

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CANDICE MICHELLE HARDWICK, by
and through her Parents and
Guardians Daryl Lewis Hardwick
and Priscilla Lea Hardwick,

Plaintiff-Appellant,

v.

MARTHA HEYWARD, in her
individual capacity and in her
official capacity as Principal of
Latta Middle School; GEORGE H.
LIEBENROOD, JR., in his individual
capacity and in his official
capacity as Principal of Latta High
School; BOARD OF TRUSTEES OF
LATTA SCHOOL DISTRICT DILLON
COUNTY No. 3,

Defendants-Appellees.

No. 12-1445

Appeal from the United States District Court
for the District of South Carolina, at Florence.
Terry L. Wooten, District Judge.
(4:06-cv-01042-TLW)

Argued: January 30, 2013

Decided: March 25, 2013

Before NIEMEYER, SHEDD, and AGEE, Circuit Judges.

Affirmed by published opinion. Judge Shedd wrote the opinion, in which Judge Niemeyer and Judge Agee joined.

COUNSEL

ARGUED: Frederick Daniel Taylor, STALLINGS, BUSH & RANDALL, PC, Suffolk, Virginia, for Appellant. Vinton D. Lide, LIDE & PAULEY, LLC, Lexington, South Carolina, for Appellees. **ON BRIEF:** Kirk D. Lyons, SOUTHERN LEGAL RESOURCE CENTER, INC., Black Mountain, North Carolina; Lourie A. Salley, III, Lexington, South Carolina, for Appellant. Michael S. Pauley, LIDE & PAULEY, LLC, Lexington, South Carolina; Vernie L. Williams, CHILDS & HALLIGAN, Columbia, South Carolina, for Appellees.

OPINION

SHEDD, Circuit Judge:

On multiple occasions at Latta Middle School and Latta High School in Latta, South Carolina, school officials prohibited Candice Hardwick from wearing and on one occasion punished her for wearing Confederate flag¹ shirts at school. Candice Hardwick, by and through her parents, brought this action against the school principals and the school board pursuant to 42 U.S.C. § 1983, alleging violations of her First Amendment right to free speech and expression and her Fourteenth Amendment rights to due process and equal protection. The district court granted summary judgment to the defendants, and Candice Hardwick now appeals. Because we con-

¹Throughout this opinion, we refer to the Confederate battle flag simply as the "Confederate flag." We refer to other Confederate flags by their specific names.

clude that the school officials complied with the requirements for regulating student speech as established in *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), and that the school dress codes and their enforcement did not violate the Fourteenth Amendment, we affirm.

I.

We review the facts in the light most favorable to Candice Hardwick, the nonmoving party. See *Laing v. Fed. Express Corp.*, 703 F.3d 713, 714 (4th Cir. 2013).

A.

Candice Hardwick grew up in Dillon County, South Carolina. She attended Latta Middle School during the 2002-03 and 2003-04 school years before attending Latta High School during the 2004-05 and 2005-06 school years. Both schools are located in Latta, a town of about 1,400 people. These schools are part of the Latta School District,² which had a student population of approximately 1,600 students, almost equally divided between whites and African-Americans, during the time Candice attended Latta schools.

Latta Middle School and Latta High School have dress codes that regulate what clothing students may wear at school. The relevant portion of the middle school policy states, "Generally, student dress is considered appropriate as long as it does not distract others, interfere with the instructional programs, or otherwise cause disruption." J.A. 38. The policy then provides "some examples that are judged to be inappropriate or distracting in the educational setting," which includes "clothing that displays profane language, drugs, tobacco, or alcohol advertisements, sexual innuendoes or anything else deemed to be offensive." J.A. 39. Similarly, the relevant part of the high school policy provides that "students

²The district is also known as Dillon County School District 3.

are to come to school in a neat and clean manner each day. Dress is casual, but some styles, which may be appropriate outside of school, are clearly inappropriate for school. Students may not wear the following: . . . Shirts with obscene/derogatory sayings." J.A. 45.

Starting during the 2002-03 school year at the middle school, school officials on multiple occasions forced Candice to remove Confederate flag shirts and on one occasion punished her for wearing those shirts. The first incident came in early 2003, when Martha Heyward, principal of the middle school, required Candice to remove her "Southern Chicks" shirt, which displayed the Confederate flag. *See* J.A. 46.

More incidents occurred during the 2003-04 school year. On one occasion in January 2004, a teacher required Candice to cover up a "Dixie Angels" shirt, which displayed the Confederate flag. *See* J.A. 47. In early February, Heyward removed Candice from class for wearing a "Southern Girls" shirt, which, like the previous two shirts, displayed the Confederate flag. *See* J.A. 48. Then in mid-February, Candice was sent to the school office and forced to change shirts when she wore a shirt honoring "Black Confederates" that displayed a Confederate flag and a picture of the 1st Louisiana Native Guards, a Confederate regiment consisting mostly of free African-Americans. *See* J.A. 49. Shortly after this incident, Heyward refused to let Candice wear what Candice labeled a "protest shirt," which displayed the American flag with the words "Old Glory" above the flag and "Flew over legalized slavery for 90 years!" underneath it. *See* J.A. 50. In late February, when Candice wore a shirt with a picture of Robert E. Lee and the Confederate flag, Candice refused to change shirts and was given in-school suspension. *See* J.A. 51. Finally, in March, Candice was forced to change a "Girls Rule" shirt that, like her other shirts, displayed the Confederate flag. *See* J.A. 52.

After this series of incidents, Candice's parents sent John Kirby, the superintendent of the school district, a letter stating that Candice's clothing was approved by them and reflected Candice's family heritage and religious beliefs. Harold Kornblut, the chairman of the school board, responded to this letter, explaining that based on a long history of racial tension and the potential for different interpretations of the meaning of the Confederate flag, school officials could prohibit clothing that contained images of that flag. At some time during this exchange of letters, Candice wore a shirt at school after school hours that said "Offended by School Censorship of Southern Heritage," resulting in a school official yelling at her. *See* J.A. 89.³

When Candice began high school in the 2004-05 school year, the controversy over her Confederate flag shirts continued. Candice's parents and Kornblut again exchanged letters in the fall of 2004. Candice's parents asked Kornblut to reconsider the school board's position that Candice could not wear Confederate flag shirts at school. Kornblut's response reaffirmed the school board's position that such clothing was likely to cause a disruption at school and was thus prohibited.

In May of that school year, George Liebenrood, principal of the high school, removed Candice from class for wearing a shirt that read "Daddy's Little Redneck" and displayed the Confederate flag. *See* J.A. 99. In Liebenrood's presence, Candice then produced four more "protest shirts," each of which Liebenrood prohibited Candice from wearing: (1) a shirt saying "Jesus and the Confederate Battle Flag: Banned from Our Schools but Forever in Our Hearts" that displayed the first Confederate national flag, commonly known as the "Stars and Bars," the Bonnie Blue flag, the third Confederate national flag,⁴

³Although this shirt does not display a Confederate flag as clearly as some of the other shirts that Candice wore, the lettering has the red, white, and blue coloring of the Confederate flag and resembles the familiar diagonal cross of the flag.

⁴This flag is a white banner with the Confederate battle flag in the upper-left-hand corner, which has the censor symbol over it as depicted on this shirt, and a vertical red stripe on the far right side of the flag.

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