

Judicial Opinion Writing Activity—Answer Key

Morse v. Frederick (2007)

What you need to know before you begin: In a given term between October and April, the U.S. Supreme Court usually hears oral arguments in 70 to 80 cases. For one hour, the attorneys for the **petitioner** (who lost in the lower court and is now appealing the decision) and **respondent** (who won in the lower court) present arguments and answer the justices' questions. Later that week, the justices hold a private conference and discuss the case. The justices vote on the outcome of the case starting with the chief justice and then the associate justices in order of seniority with the most junior justice going last. The party in the majority with at least five votes wins. The chief justice or the most senior justice in the majority will assign a justice the job of writing a legal explanation, called an **opinion**. The justice will write a draft of the Court's **majority opinion** and circulate it to the other justices in the majority who will sign on to the opinion if they agree. The same procedure will happen to the justices in the minority who will write a **dissenting opinion**. Justices who agree with the outcome of the majority but for different legal reasons may write **concurring opinions** to explain their differences. There can also be more than one dissenting opinion.

How it's done: You have been given the facts, issue, constitutional amendment, Supreme Court precedent, and arguments of the case. Consider and apply the constitutional amendment and precedents, including *Tinker v. Des Moines*, to the case *Morse v. Frederick*. Carefully consider all of the arguments. Decide if you will find for the **petitioner** (Morse, the principal), and **reverse** the decision of the lower court or for the **respondent** (Frederick, the student), and uphold or **affirm** the lower court's decision. Assume the majority of justices agree with you and write the Court's **majority opinion** explaining the reasons for the decision.

Case name: *Morse v. Frederick* **Date decided:** _____ (today's date).

Justice _____ (your name) delivered the opinion of the Court.

The question presented is: Does the First Amendment allow public schools to prohibit students from displaying pro-drug messages during a school-supervised event?

1. Brief summary of case and lower court decision(s):
After losing his appeal to the school board, he filed suit in federal court against Morse and the school district, arguing that his First Amendment rights had been violated. Frederick lost in the trial court. The U.S. Court of Appeals for the Ninth Circuit reversed the trial court, finding that the school had violated the student's First Amendment rights.
2. Write a paragraph explaining how the constitutional amendment applies:
Student answers will vary but should include that the First Amendment's freedom of speech is at question in this case. The issue is: Does the First Amendment allow public schools to prohibit students from displaying pro-drug messages during a school-supervised event?

3. Write a paragraph explaining how each of the precedents apply:
Student answers will vary but should include:

In *Tinker v. Des Moines Independent Community School District* (1969), the Court set the precedent that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” This might support that Frederick’s First Amendment rights were violated since there was no disruption or immediate affect on the learning environment. However, if school administrators can prove that pro-drug messages disrupt the educational mission of the school, they will likely win.

In *Bethel School District No. 403 v. Fraser* (1986), the Court set the precedent that students do not have the same First Amendment rights as adults. This might support the school’s position that it can restrict pro-drug speech.

In *Hazelwood School District v. Kuhlmeier* (1988), the Court ruled that in school-sponsored activities, school officials can limit speech so long as their actions are “reasonably related to legitimate pedagogical concerns.” If the Court finds that Frederick was present at a school-sponsored activity (in question because he did not report to school before he joined his class on the parade route), the school would only have to show that the sign with the pro-drug message presented a “legitimate pedagogical concern.”

4. Write a paragraph explaining which arguments are most persuasive and why:
Student answers will vary but should be chosen from the petitioner’s and respondent’s arguments provided.

5. Therefore, we find for the petitioner / respondent (circle one), _____
(name of party) and therefore reverse / affirm (circle one) the decision of the lower court.
Student answers will vary.

In a 5–4 decision, the Supreme Court found for Morse (school principal).

After students complete the Judicial Opinion Writing Activity, consider sharing the complete case summary of *Morse v. Frederick* (2007).

Morse v. Frederick (2007)

Argued: March 19, 2007

Decided: June 25, 2007

Facts

Although the First Amendment states that the government cannot make any law “abridging the freedom of speech,” there are still many limits to where people can speak and what they can say. For example, students in public schools have free-speech rights, but those rights are not the same as what adults have in the community. This case, *Morse v. Frederick*, is about limits on student speech in public schools and whether a school can punish a student for what he said about drugs during an off-campus event.

On January 24, 2002, the Olympic Torch Relay passed through Juneau, Alaska. School officials at Juneau-Douglas High School released students from school to watch the Olympic torch pass by. Some of the students, including the school’s marching band, were supervised by school faculty and staff. Approximately 1,000 students stood near the school, on both sides of the street, to watch the relay.

Joseph Frederick, an 18-year-old senior, was one of those students. Although he never made it to school that day because he got stuck in the snow, he joined his classmates on a public sidewalk across the street from school. Frederick was interested in more than just watching the relay. He and some friends waited for the television cameras to pass by and then unfurled a large banner reading “Bong Hits 4 Jesus.” The school principal, Deborah Morse, saw the banner from across the street. Believing that it advocated drug use, she approached Frederick and demanded that he stop displaying it. He refused, so she grabbed and crumpled up the banner.

Frederick was suspended for 10 days. After losing his appeal to the school board, he filed suit in federal court against Morse and the school district, arguing that his First Amendment rights had been violated. Frederick lost his case in the trial court. The U.S. Court of Appeals for the Ninth Circuit reversed the trial court, finding that the school had violated the student’s First Amendment rights. Principal Morse and the school district appealed to the Supreme Court.

Issue

Does the First Amendment allow public schools to prohibit students from displaying pro-drug messages during a school-supervised event?

Constitutional Amendment and Supreme Court Precedents**– First Amendment to the U.S. Constitution**

“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.”

– *Tinker v. Des Moines Independent Community School District* (1969)

Students John and Mary Beth Tinker and Christopher Eckhardt opposed the war in Vietnam. To show their opposition, they planned to wear black armbands to school. Having found out about the students’ plan, the Des Moines principals adopted a new policy prohibiting armbands. The students wore armbands to school despite the policy. They refused to remove the armbands and were suspended from school.

The Supreme Court ruled in favor of the students. It made clear that students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” To restrict speech, a school must demonstrate that the speech would “materially and substantially interfere” with the work of the school or interfere with the rights of other students. The Court explained that school officials in Des Moines could not “reasonably forecast” that the students’ speech would cause a substantial disruption or invade the rights of others.

– *Bethel School District No. 403 v. Fraser* (1986)

During a school assembly at Bethel High School in Washington, Matthew Fraser gave a speech to nominate a classmate for student government. The short speech was filled with sexual references and innuendoes: for example, he said that his friend is “firm in his pants . . . his character is firm” and “will go to the very end—even the climax, for each and every one of you.” The students greeted the speech with hoots, cheers, and lewd motions. The friend who Fraser nominated won by a wide margin; Fraser was suspended for three days.

Ruling in favor of the school district, the Supreme Court emphasized that students do not have the same First Amendment rights as adults. It explained that school officials may prohibit the use of lewd, indecent, or plainly offensive language, even if it is not obscene. Schools have an interest in preventing speech that is inconsistent with the school’s “basic educational mission” and in “teaching students the boundaries of socially inappropriate behavior.” In addition, the First Amendment should not prevent school officials from maintaining order during a school-sponsored educational program.

– *Hazelwood School District v. Kuhlmeier* (1988)

Spectrum at Missouri’s Hazelwood East High School was a newspaper written and edited by students in journalism class. In May 1983, the students created the school year’s final edition of the newspaper, which their faculty advisor submitted to the principal for approval. The

principal objected to two of the paper's articles: 1) an article about teen pregnancy that discussed sex and birth control and also hinted at the identities of pregnant students and 2) an article about divorce that included a student's complaints about her father without giving him a chance to defend himself. Because there was an imminent printing deadline, the principal decided to pull the pages the articles were on.

The Supreme Court ruled in favor of the school district. It said a school principal could censor a student newspaper that is produced as part of journalism class. A school has a right to censor speech in activities—like student newspapers or theatrical productions—that others may believe the school is endorsing. In these school-sponsored activities, school officials can limit speech so long as their actions are “reasonably related to legitimate pedagogical concerns.”

Arguments for Morse (petitioner)

- This case involves student speech because Frederick was at a school-sponsored event. The students were released to watch the relay around school, and the students were under the supervision of school faculty and staff. It was during the school day, and students attending class trips are subject to school rules.
- This case is like *Bethel v. Fraser*. Principal Morse and the school disciplined Frederick for displaying a message that advocated illegal drug use. Discouraging the use of illegal substances is part of the school's “basic educational mission.”
- Like in *Hazelwood v. Kuhlmeier*, the school can limit Frederick's message during a school-sponsored event because it looks like the school is endorsing the message.
- Frederick disrupted a school activity by displaying the banner and could have interfered with the work of the school by increasing drug use and promoting other pro-drug messages.

Arguments for Frederick (respondent)

- This case does not involve student speech in a public school, so Frederick should have the same rights adults have. Frederick did not attend or step foot onto school property that day. Only some of the students were supervised by faculty and staff.
- Even if considered student speech, Frederick's banner was like the armbands in *Tinker v. Des Moines*. It was displayed peacefully and did not “substantially interfere” with schoolwork. The only disruption was the principal's action of crumpling up the banner.
- Unlike in *Bethel v. Fraser*, the message was not plainly offensive, lewd, or vulgar. Instead it was political speech about drug use, which did not involve sexual innuendos or cause a reaction from other students.
- This case is not like *Hazelwood v. Kuhlmeier* because the pro-drug banner was not part of the curriculum or an official school activity. The speech took place off campus at a non-school

activity. No reasonable person would think the pro-drug message was endorsed by the school.