

Schenck v. United States (1919)

Facts: Charles T. Schenck and Elizabeth Baer, charged with conspiring to print and circulate documents intended to cause insubordination within the military, were convicted of violating the Espionage Act of 1917. The act made it a crime to “willfully cause or attempt to cause insubordination, disloyalty, mutiny, or refusal of duty in the military ... or to willfully obstruct the recruiting service of the United States.” Schenck appealed the conviction to the Supreme Court of the United States, claiming all his actions were protected by the First Amendment.

Issue: Whether Schenck’s and Baer’s First Amendment right to freedom of speech were violated when they were convicted of conspiring to obstruct the recruitment and enlistment of service.

Opinion: The Court unanimously upheld the conviction of Schenck, not for violation of the Espionage Act, but rather for conspiracy to violate it. The Court found that the First Amendment did not apply in this case, and that Schenck’s speech was not constitutionally protected because it posed a “clear and present danger” to the country. The nation was involved in World War I, and the Court saw Schenck’s speech and action as counter-productive to the national war effort. The Court reasoned that certain speech could be curtailed, using the example of a situation where one cannot yell “fire” in a crowded theatre.

Questions

- 1. What was Schenck charged with?**

- 2. Why did Schenck believe the Espionage Act was unconstitutional?**

- 3. What did the court rule?**

- 4. What logic did the court use to justify its opinion?**

