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Court Hears Candy Cane Case:

Will Fifth Circuit Court Rule Elementary Students Have No First Amendment Rights?

NEW ORLEANS, Louisiana, May 23 – Moments ago, all seventeen judges sitting on the Fifth Circuit Court of Appeals heard oral arguments in one of the nation's most important cases involving free speech, *Morgan v. Plano Independent School District*. Known nationwide as the "candy cane" case, the case's outcome will likely determine whether or not elementary students are too young for the First Amendment right to free speech.

"The school officials are asking the court to change the law to actually allow religious discrimination for the first time in American law; the judges were very attentive and active today, and we are hopeful they will reject this radical request from the school officials," said Kelly Shackelford, Esq., president/CEO for Liberty Institute, which represents several students and their parents in the case.

The case involves several students who were discriminated against because their speech was religious in nature, including a young boy who was singled out and banned from handing out candy cane pens with a religious message at his class "winter" party, a little girl who was threatened for handing out tickets after school to a religious play, and an entire class of kids who were forbidden from writing "Merry Christmas" on holiday cards to American troops serving overseas. On appeal, the government officials are now arguing that elementary students are too young to have First Amendment rights.

Paul Clement, former U.S. Solicitor General under President Bush (who will also represent the U.S. House of Representatives in its effort to uphold the Defense of Marriage Act), and former Solicitor General Kenneth Starr, now president of Baylor University, joined Liberty Institute by arguing for the students.

Judge Starr stated in the argument, "This is 'cold on the docks' unconstitutional. We come in the spirit of *Barnette v. West Virginia*, that school districts have the responsibility to obey the law."

"The big surprise today in the courtroom is that now the defendants are trying to shift their argument by throwing Plano Independent School District and their representation under the bus, and that school officials have no responsibility to know that they cannot engage in religious discrimination against student speech," said Charles Bundren, Esq., affiliate attorney with Liberty Institute.

The arguments by the government officials are so troubling that eight groups of diverse political views have filed briefs in support of the students, including conservative groups as well as the ACLU. In fact, during today's arguments, one of the judges asked the attorney for the school officials exactly what religious speech they couldn't ban; his answer was, 'I don't know.'

Liberty Institute is a public policy and non-profit legal firm dedicated to protecting freedoms and specializes in First Amendment and Constitutional cases.

For more information and to see a video on this case, visit www.libertyinstitute.org.

Audio of the oral argument will be posted online at http://www.ca5.uscourts.gov/OralArgumentRecordings.aspx.

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Editors' Note: Photo L to R: Jonathan Morgan, the boy banned from handing candy cane pens to his classmates, now 16 years old, and Marie Barnett Snodgrass, of the landmark *Barnette v. West Virginia* case, standing in front of the Fifth Circuit Court of Appeals in New Orleans.