

# Supreme Court Case Study

## Texas v. Johnson (1989)

### Background of the Case:

Gregory Johnson, then a member of the Revolutionary Communist Youth Brigade, participated in a political demonstration during the 1984 Republican National Convention in Dallas, Texas. The demonstrators were protesting the policies of the Reagan Administration and of certain companies based in Dallas. They marched through the streets, shouted chants, and held signs outside the offices of several companies. At one point, another demonstrator handed Johnson an American flag stolen from a flagpole outside one of the targeted buildings.

When the demonstrators reached Dallas City Hall, Johnson poured kerosene on the flag and set it on fire. During the burning of the flag, demonstrators shouted such phrases as, "America, the red, white, and blue, we spit on you, you stand for plunder, you will go under," and, "Reagan, Mondale, which will it be? Either one means World War III." No one was hurt, but some witnesses to the flag burning said they were extremely offended. One witness, Daniel E. Walker, received international attention when he collected the burned remains of the flag and buried them according to military protocol in his backyard.<sup>[1]</sup>

### Constitutional & Legal Issues Involved:

Johnson was charged with violating the Texas law that prohibits vandalizing respected objects. He was convicted, sentenced to one year in prison, and fined \$2,000. He appealed his conviction but he lost the first appeal. He then appealed to the Texas Court of Criminal Appeals, and it overturned his conviction, saying that the State could not punish Johnson for burning the flag because the First Amendment protects such activity as symbolic speech.

The State had said that its interests were more important than Johnson's symbolic speech rights because it wanted to preserve the flag as a symbol of national unity, and because it wanted to maintain order. The court said neither of these state interests justified Johnson's conviction.

The Texas court said, "Recognizing that the right to differ is the centerpiece of our First Amendment freedoms, a government cannot mandate by fiat a feeling of unity in its citizens. Therefore that very same government cannot carve out a symbol of unity and prescribe a set of approved messages to be associated with that symbol . . ." The court also concluded that the flag burning in this case did not cause or threaten to cause a breach of the peace.

The State of Texas asked the Supreme Court of the U.S. to hear the case, which it did.

### Supreme Court Majority Opinion:

The Court split 5-4 on the case, upholding the ruling that flag burning is constitutionally protected free speech. Justice Brennan wrote the majority opinion, arguing that the First Amendment protection does not end at the spoken or written word. This was an uncontroversial conclusion in light of cases such as *Tinker v. Des Moines*.

The court found that, "Under the circumstances, Johnson's burning of the flag constituted expressive conduct, permitting him to invoke the First Amendment... Occurring as it did at the end of a demonstration coinciding with the Republican National Convention, the expressive, overtly political nature of the conduct was both intentional and overwhelmingly apparent."

**Dissenting Opinion:** William H. Rehnquist, joined by two other justices, argued that the "uniqueness" of the flag "justifies a governmental prohibition against flag burning in the way respondent Johnson did here." Rehnquist argued that the flag was a universal national symbol that should be protected.