

A Burning Discontent

The presidential election of 1984 had something in common with all other presidential elections: People disagreed about who the next president should be. Ronald Reagan was finishing up four years as president and was running for re-election. He was a popular president, but there were many who disagreed with his ideas. One of these people was Gregory Johnson. In Dallas, Texas in the summer of 1984, Johnson joined a group of protestors outside the Republican National Convention, where Reagan was set to be nominated as the Republican presidential candidate. Standing in front of the Dallas City Hall, Johnson poured kerosene on an American flag and set it on fire. He was then arrested under a Texas law that prohibited "desecration of a venerated object." At trial, Johnson was sentenced to a year in prison and fined \$2,000.



An American flag being burned in protest.

ISSUE

Does the First Amendment right to freedom of speech protect flag burning?

DECISION

Yes. Burning the flag is an act of expression that is intended to convey a message.

The Argument

The First Amendment to the U.S. Constitution forbids laws that would limit citizens' freedom of speech. Johnson argued that the Texas law did exactly that: Burning a flag, he argued, was a form of speech that should be protected by the First Amendment.

The Decision

The Supreme Court agreed. Many times before, the Court had already said that speech is not limited to words. Conduct can also be "speech" if it is intended to send a message. The fact that Johnson's conduct involved an American flag only made it more obvious that he was trying to send a message: "Johnson was not... prosecuted for the expression of just any idea; he was prosecuted for his expression of dissatisfaction with the policies of this country," and that kind of expression is "at the core of our First Amendment values."

The Court made it clear that even though some people were seriously offended by the flag burning "speech," that didn't make it okay to limit the speech. Instead, the Court said that "a principal function of free speech under our system of government is to invite dispute." Ultimately, the Court said, "Johnson's political expression was restricted because of the content of the message he conveyed." That is exactly what the First Amendment forbids.



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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.

— U.S. Supreme Court,
Texas v. Johnson

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Johnson (left) and his lawyer outside the Supreme Court.

So What?

Most people aren't going to go out and burn a flag. But at some point, most of us will have ideas and opinions that some people will find offensive. Does the government have the right to decide what opinions are too offensive to express? The answer is no. This case reinforced citizens' right to express ideas even if those ideas are extremely upsetting to some people. The Constitution guarantees people the freedom to hold and express whatever views they wish, about our government or the flag or anything else.

Texas v. Johnson (1989)

Name: _____

Different Views. Not all of the Justices agreed that the First Amendment should protect burning the flag. Four Justices dissented, saying that the flag should be protected. Read each argument below. Decide whether the argument is from the opinion, which found that Johnson had the right to burn the flag, or the dissent, which argued that the Texas law against burning the flag was constitutional. Write the letter of each argument where it belongs.

A Johnson wasn't punished for his ideas, he was punished for his conduct. He could have expressed his ideas many other ways and not been punished.

B It does not honor the flag to punish people who destroy it. All punishment does is limit the freedom that the flag represents.

C Burning a flag is more like a roar or a grunt and not like expressing an idea. It is just meant to upset people.

D The government encourages people to treat the flag respectfully. But that's different from criminally punishing someone who burns the flag as a form of political protest.

E The government has the power to draft men into the armed forces to fight and die for our country, so it should have the power to protect the flag they fight under.

F There are laws against murder, cheating, and pollution. Most people think flag-burning is just as evil and offensive as these other acts.

G The flag is more than just a symbol or idea. It represents liberty and equality to people all around the world who look to America as a model.

H To decide which symbols should be protected, the Court would have to force its own moral values on citizens. That's what the First Amendment prohibits.

I The flag protects even those who do not respect it.

J The government cannot say that a symbol may only be used to express one point of view.

K Burning the flag is like spraying graffiti on the Washington Monument or the Lincoln Memorial, which would be illegal.

L The government already says that worn out flags should be burned. The Texas law does not forbid burning a flag to dispose of it. This shows Johnson was punished for his ideas.

OPINION
of the
SUPREME COURT
OF THE UNITED STATES



DISSENT
of
Chief Just Rehnquist and Justices
White, O'Connor, and Stevens



YOUR OPINION

Write the letter of the argument you agree with the most strongly: 

I agree with this argument because _____

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Answers will vary
