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“BONG HITS 4 JESUS” WHAT CAN A PRIVATE SCHOOL LEARN FROM A FREE SPEECH CASE?

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A case recently argued before the United States Supreme Court, presents the question of whether a public school principal had the right to discipline Joseph Frederick, then a senior at Juneau-Douglas High School, for holding a 14 foot banner displaying the words “Bong Hits 4 Jesus” as he stood across the street from his school during an Olympic torch relay parade. *Morse v. Frederick*.

The Court is struggling with three issues. First, did Frederick’s conduct occur in connection with his status as a student participating in a school-related event, like an assembly? Under prior Supreme Court precedent this would be a forum over which the school can exercise more control. *Tinker v. Des Moines School Dist. and Bethel School Dist. v. Fraser*.

If it did, the second and third questions are whether the student’s expression was materially disruptive (*Tinker*) to the class, school or event, or whether it was inconsistent with the school’s educational mission (*Fraser and Hazelwood School Dist. V. Kulmeier*). The Court’s decision is expected in the next few months.

The issues on which this case will turn are the same types of issues with which private schools struggle when they attempt to impose discipline on students or parents for conduct that occurs off school property and which may be disruptive or inconsistent with the school’s mission. It is instructive, therefore, to assess the arguments and the thought processes of the justices as they discuss these issues.

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A final issue permeating the Court's discussion, and especially that of Chief Justice Roberts, was a great reluctance to inhibit educators from taking action that educators reasonably believe is necessary to promote the school's educational mission. These statements reflect an intent seen in other cases to allow educators to determine the best way to educate, discipline, and determine policy for students in their care. Courts have traditionally given schools wide latitude in making decisions on these issues. As long as schools do not appear to be abusing that discretion, this wide latitude is expected to continue.

Regardless of the outcome of the *Morse* case, the points set forth in the oral argument should remind school administrators to continually review school policies, student handbooks, enrollment contracts, and field trip guidelines. Ensure that your school has retained clear discretion to define its purpose, goals, mission, and image; has made clear the extent of its reach into the home, off campus, or other activities; and has trained its administration on when and whether it should exercise disciplinary action for such activities.

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