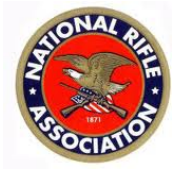
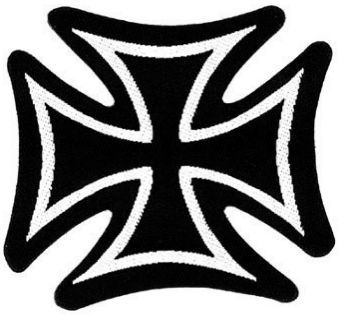
Lesson 2: Freedom of Expression

Freedom of Expression – Symbols Matrix Worksheet

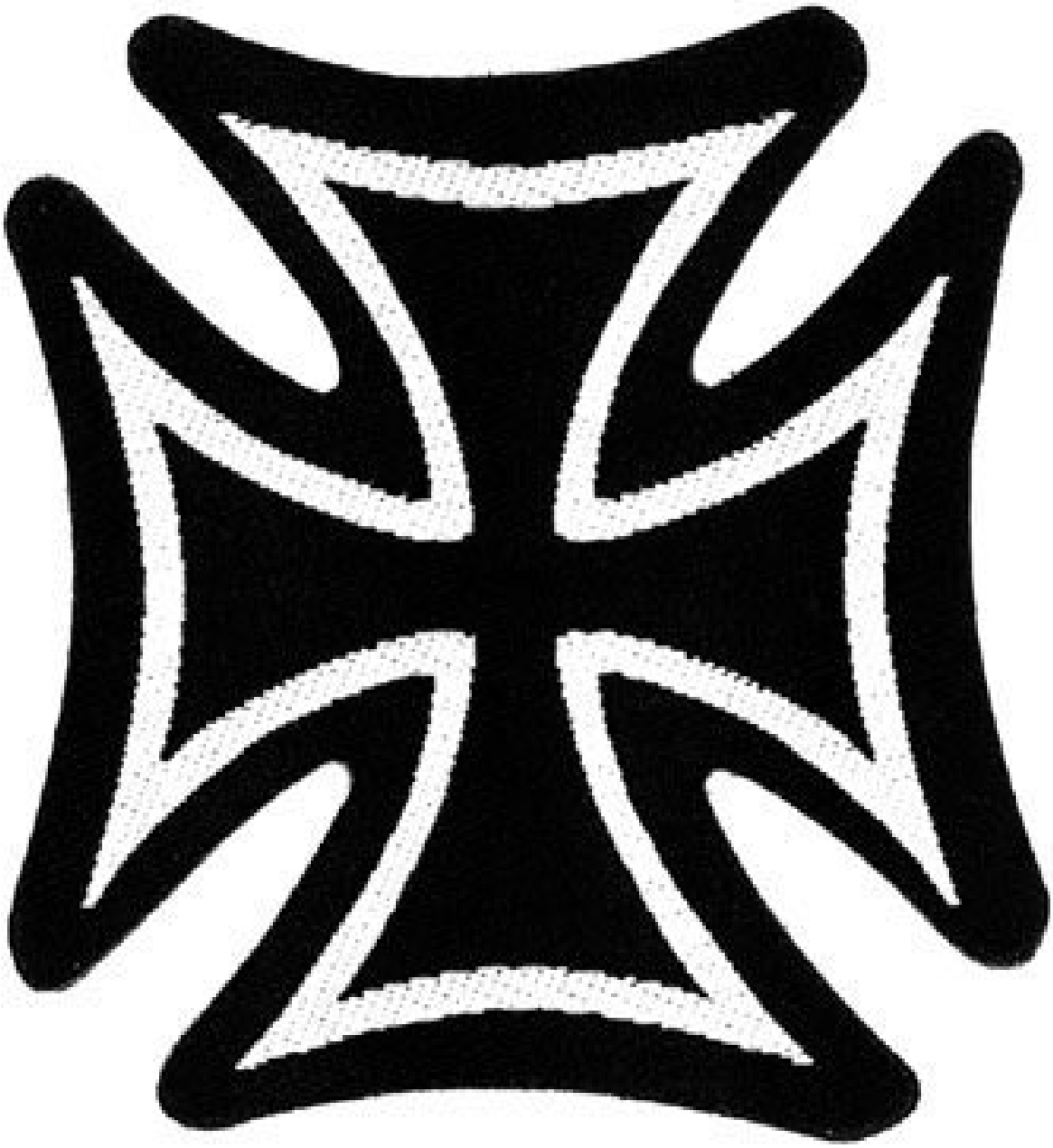
Symbol	How It Makes You Feel	Supreme Court's Interpretation
		
		
		
		
		
		

Should we have a dress code? How have your feelings changed as a result of today's lesson when you see the symbol pictured above? How does the clothing that we wear affect others?

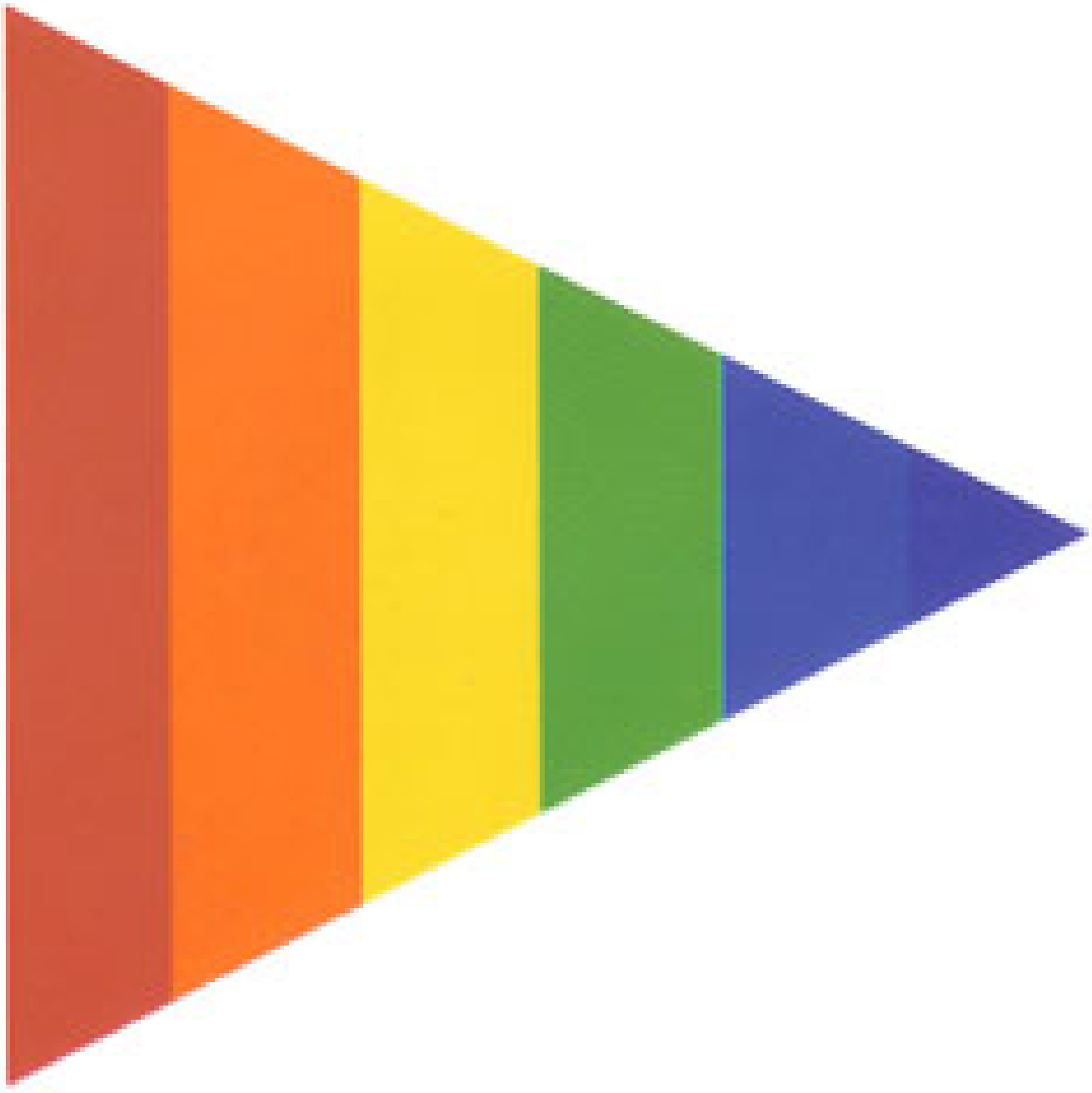
Symbols



Symbol #1

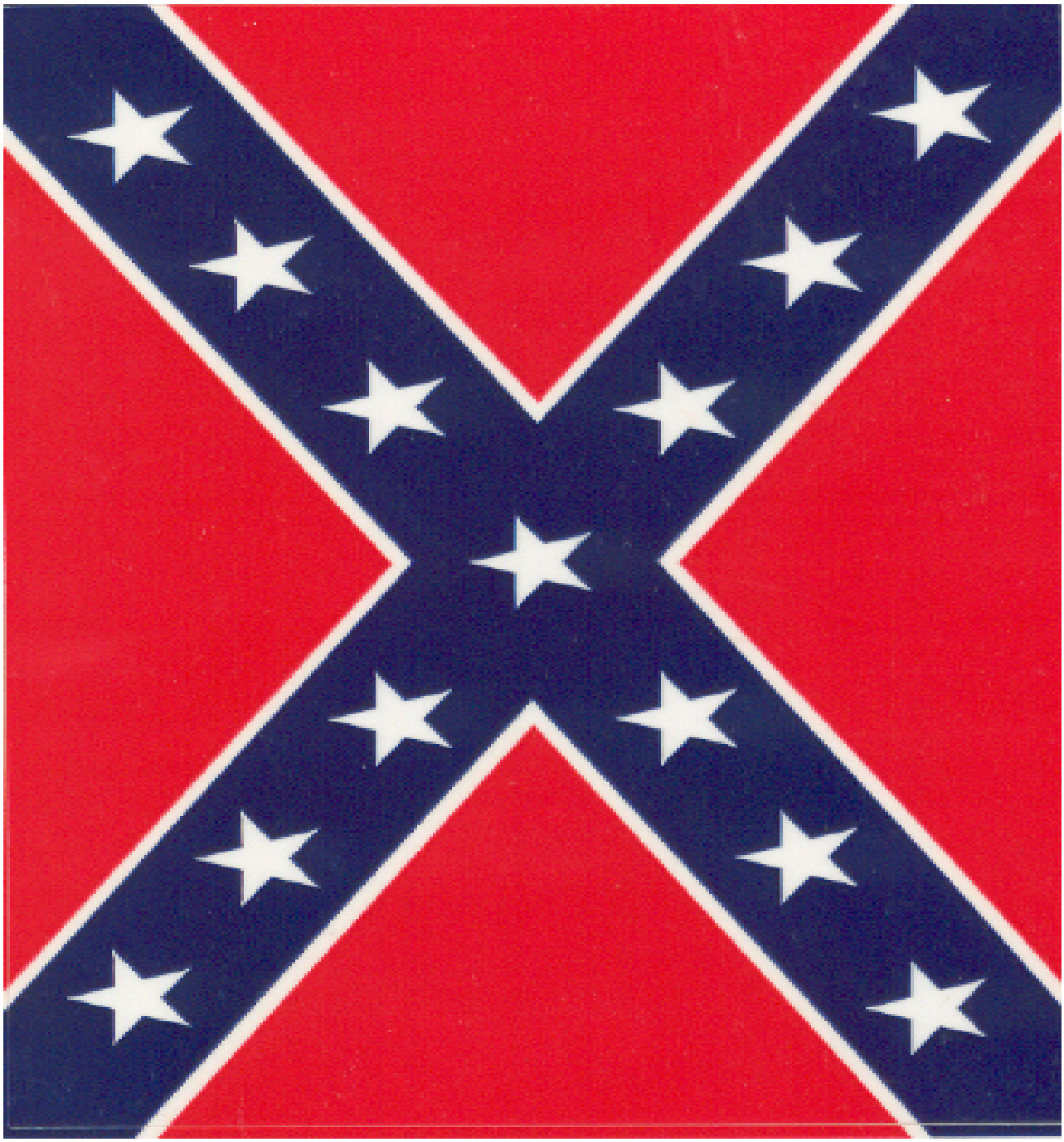


Symbol #2



Symbol #3

Symbol #4



Symbol #5

Symbol #6

Possible Opener

Explain the historical implications of this political cartoon.

http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=393&invol=503

U.S. Supreme Court

TINKER v. DES MOINES SCHOOL DIST., 393 U.S. 503 (1969)

393 U.S. 503

TINKER ET AL. v. DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT ET AL.
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.
No. 21.
Argued November 12, 1968.
Decided February 24, 1969.

Petitioners, three public school pupils in Des Moines, Iowa, were suspended from school for wearing black armbands to protest the Government's policy in Vietnam. They sought nominal damages and an injunction against a regulation that the respondents had promulgated banning the wearing of armbands. The District Court dismissed the complaint on the ground that the regulation was within the Board's power, despite the absence of any finding of substantial interference with the conduct of school activities. The Court of Appeals, sitting en banc, affirmed by an equally divided court. Held:

1. In wearing armbands, the petitioners were quiet and passive. They were not disruptive and did not impinge upon the rights of others. In these circumstances, their conduct was within the protection of the Free Speech Clause of the First Amendment and the Due Process Clause of the Fourteenth. Pp. 505-506.
2. First Amendment rights are available to teachers and students, subject to application in light of the special characteristics of the school environment. Pp. 506-507.
3. A prohibition against expression of opinion, without any evidence that the rule is necessary to avoid substantial interference with school discipline or the rights of others, is not permissible under the First and Fourteenth Amendments. Pp. 507-514.
383 F.2d 988, reversed and remanded.

Dan L. Johnston argued the cause for petitioners. With him on the brief were Melvin L. Wulf and David N. Ellenhorn.

Allan A. Herrick argued the cause for respondents. With him on the brief were Herschel G. Langdon and David W. Belin.

Charles Morgan, Jr., filed a brief for the United States National Student Association, as amicus curiae, urging reversal. [393 U.S. 503, 504]

MR. JUSTICE FORTAS delivered the opinion of the Court.

Petitioner John F. Tinker, 15 years old, and petitioner Christopher Eckhardt, 16 years old, attended 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.

This complaint was filed in the United States District Court by petitioners, through their fathers, under 1983 of Title 42 of the United States Code. It prayed for an injunction restraining the respondent school officials and the respondent members of the board of directors of the school district from disciplining the petitioners, and it sought nominal damages. After an evidentiary hearing the District Court dismissed the complaint. It upheld [393 U.S. 503, 505] the constitutionality of the school authorities' action on the ground that it was reasonable in order to prevent disturbance of school discipline. 258 F. Supp. 971 (1966). The court referred to but expressly declined to follow the Fifth Circuit's holding in a similar case that the wearing of symbols like the armbands cannot be prohibited unless it "materially and substantially interfere[s] with the requirements of appropriate discipline in the operation of the school." Burnside v. Byars, 363 F.2d 744, 749 (1966). 1

On appeal, the Court of Appeals for the Eighth Circuit considered the case en banc. The court was equally divided, and the District Court's decision was accordingly affirmed, without opinion. 383 F.2d 988 (1967). We granted certiorari. 390 U.S. 942 (1968).

http://writ.corporate.findlaw.com/commentary/20040304_jr..html

Silencing Student Speech -- And Even Artwork -- in the Post-Columbine Era: The Relevant Supreme Court Cases, and How They Have Been Misapplied
By DAVID L. HUDSON, JR.

Thursday, Mar. 04, 2004

Public school officials face a daunting task: Ensuring safe schools in the age of Columbine. The rash of school shootings in recent years -- including the April 1999 horror at Columbine High School in Littleton, Colorado -- shows that danger does exist from certain disturbed, alienated, and disaffected youth.

However, the response among many school officials has been to overreact by infringing on students' constitutional rights.

One recent federal district court judge wrote that in the wake of Columbine "some schools became like war zones and metal detectors and police officers became commonplace on high school campuses throughout the country." Unsurprisingly, Fourth Amendments rights, and student privacy, both suffered.

Meanwhile, First Amendment rights have often also been squelched. School officials have turned to zero tolerance policies with respect to certain types of speech they deemed offensive; to anti-bullying codes; and to more restrictive dress codes -- all in the hopes of somehow preventing the next Columbine.

Certainly, school officials should look for warning signs among disaffected youth. Students who convey true threats should be closely monitored and punished. But some school officials have overreacted, silencing student speech that is neither genuinely threatening, nor genuinely disruptive.

Examples of How School Administrators Have Overreacted

Indeed, as Professors Robert Richards and Clay Calvert write in a recent Boston University law review article: "Quite simply, the events at Columbine gave high school administrators all the reasons -- legitimate or illegitimate -- they needed to trounce the First Amendment rights of public school students in the name of preventing violence."

If you doubt it, consider the following:

- An honor-roll high school student in Kansas was suspended for writing a poem entitled "Who Killed My Dog." School officials determined the poem to be a threat.

- A kindergartener in New Jersey was suspended from school for saying "I'm going to shoot you" on the playground while playing cops and robbers with his classmates.

- A high-school student in Oklahoma was suspended for a poem she wrote about her teacher that she never showed to anyone. The poem fell out of her backpack and was shown to school authorities by another student.

A middle-school student in Arkansas was expelled for making terroristic threats because of a graphically violent poem he wrote about his ex-girlfriend. However, the student never brought the poem to school. His

- "friend" stole the poem from his room and showed it to the ex-girlfriend.

- A sixth-grader in Texas was put in juvenile detention for writing a Halloween, class-project essay about a student who kills fellow students and a teacher.

- Also in Texas, school officials -- ironically -- disciplined students for wearing black armbands to mourn the victims of Columbine and to protest overly restrictive school policies.

In each of these cases, it appears that student First Amendment rights were violated. In each, speech that did not pose a genuine threat or risk a substantial disruption -- which are the relevant legal tests, as I will explain -- was nevertheless censored and/or punished.

Some school districts seem to believe that public school students simply have no First Amendment right. But as long ago as 1969, in *Tinker v. Des Moines Independent Community School District*, the Supreme Court made very clear that they do.

There, school officials tried to prohibit students from wearing black armbands to protest the Vietnam War. In explaining why the students' First Amendment rights had been violated, Justice Abe Fortas wrote that "undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression."

What was enough, in the Court's view? *Tinker* set the standard: Speech can be suppressed when school officials can reasonably forecast that student expression would create a substantial disruption or material interference with school activities officials or invade the rights of others. The line is clear: These concrete, specific predictions are sufficient; undifferentiated fear is not.

Unfortunately, "undifferentiated fear" is precisely what seems to be motivating school officials in cases like those listed above. Many students have even been punished for art -- for the content of their poems and drawings. In too many instances, this zero tolerance mentality had led to zero judgment.

When Does Student Expression Cause a "Substantial Disruption"?

In 2002, in *Lavine v. Blaine School District*, the U.S. Court of Appeals for the Ninth Circuit held that the Tinker standard had been satisfied. In that case, school officials expelled a high-school student who wrote a poem about school violence.

Why was *Tinker*'s standard satisfied, according to the court? Given the "backdrop of actual school shootings," the court thought that school officials could reasonably forecast that the poem would constitute a substantial disruption.

But Judge Andrew Kleinfeld's poignant dissent was more persuasive. Her critiqued the majority's reasoning as follows:

They [students] have lost their free-speech rights. If a teacher, administrator, or student finds their art disturbing, they can be punished, even though they say nothing disruptive, defamatory or indecent and do not intend to threaten or harm anyone. School officials may now subordinate their students' freedom of expression, where no one may be made

uncomfortable by the knowledge that others have dark thoughts, and all the art is of hearts and smiley faces. The court has adopted a new doctrine of First Amendment law, that high school students may be punished for non-threatening speech that administrators believe m After all, exactly what kind of disruption did the school officials forecast? Did they believe other students might become afraid of the poem-writing student because of the poem? If so, that sounds like exactly the kind of undifferentiated fear that Tinker says cannot be a ground for suppressing student speech.

When Does Student Expression Count as a "True Threat"?

Meanwhile, there is another crucial precedent, besides *Tinker*, that is also invoked, and often misapplied, by school officials who seek to suppress student speech. It is *Watts v. United States* -- a decision that, like *Tinker*, was issued in 1969.

In *Watts*, a young man who said "if they ever make me carry a rifle, the first man I want in my sights is L.B.J." was convicted of a crime. But the court determined that the young man's statement was mere "political hyperbole," not a true threat -- and was therefore protected by the First Amendment.

Then what kind of statement would be a "true threat"? Unfortunately, the Court did not make that clear. Accordingly, lower courts have adopted different "true threat" tests.

The Various "True Threat" Tests, and Some Recent "True Threat" Cases

In setting out their "true threat" standard, some of these courts focus on a reasonable recipient of the statement: Would that person perceive a true threat?

Others focus on how a reasonable speaker should foresee that others would take her statements: Should she foresee her statements will be perceived as a true threat?

The U.S. Circuit Court of Appeals for the Eighth Circuit has devised a complex multi-factor "true threat" test, set out in the 2002 decision in *Doe v. Pulaski County Special Sch. Dist*. Under this test, school officials should focus on factors including: (1) the reaction of the listener and other recipients; (2) whether the threat was conditional; (3) whether the speaker communicated the statement(s) directly to the recipient; (4) whether the speaker had a history of making threats; (5) whether the recipient knew the speaker had a propensity for violence.

But whatever verbal formulation is used, judges in "true threat" cases ask more or less the same questions: Does the speech, understood in context, carries a specific and unequivocal statement of harm? Or is it more properly characterized as mere joking, idle talk or political argument?

In answering these questions, context is often important. That was the case, for example, in the February 12 decision by the Washington Supreme Court in *State of Washington v. Kilburn.*

There, a student was convicted of felony harassment for telling a fellow student: "I'm going to bring a gun to school tomorrow and shoot everyone and start with you." In reversing the conviction, the court focused on context -- and, in particular, on the fact that the student was laughing and joking when he made the comment. The recipient even admitted that the student-speaker was "acting like he was kind of joking."

Context also mattered to the Louisiana federal district court judge's January 28 ruling in *Porter v. Ascension Parish School Board*. There, a student's two-year-old sketch of his school -- soaked in gasoline surrounded by an individual with a torch and a missile -- was discovered two years after he had created it, when his younger brother brought it in. The student himself had not showed anyone the drawing, nor had he brought the sketch to school.

Nevertheless, the court found a "true threat." In so doing, the court relied on "backdrop" of Columbine -- presumably believing that after Columbine, students ought to be on notice that specific depictions of attacks against their school will be read as true threats.

Granted, reasonable minds can differ as to whether this ruling was correct. But this drawing is hardly typical of those that have usually resulted in punishment. None of the examples listed above were anywhere near as specific or threatening as this drawing.

-- yet, they too still led to penalties against the students involved.

Silencing Students Is a Mistake

Of course, student safety should be a paramount concern. And school officials have a duty to ensure safe learning environments.

Nevertheless, as the cases I have listed show, the push to silence and punish student expression has led to some very unjust results. Students have been suspended and expelled

for classroom essays and poems -- sometimes regardless of the fact that these writings and artworks were not intended for anyone else's eyes but their own.

This trend toward silencing student expression is the wrong response. As Judge Kleinfeold wrote in *Lavine*: "Suppression of speech may reduce security as well as liberty." A cowed student body is not the safest kind.

http://supreme.lp.findlaw.com/supreme_court/briefs/06-278/06-278.pet.pdf

IN THE
Supreme Court of the United States

JUNEAU SCHOOL BOARD; DEBORAH MORSE,

Petitioners (1),

v.

JOSEPH FREDERICK,

Respondent (2).

STATEMENT OF THE CASE

A. Factual Background

1. Surveys of Juneau, Alaska teenagers indicate that at least 60% use marijuana before graduating from high school, which is above the national average. Julia O'Malley, *Students and officials discuss teen drug use*, Juneau Empire, Nov. 26, 2002.1 In response to concerns about teenage substance abuse, the Juneau School Board promulgated a district-wide health and safety curriculum that emphasizes the dangers of illegal drug and alcohol use. The Board also established detailed policies for prevention, intervention, and discipline of students engaging in the illegal use or possession of drugs or alcohol. In connection with these policies, the Board prohibits the display of materials that advertise or advocate the use of illegal drugs or alcohol on campus and at all school-sponsored events, whether on or off campus. These policies are consistent with both state and federal law, including 20 U.S.C. § 7114(d)(6), which requires school districts receiving funds through the Safe and Drug Free Schools and Communities Act to certify periodically that their programs "convey a clear and consistent message that . . . illegal use of drugs [is] wrong and harmful."

2. Against this background, Principal Deborah Morse of the Juneau-Douglas High School was confronted with a flagrant violation of the school policies pertaining to pro-drug messages. The violation occurred during a school-sponsored and faculty-supervised event that took place on and adjacent to school grounds during school hours. The event was the Olympic Torch Relay, which came to Juneau on January 24, 2002.

1 *an application for a court order or for some judicial action..*
2 *a defendant, esp. in appellate and divorce proceedings.*

Believing that the event had both noteworthy educational value and high significance to the community, the Juneau School District allowed students to observe the relay. The district also allocated funds to transport students from schools not along the relay route to locations where they could view this memorable event. The Juneau-Douglas High School was located along the Olympic Torch Relay route. After classes started on the morning of the event, Juneau-Douglas High School administrators and teachers accompanied students from their classrooms to view the relay as it passed in front of the school. While teachers were given the option of allowing their students to take part in this event on a class-by-class basis, Principal Morse was unaware of any teachers who declined to let their classes participate. Once outside the classroom, there was only one place where Juneau-Douglas High School students were allowed to be — in front of the school, either on campus or lined along either side of the street.

During the event, high school cheerleaders were out in uniform to greet the torchbearers. The high school pep band played.. And four high school students, representing various segments of the student body, acted as torchbearers, carrying the torch in front of the school as a small part of the 11,500-person chain of torchbearers who transported the torch along the 13,500-mile relay route.

3. Joseph Frederick, a Juneau-Douglas High School student, and several of his schoolmates positioned themselves on the sidewalk opposite the campus. As the torchbearers and television camera crews approached the school, Frederick and his friends unfurled a large banner emblazoned with the phrase “BONG HITS 4 JESUS.” “Bong” is a slang term for drug paraphernalia commonly used for smoking marijuana. A “bong hit” is slang for inhaling marijuana from such a device. The term “bong hits” is widely understood by high school students and others as referring to smoking marijuana. Frederick’s banner, roughly 20-feet long, was clearly visible to the large number of students on campus.

Prior to displaying the banner, Frederick had been absent from school. And while Frederick might have selected any number of locations to unfurl his banner along the several-mile journey of the relay, Frederick chose instead to insert himself in front of the student body and to display the banner where it would be in full view of his fellow students.

Principal Morse approached Frederick and his friends and asked them to take down the banner. While other students complied with the directive, Frederick continued to hold the banner and refused to take it down. Frederick claimed he had a First Amendment right to display the banner because he was not physically on campus. Principal Morse responded to Frederick that he was participating in a school activity and that the banner was inappropriate. When Frederick still refused to put the banner down, Principal Morse confiscated it and instructed Frederick to accompany her to her office. Frederick walked the other way.

Frederick was later removed from class and brought to the principal's office. Principal Morse again explained that the banner was inappropriate in that it violated the school's policy against displaying offensive material, including material that advertises or promotes the use of illegal drugs. After further discussing the incident with a defiant and uncooperative Frederick, Principal Morse suspended him for ten days based on multiple counts, including refusal to respond to a staff directive, truancy/skipping, defiance/disruptive behavior, and refusal to cooperate, in addition to the underlying charge of displaying the offensive banner.

Following the banner episode, school personnel reported incidents of pro-drug graffiti in the halls and on school grounds.

http://www.cnn.com/2007/LAW/06/25/free.speech/

'Bong Hits 4 Jesus' case limits student rights

June 26, 2007

• High Court considers students' First Amendment rights
• Case involves student's "Bong hits 4 Jesus" banner at event
• School argues principal had right to punish student for drug message
• Student, now 24, said he was not promoting drugs
By Bill Mears
CNN Washington Bureau

WASHINGTON (CNN) -- The Supreme Court ruled against a former high school student Monday in the "Bong Hits 4 Jesus" banner case -- a split decision that limits students' free speech rights.

Joseph Frederick was 18 when he unveiled the 14-foot paper sign on a public sidewalk outside his Juneau, Alaska, high school in 2002.

Principal Deborah Morse confiscated it and suspended Frederick. He sued, taking his case all the way to the nation's highest court.

The justices ruled that Frederick's free speech rights were not violated by his suspension over what the majority's written opinion called a "sophomoric" banner.

"It was reasonable for (the principal) to conclude that the banner promoted illegal drug use--and that failing to act would send a powerful message to the students in her charge," Chief Justice John Roberts wrote for the court's 6-3 majority. Breyer noted separately he would give Morse qualified immunity from the lawsuit, but did not sign onto the majority's broader free speech limits on students.

Roberts added that while the court has limited student free speech rights in the past, young people do not give up all their First Amendment rights when they enter a school.

Roberts was supported by Justices Antonin Scalia, Anthony Kennedy, Clarence Thomas, Stephen Breyer, and Samuel Alito. Breyer noted separately he would give Morse qualified immunity from the lawsuit, but did not sign onto the majority's broader free speech limits on students.

In dissent, Justice John Paul Stevens said, "This case began with a silly nonsensical banner, (and) ends with the court inventing out of whole cloth a special First Amendment rule permitting the censorship of any student speech that mentions drugs, so long as someone could perceive that speech to contain a latent pro-drug message."

He was backed by Justices David Souter and Ruth Bader Ginsburg.

At issue was the discretion schools should be allowed to limit messages that appear to advocate illegal drug use. "Bong," as noted in the appeal filed with the justices, "is a slang term for drug paraphernalia."

The incident occurred in January 2002 just outside school grounds when the Olympic torch relay was moving through the Alaska capital on its way to the Salt Lake City, Utah, Winter Games.

Though he was standing on a public sidewalk, the school argued Frederick was part of a school-sanctioned event, because students were let out of classes and accompanied by their teachers.

Morse ordered the senior to take down the sign, but he refused. That led to a 10-day suspension for violating a school policy on promoting illegal drug use.

Frederick filed suit, saying his First Amendment rights were infringed. A federal appeals court in San Francisco agreed, concluding the school could not show Frederick had disrupted the school's educational mission by showing a banner off campus.

Former independent counsel Kenneth Starr argued for the principal that a school "must be able to fashion its educational mission" without undue hindsight from the courts.

Morse, who attended arguments in March, told CNN at the time: "I was empowered to enforce the school board's written policies at that time aimed at keeping illegal substances out of the school environment."

As for Frederick, he is halfway across the globe, teaching English to students in China.

Now 24, he told reporters in March that he displayed the banner in a deliberate attempt to provoke a response from principal Morse, by whom he had been disciplined previously. But Frederick claimed his message of free speech is very important to him, even if the wording of the infamous banner itself was not.

"I find it absurdly funny," he said. "I was not promoting drugs. ... I assumed most people would take it as a joke."

http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=000&invol=06-278

DEBORAH MORSE, *et al.,* PETITIONERS *v.* JOSEPH FREDERICK

on writ of certiorari to the united states court of appeals for the ninth circuit

[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 take down 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.

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 Independent Community School Dist.*, 393 U. S. 503, 506 (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. No. 403* v. *Fraser*, 478 U. S. 675, 682 (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*, 484 U. S. 260, 266 (1988) (quoting *Tinker*, *supra,* at 506). 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.

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. App. 22-23. 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 14-foot banner bearing the phrase: "BONG HiTS 4 JESUS." App. to Pet. for Cert. 70a. 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 ... ." *Id.,* at 53a. 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. *Id.,* at 58a.

Frederick administratively appealed his suspension, but the Juneau School District Superintendent upheld it, limiting it to time served (8 days). In a memorandum setting forth his reasons, the superintendent determined that Frederick had displayed his banner "in the midst of his fellow students, during school hours, at a school-sanctioned activity." *Id.,* at 63a. He further explained that Frederick "was not disciplined because the principal of the school 'disagreed' with his message, but because his speech appeared to advocate the use of illegal drugs." *Id.,* at 61a.

The superintendent continued:

"The common-sense understanding of the phrase 'bong hits' is that it is a reference to a means of smoking marijuana. Given [Frederick's] inability or unwillingness to express any other credible meaning for the phrase, I can only agree with the principal and countless others who saw the banner as advocating the use of illegal drugs. [Frederick's] speech was not political. He was not advocating the legalization of marijuana or promoting a religious belief. He was displaying a fairly silly message promoting illegal drug usage in the midst of a school activity, for the benefit of television cameras covering the Torch Relay. [Frederick's] speech was potentially disruptive to the event and clearly disruptive of and inconsistent with the school's educational mission to educate students about the dangers of illegal drugs and to discourage their use." *Id.,* at 61a-62a.

Relying on our decision in *Fraser*, *supra*, the 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." App. to Pet. for Cert. 62a (internal quotation marks omitted). The Juneau School District Board of Education upheld the suspension.

Frederick then filed suit under 42 U. S. C. §1983, alleging that the school board and Morse had violated his First Amendment rights. He sought declaratory and injunctive relief, unspecified compensatory damages, punitive damages, and attorney's fees. The District Court granted summary judgment for the school board and Morse, ruling that they were entitled to qualified immunity and 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." App. to Pet. for Cert. 36a-38a. Under the circumstances, the court held that "Morse had the authority, if not the obligation, to stop such messages at a school-sanctioned activity." *Id.,* at 37a.

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." 439 F. 3d 1114, 1118, 1121-1123 (2006). 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, and that Morse was therefore not entitled to qualified immunity. *Id.,* at 1123-1125.

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. 549 U. S. ___ (2006). We resolve the first question against Frederick, and therefore have no occasion to reach the second.[1]

II

At the outset, we reject Frederick's argument that this is not a school speech case--as has every other authority to address the question. See App. 22-23 (Principal Morse); App. to Pet. for Cert. 63a (superintendent); *id.,* at 69a (school board); *id.,* at 34a-35a (District Court); 439 F. 3d, at 1117 (Ninth Circuit). The event occurred during normal school hours. It was sanctioned by Principal Morse "as an approved social event or class trip," App. 22-23, 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." App. to Pet. for Cert. 58a. Teachers and administrators were interspersed among the students and charged with supervising them. The high school band and cheerleaders performed. Frederick, standing among other JDHS students across the street from the school, directed his banner toward the school, making it plainly visible to most students. Under these 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." *Id.,* at 63a. There is some uncertainty at the outer boundaries as to when courts should apply school-speech precedents, see *Porter* v. *Ascension Parish School Bd.*, 393 F. 3d 608, 615, n. 22 (CA5 2004), but not on these facts.

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." 439 F. 3d, at 1117-1118. 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.

As Morse later explained in a declaration, when she saw the sign, she thought that "the reference to a 'bong hit' would be widely understood by high school students and others as referring to smoking marijuana." App. 24. 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. *Id.,* at 25; see *ibid.* ("I told Frederick and the other members of his group to put the banner down because I felt that it violated the [school] policy against displaying ... material that advertises or promotes use of illegal drugs").

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 ..."--a message equivalent, as Morse explained in her declaration, to "smoke marijuana" or "use an illegal drug." 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. See *Guiles* v. *Marineau*, 461 F. 3d 320, 328 (CA2 2006) (discussing the present case and describing the sign as "a clearly pro-drug banner").

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." 439 F. 3d, at 1116. The dissent similarly refers to the sign's message as "curious," *post,* at 1, "ambiguous," *ibid.*, "nonsense," *post,* at 2, "ridiculous," *post,* at 6, "obscure," *post,* at 7, "silly," *post,* at 12, "quixotic," *post,* at 13, and "stupid," *ibid.* Gibberish is surely a possible interpretation of the words on the banner, but it is not the only one, and dismissing the banner as meaningless ignores its undeniable reference to illegal drugs.

The dissent mentions Frederick's "credible and uncontradicted explanation for the message--he just wanted to get on television." *Post,* at 12. 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," *post,* at 16, 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, see *post,* at 14-16, 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*, 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." 393 U. S., at 506. *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. *Id.,* at 504. 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." *Id.,* at 513. The essential facts of *Tinker* are quite stark, implicating concerns at the heart of the First Amendment. 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." *Id.,* at 514. Political speech, of course, is "at the core of what the First Amendment is designed to protect." *Virginia* v. *Black*, 538 U. S. 343, 365 (2003). The only interest the Court discerned underlying the school's actions was the "mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint," or "an urgent wish to avoid the controversy which might result from the expression." *Tinker*, 393 U. S., at 509, 510. That interest was not enough to justify banning "a silent, passive expression of opinion, unaccompanied by any disorder or disturbance." *Id.,* at 508.

This Court's next student speech case was *Fraser*, 478 U. S. 675. 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." *Id.,* at 678. Analyzing the case under *Tinker*, the District Court and Court of Appeals found no disruption, and therefore no basis for disciplining Fraser. 478 U. S., at 679-680. This Court reversed, holding that the "School District acted entirely within its permissible authority in imposing sanctions upon Fraser in response to his offensively lewd and indecent speech." *Id.,* at 685.

The mode of analysis employed in *Fraser* is not entirely clear. The Court was plainly attuned to the content of Fraser's speech, citing the "marked distinction between the political 'message' of the armbands in *Tinker* and the sexual content of [Fraser's] speech." *Id.,* at 680. 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." *Id.,* at 683. Cf. *id.,* at 689 (Brennan, J., concurring in judgment) ("In the present case, school officials sought only to ensure that a high school assembly proceed in an orderly manner. There is no suggestion that school officials attempted to regulate [Fraser's] speech because they disagreed with the views he sought to express").

We need not resolve this debate to decide this case. For present purposes, it is enough to 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." *Id.,* at 682. Had Fraser delivered the same speech in a public forum outside the school context, it would have been protected. See *Cohen* v. *California*, 403 U. S. 15 (1971); *Fraser*, *supra,* at 682-683. In school, however, Fraser's First Amendment rights were circumscribed "in light of the special characteristics of the school environment." *Tinker*, *supra,* at 506. 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, supra,* at 514. See *Kuhlmeier*, 484 U. S., at 271, n. 4 (disagreeing with the proposition that there is "no difference between the First Amendment analysis applied in *Tinker* and that applied in *Fraser*," and noting that the holding in *Fraser* was not based on any showing of substantial disruption).

Our most recent student speech case, *Kuhlmeier*, concerned "expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school." 484 U. S., at 271. Staff members of a high school newspaper sued

their school when it chose not to publish two of their articles. The Court of Appeals analyzed the case under *Tinker*, ruling in favor of the students because it found no evidence of material disruption to classwork or school discipline. 795 F. 2d 1368, 1375 (CA8 1986). This Court reversed, holding 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, supra,* at 273.

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 confirms both principles cited above. *Kuhlmeier* acknowledged that schools may regulate some speech "even though the government could not censor similar speech outside the school." *Id.,* at 266. And, like *Fraser*, it confirms that the rule of *Tinker* is not the only basis for restricting student speech.[2]

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." *Vernonia School Dist. 47J* v. *Acton*, 515 U. S. 646, 655-656 (1995) (quoting *Tinker*, *supra,* at 506). In particular, "the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject." *New Jersey* v. *T. L. O.*, 469 U. S. 325, 340 (1985). See *Vernonia*, *supra,* at 656 ("Fourth Amendment rights, no less than First and Fourteenth Amendment rights, are different in public schools than elsewhere . . ."); *Board of Ed. of Independent School Dist. No. 92 of Pottawatomie Cty.* v. *Earls*, 536 U. S. 822, 829-830 (2002) (" 'special needs' inhere in the public school context"; "[w]hile schoolchildren do not shed their constitutional rights when they enter the schoolhouse, Fourth Amendment rights . . . are different in public schools than elsewhere; the 'reasonableness' inquiry cannot disregard the schools' custodial and tutelary responsibility for children" (quoting *Vernonia*, 515 U. S., at 656; citation and some internal quotation marks omitted).

Even more to the point, these cases also recognize that deterring drug use by schoolchildren is an "important--indeed, perhaps compelling" interest. *Id.,* at 661. Drug abuse can cause severe and permanent damage to the health and well-being of young people:

"School years are the time when the physical, psychological, and addictive effects of drugs are most severe. Maturing nervous systems are more critically impaired by intoxicants than mature ones are; childhood losses in learning are lifelong and profound; children grow chemically dependent more quickly than adults, and their record of recovery is depressingly poor. And of course the effects of a drug-infested school are visited not just upon the users, but upon the entire student body and faculty, as the educational process is disrupted." *Id.,* at 661-662 (citations and internal quotation marks omitted).

Just five years ago, we wrote: "The drug abuse problem among our Nation's youth has hardly abated since *Vernonia* was decided in 1995. In fact, evidence suggests that it has only grown worse." *Earls*, *supra,* at 834, and n. 5.

The problem remains serious today. See generally 1 National Institute on Drug Abuse, National Institutes of Health, Monitoring the Future: National Survey Results on Drug Use, 1975-2005, Secondary School Students (2006). About half of American 12th graders have used an illicit drug, as have more than a third of 10th graders and about one-fifth of 8th graders. *Id.,* at 99. Nearly one in four 12th graders has used an illicit drug in the past month. *Id.,* at 101. Some 25% of high schoolers say that they have been offered, sold, or given an illegal drug on school property within the past year. Dept. of Health and Human Services, Centers for Disease Control and Prevention, Youth Risk Behavior Surveillance--United States, 2005, 55 Morbidity and Mortality Weekly Report, Surveillance Summaries, No. SS-5, p. 19 (June 9, 2006).

Congress has declared that part of a school's job is educating students about the dangers of illegal drug use. It has provided billions of dollars to support state and local drug-prevention programs, Brief for United States as *Amicus Curiae* 1, and required that schools receiving federal funds under the Safe and Drug-Free Schools and Communities Act of 1994 certify that their drug prevention programs "convey a clear and consistent message that ... the illegal use of drugs [is] wrong and harmful." 20 U. S. C. §7114(d)(6) (2000 ed., Supp. IV).

Thousands of school boards throughout the country--including JDHS--have adopted policies aimed at effectuating this message. See Pet. for Cert. 17-21. 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. *Earls*, *supra,* at 840 (*Breyer, J.*, concurring). 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," *Tinker*, 393 U. S., at 506, 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." *Id.,* at 508, 509. 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, App. 92-95; App. to Pet. for Cert. 53a, 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*. See Reply Brief for Petitioners 14-15. 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.

Although accusing this decision of doing "serious violence to the First Amendment" by authorizing "viewpoint discrimination," *post,* at 2, 5 (opinion of *Stevens*, J.), the dissent concludes that "it might well be appropriate to tolerate some targeted viewpoint discrimination in this unique setting," *post,* at 6-7. Nor do we understand the dissent to take the position that schools are required to tolerate student advocacy of illegal drug use at school events, even if that advocacy falls short of inviting "imminent" lawless action. See *post,* at 7 ("[I]t is possible that our rigid imminence requirement ought to be relaxed at schools"). And even the dissent recognizes that the issues here are close enough that the principal should not be held liable in damages, but should instead enjoy qualified immunity for her actions. See *post,* at 1. Stripped of rhetorical flourishes, then, the debate between the dissent and this opinion is less about constitutional first principles than about whether Frederick's banner constitutes promotion of illegal drug use. We have explained our view that it does. The dissent's contrary view on that relatively narrow question hardly justifies sounding the First Amendment bugle.

* * *

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.

Additional Relevant Court Cases

Anderson v. Creighton, 483 U.S. 635 (1987)

Anheuser-Busch, Inc. v. Schmoke, 101 F.3d 325 (4th Cir. 1996)

Bannon v. Sch. Dist. of Palm Beach County, 387 F.3d 1208 (11th Cir. 2004)

Barber v. Dearborn Pub. Sch., 286 F. Supp. 2d 847 (E.D. Mich. 2003)

Bd. of Educ. v. Earls, 536 U.S. 822 (2002)

Bd. of Educ. v. Pico, 457 U.S. 853 (1982)

Bethel Sch. Dist. No. 403 v. Fraser, 478 U.S. 675 (1986)

Boroff v. Van Wert City Bd. of Educ., 220 F.3d 465 (6th Cir. 2000)

Davis Next Friend LaShonda D. v. Monroe County Bd. of Educ., 526 U.S. 629 (1999)

Gano v. Sch. Dist. No. 411, 674 F. Supp. 796 (D. Idaho 1987)

Guiles v. Marineau, 349 F. Supp. 2d 871 (D. Vt. 2004)

Harlow v. Fitzgerald, 457 U.S. 800 (1982)

Harper v. Poway Unified Sch. Dist., 445 F.3d 1166 (9th Cir. 2006)

Hazelwood Sch. Dist. v. Kuhlmeier, 484 U.S. 260 (1988)

Lavine v. Blaine Sch. Dist., 257 F.3d 981 (2001)

Lorillard Tobacco Co. v. Reilly, 533 U.S. 525 (2001)

McCann v. Fort Zumwalt Sch. Dist., 50 F. Supp. 2d 918 (E.D. Mo. 1999)

McIntire v. Bethel Sch., 804 F. Supp. 1415 (W.D. Okla. 1992)

New Jersey v. T.L.O., 469 U.S. 325 (1985)

Newsome v. Albemarle County Sch. Bd., 354 F.3d 249 (4th Cir. 2003)

Nixon v. N. Local Sch. Dist., 383 F. Supp. 2d 965 (S.D. Ohio 2005)

Noy v. State, 83 P.3d 545 (Alaska Ct. App. 2003)

Planned Parenthood of S. Nev., Inc. v. Clark County Sch. Dist., 941 F.2d 817 (9th Cir. 1991)

Saucier v. Katz, 533 U.S. 194 (2001)

Scott v. Sch. Bd. of Alachua County, 324 F.3d 1246 (11th Cir. 2003)

Sypniewski v. Warren Hills Reg'l Bd. of Educ., 307 F.3d 243 (3d Cir. 2002)

Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969)

Vernonia Sch. Dist. 47J v. Acton, 515 U.S. 646 (1995) 22

Williams v. Spencer, 622 F.2d 1200 (4th Cir. 1980)

Wilson v. Layne, 526 U.S. 603 (1999)