



Press Release

Berkeley, Calif., August 22, 2017

Free Speech Online Statement on Nazism and Free Speech

As an organization devoted to free speech, we at the [Berkeley Institute for Free Speech Online](#) (Free Speech Online) are dismayed by the claims of American “Nazis” that their words and actions are protected as “free speech” under the First Amendment of the US Constitution. We do believe that unpopular speech deserves protection, even if we don’t agree with that speech. However, courts in the US have long ruled that certain speech is not protected by the First Amendment. Threats and certain incitement to violence are some examples of speech that is not protected.

For many reasons, the Nazi demonstrations in Charlottesville, VA and elsewhere go beyond the protections of free speech. Two of these reasons are:

- The marchers come with weapons, shields, and torches. Their purpose is not to enlighten the rest of us with their point of view; their obvious purpose is to intimidate.
- The marchers often engage in physical violence.

Furthermore, we question whether Nazism itself should qualify as “free speech” in a nation that relies on democracy and free speech. Nazism would eliminate both democracy and free speech for everyone, and even the right to life itself for the many groups that Nazism seeks to exterminate. To allow Nazism to come to power through free speech, and then to eliminate all human rights including free speech, would be an Achilles heel of free speech itself. Put another way, it is not hypocritical to be intolerant of intolerance.

What qualifies as “inciting violence” in the US has varied over the years according to different court cases. The US Supreme Court case *Brandenburg v. Ohio* (1969), which is the precedent used today, limited the restriction to “inciting *imminent* violence”; in other words, inciting non-imminent violence is permitted. However, we believe that this definition is far too narrow to be effective. Court decisions are sometimes wrong, and we hope the legal definition of “inciting violence” is updated in the future in light of modern experience.

Many would warn against restricting speech at all, lest we eventually lose our entire right to free speech. However, the history of the United States and elsewhere shows that this does not have to be true. Not only are there already exceptions to free speech in the US, but Germany is still a free country even after banning Nazism for many decades. Any belief system that would deny free speech to us all

and, let us not forget, advocate genocide (!), is a far greater and more direct threat than this alleged “slippery slope”.

We are big fans of countering bad information with better information, which is why we oppose censorship. However, we already know what Nazism is and it has been thoroughly discredited countless times (such as in the recent annotated version of “Mein Kampf”), and yet its proponents are not interested in any such rational discourse. We have nothing further to learn by enabling the spread of Nazism, and much to lose.

Finally, it is worth noting that the First Amendment protects against action by the government, not against actions by private citizens. For example, it does not protect against being fired or evicted for being Nazi (though labor or housing laws may). Nor does it guarantee that anyone can have an amplified platform for their views, such as a radio or television show, or a speaking slot at a university or convention.

We at Free Speech Online strongly support the rights of free speech and free expression for everyone. For this and for many other reasons, we **firmly and with absolute conviction** oppose giving Nazism, and similar extremely destructive and thoroughly discredited belief systems, any harbor.

Signed,

The Board of Directors and Staff of Berkeley Institute for Free Speech Online

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