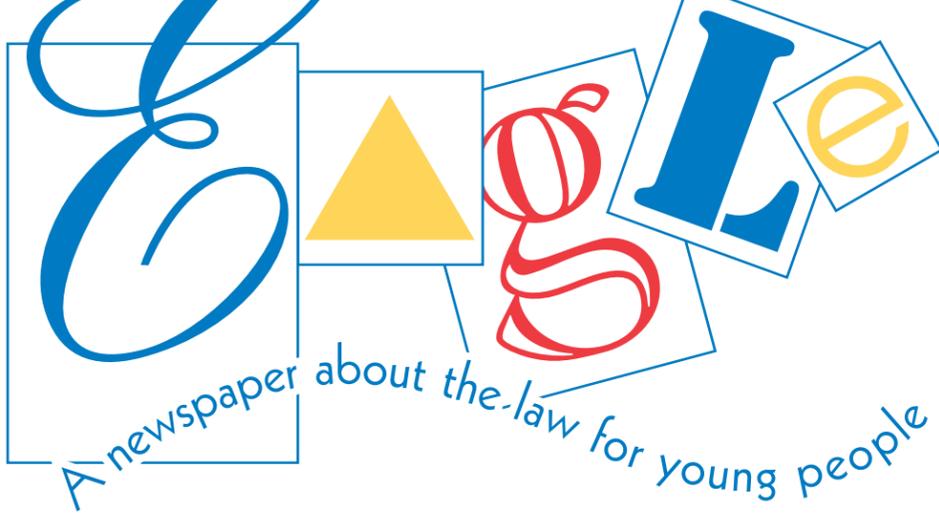


THE LEGAL



FALL 2007

Onscreen Smoking Could Keep You Out of the Theater

by Cheryl Baisden

The next time you want to see a movie like *Elf*, *School of Rock* or *Spider-Man* in the theatre, you might have to take one of your parents with you. Those three movies, and many others that were rated G, PG or PG-13 when they first hit the theatres, could be rated R if they were released today, under the movie industry's new rating guidelines.

If you are under the age of 17, you must be accompanied by a parent to get into an R-rated movie. Anyone can buy a ticket for a G, PG or PG-13 film, although your parents may decide not to let



you see a movie with a PG or PG-13 rating if they feel parts of it would not be appropriate for you.

Why such a big change for movies about an oversized elf, a wild teacher and a guy who shoots webs from his wrists? All three films feature characters who smoke. Under the new rating guidelines, movies that feature more than a passing glimpse of cigarette or cigar smoking could be rated R, unless there are historical reasons for smoking in the movie or smoking is represented negatively. In May 2007, smoking was added to the list of criteria used to rate movies, which already included bad language, violence, nudity, sex, drug use and the film's theme.

The Motion Picture Association of America (MPAA) decided to add smoking to its rating list hoping to keep some U.S. legislators from introducing a law aimed at forcing the association to give R ratings to *all* movies where a character smokes. So far, the MPAA's plan has worked, but if Congress decides to pursue the bill, moviemakers will argue that the proposed law would violate their constitutional right to freedom of expression, according to entertainment lawyer Steven Schechter of Fair Lawn.

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U.S. Supreme Court Split Decision on Protecting Wetlands Confuses Issue

by Phyllis Raybin Emert

According to the state website, New Jersey ranks eighth in the nation for wetlands with over 900,000 acres, including the Great Swamp and the Pine Barrens. Why should we care about preserving the nation's wetlands?

Until the 1960s, wetlands were often thought by many to be places full of bacteria and disease, and attempts were made to drain them, often unsuccessfully. Today, wetlands have come to be seen as filling a vital role in the ecological system and, in some cases, if properly developed, can prove economically useful as well. Increasing awareness of the environment has revealed the importance and value of this land. We now know that wetlands absorb floodwaters and remove pollutants, in addition to preserving the natural habitat of numerous plants and animals.

According to the Sierra Club, a grassroots environmental

organization, wetlands and other waters that may connect to groundwater and not surface water, "provide critical habitat for a wide array of migrating and resident bird and wildlife species and many of these systems contribute to maintaining and protecting drinking water supplies."

In the combined case, *Rapanos v. United States and Carabell v. U.S. Army Corps of Engineers*, the nine justices of the U.S. Supreme Court in June 2006 announced a 4-1-4 split decision, which sent the case back to the lower court for further review.



Both cases involved private developers in Michigan who wanted to drain wetlands and build construction projects. Since there was no majority ruling, the U.S. Supreme Court left the question of federal regulation of wetlands under the Clean Water Act more confusing.

The Rapanos and Carabell cases

John Rapanos, his wife and the companies they owned, cleared and filled large areas of wetlands on three land sites near Midland, Michigan without a permit. Despite knowledge that the lands contained protected wetlands, Rapanos went ahead with the work, refused to allow Michigan Department of Natural Resources (MDNR) inspectors on the sites, and ignored notices to stop from the MDNR and the Environmental Protection Agency (EPA). The federal government brought charges against the couple. The District Court found they had violated the Clean Water Act and decided in favor of the government. The Sixth Circuit Court of Appeals **affirmed** that decision.

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How Free is Student Speech?

by Cheryl Baisden

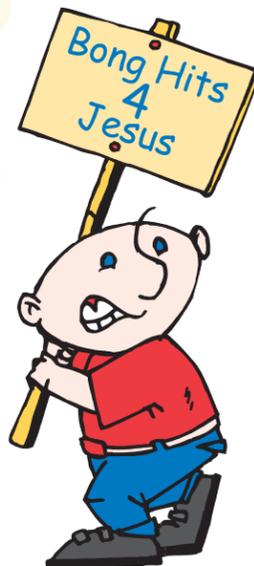
When 18-year-old Joseph Frederick waved a banner across the street from his high school hoping to get on TV, he had no idea he was about to launch a national legal debate about students' First Amendment rights to free speech and free expression.

Frederick, who attended high school in Juneau, Alaska, made the banner that said "Bong Hits 4 Jesus" hoping it would get camera time when news crews came to film the Winter Olympics torch passing by the school in Jan. 2002. Although he said the phrase was not designed to promote drug use, his principal disagreed, claiming the banner violated a school policy against endorsing drugs.

The case made it all the way to the U.S. Supreme Court, and five and a half years after the incident, in June 2007, the Court ruled that Frederick's constitutional rights were not violated when his principal confiscated the banner and suspended him for 10 days. In their 5-4

ruling in favor of the school district, the justices determined that the banner did promote illegal drugs, and that drug-related messages in school were not protected by the First Amendment right to free speech.

"School principals have a difficult job, and a vitally important one," Chief Justice John G. Roberts Jr. wrote in the ruling. "When Frederick suddenly and unexpectedly unfurled his banner, [principal] Morse had to decide to act, or not act, on the spot. It was reasonable for her to conclude the banner promoted illegal drug use — a violation of established school policy — and that failing to act would send a powerful message to the students in her charge."



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What happened to freedom of expression?

"The First Amendment to the U.S. Constitution says that the government cannot make any law 'abridging,' which means restricting or limiting, freedom of speech or freedom of the press," explains Schechter. "In the early days after movies were first invented in the late 1880s, people thought they were just a passing fad, and the U.S. Supreme Court said that they were not protected by the First Amendment."

Just a few decades later, movies were becoming so popular that state and local governments began passing laws limiting what could be included in films shown in their communities because they worried that movies showing violence and other negative behaviors might lead viewers to

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June and Keith Carabell owned 20 acres of land near Lake St. Clair in Michigan, four-fifths of which were wetlands. The Carabells applied for a permit to fill the wetlands so they could build condominiums. The Army Corps of Engineers denied the permit because it claimed the loss of the wetlands would have a negative effect on the environment. The Carabells appealed the decision, however the District Court rendered a unanimous decision in favor of the Army Corps of Engineers. The reasoning of the court was that because it is adjacent to a tributary of traditionally navigable waters, the Corps has jurisdiction over this wetland. Navigable waters are typically waters that can be navigated or traveled by boats or ships.

The Clean Water Act

In an attempt to control water pollution in America, the Federal Water Pollution Control Act Amendments were passed by Congress in 1972 and amended in 1977. Subsequent revisions occurred in 1981, 1987, 1990 and 2002. These laws became known as the Clean Water Act whose stated objective was "to restore and maintain the chemical, physical, and biological integrity of the nation's waters." The Clean Water Act gave the Environmental Protection Agency the authority to regulate the discharge of pollutants into United States waters. The Act also allowed the EPA to set up pollution control programs and "made it unlawful for any person to discharge any pollutant from a point source into navigable waters, unless a permit was obtained."

Five opinions, no majority

The U.S. Supreme Court issued five opinions on this case — one **plurality opinion**, two **concurring opinions** and two **dissenting opinions** — leaving more questions than answers. Justice Antonin Scalia, joined by Justices Clarence Thomas, Joseph Alito, and Chief Justice John Roberts, announced the judgment of the Court and issued its plurality opinion. The decision in this case is called a "plurality opinion" because it has the greater number of supporters, but not the majority.

In his plurality opinion, Justice Scalia narrowed the definition of federally protected lands to "continuously flowing bodies of water...and does not include channels through which water flows intermittently...or channels that periodically provide drainage for rainfall." *The Los Angeles Times* noted that to use that definition "tens of millions of acres of wetlands, including nearly all those in the West, because they are dry for much of the year" would be without federal protection.

Justice Scalia noted in the opinion that the interpretation by the Army Corps of Engineers was too broad. "...The Corps has stretched the term 'waters of the United States' beyond parody, by including storm sewers, culverts and drainage ditches," he wrote. He pointed to the term "navigable waters" in the Clean Water Act and wrote that this confirms the Act referred to "relatively permanent



bodies of water." For Justice Scalia and

three other justices on the Court, the *Rapanos and Carabell* wetlands did not have an unbroken surface connection to a permanent body of water and therefore were not covered by the Clean Water Act.

Kennedy's middle-ground opinion

Although Justice Anthony Kennedy agreed with Justice Scalia in sending the case back to the lower court, he wrote a separate concurring opinion and recommended a different standard of jurisdiction to be applied to questionable wetlands. The Kennedy standard referred to a 2001 case, *Solid Waste Agency of Northern Cook County v. Army Corp of Engineers* (called SWANCC) where the Court held that "a water or wetland must possess a 'significant nexus' [or connection] to waters that are or were navigable."

According to Justice Kennedy, "with the need to give the term 'navigable' some meaning, the Corps jurisdiction over wetlands depends upon the existence of a significant nexus between the wetlands in question and navigable waters in the traditional sense." Justice Kennedy explained that wetlands can act in "pollutant trapping, flood control, and runoff storage...possess the requisite nexus and thus come under the phrase 'navigable waters' if ... [they]... significantly affect the chemical, physical and biological integrity of other covered waters more readily understood as navigable." If the wetlands do not affect the water quality, they are not included under the term navigable waters. Justice Kennedy's opinion concluded with, "I would...remand for consideration whether the specific wetlands at issue possess a significant nexus with navigable waters."

The dissent

Justice John Stevens, who was joined by Justices David Souter, Ruth Bader Ginsburg, and Stephen Breyer, wrote the dissenting opinion and supported the broadest possible definition of the Clean Water Act. Justice Stevens wrote, "The question is whether regulations that have protected the quality of our waters for decades, that were implicitly approved by Congress, and that have been repeatedly enforced in case after case, must now be revised in light of the creative criticisms voiced by the plurality and Justice Kennedy." Justice Stevens accused the plurality of "rejecting more than 30 years of practice by the Army Corps..." and Justice Kennedy of failing "to defer sufficiently to the Corps."

In 1977, both houses of Congress supported the Army Corps' regulation of wetlands, Justice Stevens noted, and also stated that the importance of wetlands outweighs any cost in preserving them. Justice Stevens said that any questions or concerns about the Clean Water Act should be determined by Congress or the Army Corps of Engineers, who have the technical expertise, and not the judiciary. "I would affirm the judgments in both cases," concluded Justice Stevens, "and respectfully dissent from the decision of five Members of this Court to vacate and remand."

The navigable controversy

It seems that at least one source of disagreement with the Clean Water Act is the use of the word "navigable" when dealing with the "waters of the United States." In fact, the plurality opinion written by Justice Scalia uses the term "navigable waters" to justify his argument of restricting federal jurisdiction. An editorial in the May 27, 2007 edition of *The New York Times* stated, "because the word 'navigable' pops up in the act from time to time, developers and other opponents of the law have argued that it should apply only to large, clearly navigable waters or streams immediately adjacent to such waters — thus excluding most of the waters of the United States from federal jurisdiction."

To clarify this, the Clean Water Restoration Act of 2007 was introduced in Congress in May 2007 and specifically strikes the term "navigable waters" wherever it appears in the original Clean Water Act and replaces it with "waters of the United States." According to the Clean Water Restoration Act of 2007, "the term 'waters of the United States' means all waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters and their tributaries, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes and natural ponds are subject to the legislative power of Congress under the Constitution." The bill is currently in the House Committee on Transportation and Infrastructure.

In addition, in June 2007, the Army Corps of Engineers and the EPA issued revised guidelines regarding its jurisdiction in connection with the Clean Water Act. The guidelines now go into a six-month public comment period, after which the agencies will review and refine the guidelines as needed.

Feeling the way

In a separate concurring opinion, Chief Justice Roberts agreed with the judgment of the Court, but noted, "It is unfortunate that no opinion commands a majority of the Court on precisely how to read Congress' limits on the reach of the Clean Water Act. Lower courts and regulated entities will now have to feel their way on a case-by-case basis."

Teaching the Bible in Public Schools — Religious Resurgence or Constitutional Violation?

by Phyllis Raybin Emert

The First Amendment to the U.S. Constitution states: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...” This is referred to as the establishment clause and means that the government or its representatives (such as a department of education or a school district) cannot promote or approve a state religion. At the same time, the government cannot interfere with anyone’s right to practice the religion of his or her choice, which also includes practicing no religion.

In May 2006, Georgia’s governor signed a bill into law that allows state-funded Bible study in public high schools, making Georgia the first state in the nation to fund Bible study courses. The law, which had **bipartisan** support in the Georgia Legislature, states that classes must be taught “in an objective and non-devotional manner with no attempt to indoctrinate students.”

According to *Newsweek*, eight percent of U.S. schools offer some type of Bible study, however it is usually at a local level as determined by the school board and the community, not statewide. States considering similar bills to Georgia’s include Alabama, Missouri, Texas and Virginia.

Bible study and prayer—U.S. Supreme Court weighs in

A series of U.S. Supreme Court decisions beginning in the 1960s ruled against prayer and Bible reading in the public schools. In the 1962 case of *Engel v. Vitale*, the Court held that it was unconstitutional for school officials on the Board of Education of Union Free School District No. 9 in New Hyde Park, NY, to lead students in organized prayer.

In delivering the opinion of the Court, Justice Hugo Black declared, “...It is no part of the business of government to compose official prayers for any group of the American people to recite...Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause...” Black noted that religion was the personal and private choice of each individual and not appropriate in public schools.

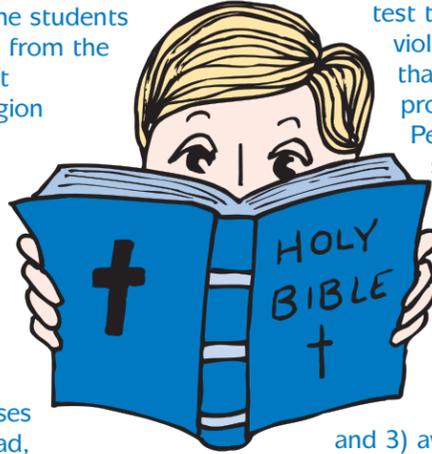
In 1963, Pennsylvania’s Abington Township schools opened each day with the reading of Bible verses and the Lord’s Prayer. A state law stipulated that “at least 10 verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day.” Any student could be excused from the Bible reading at the written request of a parent or guardian. In Baltimore, classes were also opened with a Bible reading or recitation of the Lord’s Prayer. Parents in both school districts brought legal challenges. Ultimately, *Abington Township v. Schempp* and *Murray v. Curlett* were appealed to the U.S. Supreme Court, where the Court combined the two cases and decided by an 8-1 majority that Bible reading, prayer and any laws that required them in classrooms, were unconstitutional.

Justice Tom C. Clarke wrote in *Abington*, “In the relationship between man and religion, the state is firmly committed to a position of neutrality.” However, Clark also noted that “study of the Bible or of religion, when presented objectively as part of a **secular** program of

education” is consistent with the First Amendment. In other words, if the purpose of prayer in school is religious worship, it is unconstitutional, but if the purpose is academic study, it is allowed.

In *Lemon v. Kurtzman*, the Court devised a test to determine whether there was a violation of the establishment clause. In that case, the Court ruled that state programs in Rhode Island and Pennsylvania that helped to pay salaries of religious schoolteachers out of public funds were unconstitutional. According to the *Lemon Test*, a school district or government policy must 1) have a purpose that is clearly secular and not religious, 2) not have the effect of either promoting or discouraging religion, and 3) avoid excessive entanglement with religion. The policy is unconstitutional if it does not meet all three standards.

According to the U.S. Department of Education guidelines, “students may read their Bibles or other scriptures, say grace before meals, and pray or study religious materials with fellow students during recess, the lunch hour, or other non instructional time to the same extent that they may engage in nonreligious activities.” Additionally, students can organize prayer groups or religious clubs on their own, and have equal access to school facilities like other extracurricular clubs. The guidelines state, “School authorities may not discriminate against groups who meet to pray.” Students may choose to pray or not to pray during a moment of silence or quiet time. Students can express their religious beliefs or lack of religious beliefs in



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Onscreen Smoking CONTINUED FROM PAGE 1

commit crimes. Afraid that the federal government would start setting restrictions too, movie studios created what would become the MPAA in the 1920s, and set up strict rules for themselves, known as the Hay’s Code. Under the code, all movie studios had to obtain a seal of approval from the association before releasing a movie or pay a fine.

“In the 1950s, as people saw that movies could tell powerful stories, send strong messages and be an important media for both entertainment and news, the U.S. Supreme Court finally recognized that movies were protected by the First Amendment,” Schechter says. “That means the government generally cannot tell filmmakers what to say, force them to change their films, or stop people from seeing their films based on the content or the message the film contains. This is called **censorship**, and occurs when the government tries to interfere with the film’s content or tries to stop the presentation of a film (or prohibits people from seeing it).”

With the U.S. Supreme Court decision behind them, movie studios abandoned the Hay’s Code, but soon found themselves facing public complaints from parent groups and religious organizations concerned about violence, bad language and sex in movies. So in 1968, the MPAA established its rating system to help parents decide which films to let their children see, and movie studios began voluntarily submitting their films for rating.

“Participating in the rating system is, and always has been, totally voluntary,” says Schechter. “It’s not done as a result of government threats of criminal fines or punishment. Because of the First Amendment, a filmmaker can make a film that criticizes politicians or government policy, or makes political, religious or other sensitive or controversial statements, without fear of government censorship or criminal prosecution.”

Smoking stats and censorship

Opponents of smoking in films — including some legislators — say they don’t see forcing studios to give R ratings to movies containing smoking as censorship at all.

“Censorship is when you tell someone they are not allowed to say something,” Stanton Glantz, the director of the University of California’s Center for Tobacco Control Research and Education and founder of a group called Smoke Free Movies, told *Newsweek*. “We are talking about labeling here. Censorship would be if we never permitted smoking.”

To back up their stand, opponents point to studies conducted by the Harvard School of Public Health and Dartmouth Medical School, showing that children who see smoking in movies are more likely to take up the habit themselves. The Dartmouth study, for example, involved German teenagers

who saw the most movies that depicted smoking, many of them Hollywood productions. Those teens were twice as likely, according to the study, to try cigarettes as those teens that saw the least amount of smoking onscreen. The same Dartmouth study also found that of 534 recent box office hits, 74 percent contained smoking. Many of those movies, the study reported, were rated PG-13.



Monkey see, monkey do?

Joel Stein, a columnist for *The Los Angeles Times*, believes that the dispute over smoking overestimates an actor’s influence on kids in so far as making it look cool. In a column published before the MPAA made its announcement, he wrote, “Not everything a character does is meant to be positive or desirable. Even if smoking looks cool, it doesn’t necessarily make you want to do it. Getting a machine gun for a prosthetic leg looks pretty cool too, but three weeks after *Grindhouse* opened, most people are sticking with their legs.” Stein also says, “Even if Leonardo DiCaprio’s chain smoking in *Blood Diamond* causes kids to try cigarettes, that’s the price of liberty. Art is empty **propaganda** if it just shows the world as we want it to be.”

The movie industry also stands behind its belief that the First Amendment protects showing smoking in movies.

“Smoking [in movies] is a matter of creative expression,” Vans Stevenson, senior vice president of MPAA when the debate first began, told the *Los Angeles Daily News*. “People smoke, and that is an element that is sometimes depicted on screen.”

Disney weighs in

Either way, public pressure and the threat of government intervention is already changing the future of films. In the spring, Universal Studios began reviewing its policy on smoking in films. And, in July 2007, Disney announced they would no longer show smoking in any of their movies, including ones released by their Touchstone Pictures division, which produces films for a more adult audience.

Disney Chief Executive Robert A. Iger told *The Los Angeles Times*, “While we don’t believe that people necessarily copy everything they see in movies, we also know that people who appear in these films and TV shows can become role models and kids can at times try to copy the behavior of role models.”

Disney also agreed to place public service announcements warning of the dangers of smoking on any future DVDs the studio releases.

Student Speech CONTINUED FROM PAGE 1

Although the Court took the school's side, the justices agreed they would have ruled differently if Frederick's message had been a political or social statement rather than one referring to drugs. Some people think the Court went too far in its decision.

"In my opinion, the banner did not advocate drug use, but was a nonsensical message calculated merely to tweak the noses of the school authorities," says Princeton attorney Grayson Barber. "The banner was displayed off campus. Unless it created substantial disruption at school, I don't think the student should have been suspended. I suspect the Court held a different perception of the message on the banner because they are terribly concerned about drug abuse by teens."

Protecting Free Speech

The U.S. Constitution's First Amendment guarantees everyone the right to express their opinions freely, in speech or writing, through artwork, and even through the clothes they choose to wear. There are some limits on freedom of expression that apply to everyone, including threats, personal attacks on a person's character (called defamation) and certain things that are considered obscene. In school, certain forms of expression also can be prohibited if they cause a substantial disruption or are done under the school's name, for example statements that are printed in a school newspaper, according to Barber.

Before Joseph Frederick's case tested the First Amendment, students' free speech rights were guided by a 1969 U.S. Supreme Court ruling called *Tinker v. Des Moines School District*, where the Court overturned the suspension of students who had defied school officials by wearing black armbands to protest the Vietnam War. The decision made it clear that schools could limit student speech when it would "substantially interfere with the work of the school or impinge upon the rights of other students," but could not deny free speech just to avoid "the discomfort or unpleasantness that always accompany an unpopular viewpoint."

The *Tinker* ruling said that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," while the decision in the Alaska case goes against that ruling, explained Frank Askin, a constitutional law professor at Rutgers Law School — Newark.

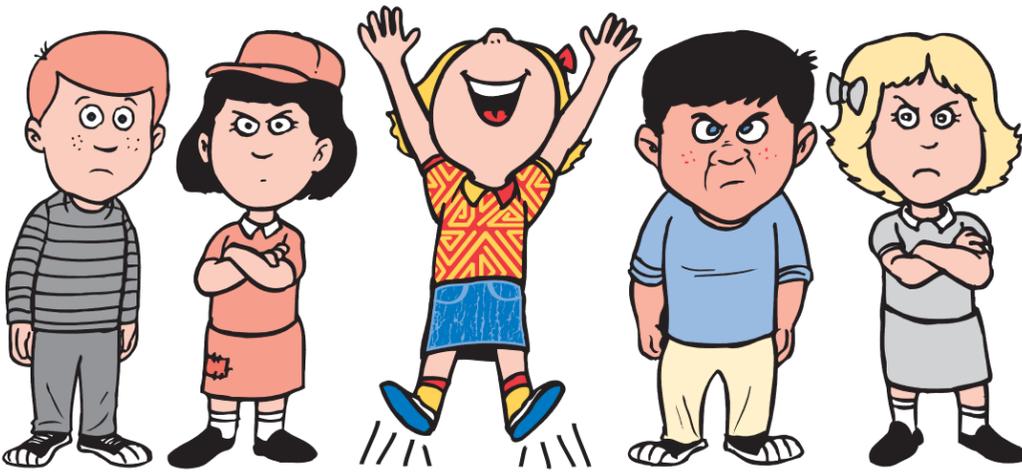
When the ruling came out, many agreed with Professor Askin. An editorial in *The New York Times* stated, "The ruling by Chief Justice Roberts said public officials did not violate the student's rights by punishing him for words that promote a drug message at an off-campus event. This oblique reference to drugs hardly justifies such mangling of sound

precedent and the First Amendment."

Another editorial in *The Los Angeles Times* said, "In ruling against Frederick, the Court has muddled the teaching of *Tinker* and has made it easier for hyper cautious school officials to clamp down on a wide range of student speech, some of which will be more serious than the bong banner." The editorial noted as positive, however, that Justices Samuel Alito and Anthony Kennedy filed a separate opinion stating that the decision "provides no support for any restrictions of speech that can plausibly be interpreted as commenting on any political or social issue."

You can't wear that in school, can you?

While the U.S. Supreme Court has ruled that messages like Frederick's are not protected under the First Amendment, a California Superior Court has defended the right of students when it comes to



expressing themselves through the clothes they wear.

While every school has some sort of dress code, preventing students from wearing clothes with obscene messages or that are too revealing, 7th grade honors student Kay Scott found herself assigned to an in-school suspension program called Students With Attitude Problems for wearing a denim skirt, brown shirt with a pink border and Tiger socks on the first day of school in 2005.

The school's dress code limits students to wearing clothes that are solid blue, white, green, yellow, khaki, grey, brown or black, and bans anything made of denim, according to principal Michael Pearson. The policy is developed so students wouldn't compete or fight about their clothes.

"We do not have to deal with issues of kids who are dressing a certain way because their parents are able to shop at the fashionable stores," he told the *San Francisco Chronicle*. "You cannot tell on my campus the kids that come from a low-income family."

But several students and their parents, who joined in the lawsuit against the school district, argued that choosing what they wore to school should be a personal decision.

"Kids who want to express their opinions or ideas aren't hurting anyone," Scott said in a statement through her attorneys in March 2007. "We should be able to show everyone who we are and have a way to express ourselves, as long as we aren't showing off things that shouldn't be shown off in school."

After hearing the case, in July 2007, a California Superior Court

judge agreed with her. The court ruled that the school district's policy violated students' free speech, and that students have the right to express themselves or take a stand on issues through clothing, as long as the message is not obscene, gang-related or promotes drugs. It is important to note that in making rulings, state courts sometimes interpret their state's constitution, which could be more **liberal** than a U.S. Supreme Court interpretation of the U.S. Constitution. In any case, a state superior court ruling never takes precedence over a U.S. Supreme Court ruling.

Although the school district says it may appeal the judge's decision, for the moment students are free to express themselves through their clothes. And even though the U.S. Supreme Court's ruling in Alaska places a new limit of free speech, students can still exercise their First Amendment rights.

"The Alaska decision will muddy the waters for students, teachers

and administrators who have to figure out where to draw the line between prohibited speech and speech that is constitutionally protected," says Barber. "But the



affirm — to uphold, approve or confirm.

bipartisan — supported by two political parties.

censorship — blocking the distribution or publication of, for example, movies, plays, publications, etc., because of questionable (i.e., obscene, immoral) material.

concurring opinion — a separate opinion delivered by one or more justices or judges that agrees with the decision of the court but not for the same reasons.

dissenting opinion — a statement written by a judge or justice that disagrees with the opinion reached by the majority of his or her colleagues.

liberal — broad or open-minded.

nonsectarian — not associated with any formal religious denomination.

plurality opinion — an opinion that does not have the support of the majority of the judges or justices on a court, but has more support than any other opinion.

propaganda — misinformation or half-truths.

remand — to send a case back to a lower court.

secular — not sacred or concerned with religion.

law remains that school administrators and teachers cannot censor you, or prevent you from saying something, just because it is controversial."

Bible in Public Schools CONTINUED FROM PAGE 3

written or oral school assignments without discrimination as long as it is relevant to the topic.

State-approved Bible classes in Georgia

Two Bible classes—one on the Old Testament and one on the New Testament—will be offered in some Georgia school districts in the 2007 – 2008 school year. The Bible must be treated as a historical or literary work and cannot be studied from the perspective of one religion over another. Instruction in the class must be neutral and **nonsectarian** with respect for both Christian and non-Christian beliefs.

The U.S. Supreme Court has said the Bible itself may be used as the main textbook in such classes, but the selection of which one to use may present problems, since different religions have different interpretations and names for their bibles (the Old Testament, the New Testament, The Hebrew Bible, the King James Bible, etc.).

"To pick one is to suggest that it is the right Bible, which is a school district making a faith statement," Judith Schaeffer, attorney for People for the American Way, told *The Christian Science Monitor*.

Possible constitutional challenges

Jonathan Cassady, an attorney in West Orange, believes that state-funded Bible classes in Georgia "will be challenged regardless of the measures put in place to secularize it." Cassady maintains that it may be possible to study the Bible "objectively as part of a secular program of education" as described by Justice Clarke in Abington, but feels it is "improbable" that it will happen. According to Cassady, a legal challenge might be avoided if all parties were allowed to closely examine the curriculum and come to a mutual understanding of what could or could not be taught.

"Religious texts are crucial in understanding world civilization," he explained. "They show us the world we came from and the structures of the societies on which we base our own. On the other hand," Cassady stated, "it worries me that a program based on the Bible wouldn't backslide into the 'mysticism' that the Bible reflects." He declared, "The bottom line is that the schools should remain secular and any invasion of that, whether intentional or unintentional has to be scrutinized."

Since this school year is the first time the Georgia courses are being offered, it remains to be seen whether legal challenges will be brought against a school district. The constitutionality of the classes cannot be determined until a lawsuit is brought and the courts weigh in.