

SPECIAL REPORT

**9th Circuit Court
Rules Against Parental Rights**

On November 2, 2005, a three-judge panel on the 9th Circuit Court of Appeals in San Francisco issued a ruling against parental rights that, if not overturned on appeal, could be used as a weapon against parental rights on a whole range of issues in our public schools.

The decision involved parents of elementary school children who sued their local school district over a questionnaire given to children in the first, third, and fifth grades.

The opinion, *Fields v. Palmdale School District*, was a unanimous decision of the three-judge panel on 9th Circuit and the opinion was written by liberal Judge Stephen Reinhardt. (Reinhardt is known for his infamous Pledge of Allegiance case in 2002, where he declared the Pledge to be unconstitutional because it contains the words “under God” in it.)

Fortunately, the Liberty Counsel is representing the parents in this case and is appealing this ruling to the full Ninth Circuit Court. LC is prepared to go all the way to the Supreme Court to defend parental rights.

The Facts Of The Case

In 2001, a volunteer mental health counselor named Kristi Seymour working at the Mesquite Elementary School in Palmdale, California, designed a questionnaire to give to children in the first, third, and fifth grades. She did this as part of her work on a Master’s Degree at the California School of Professional Psy-

chology. Prior to administering the survey, Seymour sent a letter to parents asking for their consent to allow their children to participate in the survey. The survey questionnaire was described in the letter as designed to gather information on children’s exposure to early

childhood trauma. It did not detail the sexual nature of the questions that were to be asked.

These questions included asking children to their thoughts about:

- Touching my private parts too much.
- Thinking about having

sex.

- Thinking about touching other people’s private parts.
- Thinking about sex when I don’t want to.
- Washing myself because I feel dirty on the inside.
- Not trusting people because they might want sex.
- Getting scared or upset when I think about sex.
- Having sex feelings in my body.
- Can’t stop thinking about sex.
- Getting upset when people talk about sex.

When parents learned from their children that they had been asked such invasive and inappropriate questions, six of the parents decided to file a lawsuit against the school district for violating their right to privacy and their right to control the upbringing of their children

“We ... hold that there is no fundamental right of parents to be the exclusive provider of information regarding sexual matters to their children, either independent of their right to direct the upbringing and education of their children or encompassed by it.” — Ninth Circuit Court Decision

by teaching them about sex at home. They stated that they would never have allowed their children to take such a survey if they had known what kind of sexual questions would be asked of their children.

The parents' lawsuit was dismissed in a lower district court and eventually made it to the 9th Circuit on appeal. Their claims were rejected.

Liberal Court Rejects Parental Rights

In rejecting the parents' appeal over the violation of their right to direct the upbringing of their children, Judge Reinhardt stated:

... we hold that there is no free-standing fundamental right of parents "to control the upbringing of their children by introducing them to matters of and relating to sex in accordance with their personal and religious values and beliefs" and that the asserted right is not encompassed by any other fundamental right We conclude ... that the parents are possessed of no constitutional right to prevent the public schools from providing information on that subject [sex] to their students in any forum or manner they select.

In issuing this decision, the three-judge panel said that "As with all constitutional rights, the right of parents to make decisions concerning the care, custody, and control of their children is not without limitations."

The panel noted that the state has authority to require school attendance, prohibit child labor, and place other restrictions on parental rights.

It quoted the 1st Circuit Court decision in *Brown v. Hot, Sexy & Safer Prods., Inc.*, a 1995 case that upheld the "right" of a school district to require compulsory attendance at a school assembly on AIDS education.

The 9th Circuit opinion stated that parents do not have the right to "prevent a school from providing any kind of information — sexual or otherwise — to its students."

Reinhardt insists that schools can't be expected to accommodate parental objections to such discussions involving guns, violence, the military, gay marriage, racial equality, "or the teaching of scientifically -validated theories of the origins of life. Schools cannot be expected to accommodate the personal, moral, or religious concerns of every parent."

The Right To Privacy?

The parents who filed suit against the school district claimed that their right to privacy was violated by having their children exposed to sexual materials.

The 9th Circuit rejected their claim, but then detailed what they view as a "right to privacy," which includes abortion on demand; the "right" of unmarried fathers to have custody of their children; the "right" of sexual intimacy—meaning homosexual sodomy legalized by the Supreme Court in *Lawrence v. Texas* in 2003.

Reinhardt writes: "We cannot overstate the significance of these rights. They symbolize the importance of our evolving understanding of the nature of our Constitu-

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tion. See Stephen G. Breyer, *Active Liberty: Interpreting Our Democratic Constitution* (2005)."

Judge Reinhardt's reference to Breyer's book is a key to understanding the liberal judicial activist mentality on the 9th Circuit. Reinhardt and his role model Breyer are both advocates of the "living" or "evolving" view of the Constitution.

This view holds that the Constitution can be freely reinterpreted and redefined to suit whatever political viewpoint a judge may have. This is how the Supreme Court can justify legalizing homosexual sodomy as a constitutional right; how the Court discovered a "right" to abortion on demand in the Constitution; and how the 9th Circuit Court can reason that the Pledge of Allegiance is unconstitutional.

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In 2003, TVC proposed that the 9th Circuit be split up in order to minimize the damage it can do to our nation. This latest decision makes it clearer than ever that the 9th is a renegade court that must be split.