



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W



October 24, 2017

Board of Regents
University System of Georgia
270 Washington Street SW
Atlanta, GA 30334

Dear Board of Regents,

We are writing on behalf of the Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee) and the Cobb County chapter of the Southern Christian Leadership Conference (SCLC). The Lawyers' Committee is a nonpartisan, nonprofit organization, formed in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership and resources in combating racial discrimination and the resulting inequality of opportunity. The principal mission of the Lawyers' Committee is to secure equal justice for all through the rule of law, targeting in particular the inequities confronting African Americans and other racial and ethnic minorities.

The Southern Christian Leadership Conference has been a major force, in the Southeastern region of the United States and a number of other locations, for social justice for more than six decades. The organization was formed in 1957 and the membership elected the Rev. Dr. Martin Luther King, Jr. to serve as the first President. Non-violent action was adopted as the cornerstone strategy to influence change in the quality of life for poor people and people of color. The efficacy of the non-violent action strategy is reflected in more than 200 pieces of public policy legislation that addresses major social justice issues. In today's world the SCLC continues to pursue Dr. King's dream of the "*Beloved Community*." To that end, SCLC frequently works with legal scholars and practitioners along with other advocacy organizations to engage the judicial system in our efforts to secure justice for all.

We are writing to express grave concerns regarding punitive actions that appear to violate the constitutional rights of cheerleaders at Kennesaw State University.

On September 30th, five members of the KSU cheerleading squad knelt during the national anthem.¹ On October 6th, the Marietta Daily Journal reported that Sheriff Neil Warren and State Representative Earl Ehrhart contacted KSU President Sam Olens and State Attorney General Chris Carr to try to stop the protests, and received a "helpful" response from President Olens.² Representative Ehrhart is the chair of the legislative committee that controls KSU's budget. Sheriff Warren described the protest as a "lack of respect," and Representative Ehrhart described it as "repugnant and hateful."³ Sheriff Warren stated, "Sam [Olens] assured me that [the protest] will not happen again."⁴ The next day, October 7th, the cheerleaders were kept in a tunnel off of the football field during

¹ See, e.g., Eric Sturgus and Meris Lutz, "Kennesaw State cheerleaders take a knee; some in Cobb take offense," Atlanta Journal-Constitution, Oct. 13, 2017 (<https://www.myajc.com/news/local-education/kennesaw-state-cheerleaders-take-knee-some-cobb-take-offense/hNdFCcBlcyIW2EImiDpY9N/>).

² "Around Town: Cobb sheriff outraged by KSU cheerleaders 'taking a knee,'" Marietta Daily Journal, Oct. 6, 2017 (http://www.mdjonline.com/opinion/around-town/around-town-cobb-sheriff-outraged-by-ksu-cheerleaders-taking-a/article_17ca65da-aaf4-11e7-9e17-27654a326e90.html).

³ *Id.*

⁴ *Id.*



the national anthem so that they could not repeat their kneeling protest in public view.⁵ While President Olens denied that the cheerleaders were kept off the field in order to interfere with their protest, Sheriff Warren reportedly sent a text message to Representative Ehrhart stating, “Not letting the cheerleaders come out on the field until after national anthem was one of the recommendations that Earl and I gave [Olens]!”⁶

KSU cheerleader Shlondra Young explained why she and her colleagues are kneeling in protest during our national anthem, “We kneel for equality. We kneel to highlight social injustice and to highlight police brutality and kneel in honor for those who unjustly lost their lives and for those who could not kneel for themselves. We kneel in a city where a Confederate culture still exists amongst some and issues like this are placed on the back burner.”⁷ On October 11th and 16th, local community members and the SCLC rallied and marched to support the KSU cheerleaders.⁸ On October 19th, students knelt in protest when the national anthem was played during President Olen’s investiture ceremony, and then joined a large rally on the Campus Green.⁹ Yet, at the next KSU football home game on October 21st, the cheerleaders were not allowed on the field and had to kneel in the stadium tunnel.¹⁰ Dozens of students knelt in the stands and rallied outside the stadium.¹¹

The United States Supreme Court has consistently protected the First Amendment rights of students, observing that they do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”¹² Rather, students have the right to peacefully express their opinions and responsibly protest on public university grounds and during school activities, like a college football game. This includes a “silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of [the students],”¹³ such as kneeling during our national anthem.

⁵ Ellen Eldridge, “KSU cheerleaders kept off field after some knelt during national anthem,” Atlanta Journal-Constitution, Oct. 8, 2017 (<https://www.myajc.com/news/local/ksu-cheerleaders-kept-off-field-after-some-knelt-during-national-anthem/3FE7PkGn1R8me0zNx8K8rO/>).

⁶ Meris Lutz, “Cobb sheriff, lawmaker pushed to keep KSU cheerleaders off field,” Atlanta-Journal Constitution, Oct. 17, 2017 (<https://www.ajc.com/news/local-govt--politics/ksu-cheerleader-protest-sheriff-lawmaker-say-olens-caved/y4VLs2DlTY82rOskdXvfcj/>).

⁷ Eric Stirgus and Meris Lutz, “Kennesaw State cheerleaders take a knee; some in Cobb take offense,” Atlanta Journal-Constitution, Oct. 13, 2017 (<https://www.myajc.com/news/local-education/kennesaw-state-cheerleaders-take-knee-some-cobb-take-offense/hNdFCcBlcylW2EImiDpY9N/>).

⁸ Jonathan Phelps, “Protestors show support for cheerleaders kept off field,” KSU Sentinel, Oct. 16, 2017 (<http://ksusentinel.com/2017/10/16/protestors-show-support-for-cheerleaders-kept-off-field/>); Madeline McGee, “Protesters support Kennesaw State University cheerleaders who kneeled during national anthem,” Marietta Daily Journal, Oct. 13, 2017 (http://www.mdjonline.com/news/protesters-support-kennesaw-state-university-cheerleaders-who-kneeled-during-national/article_c6e19f5e-afcf-11e7-a267-bb1a0c61e3d6.html).

⁹ Jonathan Phelps, “Investiture eclipsed by kneeling protest,” KSU Sentinel, Oct. 19, 2017, (<http://ksusentinel.com/2017/10/19/investiture-eclipsed-kneeling-protest/>); Eric Stirgus and Meris Lutz, “Students kneel during national anthem as Olens takes president’s office,” Atlanta Journal-Constitution, Oct. 19, 2017, (<https://www.ajc.com/news/local-education/students-kneel-during-national-anthem-olens-takes-president-office/SyoWmA2or5j9nNz6qBVlgL/>).

¹⁰ Eric Stirgus, “Cheerleaders continue to take a knee at Kennesaw State football games,” Atlanta Journal-Constitution, Oct. 21, 2017 (<https://www.myajc.com/news/local-education/cheerleaders-continue-take-knee-kennesaw-state-football-games/z0t7pdH1n0lppikohE9w5K/>).

¹¹ *Id.*

¹² *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

¹³ *Id.* at 508.



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Our national anthem does not receive special treatment under the First Amendment. For over 70 years the Supreme Court has held that public schools may not compel students to participate in coerced patriotic displays. In 1943, the Court held that it is illegal for schools to punish students for refusing to salute the flag or participate in the Pledge of Allegiance.¹⁴ “To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds.”¹⁵ These students embody the best patriotic ideals of our nation: they are striving to civically engage with their community and improve our nation by taking a knee to peacefully protest police violence against African Americans.

Denying the cheerleading squad the opportunity to be present during our national anthem is not an act of patriotism; it is an act of retaliation. The public reports indicate that KSU and other public officials violated these students’ First Amendment rights by retaliating against their peaceful protest based on the students’ viewpoint.

Please explain how the University System of Georgia intends to address this situation going forward. We request that the Board of Regents immediately conduct a full investigation into this matter. Any disciplinary action or retaliation against these students must immediately cease and be reversed. KSU must make a prompt assurance that it will not take any further disciplinary or retaliatory action against the students for exercising their First Amendment rights. These rights are critical to creating an environment where students are encouraged to participate in our country’s democracy.

We will continue to monitor this matter closely. Please contact the Lawyers’ Committee for Civil Rights Under Law at 202-662-8362 and the SCLC at 770-876-2070 by the close of business on Friday, October 27, 2017, to schedule time to discuss this matter.

Sincerely,

Kristen Clarke
President and Executive Director
Lawyers’ Committee for Civil Rights Under Law

Dr. H. Benjamin Williams
President, Cobb County Chapter
Southern Christian Leadership Conference

¹⁴ *W. Virginia Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943).

¹⁵ *Id.* at 642.