

Freedom of Expression in Public Schools

Tinker v. Des Moines, 1969

***** **Background of the Case** *****

Throughout the 1960s, television broadcasts carried graphic images of the Vietnam War. In December of 1965, John Tinker, his sister Mary Beth, and their friend Christopher Eckhardt decided to protest the war. They planned to wear black armbands to their schools in Des Moines, Iowa. When the school board learned of their plans, it adopted a policy that banned the wearing of armbands. Any students who violated this policy would be suspended. Several students, including the Tinkers, went ahead with their protest. The students were suspended when they refused to remove the armbands. Through their parents, the students asked the district court to issue an injunction against the policy. The district court refused, stating that the school policy was “reasonable.” A divided appellate court upheld this decision. The petitioners then appealed to the United States Supreme Court, which agreed to review the case.

Constitutional Issue *****

The Court was asked to decide whether wearing armbands is a form of free speech, and thus protected under the First Amendment. The students claimed that wearing armbands was a way to express their ideas and opinions about the Vietnam War. Lawyers for the school board argued that the Tenth Amendment gives the states authority over education. The school board’s policy was needed to preserve order and discipline in the schools. The U.S. Supreme Court had extended the First Amendment to cover the actions of state officials in *Gitlow v. New York* (1925). Later, in *West Virginia v. Barnette* (1943) the Court struck down a law requiring students to salute the American flag.

***** **The Supreme Court’s Decision** *****

In a 7 to 2 decision, the Supreme Court ruled in favor of the Tinkers and the students. The Court determined that the wearing of armbands was protected by the First Amendment’s free speech clause.

Justice Abe Fortas wrote the Court’s opinion. Justice Fortas wrote that wearing armbands was an action “akin to pure speech.” Further, he wrote, “It can hardly be argued that either students or teachers shed their constitutional rights . . . at the schoolhouse gate.” He found little evidence that this silent protest disrupted the school environment. Justice Fortas wrote that the school board officials acted out of an “urgent wish to avoid controversy,” rather than a fear of disrupting school activities.

Justice Potter Stewart wrote, however, in a concurring opinion, that, “[A] State may permissibly determine that, at least in some precisely delineated areas, a child . . . is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees.”

The *Tinker* case remains controversial to this day. In more recent cases, the Court has limited students’ First Amendment rights. In *Bethel School District v. Fraser* (1986), the Court upheld the disciplining of a student for using offensive speech in a school assembly. In *Hazelwood School District v. Kuhlmeier* (1988) the Court ruled in favor of a school district that censored student newspaper articles with mature subject matter.

★★★★★★★★★★★★★★★★★★★★ **Dissenting Opinion** ★★★★★★★★★★★★★★★★★★

Justice Hugo Black dissented. Justice Black pointed out that the wearing of armbands had led to mockery from other students and other disruptive behavior. This diversion from their normal school day was exactly what the school officials had wanted to avoid. Justice Black’s dissent also contended that “some students . . . will be ready, able, and willing to defy their teachers on practically all orders.”

Justice John Marshall Harlan, in a separate dissent, argued that school officials should have wide latitude in maintaining discipline. He further wrote that the school board’s policy appeared to be motivated by genuine concerns.

DIRECTIONS: Answer the following questions on a separate sheet of paper.

1. Why does wearing armbands fall within the protection of the free speech clause?
2. Do you agree more with Justice Fortas’s opinion or Justice Black’s dissent? Give reasons for your answer.
3. Why is the *Tinker* decision considered such an important First Amendment case?
4. How does the *Tinker* decision affect your right to wear a T-shirt supporting a cause that you believe in?
5. How has the ruling in *Tinker* been modified by later Supreme Court decisions?