

Clarence Brandenburg had addressed a small gathering of Ku Klux Klan members in a field in Hamilton County, Ohio. During the address, which was recorded by invited media representatives, Brandenburg bemoaned the fate of the “White Caucasian race” at the hands of the government. He made anti-Semitic and anti-black statements and alluded to the possibility of “revengeance” in the event that the federal government and Court continued to “suppress the white, Caucasian race.” He also announced that the Klan members were planning to march on Washington, D.C., on Independence Day, which was a date in the future.

He was later convicted under an Ohio criminal law. The law made illegal advocating "crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform..." The court sided with Brandenburg, holding that “*Freedoms of speech and press do not permit a State to forbid 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.*”

<https://www.mtsu.edu/first-amendment/article/189/brandenburg-v-ohio>

Based on the information above, respond to the following.

- A. Identify a common constitutional freedom used to make a ruling in both *Brandenburg v. Ohio* (1969) and *Schenck v. United States* (1919)
- B. Based on the constitutional freedom identified in part A, explain why the facts of *Brandenburg v. Ohio* led to a different holding than the holding in *Schenck v. United States* (1919)
- C. Describe an action that Congress could take to respond to the *Schenck v. United States* decision if it disagreed with it.