

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

CANDICE MICHELLE HARDWICK, )  
by and through her Parents and Guardians )  
DARYL LEWIS HARDWICK and )  
PRISCILLA LEA HARDWICK, )

Plaintiff, )

vs. )

Civil Action No.: 4:06-cv-1042-TLW

MARTHA HEYWARD in her individual )  
capacity as Principal of Latta Middle )  
School, )

GEORGE H. LIEBENROOD, JR., in his )  
individual capacity as Principal of Latta )  
High School, and the )

BOARD OF TRUSTEES OF LATTA )  
SCHOOL DISTRICT )  
(Dillon County No. 3), )

Defendants. )  

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**ORDER**

The plaintiff, Candice Michelle Hardwick (“Hardwick” or “plaintiff”), by and through her parents, Daryl Lewis Hardwick and Priscilla Lea Hardwick, instituted this lawsuit for damages and injunctive relief against Martha Heyward, in her individual capacity as Principal of Latta Middle School; George H. Liebenrood, Jr., in his individual capacity as Principal of Latta High School; and the Board of Trustees of Latta School District (Dillon County No. 3)

(“defendants”), which is sued in its official capacity.<sup>1</sup> The plaintiff alleges the defendants violated her constitutional rights by restricting her wearing of clothing containing images of the Confederate flag and what she describes in the First Amended Complaint as “protest” clothing. In her First Amended Complaint, the plaintiff alleges the following causes of action: violation of her First Amendment right to freedom of speech and expression; violation of her rights under the South Carolina Constitution; violation of her Fourteenth Amendment right to due process of law; violation of her Fourteenth Amendment right to equal protection under the law; and violation of the reserved right to express heritage.<sup>2</sup> (Am. Compl., Doc. # 18).

The defendants filed their first motion for summary judgment on June 8, 2009. (Doc. # 120). On September 8, 2009, this Court filed an Order granting the defendants’ motion for summary judgment in which the Court concluded that the defendants did not violate the plaintiff’s First Amendment rights by prohibiting her from wearing clothing displaying the Confederate flag (“September 2009 Order”). Hardwick ex rel. Hardwick v. Heyward, 674 F. Supp. 2d 725 (D.S.C. 2009) (Doc. # 150).

The plaintiff filed a notice of appeal. (Doc. # 156). On December 10, 2010, the United States Court of Appeals for the Fourth Circuit issued an opinion dismissing the appeal and

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<sup>1</sup> In her initial complaint, the plaintiff names defendants Heyward and Liebenrood in their official and individual capacities. Compl. ¶¶ 1, 3-4 (Doc. # 1). Although the caption of her First Amended Complaint still suggests the lawsuit is against defendants Heyward and Liebenrood in both capacities, the body of the First Amended Complaint clearly indicates Hardwick is suing these defendants in their individual capacities only. Am Compl. ¶¶ 1, 3-4 (Doc. # 18).

<sup>2</sup> In her response to a motion to dismiss filed by the defendants, the plaintiff agreed to dismiss Count Five of her First Amended Complaint (violation of the reserved right to express heritage). (Doc. # 90). The plaintiff also agreed that her claims for declaratory and injunctive relief were moot. (Doc. # 90). In its Order denying the defendants’ motion to dismiss, the Court noted the plaintiff stipulated to the dismissal of Count Five and stipulated that her claims for declaratory and injunctive relief were moot. (Doc. # 104).

remanding the case. More specifically, the Fourth Circuit stated that “[a]lthough the district court granted summary judgment on [the plaintiff]’s confederate flag clothing claims, it has not yet ruled (or been asked to rule) on her protest clothing First Amendment damages claim.” C.H. ex rel. Hardwick v. Heyward, No. 09-2390, 2010 WL 5066024 (4th Cir. Dec. 10, 2010) (Doc. # 160). The Fourth Circuit also noted this Court may consider on remand whether any of the plaintiff’s other causes of action involve protest clothing. Id. The Fourth Circuit therefore characterized this Court’s September 2009 Order (Doc. # 150) as a partial grant of summary judgment that is interlocutory in nature rather than a final judgment.

In light of the Fourth Circuit’s decision, this Court directed the plaintiff to file a memorandum in support of her position “in relation to the claim(s) remanded back to this Court . . . , specifically addressing the protest clothing First Amendment claim.” (Doc. # 162). On March 15, 2011, the plaintiff filed her memorandum but noted that while she limited her brief to addressing the protest clothing First Amendment claim, she also had a Fourteenth Amendment protest clothing claim which she reserved the right to assert. (Doc. # 175). The Court entered an Order on March 18, 2011, giving the plaintiff twenty days to file a memorandum which addressed her protest clothing Fourteenth Amendment claim and giving the defendants thirty days to then respond. (Doc. # 176). On April 7, 2011, the plaintiff filed a memorandum addressing her protest clothing Fourteenth Amendment claim. (Doc. # 179). After being granted an extension (Doc. # 183), the defendants, on May 13, 2011, filed their response in which they indicate they are seeking summary judgment as to all of the plaintiff’s remaining claims. (Doc. # 185). The plaintiff filed a reply in which she asserted that the defendants should not be able to turn their response into a motion for summary judgment. (Doc. # 189). On July 19, 2011, this

Court entered an Order concluding that the defendants' response (Doc. # 185) is a motion for summary judgment, that the Court would treat the plaintiff's reply (Doc. # 189) as a response in opposition, and giving the plaintiff fourteen days to submit any further response she wished to file in opposition to the defendants' motion. (Doc. # 192). On August 2, 2011, the plaintiff filed an amended response in opposition to the defendants' motion for summary judgment. (Doc. # 195). On August 11, 2011, the defendants filed a reply to the plaintiff's response in opposition. (Doc. # 198). A hearing on the defendants' motion for summary judgment was held on November 18, 2011. (Entry # 204). The Court has considered the applicable law, arguments of counsel, and memoranda submitted. This motion is now ripe for disposition.

### **FACTS**

Plaintiff Candice Michelle Hardwick was a student at Latta Middle School during the 2002-03 and 2003-04 school years and Latta High School during the 2004-05 and 2005-06 school years. (Am. Compl., Doc. # 18). Latta Middle School and Latta High School are located in Dillon County, South Carolina and are part of Dillon School District Number Three, also known as Latta School District. Defendant Martha Heyward ("Heyward") was the principal of Latta Middle School during the events in question, and defendant George H. Liebenrood, Jr. ("Liebenrood") was the principal of Latta High School. Defendant Board of Trustees of Latta School District (Dillon County No. 3) ("Board of Trustees" or "Board") is a "body politic and corporate" that is amenable to suit under South Carolina law. See S.C. Code Ann. § 59-17-10. The Board of Trustees has the authority to manage and control schools within Latta School District. See S.C. Code Ann. § 59-19-10. The plaintiff asserts the Board has the "power to formulate, implement, and interpret a dress code policy for all students." Am. Compl. ¶ 5.

In the First Amended Complaint (“complaint”), the plaintiff alleges numerous incidents when she was asked to cover up or remove shirts with depictions of the Confederate flag. One such instance occurred in early 2003, and three more occurred in January and February 2004. Am. Compl. ¶¶ 16-19.

The first incident involving what the plaintiff describes as a “protest” shirt allegedly occurred in mid-February 2004. Am. Compl. ¶ 20. The plaintiff asserts Heyward denied her the right to wear a protest shirt which contained an image of the United States flag and the words “Old Glory Flew over legalized slavery for 90 years!” (a photo of the shirt is attached to the plaintiff’s original complaint as Exhibit “H” (doc. # 1, attach. 2)). Id. Shortly after wearing this protest shirt, Hardwick alleges she was sent to the office for refusing to change another t-shirt containing the image of the Confederate flag. Id. ¶ 21. Hardwick’s mother allegedly was called and, upon arriving at the school, spoke with the Latta School District Superintendent, Dr. John Kirby, in support of her daughter’s actions. Id. According to the complaint, Hardwick received in-school suspension for the rest of the day and was denied lunch. Id. In early March 2004, the plaintiff asserts she was written up at Heyward’s direction for wearing a different shirt with the Confederate flag on it, made to change the shirt, and threatened with removal from the track team if she wore another Confederate shirt. Id. ¶ 22.

After this incident, Hardwick’s parents wrote a letter to Superintendent Kirby, dated April 12, 2004, in which they indicated their belief that their daughter had a First Amendment right to wear Confederate items (a copy of the letter is attached to the plaintiff’s original complaint as Exhibit “L” (doc. # 1, attach. 3)). They requested that Kirby remove any disciplinary record imposed relating to Hardwick’s wearing of Confederate clothing and

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