

## CASES CITED

1. *Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986).
2. *Boroff v. Van Wert City Board of Education*, 2000 FED App. 0249P (6<sup>th</sup> Cir.) (2000).
3. *Brandt v. Board of Education of City of Chicago*, 06-1999 (7<sup>th</sup> Cir.) (2007).
4. *Brown v. Cabell County Board of Education*, 3:09-0249 U.S. District Court for the Southern District of West Virginia (2009).
5. *Pyle v. School Committee of South Hadley*, 4234 Mass. 283 (1996).
6. *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969).

SIMPSON v. BEACON SCHOOL DISTRICT AND DAVID KORESH, PRINCIPAL

This case comes to us as an appeal from the trial court that granted summary judgment in favor of the defendants. The sole issue in the case is based on the First Amendment to the United States Constitution and M.G.L c.71 S 82. The sole question is whether or not the T Shirt described in the facts below is protected by the aforementioned statutes. In this case, Bart Simpson, a junior, at Jim Jones Memorial High School was directed by David Koresh, the principal, to remove a T-shirt Simpson wore to school. The result of Simpson's refusal was his expulsion from the school. Simpson, through his parents, Homer and Marge, bring the appeal of the summary judgment. We affirm the ruling of the trial court.

At this point, a summary of the facts is in order. Bart Simpson was a junior at Jim Jones Memorial High School. He has organized and is president of the Young Communist group at the school. Although the group is not recognized by the school administration, the group has met both in and out of the school. Simpson instituted a rule that members must wear the official Young Communist T-shirt to school. The front of the shirt has the words "Young Communist" and the back of the shirt has the letters "TSS". Although it is not spelled out, it is common knowledge that TSS means "This School Sucks". After many warnings, with all due process rights preserved, Principal Koresh instituted and finished an expulsion procedure regarding Simpson.

The petitioners in this case rely on M.G.L. c.71 S.82 which states in relevant part:

"The right of students to freedom of expression in the public schools  
Of the commonwealth shall not be abridged, provided that such right

shall not cause any disruption or disorder within the school. Freedom of expression shall include without limitation, the rights and responsibilities of students, collectively and individually, (a) to express their views through speech and symbols and (b) to assemble on school property for the purpose of expressing their opinions.” (M.G.L. c.71 S.82)

In the case of *Pyle v. School Committee of South Hadley*, 423 Mass. 283 (1996), Justice Liacos stated “There is no room in the statute to construe an exception for arguably vulgar, lewd or offensive language absent a showing of disruption within the school”. (*Pyle v. South Hadley School Committee* 423 Mass. 283 1996). This case seems to indicate that the T-shirts in question in South Hadley, to wit, “Coed Naked Band: Do it to the Rhythm” is acceptable. This view and interpretation of the statute also seems to give the school no ability to determine the appropriateness of the clothing worn to school.

The petitioner also relies on the case of *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969). In this case, three students were suspended from school for wearing black armbands in protest against the war in Vietnam. Justice Fortas stated “In wearing the armbands, the petitioners were quiet and passive. They were not disruptive and did not impinge upon the rights of others. In these circumstances, their conduct was within the protection of the Free Speech Clause of the First Amendment and the Due Process Clause of the Fourteenth”. (*Tinker v. Des Moines Independent Community School District* 393 U.S. at 505 (1969).

There are, however, cases that would, on their face, dispute the decisions in the cases above. In *Bethel School District No. 403 v. Fraser*, 478 U.S. 675 (1986), the Supreme Court indicated that the school had the right to limit the contents of a

speech delivered to the student body. In a speech written and delivered by Fraser, there were strong sexual innuendos accompanied by body movements. Although Fraser was warned not to deliver the speech, he did so anyway. Fraser was suspended and both the trial court and appeals court found for Fraser. The Supreme Court reversed the appeals court. Justice Burger stated “Under the First Amendment, the use of an offensive form of expression may not be prohibited to adults making what the speaker considers a political point, but it does not follow that the same latitude must be permitted to children in a public school”. (*Bethel School District No. 403 v. Fraser* 478 U.S. at 680 (1986),

The issue of the offensive T-shirt arose again in the case of *Boroff v. Van Wert City Board of Education*, 2000 FED App. 0249P (6<sup>th</sup> Cir)(2000). In this case Nicholas Boroff was directed not to wear T-shirts depicting the image of the performer, Marilyn Manson. The action was taken based on the fact that the performer took the name as a compilation of Marilyn Monroe and Charles Manson. Further, the images portrayed on the garments appeared to be offensive. In affirming the summary judgment for the school district, Justice Wellford stated” In our view, the evidence does not support an inference that the School intended to suppress the expression of Boroff’s viewpoint, because of its religious implications. Rather the record demonstrates that the School prohibited Boroff’s Marilyn Manson T-shirts generally because this particular rock group promotes disruptive and demoralizing values which are counter-productive to education”. (*Boroff v. Van Wert City Board of Education*, 2000 FED App. 0249P. (2000)

The T-shirt issue came to the front again in the case of *Brandt v. Board of Education of the City of Chicago*, 06-1999 (7<sup>th</sup> Cir)(2007). In this case, Eighth Grade “gifted” students

ran a contest to pick a class shirt. The shirt that was chosen appeared to poke fun at the non-gifted students who were referred to as “tards”. The principal of the school warned the students not to wear the shirts saying “that wearing the shirt would show disrespect for him and create a risk to the good order of the school...” (*Brandt v. Board of Education of the City of Chicago* 06-1999 at 3. (2000). Parents brought the suit in Federal District Court to prevent the school from taking disciplinary action against the children. The trial judge dismissed the action on defendant’s motion for summary judgment. The Circuit Court of Appeals for the Seventh Circuit affirmed the ruling of the trial court. Justice Posner stated “Prohibiting children from wearing to school clothing that contains ‘inappropriate’ words or slogans place appropriately broad limits on school authorities’ exercise of discretion to maintain a proper atmosphere.” *Brandt* at 11).

In a more recent case, *Brown v. Cabell County Board of Education*, 3: 09-0279 (2009), the Federal District Court in West Virginia denied the plaintiff’s request for an injunction against the school board regarding his suspension. The case arose from the arrest of one Anthony Jennings. He was charged with armed robbery and attempted murder of a police officer. At the time of his arrest, Jennings was both a student at the school and a member of a local gang known as the Black East Thugs (BET). Jennings was well known by his nick name “A-Train. Although there was no specific evidence that the plaintiff was a member of the gang, there was pro Jennings sentiment in the school. Further there had been BET incidents in the school. Specifically, Brown entered the school with the words “Free A-Train” written on both of his hands in felt tipped marker. Brown was given the option of removing the message or serving a ten day suspension. After initially removing

the message, Brown re-wrote it and, as a result, was suspended. Throughout the process, Brown's due process rights were preserved.

The court denied plaintiff's motions for injunctive relief. In so doing, Justice Chambers stated in his conclusion, "The right to free speech, implicated in this case, is one of the most firmly entrenched guarantees of the United States Constitution. Speech, even at school, cannot be suppressed merely because those in authority to do so disagree with the message. But, that is not what happened here. At this stage, the evidence shows that displays of the "Free A-Train" slogan, like Anthony Brown's written message, threatened the exacerbate student fears and substantially disrupt the educational process." (*Brown v. Cabell County Board of Education*, 3:09-0279 at 10. (2009)).

In the case before us, the decision is whether or not Simpson's "TSS" slogan on a T-shirt meets the level of disruption of the educational process. There is no question that this situation does not have the gang implications as shown in *Brown*. However, all of the cited cases indicate that the school may put enforceable restrictions on dress and statements. Unlike Pyle, where the school group was recognized by administration, The Simpson group was not sanctioned by the school. There is little doubt that the "TSS" t-shirt reached the level of restriction in both *Boroff* and *Brandt*. The perception, innuendo, and rumor regarding the actual meaning of "TSS" are sufficient for this court to state that there may be disruption of the educational process in the school. As a result, the order of the trial court is AFFIRMED.