



Why Threats of Violence are Not Protected

The following case law identifies situations where speech that includes threats of violence may not be protected under the first amendment. Though all citizens are granted the right to free speech, not all speech is protected under law.

R.A.V. v. City of St. Paul, 505 U.S. 377, 388 (1992)

Authorities charged the petitioner with violating St. Paul Bias-Motivated Crime Ordinance for allegedly burning a cross in the yard of an African-American family. He sought to dismiss the charge by challenging the statute as overbroad and impermissibly content-based, thus violating the First Amendment. Ultimately, the Court held that the First Amendment did not permit the government to impose special prohibitions on speakers who express views on disfavored cases. While the statute served a compelling interest, there were content-neutral alternatives available. The Court struck down the bias-motivated crime ordinance as facially unconstitutional.

Chaplinsky v. New Hampshire, 315 U.S. 568 (1942)

Authorities charged and convicted the petitioner under a New Hampshire statute forbidding intentionally offensive speech directed at others in a public place for allegedly attacking the town marshal verbally. The complaint against Chaplinsky stated that he shouted obscenities at the police. Under New Hampshire's Offensive Conduct law (chap. 378, para. 2 of the NH. Public Laws) it is illegal for anyone to address "any offensive, derisive or annoying word to anyone who is lawfully in any street or public place ... or to call him by an offensive or derisive name."

The Court, in a unanimous decision, upheld the arrest. Writing the decision for the Court, Justice Frank Murphy advanced a "two-tier theory" of the First Amendment. Certain "well-defined and narrowly limited" categories of speech fall outside the bounds of constitutional protection. Thus, "the lewd and obscene, the profane, the slanderous," and (in this case) insulting or "fighting" words neither contributed to the expression of ideas nor possessed any "social value" in the search for truth.

Snyder v. Phelps, 562 U.S. 443 (2011)

On March 10, the Westboro Baptist Church picketed U.S. Marine Lance Corporal Matthew A. Snyder's funeral in Westminster, Maryland. Albert Snyder, the father of Matthew Snyder, sued Fred Phelps, Westboro Baptist Church and two of Phelps's daughters for defamation, intrusion upon seclusion, publicity given to private life, intentional infliction of emotional distress, and civil conspiracy. After Snyder won the initial lawsuit, Phelps appealed and the Fourth Circuit Court of Appeals reversed the jury verdict and set aside the lower court's \$5 million judgment.

In an 8–1 decision, the Supreme Court ruled in favor of Phelps, upholding the Fourth Circuit's decision. Chief Justice John Roberts (as in the Stevens case) wrote the majority opinion stating, "What Westboro said, in the whole context of how and where it chose to say it, is entitled to 'special protection' under the First Amendment and that protection cannot be overcome by a jury finding that the picketing was outrageous."