You Can’t Say That?! Limits on First Amendment Freedoms

Unit Overview

We believe that your visit to the Newseum, along with this unit of study on the exceptions to the First Amendment, will immerse you and your students in the exciting, tumultuous world of constitutional law in a way no textbooks can.

Our guiding question in this unit is: When are the freedoms of the First Amendment not absolute? That question engenders a number of additional questions that will be good to keep in mind to get maximum utilization of your Newseum visit:

- How often do we think about the influence of the First Amendment on our everyday lives? On the lives of those who came before us and on historical events?
- What do exceptions to the First Amendment tell us about the values of our nation?
- How have anonymous sources affected people’s perceptions about the media?
- Why do people attempt to squelch First Amendment rights in times of war and tension?

What exceptions are there to the First Amendment freedoms? Who makes these exceptions and how? Where do exceptions apply?

We appreciate your willingness to share with your students the benefits of viewing, hearing, reading and experiencing the First Amendment through which the Newseum brings history to life.
### National Standards of Learning

**National Center for History in the Schools, National Standards for U.S. History (5-12)**

<table>
<thead>
<tr>
<th>Content:</th>
<th>Standard</th>
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<tbody>
<tr>
<td>The student understands the guarantees of the Bill of Rights and its continuing significance. 5-12 Analyze the significance of the Bill of Rights and its specific guarantees. [Examine the influence of ideas] 9-12 Analyze issues addressed in recent court cases involving the Bill of Rights to assess their continuing significance today. [Identify relevant historical antecedents]</td>
<td>Era 3</td>
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<td>Standard 3B</td>
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<tr>
<td>The student understands the Warren Court’s role in addressing civil liberties and equal rights. 5-12 Evaluate the Supreme Court’s interpretation of freedom of religion. [Formulate a position or course of action on an issue]</td>
<td>Era 9</td>
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<td>Standard 4C</td>
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**Center for Civic Education, National Standards for Civics and Government Grades 9-12:**

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<th>Content:</th>
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<tr>
<td>Scope and limits of rights. Students should be able to evaluate, take, and defend positions on issues regarding the proper scope and limits of rights.</td>
<td>V.B.5.</td>
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**National Council for the Social Studies, Curriculum Standards for Social Studies Middle Grades:**

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<th>Content:</th>
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<tbody>
<tr>
<td>e. investigate, interpret, and analyze multiple historical and contemporary viewpoints within and across cultures related to important events, recurring dilemmas, and persistent issues, while employing empathy, skepticism, and critical judgment</td>
<td>(II)</td>
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<td></td>
<td>Time, Continuity, &amp; Change</td>
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<tr>
<td>a. examine persistent issues involving the rights, roles, and status of the individual in relation to the general welfare</td>
<td>(VI)</td>
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<td></td>
<td>Power, Authority, &amp; Governance</td>
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<tr>
<td>b. identify, analyze, interpret and evaluate sources and examples of citizens’ rights and responsibilities</td>
<td>(X)</td>
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<td>Civic Ideals &amp; Practices</td>
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## District of Columbia

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<tr>
<td><strong>Students explain the fundamental principles and moral values of the American Republic as express in the U.S. Constitution and other essential documents of American democracy...</strong></td>
<td><strong>12.1.6</strong> (12th Grade)</td>
</tr>
<tr>
<td>6. Understand that the Bill of Rights limits the powers of the federal government and state governments.</td>
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<tr>
<td><strong>Students summarize landmark U.S. Supreme Court interpretations of the Constitution and its amendments...</strong></td>
<td><strong>12.4.1</strong> (12th Grade)</td>
</tr>
<tr>
<td>1. Understand the changing interpretations of the Bill of Rights over time, including interpretations of the basic freedoms (religion, speech, press, petition, and assembly) articulated in the First Amendment and the due process and equal-protection-of-the-law clauses of the 14th Amendment.</td>
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<tr>
<td><strong>Students evaluate and take and defend positions on the scope and limits of rights and obligations as democratic citizens, the relationships among them, and how they are secured...</strong></td>
<td><strong>12.8.1</strong> (12th Grade)</td>
</tr>
<tr>
<td>1. Discuss the meaning and importance of each of the rights guaranteed under the Bill of Rights and how each is secured (e.g. freedom of religion, speech, press, assembly, petition, privacy).</td>
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<tr>
<td><strong>Students analyze the political principles underlying the U.S. Constitution, and they compare the enumerated and implied powers of the federal government...</strong></td>
<td><strong>8.3.4 and 9</strong> (8th Grade)</td>
</tr>
<tr>
<td>4. Evaluate the major debates that occurred during the development of the Constitution and their ultimate resolutions in such areas as shared power among institutions, divided state-federal power, slavery, the rights of individuals and states (later addressed by the addition of the Bill of Rights), and the status of American Indian nations.</td>
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<tr>
<td>9. Describe the powers of government set forth in the Constitution and the fundamental liberties ensured by the Bill of Rights.</td>
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## Virginia

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<tbody>
<tr>
<td><strong>The student will demonstrate knowledge of the operation of the federal judiciary by...</strong></td>
<td><strong>GOVT.10 a, e</strong> (12th Grade)</td>
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<tr>
<td>a. Describing the organization, jurisdiction, and proceedings of federal courts.</td>
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<tr>
<td>e. Evaluating how the judiciary influences public policy by delineating the power of government and safeguarding the rights of the individual.</td>
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<td><strong>The student will demonstrate knowledge of civil liberties and civil rights by...</strong></td>
<td><strong>GOVT.11 a, d, e</strong> (12th Grade)</td>
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<tr>
<td>a. Examining the Bill of Rights, with emphasis on First Amendment freedoms.</td>
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<tr>
<td>d. Exploring the balance between individual liberties and the public interest.</td>
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<tr>
<td>e. Explaining every citizen’s right to be treated equally under the law.</td>
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The student will demonstrate knowledge by economic, social, cultural, and political developments in recent decades and today by...

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<tbody>
<tr>
<td>a.</td>
<td>Examining the role the United States Supreme Court has played in defining a constitutional right to privacy, affirming equal rights, and upholding the rule of law.</td>
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The student will demonstrate knowledge of the foundations of American constitutional government by...

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<tr>
<td>b.</td>
<td>Explaining the significance of the Bill of Rights.</td>
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The student will demonstrate knowledge of citizenship and the rights, duties, and responsibilities of citizens by...

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<tr>
<td>b.</td>
<td>Describing the First Amendment freedoms of religion, speech, press, assembly, and petition, and the rights guaranteed by due process and equal protection of the laws.</td>
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The student will demonstrate knowledge of the judicial systems established by the Constitution.

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<td>CE.8 (8th Grade)</td>
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Maryland

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<th>Content:</th>
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<tr>
<td>The student will analyze historic documents to determine the basic principles of United States government and apply them to real-world situations...</td>
<td>Political Science, A, 1, c (US Govt.)</td>
</tr>
<tr>
<td>c. Evaluate the principles of federalism, representative democracy, popular sovereignty, consent of the governed, separation of powers, checks and balances, rule of law, limited government, majority rule, and how they protect individual rights and impact the functioning of government.</td>
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The student will analyze historic documents to determine the basic principles of United States government and apply them to real-world situations...

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<tbody>
<tr>
<td>a.</td>
<td>Describe the purpose of government, such as protecting individual rights, promoting the common good and providing economic security.</td>
</tr>
<tr>
<td>i.</td>
<td>Identify the rights in the Bill of Rights and how they protect individuals and limit the power of government.</td>
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Examine the impact of governmental decisions on individual rights and responsibilities in the United States...

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<tbody>
<tr>
<td>a.</td>
<td>Describe responsibilities associated with certain basic rights of citizens, such as freedom of speech, religion, and press, and explain why these responsibilities are important.</td>
</tr>
<tr>
<td>b.</td>
<td>Explain how rules and laws protect individual rights and protect the common good.</td>
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Washington, D.C., area school groups are sponsored by WTOP 103.5 FM.
Dear Educator,

We are looking forward to welcoming you and your class to the Newseum for the “You Can’t Say That?!” school program. These two quick activities will introduce your students to some of the topics and concepts we will explore together in more depth during the visit. Enclosed you will find the following activities:

- Exercising My Five Freedoms
- First Amendment Freedoms: What’s a Violation?

We hope these activities help you and your students get excited about your upcoming field trip. We’ll see you soon!

Newseum Education staff
Exercising My Five Freedoms

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.

Directions: Think about the five freedoms of the First Amendment. How can you exercise each of the rights protected in the First Amendment? In the boxes below, write two or three sentences explaining how you personally exercise this right, or create a drawing with a one-sentence caption.
First Amendment Freedoms: What’s a Violation?

Does this violate the First Amendment’s freedom of religion? Why or why not?
1. Your parents insist you attend a weekly religious service.
2. Your private school requires you to say a certain prayer each morning, even though you have a different faith.
3. Your public school begins a sporting event with a student-led prayer over the school’s PA system.
4. Your state passes a law that everyone must pay taxes to support a specific church.

Does this violate the First Amendment’s freedom of speech? Why or why not?
1. You work in a retail store after school and on weekends. Your boss says you have to stop talking so much while you’re working.
2. Your public school administrator suspends you for wearing a black armband in protest of a war.
3. Your public school principal says you can’t come to school as long as your hair is dyed purple.
4. You do not wish to say the Pledge of Allegiance each morning, and your principal expels you.

Does this violate the First Amendment’s freedom of the press? Why or why not?
1. You work in a restaurant. Your boss treats you unfairly, and you write about what happened on your Facebook page. Your boss finds out what you wrote and fires you.
2. Your school newspaper is produced by the journalism class. Your public school principal objects to the content of an article and prevents it from being published.
3. Your parents won’t let you have a Facebook or Twitter account.
4. Police arrest a professional reporter for writing an article that criticizes the government.
Does this violate the First Amendment’s freedoms of assembly and petition? Why or why not?
1. You belong to a service club in your neighborhood. You hope you’ll be chosen to lead an upcoming event. When you are not selected, you decide to gather signatures from other members urging the club leaders to change their minds. The club leaders refuse to accept your petition.
2. A neighborhood store sells you an iPod that doesn’t work. The cashier won’t give you a refund. You decide to go back into the store with some of your friends and stand just inside the front door with signs that say “Don’t Shop Here!” The store owner makes you leave.
3. A white supremacist group applies for a city permit to have a march. The city says that they cannot have the permit unless they pay for a large insurance bond. Other groups are given permits for free.
4. Your public school principal punishes you for attending a city-wide demonstration during school hours.
First Amendment Freedoms: What’s a Violation?

Explain your reasoning for each situation.

Does this violate the First Amendment’s freedom of religion? Why or why not?
1. __________________________________________________________________________
2. __________________________________________________________________________
3. __________________________________________________________________________
4. __________________________________________________________________________

Does this violate the First Amendment’s freedom of speech? Why or why not?
1. __________________________________________________________________________
2. __________________________________________________________________________
3. __________________________________________________________________________
4. __________________________________________________________________________

Does this violate the First Amendment’s freedom of the press? Why or why not?
1. __________________________________________________________________________
2. __________________________________________________________________________
3. __________________________________________________________________________
4. __________________________________________________________________________

Does this violate the First Amendment’s freedoms of assembly and petition? Why or why not?
1. __________________________________________________________________________
2. __________________________________________________________________________
3. __________________________________________________________________________
4. __________________________________________________________________________

Washington, D.C., area school groups are sponsored by WTOP 103.5 FM.
First Amendment Freedoms: What’s a Violation?  
Answer Key

Religion
1. No. The First Amendment does not apply to parents.
2. No. A private school can require religious activities.
4. Yes. The First Amendment forbids the government from establishing an official religion.

Speech
1. No. Private employers do not have to abide by the First Amendment.
2. Yes. According to the ruling in Tinker v. Des Moines (1969), officials cannot punish this kind of symbolic speech unless it would substantially disrupt school.
3. No. Schools can set dress codes and make rules about students’ appearance.
4. Yes. The Supreme Court ruled in West Virginia v. Barnette (1943) that the First Amendment protects your right not to be forced to say something.

Press
1. No. Private employers do not have to abide by the First Amendment.
2. Probably not. According to the ruling in Hazelwood v. Kuhlmeier (1988), public high school officials can censor school-sponsored newspapers if they have reasons related to education. Some states have passed laws giving the student press greater protection.
3. No. The First Amendment does not apply to parents.
4. Yes. The First Amendment protects the right of the professional press to write stories critical of government.

Assembly and Petition
1. No. Generally speaking, private clubs do not have to abide by the First Amendment.
2. No. The First Amendment does not give you the right to assemble on private property. However, some states allow freedom of assembly in shopping malls even though the U.S. Constitution does not.
3. Yes. According to the ruling in National Socialist Party of America v. Village of Skokie (1977), the National Socialist (Nazi) Party could not be prohibited from marching peacefully because of the content of their message.
4. No. The First Amendment does not give you the right to leave school without permission in order to assemble.
Resources

You may wish to review the following Supreme Court cases before the class discussion. Consider having students research one or more of these cases for homework.


Tinker v. Des Moines (1969)

West Virginia v. Barnette (1943)


National Socialist Party of America v. Village of Skokie (1977)
Dear Educator,

We hope you enjoyed your recent visit to the Newseum. Attached please find three activities about exceptions to the First Amendment to further the conversation your students began at the Newseum:

- **Taking Exception: Modern First Amendment Rights Issues**
- **Student Expression in School**
- **Morse v. Frederick (2007): You Make the Call**

All of these activities use real-life cases and situations that relate to First Amendment rights in schools. These can be discussed as a class, in groups, written about or assigned as homework. We hope these activities help extend the experience and allow you to apply concepts that were presented in the “You Can't Say That?!” lesson.

Newseum Education staff
Taking Exception: Modern First Amendment Issues

Directions:
Apply what you learned about constitutional exceptions to the First Amendment by studying one of the modern situations below. Be sure to summarize the facts of the situation and then present your opinion about whether the actions of the individual in the scenario were protected by the First Amendment. If you disagree with the court, school or law enforcement’s decision, be sure to explain why you disagree.

1. Religion
   Court Split Over Commandments
   Rabbi Reflects on Role in Military Religious-Freedom Case

2. Speech
   Activist Sheehan Arrested in House Gallery
   Teen Sues Over Confederate Flag Prom Dress and Ky. high school, ex-student settle suit over Confederate-flag dress

3. Press
   White House Approves Pass for Blogger
   Apple Rumor Site to Shut Down in Settlement
Taking Exception: Modern First Amendment Issues

Directions: Apply what you learned about constitutional exceptions to the First Amendment by studying one of the attached news reports. Answer the following questions after you familiarize yourself with the scenario.

Scenario title: ________________________________________________________________

On which First Amendment freedom does your scenario focus? ________________________

Summarize the story and explain the conflict surrounding the First Amendment freedom:

Issue:__________________________________________________________________________

________________________________________

Position 1:______________________________________________________________________

________________________________________

Position 2:______________________________________________________________________

________________________________________

How was the conflict decided? Do you agree or disagree with the court, school or law enforcement’s decision? Explain your opinion.

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

Make a revision to the story; explain why and how it changes the outcome.

__________________________________________________________________________

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Court Split Over Commandments

By Charles Lane
Washington Post Staff Writer
Tuesday, June 28, 2005

A sharply divided Supreme Court issued a split decision on the public display of the Ten Commandments on government property yesterday, forbidding framed copies on the walls of two rural Kentucky courthouses while approving a 6-foot-tall granite monument on the grounds of the Texas Capitol in Austin.

In a pair of 5 to 4 votes, the court ruled that the commandments were put up in Kentucky six years ago with the unconstitutional purpose of favoring monotheistic religion but that the Texas monument, erected in 1961, is a less blatantly religious statement tinged with secular historical and educational meaning as part of a group of similar markers on the grounds.

The decisions were announced on a day of high drama at the court, with many of those in attendance waiting -- in vain, as it turned out -- for a retirement announcement from Chief Justice William H. Rehnquist. Justices on both sides of the Ten Commandments issue aimed strong criticism at each other as they read their opinions from the bench.

Yet for all the intensity, the net result of the decisions -- the first on the Ten Commandments from the court in 25 years -- may have been to leave the law more or less unchanged, legal analysts said.

The court did not scrap complicated legal balancing tests it has used to evaluate the constitutionality of governmental religious statements, as some supporters of the public display of the commandments had urged. Nor did it take the opportunity to rule out the official embrace of popular religious symbols, as some opponents of the displays had hoped.

Instead, the decisive vote in the cases was cast by Justice Stephen G. Breyer, who sized up each one in terms of its particular history and his view of the "basic purposes" of the First Amendment, which prohibits the creation of a state religion.

In a separate concurring opinion in the Texas case, Breyer found it "determinative" that the Texas monument, donated by the Fraternal Order of Eagles, had stood for 40 years without anyone's complaining, whereas the Kentucky displays sparked litigation almost as soon as they were put up in 1999.
"This [Texas] display has stood apparently uncontested for nearly two generations. That experience helps us understand that as a practical matter of degree this display is unlikely to prove divisive," Breyer wrote.

But he added, referring to the Kentucky displays, that "in a Nation of so many different religious and comparable nonreligious fundamental beliefs, a more contemporary state effort to focus attention upon a religious text is certainly likely to prove divisive in a way that this longstanding, pre-existing monument has not."

Each side in the case claimed victory. Steven R. Shapiro, legal director of the American Civil Liberties Union, whose Kentucky affiliate had challenged the courthouse displays, said that "a majority of the court in both cases has now clearly reaffirmed the principle that government may not promote a religious message through its display of the Ten Commandments."

Jay Sekulow, chief counsel of the American Center for Law and Justice, a conservative Christian legal organization that backs the displays, said the decision means many similar monuments provided to state and local governments by the Fraternal Order of the Eagles, along with long-established paintings or sculptures of the commandments, are probably on safe ground.

The court is expected to announce today whether it will hear challenges to the display of the commandments on school property in two Ohio locales; a Harlan County, Ky., display of the commandments on school classroom walls; and a Richland County, Ohio, judge's posting of the commandments on his courtroom's wall.

"The road map is keep your mouth shut about the religious purpose, talk about secular and historical things, and you can probably get away with it," said Douglas Laycock, a professor of constitutional law at the University of Texas.

Certainly the two cases proved divisive for the court itself, with Justice Antonin Scalia reading a passionate dissent on the Kentucky ruling from the bench. Scalia said the decision was inconsistent with the Founding Fathers' own views and "ratchets up this court's hostility to religion."

He invoked the experience of Sept. 11, 2001, noting that he had been in Rome on that day, and that after President Bush had concluded his speech to the nation with "God Bless America," a European judge had confided that he was sad Europe's leaders no longer make such religious references in their speeches.

Scalia was joined in full by Rehnquist and Justice Clarence Thomas, and in part by Justice Anthony M. Kennedy.

But Justice David H. Souter, who wrote the opinion in the Kentucky case, joined not only by Breyer but also by Justices John Paul Stevens, Sandra Day O'Connor and Ruth Bader Ginsburg, warned listeners in the courtroom that Scalia would "allow government to espouse the core religious beliefs of some religions."
In his written opinion, Souter argued that strict official "neutrality" toward religion is the best antidote to contemporary culture wars.

"We are centuries away from the St. Bartholomew's Day Massacre and the treatment of heretics in early Massachusetts, but the divisiveness of religion in current public life is inescapable," he wrote. "This is no time to deny the prudence of understanding the [First Amendment] to require the Government to stay neutral on religious belief, which is reserved for the conscience of the individual."

The two Kentucky counties, McCreary and Pulaski, first posted copies of the King James version of the commandments in their respective courthouses in the summer of 1999.

After the ACLU sued, the two counties passed resolutions calling the commandments the "precedent legal code" for Kentucky's laws. They also added other religious-themed historical documents, such as President Abraham Lincoln's declaration of a national day of prayer in 1863.

After a federal judge ordered that display taken down in 2000, the counties added several secular documents, such as the Magna Carta and the lyrics of "The Star-Spangled Banner."

But Souter wrote that the changes could not disguise the counties' true purpose, which, he said, was "to emphasize and celebrate the Commandments' religious message."

The Texas monument is one of 38 such items on the sprawling 22-acre state Capitol grounds. It features an eagle grasping the American flag; an eye inside a pyramid; two small stone tablets; two Stars of David; two Greek letters -- Chi and Ro -- symbolizing Christ; and a large-print text of the commandments.

A homeless man, Thomas Van Orden, sued for the monument's removal, saying it conveyed an offensive state endorsement of religion each time he walked by it.

But Breyer was joined in permitting the monument by Rehnquist, who wrote on behalf of himself, Scalia, Kennedy and Thomas that "the Ten Commandments have an undeniable historical meaning. . . . Simply having religious content or promoting a message consistent with a religious doctrine does not run afoul of the [First Amendment.]

The cases are McCreary County, Ky., v. American Civil Liberties Union of Kentucky, No. 03-1693, and Van Orden v. Perry, No. 03-1500.
Rabbi Reflects on Role in Military Religious-Freedom Case

By David L. Hudson Jr.

First Amendment scholar www.firstamendmentcenter.org

01.27.05

One in a series of interviews with principals involved in First Amendment-related U.S. Supreme Court cases (see below).

It might seem odd that a head covering in the military would lead to a legal dispute that ended up in the Court of Last Resort. But that’s exactly what happened when military officials infringed on the religious liberty of ordained rabbi S. Simcha Goldman in the U.S. Air Force in the early 1980s.

From 1970 to 1972, Goldman wore the yarmulke, a symbol of significance for those of the Orthodox Jewish faith, in the U.S. Navy while he serving as a chaplain. Nobody said anything about it.

In 1973, Goldman entered the Armed Forces Health Professions Scholarship Program, completing his Ph.D. in clinical psychology in 1977. After that, he entered active service as a captain at March Air Force Base in Riverside, Calif. Once again he wore his yarmulke for several years without incident. He did not attract attention or controversy in part because when outdoors he wore the yarmulke underneath his service cap.

However, in April 1981, Goldman served as a defense witness in a court-martial hearing. In that hearing, Goldman took a position adverse to that of the prosecutor. The prosecutor retaliated, according to Goldman, by complaining about the yarmulke.

“"The motive of the attorney who filed the complaint (about the wearing of the yarmulke at a military trial) was certainly retaliatory," Goldman said. "I clashed with this military prosecutor in a recent court-martial as a defense witness. I showed him up in court when he tried to play with my testimony. He then filed the complaint."

The attorney complained that Goldman had violated an Air Force regulation providing
that "headgear will not be worn … while indoors except by armed security police in the performance of their duties."

A colonel then ordered Goldman to stop wearing the yarmulke. After Goldman complained to the Air Force general counsel, the colonel prohibited Goldman from wearing the yarmulke even inside the hospital. The colonel also withdrew a positive recommendation that he had given Goldman with respect to continuing his term of active service.

To Goldman, removing the yarmulke was unacceptable.

“The yarmulke is an important part of what I was and am,” he says. “I had worn the yarmulke for three and a half years in the Air Force without incident. I did a good job. Wearing a yarmulke in a hospital did not interfere with the base mission of launching nuclear-armed B-52s at a moment’s notice.”

“I didn’t like how I was being treated,” Goldman recalls. “The lack of appreciation for the human side of the issue really touched a nerve with me.”

Goldman enlisted the services of experienced D.C. attorney Nathan Lewin. “I thought there was an important principle at stake about religious freedom in general and religious freedom in the military,” Lewin says.

**Federal lawsuit, lower court decisions**

It touched enough of a nerve that Goldman filed a federal lawsuit, contending that Air Force officials had violated his First Amendment rights under the free-exercise clause. The Air Force contended that it had strong interests in maintaining a rigid uniform requirement to maintain esprit de corps and teamwork.

A federal district court judge agreed with Goldman. In July 1981, Judge Aubrey E. Robinson granted Goldman a preliminary injunction, preventing the Air Force from enforcing its headgear regulation.

“There can be no doubt that Plaintiff’s insistence on wearing a yarmulke is motivated by his religious convictions, and is therefore entitled to First Amendment protection,” Robinson wrote. “Because of the seriousness of the First Amendment allegations, and resulting pressure on Plaintiff to abandon his religious observances, injunctive relief is appropriate.” Judge Robinson also ordered the Air Force to withdraw a letter of reprimand and negative performance evaluation given Goldman.
After a trial in September 1981, Robinson again ruled in favor of Goldman in April 1982. Robinson noted that the military failed to show any objective studies showing that religious exemptions would erode morale in the military.

The secretary of defense and the secretary of the Air Force appealed the district court decision to the U.S. Circuit Court of Appeals for the District of Columbia. The appeals court’s three-judge panel showed more deference than had Robinson to the military’s arguments about uniformity, esprit de corps and teamwork.

“Although we must not abdicate our responsibility to review the constitutional challenge, we cannot lightly substitute our judgment whether a closer accommodation of religious interests would be possible given the military interests in order and obedience,” the appeals court wrote in its May 1984 opinion.

The appeals court concluded that “the peculiar nature of the Air Force’s interest in uniformity renders the strict enforcement of its regulation permissible.”

“I was surprised by the court of appeals’ decision, particularly because we had won before the district court,” Lewin recalls. He sought en banc (or full panel) review by the appeals court, but it denied such review in August 1984.

Interestingly, three judges dissented from the denial of en banc review. Those three judges were none other than future U.S. Supreme Court Justices Ruth Bader Ginsberg and Antonin Scalia, and Ken Starr, future solicitor general and U.S. independent counsel for the Whitewater investigation.

**U.S. Supreme Court: Goldman v. Weinberger**

Though he had left the military, Goldman still felt strongly about his right to wear a yarmulke in the armed services. He appealed his case to the U.S. Supreme Court, which agreed to hear it. The Court heard oral argument in Goldman v. Weinberger (Caspar Weinberger was named lead defendant because he was then secretary of defense) in January 1986.

During oral argument, Goldman said, “I recall the time box with the red and green lights. I am a very analytical person and I’m not sure the oral-argument process before the Court was a great process for getting at the truth.” Lewin, who has argued 27 cases before the Supreme Court, recalls that several of the justices appeared hostile, including then Justice (now Chief Justice) William Rehnquist.

The Court didn’t take long to issue its decision, which it did in March 1986. The result
was a narrow 5-4 loss for Goldman. Writing the main opinion, Rehnquist emphasized that “courts must give great deference to the professional judgment of military authorities concerning the relative importance of a particular military interest.”

“The desirability of dress regulations in the military is decided by the appropriate military officials, and they are under no constitutional mandate to abandon their considered professional judgment,” Rehnquist continued.

He added that “the First Amendment does not require the military to accommodate such practices in the face of its view that they would detract from the uniformity sought by the dress regulations.” Chief Justice Warren Burger joined Rehnquist’s opinion.

Justice John Paul Stevens authored a concurring opinion, which was joined by Justices Byron White and Lewis Powell. Stevens appeared more sensitive to Goldman’s religious-freedom claims, writing that he presented “an especially attractive case for an exemption from the uniform regulations.” He also noted that there apparently was a “retaliatory motive” against Goldman in the case.

However, Stevens voted against Goldman, primarily because he believed that the rigid dress code served the interest of “uniform treatment for the members of all religious faiths.”


Blackmun blasted the Court’s ruling for following a new standard of review that he termed “subrational-basis standard — absolute, uncritical deference to the professional judgment of military authorities.”

“I find it totally implausible the suggestion that the overarching group identity of the Air Force would be threatened if Orthodox Jews were allowed to wear yarmulkes with their uniforms,” Brennan wrote.

In his conclusion, Brennan said the decision was devastating for “patriotic Orthodox Jews.” He wrote that “we must hope that Congress will correct this wrong.”

Congress did “correct the wrong” by enacting a provision in 1987 called in some circles the Religious Apparel Amendment. Lewin helped draft the language of the bill that
Congress eventually adopted. The federal law, 10 U.S.C. § 774, provides for a general rule that “a member of the armed forces may wear an item of religious apparel while wearing the uniform of the member’s armed force.”

**Significance of Court’s decision**

Legal experts see the Goldman v. Weinberger decision primarily as a case standing for the general principle that First Amendment rights are circumscribed in the military. “When you put this case together with O’Lone (O’Lone v. Shabazz, a 1987 case about religious freedom in prison), you see that free expression is tempered in certain contexts,” said Robert O’Neil, founder of the Virginia-based Thomas Jefferson Center for the Protection of Free Expression. “It reflects something that I find in the Native American cases — a reluctance on the Court’s part to give credibility to non-Christian faiths.”

O’Neil said that despite the statute passed by Congress overruling the decision, the spirit of the Goldman decision, characterized by deference to the military, lives on. “My sense is that broad deference to the military is alive and well and would be so even without the heightened sense of awareness as a result of Afghanistan and the war in Iraq,” says O’Neil.

Lewin sees the case as granting “extreme deference” to the military.

**Recollections**

For his part, S. Simcha Goldman has had and continues to have a successful and fulfilling career and life. After leaving the Air Force shortly after filing his lawsuit, he continued to practice psychology. He ran a residential drug-treatment program for 11 years.

He currently works for a nonprofit comprehensive mental health agency and has a small private practice that focuses on marital and relationship counseling. Proudly, he says he’s “collecting grandchildren,” with “ten so far.”

Goldman does not regret his decision to go to court against the Air Force. “The experience itself and the impact it had on my family and me were very meaningful in my life.”

“First Amendment rights are very important,” he says. “Although people share much in common, they also differ significantly. At times, it can be a challenge to maintain a democracy without creating a ‘tyranny of the majority’ or of the minority. If our society isn’t constantly vigilant in clearly defining our constitutional freedoms as questions
and challenges are raised, the goals of 'life, liberty and the pursuit of happiness' for all of our citizens I believe will be ultimately endangered.”

Goldman adds: “I think that America is still coming to grips with how to have a rule of law and realize cultural and religious diversity.”

Goldman should be remembered for his devotion to his religious faith and his commitment to waging a First Amendment battle all the way to the Supreme Court. His battle eventually led to a federal law that provided more protection for religious liberty for those in the armed services.

“On the one hand I was happy that Congress recognized (that) the minority religious need reasonable accommodation even by the Armed Forces,” Goldman said. “On the other hand, I was still disappointed because since it was a statutory, rather than a constitutional right, the statute could be changed, if Congress wished.”
Activist Sheehan Arrested in House Gallery
GOP congressman says his wife was also ordered to leave

WASHINGTON (CNN) -- Peace activist Cindy Sheehan was arrested Tuesday in the House gallery after refusing to cover up a T-shirt bearing an anti-war slogan before President Bush’s State of the Union address.

According to a blog post on Michael Moore’s Web site attributed to Sheehan, the T-shirt said, “2,245 Dead. How many more?” -- a reference to the number of U.S. troops killed in Iraq.

“She was asked to cover it up. She did not,” said Sgt. Kimberly Schneider, U.S. Capitol Police spokeswoman.

House rules bar demonstrations in the galleries.

On Wednesday, U.S. Rep. Bill Young, R-Florida, spoke on the House floor saying his wife Beverly, had been “ordered to leave” the gallery during the speech for wearing a shirt that said, “Support Our Troops.”

Young, an 18-term congressman, held up his wife’s shirt during his remarks, speaking with anger and emotion about her treatment.

“She has a real passion for our troops, and she shows it in many, many ways,” Young said.

“And most members in this House know that, but because she had on a shirt, that someone didn’t like, that said, ‘Support Our Troops,’ she was kicked out of this gallery while the president was speaking and encouraging Americans to support our troops. Shame. Shame.”

Sheehan held 4 hours
Sheehan was arrested around 8:30 p.m. ET Tuesday on charges of unlawful conduct, a misdemeanor that carries a maximum penalty of a year in jail, Capitol Police said.
She was handcuffed and held in the Capitol building until she was driven to the Capitol Police headquarters for booking. According to her blog, she was released about four hours after her arrest.

Sheehan, who became a vocal war opponent after her son was killed in Iraq, was an invited guest of Rep. Lynn Woolsey, D-California. Woolsey has called for a withdrawal of troops in Iraq and supports legislation for the creation of a Department of Peace.

Sheehan gained national attention in August when she and hundreds of other protesters camped outside Bush’s ranch in Crawford, Texas, and demanded an audience with the president.

She also recently penned a book, “Not One More Mother’s Child.”

In April 2004, Sheehan and other relatives of troops killed in Iraq met with Bush during a visit to Fort Lewis, Washington, shortly after the death of her son, Army Spc. Casey Sheehan, 24.

Sheehan later said that the president wouldn’t look at pictures of her son and “didn’t even know Casey’s name.”

The Vacaville, California, resident has said she’d like to meet with Bush again to discuss her opposition to the war.

The president has declined another meeting and has taken issue with Sheehan’s calls for a withdrawal of troops from Iraq.

“She expressed her opinion; I disagree with it,” Bush said in August. “I think immediate withdrawal from Iraq would be a mistake.”

*CNN.com’s Eliott C. McLaughlin contributed to this report.*
Teen Sues Over Confederate Flag Prom Dress

By The Associated Press

12.21.04

A Greenup County teenager is suing the school district for barring her from the prom for wearing a red dress styled as a large Confederate battle flag.

School officials kept Jacqueline Duty out of Russell High School's May 1 prom for wearing the dress, calling it too controversial.

Duty, 19, is suing the school district in U.S. District Court in Lexington, claiming the district and administrators violated her First Amendment right to free speech and her right to celebrate her heritage. She also is suing for defamation, false imprisonment and assault.

"Her only dance for her senior prom was on the sidewalk to a song playing on the radio," said Earl-Ray Neal, her lawyer.

She also plans to sue for actual and punitive damages in excess of $50,000.

Duty met with reporters in front of the federal courthouse in Lexington on Monday.

She acknowledged that some might find the Confederate flag offensive.

"Everyone has their own opinion. But that's not mine. I'm proud of where I came from and my background," Duty said.

She also showed the dress.

"I wanted to show part of my Southern heritage," she said, explaining why she wanted to wear the dress. She said she had worked on the dress' design for four years.
Kirk Lyons, one of her lawyers, said Duty waited several months to file the lawsuit because much of the legal work is being done for free. The Sons of Confederate Veterans also vowed help pay for some of the legal expenses.

Duty was told not to wear the dress by school officials shortly before the prom, but she said she didn’t have another dress, so she decided to go and see if school administrators would change their minds.

Howard, the principal, and two police officers met her outside the school, according to the lawsuit.

"Howard intimidated (Duty) by physically striking the vehicle in which she was sitting," the lawsuit said.

The lawsuit says that after the prom, school officials made students wearing Confederate symbols change or remove the items even though the symbols were not creating any disruption in the predominantly white high school in northeast Kentucky.

No one from the Russell Independent Board of Education or from Superintendent Ronnie Back's office could be reached for comment. Back and Howard also are named in the lawsuit.

Federal court opinions on the display of the Confederate flag on clothing at public schools has been mixed.

In 2002, the 6th U.S. Circuit Court of Appeals overturned a case involving a Madison County student.

In 1997, Timothy Castorina was suspended for wearing a T-shirt with a Confederate flag on it to Madison Central High School. He sued, but U.S. District Court Judge Henry Wilhoit Jr. ruled that T-shirts were not a form of free speech, and tossed out the case. However, the 6th U.S. Circuit Court of Appeals overturned the decision and ordered a new trial.

The case was settled before the second trial began. As part of the settlement, Madison County revamped its dress code policy.

The U.S. Supreme Court has not heard a case over whether a student can wear Confederate symbols to school.

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Ky. high school, ex-student settle suit over Confederate-flag dress

FIRST AMENDMENT CENTER
NASHVILLE, TENN.
Wednesday, March 1, 2006

LEXINGTON, Ky. — A former high school student who filed a lawsuit over trying to attend prom wearing a dress with a Confederate-flag design has reached a settlement with the school district, her attorney said. School officials kept Jacqueline Duty out of Russell High School's May 1, 2004, prom for wearing the dress, calling it too controversial.

Duty then filed a lawsuit against the school district in U.S. District Court in Lexington, claiming the district and administrators violated her First Amendment right to free speech and her right to celebrate her heritage.

Her attorney, Earl-Ray Neal, verified that a settlement has been reached, but said terms of the settlement will not be disclosed. According to an order filed last week by U.S. Magistrate Judge Peggy Patterson, attorneys representing the school board had notified the court of the settlement.

“My client feels vindicated and we feel quite happy that the school district and administration were able to work with Ms. Duty and reach an amicable settlement,” Neal said. “These types of resolutions are what the system is designed to accomplish.”

A call to an attorney representing school officials by the Associated Press was not immediately returned on Tuesday.

The settlement has not yet been presented to the judge and is subject to the judge’s approval, Neal said.
White House Approves Pass for Blogger

The New York Times
March 7, 2005
By Katharine Q. Seelye

Another signal moment for bloggers is to occur this morning, when Garrett M. Graff, who writes a blog about the news media in Washington, is to be ushered into the White House briefing room to attend the daily press "gaggle."

Mr. Graff, 23, may be the first blogger in the short history of the medium to be granted a daily White House pass for the specific purpose of writing a blog, or Web log. A White House spokesman said yesterday that he believed Mr. Graff was the first blogger to be given credentials.

He is being given a press pass as the editor of FishbowlDC (www.mediabistro.com/fishbowl), a blog that is published by Mediabistro.com, which offers networking and services for journalists.

Increasingly, bloggers are penetrating the preserves of the mainstream news media. They have secured seats on campaign planes, at political conventions and in presidential debates, and have become a driving force in news events themselves.

Mr. Graff said he was inspired to try to seek access to the White House by the controversy over James D. Guckert, who used the alias Jeff Gannon. Mr. Guckert was granted daily passes to White House briefings while writing for a Web site run by a Republican operative in Texas. The episode raised questions about who was a legitimate journalist and how access to the White House was granted.

White House press officials and others said it was relatively easy to get a day pass, prompting Mr. Graff to test that premise. He set about trying to get one and chronicled his attempt on his blog.

He made 20 phone calls and got nowhere. Bigger blogs picked up on his saga, and traffic on FishbowlDC increased tenfold, he said. But it was not until the traditional media joined in, Mr. Graff said, that the White House relented.
“USA Today started making calls on Thursday. CNN mentioned it on ‘Inside Politics,’ and Ron Hutcheson, president of the White House Correspondents Association, raised the issue with the White House Press Office,” he said. “I think a combination of all of that made the White House pay attention and decide to let me in.”

Scott McClellan, the White House press secretary, said he had met with the White House Correspondents Association and they had decided to let Mr. Graff in. “It is the press corps’ briefing room and if there are any new lines to be drawn, it should be done by their association,” he said.

Mr. Graff said he was surprised at the help he received from “real” reporters covering the White House, given what he described as the animosity between some bloggers and the mainstream news media.

Mr. Graff is something of a bridge between those two worlds. Although he is a blogger, he has old-media genes: his father, Christopher Graff, is the chief correspondent in Vermont for The Associated Press; and his grandfather, Bert McCord, was the drama critic for The New York Herald Tribune.

Mr. Graff himself was executive editor of The Harvard Crimson. He said he became a blogger because “it’s the newest trend in journalism.”

In any case, Jay Rosen, a journalism professor at New York University and specialist in blogging, said Mr. Graff’s odyssey was significant for two reasons. First, he showed that it was harder to get a pass than the White House said it was after the Guckert case. Secondly, he said, Mr. Graff was expanding the definition of what constitutes the press, just as radio and television once pushed those boundaries.
SAN FRANCISCO — Apple on Thursday put to rest the last of a series of lawsuits it brought in a losing and costly effort to put a stop to Web leaks about its product plans.

The suits raised questions about whether independent Web publishers should be accorded the same legal protections as traditional journalists. They were aimed at the gaggle of Apple enthusiasts who have made both a sport and a business out of pre-empting Steven P. Jobs’s big product announcements.

Nicholas M. Ciarelli, who operated a Web site for Apple rumors called Think Secret, was sued by Apple for publishing trade secrets in January 2005. In a brief statement Thursday on his site, Mr. Ciarelli said that he had reached a settlement with Apple and that he would stop publishing Think Secret.

Mr. Ciarelli, a senior at Harvard, would not comment on whether Apple had given him money to persuade him to cease publishing. But he said he was pleased with the outcome of the negotiations.

“We’ve been able to reach a positive solution,” he said in a telephone interview. Mr. Ciarelli led a countermotion against Apple in March 2005 under a California provision that makes litigants vulnerable to financial damages if they sue over what is determined to be constitutionally protected speech. Mr. Ciarelli’s lawyer, Terry Gross, who represented him pro bono, said the motion could have resulted in a financially damaging and embarrassing ruling against Apple, a risk that he said led to this week’s settlement.
Mr. Ciarelli, a social studies major, also writes and edits for The Harvard Crimson, the student newspaper. He was a freshman when Apple sued him and the publishers of two other sites over leaks about unreleased products.

Apple lost the two other suits on appeal after a higher court ruled that the Web site operators were journalists and entitled to First Amendment protections. The court forced Apple to pay $700,000 in legal fees to the sites.

Mr. Ciarelli said his agreement with Apple constituted a clear statement about the rights of online journalists: “Speaking more broadly, I think online journalists can feel confident that they can assert their First Amendment rights, even when they run up against large corporations.”

However, some free speech advocates warned that the site’s closing could be viewed as a partial victory for a large company that tried to squelch an independent voice.

“It’s great for the individual critic to be paid to be quiet, but the public is worse off if we lose the ability to get more information in the marketplace of ideas,” said Paul Alan Levy, a lawyer with the Public Citizen Litigation Group in Washington.

Despite Apple’s attempts to use the courts to silence the ecosystem of sites that try to ferret out information about its products before Mr. Jobs unveils them on stage, the Apple rumor mill has continued to thrive.

None of Mr. Ciarelli’s sources were revealed as part of the settlement, said Steve Dowling, an Apple spokesman. He called the settlement “amicable” but noted that the details of the agreement were confidential.
Student Expression in School

Directions:
Apply what you learned about exceptions to the First Amendment to a specific situation.
Review the 1969 Tinker v. Des Moines case and more recent incidents of limits on student clothing in schools. Choose a partner and fill in the Tinker portion of the Venn diagram. Then fill in the Barber portion.

Venn Diagram Questions:
What was the students’ message?
What form did their expression take?
How old were these students?
What type of school did they attend? Public, private, charter or another kind?
What reasons did school officials give for banning the expression?
What level of court or official decided the case?
Student Wins Anti-Bush Shirt Clash

(AP) A Pennsylvania student is off the hook after the American Civil Liberties Union defended his right to wear a political T-shirt to school.

Chris Schiano’s T-shirt said “International Terrorist” and had a picture of President Bush. A security guard at his high school north of Philadelphia told him to take it off. He refused.

Schiano says he’s well versed in the First Amendment. He says he “knew right off they had no legal footing to stand on.”

The principal says after hearing from the ACLU, school officials realized that the shirt, while potentially offensive, didn’t violate the school’s dress code. It had no references to sex, drugs, ethnic intimidation or explicit language. Schiano says he’s now wearing the shirt to school and no one’s given him a hard time.

In February 2003, school officials ordered a 16-year-old in Michigan to take off a T-shirt emblazoned with the words “International Terrorist” and a picture of President Bush or go home, saying they worried it would inflame passions at the school where a majority of students are Arab-American.

The student, Bretton Barber, chose to go home. He said he wore the shirt to express his anti-war position and for a class assignment in which he wrote a compare-contrast essay on Mr. Bush and Iraqi President Saddam Hussein. (cbsnews.com/stories/2005/12/13/national/main1123854.shtml)

Tinker v. Des Moines (1969)

Mary Beth Tinker was a 13-year-old middle school student from Des Moines, Iowa, in 1965. She opposed the war in Vietnam. She, her older brother John and other students decided to wear black armbands to school to protest the war. They believed their passive protest was considerate and respectful of others. The school district learned of their plans and said students who came to class wearing them would be suspended. The students wore their armbands despite the threat.

Tinker believed that even as a public school student, she had a right to freedom of speech. She held that the armbands were a form of expression (or “symbolic speech”) and that therefore the First Amendment should protect her right to wear them. Tinker and her brother took their case to court. In Tinker v. Des Moines (1969), the Supreme Court ruled in the students’ favor, saying that the armbands were “akin to pure speech.”

As Tinker recalled in 2005, “Some people thought we were being unpatriotic.” But she explained that even though she knew she would be suspended, she decided to wear her black armband to school anyway. She reflected on her courage and the kinds of choices citizens frequently encounter: “We each have to make those decisions in life.” (citizenbee.org/user/StudentGuide.aspx?id=709)
Morse v. Frederick (2007): You Make the Call

The Olympic torch relay was coming through Juneau, Alaska. Television cameras were following the Olympic torch runner.

Officials at Juneau-Douglas High School decided to allow teachers and students to stand outside to watch the torch pass. Students were not “dismissed.” This was a school-sponsored and school-supervised event.

Joseph Frederick was a student at Juneau-Douglas High School. Frederick and some friends stood on the sidewalk across the street from the school. As cameras rolled, they unfurled a banner that read “Bong Hits 4 Jesus.”

Principal Deborah Morse asked Frederick for the banner, and he refused. She took the banner away and suspended Frederick for 10 days. Morse said that the banner promoted marijuana. Therefore, the banner broke school rules against the display of material that promotes the use of illegal drugs.

Frederick sued the principal, claiming his First Amendment rights had been violated.

Directions:
Keep in mind the exceptions to the First Amendment discussed at the Newseum. Think about time, place, manner, imminent danger, fighting words, obscenity, and slander and libel — does this case fit any of those exceptions? Courts have ruled that student speech that interferes with the education process is not protected speech.

- What right do you think Frederick claimed was being violated?
- Take Frederick’s position — what are some arguments to support his claim?
- Take the position of the principal and the school — what are some arguments to support the school’s action?
- Did school officials violate Frederick’s First Amendment rights when they suspended him? Make a case for your opinion.
Morse v. Frederick (2007): How Did the Supreme Court Rule?

The Supreme Court ruled 5-4 that Joseph Frederick’s First Amendment rights had NOT been violated. The court held that while students do have the right to free speech in public schools, that right does not include the right to express pro-drug messages. The school's interest in discouraging drug use outweighed Frederick’s right to express the pro-drug message.

The dissenting justices argued that a reasonable person would not think Frederick’s message promoted drug use. The purpose of the First Amendment was to ensure free debate, even among high school students.