The First Amendment & Free Speech

High School

**EXCERPT**

***TINKER V. DES MOINES INDEP. CMTY. SCH. DIST.***

SUPREME COURT OF THE UNITED STATES

Argued November 12, 1968

Decided February 24, 1969

MR. JUSTICE FORTAS delivered the opinion of the Court:

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. . . . 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.

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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.

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, 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.

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.

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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.

**Understanding 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 to peaceably assemble, and to petition the government for a redress of grievances.”*

* U.S. Const., amend. I

THE FIVE FREEDOMS

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| **1.** | **RELIGION:** | Congress will not establish a uniform religion for our country or interfere with the free exercise of religious beliefs. Congress shall not make any laws or issue any proclamations favoring one faith over another. |
| **2.** | **SPEECH:** | Congress may not restrict your ability to express your opinions, share your ideas, and exchange information with others. “Speech” also includes symbolic speech, such as wearing a button or waving a sign. |
| **3.** | **PRESS:** | Publishers (in all media) can gather and report news and opinions without government interference in their content. |
| **4.** | **ASSEMBLE:** | People have the right to gather for peaceful and lawful purposes. |
| **5.** | **PETITION THE GOVERNMENT:** | People may join together to seek change from our government. People who have been wronged by our government may seek relief through our court system or other government action. |

# **ACTIVITY**

# First Amendment Quiz

Each statement below describes a student who is exercising his or her First Amendment rights. Can you figure out which of the “Five Freedoms” each student is demonstrating? Write your guess in the blank box next to the statement.

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| **1** | Jaime does not say the pledge of allegiance with her class because her faith does not approve of the line “one nation under God.” |  |
| **2** | Kelly is an animal lover who does not believe in the sale of fur coats. She stands outside a department store with a sign that says “Love Rabbits — Don’t Wear Them.” |  |
| **3** | Tim, Dave, and Liz decide to meet at a local restaurant to talk about the recent presidential election. |  |
| **4** | Frank is an advocate for peace. He organizes a letter-writing campaign to urge the President to end the war. |  |
| **5** | Wendy writes an editorial in her family’s community newspaper about government corruption in her town. |  |
| **6** | Ann does not like one of the political candidates running for mayor. She decides to print and distribute a pamphlet describing his voting record. |  |
| **7** | Rachel wears a hijab to school as part of her faith. |  |
| **8** | Amber, Adam, and Angie use a room in the public library for a meeting of their “Support Our Troops” club. |  |
| **9** | Candice burns an American flag during a protest. |  |

# **ACTIVITY**

# Class Debate

*Jamie Madison v. Jackson Community School District*

Read the following set of facts.

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| Jamie Madison is a high school student who is in favor of Amendment 5, a proposed state constitutional amendment that would make it legal for doctors to prescribe an illegal narcotic, called Zomac, to terminally ill people for pain relief. To show her support for Amendment 5, Jamie gets some “Vote ‘Yes’ on Amendment 5” campaign buttons and pins them to her book bag and clothing for five straight days.  Several students make negative comments to Jamie when they see the buttons, but there are no incidents until the fifth day, when Jamie and another student, Tim, get into a heated debate while walking out to the parking lot after school. The principal runs out and breaks up the debate after he sees Tim raise his arm, thinking Tim is about to hit Jamie.  The principal tells Jamie she is suspended from school and she can return when she stops wearing the pins. The school principal reminds Jamie that it is against the school dress code policy to wear pins or buttons to school. The reason for this policy is that the sharp ends of the pins could be used as a weapon. |

There are two issues the court in *Jamie Madison v. Jackson Community School District* needs to resolve: (1) whether Jamie’s speech is protected by the First Amendment; and (2) whether Jamie’s speech caused a “substantial disruption of normal school activities.”

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| **Issue 1** | **The First Amendment**   * Does the First Amendment apply to this case? * Does it matter if Jamie has worn other buttons to school for months and the principal is just beginning to enforce the school dress code policy? * Is it fair that one person’s angry reaction to the buttons means that Jamie cannot deliver her message as she wants to? * Would it make a difference if Jamie wore buttons that encouraged people to drink Pepsi instead of a political cause? * What if the policy banned not only metal buttons but also decals and stickers? |
| **Issue 2** | **Substantial Disruption of Normal School Activities**   * Does an argument in the parking lot constitute a “substantial disruption of normal school activities?” * Does it matter that Tim did not actually strike Jamie? Should the principal be required to wait until the first punch is thrown? * Would the situation be different if Jamie and Tim got in a debate in the hallway during school hours? |

Working as a team, prepare answers to each of the questions above that best serve your client’s interests. Use the First Amendment of the United States Constitution, the *Tinker* case, and the case summaries on the next page to support your arguments. Make sure to designate one member of your team to serve as “Lead Counsel” and present your arguments to the class.

**CASE SUMMARIES**

***Chandler v. McMinnville School District* (1992)**

During a teachers’ strike at a public high school, several students wear buttons to school that criticize substitutes who are replacing the striking teachers as “scabs.” School officials say the insults are offensive to the substitute teachers and they punish the students who refuse to remove the buttons.

The U.S. Court of Appeals for the Ninth Circuit rules that the *Tinker* standard applies to the buttons, and the buttons could not be banned unless they substantially disrupted school. The fact that some substitute teachers found the words on the button offensive was not enough to cause a substantial disruption.

***Morse v. Frederick* (2007)**

A high school student stands across the street from campus during a school-organized outing to watch the Olympic Torch relay pass through town. When the torch goes by, he holds up a joke sign, “Bong Hits 4 Jesus,” and is suspended for his behavior.

The Supreme Court rules that the school did not violate the student’s First Amendment rights. The student’s sign promoted illegal drug use, and speech promoting illegal drug use is an exception to *Tinker*. A school can discipline such speech at school or at a school-sanctioned event even without showing it substantially disrupted school.

***Jacobs v. Clark County School District* (2008)**

High school students challenge a dress code that limits students to wearing khaki-colored slacks and solid-colored tops, with no logos except the school’s logo. They argue that the restrictions interfere with their First Amendment right to free expression.

The Ninth Circuit U.S. Court of Appeals rules that the dress code is not subject to the *Tinker* standard because the school in *Tinker* singled out certain viewpoints. The Clark County school regulation is constitutional because it is not aimed at any particular student’s message, but instead applies to everyone, regardless of what message they want to deliver.

***Hardwick ex rel. Hardwick v. Heyward* (2013)**

Throughout middle and high school, school officials repeatedly refuse to allow a student to wear t-shirts featuring the Confederate flag by forcing the student to change shirts, removing her from class, and even giving her in-school suspension. The student’s parents sue the school district on her behalf, claiming the officials violated her right to free speech by punishing her for wearing the shirts.

The U.S. Court of Appeals for the Fourth Circuit ruled that schools can consider the causes of past disruptions to determine how to prevent them from recurring. Because of the school’s history of racial segregation and flag-related violence, school officials were entitled to limit the student’s speech in order to “ensure order, protect the rights of other students, and promote the school’s education.”