

Tinker v. Des Moines / Background ••—Answer Key

John and Mary Beth Tinker and Christopher Eckhardt attended public school in Des Moines, Iowa. In December of 1965, a community group in Des Moines decided to protest American involvement in the Vietnam War by wearing black armbands. John, Mary Beth, and Christopher wanted to wear their black armbands to school. However, principals in the school district, aware of the students' plans, created a rule that any student wearing an armband to school would be suspended unless the student removed the armband. Although the students knew about this rule, they decided to come to school wearing armbands anyway. John, Mary Beth, and Christopher were sent home by the principal. Their suspension lasted until they agreed to come back to school without the armbands.

The Tinkers and Eckhardts filed a suit in the U.S. District Court to stop the school principals from enforcing the rule in the future. Although the District Court said that this type of protest was a form of expression protected under the First Amendment's freedom of speech clause, the court sided with the school officials, saying that the rule was needed to "prevent the disturbance of school activities." The Tinkers and Eckhardts appealed their case to the U.S. Eighth Circuit Court of Appeals, but they lost and appealed the case to the Supreme Court of the United States.

The fundamental question of the case came down to this: Does the First Amendment's promise of free speech extend to the symbolic speech of public school students? And, if so, in what circumstances is that symbolic speech protected? The First Amendment to the Constitution says, "Congress shall make no law . . . abridging the freedom of speech." The 14th Amendment extends this rule to state government as well, which includes public schools. However, the Supreme Court has ruled that some types of speech can be prohibited. It also does not specify what types of expressive actions, like wearing an armband, should be considered as speech.

The question of what kind of speech or action is protected under the First Amendment has been considered many times by the Supreme Court of the United States. Generally, the Court has held that the First Amendment protects adult symbolic speech that does not harm or threaten to harm. However, at the time of *Tinker*, it was unclear whether students' rights in this area were different.

In 1968 the Supreme Court of the United States agreed to hear the Tinkers' case and consider whether the Des Moines public schools ban on armbands was an unconstitutional violation of the students' right to free speech. The Court's decision in *Tinker v. Des Moines* was handed down in 1969.

Questions to Consider

1. Do you think that the school policy banning armbands was fair? Why or why not?
Student answers will vary. Some students will argue that it was fair because in certain localities, schools place restrictions on the way students dress. The armbands could be viewed as an article of clothing that could be subject to these rules. Others will argue that the policy was unfair in that it put unnecessary or discriminatory restrictions on students. Unlike other articles of clothing, like bandanas, which can be indicative of gang activity, and skimpy clothing, which can be provocative, the armbands did not disrupt or threaten to disrupt the school.
2. The students knew they would be suspended if they wore armbands to school and chose to do so anyway. Why do you think they ignored the rule?
They ignored the rule because they thought it was unfair. They viewed wearing the armbands as a way of making expressing their objections to the war, and they believed that they would not harm any other students by doing so.
3. The First Amendment says, “Congress shall make no law . . . abridging the freedom of speech.” Why do you think the Supreme Court of the United States has ruled that certain actions should have the same protection as verbal speech? Are these reasons valid?
The Supreme Court of the United States has ruled that certain actions have the same protection as verbal speech because actions can be a way of expressing an opinion. Some students will argue that these reasons are valid on the grounds that, at times, an action is the most effective way to express an opinion—sometimes these actions can make a point more forcefully than words can. As long as these actions do not violate the law or harm or threaten to harm anyone else, they should be allowed. Others will say that they are invalid on the grounds that the Constitution protects free speech and not free action. The government cannot mandate that people feel a certain way or speak a certain way but can regulate their behavior. Actions fall into the category of behavior.
4. Pretend that students in your school wanted to protest the school-wide ban on smoking. Should they be allowed to protest by wearing t-shirts that read “Up with ‘Butts!’”? Why or why not?
Student answers will vary. Some students will argue that students should legally be allowed to protest by wearing T-shirts that read "Up with 'Butts!'" because the message on the T-shirts is a form of speech or expression that is protected by the First Amendment. Others will say that this message is offensive, encourages illegal behavior, and could be disruptive to the learning environment, so it should not be allowed.