

LIST OF ALL CURRENT LITIGATION

(11/16/11) --- * New since last report)

Children's Rights

**Cundiff v. Indiana Department of Child Services* (Marion Superior Court)[Filed 10/11]

This case challenges the failure of the Department of Child Services to provide appeal hearings to families wishing to contest the amount of adoption subsidies offered during the adoption of special needs children.

ATTORNEY(S): Kenneth J. Falk

P.D. v. Carroll Consolidated School Corporation (U.S. Dist. Ct.- No. District) [Filed 9/11]

The plaintiff is a middle school student who is not allowed by the schools system to wear a breast cancer awareness bracelet from the Keep a Breast Foundation that states, "'i ♥ boobies!'" The case alleges that this violates the First Amendment rights of the student.

ATTORNEY(S): Kenneth J. Falk, Jacquelyn Suess

Due process and fair hearing rights

Coats v. Indiana Department of Correction (Marion Superior Court, Indiana Court of Appeals) [Filed 4/09]

This is an action brought by a man who was erroneously listed on the sex offender registry. Damages and an injunction are sought. Cross-motions for summary judgment have been denied and the matter is being appealed.

ATTORNEY(S): Kenneth J. Falk

Gorman v. Commissioner, Indiana Department of Workforce Development (Marion Superior Court, Indiana Court of Appeals) [Filed 6/10]

This is a class action challenge to the failure of Indiana to timely resolve unemployment appeals in violation of federal law. The trial court dismissed the case. However, this was vacated and the case is back in the trial court.

ATTORNEY(S): Gavin Rose

Schepers v. DOC (U.S. Dist. Court – Southern District of Indiana) [Filed 10/09]

This is a class action challenge to the failure of the DOC to have any sort of procedure for persons to challenge factually erroneous listings on the Sex and Violent Offender registry. Summary judgment has been denied an, when the case is finalized an appeal will probably be filed.

ATTORNEY(S): Kenneth J. Falk

Freedom of Speech and Association

Gohmann Asphalt and Construction v. Cornetta (Clark Superior Court) [Filed 7/08]

An employer involved in the construction of the I-69 Project is seeking a workplace violence restraining order against a group of environmental protesters. We represent them in an effort to support their 1st Amendment rights. We have filed for summary judgment and it was denied and interlocutory appeal was denied.

ATTORNEY(S): Gavin Rose

Stanton v. Fort Wayne-Allen County Airport Authority (U.S. Dist. Court- Northern District of Indiana) [Filed 1/11]

This is a challenge to the rules of the Fort Wayne International Airport that do not allow persons to engage in First Amendment activities within the airport and that impose permitting requirements on those who wish to use the small “free speech zone” outside of the airport. Summary judgment has been filed.

ATTORNEY(S): Gavin Rose

State v. B. (Martinsville City Court) [Filed 9/11]

We are representing a person who has been cited for littering for distributing literature to businesses in Martinsville. A trial resulted in a decision for or client.

ATTORNEY(S): Kenneth J. Falk

TV v. Smith-Green Community School Corp. (U.S. Dist. Ct. –Northern District of Indiana) [Filed 10/09]

This is a challenge brought by two high school students who were disciplined by their school corporation because of “inappropriate” photos on their MySpace pages, even though this

all took place during summer vacation and had no impact on school whatsoever. Damages are sought for the plaintiffs and injunctive relief for the plaintiffs. The trial court denied our request for class certification. Summary judgment has been granted to the plaintiffs with a question of the liability of the School Corporation to be resolved.

ATTORNEY(S): Kenneth J. Falk

United Northern & Southern Knights of the Ku Klux Klan v. Prosecutor and Sheriff of Rush County (United States District Court – Southern District) [filed 8/11]

This case challenges the citation of members of the United Northern and Southern Knights of the Ku Klux Klan for littering when they distribute literature. The case was dismissed after the defendants indicated that they would not treat literature distribution by the organization differently than other literature.

ATTORNEY(S): Kenneth J. Falk

Governmental Benefits

Dick v. Indiana Family and Social Services Administration (Marion Superior Court) [Filed 7/09]

This is a class action challenge to the actions of the State of reducing a grocery allowance given to persons on the developmental disability waiver by the dollar-for-dollar amount of and Food Stamp allotment received by the recipient. This contravenes explicit federal law prohibiting Food Stamps from being considered as income or resources in any assistance program. It also represented a non-promulgated rule which is unlawful. The case has been settled and will be closed.

ATTORNEY(S): Gavin M. Rose, Steven K. Dick

Gibbs v. Calumet Township of Lake County, Indiana (Lake County Courts) [filed 9/10]

This is a class action challenge to the failure of the Calumet Township (Lake County) Trustee to pay more than three months of shelter assistance a year. Settlement is being pursued.

ATTORNEY(S): Gavin Rose

Gibson v. Roob (Marion Superior Court, Indiana Court of Appeals, Indiana Supreme Court) [Filed 3/08]

This case challenges the constitutionality and legality of the policy of the Indiana Family and Social Services Administration whereby individuals are denied or terminated from public benefits programs such as Medicaid and Food Stamps for allegedly “failing to cooperate” in establishing their eligibility for the programs. The trial court denied certification of one of the classes in the case and we are seeking interlocutory relief on this while the rest of the case goes forward. We have filed for summary judgment and we lost the interlocutory appeal on class. The trial court entered summary judgment partially in our favor and partially in the State’s favor. The Indiana Court of Appeals entered a decision in our favor. However, the Indiana Supreme Court has granted transfer, which vacates the Court of Appeals decision. The case has been argued and is awaiting decision in the Supreme Court.

ATTORNEY(S): Gavin Rose, Jacquelyn Bowie Suess

Immigrant Rights

Buquer v. City of Indianapolis (U.S. Dist. Ct- So. Dist. Indianapolis) (filed 5/11)

This is a class action challenge to Indiana’s new law purporting to allow persons to be arrested for certain non-criminal immigration matters as well as prohibiting the use of consular identification cards. Following a hearing the Court entered a preliminary injunction . The State is not appealing, but is proceeding with the case in the trial court.

ATTORNEY(S): Kenneth J. Falk, Gavin Rose, Jan Mensz, Angela Adams (Lewis & Kappes); ACLU Immigration Rights Project; National Immigration Law Center

LP v. Commissioner, Indiana State Dept of Health (U.S. District Court-Southern Dist. of Indiana) [filed 10/10]

This case challenges the interpretation of state law by the State Department of Health which denies children born in Indiana the opportunity to have paternity established through a simplified paternity affidavit procedure if either of their parents do not have a Social Security number. The case is being brought by a class of American citizen children whose parents do not – because of their immigration status – have the ability to obtain Social Security numbers. A class was certified and the trial court entered a preliminary injunction on our behalf. The parties are pursuing a settlement.

ATTORNEY(S): Kenneth J. Falk, Gavin Rose, Jason Flora, Abigail Seif

Miscellaneous

**Doe v. City of Indianapolis* (Marion Superior Court)

This is a challenge, on the basis of the Indiana Constitution, to the retroactive application of Indiana's statute that prohibits certain sex offenders from living within 1,000 feet of school property, a youth program center, or a public park.

ATTORNEY(S): Kenneth J. Falk

Prisoners' Rights

Indiana Protection and Advocacy Services Commission v. Commissioner, Indiana Department of Correction (U.S. District Court- Southern District of Indiana)

This case challenges the continued confinement of seriously mentally ill prisoners by the Department of Correction in segregated or extremely isolated prison environments. The case is brought on behalf of Indiana Protection and Advocacy Services which is charged by federal law for advocating on behalf of the mentally ill. We have added prisoners and class has been certified and we are moving forward. The case was tried in July of 2011 and post-trial briefing is ongoing with a decision expected by the end of 2011.

ATTORNEY(S): Kenneth J. Falk, Gavin Rose, attorneys from Indiana Protection and Advocacy Services

Olson v. Brown (U.S. Dist Ct. – No. Dist of In., 7th Circuit, United States Supreme Court) [Filed 1/09]

This case challenges the alleged practice and policy of the Tippecanoe County Sheriff of interfering with legal mail, denying reasonable access to the law library, and failing to properly respond to grievances. Claims are made under the First Amendment and Indiana law. The case was dismissed by the trial court and the Seventh Circuit ruled in our favor, reversing the dismissal. The Sheriff filed a petition for writ of certiorari in the U.S. Supreme Court which was denied. The case is back in the trial court with pending motions for class certification and for judgment on the pleadings.

ATTORNEY(S): Gavin R. Rose, Kenneth J. Falk

Richardson v. Monroe County Sheriff (U.S. Dist.Ct. – Southern District) [Filed 2/08]

This is a case challenging the conditions at the Monroe County Jail. A motion to dismiss has been filed by the defendants and was denied. The case has been settled and is open for monitoring.

ATTORNEY(S): Kenneth J. Falk

Snider v. Superintendent, (U.S. Dist. Ct – Southern District) [Filed 5/11]

This is a class action challenge to inadequate diets being served to prisoner at the Special Confinement Unit at Wabash Valley Correctional Facility. The case is pending.

ATTORNEY(S): Kenneth J. Falk

Tyson v. Grant County Sheriff (United States District Court-Northern District of Indiana)[filed 1/07]

This case challenges the overcrowded conditions in the Grant County Jail. The case was settled with a private settlement agreement and we are monitoring .

ATTORNEY(S): Kenneth J. Falk

Religious Freedoms and Establishment Clause

Arnaout v. Warden (U.S. District Court – Southern District) [Filed 6/09]

This is a challenge to the refusal of the authorities to allow Muslim prisoners confined to the Communications Management Unit at the Federal Correctional Institution in Terre Haute to engage in congregate five times a day prayer. Summary judgment is pending.

ATTORNEY(S): Kenneth J. Falk

Scarberry v. Scarberry (Indiana Court of Appeals) [Filed 12/10]

We are representing an ex-husband who lost joint custody of his children after the trial court found that he did not participate in the same religious training as the ex-wife and that he is an agnostic. The Court of Appeals has ordered that new findings be made by the trial court. Based on these findings the action has been dismissed and the case will be closed.

ATTORNEY(S): Kenneth J. Falk

Wirtz v. City of South Bend (U.S. Dist. Ct. –Northern District) [Filed 8/11]

The City of South Bend planned to donate a plot of land that it had purchased for \$1.2 million to be used by St. Joseph High School, a Catholic parochial school. The district court granted a preliminary injunction preventing the transfer as a violation of the Establishment Clause. South Bend requested that the Court reconsider the case and this was denied.

ATTORNEY(S): Gavin Rose and attorneys from the national ACLU and Americans United for Separation of Church and State

Reproductive Rights

Planned Parenthood of Indiana v. Commissioner, Indiana State Dept of Health (U.S. Dist. Ct. – So. Dist. of Ind., Seventh Circuit Court of Appeal) [5/11/)

This cases challenges the recently enacted Indiana statute that cuts off state funding to any organization that performs abortion and that also imposes new informed consent procedures on abortion providers. Most of the challenged law has been enjoined and the State is appealing the injunction. The case was argued in the Seventh Circuit in October and a decision is pending.

ATTORNEY(S): Kenneth J. Falk, Gavin M. Rose, Jan Mensz (Member NY Bar and the Bar of the Southern District of Indiana)

Rights of those with Disabilities and Medicaid

BN v. Murphy (U.S. District Court- Northern Dist) [Filed 3/09]

This is a challenge to the policy of the Family and Social Services Administration of reducing the amount of hours for respite hours available to persons receiving waiver services through the Medicaid program. Waiver services are designed to provide aid to persons to prevent them from needing to move into nursing homes. Summary Judgment has been filed and we are awaiting a decision.

ATTORNEY(S): Gavin Rose

Blade v. City of Richmond (U.S. District Court, Southern District) [Filed 7/04]

This case challenges the lack of accessible sidewalks in Richmond, Indiana. A settlement has been reached and has been approved by the Court. It is open for monitoring.

ATTORNEY(S): Kenneth J. Falk

Bontrager v. FSSA (U.S. Dist. Court, No. Dist.) [Filed 5/11]

This is a class action challenge to the failure of the State to provide for medically necessary dental services by putting a \$1,000 annual cap on the amount paid for necessary dental services. The district court has recently entered a preliminary injunction in plaintiffs' favor.

ATTORNEY(S): Jacquelyn Suess, Gavin Rose

Cantrell v. Town of Liberty (U.S. District Court- Southern District) [Filed 2/02]

This is a challenge under the ADA to the fact that the Town of Liberty does not have accessible sidewalks. The case has been settled in plaintiff=s favor. It remains open for monitoring as the sidewalks are made accessible.

ATTORNEY(S): Kenneth J. Falk

Culvahouse v. City of Laporte (U.S. Dist.Ct.-Northern District) [Filed 5/06]

This is a class action challenge to the failure of LaPorte to have sidewalks that are accessible to disabled persons as required by the Americans with Disabilities Act. Both sides have sought summary judgment. The trial court has entered partial summary judgment in plaintiffs' favor. The parties have entered into a settlement of all remaining issues and the case is open for monitoring.

ATTORNEY(S): Kenneth J. Falk

Doe v. Individual Members of the Indiana State Board of Law Examiners (U.S. Dist. Court – Southern District) [filed 7/09]

This case challenges, as violative of the ADA, the questions concerning mental health issues and the evaluation and assessment process imposed on persons applying to take the Indiana bar examination. The student chapter of the ACLU at IU-Indianapolis law school has been added as an additional plaintiff. The trial court entered summary judgment, in part for the plaintiffs and in part for the defendants. However, the most intrusive question has been enjoined.

ATTORNEY(S): Kenneth J. Falk

Ely v. Indiana Family and Social Services Administration (Monroe Circuit Court) [filed 8/11]

The plaintiff is severely disabled and is in need of constant care and supervision. In order for him to be able to reside in the community Medicaid has provided 105 hours a week of residential services. These have been reduced approximately 50% by Medicaid. The lawsuit alleges that this violates state law, federal law, and the Constitution.

ATTORNEY(S): Gavin Rose

Jackson v. Superintendent of Logansport State Hospital (U.S. District Court – Northern District of Indiana) [filed 3/11]

The plaintiff is a patient at Logansport State Hospital pursuant to a finding that he lacks sufficient comprehension to stand trial for a criminal charge and a subsequent civil commitment.

He is deaf and does not speak, but he has not been provided with a qualified American Sign Language interpreter for his classes or treatment sessions. The case is pending.

ATTORNEY(S): Gavin Rose

Liu v. Indiana Family and Social Services Administration (Morgan Superior Court) [filed 9/11]

The plaintiff is a 7 year old with cerebral palsy. Medicaid has reduced the amount of physical and occupational therapy that he can receive. The litigation challenges this reduction as violating state and federal law as well as the Constitution.

ATTORNEY(S): Gavin Rose

Murray v. Murphy (Marion Superior Court) [Filed 2/09]

This is a contempt action that has been filed challenging the State's non-compliance with an earlier agreement to issue decisions on Medicaid disability appeals within 90 days of the request. Settlement has been agreed to and has been approved and an agreement has been reached on our attorneys' fees. The case is being monitored.

ATTORNEY(S): Gavin M. Rose

Targett v. City of Brazil (U.S. District Court- Southern District) [Filed 8/00]

This case challenges the failure of the City of Brazil to maintain accessible sidewalks in violation of the ADA. Discovery is being done. A settlement was approved. Contempt was filed since it is alleged the City has not complied with the settlement. We entered a new settlement which the City did not comply with and we again sought contempt. The matter was resolved and we are monitoring.

ATTORNEY(S): Kenneth J. Falk, Jacquelyn Bowie Sues