this law because it seems motivated by a desire to retaliate against the CRC for its unfavorable review of the constitutional ban on affirmative action proposed by Rep. Oda during the 2010 legislative session. The ACLU of Utah engaged in substantial lobbying efforts of groups and legislators encouraging them to oppose the bill. Unfortunately, the bill passed and is currently before the Governor.

FIRST AMENDMENT

HB 477, “Government Record Amendments,” caused the greatest public uproar, aside from immigration. The bill, already signed into law by the governor, has resulted in an extreme loss of confidence by the public in their government. While it is possible that this law will be modified during a special legislative session, the ACLU of Utah continues to call for an outright repeal. The law, as it stands, changes the regulations governing the Government Records Access and Management Act (GRAMA) by creating new exemptions of government records that the public can access. It prevents the release of a variety of electronic communications including

voicemail, transcripts of voicemails, instant messages, video chat recordings, and text messages, generally reducing transparency in government. It also expands the ability of government entities to charge fees and costs for responses to GRAMA requests and reduces the ability of news media and public interest organizations to obtain fee waivers, seriously undermining the ability of the public to access records.

SB 165, “Election Law Amendments,” signed into law on March 10, bans the use of electronic signatures to qualify initiatives, referendums and candidates for the ballot. We feel portions of this law are unconstitutional and are preparing a lawsuit representing certain sponsors of the referendum to repeal HB 477 who need to collect 65,000 signatures by April 19. (See the article on page 6)

FOURTEENTH AMENDMENT

The ACLU of Utah has received complaints about municipal “Good Landlord Programs” that are being adopted throughout the state. The main concern of this program regarded cases of domestic abuse – victims feared calling the police because they may end up evicted due to the restrictions in the Good Landlord Program.

To address this concern, The ACLU of Utah helped draft **HB 403, “Changes to Fit Premises Act.”** It prohibits a landlord from taking action against a renter for requesting assistance from a public safety agency, and prohibits municipalities with good landlord programs from penalizing property owners whose tenants request reasonable assistance from public safety agencies. This bill passed the legislature and is before the Governor.

Unconstitutional Ban on E-Signatures Prompts Lawsuit



Early in the morning of March 25, the ACLU of Utah sued Utah Lieutenant Governor Greg Bell challenging his refusal to count electronically collected signatures (e-signatures) submitted in support of citizens' referenda or initiatives. The ACLU represents two of the sponsors of

the on-going referendum to repeal HB 477--the controversial bill that was passed at record-speed in the waning days of the 2011 legislative session, which eviscerated Utah's public information law. When those sponsors, Janalee Tobias and Nancy Lord, submitted their petition for the HB 477 Referendum, Lt. Gov. Bell declared his outright refusal to count any e-signatures they might gather.

The law on which Lt. Gov. Bell relied, SB 165, was also passed in the last days of the session, and contains a

blanket ban on any e-signatures collected in support of any referenda or initiatives. The ACLU's lawsuit contends that SB 165 violates the state and federal constitutional rights of Utah voters--including those of a third ACLU client, Madison Hunt, who attends college out of state and who, like many Utah voters (like soldiers or missionaries), cannot participate in the HB 477 Referendum if she cannot do so on-line."

Keep up-to-date on developments at www.acluutah.org/SB165lawsuit.html

Victory in Case Challenging Constitutionality of Charging Fees For Evidence

On December 13, 2010, the ACLU of Utah entered its formal appearance as co-counsel in *Webb v. Lohra Miller, et al.* The case challenged a controversial practice by the Salt Lake County District Attorney's Office of charging unlimited up-front fees to criminal defendants wishing to receive discovery materials in their pending cases. Prosecutors are ethically and constitutionally obligated to provide defendants with discovery--i.e., information on which

the criminal charges are based--as part of defendants' right to receive a fair trial. The ACLU of Utah assisted lead counsel John Bogart of Telos VG in negotiating a settlement with District Attorney Sim Gill, whereby he agreed that his office would no longer charge up-front fees for discovery. Mr. Gill's agreement was an important step toward ensuring that the rights of criminal defendants to a fair trial are protected in Salt Lake County.

Ban on "Boobies" Bracelets Violates Students Free Speech



Under pressure from the ACLU of Utah, several school districts across the state have lifted their bans on students and teachers wearing "I [heart] boobies" bracelets to school. The bracelets, which are sold by the Keep A Breast Foundation to raise money for breast cancer awareness, were banned by the various school districts as "inappropriate." Once we notified the school districts that we considered the bans to be unconstitutional restrictions on the students' rights to freedom of expression and to engage in political speech, almost every district we contacted agreed the bans were unconstitutional. We are considering litigation against the two districts that have not lifted their bans.

Utah Supreme Court to Define Abortion

The Utah Supreme Court denied a request by the ACLU of Utah to submit an amicus curiae ("friend of the court") brief in a criminal appeal over the meaning of the word "abortion." The defendant, an indigent juvenile, allegedly attempted to terminate her pregnancy in May 2009. Based on the faulty argument that the

method by which J.M.S. sought to terminate her pregnancy was not an allowable abortion "procedure," the State charged J.M.S. with Criminal Solicitation to Commit Murder. The juvenile court disagreed and dismissed the charges. Although the ACLU's motion was denied, we continue to work with and provide support to the defendant's counsel. The case will be heard on April 13.

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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Utah Youth Stand Up For Their Rights and YOURS, too!

2011 Youth Activist Scholarship Winners

The ACLU of Utah is proud to announce the amazing winners of its 2011 Youth Activist Scholarship Awards. A selection committee composed of community leaders and volunteers reviewed qualifying candidates from across the state. Our winners were selected based on the students' dedication to civil liberties, the challenges they have overcome, and the leadership they display. Each winner is awarded \$1,000 towards their first year of college and will be honored at our Bill of Rights Dinner on May 11.



Elizabeth Lopez

Academy for Math, Engineering, and Science, Salt Lake City

"Often we, the youth, feel like we can't do anything because we're just kids. Yet, behind every movement, there are young people who are just as important as the adults. Change begins with us. As a civil libertarian activist, I envision continuing to be a voice for my community."

Elizabeth has been active in promoting justice for the immigrant community since she was in junior high. She has become a leader working tirelessly with MEChA and the Salt Lake DREAM Team.



Nathan Goodman

Academy for Math, Engineering, and Science, Salt Lake City

"Through organizing, protesting, testifying at the legislature, lobbying, and blogging, I directly challenge violations of constitutional rights. It is how I express my passion for freedom and equality."

Nathan is passionate about his multi-level activism. He is part of the LGBTQ community and advocates for racial and social justice, an end to the death penalty, and peace.



Luissana Gomez

Pine View High School, Washington

"I participate in LGBT and Latina activism because I believe in equal opportunity for everyone. Youth activists have the important role of relating to young people and inspiring them to take charge of big issues going on in our country."

Luissana is the first president of her school's new Gay-Straight Alliance, and is working on a documentary to explore the high number of teenage Latina pregnancies in Utah.

ACLU of Utah *Reporter*



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Get Your
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On!

Tell Utah "You have the
right to be yourself!"

Sunday, June 5
9:30 to 11:00 a.m.

Walk with us in the Utah Pride Parade through downtown Salt Lake City.
To sign up as a walker and receive more information, email us at
pride2011@acluutah.org or call (801) 359-2614 ext. 101.

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