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## **American Freedom Law Center Files Brief in Ninth Circuit Challenging Ban on the American Flag in a California High School**

San Francisco, California (February 29, 2012)—Today, the American Freedom Law Center (AFLC), on behalf of three students and their parents, filed its opening brief in the U.S. Court of Appeals for the Ninth Circuit in a case challenging the constitutionality of a ban on the wearing of American flag shirts. AFLC is asking the appellate court to reverse a decision by a lower federal court in San Francisco that upheld a school district’s ban on the wearing of American flag shirts on a California high school campus during Cinco de Mayo (May 5th)—a Mexican holiday—for fear of offending Mexican students.

AFLC Co-Founder and Senior Counsel Robert Muise, the principal author of the brief, commented, “It is a sad day in our Nation’s history when government officials ban the American flag on a public high school campus for any reason. Here, school officials feared that our clients would offend ‘Mexican’ students if they wore their flag shirts to school on Cinco de Mayo, so they ordered the students to either remove their shirts or leave school in direct violation of their First Amendment rights.”

On May 5, 2010, school officials from Live Oak High School in the Morgan Hill Unified School District, California prevented five students from wearing American flag t-shirts because the officials did not want to offend “Mexican” students on “their day.” That day, some students at the school were celebrating the Mexican holiday known as Cinco de Mayo. School officials approved the Cinco de Mayo celebration, which was co-sponsored by M.E.Ch.A, a school-sanctioned student group.

M.E.Ch.A. is an acronym that stands for “movimiento” [movement] “estudiantil” [student] “Chicano” [an ethnic identity] and “Aztlán” [referring to the mythical homeland of the Aztecs]. M.E.Ch.A is a student movement that rejects the assimilation of Chicanos into

American culture.

Despite banning the American flag, school officials permitted the Mexican students participating in the Cinco de Mayo celebration to wear clothing that had the colors of the Mexican flag.

The students wearing the American flag shirts had been on campus for over 3 hours when they were approached by an assistant principal and ordered to turn their shirts inside out. When the students refused to disrespect the American flag, the school official directed them to the principal's office where they were lectured on the importance of Cinco de Mayo and given the option of either removing their shirts or leaving school. The students refused to remove the shirts, so they left school and then filed this civil rights lawsuit.

AFLC Senior Counsel David Yerushalmi commented, "These students and their parents should be commended for standing up and exercising their rights under the First Amendment. Our rights will only have meaning if we are willing to fight for them. That is what the American Freedom Law Center is doing every day, but it also takes courageous citizens, such as our clients in this case, to join us in the fight."

During the discovery phase of the lawsuit, the evidence overwhelmingly showed that school officials intentionally restricted the students' speech on May 5, 2010, because they believed that the pro-America message conveyed by the students' patriotic clothing would offend some Mexican students since it was Cinco de Mayo—"their day," as one school official testified. School officials enforced the clothing restriction even though they had no objective evidence that the students were causing any disruption—let alone a material and substantial one—to the operation of the school by wearing the American flag shirts.

Despite this uncontested evidence, the lower federal court ruled in favor of the school district, stating, "Upon review, the Court finds that based on these undisputed facts, the school officials reasonably *forecast* that Plaintiffs' clothing *could* cause a substantial disruption with school activities, and therefore did not violate [the First Amendment]."

AFLC has appealed this decision to the Ninth Circuit and has today filed its opening brief with the appellate court. The school district has 30 days to respond.

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