IN THE COURTS: 2007 LEGAL DOCKET REPORT

I. Free Speech
II. Privacy
III. Religious Liberty
IV. Reproductive Freedom
V. Lesbian and Gay Rights
VI. Rights of Criminal Defendants
VII. Voting Rights
VIII. Youth Rights
IX. Prisoners' Rights / Right to Rehabilitation

I. FREE SPEECH

Morse v. Frederick
Issue: high school student suspended for display of banner reading "Bong Hits 4 Jesus"
Case Number: 03-35701 (Ninth Circuit Court of Appeals), 06-278 (U.S. Supreme Court)
Status: ACLU of Alaska loss, U.S. Supreme Court decision reported at 127 S.Ct. 2618 (2007)
Summary: In January 2002, Juneau Douglas High School senior Joseph Frederick was suspended from school because of his off-campus display of a banner that read "Bong Hits 4 Jesus." The banner was displayed as many JDHS students gathered along Glacier Avenue to watch the Olympic Torch Relay pass along the street. After confronting him about the banner, then-school principal Deborah Morse suspended Joseph on the grounds that the banner advocated drug use and violated the school's drug policy. Joseph's banner did not advocate drug use, but merely referenced drugs in a nonsensical, meaningless way. Moreover, Joseph was not suspended for using or possessing drugs; he was suspended only for mentioning "Bong Hits" on a banner. The ACLU of Alaska believed this was a violation of his right to free speech, so we filed a lawsuit to challenge the suspension on his behalf. In 2003, U.S. District Judge John Sedwick ruled that although Joseph's speech was protected by the First Amendment, the school could censor his speech if it perceived his message to be advocating drug use in violation of the school's anti-drug policy. This decision was appealed to the Ninth Circuit Court of Appeals, and in March 2006, the court reversed the decision, finding that Joseph's speech was protected by the First Amendment. The court based its decision on the longstanding rule that a school cannot censor a student's non-offensive speech if it does not cause a material disruption to the educational process. The Juneau School Board then petitioned the U.S. Supreme Court to hear the case. The Court granted the request and overturned the Ninth Circuit's decision. The Court found that the phrase on the banner advocated illegal drug use and ruled that a school could restrict such student speech about drugs.

Hornyak v. University of Alaska Fairbanks
Issue: Public radio DJ fired after making political comments on-air
Status: settled; UAF agreed to reinstate DJ and compensate him for lost wages and damages
Summary: In June 2004, University of Alaska Fairbanks student Scott Hornyak, a/k/a DJ Spider Bui, had his volunteer DJ privileges suspended and was fired from his job as business manager for

KSUA-FM, the University's radio station. Shortly after President Reagan passed away, Hornyak was hosting his weekly show and was very critical of Reagan's foreign policies and his response to the AIDS epidemic. Hornyak made very pointed comments about Reagan's death itself and used the show to counter what he called the media's "sugar-coating" of Reagan's record as his death was reported. Many people, however, were offended by Hornyak's comments. KSUA officials responded by suspending his DJ privileges and firing him from his work-study job as business manager for the station. Because Hornyak was punished for speaking his mind on a public radio show and engaging in constitutionally protected political speech, the ACLU of Alaska Foundation represented him as he appealed both decisions through UAA's internal appeals process. As a result of the ACLU of Alaska's advocacy on his behalf, Hornyak's DJ suspension was lifted, and he was reinstated as KSUA's business manager. UAF also reimbursed him for all lost wages during the three months he could not work at the station and provided compensation for all other damages he incurred.

Bussard v. Varni
Issue: State employee fired after publicly criticizing elected officials
Status: settled; State of Alaska agreed to settlement
Summary: Daniel Bussard worked as a security guard at the Capitol Building in Juneau. In February 2005, he was fired from his job after he wrote a letter to the editor of the Juneau Empire that alleged some legislators were drinking alcohol in the building. Because Mr. Bussard's letter was about a matter of public concern, firing him for expressing his views was a violation of his right to free speech. The ACLU of Alaska Foundation represented Mr. Bussard when he challenged the termination decision. The case was settled and Mr. Bussard was compensated in the amount of $10,000 for his lost wages and other damages.

United States v. Corrie Bosman and Kenyon Fields
Issue: protestors charged with federal crime for wearing federal agency insignias
Case Number: J05-0001 MJ (PMP) (U.S. District Court, District of Alaska)
Status: criminal charges dismissed
Summary: In September 2004, several environmental activists staged a demonstration outside of the U.S. Forest Service Building in Sitka. The demonstration involved a parody of U.S. Forest Service employees shredding public comment documents. Among the demonstrators, two were dressed as Forest Service employees, one as President Bush, one as Smokey the Bear and another as Vanna White. About four months after the protest, two demonstrators who wore old Forest Service sport coats with the agency's insignia on the front were charged with violating an obscure federal law that prohibits use or possession of a federal agency insignia without permission. The demonstrators dressed as President Bush, Smokey the Bear and Vanna White were not charged. The demonstrators had purchased the jackets at a thrift store and used them in conjunction with an exercise of their First Amendment right to peacefully protest. Since the law was only intended to prevent individuals from using a federal agency logo or insignia to intentionally deceive the public, the ACLU of Alaska saw this as an attempt by the Forest Service to punish the protestors for exercising their free speech rights

and assisted with their defense in federal court. The charges were quickly dismissed after the ACLU of Alaska became involved in the defense.

Alaskans for a Common Language v. Alakayak
Issue: State law requiring government to conduct business only in English
Case Number: S-10590 (Alaska Supreme Court)
Status: ACLU of Alaska victory at Superior Court, Alaska Supreme Court decision pending
Summary: In 1998, Alaskans approved a ballot initiative proclaiming English to be the official language of the State of Alaska. This law would restrict the state government from conducting business in any language other than English, with limited exceptions. This "English-Only" law would apply both to written government documents and to oral communications as well. The ACLU of Alaska determined the law was unconstitutional and filed suit, along with the Native American Rights Fund and others, against the State. In 1999, Superior Court Judge Torrisi issued a preliminary injunction suspending enactment of the law until a hearing regarding its constitutionality could be held. After three years of delays and additional litigation, Judge Torrisi ruled that the English-Only initiative violates the Alaska Constitution's free speech provision by unduly limiting the ability of public officials and government employees to communicate with members of the public in need of their assistance. The judge agreed with the plaintiffs' argument that allowing government employees and public officials to communicate with members of the public in languages other than English actually makes government more efficient, not less efficient, as supporters of the law claimed. The sponsors of the initiative appealed this ruling to the Alaska Supreme Court. Oral argument was in June 2003, but the Court has yet to issue a decision. Until the Court issues a final decision, the English-Only law will not be enforced in Alaska.

II. PRIVACY

ACLU of Alaska, Jane Doe, and Jane Roe v. State of Alaska
Issue: possession of small amounts of marijuana in the home for personal use
Case Number: 1JU-06-7893CI (Superior Court), S-12370 (Alaska Supreme Court)
Status: ACLU of Alaska victory; on appeal to the Alaska Supreme Court
Summary: In June 2006, the Governor signed HB 149 into law. This legislation provides criminal penalties for all possession of marijuana, despite the fact that such penalties contradict longstanding Alaska legal precedent. In 1975, the Alaska Supreme Court ruled in *Ravin v. State* that possession of small amounts of marijuana in one's home is protected by the State Constitution's privacy provision – a decision repeatedly affirmed by Alaskan courts, most recently in 2004. The ACLU of Alaska Foundation filed a lawsuit to challenge the law. In this case the ACLU of Alaska represented two individuals who use marijuana within the privacy of their homes, Jane Doe and Jane Roe. Both plaintiffs had to remain anonymous, as they were subject to arrest and prosecution for their use of marijuana under the new law. The ACLU of Alaska is also a plaintiff on behalf of itself, as a civil liberties organization, as well as its members, some of whom use marijuana in the privacy of their homes. In July 2006, Superior Court Judge Patricia Collins struck down the law as an unconstitutional violation of the right to privacy. Judge Collins ruled that the right to privacy protects

an adult's personal use and possession of up to one ounce of marijuana in the home. The State appealed this decision to the Alaska Supreme Court.

Hinman v. State of Alaska
Issue: home addresses of licensed nurses made publicly available on State website
Case Number: 3AN-05-07050 CI (Alaska Superior Court)
Status: active litigation
Summary: The ACLU of Alaska Foundation filed a lawsuit on behalf of all licensed nurses in the State because the Alaska Division of Occupational Licensing (DOL) makes personal address information contained in all occupational licensing files available to the public. Not only is this address information contained in the paper files maintained by DOL, but it is also included in an online searchable database on the State's website, and on informational CDs distributed by the State. The files maintained by DOL are public records, but a balance must be struck between open access to public information and protection of an individual's privacy. This case seeks to establish that the sensitive personal information contained in these public records should not be subject to general public disclosure. Nurses support this case because many fear that the public availability of their addresses could subject them to harassment, stalking, and other dangers, including identity theft.

Child Support Services Division Release of Social Security Numbers
Issue: unauthorized public release of Social Security Numbers
Status: settled; State agreed to restrict public distribution of Social Security Numbers
Summary: The Child Support Services Division of the Alaska Department of Revenue (CSSD) agreed to the ACLU of Alaska's request to keep the Social Security Numbers (SSNs) of a group of commercial fishermen private. The ACLU of Alaska filed its request on behalf of a commercial fisherman who received a list of names of individuals subject to child support enforcement orders that included their SSNs. CSSD was releasing SSNs in order to identify commercial fishermen who were in arrears on their support obligations. This policy was in conflict with the law governing the use of SSNs, infringed on individual privacy rights, and provided information to the public that put people at risk for identity theft. Upon the ACLU of Alaska's request, CSSD agreed to cease using Social Security Numbers and to start using other appropriate means, such as fishing permit numbers, to identify commercial fishermen subject to income withholding orders for child support.

Sampson v. State of Alaska
Issue: right to make end-of-life decisions
Case Number: S-9338 (Alaska Supreme Court)
Status: Alaska Supreme Court ruled that the State could restrict the ability of adults to seek physician aid in dying; decision reported at 31 P.3d 88 (Alaska 2001)
Summary: The ACLU of Alaska submitted a friend-of-the-court brief arguing that Alaska's criminalization of physician aid in dying violates the rights of mentally competent, terminally ill patients who are dying and wish to make end of life decisions free from government interference. In its brief, the ACLU of Alaska argued that the privacy, liberty and equal protection clauses of the Alaska Constitution protect the right of patients who are deemed mentally competent and terminally

ill to seek physician aid in dying. Unfortunately, the Alaska Supreme Court disagreed. The Court sympathized with the plaintiffs in the case, but declined to find that an affirmative right to physician aid in dying is contained in the Alaska Constitution, explaining that this is a matter for the legislature, not the courts, to decide.

III. RELIGIOUS LIBERTY

Coonrod, Metcalfe, and ACLU of Alaska v. State of Alaska
Issue: property tax exemption for religious school teacher housing
Case Number: 3AN-06-8866CI (Superior Court)
Status: active litigation
Summary: In 2006, the Alaska legislature passed a law that exempts from taxation any property owned by religious organizations and used as housing for teachers in religious or parochial schools. Both the U. S. and Alaska Constitutions bar the government from showing favoritism for one religion over another, or for religion generally over non-religion. The ACLU of Alaska believes that this legislation has the impermissible effect of carving out special privileges for religion that do not apply to non-religious interests. The ACLU of Alaska filed a lawsuit on behalf of two Anchorage residents to challenge the law and have it declared unconstitutional.

Prayer at Wasilla Planning Commission Meetings
Issue: Sectarian Prayer at Wasilla Planning Commission Meetings
Status: settled; Planning Commission agreed to cease sectarian prayer at meetings
Summary: In 2005, the Wasilla Planning Commission was opening its monthly public meetings with sectarian prayer in violation of the strict constitutional prohibition of such activity. After receiving numerous complaints from residents of Wasilla, the ACLU of Alaska sent a letter to the City Attorney requesting that the Planning Commission immediately cease this practice. The City Attorney agreed with the ACLU of Alaska's analysis and advised the Commission on the unconstitutional nature of including sectarian prayer at public meetings. The City Attorney confirmed to the ACLU of Alaska that the Commission agreed to follow his advice.

Fairbanks North Star Borough Ten Commandments Display
Issue: Ten Commandments display at the FNSB Assembly Building
Status: settled; FNSB agreed to create a display that meets constitutional requirements
Summary: In the Spring of 2004, the Fairbanks North Star Borough (FNSB) installed a display entitled "Our Heritage: Words That Shape and Guide Us," in the FNSB Assembly Building. The display included the Ten Commandments, the Magna Carta, the Bill of Rights, and the Declaration of Independence. The intent of the display was to show historical documents that influenced our legal system. Because the display included the Ten Commandments, a plainly religious document, and did not have a clear, overall secular theme, the display was an unconstitutional endorsement of religion in violation of the Establishment Clause. The ACLU of Alaska challenged this display and the Borough was forced to change it so that it would comply with the Constitution. The title of the display is now "Historical Influences on the Law." The display still includes the Ten Commandments, but now it

also includes the following documents, all arranged according to their historical order: Hammurabi's Code of Laws, the Ethics of Confucius, the Roman Twelve Tables, the Magna Carta, the Declaration of Independence, the U.S. Constitution, the Bill of Rights, and a Code of Conduct from the Manataka American Indian Council. The display also includes information about each document that explains the document's historical significance and how it has influenced our current legal system.

IV. REPRODUCTIVE FREEDOM

State of Alaska v. Planned Parenthood of Alaska, et al.
Issue: State law requiring parental consent for abortions provided to women under 17
Case Number: S-11386 (Alaska Supreme Court)
Status: ACLU of Alaska victory at Superior Court; Alaska Supreme Court decision pending
Summary: This case was filed by the ACLU of Alaska Foundation and the Center for Reproductive Rights on behalf of Planned Parenthood of Alaska and local doctors. The plaintiffs in this case sought to protect the privacy rights and the health of their patients by challenging the constitutionality of the Alaska Parental Consent Law. This law forces women under the age of 17 to overcome state-imposed hurdles in order to exercise their right to make reproductive choices. Under the this law, pregnant minors who choose to carry their pregnancies to term are deemed capable of giving informed consent for all medical treatments including undergoing a major medical procedure such as a cesarean section, but pregnant minors who choose to terminate their pregnancies are deemed incapable of providing such consent. In October 2003, Superior Court Judge Sen Tan ruled that the equal protection guarantee in the Alaska Constitution prohibits the State from requiring parental consent for minors to obtain abortions. The State appealed this ruling to the Alaska Supreme Court. Oral argument was held in April 2005, but no decision has been issued yet. Until the Court issues a final decision, the parental consent law will not be enforced in Alaska.

State of Alaska v. Planned Parenthood of Alaska, et al.
Issue: Medicaid coverage for medically necessary abortions
Case Number: S-9109 (Alaska Supreme Court)
Status: ACLU of Alaska victory, decision reported at 28 P.3d 904 (Alaska 2001)
Summary: In 1998, the Alaska legislature eliminated Medicaid funding for medically necessary abortions for low-income women in Alaska. Under this funding scheme, poor women with epilepsy, cancer, heart disease and many other conditions for whom pregnancy involves severe health consequences, but not death, were denied Medicaid coverage for abortions. The ACLU of Alaska Foundation filed suit, arguing that this scheme was unconstitutional because it violated the Alaska Constitution's privacy and equality guarantees. Superior Court Judge Sen Tan agreed and ruled that although the State does not have to fund any medical care for poor people, once it does, it cannot then withhold funds from some eligible people simply because they choose to exercise a constitutional right; in this case, the right to terminate a pregnancy. The State appealed and the Alaska Supreme Court affirmed Judge Tan's ruling.

Planned Parenthood of Alaska v. State of Alaska

Issue: restrictions on abortion procedures
Case Number: 3AN-97-6019CI (Alaska Superior Court)
Status: "partial-birth" abortion law found unconstitutional
Summary: In 1997, the ACLU of Alaska Foundation and the Center for Reproductive Law and Policy challenged the State's ban on so-called "partial-birth" abortions. Superior Court Judge John Reese struck down the law, holding that Alaska's ban violated a woman's fundamental right to an abortion and her right to privacy under the Alaska Constitution. Judge Reese found that the law was so vague that it could apply to virtually any abortion procedure and that this vagueness was a deliberate attempt by the legislature to prevent doctors from performing abortions because of fear of prosecution. The State appealed the decision to the Alaska Supreme Court, but before the court ruled on the case, the U.S. Supreme Court overturned a similar law in Nebraska in *Stenberg v. Carhart*. As a result of that decision, the Alaska Attorney General dropped the State's appeal, leaving Judge Reese's decision that the ban was unconstitutionally vague as the law of the state.

Valley Hospital Ass'n, Inc. v. Mat-Su Coalition for Choice
Issue: whether hospitals could decline to perform abortions
Status: ACLU of Alaska victory, decision reported at 948 P.2d 963 (Alaska, 1997)
Summary: This case is the Alaska state version of *Roe v. Wade*. It established that, under Alaska law, "reproductive rights are fundamental," "they are encompassed within the right to privacy expressed in article I, section 22 of the Alaska constitution," and "these fundamental reproductive rights include the right to an abortion." In this case, the Alaska Supreme Court held that the state statute that provided that hospitals were not required to provide abortions was unconstitutional with respect to public and quasi-public institutions. The hospital in question was unable to show a compelling state interest that would allow interference with a woman's fundamental rights. The only interest the hospital could show was political and "moral" – the hospital had provided abortions and given privileges to physicians who performed abortions until 1992, when a newly elected hospital board enacted an anti-abortion policy.

V. LESBIAN AND GAY RIGHTS

AkCLU, et al. v. State of Alaska, Municipality of Anchorage
Issue: employment benefits for employees with same-sex domestic partners
Case Number: 3AN-99-11179CI (Superior Court), S-10459 (Alaska Supreme Court)
Status: ACLU of Alaska victory, decision reported at 122 P.3d 781 (Alaska 2005)
Summary: In 1999, the ACLU of Alaska filed a lawsuit challenging the denial of employment benefits for the partners of gay and lesbian employees of the State of Alaska and the Municipality of Anchorage. Employment benefits were conditioned on marriage, so spouses of heterosexual employees were entitled to health insurance, retirement funds, and pensions. Because the Alaska Constitution prohibits the State from recognizing marriages between gay and lesbian couples, partners of gay and lesbian employees could never get those benefits, and gay and lesbian government employees were thus essentially denied equal benefits for equal work. The Alaska Supreme Court agreed, and in October 2005, ruled that the benefits programs offered by the State and

Municipality of Anchorage violated the right to equal protection of the law for employees with same-sex domestic partners. The Court ordered the State and Municipality to implement benefits plans that provided the same benefits for employees with same-sex domestic partners as for married employees.

PFLAG/Anchorage, et al. v. Municipality of Anchorage
Issue: censorship of Gay Pride exhibit at Loussac Library
Case Number: A01-173 CV (JKS) (U.S. District Court, District of Alaska)
Status: ACLU of Alaska victory
Summary: In the summer of 2001, Anchorage Mayor George Wuerch arbitrarily censored a Gay Pride exhibit called "Celebrate Diversity Under the Midnight Sun" at the Loussac Library. Organizers of Gay Pride Month activities in Anchorage had permission from the library to put up a display in the public display area, and they met with library staff before the exhibit was posted to ensure its acceptability. Nevertheless, the morning after it was put up, Mayor Wuerch ordered the display removed from the library walls. He issued this edict without ever having seen the exhibit, claiming that the exhibit was "advocacy" and that he found it to be inappropriate for a public library. The sponsors of the exhibit met with the Mayor and asked him how they could modify the exhibit to alleviate his concerns, but the Mayor refused to compromise. The ACLU of Alaska Foundation filed suit on behalf of six local organizations and more than two dozen individuals asserting that their First Amendment rights were violated by the Mayor's censorship of the exhibit. U.S. District Court Judge James Singleton agreed with the ACLU of Alaska and issued an order allowing the sponsors of the exhibit to reinstall it at the Loussac Library.

VI. RIGHTS OF CRIMINAL DEFENDANTS

Murtagh, et al., v. State of Alaska
Issue: law restricting criminal defendants' ability to conduct pre-trial investigations
Case Number: 3AN-97-649 CI (Alaska Superior Court), No. S-11988/S-12007 (Alaska Supreme Court)
Status: portion of State statute restricting criminal defendants' right to interview witnesses declared unconstitutional by Superior Court; Alaska Supreme Court decision pending
Summary: In 1997, the ACLU of Alaska Foundation filed a lawsuit on behalf of criminal defense attorneys and investigators seeking to challenge portions of the Alaska Victims Rights Act that restricted their ability to defend their clients and investigate their cases. The challenged laws were aimed at shielding crime victims and witnesses from defense investigators, but in doing so, violated the rights of criminal defendants. After a lengthy pre-trial period, the case went to trial in November 2004. In May 2005, Superior Court Judge Sen Tan ruled that some portions of the statute were unconstitutional. Judge Tan ruled that the provisions of the law obligating defense representatives to get written releases before interviewing witnesses and prohibiting them from taping interviews violated rights of equal protection and due process. Judge Tan upheld the provisions that require defense counsel to advise victims verbally that they have the right to not answer questions. Because the decision invalidated some portions of the statute and upheld others, both the State and the ACLU of Alaska appealed the decision to the Alaska Supreme Court.

VII. VOTING RIGHTS

<u>Nick, et al. v. Bethel, Alaska, et al.</u>
Issue: enforcement of the minority language provisions of the Voting Rights Act
Case Number: 3:07-cv-0098-TMB (U.S. District Court, District of Alaska)
Status: active litigation
Summary: The ACLU of Alaska Foundation joined with the Native American Rights Fund (NARF) to file a lawsuit on behalf of four Bethel-area Alaska Natives charging state and local elections officials with ongoing violations of the federal Voting Rights Act. The lawsuit alleges that state and local officials have denied voter assistance and failed to provide oral language assistance and voting materials to citizens who primarily speak Yup'ik, the first language of many Alaska Natives in the Bethel region. Under the Voting Rights Act, state and local elections officials have an obligation to provide oral language assistance in Yup'ik, and ballots and other voting materials translated into Yup'ik, an obligation the State has not lived up to. This case seeks to ensure that people who need assistance to vote receive it from someone of their choosing, that election officials provide bilingual staff to help voters at the polls, and that they translate ballots and other election materials into Yup'ik.

<u>Green Party of Alaska v. State of Alaska</u>
Issue: State's method of determining official party status for political organizations
Case Number: 3AN0309936CI (Superior Court); S-11964 (Alaska Supreme Court)
Status: State's method of determining political party status upheld; decision reported at 147 P.3d 728 (Alaska 2006)
Summary: In 2003, State law required the candidates of recognized political parties to receive at least three percent of the vote in the race for governor in order for the party to maintain official party status. The Green Party challenged the law on the grounds that by selecting only the governor's race as the qualifying benchmark, and not also including results from the preceding U.S. Senator and U.S. Representative races, the State did not employ the least restrictive means of determining party status, thus violating the Green Party's constitutional rights. Superior Court Judge Stowers disagreed with the Green Party and upheld the law. The Green Party appealed to the Alaska Supreme Court, and the ACLU of Alaska filed a friend-of-the-court brief on behalf of the Green Party to support the ballot access rights of small political parties. The Alaska Supreme Court upheld the lower court's ruling.

<u>Green Party of Alaska & Republican Moderate Party, Inc. v. State of Alaska</u>
Issues State law prohibited political parties from conducting joint primary elections
Case Number: S-11272 (Alaska Supreme Court)
Status: law prohibiting joint primary elections struck down; decision reported at 118 P.3d 1054 (Alaska 2005)
Summary: The Alaska Supreme Court ruled in favor of the Green and Republican Moderate Parties and upheld the right of political parties to conduct joint primary elections. The decision was in line with the arguments advanced by the ACLU of Alaska in its friend-of-the-court brief filed in support of the two parties. In affirming the decision of the lower court, the Alaska Supreme Court held that

the Alaska Constitution protects a political party's right to determine for itself who will participate in its primary election. This right now definitively includes the ability of a party to share a primary ballot with another political party in order to seek the participation of members of the other party who, if forced to choose between the two, would only vote in their own party's primary election.

VIII. YOUTH RIGHTS

Bartlett High School Pledge of Allegiance
Issue: right of students to not participate in Pledge of Allegiance
Status: ACLU of Alaska victory
Summary: The ACLU of Alaska received several complaints about students being chastised for not singing the national anthem and being pressured to participate in the Pledge of Allegiance at Bartlett High School in Anchorage. In April 2005, the ACLU of Alaska sent a letter to the Bartlett principal and explained that students have the right to decline to participate in singing the national anthem, to not pledge allegiance to the flag, to not stand during the pledge, and may not be forced to leave the room while others pledge allegiance. The ACLU of Alaska requested that the Bartlett administration notify each member of the staff in writing of these rights. The principal complied with this request and notified each Bartlett staff member in writing of the policy regarding forced participation in the pledge and/or disciplinary actions as a result of non-participation.

Treacy v. Municipality of Anchorage
Issue: juvenile curfew law
Case Number: S-10149 (Alaska Supreme Court)
Status: ACLU of Alaska loss, decision reported at 91 P.3d 252 (Alaska 2004)
Summary: In 1999, the ACLU of Alaska Foundation filed a lawsuit on behalf of parents and teens who sought to challenge the Anchorage municipal curfew ordinance. The ACLU of Alaska argued that the curfew ordinance violated Alaskans' constitutional rights to liberty, privacy, equality, freedom of expression, freedom of association, and due process. In March 2001, Judge Rene Gonzalez struck down the ordinance as unconstitutional. He determined that the law was overbroad and violated parents' rights to raise their children free from government interference. The municipality appealed, and the Alaska Supreme Court reversed Judge Gonzales' ruling, determining that the ordinance was constitutional.

IX. PRISONERS' RIGHTS / RIGHT TO REHABILITATION

Purcell v. University of Alaska Anchorage
Issue: student denied entry to degree program because of felony background
Case Number: 3AN-05-09374 CI (Alaska Superior Court)
Status: ACLU of Alaska loss
Summary: The ACLU of Alaska Foundation filed an administrative appeal on behalf of Micheal Purcell, a University of Alaska Anchorage student and former prisoner who was denied entry into the UAA Bachelor of Social Work degree program because of his past felony conviction for murder. At the time the case was filed, Mr. Purcell was a 37-year-old student who had served nearly 20 years in prison for a crime he committed when he was 16. He had attended UAA since he was released on furlough in 2002, and had good grades and served as President of the UAA Social Work Club. The ACLU of Alaska believed that the school's denial of entry to a model student constitutes a violation of Mr. Purcell's rights, including his right to rehabilitation under the Alaska Constitution. Because of Alaska's unique right to rehabilitation, the ACLU of Alaska argued that UAA must take into consideration factors related to whether students like Mr. Purcell have been rehabilitated when making admission decisions. The Alaska Superior Court disagreed, and ruled that the right to rehabilitation only requires the State to provide rehabilitative programming in prison. The court also assessed attorney's fees against Mr. Purcell. In exchange for UAA releasing its claim to fees, Purcell agreed not to appeal the decision to the Alaska Supreme Court.

State of Alaska v. Callahan, Lundy, and Chase
Issue: whether the Department of Corrections must provide sex offender treatment to prisoners
Case Number: 1JU0500149CR/ 1JU0400135CR / 1JU04992CR (Superior Court), A-09493/A-09494/A-9836 (Court of Appeals)
Status: Superior Court judge ruled that DOC must provide sex offender treatment as part of a convicted sex offender's criminal sentence; currently on appeal to Alaska Court of Appeals
Summary: Superior Court Judge Larry Weeks ordered the Department of Corrections to provide sex offender treatment for convicted sex offenders as part of their criminal sentences. Judge Weeks' orders were based on a unique provision of the Alaska Constitution that provides a fundamental right to rehabilitation for criminal offenders. The right is also intended to protect the public, and Judge Weeks specifically ordered DOC, which has not provided sex offender treatment within the State prison system since 2003, to provide Mr. Callahan, Mr. Lundy, and Mr. Chase with rehabilitative treatment while they are incarcerated for the protection of the public. The State challenged Judge Weeks' orders and asked for an exemption so that DOC would not be required to provide sex offender treatment. Because the ACLU of Alaska is actively involved with protecting the rights of prisoners in Alaska as well as with ensuring the proper administration of criminal justice to protect the public, the ACLU of Alaska Prison Project filed a friend-of-the-court brief in support of Judge Weeks' orders. The brief argued that Judge Weeks was well within his authority to require sex offender treatment and that the State's requested exemption violates the principles of criminal justice administration in Alaska.

Tyler v. Department of Corrections

Issue: DOC policy prohibiting outside evidence at in-prison disciplinary hearings
Case Number: 3AN-05-7368CI (Alaska Superior Court); S-12580 (Alaska Supreme Court)
Status: case dismissed as moot
Summary: The ACLU of Alaska Foundation represented Cortez Tyler in an administrative appeal of a Department of Corrections (DOC) disciplinary board decision. Mr. Tyler's right to due process was violated because DOC policies rendered him unable to present corroborating evidence at his hearing. After being released on a furlough to spend the last six months of his sentence in a Fairbanks halfway house, Mr. Tyler was escorted by a Wildwood Correctional Center officer to the Kenai Airport. While at the airport, Mr. Tyler was written up for disobeying a direct order from the officer and sent back to prison. Mr. Tyler claimed that he did not commit the infraction and asked that witnesses from the airport testify on his behalf at his disciplinary hearing. His request was denied because DOC does not allow outsiders to present evidence in prison disciplinary board hearings. Because he could not present relevant evidence to back up his story, Mr. Tyler was found guilty of the infraction, sentenced to time in punitive segregation, and transferred to Spring Creek Correctional Center. His furlough was also cancelled. The ACLU of Alaska represented Mr. Tyler because the implications of this policy are great - anytime a prisoner is charged with an offense that occurs outside facility walls, whether at a medical appointment, court hearing, or transfer, they will be unfairly required to counter the testimony of staff members, who often have greater credibility with the staff on the hearing committee, without the testimony of neutral, unbiased witnesses. Mr. Tyler completed his sentence and was released from prison before briefing in this case was completed. The Department of Corrections argued that with Tyler out of prison, the case was moot. The superior court agreed and dismissed the case. Mr. Tyler chose to pursue an appeal, but was then unable to participate and the appeal was dropped.