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## **U.S. Supreme Court declines to review case upholding student dress code**

*By James C. Schwellenbach*

The United States Supreme Court recently declined to review, and therefore let stand, an August 2009 decision by the Fifth Circuit Court of Appeals, *Palmer v. Waxahachie Independent Community School District*,<sup>1</sup> that gives schools in that circuit broad authority to implement dress codes, even when those dress codes severely limit student expression.

### **Facts**

The school district in this case implemented a dress code that prohibited shirts with printed messages, professional sports team logos, and university messages. The dress code permitted shirts approved by the school principal that promoted school-sponsored clubs, organizations and teams, as well as school “spirit.” It also allowed logos smaller than two inches by two inches. The dress code did not ban political pins, buttons, bumper stickers, or wrist bands. Those items were analyzed under another District policy prohibiting any item that is distracting, sexually explicit, or promotes violation of school rules.

In response to the dress code, a student, Paul Palmer, submitted three shirts for review and approval – a John Edwards for President T-shirt, a John Edwards for President polo shirt, and a T-shirt with “Freedom of Speech” printed on the front and the text of the First Amendment on the back. The district rejected all three as violating the school’s dress code. The student sued the school district, alleging that the dress code violated his freedom of speech under the First Amendment. The school district prevailed at the federal District Court level and the student appealed that decision to the Fifth Circuit.

### **The decision**

The Fifth Circuit upheld the dress code. The court first noted that in every school-speech case to reach the Supreme Court since *Tinker v. Des Moines*,<sup>2</sup> the Court had expanded the right of schools to regulate student expression by extending the kinds of speech that schools can prohibit. The court next noted that a school’s authority to limit speech is not restricted to the specific types of speech prohibited by that line of cases, meaning that schools are not limited to only restricting student speech that is disruptive, lewd, school-sponsored, or drug-related.<sup>3</sup>

In addition to these content-specific restrictions on student speech approved by the Supreme Court, the Fifth Circuit made it clear that, in its opinion, schools can sometimes institute restrictions that are content-neutral, without running afoul of the First Amendment. Such content-neutral restrictions must, however, meet three important requirements. First, the dress code must further an important or substantial interest of the school. Second, it must be unrelated to the suppression of student expression. And, third, it must be no more restrictive than necessary to facilitate the important government interest.

Here, the Fifth Circuit found first that the dress code was in fact content-neutral. The dress code did not differentiate based on the content of the speech, nor were the dress code's restrictions based on the school's disagreement with the message the restricted speech conveyed.

Turning to the question of whether the dress code furthered an important school interest, the court noted that the preamble to the dress code stated that it was adopted to "maintain an orderly and safe learning environment, increase the focus on instruction, promote safety and life-long learning, and encourage professional and responsible dress for all students." The court noted that, when analyzing the reasons for school policies, "courts should give substantial deference to schools." The court went on to find that the district's stated purposes were all "important or substantial" interests of the school. The court also found that these interests are not undermined by the fact that students can wear buttons, pins and wrist bands that do contain messages, within certain limits.

The student did not argue that the dress code was intended to suppress student expression, so the court did not consider that issue. Turning to the third issue, whether the dress code was more restrictive than necessary to achieve its purposes, the court found that it was not. This was because, the court noted, students remain free to wear what they want after school hours, and students may still express their views in other ways – buttons, pins, oral discussions – during the school day.

The court also rejected what it termed the "perverse reasoning" put forth by the student that the dress code was unconstitutional because it did not go far enough and restrict *all* student expression during school hours. To establish such a legal principle, the court found, would lead to a "race-to-the-bottom," in which schools would rush to impose the strictest dress codes possible or simply require students to wear uniforms.

## Conclusion

It would be wrong to read too much into the Supreme Court's decision not to review the Fifth Circuit's decision. It does suggest, however, that the Court may not disagree with the Fifth Circuit's legal reasoning or the outcome. Remember, too, that the Fifth Circuit's decision is not binding on courts outside that Circuit. It may, however, prove persuasive to courts here, and elsewhere, that are asked to review similar restrictions on student speech. ■

### Endnotes

1. 579 F.3d 502 (5th Cir. 2009).
2. 393 U.S. 503 (1969).
3. See *Tinker*, 393 U.S. 503 (1969) (disruptive speech); *Bethel School District v. Frasier*, 478 U.S. 675 (1986) (lewd speech); *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260 (1988) (school-sponsored speech); and *Morse v. Frederick*, 127 S. Ct. 2618 (2007) (drug-related speech).