

## The ACLU Appeals Verdict in Its Case Against the Higher Education Act

*By Brooke Heath*

Last week, the American Civil Liberties Union (ACLU) filed an appeal asking a federal court to reconsider its verdict in a case challenging the Higher Education Act's Aid Elimination Penalty. This penalty denies financial aid to any student who has been convicted of a drug offense. The ACLU argues that the penalty is unconstitutional and has asked the court to take another look at the constitutional validity of the act.

During the original motion, the ACLU fought against the Higher Education Act's Aid Elimination Penalty, saying that denying convicted students federal student aid is a second criminal punishment for those who have already served sentences imposed by the courts. The ACLU argued that this directly violates the double jeopardy clause of the Fifth Amendment of the U.S. Constitution. In October of 2006, District Court Judge Charles Kornmann upheld the Aid Elimination Penalty, ruling that insufficient evidence had been presented to prove the law violated the double jeopardy clause.

Since being endorsed by Congress in 2000, the Higher Education Act's Aid Elimination Penalty has blocked federal aid for more than 200,000 would-be students, according to the ACLU.

"The law's purpose is to impose a second criminal punishment on students who have already served their sentences, which makes it unconstitutional," said Adam Wolf, an attorney with the ACLU Drug Law Reform Project. "Judges must assess, not ignore, lawmakers' intentions. All we ask is that the court consider the evidence."

According to a press release from the ACLU, the recent appeal was filed in the U.S. Court of Appeals for the Eighth Circuit and comes from a class-action lawsuit brought on behalf of the thousands of students affected by the Aid Elimination Penalty, including Students for Sensible Drug Policy, and three specific individuals who were denied financial aid under the act. The appeal requests that the district court be ordered to reconsider the legislative history of the act and reassess whether the law is, indeed, a violation of the Constitution's double jeopardy stipulation.

"The Aid Elimination Penalty represents the culmination of a decade of legislative efforts to impose an additional criminal punishment on students who have already paid their debts to society," said Wolf. "The penalty's legislative history makes clear that this law is an affront to the constitutional rights of students."