



Does 1st Amendment protect 'F--- the police'?

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America has the First Amendment to protect offensive speech. After all, nobody objects to speech with which they agree.

But defamation, obscenity and “true threats” are unprotected.

Nevertheless, rappers have gotten away with rhymes promoting rape, shooting and killing.

But now the U.S. Supreme Court is being asked to review the case of a rapper who recounted being arrested in a recording titled “F— the police” and was convicted of making threats.

“In totalitarian regimes – a.k.a. police states – where conformity and compliance are enforced at the end of a loaded gun, the government dictates what words can and cannot be used,” said constitutional attorney John W. Whitehead, president of The Rutherford Institute.

“This is exactly the scenario we’re seeing played out over and over again in America today, where ‘we the people’ are increasingly only as free to speak as a government official or corporate censor may allow.”

His group filed a friend-of-the-court brief along with the Cato Institute in the case now before the U.S. Supreme Court.

“Yet nowhere in the First Amendment does it permit the government to limit speech in order to avoid causing offense, hurting someone’s feelings, safeguarding government secrets, protecting government officials, insulating judges from undue influence, discouraging bullying, penalizing hateful ideas and actions, eliminating terrorism, combatting prejudice and intolerance, and the like.”

The appeal comes from rap artist Jamal Knox, known as “Mayhem Mal.” He teamed with Rashee Beasley to create “Ghetto Superstar Committee,” which was posted on Facebook and other social media.

One topic was their 2012 arrest by Pittsburgh police on drug and weapons charges.

“The song ... contained violent lyrical rhetoric regarding the police that is typical of the rap genre and its commentary on the experiences of minorities at the hands of law enforcement,” Rutherford said.

Police were monitoring their activity and eventually charged them with making terroristic threats and witness intimidation.

They were convicted in state court even after Knox's attorneys argued that the rap song and its lyrics were protected by the First Amendment and not "true threats" that can be punished criminally.

The state court rejected the argument that to be a "true threat" an objective person must consider it an actual threat and not rhetoric.

The court's ruling, the brief contends, would cause a chilling effect on speech, "particularly in an age when the government engages in unprecedented monitoring of new and ever-changing forms of expression, online and otherwise."

The outcome of the case could impact art forms with speech that many find offensive.

The brief urges the high court to take the case because lower courts are divided on the definition of "true threats."

It suggests a resolution that makes clear the First Amendment "favors more speech, not less, and the government has a heavy burden when it seeks to proscribe categories."

A "true threat," the brief contends, should be subjectively intended as a threat and objectively viewed as one.

"The 'true threats' exception must remain an exceedingly narrow carveout to the broad protections of the First Amendment," the brief states.

"Requiring courts to consider targeted speech both objectively and subjectively is one important way to ensure that result."