

Where Are the Justices? Mapping the Opinions in *Morse v Frederick* (2007)

JUSTICE	ROBERTS	SCALIA	THOMAS	ALITO	KENNEDY	BREYER	STEVENS	GINSBERG	SOUTER
Opinion	For the Court	Joined with Roberts				Separate Concurrence and Dissent	Dissenting	Joined with Stevens	
Argument	Frederick cannot claim he was not at school  "BONG HiTS 4 JESUS" banner could reasonably be interpreted as advocating or promoting illegal drug use		Separate Concurrence "In light of the history of American public education, it cannot seriously be suggested that the First Amendment 'freedom of speech' encompasses a student's right to speak in public schools."	Separate Concurrence Alito Concurrence Joins the opinion of the Court on the understanding that it (a) supports a public school's power to restrict what a reasonable observer would consider pro-drug speech but (b) "provides no support for any restriction of speech that can plausibly be interpreted as commenting on any political or social issue," including current or potential drug policies.		"This Court need not and should not decide this difficult First Amendment issue on the merits....[I]t should simply hold that qualified immunity bars the student's claim for monetary damages [against the principal] and say no more."	"[T]he 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."  "[T]he First Amendment protects student speech if the message itself neither violates a permissible rule nor expressly advocates conduct that is illegal and harmful to students. This nonsense banner does neither."		
<i>Tinker</i> Test and Political Speech	<i>Tinker</i> is not abrogated. Students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." Nevertheless, even <i>Tinker</i> permits regulation of student speech in the event of a "substantial disruption" exception.  But <i>Tinker</i> is not correct test. Frederick's rights "are not automatically coextensive with the rights of adults in other settings."		<i>Tinker</i> "is without basis in the Constitution."  "I think the better approach is to dispense with <i>Tinker</i> altogether, and given the opportunity, I would do so."	Public school authorities regulate student speech "as agents of the State.... It is a dangerous fiction to pretend that parents simply delegate their authority... to public school authorities.... It is therefore wrong to treat public school officials, for purposes relevant to the First Amendment, as if they were private, nongovernmental actors standing <i>in loco parentis</i> ."  Any argument about free speech rules in public schools must rest "on some special characteristic of the school setting."			This decision "trivializes" the principles upon which <i>Tinker</i> rests.  "[J]ust as we insisted in <i>Tinker</i> 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."		
<i>Fraser</i> Test and Pro-Drug Speech	<i>Fraser</i> is the correct test  In a Fourth Amendment context, the nature of rights is what is "appropriate for children in school," ( <i>Vernonia School Dist. v. Acton</i> ) Deterring drug use by schoolchildren is an "important—indeed, perhaps compelling" interest ( <i>Vernonia</i> )			"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."			"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."  Even under <i>Fraser</i> , "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."		