

Russell Stoll

Affirmative Position

Government (P2/4) & English 12 (P1/3)

Solis & Stoll

Statement: School Dress Code policies that limit how students dress are constitutional.

Sample First Argument: 4 minutes

Good Morning / Afternoon Class, and Mr. Solis. Thank you all for being here today despite the fact that you, well, kind of have to be, but I do appreciate you for your attention and, in a moment, for your vivid imaginations.

My name is Russell Stoll, and I am here to defend the idea that School Dress Code policies which limit how students dress are, without dispute, constitutional. Any educational institution, be it public or private, and at any level of instruction, has the right to set a standard for how its students should dress when they are on the campus during operating hours or during school sponsored events.

There is no section of the United States Constitution, no law or legal precedent, which prohibits any grade school, college, university, or vocational school from enacting and enforcing a dress code on its students. None. Schools can do it, and they do. And they should.

It's Fall of 2016, and you're sitting in your first college class. The professor enters, prepares notes, and as other students saunter in and find their seats, one student enters that catches your eye. This student catches your eye because all he is wearing is his backpack. He is completely naked. He lays a sweatshirt down over a seat, sits down, and class begins. And what is a cliché nightmare that many have had, showing up to class naked, is a reality for this student.

And I'd like you to reflect on the reaction that you and the other folks around you just had to that story: some laugh, some cringe, and some of you even

at this moment are still having trouble getting over the distracting idea of a naked student. But ladies and gentlemen, this is not fiction, this is reality. In the early-90's, a student at UC Berkeley named Andrew Martinez was known as "The Naked Guy" because he attended class, parties, and most public events completely naked (Zenergle).

And while "The Naked Guy" grew in fame for a time at his university and in the main stream media, it was only a matter of time before shock had turned to intrigue, and then intrigue had turned to distraction. In the fall of 1992, UC Berkeley imposed a dress code that students must wear clothing to class. "The Naked Guy" ran afoul of this rule, was given a disciplinary hearing, and then expelled.

And then what happened? Nothing. Absolutely nothing. The university was never sued. The expulsion was never overturned. And by all accounts, the dress code is still in place today.

Schools have a right to impose a dress code, and for good reason. It protects students from health risks, keeps students safe, and allows schools to express themselves as professional environments. Enforcing a reasonable, common sense dress code policy protects students from very real threats like gang violence and hate speech. Schools already do this, and they should keep doing this.

ECS, the Educational Commission of the States, in a 2008 report on dress code and uniform policy, states that, "In states where no policy exists, it can be assumed that unless explicitly prohibited, schools and districts can require dress codes and/or uniforms." (Colasanti, 1) Currently, 23 states explicitly allow public schools to enact dress codes; not uniforms, where students have to wear the same thing, but dress codes, which set far more lenient guidelines. And, in states like New Jersey, Ohio, and our own state of California, public schools may

implement uniforms, not just dress codes, so long as districts in these states seeks input from principals, staff, and parents (Colasanti, 1-4).

States that impose dress codes on students do so fairly. And they should keep doing so.

In Tennessee, where uniforms are allowed, too, “the state board must establish guidelines and criteria for local adoption of a uniform including that the clothing must be ‘simple, appropriate, readily available and inexpensive.’” (Colasanti, 4)

The main reason schools enforce dress codes is simple: it’s in the students’ best interest. In his 1996 State of the Union address, President Bill Clinton endorsed uniforms, saying:

“I challenge all our schools to teach character education, to teach good values and good citizenship...” He then followed that strong challenge to the country with an even stronger suggestion for how to encourage these values, saying, “...Our public schools should be able to require their students to wear school uniforms.”

And remember, we are not even talking about uniforms, but dress codes.

I went to Catholic school for 9 years where I had to wear a uniform, the same thing, every day: navy blue slacks, a white polo shirt, a brown or black belt, and brown or black shoes. If I wanted to jazz it up, I could wear a sweater with the school logo on it. It wasn’t until my 7th grade year that school even allowed girls to wear pants in the winter! It was dresses ladies. Or skirts with tights.

With dress codes, students still have the right to express themselves. The express themselves in terms of color, pattern, fabric, texture, brand, design... in other words, free choice and style.

Thank you.

Potential Cross Examination Questions:

1ST Argument: Russell Stoll

- **How does “*The Naked Guy*” case connect to Dress Code?**
UC Berkeley was able to successfully expel this student after he broke the rules of the newly implemented dress code policy. The dress code still stands today.
- **Doesn't the *Tinker case* state that schools can't impose dress codes against students?**
No. The Tinker case was different because the administration of the school “singled out” a piece of clothing to limit political expression.
Schools can still impose a dress code, and the Tinker case in fact supports that.
- **How do dress codes help protect/promote...**
- **Health?**
Florida, the Sunshine State, makes an exception so that when wearing uniforms, “Students may wear hats, sunglasses, and other sun-protective wear while outdoors” (Colasanti, 2).

The only school that prohibits dress codes is Massachusetts, and even then, the language of this Massachusetts code has a provision that, “School officials are prohibited from establishing a dress code abridging the rights of students as to personal dress and appearance unless it violates ‘reasonable standards of health, safety and cleanliness’” (IBID, 2). So even in a politically liberal state like Massachusetts, and even in a state that prohibits most dress codes, the fact remains that dress codes can be used to promote student health and student safety.

- **Safety?**
According to the American Bar Association, hate speech should be discouraged because it can make somebody afraid for their safety. They also argue that no “Hate speech is speech that offends, threatens, or insults groups, based on race, color, religion, national origin, sexual orientation, disability, or other traits. Should hate speech be discouraged? The answer is easy—of course!”

In that same State of the Union address by Bill Clinton, he states how not having a dress code can lead to dangerous outcomes. He says, “...if it means that teenagers will stop killing each other over designer jackets, then our public schools should be able to require their students to wear school uniforms.”

Getting jumped for what you wear is nothing new. Our students will remember that acclaimed African American playwright Lorraine Hansberry was strongly impacted, as a young girl, by being jumped by students at her high school for wearing a white, rabbit fur coat to her public school that she received as a Christmas gift.

- **Expression?**
Illinois allows schools to bend their dress code rules if students have religious objections, proving that dress codes can be enacted in a way that they still protect students' 1st amendment rights (IBID, 2).

There are times when freedom of speech and freedom of expression must be limited for the safety and benefit of others. In an opinion ruling in favor of the restriction of the freedom of speech in *Schenck v. United States*, Supreme Court Justice Oliver Wendell Holmes once stated that, “the most stringent protection of free speech would not protect a man falsely shouting fire in a theater and causing panic.” In this now infamous legal metaphor, Justice Holmes is making the point that freedom of speech does not allow you to cry “Fire!” in the middle of a crowded theater, because you would then be putting the audience in harms way. People would be scared for their lives, they would be acting irrationally in an attempt to get out of that theater; people could be trampled or injured by other patrons in the mad rush to get out of the theater

Students have to eat vegetables with their school lunches. It might not be their favorite thing, but they must. Just like our little brothers and sisters never want to eat their vegetables with dinner, we know that it's important, and that they should do it.

- *How are **schools and business** related in terms of dress code?*

In the case *Burwell v. Hobby Lobby Stores, Inc.* in June 2014, the Supreme Court decided that corporations have the same 1st amendment protections of freedom of speech and religion that citizens do (White, 24). Therefore, if a business, or an institution, like a school, wants to express itself as an environment that is safe and professional, and chooses to create this environment via a dress code, it has every right to do so.

The Hobby Lobby decision states that businesses have the same 1st amendment rights as individuals. If a school can be considered a business, than a school can express itself as a place that values expressing itself as a place of professionalism and character by enforcing a dress code.

Even in government, dress codes are required. In the US House of Representatives, members of congress are to wear a jacket at all times, and men to wear a tie. As recently as 2013, the Speaker of the House called out members of Congress for not having appropriate attire.

- *Even if 23 states currently have dress codes, isn't limiting what students wear **unconstitutional**?*

No. First, because no amendment says anything about uniforms or dress codes, therefore it is up to the states to enact policy. Second, there's been no US Supreme Court decision saying that schools can't impose a dress code or even a uniform. Third, most schools make the dress code policies with help of parents and teachers, so that it is inclusive of the community and fits the community's needs. Fourth, many laws allowing the schools to enforce a dress code state that the schools must provide the opportunity to opt out for many reasons, including religious objections. Fifth, many schools (like in Florida) have already proven to allow reasonable exceptions to promote student health and safety.

- *Isn't **Massachusetts** correct in making dress codes illegal?*

No. And, even in the case of MA, the state allows schools to enact a dress code if the lack of a dress code violate the health, safety, or cleanliness of students.

NOTES:

FACT SHEET:

Below are 3 major arguments used by those who **support** public school dress code policies.

1) Uniform policies in public schools are a reasonable way to instill discipline and create a positive educational environment. The courts have determined that some school dress code policies were not intended to suppress students' freedom of expression but to further reasonable educational objectives. This stance was reflected in the 5th Court of Appeals ruling, *Canady v. Bossier Parish School Board* (2001). "The School Board's purpose for enacting the uniform policy is to increase test scores and reduce disciplinary problems throughout the school system," the appeals court wrote in *Canady*. "This purpose is in no way related to the suppression of student speech."

2) School dress codes make schools safer by reducing gang influence, minimizing violence by reducing sources of conflict and help identify trespassers.

3) President Bill Clinton endorsed uniforms in his 1996 State of the Union address:

"I challenge all our schools to teach character education, to teach good values and good citizenship. And if it means that teenagers will stop killing each other over designer jackets, then our public schools should be able to require their students to wear school uniforms."

Below are 3 major arguments used by those who **do not support** public school dress code policies.

- 1) **In *Tinker v. De Moines* (1969)**, the U.S Supreme Court ruled that First Amendment guarantees must be balanced against a school's need to keep order: As long as an act of expression doesn't disrupt classwork or school activities or invade the rights of others, it's acceptable.

The Court found that the school had not demonstrated that the armbands caused "a material and substantial interference with schoolwork or discipline" and, rather, had acted merely to avoid the "discomfort and unpleasantness that always accompany an unpopular viewpoint." **The Court noted that the school district had not banned all political symbols, but had instead "singled out" the armbands for prohibition. In other words, the limiting of speech was not content-neutral - a test the Supreme Court uses when deciding some First Amendment cases.**

The *Tinker* case remains a landmark in upholding the rights of students in schools to express their views in a peaceful and orderly way.

- 2) Schools have to show what the reasonable objectives are for implementing school dress code policies. As stated in *Gardner vs. Cumberland School Committee* (1971), school districts are limited to regulating the dress of pupils to situations where "it presents a clear and present danger to the student's health and safety, causes an interference with school work, or creates a classroom or school disorder."

Hate Speech

- 3) School dress code policies infringe on a student's right to freely express themselves as provided by the First Amendment. Forming an identity and expressing oneself through the development of this identity should not be obstructed by public school dress code policies.

Can't fire in a crowded theater... there are some limits to "free speech".

CROSS NOTES:

HAWTHORNE HIGH SCHOOL DRESS CODE

DRESS CODE POLICY

Students must wear clothing that is appropriate for the school environment, therefore the wearing or carrying of any clothing or symbol that denotes gang activity is prohibited on school grounds and at school activities, both on and off campus. Prohibited items of clothing or symbols include, but are not limited to, any item of clothing, jewelry, accessory, notebook, or symbol which, by the nature of its color, design, arrangement, representation, trademark, or any other attribute that disrupts the school climate, denotes membership in a gang or any other group which advocates drug use or inappropriate behavior.

- No hats, beanies, hair nets, bandanas, sweatshirt hoods worn up or other head coverings.
- Only one belt buckle may be worn at any one time and initial must be the student's initial. Belts must be in pant loops and not hanging loose.
- No chains or spikes of any type.
- No oversized shirts, pants or shorts. Pants and shorts must be worn above the hips - no sagging.
- No long shorts with long socks pulled up meeting the cuff of the shorts. There must be a minimum of 6 inches between the top of the socks and the bottom of the shorts.
- No strapless tops or dresses that expose the midriff area. Tank tops must have a strap width of at least one inch. No bare midriff clothing of any kind. No "see through" apparel, extremely short skirts / shorts, short skirts with slits or long skirts with slits past the mid-thigh. No apparel that administrator's judge to be too revealing and distracts from the educational environment.
- No underwear showing! This includes any other type of clothing that resembles underwear or sleepwear.
- No other type of clothing that the administration considers to denote gang involvement or is inappropriate for a school setting.

Hate Speech Legislation

Hate speech is speech that offends, threatens, or insults groups, based on race, color, religion, national origin, sexual orientation, disability, or other traits. Should hate speech be discouraged? The answer is easy—of course! However, developing such policies runs the risk of limiting an individual's ability to exercise free speech. When a conflict arises about which is more important—protecting community interests or safeguarding the rights of the individual—a balance must be found that protects the civil rights of all without limiting the civil liberties of the speaker.

In this country there is no right to speak *fighting words*—those words without social value, directed to a specific individual, that would provoke a reasonable member of the group about whom the words are spoken. (American Bar Association)

The ACLU also noted that the need for protections against hate crimes is growing. Under the Hate Crime Statistics Act, the FBI annually collects and reports statistics on the number of bias-related crimes reported by local and state law enforcement officials. In 2003, the FBI reported 7,489 incidents covered by the act. Of those, 3,844 were related to race and 1,239 were related to sexual orientation. Gender identity is not a category monitored by the act.

"This law would punish acts of discrimination, but not bigoted beliefs," Anders said. "Congress should act to punish persons for violent acts when victims were selected only because of who they are." (ACLU)
<https://www.aclu.org/news/aclu-endorses-federal-hate-crimes-legislation-first-time-says-conyers-proposal-properly>

RECENT CASES: CASTORINA AND CANADY

Uniform policies in public schools are a reasonable way to instill discipline and create a positive educational environment. The courts have determined that some school dress code policies were not intended to suppress students' freedom of expression but to further reasonable educational objectives. This stance was reflected in the 5th Court of Appeals ruling, *Canady v. Bossier Parish School Board* (2001). "The School Board's purpose for enacting the uniform policy is to increase test scores and reduce disciplinary problems throughout the school system," the appeals court wrote in *Canady*. "This purpose is in no way related to the suppression of student speech."

The most recent case was decided in March 2001 when the U.S. Court of Appeals for the Sixth Circuit issued a ruling regarding a Kentucky high school's dress code (*Castorina v. Madison County School Board*, 246 F.3d 536, U.S. Ct. App. 6th Circuit). The court indicated that several criteria were crucial in determining whether school policy interferes with student rights under the Constitution. Those criteria include:

1. If the school policy appears to be viewpoint specific (as in the *Tinker* case), the courts will apply a higher level of scrutiny to a school's proposed regulation.
2. If the disputed clothing is obscene, vulgar or worn in a manner that disrupts school activity or causes unrest during the school day, the courts will allow school districts more discretion in prohibiting the clothing.
3. If the student speech/dress could be considered to be "school-sponsored," the courts will allow school districts more discretion in prohibiting the clothing. For instance, school officials could regulate school-sponsored activities such as publications, theatrical productions and other conduct related to the school's curriculum if their actions are reasonably related to legitimate pedagogical concerns.

The Supreme Court has not yet addressed the issue of school uniforms per se. As a result, this issue is a matter of first impression for all circuit courts of appeals and most federal and state courts. In the most recent case, decided in January 2001, the U.S. Court of Appeals for the Fifth Circuit upheld the constitutionality of a mandatory public school uniform policy in a Louisiana school district (*Canady v. Bossier Parish School Board*, 240 F.3d 437, U.S. Ct. App. 6th Circuit).

The court held that, "the school board's uniform policy will pass constitutional scrutiny if it furthers an important or substantial government interest; if the interest is unrelated to the suppression of student expression; and if the incidental restrictions on First Amendment activities are no more than is necessary to facilitate that interest."