[**SPEECH**](http://www.firstamendmentcenter.org/category/speech)

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

[**DAVID L. HUDSON JR.**](http://www.firstamendmentcenter.org/author/davidhudson)

**FIRST AMENDMENT SCHOLAR**

Thursday, August 19, 2010 / First Amendment Center, Vanderbilt University

<http://www.firstamendmentcenter.org/it%E2%80%99s-elementary-children-have-first-amendment-rights-too> (8.7)

The First Amendment sets no age limit. It says that “Congress shall make no law … abridging the freedom of speech.” It doesn’t say. “adults only.” It protects the free-speech rights of students — even those in elementary schools.

Still, 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.” This was in the very decision where the Court said students don’t lose their free-speech rights at school. The Court was saying that there are limits. Schools’ main mission is to educate kids. That requires an environment conducive to learning.

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

For example, 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. The argument was that he was too young to have First Amendment rights.

On the other hand, the U.S. Supreme Court 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 Barnett was 8 and her sister Gathie was 9 when they were told they couldn’t return to school because of their refusal to salute the flag. They were Jehovah Witnesses. It was against their religion to do so.

In that famous case, the Supreme Court held that the First Amendment applied in public schools. Justice Robert Jackson said the fact that school officials were “educating the young for citizenship is reason for scrupulous protection of Constitutional freedoms of the individual.” They said to do otherwise would “strangle the free mind” …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. They said it was partly 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 claim. They pointed out “it is evident … [the Barnette sisters] were elementary school students.”

School officials would be wise to remember the history of the*Tinker* case. Yes, the litigation 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 a reason to suspend them.

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.