*Fictional Scenario*

Texas v. Johnson  
Applied to Taking a Knee: Is Protest Worth the Price?

Tiana Johnson is an 18-year-old high school student at Oakwood Public High School in Dayton, Ohio. As a junior, she is the starting kicker on the varsity football team, with hopes of entering the United States Naval Academy at Annapolis, MD on a full-ride athletic and academic scholarship.

She has the grades and an impressive record of extracurricular leadership in ROTC that make her a strong candidate for a scholarship. As the editor of the student section of the school’s website, Tiana writes a blog on a variety of topics. Her recent piece on race and police-involved shootings got some media attention in Dayton.

Like many student athletes, Tiana is frustrated that the media attention given to this issue has been waning since former NFL quarterback Colin Kaepernick’s career faltered. She says he wasn’t hired because of his take-a-knee protest at games during the national anthem. Tiana wants to keep attention on the police issue. To do that, she wears Kaepernick’s number taped on her jersey and takes a knee at the first football game of her junior season.

While most of the students at Oakwood don’t care, or they respond positively, those from military families are offended by her action. They write an open letter to the football team that they want posted on the school’s website. As editor of the student section, Tiana invites interested students to an editorial meeting about the letter, which they, ultimately, decide to post. When Tiana is asked why she insults the military, she says she is in ROTC, and wants to go to the Naval Academy.

In the meantime, the Ohio Legislature passes House Bill 999, which makes it unlawful for an adult to take a knee, be disruptive, or distract or detract from the national anthem in a way that could be interpreted as disrespecting the American flag. The penalty for violating the law is a $5,000 fine for every incident. Tiana knows that a misdemeanor conviction will stay on her record and will have an impact on college admissions and future job prospects.

Nevertheless, the issue is so important to Tiana that she takes a knee, again, after the Governor signs the bill into law. Tiana thinks the U.S. Senator, who is nominating her for Annapolis, will be impressed by her courage and the Academy will reward her leadership – even if she is convicted. Tiana thinks her ROTC and academic records are strong enough to protect her scholarship prospects.

At the game, Tiana is caught on video by a military mom using her cell phone to document the protest. She turns her phone over to the local police at halftime. After reviewing the video, the State of Ohio charges Tiana with a misdemeanor that could cost her not only the financial penalty, but admission and scholarships to any college. While her conduct falls within the scope of House Bill 999, her public defender argues that the Ohio law is unconstitutional, because it violates the First Amendment’s guarantee of free speech. The defender cites the precedent set by the Supreme Court in *Texas v. Johnson.*