

Inciting Imminent Lawless Action Is Not Protected First Amendment Speech

Whereas the organizational goals of the Ku Klux Klan, Nazi party, and other White supremacist groups are both for the purpose of denying the rights of and targeting violence with the intent of genocide at Black, Indigenous, and other People of Color (BIPOC), Jews, Catholics, members of the LGBTQ community, and other identity groups;

Whereas the advocacy of force or criminal activity does not receive First Amendment protections as defined by the 1969 Supreme Court ruling in *Brandenburg v Ohio* which established the “imminent lawless action” test which places limits on First Amendment free speech, and the 1973 Supreme Court ruling in *Hess v Indiana* clarified the imminence requirement, current interpretation states that advocacy of force or criminal activity does not receive First Amendment protections if the advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action;

Whereas in the past several years there are regular examples of speech by members of the Ku Klux Klan, Nazi party, and other White supremacist groups advocating the use of force and criminal activity which has incited lawless action that resulted in the injury and death of people in the aforementioned identity groups and their allies, including the recent examples of participants in the Santee Black Lives Matter rally being ambushed and physically attacked by White supremacists while leaving the rally, and Marcus Boyd, a Black man who lives and owns a business in Imperial Beach being sucker-punched in the back of the head during a Black Lives Matter rally in his city.

Be it resolved that the San Diego county Democrats recognize that displaying symbols and imagery associated with the Ku Klux Klan, Nazi party, and other white supremacist groups (e.g. wearing a KKK hood or Nazi flag facemask while shopping) and speech promoting these groups and their agendas of achieving White supremacy through violence and genocide does not fall under protected First Amendment speech because they are currently being disseminated and displayed for the sole purpose of inciting imminent lawless action and have been successful in doing so all over the United States.

Be it further resolved that the Democratic Party calls on civil rights agencies and organizations to revisit the First Amendment free speech protections currently extended to White supremacist activity and propaganda and reevaluate if it passes the imminent lawless action limit of protected speech.