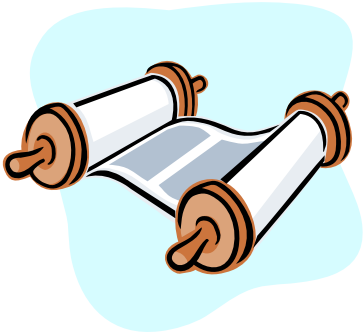
NATIONAL CONSTITUTION DAY

September 17, 2007



TEACHING MODULE

Morse v. Frederick: The "Bong Hits for Jesus" Case and the First Amendment Rights of America's Students

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AND THE SUPPORT OF OUR FRIEND, MARY BETH TINKER, PLAINTIFF IN THE LANDMARK SUPREME COURT CASE,
TINKER V. DES MOINES INDEPENDENT SCHOOL DISTRICT

THE MARSHALL-BRENNAN PROJECT TRAINS TALENTED UPPER-LEVEL LAW STUDENTS TO TEACH CONSTITUTIONAL RIGHTS AND RESPONSIBILITIES TO PUBLIC HIGH SCHOOL STUDENTS IN THE DISTRICT OF COLUMBIA AND IN OTHER CITIES ACROSS AMERICA AND THE WORLD. FOR MORE INFORMATION, PLEASE VISIT OUR WEBSITE - HTTP://WWW.WCL.AMERICAN.EDU/MARSHALLBRENNAN/.

The First Amendment and *Morse v. Frederick*

Description: This is an excellent unit to teach during the week beginning on Constitution Day, Monday, September 17. The goal is to honor the Constitution by teaching students about its central importance in structuring the rights and responsibilities of young people in the school environment.

Objectives: 1) To learn how the Supreme Court has interpreted the First Amendment to reconcile students' freedom of speech rights with the public schools' educational mission and disciplinary authority; and

2) To understand the facts and legal holdings in *Tinker v. Des Moines Independent School District* and *Morse v. Frederick*.

Length of Lesson: 1-3 class periods. The exercise can be reproduced and distributed for use on Constitution Day. For further study, students are encouraged to read the accompanying case excerpts and vocabulary lists.

Supplies Needed: This packet

Age Group: High school and college students

2007 CONSTITUTION DAY EXERCISE

On January 24, 2002, the Olympic torch Relay passed through Juneau, Alaska *en route* to the winter Olympic Games in Salt Lake City, Utah. As it was a school day and the torchbearers planned to walk along the path of the Juneau-Douglas High School (JDHS), school principal Deborah Morse authorized staff and students to go outside to join in the Torch Relay ceremony.

Along with a group of his friends, Joseph Frederick, then a senior at the high school, participated in the festivity and opened up a 14-foot banner bearing the phrase: BONG HiTS 4 JESUS."

Upon seeing the banner, Principal Morse crossed the street to demand that the students take it down. Frederick refused to do so and was shortly thereafter ordered to Morse's office where he was suspended for ten days for violating Juneau School Board Policy No. 5520, which provides that: "The Board specifically prohibits any assembly or public expression that . . . advocates the use of substances that are illegal to minors . . ."

Joseph challenged his discipline, asserting that the First Amendment protected his right to unfurl his message. As you can see from the June 25, 2007 opinion of the Court, Chief Justice Roberts and four other justices found that Joseph's message was not protected by the First Amendment because it advocated illegal drug use. Four other justices dissented.

1. In his dissenting opinion, Justice Stevens said that Joseph's banner "is a nonsense message, not advocacy." What exactly *did* it mean? Which of the following meanings seems most likely to you? Discuss.

"Take bong hits." [Chief Justice Roberts' suggestion]

"Bong hits are a good thing." [Chief Justice Robert's suggestion]

"We take bong hits." [Chief Justice Roberts' suggestion]

"Marijuana use demonstrates support for Jesus Christ."

"Drug use leads to Christianity."

"Jesus was a psychedelic hippie rebel."

"We use drugs and talk about Jesus."

"Be a religious conscientious objector to the War on Drugs."

"Pay attention to me, I want to get on TV!" [Joseph's own suggestion]

2. Given how ambiguous and inscrutable Joseph's message was, does that suggest that it *should* or *should not* be protected by the First Amendment? Who gets to decide what a young citizen's expression actually means—the student, his classmates, his teacher, his principal, or the Supreme Court?

3. In his dissenting opinion, Justice Stevens lampoons the whole discipline of Joseph by saying that most students "do not shed their brains at the schoolhouse gate, and most students know dumb advocacy when they see it. The notion that the message on this banner would actually persuade either the average student or even the dumbest one to change his or her behavior is most implausible." Do you agree or disagree? Would the holding of such a banner actually encourage students to use marijuana? Would you be influenced by it?

4. Joseph first asserted that this was not a case about speech at school since it took place outside of school, but Chief Justice Roberts thoroughly rejects this claim, observing that this was an approved class activity with a school band performance and a heavy teacher and administrator presence in the crowd. Do you agree with Joseph's claim that he was not actually at school? Why was this such an important first point for the Court to decide?

5. Chief Justice Roberts and Justice Stevens take dramatically different approaches to the War on Drugs, which is the critical backdrop to the case. Chief Justice Roberts records the serious physical and psychological dangers of drug use by adolescents and cites pervasive federal and local efforts to criminalize and prevent drug use by young people. But Justice Stevens says that the majority opinion "is deaf to the constitutional imperative to permit unfettered debate, even among high school students, about the wisdom of the war on drugs or of legalizing marijuana for medicinal use." He notes that Alaska's Constitution protects the right of adults to possess less than four ounces of marijuana for personal use and that Alaska's voters also passed a ballot measure decriminalizing the use of marijuana for medicinal purposes. Should high school students be able to freely debate the wisdom of the War on Drugs and drug prohibition in high school or does that invite advocacy of illegal behavior among young students who may not be able to tell the difference between a policy debate and official academic advice?

6. Justice Stevens closes his dissenting opinion with an analysis comparing speech that dissents from the War on Drugs with speech that dissented from the Vietnam War and speech that protested Prohibition. Justice Stevens writes: "just as prohibition in the 1920's and early 1930's was secretly questioned by thousands of otherwise law abiding patrons of bootleggers and speakeasies, today the actions of literally millions of otherwise law abiding users of marijuana, and of the majority of voters in each of the several States that tolerate medicinal uses of the product, lead me to wonder whether the fear of disapproval by those in the majority is silencing opponents of the war on drugs. Surely our national experience with alcohol should make us wary of dampening speech suggesting however inarticulately that it would be better to tax and regulate marijuana than to persevere in a futile effort to ban its use entirely. . . . Whatever the better policy may be, a full and frank discussion of the costs and

benefits of the attempt to prohibit the use of marijuana is far wiser than suppression of speech because it is unpopular." Do you agree with this approach? Is it dangerous for a Supreme Court justice to be inviting a national discussion about the continued wisdom of criminalizing drugs? Are high school students mature enough to have such a debate?

7. Imagine you know students who are thinking of unfurling a banner at school and come to you for advice. Which of the following messages do you think could be censored and punished by the school under the majority opinion? Which not? Discuss and explain.

"Bong hits offend Jesus."

"Song hits 4 Jesus."

"Long hits for Jesus: Juneau-Douglas Baseball Sluggers"

"People who are late 4 class 4 Jesus."

"Arrest drug users now."

"Jesus forgives bong hits."

"Legalize marijuana."

"Kill drug users."

"Free speech to end the War on Drugs."

"Justice Stevens and dissenters say we can say 'Bong hits 4 Jesus.'"

8. In the landmark case of *Tinker v. Des Moines School District (*1969), the Supreme Court found that students do not "shed" their First Amendment rights at school and may only have their expression censored if its threatens a "material and substantial" disruption of the educational process. In *Bethel v. Fraser* (1986), the Court granted schools' additional authority to censor student speech that is lewd or indecent. In *Hazelwood v. Kuhlmeier* (1988), the Court found that schools may regulate the content of student newspapers and other publications since they are paid for by the school and bear its name and authority but, in exercising these editorial powers, schools may not discriminate on the basis of political viewpoint. What does *Morse v. Frederick* now add to our understanding of student speech rights? Is *Tinker* still a towering precedent in the field or have the exceptions swallowed the rule? How free is speech at school?

Vocabulary List for *Tinker v. Des Moines Independent School District*

akin	Related; similar
apprehension	Capture or arrest; understanding
boisterous	Loud; energetic; noisy
colliding	Clashing; conflicting
conflagration	A big, destructive fire
contrary	Opposite ("on the *contrary*")
defy	Go against ("that argument *defies* logic")
departure	Movement away from
deportment	Behavior
deviates	Veers or strays from
divert	To turn away
earnest	Well-intentioned
Embrace	To hold or hug; take in mentally or visually
enclaves	Small groups within large groups
engage	Involve; include; participate in
exhibit	To show
flout	To scorn or show contempt for
foresaw	Predicted; forecasted; anticipated
hostile	Aggressive; hurtful
immunized	Protected
impinge	Be in somebody's way; impose; intrude
inevitable	Predictable; to be expected; unavoidable
inspire	Cause
intrude	Break in, interfere, impose

intrude	Break in, interfere, impose
liberty	Freedom
materially	Significantly; in an important way
memorandum	Written statement outlining a policy or recommendation
Nascent	Budding; promising; hopeful
opposition	Resistance; disagreement
ordained	Intended; predestined; fated
Ordained	Intended; predestined; fated
petitioner	Person bringing a legal claim to the Supreme Court
premises	Property; building; grounds ("no smoking is allowed on school *premises*")
purport	Claim; imply
recipients	Receiver; beneficiary; heir ("students are *recipients* of education")
regimentation	Strict organization and order
remanded	Sent back to the lower court for review and revision consistent with the Supreme Court's finding
sentiments	Feelings; emotions
substantially	Considerably; significantly
totalitarianism	Dictatorship; absolute tyranny
tranquility	Peace
unaccompanied	Alone; without
undifferentiated	Undistinguished; not clearly identified
variation	Change

TINKER v. DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT

Supreme Court of the United States
Decided Feb. 24, 1969

Justice FORTAS delivered the opinion of the Court.

Petitioner John F. Tinker, 15 years old, and Christopher Eckhardt, 16 years old, attend high schools in Des Moines, Iowa. Petitioner Mary Beth Tinker, John's sister, was a 13-year-old student in junior high school.

In December 1965, a group of adults and students in Des Moines held a meeting at the Eckhardt home. The group determined to publicize their objections to the hostilities in Vietnam and their support for a truce by wearing black armbands during the holiday season and by fasting on December 16 and New Year's Eve. Petitioners and their parents had previously engaged in similar activities, and they decided to participate in the program.

The principals of the Des Moines schools became aware of the plan to wear armbands. On December 14, 1965, they met and adopted a policy that any student wearing an armband to school would be asked to remove it, and if he refused he would be suspended until he returned without the armband. Petitioners were aware of the regulation that the school authorities adopted.

On December 16, Mary Beth and Christopher wore black armbands to their schools. John Tinker wore his armband the next day. They were all sent home and suspended from school until they would come back without their armbands. They did not return to school until after the planned period for wearing armbands had expired - that is, until after New Year's Day….

I

The District Court recognized that the wearing of the armband for the purpose of expressing certain views is the type of symbolic act that is within the Free Speech Clause of the First Amendment. As we shall discuss, the wearing of the armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely **akin** to "pure speech" which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment.

First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. This has been the unmistakable holding of this Court for almost 50 years….

… Our problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities.

II

The problem posed by the present case does not related to regulation of the length of skirts or the type of clothing, to hair style, or **deportment**. It does not concern aggressive, disruptive action or even group demonstrations. Our problem involves direct, primary First Amendment rights akin to "pure speech."

The school officials banned and sought to punish petitioners for a silent, passive, expression of opinion, **unaccompanied** by any disorder or disturbance on the part of petitioners. There is here no evidence whatever of petitioners' interference, actual or **nascent**, with the schools' work or of collision with the rights of other students to be secure and to be let alone. Accordingly, this case does not concern speech or action that **intrudes** upon the work of the schools or the rights of other students.

Only a few of the 18,000 students in the school system wore the black armbands. Only five students were suspended for wearing them. There is no indication that the work of the schools or any class was disrupted. Outside the classrooms, a few students made **hostile** remarks to the children wearing armbands, but there were no threats or acts of violence on school premises.

The District Court concluded that the action of the school authorities was reasonable because it was based upon their fear of a disturbance from the wearing of the armbands. But, in our system, **undifferentiated** fear or **apprehension** of disturbance is not enough to overcome the right to freedom of expression. Any **departure** from absolute **regimentation** may cause trouble. Any **variation** from the majority's opinion may **inspire** fear. Any word spoken, in class, in the lunchroom, or on the campus, that **deviates** from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk[,] and our history says it is this sort of hazardous freedom - this kind of openness - that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive … society.

In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would "**materially** and **substantially** interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained.

In the present case, the District Court made no such finding, and our independent examination of the record fails to yield evidence that the school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school or **impinge** upon the rights of other students. Even an official **memorandum** prepared after the suspension that listed the reasons for the ban on wearing the armbands made no reference to the anticipation of such disruption.

On the **contrary**, the action of the school authorities appears to have been based upon an urgent wish to avoid the controversy which might result from the expression, even by the silent symbol of armbands, of opposition to this Nation's part in the **conflagration** in Vietnam….

It is also relevant that the school authorities did not **purport** to prohibit the wearing of all symbols of political or controversial significance. The record shows that students in some of the schools wore buttons relating to national political campaigns, and some even wore the Iron Cross, traditionally a symbol of Nazism. The order prohibiting the wearing of armbands did not extend to these. Instead, a particular symbol - black armbands worn to **exhibit opposition** to this Nation's involvement in Vietnam - was singled out for prohibition. Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible.

In our system, state-operated schools may not be **enclaves** of **totalitarianism**. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit **recipients** of only that which the State chooses to communicate. They may not be confined to the expression of those **sentiments** that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their view ….

The principle of these cases is not confined to the supervised and **ordained** discussion which takes place in the classroom. The principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is personal intercommunication among the students. This is not only an **inevitable** part of the process of attending school; it is also an important part of the educational process. A student's rights, therefore, do not **embrace** merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without "materially and substantially interfer(ing) with the requirements of appropriate discipline in the operation of the school" and without **colliding** with the rights of others. But conduct by the student, in class or out of it, which for any reason - whether it stems from time, place, or type of behavior - materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not **immunized** by the constitutional guarantee of freedom of speech ….

As we have discussed, the record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school **premises** in fact occurred. These petitioners merely went about their **ordained** rounds in school. Their deviation consisted only in wearing on their sleeve a band of black cloth, not more than two inches wide. They wore it to exhibit their disapproval of the Vietnam hostilities and their advocacy of a truce, to make their views known, and, by their example, to influence others to adopt them. They neither interrupted school activities nor sought to **intrude** in the school affairs or the lives of others. They caused discussion outside of classrooms, but no interference with work and no disorder. In the circumstances, our Constitution does not permit officials of the State to deny their form of expression….

Reversed and ***remanded***.

Justice BLACK, dissenting.

… While the absence of obscene remarks or **boisterous** and loud disorder perhaps justifies the Court's statement that the few armband students did not actually "disrupt" the classwork, I think the record overwhelmingly shows that the armbands did exactly what the elected school officials and principals **foresaw** they would, that is took the students' minds off their classwork and **diverted** them to thoughts about the highly emotional subject of the Vietnam war. And I repeat that if the time has come when pupils of state-supported schools, kindergartens, grammar schools, or high schools, can **defy** and **flout** orders of school officials to keep their minds on their own schoolwork, it is the beginning of a new revolutionary era of permissiveness in this country fostered by the judiciary. The next logical step, it appears to me, would be to hold unconstitutional laws that bar pupils under 21 or 18 from voting, or from being elected members of the boards of education….

Change has been said to be truly the law of life but sometimes the old and tried and true are worth holding. The schools of this Nation have undoubtedly contributed to giving us **tranquility** and to making us a more law-abiding people. Uncontrolled and uncontrollable **liberty** is an enemy to domestic peace. We cannot close our eyes to the fact that some of the country's greatest problems are crimes committed by the youth, too many of school age. School discipline, like parental discipline, is an integral and important part of training our children to be good citizens - to be better citizens. Here a very small number of students have crisply and summarily refused to obey a school order designed to give pupils who want to learn the opportunity to do so. One does not need to be a prophet or the son of a prophet to know that after the Court's holding today some students in Iowa schools and indeed in all schools will be ready, able, and willing to defy their teachers on practically all orders. This is the more unfortunate for the schools since groups of students all over the land are already running loose, conducting break-ins, sit-ins, lie-ins, and smash-ins. Many of these student groups, as is all too familiar to all who read the newspapers and watch the television news programs, have already **engaged** in rioting, property seizures, and destruction. They have picketed schools to force students not to cross their picket lines and have too often violently attacked **earnest** but frightened students who wanted an education that the pickets did not want them to get. Students engaged in such activities are apparently confident that they know far more about how to operate public school systems than do their parents, teachers, and elected school officials…. I dissent.

VOCABULARY LIST FOR *MORSE V. FREDERICK*

Abdicate: To formally give up power or responsibility.

Abstemious: Using or doing something sparingly or very moderately.

Censorship: Limiting or prohibiting speech.

Compelling interest test: A method of determining the constitutional validity of a law, whereby the government's interest in the law is balanced against the individual's constitutional right to be free of the law.

Dissent: Opinion written by a justice or judge that disagrees with the ruling of the majority opinion in a case.

First Amendment: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Governmental interest: That which is done for the common good.

Inimical: Harmful, unfriendly, or hostile.

Ostensibly: Being apparent, evident, or very obvious.

Political Speech: Speech held in the highest regard for constitutional protection.

Precedent: Prior case law.

Quixotic: Impulsive and unpredictable.

Rambunctious: Wild, noisy, lacking restraint or discipline.

Scrupulously: Being extremely precise and careful.

Substantial disruption: To interrupt or impede the progress, movement, or procedure of in such a manner that is not protected by the Constitution. In Tinker v. Des Moines Independent School District, the Supreme Court held that student speech cannot be censored unless it creates a material or substantial disruption.

Unfurl: To open something or make it spread out.

DEBORAH MORSE v. JOSEPH FREDERICK

Supreme Court of the United States
[June 25, 2007]

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

At a school-sanctioned and school-supervised event, a high school principal saw some of her students unfurl a large banner conveying a message she reasonably regarded as promoting illegal drug use. Consistent with established school policy prohibiting such messages at school events, the principal directed the students to takedown the banner. One student—among those who had brought the banner to the event—refused to do so. The principal confiscated the banner and later suspended the student. The Ninth Circuit held that the principal's actions violated the **First Amendment**, and that the student could sue the principal for damages.

…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…

I

On January 24, 2002, the Olympic Torch Relay passed through Juneau, Alaska, on its way to the winter games in Salt Lake City, Utah. The torchbearers were to proceed along a street in front of Juneau-Douglas High School (JDHS) while school was in session. Petitioner Deborah Morse, the school principal, decided to permit staff and students to participate in the Torch Relay as an approved social event or class trip. Students were allowed to leave class to observe the relay from either side of the street. Teachers and administrative officials monitored the students' actions.

Respondent Joseph Frederick, a JDHS senior, was late to school that day. When he arrived, he joined his friends (all but one of whom were JDHS students) across the street from the school to watch the event. Not all the students waited patiently. Some became **rambunctious**, throwing plastic cola bottles and snowballs and scuffling with their classmates. As the torchbearers and camera crews passed by, Frederick and his friends unfurled a 14foot banner bearing the phrase: "BONG HiTS 4 JESUS." The large banner was easily readable by the students on the other side of the street.

Principal Morse immediately crossed the street and demanded that the banner be taken down. Everyone but Frederick complied. Morse confiscated the banner and told Frederick to report to her office, where she suspended him for 10 days. Morse later explained that she told Frederick to take the banner down because she thought it encouraged illegal drug use, in violation of established school policy. Juneau School Board Policy No. 5520 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 "[p]upils who participate in approved social events and class trips" to the same student conduct rules that apply during the regular school program. Frederick administratively appealed his suspension, but the Juneau School District Superintendent upheld it, limiting it to time served (8 days).

Frederick then filed suit under, alleging that the school board and Morse had violated his **First Amendment** rights. The District Court granted summary judgment for the school board and Morse, ruling that they had not infringed Frederick's **First Amendment** rights. The court found that Morse

reasonably interpreted the banner as promoting illegal drug use—a message that "directly contravened the Board's policies relating to drug abuse prevention."

The Ninth Circuit reversed. Deciding that Frederick acted during a "school-authorized activit[y]," and "proceed[ing] on the basis that the banner expressed a positive sentiment about marijuana use," the court nonetheless found a violation of Frederick's **First Amendment** rights because the school punished Frederick without demonstrating that his speech gave rise to a "risk of **substantial disruption**." The court further concluded that Frederick's right to display his banner was so "clearly established" that a reasonable principal in Morse's position would have understood that her actions were unconstitutional.

II

We reject Frederick's argument that this is not a school speech case—as has every other authority to address the question. The event occurred during normal school hours. It was sanctioned by Principal Morse "as an approved social event or class trip," and the school district's rules expressly provide that pupils in "approved social events and class trips are subject to district rules for student conduct." Under the circumstances, we agree with the superintendent that Frederick cannot "stand in the midst of his fellow students, during school hours, at a school-sanctioned activity and claim he is not at school."

III

The message on Frederick's banner is cryptic. It is no doubt offensive to some, perhaps amusing to others. To still others, it probably means nothing at all. Frederick himself claimed "that the words were just nonsense meant to attract television cameras." But Principal Morse thought the banner would be interpreted by those viewing it as promoting illegal drug use, and that interpretation is plainly a reasonable one.

She further believed that "display of the banner would be construed by students, District personnel, parents and others witnessing the display of the banner, as advocating or promoting illegal drug use"—in violation of school policy.

We agree with Morse. At least two interpretations of the words on the banner demonstrate that the sign advocated the use of illegal drugs. First, the phrase could be interpreted as an imperative: "[Take] bong hits . . ." Alternatively, the phrase could be viewed as celebrating drug use—"bong hits [are a good thing]," or "[we take] bong hits"—and we discern no meaningful distinction between celebrating illegal drug use in the midst of fellow students and outright advocacy or promotion.

The pro-drug interpretation of the banner gains further plausibility given the paucity of alternative meanings the banner might bear. The best Frederick can come up with is that the banner is "meaningless and funny."

The **dissent** mentions Frederick's "credible and uncontradicted explanation for the message—he just wanted to get on television." But that is a description of Frederick's motive for displaying the banner; it is not an interpretation of what the banner says. The way Frederick was going to fulfill his ambition of appearing on television was by **unfurling** a pro-drug banner at a school event, in the presence of teachers and fellow students.

Elsewhere in its opinion, the **dissent** emphasizes the importance of **political speech** and the need to foster "national debate about a serious issue," as if to suggest that the banner is **political speech**. But not even Frederick argues that the banner conveys any sort of political or religious message. Contrary to the **dissent**'s suggestion, this is plainly not a case about political debate over the criminalization of drug use or possession.

IV

The question thus becomes whether 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. We hold that she may.

…We have held 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." In particular, "the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject."

Even more to the point, these cases also recognize that deterring drug use by schoolchildren is an "important—indeed, perhaps **compelling**" **interest**.

Thousands of school boards throughout the country—including JDHS—have adopted policies aimed at effectuating this message. Those school boards know that peer pressure is perhaps "the single most important factor leading schoolchildren to take drugs," and that students are more likely to use drugs when the norms in school appear to tolerate such behavior.

The "special characteristics of the school environment," and the **governmental interest** in stopping student drug abuse—reflected in the policies of Congress and myriad school boards, including JDHS—allow schools to restrict student expression that they reasonably regard as promoting illegal drug use. Tinker warned that schools may not prohibit student speech because of "undifferentiated fear or apprehension of disturbance" or "a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint." The danger here is far more serious and palpable. The particular concern to prevent student drug abuse at issue here, embodied in established school policy, extends well beyond an abstract desire to avoid controversy.

School principals have a difficult job, and a vitally important one. When Frederick suddenly and unexpectedly unfurled his banner, Morse had to decide to act—or not act—on the spot. It was reasonable for her to conclude that the banner promoted illegal drug use—in violation of established school policy—and that failing to act would send a powerful message to the students in her charge, including Frederick, about how serious the school was about the dangers of illegal drug use. The **First Amendment** does not require schools to tolerate at school events student expression that contributes to those dangers. The judgment of the United States Court of Appeals for the Ninth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE ALITO, with whom JUSTICE KENNEDY joins, concurring.

I join the opinion of the Court on the understanding that (a) it goes no further than to hold that a public school may restrict speech that a reasonable observer would interpret as advocating illegal drug use and (b) it provides no support for any restriction of speech that can plausibly be interpreted as commenting on any political or social issue, including speech on issues such as "the wisdom of the war on drugs or of legalizing marijuana for medicinal use."

Speech advocating illegal drug use poses a threat to student safety that is just as serious, if not always as immediately obvious. As we have recognized in the past and as the opinion of the Court today details, illegal drug use presents a grave and in many ways unique threat to the physical safety of students. I therefore conclude that the public schools may ban speech advocating illegal drug use. But I regard such regulation as standing at the far reaches of what the **First Amendment** permits. I join the opinion of the Court with the understanding that the opinion does not endorse any further extension.

JUSTICE STEVENS, with whom JUSTICE SOUTER and JUSTICE GINSBURG join, dissenting.

I

Encouraging drug use might well increase the likelihood that a listener will try an illegal drug, but that hardly justifies **censorship**.

No one seriously maintains that drug advocacy (much less Frederick's ridiculous sign) comes within the vanishingly small category of speech that can be prohibited because of its feared consequences.

II

The Court rejects outright these … foundations of Tinker because, in its view, the unusual importance of protecting children from the scourge of drugs supports a ban on all speech in the school environment that promotes drug use. Whether or not such a rule is sensible as a matter of policy, carving out pro-drug speech for uniquely harsh treatment finds no support in our case law and is **inimical** to the values protected by the **First Amendment**.

It is one thing to restrict speech that advocates drug use. It is another thing entirely to prohibit an obscure message with a drug theme that a third party subjectively—and not very reasonably—thinks is tantamount to express advocacy. Even the school recognizes the paramount need to hold the line between, on the one hand, non-disruptive speech that merely expresses a viewpoint that is unpopular or contrary to the school's preferred message, and on the other hand, advocacy of an illegal or unsafe course of conduct. The district's prohibition of drug advocacy is a gloss on a more general rule that is otherwise quite tolerant of non-disruptive student speech.

There is absolutely no evidence that Frederick's banner's reference to drug paraphernalia "willful[ly]" infringed on anyone's rights or interfered with any of the school's educational programs. On its face, then, the rule gave Frederick wide berth "to express [his] ideas and opinions" so long as they did not amount to "advoca[cy]" of drug use. If the school's rule is, by hypothesis, a valid one, it is valid only insofar as it **scrupulously** preserves adequate space for constitutionally protected speech. Just as we insisted in Tinker that the school establish some likely connection between the armbands and their feared

consequences, so too JDHS must show that Frederick's supposed advocacy stands a meaningful chance of making otherwise-**abstemious** students try marijuana.

To the extent the Court defers to the principal's **ostensibly** reasonable judgment, it **abdicates** its constitutional responsibility. The beliefs of third parties, reasonable or otherwise, have never dictated which messages amount to proscribable advocacy. Indeed, it would be a strange constitutional doctrine that would allow the prohibition of only the narrowest category of speech advocating unlawful conduct, yet would permit a listener's perceptions to determine which speech deserved constitutional protection.

To the extent the Court independently finds that "BONG HiTS 4 JESUS" objectively amounts to the advocacy of illegal drug use—in other words, that it can most reasonably be interpreted as such—that conclusion practically refutes itself. This is a nonsense message, not advocacy. The Court's feeble effort to divine its hidden meaning is strong evidence of that. Admittedly, some high school students (including those who use drugs) are dumb. Most students, however, do not shed their brains at the schoolhouse gate, and most students know dumb advocacy when they see it. The notion that the message on this banner would actually persuade either the average student or even the dumbest one to change his or her behavior is most implausible. That the Court believes such a silly message can be proscribed as advocacy underscores the novelty of its position, and suggests that the principle it articulates has no stopping point.

Even if advocacy could somehow be wedged into Frederick's obtuse reference to marijuana, that advocacy was at best subtle and ambiguous. There is abundant **precedent**, including another opinion THE CHIEF JUSTICE announces today, for the proposition that when the "**First Amendment** is implicated, the tie goes to the speaker," and that "when it comes to defining what speech qualifies as the functional equivalent of express advocacy . . . we give the benefit of the doubt to speech, not **censorship**". If this were a close case, the tie would have to go to Frederick's speech, not to the principal's strained reading of his **quixotic** message.

III

Although this case began with a silly, nonsensical banner, it ends with the Court inventing out of whole cloth a special **First Amendment** rule permitting the **censorship** of any student speech that mentions drugs, at least so long as someone could perceive that speech to contain a latent pro-drug message. Our **First Amendment** jurisprudence has identified some categories of expression that are less deserving of protection than others—fighting words, obscenity, and commercial speech, to name a few. …It would be profoundly unwise to create special rules for speech about drug and alcohol use.

Even in high school, a rule that permits only one point of view to be expressed is less likely to produce correct answers than the open discussion of countervailing views. In the national debate about a serious issue, it is the expression of the minority's viewpoint that most demands the protection of the **First Amendment**. Whatever the better policy may be, a full and frank discussion of the costs and benefits of the attempt to prohibit the use of marijuana is far wiser than suppression of speech because it is unpopular.

I respectfully **dissent**.