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## **Freedom for Free Speech STILL Wins the Day**

David Dell knows what he said was...well, controversial. But he also knew he had the legal right to say controversial things on a public street, so when he was arrested by Lincoln Police for "disturbing the peace," he called the ACLU.

Dell is passionate about reproductive freedom and he volunteers with Planned Parenthood to screen patients from protestors at the South Street clinic in Lincoln. Last summer, he lost patience with the taunts and shouts from the anti-choice protestors. "I just wanted them to leave me alone and I decided to taunt them back so they would step farther back," says Dell. After exchanging what can only be described as sassy words, the protestors did retreat for the day.

But the protestors didn't forgive Dell for using his freedom of speech. At the next meeting of the Lincoln Right to Life board of directors, they composed a letter to the Lincoln Police, complaining that Dell had "disgusted" and "upset" them with his taunts. In response, Lincoln Police called Dell to set up a meeting, where he received a criminal ticket for disturbing the peace.

How could one man disturb the peace on one of the busiest, noisiest streets in Lincoln during the middle of a protest? "Clearly, Dell wasn't ticketed because he was being noisy. He was ticketed because the police disagreed with the content



*ACLU Legal Director Amy Miller and David Dell at the Lancaster County Courthouse.*

of his speech. That's illegal, and that's why we went to court to defend him," said ACLU Nebraska Legal Director Amy Miller.

ACLU represented Dell, defending him against the ticket in Lancaster County Court. We won—and the city appealed to the District Court. Then in May, we won again, fully clearing Dell of the frivolous charges.

"While David Dell is now safe from government retaliation for his support of reproductive freedom, ACLU needs to take one more step here," said Miller. "We will be following up with the Chief of Police and Lincoln City Attorney so they are clear that they cannot arrest citizens for simply exercising their right of free speech. The fact that one person is upset by what they hear is just part of the rough and tumble world guaranteed by the Constitution."

## Marriage License Discrimination Uncovered by ACLU Investigation

This April, ACLU Nebraska uncovered at least five counties engaging in illegal discrimination by refusing marriage licenses to new immigrants. ACLU began its investigation several months ago after receiving complaints from people who were turned away when they attempted to get a marriage license.

One man, who is here legally but not yet a citizen, told us he went to three counties in a row and was told at each office ‘Only citizens can get married,’ until he finally went to Omaha and was able to marry in Douglas County. ACLU followed up on this and other complaints by using several testers to find out how each county was handling requests for marriage licenses. Both testers were native Spanish speakers with an obvious accent.

Five counties failed the tests, giving false information to the testers about what is required to get a marriage license. The five offending counties were Hall County (Grand Island), Platte County (Columbus), Phelps County (Holdrege), Lincoln County (North Platte) and Dawson County (Lexington). In those counties, employees claimed variously that a marriage applicant must:

- Have a Social Security Number. (It is common for counties to *ask* for a SSN to determine identity, but it is not *required* to have one. Most counties have a pre-printed form for people to fill out if they don’t have a SSN.)
- Have US-created photo identification; testers were told a valid foreign passport isn’t adequate ID.
- Have an “officially translated” birth certificate if the certificate was issued by another country.

There was no explanation what would count as an “official” translation.

- Have an I-9 form, which is issued to legal aliens. “This requirement was clearly fabricated to try and prohibit any undocumented alien from getting married,” said ACLU Legal Director Amy Miller.

“Nebraska law only allows a county clerk to ask for identification to prove one’s name and one’s date of birth to prohibit minors from getting married,” said Miller. “Government employees who make up new rules based on an applicant’s skin color have no place in Nebraska. It is very common for a new immigrant to become a citizen by marrying an American. Apparently a few rogue employees have taken it upon themselves to try and limit the road to citizenship by rejecting marriage license applicants originally from another country. These counties have been acting illegally and we’ve asked the County Clerk in each city to personally investigate to ensure this never happens again,” said Miller.

***Government employees who make up new rules based on an applicant’s skin color have no place in Nebraska.***

ACLU Nebraska sent a warning letter (available at [www.aclunebraska.org](http://www.aclunebraska.org)) to the five counties as well as to the Nebraska Association of County Officials, directing the offending counties to re-train employees or face a lawsuit.

At the time of this printing, only two counties have responded satisfactorily: Hall County has completely redone their policy and printed materials to comply with the ACLU’s demands. Dawson County is still in the process of revising their policies.

“We did not give a deadline to the counties initially,” said Miller, “because they are smaller communities without a large amount of resources. But enough time has passed, and we will now be following up with Platte, Phelps and Lincoln Counties. If they don’t comply with the law, we will turn to the only remaining option and sue them.”

## Grand Island Student Wins Right to Observe “Day of Silence”

Grand Island High school junior Tyler Pierce and his friends wanted to observe the national “Day of Silence” in April, but last year they ran into a snag. The Day of Silence was created to protest the bullying and harassment of gay, lesbian, bisexual and transgender students in schools. Participants voluntarily remain silent for the whole day



(except as required for class participation) to symbolically represent the silencing of the GLBT community. Students participate all across the country and usually carry cards that say “I am remaining silent today” and explain the reason for the demonstration.

Last year, Tyler participated as a sophomore, but the demonstration was cut short when an upper classman who organized the day was suspended for handing out the explanatory cards in the hallways. So this year, Tyler planned ahead and called the ACLU in advance.

“The freedom to speak has a parallel under the Constitution: the right to NOT speak,” said ACLU Nebraska Legal Director Amy Miller. Students do have to answer teachers and administrators during the day—they can’t use the demonstration as a way to avoid their academic requirements—but they have the

right to avoid unnecessary conversation in school.

An attorney for the Grand Island High School claimed that all materials to be handed out at school had to be pre-approved by the Principal. The student suspended last year was disciplined for not asking permission, they claimed. The

school argued that it was a safety issue—a student with a box of flyers might be hiding a gun.

“That’s simply ridiculous,” responded Miller. “The school isn’t searching backpacks, purses and lunch bags for guns, so why assume that a box of paper is a danger? Clearly, the school just wants to keep control over what messages are shared on school grounds. While students lose a lot of rights at school, they still clearly retain the right to hand out and share information with other students.”

Negotiation between the school and the ACLU was successful. Tyler reports that he and about a dozen other students observed April 17th as the Day of Silence without any difficulty. “It went really well,” says Tyler. “And next year, I’m going to start a GSA. Thank you sooooo much for helping out.”

## NEW ACLU BOARD MEMBERS ELECTED

The ballot counting is done (no hanging chads here!), and ACLU Nebraska has two brand new board members that will help guide and govern the work of our state office. Meet your newest representatives:

**Gloria Romero-Downing** is an Omaha emeriti professor of Spanish Literature at Creighton University. She writes, “As a child, members of my family suffered for their political views, including loss of business, jail and torture. After more than 20 years as a resident immigrant, I became a US citizen in 1989, and did so in part, to fully participate in the country’s political life.” Gloria is fully bilingual (Spanish-English) and looks forward to working with the board to develop or improve communication tools which can help us reach an increasingly diverse population.

**Bassel El-Kasaby** heads the law firm of Kasaby & Nicholls, practicing in the areas of immigration law and civil rights. He has a JD from the University of Iowa, as well as a Masters degree in Urban Planning. Bassel wrote, “I take great pride in representing non-traditional clients and in addressing novel questions of law. In 2005 I successfully settled an ACLU case as cooperating attorney on behalf of a Muslim woman in Omaha who was denied entrance to an Omaha public pool because of her Muslim head scarf. The case was successfully settled.”

The board also elected **officers** at their May meeting. Elected were: Eric Evans, President; Joe Brown, First Vice President; Leslie Seymore, Second Vice President; Rachel Yamamoto, Secretary; Christy Abraham, Treasurer.

## Executive Director's Message by Laurel Marsh



A careful reading of this month's newsletter should reveal some repetitive themes, including health care and activism.

Women's health care has been on our minds here in Nebraska as we vigorously (but unsuccessfully) challenged LB 675. The bill provides that if an ultrasound is performed, the woman must have

it within one hour of the abortion. The image must be displayed so the woman can see it (though she is allowed by law to avert her eyes). ACLU believes that decisions surrounding reproductive care should be left to each woman rather than to the government.

Women's health care has also been on our minds in the national picture, as the national ACLU office has filed a suit challenging monopolies on the gene that causes certain types of breast and ovarian cancer. (See page 6 for story.)

And health care for everyone is on my mind as I work to set up a "Community Conversation" that will be held in Omaha this summer on the question of why Omaha has egregiously high rates of sexually transmitted diseases. ACLU Nebraska has been studying this issue with our new Community Organizer Tristan Bonn, whose findings will be discussed at that conversation. (You can meet Tristan at our open house, see next page for information.)

Look for an invitation in the mail soon, inviting you to the table to discuss what factors are contributing to this health crisis. Our initial review shows troubling results: access to health care in Omaha seems to be much worse for people of color and for poor people. Also, sex education in some public schools is apparently producing young men and women who simply do not abstain, and who also have not learned how to protect themselves from serious STDs.

Tackling issues in Omaha will only work if we have enough community involvement, including help from you. That's why we want you to watch your mail and come to the events as they are organized.

But being involved isn't just around one topic. We leaned heavily on the help of ACLU members during this legislative session by calling upon our Citizen Activist list. This is a list of members or friends of ACLU who have agreed to share their email addresses with us. We promise not to bug you very often, but we did send an action alert when there was important movement in the Capitol on one of our key issues. (See story page 7 for a report on what happened with those bills.)

If you're not yet a Citizen Activist, please sign up by emailing your name, address, phone number and preferred email address [info@aclunebraska.org](mailto:info@aclunebraska.org)

Activists in Lincoln will have a chance to participate in an upcoming Community Conversation on racial profiling by police, too. Again, watch your mailbox for a postcard, and remember that our website always has the most up to date information about ACLU events.

While some people choose to become activists by signing up for legislative alerts or attending a strategic planning event, others have activism thrust upon them unexpectedly. You'll read in this issue about a high school student fighting for the right to hand out flyers for the national Day of Silence (page 3), high school students and their supportive mom fighting for the right to mourn a slain friend (page 6) and a man who had to fight for the right to be disagreeable on a public street (page 1).

All of this underlines the best part about working for ACLU Nebraska: we meet average people who have been involuntarily made into champions for the rights of all of us. If these people didn't stand up for themselves and ask for our help, we wouldn't be able to do our work.

As always, thank you for your participation in this organization. All of us here on staff appreciate you more than you'll ever know.

## NIGHT OWLS HAVE RIGHTS, TOO

Omaha has passed two city ordinances essentially making it illegal to hang out late at night. Section 20-43 and 18-3 of the Omaha Municipal Code are the two provisions at issue. Section 20-43 applies when police have arrested one person...and then order everyone else to leave, even if they have nothing to do with the troublemaker. Refusing to leave is now a crime, even though you've done nothing wrong. Section 18-3 labels businesses as a "nuisance" if people hang out on the business property after hours and make noise, thus making the business owner pay the price for other people's bad actions.

Why did Omaha do this? Supposedly to combat gang problems and noisy groups of people congregating after hours, but there are a lot of signals that indicate this won't be neutrally applied across the city. Discussion at the City Council meetings suggested the ordinances are really just targeting black residents of North Omaha, and are masked racial profiling.

The right to hang out—to gather with friends—to just loiter for no particular purpose—is protected by the US Constitution. The cases from the US Supreme Court are clear," said ACLU Nebraska Legal Director Amy Miller. "Cities can't make it illegal for people to hang out, even in the middle of the night. You can't arrest me because someone nearby me was making noise. Only the person causing the disturbance can be ticketed--everyone else has a right to congregate in public, even in the wee hours of the morning."

ACLU Nebraska wrote to the Omaha Mayor and City Attorney in March, warning the new ordinances could not be legally enforced and warning a lawsuit will follow if anyone is ticketed under the law. (A copy is available on our website, [www.aclunebraska.org](http://www.aclunebraska.org))

We are working with community organizers and activists in North Omaha to ensure that if anyone IS ticketed under the laws, we will learn about it and can evaluate the case for potential challenge.

## COME TO OMAHA OFFICE OPEN HOUSE: JUNE 25th

We'll be celebrating the new ACLU office in Omaha with a wine and cheese open house on Thursday, June 25th, from 5 to 7 pm, and we want you to come help us toast this outreach effort.

The office is located at 1105 Howard Street in the Old Market in Omaha, second floor (elevator is available), right above Spaghetti Works restaurant. The telephone number is 402-398-3027. We share the office with Citizens for Equal Protection (CFEP), and CFEP members will be present to celebrate as well.

All the ACLU staff will be present for the open house, including our newest employee, Community Organizer Tristan Bonn, former Police Auditor for the City of Omaha. Come on down and say hi; we love meeting card carrying ACLU members!

RSVP by Tuesday, June 23rd by calling or emailing Megan at (402) 476-8091 or [mmoslander@aclunebraska.org](mailto:mmoslander@aclunebraska.org). If you can't make it to the open house, the office will be staffed every Wednesday from 9 am to 1 pm and you're welcome to drop in and meet Tristan.

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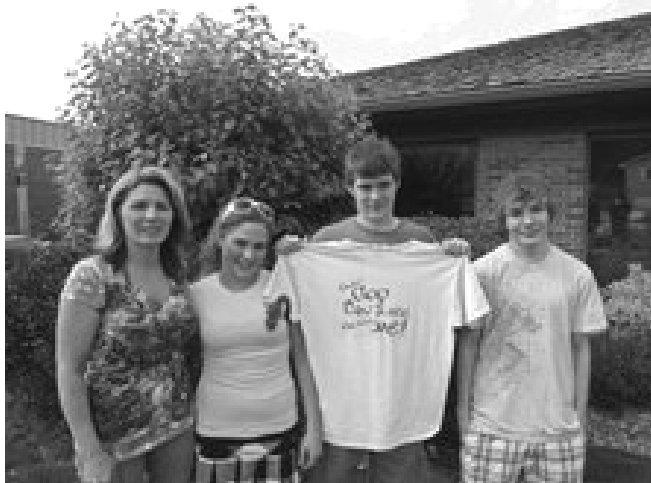
**WHERE:** 1105 Howard Street, Suite 2, Omaha, NE, 68102, just above Spaghetti Works. (2nd floor, wheelchair accessible elevator.)

**WHEN:** Office hours will be Wednesdays, 9 a.m. to 1 p.m. or by appointment

**CONTACT:** (402) 398-3027

## “JULIUS RIP” SHIRT DEFENDED IN MILLARD

In August 2008, Millard South High School suspended between 20 and 30 students for wearing t-shirts with the phrase "Julius RIP." The shirts were created by a friend of Julius who wanted to help raise money for the young man's funeral after Julius was shot by gang members over Julius' refusal to join their gang. Several parents complained to ACLU, and we issued a letter demanding the school dismiss the suspensions and allow the shirts to be worn in the future.



*Jeanne Kuhr with her children: Cassie, Dan holding the memorial shirt, and Nick*

Going back to school shouldn't mean sacrificing free speech rights at the school house door. While schools have latitude to censor messages that may cause a substantial disruption, the phrase "Julius RIP" is not one of those messages. "RIP" is a time honored expression of grief for a lost loved one with no likelihood of disrupting school. The school argued that the shirts could be banned as being related to gangs.

Negotiations with the school have failed, so one family has agreed to step forward and be clients in a lawsuit challenging the limits of school power to censor student speech.

Julius in his football uniform and read "Only God Can Judge Me Now" on the back. Jeanne helped her son organize other ways to raise money for Julius' funeral, including a fish feed, a car wash, and an auction of items donated by Julius' friends.

Jeanne Kuhr has three children who were affected by the Millard suspensions. Her oldest son, Dan helped design the shirts, which read "Julius RIP" on the front with a picture of

"It's bad enough that my son had to lose his good friend to a tragic shooting, but now the school has heightened that loss by silencing their ability to show their grief and work through it by helping Julius' family," said Jeanne. "The school thinks it can do this because they're big, and we're little." The family is currently working with volunteer Omaha attorney W. Craig Howell to file a lawsuit with ACLU Nebraska against Millard Schools.

## ACLU SUES TO PROTECT WOMEN'S PRIVACY

On May 12th, ACLU filed suit charging that patents on two human genes associated with breast and ovarian cancer are unconstitutional and invalid. The suit was filed on behalf of four scientific organizations that represent geneticists, pathologists, researchers, breast cancer and women's health groups and individual women.

The US Patent and Trademark Office (PTO) has granted thousands of patents on human genes. A gene patent holder has a right to prevent anyone from studying, testing or even looking at a gene. As a result, scientific research and genetic testing has been delayed, limited or even shut down due to concerns about gene patents.

Women with certain mutations of genes known as BRCA1 and BRCA2 are at a significantly higher risk of developing breast and ovarian cancer. Yet as a result of the patent process, only one lab in the entire US can work on these genes, giving them a monopoly on developing the genes, developing tests, or coming up with alternate treatments. Read more about the suit at [www.aclu.org/freespeech/gen/brca.html](http://www.aclu.org/freespeech/gen/brca.html)





## ACLU Nebraska at the Unicameral

The legislative session is over for 2009, and it was a disappointing year for civil liberties. We lobbied on approximately 45 bills, with only a few successes. Hard to call these highlights given all the bad decisions made by legislators, but here they are:

LB 403: Mandate **E-Verify** database use, despite serious concerns about the flawed and racially suspect information in that federal database. We opposed this and related bills, but were unsuccessful. LB 403 was signed into law by the Governor.

LB 63: Criminalizes **“association” with a gang member**. We opposed because of vague definitions of “association”—would hanging out with your old school chum to play Nintendo be associating? The bills passed, but the vague definitions we were concerned about were eliminated from the final version.

LB 36: Made **lethal injection** the new method of execution. ACLU opposes the death penalty in any form and supported LB 306, which would have abolished the death penalty. Lethal injection was signed into law in May.

LB 67: **Tax credits for private religious schools**, opposed as a violation of church/state separation. This bill is still in committee and will be carried over to next year’s session.

LB 125 and 382: Makes **same day election registration** available. We supported these bills which would increase the pool of potential voters and expand the constitutional right to vote. Both bills are still in committee and will be carried over until next year.

LB 307: Change **juvenile life without parole** to a term of years—this would not guarantee young murderers would get parole, but would make a second chance available for those who reform. We supported this legislation and have issued a report describing the need for this law, available on our website. Unfortunately, the bill was laid over until next session following a floor debate that indicated there is not a majority of support for this bill.

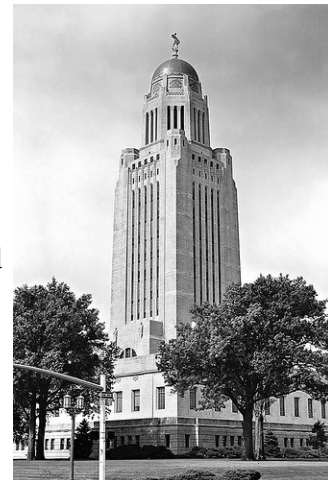
LB 443: Limits on **adult and sexually oriented businesses**. We opposed this limitation on adults’ right to have materials protected by the First Amendment. This bill remains in committee and will be potentially viable in the 2010 session.

LB 496: **Red light cameras**. We opposed due to privacy concerns with public surveillance methods as well as the due process concerns of ticketing the owner of the car rather than the driver. This bill remains in the Judiciary Committee and will still be alive for next session.

LB 675: **Ultrasounds prior to an abortion**. We opposed this as an unreasonable imposition on a women’s reproductive freedom, but the bill was signed into law in May.

Bills that didn’t pass this year but remained in committee or are still on file will be renewed for discussion in 2010. If you’re concerned about the developments, it’s never a wrong time to contact your state senator and tell them by email, mail or phone that you want them to vote a certain way. Not sure who your senator is? Just visit [www.nebraskalegislature.gov](http://www.nebraskalegislature.gov) and click on “Senators” on the menu, then “Find Your Senator.”

Meanwhile, don’t be too discouraged by this session. Many of the senators were new, a product of term limits taking effect in Nebraska, and it is our experience that more time to work on educating senators can produce a change in their perspective. And we don’t give up: we’ll be at the Capitol next year, still fighting for civil liberties.



**“Our greatest glory is not in never failing, but in rising up every time we fail.”**

**~ Ralph Waldo Emerson**



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## Community Services Fund

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Learn more at the CSF website:

[www.CommunityServicesFund.org](http://www.CommunityServicesFund.org)