



December 29, 2014

**Via U.S. Mail and Electronic Mail**

Superintendent Charles Bush  
Fort Bragg Unified School District  
312 S. Lincoln Street  
Fort Bragg, CA 95437  
Email: [cbush@fbusd.us](mailto:cbush@fbusd.us)

**Re: Fort Bragg Unified School District Ban on “I Can’t Breathe” T-Shirts**

Dear Superintendent Bush,

We are writing on behalf of the American Civil Liberties Union of Northern California, Mendocino High School student basketball player Connor Woods, and his father Marc Woods. It has come to our attention that the Fort Bragg Unified School District (“District”) has banned participants and spectators at the Vern Piver Holiday Classic basketball tournament, now being held at Fort Bragg High School, from wearing t-shirts that say “I Can’t Breathe,” a reference to the death of Eric Garner in police custody. We further understand that the District has also prohibited people from taking any action to protest that decision at the tournament.

Because these actions violate the fundamental protections for free speech of the First Amendment, the California Constitution, and the California Education Code, we ask that the District immediately stop this unlawful policy and allow players and spectators to wear t-shirts and other expressive items at the tournament.<sup>1</sup>

**Background**

The circumstances surrounding Mr. Garner’s death and the decision not to bring criminal charges against the officers involved has been widely reported. In response to these events, many people – including a number of professional and scholastic basketball players – have worn t-shirts with Mr. Garner’s reported last words – “I Can’t Breathe” – written on them, to protest the killing, the failure to bring criminal charges, and the more general issue of police use of excessive force.

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<sup>1</sup> We understand that the District may already be in the process of revising its position but we have not seen any official statements from it about this.

As we understand it, members of the Mendocino High School girls' and boys' basketball teams have joined this form of silent protest. On December 16, they wore these shirts at a warm-up at Fort Bragg High School, without incident. They have since worn them at three other games, again without incident.<sup>2</sup> Nevertheless, on December 26, Fort Bragg High School Principal Rebecca Walker issued a statement on behalf of the District stating that "it is necessary to ensure that all political statements and or protests are kept away from this tournament," referring to the Mendocino High School student basketball players who chose to wear t-shirts stating "I Can't Breathe" during warm-up, and that "[i]f a team cannot or is unwilling to do that, we have no other choice but to exclude them from the event."<sup>3</sup>

All but one member of the boys' team (Connor Woods) submitted to this condition, but the girls' team did not and is not being allowed to play at the tournament. The District's statement appears to ban students and spectators from wearing t-shirts saying "I Can't Breathe" or from any political expression that otherwise protest Eric Garner's death in police custody or the District's ban on "political statements or protests" during the Vern Piver Holiday Classic basketball tournament. To justify this censorship, the District claims that the speech will cause disruption that the school will not be able to control.

## Discussion

The decision to ban these t-shirts and other political statements or protests from the tournament violates the constitutional and statutory protections for free speech, and the attempt to suppress criticism of this decision is an even more gross violation. More than 40 years ago, the U.S. Supreme Court held that students have a right under the First Amendment to engage in non-disruptive political protests, and that this right applies "on the playing field" and even to expression of opinion "controversial subjects" (in that case, wearing black armbands to protest the war in Vietnam). *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 512-13 (1969). Given that the Mendocino teams – like numerous professional and school teams throughout the nation – have previously worn "I Can't Breathe" t-shirts without causing disruption, it is almost certain that the District's decision violates the First Amendment and our state constitution's even stronger protections for free speech. But even if this were not the case, the decision would violate a California statute that specifically protects the rights of students to wear expressive messages:

Pupils of the public schools ... shall have the right to exercise freedom of speech and of the press including, but not limited to, ... the distribution of printed materials or petitions, ***the wearing of buttons, badges, and other insignia***, ....., except that

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<sup>2</sup> The students wish to wear the shirts only during warm-ups, not during the game.

<sup>3</sup> See *FBHS Administration Releases Statement About Vern Piver Memorial Holiday Classic basketball tournament*, Fort Bragg Advocate-News, Dec. 26, 2014, available at <https://www.facebook.com/FortBraggAdvocateNews/posts/902912476400314>



expression shall be prohibited which is obscene, libelous, or slanderous. Also prohibited shall be material that so incites pupils as to create a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school.

Cal. Educ. Code § 48907 (emphasis added).

As its text indicates, this provision “provides greater free speech protection than does the United States Constitution.” *Lopez v. Tulare Joint Union High Sch. Dist.*, 34 Cal. App. 4th 1302, 1317 (1995). In particular, it forbids school authorities from acting to “censor (i.e., exercise prior restraint over) student expression which is not prepared for an official school publication.” *Id.* at 1320. And, most relevant to the present situation,

the plain language of section 48907 mandates that a school may not prohibit student speech simply because it presents controversial ideas and opponents of the speech are likely to cause disruption. Schools may only prohibit speech that incites disruption, either because it specifically calls for a disturbance or because the manner of expression (as opposed to the content of the ideas) is so inflammatory that the speech itself provokes the disturbance.

*Smith v. Novato Unified Sch. Dist.*, 150 Cal. App. 4th 1439, 1457 (2007).

Thus, § 48907 protects the student speech here in three distinct ways: it gives the students the right to wear t-shirts bearing political messages; it forbids the District from banning any such expression before it occurs; and prohibits the District from using an expected reaction to censor speech. The District’s actions violate all three of these protections.

Nor can the District ban spectators from wearing the t-shirts or engaging in peaceful criticism of its decision to ban political statements, whether by students or by others. The right of students to express themselves at the Vern Piver Holiday Classic basketball tournament is protected by § 48907, as discussed above. Although a school need not allow outsiders onto its campus to speak or distribute during school hours, the basketball tournament is open to members of the public. Spectators who wear a t-shirt bearing a message or carry a reasonably-sized sign do not interfere with the ability of others to see or hear the game; indeed, basketball games are noisy affairs, and signs are common at them. Allowing students to wear the t-shirts but banning others from doing so would be unreasonable – one person’s “I Can’t Breathe” t-shirt is no more likely to create a disruptive reaction than is the same message on another t-shirt. Moreover, the school’s attempt to ban criticism of its ban on the shirts constitutes viewpoint discrimination, which strikes at the heart of the constitutional protections for speech and is virtually always illegal. See *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829-30 (1995).

Please ensure immediately that all participants in the Vern Piver Holiday Classic basketball tournament, including students and spectators, are allowed to exercise their freedom to display political statements as guaranteed by the constitutional and statutory protections discussed above. Because the District has previously issued a public statement which was widely distributed by

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national and international news networks, we ask that the District immediately issue a corrective statement that it will not ban "political statements or protests," including t-shirts stating "I Can't Breathe," by students or spectators during the Vern Piver Holiday Classic basketball tournament. Furthermore, please immediately reinstate the Mendocino High School girls' basketball team into the tournament, since they were wrongfully excluded from the tournament due to their collective refusal to acquiesce to the District's demand that they waive their constitutional and statutory rights to free speech in order to participate in the tournament.

If you would like to discuss this matter, please contact Michael Risher at [mrisher@aclunc.org](mailto:mrisher@aclunc.org) or 415.621.2493.

Sincerely,



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Senior Staff Attorney



Linnea L. Nelson  
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