

Tinker v. Des Moines (1969)

Key points

- In 1965, a public school district in Iowa suspended three teenagers for wearing black armbands to school to protest the Vietnam War. Their families filed suit, and in 1969 the case reached the Supreme Court.
- The Court ruled that the school district had violated the students' free speech rights. The armbands were a form of symbolic speech, which the First Amendment protects.

Background of the case:

In 1965, Iowa teenagers Mary Beth Tinker, her brother John, and their friend Christopher Eckhardt decided to stage a peaceful protest of the Vietnam War by wearing black armbands to their public schools. School officials announced that students who wore armbands had to remove them or face suspension. The Tinker siblings and Eckhardt refused to remove their armbands, and the district suspended them until their protest ended.



Photograph of college-aged students marching, holding signs saying "End the War Now! Bring the Troops Home," "Stop the War," and "Bring Our Boys Home Alive."

A student-led march protesting the Vietnam War. Source: [Flickr](#)

Their parents filed suit against the school district, claiming that the school had violated the students' free speech rights. Lower courts upheld the school district's decision as a necessary one to maintain discipline, so the families appealed to the Supreme Court for a ruling. In 1969, the Supreme Court heard the case, *Tinker v. Des Moines Independent Community School District*.

One important aspect of the Tinker case was that the students' protest did not take the form of written or spoken expression, but instead used a symbol: black armbands. Was "symbolic speech" protected by the First Amendment?

The Constitutional question at stake:

Did the school district violate the students' First Amendment right to freedom of expression?

Decision:

Yes. The Supreme Court ruled that the armbands were a form of symbolic speech, which is protected by the First Amendment, and therefore the school had violated the students' First Amendment rights. The silent protest had not interfered with the school's ability to operate normally, and therefore the school district's restriction of the student's free speech rights was not justified.

Writing for the majority, Justice Abe Fortas explained the Court's reasoning:

"In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school, as well as out of school, are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State. In our system, students may not be regarded as closed-circuit recipients of only that which the State chooses to communicate. They may not be confined to the expression of those sentiments that are officially approved. In the absence of a specific showing of constitutionally valid reasons to regulate their speech, students are entitled to freedom of expression of their views."

What does this mean? Why does *Tinker v. Des Moines* matter?

First, *Tinker v. Des Moines* shows how the Supreme Court's interpretation of the First Amendment reflects a commitment to individual liberty. In this case, the Court affirmed that the right to free expression is more important than the need for government entities, like schools, to maintain order. Even minors have free speech rights that school officials must respect.

Second, the *Tinker* ruling confirmed that symbolic speech merits protection under the First Amendment. Symbolic speech describes a wide array of nonverbal actions: marching, holding protest signs, conducting sit-ins, wearing t-shirts with political slogans, or even burning flags. The First Amendment protects all of these forms of expression.

CHECK YOUR UNDERSTANDING

Based on the ruling in *Tinker v. Des Moines* (1969), the Supreme Court is most likely to view a case concerning which of the following as a symbolic speech case? Choose 1 answer:

- A. journalist who was sued for libel after writing a negative article about a presidential candidate
- B. A woman who was arrested for spray painting a political slogan on a car
- C. An athlete at a public school who was kicked off the team for wearing a jersey with a protest movement slogan

What do you think?

1. What is symbolic speech? Should it be treated any differently than written or oral forms of expression?
2. Why do you think the Supreme Court has upheld restrictions on free speech under some circumstances, but overturned restrictions in others?