

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

D.B., a minor, by and through his parent)
and guardian, SHARON BROGDON,)
R.W. and C.W., both minors, by and through)
their parent and guardian ROGER WHITE,)

Plaintiffs,)

v.)

No.: 3:06-CV-75
(VARLAN/SHIRLEY)

STEVE LAFON, in his individual and)
official capacity; ALVIN HORD, in his)
official capacity, and BLOUNT COUNTY)
SCHOOL BOARD,)

Defendants.)

MEMORANDUM OPINION

Plaintiffs, three students at William Blount High School in Blount County, Tennessee, allege defendants, Blount County school officials, are violating plaintiffs’ First and Fourteenth Amendment rights by prohibiting them from wearing clothing depicting the confederate battle flag.

This civil action is now before the Court for consideration of plaintiffs’ motion for preliminary injunction and temporary restraining order [Doc. 3]. Plaintiffs seek an order enjoining defendants “to cease interfering with [p]laintiffs’ and other students’ constitutionally[-]protected right to express themselves through attire that reflects their political beliefs.” Doc. 3 at 4. Plaintiffs argue, *inter alia*, that a preliminary injunction is appropriate because there is a substantial likelihood that plaintiffs will prevail on the merits.

See id. at 8-9. Specifically, plaintiffs argue that the ban is unjustified because defendants have failed to identify any disruption at the high school caused by depictions of the flag; and even if such disruptions may be shown, defendants are engaging in viewpoint discrimination because they have banned depictions of the confederate battle flag but not certain other political symbols, such as Malcolm X symbols and foreign national flags. *See id.*

Defendants respond in opposition to the motion by pointing to two facts. First, defendants state that during the 2004-05 school year, William Blount High School experienced a number of racially motivated incidents directed against African-American students, including fighting and threats, that resulted in a school lockdown involving law enforcement, as well as complaints of racial harassment to the board of education and federal officials. *See Doc. 7-3.* Second, defendants state that there have been 452 dress code violations, 23 of which involved the confederate battle flag, but there have been no reports of violations involving “Malcolm X words . . . or international flags.” *See Doc. 7-2 at 2.*

The issues have been briefed thoroughly by both sides, and the Court heard oral argument on May 4, 2006. Thus, the motion now is ripe for disposition. For the reasons discussed herein, the Court will deny plaintiffs’ motion for preliminary injunction and temporary restraining order.

I. Relevant Facts¹

The Blount County Board of Education has adopted a dress code that applies to all high school students. *See* Doc. 7-3 at 5. That dress code prohibits students from wearing certain items, including the following:

- f. clothing which exhibits written, pictorial, or implied references to illegal substances, drugs or alcohol, negative slogans, vulgarities, or causes disruption to the educational process; wearing apparel that is sexually suggestive or that features crude or vulgar commercial lettering or printing and/or pictures that depict drugs, tobacco, alcohol beverages, racial/ethnic slurs or gang affiliation
.....

Id. The ban at issue in this case was imposed pursuant to the provision prohibiting clothing that “causes disruption to the educational process.” *Id.* at 3.

This action was initiated by the three plaintiffs with the filing of their complaint on March 2, 2006. *See* Doc. 1. In the complaint, plaintiffs allege that on May 30, 2005, during the 2004-05 school year, they, along with the other students at William Blount High School, were informed that depictions of the confederate battle flag on students’ clothing would be considered a violation of the school’s dress code, even though such depictions were not previously considered violations. *See id.* at 3-4. On September 1, 2005, during the 2005-06 school year, despite the prohibition and “to express pride in his southern heritage,” plaintiff D.B. wore a shirt depicting the confederate battle flag, two dogs, and the words “Guarding

¹ These facts are drawn from the parties’ respective pleadings, briefs, and exhibits. *See* Docs. 1, 3, 7, 15. Prior to and at the outset of the hearing on the instant motion conducted on May 4, 2006, the Court specifically invited both parties to present additional evidence if either party thought it was necessary. Both parties, however, declined by indicating that they would rely only on the facts contained in their respective briefs and exhibits.

our Southern Heritage.” *See id.* at 4. He was allegedly confronted by defendant LaFon, the school’s principal, who reminded D.B. about the ban, told him to turn his shirt inside out or take it off, and threatened him with suspension if he refused. *See id.* A similar incident involving plaintiff C.W. allegedly occurred on January 13, 2006. *See id.* There is no evidence whether plaintiff R.W. had a similar experience.

Plaintiffs allege that William Blount High School permits other expressions “of political or controversial significance,” and there have been no disruptions resulting from the depiction of the confederate battle flag, but nevertheless defendants implemented the ban. *See id.* at 4-5. Plaintiffs D.B. and C.W. also explain in their declarations that they have seen other students wearing foreign flags, Malcolm X symbols, and political slogans. Docs. 1-2, 1-3. Consequently, plaintiffs allege violations of free speech, equal protection, and due process, and seek injunctive relief, a declaratory judgment, and damages. *See id.* at 5-8.

At the same time the complaint was filed, plaintiffs filed the instant motion. *See* Doc. 3. Defendants have responded in opposition to the motion and have included two affidavits. *See* Doc. 7. In the first affidavit, defendant LaFon explains that defendant Hord directed him to apply the dress code without viewpoint discrimination and that during the 2005-06 school year there were “over 452 documented violations of the dress code policy . . . , twenty-three (23) of which involved the wearing of the ‘Confederate flag’ by students.” Doc. 7-2 at 2. Defendant LaFon goes on to explain that while “there have been no reported incidents of students wearing clothing emblazoned with Malcolm X words or caricatures[] or

international flags[,] [t]here have been numerous non-documented incidents of violations . . . beyond those documented.” *Id.*

In the second affidavit, defendant Hord, the director of Blount County Schools, describes racial tensions at William Blount High School. *See* Doc. 7-3 at 2-3. According to the affidavit, on February 22, 2005, there was a “physical altercation between a white student and an African-American student,” which resulted in a civil rights complaint against the school system. *Id.* at 2. On April 7, 2005, defendant Hord requested that the school be locked down with the presence of sheriff’s deputies “due to threats of violence against African-American students.” *Id.* at 3.

For the remainder of the 2004-05 school year, defendant Hord explains that sheriff’s deputies remained at the school, and there were “multiple racially motivated threats and physical altercations” that resulted in suspensions and civil rights complaints and a civil lawsuit that alleges the school system is “a racially hostile educational environment.” *Id.* at 2, 3. During the 2005-06 school year, two more racial harassment complaints were made to the board of education. Based upon those events, defendant Hord concluded that “the wearing of the ‘Confederate flag’ by students during school hours has a significant disruptive effect on the proper education environment of the students at the Blount County high school.” *Id.* at 3.

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