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the TORCH

The Newsletter of the American Civil Liberties Union of New Mexico

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EQUAL Pay for EQUAL Service

Richard Collins joined the U.S. Military for the same reasons most people do. He saw it as an opportunity to get ahead in life, to receive an education, to be a part of something bigger than himself—to serve his country.

Richard enlisted after graduating high school in 1997 and served ably and honorably in the U.S. Air Force for nine years. He advanced rapidly, receiving an early promotion to senior airman, winning the Lt. Gen. Leo Marquez Award in 2001 for best weapons loader and ultimately achieving the rank of Staff Sergeant. He loved his job, he loved the military community, and he loved his country. There was only one problem: he also loved his partner.



Former U.S.A.F Staff Sergeant Richard Collins

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ACLU-NM Joins Anti-Bullying Case

Over the past few months we've been barraged by news of one teen suicide after another. Normally, a cluster of teen suicides wouldn't make the national news, except this time they all have something in common: they were victims of school bullies. For being gay, for being different or for no discernible reason at all, other students tormented these young people until they completely and utterly lost hope.

These tragic deaths leave us shocked, saddened and a not a little incredulous. How could it have gotten so bad? What could have been done?

As the nation searched for answers, a picture began to emerge that revealed uncomfortable truths about our schools. It is a picture of schools that deliberately turn a blind eye to the growing culture of violence in their classrooms and hallways.

Unfortunately, you need go no further than Española, New Mexico's secondary schools to see what this looks like.

The bullying and student-on-student violence in Española's Carlos Vigil Middle School and Valley High School is endemic, brutal and largely ignored by school administrators. Students attack and harass other students

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Visit www.aclu-nm.org to learn more about our work!



THE TORCH

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Equal Pay, Ctd.

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In March 2006, Richard was stationed at Cannon Air Force Base near Clovis, New Mexico when two civilian co-workers observed him exchange a kiss with his civilian partner and reported it to his supervisors. At the time, Richard was off-duty, out of uniform and in a car 10 miles off base. No one asked, no one told; but nevertheless Richard's commanding officer informed him a few weeks later that he was under investigation for potential discharge under the military's "Don't Ask, Don't Tell" policy. Less than two months later, he received an honorable—but involuntary—discharge.

Richard was devastated. For nothing more than sharing an affectionate moment in the privacy of his own vehicle, like millions of other couples do without a second thought, Richard suddenly found that his career was over.

"To me, the Military was my family," says Richard. "I was going to make a career of it. I already had half my time in."

But rather than leaving the force with a pension as planned, he was forced to face the transition from Military to civilian life with nothing more than the \$26,000 separation pay given to soldiers who are involuntarily and honorably discharged after more than six years service. Or so he thought. As his supervisor formalized the discharge, Richard learned that he would only receive \$12,351, half the normal separation pay.

"It was like a slap in the face," says Richard, reflecting on the moment he realized that his nine years of service were worth only half that of a straight airman.

In 1991, two years before the "Don't Ask, Don't Tell" law was enacted by congress, the Department of Defense (DoD) adopted a policy that stripped gay and lesbian service members of half their separation pay—not because they failed to perform their duties as soldiers, but simply because of who they love.

"The proponents of the "Don't Ask, Don't Tell" law at least used military readiness and unit cohesion as a fig leaf for their anti-gay

discrimination," said ACLU-NM Managing Attorney Laura Schauer Ives, "But this policy clearly has no other rationale or purpose apart from punishing men and women in our military for being gay."

Richard, upset with this insult heaped upon injury, began looking for legal representation, but was unsuccessful in finding an attorney to take his case. In 2008, a friend suggested that he contact the ACLU.

"When we received Richard's complaint, we knew we had to get involved," said ACLU-NM Executive Director Peter Simonson. "Cutting separation pay for military members discharged under "Don't Ask, Don't Tell" is unfair, unnecessary and blatantly unconstitutional."

The ACLU and the Servicemembers Legal Defense Department contacted the U.S. De-

partment of Defense in November 2009, urging them to revise the separation pay policy to end discrimination against gay and lesbian service members. Because it is an internal policy and not a provision of law required by the "Don't Ask, Don't Tell" statute, the DoD could restore full separation pay to honorably discharged gay and lesbian service members at any time. Despite vocal support from the Commander-in-Chief for ending discrimination against gays and lesbians in the military, the DoD refused to revise their policy.

On November 10th, the ACLU of New Mexico and the national ACLU Lesbian, Gay, Bisexual, Transgender (LGBT) & AIDS Project filed a class action lawsuit in the U.S. Court of Federal Claims on behalf of Richard Collins and all other service members who were deprived of equal separation pay due to their "homosexuality." The ACLU estimates that over 100 former service members will qualify as part of the class of plaintiffs. In the lawsuit, the ACLU seeks elimination of the policy as well as full restoration of lost separation pay with interest.

"After nine years of honorable service, it's not fair that I should be deprived of the same benefits given to other service members who are adjusting to civilian life," said Collins. "I hope that the Defense Department will adjust its policy and show some justice to anyone who has been discharged from the military under 'Don't Ask, Don't Tell.'"



"It was like a slap in the face," says Richard, reflecting on the moment he realized that his nine years of service were worth only half that of a straight airman.

Richard still lives in Clovis with his partner, the same man who he was spotted with four years ago. He attends classes at a local community college and operates a pet grooming business with his partner. Although a lot has changed for Richard over the past four years, one thing remains the same—his desire to serve.

Even after facing sexual orientation discrimination and the humiliation of being drummed

out of the military, Richard is still ready to serve his country in uniform and plans to re-enlist when the military allows gay and lesbian Americans to serve openly. Hopefully, that day will be very soon. In the meantime, the ACLU of New Mexico is working hard to ensure that Richard and other LGBT service members discharged under “Don’t Ask, Don’t Tell” are afforded the benefits they’ve earned and dignity they deserve.

Communications Department Develops Guidebook for Protecting Religious Liberty in Public Schools

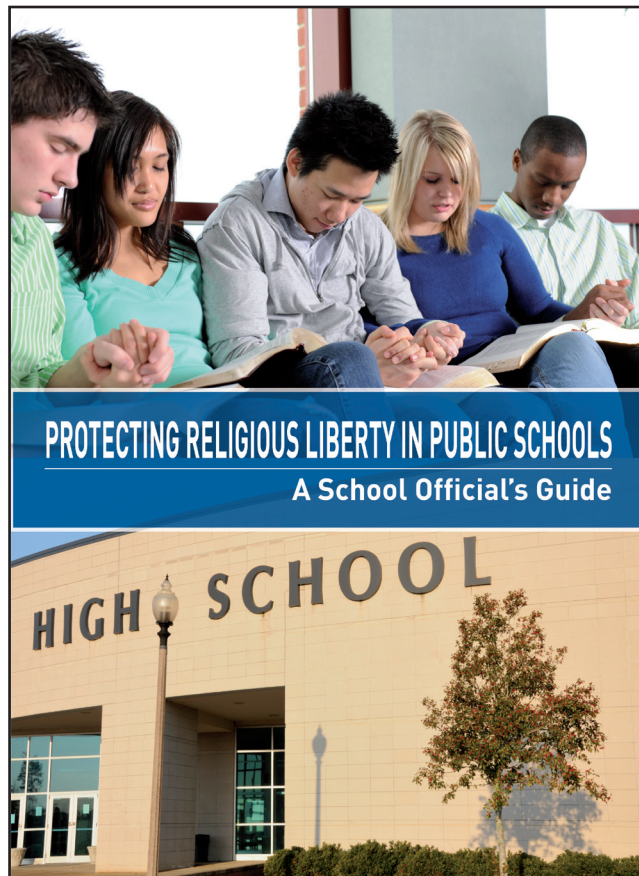
Every school year, the ACLU responds to complaints from parents about perceived violations of their children’s religious freedom in public schools. Religion poses tricky questions in the public school setting. On the one hand, schools must avoid any endorsement of religion and, on the other, they must guarantee students’ private right to practice their faith. Schools must also accommodate students’ free speech rights concerning religion and belief while preventing religion-fueled disputes that substantially disrupt the educational process.

Further compounding the complexity of this issue, we now have over seventy years of case law concerning religion and public schools to navigate. These decisions, ranging from school prayer to religious diet accommodations in the cafeteria, address all the different intricacies in the balancing act between maximizing student religious freedom while minimizing state establishment of religion.

Part of the ACLU’s core mission is to reach out to our community and help educate the public about important civil liberties issues. In light of several violations of church-state separation in various New Mexico school districts this year, we decided to create a comprehensive but easy to use resource for school officials to reference, hopefully reducing violations of the Constitution in the process.

This Fall, the ACLU of New Mexico communications department published a 20-page booklet entitled *Protecting Religious Liberty in Public Schools: A School Official’s Guide*. In early January, after the new semester begins, the ACLU of New Mexico will mail a copy to every public school district superintendent and school principal in New Mexico.

Jonathan Wilkes, Dean of School and Student Life at Albuquerque’s Amy Biehl High School, received an advance copy of *Protecting Religious Liberty in Public Schools*.



“The booklet is remarkable for its clarity and its fairness of perspective,” said Wilkes. “It was fortuitous that “Protecting Religious Liberty” arrived on my desk when it did. I had just been reviewing a request from a group of our students who were seeking permission to form a lunch time Bible study meeting at our public high school, and the ACLU’s booklet was instrumental in helping me understand our school’s Constitutional obligation to these students.”

Some of the topics covered include:

- Prayer in the school;
- School curriculum and religion;
- Religious holidays and symbols;
- Religious expression at school;
- The Pledge of Allegiance; and
- Student religious clubs

We’ve also made the booklet available online in PDF format so parents and students can use it for reference at any time. You can find the booklet on our website in the Student Center under “Resources.”

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Anti-bullying Suit, Ctd.

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on a daily basis; classrooms, hallways and bathrooms are left unsupervised; and—most disturbing of all—the private security guards responsible for maintaining safety and order encourage and participate in the abuse themselves. Despite persistent and increasingly desperate complaints from students and their parents, school administrators have taken no meaningful steps to address this growing problem.

Unable to endure this toxic environment any longer, eight students filed a class action lawsuit against the school district, their private security guards and the Española Police Department for fostering

a dangerous and hostile environment in the city's secondary schools. This case, originally filed by the Kennedy Law Firm in August, was joined by the Rothstein Law Firm and the ACLU of New Mexico in November.

“Española Public Schools is failing to provide a safe educational environment for their students to learn and grow,” said ACLU-NM Co-legal Director Phil Davis. “Their deliberate indifference has allowed bullying to go unchecked in the district’s middle and high schools. No student should have to endure the kind of abuse our clients have suffered; especially not from the very people they are supposed to trust for their protection.”

This case is a classic example of the problems that arise when duties traditionally performed as a public service are privatized for profit. With profit as their primary motive, private corporations hired by schools to provide security often do not give adequate training and oversight to their employees, creating fertile ground for abuse and rights violations.

Española Public Schools currently contracts with private company ProSec Services (owned by a former school board member) to provide guards and security cameras at Carlos Vigil Middle School and Española Valley High School. According to the legal complaint, guards have failed in their duty to supervise the school grounds and prevent student-on-student violence. The complaint also charges individual security guards with the rape of a minor student; selling drugs to students; inciting students to assault other students; battery and false imprisonment.

Some students say that the harassment, intimidation and violence have become so unbearable that they are afraid even to go to school. The parents of one student plaintiff

removed their son completely and enrolled him in a private school to give him respite from daily assaults. Another plaintiff reports that he took to skipping class and hiding on school grounds to avoid his attackers. In both these cases, the parents repeatedly pled in vain with school administration to take action and protect their children.

The only way to deal with bullies is to stand up to them, and the ACLU of New Mexico is determined to continue to help the students in Española’s secondary schools do just that. Students have the right to receive a quality public education without fearing for their safety or having their constitutional rights violated by school employees.

Visit us online at aclu-nm.org to learn more about what you can do to help stop bullying.



ABOVE: Students at Española secondary schools often film fights with their cell phone cameras and share them with their friends on the internet.

In this video clip, two female students fight inside a classroom. No teacher is present.

Some of these videos have been entered into the lawsuit as evidence and may be viewed online at aclu-nm.org.

WARNING: Video clips contain violence and strong language.

Allegation Highlights

- A female security guard at Carlos Vigil Middle School falsely imprisoned, assaulted, and threatened to strip search a thirteen-year-old female special education student for suspicion of possessing a contraband cell phone;
- Security guards at Española Valley High School battered and assaulted students on three separate occasions;
- A male security guard at Valley High School sexually assaulted a fifteen-year-old female special education student;
- Security guards facilitated the use and sale of drugs among students at school;
- A security guard at Carlos Vigil Middle School arranged an assault on a student;
- School staff repeatedly fails to take threats of violence seriously or to discipline violent students;
- The Española Police Department and individual Española Police Officers insulated student perpetrators, refused to investigate student-on-student violence, and ridiculed and bullied victims of violence.

A full account of the specific allegations can be found online at aclu-nm.org.

Executive Director's Notes

Challenges Ahead for Civil Liberties



A Message from Executive Director Peter Simonson

Never will the ACLU's efforts to defend civil rights in New Mexico be more important than in the coming years. Our newly-elected governor has declared her intention to roll back civil liberties in every major area of our work, from the rights of immigrants, to legal recognition of gay and lesbian relationships, to fairness in the criminal justice system.

We may well see new policies denying teenagers' access to abortion services and withdrawing domestic partner benefits from gay and lesbian state employees. Emboldened by the governor's tough-on-immigration rhetoric, state and local police may begin to enforce federal immigration laws and profile motorists on the basis of race at levels we've never seen before. We cannot yet know when these affronts to civil liberties will occur, or what form they will take, but we know that the challenges will surely come. In many of these areas, the ACLU stands alone in defending fundamental rights.

Fortunately, we are well-positioned to meet these new challenges. Over the last year, the ACLU of New Mexico legal program has expanded to four staff and built our legal docket to over 20 cases, spanning an array of issues, from religious freedom, to corrections reform, to the rights of gay men

and lesbians. Just this fall we filed or joined cases challenging:

- The U.S. military policy of denying full separation pay to soldiers discharged under "Don't Ask, Don't Tell";
- Rampant bullying in Española schools; and
- Rape by jail officials in the Grants County jail.

These and the other suits our lawyers are working on will have a positive, tangible impact on the lives of thousands of everyday New Mexicans.

Our Regional Center for Border Rights is completing a report on detention conditions for immigrants incarcerated in New Mexico and is finalizing a system for documenting human and civil rights abuses along the entire span and on both sides of the US-Mexico border.

Our Policy Director is prepared to confront bills diminishing gay and lesbian equality and reproductive freedom, but also has developed legislation to advance civil rights in key areas of corrections and fair treatment of immigrants.

In January, our Communications Specialist will release a new publication to educate public school administrators around the state about students' religious freedom.

Yes, the outcome of November's election poses daunting challenges, but the ACLU of New Mexico has spent the last five years expanding our capacity and preparing for the moment when those tests would come. We're eager to rise to the challenge!



Join the ACLU of New Mexico

Online
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Sign up at:

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Make a difference today!

We're on facebook!



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...and Twitter!



www.twitter.com/aclunm

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community
Stay in
Take the loop
action

Upcoming Events

FEBRUARY

Student Advocacy Day

Monday, February 21
8:00 AM

at the old PERA building
1120 Paseo de Peralta
Santa Fe, NM

Interested high school and university students are invited to participate in the **2011 ACLU-NM Student Advocacy Day** during the New Mexico state legislative session.

Talk to your representatives and urge them to support key civil liberties issues that are important to you. This year we will be focusing on:

- LGBT rights;
- Immigrants' rights; and
- Students' rights.

A pickup van will meet students from Albuquerque at the South Capitol Rail Runner station.

For more information, contact Policy Director Diane Wood at:

dwood@aclu-nm.org

RCBR Dispatch

ACLU-NM Inspects Border Patrol Academy

On December 1st, Regional Center for Border Rights (RCBR) staff participated in a day-long inspection of the U.S. Border Patrol Academy at the Federal Law Enforcement Training Center in Artesia, New Mexico. All incoming Border Patrol recruits receive eight weeks of basic law enforcement skills training at the Artesia facility. The RCBR conducted this visit with other border rights organizations and community leaders as part of an ongoing coalition effort to spur U.S. Customs and Border Protection (CBP) to improve agent training and agency accountability to the communities in which they serve.

RCBR staff works with coalition members to collectively advocate at the local, state and national levels against unconstitutional border enforcement practices and lack of agent oversight and accountability. Over the past decade, the U.S. Border Patrol underwent a massive expansion from less than 9,000 agents to over 20,000, making it the largest arms-bearing branch of the U.S. government, excluding the military. In the course of this unprecedented growth, the U.S. Department of Homeland Security placed far more emphasis on quantity of border enforcement than quality. Relaxation of CBP recruitment standards, inadequate training and lack of field supervision augment the ACLU's concerns about civil rights abuses along the U.S.-Mexico border.

A recent spate of high-profile incidents demonstrates the need for increased

oversight and accountability now more than ever:

- In San Diego in May, border patrol agents beat and tased Anastasio Hernandez Rojas at the San Ysidro Port of entry. Rojas died shortly afterwards.
- In El Paso, Texas, on June 7, 2010, a border patrol agent shot and killed fifteen-year-old Sergio Adrian Hernandez Huereca for allegedly throwing rocks.
- In Arizona, humanitarian group No More Deaths released a report highlighting gross abuse of immigrants held in short-term border patrol custody.
- In southern New Mexico, community residents report harassment and racial profiling at interior checkpoints.

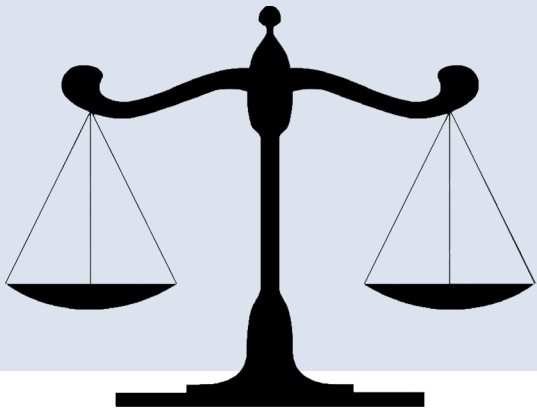
The ACLU's visit to the Border Patrol Academy was an important first step towards understanding the basic training agents receive. The RCBR and the other coalition representatives in attendance will provide CBP with recommendations based on academy department briefings and observations made during the tour. Continued focus on proper training, oversight and accountability along with clear and transparent complaint processes are essential to ensuring that border communities do not become "constitution-free" zones.

- Emily Carey, RCBR Program Coordinator



ABOVE: A U.S. Customs and Border Patrol vehicle patrols the fence along the U.S.-Mexico border.

Legal Highlights



The ACLU-NM Legal Department litigates 30 to 40 cases per year in order to advance and defend civil liberties in the State of New Mexico. You can learn more about our work on our website at <http://aclu-nm.org/tag/legal-advocacy-and-litigation/>.

ACLU-NM Sues Albuquerque for Withholding Public Information

The ACLU of New Mexico filed a lawsuit in December against the City of Albuquerque for its refusal to provide information regarding the implementation of ‘Secure Communities,’ a federal program to screen arrestees for immigration status in Albuquerque jails.

The City of Albuquerque failed to respond to two separate Inspection of Public Records Act (IPRA) requests, one of which was sent in July. Upon receiving an IPRA request, a New Mexico governmental agency is required by law to provide the requested public information within 15 days. Should they fail to do so, they are deemed to have denied the request. The ACLU of New Mexico sent multiple follow-up inquiries in an attempt to obtain the requested documents, but the city has unlawfully withheld information concerning the implementation of Secure Communities in Albuquerque’s Prisoner Transport Center.

The U.S. Department of Homeland Security created the Secure Communities program for the alleged purpose of helping Immigration and Customs Enforcement (ICE) agents to identify serious criminal offenders who are unlawfully present in the United States. Studies show, however, that Secure Communities has largely targeted minor offenders and, in some jurisdictions, has led to higher levels of arrests of people who appear and sound “foreign.”

The ACLU’s concerns about the Secure Communities program extend beyond racial profiling. Despite its misleading moniker, “Secure communities” actually makes our communities less safe. Fearing that their legal status will be questioned, immigrants who are victims of or witnesses to crime are less likely to report incidents to the police. This is especially true in cases involving allegations of domestic violence, where police often arrest both parties when it is unclear who the abuser is.

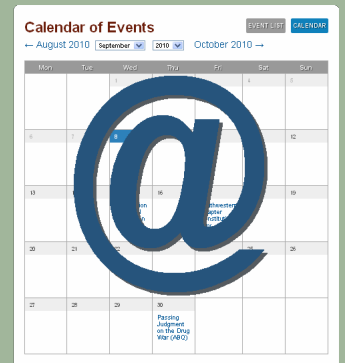
In addition to seeking punitive damages, the lawsuit demands that the city release information regarding Secure Communities, bringing oversight and accountability to a constitutionally dubious program.

Taking Legal Action to Prevent Sexual Abuse in New Mexico Correctional Facilities

The ACLU-NM legal team, along with cooperating attorney Mark Fine, filed suit on behalf of four female inmates who allege that a male nurse employed by the New Mexico Women’s Correctional Facility in Grants, N.M. sexually assaulted them. When the women reported the sexual assaults, the prison retaliated by placing them in solitary confinement.

Sexual assault in New Mexico correctional facilities is a widespread and serious problem. The National Prison Rape Elimination Commission listed two New Mexico facilities among the worst ten in the nation for sexual abuse. The ACLU of New Mexico sued one of those facilities, Albuquerque’s Metropolitan Detention Center (MDC), in 2008 for failing to protect an inmate from rape. Other local law firms currently have several other cases in various stages of litigation that involve allegations of sexual abuse at MDC.

To help address this problem, the ACLU of New Mexico is moving forward on creating legislation that requires New Mexico corrections facilities to adhere to the standards for sexual abuse prevention put forth in the Prison Rape Elimination Act of 2003.



Check out our online calendar for updates and new events at aclu-nm.org

SUPPORT THE ACLU!

The need has never been greater for freedom-loving people to join the ACLU and take a stand against the growing threats to our most cherished liberties.

Become a card-carrying member of the ACLU or renew your membership today!

You can join or renew online at aclu-nm.org or contact the Development Department at (505) 266-5915 ext. 1001 or supportus@aclu-nm.org.



To make a donation online right away, visit www.aclu-nm.org and click the **Donate Now** button. You may also fill out the envelope accompanying this newsletter to mail your contribution.

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A Celebration of Hip Hop Culture and Freedom of Expression

This Fall, the ACLU of New Mexico collaborated with local gallery 516 ARTS to sponsor STREET ARTS, a series of events in Albuquerque celebrating urban art and the First Amendment. Below is a photographic look back at the events the ACLU of New Mexico sponsored as part of this ambitious project.



Reggae band Native Roots performing at the ACLU-NM "ART for Your Rights" benefit concert.



"Defending Artistic Liberty" panelists at 516 ARTS (left to right) Mark Childs, architect; Adriana Ramirez de Arellano, anthropologist; Chip Johnson, photographer and wheat paste muralist. Panelists Reber Boulton, ACLU-NM Co-legal Director and Peter Simonson, ACLU-NM Executive Director not pictured.



Spoken word artist Idris Goodwin at the 2010 ACLU-NM Bill of Rights Celebration



Jazz piano legend Cecil Taylor (left) and renowned poet Amiri Baraka (right), headline performers at "Diction and Contra Diction", an ACLU-sponsored multimedia event at the KiMo.

ACLU Board of Directors Notice of Elections, 2011

If you desire to run for one of the seven open positions on the ACLU-NM Board of Directors, you must send to the ACLU-NM Board Administration Committee:

- A 250-word statement of interest to the ACLU-NM Board Administration Committee to be considered as a Board nominee; or
- A petition signed by 1% of the ACLU-NM membership (currently 4,400 members total), supporting your nomination, along with a 250-word statement of interest.

NOTE: Statements of interest must include a statement of willingness to serve, if elected.

The ACLU-NM office must receive statements of interest/signed petitions by January 31, 2011. Nominees names will be placed on the election ballot and their statements will be published in the next issue of the ACLU-NM's quarterly newsletter, *The Torch*.

Please mail petitions and statements to:
Board Administration Committee c/o ACLU of New Mexico, PO Box 566, Albuquerque, NM 87103. Statements may also be faxed to: (505) 266-5916

Ballots and statements of interest will be mailed to members at least two weeks prior to the election. The election will be held on March 31, 2011.