

“Empty Holster” Ban Violates First Amendment

A District Court in Texas held that the Tarrant County Community College’s ban of students’ right to participate in an “empty holster” protest violated the students’ First Amendment Rights. *Smith v. Tarrant County College Dist.*, 670 F.Supp.2d 534 (N.D. Tex. 2009). The same court has now held that the community college must pay the plaintiffs’ attorneys fees of \$243,000.00. *Smith v. Tarrant County College Dist.*, Civil Action No. 4:09-C-658-Y (N.D. Tex. Oct. 13, 2010).

Two students at the Tarrant County Community College wanted to participate in an “empty holster” protest promoted by the Students for Concealed Carry on Campus. This group formed after the Virginia Tech shootings to protest the fact that students on college campuses are generally not permitted to protect themselves by carrying concealed weapons on campus. The two community college students planned to wear empty holsters and to distribute leaflets in class and in the hallways of the college. The community college originally had a policy that required students to get advance permission for all protests and to limit protests to a designated “free speech zone.” The community college’s revised policy, adopted after the lawsuit was filed, retained the right of the college to ban “disruptive” protests. The revised policy also prohibited protests that were co-sponsored by an off-campus organization. The students continued the litigation after the revised policies were adopted.

The District Court quickly dealt with the community college’s policy banning student protests co-sponsored by an off-campus organization, ruling that the policy was overly broad and on its face violated the students’ First Amendment rights. Next, the Court held that the community college was within its rights to ban the distribution of leaflets in classrooms and adjacent hallways, as this would be disruptive of the rights of other students to learn. However, the Court held that the community college violated the students’ First Amendment rights by not allowing them to wear the empty holsters in classrooms and adjacent hallways. After a thorough discussion of the First Amendment rights of college students, the Court held that the wearing of empty holsters was clearly protected symbolic speech. The college contended that the empty holsters would be “disruptive.” The Court responded by stating that the college must offer actual evidence that the protest would be “disruptive” and could not rely on college officials’ “mere expectation” that there would be a disruption. According to the Court, college officials must base their First Amendment decisions “on fact, not intuition.”

This case is another in the long line of decisions illustrating the tension between the right of college officials to pursue the college’s primary mission of orderly education on the one hand, and the First Amendment rights of students on the other. The case also illustrates the potentially expensive consequences of an error in evaluating that tension.