

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

HAYDEN GRIFFITH,)	
)	
Plaintiff,)	
v.)	No. 15-CV-273-GKF-FHM
)	
CANEY VALLEY PUBLIC SCHOOLS,)	Hon. Gregory K. Frizzell
et al,)	
Defendants.)	

**MOTION OF THE PLAINTIFF FOR PRELIMINARY OR PERMANENT INJUNCTION
AND BRIEF IN SUPPORT**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
FACTS	1
PRELIMINARY AND PERMANENT INJUNCTION STANDARDS	4
ARGUMENT & AUTHORITIES	5
I. MS. GRIFFITH WILL SUFFER IRREPARABLE HARM IF A PRELIMINARY INJUNCTION IS NOT ISSUED	5
II. THE THREATENED INJURY TO MS. GRIFFITH GREATLY OUTWEIGHS ANY POSSIBLE INJURY TO THE SCHOOL	6
III. A PRELIMINARY INJUNCTION WOULD NOT BE ADVERSE, BUT IN FACT WOULD SERVE THE PUBLIC INTEREST	7
IV. MS. GRIFFITH IS LIKELY TO SUCCEED ON THE MERITS	7
A. Eagle Feathers are Sacred to Ms. Griffith as a Fundamental Part of her Native American Religious Beliefs and are of Particular Importance to Her with Respect to High School Graduation.....	8
B. The School’s Threat to Preclude Ms. Griffith from Wearing her Sacred Eagle Feather on her Graduation Cap Violates Her Right to Free Exercise of Religion and Expression under the First and Fourteenth Amendment to the U.S. Constitution.....	10
C. The Oklahoma Religious Freedom Act Precludes the School From Infringing on Ms. Griffith’s First Amendment Right to Free Exercise of Religion.....	13
CONCLUSION.....	17
CERTIFICATE OF SERVICE	iv

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.</i> , 701 F. Supp. 2d 863 (S.D. Tex. 2009) <i>aff'd sub nom. A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.</i> , 611 F.3d 248 (5th Cir. 2010).....	13
<i>Burwell v. Hobby Lobby</i> , 134 S. Ct. 2751 (2014).....	14, 15, 17
<i>Dominion Video Satellite, Inc. v. Echostar Satellite Corp.</i> , 356 F.3d 1256 (10th Cir. 2004)	4
<i>Elrod v. Burns</i> , 427 U.S. 347 (1976)	5
<i>Gitlow v. New York</i> , 268 U.S. 652 (1925)	12
<i>Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal</i> , 546 U.S. 418(2006)	15
<i>Holt v. Hobbs</i> , 135 S. Ct. 853 (2015).....	14, 15, 17
<i>Jolly v. Coughlin</i> , 76 F.3d 468 (10th Cir. 1996).....	5
<i>Kikumura v. Hurley</i> , 242 F.3d 950 (10th Cir. 2001).....	5
<i>Lee v. Weisman</i> , 505 U.S. 577 (1992).....	9, 10
<i>McAllen Grace Brethren Church v. Salazar</i> , 764 F.3d 465 (5th Cir. 2014).....	9, 14, 15
<i>McIntire v. Bethel Sch. Indep. Sch. Dist. No. 3</i> , 804 F. Supp. 1415 (W.D. Okla. 1992)	7
<i>Merced v. Kasson</i> , 577 F.3d 578 (5th Cir. 2009).....	15
<i>Oregon v. Smith</i> , 494 U.S. 872 (1990).....	12, 13
<i>United States v. Abeyta</i> , 632 F. Supp. 1301 (D.N.M. 1986).....	9
<i>United States v. Hardman</i> , 297 F.3d 1116 (10th Cir. 2002).....	9
<i>United States v. Playboy Entm't Group, Inc.</i> , 529 U.S. 803 (2000).....	17
<i>Wisconsin v. Yoder</i> , 406 U.S. 205 (1972).....	15
Constitutional Provisions, Statutes, Regulations & Rules	
28 U.S.C. § 1983.....	13

Okla. Stat. tit. 51, § 25113
Okla. Stat. tit. 51, § 25214
Okla. Stat. tit. 51, § 25314
Fed. R. Civ. P. 651, 4, 7
U.S. Const. amend I10, 11
U.S. Const. amend XIV10, 11

Other Authorities

59 Fed. Reg. 229538
Antonia M. De Meo, *Access to Eagles and Eagle Parts; Environmental Protection v. Native American Free Exercise of Religion*, 22 Hastings Const. L.Q. 771 (1995)8

**MOTION OF THE PLAINTIFF FOR PRELIMINARY OR PERMANENT INJUNCTION
AND BRIEF IN SUPPORT**

The plaintiff, Hayden Griffith (“Plaintiff” or “Ms. Griffith”), for the reasons stated herein, and pursuant to Fed. R. Civ. P. 65, move for a preliminary or permanent injunction.

INTRODUCTION

Ms. Griffith is a senior at Caney Valley High School (“School”) and is scheduled to participate in a graduation ceremony on Thursday, May 21, 2015. As an expression of her Native American religious beliefs, she has requested the freedom to wear a sacred eagle feather on her graduation cap. The feather was ceremonially gifted to her by an elder of the Delaware Tribe of Indians, of which she is an enrolled member, in recognition of her achievement. Teachers and representatives of the School and of the Caney Valley Public Schools (the “School District”) have told her that she will be barred from the ceremony if she wears the feather as requested. The position taken by the School and School District would infringe upon Ms. Griffith’s constitutionally guaranteed right to freedom of religious exercise and expression. With graduation less than a week away, the only way to protect Ms. Griffith from this unconstitutional infringement is a preliminary or permanent injunction entered in an expedited manner.

FACTS

As a proud member of the Delaware Tribe and the Cherokee Nation, Ms. Griffith has long participated in and observed traditional and cultural practices. She has served as head girl dancer and princess at the Oklahoma Indian Summer pow-wow and served two years as princess for the Delaware War Mother’s organization. Ms. Griffith also observes traditional religious practices based on her Native American heritage. The facts stated herein and below are supported by the Declaration of Hayden Griffith. (Ex. 1).

An important aspect of her religious beliefs is the sacred nature of eagle feathers. At the

age of five (5) years, Ms. Griffith was honored and blessed to receive from tribal elders an eagle plume in recognition of her participation, commitment, and respect of Native American values and traditions. In her religious beliefs, eagles, as they roam the sky, have a special connection with God. It is her belief that eagle feathers are sacred objects that symbolize honesty, truth, majesty, strength, courage, wisdom, power, and freedom.

Very recently, Ms. Griffith was ceremonially gifted a sacred eagle feather from a Delaware tribal elder. In her Native American tradition, when an eagle feather is gifted from a tribal elder, it is among the highest forms of recognition that may be bestowed upon a young person. This particular eagle feather was gifted to Ms. Griffith in recognition of her great accomplishment of completing high school and to acknowledge her passage into adulthood. Ms. Griffith's high school graduation ceremony is among the most significant events of her life and she wants to wear the single eagle feather gifted to her by the tribal elder to acknowledge and honor her Native American culture and family and as a practice and expression of her Native American religious beliefs.

A few weeks ago, Ms. Griffith's mother took a photograph of Ms. Griffith wearing her graduation cap with the sacred eagle feather attached to the top of the cap along with the traditional tassel. Her mother posted the photo on her Facebook internet account and the photo was seen by a teacher at the School. The teacher told Ms. Griffith that she would not be allowed to wear the feather at the graduation ceremony. Ms. Griffith and her mother requested that the School allow her to wear the sacred eagle feather on her graduation cap at the ceremony but was told by Superintendent Rick Peters that it would not be allowed.

Caney Valley Public Schools does not have any formal written policy or procedure that expressly forbids the wearing of sacred eagle feathers on graduation caps. A document titled

“Graduation Dress Code” does not prohibit such practice. (Ex. 2). Ms. Griffith is also aware of a document that was circulated to graduating students titled “Mrs. Ward’s Graduation Top 10” which states in Paragraph 4 that “HATS MAY NOT BE DECORATED AT ALL.” (Ex. 3). It refers, however, to “glitter and paint” as prohibited. Ms. Griffith also was informed by Caney Valley School District officials, including Superintendent Peters, that she will not be allowed to participate in graduation ceremonies if she attaches her sacred eagle feather to her graduation cap based on a characterization of the feather as a “decoration.”

According to Ms. Griffith’s religious beliefs, when an eagle feather is worn, it is not merely a “decoration,” but a sacred object. Her religious belief is that, as a sacred object, the eagle feather must be treated and handled with great respect and reverence. In accordance with her Native American beliefs and traditions, the sacred eagle feather may only be worn on the head and cannot be dominated by another object that is also being worn on the head. Thus, in order to wear the eagle feather in a manner consistent with her religious beliefs and also wear the required graduation attire, Ms. Griffith must attach the eagle feather to her graduation cap so that the eagle feather will not be dominated by another object also being worn on her head. Caney Valley School District officials have informed Ms. Griffith that she may wear the eagle feather on a necklace or attached to her hair; however, wearing the eagle feather in such a manner would violate her religious beliefs that it must be worn on her head and cannot be dominated by another object also worn on her head.

On April 28, 2015, Superintendent Peters issued a press release (Ex. 4) in which he stated that Ms. Griffith’s request was denied. Superintendent Peters claimed that the decision was

“based upon our neutral practice of not allowing any student to adorn or decorate his or her graduation cap. We are concerned that if we grant this student’s request, then we have opened the door to virtually any other decoration.”

On May 8, 2015, attorneys and representatives from the Native American Rights Fund, Oklahoma Indian Legal Services, Inc., and the American Civil Liberties Union of Oklahoma, wrote a letter to Superintendent Peters setting forth legal precedents and supported Ms. Griffith's request. Support for Ms. Griffith's request has also been expressed to Caney Valley Public Schools by tribal leaders for the Delaware Tribe of Indians and the Cherokee Nation. On Monday, May 11, 2015, Ms. Griffith's mother appeared before the Caney Valley Public Schools Board of Education and reiterated the importance of the sacred eagle feather to Ms. Griffith and again requested that she be allowed to wear the feather at the graduation ceremony.

On Wednesday, May 13, 2015, a formal demand was made through legal counsel for Ms. Griffith that Superintendent Peters or the Caney Valley Public Schools Board of Education allow Ms. Griffith to wear the sacred eagle feather on her graduation cap and stating that, barring an agreement, this lawsuit would be filed to obtain declaratory and injunctive relief. (Ex. 6). Counsel for Ms. Griffith has been in contact with counsel for Caney Valley Public Schools but, as of the filing of this lawsuit, neither Superintendent Peters nor the Board have agreed to grant Ms. Griffith's request.

PRELIMINARY AND PERMANENT INJUNCTION STANDARDS

To secure a preliminary injunction, a plaintiff must establish (1) that the plaintiff will suffer irreparable harm; (2) that the threatened injury to the plaintiff outweighs any injury the opposing party would suffer under the injunction; (3) that the injunction is not adverse to the public interest; and (4) that the plaintiff has a substantial likelihood of success on the merits of the case. *See, inter alia, Dominion Video Satellite, Inc. v. Echostar Satellite Corp.*, 356 F.3d 1256, 1260 (10th Cir. 2004).

Further, under Rule 65(a)(2) of the Federal Rules of Civil Procedure, a hearing on preliminary injunction can be consolidated with a trial on the merits. In this case, Ms. Griffith asserts that she has not only a likelihood of success on the merits, but that a permanent injunction may be proper on the merits after a hearing. The threatened infringement is a onetime event—Caney Valley High School graduation—and she is entitled to injunctive relief allowing her to freely express her religious beliefs by wearing the sacred eagle feather on her graduation cap.

ARGUMENT & AUTHORITIES

I. MS. GRIFFITH WILL SUFFER IRREPARABLE HARM IF A PRELIMINARY INJUNCTION IS NOT ISSUED

The loss of a right to free expression under the First Amendment is one of the most well recognized types of harm which is irreparable. The loss of First Amendment freedoms, for even minimal periods of time unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion). The Tenth Circuit has stated that “[C]ourts have held that a plaintiff satisfies the irreparable harm analysis by alleging a violation of RFRA.” *Kikumura v. Hurley*, 242 F.3d 950, 963 (10th Cir. 2001) (holding prisoner satisfied irreparable injury prong of test for injunctive relief by alleging violation of his free exercise right to religion and the RFRA); *see also Jolly v. Coughlin*, 76 F.3d 468, 482 (10th Cir. 1996)(“[A]lthough the plaintiff’s free exercise claim is statutory rather than constitutional, the denial of the plaintiff’s right to the free exercise of his religious beliefs is a harm that cannot be adequately compensated monetarily.”).

Ms. Griffith is less than a week away from her high school graduation, which is a once in a lifetime occurrence. The sacred eagle feather was ceremonially gifted to her for this specific occasion, in recognition of the great honor of graduating high school and entering adulthood. If her graduation day passes without the requested relief, the opportunity to exercise her religious

rights, to honor her family, and be personally acknowledged and honored by her Indian family, will be forever lost. The harm cannot be later remedied. The harm to her is therefore irreparable and a preliminary injunction is therefore warranted.

II. THE THREATENED INJURY TO MS. GRIFFITH GREATLY OUTWEIGHS ANY POSSIBLE INJURY TO THE SCHOOL

While the injury to Ms. Griffith would be great and irreparable, the harm to the School is minimal and likely non-existent. In his April 28, 2015 press release, Superintendent Peters cites as his concern that allowing Ms. Griffith's religious expression would "open the door" to other less meritorious requests for exceptions to what he characterizes as a policy precluding "decorations" on graduation ceremony attire. As discussed in more detail below, the law applicable to free exercise and freedom of religion claims is to be evaluated to the person, and speculative future events are not to be considered. From a practical standpoint, however, there is little to no risk of any hardship to the School if Ms. Griffith is allowed her right to wear the sacred eagle feather on her graduation cap.

The School, in fact, has offered to allow Ms. Griffith to wear her feather as a necklace or as an attachment to her hair, as opposed to the graduation cap. This is clear evidence that the presence of the feather would result in no harm to the School. The difference in a few inches of where the feather might be placed is of little to no concern to the School, but it is a world of difference to Ms. Griffith in light of her religious beliefs. As outlined above, to comply with her religious practices and beliefs, the feather is to be worn on the head and cannot be dominated by another object that is also being worn on the head. Thus, the feather must be attached to her graduation cap so that the feather is the predominant feature. The distinction is the difference

between a sincerely held religious belief, and the requirement by school officials that it be placed in a manner inconsistent with that belief.

Additionally, as pointed out below, a number of school districts nationwide have granted variances in graduation attire to accommodate Native American traditional and religious practices, and there have been no reports of disruptive results or a floodgate of non-religious decorations. A preliminary injunction is therefore warranted because the harm to Ms. Griffith would be irreparable while the harm to the School would be minimal to non-existent.

III. A PRELIMINARY INJUNCTION WOULD NOT BE ADVERSE, BUT IN FACT WOULD SERVE THE PUBLIC INTEREST

The public interest prong is easily satisfied in this case because First Amendment issues are involved. The courts have held that “[t]he public has an interest in the protection and preservation of First Amendment rights.” *McIntire v. Bethel Sch. Indep. Sch. Dist. No. 3*, 804 F. Supp. 1415, 1429 (W.D. Okla. 1992). Accordingly, “[v]indication of constitutional freedoms and protection of First Amendment rights is in the public interest.” *Id.*

Thus, because First Amendment rights to free exercise of religion are at issue, an injunction would serve the public interest. The requested injunction is therefore warranted.

IV. MS. GRIFFITH IS LIKELY TO SUCCEED ON THE MERITS

The likelihood of success on the merits is often considered the most important prong in securing a preliminary injunction. In this case, Ms. Griffith’s claims fall squarely within applicable law that precludes the School from denying her right to free exercise. Not only is a preliminary injunction warranted, but the Court would be within its authority to enter a permanent injunction pursuant to Fed. R. Civ. P. 65(a)(2).

A. Eagle Feathers are Sacred to Ms. Griffith as a Fundamental Part of her Native American Religious Beliefs and are of Particular Importance to Her with Respect to High School Graduation

Both bald and golden eagles and their feathers are highly revered and considered sacred within Native American traditions, culture, and religion. They are honored with great care and shown the deepest respect. These feathers represent honesty, truth, majesty, strength, courage, wisdom, power, and freedom. Native Americans believe that as eagles roam the sky, they have a special connection with God. *See* Antonia M. De Meo, *Access to Eagles and Eagle Parts; Environmental Protection v. Native American Free Exercise of Religion*, 22 Hastings Const. L.Q. 771, 774-75 (1995) (noting that “Native Americans hold eagle feathers sacred and equate them to the cross or the Bible in western religion.”).

The religious significance of eagle feathers to Native Americans is recognized and embedded in federal law and policy. In 1962, Congress enacted the Bald and Golden Eagle Protection Act, which extended from the Bald Eagle Protection Act of 1940 the prohibition on the take, transport, sale, barter, trade, import and export, and possession of bald eagles to golden eagles as well. The government realized that the passage of this act would severely impinge on the religious practices of many Native Americans, for whom the use of eagle parts is essential to many ceremonies. In order to allow Native Americans to continue to include both bald and golden eagle parts in their religious ceremonies, the government provided for exemptions. The law also permits the traditional gifting of eagle feathers for Native Americans.

On April 29, 1994, President Clinton signed an Executive Memorandum entitled “Policy Concerning Distribution of Eagle Feathers for Native American Religious Purposes.” 59 Fed. Reg. 22953. That Executive Memorandum noted that

“[e]agle feathers hold a sacred place in Native American culture and religious practices.

Because of the feathers' significance to Native American heritage and consistent with due respect for the government-to-government relationship between the Federal and Native American tribal governments, this Administration has undertaken policy and procedural changes to facilitate the collection and distribution of scarce eagle bodies and parts for this purpose."

Id.

On October 12, 2012, the United States Department of Justice released an updated Policy on Tribal Member Use of Eagle Feathers, which states that "[f]rom time immemorial, many Native Americans have viewed eagle feathers and other bird parts as sacred elements of their religious and cultural traditions." <http://www.justice.gov/opa/pr/2012/October/12-ag-1234.html>.

The courts too have consistently recognized and applied the religious nature of eagle feathers in cases where Native American religious rights are at issue. See *McAllen Grace Brethren Church v. Salazar*, 764 F.3d 465, 472 (5th Cir. 2014) ("[T]he eagle feather is sacred to the religious practices of many American Indians."); *United States v. Hardman*, 297 F.3d 1116, 1126-27 (10th Cir. 2002) (en banc) ("The eagle feather is sacred in many Native American religions, including claimants'. Any scheme that limits their access to eagle feathers therefore must be seen as having a substantial effect on the exercise of religious belief. ") (footnote omitted); *United States v. Abeyta*, 632 F. Supp. 1301, 1303 (D.N.M. 1986) ("The central tenets of ancient Indian religious faith are shared among New Mexico's pueblos and, of all birds, the eagle holds an exalted position in all pueblo religious societies. The use of their feathers, particularly from the tail and wings, is indispensable to the ceremonies of the Katsina Society and other pueblo rituals.")

The Supreme Court also has recognized that "in our society and in our culture high school graduation is one of life's most significant occasions." *Lee v. Weisman*, 505 U.S. 577, 595 (1992). "Graduation is a time for family and those closest to the student to celebrate success

and express mutual wishes of gratitude and respect, all to the end of impressing upon the young person that role that it is his or her right and duty to assume in the community and all of its diverse parts.” *Id*

The current customary attire of the graduation cap and gown that is donned in American graduation rituals is borrowed from European medieval times, and is a tradition that has continued to exist today. Likewise, the sacred symbolic meaning and wearing of the eagle feather stems from the ancient indigenous representation of one’s Creator and one’s Creation. Both the cap and gown and eagle feather bring honor; however, the former reflects a cultural tradition, while the latter takes on a deeper spiritual meaning that mirrors humility in the honor of one’s Creator, and when presented by a loved one, one’s family. As such, the eagle feather is not merely a decoration—it is worn by many Native Americans every year at graduation ceremonies as a genuine expression of their religious and cultural beliefs.

Ms. Griffith’s Native American cultural heritage includes religious beliefs that are consistent with the foregoing as it concerns the sacred and religious nature of eagle feathers, and the importance to her to practice such at her graduation ceremony. Every branch of the federal government has recognized the sacred and religious significance of eagle feathers and have enacted, enforced, or interpreted the law with these considerations playing a decisive role. Thus, there can be no genuine dispute as to the religious nature of Ms. Griffith’s request and her sincerely held religious beliefs and their relation to her high school graduation.

B. The School’s Threat to Preclude Ms. Griffith from Wearing her Sacred Eagle Feather on her Graduation Cap Violates Her Right to Free Exercise of Religion and Expression under the First and Fourteenth Amendment to the U.S. Constitution

The freedom of religious exercise and expression is one of the most important personal rights of American citizenship. The Free Exercise Clause, at its core, is not merely about

protecting an individual's right to believe, but protects an individual's right to act on and express those beliefs when doing so is otherwise within the bounds of law. The right of free exercise is protected so that citizens do not have to choose between religious adherence and participation in the civic, social, or economic life of their communities. Such a choice is precisely what is forced upon Ms. Griffith by Defendant's arbitrary prohibition on her proper and reverent wearing of a sacred eagle feather on her graduation cap.

Ms. Griffith's intended wearing of this eagle feather carries the meaning not only of religious practice, but also of the free expression of her pride and honor as a Native American and member of the Delaware Tribe of Oklahoma and Cherokee Nation. Through this cultural and religious expression, Ms. Griffith makes a cognizable statement concerning Delaware, Cherokee, and Native American cultural dignity and respect, and affirms the value of her tribal heritage. If Ms. Griffith is not permitted to wear her eagle feather at graduation, or is punished for doing so, it will be a devastating embarrassment and a substantial hardship for her as she will not be able to honor her uncle, her family, and her religious beliefs. She will also be denied the opportunity to participate in one of life's most significant occasions, and be denied the opportunity for her to personally be honored and acknowledged in a manner consistent with her beliefs.

The School has not demonstrated that the prohibition on Plaintiff's religious practice is pursuant to a neutral regulation of general applicability. The official graduation dress code makes no mention of religious expression or sacred eagle feathers in particular. However, even if the School has a formal or even an informal policy or practice that was facially neutral or otherwise not motivated by animus toward Native American religious traditions like those of the Delaware and Cherokee People, the practice does not further a compelling governmental interest, in particular as it relates to the wearing of sacred eagle feathers on graduation caps. The

School's stated concerns that an accommodation for Ms. Griffith would "open the door" for other requests is not a valid reason to deprive Ms. Griffith of her right to free expression in this instance. Further, Ms. Griffith's request is based on her religious beliefs, rather than a general request to "decorate" her cap with glitter or paint. Thus, her request is significantly different than the requests the School District speculates could become a concern.

The School further has cited no specific concerns of disruption, danger, incitement, or obscenity to override or exempt Ms. Griffith from her right to religious exercise and expression. The only governmental interest that has been expressed appears to relate to wardrobe aesthetics of its graduating class. This can hardly be said to exist in the same class as the interests furthered by criminal statutes, dangerous drug regulations, or essential components of family or property law, such as the laws considered in *Gitlow v. New York*, 268 U.S. 652 (1925), *Oregon v. Smith*, 494 U.S. 872 (1990), or *Reynolds v. U.S.*, 98 U.S. 145 (1878).

The School District's willingness to allow the wearing of the eagle feather in places no less visible than the place sought by Ms. Griffith (but in a manner inconsistent with her religious beliefs and practices) shows that the Defendant bears no interest in preventing the visible presence of the eagle feather itself on Ms. Griffith's person, but rather purports to have a governmental need to keep the feather hanging on her ear or around her neck, rather than from her graduation cap. The School has given no valid reason or foundation for drawing this distinction. Ms. Griffith, on the other hand, has more than once expressed to the School why the distinction is important to her and her religious beliefs and why the feather is not simply a "decoration" in the same manner as glitter or paint as expressed in Mrs. Ward's informal advice.

Importantly, the School District in the past and currently has allowed students to wear National Honor Society stashes and stoles at graduation as a symbol of honor and achievement

of students. The School District has indicated that it will continue to allow those stashes and stoles to be worn this year. The School District, however, will not allow Ms. Griffith to wear her eagle feather in accordance with her beliefs, which was given to honor her achievements, and is typically worn by Native American graduates as a sign of achievement and honor. To allow one form of regalia to be worn as a sign of honor and achievement and not another discriminates based on viewpoint and is akin to allowing some students to talk openly about their achievements but not others. As Ms. Griffith has indicated, to appropriately honor and wear the eagle feather as the sign of her achievement, it must be worn on top of the cap.

Ms. Griffith's claim for relief is based on the deprivation of her free exercise rights in conjunction with the deprivation of her free speech rights, and is thus a hybrid claim implicating constitutional protection even against a regulation or practice of general applicability. *See Oregon v. Smith*, 494 U.S. 872 (1990). Her claim is redressable through injunctive relief pursuant to 28 U.S.C. § 1983, and the inherent powers of the Court to issue a declaratory judgment of Ms. Griffith's constitutionally guaranteed rights and to prevent infringement by a governmental actor of such rights. A preliminary or permanent injunction is warranted.

C. The Oklahoma Religious Freedom Act Precludes the School From Infringing on Ms. Griffith's First Amendment Right to Free Exercise of Religion

The Oklahoma Religious Freedom Act prohibits a government entity from substantially burdening a person's free exercise of religion, even if the burden results from a rule of general applicability. Okla. Stat. tit. 51, § 251 et seq.; *see also A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 701 F. Supp. 2d 863, 886 (S.D. Tex. 2009) *aff'd sub nom. A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 611 F.3d 248 (5th Cir. 2010) (applying Texas' religious freedom law to enjoin enforcement of a school rule interfering with Native American

student's religious practice of wearing unshorn hair). The School and its representatives are a government entity, branch, department, agency, or instrumentality of state government, or officials or other persons acting under color of state law, or a political subdivision of this state, which is subject to the Oklahoma Religious Freedom Act. Okla. Stat. tit. 51, § 252.

Ms. Griffith's desire to wear an eagle feather on her cap during graduation is religiously motivated conduct and a free exercise of her religion, which is protected by the Oklahoma Religious Freedom Act. By prohibiting Ms. Griffith from wearing an eagle feather on her cap during graduation, the School has given Ms. Griffith a Hobson's choice: abandon her traditional Native American religious practice, or be banned from participation in her greatest achievement to date—walking across the stage at her high school graduation ceremony. Accordingly, by failing to accommodate Ms. Griffith's religiously motivated conduct, the School will substantially burden Ms. Griffith's free exercise of religion on May 21, 2015.

A government entity substantially burdening the free exercise of religion must show that such a substantial burden is: (1) essential to furthering a compelling government interest, and (2) is the least restrictive means of furthering that compelling government interest. Okla. Stat. tit. 51, § 253. A compelling interest cannot be a "general statement of interest." *McAllen Grace Brethren Church*, 764 F.3d at 472. In applying the federal analogue to Oklahoma's religious freedom statute, the U.S. Supreme Court has made it clear that statutory protection of religious practice is expansive and that government interference with religious conduct is subject to the highest level of judicial scrutiny and will only be upheld for the most compelling reasons. *Holt v. Hobbs*, 135 S. Ct. 853, 860 (2015); *Burwell v. Hobby Lobby*, 134 S. Ct. 2751, 2761 (2014).

Moreover, such religious freedom statutes apply to the person, and broadly formulated, generalized fears about what could happen if others are given similar accommodations are

insufficient. *See Holt*, 135 S. Ct. at 863; *Hobby Lobby*, 134 S.Ct. at 2779 (quoting *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430-431(2006)); *see also Merced v. Kasson*, 577 F.3d 578, 592 (5th Cir. 2009) (applying the Texas Religious Freedom and Restoration Act and holding that the government must satisfy the compelling interest standard as applied to the plaintiff). The Supreme Court has further noted that “[t]he essence of all that has been said and written on the subject is only those interests of the highest order and those not otherwise served can overbalance legitimate claims to the free exercise of religion.” *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972); *see also McAllen Grace Brethren Church*, 764 F.3d at 472 (“‘general statements of interests’ are not sufficient to demonstrate a compelling governmental interest; rather the interests need to be closely tailored to the law.”); *U.S. v. Hardman*, 297 F.3d 1116, 1127 (10th Cir. 2002).

Banning decorations on high school graduation caps does not further a compelling government interest when applied to Ms. Griffith’s request to wear an eagle feather on her graduation cap as a religious practice, expression, and/or observance. Superintendent Peters has stated that the reason for not allowing Ms. Griffith to wear her eagle feather on her graduation cap is that, “We are concerned that if we grant [Hayden Griffith’s] request, then we have opened the door to virtually any other decoration.” (Ex. 4). Fearing a preverbal flood of other requests is not a compelling interest. *See Holt*, 135 S. Ct. at 863; *Hobby Lobby*, 134 S. Ct. at 2779 (quoting *Gonzales*, 546 U.S. at 430-431); *see also Merced*, 577 F.3d at 592.

The School has only offered broad, speculative justifications for not allowing Ms. Griffith to wear an eagle feather on her cap during graduation. The Schools justifications fail to articulate an application of the compelling interest standard “to the person,” i.e., Ms. Griffith, and instead advances only a speculative, broadly formulated, and generalized fear of having to

consider requests regarding graduation attire from graduates besides Ms. Griffith. In doing so, the School fails to consider the religious motivations specific to Ms. Griffith.

The School has offered to allow Ms. Griffith to wear her eagle feather clipped to her hair, worn as a necklace or earring, or held in her hand. However, Ms. Griffith's religious beliefs require the eagle feather to be worn on her head, and not dominated by another object also worn on her head—in this case a graduation cap—thus requiring the eagle feather to be attached to her graduation cap. Moreover, the School's offer of allowing her to wear the eagle feather in other locations demonstrates that their requirements do not further a compelling interest. Apparently, their interests are only threatened when the feather is moved a matter of inches from her hair or neck and on to the graduation cap. Those inches are highly important to Ms. Griffith because they are the difference between adhering to her religious beliefs and being forced to act inconsistent with them. By contrast, it is very difficult to see how those inches make a difference in the furtherance of the School's asserted interests. If, as they apparently concede, their interests are preserved with the eagle feather being worn almost anywhere else, then those interests can likewise remain undisturbed by wearing the eagle feather on her graduation cap. This suggests that the School's restriction on Ms. Griffith's religious exercise does not further any compelling interest.

Even if the reasons advanced by the School are regarded as compelling interests, the School is not utilizing the least restrictive means of furthering those interests. As the United States Supreme Court has stated, “[t]he least-restrictive-means standard is exceptionally demanding, and it requires the Government to show that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion by the objecting party. If a less restrictive means is available for the government to achieve its goals, the

Government must use it.” *Holt v. Hobbs*, 135 S. Ct. 853, 864 (2015), quoting *Burwell v. Hobby Lobby*, 134 S.Ct. at 2780 and *United States v. Playboy Entm’t Group, Inc.*, 529 U.S. 803, 815 (2000) (internal quotations and brackets omitted).

Many other schools have granted variances in graduation attire in order to accommodate Native American traditions, and there have been no reports of disruptive results. One of many examples that can be found on an internet search is very recent case where a school district created a general exception to a “no adornment” policy “to allow Native American students, who have earned the eagle feather honor, to wear their eagle feather during graduation.” (Ex. 7). Any interests asserted by the School can be equally achieved by allowing Ms. Griffith to wear an eagle feather on her graduation cap pursuant to a limited exception for sincerely held religious beliefs, which is clearly less restrictive than banning it altogether. *See Holt*, 135 S. Ct. at 866 (“While not necessarily controlling, the policies followed at other well-run institutions would be relevant to a determination of the need for a particular type of restriction.”).

Accordingly, the School has violated the Oklahoma Religious Freedom Act, and Ms. Griffith is entitled to injunctive relief as well as reasonable costs and attorney fees.

CONCLUSION

For the foregoing reasons, the Court should issue a preliminary injunction enjoining the School District, through its representatives and agents, from precluding Ms. Griffith from wearing a sacred eagle feather on her graduation cap at Caney Valley High Schools’ graduation ceremony on Thursday, May 21, 2015 or, alternatively, should enter declaratory judgment and enter a permanent injunction to allow Ms. Griffith’s religious expression at graduation.

Respectfully submitted,

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**Admission Pro Hac Vice Pending*

CERTIFICATE OF SERVICE

I hereby certify that on this the 15th day of May, 2015, I electronically transmitted a full, true, and correct copy of the above and foregoing instrument, the “BRIEF OF THE PLAINTIFFS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT,” to the Clerk of Court using the Electronic Case Filing System (the “ECF System”) and also transmitted a full, true, and correct copy by e-mail and Federal Express Overnight Delivery to the following, who has represented to counsel for Plaintiff that he is counsel for the Defendants:

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