



## ACLU-TN Docket 2007-2008

---

### Death Penalty

**Case Name:** State v. Taylor  
(No. M2005-1941-CCA-R3-DD  
Tennessee Court of Criminal Appeals)

**ACLU Attorney:** Casey Stubbs, ACLU Death Penalty Project  
Kelly Gleason, Tennessee Post-Conviction Defender Office  
(Direct Representation)

**Defendants:** State of Tennessee

The ACLU Capital Punishment Project represented Richard Taylor, a Tennessee death row inmate who suffers from multiple mental health related issues, in his direct appeal from his 2003 conviction for first degree murder. Mr. Taylor had previously been found incompetent to stand trial. At a competency hearing in the spring of 2003, the state trial court found Mr. Taylor competent to stand trial and to represent himself despite the fact that he continued to make bizarre and delusional statements. Mr. Taylor represented himself at the 2-day capital trial, without standby counsel, while wearing his prison uniform and sunglasses. Taylor called no witnesses, introduced no evidence, and presented no defense. The few cross-examination questions he posed during the guilt-innocence phase of his trial were delusional, and he was completely silent during the sentencing phase of the proceedings. The jury that sentenced Taylor to death was never presented with compelling evidence of Taylor's difficult childhood, suicide attempts, psychiatric hospitalizations or severe mental illness. The ACLU's numerous legal challenges to the 2003 trial and the proceedings leading up to it including to the judge's failure to hold a competency hearing during the trial when it was obvious that Taylor was incapable of standing trial and representing himself, were successful in March of 2008 when the Tennessee Court of Criminal Appeals reversed his conviction and death sentence and sentenced him to a life of imprisonment.

### FREE SPEECH

**Case Name:** In re Matthews  
(Case not filed)

**ACLU-TN Coop. Atty:** Bruce Kramer, Borad & Kramer, P.C.  
ACLU First Amendment Working Group  
(Direct Representation)

**Defendants:** City of Memphis

In early 2008, ACLU-TN was contacted by Thaddeus Matthews, a prominent Memphis blogger, to assist him in asserting the Tennessee Press Shield Law and to resist attempts by the government to coerce information out of him or subject him to punishment for exercising his free speech rights as a journalist. This was a cutting edge First Amendment issue which would have extended traditional press protections to bloggers.

Mr. Matthews, who writes a blog that is critical of the Memphis police department and oftentimes contains internal investigative information, was pressured by local law enforcement to reveal the identity of his source(s).

The MPD tried to ascertain the identity of unknown bloggers who ran a similar site which criticized the MPD. MPD filed suit in court and then had it sealed, while simultaneously moving to subpoena the identity of the other bloggers. Mr. Matthews, having reason to believe that the sealed suit involved efforts to harass him and discover his sources, moved to intervene in the related litigation to unseal the documents to protect his sources. Ultimately, the documents were unsealed in response to our motion. ACLU-TN notified MPD that Mr. Matthews was represented by counsel and would vigorously fight any attempt to discover his sources. Eventually MPD backed down and ceased their harassment of Mr. Matthews.

## **RELIGIOUS FREEDOM**

**Case Name:** John and Jane Doe v. Wilson County School System  
(No. 3:06-0924, United State District Court of Middle Tennessee, Nashville Division, Judge Robert Echols)

**ACLU-TN Coop. Atty:** Edmund J. Schmidt, III, Law Offices of David Randolph Smith & Edmund J. Schmidt, III  
(Direct Representation)

**Defendants:** Wilson County School System;  
Dr. Jim Duncan, Director of Wilson County Schools;  
Wendell Marlowe, Principal of Lakeview Elementary School;  
Yvonne Smith, Assistant Principal of Lakeview Elementary School; and  
Janet Adamson, teacher at Lakeview Elementary School.

**Intervening Defendants:** Doug and Christy Gold, individually, and on behalf of their minor children H.G. and J.G. and James and Jennifer Walker individually, and on behalf of their minor child A.W.

On September 27, 2006 ACLU-TN filed a lawsuit on behalf of John and Jane Doe and their son James Doe. The lawsuit alleged that Lakeview Elementary School violated the Establishment Clause of the First Amendment by endorsing and promoting a range of sectarian religious activities.

The plaintiffs alleged that the Wilson County school system endorsed and promoted a range of religious activities, including the "Praying Parents," "Prayer at the Flag Pole," the National Day of Prayer event, and teacher-led classroom prayers.

For example, "The Praying Parents" were identified on the school website as a group of parents who meet monthly "to pray for our school, faculty, staff, and children." The group, who met in the school cafeteria at the start of the school day, was endorsed in the school's monthly newsletter; their flyers were distributed to students; and their members entered the classroom to inform students that "the Praying Parents" had prayed for them.

The lawsuit was filed only after repeated attempts by the plaintiffs to end the religious activities in their child's school had failed. Despite plaintiffs' requests, Wilson County School administrators continued to promote and sponsor the religious activities; furthermore, school administrators indicated to the parents that the school intended to continue to support the religious activities. ACLU-TN's lawsuit alleged that the school administrators went so far as to encourage the family to withdraw their child from Lakeview Elementary school. The family felt forced to home school their child.

ACLU-TN's lawsuit sought declaratory and injunctive relief, compensatory or nominal damages, and attorney's fees. The case was tried in front of Judge Echols in December 2007 and the court granted our request for injunctive relief on the majority of ACLU-TN's claims against the school administrators and teachers finding that the defendants had engaged in a clear pattern and practice of promoting and endorsing religion. The Court also found Plaintiffs to be substantially prevailing parties and ACLU-TN was awarded attorney's fees.

## **Student's Rights**

**Case Name:** Lowery, et al. v. Euverard, et. al.  
(No. 06-6172, U.S. Court of Appeals for the Sixth Circuit)

**ACLU-TN Coop. Atty:** Barbara Moss and Sam Zeigler, Stites and Harbison  
(Amicus Representation)

**Defendants:** Marty Euverard, Football Coach,  
Dale Schneitman,  
Craig Kisabeth,  
Jefferson County Board of Education

ACLU-TN was contacted to assist the case of four students who were members of the varsity football team at Jefferson County High School (JCHS). These children had dreamed of playing varsity football. They quickly realized, however, that the football

coach, Coach Euvard, was verbally and sometimes physically abusive to the boys. The boys decided to take a stand against the coach and his treatment of his players. Two of the boys began a petition that stated: "I hate Coach Euvard and I don't want to play for him." Their intention was to circulate the petition to current, former and potential football players to ask them to sign it and to present the results to the administration, at the end of the season, to see if they could get the Coach removed from his position. In all, the students gathered 18 signatures of the 36 varsity football players and many other signatures from others who did not play football because of the coach. The signatures were gathered over the course of three days. There was no disruption of school or athletic activities during that time.

At some point, Coach Euverard was made aware that the petition was being circulated. In response to this knowledge, he met with his assistant coaches and conspired about how to "deal with" the players who signed the petition. They determined that each player would be singled out and interrogated in a closed room by at least two adult coaches. The players that refused to recant would be, and ultimately were segregated from the rest of their teammates and summarily dismissed from the team. The coaches, headed by Euverard, then told everybody that all of the dismissed players had quit, which every player denied repeatedly under oath.

After the case was filed in the U.S. District Court for the Eastern District of Tennessee, in an attempt to have them placed back on a football team, Defendants filed a motion for summary judgment asserting qualified immunity protections. The Court denied their request for qualified immunity and defendants appealed the decision to the Sixth Circuit Court of Appeals. The case was briefed and argued in April 2007.

Procedurally, this case was already on appeal from the District Court's denial of qualified immunity for the school district, when ACLU-TN became involved. We were considering what role, if any, ACLU should play in this debate, when the 6<sup>th</sup> Circuit Court of Appeals issued a scathing decision that essentially stripped student's of many free speech protections. Instead of applying the longstanding Tinker standard, the Court found that student athletes, were more akin to government workers than to students, and therefore, should only be afforded First Amendment protections given to government workers. The court found that no free speech right existed for a student to pass a petition in school, even if the activity itself was not disruptive and that a coach could retaliate against a student for such behavior, by kicking them off of the team. The decision was a huge blow to student free speech rights.

In light of the horrible precedential value of such a decision, ACLU-TN, filed an amicus brief in support of Appellee's Petition for rehearing en banc. The Student Press Law Center and the American Center for Law and Justice (ACLJ) joined ACLU-TN's brief.

Ultimately, the request for rehearing en banc was denied. Plaintiffs petitioned to the U.S. Supreme Court where certiorari was denied in October of 2008.

**Case Name:** John Doe and Jennifer Doe, a minor, v. Roane County School Board  
(Not Filed)

**ACLU-TN Coop. Atty:** Gerald Gulley and Chris Oldham of Gulley and Oldham  
Knoxville, TN  
(Direct Representation)

**Defendants:** Roane County School Board

ACLU-TN represented a family in Roane County who objected to their school's policy on the drug testing of student athletes. The constitutional issues in this case involved a student's right to privacy and to be free from unreasonable search and seizure. A Tennessee Statute was also in effect at the time, which explicitly prohibited such student drug testing of student athletes.

The student in this case had been "randomly" drug tested 9 times since entering middle school 3 years earlier, with negative results every time. Despite the state law, the school's policy provided for random drug testing of student athletes.

ACLU-TN sent a demand letter to the Board giving them 30 days to change their policy or be subject to a legal challenge. The Board initially voted to keep the policy intact, but when the Rules Committee of the Board met separately, they ultimately changed the language to include both opt in and opt out provisions to the school's drug testing policy.

Ultimately, the policy was changed to include both an opt in provision and an opt out provision, making it no longer ripe for judicial challenge. The Plaintiffs were extremely pleased with the outcome, and opted their daughter out of the drug testing scheme.

## Voting Rights

**Case Name:** Ronald Teel, et al. v. Riley Darnell, et al.  
(No. 1:07-cv-0027, United State District Court of Eastern Tennessee, Judge Curtis Collier)

**ACLU-TN Coop. Atty:** Chris Varner, Gearhiser, Peters, Lockaby, Cavett & Elliott, PLLC. (Direct Representation)

**Defendants:** Bradley County Elections Commission;  
Brook Thompson, Coordinator of Elections;  
Riley Darnell, Secretary of State;  
Fran Green, Administrator of BEC;  
Kalin Morris, Assistant Admin. of BEC elections.

In a cutting edge issue of voting rights law, ACLU-TN filed suit in November 2007 to protect the voting rights of those who travel full time in their recreational vehicles. The constitutional issues involved deprivation of the fundamental right to vote, a lack of due process and a violation of the Plaintiffs rights to interstate travel and to be treated the same as other more traditional voters.

In 1998, the Teels retired from a long career in public service, sold all of their real property, bought an RV and set out on the road full time. In 2001, they came across Tennessee and decided to make it their home. They obtained a mailbox at a commercial mail forwarding service and used that address to register their RV, pay taxes, for the federal census, for insurance purposes, for their driver's licenses and even to vote in Bradley County in 2004. In 2005, however, in the wake of the John Ford residency controversy, the TN legislature quickly passed a law banning the use of commercial addresses for use for election or voting purposes. As a result, the Teels and 286 others were purged from the voter registration logs and were unable to vote.

In a very disappointing decision, the court dismissed our case on a motion to dismiss. We filed a motion for reconsideration which the court denied using very strong language giving a road map of how they could register to vote - - using the parking lot of the mail forwarding service as their address.

After months of legal wrangling and a due process hearing in front of the election commission and on the eve of the filing of the second complaint, the BEC agreed that the parking lot of the mail forwarding service is in compliance with the NVRA and that Plaintiffs met their burdens. They are now registered to vote.