

AMERICAN CIVIL LIBERTIES UNION

Creating an America We Can Be Proud of: The 2009 Workplan

Introduction

Since our founding in 1920, the ACLU hasn't just defended civil liberties — we've helped define them. It is our role to be a principled visionary, to not only react to violations of people's fundamental rights but to stay ahead of the curve by taking advantage of opportunities to expand the rights and liberties of everyone across America. It is our responsibility not just to respond to crisis but to create openings for change.

That mission has never been more critical than it is today. And we have a strong, bold plan for renewing American freedom in 2009 — one that calls for ACLU leadership on multiple fronts and that needs the active support of members like you if it is going to be successful.

- We have to use our knowledge, expertise, and passion to encourage bold steps by the Obama administration to restore our lost liberties. That is why we have put together an ambitious agenda outlining what our new President can — and must — do to restore the vibrancy of our democracy.
- We must vigorously pursue freedom's agenda in the courts. From an absolutely critical upcoming Supreme Court case on indefinite detention to our work standing up against those who would use government power to impose their beliefs and ideology on the rest of us, the ACLU's extensive legal program ensures that whenever and wherever the government denies people their fundamental rights they can expect to meet our lawyers in court.
- And we've got to strengthen our work community by community by looking out across America and bolstering freedom's defenses in those places where civil liberties violations are egregious and resources for protecting fundamental freedoms are scarce.

Only the ACLU is capable of leading the way on all three fronts. And only coordinated action across all these arenas can succeed in creating an America we can be proud of. Fully recognizing how much hard work we have in front of us, the 2009 ACLU Workplan details — in one critical area after another — exactly what you and the ACLU must do to make sure our government lives by the rule of law and to guarantee that the life of our nation is anchored in the principles of the Constitution.

Part One. An America That Honors the Constitution: Warrantless Eavesdropping, the Patriot Act, FBI Guidelines and Freedom of Information

"I love the Constitution. I have taught the Constitution.
And, as President, I will defend and obey the Constitution."

— President Barack Obama

The path forward for American freedom is clear. First and foremost, we need a government that acts with a deep respect for the Constitution and the rule of law. Getting from where we are today to where we need to be will be no easy task. In the midst of enormous demands on the Obama administration for action on everything from the economy to health care to energy, we'll have to press for vigorous administration efforts to end undue government secrecy and restore respect for personal privacy and the freedoms of speech, religion, and association.

This is the year for ending our government's involvement in warrantless eavesdropping and for starting the tough job of fixing the Patriot Act and stopping abuses of that law that have persisted since it was passed in October 2001. It's going to take decisive action all through 2009 if we are to make this a year of progress toward an America that proudly lives by the Constitution and deeply respects the rule of law.

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Ending Warrantless Eavesdropping: One of the most urgent civil liberties tasks of 2009 is ensuring that the United States government does not engage in warrantless eavesdropping — an abuse of American freedom that worsened in 2008 due to the indefensible acts of a timid Congress.

The ACLU has tirelessly led the opposition to out-of-control domestic spying from the very moment in 2005 when the secret National Security Agency (NSA) spying program was first exposed. In 2008, we urged Congress not to cave in to President Bush's demands for vastly expanded spying powers, and we called on our leaders not to let telecom companies off the hook for actively cooperating with illegal government spying operations.

When Congress ignored our warnings and passed the FISA Amendments Act, the ACLU immediately went to court to challenge the constitutionality of this dangerous legislation, which grants the President vast new authority to monitor Americans' phone calls and e-mails without any meaningful judicial review. With your support, the ACLU will work in 2009 to bring warrantless eavesdropping to an end by:

- Vigorously pursuing our lawsuit challenging the constitutionality of the FISA Amendments Act.
- Mobilizing our network of grassroots activists to call on President Obama to issue an executive order recognizing the President's obligation to comply with FISA and other statutes.
- Urging the President to prohibit the use of new FISA powers to conduct dragnet surveillance that is not based on probable cause or individualized suspicion of wrongdoing.

Stopping Patriot Act Abuses: The Patriot Act was the centerpiece of the Bush administration's assault on civil liberties. And no step to renew American freedom in 2009 will mean more to our civil liberties than decisive action to put an end to Patriot Act abuses.

By the end of 2009, Congress must decide whether to reauthorize key Patriot Act provisions — including Section 215, which vastly expanded the FBI's power to spy on ordinary people living in the United States. The ACLU will strongly oppose the reauthorization of these provisions in their current form.

The ACLU will also be working with the Obama administration, in Congress, and in the courts to stop continued FBI abuses of the Patriot Act's National Security Letter (NSL) provision.

This dangerous provision — used hundreds of thousands of times in recent years by an FBI prone to abuse — allows government agents to compile vast dossiers on innocent people and obtain sensitive information such as the web sites a person visits, a list of e-mail addresses with which a person has corresponded, or even the identity of a person who has posted anonymous speech on a political web site. Even more pernicious, the provision allows the FBI to forbid or "gag" anyone who receives an NSL from telling anyone that they have been compelled to disclose information to the FBI.

VICTORY: In December, the ACLU won a major courtroom victory when a federal appeals court upheld a lower court ruling that the NSL gag order provisions are unconstitutional. The case involves an internet service provider that was served with an NSL in 2004 and has been under a gag order for more than four years.

With your ongoing support, the ACLU will work in the courts, in Congress and with the Obama administration to make 2009 the year in which the damage done to our Constitution by the Patriot Act finally comes to an end.

Protecting People from FBI Abuses: We have to address indefensible new FBI guidelines that were put through in the final months of the Bush administration and that give the FBI a blank check to open investigations of innocent Americans based on no real suspicion of wrongdoing.

The guidelines also include no safeguards against the FBI improperly using race and religion as grounds for suspicion, and they fail to prevent the government from infiltrating peaceful and law-abiding political groups. No law enforcement agency should have such unbridled power, regardless of which administration is in the White House.

For these reasons, the ACLU will be continuing our work to educate the public about these guidelines, and we'll be calling on President Obama to direct his Attorney General to repeal the guidelines and replace them with ones that

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protect the rights and privacy of innocent individuals. It's also crucial to assure that the new guidelines specifically prohibit the use of race, religion, national origin, or the exercise of First Amendment-protected activities as factors in making decisions about whom to investigate.

Protecting Open Government: An America that honors the Constitution must also recognize that democracy cannot thrive in an atmosphere of secrecy. Transparency about government policy and conduct is essential to the vitality of any open society.

During his tenure as Attorney General, John Ashcroft instructed government officials dealing with Freedom of Information Act (FOIA) requests to withhold information whenever possible. This secrecy-favoring "Ashcroft Doctrine" stands in direct contrast to previous FOIA compliance standards, which incorporated a presumption in favor of disclosure.

As you know, the ACLU and other public interest organizations make frequent use of FOIA requests to obtain information essential to determining whether government officials are honoring the Constitution and abiding by the rule of law. Therefore, we are urging the Obama administration to act against excessive secrecy by rescinding the "Ashcroft Doctrine," reducing secrecy by controlling the rampant over-classification of public documents, and releasing the many still-secret documents relating to the Bush administration's unlawful national security policies — including the memos that supplied the legal basis for the torture and warrantless wiretapping programs.

FUNDING NEEDS: To pursue the ACLU's critical work bringing the behavior of our government back in line with the Constitution and the rule of law, we will need \$850,000 in support from ACLU members across the country.

Part Two. Renewing America's Reputation in the World: Torture, Rendition, Guantánamo Bay, and Military Commissions

Justice and human rights have suffered greatly under the Bush administration. America's reputation in the world and our moral authority on torture, indefinite detention and other human rights abuses have been badly damaged. President Obama has begun to fix the damage. But, we're still far from reclaiming our global reputation as a leader — rather than an abuser — of human rights.

From our pioneering work exposing hundreds of thousands of pages of evidence concerning abuses at Abu Ghraib, Guantánamo Bay, and secret CIA prisons, to our leading role in court cases aimed at exposing and ending the practice of extraordinary rendition, the ACLU has worked relentlessly to demand that our government respect human rights.

Critical 2009 Supreme Court Case: At the end of 2008, the U.S. Supreme Court agreed to hear *Al-Marri v. Pucciarelli*, an ACLU case challenging indefinite detention without charge or trial. The court will examine the constitutionality of the U.S. government's claim that it can indefinitely detain a person living legally inside the United States simply by designating that person an "enemy combatant."

We cannot rest in 2009 until the Guantánamo Bay prison is closed and America's renewed and unshakeable commitment to human rights is evident for the entire world to see.

Shutting Down Guantánamo Bay and the Military Commissions: As you read this, events surrounding Guantánamo Bay and the military commissions operating there are moving quickly. This much is clear: the ACLU's goal is not only the closing of the detention center but also an end to the system of injustice that has thrived there.

The ACLU has acted in numerous ways to challenge that injustice — from forcing the release of documents exposing prisoner abuse at Guantánamo Bay, Abu Ghraib, and CIA secret prisons to putting together high-profile legal teams to represent Guantánamo detainees.

From the very beginning, we have insisted that the detainees at Guantánamo should be charged and prosecuted in federal courts or traditional military courts governed by the Uniform Code of Military Justice. Those who are not charged should be released and resettled in countries where they will not be subjected to torture or continued detention without charge. Only then will the deep injustice of Guantánamo Bay be brought to an end — and only then will the deep

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wounds to America's reputation in the world begin to heal.

Banning Torture and Rendition: The thousands of documents we have obtained under the Freedom of Information Act have shown that the use of torture by the United States was not the work of a few rogue government agents, but rather the product of a deliberate and systemic program established by our government's highest-ranking officials.

The U.S. once led the fight against torture and not only signed, but helped craft many of the international treaties and laws that outlaw torture. But, in recent years, the United States has shamefully engaged in waterboarding and other acts that our government termed "enhanced interrogation techniques" but that the world recognizes as torture.

The ACLU has played a leading role in the fight against torture and extraordinary rendition — the illegal practice of abducting people and transporting them to nations known to engage in torture. We've used Freedom of Information Act requests to acquire and release hundreds of thousands of pages of evidence documenting U.S. abuses. And we've filed lawsuits drawing international attention to the U.S. government's involvement in extraordinary rendition.

VICTORY: In late 2008, the ACLU scored another legal victory in our effort to challenge torture when a federal court rejected attempts to deport an Egyptian national without giving him the chance to challenge highly questionable "diplomatic assurances" that the government of Egypt would not torture him upon his return to that country.

We've seen some positive movement from the Obama administration in reversing our government's shameful involvement in torture. But, we can't stop until Americans can be assured that our government does not engage in torture and abuse in our names and our nation can once again serve as a proud leader in the area of human rights.

Beyond ordering all agencies to take immediate steps to assure that torture and abuse is prohibited by our government, there are a number of crucial steps the ACLU has urged the Obama administration to take including:

- Ceasing and prohibiting the practice of extraordinary rendition.
- Ordering the immediate closure of the CIA's secret prisons.
- Ordering all agencies to comply with requests from members of Congress for unredacted copies of documents related to the development and implementation of U.S. interrogation policies.
- Registering all persons being held overseas with the International Committee of the Red Cross.

To achieve these crucial steps, we have to educate, organize, agitate, and insist that President Obama turn his attention to these issues as a matter of the utmost urgency. It is up to us to hold the President and his administration accountable — not just for symbolic early actions but for deep and profound changes across our entire government.

FUNDING NEEDS: To move forward with these critical legal, educational, and grassroots efforts to restore respect for human rights and repair America's reputation in the world will require a minimum of \$790,000 from the ACLU's 500,000 plus members.

Part Three. Challenging Government-Imposed Morality: LGBT Equality, Reproductive Freedom and the Separation of Church and State

Some of the deepest threats to personal freedom in America stem from government policies that attempt to mold our country and our personal lives to fit one particular religious or moral viewpoint.

From Proposition 8-style initiatives to deny equality to same-sex couples, to \$1.5 billion of government spending on failed abstinence-until-marriage programs, to constant state-by-state efforts to use our public schools as a forum for religious proselytizing, the ACLU is called on every day to challenge government actions that try to control our personal moral decisions. The freedom to decide how we lead our lives — who we love, what kind of families we choose to create, how or if we worship — not only impact people's lives in very real ways, it defines who we are as a people and a nation.

All too often, politicians are the first to promote government-imposed morality. And rarely do they oppose those who would use the enormous power of the government to force one narrow view of morality on the rest of us. When it comes to protecting our personal freedoms from the relentless efforts of well-organized groups that want all of us to conform to one skewed view of morality, it is really up to us.

Challenging the Intolerance of Proposition 8: If 2008 was an election year marked by hope and promise, the results of some vitally important initiatives exposed one of the deep inequalities we still must address. We have a long way to go before we can say that America is a country where people's personal freedom is protected and cherished regardless of who they are or who they love.

Our nation's great promise of justice and equality for all took a giant step forward in May of 2008 when the California Supreme Court affirmed the right of same-sex couples to marry. But, in November, the forces of bigotry and intolerance waged a deceitful and massive \$37 million campaign and passed Prop 8 to once again ban same-sex marriages in California — wreaking heartbreak and havoc in the lives of loving couples who simply want the same recognition and rights available to opposite-sex couples.

The ACLU worked tirelessly to defeat Prop 8, and when it passed, we moved immediately and decisively by joining our allies in going to court to challenge the Proposition as a violation of the state constitution. In December, the California Supreme Court agreed to hear our case. **In this critical court case and in every available forum, the ACLU will keep working until we achieve the goal of full LGBT equality.**

Taking on Gender Identity Discrimination: In 2008, the ACLU made a major advancement in a critical ACLU case about gender discrimination.

VICTORY: A federal judge ruled that the Library of Congress discriminated against Diane Schroer, a Special Forces veteran denied a job after announcing her intention to transition from male to female.

In 2009, we will be protecting and building upon this crucial courtroom victory. We will also press Congress to pass a hate crimes law that both responds to criminal violations of LGBT Americans' civil rights and includes clear protections for free speech and association, and we will also push for federal legislation ending employment discrimination based on sexual orientation or gender identity.

We're also pressing the Obama administration to require federal contractors to agree not to discriminate based on sexual orientation or gender identity. And we're calling on the President to expand President Clinton's executive order banning discrimination in federal employment to include gender identity.

Fighting for Families: The ACLU is also active in the courts challenging efforts to interfere with the ability of gay couples to adopt and foster children.

VICTORY: This past November, the ACLU won a landmark victory in Florida when that state's 30-year-old ban on gay adoption was ruled unconstitutional.

The news was far less promising in Arkansas where the ACLU has filed a lawsuit seeking to strike down a new law that bans *any* unmarried person who lives with a partner — straight or gay — from serving as an adoptive or foster parent. We argue that the law, known as Act 1, violates the federal and state constitutional rights to equal protection and due process.

Under this law, custody of children could be denied to grandparents who have been named as guardians by the parents themselves. Consider the case of one of our clients:

Trina Kelley spent many years of her childhood in state care, and she feels very strongly that children who need homes shouldn't be cut off from loving relatives. But, that's exactly what could happen to her two young daughters if anything were to happen to Trina and her husband, Cary. That's because Cary's mother, Vickie Kelley, and her partner of sixteen years, Sophia Estes, might be excluded from adopting the children because of Act 1 even though it's the express wish of the children's parents. Personal stories such as this bring home the urgent need for you and the ACLU to continue challenging laws that disrupt people's lives in the most profound ways imaginable.

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Protecting the Separation of Church and State: In 2009, the ACLU will be leading efforts to overcome eight years of consistent efforts to intertwine government and religion.

The Bush faith-based initiative placed government in the unconstitutional position of directly funding houses of worship, underwriting religious proselytizing with tax-payer dollars, and providing financial aid for religious discrimination and coercion.

Bush's faith-based initiatives were so broad and sweeping, and cut across so many governmental agencies, that it has been virtually impossible to track just how much of Americans' taxpayer dollars have gone into these unconstitutional and discriminatory programs. The good news is that, because much of this was done by Bush executive orders, it can be undone by Obama executive orders.

Indeed, the ACLU has already developed a detailed set of recommendations calling on the President to explicitly prohibit government-funded religious discrimination and asking him to instruct government agencies to ensure no direct government funds are used to support religious activity, programming, or materials.

In addition, of course, we will continue to pursue individual religious liberty cases in local communities where government intrusion and discrimination in matters of religion impacts people's lives in real and painful ways. For example:

- We successfully stopped school districts in Maryland, Missouri and Louisiana from allowing the unconstitutional distribution of bibles to public school children.
- In Louisiana, the ACLU and the Native American Rights Fund successfully intervened on behalf of a five-year-old Native American child who wears his hair in a neat braid down his back. The child's principal told his mother that he would be required to cut his hair to continue to attend school even though to do so would violate his family's religion.
- We recently filed a federal lawsuit on behalf of a New Jersey prisoner — an ordained Pentecostal minister — denied the right to preach based on the New Jersey State Prison's absolute ban on all preaching by inmates.

In these and dozens of other cases like them, the ACLU is working to protect religious freedom on the ground in communities all across America.

Threats to Reproductive Freedom: In 2008, voters in South Dakota, Colorado, and California stopped ballot measures that would have seriously threatened the ability of women and families to make private health care decisions.

This is encouraging news, but if history has taught us anything, it is this: the anti-choice movement responds to defeats such as those they experienced in the 2008 elections by quickly and dramatically intensifying their state and local efforts to throw obstacles in the path of women seeking to exercise their freedoms. Despite voters sending a strong message that our government should not interfere with personal decisions about our health and families, we fully expect a highly organized mobilization of anti-choice forces in states all across the nation in 2009. The ACLU, with our on-the-ground presence in all 50 states, is fully prepared to meet this intensified assault head-on.

And, at the federal level, we have the daunting task of undoing eight years of damage to reproductive freedom.

In its closing weeks, the Bush administration added to that challenge. The Department of Health and Human Services (HHS) instituted regulations that will allow a broad range of health care providers to withhold vital information and services from patients.

Under this rule, a state might be prevented from enforcing its law requiring emergency rooms to provide emergency care to rape survivors, thus leaving women at risk of not getting the care they need. A clinic that provides family planning services may be hampered in its efforts to discipline a counselor who announces an objection to providing any information about contraception. And a pregnant woman may leave a federally supported health care facility with incomplete information about her options, as the rule provides that facilities need not counsel or refer for all options.

In January, the ACLU went to court to challenge this new HHS regulation because it threatens the ability of women and men to access vital health care services, including birth control and emergency medical care.

We're also urging the Obama administration to act administratively to reverse the HHS rule, and we're pressing our allies in Congress to take legislative action. We'll keep working on all three fronts until we've reversed this dangerous intrusion into people's ability to access health care.

Ending Taxpayer Funding of Abstinence-Only Programs: Our government has now spent more than \$1.5 billion to fund abstinence-only-until-marriage programs that the government's own studies have confirmed as total failures. In 2009, the ACLU will work relentlessly to end federal funding for these programs, which deny young people access to vitally important information for protecting their health, often present gender stereotypes as scientific fact, and discriminate against LGBT students and families. We'll also be working hard to urge the Food and Drug Administration (FDA) to use science, not ideology, in evaluating critical reproductive rights decisions including assessing age restrictions on access to emergency contraception.

FUNDING NEEDS: To help the ACLU defend personal freedom in the face of persistent and far-reaching efforts to advance government-imposed morality will require \$925,000 in 2009 funding from ACLU members across the nation.

Part Four. The ACLU Key States Initiative: Defending Fundamental Freedoms Where They are Most at Risk

As a new political era begins, the ACLU isn't just looking to the Obama White House and America's courts for a renewed commitment to the Constitution and the rule of law. We're looking out across America, strengthening freedom's defenses in communities where civil liberties violations are egregious and resources for protecting fundamental freedoms are scarce. The ACLU has always understood that civil liberties are a product that needs to be delivered locally and has built a nationwide network of affiliates in every state for just that reason.

The real strength of the ACLU lies in the fact that we are there to defend freedom and challenge intolerance in all 50 states. That's why our Key States Initiative is such a crucial element in our 2009 Workplan.

With your help, we intend to significantly increase our ability to help people protect their fundamental freedoms in states where civil liberties violations are most severe and the opportunities for change most promising.

Our nationwide network of affiliates — with an office in every state as well as the District of Columbia and Puerto Rico — allows us to be on the ground wherever and whenever we're needed.

But, especially in places where threats to personal freedom are most egregious, we need to be stronger still. There are over 100 ACLU lawyers, advocates and organizers at work in states like New York and California, and their efforts allow the ACLU to have a deep and lasting impact. The work we accomplish in large, well-resourced states is and will continue to be essential. But, in other parts of the country where civil liberties may not be as widely supported and where the resources are scarce, the impact of intolerance and injustice in people's lives is very real and requires a stronger and more energetic ACLU presence.

In 2009, our Key States Initiative will be bolstering resources in states such as Florida, Texas, New Mexico, Mississippi, Missouri, Montana, and Tennessee. We're already seeing compelling evidence of how the ACLU's efforts to strengthen civil liberties from the ground up can make a powerful difference in people's lives. Take Florida, for example:

Before the Key States Initiative, the ACLU in Florida had 17 paid staff members. Now, it employs 35 people, has opened four new regional offices, and can successfully fight to protect the rights of people all across Florida, including those in the most remote parts of the state.

Without this new capacity, the ACLU of Florida would not have been able to successfully defend the rights of a high school student in the Florida Panhandle whose First Amendment rights were violated when she was forbidden by her school's principal

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to wear any sort of clothing, stickers, buttons, or symbols to show her support for gay students who had been harassed at school.

That victory made a world of difference in those young people's lives. But, it did even more. The case provides a precedent that helps reduce the risk that gay students all across Florida — indeed, all across America — will be left alone in the face of outright discrimination. That is the power of the ACLU and why expanding our reach into areas of the country that we have not been able to really reach until now will help us transform civil liberties not just in those areas but throughout the country.

Our increased capacity to protect personal freedom is already making an impact:

- We stood with immigrant children, winning the release of some and improving conditions for others held with their parents in unacceptably harsh conditions at the Hutto detention center in Taylor, Texas.
- We helped parents in Odessa, Texas stop the teaching of a religious Bible class endorsed by a national group seeking to pass laws mandating Bible curricula in the public schools.
- We won a settlement for Muslim football players driven off of their team at New Mexico State University by the Christian proselytizing of the state university's head coach.
- In Montana, we won a settlement on behalf of Abdul Habeeb, an Iraqi refugee who had been tortured under Saddam Hussein's reign. En route by train to Seattle to start a new job, Habeeb was stopped in Havre, Montana, where Border Patrol officers demanded that he present "special registration" papers not applicable to refugees. The government imprisoned Mr. Habeeb for eight days, humiliating and terrifying him, even though he had done nothing wrong.

The more we can strengthen the ACLU's 50-state presence as a bulwark for defending civil liberties, the more people we can help defend their fundamental freedoms and the stronger we can make our nation's commitment to freedom, justice and equality.

That's why your support for our Key States Initiative is such a critical element in our 2009 Workplan.

FUNDING NEEDS: To help the ACLU move forward with our efforts to strengthen our state-by-state ability to help people protect their rights and fight injustice, we will need ACLU members to provide at least \$945,000 in funding in 2009.

Conclusion

As the 2009 Workplan makes clear, the ACLU is pursuing an aggressive three-part strategy for renewing American freedom.

- With your support, we will build on our recent courtroom victories as ACLU attorneys pursue vitally important court cases throughout the coming year.
- With you by our side, we will also take the lead in urging the Obama administration to vigorously move forward with efforts to restore our lost liberties.
- And, with your foresight and support, we will strengthen freedom's defenses in communities all across America.

Taken together, these three streams of activity constitute the bold plan of action required to make 2009 a year of genuine progress for American freedom.

Your personal leadership and support will be more essential than ever in the year ahead. The progress we need can't be achieved without the vision, energy, and persistence of the ACLU and its over 500,000 active members and supporters.

We look forward to your ongoing support as we work together to create an America we can be proud of, restoring America's reputation in the world and strengthening freedom's defenses in communities all across the country.