



AMERICAN CIVIL LIBERTIES UNION OF UTAH FOUNDATION, INC
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Provo City Legal Services
Gary Gregerson, City Attorney
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Provo, Utah 84061
Phone 852-6140
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Dear Mr. Gregerson,

It has come to our attention that Provo City Mayor, Lewis K. Billings, has signed a policy concerning Provo City employees that contradicts state statute. Specifically, Provo City's policy regarding "Time-Off to Vote," signed by the Mayor on August 17, 2004, contradicts Utah Code Annotated § 20A-3-103, "Employee's right to time off for election." A concerned City employee contacted us after being referred to this City policy when he requested his leave of absence to vote in the upcoming general election on November 2, 2004.

Under section 20A-3-103(1), employers are required to allow employees "to be absent from service or employment on election day for not more than two hours between the time the polls open and close." The statute, which only applies to employees who do not have "three or more hours between the time polls open and close during which the employee is not employed on the job," requires employees to request a leave of absence in advance. *Id.* § 20A-3-103(2). Employers may not deduct from an employee's usual salary or wages because of this time off to vote. *Id.* § 20A-3-103(1)(d).

Provo City's policy creates an exception, where none was created by the legislature, to this state statute. Under Provo City's policy, the statute does not apply to employees working in "positions designated as emergency response or where coverage requirements for critical services exist." The policy requires these employees to vote by absentee ballot, but *only if* they reside outside Provo City limits. While Provo City may be trying to address legitimate concerns with the state statute through this policy, such changes are the province of the legislature. As written, Provo City's policy violates state law, and we request that appropriate steps are taken to ensure that this violation is remedied.

The American Civil Liberties Union of Utah is concerned about this issue because the right to vote, and to have every vote counted accurately and equally, is a core principle of our democracy. The State of Utah's statute helps protect that right by allowing employees time off to vote. Voting absentee is not the equivalent of voting on election day, in so far as events may change after the absentee ballot deadline. Further, absentee ballots are not necessarily counted in election day polling and are often seen as diluted votes.

Most importantly, however, Provo City may not circumvent state law through its own policy. Provo City's policy is a violation of both Due Process and Equal Protection under the United States Constitution and the Utah Constitution. We request immediate action to insure that Provo City policy ceases to violate Utah Code Annotated § 20A-3-103. Further, City employees

affected by the state statute and the City policy should be made aware of the policy change, so they are not denied their statutory right to vote in the general election on election day.

If we have misunderstood the policy, or if you would like to discuss the matter, you can reach me through my office at 801.521.9862 ext. 103. We would appreciate your written assurance by October 4, 2004, that this issue has been resolved. We look forward to hearing from you.

Respectfully,

Margaret Plane
Staff Attorney
ACLU of Utah