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## Teacher Rights, Administrator Wrongs

Summer 2003

*In recent months, there have been numerous incidents when school administrators have attempted to prohibit or otherwise discipline teachers for wearing buttons or armbands that protested the government's involvement in the war with Iraq. We asked Rich Saks, a lawyer who works with the Milwaukee Teachers Education Association to summarize teacher rights on this matter. This is what he told us:*

School authorities cannot selectively prohibit or ban certain types of speech, including nonverbal conduct, such as wearing buttons or armbands, based solely on whether the content of the speech is disfavored. Teachers have a constitutional right to engage in political expression as long as it is not disruptive of the educational environment.

In a 1972 federal appeals court case emanating out of Elmira, N.Y., *James v. Bd. of Ed. of Addison*, 461 F.2d 566 (2nd Cir. 1972), the court held that a teacher had the right to wear a black armband in a classroom as a symbolic protest against U.S. involvement in the Vietnam War. The court analogized the facts in *James* to the famous *Tinker* (*Tinker v. Des Moines Independent Community Sch. Dist.*, 393 U.S. 503, 506 (1969)) case, where the U.S. Supreme Court upheld the right of students to wear armbands protesting the Vietnam War. In upholding the right of students to organize armband protests against the war, the Supreme Court emphatically declared that students do not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." In *James*, the federal appeals court held that the rationale in *Tinker* applied to teachers as well as students, and that as with students, any limit on political expression by teachers regarding matters of public concern (of which foreign policy surely is), could only be justified by the administration's need to ensure the maintenance of discipline and an appropriate educational environment. In the context of the current U.S.-Iraq situation, I do not believe that a teacher or student wearing an anti-war button — any more than the wearing of a union button, or political campaign button, or an environmental button — would constitute such a disruptive force to justify the curtailment of the first amendment right to express such opinion.

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