THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2014-CP-0400381

Tariq Geer, by his mother, Lisa Geer; Ka'Darrius Brownlee, by his mother Lakesha Brownlee; Shamarion Brownlee, by his mother Kim Brownlee,

Appellants,

v.

Anderson County School District 5,

Respondent.

FINAL BRIEF OF APPELLANT

May 18, 2015

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STATEMENT OF THE CASE

Comes now, Appellants, Tariqus Geer, Shamarion Ahkeim Brownlee, and Ka'Darrius Brownlee, appealing the decision from the Tenth Judicial Circuit Court, affirming the Anderson District Five Board of Trustees' (Board) decision to expel appellants for the remainder of the 2013-2014 school year. This case arises out of the decision by Hearing Officer Mike Ruthsatz on November 25, 2013, to expel the appellants for their individual violations of the Student Code of Conduct, Section V—Gang and gang-related activities. The Board is authorized to take final expulsion action and expel students from school according to the Code of Laws for South Carolina, Section 59-63-240. Disciplinary hearings are delegated to the hearing officer, with a right of appeal back to the Board.

As such, evidentiary hearings were held individually for each appellant on November 13, 2013, pursuant to the Section 59-63-240 and District Policy JIDCA. Appellants timely the decision of the Hearing Officer for expulsion back to the

Board on December 18, 2013. The appeal was considered by the Board at its regular meeting on January 27, 2014. The Board voted to uphold their recommendation that appellants be expelled for the remainder of the 2013 to 2014 school year and by letter dated January 30, 2014, appellants were notified of the board decision. Appellants appealed the decision of the Board to the Tenth Judicial Circuit Court. Judgment was entered on September 8, 2014, in the Circuit Court, stating that the evidence was such that reasonable minds could reach the same decision as the Board, and Judge McIntosh signed his order on October 2, 2014. Appellants filed a timely notice of appeal to the South Carolina Court of Appeals. The transcript from the proceedings was received by Counsel on January 29, 2015, and this Initial Brief followed.

FACTS

The Appellants attended T.L. Hanna High School until their expulsion based on events that precipitated over a month-long period in 2013. Individual evidentiary proceedings for the appellants revealed the following events.[1] On October 7. 2013, Coach Derek Hamby learned of a verbal argument during school hours in the main locker room. Record on Appeal ("R.") at 34, 57, 76. Appellant, Shamarion Brownlee was one of the students and upon learning that the verbal altercation may have arose after another student said "F outlaw," Principal Hilton determined that the fight hastened due to Appellant S. Brownlee's allegiance to a gang. R. at 34-36, 57-59, 76. At the hearings of

[1] *See* Transcript of the expulsion hearing of Tariqus Geer held on November 13, 2013, before Hearing Officer Mike Ruthsatz of Anderson School District Five (R. at 30-51); Transcript of the expulsion hearing of Shamarion Brownlee held on November 13, 2013, before Hearing Officer Mike Ruthsatz of Anderson School District Five. (R. at 52-69); and Transcript of the expulsion hearing of Ka'Darrius Brownlee held on November 13, 2013, before Hearing Officer Mike Ruthsatz of Anderson School District Five. (R. at 70-104).

all three Appellants, Principal Hilton read into the record, her version of events.[2] According to Principal Hilton, any disrespect to Outlaw "would have been an insult to his set, and gang members are required to defend their set whenever it is insulted." R. at 34. Coach Hamby witnessed that the word outlaw was written on the school notebooks of appellants, the football shorts of Shamarion Brownlee, and that these appearances of the word were decidedly gang related. R. at 57. Principal Hilton stated that Shamarion Brownlee confessed to writing on his shorts as a part of a mission, which he carried on due to his gang membership. R. at 58. According to the principal, "this would constitute gang activity, in that gang members are required to participate in criminal, illegal activities as part of membership in a gang." R. at 112.

The principal testified that she confronted Shamarion Brownlee about being in a gang, and that he, after becoming very upset with the prospect of getting in trouble at home for being expelled, he eventually admitted that he was in a gang along with appellants. R. at 59-60. During the hearing, however, Shamarion Brownlee denied making such statements to the principal and stated that he was upset, and cried during the interaction with Principal Hilton, not because he had just confessed, but because he believed he was being railroaded. R. at 66 ("I cried because you all were pressuring me and I was mad.")

Appellants categorically denied membership in a gang called Outlaw at their individual hearings and rather asserted membership in a rap group of the same name. Indeed, appellants testified that they have CDs and mixes which they shared with

[2] *See* R. at 32-43, 56-65, 72-81.

teachers and students alike, and that affirm this membership in a rap group. R. at 45, 67, 87. The principal, and other teachers and administrators in making their case against appellants, turned to social media to bolster their case. Without equivocation, according to Principal Hilton, "other students at school, appeared to accept that the Outlaws were a gang because of their identification of themselves on social media sites, such as Twitter, using both pictures, gang names, gang signs, and often having the word outlaw associated with their names." R. at 39.

Ten days after the expulsion hearings, Anderson School District Five initiated Appellants' expulsions for the remainder of the 2013-2014 school year pursuant to South Carolina State law and District Policy JICDA for a violation of the Student Code of Conduct, Section V—Gang related activities. R. at 20-25. The handbook states that "activities include the commission of criminal acts or the purposeful violation of any District policy and having a common name or identifying sign, color, symbols" R. at 96.

The hearing officer advised the parents in writing of his decision to expel appellants for the remainder of the school year. Additionally, Appellants were required to successfully complete the year at the Anderson County alternative school before becoming eligible to return to TL Hanna high school. Appellants all completed the 2013-2014 school year at the alternative school.

STANDARD OF REVIEW

The Board's decision to expel a student from school "may be appealed to the proper court." S.C. Code Ann. § 59-63-240 (Supp. 2008); *see Davis v. Sch. Dist. of Greenville County*, 374 S.C. 39, 44, 647 S.E.2d 219, 222 (2007) (stating the expulsion

provision in the statute, unlike the suspension provision, expressly grants the student a right to appeal to the proper court). Judicial review of the school Board's decision is limited to ascertaining whether the board's decision is supported by substantial evidence. *Laws v. Richland County Sch. Dist. No. 1*, 270 S.C. 492, 495, 243 S.E.2d 192, 193 (1978). However, this court cannot improperly substitute its judgment for that of school authorities in reversing the Board's decision. *Id.* Appellants are before this court pursuant to ISC code annotated 59–60 3–2 40 revision 1990 which specifically governs student expulsions. The code provides that the action of the school board in a suit and exposing case baby appeal to the proper court. This court is to review the record below and as in analyzing any circuit court case, this court determines whether there was substantial evidence below to read to the same conclusion that the Circuit Court reached.

ARGUMENT

I. WHETHER THE ISSUE BEFORE THIS COURT IS MOOT.

Prior to considering the legal issues implicated by the expulsions of Appellants, the threshold issue of mootness must be addressed by this Court. The issue of whether an expulsion appeal is moot after the expelled students return to the very school they were expelled from[3] is an important issue for this Court to consider and enter a ruling. At the outset, Appellants argue that the matter is not moot, as the issue of expulsion still matters very much to the students at issue in this very case. Indeed, the permanent record of each appellant was impacted by expulsions, which we argue below were unjust and not supported by substantial evidence. *See supra* Final Brief of Appellant at 9-13. An

[3] Ka'Darrius Brownlee was only eligible to re-enroll in the alternative school for the 2014-2015 school year.

expulsion may affect subsequent disciplinary actions while in high school, acceptance to college, and even prospects of future employment opportunities. Accordingly, the unjust expulsion of appellants is not a moot matter which this Court would be unable to provide a potential remedy to appellants. By reversing the decision of the Circuit Court below, this Court may grant appellants the opportunity to challenge their expulsions.

Assuming *arguendo* that the fact that Appellants' period of expulsion from the above outlined events has elapsed, renders their underlying claims moot, this fits into the exceptions carved out by the Supreme Court in *Byrd v. Irmo High Sch,* 321 S.C. 426, 468 S.E.2d 861 (S.C. 1996).

Generally, an appellate court will not address a moot question or make an adjudication when no actual controversy remains. *Id.* at 431-32 (addressing mootness with regard to a student's ten-day suspension). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon an existing controversy. This is true when some event occurs making it impossible for the reviewing court to grant effectual relief." *Id.* The inquiry before the *Byrd* case whether the review of a student's ten-day suspension was properly before a higher court because the student had served the suspension by the time the matter reached the appellate court. The court noted an exception to the mootness doctrine allows a court to take jurisdiction if the issued raised was capable of repetition but evading review. *Byrd*, 321 S.C. at 431, 468 S.E.2d at 864. Importantly, the exception does not require that Appellants be subject to the exact same action again, but that the controversy presents a recurring dilemma that the court

will address to clarify the law. *Id.; Evans v. South Carolina Dep't of Soc. Servs.*, 303 S.C. 108, 110 n.1, 399 S.E.2d 156, 157 n.1 (1990).

Subsequent to filing the notice of appeal, the school year for which the Appellants served the full-extent of their expulsion concluded. Even assuming the issue in the present case is moot because the 2013-2014 terms of expulsion have lapsed, and this Court can grant no effectual relief, notwithstanding the issues raised above regarding the issue not being moot, this Court should find that the issues are capable of repetition but evading review. As in *Byrd*, student expulsions are "completed long before an appellate court can review the issues they implicate." *Byrd*, 321 S.C. at 432, 468 S.E.2d at 864. Therefore, the instant case fits within the exception to the mootness doctrine.

The District argued before the Circuit Court that the matter is moot as the appellants all served their term of expulsion, and one was currently attending T.L. Hanna High School. R. at 4. Appellants therefore ask this Court to make a ruling on the issue of mootness in the context of expulsion appeals. *See Sloan v. Dep't of Transp.,* 379 S.C. 160, 167, 666 S.E.2d 236, 240 (2008) (This Court "will not pass on moot and academic questions or make an adjudication where there remains no actual controversy."); *See Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591 (2001), *cert. denied*, 535 U.S. 926 (2002) (case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy); *Waters v. South Carolina Land Resources Conservation Comm'n,* 321 S.C. 219, 467 S.E.2d 913 (1996) (justiciable controversy is real and substantial controversy appropriate for judicial determination, as opposed to dispute or difference of contingent, hypothetical or abstract character). If, however, an

issue raised is capable of repetition but generally will evade review, the Court can address the issue. *See Sloan,* 379 S.C. 160 at 167. Appellants argue that these issues are ones that are capable of repetition, yet will usually evade review because most students will have served their period of expulsion before the lawfulness of the expulsions could be reviewed.

The issues involved in this case are they are capable of repetition yet evade review and the issues involve matters of important public interest. Regarding the exception that a court can take jurisdiction, despite mootness, if the issue raised is capable of repetition but evading review, this Court should find that the questions will "usually become moot" before they can be reviewed. *See South Carolina Dep't of Mental Health v. State*, 301 S.C. 75, 390 S.E.2d 185 (1990) (appeal allowed because raises question that is capable of repetition, but which usually becomes moot before it can be reviewed). Further, the issues involved may present a "recurring dilemma" if expulsions on these basis are permitted, and as such, the Court needs to address to clarify the law. *See Evans v. South Carolina Dep't of Social Servs.*, 303 S.C. 108, 399 S.E.2d 156 (1990) (stating controversy presents a recurring dilemma which the Court will address to clarify the law). The Respondents argued below that the *Byrd* case is inapplicable due to the claim that this is not a short term suspension. R. at 118. However, Appellants argue that it is indeed applicable, since the expulsion occurred on November of 2013, and they were enrolled again in August of 2014. Although this was a nine month period, the case took until February of 2015 to come before this Court. Since "the Court noted that '[s]hort term suspensions, by their very nature, are completed long before an appellate court can

review the issues they implicate,'" *Byrd*, 321 S.C. at 433, 468 S.E.2d at 867, we contest that short term expulsion, by its very nature, is completed long before an Appellate court can review the issues it implicates. Therefore we argue that the present case clearly fits into the evading review exception of the mootness doctrine, even if it were otherwise not appropriate for the Court to address this appeal.

II. WHETHER THE CIRCUIT COURT ERRED IN ITS DETERMINATION THAT THE BOARD'S DECISION TO EXPEL APPELLANTS WAS BASED ON SUBSTANTIAL EVIDENCE.

The Circuit Court erred in upholding the expulsions of Appellants as Respondent failed to prove that the alleged gang activity for which the expulsion proceedings were concerned. The court was tasked with determining whether there was substantial evidence to support the Board's decision and determine whether the expulsion hearing provided sufficient due process, as well as review any relevant statutory or constitutional claims which an aggrieved party may make regarding any aspect of the procedure. *See* Order of Circuit Court dated October 2, 2014. The constitutional issues will be discussed at length below, *See supra* Final Brief of Appellant at 14-20. "Substantial evidence is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion that the Board reached or must have reached in order to justify its action." *Kizer v. Dorchester County Vocational Educ. Bd. of Trs.*, 287 S.C. 545, 548, 340 S.E.2d 144, 146 (1986). Here, reasonable minds could not reach the decision of the school board, as there was no evidence that the appellants were in a gang or performed gang-related activities in school or off campus.

The school handbook states that gang "activities include the commission of criminal acts or the purposeful violation of any District policy and having a common name or identifying sign, color, symbols" R. at 96; however, there was not substantial evidence presented at any stage of the administrative or judicial process that indicated criminal activity had occurred. Further, the appellants were not committing criminal acts, and therefore, were not violating District policy. R. at 95. School administrators became aware of the alleged gang related activity when one of the three appellants had the word "Outlaw" written on his shorts. R. at 57-58. The student stated this was part of a "mission" he was instructed to do by other members of the game. R. at 57-58. This appellant confessed to being in a gang and wrote down the name of three other gang members. R. at 58. In light of this confession, school administrators collected evidence including staff and student statements, Twitter screenshots, and student drawings. R. at 61.

The expulsions of all three students should be overturned because the district did not meet its burden to show that gang or gang-related activity had occurred. The District's disciplinary code defines what is considered misconduct for which disciplinary action is appropriate. R. at 20-29. The gang and gang-related activities section reads "no student shall commit any act that furthers gangs or gang-related activities." *Id.* A gang is any ongoing organization, association or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of criminal acts, or the purposeful violation of any district policy, and having a common name or common

identifying sign, color or symbols. None of the expulsion hearings brought to light anything that constituted a gang.

Here, the students expelled for membership in a gang and gang activity did not engage in criminal activity, alleged or otherwise. At the expulsion hearing of Shamarion Brownlee, Ms. Hilton admitted that there was no evidence of criminal activity in this case. R. at 48. Indeed, the so-called offenses alluded to before the Circuit Court were as inane as writing the word Outlaw on a pair of shorts, another appellant wrote the word in his notebook and also created a fictional town in a school assignment, which he dubbed the high school as Outlaw High School and streets named Hit Squad Lane or Avenue. The District also argued "What if [appellant] is given a mission to cause some kind of harm at school." R. at 98. After finding the word Outlaw written on a pair of shorts and notebooks, the school administrators took to social media to make their case, and found more references to Outlaw and Hit Squad. *Id.* The District argued through Sheila Hinton that Shamarion Brownlee confessed to being in a gang R. 60-63; however, during his expulsion hearing, Shamarion Brownlee, indicated that he insisted that Outlaw was a rap group, throughout the interrogation, and that he became upset when he felt pressured to change his explanation. R. at 65-66. Shamarion Brownlee told the hearing officer that he was not in a gang. R. at 67.

Appellants argue that the administration was looking for a reason to kick the boys out of school, which is evidenced by the fact that Ms. Hilton opined, "at the beginning of the school year, Officer Jamie Hill noticed five boys standing on the stage area of the mall in the morning, prior to school beginning, all wearing white t-shirts. This is one

sign of gang activity, both the white t-shirts and a group all standing together wearing them." R. at 38. The school board according to the code of laws her South Carolina, section 59–63-245, is authorized to expel students from school. R. at 26. Although the board may receive recommendations for expulsion from others, it is solely empowered to take the final expulsion action. In this district, the Board of Trustees has delegated discipline hearing responsibilities to a hearing officer with the right of appeal back to the school board. In pertinent part the section prohibiting gang activity reads: a) clothing: wearing, possessing, using, distributing, displaying, or selling any clothing, jewelry, emblems, badges, symbols, signs, visible tattoos and body markings, or other things, or being in possession of the literature that shows affiliation with the gang, or is evidence of membership or affiliates in any gang or that promotes gang affiliations; c) vandalism or destruction of property: tagging, or otherwise defacing school or personal property with gang or gang-related symbols or slogans. R. at 80.

Here, the students expelled for membership in a gang and gang activity did not engage in criminal activity at school or elsewhere. If they had, the administrators wouldn't be reaching so terribly to use white T-shirts as its primary evidence of gang affiliation. It would have been a much easier task for the administrators had the appellant's been members of a gang that promoted violence, rather than a rap group who expressed themselves. The administration has failed to show how innocuous activities became gang activities. Appellants all maintained during their respective hearings that there is no gang. Also, the principal admitted that, in speaking with each of the boys during investigation, all but Shamarion Brownlee maintain that their group was not a

gang but a rap group. Shamarion Brownlee testified at his hearing that his statements were misconstrued and that while the principal continued to insist that the rap group was a cover for gang activity, he maintained his statement that Outlaw was a rap group. "I think they can be in a gang and a rap group at the same time. Rap groups do not give people missions to do. That's why we have classified Outlaw as a gang; because, they are handing out missions and signing gang graffiti on their notebooks. There was also on Twitter the hashtag #Outlaw which was often associated with the hashtag #Hit Squad." R. at 84.

Even viewing the evidence in the light most favorable to the school board, this is far from substantial evidence that appellants were members of a gang or participating in gang activities. Nor was the behavior in violation of district policy. The cited behaviors could have innocuous meanings. Accordingly the expulsions of Appellants should be overturned because the District could not meet its burden to show that gang or gang-related activity had occurred.

III. WHETHER THE DUE PROCESS RIGHTS OF THE APPELLANTS WERE VIOLATED.

The due process rights of Appellants at the hearing level were completely violated by the hearing officer, necessitating the opportunity for a new administrative hearing or the reversal of the expulsion on appellant's records. Appellants were represented by counsel at their respective hearings before the hearing officer; however, there was an utter lack of due process in the proceedings, due to their limited ability to impeach witnesses and fully defend against the allegations of the school administrators. S.C. Code

Ann. § 1-23-610(B) (Supp. 2011) grants this Court the authority to analyze the due process afforded to the participants in hearings before the school board. In determining whether Appellants were afforded the procedural due process prescribed by our laws and our constitution, the Court may reverse or modify the decision if substantive rights of Appellants have been prejudiced because the finding, conclusion, or decision is:

> (a) in violation of constitutional or statutory provisions;
>
> (b) in excess of the statutory authority of the agency;
>
> (c) made upon unlawful procedure;
>
> . . . .

Id. § 1-23-610(B).

The United States Supreme Court has said that the fundamental touchstone of due process is the opportunity to be heard. *Goss v. Lopez*, 419 U.S. 565, 579, 95 S. Ct. 728, 739 (1975). The Supreme Court further stated that the type of hearing required to be provided will depend upon the nature of the case. *Id.* at 579, 95 S. Ct. at 738. For example, in *Goss*, the Supreme Court held that a public school student facing a short-term suspension need only be provided with notice of the claims against him and an opportunity to explain his side of the facts, and was not constitutionally guaranteed a full adversarial hearing. *Id.* at 581, 95 S. Ct. at 740. Expulsion is a more serious disciplinary action than is suspension. Accordingly, the procedures and protections given to the accused student should be greater than the informal, immediate hearing that was authorized in *Goss*.

The due process standard in expulsion cases in this jurisdiction are determined by S.C. Code Ann. § 59-63-240 (2004). This statute affords notice, the opportunity to be heard, the right to be represented by counsel, and the right to present evidence and question witnesses. Without deciding the constitutional minimum that must be given in these circumstances, we find the procedures and protections outlined in section 59-63-240 to be constitutionally sufficient. The statute reads, in pertinent part, "If procedures for expulsion are initiated, the parents or legal guardian of the pupil shall be notified in writing of the time and the place of a hearing either before the board or a person or committee designated by the board. At the hearing, the parents or legal guardian shall have the right to legal counsel and to all other regular legal rights, including the right to question all witnesses." The record shows that appellants were not provided with the process established in the statute. While represented by counsel during their hearings, counsel, and therefore appellants, was significantly limited in its ability to fully question witnesses and put on the strong case they intended. The fact that they could not present evidence or exercise their statutory right to question witnesses creates an obvious procedural due process violation. "[D]ue process requires that an administrative board, or body, when acting in a quasi-judicial capacity, must consider all the evidence before rendering its decision upon any particular question. This does not mean that this administrative board, or body, must itself hear the evidence, but it must have the evidence before it, and consider such evidence when rendering its decision." *Pettiford v. South Carolina State Board of Education*, 218 S.C. 322, 345-6, 62 S.E.2d 780, 791 (1950).

Here, it was impossible for the full school board to have access to all of Appellant's evidence in support of their claim that Outlaw is not a gang, but instead just a rap group, because the proceedings before the hearing officer were unconstitutionally limited. At every turn, in attempting to relate the activities called gang activities in this context and benign activities in other contexts with school groups such as cheerleaders and Girl Scouts, Appellants' counsel was unconstitutionally cut-off and shut down. For example, Counsel attempted to relate to the Court that the allegations were basically he said, she said. Accordingly, he went on, "I should be able to impeach people. I am not allowed to do that[?]" R. at 65-66, to which the hearing officer replied: "No, sir." The corollary to other school groups and the use of this argument as a comparison to the Appellants' rap group, was unable to become a part of the record when the hearing officer denied appellant their rights to due process at every turn.

Based on the manner of investigation into the three appellants, it was clear that the teachers in this case and administrators were biased against Appellants without regard for their constitutional rights. Indeed, extending their investigation to various Twitter accounts, viewing the hashtag references to a common word: #Outlaw, and using this to bolster their case; it is clear that they had a predisposed opinion against the Appellants. An indispensable component of procedural due process is that the persons legally responsible for making a decision must be informed and unbiased. *See Garris v. S.C. Reinsurance Facility*, 333 S.C. 432, 453, 511 S.E.2d 48, 59 (1998) ("Due process requires an administrative board, when acting in a quasi-judicial capacity, to consider all the evidence before deciding a particular question."). Accordingly, we find that a

meaningful review requires some showing that the Board made an informed decision based on the evidence presented by both parties. Anything less deprives school district employees the rights afforded them under TEDA to have a dismissal or non-renewal recommendation adjudicated by the Board. *See* S.C. Code Ann. § 59-25-470 (Supp. 2011) (following a hearing, the Board is responsible for rendering a decision).

IV. WHETHER THE FIRST AMENDMENT RIGHTS OF THE APPELLANTS WERE VIOLATED.

The Circuit Court erred when it found that that the First Amendment rights of Appellants were not violated. This case implicates the important issue of the authority of a Board of Trustees, School District, and/or school administrators to regulate the speech of their students at all times. Whether on or off campus, the mutterings of young people are indeed protected speech of those entitled to express themselves within the boundaries of Free Speech. While the school has a right to protect the interest of all of its students, that right does not extend to violating the rights maintained by students in a school setting and off campus. As a general matter, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *United States v. Alvarez,* 132 S.Ct. 2537, 2543 (2012). Whether the cited behavior is gang-related behavior "necessary to avoid material and substantial interference with schoolwork or discipline" *Tinker v. Des Moines Indep. Cmty. Sch. Dist.,* 393 U.S. 503, 522 (1969) is the key to the determination by this Court whether the First Amendment was violated.

As members of a rap group and in general, despite their student status, the Appellants all enjoy the right to freedom of speech denied by the hearing officer, and finding activities such as writing on clothes, notebooks, and Twitter, the word outlaw constitutes gang activity. Appellants have the constitutional right to engage in the above activities without being encroached upon by the school administration. While "the determination of what manner of speech in the classroom or in the school assembly is inappropriate properly rest with the school board," *Bethel School v. Fraser,* 478 U.S. 675, 683 (1986), "it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker v. Des Moines,* 393 U.S. 503, 506 (1969). On the other hand, the Court has often emphasized school officials' duty to enforce discipline, and has at times shown great deference to school officials' decisions. *Id.* at 504, 89 S.Ct. at 735. The problems occur at the fringes "where students in the exercise of First Amendment rights collide with the rules of school authorities." *Id.* at 507, 89 S.Ct. at 737. The Supreme Court said in *Tinker* that if conduct by the student in class or out of it, which forever reason – whether it stands from time, place, or type a behavior – materially disrupts classwork or involves substantial disorder or invasion of the rights of others, of course not immunized by the constitutional guarantee of freedom of speech. *See id.* This is the linchpin upon which this Court should find that appellants' free speech was violated. Importantly, administrators had to look *outside* school to find that the students were engaging in gang-activity. They went to social media accounts to do so and improperly used innocuous speech and expressions against the appellants to make their case. Indeed, if there were

school disruptions and the like, the administrators would have had no problem making a legitimate case against appellants.

There is not a single case in which the Supreme Court has upheld that students should be limited in their freedom of expression in so far as their speech was displayed in this case. Here, the appellants were expelled for having Twitter accounts referencing the word outlaw, scribbles and notebooks, words on shorts, and so called missions to affect this specific activities. Merriam Webster's dictionary defines outlaw as: "a person excluded from the benefit or protection of the law..." Clearly, writing this word down is not inherently gang-related. The administrators failed to provide substantial evidence that the word means anything more that it's dictionary meaning; therefore, vastly overreaching in its interpretation of student activities on and off campus. At best, Respondent proved that one student had the word outlaw written on his shorts, another with the word written in his notebook. The Sherriff's department never found any gang activity was occurring at TL Hanna, following a lockdown an investigation of the entire campus during the school day. Without any connection to criminal activity, the constitutional rights of the students have been violated and their expulsion should be reversed.

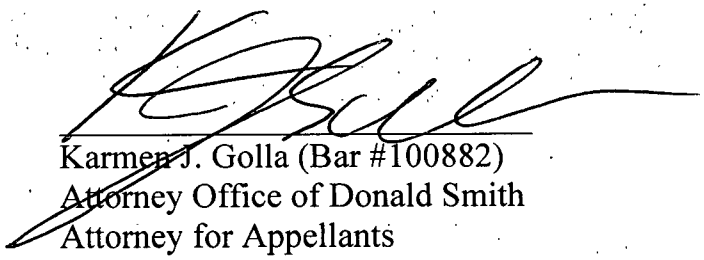
"The interrelated freedom of assembly and associations from the first amendment which states in part that Congress shall make no law abridging the right of the people to peacefully assemble." R. at 16. The freedom of assembly clause protects the rights of citizens to engage in lawful and peaceful public assemblies, to make public speeches, to discuss their own affairs, and to elicit support of others. U.S. Constitution Amend. 1.

Appellants also argued below that gang-related activities is clearly overbroad. R. at 94. Here, these rights were violated and the application of the prohibition against gang-related activities is overbroad. The policy is unconstitutional because it is overly broad and punishes a substantial amount of protected free speech "[T]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools." *Shelton v. Tucker*, 364 U.S. 479, 487 (1960). The effect is the danger of chilling speech, which the First Amendment seeks to ward against. The District also stated, without qualification that appellants were trying to set up a fight on campus. R. at 64. Indeed, there was no threatened violence alleged, in direct contrast with an actual gang, Hit Squad, which two to three years prior to the incidents of Appellants writing on their shorts and notebooks, initiated a food fight in the cafeteria replete with throwing gang signs. If there was threatened violence, that would be a clear violation of policy, otherwise, the District is most definitely reaching: trying to make a case against these boys before something bad happens. The problem with this strategy is that is screams of prior restraint, and is a clear violation of the constitutional rights. Therefore, the Circuit Court erred when it found that that First Amendment rights of Appellants were not violated.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Circuit Court and grant Appellant a new hearing or reverse their expulsions.

Respectfully submitted,



May 18, 2015

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PROOF OF SERVICE OF THE FINAL BRIEF OF THE APPELLANT
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Case No. 2014-CP-0400381

RECEIVED
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SC Court of Appeals

Tariq Geer, by his mother, Lisa Geer; Ka'Darrius Brownlee, by his mother Lakesha Brownlee; Shamarion Brownlee, by his mother Kim Brownlee, Appellants,

v.

Anderson County School District 5, Respondent.

PROOF OF SERVICE

I certify that I have served the Final Brief of the Appellant on Anderson County School District 5 by depositing a copy of it in the United States Mail, Priority Mail, postage prepaid, to Post Office Box 11367 Columbia, SC 29211 on May 18, 2015, addressed to its attorney of record, Thomas K. Barlow, on May 18, 2015.

May 18, 2015

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