

April 26, 2017

Principal Bobby Wines
Volunteer High School
1050 Volunteer Blvd.
Church Hill, TN 37642

By electronic mail: bobby.wines@hck12.net

Dear Principal Wines,

On behalf of the Youth Free Expression Program, an initiative of the National Coalition Against Censorship that promotes students' First Amendment rights, we write to address an incident in which administrators at Volunteer High School took down a pastel drawing created by an art student. The removal of this drawing calls into question Hawkins County School District's commitment to protecting its students' First Amendment rights to free political and artistic expression.

It is our understanding that an art teacher at Volunteer High School allows each student to display artwork in a display case in the art classroom, and that in this instance the teacher told a senior to create artwork, which would be displayed for two weeks. The teacher did not impose any requirements or constraints on the subject matter of the artwork. The senior elected to display several pieces, including some that depict animals, a clock, and the British flag. One piece was a rainbow motif, upon which the word "GAYDOM" was superimposed. Assistant Principal Mike O'Neill reportedly informed the senior that students had complained about the "GAYDOM" piece and asked the student to remove the piece from the case. The senior complied and sought permission from you to rehang the piece. Permission was allegedly denied because you claimed the piece "disrupted the learning environment," i.e. some students had a negative reaction to the rainbow symbol associated with the gay pride movement.

Complaints from students provide no justification for the censorship of student artwork. Although artwork that advocates for gay rights may elicit passionate emotional responses, including negative reactions, it nevertheless enjoys the utmost constitutional protections. If the negative reactions of some viewers provided sufficient grounds for censorship, art that engages with politicized issues such as immigration, abortion, terrorism, and race among others could be purged from our high schools. Granting a heckler's veto for artwork would be counterproductive to the educational process, as it would suppress civic engagement and discussions of sociopolitical controversies. Moreover, it would set a precedent for censoring a broad range of verbal and written material.

There is no "generalized 'hurt feelings' defense to a high school's violation of the First Amendment rights of its students." *Zamecnik v. Indian Prairie School Dist.* 636 F.3d 874, 877 (7th Cir. 2011). In fact, political artwork that generates negative reactions plays an important role in our educational system by promoting political discourse about controversial subjects. Negative reactions may be addressed through education and discussion of the issues at hand, not censorship. Students often benefit by learning to maturely

respond to opinions that they find distasteful—especially in times of intense political polarization—so that they may discuss, debate, and understand controversial and salient issues. Censorship of the senior’s artwork undermines this vital educational goal.

Removal of the senior’s artwork appears to violate the First Amendment. Courts have long recognized that students have the right to express their political views so long as they do so in a non-disruptive manner; students do not “shed their constitutional rights to free speech or expression at the school-house gate.” *Tinker v. Des Moines Independent Community School Dist.* 393 U.S. 503, 506 (1969). Disruption, in this context, amounts to much more than a few students’ “negative reactions.” In order to silence a student’s political speech, schools need to demonstrate that there is “a real or substantial threat of disorder, as opposed to the mere possibility of one.” *Holloman v. Harland* 370 F.3d 1252, 1273 (11th Cir. 2004). Indeed, while serving on the Third Circuit, now-Justice Samuel Alito noted that “*Tinker* requires a specific and significant fear of disruption, not just some remote apprehension of disturbance.” *Saxe v. State College Area School District* 240 F.3d 200, 211 (3rd Cir. 2001).

There is no indication that the artwork has caused or can be reasonably expected to cause any actual substantial disruptions. The artwork clearly does not violate the District’s Policy 6.306, which forbids the use of “violence, noise, coercion, threat, intimidation, fear, passive resistance, or any other conduct which causes the disruption, interference or obstruction of any school purpose.” Nor is there a valid reason to believe a small rainbow motif that is one of many works in a display case can in and of itself create a “real or substantial threat of disorder.” Students who find the artwork offensive or distasteful can simply choose not to look at it. The artwork is not vulgar, lewd, obscene, profane, or patently offensive. Rather, it conveys a purely political message in an aesthetically pleasing manner.

The removal of the artwork appears to constitute blatant discrimination against the pro-LGBT viewpoint. This discrimination can have serious ramifications. Despite significant recent victories by the LGBT community in the courts of law and public opinion, anti-LGBT sentiment remains prevalent in our high schools. A 2015 survey reported that nine out of ten LGBT students faced teasing, bullying, or violence and found that a majority of “out” students have at one point felt unsafe in schools.¹

To be clear, all students, including those who disagree with the artist, must be free to express their own views on LGBT issues. However, school censorship of pro-LGBT artwork goes far beyond respectful disagreement with the artist’s message. It instead denigrates and blocks the message and stigmatizes those who articulate it. By censoring the artwork, administrators have seemingly violated their responsibilities under Policy 4.800, which requires “all personnel [...] to create an atmosphere in which differences of opinion can be voiced without fear and hostility and with mutual respect for all viewpoints.”

In a very similar situation in 2008, a federal judge in Florida forbade a school district from suspending students who wore rainbow belts and clothing that promoted gay pride. The judge rejected the notion that this advocacy was disruptive, instead finding that its promotion of “the robust exchange of political ideas [...] is precisely the type of speech that is sacrosanct under the First Amendment.” *Gillman v. Holmes County School Dist.* (N.D. Florida, 2008).

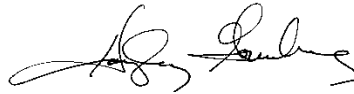
¹ <https://www.glsen.org/article/2015-national-school-climate-survey>

We respectfully urge you to apologize for removing the senior's artwork, to replace it on display, and to adopt policies ensuring that censorship does not occur in the future. We are concerned that Hawkins County School District currently lacks an academic freedom policy that can help protect the First Amendment rights of its students. We would be happy to provide resources to support your drafting such a policy.

Sincerely,



Svetlana Mintcheva
Director of Programs
National Coalition Against Censorship



Hayley Gorenberg
Deputy Legal Director and General Counsel*
Lambda Legal

*Admitted member, New York Bar

Cc: Assistant Principal Mike O'Neill mike.oneill@hck12.net
Superintendent Steve Starnes steve.starnes@hck12.net