



Written by [Bob Adelman](#) on May 16, 2023

“Two-gender T-Shirt” War Heats Up

The law firm representing 12-year-old Liam Morrison, the seventh-grader at Nichols Middle School (NMS) in Middleborough, Massachusetts, who wore a t-shirt back in March that offended someone, [asked the school board nicely](#) to let him keep his shirt on. The shirt said simply “There are only two Genders.”

The letter from the Massachusetts Family Institute (MFS) reviewed the case law that favored the free speech rights of Liam for the board, just in case they weren’t aware of it, and then informed the board that “Liam intends to wear his shirt again on Friday, May 5. Now that NMS is on notice that hindering him from wearing the shirt is a violation of his constitutional rights, we trust that it will not interfere with Liam doing so again. If it does, it may be necessary to take legal action against the school district. Please confirm in writing at your earliest opportunity that Liam will be allowed to wear the shirt.”

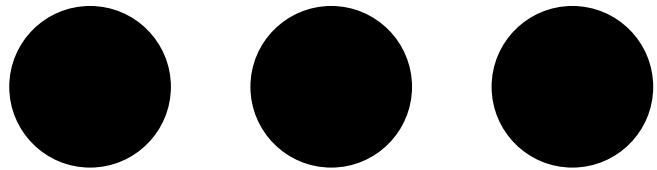
Instead of complying with the letter from Samuel Whiting, staff attorney at MFS, the board enlisted the help of Stoneman, Chandler & Miller to defend its position. Stoneman, Chandler & Miller informed Liam and his attorneys that the school will continue to “prohibit the wearing of a T-shirt by Liam Morrison, or anyone else which is likely to be considered discriminatory, harassing and/or bullying to others including those who are gender non-conforming by suggesting that their sexual orientation, gender identity, or expression does not exist or is invalid.”

The attorneys from Stoneman, Chandler & Miller have a huge mountain to climb. First, public opinion continues to weigh heavily in Liam’s favor. The video of him addressing the school board on April 13 [has now been viewed more than 13 million times](#).

Second, courts have ruled in favor of the First Amendment in numerous cases, including especially [Tinker v. Des Moines Independent Community School District](#), decided in 1969. It has been used so often in First Amendment cases that it is now referred to as the “Tinker test.”

[The “Tinker test”](#) simply asks the questions, does the speech or expression of the student “materially and substantially interfere with the requirements of appropriate discipline in the operation of the school?” or might it “reasonably have led school authorities to forecast substantial disruption of or material interference with school activities?”

Liam answered that question himself in an interview with Fox News:



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The reason that I wore it is because, well, everyone has a right to their opinions, and I want to be able to voice mine on a subject that a lot of people were talking about.

I definitely don't like that they violated what is basically the first thing that the people who were in charge of America at the time stated we were allowed to do and nowadays it feels like that's being taken away a lot, which is why some people choose to speak up about it. It's not just me.

As the letter from MFI to the school board makes clear, Liam's freedom of speech rights were violated:

On Tuesday, March 21, 2023, Liam wore a t-shirt to school that simply stated, "There are only two genders." Liam had asked his parents to buy him this shirt because he opposes the idea that there are many (even infinite) genders, which he sees as radical and untrue.

He wore the shirt because he wanted to make a statement based on his deeply held personal and political beliefs regarding the unchangeable nature of gender as a binary of male and female.

Unfortunately, Liam was not allowed to express his beliefs. Instead, acting principal Heather Tucker removed him from gym class and met with him and a school counselor in a side room.

During that meeting, she told Liam that his shirt was inappropriate because it made other students upset. She asked him to change his shirt in order to return to class, but Liam expressed that he could not do so in good conscience.

Having reached this impasse, Liam's father and stepmother came and picked him up. Liam missed the rest of his classes that day.

Liam's attorneys reviewed the "Tinker test" for the edification of the school board and then quoted from another similar ruling that confirmed it: "Students do not have the right to be 'upset' when confronted with a viewpoint with which they disagree."

They added:

Here, there is no doubt that the NMS administration and "several" students and staff did not like what Liam had to say. Indeed, NMS has made its position on gender ideology clear through the use of banners, flags, and curricula. Because Liam dissented from this orthodoxy, he was censored.

But NMS has not pointed to any evidence of substantial disruption that took place because of Liam's shirt that would justify such an action; as the cases above make clear, apprehension that some students may be offended, even that they may feel personally attacked, is not enough.

Nor is there any evidence that other students' rights were infringed — how could they have been, when Liam's expression was passive and could easily be ignored or avoided?

Complaints by other students and staff that Liam's shirt made them feel upset or uncomfortable simply do not come close to the level of disruption required to justify censoring speech....



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It should be clear that the “hate speech” provision of NMS’s dress code is similarly facially unconstitutional and would be struck down if challenged in federal court.

By allowing speech that supports gender identity ideology, but forbidding speech that opposes it, NMS is unconstitutionally “picking and choosing” speech that it favors and disfavors.

Liam’s shirt did not in fact come close to expressing “hate speech” toward transgender-identifying students, but even had it done so, it could not be prohibited absent evidence of a material and substantial disruption to school operations.

In announcing that Liam’s lawyers were going to be filing suit against the school board in the very near future, Liam’s lawyer Sam Whiting told Fox News that Liam plans on “wearing something to school [on Friday] that will make a strong statement about censorship.”

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