

Note: Sixth Amendment Challenge to Courthouse Dress Codes (Harvard Law Review 2018)

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Courthouses with dress codes require the public to conform to particular standards of attire in order to enter. They may be specific — for example, refusing entry to people wearing shorts, tank tops, hats, or clothing with writing or logos — or general — requiring that all clothing meet a standard like “appropriate” or not “dirty, slovenly, bizarre, revealing, or immodest.” In the vast majority of courthouses, the public must pass through a security checkpoint where the dress code is enforced by security officers at the point of entry. Dress codes, therefore, delegate to security officers the authority to decide who may enter to observe court proceedings, based on their own determinations of who is dressed “appropriately” and who is not.

First, this weakens the key constitutional principle of popular access to, and control over, the courts. Second, dress code exclusions pose even greater risks in practice. The standards that security officers are likely to apply in determining who is dressed “appropriately” and what clothing is “disruptive” or “threatening” are likely to be entangled with culture, race, gender, and class. Third, the current system marginalizes judicial oversight. The decision of whom to exclude from courthouses is better located with judges in courtrooms, not security officers outside.

This Note argued that the Sixth Amendment right to public trials offers a powerful tool to significantly curtail exclusions based on attire and to relocate that decision with judges and constitutional law. Part I outlines possible avenues for challenging courthouse dress codes and explains the advantages of a Sixth Amendment claim over First Amendment challenges. Part II surveys lower court doctrine, considering the obstacles that courts might raise to such a challenge and offering a roadmap for defendants in avoiding them. Part III offers preliminary observations on the likely outcomes of the Sixth Amendment claim and the changes it should bring to the practice of courthouses across the country.

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