

Deciding to Decide Activity

The purpose of this activity is to help you become more familiar with H. W. Perry's criteria for understanding why the Supreme Court decides to grant *certiorari* in a particular case.

Follow these steps:

1. Read the short descriptions of each of the four cases. If you know whether or not the Court has granted *certiorari* in any of the cases, please keep that to yourself so that you don't shortcut your group's deliberation.
2. Discuss the strongest reasons for granting and not granting *cert*. Appoint a timekeeper so you can get through all four cases. Allow about five minutes per case. Focus your discussions on the meaning of the criteria as they apply to the specific cases. Next, decide for each case whether or not the Supreme Court would grant *certiorari*. There is no need for you to reach a consensus, but try to be clear about why (i.e., on which criteria) you are disagreeing.
3. Select a spokesperson to represent your group's deliberations in the debriefing of the activity.
4. Have fun!

Case One: Drug Sweep in School Parking Lot

In the spring semester of 2002, Scott County School District instituted a policy that allowed suspicion-less campus-wide drug sweeps with drug-sniffing dogs to be conducted at local schools. At Austin High School in Austin, Indiana, one such search turned up a handgun in a student's car. The student was charged with possession of a firearm on school property. At trial, the defendant moved to suppress the handgun, arguing that it was found as a result of an illegal search. The court denied the motion and both the court of appeals and Indiana Supreme Court affirmed that decision. The petitioner argues that the Supreme Court needs to decide whether the Fourth Amendment allows suspicion-less drug sweeps such as this at school. The respondent argues that lower courts agree that suspicion-less, warrantless searches on school grounds are reasonable. No court has held that the Fourth Amendment prohibits this type of drug sweep at school.

What is the best argument for granting *cert*?

What is the best argument for denying *cert*?

Will the Supreme Court grant *certiorari* in this case?

Case Two: Video Voyeurism

A man in Mississippi was convicted of five counts of video voyeurism (which state law makes a felony) and sentenced to fifteen years in prison plus five years probation. State police had observed him, on five separate occasions, videotaping a woman in her apartment from his car. The woman was clothed and the door of her apartment was open. He repeatedly zoomed in on her chest and crotch. The state statute for video voyeurism requires that the video taping be committed with lewd intent, without the victim's permission, and in a location where a person would intend to be in a state of undress and have a reasonable expectation of privacy.

On appeal through the Mississippi state courts, the man argued that the woman was not in a location where a person would intend to be in a state of undress, since her door was open. The state supreme court upheld his conviction, finding the fact that the woman was in a private dwelling sufficiently met the "location" test of the statute. The man appealed the decision to the U.S. Supreme Court, arguing that the courts below had misinterpreted the statute, and as such, violated his right to due process as guaranteed by the Fourteenth Amendment.

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Will the Supreme Court grant *certiorari* in this case?

Case Three: Public Money for Computers in Religious Schools

A federal law allowed for the allocation of federal aid to provide computer equipment in public and private schools for “secular, neutral and non-ideological” programs. In Jefferson Parrish, Louisiana, about 30% of the funding allocated under this law went to private schools, many of them religiously affiliated. Several public school parents sued, arguing that the federal law allocating funds for educational materials to private schools violated the Establishment Clause of the First Amendment. The Fifth Circuit ruled that this provision did violate the First Amendment because it was an impermissible governmental aid to religious schools. The Ninth Circuit, in analyzing the same issue in a different case, said that there was no violation of the First Amendment. A recent Supreme Court decision already decided that it was ok for public school teachers to offer remedial courses in parochial school classrooms. The Solicitor General of the U.S. filed a brief asking the Court to grant certiorari.

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Case Four: School Dress Codes

Nicholas Boroff, a 17 year old public high school student in Ohio, was sent home from school on consecutive days for wearing a t-shirt depicting shock rocker Marilyn Manson. Marilyn Manson was often criticized as being satanic and presenting himself as the “anti-Christ.” The shirt was not obscene, but school officials said that he could not wear it at school because it presented immoral, satanic, and offensive images, which conflicted with Christian beliefs that were widely held by students and officials at the school. Officials told Boroff that he could return to school if he did not wear a Marilyn Manson t-shirt. The prior school year, Boroff often wore Marilyn Manson t-shirts to school, and it caused no disruption. The school continues to let students wear t-shirts depicting other rock and roll groups, many of which are quite similar to Marilyn Manson. Additionally, some students are allowed to have small Marilyn Manson patches on their backpacks and are not sent home or asked to remove them.

Boroff’s mother sued the school district for violating her son’s First Amendment right to free speech. The district court ruled in favor of the school district and the Sixth Circuit Court of Appeals affirmed this decision. The U.S. Supreme Court was asked to decide whether the First Amendment forbids public school officials from banning a student from wearing a t-shirt with a message which is contrary to the religious beliefs held by the majority of the students. The Sixth Circuit’s ruling is in conflict with the rulings of the Third and Fourth Circuits on this same issue.

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Graphic Organizer

<i>Criteria</i>	Case #1	Case #2	Case #3	Case #4
Conflict among lower courts?				
Importance?				
Adequate percolation?				
Involvement of federal government?				
Intractable issue or other considerations?				
Should <i>cert</i> be granted in this case?				

