

## MORSE v. FREDERICK

\_\_\_ US \_\_\_ (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. [The banner said "BONG HiTS 4 JESUS." The principal reasonably thought that it promoted the illegal use of marijuana.] Consistent with established school policy prohibiting such messages at school events, the principal [Morse] directed the students to take down the banner. One student [Frederick] 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.

Our cases make clear that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." 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," and that the rights of students "must be 'applied in light of the special characteristics of the school environment.'" 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.

### I

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We granted certiorari on two questions: whether Frederick had a First Amendment right to wield his banner, and, if so, whether that right was so clearly established that the principal may be held liable for damages. We resolve the first question against Frederick, and therefore have no occasion to reach the second.

### II

At the outset, we reject Frederick's argument that this is not a school speech case . . . [W]e 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

. . . 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.

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Elsewhere in its opinion, the dissent emphasizes the importance of political speech and the need to foster "national debate about a serious issue" . . . But . . . 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.

In *Tinker v. Des Moines Independent Community School Dist.*, this Court made clear that "First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students." *Tinker* involved a group of high school students who decided to wear black armbands to protest the Vietnam War. School officials learned of the plan and then adopted a policy prohibiting students from wearing armbands. When several students nonetheless wore armbands to school, they were suspended. The students sued, claiming that their First Amendment rights had been violated, and this Court agreed.

*Tinker* held 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 students sought to engage in political speech, using the armbands to express 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." Political speech, of course, is "at the core of what the First Amendment is designed to protect" . . . .

This Court's next student speech case was *Bethel School Dist. No. 403 v. Fraser*. Matthew Fraser was suspended for delivering a speech before a high school assembly in which he employed what this Court called "an elaborate, graphic, and explicit sexual metaphor" . . . . This Court [held] that the "School District acted entirely within its permissible authority in imposing sanctions upon Fraser in response to his offensively lewd and indecent speech."

. . . . The Court [cited] the "marked distinction between the political 'message' of the armbands in *Tinker* and the sexual content of [Fraser's] speech." But the Court also reasoned that school boards have the authority to determine "what manner of speech in the classroom or in school assembly is inappropriate."

. . . . [We] distill from *Fraser* two basic principles. First, *Fraser's* holding demonstrates that "the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings" . . . . Second, *Fraser* established that the mode of analysis set forth in *Tinker* is not absolute. Whatever approach *Fraser* employed, it certainly did not conduct the "substantial disruption" analysis prescribed by *Tinker*.

Our most recent student speech case, *Hazelwood v. Kuhlmeier*, concerned "expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school." Staff members of a high school newspaper sued their school when it chose not to publish two of their articles . . . . This Court [held] that "educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns."

*Kuhlmeier* does not control this case because no one would reasonably believe that Frederick's banner bore the school's imprimatur. The case is nevertheless instructive because it . . . . acknowledged that schools may regulate some speech "even though the government could not censor similar speech outside the school." And, like *Fraser*, it confirms that the rule of *Tinker* is not the only basis for restricting student speech.

Drawing on the principles applied in our student speech cases, we have 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" . . . . Even more to the point, these cases also recognize that deterring drug use by schoolchildren is an "important—indeed, perhaps compelling" interest. Drug abuse can cause severe and permanent damage to the health and well-being of young people . . . .

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Congress has declared that part of a school's job is educating students about the dangers of illegal drug use . . . .

Thousands of school boards throughout the country . . . have adopted policies aimed at effectuating this message . . . . Student speech celebrating illegal drug use at a school event, in the presence of school administrators and teachers, thus poses a particular challenge for school officials working to protect those entrusted to their care from the dangers of drug abuse.

The "special characteristics of the school environment," and the governmental interest in stopping student drug abuse . . . 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.

Petitioners urge us to adopt the broader rule that Frederick's speech is proscribable because it is plainly "offensive" as that term is used in *Fraser*. We think this stretches *Fraser* too far; that case should not be read to encompass any speech that could fit under some definition of "offensive." After all, much political and religious speech might be perceived as offensive to some. The concern here is not that Frederick's speech was offensive, but that it was reasonably viewed as promoting illegal drug use.

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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 THOMAS, concurring.**

The Court today decides that a public school may prohibit speech advocating illegal drug use. I agree and therefore join its opinion in full. I write separately to state my view that the standard set forth in *Tinker v. Des Moines Independent Community School Dist.* is without basis in the Constitution.

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**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."

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**Justice BREYER, concurring in the judgment in part and dissenting in part.**

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.

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**Justice STEVENS, with whom Justice SOUTER and Justice GINSBURG join, dissenting.**

I agree with the Court that the principal should not be held liable for pulling down Frederick's banner. I would hold, however, that the school's interest in protecting its students from exposure to speech "reasonably regarded as promoting illegal drug use," cannot justify disciplining Frederick for his attempt to make an ambiguous statement to a television audience simply because it contained an oblique reference to drugs. The First Amendment demands more, indeed, much more.

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I respectfully dissent.