

**NATIONAL
COALITION
AGAINST
CENSORSHIP** **YOUTH
FREE
EXPRESSION**

March 8, 2022

Gary Buchsen, Superintendent
Port Allegany School District
20 Oak Street
Port Allegany, PA 16743

Re: "Let's Go, Brandon" clothing

Dear Supt. Buchsen:

The National Coalition Against Censorship is an alliance of national nonprofit groups dedicated to protecting freedom of expression, including the rights of K-12 students, teachers and staff. We are writing because we received a complaint from the parent of a student who was told to remove clothing with the message "Let's Go Brandon" based on the school's policy of prohibiting vulgarity on campus. We believe that this order violated the student's First Amendment rights.

The United States Court of Appeals for the Third Circuit, which includes Pennsylvania, has declared that student speech about political or social issues cannot be banned unless it is "plainly lewd." In *B.H. ex rel. Hawk v. Easton Area Sch. Dist.*, 725 F.3d 293, 320 (3d Cir. 2013), the Court stated:

We hold that *Fraser*, as modified by the Supreme Court's later reasoning in *Morse v. Frederick*, 551 U.S. 393, 127 S.Ct. 2618, 168 L.Ed.2d 290 (2007), sets up the following framework: (1) plainly lewd speech, which offends for the same reasons obscenity offends, may be categorically restricted regardless of whether it comments on political or social issues, (2) speech that does not rise to the level of plainly lewd but that a reasonable observer could interpret as lewd may be categorically restricted as long as it cannot plausibly be interpreted as commenting on political or social issues, and (3) speech that does not rise to the level of plainly lewd and that could plausibly be interpreted as commenting on political or social issues may not be categorically restricted.

725 F.3d at 298.

The "Let's Go Brandon" message is not "plainly lewd." Rather, it is "speech that does not rise to the level of plainly lewd but that a reasonable observer could interpret as lewd[.]" It is also clearly a comment on a political issue, given that it is a coded criticism of

President Biden. Hence, under *B.H. ex rel Hawk*, the district is not permitted to categorically ban clothing bearing that slogan from school campuses.

For these reasons, we ask that you apologize to the student for violating her First Amendment rights; revise any policy that bans clothing with social or political content in violation of the Third Circuit decision; and inform students and staff that students have the right to engage in that speech on campus, except in narrow circumstances in which doing so would create a risk of substantial disruption of school operations.

Thank you for your attention to this important issue

Sincerely yours,

A handwritten signature in black ink that reads "Chris Finan". The signature is written in a cursive, slightly slanted style.

Christopher Finan
Executive Director
National Coalition Against Censorship