

## WCSD 8th circuit victory

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### Appeals Court Sides with ACLU, Finds Watson Chapel Students' Free Speech Rights Violated

Court cites landmark student free speech case in finding district unlawfully suspended students for protesting school policy

#### FOR IMMEDIATE RELEASE

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LITTLE ROCK— Today the 8th Circuit Court of Appeals affirmed the decision of a federal judge in finding that the Watson Chapel School District (WCSD) violated the First Amendment rights of students when they disciplined them for wearing black armbands to protest the student apparel policy. In October 2006 the ACLU of Arkansas filed suit against WCSD alleging the district violated the free speech rights of those students and a federal judge agreed. The school district appealed to the 8th Circuit Court of Appeals, and today that Court upheld the lower court's ruling. The Court said that by winning this lawsuit, the student plaintiffs did something "that benefitted all of the students in the school" and "vindicated" students' right to free speech.

In 2006, more than fifty parents and students of the WCSD complained that the school apparel policy was restrictive and unclear and was arbitrarily enforced. Students were punished for such things as wearing a belt that was braided, had too many holes, or were not the "right" color of black or brown. One student was suspended for violating the school literature distribution policy for handing out a flyer criticizing the policy.

Students and parents planned for students to wear black armbands/wristbands to school on Friday, October 6th, 2006, to express dissent with the apparel policy. When school officials discovered the plan, they announced that students wearing the bands would be disciplined. Some students wore the bands anyway and were disciplined by the school. Junior high students were held under the watch of armed police officers until parents arrived to pick them up from school. At a hearing that month the ACLU succeeded in getting federal judge Leon Holmes III to stop the school district from enforcing the discipline given the student plaintiffs and to prohibit the district from disciplining the students for wearing armbands in the future. The school maintained the students were suspended for violating the policy and not for expressing their disapproval of it.

In his order, federal Judge Holmes said, "the student plaintiffs would suffer harm not only to their First Amendment rights, but also potential exposure to progressive discipline should an injunction not be granted." Judge Holmes noted that the bands were similar to other bands worn by students. Testimony at the hearing showed that students were not disciplined for wearing black wristbands bearing the words "Watson Chapel" sold by the school.

The ACLU added claims to the original charge that, not only did the discipline of the students violated their free speech rights, but the apparel policy itself violated the First Amendment by only allowing expressive adornments that support the school district, that the enforcement of the policy violated the due process rights of the students because it was so hard to follow and applied differently to students depending on both the school official and the student, and that the student literature policy was unconstitutional because it required school officials to pre-review and approve of all student literature with no guidelines for approval.

A trial was scheduled for On September 10, 2007. The morning of the trial the school district admitted that it did punish the students for wearing the armbands as a protest of the school policy; the judge ruled that WCSD had violated students' First Amendment rights by doing so, and also found the literature distribution policy was "probably" unconstitutional. However the judge did not find that either the apparel policy or its enforcement was unconstitutional.

Both the 8th circuit and the federal judge ruled that the situation was markedly similar to the landmark student free speech case *Tinker v. Des Moines Independent Community School District* where the U.S. Supreme Court held that students engaging in symbolic speech and political expression by wearing armbands to protest the Vietnam War were protected under the First Amendment. Quoting that decision the 8th circuit wrote:

It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. . . . The Fourteenth Amendment . . . protects the citizen against the State itself and all of its creatures-- Boards of Education not excepted. .... That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes. (emphasis added)

The school district had claimed that the fact that the Tinker case dealt with an issue of national importance the Vietnam War while the case against them involved "only" a student apparel policy, meant that the Tinker decision did not apply. In response, the 8th Circuit quoted another famous Supreme Court school case, *W. Va. State Bd. of Educ. v. Barnette* in which the Court addressed the question of whether school boards could violate the constitutional rights of students:

Such Boards are numerous and their territorial jurisdiction often small. But small and local authority may feel less sense of responsibility to the Constitution, and agencies of publicity may be less vigilant in calling it to account. ... There are village tyrants as well as village Hampdens, but none who acts under color of law is beyond reach of the Constitution.

"The 8th Circuit is clearly rebuking the school district for claiming that punishing students for protesting an apparel policy was not as serious as punishing students for protesting national policy," said Rita Sklar, ACLU of Arkansas executive director. "The Court reminds us that often great constitutional battles are won in the smallest of battlegrounds; and that 'local authorities' like school boards sometimes think themselves exempt from the federal Constitution and use their power like 'village tyrants,' while the individual who dares to stand up for their rights plays the part of a 'village Hampden,' the champion of the rights of all. These students are champions of liberty, as this case has further secured the free speech rights of students in America."

A copy of the 8th Circuit decision can be found at:

<http://www.ca8.uscourts.gov/opndir/08/09/073437P.pdf>.

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