

The First Amendment in the Schools

By Ellis H. Katz

The United States Supreme Court recently issued a decision in the case of Morse v. Frederick which addressed the First Amendment rights of students. The facts in this case are that on January 24, 2002, the Olympic Torch Relay passed through Juneau, Alaska on its way to the winter games. The torch bearers proceeded along a street in front of the Juneau-Douglas High School while school was in session. The Principal had permitted staff and students to leave school to observe the relay as an “approved social event or class trip”. Joseph Frederick, a senior attended the event. As the torch bearers and camera crews passed by, Frederick and his friends unfurled a 14 foot banner bearing the phrase “BONG HiTS 4 JESUS”. As a result, Frederick was suspended for eight days because his message appeared to advocate the use of illegal drugs. Frederick sued alleging that his First Amendment rights were violated.

The Supreme Court in a 5-4 decision concluded that Frederick’s rights were not violated. The Court concluded that the district could, consistent with the First Amendment, restrict student speech at a school event when that speech was reasonably viewed as promoting illegal drug use.

The Court noted that the Constitutional rights of students in public school are not coextensive with the rights of adults in other settings. The Court further determined that the district was not limited to controlling speech only if the district found the speech would materially and substantially disrupt the work and discipline of the school. Rather, the Court found that the district had an important, perhaps compelling interest in deterring drug use, and that failing to discipline Frederick would send a “powerful” negative message. The Court concluded that the First Amendment does not require schools to tolerate, at school events, student expression that contributes to the dangers of illegal drug use.

As a practical matter, the Court, in our opinion, has expanded a District’s right to discipline students based on the content of their speech. How far this expansion goes remains to be seen. However, it is clear that, at least with regard to drugs, a district can discipline speech that encourages illegal drug use even in the absence of any evidence of a disruption to the school environment.

Decisions to discipline students for their speech, which affect the First Amendment rights of those students, are difficult to make and must be carefully analyzed prior to the decision being made. Clients who have questions regarding the issues discussed in this article, or any education law matters, should not hesitate to call us at 215-345-9111.