

**July 2, 2002**

## **COURT UPHOLDS STUDENT DRUG TESTING (*Board of Education v. Earls*, No. 01-332)**

The U.S. Supreme Court this week upheld the right of school districts to conduct random drug testing of students, as part of their efforts to detect and prevent illegal drug use.

The decision in *Board of Education v. Earls* was a victory for the Washington Legal Foundation (WLF), which filed a brief in the case in support of an Oklahoma school district whose drug testing program was challenged by the American Civil Liberties Union (ACLU). The Court agreed with WLF that school districts should not be required to prove that drug use is rampant before instituting a testing program.

WLF's clients in the case included 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.

Those features of the program apparently were crucial to the Court's 5-4 decision to uphold the program. In particular, as a result of the Court's decision school districts are likely to be immune from constitutional challenges to their drug testing programs so long as sanctions imposed on students who refuse to participate do not include exclusion from the school's regular academic curriculum.

In this case, the U.S. Court of Appeals for the Tenth Circuit in Denver had struck down the

Oklahoma 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.

In reversing the appeals court, the Supreme Court agreed with WLF that the 1995 Oregon decision could not meaningfully be distinguished from the Oklahoma case. The Court said that the rationale of its 1995 decision applied to student participation in all extracurricular activities, not just to athletics.

"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 reviewing the Court's decision. "We agree with the Court that 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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