*Overview – Student Package*

Civil Discourse: 16-Year-Olds and the Right to Vote
Bong Hits 4 Voting

**Law School in High School**

*60-Minute Distance-Learning Module*

What is the intersection of free speech and lowering the voting age to 16? In this virtual program, a federal judge leads high school students in a law school-style class in the distance-learning space.

The judge employs the Socratic method to facilitate students’ exploration of the issues in the landmark Supreme Court case of Morse v. Frederick, popularly known as the Bong Hits for Jesus case.

Students apply this precedent to a realistic but fictional car parade in which a high school student sports a banner on his van that calls for granting 16-year-olds the right to vote using an ambiguous message.

In this highly interactive experience, all learning styles are involved, and all students participate as law students who grapple with legal issues with the assistance of a judge.

**About These Resources**

Start with this Activity Download to find the agenda and all of the resources needed to prepare for and conduct the virtual law school class.

**Roles and Resources**

This activity requires a federal judge presiding and no fewer than 25 high school or college students. The virtual program can accommodate up to 100 students.

* Federal Judge: Facilitates the arguments, using the Socratic method of inquiry to involve all students, then opens up the program to take questions and comments from the participants. Resources for the judge are available in this Activity Download.
* The Teacher and Students:
**In advance**, they read the designated materials on their own (about 15 minutes). The teacher assigns students to two groups – Group #1 represents the position of student Julian Sampson and Group #2 represents the interests of the school.
**In the Law School class**, students work in their small groups to identify the arguments on the Arguments Worksheet that favor their position. They follow the judge’s Socratic line of questions to make their arguments during the virtual law school class.
* Methodology in Class: There are no designated spokespersons or debaters. All students have the opportunity to participate using the microphone function. The judge may require students to use the chat box to raise their hand, then speak. If the large group is more than 50 students, the chat box also can be used for student comments and questions if not all students who want to speak can be called on.
* After the arguments, all students deliberate on the issues and come to a decision. Due to time constraints, the decision does not have to be unanimous. Students should be prepared to explain the rationale for their decisions.

*Agenda for the Judge, Teacher, and Students*

Bong Hits 4 Voting

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*60-Minute Distance-Learning Module*

**Advance Work for Students at Home** *(~15 minutes)*

1. **Students Complete a Quiz and Share It with an Adult in Their Household**
* [Civility Self-Reflection Quiz](https://www.uscourts.gov/about-federal-courts/educational-resources/educational-activities/civil-discourse-and-difficult): To be discussed at the beginning of the program.
1. **Students Read Two Handouts to Prepare for the Simulation**
* One-Page Landmark Supreme Court Case: [Morse v. Frederick Facts and Case Summary](https://www.uscourts.gov/educational-resources/educational-activities/facts-and-case-summary-morse-v-frederick)
* One-Page Fictional Scenario: Bong Hits 4 Voting

**Advance Request for Teachers – Please Assign Students to Two Groups – Group #1 and Group #2 of Approximately Equal Numbers. They will receive their group assignments during the program.**

**The Online Program Begins**

**PART I: INTRODUCTION AND OVERVIEW**

**9:00 – 9:10 a.m. Judge Welcomes Everyone and Explains the Program**

*(10 minutes)*  **Judge Leads Discussion on One or Two Points:** Civility Self-Reflection Quiz

 **Judge Briefly Reviews** the Landmark Case: Facts and Case Summary

 **A Teacher-Selected Student Summarizes** the Fictional Scenario

**PART II: ALL PARTICIPANTS ARE LAW STUDENTS**

**9:10 – 9:30 a.m. Preparation of Arguments**

*(20 minutes)* **The Judge Leads All Students Through the Arguments Worksheet to identify arguments on both sides.** *(5 minutes)*

 **Students in Group 1 –** Represent the School

**Students in Group 2 –** Represents Julian Sampson

 **Working in Their Groups, Students Use the Arguments Worksheet**

 **To Discuss:**

* How they will present their arguments *(~5 minutes)*
* How they will refute the other side’s anticipated arguments. *(~5 minutes)*

**9:30 – 9:45 a.m. Return to the Large Group.**

*(15 minutes)* **Judge Uses the Socratic Method to Guide the Discussion.**

 All students have the opportunity to respond by using the microphone function.

**9:45 – 9:55 a.m. Q/A with the Judge on Any Topic**

*(10 minutes)*

**10:00 a.m. Adjournment and Students Complete Feedback Form.**

**Civil Discourse Self-Reflection Exercise**

**Instructions:** *Circle the frequency of each behavior as it applies to you when you are with peers*.

**Important:** Before filling out this form, think about your pet peeves in other people’s behavior when you are having a contentious conversation. Make a list of what annoys you that gets in the way of the understanding each other.

1. **I take an active role in creating a welcoming environment for differing opinions.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

1. **I give my peers eye contact and my full attention when they speak, even when I disagree.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

1. **I can’t control others’ behavior or opinions, so I focus on my own actions and civility.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**4. I speak respectfully to people with whom I disagree, even if they disrespect me.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**5. I ask clarifying questions.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**6. I am careful not to take over a conversation by talking longer than others**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**7. When I get excited, I interrupt the speaker. I’m not trying to be rude; I’m trying to be heard.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**8. I have side conversations when someone else has the floor.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**9. When peers disagree, I find common ground and call attention to areas of agreement.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

**10. I roll my eyes or make subtle faces when I disagree with someone’s opinion.**

• Very Frequently • Frequently • Occasionally • Rarely • Never

Bong Hits 4 Voting

**Facts and Case Summary: Morse v. Frederick**

*60-Minute Distance-Learning Module*

Facts and case summary for Morse v. Frederick, 551 U.S. 393, 127 S. Ct. 2618 (2007)

**School authorities do not violate the First Amendment when they stop students from expressing views that may be interpreted as promoting illegal drug use.**

**FACTS**: Joseph Frederick, a senior at Juneau-Douglas High School, unfurled a banner saying "Bong Hits 4 Jesus" during the Olympic Torch Relay through Juneau, Alaska on January 24, 2002. Frederick's attendance at the off-campus event was part of a school-supervised activity. The school's principal, Deborah Morse, told Frederick to put away the banner, as she was concerned it could be interpreted as advocating illegal drug activity. After Frederick refused to comply, she took the banner from him. Frederick originally was suspended from school for 10 days for violating school policy, which forbids advocating the use of illegal drugs.

**PROCEDURE:** The U.S. District Court for the District of Alaska ruled for Morse, saying that Frederick's action was not protected by the First Amendment. The U.S. Court of Appeals for the Ninth Circuit reversed and held that Frederick's banner was constitutionally protected. The U.S. Supreme Court granted certiorari.

**ISSUES:** Whether a principal violates the Free Speech Clause of the First Amendment by restricting speech at a school-supervised event when the speech is reasonably viewed as promoting illegal drug use.

**RULING:** No.

**REASONING:** In Tinker v. Des Moines (1969), the Court stated that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." Tinker held that the wearing of armbands by students to protest the Vietnam War was constitutionally protected speech because it was political speech. Political speech is at the heart of the First Amendment and, thus, can only be prohibited if it "substantially disrupts" the educational process. On the other hand, the Court noted in Bethel v. Fraser, 478 U.S. 675, 682 (1986) that "the constitutional rights of students at public school are not automatically, coextensive with the rights of adults." The rights of students are applied "in light of the special characteristics of the school environment," according to the U.S. Supreme Court in Hazelwood School District v. Kuhlmeier, 484 U.S. 260, 266 (1988). In the present case, the majority acknowledged that the Constitution affords lesser protections to certain types of student speech at school or school-supervised events. Finding that the message Frederick displayed was, by his own admission, not political in nature, as was the case in Tinker, the Court said the phrase "Bong Hits 4 Jesus" reasonably could be viewed as promoting illegal drug use. As such, the state had an "important" if not "compelling" interest in prohibiting/punishing student speech that reasonably could be viewed as promoting illegal drug use. The Court, therefore, held that schools may "take steps to safeguard those entrusted to their care from speech that can reasonably be regarded as encouraging illegal drug use" without fear of violating a student's First Amendment rights.

**CONCURRENCES:** Justice Clarence Thomas concurred with the majority, but argued that, instead of making exceptions to the holding in Tinker, Tinker should be overturned. Citing various scholarly sources on the history of public education, Justice Thomas argued that the First Amendment was never meant to protect student speech in public schools. Justices Alito and Kennedy concurred with the majority, but were careful to note that the majority's decision was at the outer parameters of constitutionally protected behavior. These justices were concerned that the majority's decision permitting the suppression of speech promoting illegal drug use could be used to punish those advocating constitutionally permissible, but unpopular, political ideas, e.g., legalizing medicinal marijuana use.

**DISSENT:** Justice John Paul Stevens took the position that the school's interest in protecting students from speech that can be reasonably regarded as promoting drug use does not justify Frederick's punishment for his attempt to make an ambiguous statement simply because it refers to drugs. Justice Stevens made several points in his dissent. First, he argued that prohibiting speech because it advocates illegal drug use, unless it is likely to provoke the harm sought to be avoided by the government, violates the First Amendment because it impermissibly discriminates based upon content. Second, even if the school had a compelling interest to prohibit such speech, Frederick's banner was so vague that a reasonable person could not assume that it advocated illegal drug use. Finally, the dissent took issue with the majority's justification that the speech could "reasonably be perceived as promoting drug use" because the constitutionality of speech should not depend on the perceptions of third parties.

**Fictional Scenario
Morse v. Frederick**Applied to Bong Hits 4 Voting

Skyline High School observes Constitution Day and Citizenship Day every year with a school assembly. The program is in keeping with a [2004 Congressional mandate](file:///C%3A%5CUsers%5Crebecca%20fanning%5CAppData%5CLocal%5CMicrosoft%5CWindows%5CINetCache%5CContent.Outlook%5CY37UPKP9%5CIn%202004%2C%20Congress%20mandated%20that%20schools%20receiving%20federal%20funding%20provide%20education%20about%20the%20Constitution%20on%20that%20date) requiring that schools receiving federal funds teach about the Constitution on the anniversary of its signing on September 17.

During the COVID-19 pandemic, the principal and student body president agree to have a school-sponsored car parade instead of an assembly. The theme is lowering the voting age to 16 -- proposing a 28th Amendment to the Constitution. Students are allowed to decorate their vehicles and form a parade line at school that goes through the downtown area.

The parade, which is scheduled during the lunch hour, attracts the participation of students driving cars and vans with banners and rear windshield signs with messages, including:

* Hey Boomers! You Blew It. Let 16-Year-Olds Vote.
* 16 is the New 18.

In a parking lot adjacent to school property, where 40 vehicles are lining up for the parade, Principal Annette Clark approaches the side of Julian Sampson’s van where he has strung up a banner reading: “Bong Hits 4 Voting.” She asks him about it and requests that he take it down. When Julian refuses, Ms. Clark pulls the banner off the van.

Julian tells her that he is exercising his right to free speech under the Constitution. He says that if 16-year-olds vote, they can legalize marijuana, which is on the ballot this year. He drives off using a bullhorn to chant: “Bong Hits 4 Voting.” A few blocks down the street, he gets out of the van and writes the slogan on his back windshield.

The administration gives Julian a five-day suspension for violating a school policy prohibiting the promotion of illegal drugs. Julian sues the principal and the school district claiming that his speech was political and protected by the First Amendment. He was communicating a get-out-the-vote message – something that everyone can get behind. The school argues that the speech was not protected by the First Amendment. The sign broke an anti-drug school policy designed to maintain order in the student body.

**Morse v. Frederick Applied to Bong Hits 4 Voting**

Arguments Worksheet for Students’ Small-Group Preparation – Blank for Students

1. The event was sponsored by the school. The administration was obligated to regulate it.
2. Students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.”
3. The banner did not disrupt the school-related event.
4. 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.
5. The school is teaching the students a false narrative about the First Amendment when the assistant principal puts a stop to speech that the administration doesn’t like or understand.
6. School administrators must have the ability to restrict speech that is harmful to other students. In this instance the speech was promoting illegal drug use.
7. Sampson was advocating for illegal drug use. Drug use can have fatal consequences and the administration cannot ignore proactive lobbying for a life-threatening activity at a school event.
8. No third party would reasonably conclude that the school was sponsoring the illegal use of drugs, regardless of what the banner said. The banner was displayed on a student’s van, not on a school vehicle such as a bus.
9. Even if the message were nonsensical, the words “bong hits” could easily be interpreted as promoting illegal drug use. The school has a compelling interest to stop the communication.
10. The state may not censor the student’s message simply because it is unpopular. Afterall, how could a student advocate for change in the law if he cannot advocate for making something legal that currently is illegal?
11. Sampson was communicating his message at a school-sponsored event. The administration had a right to intervene to prevent the false impression that the school endorsed the pro-drug message.
12. Under most circumstances, the First Amendment gives individuals the right to say whatever they wish so long as they are not harming others or interfering with their rights. No one was harmed by the banner on Sampson’s van.