***Judge-Facilitated Virtual Law School Class – Arguments Tool for Judge or Facilitator/Teacher***

**Bong Hits 4 Voting**

**Socratic Method of Argument Exploration**

**Directions: The Judge or facilitator raises the following questions and asks follow-up questions based on student responses. The responses listed here provide guidance for non-judge facilitators. They are not meant to be shared with, or read by, students. Instead, students are asked to use their critical-thinking skills. Students may work in pairs or small groups to develop their arguments.**

**Judge or Facilitator: The Overarching Issue is:**  Do school authorities violate the Free Speech Clause of the First Amendment by restricting student speech at a school event when the speech relates to legalizing the use of illicit substances?

**1. Judge or Facilitator: Do school officials have the authority to restrict student speech that is political in nature but could be interpreted as violating a school policy that prohibits the use of illegal substances?**

*What to look for in student responses:*

**School**

**Affirmative.** Yes.

Although students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,” school administrators must have the ability to restrict speech that is harmful to other students, in this instance promoting illegal drug use. Sampson displayed his banner at a school event. It was the duty of the principal to take action against him.

**Sampson**

**Negative.** No.

Students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” Here, a student was punished only because his message was deemed unpopular/controversial by the school principal. The banner did not disrupt the school-related event. The principal’s actions were based solely on opposition to the content of the banner, and the First Amendment protects against such acts of censorship.

**2. Judge/Facilitator: If the banner could be interpreted as promoting illegal drug use, do schools have a compelling interest in preventing such messages at school-sanctioned events?**

***What to look for in the student responses:***

**School**

**Affirmative.** Yes.

Illegal drug use can have serious adverse consequences on users, including death. The school has a responsibility to discourage the use of illegal drugs. Sampson was advocating illegal drug use. The state has a compelling interest in preventing such messages. Even if Sampson’s message were nonsensical, the term “bong hits” is a slang term associated with illegal drug use. Thus, the school’s compelling interests remain.

**Sampson**

**Negative.** No.

The “Bong Hits 4 Voting” banner did not explicitly promote illegal drug use. It is a nonsensical phrase. Any interpretations are a result of the viewer’s perceptions. The words are not meant to be taken literally. No one takes the number 4 on the banner literally. Even if the banner did have a pro-drug message, it is political speech and thus protected by the First Amendment. Afterall, how could one advocate for political bodies to change the law if one cannot advocate for making something legal that currently is illegal? Besides, Sampson, was not engaging in illegal conduct. The state may not censor his message simply because it is unpopular.

**3. Judge or Facilitator: May student speech be restricted by school officials if it could be interpreted to convey a message not endorsed by the school?**

***What to look for in the student responses:***

**School**

**Affirmative.** Yes.

Perceptions by others can have a role to play in restricting speech. The term “bong hits” is usually associated with illegal drug use and schools have a compelling interest in preventing a student from advocating illegal drug use. The fact that Sampson displayed the banner at a school event gives the school reason to remove it so that no one would think that the school either explicitly or implicitly endorsed its message.

**Sampson**

**Negative.** No.

Speech should not be restricted simply because it can be misinterpreted by others. If this is the criteria for restricting speech, then all speech can potentially be restricted since speech can easily be misconstrued. This interpretation would drastically undermine the protections of the First Amendment. No third party would seriously think that the school was endorsing Sampson’s message.

**4. Judge or Facilitator: Does the First Amendment protect only the expression of political speech by students but not student speech that is nonsensical?**

***What to look for in the student responses:***

**School**

**Affirmative.** Yes.

The First Amendment’s protection of freedom of speech is meant to promote the spread of ideas. As such, it only protects coherent or rational thoughts. Nonsensical speech is not protected by the First Amendment or, at least, is given less protection than rational speech. If Sampson’s speech were simply nonsensical, the principal could have restricted it without violating the First Amendment.

**Sampson**

**Negative.** No.

Nonsensical speech is protected by the First Amendment. The principal does not have the right to determine what speech is or is not protected by the First Amendment. Under most circumstances, the First Amendment gives individuals the right to say whatever they wish as long as they are not harming others or interfering with their rights. No one was harmed by Sampson’s speech.