

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

B.W.A., A Minor,)
MARC ARCHAMBO, Individually, and)
As Next Friend of B.W.A.,)
A Minor, and TAMRA ARCHAMBO,)
Individually, and as Next Friend of)
B.W.A., A Minor; R.S., a Minor,)
OPAL SCAGGS, as next Friend)
of R.S.; S.B., a Minor, and)
PATRICIA HILL, as Next Friend)
of S.B.,)

Plaintiffs,)

vs.)

FARMINGTON R-7 SCHOOL DISTRICT;)
W.L. SANDERS, in his official capacity)
as Superintendent of Farmington R-7)
School District; JUDITH DELANEY, in her)
official capacity as Assistant Superintendent)
of Farmington R-7 School District; MARK)
KRAUSE, in his official capacity as Teacher/)
Instructor of Farmington R-7 School District;)
SUSAN BARBER, in her official capacity as)
Assistant Principal of Farmington R-7 School)
District; and TODD MCKINNEY, in his)
official capacity as Dean of Students of)
Farmington R-7 School District,)

Defendants.)

Cause No.: 4:06CV01691-JCH

**DEFENDANTS’ MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

COMES NOW Defendants Farmington R-7 School District, W.L. Sanders, Judith Delany, Mark Krause, Susan Barber and Todd McKinney (hereinafter sometimes collectively referred to as the “the District”), by and through their undersigned counsel, and for their Memorandum of Law in Support of Plaintiffs’ Motion for Summary Judgment state:

INTRODUCTION

Plaintiffs B.W.A, and his mother, Tamra Archambo, and father, Marc Archambo and friends and fellow classmates R.S. and S.B. (“Plaintiffs”) have sued the Farmington R-7 School District, its Superintendent Dr. W.L. Sanders (“Dr. Sanders”), Assistant Superintendent Judith Delany, Assistant High School Principal Susan Barber, Dean of Students Todd McKinney and teacher Mark Krause. Plaintiffs’ Complaint seeks declaratory judgment and a preliminary and permanent injunction enjoining the District “from conditioning the enrollment or attendance of Plaintiffs B.W.A.; R.S.; and S.B. in the School District upon the removal of such sign, insignia or emblem of the Confederate States of America from their clothing while in attendance at the Defendant school; . . .” *See* Pls.’ Am. Compl. p. 13.

The District however, did not infringe upon Plaintiff B.W.A.’s rights because disruptive speech in the “special characteristics of the school environment” is not protected. As shown by the sworn testimony of District personnel, District students and former District parents, Plaintiffs wore said clothing on the heels of volatile circumstances which fully warranted the District’s response. Tinker v. Des Moines Independ. Commun. Sch. Dist., 393 U.S. 503, 506 (1969).

Specifically, in the year approximately preceding Plaintiffs’ display of the confederate flag at school, the District had several racial incidents including a Caucasian student urinating on an African American student and allegedly making the statement, “that’s what black people deserve,” a racial fight outside of school which was brought into school when Caucasian students surrounded and confronted an African American student at school, a racial confrontation between Caucasian District students and African American students on an opposing team at a basketball game, in addition to several incidents of students using racial slurs and making statements such as “nigger” and “white power” in school. The seriousness of these incidents

cannot be denied as they resulted in African American students staying home from school and moving out of the District and a United States Department of Education Office of Civil Rights investigation into alleged racial harassment by District students. Given the racial climate of the school district, the District reasonably forecasted that the display of the confederate flag inside school buildings would pose a continuing and escalating substantial disruption to the District's educational environment. The District's fear of substantial disruption was confirmed as this controversy spurred picketing and protests directly adjacent to District property while students arrived at school to commence their school day. The protestors displayed confederate flags which made at least one minority student so uncomfortable that he requested to leave school.

At the heart of this issue is the fact that the District takes no position on the meaning of the confederate flag and whether or not it should be viewed as a symbol of racism and oppression. Rather, the District's only position is pro-student and pro-education. The District strives to foster a safe, orderly learning environment of the highest possible quality. Accordingly, the District respectfully requests that judgment be entered in favor of Defendants on Plaintiffs' claim for declaratory judgment and Plaintiffs' request for a preliminary and permanent injunction and attorney's fees be denied.

ARGUMENT

Pursuant to Federal Rule of Civil Procedure 56, a court may grant summary judgment when there are no genuine issues of material fact in dispute. The question before the court is whether the record, when viewed in the light most favorable to the non-movant shows there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Davenport v. Riverview Gardens Sch. Dist., 30 F.3d 940, 944 (8th Cir. 1994). In making the determination, the court may consider pleadings, depositions, answers to interrogatories,

admissions, and affidavits. McLaughlin v. Esselte Pendaflex Corp., 50 F.3d 507, 510 (8th Cir. 1995). No genuine issue of material fact exists if the evidence is such that a reasonable jury could not return a verdict for the nonmoving party. Id. at 510 (*citing* Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)).

I. The District is Entitled to Judgment on Plaintiffs' Claim for Declaratory Judgment.

Plaintiffs request that this Court declare that the District may not prohibit students from displaying a sign, insignia, or emblem of the Confederate States of America while on District property. Pls.' Compl. p. 10. The District's ban on the display of the confederate flag on clothing worn inside its school buildings is not unlawful as a matter of law and thus, Plaintiffs are not entitled to the relief sought.

It is widely recognized that students' limited First Amendment rights "should not interfere with a school administrator's professional observation that certain expressions have led to, and therefore could lead to, an unhealthy and potentially unsafe learning environment for the children they serve." Scott v. School Bd. of Alachua County, 324 F.3d 1246, 1247 (11th Cir. 2003). As such, it is appropriate for school officials to censor student expression under either of two theories. Scott, 324 F.3d at 1248. First, student speech may be restricted based on a reasonable fear the expression will "appreciably disrupt the appropriate discipline in the school." Id.; *see also* Tinker v. Des Moines Independent Comm. School Dist., 393 U.S. 503, 511 (1969); White v. Grimes, 2006 WL 1594213, *1 (11th Cir. 2006). Second, even absent a showing that disruption was immediately likely, "school officials are charged with the duty to 'inculcate the habits and manners of civility as values conducive both to happiness and to the practice of self-government.'" Scott, 324 F.3d 1246, 1248 (quoting Bethel School District No. 403 v. Fraser, 478 U.S. 675, 681 (1986)); *see also* White, 2006 WL 1594213, *1. To achieve this mission,

schools “must have the flexibility to control the tenor and contours of student speech within school walls or on school property, even if such speech does not result in a reasonable fear of immediate disruption.” Scott, 324 F.3d at 1248.

The United States Supreme Court holds that “[j]udicial interposition in the operation of the public school system of the Nation raises problems requiring care and restraint...by and large; public education in our Nation is committed to the control of state and local authorities.” Goss v. Lopez, 419 U.S. 565, 578 (1975); Ingram v. Wright, 430 U.S. 651, 682 (1977) (holding that school matters are committed to the discretion of school authorities subject to state law”); Consolidated Sch. Dist. No. 2 v. King, 786 S.W.2d 217, 218 (Mo. App. 1990) (holding that courts are “mindful of the reluctance of Missouri courts to interfere in a school district’s exercise of its discretion”). As such, “courts should refrain from second-guessing” the decisions made by school administrators. Davis v. Monroe Cnty. Brd. of Ed., 526 U.S. 629, 678 (1999). The District’s ban on clothing bearing the confederate flag on District property is appropriate as the District reasonably perceived material disruption to its educational environment, and further, it had a legitimate interest in promoting good citizenship.

1. The District Reasonably Perceived Substantial Disorder in its Educational Environment.

Restricting student speech does not offend the student’s Constitutional rights if it “materially disrupts class work or involves substantial disorder or invasion of the rights of others.” Tinker, 393 U.S. 503, 513 (1969); Henerey v. City of St. Charles Sch. Dist., 200 F.3d 1128, 1132 (8th Cir. 1999) (holding that school may restrict individual expression that interferes with the work of the school or impinges upon rights of other students after student disqualified from running for student body president due to his distribution of condoms attached with student’s campaign slogan). Significantly, school district officials need not wait for actual

disruption to occur, “but rather the existence of facts which might reasonably lead school officials to forecast substantial disruption.” Tinker, 393 U.S. at 514. Thus, a showing that the suppressed speech might reasonably be forecasted as a material disruption at school negates Plaintiffs’ claim.

Recently, the Eleventh Circuit upheld summary judgment in favor of a school board in a case with strikingly similar circumstances. Judgment was granted in favor of the school board because the school ban on confederate flags on school grounds was not an unconstitutional restriction of students’ free speech rights. Scott v. School Bd. of Alachua County, 324 F.3d 1246 (11th Cir. 2003). In addressing the reasonableness of the school’s fear of disruption due to the display of the confederate flag, the Court found,

It is not only constitutionally allowable for school officials to closely contour the range of expression children are permitted regarding such volatile issues, it is their duty to do so . . . one only needs to consult the evening news to understand the concern school administrators had regarding the disruption, hurt feelings, emotional trauma and outright violence which the display of the symbols involved in this case could provoke.

Scott, 324 F.3d at 1249; *see also* D.B. ex rel. Brogdon v. Lafon, 452 F.Supp.2d 813 (E.D.Tenn. 2006); White v. Nichols, 2006 W.L 1594213 (11th Cir. 2006) (finding that school’s dress code ban on clothing bearing a confederate flag did not constitute an unconstitutional violation of First Amendment rights).

Likewise, in Phillips v. Anderson County School District, 987 F.Supp. 488, 493 (D.S.C. 1997), the Court upheld another ban on the confederate flag on student clothing finding that as a matter of law that the prior disruptions the District relied on were sufficient to justify the ban despite the fact that they “did not occur in the ‘context of classroom instruction’” and that Plaintiff wore his confederate flag clothing to school for a day without incident. The Court held

that confrontations which had taken place off school property were not eliminated from the equation” but rather were “rightfully factors for inclusion in the calculus.” Phillips, 987 F.Supp. at 493.

Remarkably similar to Scott and Phillips, the District’s educational environment was permeated with racial tension. The District had multiple incidents of racial altercations and harassment preceding the District’s prohibition of the display of the confederate flag on Plaintiffs’ clothing. These incidents fully satisfied the threshold for prohibiting certain symbols on student clothing in public school districts and made the District’s actions both appropriate and necessary. *See Tinker*, 393 U.S. at 514.

In particular, in May 2005, an African American student reported that a Caucasian student urinated on him at school and made the comment “that’s what black people deserve.” Reid Aff. ¶ 6. The incident triggered an extensive investigation by District administrators and included conferences with attorneys for the District and the child. Sanders Dep. pp. 8:12-9:9; 100:9-21. The mother of the African American student moved the child out of District as a result of this incident. Reid Aff. ¶ 7.

Shortly thereafter, on or about September 9, 2005, some Caucasian Farmington High School students went to the home of an African American student with an aluminum bat looking for the African American student. Welch Aff. ¶ 6. At least one of the Caucasian students had a swastika tattoo and they made racial remarks including stating that “anything that is not white is beneath them.” Welch Aff. ¶ 6. The African American student’s mother tried to get in between the boys to keep a physical altercation from breaking out and was hit in the eye by the Caucasian students. Welch Aff. ¶ 7. Thereafter, a physical confrontation broke out between the students. Welch Aff. ¶ 7. The following Monday morning at the High School the African American

student was surrounded by a group of Caucasian students and another racial altercation occurred. Welch Aff. ¶ 9. As a result, the African American student's parent withdrew him and from the Farmington School District and moved out of the District because the parent felt that the District could not protect her children as a result of the racial tension. Welch Aff. ¶¶ 10-11.

Additionally, in the academic year preceding Plaintiffs wearing confederate clothing, the District's high school had incidents of students using racial slurs on numerous occasions. The racial slurs included Caucasian Farmington students using the word "nigger" repeatedly in classes referring to African Americans, drawing swastikas on a classroom chalkboard, yelling "white power" repeatedly during class, and writing and carrying around in school a song with lyrics stating "whites are superior, niggers are less," "niggers will fall" "niggers faces will be a mess." Ex. 2 to Barber Aff.

Perhaps one of the most serious racial incidents led to a United States Department of Education Office of Civil Rights ("OCR") investigation of alleged racial harassment by Farmington basketball players. Sanders Dep. 25:4-12. On December 29, 2005, District basketball players were accused of making racial comments to opposing African American players during a tournament at a neighboring school district. Sanders Dep. 19:19-20:3. The situation became a heated confrontation between players which required the intervention of staff members to separate the players. Sanders Dep. 20:4-8. During the racial confrontation at the basketball game, Farmington employees were called "fucking honky" and "bitch" by upset African American students. Sanders Dep. 101:11-19. Following the confrontation, a complaint was made to OCR concerning the alleged racial harassment by Farmington students. Sanders Dep. 25:4-7. The resulting OCR investigation caused six Farmington High School teachers and administrators, to be pulled out of school and away from instruction to be interviewed by OCR

investigators for a day. Sanders Dep. 97:14-98:6. Both in the OCR investigation and local media coverage of the racial altercation at the basketball tournament, much attention was given to the fact that the African American students and parents were upset that there was a confederate flag hanging outside of Festus' locker room during the game and the students had been forced to walk by it. Sanders Dep. 21:8-15. Since the incident, the District has had to alter its athletic program, as Festus and Farmington athletic teams no longer compete against each other unless required in conference play. Sanders Dep. 29:2-13.

As a result of the numerous racial incidents which occurred in the District and in the community involving the District's students and consistent with the District's policy prohibiting "disruptive clothing" the District prohibited students from wearing clothing with confederate flag symbols. The District's actions were justified in light of the racial tension in the District and the likelihood of a material disruption to the education environment. See Tinker, 393 U.S. at 514; see also Scott, 324 F.3d at 1249; D.B., 452 F.Supp.2d at 813; White, 2006 W.L. 1594213; Phillips, 987 F.Supp. at 493. The appropriateness of the District's actions cannot be doubted in light of the sworn testimony from District students stating that they find the confederate flag offensive and believe that its display at school would be disruptive. Caruthers Aff. ¶ 6; Glaspy Aff. ¶ 6. Additionally, District students were involved in a racial altercation that occurred after minority students were upset that they had to allegedly walk past the confederate flag at another school. Further, it is undisputed that the District actually did have a student request to leave school because the confederate flag was being displayed across the street from the school by protestors. Sanders Dep. 60:12-16. District administrators must be given the latitude to exercise such discretion in preserving an educational environment of the highest possible quality. Accordingly, Plaintiffs cannot establish entitlement to declaratory judgment as a matter of law.

2. The District's Actions Comport with the District's Obligations Concerning Good Citizenship.

Moreover, courts have recognized public school districts' role in maintaining an educational environment that prepares children for citizenship. Specifically, the Supreme Court held in Fraser:

Surely it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse. Indeed, the "fundamental values necessary to the maintenance of a democratic political system" disfavor the use of terms of debate highly offensive or highly threatening to others. Nothing in the Constitution prohibits the states from insisting that certain modes of expression are inappropriate and subject to sanctions. The inculcation of these values is truly the "work of the schools." Tinker, 393 U.S. at 508, 89 S.Ct. at 737.... The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board.

Scott, 324 F.3d at 1248 (quoting Fraser, 478 U.S. at 683).

Similar to the present case, in Scott, plaintiff students wore clothing to school bearing the confederate flag despite a school ban on such clothing. Id. at 1247. Plaintiffs argued that they had no racist motivations and allegedly displayed the confederate flag only in celebration of their southern heritage and in support of their friend. Id. at 1248-49. The Court approved previous holdings from analogous cases "that part of a public school's essential mission must be to teach students of differing races, creeds and colors to engage each other in civil terms rather than in 'terms of debate highly offensive or highly threatening to others.'" Id. at 1249 (quoting Denno v. School Bd. of Volusia County, Fla., 218 F.3d 1267, 1275 (11th Cir. 2000)). The Court recognized that while there may be a difference of opinion as to whether the confederate flag is "vulgar and offensive," there is no disputing that the flag has become synonymous with highly emotionally charged words like "heritage", "racism", "power", "slavery", and "white supremacy." Id. Thus, finding no evidence that the school district attempted to suppress civil debate on racial matters, but rather had only concluded that the display of certain symbols that

have become associated with racial prejudice are so likely to provoke feelings of hatred and ill will in others that they are inappropriate in the school context, the Court held that the district's ban of the confederate flag was not unlawful. Scott, 324 F.3d at 1249.

The Court's holding in Scott is well supported by precedent from other analogous cases such as Denno v. School Bd. of Volusia County, Fla., 218 F.3d 1267, 1275 (11th Cir. 2000). In Denno, the Court found that the fact that the plaintiff allegedly had no racist intentions was not dispositive. Further, "it is not dispositive that common experience teaches us that the Confederate flag is honored by many people as a non-racist memorial to their Southern heritage; common experience also teaches that many people perceive the flag as offensive, constituting either a racist message or at least reflecting an uncivil lack of sensitivity to the sensibilities of many people." Id. Thus, the Court in Denno held that the school official's actions was not unreasonable or a clear violation of the student's First Amendment rights. Id.

Like the ban on the display of the confederate flag on student clothing in Scott and Denno, Farmington School District's ban on the confederate flag is not unlawful. As the Court found in Scott, it is part of the District's essential mission to teach students of differing races, creeds and colors to engage each other in civil terms rather than in "terms of debate highly offensive or highly threatening to others," such as the confederate flag, and there is no evidence that the District has suppressed civil debate on racial matters. See Scott, 324 F.3d. 1249. Rather, the District merely concluded that this symbol which has become associated by many with racism, oppression and hatred did not have a place inside the school walls where the District is trying to promote values of respect and racial tolerance and equality.

As the District reasonably perceived that the display of the confederate flag inside its schools would cause a disruption and further, is within its authority and discretion to take the

actions necessary to teach students civility toward one another, judgment must be entered in favor of Defendants as a matter of law as to Count I of Plaintiffs' Complaint.

II. Plaintiffs' Claim for a Preliminary and Permanent Injunction Should be Denied.

In order to obtain an injunction against the District, Plaintiffs carry the burden of proving: (1) a likelihood of success on the merits; (2) the threat of irreparable harm to them in the absence of relief; (3) the balance between that harm and the harm that the relief would cause the District; and (4) that public interest would be served by issuing the injunction. Watkins v. Lewis, 346 F.3d 841, 844 (8th Cir. 2003). The Eighth Circuit holds that preliminary injunctions are "extraordinary remed[ies]." Id. As such, they should be "granted sparingly." Greater Iowa Corp. v. McLendon, 378 F.2d 783, 799 (8th Cir. 1967). Plaintiffs fall far short of carrying the burden of proving all four elements entitling them to the "extraordinary remedy" of a preliminary injunction against the District. Watkins, 346 F.3d at 844.

Plaintiffs cannot make any of the showings required for injunctive relief because there has been no violation of Plaintiffs' constitutional rights. Specifically, Plaintiff B.W.A. can show no likelihood of success on the merits of his claims against the District because as discussed *supra*, Plaintiffs are not entitled to the same rights that adults have.

1. Plaintiffs' Cannot Show a Likelihood of Success on the Merits.

As discussed *supra*, the District did not violate Plaintiffs' First Amendment rights. As such, Plaintiffs cannot make the necessary showing of a likelihood of success on the merits. In a case very similar to the present case, the Sixth Circuit recently affirmed the denial of student plaintiffs' motion for a preliminary injunction finding that defendants "had reason to believe that a student's display of the Confederate flag might cause disruption." D.B. ex rel. Brogdon v. Lafon, 2007 WL 541594, *4 (6th Cir. 2007) (affirm Brogdon, 452 F.Supp.2d 813)). In Brogdon,

the Court found that the plaintiffs' likelihood of success on the merits was determinative, and as such, the Court found that the crucial inquiry was whether the policy in question was likely to be found unconstitutional. Brogdon, 452 F.Supp.2d at 817.

The school district at issue in Brogdon, like the Farmington School District, banned clothing that "causes disruption to the educational process." 452 F.Supp.2d at 815. Due to past racial tension in the District, the District determined that clothing depicting the confederate flag would be prohibited under the policy. Id. Despite the ban, the plaintiffs, high school students in the District, wore T-shirts depicting the confederate flag allegedly to express pride in their southern heritage and were asked to change their shirts or turn them inside out and were threatened with suspension if they refused. Id. Plaintiffs complained that there were no disruptions resulting from the depiction of the confederate battle flag and defendants failed to "make any connection between the [c]onfederate [battle] flag and any incident of racially motivated violence or threats" because the incidents cited by defendants were not the direct result of displays of the confederate flag." Id. at 818. The District Court held however, that Plaintiffs' required too much, and that under Tinker, school authorities only need "reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school or impinge upon the rights of other students." Id. (quoting Tinker v. Des Moines Indep. Sch. Dist., 393 U.S. 503, 508 (1969)).

The Appellate Court agreed with the reasoning of the lower court that "even without evidence that Confederate flag displays had been the direct cause of past disruptions, school officials reasonably could surmise that such displays posed a substantial risk of provoking problems in the incendiary atmosphere then existing." D.B. ex rel. Brogdon v. Lafon, 2007 WL 541594, *4. Thus, the Court found the students failed to show likelihood of success on merits of

their claim, as required for preliminary relief, in the suit against school officials alleging that the policy of prohibiting them from wearing clothing depicting the Confederate battle flag violated their First Amendment rights. Id.

As in Brogdon, the District reasonably anticipated that displaying the confederate flag within the school would cause a disruption. As such, Plaintiffs cannot establish a likelihood that they will prevail on the merits and a preliminary and permanent injunction must be denied.

2. Plaintiffs Cannot Show Irreparable Harm, that the Balance of Harm Weighs in Their Favor, nor that the Public Interest Would be Served by Issuing an Injunction.

In addition to Plaintiffs' inability to show a likelihood of success on the merits, Plaintiffs also fail to carry the burden of proving the remaining elements. Plaintiffs cannot show irreparable harm, that any harm to Plaintiffs far outweighs the harm that granting the injunction would cause the District, nor that the public interest would be served by issuing an injunction. See Watkins, 346 F.3d. at 844.

Plaintiffs claim that they have suffered irreparable harm because they are not allowed to wear clothing bearing the confederate flag to school. B.W.A Dep. 41:6-42:7. Plaintiffs do not have the right to wear whatever they want to school. Clearly, this alleged harm does not constitute "irreparable" harm sufficient to grant the extreme measure of injunctive relief.

Further, even if Plaintiffs could demonstrate irreparable harm, which they cannot, they still cannot prevail because they fail to show that the hardship scales tip sharply, or even minimally, in their favor. Nor, can Plaintiffs establish that the public interest would be served by the issuance of an injunction. In examining these elements, Plaintiffs' right to express their alleged position/endorsement of the confederate flag must be balanced against the District's

responsibility to maintain a safe and orderly educational environment, free of disruption, for all students.

Consistent with the Supreme Court's holdings cited *supra*, the District is in the best position to make determinations concerning what is, and is not, disruptive to its student body. Consequently, Courts are reluctant to question the judgment of District educators and administrators. Here, the District has a responsibility to maintain order and safety for the student body. Unfortunately, in times plagued by the school tragedies at Combine and Virginia Tech the importance of ensuring that kids do not feel harassed, discriminated against, bullied or isolated can not be stressed enough. The undisputed testimony is that minority parents have moved their children out of the District because they felt their children were not in a safe, nondiscriminatory environment and students of the District have testified that they feel having the confederated flag at school would be disruptive and have even requested to leave school because of the presence of the confederate flag across the street from their school. Reid Aff. ¶ 7; Welch Aff. ¶¶ 10 and 11; Glaspy Aff. ¶ 5; Caruthers Aff. ¶ 5. Requiring the District to allow Plaintiffs to wear confederate flags will cause a disruption to the work of the District, an invasion upon the rights of other students, and an undermining of the District administration's authority. Thus, the public interest certainly is not served by such an injunction and the hardship scales fail to tip in Plaintiffs' favor.

CONCLUSION

Plaintiffs cannot prevail against the District and its administrators because Plaintiffs' constitutional rights have not been violated. Expression that disrupts, or can be forecasted to do so, in the school environment is not protected expression. The Farmington School District, under the watchful eyes of the District administrators and teachers, strives to provide the best

educational environment possible for its students. Thus, the District consistently seeks to provide an environment free of distractions and disruptions for its students and recognizes that the confederate flag is something that interferes with its duty to educate students. For all the reasons stated, Defendants are entitled to summary judgment as a matter of law.

Respectfully submitted,

**DOSTER, MICKES, JAMES,
ULLOM, BENSON & GUEST L.L.C.**

By: /s/ Sarah A. Wight
Thomas A. Mickes, # 3852
Sarah A. Wight, # 498750
17107 Chesterfield Airport Road
Suite 300
Chesterfield, Missouri 63005
(636) 532-0042
(636) 532-1082 Facsimile
tmickes@dostermickes.com
swight@dostermickes.com
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of June, 2007, a true and correct copy of the foregoing was electronically filed and electronic notification was sent to Robert Herman, 621 North Skinker Blvd., St. Louis, Missouri 63130, (314)-862-3050 (fax), Attorney for Plaintiffs.

/s/ Sarah A. Wight