

LIST OF ALL CURRENT LITIGATION

(3/14/17) --- * New since last report)

Children's Rights

Price v. Department of Child Services (Marion Superior Court, Indiana Court of Appeals, Indiana Supreme Court) (filed 7/15)

This is a class action case brought by a case manager for the Department of Child Services alleging that the Department has allowed caseloads to rise far in excess of mandatory state standards. The trial court granted the State's motion to dismiss and the matter is being appealed. The case was argued in the Indiana Court of Appeals and the Court of Appeals ruled in our favor, reversing the trial court and sending the case back for a trial. However, the State has sought transfer and we are awaiting a decision from the Indiana Supreme Court.

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

Due Process and Fair Hearing Rights

Rebirth Christian Academy Daycare, Inc. v. Indiana Family and Social Services Administration (U.S. Dist. Ct., So. Dist. of Indiana, Seventh Circuit Court of Appeals) [Filed 07/12, our appearance 10/12]

The plaintiff in this case was registered as an unlicensed child care ministry in order to provide child care services under Indiana law. This registration was terminated by the State, although the plaintiff was never afforded an opportunity to have a hearing or to contest the factual allegations made by the State. The original complaint was filed by a private attorney, and we filed an amended complaint alleging that this violates due process and seeking both an injunction and damages. A motion to dismiss was granted in part and denied in part. We received partial summary judgment and we are appealing the issue we lost. The Seventh Circuit recently entered a decision in our favor, reversing the district court's grant of qualified immunity and remanding the case for trial. The case has been settled and is being dismissed.

ATTORNEY(S): Gavin Rose

Election Issues

Valenti v. Secretary of State (U.S. Dist. Ct. – So. Dist. of Ind.) (Filed 8/15)

The new law that prevents certain sex offenders from entering schools prevents them from voting in-person if their voting place is in a school. Although the absentee ballot voting law has been amended to allow these persons to vote absentee, absentee voting is not a substitute for in-person voting. This case alleges an infringement on the right to vote. A motion to dismiss by the State has been denied and both parties have moved for summary judgment. A decision on the parties' cross-motions is pending.

ATTORNEY(S) Jan P. Mensz, Kenneth J. Falk

Freedom of Speech and Association

Doyle v. Concord Township, Elkhart County, Ind. (U.S. Dist. Ct. – No. Dist.) [Filed 1/17]

The plaintiff is a firefighter who has been unable to gain approval to use a community room at the firehouse that is open to all. He is trying to get the room for a meeting of the local of the firefighters union. Shortly after filing the defendant agreed to allow the room to be used and the matter has been dismissed and will be closed.

ATTORNEY(S): Kenneth J. Falk, Jan P. Mensz

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

Harnishfeger v. United States of America (U.S. Dist. Ct. – So. Dist. of Indiana) [Filed 11/16]

A former phone-sex operator wrote a short book about her experiences in that job in order to make sure persons were apprised of the predatory nature of some men. She subsequently obtained a position as an AmeriCorps VISTA volunteer placed with the Indiana National Guard (as a civilian). When her superiors at the Indiana National Guard discovered her authorship of the book, she was first removed from her placement with the Indiana National Guard and then terminated from participation in the VISTA program. We filed a lawsuit on First Amendment grounds against both the state and federal officials responsible for these decisions. The case is pending.

ATTORNEY(S): Gavin Rose; Jan Mensz

Higher Society of Indiana, Inc. v. Tippecanoe County, Indiana (U.S. Dist. Ct – No. Dist. of Indiana; Seventh Circuit)

This case challenges the failure of the County to allow the plaintiff group to have a rally on the grounds of the Tippecanoe County Courthouse. The Court recently issued a preliminary injunction decision in our favor and Tippecanoe County is appealing.

ATTORNEY(S): Kenneth J. Falk, Jan P. Mensz

ICLU v. Secretary of State (U.S. Dist. Ct. – So. Dist. of Ind.; Seventh Circuit) (Filed 8/15)

This case challenges the new Indiana law that prohibits people taking photos or other digital images of their ballots. The challenge is based on the First Amendment. The district court entered a preliminary injunction against the law. The State did not appeal the grant of a preliminary injunction and the parties filed for summary judgment. The Court ruled in our favor and the State is appealing.

ATTORNEYS: Kenneth J. Falk, Gavin M. Rose, Jan P. Mensz

Shaw v. City of Bedford (U.S. Dist. Ct. – So. Dist.) [filed 10/16]

This case challenges the constitutionality of Bedford's ordinances regulating residential signs. The ACLU filed for a preliminary injunction, prompting the City to amend its ordinance. The new ordinance, however, still contains a number of unconstitutional provisions and the ACLU is proceeding with its request for an injunction. The motion for a preliminary injunction is fully briefed and a hearing is set for May 2017.

ATTORNEY(S): Jan P. Mensz, Kenneth J. Falk

****Voices United v. Carmel Clay Schools, et al.*** (U.S. Dist. Ct. – So. Dist.) [filed 03/14]

Voices United is a student club at Carmel High School that wishes to post a pro-choice banner in the school cafeteria. The School's regulations prohibit clubs from posting advocacy messages in the cafeteria, but the School granted an exception to a pro-life group after the group threatened a lawsuit. The School's refusal to grant a similar exception to Voices United constitutes viewpoint discrimination and is presumptively unconstitutional. The ACLU has requested a preliminary injunction and briefing on the motion is ongoing.

ATTORNEY(S): Jan P. Mensz, Kenneth J. Falk

Willis v. Commissioner – (U.S. Dist. Ct. – So. Dist.) [Filed 08/16]

The plaintiff is an inmate and a subscriber to the San Francisco Bay View National Black Newspaper. After a different inmate wrote an op-ed concerning “why black lives matter behind bars” that was published in the newspaper, the plaintiff was informed that he could no longer receive copies of the newspaper while incarcerated. We have challenged this action as violative of the First Amendment. Summary judgment has been sought by both parties. (The plaintiff is a different “Mr. Willis” than in the long-standing case concerning kosher meals in prison.)

ATTORNEY(S) Gavin M. Rose; Jan P. Mensz

Miscellaneous

Exodus Refugee Immigration v. Pence (U.S. Dist. Ct. – So. Dist. of Ind., U.S. Court of Appeals – Seventh Circuit) [Filed 11/15]

This case challenges the Governor’s “suspension” of the resettlement of Syrian refugees in Indiana. The district court granted our request for a preliminary injunction and the State is appealing. The case was argued in the Seventh Circuit in September and the Court ruled in plaintiff’s favor and the matter has been remanded back to the district court.

ATTORNEY(S): Kenneth J. Falk, Gavin M. Rose, Jan P. Mensz, attorneys from the National ACLU – Judy Rabinovitz, Cecillia Wang, Omar Jadwat

Hope v. Commissioner of the Indiana Department of Correction (U.S. Dist. Ct. – S.D. Ind.) [Filed 10/16]

In a 2009 case the Indiana Supreme Court held that requiring an individual to register as a sex offender when the person committed his or her offense prior to the time the law had imposed the registration obligation violated the Indiana Constitution’s prohibition on *ex post facto* punishments. Nonetheless, the Indiana Supreme Court holds that it does not violate the state constitutions to require persons to register if they were previously required to register in another jurisdiction. Two of the three plaintiffs were convicted in Michigan and then moved here; and the third was convicted in Indiana, moved to Texas for a period of time, and then returned. If any of them had been convicted in Indiana and never left the state, they would not be required to register. The case alleges that requiring them to register due to their travel between states violates the due process right to interstate travel and equal protection. It also alleges that requiring them to register violates the federal constitution’s *ex post facto* clause. A preliminary injunction has been sought and we are waiting on a decision.

ATTORNEY(S): Gavin M. Rose; Jan P. Mensz

Valenti v. Hartford City, Indiana (U.S. Dist. Ct. – No. Dist. of Ind.) [Filed 3/15]

Hartford City has in place an ordinance that prohibits persons who are required to register because of sex offenses against children from going into Child Safety Zones (school, parks, athletic areas, etc.) and also prohibits them from “loitering” within 300 feet of these areas. This is a class action challenge, with an individual request for damages. Hartford City has amended the ordinance and has attempted to define “loitering.” The Court granted plaintiff summary judgment and the matter is pending.

ATTORNEY(S): Kenneth J. Falk

Prisoners’ Rights

Fugate v. Martin, et al. (U.S. Dist. Ct. – So. Dist.) (Rec’d appointment 5/16)

At the request of the District Court we have accepted appointment to represent the plaintiff in this case who has numerous complaints concerning medical treatment issues. As required under Indiana law, the medical malpractice claims have been submitted to a panel of doctors appointed by the Indiana Department of Insurance, and the plaintiff has filed its initial submission and responsive submissions will be made in the coming months. The federal case has been stayed pending a decision by the IDOI.

ATTORNEYS(S): Jan P. Mensz, Kenneth J. Falk

Hos v. Vigo County Sheriff (Vigo Superior Court) [Filed 8/13]

As part of a settlement entered into in 2002 the Vigo County Sheriff and Commissioner agreed to a population cap of 268 on the Vigo County Jail and agreed that prisoners should be allowed recreation 3 times a week. The population has greatly exceeded that amount and prisoners are not getting the requisite amount of recreation. This is a breach of contract action filed in state court to require the defendants to comply with the contract.

ATTORNEY(S): Kenneth J. Falk

Indiana Protection and Advocacy Services Commission v. Commissioner, Indiana Department of Correction (U.S. Dist. Ct.—So. Dist. 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 the trial court recently ruled in plaintiffs’ favor, finding that the treatment of these seriously mentally ill prisoners violates the 8th amendment. A final settlement has been negotiated and has been allowed to go into effect. The case remains open for monitoring.

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

Lindh v. Warden (U.S. Dist. Ct. – So. Dist.) [filed 5/14] (not listed previously)

This is a challenge to the practice in the Communications Management Unit at the federal prison in Terre Haute of subjecting all prisoners to cavity searches before they have a non-attorney visit, even though the visits are all non-contact and are conducted through plexiglass. The parties filed cross-motions for summary judgment and the district court recently entered a decision in our favor. The federal government has not appealed the decision and it will be closed once fees are paid.

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

Richardson v. Monroe County Sheriff (U.S. Dist. Ct.—So. Dist. of Indiana) [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

Simons v. Hinshaw (U.S. Dist. Ct.—So. Dist. of Indiana) [Filed 10/16]

This is a case challenging the refusal of a chaplain at the Correctional Industrial Facility to permit the plaintiff to marry her inmate-fiancé. After the case was filed, the DOC approved the marriage, and our claim for damages is proceeding.

ATTORNEY(S): Gavin M. Rose

Religious Freedoms and Establishment Clause

Doe v. Boone County Prosecutor (Boone Superior Court, Indiana Court of Appeals) [Filed 5/16]

Indiana’s “serious sex offender” law prohibits sex offenders from entering school property. The Boone County Prosecutor and Sheriff have interpreted the law to prohibit these persons from attending church if there is any children’s programming on the premises. This interpretation is both erroneous and violates Indiana’s Religious Freedom Restoration Act. The Court has ruled against plaintiffs and in favor of the statute the matter is being appealed.

ATTORNEY(S): Kenneth J. Falk, Jan P. Mensz

Freedom from Religion Foundation v. Concord Community Schools (U.S. Dist. Ct. – N. Dist. of Indiana) [Filed 10/15]

Each year, Concord High School stages several performances of a “Christmas Spectacular,” which includes many songs celebrating the holiday season performed by various classes and groups from the school’s performing arts department. The event then concludes with a 20-minute live nativity scene and scriptural reading telling the story of the birth of Jesus Christ. We represent an organization, a student enrolled at the school, and the father of that student in challenging this portion of the Christmas Spectacular as violating the Establishment Clause. A preliminary injunction was granted, although partial summary judgment was granted in favor of the defendants based on a revised program. Partial summary judgment on the remaining issues was then granted in our favor, and the earlier program was declared unconstitutional and the plaintiffs were awarded their nominal damages.

ATTORNEY(S): Gavin M. Rose; Sam Grover and Ryan Payne (Freedom From Religion Foundation); Heather Weaver and Dan Mach (ACLU-National)

Glenn v. Liebel (Marion Superior Court) [Filed 7/16]

We previously represented the plaintiff, a prisoner, in a federal case that resulted in a private settlement agreement allowing him and other Eastern Orthodox adherents at Wabash Valley Correctional Facility to meet for worship and study. The case alleges that defendants have breached that agreement and seek its enforcement.

ATTORNEY(S): Kenneth J. Falk

Jones v. Commissioner, DOC (U.S. Dist. Ct. – So. Dist. of In.) [filed 10/16]

This case, brought by a Muslim prisoner, challenges the failure of the DOC to provide a halal diet with halal meat. The matter is pending.

ATTORNEY(S): Kenneth J. Falk, Jan P. Mensz

Kemp v. Commissioner (U.S. Dist. Ct.—So. Dist., Seventh Circuit) [Filed 10/14]

This is an action by two Jewish prisoners who were at a facility that provided both a kosher diet and services. The DOC decided to construct what it characterizes as kosher kitchens at 4 institutions. The prisoners were transferred to one of the institutions so that they could continue their kosher diets. However, the DOC has not allowed any of the Jewish prisoners to meet for worship or study at the new institution. After services were finally initiated the case was fully briefed on the question of damages. The district court entered a decision against us and the matter is being appealed.

ATTORNEY(S): Kenneth J. Falk

Nickell v. Franklin Township Community School Corp. (So. Dist. of Ind.) [File 11/16]

This case challenges the fact that the School Board for this school corporation begins its meetings with prayer. A preliminary injunction hearing was held in February and we are awaiting a decision.

ATTORNEY(S): Kenneth J. Falk, Jan P. Mensz

Tompkins v., Town of Knightstown, Indiana (U.S. Dist. Ct. – So. Dist.) [Filed 12/16]

This case challenges the posting of a cross on tree in the Town’s plaza. The matter is pending.

ATTORNEY(S): Kenneth J. Falk, Jan P. Mensz

Tyler v. Commissioner, DOC (U.S. Dist. Ct. – So. Dist.) [Filed 1/17]

Much like the *Glenn* case above, this case challenges the failure to allow Eastern Orthodox prisoners to have time for both communal worship and study each week. The matter is pending.

ATTORNEY(S): Kenneth J. Falk, Jan P. Mensz

Reproductive Rights

Planned Parenthood of Indiana and Kentucky, Inc. v. Commissioner, Indiana State Department of Health (U.S. Dist. Ct – So. Dist. of Ind.) [Filed 4/16]

This case challenges various aspects of HEA 1337, including the prohibition on obtaining abortions for certain reasons and the requirement that women seeking abortion services be informed of these prohibitions as part of Indiana’s so-called “informed consent” process. The district court granted a preliminary injunction on June 30. The State is not appealing the grant of the preliminary injunction and the case is proceeding to summary judgment.

ATTORNEY(S): Kenneth J. Falk, Gavin M. Rose, Jan P. Mensz, Jennifer Dalven (National ACLU), Helene Krasnoff (National Planned Parenthood)

Planned Parenthood of Indiana and Kentucky, Inc. v. Commissioner, Indiana State Department of Health (U.S. Dist. Ct – So. Dist. of Ind.) [Filed 7/16]

This case challenges another provision of HEA 1337 that requires that ultrasound examinations be performed at least 18 hours before the abortion, as opposed to prior law that allowed the examinations to occur at the time of the abortion. This will negatively impact the ability of women to obtain abortions and in light of recent Supreme Court precedent is an unconstitutional undue burden. A preliminary injunction hearing was held on November 9 and a decision is pending.

ATTORNEY(S): Kenneth J. Falk, Gavin M. Rose, Jan P. Mensz, Jennifer Dalven (National ACLU), Jennifer Sandman (National Planned Parenthood)

Rights of Those with Disabilities and Medicaid

Ashby v. Warrick County School Corp. (U.S. Dist. Ct. – So. Dist. of Indiana) [filed 9/16]

Mycal Ashby is a person with a physical disability and is confined to a wheelchair. Her child was in the school choir that conducted its Christmas program at a site that was not accessible. She has sued for damages claiming that his violates federal laws prohibiting discrimination on the grounds of disability status. The matter is pending.

ATTORNEY(S): Kenneth J. Falk, Jan P. Mensz

Blade v. City of Richmond (U.S. Dist. Ct.—So. Dist. of Indiana) [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

Cantrell v. Town of Liberty (U.S. Dist. Ct.—So. Dist. of Indiana) [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

Caylor v. Indiana Family and Social Services Administration (Fayette Superior Court) [Filed 10/12]

The plaintiff is a serious disabled adult who requires constant care and supervision, and receives services through the Medicaid waiver program to receive this care and supervision. As a result of new service limitations that are being imposed on waiver recipients, the plaintiff's

services have been dramatically reduced. The lawsuit alleges that this violates the ADA, as well as state and federal Medicaid law. This case presents the same issue as the *Smith* case and the *Chickadaunce* case below. The case has been stayed pending a resolution to the *Chickadaunce* case.

ATTORNEY(S): Gavin Rose, Nicole Goodson (private attorney)

Chickadaunce v. Minott (U.S. Dist. Ct.—So. Dist. of Indiana) [Filed 8/13]

The plaintiffs are three individuals who are enrolled in a home-and-community-based Medicaid waiver program in Indiana. They have been assigned by the State to a category of individuals that require 24/7, or almost 24/7 care. However, the State has promulgated limits on services that are far lower than this level of care. The lawsuit challenges these service limits as violative of the Medicaid Act and the Americans with Disabilities Act. The plaintiff class has been certified, and summary judgment was filed. This case presents the same issue as presented by the *Smith* and *Caylor* cases. The case has now been stayed as the agency contemplates making changes to its waiver program.

ATTORNEY(S): Gavin Rose

Culvahouse v. City of LaPorte (U.S. Dist.Ct.—No. Dist. of Indiana) [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

Hizer v. Pulaski County, Indiana (U.S. Dist. Ct. – No. Dist. of Ind) [Filed 12/16]

This case, brought as a class action, challenges the lack of accessibility of the Pulaski County Courthouse as violating the Americans with Disabilities Act and the Rehabilitation Act. It is pending.

ATTORNEY(S): Kenneth J. Falk, Jan P. Mensz

Jackson v. Secretary of the Indiana Family and Social Services Administration (U.S. Dist. Ct. – So. Dist. of Indiana) [Filed 11/15]

This is a putative class action that challenges the failure of the Indiana Medicaid program to provide recipients with Harvoni, the new drug that cures Hepatitis C unless and until they

reach the later stages of the disease. After the drug was provided to our named plaintiff, we intervened with a new plaintiff. The case is pending.

ATTORNEY(S): Gavin M. Rose

King v. Marion Circuit Court (Seventh Circuit)

Private counsel received a judgment in favor of the plaintiff who is deaf and was denied a free interpreter at court-ordered mediation. We have been asked to assist on the appeal. Oral argument is set for April.

ATTORNEYS(S) (for the ACLU): Kenneth J. Falk, Gavin M. Rose, Andrea Ciobanu (private attorney)

Meeker v. Kosciusko Community Fair, Inc. (U.S. Dist. Ct. – No. Dist. of Indiana) [Filed 9/14] (mistakenly not listed previously)

The client, who is a person with disabilities, challenges the lack of accessibility of the Kosciusko County Community Fair fairgrounds. A settlement has been filed and has been approved. The case remains open for monitoring.

ATTORNEY(S): Kenneth J. Falk

New Horizons Rehabilitation, Inc. v. City of Lawrenceburg (U.S. Dist. Ct. – So. Dist. of Ind.) [Filed 9/16]

New Horizons, an organization serving those with intellectual and developmental disabilities, has been attempting to open a supported living home for three adults in Lawrenceburg for a number of years. It has been thwarted by Lawrenceburg imposing requirements that are not imposed on other single-family homes. The case alleges this violates various federal laws, Indiana law, and equal protection. A favorable settlement has been negotiated.

ATTORNEY(S): Kenneth J. Falk, Jan P. Mensz

****New Horizons Rehabilitation, Inc. v. State of Indiana*** (U.S. Dist. Ct. — So. Dist. of Ind.) [filed 3/16]

After resolving the issues noted above with the City of Lawrenceburg, New Horizons was informed by the State of Indiana that it had to submit detailed plans for the supported living home and meet state-imposed requirements. None of these requirements are imposed on other single-family dwellings that house nuclear families. The case alleges that this violates federal laws and equal protection. The matter is pending.

ATTORNEY(S): Kenneth J. Falk, Jan P. Mensz

Smith v. Indiana Family and Social Services Administration (Monroe Circuit Court) [Filed 10/12]

The plaintiff is a serious disabled adult who requires constant care and supervision, and receives services through the Medicaid waiver program to receive this care and supervision. As a result of new service limitations that are being imposed on waiver recipients, the plaintiff's services have been dramatically reduced. The lawsuit alleges that this violates the ADA, as well as state and federal Medicaid law. A motion for preliminary injunction has been filed. This case presents the same issue as the *Caylor* case and the *Chickadaunce* case above. The case has been stayed pending a resolution to the *Chickadaunce* case.

ATTORNEY(S): Gavin M. Rose

Targett v. City of Brazil (U.S. Dist. Ct.- So. Dist. of Indiana) [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

Search and Seizure Issues

Gutierrez v. City of East Chicago (U.S. Dist. Ct. – No. Dist. of Ind.) [Filed 3/16]

This is a challenge to the policy of the Housing Authority of East Chicago of conducting warrantless searches and inspections of tenants' apartments without cause or consent, including some searches that are clearly for criminal investigatory purposes. A preliminary injunction was issued in plaintiff's favor and the case is proceeding to summary judgment.

ATTORNEY(S): Jan P. Mensz, Kenneth J. Falk

Lopez-Aguilar v. Marion County Sheriff's Department (U.S. Dist. Ct. – No. Dist. of Ind.) [Filed 9/16]

The plaintiff appeared in court for a traffic citation when he was informed by a sheriff's deputy that federal immigration officials (ICE) had been looking for him earlier in the day. He

was therefore held at the Marion County Jail overnight at which point he was transferred into ICE custody. The case alleges that he was unconstitutionally arrested.

ATTORNEY(S): Gavin M. Rose; Jan P. Mensz

Upton v. Town of Clarksville, Indiana (U.S. Dist. Ct. – So. Dist. of Indiana [Filed 12/16])

This case challenges local ordinances that the Town has interpreted as allowing warrantless entry onto property to do a weed inspection. A settlement has been reached and the matter will be closed.

ATTORNEY(S): Kenneth J. Falk, Jan P. Mensz