

Tinker v. Des Moines Independent Community School District, 393 U.S. 503 (1969)

Condensed Case



The Big Picture

The First Amendment protects students' right to free speech and expression in public schools.

Ruling

Suspending students for wearing black armbands to protest the Vietnam War violated students' free speech rights because their behavior was nondisruptive.

Constitutional Text

The First Amendment reads:
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Dissenting Opinion

OPINION OF THE COURT

[A group of students decided to express their objections to the Vietnam War by wearing black armbands to school. The principals] adopted a policy that any student wearing an armband to school would be asked to remove it, and if he refused he would be suspended. [Students] were aware of the regulation [and wore the armbands anyway]. They were suspended.

First Amendment rights 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. This has been the unmistakable holding of this Court for almost 50 years.

On the other hand, the Court has repeatedly emphasized the need for affirming the comprehensive authority of the States and of school officials, consistent with fundamental constitutional safeguards, to prescribe and control conduct in the schools.

The problem posed by the present case does not relate to regulation of the length of skirts or the type of clothing, to hair style, or deportment. It does not concern aggressive, disruptive action or even group demonstrations. Our problem involves direct, primary First Amendment rights akin to "pure speech."

The school officials banned and sought to punish petitioners for a silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of [the students].

Only a few of the 18,000 students in the school system wore the black armbands. There is no indication that the work of the schools or any class was disrupted. Outside the classrooms, a few students made hostile remarks to the children wearing armbands, but there were no threats or acts of violence on school premises.



While the record does not show that any of these armband students shouted, used profane language, or were violent, detailed testimony shows their armbands caused comments, warnings by other students, the poking of fun at them, and a warning by an older football player that other students had better let them alone.

Even a casual reading of the record shows that this armband did divert students' minds from their regular lessons. While the absence of obscene remarks or boisterous and loud disorder perhaps justifies the Court's statement that the few armband students did not actually "disrupt" the classwork, the record overwhelmingly shows that the armbands did exactly what the elected school officials and principals foresaw they would, that is, took the students' minds off their classwork and diverted them to thoughts about the Vietnam war. [I]f the time has come when pupils can defy and flout orders of school officials, it is the beginning of a new revolutionary era of permissiveness in this country.

The original idea of schools was that children had not yet reached the point of experience and wisdom which enabled them to teach all of their elders.

This case subjects all the public schools in the country to the whims and caprices of their loudest-mouthed, but maybe not their brightest, students.

[I]n our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk; and our history says that it is this sort of hazardous freedom—this kind of openness—that is the basis of our national strength.

[To restrict] expression of opinion, [a school] must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained.

It is also relevant that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance. [S]tudents in some of the schools wore buttons relating to national political campaigns, and some even wore the Iron Cross, traditionally a symbol of Nazism. The order prohibiting the wearing of armbands did not extend to these [symbols]. Instead, a particular symbol—black armbands worn to exhibit opposition to this Nation's involvement in Vietnam—was singled out. Clearly, the prohibition of one particular opinion, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible.

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 [possess] 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.

