



LANDMARK SUPREME COURT CASES AND THE CONSTITUTION

TEXAS V. JOHNSON (1989)

OCTOBER 26, 2009

OVERVIEW

© [The Bill of Rights Institute](#), All rights reserved

This Landmark Supreme Court Cases and the Constitution eLesson focuses on a case involving expressive conduct, and what is for many a deeply cherished symbol of America—the US flag. In a closely divided (5-4) ruling, the Supreme Court held that states could not forbid burning the US flag in protest, because doing so would violate the freedom of speech protected by the First Amendment.

RESOURCES

- http://www.oyez.org/cases/1980-1989/1988/1988_88_155/
- <http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/texasvjohnson.html>
- <http://www.constitutionbee.org/user/StudentGuide.aspx?id=787>

ACTIVITY

During the 1984 Republican National Convention in Dallas, Texas, Gregory Lee Johnson joined an organized political protest in opposition to Reagan administration policies and some Dallas-based corporations. Demonstrators marched through the streets, chanting their message. As the march progressed, a fellow protestor handed Johnson an American flag that had been taken from a flag pole at one of their protest locations.

Upon reaching the Dallas City Hall, Johnson doused the flag with kerosene and set it ablaze. Johnson and his fellow demonstrators circled the burning flag and shouted “America, the red, white, and blue, we spit on you.” No one was hurt or threatened with injury by the act, but many who witnessed it were deeply offended. Johnson was arrested, charged, and convicted of violating a Texas law that made it a crime to desecrate a “venerable object.” He received a sentence of one year in prison and was ordered to pay a \$2,000 fine.

Johnson appealed his conviction, and his eventually went to the Supreme Court. Johnson argued that the Texas flag desecration statute violated the First Amendment, which says “Congress shall make no law ... abridging the freedom of speech ... or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.” The state of Texas argued that it had an interest in preserving the flag as a symbol of national unity. The Court had to consider: Are there certain symbols that are so widely cherished and understood to convey certain meanings that the government can regulate their use?

The Court agreed with Johnson (5-4) and struck down the Texas statute. Burning a US flag in protest was expressive conduct protected by the First Amendment. “The First Amendment literally forbids the abridgment only of ‘speech,’ but we have long recognized that its protection does not end at the spoken or written word.... If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable....”

COMPREHENSION AND CRITICAL THINKING QUESTIONS

1. Why was Joey Johnson arrested?
2. What were the arguments on each side?
3. Do you agree with the Court’s ruling that the First Amendment protects expressive conduct? Why or why not?
4. In his dissenting opinion, Chief Justice Rhenquist argued that Johnson’s right to express his views had not been abridged. “It was Johnson’s use of this particular symbol, and not the idea that he sought to convey by it or by his many other expressions, for which he was punished.... Surely one of the high purposes of a democratic society is to legislate against



LANDMARK SUPREME COURT CASES AND THE CONSTITUTION

TEXAS V. JOHNSON (1989)

OCTOBER 26, 2009

conduct that is regarded as evil and profoundly offensive to the majority of people—whether it be murder, embezzlement, pollution, or flag burning.” How would you respond to this argument?



LANDMARK SUPREME COURT CASES AND THE CONSTITUTION

TEXAS V. JOHNSON (1989)

OCTOBER 26, 2009

ANSWERS

1. Johnson was arrested for desecrating an American flag in violation of Texas law.
2. Johnson argued that burning a US flag in protest was protected by the First Amendment, which says government cannot abridge individuals' freedom of speech. Texas argued that it had a rightful interest in preserving the American flag because it was a symbol of national unity.
3. Some students may agree with the Court that the First Amendment protects expressive conduct, because the purpose of the First Amendment is to ensure that the people could participate in self-government by sharing their political views peacefully. If government can ban expressive conduct, they could severely limit the ways individuals can bring their messages to others. Others may disagree with the Court, reasoning that the amendment protects "speech" and not conduct. Governments must be able to maintain civility and order, and if all conduct with an expressive purpose must be allowed, that would be impossible.
4. Accept reasoned answers.