

ENTERED

September 06, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

BELEN GONZALES, <i>et al</i> ,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 2:18-CV-043
	§	
MATHIS INDEPENDENT SCHOOL	§	
DISTRICT,	§	
	§	
Defendant.	§	

ORDER GRANTING PRELIMINARY INJUNCTION AS TO D.G.

Before the Court is Plaintiffs’ Motion for Entry of Preliminary Injunction (D.E. 33). On September 5, 2019, the Court called the motion for hearing and Plaintiffs, Belen Gonzales, C.G., and D.G. appeared personally and through counsel. Defendant Mathis Independent School District (MISD) appeared by counsel. Pending a determination of the jurisdictional challenge to C.G.’s claims, the Court issues this Order only as to D.G. After hearing evidence and arguments of counsel, the Court holds as follows with respect to the claims of D.G.:

A. Substantial Likelihood of Success.

D.G. demonstrated a substantial likelihood of success on the merits. Plaintiffs request a preliminary injunction under the Texas Religious Freedom Restoration Act (TRFRA), Tex. Civ. Prac. & Rem. Code § 110.001 et seq. The TRFRA provides that “a government agency may not substantially burden a person’s free exercise of religion.” § 110.003(a). It is undisputed that MISD qualifies as a government agency. Therefore, the statute will require proof that: (1) D.G.’s maintenance of an uncut shock of hair in a

braid down his back is a religious exercise; and (2) that MISD's refusal to give D.G. a religious exemption from the hair grooming policy in order to participate in extra-curricular activities is a substantial burden on his free exercise of religion. *Id.*

Religious Exercise. The witnesses, Belen Gonzales, C.G., and D.G., gave compelling testimony that they made and observe a promesa—a prayerful promise that is a devotion to God in appreciation for His healing hand. First, the parents asked God to heal C.G. as an infant struggling with illness. Then they sought His aid with respect to Belen's pregnancy with, and delivery of, D.G. after she had previously undergone an emergency C-section for C.G.'s birth.

Each of the witnesses testified that their promesa has been, and continues to be, a sacred promise and an outward sign of their religious belief. They believe that God would be disappointed in them and could withdraw his healing protection if they were to break the promesa by cutting the long strands of hair. Belen stated that the braids constituted a symbol of faith and the family's dedication to God in their hearts and in their home, as well as a part of raising good children. To cut the braids would be to give up on God or would represent the false suggestion that she does not need Him anymore.

The promesas, since the childrens' births, have been sanctioned by Catholic priests, who provided verification to MISD to support Plaintiffs' religious exemptions to enroll in school while maintaining their braids, which do not comply with the MISD hair grooming policy. *See* Plaintiffs' Exhibits 2A and 2B. Since pre-kindergarten through 2017, D.G. has been permitted to attend school and participate in extracurricular

activities while maintaining his braid, on the basis of his long held promesa and the religious exemption MISD granted.

In the children's sixth grade year, their parents gave them the freedom to choose whether to continue to observe the promesa as a promise of their own to God or to cut their braids. After discussing the matter between themselves, both children adopted the promesa as their own sacred promise and continue to affirm it to this day.

The TRFRA defines "free exercise of religion" as "an act or refusal to act that is substantially motivated by sincere religious belief." Tex. Civ. Prac. & Rem. Code § 110.001(a)(1). The Court FINDS that the witnesses testified credibly that the braids are worn pursuant to a sincere religious belief.

Substantial Burden. The witnesses testified that being denied participation in extracurricular activities significantly saddened the children. They feel excluded and ostracized. The football coach took C.G.'s helmet and equipment away, telling him publicly in front of the team that he would not be permitted to be on the football team because of his braid. D.G. and C.G. are hurt because they cannot contribute to the success of their school teams and therefore have difficulty celebrating wins.

Belen testified about her concerns that extracurricular activities are stepping stones for the children realizing who they can and want to be. Such group endeavors help children unlock their potential, dabbling in different types of work to learn what fits best with their needs and talents. Not being exposed to that has deprived them of opportunities for learning, growth, and socialization with friends they have grown up with.

This is consistent with MISD's own representation of the benefits of extra-curricular activities. According to the MISD Extra-Curricular Handbook:

We believe that [] properly controlled well organized academic, athletic, vocational, and technology programs meet the needs for self-expression, mental alertness, and physical growth. We endeavor to maintain a program that is sound in purpose and will further each student's educational maturity. It is our desire that through competition, our students realize that they can determine the course of their own lives. We believe that through our program we can help our students grow into mature, responsible citizens that contribute to our society. **The primary objective of our program is to develop a sense of responsibility and accountability in all of our students.**

...

Why are Extracurricular Activities Important?

- They promote self-discipline, responsibility, leadership, teamwork, self-confidence, commitment, and student wellness.
- They enhance and enrich curricular educational offerings.
- They offer participants the opportunity to be leaders and role models on campus and in the community.
- They enable participants to represent the School District in a positive manner.

Plaintiffs' Exhibit 1, p. 3 (emphases in original). Along those same lines, Belen worries that continued exclusion will deny her children of accomplishments necessary for presenting effective college application resumes. In particular, D.G. testified that he has been interested in science and math clubs in the past and would like to participate in

computer programming, designing, and technology activities, as they are directly relevant to his future career goals.

Excluding D.G. from participation in extracurricular activities because he refuses to cut his hair and break his promesa places a substantial burden on D.G.'s religious expression. MISD is depriving D.G. of the real and significant benefits of high school extracurricular life. *See, A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 611 F.3d 248, 264 (5th Cir. 2010).

Government Interest and Least Restrictive Means. Even if D.G. has a substantial likelihood of success on the issue of the substantial burden placed on his free exercise of religion, MISD can still prevail if it demonstrates that it has imposed the burden in furtherance of a compelling governmental interest and the burden is the least restrictive means for doing so. Tex. Civ. Prac. & Rem. Code § 110.003(b). The burden of proof for this defense is placed on the government agency, MISD. *Id.*

MISD chose not to offer any evidence on these defensive issues. Nothing in Plaintiffs' evidence revealed a compelling interest supporting MISD's decision to deny C.G. and D.G. participation in extracurricular activities because they wore narrow braids down their backs, tucked inside their shirts. MISD failed to satisfy its burden of proof to show that it took reasonably restricted measures to advance their interests. Therefore, D.G. has sustained his burden to demonstrate a likelihood of success on the merits.

B. Irreparable Injury

D.G. demonstrated a substantial threat of irreparable injury if the requested injunction is not issued. The MISD school year began July 31, 2019, and extracurricular

activities are getting started. This action is not scheduled for trial until March 16, 2020. MISD has not indicated any intention to moderate its stance on this issue and C.G. has already been denied the opportunity to participate in football. If an injunction is not entered, D.G. will lose three-quarters of his high school freshman year's opportunity for participation. This is a formative time for students to integrate into the life of the school and the time cannot be regained.

C. Harm of Injunction

D.G. demonstrated that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted. MISD declined to offer any evidence of harm to the school or the district if D.G. is permitted to participate and compete in extracurricular activities. Thus D.G.'s evidence of the harm he will suffer offers the sole weight in favor of issuing the injunction.

D. Public Interest

D.G. demonstrated that the grant of an injunction will not disserve the public interest. It appears to the Court that D.G. is a good student and was, prior to the ban on his participation, an asset to his extracurricular teams in middle school. The same benefits extolled in MISD's Extra-Curricular Handbook support a finding that the public interest is served by having students, including D.G., participate in those activities.

E. Bond

There is no evidence that MISD risks suffering any monetary harm by way of the requested injunctive relief. Therefore, no bond is required to secure the injunction.

Steward v. West, 449 F.2d 324, 325 (5th Cir. 1971).

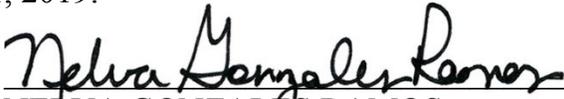
CONCLUSION

For the reasons set out above, the Court GRANTS IN PART Plaintiffs' motion for a preliminary injunction (D.E. 33) in favor of D.G. The Court ENJOINS MISD from excluding D.G.—based on his continued growth of a braid of hair running down his back and tucked in his shirt in violation of the MISD hair grooming policy—from any extra-curricular activities identified in the MISD Extra-Curricular Handbook, including:

- Any University Interscholastic League (UIL), School District, or campus-sponsored or related public performances, events, contests, demonstrations, displays, club activities, athletics, whether on- or off-campus;
- Any elected offices and honors (such as student council and homecoming king);
- All co-curricular activities, which are those held in conjunction with a credit-bearing class, but that may take place outside of school and outside of the school day (such as band and choir);
- All national organizations (such as National Honor Society or Future Farmers of America); and
- Any activity held in conjunction with another activity that is considered to be an extracurricular activity (such as a meeting, practice, or fundraiser).

The Court takes under advisement the balance of the motion for preliminary injunction as it applies to C.G., pending resolution of the jurisdictional issue interposed by MISD.

ORDERED this 6th day of September, 2019.



NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE