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Grinnell Students sue over right to display American flag upside down

Ben Stone, ACLU-IA Executive Director

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Today, the American Civil Liberties Union of Iowa announced that it has filed suit on behalf of two Grinnell College students who were prohibited from displaying a United States flag upside down as a result of a joint decision by two Grinnell city police officers and the Poweshiek County attorney.

The ACLU-IA sponsored lawsuit seeks nominal damages, the right to display the U.S. flag in the future, and a ruling holding Iowa's "flag desecration" statute totally void on its face.

"Bad laws like these should be stricken from the Iowa code," says Ben Stone, Executive director of the ACLU-IA. "Despite the fact that courts have consistently ruled that flags may be used in the course of war protests, police and prosecutors continue to use this law for no other purpose than to silence government critics," Stone added.

The suit alleges that on September 26th, 2002, students John Bohman and Juan Diaz, both citizens of the United States, displayed an American flag outside their dorm window. They hung the flag upside down observing the official method of using the flag to indicate distress as a statement of their "displeasure with the policies of the United States Government."

Two Grinnell police officers, Theresa Petersen and David Klein, allegedly saw the flag and consulted with Poweshiek County Attorney Michael Mahaffey. After receiving assurances from Mahaffey that he was willing to prosecute the students under Iowa Code Chapter 718A (Iowa's "flag desecration" statute) the officers travelled to the students' dorm room, the suit says. There, the officers are said to have informed the students that if the flag was not removed they would be prosecuted under Iowa Code section 718A.1. Petersen, Klein and Mahaffey are all named as defendants in the suit.

Thirty years ago, the Iowa Supreme Court ruled in *State v. Kool*, 212 N.W.2d 518, that displaying an American flag upside down was protected speech and could not be prosecuted. Later, in 1989, in *Texas v. Johnson*, 491 U.S. 397, the United States Supreme Court threw out the conviction of a Texas protestor who was arrested for

actually burning a flag in the course of a demonstration, declaring that the right of free speech protected symbolic use of the flag.

Ironically, the Iowa statute authorizes some uses of the flag that are impermissible under recognized standards such as depicting the flag on newspapers, letterhead, and other temporary items. Unlike the students in this case, newspapers are allowed to display the flag in any manner they wish.

"This is a highly confusing and inconsistent law that is really more about harassment of protestors than protecting the flag from irreverent treatment," says ACLU-IA Legal Director Randall Wilson. "As a device for eliminating freedom of speech this law is a disgrace to our national emblem and everything it stands for," Wilson added.

The students are being represented in the lawsuit by ACLU-IA Cooperating Attorney Phillip B. Mears of Iowa City. The suit was filed in the United States District Court for the Southern District of Iowa in Des Moines, Iowa. A preliminary injunction against further enforcement of the law has been requested.