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GOVERNOR KEATING JOINS WLF TO FIGHT DRUGS IN SCHOOL

(Earls, et al. v. Board of Education of Tecumseh Public School District)

This week the Washington Legal Foundation (WLF) filed a brief urging the U.S. District Court for the District of Western Oklahoma to uphold an Oklahoma school district policy, which requires students who participate in extracurricular activities to be tested for illicit drugs.

WLF filed its brief in *Earls v. Board of Education of Tecumseh Public School District* on behalf of itself; Governor 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.

This case arose when the Tecumseh School District adopted a policy requiring students who participate in extracurricular activities to be tested for illicit drugs. In adopting its policy, the school district was especially careful to apply the requirement only to students participating in genuinely out-of-class activities. A student could join the band, attend band class, and receive credit toward graduation, for instance, without needing to satisfy the drug testing policy. 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. Both the district and the ACLU are filing motions asking the court to decide whether the policy is constitutional as a matter of law.

In its brief, filed with the U.S. District Court for the District of Western Oklahoma, WLF argued that any school district may constitutionally require students who voluntarily participate in extracurricular activities to be tested for illicit drugs, so long as the policy fits certain principles laid down by the U.S. Supreme Court. Among such principles, three are especially significant. First, the policy must apply only to students who participate in out-of-class activities. It cannot apply to all students enrolled in a debate class, for instance. Second, the policy must not penalize students by suspending or expelling them from school, or by reporting them to the police. Third, the policy must be framed so that the collection and testing of urine samples reasonably satisfies the students' legitimate interests in privacy.

“Nothing in the Constitution prevents a school district from requiring students who participate in extracurricular activities to be tested for illicit drugs, provided that the district follows the principles established by the U.S. Supreme Court,” said Shawn Gunnarson, WLF’s Senior Counsel for Litigation Affairs. “At a time when the dangers of drug abuse are well known and the capacity to detect such abuse is readily available, schools ought to do what they can to discourage students from using illicit drugs.”

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For further information, contact WLF Senior Counsel for Litigation Affairs Shawn Gunnarson at (202) 588-0302.