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U.S. SUPREME COURT HOLDS THAT SCHOOL DISTRICT DID NOT VIOLATE THE FIRST AMENDMENT WHEN STUDENT WAS SUSPENDED FOR DISPLAYING A DRUG-RELATED BANNER AT SCHOOL-SANCTIONED EVENT

On June 25, 2007, the U.S. Supreme Court ruled in *Morse v. Frederick*, that a school district did not violate a student's First Amendment rights when the principal confiscated a drug-related banner that was brought to a school-sanctioned event and suspended the student. 2007 WL 1804317 (U.S. June 25, 2007).

Facts

At a school-supervised event, a group of high school students put a banner up stating "BONG HITS 4 JESUS." The principal ordered the students to take down the banner. When the student who brought the banner refused, the principal removed the banner and suspended the student.

The student sued the school district for violating his First Amendment rights. The Ninth Circuit held the school violated the First Amendment. The school appealed. The U.S. Supreme Court reversed the decision.

Court's Analysis

The Court first found that the high school student put up the banner at school, since the event occurred during normal school hours and it was a school-sanctioned event. In finding that the activity occurred in a school-related event, the court noted that teachers and school administrators were supervising students at the event and the high school band and cheerleaders performed. As a school-sponsored event, it was subject to the school district's rule that "approved social events and class trips are subject to district rules for student conduct."

The Court next determined that the banner promoted illegal drug use. The phrase could be viewed as saying “smoke marijuana” or “use an illegal drug.” School districts can clearly prohibit this type of message. Also, it could be read as celebrating illegal drug use; for example, “bong hits are a good thing.”

The Court found that a school district can restrict student speech that can reasonably be viewed as promoting illegal drug use. Quoting prior cases, the court stated “the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings” and First Amendment rights must be viewed “in light of the special characteristics of the school environment.” The Court reasoned that there is a “compelling” interest in deterring drug use among schoolchildren because of the serious health effects.

However, the Court cautioned that if the student speech were promoting legalization of marijuana rather than promoting drug use, it could be protected speech.

Recommended Action

- Review and revise school rules to clearly prohibit speech that promotes illegal drug use or alcohol and other illegal activities.
- Provide training to school administrators on the new policies, student discipline and constitutional parameters.
- Clearly define what constitutes school events and activities and a school district’s jurisdiction over those activities.
- Develop policies regarding how to handle other speech, such as hate speech, racial slurs, homophobic speech, etc.
- Consult with legal counsel in revising policies to assure that they comply with legal requirements.

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