



## JOHN J. GIBBONS FELLOWSHIP IN PUBLIC INTEREST & CONSTITUTIONAL LAW: YEAR IN REVIEW (2007-08)

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### **ABOUT THE JOHN J. GIBBONS FELLOWSHIP**

Since 1990, Gibbons has sponsored the John J. Gibbons Fellowship in Public Interest & Constitutional Law under the guidance of John J. Gibbons, former Chief Judge of the United States Court of Appeals, Third Circuit, and Lawrence S. Lustberg, Director of the Gibbons Fellowship Program. Gibbons Fellows, together with the broader law firm, undertake public interest and constitutional law projects and litigation. Requests for representation or advice are considered from all sectors, public and private, including public interest organizations, legal services or public defender offices, government agencies, private non-profit corporations, courts, and individuals. Working with a broad cross-section of public interest groups, the Fellowship program has become widely known in New Jersey and nationally as a voice for the poor and underrepresented.

The Fellowship has been and remains involved in the most significant and controversial issues that confront the federal and state courts today. Unlike traditional legal services projects or law firm *pro bono* programs, the Fellowship program is able to tackle public interest issues of major importance and to provide the resources and continuity of personnel to pursue projects to conclusion. The Gibbons Fellowship is also unique among fellowship programs in the breadth of legal issues addressed. The Fellowship brings together the experience and knowledge of Judge Gibbons and Mr. Lustberg, the dedication and talent of Fellowship recipients, and the professional resources and experience of the firm. Centered in Newark, New Jersey, the Fellowship program is an ideal vehicle to address urban issues, individual rights, and social concerns. Moreover, the Gibbons Fellowship augments, but does not supplant, the firm's other *pro bono* activities, which are ongoing and include a complement of municipal and superior court criminal assignments, asylum cases, and representation of non-profit corporations and agencies.

**Founder:** John J. Gibbons

**Director:** Lawrence S. Lustberg

**Fellows:** Melanca D. Clark (2006-2008), Avidan Y. Cover (2007-2009)

### **SAME-SEX MARRIAGE EQUALITY**

Gibbons has sought through litigation to build on the victory that the Fellowship, with its non-profit allies, achieved on behalf of New Jersey same-sex couples in *Lewis v. Harris*, the landmark case in which New Jersey's Supreme Court held, under the State Constitution, that same-sex couples are entitled to the same rights as heterosexual couples. Today, the Fellowship represents two couples who filed a complaint against the Ocean Grove Camp Meeting Association of the United Methodist Church for the Association's refusal to rent out its boardwalk pavilion for same-sex wedding ceremonies. In an early victory in the case, *Bernstein v. Ocean Grove Camp Meeting Association*, the Division of Civil Rights denied the Association's motion to dismiss the suit on First Amendment grounds and will

proceed with an investigation to determine whether the Association violated New Jersey's Law Against Discrimination. More recently, in *Hammond v. Hammond*, the Fellowship has taken on the case of a woman seeking a divorce from a same-sex marriage performed in Canada. The Fellowship's significant contributions to the advancement of the rights of the LGBT community were recently recognized by the firm's induction by the LGBT advocacy organization Garden State Equality into its Equality Hall of Fame.

### **DEATH PENALTY**

The Fellowship has continued its longstanding advocacy against the death penalty, successfully representing former New Jersey death row inmate Anthony DiFrisco in his efforts to overturn his capital conviction; today, we continue to represent Mr. DiFrisco with respect to the life sentence that was imposed on remand. We also currently represent two additional former New Jersey death row inmates whose sentences were commuted to life without parole, proceedings in *State v. Cooper* and *Bay v. Ricci*. This past year, the firm's *pro bono* efforts in this area were complemented by the work of the firm's Government Affairs Department, which served as lead government affairs counsel to New Jerseyans for Alternatives to the Death Penalty, the statewide grassroots organization that successfully led the historic movement to abolish New Jersey's death penalty. This matter was the culmination of the firm's longtime involvement in this effort, including the substantial personal efforts of Judge Gibbons, who was at the forefront of the legislative initiative that resulted in New Jersey becoming the first state in the country to repeal its death penalty statute since capital punishment was reinstated by the United States Supreme Court in 1976. The Fellowship continues to be involved in death penalty work in other states; we represent death row inmates in a state post-conviction challenge in Alabama and a direct appeal in Virginia, as well as in a federal post-conviction challenge in Texas.

### **FREEDOM OF INFORMATION ACT**

In an effort to increase government transparency and accountability, the Fellowship has brought two suits against U.S. government agencies under the Freedom of Information Act. In *NAACP Legal Defense and Education Fund v. HUD*, the Fellowship secured the release of records pertaining to HUD community block grant funding for post-hurricane rebuilding efforts in the Gulf region. In *ACLU v. Department of Defense*, the Fellowship continues to litigate against several government agencies to obtain records related to the treatment of detainees in the War on Terror. Thousands of records have already been released pursuant to this lawsuit, including, as just one recent example, a secret 2003 memo authored by John Yoo, then deputy assistant attorney general in the Department of Justice's Office of Legal Counsel, which authorized the Department of Defense to employ a wide range of extreme interrogation methods.

### **EDUCATIONAL EQUITY**

In an effort to secure equal educational opportunity for students in New Jersey's poor, urban areas, the Fellowship has been engaged in litigation for nearly twenty years, serving as co-counsel in the landmark education finance case *Abbott v. Burke*. The Fellowship is currently opposing efforts by the State of New Jersey to reduce funding for these predominantly disadvantaged school districts.

## **DETAINEE CASES**

Since almost immediately after September 11, 2001, the Fellowship has been at the forefront of representing detainees held by the United States at Guantánamo Bay, as well as in locations in this country, and in opposing the president's assertions of unchecked executive power to hold terrorism suspects. In 2004, Judge Gibbons successfully argued before the U.S. Supreme Court in *Rasul v. Bush*, resulting in the landmark ruling that detainees held at Guantánamo must receive a hearing in federal court. The Fellowship has remained as counsel in litigation over the nature of that hearing and the rights of those detainees, issues that were argued before the Supreme Court in December in *Boumediene v. Bush*. The Fellowship also authored an *amicus* brief to the Supreme Court in support of detainees held by U.S. forces in Iraq, seeking to enjoin their transfer to Iraqi custody, where they are likely to be tortured. We also continue to represent Ali Saleh al-Marri in a constitutional challenge to his indefinite detention without charge in the Navy Brig in Charleston, South Carolina, and to the unconstitutional conditions under which he has been held and interrogated; recently, the Fourth Circuit Court of Appeals sustained that challenge, which is now under *en banc* review.

## **FAMILY LAW**

The Fellowship was appointed by the New Jersey Superior Court to represent an infant child born subject to the "Child Exclusion" provision of New Jersey's public assistance program, Work First New Jersey—an enactment that has long been the subject of constitutional and statutory challenge by Gibbons Fellows. In this case, the county welfare agency responsible for providing WFNJ benefits sought to retain all but a portion of the monthly child support payments paid by the infant's father, in order to reimburse the government for WFNJ cash assistance provided to the infant's mother, even though the infant child was not included in the determination of her family's cash assistance award as a result of the Child Exclusion provision. The Fellowship successfully argued that such action constituted an unconstitutional taking of the infant's property, was not required by applicable regulations, and was inconsistent with New Jersey's common law governing child support, including the principle that child support belongs to the child and may not be waived by a parent. The Court agreed and voided the infant's mother's purported assignment of child support payments to the agency, holding that the agency cannot at once deny a child public assistance and at the same time retain child support provided by that child's father.

## **URBAN REDEVELOPMENT**

The Fellowship advised the City of Newark with respect to the process required for administrative hearings designed to address governmental designations of real property as abandoned, conducted as part of an effort to encourage community redevelopment. The Fellowship's legal guidance focused on the constitutional requisites for appeals by property owners of determinations that their property is abandoned and may be seized.

## **PRISONERS' RIGHTS**

Among its many prisoners' rights cases, the Fellowship continues to represent a class of all New Jersey inmates who are diagnosed with HIV and AIDS, challenging their segregation, denial of services, and inadequate medical care. By way of enforcing a Consent Decree, the Fellowship advocates on behalf of inmates on a daily basis concerning implementation and enforcement of the Decree, particularly addressing the provision of medical care in an effort to ensure that it meets community standards.