AMERICAN CONSTITUTIONALISM

VOLUME II: RIGHTS AND LIBERTIES

Howard Gillman • Mark A. Graber • Keith E. Whittington

Supplementary Material

Chapter 9: Liberalism Divided – Democratic Rights/Free Speech

**Gooding v. Wilson, 405 U.S. 518** (1972)

*In 1966, Johnny Wilson was part of a group of people who were protesting the Vietnam War by blocking army inductees attempting to enter an army induction center in Fulton County, Georgia. When police officers tried to remove the protestors, a scuffle broke out. During the fight, Wilson said to two of the officers, “White son of a bitch, I'll kill you,” “You son of a bitch, I'll choke you to death,” and “You son of a bitch, if you ever put your hands on me again, I'll cut you all to pieces.”*

*Wilson was arrested and convicted in state court of two counts of assault and battery and two counts of using opprobrious words and abusive language. The second charge fell under a state statute that made it a misdemeanor offense to “without provocation, use to or of another, and in his presence, . . . opprobrious words or abusive language, tending to cause a breach of the peace.” He was also tried and convicted in federal court on charges of interfering with the administration of the draft and damaging federal government property. On appeal, all the convictions were upheld. The U.S. Supreme Court heard an appeal of the state charge under the abusive language statute. In a 5-2 decision, the Court struck the Georgia statute down in its entirety, concluding that the statute could be read to encompass more than the narrow set of “fighting words” that the Court had previously said are unprotected by the First Amendment.*

JUSTICE BRENNAN delivered the opinion of the Court.

. . . .

The constitutional guarantees of freedom of speech forbid the States to punish the use of words or language not within "narrowly limited classes of speech." Even as to such a class, however, because "the line between speech unconditionally guaranteed and speech which may legitimately be regulated, suppressed, or punished is finely drawn," "[i]n every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom." n other words, the statute must be carefully drawn or be authoritatively construed to punish only unprotected speech and not be susceptible of application to protected expression. "Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."

Appellant does not challenge these principles, but contends that the Georgia statute is narrowly drawn to apply only to a constitutionally unprotected class of words -- "fighting" words -- "those which, by their very utterance, inflict injury or tend to incite an immediate breach of the peace." Chaplinsky v. New Hampshire (1942). . . .

Our decisions since Chaplinsky have continued to recognize state power constitutionally to punish "fighting" words under carefully drawn statutes not also susceptible of application to protected expression. *Street v. New York* (1969). We reaffirm that proposition today.

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The dictionary definitions of "opprobrious" and "abusive" give them greater reach than "fighting" words. Webster's Third New International Dictionary defined "opprobrious" as "conveying or intended to convey disgrace," and "abusive" as including "harsh insulting language." Georgia appellate decisions have construed § 26-6303 to apply to utterances that, although within these definitions, are not "fighting" words as Chaplinsky defines them. . . . [In] Jackson v. State (Ga. 1913), [the state court] held that a jury question was presented by the words addressed to another, "God damn you, why don't you get out of the road?" Plainly, although "conveying . . . disgrace" or "harsh insulting language," these were not words "which by their very utterance . . . tend to incite an immediate breach of the peace."

. . . . This definition makes it a "breach of peace" merely to speak words offensive to some who hear them, and so sweeps too broadly. . . .

. . . .

*Affirmed*.

JUSTICE POWELL and JUSTICE REHNQUIST took no part in the decision.

CHIEF JUSTICE BURGER, dissenting.

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. . . . If words are to bear their common meaning, and are to be considered in context, rather than dissected with surgical precision using a semantic scalpel, this statute has little potential for application outside the realm of "fighting words" that this Court held beyond the protection of the First Amendment in Chaplinsky. Indeed, the language used by the Chaplinsky Court to describe words properly subject to regulation bears a striking resemblance to that of the Georgia statute, which was enacted many, many years before Chaplinsky was decided. And if the early Georgia cases cited by the majority establish any proposition, it is that the statute, as it language so clearly indicates, is aimed at preventing precisely that type of personal, face-to-face, abusive and insulting language likely to provoke a violent retaliation -- self-help, as we euphemistically call it -- that the Chaplinsky case recognized could be validly prohibited. The facts of the case now before the Court demonstrate that the Georgia statute is serving that valid and entirely proper purpose. There is no persuasive reason to wipe the statute from the books unless we want to encourage victims of such verbal assaults to seek their own private redress.

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. . . . It is regrettable that one consequence of this holding may be to mislead some citizens to believe that fighting words of this kind may be uttered free of any legal sanctions.

JUSTICE BLACKMUN, with whom CHIEF JUSTICE BURGER joins, dissenting.

It seems strange, indeed, that, in this, day a man may say to a police officer who is attempting to restore access to a public building, "White son of a bitch, I'll kill you," and "You son of a bitch, I'll choke you to death," and say to an accompanying officer, "You son of a bitch, if you ever put your hands on me again, I'll cut you all to pieces," and yet constitutionally cannot be prosecuted and convicted under a state statute that makes it a misdemeanor to "use to or of another, and in his presence . . . opprobrious words or abusive language, tending to cause a breach of the peace. . . ." This, however, is precisely what the Court pronounces as the law today.

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The Court reaches its result by saying that the Georgia statute has been interpreted by the State's courts so as to be applicable in practice to otherwise constitutionally protected speech. It follows, says the Court, that the statute is overbroad, and therefore is facially unconstitutional, and to be struck down in its entirety. Thus, Georgia apparently is to be left with no valid statute on its books to meet Wilson's bullying tactic. This result, achieved by what is indeed a very strict construction, will be totally incomprehensible to the State of Georgia, to its courts, and to its citizens.

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I wonder, now that § 26-6303 is voided, just what Georgia can do if it seeks to proscribe what the Court says it still may constitutionally proscribe. The natural thing would be to enact a new statute reading just as § 26-6303 reads. But it, too, presumably would be overbroad unless the legislature would add words to the effect that it means only what this Court says it may means, and no more.

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For me, Chaplinsky v. New Hampshire (1942), was good law when it was decided, and deserves to remain as good law now. . . . But I feel that, by decisions such as this one . . . the Court, despite its protestations to the contrary, is merely paying lip service to Chaplinsky. . . . The Court has painted itself into a corner from which it, and the States, can extricate themselves only with difficulty.