

Street Law: A Course in Practical Law (11th ed.)

DELIBERATION

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Should hate speech be banned in our democracy?

Free speech is essential in democracies. Self-government requires that citizens have accurate and timely information about issues facing their society. Free speech also allows people to advocate for issues important to them, encounter perspectives that are different from their own, and express their complaints with government. In the United States, free speech and other forms of free expression are protected by the First Amendment.

Even democracies, however, limit or prohibit certain kinds of speech. Governments place limits on speech when it conflicts with other democratic values. An example is hate speech. Hate speech is public speech that expresses hate or encourages violence towards a person or group based on something such as race, religion, gender, sexual orientation, or gender identity. Hate speech violates the democratic values of security, tolerance, and equal protection. But different democracies have different ways of dealing with hate speech based, in part, on a country's history.

The United States was born in a war for independence from Great Britain. Americans understood the war, in part, as a rebellion against British restrictions on their rights. As one result, the First Amendment to the Constitution protects freedom of expression. At the same time, however, the United States has a history of slavery, genocide, prejudice, and discrimination that has influenced how some Americans feel about hate speech today.

In the United States, Hispanics, Asian Americans, Jews, Muslims, people with disabilities, immigrants, women, members of the LGBTQ+ community, and many more groups have also been the targets of hate speech and hate crimes—both in the past and in present day. Many people who have been the targets of hate speech argue that not only does hateful speech prompt real and immediate violence, but that hate speech itself is harmful to their health and well-being. Further, many argue that continuous dehumanization of targeted groups can lead to future violence and denial of rights.

The Supreme Court has weighed in on this debate many times. One type of speech that the Court has said can be limited is incitement, which is speech designed to cause immediate, unlawful behavior and likely to do so. However, the Court has also ruled many times that hate speech is protected if it does not promote imminent violence. In the *Matal v. Tam* (2017) case, Justice Alito wrote, "Speech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express 'the thought that we hate.'"

Clearly, the question of how to handle hate speech is still under debate. Is the answer banning all hate speech? Continuing to protect it? Or somewhere in the middle?

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**Should hate speech be banned in our democracy?
Consider the options.**

YES

Hate speech should be banned.

History has shown that demeaning and hateful speech is frequently the first act of persecution against specific persons and groups. The next step may be to terrorize the group. Punishing hate speech establishes necessary and appropriate limits on what can be said in a democratic society.

Research shows that being subjected to racist hate speech on a regular basis can cause health problems. These include high blood pressure, anxiety, and depression. Students who experience racist hate speech do not do as well at school. Even when hate speech does not incite violence it causes harm to its victims.

Freedom of speech is not absolute. Society must decide—through its laws—the limits of free speech. By prohibiting hate speech, the government balances freedom of expression with other democratic values like respect and tolerance. If government gets the balance wrong, the people can always change it.

Our government should take a clear stand for what is right. If we know we are wrong. By enacting a ban on hate speech, our democracy is writing our values—tolerance, security, and equal protection—into law.

1. What are the two most compelling reasons to answer “yes” to the deliberation question?
2. What are the two most compelling reasons to answer “no” to the deliberation question?
3. What is one area of this deliberation where the two sides might find common ground?

NO

Hate should not be banned.

People will be less likely to say what they really mean if we enact laws punishing hate speech. Once the government has the power to punish expression, the types of prohibited speech will grow. Governments should be permitted to control only what people can and cannot do, not what they say or believe.

People do not agree on what speech is hateful, offensive, or just an opinion with which they disagree. If we cannot agree on what hate speech is, how can we ban it?

Laws prohibiting hate speech do not work. Such laws are often vague and require the government to determine the intent of the speaker. This is difficult, if not impossible. A word or symbol can mean something to one person, and something very different to another person.

Dealing with hate speech is the price we pay for our freedom. Everything that is legal is not necessarily socially acceptable. It is better to err on the side of allowing some harmful speech than on the side of banning some beneficial speech. A better way to deal with hateful expression is to condemn it with more speech.