

Randazza: Even Trump has a right to free speech

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Donald Trump on rally violence: It's not me

01:45 - Source: [CNN](#)

Editor's Note: [Marc J. Randazza](#) is a First Amendment attorney and managing partner of the [Randazza Legal Group](#). Follow him on Twitter [@marcorandazza](#), and read his academic publications [here](#). The opinions expressed in this commentary are solely those of the author.

CNN —

Back in March 2016, then-presidential candidate Donald Trump, annoyed by protesters at one of his rallies said, "[Get 'em out of here](#)," followed closely by, "Don't hurt 'em — if I say go 'get 'em,' I get in trouble with the press."

Despite his admonition, Trump supporters assaulted three protesters. Those three protesters are seeking to hold Trump liable for what people in the crowd did.

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Courtesy Marc Randazza

The trial court denied the defense’s motion to dismiss, but the Sixth Circuit Court of Appeals is taking the unusual step of hearing an interlocutory appeal. The Sixth Circuit will now consider whether statements like Trump’s are actionable.



If these claims survive, it will chill free speech, political and otherwise. It is not that I approve of Trump’s words, but as a sworn defender of the First Amendment, I am honor-bound to defend his right to say them – even if he might have a tense relationship with the First Amendment.

If you feel differently, I ask you to take a breath and follow me down free speech lane.

Related article It's plausible Trump incited violence, federal judge rules in OK'ing lawsuit



In our increasingly polarized political climate, up is down and black is white. Those who half a generation ago were free-speech hawks are now those who cry for censorship. Many now embrace the notion that “words are violence.” What they really mean is “words I disagree with are violence.”

This view is unprincipled – an attempt to justify “free speech for me, but not for thee” by those who, in a different context, would have worshiped at the altar of the famous Voltaire misquote: “I Disapprove of What You Say, But I Will Defend to the Death Your Right to Say It.”

Why the change? Trump Derangement Syndrome – many people are simply too blinded by their perception of the President to think clearly, critically, or honestly.

Speech is presumptively protected. And, while there were decisions at one time that prohibited speech that had the tendency to produce negative results, those were thoroughly wiped away in 1969 in the landmark case, *Brandenburg v. Ohio*.

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Trump denies blame for violence at rallies

02:00 - Source: CNN

In that case, the Supreme Court wisely held that incitement to violence could be punished, but it must be speech that is “directed to inciting or producing imminent lawless action and is likely to incite or produce such action.” It needs to have intent and immediacy and likelihood. Without all three, it remains protected.

Today, many are ready to tear down that wall protecting our cherished freedom simply because they have adopted the view that the end justifies the means. And, if their political tribe will win and our basic freedoms get in the way, that is worth it. After all, who would it hurt? Just their villain: Donald Trump.

But that is shortsighted. Lets look at the facts: Trump's words were "Get 'em out of here ... Don't hurt 'em – if I say go 'get 'em,' I get in trouble with the press."

Allowing this case to move forward on facts like that would chill speech. I know the "Occupy" movement was popular among those who call for Trump to be held liable. But I would question whether every one of those rallies went on without language of that type – or worse.

I could see a comedian saying worse to get a heckler thrown out of a nightclub. Louis Head, Michael Brown's stepfather, famously screamed, "Burn this mother***** down!" at a 2014 protest rally in Ferguson, Missouri. That was certainly more of a call to violence, to an already worked-up crowd. And rioting ensued.

And I'd be just as interested in defending him, had he been sued or prosecuted. Because there, as here, if it goes the wrong way, it will come crashing down on us all. A speaker ought to be able to say "get 'em out of here." If someone in the crowd gets carried away, that should not fall upon the speaker's shoulders, but upon the person who crossed the line himself.

Too many Americans are prepared to change their principles at this point, simply because they suffer from TDS. They are more interested in tribalism over principles.

Forget that this is a case involving someone you might despise. If this case goes the wrong way, then its arc bends toward censorship and repression.

There is an important First Amendment question here. I am happy that the 6th Circuit is considering it, and for all of our sakes, I hope that it makes the right choice. And if you think maybe Trump's free-speech rights should be laid at the altar of your politics, you need to reconsider. We can not sever his right to free speech from our own.