

School District Effort to Prohibit Students' Political Attire Enjoined

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Morgan v. Mifflin County School District, Case No. 1:2-CV-01930 (M.D. Pa. 2020). The United States District Court for the Middle District of Pennsylvania issued a restraining order enjoining a school district policy prohibiting students from wearing attire expressing support for a political candidate.

SUMMARY BACKGROUND

From the start of the 2020-21 academic school year, Morgan Earnest, a 15-year old high school student, wore a mask supporting then President Donald Trump's campaign every day that she attended school. Earnest's mask depicted the words "Women for Trump." On two occasions, Earnest also wore a t-shirt supporting Trump's reelection campaign to school. The front of this shirt bore the words "Trump 2020 Keep America Great," and the back of the shirt contained the words "Trump 2020 The Sequel Make Liberals Cry Again."

In October, Mifflin County School District emailed a message to families of students in the district that stated complaints had been received indicating that there was a disruption to the education of the students because of masks, articles of clothing and other items that were worn at school, and stated, in part:

Starting on Monday October 5, 2020, no masks, articles of clothing or other items may be worn or otherwise brought on to Mifflin County School District property, which contain political speech or symbolize a particular political viewpoint, including but not limited to confederate flags and swastikas, as well as BLM logos or phrases associated with that movement...

Subsequently, Earnest attended school wearing her mask and t-shirt supporting the Trump campaign. That morning, at around 9:00 a.m., Earnest was sent to the administrator's office and asked to either turn her mask and shirt inside-out or go home for the remainder of the school day because her articles of clothing were in violation of the District's new policy. Earnest declined to turn her mask or t-shirt inside-out, and was therefore sent home for the remainder of the school day. She also was warned that she would be sent home again if she wore a mask or t-shirt expressing a political viewpoint in the future.

On October 20, 2020, Earnest filed a lawsuit in federal court alleging violations of her First and 14th Amendment rights and requesting a temporary restraining order and preliminary injunction against Mifflin County. The court determined that Earnest was likely to prevail on the merits of her challenge to the constitutionality of Mifflin County's policy and granted a temporary restraining order enjoining Mifflin County from enforcing its policy against Earnest for wearing clothing indicating support for a political candidate.

DISCUSSION

The court acknowledged that, while school districts have more latitude to regulate the conduct of their students in school than the state is typically allowed under the First Amendment, a school's authority to regulate the conduct of its students is not unlimited. Citing the seminal U.S. Supreme Court case in *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969), in which that court cautioned that students do not "shed their constitutional rights to freedom of speech and expression at the schoolhouse gate," the federal court recognized that a school's interest in avoiding material and

substantial disruptions in learning must be balanced against the students' rights which such regulation may seek to abridge.

In reviewing prior free speech cases from the school context, the court noted that a school district's ability to demonstrate substantial disruption is often determinative in cases challenging a restriction on students' right to free speech. Here, the court found no evidence that Earnest's attire resulted in any disruption that would cause Mifflin County to have a "well-founded fear of genuine disruption in the form of substantially interfering with school operations." The court opined that "where a school seeks to suppress a term merely related to an expression that has proven to be disruptive, it must do more than simply point to a general association." The court concluded that the reactions of some based on the perceived association of a presidential candidate with views with which they disagree was not a valid reason to prohibit passive political speech.

PRACTICAL ADVICE

A general fear or apprehension of disturbance is not enough to overcome the right to freedom of expression in the school setting, even in the current climate of considerable political divisiveness. Those restrictions upon student speech that have been affirmed by courts (such as the racial tension arising from the display of the Confederate flag) have been justified by evidence of demonstrable disruptive effects.

The First Amendment would have little meaning if schools could justify prohibition of speech that may offend others simply because the recipients disagree with the political views advocated or the political candidate supported. Instead, school officials considering restrictions on messages displayed on students' attire must be able to identify particular and concrete bases for concluding that such expression has or will cause genuine disruption that interferes with school operations or the rights of others.

For more information on this topic or other legal topics, contact Matt Hoffman at mhoffman@tuckerlaw.com.