

The Civil Libertarian

Newsletter of the ACLU of Nevada
Fall/Winter 2009

PRIVACY ON THE INTERNET IT'S NOT THE WILD WEST ANYMORE

by MAGGIE McLETCHE

The Internet is the new frontier – the electronic frontier. Much like the Wild West, the Internet promises freedom and escape through anonymity, where people can leave the “real world” behind and take on new identities in chat rooms or virtual worlds like Second Life. But just how anonymous is what we say on the Internet?

cost to privacy. For example, “cookies” containing bits of information about you, your personal information, your buying history, and your web browsing habits are embedded in your computer through many common websites. In addition, your computer’s IP (Internet Protocol) address follows you online, making it possible for companies and even the government to uncover your web surfing habits and history.

While the Internet may feel anonymous and free, it is not so easy to escape into a virtual world and leave your actual identity behind. Leaving aside spyware, which tracks your computer’s every move, people have come to expect convenience on the Internet, without realizing the

Recently, the ACLU of Nevada tried to stop the government from uncovering of identities of anonymous online commenters and took on representation

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LIBERTY v. PERSONHOOD FIGHTING THE VAGUE PERSONHOOD INITIATIVE

by LEE ROWLAND

The ACLU of Nevada has spent years protecting the initiative process as fundamental free speech, ensuring that the rules are fair and applied evenly to all initiative petitions, regardless of the message.

When the Personhood Initiative was filed this November, seeking to reduce fundamental reproductive rights for women, we did some hard thinking about the various civil liberties principles at play. The Initiative seeks to ban all

access to abortion, even in cases of rape or incest, and would likely also ban many common forms of birth control, medical research, and fertility treatment. There is no question that the protection of women’s health, privacy rights, and reproductive freedom are of the absolute highest priority to the ACLU and our membership. On the other hand, we defend access to the ballot regardless of proponents’ viewpoints and will continue to do so.

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PASSING THE TORCH

THE ACLU OF NEVADA PLANS FOR A SUCCESSFUL FUTURE

The last six months have brought a great deal of change to the ACLU of Nevada. Executive Director Gary Peck decided to end his tenure in July to pursue other opportunities. Gary led the Nevada ACLU for thirteen strong years, and his contributions to the growth of the affiliate are too numerous to count. Starting as the only paid staff person, over time he cultivated the talented and passionate staff of eight that works every day to protect our rights in the courts, at the legislature, and in our communities.

The thriving and successful organization we are today is certainly Gary's legacy and testament to his boundless energy and commitment to protecting the civil liberties and civil rights of all Nevadans. Each member of the staff and board wishes Gary all the best in his future endeavors!

While the work of the ACLU never stops and the search for a new Executive Director is underway, the Board is using this opportunity take a deep breath, step back, and envision a new ten-year plan to make way for new growth.

I encourage each of you to similarly use this moment to consider how you will continue to be part of protecting the rights and liberties of all Nevadans. We need you, our members and supporters, to step up your support of the ACLU of Nevada. Your talents can and will strengthen our work and bring us into the next phase of our growth. Consider, for example, volunteering with our talented staff or joining our dedicated Board of Directors. The staff and board hope to introduce new and old civil libertarians to the joys of stewardship and volunteerism, so please contact our offices to explore the ways that you can pitch in and make a difference!

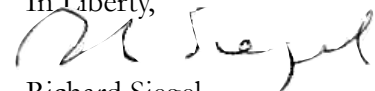
Of course, the greatest source of pride for every board member is our affiliate's continuing strength in defending the rights and liberties of all Nevadans. To stay

current with all of our latest news, please find the ACLU of Nevada on Facebook and Twitter, visit our website www.aclunv.org or join our email list. Our staff is as active as ever and this newsletter is filled with highlights of our incredible recent work, from stopping censorship of two school plays to lobbying to support the creation of a Domestic Partnership registry.

Our public outreach continues to be on the rise as we find new ways to be present in our communities through the web, community forums, celebrations, and educational events. Our lobbying arm has never been stronger, as we enjoyed an unbelievably successful lobbying effort that saw both the defeat and modification of bills that threatened civil liberties, as well as the passage of momentous civil liberties legislation through a permanent civil liberties presence in the legislative building. And as always, our legal team continues its victories in both legal advocacy and the courts, and our ground-breaking First Amendment work continues to set the bar both in the state and at the Ninth Circuit Court of Appeals.

It goes without saying that none of this inspiring, critical work can be done without you - our members, donors, and supporters. Personally, and on behalf of the Board of Directors, I thank you for your attention, passion, membership, and donations. I urge you to make a personally meaningful tax-deductible contribution to the ACLU of Nevada Foundation on our website www.aclunv.org or through the envelope enclosed with this newsletter. In these difficult economic times, every little bit helps. As you can see by this newsletter, you can rest assured that we will put every penny to its best use protecting individual liberty in the Silver State!

In Liberty,



Richard Siegel
President of the Board of Directors

ACLU HONORS SENATOR DAVID PARKS

THE SEVENTH ANNUAL CELEBRATION OF CIVIL LIBERTIES

by PHIL HOOPER

With its theme of “Carrying the Torch,” the ACLU of Nevada Foundation’s Seventh Annual Celebration of Civil Liberties recognized community members who have tirelessly supported the cause of civil rights and civil liberties year after year.

Chief among these leaders at this year’s gala, held November 13th in Las Vegas, was State Senator David Parks, who received the Emilie Wanderer Civil Libertarian Award for his work to promote equality and justice for all Nevadans. The award is named in honor of one of Las Vegas’s first female attorney and a longtime civil rights advocate and given to individuals who have significantly contributed to the protection and advancement of civil liberties in Nevada.

In addition to being a stalwart defender of civil rights, Senator Parks was the chief sponsor of two bills that very significantly advanced equality and marked a truly watershed moment for LGBT rights in Nevada. Gay and straight couples can now register with the Secretary of State under the new Domestic Partner Registry, which

grants rights and responsibilities similar to marriage. Additionally, places of public accommodation can no longer discriminate against someone based on sexual orientation. Neither of these bills would have been possible without the belief and perseverance of Senator Parks.

The attendees also heard from Cody Huff, a homeless outreach activist, who is able to continue his ministry of feeding homeless individuals thanks to an ACLU lawsuit seeking to protect access to public parks.

In attendance were a number of community leaders, activists, ACLU clients, and legal professionals who share a commitment to supporting the organization’s mission—nearly 200 people in total. Cili Restaurant at the Bali Hai Golf Club was the event’s host and one of its sponsors, along with the Henderson-based company Incomp.

This year’s celebration included a silent auction, live music, and a visit from the Ladies of Liberty—volunteers who encouraged guests to become official, card-carrying ACLU members.

Thank You!

The Annual Celebration of Civil Liberties would not have been possible without the generous support of our Event Sponsors:

- Cili at the Bali Hai Golf Club
- Incomp

The ACLU of Nevada also thanks the following individuals, organizations, and businesses for contributing to our Silent Auction:

- Avi Resort & Casino
- Gary Adams
- Beau Photography
- Terrie Bergman, Psychic Consultant
- Robert Chester, Pilot
- Cloud Nine Entertainment, LLC
- Delgado Dance Studio
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- Las Vegas Motor Speedway
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- Potato Valley Café
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- The Rack/Onyx Theatre
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- Law Office of Lisa Rasmussen
- Office of Senator Harry Reid
- Reno eNvy
- Ritual Salon & Spa
- Jim Rogers
- Steve Sebelius, City Life Editor
- The Skin Therapist
- Talk of the Town
- Trader Joe’s
- VCA Animal Hospitals

(Clockwise from top) Items from the silent auction; Michael Ginsburg, Dave Parks, and Tod Story; ACLU of Nevada Board with MC’s Maggie McLetchie and Lee Rowland; the Ladies of Liberty; guests enjoying the evening.



Photographs courtesy of Paul Ershler, www.eventpicsphotography.com

ACLU OF BLACK ROCK CITY NEVADA

LEGAL OBSERVING AND PROTECTING PRIVACY RIGHTS AT BURNING MAN

by LEE ROWLAND

Sand. Nudity. Sculpture. Neon. Costumes. Civil Liberties...? This year, all were critical components of Burning Man, the indescribably unique temporary city of nearly 50,000 people created on the remote Black Rock Desert, owned by the federal Bureau of Land Management, known as the playa. For one week each year, thousands of “Burners” converge on Black Rock City, Nevada to celebrate their art, their spirits, and their weirdness with each other.

Along with the scores of Burners flooding into the desert come a half-dozen law enforcement agencies looking to play their part in this impromptu society. The presence of law enforcement at the Black Rock Desert has steadily increased every year since the event was first held there in 1990. Each year, as part of the cost of renting the playa, Burning Man organizers are presented with a non-negotiable bill for estimated law enforcement costs, including an officer-to-citizen ratio much higher than the normal ratio for community policing off the playa. Yet, historical lack of violent behavior at Burning Man fails to justify such a large law enforcement presence, or the relatively high number of citations and arrests meted out by the various

law enforcement agencies.

Indeed, most Burners think of the playa as “home,” and many bring their families – and their children – with them to share in the spirit of freedom and art. Yet, officer staffing levels indicate that law enforcement agencies view Burning Man as a “target-rich” environment closer to a violent protest than a family-friendly experimental society. And in that environment, there is always the possibility for law enforcement to bend the rules a little, particularly with regard to the Fourth Amendment, to see participation in Burning Man as itself probable cause for a search.

The ACLU of Nevada is invited by Burning Man to act as legal observers, inform people about their rights, and make sure law enforcement behavior stays within the bounds of the Constitution. This year, we held “civil liberties” hours to answer questions on the playa and collect complaints from participants about their interactions with law enforcement and we received numerous complaints about illegal searches and seizures. The vast majority of complaints we received detail a common interaction: law enforcement officers pressure an individual into consenting to an unwanted search – of their person, their bag, even their friend’s bag – often coercing the individual into consenting by providing inaccurate



Left to Right: ACLU of Nevada staff Paige White, Maggie McLetchie, and Lee Rowland and volunteer Marco Carbone at the ACLU Booth at Burning Man

information about the effect of not consenting to the search. Therefore, almost everyone consents. And then when they consult with us afterward and we hand them a small “Know Your Rights” card informing them they have every right not to consent to a search, a light bulb goes off, and they wish they had been empowered with their rights before interacting with the government. The lesson on the playa is the same as off-playa: knowing your rights can be the best defense against abuse of government power.

The ACLU of Nevada appreciates that the Burning Man organization recognizes the importance of protecting constitutional principles like individual liberty and privacy of all citizens, even in an experimental society like Black Rock City.

THANK YOU!

The ACLU of Nevada appreciates the invitation from the Burning Man organization to legal observe at Black Rock City and we deeply thank them for providing our staff and volunteers with tickets.

We also thank the Reno Bike Project for donating The Regal (pictured) so we could get around the Playa!



CIVIL LIBERTIES AT THE LEGISLATURE

ON THE GROUND, PROTECTING RIGHTS DURING THE LEGISLATIVE SESSION

by REBECCA GASCA

At times challenging, the 2009 legislative session was an incredibly rewarding and successful team effort for the ACLU of Nevada. It was an especially unique experience because it was the first time we had the opportunity to focus so much of our efforts and energy on the legislative process.

Six of our staff members and one board member registered as lobbyists this session and all staff participated in various ways towards building a comprehensive strategy throughout the entire session. With a lobbyist on the ground and in the legislative building at almost all times, we were able to effectively monitor each piece of civil liberties-related legislation from its inception through passage or eventual defeat.

We started monitoring bills at the end of 2008, before the session began, in their early “bill draft request” stage. Once the session began, we moved with the drafted bills through their introduction and committee assignment, into hearings, vote on the floor, and progression into the other house for consideration. In some cases (like the Domestic Partnership bill), we even lobbied through the Governor’s veto and back into both houses for an override vote.

By the end of the session, our legislative team had closely monitored over 130 bills and testified on nearly 100 from that list. We supported almost 40 bills during the session on issues ranging from child welfare reform to a moratorium on the death penalty. Unfortunately, there were more bills attempting to limit or harm civil liberties and civil rights than there were bills attempting to expand those rights. Therefore, we usually found

ourselves in a defensive position and testifying against, to varying degrees, at least one portion of more than 50 bills. A list of these bills, the written testimonies we delivered, and indexed votes of legislators is available on our website, www.aclunv.org.

You may remember receiving a list of our many legislative victories in the mail shortly after the legislative session ended. If you missed it or are a new member, you can find this list of victories online at www.aclunv.org.

While we are thankful for the opportunity to help shape the course of public policy and law in the Silver State, perhaps one of the most valuable takeaways for the ACLU of Nevada was the in-depth knowledge gained from the experience. A good example of this was our work on two bills in particular - Assembly Bill 190 (which would have imposed

a moratorium on the death penalty while the fiscal costs were studied) and Assembly Bill 273 (which would have placed certain limitations on the use of Tasers by law enforcement). Although neither of these bills made it out of committee for an Assembly floor vote, we felt that the discussions they spurred, both in public and behind closed doors, and the press coverage generated were tangible victories. We felt fortunate to have forcefully advocated for the consideration of both.

We realize that every legislative session is different than the one before it and any one yet to come, and are therefore already reviewing our lessons learned and looking toward the next session. We look forward to engaging in an even more proactive manner for the next Nevada legislative session. Mark your calendars! It begins on February 7, 2011.

THE RESPONSE

The Response, a short film that uses real-life transcripts to recreate the military tribunals at Guantanamo Bay, was screened in Las Vegas on September 24th at an event sponsored by the ACLU of Nevada, Amnesty International and the Boyd School of Law at UNLV. The program was enhanced by the participation of the film’s writer/producer, Sig Libowitz, and one of its actors, Peter Riegert. A panel discussion and reception followed the screening.

Attended by nearly 80 students and community members, the film generated a lively dialogue about national security, civil liberties, and the American justice system.

“The ACLU of Nevada was proud to help bring *The Response* to Las Vegas,” said Phil Hooper, Program Coordinator. “Because it gives insight into what actually happens at Guantanamo Bay, the film is a valuable resource in the ongoing debate over military tribunals and the extent to which they compromise the due process rights guaranteed in our Constitution.”



For more information, visit www.theresponsemovie.com

FIGHTING FOR FIRST AMENDMENT FREEDOMS

by JUDY COX

License Plates

Defining “HOE”

In 1999, Nevada resident William Junge purchased a vanity plate, “HOE” on a Lake Tahoe-themed background for his Chevy Tahoe. He had the plate for six years before a DMV employee decided it was offensive using the online Urban Dictionary which said that “hoe” could be slang for “whore.”

The DMV is allowed to deny any plate it deems “inappropriate,” giving individual DMV employees unfettered discretion to determine what is and is not appropriate.

Junge had to either surrender the plate or have his registration revoked. Junge appealed the revocation, but an Administrative Law Judge, agreed that if the DMV felt the plate was inappropriate, it could be revoked. Junge appealed again, and the District Court found that having a gardening tool on a license plate was not offensive. The DMV appealed to the Nevada Supreme Court, which asked the ACLU of Nevada to weigh in as a “friend of the court.”

The ACLU of Nevada was interested in the important First Amendment issue: Does any individual DMV employee have the power to decide what is and isn’t “offensive” without any guidelines? The Supreme Court sided with Junge and found that the DMV acted unreasonably, but did not make a ruling on the constitutionality of the code.

Church & State

It’s Fun to Pray at the YMCA?

The ACLU of Nevada received several complaints that community members were required to join the YMCA, a Christian organization, in order to have access to facilities or programs at two local publicly-funded Las Vegas Community Recreational Centers. The Rec Centers were city-owned, but the City had contracted with the YMCA to run the facilities. In addition, the centers referenced Christianity in their brochures and one center had a Bible verse on its wall that read, “I can do all things through Christ who strengthens me.”

Requiring people to join a Christian organization to use public Rec Centers violates the Establishment Clause. The United States and Nevada Constitutions require the separation of church and state and prohibit excessive government entanglement with religion, such as the use of public funds for religious purposes.

The ACLU of Nevada and the City of Las Vegas were able to reach an agreement to solve these problems, including removing religious references from the city-owned YMCAs, segregating City funds, and allowing community members to participate in programs at the centers without joining the YMCA. The ACLU of Nevada is happy that the issue was resolved without costly litigation. Even more importantly, Las Vegas residents of all faiths and backgrounds can now feel like the community centers belong to them.

Sidewalks

Street Performers on the Strip

After receiving complaints that the Las Vegas Metropolitan Police Department was arresting and ticketing street performers on the Las Vegas Strip, the ACLU of Nevada filed a lawsuit to once again protect the First Amendment on Las Vegas sidewalks. The sidewalks of the Strip are a public forum where First Amendment activity, such a personal artistic expression, is protected.



Plaintiff William Jablonski had been harassed by Metro officers who said he was breaking the law when he performed dressed as Elvis Presley. Plaintiff Suzette Banasik had been playing and singing on the Strip for years and she was ticketed and arrested for violations ranging from begging to operating a business without a license. “I know what I’m doing is perfectly legal,” said Banasik.



The ACLU of Nevada has litigated a number of cases protecting First Amendment activity on the Strip and Fremont Street and we recently won another legal victory in our 13-year battle over First Amendment protections at the Fremont Street Experience. The ACLU of Nevada hopes to make clear to city officials, police officers, and casinos that the First Amendment speech protections are at their highest on public sidewalks.

Congress shall make no law respecting an establishment of religion, of speech, or of the press; or the right of the people peaceably to

Censorship

Protecting Unpopular Speech

The Associated Students invited Jim Gilchrist, the controversial leader of the Minuteman Project, to speak at a UNR immigration forum. The Minuteman Project engages in private border patrols and has been widely criticized by immigrants' rights groups. UNR faculty and community members sent letters urging that Gilchrist's appearance be canceled, some calling his opinions "hate speech," and the moderator of the panel withdrew. In response, the ACLU of Nevada sent a letter to the University encouraging the administration to allow the forum to go on. Even though the ACLU vehemently disagrees with Gilchrist on immigration issues, that disagreement can never be a justification for censorship, especially in an educational forum. The forum went off without a hitch, to the benefit of both UNR students and the principle of academic freedom.

Speech Code

CCSD Curbs Criticism

The Clark County School District Board of Trustees proposed changes to its Public Speaking Guidelines to limit comments that are "repetitious, slanderous, offensive, inflammatory, irrational" or "amounts to personal attacks." The ACLU of Nevada, the Las Vegas Review-Journal, and the Nevada Policy Research Institute all expressed concern about giving School Board members the discretion to limit or prohibit public comment based on content. Indeed, this sort of power constitutes censorship and violates the First Amendment and Nevada's Open Meeting Law.

Online Speech

Anonymous Comments

The Las Vegas Review-Journal ran an article on its website about a controversial federal tax case that provoked comments criticizing the U.S. Attorney and the Federal tax system. The same Assistant U.S. Attorney who was criticized issued a subpoena seeking identifying information for each and every person who commented on the article. The Review-Journal refused to comply and instead published an editorial about the subpoena.

The ACLU of Nevada filed a constitutional challenge to the subpoena on behalf of three of the anonymous commenters because the right to criticize the government, even crudely or anonymously, is a core First Amendment right.

The U.S. Attorney's subpoena dangerously chills free speech and is nothing more than a thinly veiled threat to prosecute people for criticizing the government.

The U.S. Attorney's office narrowed its request to two comments and the Review-Journal complied with the subpoena. The ACLU of Nevada continued to fight the subpoenas because the comments, while vitriolic, were not true threats and thus were protected by the First Amendment.

Unfortunately, the Judge dismissed the ACLU's challenge as moot and determined that the government could uncover an anonymous commenter's identity to decide whether the speaker could potentially pose a threat. The ACLU of Nevada is appealing this ruling to the Ninth Circuit.

Event Ordinances

Problematic Permits

The ACLU of Nevada is working with the Sparks City Attorney's office to give feedback on two ordinances involving First Amendment activity. Sparks had problematic ordinances which gave city officials unfettered discretion to deny permits for expressive activities in local parks or permits for parades and large events within city limits. The City of Sparks has been very willing to work cooperatively and get guidance and feedback from the ACLU of Nevada on how to rework the ordinances to protect First Amendment rights.

Association

Pre-trial Jail Visits

Lander County Jail recently abandoned the practice of denying all non-attorney visits to inmates charged with felonies. Our office received complaints about the visitation ban and wrote a letter to Lander County asking that the visitation ban be lifted. The ban not only violated the rights of pre-trial inmates, who are innocent until proven guilty, but also violated the rights of individuals, usually family members, trying to visit the inmates.

The U.S. Supreme Court and the Ninth Circuit have consistently held that prisoners and pretrial detainees retain certain Constitutional rights, including the freedom of speech and association embodied in the First Amendment, which includes the right to communicate with members of free society. Thus, people who have been charged with crimes – even felonies – must be allowed reasonable visitation privileges.

or prohibiting the free exercise thereof; or abridging the freedom assemble, and to petition the government for a redress of grievances.

STEPS TOWARD EQUALITY

NEW DOMESTIC PARTNERSHIP LAW IN NEVADA

by LEE ROWLAND

The ACLU of Nevada joined hundreds of couples across the state in welcoming October 1st: the day that Nevada's new domestic partnership law took effect. This momentous law, which was one of our highest priorities at the Legislature this session (see *Legislature* on page 5), now extends a large bundle of legal benefits to any loving couple who registers with the Secretary of State. This law represents a sea change for couples – particularly gay couples – who can now access a whole panoply of rights that they could not previously.

No advocacy is complete without public education efforts to inform people of their newly-acquired rights, including the extent of a partnership's protections, rights, and responsibilities. To help couples determine if a domestic partnership was right for them, we participated in numerous question and answer sessions with the Gay & Lesbian Center and the Kunin Carman law firm in Las Vegas, and with 3 Degrees and the Surratt Law Practice in Reno.



Couples celebrate the new domestic partnership law at an October 2 celebration sponsored by Harrah's Northern Nevada

And we didn't just inform; we celebrated! With generous support from Harrah's, we helped throw a gala celebration in Las Vegas in July and in Reno on October 2nd. These parties not only reflected the enthusiasm about domestic partnerships in our communities, but also gave us a chance to honor and thank the politicians, lobbyists, and citizens that made the domestic partnership law possible.

We recognize that not even this hard-fought victory is complete; the law does not require employers to offer or pay for insurance benefits for domestic partners. In late August, the ACLU of Nevada worked with the Reno City Council in support of a resolution granting full insurance benefits to employees of the city and their dependents who register as domestic partners. The resolution was adopted unanimously, making Reno the first local government since the passage of the domestic partnership law to extend full, paid benefits. The ACLU of Nevada continues to make the case to local governments that offering these benefits is not only morally right and legally equal, but is also good for business and families as it welcomes the best people to our state, regardless of whom they love.



Senator David Parks, sponsor of the domestic partnership bill, speaks at a celebration at Harrah's Las Vegas

287(g)

BURDENING LOCAL POLICE WITH FEDERAL IMMIGRATION LAWS

The Department of Immigration and Customs Enforcement has a program in which local police agree to enforce federal immigration laws, called a 287(g) agreement. The ACLU is concerned about 287(g) because the program burdens local police with enforcing federal laws, lessens their ability to work with the local community, all while expecting the local police to bear almost all of the costs.

Because of its many costs and few benefits, the ACLU of Nevada led a campaign against 287(g) in Nevada. On October 7, the Mesquite Police Department announced that it would not enter into the 287(g) program because of the costs. Shortly thereafter, however, the Las Vegas Metropolitan Police Department, announced that it would renew its 287(g) agreement.

Throughout the country, law enforcement agencies are realizing that turning local officers into immigration police actually hinders crime fighting efforts. William J. Bratton, the outgoing Chief of the Los Angeles Police Department, urged the LAPD to keep in mind that "criminals are the biggest benefactors when immigrants fear the police ... we can't solve crimes that aren't reported because the victims are afraid to come forward to the police." The ACLU of Nevada hopes that Metro and any law enforcement agency in Nevada considering 287(g) will take Mr. Bratton's words to heart and focus on making their communities the safest they can be.

For more information visit
www.aclunv.org/287g

... Personhood,
continued from page 1

In reviewing the actual language of the petition and the description of effect, the ACLU of Nevada came to the decision that an initiative proponents' right to access the ballot box comes with an equally important responsibility: to let voters know the consequences of what they're voting on.

The actual text of the Personhood Initiative is 14 words long, adding to the Constitution the language that "In the great state of Nevada, the term 'person' applies to every human being." As written, this initiative's meaning is unclear and does not mention abortion, let alone birth control or fertility. It is only through proponents' media statements that we know their main goal is the criminalization of all abortions. The right of women in Nevada to access reproductive health care is protected both by the United States Supreme Court in *Roe v. Wade* as well as an

earlier initiative passed by Nevada voters in 1990.

The initiative's description of effect is equally misleading and vague, defining human being as anyone "possessing a human genome" and claiming to protect all life "without discrimination as to age, health, reproduction method, function, physical or mental capacity, or cognitive ability."

In addition, the petition description says that it "guarantees" that no one will be deprived of "life, liberty or property without due process of law" but also states that it "prohibits state intrusion in end of life decisions." It is therefore also unclear whether the amendment would increase an individual's right to control end of life decisions or if it would conversely require State intervention before a living will could be effectuated.

Because this proposed ballot initiative involves misleading

The right of women in Nevada to access reproductive health care is protected by the U.S. Supreme Court in *Roe v. Wade* as well as an initiative passed by Nevada voters in 1990

language on a matter affecting, and potentially jeopardizing fundamental human rights, the ACLU of Nevada decided to work in collaboration with Planned Parenthood USA and the ACLU's Reproductive Freedom Project in filing a lawsuit challenging the Personhood Initiative.

While we always have and always will endeavor to ensure that the initiative process is open and fair to the public, we also recognize the duty of ensuring that Nevadans know when they are being asked to strip away their own fundamental rights. Our litigation against the Personhood Initiative seeks to do just that: inform voters of the unpredictable, extreme, invasive, and unwise consequences of a vote for "Personhood."

THE SHOW MUST GO ON! ACLU FIGHTS CENSORSHIP OF SCHOOL PLAYS by PHIL HOOPER

Upset with the thematic content, a group of parents from Green Valley High School in Henderson filed a lawsuit to stop the high school's production of two plays, *Rent: School Edition* and *The Laramie Project*. Both plays have been performed successfully at high schools across the nation and local school administrators had already approved the scripts as appropriate and beneficial for students who choose to perform with parental consent. Participation in the plays and attendance is entirely voluntary.

The ACLU of Nevada received a number of inquiries from parents and other community members

concerned about censorship. Working in cooperation with the Clark County School District, the ACLU of Nevada attorneys filed an amicus brief on behalf of the parents and their children as well as the ACLU and its members, supporting the school and the District's defense of the plays.

"Schools, if they are doing their job properly, will confront and deal with controversial issues and will not be stopped because of the wishes of a few disgruntled parents," said Allen Lichtenstein, General Counsel for the ACLU of Nevada. "More importantly, the students who have worked so hard to put on these

performances will have learned a valuable lesson about their own free speech rights."

The ACLU argued for the importance of discretion that is given to school administrators to make decisions about curriculum, as recognized by the U.S. Supreme Court in *Hazelwood School District v. Kuhlmeier*.

Nevada District Court Judge David Wall denied the motion to block the plays.

"I'm very happy to hear that our kids will have this opportunity to perform," said Alice Ronconi, a parent of a Green Valley High School student performing in both productions. "Hopefully the positive messages that both plays deliver will prevail, not the controversial aspects surrounding this legal challenge."

A CIVIL LIBERTARIAN SUMMER

LAW SCHOOL EXTERNS GET FIRSTHAND LEGAL AND ADVOCACY EXPERIENCE

by PHIL HOOPER

In early summer of 2009, six law students gathered at the ACLU offices in Las Vegas and Reno. All had impressive resumes and came from a diverse array of schools including Harvard, the University of Virginia, UNLV's Boyd School of Law, Seattle University, and the University of Illinois. They had traveled from near and far with two things in common: a passion for civil rights and an impending summer externship with the ACLU of Nevada.

What motivated them to come here? Harvard Law student Su Shi was drawn to the ACLU's national reputation. "I was inspired to work for the ACLU because I think it's an important organization that does some amazing work," she says. "I especially appreciate that it works to support populations and causes that are not always looked upon favorably." During her two months in Las Vegas, Su Shi had the opportunity to work with prisoners, homeless people, and immigrant populations.

KJ Bagchi, who worked in the ACLU's Reno office, felt called back to the state. "Being raised in Nevada," he says, "I could not pass up the opportunity to come back home and work in my old community to ensure

that civil liberties and rights were protected."

During the summer program, the externs were exposed to all aspects of litigation and advocacy work. Under the supervision of the organization's legal staff, the students were able to plunge headfirst into drafting legal briefs, consulting with potential plaintiffs, and attending community meetings.

Su Shi feels these hands-on opportunities made the experience especially valuable. "I was amazed that I got to draft several documents that were actually filed in court as opposed to pumping out memos day in and day out," she says. Although all documents were reviewed and edited by the legal staff, allowing students to do the initial writing and craft their own legal arguments was a unique opportunity not offered at most summer legal programs.

The externs also had plenty of opportunities to socialize with each other and the ACLU staff. In addition to a statewide training session held in Las Vegas, the students attended a celebration in honor of Nevada's domestic partnership legislation and a number of informal excursions around town.

Staff Attorney Maggie McLetchie knows that the planning and supervision that goes into the externship program, now in its second year, is well worth the time. "Our externship program continues to grow in size and stature, and it's an invaluable resource for our legal



Left to Right: ACLU of Nevada summer externs Brett Harris, Ashley Scarborough, Leo Wolpert, Su Shi, and Tyler Lacey, based in Las Vegas



Summer extern KJ Bagchi with his Reno office mates, Lee Rowland (left) and Rebecca Gasca (right)

program," she said. "We are all inspired by the externs' enthusiasm and their quality of work is consistently impressive."

What do the externs take away from their time at the ACLU of Nevada? Leo Wolpert says "the best part is vindicating people's Constitutional rights. It was surprising to see appreciative comments from people who were ordinarily skeptical of the ACLU, but then came around when the ACLU leapt to defend their civil liberties."

KJ feels the benefits are practical, too. "The experiences I have gained have been helpful in understanding the importance of organizations that take on impact litigation in communities. I hope to take these skills and apply them to organizations fighting for similar causes."

Volunteering

The ACLU of Nevada relies on the help of volunteers, externs, and cooperating attorneys to protect the rights and liberties of all Nevadans. The Nevada ACLU is currently accepting applications for legal internships for the summer of 2010. If you want more information about volunteering or interning with the ACLU visit: www.aclunv.org

... Internet,
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of individuals who posted anonymous comments on an online Las Vegas Review-Journal article that were critical of the U.S. Attorney's office. Hoping to unmask its critics, the U.S. Attorney's Office issued subpoenas to the Review-Journal seeking IP addresses and other identifying information for every single commenter to the story. The U.S. Attorney's Office presumably sought IP addresses to get detailed account information, like names and addresses, from Internet Service Providers – which by law can be requested and turned over without any notice to the customer.

It is unknown how often seemingly anonymous online information is accessed by the government in this way. Subpoenas from the U.S. Attorney's Office often carry a gag order and a threat of criminal contempt charges for noncompliance, so it is not surprising that individuals and companies are often not willing to fight them. Moreover, the targets of a subpoena never receive notice from the U.S. Attorney or the company that their information was sought or disclosed. In the Review-Journal case, the ACLU of Nevada only learned about the subpoenas because the Review-Journal refused to comply and published an editorial critical of the subpoenas.

As a practical matter, this means that the issue is not often before courts and there is very little guidance as to the proper bounds of such subpoenas. Additionally, there are no formal protections guaranteeing anonymity when Internet users post on websites like the Review-Journal.

So, how does the First Amendment apply in the wild and woolly frontier called the Internet? Although the The United States Supreme Court

declared in *Reno v. ACLU* that the Internet deserved at least as much First Amendment protection as books, newspapers and magazines, the privacy of that speech is another question.

The principle of anonymous speech is older than the Constitution itself. The Federalist Papers, advocating for the passage of the Constitution, were published and circulated anonymously. While the principle is old, the medium is, historically speaking, brand new. However, just because the Federalist Papers were printed on paper and the Review-Journal comments were posted in cyberspace, the principle and importance of protecting anonymous speech is exactly the same. The ACLU of Nevada feels that the U.S. Attorney's Office's subpoenas ran afoul of the bedrock principle of protecting anonymous critics of the government from punishment for their dissent.

Like the Review-Journal, a number of news organizations have resisted criminal subpoenas seeking to unmask anonymous online commenters, with mixed results. In Texas, a court held that a newspaper had the right to refuse to hand over information about commenters to an online article about a murder. However, a federal judge in Illinois recently allowed a subpoena seeking information about comments posted on a story about the investigation of the murder of a child. The judge required law enforcement to exhaust all other available resources and also found that the personal information about anonymous commenters is different from other, legally protected anonymous sources.

The question of privacy and the Internet is far from resolved in the

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eyes of the courts and the scope of privacy and speech protections on the Internet is unclear at best. For example, the courts okayed a school disciplining a student for comments made on the student's personal blog outside of the school day. Additionally, although courts use a heightened standard to determine when Internet Service Providers are required to turn over third-party information in civil cases, the Patriot Act gives the criminal system an end-run around any process. The FBI can submit National Security Letters demanding such information without *any* showing of probable cause or requirement of court oversight.

From the ACLU of Nevada's point of view, one thing is clear: the interests in protecting privacy and free speech are not lessened by the fact that we operate in a world where we exchange and store information through new technological means. Instead, technological developments pose new challenges and new needs for protection. By challenging the U.S. Attorney's power to subpoena information about anonymous online commenters, the ACLU of Nevada hopes the courts will provide guidance as to the scope of First Amendment protection for such speech – and the ways in which these protections might act as a bar on governmental fishing expeditions into private information and anonymous comments.

The ACLU of Nevada and the ACLU's national Technology and Liberty Project are committed to fighting the trend toward a surveillance society and are working to guarantee that individuals, not governments or corporations, determine how and when others are able to access their personal information.

HELP PROTECT CIVIL LIBERTIES IN NEVADA! VOLUNTEER FOR THE ACLU OF NEVADA BOARD OF DIRECTORS

Although I have been a supporter of the ACLU since law school, I never thought about serving on the board. Then, about ten years ago, I attended an ACLU event. I learned that there was a need for committed volunteers to participate on the board of the affiliate, and realized that **I had not only the requisite commitment to the principles and programs of the ACLU, but also something to contribute:** My experience in business, and with other non-profit, volunteer organizations. It has been a very rewarding experience, **working with like-minded volunteers with diverse backgrounds in providing leadership for an organization of highly talented, motivated and skilled staff members, dealing with challenging civil liberties and civil rights issues on behalf of all Nevadans.**

- Robert Chester

ACLU of Nevada Board Member and National Board Representative

I have always been a **strong supporter of the First Amendment and am so proud to serve on the ACLU of Nevada's Board.** Recently, I've seen how people act when they are scared, as so many unemployed, homeless and newly disenfranchised people, particularly in Nevada, are. **I realize now that the Constitution needs to be even more strongly protected than before.** And that we must not fear changes to ensure this.

- Toni Sandler

ACLU of Nevada Board Member

I have been part of the ACLU of Nevada's Board for the past forty years. It has been thrilling to help this organization become a major force in Nevada's legal and policy worlds. This has provided me with **fine friendships, terrific intellectual stimulation, admiration for those whose financial support makes our work possible and, most of all, the pleasure of working with an extraordinarily capable and dedicated board and staff.**

- Richard Siegel

ACLU of Nevada Board President

HOW TO APPLY

The ACLU of Nevada is governed by a Board of Directors. Each Board member must be a card-carrying member of the organization. One-third of the board members are elected each year and a single term of office consists of three years.

If you would like to be considered as a potential candidate for the 2010 election, please submit a written letter of intent with a brief biography for the nominating committee's consideration to:

ACLU of Nevada, Nominating Committee
732 South Sixth Street, Suite 200A
Las Vegas, Nevada 89101

To receive full consideration, all such nominations must be received by February 15, 2010.

Nominations may also be submitted by petition. Members interested in being nominated by petition should submit a statement of nomination signed by ten active members. A candidate nominated by petition who provides a short statement of his/her background and qualifications will have a brief biography included on the ballot to the same extent as candidates nominated by the nominating committee. Nominations must be received no later than March 1, 2010.

Nominations of women, people of color, people living with HIV, people with disabilities, and lesbian, gay, bisexual and transgender individuals are strongly encouraged.

KEEP AMERICA SAFE & FREE
Changes are happening every day to the Patriot Act reauthorization bill in Congress. Stay tuned to www.aclunv.org for updates!

ADDRESS SERVICE REQUESTED

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OF NEVADA FOUNDATION, INC.
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