

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

A.M., <i>et al.</i> ,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	Civil Action No. 3:07-CV-0272-N
	§	
PAUL ELLIOTT CASH, <i>et al.</i> ,	§	
	§	
Defendants.	§	

ORDER

Plaintiffs A.M., Richard Dale McAllum, Shelby Voda McCallum, A.T., Darrell Ray Thomas, and Joni Ann Thomas (collectively, “Plaintiffs”) filed a Motion for Preliminary Injunction [13] on April 9, 2007. Because the Court concludes that Plaintiffs are unlikely to succeed on the merits of their First and Fourteenth Amendment claims, the Court denies the motion.

I. ORIGINS OF THE CASE

This case arises from an incident in which Burleson High School (“BHS”) officials enforced the BHS dress code against plaintiffs A.M. and A.T.,¹ both students at BHS, by requiring them to stop carrying purses bearing the images of the Confederate battle flag.²

¹ Plaintiffs A.M. and A.T. are the minor children of the other named plaintiffs and are designated by their initials. After the filing of the motion for preliminary injunction, additional plaintiff M.T. intervened, and A.M. and A.T. have graduated.

² The Confederate battle flag, or St. Andrew’s Cross, was not the official flag of the Confederate States of America. See *Coleman v. Miller*, 885 F. Supp 1561, 1564 (N.D. Ga. 1995) (noting the difference between the “Confederate national flag, also known as the ‘Stars

Plaintiffs filed this suit seeking damages and declaratory and injunctive relief, arguing that BHS's enforcement of the dress code violates A.M. and A.T.'s constitutional rights under the First and Fourteenth Amendments.

A. Racial Hostilities at BHS

The Burleson Independent School District, of which BHS is a part, has adopted a uniform dress code that applies to all students at BHS. The dress code states that "there will be no tolerance for clothing or accessories that has inappropriate symbolism, especially that which discriminates against other students based on race, religion, or sex." App'x to Pls.' Mot. for Prelim. Inj., at 19. Recent history of racial hostility at BHS, coupled with the overt use of the Confederate battle flag as a symbol of that hostility, has led the school to interpret this language to prohibit the display of the Confederate battle flag.

As shown in the preliminary injunction record, Burleson ISD first began experiencing noticeable racial tensions during the 2002-2003 academic year when a student at BHS waived the Confederate battle flag in the face of an African-American athlete from a rival school. As a result of the incident, the principal of BHS met with members of the opposing

and Bars'" and the Confederate battle flag carried by Confederate troops during the civil war, which "depict[ed] a blue St. Andrew's cross on a red field."). During the last half of the Twentieth Century, however, it became more associated in the public mind with the Confederacy than the official flag. See Tyler T. Ochoa, *Patent and Copyright Term Extension and the Constitution: A Historical Perspective*, 49 J. COPYRIGHT SOC'Y AM. 19, 125 (2001) (explaining that the Confederate battle flag is "more familiar" than the Stars and Bars); Alexander Tsesis, *The Problem of Confederate Symbols: A Thirteenth Amendment Approach*, 75 TEMP. L. REV. 539, 601 (discussing the "revival of interest in Confederate symbolism during the 1950's," as well as the incorporation of the Confederate battle flag into many southern state flags as an expression of state pride).

team, as well as with the principal of the school, to apologize for the BHS student's behavior. Following this incident, displays of the Confederate battle flag by BHS students continued at athletic events. According to BHS officials, these displays were apparently used as a means of racial intimidation, as the displays occurred only in situations where the opposing team was predominantly African-American.

Displays of the Confederate battle flag occurred both on and off campus throughout the 2002-2003 academic year. At times, such displays provoked violence between BHS students and African-American students from other schools. For instance, at an athletic event during the 2002-2003 school year, a fight broke out between BHS students and students from a predominantly African-American school.

Furthermore, as a result of the evident racial hostilities between BHS students and students from predominantly African-American schools, the issue of race relations was raised at a district University Interscholastic League ("UIL") meeting. Specifically, attendees of the meeting noted that BHS had a reputation within the district as being openly hostile to African-Americans, as evidenced by the display of the Confederate battle flag during athletic events.

BHS has continued to experience racial hostilities, both before and after the incident in which BHS enforced the dress code against A.M. and A.T. According to BHS, racial hostilities, including the use of racial slurs and other incidents involving the Confederate battle flag, have continued since the beginning of the 2004-2005 school year. For example, on the day following the incident with A.M. and A.T. – Martin Luther King Day –

unidentified students raised the Confederate battle flag on the BHS flag pole and spray painted a symbol resembling the Confederate battle flag's "stars and bars" on the concrete near the pole. Additionally, a variety of racially hostile graffiti has appeared in the boys' bathroom at BHS, including the phrases "the South will rise again" and "the white man marches on."

B. BHS's Enforcement of the Dress Code Against A.M. and A.T.

On the first day of school in January of 2006, A.M. and A.T. came to school carrying purses bearing the images of the Confederate battle flag. According to Plaintiffs, A.M. and A.T. wore their purses as an expression of pride in their Southern heritage and did not intend to make any sort of racial statement by the display. A.M. and A.T. were referred to the campus administration for appropriate action pursuant to the prohibition of Confederate battle flag displays. Although the school gave both students the opportunity to call home and have their purses retrieved, or to leave the purses in the office and retrieve them at the end of the day, both students opted to go home for the day, refusing to relinquish the purses. They were not suspended.

Plaintiffs appealed the prohibition on displays of the Confederate battle flag to the principal of BHS, to the Superintendent, and to the Burleson ISD Board of Trustees. These appeals were denied. Plaintiffs then filed suit in this Court, and now move for the Court to issue a preliminary injunction enjoining BHS from enforcing the Confederate battle flag prohibition.

II. STANDARD FOR PRELIMINARY INJUNCTION

The decision to grant or deny a preliminary injunction lies within the sound discretion of the district court. *Miss. Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 621 (5th Cir. 1985). A preliminary injunction is an extraordinary and drastic remedy, not to be granted routinely, but only when the movant, by a clear showing, carries the burden of persuasion. *Harris County v. CarMax Auto Superstores, Inc.*, 177 F.3d 306, 312 (5th Cir. 1999). To obtain a preliminary injunction, the movant must establish the following: (1) a substantial likelihood that the movant will ultimately prevail on the merits; (2) a substantial threat that the movant will suffer irreparable injury if the preliminary injunction is denied; (3) that the potential injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) that granting the preliminary injunction will not disserve the public interest. *Guy Carpenter & Co. v. Provenzale*, 334 F.3d 459, 464 (5th Cir. 2003).³

III. PLAINTIFFS ARE NOT LIKELY TO SUCCEED ON THEIR FIRST AMENDMENT CLAIM

A special body of jurisprudence surrounds First Amendment disputes arising in public school settings. High school students, like all Americans, enjoy the freedoms afforded by the First Amendment. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969) (“It can hardly be argued that teachers and students shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”). However, “the constitutional

³Because the Court finds that Plaintiffs fail to show a likelihood of success on the merits, it does not reach the other three factors.

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