

The GUARDIAN

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ACLU REMINDS SCHOOLS ABOUT SEPARATION OF CHURCH AND STATE

Some of the most important work we do is done quietly but with great success, nudging public schools to honor the separation of church and state despite frequent attempts by educators to share their religious beliefs with students.

Outraged or uncomfortable students and parents contact the ACLU of Alabama office, asking for help in explaining to educators why no one – of any religious persuasion -- is allowed to mingle religion and education in tax-supported schools.

ACLU is receiving increasing numbers of complaints from parents and students about blatant endorsements of religion in public schools.

Here are some recent examples:

- ≈ In Jefferson County, students at a high school were punished for leaving a mandatory school assembly and waiting in the lobby while a “motivational speaker” extolled his Christian faith.
- ≈ In Houston County, a program encouraged students at a public elementary school to sell Bible plaques, with large Bibles offered as prizes to the top sellers. In addition, pocket-sized New Testaments were distributed to on school property during school hours.
- ≈ In St. Clair County, religious-themed homework was assigned to Head Start students, and prayers were recited in class.
- ≈ In Morgan County, students who arrived early at an elementary school were instructed to attend prayer meetings, without parental consent, that were conducted by a minister on school property. The prayer meetings began after the school’s principal received complaints about teachers who prayed in class and recruited students to pray also.
- ≈ In Baldwin County, an official school Website contained prayers and Scripture.
- ≈ In Colbert County, junior high school students were instructed to watch a film about the last 18 hours of the life of Jesus. A student who objected to the showing of the film was told to stay in the classroom and be quiet.

“The right of each and every American to practice his or her own religion, or no religion at all, is a fundamental freedom guaranteed by the Bill of Rights. The Constitution’s Framers understood very well that religious liberty can flourish only if the government leaves religion alone.”

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CIVIL RIGHTS BILL CRITICAL TO ALABAMA STALLS IN CONGRESS

Congressional debate over renewal of the Voting Rights Act is a national issue that resonates in Alabama.

The Voting Rights Act of 1965 was signed by President Lyndon B. Johnson after the heroic determination of civil rights activists in Alabama and Mississippi called national attention to the fact that for African Americans in the South, attempting to register to vote could be deadly. Johnson addressed the nation after Bloody Sunday in Selma showed the violence that confronted peaceful protesters, calling for a federal law to ensure that every citizen could have a vote.

The tools contained in the Voting Rights Act are still needed, in Alabama and across the nation, because new efforts to discourage minority participation in elections are cropping up regularly. The American Civil Liberties Union is urging Congress to renew sections of the legislation that would otherwise expire in 2007. Among the co-sponsors of the Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006 are three House members from Alabama, Democrat Artur Davis and Republicans Mike Rogers and Spencer Bachus. Although leaders of both parties hoped to pass the bill, H.R. 9, before the fall elections, House Republican leaders decided June 21 to delay a vote because some Republican lawmakers complained that the bill unfairly singles out nine Southern states



for federal oversight. Senate Judiciary Committee Chairman Arlen Specter said the House delay means the Senate panel is under less pressure to take quick action on the voting rights bill.

A national ACLU campaign, called "Every Voice. Every Vote. Renew the Voting Rights Act," is supported by two reports, The Case for Extending and Amending the Voting Rights Act: Voting Rights Litigation, 1982 - 2006, which documents 293 cases brought by the ACLU in 31 states to protect the right to vote and challenge discrimination in voting, and Promises to Keep: The Impact of the Voting Rights Act in 2006, which looks at the practical effects of the Voting Rights Act. These reports can be found at www.votingrights.org.

Alabama is one of 16 states affected by Section 5 of the act, which requires that any proposed changes in voting laws or procedures receive advance federal approval.

Section 5, called the preclearance section, protects voters in states or counties with histories of voting discrimination. Preclearance is designed to prevent backsliding in areas that have discriminated against minority voters in the past.

Among the members of Congress who have problems with the extension of the Voting Rights Act is Alabama Senator Jeff Sessions, who has said that Section 5 places an unfair burden on the South and that state courts could stop any discrimination against minority voters.

IT'S TIME TO STOP THE ABUSE OF POWER

Since 9/11, the balance of power in our federal government, designed by the framers of the Constitution to be divided equally among the executive, legislative and judicial branches, has swung to the executive branch. In some instances, policies and practices adopted by our government since 9/11 have led to an outright removal of the critical checks and balances in our system, especially with regard to the judiciary. The result has been an alarming erosion of individual freedom and an abandonment of the American value of equal treatment under the law.

We want an America that is safe from terrorist attack, and we also want an America that lives up to its ideals. The past five years, however, have brought report after report of government-sanctioned torture, of people detained without any semblance of due process, and of illegal searches including massive, covert wiretapping campaigns.

It's time to take action.

The American Civil Liberties Union has launched a campaign called "Stop the Abuse of Power" to put a stop to the erosion of our rights. The campaign includes:

≈ Lawsuits to fight illegal spying.

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- ≈ Demands that Congress start doing its job instead of allowing the executive branch to act independently of checks and balances.
 - ≈ Education campaigns to inform the public of what is being lost when our freedoms are attacked from within.
- Your help is needed. Alabamians can participate in the “Stop the Abuse of Power Campaign” campaign this summer. Opportunities to get involved include

hosting house parties to view videos and spark discussion, helping to set up community forums, inviting ACLU speakers to your civic club or community group and writing letters to the editor to create more dialogue in Alabama about these issues. If you are interested in joining our campaign, please contact ACLU of Alabama Executive Director Olivia Turner at (334) 265-2754 ext. 204 or write otaclual@bellsouth.net.

NEW ATTORNEY HIRED

Allison Neal has joined the Alabama affiliate of the American Civil Liberties Union, which for the first time had the funding to make a multi-year offer for the staff attorney position.

Neal, whose interest in civil rights sparked her decision to become a lawyer, is a native of Texas. Her law degree is from Emory University School of Law, and she has a bachelor’s degree in political science from Southern Methodist University.

While at SMU, Neal founded a campus chapter of the ACLU and served on the board of the Dallas ACLU chapter. She has worked for the Lambda Legal Defense and Education Fund in Dallas and the ACLU in Atlanta and New York.

“I have always had a passion for civil rights issues and that is what made me want to be a lawyer,” Neal said.

Neal is working under the title of law fellow until she sits for the Alabama bar and is licensed.

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AMERICANS TELL GOVERNMENT: DON'T SPY ON ME



The shocking news that the National Security Agency has collected data on telephone calls made by millions of Americans demonstrates the recent widespread erosion of personal freedoms in this country.

Nationally, the American Civil Liberties Union is fighting domestic spying and encouraging Americans to take a stand.

“We cannot sit by while the government and the phone companies collude in this massive, illegal and fundamentally un-American invasion of our privacy,”

said ACLU Executive Director Anthony D. Romero. “And unfortunately, we cannot wait for Congress to act. The ACLU is mobilizing its members and supporters nationwide to demand investigations into this shocking breach of trust.”

An ACLU lawsuit against the National Security Agency seeks to end the NSA’s practice of tapping into international telephone conversations without a warrant. The lawsuit, *ACLU v. NSA*, was filed before news accounts showed that the scope of the spying was much larger, with communications

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companies giving the government information on millions of Americans without their knowledge.

The ACLU has also filed complaints with public utility commissions across the nation, demanding action against telephone companies that abuse the trust of their customers.

How can we in Alabama help?

One way is to visit the national ACLU Web site's Action Center, where you can sign a peti-

tion asking AT&T, Verizon and BellSouth to stop sharing personal communications with the National Security Agency and join an effort to call senators to ask them to stop this illegal spying. You also can write to the Federal Communications Commission to express your outrage.

For more details, go to www.aclu.org/dontspy.



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The ACLU of Alabama and the ACLU of Alabama Foundation are separately incorporated nonprofit organizations in Alabama. The ACLU conducts membership outreach and organizing, legislative advocacy and lobbying, and is supported primarily by membership dues. It is the 501(c)4 organization which is tax-exempt, but donations to it are not tax deductible. The ACLU Foundation conducts litigation and public education in support of civil liberties. The Foundation is a 501(c)3 tax-deductible organization, and contributions to it are deductible to the extent allowed by law.

WAYS TO SUPPORT THE ACLU

1. Give the gift of Liberty; buy a friend or family member an ACLU gift membership for just \$20. <http://www.aclualabama.org>. Dues pay for national and local membership.
2. Make a tax-deductible contribution to the ACLU of Alabama Foundation. Your contribution will support our legal and educational work.
3. Sign up for the Action Alert List. Receive legislative alerts by email so you can take action on key civil liberties issues when it matters most at: www.aclu.org. Click on the Action Center button then, click on the icon: Join the ACLU Action Network.

JOIN THE LEGACY CHALLENGE

Robert W. Wilson, an investor from New York, has offered to match bequests to the ACLU Foundation with up to \$10,000 in cash for each new bequest made in 2005 or 2006.

The Legacy Challenge is intended to encourage members to remember the ACLU Foundation with bequest provisions in their wills or trusts or to create life income gifts such as charitable gift annuities, pooled income gifts or charitable remainder trusts. Although most gifts qualify for matching funds, some do not, such as beneficiary designations in life insurance policies or retirement accounts.

Interested in participating in the Legacy Challenge? Call Olivia Turner, Executive Director of the ACLU of Alabama, at (334) 265-2754, Ext. 204.

AMERICAN CIVIL LIBERTIES UNION OF ALABAMA

LEGAL DOCKET

SPRING 2006

(These are pending or recently completed cases. The most recent information is in bold.)

PRIVACY

Williams v. Attorney General of Alabama:

Acting on behalf of six individuals, the ACLU of Alabama and the National ACLU filed a challenge to a state law, Ala. Code § 13A-12-200.2(a), which prohibits as obscene the sale, production, or distribution of “any device designed or marketed as helpful primarily for the stimulation of human genital organs.” The ACLU argued that the statute is facially unconstitutional and unconstitutional as applied to the plaintiffs — consumers and vendors of sexual devices — because the law is an unwarranted governmental intrusion into private practices. The trial court ruled in favor of the plaintiffs on their facial challenge, holding that there was no rational basis for the law, but did not reach the as-applied challenge.

The Eleventh Circuit U.S. Court of Appeals reversed, holding that the law was not facially unconstitutional, but remanded the as-applied challenge to the trial court for further consideration. On remand, and following extensive discovery, U.S. District Judge Lynnwood Smith held that the law was unconstitutional as applied to the plaintiffs, and in particular that the law prohibiting the sale of sexual devices was an unwarranted interference with the fundamental right to sexual privacy. The State appealed and in August of 2003, the Court asked the parties to submit additional briefs in light of the United States Supreme Court’s decision in the landmark case, *Lawrence v. Texas*, in which a Texas statute banning homosexual sodomy was struck down. In that case, the Court held that the fundamental right to privacy extends to the right to sexual privacy unrelated to marriage or procreation.

The 11th Circuit, in a 2-1 opinion, ruled against the ACLU. The ACLU filed for a rehearing en banc, which was denied. We then filed a cert petition with the U.S. Supreme Court, which was denied. The 11th Circuit then remanded the case back to the District Court.

We filed for Summary Judgment asking the Court to find, in essence, that: in light of *Lawrence* (even a narrow reading of the case) there is no rational relationship between the ban and a protectable state interest. The Court ruled against us, our first loss before Judge Smith, at the end of February. The gist of the ruling is that the State has a morality-based interest in prohibiting the sale of sex toys separate and apart from the State’s interest in discouraging their use. Our view is that the error in Judge Smith’s analysis was evaluating the issues by reference to sales alone when the statute is aimed at use as well as sales.

We will appeal to the 11th Circuit. Our position is that, post-*Lawrence*, the State cannot make the kinds of judgments implied in the statute, a position which is strengthened because the statute allows the sale of these products for certain, specified (presumably “moral”) uses.

FIRST AMENDMENT

Lake v. Henry:

In September 2001, Mr. Lake, a practicing Muslim, led an Islamic service while incarcerated at St. Clair Correctional Facility. Sparked by a passage in the Quran about repentance and making amends for one's sins, he led a discussion about reparations for African-Americans. He wrote questions and thoughts on a blackboard on the subject of reparations, a subject with particular relevance at the time since U.S. Congressman John Conyers had recently introduced, "The Reparations Study Bill" (H. B. 40). The discussion included references to the United Nations Charter and to other instances in which reparations were found to be necessary and appropriate, namely reparations paid by the German government to survivors of the Holocaust, reparations paid by the U.S. government to Native Americans for a number of abuses and paid to Japanese citizens as compensation for internment during World War II. Mr. Lake urged members of the group to write to the United Nations to request copies of the Universal Declaration of Human Rights.

Lake was subsequently disciplined for "intentionally creating a security, safety or health hazard within a prison facility," for his actions. He was also charged with "creating a security hazard by writing anti-American propaganda on the blackboard during Islamic services, attempting to influence participants in the service." Despite the absence of a disturbance of any kind resulting from the discussion of reparations, Mr. Lake was found guilty of a major disciplinary infraction, received a sentence of twenty days in disciplinary segregation, lost privileges for twenty days and lost incentive time.

Lake challenged the discipline pro se in Federal Court. His case was dismissed. We appealed to the 11th Circuit. One day prior to the hearing the Alabama Attorney General's Office filed a letter with the 11th Circuit conceding that the district judge erred in ignoring the First Amendment claim, and apologizing for misrepresenting the record and facts in their brief.

Oral argument was held in the summer of 2004. The Circuit Court ruled in Plaintiff's favor and remanded all issues to the District Court. An Amended Complaint has been filed.

Tanner Advertising Company v. Fayette Co. GA (amicus):

The 11th Circuit granted rehearing en banc to review an order holding that Tanner Advertising could not challenge Fayette County's sign ordinance in its entirety under the First Amendment's overbreadth doctrine. The District Court had concluded that Tanner had only suffered an injury-in-fact under §1-43 of the ordinance and, therefore, could only challenge that section of the ordinance.

In our brief we argue 1) that a section-specific standing requirement conflicts with the Supreme Court's overbreadth decisions, 2) that a section-specific standing requirement would gut the framework for analyzing overbreadth challenges and empower government entities to immunize objectionable sections of their statutes from constitutional review and 3) that the Supreme Court has already imposed a standing and merit-based limitation on the overbreadth doctrine that strikes the proper balance between social benefits and the expansive remedy.

City of Montgomery v. Zgouvas (amicus):

The Defendant was charged with violating Montgomery city ordinance 125-79 (identical to ALA.CODE §13A-11-8(b)(1)(a)(1975)), which states that an offense is committed “if, with intent to harass, or alarm another person, (a Defendant) communicates with a person, anonymously or otherwise, by telephone, telegraph, mail, or any other form of written or electronic communication, in a manner likely to harass or cause alarm.” The trial court granted the Defendant’s motion to dismiss on the grounds that the ordinance was unconstitutionally vague and broad. The City appealed. In our brief we argue that:

- 1) The statute/ordinance is unconstitutionally overbroad because it seeks to criminalize constitutionally protected speech.
 - Although speech is not protected if it constitutes “fighting words,” those which “by their very utterance inflict injury or tend to incite an immediate breach of peace,” this ordinance criminalizes speech that is only possibly harassing or alarming.
 - The “fighting words” doctrine is adequate to protect members of the public from danger without restricting speech as broadly as this ordinance does.
 - Courts have held that harassing, alarming, disturbing speech is Constitutionally protected: KKK, Nazis, etc.
 - The statute creates a risk that the ordinance will be enforced based on one listener’s subjective reaction to the speech.
 - Although the Alabama Court of Criminal Appeals expanded harassment beyond “fighting words,” to include circumstances where a person is placed in reasonable fear of injury, this ordinance is different because of the lack of proximity involved in the communications prohibited by the ordinance.
- 2) The statute/ordinance is unconstitutionally vague because a person of ordinary intelligence and law enforcement officers cannot readily determine what speech is prohibited.
 - There is no notice to ordinary people of what speech is proscribed. The lack of notice is problematic because it could chill speech through self-censorship.
 - The law enforcement officers do not have guidelines for determining what speech is prohibited, thereby encouraging arbitrary and discriminatory enforcement.
 - The statute provides no objective basis for defining “alarm” or “harass.”

RELIGIOUS FREEDOM

Twarog v. Campbell (Commissioner, Alabama Department of Corrections):

Many, if not most, state custody prisoners must participate in drug rehabilitation programs in order to be eligible for parole, work release, Incentive Good Time and the like. Our case challenges the fact that all of these programs are religiously based. The case was filed last fall.

The defendants filed a motion to dismiss. We responded the first week of March.

This is the second time we have filed suit over this problem. We settled the case favorably the first time, but the State failed to comply with the terms of the settlement.

Knight v. Thompson:

Pro se prisoners filed suit claiming that Alabama Department of Corrections regulations prevented them from practicing the Native American religion. Thereafter, the ACLU of Alabama entered the case seeking to file an amended complaint that requested declaratory and injunctive relief as well as adequate training of correctional officers regarding prisoners' exercise of religious freedom.

After a trial on the merits, the Court granted Plaintiff's relief with the exception of their request for access to sweat lodges and exemption from hair length restrictions. While the sweat lodge and hair length issues were pending appeal, Congress enacted the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). Plaintiffs requested that the matter be remanded for reconsideration in light of the newly enacted federal statute. The request for remand was granted over the State's objection, and the Court heard evidence on the sweat lodge issue in December 2004. As a result of Plaintiffs' evidence at that hearing, the Department of Corrections now permits sacred sweat lodge ceremonies at designated facilities on certain holy days. In light of the current circuit split on the issue of hair length exemptions, Plaintiffs anticipate appealing the summary judgment entered against them on this issue after resolution of various pending motions.

RIGHTS OF GAY MEN AND LESBIANS

Jane Doe v. John Doe:

Ms. Doe is a mother and a lesbian. She had been awarded physical custody of her six-year-old son at the time of her divorce. Ms. Doe, her partner and her son had been living together for three years when her former husband, who had visitation privileges, remarried and sought a change in custody. This is a very common situation and the point at which many parents who are gay and lesbian lose custody of their children. The father had two convictions for domestic violence. His wife had recently tested positive in a court-ordered drug screen for methamphetamine. Nothing was presented to the Court about poor parenting on the part of Jane Doe, only the fact that she was lesbian and had a live-in partner. The court ruled that custody should remain with Jane Doe but only on the condition that her son never see her partner without supervision by the State and that she refrain from speaking with her son about her partner or her lifestyle. The Court determined, however, that the father's wife could have unsupervised visits with the child. The ACLU was contacted after this ruling.

We entered an appearance in the case and filed a motion for reconsideration based on the USSC's ruling in *Lawrence v. Texas*. The motion was denied. In January, Ms. Doe decided not to appeal because her relationship with the father took a turn for the better, and she felt it in her overall best interest to drop the matter.