

Freedom of speech without violating american symbols: johnson's trial for burning...

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State of Texas vs. Johnson (1989)

Justice Viveiros delivers the opinion of the court:

Gregory Lee Johnson has been convicted of desecrating a flag in violation of Texas law; a conviction which questions ones guaranteed First Amendment, constitutional rights. Johnson's involvement in a political demonstration in Dallas, lead him to express his political concerns with the nations leaders and governmental policies. The State of Texas' conviction of Johnson was carried out due to Johnson's conduct, a physically expressive act, rather than a written or spoken one and based on two criteria: a responsibility to preserve the integrity of the flag representing the strength, pride and unity of our nation and whether Johnson's actions threatened societal order and peace. Both criteria, which serve as the basis for Gregory Lee Johnson's conviction, have been explored in depth, and this court concludes the following...

Johnson's form of political expression did not cause societal disorder or disrupt the peace. There were no violent outbreaks, either verbal or physical, from members of Johnson's protest, or other citizens, who may view flag burning as a distasteful, ungrateful, slap in the face of our nation. However, the State of Texas has already acknowledged this fact. The State ruled that regardless of the lack of evidence that Johnson's actions have threatened societal order and public peace, on account there were no such occurrences, flag burning has the potential to do so. The State has concluded that flag burning could: first, stir up people's emotions enough, possibly resulting in intense public arguments, violent physical disputes, or riots, and second,

serves as an invitation for others to take political protests to the next level, which could be dangerous.

The States decision brings up two questions, is flag burning as a form of political protest an agreeable method of practicing ones First Amendment rights, or an attempt to persuade others to take the act beyond the rights of citizens to more serious and dangerously, harmful, acts of protest?, and does the State have the right to claim that Johnson's conduct had the potential or intended to cause a violent encounter with passionate opposition to flag burning, even if the act did not do so?

Johnson is an individual, responsible for his own actions, not the actions of others. He has chosen to practice his First Amendment rights, by expressing his disapproval of government leadership and policies, by publicly burning and American flag. It is this courts decision that Johnson has not intended to encourage others to take more drastic approaches of protesting government. Johnson can not be accountable for wrongful impressions of his intentions.

The State has allowed itself power not granted by the United States Constitution, by convicting Johnson for an act that potentially causes violent confrontations. Had publicly burning a flag caused a fight or rioting, this would be an entirely different case. However, the fact remains, the protest resulted in no such event. There is also no evidence that Johnson intended his protest to provoke societal disorder. Again, the State has not the right to base charges of Johnson's intentions with no evidence, only expressing concerns of the potential negative effects of Johnson's actions.

The State's conviction is therefore unjust, based on its claim that Johnson has threatened societal order and peace. This does not disregard the conviction of Johnson entirely, the right of the State to preserve the integrity of the flag must still be discussed. Likewise, this court's ruling does not disregard the right of the State of Texas to promote and ensure order. History and common sense both show, order and peace necessary aspects of a stable, powerful nation and both must be ensured to protect American citizens. However, it has not been proven that Johnson's public desecration of the flag has infringed American peace or has promoted or intended to evoke societal disorder. The State's conviction of Johnson, based on a responsibility to preserve the integrity of the flag as a representation of national unity and pride, brings about several questions involving the meaning of America itself, and what our nation stands for. The State concerns involve the message perceived by others, at the actions of Johnson. If a citizen can publicly destroy the symbol representing our nation's pride and unity without consequences, then the State has concluded that it will be perceived that this pride and unity does not exist, having a drastically negative impact on American society.

The State needs to understand that the American flag is a great symbol of our nation. A symbol which reflects, not only pride and unity, but other aspects of America as well. Americans have always prided our nation as "the home of the free." The First Amendment guarantees the right of free expression, not just positive expression consenting the government policies and our leaders, but negative expression condoning both as well. To convict Johnson for publicly burning a flag as a form of political protest, would

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convey an even more dangerous message to the American people, than to respect his right to do so. The message being that it is wrong and punishable by law to express ones beliefs by destroying the very symbol of freedom our nation claims we possess the right to express.

The State's conviction of Johnson, on the grounds of preserving the symbolic meaning of the flag, is contradictory in another respect as well. It is customary and preferred to burn a flag when it becomes torn, old, and improper to symbolize our nation, as an honorable means of disposal. Texas has never expressed disagreement with this custom. Therefore, by convicting Johnson for burning a flag as a means of political protest, rather than honorably disposing of an unfit symbol, the State of Texas has unconstitutionally ignored the First Amendment and ruled to dictate the circumstances for burning an American flag. The State has set its initiative and stated that flag desecration, as a form of condoning government, will be punishable by law.

Government does not have the right to prohibit expression, nor the right to enforce its views on its citizens. If the flag is to be used as a symbol for everything great about America, it is the right of individuals, who disagree with politics of the time, to use that symbol as a sign of their concerns. Therefore, it is this courts decision that the symbolism and meaning of the flag is the very reason publicly burning it as a form of political protest is a permissible deed, within the boundaries of the law. The State is therefore denied, by this court, its conviction of Johnson based on the State's criterion

that Johnson has wrongfully conveyed unity and pride do not exist in America.

The American flag holds an undeniable place in the hearts of its citizens, as in mine. It is a symbol of all that makes us proud of who we are and what this country has accomplished. However, the State of Texas' conviction of Gregory Lee Johnson is without evidence on the charge of Johnson's intent to promote societal disorder and disrupt peace. The State has also contradicted itself by taking the responsibility of protecting the symbolism of the flag, a responsibility which has unconstitutionally convicted Johnson, denying him the First Amendment right of free expression. The judgment of the Texas Court of Criminal Appeals is therefore Affirmed.