



BANNED BOOKS WEEK

September 24-October 1, 2005

American Civil Liberties Union • www.aclu.org/banned2005

Defending First Amendment Rights

When the framers of our Constitution insisted on Freedom of Speech rights, one of their aims was so that all Americans — no matter their social class or position in our society — could vigorously examine and criticize our government. These rights have throughout our history nurtured our democracy and made us a beacon to the whole world. But, as history has played out, they've been hard-won rights that we have to continually fight for and renew. Take the case of John Blair. When he mounted his solitary vigil some winter night a few years ago to protest an appearance by Vice President Dick Cheney, local cops first tried to shunt him aside. They tried to position him 500 feet away from the site of the event. Authorities at the local and federal levels became adept in recent years of using security concerns to create the so-called "protest zones" far away from official events. Both Democrats and Republicans used them at their most recent political conventions.

Blair crossed the street instead and held up his banner criticizing Cheney. Cops arrested him for disorderly conduct. The Indiana Civil Liberties Union filed a suit on Blair's behalf.

A United States District Court Judge, Larry J. McKinney, earlier this year vindicated Blair's free speech rights by ruling that the authorities violated his constitutional rights by restricting his movement and arresting him before the 2002 event.

"The restriction of protesters to an area 500 feet away from the only entrance used by attendees, and on the opposite end of the building from where Vice President Cheney would enter the facility . . . burdened speech substantially more than was necessary to further the Defendants' goals of safety," Judge McKinney wrote.

NOTABLE FREE SPEECH ISSUES IN THE PAST YEAR

Free Speech

- Attorneys for the American Civil Liberties Union of Massachusetts declared a First Amendment victory when a federal appeals court ruled in December 2004 that the Massachusetts Bay Transportation Authority violated free speech rights by refusing to display subway advertisements encouraging public discussion about marijuana policies and laws. However, the ACLU criticized a separate ruling that upheld the transit agency's decision to reject ads submitted by a Christian church group.



- A month later, the U.S. Department of Justice — Perhaps heeding the federal district court’s ruling that its controversial statute was unconstitutional — notified Congress that it would not defend a law prohibiting the display of marijuana policy reform ads in public transit systems. “The government does not have a viable argument to advance in the statute’s defense and will not appeal the district court’s decision,” Solicitor General Paul Clement said in a letter to Congress.
- The ACLU of Washington joined Public Citizen in April to file a lawsuit backing free speech rights of a union member running for office. The Union member, Joseph Hughes, was challenging a rule that forbade candidates from discussing the union election or having political paraphernalia — including buttons or bumper stickers — anywhere on union premises.
- The ACLU of Michigan challenged a “gag order” imposed by a college president prohibiting board members from talking to students, faculty and employees without first obtaining clearance from the college president. The ACLU filed the suit on behalf of Thomas A. Hamilton, a St. Clair County Community College Trustee.
- In a victory for free speech and protest rights, the ACLU of Pennsylvania settled a lawsuit it brought on behalf of activists famously known as the “Smoketown Six.” The activists had been arrested when they, during a campaign rally for President Bush, stripped down to thong underwear to recreate the infamous image from the Abu Ghraib torture scandal.
- Evansville police violated a protester’s constitutional rights when they restricted his movement and arrested him for disorderly conduct before a 2002 appearance by Vice President Dick Cheney, a federal judge ruled. John Blair, a Pulitzer-prize winning photographer and writer, had held a sign stating “Cheney, 19th Century Energy Man” as he stood across the street from the arena where Cheney was to appear. His ultimate arrest was a violation of his First Amendment rights, Judge Larry K. McKinney ruled.

Students’ Speech

- A U.S. District Court ruled in favor of free speech for students and found Oceanport school officials liable for violating the rights of an eight-grade student whom it punished for creating a website on his home computer that included student comments criticizing the school.
- A federal court ruled that school officials violated the rights of a high school students when they disciplined him for wearing a t-shirt bearing an image of the Confederate flag. The ACLU of West Virginia filed the suit against the school on behalf of the student.



- In settlement of a federal lawsuit brought by the ACLU of Illinois on behalf of two activists who sought to broaden opportunity to effectively communicate with people attending conventions at the McCormick Place in Chicago, all people and all organizations gained the right to hand out leaflets to conventioners at public entry and exits at the center.

Internet Speech

- The ACLU of Utah, joined by a broad-based group of bookstores, artistic and informative Websites, Internet service providers, and national trade associations, filed suit in federal court challenging the constitutionality of a Utah law targeted at restricting children's access to material on the Internet.

