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Free Speech Guardians

ACLU Nebraska finds itself at all sorts of interesting public demonstrations while guarding free speech. Animal rights protestors outside the circus with babies and puppies, counter demonstrators in single digit weather and hemp activists at the Capitol are just part of the spectacle we enjoy in our work.

We provide legal observers—“crossing guards for the First Amendment”—when requested and when staffing permits. By having a neutral third party observer, we hope to discourage any effort to silence controversial speech by police or the public.



Above: “Cures Not Wars” demonstration for marijuana legalization on May 1st. See page 8 for the full story.



Left: ACLU Nebraska Legal Director Amy Miller guards pro-choice counter protestors to the “Walk for Life” held in January.



Right: People for the Ethical Treatment of Animals demonstrated outside the circus in March with ACLU Nebraska volunteers acting as legal observers.

Why Immigrants Rights are a Civil Liberties Issue



The ACLU recognizes that the United States, like every country, has the right to control who enters the country, to enforce the integrity of its borders, and to set immigration policy. However, the ACLU also believes that this policy needs to be consistent with our American values of fairness and the tradition of welcoming immigrants.

The Constitution was designed to protect the most vulnerable members in our society. Immigrants are by definition in that category. Divisive and inhumane immigration laws are unjust and legally suspect in addition to being against our national interests and core American values of fundamental fairness and equality.

Fremont Ordinance: Take the efforts to prohibit renting to or employing illegal immigrants proposed in Fremont. The ordinance attempts to drive out undocumented immigrants and their families by punishing those who employ or rent to them.

The Fremont ordinance is discriminatory, unfair, and unpatriotic. This law not only violates the U.S. Constitution and federal civil rights laws, but subjects people who look or sound foreign to potential discrimination based on their race, ethnicity or national origin.

Schoolchildren: We also have been working to identify and stop local school district practices that try to discourage children of undocumented immigrants to register for public school. Undocumented students arrived here because of the choices of their parents.

They grow up in Nebraska and persevere against the odds to graduate from high school, and they have a right to obtain a public education.

In the 1982 landmark case of *Plyler v. Doe*, the U.S. Supreme Court held that all students have a right to basic public education. The Court wrote that denying immigrant children access to K-12 education “raises the specter of a permanent caste of undocumented resident aliens, encouraged by some to remain here as a source of cheap labor, but nevertheless denied the benefits that our society makes available to citizens and lawful residents.”

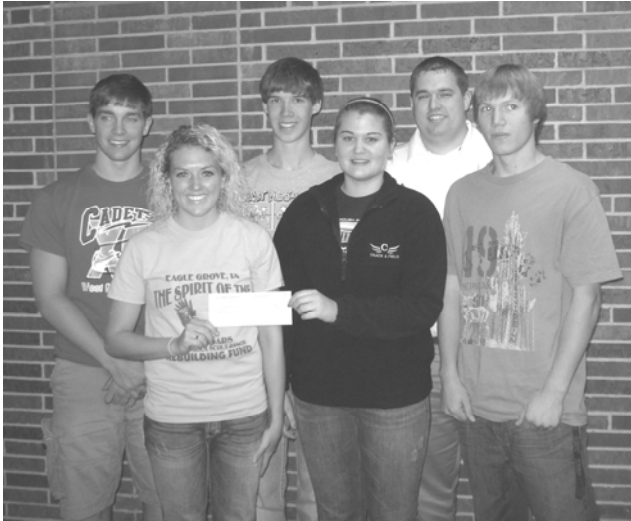
State legislature: Nebraska, like most states, saw a variety of anti-immigrant measures in our legislature this year. See page 6 for more information.

When we take away due process and equal protection from one vulnerable group, we chip away at the Constitution and its fundamental protections that we value so much as Americans. Laws that protect only some people’s rights put everybody’s rights in jeopardy. Civil liberties apply to all of us--with or without documentation.

Divisive and inhumane immigration laws are unjust and legally suspect in addition to being against our national interests and core American values of fundamental fairness and equality.

West Point-Beemer High Students Win PSA Contest

The first-ever ACLU Nebraska PSA contest was a fascinating process. We sent a letter to every high school (public AND private) in Nebraska, inviting students to create a public service announcement that captured the essence of the rights under the First Amendment. Students from eleven schools entered.



West Point-Beemer High students with teacher Matt Hinkel (in white) holding their prize check.

We thank judges Laurie Thomas Lee (UNL Professor of Broadcasting), Laurie Richards (Director of the Nebraska Film Office in the Dept. of Economic Development) and Danny Ladely (Director of the Mary Riepma Ross Media Arts Center).

The judges chose West Point-Beemer High's entry as the standout winner. Their entry used music, voice over work and still photos (it's not easy to try to illustrate "the right to petition the government for redress of grievances" with a picture, but they did it!). The entry came from seniors in the computer class. They won \$500 for their work.

Second place (\$250) and third place (\$150) went to two different student groups from Lincoln Southeast High, and fourth place (\$100) was won by students from Omaha North High.

"This contest was so much fun that we hope to do it again next year," said ACLU Nebraska Executive Director Laurel Marsh.

2010 Annual Banquet Recognizes Civil Liberties Heroes



ACLU Board Member Leslie Seymore, winner of the Robert M. Spire Founder's Service Award, greets Dr. LeRoy Carhart, winner of the Roger Baldwin Civil Libertarian Award.



David Downing accepted the Defender of the Bill of Rights Award on behalf of the Nebraska Criminal Defense Attorneys Association, presented here by Amy Miller.

Mental Health Board Proposal Puts Bias Over Patient Care

ACLU Nebraska provided testimony in opposition to a proposed rule change for mental health practitioners in May. The proposal was to permit mental health practitioners to reject a client without providing a full and complete referral for another counselor. According to news reports, the specific concern was about counselors who didn't want to help a gay or lesbian patient due to the counselor's personal religious beliefs.

Why is the State Mental Health Board even considering a change to the code of ethics? Because the Nebraska Catholic Conference has been lobbying for such a change for almost two years now. Without a change in the code of ethics, says the Conference, religious people will be forced to violate their church's teachings in violation of the First Amendment's guarantee of Free Exercise of religious rights.

Are they right? Is the ACLU speaking out against the rights of religion?

No, we haven't forgotten our mission. We protect the right of all people to practice

their religion. But the First Amendment doesn't give a free pass to discriminate. The US Supreme Court has said that any neutral law or rule that is generally applicable to all, but which has an incidental effect on a religious person, is constitutional.

To put it another way, we all have to obey the laws, whether we go to a particular house of worship or not. And holding a mental health license means providing appropriate care to all patients—not just those that the license holder “approves” of.

Nebraska has a mental health crisis as it is. Reports by national organizations indicate we rank 10th in the country for suicide rates. We simply do not have enough mental health providers to meet all the needs of our citizens. The Board should reject the proposed change as just one more obstacle in the path of people who need help.

Our testimony urged the Board to reject the proposal for both public policy and constitutional concerns. The Board is not expected to make a decision for several months.

The First Amendment does not give a free pass to discriminate in the name of religion.

FORTUNE TELLING AND FREE SPEECH

You might not think about Tarot cards, palm reading and crystal balls when you think about the First Amendment. But all of those activities are protected under the Constitution.

One future business owner worried she'd be prosecuted under Scottsbluff's city ordinance outlawing such fortune telling, so she

contacted us for help.

As one 8th Circuit judge wrote about these occult activities, they can't be outlawed by cities because “For all we know, certain persons genuinely believe that they have such powers. In this belief they may be mistaken, but that is not a decision that government is free to make under our Constitution.”

In April, ACLU warned Scottsbluff that their city law banning clairvoyance and divination was illegal under the First Amendment. They promptly agreed to stop enforcement and the City Council is currently reviewing a proposal to strike the law entirely.

Did you foresee this happy ending?

GUANTANAMO DEFENSE LAWYER SPEAKS IN LINCOLN

Emmet Bondurant didn't know what to expect when he met the first of two clients detained in Guantanamo as suspected terrorists. What he discovered was shocking. One client's had been systematically tortured, including having his toenails and fingernails pulled out, electric shocks and water boarding.

Bondurant came to Lincoln as the guest of Common Cause Nebraska, co-sponsored by ACLU Nebraska. He spoke at UNL journalism and law classes and then to the general public at the Lincoln Unitarian Church on April 7th. He highlighted the procedural failings of the justice system for both of his clients.

"Each of these men have been detained for over 8 years," said Bondurant. "If they're guilty, we need to try and convict them. If they're innocent, why have we kept them in these terrifying conditions?"



Omaha Office Launches Traffic Stops Program with Racial Justice Grant by Tristan Bonn, Community Organizer



On May 1st, Law Day, ACLU Nebraska announced the launch of a new program called "Know Your Rights: What to Do When Stopped by the Police." This live presentation is suitable for any student, church or community group interested in this issue.

For years, minorities in Omaha have complained about the greater frequency and harsher treatment of their populations than white when stopped by police. The Nebraska Crime Commission data on traffic stops supports these concerns. The numbers demonstrate that blacks have been stopped four times more often than whites, while Latinos have been stopped about 2.5 times more often than whites. The numbers have

been fairly consistent for about 8 years.

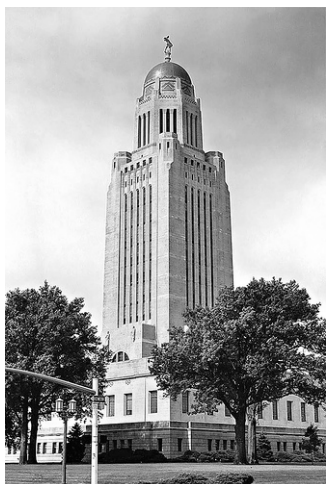
In addition to explaining rights to audiences, ACLU is now collecting data from Omaha residents about their interactions with law enforcement. If any trends or patterns are identified, they will be reported to the appropriate agency. Ideally, that agency will act to correct the complaint pattern and that action will be reported publicly. Failure to address the problem may lead to further ACLU action.

So far, Professor Sam Walker of UNO and I have met with Omaha Police Chief Alex Hayes twice and he is supportive of the program. Sam is a long time ACLU Nebraska member and supporter, and his expertise in police practices will be invaluable in this work.

If you have a group that would benefit from one of our presentations, please contact me at (402) 398-3027.

A LOOK BACK AT THE 2010 LEGISLATURE

Good news first. ACLU Nebraska had good success with several key issues in this session.



Local police cooperating with immigration authorities: LB 699 would have had local police send all information on mere arrestees (not people actually convicted of any crime) to federal immigration authorities. A spokesperson for Omaha Police testified against the bill, pointing out police fear it will discourage cooperation with investigations as well as intimidate victims from seeking help.

Racial profiling study extended: LB 746 will ensure that law enforcement agencies across the state must continue to collect driver racial data for four more years in order to permit a complete picture of how minority drivers are treated. ACLU Nebraska has an appointed seat on the Racial Profiling Taskforce.

Drug testing of welfare recipients defeated: LB 940 would have permitted one of the most invasive ways government can interact with citizens. The bill was defeated.

Repeal of in-state tuition for children of immigrants defeated: LB 1001 wanted to make children of illegal immigrants who have lived in Nebraska for years and who graduated from a Nebraska high school only go to college if they paid out-of-state tuition rates. “High achievers should not be discouraged from becoming an asset to our state based on the choices of parents,” testified ACLU Nebraska Legal Director Amy Miller.

Bad news for civil liberties was mixed in with our successes.

Data collection: LB 261 passed despite our strong efforts to oppose it. The bill allows merchants to scan and retain personal data from Nebraska driver’s licenses. We opposed the creation of an identity-thief’s dream database to no avail.

Abortion restrictions: LB 594 and LB 1103 both passed with far reaching potential impact on the right of women to access abortion. We are currently evaluating the laws—and whether a legal challenge is appropriate—with our national partners.

Student free speech: LB 898 was drafted by our coalition partner AFCON (Academic Freedom Coalition of Nebraska) and would have created a code of rights for students. The bill did not advance out of committee and thus never got a full hearing by the senators.

Cost study of the death penalty: LB 1105 would have given lawmakers a chance to fully assess the price we pay for executions. Despite the fact that such a study would have added no new cost to the budget, senators narrowly rejected the study.

Executive Director's Message—Laurel Marsh

It appears that hate and bigotry are back in fashion. The scapegoats have changed a bit, though. People from the Middle East are out and illegal aliens are in. We're having some fun with proposed city ordinances in Fremont and with green cards at soccer games.

This newsletter addresses civil liberties infringements in immigration, reproductive freedom, privacy, free speech, religion, and the mental health treatment of people who are LGBT. These are not theoretical problems designed to illustrate school textbooks. These are real problems that create frustration in the lives of real Nebraskans. We do not seek these people out. They come to us.

How you react to the civil liberties problems experienced by others matters. It's easy to get lost in the conflicting arguments of persuasive people. These are complex issues that affect many of us personally and about which we have closely held views. But we also have some bedrock principles to guide us when we make decisions: our Constitution and our Bill of Rights. Relying on these principles and precedents allows us to step outside of the emotions created by the problems of the moment. We can then judge whether or not the proposed solutions are in keeping with the civil liberties values that separate America from all other nations. This isn't quaint, hokey bullcrap; it's the truth! Even when we disagree with an individual position taken by ACLU, we generally agree that *we* only have civil liberties when *all of us* have access to them. You can't play favorites!

Make it uncomfortable for those around you to continue with the fashionable assertions of hate and bigotry. Let's help this fad become passé quickly.

PS: Check out our redesigned website at www.aclunebraska.org and become a fan of ACLU Nebraska on Facebook, too!



Thank You, Thank You!

Ricky Fulton, for organizing and underwriting our Jackson Artworks Valentines event.

Rich Juro, for organizing and underwriting our Happy Hollow event with a presentation by...

Sam Walker, for presenting his speech "Civil Liberties and the Presidents."

James Arthur Vineyards for staffing the wine bar at our Jackson Artworks event

"Society changes.
Knowledge accumulates.
We learn, sometimes, from our mistakes. Punishments that did not seem cruel and unusual at one time may, in the light of reason and experience, be found cruel and unusual at a later time..."

Graham v. Florida, concurrence by Justice Stevens, abolishing juvenile life without parole for non-homicide crimes.



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Free Speech Rights...For A Price??

ACLU Nebraska is currently working with the city of Lincoln to see whether the city will change their demonstration ordinances.

Diana Wulf is a volunteer grassroots activist interested in legalizing marijuana. She filled out a permit request to hold a gathering in a Lincoln park on May 1st, which is the international "Legalize Marijuana" day. She intended to have booths with information, a potluck and musicians. The permit form required her to write in what the signs would look like, and she gave the city all the information they needed.

Then in April she was informed that on top of the \$125 permit fee, she also needed to obtain a \$1,000,000 insurance liability policy "due to the nature of the event." Diana told the Parks &

Recreation Department she didn't have any money to do that, and was informed she couldn't hold her event.

With only days to publicize her event, Diana chose to hold a rally at the State Capitol and simultaneously called the ACLU. The state authorities allowed her to have her event at no cost, but it wasn't the event she wanted—no booths, no potluck, no music.

"Free speech rights don't hinge on whether you have money in your pocket," said ACLU Nebraska Legal Director Amy Miller. "We're in discussions with city officials to see whether the city is willing to modify their ordinances to ensure everyone's speech is heard, regardless of your bank account." Stay tuned!