

**Using the following excerpts from Court cases, explain how you think the Supreme Court would rule on the following facts:**

Jane attended her public school high school prom in a dress designed as the Confederate flag. Everyone at the event immediately stopped and stared, made comments to each other, but there was no other disturbance. The principal of the school approached Jane and told her she had to change her outfit immediately or she would be suspended. Jane refused to change her clothes, and on Monday, she was suspended from school. She filed suit claiming her 1<sup>st</sup> Amendment right was violated, and the case has now reached the Supreme Court.

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Court Opinion: Tinker v. Des Moines (1969)

*In December, 1965, Mary Beth Tinker and a group of students decided to wear black armbands to school in order to protest the Vietnam War. When the administration found out, they placed a preemptive ban on the protest. Tinker arrived to school with the armband on and, after refusing to remove it, was sent home. Justice Abe Fortas delivered the opinion of the Court.*

“First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.

... In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained.

It is also relevant that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance . . . Instead, a particular symbol - black armbands worn to exhibit opposition to this Nation's involvement in Vietnam - was singled out for prohibition. Clearly, the prohibition of expression of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible. In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are ‘persons’ under our Constitution. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views. . .”

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Court Opinion: Bethel School District v. Fraser (1986)

*At a school assembly of approximately 600 high school students, Matthew Fraser made a speech nominating a fellow student for elective office. In his speech, Fraser used what some observers believed was a graphic sexual metaphor to promote the candidacy of his friend. As part of its disciplinary code, Bethel High School enforced a rule prohibiting conduct which "substantially interferes with the educational process . . . including the use of obscene, profane language or gestures." Fraser was suspended from school for two days, and sued. Chief Justice Burger wrote the majority opinion.*

"Surely it is a highly appropriate function of public school education to prohibit the use of vulgar and offensive terms in public discourse. Indeed, the "fundamental values necessary to the maintenance of a democratic political system" disfavor the use of terms of debate highly offensive or highly threatening to others. Nothing in the Constitution prohibits the states from insisting that certain modes of expression are inappropriate and subject to sanctions. The inculcation of these values is truly the "work of the schools." The determination of what manner of speech in the classroom or in school assembly is inappropriate properly rests with the school board. The process of educating our youth for citizenship in public schools is not confined to books, the curriculum, and the civics class; schools must teach by example the shared values of a civilized social order. Consciously or otherwise, teachers -- and indeed the older students -- demonstrate the appropriate form of civil discourse and political expression by their conduct and deportment in and out of class. Inescapably, like parents, they are role models. The schools, as instruments of the state, may determine that the essential lessons of civil, mature conduct cannot be conveyed in a school that tolerates lewd, indecent, or offensive speech and conduct such as that indulged in by this confused boy.

The pervasive sexual innuendo in Fraser's speech was plainly offensive to both teachers and students -- indeed to any mature person. By glorifying male sexuality, and in its verbal content, the speech was acutely insulting to teenage girl students. The speech could well be seriously damaging to its less mature audience, many of whom were only 14 years old and on the threshold of awareness of human sexuality. Some students were reported as bewildered by the speech and the reaction of mimicry it provoked. We have also recognized an interest in protecting minors from exposure to vulgar and offensive spoken language...."

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Court Opinion: Hazelwood v. Kuhlmeier (1988)

*Students enrolled in the Journalism II class at Hazelwood East High School were responsible for writing and editing the school's paper The Spectrum. Two of the articles submitted for publication in the final edition of the paper contained stories on divorce and teenage pregnancy. The school principal felt that these topics were inappropriate, but because there was no time to edit the paper if it were to go to press before the end of the school year, entire pages were eliminated. The students sued the district for violating their First Amendment right to freedom of speech. Justice White delivered the opinion of the court.*

“We have nonetheless recognized that the First Amendment rights of students in the public schools ‘are not automatically coextensive with the rights of adults in other settings’ . . . and must be ‘applied in light of the special characteristics of the school environment’ . . . A school need not tolerate student speech that is inconsistent with its ‘basic educational mission.’ . . . even though the government could not censor similar speech outside the school.

... The question whether the First Amendment requires a school to tolerate particular student speech—the question that we addressed in *Tinker*—is different from the question whether the First Amendment requires a school affirmatively to promote particular student speech. The former question addresses educators' ability to silence a student's personal expression that happens to occur on the school premises. The latter question concerns educators' authority over school-sponsored publications, theatrical productions, and other expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school. These activities may fairly be characterized as part of the school curriculum, whether or not they occur in a traditional classroom setting, so long as they are supervised by faculty members and designed to impart particular knowledge or skills to student participants and audiences.

Educators are entitled to exercise greater control over this second form of student expression to assure that participants learn whatever lessons the activity is designed to teach, that readers or listeners are not exposed to material that may be inappropriate for their level of maturity, and that the views of the individual speaker are not erroneously attributed to the school.”

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Court Opinion: *Morse v. Frederick* (2007)

*On January 24, 2002, Joseph Frederick came to an Olympic Torch Relay, a school-sponsored activity, with a sign that read “Bong Hits 4 Jesus.” The school principal, Deborah Morse, asked Frederick to remove the banner and, when he would not, confiscated the banner. Frederick was then suspended for 10 days for advocating illegal drug use. Chief Justice John Roberts delivered the opinion of the Court.*

“Our cases make clear that students do not ‘shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.’ *Tinker v. Des Moines Independent Community School Dist.* At the same time, we have held that ‘the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings,’ ... Consistent with these principles, we hold that schools may take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use. We conclude that the school officials in this case did not violate the First Amendment by confiscating the pro-drug banner and suspending the student responsible for it.

... Elsewhere in its opinion, the dissent emphasizes the importance of political speech and the need to foster ‘national debate about a serious issue,’ as if to suggest that the banner is political speech. But not even Frederick argues that the banner conveys any sort of political or religious message. Contrary to the dissent’s suggestion, this is plainly not a case about political debate over the criminalization of drug use or possession.

The question thus becomes whether a principal may, consistent with the First Amendment, restrict student speech at a school event, when that speech is reasonably viewed as promoting illegal drug use. We hold that she may.”

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