

6 MAJOR U.S. SUPREME COURT HATE SPEECH CASES

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Updated May 24, 2019

In the decades following World War II, the U.S. Supreme Court has ruled on a handful of significant hate speech cases. In the process, these legal decisions have come to define the First Amendment in ways the framers may never have imagined. But at the same time, these decisions have also reinforced the right to free speech itself.

Defining Hate Speech

The American Bar Association defines hate speech as “speech that offends, threatens, or insults groups, based on race, color, religion, national origin, sexual orientation, disability, or other traits.” While Supreme Court justices have acknowledged the offensive nature of such speech in recent cases like *Matal v. Tam* (2017), they have been reluctant to impose broad restrictions on it.

Instead, the Supreme Court has chosen to impose narrowly tailored limits on speech that is regarded as hateful. In *Beauharnais v. Illinois* (1942), Justice Frank Murphy outlined instances where speech may be curtailed, including “lewd and obscene, the profane, the libelous and the insulting or ‘fighting’ words — those which by their very utterances inflict injury or tend to incite an immediate breach of the peace.”

Later cases before the high court would deal with the rights of individuals and organizations to express messages or gestures many would consider patently offensive—if not intentionally hateful—to members of a given racial, religious, gender, or other population.

Terminiello v. Chicago (1949)

Arthur Terminiello was a defrocked Catholic priest whose anti-Semitic views, regularly expressed in newspapers and on the radio, gave him a small but vocal following in the 1930s and ‘40s. In February of 1946, he spoke to a Catholic organization in Chicago. In his remarks, he repeatedly attacked Jews and Communists and liberals, inciting the crowd. Some scuffles broke out between audience members and protesters outside, and Terminiello was arrested under a law banning riotous speech, but the Supreme Court overturned his conviction.

[F]reedom of Speech,” Justice William O. Douglas wrote for the 5-4 majority, is “protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest ... There is no room under our Constitution for a more restrictive view.”

Brandenburg v. Ohio (1969)

No organization has been more aggressively or justifiably pursued on the grounds of hate speech than the Ku Klux Klan. But the arrest of an Ohio Klansman named Clarence Brandenburg on criminal syndicalism charges, based on a KKK speech that recommended overthrowing the government, was overturned.

Writing for the unanimous Court, Justice William Brennan argued that “The constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or law violation except where such

advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.”

National Socialist Party v. Skokie (1977)

When the National Socialist Party of America, better known as Nazis, was declined a permit to speak in Chicago, the organizers sought a permit from the suburban city of Skokie, where one-sixth of the town’s population was made up of families that had survived the Holocaust. County authorities attempted to block the Nazi march in court, citing a city ban on wearing Nazi uniforms and displaying swastikas.

But the 7th Circuit Court of Appeals upheld a lower ruling that the Skokie ban was unconstitutional. The case was appealed to the Supreme Court, where the justices declined to hear the case, in essence allowing the lower court’s ruling to become law. After the verdict, the city of Chicago granted the Nazis three permits to march; the Nazis, in turn, decided to cancel their plans to march in Skokie.

R.A.V. v. City of St. Paul (1992)

In 1990, a St. Paul, Minn., teen burned a makeshift cross on the lawn of an African-American couple. He was subsequently arrested and charged under the city’s Bias-Motivated Crime Ordinance, which banned symbols that “[arouses] anger, alarm or resentment in others on the basis of race, color, creed, religion or gender.”

After the Minnesota Supreme Court upheld the legality of the ordinance, the plaintiff appealed to the U.S. Supreme Court, arguing that the city had overstepped its bounds with the breadth of the law. In a unanimous ruling written by Justice Antonin Scalia, the Court held that the ordinance was excessively broad.

Scalia, citing the Terminiello case, wrote that “displays containing abusive invective, no matter how vicious or severe, are permissible unless they are addressed to one of the specified disfavored topics.”

Virginia v. Black (2003)

Eleven years after the St. Paul case, the U.S. Supreme Court revisited the issue of cross-burning after three people were arrested separately for violating a similar Virginia ban.

In a 5-4 ruling written by Justice Sandra Day O’Connor, the Supreme Court held that while cross-burning may constitute illegal intimidation in some cases, a ban on the public burning of crosses would violate the First Amendment.

“[A] State may choose to prohibit only those forms of intimidation,” O’Connor wrote, “that are most likely to inspire fear of bodily harm.” As a caveat, the justices noted, such acts can be prosecuted if the intent is proven, something not done in this case.

Snyder v. Phelps (2011)

The Rev. Fred Phelps, the founder of the Kansas-based Westboro Baptist Church, made a career out of being reprehensible to many people. Phelps and his followers came to national prominence in 1998 by picketing the funeral of Matthew Shepard, displaying signs the used slurs directed at homosexuals. In the

wake of 9/11, church members began demonstrating at military funerals, using similarly incendiary rhetoric.

In 2006, members of the church demonstrated at the funeral of Lance Cpl. Matthew Snyder, who was killed in Iraq. Snyder's family sued Westboro and Phelps for intentional infliction of emotional distress, and the case began making its way through the legal system.

In an 8-1 ruling, the U.S. Supreme Court upheld Westboro's right to picket. While acknowledging that Westboro's "contribution to public discourse may be negligible," Chief Justice John Roberts' ruling rested in existing U.S. hate speech precedent: "Simply put, the church members had the right to be where they were."

Head, Tom. "6 Major U.S. Supreme Court Hate Speech Cases."
ThoughtCo, May. 24, 2019, [thoughtco.com/hate-speech-cases-721215](https://www.thoughtco.com/hate-speech-cases-721215).