

Electronic Voting Machines Challenged in Lawsuit Brought by the Law Center

Increasingly, commentators are sounding the alarm about the reliability of Direct Recording Electronic Voting systems (DREs) – electronic voting machines that do not create an independent permanent physical record and therefore cannot be audited or recounted. Originally purchased by states to cure perceived problems with older, mechanical machines, DREs malfunction and are subject to tampering. As Lou Dobbs said on CNN: “There is additional uncertainty about the outcome of our elections that is intolerable and inexcusable, and which could make the contested 2000 presidential election look orderly by comparison. As of right now, there is little assurance your vote will count.” Despite these uncertainties, Pennsylvania’s Secretary of State has certified seven types of electronic machines, and 57 of the Commonwealth’s 65 counties have purchased them.

Michael Churchill of the Law Center, in partnership with Mary E. Kohart, a partner at Drinker Biddle & Reath LLP and private practitioner Marlan K. Schneider, Esq., are addressing this problem in Pennsylvania with a lawsuit against the Secretary of State on behalf of 26 individuals. Plaintiffs include Rev. James Moore, president of the Black Clergy of Philadelphia and Vicinity, J. Whyatt Mondesire, president of the NAACP Philadelphia Branch, and Rob McCord, chair of the Eastern

Technology Council. The plaintiffs come from 11 counties in Pennsylvania and from both political parties. The Complaint alleges that the machines have repeatedly malfunctioned and have been subject to malicious tampering, highlighting the importance of the law’s requirement that voting machines create an independent permanent physical record of each vote. Additionally, it alleges that electronic machines in four precincts in Berks County, Pennsylvania failed to record any votes at all during the May 2005 primary election, forcing election officials there to certify the tallies without the votes from those precincts, and details security flaws which allow tampering in the electronic machines that have been certified in Pennsylvania. The Complaint draws on examples of voting machine issues nationwide, describing a 2002 election in Dade County, Florida in which an electronic voting machine failed to record 8.2% of the voters who were checked in at the polls, and a 2006 primary election in Jefferson County, Texas in which an electronic voting machine counted 1,500 ballots twice. In April the case survived its first challenge when the Pennsylvania Commonwealth Court refused to dismiss the Complaint and sharply criticized the Pennsylvania Secretary of State for certifying DREs “that provide no way for Electors to know whether their votes will be recognized.” The Court stated

that “because Electors have a right to vote and because Electors have no way of knowing whether using the DREs affords them that right,” the voters had alleged a violation of a civil right with regard to the state Constitution. The Court concluded that the Pennsylvania Constitution “does not permit the use of DREs that are not reliable or secure and provide no means for vote verification or vote audit.” The defendant has appealed the decision to the Pennsylvania Supreme Court. ●

A New Face at the Law Center

The Law Center enthusiastically welcomes its new Development Director, Lauren R. Milwitz, who arrived in June. A magna cum laude graduate of the University of Pennsylvania who holds a certificate in Non-Profit Administration from the Fels Institute of Government, Lauren comes to the Law Center from PENN Medicine’s Office of Development and Alumni Relations. There she was instrumental in the management and organization of the School of Medicine’s Annual Fund and Parents programs. This important new staff position was made possible by the Law Center’s old and new dedicated supporters who contributed \$10,000 in first-time and increased donations last year, securing a matching challenge grant from the Independence Foundation. Jennifer Clarke, the Law Center’s Executive Director, said the addition of a dedicated development professional on staff is a major step forward for the continued financial stability of the Law Center. “With Lauren’s expertise and energy, we now have the capacity to share our vital and successful work with a broader circle of individuals and foundations.” ●

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Update

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Letter from the Executive Director



Why do we, as a nation, tolerate a system of public education in which a child who lives in one district lacks textbooks, experienced teachers and safe, attractive facilities, while a child who lives five miles away in a different district is given all of those advantages? Why, for example, do we allow a child living in Philadelphia to receive an education that costs, on average, \$2,378 less than the education provided to a child in the city’s 61 neighboring districts?

I’ve been thinking hard about those issues these last few months after the eloquent writer Jonathan Kozol, best known for his work on the topic of public education in America, issued a challenge to those of us attending the Pennsylvania Bar Association’s Outreach to Children Interdisciplinary Summit. You are lawyers, he said to us (actually, we were lawyers, social workers, doctors, educators and judges)—don’t stand for this. Do something!

Here at the Public Interest Law Center of Philadelphia, we are doing something. Over the last year, we have worked with Pennsylvania legislators Nicholas Micozzie (R) and Kathy Manderino (D) on legislation to create a funding formula for Pennsylvania’s schools that reduces the gross inequalities among Pennsylvania’s 501 school districts. Representatives Micozzie and Manderino, together with a bi-partisan group of 21 other co-sponsors, introduced The Successful Schools Bill, HB 1544, in June. We also keep the public debate alive with yearly reports

showing the unfair and unequal differences in spending. The most recent report, issued in June, shows that the gap between the richest and poorest districts became even worse in 2005-2006 and the state share of funding dropped, making Pennsylvania one of the nation’s five lowest in terms of the state-funded percentage of spending on education, along with Nevada, Nebraska, Illinois and Missouri. On a national level, with generous funding from the Institute for Educational Equity and Opportunity, we are completing our study of the history of public education clauses in each of the 50 states. When the study is published in the fall, it can be used by advocates and litigators to demonstrate education’s fundamental role in every state in the nation.

I write this letter on the day that the Supreme Court again, and more ferociously, limited efforts to ameliorate the segregation that once again is a fact of life in our urban schools. This opinion, and the sense of inevitability that preceded it, only highlights the importance of our work outside the courtroom and your own advocacy in your district and state. Please join us.

Very truly yours,

Jennifer R. Clarke
Executive Director

career has positively impacted the lives of literally millions of the most disadvantaged persons in our society – children and adults suffering from disabilities, children lacking adequate health care, and individuals on public assistance.”

In a letter to the Law Center inviting Tom to receive the honorary degree of Doctor of Education from Syracuse University, Nancy Cantor, Syracuse’s Chancellor and President said, “Mr. Gilhool’s role as architect of the landmark right-to-education case (PARC v. Pennsylvania) and involvement in groundbreaking litigation to enable people with disabilities to live in the community will be an inspiration to our students and their families, for inclusion has long been a hallmark of our School of Education.” As Tom received the Doctor of Humane Letters from Holy Family University in February 2007, he urged the graduates to action: “Our globe has grown now very small and the inequalities of income and schooling and health that beset most members of the human family have become easier for us to see and the cost of wars, suffering, and pestilence harder to ignore. Thus, for people, you, the members of this 50th graduating class, there are crucial fields for courage, for thought, and for action, wide open to you as professionals and as citizens.”

Scholars and lawyers celebrated Thomas K. Gilhool’s distinguished career as he recently received three awards and honorary degrees.

Shower of Awards and Degrees Honor the Law Center’s Thomas K. Gilhool

On December 5, 2006, the Public Interest Section of the Philadelphia Bar Association presented Tom with the coveted Andrew Hamilton Award. This prestigious award is given annually to a lawyer who has demonstrated a personal vision and commitment to the mission they serve, innovation in their work, and clear results achieved throughout their career. In the letter nominating Gilhool, the Law Center’s board chairman Roosevelt Hairston, Jr. wrote: “Tom’s extraordinary passion and commitment are reflected in the breadth and depth of work in his lifetime pursuit of social justice.... Tom Gilhool’s exceptional

Photo courtesy of Syracuse University
Thomas K. Gilhool accepts the honorary degree of Doctorate of Education at Syracuse University’s 153rd Commencement



Watch for announcements from the Law Center in the near future as we prepare our own major event to celebrate Tom Gilhool’s extraordinary 40-year legacy of service to those most in need. ●

Samuel S. Fels Fund Awards Grant to Law Center to Prepare Policy Paper on Aversive Behavioral Interventions

Electric shock treatment, physical restraints, seclusion...this may sound like the beginning of an article about treatment of political prisoners, but in fact it is a list of methods (sometimes called aversive behavioral interventions) that are used on children with behavioral disorders. Aversives continue to be authorized in some parts of the United States, for example, in recent regulations promulgated by New York State's Department of Vocational and Educational Services for Individuals with Disabilities.

In conjunction with a team of advocacy organizations and medical professionals, the Law Center has been working to eliminate these interventions which result in suffering and, in some cases, death of children with disabilities. The group is now embarking upon a powerful new project in its advocacy work with the preparation of a policy paper that explores the scientific and legal bases for and against the use of these interventions. While the medical professionals

are reviewing the literature on both sides—those claiming benefit and harm—the Law Center, through a generous grant from the Samuel S. Fels Fund, is researching and compiling the laws, cases and treaties that would prohibit such treatment. The document they prepare will be used not only in litigation but for lobbying with regulatory agencies as they set policy and in the public debate over such interventions.

The grant is for the Fels Internship in Community Service Program and is being used to pay the salary of Tonya Carter, a law student at Villanova University School of Law. Ms. Carter is collaborating with Anisha Dasgupta, a Marshall scholar presently clerking for the Honorable Louis H. Pollack and volunteering at the Law Center as she prepares for her upcoming clerkship with the honorable Jose A. Cabranes on the Second Circuit Court of Appeals. Summer intern Sarah Goodman, a sophomore at Brown University, is assisting on the project. ●



From left, Sarah Goodman, Anisha Dasgupta, and Tonya Carter are working on the Aversive Behavioral Interventions policy paper at the Law Center.

Law Center Victory Ensures Availability of Drug Treatment in Pennsylvania

“In Pennsylvania, hundreds of people who want to rid themselves of heroin addiction are on waiting lists for treatment that could help them because of a shortage of facilities,” says Glen Cooper, Executive Director of New Directions Treatment Services (NDTS), a non-profit methadone treatment provider that offers addiction and mental health out-patient treatment to persons who are impacted by chemical dependency and/or mental illness. According to the National Institute on Drug Abuse, this treatment has been “used for more than 30 years to effectively treat opiod addiction.” Nonetheless, in 1999 the Pennsylvania General Assembly essentially banned new methadone treatment centers by making it impossible for them to open in locations accessible to their intended clients.

Methadone treatment is a vital service for persons seeking to end heroin addiction. It reduces the

patient's cravings for heroin and blocks its effects, enabling the patient to lead a productive life, free of heroin addiction. In 1997, an expert panel convened at a National Institutes of Health (NIH) Consensus Development Conference on Effective Medical Treatment of Heroin Addiction endorsed methadone treatment for the medical disorder of heroin addiction. The President's Drug Council calls it the most effective treatment available for heroin addiction.

Consequently, when the City of Reading refused to permit NDTS to open a methadone center on a busy commercial strip that previously housed an alcohol and drug treatment center that did not use methadone, Barbara Ransom and Michael Churchill of the Public Interest Law Center went to federal court on behalf of NDTS and several of its patients, arguing that the Pennsylvania zoning statute and the action of the City discriminated against people with disabilities.

On June 15th a unanimous Court of Appeals struck down this law as discriminatory, in a resounding victory for methadone treatment centers and their clients. According to the Court, “[t]his case presents the familiar conflict between the legal principle of non-discrimination and the political principle of not-in-my-backyard.” In its opinion, the Court found that the law was based on “generalized prejudice and fear” and therefore violated the Americans with Disabilities and the Rehabilitation Acts. This is the first court of appeals that has had to strike down a state zoning law on the basis that it discriminates against persons with disabilities.

The week after the decision, Glen Cooper attended a meeting of the Pennsylvania Community Providers Association. As he entered the room, he received a round of applause from his colleagues. The decision impacts their ability to provide treatment to their patients. Cooper told them that NDTS's limited resources would not have permitted them to see this case through to completion. “The victory,” he says, “is completely to the credit of the Law Center,” which agreed to carry on the case even when NDTS could no longer cover its costs.



Above, New Directions Treatment Services' existing clinic in West Reading.

Law Center Lawyer Among 25 National Leaders to Participate in Institute Addressing “Schoolhouse to Jailhouse” Pipeline

Law Center lawyer Judith A. Gran was one of 25 attorneys invited from around the country to participate in a meeting to discuss concrete legal strategies for addressing the so-called “schoolhouse to jailhouse” pipeline. Convened by the Southern Disability Law Center in conjunction with the Southern Poverty Law Center, the institute met in New Orleans to plan for the development of a coordinated national litigation agenda among interested legal advocacy organizations and private attorneys. In the invitation, program conveners told Judith, “folks from literally all over the country have told us that we need your involvement at the Institute...we would therefore be honored if you would attend.”

The Institute's work is directly related to the Law Center's focus on obtaining in-school support and services for children with emotional disturbances, as required by federal law. Judith's expertise will be invaluable to this effort as she will direct attention to the potential for positive social change inherent in educating families and school personnel about the availability and effectiveness of proven behavioral techniques. ●

Grants to 74 Pennsylvania School Districts Awarded Under Terms of Law Center's Historic Gaskin Settlement

Throughout the ten-year course of the Law Center's Gaskin class action – a suit against Pennsylvania Education officials for failing to enforce the integration mandate of the Individuals with Disabilities Education Act – Law Center lawyers encountered well-intentioned teachers and administrators who wanted to include children with disabilities in their classrooms, but who lacked the training and techniques to do so. Thus, when the case was settled, they seized the opportunity to craft a remedy. The settlement agreement established an advisory panel to administer an assessment of each school district's needs in “research-based practices and the provision of supplementary aids and services in regular classes,” as well as state-funded discretionary grants to pay for school district initiatives that use training and technical assistance to overcome gaps in knowledge and skills identified by the assessment.

This remedy is now becoming a reality. At the end of 2006, Pennsylvania Secretary of Education Gerald Zahorchak announced \$1.1 million in “inclusive practices minigrants” to 74 Pennsylvania school districts. According to the Department, the grants will “help make school more inclusive for students with disabilities by supporting the development and expansion of effective instruction that encourages meaningful participation in regular education settings.”

In the appeal, the court relied heavily on data concerning the effectiveness of methadone in rehabilitating persons addicted to heroin provided in an amicus brief filed by the Pennsylvania Community Providers Association. Jon Romberg and Rachel D. Godsfil of Seton Hall University School of Law, Center for Social Justice represented the Association. ●

To see the full text of the decision visit the News section of our website at www.pilcop.org/news.mpl.

Glen Cooper, Executive Director of New Directions Treatment Services, in front of the West Reading clinic.



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