

Morse v. Frederick
551 U.S. 393 (2007)

Chief Justice Roberts delivered the opinion of the Court.

At a school-sanctioned and school-supervised event, a high school principal saw some of her students unfurl a large banner conveying a message she reasonably regarded as promoting illegal drug use. Consistent with established school policy prohibiting such messages at school events, the principal directed the students to take down the banner. One student—among those who had brought the banner to the event—refused to do so. The principal confiscated the banner and later suspended the student. The Ninth Circuit held that the principal’s actions violated the First Amendment, and that the student could sue the principal for damages.

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.*, 393 U. S. 503, 506 (1969). 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,” *Bethel School Dist. No. 403 v. Fraser*, 478 U. S. 675, 682 (1986), and that the rights of students “must be ‘applied in light of the special characteristics of the school environment.’ ” *Hazelwood School Dist. v. Kuhlmeier*, 484 U. S. 260, 266 (1988) 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.

I

On January 24, 2002, the Olympic Torch Relay passed through Juneau, Alaska, on its way to the winter games in Salt Lake City, Utah. The torchbearers were to proceed along a street in front of Juneau-Douglas High School (JDHS) while school was in session. Petitioner Deborah Morse, the school principal, decided to permit staff and students to participate in the Torch Relay as an approved social event or class trip. Students were allowed to leave class to observe the relay from either side of the street. Teachers and administrative officials monitored the students’ actions.

Respondent Joseph Frederick, a JDHS senior, was late to school that day. When he arrived, he joined his friends (all but one of whom were JDHS students) across the street from the school to watch the event. Not all the students waited patiently. Some became rambunctious, throwing plastic cola bottles and snowballs and scuffling with their classmates. As the torchbearers and camera crews passed by, Frederick and his friends unfurled a 14-foot banner bearing the phrase: “BONG HiTS 4 JESUS.” App. to Pet. for Cert. 70a. The large banner was easily readable by the students on the other side of the street.

Principal Morse immediately crossed the street and demanded that the banner be taken down. Everyone but Frederick complied. Morse confiscated the banner and told Frederick to report to her office, where she suspended him for 10 days. Morse later explained that she told Frederick to take the banner down because she thought it encouraged illegal drug use, in violation of established school policy. Juneau School Board Policy No. 5520 states: “The Board specifically prohibits any assembly or public expression that ... advocates the use of substances that are illegal to minors” *Id.*, at 53a. In addition, Juneau School Board Policy No. 5850 subjects “[p]upils who participate in approved social events and class trips” to the same student conduct rules that apply during the regular school program. *Id.*, at 58a.

Frederick administratively appealed his suspension, but the Juneau School District Superintendent upheld it, limiting it to time served (8 days). In a memorandum setting forth his reasons, the superintendent determined that Frederick had displayed his banner “in the midst of his fellow students, during school hours, at a school-sanctioned activity.” *Id.*, at 63a. He further explained that Frederick “was not disciplined

because the principal of the school ‘disagreed’ with his message, but because his speech appeared to advocate the use of illegal drugs.” *Id.*, at 61a.

The superintendent continued:

“The common-sense understanding of the phrase ‘bong hits’ is that it is a reference to a means of smoking marijuana. Given [Frederick’s] inability or unwillingness to express any other credible meaning for the phrase, I can only agree with the principal and countless others who saw the banner as advocating the use of illegal drugs. [Frederick’s] speech was not political. He was not advocating the legalization of marijuana or promoting a religious belief. He was displaying a fairly silly message promoting illegal drug usage in the midst of a school activity, for the benefit of television cameras covering the Torch Relay. [Frederick’s] speech was potentially disruptive to the event and clearly disruptive of and inconsistent with the school’s educational mission to educate students about the dangers of illegal drugs and to discourage their use.” *Id.*, at 61a–62a.

Relying on our decision in *Fraser, supra*, the superintendent concluded that the principal’s actions were permissible because Frederick’s banner was “speech or action that intrudes upon the work of the schools.” App. to Pet. for Cert. 62a (internal quotation marks omitted). The Juneau School District Board of Education upheld the suspension.

Frederick then filed suit under 42 U. S. C. §1983, alleging that the school board and Morse had violated his First Amendment rights. He sought declaratory and injunctive relief, unspecified compensatory damages, punitive damages, and attorney’s fees. The District Court granted summary judgment for the school board and Morse, ruling that they were entitled to qualified immunity and that they had not infringed Frederick’s First Amendment rights. The court found that Morse reasonably interpreted the banner as promoting illegal drug use—a message that “directly contravened the Board’s policies relating to drug abuse prevention.” App. to Pet. for Cert. 36a–38a. Under the circumstances, the court held that “Morse had the authority, if not the obligation, to stop such messages at a school-sanctioned activity.” *Id.*, at 37a.

The Ninth Circuit reversed. Deciding that Frederick acted during a “school-authorized activit[y],” and “proceed[ing] on the basis that the banner expressed a positive sentiment about marijuana use,” the court nonetheless found a violation of Frederick’s First Amendment rights because the school punished Frederick without demonstrating that his speech gave rise to a “risk of substantial disruption.” 439 F. 3d 1114, 1118, 1121–1123 (2006). The court further concluded that Frederick’s right to display his banner was so “clearly established” that a reasonable principal in Morse’s position would have understood that her actions were unconstitutional, and that Morse was therefore not entitled to qualified immunity. *Id.*, at 1123–1125.

We granted certiorari on two questions: whether Frederick had a First Amendment right to wield his banner, and, if so, whether that right was so clearly established that the principal may be held liable for damages. We resolve the first question against Frederick, and therefore have no occasion to reach the second.

II

At the outset, we reject Frederick’s argument that this is not a school speech case—as has every other authority to address the question. The event occurred during normal school hours. It was sanctioned by Principal Morse “as an approved social event or class trip,” App. 22–23, and the school district’s rules expressly provide that pupils in “approved social events and class trips are subject to district rules for student conduct.” App. to Pet. for Cert. 58a. Teachers and administrators were interspersed among the students and charged with supervising them. The high school band and cheerleaders performed. Frederick, standing among other JDHS students across the street from the school, directed his banner toward the school, making it plainly visible to most students. Under these circumstances, we agree with the superintendent that Frederick cannot “stand in the midst of his fellow students, during school hours, at a

school-sanctioned activity and claim he is not at school.” *Id.*, at 63a. There is some uncertainty at the outer boundaries as to when courts should apply school-speech precedents, but not on these facts.

III

The message on Frederick’s banner is cryptic. It is no doubt offensive to some, perhaps amusing to others. To still others, it probably means nothing at all. Frederick himself claimed “that the words were just nonsense meant to attract television cameras.” 439 F. 3d, at 1117–1118. But Principal Morse thought the banner would be interpreted by those viewing it as promoting illegal drug use, and that interpretation is plainly a reasonable one.

As Morse later explained in a declaration, when she saw the sign, she thought that “the reference to a ‘bong hit’ would be widely understood by high school students and others as referring to smoking marijuana.” App. 24. She further believed that “display of the banner would be construed by students, District personnel, parents and others witnessing the display of the banner, as advocating or promoting illegal drug use”—in violation of school policy. *Id.*, at 25. [...]

We agree with Morse. At least two interpretations of the words on the banner demonstrate that the sign advocated the use of illegal drugs. First, the phrase could be interpreted as an imperative: “[Take] bong hits ...”—a message equivalent, as Morse explained in her declaration, to “smoke marijuana” or “use an illegal drug.” Alternatively, the phrase could be viewed as celebrating drug use—“bong hits [are a good thing],” or “[we take] bong hits”—and we discern no meaningful distinction between celebrating illegal drug use in the midst of fellow students and outright advocacy or promotion.

The pro-drug interpretation of the banner gains further plausibility given the paucity of alternative meanings the banner might bear. The best Frederick can come up with is that the banner is “meaningless and funny.” 439 F. 3d, at 1116. [...]

The dissent mentions Frederick’s “credible and uncontradicted explanation for the message—he just wanted to get on television.” *Post*, at 12. But that is a description of Frederick’s *motive* for displaying the banner; it is not an interpretation of what the banner says. The *way* Frederick was going to fulfill his ambition of appearing on television was by unfurling a pro-drug banner at a school event, in the presence of teachers and fellow students.

Elsewhere in its opinion, the dissent emphasizes the importance of political speech and the need to foster “national debate about a serious issue,” *post*, at 16, 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, see *post*, at 14–16, this is plainly not a case about political debate over the criminalization of drug use or possession.

IV

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.

In *Tinker*, this Court made clear that “First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students.” 393 U. S., at 506. *Tinker* involved a group of high school students who decided to wear black armbands to protest the Vietnam War. School officials learned of the plan and then adopted a policy prohibiting students from wearing armbands. When several students nonetheless wore armbands to school, they were suspended. *Id.*, at 504. The students sued, claiming that their First Amendment rights had been violated, and this Court agreed.

Tinker held that student expression may not be suppressed unless school officials reasonably conclude that it will “materially and substantially disrupt the work and discipline of the school.” *Id.*, at 513. The essential facts of *Tinker* are quite stark, implicating concerns at the heart of the First Amendment. The students sought to engage in political speech, using the armbands to express their “disapproval of the Vietnam hostilities and their advocacy of a truce, to make their views known, and, by their example, to influence others to adopt them.” *Id.*, at 514. Political speech, of course, is “at the core of what the First Amendment is designed to protect.” *Virginia v. Black*, [538 U. S. 343](#), 365 (2003). The only interest the Court discerned underlying the school’s actions was the “mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint,” or “an urgent wish to avoid the controversy which might result from the expression.” *Tinker*, 393 U. S., at 509, 510. That interest was not enough to justify banning “a silent, passive expression of opinion, unaccompanied by any disorder or disturbance.” *Id.*, at 508.

This Court’s next student speech case was *Fraser*, [478 U. S. 675](#). Matthew Fraser was suspended for delivering a speech before a high school assembly in which he employed what this Court called “an elaborate, graphic, and explicit sexual metaphor.” *Id.*, at 678. Analyzing the case under *Tinker*, the District Court and Court of Appeals found no disruption, and therefore no basis for disciplining Fraser. 478 U. S., at 679–680. This Court reversed, holding that the “School District acted entirely within its permissible authority in imposing sanctions upon Fraser in response to his offensively lewd and indecent speech.” *Id.*, at 685.

The mode of analysis employed in *Fraser* is not entirely clear. The Court was plainly attuned to the content of Fraser’s speech, citing the “marked distinction between the political ‘message’ of the armbands in *Tinker* and the sexual content of [Fraser’s] speech.” *Id.*, at 680. But the Court also reasoned that school boards have the authority to determine “what manner of speech in the classroom or in school assembly is inappropriate.” *Id.*, at 683. [...]

We need not resolve this debate to decide this case. For present purposes, it is enough to distill from *Fraser* two basic principles. First, *Fraser*’s holding demonstrates that “the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings.” *Id.*, at 682. Had Fraser delivered the same speech in a public forum outside the school context, it would have been protected. See *Cohen v. California*, [403 U. S. 15](#) (1971); *Fraser*, *supra*, at 682–683. In school, however, Fraser’s First Amendment rights were circumscribed “in light of the special characteristics of the school environment.” *Tinker*, *supra*, at 506. Second, *Fraser* established that the mode of analysis set forth in *Tinker* is not absolute. Whatever approach *Fraser* employed, it certainly did not conduct the “substantial disruption” analysis prescribed by *Tinker*, *supra*, at 514. [...]

Our most recent student speech case, *Kuhlmeier*, concerned “expressive activities that students, parents, and members of the public might reasonably perceive to bear the imprimatur of the school.” 484 U. S., at 271. Staff members of a high school newspaper sued their school when it chose not to publish two of their articles. The Court of Appeals analyzed the case under *Tinker*, ruling in favor of the students because it found no evidence of material disruption to classwork or school discipline. 795 F. 2d 1368, 1375 (CA8 1986). This Court reversed, holding that “educators do not offend the First Amendment by exercising editorial control over the style and content of student speech in school-sponsored expressive activities so long as their actions are reasonably related to legitimate pedagogical concerns.” *Kuhlmeier*, *supra*, at 273.

Kuhlmeier does not control this case because no one would reasonably believe that Frederick’s banner bore the school’s imprimatur. The case is nevertheless instructive because it confirms both principles cited above. *Kuhlmeier* acknowledged that schools may regulate some speech “even though the government could not censor similar speech outside the school.” *Id.*, at 266. And, like *Fraser*, it confirms that the rule of *Tinker* is not the only basis for restricting student speech.

Drawing on the principles applied in our student speech cases, we have held in the Fourth Amendment context that “while children assuredly do not ‘shed their constitutional rights . . . at the schoolhouse

gate,’ . . . the nature of those rights is what is appropriate for children in school.” *Vernonia School Dist. 47J v. Acton*, [515 U. S. 646](#), 655–656 (1995). In particular, “the school setting requires some easing of the restrictions to which searches by public authorities are ordinarily subject.” *New Jersey v. T. L. O.*, [469 U. S. 325](#), 340 (1985). [...]

Even more to the point, these cases also recognize that deterring drug use by schoolchildren is an “important—indeed, perhaps compelling” interest. *Id.*, at 661. Drug abuse can cause severe and permanent damage to the health and well-being of young people: [...]

Just five years ago, we wrote: “The drug abuse problem among our Nation’s youth has hardly abated since *Vernonia* was decided in 1995. In fact, evidence suggests that it has only grown worse.” *Earls, supra*, at 834, and n. 5.

The problem remains serious today. [...]

Congress has declared that part of a school’s job is educating students about the dangers of illegal drug use. It has provided billions of dollars to support state and local drug-prevention programs, Brief for United States as *Amicus Curiae* 1, and required that schools receiving federal funds under the Safe and Drug-Free Schools and Communities Act of 1994 certify that their drug prevention programs “convey a clear and consistent message that ... the illegal use of drugs [is] wrong and harmful.” 20 U. S. C. §7114(d)(6) (2000 ed., Supp. IV).

Thousands of school boards throughout the country—including JDHS—have adopted policies aimed at effectuating this message. [...]

The “special characteristics of the school environment,” *Tinker*, 393 U. S., at 506, and the governmental interest in stopping student drug abuse—reflected in the policies of Congress and myriad school boards, including JDHS—allow schools to restrict student expression that they reasonably regard as promoting illegal drug use. [...]

* * *

School principals have a difficult job, and a vitally important one. When Frederick suddenly and unexpectedly unfurled his banner, Morse had to decide to act—or not act—on the spot. It was reasonable for her to conclude that the banner promoted illegal drug use—in violation of established school policy—and that failing to act would send a powerful message to the students in her charge, including Frederick, about how serious the school was about the dangers of illegal drug use. The First Amendment does not require schools to tolerate at school events student expression that contributes to those dangers.

The judgment of the United States Court of Appeals for the Ninth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Justice Thomas, concurring.

The Court today decides that a public school may prohibit speech advocating illegal drug use. I agree and therefore join its opinion in full. I write separately to state my view that the standard set forth in *Tinker v. Des Moines Independent Community School Dist.*, [393 U. S. 503](#) (1969), is without basis in the Constitution.

I

The First Amendment states that “Congress shall make no law ... abridging the freedom of speech.” As this Court has previously observed, the First Amendment was not originally understood to permit all sorts of speech; instead, “[t]here are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem.” *Chaplinsky v. New Hampshire*, [315 U. S. 568](#), 571–572 (1942); see also *Cox v. Louisiana*, [379 U. S. 536](#), 554 (1965). In my view, the history of public education suggests that the First Amendment, as originally understood, does not protect student speech in public schools. Although colonial schools were exclusively private, public education proliferated in the early 1800’s. By the time the States ratified the Fourteenth Amendment, public schools had become relatively common. If students in public schools were originally understood as having free-speech rights, one would have expected 19th-century public schools to have respected those rights and courts to have enforced them. They did not.

A

During the colonial era, private schools and tutors offered the only educational opportunities for children, and teachers managed classrooms with an iron hand. Public schooling arose, in part, as a way to educate those too poor to afford private schools. Because public schools were initially created as substitutes for private schools, when States developed public education systems in the early 1800’s, no one doubted the government’s ability to educate and discipline children as private schools did. Like their private counterparts, early public schools were not places for freewheeling debates or exploration of competing ideas. Rather, teachers instilled “a core of common values” in students and taught them self-control. [...]

In short, in the earliest public schools, teachers taught, and students listened. Teachers commanded, and students obeyed. Teachers did not rely solely on the power of ideas to persuade; they relied on discipline to maintain order.

B

Through the legal doctrine of in loco parentis, courts upheld the right of schools to discipline students, to enforce rules, and to maintain order. Rooted in the English common law, in loco parentis originally governed the legal rights and obligations of tutors and private schools. [...]

As early as 1837, state courts applied the *in loco parentis* principle to public schools:

“One of the most sacred duties of parents, is to train up and qualify their children, for becoming useful and virtuous members of society; this duty cannot be effectually performed without the ability to command obedience, to control stubbornness, to quicken diligence, and to reform bad habits The teacher is the substitute of the parent; ... and in the exercise of these delegated duties, is invested with his power.” *State v. Pendergrass*, 19 N. C. 365, 365–366, (1837).

Applying *in loco parentis*, the judiciary was reluctant to interfere in the routine business of school administration, allowing schools and teachers to set and enforce rules and to maintain order. [...]

A review of the case law shows that *in loco parentis* allowed schools to regulate student speech as well. [...]

The doctrine of *in loco parentis* limited the ability of schools to set rules and control their classrooms in almost no way. It merely limited the imposition of excessive physical punishment. [...]

II

Tinker effected a sea change in students’ speech rights, extending them well beyond traditional bounds. The case arose when a school punished several students for wearing black armbands to school to protest the

Vietnam War. *Tinker*, 393 U. S., at 504. Determining that the punishment infringed the students’ First Amendment rights, this Court created a new standard for students’ freedom of speech in public schools: “[W]here 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.” *Id.*, at 509 (internal quotation marks omitted).

Accordingly, unless a student’s speech would disrupt the educational process, students had a fundamental right to speak their minds (or wear their armbands)—even on matters the school disagreed with or found objectionable. *Ibid.* [...]

Today, the Court creates another exception. In doing so, we continue to distance ourselves from *Tinker*, but we neither overrule it nor offer an explanation of when it operates and when it does not. *Ante*, at 10–14. I am afraid that our jurisprudence now says that students have a right to speak in schools except when they don’t—a standard continuously developed through litigation against local schools and their administrators. In my view, petitioners could prevail for a much simpler reason: As originally understood, the Constitution does not afford students a right to free speech in public schools.

III

In light of the history of American public education, it cannot seriously be suggested that the First Amendment “freedom of speech” encompasses a student’s right to speak in public schools. Early public schools gave total control to teachers, who expected obedience and respect from students. And courts routinely deferred to schools’ authority to make rules and to discipline students for violating those rules. Several points are clear: (1) under *in loco parentis*, speech rules and other school rules were treated identically; (2) the *in loco parentis* doctrine imposed almost no limits on the types of rules that a school could set while students were in school; and (3) schools and teachers had tremendous discretion in imposing punishments for violations of those rules.[...]

To be sure, our educational system faces administrative and pedagogical challenges different from those faced by 19th-century schools. And the idea of treating children as though it were still the 19th century would find little support today. But I see no constitutional imperative requiring public schools to allow all student speech. Parents decide whether to send their children to public schools. [...] If parents do not like the rules imposed by those schools, they can seek redress in school boards or legislatures; they can send their children to private schools or home school them; or they can simply move. Whatever rules apply to student speech in public schools, those rules can be challenged by parents in the political process.[...]

And because *Tinker* utterly ignored the history of public education, courts (including this one) routinely find it necessary to create ad hoc exceptions to its central premise. This doctrine of exceptions creates confusion without fixing the underlying problem by returning to first principles. [...]

* * *

I join the Court’s opinion because it erodes *Tinker*’s hold in the realm of student speech, even though it does so by adding to the patchwork of exceptions to the *Tinker* standard. I think the better approach is to dispense with *Tinker* altogether, and given the opportunity, I would do so.

Justice Stevens, with whom Justice Souter and Justice Ginsburg join, dissenting.

A significant fact barely mentioned by the Court sheds a revelatory light on the motives of both the students and the principal of Juneau-Douglas High School (JDHS). On January 24, 2002, the Olympic Torch Relay gave those Alaska residents a rare chance to appear on national television. As Joseph Frederick repeatedly explained, he did not address the curious message—“BONG HiTS 4 JESUS”—to his fellow students. He just wanted to get the camera crews’ attention. Moreover, concern about a nationwide

evaluation of the conduct of the JDHS student body would have justified the principal's decision to remove an attention-grabbing 14-foot banner, even if it had merely proclaimed "Glaciers Melt!"

I agree with the Court that the principal should not be held liable for pulling down Frederick's banner. I would hold, however, that the school's interest in protecting its students from exposure to speech "reasonably regarded as promoting illegal drug use," *ante*, at 1, cannot justify disciplining Frederick for his attempt to make an ambiguous statement to a television audience simply because it contained an oblique reference to drugs. The First Amendment demands more, indeed, much more.

The Court holds otherwise only after laboring to establish two uncontroversial propositions: first, that the constitutional rights of students in school settings are not coextensive with the rights of adults, see *ante*, at 8–12; and second, that deterring drug use by schoolchildren is a valid and terribly important interest, see *ante*, at 12–14. As to the first, I take the Court's point that the message on Frederick's banner is not necessarily protected speech, even though it unquestionably would have been had the banner been unfurled elsewhere. As to the second, I am willing to assume that the Court is correct that the pressing need to deter drug use supports JDHS's rule prohibiting willful conduct that expressly "advocates the use of substances that are illegal to minors." App. to Pet. for Cert. 53a. But it is a gross non sequitur to draw from these two unremarkable propositions the remarkable conclusion that the school may suppress student speech that was never meant to persuade anyone to do anything.

In my judgment, the First Amendment protects student speech if the message itself neither violates a permissible rule nor expressly advocates conduct that is illegal and harmful to students. This nonsense banner does neither, and the Court does serious violence to the First Amendment in upholding—indeed, lauding—a school's decision to punish Frederick for expressing a view with which it disagreed.

I [...]

II [...]

To the extent the Court independently finds that "BONG HiTS 4 JESUS" *objectively* amounts to the advocacy of illegal drug use—in other words, that it can *most* reasonably be interpreted as such—that conclusion practically refutes itself. This is a nonsense message, not advocacy. The Court's feeble effort to divine its hidden meaning is strong evidence of that. *Ante*, at 7 (positing that the banner might mean, alternatively, "[Take] bong hits," "bong hits [are a good thing]," or "[we take] bong hits"). Frederick's credible and uncontradicted explanation for the message—he just wanted to get on television—is also relevant because a speaker who does not intend to persuade his audience can hardly be said to be advocating anything. But most importantly, it takes real imagination to read a "cryptic" message (the Court's characterization, not mine, see *ibid.*, at 6) with a slanting drug reference as an incitement to drug use. Admittedly, some high school students (including those who use drugs) are dumb. Most students, however, do not shed their brains at the schoolhouse gate, and most students know dumb advocacy when they see it. The notion that the message on this banner would actually persuade either the average student or even the dumbest one to change his or her behavior is most implausible. That the Court believes such a silly message can be proscribed as advocacy underscores the novelty of its position, and suggests that the principle it articulates has no stopping point.

Even if advocacy could somehow be wedged into Frederick's obtuse reference to marijuana, that advocacy was at best subtle and ambiguous. There is abundant precedent, including another opinion The Chief Justice announces today, for the proposition that when the "First Amendment is implicated, the tie goes to the speaker." *Federal Election Comm'n v. Wisconsin Right to Life, Inc.*, 551 U. S. ____ (2007) (slip op., at 21) and that "when it comes to defining what speech qualifies as the functional equivalent of express advocacy ... we give the benefit of the doubt to speech, not censorship," *post*, at 29. If this were a close case, the tie would have to go to Frederick's speech, not to the principal's strained reading of his quixotic message.[...]

III [...]

Even in high school, a rule that permits only one point of view to be expressed is less likely to produce correct answers than the open discussion of countervailing views. *Whitney*, 274 U. S., at 377 (Brandeis, J., concurring); *Abrams*, 250 U. S., at 630 (Holmes, J., dissenting); *Tinker*, 393 U. S., at 512. In the national debate about a serious issue, it is the expression of the minority’s viewpoint that most demands the protection of the First Amendment. Whatever the better policy may be, a full and frank discussion of the costs and benefits of the attempt to prohibit the use of marijuana is far wiser than suppression of speech because it is unpopular.

I respectfully dissent.

Justice Breyer, concurring in the judgment in part and dissenting in part.

This Court need not and should not decide this difficult First Amendment issue on the merits. Rather, I believe that it should simply hold that qualified immunity bars the student’s claim for monetary damages and say no more.

I

Resolving the First Amendment question presented in this case is, in my view, unwise and unnecessary. In part that is because the question focuses upon specific content narrowly defined: May a school board punish students for speech that advocates drug use and, if so, when? At the same time, the underlying facts suggest that Principal Morse acted as she did not simply because of the specific content and viewpoint of Joseph Frederick’s speech but also because of the surrounding context and manner in which Frederick expressed his views. To say that school officials might reasonably prohibit students during school-related events from unfurling 14-foot banners (with any kind of irrelevant or inappropriate message) designed to attract attention from television cameras seems unlikely to undermine basic First Amendment principles. But to hold, as the Court does, that “schools may take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use” (and that “schools” may “restrict student expression that they reasonably regard as promoting illegal drug use”) is quite a different matter. *Ante*, at 2, 14. This holding, based as it is on viewpoint restrictions, raises a host of serious concerns.

[...]

In some instances, it is appropriate to decide a constitutional issue in order to provide “guidance” for the future. But I cannot find much guidance in today’s decision. The Court makes clear that school officials may “restrict” student speech that promotes “illegal drug use” and that they may “take steps” to “safeguard” students from speech that encourages “illegal drug use.” *Ante*, at 2, 8. Beyond “steps” that prohibit the unfurling of banners at school outings, the Court does not explain just what those “restrict[ions]” or those “steps” might be.[...]