

# BRIEFING SUPREME COURT CASES

1. **What is the name of the case?**

The name is important because it *generally* reveals which party is asking the Court to review the case. The name appearing first is usually (but not always) the appellant/petitioner, the party that lost in the court below.

2. **In what year did the Supreme Court decide the case?**

The year is important because it will help to put the case into a legal and historical context. See Thumbnail Sketch of Supreme Court History for more detail.

3. **What circumstances triggered the dispute?**

4. **What statute or action triggered the dispute?**

5. **What provision of the Constitution is at issue?**

6. **What is the basic legal question(s) the Court is being asked to address?**

7. **What was the outcome of the dispute?**

8. **How did the majority reach its decision? What was its legal reasoning?**

9. **What legal doctrine, standards, or policy did the majority announce?**

10. **What other views (dissents, concurrences) were expressed?**

**AN EXAMPLE:** *Texas v. Johnson* (1989)

1. Case Name. *Texas v. Johnson*
2. Year Case Decided by Supreme Court. 1989
3. Facts that Triggered the Dispute. While the Republican National Convention was meeting in Dallas, Texas, in 1984, Gregory Johnson took part in a demonstration, protesting policies of the Reagan administration. During the demonstration, Johnson burned an American flag, and Dallas police arrested him.
4. Statute. Johnson was arrested and subsequently convicted under a Texas law that made it a criminal activity to desecrate a "venerable" object, including a state or a national flag.
5. Provision of the Constitution. Johnson alleged that his conviction, under the Texas state law, violated First Amendment guarantees of freedom of expression.
6. Legal Question. Is flag burning, in the context of this dispute, an activity protected by the First Amendment?
7. Outcome. In a 5-4 ruling, the Court held for Johnson.
8. Legal Reasoning of the Majority. In delivering the opinion of the Court, Justice William J. Brennan Jr. held that:
  - a. Johnson's action constituted expressive conduct, allowing him to raise a First Amendment claim.
  - b. Although governments have a "freer hand" in restricting "conduct" (as opposed to pure speech or writing), they still must demonstrate a sufficiently important governmental interest in regulating the activity in question.
  - c. Texas's stated interests—preventing breaches of the peace and preserving the flag as a symbol of national unity—are insufficient to prohibit Johnson's expressive conduct.
9. Legal Doctrine. The majority:

a. set policy in an area of the law that was previously murky. States may not "foster" their own view "of the flag by prohibiting expressive conduct relating to it."

b. reaffirmed past precedents, suggesting that in such cases the Court will not only consider the nature of the expression (whether it is verbal or nonverbal), but the governmental interest at stake.

c. reaffirmed a general commitment to the fundamental nature of the First Amendment: "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 that idea itself offensive or disagreeable."

10. Other Points of View.

a. Justice Kennedy concurred: while the flag "holds a lonely place of honor," the Constitution mandates the outcome expressed by the majority. In short, sometimes justices "make decisions" they do not "like." But they make them "because they are right."

b. Chief Justice Rehnquist (joined by White and O'Connor) dissented: freedom of expression is not absolute: conduct may be prohibited in light of legitimate governmental interests. Here, those interests outweigh the expression.

i. Johnson's conduct had the tendency to incite a breach of the peace.

ii. the American flag is a "visible symbol embodying our Nation"; it does not represent a political idea or philosophy, nor is it just "another symbol."

c. Justice Stevens dissented: the question of flag desecration is unique. Cases involving other forms of symbolic expression are not dispositive of it. Our nation's flag symbolizes those values—liberty and equality—that "are worth fighting for." As such it cannot be "true that the flag . . . is not itself worthy of protection from unnecessary desecration."