

Texas v. Johnson (1989)

Argued: March 21, 1989

Decided: June 21, 1989

Background and Facts

The Bill of Rights is made up of the first 10 amendments to the Constitution of the United States. These amendments let Americans know what their rights are.

The First Amendment states: “Congress shall make no law ... abridging the freedom of speech...” It makes sure that all Americans have a right to free speech. Under the protection of this amendment, Americans are able to express their ideas and beliefs. Symbolic speech is the expression of those ideas through actions instead of spoken words and is also protected by the Constitution.

There are some forms of speech that aren’t protected under the First Amendment. These include obscene material, true threats, fighting words, defamation, and plagiarism.

During the Republican National Convention in 1984, Gregory Lee Johnson participated in a group political demonstration on the steps of Dallas City Hall. The demonstrators were opposed to nuclear weapons. One demonstrator took an American flag from a flagpole and gave it to Johnson, who set fire to the flag. While the flag burned, protesters chanted “America, the red, white, and blue, we spit on you.” There were no injuries or threats of injury during the demonstration.

Johnson was arrested and charged with violating a Texas state law that banned the desecration of the American flag in a way that would seriously offend one or more persons observing the action. Several people were offended by the flag burning and said so in court. Johnson was convicted, but he appealed. He said that the Texas law violated the First Amendment, which protects free speech.

Constitutional Question

Does a law banning the desecration of the American flag violate the First Amendment?

Arguments for Texas (petitioner)

- For 200 years, the American flag has been regarded as the symbol of the nation.
- The flag symbolizes more than national unity. It has strong significance for war veterans and their families. It symbolizes the shared values of freedom, equal opportunity, and religious tolerance. It is in the government’s interest to protect this important American symbol.
- Texas did not punish Johnson’s message, just the way he chose to convey it.
- Even if the action of flag burning can be interpreted as speech, we don’t have to allow all speech. There must be reasonable limits. There are other ways that Johnson could have expressed his views.

Arguments for Johnson (respondent)

- The government may not prohibit expression just because society finds the ideas presented offensive.
- The Supreme Court has long recognized that speech can be more than the spoken or written word. Actions are symbolic speech when the actor intends to convey a particular message that would most likely be understood by those watching.
- Johnson's actions did not incite violence or disrupt the peace.
- It is important for the government to preserve the flag as a symbol. However, it is more important to ensure Americans' rights to protest when they disagree with the government.

Decision

The court ruled in favor of Johnson, 5-4. Justice Brennan wrote the opinion for the majority. The opinion stated that Johnson's act of burning the American flag was protected by the First Amendment, because it was **expressive conduct**. The justices stated that "the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable."

The Court also found that states did not have the authority to decide which actions were acceptable to perform on a certain symbol, just because they disapproved of the actions.

In the main **dissent**, Chief Justice Rehnquist wrote that the American flag is unique because it has been a symbol of the nation. Because of this, the government is justified in banning flag burning in the way that Johnson did. He said that flag is not just another "idea" or "point of view."

He also stated that Johnson was not punished for his ideas or his expressions. He was punished more so for the fact he was using this particular symbol that is so significant to the nation.

Impact

The Supreme Court's decision in *Texas v. Johnson* struck down flag burning bans that were in place in 48 states, including Texas. In response to this case, Congress passed the Flag Protection Act in 1989, which was a federal law banning the desecration of the flag. Once again, Johnson decided to protest this law. He and three others burned a flag on the steps of the U.S. Capitol. They were all arrested, but the government decided not to prosecute Johnson. However, the other protesters were charged and convicted of violating the Flag Protection Act. Their case, *United States v. Eichman* (1990), also was heard by the Supreme Court. The same justices who overturned the Texas law in *Texas v. Johnson* once again made up the majority to strike down the Flag Protection Act as **unconstitutional**.

Flag burning is still a very controversial topic. Because of the decision in *Texas v. Johnson*, the only way to outlaw flag desecration would be to enact a constitutional amendment. Congress has considered a constitutional amendment banning the desecration of the flag many several times, but it has never successfully gained the support necessary to ratify an amendment to the Constitution.

Glossary

- **Abridging**: reducing or diminishing.
- **Convey**: to communicate an idea through words or actions.
- **Defamation**: saying or writing something that would hurt another person's reputation. The statement about that person has to claim to be a fact instead of an opinion. Defamation usually implies that the statement is not true.
- **Desecration**: to violate; to damage or disrespect something that is sacred.
- **Expressive conduct**: actions that convey a particular message
- **Obscene**: offensive or indecent; usually relating to sexual matters.
- **Plagiarism**: the act of taking someone else's work or ideas and passing them off as one's own.
- **Symbolic speech**: non-verbal actions that convey a message (e.g., burning the flag, sit-ins, and wearing political buttons).
- **Unconstitutional**: not allowed by or contained in the Constitution. If a law is unconstitutional, it will be struck down, meaning it is no longer a law.

Additional information about *Texas v. Johnson*, including background at three reading levels, opinion quotes and summaries, teaching activities, and additional resources, can be found at <https://www.landmarkcases.org/>.