**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF CENTENNIAL**

**JAMES W. WADSWORTH,**

and

**PETER S. DUPONT,**

Plaintiffs,

**Civil Action No. 08–1821**

v.

**SOUTH PARK SCHOOL DISTRICT,**

Defendant.

**Memorandum in Support of**

**Plaintiffs’ Cross-Motion for Summary Judgment and in Opposition to Defendant’s Motion for Summary Judgment**

Mailbox no. 294

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# Introduction

Jimmy Wadsworth is an 18 year-old senior at South Park High School in the state of Centennial. On September 22, 2008, he wore a T-shirt to school expressing a political viewpoint about a statewide initiative to lower the drinking age from 21 to 19. The T-shirt read, ““I’m 18. I can vote. I can marry. I can pay taxes. I can go to jail. I can fight in war. NOW GIMME MY BEER!!!” South Park High School, assuming that the shirt promoted illegal use of alcohol, forced Wadsworth to cover the slogan or remove his T-shirt and thus violating his First Amendment rights. The school persisted in prevent him from expressing this specific political viewpoint.

Wadsworth has exhausted all his administrative remedies within the School District, and now wishes to bring this action requesting to (1) declare unconstitutional South Park School District’s restriction on his First Amendment right to express his political views, and to (2) direct the School District to permit him to wear his T-shirt at school.

# Statement of Facts

South Park High School is a four-year public high school located in South Park, Centennial. (Compl. ¶ 5.) During the 2008-09 academic year, underage drinking became a common topic in the school due to two incidents. First, a well known student died from an alcohol overdose during the 2006-07 academic year. (Hunt Aff. ¶ 3.) The school utilized this event as a teaching tool during the 2008-09 freshmen orientation. (*Id*. ¶ 1.) Also, during the 2008 election cycle, a state wide ballot initiative to lower Centennial’s drinking age from 21 to 18 received extensive press coverage, which several teachers dedicated classroom time for discussions. (*Id*. ¶ 5.)

The discussions at school and the initiative to lower the drinking age resonated with Jimmy Wadsworth, an 18 year-old senior at South Park High School. (Compl. ¶ 8.) Wadsworth firmly believes that 18 year-olds should have the legal right to possess and drink alcohol. Although the 2008 ballot initiative failed, Wadsworth, following his strongly held belief, began seeking ways to get involved in a possible 2010 ballot initiative. (*Id*. ¶ 9.) He joined the national organization, Minors’ Rights Association (“MRA”), which advocates lowering the drinking age and was a proponent of the 2008 Centennial ballot initiative. (*Id*. ¶ 9.) Through the MRA, he began discussing reasons for the failed 2008 ballot attempt and a possible 2010 initiative. (*Id*. ¶ 10.)

During these discussions and ruminations, he came up with a political slogan accurately expressing his viewpoint, which stated, “I’m 18. I can vote. I can marry. I can pay taxes. I can go to jail. I can fight in war. NOW GIMME MY BEER!!!” (*Id*. ¶ 15.) Feeling strongly about how well his slogan captured a core issue of the debate and wanting to help the MRA in a possible 2010 effort, he sent an email to MRA president, Kalevala Minkasi suggesting that they adopt his political slogan. (*Id*. ¶ 11.) Minkasi has not acted on the idea. (*Id*. ¶ 12.)

On September 22, 2008, satisfied with his slogan and confident in his cause, Wadsworth put the slogan on a T-shirt and wore it to school. (*Id*. ¶¶ 14, 16.) It resonated with several other students who engaged him in discussion, and it excited several others wanting to become involved in the 2010 initiative. (*Id*. ¶¶ 16-17.) One official school club, the Senior Men’s Club (SMC), has even considered using the T-shirt and slogan as their official club T-shirt. (*Id*. ¶¶ 38-39.)

Mary Hunt, the Principal at South Park High School, became aware of Wadsworth’s T-shirt, which caused her concern. (*Id*. ¶ 19.) According to her affidavit, “several teachers reported to me that they observed students rough-housing and being boisterous in the school halls as they examined the T-shirt.” (Hunt Aff. ¶ 6.) Also, an “unusually high number” of students were late to their morning classes. (*Id.* ¶ 6.) The affidavit does not indicate any disciplinary actions towards these “boisterous” or tardy students. (*Id*. ¶ 6.) One student did report leaving mid-day because the T-shirt reminded her of a relative’s alcohol related death, and the shirt offended her. (*Id.* ¶ 6.)

Principal Hunt’s affidavit also mentions a couple incidents “related to the previous attempt to lower the drinking age.” (*Id*. ¶ 7.) The affidavit mentioned “at least one fight” because of “high emotions that surrounded the proposed initiative.” (*Id*. ¶ 5.) And also, during the classroom talks about the initiative, two relatives and several close friends of the student who died of alcohol poisoning were sensitive to the discussions and requested to be removed from the discussions. (*Id*. ¶ 5.)

Based on these ordinary incidents of boisterous students, tardy students, sensitive students, and “at least” one fight, Principal Hunt sensed that further disruptions might occur. She called Wadsworth into her office and demanded that he cover the slogan, turn the shirt inside out, or face suspension. (*Id*. ¶¶ 5-7.) The South Park School District has persisted refusing to allow Wadsworth to wear his t-shirt, and he has yet to be able to express his political views.

# Argument

While the Supreme Court recognizes that high schools need to have the freedom to discipline, it also recognizes the importance of protecting the student’s constitutional rights.

The schools are “educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual.” *Tinker v. Des Moines Indep. Comty. Sch. Dist.*, 393 U.S. 503, 507 (1969).

“These fundamental ‘values of habits and manners of civility’ essential to a democratic society must, of course, include tolerance of divergent political and religious views, even when the views expressed may be unpopular.” Bethel Sch. Dist. No. 403 v. Fraser 478 U.S. 675, 681 (1986).

South Park School District prepares its students to become effective democratic citizens. By sheltering students from unpopular political viewpoints the students are unprepared to deal with the diverse and disputatious society that democracy requires.

This brief will show that James W. Wadsworth’s slogan advocates a political viewpoint and does not cause a material and substantial disruption. Wadsworth’s T-shirt, which reads, “I’m 18. I can vote. I can marry. I can pay taxes. I can go to jail. I can fight in war. NOW GIMME MY BEER!!!” expresses a political viewpoint concerning the lowering of the Centennial’s drinking age from 21 to 18. (Compl. ¶ 15.) Principal Hunt’s September 22, 2008 decision to forbidding Wadsworth from wearing his T-shirt violated his free-speech rights under the First Amendment. (Compl. ¶ 19.)

The court should grant summary judgment to him and declare unconstitutional the restriction of his First Amendment right to express his political viewpoint and direct the School District to permit him to wear his T-shirt at school.

“Summary judgment is only appropriate where ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.’” *Tanner v. Gladstone*, 18 F.3d 210, 212 (13th Cir. 1987) (quoting Fed. R. Civ. P. 56(c)).

THE COURT SHOULD DECLARE UNCONSTITUTIONAL THE RESTRICTION OF WADSWORTH’S RIGHT TO WEAR HIS T-SHIRT BECAUSE ITS SLOGAN ADVOCATES A POLITICAL VIEWPOINT AND DOES NOT CAUSE A MATERIAL AND SUBSTANTIAL DISRUPTION.

This brief will show that the South Park School District violated Wadsworth’s First Amendment rights by refusing to allow him to express his political views and that the school district continues violate his rights by preventing him from wearing his T-shirt at school. First, it will show that the “*Morse Test*” does not apply because Wadsworth’s shirt expresses a viewpoint concerning political issues and does not promote illegal drug use. *See* *Morse v. Frederick*, 127 S.Ct. 2618 (2007). Second, it will apply the “*Tinker Test*” and show that the T-shirt did not cause material and substantial disruptions based on the current disruptions, forecasted disruptions, and impingement on the rights of others. *See Tinker v. Des Moines Indep. Comty. Sch. Dist.*, 393 U.S. 503, 507 (1969).

1. Morse does not apply to Wadsworth’s T-shirt because it expresses a viewpoint concerning political or social issues and not the promotion of illegal drug use.

In *Morse*, the Court held that a school may restrict student speech at a school event when that speech is reasonably viewed as promoting illegal drug use and not debates concerning political or social issues about drug laws. *See* 127 S.Ct. 2618.

Wadsworth’s viewpoint about lowering the drinking age is a viewpoint about a political issue and does not apply to Morse because the holding in Morse focuses on messages promoting illegal drug use in schools and not on political or social issues. In Morse, the Supreme Court examined the importance of prohibiting student speech when a school reasonably believes the speech promotes illegal drug use. *Barr v. Lafon*, 538 F.3d 554 (2008) (quoting *Morse v. Frederick*, 127 S.Ct. 2618 (2007)). High school student Joseph Frederick attended a school-supervised event to watch the Olympic torch pass in front of the high school. 127 S.Ct. at 2622. In order to get the attention of news stations taping the event, Frederick unfurled a banner displaying the words "BONG HiTS 4 JESUS." *Id.* at 2622. Frederick admits the words were quixotic and ambiguous. Principal Morse recognized the reference to drug paraphernalia and, not being able to interpret it as anything other than promoting illegal drug use, confiscated the banner. *Id.* at 2629. Chief Justice Roberts, delivering the opinion of the court, found that Principal Morse reasonably determined that an ambiguous banner with a drug reference could be interpreted as promoting an illegal drug. *Id.* at 2629. Justice Roberts goes on to assure the court that the opinion is “plainly not a case about political debate over the criminalization of drug use or possession.” *Id.* at 2629. Also, Alito’s concurrence, which Kennedy joins, giving the court its 5 vote majority, concurs “on the understanding that…the opinion provides no support for any restriction of speech that can plausibly be interpreted as *commenting on any political or social issue*.” *Id.* at 2629 (Alito, J., concurring) (Italics added for emphasis). Student speech that can be interpreted as commenting on a political or social issue and not the promotion of an illegal drug, as found in Morse, will fall under the protection of the First Amendment.

Wadsworth’s t-shirt is a protected political statement and doesn’t fall under the promotion of illegal drugs in Morse, because it is not ambiguous, it mirrors Wadsworth’s belief, and Wadsworth’s actions back up the shirt and his belief. First, unlike Frederick’s banner, Wadsworth’s slogan is political speech expressing his viewpoint and not some quixotic and ambiguous message. *Id.* at 2629. The message on his shirt states “I’m 18. I can vote. I can marry. I can pay taxes. I can go to jail. I can fight in war. NOW GIMME MY BEER!!!” (Compl. ¶ 15.) This is not ambiguous; he is stating a political viewpoint that other rights and responsibilities of eighteen year olds are coextensive to the rights and responsibilities of drinking alcohol. The slogan, being political speech, is backed by Wadsworth’s actions. He joined a national organization, the Minors’ Rights Association (the “MRA”), which advocates lowering the drinking age. (Compl. ¶ 9.) He has discussed with other MRA members about proposing legislation to reduce the drinking age 2010. (Compl. ¶ 10.) Finally, He contacted the MRA to see if they would adopt his T-shirt slogan for their cause. (Compl. ¶ 11.) Wadsworth’s T-shirt clearly expresses a political viewpoint about lowering the drinking age in Centennial and does not in any way promote illegal drug use.

Because Wadsworth’s T-shirt expresses a viewpoint concerning a political issue and does not promote the illegal use of drugs, Morse does not apply.

1. South Park School District violated Wadsworth’s First Amendment rights by preventing him from wearing his shirt because the slogan did not cause material and substantial disruptions based on the current disruptions, forecasted disruptions, or impingement on the rights of others.

Principal Hunt’s affidavit implies a material and substantial disruption based on current disruptions of boisterous students and tardiness, forecasted disruptions based on a previous fight, and the impingement on rights of other students with sensitivities to the shirts slogan. This section of the brief will show that these disruptions could not reasonably be “material or substantial” disruptions based on the evidence in Principal Hunt’s affidavit.

1. Principal Hunt could not reasonably determine a “material and substantial” current disruption because the intensity of disruption is too low and because of a lack of direct connection between the T-shirt and the disruptions.

where there is no finding and no showing that engaging in the forbidden conduct would ‘materially and substantially interfere with the requirements of appropriate discipline in the operation of the school,’ the prohibition cannot be sustained. *Tinker v. Des Moines Indep. Comty. Sch. Dist.*, 393 U.S. 503 (1969).

The 6th Circuit has found that a current “substantial and material” disruption existed when Principal Steve Lafon prevented High School student Derek Barr from wearing an image of the Confederate Flag because of current high levels of racial tension and because of lack of a direct connection between the image and the racial tensions. *Barr v. Lafon*, 538 F.3d 554, 560 (6th Cir. Tenn. 2008). A fight broke out between a white student and an African American student because of the Confederate Flag. *Id.* at 569. Racist graffiti, accompanied with images of confederated flags, had been found containing demeaning racial slurs, an image of a noose, and "hit lists" naming African American students. *Id.* at 559. The tension got to be so bad that the school had to be put in lockdown by the local sheriff. *Id.* at 559. Several students and parents had testified that African American students had been taunted by images of the flag. *Id.* at 565.

According to Principal Hunt’s affidavit, Wadsworth’s shirt didn’t create “substantial and material” current disruption because the intensity of disruption was too low and because little evidence indicates a direct connection between the shirt’s slogan and the disruptions. First, the affidavit describes several teachers observing students rough-housing and being boisterous in the school halls as they examined the shirt. (Hunt Aff. ¶ 6.) Unlike the violence in Barr, rough-housing and being boisterous describes fairly typical teenage behavior and hardly qualifies as a “substantial” and “material” disruption. *Id.* Also, reports that the rough-housing happened while students examined the t-shirt does not show a direct connection between disruptions and the slogan. *Id.* The boisterous activity could have been caused by many other situations. *Id.* Finally, the affidavit does not indicate that the “boisterous” students had to be controlled by a local sheriff or any other means, and none of the students had been disciplined because of this disruption. *Id.*

Also, the affidavit implies a connection between the T-shirt and an “unusually high number” of students being late to the morning periods when Wadsworth wore the shirt. (*Id.* at ¶ 6.) While an increase in tardiness does warrant some concern, the affidavit only indicates that an “unusually high number” of students were late to the morning periods; however, nothing in the affidavit indicates exactly how much is “unusually high.” *Id.* Also, there is no indication of investigations into this “unusually high” rate, and no students had been disciplined for being late. *Id.* Because the current disruption did not rise to a level where any student needed discipline and the incidents are not directly connected to Wadsworth’s T-shirt, the current disruptions are not material or substantial.

1. Principal Hunt could not reasonably determine a “material and substantial” forecast disruption because there is not enough history to forecast future fights, the t-shirt slogan is not inherently likely to provoke violent reaction, and there is no connection between advocacy of lowering drinking age and the previous fight.

If a school can point to a well-founded expectation of disruption-especially one based on past incidents arising out of similar speech-the restriction may pass constitutional muster. *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 212 (9th Cir. 2001).

In *Castorina v. Madison County Sch. Bd.*, the Sixth circuit held that two Hank Williams, Jr. concert T-shirts, which displayed confederate flags, were protected speech. 246 F.3d at 538 (6th Cir. 2001). A fight had broken out the previous day, allegedly over images of confederate flags, and the court held that one fight that may have been started because of a confederate shirt was not enough history to forecast future fights. *Id.*

Also, reusing the *Barr* analysis, the court found a direct connection between a fight and the image of a confederate flag because the court testimony from both the defendants and plaintiffs stated the fight was directly caused by a student wearing a confederate flag. 538 F.3d at 565.

Principal Hunt’s forecast disruption, based on “at least one” fight that happened during the previous legislation, fails to establish a material or substantial disruption because there is not enough history to forecast future fights and there is no connection between Wadsworth’s slogan and the previous fight. (Hunt Aff. ¶ 5.)

Principal Hunt’s affidavit states that “due to the incidents at school related to the previous attempt to lower the drinking age in Centennial…[she] foresaw that additional disruption would occur if Jimmy were allowed to continue to wear his T-shirt at school.” (Exhibit A 7) The affidavit describes “high emotions” from a ballot initiative to lower the drinking age caused “at least one fight,” on school grounds. (Hunt Aff. ¶ 5.) As the court determined in *Castorina*, a single high school fight does not warrant the suppression of First Amendment rights. 246 F.3d at 538. Furthermore, the school’s belief that “high emotions” caused the fight does not really prove that any aspect of Wadsworth’s T-shirt would directly cause either the fights or “high emotions.” (Hunt Aff. ¶ 5.) A multitude of causes could have caused these incidents. An argument could be made that the school’s suppression of a specific expressions contributed to the heightened “high emotions.”

The district has failed to show enough history required to forecast a disruption and has failed to show a direct connection between the disruptions and any aspect of Wadsworth’s T-shirt.

1. Principal Hunt could not reasonably determine a “material and substantial” disruption from impinging on rights of other students because the viewpoints about the ballot initiative are widely spread and do not create a tort liability.

For a school to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint.” Tinker v. Des Moines Independent Community School Dist. *Tinker v. Des Moines Indep. Comty. Sch. Dist.*, 393 U.S. 503, 509 (1969).

The District court in *Bowler v. Town of Hudson* determined a poster with a URL link to violent images did not impinge on the rights of others because the link was widely spread, it was not targeted at a specific group, and it did not create a tort liability. *See* 514 F. Supp. 2d 168 (D. Mass. 2007). A high school club put up posters which had a link to a website, which in-turn contained a link to graphic video footage of hostage beheadings. *Id.* at 172. The school removed the images because of the sensitivities of other students. *Id.* at 178. The court granted that the images were offensive but determined that they did not impinge upon the rights of others because of a URL’s wide availability and they were not “capable of triggering tort liability.” *Id.* at 176-178

Principal Hunt’s affidavit mentions relatives and friends of the teenager whom died of an alcohol overdoes during the 2006-07 academic year. (Hunt Aff. ¶ 3.) They were sensitive to the school discussions concerning the ballot initiative to lower the drinking age and had requested to be dismissed from them. Also, one of the relatives left school when Wadsworth wore his shirt because the shirts message “offended her.” (*Id.* ¶ 6.) Like the internet links, viewpoints about ballot initiatives are widely spread. Especially because of the extensive press coverage it received. Finally, the content of the shirt would not trigger a tort liability.

Even if the “widely spread” argument is not compelling in its current form, the potential ramifications to schools forced to protect sensitive students from widely spread debates should be considered. The ballot initiative will likely return in 2010 and, if the court doesn’t declare unconstitutional the school’s restriction on Wadsworth’s right to wear his T-shirt, other schools may be required to block the multitude of political viewpoints that the next initiative propagates.

Because Wadsworth’s slogan did not cause material and substantial disruptions based on the current disruptions, forecasted disruptions, or impingement on the rights of others, South Park School District violated his First Amendment rights by preventing him from wearing his shirt.

# Conclusion

Wadsworth’s slogan is pure political speech and not under the Morse test. Also, the incidents listed in the affidavit fail to meet the standards of a material and substantial disruption. Furthermore, stifling Wadsworth’s First Amendment right to express his opinion will shelter students from the civics training required to make strong democratic citizens of Centennial. For these reasons the court should grant summary judgment in Wadsworth’s favor and declare unconstitutional the restriction of James W. Wadsworth’s First Amendment right to express his political views and direct the School District to permit him to wear his T-shirt at school.

Respectfully Submitted,

/s/

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/s/

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