



Judicial Decision-making and the First Amendment

This activity will introduce students to the First Amendment through the case study method. Students will define speech and explore case precedent in the area of free speech. A mock Supreme Court conference activity will allow students to explore the judicial decision-making process. Volunteers should discuss this lesson in advance with the teacher as the content is controversial.

Objectives:

As a result of this lesson, students will

1. Define speech;
2. Explore the boundaries of free speech;
3. Analyze the First Amendment;
4. Apply the First Amendment and case precedent to specific case studies;
5. Experience the judicial decision-making process.

Materials:

Copy of First Amendment

Case Study Handout

Power Point

Question before the Court

Note: Facilitator should review the *Morse v. Frederick* decision on the oyez.org web-site prior to presenting this activity. Additionally, cases used as precedent should be reviewed prior to presenting to the class.

Time Required:

This lesson can be completed in one to two class periods.

Sunshine State Standards:

Grades 6-8: SS.C.1.3 (6), SS.C.2.3 (3), (4), (7)

Grades 9-12: SS.C.2.4 (3), (5), (6)



Activities:

1. Using the power point, initiate an interactive discussion on the five rights in the First Amendment, the definition of speech, limits on speech, and an overview of precedent.
2. Review briefly the facts and decisions in the Tinker, Bethel, and Hazelwood cases. As you review each case, check for understanding to determine if students agree with the Court's decisions.
3. Distribute copies of the Facts Statement for the Morse V. Frederick case.
4. Trace the case through the lower courts.
5. Present the Question Before the Court and have each student individually write down their decision in the case if they were Supreme Court justices. Students should not talk with anyone else in the class. They should think independently and write down their decision citing one or more of the cases presented as case precedent.
6. Following the power point, place students in groups of five and have each group select a Chief Justice. Let students know each group needs to come to a unanimous decision in the case (if possible). Allow fifteen minutes for groups to reach a decision.
7. Bring each Chief Justice to the front of the room to give the decision of each Court. Allow each group to present their majority and dissenting opinions.
8. Review the finding of the US Supreme Court and explain. Using the oyez.org web-site, allow students to listen to arguments from each side of the case.



FACTS

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 public 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 14 foot 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). 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.” 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.”

Frederick filed a federal civil rights action alleging that the school board and Morse had violated his First Amendment rights. The federal district court ruled in favor of the school board and Morse, concluding that neither had infringed Frederick’s First Amendment rights because Morse reasonably interpreted the banner to promote illegal drug use—a message that directly contravened the school Board’s policy with regard to drug abuse prevention.

Frederick appealed, and the federal appellate court reversed, concluding that Frederick’s First Amendment rights were violated because the school punished Frederick without demonstrating that his “speech” (in the form of the banner) gave rise to a substantial risk of disruption.

Morse and the school board petitioned the United States Supreme Court to review the decision of the federal appellate court. The Supreme Court accepted the case to decide whether Frederick had a First Amendment right to display his banner.



Question before the Court

Does the First Amendment allow public schools to prohibit students from displaying messages, which the school could reasonably interpret as promoting the use of illegal drugs, at school-supervised events?



FIRST AMENDMENT – UNITED STATES CONSTITUTION

Amendment I.

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.