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FREEDOM OF EXPRESSION: A FALLACY FOR SPORTS FANS IN THE PUBLIC SCHOOLS AFTER *JEGLIN V. SAN JACINTO UNIFIED SCHOOL DISTRICT*

INTRODUCTION

Walk into any public high school and you will understand what is meant by the saying, “anything goes.” High school is a place where most young adults express themselves either verbally or with their appearance; body piercing, tattoos, multi-colored hair and tattered clothing are more the norm than the exception in many high schools. It seems that the First Amendment freedom of expression should be as compelling for these young adults as it is for the general public.¹ But, imagine being unable to wear a sweatshirt, baseball cap or T-shirt to school just because it bears a sport or university logo. Many public schools are putting such restraints on their students’ freedom of expression rights in the name of safety and social control.

In *Jeglin v. San Jacinto Unified School District*,² the United States District Court for the Central District of California held that public high school students could be prohibited by school officials from wearing clothing bearing writings or insignias that represented any professional or amateur sports team. It appears that freedom of expression is a fallacy for some public high school students. Furthermore, the court’s holding in *Jeglin* may have future implications on public high school students’ other expressive freedoms.

I. THE HISTORY OF FIRST AMENDMENT RIGHTS FOR PUBLIC SCHOOL STUDENTS

The courts have confronted the issue of students’ rights in the schools, recognizing that First Amendment rights should be analyzed in “light of the special characteristics of the school environment.”³ The courts recognized that the school districts have broad discretion in managing its own affairs; but at the same time, the public schools are a crucial medium for students to express themselves.⁴ Although the school boards have the authority to act within highly discretionary boundaries, at what price must students compromise their rights to freedom of speech or expression? The United States Supreme Court has answered this question by stating that courts should not intervene in conflicts arising out of the daily operations of a school system, unless these conflicts directly and sharply implicate basic constitutional values.⁵

Before examining the *Jeglin* opinion, a brief history of First Amendment rights

1. The author does realize that in *New Jersey v. T.L.O.*, 469 U.S. 325 (1985), the Supreme Court reaffirmed the notion that constitutional rights of public school students are not automatically coextensive with the rights of adults in other settings. *Id.* at 340, 342.

2. *Jeglin v. San Jacinto Unified School Dist.*, 827 F. Supp. 1459 (C.D. Ca. 1993)

3. *Tinker v. Des Moines School Dist.*, 393 U.S. 503, 506 (1969).

4. *See Shelton v. Tucker*, 364 U.S. 487 (1960), where the Court stated that “the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” *Id.* at 487. *See also*, *Keyishian v. Board of Regents*, 385 U.S. 589, 87 S. Ct. 675 (1967) (stating that the classroom is the marketplace of ideas).

5. *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968).

for public school students must first be addressed. The following cases demonstrate the courts' uneasiness to allow a broad right of free speech for public school students. Indeed the Supreme Court has explicitly stated that public school students do not have an absolute right to express themselves on school grounds⁶ and that substantial interference or material disruption must proceed an abatement of a student's First Amendment rights. Although regulation of expression has long been justified by the need for local school boards to have broad discretion in managing their own educational affairs, the constitutional doctrine of freedom of speech has essentially been ignored in order to maintain control over rebellious teens.

A. *Burnside v. Byars*

In 1966, public students' free speech rights were first recognized by the Fifth Circuit in *Burnside v. Byars*.⁷ At issue was whether students could be suspended for wearing "freedom buttons" which were worn to encourage blacks to exercise their civil rights.⁸ The students were suspended under a disciplinary regulation which insured that students and faculty were not subject to annoying, distracting or disorderly conduct.⁹ Because maintaining and protecting the public school system was a compelling interest, the court balanced the regulation against the First Amendment rights of the students.¹⁰ The principal of the school claimed that the buttons did not bear on the students education, would disturb the school program and would cause a commotion in the classroom.¹¹ There was no evidence, however, that regular school activities were hampered or that the school schedule was otherwise disturbed.¹² In fact, the principal testified that the students were suspended merely for violating the regulation and not for interfering or disrupting classes.¹³ The Appellate Court held that although school officials had a wide latitude of discretion to protect the educational system, the policy forbidding the wearing of 'freedom buttons' was arbitrary and unreasonable.¹⁴

B. *Tinker v. Des Moines School District*

It was not until *Tinker v. Des Moines School District*¹⁵ that the Supreme Court explicitly held that the First Amendment rights of students "were not shed at the school house gates."¹⁶ In *Tinker*, a disciplinary policy initiated by local school officials

6. *Tinker*, 393 U.S. 503.

7. 363 F.2d 744 (5th Cir. 1966).

8. *Id.* at 746, 747.

9. *Id.* at 747.

10. *Id.* at 748.

11. *Id.* at 746-747.

12. *Id.* at 748.

13. *Id.*

14. *Id.* at 748-749.

15. 393 U.S. 503 (1969).

16. *Id.* at 506.

banned students from wearing black armbands, in protest of the Vietnam war, while on school property.¹⁷ Five students who did not comply with the ban were suspended for wearing the armbands.¹⁸ The Supreme Court recognized the students' right to express themselves but further stated that expressive conduct could be prohibited if it substantially and materially interfered with the invasion of other's rights or caused disruption.¹⁹ The record evidence did not demonstrate that school officials could reasonably believe a disruption could occur, nor did the passive, silent protest cause any interference with school activities.²⁰ Because undifferentiated fear or apprehension of a disturbance is not a justification for prohibiting free expression, the Supreme Court held that the regulation unconstitutionally infringed upon the students' First Amendment rights.²¹

C. Grayned v. Rockford

Later, in 1972, the Court addressed the First Amendment rights of protesters on or near school grounds in *Grayned v. Rockford*.²² The anti-noise ordinance "prohibited a person on grounds adjacent to a building in which school was in session from willfully making a noise or diversion that interfered with the peace or good order of a school."²³ The demonstrators were arrested for marching around a sidewalk approximately one hundred feet from the school while holding signs which demanded racial equality in the school.²⁴ One of the arrested demonstrators challenged the ordinance as an unconstitutional regulation of protected activity.²⁵ The Supreme Court disagreed.²⁶ Justice Marshall used the material disruption/substantial disorder standard to conclude that noisy protesting was incompatible with the normal activities of the school during school hours.²⁷ Although there was conflicting evidence as to whether the protesters actually disrupted school procedure, the Court found that the ordinance furthered the compelling interest of maintaining a quiet, undisturbed school session conducive to students' learning.²⁸ The Court further held that the law did not unnecessarily interfere with First Amendment rights of the students.²⁹

17. *Id.* at 508.

18. *Id.*

19. *Id.* at 511.

20. *Id.* at 514.

21. *Id.* at 508, 514.

22. 408 U.S. 104, 107 (1972).

23. *Id.* at 104.

24. *Id.* at 105.

25. *Id.* at 106.

26. *Id.* at 117.

27. *Id.* at 118-120.

28. *Id.* at 105-106, 119.

29. *Id.* at 115, 119.

D. Bethel School District No. 403 v. Fraser

When student speech interferes with the social order within the school building, the Court has also curtailed the First Amendment rights of the pupils. In *Bethel School District No. 403 v. Fraser*,³⁰ the Court held that a school district was within its permissible authority in disciplining a high school student for giving a lewd speech at a class assembly.³¹ Specifically, the student recited a graphic and sexually explicit speech while nominating a fellow student for student council.³² The school board suspended the student for two days under a school disciplinary rule which prohibited the use of obscene language in the school.³³ The student then brought suit claiming his First Amendment rights of freedom of expression were violated by the school board.³⁴ The Supreme Court, in a 7-2 decision, stated that the controversial view of the student had to be balanced against the school's interest in teaching students about socially acceptable behavior.³⁵ The Court gave the school district the right to decide when freedom of expression undermined the values of the school, mainly protecting students from exposure to vulgar and offensive speech.³⁶ The Court also allowed the school unfettered discretion when deciding when that free speech could be subject to inter-school discipline.³⁷

II. *JEGLIN v. SAN JACINTO UNIFIED SCHOOL DISTRICT*³⁸A. *Facts*

On February 23, 1993, the San Jacinto Unified School District revised the student dress and grooming regulation³⁹ and adopted a district-wide policy entitled "Students Disruptions to the Learning Process,"⁴⁰ which applied to all 4,229 students in the

30. 478 U.S. 675 (1986).

31. *Id.* at 685.

32. *Id.* at 67-678.

33. *Id.* at 678-79.

34. *Id.* at 679.

35. *Id.* at 681.

36. *Id.* at 683, 685.

37. *Id.* at 686.

38. 827 F. Supp. 1459 (C.D. Ca. 1993).

39. *Jeglin*, 827 F.Supp 1463. San Jacinto Unified School District Administrative Regulation AR 5131.2, entitled Students Dress and Grooming states in pertinent part; "The following guidelines shall apply to all school related activities: (2) clothing and jewelry shall be free of writing, pictures or any other insignia which are crude, vulgar, profane, or sexually suggestive or which advocate racial, ethnic, or religious prejudice or the use of drugs or alcohol. Additionally, clothing shall be free of any writing, pictures or any other insignia which identifies any professional sports team, college, or group advocating or participating in disruptive behavior."

40. *Id.* at 1463-1464. San Jacinto Unified School District Board Policy BP 5131.2(a) states in part (II)(A) that; "Each school shall establish and inform students of the standards for student behavior and dress. If infractions occur a remediation process shall be utilized that embodies

district⁴¹ These policies denied the district's students of the right to wear any clothing which identified a professional or collegiate sports team.⁴² Violating the policy could result in removal from regularly scheduled class and placement in alternative education for a day.⁴³ Any subsequent violation could result in suspension or expulsion from school.⁴⁴ After notice of the new policy was issued to parents, the regulations were enforced immediately.⁴⁵

On March 3, a little more than a week after the enforcement of the policy began, plaintiffs Alan and Marvin Jeglin were sent to the principal's office in violation of the district's policy on inappropriate attire.⁴⁶ Alan, a twelve year old middle school student, was wearing a University of California-Riverside sweatshirt; Marvin, a fourteen year old middle school student, was wearing a Chicago Bears jacket.⁴⁷

Just two days later, on March 5, plaintiffs Ariel and Elisa Jeglin were also found to be in violation of the dress code at their elementary school.⁴⁸ Nine year old Ariel was in violation for wearing a University of California-Los Angeles sweatshirt.⁴⁹ Her seven year old sister Elisa was wearing a "Twins" shirt—the name of a professional baseball team as well as the name of her brother's recreational baseball team.⁵⁰

Subsequent to the Jeglins' violation of the dress code, a seventeen year old high school student named Darcee Le Borgne became the fifth plaintiff in this case.⁵¹ Le

the principals of assertive discipline. The school discipline plan shall incorporate the consequences for students engaged in any disruptive behavior related to identified student group activity as defined below:

- (1.) Disruptions Related to Student Behavior. Included are those activities by identified groups of students who are or have been related with inappropriate student dress, controlled substances, mayhem, and defiance of school authority.
- (2.) Identified Groups of Students. Includes those students engaged in negative activity, behavior, dress or display, which when evaluated collectively, could denote student group affiliation which threatens the safe and orderly school environment.
 - (a) "Colors". The term "colors" is defined as a display by wearing or placement of apparel by a group of students, or an individual student, which would signify the affiliation or intent of affiliation in a student group advocating or participating in disruptive behavior.
- (3.) Students shall be responsible for learning and adhering to rules of conduct and dress as well as district policies and regulations, administrative directions, and staff supervision."

41. *Id.* at 1460.

42. *Id.*

43. *Id.*

44. *Id.* at 1460, 1464.

45. *Id.* at 1460.

46. *Id.*

47. *Id.*

48. *Id.* at 1461.

49. *Id.*

50. *Id.*

51. *Id.* at 1460, 1461.

Borgne was personally warned by the principal that she would be disciplined under the policy if she wore any sports-related clothing.⁵² The clothing in question included Le Borgne's sweatshirt emblazoned with a University of San Diego logo and t-shirts for the Los Angeles Lakers and Dodgers.⁵³

B. Procedural History

The five plaintiffs filed their complaint challenging the constitutionality of the dress code.⁵⁴ The plaintiffs, whom alleged that the policy restricted, prevented, deprived and denied them of their right to free speech sought declaratory and injunctive relief.⁵⁵ The District Court for the Central District of California issued a temporary restraining order and ordered a show of cause hearing.⁵⁶ A trial was later set and consolidated with the hearing of the preliminary injunction application.⁵⁷

The district court immediately and permanently enjoined the school district from enforcing the revised student dress code policy with respect to elementary and middle school students.⁵⁸ The United States District Court for the Central District of California held that the code violated free speech rights of elementary and middle school students.⁵⁹ The court stated that the policy was justifiable in the public high school, where there was evidence of gangs which threatened disruption or material interference with school activities.⁶⁰

III. LEGAL ANALYSIS

The district court was called upon to decide whether the school-imposed dress regulations deprived or denied the students of their right to free speech or expression as guaranteed by the First Amendment. First, the court had to find that speech included dressing in sports-oriented clothing. The court's second inquiry was to determine the compelling state interest that was furthered by the school board's dress policy. Finally the court examined whether there was evidence that the speech in question caused substantial disruption or material interference of school activities.

A. First Amendment Rights Survive the Schoolyard

The court began its opinion by enunciating that there was indeed a right to

52. *Id.* at 1461.

53. *Id.*

54. *Id.* at 1459.

55. *Id.* at 1461.

56. *Id.*

57. *Id.*

58. *Id.* at 1464.

59. *Id.*

60. *Id.* at 1462.

freedom of speech for public school students as recognized under *Karp v. Becker*⁶¹ and *Tinker*.⁶² The court in *Jeglin* concluded that the speech in question was the wearing of clothes that bore the writings or pictures of a university or professional sports team.⁶³

B. *Compelling Interests of the State*

The court immediately turned its attention to the interest of the state. Inherent in the duties of a public school system administration, the court stated, are the responsibility and authority to control student conduct in the schools.⁶⁴ The court found that the maintenance of an educational system is a compelling state interest.⁶⁵ Thus, the state's efforts to protect and preserve the integrity of its educational process must be balanced against the students' right of free speech.⁶⁶

C. *Substantial Disruption or Material Interference Standard*

The district court stated that the right to free speech may not be curtailed unless there are facts to demonstrate that there may be a substantial disruption or material interference of school activities.⁶⁷ However, this standard is essentially form without substance, as no certainty that the disruption will occur is necessary before a student's right is abridged.⁶⁸ School authorities need not wait until a disruption actually occurs because the officials have a duty to prevent such turmoil.⁶⁹ The school authorities need only show that, because of the existence of certain factors, a substantial disruption could be anticipated.⁷⁰

The court first looked to the evidence of gang presence at the four district elementary schools, which had approximately 2,455 students in attendance.⁷¹ The court found that the elementary school offered no proof of gang presence, actual or threatened disruption, or material interference.⁷² The elementary school could not,

61. 477 F.2d 171 (9th Cir. 1973). The Ninth Circuit held that a public high school student could not be suspended, absent justification, for attempting to distribute signs which protested the refusal of the school to renew the contract of an English teacher. Adequate justification to discipline the student speech included violation of an existing reasonable statute or school rule. *Id.* at 176, 177. However, the Ninth Circuit stated that school officials could justify confiscating the signs because they reasonably anticipated or forecasted possible violence. *Id.* at 176.

62. *Jeglin v. San Jacinto Unified School District*, 827 F. Supp. at 1461.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.* at 1460, 1461-1462.

72. *Id.* at 1461-1462.

therefore, abridge the students' free speech rights.⁷³

Next, the court analyzed the evidence for gang presence at the one middle school in the district.⁷⁴ It concluded that the middle school only offered negligible evidence of gang presence.⁷⁵ Furthermore, the school district could not show actual or threatened disruption at the middle school level.⁷⁶ Once again, the court found that the middle school did not carry their burden of justifying the restricting dress code as to the 886 middle school students.⁷⁷

The last part of the court's analysis was examining the evidence of gang presence at the sole district high school, which had 828 pupils in attendance.⁷⁸ At the high school level there were conflicting reports as to the presence of gangs and as to whether wearing sports-oriented clothing was associated with gangs.⁷⁹ Students testified that gang members do not wear sports-oriented clothing, but rather wear other gang-identifying apparel such as dickies, a type of work pants, and white T-shirts.⁸⁰ Furthermore, it was claimed that most students that wore the clothing in question, the sports-oriented clothing banned under the dress code, were the school athletes and other students who generally followed the rules.⁸¹ In addition, there was evidence that simply wearing sport or university-bearing clothes never lead to any disruption or mayhem on campus.⁸²

The court, however, relied upon other evidence to show a gang presence that resulted in intimidation.⁸³ This intimidation of students and faculty, the court said, could lead to disruption, although the school board never defined the size or composition of this gang presence.⁸⁴ The court conceded that the dress code may not negate gang presence or any possible disruption but, the court was not concerned that the school officials could only present remote, hypothetical evidence of a disturbance caused by the wearing of clothing bearing sports or university insignia.⁸⁵ Because the state's interest in maintaining a proper educational system was compelling, the court held that the level of disturbance could be relatively low in order to justify a curtailment of rights.⁸⁶

73. *Id.* at 1462.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.* at 1460, 1462.

78. *Id.* at 1460, 1462.

79. *Id.* at 1462.

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.* Indeed, the Appellate Court of Illinois struck down an ordinance which made it unlawful for a person to wear known gang colors, emblems or other insignia—including sports-related clothing—as unconstitutionally overbroad and vague. *See City of Harvard v. Gaut*, 660 N.E.2d 259 (2nd Dist. 1996).

D. Inter-School Disciplining of Free Speech

Furthermore, the court allowed the school officials to discipline a public student's exercise of free speech.⁸⁷ The school officials, however, carried the burden of establishing that their actions were justified.⁸⁸ Absent such justification, the school officials could not discipline a public school student's exercise of free speech.⁸⁹ The district court also left the school board with the discretion of reviewing the policy and revising it 'as needed' to prevent future First Amendment encroachments.⁹⁰

IV. FUTURE IMPLICATIONS

The First Amendment states in pertinent part that "Congress shall make no law... abridging the freedom of speech."⁹¹ Unfortunately, the courts have found a way to carve out exceptions to this constitutional guarantee for public high school students. Even the most highly protected speech—political discourse—may be abridged when exercised in the school yard. In theory, although the Supreme Court has held that public school students do not shed their rights at the school gates, in practice students are essentially stripped of their free expression rights once they step on school property. The Court has allowed the First Amendment freedoms to be curtailed in order to assist public school authorities in controlling the content of a student's speech in the name of social control.

Although the courts have held that a state has a compelling interest in preserving an environment that is conducive to learning, this policy too often violates the constitutional guarantee of free speech and expression. Often there is no relationship between the regulation and the so-called compelling state interest. The school board dress and grooming policy at issue in *Jeglin* states that "clothing shall be free of writing, pictures or any other insignia which identifies any professional sports team, college, or group advocating or participating in disruptive behavior."⁹² How does wearing a University of Michigan or Chicago Bears sweatshirt advocate disruptive behavior? How many gang members wear these types of clothing? This dress and grooming policy was obviously overbroad. The only people being punished by these school-imposed regulations were students who wanted to show support for a university or professional sports team. Furthermore, the school board's regulation was underinclusive as well; the gang members still wore their own gang-identifying apparel and were never subject to discipline under the policy. It is frightening to think how many other unconstitutional school-imposed regulations will be upheld.

First Amendment jurisprudence also requires evidence of substantial disruption or material interference to justify curtailment of free speech. Theoretically, absent such evidence, no encroachment to a student's rights may occur. Practically, however,

87. *Jeglin*, 827 F. Supp. at 1461.

88. *Id.*

89. *Id.*

90. *Id.* at 1462.

91. U.S. CONST. AMEND. I.

92. *Jeglin*, 827 F. Supp. at 1463 (emphasis added).

that standard is often ignored so that the court may achieve its desired result—keeping students from rebelling against authority. There was not only conflicting evidence as to whether there was a gang presence at the San Jacinto high school, but the evidence that was presented showed only a minimal presence at best. The *Jeglin* court could have followed *Tinker* and held that the undifferentiated fears or apprehension of disturbance by gangs was not enough to overcome the First Amendment rights. Similar to the facts in *Tinker*, this case involved a small number of students who were engaged in silent, passive speech. Instead, the court deviated from the advise of the Supreme Court and decided that the “hazardous freedom”⁹³ bestowed upon us by the Constitution is inapplicable to students at San Jacinto High School. Unfortunately, the court’s reasoning in *Jeglin* raises the possibility that other constitutional guarantees will not be afforded to public school students.

CONCLUSION

The First Amendment was enacted to protect the free expression of its citizens—all citizens—and was not intended to protect a select few. What is so harmful about wearing a sweatshirt or T-shirt bearing a sports insignia? It is illogical to assume that a school board dress policy which bans clothing that is worn to support a sports team will reduce the amount of disruption in the public schools. Public high school students, like all citizens, should be allowed, even expected to express themselves. What are we afraid of?

Elaine Spiliopoulos

93. *Tinker v. Des Moines School District*, 393 U.S. at 508-509.