GOODING v. WILSON
SUPREME COURT OF THE UNITED STATES
405 U.S. 518
March 23, 1972
[5 - 2][1]

This is a good case to teach the "overbreadth" doctrine.

OPINION: Justice Brennan...Wilson was convicted...[of violating] Georgia Code Ann. §26-6303, which provides:

> "Any person who shall, without provocation, use...**opprobrious words or abusive language, tending to cause a breach of the peace**...shall be guilty of a misdemeanor."

[He appealed, contending that]...the statute violated the First and Fourteenth Amendments [as] vague and overbroad...[His conviction was reversed on appeal and we affirm]...The state conviction was upon two counts of assault and battery as well as upon two counts of using **opprobrious and abusive language**. Appellee was also convicted of federal offenses arising out of the same incident, and **those convictions were affirmed...**

Let us not forget that "this" case is solely about prosecutions for speech...Wilson was convicted of other charges that stuck and are not involved here.

[1]Justices Powell and Rehnquist did not participate.

The defendant was one of a group of persons who, on August 18, 1966, picketed the building in which the 12th Corps Headquarters of the United States Army was located, carrying signs opposing the war in Viet Nam. When the inductees arrived at the building, these persons began to block the door so that the inductees could not enter. They were requested by police...to move from the door, but refused...[A] scuffle ensued...Count 3 of the indictment alleged that the accused...[used] the following abusive language and opprobrious words, tending to cause a breach of the peace: "White son of a bitch, I'll kill you. You son of a bitch, I'll choke you to death...You son of a bitch, if you ever put your hands on me again, I'll cut you all to pieces." Section 26-6303 punishes only spoken words. It can therefore withstand appellee's attack upon its facial constitutionality only if, as authoritatively construed by the Georgia courts, it is not susceptible of application to speech, although vulgar or offensive, that is protected by the First and Fourteenth Amendments. *Cohen v. California*[2]...

In other words, if the Georgia courts have previously construed the meaning of the criminal statute under which Wilson was charged as prohibiting speech that can be constitutionally prohibited as well as speech that cannot be constitutionally prohibited, then, the conviction must fall even if the words spoken here could be criminalized under a better drafted statute. This is called the "overbreadth doctrine."

It matters not that the words appellee used might have been constitutionally prohibited under a narrowly and precisely drawn statute...**This is deemed necessary because persons whose expression is constitutionally protected may well refrain from exercising their rights for fear of criminal sanctions provided by a statute susceptible of application to protected expression**.

Frankly, I am not so sure this doctrine is justifiable. Let's continue to explore its function.

"**Although a statute may be neither vague, overbroad, nor otherwise invalid as applied to the conduct charged against a particular defendant, he is permitted to raise its vagueness or unconstitutional overbreadth as applied to others. And if the law is found deficient in one of these respects, it may not be applied to him either, until and unless a satisfactory limiting construction is placed on the statute. The statute, in effect, is stricken down on its face. This result is deemed justified since the otherwise continued existence of the statute in unnarrowed form would tend to suppress constitutionally protected rights."** *Coates v. City of Cincinnati*.

[2]Case 1A-S-20 on this website.

The foregoing paragraph is the overbreadth doctrine in a nutshell. The doctrine says "it is necessary to permit someone who is otherwise guilty of using unprotected speech to avoid punishment if he proves that the statute reaches speech that is otherwise constitutionally protected" (i.e., if the statute is overbroad). This apparently is so because if we do not permit the Wilsons of the world to reverse their convictions by cleaning up statutory language for the rest of us, the rest of us might unnecessarily refrain from speaking out while the statute remains on the books. I'm still not sure I agree with the rationale, but that is the idea.

...[A statute designed to regulate speech] must be carefully drawn or be authoritatively construed to punish only unprotected speech and not be susceptible of application to protected expression...

Appellant...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.* In *Chaplinsky*[3], we sustained a conviction under...the Public Laws of New Hampshire which provided: "No person shall address any offensive, derisive or annoying word to any other person who is lawfully in any street or other public place, nor call him by any offensive or derisive name..." Chaplinsky was convicted for addressing to another on a public sidewalk the words, "You are a God damned racketeer," and "a damned Fascist and the whole government of Rochester are Fascists or agents of Fascists." Chaplinsky challenged the constitutionality of the statute as inhibiting freedom of expression because it was vague and indefinite. The Supreme Court of New Hampshire, however, "long before the words for which Chaplinsky was convicted," sharply limited the statutory language "offensive, derisive or annoying word" to "fighting" words...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. We reaffirm that proposition today.

...[T]he District Court expressly stated,..."[T]he Georgia appellate decisions have not construed §26-6303 to be limited in application, as in *Chaplinsky*, to words that 'have a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed.'" The dictionary definitions of "opprobrious" and "abusive" give them greater reach than "fighting" words.

Webster's Third New International Dictionary (1961) 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 *Lyons v. State*, a conviction under the statute was sustained for awakening 10 women scout leaders on a camp-out by shouting, "Boys, this is where we are going to spend the night. Get the G-- d bed rolls out...let's see how close we can come to the G-- d tents."...Again, in *Jackson v. State* 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

[3]Case 1A-S-8 on this website.

very utterance...tend to incite an immediate breach of the peace." *Chaplinsky.*

Just to be clear, the Supreme Court is citing other Georgia cases in which the Georgia courts have construed the language of this statute to prohibit speech that is protected by the Constitution because they are not "fighting words" which could otherwise be prohibited. Apparently, the defendants in those cases did some jail time without contesting the constitutionality of the statute or, for whatever reason, their cases did not reach the Supreme Court.

...[If "peace" means "tranquility", then]...**this definition makes it a "breach of peace" merely to speak words offensive to some who hear them, and so sweeps too broadly...**Because earlier appellate decisions applied §26-6303 to utterances where there was no likelihood that the person addressed would make an immediate violent response, it is clear that the standard allowing juries to determine guilt "measured by common understanding and practice" does not limit the application of §26-6303 to "fighting" words defined by *Chaplinsky*. Rather, that broad standard effectively "licenses the jury to create its own standard in each case."..."**The fault of the statute is that it leaves wide open the standard of responsibility, so that it is easily susceptible to improper application."** Unlike the construction of the New Hampshire statute by the New Hampshire Supreme Court, the Georgia appellate courts have not construed §26-6303 "so as to avoid all constitutional difficulties." Affirmed.

DISSENT: Chief Justice Burger...If words are to bear their common meaning,...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*...And if the early Georgia cases cited by the majority establish any proposition, it is that the statute, as its 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...The technique of invalidating state statutes on their face because of their *substantial* overbreadth finds little...to commend it. As the Court itself recognizes, **if the First Amendment overbreadth doctrine serves any legitimate purpose, it is to allow the Court to invalidate statutes because their language demonstrates their potential for sweeping improper applications posing a significant likelihood of deterring important First Amendment speech -- not because of some insubstantial or imagined potential for occasional and isolated applications that go beyond constitutional bounds.** Writing in a related context, Justice Black, only last Term, evidenced proper regard for normal principles of adjudication when he observed:

> **Procedures for testing the constitutionality of a statute 'on its face'...and for then enjoining all action to enforce the statute until the State can obtain court approval for a modified version, are fundamentally at odds with the function of the federal courts in our constitutional plan...The task of analyzing a proposed statute, pinpointing its deficiencies, and requiring correction of these**

deficiencies before the statute is put into effect, is rarely if ever an appropriate task for the judiciary..." *Younger v. Harris*.

The Court makes a mechanical and, I suggest, insensitive application of the overbreadth doctrine today...**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.**

DISSENT: Justice Blackmun...Any Georgia schoolboy would expect that this defendant's fighting and provocative words to the officers were covered by §26-6303...This is demonstrated by the fact that the appellee, and this Court, attack the statute, not as it applies to the appellee, but as it conceivably might apply to others who might utter other words...For me, *Chaplinsky v. New Hampshire*, 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 and, indeed, *Cohen v. California,* the Court, despite its protestations to the contrary, is merely paying lip service to *Chaplinsky*. As the appellee states in a footnote to his brief, "Although there is no doubt that the state can punish 'fighting words' this appears to be about all that is left of the decision in *Chaplinsky*." **If this is what the overbreadth doctrine means, and if this is what it produces, it urgently needs re-examination.** The Court has painted itself into a corner...