

AMERICAN CIVIL LIBERTIES UNION OF ALABAMA

2003 DOCKET

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, M.D. Ala., 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. 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. Justice Moore appealed the orders to the Eleventh Circuit U.S. Court of Appeals and Judge Thompson entered a stay of injunction pending the appeal. In July 2003, the Eleventh Circuit upheld Judge Thompson's order that the monument be removed and the stay was lifted. Moore refused to remove the monument, in defiance of the federal court order and vowed to appeal to the United States Supreme Court. On August 21, 2003, a unanimous Court refused to hear Moore's appeal. The other eight members of the Alabama Supreme Court voted unanimously to remove the monument "as soon as practicable." On August 27, 2003, the monument was removed from the rotunda and placed in a back room in the State Judicial Building, out of public view

Plaintiff Glassroth filed a complaint against Moore with the Judicial Inquiry Commission (JIC), alleging that Moore violated the Canons of Judicial Ethics when he disregarded the federal court order. Moore was suspended with pay pending the outcome of the JIC investigation. On November 13, 2003, the Court of the Judiciary removed Moore from office for "willfully and publicly" defying a federal court order. Moore has challenged this decision and the governor has appointed a seven judge panel to hear the appeal, since all members of the Alabama Supreme Court have recused themselves. Moore is also challenging the methods used to select the appellate panel. He is also asking that Judge Thompson recuse himself from the remaining proceedings in the original case, arguing that since Thompson appeared at an ACLU conference entitled "Human Rights at Home: the Role of International Law in the U.S. Courts." Both matters are pending.

*Volunteer attorneys: Bob Varley, Bill Messer*

*Organizational partners: Americans United for Separation of Church & State*

*Staff: Maggie Garrett, Rob Weinberg*

Freedom of Religion In Prison

*Knight v. Thompson*, U. S. District Court, M.D. Ala. 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, M.D. Ala., 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

RIGHT TO PRIVACY
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**Right to Distribute "Marital Aids"**

*Williams v. Pryor*, U.S. District Court, N.D. Ala., 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 Eleventh 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 appealed and in August of 2003, the Court asked the parties to submit additional briefs in light of the United States Supreme Court's decision in the landmark case, *Lawrence v. Texas*, in which a Texas statute banning homosexual sodomy was struck down. In that case, the Court held that the fundamental right to privacy extends to the right to sexual privacy unrelated to marriage or procreation. The parties are awaiting a decision.

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

## DUE PROCESS AND EQUAL TREATMENT

### **Rights of Persons Subject to the Alabama Community Notification Act**

*Doe v. Pryor*, U. S. District Court, M.D. Ala., 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

## POST-911 CIVIL RIGHTS ADVOCACY

The State of Alabama and the United States Department of Homeland Security (DHS) have entered into a Memorandum of Understanding (MOU), which authorizes the Alabama Department of Public Safety (DPS) to train state troopers to enforce federal immigration law. The agreement went into effect on October 14, 2003.

To date, twenty-one troopers have been trained by the Bureau of Immigration and Customs Enforcement (a division of DHS). Of those troopers, only fourteen work in the field. The other seven work in offices around the state, including Department of Motor Vehicle locations. On November 20, 2003, staff from the ACLU of Alabama and other interested organizations met with representatives from DPS. Currently, Florida and Alabama are the only states that have signed an MOU with the DHS. Some municipalities have passed ordinances and resolutions expressly denying local law enforcement any authority to enforce federal immigration law.