

Upon Further Review Sixth Circuit Picks Up Flag

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Reaffirming the principle that "public schools are not necessarily run as a democracy," the Sixth Circuit recently dismissed four varsity football players' claim that their dismissal from the team for circulating a petition urging the firing of the head coach violated their free speech rights.

In *Lowery v. Euverard*, four members of the varsity football squad circulated a petition that stated: "I hate Coach Euvar[d sic] and I don't want to play for him." After Coach Euverard learned of the petition, he and his coaches questioned each member of the team. The four plaintiffs acknowledged that they signed the petition and refused to apologize. Coach Euverard summarily dismissed them from the team. The players filed suit, alleging a violation of their free speech rights.

Reversing the lower court's denial of summary judgment for the school district, the Sixth Circuit first set forth the long standing *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969), test which permits school officials to regulate student speech that materially and substantially interferes "with the requirements of appropriate discipline in the operations of the school." As recognized by the Sixth Circuit, when deciding whether the regulation is permissible, the court must consider the content and the context of the speech, and the nature of the school's response.

Analyzing these factors, the Sixth Circuit concluded that it was reasonable for the coaches to conclude that the petition would create a substantial disruption to the team. While coaches "have the prerogative to open up the question of their authority if they so choose...this does not mean that players have a corresponding right to unilaterally undertake a referendum on the coach's authority. Creating the latter right would be tantamount to establishing a bottom-up authority structure for high school athletics...the team's plays and strategies are seldom up for debate. Execution of the coach's will is paramount."

The lesson is clear: School districts are not obligated to wait until a problem substantially disrupts a team before acting. Rather, as stated by the Sixth Circuit, school officials have a duty to provide "an educational environment conducive to learning team unity and sportsmanship free from disruptions and distractions that could hurt or stray the cohesiveness of the team."

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