

■ 9TH CIRCUIT

Court to review warrantless strip search of students

Issue has split circuits and vexed the schools.

By Pamela A. MacLean
STAFF REPORTER

SCHOOL OFFICIALS in Safford, Ariz., found nothing when they strip-searched a 13-year-old honor student with no history of drug use looking for a prescription dose of ibuprofen.

A split three-judge panel of the 9th U.S. Circuit Court of Appeals upheld the search as justified based on the single accusation from another student. But now the full appeals court has voted to reconsider the constitutionality of warrantless strip searches of students. *Redding v. Safford Unified School District*, No. 05-15759.

Around the country, school districts have been grappling with when strip searches may be permissible and under what conditions.

And, in January, the White House is-

sued a report warning of increased student abuse of prescription and over-the-counter drugs, adding to the pressure to conduct searches.

Although the U.S. Supreme Court has held that school officials may search students without warrants and test them for drugs without individualized suspicion, the court has not weighed in on school strip searches.

In September, Portland, Maine's Winslow High School agreed to ban strip searches after a female student complained to the American Civil Liberties Union that she was required to strip above the waist while school officials looked for drugs.

Splitting on searches

The 2d Circuit held that the strip search of an 18-year-old woman in 2006 was unjustified when based only on another student's allegation that she planned to bring marijuana on a school picnic.

There was not sufficient justification

for so intrusive a search, even though the school called in the woman's mother to do the search. *Phaneuf v. Fraikin*, 448 F.3d 591 (2006).

The 11th Circuit in 2001 ruled that strip searches violated students' Fourth Amendment rights, but concluded that school district officials had qualified immunity. *Thomas v. Roberts*, 261 F.3d 1160.

The ruling was later vacated by the U.S. Supreme Court under a new immunity standard.

Several states, including California, have statutes that ban school strip searches.

Savana Redding and her mother sued the Stafford school district for civil rights violations following the 2003 search. A student caught with the prescription ibuprofen said it came from Redding. Redding denied any connection



MATTHEW WRIGHT:
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with the pills.

"School districts have always been in a Catch-22 situation on issues of supervision," said Matthew Wright, an attorney at Holm Wright Hyde & Hays in Phoenix who represented the Safford school district.

On strip searches of students "there is not a clear test for administrators to follow," Wright said. "It will be hopelessly unclear if they overturn the current decision," he said.

But Andrew Petersen of Tucson, Ariz.'s Humphrey & Petersen, who represented Redding, countered that the

federal appellate circuits are "all over the map" on the issue.

"I think [the circuit] needs to focus on how highly intrusive these searches are and the need for increased justification to conduct them," Petersen said. **NLJ**