



***Morse v. Frederick*: Notes for Teachers and Facilitator**

Key Points:

- The Supreme Court in *Morse v. Frederick*, 561 U.S. 393 (2007) ruled by a vote of 5-4 that schools are permitted to stop students from promoting illegal drug use while at school-supervised functions, and that this does not violate students' First Amendment rights. The opinion was issued by Chief Justice John Roberts. While recognizing students have a right to freedom of speech during school time, the Court noted that the right can be limited by school officials because of the needs of the learning environment. It reasoned that the student's banner, which was deemed to support drug use, could be prohibited because the use of drugs was harmful. A concurring opinion argued that the Court should overturn *Tinker v. Des Moines*, 393 U.S. 503 (1969). The dissenters saw no difference with the circumstances in this case and those in the earlier case of *Tinker*. Both involved what they saw as political speech, speech related to current social issues.
- The students representing the school need to argue that school officials should be able to limit certain speech that is potentially disruptive or dangerous to students, including speech that promotes illegal drug use. Students representing Frederick, the student who brought the case, need to argue that the statement was not disruptive or dangerous, and he should be allowed to say it at school given that he had the right to say it outside of school.
- This case is a great debate activity because the case law is relatively simple with only two vital cases to consider: *Tinker* and *Bethel v. Fraser*, 478 U.S. 675 (1986). The students will primarily need to argue as to which precedent is most relevant.

Additional Resources:

[Oyez Case Summary](#)

[United States Courts: Summary with link to activity](#)



Morse v. Frederick

This moot court concerns the case of *Morse v. Frederick* in which the Supreme Court found that school officials are permitted to stop students from promoting illegal drug use, and it is no First Amendment violation.

Facts

In 2002, the town of Juneau, Alaska, was abuzz as it planned to host the Olympic Torch Relay, a highly publicized event. A local high school allowed its students to stand outside and watch the Olympic torch pass by. During this school-supervised activity, a student named Joseph Frederick held up a banner that read: “Bong Hits 4 Jesus.” The school interpreted this message to be encouraging drug use.

The principal, Deborah Morse, told Frederick to put the banner away, and he refused. The banner was then confiscated, and Frederick was suspended for 10 days. Frederick brought a lawsuit claiming that the school violated his First Amendment right to free speech.

Legal Issues

First Amendment in the School Context:

The First Amendment to the Constitution reads in pertinent part:

“Congress shall make no law . . . abridging the freedom of speech.”

“Free speech” has never protected *all* speech. For example, you cannot randomly yell “FIRE” in a movie theater because that could cause panic and danger to people if there is no real fire. Obscenity is not protected under the First Amendment either..

Though students have the right to free speech while at school, the Supreme Court has made clear that public schools can restrict students’ constitutional rights more than adults. For example, in *Tinker v. Des Moines*, the Supreme Court held that students had the right to wear black armbands to protest the Vietnam War since this “speech” was not disruptive to the school’s learning environment.. But in *Fraser v. Bethel*, the Court held that students could be stopped from saying certain offensive things at school. One difference between these cases is that protesting the Vietnam War is “political” speech, whereas making offensive comments is not necessarily political. The First Amendment protects political speech above all else. And even though adults can say offensive things under the First Amendment, students can be stopped from those kinds of statements while at school.

Key Issue: In this case, Frederick argues that the school violated his freedom of speech by making him take the banner down and punishing him for displaying the banner. The question is whether the First Amendment protects a statement like “Bong Hits 4 Jesus” when it is made by a student during a school-supervised event. That is, to what extent can schools limit the speech that students make while at school? Can the school stop students from saying things that promote illegal drug use? Or do students have the right to say things about drug use as members of American society, even while at school?

Procedural History: Frederick filed suit in the federal district court. The district court upheld the action by the principal,

Frederick appealed to the Ninth Circuit Court of Appeals. If you lose at the district court level, you have the right to ask the court of appeals to double check and potentially overturn the decision below. That is what happened here – the Ninth Circuit said that Frederick was right, and that his First Amendment rights had been violated.

Morse and the school board then petitioned the Supreme Court to review that decision, and the Supreme Court granted *certiorari*. Remember, the Supreme Court does not *have* to decide every case brought to it. Thousands of people ask the Supreme Court to hear their case each year, and the Court usually ends up accepting less than 100 cases – this is called “granting *certiorari*.” Frederick’s case was accepted, and this is where our moot court begins.



Our Mission in this Moot Court

Our moot court begins at the point that the United States Supreme Court has agreed to resolve the issue of whether the First Amendment protected Frederick and his “Bong hits 4 Jesus” banner. Because the school district lost in the Ninth Circuit and is appealing the case, the school district goes first and may save time for rebuttal.

Brainstorming

Break into three groups:

Group 1: Attorneys representing Morse (the principal and school board)

Group 2: Attorneys representing Frederick (the student)

Group 3: Justices who will ask probing questions and decide the case.

Each side will have 15 minutes to present its arguments. Those representing the school will go first and may reserve 5 minutes for rebuttal. Justices who will hear the case will have engaged in brainstorming and will interrupt the arguments with questions.

Hints for attorneys representing Morse and the school district: You must argue that the principal and school board did not violate Frederick’s First Amendment rights by suspending him for waving the banner. You need to convince the court that, yes, students have freedom of speech while at school, but it does not protect speech promoting illegal drug use. Schools have the right – and maybe even obligation – to stop students from promoting drug use at school-sponsored events. Why is this a good policy? Why do we *want* schools to have this power? Is our case more like *Tinker* or *Bethel*?

As the side that appealed the case to the Supreme Court, remember that you can reserve five minutes for rebuttal. That means you can have the last word to counter what the other side says.

Hints for attorneys representing Frederick: You must argue that Frederick’s First Amendment rights were violated by his suspension. People in America are allowed to hold up banners saying “Bong hits 4 Jesus” in public places, so why should students at school not have that same right? You should argue that the banner did not disrupt anything and did not interfere with learning. Plus, it was not overly offensive – it maybe was not even a drug reference, and if it was, maybe it was making a political statement about legalizing drugs. Why should the Court want to stop schools from limiting speech? Is this case more like *Tinker* or *Bethel*?

Hints for Justices: Your job is to think about both sides of the case and develop questions for each side. Good questions will dig deeper into the arguments made and help clarify both sides.

Summary of tasks:

1. Engage in general brainstorming of arguments for your side or if you are a justice of questions to ask.
2. As part of that brainstorming, review and consider the arguments on the Argument Sheet.
3. Attorneys: Write out a bullet point list of the arguments you want to make and begin with the most persuasive.
4. Attorneys: Think of counters to those arguments and develop answers.
5. Justices: Fill out the Justice worksheet
6. Attorneys: Designate the person to make the argument (All attorneys can answer questions posed by the Justices)

Attorneys making argument: Introduce yourself by saying, “May It Please the Court, I’m _____ and I represent _____ in this matter.”



Arguments

Look over these arguments. Decide whether they help Morse and the school board or Frederick. Or does the argument help both sides or neither side? Or can our case be distinguished or aligned in some other way?

1. _____ In *Tinker v. Des Moines*, the Supreme Court held that students have First Amendment rights even while at school. The students there were prohibited from wearing armbands to school that protested that Vietnam War. The Court said that wearing armbands was not disruptive. Also, the armbands constituted political speech, which is at the heart of the First Amendment. So, the Court said, these students were allowed to make political statements as long as they were not disruptive.
2. _____ In *Fraser v. Bethel*, the Supreme Court said that students could be stopped from certain offensive speech. In that case, a student gave a speech at a school assembly using lewd and vulgar speech. He was suspended. The Supreme Court said that the suspension did not violate Fraser's First Amendment rights because the speech was not political. It also stands for the idea that schools can regulate offensive speech even if it does not cause a disruption
3. _____ The First Amendment tries to prevent the government from silencing certain viewpoints it disagrees with. The principal in this case was concerned because the banner promoted illegal drug use. Drug use is an extreme danger to students. The school's motivation was not simply to silence students or interfere with civil dialogue. Instead, the motive was to prevent the dangers that drug use causes among students. Therefore, the principles underlying the First Amendment are not harmed here.
4. _____ The banner itself was not disruptive, which means the only reason the principal would ask for it to be taken down is to silence the student's viewpoint. This is discrimination based on the content of speech, which offends the First Amendment. The principal did not seem to have an issue with holding a banner, but instead only had an issue with the speech this banner had on it. This speech was protected.
5. _____ The requirements of the First Amendment should be relaxed while at school. Schools have the right and responsibility to keep students safe. This means schools have to be allowed to stop certain dangerous speech from being said at school, including speech that promotes or makes light of drug use. Because this was a school function, the school had the right to stop drug-related statements from being made.
6. _____ Though this was a school function, it did not occur *at* school – it happened across the street from the school. School officials should not be allowed to regulate the speech of students when they are not on campus.
7. _____ "Bong hits 4 Jesus" is political speech, just like the armbands in *Tinker*, and therefore is protected by the First Amendment. Even if we agree that "bong hits" is a drug reference, there was a nationwide debate over legalization of marijuana, and so the statement on the banner is actually political speech promoting legalization of drugs.

8. _____ School officials should have broad authority to limit the type of speech allowed at school. Yes, political speech should generally be allowed. But things like drug speech, offensive language, jokes, and disruptive speaking should be allowed to be limited if the school decides to. School officials need to make sure that teachers can teach without disruption and students can learn in an orderly environment. Therefore, schools should be able to set their own rules about what can and cannot be said while at school.

9 _____ Because the speech in *Tinker* was political, it enjoys more First Amendment protection than the non-political speech in *Fraser*.

10 _____ Several Supreme Court decisions have held that the Bill of Rights provides greater protection to the adults than to juveniles.

11. _____ There was no evidence that the display of the banner caused any disruption at the high school.

12. _____ Drug usage or possession is a criminal offense



Justice Brainstorming Worksheet

You are a Supreme Court Justice hearing *Morse v. Frederick*. Please answer the following questions. Be sure to reference the facts and the relevant cases on the argument sheet.

1. Pretend that you are listening to the oral arguments of the attorneys representing Morse and the school board. What two questions would you ask?

A.

B.

2. Pretend that you are listening to the oral arguments of the attorneys representing Frederick. What two questions would you ask?

A.

B.

3. At the conclusion of hearing the case, you have to write a court opinion ruling either in favor of Morse or Frederick.

_____ Morse and the school board _____ Frederick

4. Prepare a bullet point list of your reasons. Include why you rejected the losing side's arguments.