

4.9: MORSE v. FREDERICK

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551 U.S. 393 (2007)

(Case Syllabus edited by the Author)

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, *inter alia*, 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 under 42 U. S. C. § 1983, alleging that the school board and Morse had violated his First Amendment rights. The District Court granted petitioner’s 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.

(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.

(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. At least two interpretations of the banner’s words — that they constitute an imperative encouraging viewers to smoke marijuana or, alternatively, that they celebrate drug use — demonstrate that the sign promoted such use. This pro-drug interpretation gains further plausibility from the paucity of alternative meanings the banner might bear.

(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. In *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, the Court declared, in holding that a policy prohibiting high school students from wearing antiwar armbands violated the First Amendment, that student expression may not be suppressed unless school officials reasonably conclude that it will “materially and substantially disrupt the work and discipline of the school.” The Court in *Bethel School Dist. No. 403 v. Fraser*, 478 U. S. 675, however, upheld the suspension of a student who delivered a high school assembly speech employing “an elaborate, graphic, and explicit sexual metaphor.

Analyzing the case under *Tinker*, the lower courts had found no disruption, and therefore no basis for discipline. 478 U. S., at 679–680. This Court reversed, holding that the school was “within its permissible authority in imposing sanctions ... in response to [the student’s] offensively lewd and indecent speech.”

Two basic principles may be distilled from *Fraser*. First, it demonstrates that “the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings.” Had Fraser delivered the same speech in a public forum outside the school context, he would have been protected. In school, however, his First Amendment rights were circumscribed “in light of the special characteristics of the school environment.” *Tinker, supra*.

Second, *Fraser* established that *Tinker*’s mode of analysis is not absolute, since the *Fraser* Court did not conduct the “substantial disruption” analysis. Subsequently, the Court has held in the Fourth Amendment context that “while children assuredly do not

‘shed their constitutional rights ... at the schoolhouse gate,’ ... the nature of those rights is what is appropriate for children in school,” *Vernonia School Dist. 47J v. Acton*, 515 U. S. 646, and has recognized that deterring drug use by schoolchildren is an “important — indeed, perhaps compelling” interest.

Drug abuse by the Nation’s youth is a serious problem. For example, Congress has declared that part of a school’s job is educating students about the dangers of drug abuse, see, e.g., the Safe and Drug-Free Schools and Communities Act of 1994, and petitioners and many other schools have adopted policies aimed at implementing this message. Student speech celebrating illegal drug use at a school event, in the presence of school administrators and teachers, poses a particular challenge for school officials working to protect those entrusted to their care. The “special characteristics of the school environment,” *Tinker*, 393 U. S., at 506, and the governmental interest in stopping student drug abuse allow schools to restrict student expression that they reasonably regard as promoting such abuse. *Id.*, at 508, 509, distinguished. The issue regarding qualified immunity does not need to be resolved since the principal did not violate the student’s rights.

439 F. 3d 1114, reversed and remanded.

Roberts, C. J., delivered the opinion of the Court, in which Scalia, Kennedy, Thomas, and Alito, JJ., joined. Thomas, J., filed a concurring opinion. Alito, J., filed a concurring opinion, in which Kennedy, J., joined. Breyer, J., filed an opinion concurring in the judgment in part and dissenting in part. Stevens, J., filed a dissenting opinion, in which Souter and Ginsburg, JJ., joined.

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