

## FIGHTING WORDS

There is a very limited “fighting words” exception to the first amendment which only applies to speech that is directed at a specific person and likely to provoke a violent reaction based on a “totality of the circumstances.”

Examples:

- Chaplinsky v. New Hampshire (1942): Chaplinsky’s words caused a direct harm to their target and could be construed to advocate an immediate breach of the peace. Thus, they lacked the social value of disseminating ideas to the public that lay behind the rights granted by the First Amendment
- R.A.V v. City of St. Paul (1992): R.A.V. burned a cross on black family’s lawn and was charged with violation of criminal ordinance. Sup. Ct. held that ordinance improperly restricted viewpoint speech and was unconstitutional

## INCITEMENT

Incitement is another very limited exemption to free speech, but requires evidence of likely and immediate violence.

- Armed KKK members march while advocating “*revenge*” against Blacks and Jews (and those who support them). The court deemed that this was not incitement.
- “*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 of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action.*” Brandenburg v. Ohio (1969)

## TRUE THREATS:

Another category of speech that is exempted from constitutional protection is “true threats”. The standard for identifying speech as a true threat requires a focus on the speaker’s **subjective intent**. Other protected speech could be chilled if speech amounting to “true threats” is interpreted liberally.

Examples:

- Watts v. US (1969): “*If they ever make me carry a rifle, the first man I want to get in my sights is LBJ*” - NOT a true threat, but political hyperbole.
- Virginia v. Black (2003): Cross Burning is not *prima facie* evidence of intent to intimidate
- Counterman v. Colorado (2023): state must prove defendant’s **subjective** understanding of the statements’ threatening nature and that the defendant **recklessly** disregarded it.

FIRST  
AMENDMENT  
CONSTITUTIONAL  
SPEECH

Hate  
Speech

Fighting  
Words

- directed at a specific person
- likely to provoke a violent reaction
- based on a “totality of the circumstances.”

True  
Threats

- Speaker has *subjective* understanding as to whether the person to whom his words were directed would perceive them as threatening
- Speaker must have acted *recklessly*

Incitement

- Speech that aims to produce an *imminent* lawless action and
- is *likely* to incite or produce such action