

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
PANAMA CITY DIVISION**

HEATHER GILLMAN, through next  
friend and mother, Ardena Gillman,

Plaintiff,

vs.

CASE NO. 5:08cv34-RS-MD

SCHOOL BOARD FOR HOLMES  
COUNTY, FLORIDA,

Defendant.

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**OPINION AND ORDER**

The question presented is whether a public high school may prohibit students from wearing or displaying t-shirts, armbands, stickers, or buttons containing messages and symbols which advocate the acceptance of and fair treatment for persons who are homosexual.

**I. Background**

Plaintiff Heather Gillman, through her mother, Ardena Gillman, has sued Defendant School Board for Holmes County, Florida, alleging that the School Board has deprived her of her right to free speech and political expression and has engaged in viewpoint-based discrimination, in violation of the First and Fourteenth Amendments to the United States Constitution. Gillman is an eleventh grade student at Ponce de Leon High School, a public school in a rural community in the Florida

panhandle serving approximately four hundred students in grades six through twelve. Gillman, who identifies herself as heterosexual, contends that the School Board and the principal of Ponce De Leon, David Davis, unlawfully prohibited her and other students from wearing or displaying t-shirts, armbands, stickers, or buttons containing slogans and symbols which advocate the acceptance of and fair treatment for persons who are homosexual. Banned from the school are rainbows, pink triangles, and the following slogans: "Equal, Not Special Rights," "Gay? Fine By Me," "Gay Pride" or "GP," "I Support My Gay Friends," "I Support Gays," "God Loves Me Just the Way I Am," "I'm Straight, But I Vote Pro-Gay," "I Support Equal Marriage Rights," "Pro-Gay Marriage," "Sexual Orientation is Not a Choice. Religion, However, Is."

## II. Facts

This case arose from events involving a homosexual student at Ponce de Leon High School on Friday, September 7, 2007. The twelfth-grade student, Jane Doe, reported to a teacher's aide that she had been taunted by a group of approximately five middle school students because of her sexual orientation. The middle school students allegedly told Jane that "dykes," such as herself, were "nasty," "gross," and "sick." The teacher's aide reported the incident to Principal David Davis.

At the end of the school day on the following Monday, September 10, 2007, Davis called Jane into his office. Davis asked Jane if she had told the teacher's aide that she identified herself as a lesbian. Jane answered, "Yes." Davis then asked, "Are you a lesbian?" Jane again answered, "Yes." Davis counseled Jane that it was not "right" to be homosexual. He then questioned Jane about whether her parents

were aware of her sexual orientation. When Jane answered in the negative, Davis asked Jane for her parents' telephone number so that he could call them and inform them of her sexual orientation.<sup>1</sup> Davis also instructed Jane to "stay away" from the middle school students or that he would suspend her. Jane left Davis's office in tears.

Jane was not present at school the following day because her sister had surgery. However, Davis's rebuke of Jane on the basis of her sexual orientation became known to the student body. A false rumor circulated that Jane was absent from school because Davis had suspended her for being homosexual. Numerous students expressed their support for Jane by writing "GP" or "Gay Pride" on their bodies, wearing t-shirts with messages supportive of gay rights, yelling "Gay Pride" in the hallways, circulating petitions to demonstrate support for gay rights, and creating signs with messages supporting homosexuals.

On Tuesday, September 11, 2007, a rumor circulated among the student body that Davis had invited an anti-gay preacher from a local church to speak at a mandatory assembly on Wednesday, September 12, 2007. A silent bulletin on the video monitors in each classroom stated that a "morality assembly" would be held at the end of the day on Wednesday.

During lunch, on Wednesday, September 12, 2007, a group of Jane's friends discussed the prospect of peacefully walking out of the assembly in protest. Because the preacher did not discuss issues relating to homosexuality at the assembly, and because Davis instructed students that a walk-out would not be tolerated, no students walked out in protest, and the assembly proceeded without

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<sup>1</sup>Testimony at trial revealed that Jane's father threatened to kick Jane out of the house upon learning of his daughter's sexual orientation.

incident.

Following the assembly, Davis began investigating what had come to be known as the “Gay Pride” movement at the school. He interviewed approximately thirty students, interrogated them about their sexual orientations, and questioned them about their involvement in the planned walk-out of the assembly and their activities in relation to the movement. During those meetings, Davis instructed students who were homosexual not to discuss their sexual orientations. He also prohibited students from wearing rainbow belts or writing “Gay Pride” or “GP” on their arms and notebooks. He required students to wash “GP” or “Gay Pride” from their arms and hands and lifted the shirts of female students to verify that no such writings were present on their bodies.

One of the students that Davis questioned was Gillman’s cousin, who identifies as homosexual. Davis questioned Gillman’s cousin about her sexual orientation. Davis stated that being gay was against the Bible and that it was not right. He expressed his hope that Gillman’s cousin would not “go down the road” of being a homosexual. Davis then instructed her not to discuss her sexual orientation with any students at the school, not to say “Gay Pride” or write it on her body or school materials, and not to wear her rainbow-colored belt. Davis warned Gillman’s cousin that if she violated his instructions, he would suspend her from school.

On Friday, September 21, 2007, and Monday, September 24, 2007, Davis suspended eleven students, including Gillman’s cousin, for five school days each as punishment for their involvement in the “Gay Pride” movement. As grounds for the suspensions, Davis explained that the students belonged to a “secret society” or “illegal organization” forbidden by school board policy; had threatened to walk out

of an assembly; and had disrupted the school. Davis told the mother of a student whom he had suspended that he could secretly “send her [daughter] off to a private Christian school down in Tallahassee” or to the juvenile detention center and that “if there was a man in your house, your children were in church, you wouldn’t be having any of these gay issues.”

On Wednesday, September 26, 2007, Gillman wore a rainbow belt and a handmade shirt with the slogan “I Support Gays” to school as an expression of support for her cousin, her acceptance of homosexuals, and her belief that homosexuals should be afforded equal and fair treatment. On Thursday and Friday of that week, Gillman wore a rainbow belt to school to express the same beliefs. Gillman’s conduct did not cause any disruption at the school or other negative reactions, and she was not reprimanded or punished.

In light of Davis’s prohibition of messages relating to the support and acceptance of homosexuals, Gillman sought clarification from the School Board about its own position on the matter. On November 2, 2007, Gillman and her cousin (who had previously been suspended by Davis), through legal counsel, sent a letter to the attorney for the School Board. The letter requested guidance on which phrases and symbols students could display at school without being disciplined. Specifically, Gillman sought permission from the School Board to display rainbows, pink triangles, and the following slogans: “Equal, Not Special Rights,” “Gay? Fine By Me,” “Gay Pride” or “GP,” “I Support My Gay Friends,” “I Support Gays,” “God Loves Me Just the Way I Am,” “I’m Straight, But I Vote Pro-Gay,” “I Support Equal Marriage Rights,” “Pro-Gay Marriage,” “Sexual Orientation is Not a Choice. Religion, However, Is.”

By letter dated November 12, 2007, the School Board responded that none of

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