ACLU
AMERICAN CIVIL LIBERTIES UNION of MONTANA

American Civil Liberties Union of Montana
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EXHIBIT 10
Exhibit No.
Date 9 JAN 07
Bill No. SB 15

January 9, 2007
Testimony SB 15

Chairman Laslovich and Members of the Committee,

My name is Scott Crichton and I believe SB 15 is no doubt a well intentioned proposed piece of legislation, which unfortunately, from a constitutional perspective appears to be seriously flawed.

This complex issue is not made any easier to understand when you co-mingle the pain of grief and the passions of patriotism. In an effort to focus on the matters within your charge as lawmakers, I encourage you to sift through raw emotions so that you might dispassionately consider how SB 15 fits within the rule of law.

Both the U.S. and Montana Constitutions protect the right to assemble and the right to speak. These rights include speech that may be distasteful and upsetting. The Courts have upheld that the government may enact laws with time, place and manner restrictions, provided that such laws are narrowly tailored to meet specific government interests. Whether you choose to focus on the time restriction, the place restriction, or the manner restriction called for in SB 15, I suspect that an impartial, independent and judicious review would find some if not all of them to be overly broad.

In the past couple of years, Fred Phelps's family and protestors from his Westboro Baptist Church have come to Montana to express their hostilities. When they came to Helena not long ago, rather than disrupt and divide this community, they served as an ecumenical catalyst bringing together people of good will from many faiths. Rather than ban their rights to assemble and speak, the good members of this fine community rallied to drown out their hateful messages with affirmation, songs and prayer. Then last August, when they came to spew their bilious messages, they again were effectively silenced, not by criminalizing their behavior, but by minimizing it. Again, members of the community creatively responded by encircling their miniscule dissident group to shield them by sight and sound on the perimeter of the Baucus ranch.

And in both instances, law enforcement was there to do their job-- to keep the peace while also protecting a fundamental American value-- the right to protest. In both instances, what was being defended was the right of a religious minority to express their political viewpoints on public land.

So in reflection, I want to suggest that it is in the best of our American tradition not to denigrate fallen heroes by eroding the Constitutional rights they fought to protect. Offensive speech is better neutralized through counter-speech than glorified through censorship.

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