



## **Supreme Court of the United States**

### **State of Texas v. Gregory Lee Johnson**

**By Jean-Paul Jacquet**

#### **Summary of the Facts**

The case of *Texas v. Johnson* centers on what is arguably one of the most important legal issues in the United States: the freedom of speech. During protests at the 1984 Republican National Convention in Dallas, Texas, Gregory Johnson was arrested for pouring kerosene on an American flag and setting it aflame. In violation of a Texas law prohibiting the desecration of revered objects, Johnson was tried and convicted. Johnson then appealed his case to the Fifth Court of Appeals of Texas, which denied his case. After this, Johnson's case was heard by the Texas Court of Criminal Appeals. The criminal appeals court overturned Johnson's conviction on the basis that his actions constituted politically-motivated expression protected under the First Amendment of the United States Constitution (also known as the First Amendment in the Bill of Rights) as symbolic speech. Following the reversal of Johnson's conviction, the State of Texas appealed to the Supreme Court.

The freedom of speech guaranteed by the First Amendment is widely regarded as one of the most fundamental political rights guaranteed to citizens of the United States. However, against this right, the court must weigh the interests of the state. The desecration of revered objects, specifically desecration of the Flag of the United States of America, has long been regarded as an egregious violation of civic duty, and as an altogether unacceptable act. In fact, flag burning has historically incited deep unrest and passionate responses from those who have witnessed it. Related to this concern, the state has an obligation to protect its citizenry. If burning the flag will cause a riot or disrupt the public order, the state may be justified in preventing the act.

The Supreme Court first must decide whether or not Johnson has a constitutionally-protected right to burn the flag as a means of political expression. However, even if this issue is decided, questions still remain. Does Johnson's right to free speech outweigh the state interests of protecting public order and preserving a revered national symbol? Is flag burning provocative in nature? And if so, does that provocation represent a threat to public safety? To what extent, if any, does the effect of Johnson's actions on others affect the outcome of this case?

#### **Relevant Precedents**

##### **STROMBERG v. PEOPLE OF STATE OF CALIFORNIA, 283 U.S. 359 (1931)**

###### *Background*

During the summer of 1929, the Pioneer Summer Camp (PSC) was operating in the state of California. PSC was a youth camp for working-class children run by organizations with strong ties to communist groups. Yetta Stromberg, a member of the Youth Communist League teaching at the camp, was arrested for violating a California state law prohibiting the public display of red flags. After being tried and convicted in state court, Stromberg appealed her case to

the Supreme Court of the United States on the basis that the California law violated the Fourteenth Amendment, which guarantees the protection of civil and political rights from violation by states. The specific right which would be protected in this case is the right to freedom of speech, protected by the First Amendment.

*Opinion of the Court by Chief Justice Hughes*

The court finds that the Fourteenth Amendment provides protection of the right of free speech against violation of this right by the State.

“It has been determined that the conception of liberty under the due process clause of the Fourteenth Amendment embraces the right of free speech. The right is not an absolute one, and the State in the exercise of its police power may punish the abuse of this freedom. There is no question but that the State may thus provide for the punishment of those who indulge in utterances which incite to violence and crime and threaten the overthrow of organized government by unlawful means. There is no constitutional immunity for such conduct abhorrent to our institutions.”

As we see that the freedom of speech is protected, it must be determined whether or not the actions of Yetta Stromberg constituted free speech. The court finds that the California state law against raising a red flag violates the individual’s right to peaceably oppose the government, a right protected under “free speech.”

“The question is thus narrowed to that of the validity of the first clause, that is, with respect to the display of the flag 'as a sign, symbol or emblem of opposition to organized government,' and the construction which the state court has placed upon this clause removes every element of doubt. The state court recognized the indefiniteness and ambiguity of the clause. The court considered that it might be construed as embracing conduct which the State could not constitutionally prohibit. Thus it was said that the clause 'might be construed to include the peaceful and orderly opposition to a government as organized and controlled by one political party by those of another political party equally high minded and patriotic, which did not agree with the one in power. It might also be construed to include peaceful and orderly opposition to government by legal means and within constitutional limitations.' The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic is a fundamental principle of our constitutional system. A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the Fourteenth Amendment. The first clause of the statute being invalid upon its face, the conviction of the appellant, which so far as the record discloses may have rested upon that clause exclusively, must be set aside.”

However, there are two remaining clauses of the statute that do not violate the First Amendment rights of the appellant. Such action that constitutes “an invitation or stimulus to anarchistic action or as an aid to propaganda that is of a seditious character” is not protected by the Constitution and may stand in California law. However, as the conviction may have rested on the first clause of the statute, action under which is protected by the First Amendment, the conviction is overturned.

## **TINKER v. DES MOINES SCHOOL DIST., 393 U.S. 503 (1969)**

### *Background*

In December of 1965, the United States was embroiled in the Vietnam War. Three students in Des Moines, Iowa planned to wear black armbands showing peace symbols to school as a sign of protest against the war. Upon hearing of the plan, the school board passed a policy banning armbands in school. The policy would suspend any student found wearing an armband on school grounds. The three students violated this policy and were suspended from school. The Iowa Civil Liberties Union aided the families in filing suit against the school board, at which time the parents filed suit against the school district in U.S. District Court, which ruled that the school authorities' action was "reasonable in order to prevent disturbance of school discipline." After the district court upheld the school's decision, the parents appealed to the 8<sup>th</sup> Circuit U.S. Court of Appeals. After a tie vote in the Court of Appeals, the families appealed directly to the Supreme Court. The case was heard in November of 1968.

### *Opinion of the Court by Justice Fortas*

A constitutionally-protected right to freedom of speech exists in this case on the part of the students. Their actions are very close to "pure speech," which is protected by the First Amendment. In this case, three students were suspended for wearing armbands. There is no issue of disruptive conduct or the cessation of order on school grounds.

"The District Court recognized that the wearing of an armband for the purpose of expressing certain views is the type of symbolic act that is within the Free Speech Clause of the First Amendment. As we shall discuss, the wearing of armbands in the circumstances of this case was entirely divorced from actually or potentially disruptive conduct by those participating in it. It was closely akin to "pure speech" which, we have repeatedly held, is entitled to comprehensive protection under the First Amendment."

Additionally, although the school district argues that there is a reasonable fear of disturbance caused by wearing armbands, such fear is not enough to overcome the right of the students to freely express themselves.

"The District Court concluded that the action of the school authorities was reasonable because it was based upon their fear of a disturbance from the wearing of the armbands. But, in our system, undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression. Any departure from absolute regimentation may cause trouble. Any variation from the majority's opinion may inspire fear. Any word spoken, in class, in the lunchroom, or on the campus, that deviates from the views of another person may start an argument or cause a disturbance. But our Constitution says we must take this risk; and our history says that it is this sort of hazardous freedom - this kind of openness - that is the basis of our national strength and of the independence and vigor of Americans who grow up and live in this relatively permissive, often disputatious, society.

In order for the State in the person of school officials to justify prohibition of a particular expression of opinion, it must be able to show that its action was caused by something more than a mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular

viewpoint. Certainly where there is no finding and no showing that engaging in the forbidden conduct would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school," the prohibition cannot be sustained."

*Dissenting opinion by Justice Black*

While individuals certainly have a right to free speech and expression guaranteed by the First Amendment, this right does not exist grant unrestrained license to express beliefs and opinions.

"While I have always believed that under the First and Fourteenth Amendments neither the State nor the Federal Government has any authority to regulate or censor the content of speech, I have never believed that any person has a right to give speeches or engage in demonstrations where he pleases and when he pleases. This Court has already rejected such a notion. In *Cox v. Louisiana*, 379 U.S. 536, 554 (1965), for example, the Court clearly stated that the rights of free speech and assembly "do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time."

In addition, the actions by the students in this case are not devoid of negative consequences. It has been asserted that the actions of the students did not cause any disturbance of the functions of the school. However, such disturbance has been caused, and for that reason the school district is justified in its action against the students.

"While the record does not show that any of these armband students shouted, used profane language, or were violent in any manner, detailed testimony by some of them shows their armbands caused comments, warnings by other students, the poking of fun at them, and a warning by an older football player that other, nonprotesting students had better let them alone. There is also evidence that a teacher of mathematics had his lesson period practically "wrecked" chiefly by disputes with Mary Beth Tinker, who wore her armband for her "demonstration." Even a casual reading of the record shows that this armband did divert students' minds from their regular lessons, and that talk, comments, etc., made John Tinker "self-conscious" in attending school with his armband. While the absence of obscene remarks or boisterous and loud disorder perhaps justifies the Court's statement that the few armband students did not actually "disrupt" the classwork, I think the record overwhelmingly shows that the armbands did exactly what the elected school officials and principals foresaw they would, that is, took the students' minds off their classwork and diverted them to thoughts about the highly emotional subject of the Vietnam war."

*Dissenting opinion by Justice Harlan*

In order to overturn the ruling and find in favor of the students, the students must show that the school district's prohibition on armbands is motivated by a desire to unfairly limit the speech of the students. If it cannot be shown that the school district's intent is to stifle the minority opinion of the students while allowing expression of the majority opinion, there is no basis to overturn the standing ruling.

"I certainly agree that state public school authorities in the discharge of their responsibilities are not wholly exempt from the requirements of the Fourteenth Amendment respecting the freedoms of expression and association. At the same time I am reluctant to believe that there is any disagreement between the majority and myself on the proposition that school officials should be accorded the widest authority in maintaining discipline and good order in their institutions. To

translate that proposition into a workable constitutional rule, I would, in cases like this, cast upon those complaining the burden of showing that a particular school measure was motivated by other than legitimate school concerns - for example, a desire to prohibit the expression of an unpopular point of view, while permitting expression of the dominant opinion.

Finding nothing in this record which impugns the good faith of respondents in promulgating the armband regulation, I would affirm the judgment below.”