



July 7, 2008

The Honorable Edward Kennedy
Chair, Committee on Health, Education, Labor and Pensions
U.S. Senate
Washington, D.C. 20510

The Honorable George Miller
Chair, Committee on Education and Labor
U.S. House of Representatives
Washington, D.C. 20515

Re: ACLU Urges Repeal of the Aid Elimination Penalty in the Higher Education Act Reauthorization

Dear Chairmen Kennedy and Miller,

On behalf of the American Civil Liberties Union, a non-partisan organization with hundreds of thousands of activists and members and 53 affiliates nationwide, we are writing to state once again our strong opposition to the inclusion of the aid elimination penalty (20 U.S.C. 1091(r)) in the reauthorization of the Higher Education Act (HEA). As the reauthorization conference for H.R. 4137, the College Opportunity and Affordability Act, and S. 1642, the Higher Education Amendments Act, moves forward, we urge that the penalty provision be deleted in the final conference report.

Since it was enacted in 1998, the aid elimination penalty has barred over 200,000 would-be students with drug convictions, often minor, first time and misdemeanor offenses, from receiving critical college aid, thereby preventing many from pursuing their dreams of a college education and the promise of a better life that comes with it. Access to education and the opportunity to better oneself should not be wielded as a weapon in the war on drugs. Denying educational opportunities to those with drug convictions simply makes them more susceptible to drug abuse, addiction, and repeat offenses. According to the National Institute on Drug Abuse, high school graduates not enrolled in college are three times more likely than those in school to have used methamphetamine or heroin in the past year. Additionally, the penalty disproportionately impacts low-income communities and communities of color due to longstanding disparities in drug law enforcement and the heightened financial assistance needs of many of these students. By putting an increased burden on communities of color and on those whose only means of attending college is with the help of financial aid, the penalty only serves to perpetuate economic and racial inequalities.

While the ACLU supports a complete repeal of this fundamentally unwise policy, Senator Christopher Dodd of Connecticut has offered a fair compromise between the current one-size-fits-all penalty and full repeal. S. 2767 would not eliminate the penalty, but would bring judicial discretion to the process. It would empower judges to weigh the value of imposing the penalty on a case-by-case basis in addition to other sanctions such as jail time, fines or community service. Allowing judges to assess

each student's individual circumstances would dramatically improve the current system of blanket aid denial.

Congressional action, whether full repeal of the penalty or enabling judicial discretion, is the only remaining hope for students impacted by the penalty. Students for Sensible Drug Policy (SSDP) and its more than 100 chapters nationwide, as well as a class of individual students, challenged the constitutionality of the aid elimination penalty. On April 29, 2008, the U.S. Court of Appeals for the Eighth Circuit affirmed a District Court decision rejecting these legal challenges.

While we are disappointed in the court's failure to remedy this misguided policy, Congress now has the opportunity and the obligation to act. The ACLU urges Congress to address this issue in the HEA reauthorization currently under consideration. It has now been ten years since Congress first passed the aid elimination penalty into law, and in that decade 200,000 students have seen the doors of educational opportunity slammed shut. In another ten years, the number may be more than a half million. How many of these individuals have failed to overcome the harsh penalties associated with their relatively minor transgressions? How many now burden our society and how many could have flourished if only we had the wisdom to provide a mechanism to obtain the same lift offered to other students?

Please ensure that this wrong-headed approach to fighting drugs is addressed in the HEA reauthorization either by repealing the aid elimination penalty entirely (the preferred course) or by allowing judges to decide on a case-by-case basis whether to implement the penalty (a fair compromise). The opportunity to re-open the doors of education to tens of thousands of bright and eager students rests in your hands.

Sincerely,



Caroline Fredrickson
Director, Washington Legislative Office



Michael W. Macleod-Ball
Chief Legislative and Policy Counsel, Washington Legislative Office

Cc: Senate Committee on Health, Education, Labor and Pensions Members
House Committee on Education and Labor Members