No. 03-13011-HH

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

SHARAH HARRIS,
through her parent and natural guardian
SHELDA HARRIS BANNON
Plaintiff-Appellant,

vs.

THE **SCHOOL DISTRICT OF PALM BEACH COUNTY,** a body corporate,
ED HARRIS, individually and in his capacity as principal of
BOCA RATON COMMUNITY HIGH SCHOOL,
Defendant-Appellees.

On Appeal from the United States District Court
for the Southern District of Florida
Hon. Judge Daniel T.K. Hurley
District Court Case No. 02-80438 CV-DTKH

AMICI CURIAE BRIEF OF NATIONAL SCHOOL BOARDS ASSOCIATION, NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS AND GEORGIA SCHOOL BOARDS ASSOCIATION IN SUPPORT OF APPELLEES

JULIE UNDERWOOD, General Counsel
National School Boards Association
1680 Duke Street
Alexandria, VA 22314
Telephone: 703-838-6722
Facsimile: 703-683-7590
Counsel of Record

No. 03-13011-HH

Shelda Harris Bannon v. School District of Palm Beach County

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Steven H. Aden, Esq., Counsel for Appellant

JulieAnn Rico Allison, Esq., Counsel for Defendants-Appellees

Sandi Bosso-Pardo, Esq., Counsel for Defendants-Appellees

Randall D. Burks, Esq., Counsel of Record for Defendants-Appellees

Kenneth R. Drake, Esq., Counsel for Appellant

Rita M. Dunaway, Esq., Counsel for Appellant

Georgia School Boards Association (GSBA) a nonprofit Georgia corporation, as *Amicus Curiae*

Sam S. Harben, Jr., Esq, Counsel for *Amicus Curiae*, GSBA

Ed Harris, as Principal of Boca Raton Community High School, Defendant-Appellee

Brittni Harris, an individual, Plaintiff-Appellant

Shara Harris, an individual, Plaintiff-Appellant

Shelda Harris Bannon, an individual, Plaintiff-Appellant

Honorable Daniel T.K. Hurley, Judge of the District Court

Honorable Frank J. Lynch, Magistrate Judge of the District Court

No. 03-12011-HH

Shelda Harris Bannon v. School District of Palm Beach County

M. Casey Mattox, Esq., Counsel for Appellant

National Association of Secondary School Principals (NASSP), a nonprofit Virginia corporation, as *Amicus Curiae*

National School Boards Association, an IRC § 501(c)(3) nonprofit Illinois corporation, as *Amicus Curiae*

Rutherford Institute, an IRC § 501 (c)(3) not-for-profit Virginia corporation

The School Board of Palm Beach County, Florida, a body corporate and governing body of the District School System in the School District of Palm Beach County Florida (Defendant-Appellee)

Bernard H. Shulman, Esq., Counsel for Defendants-Appellees

Sara Singhas, Esq., Counsel for *Amicus Curiae*, NASSP

William O. Solms, Jr., Esq., Counsel of Record for Appellant

Julie Underwood, Esq., Counsel for *Amicus Curiae*, NSBA

John W. Whitehead, Esq., Counsel for Appellant

TABLE OF CONTENTS

TABLE OF CITATIONS

CASES:

INTERESTS OF THE *AMICI CURIAE*[1]

The National School Boards Association (NSBA) is a not-for-profit federation of 49 state associations of school boards, together with the Hawai‘i State Board of Education and the school boards of the District of Columbia, Guam, and the U.S. Virgin Islands. NSBA represents the nation’s 95,000 school board members, who, in turn, govern the 14,890 local school districts serving more than 47 million public school students. NSBA, with many other educational and religious organizations, has long been involved in broad-based efforts to reasonably balance the religious and free speech rights of students with the constitutional obligation to avoid government sponsorship of religion. In cases where expressive activity, religious or otherwise, would be perceived as sponsored by the school, it is important that school districts maintain their discretion to limit speech based on legitimate educational interests.

The National Association of Secondary School Principals (NASSP)--the preeminent organization and the national voice for middle level and high school principals, assistant principals and aspiring school leaders-provides its members the professional resources to serve as visionary leaders. NASSP promotes the intellectual growth, academic achievement, character

[1] This brief is filed with the consent of both parties.

development, leadership development, and physical well-being of youth through its programs and student leadership services. NASSP sponsors the National Honor Society™, the National Junior Honor Society™, and the National Association of Student Councils™.

The Georgia School Boards Association (GSBA) serves as an advocate for the state's public education system and works collectively for Georgia's 180 boards of education by offering in-service training, technical assistance and a vast array of services and resources to local school systems and school board members. GSBA supports the authority of locally elected school boards to determine appropriate policy concerning school-sponsored speech and neutrality toward religion and has an interest in litigation before the Eleventh Circuit that may affect this discretion.

Amici share a strong interest in the effective implementation of school policies and practices, including those that balance the free speech rights of students and the public schools' concern with avoiding the appearance of endorsement of religion. To these ends, *amici* have an interest in ensuring that local school boards and administrators maintain the autonomy to adopt and implement appropriate policies and practices, and thus seek judicial clarity on these complex questions.

STATEMENT OF THE ISSUE

Whether the school district's refusal to allow a student to display religious messages and symbols on a mural that was part of a school-sponsored beautification project violated the student's First Amendment rights to free speech or free exercise of religion.

STATEMENT OF THE CASE

Sharah Harris, a student at Boca Raton Community High School, participated in a school beautification project as a member of the Fellowship of Christian Athletes (FCA). The project involved students and faculty members painting murals on 4' x 8' wooden construction panels erected in the school's corridors as dividers during a renovation project. Sharah's mural contained a Bible verse, an inspirational statement, and a depiction of the sun with a cross and the words, "Jesus" and "God." Her principal, concerned that this content would compromise the school's policy of neutrality on religious matters, directed her to remove the cross and the words, "Jesus" and "God." Sharah sued in federal district court, alleging violation of her First Amendment rights to free speech and free exercise of religion. The court granted the school district's motion for summary judgment and dismissed the suit. Rejecting arguments that the project constituted a limited public forum, the court declared that the mural "falls

squarely in the category of school-sponsored speech" because it was part of a school-wide beautification project clearly under the control of the school. As a result, the principal had a legitimate pedagogical interest in avoiding religious debates that could disrupt the educational process.

SUMMARY OF THE ARGUMENT

Amici submit this brief to emphasize the need to maintain the discretion of schools to limit speech based on legitimate educational interests, where expressive activity, religious or otherwise, would be perceived as sponsored by the school. Courts have long recognized the public schools' authority to control school-sponsored speech based on their educational mission. This control necessarily extends to excluding from school-sponsored contexts student speech that endorses religion. Furthermore, the Establishment Clause mandates that public schools, as governmental entities charged with educating children, scrupulously adhere to principles of religious neutrality. *Amici* urge this court to reaffirm these legal principles and avoid a ruling that invites incremental litigation that risks eroding the authority of schools to determine the appropriate bounds of school-sponsored speech and blurring the line of religious neutrality that public schools must observe.

ARGUMENT

I. Traditionally school-sponsored contexts are not transformed into limited public forums absent clear intent to do so.

The district court correctly found that the mural project in this case constituted school-sponsored speech under the control of the school district.[2] Under similar circumstances, the U.S. Courts of Appeals for the Tenth and Seventh Circuits have ruled that schools acted properly in prohibiting religious messages on fixtures likely to remain in school buildings for an extended period of time and to which students would be exposed on a daily basis. *Fleming v. Jefferson County Sch. Dist. R-1*, 298 F.3d 918 (10th Cir. 2002)(tiles painted by students, teachers and community members and displayed in the main hallway of the high school are school-sponsored speech) and *Gernetzke v. Kenosha United Sch. Dist. No. 1*, 274 F.3d 464 (7th Cir. 2001)(mural painting project displayed in the high school's main hallway open to all students is school-sponsored speech). *Amici* urge this Court to reach a similar result that allows school administrators to make common sense decisions based on school policy and consistent with constitutional parameters.

[2] In reaching its conclusion, the court pointed out that the project was sponsored by the student government, approved by the principal, advertised by the school, supervised by a teacher, constructed with and on school property, limited to students and faculty, and subject to initial guidelines. The panels would remain as semi-permanent fixtures during the renovation period.

It is well established that for First Amendment purposes, schools are generally considered nonpublic forums. In *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988), the Supreme Court stated:

> school facilities may be deemed to be public forums only if school authorities have "by policy or by practice" opened those facilities "for indiscriminate use by the general public," or by some segment of the public, such as student organizations. If the facilities have instead been reserved for other intended purposes, "communicative or otherwise," then no public forum has been created, and school officials may impose reasonable restrictions on the speech of students, teachers, and other members of the school community. "The government does not create a public forum by inaction or by permitting limited discourse, but only by intentionally opening a nontraditional forum for public discourse."

Id. at 267 (citations omitted). [3]

Class time, student assemblies, school athletic programs and competitions, theatrical productions, school-sponsored publications, curriculum-related activities, and many extra-curricular events are all regarded as closed forums in which schools may exercise control over

[3] The Court's analysis in *Hazelwood* clearly declares public schools to be nonpublic forums unless school authorities intentionally open them to indiscriminate public use and then focuses on the "school-sponsored" nature of the speech without directly addressing the issue of "limited public forums." Subsequent to *Hazelwood*, confusing and disparate analytical tracks have emerged in cases raising free speech challenges against school policies or practices; some courts appear to use the forum approach to determine initially if speech is school-sponsored, whereas other courts seem to view school-sponsored speech as a special kind of expression not subject to forum analysis at all. *Amici* urges this court to avoid contributing to this confusion and to clarify that no matter what path of legal analysis one travels, school officials may constitutionally exercise strict control over school-sponsored speech (as described in *Hazelwood*) based on their educational mission.

student speech consistent with its educational mission. *See, e.g., Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986) (student assembly); *Hazelwood Sch. Dist.*, (school newspaper); *Muller v. Jefferson Lighthouse Sch.*, 98 F.3d 1530 (7th Cir. 1996) (class time); *Boring v. Buncombe County Bd. of Educ.*, 136 F.3d 364, (4th Cir. 1998) (school play). In fact, this control reaches any "expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school." *Hazelwood*, 484 U.S. at 271. Unless the school has by policy or practice intentionally relinquished its authority to regulate the expression in the particular context, students' free speech rights may be limited for legitimate educational reasons.

Written and visual expression displayed for extended periods of time on school property is traditionally and reasonably perceived as sponsored by the school. *See Washegesic v. Bloomingdale Pub. Sch.*, 813 F. Supp. 559 (W.D. Mich. 1993), *aff'd*, 33 F.3d 679 (6th Cir. 1994)(picture of Jesus could not be displayed on a school wall); *Joki v. Board of Educ.*, 745 F. Supp. 823 (N.D.N.Y. 1990)(student painting depicting the crucifixion could not be on permanent display in the school auditorium). Schools clearly have the

authority to regulate expression physically attached to school facilities.[4] No one could seriously contend that students, staff, or members of the public are free to post whatever they may choose on school property.

Because expression affixed to school property is by policy, practice and tradition viewed as school approved or sponsored, no limited public forum exists unless school officials act intentionally—*i.e.*, take concrete steps—to disavow this close association and relinquish their control over such speech. Where such affirmative action does not occur, the expression remains school-sponsored and thereby subject to school regulation.

Amici urge this court to reject categorically Appellants' contention in this case that a school opens the door to all forms of student speech that it does not specifically exclude in advance of every school activity where student expression is permitted.[5] In their view, requesting students to avoid

---

[4] In fact, in some instances schools have a responsibility to regulate such expression precisely because it is viewed as school-sponsored, or at least school-condoned. As in this case, the obligation to regulate and prohibit certain forms of expression stems from constitutional provisions forbidding government sponsorship of religious speech. In other cases, it may derive from federal and state statutory directives, such as those requiring schools to be safe, harassment free environments. Under such requirements a school that failed to remove signs containing racial or sexual slurs from its walls might face legal liability for permitting a hostile environment to exist. Certainly, parents and the community at large expect schools to restrict speech that may be educationally inappropriate.

[5] In *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675 (1986), the Supreme Court approved against First Amendment and due process challenges a school policy that prohibited "conduct which materially and substantially interferes with the educational process,. . .including the use of obscene, profane language or gestures." In applying the

"vulgar and offensive" speech invites every other form of student expression. Were this so, even classrooms would be converted to limited public forums unless teachers announced prior to the start of each class that a school-sponsored activity was about to occur and that all school policies regarding acceptable student speech applied. This regime would eviscerate the longstanding legal principle that unless a school takes affirmative steps to open the forum to indiscriminate use by students or others, expression affixed to school property remains school-sponsored and subject both to school policy regulating student speech and to the constitutional mandate to remain neutral toward religion.

II. School-sponsored speech may be regulated for legitimate pedagogical reasons, including avoiding religious controversy that disrupts the school's educational mission.

The district court correctly held that avoiding controversy by taking steps to remove speech that endorses religion from school-sponsored contexts is a legitimate pedagogical concern. The Tenth and Seventh Circuits have also appropriately recognized the schools' interest in avoiding such religious conflict as a "legitimate pedagogical concern" in *Fleming* and

---

policy to a student speech made at a school assembly, the Court made no suggestion that the school somehow had relinquished its authority to restrict speech in that context based on the failure to include a detailed recitation of prohibited expression in the policy or to invoke the policy before the assembly. On the contrary, the Court strongly reaffirmed the authority of school officials to determine the bounds of acceptable student expression during a school activity.

Gernetzke and upheld the actions of school officials in removing student-created religious expression from school walls. These rulings properly recognize that schools do not violate the First Amendment by taking actions to preserve appropriate educational environments by regulating religious speech that may lead to divisive debate that distracts from the schools' educational mission.

In *Hazelwood* the Supreme Court held that school officials may restrict or regulate school-sponsored speech provided their actions are "reasonably related to legitimate pedagogical concerns." *Hazelwood*, 484 U.S. at 273. Courts have held that avoiding controversy and disruption within the school environment is a legitimate pedagogical concern and have upheld numerous restrictions on expression in schools based on its controversial nature. *See, e.g.*, *Planned Parenthood of S. Nev. v. Clark County Sch. Dist.*, 941 F.2d 817 (9th Cir. 1991) (prohibiting advertisements from Planned Parenthood in school programs distributed at athletic events); *Crosby v. Holsinger*, 852 F.2d 801 (4th Cir. 1988) (retiring school mascot that part of student body found offensive); *McCann v. Fort Zumwalt Sch. Dist.*, 50 F. Supp. 2d 918 (E.D. Mo. 1999)(prohibiting school band from performing a song that superintendent determined promoted illegal drug use). For schools, restricting controversial and disruptive speech is not so

much about "prescrib[ing] what shall be orthodox," *West Virginia Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943), as it is about preserving an environment in which the business of teaching and learning is foremost.

This is no less true when school officials bar students from including religious speech in school-sponsored projects in an effort to avoid disruptive and divisive religious debate. Although in school-sponsored contexts the validity of restrictions on school-sponsored speech does not depend on showing real or imminent disruption,[6] school officials' concern that religious expression will cause divisiveness and debate is well grounded. Indeed, avoiding religious strife is one of the basic objectives of the Establishment Clause. The Supreme Court has repeatedly reminded schools that they must be particularly vigilant to guard against such divisiveness. *See* Section III, *infra*; *Zelman v. Simmons-Harris*, 536 U.S. 639, 718-19 (2002)(Breyer, J. dissenting) (discussing the Court's focus in 20th century Establishment Clause jurisprudence on the social and political conflict caused by "government efforts to impose religious influence on 'young impressionable [school] children," citing, *School Dist. of Abington Township v. Schempp*, 374 U.S. 203, 307 (1963)(Goldberg, J., concurring) and other cases).

---

[6] *Cf. Tinker v. Des Moines Indep. Sch. Dist.*, 393 U.S. 503 (1969) (pure student expression that happens to occur on school premises may be regulated by showing a substantial likelihood that the expression will cause material disruption of the educational process or infringe others' rights).

III. The Establishment Clause requires schools to avoid the appearance of endorsement of religion.

School officials understand that it is precisely their mission to shape the hearts and minds of school children that makes it so critical for schools to disassociate themselves from religious speech. School officials have the duty and authority to prevent the impression that the school favors a particular religious viewpoint over others.[7] The appearance of endorsement

[7]This is true regardless of whether the expression comes from students, staff, or community members. *See, e.g., Lassonde v. Pleasanton Unified Sch. Dist.*, 320 F.3d 979 (9th Cir. 2003), *cert. denied*, 124 S.Ct. 78 (U.S. Oct. 6, 2003) (finding that principal had duty under Establishment Clause to ban those parts of student's salutatorian address that he determined constituted overt proselytizing); *Walz v. Egg Harbor Township Bd. of Educ.*, 342 F.3d 271 (3rd Cir. 2003) (upholding school district's prohibition on elementary school student's classroom distribution of pencils and candy containing religious messages because student's activity constituted proselytizing rather than personal religious observance); *Mellen v. Bunting*, 327 F.3d 355 (4th Cir. 2003), *r'hg and r'hg en banc denied*, 341 F.3d 312 (4th Cir. 2003) (holding that state military institute's policy of conducting prayer before evening meals constituted impermissible school-sponsor religious speech); *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000) (invalidating school district's policy of permitting student-led, student-initiated prayer at football games as violating the Establishment Clause); *Marchi v. Board of Coop. Educ. Serv. of Albany*, 173 F.3d 469 (2d Cir. 1999) (holding that school district had authority and duty to direct teacher not to inject religion into instruction and communication with parents); *Helland v. South Bend Cmty. Sch. Corp.*, 93 F.3d 327 (7th Cir. 1996) (holding that substitute teacher's injection of religion into classroom was legitimate, nondiscriminatory reason for school district to remove him); *Peloza v. Capistrano Unified Sch. Dist.*, 37 F.3d 517 (9th Cir. 1994) (finding that school district's concern over Establishment Clause violation warranted prohibiting teacher from talking with students about religion, including when teacher was not teaching), *cert. denied*, 515 U.S. 1173 (1995); *Roberts v. Madigan*, 921 F.2d 1047 (10th Cir. 1990) (upholding school district's directive that elementary school teacher refrain from silently reading the Bible during class time, remove religious books from classroom shelves, and remove religious poster from classroom wall to prevent cumulative effect of advancing teacher's religious views); *Karen B. v. Treen*, 653 F.2d 897, 902 (5th Cir. 1981) (finding that state law and school district policy authorizing teachers to implement voluntary classroom prayer program violated Establishment Clause); *Rusk v. Crestview Local Sch. Dist.*, 220 F. Supp. 2d 854 (N.D. Ohio 2002), *appeal docketed*, No. 02-3991 (6th Cir. Sept. 6, 2002) (holding that

leads to potential entanglements and Establishment Clause violations. In *Edwards v. Aguillard*, the U.S. Supreme Court spoke directly to this constitutional obligation:

> The Court has been particularly vigilant in monitoring compliance with the Establishment Clause in elementary and secondary schools. Families entrust public schools with the education of their children, but condition their trust on the understanding that the classroom will not purposely be used to advance religious views that may conflict with the private beliefs of the student and his or her family. Students in such institutions are impressionable and their attendance is involuntary. The State exerts great authority and coercive power through mandatory attendance requirements, and because of the students' emulation of teachers as role models and the children's susceptibility to peer pressure. [Fn. 5] The potential for undue influence is far less significant with regard to college students who voluntarily enroll in courses. "This distinction warrants a difference in constitutional results."] Furthermore, "[t]he public school is at once the symbol of our democracy and the most pervasive means for promoting our common destiny. In no activity of the State is it more vital to keep out divisive forces than in its schools…."

482 U.S. 578, 583 (1987) (citations omitted).

Subsequent Supreme Court holdings have affirmed the importance of avoiding the appearance of the school endorsing religion. The appearance of endorsement may lead to a divisive atmosphere inconsistent with the

---

Establishment Clause prohibits teachers from distributing religious materials to students); *DiLoreto v. Downey Unified Sch. Dist.*, 196 F.3d 958 (9th Cir. 1999) (holding that exclusion of religious message from fence of the school's baseball field did not violate Establishment Clause.

mission of public schools. "School sponsorship of a religious messages is impermissible because it sends the ancillary message to members of the audience who are non-adherents 'that they are outsiders, not full members of the political community, and an accompanying message to adherents that they are insiders, favored members of the political community.'" *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290, 310- 311 (2000), quoting *Lynch v. Donnelly*, 465 U.S. 668 (1984).

This principle is widely understood by school officials, and parents are concerned that schools and teachers not undermine their values by compromising religious neutrality and therefore expect schools to adhere to it. This Court should preserve the discretion of schools to avoid the appearance of endorsement of religion and should shun legal arguments that seek to confuse neutrality with hostility.[8]

---

[8]Even where the speech ostensibly occurs in a limited public forum, schools must adhere to the neutrality dictates of the Establishment Clause. In *Anderson v. Mexico Acad. & Central Sch.*, 186 F. Supp. 2d 193 (N.D.N.Y. 2002), the school conceded that it had created such a forum by selling to the public bricks that could be inscribed with personal messages to be installed in a walkway on school grounds. On a motion for a preliminary injunction, the court found that the district may have engaged in viewpoint discrimination by removing one brick with a religious message, but not another. However, the court also found a likely Establishment Clause violation if bricks with religious messages were allowed to remain. *But see Demmon v. Loudoun County Pub. Sch.*, 279 F. Supp.2d 689 (E.D. Va. 2003)(court found similar walkway to be a limited public forum and that depending on the purpose of the walkway, exclusion of religious symbols from bricks might impermissibly inhibit religion in violation of the Establishment Clause).

IV. Courts should not interfere with actions of school officials to preserve religious neutrality in school-sponsored activities.

In a society of increasing religious diversity, public schools must tread ever more carefully to maintain public confidence by avoiding furtherance, inhibition, coercion, entanglement, or endorsement of religion. The intersection of religion with public education continues to confront schools with highly divisive issues. This litigation represents a diversion of scarce resources and a distraction from their mission of academic achievement that our Nation's schools can ill afford.

On questions like those at issue here, it is necessary for courts to draw a balance that upholds the public school districts' need to administer the schools and to ensure that the public schools remain inclusive of all. This court should also recognize the destructive nature of this type of successive litigation. It continues to inflict significant costs on communities and their schools. This court should not erode the longstanding judicial deference the courts have shown the expertise and discretion necessary for public school authorities to administer the realities of the public school day. *E.g.*, *Gernetzke*, 274 F.3d 464 (holding that principal's refusal to allow student Bible club to display mural containing religious messages in high school's main hallway did not violate students' free speech rights); *DiLoreto*, 196 F.3d 958 (school district's refusal to post individual's advertisement

containing religious message on fence of the high school's baseball field did not violate the individual's free speech rights); *Planned Parenthood*, 941 F.2d 817 (school officials refusal to accept advertisements from Planned Parenthood for school-sponsored publications did not offend the Free Speech Clause) ; *Fleming*, 298 F.3d 918 (school district's policy of prohibiting tiles with religious messages from inclusion in permanent display in the high school's main hallway did not violate students' free speech rights); *West v. Derby Unified Sch. Dist.* 206 F.3d 1358 (10th Cir. 2000)(holding that student discipline for displaying Confederate flag did not violate student's free speech rights). Where school officials make good faith judgments that particular speech will reasonably be perceived as school-sponsored and that the expression crosses the bounds of religious neutrality required of schools, courts should be loathe to interfere with these judgments.

As Judge Posner of the Seventh Circuit has stated:

> We pause here to express our doubts about the appropriateness of litigation that is intended, whether by the friends of religion or by its enemies, to wrest the day-to-day control of our troubled public schools from school administrators and hand it over to judges and jurors who lack both knowledge of and responsibility for the operation of the public schools. The plaintiffs' high school is an urban school with 2000 students and 42 student groups. The regulatory and disciplinary problems implied by these numbers are formidable. In her diary, which is part of the record, plaintiff Gernetzke wrote: *"There's something exciting[:] I'm suing Kenosha Unified School*

> *District #1 …. The lawsuit is getting very interesting. KUSD is getting themselves deeper in cow dung than what they realize!"* Do we really need this?

Gernetzke, 274 F.3d at 467-68.

CONCLUSION

For these reasons, *amici* urge this Court to affirm the lower court's opinion.

Respectfully submitted this 13th day of November, 2003:

_____

JULIE K. UNDERWOOD
Counsel of Record
General Counsel
National School Boards Assoc.
1680 Duke Street
Alexandria, Virginia 22314
Telephone: (703) 838-6722
Facsimile: (703) 548-5613

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P.32(a)(7)(C), undersigned counsel certifies that this brief complies with the Court's type-volume limitation. The brief is typed in proportionally-spaced Times New Roman 14-point, double spaced, and contains 4086 words (including text, footnotes, headings, and quotations), based upon the word processing counter of Word 97 using the formula stated in Fed. R. App. P.32(a)(7)(B)(iii.)

By:

_____

JULIE UNDERWOOD, ESQ.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Amici Curiae* Brief was served this 13th day of November 2003, via First Class U.S. Mail, postage prepaid, to the Clerk of the Court and upon the following:

William O. Solms Jr., Esq.
Solms & Price, P.A.
6701 Sunset Drive, Suite 104
Miami, FL 33143-4529
Counsel for Appellants

John W. Whitehead
Steven H. Aden
Rita M. Dunaway
M. Casey Mattox
THE RUTHERFORD INSTITUTE
1440 Sachem Place
Charlottesville, VA 22901
Counsel for Appellants

Randall Burks, Esq.
School Board of Palm Beach County
3318 Forest Hill Boulevard, Suite C-302
West Palm Beach, FL 33406
Counsel for Appellees

By: _____

JULIE UNDERWOOD, ESQ.
National School Boards Association
1680 Duke Street
Alexandria, VA 22314
Telephone: (703) 838-6722
Facsimile: (703) 683-7590
Counsel for Amici Curiae