



MEMORANDUM

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Religious Clothing at School

Public school students retain their constitutionally protected right to freedom of speech and expression – including the right to wear Christian t-shirts and other religious paraphernalia. The ACLJ continues to represent students around the country whose constitutional rights are being violated by school officials that wish to squelch their religious speech.

The Supreme Court of the United States has long held that public school students retain their constitutionally protected right to freedom of speech and expression. *See, e.g., Morse v. Frederick*, 551 U.S. 393, 396 (2007); *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98, 107 (2001); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988); *Bethel Sch. Dist. v. Fraser*, 478 U.S. 675, 682 (1986); *Widmar v. Vincent*, 454 U.S. 263, 276 (1981) This includes the right to wear Christian t-shirts and other religious paraphernalia. *See generally Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) (allowing students the right to wear black armbands to school in protest of the Vietnam war).

The seminal case regarding students’ speech rights is *Tinker v. Des Moines Independent School District*. *See id.* In *Tinker*, students wore black armbands on their sleeves to exhibit their disapproval of the Vietnam War. As a result, the students were sent home and suspended from school, and were not allowed to return to school so long as they wore the armbands. *Id.* at 504. Ruling in the students favor, the Supreme Court in *Tinker* held that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Id.* at 506.

School officials do not possess complete authority over students, and students may not be required to express only those sentiments that are officially approved. In fact, school officials can only restrict student speech if it will “materially or substantially disrupt school discipline.” *Id.* at 509 (quoting *Burnside v. Byars*, 363 F.2d 744, 749 (5th Cir. 1966)). “When [a student] is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions” *Id.* at 512–13.

The fact that a student’s speech is religious—from a Christian statement on a t-shirt to the symbol of the cross—does not lessen its protection under the First Amendment, even when that speech takes place on a public school campus. *See Widmar*, 454 U.S. at 268–69 (citing *Heffron v. Int’l Soc’y for Krishna Consciousness, Inc.*, 452 U.S. 640 (1981)); *see also Bd. of Educ. v. Mergens*, 496 U.S. 226 (1990). As the Supreme Court has explained,

[P]rivate religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression. Indeed, in Anglo-American history, at least, government suppression of speech has so commonly been directed precisely at religious speech that a free-speech clause without religion would be Hamlet without the prince.

Capitol Square & Advisory Bd. v. Pinette, 515 U.S. 753, 760 (1995) (plurality opinion) (internal citations omitted); *see also Mergens*, 496 U.S. at 250. In fact, the right to persuade, advocate, or evangelize a religious viewpoint implicates the very reason the First Amendment was adopted.

Accordingly, a school may not censor student expression because of its religious content unless the school can demonstrate that the speech falls within one of a few narrow exceptions (*e.g.*, the speech causes material disruption, violates the rights of others, is vulgar, or advocates illegal conduct). *Morse*, 551 U.S. 393; *Hazelwood Sch. Dist.*, 484 U.S. 260; *Fraser*, 478 U.S. 675. Since the Supreme Court decided *Tinker*, courts have upheld the free speech rights of students to wear clothing and paraphernalia with controversial messages in numerous cases, such as:

- wearing a t-shirt with the phrase “Be Happy, Not Gay,” *Nuxoll v. Indian Prairie Sch. Dist.*, 523 F.3d 668, 676 (7th Cir. 2008);
- wearing a button to school featuring a picture of the Hitler Youth to protest the school’s uniform policy, *DePinto v. Bayonne Bd. of Educ.*, 514 F. Supp. 2d 633 (D.N.J. 2007);
- wearing a t-shirt that bore images of cocaine and alcohol and suggested that President Bush had used them, *Guiles v. Marineau*, 461 F.3d 320 (2d Cir. 2006);

- wearing a pro-life t-shirt with the phrases: “ABORTION IS HOMICIDE,” “You will not silence my message,” “You will not mock my God,” “You will stop killing my generation,” and “Rock for Life!”, *K.D. v. Fillmore Cent. Sch. Dist.*, No. 05-CV-0336(E), 2005 WL 2175166 (W.D.N.Y. Sept. 6, 2005);
- wearing a t-shirt with the phrases: “INTOLERANT ... Jesus said ... I am the way, the truth and the life. John 14:6” and “Homosexuality is a sin! Islam is a lie! Abortion is murder! Some issues are just black and white!”, *Nixon v. N. Local Sch. Dist. Bd. of Educ.*, 383 F. Supp. 2d 965, 967 (S.D. Ohio 2005);
- wearing a t-shirt containing President Bush’s photo with the caption “International Terrorist,” *Barber v. Dearborn Pub. Schs.*, 286 F. Supp. 2d 847 (E.D. Mich. 2003);
- wearing a “scab” button to protest the school’s hiring of substitute teachers during a strike, *Chandler v. McMinnville Sch. Dist.*, 978 F.2d 524 (9th Cir. 1992);
- wearing a t-shirt displaying Jeff Foxworthy’s “Redneck” humor, *Sypniewski v. Warren Hills Reg’l Bd. of Educ.*, 307 F.3d 243 (3d Cir. 2002); and
- wearing a Rosary outside clothing despite school officials considering Rosaries worn outside of clothing to be “gang-related apparel,” *Chalifoux v. New Chaney Indep. Sch. Dist.*, 976 F. Supp. 659 (S.D. Tex. 1997).

School officials “cannot suppress ‘expressions of feelings with which they do not wish to contend,’” *Tinker*, 393 U.S. at 511 (quoting *Burnside*, 363 U.S. at 749.), or “prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Texas v. Johnson*, 491 U.S. 397, 414 (1989). As the Supreme Court has noted, “[t]he First Amendment protects expression, be it of the popular variety or not.” *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 660 (2000). In other words, the fact that student expression may touch upon controversial matters is *more* reason to uphold the First Amendment’s protections, not *less*. In light of these cases, a student’s right to wear a Christian t-shirt or other religious paraphernalia is protected by the First Amendment. Rarely, if ever, will wearing a Christian t-shirt materially disrupt classwork, cause substantial disorder, or violate the rights of other students.

Moreover, school dress code policies that are overly broad and give school administrators unbridled discretion in prohibiting certain clothing may be unconstitutionally vague. A New York federal district court found that a school code that prohibited “[a]ny activity, affiliation and/or communication in connection with a non-school sanctioned club/group, including fraternal organizations or gangs” was unconstitutional because it gave administrators too much

discretion in implementing the policy and included vague terms. *Lopez v. Bay Shore Union Free Sch. Dist.*, 668 F. Supp. 2d 406, 421 (E.D. N.Y. 2009) (citing *Chalifoux*, 976 F. Supp. at 668).

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