

Texas v. Johnson (1989)

"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. . . ."

—Justice William Brennan,
speaking for the majority

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About landmarkcases.org

This site was developed to provide teachers with a full range of resources and activities to support the teaching of landmark Supreme Court cases, helping students explore the key issues of each case. The "Resources" section features basic building blocks such as background summaries and excerpts of opinions that can be used in multiple ways. The "Activities" section contains a range of short activities and in-depth lessons that can be completed with students. While these activities are online, many of them can be adapted for use in a one-computer classroom or a classroom with no computer.

Depending upon the amount of time you have to teach the case, you may want to use one or more of the "Resources" or "Activities" in conjunction with one or more of the general teaching strategies. These general teaching strategies include moot court activities, political cartoon analysis, continuum exercises, and Web site evaluation.

If you have time constraints, look at the Teaching Recommendations on page 3.

Feel free to experiment with these materials!

Teaching Recommendations Based on Your Time

If you have one day . . .

- Begin class with a continuum activity regarding students' opinions about the constitutional amendment to prohibit flag burning. (Find "Instructions for the Continuum Activity" at <http://www.landmarkcases.org/continuum.html>)
- Have students read the appropriate "Background Summary" and answer the questions. Discuss.
- Complete the activity titled "What is Symbolic Speech? When is it Protected?" Be sure to go over the last question, which asks students to predict the outcome of the case.
- For homework, have students complete the activity titled "Data Analysis: How do Americans feel about a Constitutional Amendment to Protect the Flag."

If you have two days . . .

- Complete all activities for the first day.
- On the second day, discuss the activity that students completed for homework. Compare the opinions of students in the class (as noted in the continuum activity on day one) with the opinions of the American public as a whole.
- Next, complete the activity titled "The Amendment Process." This lesson provides a nice segue into the WebQuest.

If you have three days . . .

- Complete all activities for the first and second days.
- On the third day, begin the WebQuest activity titled "Should the United States Enact a Constitutional Amendment to Prohibit Flag Burning?"
- Have students work on the WebQuest for homework.

If you have four days . . .

- Complete all activities for the first, second, and third days.
- On the fourth day, complete the WebQuest activity. Students can begin writing the letter in class and finish it for homework.
- Consider wrapping up the case by using the same continuum activity regarding students' opinions about the constitutional amendment to prohibit flag burning that you did on the first day. This would allow you to determine whether students' opinions had changed.
- The activity titled "Political Cartoon Analysis" can also be used as a wrap-up feature.

(Note to teachers: The Data Analysis and Political Cartoon Analysis activities could easily be incorporated into a test or quiz. Honors level students could probably do the WebQuest as a two-day activity, without any of the preceding activities.)

Background Summary and Questions • • •

Gregory Lee Johnson participated in a political demonstration during the Republican National Convention in Dallas, Texas, in 1984. The purpose of the demonstration was to protest policies of the Reagan Administration and of certain corporations based in Dallas. Demonstrators marched through the streets, chanted slogans, and held protests outside the offices of several corporations. At one point, another demonstrator handed Johnson an American flag.

When the demonstrators reached Dallas City Hall, Johnson doused the flag with kerosene and set it on fire. During the burning of the flag, the demonstrators shouted, "America, the red, white, and blue, we spit on you." No one was hurt or threatened with injury, but some witnesses to the flag burning said they were seriously offended. One witness picked up the flag's charred remains and buried them in his backyard.

Johnson was charged with the desecration of a venerated object, in violation of the Texas Penal Code. He was convicted, sentenced to one year in prison, and fined \$2,000. He appealed his conviction to the Court of Appeals for the Fifth District of Texas, which let his conviction stand. He then appealed to the Texas Court of Criminal Appeals, which is the highest court in Texas that hears criminal cases. That court overturned his conviction saying that the State, consistent with the First Amendment, could not punish Johnson for burning the flag in these circumstances.

The court first found that Johnson's burning of the flag was expressive conduct protected by the First Amendment. Therefore in order for a state to criminalize or regulate such conduct it would have to serve a compelling state interest that would outweigh the protection of the First Amendment. The court concluded that criminally sanctioning flag desecration in order to preserve the flag as a symbol of national unity was not a compelling enough interest to survive the constitutional challenge. It also held that while preventing breaches of the peace qualified as a compelling state interest the statute was not drawn narrowly enough to only punish those flag burnings that would likely result in a serious disturbance. Further, it stressed that another Texas statute prohibited breaches of the peace and could serve the same purpose of preventing disturbances without punishing this flag desecration.

The 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 filed a petition for a *writ of certiorari* and, in 1988, the Supreme Court of the United States agreed to hear the case. In 1989, the Court handed down its decision.

Background Summary and Questions • • •

Questions to Consider:

1. Read the [First Amendment](#) to the U.S. Constitution. What part of the Amendment is relevant to this case?
2. What do you think is meant by "symbolic speech"? What are some other examples?
3. What argument could you make that flag burning threatens to cause violence and therefore should be against the law?
4. What arguments could you make that the First Amendment should protect flag burning?
5. How should the Supreme Court of the United States decide this case? Why?

Background Summary and Questions • •

Gregory Lee Johnson participated in a political demonstration during the Republican National Convention in Dallas, Texas, in 1984. The demonstrators were protesting the policies of the Reagan Administration and of certain companies based in Dallas. They marched through the streets, shouted slogans, and held protests outside the offices of several companies. At one point, another demonstrator handed Johnson an American flag.

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 "America, the red, white, and blue, we spit on you." No one was hurt, but some witnesses to the flag burning said they were extremely offended. One witness picked up the flag's burned remains and buried them in his backyard.

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 to the Court of Appeals for the Fifth District of Texas, but he lost this appeal. He then took his case to the Texas Court of Criminal Appeals, which is the highest court in Texas that hears criminal cases. That court 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 could be used to justify Johnson's conviction.

The 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 United States to hear the case. In 1989, the Court handed down its decision.

Background Summary and Questions • •

Questions to Consider:

1. Read the [First Amendment](#) to the U.S. Constitution. What part of the Amendment is relevant to this case?
2. What do you think is meant by "symbolic speech"? What are some other examples?
3. What argument could you make that flag burning is likely to cause violence and therefore should be against the law?
4. What argument could you make that flag burning is symbolic speech that should be protected by the First Amendment?
5. How should the Supreme Court of the United States decide this case? Why?

Background Summary and Questions •

Vocabulary

demonstration

Define:

Use in a sentence:

protest

Define:

Use in a sentence:

conviction

Define:

Use in a sentence:

appeal

Define:

Use in a sentence:

symbolic

Define:

Use in a sentence:

Texas v. Johnson

In 1984, the Republican National Convention was held in Dallas, Texas. Gregory Lee Johnson took part in a demonstration there. He and his group were protesting against nuclear weapons among other things. They marched through the streets shouting.

Johnson was carrying an American flag. When he reached Dallas City Hall, Johnson poured kerosene on the flag. Then he set it on fire. While the flag burned, people shouted, "America, the red, white, and blue, we spit on you." No one was hurt, but some people who were there said they were very upset.

Johnson was arrested. He was charged with violating a Texas law that said people couldn't vandalize a respected object. He was convicted, sentenced to one year in prison, and fined \$2,000.

Johnson appealed his case to the Texas Court of Criminal Appeals, which agreed with him. The court said that the First Amendment protection of free speech included "symbolic speech," which is an action that expresses an idea. It said that flag burning was a form of symbolic speech so Johnson could not be punished.

The State wanted to maintain order and to preserve the flag as a symbol of national unity. The State had argued its interests were more important than Johnson's symbolic speech rights. The court did not agree with the State's arguments.

The court said the government cannot "carve out a symbol of unity and prescribe a set of approved messages to be associated with that symbol . . ." The court also said that the flag burning did not cause or threaten to cause a breach of the peace.

The State of Texas asked the Supreme Court of the United States to hear the case. In 1989, the Court made a decision.

Background Summary and Questions •

Questions to Consider:

1. What did Gregory Johnson do? What happened to him as a result?

2. What does the First Amendment say about freedom of speech? Why did Johnson say his First Amendment rights had been violated?

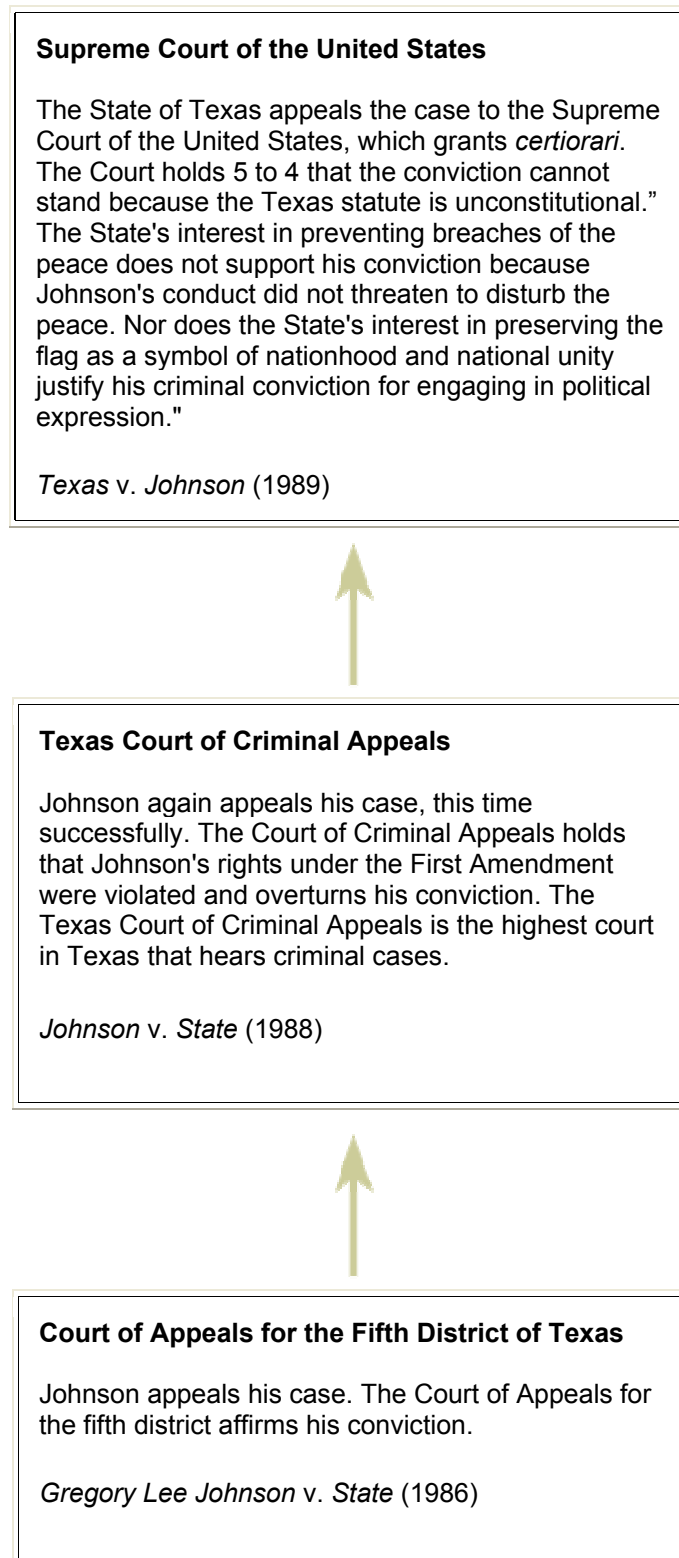
3. What argument could you make that flag burning is likely to cause violence and therefore should be against the law?

4. What argument could you make that flag burning is symbolic speech protected by the First Amendment?

5. The Texas Court of Appeals said the government cannot "carve out a symbol of unity and prescribe a set of approved messages to be associated with that symbol . . ." What does this mean? Do you agree that the government should not be able to do this? List your reasons.

6. How should the Supreme Court of the United States decide this case? Why?

Diagram of How the Case Moved Through the Court System





County Criminal Court Number Eight in Dallas County, Texas

Gregory Lee Johnson is arrested after burning a U.S. flag in the course of a demonstration outside the Republican National Convention in Dallas, Texas, in 1984. He is convicted of violating a Texas statute prohibiting desecration of the flag, sentenced to one year in prison, and fined \$2,000.

State v. Gregory Lee Johnson (1984)

Key Excerpts from the Majority Opinion

The case was decided 5 to 4.

Justice Brennan delivered the opinion of the Court.

The First Amendment literally forbids the abridgment only of "speech", but we have long recognized that its protection does not end at the spoken or written word. While we have rejected "the view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea," . . . we have acknowledged that conduct may be "sufficiently imbued with elements of communication to fall within the scope of the First and Fourteenth Amendments," . . .

We have not automatically concluded, however, that any action taken with respect to our flag is expressive. Instead, in characterizing such action for First Amendment purposes, we have considered the context in which it occurred.

. . . Johnson burned an American flag as part - indeed, as the culmination - of a political demonstration that coincided with the convening of the Republican Party and its re-nomination of Ronald Reagan for President. The expressive, overtly political nature of this conduct was both intentional and overwhelmingly apparent. . . .

The government generally has a freer hand in restricting expressive conduct than it has in restricting the written or spoken word. . . . It may not, however, proscribe particular conduct because it has expressive elements. . . .

It remains to consider whether the State's interest in preserving the flag as a symbol of nationhood and national unity justifies Johnson's conviction.

. . . Johnson was not, we add, prosecuted for the expression of just any idea; he was prosecuted for his expression of dissatisfaction with the policies of this country, expression situated at the core of our First Amendment values. . . .

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. . . .

. . . To conclude that the government may permit designated symbols to be used to communicate only a limited set of messages would be to enter territory having no discernible or defensible boundaries. Could the government, on this theory, prohibit the burning of state flags? Of copies of the Presidential seal? Of the Constitution? In evaluating these choices under the First Amendment, how would we decide which symbols were sufficiently special to warrant this unique status? To do so, we would be forced to consult our own political preferences, and impose them on the citizenry, in the very way that the First Amendment forbids us to do. . . .

There is, moreover, no indication-either in the text of the Constitution or in our cases interpreting it-that a separate juridical category exists for the American flag alone . . . It is not the State's ends, but its means, to which we object. It cannot be gainsaid that there is a special place reserved for the flag in this Nation, and thus we do not doubt that the government has a legitimate interest in making efforts to "preserv[e] the national flag as an unalloyed symbol of our country." . . . To say that the government has an interest in encouraging proper treatment of the flag, however, is not to say that it may criminally punish a person for burning a flag as a means of political protest.

We are tempted to say . . . that the flag's deservedly cherished place in our community will be strengthened, not weakened, by our holding today. Our decision is a reaffirmation of the principles of freedom and inclusiveness that the flag best reflects, and of the conviction that our toleration of criticism such as Johnson's is a sign and source of our strength. Indeed, one of the proudest images of our flag,

the one immortalized in our own national anthem, is of the bombardment it survived at Fort McHenry. It is the Nation's resilience, not its rigidity, that Texas sees reflected in the flag-and it is that resilience that we reassert today.

The way to preserve the flag's special role is not to punish those who feel differently about these matters. It is to persuade them that they are wrong . . . We can imagine no more appropriate response to burning a flag than waving one's own, no better way to counter a flag burner's message than by saluting the flag that burns, no surer means of preserving the dignity even of the flag that burned than by-as one witness here did-according its remains a respectful burial. We do not consecrate the flag by punishing its desecration, for in doing so we dilute the freedom that this cherished emblem represents.

Johnson was convicted for engaging in expressive conduct. The State's interest in preventing breaches of the peace does not support his conviction because Johnson's conduct did not threaten to disturb the peace. Nor does the State's interest in preserving the flag as a symbol of nationhood and national unity justify his criminal conviction for engaging in political expression. The judgment of the Texas Court of Criminal Appeals is therefore Affirmed.

Key Excerpts from the Majority Opinion

Questions to Consider:

1. According to this opinion, why does the First Amendment protect the flag burning in which Johnson engaged?
2. How would prohibiting flag burning prevent "breaches of the peace?" Did the Court accept the State's argument to this effect?
3. According to the Court, Texas asserted an interest in preserving the flag as a symbol of national unity. How does the Court respond to this assertion?
4. Why does the Court say that the flag's position as a symbol will be strengthened, not weakened, by their decision in this case?
5. How does the Court recommend that supporters of the flag respond to those who desecrate it?

Key Excerpts from the Dissenting Opinion

The case was decided 5 to 4.

Chief Justice Rehnquist wrote the main dissenting opinion.

. . . For more than 200 years, the American flag has occupied a unique position as the symbol of our Nation, a uniqueness that justifies a governmental prohibition against flag burning in the way respondent Johnson did here.

The American flag . . . throughout more than 200 years of our history, has come to be the visible symbol embodying our Nation. It does not represent the views of any particular political party, and it does not represent any particular political philosophy. The flag is not simply another "idea" or "point of view" competing for recognition in the marketplace of ideas. Millions and millions of Americans regard it with an almost mystical reverence regardless of what sort of social, political, or philosophical beliefs they may have. I cannot agree that the First Amendment invalidates the Act of Congress, and the laws of 48 of the 50 States, which make criminal the public burning of the flag.

The result of the Texas statute is obviously to deny one in Johnson's frame of mind one of many means of "symbolic speech." Far from being a case of "one picture being worth a thousand words," flag burning is the equivalent of an inarticulate grunt or roar that, it seems fair to say, is most likely to be indulged in not to express any particular idea, but to antagonize others. . . . The Texas statute deprived Johnson of only one rather inarticulate symbolic form of protest—a form of protest that was profoundly offensive to many—and left him with a full panoply of other symbols and every conceivable form of verbal expression to express his deep disapproval of national policy. Thus, in no way can it be said that Texas is punishing him because his hearers—or any other group of people—were profoundly opposed to the message that he sought to convey. Such opposition is no proper basis for restricting speech or expression under the First Amendment. It was Johnson's use of this particular symbol, and not the idea that he sought to convey by it or by his many other expressions, for which he was punished.

. . . Uncritical extension of constitutional protection to the burning of the flag risks the frustration of the very purpose for which organized governments are instituted. The Court decides that the American flag is just another symbol, about which not only must opinions pro and con be tolerated, but for which the most minimal public respect may not be enjoined. The government may conscript men into the Armed Forces where they must fight and perhaps die for the flag, but the government may not prohibit the public burning of the banner under which they fight. I would uphold the Texas statute as applied in this case.

Key Excerpts from the Dissenting Opinion

Questions to Consider:

1. Chief Justice Rehnquist agrees with the majority that expression may not be punished because of the negative reaction of people who observe that expression. What does he say is the real justification for anti-flag burning laws and why Johnson was punished?
2. In Chief Justice Rehnquist's opinion, how was the unique status that the flag enjoys established?
3. What point is Chief Justice Rehnquist trying to make about flag burning when he mentions that the government may send young men into battle to die for the flag, but may not prohibit the public burning of the flag? Do you agree or disagree with this argument? Explain.

What Is Symbolic Speech? When Is It Protected?

(Note to teachers: When you assign this activity, you may want to invite a lawyer or law student to help with discussion of these cases. For recommendations on using community resources, visit the Landmark Cases home page (www.landmarkcases.org) and click on Community Resources.)

The First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people to peaceably assemble and to petition the government for a redress of grievances.

Almost everyone knows that the First Amendment contains the right to freedom of speech. What does this mean? On its most basic level, it means you can express an opinion without fear of censorship by the government, even if that opinion is an unpopular one. However, it does not mean you can say anything you want, whenever you want. For instance, fighting words – words that cause distress or incite violence – are not protected. In addition, obscene expressions are not protected by the First Amendment.

While most people understand these basic limitations on the right to free speech, understanding what constitutes "free speech" is complicated. For instance, some people argue that books, art, music, and other genres are also forms of speech because they, too, are expressive in nature. Over the years, the Supreme Court of the United States has debated what limitations should apply to these genres. The Court has also debated the claims made by others that actions that express an opinion are also protected. Often, these actions are referred to as "symbolic speech," which is below:

"Expression may be symbolic, as well as verbal. Symbolic speech is conduct that expresses an idea. Although speech is commonly thought of as verbal expression, we are all aware of nonverbal communication. Sit-ins, flag waving, demonstrations, and wearing . . . protest buttons are examples of symbolic speech. While most forms of conduct could be said to express ideas in some way, only some conduct is protected as symbolic speech. In analyzing such cases, the courts ask whether the speaker intended to convey a particular message, and whether it is likely that the message was understood by those who viewed it.

In order to convince a court that symbolic conduct should be punished and not protected as speech, the government must show it has an important reason. However, the reason cannot be that the government disapproves of the message conveyed by the symbolic conduct" (Arbetman, 442-3)

So, just as there are limitations on the extent to which "free speech" applies to the spoken word, there are restrictions on the actions that people seek to have protected as symbolic speech.

Examine the actions on the next page. Based on the information you have just read, determine if each action listed is a form of constitutionally protected "symbolic speech". In the last column, provide a brief rationale for your response.

Action	Is the action a form of constitutionally protected "symbolic speech?"		Rationale
	YES	NO	
<p>In order to protest against a former employer, an individual joins a picket line. State law says picketing is illegal. The individual is arrested and fined \$100.</p> <p>Read the case abstract and ruling at http://www.oyez.org/oyez/resource/case/389/</p>			
<p>An individual burns a draft card to express opposition to the war. Federal law says that burning draft cards is a crime.</p> <p>Read the case abstract and ruling at http://www.oyez.org/oyez/resource/case/645/</p>			
<p>A department store employee wears a jacket that says "F--- the draft. Stop the War." The individual is convicted for violating a law that forbids "maliciously and willfully disturb[ing] the peace and quiet of any neighborhood or person [by] offensive conduct." The individual is arrested and sentenced to 30 days in jail.</p> <p>Read the case abstract and ruling at http://www.oyez.org/oyez/resource/case/77/</p>			
<p>An organization applies for a permit to hold a demonstration on the National Mall. Members plan to erect "tent cities" in order to demonstrate the plight of the homeless. The permit was denied on the grounds that camping is forbidden on the Mall.</p> <p>Read the case abstract and ruling at http://www.oyez.org/oyez/resource/case/74/</p>			

Texas v. Johnson

New Hampshire's state motto, "Live Free or Die" appears on license plates. An individual covers "or die" on the grounds that it goes against his religious and political beliefs. He is convicted for violating a state law, fined, and sentenced to jail time.			
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[Read the case abstract and ruling](http://www.oyez.org/oyez/resource/case/453/) at <http://www.oyez.org/oyez/resource/case/453/>

Questions to Consider:

1. Are there any general standards that seem to apply to symbolic speech?
2. Based on what you have learned about symbolic speech, how do you think the Court will rule in *Texas v. Johnson*?

Works Cited

Arbetman, Lee P. and Edward L. O'Brien, eds. Street Law: A Course in Practical Law, sixth edition. Lincoln, Illinois: National Textbook Company, 1999.

The Amendment Process

Introduction

In 1984, Gregory Lee Johnson was arrested for burning the U.S. flag at the Republican National Convention in Texas. He was charged with violating a Texas law that banned the desecration of the flag in an offensive manner. In the 1989 case of *Texas v. Johnson*, the Supreme Court of the United States said that Johnson's burning of the flag was a form of symbolic speech that is protected by the First Amendment. The Court mentioned the importance of protecting free speech, especially speech that is unpopular or offensive to others. It said, "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."

People who felt strongly about protecting the flag convinced Congress to pass the Flag Protection Act of 1989. This law made it a crime to knowingly mutilate, deface, physically defile, burn, or trample a U.S. flag. In 1990, the Supreme Court of the United States declared this law unconstitutional in the case of *United States v. Eichman*.

Questions to Consider:

1. On what grounds did the Supreme Court of the United States rule in Johnson's favor?
2. When the Supreme Court of the United States declares a law unconstitutional, is there anything citizens or other branches of government can do? If so, what?

The Amendment Process

Checks and Balances

In the United States, we have a system of checks and balances. This system allows various branches of government to "check" one another's actions. For instance, when Congress passes a law, the president can veto it or the Supreme Court of the United States can declare the law unconstitutional. If the Supreme Court of the United States finds a law unconstitutional, but people agree with the law, the Constitution can be amended or changed so that the law becomes constitutional. However, this does not occur often. The Constitution has been amended to overturn a Supreme Court ruling only four times in history.

After the Supreme Court of the United States declared the law banning flag burning unconstitutional, Congress proposed a Constitutional amendment. A version of this proposed amendment that was before Congress in 2001 reads: *"The Congress shall have power to prohibit the physical desecration of the flag of the United States."*

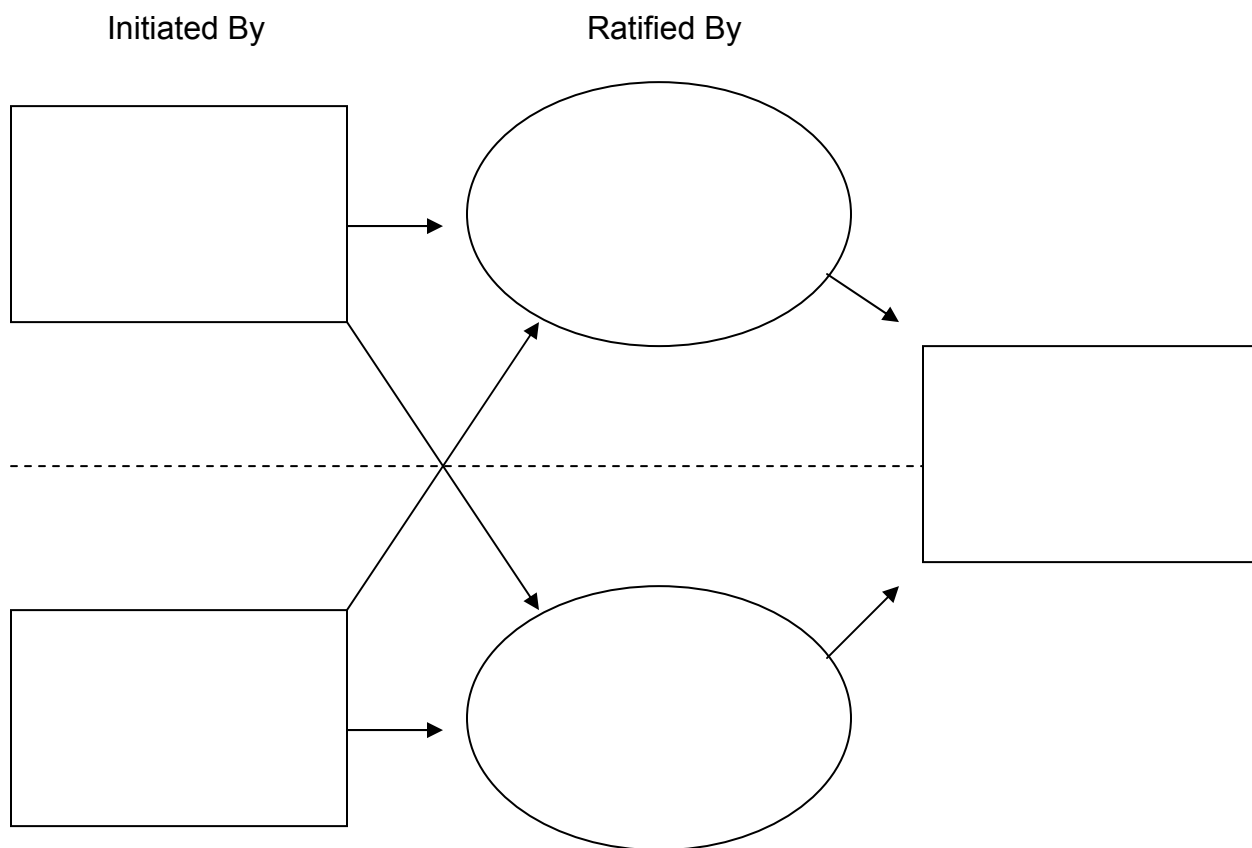
Questions for Discussion

1. Define the term "amend".
2. Why would the framers have wanted people to be able to change the Constitution?
3. Do you think the process of adding amendments to the Constitution is a difficult or easy process? Explain your opinion.
4. How could you determine the actual process for amending the Constitution?

The Amendment Process

1. Read Article 5 of the United States Constitution.
(<http://www.law.cornell.edu/constitution/constitution.articlev.html>)
2. Diagram the process using the blank diagram below. Check your answers by comparing them to your teacher's completed diagram.
3. Note that there are two methods of initiating amendments and two methods of ratifying them, for a total of four possible routes. Why would one method be preferable to others?

Amending the United States Constitution



The Amendment Process

Evaluating the Amendment Process

1. Work with your group to generate a list of ways in which citizens can be involved in the process. Share responses with other groups and take notes.
2. Identify the advantages and disadvantages of the amendment process. Use the chart below. Your teacher will guide you through the process.

Advantages and Disadvantages of the Amendment Process

Characteristics of Process	Advantages	Disadvantages
Two Part Process		
Role of Citizens		
Role of States		

The Amendment Process

Closure

Discuss the following questions:

1. Which process is easiest? Which is the most difficult?
2. At which level are there the greatest opportunities for citizen involvement? Explain.

For Extension

Complete one of the following activities:

1. Evaluate the amendment process. Should there be changes to the process that make it easier or more difficult to amend the Constitution? Why or why not?
2. Write an amendment that you would like added to the Constitution and choose the process you would use. Explain the reasons for your amendment and choice of process.
3. Like the United States as a whole, your state has a Constitution. At times, this document has also needed to be changed. The process for doing so is similar to that which occurs at the federal level. [Examine your state's constitution](#) to find out specifics of this process. Identify how the system of checks and balances is at work. Make note of opportunities for citizen involvement, as well as the similarities and differences in the process at the federal and state levels.

Note: This activity has been adapted from a lesson called "The Amendment Process" that appeared in a national, state, and local government curriculum guide created by the Montgomery County Public Schools in 1998. The school system is located in Maryland.

Forms of Political Protest

1. **Why do people protest?**

Gregory Lee Johnson burned the American flag as part of a political protest. Why was he protesting? What do other people protest?

2. **How do people protest?**

In the space below, list as many methods of protest as you can.

3. **Which methods of protest are legal and which are illegal?**

Take the methods listed above and list them in the appropriate columns below.

LEGAL METHODS OF PROTEST	ILLEGAL METHODS OF PROTEST

Your teacher will go over the answers.

Conclusion

If we live in a free country with free speech, why are some of these forms of protest illegal? How does the government determine which forms of protest are illegal?

Political Cartoon Analysis: Hayworth the Bear

Analyze the cartoon on the next page in terms of its meaning related to the *Texas v. Johnson* case. Answering the following questions will help you correctly interpret the cartoon's meaning.

1. What do you see in the cartoon? Make a list. Include objects, people, and any characteristics that seem to be exaggerated.
2. Which of the items on the list from Question 1 are symbols? What does each stand for?
3. Who do you think JD Hayworth is? What are his views on the anti-flag burning amendment? If you're still not sure, visit his home page (<http://www.house.gov/hayworth/az/services.htm>.)
4. What is happening in the cartoon?
5. What is the cartoonist's message? Does he agree or disagree with JD Hayworth? In your opinion, how does he feel about the ruling in *Texas v. Johnson*?
6. Do you agree or disagree with the cartoonist's message? Explain your answer.



Source: Benson(c) 6-95 Arizona Republic

Source: [Benson. "J.D Hayworth \(as Smokey the Bear\). Only you can prevent free speech."](#) [Online cartoon] 12 May 2002.

Data Analysis: How do Americans Feel about the Constitutional Amendment To Protect the Flag?

(Note to teachers: You may want to do a continuum activity prior to assigning this activity.)

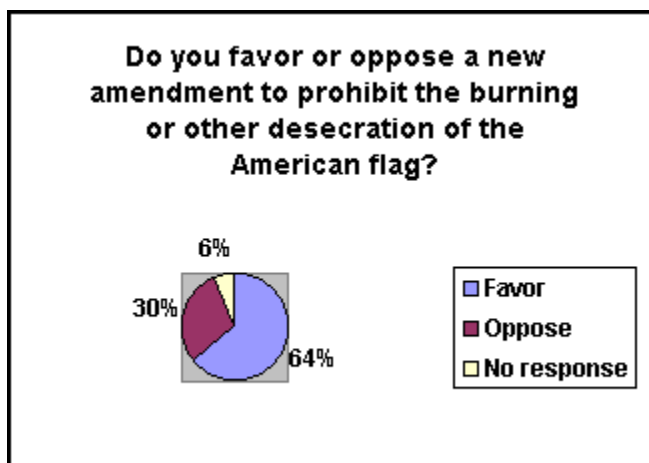
The table below contains results from **Survey I**.

Group	Percentage who would vote for a Constitutional Amendment to protect the flag
Men	78%
Women	83%
Age 18–34	76%
Age 35–54	80%
Age 55+	84%
Northeast	82%
Midwest	83%
South	78%
West	80%
HS/Less Education	86%
Some College	80%
College Grads	67%
Whites	82%
Blacks	71%
Republicans	85%
Democrats	78%
Independents	78%
Conservative Democrats	86%
Conservative Republicans	84%
Moderate/Liberal Democrats	72%
Moderate/Liberal Republicans	90%

1. According to the table, which demographic group listed below is most in favor of a Constitutional Amendment to protect the flag?
 - A. College Graduates
 - B. Politicians
 - C. Moderate/Liberal Republicans
 - D. Women

2. What conclusion can be drawn from the data regarding the Constitutional Amendment to protect the flag?
 - A. It will pass by a large margin.
 - B. It enjoys widespread political support.
 - C. It has only partisan support.
 - D. It has pitted regional interests against one another.

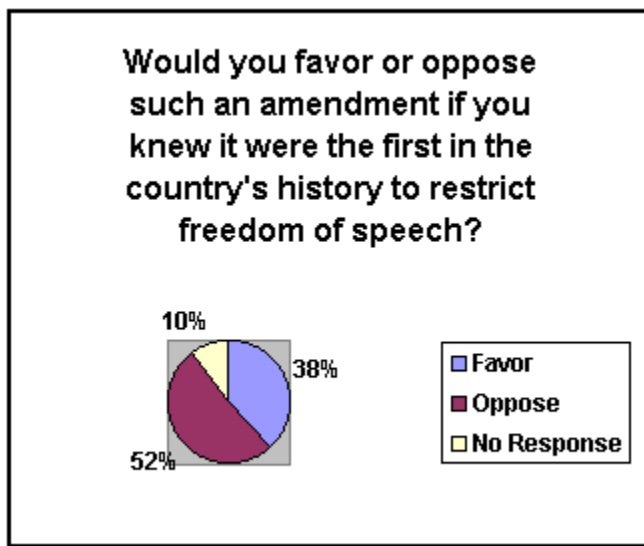
The chart below contains results from **Survey II**.



Source: The ABA News Center. ["Flag Burning Poll Results Show Americans Opposed To Amending Constitution."](#) [Online] 12 May 2002.

3. According to the chart, how do the majority of Americans feel about a Constitutional amendment to protect the flag?
 - A. They are unsure of their position.
 - B. They are opposed to this amendment.
 - C. They are in favor of this amendment.
 - D. They are evenly divided on this issue.

The chart below summarizes responses to a follow-up question in the same survey.



Source: The American Bar Association News Center. ["Flag Burning Poll Results Show Americans Opposed To Amending Constitution."](#) [Online] 12 May 2002.

4. What conclusions can be drawn from this chart?
- A. A majority of Americans are in favor of such an amendment.
 - B. Many people would burn the flag if given the opportunity to do so.
 - C. A different group of people must have been surveyed for this question and the previous one.
 - D. None of the above.

Questions for Discussion

1. What would account for the differences in results in Survey 1 and Survey 2?
2. From studying the table and charts, what conclusions can be drawn regarding American political opinion on the issue of the Constitutional amendment to protect the flag?
3. What are the implications of this information?
4. Why do some people believe that even speech that is unpopular needs to be protected?

WebQuest: Should the United States Enact a Constitutional Amendment to Prohibit Flag Burning?

Introduction

Did you know that the proper method of destroying or "retiring" a flag that is worn out or soiled is to burn it? Boy Scouts and American Legion groups regularly perform such ceremonies. However, ordinary citizens who have burned flags for other reasons, such as political protest, have often been subject to arrest in this country. This is because many states, including Texas, have laws making it a crime to burn or desecrate the flag. In 1984, Gregory Lee Johnson was arrested for burning a flag during protest outside the Republican National Convention in Texas. His case eventually went to the Supreme Court of the United States. In the 5 to 4 ruling the Court explained that what Johnson did is a form of speech that is protected by the First Amendment.

Question/Task

In response to this decision, flag supporters have tried to pass a Constitutional amendment to protect the flag or prohibit flag burning. A proposed constitutional amendment needs a two-thirds majority in both houses of Congress and be approved by three-fourths of the state legislatures. Since the Supreme Court ruling, the House has approved flag amendments in 1995, 1997, 1999 and 2001, all by more than 300 votes. The Senate, in votes in 1995 and 2000, came up with only 63 votes, four short of the two-thirds majority needed.

For information on the 2004 attempt to pass the Desecration of the Flag Resolution, visit <http://thomas.loc.gov/cgi-bin/bdquery/z?d108:SJ00004:@@X>.

And so the debate continues, with proponents likely to continue raising the issue. As a recently elected U.S. Senator, you will be asked to vote on this issue, which is very important to many of your constituents. Before voting, you must learn about the arguments on both sides and make an informed decision. Then you will vote on this issue: Should the United States enact a constitutional amendment to prohibit flag burning?

Background for Everyone

Read the CNN article [High court rulings led to quest for flag-burning amendment](http://www.cnn.com/2001/LAW/07/17/flag.desecration.court/index.html) (<http://www.cnn.com/2001/LAW/07/17/flag.desecration.court/index.html>)

Process

1. Your teacher will assign you one of the base groups listed below. You and the other members of your group will read at least two of the articles that have been assigned to your base group.

Citizens Flag Alliance (CFA), an organization founded by the American Legion and other like minded groups

[It's Not the Flag, Stupid](http://www.qgazette.com/news/1999/1110/Editorial_Pages/lts_Not_The_Flag_Stupid.html) Editorial by Major General Patrick H. Brady (USA Ret), CFA Board Chairman
(http://www.qgazette.com/news/1999/1110/Editorial_Pages/lts_Not_The_Flag_Stupid.html)

[The Flag Protection Amendment and the Return to First Principles](http://www.cfa-inc.org/editorials/edit19.htm) by Stephen B. Presser
(<http://www.cfa-inc.org/editorials/edit19.htm>)

[CFA members rally around flag-protection amendments](http://www.cfa-inc.org/oldglory/ogn0401c.htm) Old Glory News: April 2001
(<http://www.cfa-inc.org/oldglory/ogn0401c.htm>)

[Just Plain Tired of Being Pushed Around](http://www.cfa-inc.org/editorials/edit27.htm) by Daniel S. Wheeler, CFA President (<http://www.cfa-inc.org/editorials/edit27.htm>)

Veterans groups for the Amendment

[Frontlines: Our fight, the right thing to do](http://www.cfa-inc.org/oldglory/ogn0801b.htm) by Major General Patrick H. Brady, CFA Board Chairman
(<http://www.cfa-inc.org/oldglory/ogn0801b.htm>)

[The Flag Speaks](http://www.angelfire.com/pa/post571/flag.html) Poem and anecdote about the flag
(<http://www.angelfire.com/pa/post571/flag.html>)

[Just Plain Tired of Being Pushed Around](http://www.cfa-inc.org/editorials/edit27.htm) by Daniel S. Wheeler, CFA President (<http://www.cfa-inc.org/editorials/edit27.htm>)

[The Flag Protection Amendment and the Return to First Principles](http://www.cfa-inc.org/editorials/edit19.htm) by Stephen B. Presser
(<http://www.cfa-inc.org/editorials/edit19.htm>)

Politicians for the Amendment

[Open Forum -- The Flag Deserves Protection](http://www.esquilax.com/flag/chal4.html) by Senator Dianne Feinstein
(<http://www.esquilax.com/flag/chal4.html>)

[Stenholm sounds support for flag burning amendment](http://web.gosanangelo.com/archive/99/july/4/1.htm) Article from Texas paper explaining a Democratic Congressman's position (<http://web.gosanangelo.com/archive/99/july/4/1.htm>)

Civil Liberties Organizations (American Civil Liberties Union/ACLU and People for the American Way/PFAW)

[Veterans Group Oppose Flag Constitutional Amendment](http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=16180&c=50); Joins ACL in Call To Reject Censorship in the Constitution (http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=16180&c=50)

[ACLU Letter to Senate](http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=15312&c=50) opposing anti-flag burning measures (http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=15312&c=50)

[Burning the Bill of Rights to Save the Flag](http://www.firstamendmentcenter.org/commentary.aspx?id=14012) (http://www.firstamendmentcenter.org/commentary.aspx?id=14012)

[On Capitol Hill: Flag Amendment](http://www.pfaw.org/pfaw/general/default.aspx?oid=3073) PFAW explains all of the reasons they oppose the flag amendment. People for the American Way discusses potential impact of the flag burning amendment (http://www.pfaw.org/pfaw/general/default.aspx?oid=3073)

Individual veterans against the Amendment

[In Their Own Words](http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=11933&c=50) Direct quotes from a number of famous veterans (http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=11933&c=50)

[Letter from Colin Powell](http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=11879&c=50) (http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=11879&c=50)

[Veterans Defending the Bill of Rights](http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=12009&c=50) Contains some of the same comments that are in the other articles (http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=12009&c=50)

[Testimony of Gary May](http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=12517&c=50) to Congress: Opposition to H.J. Res. 4 (http://www.aclu.org/FreeSpeech/FreeSpeech.cfm?ID=12517&c=50)

Politicians against the Amendment

[Flag Amendment raises symbol above liberty](http://www.freedomforum.org/templates/document.asp?documentID=14506) Editorial (http://www.freedomforum.org/templates/document.asp?documentID=14506)

[Flag more endangered by patriots than pyromaniacs](http://www.freedomforum.org/templates/document.asp?documentID=14539) Commentary by Dennis Neal on the Freedom Forum Web site (http://www.freedomforum.org/templates/document.asp?documentID=14539)

[Ted Kennedy](http://www.esquilax.com/flag/kenne.html) Comments from a 1990 speech before Congress (http://www.esquilax.com/flag/kenne.html)

Texas v. Johnson

2. When all members of the group have finished reading, work together to complete Student Handout #1. Fill in the information regarding the position of your base group.
3. Students will form jigsaw groups so they are working with one person from each of the other base groups. Each person in the jigsaw group will share his or her findings from the initial reading. All members of the jigsaw group will listen and use this new information to complete Student Handout #2.
4. The jigsaw group will identify the strongest arguments for and against the amendment to prohibit flag burning and discuss them.
5. Each individual will reflect on the arguments and make a decision regarding whether he or she is for or against the amendment to prohibit flag burning.
6. The U.S. Senate, which is composed of all members of the class, will convene and debate the issue. Then they will vote to see if the amendment passes.

Real World Feedback

Since it is possible that the U.S. Senate will be voting on this in the future, write a letter to your Senator expressing your viewpoint on the question, "Should the United States enact a constitutional amendment to prohibit flag burning?" In your letter, be sure to state your position clearly and provide arguments that support your position.

Interested in the position of members of the House of Representatives? Visit <http://www.cfa-inc.org/issues/house107.htm>.

Conclusion

1. Should the U.S. Constitution be changed if the majority of people believe it should be? Why or why not?
2. What is the likelihood that an amendment will be passed in the future?
3. Is writing a letter an effective way to influence the process? What are some other ways that citizens can be involved in the amendment process?