

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

## **LEGAL DOCKET**

### **2001**

*(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.

In March 2001, the plaintiffs petitioned the trial court to reopen the case on the grounds that the defendants have failed to comply with the remedy order because "reasonable time" had passed without a plan to address the inequity and inadequacy.

In a separate action in February 2001, the plaintiffs intervened in a proration lawsuit brought by the Alabama Association of School Boards (AASB). AASB sued the governor and legislature because of proration plans that would cut 6.2% of the K-12 education budget. Montgomery County Circuit Court Judge Tracy McCooney ruled in favor of the plaintiffs, ordering the governor not to prorate portions of the education budget. Numerous colleges and universities, which intervened as defendants in the case, appealed and the case is pending before the Alabama Supreme Court.

The National ACLU and ACLU of Alabama represent a statewide class of school children not receiving an adequate education.

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

*Organizational partners: National ACLU*

*Staff: Tari Williams*

# RELIGIOUS FREEDOM AND SEPARATION OF CHURCH AND STATE

## **In Public Schools**

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

In 1996, the ACLU of Alabama, the National 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. The Talladega County case was settled by a consent order.

In March 1997, the Court struck down the so-called "student-initiated voluntary prayer" statute over then Governor Fob James's claim that the Court did not have jurisdiction over U.S. Constitutional claims. In October 1997, the Court issued a wide-ranging injunction prohibiting numerous illegal activities which routinely occurred in DeKalb County. On appeal, the Eleventh Circuit issued a confused and conflicting ruling which struck down portions of the trial court's injunction. Plaintiffs sought review from the U. S. Supreme Court. In June 2000, the Supreme Court vacated the Eleventh Circuit's opinion, and remanded it for reconsideration in light of their ruling in *Santa Fe v. Doe* which found prayers delivered over the loud speaker at football games violate the Establishment clause. In November 2000, the Eleventh Circuit, in spite of the similar facts, determined that *Santa Fe* did not conflict with its previous ruling and reinstated that earlier decision. The plaintiffs were denied a rehearing by the entire panel of the Eleventh Circuit, and will once again petition the Supreme Court for review.

*Volunteer attorneys: Pamela Sumners and Liz Hubertz*

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

## **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 Alabama 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. Oral argument before the Eleventh Circuit is scheduled for June 2001 on these issues and plaintiffs' motion for remand based on the recently enacted Religious Land Use and Institutionalized Persons Act. There is also a fee petition pending before district court.

*Volunteer attorney: Mark Sabel*

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

ACLU of Alabama filed suit on behalf of a prisoner challenging the State's absolute ban on the practice of the Wiccan religion. 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 and was awarded compensatory damages. Plaintiffs are awaiting a ruling on the objection they filed to the magistrate's decision.

*Volunteer attorney: Mark Sabel*

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

Inmates in the custody of the Alabama Department of Corrections (ADOC) allege that their First Amendment right to freedom of religion has been violated by ADOC'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 case settled in December 2000 and requires the ADOC to provide secular alternative treatment program and notify prisoners of the program.

*Volunteer attorney: Joe Van Heest*

## GAY AND LESBIAN RIGHTS

### Family Matters

*In the Matter of R.P, C.W., and S.N.W., Lee County Circuit Court*

A lesbian mother whose children are in foster care has been unable to regain custody. The Department of Human Resources and private therapists agree that that the children should be returned to her home. The judge, however, refused to approve the reunification plan because the mother lives with her female partner. The judge also ruled that the partner is not allowed to spend the night in the family home when the children visit on weekends. A full hearing on the issue is scheduled for April 2001.

*Volunteer attorney: Russell Balch*

*Staff: Jeanne Locicero*

## RIGHTS OF PERSONS INFECTED WITH HIV

### In Prisons

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

In 2000, the United States Supreme Court refused to review an appeal regarding the segregation and treatment policies of prisoners with HIV by the Alabama Department of Corrections (ADOC). The District Court had affirmed the ADOC policies regarding the treatment of prisoners with HIV, which included forced segregation of all inmates with HIV, grossly inadequate medical care, and a complete absence of mental health care. On appeal, the Eleventh Circuit originally remanded the case to the trial court with instructions to replace the trial judge. The Eleventh Circuit, however, vacated that opinion in an en banc ruling. Today Alabama is one of two states that segregates all prisoners with HIV, denying them equal access to education, vocational instruction, religious services, visitation with family, and the like. The ACLU of Alabama is part of the Network for Alabama Prisoners with HIV to change ADOC policies through public education and organizing efforts.

*Organizational partners: ACLU National Prison Project*

## PRIVACY RIGHTS

### **Right to distribute “marital aids”**

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

Acting on behalf of 6 individuals, the ACLU of Alabama and the National ACLU filed a challenge to a state law banning the purchase of sexual stimulation devices. The law prohibits 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, arguing that it was facially unconstitutional and unconstitutional as it applied to the plaintiffs. The trial court ruled in favor of the plaintiffs on their facial challenge, holding that there was no rational basis for the law. The Eleventh Circuit reversed and remanded the decision back to the trial court for consideration on the as-applied challenge.

Plaintiffs are also making legislative efforts to amend the statute. House Bill 716 is sponsored by Representative Rogers and has made it out of committee.

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

## FREE SPEECH

*Robson v. Dale County Board of Education*,  
U.S. District Court, Magistrate Judge Susan Russ Walker

A long-term substitute teacher was fired from her assignment and prevented from working for the defendants after she complained to the principal, superintendent, and board of education members about inequitable funding for girls’ athletic and violations of Title IX. The plaintiff’s claims are based on the defendant’s retaliation for her free speech and for bringing up Title IX complaints. The case is set for trial in October 2001.

*Volunteer Attorneys: William Messer and Robert Varley*  
*Staff: Jeanne Locicero*

## DUE PROCESS AND EQUAL TREATMENT

### **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. Mr. Doe was convicted of a crime outside Alabama but subject to Alabama law.

The Community Notification Act as applied to persons situated like Mr. Doe was struck down by the trial court.

*Volunteer attorneys: Kyla Groff, David Gespass*

## DEVELOPMENTS IN FORMER CASES

### **Child Welfare Reform**

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

In 1988 the ACLU of Alabama 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. Because there has been no progress on reducing social worker caseloads, is behind schedule in converting counties to adequacy standards, and has no workable plan for achieving these goals, lawyers from Alabama Disabilities Advocacy Project have filed a motion asking the judge to find the state in contempt and fine the state an amount equal to that which it should be spending on additional staff salaries.

*Former partners: Bazelon Center for Mental Health Law, Southern Poverty Law Center, Alabama Disabilities Advocacy Project*

### **Due Process for national origin minorities**

(challenge to "english only")

*Sandoval v. Hagan, U.S. Supreme Court*

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 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." The other organizations involved, including the ACLU of Northern California who has expertise in this area of the law, appealed the decision to the United States Supreme Court which heard arguments this term.

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