

In *McIntyre v. Little Miami School District*, Southern District of Ohio Holds Classroom Displays Are Not Protected Speech

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On November 9, 2026, the U.S. District Court for the Southern District of Ohio granted summary judgment to Little Miami School District and its board president, holding that a teacher's classroom poster was employee speech that the Board of Education could order removed without violating the First Amendment. The ruling is a significant affirmation of board authority over the classroom environment, particularly as districts implement House Bill (HB) 8, the Ohio Parents' Bill of Rights.

Case Background

A high school history teacher displayed a "Hate Has No Home Here" poster featuring hearts with the American flag, a peace sign, and the rainbow and transgender pride flags. After the board president photographed it, the principal asked whether it was tied to curriculum. The teacher cited state standards but said the poster was not used for formal instruction.

The superintendent concluded a reasonable observer would not view its primary purpose as instruction on sexual concepts or gender ideology. Under the school district's three-tier review (principal, superintendent, board), the Board of Education then voted 4-1 on February 25, 2026, to classify the poster as "sexuality content" under Board Policy 5780.01 and ordered its removal. The teacher sued under 42 U.S.C. § 1983.

Holding and Reasoning

Invoking the U.S. Court of Appeals for the Sixth Circuit's *Evans-Marshall v. Bd. of Educ. of the Tipp City Exempted Vill. Sch. Dist.* decision from 2010, the Southern District drew a clear line: "Although public employees 'undoubtably enjoy certain rights,'

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those rights 'do not transform them into 'sovereigns unto themselves.'… Rather, 'the government, just like a private employer, retains 'control over what the employer itself has commissioned or created': the employee's job. That authority carries particular significance in the context of public education, where Ohio's compulsory-attendance requirements give public school teachers 'a captive audience for their in-class speech.'" Citing the standard articulated in the U.S. Supreme Court's *Garcetti v. Ceballos* decision, the court found the teacher's poster was speech as a public employee, not a private citizen.

Because the teacher controlled the wall space only by virtue of his job, the court reasoned that whether the poster was used for formal instruction or not was immaterial. "Just as in [*Cahall v. New Richmond Exempted Village School District Bd. of Education*], McIntyre's motivations and actions were directly related to, and arose from, his professional responsibilities as a teacher shaping his students' learning environment. … He gained access to and control over the classroom wall space through his position as a public school employee, not as a private citizen. … As McIntyre displayed the Poster pursuant to his official duties, his expression constituted unprotected employee speech." The court distinguished the Supreme Court's *Kennedy v. Bremerton* decision in which a brief, "off the clock" prayer was held to be protected speech, from a permanent display visible during the school day, and relied on consistent decisions from the Second, Seventh, and Ninth Circuits. The court thus granted the school district's motion for summary judgment, and denied all other pending motions, including the teacher's motion for a preliminary injunction.

Appellate Considerations

The teacher may appeal the final judgment as of right by filing a notice of appeal within 30 days after entry of judgment, in this case by Wednesday, December 9, 2026. The Sixth Circuit would review the grant of summary judgment *de novo*, deciding anew whether any genuine dispute of material fact exists and whether the school district was entitled to judgment as a matter of law. The appellant would likely press *Kennedy* and the "not formal instruction"

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distinction drawn by the district court. Because the ruling rests on the Sixth Circuit's own published precedent (*Evans-Marshall*) and on consistent authority from other circuits, the school district's prospects for affirmance appear favorable, though not assured. A published affirmance would extend this precedent beyond just the Southern District of Ohio to all jurisdictions within the Sixth Circuit.

Key Legal Implications

- **Boards may regulate classroom displays.** Displays a teacher posts in the classroom will generally be treated as the school district's own speech, which elected boards may direct.
- **Process matters.** Little Miami School District acted through an adopted policy, a documented review, and a public board vote. Its board could, and did, reach a different conclusion than the superintendent.
- **Open questions remain.** The court did not decide whether the poster actually met HB 8's "sexuality content" definition, which excludes "incidental references" outside formal instruction. As a single district court ruling, it is persuasive, not binding, in other jurisdictions.

Practical Considerations for Ohio School Districts

- Adopt or update a written classroom display policy aligned with HB 8 and your Policy 5780.01 equivalent, applied viewpoint-neutrally to all displays.
- Use a defined review path (principal, superintendent, board) with written findings at each stage and a clear statement of the policy basis for any removal.
- Train administrators and staff that classroom décor is part of the job, and on how HB 8 notice/opt-out duties apply to instructional materials versus incidental displays.
- Document carefully, and avoid informal, individual board member directives that bypass adopted procedures. Treasurers should track litigation-related costs and coordinate with insurers.

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While this decision supports board authority over classroom displays, other outcomes will be fact-specific and turn on each district's policies and process. Should you have questions, please contact the author or any attorney with FBT Gibbons' Government Services practice group.

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