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# COURT OF APPEALS URGED TO UPHOLD DRUG TESTING POLICY

***(Earls v. Board of Education of Tecumseh Public School District)***

The Washington Legal Foundation (WLF) filed a brief this week with the U.S. Court of Appeals for the Tenth Circuit, urging it to approve an Oklahoma school district policy that requires students who represent a school in extracurricular activities to be tested for illicit drugs.

WLF filed a brief with the court on behalf of itself; Oklahoma Governor Frank Keating; U.S. Senators Don Nickles of Oklahoma and Judd Gregg of New Hampshire; Representative Fred S. Morgan, Minority Leader of the Oklahoma House of Representatives; the Oklahoma Secondary Schools Activities Association; the Allied Educational Foundation; and 18 parents of students who attend school in the Tecumseh School District.

In a brief filed with the Tenth Circuit, WLF argued that the drug testing policy satisfies the Fourth Amendment's requirement that any search conducted by public officials be reasonable. First, WLF asked the court of appeals to follow binding U.S. Supreme Court precedent, which directly addresses the constitutionality of searches conducted in public schools, rather than cases relied on by the ACLU, which do not discuss the unique setting of public schools. Second, WLF maintained that U.S. Supreme Court decisions interpreting the Fourth Amendment in the context of public schools allow a school to require students who represent it to undergo random drug testing. Third, WLF pointed out that the Tenth Circuit should be guided by decisions of the U.S. Court of Appeals for the Seventh Circuit, which have identified several reasons why public schools may constitutionally impose a drug testing requirement on students participating in all kinds of extracurricular activities, not just interscholastic sports.

This case arose when the Tecumseh School District adopted a policy requiring students who represent a school in extracurricular activities to be tested for illicit drugs. In adopting its policy, the school district applied the policy only to students participating in genuinely out-of-class activities. Only when a student actually participated in an out-of-class activity, such as a band performance, would the drug testing requirement apply. Moreover, the district sharply limited the consequences of violating the policy. If a student either failed a drug test or refused to agree to be tested, their only penalty was suspension from participating in extracurricular activities. The student was subject neither to school discipline, such as suspension or expulsion, nor to being reported to the police. Despite the district's care in crafting the policy, the American Civil Liberties Union (ACLU) filed a lawsuit against the district in the U.S. District Court for the Western District of Oklahoma claiming that the students' Fourth Amendment right to be free of unreasonable searches and seizures had been violated.

Earlier this year, the federal district court handed down a decision agreeing with WLF's arguments and even citing WLF's brief: "the fact that some sixteen parents have joined in an amicus curiae brief in favor of the drug testing policy [is] some indication of parental support for the policy." The court found that the school district "adequately demonstrated a special need to justify the warrantless, suspicionless drug testing at issue." It also found that "the privacy interest asserted is diminished by virtue of the Plaintiffs' position as children in a public school [setting], and that the intrusion is minimal." And the court found the policy sufficiently effective. "It can scarcely be disputed that the drug problem among the student body is effectively addressed by making sure that the large number of students participating in competitive, extracurricular activities do not use drugs." For these reasons, the court concluded that "the drug testing policy constitutes a reasonable search, permissible under the Fourth Amendment."

"Nothing in the Constitution prevents a school district from requiring students who represent the school in extracurricular activities to be tested for illegal drugs," said Shawn Gunnarson, WLF's Senior Counsel for Litigation Affairs. "The dangers of drug abuse are well known and the capacity to detect such abuse is readily available. We hope that the court of appeals will let schools continue doing all they can to encourage students to avoid the plague of illegal drugs."

The Washington Legal Foundation is a nonprofit public interest law and policy center with supporters nationwide. It devotes a significant portion of its resources to defending and promoting the principles of free enterprise and effective public education.

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