

# AMERICAN CIVIL LIBERTIES UNION

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For the past seven years, an over-reaching, law-breaking Bush administration has done serious damage to our rights in the name of fighting terrorism. It has also applied the same disrespect for the Constitution and the Bill of Rights in ways that broadly threaten our personal liberty — from undermining reproductive freedom to determinedly blurring the line separating church and state.

We begin 2008 fully recognizing that our civil liberties face as severe a threat from a moralizing government as they do from a fear-mongering one.

And we recognize this as well: the severe damage the Bush/Cheney administration has done to constitutional principles cannot be set right with the simple passage of time. We need a passionate, all-out effort to reverse bad laws, undo reckless assertions of executive power, reassert forsaken values, and restore the Constitution.

That means this will be a particularly important year as front-page events once again bring civil liberties to the fore ... from the FISA debate ... to an upcoming Supreme Court decision on the rights of Guantánamo detainees to challenge their detention ... to a presidential campaign in which torture, reproductive freedom, and immigrants' rights are all at the center of the debate.

Our 2008 ACLU Workplan outlines a strategy and program big enough, bold enough, and far-reaching enough to both meet the wide-ranging new challenges to freedom we will undoubtedly face throughout this year and fuel our critical ongoing efforts to restore fundamental rights.

In 2008, we each have a choice to make. Will we accept the damage that has been done by Bush administration abuses and live with the consequences? Or will we act with energy and conviction to restore our constitutional rights?

Your personal participation and active, generous support are absolutely essential to all of our efforts. Please answer freedom's call today.

## **PART ONE: Challenging Intrusive Government: Spying, Surveillance, and the Right to Dissent**

From the moment the ink dried on the Patriot Act, the ACLU has stood as a bulwark in defense of the Constitution and Bill of Rights, insisting that our nation must remain both safe and free, and aggressively challenging the government's unconstitutional attacks on civil liberties under the guise of defending national security. As 2008 begins, this essential work is entering a decisively important stage.

### **Bringing Warrantless Spying to an End**

The ACLU is at the forefront of efforts challenging the government's assertion that it has the right to spy on Americans at will and without judicial oversight. In the process, we've succeeded in making a program that the Bush administration hid completely out of the view of the American people the subject of intense public scrutiny and high-profile debate.

Our work in this area has two goals: ending our government's involvement in warrantless spying and holding accountable the government officials and the telecommunications companies that helped launch and execute this illegal spying program. As we begin the year, there are pivotal developments underway in Congress and in the courts.

**Challenging Warrantless Spying in the Courts:** Despite obstacles, the ACLU has been relentless in pursuing our legal challenge to the Bush administration's illegal spying operation. Less than a month after the National Security Agency's illegal spying was revealed, the ACLU filed our *ACLU v. NSA* lawsuit challenging the program.

In August 2006, a federal district court judge ruled that the NSA's wiretapping and monitoring of Americans' phone calls and e-mails without obtaining warrants is unconstitutional and should be stopped. This decision,

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coupled with increased pressure from Congress and the American public, forced the Bush administration to announce, in January 2007, that the spying program would be subject to Foreign Intelligence Surveillance Court (FISC) approval. However, the Administration also continues to assert that the President has “inherent authority” to engage in warrantless eavesdropping.

Six months ago, in July of 2007, the Sixth Circuit Court of Appeals dismissed the *ACLU v. NSA* lawsuit on the grounds that our clients could not state with certainty that they had been wiretapped by the NSA. **This disappointing decision makes the very secrecy of the spying program its best defense against challenges from those victimized by illegal surveillance of their telephone calls and e-mails.**

The effect of this decision reaches beyond the NSA spying program to affect all types of government surveillance programs, allowing the government to largely insulate its programs from judicial review by simply refusing to identify the targets of its surveillance. The ACLU has asked the Supreme Court to review this wrong-headed decision and will learn any day whether or not it will hear the case.

Knowing that our lawsuits have had a substantial impact in hindering the Administration’s efforts to eavesdrop on innocent Americans without judicial review, the ACLU intends to continue pursuing every avenue available to us until we end these unconstitutional activities.

**Urging Congress to Insist on Individual Warrants and Accountability:** As 2008 begins, the ACLU is closely monitoring the vitally important congressional debate over reining in warrantless spying. With a critical February 1 deadline fast approaching, all eyes are on Congress to see how it will deal with the issue of NSA spying, and the likely outcome is up for grabs. But there is one thing I can assure you of right now — if legislation that does not pass constitutional muster is signed into law, the ACLU will challenge it in court.

Here is where we are as of this writing. Any hopes that the Democrat-controlled Congress, elected in 2006, would decisively rein in this illegal activity were dashed in August when Congress rushed through disastrous legislation — the inappropriately named “Protect America Act” — broadly expanding the government’s ability to eavesdrop without warrants on the international phone calls and e-mails of American citizens.

The ACLU responded quickly to this unjustifiable cave-in to Bush administration demands. Using powerful newspaper ads, online organizing drives, call-ins directed at key members of Congress, and other public pressure, we sparked a flood of outrage that quickly got Congress’s attention. The “Protect America Act” was passed with a six-month sunset provision, meaning it expires in February 2008. That deadline has led to an intense debate about whether Congress will pass Foreign Intelligence Surveillance Act (FISA) legislation that protects our right to privacy and due process or, once again, fail to stand up even to a politically-weakened Administration and its demand for unnecessarily and dangerously broad powers.

Two critical issues are at stake: will Congress insist on meaningful judicial oversight rather than the virtually meaningless “blanket” or “basket” warrants that have been proposed? And will they insist on holding telecom companies accountable for their cooperation with illegal government spying operations?

**Refusing to Let Telecoms and Bush Officials off the Hook:** If companies broke the law, they should be held accountable. It’s a simple proposition, but one that the Bush administration and its allies are demanding that Congress ignore. The President insists that he will not sign new FISA legislation unless it grants telecom companies immunity from prosecution for aiding the Bush administration’s illegal spying operations and turning over millions of people’s individual records.

It is important to understand that the Administration is not simply trying to protect giant telecom companies in this battle — it is trying to protect itself. If current lawsuits against telecoms are allowed to work their way through the courts, high-ranking officials in the Administration could well be forced to explain their own involvement in authorizing and carrying out this illegal program. Granting immunity and blocking these lawsuits could put an end to our best opportunity to get at the truth.

Right now, there are a number of lawsuits challenging telecom companies for supplying the government with people’s personal information without a warrant or any other legal justification, and ACLU affiliates across the country have been at the center of many of these actions. However, if Congress grants blanket immunity to telecommunications companies

involved in this domestic spying program, those lawsuits may be thrown out of court. Working with a coalition of privacy rights organizations and other progressive groups — and mobilizing ACLU affiliates and activists across the country — the ACLU has been leading efforts to make sure Congress rejects such immunity.

If a law that includes immunity and unconstitutional basket warrants is signed, you can rest assured that ACLU lawyers will be in court challenging it as quickly as humanly possible.

### **Stopping Patriot Act Abuses**

A key part of the ACLU's work to end Patriot Act abuses is our challenge to the National Security Letter (NSL) provision, which authorizes the FBI to forego court approval in demanding a range of customers' personal records from libraries, universities, Internet service providers, and other businesses and organizations. Worse still, it includes a broad gag provision that, under penalty of law, prevents those served with an NSL from telling anyone about it.

The ACLU has successfully challenged NSLs in two separate lawsuits, one of which is still ongoing. In both cases, the judges ruled that the gag orders issued by the FBI were unconstitutional. We won a huge victory in *Doe v. Gonzales* this September when U.S. District Court Judge Victor Marrero struck down the amended Patriot Act's NSL provision. Not surprisingly, the government has appealed the decision. We are preparing for the next round and are confident that the decision will be affirmed on appeal.

Our client in this case, whom we can identify only as John Doe, runs a small Internet access and consulting business and is now in his fourth year of being gagged from discussing the National Security Letter ordering him to provide sensitive personal information about one of his clients. Even though the FBI long ago gave up its effort to secure the records it was after in the first place, it has insisted on keeping John Doe gagged.

As the government's own data suggests, John Doe is hardly alone. The Justice Department's own Office of the Inspector General (OIG) has acknowledged an explosion in the number of NSLs, with over 143,000 issued between 2003 and 2005. The OIG also found that the administration of the NSLs was extraordinarily sloppy, resulting in thousands of innocent Americans being tagged by national and international databases.

And recently, the ACLU uncovered hundreds of new documents suggesting that National Security Letters are also being used as a vehicle for expanding the military's role in domestic surveillance. The documents make clear that the Department of Defense may have secretly and illegally conducted surveillance beyond the powers it was granted by Congress. It also appears as if the FBI and the DoD are conspiring to evade limits placed on the Department of Defense's surveillance powers.

Senator Russ Feingold and Representative Jerrold Nadler have introduced legislation to rein in this unchecked NSL authority. Given the broad nature of these powers and the potential extent of the abuse, the ACLU will be pushing vigorously for the immediate consideration of these bills.

With your support, the ACLU will continue to push for legislative reform and to defend our courtroom victories challenging the Patriot Act's National Security Letter provision. Rest assured, we will continue to expose this unconstitutional and truly radical expansion of secret government powers.

### **Protecting Freedom of Expression and the Right to Protest**

From the "ideological exclusion" provision of the Patriot Act to the rampant monitoring of peaceful protestors, government and law enforcement officials have employed a dizzying array of tactics and technologies to squelch dissent and free speech, and to monitor and silence political expression.

The ACLU's work defending free speech has grown exponentially as our ability to freely express our opinions and beliefs is being challenged by those who would use the "war on terror" as cover for a crackdown on dissent and political protests.

A major focus of our work to protect free speech this year will be our continuing challenges to Section 411 of the Patriot Act — the "ideological exclusion" provision — which is being used to deny visas to foreign nationals whose political views the government disfavors. Once used to bar suspected Communists from entering the country, the practice

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of ideological exclusion was resurrected by the Patriot Act, and violates Americans' First Amendment right to hear constitutionally-protected speech by denying foreign scholars, artists, politicians, and others entry into the U.S.

We are currently bringing lawsuits on behalf of academic, religious, and professional organizations that have invited foreign scholars Tariq Ramadan and Adam Habib to speak in the U.S.

The ACLU is also working on cases around the country in which freedom of expression and speech are being discouraged and suppressed. We are representing two Denver residents who were removed from a town hall discussion with President Bush because they had a "No Blood for Oil" bumper sticker on their car. For two years, the White House refused to admit its role in the incident. But, at our recent deposition, a Republican volunteer admitted taking orders from two White House staffers, including the deputy director of the White House advance office.

And we recently filed a federal civil rights lawsuit charging that a Transportation Security Agency (TSA) official and JetBlue Airways discriminated against an American resident based solely on the Arabic message on his t-shirt and his ethnicity. JetBlue and the TSA official would not let Raed Jarrar board his flight at John F. Kennedy Airport until he agreed to cover his t-shirt which read "We Will Not Be Silenced" in Arabic and English.

**Immediate Priorities and Funding Needs:** The ACLU's efforts to put an end to warrantless surveillance, to fix Patriot Act abuses, and to protect freedom of expression and the right to dissent cover an enormous amount of territory. From massive legal challenges to critical legislation, our work in this area will define the landscape for due process, privacy and free speech rights for years to come. At this moment, your support is needed as never before. To keep carrying forward all of the investigations, legal work, and long-term advocacy efforts that set the stage for progress, our work protecting American's fundamental privacy, and free speech rights will require a 2008 investment of at least \$2.7 million.

### **PART TWO: Standing Up for Our America: Torture, Rendition, and Habeas Corpus**

It was a dark day for our nation in October of 2006 when Congress passed the Military Commissions Act and became a willing accomplice in the Bush administration's assault on fundamental human rights principles. And although a majority of the United States Senate went on record in support of restoring habeas corpus this past fall, at the end of the day an indecisive and cowardly Congress failed to take action to restore America's commitment to human rights.

Meanwhile, the CIA's stunning admission that it taped its officers using harsh interrogation techniques on two al-Qaeda suspects and later destroyed this evidence exposes just how far our government is willing to go to escape accountability. And the refusal of Michael Mukasey to acknowledge during his confirmation hearings as Attorney General that waterboarding and other extreme interrogation techniques are torture demonstrates just how far our nation's leaders have strayed from the clarity and the principled judgment that are required to protect human rights here in the United States and across the globe.

Despite disturbing inaction by Congress and outright indifference to principle by our own government, the ACLU is determined to pursue every avenue at our disposal to end torture and rendition, restore habeas corpus, and bring an end to the injustice being perpetrated at Guantánamo Bay.

### **Ending Torture**

The *New York Times* revealed in October the existence of secret memos justifying the use of torture that are directly at odds with public assurances by both the White House and the Justice Department that "abhorrent" torture methods would not be used on terror suspects. One of the memos gave explicit authorization to abuse people with a combination of physical and psychological methods, including a barbaric technique known as waterboarding.

Subsequent to the *New York Times* revelations, legal filings in an ACLU lawsuit have exposed the fact that there is a third Justice Department torture memo from the same period. In addition to withholding these relevant memos from the ACLU in our FOIA (Freedom of Information Act) lawsuit, the government has also withheld the documents from key Senators in a congressional inquiry. And just this December, the CIA admitted that it destroyed tapes of interrogations that were conducted in 2002 — tapes that reportedly show CIA agents subjecting prisoners to waterboarding. The ACLU has argued that the destruction of evidence violated court orders and has asked a federal court to hold the CIA in contempt.

These developments demonstrate the vital importance of the ACLU's continued efforts to get at the truth regarding the torture and abuse of detainees held in U.S. custody abroad. To date, our original FOIA lawsuit has wrested over 103,000 pages of documents from the Defense Department and other agencies. The material we are obtaining provides crucial data to human rights organizations, reporters, investigators, and the public, and helps build the case for strong congressional action to both guarantee an end to U.S. involvement in torture and hold accountable those responsible for such activities.

### **Stopping Extraordinary Rendition**

If you told most Americans that our government is kidnapping people off the streets and delivering them to "black site" prisons around the world where they are tortured and abused, they wouldn't believe it. But that is exactly what is happening.

In 2008, it will be a top ACLU priority to continue to pursue our efforts to expose and end the un-American practice of "extraordinary rendition." While our first, and most widely known, rendition case — *El-Masri v. Tenet* — has been blocked from proceeding by the courts, our work on this issue has thrust rendition into the public consciousness, stirred much-needed public debate, and forced the Administration to start explaining itself.

In October, the Supreme Court declined to review the case of our client, Khaled El-Masri, an innocent victim of the CIA's extraordinary rendition program, letting stand a federal appeals court's decision that the case could not proceed based upon the U.S. government's assertion of the "state secrets" privilege, the claim that proceeding with the case would expose sensitive national security information.

In 2008, the ACLU will be aggressively pursuing a second rendition lawsuit filed on behalf of five rendition victims, this time going after Jeppesen Dataplan, Inc., an airline charter service that knowingly aided and profited from the CIA's illegal activities. Since December of 2001, Jeppesen has provided flight and logistical support to at least 15 aircraft that have made 70 rendition flights, and its support services have been absolutely critical to the functioning of the government's rendition program. The ACLU believes that companies that have chosen to facilitate — and profit from — this unlawful and immoral program must be held legally accountable.

Again seeking to use the "state secrets" privilege to avoid judicial scrutiny of illegal actions carried out in the name of fighting terrorism, the U.S. government is seeking to have the ACLU's federal lawsuit dismissed. Regardless of the government's nonstop efforts to shield its illegal activities under a claim of "state secrets," the ACLU will pursue this case — as well as all other available avenues — until we bring an end to this un-American practice.

### **Restoring Habeas Corpus**

What could be more fundamental to freedom than the principle that the government cannot lock you up for no reason and detain you as long as it wants? When the Military Commissions Act denied the right of habeas corpus to some individuals, it did just that, and struck at an ancient principle of law and justice in the process.

As it stands now, the Bush administration claims that all the President has to do is designate you an "enemy combatant" — with no public evidence or judge's finding or even probable cause — and the government can subject you to unlimited detention, isolation from family, attorneys, and human rights organizations; can elicit confessions won through physical abuse; and can convict you based on hearsay and rumor.

In 2008, the ACLU will continue to work through every channel possible to end such grave miscarriages of justice. As one of only four organizations that have been granted status as human rights observers at the military commission proceedings, ACLU lawyers have been at Guantánamo Bay, monitoring the military tribunals there and publicizing our observations to the world.

And soon, the Supreme Court will rule in *Boumediene v. Bush* and *Al-Odah v. United States*, pivotal cases on the right of Guantánamo detainees to challenge their detention in federal court and on whether the repeal by Congress of habeas corpus through the passage of the Military Commissions Act is constitutional. The ACLU's friend-of-the-court brief in these consolidated cases argues that the Constitution's protections extend to prisoners in the exclusive custody and control of U.S. forces at Guantánamo.

Beyond the courts, the ACLU is also actively pursuing a legislative remedy to the damage done by the Military Commissions Act. Last summer, we brought thousands of people together to demand the restoration of habeas corpus and due process, delivering over 250,000 petition signatures to Congress. And just this January, we joined with a coalition of major human rights and advocacy organizations in a nationwide day of action calling for the closing of the prison at Guantánamo Bay.

Although many in Congress are listening, we can't let up until a majority of our elected representatives have heard loud and clear that the American people do not support policies that deny fundamental rights to those being held in our nation's custody. Currently there are two bills in Congress that the ACLU is actively supporting — the Restoring the Constitution Act of 2007 and the Habeas Corpus Restoration Act — that would restore the right of habeas corpus that was stripped in the Military Commissions Act.

From grassroots organizing and massive online advocacy to “grasstops” political pressure, from newspaper and radio ads to house parties and town halls, from national days of action to meetings with newspaper editorial boards and letter-to-the-editor campaigns, over the coming year the ACLU will leave no stone unturned in our efforts to build a tremendous outcry for action reversing the damage done by the Military Commissions Act.

**Immediate Priorities and Funding Needs:** In what promises to be a year of intensive, high-profile activity in the courts, in Congress, and in the court of public opinion, the ACLU's efforts to protect and defend fundamental human rights principles will require a minimum of \$2.5 million in financial support.

### **PART THREE: Stopping the Morality Police: Religious Liberty, Reproductive Freedom, and LGBT Rights**

There is no doubt that we have our work cut out for us when it comes to addressing attacks on our civil liberties in the name of the “war on terror.” But we must also recognize that in the long run, our civil liberties face as severe a threat from those who would use the government to legislate our most private decisions about how to worship, whom to love, and whether or not to have children.

In the heated political climate of a presidential election year, the ACLU expects to face particularly destructive measures aimed at eroding our personal freedoms. As the new year begins, there is little evidence that 2008 will be an exception to the rule.

In this highly-charged setting, the ACLU will rely on your dedicated support to make it clear that our freedoms are not political bargaining chips and that there is no excuse for political candidates and agitators rubbing raw the nerves of social division. This is not the time to look the other way as people seek to use our government as a vehicle for advancing hate, injustice, or bigotry.

#### **Protecting Religious Liberty**

As far back as the Scopes trial of 1925 and as recently as last October when the ACLU persuaded a federal judge to block the state of Louisiana from making unrestricted taxpayer-funded grants to Louisiana churches, the ACLU has been standing up for religious freedom and fighting repeated attempts to break down the wall separating church and state.

Our work in 2008 will focus on two equally important areas: challenging government funding of religion and ensuring that our nation's public schools are not unconstitutionally promoting religion.

**Exposing and Ending Government-Funded Religion:** The notion that true religious liberty can only flourish when the government stays out of religion is a principle that seems to have escaped President Bush as well as untold scores of local government officials who continue their campaign to funnel taxpayer dollars to religious groups. The ACLU is working both to challenge the distribution of your tax dollars to overtly religious programs and to continue our work to ensure that programs that receive federal taxpayer dollars are not allowed to discriminate on the basis of religion.

There is good news to report. In 2007, we helped defeat new rules for Head Start that would have allowed faith-based providers of the program to discriminate against their employees while receiving federal funds. By lifting long-standing civil rights protections, this measure would have meant that more than 218,000 Head Start teachers and staff and

over 1.3 million parent volunteers could have been disqualified from the classroom because they subscribed to a faith different from the one of the group running the Head Start program.

And, this October we had a significant victory when a U.S. District judge for the Eastern District of Louisiana issued an order blocking the payment of taxpayer-funded grants to two Louisiana churches, finding that the non-neutral, direct money grants of taxpayer funds to favored houses of worship were clearly unconstitutional.

The ACLU's suit, which is the first-ever direct challenge to the practice of legislative earmarks, challenged the constitutionality of a general appropriations measure that directed taxpayer grants to Stonewall Baptist Church in Bossier City and Shreveport Christian Church. The grants were not subject to any oversight or competitive bidding process and the bill offered no justification for the earmarks.

The funneling of taxpayer dollars to houses of worship without any neutral grantmaking process, restrictions on use, or secular purpose is a blatant violation of the religious freedom guaranteed by the First Amendment. But challenging such funding is difficult unless we can show where the money is going and how it is being spent.

In 2008, the ACLU will continue efforts to research and document how the billions of federal dollars that have been pumped into faith-based organizations since 1989 are being spent and to pursue litigation where warranted.

**Religion and Our Public Schools:** It seems like common sense — our public schools should seek to create an environment conducive to learning by all students and not act as vehicles proselytizing for religious or anti-religious beliefs. But there is an extremist minority that is determined to insert their brand of fundamentalist Christianity into the public schools by whatever means they can.

Despite our slam-dunk victory in the Dover, Pennsylvania, intelligent design case, the movement to put the “theory” of intelligent design on par with evolution in our public school science classrooms is alive and well. There are rumblings in Texas, where the Science Director of the Texas Education Agency, which sets the educational standards for the state, was fired after sending out an e-mail announcing a talk by a distinguished professor who debunks intelligent design and creationism as alternatives to evolution. Current Texas standards, which require the teaching of evolution, are up for review in the coming year.

In the meantime, the ACLU is challenging another movement to inject religion into the schools that has also taken root in the Lone Star state. On behalf of eight Odessa, Texas parents, we are challenging the teaching of a Bible course in the local public schools.

The course, “The Bible in History and Literature,” was created by the National Council on Bible Curriculum in Public Schools (NCBCPS) and has been criticized by Bible scholars for its lack of accuracy, ignorance of scholarly research, and biased promotion of a particular religious interpretation of the Bible. Rather than teaching about the Bible in a historical or literary context, which is permitted under the Constitution, the course promotes religion and advances a particular religious viewpoint that is not shared by Jews, Catholics, Orthodox Christians, and many Protestants.

This lawsuit has national implications. NCBCPS has promoted its curriculum not only in Texas but throughout the country, and has been incredibly secretive regarding its course materials, failing to answer questions about authorship, to share the textbook, or to identify the other schools using it.

Meanwhile, in Missouri, we are continuing our litigation to prevent Gideons International from coming into fifth grade classrooms during mandatory class time to distribute bibles to the students. This August, the Court of Appeals for the Eighth Circuit affirmed an injunction on behalf of our clients. The school district, represented by the Jerry Falwell-founded Liberty Counsel, has appealed.

These cases are a few examples of the vast amount of work to preserve the separation of church and state that ACLU lawyers will take on this year. In fact, our docket includes over 70 religious freedom cases, many of which will see significant action throughout the year.

### **Defending Reproductive Freedom**

The ACLU has a long-standing and ongoing commitment to defending reproductive rights. In 2008, we'll need to redouble our efforts to ensure the fundamental right to a safe and legal abortion in light of the Supreme Court's

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dangerous 2007 decision upholding the first-ever federal abortion ban. At the same time, we must continue to take on adversaries who seek not only to take away the right to end a pregnancy, but even the information and tools to prevent unintended pregnancy.

That means making full use of the ACLU's state-by-state resources to resist efforts to ban or severely restrict access to abortion. And it also means continuing to resist abstinence-only-until-marriage programs and working to ensure access to contraception.

We face this reality in 2008: the Supreme Court's 2007 decision upholding the Bush abortion ban and the efforts of anti-abortion organizations to quickly build and capitalize on it represent a dangerous new phase in the drive to permit massive government intrusions into the most personal decisions of women's lives.

In language that sets a dangerous precedent, the Court's *Carhart v. Gonzales* decision held that the "state's interest in promoting human life at all stages in the pregnancy" could outweigh the woman's interest in protecting her own health, and thus undermined a decades-old principle that the woman's health must always remain paramount. The Court also ruled that, in the face of "medical uncertainty," lawmakers could overrule a doctor's medical judgment. In other words, the Court sanctioned putting medical decisions in the hands of politicians, not doctors — and, in 2008, there is little doubt that anti-abortion politicians in state legislatures across America will try to do exactly that.

**Addressing a Surge in State Legislative Threats:** Anti-abortion legislative challenges in the states threaten to be more active, and more dangerous, than they have been for more than a decade. Justice Kennedy's decision in *Carhart v. Gonzales* invited further state restrictions on abortion, and there is no question that our adversaries have accepted the invitation. As Leslie Unruh, an anti-abortion activist, said of the decision, "It's like someone gave me \$1 million dollars and told me, Leslie, go shopping. We are brainstorming and we are having fun."

Thanks to their brainstorming, we expect to see a new crop of anti-abortion legislation — ranging from severe abortion bans that fail to take the woman's health into account to measures designed to drive abortion providers out of business. Precisely because of the Supreme Court's decision, the ability to stop some of these measures through the courts is uncertain. That is why the ACLU's presence on the ground and our work in the state legislatures is absolutely critical.

**Meeting 2008 Challenges at the Ballot Box:** We won't just face risks on the legislative front. Anti-abortion groups are also likely to be active at the ballot box as well.

In at least two states that we know of, anti-abortion strategists are planning to put to the electorate, via ballot initiatives, bans on abortion. In South Dakota, anti-abortion activists are again pressing for a ban on abortions after the ACLU and other groups defeated such a measure in 2006. This year's proposal may have more exceptions, but it will still amount to a ban on virtually all abortions. And, in California, we also expect to see the *third* ballot initiative in *four* years that attempts to interfere with teens' access to abortion.

In seven other states, Colorado, Georgia, Michigan, Mississippi, Montana, Oregon, and South Carolina, anti-abortion advocates have or will introduce amendments to their constitutions to define a "person" to include an unborn child from fertilization onward.

The ACLU will put everything we have into directly challenging these measures and providing resources and support to our affiliates who will be on the front lines of these battles. The risks are immense — and so is the need for your support. In some states, ACLU affiliates are literally the only voices for reproductive justice. One or more of these efforts, if not defeated, could present the occasion to revisit *Roe v. Wade* in the courts of law.

**Challenging Abstinence-Only-Until-Marriage Sex Programs:** In 2008, we will continue our efforts to challenge abstinence-only-until-marriage programs and the harm they foster. The good news is that there has been a groundswell of opposition to these programs because they intentionally deny young people access to full and accurate information about how to prevent pregnancies and protect their health. More than a dozen states have rejected or failed to re-apply for federal abstinence-only funds.

One key strategy we continue to pursue is exposing the medically inaccurate information that is being promoted inside abstinence-only programs. In 2007, the ACLU called on the Department of Health and Human Services to stop funding three abstinence-only-until-marriage programs that violate a federal law requiring such programs to provide



accurate information about condom effectiveness. The ACLU stands ready to take whatever action is necessary to correct these problems.

**Access to Contraception:** On a number of different fronts in 2008, the ACLU will continue our efforts to overcome the numerous barriers thrown in the way of women seeking access to contraception. As you read this, our report *Religious Refusals and Reproductive Rights: Accessing Birth Control at the Pharmacy* is being distributed across the country to advocates, legislators, and pharmacy professionals.

In the months ahead, the ACLU will defend rules that we fought to put in place in Washington state, which require pharmacies to ensure patient access to a prescription, including birth control, despite an individual pharmacist's religious objection.

It is no exaggeration to say that 2008 will be of critical importance to reproductive freedom. With your support, we will meet such challenges with the ACLU's strengths — decades of experience, including landmark litigation; unparalleled breadth; and the resources to ensure the most efficient and effective strategy — in the courts, the legislatures, and the press.

### **Defending LGBT Rights**

We at the ACLU are committed to doing everything in our power to fight a morality police that would tell people how to live their lives and whom to love. Our goal is to create an America free from discrimination based on sexual orientation or gender identity. And, in 2008, we will aggressively pursue our comprehensive litigation and public persuasion strategies aimed at making significant progress on the road to equality for lesbian, gay, bisexual, and transgender people.

Central to our approach is the firm belief that meaningful, lasting change is possible only if the American people accept it. To convince Americans that LGBT people deserve equal treatment, we are building our work around long-term strategic plans aimed at changing not just law and policy, but also hearts and minds.

**Challenging Discrimination:** In November, we experienced a bittersweet victory moving our country toward justice and equality. The House of Representatives voted 235 to 184 to pass ENDA (the Employment Non-Discrimination Act), barring workplace discrimination against lesbian and gay people. This was welcome news to lesbian and gay people who can be fired or refused a job in 30 states for no reason other than being themselves. The ACLU has been working to pass ENDA or similar legislation since 1974. However, the bill excluded protections for transgender workers, and therefore did not include protections for the full lesbian, gay, bisexual, and transgender community.

The ACLU believes that it was a mistake to cut back on ENDA's protections, and we worked hard to try to keep a non-inclusive bill from being sent to the floor. However, once it was ready for a floor vote, we supported passage for two reasons. First, having a bigger vote for the bill would help in the fight to restore gender identity protection in the next Congress. Second, the ACLU has never opposed civil rights legislation simply because it wasn't inclusive enough.

If this bill passes the Senate, it will likely face a veto from President Bush. In 2008, the ACLU will keep pressing for anti-discrimination legislation covering the entire LGBT community.

But we aren't looking only to Congress. We recognize that in order to move towards full equality for LGBT people nationwide, we must make advances at the city and state levels by securing non-discrimination laws and relationship recognition protections. We are actively looking to pursue local anti-discrimination legislation in a number of states, including Missouri, Tennessee, South Carolina and Idaho. In West Virginia, the city of Charleston passed a gender identity-inclusive non-discrimination ordinance, the first such law in the state — this victory has already helped similar campaigns gain momentum in other cities.

Effective and strategic litigation is equally important. In 2008, we'll be carrying forward with a gender identity discrimination lawsuit on behalf of Diane Schroer, a 25-year decorated veteran of the U.S. Armed Forces whose job offer to research terrorism for the Library of Congress was rescinded when her supervisor learned that she is transgender.

**Marriage, Families and Relationships:** The ACLU filed the first-ever marriage lawsuit for same-sex couples in 1972. Ever since, we have been at the forefront of both legal and public education efforts to win legal recognition for LGBT relationships and secure marriage rights for same-sex couples. Equally important is our work defending the rights

of LGBT parents. We're working hard for fair custody and visitation arrangements, and we're directly challenging discriminatory laws that restrict the rights of LGBT people to parent.

In 2008, we will continue to pursue a multi-pronged strategy on both of these fronts that include high-impact litigation, persuasive public outreach, and strategic grassroots organizing. As always when pursuing fundamental social change, we expect to experience some victories and some setbacks.

For example, we had a disappointing loss in September when the Maryland Court of Appeals reversed a lower court and upheld the state's marriage law. This moved the debate on relationship protections for same-sex couples in Maryland to the state legislature, where the ACLU will continue to take a leadership role in public education and advocacy efforts to push for progress.

In an encouraging development, last August we won an important decision on behalf of two gay men in an 18-year relationship who were released from prison with probation conditions prohibiting them from having any contact with each other — a discriminatory standard that would not have been applied if the plaintiffs were in a heterosexual relationship. This historic federal decision recognized that same-sex couples are equally protected by the Constitution and must be treated the same as other families.

Throughout 2008, we'll continue our work on a number of critical relationship lawsuits, including marriage litigation in California and a case in New Mexico seeking retirement health insurance for the domestic partners of lesbian and gay state employees.

We'll be mobilizing our forces and resources for a battle in Arkansas, where an adoption saga continues to unfold. Last year, we persuaded the Arkansas Supreme Court to strike down that state's ban on foster parenting by gay people, reinforcing the proven fact that gay people are as capable as heterosexuals in rearing kids.

We took the evidence that we had submitted to the Arkansas courts and digested it into a new edition of *Too High a Price*, a book that makes the case that sexual orientation should play no role in parental custody decisions. Thus far, we've distributed over 10,000 copies to legislative leaders, child welfare professionals and activists, who have successfully used it to fight anti-gay parenting policies throughout the country.

But we knew that our victory in the Arkansas Supreme Court would not be the end of it — and it wasn't. Earlier this year, right-wing forces pressured the state legislature for passage of a new adoption ban, one that might be tougher to challenge in court. Using every public education and lobbying opportunity, we fought in coalition against this campaign and succeeded. But this still wasn't the end. Those same right-wing forces are now collecting signatures for a ballot measure to ban adoption or foster care by any unmarried cohabitating couples. We have a lot of work to do, but we are confident that, given the resources, we can win.

Through these and other activities, the ACLU will work throughout 2008 to push strategically for equal treatment for LGBT people in all aspects of life — from protection against discrimination in the workplace, to being able to parent a child, to being able to marry the person you love.

**Immediate Priorities and Funding Needs:** In the face of intolerance and determined efforts by a moralizing government and its allies to impinge on our ability to lead our lives as we see fit and in order to make our most personal moral decisions free of government intrusion, the ACLU's 2008 activities to protect freedom of religion, reproductive freedom, and LGBT rights will require an investment of at least \$3.2 million.

#### **PART FOUR: Fulfilling the Promise of Equality: Fair Elections and Fair Treatment**

Every time a person is wrongly turned away at a polling place, democracy suffers. Every time efforts to intimidate minority voters are allowed to go forward, an incredible injustice is done. Every time voting machine technologies allow people's legitimate votes to be cast aside or left uncounted, our democracy lists dangerously. The ACLU's involvement and expertise in voting rights issues are longstanding and time-tested — and, in this critical election year, we will be out in full force confronting challenges posed by both new technologies and age-old abuses.

If the rights of society's most vulnerable members are denied, then everybody's rights are imperiled. There is an old saying, full of wisdom, "Tell me who you walk with and I will tell you who you are." In 2008, the ACLU will continue to walk with and fight alongside those who, to this very day, are denied the full promise of equality.

### **Voting Rights: Dismantling Barriers, Expanding Democracy**

Over the course of the last four decades, the ACLU has initiated or participated in more than 400 voting rights lawsuit actions across the United States. The vast majority of these lawsuits were resolved in favor of the ACLU's clients and resulted in more fair elections. In 2008, the ACLU will challenge the discriminatory targeting of minority voters and conduct wide-ranging pre-election activities to protect the integrity of the electoral process.

Then, come Election Day, we will be out in full force to ensure that all votes — Democratic, Republican, or Independent — black, white or Hispanic — young or old — are counted. We'll be monitoring the voting process, intervening to help unjustly treated voters wherever we can, and gathering the critical evidence needed should post-election action be necessary to defend freedom.

Our work to protect voting rights covers a wide range of initiatives. However, two critical objectives are especially in 2008.

**Challenging Voter Intimidation and Voter Suppression:** One of the recurring, though little-reported scandals in American politics is the discriminatory targeting of minority voters through so-called "ballot security" programs. The defenders of ballot security efforts say they are necessary to prevent voter fraud and ensure that only those who are eligible cast ballots. However, ballot security efforts have regularly been designed to suppress minority participation.

Just as we have in other elections, the ACLU will marshal our considerable organizational resources, including more than 800 full-time staff, spread throughout the country in our national offices and 53 affiliate and chapter offices, to expose and end such efforts to block participation and distort the electoral process.

And, wherever we find them, we will work to combat voter suppression and voting discrimination by challenging restrictive voter identification requirements, voting practices that disfranchise voters by improperly purging eligible voters from the rolls and other onerous or discriminatory rules and procedures.

**Promoting Progressive Reform:** Even as we work to protect voting rights in the 2008 election, we will also be pressing hard for additional reforms both in Washington and in state legislatures across the nation. At every possible turn, we will push for the adoption of election technology that is accurate, verifiable, transparent, and fully accessible to all voters. We'll work to advance comprehensive voter protection measures, such as the one supported by the ACLU of Maryland, which bolstered the right of voters to cast a provisional ballot and outlawed the use of flyers announcing bogus election dates to suppress voter turnout. In 2008, we will also stand in front of the Supreme Court and ask them to strike down photo ID requirements that disenfranchise the elderly, minorities, and the poor.

We'll pursue state legislation to expand ballot access in places like Arkansas, where in the wake of the ACLU's legal victory striking down the state's restrictive ballot access law on behalf of the Green Party, the potential now exists for passage of proactive voting measures to remove barriers to third parties and independent candidates. And we'll open up the democratic process by calling for no-fault absentee voting accompanied by adequate safeguards to prevent voter fraud and liberalization of identification requirements for voting while ensuring the integrity of the voting process.

In these and numerous other ways, the ACLU will continue fulfilling our historic role in protecting the integrity of the electoral process and combating any and all efforts to throw barriers in the way of full participation by each and every American.

### **Fighting for Racial Justice and Opposing Discrimination**

The ACLU is totally committed to ending all forms of discrimination. And, in 2008, we will pursue legislation, litigation, and public education strategies that directly challenge abuse of civil liberties and civil rights — abuses that have been aggravated in recent years by new and dangerous developments. The fact that the basic due process rights guaranteed by the Constitution apply to *everyone* within our borders is one of the things that makes America a truly great nation. However, the reactionary laws against immigrants that are currently sweeping our nation stand in stark opposition to our values and our constitutional heritage.

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As immigration becomes the focus of national, state, and local politics, we have witnessed a wave of local ordinances that would regulate “illegal immigration” under city or municipal law. This growing phenomenon is feeding anti-immigrant hostility and causing discrimination against all immigrants, especially Latino communities.

The ACLU has and will continue to respond swiftly to this onslaught by supporting and leading litigation against high-visibility local ordinances around the country. In 2007, we won a major victory in a landmark case in Hazelton, Pennsylvania, when a federal court declared unconstitutional a city ordinance that sought to punish landlords and employers for doing business with “illegal aliens.” Unworkable and unconstitutional, the ordinance declared a broad swath of documented and undocumented immigrants as “illegal aliens” and prohibited employing, doing business with, or “aiding and abetting” those individuals; renting property to them; or even allowing them to “use” any premise.

Despite the judge’s definitive ruling, the Federation for American Immigration Reform (FAIR) has announced its intention to appeal and, with your help, the ACLU will vigorously defend our victory in this crucially important case.

**Too Many Children Left Behind:** We intend to put special energy into our growing work on behalf of children by challenging the “school-to-prison pipeline” — a disturbing national trend wherein children are being funneled out of public schools and into the juvenile and criminal justice systems. Many of these children — who are disproportionately children of color — are the most vulnerable, with learning disabilities or histories of poverty, abuse or neglect, and need additional educational services, not isolation and punishment.

Three policy trends in the public education and juvenile justice systems are coming together to cause this trend: “zero-tolerance” policies criminalizing minor instances of school misconduct, the bypassing of due process protections for children before sending them into the juvenile justice system, and the emphasis on high-stakes testing, including the No Child Left Behind Act, which creates incentives for schools to push out low-performing students in order to boost the schools’ overall test scores.

As part of this work, the ACLU has filed a class action lawsuit on behalf of 14 Native American students who attend middle and high school in South Dakota’s Winner School District, challenging school disciplinary policies and practices that target Native American children. The discrimination and intimidation faced by these children are appalling and heart-breaking, ranging from everyday harassment and abuse to forced “confessions” that lead to criminal conviction and expulsion from school. The case is ongoing, and we’ll stick with it until we win justice for these young people and others like them.

Beyond litigation, the ACLU and its affiliates are working to bring this tragic epidemic into the public spotlight. The New York Civil Liberties Union’s report, *Criminalizing the Classroom*, which documents the massive and aggressive police presence in New York City public schools, has received widespread attention. And in Massachusetts, we are reaching out to government officials, law enforcement officials, community members, academics and others to address the problem of disproportionate minority confinement in the juvenile justice system and its impact on Massachusetts’ communities of color.

**Immediate Priorities and Funding Needs:** The 2008 elections and the often divisive political climate that accompanies a highly-contested national election will place special demands on the ACLU throughout this year. It will take at least \$940,000 to continue our vigorous monitoring of the electoral process and to defend the basic rights of the most vulnerable members of our society as political figures seek to rub raw the nerves of cultural, economic, and social division in our country.

### **Conclusion**

Even a document of this length can only touch upon the most important elements of the ACLU’s wide-ranging activities. But, I hope that this Workplan has made clear to you just how crucial this upcoming year of change and transition will be to the cause of freedom.

Indeed, the challenges and opportunities we have ahead of us in 2008 are some of the most critical in our history. It means so much to us to know we can count on your support as we take them on.

Together, we can stop further violations of the Constitution by the Bush administration, actively restore liberties that have been jeopardized and undermined, and take on right-wing organizers using government power to shape an America that constrains our freedoms to conform to their prejudices.

That’s our task in 2008. Let’s get to work.