



CIVICS IN REAL LIFE

Civics is all around us. There is a lot to know about the government and how "We the People" interact with the government and each other. Let's help each other expand our civic literacy.

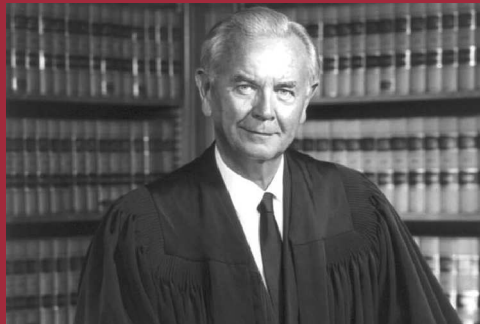
Texas v. Johnson & the First Amendment

In August of 2025, President Donald Trump [signed an executive order](#) that directed his administration to "act to restore respect and sanctity to the American flag and prosecute those who incite violence or otherwise violate our laws while desecrating this symbol of our country, to the fullest extent permissible under any available authority". Essentially, it encourages and allows law enforcement to charge individuals with crimes that could have been committed while burning an American flag. This might include destruction of property, being a public nuisance, or something similar. However, the executive order does not permit someone to be charged solely for burning the flag,

without considering other factors. So why must other factors be considered?

In 1984, Gregory Lee Johnson was convicted of breaking a Texas law that made it illegal to burn the American flag and sentenced to serve time in prison. His appeal eventually reached the United States Supreme Court. In a [5-4 decision](#) issued in 1989, the justices ruled that flag burning was an act of symbolic speech protected by the First Amendment to the United States Constitution, even though it could be perceived as offensive. It struck down the Texas law.

Justice [Brennan](#), in the majority opinion, stated that: "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...the government may not prohibit expression simply because it disagrees with its message..."



Responding to this decision, the United States Congress passed a law that banned burning the American flag as an act of protest. In [United States v. Eichman \(1990\)](#), the Supreme Court reiterated that burning the flag was protected by the First Amendment, thereby expanding its decision beyond the Texas law.

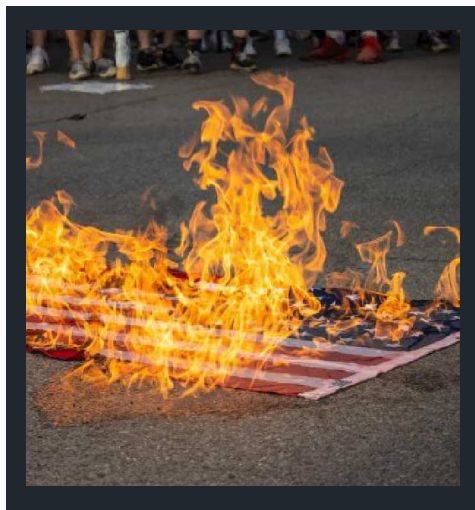
In discussing the cases, noted conservative jurist Antonin Scalia, who signed on to the majority opinions in both, emphasized the importance of the protections offered by the United States Constitution and the First Amendment: "[If it were up to me](#), I would put in jail every sandal-wearing, scruffy-bearded weirdo who burns the American flag. But I am not king."

The [First Amendment](#) has a long history of offering protections to those with unpopular or controversial views expressed in multiple forms, though those protections are not absolute. The Brandenburg test, established in [Brandenburg v. Ohio](#) (1969), sets the standard for when speech advocating illegal activity can be lawfully restricted. In the case, a Ku Klux Klan leader gave a speech containing racial slurs and suggested that "some vengeance" might be necessary. The Supreme Court ruled that speech can only be prohibited if it meets both parts of a two-pronged test:

1. The speech is intended to incite or produce imminent unlawful action, and
2. The speech is likely to actually incite or produce such action.

Based on this decision, controversial or unpopular speech is not always illegal speech. For example, in 1977, the First Amendment protected the [rights of Nazis to march](#). In 1969, the symbolic speech represented by a student wearing an armband to protest a war was upheld in the Tinker decision. Examples like these highlight the importance of the First Amendment in enabling citizens of all views to engage in public debate, discussion, and protest.

President Trump's executive order is likely to face court challenges. Just hours after it was issued, a man was arrested in Washington, D.C. after burning the American flag. As per the executive order, however, he was arrested for illegally setting a fire in a public park. Ultimately, it is up to the courts to determine whether this arrest does indeed violate the First Amendment, or whether the details of the executive order (which deals with crimes related to flag-burning rather than burning the flag itself) are sufficient to avoid limiting the rights of citizens.



To Think and To Do:

In a 2015 speech, Justice Antonin Scalia said about flag burning, "If it were up to me, I would put in jail every sandal-wearing, scruffy-bearded weirdo who burns the American flag. But I am not king." What do you think Justice Scalia meant when he said, "But I am not king"? Explain.

Learn MORE:

- [First Amendment & Flag Burning](#) from SCOTUSblog



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