

## Appendix C

# ACLU/U.S. Supreme Court Case Summaries

### 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):** Walter H. Pollak and Walter Nelles argued the cause for appellant.

**Opposing Side (Respondent/Appellee):** John Caldwell Myers and W. J. Wetherbee argued the cause for appellee.

#### III. AMICI CURIAE

##### ACLU Side (Petitioner/Appellant)

No briefs of amici curiae were filed in support of appellant.

##### Opposing Side (Respondent/Appellee)

No briefs of amici curiae were filed in support of appellee.

#### IV. THE SUPREME COURT'S DECISION

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."

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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 . . . ."

#### V. JUSTICE VOTE

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##### ACLU Side (Petitioner/Appellant)

1. Holmes, O. – Wrote dissenting opinion
2. Brandeis, L. – Joined dissenting opinion

##### Opposing Side (Respondent/Appellee)

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

#### VI. 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.)

### 2. Whitney v. California

(Decided May 16, 1927; 274 U.S. 357)

#### I. ISSUE

##### A. Issues Discussed

Due process, equal protection

##### B. Legal Question Presented

Whether the Criminal Syndicalism Act in California violates either the due process or equal protection clauses of the Fourteenth Amendment.

##### C. Supreme Court's Answer

The Criminal Syndicalism Act in California does not violate either the due process clause or equal protection clause of the Fourteenth Amendment.

#### II. CASE SUMMARY

##### A. Background

Defendant was a member of the Community Labor Party. She was "charged, in five counts, with violations of the Criminal Syndicalism Act of [California]. She was tried, convicted on the first count, and sentenced to imprisonment. The judgment was affirmed by the District Court of Appeal."

"The first count of the information, on which the conviction was had, charged that on or about November 28, 1919, in Alameda County, the defendant, in violation of the Criminal Syndicalism Act, 'did then and there unlawfully, willfully, wrongfully, deliberately and feloniously organize and assist in organizing, and was, is, and knowingly became a member of an organization, society, group and assemblage of persons organized and assembled to advocate, teach, aid and abet criminal syndicalism.'"

On certiorari the Supreme Court affirmed the judgment of the District Court of Appeal, upholding the conviction.

##### B. Counsel of Record/ACLU Attorney

**ACLU Side (Petitioner/Appellant):** Walter H. Pollak argued the cause for appellant. With him on the brief were John Francis Neylan, Thomas Lloyd Lennon, Walter Nelles, and Ruth I. Wilson.

**Opposing Side (Respondent/Appellee):** John H. Riordan argued the cause for appellee. With him on the brief was Attorney General of California U. S. Webb.

#### III. AMICI CURIAE

##### ACLU Side (Petitioner/Appellant)

No briefs of amici curiae were filed in support of appellant.

##### Opposing Side (Respondent/Appellee)

No briefs of amici curiae were filed in support of appellee.

#### IV. THE SUPREME COURT'S DECISION

"By enacting the provisions of the Syndicalism Act the State has declared, through its legislative body, that to knowingly be or become a member of or assist in organizing an association to advocate, teach or aid and abet the commission of crimes or unlawful acts of force, violence or terrorism as a means of accomplishing industrial or political changes, involves such danger to the public peace and the security of the State, that these acts should be penalized in the exercise of its police power. That determination must be given great weight. Every presumption is to be indulged in favor of the validity of the statute, and it may not be declared unconstitutional unless it is an arbitrary or unreasonable attempt to exercise the authority vested in the State in the public interest. . . ."

We cannot hold that, as here applied, the Act is an unreasonable or arbitrary exercise of the police power of the State, unwarrantably infringing any right of free speech, assembly or association, or that those persons are protected from punishment by the due process clause who abuse such rights by joining and furthering an organization thus menacing the peace and welfare of the State.

We find no repugnancy in the Syndicalism Act as applied in this case to either the due process or equal protection clauses of the Fourteenth Amendment on any of the grounds upon which its validity has been here challenged."

The Supreme Court upheld the judgment of the District Court of Appeal.

#### V. JUSTICE VOTE

0 Pro ACLU Side vs. 9 Con Opposing Side