

THE RUTHERFORD INSTITUTE

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May 17, 2017

Via Email and U.S. Mail

Tonya Waddell, Principal
Richmond Early College High School
1042 West Hamlet Avenue
P.O. Box 1189
Hamlet, North Carolina

Re: Censorship of Yearbooks

Dear Ms. Waddell:

Richmond Early College High School's decision to confiscate copies of the school's yearbook—based on an “inappropriate” quote attributed to Donald Trump (“Build that wall”) that accompanied a senior's photograph—constitutes an act of censorship in violation of the First Amendment to the U.S. Constitution.¹

As an organization committed to ensuring that America's schools not only teach the constitutional principles on which this nation was founded but also exercise them, The Rutherford Institute has helped countless communities balance student freedom with maintaining a healthy learning environment.² While we understand the particular challenges that school administrators must grapple with in creating nurturing environments for learning while also accommodating the varied—and sometimes controversial—views of its students, censorship should never be the answer.

In an effort to assist Richmond Early College High School in untangling this knotty problem, we offer the following analysis of First Amendment law as it relates to your situation and recommendations for resolving this matter in a satisfactory fashion.

¹William R. Toler, “Richmond Early College student's use of Trump's ‘Build that wall’ quote leads to yearbooks being yanked,” *Richmond County Daily Journal* (May 10, 2017), <http://yourdailyjournal.com/news/73175/richmond-early-college-students-use-of-trumps-build-the-wall-quote-leads-to-yearbooks-being-yanked>.

² The Rutherford Institute is a non-profit civil liberties organization that provides free legal representation to individuals whose civil rights are threatened or infringed.

Confiscation of the Yearbooks Due to ‘Inappropriate’ Comments

According to public accounts, the incident arose after a graduating senior opted to include the quote “Build that wall,” attributed to Donald Trump, to appear below her picture in the yearbook. Reportedly, all graduates are allowed to select their own quote and these quotes are subject to review and approval before the yearbook is sent for printing. It is our understanding that this particular yearbook and its quotes were vetted in the same way. However, after an objection to the “Build that wall” quote was posted on social media, school officials confiscated the yearbooks that had already been distributed and refused to distribute other copies that had been printed and paid for. According to the Richmond County Schools’ Facebook page, the yearbooks were seized because they contained quotes that were “inappropriate” and because the District will not tolerate any “inappropriate conduct toward any of our students.”

Students Do Not Shed Their Right to Freedom of Speech

It has long been established that students do not shed their right to freedom of speech at the schoolhouse door.³ This freedom of speech also extends to student expression in yearbooks.⁴ Thus, “inappropriate” or not, the decision by a student to select the “Build that wall” quote to accompany her senior photo was clearly an act of expression protected by the First Amendment. Public schools may not censor a student’s speech because they disagree with the student’s message or in order to avoid the discomfort that accompanies an unpopular opinion. Censorship is justified only if the speech causes material and substantial disruption of the operation of the school.⁵

No Disruption Resulted From the Speech

There is no indication whatsoever that the “Build that wall” quote caused the kind of disruption that would justify such an overt act of censorship as banning distribution of the yearbooks and confiscating copies previously distributed. That some individuals objected to the viewpoint expressed by the quote is not sufficient cause for the school to ban the yearbook as originally printed. The fact that certain “hecklers” may object to a student’s speech does not license school officials to forbid that speech.⁶

Unpopular Speech Is Not Inappropriate

The decision to confiscate and ban the yearbooks also is not justified merely because the “Build that wall” quote is perceived as “inappropriate.” Although schools may restrict speech that is obscene, lewd or vulgar, it clearly may not censor student speech because the speech is

³ *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

⁴ *Kincaid v. Gibson*, 236 F.3d 342, 356 (6th Cir. 2000).

⁵ *Tinker*, 393 U.S. at 508-09.

⁶ *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1275-76 (11th Cir. 2004).

political in nature. To the contrary, schools must respect student freedom of expression by tolerating divergent political and religious views, even when the views expressed may be unpopular.⁷

Thus, the decision to confiscate and ban the yearbook because some object to the “Build that wall” quote violates the First Amendment. This action was not necessary to maintain order or discipline in the school, but served only to censor constitutionally-protected expression.

Schools Should Teach Freedom Principles, Not Censorship

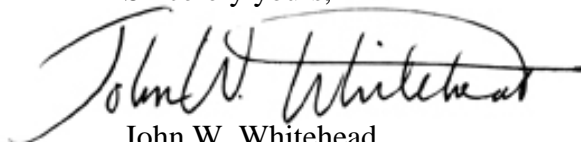
It is far better to teach students about the First Amendment and about why we tolerate divergent views than to suppress speech.⁸ To this end, the ban on the yearbooks as originally printed should be reversed, the confiscated yearbooks should be returned to those who have already paid for them, and the sale and distribution of the yearbook should be resumed.

By reversing the ban, the school will teach an important lesson to students and to the community. As the United States Supreme Court has written:

The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools. . . . The classroom is peculiarly the “marketplace of ideas.” The Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth out of a multitude of tongues, rather than through any kind of authoritative selection.⁹

Should The Rutherford Institute be of assistance to you in striking a proper balance between creating nurturing environments for learning while also accommodating the varied—and sometimes controversial—views of its students, please do not hesitate to contact us.

Sincerely yours,

A handwritten signature in black ink that reads "John W. Whitehead". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John W. Whitehead
President

⁷ *Bethel Sch. Dist. 403 v. Fraser*, 478 U.S. 675, 681 (1986).

⁸ *Hills v. Scottsdale Unified Sch. Dist. No. 48*, 329 F.3d 1044, 1055 (9th Cir. 2003).

⁹ *Keyishian v. Board of Regents of University of State of New York*, 385 U.S. 589, 603 (1967) (citations omitted).