*Texas v. Johnson* (1989)

**Facts:** During the Republican National Convention in 1984, Gregory Lee Johnson participated in a group political demonstration. The demonstrators were opposed to nuclear weapons. One demonstrator took an American flag from a flagpole and gave it to Johnson. The demonstration ended in front of the Dallas, Texas city hall, where Johnson set fire to the American 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 likely to observe his action. Several people were offended by the flag burning, and said so in court. Johnson was convicted, but he appealed, saying that the Texas law violated the First Amendment, which protects free speech.

**Issue:** Does a law banning the burning of the flag violate the First Amendment?

Classifying Arguments

Read each argument below and label each based on whether it supports Texas’s side (that the flag burning law is constitutional) or Johnson’s side (that the law is unconstitutional).

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, and there is a great likelihood that those watching would understand the message.

\_\_\_\_ 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.

\_\_\_\_ Texas did not punish Johnson’s message, just the means he used to convey it.

\_\_\_\_ The government may not prohibit expression simply because society finds the ideas presented offensive.

\_\_\_\_ For 200 years, the American flag has occupied a unique position 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 our shared values of freedom, equal opportunity, and religious tolerance. It is in the government’s interest to protect this important American symbol.

\_\_\_\_ While it is important for the government to preserve the flag as a symbol, it is more important to ensure Americans’ rights to protest when they disagree with the government.

\_\_\_\_ Johnson’s actions did not incite violence or disrupt the peace.

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Read each of the two sample opinions in this case. Decide which one you think should be the majority (winning) opinion, and which one you think should be the dissenting opinion. Explain your choice.

**Opinion A:** Johnson’s actions in this case are not protected by the First Amendment, and the state of Texas should be able to punish him for burning the flag. For 200 years, the American flag has occupied a unique position as the symbol of the nation. Congress and many states have enacted laws prohibiting the misuse and mutilation of the American flag. 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.

Texas did not punish Johnson’s message, just the means he used to convey it. The flag symbolizes more than national unity. It has strong significance for war veterans and their families. It symbolizes our shared values of freedom, equal opportunity, and religious tolerance. It is in the government’s interest to protect this important American symbol. It is not too much to ask that protestors use other means of speech to express their ideas. Johnson’s conviction should be affirmed.

**Opinion B:** Johnson’s actions in this case should be protected as free speech. While the First Amendment literally protects speech, 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 and there is a great likelihood that those watching would understand the message. Johnson burned the flag to express an idea – his dissatisfaction with the country’s policies.

Johnson’s actions did not incite violence or disrupt the peace. While it is important for the government to preserve the flag as a symbol, it is more important to ensure Americans’ rights to protest when they disagree with the government. The government may not prohibit expression simply because society finds the ideas presented offensive. In this case, the government has not provided enough justification for punishing Johnson’s speech. His conviction should be overturned.

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Arguments for Texas

* For 200 years, the American flag has occupied a unique position 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 our 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 means he used 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

* The government may not prohibit expression simply 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 and there is a great likelihood that those watching would understand the message.
* Johnson’s actions did not incite violence or disrupt the peace.
* While it is important for the government to preserve the flag as a symbol, it is more important to ensure Americans’ rights to protest when they disagree with the government.

Opinion: Act as a Supreme Court justice and write an opinion for this case. Choose the side you agree with more and write a summary explaining why you would rule in that party’s favor. Support your opinion with reasons.

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**Precedents:** Arguments in a Supreme Court case are often based on precedents—previous cases the Court has decided about similar issues. Both sides argue that a particular precedent does or does not apply to the present case. These are First Amendment precedents:

***United States v. O’Brien* (1968):**To protest the war in Vietnam, four men burned their draft cards at a public demonstration. A federal law said that mutilating a draft card was illegal. When the men were convicted of breaking this law, they challenged it, saying the law violated their freedom of speech. The Supreme Court ruled that the law was constitutional. The Court said a person could not simply say any activity was “speech.” In addition, it said that the nation’s need to maintain the armed forces was more important than free speech.

***Spence v. Washington* (1974):** Spence, a college student, wanted to protest the actions of American troops in Cambodia. He hung an American flag upside down from his apartment window. Over the flag he placed a peace symbol made from black tape. At his trial, Spence stated his purpose was to associate the American flag with peace instead of war and violence. Spence was convicted of violating a Washington law that prohibited placing anything over a flag. The Supreme Court ruled for Spence, saying that the flag was displayed on his own home, and that he was clearly expressing an idea through his action. The state could not demonstrate a clear reason for preventing the expression of this idea.

For each precedent, decide how similar to or different from the current case the precedent is. Then decide whether, in your opinion, this precedent applies to the current case. Then determine how the case before you should be decided and give your reasons.