



To: Members of the Nevada Assembly  
Date: February 25, 2010  
Re: Trampling the Constitution Won't Solve Nevada's Budget Crisis

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OF NEVADA

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Tucked into Governor Gibbons' proposals to solve the budget crisis are thinly-veiled attacks on the Constitution and Nevada's libertarian ethos. Some measures are illusory: they won't actually solve Nevada's financial woes because they shift the financial burden from one part of the criminal justice to an increase in liability. Very importantly, Nevadans' rights to free speech and to be free of governmental surveillance are not for sale. The ACLU of Nevada urges you to soundly reject the following provisions as unwise affronts to our civil liberties.

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### **Closing State Prisons or Juvenile Facilities**

The ACLU of Nevada does not oppose closure of the prison *per se*. We do, however, oppose any closure of prisons that would include sending Nevada inmates to private or out-of-state prisons, due to lack of accountability or oversight, and the risk of liability and costs. Further, if Nevada doesn't responsibly rehabilitate incarcerated individuals, the likelihood that offenders will recommit crimes will increase, public safety will be put at risk, and the state will also have to spend more money in the long run.

*Private and out-of-state prisons put Nevada between a rock and a hard place because it will have no meaningful oversight of its incarcerated.*

- Sending inmates to another state and/or allowing a private prison to take custody of prisoners creates a bad situation for NV: liability without control. Nevada will still be ultimately responsible and would have to spend resources on oversight – yet, the state would have no control.

*Sending prisoners out of state or to rural areas also severs ties between offenders and their families; this bond, however, is crucial to maintain for successful rehabilitation, especially for youth offenders.*

- Many prisoners will eventually be released. While in state custody, one of the most important aspects of rehabilitation is maintaining family ties. Moving prisoners, especially youth, to different facilities and further away from their families often makes that impossible and ultimately, punishes the family of offenders who otherwise provide an important component of an offender's rehabilitation.

Successful rehabilitation isn't only for the offenders-- it's for the greater good of the general public.

### **School Vouchers**

The ACLU of Nevada has long held the position that school vouchers may violate the First Amendment to the U.S. Constitution. While individuals have an absolute right to send their children an institution consistent with their own beliefs, the ACLU opposes the direct funding of any religious institution with taxpayer dollars because of the constitutional mandate that church and state remain separate. We oppose school voucher programs for a number of reasons:

*"The strength of the Constitution lies entirely in the determination of each citizen to defend it."*

- Albert Einstein



*Just as the U.S. Constitution requires the separation of church and state, Nevada's own state Constitution clearly states that public funds cannot be applied to sectarian uses. We believe that a school voucher program would not withstand constitutional scrutiny.*

- “No public funds of any kind or character whatever, State, County or Municipal, shall be used for sectarian purpose.” (Art. 11, Sec. 10).
- This means that school vouchers could lead to litigation.

*In addition to the constitutional concerns they create, vouchers are simply unfair: they create a benefit only for those students who can already afford private tuition.*

- Partial funding vouchers often leave a substantial portion of tuition that must still be paid to the private school, which means very little to a student for whom that tuition gap is insurmountable. “School choice” programs totally fail to give any choices to the poorest kids in the system who are frequently marginalized in the worst schools and are likely to disproportionately leave out students of color and ethnic minorities.

*The ACLU wholeheartedly believes that putting taxpayer dollars towards institutions that are permitted to discriminate undermines and threatens crucial civil rights protections.*

- Religious schools are frequently exempted many critical anti-discrimination policies. Otherwise, school vouchers and tax payer dollars could directly fund schools that discriminate based on gender, religion, race, or other protected classes.

### **Nevada Equal Rights Commission (NERC)**

The ACLU believes that NERC serves a vital role in our state, as an expression of our state's public policy against discrimination in employment and places of public accommodation. We urge that you leave NERC's crucial services intact. The creation of NERC required years of civil rights advocacy; it's continued funding sends the message to Nevadans -- and visitors to Nevada -- that this is a state that values all of its citizens and visitors.

*The elimination of NERC would undoubtedly lead to more filings in state court - which of course should be weighed in any serious cost savings analysis.*

- As a general matter, NERC extends important resources that the EEOC is simply too overburdened to grant to Nevadans, such as mediation services and factual investigation, for claims such as sex or racial discrimination in employment, or racial discrimination in places of public accommodation. In terms of mediation in particular, this is a critical informal method of resolving employment and public accommodation discrimination claims - frequently without going to state court.

*The elimination of NERC would eliminate the opportunity for any redress of grievances - for any individual suffering discrimination based on sexual orientation, as this is not a protected class under federal law.*

- The 2009 Nevada Legislature worked hard to pass the law this session at long last instituting public accommodations protections for gay individuals, and the ban on employment discrimination has existed, rightly, for years. Because EEOC does not deal with such claims, we believe that elimination of NERC would deny critical resources to gay individuals.

### **An electronic police state is not a budget solution**

The 2009 state legislature rejected an attempt to give a private company an exclusive contract – without any competitive bidding – to install a surveillance net of cameras throughout Nevada's

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roadways to catch “insurance scofflaws.” Under InsureNet’s proposal, every time you drive on Nevada’s streets and highways, your license plate will be scanned, captured, and analyzed. But the sound policy considerations that led to the rejection in 2009 still stand.

*It would lay the groundwork for a system that would permit surveillance data to be captured in ways that raise serious civil liberties issues. While InsureNet claims that their proposal poses no privacy issues, Nevada citizens do not want to live in a glass bubble, under constant government watch.*

- The government could, for example, seek the camera records of every car attending a political rally; could track the daily traffic patterns of individuals; could even request that InsureNet provide them with real-time location of a particular car -- without any court oversight or warrant. This is not paranoia: in similar contexts, this kind of surveillance happens all the time. For example, the government tracks people using cell phone data – without proper warrants.

*Not only does “electronic police state” surveillance violate our fundamental values, there is no promise that it will even work.*

- InsureNet has never implemented a system like the one it is proposing in Nevada anywhere else in the U.S. Insurance industry leaders such as the American Insurance Association and the Insurance Research Council have questioned whether InsureNet’s system would be accurate. (See [www.wired.com.autopia.2009/03/the-uninsured-m](http://www.wired.com.autopia.2009/03/the-uninsured-m)). While InsureNet says it is negotiating with other states, InsureNet won’t tell us with whom.

*Courts will be overburdened.*

- Under this system, some people with valid insurance would be sent a citation and the burden would unfairly shift to them to prove it and correct InsureNet’s errors. Our already over-stretched court resources would get sucked into trying to enforce citations. Even worse, for many tourists, a trip to Nevada could mean having to deal with an undeserved citation from another state when they get home.

If there are fines to be collected, the DMV should be collecting them in a way that does not subject us all to monitoring. Indeed, the Nevada DMV is about to launch its own insurance verification system that is expected to bring compliance rates up considerably and doesn't include any information sharing with third parties. Tax dollars have already gone towards building this new system – which doesn't violate civil liberties – and no revenue-sharing will with any private party like InsureNet will be required. In any case, it’s not logical to assume that the poor people who can't afford insurance are going to be able to afford any ticket issued to them for not having insurance. Finally, it is perverse for the state to be filling budget holes on the hopes that people will break the law. Nevadans deserve a more responsible form of government that doesn’t violate our rights and bank on those who can least afford to pay.

### **Chapter 288/Collective Bargaining**

The ACLU supports the rights of employees to organize and collectively bargain as aspects of their First Amendment freedom to associate. Public and private employees' right to engage in advocacy to improve conditions of employment is a protected civil liberty, and should necessarily include the right to *meaningful* employment advocacy.

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*Because Nevada law already prohibits strikes by public employees, binding arbitration between the government and public unions remains the sole avenue for employees to rely on when concerns related to work conditions arise.*

- The repeal of binding arbitration laws would effectively leave the government free to ignore legitimate concerns of its employees and would prohibit employees from engaging in meaningful and protected union advocacy.

### **Race to the Top**

The ACLU of Nevada supports proactive, positive approaches to school discipline that can reduce suspensions and expulsions, and ultimately keep juveniles out of the criminal justice system, while improving student achievement and perceptions of school safety. But excessive use of exclusionary discipline approaches, which disengage students from learning and remove them from instruction, are reaching crisis levels. In 2006, there were 28,195 out-of-school suspensions and 1,455 expulsions in Clark County alone.

*There is a potential for the state of Nevada to implement programs that will address the school-to-prison pipeline issues currently created by our state's unjust disciplinary policies using "Race to the Top" funds available from the US Department of Education.*

- The final application guidelines for *Race to the Top* includes language encouraging states to support schools in "implementing approaches to improve school climate and discipline, such as implementing a system of positive behavioral supports (PBS)," and to develop data systems that track school climate programs and discipline.<sup>1</sup>

While the ACLU of Nevada takes no position related to specific budget allocations of the state, we encourage you to address policy shortcomings that marginalize our most at-risk youth and deny them access to education.

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<sup>1</sup> *Race to the Top Program Preamble and Major Changes*: <http://www.ed.gov/programs/racetothetop/major-changes.pdf>  
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