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US Court Of Appeals for the Fourth Circuit Rules against Plaintiffs' Challenge of a Charter School Dress Code

The Court ruled that the Charter Day School is not a state actor, thus, it is a private operation. The Court reasoned that, although the school is funded with public money and is labeled as a public school, it is a private operation and thus, the court will not invalidate the dress code.

Charter schools are privately operated. They are not state actors. The label--public schools—should be scrubbed from the law books. Since they are not public schools, they should be privately funded.

Appeals court gives mixed ruling on N.C. school's dress code

A federal appeals court has tossed out a lower-court ruling that banned a North Carolina charter school from requiring girls to wear skirts

By MATTHEW BARAKAT Associated Press

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FALLS CHURCH, Va. -- A federal appeals court on Monday tossed out a lower-court ruling that banned a North Carolina charter school from requiring girls to wear skirts.

But the 2-1 ruling from the 4th U.S. Circuit Court of Appeals in Richmond, Virginia, also opens up a new legal avenue to challenge the legality of the skirts requirement.

Charter Day School, a public charter school in Leland, North Carolina, that serves elementary and middle school students, was sued in 2016 by parents who objected to the dress code. The rules required girls to wear skirts, jumpers or skorts, except on gym days.

In 2019, a federal judge ruled that the dress code was unconstitutional because the charter school should be considered a state actor and that the rule violated the Equal Protection Clause of the 14th Amendment.

Since then, the school has suspended that part of its dress code.

In Monday's decision, though, Judges A. Marvin Quattlebaum and Allison Jones Rushing, both appointees of former President Donald Trump, ruled that charter schools should not be considered state actors, and are therefore not subject to the Equal Protection Clause, a ruling that could give charter schools greater leeway to operate as they see fit on issues beyond implementation of dress codes.

But the ruling does not flatly allow for reinstatement of the dress code. Instead, it orders the lower court to review whether the dress code is a violation of Title IX, the federal law that bars sex-based discrimination in education.

In a dissent, Judge Barbara Milano Keenan, an appointee of former President Barack Obama, said the ruling barring the dress code should have been flatly upheld.

"No, this is not 1821 or 1921. It's 2021," Milano wrote. "Yet, girls in certain public schools in North Carolina are required to wear skirts to comply with the outmoded and illogical viewpoint that courteous behavior on the part of both sexes cannot be achieved unless girls wear clothing that reinforces sex stereotypes."

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Baker Mitchell, who founded the school in 1999, said he still believes in the dress code, and that a majority of parents at the school support it as well.

“We're a school of choice. We're classical in our curriculum and very traditional. I believe that the more of the traditional things you have in place, the more they tend to reinforce each other,” he said in a phone interview. “We want boys to be boys and girls to be girls and have mutual respect for each other. We want boys to carry the umbrella for girls and open doors for them ... and we want to start teaching that in grammar school.”

The ACLU, which helped bring the lawsuit, issued a statement Monday saying it's pleased that the ruling opens up the opportunity for dress codes to be challenged under Title IX, but disappointed that it overturns the finding of an Equal Protection Clause violation.

“Dress codes that enforce different rules based on old-fashioned conventions of how girls should dress, look, and behave while intentionally signaling that girls are not equal to boys perpetuate gender stereotypes and should have no place in our public schools,” said Galen Sherwin, senior staff attorney with the ACLU Women’s Rights Project.

<http://curmudgucation.blogspot.com/2021/08/charter-schools-are-not-public-schools.html>

<https://abcnews.go.com/US/wireStory/appeals-court-mixed-ruling-nc-schools-dress-code-79369030>

[\(Linked PDF of Court Decision\)](#)