

The Bill of Rights in Action: Landmark Supreme Court Cases
Document Set A
Morse v. Frederick (2007)



Facts of the Case

At a school-supervised event, Joseph Frederick held up a banner with the message "Bong Hits 4 Jesus," a slang reference to marijuana smoking. Principal Deborah Morse took away the banner and suspended Frederick for ten days. She justified her actions by citing the school's policy against the display of material that promotes the use of illegal drugs. Frederick sued ..., alleging a violation of his First Amendment right to freedom of speech.

The District Court found no constitutional violation and ruled in favor of Morse. The court held that even if there were a violation, the principal had qualified immunity from lawsuit. The U.S. Court of Appeals for the Ninth Circuit reversed. The Ninth Circuit cited *Tinker v. Des Moines Independent Community School District*, which extended First Amendment protection to student speech except where the speech would cause a disturbance. Because Frederick was punished for his message rather than for any disturbance, the Circuit Court ruled, the punishment was unconstitutional. Furthermore, the principal had no qualified immunity, because any reasonable principal would have known that Morse's actions were unlawful.

Question

- 1) Does the First Amendment allow public schools to prohibit students from displaying messages promoting the use of illegal drugs at school-supervised events?

- 2) Does a school official have qualified immunity from a damages lawsuit under 42 U.S.C. 1983 when, in accordance with school policy, she disciplines a student for displaying a banner with a drug reference at a school-supervised event?

Conclusion

Yes and not reached. The Court reversed the Ninth Circuit by a 5-4 vote, ruling that school officials can prohibit students from displaying messages that promote illegal drug use. Chief Justice John Roberts's majority opinion held that although students do have some right to political speech even while in school, this right does not extend to pro-drug messages that may undermine the school's important mission to discourage drug use. The majority held that Frederick's message, though "cryptic," was reasonably interpreted as promoting marijuana use - equivalent to "[Take] bong hits" or "bong hits [are a good thing]." In ruling for Morse, the Court affirmed that the speech rights of public school students are not as extensive as those adults normally enjoy, and that the highly protective standard set by *Tinker* would not always be applied. In concurring opinions, Justice Thomas expressed his view that the right to free speech does not apply to students and his wish to see *Tinker* overturned altogether, while Justice Alito stressed that the decision applied only to pro-drug messages and not to broader political speech. The dissent conceded that the principal should have had immunity from the lawsuit, but argued that the majority opinion was "[...] deaf to the constitutional imperative to permit unfettered debate, even among high-school students [...]."

Decision: 5 votes for Morse, 4 vote(s) against

Source: The Oyez Project, *Morse v. Frederick*, 551 U.S. ____ (2007), available at: http://www.oyez.org/cases/2000-2009/2006/2006_06_278/

Syllabus

SUPREME COURT OF THE UNITED STATES

MORSE ET AL. V. FREDERICK

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Argued March 19, 2007—Decided June 25, No. 06–278. 2007

At a school-sanctioned and school-supervised event, petitioner **Morse**, the high school principal, saw students unfurl a banner stating “BONG HiTS 4 JESUS,” which she regarded as promoting illegal drug use. Consistent with established school policy prohibiting such messages at school events, **Morse** directed the students to take down the banner. When one of the students who had brought the banner to the event—respondent Frederick—refused, **Morse** confiscated the banner and later suspended him. The school superintendent upheld the suspension, explaining ... that Frederick was disciplined because his banner appeared to advocate illegal drug use in violation of school policy. Petitioner school board also upheld the suspension. Frederick filed suit ... alleging that the school board and **Morse** had violated his First Amendment rights. The District Court granted petitioners summary judgment, ruling that they were entitled to qualified immunity and that they had not infringed Frederick’s speech rights. The Ninth Circuit reversed. Accepting that Frederick acted during a school-authorized activity and that the banner expressed a positive sentiment about marijuana use, the court nonetheless found a First Amendment violation because the school punished Frederick without demonstrating that his speech threatened substantial disruption. It also concluded that **Morse** was not entitled to qualified immunity because Frederick’s right to display the banner was so clearly established that a reasonable principal in **Morse**’s position would have understood that her actions were unconstitutional.

Held: Because schools may take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use, the school officials in this case did not violate the First Amendment by confiscating the pro-drug banner and suspending Frederick. Pp. 5-15.

a) Frederick’s argument that this is not a school speech case is rejected. The event in question occurred during normal school hours and was sanctioned by **Morse** as an approved social event at which the district’s student-conduct rules expressly applied. Teachers and administrators were among the students and were charged with supervising them. Frederick stood among other students across the street from the school and directed his banner toward the school, making it plainly visible to most students. Under these circumstances, Frederick cannot claim he was not at school. Pp. 5-6.

(b) The Court agrees with **Morse** that those who viewed the banner would interpret it as advocating or promoting illegal drug use, in violation of school policy... Pp. 6-8.

(c) A principal may, consistent with the First Amendment, restrict student speech at a school event, when that speech is reasonably viewed as promoting illegal drug use ...

Source: 439 F. 3d 1114, reversed and remanded.