

Sample Pages

4 of 18

Appendix D:

Three Examples of the ACLU/U.S. Supreme Court Cases from the 3-volume Set of Cases

Cases No. 1, No. 268 and No. 771 from the 3-volume set:

1. **Gitlow v. New York**

(Decided June 8, 1925; 268 U.S. 652)

I. ISSUE

- A. **Issues Discussed:** First Amendment, Fourteenth Amendment, freedom of speech and of the press
- B. **Legal Question Presented:** Does a state statute regulating speech by prohibiting advocacy of criminal anarchy deprive the defendant of freedom of speech or of the press in violation of the due process clause of the Fourteenth Amendment?
- C. **Supreme Court's Answer:** The state statute is constitutional. However, fundamental rights federally protected under the First Amendment, such as freedom of speech and press, are protected from state impairment by the due process clause of the Fourteenth Amendment.

II. CASE SUMMARY

A. Background

“The defendant [was] a member of the Left Wing Section of the Socialist Party [which] was organized nationally at a conference in New York City in June, 1919 The conference elected a National Council, of which the defendant was member, and left to it the adoption of a ‘Manifesto.’ This was published in *The Revolutionary Age*, the official organ of the Left Wing. . . . Sixteen thousand copies

were printed [and] paid for by the defendant, as business manager of the paper [D]efendant signed a card subscribing to the Manifesto and Program of the Left Wing [and] went to different parts of the State to speak to branches of the Socialist Party about the principles of the Left Wing and advocated their adoption.

[The Manifesto] advocated, in plain and unequivocal language, the necessity of accomplishing the ‘Communist Revolution’ by a militant and ‘revolutionary Socialism,’ based on ‘the class struggle’ and mobilizing the ‘power of the proletariat in action,’ through mass industrial revolts developing into mass political strikes and ‘revolutionary mass action,’ for the purpose of conquering and destroying the parliamentary state and establishing in its place, through a ‘revolutionary dictatorship of the proletariat,’ the system of Communist Socialism.”

Defendant was “convicted and sentenced to imprisonment” by the trial court. “The Court of Appeals held that the Manifesto ‘advocated the overthrow of [the] government by violence, or by unlawful means.’ . . . And both the Appellate Division and the Court of Appeals held the statute constitutional.”

The Supreme Court granted certiorari to review the case and affirmed the judgment of the Court of Appeals.

B. Counsel of Record / ACLU Attorney:

ACLU Side (Petitioner/Appellant):	Opposing Side (Respondent/Appellee):
Walter H. Pollak and Walter Nelles argued the cause for appellant.	John Caldwell Myers and W. J. Wetherbee argued the cause for appellee.

III. AMICI CURIAE

ACLU Side (Petitioner/Appellant):	Opposing Side (Respondent/Appellee):
No briefs of amici curiae were filed in support of appellant.	No briefs of amici curiae were filed in support of appellee.

IV. THE SUPREME COURT'S DECISION

A. In upholding the statute and affirming the Court of Appeals decision, the Court determined “[t]he statute does not penalize the utterance or publication of abstract ‘doctrine’ or academic discussion having no quality of incitement to any concrete action. . . . What it prohibits is language advocating, advising or teaching the overthrow of organized government by unlawful means. [The Manifesto] advocates and urges in fervent language mass action which shall progressively foment industrial disturbances and through political mass strikes and revolutionary mass action overthrow and destroy organized parliamentary government.”

The Court “assume[d] that freedom of speech and of the press—which are protected by the First Amendment from abridgment by Congress—are among the fundamental personal rights and ‘liberties’ protected by the due process clause of the Fourteenth Amendment from impairment by the States.” However, “[i]t is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility. . . .”

State “‘statutes may only be declared unconstitutional where they are arbitrary or unreasonable attempts to exercise authority vested in the State in the public interest.’ That utterances inciting to the overthrow of organized government by unlawful means, present a sufficient danger of substantive evil to bring their punishment within the range of legislative discretion, is clear. Such utterances, by their very nature, involve danger to the public peace and to the security of the State.”

The Court ultimately found “that the statute is not in itself unconstitutional, and that it has not been applied in the present case in derogation of any constitutional right”

B. Justice Vote: 2 Pro ACLU Side vs. 7 Con Opposing Side

ACLU Side (Petitioner/Appellant):	Opposing Side (Respondent/Appellee):
<ol style="list-style-type: none"> 1. Holmes, O. – Wrote dissenting opinion 2. Brandeis, L. – Joined dissenting opinion 	<ol style="list-style-type: none"> 1. Sanford, E. – Wrote majority opinion 2. Taft, W. – Joined majority opinion 3. Van Devanter, W. – Joined majority opinion 4. McReynolds, J. – Joined majority opinion 5. Sutherland, G. – Joined majority opinion 6. Butler, P. – Joined majority opinion 7. Stone, H. – Joined majority opinion

V. A WIN OR LOSS FOR THE ACLU?

The ACLU, as attorney of record, urged reversal of the judgment of the Court of Appeals; the Supreme Court affirmed in a 7-2 vote, giving the ACLU an apparent **loss**.

(Some believe that this case should be viewed as a win overall because the Court established in *Gitlow* that fundamental rights, such as freedom of speech and press, must not be impaired by the states, incorporating these rights under the due process clause of the Fourteenth Amendment.)