

APPEALS COURT REAFFIRMS SCHOOL DISTRICT'S DISCRETION OVER LIMITING FREE SPEECH RIGHTS OF STUDENTS

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A federal appeals court has settled the latest tug-of-war between a student's First Amendment right to free speech and her school district's ability to limit that speech in the interests of furthering the school's educational purposes. In *Robertson v. Anderson Mill Elementary School*, 2021 WL 786631 (4th Cir. Mar. 2, 2021) the Fourth Circuit was called upon to decide whether a school district had properly exercised its authority to control the educational process by refusing to publish a fourth-grader's "essay to society" on LGBTQ equality.

The case involved an assignment given to fourth grade students at Anderson Mill Elementary School in Spartanburg, South Carolina. The teacher required the students to write an "essay to society" on any topic of their choosing. The essays would then be compiled into a booklet and distributed to each fourth grade classroom, and copies would be sent home with the students. The plaintiff elected to write her essay about LGBTQ equality because her maternal grandmother is a member of the LGBTQ community. The school's principal vetted the essays before publication of the booklet and determined that the subject matter of the essay was not age-appropriate, so she instructed the plaintiff's teacher to inform the student that the essay would not be published. Plaintiff's parents sued, arguing that the school district had improperly infringed her First Amendment right to free speech.

The District Court dismissed the student's First Amendment claim. On appeal, the Fourth Circuit affirmed that dismissal. The appellate court began its analysis with the Supreme Court's seminal decision in *Hazelwood School District v. Kuhlmeier*, 484 U.S.260 (1988), which set forth the governing test for First Amendment cases arising out of school officials restricting school-sponsored student speech. Under that two-part test, school officials "do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns." *Id.* at 273.

Here, the Fourth Circuit held that the essay was a "school-sponsored expressive activity" because it was a school assignment, and the resulting booklet that was being sent home with the students would appear to be a publication of the school, not just the individual students. Additionally, the essay was part of the school curriculum,

Attorneys

Ryan Cummings
Patrick Hines
Charles H. Kaplan
Ryan Lucinski
Elizabeth McPhail
Aaron Saykin
Gary Schober
Christian Soller

Practices & Industries

Education
Media & First Amendment

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not an independent, unrelated project undertaken by the student on his or her own initiative.

Next, the Court evaluated whether the principal's decision was "reasonably related to legitimate pedagogical concerns." The Court held that the principal's decision was so related because it was motivated, at least in part, by a concern that the topic was not "age appropriate." In *Hazelwood*, the Supreme Court held that schools "must be able to take into account the emotional maturity of the intended audience" when deciding whether to disseminate particular student speech. *Id.* at 272.

As such, the Court held that the school district's decision not to publish the essay was not an unconstitutional infringement of the student's First Amendment rights.

Takeaway: School districts have wide latitude to determine which school-sponsored student speech will be published, and which will not. Provided the school's decision is based, at least in part, on a legitimate educational concern/purpose, the editorial decision will likely be upheld.

For any question you have regarding whether this recent decision impacts any of your organization's activities, please contact [Ryan Cummings](#) (716.848.1665), [Aaron Saykin](#) (716.848.1345), or any member of our [Media and First Amendment](#) practice.