

News Release

Washington Legal Foundation
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FOR IMMEDIATE RELEASE

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COURT ASKED TO UPHOLD STUDENT DRUG TESTING (*Board of Education v. Earls*, No. 01-332)

The Washington Legal Foundation (WLF) has asked the U.S. Supreme Court to allow school districts to conduct random drug testing of students, in an effort to detect and prevent illegal drug use. In a brief filed in *Board of Education v. Earls*, WLF argued that school district should not be required to prove that drug use is rampant before instituting a testing program.

WLF filed its brief in support of a small Oklahoma school district which was sued by the American Civil Liberties Union because of its drug testing program. WLF's clients in the case include Oklahoma Governor Frank Keating, U.S. Senator Don Nickles (Okla.), U.S. Representative Wes Watkins (Okla.), Rep. Fred S. Morgan (Minority Leader in the Oklahoma House of Representatives), the Allied Educational Foundation, and 30 residents of the Oklahoma school district who are either parents of school children or employed by the school system.

The challenged testing program is limited to students who wish to participate in extracurricular activities. No sanctions are imposed on students who refuse to be tested, other than exclusion from extracurricular activities. Those who do not pass the test are referred for counseling and/or treatment, but no discipline is imposed and the results are not released to law enforcement authorities.

The U.S. Court of Appeals for the Tenth Circuit in Denver nonetheless struck down the program as a violation of the Fourth Amendment's prohibition against unreasonable searches and seizures. The appeals court acknowledged that in 1995, the Supreme Court upheld an Oregon school district's drug testing plan involving the testing of athletes. The court held that the Oregon case was distinguishable because there was evidence that the Oregon community was experiencing a serious drug problem, while there was no similar evidence in the Oklahoma school district. The Supreme Court agreed last fall to review the appeals court's decision.

"The tragic consequences of adolescent drug use are well known, as is the nationwide nature of the problem," said WLF Chief Counsel Richard A. Samp after filing WLF's brief. "A school board should not be required to wait until it has evidence that drug abuse is particularly rampant in local schools before taking strong measures to discourage drug use among students," Samp said.

In its brief, WLF argued that courts should not attempt to second-guess professional educators when it comes to determining the proper scope of anti-drug programs. WLF argued that particularly where, as here, a challenged program has no law enforcement purpose but rather is designed solely to protect student health and safety, courts should defer to schools' good-faith efforts to act in the best interests of students.

WLF is a public interest law and policy center with supporters in all 50 states, including many in Oklahoma. WLF devotes a substantial portion of its resources to supporting the nation's campaign against drug abuse. WLF also filed briefs in support of the Oklahoma school district when this case was before the district court and the court of appeals. WLF's Supreme Court brief was drafted with the pro bono assistance of Richard Willard, a Washington attorney and former senior Justice Department official.

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