

Texas v. Johnson / Background ●●●

Gregory Lee Johnson participated in a political demonstration during the Republican National Convention in Dallas, Texas, in 1984. The purpose of the demonstration was to protest policies of the Reagan Administration and of certain corporations based in Dallas. Demonstrators marched through the streets, chanted slogans, and held protests outside the offices of several corporations. At one point, another demonstrator handed Johnson an American flag.

When the demonstrators reached Dallas City Hall, Johnson doused the flag with kerosene and set it on fire. During the burning of the flag, the demonstrators shouted, “America, the red, white, and blue, we spit on you.” No one was hurt or threatened with injury, but some witnesses to the flag burning said they were seriously offended. One witness picked up the flag’s charred remains and buried them in his backyard.

Johnson was charged with the desecration of a venerated object, in violation of the Texas Penal Code. He was convicted, sentenced to one year in prison, and fined \$2,000. He appealed his conviction to the Court of Appeals for the Fifth District of Texas, which let his conviction stand. He then appealed to the Texas Court of Criminal Appeals, which is the highest court in Texas that hears criminal cases. That court overturned his conviction saying that the state could not punish Johnson for burning the flag in these circumstances because it was not consistent with the First Amendment.

The Criminal Appeals Court first found that Johnson’s burning of the flag was expressive conduct protected by the First Amendment. Therefore, in order for a state to criminalize or regulate such conduct it would have to serve a compelling state interest that would outweigh the protection of the First Amendment. The court concluded that making flag desecration illegal in order to preserve the flag as a symbol of national unity was not a compelling enough interest to survive the constitutional challenge. It also decided that while preventing breaches of the peace qualified as a compelling state interest, the law was not drawn narrowly enough to only punish those flag burnings that would likely result in a serious disturbance. Further, it stressed that another Texas statute prohibited breaches of the peace and could serve the same purpose of preventing disturbances without punishing this flag desecration.

The court said, “Recognizing that the right to differ is the centerpiece of our First Amendment freedoms . . . a government cannot mandate by fiat a feeling of unity in its citizens. Therefore that very same government cannot carve out a symbol of unity and prescribe a set of approved messages to be associated with that symbol” The court also concluded that the flag burning in this case did not cause or threaten to cause a breach of the peace.

The state of Texas filed a petition for a writ of *certiorari* and, in 1988, the Supreme Court of the United States agreed to hear the case. In 1989, the Court handed down its decision.

Questions to Consider

1. The First Amendment to the U.S. Constitution states: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” What part of the Amendment is relevant to this case?
2. What do you think is meant by “symbolic speech?” What are some other examples?
3. What argument could you make that flag burning threatens to cause violence and, therefore, should be against the law?
4. What arguments could you make that the First Amendment should protect flag burning?
5. How should the Supreme Court of the United States decide this case? Why?