



National Socialist Party of America v. Village of Skokie **(1977)**

Relevant Amendments:

First Amendment

Free Speech and Expression

Background

The National Socialist German Workers' (Nazi) Party was a totalitarian movement in 20th-century Europe, meaning the state had unlimited power and exerted total control over its citizenry, shaped culture, and punished opposition. The party promoted extreme nationalism and racism, asserting that some people were racially superior to others. Germans were members of the master, or Aryan, race and Jews were said to be the primary racial threat to Aryans. The party's leader, Adolf Hitler, became the chancellor of Germany in 1933. As chancellor, he called for the genocide of all inferior races that threatened the creation of a pure Aryan society. Hitler's invasion of Poland in 1939 sparked World War II. During the war, the Nazi regime systematically murdered six million Jews in what became known as the Holocaust.

The Nazis were defeated in 1945 by the Allied Powers, an alliance that included the U.S., U.K., Soviet Union, and other countries opposed to the recent Nazi invasions of European countries. When it became clear that the Allies would win, Hitler committed suicide. Soon after, the territory acquired by the Nazis was returned to the governments from which it had been taken.

Even after the fall of Nazi Germany, Hitler sympathizers and supporters continued to promote the party's racist and hateful perspectives across the globe. One such supporter was Frank Collin, an American political activist who founded the National Socialist Party of America (NSPA) in 1970. The NSPA used the Nazi Party's swastika symbol—an icon that has become synonymous with antisemitism—as its own symbol, wore Nazi armbands, and advocated for white power. The party's primary activity was hosting weekly demonstrations protesting the migration of Black people into historically white Chicago neighborhoods. These protests took



place near their headquarters in Marquette Park, Chicago.

The NSPA protests were loud, vulgar, and at times violent. Concerned that an NSPA demonstration could draw lawsuits from the public, the Chicago Park District passed an ordinance, a law issued by a local governing body, requiring the NSPA to pay heavy fees for liability insurance to host an event in Marquette Park. The required insurance would hypothetically cover hundreds of thousands of dollars in legal fees if the demonstration drew any lawsuits, shifting this financial burden from the Chicago Park District to the NSPA. The high cost of the liability insurance ultimately prevented the NSPA from holding their rally. Collin immediately filed a lawsuit against the City of Chicago claiming that this ordinance violated his First Amendment right to assembly. He simultaneously began searching for other locations to host his protests, eventually setting his sights on the Village of Skokie, a northwestern suburb of Chicago.

Facts of the Case

In October of 1976, Frank Collin mailed a formal request to the Skokie Park District asking to host a public meeting in Skokie's Birch Park on November 6th. Collin purportedly chose Skokie because of its large Jewish population. Of its 70,000 residents, 41,000 were Jewish and approximately 7,000 were Holocaust survivors—the highest concentrated population of Holocaust survivors in America. Shortly after receiving this letter, Skokie passed a new ordinance that would require the NSPA to acquire a \$350,000 insurance policy to host rallies in the Village, similar to the Chicago Park District ordinance. The NSPA announced that 25 to 50 of its members would picket against the new insurance requirement for approximately 30 minutes outside Skokie Village Hall on May 1st, with or without permission. The picketers planned to wear Nazi uniforms with swastika armbands and carry signs which read “Free Speech for White People,” in addition to other white power statements.

The Mayor of Skokie informed local religious councils of the planned NSPA rally, urging their leaders to peacefully ignore the protest. However, it soon became clear that Skokians would not let this rally occur without a fight. With World War II ending just 30 years prior, there were deep fears about how Holocaust survivors and their families would react to hearing antisemitic rhetoric and seeing swastika flags. After much public outcry, Skokie officials filed for a preliminary injunction, a



judicial order that temporarily prevents an individual from completing a specific act while a lawsuit is ongoing, with the Cook County Circuit Court. The village asked the circuit court to block the NSPA from holding their event. Served with a complaint, Collin reached out to The American Civil Liberties Union (ACLU), a group that defends individual rights, for help protecting his First Amendment rights.

The circuit court held a hearing to address the village's motion for a preliminary injunction. During the hearing, several Skokie residents testified about the risk of violent responses from locals and others planned counter-protests to the rally. The circuit court ultimately granted the injunction on April 29th, prohibiting the May 1st rally from occurring. The injunction specifically banned "marching, walking or parading" in Nazi uniforms or with the swastika. It also criminalized sharing information that promoted hatred against Jews or other people because of their race, religion, or ancestry. In response, Collin moved the rally date up to April 30th. However, just hours before the new date, the injunction was broadened to include any new date, barring the event once again.

On behalf of Collin, the ACLU filed a stay with the Illinois Appellate Court, which is a temporary pause in legal proceedings. The stay was denied. The ACLU then filed a stay with the Illinois Supreme Court, the most powerful court in the state, with an additional request for a direct expedited appeal so that their case could be heard immediately. The Illinois Supreme Court denied both the request for a stay and the request for a direct expedited appeal. The ACLU then filed for a stay with U.S. Supreme Court Justice John Paul Stevens, who referred the case to the full Supreme Court for consideration.



Precedent and Relevant Cases

Cohen v. California (1971)

19-year-old Paul Robert Cohen wore a jacket that read “FU** THE DRAFT. STOP THE WAR” in protest of the Vietnam War. He was convicted under a California state law that banned “disturbing the peace” through “offensive conduct.” The Supreme Court reversed Cohen’s conviction, finding that his speech was protected by the First Amendment. Although his message was provocative, it was not directed toward any particular individual and was not likely to incite a violent response. Although the Supreme Court did not directly reference *Cohen* in their opinion, *Cohen* established an essential precedent that the First Amendment protects offensive expression.

Brandenburg v. Ohio (1969)

Clarence Brandenburg, a leader in the Klu Klux Klan, a white supremacist group, was convicted of violating an Ohio criminal syndicalism law. Criminal syndicalism is the advocacy of political reform through unlawful, violent methods. The Ohio law made it illegal to assemble in large groups to advocate for criminal syndicalism. The Supreme Court held that the Ohio criminal syndicalism law violated the First Amendment, and established a two-step test to evaluate future speech acts. Speech can be criminalized if it “[1] is directed to inciting or producing imminent lawless action and [2] is likely to incite or produce such action.” In other words, speech that intends to create violence and will probably create that violence can be prohibited.

Freedman v. Maryland (1964)

The state of Maryland had a law that required all movies to be evaluated by a censorship board before being shown in theaters. The Board of Censors could outlaw movies that it found inappropriate, violent, or immoral, and there was no deadline within which these decisions had to be made. Ronald Freeman, a Maryland citizen, sued the state, arguing that the law was voted in favor of Freedman, stating that the Maryland law granted the Board of Censors “overly broad licensing discretion,” or that it gave them too much freedom to outlaw movies at their own will. In order to outlaw a form of expression, like a movie, strict procedural guidelines were required



Discussion Questions

How does the Skokie case build on or depart from the free speech ideas found in *Cohen v. California* and *Brandenburg v. Ohio*?

How does the Skokie case show the struggle between letting people speak freely, as protected by the First Amendment, and keeping the public safe? Did the Supreme Court find a good way to balance both of these issues?

Collin's lawyer, David Goldberger, was Jewish. Why would a Jewish lawyer choose to defend Collins' speech?

"Free speech is having the right to not agree." Olivia explained that sacred Jewish texts such as the Talmud are full of questioning commentaries. Why is this space for questioning so important? How did it inspire her commitment to free speech, and what does it suggest about the value of encouraging more speech rather than restricting it?

Collin specifically chose to hold his protest in Skokie. At the Circuit Court hearing on whether the protest could be blocked with an injunction, the judge heard from Holocaust survivors who were afraid of having to see and hear Collin's demonstration. Should Collin's right to protest be affected by where he holds it and the audience that might see or hear it?

What could the Skokie case mean for communities that are targeted by hate speech in the future? How can these communities respond?



Decision (5-4 for National Socialist Party of America) Majority

The decision was delivered *per curiam*, meaning the whole Court issued the opinion rather than one individual justice. First, the Court held that the Illinois Supreme Court's ultimate decision was the final decision on the case. The Illinois court found that the circuit court's injunction deprived Collin of his right to free speech during the period of appellate review, or when the higher court reviewed the decision of the lower court.

Second, the Court noted that because the appeal process can take over a year to complete, states with similar rules must create procedural safeguards to protect individuals' constitutional rights. For example, states should allow for immediate appellate review if a person's fundamental rights are potentially being compromised. If immediate appellate review is denied, states must allow a stay, or a temporary stop in legal proceedings, to ensure that an individual's rights are not stripped during the judicial process. The Supreme Court of Illinois refused both the request for immediate review and a stay, stripping Collin of his First Amendment rights during the appeal period. The Supreme Court reversed the decision and remanded the case to a lower court for further review in accordance with their opinion.



Dissent

Justice William Rehnquist wrote a dissenting opinion joined by Chief Justice Warren E. Burger and Justice Potter Stewart. The dissent argued that the Supreme Court should not have heard this case at all. In order for the Supreme Court to have jurisdiction, or the right, to hear a case concerning state law, the highest court within that state has to make a final decision on the matter first. Congress imposed that procedural limitation onto the Supreme Court. The dissent found that the Supreme Court of Illinois' refusal to grant a stay on the lower court's injunction does not count as a final decision of the highest court in the state. No higher court in Illinois had reviewed or made a decision on Collin's federal claim—that the injunction itself was unconstitutional.

Therefore, the case was exclusively within the purview of the state of Illinois. The dissenting justices agreed with the majority's conclusion that the injunction was overly broad and would require substantial modifications to avoid First Amendment violations. However, the Supreme Court should have waited for the Illinois Supreme Court to make a final decision on the case before involving itself. In hearing this case, the dissent suggested that the Supreme Court disrespected the separation of judicial power between states and the federal government.