

American Civil Liberties Union of Alabama

LEGAL DOCKET

Summer 2002

(Pending and recently completed litigation)

CHILDREN'S RIGHTS

Education Reform

Harper v. Siegelman

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 upheld the liability order 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 Court noted, however, that "the parties may petition the trial court to reopen the case if within a reasonable time the coordinate branches of government have not formulated an educational system that complies with the judgment in the Liability Phase."

In March 2001, the plaintiffs petitioned the trial court to reopen the case on the grounds that the defendants had failed to comply with the remedy order because "reasonable time" had passed without a plan to address inequity and inadequacy. On May 15th, the trial court issued an order directing the State Board of Education to file its model plan for an adequate and equitable education with the court by October 15, 2001. A hearing on the matter was set for December 5, 2001. The State Board of Education failed to meet the deadline. On October 23, 2001, the plaintiffs filed a motion to revise the scheduling order of May 15th. The motion was granted and a new scheduling order was issued, directing the State Board of Education to file its model plan with the trial court no later than March 15, 2002. Plaintiffs have 75 days after the date of the SBOE filing to respond and/or raise objections and a hearing on the matter is now set for July 2002.

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 to challenge proration plans that would cut 6.2% of the K-12 education budget. Montgomery County Circuit Court Judge Tracy McCooley ruled in favor of the plaintiffs, ordering the governor not to prorate portions of the education budget. On June 29, however, the Alabama Supreme Court vacated the trial court decision and order. In addition, the Supreme Court, in the absence of a motion from either party, asked all parties in the Harper case to brief the question of whether the 1993 liability order was final and appealable. In 2002 the trial court issued a new schedule for the second remedial phase of the litigation. The State Board of Education, in compliance with the court's order, filed an adequacy plan with the court. The plan,

if implemented, would bring about substantial reform and mean billions of new dollars for the education system. Nonetheless, in early 2002, the state Supreme Court, acting on its own, dismissed the litigation. The Liability Order and Amendment 111 rulings stand

The State Board of Education and Superintendent of Education plan to take their adequacy plan to the people and the legislature to seek funding.

The National ACLU and ACLU of Alabama represented 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 Government Buildings

Maddox v. Moore

U.S. District Court, Judge Thompson

The ACLU of Alabama and Americans United for Separation of Church and State filed suit on behalf of two Alabama attorneys who are seeking the removal of the 5,000 pound Ten Commandments monument placed in the Alabama Judicial Building by Alabama Supreme Court Chief Justice, Roy Moore. The trial date is set for October 15, 2002.

Volunteer attorneys: Bob Varley, Bill Messer

Organizational partners: Americans United for Separation of Church & 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 that requested declaratory and injunctive relief, adequate training of correctional officers regarding prisoners' exercise of religious freedom, and damages. After a trial on the merits, the Court granted comprehensive structural relief in favor of the Plaintiffs on all issues except Plaintiffs' 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 matter is presently pending again before the trial court. The Defendants have argued that the new statute is unconstitutional, and the Department of Justice has intervened to defend the statute's constitutionality.

In June, the Defendants filed a motion to dismiss and in July, the plaintiffs filed a response.

Volunteer attorney: Mark Sabel

Hornsby v. Alabama

U.S. District Court, Judge Myron Thompson

A pro se prisoner filed suit challenging the State's absolute ban on the practice of the Wiccan religion. Thereafter, the ACLU of Alabama entered the case seeking to file an amended complaint that requested declaratory and injunctive relief, adequate training of correctional officers regarding prisoners' exercise of religious freedom, and compensatory and punitive damages. After a trial on the merits, the court awarded damages upon a finding that the defendants had unconstitutionally confiscated and banned Hornsby's religious literature. However, the federal magistrate judge handing the case, dismissed all injunctive claims as moot on the grounds that the plaintiff, who was granted parole after the trial, was no longer incarcerated. Hornsby awaits a ruling on the objection he has filed to the magistrate's decision.

Volunteer attorney: Mark Sabel

MINORS' RIGHTS

In Public Schools

T.R Miller High School

A high school senior was kicked off the National Honor Society because she became pregnant. The ACLU of Alabama and the Women's Rights Project wrote to the school explaining that revoking the girl's membership violates the United States Constitution, Title IX, and National Honor Society policy. After receiving the letter, the school readmitted the student to the Honor Society.

Volunteer Attorney: Melinda Maddox

Organizational partners: ACLU'S Women's Rights Project

Staff: Maggie Garrett

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 were in foster care could not regain custody even though the Department of Human Resources and private therapists had agreed that the children should be returned to her home. The judge had refused to approve the reunification plan because the mother lived with her female partner. The judge also ruled that the partner was not allowed to spend the night in the family home when the children visited on weekends. At this point, the ACLU of Alabama's assistance was requested. The ACLU recruited and provided an attorney and funded an expert witness for the case. Upon further consideration, the court returned custody of the children to their mother.

Volunteer attorney: Russell Balch

Staff: Jeanne Locicero

PRIVACY RIGHTS

Right to Distribute “Marital Aids”

Williams v. Pryor

U.S. District Court, Judge Lynwood Smith

Acting on behalf of six 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 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 it applies to the plaintiffs 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. The Eleventh Circuit reversed and remanded the decision back to the trial court for consideration on the as-applied challenge.

The ACLU filed a motion for summary judgment with the district court. The court has delayed consideration of the motion to enable the defendants to engage in extended discovery.

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

Reproductive Rights

Case Under Seal

The ACLU assisted in a case in which a woman’s right to have an abortion was jeopardized. Because the case is under seal no other information may be revealed about the case.

FREE SPEECH

The Right to Distribute Religious Materials

Mobile v. Spence,

Mobile Municipal Court, Judge Wanda Rahman

In September, an apocalyptic preacher was arrested for distributing religious material outside of the Mobile Convention Center. The police and the Convention Center claimed the preacher was illegally trespassing on Civic Center property. The preacher, however, had a city plat map that demonstrated he was standing on public property, and thus, was acting within his free speech rights. On November 21, 2001, the trial court judge dismissed all charges against the preacher.

Volunteer Attorney: Jeff Deen

The Right to Protest

Mobile v. Worden

Mobile Municipal Court

On June 7, 2002, Kayla Warden, a demonstrator for the People For the Ethical Treatment of Animals (PETA), was arrested for “disorderly conduct,” while protesting a circus in Mobile, AL. Kayla was wearing short black shorts and pasties and had painted her body with orange and black stripes so that she would resemble a tiger. She placed herself in a small wire cage, to demonstrate the way in which tigers are caged by circuses, and held a sign that read “Wild Animals Don’t Belong Behind Bars.” Even though she was not blocking a sidewalk or making obscene gestures or statements, the police arrested her. A hearing was set for August 20, 2002. On the day of the hearing, a settlement was reached and all of the charges against Ms. Warden were dropped.

Volunteer Attorney: Jeff Deen

Royal Confederate Knights of the Ku Klux Klan v. City of York

U. S. District Court, Judge Edwin Nelson

The Royal Confederate Knights of the Ku Klux Klan sought a parade permit so that they could march in York, Alabama on July 26, 2002. In accordance with the city ordinance that granted sole discretion in the Mayor, the city denied the request without providing any reason for the denial. After the ACLU of Alabama filed a complaint against the City and the Mayor, the City said that the KKK could reapply for a permit under a new ordinance. The new ordinance, however, required a \$2,000 bond and forbid the KKK from wearing masks. The ACLU challenged both the old and the new ordinance and the Court granted the plaintiffs a preliminary injunction that permitted the KKK to march without a bond and with masks. Because the hearing was held so close to the date of the scheduled march, the KKK ultimately was unable to hold the march.

Cooperating Attorney: David Schoen

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

In July 1999, the plaintiff brought a challenge to the Community Notification Act 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 trial court struck down the Community Notification Act as applied to persons situated like Mr. Doe, on the grounds that the Act violated Mr. Doe’s due process rights.

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. The defendants have reported that over half of the counties in Alabama are now in compliance with the order. The two biggest counties in the state, however, are still not in compliance. The defendants have until October 2002 to achieve compliance.

The ACLU of Alabama was substantially involved in developing and litigating this case from 1987 until 1998. In 1998, the Alabama Disabilities Advocacy Project assumed responsibility for representing the plaintiffs in this action.

Former partners: Bazelon Center for Mental Health Law and Southern Poverty Law Center.

WINTER 2002

(Pending and recently completed litigation)

RELIGIOUS FREEDOM AND SEPARATION OF CHURCH AND STATE

Establishment of Religion In Government Buildings

Maddox & Howard v. Moore consolidated with Glassroth v. Moore

U.S. District Court, Judge Myron Thompson

The ACLU of Alabama and Americans United for Separation of Church and State filed suit on behalf of two Alabama attorneys seeking the removal of the 5,000 pound Ten Commandments monument placed in the rotunda of the Alabama Judicial Building by Alabama Supreme Court Chief Justice, Roy Moore. The case was consolidated with *Glassroth v. Moore*, filed by the Southern Poverty Law Center. Following a week of trial in October 2002, on November 18, 2002, U.S. District Judge Myron Thompson issued a declaratory judgment holding that Chief Justice Roy Moore's Ten Commandments monument in the rotunda of the Alabama State Judicial Building violates the Establishment Clause of the First Amendment. Chief Justice Moore was given 30 days to remove the monument, and Judge Thompson retained jurisdiction to enter injunctive relief if necessary. Chief Justice Moore and his attorneys have announced that he does intend to appeal and to request a stay of the order requiring him to remove the monument.

Volunteer attorneys: Bob Varley, Bill Messer

Organizational partners: Americans United for Separation of Church & State

Staff: Maggie Garrett, Rob Weinberg

Freedom of Religion In Prisons

Knight v. Thompson

U. S. District Court, Judge Ira DeMent

Pro se prisoners filed suit claiming that Alabama Department of Corrections regulations prevent them from practicing Native American religion. Thereafter, the ACLU of Alabama entered the case seeking to file an amended complaint that requested declaratory and injunctive relief, adequate training of correctional officers regarding prisoners' exercise of religious freedom, and damages. After a trial on the merits, the Court granted comprehensive structural relief in favor of the Plaintiffs on all issues except Plaintiffs' 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 matter is presently pending again before the trial court. The Defendants have argued that the new statute is unconstitutional, and the Department of Justice has intervened to defend the statute's constitutionality.

In June, the Defendants filed a motion for summary judgment. The Plaintiffs filed a response to that motion, explaining that RLUIPA is constitutional and that the Defendant's policies violate RLUIPA. The matter is pending before the Magistrate Judge.

Volunteer attorney: Mark Sabel

Staff: Maggie Garrett

Hornsby v. Alabama

U.S. District Court, Judge Myron Thompson

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Volunteer attorney: Russell Balch

Staff: Jeanne Locicero

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U.S. District Court, Judge Lynwood Smith

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 11th Circuit U.S. Court of Appeals reversed, holding that the law was not facially unconstitutional, but remanded to the trial court for further consideration of the as-applied challenge. 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 has filed notice of appeal.

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