BECKET
Religious Liberty for All

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July 15, 2019

Superintendent Benny P. Hernandez
Mathis Independent School District
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To Superintendent Hernandez and the Board of Trustees:

We are writing to you about *Gonzales v. Mathis Independent School District*—a case in which your school district has banned two students from interscholastic activities, including playing on the football team, unless they cut a strand of hair that they have kept uncut as a promise to God since birth.

Our firm, the Becket Fund for Religious Liberty, is the nation's leading law firm specializing in religious freedom cases. We have won multiple cases in Texas and the Fifth Circuit under the laws at issue in your case, and we are undefeated in the U.S. Supreme Court. Although we are not currently representing the Gonzales family, we are nationally recognized experts in this area of the law, and we strongly urge you to settle this case and respect these students' rights for two reasons:

(1) You will lose this case. As explained below, the law is clear, and the school district will lose hundreds of thousands of dollars if it does not respect these students' religious liberty.

(2) It is the right thing to do. Religious liberty is a fundamental human right, and the school district should set an example for its students of respecting human dignity.

If you do not reach a settlement by August 12, we are prepared to bring substantial additional resources to bear in this litigation.

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I. The School District Will Lose

The school district has been sued under the Texas Religious Freedom Restoration Act (TRFRA).[1] Lawsuits under TRFRA have two main parts. First, the plaintiff must prove that the government has imposed a "substantial" burden on his exercise of religion. Second, if the plaintiff proves a substantial burden, the government must prove that imposing that burden on the plaintiff is the "least restrictive means" of furthering a "compelling governmental interest."[2]

In your case, the federal district court has already twice rejected the school district's request for summary judgment. It has correctly held that excluding the boys from extracurricular activities unless they cut their hair would impose a "substantial burden" on their exercise of religion—a ruling that is now binding law of the case.[3] And it has strongly suggested that the school district's interest in its grooming policy "is insufficiently compelling to overtake the sincere exercise of religious belief."[4] Indeed, in its latest ruling, the court criticized your attorneys for making "fundamental analytical errors" and engaging in "multiple slippery slope arguments couched in hyperbole . . . predicting nonsensical and untenable results."[5]

These rulings are not surprising. The leading case on this issue is *A.A. ex rel. Betenbaugh v. Needville Independent School District*, in which a school district required a Native American boy to keep his long hair in a bun on top of his head or in a braid tucked into his shirt—so that his appearance would more closely conform to the school district's grooming policy, which required boys to have short hair.[6] The Fifth Circuit, however, ruled against the school district. It held that requiring the boy to obscure the length of his hair would impose a "substantial burden" on his

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[1] TEX. CIV. PRAC. & REM. CODE § 110.

[2] *A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 611 F.3d 248, 259 (5th Cir. 2010).

[3] *Gonzales v. Mathis Indep. Sch. Dist.*, 2018 WL 6804595, *5 (S.D. Tex. 2018).

[4] *Id.* at *7.

[5] Order denying Defendant's Motion to Reconsider the Denial of Summary Judgment at 1, *Gonzales v. Mathis Indep. Sch. Dist.*, No. 2:18-CV-043 (S.D. Tex. 2019).

[6] *Needville*, 611 F.3d at 256.

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religious practice of wearing his hair visibly long.[7] And it held that the school district had no compelling interest in requiring the boy to follow the grooming policy—particularly when that policy allowed girls to have either long or short hair.[8] The school district was eventually forced to pay the student a settlement of $166,750.

Your district is in an even weaker legal position. As the court said in your case, while the Needville Independent School District "allowed for alternative styling of the hair to conceal its length," "MISD's hair grooming policy requires cutting the Children's hair. This would fully eliminate their religious effort of maintaining a [religious promise], now 14 years strong."[9] And the district has not even attempted to identify any compelling interest in requiring the boys to cut their hair.

Beyond the *Needville* precedent, there are several other decisions that fatally undermine your legal defense in this case. For example, in *Chalifoux v. New Caney Independent School District*, the court ruled against another Texas school district that required Catholic students to conceal their rosaries, which they wore as necklaces, under their shirts.[10] In *Cheema v. Thompson*, the court ruled against a school district that prohibited Sikh students from bringing ceremonial knives to school.[11] And in multiple cases, courts have ruled against state prison systems that required prisoners to cut their beards or hair, even when the prison systems had important interests in the safety and security of their prisons.[12] All of these

[7] *Id.* at 265.

[8] *Id.* at 272.

[9] *Gonzales*, 2018 WL 6804595 at *5.

[10] 976 F. Supp. 659 (S.D. Tex. 1997).

[11] 67 F.3d 883 (9th Cir. 1995).

[12] Findings of Fact and Conclusions of Law, *Goodman v. Davis*, No. 2:12-CV-00166 Dkt. No. 322 (S.D. Tex. Jan. 24, 2019) (Gonzales Ramos, J.) (long hair); *Ware v. Louisiana Dep't of Corr.*, 866 F.3d 263 (5th Cir. 2017) (dreadlocks); *Warsoldier v. Woodford*, 418 F.3d 989 (9th Cir. 2005) (long hair); *Ali v. Stephens*, 833 F.3d 776 (5th Cir. 2016) (fist-length beard); *Garner v. Kennedy*, 713 F.3d 237 (5th Cir. 2013) (quarter-inch beard); *Ali v. Quarterman*, 434 F. App'x 322 (5th Cir. 2011) (fist-length beard); *Holt v. Hobbs*, 135 S.Ct. 853 (2015) (quarter-inch beard); *Nance v. Miser*, 700 F. App'x 629 (9th Cir. 2017) (fist-length beard); *Couch v. Jabe*, 679 F.3d 197 (4th Cir. 2012) (one-eighth inch beard).

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governmental entities had better legal arguments and were in a stronger legal position than your school district. All of them lost.

Finally, as you must know, the Texas Association of School Boards has published a legal memo specifically addressing the question, "Can schools restrict hair styles and hats?" with the following answer: "Yes, but districts *must accommodate requests for exceptions based on a student or parent's sincerely held religious belief*."[13] Many Texas school districts already make religious exemptions to their grooming and dress codes. There is no reason your school district can't do the same. And that is all the more reason why you cannot prevail in this case.[14]

II. Respecting Religious Liberty Is the Right Thing to Do

We urge you to settle this case not just because you will lose—wasting hundreds of thousands of dollars and valuable judicial and taxpayer resources in the process—but even more because it is the right thing to do. This nation was founded on the principle that "all men are created equal" and "are endowed by their Creator with certain unalienable Rights." And the first right enshrined in the First Amendment is the right of religious liberty. Now more than ever, as our nation grows increasingly diverse, it is essential that our public schools teach and model respect for deeply held religious convictions, including the Catholic religious practices at issue here.

To that end, the boys in this case should be commended, not punished, for devoutly keeping a religious promise for over 14 years. And the district should fully respect their religious practices. The law demands no less.

Please inform us by July 29 of whether you intend to pursue a settlement with the Gonzales family and their attorney.

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[13] STUDENT DRESS AND APPEARANCE, TASB SCHOOL LAW ESOURCE, (last updated December 2018) https://www.tasb.org/services/legal-services/tasb-school-law-esource/students/documents/student_dress_and_appearance.aspx (emphasis added).

[14] *See Holt*, 135 S.Ct. at 866 (when "many prisons offer an accommodation, a prison must, at a minimum, offer persuasive reasons why it believes that it must take a different course").

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Sincerely,

Eric Rassbach, Vice President and Senior Counsel
The Becket Fund for Religious Liberty

Luke Goodrich, Vice President and Senior Counsel
The Becket Fund for Religious Liberty

Cc:
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Board Member, Dr. Michelle Davila
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