

WEB SITE DOCKET UPDATE FOR 10/22/2009

ACTIVE CASES: Direct Representation/Advocacy

Fair Housing/Urban Environment

State Financial Bank et al. v. City of So. Milwaukee, 2000C1530 (ED Wis.)

Description: Low-income, minority and disabled tenants are seeking to prevent the City of South Milwaukee from razing their homes. Lake Bluff Apartments is a low-income and wheelchair-accessible development that houses a significant proportion of South Milwaukee's minority population. The tenants allege violations of the Fair Housing Act and the Americans with Disabilities Act.

Forum: U.S. District Court for Eastern Dist. of Wisconsin.

Attorneys: Peter Koneazny of Legal Aid Society of Milwaukee; Mark Silverman of Legal Action of Wisconsin; Senior Staff Attorney & Legal Director.

Freeway Expansion and Transportation Equity/Environmental Justice

Description: The process for determining that \$6.25 billion should be spent to rebuild and expand freeway system failed to adequately involve minority and low-income communities, and failed to adequately address the impact of proposed freeway expansion on issues affecting those communities (such as employment, housing, and health and pollution issues), in violation of statutes and U.S. Dept. of Transportation rules on civil rights and environmental justice.

Potential Claim(s): Clean Air Act; Title VI, NEPA, WEPA

Attorneys: Poverty, Race & Civ. Lib. Attorney; Sierra Club; Melissa Scanlan, Midwest Environmental Advocates; Dennis Grzezinski, Milwaukee.

Pabst Farms Interchange/Transportation Equity/Environmental Justice

Description: In Feb. 2008, the Southeast Wisconsin Regional Planning Comm'n approved construction of an interchange at Pabst Farms in Oconomowoc. In making this decision, SEWRPC failed to conduct required civil rights and environmental justice analyses, ignoring, among other factors, that Waukesha County had voted to cut bus routes within days of saying it would pay more than \$1 million for the interchange. SEWRPC's decision allowing accelerated construction of the interchange has a discriminatory effect on communities of color, particularly given the residential racial segregation in the region.

Claim(s): Title VI

Attorneys: Poverty, Race & Civ. Lib. Attorney; Dennis Grzezinski, Milwaukee.

Free Expression & Association

Congine v. Village of Crivitz

Description: Crivitz police officers setting up for the Fourth of July parade received "numerous complaints" about Vito Congine's flag, which was flying upside down in front

of his supper club in protest of the Village's denial of a liquor license for the supper club. According to police, some of the parade-goers threatened "property damage and bodily harm to the property owner," who was not present at the time. Rather than protect Mr. Congine's First Amendment right to express disagreement with his local government and defend his property from would-be vandals, the police, at the direction of the Marinette County District Attorney, instead trespassed on Mr. Congine's property and confiscated his flag, in violation of the Fourth and First Amendments.

Claim(s): Violation of First Amendment right to freedom of expression and Fourth Amendment right against unreasonable searches and seizures.

Potential Forum: Possible damages action in the U.S. District Court for the Eastern District of Wisconsin.

Attorneys: James Friedman, Godfrey & Kahn, Madison; Timothy Nixon, Godfrey & Kahn, Green Bay; legal director.

Milwaukee Gay Arts Center v. City of Milwaukee, 08-C-0958 (E.D. Wis.)

Description: The Milwaukee Gay Arts Center (MGAC) arranged for the staging of a play, "Naked Boys Singing," to be performed in August 2005. After a week of performances and after receiving an open records request and complaint from an anti-gay activist, officials from the Milwaukee Police Department closed the production, on the grounds that the MGAC did not have a theater license, even though the licensing regulation does not require nonprofits, such as MGAC, to have such a license. The City ultimately reversed course and allowed the production to take place several months later, but promotion and other costs of the originally scheduled production were lost. MGAC sued the City for its losses.

Potential Claim(s): Violation of right to freedom of expression and equal protection through selective enforcement.

Forum: Sec. 1983 action in U.S. District Court for the Eastern district of Wisconsin.

Attorneys: Steve Porter, Madison; Jeff Scott Olson, Madison; legal director.

Fitz v. City of West Bend or West Bend Parents for Free Speech v. City of West Bend

Description: Earlier this spring, a group calling itself West Bend Citizens for Safe Libraries asked the West Bend public library to remove several young-adult books with gay and lesbian themes from the young adult section of the library and from a list of books recommended for reading. The targeted books include Stephen Chbosky's *The Perks of Being a Wallflower*, Brent Hartinger's *The Geography Club*, and Esther Drill's *Deal with It! A Whole New Approach to Your Body, Brain and Life as a gURL*. The group argued that these books were "pornographic" and should be removed, and also urged that more books with "faith-based" and "heterosexual" themes be added to the young adult section. On April 21, 2009, the West Bend Common Council took up the Mayor's reappointments of four individuals to the library board. In a departure from past practice, the Common Council voted to reject the appointments, because the library board had not yet removed the offending books. One Common Council member compared the library to a "porn shop." The Common Council's action violates the rejected library board members' rights

by retaliating against them for refusing to violate the First Amendment. Should the library ultimately remove the targeted books, the removal would violate the First Amendment rights of citizens to receive information.

Potential Claim(s): First Amendment retaliation and/or censorship.

Potential Forum: U.S. District Court for the Eastern District of Wisconsin.

Attorneys: James Friedman, Godfrey & Kahn, Madison; legal director.

Police, Prisons & Criminal Justice

Flynn v. Doyle (Health Care at Taycheedah Women’s Prison), 06-C-537 (ED Wis.)

Description: According to a 2002 study by the National Institute of Corrections, as well as other internal and media investigations, the Wisconsin prison system provides grossly deficient health care to prisoners in its care. The ACLU’s investigation has found that the system especially fails women. In February 2000, a 29-year-old asthmatic prisoner collapsed and died gasping for air in Taycheedah’s cafeteria after repeated requests for medical help. In June 2005, an 18-year-old suicidal prisoner hanged herself in her cell while supposedly “in observation” in the mental health unit at Taycheedah, which provides no inpatient care and serves only to isolate and punish the most vulnerable women. Unlike the women at Taycheedah, men with severe mental health issues may be assigned to the Wisconsin Resource Center, an inpatient psychiatric facility that provides round-the-clock care and individualized treatment for male offenders. The breakdown of the understaffed, underfunded and dangerously dysfunctional health care system in Wisconsin’s prisons contributes to enormous and unnecessary human suffering.

Forum: U.S. District Court for Eastern District of Wisconsin

Attorneys: Gabriel Eber, Elizabeth Alexander & David Shapiro of ACLU NPP; Robert Graham, Keri Hotaling, Grace Ho and Michael Strong of Jenner & Block, Chicago; Legal Director.

Christensen et al. v. Sullivan, 1996CV1836 (Milw. Co. Cir. Ct)

Description: The Milwaukee County Criminal Justice Facility has been under a consent decree that settled a 1996 class-action lawsuit seeking to remedy overcrowding and inadequate medical care for prisoners. Plaintiffs’ attorneys uncovered extensive violations of the decree’s requirement that prisoners not be held in the booking room – which has no beds or showers and is frequently crowded and dangerous – for more than 30 hours.

Forum: Milwaukee County Circuit Court

Attorneys: Peter Koneazny of Legal Aid Society of Milwaukee; Patrick Patterson, Fox Point; Legal Director

LGBT Rights & Prisoner’s Rights

Kari Sundstrom, et al. v. Wisconsin Department of Corrections, 06-C-112 (E.D. Wis.)

Description: Several prisoners in the Wisconsin prison system have been receiving

hormone therapy to treat Gender Identity Disorder (GID) for many years, beginning prior to their incarceration. For many years, the Department of Corrections' policy was to continue the hormone therapy of GID patients who began taking hormones prior to their incarceration. However, in late 2005, the Legislature passed a statute prohibiting the use of state funds or resources or "federal funds passing through the state treasury to provide or to facilitate the provision of hormonal therapy or sexual reassignment surgery for" prisoners. Withdrawal of hormone therapy would, in the words of one federal court, "wreak havoc on [the affected prisoners'] physical and emotional state." *Phillips v. Michigan Dep't of Corrections*, 731 F. Supp. 792, 800-01 (W.D.Mich. 1990), *aff'd without opinion*, 932 F.2d 969 (6th Cir. 1991). The statute violates transgender prisoners' 8th Amendment right to be free from cruel and unusual punishment, because it requires care that constitutes "deliberate indifference" to a "serious medical need." The statute also violates equal protection, because it treats prisoners with one serious medical condition – gender identity disorder – differently from prisoners with other serious medical conditions.

Forum: U.S. District Court for the Eastern District of Wisconsin.

Attorneys: Erik Guenther, Hurley Burish & Stanton, Madison; John Knight, Chicago, ACLU Lesbian & Gay Rights Project; Cole Thaler, Atlanta, Lambda Legal; Legal Director.

Free Speech Rights/Students Rights

Dettman v. UWM Student Association

Description: The UWM Student Association's Independent Election Commissioner removed the entire slate of 26 candidates running for Student Association offices under the Achieving Student Action through Progress (ASAP) party from the student election ballot one day before the election was to take place on April 17 & 18, 2008. The removal was based on what appears to be a biased application of election rules that restrict the political speech of candidates and their supporters. The Commissioner was a student senator of the opposing party, Students United for Change (SUFC).

Potential Claim(s): Violation of right to freedom of speech and due process.

Potential Forum: Sec. 1983 action in Milwaukee County Circuit Court or U.S. District Court for the Eastern District of Wisconsin, seeking to enjoin application of the election rules; possible action seeking to enjoin the Student Association from participating in decisions about distribution of segregated student activity fees.

Attorneys: Richard Bolton, Boardman, Suhr, Curry & Field, Madison; Legal director.

Rights of Minorities

Southeastern Wisconsin Regional Planning Commission Hiring Practices Complaint

Description: For more than 30 years, SEWRPC has been required to use affirmative action in its hiring processes, due to its receipt of federal contracts and federal funding. Currently, of SEWRPC's 41 professional staff, only one (an Asian) is a person of color.

Only three of its technical staff members and one clerical staff member are persons of color. SEWRPC's own affirmative action plan requires outreach to organizations and media representing persons of color. It also discusses the ways in which the lack of transit to SEWRPC's offices have posed hiring barriers for persons of color.

Nevertheless, when the executive director of SEWRPC recently decided to retire, SEWRPC promoted the assistant director (a white male) to the ED position, without conducting a job search – despite the request of its own Environmental Justice Task Force that it do so. Further, at an EJTF meeting in May, when asked if SEWRPC would conduct a detailed search to replace the assistant director, the current ED stated that SEWRPC preferred to promote from within. In addition, SEWRPC's reports claim that its technical staff minority percentages are greater than they in fact are, because SEWRPC is (improperly) counting summer interns as "technical staff."

Potential Claim(s): Violation of federal contractor's affirmative action duties.

Potential Forum: Office of Federal Contract Compliance and possibly USDOT and US Department of Interior Offices of Civil Rights.

Attorneys: Senior Staff Attorney; Atty. Rebecca Salawdeh

Immigration Enforcement by Local Law Enforcement

Description: Local police and sheriff's deputies in an increasing number of communities have been stopping persons who they perceive as immigrants (almost always Latinos), inquiring about their immigration status, and contacting immigration officials to have persons deported. In many cases it appears that the departments are engaging in racial profiling in violation of Title VI and equal protection. In addition, almost all violations of immigration laws are civil, not criminal, and enforcement of civil immigration laws exceeds the authority of local law enforcement.

Forum: Letters to local law enforcement agencies seeking documentation of actions and revision of policies. Efforts to identify and provide trainers to improve police practices.

Attorneys: Poverty, Race & Civ. Lib. Attorney.

Challenge to W-2 Race & Disability Discrimination

Description: The W-2 welfare program, administered by the Wisconsin Department of Workforce Development, has policies and practices that have led to race and disability discrimination against W-2 participants. These include the failure to properly assess and accommodate disabilities, and the racially disparate imposition of adverse actions such as monetary sanctions for alleged violations of program requirements.

Forum: Administrative complaint to US Dept. of Health & Human Services, Office of Civil Rights

Attorneys: Rebecca Salawdeh for NAACP of Milwaukee; Anne DeLeo, Milwaukee; Pat DeLessio, Legal Action of Wisconsin; Jodi Hanna of Wisconsin Coalition for Advocacy; Poverty, Race & Civ. Lib. Attorney.

Safe & Free/National Security

Ahmad Khorrami v. Dale Mueller, et al.

Description: Dr. Ahmed Khorrami, a British citizen born in Iran, with lawful permanent resident status in the United States since 1997, was employed as a pilot by Skyway Airlines in Milwaukee. When he arrived at Skyway Airlines' office on the afternoon of September 17, 2001, he was greeted by Milwaukee FBI and INS agents, who detained him unlawfully, interrogated him, and insulted his religion and ethnicity. The agents then transported him to the Waukesha County Jail, where they continued to interrogate him, and threatened him and physically and psychologically abused him. He was transferred to a jail in Illinois, where he was held until he was ultimately released after the FBI admitted it had submitted a false declaration regarding Dr. Khorrami's supposed link to the September 11 attacks. The government's actions violated Dr. Khorrami's 4th Amendment rights to be free from unreasonable seizure and excessive force, his substantive due process right to be free from abusive treatment, and his equal protection right to be free from ethnic and/or religious profiling.

Forum: U.S. District Court for Eastern District of Wisconsin.

Attorneys: Harvey Grossman, ACLU-IL legal director; Roger Pascal, Lawrence Heftman and Renee Kelley of Schiff Hardin, Chicago; legal director (as local counsel).

Joint Terrorism Task Force/Spy-Files FOIA

Description: The federal government has aggressively sought, through Joint Terrorism Task Forces, to enlist state and local law enforcement agencies in imposing federal "anti-terrorism" policy in a way that may infringe on free speech and association rights.

Forum: Letters to local law enforcement seeking clarification of role and modifications of policies.

Attorneys: Patrick Patterson, Milwaukee; Peter Goldberg, Milwaukee; Jennifer Peterson, LaFollette, Godfrey & Kahn, Madison; Scott Sussman, Center for Fathers, Families & Public Policy, Madison; Steve Porter, Madison; legal director.

LGBT Rights

***Helgeland v. Dep't of Employee Trust Funds*, 05 CV 1265 (Dane Co. Cir. Ct.)**

Description: Same-sex couples have been denied benefits or privileges hitherto reserved to different-sex spouses, in violation of the Wisconsin Fair Employment Act and the Wisconsin constitution's equal protection guarantee.

Forum: Dane County Circuit Court.

Attorneys: Linda Roberson & Christopher Krimmer of Balisle & Roberson, Madison; John Knight, Ken Choe, James Esseks, ACLU Lesbian & Gay Rights Project; Legal Director.

***Appling v. Doyle*, 2009AP001860 – OA (Wis. Supreme Court)**

Description: On June 29, 2009, Wisconsin Governor Jim Doyle signed legislation creating a Domestic Partner Registry for same-sex couples that confers a limited number of important benefits, including hospital visitation and medical decision-making rights,

inheritance and survivorship protections, and family and medical leave rights. County clerks were required to begin taking registrations on August 3, 2009. On July 23, 2009, Julaine Appling and two other leaders of Wisconsin Family Action, a group hostile to gay and lesbian rights, filed a petition with the Wisconsin Supreme Court asking the Court to take “original jurisdiction” (that is, to take the case without having to go through the normal process in the trial court and court of appeals) of the case and invalidate the registry as a violation of the Anti-Marriage Amendment, Art. XIII, § 13, Wis. Const. *Defense(s)*: The Domestic Partnership Registry and its limited benefits do not violate the Amendment’s prohibition on recognition of relationships “substantially similar” to marriage.

Potential Forum: Wisconsin Supreme Court; Circuit Court, if Supreme Court denies original jurisdiction.

Attorneys: John Knight, ACLU LGBTAP; David Goroff, Foley & Lardner, Chicago; Linda Hansen, David Froiland, Jason Plowman & Daniel Manna, Foley & Lardner, Milwaukee; legal director.

ACTIVE CASES: Amicus Representation

Freedom of Expression/Association

Siefert v. Alexander, No. 09-1713 (7th Circuit)

Description: Hon. John Siefert, a Milwaukee County Circuit Court judge, has sued officials of the Wisconsin Judicial Commission seeking to strike down three rules of judicial conduct on the grounds that they violate his associational and speech rights under the First Amendment. The first rule prohibits judges from being members of a political party, the second prohibits endorsement of candidates in partisan elections, and the third prohibits a judge from directly soliciting campaign contributions. In a well-reasoned opinion, the federal district court in Madison agreed with Judge Siefert and enjoined enforcement of all three rules, concluding that they interfered with robust debate in election campaigns protected by the First Amendment. *Siefert v. Alexander*, 597 F. Supp. 2d 860 (W.D. Wis. 2009). The Judicial Commission has appealed.

Claim(s): Violation of elected judges’ rights to freedom of association and freedom of expression.

Potential Forum: Amicus brief to the U.S. Court of Appeals for the Seventh Circuit.

Attorneys: Erik Guenther, Hurley, Burish & Stanton, Madison; legal director.

Privacy/Police Practices/Search & Seizure

State v. Sveum, 2008 AP 658CR

Description: The defendant in this case was convicted of aggravated stalking. The evidence included data from a global positioning system (“GPS”) device the police had secretly attached to the defendant’s vehicle. Although the police obtained a court order to place the GPS on the car, the defendant challenged the scope of the warrant as over-

broad. The Wisconsin Court of Appeals upheld the conviction, not on the ground that the warrant was valid, but on the ground that no “search” or “seizure” within the meaning of the 4th Amendment occurred, because a person has no reasonable expectation of privacy in their movements in public places and the placing of a GPS device to track those movements does not affect the 4th Amendment analysis. As the Court itself recognized, the result is “more than a little troubl[ing]. . . . If there is no Fourth Amendment search or seizure, police are seemingly free to track *anyone’s* public movements with a GPS device.” 2009 WL 1229942 ¶ 20. As the New York Court of Appeals noted in reaching the opposite conclusion under the New York state constitution, a GPS unit can disclose trips of an “indisputably private nature,” such as “trips to the psychiatrist, the plastic surgeon, the abortion clinic, the AIDS treatment center, the strip club, the criminal defense attorney, the by-the-hour motel, the union meeting, the mosque, synagogue or church, the gay bar and on and on.” *People v. Weaver*, 2009 WL 1286044 (N.Y. May 12, 2009). Because the Fourth Amendment’s protection against “unreasonable searches and seizures” of private “persons, houses, papers, and effects,” if it means anything, means that the police cannot engage in such fishing expeditions without the minimal court supervision required to obtain a warrant, the placement of GPS monitors without warrants supported by probable cause violates the U.S. Constitution, as well as Art. I, § 11 of the Wisconsin Constitution.

Forum: Amicus brief to the Wisconsin Supreme Court

Attorneys: Legal Director; will recruit volunteer attorney.

LGBT Rights

McConkey v. Van Hollen

Description: William McConkey, a professor at UW-Oshkosh, filed an action in state court seeking to invalidate Article XIII, Section 13 of the Wisconsin Constitution, which prohibits same-sex marriage *and* legal recognition of “identical or substantially similar” civil unions, on various grounds, including a claim that the referendum question enacting Art. I, § 13 violated the “single subject” rule of Art. XII, § 1, of the Constitution, which requires that “if more than one amendment be submitted, they shall be submitted in such manner that the people may vote for or against such amendments separately.” The Wisconsin Supreme Court has agreed to review the case.

Claim(s): Violation of “single subject” rule for constitutional amendments.

Potential Forum: Amicus brief in Wisconsin Supreme Court.

Attorneys: Legal director; John Knight, ACLU National LGBT Rights Project; will seek volunteer attorney.

Police, Prisons & Criminal Justice

***Castaneda v. Welch*, 2004AP3306 (Wis. Sup. Ct.)**

Description: In 2002, workers and customers at El Rey grocery store in Milwaukee were subjected to a police raid by the Milwaukee Police department to seize antibiotics

allegedly being sold at the store. Some of those workers filed complaints with the Fire and Police Commission, but the FPC decided it had no authority to investigate the matter under its own rules, and referred the case to the police department. Under Wis. Stat. § 62.50(19), an aggrieved person may file charges with the FPC. In relevant part, the statute states that the “board shall cause notice of the filing of the charges with a copy to be served upon the accused and shall set a date for the trial and investigation of the charges, following the procedure under this section.” The central purposes of citizen review include: reducing or deterring misconduct by police officers; holding departments accountable for patterns of misconduct; and increasing public trust of police departments by assuring that misconduct results in appropriate discipline and by bringing some transparency to misconduct investigations. Failure to independently investigate complaints undermines the purposes of citizen review of police action:

Forum: Amicus brief to the Wisconsin Supreme Court

Attorneys: Atty John Celichowski, Milwaukee; Henry Hamilton III, NAACP-Milwaukee Branch; PRCL Attorney; Legal Director.

CASES RECENTLY CONCLUDED

HIV/AIDS Discrimination

EEOC v. Lee’s Log Cabin, App. No. 06-3278 (7th Cir.)

Description: A Wisconsin woman with HIV disease applied for a job as a waitress at Lee’s Log Cabin and didn’t get it. She saw her application, on which the employer had written “HIV+.” The EEOC filed a lawsuit on the applicant’s behalf, but a federal district court in Wisconsin dismissed the case, granting summary judgment to the employer on the grounds that the employer had discriminated against the applicant because of her *HIV status*, but that the applicant was disabled not by HIV, but by *AIDS*. *EEOC v. Lee’s Log Cabin, Inc.*, 436 F. Supp.2d 992 (W.D. Wis. 2006). The court’s distinction between HIV and AIDS is a semantic one that does not determine whether someone is disabled or not under the ADA, since many persons with HIV infection are disabled well before they meet the criteria for an AIDS diagnosis.

Forum: Amicus brief to the Seventh Circuit U.S. Court of Appeals

Attorneys: John Knight, ACLU AIDS Project, Chicago.

Rights of Minorities & Free Speech

Sandoval v. City of Green Bay:

Description: The City of Green Bay has passed an ordinance that requires businesses seeking liquor licenses to stipulate that “unauthorized aliens not be employed by the licensed establishment or perform work for the licensee within the City of Green Bay, consistent with 8 U.S.C. §1324a [the provision of the Immigration Reform & Control Act regarding “Unlawful Employment of Aliens”].”

During the debate over the ordinance, Maria Sandoval, who owns a restaurant in Green Bay that has a liquor license, was very public in her opposition. Media reports quote Ald. Chad Fradette, president of the council, as stating that Ms. Sandoval's "public statements made him suspicious that Sandoval either wasn't in this country legally or that she was hiring people who weren't." Minutes of the Green Bay Protection and Welfare Committee meeting of 6/13/07 state: "Ald. Fradette requested that Maria Sandoval (owner of Carnitas Guanajuato, 1906 University Avenue) attend the next meeting because of comments made to the media regarding illegal immigrants." We are concerned that the council president is taking action against Ms. Sandoval in retaliation for her exercise of her First Amendment rights. On June 11, 2007, the Committee had sent Ms. Sandoval a copy of its June 13th agenda with a line typed at the top stating "**YOUR PRESENCE IS REQUIRED**." She did not go to that meeting, but expects to receive a notice for the next meeting, which is 6/27/07.

Forum: Initially defending Ms. Sandoval before the Welfare & Protection Committee.

Attorneys: PRCL Attorney; Volunteer Attys. Herbert Liebmann III & Kristin Hooker of Liebmann, Conway in Green Bay.

National Security/Safe & Free

Clancy v. OFAC (Fine for Travel to Iraq), 05-C-580 (E.D. Wis.)

Description: The federal Office of Foreign Assets control is trying to fine Ryan Clancy \$10,000 for allegedly traveling to Iraq prior to the U.S. invasion. The agency does not claim that Mr. Clancy provided any "assets" to Iraq and gives him no right to a hearing or opportunity to confront the evidence the agency is relying upon. The fine violates procedural due process rights, the travel ban exceeds statutory authorization; and the apparently selective enforcement violates the 5th Amendment right to travel and 1st Amendment associational and speech rights.

Forum: Office of Foreign Assets Control for FOIA request. Possible representation in administrative proceedings and/or federal court.

Attorneys: James Friedman, Linda Clifford, Steve Heinzen & Brian Dillon, Madison; Arthur Heitzer, Milwaukee; Legal Director.