Strange Bedfellows

Students find unexpected ally in the Christian Right

BY JOSHUA DUNN AND MARTHA DERTHICK

A recent case out of Texas, *Palmer v. Waxahachie Independent School District*, proves that law no less than politics makes for strange bedfellows. It also provides additional evidence that federal courts have grown leery of second-guessing the choices of school districts and administrators.

In this case, the Liberty Legal Institute (LLI), a Texas-based Christian public-interest firm devoted to protecting religious liberties, provided pro bono representation for a student challenging his suspension for wearing a "John Edwards for President" T-shirt. Previously, LLI had filed an amicus brief supporting the right of a student to unfurl a sign proclaiming "BONG HITS 4 JESUS" in 2007's *Morse v. Frederick*. A bong is a piece of drug equipment, and John Edwards, even before the revelation of his extramarital activities, had no special appeal to the Christian Right.

If schools can suppress John Edwards T-shirts, they can just as easily suppress John 3:16.

Palmer v. Waxahachie started innocently but quickly escalated into a full-blown First Amendment storm. In September 2007, Paul Palmer, a 10th-grade student, wore a T-shirt to school that said simply "San Diego." The district's dress code prohibited T-shirts with printed messages. After school officials informed Palmer of his offense, his parents gave him the John Edwards shirt to substitute for "San Diego." This too fell afoul of district policy.

In response, Palmer sued in federal court, asking for preliminary and permanent injunctions along with damages and attorney fees. He claimed that Supreme Court doctrine allowed student speech to be restricted only if it would cause a substantial disruption, was indecent, was school-sponsored (in a school newspaper, for example), or promoted illegal drug use.

At an initial hearing, the district informed the judge that it had changed its dress code, which prompted the court to dismiss Palmer's claim without prejudice. The new code was more comprehensive in its restrictions, forbidding polo shirts with messages, shirts with logos of professional sports teams, and clothing with university logos and messages. The revised code did allow shirts with logos smaller than two inches by two inches. Students could also wear clothing promoting school spirit or school-sanctioned clubs and teams. Also permitted were bumper stickers (even attached to clothing), political pins and buttons, and wristbands.

Upon receiving the new code, Palmer submitted three shirts to school officials for approval: the original John Edwards T-shirt, a John Edwards polo shirt, and a T-shirt with "Freedom of Speech" on the front and the text of the First Amendment on the back. The school replied that the Edwards paraphernalia were forbidden and so was the First Amendment representation.

Palmer sued again, but the district court denied his request for an injunction. On appeal, the school district contended, and a Fifth Circuit panel agreed, that its policy was fully compliant with settled doctrine on student speech. Even though Palmer's sartorial choices were not disruptive, lewd, school-sponsored, or drug-related, the district's policies were content-neutral and thus permissible. According to the court, the school district's policy exhibited no hostility to the message conveyed by Palmer, but instead simply regulated his manner of expressing it. The court appeared particularly concerned that siding with Palmer "would spawn endless line-drawing litigation."

But why did LLI find the travails of the cantankerous Mr. Palmer so compelling? The answer is that Christian public-interest firms like LLI now see the Supreme Court's 1969 decision in *Tinker v. Des Moines* as the last bulwark protecting student religious speech.

Tinker had established that students "do not shed their constitutional rights at the schoolhouse door." At the time, it was criticized by conservatives as one of the Warren Court's intemperate assaults on America's constitutional and moral fabric. Jay Sekulow, who championed the Christian Right's free-speech legal strategy at the American Center for Law & Justice (ACLJ), now argues that *Tinker* is the decision "you have to hope to hold onto." Hence, religious conservatives are now some of its most adamant defenders. For groups like LLI and ACLJ, the fear is that if schools can suppress John Edwards T-shirts and Bong Hits banners, then they can just as easily suppress John 3:16.

Joshua Dunn is associate professor of political science at the University of Colorado–Colorado Springs.
Martha Derthick is professor emerita of government at the University of Virginia.