

INSIDE THE HIGHEST COURT

Purpose:

This lesson is designed to offer an overview of the procedures and inner-workings of the United States Supreme Court, including an introduction to the history of the role of the Court in interpretation of First Amendment freedoms. Following this overview, students will apply their knowledge of the Court's operations through a recent case study involving student's rights to freedom of expression within school settings through preparation of "mock briefs" and "mock opinions."

Procedure:

1. Introduce students to the idea that our Supreme Court operates somewhat differently than local municipal or state courts as the final arbiter of legal conflicts in America. As the final arbiter, the Court exercises the power of "judicial review." While students might have studied the roots of "judicial review" in previous history classes, use this opportunity to review their understanding of this authority by asking students to read the handout "The Court and Constitutional Interpretation." Conduct a classroom discussion, listing new information students have learned about the Court's role in interpreting the meaning and application of the Constitution in modern affairs. Do they agree or disagree with John Marshall's statement, "It is emphatically the province of the judicial department to say what the law is"? (For extension, use the C-Span videoclip that takes students on a brief online tour of the original Supreme Court chambers in the basement of the U.S. Capitol building. See "Old Supreme Court Chamber" tour at <http://www.c-span.org/capitolhistory/tours/>.)
2. Distribute the handout which charts the Supreme Court's jurisdiction, routes of cases, calendar, types of decisions and opinions. Discuss the information on the chart with students to assure all understand the differences in appellate versus original jurisdiction, as well as the varying types of opinions issued by the Court. Using the handout "Terminology of Supreme Court Procedures," discuss any new terms with students. Remind students they will be using such terminology in their study of the Supreme Court and the First Amendment. (For extension or enrichment, students may use the internet to explore the workings of the Supreme Court by seeking answers to questions found on the "Inside the Supreme Court Webquest.")
3. Inform students that they will apply what they have learned about the workings of the Court by exploring a recent situation involving the rights of students to express a controversial idea within a school setting. Divide students into four groups. One group will be attorneys representing the student, Joseph Frederick; one group will be attorneys representing his high school principal, Deborah Morse; one group will be attorneys representing DARE (Drug Free America Foundation) who will be filing an "amicus" brief siding with the high school principal; and one group will be attorneys representing the Alliance Defense Fund who will be filing an amicus brief siding with the student.
4. From the handout "*Morse v. Frederick*," read aloud the facts of the case to the class, including the two questions at stake. (Do not read the conclusion of the case at this time.) Give time for the four groups to discuss the points they will be making before the Supreme Court on behalf of their clients. Each group will be writing its own one-page brief to be submitted to the Court. Use the handout "You are There" which offers guidelines for the brief. (The instructor may wish to

also hand out the rubric for grading the briefs at this time and review with students what will be the expectations for the assignment.) Students are to complete their briefs within one class period. Each group will submit one jointly-written brief, including two "amicus" briefs from DARE and the ADF. (For extension, time might be offered outside of class for students to access the website <http://www.oyez.org> to discover what major arguments the real attorneys made in their briefs.

5. Ask one representative from each group to read their group's brief aloud. What are the major arguments the student would have made to support his right to freedom of expression, even controversial messages, such as his? Does the class believe the high school is required to maintain a peaceful environment for learning, which might empower it to limit freedom of expression? Following the presentations and discussion, ask students to vote whether they find in favor of Frederick or his principal, Ms. Morse.

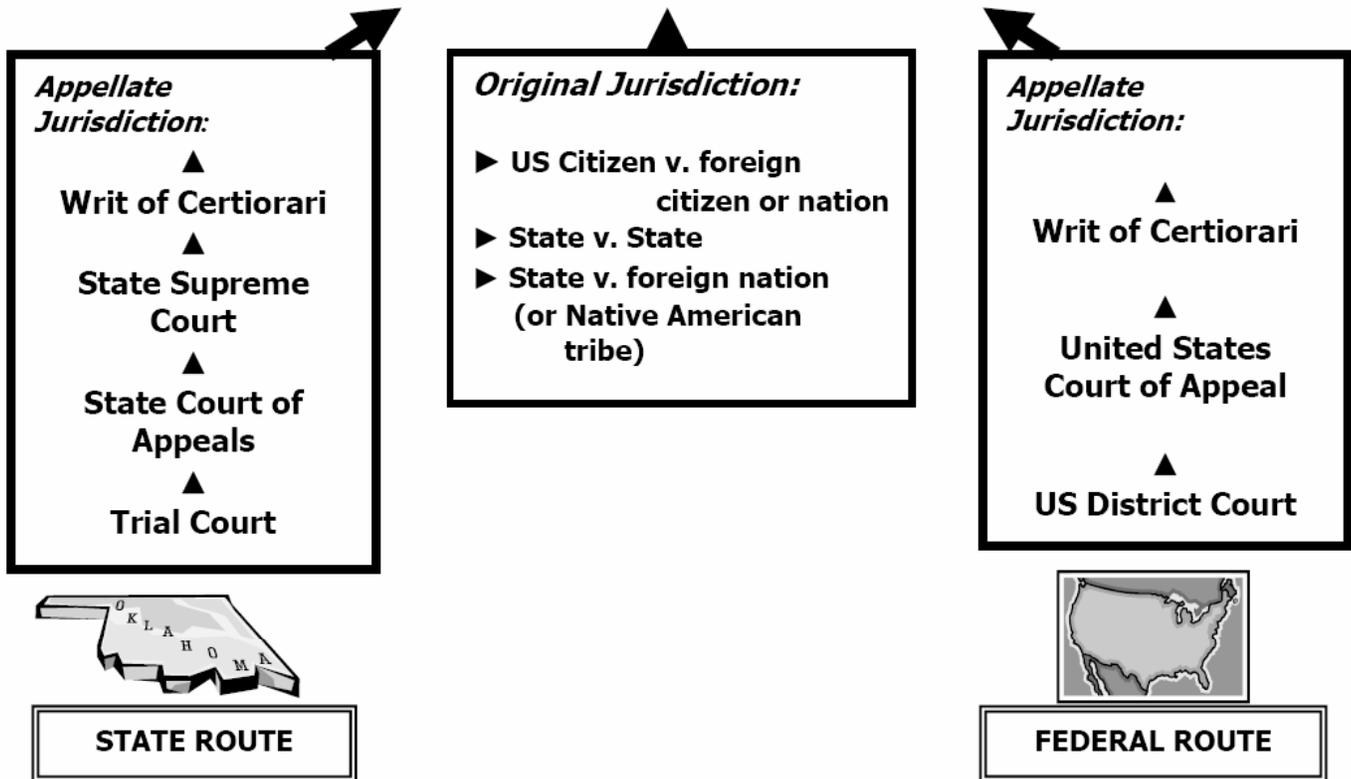
6. For homework, assign individual students the task of writing a half-page opinion, through the eyes of a Supreme Court justice. This opinion will be either a "majority" or "dissenting" opinion, as based on the outcome of the class vote and the individual student's concurrence or disagreement with the majority of his/her classmates.

7. Inform students of the outcome of this case. (See the conclusion portion of the "*Morse v. Frederick*" handout.) To better understand the reasoning of justices, ask the class to read the article "Bong Hits 4 Jesus." How is this 2007 case similar or different from previous cases involving students' rights to free speech at school? What additional guidelines did the Court offer to assist both students and schools in determining where free speech begins and ends within an educational environment?

8. For enrichment or extension, explain to students that scholars of the Supreme Court often attempt to predict trends and future changes in the Court's interpretation of the Constitution and our First Amendment. Divide the class into pairs. Assign each pair the task of creating a "Concept Journal" outlining the claim, major supporting points, and evidence or reasoning presented in the article "New Supreme Court Needs New First Amendment Direction" by Paul McMasters. Student pairs will use the "Concept Journal Graphic Organizer" to note the major thoughts expressed by the author.



United States Supreme Court



Supreme Court Calendar:

First Monday in October- Start of New Term
Late September and Early October- Consider Writs of Certiorari
October through April- Oral Arguments
Spring and Early Summer- Opinion Announcements

Types of Decisions:

- *Reverse the lower court's decision*
- *Remand to a lower court of appeals for review*
- *Retrial by original court*

Opinions of the Justices:

- ✓ **Majority-** *Chief Justice assigns one majority opinion to be written, reflecting viewpoints of the majority of justices*
- ✓ **Concurring-** *Individual justice siding with majority may submit independent opinion, summarizing different viewpoints and reasoning*
- ✓ **Dissenting-** *All justices not voting with the majority submit individual opinion, explaining reasoning and justification*

Terminology of Supreme Court Procedures:

Associate Justice- a member of the Supreme Court. There are eight associate justices and one chief justice.

Amicus Curiae-

(ah-MEE-cus CURE-ee-ay)

a party or organization interested in a case who files a brief in support of one side in a lawsuit. (Latin for "friend of the court.") Usually, the court must give permission for the brief to be filed.

Brief- a written legal document stating the legal reasons for the lawsuit, based on statutes, regulations, case precedents, legal texts, and reasons applied to the particular facts of a situation.

Calendar- the list of cases to be called for trial before a court (also called the "docket.")

Case Law- decisions of appeals courts which make new interpretations of the law and can therefore be cited as precedents.

Certiorari- (sersh-oh-RARE-ee) a writ (court order) for all documents for a case to be handed over to an appeals court for review. For example, when a person wishes the Supreme Court to hear his/her case, a "writ of certiorari" is submitted.

Clerks- young lawyers who assist the justices in research and drafting of documents and opinions.

Conference- when the Supreme Court justices meet in total privacy to discuss which cases to accept each year; also when justices meet following oral arguments to make their final decision regarding a case.

Oral Arguments- each side's attorneys in a lawsuit at the Supreme Court is allowed a limited time period to appear before all nine justices and explain their viewpoint. Justices also interact and questions attorneys during this time period. Television cameras are not permitted but tape recordings of the oral arguments are made available to the public.

Opinion- the written explanation of a court's judgment of a case. Precedents will be cited, the facts of the situation will be summarized, and arguments from the attorneys will be applied to the law.

Petitioner- the person or group of people who ask the court to review a case, modify, or dismiss a lower court's ruling.

Precedent- a prior opinion of any appeals court which establishes a legal rule to be followed in a similar situation. The doctrine that a lower court must follow a precedent is called "stare decisis" (Latin for "to stand by a decision.")

Respondent- the party who must answer to a petitioner's filing of a lawsuit. The respondent is usually listed last on a case citing.



Inside the Supreme Court: WEBQUEST



Use the following links to discover how the Supreme Court really works!

1. Of the thousands of cases submitted to the Supreme Court each year, only about ____ are actually heard and a ruling is handed down. (http://www.supremecourthistory.org/03_how/subs_how/03_a03.html)
2. List two types of cases brought to the Court by way of "original jurisdiction."
(http://www.supremecourthistory.org/03_how/subs_how/03_a08.html)
3. What does it mean for the Court to grant a "writ of certiorari?"
(http://www.supremecourthistory.org/03_how/subs_how/03_a08.html)
4. When attorneys for the plaintiff and respondent make their oral arguments before the bench, each side is given only ____ minutes to make their case and respond to questions from the justices.
(http://www.supremecourthistory.org/03_how/subs_how/03_a07.html)
5. Describe what happens during the "conference."
(http://www.supremecourthistory.org/03_how/subs_how/03_a09.html)
6. Who usually writes the Court's majority opinion?
(http://www.supremecourthistory.org/03_how/subs_how/03_a09.html)
7. List two duties of the Chief Justice:
(http://www.supremecourthistory.org/03_how/subs_how/03_a15.html)
8. Who was the first woman to be appointed as a justice and when did this occur?
(http://www.supremecourthistory.org/03_how/subs_how/03_a16.html)
9. Who appoints justices to the Court and what role does the legislative branch play in the selection process?
(http://www.supremecourthistory.org/03_how/subs_how/03_a17.html)
10. What is the term of office for federal judges and under the Constitution, what circumstances could they be removed from office? (http://www.supremecourthistory.org/03_how/subs_how/03_a17.html)

BONUS: The Supreme Court exercises the power of "judicial review." What are two reasons why this power may not have been specifically mentioned in the U.S. Constitution?

(<http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/judicialrev.htm>)

Morse v. Frederick

Docket: 06-278
Citation: 551 U.S. ____ (2007)
Petitioner: Deborah Morse, et al.
Respondent: Joseph Frederick

Case Media

- [Oral Argument](#)
- [Briefs](#)
- [Opinion Announcement](#)
- [Written Opinion](#)

Granted: Friday, December 1, 2006
Argument: Monday, March 19, 2007
Decision: Monday, June 25, 2007
Issues: First Amendment, Protest Demonstrations

Facts of the Case

At a school-supervised event, Joseph Frederick held up a banner with the message "Bong Hits 4 Jesus," a slang reference to marijuana smoking. Principal Deborah Morse took away the banner and suspended Frederick for ten days. She justified her actions by citing the school's policy against the display of material that promotes the use of illegal drugs. Frederick sued under 42 U.S.C. 1983, the federal civil rights statute, alleging a violation of his First Amendment right to freedom of speech.

The District Court found no constitutional violation and ruled in favor of Morse. The court held that even if there were a violation, the principal had qualified immunity from lawsuit. The U.S. Court of Appeals for the Ninth Circuit reversed. The Ninth Circuit cited *Tinker v. Des Moines Independent Community School District*, which extended First Amendment protection to student speech except where the speech would cause a disturbance. Because Frederick was punished for his message rather than for any disturbance, the Circuit Court ruled, the punishment was unconstitutional. Furthermore, the principal had no qualified immunity, because any reasonable principal would have known that Morse's actions were unlawful.

Question

- 1) Does the First Amendment allow public schools to prohibit students from displaying messages promoting the use of illegal drugs at school-supervised events?
- 2) Does a school official have qualified immunity from a damages lawsuit under 42 U.S.C. 1983 when, in accordance with school policy, she disciplines a student for displaying a banner with a drug reference at a school-supervised event?

Conclusion

Yes and not reached. The Court reversed the Ninth Circuit by a 5-4 vote, ruling that school officials can prohibit students from displaying messages that promote illegal drug use. Chief Justice John Roberts's majority opinion held that although students do have some right to political speech even while in school, this right does not extend to pro-drug messages that may undermine the school's important mission to discourage drug use. The majority held that Frederick's message, though "cryptic," was reasonably interpreted as promoting marijuana use - equivalent to "[Take] bong hits" or "bong hits [are a good thing]." In ruling for Morse, the Court affirmed that the speech rights of public school students are not as extensive as those adults normally enjoy, and that the highly protective standard set by *Tinker* would not always be applied. In concurring opinions, Justice Thomas expressed his view that the right to free speech does not apply to students and his wish to see *Tinker* overturned altogether, while Justice Alito stressed that the decision applied only to pro-drug messages and not to broader political speech. The dissent conceded that the principal should have had immunity from the lawsuit, but argued that the majority opinion was "[...] deaf to the constitutional imperative to permit unfettered debate, even among high-school students [...]."

Decision: 5 votes for Morse, 4 vote(s) against

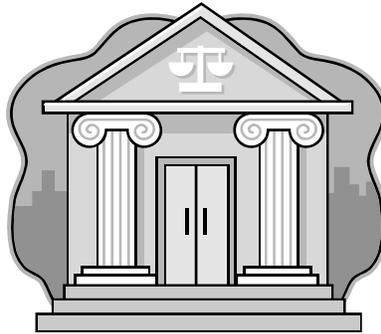
http://www.oyez.org/cases/2000-2009/2006/2006_06_278/

OYEZ
U.S. SUPREME COURT MEDIA



YOU ARE THERE!

ORAL ARGUMENTS BEFORE THE SUPREME COURT



*You will be giving a 5 minute argument before the US Supreme Court.
But first, you must prepare what you wish to say....
Research your case and compose the following brief to complete preparations
for your oral argument.*

FORMAT for Your BRIEF:

Title of Case: Should include the legal citation, showing the volume and date of decision, e.g. Brown v. Board of Education, 347 US 483, 1954.

Facts: Name of the parties involved (petitioner, respondent, amicus) and give a well-phrased overview of what actually happened, including necessary historical background. Use no more than 6-7 sentences.

Issue: Identify the constitutional issues involved. State each issue as a question that can be answered "yes" or "no." Use no more than 2-3 sentences.

Precedents: List previous cases that might pertain to the decision to be made in this case.

Opinion: In your own words, where do you stand? What are you trying to convince the court to rule? Give a strong plea to the bench to support your point of view.

**YOU ARE THERE!
ORAL ARGUMENTS BEFORE THE SUPREME COURT**



RATING SHEET:

1= Good

2= Very Good

3 = Excellent

4 = Superior

Case Title: _____

Petitioner's Attorneys: _____

	Rating:	Comments:
Statement of Facts	_____	_____
Constitutional Issue	_____	_____
Historic Accuracy	_____	_____
Supporting Evidence	_____	_____
Logic & Reasoning	_____	_____
Response to Questions	_____	_____
Opinion	_____	_____

Total Points

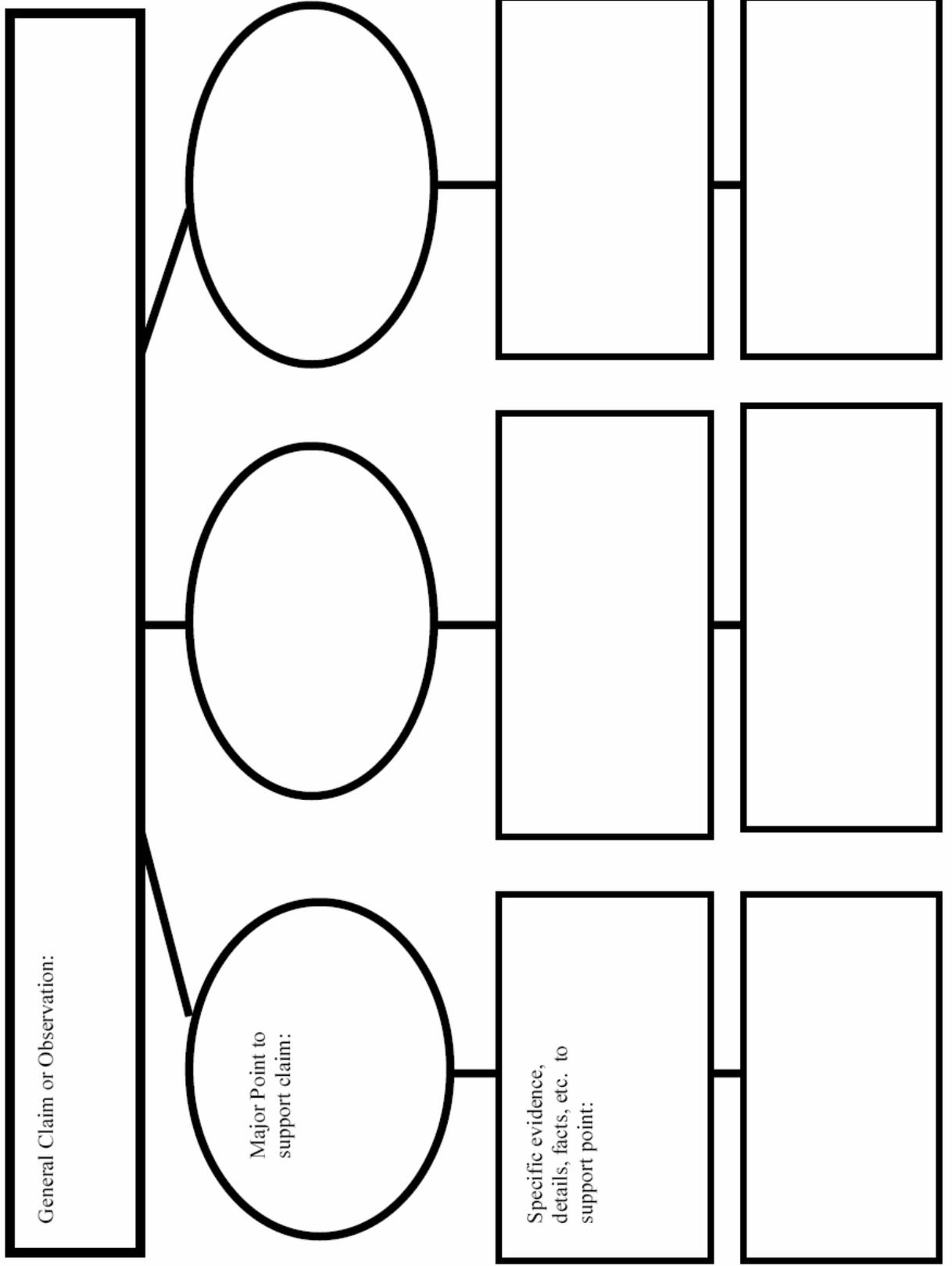
Respondent's Attorneys _____

	Rating:	Comments:
Statement of Facts	_____	_____
Constitutional Issue	_____	_____
Historic Accuracy	_____	_____
Supporting Evidence	_____	_____
Logic & Reasoning	_____	_____
Response to Questions	_____	_____
Opinion	_____	_____

Total Points

CONCEPT JOURNAL GRAPHIC ORGANIZER

Title of Article: _____



New Supreme Court Needs New First Amendment Direction

President Woodrow Wilson's nomination of Louis D. Brandeis to the U.S. Supreme Court in 1916 provoked rather agitated responses from some quarters. Calling the nomination "utterly indefensible and outrageous " and the nominee "a radical of the radicals, " the Los Angeles Times wrote in a Jan. 30 editorial, "His nomination is an obvious appeal by the President for the political support of the Socialists, law-defying labor unions bosses, wreckers of business and all the discontented and dangerous elements of the population. " Brandeis went on to confirmation and a distinguished career on the Court. Then and now, there is ample proof that Americans do take Supreme Court nominations seriously.

Today, we have a new Supreme Court for the first time since 1994. Sooner or later, the nation's most vexing disagreements over our most vital issues wind up before the Supreme Court. None quite penetrates to the core of our democratic being more than those involving First Amendment rights and values.

Each term, the nine justices must grapple with profound questions involving freedom of speech, freedom of thought and freedom to participate in political discourse: Just how free is freedom of speech? What is the role of religion in public life?

During the Court's last three terms, the First Amendment has not fared well. The high court has accepted for review far fewer free-expression-related cases than usual. How the First Amendment will fare in the future depends on how Chief Justice John Roberts differs from his predecessor, William Rehnquist. The justices will hear arguments, review briefs and render opinions in cases that have direct bearing on the crucial political, cultural or religious issues that confront us. For example, in a case involving anti-abortion protests appearing before the Court for the third time since 1986, the justices' ruling could affect protest and picketing rights and practices.

First Amendment advocates, of course, hope the new Court is set on a new course as far as free expression is concerned. In that regard, Justice Brandeis set a great example as a First Amendment champion during his 23 years on the Supreme Court.

"Those who won our independence... " he wrote in 1927, " believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth. "

October 10, 2005, Paul K. McMasters, First Amendment Center, Gannet News Service, [USA Today](#)