

DBQ 1

Discuss the government's role in regulating speech that is unwelcome or offensive, using the following legal rulings to back up your arguments:

In 1984, Gregory Lee Johnson burned an American flag, an act he asserted was "symbolic speech," in order to protest the policies of President Ronald Reagan. Under a Texas law that prevented destruction of venerated objects if such destruction were to incite anger in others. Johnson was tried and victed in a Texas court, and he appealed. The Supreme Court agreed to hear his case, and Justice Brennan wrote the opinion for the 5-4 majority.

COURT OPINION: TEXAS V. JOHNSON (1989)

"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.

Moreover, Johnson was prosecuted because he knew that his politically charged expression would cause "serious offense." If he had burned the flag as a means of disposing of it because it was dirty or torn, he would not have been convicted of flag desecration under this Texas law: federal law designates burning as the preferred means of disposing of a flag "when it is in such condition that it is no longer a fitting emblem for display," and Texas has no quarrel with this means of disposal. The Texas law is thus not aimed at protecting the physical integrity of the flag in all circumstances, but is designed instead to protect it only against impairments that would cause serious offense to others. Texas concedes as much:

Section 42.09(b) reaches only those severe acts of physical abuse of the flag carried out in a way likely to be offensive. The statute mandates intentional or knowing abuse, that is, the kind of mistreatment that is not innocent, but rather is intentionally designed to seriously offend other individuals...

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.

Texas' focus on the precise nature of Johnson's expression, moreover, misses the point of our prior decisions: their enduring lesson, that the government may not prohibit expression simply because it disagrees with its message, is not dependent on the particular mode in which one chooses to express an idea...

...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.”

A law was created in Chicago that prohibited picketing within 150 feet of the school during school hours. The only exception to this rule was for “peaceful picketing.” Earl Mosley decide to protest “black discrimination” near a public school, hoping to receive a declaration that the law was unconstitutional. Justice Marshall gave the majority opinion for the unanimous decision.

COURT OPINION: POLICE DEPT. OF CITY OF CHICAGO V. MOSLEY (1972)

“The central problem with Chicago's ordinance is that it describes permissible picketing in terms of its subject matter. Peaceful picketing on the subject of a school's labor-management dispute is permitted, but all other peaceful picketing is prohibited. The operative distinction is the message on a picket sign. But, above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content. .. To permit the continued building of our politics and culture, and to assure self-fulfillment for each individual, our people are guaranteed the right to express any thought, free from government censorship. The essence of this forbidden censorship is content control. Any restriction on expressive activity because of its content would completely undercut the "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.

Necessarily, then, under the Equal Protection Clause, not to mention the First Amendment itself, government may not grant the use of a forum to people whose views it finds acceptable, but deny use to those wishing to express less favored or more controversial views. And it may not select which issues are worth discussing or debating in public facilities. There is an "equality of status in the field of ideas," and government must afford all points of view an equal opportunity to be heard. Once a forum is opened up to assembly or speaking by some groups, government may not prohibit others from assembling or speaking on the basis of what they intend to say. Selective exclusions from a public forum may not be based on content alone, and may not be justified by reference to content alone.

The First Amendment forbids the government from "restrict[ing] expression because of its message [or] its ideas."

In order to protest the alleged tolerance of homosexuality within the military Fred Phelps and followers at the Westboro Baptist Church would frequently picket the funerals of veterans. In one specific instance, Phelps and others picketed the funeral of Matthew Snyder. Before picketing, the church had notified the city of their plan, and had set up the picketing on public land near the funeral. Snyder's father sued Phelps and the church claiming, among other things, that their actions caused him severe emotional distress. Chief Justice Roberts gave the majority opinion for the 8-1 decision.

COURT OPINION: SNYDER V. PHELPS (2011)

“Westboro believes that America is morally flawed; many Americans might feel the same about Westboro. Westboro’s funeral picketing is certainly hurtful and its contribution to public discourse may be negligible. But Westboro addressed matters of public import on public property, in a peaceful manner, in full compliance with the guidance of local officials. The speech was indeed planned to coincide with Matthew Snyder’s funeral, but did not itself disrupt that funeral, and Westboro’s choice to conduct its picketing at that time and place did not alter the nature of its speech.

Speech is powerful. It can stir people to action, move them to tears of both joy and sorrow, and—as it did here—inflict great pain. On the facts before us, we cannot react to that pain by punishing the speaker. As a Nation we have chosen a different course—to protect even hurtful speech on public issues to ensure that we do not stifle public debate. That choice requires that we shield Westboro from tort liability for its picketing in this case.”

At a state-sponsored university, students requested permission to form a chapter of Students for a Democratic Society (SDS). The president denied their request because he said the organization had a philosophy of violence and disruption inconsistent with the University’s values. The students thereupon brought this action for declaratory and injunctive relief. Justice Powell delivered the opinion of the court.

COURT OPINION: HEALY V. JAMES (1972)

“At the outset, we note that state colleges and universities are not enclave immune from the sweep of the First Amendment.

It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Independent School District* (1969).

Yet the precedents of this Court leave no room for the view that, because of the acknowledged need for order, First Amendment protections should apply with less force on college campuses than in the community at large. Quite to the contrary, “[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools.” *Shelton v. Tucker*, (1960). The college classroom, with its surrounding environs, is peculiarly the “marketplace of ideas,” and we break no new constitutional ground in reaffirming this Nation’s dedication to safeguarding academic freedom.”

In the 1980s, incidents of hate crimes were increasing at the University of Michigan. In response, the university passed a policy that prohibited conduct that “stigmatizes or victimizes” students on the basis of “race, ethnicity, religion, sex, sexual orientation” and other invidious factors. The policy was challenged in court. The plaintiff Doe filed suit against the University of Michigan, claiming that their year-old hate

speech code was unconstitutional because it violated free speech rights of students, and he worried that he could be charged with violating the code due to the provocative nature of his studies.

COURT OPINION: DOE V. UNIVERSITY OF MICHIGAN (1989)

“It is an unfortunate fact of our constitutional system that the ideals of freedom and equality are often in conflict. The difficult and sometimes painful task of our political and legal institutions is to mediate the appropriate balance between these two competing values...

Recently, the University of Michigan at Ann Arbor (the University), a state-chartered university, see Mich. Const. art. VIII, adopted a Policy on Discrimination and Discriminatory Harassment of Students in the University Environment (the Policy) in an attempt to curb what the University's governing Board of Regents (Regents) viewed as a rising tide of racial intolerance and harassment on campus. The Policy prohibited individuals, under the penalty of sanctions, from "stigmatizing or victimizing" individuals or groups on the basis of race, ethnicity, religion, sex, sexual orientation, creed, national origin, ancestry, age, marital status, handicap or Vietnam-era veteran status. However laudable or appropriate an effort this may have been, the Court found that the Policy swept within its scope a significant amount of "verbal conduct" or "verbal behavior" which is unquestionably protected speech under the First Amendment.

...While the Court is sympathetic to the University's obligation to ensure equal educational opportunities for all of its students, such efforts must not be at the expense of free speech. Unfortunately, this was precisely what the University did.”

Father Arthur Terminiello delivered a controversial speech that offered numerous political critiques. As a result, a violent crowd gathered outside. Because the police were unable to prevent the violence of the crowd, they charged Terminiello for “breach of the peace.” He was tried and convicted for inciting a riot. The decision was appealed. Justice Douglas delivered the opinion of the court.

COURT OPINION: TERMINIELLO V. CHICAGO (1949)

“A function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.”

Useful with discussion of heckler’s veto, silencing, shoutdowns, no-platforming.