



2011 ACLU of Hawaii

Legal Program Year-End Highlights

First Amendment (Free Speech, Freedom of the Press, Right to Protest)

- **Unlawful Citation of Lawful Protesters (Tess & Jamie Meier)**

The ACLU of Hawaii and the law firm of Davis Levin Livingston represent Tess & Jamie Meier, who were cited and threatened with arrest for their peaceful Waikiki sidewalk demonstration in support of gender equality. We are in the process of finalizing a settlement agreement with the City & County of Honolulu.

- **ACLU of Hawaii Toolkit**

In advance of APEC, the ACLU of Hawaii created a “First Amendment Toolkit”: a comprehensive overview of the issues affecting the First Amendment right to protest on Oahu.

- **Protesters’ Rights (in advance of and during APEC 2011)**

From a civil liberties standpoint, APEC was mostly successful: no lawful protesters were arrested and there was no excessive use of police force on protesters or passersby. As far as we can tell, every group and individual that wanted to demonstrate was able to do so. While we continue to discuss a number of areas of improvement with both the State and the City, we are largely pleased with the degree to which the government respected civil liberties during APEC.

- **Journalists’ Rights – Right to Videotape/Photograph Law Enforcement**

The ACLU of Hawaii is submitting an *amicus* brief in U.S. District Court on the disturbing trend state-wide of law enforcement officers assaulting individuals who are exercising their First Amendment rights to videotape law enforcement officers.

- **Physicians’ Rights to Speak with Patients**

The ACLU of Hawaii continues to work with the Department of Public Safety (“DPS”) on its handling of Hawaii’s medical marijuana program. Several times this year, we sent demand letters and threatened litigation over DPS’s practices, including DPS’s policy of prohibiting physicians who prescribe medical cannabis from performing calls at patient homes and DPS’s policy of over-charging patients for medical cannabis licenses. These practices have been largely corrected, and we continue to monitor DPS’s actions.

- **Establishment Clause (Separation of Church and State)**

The ACLU of Hawaii is investigating the City and County of Honolulu’s continued violation of the Establishment Clause of the First Amendment by having sectarian prayers at the beginning of City-sponsored events.

Civil Liberties By The Numbers:

- **10,000** copies of our First Amendment Toolkit printed (**5,000** distributed prior to APEC); more than **1,500** views of the Toolkit on our website;
- **17** requests for government records filed under Hawaii’s Uniform Information Practices Act;
- **6** cases in which the ACLU threatened litigation but were able to achieve our clients’ goals prior to filing a complaint;
- **5** motions to suppress in immigration court filed/pending;
- **5** legal department interns;
- **4** different appearances as *amicus* (Ninth Circuit Court of Appeals (1); U.S. District Court (1); Hawaii Intermediate Court of Appeals (2));
- **3** groups assisted in navigating the permit process for the Hawaii State Capitol and/or City & County of Honolulu property;
- **2** pending cases resolved (civil unions litigation and teacher drug-testing litigation).

Fourth Amendment (Searches, Seizures, Police Misconduct); Right to Privacy

- **Excessive Force by Police**

The ACLU of Hawaii and the ACLU of Washington State submitted two amicus curiae (“friend of the court”) letters to the Ninth Circuit Court of Appeals, which ruled that Maui Police Department officers used excessive force in “Tasing” a woman who had called MPD for help with a domestic dispute. The Court similarly ruled that Seattle police used unconstitutionally excessive force by using a Taser on a pregnant woman whose crime was refusing to sign a speeding ticket.

- **Teacher Drug Testing**

In September, after nearly four years of litigation, the ACLU, the State, and the Hawaii State Teachers Association signed an agreement to end all court proceedings relating to random drug testing of Hawaii’s educators.

- **Unconstitutional Immigration Enforcement & Seizures**

The ACLU of Hawaii, with attorneys Clare Hanusz and Melissa Vincenty, has appeared (and filed suppression motions) in five separate removal (*i.e.*, deportation) proceedings in federal immigration court. All of the cases involve allegations that federal agents violated the Fourth Amendment by entering homes without warrants and without residents’ consent.

- **Unconstitutional Warrantless Aerial Searches**

The ACLU continues to receive complaints from private property owners about government helicopters flying as low as 40-50 feet above their homes and circling their properties for hours at a time while engaged in “Green Harvest” (cannabis eradication) missions. We are investigating these issues and are evaluating possible legal action; we encourage individuals affected by these activities to contact us at office@acluhawaii.org.

- **Protecting HIV Patients’ Privacy**

The ACLU of Hawaii represented an individual whose medical provider released information about the patient’s HIV status to a bill collection agency, in violation of a Hawaii statute specifically prohibiting such information sharing. Without going to court, the ACLU secured a financial settlement on behalf of the patient, along with assurances from the medical provider that it would put new safeguards into place to prevent such lapses in the future.

- **Right to Privacy: Medical Cannabis**

The ACLU of Hawaii filed amicus briefs in two different cases currently before the Hawaii Intermediate Court of Appeals. The cases – both involving criminal prosecution against a medical cannabis patient – will test the meaning of Hawaii’s medical cannabis law, which expressly protects a patient’s right to transport her or his medicine.

Fourteenth Amendment – Equal Protection

- **Civil Unions**

In 2010, the ACLU of Hawaii, Lambda Legal, and the law firm of Alston Hunt Floyd & Ing filed a lawsuit on behalf of six same-sex couples, seeking the same rights and benefits for married couples under state law. We voluntarily dismissed the lawsuit after Governor Abercrombie signed the Civil Unions bill into law.

- **Sex Discrimination by DOE and Maui County – Baldwin High School Softball**

The ACLU is continuing to review the Department of Education’s policies and procedures relating to private fund-raising and booster clubs (because private funding often perpetuates discrimination in school athletics, and the DOE is obligated to address these inequities). To help educate Hawaii’s students about their right to equal opportunity in athletics, the ACLU of Hawaii is preparing a student “Know Your Rights” guide to Title IX (the federal law that requires equal opportunities for all students, regardless of sex).

Government Transparency

The ACLU of Hawaii filed 17 requests under Hawaii’s Uniform Information Practices Act (Hawaii’s “open records” law) this year and one under the federal Freedom of Information Act, on topics ranging from the Department of Education’s compliance with Title IX and sex-ed mandates, the Honolulu Police Department’s acquisition of “less lethal” weapons, and government cell-phone tracking.

Other Civil Liberties Actions

- **New Local Website.** The ACLU of Hawaii launched a new website in September 2011 to better communicate with the public as to our work and to better engage the community regarding civil liberties issues. The website received over 3,000 hits in October alone, with over 1,500 views of our First Amendment Toolkit.
- **Improving Public Response.** The ACLU of Hawaii recently implemented new, custom software to allow it to respond more quickly to requests for legal assistance. We hope to decrease the amount of time needed to respond to requests from the current wait time of 6-8 weeks to 1-2 weeks or less.
- **Prison conditions.** The ACLU of Hawaii has been involved in the Justice Reinvestment Initiative (“JRI”) process, in which analysts from the Council of State Governments has conducted a review of Hawaii’s criminal justice system to identify areas for policy reform.
- **Advocacy by Non-Profit Organizations.** To ensure that our work complies with the highest ethical standards, the ACLU (along with the Legal Aid Society of Hawaii, the Native Hawaiian Legal Corporation, the Hawaii Appleseed Center for Law and Economic Justice, Life Foundation, and Evan Shirley, Esq.), submitted a letter to the Judiciary requesting clarification of the existing ethical rules for attorneys to clarify that we may use undercover “testers” to ferret out unlawful discrimination in housing, public accommodations, and government services.

