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Justices to Hear Landmark Free-Speech Case

Defiant Message Spurs Most Significant Student 1st Amendment Test in Decades

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The most important student free-speech conflict to reach the Supreme Court since the height of the Vietnam War hinges on a somewhat absurd, vaguely offensive, mostly nonsensical message of protest.

Bong Hits 4 Jesus.

That is the slogan that a defiant high school student named Joseph Frederick fashioned with a 14-foot piece of paper and a \$3 roll of duct tape. His goal was partly to get on TV as the Olympic torch passed through his town of Juneau, Alaska, and mostly to get under the skin of his disciplinarian principal, Deborah Morse, with whom he had a running feud.

It worked, at least the irritating-the-principal part. Morse crossed Glacier Avenue to Frederick's position across from the school and confiscated the banner. She later suspended him for 10 days. Frederick, a high school rebel who at the time was fond of quoting Thoreau and Voltaire, said Morse tacked on the last five days when he paraphrased Thomas Jefferson's admonition that "speech limited is speech lost."

In the five years since, a classic conflict between a second-semester senior impatient to move on in the world and his frazzled principal trying to maintain order has become an only-in-America battle spawning numerous lawsuits, conflicting court rulings and changes that shook the lives of its participants.

Now, a wide range of interested parties has assembled for what they see as an epic Supreme Court battle, which will be heard on Monday.

The American Civil Liberties Union has been on Frederick's side from the jump, joined by a diverse liberal and conservative coalition of civil rights, constitutional law and religious organizations. Kenneth W. Starr, the independent counsel during the investigation of President Bill Clinton, has volunteered his time to the Juneau School District, and school boards nationwide, plus the Bush administration, are supporting Morse and the school district.

Morse v. Frederick asks the justices to weigh the court's famous 1969 ruling that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate" against more recent decisions acknowledging a school system's ability to create rules that maintain order and protect students from messages deemed harmful.

In this case, the school board maintains that Frederick's slogan encouraged smoking marijuana. But other

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school districts, especially in light of school shootings and other violence, have restricted clothing and speech that they thought could cause disruption or violence.

Both sides equate an adverse ruling with cataclysmic results.

The "extraordinarily broad claim" asserted by the government, said ACLU national legal director Steven R. Shapiro, "would in effect overrule the entire architecture of student speech law that the Supreme Court has so carefully constructed over the past 40 years."

Morse's brief, written by Starr and a team of pro bono lawyers at the firm of Kirkland and Ellis, said ratification of Frederick's victory in the appellate court would make all the more daunting "the vital task of teachers, administrators and volunteer school board members in attending holistically to the needs of millions of students entrusted every school day to their charge."

Frederick was one of them, five years ago, though he was not a particularly happy student at Juneau-Douglas High School. One day, he refused a vice principal's order to leave a student commons area where he was reading Albert Camus, and the police were called. The next day, he remained in his seat while others stood for the Pledge of Allegiance and was sent to the principal's office. He described it all in a mini-treatise -- "This is a story of a high school senior who refused to bow down in submission before an authority" -- he posted on the Internet.

He planned his ultimate protest for Jan. 24, 2002, the day the Olympic torch was scheduled to pass through Juneau, part of a 50-state relay leading up to the Salt Lake City Olympic Games. Frederick said he had seen the phrase "Bong Hits For Jesus" on a sticker on a snowboard.

"To me, it's absurdly funny," Frederick, now 23, said in a recent conference call with reporters organized by the ACLU. "The phrase was not important. I wasn't trying to say anything about religion. I wasn't trying to say anything about drugs. I was just trying to say *something*. I wanted to use my right to free speech, and I did it."

While that right was clearly established by the court four decades ago, subsequent decisions have allowed some restrictions, including those on speech considered indecent enough to disrupt a school's mission, and some content in school newspapers.

Frederick's case presents unusual facts for the justices to consider. For one thing, he was 18 at the time of the event, and he was careful not to display his protest message on school grounds. At least one non-student was among the group holding the banner, and his attorneys contend that even if his message was considered pro-marijuana, debates about legalizing the drug are a legitimate topic of political discussion in Alaska, where the state high court has ruled that adults have the legal right to possess small amounts of the drug.

Even school officials acknowledged that Frederick's actions were not disruptive. Students throwing snowballs and plastic soda bottles at one another got more attention.

But the school board says Frederick's protest happened during a school-sponsored event -- the entire student body was released for the parade, and the cheerleaders and pep band entertained. "It was a field trip," Starr says, even if it occurred just outside the school's doors. And in his brief, he argued, "student free speech rights . . . appropriately yield when it comes to promoting illegal substances."

A federal district judge relied on the court's more recent decisions to dismiss Frederick's lawsuit against Morse and the school board that backed her decision. But the U.S. Court of Appeals for the 9th Circuit said that the 1969 decision in *Tinker v. Des Moines Independent Community School District* from which the "schoolhouse gate" language is drawn was the most important and that government officials cannot punish speech with which they disagree. That court held Morse personally liable for violating Frederick's rights, a finding that has caused consternation among educators nationwide.

Morse is now an administrator with the Juneau School District, and Superintendent Peggy Cowan said the district's pursuit of the case was necessary. "The district backed her decision, and we were sued," she said of Morse. It sounds like a cliché, she said, "but it's the principle of the case that's important."

Frederick, too, has learned much about the legal system. He sued the Juneau Police Department for a series of alleged harassment that occurred after the banner incident and received a settlement from the city. Coincidentally, his father, Frank Frederick, worked for the company that insured the school district and sued after he claimed that he was demoted and then fired for not pressuring his son to drop his lawsuit. A jury believed him, and he received a settlement of nearly \$200,000.

Joseph Frederick was arrested while attending college in Texas for distributing marijuana. "I never professed to be perfect or a saint," he said in the conference call with reporters.

Father and son are now in China, where Joseph Frederick teaches English to Chinese students and studies Mandarin. He has not brought up his case with his students as a way to discuss freedom of speech or the American justice system. "I'm an English teacher -- I don't teach constitutional law," he said.

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