# AMERICAN CIVIL LIBERTIES UNION OF ALABAMA
# LEGAL DOCKET - JANUARY 2009

*(Most recent information is in bold.)*

## RACE DISCRIMINATION IN EDUCATION

### 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 v. Macon,* 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 of 2006, 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.

**To that end, we submitted a document to the Justice Department and the Pickens County Board in June 2008 outlining our concerns about ongoing race-related disparities in the Pickens County system. Serious race-related inequities in curricula, facilities, teacher qualifications, test scores and diploma types are examples of the problems we documented.**

## RELIGIOUS LIBERTY

### Knight v. Allen

This case has been in litigation for over a decade and has a complicated history.

Native American pro se prisoners filed suit claiming that Alabama Department of Corrections regulations prevented them from practicing their religion. Thereafter, the ACLU of Alabama entered the case seeking to file an amended complaint that requested declaratory and injunctive relief as well as adequate training of correctional officers regarding prisoners' exercise of religious freedom.

After a trial on the merits, the Court granted Plaintiffs' relief with the exception of their 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 Court heard evidence on the sweat lodge issue in December 2004. As a result of Plaintiffs' evidence at that hearing, the Department of Corrections now permits sacred sweat lodge ceremonies at designated facilities on certain holy days. In light of the circuit split on the issue of hair length exemptions, Plaintiffs appealed the summary judgment entered against them on this issue.

**On October 19, 2007, the Eleventh Circuit ruled on our appeal from the 2003 District Court order granting summary judgment to the Department of Corrections on hair length restrictions and a 2006 District Court order dismissing our sweat lodge claims. The Eleventh Circuit dismissed as moot our appeal on the sweat lodge issue, and remanded the hair length matter for an evidentiary hearing and new trial.**

**Regarding hair length, the Eleventh Circuit questioned whether the Department's restrictions were the least restrictive means of furthering the state's compelling interest in security within the prisons. The Court also noted that the factual record of the case is over a decade old and that much has likely changed in the prison system since that time. Accordingly, the Court vacated the District Court's ruling on this issue and remanded the matter for trial. Trial is scheduled for January 21, 2009.**

## Monroe v. Allen (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. 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 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 2007. We subsequently amended our complaint to add plaintiffs and seek class certification. The Magistrate Judge recommended that our motion for class certification be denied, to which we objected.

**The Alabama Department of Corrections (ADOC) implemented secular drug rehabilitation programs in two facilities in response to the litigation. We are currently focused on ensuring that the implementation of these programs meets our clients' needs and that Plaintiffs can return to Court should the agreement be violated.**

# 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 he 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.

**Trial is set for March 2009.**

# 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.

**We have settled this case. ADOC agreed to do the following at the prison in which Mr. Lake is incarcerated: provide a Chaplain liaison to Muslim prisoners, take Muslim prisoners’ religious concerns into account, and allow a member of the Muslim faith community to offer services at the prison.**

## HIV/AIDS

### In re: HIV-Positive Prisoners

After years of advocacy by the ACLU of Alabama and the ACLU National Prison Project, the Alabama Department of Corrections (ADOC) has agreed to give HIV-positive prisoners greater access to visitation, educational programs, substance abuse treatment programs, and religious services. Previously, the Department’s policy was to deny HIV-positive prisoners access to programs and services offered to the general population of inmates. The changes were announced in a letter from ADOC Commissioner Richard F. Allen to the ACLU of Alabama in the fall of 2007.

Prior to advocacy by the ACLU, HIV-positive inmates were barred from or given unequal access to prison jobs, family visiting rooms, dining halls, sports and recreational opportunities, community corrections programs, faith-based programs, and religious services. **Sweeping changes were made at Tutwiler Prison for Women in the fall of 2007. Integration of programs is moving forward slowly for the men at Limestone. An important policy still under negotiation, however, relates to access to work release.**

**We continue to monitor both facilities to ensure that appropriate changes are in place or underway and to urge Commissioner Allen to allow HIV-positive prisoners equal access to work release programs, which are crucial to rehabilitation as well as beneficial to the community.**

# VOTING RIGHTS

## Baker v. Chapman

Plaintiffs Ms. Baker, Ms. Hall, and Ms. McWashington Pruitt each have a felony conviction, and each has been denied the right to vote even though their felonies are not on the list of disqualifying felonies established by the Legislature. The lawsuit seeks to block state election administrators from disqualifying any voter whose conviction is not on that list. The ACLU also asked the court to strike down the discriminatory fee provision of the voter restoration process.

The Alabama Constitution was amended in 1996 -- after the previous voting provisions were declared unconstitutional because they discriminated on the basis of race -- to state that only convictions for felonies that "involve moral turpitude" should be punished with loss of the franchise. Unfortunately, this vague and arbitrary term is not defined in the Constitution. However, the Constitution does require the Legislature to define elector qualifications. In 2003, the Legislature adopted a list of disqualifying felonies. In 2005, the Attorney General put forth a much broader list. This alone is unacceptable, but county registrars are going ever further. They appear to be disqualifying felonies that are on neither the Legislature's nor the Attorney General's list.

The lawsuit also challenges the rights-restoration process. Currently, most individuals can get their right to vote restored after they have 1) finished their sentence, 2) ended all supervised release, including probation or parole and 3) paid off all financial obligations, including any restitution, court costs and fines. This third requirement discriminates on the basis of wealth. Two individuals, convicted of the same crime, sentenced to the same number of months in prison, and serving the same number of days on probation or parole, will be eligible to get their rights restored at a different time solely based on which one can afford to pay off their financial fees first. The lawsuit challenges this requirement as unfairly discriminating on the basis of wealth and alleges that this is a modern-day poll tax.

**The Circuit Court granted the Defendant's motion to dismiss on the grounds that two of our plaintiffs lacked standing and the other plaintiffs' claims were not ripe for adjudication. We have appealed this ruling to the Court of Civil Appeals.**

# IMMIGRANTS' RIGHTS

## Indefinite Detention of Immigrants—Habeas Corpus Petitions

In Alabama there are two long-term detention facilities used by the Bureau of Immigration and Customs Enforcement ("ICE") to incarcerate immigrants as ICE attempts to deport them. These facilities are the Etowah County Detention Center in Gadsden and the Perry County Corrections Center near Uniontown. However, the Supreme Court ruled in *Zadvydas v. Davis* that immigrants with final orders of removal can only be detained so long as it is significantly likely that their removal will occur in the reasonably foreseeable future, with six months being a presumptively reasonable period. The Court made clear that it is unconstitutional to indefinitely imprison people for violations of immigration law. Many detainees in Etowah and Perry have been detained far beyond this presumptive six-month period in direct violation of the Court's holding.

**Over the past ten months, the ACLU of Alabama has brought habeas petitions and/or negotiated the supervised release of more than fifteen detainees who have been detained well beyond the six-month period, with some of them being detained for more than a year after a final removal order was entered.**

# FREE SPEECH

## State v. Jackson, et al.

On February 29, 2008, University of Alabama members of Students for a Democratic Society (SDS) and others put on a brief peaceful skit about the war in the University of Alabama's student center. Subsequently, two Alabama students, a University of North Carolina student and an Iraqi war veteran from North Carolina who participated in the skit were detained and interrogated for more than four hours by University security and other law enforcement officials. They were subsequently arrested on criminal charges of disorderly conduct.

Along with lawyers for the Alabama Chapter of the National Lawyer's Guild, we successfully defended the four protestors against these charges in a trial in Tuscaloosa District Court on May 2, 2008. The two Alabama students and the SDS also faced university disciplinary charges, for which we were also their counsel. Penalties for these charges include possible expulsion from the university. The two non-university students were barred from campus.

**All university charges have been dropped.**