



**BACKGROUNDER**  
**MAXWELL v. VOLUSIA COUNTY SCHOOLS**

**Executive Summary**

Should students have to give up their First Amendment rights when they arrive on school property? The Supreme Court has long said *no*—at least if a student’s expression isn’t substantially disrupting the school’s normal activities. Unfortunately, some schools still haven’t gotten the message.

Tyler Maxwell is a high-school senior in Volusia County, Florida, and looks forward to voting in the 2020 election. To promote his preferred presidential candidate, he put a statue of an elephant decorated in red, white, and blue with “TRUMP” painted on it in the back of his pickup truck. But after he parked the truck in his school parking lot, school officials took him out of class and told him to take the elephant home and leave it there. If he didn’t, he’d have to give up his parking privileges.

School officials did this even though the elephant caused no disruption, and the school had no policy against political messages on vehicles. In fact, others at the school display political messages on their vehicles and even on their apparel without causing any disruption and without being punished by the school.

Public schools shouldn’t discourage, let alone punish, student political expression. So the Goldwater Institute has sued the Volusia County Schools to protect Tyler’s First Amendment rights.

**The Problem**

High school senior Tyler Maxwell is eager to vote for the first time in the 2020 election. One Sunday in September 2020, he put a statute of an elephant decorated red, white, and blue with his preferred presidential candidate’s name on the side in the back of his pickup truck. The next day, he drove to school and parked his truck as usual in a student parking lot some distance from the school building.

About 20 minutes into the school day, a school official took him out of class to meet with one of the school’s principals, who told him that he had to take the elephant home. When Tyler returned to school the next day with the elephant still in the truck, the school’s head principal stopped him on the street outside the school and demanded that he hand over his parking pass—and told him that the school would only return it to him if and when he removed the elephant.

Tyler retained an attorney who asked the school to justify its actions. The school cited a “Policy No. 805,” which governs the use of school property for political activity. But that policy applies to employees and to people who want to use the school for political events, or to distribute political literature. It has nothing to do with students’ political expression or political messages on vehicles parked at the school, which the school normally allows.

Tyler wants to attend school in person, but he doesn't want to have to give up his First Amendment rights to do it. He wants to be able to transport the elephant all the time, so it will be seen as he travels to and from school and elsewhere.

The Goldwater Institute represents Tyler in a lawsuit to protect his First Amendment rights and restore his parking pass.

### **The Law**

The Supreme Court has long held that students don't lose all of their First Amendment rights when they arrive at a public school. In the landmark *Tinker v. Des Moines Independent Community School District* case, the Supreme Court ruled that a school violated students' First Amendment rights when it suspended them for wearing black armbands to protest the Vietnam War.<sup>1</sup> And it said that public schools cannot censor students' political speech unless the speech would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school." A school can't censor speech based on a "mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint."<sup>2</sup>

Since then, the Supreme Court has added that a school may censor speech that promotes illegal conduct—but it has reiterated that schools may not censor religious or political opinions simply because some people might find them offensive.<sup>3</sup>

A federal court in Louisiana recently ruled that a school in that state violated a student's First Amendment rights when it painted over a mural supporting President Trump that the student had painted on his parking space as school rules allowed. The school could not show that the mural threatened any disruption, so the school's censorship was unconstitutional.<sup>4</sup>

Tyler Maxwell's truck hasn't caused any disruption at his school. Neither has any other political expression that has occurred at the school. Therefore, the school violated Tyler's First Amendment rights by taking his parking pass based on his truck's political expression.

### **Case Logistics**

The plaintiff in this case is Tyler Maxwell, an 18-year-old high school senior who wants to display his support for his preferred presidential candidate on his truck.

The case was filed in the United States District Court for the Middle District of Florida on October 22, 2020.

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<sup>1</sup> *Tinker v. Des Moines Ind. Cmty. Sch. Dist.*, 393 U.S. 503, 509-14 (1969).

<sup>2</sup> *Id.* at 509.

<sup>3</sup> *Morse v. Frederick*, 551 U.S. 393, 409 (2007).

<sup>4</sup> *Thomas v. Varnado*, No. 20-2425, 2020 WL 5993165 (E.D. La. Oct. 9, 2020), <https://www.casemine.com/judgement/us/5f83ee794653d03878951e90>.

The lawsuit seeks a court order that: (1) declares that the Volusia County Schools violated Tyler Maxwell's First Amendment rights when it revoked his parking pass based on his vehicle's political message; and (2) orders the Schools to immediately restore his parking privileges.

### **The Legal Team**

**Jacob Huebert** is a Senior Attorney at the Goldwater Institute. Before joining Goldwater, he served as Director of Litigation for the Liberty Justice Center in Chicago. There, he successfully litigated cases to protect economic liberty, free speech, and other constitutional rights, including the landmark *Janus v. AFSCME* case, in which the U.S. Supreme Court upheld government workers' First Amendment right to choose for themselves whether to pay money to a union. Huebert is a former clerk to a judge of the U.S. Court of Appeals for the Sixth Circuit and a graduate of Grove City College and the University of Chicago Law School.

**Martha Astor** is a Staff Attorney at the Goldwater Institute. She earned her J.D. at the Notre Dame School of Law, and she has a B.S. in public relations and an M.A. in counseling from Northern Arizona University, where she graduated with highest honors. Before law school, Martha was invited to speak at numerous international conferences, including at Oxford and the Sorbonne. She has written and published frequently on education reform, including authoring the book *Regrowing from Our Roots*.

**The Goldwater Institute** opened in 1988, with the blessing of its namesake. Its early years focused on defending liberty in Barry Goldwater's home state of Arizona. Today, the Goldwater Institute is a national leader for constitutionally limited government, with hundreds of legislative and court victories to its name. In 2016 in Arizona, the Goldwater Institute successfully challenged home-sharing regulations and spearheaded the nation's first state home-sharing law to protect people's rights to share their homes, while allowing government to enforce reasonable rules against nuisances.