

Monday, June 25, 2007

Bong Hits decision provides roadmap to silence student drug reform advocacy.

Â Â The First Amendment and the rest of the Bill of Rights.Â (From the public domain.)Â As I have repeatedly said, your vote for president will leave an indelible mark on the Supreme Court's composition and its protection or non-protection of individual liberties. Â Today, in the Bong HitsÂ 4 Jesus case (covered by my April 2, 2007, blog entry)Â the United States Supreme Court wroteÂ public schools a roadmap to silence speech seen as advocating illegal drug use, even when the message is intended to advocate for drug policy reform. The case is *Morse v. Frederick*,Â __ U.S. __ (June 25, 2007). Morse's solid five-justice majority (Chief Justice Roberts joined by Justices Scalia, Kennedy, Thomas, and Alito) givesÂ public schools an effective green lightÂ not only to exempt students from advocating drug use, but from expressing a whole host of messages deemed (deemed by whom?) to be disruptive to the academic mission. Â Considering the vagueness of the "Bong Hits 4 Jesus" banner at issue in this case (does it promote smoking from bongos, promote making marijuana legal, or promote vague banners?), public school principals likely will feel emboldened to silence pro-drug reform messages on and off school premises, even where the activities are as mild asÂ wearing t-shirts and buttons for NORML and the Drug Policy Alliance, let alone to establish a school NORML chapter or to submit a pro-drug reform opinion article or letter to the school newspaper, and let alone to wear a t-shirt with a marijuana leaf, even though the marijuana plant has proven industrial uses that were advocated in the past by the United States government. Â Will public schools go as far as banning Coca Cola/Coke machines and t-shirts -- and drinking Coke at school-sponsored events -- considering that this brand name was initiated when Coca Cola indeed included cocaine as a key ingredient, and when considering that "coke" remains the street name for cocaine? Â Bad court decisions about students' rights, like this First Amendment-violative Morse decision, challenge my support of the public school system.Â MorseÂ certainly fails to teach students the value and meaning ofÂ the First Amendment; rather MorseÂ damages and undermines the First Amendment. Jon Katz.Â ADDENDUM: Marty Lederman at *ScotusBlog* suggests that MorseÂ "is a very limited holding -- essentially limited to the drug context. The Alito concurrence, joined by Kennedy, is controlling." As much as I wish Morse'sÂ reach will be strictly limited, I think the lower courts and public school officials will see MorseÂ as confirming and even enabling the expansion of substantial authority of public schools to limit student speech going beyond advocacy of drug use, including when one considers the very vagueness of the "Bong Hits 4 Jesus" banner involved in this case.

Posted by Jon Katz in Constitutional Law at 11:25