

## Tinker v. Des Moines Independent Community School District

-John J. Patrick, The Supreme Court of the United States - A Student Companion,  
2<sup>nd</sup> Ed., Oxford Press

- ◆ 393 U.S. 503 (1969)
- ◆ Vote: 7-2
- ◆ For the Court: Fortas
- ◆ Concurring: Stewart and White
- ◆ Dissenting: Black and Harlan

In December 1965 some students in Des Moines, Iowa, decided to publicly express their opposition to the war in Vietnam by wearing black armbands. Des Moines School Administrators, however, decided upon a policy that forbade the wearing of a black armband in school. Students who violate the policy would be suspended from school until they agreed to comply with the policy.

On December 16, Mary Beth Tinker and Christopher Eckhardt wore armbands to school. John Tinker did the same thing the next day. As a consequence, the three students were suspended from school and told not to return unless they removed their armbands. They stayed away from school until the early part of January 1966.

The three students filed a complaint, through their parents, against the school officials. They sought an injunction to prevent the officials from punishing them for wearing black armbands to school.

**The Issue** Did the school district's policy of prohibiting the wearing of black armbands in school violate the student's 1<sup>st</sup> Amendment right to free speech, as extended to the states through the due process clause of the 14<sup>th</sup> Amendment?

**Opinion of the Court** The Court decided by a vote of 7 to 2 that the school district had violated the students' right to free speech under the 1<sup>st</sup> and 14<sup>th</sup> Amendments to the Constitution. In previous cases, such as *Stromberg v. California*, the Court had ruled that 1<sup>st</sup> Amendment free speech rights were incorporated by the due process clause of the 14<sup>th</sup> Amendment, which provides that no state shall "deprive any person of life, liberty (such as free speech), or property, without due process of law."

Justice Abe Fortas wrote the majority opinion, in which he stated that the wearing of black armbands to protest the Vietnam War was a form of "symbolic speech" protected by the 1<sup>st</sup> Amendment. Therefore, a public school ban on this form of protest was a violation of the students' right to free speech, as long as the protest did not disrupt the functioning of the school or violate the rights of other individuals. Justice Fortas wrote,

"First Amendment rights applied in light of the special characteristics of the school environment or 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."

**Dissent** Justice Hugo Black was one of the two dissenters in this case. He wrote:

While I have always believed that under the First and Fourteenth Amendments neither the State nor the Federal Government has any authority to regulate or censor the content of speech, I have never believed that any person has the right to give speeches or engage in demonstrations where he pleases and when he pleases. This Court has already rejected such a notion . . .

One does not need to be a prophet or the son of a prophet to know that after the Court's holding today some students in Iowa schools and indeed in all schools will be ready, able and willing to defy their teachers on practically all orders . . .

This case, therefore, wholly without constitutional reasons in my judgement, subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest students.

**Significance** *Tinker* is one of the most important cases on the constitutional rights of students in public schools. It supports a protection of free expression that does not disrupt the educational purposes of the school or violate the rights of other students.

In subsequent cases involving students in public schools, such as *Bethel School District No. 403 v. Fraser* (1986) and *Hazelwood School District v. Kuhlmeier* (1988), the Court supported the power of public school officials to limit freedom of expression by students if such expression -- in these cases, a vulgar speech and the publication of sensitive material in the student newspaper -- disrupted the schools' educational mission.