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**Expressions of Identity:  
A 21st Century Snapshot of Dress Code Issues**

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## INTRODUCTION

De’Andre Arnold and Kaden Bradford, Black<sup>1</sup> male students at a Texas high school, wear their hair in locs<sup>2</sup> as an expression of their West Indian heritage.<sup>3</sup> In January 2020, the young men were informed that they would have to cut their locs to conform to a new requirement of the hair policy at Barbers Hill High School.<sup>4</sup> Arnold and Bradford complied with previous iterations of the dress code<sup>5</sup> by wearing headbands and hair ties to fasten their hair but were regularly scrutinized and “removed . . . from class . . . to ensure [their] locs complied with the hair policy[.]”<sup>6</sup> The language of the 2019 dress code<sup>7</sup> removed the option for compliance by fastening and left the boys with a single option: cutting their locs. Notwithstanding his contention that his hair “is part of [his] Black culture and heritage[.]”<sup>8</sup> administrators at Barbers Hill ISD told Bradford that he would be placed on indefinite in-school suspension unless he cut his hair. Likewise, Arnold was told that he would not be allowed to walk the stage at his May graduation ceremony if he refused to cut his hair.<sup>9</sup>

In a similar April 17, 2019 incident, thirteen-year-old Juelz Trice arrived at Berry Junior High School with a fresh fade haircut with design line etched into its profile.<sup>10</sup> Although this type of haircut is common among Black males, Trice was disciplined for violating the school’s dress code, which prohibited “[e]xtreme hair styles such as carvings, mohawks, spikes and similar hair styles.”<sup>11</sup> For his punishment, Trice was given a choice of “[being] assigned to in-school suspension for an indeterminate length of time; or (2) [to] color in his hair’s design line.”<sup>12</sup> The

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<sup>1</sup> The term “Black” is used throughout this paper to describe individuals who are perceived or self-identify as part of the African diaspora. The term specifically includes Black individuals born in America as well as those born abroad who have migrated to the United States regardless of citizenship status.

<sup>2</sup> “Locs” are a hairstyle commonly worn by individuals of African descent in which sections of hair are “permanently locked together and cannot be unlocked without cutting[.]” Shauntae Brown White, *Releasing the Pursuit of Bouncin’ and Behavin’ Hair: Natural Hair as an Afrocentric Feminist Aesthetic for Beauty*, 1 INT’L J. MEDIA & CULTURAL POL. 295, 296 n.3 (2005). Locs are commonly referred to as “dreadlocks;” however, the term “dreadlocks” was coined by European slave traders who described African hair that likely locked during the months spent at sea during the Middle Passage, as “dreadful.” *Id.*; see also *Arnold v. Barbers Hill Indep. Sch. Dist.*, 2020 WL 4805038, at \* 14, n. 1 (S.D. Tex. Aug. 17, 2020).

<sup>3</sup> *Arnold v. Barbers Hill Indep. Sch. Dist.*, 2020 WL 4805038, at \* 1 (S.D. Tex. Aug. 17, 2020).

<sup>4</sup> Stacy Fernandez, *ACLU Warns 500 Texas School Districts to Revise Discriminatory Dress Codes*, THE TEXAS TRIBUNE (Sept. 4, 2020), <https://www.texastribune.org/2020/09/04/texas-school-dress-code-aclu-hair-discrimination/>.

<sup>5</sup> The hair length policy in effect at Barbers Hill High School during Bradford’s freshman and sophomore years provided: “[b]oys’ hair will not extend, at any time, below the eyebrows, below the ear lobes, or below the top of a t-shirt collar. Corn rows and/or dread locks are permitted if they meet the aforementioned lengths.” *Arnold*, 2020 WL 4805038, at \*2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*; Matthew S. Schwartz, *Texas School Board Keeps Grooming Code that Led to Suspension of Black Students*, NPR (July 22, 2020), <https://www.npr.org/2020/07/22/893970329/texas-school-board-keeps-grooming-code-that-led-to-suspension-of-black-students> (“[I]n 2019 the school board made the code more stringent . . . requiring that students’ hair meet the district’s length requirement even if not worn let down.”).

<sup>8</sup> *Arnold*, 2020 WL 4805038, at \*1.

<sup>9</sup> Fernandez, *supra* note 4.

<sup>10</sup> *Trice v. Pearland*, 2020 WL 1557750 (S.D. Tex. March 16, 2020).

<sup>11</sup> *Id.* at \*1.

<sup>12</sup> *Id.*

school and Trice dispute the precise course of events – however, it is undisputed that a Berry staff member used a black Sharpie marker to color Trice’s scalp to fill in the design line in his haircut.<sup>13</sup>

Dress codes have long been a source of contention (and litigation) between students and school administrators.<sup>14</sup> Historically, the bulk of dress code lawsuits have been framed as First Amendment challenges, arguing that a particular provision violates a student’s right to free speech<sup>15</sup> or religion.<sup>16</sup> However, in recent years, school dress codes have been frequently criticized on the grounds that the regulations discriminate, either explicitly or implicitly, based on sex, gender, and race.<sup>17</sup>

*Arnold*, *Trice*, and other dress code cases have raised familiar First Amendment arguments, but have added a novel wrinkle by explicitly invoking, sometimes successfully, the Equal Protection Clause of the Fourteenth Amendment. The arguments in these cases hinge on appropriately characterizing the student’s expression as one of heritage or gender and linking the differential treatment received to that expression of identity.<sup>18</sup> By connecting his or her expression to membership in a protected class, a student invites the court to consider the equal protection implications of a dress or grooming policy, thus requiring a school district to more carefully consider its method of regulation and justification for doing so.

This paper is divided into three parts: the first discusses the application of the Free Speech Clause of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment,

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<sup>13</sup> *Id.* at \*2.

<sup>14</sup> *Tinker v. Des Moines Indep. Comm. Dist.*, 393 U.S. 503 (1969) (black arm bands protesting Vietnam War and advocating for civil rights, generally); *Karr v. Schmidt*, 460 F.2d 609 (5th Cir. 1972) (male hair length); *Canady v. Bossier Parish School Board*, 240 F.3d 437 (5th Cir. 2001) (uniform policy); *Blau v. Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381, 390-93 (6th Cir. 2005) (uniform policy).

<sup>15</sup> *Palmer ex rel. Palmer v. Waxahachie Independent School District*, 579 F.3d. 502 (5th Cir. 2009), *cert. denied*, 130 S.Ct. 1055 (2010) (dress code banning shirts with printed messages).

<sup>16</sup> *A.A. ex rel. Betenbaugh v. Needville Indep. Sch. Dist.*, 701 F.Supp.2d 863 (S.D. Tex. 2009), *aff’d*, 611 F.3d 248 (5th Cir. 2010) (hair policy forbidding males from wearing long hair violated Native American male student’s right to free exercise).

<sup>17</sup> See, e.g., Peggy Orenstein, *The Battle Over Dress Codes*, N.Y. TIMES (June 13, 2014), <https://www.nytimes.com/2014/06/14/opinion/the-battle-over-dress-codes.html> (expressing concern that school dress codes single out and hypersexualize female students); ShaCamree Gowdy, *Texas Teen Blasts High School for ‘Double Standard’ After Fingernail Polish Lands Him in ISS*, HOUSTON CHRONICLE (Dec. 7, 2020), <https://www.chron.com/news/houston-texas/article/Trevor-Wilkinson-Texas-High-School-nail-polish-ISS-15781504.php> (describing an openly gay male student’s efforts to combat high school dress code provisions that prohibit boys from wearing nail polish and makeup); John Riley, *Transgender Texas Teen Says She’s Been Banned From School Until She Adheres to Male Dress Code*, METRO WEEKLY (Oct. 3, 2020), <https://www.metroweekly.com/2020/10/transgender-texas-teen-says-shes-been-banned-from-school-until-she-adheres-to-male-dress-code/> (transgender female high school senior argues that she should be allowed to follow dress code guidelines that match her gender identity); Naomi Andu, *After Black Student Suspended Over Dreadlocks, Some Texas Lawmakers Want to Ban Hair Discrimination*, THE TEXAS TRIBUNE (Feb. 6, 2020), <https://www.texastribune.org/2020/02/06/prewrite-after-black-student-suspended-over-dreadlocks-some-texas-lawm/> (discussing Texas Legislative Black Caucus’ intention to introduce the CROWN Act in the 2021 Texas legislative session to combat discrimination based on hair styles commonly associated with a specific race).

<sup>18</sup> See e.g., *Arnold*, 2020 WL 4805038, at \*1, 10-11; *Trice*, 2020 WL 1557750, at \*9, 13, n. 5; *Doe ex rel. Doe v. Yunits* 2000 WL 33162199 (Mass. Super. Ct. Oct. 11, 2000) (protecting transgender female student’s right to dress in accordance with gender identity).

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