AMERICAN CIVIL LIBERTIES UNION OF ALABAMA LEGAL DOCKET - JUNE 2011

(Most recent information is in bold.)

RACIAL JUSTICE

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 County Board of Education)*, 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. We are monitoring to ensure that the Board complies with the Court's order to keep the school open and work to make it a success.

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.

Here are a few examples of the problems: 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.

The Pickens County Board of Education wants the Federal Court to declare that the Pickens

County school system is “unitary” and to end court oversight of *Lee v. Macon County Board of Education (Pickens County Board of Education)*. Such a declaration by the Court would mean the Court determined that the Pickens County Board of Education had remedied the vestiges of racial segregation in Pickens County schools. Our goal is to obtain fairness for racial minority students in Pickens County schools in course offerings, extracurricular activities, discipline, college scholarship opportunities, drop-out rates and other quality of education issues through negotiating a court-ordered agreement in *Lee v. Macon County Board of Education (Pickens County Board of Education)*.

Judge Karon Bowdre, a federal judge in the Northern District, has approved the plan of the parties to work toward a new settlement or consent decree in the case. That work is ongoing.

PRISONERS’ RIGHTS

Knight v. Allen

Native American prisoners filed suit on their own behalf claiming that the Alabama Department of Corrections regulations prevented them from practicing their religion. 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.

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. As a result, the Department of Corrections now permits sacred sweat lodge ceremonies at designated facilities on certain holy days. Summary judgment was entered against Plaintiffs on the issue of hair length exemptions, and we appealed.

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 remanded the matter for trial. **This case went to trial in January 2009. We are currently awaiting the decision of the District Court.**

In April 2011, the Department of Justice filed a Statement of Interest in this case. The statement expressed the United States’ interest in ensuring that RLUIPA’s requirements are vigorously and uniformly enforced. The DOJ’s statement also expresses that Defendant’s policy requiring male inmates to cut their hair short does not conform with either the proper interpretation of RLUIPA or reasonable regulations necessary for prisoner safety and hygiene, and therefore Defendant’s should formulate a new hair length policy.

Monroe v. Allen

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.**

ACLU of Alabama v. Ingle

In an attempt to learn about jail conditions and treatment of inmates across the state, ACLU staff has visited several county jails to interview inmates. Sheriffs and other staff at these facilities put up time-consuming and unconstitutional hurdles to our visits.

The main purpose of seeking access to prisoners is to learn about potential unconstitutional and inhumane living conditions and treatment of prisoners in county jails. Reported problems include lack of adequate medical care, nutrition, exercise, sanitation and access to fresh air. Another potential problem is the unconstitutional and abusive treatment of pregnant women, including denial of adequate medical care and possible use of shackling during childbirth.

Our goal is to gain access to county jail prisoners who seek our help and to ensure that sheriffs are allowed to restrict access only as needed to maintain security. We want to establish this right for our organization, other human rights groups and private attorneys. The denial of access to prisoners is a violation of the ACLU's First Amendment right to consult with inmates and discuss with them the possibility of legal representation and litigation.

In March 2011, we filed suit against Rodney Ingle, in his official capacity as Sheriff of Fayette County, charging that the ACLU of Alabama and our attorneys have been unconstitutionally deprived of our right to consult with inmates at the Fayette County Jail. A settlement agreement was reached in April which provides that ACLU attorneys will be allowed to consult privately with inmates at the jail in accordance with standard attorney-client visitations procedures. The agreement also provides that jail staff will not interfere with the exchange of mail between the ACLU and inmates, discourage inmates from speaking with ACLU representatives, or retaliate against or threaten inmates who wish to speak to ACLU representatives.

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 in exchange for sex, but Ms. Boswell made it clear her relationship with him would not be sexual. Mr. GumBayTay then threatened to evict Ms. Boswell for refusing to acquiesce to his advances. 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 charging that the conduct of the rental agent and the property owner violated the federal Fair Housing Act. A petition for injunctive relief was granted in February 2007.

In March 2009, a judge issued a written order granting Plaintiff's motion for civil contempt against GumBayTay for violating the court's Order granting injunctive relief. As a result, Defendants 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.

We are attempting to recruit attorneys who will take over the remainder of this case which, at this juncture, is strictly about recovery of money.

In re: Gender Segregation in Public Schools

Several Alabama schools segregate students by gender. A variety of practices are followed including disallowing any contact between boys and girls during the school day, basing classroom instruction in the gender of the students, and having a wider variety of courses available for boys than girls. Our position is that separate is inherently unequal. Our goal is to end these practices through negotiation where possible and litigation when negotiation fails.

In response to our efforts, five school systems have now stopped this practice: Mobile County, Chilton County, Lawrence County, St. Clair County, and Dothan City schools.

In re: Prosecution of Women for Drug Use While Pregnant

For the last few years, District Attorneys in numerous counties around the state have applied a law meant to keep children out of methamphetamine labs to pregnant women struggling with addiction. The position of the ACLU is that this radical expansion of the "chemical endangerment" law and other laws under which pregnant women are being prosecuted is unconstitutional, and that good public policy rest on making treatment available for drug-addicted women, not prosecuting them.

We have been monitoring these prosecutions and providing assistance to attorneys representing these defendants for the last few years. We also filed a friend-of-the-court brief in Kimbrough v. Alabama, the case of a woman who was prosecuted under the chemical endangerment statute in Franklin County.

HIV / AIDS

Henderson v. Bentley

Through several years of advocacy, which began in 2007, the Alabama Department of Corrections (ADOC) 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.

Prior to 2007, 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.

Although much was achieved through negotiation with ADOC, there is a great deal left to be done. Some of the serious problems that remain to be addressed are: 1) forced segregation of prisoners due solely to their HIV-positive status, 2) lose of medical privacy through forced segregation and other practices, 3) criteria for participation in work release that does not comport with norms used by recognized medical or prison professional bodies, and 4) denial of full access to in-prison jobs and rehabilitation programs. The ACLU and Human Rights Watch published a comprehensive report on this topic in March 2010.

In March 2011, the national ACLU and the ACLU of Alabama filed a federal class action lawsuit in the U.S. District Court for the Middle District of Alabama charging that the ADOC's policy is discriminatory and illegal. The lawsuit also charges that the policy denies all prisoners with HIV access to rehabilitative and community re-entry programs, which may result in their serving longer sentences, and that the forced public disclosure of HIV status is in violation of medical ethics and international human rights law. We filed an amended complaint in May 2011, and we currently await the Defendants answer to our amended complaint.

VOTING RIGHTS

<u>Baker v. Chapman</u>

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. Our lawsuit sought to block state election administrators from disqualifying any voter whose conviction is not on that list.

The lawsuit also challenged 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.

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 appealed this ruling to the Court of Civil Appeals. **The Alabama Supreme Court took almost two years to rule and then, without writing an opinion, affirmed the lower court.**

We remain concerned about whether people convicted of felonies which are not disqualifying are registered to vote by local Boards of Registrars and whether those who have lost their rights are given accurate information about how to restore their rights. We continue to do outreach and public education on this issue by distributing informational brochures and speaking to community groups. We also maintain a hotline so that people may call to request information and assistance from us regarding their right to vote.

<u>Shelby County v. Holder</u>

Shelby County sued the United States seeking a declaration by the federal court that two sections of the Voting Rights Act (VRA) of 1965, Sections 4(b) and 5, are unconstitutional on their face. We have intervened in the case on behalf of the United States, and our goal is to preserve intact these two enforcement provisions of the VRA. We are representing the Alabama NAACP and four voters in Shelby County. The NAACP Legal Defense Fund and the Lawyers Committee have also joined the case representing other defendant-intervenors.

We maintain that Section 5 of the Act, which since 1965 has protected racial and language minorities' access to voting across the South and the nation, should remain in place. Section 5 requires certain jurisdictions like Shelby County that have a long history of racial discrimination in voting to obtain advance approval from the federal government before changing their election laws. The Voting Rights Act is arguably the most important civil rights legislation in American history. With that act, the promise of the Fifteenth Amendment, purporting to give Americans the right to vote regardless of "race, color, or previous condition of servitude," became a law, and African Americans finally had the right to vote.

The ACLU has submitted a motion for summary judgment and is currently waiting on the court's ruling.

DEATH PENALTY

Land v. Allen

Michael Jeffrey Land, on death row since 1994, was scheduled to be executed in August 2010. In May, Mr. Land's attorneys requested that the ADOC provide them with any and all records in its possession related to his time in prison, arguing that the records would be essential in the preparation of a comprehensive clemency request.

Clemency is a deeply-rooted tradition in American law, an important safeguard against miscarriages of justice, and the right to due process in state clemency proceedings is guaranteed by the U.S. Constitution. A person seeking clemency has full discretion in determining the content of their clemency petition and may choose to include any information that might be deemed useful to the Governor's clemency decision.

The records would show that Mr. Land had been an exemplary prisoner since arriving on death row and that he had not had a single documented disciplinary incident during his 16 years in prison. The records would also show that Mr. Land completed college courses and earned an associate's degree while incarcerated and that he had been an exemplary worker on death row.

Corrections officials refused to provide Mr. Land with his prison records because they are "not considered a public record" and took the position that Mr. Land would be provided only those documents prisoners would be given during "the normal course of business during his incarceration within the Department of Corrections."

The ACLU of Alabama filed a lawsuit seeking access to Mr. Land's prison file. The ADOC turned over the record the next day. Despite our success in this case, Mr. Land's execution was carried out on August 12, 2010.

FREEDOM OF RELIGION AND BELIEF

In re: Separation of Church and State in Public Facilities

Here are some examples of how we were able to administratively resolve violations of the separation of church and state in public schools and other public facilities in Alabama:

- Prayer was being led by faculty members and invited clergy at official elementary school functions in Washington County. We sent a letter to the superintendent who responded quickly with a commitment that such activities would cease.
- Prayers were being recited over the intercom system, flyers with bible verses were posted on school walls, and speakers at assemblies promoted church programs at a high school in Calhoun County. When a student notified the superintendent that he had contacted the ACLU regarding these problems, she promptly issued a statement saying that the prayers would cease. We then sent a letter asking that the school also remove the flyers and stop having speakers that promote church programs. We received word that all objectionable activities have stopped.
- An employee at the Alabama Department of Human Resources was sending emails containing a scriptural quotation and religious messaging. We sent a letter to DHR explaining the problem with these emails, and the emails have ceased.

FREE SPEECH

City of Huntsville v. Turner

Casey Turner had a tag on his bicycle that read “Fuck OPEC.” Mr. Turner was issued a citation for the display of an obscene sticker in violation of a statute that made it unlawful for any person to display in public any bumper sticker, sign or writing which depicts obscene language descriptive of sexual or excretory activities. We defended Mr. Turner against this charge, claiming that he did not violate the statute and that the statute itself is unconstitutional.

On December 7, 2010, Mr. Turner was found guilty by the municipal court, and we have appealed that decision to the circuit court and are awaiting a new trial.