



ACLU

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Court rules for ACLU-MN taxpayer standing in Charter School Case

U.S District Court Judge Donovan Frank ruled that the ACLU-MN has taxpayer standing to protect public funds in a lawsuit filed on behalf of its members against Tarek ibn Ziyad Academy (TIZA), its sponsor, Islamic Relief, and the Commissioner of the Minnesota Department of Education. The lawsuit argues that TIZA's policies and operations improperly promote religion in violation of the Establishment Clause. The ruling came down in response to the motions to dismiss filed by the defendants, arguing, among other things, that the ACLU-MN did not have standing to sue. The Court rejected the argument and found that the ACLU-MN had demonstrated that it has standing to sue on behalf of its taxpaying members.

The Court noted that its decision "underscores the importance of taxpayer standing, particularly when there is no other party to sue." The Court opined that, while TIZA students or their parents could raise an Establishment Clause challenge against TIZA, "[i]t seems unlikely that a parent or student of TIZA, who presumably attends the school because of its particularized program, would challenge the program of choice."

In its ruling, the Court also rejected the Defendant's arguments that the lawsuit should be dismissed as moot, that the ACLU-MN should have exhausted administrative remedies and that the Court should abstain from exercising jurisdiction in the case. The Court granted the dismissal of claims raising statutory violations and claims against the Minnesota Department of Education as an entity. The ACLU-MN did not contest the dismissal of those claims. "We look forward to the next stages of this litigation and the opportunity to prove our claims", said ACLU-MN Legal Counsel Teresa Nelson.

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ACLU-MN continues to fight for free speech in RNC case

In September, 2008, the ACLU-MN sued Ramsey County Sheriff Fletcher and others under his direction for conducting the unlawful seizure of vast amounts of constitutionally protected literature while executing several search warrants in the days leading up to the 2008 Republican National Convention. Police seized multiple copies of hundreds of different First Amendment protected publications, including books, pamphlets, leaflets, posters, stickers and buttons, despite the fact that they were intended to be distributed peacefully. Our lawsuit argues that the seizure of First Amendment materials violated our clients' free speech and due process rights guaranteed under the First and Fourteenth Amendments.

The case is currently in its pre-trial discovery phase. During depositions, the defendants began to delve into information we believe would interfere with our client's First Amendment protected associational and speech activities. We sought to protect our client's rights by asserting a First Amendment privilege to prevent them from having to answer questions that would chill their free speech rights.

The Defendants responded by filing a motion to compel our clients to testify about various lines of inquiry. We opposed the motion and informed the Magistrate that our clients were willing to disclose the names of the groups whose literature was seized, and their membership in those groups for purposes of demonstrating their ownership claim to the literature; however, we made clear that our clients objected to

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From the President

Wally Hilke



A patriotism that prejudice cannot deny

This commentary was originally published in the Star Tribune.

Many have noted that the modern observance of Independence Day is not much about independence from Great Britain. July 4th celebrations do not feature the burning of the Union Jack; the hanging of King George in effigy; the marching of shame-faced, shackled Redcoat reenactors in parades, or the chanting of anti-British slogans. One might argue that independence never was the most important outcome of the Revolution. It is what our forefathers did with that independence that matters. Given the same options available to all nation-builders since 1776, they chose to found a country based on the consent of the governed and the promise of individual civil liberties. They left it to future generations to deliver on that promise.

This spring I was struck by a curious sight as I drove through the White Earth reservation in west central Minnesota. We passed a Native American cemetery that had flagpoles. Lots of flagpoles. In fact, many graves had personal flagpoles installed beside them. My navigator, White Earth member Audrey Thayer, told me that the flagpoles are placed next to veterans' graves so their families can fly their loved ones' U.S. flag above them on civic holidays. Thayer told me that this same pride of military service extends to White Earth powwows. At the beginning of these gatherings, members of the White Earth Band of Ojibwe play four veterans' songs, talk about their families' military service, and fly their veterans' flags. All veterans are invited to dance in the grand entry, whether

or not they are Native American. So too the other bands in the Bemidji, Leech Lake, and Red Earth areas, play veterans' songs and fly veterans' flags during their powwows.

The patriotism displayed in the forest of flagpoles was a bit ironic, given my reason for visiting White Earth. I had come to tribal headquarters as president of the ACLU-MN board to discuss the work of our Greater Minnesota Racial Justice Project, founded in 2004 because Native Americans were not receiving equal treatment in the Bemidji-area criminal justice system. Indeed, when our project started, Native Americans were four times likelier than Caucasians to be incarcerated in the Beltrami County jail with similar ratios in neighboring counties. The same citizens who take such pride in their service to our country were being denied the very rights for which they fought.

Things have improved some after five years of concerted effort by our Bemidji staff and dozens of volunteers led by Thayer, our project coordinator. Our work has included hundreds of meetings with judges, prosecutors, community leaders and law enforcement officials; thousands of hours of courtroom observation, and hundreds of monitored police encounters with Native Americans. Yet, in the first quarter of 2009, Native Americans still were twice as likely as Caucasians to reside in the Beltrami County jail.

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From the Executive Director

Charles "Chuck" Samuelson



Lord Actons Doctrine

We have a new president this year and his agenda is full. Many of us were excited to see a change in leadership in Washington but two things remain true. The first is that Lord Acton was correct, "Power corrupts and absolute power corrupts absolutely." The second is, because of our history, the ACLU is suspicious of anyone in power. The good news for civil libertarians is that President Obama's agenda includes closing Guantanamo prison and eschewing torture as an instrument of US foreign policy. The bad news is that he is not sure when he will be able to truly complete his agenda.

On the legal front, the national ACLU has filed a lawsuit following a Freedom of Information Act request for documents that include records relating to four specific detainee deaths from 2006 and 2007, which the government categorized as suicides. The national ACLU filed a federal lawsuit in New York against the FBI, seeing the release of records relating to its use of national security letters on behalf of other government agencies particularly the Department of Defense. The national ACLU filed a federal lawsuit demanding the release of un-redacted transcripts of Guantanamo Bay prisoners describing abuse and torture suffered in CIA custody. And we have continued in our efforts to close the Guantanamo Bay prison.

In addition we have developed a program to address the continued indefinite detention of those whom our government has decided might be terrorists. We adamantly oppose indefinite detention because it allows the government to imprison someone indefinitely without charging them with a crime or holding a trial. This would violate the essence of American due process and the rule of law. The American system of justice demands that we try those suspected of a crime and that we punish the guilty. Detaining individuals indefinitely without charge or trial is un-American and violates our commitment to due process and the rule of law. Our criminal laws are broad enough to reach anyone who poses a real threat or has any even remote connection to terrorism. After all this time, the government should have gathered reliable, untainted evidence against any suspect it believes is guilty. If not, it has no justification to hold him. That's the American way.

We must put an end to the assumption that the only way to keep us safe is to violate the rule of law and the Constitution. Our time-tested justice system has successfully prosecuted terrorist suspects in the past and is fully equipped to do so now. Our courts have well-defined procedures for protecting national security evidence while also protecting fundamental rights. There have been over 150 successful terrorist convictions in our federal court system dating back to way before September 11. Our prison system has an excellent record of maintaining security for high-risk inmates and is more than equipped to securely hold convicted terrorists. Any argument otherwise is nothing but fear-mongering, and it's time to turn the page on that kind of governing.

We cannot give the executive branch the power to violate due process, no matter who is in power. We must maintain the rule of law and due process. Although different administrations may handle their powers differently, we cannot give our political leaders the power to violate the Constitution and trust that they won't abuse it. Without the application of a justice system, we run the risk of incarcerating innocent individuals, which we know has repeatedly happened

We need to bring terrorists to justice. Indefinite detention without charge actually impedes the process of achieving justice. If we have evidence that suspects are guilty of
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GMRJP Office Manager.....Gina Walters

Newsletter

Contributors.....Carolyn Jackson, Wally Hilke,
Charles Samuelson, Rebecca Rand and Audrey Thayer

Legal update

Patients housed at Moose Lake Correctional Facility are being denied their constitutional rights

The ACLU-MN, along with cooperating attorneys, agreed to represent patients who are challenging the conditions of their confinement in the Minnesota Sex Offender Program (MSOP) “Annex”. The Annex is located in a wing of the Moose Lake Correctional Facility. While it is located within the state prison, it is technically a part of the Moose Lake Regional Treatment Center. It houses individuals who have served their prison time but have been civilly committed indefinitely for mental health treatment as Sexually Dangerous Persons and Sexual Psychopathic Personalities. The patients being held in the Annex have exercised their right to refuse to participate in sex offender treatment. Conditions at the Annex are significantly more punitive than in the general MSOP facility located at the Moose Lake Regional Treatment Center. The Plaintiffs (who originally represented themselves pro se) challenge numerous unconstitutional conditions including:

- Detainees are subjected to strip searches and are handcuffed and shackled as part of standard operating procedure whenever detainees are transported. For example, to attend patient advisory committee meetings at the MSOP facility or after contact visits. This is violation of their Fourth Amendment right to be free from unreasonable searches and seizures.
- Detainees’ incoming legal mail has, on numerous occasions, been opened outside the presence of the detainee in violation of their Sixth Amendment right to counsel.
- Detainees allege that they are not allowed incoming calls and that their calls are monitored in violation of their First Amendment right to telephone access.
- Detainees are subjected to potentially severe health risks due to inadequate sanitation in violation of their Eighth Amendment rights including:
 - Urine and fecal matter are frequently found on the bathroom floor or toilet seats;
 - No sanitizer is readily available to disinfect the floors and toilet seats;
 - Mops and brooms used to clean the bathrooms and showers are also used to clean cells, thereby spreading germs to their cells;

“The ACLU-MN firmly believes that the constitution grants individuals the same rights no matter your identity or background”

- MSOP retaliated against two of the plaintiffs for their participation in litigation challenging their access to religious activities while civilly committed to the MSOP. The retaliation took the form of a reduction in their access to religious services, attorneys, the court and visitation by family; unreasonable restraint leading to injury; unreasonable searches of property; and the seizure and copying of legal papers.

The next step in the case will be proceeding to discovery, which will happen over the next few months. The ACLU-MN has long been concerned about the way in which Minnesota’s sex offender civil commitment program has been implemented. Although patients are not prisoners, their conditions of confinement often mirror that of prisoners. While the purpose of civil commitment is to provide treatment, few – if any – patients have been released from the program. The ACLU-MN firmly believes that the constitution grants individuals the same rights no matter your identity or background. While defending sex

offenders’ rights may be considered unsavory to many people, we believe that constitutional rights would be meaningless if they did not apply in situations when we are most tempted to violate them.

RNC case cont’d

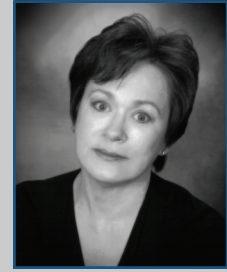
providing information that did not relate to their ownership of those materials.

We argued that the First Amendment privilege – dating back more than five decades to the civil rights era when members of the NAACP were targeted target for harassment, retaliation and violence, is designed to protect individuals from being compelled to provide information about their First Amendment activities unless the government can show that they have a compelling need for the information. We further contended that the information the defendants sought was not relevant and that they failed to meet their burden to overcome that privilege. Unfortunately, the Magistrate disagreed with our position and granted the Defendants’ motion to compel testimony. We have filed an objection to the Magistrate’s ruling with the District Court Judge and our client’s depositions have been put on hold until the matter is resolved.

Volunteer attorney in this case are Al Goins and Geneva Finn.

From the ACLU

Rebecca Rand
Minnesota's National Delegate



National board meeting

Anthony Romero reported that for the first time since FDR was president, the national Executive Director of the ACLU met privately with the President. He urged President Obama to stop preventive detentions and to try suspected terrorists in federal courts rather than in front of military commissions.

SAFE AND FREE

The suit demanding release of the torture photos awaits a response from the Second Circuit. However, a bill currently before Congress would not require the release of any photos “of U.S. military personnel engaged with detainees if release would endanger U.S. personnel”, which would moot our lawsuit.

We are currently fighting preventive detention. The ACLU currently opposes a proposal to modify the military commissions act to allow detainees to plead guilty and be executed without trial. Currently capital cases require a trial. Many detainees want to plead guilty and be executed to attain martyrdom. We would prefer that military commissions be scrapped in favor of regular federal courts. However, that appears unlikely to happen.

FREEDOM OF THE PRESS

The Committees on Data Practices, on Newspersons and Researchers Privilege, and on Right to Travel all reported. (I am on the Right to Travel Committee.) We received many useful questions, comments, and criticisms from the Board and continue to work to perfect policy. One delegate questioned our policy on “banishment,” a punishment I

thought ended upon the settlement of Australia. We’re looking into it.

CAMPAIGN FINANCE REFORM

Fireworks and many impassioned speeches greeted the report of the Campaign Finance Committee. Presently, the ACLU opposes any restrictions

on donations on free speech

grounds, which puts us on the side of Supreme Court judges Roberts, Scalia, Thomas, and Alito. Minnesota ACLU members with thoughts on Campaign Finance Reform are encouraged to communicate then to me.

Thank you for the opportunity to serve as your affiliate Rep. to the National Board. It is sometimes tedious, sometimes annoying, but most often energizing and thrilling to be surrounded by smart, passionate, knowledgeable people dedicated to the protection of everyone’s civil liberties.



Originally Published in the Ottawa Citizen by Cam Cardow

Greater Minnesota Racial Justice Project Update

Written by Audrey Thayer

This summer the Greater MN Racial Justice Project has been focused on events for Northern Minnesota, which have kept our volunteers, interns, and staff very busy.

On June 4th, we organized the first of a series of Community Dialogues on Race which was moderated by the Department of Justice. The focus of the first meeting was to have community members share their experiences of racial injustices. There were 48 attendees from all across the seven county area GMRJP serves including the three reservations. The hope is that through these community dialogues we can bring the “powers to be” and the native community together to create a plan of action to change the disparities in the justice system between the Native American and white communities. Another Community Dialogue on Race was held on July 22nd where solutions to the problems identified in the first session were addressed.

Upcoming events for the Greater MN Racial Justice Project include the “Cultural Connections Picnic” and appearances at Beltrami & Clearwater County Fair.

The Cultural Connection Cook-out was created to bring the Native American community together with the people and groups who support them. This picnic is to appreciate the great work done by many, and to celebrate the diversity of our community that makes it so rich. This will be our final year as the lead organizing agency for the picnic. We are welcoming a group of individuals that do plan on carrying on the traditions of this picnic with the expansion into many forms of music. The new name of this event will be the “Cultural Connections Festival”.

As in the past, we are in need of more volunteers with the court monitoring project and our assorted events over the year. Please do not be shy and come join us! Please call 218-444-2285 to find out more about how you can help.

The Cultural Connection Community Cook-out & Picnic

Thursday, August 20th

2:00 p.m.—7:00 p.m.

UpNorth Marina

303 Railroad Street, Bemidji

An event to thank the community we serve and a celebration of the wonderful diversity of our community.

- Food & beverages*
 - Music & entertainment*
 - Information booths*
 - Race Relations Silent Auction*
 - Bemidji Area Indian Center Rummage Sale*
- For information: 218-444-2285*

Legislative Update

Written by Carolyn Jackson

The ACLU of Minnesota was busy at the Minnesota Legislature this session. While the news headlines were all about the budget crisis, we were working away in the background on a number of policy victories.

Anti Real ID. In 2005 the federal government enacted the Real ID Act which turns state drivers licenses into a national ID card with an interlocking nation-wide database system. The ACLU of Minnesota lobbied for bi-partisan support to pass a statute telling the federal government that Minnesota will not participate in that terrible law. The bill passed 133 to 0 in the Minnesota House and 65 to 1 in the Minnesota Senate, and Governor Pawlenty signed the bill, making Minnesota the 23rd state to reject Real ID.

Racial Profiling. Fifteen State Representatives and four State Senators co-authored legislation requiring law enforcement to gather data on race in all traffic stops statewide. While this bill did not make it out of committee in either house, it reignited a discussion about race in our criminal justice system.

Charter School Reform. The ACLU-MN participated in the broad discussion about charter school reform. Most notably, we lobbied to have the data practices law and open meetings act apply to charter schools, and to give the Education Commissioner power to discipline charter schools which violated separation of church and state. These issues are incorporated in the new charter school law. Additionally, as a result of our involvement, new sponsors of charter schools must be non-sectarian.

President's article cont'd

Other measures of justice confirm that we face a steep climb ahead. The February 2009 Bemidji Study on Race Relations published by St. Paul's Wilder Foundation found that more than two-thirds of the Native Americans surveyed reported that they had experienced racial discrimination by law enforcement in the past year. Native American pride in serving our country perseveres despite the lack of equal treatment before the law. Native Americans continue to enlist in the U.S. military at rates higher than any other race. This tradition goes back to World War I, when they served at twice the rate of the general population even though as many as one-third of the enlistees were not considered U.S. citizens and could not vote. During World War II, the Saturday Evening Post opined that the Selective Service would not be necessary "if all volunteered like Indians." Various Minnesota bands have flag-festooned veterans' floats that they enter in community parades, even though they do not always receive a warm reception. Three years ago some parade-watchers jeered the Mille Lacs Band veterans' float, gave it the thumbs-down sign and reportedly spat at it during the Isle Days Parade in Mille Lacs County. Undeterred, the Mille Lacs Band veterans continue to appear in parades to celebrate their service and their country.

Americans rightly thank all of our veterans for their inestimable contribution to our freedom and liberty. At home we best honor their service by guarding the civil liberties that they have defended abroad. Each of us has a role in fulfilling our founders' promise of civil liberties and equal justice. Please join me this July 4th in identifying some action, however small, to help ensure that Minnesota's Native Americans receive the same measure of civil liberties that the majority of us enjoy as our endowment flowing from the American Revolution.

TiZA story cont'd

The ACLU-MN is represented by ACLU-MN cooperating attorneys Peter Lancaster, Christopher Amundson and Ivan Ludmer from the law firm of Dorsey and Whitney.

Check our website for updates on the case as it moves forward into the next stages.

Volunteer for the State Fair

The ACLU of Minnesota is currently looking for volunteers to work at the ACLU booth at the State Fair which runs from August 27th—September 7th at the State Fairground in St. Paul.

Interested volunteers will attend a short training and receive a ticket into the State Fair and T-shirt for volunteering their time.

If you are interested in volunteering at the State Fair please contact Jana Kooren at 651-645-41097 x123 or jkooren@aclu-mn.org.

If you are not able to attend the State Fair, we at least hope you can stop by and pick up your very own Bill of Rights on a stick!

Executive Director article cont'd

terrorism, we should prosecute them and punish them if they are found guilty.

Please contact your senators and representatives and let them know that we are a nation of laws and that we expect them to push for the use of our Federal court system to handle these criminals. It is too important to us to be left to the President alone.

TRIBUTES

In Memory of Andy Seitel

from classmates at William Mitchell College of Law class of 1991.

Paul J. Lukas

Sara Palmquist

Peter and Debra O'Connor

Barry and Mary O'Neil

Thomas Jamison

Lisa and Robert Brabbit

Steven and Karen Schlotthauer

Michael and Anne Brose

Tributes are contributions made to honor or remember special friends, family, colleagues and occasions.

To have your tribute appear in Civil Liberties News, please contact Molly at 651.645.4097 x127; mmiller@aclu-mn.org or 450 N. Syndicate, suite 325, St. Paul, MN 55104

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