



By First Class Mail and Email: john.green@gccccks.edu

November 9, 2017

John Green, Director of Athletics
Garden City Community College
Athletics Department
801 Campus Drive
Garden City, Kansas 67846

Re: National Anthem Issue at Garden City Community College

Dear Mr. Green,

The American Civil Liberties Union Foundation of Kansas (ACLU-KS) received a complaint from Rasool Samir, a former student-athlete at Garden City Community College (GCCC) who was ejected from GCCC's game against Sterling College and kicked off the team for declining to participate in the national anthem. We believe any disciplinary action by GCCC against Mr. Samir for abstaining from the anthem is antithetical to our American values and a violation of his First Amendment rights. However, we understand that the GCCC has proffered two alternative explanations for Samir's departure from the team. I am writing to clarify GCCC's position on this matter and request any information you can provide that would help allay our concern that Samir was unlawfully dismissed for exercising his constitutional rights.

On November 1, 2017, Samir warmed up with the team for the Broncbusters's game against Sterling College at Conestoga Arena. When the pre-game warmup ended, players left the court for the national anthem. Samir stayed on the court and continued shooting. He refrained from participating in the anthem because he is a Muslim and his faith prohibits acts of reverence to anything but God. It is my understanding that Samir abstained from participating in the national anthem during the team's preseason games without incident.

After the anthem was finished, Broncbuster booster Jim Howard came onto the court and confronted Samir about "disrespecting the flag." Howard shoved Samir and attempted to grab his arm multiple times. A security guard intervened and escorted Samir to the locker room. Howard returned to his seat in the stands. In the locker room, Coach Brady Trenkle ordered Samir to return to his dorm and asked the security guard to escort him out of the arena. On November 2, 2017, Samir learned through his roommate Theo Holloway that Coach Trenkle planned to dismiss him from the team and send him back home to Philadelphia. Samir called and texted

Coach Trenkle to confirm what Holloway had told him. He was eventually able to schedule a meeting with the coaching staff later that evening. Coach Trenkle began the meeting by asking Samir to explain his actions. Samir stated that he did not participate in the anthem because of his religious convictions and pointed out that it had not been an issue at the previous games. Coach Trenkle responded “well, we’re going to have to send you home.” Samir signed a form to drop his classes. Coach Trenkle ended the meeting by purchasing Samir’s plane ticket to Philadelphia. Samir left Garden City the next day on, Friday, November 3rd.

More than 70 years ago, the Supreme Court held that the First Amendment bars public schools from requiring students to participate in patriotic ceremonies – in that case, saluting the American flag during the pledge of allegiance. See *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). A year before the Court reached that result in *Barnette*, the Kansas Supreme Court decided that Section 7 of the Kansas Bill of Rights prohibits the state from imposing punishment for refusals to recite the Pledge. See *State v. Smith*, 121 P.2d 518 (Kan.1942). Schools have no valid interest in turning their students into mouthpieces for the government against their will. And students’ refusal to participate in patriotic ceremonies “does not interfere with or deny rights of others to do so,” or otherwise “bring them into collision with rights asserted by any other individual.” *Barnette*, 319 U.S. at 630. Even in the midst of World War II, the Court admonished school administrators that their job is to train students for participation in our free society, not “to strangle the free mind at its source.” *Id.* at 637.

Barnette recognized that public schools cannot enforce uniformity of thought “by word or act,” *id.* at 642, and courts have consistently held that this includes not only the right to be silent during the pledge of allegiance or national anthem, but also the right not to stand. See, e.g., *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1274, 1277–82 (11th Cir. 2004) (holding that school officials are not entitled to qualified immunity when they violate a student’s “clearly established” right to “expressive conduct” by punishing him for remaining seated and silent during the pledge); *Lipp v. Morris*, 579 F.2d 834, 835 (3d Cir. 1978) (per curiam) (holding that requiring students to stand during the pledge is unconstitutional compulsion); *Goetz v. Ansell*, 477 F.2d 636, 638 (2d Cir. 1973) (holding that standing for the pledge “can no more be required than the Pledge itself”); *Rabideau v. Beekmantown Cent. Sch. Dist.*, 89 F. Supp. 2d 263, 267 (N.D.N.Y. 2000) (“It is well established that a school may not require its students to stand for or recite the Pledge of Allegiance or punish any student for his/her failure to do so.”); *Banks v. Bd. of Pub. Instruction of Dade Cty.*, 314 F. Supp. 285, 294–96 (S.D. Fla.1970) (holding that requiring students to stand during the pledge is unconstitutional), *aff’d*, 450 F.2d 1103 (5th Cir. 1971); *Sheldon v. Fannin*, 221 F. Supp. 766, 775 (D. Ariz. 1963) (holding that student may not be disciplined for choosing not to stand during the national anthem).

This principle holds no less true today than during World War II, and no less true on the playing field than in the classroom. As the Supreme Court held in the seminal *Tinker* case, a student’s free speech rights “do not embrace merely the classroom hours” but apply equally when “he is in the cafeteria, or on the playing field, or on the campus during the authorized hours.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 512–13 (1969). Courts have recognized that student-athletes have a right to oppose or boycott a range of activities under the First Amendment. *Seamons v. Snow*, 206 F.3d 1021 (10th Cir. 2000)(holding “coaches may not

penalize players for engaging in peaceful speech activit[ies], which do not create substantial disorder.”); *Hyshaw v. Washburn Univ. of Topeka*, 690 F. Supp. 940 (D. Kan. 1987)(recognizing the First Amendment rights of student-athletes to boycott practice in protest of racial injustice); *Williams v. Eaton*, 443 F.2d 422 (10th Cir. 1971)(denying summary judgement to coaches that suspended football players who planned to engage in a political demonstration at an upcoming game); *Boyd v. Bd. of Dir.*, 1612 F. Supp. 86 (E.D. Ark. 1985)(upholding the right of student-athletes to silently protest a pep rally). Additionally, the right to abstain from patriotic rituals applies with particular force where opposition is motivated by the protester’s religious convictions. See *Barnette*, 319 U.S. at 646 (1943) (Murphy, J, concurring “Official compulsion to affirm what is contrary to one’s religious beliefs is the antithesis of freedom of worship.”).

Samir was engaged in protected First Amendment activity when he declined to observe the national anthem. His nonparticipation is clearly in line with the protests deemed constitutionally protected in *Barnette* and *Goetz*. The fact that Samir was at a basketball game rather than in a classroom did not diminish his rights. Moreover, Samir’s objection was motivated by his religious beliefs and thus, was protected on free exercise grounds.

Here, Samir appears to have been disciplined because of his aforementioned First Amendment activity. Samir has identified three separate disciplinary actions GCCC imposed because he abstained from the national anthem. First, Samir alleges that Coach Trenkle reprimanded him on the evening of Wednesday, November 1st immediately after he was escorted off the court. Second, Samir said that Coach Trenkle ordered security to remove him from the gym in retaliation for asserting his right to abstain from the anthem. Finally, Samir contends that he was dismissed from the team because of his refusal to participate in the anthem, noting that Coach Trenkle cited his protest activity during their dismissal meeting on November 2nd.

To my knowledge, GCCC has not publically commented on Samir’s allegations regarding the first two disciplinary actions. ACLU-KS requests any information you have in response to Samir’s claim that he was reprimanded and ordered to leave the game for exercising his First Amendment rights.

GCCC has commented on Samir’s claim that he was dismissed from the team because of his First Amendment activity. You originally told the *Garden City Telegram* that Samir was not dismissed but had left on his own accord.¹ Specifically, you stated that you were in possession of a text message and a handwritten note from Samir that included a request to be released from the team.² Several days later in an interview with KWCH, you provided an alternative rationale for Samir’s departure, stating that he was dismissed from the team due to a “violation of team rules”

¹ J. Levi Burnfin, *Player who shot during anthem done at GCCC*. The Garden City Telegram (November 4, 2017), <http://www.gctelegram.com/sports/20171104/player-who-shot-during-anthem-done-at-gccc>

² Supra.

John Green, Athletic Director

November 9, 2017

Page 4

that occurred after the anthem incident.³ In both statements, GCCC denied dismissing Samir for his protest activity. However, GCCC's inconsistent explanations have made it difficult to ascertain the school's official position as to why Samir is no longer on the team roster. These shifting explanations also suggest that neither reason is true. We would welcome any information you are willing to provide that supports GCCC's first and/or second justification for Samir's departure from the team.

Because we are concerned that Samir was kicked off the team for exercising his First Amendment rights, we ask that you please provide us with GCCC's response to his allegations. In particular, we request any documentation you have that establishes Samir: (1) was not chastised by Coach Trenkle for refusing to salute the flag; (2) was not ordered to leave Conestoga Arena for asserting his right to abstain from the anthem; (3) left the team voluntarily; and (4) was dismissed because he violated a team rule that carries the penalty of dismissal. We are also interested in understanding why GCCC provided conflicting explanations to the media about Samir's departure. If you have any questions about this request, please contact me by phone or e-mail.

Sincerely,



Lauren Bonds

Legal Director

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³ Jennifer Herrera, *Issue surrounding athlete response to National Anthem comes to KS community college*. KWCH Channel 12. (November 6, 2017), <http://www.kwch.com/content/news/Issue-surrounding-athlete-response-to-National-Anthem-comes-to-KS-community-college-455732073.html>