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October 2, 2006

Capitol Preservation Board  
Budget Development and Board Operations Subcommittee  
420 N. State St. East Building, E110  
Salt Lake City, UT 84114

***Public Comment Re: Capitol Preservation Board Proposed Regulations***

Dear Members of the Committee,

The American Civil Liberties Union of Utah recognizes the effort the Committee has put into formulating regulations concerning free speech activities on Capitol Hill and we wish to take this opportunity to comment briefly on the proposed rules. Our primary concern is that the rules work to protect, rather than inhibit, the right to free speech, guaranteed under the First Amendment to the United States Constitution and Article I, section 15 of the Utah Constitution.

Initially, we note that based on the comments given at the public hearing on September 25, 2006, there is significant public confusion about the proposed rules. Indeed, despite our familiarity with the legal parameters of free speech regulations, we also found the proposed rules convoluted. A public misunderstanding of rules concerning free speech is constitutionally problematic because it may lead to a chilling effect on speakers. When speakers are not on notice as to what conduct is or is not permissible, they often choose to remain silent. To avoid this chilling effect, the Committee should make every effort to ensure that the rules both put the public on notice as to what is permissible *and* comply with federal and state constitutional requirements.

The primary source of confusion seems to stem from rule R131-10, Solicitations. When read in conjunction with R131-11, Free Speech Activities, it is difficult to piece together the overlapping definitions of what constitutes “solicitation” versus a “free speech activity.” For example, under Solicitation rule R131-10-3(2)(b), “handbills, leaflets . . . [or] printed materials” are defined as solicitation. However, leafleting is also found under the definition of free speech activity. *See* R131-11-3(1). Although the solicitation rule specifically states that “free speech activities as defined in rule R131-11” are not included in its definition, the rules may put officials in the constitutionally uncomfortable position of considering the content of leaflets and other handouts, as well as the status of the distributor, to determine whether they fall under “solicitation” or “free speech activity.” This opens the door to impermissible content regulation, and should be avoided. If the Solicitation rule is meant to restrict vending on Capitol Hill, then perhaps a rule that clearly restricts that behavior would alleviate the confusion. A “Vendor Restriction” rule might simply require that vendors or commercial enterprises cannot operate on Capitol Hill without authorization from the board or without a valid state contract to engage in such behavior.

Additionally, the fact that the proposed rules only govern certain areas of Capitol Hill, and that the Utah State Legislature has jurisdiction over the other areas, should be made clear in the rules or in supplementary information provided to the public. Currently, the rules appear to designate important areas of the complex as non-Free Speech Areas. For instance, “Map A” found online at [http://utahstatecapitol.utah.gov/homepage/R131-11SenateandHousePublicFoyers\\_1.pdf](http://utahstatecapitol.utah.gov/homepage/R131-11SenateandHousePublicFoyers_1.pdf), does not provide any information about the downstairs of the West Building, where many legislative activities take place.

There is also confusion as to which map the rules refer to—the map online or the map handed out at the public hearing.

As the Committee is aware, even if changes are made to clarify the regulations so that they do not pose constitutional problems, any regulation can be applied unconstitutionally. It is therefore critical that all law enforcement and staff who will be enforcing the regulations are properly trained. This includes the Sergeants-at-Arms for the House and Senate, as well as those who work with the Sergeants-at-Arms. Legislators should also be made aware of the rules. This training will help ensure that the public has access to its government and that no one will be turned away because of the content of their message.

Please contact me directly at 801.521.9862 ext. 103 if you have any questions about our comments.

Respectfully,

Margaret Plane  
Legal Director