

High School Senior Allowed to Attend Prom with Her Girlfriend Thanks to ACLU of Alabama

A senior at Lincoln High School in Talladega was recently allowed to attend prom with her girlfriend thanks to the ACLU of Alabama.

Haley Jereczek contacted our office earlier this year after Principal Terry Roller told her that she and her girlfriend would be required to wear dresses for the two to be allowed to attend the prom together. Ms. Jereczek's girlfriend, Maegan Gaston, wished to wear a tuxedo to the formal event.

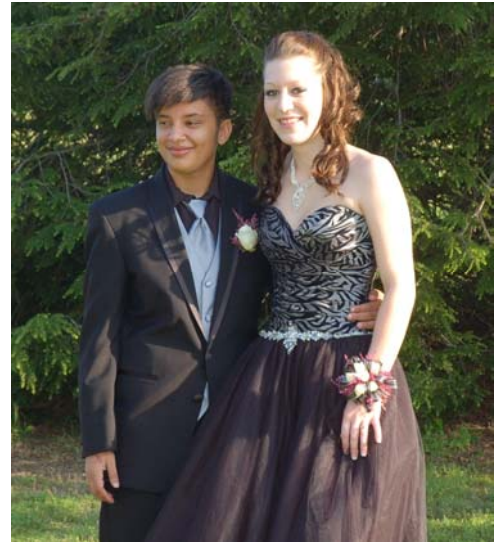
After being contacted by Ms. Jereczek, Allison Neal, ACLU-AL Legal Director, sent a letter to Superintendent Suzanne Lacey explaining why the policy prohibiting girls from wearing tuxedos to the prom is unconstitutional. The policy violated the equality provisions of the 14th Amendment as well as the

First Amendment's guarantee of free expression and association.

"A public school may impose a requirement of proper, even formal, attire for the prom," said Ms. Neal. "To mandate dress requirements, however, based on outdated notions that only boys can wear tuxedos and only girls can wear dresses is illegal."

After we sent the letter to the school district, Ms. Jereczek and Ms. Gaston were allowed to attend the prom wearing the formal outfits of their choice.

"I'm so thankful to the ACLU for making it possible for us to attend prom," Ms. Jereczek said. "We had an amazing night, and Ms. Neal has really inspired me to make a difference." ■



Haley Jereczek (R) and girlfriend Maegan Gaston dressed to attend prom at Lincoln High School in Talladega.

ACLU Files Lawsuit Against ADOC for Illegally Segregating Prisoners with HIV

The American Civil Liberties Union and the ACLU of Alabama filed a federal class action lawsuit in March charging that a state policy requiring prisoners with HIV be segregated from the rest of the state's prison population is discriminatory, illegal and bars prisoners from participating in critical prison programs and jobs.

Filed on behalf of 10 named plaintiffs imprisoned by the Alabama Department of Corrections (ADOC), the lawsuit charges the policy denies all

prisoners with HIV access to rehabilitative and community re-entry programs, and may result in their serving longer sentences. The Department also requires all men with HIV to wear white armbands signifying their assignment to the HIV living area, forcing them to publicly disclose their HIV status in violation of medical ethics and international human rights law. This forced disclosure permanently stigmatizes these

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ACLU Files Lawsuit Against ADOC For Illegally Segregating Prisoners With HIV

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prisoners and makes it much harder for them to get jobs upon their release.

“There is absolutely no legitimate justification for segregating prisoners with HIV from the general prison population,” said Margaret Winter, Associate Director of the ACLU National Prison Project. “It is more than clear that Alabama can meet its obligation to safely incarcerate prisoners and provide them with necessary medical care without requiring them to forfeit their right to be free from disability-based discrimination. Alabama’s policy, which has been rejected by 48 states, is nothing more than a shameful remnant of an earlier era of ignorance and hysteria about HIV.”

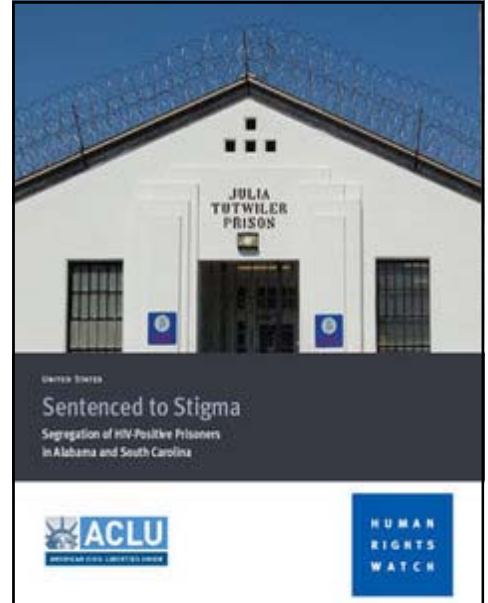
Along with South Carolina, Alabama is one of only two states in the nation that continue to segregate all prisoners with HIV in separate, specially designated housing units. Mississippi ended its segregation policy last year when the ACLU and Human Rights Watch released a report documenting the stigma, harassment and systemic discrimination segregated prisoners with HIV face.

A product of the 1980s and the tidal wave of public fear that gripped the nation over the HIV/AIDS epidemic, the policy is emblematic of an era when widespread popular confusion existed over the methods of HIV transmission, treatment options were virtually nonexistent and HIV was considered a death sentence. It is clear today that HIV cannot be transmitted through casual contact and the development of new classes of antiretroviral medications allows people with HIV to look forward to a normal lifespan.

Nonetheless, corrections officials in Alabama immediately segregate all prisoners who test positive for HIV and house them apart from all other prisoners throughout their time in prison. As a result, prisoners are excluded from programs like the residential substance abuse treatment program, a critical rehabilitation program. While prisoners with HIV are allowed to take substance abuse classes, they are barred from living with other program participants, a key component of the program’s efficacy. For example, Albert Knox, one of the named plaintiffs in the lawsuit and who is expected to be released from the Limestone Correctional Facility in March 2013, was charged with creating a security, safety or health hazard and spent 45 days in a disciplinary segregation cell simply for eating lunch with other participants in the substance abuse program.

Prisoners with HIV in Alabama are also excluded from residential pre-release units where prisoners near the end of their sentence participate in programming aimed at ensuring they successfully transition from prison back into the community, faith-based honor dorms that work to reduce the chances that prisoners recidivate after their release and jobs in the kitchen and elsewhere that enable prisoners to gain marketable work skills and experience. Prisoners with HIV in Alabama are also categorically excluded from the community corrections program, which affords qualified prisoners the opportunity to work in the community during the day.

“The policy of segregating prisoners with HIV not only is discriminatory, but it undermines what should be a goal shared by all Alabamians to save valuable taxpayer dollars by reducing the number of people in



In 2010, ACLU and Human Rights Watch released a report documenting the stigma, harassment and systemic discrimination segregated prisoners with HIV face.

prison across the state,” said Olivia Turner, Executive Director of the ACLU of Alabama. “We should be doing everything we can to provide the best possible rehabilitation opportunities to all prisoners in an effort to ensure that they lead healthy and productive lives upon release and don’t end up being reincarcerated.”

A copy of the lawsuit is available online at: www.aclu.org/hiv-aids-prisoners-rights/henderson-et-al-v-bentley-complaint

The lawsuit, filed in U.S. District Court for the Middle District of Alabama, names Alabama Gov. Robert Bentley, ADOC Commissioner Kim Thomas and a handful of other ADOC officials. ■

ACLU of Alabama Sues Sheriff for Barring ACLU Lawyers from Fayette County Jail

The American Civil Liberties Union of Alabama filed a lawsuit in March against Rodney Ingle, in his official capacity as Sheriff of Fayette County, charging that the ACLU of Alabama and its attorneys have been unconstitutionally deprived of the right to consult with inmates at the Fayette County Jail. The suit was filed after the organization was repeatedly denied access to meet with inmates at the jail.

After a settlement agreement was reached with Sheriff Ingle in April, ACLU attorneys will no longer be banned from visiting inmates at the Fayette County Jail. The settlement agreement provides that ACLU attorneys will be allowed to consult privately with inmates at the jail in accordance with standard attorney-client visitation procedures. Furthermore, Sheriff Ingle agrees that he and his staff will not interfere with the exchange of mail between the ACLU of Alabama and inmates at the Fayette County Jail. The agreement also provides that jail staff will not

discourage inmates from speaking with ACLU representatives nor will staff retaliate against or threaten inmates who wish to speak with the organization.

“Constitutionally protected communication between attorneys and inmates requires an atmosphere free of interference and intimidation,” said Jared Shepherd, ACLU-AL law fellow. “We are happy that Sheriff Ingle recognizes the importance of attorney-client visits, and we look forward to cooperating with the staff at the Fayette County Jail.”

Based on numerous letters from current and former inmates, we have reason to believe that conditions in Fayette County Jail may constitute a violation of the Eighth Amendment’s prohibition against cruel and unusual punishment. We are specifically concerned about poor medical care, malnutrition, use of excessive force, and the monitoring of inmates with mental health issues.

“Since we filed the lawsuit, our office has been flooded with comments and concerns about treatment at the jail,” said Mr. Shepherd. “Now we will be able to respond to these pleas for help and shed some light on the conditions in which inmates are living.”

Shortly after the settlement agreement was reached, ACLU representatives were finally allowed to enter the Fayette County Jail. Mr. Shepherd and Melanie Stewart, a law student externing at our office, met with seven male inmates. The most frequent complaint from the inmates was the failure of the jail staff to properly address medical issues.

We are currently investigating serious allegations of egregious violations of inmates’ constitutional rights across the state. Our organization is protected by the First Amendment to investigate requests for legal assistance, advise inmates of their constitutional rights and meet with prisoners to discuss legal representation. ■

Member Spotlight: Tell Us Why You Are a Card-Carrying Member of the ACLU!



Why did you join the ACLU?
How long have you been a member?
Why are you still a member?

Send your story to
info@aclualabama.org or to

ACLU of Alabama
207 Montgomery St, Ste 910
Montgomery AL 36104

If you want, include a picture of yourself for publication! We may use your story in a future newsletter or on our website.

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2011 Legislative Recap

The 2011 Session of the Alabama Legislature was an attempt at being one of the most brutal assaults on civil liberties in recent memory. Many of our legislators regard bedrock principles of democracy and civil liberties as barely a stumbling block in their rush to push a political agenda that undermines critical constitutional values. Several bills attacking civil liberties were in danger of passing, and we are exploring the possibility of legal action in response to those that did become law.

Throughout this session, we mobilized to meet this challenge, providing testimony at public hearings, lobbying legislators, frequently speaking to members of the media, and speaking at rallies. Here is a brief summary of our 2011 Legislative Docket, highlighting bills that were our greatest concern.

Capital Punishment

Death Penalty Bills: Two proposed bills would have allowed the death penalty for the murder of a judicial system employee or a member of their immediate family. The bills would have also made the threat of harm or violence against a judicial system employee an aggravating circumstance relating to a capital offence. Capital punishment is unfair and arbitrary, and the use of the death penalty should be curtailed, not expanded. These bills did not pass, but similar measures attempting to expand the death penalty will likely be brought before the legislature again next year.

First Amendment

Ten Commandments Bill: This bill would have created a constitutional amendment allowing for the display of the Ten Commandments on public property, including public schools, county courthouses, city halls and other public facilities. The stand-alone display of the Ten Commandments, outside of the context of historical tradition or legitimate secular purpose, is a direct violation of the First Amendment's prohibition against the government endorsing religion. Though this bill did not pass, it was an attempt at religious indoctrination and was insensitive to the wide variety of religious views held by Alabamians.

Anti-International and Anti-Sharia Law Bills: These bills would have prohibited Alabama courts from considering International law, Sharia law, or the legal precepts of other nations or cultures in making judicial decisions. Since the First Amendment already prohibits U.S. courts from adopting any kind of religious law, these bills are unnecessary and only serve to treat one religious group –

Muslims – as second class citizens. In order to be a global leader on human rights, we must uphold our commitment to international laws and standards by not only honoring international laws, but by also refusing to enshrine discrimination and intolerance in U.S. laws. Thankfully, these bills did not pass.

Immigrants' Rights

Arizona-style Anti-Immigration Bills: The Legislature passed, and the Governor signed into law, a copy-cat version of an anti-immigration law adopted in Arizona last year. The law's key provisions sanction discriminatory and unconstitutional practices by police officers, landlords and employers by inviting racial profiling of Latinos and others based on how they look or talk, violating the First Amendment and interfering with federal law. Also, under this law, Alabama public schools will require school children to provide proof of citizenship when enrolling in kindergarten and grade school and require police to demand "papers" from people they stop whom they suspect are not authorized to be in the U.S. The ACLU will file a lawsuit challenging the constitutionality of this law before it goes into effect on September 1.

Reproductive Freedom

Chemical Endangerment Bills: Alabama currently has a statute that makes it a crime to expose a child to a controlled substance. The statute, commonly referred to as the Chemical Endangerment Statute, is intended to protect children from exposure to methamphetamine labs. Two bills introduced would have amended this statute to change the definition of "child" to include a fetus in utero, and thus make pregnant women criminally liable if they struggle with substance abuse problems. These bills would infringe on a woman's fundamental right to continue a pregnancy. Prosecuting pregnant women for drug use during pregnancy drives them out of the health system, making it less likely that they will get the prenatal care they need. These bills did not pass, and if the legislature is truly interested in supporting healthy moms and babies, they should introduce legislation to provide pregnant women with prenatal care, treatment and support to overcome their addiction, not jail time.

20-Week Abortion Ban Bill: The Legislature passed a bill that will ban most abortions after 20 weeks of pregnancy, regardless of fetal viability. This bill fails to contain a real health exception, allowing abortions only when necessary to either save a woman's life or to pre-

2011 Legislative Recap



Law Fellow Jared Shepherd (R) speaks to a crowd outside the Alabama State House at a rally in opposition of HB 56.

vent severe and irreversible damage to her physical bodily functions. Under this bill, rape and incest victims and women whose pregnancies go awry with a serious fetal anomaly will be forced to carry their pregnancies to term. It is extremely callous for politicians to impose one rule on every woman, regardless of the circumstances of her pregnancy, and women should not be denied basic health care or the ability to make the best decision for her and her family because some politicians disagree with her decision.

“Conscience Refusal” Bills: Several bills would have allowed health care providers to decline to perform health care services that violate their conscience, including abortion care. Refusals to provide health care that are motivated by religious, moral, or ethical principles threaten the public’s access to health care and jeopardizes health, particularly in small towns and rural areas where medical services are already limited. Though these bills did not pass this session, they may be introduced again next year.

Personhood Bills: Several bills introduced would have defined the term “persons” to include fertilized eggs, thus granting them legal rights. These bills, part of a national strategy to overturn the core principles of *Roe v. Wade*, could ban all abortions and many common and life-saving medical treatments, including certain forms of birth control and treatments for infertility and ectopic pregnancies (non-viable tubal pregnancies that can kill a woman if left untreated). Also, giving legal rights to fertilized eggs could impact thousands of laws, from when property rights are granted, to inheritance rights, to who can file a lawsuit. One of these personhood bills came very close to passing, and similar measures will likely be introduced again next year.

Abortion Coverage Prohibition Bills: Several bills were introduced that would have prohibited insurance companies from providing abortion coverage. It is wrong to deny women and families the opportunity to purchase insurance they feel they need just because some politicians are opposed to it. Abortion is a legal medical procedure and is part of basic health care for women and

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2011 Legislative Recap

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should be part of comprehensive insurance plans. Medical decisions should be made by a woman and her doctor, not politicians. Thankfully, these bills did not pass.

Medical Abortion Bill: This bill would have banned the standard treatment – a drug called methotrexate – to perform a medication abortion to end an ectopic pregnancy (non-viable tubal pregnancies that can kill a woman if left untreated). Under this bill, even when a woman’s doctor knew that methotrexate was the best treatment for the woman’s health, she would be forced to undergo unnecessary and invasive surgery to end an ectopic pregnancy. Additionally, the bill would have required doctors to administer three times as much of another drug, mifepristone, as women need. The only reason to force overmedication is to make abortion care more expensive, which makes the procedure more difficult for many women to obtain. This bill did not pass, though similar measures will likely be introduced next session.

Ultrasound Bill: This bill would have prohibited a woman from obtaining an abortion unless she first had an ultrasound, was shown the ultrasound image and listened to her doctor describe the image in detail. Since

Alabama law already requires every woman seeking an abortion to be presented with information regarding her pregnancy, including the development of the fetus, the sole purpose of this bill appeared to be to try to shame and humiliate a woman into making a decision that is not right for her. It is unbelievably cruel to force a woman who has struggled with this difficult and personal decision to undergo a mandatory viewing and description of her ultrasound. The ultrasound bill did not pass, but legislators may attempt to pass it next year.

Voting Rights

Voter ID Bills: Several bills were introduced to require voters to show a government-issued photo ID in order to cast a ballot. Voting is a fundamental right, not a privilege. There is no credible evidence that in-person impersonation voter fraud is a pervasive problem, and these bills would limit voters’ access to the voting booth and hinder their right to cast a ballot. Voter ID laws have a disproportionate and unfair impact on low-income individuals, racial and ethnic minority voters, senior citizens, voters with disabilities and others who do not have a government-issued ID or the money to get one. One of these voter ID bills did pass during this session. ■

2011 ACLU-AL BOARD ELECTION NOTICE

The Board of Directors of the ACLU of Alabama, has an election schedule as follows: Directors will be elected by the ACLU-AL membership. A slate, including candidates nominated by the Board and candidates nominated by petition, will be sent to the membership by July 13. Further instructions will be included in the ballot. Ballots postmarked no later than July 30 will be counted. Election results will be certified by the Secretary of the Board at the next meeting of the Board on September 17. The results will be reported in the 1st issue of the newsletter following that meeting.

If you are interested in serving on the Board or want to nominate someone for the Board, please submit the following by July 9: a petition signed by twenty-five (25) members of the affiliate, a written statement of the candidate’s willingness to serve and a short biographical sketch. Mail the information to: Nominations Committee, ACLU of Alabama, 207 Montgomery Street, Suite 910, Montgomery, AL 36104. Board member qualifications and responsibilities are listed below.

For more information, contact Olivia Turner, Executive Director, at 334-265-2754 ext. 204 or oturner@aclualabama.org.

BOARD OF DIRECTORS RESPONSIBILITIES

1. Membership in the ACLU or willingness to join.
2. Regular attendance at Board meetings. (The Board meets four times a year. Meetings are typically on Saturdays and last approximately three hours. Meetings are generally held in Birmingham or Montgomery, although the Board may occasionally meet in other cities.)
3. Participate in policy determination and administrative oversight of the organization.
4. Participate on at least one Board Committee.
5. Participate in resource development which includes supporting the organization within one’s means, raising funds for the Bill of Rights Campaign and assisting with membership recruitment.

Whatever his status under the immigration laws, an alien is surely a 'person'....Aliens, even aliens whose presence in this country is unlawful, have long been recognized as 'persons' guaranteed due process of law by the Fifth and Fourteenth Amendments.

-- U.S. Supreme Court Justice William J. Brennan (*Plyler v. Doe*, 1982)

Why does the ACLU defend immigrants' rights?

Immigration, along with the American ideals of equality, fairness and social tolerance have built the political, economic and cultural strength of this country from colonial days to the present. Yet, virtually every group of newcomers—from the Germans, Irish and Italians to the Chinese and others—has faced discrimination, hostility and stereotyping from those already here. The tensions between today's newest immigrants and established residents are much the same.

Regardless of one's views on U.S. immigration policy, the fundamental civil liberties protections of the Bill of Rights and the U.S. Constitution protect every person in this country—including non-citizens. The government can legitimately control its borders, but the power to exclude and deport people must be exercised fairly and humanely, subject to our constitutional norms and consistent with U.S. obligations under international law.

By eroding the fundamental rights of immigrants, state-based immigration laws threaten the rights of all Americans, while further reinforcing the second class status of non-citizens. The ACLU fights the very notion of a two-tiered system of law and justice and carries on our historic commitment to ensure that immigrants, like all other persons in this country, receive the Constitutional protections to which they are entitled.

What will House Bill 56, the “Alabama Taxpayer and Citizen Protection Act,” really do?

HB 56 is an extraordinary attempt to regulate every aspect of the lives of immigrants in Alabama. It will deter their children from going to school and interfere with their ability to rent housing, earn a living, and enter into contracts. It also requires state and local police officers to detain and investigate people based on a “suspicion” that they may be undocumented immigrants, thus inviting racial profiling and raising concerns about prolonged and erroneous detentions. It creates a range of new immigration-related crimes, with draconian penalties attached. It even authorizes the Alabama Department of Homeland Security to hire and maintain its own immigration police force. These and other provisions of HB 56 are unconstitutional in multiple respects. Consequently, they threaten to deny immigrants and Alabamans of color their most basic rights.

Here is a look at some of the most troubling provisions of this law:

Interfering with children's access to education

HB 56 provides that every public elementary and secondary school in Alabama shall determine whether the student enrolling was born outside the jurisdiction of the United States or is the child of an undocumented immigrant not lawfully present in the United States. At enrollment, each child must produce his or her birth certificate. If a child's birth certificate is unavailable or shows that the child was born outside the U.S., the child must prove his or her citizenship or immigration status; otherwise, the school shall presume that the student is an undocumented immigrant. Schools must maintain this information and periodically report to the state legislature how many undocumented children are in school.

Though ostensibly aimed at data collection, HB 56's inevitable effect will be to intimidate parents and to drive children—including U.S. citizen children with immigrant parents—out of school. The U.S. Supreme Court has held that a state cannot bar children from primary education based on their immigration status.

Further, HB 56 restricts educational access by prohibiting undocumented immigrants from enrolling in or attending any public postsecondary education institution in this state or receiving any educational benefits such as financial aid. Even lawful immigrant students may lose or be denied enrollment or financial aid if the educational institution seeks verification of their status and the federal government's response is delayed, erroneous or inconclusive.

Preventing people from renting, entering into contracts, and earning a living

HB 56 provides that no Alabama state court shall enforce any contract between a party and an undocumented immigrant, if the party had knowledge that the immigrant was undocumented. Though there are limited exceptions to this rule, the effect will be rampant exploitation of immigrants.

HB 56 makes it a felony for an undocumented immigrant to apply for a license plate, a driver's license, a nondriver identification card, a business license, etc. Lawful immigrants will face serious administrative hurdles and delays under this section, and potentially wrongful denials.

HB 56 also makes it a crime to enter into a rental agreement with an undocumented immigrant, if the landlord knows or recklessly disregards the fact that the immigrant is undocumented. Further, it will be a crime for an undocumented immigrant to knowingly apply for work, solicit work, or perform work.

Requiring law enforcement officers to verify immigration status

HB 56 requires that, upon any lawful stop or detention by a law enforcement officer, the officer must verify the person's immigration status if the officer has "reasonable suspicion" that the person is undocumented. The law does not explain what constitutes "reasonable suspicion" that a person is undocumented, and this vague formulation is an open invitation to racial profiling. Alabamans stopped by police for any reason will be subjected to interrogation and extended detention unless they carry documents which give rise to a "presumption" of citizenship.

Creating new immigration-related state crimes

HB 56 creates new state-law crimes related to immigration. The law criminalizes "harboring" and "transporting" any undocumented immigrant while knowing or recklessly disregarding the fact that the immigrant is undocumented. The crime of "transporting" includes activities such as driving someone to a doctor, to church, to a grocery store, to a legal service provider, to a homeless shelter, or to a soup kitchen. The crime of "harboring" may include providing temporary housing or allowing undocumented immigrants to attend church services. Felony violations of this section may be punishable by at least 1 year and up to 10 years in prison, and fines of up to \$15,000.

Creating a state immigration police force

HB 56 authorizes the Alabama Department of Homeland Security to hire and maintain state law enforcement officers whose job is not to engage in routine law enforcement activity, but instead to perform "investigative and analytical duties necessary to carry out the enforcement" of this law. The result is the creation of a new state immigration police force, supplanting the federal Immigration and Customs Enforcement. This is constitutionally impermissible: state law enforcement officers have no general authority to enforce federal civil immigration law.

What will the ACLU do about HB 56?

The ACLU and the ACLU of Alabama, along with Southern Poverty Law Center, the National Immigration Law Center and others, will bring a lawsuit challenging the constitutionality of HB 56 before it goes into effect on September 1.

ACLU-AL Legal Docket

(Most recent information is in bold.)

RACIAL JUSTICE

Lee v. Macon County Board of Education (Pickens County Board of Education)

The ACLU of Alabama joined the long-running school desegregation case, *Lee v. Macon County Board of Education (Pickens County Board of Education)*, in July 2006. Our immediate goal was to prevent the Pickens County School Board from closing the Carrollton Unit School, a majority African American school which the school board had neglected for years while allocating disproportionate resources to a predominantly white school in another part of the county. Closing the Carrollton school, the only school in the Carrollton community, would have resulted in more harm to black students in the county than white students, thereby violating the federal court's holdings in the case. Plaintiffs were successful in obtaining a court order requiring the school board to keep grades K-6 at Carrollton open and to work to make the school a success. It was not possible to keep the higher grades open as the buildings that housed those students had been neglected to the point that they were uninhabitable and beyond repair. We are monitoring to ensure that the Board complies with the Court's order to keep the school open and work to make it a success.

In addition, we are working to stop the race-based discrimination in the allocation of resources in Pickens County schools so that African American students have the same opportunity that white students do to graduate from high school, earn the more valuable diplomas and attend college or technical school. The

disparity in educational opportunity between black and white students in the system is dramatic and has led to African American students dropping out at higher rates, graduating with less meaningful diplomas and scoring lower on standardized tests.

Here are a few examples of the problems: The predominantly white high school in Pickens County offers the entirety of college preparatory classes; the black high school does not. Students at the white high school are offered remedial and enrichment classes not available for students at the all-black high school. Students at the black high school are offered electives such as Introduction to Cosmetology, Nail Care and Application and Fashion Decisions; students at the white high school are offered Journalism, Calculus, Latin and Shakespearean Drama. Black students across the system are offered less meaningful vocational courses than white students, and black students at the predominantly white high school are more likely to be "tracked" into the less challenging science and math courses. Teachers at the black high school are more likely to be untenured and less qualified than teachers at the predominantly white high school.

The Pickens County Board of Education wants the Federal Court to declare that the Pickens County school system is "unitary" and to end court oversight of *Lee v. Macon County Board of Education (Pickens County Board of Education)*. Such a declara-



tion by the Court would mean the Court determined that the Pickens County Board of Education had remedied the vestiges of racial segregation in Pickens County schools. Our goal is to obtain fairness for racial minority students in Pickens County schools in course offerings, extracurricular activities, discipline, college scholarship opportunities, drop-out rates and other quality of education issues through negotiating a court-ordered agreement in *Lee v. Macon County Board of Education (Pickens County Board of Education)*.

Judge Karon Bowdre, a federal judge in the Northern District, has approved the plan of the parties to work toward a new settlement or consent decree in the case. That work is ongoing.

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ACLU-AL Legal Docket

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PRISONERS' RIGHTS

Knight v. Allen

Native American prisoners filed suit on their own behalf claiming that the Alabama Department of Corrections regulations prevented them from practicing their religion. 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.

The Court granted Plaintiffs' 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. As a result, the Department of Corrections now permits sacred sweat lodge ceremonies at designated facilities on certain holy days. Summary judgment was entered against Plaintiffs on the issue of hair length exemptions, and we appealed.

Regarding hair length, the Eleventh Circuit questioned whether the Department's restrictions were the least restrictive means of furthering the state's compelling interest in security within the prisons. The Court also noted that the factual record of the case is over a decade old and that much has likely changed in the prison system since that time. Accordingly, the Court remanded the matter for trial. **This case went to trial in January 2009. We are**

currently awaiting the decision of the District Court.

In April 2011, the Department of Justice filed a Statement of Interest in this case. The statement expressed the United States' interest in ensuring that RLUIPA's requirements are vigorously and uniformly enforced. The DOJ's statement also expresses that Defendant's policy requiring male inmates to cut their hair short does not conform with either the proper interpretation of RLUIPA or reasonable regulations necessary for prisoner safety and hygiene, and therefore Defendant's should formulate a new hair length policy.

Monroe v. Allen

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. Due to their refusal to participate in religious-themed rehabilitation, our clients have been denied lower security classifications, denied the opportunity to receive "incentive packages" of food and personal hygiene items, refused admittance to honors dorms, refused parole and job placement, and denied the opportunity to participate in work release and other community placement programs. The case was filed in the fall of 2005. (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.)

In August of 2009, Plaintiffs and Defendants submitted a joint submission of evidence. In September

2009, the Plaintiffs filed a memo in support of their request for entry of judgment in this action. Defendant filed a reply brief in October 2009. Plaintiff filed a response in October 2009. **We are awaiting the final decision of the district court.**

ACLU of Alabama v. Ingle

In an attempt to learn about jail conditions and treatment of inmates across the state, ACLU staff has visited several county jails to interview inmates. Sheriffs and other staff at these facilities put up time-consuming and unconstitutional hurdles to our visits.

The main purpose of seeking access to prisoners is to learn about potential unconstitutional and inhumane living conditions and treatment of prisoners in county jails. Reported problems include lack of adequate medical care, nutrition, exercise, sanitation and access to fresh air. Another potential problem is the unconstitutional and abusive treatment of pregnant women, including denial of adequate medical care and possible use of shackling during childbirth.

Our goal is to gain access to county jail prisoners who seek our help and to ensure that sheriffs are allowed to restrict access only as needed to maintain security. We want to establish this right for our organization, other human rights groups and private attorneys. The denial of access to prisoners is a violation of the ACLU's First Amendment right to consult with inmates and discuss with them the possibility of legal representation and litigation.

In March 2011, we filed suit against Rodney Ingle, in his official capacity as Sheriff of Fayette County, charging that the

ACLU-AL Legal Docket

ACLU of Alabama and our attorneys have been unconstitutionally deprived of our right to consult with inmates at the Fayette County Jail. A settlement agreement was reached in April which provides that ACLU attorneys will be allowed to consult privately with inmates at the jail in accordance with standard attorney-client visitations procedures. The agreement also provides that jail staff will not interfere with the exchange of mail between the ACLU and inmates, discourage inmates from speaking with ACLU representatives, or retaliate against or threaten inmates who wish to speak to ACLU representatives.

WOMEN'S RIGHTS

Boswell v. GumBayTay

Ms. Boswell moved into a rental house in Montgomery in the fall of 2006. The property agent, Mr. GumBayTay, told her he would reduce her monthly rent in exchange for sex, but Ms. Boswell made it clear her relationship with him would not be sexual. Mr. GumBayTay then threatened to evict Ms. Boswell for refusing to acquiesce to his advances. Legal Services Alabama, the ACLU Women's Rights Project and the ACLU-AL, with the assistance of the Fair Housing Center of Central Alabama, filed a complaint charging that the conduct of the rental agent and the property owner violated the federal Fair Housing Act. A petition for injunctive relief was granted in February 2007.

In March 2009, a judge issued a written order granting Plaintiff's motion for civil contempt against GumBayTay for violating the court's Or-

der granting injunctive relief. As a result, Defendants owe Plaintiff, jointly and severally, \$25,000 in actual damages and \$25,000 in punitive damages and GumBayTay owes \$866.39 for actual losses for his violation of the injunction entered against him in the summer of 2007.

We are attempting to recruit attorneys who will take over the remainder of this case which, at this juncture, is strictly about recovery of damages.

In re: Gender Segregation in Public Schools

Several Alabama schools segregate students by gender. A variety of practices are followed including disallowing any contact between boys and girls during the school day, basing classroom instruction in the gender of the students, and having a wider variety of courses available for boys than girls. Our position is that separate is inherently unequal. Our goal is to end these practices through negotiation where possible and litigation when negotiation fails.

In response to our efforts, five school systems have now stopped this practice: Mobile County, Chilton County, Lawrence County, St. Clair County, and Dothan City schools.

In re: Prosecution of Women for Drug Use While Pregnant

For the last few years, District Attorneys in numerous counties around the state have applied a law meant to keep children out of methamphetamine labs to pregnant women struggling with addiction. The position of the ACLU is that this radical expansion of the "chemical endangerment" law and other laws under which pregnant women are being prose-

cuted is unconstitutional, and that good public policy rest on making treatment available for drug-addicted women, not prosecuting them.

We have been monitoring these prosecutions and providing assistance to attorneys representing these defendants for the last few years. We also filed a friend-of-the-court brief in *Kimbrough v. Alabama*, the case of a woman who was prosecuted under the chemical endangerment statute in Franklin County.

HIV/AIDS

Henderson v. Bentley

Through several years of advocacy, which began in 2007, the Alabama Department of Corrections (ADOC) agreed to give HIV-positive prisoners greater access to visitation, educational programs, substance abuse treatment programs, and religious services. Previously, the Department's policy was to deny HIV-positive prisoners access to programs and services offered to the general population of inmates.

Prior to 2007, HIV-positive inmates were barred from or given unequal access to prison jobs, family visiting rooms, dining halls, sports and recreational opportunities, community corrections programs, faith-based programs, and religious services.

Although much was achieved through negotiation with ADOC, there is a great deal left to be done. Some of the serious problems that remain to be

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addressed are: 1) forced segregation of prisoners due solely to their HIV-positive status, 2) loss of medical privacy through forced segregation and other practices, 3) criteria for participation in work release that does not comport with norms used by recognized medical or prison professional bodies, and 4) denial of full access to in-prison jobs and rehabilitation programs. The ACLU and Human Rights Watch published a comprehensive report on this topic in March 2010.

In March 2011, the national ACLU and the ACLU of Alabama filed a federal class action lawsuit in the U.S. District Court for the Middle District of Alabama charging that the ADOC's policy is discriminatory and illegal. The lawsuit also charges that the policy denies all prisoners with HIV access to rehabilitative and community re-entry programs, which may result in their serving longer sentences, and that the forced public disclosure of HIV status is in violation of medical ethics and international human rights law. We filed an amended complaint in May 2011, and we currently await the Defendants answer to our amended complaint.

VOTING RIGHTS

Baker v. Chapman

Plaintiffs Ms. Baker, Ms. Hall, and Ms. McWashington Pruitt each have a felony conviction, and each has been denied the right to vote even though their felonies are not on the list of disqualifying felonies estab-

lished by the Legislature. Our lawsuit sought to block state election administrators from disqualifying any voter whose conviction is not on that list.

The lawsuit also challenged the rights-restoration process. Currently, most individuals can get their right to vote restored after they have 1) finished their sentence, 2) ended all supervised release, including probation or parole, and 3) paid off all financial obligations, including any restitution, court costs and fines. This third requirement discriminates on the basis of wealth.

The Circuit Court granted the Defendant's motion to dismiss on the grounds that two of our plaintiffs lacked standing and the other plaintiffs' claims were not ripe for adjudication. We appealed this ruling to the Court of Civil Appeals. **The Alabama Supreme Court took almost two years to rule and then, without writing an opinion, affirmed the lower court.**

We remain concerned about whether people convicted of felonies which are not disqualifying are registered to vote by local Boards of Registrars and whether those who have lost their rights are given accurate information about how to restore their rights. We continue to do outreach and public education on this issue by distributing informational brochures and speaking to community groups. We also maintain a hotline so that people may call to request information and assistance from us regarding their right to vote.

Shelby County v. Holder

Shelby County sued the United States seeking a declaration by the federal court that two sections of the

Voting Rights Act (VRA) of 1965, Sections 4(b) and 5, are unconstitutional on their face. We have intervened in the case on behalf of the United States, and our goal is to preserve intact these two enforcement provisions of the VRA. We are representing the Alabama NAACP and four voters in Shelby County. The NAACP Legal Defense Fund and the Lawyers Committee have also joined the case representing other defendant-intervenors.

We maintain that Section 5 of the Act, which since 1965 has protected racial and language minorities' access to voting across the South and the nation, should remain in place. Section 5 requires certain jurisdictions like Shelby County that have a long history of racial discrimination in voting to obtain advance approval from the federal government before changing their election laws. The Voting Rights Act is arguably the most important civil rights legislation in American history. With that act, the promise of the Fifteenth Amendment, purporting to give Americans the right to vote regardless of "race, color, or previous condition of servitude," became a law, and African Americans finally had the right to vote.

The ACLU has submitted a motion for summary judgment and is currently waiting on the court's ruling.

DEATH PENALTY

Land v. Allen

Michael Jeffrey Land, on death row since 1994, was scheduled to be executed in August 2010. In May, Mr. Land's attorneys requested that the ADOC provide them with any and all records in its possession related to

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his time in prison, arguing that the records would be essential in the preparation of a comprehensive clemency request.

Clemency is a deeply-rooted tradition in American law, an important safeguard against miscarriages of justice, and the right to due process in state clemency proceedings is guaranteed by the U.S. Constitution. A person seeking clemency has full discretion in determining the content of their clemency petition and may choose to include any information that might be deemed useful to the Governor's clemency decision.

The records would show that Mr. Land had been an exemplary prisoner since arriving on death row and that he had not had a single documented disciplinary incident during his 16 years in prison. The records would also show that Mr. Land completed college courses and earned an associate's degree while incarcerated and that he had been an exemplary worker on death row.

Corrections officials refused to provide Mr. Land with his prison records because they are "not considered a public record" and took the position that Mr. Land would be provided only those documents prisoners would be given during "the normal course of business during his incarceration within the Department of Corrections."

The ACLU of Alabama filed a lawsuit seeking access to Mr. Land's prison file. The ADOC turned over the record the next day. Despite our success in this case, Mr. Land's execution was carried out on August 12, 2010.

FREEDOM OF RELIGION AND BELIEF

In re: Separation of Church and State in Public Facilities

Here are some examples of how we were able to administratively resolve violations of the separation of church and state in public schools and other public facilities in Alabama:

- Prayer was being led by faculty members and invited clergy at official elementary school functions in Washington County. We sent a letter to the superintendent who responded quickly with a commitment that such activities would cease.
- Prayers were being recited over the intercom system, flyers with bible verses were posted on school walls, and speakers at assemblies promoted church programs at a high school in Calhoun County. When a student notified the superintendent that he had contacted the ACLU regarding these problems, she promptly issued a statement say-

ing that the prayers would cease. We then sent a letter asking that the school also remove the flyers and stop having speakers that promote church programs. We received word that all objectionable activities have stopped.

- An employee at the Alabama Department of Human Resources was sending emails containing a scriptural quotation and religious messaging. We sent a letter to DHR explaining the problem with these emails, and the emails have ceased.

FREE SPEECH

City of Huntsville v. Turner

Casey Turner had a tag on his bicycle that read "Fuck OPEC." Mr. Turner was issued a citation for the display of an obscene sticker in violation of a statute that made it unlawful for any person to display in public any bumper sticker, sign or writing which depicts obscene language descriptive of sexual or excretory activities. We defended Mr. Turner against this charge, claiming that he did not violate the statute and that the statute itself is unconstitutional.

On December 7, 2010, Mr. Turner was found guilty by the municipal court, and we have appealed that decision to the circuit court and are awaiting a new trial. ■

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