

Morse v. Frederick 551 U.S. 393 (2007)
Kelsey Bergeron
MACO 370
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On January 24, 2002 during a school-sanctioned and school-supervised event, students and staff of Juneau-Douglas High School in Alaska went outside to watch as the televised Olympic Torch Relay passed on the streets in front of the school. The relay was a public event for the citizens of Juneau, Alaska, and took place on public streets. Joseph Frederick, a senior at Juneau-Douglas, and a couple of his fellow classmates gathered together across the street from the school, and unruffled a banner which read “BONG HiTS 4 JESUS” as soon as the television cameras passed in front of them. The school's principal, Deborah Morse, told Frederick and his classmates to put away the banner, as she was concerned it could be interpreted as advocating illegal drug activity (Facts and Case, n.d.). Everyone complied while Frederick refused to take down the banner. Principal Morse confiscated it and later chose to suspend him for 10 days. 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 (*Morse v. Frederick*, 2007).

Frederick filed suit against Principal Morse and the school board under 42 U.S.C. § 1983, alleging that they had violated his First Amendment rights (*Morse v. Frederick*, 2007). 42 U.S.C. § 1983 (Section 1983), a federal civil rights statute, states that Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be grant-

ed unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia (42 U.S.C. § 1983).

On April 25, 2002, the U.S. District Court for the District of Alaska did not find any violation of the Constitution, and voted in favor of Morse. The Court granted petitioners summary judgement, which signifies that the plaintiff, which in this case is Frederick, could not meet the obligation to prove his assertion. This ruled that the appellants Morse and the school board were entitled to qualified immunity. Qualified immunity shields public officials from damages for civil liability, as long as they do not violate an individuals clearly established statutory or constitutional rights (Mukherji, 2013). According to the District Court, they had not infringed Frederick's speech rights (*Morse v. Frederick*, 2007).

The U.S. Court of Appeals for the Ninth Circuit reversed the District Court's rule that was in favor of Morse. 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 gave rise to a "risk of substantial disruption" (*Morse v. Frederick*, 2007). The U.S. Court of Appeals also found that qualified immunity was not authorized to Principal Morse, because Frederick's First Amendment rights to freedom of speech and showing the banner was plainly established, and any school principal should have known the act of suspending him for it was not constitutional.

The Ninth Circuit used the Tinker Standard, which was adopted from *Tinker v. Des Moines Independent Community School District*, as a basis in their decision in favor for Frederick. *Tinker v. Des Moines School District*, 393 U.S. 503 is a landmark U.S. Supreme Court case that ruled on behalf of student expression, and has been used for student speech cases since it was argued. The case involved a group of students, which included 13-year-old Mary Beth Tinker and her 16-year-old brother John Tinker, who chose to wear black armbands with peace signs on them through the December holiday season, to publicly show their support for a truce in the Vietnam War. The principals of the schools the children attended heard of their plan, and created a school policy that stated armbands were not apart of school uniform with the reasoning being that they could create a distraction for other students (*Tinker v. Des Moines* 393 U.S. 503, n.d.). If the students were to wear them and not take them off, they would be suspended and sent home. The students wore the armbands to school, were sent home, and did not return to school until after the end of their planned protest (*Tinker v. Des Moines*, 1969). Instead of wearing the armbands when returning to school after their Christmas break, they protested by wearing black clothing for the remainder of the school year (Landmark Supreme Court Ruling, n.d.).

The Tinkers' parents took the case to court, stating that the Des Moines Independent Community School District violated their children's freedom of expression. In a 7-2 decision the Supreme Court voted in favor of the Tinker family, ruling that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" (*Tinker v. Des Moines*, 1969). Free speech advocates value the Court's emphasis on individual liberties and its assertion that speech — even on school property — is protected unless officials can demonstrate a reason to restrict it (Kozlowski, 2017, p. 124). The Tinker Standard states that in order for a school to

justify restricting our speech, they must display a reason to why the speech interferes, both materially and substantially, with our learning process. When citing *Tinker*, this question must be answered: Can school officials show that their justification on restricting our speech is based on a considerable forecast of material and substantial disruption of school activities or an invasion of other people's rights? When the U.S. Court of Appeals decided for *Morse v. Frederick*, they did not find that the banner disrupted students, so there was no reason for Morse to have suspended Frederick.

The Supreme Court argued on March 19, 2017, and the Court granted certiorari on two questions: "Does the First Amendment allow public schools to prohibit students from displaying messages promoting the use of illegal drugs at school-supervised events?" and "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?" (*Morse v. Frederick*, n.d.). On June 25, 2007, the Supreme Court decided and reversed the Ninth Circuit's decision by a 5-4 vote, ruling that the display of messages that promote the use of illegal drugs in school can be prohibited by school administration and officials, without them being in violation of the First Amendment. Because the Court resolved the first question against Frederick, there is no reason to reach the second (*Morse v. Frederick*, 2007). Students do have certain rights to political speech while in school; however, this does not give students the right to spread messages that are in support of drug use, and go against the school's policy that discourages it. It was held that 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 (*Morse v. Frederick*, 2007).

The court also found that Morse was correct and reasonable for taking away the banner and considering it to have been a promotion for illegal drug use, which violated Juneau School Board Policy No. 5520 that states: "The Board specifically prohibits any assembly or public expression that . . . advocates the use of substances that are illegal to minors" In addition, Juneau School Board Policy No. 5850 subjects "pupils who participate in approved social events and class trips" to the same student conduct rules that apply during the regular school program (*Morse v. Frederick*, 2007). The ruling of the Court added restrictions to student's speech rights.

The opinion of the Court was delivered by Chief Justice John Roberts, with Justices Antonin Scalia, Anthony M. Kennedy, Clarence Thomas, and Samuel A. Alito Jr. who had joined (*Morse v. Frederick* 551 US 393, n.d.). In his opinion he states:

"Our cases make clear that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." (*Tinker v. Des Moines*, 1969). At the same time, we have held that "The constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings," (*Bethel School Dist. v. Fraser*, 1986), and that the rights of students "must be applied in light of the special characteristics of the school environment." (*Hazelwood School Dist. v. Kuhlmeier*, 1988).

Consistent with these principles, we hold that schools may take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use. We conclude that the school officials in this case did not violate the First

Amendment by confiscating the pro-drug banner and suspending the student responsible for it” (*Morse v. Frederick*, 2007).

As stated in the quote, the Court found that *Tinker* did not apply in the context of this case.

Bethel School District v. Fraser however did affect the decision in *Morse v. Frederick*, and is known for changing the way *Tinker* is applied. *Fraser* was the first case to show that *Tinker*'s mode of analysis was not absolute since the court did not perform a substantial disruption analysis, which is a test that determines if a public school official has gone against a student's freedom of speech (*Morse v. Frederick*, 2007).

Bethel v. Fraser involved a Bethel High School student named Matthew Fraser, who gave a speech at a school-sponsored assembly, nominating one of his friends for student office. During the speech to his 600 fellow high-school students, Fraser referred to his candidate in terms of an elaborate, graphic, and explicit sexual metaphor (*Bethel School Dist. v. Fraser*, 1986). Bethel High School enforced a rule prohibiting conduct that interferes with the educational process, including the use of obscene, profane language or gestures, so Fraser was suspended for two days (*Bethel School District No. 403 v. Fraser*, n.d.). He later sued the school, and Bethel School District won and it was ruled that schools have a moral obligation to distance themselves from speech that is inconsistent with the fundamental values of public school education (*Bethel School Dist. v. Fraser*, 1986). Relying on the decision made in *Fraser*, the Juneau-Douglas High School superintendent concluded that the principal's actions were permissible because Frederick's banner was “speech or action that intrudes upon the work of the schools” (*Morse v. Fredrick*, 2007).

According to *Cohen v. California*, if Fraser or Frederick had expressed their speech in a public forum, their rights would have been protected (*Morse v. Fredrick*, 2007). In this case, a

19-year-old named Paul Cohen walked into a Los Angeles County Courthouse wearing a jacket bearing the slogan “Fuck the Draft Stop the War.” He was arrested and convicted of disturbing the peace and of violating the portion of the California Penal Code that prohibited maliciously and willfully disturbing the peace to quiet of any neighborhood or person by offensive conduct (Hopkins, 2017, p. 42). The Court ruled in favor of Cohen, stating even though the statement is provocative, it was not being directed towards anyone (*Cohen v. California*, 1971). Because Fraser and Frederick were at school-supervised events, their cases did not result the same way as *Cohen*.

The dissenting opinion for *Morse v. Frederick* was filed by Justice John Paul Stevens, where Justices David H. Souter and Ruth Bader Ginsburg also joined, and Justice Stephen G. Breyer filed an opinion concurring in the judgment in part and dissenting in part. Justice Stevens wrote in the dissent that the school's interest in protecting its students from exposure to speech does not justify disciplining Frederick for his attempt to make an ambiguous statement to a television audience, simply because it contained an oblique reference to drugs (*Morse v. Frederick*, 2007). Stevens continues by saying that, in his opinion, the First Amendment protects student speech if the message does not violate a permissible rule or advocate conduct that is illegal and harmful to a student; the “nonsense” banner does neither. Justice Breyer stated, “This Court need not and should not decide this difficult First Amendment issue on the merits. Rather, I believe that it should simply hold that qualified immunity bars the student's claim for monetary damages and say no more,” (*Morse v. Frederick*, 2007).

The message “BONG HiTS 4 JESUS” that was displayed on the banner could have been interpreted by others as offensive, amusing, or could have meant nothing to them at all. Frederick

claimed that he was just trying to attract the television cameras, and put nonsense words on the banner just to get attention (*Morse v. Frederick*, 2007). Because the banner was positioned in front of a high school, there is a higher probability that the students, with them being teenagers, connected the message to bong hits, which refers to the illegal use of marijuana. The school board and Principal Morse believed that peer pressure may lead other students to experiment and try illegal drugs, if it is something that friends around them are promoting or doing. It is important for students to have their freedom of speech and a right to political speech, however, these actions can be done without the use of a message that promotes illegal drug use.

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