

Schenck v. United States (1919)

Circumstances of the Case

Charles Schenck was the general secretary of the Socialist Party of America. Socialists believed that the war had been caused by and would benefit only the rich, while causing suffering and death for the thousands of poor and working-class soldiers who would do the actual fighting in Europe. Party officials not only opposed the war, they urged American workers to oppose the war as well.

Schenck participated in many antiwar activities in violation of the Espionage Act, including the mailing of about 15,000 leaflets urging draftees and soldiers to resist the draft. He was arrested and charged with “causing and attempting to cause insubordination in the military and naval forces of the United States” and with disturbing the draft. He was arrested, tried, convicted, and sentenced to prison for violating the Espionage Act of 1917, and he appealed his case to the Supreme Court.

Arguments

For the United States: A nation at war is justified in taking steps to insure the success of its effort to defend itself. The case involves congressional draft policy, not the 1st Amendment. Statements critical of the government cannot be tolerated in a crisis. The nation cannot allow an effort to deprive the armies of necessary soldiers. The actions and words of the Socialist party were a danger to the nation. The Espionage and Sedition acts, by contrast, were legitimate and appropriate in a time of war.

Decision and Rationale

The Court's unanimous (9-0) decision was written by Justice Oliver Wendell Holmes. In it, the Court upheld Schenck's conviction, declaring the Espionage Act a reasonable and acceptable limitation on speech in time of war.

In the operative passage of the decision, Holmes wrote, “The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing panic.” Holmes argued that “The question in every case is whether the words used are used in such circumstances and are of such nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.”

In short, the Court held that reasonable limits can be imposed on the 1st Amendment's guarantee of free speech. No person may use free speech to place others in danger. “Protected political speech” was diminished in time of war.

The *Schenck* case stands as the first significant exploration of the limits of 1st Amendment free speech provisions by the Supreme Court. Its clarifications on the meaning of free speech have been modified, rewritten, and extended over the years. Flowing directly from this case, two schools of legal thought on the protections of the Bill of Rights emerged. One “absolutist” group felt that the Constitution meant to tolerate no interference by government with the people's freedoms, “absolutely none.” More widely held was the “balancing doctrine,” which suggested that the right of the people to be left alone by a government had to be “balanced” against “compelling public necessity.”

