

Brandenburg v Ohio
Supreme Court of the United States
395 U.S. 444 (1969)

THE STORY

Brandenburg, the leader of a Ku Klux Klan group in Ohio invited a Cincinnati TV reporter to a rally at a farm. The reporter captured film and audio from the rally which later appeared on local and national news networks. In the first film, there were only hooded rally participants, some with firearms, and the videographer and reporter. Much of the rally speeches and chants were inaudible, but derogatory phrases about blacks and Jews were picked up. In the first film, Brandenburg delivered a speech in Klan regalia in which he discussed "possible revengeance" toward the president, congress and supreme court if they continued to suppress the white race. He then detailed plans for a July 4 march on Congress with four hundred thousand people who would then split up and march to two separate locations – St. Augustine, Florida and Mississippi.

In a second film, Brandenburg, in his regalia and without a weapon, was among six hooded figures and delivered a similar speech as the one before, omitting the reference to a possible revengeance. He included his own opinion stating "'Personally, I believe the nigger should be returned to Africa, the Jew returned to Israel.'" He was convicted under the Ohio Syndicalism statute and fined \$1,000 and sentenced to 10 years in jail. He immediately challenged the constitutionality of his conviction under the Fourteenth Amendment to the U.S. Constitution to no avail. The intermediate appellate court of Ohio affirmed his conviction without opinion and the Supreme Court of Ohio did the same. They dismissed his appeal on the basis that no substantial constitutional question existed. He is appealing his conviction to the United States Supreme Court.

THE LEGAL ROUTE

- I. Ohio Courts of Common Pleas
 - a. In the State of Ohio v. Brandenburg case, the state found the defendant guilty and convicted under the Ohio Criminal Syndicalism statute. He was fined and sentenced to jail. The State of Ohio won.
- II. Ohio Court of the Appeals
 - a. Affirmed the court decision rendered in State v. Brandenburg case without opinion. The state won.
- III. Ohio Supreme Court
 - a. Upon appeal to the Ohio Supreme Court, Brandenburg's appeal was dismissed without opinion or an explanation because there was no substantial constitutional question that existed. The state won.
- IV. United States Supreme Court
 - a. The U.S. Supreme Court reviewed the case and Brandenburg's argument that the state of Ohio's decision violated his first and fourteenth amendment rights.

THE PRECEDENTS

1. Ohio Rev. Code Ann. § 2923.13.(Ohio Criminal Syndicalism statute) It is illegal if one advocates "the duty, necessity, or propriety of crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform" and the law punishes people for "voluntarily assembl[ing] with any society, group, or assemblage of persons formed to teach or advocate the doctrines of criminal syndicalism."

2. Noto v. United States, 367 U.S.290 (1961), Abstract teaching or discussion about violence is legal and is NOT equivalent to inciting others to do violence.

3. Yates v. United States, 354 U.S. 298, 320-324 (1957), A court must overturn a conviction if a person just advocates overthrowing the government. The judge or jury would have to find that a related “tendency to produce forcible action”. The court explained that a conviction would require more than advocacy or teaching about violence, it requires an “urging of force and violence as the means of overthrowing and destroying the Government of the United States...”

THE KEY QUESTION

Under the Fourteenth Amendment, does Ohio’s syndicalism statute protect hate speech devoid of a clear call to action for inflicting danger toward others?

THE ANSWER AND VOTE

Yes. The United States Supreme Court sided with Brandenburg and reversed the original decision from the lower courts finding him not guilty. Justices Warren, Black, Douglas, Harlan, Brennan, Stewart, White and Marshall unanimously concurred.

REASONS FOR THE DECISION

- I. The constitution guarantees free speech and free press and a State cannot take that away from a citizen unless their advocacy efforts are directly inciting or encouraging breaking the law and likely can incite violence.
- II. As precedent, the Justices referred to Noto v. United States where it was concluded that tying morals to the need for force and violence is not the same as actually preparing a group for violence and leading them to it.
- III. Another precedent was from Yates v. United States saying a court must overturn a conviction if a person just advocates overthrowing the government. Without concrete evidence that there was a push to enforce violence to overthrow the government, simply advocating for an overthrow is legal.
- IV. The majority also looked at the original statute in question, Ohio’s Criminal Syndicalism Statute. They expressed that the way the statute is written, it punishes advocacy and forbids assembly with others to advocate for a certain or described type of action.
- V. Using prior precedent and the Ohio State statute, the justices found that the statute is a direct violation of a person’s first and fourteenth amendment right.
- VI. The justices reviewed the original case trial and found that the statute didn’t differentiate between mere advocacy and actually committing the crime.

POINTS FROM THE DISSENT

No Dissents present.

KEY LEGAL POINT

The key take away from this case is that while Brandenburg and others at the rally were engaged in hate speech and were in agreement about many things including; the discriminatory statements about African-Americans returning to Africa and Jews to Israel; the purported white suppression by the government; a readiness in case congress and the president didn’t heed their warnings and a plan to further spread their message by marching in other cities, none of these actions were criminal in nature. The Klan advocated to participants, but didn’t direct, encourage or consult its

followers about [how to] to carry out acts of violence on others or take action against the minority groups.