



# THE DEFENDER

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2003

Newsletter of the Iowa Civil Liberties Union

Vol. 31, No. 3

## Judge Restrains 2,000 Foot Residency Law

A federal judge has temporarily restrained enforcement of Iowa's controversial law forbidding sex offenders from living within 2,000 feet of a school or day care.

The order results from a class action lawsuit brought in July by the Iowa Civil Liberties Union on behalf of ten "John Doe" petitioners. A hearing is scheduled for mid-September to determine if a preliminary injunction should be issued.

Almost unique among the states, Iowa's new law prohibits a sex offender from "residing" (defined as "where a person sleeps") for one or more nights within 2,000 feet of a school or child care facility. There are thousands of registered child care homes in Iowa that meet the definition of a protected facility, meaning that there are entire communities that are completely off limits to former offenders.

"In effect, Iowa has re-instituted the sanction of banishment and has defined small pockets of residential land in Iowa as penal colonies," said ICLU Legal Director Randall Wilson. "We simply cannot allow this law to stand," he added.

The law, which was adopted by the Iowa Legislature against the strenuous objections of the ICLU and its citizen-lobbyists, has been controversial since its inception. Only the state of Alabama has a similar statute and Iowa's is the first state-wide law to be constitutionally challenged. Other states are watching to see what becomes of the Iowa law. The issue has received national attention from the media.

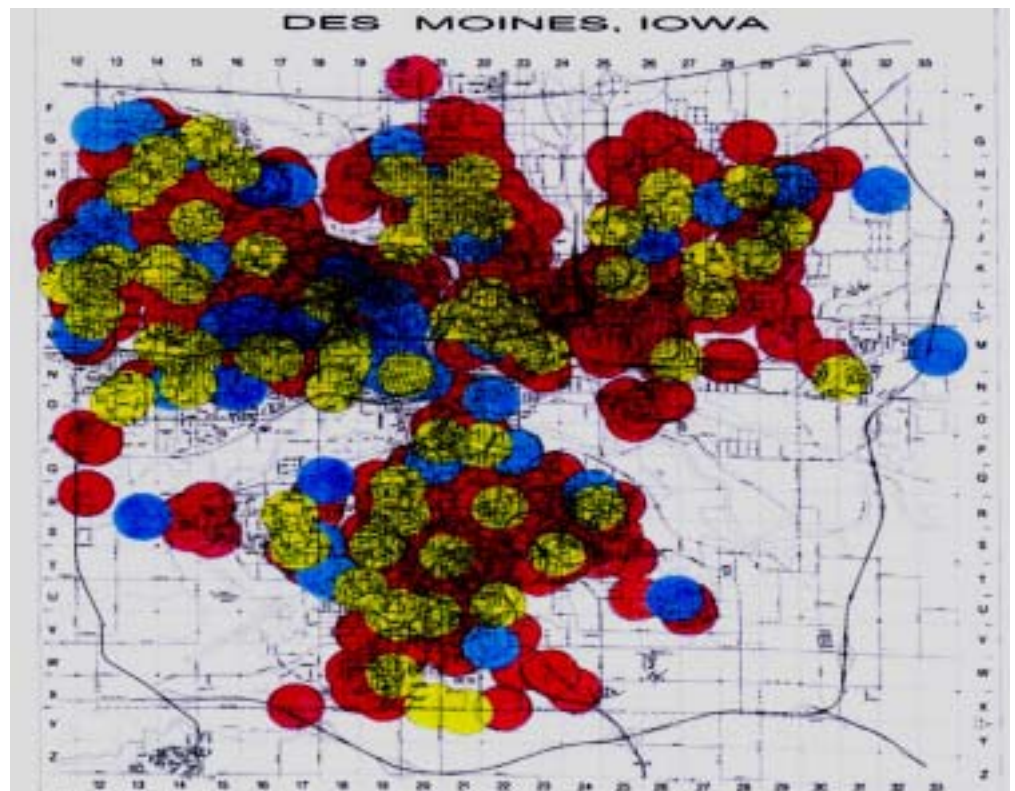
Last spring, an Iowa judge dismissed one of the first prosecutions under the new law, holding that Iowa's sex offender resi-

dency restrictions were unconstitutional on a number of grounds. The State has appealed the Washington County ruling by Judge Lucy Gamon. The ICLU is working to file a friend-of-court brief in that case.

The ICLU argues in the lawsuit that Iowa's statute imposes an unconstitutional punishment in violation of the prohibition against cruel and unusual punishment and double jeopardy. Moreover, the law interferes with the fundamental right of interstate travel, the privilege against self-incrimination, and the right of family privacy and fundamental fairness.

The law has created many hardships—all of which are at this point only *temporarily* halted. Sex offenders have been unable to leave prison on parole or enter community based residential treatment, because to do so would put them too close to schools or day cares. They have been typically unable to reunite with family members. Out of state offenders have been unable to move to Iowa due to the restrictions. Since it is next to impossible to learn the locations of all the registered day care

*Continued on page 5*



*Ex-sex-offenders cannot live anywhere within circles. To see in color visit [www.iowaclu.org](http://www.iowaclu.org)*

## Governor Vetoes Mandatory Reporter Bill: Other News

By Marty Ryan

As the previous *Defender* went to the printer, the Iowa Civil Liberties Union eagerly awaited the results of a vote on a Federal Communications Commission media monopoly rule change, the outcome of the special session of the Iowa General Assembly, and Governor Vilsack's signature or veto of certain bills of civil liberties importance.

FCC: Since that time, the FCC narrowly approved a rule change that now will allow communication giants to control large concentrations of a media market. This action was taken despite hearing opposition from over 750,000 Americans, including 30,000 activists who wrote the FCC after receiving an ACLU alert. The changes, which both Republicans and Democrats in Congress are seriously threatening to overturn, are profound. Among other things, the new rules raise the national audience cap for a single corporation from 35% to 45% and allow corporations in all but the smallest markets to own radio, television, cable and newspaper outlets in the same town. For more on this vital issue, go to: <http://www.mediareform.net>

VETOES: The special session of the Iowa Legislature produced one bill that was important to civil liberties. House File 614, a bill designed to implement the federal Help America Vote Act (HAVA), passed the House during the regular session and Senate during the special session. It was vetoed by the governor on June 30. ICLU opposed this bill because it actually would have restricted the ability of people to vote.

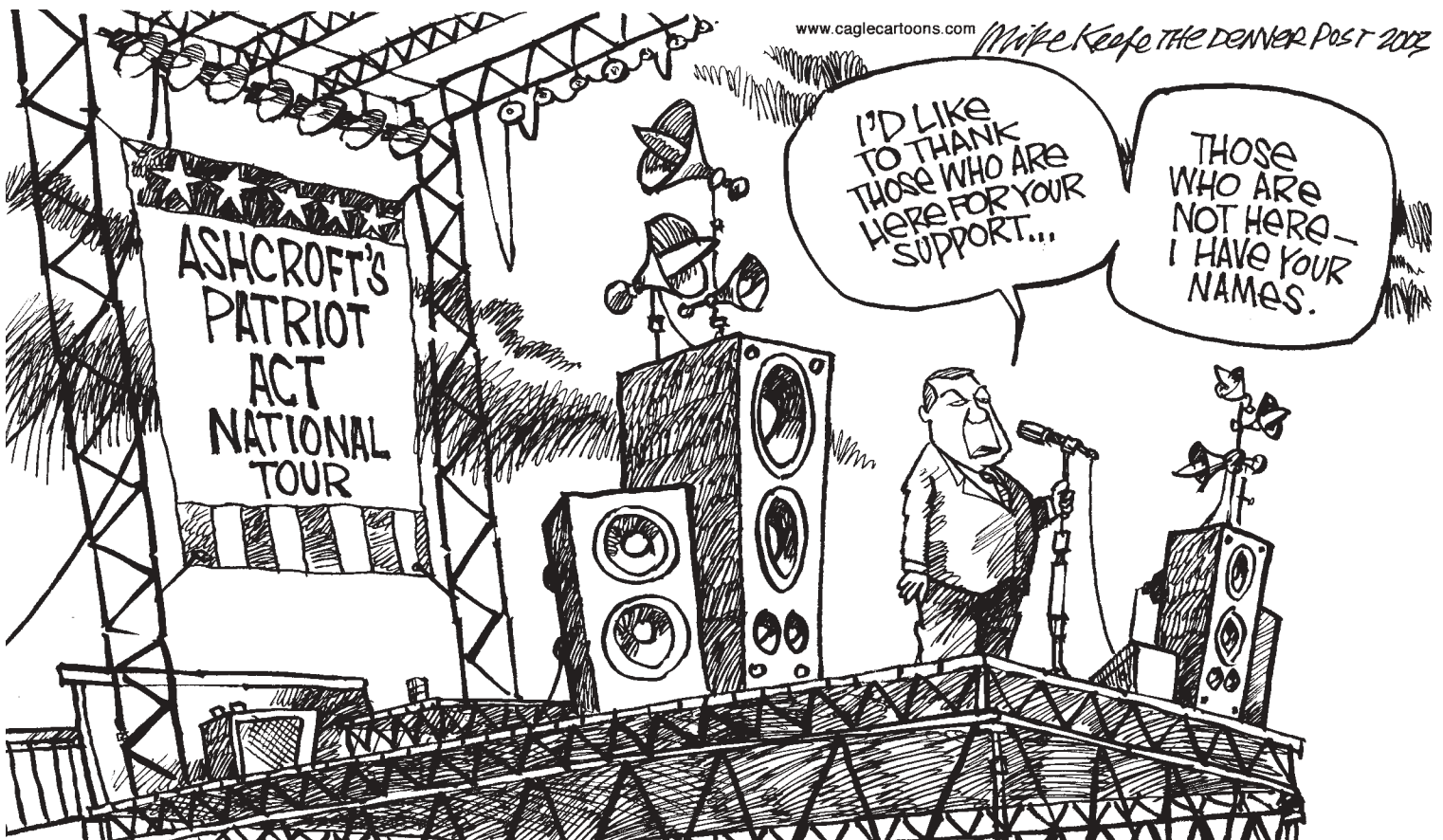
•Also this summer, Senate File 422, a bill incorrectly labeled as "sentencing reform," was signed into law by the governor. Even though he signed the bill, Governor Vilsack had reservations about it. He shares the ICLU's disappointment that the bill did not go as far as necessary to relieve prison overcrowding and fairly equalize the disparity between the penalties of possession of crack versus powder cocaine. The ICLU opposed this bill.

•House File 685, the "Healthy Iowans Tobacco Trust" fund (HITT), contained an appropriation of \$310,000 to the InnerFaith Freedom Initiative (IFI) at the Newton Correctional Facility. The IFI is a controversial, fundamentalist, Christian-based program developed by Chuck Colson (Watergate

conspirator) that caters to those inmates who are willing to accept a very particular version of Jesus Christ as their lord and savior. In return, those inmates are most often considered for early release and receive special privileges not available to other inmates within the facility. The ICLU asked the governor to line-item veto this appropriation, but he chose to allow it to be included.

•The governor also vetoed HF 206. As reported in the most recent *Defender*, HF 206 raises the age at which mandatory reporters are required to report possible sex abuse from age 11 to age 15. Both Planned Parenthood and the ICLU opposed this bill because it would have deterred young people from seeking medical counseling for sex-related issues. The bill also added members of the clergy as mandatory reporters.

\*\*\*\*The Iowa Civil Liberties Union 2003 Voting Record is inserted into this copy of the *Defender*. Please take moment to thank those legislators who represent you and supported our issues, and ask those legislators who represent you that didn't support civil liberties to do a better job of it in the future.\*\*\*\*



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# Local Opposition to the USA PATRIOT Act Grows in Iowa

Expressing growing concern with increasing threats to civil liberties in the U.S., activists around Iowa have been organizing local opposition to the USA PATRIOT Act. ICLU members and allies in Iowa City, Black Hawk County, and Scott County are working on public education campaigns while drafting resolutions against the USA PATRIOT Act to be passed by their City Councils.

Since October 2001, the USA PATRIOT Act, the Homeland Security Act, and several executive orders have granted federal agencies unprecedented access to citizens' personal information without probable cause and have allowed the arrest, detention and deportation of non-citizens without appeal or legal counsel.

In response, city councils and legislatures in 152 cities and three states have already passed resolutions aimed at protecting and restoring civil liberties. No Iowa city has yet joined this continuously growing list of cities. A national Bill of Rights Defense Committee, which maintains a web site at [www.bordc.org](http://www.bordc.org), coordinates the work of many emerging state and local BORDCs across the country. To continue to gain momentum, we need your help! Now is the time to get involved in the campaign in your area.

## Iowa City

Iowa City formed a Bill of Rights Defense Committee in May with members

from the Hawkeye Area Chapter of the Iowa Civil Liberties Union, Iowans for Peace, FAIR! and others. The BORDC's immediate goals include advocating a city resolution affirming local government's respect for residents' constitutional civil liberties and educating the public and legislators about threats to constitutional rights. BORDC members have drafted a proposed resolution for City Council and are currently working to gain City Councilors' support.

Various members of the Iowa City community have been working on resolution related events for almost a year. Hundreds of signatures were submitted to the Iowa City City Council between December 2002 and February 2003 supporting such a resolution. Ben Stone also appeared in front of the Iowa City City Council in December of 2002 asking them to support a pro-civil liberties resolution.

*For more information contact:* Julie Spears, a member of the ICLU involved with the Iowa City Bill of Rights Defense Committee. She can be contacted at either [julie-spears@uiowa.edu](mailto:julie-spears@uiowa.edu) or 319-354-6589.

## Waterloo/Cedar Falls

Waterloo/Cedar Falls Bill of Rights Defense Committee was formed in early August by members of the Black Hawk County Green Party and Cedar Valley Churches United for Peace. The groups' previous combined efforts included protesting the Iraq War in both Cedar Falls and

Washington, DC.

Immediate BORDC plans are to raise public awareness about the PATRIOT Act, collect signatures in opposition to the Act, and to encourage the Waterloo and Cedar Falls City Councils to adopt appropriate resolutions. A rally is planned for early September where the ICLU's Ben Stone will be the featured speaker.

David Larson is a member of the ICLU involved with the Waterloo/Cedar Falls Bill of Rights Defense Committee. He can be reached at [dcl.trueleft@burningmail.com](mailto:dcl.trueleft@burningmail.com) or 319-233-1216.

## Scott County

Scott County anti-PATRIOT Act organizing produced two August public actions last month. A rally in support of libraries' freedoms was held in front of the Davenport Public Library on August 16<sup>th</sup> and in front of the Bettendorf Public Library on August 18<sup>th</sup>. Additional organizing efforts are currently being planned.

Ted Pfeiff is a member of the ICLU involved in Scott County's efforts. He can be contacted at either 563-332-9203 or [tpfeiff@earthlink.net](mailto:tpfeiff@earthlink.net).

**Providing Security at the Price of Civil Liberties?** Ames Public Library, 7:30 PM, September 18. Dr Adrian Bennett taught Asian History at ISU for 30 years. He is currently the Chair of the Board of College for Seniors, and was the coordinator of the popular CFS class, "World Turned Upside Down" last spring.



In less than two days the ICLU organized 80 protestors against Ashcroft's Patriot Act Tour.

## ICLU Organizes Against Ashcroft

On the morning of Tuesday, August 19, Attorney General John Ashcroft announced that he would embark on a nationwide tour to promote the PATRIOT Act. Later that day, the ICLU learned that he would speak to a closed audience of law enforcement officials in Des Moines on Thursday.

Despite the short time frame, the ICLU felt compelled to do what it could to organize a demonstration. In less than 48 hours, using email and word of mouth, the ICLU helped spark a civil liberties demonstration attended by 80 people —the same number as turned out to protest an Ashcroft speech in Philadelphia the day before.

The participation was even more remarkable considering that the *Des Moines Register* decided not to run a planned story that morning announcing the Ashcroft speech and the demonstration.

In a statement released to the media that morning, the ICLU said:

“Today in Des Moines, the Attorney General of the United States is giving yet another speech to a closed audience of law enforcement personnel. Like many in this administration, he has chosen to avoid speaking to the American people. Instead he prefers to confine his speaking to hand-picked audiences, thus creating the illusion of agreement and consensus. Meanwhile,

around the country, from small, conservative towns to big cities, Americans from all over the political spectrum are speaking out against the PATRIOT Act.”

Describing the tour as a “Patriot Act charm offensive,” the ICLU went on to say: “Although the Department of Justice is understandably reluctant to admit it, the real significance of this roadshow is that it points out that the PATRIOT Act is becoming a ‘kitchen table’ issue. Of course Americans want to be safe, but they also want — and deserve — to be free.”

While the demonstration was given only marginal coverage by most of the television stations, other news outlets did a good job of reporting the views of the protesters.

The ICLU’s quick response to the Ashcroft visit has been lauded by the ACLU’s national press office as an example of how protests can be accomplished in other states despite the Attorney General’s effort to keep his tour stops secret until the last minute.

For more on the Iowa visit, go to the ICLU’s website, [www.iowaclu.org](http://www.iowaclu.org). To learn more about the Ashcroft tour and the ACLU’s response, visit the Safe and Free section of the ACLU’s website at [www.aclu.org](http://www.aclu.org)



Activists, labor organizers, and “plain citizens” protest Ashcroft’s tour.

## Iowa Jurists and Lawyers Respond to Federalist Society

In the early 1980s, future Supreme Court Justice Antonin Scalia and others founded The Federalist Society. Over the past 20 years, this well-funded law group has worked effectively to help make the law in America profoundly hostile to civil liberties and civil rights.

In response, a new organization has

come into existence: The American Constitution Society. This national group, founded expressly to help counter the influence of the Federalists, does not have a presence in Iowa (except for a student chapter at the U of I Law School). Some Iowa jurists and lawyers are trying to change that fact.

## Why We Speak Up

*First they came for the Muslims, and I didn't speak up because I wasn't a Muslim.*

*Then they came to detain immigrants indefinitely solely upon the Certification of the Attorney General, and I didn't speak up because I wasn't an immigrant.*

*Then they came to eavesdrop on suspects consulting with their attorneys, and I didn't speak up because I wasn't a suspect.*

*Then they came to prosecute non-citizens before secret military commissions, and I didn't speak up because I wasn't a non-citizen.*

*Then they came to enter homes and offices for unannounced sneak and peek searches, and I didn't speak up because I had nothing to hide.*

*Then they came to reinstate Cointelpro and resume the infiltration and surveillance of domestic religious and political groups, and I didn't speak up because I had stopped participating in any groups.*

*Then they came for anyone who objected to government policy because it aided the terrorists and gave ammunition to America's enemies, and I didn't speak up because..... I didn't speak up.*

*Then they came for me..... and by that time no one was left to speak up.*

— Stephen Rohde, a constitutional lawyer and former President of the ACLU of Southern California, is indebted to the inspiration of Rev. Martin Niemoller (1937).

Patricia Hulting, an ICLU cooperating attorney practicing in Ames, has taken it upon herself to help recruit people to join. Membership, which is not restricted to lawyers and judges, is just \$10 for students, \$25 for public service/interest lawyers and law professors, and \$35 for others. Once enough Iowans become members, a statewide chapter can start here. To learn more, go to the ACS website at: [www.americanconstitutionsociety.org](http://www.americanconstitutionsociety.org)

If interested in joining (which you can do on the website), please be sure to contact Ms. Hulting at 515/232-4641; [pmulhul@aol.com](mailto:pmulhul@aol.com)

2000' Law ,continued from page 1

homes in an area and measure off all distances correctly, the law provided a trap for the unwary. In addition, sex offenders must register their residences, so any sex offender who was unlucky enough to violate the law must inform on himself or face criminal penalties for failing to register. Due to their location, most hospitals and homeless shelters are off limits to offenders.

Not surprisingly, those involved in public protection and rehabilitation are opposed to the law. There are no studies to support the contention that Iowa's residency restrictions would have any significant effect on prevention of sexual abuse of children. Indeed, argues Wilson, Iowa's law will eventually result in a large population of homeless, untrackable sex offenders who are not receiving services, maintaining their treatment and who may be alienated, bitter and

involved in the kinds of activities that may cause them to re-offend. Large numbers of probation officers, law enforcement officials and victim advocates seem to agree that the law is counterproductive and complicates their abilities to track and rehabilitate sexual offenders.

Another problem with the law involves its broad scope. It has always been the practice, says Wilson, for parole officers to require pedophiles to avoid children who fit their victim profile, but many of the offenders covered by Iowa's law are not pedophiles and pose no serious threat to school children. For example, one of the plaintiffs in the ICLU lawsuit was a teenager who had a consensual relationship with an underage girl in Wisconsin. Had the relationship occurred in Iowa, it would

not have even been a crime. Still, the Iowa law applies to him.

The ICLU is fortunate to have cooperating lawyer Phil Mears of Iowa City as lead attorney on the case. Also serving on the case is the ICLU's Randall C. Wilson. The Honorable Robert W. Pratt, U.S. District Judge for the Southern District of Iowa issued the ruling.

To read the brief and ruling in this case, go to the ICLU's website, click on the legal program banner and go to the

"Briefs/Stuff" section.

## Banned Books Week - Reflections on Margaret Sanger and Freedom of Expression

By Skywalker Payne

Less than 90 years ago nowhere in America could a woman find or receive information on birth control. Margaret Sanger, a wife, mother, and nurse left her profession and went to Europe in search of information to give women the tools they needed to limit or space birth and to help end the terrible deaths she witnessed due to bad abortions. When she returned to the U.S. she sought out allies from feminists and suffragists. Sanger wrote, "I came to the realization that I must fight the battle against Comstock's obscenity laws utterly alone. No organization would support me. No group of women would stand beside me in this fight. On all sides, in fact, I was advised to let it alone or suffer the consequences. I decided to test out public opinion on the broad issues of economic and feminist principles."

Using her own money and thought, she published a monthly magazine called, "The Woman Rebel." The magazine discussed the question of contraception and other issues of importance to women and working people and resulted in her receiving over 10,000 requests for contraceptive information in six months. But, in March 1914 she received notice from the New York Post Office that her magazine could not be mailed because it violated the Comstock laws which banned written material of a sexual or contraceptive nature. Medical doctors were even forbidden not only to write about birth control but also to tell women how to prevent conception. Thus, the war that Margaret Sanger began was long and involved exile, trials, bad publicity, imprisonment and destruction of clinics, but she was prepared for anything and everything. "I felt that a right was on my side, and always I had believed that principles eventually win out if you hold fast to them." In less than ten years the strength of her convictions manifested in a world wide movement for birth control, leading to organizations, clinics, national and international conferences. Nevertheless, the Comstock Laws, which have never been repealed, continued to be used to prosecute people providing contraceptive information up until the 1960's.

During the height of its enforcement ( the act was passed in 1873) the Comstock Law banned such works of literature as *Lysistrata*, *The Canterbury Tales*, and *The Arabian Nights* as well as the work of Honore de Balzac, Victor Hugo, Oscar Wilde, and Hemingway among many others. Although the Comstock Law is no longer enforced, threats to freedom of expression continue to arise. For example, here in Iowa, last year the board members of the Kennedy Public Library in Dyersville tried to remove the teen age advice book, [Sari Says: The Real Dirt on Everything from Sex to School](#), by Sari Locker, a recognized youth advice columnist. It is because of such attempts to remove, ban, or censor books that the American Library Association and other organizations began observing Banned Books Week the last week of September over twenty years ago.

The battle for women to have Freedom of Choice, freedom to choose birth control, freedom to choose not to have children, and freedom to choose to abort an unwanted fetus began with the outspoken courage of this one woman. The irony of history is its circularity. For, although women have won the war, the skirmishes continue from those who feel they know what is best for women and society. Most women today take their right to birth control and abortion for granted, just as most Americans believe that the Constitution protects their freedom to express themselves through what they read and how they live their lives without interference. Yet, every year in one state or another, lawmakers attempt to make laws to limit these freedoms which have served as the foundation for this democracy. To prevent the erosion of our freedom of expression is why it is important to observe Banned Books Week. And in these times of attack on a woman's freedom to choose, it is important to remember the strength and force of one woman who stood up for her freedom of expression, and thus empowered the women of a nation.

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## ATTENTION

Every February, the ICLU holds elections for its board of directors. Next year there will be eight vacancies. The ICLU encourages members to bring to our attention civil libertarians who might make good candidates. (The ICLU's Affirmative Action Policy encourages us to seek diversity in candidates.)

If you are interested in running or know of someone who should be contacted about running, please call the executive director at 515/243-3988, ext. 11, by Oct. 1, 2003

**"The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."**

-Justice Louis Brandeis

*Throughout our history, civil liberties have been most imperilled during times of crisis and fear. Unlike most Iowans, ICLU members understand this. Please help make America both SAFE AND FREE by sending a tax-deductible gift to the ICLU Foundation.*

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