

TINKER V. DES MOINES (1969)

The 1969 landmark case of *Tinker v. Des Moines*, which affirmed the First Amendment rights of students in school. The Court held that a school district violated students' free speech rights when it singled out a form of symbolic speech – black armbands worn in protest of the Vietnam War – for prohibition, without proving the armbands would cause substantial disruption in class.

RESOURCES

- <http://www.firstamendmentcenter.org/faclibrary/case.aspx?id=1860>
- <http://www.oyez.org/oyez/resource/case/391/audioresources>
- <http://www.abanet.org/publiced/lawday/tinker/home.html>

The December morning air was chilly as students John and Mary Beth Tinker were getting ready for school. As they got dressed, they tied black armbands around their sleeves. It was 1965, and John and Mary Beth were opposed to American involvement in the Vietnam War. They had decided to wear the armbands to school as a symbolic protest. The school district, having learned of their plan to wear the armbands, had adopted a new policy to suspend students who came to school wearing them. John and Mary Beth knew about the policy but they kept their armbands on as they walked into their classrooms in their Des Moines, Iowa public schools. It was not long before school officials asked John and Mary Beth to remove their armbands, but they both refused and were suspended.

The school district maintained that it had banned armbands because of their potential to distract students and disrupt class. However, other forms of potentially controversial speech had been permitted in school, including campaign buttons.

The Court had to consider two questions: were the armbands a form of symbolic speech protected by the First Amendment? And if so, did the school district have the power to restrict that speech in the interest of maintaining order in the school? In a 7-2 decision, the Court found that the armbands were basically “pure speech” and that the school’s action was unconstitutional. In a famous phrase, Justice Fortas wrote, “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 found that the school had not demonstrated that the armbands caused “a material and substantial interference with schoolwork or discipline” and, rather, had acted merely to avoid the “discomfort and unpleasantness that always accompany an unpopular viewpoint.” The Court noted that the school district had not banned all political symbols, but had instead “singled out” the armbands for prohibition. In other words, the limiting of speech was not content-neutral – a test the Supreme Court uses when deciding some First Amendment cases.

The *Tinker* case remains a landmark in upholding the rights of students in schools to express their views in a peaceful and orderly way.

QUESTIONS

1. Why were John and Mary Beth Tinker suspended?
2. Why did the Supreme Court find their suspension unconstitutional?
3. The First Amendment says “Congress shall make no law...abridging the freedom of speech.” Do you think that armbands worn in protest are the same as “speech”? Why or why not?
4. In his dissent, Justice Black wrote, “the [First Amendment] rights of free speech and assembly do not mean that ‘everyone with opinions or beliefs to express may address a group at any public place and at any time.’” What did he mean? Do you agree?