



Written by [Elad Hakim](#) on April 23, 2021

Kneel or You're off the Team? Virginia Tech Player Refuses, Files Federal Lawsuit Against Women's Coach

Kiersten Hening, a soccer player at Virginia Tech, recently filed a federal lawsuit against Chugger Adair, the women's head soccer coach. In the lawsuit, Hening alleges that she was forced off the team because she refused to kneel with the rest of the team before the start of a game.

As reported by [Marc Davis](#), sports anchor for NBC12:

The suit states that Hening's refusal to kneel came during the reading of an ACC unity statement read prior to Virginia Tech's September 12 game at Virginia. The former Rapid remained standing while most other starters knelt during the reading of the statement. According to the court-filed document, one other starter stood as well, but that player's parents informed Adair of her intention prior to the game and warned against retaliation. That player was also on scholarship.

AP Images

"At the next opportunity — halftime of the Virginia game — Coach Adair berated Hening for her stance," the lawsuit reads. "He singled her out and directly attacked her, pointing a finger in her face. He denounced Hening for 'bitching and moaning,' for being selfish and individualistic, and for 'doing her own thing.'"

The document goes on to detail a film session in which the verbal abuse continued and cited the following two matches in which Hening was removed from the starting line-up. During those games, she saw her minutes decrease. She departed the team on September



20.

As part of her claim, Hening asserts that her First Amendment rights were violated. Specifically, she argues that the refusal to kneel is protected by the First Amendment, and that [Adair](#) “benched her, subjected her to repeated verbal abuse, and forced her off the team” because she refused to kneel. As a result, [Hening](#) is seeking unspecified damages, and [wants](#) Adair to undergo First Amendment training and let her back on the team.

The application of the First Amendment in the public-school setting is not necessarily a novel issue, although it has garnered more attention as of late. Recently, the Supreme Court agreed to hear arguments in the case involving Brandi Levy, a high school freshman who was suspended from her school cheerleading team for an [entire year](#) after issuing an F-bomb-laden Snapchat post to some of her followers. Levy sent the post on her own personal cell phone, away from school property, and on a Saturday. Levy’s case raises the question of whether a school may regulate speech that occurs off-campus?

While the school is not currently a defendant in Hening’s lawsuit, and although the incident occurred during a Virginia Tech soccer game, the 1969 case [Tinker v. Des Moines Independent Community School District](#) could ultimately play an important role in the suit’s eventual outcome. In that earlier case, the [Supreme Court](#) ruled that public school officials could not censor student speech/expression unless they could forecast that the expression would result in “substantial disruption of or material interference with school activities,” or “intrude in the school affairs or the lives of others.” As the [Supreme Court](#) noted:

First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years.

Since the Tinker decision, the Supreme Court has created several exceptions to such protection, which are discussed [here](#), [here](#), and [here](#).

Hening’s case, like Levy’s, raises some interesting constitutional questions. Most notably, does Hening’s refusal to kneel constitute a form of expression that is protected under the First Amendment? If so, and assuming that her allegations are found to be true, did the coach have a right to force her off the team simply because she refused to kneel? What harm, if any, resulted from Hening’s refusal to kneel? Did her refusal to kneel somehow disrupt or interfere with anything?

While the standards are a bit different for public and private institutions, it appears that a concerted effort is being made to erode the protections afforded by the First Amendment. Allowing this to happen could result in very risky precedent, which is one reason why the outcome of these two cases, and others like them, are so critical.



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