

Tinker v. Des Moines / Excerpts from the Majority Opinion—Answer Key

The following are excerpts from Justice Fortas' majority opinion:

Five justices agreed with the majority opinion. Two justices concurred, meaning that they agreed with the Court's decision that the school policy was unconstitutional, but they wrote separately to explain their reasoning. Two justices dissented. Justice Fortas delivered the majority opinion of the Court.

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.

The 14th Amendment, as now applied to the States, protects the citizen against the State itself and all of its creatures—Boards of Education not excepted. These have, of course, important, delicate, and highly discretionary functions, but none that they may not perform within the limits of the Bill of Rights. That they are educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes.

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 involves direct, primary First Amendment rights akin to “pure speech.”

In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it 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.

[The] record fails to yield evidence that the school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school or impinge upon the rights of other students . . . [and] 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.

It is also relevant that the school authorities did not purport to prohibit the wearing of all symbols of political or controversial significance . . . 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. 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.

Questions to Consider

1. In the majority opinion, the Court recognized the need to balance the specific rights in conflict in this case. What rights are in conflict here?

The rights in conflict are the First Amendment rights of students and the rights of school officials to maintain order in the schools.

2. According to the decision, what must a school prove in order to justify a rule prohibiting its students' rights to free speech?

In order to justify a law stopping free speech, a school must prove that the action would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school."

3. Students in the Des Moines schools were permitted to wear other symbols of political statements such as presidential campaign buttons. Why was this significant to the Court?

Students in the Des Moines schools were permitted to wear other symbols of political statements such as presidential campaign buttons. This was significant to the Court because they did not think it would be constitutional to single out and forbid one particular viewpoint—in this case, opposition to the war in Vietnam, as expressed by the wearing of black armbands—especially when there was no evidence that it would cause a disruption.

4. In light of this decision, what are some situations when the Supreme Court of the United States might allow the school district to restrict students' free speech?

In light of this decision, the Supreme Court of the United States might allow the school district to restrict students' free speech in cases where it would, cause "material and substantial interference with schoolwork or discipline." For example, shouting in the hallways or wearing extremely sexually provocative clothing might be "expressive conduct" but could be forbidden.