

Facts and Case Summary - Morse v. Frederick

Morse v. Frederick, 551 U.S. ___, 127 S. Ct. 2618 (2007)

School authorities do not violate the First Amendment when they stop students from expressing views that may be interpreted as promoting illegal drug use.

Facts

Joseph Frederick, a senior at Juneau-Douglas High School, unfurled a banner saying "Bong Hits 4 Jesus" during the Olympic Torch Relay through Juneau, Alaska on January 24, 2002. Frederick's attendance at the event was part of a school-supervised activity. The school's principal, Deborah Morse, told Frederick to put away the banner, as she was concerned it could be interpreted as advocating illegal drug activity. After Frederick refused to comply, she took the banner from him. Frederick originally was suspended from school for 10 days for violating school policy, which forbids advocating the use of illegal drugs.

Procedure

The U.S. District Court for the District of Alaska ruled for Morse, saying that Frederick's action was not protected by the First Amendment. The U.S. Court of Appeals for the Ninth Circuit reversed and held that Frederick's banner was constitutionally protected. The U.S. Supreme Court granted certiorari.

Issues

Whether a principal violates the Free Speech Clause of the First Amendment by restricting speech at a school-supervised event when the speech is reasonably viewed as promoting illegal drug use.

Ruling

No.

Reasoning

In *Tinker v. Des Moines* (1969), the Court stated that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." *Tinker* held that the wearing of armbands by students to protest the Vietnam War was constitutionally protected speech because it

was political speech. Political speech is at the heart of the First Amendment and, thus, can only be prohibited if it "substantially disrupts" the educational process.

On the other hand, the Court noted in *Bethel v. Fraser*, 478 U.S. 675, 682 (1986) that "the constitutional rights of students at public school are not automatically, coextensive with the rights of adults." The rights of students are applied "in light of the special characteristics of the school environment," according to the U.S. Supreme Court in *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260, 266 (1988).

In the present case, the majority acknowledged that the Constitution affords lesser protections to certain types of student speech at school or school-supervised events. Finding that the message Frederick displayed was by his own admission not political in nature, as was the case in *Tinker*, the Court said the phrase "Bong Hits 4 Jesus" reasonably could be viewed as promoting illegal drug use. As such, the state had an "important" if not "compelling" interest in prohibiting/punishing student speech that reasonably could be viewed as promoting illegal drug use. The Court, therefore, held that schools may "take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use" without fear of violating a student's First Amendment rights.

Concurrences

Justice Thomas

Justice Clarence Thomas concurred with the majority, but argued that, instead of making exceptions to the holding in *Tinker*, *Tinker* should be overturned. Citing various scholarly sources on the history of public education, Justice Thomas argued that the First Amendment was never meant to protect student speech in public schools.

Justices Alito and Kennedy

Justices Alito and Kennedy concurred with the majority, but were careful to note that the majority's decision was at the outer parameters of constitutionally protected behavior. These justices were concerned that the majority's decision permitting the suppression of speech promoting illegal drug use could be used to punish those advocating constitutionally permissible, but unpopular, political ideas, e.g., legalizing medicinal marijuana use.

Concurrence and Dissent

Justice Breyer

Justice Stephen Breyer argued that the majority did not need to decide this case on its merits, but could have decided it on the basis of the doctrine of "qualified immunity." Qualified immunity prevents government officials, such as a school principal, from being sued for actions taken in their official capacities. This protection is in place as long as the legality of the conduct is open to debate. Since Justice Breyer argued that it was not clear whether Frederick's speech was constitutionally protected, Morse was entitled to qualified immunity. This decision would demonstrate judicial restraint, i.e., not having a court decide a larger issue if deciding a smaller issue could dispose of the case.

Under current Supreme Court precedent, issues of qualified immunity cannot be decided unless a Court first determines that a constitutional violation occurred. Justice Breyer took the position that this precedent should be overturned. Since the majority decided that no constitutional violation occurred, it did not address the issue of qualified immunity.

Dissent

Justice Stevens

Justice John Paul Stevens took the position that the school's interest in protecting students from speech that can be reasonably regarded as promoting drug use does not justify Frederick's punishment for his attempt to make an ambiguous statement simply because it refers to drugs. Justice Stevens made several points in his dissent. First, he argued that prohibiting speech because it advocates illegal drug use, unless it is likely to provoke the harm sought to be avoided by the government, violates the First Amendment because it impermissibly discriminates based upon content. Second, even if the school had a compelling interest to prohibit such speech, Frederick's banner was so vague that a reasonable person could not assume that it advocated illegal drug use. Finally, the dissent took issue with the majority's justification that the speech could "reasonably be perceived as promoting drug use" because the constitutionality of speech should not depend on the perceptions of third parties.