

AMERICAN CIVIL LIBERTIES UNION of ALABAMA SPRING 2004 DOCKET

Religious Freedom and the 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," he has demonstrated bias. Both matters are pending.

Volunteer Attorneys: Bob Varley, Bill Messer
Organizational Partner: Americans United
for Separation of Church & State



Removal of Ten Commandments
Monument, August 27, 2003
Photo by Mickey Welsh,
Montgomery Advertiser

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.

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. The question

of whether the state can continue its ban on Hornsby's religious practices remains unaddressed by the Court, despite continuing attempts to have the Court address this important matter. Hornsby continues to seek temporary relief while he awaits the long overdue ruling on this matter.

Volunteer Attorney: Mark Sabel

Lake v. Henry, U.S. District Court, N.D. Ala.

Richard Mafundi Lake, an inmate in the W.E. Donaldson Correctional Facility was charged with a disciplinary violation on September 19, 2001 because during an Islamic service, he began a discussion about the appropriateness of reparations for African Americans. Mr. Lake discussed a bill before Congress and wrote the question on a blackboard. As a result, he was charged with inciting a riot and writing anti-American propaganda, put in the hole, transferred to another facility and stripped of all privileges. Additionally, Mr. Lake's mail was intercepted and kept from him. He proceeded *pro se* to district court, and was unsuccessful. Attorney David Schoen got involved at the appellate level and filed a brief with the Eleventh Circuit. Oral argument is scheduled in May of this year..



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Volunteer Attorney: David Schoen

PRAYER IN PUBLIC SCHOOLS

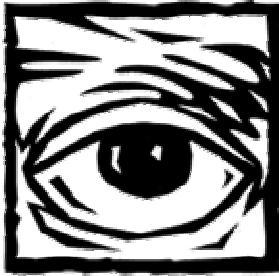
Elementary school teachers in Baker Hill, AL were leading kindergarten and first grade students in daily prayer before lunch. The ACLU of Alabama wrote to the school explaining that school officials are prohibited from leading, participating, encouraging or initiating student prayer under the Establishment Clause of the United States Constitution as well as the school's Protected Prayer policy. After receiving the letter, the school changed the practice and gave assurances that no teacher will lead any student or group of students in prayer at any time during school hours or school activities.

Staff: Lori Raphan

RIGHT TO PRIVACY

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

IMMIGRANT’S RIGHTS



The State of Alabama and the United States Department of Homeland Security (DHS) have entered into an Memorandum of Understanding (MOU) that authorizes the Alabama Department of Public Safety (DPS) to train state troopers to enforce federal immigration law. To date, twenty-one troopers have been trained by the Bureau of Immigration and Customs Enforcement (a division of DHS). 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. For more information about the MOU, please see the article on page 3.

VOTING RIGHTS

The Board of Pardons and Paroles has created an obstacle for ex-felons who are applying to get their right to vote back under a newly enacted law. The new law re-enfranchises ex-felons who have been granted a certificate of eligibility to register to vote. To begin this process, the law requires that applications be filled out and returned to the Board of Pardons and Paroles. The Board of Pardons and Paroles, however, has announced that it will refuse any applications that are delivered to them by a third party. The ACLU of Alabama has written to the Board explaining that the Board's actions are in violation of the Voting Rights Act of 1965 Section 5 in that it creates a prerequisite and a procedure with respect to voting without receiving preclearance as required under the Voting Rights Act.



Staff: Lori Raphan