

Texas v. Johnson / Background •—Answer Key

As you read the background summary of the case below, look for the **important vocabulary terms**. You can find definitions for these terms on the separate vocabulary handout.

In 1984, the Republican National Convention was held in Dallas, Texas. Gregory Lee Johnson took part in a demonstration there. He and his group were **protesting** against nuclear weapons, among other things. They marched through the streets shouting.

Johnson was carrying an American flag. When he reached Dallas City Hall, Johnson poured kerosene on the flag. Then he set it on fire. While the flag burned, people shouted, “America, the red, white, and blue, we spit on you.” No one was hurt, but some people who were there said they were very upset.

Johnson was arrested. He was charged with **desecrating** a Texas law that said people could not vandalize a respected object. He was **convicted**, sentenced to one year in prison, and fined \$2,000.

Johnson **appealed** his case to the Texas Court of Criminal Appeals, which agreed with him. The court said that the First Amendment protection of free speech included “**symbolic** speech,” which is an action that expresses an idea. It said that flag burning was a form of symbolic speech so Johnson could not be punished.

The state of Texas wanted to maintain order and to preserve the flag as a symbol of national unity. The state argued its interests were more important than Johnson’s symbolic speech rights. The court did not agree with the state’s arguments.

The court said the government cannot “carve out a symbol of unity and prescribe a set of approved messages to be associated with that symbol” The court also said that the flag burning did not cause or threaten to cause a **breach of the peace**.

The state of Texas asked the Supreme Court of the United States to hear the case. In 1989, the Court made a decision.

Questions to Consider

1. What did Gregory Johnson do? What happened to him as a result?

During a demonstration, Gregory Johnson set the American flag on fire. He was arrested, convicted, sentenced to one year in prison and fined \$2,000.

2. What does the First Amendment say about freedom of speech? Why did Johnson say his First Amendment rights had been violated?

The First Amendment says, "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people to peaceably assemble and to petition the government for a redress of grievances." [The Court has held that the 14th Amendment makes the First Amendment applicable to the States.] Johnson said that the conviction violated his free speech rights because burning the flag is a form of free speech.

3. What argument could you make that flag burning is likely to cause violence and therefore should be against the law?

The First Amendment protects freedom of speech and the right of the people to "peaceably assemble." People view flag burning as inflammatory and offensive, so there is always a possibility they will react violently. The state has a duty to protect the safety and well-being of its citizens and an action which incites violence should be prohibited. In Johnson's case the demonstration was not peaceable and though it did not result in violence or injury in this instance, the possibility was still there.

4. What argument could you make that flag burning is symbolic speech protected by the First Amendment?

Speech is not limited to the spoken or written word, but it includes actions as well. Flag burning is one of these actions that falls in the category of political expression. Some people find it offensive, but that is even more reason why it should be protected. The Constitution must protect all forms of speech, especially those that are unpopular.

5. The Texas Court of Criminal Appeals said the government cannot "carve out a symbol of unity and prescribe a set of approved messages to be associated with that symbol . . ." What does this mean? Do you agree that the government should not be able to do this? Explain your reasons.

The Texas Court of Appeals said the government cannot "carve out a symbol of unity and prescribe a set of approved messages to be associated with that symbol . . ." What the Court of Appeals meant was that the government cannot choose a particular symbol and say that all people must feel a certain way about the symbol. Opinions will vary. Some students will agree with the Court of Appeals on the grounds that prescribing a set of approved messages would amount to running a dictatorship. Others will argue that symbols like the flag do stand for certain things, like freedom, so it is okay to attach that message to do this. In fact, the government needs to do this to promote unity.

6. How should the Supreme Court of the United States decide this case? Why?

Student answers will vary as a case could be made in favor of either side. One could argue that the Court should rule in favor of Gregory Johnson on the grounds that flag burning is a form of expression protected by the First Amendment. The government has no right to mandate what people believe. Johnson's was an unpopular opinion, but that is all the more

reason that he should be allowed to express it. His actions were not disruptive, nor did they threaten to harm anyone. Allowing people to practice freedom is more important than protecting the flag, which simply symbolizes freedom. On the other hand, one could argue that the Court should rule in favor of Texas on the grounds that flag burning is antagonistic and could provoke people to behave violently. This was not the only method he had of expressing his opinion and the government was not opposed to the opinion itself but to the manner in which he expressed it. Furthermore, the flag is an important national symbol that must be revered and respected. If the government mandates that people cannot desecrate the flag, the law is controlling people's actions and not their opinions.