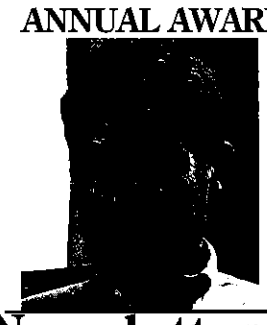
ANNUAL AWARDS DINNER



Speaker: Jack Greenberg, Civil Rights Giant

ACLU
AMERICAN CIVIL LIBERTIES UNION OF OHIO FOUNDATION

Newsletter of the American Civil Liberties Union of Ohio • Fall 1994

1223 W. Sixth Street, 2nd Floor•Cleveland, OH 44113

Two fall victories for civil rights, ACLU Precedential cases top off busy season

BY TED FOLKMAN
INTERN, PRINCETON UNIVERSITY

Charon v. Fremont Memorial Hospital

In April, 1992 Fred L. Charon suffered a severe allergic reaction to medication while driving through Ohio. He was rushed to Memorial Hospital in Fremont Ohio, near Toledo. The emergency room staff began to treat him but were forced to stop when Dr. Charles Hull, the admitting doctor on duty, refused to admit Mr. Charon. What could cause a doctor to turn away a patient suffering an acute allergic reaction? Only an AIDS diagnosis. When Dr. Hull learned that Mr. Charon had AIDS, he said, "Once you get an AIDS patient in the hospital, you will never get him out." As a result of Dr. Hull's action, which was hotly contested by another doctor on the scene, Mr. Charon was transferred to a Toledo hospital.

Dr. Hull defended his action by claiming that the hospital in Toledo was better able to treat Mr. Charon's condition, which he, erroneously and after-the-fact, diagnosed as toxic epidermal neurolysis. ACLU Cooperating Attorney **Ellen Simon Sacks**, however pointed out that in 1990, Dr. Hull's hospital admitted a 96-year-old woman with the same disease.

The ACLU, representing the estate of Mr. Charon in the U.S. District Court, sued both Dr. Hull and Fremont Memorial Hospital for $1 million in compensatory and punitive damages. Ms. Sacks, with the firm of **Spangenberg, Shibley, Traci, Lancione & Liber**, an ACLU cooperating attorney representing the plaintiffs, with **Doris Wohl** of **Wohl and Associates**, also an ACLU cooperating attorney, argued that the actions of the doctor and the hospital violated state common law regarding intentional or reckless infliction of emotional distress, the Emergency Transfer and Active Labor Act, the Federal Rehabilitation Act, and most importantly the Americans with Disabilities Act. This is believed to be the first AIDS discrimination claim ever made under the ADA, a law designed to ensure that people with AIDS and other disabilities would be protected from discrimination by private establishments, including hospitals and doctors' offices.

On June 14, 1994, the jury awarded $512,000 to Mr. Charon's estate under the Federal Rehabilitation Act. These damages included both compensatory and punitive damages against Dr. Hull and the hospital. While the jury dismissed claims under state law and the Emergency Transfer Act, the judge has yet to rule on the claims under the ADA. A favorable ruling would mark the first award to a victim of AIDS-related discrimination under the Act, and a precedent-setting decision that would protect the thousands of Americans suffering from AIDS.

Equality Foundation v. The City of Cincinnati

The ACLU is also involved with Issue 3, a Cincinnati ordinance that threatens the rights of gay men and lesbians in that city. Voters last November voted to strike civil rights-protection for sexual orientation from the city's existing Human **(continued on Page 2)**

INSIDE:
Annual dinner,
Saturday October 29
6:30 p.m.
Columbus Ohio.
SPEAKER:
Jack Greenberg, author, former head of the NAACP Legal Defense Fund.
HONOREES:
David Goldberger, lead attorney in Skokie, long-time ACLU volunteer
Melodee Kornacker, volunteer attorney and civic leader

Newspaper for homeless forced to get permit or cease distributing

BY TED FOLKMAN
INTERN, PRINCETON UNIVERSITY

Richard Clements, a homeless man, was recently cited by the Cleveland police for peddling without a license. His crime? Distributing *The Homeless Grapevine*, a publication of the Northeast Ohio Coalition for the Homeless, for a suggested one dollar donation.

The ACLU is concerned with the City of Cleveland's continued disregard for the rights of homeless people. But more than the problem of the homeless is at issue. By requiring a peddler's license for the distribution of a newspaper, the city is, in effect, in violation of the First Amendment, which prohibits the government from licensing publications. Furthermore, by requiring a $50.00 licensing fee the for particular newspaper, which is published on a shoestring budget, the city has effectively put *The Homeless Grapevine* out of business. ACLU of Ohio Legal Director Kevin F. O'Neill points out that, "Fifty dollars is a king's ransom for a homeless guy. You might as well ask him to buy a Lear jet."

The ACLU, which takes its role as the protector of the First Amendment especially seriously, was quick to take action. O'Neill filed a motion to dismiss the charges in Cleveland Municipal Court, arguing in his brief, "that the statute as written is not applicable to Mr. Clements, and that even if it were, Mr. Clements has a constitutional right to distribute his newspaper free of government interference." Kevin O'Neill received valuable assistance from Law Clerk **Robin Bruckmann** and Intern **Ted Folkman.**

According to Fred Karmis, the Executive Director of the National Coalition for the Homeless, this is the only known challenge to a city's fee for the right to sell a homeless newspaper on the streets. Mr. Karmis notes, however, that the practice of distributing homeless papers is common both across the country and in Europe.

Our brief was filed on July 21. On August 8, the City of Cleveland withdrew its prosecution of Mr. Clements and the case was dismissed. The ACLU is investigating charges that the City is using the same peddler's statute to limit distribution of the paper, *The Final Call* by the religious group, **(Continued on Page 2)**

Westerville leafletter cited for violation of state election law Case will be argued before to U.S. Supreme Court this term

BY SHELLI CALLAND
INTERN, SHAKER HEIGHTS HIGH SCHOOL

On February 22, 1994, the U.S. Supreme Court agreed to hear the case of McIntyre v. Ohio Elections Commission, which has been appealed by the ACLU. This case is of particular interest to the ACLU of Ohio because of the First Amendment freedom of speech issues involved. The ACLU is challenging the constitutionality of an Ohio statute that prohibits anonymous campaign literature, which was the only issue considered on appeal by Ohio state courts.

Mrs. Margaret McIntyre, who died in April of this year, was an active dissenter in the city of Westerville, Ohio, a suburb of Columbus. On the evenings of April 27 and 28, 1988, Mrs. McIntyre stood outside two school buildings and distributed leaflets opposing the passage of a school tax levy to persons entering the buildings to attend public meetings at which the merits of the levy were to be discussed. The levy was to be voted on at a nonpartisan referendum, and the leaflets were signed only "Concerned Parents and Tax Payers."

On both evenings, the Assistant Superintendent of Elementary Education for the Westerville Schools, J. Michael Hayfield, saw Mrs. McIntyre distributing the leaflets. He read on and told her that she was not in compliance with Ohio election laws.

About a year after she distributed her leaflets, Mrs. McIntyre was notified by the Ohio Elections Commission that a complaint has been filed against her. The complaint charged her with violating a section of the Ohio Revised Code [3599.09], and was filed by Assistant Superintendent Hayfield.

The charges against Mrs. McIntyre were initially dismissed for want of prosecution, but they were soon reinstated at the request of Mr. Hayfield. In March of 1990, a hearing was held before the Ohio Elections Commission. At the hearing, Mrs. McIntyre, who was not represented by counsel, both denied any intent to violate the law and objected to the law as an infringement of her rights. The Commission fined Mrs. McIntyre $100.

In 1990, the Franklin County Court of Common Pleas held that the law was unconstitutional as applied. In 1992, the Ohio Court of Appeals reversed the Court of Common Pleas and reinstated the fine. In 1993, that decision was affirmed by the Ohio Supreme Court.

The ACLU agreed to pursue an appeal to the U.S. Supreme Court, arguing that the Ohio Supreme Court erred in upholding the statute because its ruling is incompatible with the decision of the U.S. Supreme Court in the case of Talley v. California [362 U.S. 60 (1960)]. In that case, the U.S. Supreme Court held that a flat ban on anonymous leafletting is unconstitutional because it **(Continued on Page 2)**

Court: current school funding illegal

BY TED FOLKMAN
INTERN PRINCETON UNIVERSITY

On July 1, 1994 a Perry County judge ruled that the state's current system for funding public schools violates the Ohio Constitution. In his 500-page decision, **Judge Linton D. Lewis, Jr.** ruled that education is a fundamental right in Ohio, that the current funding system denies that right to many Ohio schoolchildren, and that the State Assembly must draft a new plan for funding education in the state.

Judge Lewis found that the state's reliance on locally levied property taxes to fund education discriminates against children from property-poor districts. According to figures from the State Department of Taxation, the amount of taxable property per pupil ranged in 1992 from $934,908 on Kelly's Island to $17,178 in Huntington. This 5,442% disparity reflects the inherent unfairness of the status quo.

The Judge's order does not require tax redistribution. It does not require absolute equality among school districts. It does not mandate a levelling down of Ohio's best schools. It simply requires the state to guarantee adequate funding for every school district. The percentage of the state budget devoted to public primary and secondary education has declined over the last fifteen years from 40% to under 33%. The Ohio Coalition for Equity and Adequacy, one of the plaintiffs in the suit, argues that the state should increase this percentage rather than redistribute or level down, making the educational pie bigger instead of redistributing the current resources.

The ACLU endorses the Judge's finding that the current system of public school financing violates the Ohio Constitution. We agree with Judge Lewis that the job solving the problem belongs to the General Assembly. And we are confident that this case will be a milestone in the history of Ohio educational reform.

The ACLU of Ohio hopes to enter this case in an amicus capacity when it moves to the appeal phase this Fall.

At-Large State Board election results

The membership elected Shirley R. Johnson, Peter F. Levin, Gwen McFarlin and Nancy E. Pierce to three-year terms to the Board of Directors of the ACLU of Ohio. In addition, Alice J. Malin and Percy Squire were appointed to terms by the Board of Directors.

The Board of Directors of the ACLU of Ohio is composed of about 30 members from around the state. The Board meets six times a year and is responsible for policy development, fiscal management and fundraising.

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OHIO ELECTION LAW, CONTINUED FROM PAGE 1

restricts freedom of expression.

The ACLU also argued, among other things, that the U.S. Supreme Court, on the basis of extensive historical precedent, has often and consistently held that the First Amendment protects anonymous speech, and that since Mrs. McIntyre, whether anonymously or not, was a street-corner leafletter engaged in core political speech about a public issue, no law can be applied to her speech without violating the First Amendment.

In fact, the tradition of anonymous political writing is old and well established in America. At the time of the American Revolution, anonymous political publications were common. Even the Federalist Papers, supporting the adoption of our Constitution, were published pseudonymously. The importance of protecting anonymous political speech has not diminished with time. As the U.S. Supreme Court said in Talley, "Anonymous pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind."

This case is being handled by **David Goldberger**, who persuaded the U.S. Supreme Court that the matter had not been rendered moot by the death of Mrs. McIntyre. Goldberger is a Professor of Law at the Ohio State University, and is the author of numerous publications on First Amendment issues. He has served as the Legal and Legislative Director of the ACLU of Illinois and as General Counsel for the ACLU of Ohio, and is scheduled to be honored at the ACLU of Ohio's Annual Awards Dinner on October 29.

The U.S. Supreme Court is expected to hear oral arguments in the case of McIntyre v. Ohio Elections Commission sometime during its next term, which begins October 3.

HOMELESS NEWSPAPER, CONTINUED FROM PAGE 1

The Nation of Islam.

In the spring of this year the City also removed newspaper boxes belonging to the *Free Times*, an alternative newspaper sometimes critical of the city's administration. Ostensibly the boxes needed fresh paint. Given that boxes in worse condition distributing *The Plain Dealer* and *The Wall Street Journal* were not removed, it appears that the City may be forgetting the scope of First Amendment protections of a free press.

Don't let this be your last newsletter — KEEP YOUR MEMBERSHIP CURRENT!

ISSUE 3, CONTINUED FROM PAGE 1

Rights Ordinance. Demonstrating a profound misunderstanding of the principle of toleration, Michael Carvin, attorney for Equal Rights, Not Special Rights, a right-wing group, is quoted as believing that the amendment promotes toleration by allowing "residents to decide for themselves whether gays and lesbians are entitled to the same rights as others." This view is reminiscent of **Stephan Douglas's** Popular Sovereignty proposal in the 1850s, in which the white citizens of a territory would vote to determine whether blacks would be slave or free. Needless to say, the ACLU was determined to fight this measure, which, if upheld, would "render the political rights of gay people useless within the City of Cincinnati," according to ACLU Cooperating Attorney **Scott T. Greenwood**.

It is no surprise that such a repressive measure would be approved (by a margin of 62% to 38%) in a city like Cincinnati, where a museum was prosecuted for displaying an exhibit by Robert Mapplethorpe, where two men were arrested for holding hands in a park and where the sheriff called for charges against a theater that was presenting a play on gay themes with nudity.

It is all the more important in such an environment to provide gays and lesbians with the full protection of the law. Thus, the ACLU, in cooperation with the Lambda Legal Defense and Education Fund and private attorney **Alphonse Gerhardstein** (an ACLU of Ohio State Board Member), and with the support of our membership of over one thousand in Cincinnati, sued for and won a preliminary injunction to prevent the amendment from taking effect. The trial ended in U.S. District Court on June 24.

The ACLU achieved a resounding victory when, on August 9, Judge Arthur Spiegal of the United States District Court accepted all of the ACLU's arguments against the constitutionality of Issue 3. The Judge found among other claims that rights protected by the Constitution can never be subordinated by a vote of the majority and Issue 3 violates a fundamental right to equal participation.

The City of Cincinnati and the radical-right organization, Equal Rights Not Special Rights have announced their plan to appeal our victory.