



## LANDMARK SUPREME COURT CASES AND THE CONSTITUTION *NATIONAL SOCIALIST PARTY OF AMERICA V. VILLAGE OF SKOKIE (1977)*

TUESDAY, MAY 26, 2009

### OVERVIEW

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This month's *Landmark Supreme Court Cases and the Constitution* focuses on two cases that tested the limits of the First Amendment, and that demonstrated the United States' commitment to freedom of speech. In these cases, *National Socialist Party of America v. Village of Skokie* (1977), and *Brandenburg v. Ohio* (1968), the Supreme Court held that the First Amendment protects individuals' rights to express their views, even if those views are considered extremely offensive by most people.

### RESOURCES

- <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=432&invol=43>
- [http://www.oyez.org/cases/1960-1969/1968/1968\\_492/](http://www.oyez.org/cases/1960-1969/1968/1968_492/)
- <http://www.skokiehistory.info/chrono/nazis.html>

### ACTIVITY

American writer Noam Chomsky said “If we don't believe in freedom of expression for people we despise, we don't believe in it at all.” Individuals who express unpopular opinions are protected by the First Amendment. The First Amendment prevents majorities from silencing views with which they do not agree—even views that the majority of people find offensive to their very core. Two cases, *Brandenburg v. Ohio* (1969) and *National Socialist Party of America v. Village of Skokie* (1977), help demonstrate the meaning of the First Amendment and the American commitment to freedom of speech.

The *Brandenburg v. Ohio* case concerned Ku Klux Klan member Clarence Brandenburg. Brandenburg delivered a speech in Hamilton County, Ohio, where he called for “revengeance” [sic] against Jews and African Americans. He was convicted under two Ohio laws, one of which punished the advocacy of “the duty, necessity, or propriety of crime [or] violence...as a means of accomplishing industrial or political reform.” He was sentenced to prison and fined \$1,000. Brandenburg argued that the Ohio law violated the First Amendment, which states in part, “Congress shall make no law...abridging the freedom of speech...” His case eventually went to the Supreme Court. The Court unanimously agreed with Brandenburg and struck down the Ohio law as unconstitutional. Interpreting the First Amendment, the Court reasoned that government cannot punish speech unless it meets two criteria: first, if it is “directed at inciting or producing imminent lawless action,” and second, if it is “likely to incite or produce such action.”

The 1978 *Skokie* case involved neo-Nazis who applied for a permit to march in the heavily Jewish community of Skokie, Illinois. Two weeks later, the Skokie Board of Commissioners passed an ordinance requiring marchers to post a \$350,000 insurance bond. The Board later passed an ordinance banning distribution of printed materials that promote hatred of groups of people, or marching in military style uniforms. The Nazi group argued that these three laws were unconstitutional violations of the First Amendment. The case eventually went to the Supreme Court, which ruled that the Nazi Party could not be prohibited from marching peacefully because of the content of their message.

### COMPREHENSION AND CRITICAL THINKING QUESTIONS

1. What were the facts of the case in *Brandenburg v. Ohio* (1968) and *National Socialist Party v. Village of Skokie* (1977)?
2. Compare and contrast the arguments, laws, and outcomes in each of the cases.
3. Why does the First Amendment protect even the most offensive types of speech?



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4. The phrase “politics is persuasion” is attributed to the ancient philosopher Aristotle. What did he mean? What is the function of free speech in a free society?

#### EXTENSION

Have students explore a new feature on Hate Speech and the Constitution at our student Web site:

[www.DoYouHaveTheRight.org](http://www.DoYouHaveTheRight.org)



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### ANSWERS

1. *Brandenburg* involved a Ku Klux Klan member who gave a speech calling for violence against blacks and Jews. He was convicted under an Ohio law which punished advocacy of illegal actions. The *Skokie* case involved an Illinois town which passed a series of laws designed to deny a Nazi group the freedom to march.
2. In both cases, citizens argued that the government was violating their First Amendment rights. The Ohio law in the *Brandenburg* law punished speech after the fact, while the *Skokie* case ordinances were designed to prevent the speech/assembly from occurring. In both cases, the US Supreme Court held that the governments had acted unconstitutionally.
3. Popular speech does not need protection. Part of the Founders' concern in writing the First Amendment was that majorities might try to use the force of government to silence people with unpopular views.
4. When individuals can use their natural freedoms of speech and press to express their messages and attempt to convince others of their points of view, they will be less likely to resort to violence. In a free society, individuals and institutions use reason and persuasion to convince others of change they think is needed, instead of living as though "might makes right." In a "marketplace of ideas," people are free to choose the ideas they think are beneficial, and reject those they think are destructive.