Tinker v. Des Moines Case Study Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Constitutional Law
Mr. Faulhaber

**The following is a list of arguments in the *Tinker v. Des Moines*(1969) case. Read through each argument and decide whether it supports the Tinkers' position (T), the position of the Des Moines School District (DM), both sides (BOTH), or neither side (N).**

\_\_\_\_1. The First Amendment to the United States Constitution states:

 *"Congress shall make no law . . . abridging the freedom of speech. . . ."*

The administration of a public school is an agent of the government. At a minimum, therefore, it must uphold the basic rights protected by the U.S. Constitution.

\_\_\_\_2. In the case of *Stromberg v. California*(1931), the Supreme Court ruled that the First Amendment protects symbolic speech by declaring unconstitutional a California law prohibiting a display of a red flag as a symbol of opposition to established government.

\_\_\_\_3. Free speech is not an absolute right. The government, at all levels, must balance the rights of individuals to free speech with other values the society holds dear. These other values may include public safety and protecting the rights of other individuals.

\_\_\_\_4. In order for a school to function, there must be rules prohibiting behavior that could be disruptive to the school's educational mission. Schools contribute to making us a more law-abiding people, and school discipline is an important part of children's development as good citizens.

\_\_\_\_5. Schools are meant to be a forum for learning, which includes the possibility for debate of controversial issues. Communication among students is an inevitable and important part of the educational process.

\_\_\_\_6. The Des Moines School District did not ban all expressions of political or controversial subjects. In the past the school had allowed the wearing of political campaign buttons, for instance.

\_\_\_\_7. Allowing students to flout a school rule regarding the wearing of armbands will lead us down a slippery slope. It is not difficult to imagine that if the Tinkers are supported, that students will see this as license to break other school rules as well.

\_\_\_\_8. In the late 1960s many student groups in universities around the country were conducting sit-ins, lie-ins, and other forms of protest against the Vietnam War that interrupted the normal functioning of schools.

\_\_\_\_9. The wearing of the armbands was a silent and passive expression of a position on the Vietnam War. There was no evidence of substantial disruption to the school resulting from the armbands; however, the school officials reasonably feared disruption and therefore took preemptive action to protect the learning environment of the students.

The Supreme Court ruled 7 to 2. The following is from the majority opinion delivered by Justice Fortas:

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?

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

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?

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?