







# Public school garb: comparing two approaches

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"Creating successful public schooling"

# Background to the paper?

## SA public school learners wear school uniforms

-  **Gap between values [school/community/Bill of Rights]**
-  **SA Schools Act: sec.8 [Code of Conduct]**
-  **SA Constitution: sec. 10, 15(1), 16(1), 30, 31(1)(b)**
-  **SA litigation = religious + cultural freedom**

## The US guided by First Amendment

-  **US litigation = freedom of speech/expression clause**
-  **Supreme Court respects all religious values *off site***

# Public education challenges...

## Already known public school education challenges...

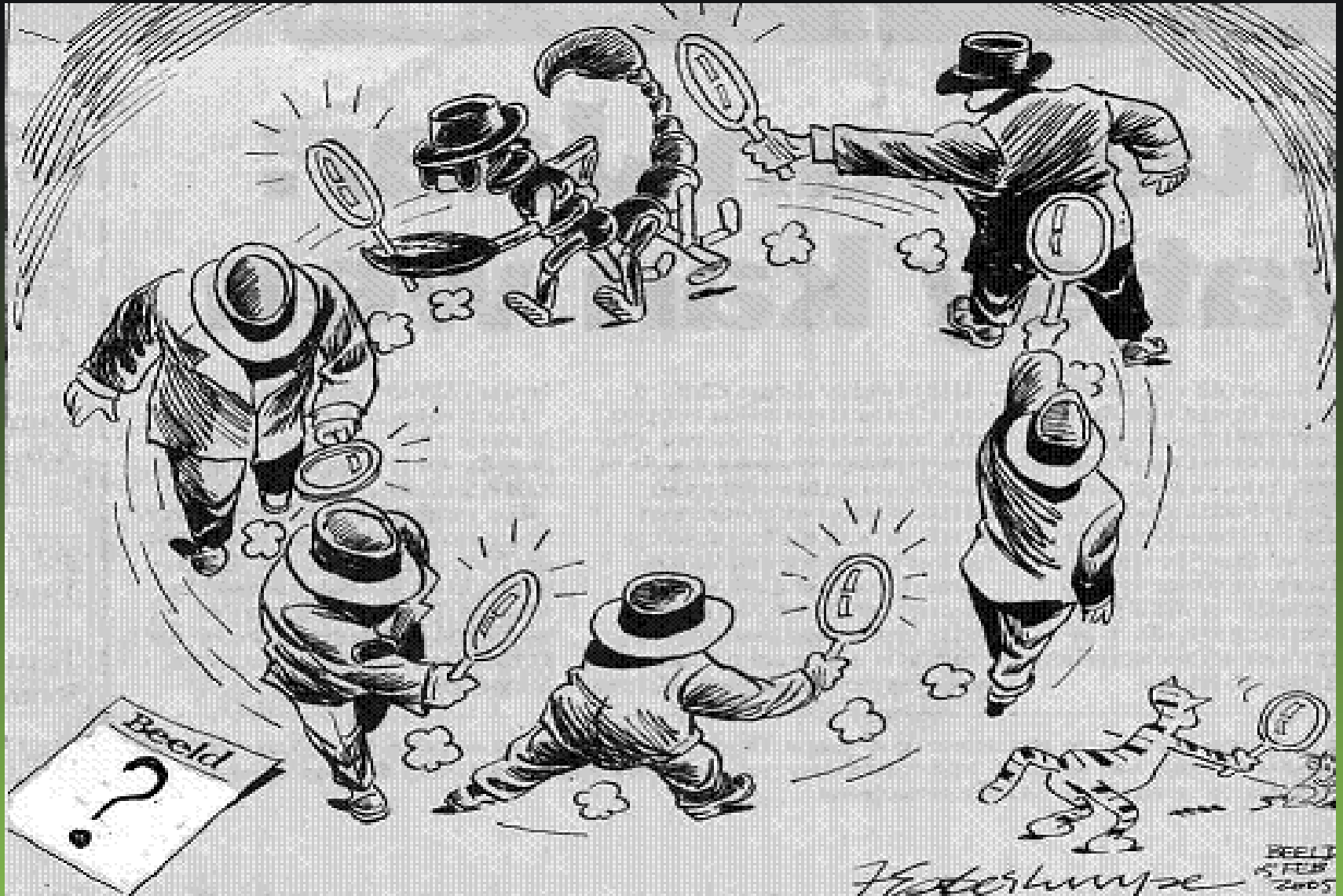
- ✿ **Some educators call for *particularism***
- ✿ ***Sustaining* secure and well-disciplined sites**
- ✿ ***Being attentive* to the legal parameters**

## A novel fourth public school education challenge...

- ✿ ***Managing tension: religious/cultural diversity***

***How to adhere to the legal provisions while not altering the school culture?***

# Problem statement!



# Objectives

-  To review the South African legal context
  - ✓ ...practical implications for dress codes
-  To examine the direction of the US
  - ✓ ...less restrictive means/viewpoint-neutral policies
-  To offer policy recommendations
  - ✓ ...developing constitutionally viable code policies
-  To reflect on exemptions from dress codes

# Conceptual framework?

## Comparative law perspective



Unique jurisprudential plan

Secondary analysis

*Codes of Conduct : human dignity, equality, freedom*

## Guidelines for Codes of Conduct

 Clearly pointing out expected learner conduct

 Indicating the communication channels


 Putting grievance procedures in place


 Protecting due process

# Reviewing SA legal context...

## Religious/cultural diversity & freedom of expression

### General description of the terms

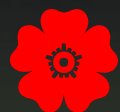
 *culture* = group of people's way of life

 *religion* = commitment to higher power [dress code]

 *freedom of expression* = communicating by dress code



## Religious/cultural diversity & freedom of expression...



### A formal stance: advancing fundamental rights



Freedom of religion = free exercise + equal treatment

*[reading section 15 together with section 9(3) equality clause]*



*Taylor v Kurtstag* 2005 (1) SA 392 (W)

*[horizontal application of freedom of religion confirmed]*



*Khumalo v Holomisa* 2002 (5) SA 401 (CC)

*[human dignity = individual's sense + public's estimation]*

# Reviewing SA legal context...

## A formal stance: advancing fundamental rights...

 Equal protection of learners' religious/cultural rights

*Pillay v MEC for Education KwaZulu-Natal* AR 791/05

[nose stud violated Code of Conduct]

*Pillay v MEC for Education KwaZulu-Natal* 2006 (6) SA 363 (N)

[school guilty: contemporary form of unfair discrimination]

*MEC for Education KwaZulu-Natal* 2008 (1) SA 474 (CC)

 Practical effect of a court order

 Importance of the issue at hand

 Complexity of the matter

# Reviewing SA legal context...

 Human dignity and freedom of expression

 *Freedom of expression as democratic prerequisite*

*S v Mamabolo (E TV Intervening) 2001 (3) SA 409 (CC) 425*

- ✓ Freedom to speak one's mind = inherent quality of society
- ✓ This is specifically advanced by the freedom of expression

# Examining the US direction

- ✓ *Cheema v Thompson* 67 F3d 883 (9<sup>th</sup> Cir 1995)  
[school officials overstepped their authority: least restrictive means?]
- ✓ *Chalifoux v New Caney Indep Sch Dist* 976 FSupp 659 (SD Tex 1997)  
[school board policy challenged: rosaries a form of religious expression]
- ✓ “Viewpoint-specific” restrictions violate First Amendment  
*Wilkins v Penns Grove-Carneys Point Reg’l Sch Dist* 123 Fed Appx 493 (3d Cir 2005)  
*Jacobs v Clark County Sch Dist* 373 FSupp 2d 1162 (D Nev 2005)
- ✓ Right of administrators to establish behavioral guidelines  
*Hazelwood Sch Dist v Kuhlmeier* 484 US 260 1998, on remand, 840 F2d 596 (8<sup>th</sup> Cir 1998)

# Examining the US direction...

 Two important principles have emerged in the US

 *Voluntary/mandatory school uniforms: popularity!!*

Large-city school districts such as Baltimore, Chicago, Houston, Indianapolis, Los Angeles, New York and Philadelphia

 *Canady v Bossier Parish School Board* 240 F3d 437 US Ct App 6<sup>th</sup> Cir


Court of Appeals: constitutionality of mandatory school uniform


 *Uniform policy reduced disciplinary problems*

 *It was a viewpoint-neutral policy*

 *Students = still express themselves during school day*

# Examining the US direction...

 Two important principles have emerged in the US...






 *US Courts apply a four-pronged test :*

- School boards must have power to make policy
- The policy must promote a vital concern
- No attempt to censor student expression
- Incidental restrictions no greater than necessary

[The four-pronged test originally applied in *Canady*]

Applied successfully in *Littlefield v Forney*

# Offering SA policy recommendations

-  Seek input: community/religious/cultural leaders
-  Consult with parents/care-givers in design phase
-  Develop clear, concise policies: careful wording
-  Review policies annually: not just controversies
-  Evaluate alleged infringements within the contexts

# Reflecting on granting exemptions

- ☠ Where would one draw the line?
- ☠ Would the line have to disappear completely?
- ☠ Rather limit exemptions: case-by-case situations?
- ☠ Are learners voluntarily choosing religious dress?
- ☠ Are learners pressurised by parents or religious leaders?

*Being pressurised may create the unintended consequence of actually limiting learners' fundamental rights*



In sum then?



**Elda needs YOUR views!**



**Thank you for listening...  
May especially our public schools  
become places of excellence!**

