



## Another Free-speech Lawsuit Goes to Trial

When Kiersten Hening, a starting forward on the Virginia Tech soccer team, didn't kowtow to pressure to "kneel" during a "social justice" event at the start of an Atlantic Coast Conference game in the fall of 2020, her coach, Charles Adair, retaliated.

At halftime he castigated her in front of her teammates, and cut her time on the field drastically during the second half. During film review of the game the following week Adair continued to chastise and criticize her, and cut her from the starting lineup ahead of the next two games.



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Kiersten just couldn't go along with the display of "unity" following the death of George Floyd that Virginia Tech embraced. As the lawsuit noted:

On September 3, 2020, the Atlantic Coast Conference's ("ACC") Committee for Racial and Social Justice announced that, in addition to creating an ACC Unity Symbol and implementing mandatory "diversity and inclusion training for student-athletes" focused on "anti-racism," a Unity Statement would be read before every ACC event.

This Unity Statement provided: "We, the ACC, are committed to seeing each other as equals, supporting each other, and treating each other with respect and dignity at all times, recognizing that our differences don't divide us, but they make us stronger."

As this Unity Statement was read prior to the UVA game, all but three of the players and coaches from both teams kneeled in an apparent show of support.

Hening and two of her teammates declined to kneel.

As Jonathan Turley, a constitutional scholar and professor at George Washington Law School, noted, "the First Amendment's protection of freedom of speech includes both the right to speak freely, and the right to refrain from speaking at all."

That right also includes, said Turley, "the right to be free from retaliation by a public official for the exercise of that right."

Coach Adair, not understanding of Hening's free-speech rights, violated them. He benched her, he publicly ridiculed her, he denounced her in front of her team, and, in the end, forced her to leave the team.

In early December, following oral presentations of both parties, U.S. District Court Judge Thomas Cullen denied Adair's move to dismiss the case, allowing Hening's complaint to go to a jury trial.

Adair argued that Hening had failed to make a sufficient case against him. He tried to say that, while she was engaging in a First Amendment protected right by not kneeling, she couldn't prove that he retaliated against her; i.e., that there was no "cause and effect."



Written by [Bob Adelman](#) on December 13, 2022

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Instead, he claimed that he criticized her for her poor play in the first half of the game.

Judge Cullen didn't buy it:

Whatever his motivations, the court has no trouble concluding that Adair's conduct towards Hening — publicly chastising her, removing her from the starting lineup, and reducing her playing time — would tend to chill a person of ordinary firmness's exercise of her First Amendment rights.

Indeed, Hening has testified that Adair's actions caused her to take a knee prior to the second (Clemson) and third (University of North Carolina at Chapel Hill) games of the season before she decided to quit the team.

A reasonable jury, in sum, could find that Adair's actions reasonably chilled Hening's First Amendment expression.

Cullen concluded:

This motion [to dismiss] has been fully briefed by the parties, and the court heard oral argument on December 2, 2022 ... the court will deny Adair's motion and allow the case to proceed to trial.

Adair had better settle before that trial and get the best deal he can from his former player.



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