

No. 23-1351

IN ~~TEXAS~~.

TORREY LYNNE HENDERSON, AMARA JANA
RIDGE, AND JUSTIN ROYCE THOMPSON,

Petitioners,

v.

TEXAS,

Respondent.

RIT OF ~~ERTIORARI~~ TO THE
COURT OF APPEALS OF TEXAS SEVENTH DISTRICT

AMICUS CURIAE

JT MORRIS
Counsel of Record
JOSHUA A. HOUSE
FOUNDATION FOR INDIVIDUAL
RIGHTS AND EXPRESSION
700 Pennsylvania Ave. SE,
Suite 340
Washington, DC 20003
(215) 717-3473
jt.morris@thefre.org

Counsel for Amicus Curiae

331238

(800) 274-3321 • (800) 359-6859

Do the First and Fourteenth Amendments prohibit the government from convicting individuals for obstructing a passageway based solely on their participation in a peaceful march on public sidewalks and streets, without evidence that the defendants themselves knowingly or intentionally obstructed any passageway or directed, authorized, ratified, or intended that others do so?

Brandenburg v. Ohio, 395 U.S. 444 (1969).....	3, 4, 8, 9
Brown v. Hartlage, 456 U.S. 45 (1982).....	5
Connick v. Myers, 461 U.S. 138 (1983).....	6
Counterman v. Colorado, 600 U.S. 66 (2023).....	1, 3, 4, 6, 8, 9, 10
Cox v. Louisiana, 379 U.S. 536 (1965)	

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NAACP v. Button, 371 U.S. 415 (1963)	5
NAACP v. Claiborne Hardware Co., 458 U.S. 886 (1982)	3, 8, 9
<i>Nat'l Rifle Ass'n of Am. v. Vullo</i> , 602 U.S. 175 (2024)	1
<i>Nat'l Socialist Party of Am. v. Vill. of Skokie</i> , 432 U.S. 43 (1977)	2
Shuttlesworth v. City of Birmingham, 394 U.S. 147 (1969)	5, 6
Snyder v. Phelps, 562 U.S. 443 (2011)	2
Speiser v. Randall, 357 U.S. 513 (1958)	5
Timbs v. Indiana, 586 U.S. 146 (2019)	7
United States v. Alvarez, 567 U.S. 709 (2012)	6
United States v. Dionisio, 410 U.S. 1 (1973)	7

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U.S. Const. amend. I 2, 3, 5, 6, 7, 8, 9

S. Ct. Rule 37.2 1

S. Ct. Rule 37.6 1

AMICUS CURIAE¹

The Foundation for Individual Rights and Expression (FIRE) is a nonpartisan, nonprofit organization dedicated to defending the individual rights of all Americans to free speech and free thought—the essential qualities of liberty. Since 1999, FIRE has successfully defended expressive rights nationwide through public advocacy, targeted litigation, and amicus curiae participation in cases that implicate expressive rights. See,

v. Comm. for Indus. Org., 307 U.S. 496, 515 (1939) (opinion of Roberts, J.). Colonists trudged through muddy roads to rally against the Stamp Act, sparking the Revolution. And two centuries later, peaceful masses marched through the streets of Selma, leading the way toward defeating Jim Crow's stranglehold over equality. Find a crossroads in

it faces a severe burden to justify its acts. In fact, this Court recently cited the need for First Amendment breathing space as its rationale for rejecting Colorado's less-stringent objective standard for criminalizing "true threats": "By reducing an honest speaker's fear that he may accidentally or erroneously incur liability, a mens rea requirement provides 'breathing room' for more valuable speech." *Counterman*, 600 U.S. at 75 (quoting *United States v. Alvarez*, 567 U. S. 709, 733 (2012) (Breyer, J., concurring in judgment)).

In upholding that breathing space, this Court has time and again rejected the government's attempts to punish peaceful expression on public sidewalks, like the Petitioners' peaceful march here. See, e.g., *Shuttlesworth*, 394 U.S. at 158–59 (reversing criminal conviction of civil rights protestor who used public sidewalk without permit); *Edwards v. South Carolina*, 372 U.S. 229, 230, 236 (1963) (reversing "breach of the peace" conviction of civil rights protestors who used public sidewalks, where the record showed "[t]here was no violence or threat of violence"). Likewise, this Court has made clear that "speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection," including in public spaces like streets. *Snyder*, 562 U.S. at 452 (quoting *Connick v. Myers*, 461 U.S. 138, 145 (1983)).

So whether Americans are gathering in a public park to protest a war, marching down the sidewalk for religious freedom, or rallying outside City Hall against a bond measure, the First Amendment protects them—and courts must safeguard the breathing space that ensures that broad protection. If the First Amendment protects the right of Nazis to march down the streets of Skokie and

the right to display a “Thank God for Dead Soldiers” sign on the sidewalk outside a solemn military funeral—and it does—then surely it also protects the right of Petitioners to march on the sidewalks of Gainesville, Texas and call for removal of the sign.

to obstruct traffic because some of their fellow protesters chanted “Whose streets? Our streets.” But that chant alone is protected speech, incapable of satisfying Texas’s heavy burden on intent. E.g., *Hess v. Indiana*, 414 U.S. 105, 107, 109 (1973) (First Amendment protected protester from criminal punishment for saying “We’ll take the fucking street later (or again)” during an anti-war protest).

In short, the decision below abides the government criminalizing core political expression without evidence that Petitioners did anything other than what the First Amendment protects. That is no way to maintain the breathing space needed for First Amendment rights to survive. Instead, it’s a path to suffocating it.

Counterman

core.” Counterman, 600 U.S. at 81. That is a dire threat to free expression. To snuff out that threat, the Court should grant certiorari and uphold its longstanding precedent protecting peaceful political advocacy from overreaching—and speech-chilling—criminal prosecution.

By any measure, Texas turned peaceful public protest into a crime. This case is not a close call: This Court’s precedents and the longstanding breathing room afforded First Amendment rights soundly foreclose any criminal conviction. Thus, amicus FIRE urges the Court to grant the petition for certiorari and summarily reverse the judgment below.

Respectfully submitted,

JT MORRIS
Counsel of Record
JOSHUA A. HOUSE
FOUNDATION S NDIVI

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jt.morris@thefre.org

Counsel for Amicus Curie

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