STROMBERG v. CALIFORNIA
SUPREME COURT OF THE UNITED STATES
283 U.S. 359
May 18, 1931
[8 - 1]

OPINION: Chief Justice Hughes...The appellant was convicted in the Superior Court of San Bernardino County, California, for violation of §403-a of the Penal Code of that State. That section provides:

> "Any person who **displays a red flag...**any flag...in any public place...or from or on any house, building or window **as a sign, symbol or emblem of opposition to organized government** or as an invitation or stimulus to anarchistic action or as an aid to propaganda that is of a seditious character is guilty of a felony."

Surely, this conviction won't survive!

The...first count charged that the appellant and other defendants, at the time and place set forth, "did wilfully, unlawfully and feloniously display a **red flag...in a public place...or meeting place...as a sign, symbol and emblem of opposition to organized government and as an invitation and stimulus to anarchistic action and as an aid to propaganda that is and was of a seditious character**."

...The appellant...was convicted...[She]...contended...that the statute was invalid because repugnant to the Fourteenth Amendment of the Federal Constitution...[O]n appeal...the judgment was affirmed ...and an appeal has been taken to this Court...

It appears that the appellant, a young woman of nineteen, a citizen of the United States by birth, was one of the supervisors of a **summer camp for children**, between ten and fifteen years of age, in the foothills of the San Bernardino mountains. Appellant led the children in their daily study, teaching them history and economics. "Among other things, the children were taught class consciousness, the solidarity of the workers, and the theory that the workers of the world are of one blood and brothers all." Appellant was a member of the Young Communist League, an international organization affiliated with the Communist Party. The charge against her concerned a daily ceremony at the camp, in which the appellant supervised and directed the children in raising a red flag, "a camp-made

reproduction of the flag of Soviet Russia, which was also the flag of the Communist Party in the United States." In connection with the flag-raising, there was a ritual at which the children stood at salute and recited a pledge of allegiance "to the worker's red flag, and to the cause for which it stands; one aim throughout our lives, freedom for the working class." The stipulation further shows that "a library was maintained at the camp containing a large number of books, papers and pamphlets, including much radical communist propaganda, specimens of which are quoted in the opinion of the state court." These quotations abundantly demonstrated that the books and pamphlets contained incitements to violence and to "armed uprisings," teaching "the indispensability of a desperate, bloody, destructive war as the immediate task of the coming action." Appellant admitted ownership of a number of the books, some of which bore her name. It appears from the stipulation that **none of these books or pamphlets were used in the teaching at the camp**. With respect to the conduct of the appellant, the stipulation contains the following statement: "She testified...that none of the literature in the library, and particularly none of the exhibits containing radical communist propaganda, was in any way brought to the attention of any child or of any other person, and that no word of violence or anarchism or sedition was employed in her teaching of the children. There was no evidence to the contrary."

The charge...as to the purposes for which the flag was raised, was laid conjunctively, uniting the three purposes which the statute condemned. But in the instructions to the jury, the trial court followed the express terms of the statute and treated the described purposes disjunctively, holding that the appellant should be convicted if the flag was displayed for any one of the three purposes named. The instruction was as follows:

> "...[Y]ou are instructed that if the jury should believe beyond a reasonable doubt that the defendants...displayed, or caused to be displayed, a red flag...in any public place or in any meeting place...and if you further believe from the evidence beyond a reasonable doubt that said flag...was displayed...(1) as a sign...of opposition to organized government, or (2) was an invitation or stimulus to anarchistic action, or (3) was in aid to propaganda that is of a seditious character, you will find such defendants guilty as charged...
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> "In this connection you are instructed that if you believe a red flag, such as herein described, was displayed in either of the places mentioned in said information, that it is only necessary for the prosecution to prove to you, beyond a reasonable doubt, that said flag was displayed for any one or more of the three purposes mentioned in the information; in other words, if the prosecution should prove to you beyond a reasonable doubt that the red flag, such as herein described, was displayed at the place or either of said places and for the purposes and objects as alleged in said information, it is only necessary for the prosecution to prove to you beyond a reasonable doubt that said flag was displayed for only one or more of the three purposes alleged in said information, and it is not necessary that the evidence show, beyond a reasonable doubt, that said red flag was displayed for all three purposes charged in said information. Proof, beyond a reasonable doubt, of any one or more

> of the three purposes alleged in said information is sufficient to justify a verdict of guilty..."

...[T]he appellant insisted that...the statute was invalid as being "an unwarranted limitation on the right of free speech."...We are not left in doubt as to the construction placed by the state court upon each of the clauses of the statute. **The first purpose** described, that is, relating to the display of a flag..."as a sign, symbol or emblem of opposition to organized government," is discussed by the two concurring justices. After referring, in the language above quoted, to the constitutional question raised by the appellant with respect to this clause, these justices said in their opinion:

> "If opposition to organized government were the only act prohibited by this section we might be forced to agree with appellant. 'Opposition' is a word broad in its meaning...
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> "It might be construed to include the peaceful and orderly opposition to a government as organized and controlled by one political party by those of another political party equally high minded and patriotic, which did not agree with the one in power. It might also be construed to include peaceful and orderly opposition to government by legal means and within constitutional limitations. Progress depends on new thought and the development of original ideas. All change is, to a certain extent, achieved by the opposition of the new to the old, and in so far as it is within the law, such peaceful opposition is guaranteed to our people and is recognized as a symbol of independent thought containing the promise of progress. It may be permitted as a means of political evolution, but not of revolution."

With respect to the second purpose described in the statute, the display of a flag..."as an invitation or stimulus to anarchistic action," the concurring justices quoted accepted definitions and judicial decisions as to the meaning of "anarchistic action." These authorities, as set forth and approved in the opinion, show clearly that the term was regarded by the state court as referring to the overthrow by force and violence of the existing law and order, to the use of "unlawful, violent and felonious means to destroy property and human life." The conclusion was thus stated: "It is therefore clear that when section 403a of the Penal Code prohibits a display of a red flag as an invitation or stimulus to anarchistic action it prohibits acts which have a well-defined and well-settled meaning in the law of our land, a teaching which if allowed to be put into force and effect would mean revolution in its most dreaded form." The state court further gave its interpretation of the third clause of the statute, that is, in relation to the display of a flag..."as an aid to propaganda that is of a seditious character." Both opinions dealt with the meaning of this clause. Thus in one opinion it is said: "Appellants' counsel concedes that sedition laws which 'interdict against the use of force or violence' are consistently upheld by the courts, and all of the authorities cited by him support that proposition ...Sedition is defined as the stirring up of disorder in the State, tending toward treason, but lacking an overt act. Certainly the 'advocacy of force or violence' in overturning the government of a State falls within that definition." The other opinion takes a similar view. Assuming that the local statute is thus construed by the state court as referring to the advocacy of force or violence in the overthrow

of government, we do not find it necessary, for the purposes of the present case, to review the historic controversy with respect to "sedition laws" or to consider the question as to the validity of a statute dealing broadly and vaguely with what is termed seditious conduct, without any limiting interpretation either by the statute itself or by judicial construction.

Having reached these conclusions as to the meaning of the three clauses of the statute, and doubting the constitutionality of the first clause, the state court rested its decision upon the remaining clauses. The basis of the decision, as more fully stated in the opinion of the two concurring justices, was this: "The constitutionality of the phrase of this section, 'of opposition to organized government' is questionable. This phrase can be eliminated from the section without materially changing its purposes. The section is complete without it, and with it eliminated it can be upheld as a constitutional enactment by the Legislature of the State of California." Accordingly, disregarding the first clause of the statute, and upholding the other clauses, the conviction of the appellant was sustained.

We are unable to agree with this disposition of the case. **The verdict against the appellant was a general one. It did not specify the ground upon which it rested. As there were three purposes set forth in the statute, and the jury were instructed that their verdict might be given with respect to any one of them, independently considered, it is impossible to say under which clause of the statute the conviction was obtained**. If any one of these clauses, which the state court has held to be separable, was invalid, it cannot be determined upon this record that the appellant was not convicted under that clause. It may be added that this is far from being a merely academic proposition, as it appears, upon an examination of the original record filed with this Court, that the State's attorney upon the trial emphatically urged upon the jury that they could convict the appellant under the first clause alone, without regard to the other clauses. It follows that instead of its being permissible to hold, with the state court, that the verdict could be sustained if any one of the clauses of the statute were found to be valid, the necessary conclusion from the manner in which the case was sent to the jury is that, if any of the clauses in question is invalid under the Federal Constitution, the conviction cannot be upheld. We are thus brought to the question whether any one of the three clauses, as construed by the state court, is upon its face repugnant to the Federal Constitution so that it could not constitute a lawful foundation for a criminal prosecution...The right [of free speech] is not an absolute one, and the State in the exercise of its police power may punish the abuse of this freedom. There is no question but that the State may thus provide for the punishment of those who indulge in utterances which incite to violence and crime and threaten the overthrow of organized government by unlawful means. There is no constitutional immunity for such conduct abhorrent to our institutions. *Gitlow v. New York*[1]*; Whitney v. California*[2]. We have no reason to doubt the validity of the second and third clauses of the statute as construed by the state court to relate to such incitements to violence.

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

[2]Case 1A-S-4 on this website.

The question is thus narrowed to that of the validity of the first clause, that is, with respect to the display of the flag "as a sign, symbol or emblem of opposition to organized government," and the construction which the state court has placed upon this clause removes every element of doubt. The state court recognized the indefiniteness and ambiguity of the clause. The court considered that it might be construed as embracing conduct which the State could not constitutionally prohibit. Thus it was said that the clause "might be construed to include the peaceful and orderly opposition to a government as organized and controlled by one political party by those of another political party equally high minded and patriotic, which did not agree with the one in power. It might also be construed to include peaceful and orderly opposition to government by legal means and within constitutional limitations." **The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system. A statute which upon its face, and as authoritatively construed, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the Fourteenth Amendment. The first clause of the statute being invalid upon its face, the conviction of the appellant, which so far as the record discloses may have rested upon that clause exclusively, must be set aside.** *Judgment reversed.*

DISSENT: Justice McReynolds...[Not provided].