from Phyllis Schlafly

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CONDOMS NIXED BY NEW YORK COURT

In a smashing victory for parents over arrogant public school administrators who are aiding and abetting promiscuity, the New York state courts have thrown out the distribution of condoms to New York City students. This is a crushing defeat for the Joseph Fernandez David Dinkins-Joycelyn Elders "axis" which has been trying to force this practice down the throats of children despite parental opposition.

The Supreme Court of the State of New York, Appellate Division, held 3-to-2 on December 30 in the case of *Alfonso v. Fernandez* that the New York City public schools "are prohibited from dispensing condoms to unemancipated minor students without the prior consent of their parents or guardians, or without an opt-out provision." The court held that the distribution program violates the fundamental rights of the parents under the Fourteenth Amendment as well as the New York Constitution.

The case started when School Chancellor Joseph Fernandez started an HIV/AIDS Education Program that included giving condoms to students who request them. After intense lobbying by then-Mayor David Dinkins, the New York City Board of Education voted 4 to 3 in 1991 to approve the program. Since then, dozens of school districts across the country have implemented similar programs.

Two Staten Island couples with children in the schools brought suit to prohibit the condom availability component of the HIV/AIDS program. They contended that the condom program violated their fundamental right to direct the upbringing of their children, and also violated the Public Health Law, which requires the consent of parents for health services.

The court took note of the fact that many believe that the condom

distribution plan is "tantamount to condoning promiscuity and sexual

permissiveness, and that the exposure to condoms and their ready availability may encourage sexual relations among adolescents at an earlier age and/or with more frequency, thereby weakening their moral and religious values."

The New York schools contended that the condom program was merely "education" about HIV/AIDS. The court rebutted by saying that "supplying condoms to students upon request has absolutely nothing to do with education," but is a "health service" within the meaning of the law that requires parental consent when health services are provided to minors.

The court explained that the distribution of condoms in public schools, where attendance is compulsory, is quite different from making them available at clinics, where attendance is wholly voluntary, or as part of a public assistance program. The court stated that parents should not be "compelled by state authority to send their children into an environment where they will be permitted, even encouraged, to obtain a contraceptive device, which the parents disfavor as a matter of private belief."

Amicus curiae briefs filed by the New York Civil Liberties Union Foundation, the AIDS Project of the ACLU Foundation, and the Planned Parenthood Federation of America argued that the condom distribution is "consistent with the practice of health providers, who routinely prescribe and distribute contraceptives and offer other HIV/AIDS and reproductive health services to minors on the basis of their own consent."

The court responded: "The amici miss the point. The primary purpose of the Board of Education is not to serve as a health provider. Its reason for being is education. No judicial or legislative authority directs or permits teachers and other public school educators

to dispense condoms to minor, unemancipated students without the knowledge or consent of their parents. Nor do we believe that they have any inherent authority to do so."

The court ruled that parents "enjoy a well-recognized liberty interest in rearing and educating their children to accord with their own views," citing the leading U.S. Supreme Court cases from the 1920s, *Pierce v. Society of Sisters* and *Meyer v. Nebraska.* "The Constitution gives parents the right to regulate their children's sexual behavior as best they can," and a decision about contraceptives "is clearly within the purview of the petitioners' constitutionally protected right to rear their children."

The school system tried to say that the problem of AIDS posed a "necessity" for this program, but according to the court, that is not a reason to force parents "to surrender a parenting right - specifically, to influence and guide the sexual activity of their children without state interference."

"The threat of AIDS cannot summarily obliterate this Nation's fundamental values," the court added. "We conclude that the condom availability component of the program violates the petitioners' constitutional due process rights to direct the upbringing of their children."

Fernandez's introduction of this condom distribution plan, followed by his attempt to force homosexual curricula on New York's elementary grades, resulted in his being fired last June 30 from his $195,000-a-year job. He was given a severance package totaling $475,000, and is now traveling the country as president of the Council of Great City Schools, an organization funded by dues from urban school districts.