Tinker v. Des Moines Independent Community School District (1969)

Argued: November 12, 1968
Decided: February 24, 1969

Facts

In 1966, in Des Moines, Iowa, five students, ages 13–16, decided to show opposition to the Vietnam War. The students planned to wear two-inch-wide black armbands to school for two weeks. The school district found out about the students' plan and preemptively announced a policy that any student who wore a black armband, or refused to take it off, would be suspended from school after the student's parents were called.

Mary Beth Tinker, an eighth-grader, and John Tinker and Christopher Eckardt, both high school students, wore black armbands to their respective schools. All three teens were sent home for violating the announced ban and told not to return until they agreed not to wear the armbands. Their parents filed suit against the school district for violating the students' First Amendment right to free speech. The federal district court dismissed the case and ruled that the school district's actions were reasonable to uphold school discipline. The U.S. Court of Appeals for the Eighth Circuit agreed with the district court. The Tinkers asked the U.S. Supreme Court to review that decision, and the Court agreed to hear the case.

Issue

Does a prohibition against the wearing of armbands in public school, as a form of symbolic speech, violate the students' freedom of speech protections guaranteed by the First Amendment?

Constitutional Amendment and Supreme Court Precedents

- **U.S. Constitution, Amendment I**

Congress shall make no law … abridging the freedom of speech….

- ***West Virginia State Board of Education v. Barnette*** **(1943)**

The West Virginia Board of Education required that all public schools include a salute of the American flag as a part of their activities. All teachers and pupils were required to salute the flag. If they did not, they could be charged with "insubordination" and punished. Students who were Jehovah's Witnesses and had a religious objection to saluting the flag sued the state board of education. The Supreme Court ruled that this mandatory salute was

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unconstitutional. The Court said that a flag salute was a form of speech, because it was a way to communicate ideas. The justices ruled that, in most cases, the government could not require people to express ideas that they disagree with.

Arguments for Tinker (petitioner)

- Students, whether in school or out of school, are "persons" under the Constitution. They possess fundamental rights that all levels of government must respect.
- Public schools are part of state government. The 14th Amendment protects people from state infringement of their First Amendment rights to free speech.
- Wearing the armbands was a form of speech. It was a silent, passive expression of opinion.
- The students' speech was not disruptive. The schools gave no evidence that the armbands were a distraction or disrupted the learning process. Just because the schools were afraid that there might be a disruption is not enough to infringe students' speech.
- The students wearing the armbands did not infringe any other student's rights. Wearing the armbands did not intrude upon the work of the school, teachers, or other students.
- Schools are meant to act as an environment for discourse and a forum for different ideas; allowing students the ability to express their ideals is an inevitable part of the educational process.

Arguments for Des Moines Independent Community School District (respondent)

- Free speech is not an absolute right. The First Amendment does not say that anyone may say anything, at any place, at any time. Schools are not an appropriate forum for protest.
- The function of a school is to teach the curriculum. Students in academic classes could have been distracted from their lessons by the armbands. The school has a legitimate interest in ensuring that instruction remains the focus of classrooms and, to that end, acted within appropriate authority to prohibit the armbands.
- The Vietnam War is a controversial issue. Wearing the armbands could be an explosive situation that disrupts learning. It is the school's duty to prevent substantial and serious disruption to the learning environment.
- Voicing controversial opinions in class or in school areas such as the hallways, lunchroom, and gym classes may lead to bullying or violence directed against the protesting students. It is the responsibility of the school to prevent such behavior and protect the safety of all students.
- The school did not ban all types of expressions, just the armbands. They were banned because of their inflammatory nature and potential for significant disruption. Students could

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still express opinions in other ways, by for example, wearing political emblems such as "Vote for Candidate X" buttons.

- If the Supreme Court rules in favor of the children, it would be overstepping its bounds and interfering with state and local government powers that govern day-to-day school operations.

Decision

The Supreme Court ruled in favor of the Tinkers, 7–2. Justice Fortas wrote the majority opinion for the Court and was joined by Chief Justice Warren and Justices Douglas, Brennan, Stewart, White, and Marshall. Justices Black and Harlan dissented.

The justices said that students retain their constitutional right to freedom of speech while in public schools. They said that wearing the armbands was a form of speech, because they were intended to express the wearer's views about the Vietnam War. The Court said, "First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate...."

The Court stressed that this does not mean that schools can never limit students' speech. If schools could make a reasonable prediction that the speech would cause a "material and substantial disruption" to the discipline and educational function of the school, then schools may limit the speech. In this case, though, there was not evidence that the armbands would substantially interfere with the educational process or with other students' rights.

Dissent

In the primary dissent, Justice Black said that the First Amendment does not give people the right to express any opinion at any time. He said that a person does not "carry with him into the United States Senate or House, or into the Supreme Court, or any other court, a complete constitutional right to go into those places contrary to their rules and speak his mind on any subject he pleases. It is a myth to say that any person has a constitutional right to say what he pleases, where he pleases, and when he pleases. Our Court has decided precisely the opposite."

The armbands, he argued, did cause a disturbance, by taking students' minds of their classwork and diverting them to "the highly emotional subject of the Vietnam War." A ruling that limits school officials' ability to maintain order and discipline would negatively affect their ability to run the school. School discipline is an important part of training children to become good citizens. Schools, he warned, could become beholden to "the whims and caprices of their loudest-mouthed…students."

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