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**It’s elementary, children have First Amendment rights too**

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The First Amendment sets no age limit. Its text says that “Congress shall make no law … abridging the freedom of speech.” It has no “adults only” modifier. It protects the free-speech rights of students — even those in elementary schools.

Admittedly, the U.S. Supreme Court said in [*Tinker v. Des Moines Independent School Dist.*](http://www.firstamendmentcenter.org/faclibrary/case.aspx?id=1860) (1969) that students’ First Amendment rights must be applied “in light of the special characteristics of the school environment” — even in the very decision where the Court famously said students don’t lose their free-speech rights at school. The Court was saying that public schools are not complete free-for-all, anything-goes zones. Schools’ primary mission is to educate kids, to provide an environment conducive to learning.

Unfortunately, some act as those though there is an age restriction on First Amendment freedoms — that elementary school kids are not old enough to merit the protections of the first 45 words of the Bill of Rights.

Consider that in Plano, Texas, the argument was made in 2004 that Jonathan Morgan did not have the right to hand out candy canes with religious messages in part because he was a young elementary school student. The argument was that he was too young to have First Amendment rights.

However, as many courts have recognized, the U.S. Supreme Court nearly 70 years ago in [*West Virginia Board of Education v. Barnette*](http://www.firstamendmentcenter.org/faclibrary/case.aspx?case=WV_Education_v_Barnette) (1943) ruled that elementary school students had a First Amendment right not to salute the flag and recite the Pledge of Allegiance. Marie Barnette (actually Barnett — her name was misspelled by a court clerk) was 8 and her sister Gathie was 9 when they encountered resistance to their beliefs as Jehovah Witnesses in school. They were told they couldn’t return to school because of their refusal to salute the flag.

In that famous case — the Supreme Court held that the First Amendment applied in public schools. Justice Robert Jackson said of school officials: “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 government as mere platitudes.”

Amazingly, attorneys for the school district in the Plano case argued that *Barnette* didn’t apply, in part because the Supreme Court didn’t emphasize that the sisters were in elementary school. The 5th U.S. Circuit Court of Appeals in [*Morgan v. Swanson*](http://www.ca5.uscourts.gov/opinions/pub/09/09-40373-CV0.wpd.pdf) on July 1 rejected that specious argument, pointing out that “it is evident on the face of the decision itself that the plaintiffs [the Barnette sisters] were elementary school students.”

School officials would be wise to remember the history of the*Tinker* case. Yes, the litigation that led to the decision arose because John Tinker, a high school student, and Mary Beth Tinker, then in middle school, were punished for wearing black armbands in protest of the Vietnam War.

What many may not know is that their elementary-age siblings — Hope and Paul Tinker — also wore black armbands to school. They were not punished. As historian John W. Johnson relates in his book *The Struggle for Student Rights,* Hope and Paul’s elementary school teachers made the armbands a teachable lesson, rather than fodder for suspension.

Age can be an important factor in First Amendment cases. Speech that is appropriate for a 17-year-old certainly may not be appropriate for a 7-year-old.

But what is even more inappropriate is arguing that elementary school students have no First Amendment rights. They most certainly do.