

# ***American Civil Liberties Union of Alabama***

## **LEGAL DOCKET**

### **1999**

**(pending and recently completed litigation)**

#### **CHILDRENS' RIGHTS**

##### **Education Reform**

*Harper v. Siegleman, Montgomery County Circuit Court, Judge Sally Greenhaw*

In April 1993, the Court found Alabama's system of public elementary and secondary education inequitable and inadequate in a ruling that established education as a fundamental right under the state constitution. In December of that year the Court ordered the state to implement a court-approved plan to remedy the constitutional infirmities in the system. The remedy order required, among other reforms, a performance-based education system, compensatory education for children academically at-risk and equitable and adequate financing. Of the approximately two dozen similar cases in the nation, only one half have been decided in favor of the plaintiffs; of those, none have previously found the system under attack to be inadequate as well as inequitable. Defendants challenged the liability and remedy orders, appealing to the Alabama Supreme Court. The Supreme Court held that the liability order remains in effect and gave the state one year to bring the education system into compliance with constitutional standards. Upon reconsideration the Supreme Court issued a ruling on December 3, 1997 affirming the liability order, vacating the remedy order and remanding the case to the trial court. The Supreme Court gave the defendants "reasonable time" to bring the system into compliance with the findings in the liability order. The ACLU and ACLU of Alabama represent a statewide class of schoolchildren not receiving an adequate education.

*Volunteer attorneys: Bobby Segall, Martha Morgan, Richard Izzi and Mark Sabel*

*Organizational partners: National ACLU*

*Staff: Olivia Turner*

##### **Child Welfare Reform**

*R.C. v. Petelos, U.S. District Court, Judge Ira DeMent*

In 1988 the ACLU of AL sued Alabama's Department of Human Resources (DHR) on behalf of all children with emotional or behavioral disorders who are in foster care and all children at imminent risk of placement in foster care who have or are at high risk of developing emotional or behavior disorders. DHR is implementing statewide child welfare and foster care reforms pursuant to the Consent Decree entered in the case The Consent Decree mandates, among other reforms, improved risk assessments; family reunification efforts; development of an appropriate array of services for children in state custody, including community-based and in-home services for children and families in crisis; reduction of social worker caseloads; improvements in staff training and better coordination between and among state agencies and private providers of child welfare services.

## RELIGIOUS FREEDOM AND SEPARATION OF CHURCH AND STATE

### IN PUBLIC SCHOOLS

*Chandler v. Siegleman, U. S. District Court, Judge Ira DeMent*

On February 1, 1996, the ACLU of AL, the ACLU and Americans United for the Separation of Church and State filed suit on behalf of an assistant principal in DeKalb County and a family in Talladega claiming that Alabama's student-initiated prayer statute was unconstitutional and that egregious violations of long established law such as prayer in classrooms and Gideon Bible distribution at schools should be enjoined. In March 1997, the Court struck down the so-called "student-initiated voluntary prayer" statute, though the Governor has since claimed the Court does not have jurisdiction over U.S. Constitutional claims. In October, 1997, the Court issued a wide-ranging injunction prohibiting numerous illegal activities which have routinely occurred in DeKalb County. The Governor and Attorney General, respectively, have appealed portions of the injunction to the 11th Circuit Court. The 11th Circuit heard oral arguments on December 3, 1998. In July 1999 the Court issued a confused and conflicting ruling which strikes down portions of the trial court's injunction. Plaintiffs have asked the 11th Circuit for rehearing. The Talladega case was settled by a consent order.

*Volunteer attorneys: Pamela Sumners and Liz Hubertz*

*Organizational partners: ACLU and Americans United for the Separation of Church and State*

### In Public Schools

*Herring v. Key, U. S. District Court, Judge Ira DeMent*

In August 1997, the ACLU of AL filed suit against the Pike County School Board on behalf of the only Jewish family in the Pike County school system. The suit alleged free exercise, establishment, and equal protection violations. The child plaintiffs were subjected to school-sponsored religious sermons, told they could not wear Stars of David and yarmulkes, and harassed mercilessly, among other things. Defendants to bring the conduct of teachers and administrators in the Pike County schools into conformity with constitutional mandates settled the case with an agreement.

*Volunteer attorney: Pamela Sumners*

### In Alabama's Courts

*AFA v. Moore, U.S. District Court, Judge Probst*

*James v. ACLU, Montgomery County Circuit, Judge Charles Price*

After ACLU of AL filed suit on behalf of individual plaintiffs challenging the routine practice of Judge Roy Moore, Circuit Court, Etowah County, of conducting Christian prayer and displaying the 10 Commandments in his courtroom, the Governor and the Attorney General of Alabama sued the plaintiffs in the original suit and the ACLU of Alabama for declaratory relief regarding essentially the same issues. Thereafter, Judge Moore filed a cross-claim against the ACLU claiming the ACLU was unlawfully intimidating him and attempting to establish the "religion of secular humanism." The Circuit Court found state sponsored courtroom prayer unconstitutional, Moore's particular display of the Ten Commandments unconstitutional, and dismissed Moore's "secular humanism" claim. Moore and the State appealed to the Alabama Supreme Court. The Supreme Court dismissed the case on the grounds that the parties did not have standing to sue.

*Volunteer attorneys: Bobby Segall, Pamela Sumners, and Joel Sogol*

### **In Prisons**

*Knight V. Thompson, U. S. District Court, Judge Ira DeMent*

Pro se prisoners filed suit claiming they are not allowed to practice their Native American religion in state prisons. Thereafter, the ACLU of AL entered the case seeking to file an amended complaint, declaratory and injunctive relief, adequate training of correctional officers regarding prisoners' exercise of religious freedom, and compensatory and punitive damages. After a hearing on the merits, the parties resolved all issues except hair length and access to sweat lodges. The parties have briefed and are awaiting decisions on those issues.

*Volunteer attorney: Mark Sabel*

### **In Prisons**

*Hornsby v. Alabama, U.S. District Court, Judge Myron Thompson*

ACLU of AL filed suit on behalf of a prisoner challenging the State's absolute ban on the practice of the Wiccan religion. Trial was held in October 1997. The federal magistrate judge handling the case failed to resolve it before the prisoner's release and then dismissed all injunctive claims as moot on the grounds that the plaintiff was no longer subject to prison regulations. Hornsby prevailed only on his claim that the prison had unconstitutionally confiscated and banned his religious material. The Court awarded him \$7500 in compensatory damages. The ACLU of AL is appealing the ruling.

*Volunteer attorney: Mark Sabel*

### **In Prisons**

*Twarog v. Hopper, U.S. District Court*

Inmates in the custody of the state's Department of Corrections (DOC) allege that their First Amendment right to freedom of religion has been violated by DOC's requirements that they participate in substance abuse programs with explicit religious content, such as Alcoholics Anonymous/Narcotics Anonymous. Most states provide alternatives, including non-religious programs. The prisoners have moved for class certification.

*Volunteer attorney: Joe Van Heest*

## **GAY AND LESBIAN RIGHTS**

*Gay Lesbian Bisexual Alliance v. Sessions and University of South Alabama, U.S. District Court, Judge Myron Thompson*

This suit challenges a 1992 legislative act which prohibits a university from spending public funds or using public facilities to "support any group which promotes a lifestyle or actions prohibited by the sodomy or sexual misconduct laws." University of South Alabama (USA) officials relied on the statute to bar USA's gay and lesbian students' group, the Gay Lesbian Bisexual Alliance, from receiving funds from the student government association. After Attorney General Sessions threatened to rely on the statute to prohibit a Southeastern Gay and Lesbian Student Conference from occurring as scheduled at the University of Alabama, the District Court found the statute unconstitutional, calling it "naked viewpoint discrimination." The State appealed and lost.

Volunteer attorney: Fern Singer  
Organizational partner: ACLU Gay and Lesbian Rights Project

## RIGHTS OF PERSONS INFECTED WITH HIV

### In Prisons

*Onishea v. Hopper, U.S. District Court, Judge Robert Varner*

District Court opinion generally affirmed the decision of prison officials to test/screen/segregate prisoners in challenge brought by HIV-infected inmates in the State prison system. The opinion had little sympathy for claims that screening and segregation violate inmates' due process, equal protection, liberty, association and speech rights. On remand, the trial court found "the general population will not readily accept the integration of" HIV prisoners and found for the State in a 476 page order. On appeal, the 11 Circuit originally remanded the case to the trial court with instructions to replace the trial judge. The 11th Circuit, however, vacated that opinion and is going to hear the case en banc. The 11<sup>th</sup> Circuit, in its en banc ruling, upheld the panel. The plaintiffs have filed a cert petition with the U. S. Supreme Court.

Organizational partner: ACLU National Prison Project

## RIGHTS OF PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

*Wyatt v. Rodgers, U.S. District Court, Judge Myron Thompson*

Plaintiffs sued the State of Alabama 25 years ago claiming conditions at facilities operated by the Department of Mental Health and Mental Retardation violated residents' rights under state and federal law. In a landmark opinion, Judge Frank Johnson entered injunctions requiring defendants to bring state facilities into compliance with enumerated minimal constitutional standards. After a tortured litigation history replete with receivership, consent decrees, expert studies, and repeated requests from the defendants to terminate the suit, plaintiffs seek community placements and services for hundreds of class members who are confined in institutions and for whom community placement has been recommended or are otherwise appropriate. Legal claims are based on 1) historic Wyatt standards, 2) the 1986 consent decree, and 3) the Americans with Disabilities Act (ADA). After a 10 week trial in the spring of 1995, the Court issued injunctive relief protecting children at the Eufala Adolescent Center from further abuse and harm. 892 F. Supp. 1410 (M.D. Ala. 1995). The Eufala Adolescent Center has since closed. The District Court's original ruling was appealed to the 11th Circuit, and remanded to the trial court. The subsequent trial court ruling anticipated many smaller, particularized proceedings to determine whether the Department of Mental Health/Mental Retardation is in compliance with the Wyatt standards. The District Court has since deemed some facilities in compliance. The parties have been in mediation over the remaining facilities.

Volunteer attorney: Fern Singer  
Organizational partners: Bazelon Center for Mental Health Law, U.S. Department of Justice

## PRIVACY RIGHTS

### Right to distribute “marital aids”

*Williams v. Pryor, U.S. District Court, Judge Lynwood Smith*

Acting on behalf of 6 individuals, the American Civil Liberties Union of Alabama and the National ACLU filed a challenge to a state law banning the purchase of sexual stimulation devices. The law 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 challenged the law as an unwarranted governmental intrusion into private practices. The trial court ruled in favor of the plaintiffs. The Attorney General appealed to the 11<sup>th</sup> Circuit Court of Appeals.

*Volunteer attorneys: Amy Herring, Michael Fees*  
*Organizational Partner: National ACLU*

## FREE SPEECH

### Equal access to public facilities

*Montgomery Study Group v. Eberhart, U.S. District Court, Judge Ira DeMent*

A community group reserved a Montgomery public school auditorium to host a rally led by Minister Lewis Farrakhan. When the School Board withdrew its permission for the rally, the ACLU of AL filed suit and obtained injunctive relief to ensure that the rally would occur and to prevent the Board’s attempt to restrict speech based on content.

*Volunteer attorney: Ed Still*  
*Staff: Shannon Holliday*

### Right to protest

*Friedrich v. City of Birmingham, Jefferson County Circuit Court*

The People for the Ethical Treatment of Animals attempted to gain a permit to hold a peaceful protest against Oscar Meyer in the parking lot of the Birmingham Zoo. When the City blatantly ignored PETA’s permit application and otherwise flatly refused permission, the ACLU of AL sought a court order prohibiting the City from blocking the protest. Shortly after the lawsuit was filed, City officials agreed to permit the PETA action.

*Volunteer attorney: David Gespass*  
*Staff: Shannon Holliday*

### Right to free speech

*City of Florence v. Elizabeth Romine, Lauderdale County Circuit, Judge Michael Jones*

In April 1999 Elizabeth Romine was arrested and charged with disrupting government processes while addressing the Florence City Council. Ms. Romine addressed the Council during a public meeting of the Council, staying within her allotted five-minute period to speak. Her arrest came after she asked

members of the Council whether they were incompetent. Ms. Romine was convicted in Municipal Court and appealed to the Circuit Court. The ACLU joined the case at this point as co-counsel. Ms. Romine was acquitted in a jury trial ending in September 1999.

*Volunteer attorney: Pamela Sumners*

## DUE PROCESS AND EQUAL TREATMENT

### **Montgomery “noise ordinance”**

*City of Montgomery v. Eddie Moore, Montgomery County Circuit Court*

Moore was convicted of playing his 1978 Chevrolet Impala factory-issued radio too loudly while listening to a local talk radio show. The case initially was thrown out of court but reinstated by the City when Moore complained about the incident in an interview with a local newspaper. The ACLU of AL took Mr. Moore’s case and argued that the Montgomery noise ordinance was both vague and overbroad and, thus, a violation of due process. The ordinance outlaws any noise, from a radio or other device, which is audible five feet from the vehicle in which it originates. The Court of Civil Appeals has declared unconstitutional less restrictive noise ordinances. Nonetheless, the Court of Civil Appeals ruled against Mr. Moore, and the State Supreme Court did not grant certiorari. The ACLU of AL did not appeal to the United States Supreme Court. Statistical evidence shows that this ordinance is enforced almost exclusively against young African-American men.

*Volunteer attorney: Tommy Goggans*

*Staff: Shannon Holliday*

### **Rights to due process in administrative proceedings**

*Smallwood v. DHR, Alabama Court of Civil Appeals*

Appellant claims that the statute creating the Alabama Central Registry of Abuse and Neglect is unconstitutional on its face and violates the procedural due process rights of childcare workers and licensees. For example, under the statute, a hearing officer may place a child care worker’s name on the registry and revoke her license when there is merely “reason to suspect” abuse may have occurred. In this case a child’s uncorroborated, internally contradictory, and fantasy-laden allegation was the sole basis for license withdrawal. The ACLU of AL won the case at the Court of Civil Appeals, and DHR decided not to appeal. The appeals court held that the state must show that an out-of-court abuse allegation has sufficient indicia of reliability before using it in license revocation and central registry proceedings.

*Volunteer attorney: Hugh Lee*

*Staff: Shannon Holliday*

### **Rights of persons subject to Alabama’s Community Notification Act**

*Doe v. Pryor, U. S. District Court, Judge Myron Thompson*

Plaintiff brought a challenge to the Community Notification Act in July 1999 on the grounds that the provisions of the act are applied without due process, including a determination of risk the offender poses to the community, and that the residence and work-related restrictions are overly broad and do not serve a governmental interest. The Court has issued a preliminary injunction against enforcement of the Act. A hearing on a motion for a permanent Injunction is set for October.

*Volunteer attorneys: Kyla Groff, David Gespass, Shannon Holliday, Scott Boykin*

**For national origin minorities**

(challenge to “english only”)

*Sandoval v. Hagan*, U.S.District Court, Judge Ira DeMent

Class action on behalf of all legal residents of Alabama who are otherwise qualified to obtain a driver’s license but cannot do so because they are not sufficiently fluent in English. The case was tried in February. The court issued a lengthy precedent-setting opinion in which it held that defendants violated Title VI when they withdrew non-English exams where the withdrawal had a disproportionate impact on national origin minorities and had no “substantial legitimate justification.”

*Staff: Shannon Holliday*

*Organizational partners: ACLU of Northern California, Southern Poverty Law Center, Employment Law Center*

**ACCESS TO PUBLIC ACCOMMODATIONS**

*Reid v. Goodwin, U.S.District Court, Judge Sharon Blackburn*

Defendants, owners and proprietors of a Phillips 66 gas station in Winfield, Alabama, refused to provide service to a white mother and her biracial child as they passed through Alabama on their way home to Missouri. One of the defendants pointed a shotgun at and threatened to shoot the plaintiffs and shouted, “Get that nigger out of here.” The case settled in April 1998.

*Volunteer attorney: Mark Sabel*