

Free to be You

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About this Lesson

This lesson, which includes a pre-lesson and post-lesson, is intended to be used in conjunction with the National Constitution Center's Free to be You program. Together, they provide students with first-hand experience about how the First Amendment establishes five key freedoms of expression for Americans: freedom of religion, freedom of speech, freedom of press, freedom to assemble peacefully, and freedom to petition the government.

In this lesson, students begin by delving into an examination of the freedom to assemble peacefully through reading about two relevant news events. They work together in groups to understand how local and federal governments both protect this freedom and regulate its expression. To conclude the pre-lesson, they prepare brief presentations about additional local and national news events involving First Amendment freedoms.

*After the NCC program, students analyze the relationship between the First Amendment and symbolic speech through reading about *Tinker v. Des Moines Independent Community School District*, a landmark Supreme Court case (1969). They examine this case's circumstances and the Court's majority and dissenting opinions before taking a look at additional landmark cases about students' First Amendment rights. To conclude the post-lesson, students work in groups to write and perform mock newscasts about these rulings.*

Designed for students in grade 9-12, this lesson takes approximately six to eight class periods from beginning to end.

Background

Grade(s) Level

9-12

Classroom Time

Two or three 45-minute class periods (pre-lesson)

Four or five 45-minute periods (post-lesson)

Handouts

The First Amendment in Action
student worksheet

Tinker v. Des Moines Independent Community School District (1969)
student worksheet

Constitution Connections

First Amendment

Americans enjoy a wide range of rights, from the freedom to practice religions of their choosing to the right to a trial by jury. Many of the rights and freedoms that we associate with being Americans are protected by the Bill of Rights, or the first ten amendments of the United States Constitution.

When the Constitution was signed in 1787, it was missing a Bill of Rights. But many of the delegates at the Philadelphia Convention believed that the Constitution needed a section that preserved fundamental human rights, and James Madison set out to write this section. Madison introduced his ideas at the First United States Congress in 1789, and, on December 15, 1791, the Bill of Rights was ratified by three-fourths of the states.

More than 300 years later, the Bill of Rights still protects many of the rights that Americans hold most dear, including those protected by the First Amendment, whose text 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.

Together, the First Amendment freedoms provide Americans with the protection they need to express their opinions and beliefs openly and honestly, a vital component of a democratic government.

Objectives

- Identify the five freedoms protected by the First Amendment;
- Understand how new events illustrate First Amendment freedoms on a daily basis;
- Explore how the government can impose limitations on First Amendment freedoms in order to protect the rights of individuals and maintain order; and

- Learn about how the U.S. Supreme Court has protected and restricted First Amendment freedoms for students through its ruling in landmark cases since the 1960s.

Standards

5.1.9.C: Analyze the principles and ideals that shape United States government.

- Liberty / Freedom
 - Democracy
 - Justice
 - Equality
-

5.1.9.D: Compare and contrast the basic principles and ideals found in significant documents:

- Declaration of Independence
 - United States Constitution
 - Bill of Rights
 - Pennsylvania Constitution
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5.1.9.F: Analyze the role political symbols play in civil disobedience and patriotic activities.

5.3.9.F: Explain the Supreme Court's role in interpreting the U.S. Constitution.

- Individual rights
 - States' rights
 - Civil rights
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Activity

Pre-Lesson

1. Introduce students to the First Amendment by having them read the following two articles:
 - "Protesters barred, for a while" (Written by Marcia Gelbart, *The Philadelphia Inquirer*, 7/5/2010)
<http://www.philly.com/philly/news/local/97785724.html>)
 - "White House sidewalk protest leads to arrest of about 370" (Written by Petula Dvorak, *The Washington Post*, 9/27/2005)
<http://www.washingtonpost.com/wp-dyn/content/article/2005/09/26/AR2005092600143.html>)

If the hyperlinks are no longer active, the full text of each article is also included in the student worksheet *The First Amendment in Action*.

2. Divide students into mixed ability groups of 3-4 and have them answer the six questions that accompany the articles on the worksheet. As they discuss their answers, students should record them in the space provided.
3. Once students have had enough time to discuss these questions, lead a whole-group discussion about the two articles. Begin by reviewing students' answers to the six questions. Then use the following questions to broaden the discussion to the First Amendment in general.
 - Look at the text of the First Amendment, which appears at the top of the worksheet. Besides the right to assemble or gather peacefully, what other freedoms does the First Amendment provide to Americans?
 - How, as a student and citizen, have you exercised some or all of these First Amendment freedoms? (Possible answers may include the following: writing an editorial for the school newspaper that expresses an unpopular opinion, choosing not to say the Pledge of Allegiance at school assemblies, signing a petition to end the U.S. government's involvement in Iraq, etc.)
 - How does the government limit First Amendment freedoms? (Possible answers may include the following: a local government can require protesters to obtain permits before assembling peacefully; while journalists enjoy the freedom of the press, they are not protected if they publish information about a person that is false and damages the person's reputation; a person's speech is not necessarily protected if it advocates illegal activity, etc.)
4. As student discuss these questions, make sure that they learn the following information about the First Amendment:
 - The First Amendment is part of the Bill of Rights, which consists of the first ten amendments of the U.S. Constitution.
 - Although the Constitution was signed in 1787, many of the delegates at the Philadelphia Convention believed that the Constitution needed a section that preserved fundamental human rights. James Madison set out to write this section and introduced his ideas at the First United States Congress in 1789. On December 15, 1791, the Bill of Rights was ratified by three-fourths of the states.
 - The First Amendment establishes the following five freedoms: freedom of religion, freedom of speech, freedom of press, freedom to assemble peacefully and freedom to petition the government.

- The First Amendment freedoms are unalienable, meaning that they cannot be taken away from someone.
 - Although the First Amendment protects these freedoms, the government can – and does – impose limitations on these freedoms as well. Freedom is not by definition limitless.
5. If time allows, have students work in their groups to research a recent local or national news event that involves a different First Amendment freedom (religion, speech, press, or the right to petition). Once each group has chosen its article, have students prepare and give a brief (2-3 minute) presentation for the class about the news event and its connection to the First Amendment. Provide students with the following questions to help structure their presentation:
- What were the circumstances surrounding the news event? (*Who* was involved? *Where* and *when* did it take place? *What* happened? *Why* did this event happen?)
 - How does this news event involve one of the First Amendment freedoms other than the freedom to assemble peacefully?
 - What, if any, complications arose during the news event because of the fact that individuals were exercising their First Amendment rights?
 - How, if at all, did the government intervene to protect or limit the expression of First Amendment rights?

Post-Lesson

1. After students have participated in the *Free to be You* program, they will be familiar with examples of Supreme Court cases and historical events related to the First Amendment. Remind students that one of the landmark Supreme Court cases mentioned in the program is *Tinker v. Des Moines Independent Community School District (1969)*, a case involving the issue of symbolic speech in schools.

Ask students the following questions to introduce them to the concept of **symbolic speech**:

- What do you think the term “symbolic speech” means? (Possible answer: conduct or behavior that expresses a specific idea, as opposed to verbal speech)
- What are examples of symbolic speech? (Possible answers: wearing campaign buttons or T-shirts with slogans on them, putting bumper stickers on your car, waving an American flag at a parade, conducting a sit-in, etc.)
- When, if ever, have you exercised your right to engage in symbolic speech at school? (Answers will vary, but encourage students to think about the non-verbal ways in which they express their opinions and preferences,

which includes everything from wearing a Livestrong bracelet to show their support of increasing cancer awareness to remaining silent during the Pledge of Allegiance.)

- When, if ever, do you think schools have the right to limit students' free expression of symbolic speech? Why? (Possible answers: If symbolic speech disrupts learning, if symbolic speech is extremely offensive to other members of the school community, if symbolic speech is threatening, etc.)
2. Distribute copies of the student worksheet *Tinker v. Des Moines Independent Community School District (1969)*. This worksheet includes an overview of the case, in which the Court ruled that the First Amendment protected students' symbolic speech in this particular instance because the wearing of armbands to protest the Vietnam War did not disrupt the school environment (and therefore did not justify limitations on expression).
 3. Divide students into mixed-ability groups of 4-5 and have them answer the six questions at the end of the worksheet. As they discuss their answers, students should record them in the space provided.
 4. Once students have had enough time to discuss these questions, lead a whole-group discussion about them. At the end of the discussion, make sure that students understand that the Court's primary reason for ruling in favor of the students was that the armbands did not appear to have disrupted the school environment. In his majority opinion, Justice Fortas makes it abundantly clear that schools have the right to curtail or limit students' First Amendment freedoms when the expression of these freedoms infringes upon others' rights, disrupts the school environment, poses a threat, etc.
 5. After the discussion, have students work in the same groups to read another Supreme Court case involving students' First Amendment rights. Assign each group a different case from the list provided below. The first four case summaries and additional cases can be found on the United States Courts' website:
<http://www.uscourts.gov/EducationalResources/ConstitutionResources/LegalLandmarks/LandmarkSupremeCourtCasesAboutStudents.aspx>

- **Engel v. Vitale (1962)**

Court Ruling: School initiated-prayer in the public school system violates the First Amendment.

In the New York school system, each day began with a nondenominational prayer acknowledging dependence upon God. This action was challenged in Court as an unconstitutional state establishment of religion in violation of the First Amendment. The Supreme Court agreed, stating that the government could not sponsor such religious activities.

- **Hazelwood v. Kuhlmeier (1983)**
Court Ruling: Administrators may edit the content of school newspapers.
The principal of Hazelwood East High School edited two articles in the school paper *The Spectrum* that he deemed inappropriate. The student authors argued that this violated their First Amendment right to freedom of speech. The Supreme Court disagreed, stating that administrators can edit materials that reflect school values.

 - **Bethel School District #43 v. Fraser (1987)**
Court Ruling: Students do not have a First Amendment right to make obscene speeches in school.
Matthew N. Fraser, a student at Bethel High School, was suspended for three days for delivering an obscene and provocative speech to the student body. In this speech, he nominated his fellow classmate for an elected school office. The Supreme Court held that his free speech rights were not violated.

 - **Santa Fe Independent School District v. Doe (2000)**
Court Ruling: Students may not use a school's loudspeaker system to offer student-led, student-initiated prayer.
Before football games, members of the student body of a Texas high school elected one of their classmates to address the players and spectators. These addresses were conducted over the school's loudspeakers and usually involved a prayer. Attendance at these events was voluntary. Three students sued the school arguing that the prayers violated the Establishment Clause of the First Amendment. A majority of the Court rejected the school's argument that since the prayer was student initiated and student led, as opposed to officially sponsored by the school, it did not violate the First Amendment. The Court held that this action did constitute school-sponsored prayer because the loudspeakers that the students used for their invocations were owned by the school.

 - **Morse v. Frederick (2007)**
Court Ruling: School officials can prohibit students from displaying messages or engaging in symbolic speech that promotes illegal drug use.
At a school-supervised event, student Joseph Frederick displayed a banner that read "Bong Hits 4 Jesus," a slang reference to smoking marijuana. Deborah Morse, the school's principal, confiscated Frederick's banner and suspended him from school for ten days, citing a school policy that bans the display of material advocating illegal drug use. Frederick sued on the grounds that Morse violated his First Amendment right to freedom of speech. The Court ruled 5-4 that school officials can prohibit students from displaying messages that promote illegal drug use. The majority opinion noted that, while students do enjoy the right to exercise their freedom of speech in school, they cannot necessarily advocate illegal activity that schools specifically discourage or forbid. (Available at http://www.oyez.org/cases/2000-2009/2006/2006_06_278/)
6. After students have read their assigned cases, have them work in their groups to write scripts for television newscasts about the rulings. Since each of these cases is considered a landmark case in student self-expression, the Court's ruling dominated newspaper headlines and television coverage at the time. Instruct students to write a script for a three-minute newscast that meets the following guidelines:
- Identifies the freedoms established by the First Amendment;

- Provides a summary of the circumstances surrounding their assigned student self-expression case;
- Explains the main points made in the Court's majority opinion;
- Explains the main points made in the Court's dissenting opinion; and
- Includes interviews with key people involved in the case.

As they write their scripts, students should give careful thought to the different people who would appear in a newscast about the case, including a newscaster/narrator, one or more of the students involved, parents of the students involved, the principal/school administrator, the students' attorney, the school district's attorney, etc. Remind students that Supreme Court justices traditionally have little or no direct contact with the press and that, therefore, they will need to think creatively about how to include the Court's views in the newscast without interviewing the justices themselves. For example, they can have attorneys or legal scholars comment on the relative merits of the majority and dissenting opinions.

Once students have written their scripts and rehearsed, conclude the lesson by giving each group an opportunity to perform its newscast in front of the class.

Assessment Options

If time allows, consider having students write opinion pieces in response to the following question: *If you were a Supreme Court justice, would you have agreed with the majority or the dissenting opinion in your case? Explain your reasoning.*

Further Resources

- <http://ratify.constitutioncenter.org/constitution/> (NCC's Interactive Constitution)
- http://www.oyez.org/cases/1960-1969/1968/1968_21 (OYEZ's summary of *Tinker v. Des Moines Independent Community School District*)
- <http://www.abanet.org/publiced/lawday/tinker/case.html> (American Bar Association's summary of *Tinker* case)
- <http://supreme.justia.com/us/393/503/case.html> (Full text of the Supreme Court's *Tinker* opinion)
- http://www.firstamendmentcenter.org/speech/studentexpression/topic.aspx?topic=clothing_dress_codes_uniforms (First Amendment Center's piece about student expression)
- <http://www.uscourts.gov/EducationalResources/ConstitutionResources/LegalLandmarks/LandmarkSupremeCourtCasesAboutStudents.aspx> (U.S. Courts' website about landmark Supreme Court cases involving student expression)
- http://www.oyez.org/cases/2000-2009/2006/2006_06_278/ (OYEZ's summary of *Morse v. Frederick*)

The First Amendment in Action

Directions: Read the two articles below, each of which illustrates important points about one of the five freedoms protected by the First Amendment. After you have read the articles, discuss answers to the six questions at the end. Record your group's answers in the space provided.

The First Amendment

"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."

Protesters barred, for a while **By Marcia Gelbart** ***The Philadelphia Inquirer (7/5/2010)***

City Hall may be known as the "people's building," but it was hardly that for one group of visitors for about 40 minutes last week.

Following a rally calling on Mayor Nutter to find more housing for AIDS patients, about 30 protesters walked from Dilworth Plaza to the visitors entrance of City Hall in the northeast quadrant.

Their intention was to deliver a report to the mayor, but they were stopped at the entranceway.

"You can't come in unless you have an appointment to see the mayor," said a municipal guard supervisor who works for the Department of Public Property. He blocked the doorway.

The protesters . . . protested. But the guard didn't budge, except to say that they could send in one or two representatives on the group's behalf.

In fact, though, no policy bars anybody from protesting at City Hall, including outside the mayor's second-floor office.

When Nutter spokesman Doug Oliver got wind of what was happening one floor down, he met with the guard and told him it was OK to let in the protesters, which is what happened.

Later, Oliver explained that the guard had safety concerns since police from the civil affairs unit are usually on hand at these times, and none had been called in.

"I explained to him that the press office was aware there was going to be a protest, and we didn't have a problem if they came up," Oliver said. "And he said, 'Well, no problem with me, then.' "

White House Sidewalk Protest Leads to Arrest of About 370 **By Petula Dvorak** ***The Washington Post (9/27/2005)***

About 370 antiwar demonstrators were arrested yesterday after planting themselves on the sidewalk in front of the White House, a protest that stretched out for nearly five hours as police removed them in stages to avoid a backlog at a processing center.

The demonstrators, who had stayed in Washington after Saturday's antiwar rally and march past the White House, were carted away in Metro buses and police vans. Fingerprinting and booking continued late into the evening at a U.S. Park Police operations facility in Anacostia.

Those arrested were charged with demonstrating without a permit, a misdemeanor that carries a \$50 fine and -- like a traffic ticket -- can be paid by mail or challenged later in court, said Sgt. Scott Fear, a Park Police spokesman.

In an action that they had planned several weeks ago and discussed with police, the demonstrators went to the White House gate on Pennsylvania Avenue NW about 12:30 p.m. and tried to deliver to President Bush the names of all the soldiers and civilians killed in Iraq. When the president did not meet with them, they sat down for their protest.

With bullhorns and hoarse voices, they yelled at the executive mansion, asking whether the president was peeking from behind a curtain or hearing them at all.

"You are a coward! You didn't meet us in Crawford; come meet us now," said Beatriz Saldivar of Fort Worth, whose nephew, Army Sgt. Daniel Torres, was killed in action nearly eight months ago during his second tour in Iraq. In August, Saldivar had joined antiwar activist Cindy Sheehan during a protest outside the president's Texas ranch, when Sheehan had asked to talk with Bush about the death of her son, Casey Sheehan, in Iraq.

Cindy Sheehan, who was among the demonstrators yesterday, was the first to be taken into police custody. She smiled at the crowd when police lifted her from the sidewalk and escorted her to a van.

At his daily news briefing yesterday, White House spokesman Scott McClellan said Bush is "very much aware" of the past few days of protests and "recognizes that there are differences of opinion" on the Iraq war.

"It's the right of the American people to peacefully express their views. And that's what you're seeing here in Washington, D.C.," McClellan said. "They're well-intentioned, but the president strongly believes that withdrawing . . . would make us less safe and make the world more dangerous."

The group arrested yesterday was led by a coalition of religious leaders. They were joined by anarchists, military families, Iraq war veterans and political activists of various stripes.

"Only people can stop the war," said Laura Linder, 44, of Chicago. She was wearing a red, white and blue bandanna and a Plexiglas hockey mask, and her hands were trembling. She said that the weekend's protests were the first she had attended and that she had never been arrested. "I'm afraid of getting my face bashed in."

But the relationship between police and protesters was placid, even jovial at times.

The crowd had headed for the White House with signs, chants and guitars. Four monks kept time with drums and a gong. Half a dozen women pulled off their shirts, standing topless with signs that read, "Breasts, Not Bombs!"

In front of the White House, however, the chants and songs grew quieter as the remaining protesters wilted in the humid afternoon.

Earlier in the day, 41 protesters were arrested about 6:30 a.m. at two entrances to the Pentagon and charged with disorderly conduct, said Maj. Todd Vician, a Defense Department spokesman. They were all released and given court dates, Vician said.

Frida Berrigan, 31, of Brooklyn, N.Y., who organized the protest, said the demonstrators unfurled signs that read "War is Terrorism" and blocked workers' access to the building.

Discussion Questions

- 1) Of the five freedoms protected by the First Amendment, which freedom is illustrated in both of these articles?

- 2) What obstacles did the protesters in Philadelphia encounter? According to city policies, should they have encountered these obstacles?

- 3) What obstacles did the protesters in Washington, DC encounter? According to federal government policies, should they have encountered these obstacles?

- 4) How is White House Spokesman Scott McClellan's comment in the second article related to the First Amendment?

- 5) The freedoms protected by the First Amendment are not limitless, meaning that people who exercise these freedoms are still subject to limitations on their expression. How do these two articles illustrate this statement?

- 6) How do these two news events demonstrate the ways in which the government both protects and regulates people's right to assemble peacefully?

Tinker v. Des Moines Independent Community School District (1969)

Directions: Read the information below, which includes a summary of the landmark Supreme Court case *Tinker v. Des Moines Independent Community School District (1969)* and excerpts from the Court's majority and dissenting opinions. After you have read the articles, discuss answers to the six questions at the end. Record your group's answers in the space provided.

Summary of Case:

Three public school students wore black armbands to school to protest the U.S. government's policies in Vietnam. After they were suspended from school for wearing the armbands, the students sued the Des Moines (Iowa) Independent Community School District for banning the wearing of the armbands. The first two courts to preside over the case – the District Court and the Court of Appeals – ruled that the ban fell within the rights of the school district. But the case made its way to the U.S. Supreme Court, which overturned the lower courts' decisions and ruled 7-2 in favor of the students.

Why did the U.S. Supreme Court rule in favor of the students?

- 1) The students were quiet and passive when wearing their armbands. They did not disrupt school activities and did not interfere with other students' rights.
- 2) The First Amendment rights of students and teachers are protected in schools.
- 3) Under the First and Fourteenth Amendments, schools cannot prohibit expressions of opinion without evidence that such expression disrupts the school environment or interferes with the rights of others.

Excerpts from Supreme Court Opinion:***Background of Case:***

"Petitioner John F. Tinker, 15 years old, and petitioner Christopher Eckhardt, 16 years old, attended high schools in Des Moines, Iowa. Petitioner Mary Beth Tinker, John's sister, was a 13-year-old student in junior high school.

In December, 1965, a group of adults and students in Des Moines held a meeting at the Eckhardt home. The group determined to publicize their objections to the hostilities in Vietnam and their support for a truce by wearing black armbands during the holiday season and by fasting on December 16 and New Year's Eve. Petitioners and their parents had previously engaged in similar activities, and they decided to participate in the program.

The principals of the Des Moines schools became aware of the plan to wear armbands. On December 14, 1965, they met and 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 until he returned without the armband. Petitioners were aware of the regulation that the school authorities adopted.

On December 16, Mary Beth and Christopher wore black armbands to their schools. John Tinker wore his armband the next day. They were all sent home and suspended from school until they would come back without their armbands. They did not return to school until after the planned period for wearing armbands had expired -- that is, until after New Year's Day."

*Majority Opinion (excerpts):***Seven justices ruled in favor of the students, and Justice Abe Fortas wrote the majority opinion.**

"The District Court recognized that the wearing of an armband for the purpose of expressing certain views is the type of symbolic act that is within the Free Speech Clause of the First Amendment... As we shall discuss, the wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to "pure speech" which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment...

...First Amendment rights, applied in light of the special characteristics of the school environment, 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... Our problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities.

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 petitioners. There is here no evidence whatever of petitioners' interference, actual or nascent, with the schools' work or of collision with the rights of other students to be secure and to be let alone. Accordingly, this case does not concern speech or action that intrudes upon the work of the schools or the rights of other students.

Only a few of the 18,000 students in the school system wore the black armbands. Only five students were suspended for wearing them. 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.

The District Court concluded that the action of the school authorities was reasonable because it was based upon their fear of a disturbance from the wearing of the armbands. But, in 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, *Terminiello v. Chicago*, 337 U. S. 1 (1949); and our history says that it is this sort of hazardous freedom -- this kind of openness -- that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society...

...On the contrary, the action of the school authorities appears to have been based upon an urgent wish to avoid the controversy which might result from the expression, even by the silent symbol of armbands, of opposition to this Nation's part in the conflagration in Vietnam. It is revealing, in this respect, that the meeting at which the school principals decided to issue the contested regulation was called in response to a student's statement to the journalism teacher in one of the schools that he wanted to write an article on Vietnam and have it published in the school paper. (The student was dissuaded.)

It is also relevant that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance. The record shows that students 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. Instead, a particular symbol -- black armbands worn to exhibit opposition to this Nation's involvement in Vietnam -- was singled out for prohibition. Clearly, the prohibition of expression 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 are possessed of 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...

...Under our Constitution, free speech is not a right that is given only to be so circumscribed that it exists in principle, but not in fact. Freedom of expression would not truly exist if the right could be exercised only in an area that a benevolent government has provided as a safe haven for crackpots. The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says. We properly read it to permit reasonable regulation of speech-connected activities in carefully restricted circumstances. But we do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom....

...As we have discussed, the record does not demonstrate any facts which might reasonably have led school authorities to forecast substantial disruption of or material interference with school activities, and no disturbances or disorders on the school premises in fact occurred. These petitioners merely went about their ordained rounds in school. Their deviation consisted only in wearing on their sleeve a band of black cloth, not more than two inches wide. They wore it to exhibit their disapproval of the Vietnam hostilities and their advocacy of a truce, to make their views known, and, by their example, to influence others to adopt them. They neither interrupted school activities nor sought to intrude in the school affairs or the lives of others. They caused discussion outside of the classrooms, but no interference with work and no disorder. In the circumstances, our Constitution does not permit officials of the State to deny their form of expression.

We express no opinion as to the form of relief which should be granted, this being a matter for the lower courts to determine. We reverse and remand for further proceedings consistent with this opinion.

Dissenting Opinion (excerpts):

Two justices – Justices Hugo Black and John Harlan – disagreed with the Court's opinion, and Justice Black wrote the main dissenting opinion.

The Court's holding in this case ushers in what I deem to be an entirely new era in which the power to control pupils by the elected "officials of state supported public schools . . ." in the United States is in ultimate effect transferred to the Supreme Court... Here, the constitutional right to "political expression" asserted was a right to wear black armbands during school hours and at classes in order to demonstrate to the other students that the petitioners were mourning because of the death of United States soldiers in Vietnam and to protest that war which they were against. Ordered to refrain from wearing the armbands in school by the elected school officials and the teachers vested with state authority to do so, apparently only seven out of the school system's 18,000 pupils deliberately refused to obey the order. One defying pupil was Paul Tinker, 8 years old, who was in the second grade; another, Hope Tinker, was 11 years old and in the fifth grade; a third member of the Tinker family was 13, in the eighth grade; and a fourth member of the same family was John Tinker, 15 years old, an 11th grade high school pupil. Their father, a Methodist minister without a church, is paid a salary by the American Friends Service Committee. Another student who defied the school order and insisted on wearing an armband in school was Christopher Eckhardt, an 11th grade pupil and a petitioner in this case. His mother is an official in the Women's International League for Peace and Freedom...

...While the record does not show that any of these armband students shouted, used profane language, or were violent in any manner, detailed testimony by some of them 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 nonprotesting students had better let them alone. There is also evidence that a teacher of mathematics had his lesson period practically "wrecked," chiefly by disputes with Mary Beth Tinker, who wore her armband for her "demonstration." Even a casual reading of the record shows that this armband did divert students' minds from their regular lessons, and that talk, comments, etc., made John Tinker "self-conscious" in attending school with his armband. 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, I think 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 highly emotional subject of the Vietnam war. And I repeat that, if the time has come when pupils of state-supported schools, kindergartens, grammar schools, or high schools, can defy and flout orders of school officials to keep their minds on their own schoolwork, it is the beginning of a new revolutionary era of permissiveness in this country fostered by the judiciary. The next logical step, it appears to me, would be to hold unconstitutional laws that bar pupils under 21 or 18 from voting, or from being elected members of the boards of education...

...The truth is that a teacher of kindergarten, grammar school, or high school pupils no more carries into a school with him a complete right to freedom of speech and expression than an anti-Catholic or anti-Semite carries with him a complete freedom of speech and religion into a Catholic church or Jewish synagogue. Nor does a person carry with him into the United States Senate or House, or into the Supreme Court, or any other court, a complete constitutional right to go into those places contrary to their rules and speak his mind on any subject he pleases. It is a myth to say that any person has a constitutional right to say what he pleases, where he pleases, and when he pleases...

For the full text of the Tinker case, go to:

<http://supreme.justia.com/us/393/503/case.html>

Discussion Questions:

- 1) How did the three students involved in this case participate in expressing symbolic speech?

- 2) In his majority opinion, 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."
 - What does this statement mean?

 - Do you agree with it? Why or why not?

- 3) In his majority opinion, Justice Fortas also wrote: “The Constitution says that Congress (and the States) may not abridge the right to free speech. This provision means what it says. We properly read it to permit reasonable regulation of speech-connected activities in carefully restricted circumstances. But we do not confine the permissible exercise of First Amendment rights to a telephone booth or the four corners of a pamphlet, or to supervised and ordained discussion in a school classroom.”
- What does this excerpt mean?
 - Why do you think Justice Fortas noted that exercising First Amendment rights should not be limited to certain contexts, like a pamphlet or a class discussion?
 - What do you think Justice Fortas and others believed would be examples of “reasonable regulation of speech-connected activities in carefully restricted circumstances”?
- 4) What reasons did Justice Fortas give for ruling that the school district did not have just cause (fair reasons) for banning the armbands?
- 5) In his dissenting opinion, Justice Black argued that the school district did have just cause for banning the armbands? What reasons did he give to support his opinion?
- 6) What are your reactions to this ruling? Are you surprised that the Court ruled in favor of the students? Why or why not? How do you think the Court might rule in this case today?