

**AMERICAN CIVIL LIBERTIES UNION OF ALABAMA  
LEGAL DOCKET  
SUMMER 2007**

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| <b>Race Discrimination in Education</b> |
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**Lee v. Macon County Board of Education (Pickens County Board of Education):**

The ACLU of Alabama filed an appearance in this long-running school desegregation case in July 2006 to object to actions taken by the Pickens County School Board in violation of *Lee v. Macon Co. Board of Ed.*, which would have harmed students attending the Carrollton Unit School (CUS) and the community of Carrollton. Historically, the Pickens County Board has favored the predominantly white K-12 schools in the county when allocating resources over the school at Aliceville, which is all black, and CUS, a majority black school. (CUS, until a few years ago, was the most desegregated school in the county with a racial breakdown of students in 2001 that was approximately 60% African-American and 40% white, making it the most integrated school in the county.) After years of unequal treatment, dwindling resources, and deteriorating conditions, students began to leave CUS, especially students whose families had the means to transport them to schools outside their town. These students tended to be disproportionately white.

In spring 2006, the Pickens Board voted to close CUS based on low enrollment, even though it was the only school in Carrollton, which is the county seat and the most geographically central town in the county. CUS students were assigned to the three other K-12 schools in the county. The planned distribution of CUS students would have resulted in a slight increase in the number of African-American students attending the two predominantly white schools and in Aliceville remaining all black. Funds which had previously been spent on students at CUS would be spent on expanding and upgrading the campus at Gordo, plans which were years in the making but could not be carried out without additional funds. The Gordo school is over 90% white and was already a superior facility compared to CUS and Aliceville. Under the new plan, CUS students, including very young children, would have to spend twice as much time on buses each day as students attending other schools in the county. All CUS students would have difficulty participating in extra-curricular activities, due to the increased difficulty their parents would face in helping with transportation. And, the heart of the small Carrollton community, clearly its school, would be lost.

Our position was that these actions by the Board were in violation of *Lee*, which requires local school boards under *Lee* orders to get approval from the federal court before making the kinds of changes described above. One goal of

the decree in *Lee* is to ensure that if such changes are made they do not have the effect of further segregating students and, if such changes do further desegregate schools, that African-American students will not bear a disproportionate burden of the changes that are proposed. The ACLU of AL joined this 38 year-old lawsuit in an effort to prevent closure of the school at Carrollton and restore equity in the allocation of resources to CUS.

The Pickens County Board filed their motion to close the school with the U. S. Federal Court for the Northern District in June last year, to which we objected. The Justice Department, which had intervened years earlier on behalf of the plaintiff school children, submitted a recommendation to the court which read like a brief by the defendants, ignored many of the facts and aggressively made the defendant's case. The Court directed the parties to settle. The agreement between the parties, which has been ordered by the Court, calls for: 1) CUS grades K-6 to remain open, 2) the Board to support the school and work to make it a success, 3) a feasibility study regarding the re-opening of grades 7-12 and 4) transportation assistance for 7-12 grade students who are assigned to new schools and want to participate in extra-curricular activities. Given the weariness some federal courts have demonstrated with these old desegregation cases, we were very pleased with this outcome.

Our work currently falls into two categories. We are taking steps to ensure that the Pickens Board is complying with the Court's order regarding Carrollton Elementary and former Carrollton students. In particular we have worked to resolve issues faced by former Carrollton upper grade students at their new schools such as seriously overcrowded classrooms, transportation problems, lack of school breakfasts and racially disparate discipline. All former Carrollton students are African-American. We are also preparing to respond to a motion we expect the Board and Justice Department to file asking the Court to declare the Pickens County system to be in compliance with the decrees issued in *Lee v. Macon* and to terminate court oversight of the system.

## Privacy

### **Williams v. Attorney General of Alabama:**

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." Initially, we argued that the statute is facially unconstitutional and unconstitutional as applied to the plaintiffs because the law is an unwarranted governmental intrusion into private practices. After the *Lawrence v. Texas* decision (and several losses before the 11th Circuit), where the court held that the fundamental right to privacy extends to the right to sexual privacy unrelated to marriage or procreation, we moved for summary judgment

asking the court to find that, in light of *Lawrence*, there is no rational relationship between the ban and a protectable state interest.

The district court granted summary judgment for the state. The district court surmised that the *Lawrence* Court's decision was a product of the fact that sodomy laws were used to stigmatize and oppress a vulnerable part of the population. Because the sex devices law did not oppress a discrete minority, *Lawrence* was inapposite. The Court also distinguished *Lawrence* by emphasizing that the sex devices law restricts public, as well as private, activities. Accordingly, the district court said that the state could still rely on public morality to justify a law designed to discourage people from using sexual devices by prohibiting the sale of these products.

We appealed to the 11th Circuit, and oral arguments were held in December of last year in Atlanta. We presented two primary arguments. First, the state's interest in promoting its view of sexual morality, the only interest furthered by this law, is no longer a legitimate justification under the rational basis test because of *Lawrence*. Second, even where fundamental rights are not implicated, substantive due process analysis requires that the government have an interest sufficient to justify its intrusion upon an individual's protected liberty interest.

On February 14, 2007, the 11th Circuit affirmed the district court's grant of summary judgment, finding that public morality remains a sufficient rational basis for the law. Furthermore, the Court stated that to the extent that *Lawrence* limits public morality as a rational basis, it's only limited with respect to laws that restrict private, non-commercial activity.

## Prisoners' Rights

### **Lake v. Henry:**

In September 2001, Mr. Lake, a practicing Muslim, led an Islamic service while incarcerated at St. Clair Correctional Facility. Sparked by a passage in the Quran about repentance and making amends for one's sins, he led a discussion about reparations for African-Americans. He wrote questions and thoughts on a blackboard on the subject of reparations, a subject with particular relevance at the time since U.S. Congressman John Conyers had recently introduced, "The Reparations Study Bill" (H. B. 40). The discussion included references to the United Nations Charter and to other instances in which reparations were found to be necessary and appropriate, namely reparations paid by the German government to survivors of the Holocaust, reparations paid by the U.S. government to Native Americans for a number of abuses and to Japanese citizens as compensation for internment during World War II. Mr. Lake urged members of the group to write to the United Nations to request copies of the Universal Declaration of Human Rights.

Mr. Lake was subsequently disciplined for “intentionally creating a security, safety or health hazard within a prison facility,” by his actions. He was also charged with “creating a security hazard by writing anti-American propaganda on the blackboard during Islamic services, attempting to influence participants in the service.” Despite the absence of a disturbance of any kind resulting from the discussion of reparations, Mr. Lake was found guilty of a major disciplinary infraction, received a sentence of twenty days in disciplinary segregation, lost privileges for twenty days and lost incentive time.

Mr. Lake challenged the discipline pro se in Federal Court. His case was dismissed. We appealed to the 11th Circuit. One day prior to the hearing the Alabama Attorney General’s Office filed a letter with the 11th Circuit conceding that the district judge erred in ignoring the First Amendment claim, and apologizing for misrepresenting the record and facts in their brief.

Oral argument was held in the summer of 2004. The Circuit Court ruled in Plaintiff’s favor and remanded all issues to the District Court. An Amended Complaint was filed. The Attorney General’s office asked the court to postpone discovery until they filed for summary judgment, which they planned to do in July 2006 but did not. The government finally filed a motion for judgment on the pleadings or in the alternative for summary judgment in December. We filed a motion to stay the case in January due to Mr. Lake’s health problems. The court granted the stay.

**Twarog v. Campbell (Commissioner, Alabama Department of Corrections):**

Many, if not most, state custody prisoners must participate in drug rehabilitation programs in order to be eligible for parole, work release, incentive good time and the like. Our case challenges the fact that all of these programs are religiously based. The case was filed in the fall of 2005.

This is the second time we have filed suit over this problem. We settled the case favorably the first time, but the State failed to comply with the terms of the settlement.

The defendants filed a motion to dismiss, and we responded in March 2006. The defendant’s motion to dismiss was denied in January of this year. We subsequently amended our complaint to add plaintiffs and seek class certification.

The ADOC has implemented a secular drug rehabilitation program in one facility in response to the litigation. This is not a satisfactory response to the litigation. The quality of the program is poor, ADOC is not providing adequate notice to prisoners of its availability and the program is only offered at one prison in the system.

Due to their refusal to participate in religious-themed rehabilitation, our clients have been denied lower security classifications, denied the opportunity to receive “incentive packages” of food and personal hygiene items, refused admittance to honors dorms, refused parole and job placement, and denied the opportunity to participate in work release and other community placement programs.

The Magistrate Judge has recommended that our motion for class certification be denied to which we have objected.

## Women’s Rights

### **Boswell v. GumBayTay:**

Ms. Boswell moved into a rental house in Montgomery in the fall of 2006. The property agent, Mr. GumBayTay, told her would reduce her monthly rent by \$100 in exchange for sex. The rent was, in fact, lowered from \$550 to \$450 a month but raised again when Ms. Boswell made it clear her relationship with him would not be sexual. Legal Services Alabama, the ACLU Women’s Rights Project and the ACLU-AL, with the assistance of the Fair Housing Center of Central Alabama, filed suit on Ms. Boswell’s behalf.

## Separation of Church/State in Public Schools

### **In re: Munford Middle School:**

We received complaints related to two incidences at Munford Middle School (Talladega County). The initial complaint was that the Christian evangelical film *Facing the Giants* was being shown to all students during physical education classes. *Facing the Giants* is a film about a football coach who never had a winning season until he and his players started serving God. It was created by the Sherwood Baptist Church of Albany, Georgia to build the Christian faith. Students who did not want to see the film were given some form of in-school suspension during which time they were not given academic instruction, told to remain silent, and threatened with regular (out of school) suspension. We wrote the school a letter and have been informed that the film will no longer be shown.

We received another complaint about the same school concerning local Baptist ministers entering the school cafeteria to proselytize and promote local Baptist youth programs. Men from Munford Baptist Church were allowed in the cafeteria during the lunch hour to recruit students to join their church. The men would approach a student and ask what church they attended. If the student responded with the name of a non-Baptist church, the men would tell the student

about the youth programs available at Munford Baptist Church. We have put the school on notice that such conduct is unconstitutional.

## LGBT Rights

### **In re: Jane Doe:**

A lesbian mom had joint custody of her child with her ex-husband. The mom wanted to move to California with her partner, and notified the court of this. Her ex-husband then filed for full custody in Marshall County. The Court issued an order granting him temporary custody of the child. The mother has been granted very limited visitation rights. The order specifically states that the father was given custody because the mom is in a lesbian relationship. There is a final custody hearing scheduled for this fall. We recruited an attorney for the mom and are assisting with the case.