



AMERICAN CIVIL LIBERTIES UNION OF ALABAMA LEGAL DOCKET - JANUARY 2010

(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 joined the long-running school desegregation case, *Lee v. Macon County Board of Education (Pickens Co)*, in July 2006. Our immediate goal was to prevent the Pickens County School Board from closing the Carrollton Unit School, a majority African American school which the school board had neglected for years while allocating disproportionate resources to a predominantly white school in another part of the county. Closing the Carrollton school, the only school in the Carrollton community, would have resulted in more harm to black students in the county than white students, thereby violating the federal court's holdings in the case. Plaintiffs were successful in obtaining a court order requiring the school board to keep grades K-6 at Carrollton open and to work to make the school a success. It was not possible to keep the higher grades open as the buildings that housed those students had been neglected to the point that they were uninhabitable and beyond repair.

Our current work on behalf of Carrollton students falls into two categories: monitoring to ensure that the Pickens County School Board complies with the court's orders regarding Carrollton Elementary and working to resolve issues faced by former Carrollton upper-grade students transferred to other schools such as transportation problems, racially disparate discipline and being denied school breakfasts to which they are legally entitled.

In addition, we are working to stop the race-based discrimination in the allocation of resources in Pickens County schools so that African American students have the same opportunity that white students do to graduate from high school, earn the more valuable diplomas and attend college or technical school. The disparity in educational opportunity between black and white students in the system is dramatic and has led to African American students dropping out at higher rates, graduating with less meaningful diplomas and scoring lower on standardized tests. Below are a few examples of this problem.

The predominantly white high school in Pickens County offers the entirety of college preparatory classes; the black high school does not. Students at the white high school are offered remedial and enrichment classes not available for students at the all-black high school. Students at the black high school are offered electives such as Introduction to Cosmetology, Nail Care and Application and Fashion Decisions; students at the white high school are offered Journalism, Calculus, Latin and Shakespearean Drama. Black students across the system are offered less meaningful vocational courses than white students, and black students at the predominantly white high school are more likely to be "tracked" into the less challenging science and math courses. Teachers at the black high school are more likely to be untenured and less qualified than teachers at the predominantly white high school.

RELIGIOUS LIBERTY/PRISONERS' RIGHTS

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. This case went to trial in the Spring of 2009. We are currently awaiting the decision of the District Court.

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.)

In August of 2009, Plaintiffs and Defendants submitted a joint submission of evidence. In September 2009, the Plaintiffs filed a memo in support of their request for entry of judgment in this action. Defendant filed a reply brief in October 2009. Plaintiff filed a response in October 2009. We are awaiting the final decision of the district court.

WOMEN'S RIGHTS/FAIR HOUSING

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 a complaint and a petition for injunctive relief, which was granted in February 2007.

On March 24, 2009, there was a hearing on GumBayTay's liability for civil contempt for violations of the court's order granting injunctive relief, Plaintiff's motion for attorney disqualification and other sanctions, and Plaintiff's motion for sanctions for the destruction of documents. In this motion for sanctions, Plaintiff requested that Default Judgment be entered against Defendant GumBayTay. Plaintiff also had a motion for summary judgment pending at this time.

On March 27, 2009, Judge Watkins issued a written order granting Plaintiff's motion for civil contempt against GumBayTay for violating the court's Order granting injunctive relief. On March 30, 2009, Judge Watkins issued a written order granting Plaintiff's motion for attorney disqualification and sanctions against attorney Al Newell and granting the Plaintiff's motion for sanctions for the destruction of documents as pertains to the request for a default judgment against GumBayTay. This order also contained a footnote indicating that in the alternative, summary judgment was also due to be granted.

As a result, Defendant Bahr and Defendant GumBayTay owe Plaintiff, jointly and severally, \$25,000 in actual damages and \$25,000 in punitive damages and GumBayTay owes \$866.39 for actual losses for his violation of the injunction entered against him in the summer of 2007.

HIV & AIDS/PRISONERS' RIGHTS

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.

In August 2009, the DOC removed its ban barring HIV-positive prisoners access to work release. We continue to monitor both facilities to ensure that appropriate changes are in place or underway.

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 even 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

Tapia-Fierro v. Mukasey

In 1986, Jose Luis Tapia-Fierro moved to the U.S. from Mexico as a lawful permanent resident. In 1999, he was convicted of involuntary manslaughter and sentenced to 60 months in prison, but was released after 34 months for good behavior. When he was released, ICE (Immigration and Customs Enforcement) alleged he had committed an aggravated felony, which is a deportable offence, and on those grounds took Mr. Tapia-Fierro into custody. Mr. Tapia-Fierro however had not been charged with an aggravated felony, but involuntary manslaughter, which is not a deportable offence and for which he had served his time.

In immigration court, the judge failed to properly discharge his duty to explain to Mr. Tapia-Fierro the consequences of waiving his right to appeal his deportation. As a result, Mr. Tapia-Fierro waived his right to appeal and was subsequently deported to Mexico. Shortly thereafter, he was arrested for unlawfully re-entering the U.S., where he has family. He has been in detention since that time.

The Constitution guarantees the fundamental rights and civil liberties of every person in the country, including non-citizens. Mr. Tapia-Fierro's indefinite detention violates procedural and substantive due process guaranteed under the 5th Amendment. Also, the type of indefinite detention that he is facing is not authorized by any immigration statute. We have requested immediate release with reasonable conditions or a hearing for the government to show that Mr. Tapia-Fierro is a flight risk or a risk to the community.