



## ACLU OF WEST VIRGINIA FOUNDATION

### DOCKET AS OF JUNE 2008

1. ***Stanley v. Rubenstein.*** Complainant, a prisoner, was granted parole in June 2005. He asked to be paroled to his fiancée's home. His request was denied because parolees must agree that they will "not violate any municipal ordinances or laws of this state, any other state, or the United States" and W.Va. Code Section 61-8-4 prohibits cohabitation. On October 26, nearly five months later, he was finally released to a six-month program at a rescue mission. There, the rules required him to attend scheduled classes and complete quizzes in Bible-related subjects, to own and use his own Bible, to go to a church service most mornings, and to attend a memory class (Bible verses), and Bible study. He was expected to attend an approved church in the community.

The challenge to complainant's coerced participation in religious exercises and to the constitutionality of W.Va. Code Section 61-8-4 (the prohibition on cohabitation), was filed in the Circuit Court of Kanawha County on September 18, 2006. Defendants' motion to dismiss without prejudice was granted and plaintiff's petition for appeal was denied. The case was refiled in the Circuit Court of Kanawha County on February 22, 2008. A hearing on defendant's motion to dismiss and/or for summary judgment is scheduled for June 17, 2008. Georgia Lee Gates is the ACLU cooperating attorney with Terri Baur as co-counsel.

2. ***W. Va. Ass'n of Club Owners & Fraternal Orgs. v. W.Va. State Lottery Comm'n.*** A video lottery retailer is prohibited from conducting video lottery advertising or promotional activities and cannot use the words "video lottery" in the name of the approved location, or in any directions or advertising visible from outside the retailer's establishment. (W.Va. Code §29-22B-702 (13) and (14)) State regulations also prohibit a limited video lottery licensed retailer from using words commonly associated with gambling (e.g. "lucky") either in its corporate name or in its doing-business-as name. The content of the 12" x 12" signs complainants *are* allowed to post ("West Virginia Lottery Products available here") is dictated by the state.

On February 27, 2007 a complaint was filed in the United States District Court for the Southern District of West Virginia on behalf of the West Virginia Association of Club Owners and Fraternal Services, Inc. The complaint alleges that members' First Amendment rights are being violated because the State of West Virginia bans their truthful commercial speech about a legal activity: use of video lottery machines.

The district court issued a preliminary injunction on September 28, 2007 and declined to issue a stay pending the State's appeal to the Fourth Circuit. On November 20, 2007 the Fourth Circuit granted the State's motion for stay pending appeal of the preliminary injunction, and denied its motion for expedited review. Scheduling of oral arguments is pending. Roger Forman is the cooperating attorney with Terri Baur as co-counsel.

3. ***Evans v. Security America, Inc.*** This case involves an employer's refusal to accommodate an employee's religious beliefs and retaliation for reporting sexual harassment. When complainant was hired, she told her employer her religion prohibits women from wearing

men's clothing. She was asked for a copy of the church's teachings, which she provided. She was told that she could wear a skirt instead of uniform trousers. She did so with no problem for about six weeks at one assignment. Then she was transferred to a position where she sat in a booth and answered phones.

At the new work site, she was subjected to sexual harassment. She reported this to her employer, but the employer took no steps to deal with the harassment. Shortly after she complained, she was told that she would be terminated if she did not wear uniform trousers. She offered to pay for a uniform skirt, or have one made to match the uniforms. When she reported for work wearing a skirt, she was dismissed.

A lawsuit alleging discrimination based on religion and gender, and retaliatory discharge, was filed in the Circuit Court of Boone County on May 29, 2007. Discovery is under way. Bradley J. Pyles is the cooperating attorney.

4. **Hutchinson v. Pennington.** Plaintiff was taking a shower when law enforcement officers arrived at her home to execute a search warrant. Ms. Hutchinson alleges that officers burst into the bathroom and refused to let her cover herself even after it was evident that she was not armed, dragged her into the living room by her hair, and forced her to lie naked on the floor for approximately 30 minutes in the presence of her father, brother, and boyfriend, and approximately ten armed and masked male officers.

On July 6, 2007, a complaint was filed in the United States District Court for the Southern District of West Virginia in Huntington alleging failure to train the officers involved, and violation of plaintiff's Fourth Amendment right to be free of unlawful search and seizure and her right to privacy. Discovery is under way. Georgia Gates is the cooperating attorney.

5. **Lee v. City of South Charleston, et al.** After complainant, an African American college student, purchased ice cream at a convenience store, a marked police car followed him out of the parking lot and trailed him for several miles. Finally, the officer pulled him over for allegedly having failed to signal for a turn. The officer asked complainant if he could search the car. Complainant refused to consent to the warrantless search. The officer made complainant and his passengers exit the car, handcuffed him, patted him down, unzipped his fly, and searched in his underwear. The roadside search took place in view of passing vehicles. The African American passenger in the car was subjected to a similar search. A white passenger was not. The car was searched and nothing was found. Complainant was given a warning ticket and released.

In a complaint filed on May 2, 2008 in the United States District Court for the Southern Division of West Virginia at Charleston, complainant alleges that he was subjected to an unconstitutional and racially based stop, detention, roadside strip search, and seizure. Melissa Foster Bird is the cooperating attorney.