

American Flag T-Shirt Ban Correct in the Name of Racial Harmony, Judge Rules

San Francisco Bay-area high school officials did not violate the civil rights of five students by demanding they remove T-shirts bearing images of the U.S. flag at an event celebrating the Mexican holiday of Cinco de Mayo, a federal appeals court ruled on Thursday.

A three-judge panel of the 9th U.S. Circuit Court of Appeals said school officials acted out of legitimate concerns of violence when they sent a handful of students home for refusing to change their American flag-embellished apparel.

“The panel held (that) given the history of prior events at the school, including an altercation on campus, it was reasonable for school officials to proceed as though the threat of a potentially violent disturbance was real,” Judge Margaret McKeown wrote in the unanimous opinion.

Live Oak High School in the town of Morgan Hill, south of San Francisco, had been experiencing gang-related tensions and racially charged altercations between white and Hispanic students at the time. School officials said they feared the imposition of American patriotic imagery by some students at an event where other students were celebrating their pride in their Mexican heritage would incite fights between the two groups.

School staff at the May 5, 2010, event told flag-wearing students Daniel Galli, Austin Carvalho, Matt Dariano, Dominic Maciel and Clayton Howard to reverse their shirts, take them off or go home. Four of the boys ultimately chose to leave for home.

The incident soon attracted widespread public attention. The parents of three students later filed suit claiming the school's actions had violated their children's federal and state constitutional rights to freedom of expression, equal protection and due process, according to court documents.

Thursday's opinion upheld a decision by U.S. District Judge James Ware, who ruled in November 2011 that school officials were reasonably fearful that the boys' clothing would incite violence.

Following the appeals hearing, plaintiffs attorney William Becker, who represents the boys and their families, told the Morgan Hill Times that he was prepared to take the case to the U.S. Supreme Court if necessary.

"It's pretty incredible that the First Amendment rights of students to express their patriotic views has to take the backseat to the rights of students who want to celebrate another nation," Becker told the paper.

Reporting by Laila Kearney; Editing by Steve Gorman and Ken Wills

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