

# SEX, DRUGS, AND ROTTIN' SOULS: CONFRONTATIONAL CAMPUS PREACHERS AND THE FIGHTING WORDS DOCTRINE

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"One of the prerogatives of American citizenship is . . . the freedom to speak foolishly and without moderation."

—Justice Felix Frankfurter<sup>1</sup>

"Prepare yourself you know it's a must. Gotta have a friend in Jesus . . . ."

—Norman Greenbaum<sup>2</sup>

## ABSTRACT

*Profane, confrontational campus preachers for decades have evangelized at state college campuses, facing arrest and criminal charges of disorderly conduct based on the fighting words doctrine which maintains that personally abusive words likely to cause a fight are subject to government prohibition. This Article argues the fighting words doctrine should not apply to the speech of confrontational campus ministers. First, the offending speech is inextricably linked to, and illustrative of, an overall religious message and is constitutionally protected. Second, the confrontational preachers are essentially social satirists and insult comics who deliver offending messages with the intent to attract attention and entertain a youthful audience while giving religious instruction. Third, the expression takes place in the context of a traditional public forum for religious, social, and political debate. Campus quads in public universities are spaces that historically have allowed for controversial expression about public matters; therefore, attempts to regulate it should receive strict scrutiny. Moreover, universities are unique, small societies where vigorous and uninhibited free speech is crucial to serving the purpose of higher education. Thus, the values of free speech and debate are elevated over politeness and there should be sufficient leeway for the expression of confrontational campus evangelists without state censorship. Lastly, this Article advocates that universities should encourage and teach the value of the importance of free speech in a democratic society, and the not-so-apparent benefits of protecting speech that is noxious and offensive.*

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1. *Baumgartner v. United States*, 322 U.S. 665, 673–74 (1944).

2. NORMAN GREENBAUM, *SPRIT IN THE SKY* (Reprise Records 1969).

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## INTRODUCTION

Spring on many state college campuses throughout the U.S. inevitably brings blossoming trees, floating frisbees . . . and fire-breathing, confrontational evangelists.<sup>3</sup> State college campus quads, those grassy, open areas where students hang out, attract these peripatetic preachers who blast theatrical and appalling soul-saving salvos upon unsuspecting passersby and the intrepid few who choose to stop and debate them.<sup>4</sup> These perennial campus rituals are often carnival-like, with students gathering to watch the spectacle and cheer, jeer, and laugh at the verbal sparring marked by profane and outrageous insults and antics.<sup>5</sup> The evangelists opine about religion, gender, sexuality, drugs, popular music, and alcohol, employing sexually charged rhetoric.<sup>6</sup> The resulting arguments can get heated, the crowds raucous, and occasionally verbal melees lead to criminal charges of disorderly conduct against the provocative preachers.<sup>7</sup>

In one such case, examined closer in Part III, James Gilles was preaching on the campus of Indiana University of Pennsylvania “on the evils of premarital sex, drinking, and homosexuality.”<sup>8</sup>

Gilles warned that “homosexuals and lesbians are headed for hell” and that “there is no such thing as a Christian lesbian . . . [or] Christian homosexual.” One woman volunteered that she was a Christian lesbian. Gilles took a pejorative tone, taunting, “oh, my, you ma’am are most confused. She thinks she’s a Christian lesbo. She’s a lesbian for Jesus.” Gilles asked the woman, “do you lay down with dogs? Are you a bestiality lover? . . . Can you be a bestiality lover and a Christian also?”

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3. “Confrontational evangelism” is a term used for a style of preaching that confronts people directly and aggressively. See, e.g., Greg Stier, *No More Confrontational Evangelism Please*, THE CHRISTIAN POST (May 15, 2019), [www.christianpost.com/voices/no-more-confrontational-evangelism-please.html](http://www.christianpost.com/voices/no-more-confrontational-evangelism-please.html).

4. See, e.g., Sage Fusco, *Preachers Have No Place on a College Campus*, MASS. DAILY COLLEGIAN (Sept. 29, 2021), [www.dailycollegian.com/2021/09/preachers-have-no-place-on-a-college-campus](http://www.dailycollegian.com/2021/09/preachers-have-no-place-on-a-college-campus).

5. See, e.g., CT Jones, *How a Rabidly Anti-Gay Preacher Inspired a Sex-Positive Summer Jam*, ROLLING STONE (July 6, 2023), <https://www.rollingstone.com/culture/culture-features/sister-cindy-one-margarita-angel-laketa-moore-tiktok-1234783235>.

6. See, e.g., Susan Orlean, *The Gospel According to Brother Jed*, NEW YORKER (Sept. 13, 2022), [www.newyorker.com/news/afterword/the-gospel-according-to-brother-jed](http://www.newyorker.com/news/afterword/the-gospel-according-to-brother-jed); see also Gilles v. Davis, 427 F.3d 197 (3d Cir. 2005).

7. See, e.g., Gilles v. Davis, 427 F.3d 197 (3d Cir. 2005).

8. *Id.* at 201.

This engendered angry responses from the crowd, including one who shouted at Gilles, “I don’t know, ask your mom.”<sup>9</sup>

Here, and in similar scenarios, prosecutors have sought criminal convictions based on the “fighting words” doctrine, which states that personally abusive words likely to cause a fight when addressed to an ordinary citizen are subject to government prohibition.<sup>10</sup>

Whether one views these spectacles as entertainment, social debate, or criminal behavior, the First Amendment questions and related policy issues they present loom large, especially in the context of state college campuses—historically important venues for debate and free expression. For example, is it violative of the First Amendment to criminally punish a confrontational preacher on a public college campus for uttering noxious insults when they are interspersed within a long religious sermon? Should the fighting words apply to such expression when the intent is to attract and entertain an audience? Should the history and tradition of debate on college campus quads allow confrontational evangelists greater leeway for such rough-and-tumble religious expression? Legal scholarship has not thoroughly addressed these questions.<sup>11</sup>

This Article examines the application of the fighting words doctrine to the unique mixture of outrageous epithets and religious, social, and political opinions expressed by these off-color, campus crusaders and proceeds as follows. Part I discusses the background and significance of *Chaplinsky v. New Hampshire*, and the two-pronged fighting words doctrine it establishes.<sup>12</sup> First, the nature of the words must “inflict injury.”<sup>13</sup> Second,

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9. *Id.* at 202.

10. See *Chaplinsky v. New Hampshire*, 315 U.S. 568, 573 (1942) (applying the fighting words doctrine to speech likely to provoke immediate violence).

11. However, scholars have weighed in on the Supreme Court’s decision in *Snyder v. Phelps*, 562 U.S. 443 (2011), protecting the right of the Westboro Baptist Church members to protest at soldiers’ funerals. See, e.g., Kevin P. Donoughe, *Can Dead Soldiers Revive a “Dead” Doctrine? An Argument for the Revitalization of “Fighting Words” to Protect Grieving Families Post-Snyder v. Phelps*, 63 CLEV. ST. L. REV. 743 (2015); Rosalie Berger Levinson, *Targeted Hate Speech and the First Amendment: How the Supreme Court Should Have Decided Snyder*, 46 SUFFOLK U. L. REV. 45 (2013). Scholars have also written about “hate speech” largely devoid of political and religious content. See, e.g., Chhun Bunkosol, *Catcalls: Protected Speech or Fighting Words?*, 33 T. JEFFERSON L. REV. 273 (2011) (catcalls); Clay Calvert, *Taking the Fight Out of Fighting Words on the Doctrine’s Eightieth Anniversary: What “N” Word Litigation Today Reveals About Assumptions, Flaws and Goals of a First Amendment Principle in Disarray*, 87 MO. L. REV. 493 (2023) (racial slurs) [hereinafter Calvert, *Taking the Fight Out*]; Clay Calvert, *Fighting Words in the Era of Texts, Ims and E-Mails: Can A Disparaged Doctrine Be Resuscitated to Punish Cyber-Bullies?*, 21 DEPAUL J. ART, TECH. & INTELL. PROP. L. 1 (2010) (cyber bullying) [hereinafter Calvert, *Cyber-Bullies*].

12. 315 U.S. 568, 572–73 (1942).

13. *Id.*

the expression must tend to provoke imminent "violence."<sup>14</sup> Lastly, the test of the doctrine is "what men of common intelligence would understand would be words likely to cause an average addressee to fight."<sup>15</sup>

Part II analyzes prominent Supreme Court cases decided after *Chaplinsky*. It explains how the Court has narrowed and muddled the fighting words doctrine by abandoning the "inflicts injury" prong in *Cohen v. California*, changing to a subjective standard for the "imminent harm" prong in *Gooding v. Wilson*, and altering its approach from an overbreadth analysis to one focusing on content and viewpoint discrimination in *R.A.V. v. St. Paul*.<sup>16</sup> Currently, the Court supports the doctrine only in name and has not upheld a conviction under the doctrine since its creation in 1942.<sup>17</sup>

Part III explores the key lower court decisions involving the doctrine and confrontational college evangelists and highlights how the courts have decided the cases inconsistently. Importantly, the Third and Sixth Circuit Courts differ strikingly in how they applied the doctrine. The former, in *Gilles v. Davis*, focused almost entirely on the "inflict[s] injury" prong in contrast with *Cohen*, holding that expression "akin to a racial slur" constituted fighting words in a situation where no violence occurred.<sup>18</sup> The latter, in *Bible Believers v. Wayne County*, held expression like the one in *Gilles v. Davis* was not fighting words.<sup>19</sup> Like *Cohen*, it disregarded the inflicts injury prong, and even held that a situation of continual violence where police feared for public safety failed to meet the "imminent harm" prong.<sup>20</sup>

Part IV argues the fighting words doctrine should not apply to the speech of confrontational campus ministers. First, the offending speech is inextricably linked to and illustrative of an overall religious message and is thus constitutionally protected. Relatedly, even if the offensive speech is determined to have little social value, it should *not* be considered in isolation as it is part of an overall religious performance. Similar to the law of obscenity, where works cannot be deemed obscene when only a portion is lacking in social value, a religious performance should also be viewed in its entirety. Second, the confrontational preachers are essentially social

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14. *Id.*

15. *Id.*

16. See *Cohen v. California*, 403 U.S. 15 (1971); *Gooding v. Wilson*, 405 U.S. 518 (1972); *R.A.V. v. St. Paul*, 505 U.S. 377, 381 (1992).

17. Burton Caine, *The Trouble with "Fighting Words": Chaplinsky v. New Hampshire Is a Threat to First Amendment Values and Should Be Overruled*, 88 MARQ. L. REV. 441, 555 (2004).

18. *Gilles v. Davis*, 427 F.3d 197, 204–06 (3d Cir. 2005); *Cohen v. California*, 403 U.S. 15 (1971).

19. 805 F.3d 228, 246 (6th Cir. 2015).

20. *Id.* at 246.

satirists and insult comics who deliver offending messages with the intent to attract attention and entertain an audience of mostly young adults while giving religious instruction. They affect campy, theatrical and/or humorous styles as aids to saving young souls, not to cause injury or imminent violence. Thus, the atmosphere they intend to create is akin to an open-air theater or comedy club. Those who choose to heckle and debate have voluntarily entered the verbal fray and assume the risk of receiving demeaning, insulting retorts. Third, the expression takes place in the context of a traditional public forum for religious, social, and political debate. Campus quads in public universities are spaces that historically have allowed for controversial expression about public matters. Accordingly, attempts to regulate it are unconstitutionally content and viewpoint based and must receive strict scrutiny. Lastly, universities are unique, small societies where vigorous and uninhibited free speech is needed to serve the purpose of higher education. Thus, the values of free speech and debate are elevated over politeness, and there should be sufficient leeway for the expression of confrontational campus evangelists without state censorship.

Finally, Part V offers concluding remarks and advocates that universities should encourage and teach the value of the importance of free speech in a democratic society, and the not-so-apparent benefits of protecting speech that is noxious and offensive.

#### I. THE ESTABLISHMENT OF THE FIGHTING WORDS DOCTRINE: CHAPLINSKY V. NEW HAMPSHIRE

Walter Chaplinsky grew up in Shenandoah, Pennsylvania, the son of a Russian immigrant who worked in the coal mines.<sup>21</sup> As a boy, Chaplinsky became deeply involved in the Jehovah's Witness faith after receiving literature and invitations from proselytizers to visit the Kingdom Hall.<sup>22</sup> He and his brother began canvassing door-to-door, passing out books, tracts, and bibles for the Witnesses.<sup>23</sup> As an adult, his devotion to the faith grew deeper, and he rose up the ranks of the organization proselytizing full time.<sup>24</sup> An energetic and passionate disciple of his faith, Chaplinsky moved to New Hampshire, taking a position where he conducted bible studies

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21. Shawn Francis Peters, *Walter Chaplinsky: The Freedom to Proselytize*, in 100 AMERICANS MAKING CONSTITUTIONAL HISTORY: A BIOGRAPHICAL HISTORY 34 (Melvin I. Urofsky ed., 2004).

22. *Id.*

23. *Id.*

24. *Id.*

inside homes in addition to his canvassing responsibilities.<sup>25</sup> Although Chaplinsky thrived in his new post, he had run-ins with police who were hostile to his activities, and even served a 40-day jail sentence for “peddling without a license.”<sup>26</sup>

One day, Chaplinsky went to the town square in Rochester, New Hampshire to proselytize and hand out Jehovah’s Witness literature, some sharply critical of the Catholic Church and veteran’s groups.<sup>27</sup> As Chaplinsky preached his contentious beliefs, such as a ban on saluting the flag, a group of men gathered around and taunted him.<sup>28</sup> One of these men, a war veteran, became enraged and attacked Chaplinsky.<sup>29</sup> Others joined in assaulting Chaplinsky and flinging his tracts and pamphlets about the square.<sup>30</sup> Seemingly to protect him from further assaults, officers escorted Chaplinsky away from the fracas and towards the police station.<sup>31</sup> En route, police officers allegedly “berated” Chaplinsky<sup>32</sup> and physically abused him.<sup>33</sup> Chaplinsky asked Marshal Bowering why he was being taken to the station, and not the men who physically attacked him.<sup>34</sup> Bowering replied: “Shut up, you damned bastard and come along.”<sup>35</sup> Chaplinsky, frustrated by his unfair treatment by the police, told Bowering, “[y]ou are a God Damned racketeer” and “a damned Fascist and the whole government of Rochester are Fascists.”<sup>36</sup>

None of Chaplinsky’s assailants were arrested or charged.<sup>37</sup> Chaplinsky, however, was criminally charged and convicted under New Hampshire state law for his profane statements to Bowering.<sup>38</sup> The law stated, in part, “[n]o person shall address any offensive, derisive or annoying word to any other person who is lawfully in any street or other public place, nor call him by any offensive or derisive name.”<sup>39</sup> The New

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25. *Id.*

26. *Id.* at 35.

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. Eric T. Kasper, *No Essential Reason to Restrict the Freedom of Speech: Why it Is Time to Knock Out Chaplinsky v. New Hampshire and the Fighting Words Doctrine*, 53 TEX. TECH L. REV. 613, 617 (2021).

32. Peters, *supra* note 21, at 35.

33. Caine, *supra* note 17, at 447 (2004).

34. *Id.*

35. *Id.* at 447–48.

36. *State v. Chaplinsky*, 18 A.2d 754, 758 (N.H. 1941).

37. Kasper, *supra* note 31, at 618.

38. Peters, *supra* note 21, at 35.

39. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 569 (quoting ch. 378, sec. 2 of the Public Laws of New Hampshire (1929)).

Hampshire Supreme Court affirmed Chaplinsky's conviction, holding the statute validly prohibited only words that "have a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed" and finding no "relationship" between Chaplinsky's profanity and freedom of speech.<sup>40</sup> Chaplinsky appealed to the Supreme Court of the United States.<sup>41</sup>

A unanimous United States Supreme Court also upheld Chaplinsky's conviction, taking a similar view that the speech at issue was beyond the protection of the First Amendment, and fell within the realm of fighting words:<sup>42</sup>

[I]t is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or "fighting" words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. . . . [S]uch utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.<sup>43</sup>

In the passage above, Justice Murphy elaborates on the doctrine and sets forth its two prongs.<sup>44</sup> The first is that fighting words, due to their nature, "inflict injury."<sup>45</sup> That is, they are inherently able to cause harm, albeit of the psychic or emotional variety.<sup>46</sup> This prong reflects the objective of restricting "extreme forms of hateful speech" that "go against the purpose of the First Amendment."<sup>47</sup> The second is that fighting words tend to incite an "immediate breach of the peace."<sup>48</sup> This prong is clearly

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40. *Id.* at 573.

41. *Id.* at 568.

42. *Id.*

43. *Id.* at 571–72.

44. Wendy B. Reilly, *Fighting the Fighting Words Standard: A Call for its Destruction*, 52 RUTGERS L. REV. 947, 951 (2000).

45. *Chaplinsky*, 315 U.S. at 572.

46. See Michael J. Mannheimer, *The Fighting Words Doctrine*, 93 COLUM. L. REV. 1527, 1336 (1993) (explaining that fighting words tend to cause harm just by their utterance); Reilly, *supra* note 44, at 982.

47. Reilly, *supra* note 44, at 951.

48. *Chaplinsky*, 315 U.S. at 572.



aimed at furthering the societal objective of preventing the provocation of violence.<sup>49</sup> In assessing whether offensive expression constitutes fighting words, the Court held that the test is not how it impacts the actual addressee but rather an objective test: “what men of common intelligence would understand would be words likely to cause an average addressee to fight.”<sup>50</sup>

The fighting words doctrine set forth by Justice Murphy is quite broad<sup>51</sup> and vague<sup>52</sup>, and thus caused a great deal of “confusion and uncertainty.”<sup>53</sup> This is due to its two prongs that have different perspectives and rationales, as well as its unclear objective test.<sup>54</sup> The first prong focuses on *content* and protecting from harm those potentially on the receiving end of the reprehensible speech.<sup>55</sup> Whereas the second centers on *context* and shielding the speaker, and perhaps those around him, from the violent conduct of the addressee.<sup>56</sup> As the prongs are separated by “or,” it is unclear what weight or significance to assign either or both.<sup>57</sup> Moreover, much ambiguity lies in the requirement that for utterances to be deemed fighting words they must be likely to cause an average person to fight.<sup>58</sup> This vague mandate could be interpreted to pertain to “either content, context, or both.”<sup>59</sup> For example, if noxious insults hurled toward another with malevolence are determined to be fighting words, would those same words uttered to someone playfully also be adjudged the same? If so, then only the content would matter; if not, then context matters as well. Given the Court’s new standard provided no guidance on this and other questions concerning its application and breadth, *Chaplinsky*’s entrance into the constitutional canon was immediately problematic.<sup>60</sup>

49. Kasper, *supra* note 31, at 626; Reilly, *supra* note 44, at 952.

50. *Chaplinsky*, 315 U.S. at 573.

51. See, e.g., William C. Nevin, *Fighting Slurs: Contemporary Fighting Words and the Question of Criminally Punishable Racial Epithets*, 14 FIRST AMEND. L. REV. 127, 133 (2015) (highlighting how the *Chaplinsky* Court held that the fighting words doctrine is broad).

52. See, e.g., Melody L. Hurdle, *R.A.V. v. City of St. Paul: The Continuing Confusion of the Fighting Words Doctrine*, 47 VAND. L. REV. 1143, 1148 (1994) (asserting that the fighting words doctrine as laid out in *Chaplinsky* is vague and creates uncertainty and confusion).

53. *Id.*

54. See *Chaplinsky*, 315 U.S. at 573 (“[W]hat men of common intelligence would understand would be words likely to cause an average addressee to fight.”).

55. *Id.*

56. Reilly, *supra* note 44, at 952.

57. See *Chaplinsky*, 315 U.S. at 573 (holding that “profane or obscene” speech falls under the fighting words doctrine).

58. Mannheim, *supra* note 46, at 1538.

59. *Id.*

60. See, e.g., Caine, *supra* note 17, at 537 (arguing that the Court’s problematic standard has led to the demise of the doctrine’s constitutional usage).

## II. THE SUPREME COURT NARROWS AND MUDDLES THE FIGHTING WORDS DOCTRINE

The Supreme Court began to alter and narrow its interpretation of the fighting words doctrine almost three decades after deciding *Chaplinsky*.<sup>61</sup> The doctrine as it exists today is much more conditional and less clear as the Court continued to acknowledge its validity but limit its application.<sup>62</sup> Some of the most noteworthy and impactful cases affecting the doctrine's development are *Cohen v. California*,<sup>63</sup> *Gooding v. Wilson*,<sup>64</sup> and *R.A.V. v. City of St. Paul*.<sup>65</sup>

### *A. Ignoring the "Inflicts Injury" Prong: Cohen v. California*

The first, *Cohen v. California*, examined the doctrine in the context of written, offensive, expression.<sup>66</sup> In 1968, Paul Cohen visited some friends in Los Angeles.<sup>67</sup> It was during the peak of protesting against the United States war in Vietnam, and while discussing their antiwar stances, someone wrote "Fuck the Draft" and "Stop the War" on Cohen's jacket.<sup>68</sup> The next morning, Cohen walked into the corridor of the Los Angeles County courthouse in the presence of men, women, and children, wearing the jacket with the messages visible.<sup>69</sup> Cohen removed his jacket before entering the courtroom, but a police officer had spotted the message in the corridor and requested that Cohen be cited for contempt of court.<sup>70</sup> Although the judge declined, the officer nevertheless placed Cohen under arrest.<sup>71</sup> Cohen was convicted under a state statute prohibiting "maliciously and willfully disturb[ing] the peace or quiet of any neighborhood or person . . . by . . . offensive conduct."<sup>72</sup> The California Court of Appeals

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61. See, e.g., *id.*, at 460 (explaining that the First Amendment needs "breathing space" and the government must regulate with specificity).

62. See, e.g., Caine, *supra* note 17, at 445 (2004) (describing the fighting words doctrine as a "minefield"); R. George Wright, *Fighting Words Today*, 49 PEPP. L. REV. 805, 807 (2022).

63. 403 U.S. 15 (1971).

64. 405 U.S. 518 (1972).

65. 505 U.S. 377 (1992).

66. 403 U.S. 15 (1971).

67. LEE EPSTEIN ET AL., CONSTITUTIONAL LAW FOR A CHANGING AMERICA: RIGHTS, LIBERTIES, AND JUSTICE 234 (11th ed. 2021).

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Cohen*, 403 U.S. at 16.

upheld the conviction holding it “reasonably foreseeable that such conduct might cause others to rise up to commit a violent act.”<sup>73</sup> The California Supreme Court denied Cohen’s appeal, but with the aid of the American Civil Liberties Union (ACLU), he successfully petitioned to the United States Supreme Court.<sup>74</sup>

The Supreme Court reversed, declaring that the display of the profane jacket in the courtroom corridor was constitutionally protected.<sup>75</sup> Justice Harlan, writing for the majority, began by making clear that Cohen’s vulgarism did not constitute conduct, but rather expression: “The conviction quite clearly rests upon the asserted offensiveness of the *words* Cohen used to convey his message to the public. The only ‘conduct’ which the State sought to punish is the fact of communication.”<sup>76</sup>

In applying the fighting words doctrine, the Court added a condition that the in-person communication must be directed toward a specific person, stating, “[n]o individual actually or likely to be present could reasonably have regarded the words on appellant’s jacket as a direct personal insult.”<sup>77</sup> Thus, the Court held the expression fell outside the ambit of fighting words.<sup>78</sup>

The Court then focused on Cohen’s lack of intent to incite violence, as well as the absence of any evidence of a disturbance, noting there was “no showing that anyone who saw Cohen was, in fact, violently aroused, or that appellant intended such a result.”<sup>79</sup> While remarking that the f-word on the jacket is “perhaps more distasteful than others,” the Court mused, famously, that “one man’s vulgarity is another’s lyric. Indeed, we think it is largely because governmental officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual.”<sup>80</sup> Finally, the Court discussed the danger of censoring specific words: “Indeed, governments might soon seize upon the censorship of particular words as a convenient guise for banning the expression of unpopular views. We have been able . . . to discern little social benefit that might result from running the risk of opening the door to such grave results.”<sup>81</sup>

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73. *Id.* at 17.

74. EPSTEIN ET AL., *supra* note 67.

75. *Cohen*, 403 U.S. at 15.

76. *Id.* at 18.

77. *Id.* at 20.

78. *Id.*

79. *Id.*

80. *Id.* at 25.

81. *Id.* at 26.

*Cohen v. California* is noteworthy in that the Court virtually ignores *Chaplinsky*'s injury prong.<sup>82</sup> The Court focuses nearly entirely on the context surrounding the expression rather than the harm caused by the vulgarity.<sup>83</sup> The majority notes Cohen did not intend to disturb the peace, and there was no showing that anyone who saw Cohen was, in fact, violently aroused.<sup>84</sup> Furthermore, they emphasized that the language was not directed toward a particular person and that observers of the offending language could simply redirect their gaze away from the jacket.<sup>85</sup> The majority also did not evaluate the extent of any harm that may have resulted from the expression.<sup>86</sup> Thus, the *Cohen* Court turns the *Chaplinsky* analysis "on its head,"<sup>87</sup> focusing not on the lack of social value of the objectionable words, but rather the lack of "social benefit" in censoring "particular words" that might be "a convenient guise for banning the expression of unpopular views."<sup>88</sup>

*B. A Subjective Standard for the "Imminent Harm" Prong: Gooding v. Wilson*

A year after deciding *Cohen*, the Court continued honing the fighting words doctrine with their decision in *Gooding v. Wilson*.<sup>89</sup> In *Gooding*, Johnny Wilson and others were picketing a U.S. Army building in protest of the Vietnam War.<sup>90</sup> When Army inductees arrived, Wilson helped block the door to deny their entry.<sup>91</sup> Police officers requested that the protestors move away, but they refused.<sup>92</sup> When the officers tried to clear the doorway, Wilson scuffled with them, and "committed assault and battery on . . . two police officers."<sup>93</sup> During this time, without provocation, Wilson threatened one of the officers saying, "[w]hite son of a bitch, I'll kill you. You son of a bitch, I'll choke you to death."<sup>94</sup> To the other officer he said,

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82. *Id.* at 20.

83. *Id.*

84. *Id.* at 20.

85. *Id.* at 21.

86. *Id.*

87. Rodney A. Smolla, *Words "Which by Their Very Utterance Inflict Injury": The Evolving Treatment of Inherently Dangerous Speech in Free Speech Law and Theory* 36 PEPP. L. REV. 317, 332 (2009).

88. *Cohen*, 403 U.S. at 26.

89. 405 U.S. 518, 523 (1972).

90. *Id.* at 519 n.88.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

also without provocation, “[y]ou son of a bitch, if you ever put your hands on me again, I’ll cut you all to pieces.”<sup>95</sup> Wilson was charged and convicted under a Georgia statute providing: “Any person who shall, without provocation, use to or of another, and in his presence . . . opprobrious words or abusive language, tending to cause a breach of the peace . . . shall be guilty of a misdemeanor.”<sup>96</sup> On appeal, the Georgia Supreme Court upheld the conviction.<sup>97</sup>

The Supreme Court, on review, first reaffirmed the doctrine stating, “[o]ur decisions since *Chaplinsky* have continued to recognize state power constitutionally to punish ‘fighting’ words under carefully drawn statutes not also susceptible of application to protected expression.”<sup>98</sup> Turning to the Georgia statute, the Court struck it down, deeming it overly broad as it encompassed utterances beyond those that “have a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed.”<sup>99</sup> In examining the statutory language, the *Gooding* Court noted that “‘opprobrious’ and ‘abusive’” had dictionary definitions “giv[ing] them greater reach than ‘fighting’ words.”<sup>100</sup> The Court also held that the Georgia Supreme Court’s interpretation of the phrase “breach of the peace” was too expansive as it “includes all violations of the public peace or order, or decorum,” rather than just those that provoke a violent response.<sup>101</sup>

Thus, the Court in *Gooding* again ignored *Chaplinsky*’s injury requirement emphasizing that fighting words must exceed mere abusive, harsh, insults and “must be likely to cause instant physical violence.”<sup>102</sup> The *Gooding* Court also narrowed *Cohen*’s standard that the words must be directed to an individual.<sup>103</sup> Rather than examining whether an ordinary citizen would be prompted to violence, the *Gooding* majority shifted the inquiry to whether *that addressee, in those circumstances*, would succumb to violence.<sup>104</sup> Indeed, *Gooding* suggests that “one can get away with more

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95. *Id.* (quoting *Wilson v. State*, 156 S.E.2d 446, 449 (Ga. 1967)).

96. *Id.* at 519.

97. *Wilson*, 156 S.E.2d at 450 (Ga. 1967).

98. *Gooding*, 405 U.S. at 523.

99. *Id.* at 524.

100. *Id.* at 525 (“[Webster’s Dictionary] defined ‘opprobrious’ as ‘conveying or intended to convey disgrace,’ and ‘abusive’ as including ‘harsh insulting language.’”).

101. *Id.* at 527.

102. Nevin, *supra* note 51, at 135.

103. Sanjiv N. Singh, *Cyberspace: A New Frontier for Fighting Words*, 25 RUTGERS COMPUT. & TECH. L.J. 283, 305 (1999).

104. *Id.*; Ashley Barton, *Oh Snap!: Whether Snapchat Images Qualify as “Fighting Words” Under Chaplinsky v. New Hampshire and How to Address Americans’ Evolving Means of Communication*, 52 WAKE FOREST L. REV. 1287, 1295 (2017); Mannheimer, *supra* note 46, at 1541–42;

invective and vitriolic speech if it is directed at a cop rather than the average person.”<sup>105</sup> In summary, the Court continued “reject[ing] the idea of defining fighting words as a category of speech inherently [sic] likely to cause violence” instead focusing on the individual facts and their context.<sup>106</sup>

*C. A Shift in Approach from Overbreadth to Content and Viewpoint  
Discrimination: R.A.V. v. City of St. Paul*

Two decades later, in *R.A.V. v. City of St. Paul*,<sup>107</sup> the Supreme Court enunciated further its views on the fighting words doctrine in a case involving a bias-motivated criminal statute. Russel and Laura Jones, a Black couple, moved with their five children to a mostly white and working-class neighborhood in St. Paul, Minnesota.<sup>108</sup> The family began to experience serious harassment from some on their street, finding their car tires slashed, and hearing racial insults directed at the children.<sup>109</sup> Then, one early June morning, several teenagers “assembled a crudely made cross by taping together broken chair legs.”<sup>110</sup> They then entered the fenced yard of the Jones family and set fire to the cross.<sup>111</sup> *R.A.V.*, a juvenile, was charged with violating the St. Paul, Minnesota, Bias-Motivated Crime Ordinance, which stated:

Whoever places on public or private property a symbol, object, appellation, characterization or graffiti, including, but not limited to, a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender commits disorderly conduct and shall be guilty of a misdemeanor.<sup>112</sup>

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Philip Weinberg, *R.A.V. and Mitchell: Making Hate Crime a Trivial Pursuit*, 25 CONN. L. REV. 299, 311 (1993); Hurdle, *supra* note 52, at 1152–53.

105. Clay Calvert, *Personalizing First Amendment Jurisprudence: Shifting Audiences & Imagined Communities to Determine Message Protection in Obscenity, Fighting Words, and Defamation*, 20 U. FLA. J.L. & PUB. POL’Y 439, 459 (2009).

106. Mannheimer, *supra* note 46, at 1546.

107. 505 U.S. 377 (1992).

108. See Conrad DeFiebre, *Burning Cross Greets Black Family on St. Paul’s East Side*, MINNEAPOLIS STAR TRIBUNE (June 22, 1990).

109. *Id.*

110. *R.A.V.*, 505 U.S. at 379.

111. *Id.*

112. *Id.* at 380.

R.A.V. moved to dismiss the charge as violative on the basis that it was substantially overbroad and unconstitutionally content-based.<sup>113</sup> The trial court granted R.A.V.'s motion, but the Minnesota Supreme Court reversed, holding the ordinance was not unconstitutionally content-based because it was crafted sufficiently narrow to serve a "compelling governmental interest in protecting the community against bias-motivated threats to public safety and order."<sup>114</sup> R.A.V. successfully petitioned the U.S. Supreme Court for certiorari.<sup>115</sup>

Writing for the majority, Justice Scalia first noted the Court was "bound by the construction given to it by the Minnesota court" that the ordinance applied only to expressions deemed to be fighting words.<sup>116</sup> However, Justice Scalia held the ordinance to be unconstitutional on its face as it discriminated based on content and viewpoint.<sup>117</sup> The Court held that fighting words, like other types of speech, such as obscenity and defamation, are a category of speech subject to regulation because they contain "constitutionally proscribable content."<sup>118</sup> Yet, the *R.A.V.* Court asserted, fighting words were not "entirely invisible to the Constitution," so the government cannot regulate them on the basis of the content or message they contain.<sup>119</sup> St. Paul's ordinance was impermissibly content-based because it pertained "only to 'fighting words' that insult, or provoke violence, on the basis of race, color, creed, religion or gender."<sup>120</sup>

Expression that is similarly vicious and abusive would be permissible under that ordinance so long as it did not address one of the named taboo topics.<sup>121</sup> Moreover, the *R.A.V.* Court maintained the ordinance was also discriminatory in viewpoint as it criminalized epithets *against* race, color, creed, religion, or gender, while equally vile insults *in favor* of those subjects were allowed.<sup>122</sup> Justice Scalia famously quipped that the First Amendment does not allow St. Paul "to license one side of a debate to fight freestyle, while requiring the other to follow Marquis of Queensbury rules."<sup>123</sup>

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113. *Id.*

114. *Id.* at 381.

115. *Id.*

116. *Id.*

117. *Id.* at 391.

118. *Id.* at 383–84.

119. *Id.* (giving the example that government can proscribe libel, but it may not regulate content further by proscribing only libel that disparages the government).

120. *Id.* at 391.

121. *Id.*

122. *Id.*

123. *Id.* at 392.

It is noteworthy that the *R.A.V.* Court “retained the doctrine of fighting words as a ‘category’ of speech” but retreated from its prior determinations that fighting words were entirely beyond First Amendment coverage.<sup>124</sup> In fact, the Court asserted that fighting words have *value* as speech.<sup>125</sup> “It is not true that ‘fighting words’ have at most a ‘*de minimis*’ expressive content, or that their content is *in all respects* ‘worthless and undeserving of constitutional protection’; sometimes they are quite expressive indeed.”<sup>126</sup>

Equally noteworthy is the *R.A.V.* majority’s explicit rejection of Justice Stevens’s suggestion in his concurring opinion<sup>127</sup> that St. Paul’s ordinance is aimed “not to speech of a particular content, but to particular ‘injur[ies]’ that are ‘qualitatively different’ from other injuries.”<sup>128</sup> Justice Scalia’s sharp response was a clear rebuke of the rationale behind the “inflicts injury” prong.<sup>129</sup>

This is wordplay. What makes the anger, fear, sense of dishonor, etc., produced by [hate speech fighting words] . . . distinct from the anger, fear, sense of dishonor, etc., produced by other fighting words is nothing other than the fact that it is caused by a distinctive idea, conveyed by a distinctive message. The First Amendment cannot be evaded that easily.<sup>130</sup>

Lastly, the *R.A.V.* Court stated, confusingly, that “the unprotected features of . . . [fighting] words are . . . essentially a ‘nonspeech’ element of communication,” and regulating fighting words is analogous to banning a “noisy sound truck.”<sup>131</sup> Both are merely modes of delivering ideas, and the government cannot constitutionally regulate them based upon the ideas that they communicate “even if only ‘unprotected’ speech is affected.”<sup>132</sup> The *R.A.V.* Court “tacitly reaffirmed *Chaplinsky* and its progeny,” but the concurring Justices disagreed conceptually with the majority about what constitutes fighting words.<sup>133</sup>

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124. Mannheim, *supra* note 46, at 1548.

125. *Id.*

126. *R.A.V.*, 505 U.S. at 384–85.

127. See Harv. L. Rev. Ass’n, *The Demise of the Chaplinsky Fighting Words Doctrine: An Argument for Its Interment*, 106 HARV. L. REV. 1129, 1139–40 (1993) [hereinafter Harv. L. Rev. Ass’n, *Demise of Chaplinsky*].

128. *R.A.V.*, 505 U.S. at 392.

129. See Harv. L. Rev. Ass’n, *Demise of Chaplinsky*, *supra* note 127, at 1140.

130. *R.A.V.*, 505 U.S. at 392–93.

131. *Id.* at 386.

132. Mannheim, *supra* note 46, at 1548.

133. Nevin, *supra* note 51, at 137. Similarly, in *Cohen and Gooding*, the Justices could not agree on what constitutes fighting words. See 403 U.S. 15 (1971); 405 U.S. 518 (1972).



### D. Summary: A Confusing Doctrine

After *Chaplinsky* and before *R.A.V.*, the Court substantially narrowed the fighting words doctrine abandoning the “inflicts injury” prong and focusing their analyses on the context surrounding the expression and the likelihood of immediate violence.<sup>134</sup> The Court viewed government restrictions of expression that were merely offensive and not likely to provoke imminent violence as unconstitutionally overbroad regulations of protected speech.<sup>135</sup> The *R.A.V.* Court, in contrast, took an “underinclusive” approach striking down the government restrictions based on content and viewpoint discrimination, rather than the regulation’s overbreadth.<sup>136</sup> Importantly, since *Chaplinsky*, the Court has not upheld any convictions arising from the fighting words doctrine.<sup>137</sup> The Court seems to be operating in a curious mode where it cites the doctrine in name but fails to endorse it in substance.<sup>138</sup> This ambivalence, along with the varying approaches of the Court over the years, has muddied the jurisprudential waters,<sup>139</sup> and left the lower courts confused and divided in deciding fighting words cases.<sup>140</sup>

## III. THE FIGHTING WORDS DOCTRINE V. CONFRONTATIONAL PREACHERS IN THE LOWER COURTS

Perhaps due to the Supreme Court’s murky guidance,<sup>141</sup> the fighting words doctrine remains alive and well in the lower courts.<sup>142</sup> In recent years, lower court decisions have held myriad slurs, expletives, and vulgarities to be fighting words in various contexts.<sup>143</sup> This Part begins examining one such case, *Gilles v. Davis*, referenced in Part I, a Third

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134. See, e.g., Harv. L. Rev. Ass’n, *Demise of Chaplinsky*, *supra* note 127, at 1140; Hurdle, *supra* note 52, at 1154; See, e.g., Mark P. Strasser, *Those Are Fighting Words, Aren’t They? On Adding Injury to Insult*, 71 CASE W. RES. L. REV. 249, 285 (2020) (arguing the Court has not specifically rejected the “inflict injury” prong and thus not precluded it from later use).

135. See, e.g., *Street v. New York*, 394 U.S. 576 (1969); *Gooding v. Wilson*, 405 U.S. 518, 523 (1972).

136. *R.A.V.*, 503 U.S. at n.3.

137. Caine, *supra* note 17, at 555.

138. See, e.g., *id.* at 551–52.

139. See Hurdle, *supra* note 52.

140. See, e.g., Caine, *supra* note 17, at 555.

141. See, e.g., *id.* at 445.

142. David L. Hudson, *Essay: The Fighting Words Doctrine: Alive and Well in the Lower Courts*, 19 UNIV. N.H. L. REV. 1 (2020).

143. See, e.g., Nevin, *supra* note 51, at 138 (describing how various insults in various contexts can constitute fighting words).

Circuit decision that holds the speech of a confrontational campus evangelist constitutes fighting words.<sup>144</sup> It then discusses two other noteworthy decisions, *Gilles v. State* and *Bethel v. City of Mobile*, where the courts similarly hold the speech of confrontational preachers proselytizing in *non-university* public spaces to be fighting words.<sup>145</sup> It concludes with an analysis of *Bible Believers v. Wayne County*, a prominent Sixth Circuit decision protecting the offensive speech of confrontational preachers, that conflicts with the Third Circuit's decision in *Gilles v. Davis*.<sup>146</sup>

*A. A Confrontational Campus Preacher Resurrects the Chaplinsky Injury  
Prong: Gilles v. Davis*

James Gilles, known as “Brother Jim,” is an itinerant evangelist<sup>147</sup> who travels to college campuses preaching against what he calls the “‘big four’—drugs, sex, booze, and rock and roll.”<sup>148</sup> Gilles gives the following story of his personal salvation: He grew up a devotee of sex, drugs, rock and roll, and alcohol, due to the manipulations of Satan.<sup>149</sup> While attending a concert where rock band Van Halen performed, “singer David Lee Roth shouted to the crowd: ‘Not even God can save your soul at a Van Halen concert!’ Gilles saw the light, called on God to save him and thus refute Roth, and was saved.”<sup>150</sup> Afterward, Brother Jim began preaching a message on college campuses that he summarizes as: “Sinner friend, I have good news for you, you also can experience righteousness, peace and joy in the Holy Ghost if you would only forsake your sinful, selfish ways and turn to The Lord and Savior Jesus Christ.”<sup>151</sup>

One day, James Gilles came to the Oak Grove on the campus of Indiana University of Pennsylvania and started preaching about the evils of fornicating, drunkenness, and homosexuality.<sup>152</sup> Brother Jim was accompanied by a few dozen members of the “Campus Ministry,”<sup>153</sup> including one who videoed the event,<sup>154</sup> and a crowd of about 75–

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144. *Gilles v. Davis*, 427 F.3d 197 (3d Cir. 2005).

145. See *infra* Part III.B.2; *Bethel v. City of Mobile*, No. 10-0009-CG-N, 2011 WL 1298130 (S.D. Ala. Apr. 5, 2011).

146. *Bible Believers*, 805 F.3d at 261–62.

147. *Gilles v. Blanchard*, 477 F.3d 466, 467 (7th Cir. 2007).

148. *Gilles v. Davis*, 427 F.3d 197, 201 (3d Cir. 2005).

149. *Blanchard*, 477 F.3d. at 467.

150. *Id.*

151. *Id.*

152. *Davis*, 427 F.3d. at 201.

153. *Id.* The “Campus Ministry” is Gilles’s business and sole source of income. *Id.* at 201 n.1.

154. *Id.* at 201–02.

100 students clustered around.<sup>155</sup> Gilles proclaimed that the “student body was full of ‘fornicators,’ ‘whores,’ ‘drunken little devils,’ . . . and ‘drugs, sex, booze and rock and roll freaks.’”<sup>156</sup> In response, one student “threw an apple core” toward Brother Jim, and “[a]nother shouted ‘get your fucking God off our campus.’”<sup>157</sup> Brother Jim “asked the man if he was a communist,” to which he responded, “you’re a small minded man.”<sup>158</sup> Told by someone he was disturbing classes, Brother Jim called the man “cigarette breath.”<sup>159</sup> He retorted, “don’t be belittling me. It is Goddamn campus policy . . . You will not preach while classes are in session.”<sup>160</sup> Brother Jim replied, “oh yes I will, devil.”<sup>161</sup>

Brother Jim then began preaching against homosexuality which led to the exchange with the student recounted in Part I.<sup>162</sup> Gilles called her a “Christian lesbo,” and a “lesbian for Jesus.”<sup>163</sup> He then asked her, “do you lay down with dogs? Are you a bestiality lover? . . . Can you be a bestiality lover and a Christian also.”<sup>164</sup> A member of the crowd responded, “I don’t know, ask your mom.”<sup>165</sup> University police arrived at the scene, responding to a report of a “near riot taking place.”<sup>166</sup> Officer Davis heard Brother Jim call someone a “lesbian” and “homosexual,” and said that bystanders claimed Gilles was “singling out individuals, calling them names.”<sup>167</sup> Officer Davis then arrested Gilles for disorderly conduct and other related charges.<sup>168</sup>

Brother Jim was granted a writ of habeas corpus by the state trial court which dismissed the charges.<sup>169</sup> Gilles then filed several federal claims under 42 U.S.C. § 1983, including a First Amendment violation against Officer Davis.<sup>170</sup> The District Court granted summary judgment in favor of defendants, holding Brother Jim’s language constituted fighting words.<sup>171</sup>

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155. *Id.* at 201.

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. *See supra* Part I.A.

163. *Gilles v. Davis*, 427 F.3d 197, 202 (3d Cir. 2005).

164. *Id.* at 202.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.* at 203 (holding that Gilles’s speech was protected noting that while his remarks were objectionable to some many in the crowd were either listening quietly or laughing).

170. *Id.* at 202.

171. *Id.* at 204.

On review in the Third Circuit, the court examined the First Amendment claim in the context of deciding whether the officers had qualified immunity.<sup>172</sup> The majority held that a great deal of Gilles's speech was constitutionally protected.<sup>173</sup> Citing *Cohen*, the court deemed some of Gilles's "questionable speech" (e.g., the campus being full of fornicators and drunkards) not likely to incite violence as it was addressed to the crowd and not an individual.<sup>174</sup> The court also noted that the video showed Gilles's "speech and manner" were "lacking in bite:"

For example, Gilles stated that "every Mormon is damned to hell," but added a comical overtone by finishing the sentence, "including, Donnie and Marie

Osmond." His manner varied between hostile and jaunty, and sometimes exuded an air of theatrical exaggeration (e.g., Gilles emphasized a point by fully extending his arms in front of him towards the sky, projecting his voice as one might do in a play).<sup>175</sup>

The majority remarked that some of the insults lobbed at specific people (e.g., "cigarette breath," "devil," "communist") were "unpleasant but petty" and were "not sufficiently provocative to constitute fighting words."<sup>176</sup>

However, the court held that Gilles's insults toward the woman declaring herself a Christian lesbian (e.g., "Christian lesbo," "lesbian for Jesus," "do you lay down with dogs," and "are you a bestiality lover") were "especially abusive and constituted fighting words."<sup>177</sup> The court maintained that Gilles's protected speech did not insulate him because "[w]here part of speech constitutes fighting words, the police may arrest for disorderly conduct even though other parts of the speech may be less provocative."<sup>178</sup> It then held that the police enjoyed qualified immunity in

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172. *Id.* at 201–12.

173. *Id.* at 205.

174. *Id.*

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.* (citing *Ovadal v. City of Madison*, 416 F.3d 531, 535 (7th Cir. 2005) (noting that evangelicals displaying large signs with religious messages on a pedestrian overpass were arrested for disorderly conduct allegedly due to concern about distracting drivers and creating a safety hazard)).

light of the circumstances.<sup>179</sup> A reasonable officer would have found probable cause to arrest Gilles as he “was rude, mocking, confrontational, and insulting,” and the crowd’s reactions “span[ned] the spectrum from pettiness to . . . hostility” with many “upset and angry.”<sup>180</sup> Moreover, the court found the insults aimed at the woman were “abusive, akin to a racial slur.”<sup>181</sup>

### *B. Cases Involving Confrontational Preachers in Other Public Spaces*

While *Gilles v. Davis* addresses squarely whether offensive proselytizing on a college campus constitutes fighting words,<sup>182</sup> decisions involving open air ministers preaching on public streets and sidewalks are factually similar and thus relevant.

#### 1. A Primary Focus on the Nature of the Expression: *Gilles v. State*

Brother Jim was no stranger to litigation when he lost the federal lawsuit in *Gilles v. Davis*.<sup>183</sup> While certainly not the only campus preacher provocateur traveling the country at the time,<sup>184</sup> he was one of the most notorious.<sup>185</sup> By 2005, he had been arrested more than 40 times for his preaching and had filed multiple lawsuits against public universities for denying him access to their campuses.<sup>186</sup> One of those arrests occurred years earlier in his hometown of Evansville, Indiana, and he appealed his conviction in *Gilles v. State*.<sup>187</sup>

One evening, Brother Jim was preaching “to a crowd of revelers at a ‘bierstube’ on the grounds of the old courthouse in Evansville.”<sup>188</sup> The festival had a live band and alcoholic drinks, and Gilles positioned himself on the public sidewalk by the entrance to the event.<sup>189</sup> When the band would stop playing, Gilles preached without amplification to the crowd of

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179. *Id.* at 205–07.

180. *Id.* at 206.

181. *Id.*

182. *See* *Davis*, 427 F.3d at 205–06.

183. *See, e.g.*, Adam Chandler, *Cert. Petition Preview: Religious Speech on Public University Campuses*, SCOTUSBLOG (Sept. 7, 2007), <https://www.scotusblog.com/2007/09/cert-petition-preview-religious-speech-on-public-university-campuses>; Jeffrey Selingo, *Murray State U. and Preacher Settle Lawsuit*, THE CHRON. OF HIGHER EDUC., (Dec. 24, 2007), <https://www.chronicle.com/article/murray-state-u-andpreacher-settle-lawsuit/>.

184. *See, e.g.*, Fusco *supra* note 4.

185. *See, e.g.*, Chandler *supra* note 205.

186. *See, e.g., id.*; Selingo *supra* note 205.

187. 531 N.E.2d 220, 221 (Ind. Ct. App. 1988).

188. *Id.* at 221.

189. *Id.*

1,100, of which about 200–300 could hear him.<sup>190</sup> According to police, Brother Jim called the crowd “fuckers, sinners, whores, queers, drunkards, AIDS people, and scum of the earth,” and called upon them to “repent.”<sup>191</sup> Unsurprisingly, “some . . . took umbrage at Gilles’s message and characterizations.”<sup>192</sup> Gilles was “loud and boisterous,” and twice refused to stop preaching when asked by police.<sup>193</sup> The police arrested Brother Jim for disorderly conduct, and he was convicted at trial.<sup>194</sup>

On appeal, the state court affirmed Gilles’s conviction, ruling his expression to be unprotected fighting words.<sup>195</sup> The court noted the test of the fighting words exception is “whether, under an objective standard, the words were stated as a personal insult to the hearer in language inherently likely to provoke a violent reaction.”<sup>196</sup> Furthermore, the court stated that “words and the context in which they are spoken” are key in the determination and they “must be spoken as a face-to-face personal insult” to be considered fighting words.<sup>197</sup> The court observed that the words were directed to people in the crowd, and they were “of a nature to provoke violent reaction.”<sup>198</sup> “In terms generally considered some of the most offensive in our culture,” the court said, Brother Jim “placed his listeners in categories defined by sexual activity, sexual orientation, and sexually transmitted disease.”<sup>199</sup> The court concluded that Gilles’s expression was “inherently likely to provoke a violent reaction,” and thus were unprotected fighting words.<sup>200</sup>

The court’s ruling here, like in *Gilles v. Davis*, leaned heavily on *Chaplinsky*’s injury prong.<sup>201</sup> While the court mentioned the importance of examining the context surrounding the expression, they largely gave lip service to it, only remarking that some of the festival goers “took umbrage” with Brother Jim’s statements.<sup>202</sup> The court’s dominant concern was that the nature of the expression was highly offensive.<sup>203</sup>

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190. *Id.*

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.*

195. *Id.* at 221–22.

196. *Id.* at 222.

197. *Id.*

198. *Id.* at 223

199. *Id.*

200. *Id.*

201. *See id.* at 222–23.

202. *See id.* at 221.

203. *See id.* at 222–23.

### 1. Analysis of *Gilles v. Davis*: Insults Akin to a Racial Slur Are Proscribable

While the majority's analysis holding the utterances to be fighting words is terse, its underlying reasoning is clear.<sup>204</sup> It deemed the words "Christian lesbo," "lesbian for Jesus," "do you lay down with dogs," and "are you a bestiality lover" to be insults "which by their very utterance inflict injury."<sup>205</sup> The court referred to the language as "especially abusive" and "akin to racial slurs" revealing their opinion that the words inherently cause harm that is qualitatively different as they are based on religion, gender, and sexual identity.<sup>206</sup> The court's implication is that these words are a type of hate speech that have little, if any, expressive value in light of the social harm they cause.<sup>207</sup>

This embrace of the *Chaplinsky* injury prong flies in the face of the *R.A.V.* majority's express disdain for content and viewpoint discrimination. As discussed later,<sup>208</sup> Justice Scalia pointedly rejects Justice Stevens's suggestion that hate speech is proscribable because the injury it causes is unique.<sup>209</sup> The *Gilles v. Davis* court distinguished these words as more egregious than the others uttered by Brother Jim, which traversed the same path as Justice Stevens's disfavored reasoning.<sup>210</sup>

### 2. *Gilles v. Davis* and the Eroding Scrutiny in Favor of Censoring Speech

Similarly, the *Gilles v. Davis* majority ignores the *Cohen* Court's concern<sup>211</sup> about the danger of censoring specific language. The *Cohen* Court notes the minimal social benefit from such censorship and warns about the potential "grave results" of government pretextually suppressing unpopular views.<sup>212</sup> The *Gilles v. Davis* court's decision, on the other hand, expresses concern solely about the social harm caused by the expressions they deemed "especially abusive" but fails to assess the costs of governments determining what speech is suitable for suppression.<sup>213</sup>

Regarding the context or "imminent harm" prong, the *Gilles v. Davis* court's scrutiny of the potential for immediate violence is anemic compared

204. *Id.* at 197.

205. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 571–72 (1942).

206. *Davis*, 427 F.3d at 206.

207. *See id.*

208. *See infra* Part III.C.

209. *See* Harv. L. Rev. Ass'n, *Demise of Chaplinsky*, *supra* note 127, at 1139.

210. *Davis*, 427 F.3d, at 205–06.

211. *See supra* Part III.A.

212. *Cohen v. California*, 403 U.S. 15, 26 (1971).

213. *See Davis*, 427 F.3d 197 at 205.

to the Court's post-*Chaplinsky* decisions such as *Gooding*.<sup>214</sup> While the majority opinion noted that many in the crowd were "upset and angry," and recounted a brief verbal confrontation between Brother Jim and the man he referred to as "cigarette breath,"<sup>215</sup> it did not argue that there was an immediate danger of violence. It is instructive that the dissenting judge in *Gilles* suggested that the video of the incident showed "no indication . . . that Gilles acted with the intention of provoking violence,"<sup>216</sup> and "it is clear that no fight was actually likely to break out."<sup>217</sup>

The *Gilles v. Davis* court also ignored *Cohen* and *Gooding*'s "actual addressee" requirement.<sup>218</sup> While the majority noted the anger of the man Gilles called "cigarette breath," they stated the insults directed to him failed to rise to the level of fighting words.<sup>219</sup> The majority characterized many in the crowd as angry; however, the crowd, as the dissent mentioned, was a good distance away,<sup>220</sup> would not constitute an individual, actual, addressee under *Cohen* and *Gooding*. The actual addressee of the language deemed fighting words was the woman in the crowd who identified herself as a Christian and a lesbian; however, the majority made no claim that she was provoked to immediate violence.<sup>221</sup>

Thus, the *Gilles v. Davis* majority declined to follow the Supreme Court's post-*Chaplinsky* jurisprudence that hyper-focused on context and was loathe to sanction punishment of expression with a modicum of social value.<sup>222</sup> Rather, it deemed degrading epithets it considered comparable to racial slurs proscribable, irrespective of the overall context in which they were uttered, effectively prioritizing the prevention of psychic harm over the protection of unpopular ideas.<sup>223</sup>

It can be inferred from *Gilles v. Davis* that finding expression is "akin to a racial slur" prima facie satisfies both the injury and imminent harm prongs.<sup>224</sup> Such expression is deemed so offensive that injury is presumed and the potential for an "uncontrollable, reflexive violent reaction"<sup>225</sup> is assumed irrespective of the actual reaction of the addressee and the

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214. See *Gooding v. Wilson*, 405 U.S. 518, 522–28 (1972).

215. *Davis*, 427 F.3d at 206.

216. *Id.* at 213.

217. *Id.*

218. See *id.* at 205–06.

219. *Id.* at 205.

220. *Id.* at 213.

221. See *id.* at 205–06.

222. *Id.*

223. *Id.*

224. *Id.*

225. Hurdle, *supra* note 52, at 1155.



surrounding circumstances. Moreover, even if the offending expression is uttered within the overall context of a religious sermon or diatribe containing mostly protected speech, and has some nexus to the protected speech, it is nevertheless scrutinized for punishment in isolation.

2. Context Is Important, but Directing Expression Toward an Individual is Not Required: *Bethel v. City of Mobile*

*Bethel v. City of Mobile* involved a street evangelist who sued the City of Mobile, Alabama, for injuries he received from an arrest for disorderly conduct during a Mardi Gras parade.<sup>226</sup> The plaintiff, Orlando Bethel, his wife, and three minor children carried signs saying, “‘God hates you wicked baby killing whores repent,’ ‘God hates gays repent or burn in hell,’ ‘God hates you sinners,’ . . . ‘Repent whores,’ and ‘GOD hates you SINners repent in JESUS name live SIN free.’”<sup>227</sup> He also yelled out at the crowd saying “everyone was going to hell” for watching the parade, and used the term, “whoremonger.”<sup>228</sup>

Police arrived and told Bethel he was “creating public alarm by the signs . . . and needed to put the signs down.”<sup>229</sup> Bethel refused, so the police took all the family’s signs.<sup>230</sup> Police were then told that Bethel shouted at a young teenager in front of her mother “calling her a whore and a prostitute” for attending the parade.<sup>231</sup> Bethel also reportedly called the girl a “slut” and told her she would “burn in hell” and “kill her babies” because she was sinning by “sitting in her boyfriend’s lap.”<sup>232</sup> The girl’s mother said she considered the situation “threatening” and believed her daughter was afraid of Bethel, so she told him to “back off and leave her daughter alone.”<sup>233</sup> Bethel denied saying anything to the girl and her mother.<sup>234</sup>

The court ruled against Bethel finding it reasonable that both probable cause existed for his arrest and his expression constituted fighting words.<sup>235</sup> The court thought it evident that “repeatedly calling a 13-year-old girl a ‘whore’ and a ‘slut’ in the presence of [her] mother serves no purpose other than to provoke a confrontation and carries no first amendment

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226. *Bethel v. City of Mobile*, No. 10-0009-CG-N, 2011 WL 1298130 (S.D. Ala. Apr. 5, 2011).

227. *Id.* at 2.

228. *Id.*

229. *Id.*

230. *Id.* at 3.

231. *Id.* at 2–3.

232. *Id.* at 3.

233. *Id.*

234. *Id.*

235. *Id.* at 7.

protection.”<sup>236</sup> Moreover, even disregarding that alleged encounter, the court maintained that the signs contained language that was arguably fighting words.<sup>237</sup> The court remarked that it was reasonable for police to assess the words “wicked baby killing whores,” etc., as fighting words, “in connection with a Mardi Gras parade in downtown Mobile.”<sup>238</sup>

The district judge in *Bethel* seemed to imply that the nature of the words and context were *both* important to his ruling in the encounter between Bethel and the mother and daughter.<sup>239</sup> While the words “whore” and “slut” are inherently offensive, the *context* of them being yelled at a young girl in front of her mother appeared to be at least as important as the words themselves in the judge’s determination.<sup>240</sup> The mother’s warning to Bethel, and the mother and the girl’s fear and alarm were likely important as well.<sup>241</sup> Notably, the judge’s ruling that the offending signs arguably constituted fighting words ignored *Cohen*’s requirement that expression must be directed to a particular person.<sup>242</sup>

### 3. Directing Expression Toward an Individual *Is* Required, and Crowd Violence Must Exceed a “Certain Percentage”: *Bible Believers v. Wayne County*

In *Bible Believers v. Wayne County*, members of an evangelical street preaching group attended the Arab International Festival in Dearborn, Michigan, for the purpose of spreading their Christian beliefs to the mostly Muslim attendees, many of who were adolescents.<sup>243</sup> Known as “The Bible Believers,” the group carried banners, signs, and tee-shirts displaying their beliefs, many anti-Muslim.<sup>244</sup> Some of the messages included: “Islam Is A Religion of Blood and Murder,” “Only Jesus Christ Can Save You From Sin and Hell,” and “Turn or Burn.”<sup>245</sup> One member brought “a severed pig’s head on a spike” in order to “keep the Muslims at bay.”<sup>246</sup> Another member taunted a group of 30 teenagers saying, “your religion will send

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236. *Id.*

237. *Id.*

238. *Id.*

239. *See id.*

240. *See id.* (“There can be little doubt that repeatedly calling a 13-year-old girl a ‘whore’ and a ‘slut’ in the presence of the girl’s mother serves no purpose other than to provoke a confrontation and carries no first amendment protection.”).

241. *See id.*

242. *See Cohen v. California*, 403 U.S. 15, 20 (1971).

243. 805 F.3d 228 (6th Cir. 2015).

244. *Id.* at 236.

245. *Id.* at 238.

246. *Id.*

you to hell,” “you believe in a prophet who is a pervert,” and “your prophet . . . wants to molest a child.”<sup>247</sup> Tensions rose, and the youths began throwing bottles and debris at the Bible Believers.<sup>248</sup> The police responded by demanding that the Bible Believers stop using a megaphone or face citations, and the members complied.<sup>249</sup> Moments later, an officer asked the crowd to move back and remove someone who threw a bottle.<sup>250</sup>

The group continued preaching unaided by a megaphone while “a growing group of teenagers jeered and heckled, some throwing bottles and others shouting profanities.”<sup>251</sup> A few of the youths threw larger objects such as milk crates, and the preaching halted while individual debates and a “shouting match” erupted between the Bible Believers and the kids.<sup>252</sup> When mounted police officers and a news crew approached the crowd, it became quiet, but once they departed, the debris throwing resumed.<sup>253</sup> When the Bible Believers moved to another location in the Festival, the throng followed, throwing debris at them.<sup>254</sup> The leader of the group, known as Israel,<sup>255</sup> got hit in the face and received a laceration.<sup>256</sup> When an officer returned again, the teenagers stopped throwing things, and the officer yelled at them to move away.<sup>257</sup> He then told Israel, “you are a danger to public safety right now,” and the police “did not have the manpower to keep the Bible Believers safe.”<sup>258</sup> He offered the group “the option to leave,” and ignored Israel’s request that police stay in the area.<sup>259</sup> When the officer left, the teenagers began throwing bottles yet again.<sup>260</sup>

Minutes later, a group of police officers returned to tell Israel that the Bible Believers would be “escorted out of the Festival,” explaining that they were responsible for “policing the entire festival” and were fearful the “situation was escalating.”<sup>261</sup> Israel responded that the group would not leave unless threatened with arrest.<sup>262</sup> Officer Richardson commented, “the

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247. *Id.* at 238–39.

248. *Id.* at 239.

249. *Id.*

250. *Id.*

251. *Id.*

252. *Id.*

253. *Id.*

254. *Id.*

255. *Id.* at 236.

256. *Id.* at 239.

257. *Id.*

258. *Id.*

259. *Id.* at 239–40.

260. *Id.* at 240.

261. *Id.*

262. *Id.*

problem is that one of your people's gonna get hurt, or one of the crowd is gonna get hurt, or one of my officers is gonna get hurt."<sup>263</sup> Israel asked again if the group would be arrested if they did not leave.<sup>264</sup> After conferring with counsel, Officer Richardson returned, telling Israel that he and the Bible Believers would be cited for disorderly conduct unless they left immediately.<sup>265</sup> The group then left the event under police escort, entered their van, and drove off.<sup>266</sup> They filed suit under 42 U.S.C. § 1983 for violations of their First Amendment rights which were dismissed by the district court, so they appealed.<sup>267</sup>

The divided, en banc, Sixth Circuit Court of Appeals reversed the district court's ruling that the Bible Believers' First Amendment rights were violated.<sup>268</sup> The court held that the police enabled "a heckler's veto by cutting off the Bible Believers' protected speech in response to a hostile crowd's reaction."<sup>269</sup> The court also held that the group's expression was protected speech and did not constitute fighting words.<sup>270</sup> In applying the doctrine, the court held that "offensive statements made generally to a crowd" are not proscribable as the offending speech "must be directed specifically at an individual."<sup>271</sup> Thus, the court concluded that because the Bible Believers' expression was not aimed at any individual, it could not be deemed fighting words.<sup>272</sup>

The court employed an objective standard examining whether the words were "likely to provoke the *average person* to retaliation."<sup>273</sup> Accordingly, it held "the average individual attending the Festival did not react with violence, and of the group made up of mostly adolescents, only a certain percentage engaged in bottle throwing when they heard the proselytizing."<sup>274</sup>

The Sixth Circuit, in *Bible Believers* follows the post-*Chaplinsky* trend of ignoring the injury prong and focusing its analysis on the context.<sup>275</sup> This stands in contrast to the Third Circuit in *Gilles v. Davis*, which focused its

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263. *Id.*

264. *Id.*

265. *Id.*

266. *Id.* at 240-41.

267. *Id.* at 241-42.

268. *Id.* at 242.

269. *Id.* at 242-43.

270. *Id.* at 246.

271. *Id.*

272. *Id.*

273. *Id.* (quoting *Street v. New York*, 394 U.S. 576, 592 (1969)).

274. *Id.*

275. *See id.* at 242-47.

analysis on injury and held that a few isolated phrases were “abusive” and “akin to a racial slur” and, thus, rose to the level of fighting words.<sup>276</sup> It also departs from the Southern District of Alabama’s holding in *Bethel v. City of Mobile*, that even the display of offensive signs “arguably constitute[s] fighting words.”<sup>277</sup>

Notably, the *Bible Believers* court hinged its ruling on their assessment that the expression was directed generally to the crowd and not at individuals despite multiple instances of the Bible Believers engaging individuals in debate, including a “shouting match.”<sup>278</sup> While the opinion does not recount the specific words uttered in these exchanges, it seems reasonable to infer that some of the expressions were like that in their speeches and displays.

Also noteworthy is the Sixth Circuit’s downplaying of the ongoing violence engaged in by members of the crowd.<sup>279</sup> The Bible Believers’ expression through displays, speeches, and face-to-face encounters caused the hurling of large, hard objects at the group, leaving one member with a head wound.<sup>280</sup> Arguably, there was no need for the court to pose the question of whether the words were “likely to provoke the *average person* to retaliation” as many in the crowd *actually retaliated* on several occasions.<sup>281</sup> Interestingly, the court held the objective test was not met as “only a certain percentage” were violent, rather than some unspecified threshold percentage.<sup>282</sup> The majority was apparently unconvinced by the officers’ first-hand determination that the violence and crowd anger had escalated to a level where police were fearful for public safety.<sup>283</sup>

*C. The Lower Courts Are Inconsistent in Applying the Fighting Words Doctrine to Cases Involving Confrontational Preachers*

The lower courts’ inconsistent applications of the fighting words doctrine to the speech of street evangelists are exemplified by the stark contrast of the decisions by the Third Circuit in *Gilles v. Davis*, and the Sixth Circuit in *Bible Believers v. Wayne County*.<sup>284</sup> The *Bible Believers* majority ignores the “inflicts injury” prong and sets the bar so high for the “imminent harm” prong that actual, continual violence, and attendant police

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276. See *Gilles v. Davis*, 427 F.3d 197, 206 (3d Cir. 2005).

277. See No. 10-0009-CG-N, 2011 WL 1298130, at \*7 (S.D. Ala. Apr. 5, 2011).

278. *Bible Believers*, 805 F.3d at 246 (quoting *Street v. New York*, 394 U.S. 576, 592 (1969)).

279. See *id.*

280. See *id.* at 238–40.

281. See *id.*

282. *Id.*

283. See *id.* at 239–47.

284. See *supra* Part III.B.

fear for public safety fails to clear it.<sup>285</sup> Whereas the *Gilles v. Davis* majority focuses almost exclusively on the “inflicts injury” prong, holding words of arguably the same ilk as the offending expression protected in *Bible Believers* to be fighting words “akin to a racial slur.”<sup>286</sup>

This divergence reflects the Supreme Court’s muddled jurisprudence.<sup>287</sup> Lacking clear guidance and limitations, lower courts have leeway to pick and choose which aspects of the doctrine they wish to emphasize and to what degree.<sup>288</sup> This discretion leads to the serious predicament of varying protection of First Amendment rights for individual citizens as well as inconsistency in interpretations across circuits.<sup>289</sup>

#### IV. FIGHTING WORDS SHOULD NOT APPLY TO CONFRONTATIONAL CAMPUS PREACHING GIVEN ITS OVERALL RELIGIOUS MESSAGE, ENTERTAINING STYLE OF DELIVERY, AND CAMPUS SETTING

There is no shortage of scholarly work attacking the fighting words doctrine. It has been criticized for being anachronistic,<sup>290</sup> gender biased,<sup>291</sup> race biased,<sup>292</sup> overly broad,<sup>293</sup> chilling of speech,<sup>294</sup> etc. The aim of this Part is not to make arguments against the doctrine generally or make the case for its “interment.”<sup>295</sup> That is well tilled field of inquiry. Rather, this Part argues that the unique expression conveyed by confrontational campus evangelists is protected speech and thus exempt from the doctrine’s application.<sup>296</sup> First, it argues that the offending expression is part of an

285. See *supra* Part III.B.3.

286. See *supra* Part III.B.3.

287. See *supra* Part II.

288. See, e.g., Caine, *supra* note 17, at 450–52 (describing fighting words doctrine as “unconstitutionally vague and overbroad”).

289. See Mark P. Strasser, *Those Are Fighting Words, Aren't They? On Adding Injury to Insult*, 71 CASE W. RES. L. REV. 249, 291 (2020).

290. See, e.g., Kathleen M. Sullivan, *The Justices of Rules and Standards*, 106 HARV. L. REV. 22, 42 (1992) (critiquing the doctrine as based on old, macho stereotypes of barroom brawls, and the twisted logic of punishing speaker due to inability of listener to control themselves from punching speaker).

291. See, e.g., Hurdle, *supra* note 52, at 1155. (“[T]he fighting words construct is gender-biased because it recognizes and validates stereo-typically male responses to abusive speech.”).

292. See, e.g., Calvert, *supra* note 11, at 563: (“[C]ourts seemingly rely on the worst form of racial stereotypes regarding how Black males will respond to usage of “N” word - violently and without self-control . . .”).

293. See, e.g., Caine, *supra* note 17, at 463–66.

294. *Id.* at 452.

295. See generally Harv. L. Rev. Ass’n, *Demise of Chaplinsky*, *supra* note 127, at 1129–30 (arguing for overruling *Chaplinsky*).

296. Granted, some of these arguments may also serve indirectly as indictments of the doctrine, generally. See, e.g., Caine, *supra* note 17, at 463–66.

overarching message and debate within a constitutionally protected religious performance. Second, it argues that the manner in which the offending speech is conveyed is intended to attract and entertain an audience, not cause imminent harm. Third, it argues that the offending expression takes place in campus quads that are traditional public forums, historically allowing ample leeway for robust debate over public issues.

#### A. The Offending Speech Is Part of an Overarching Religious Message

The *raison d'être* of confrontational campus preachers is simple: They are compelled to go out to college campuses and save souls. Their message to the college students is similarly straightforward. Students are sinners, but there is “good news” that they “can experience righteousness, peace and joy in the Holy Ghost,” if they give up their “sinful, selfish ways and turn to The Lord And Savior Jesus Christ.”<sup>297</sup> Brother Jim and other evangelists in his ilk follow that roadmap while delivering “sweeping sermon[s] on sexual immorality” drunkenness, etc., quoting Bible verses, telling the crowds they are committing sins and are going to hell for it unless they repent.<sup>298</sup> Interspersed in the sermon are epithets, insults, and admonishments to the crowd attacking their sinful ways.<sup>299</sup> When members of the crowd respond negatively or with insults, the preachers, experienced in performative oratory pugilism, often respond with “zingers” that are insulting, abusive, or degrading (e.g., “Christian lesbo,” “Are you a bestiality lover?”).<sup>300</sup> The preacher’s retaliatory responses, offensive or otherwise, typically have a nexus with the sermon message and crowd debates.

Thus, the offending speech punished in *Gilles v. Davis* is directly connected to the overall religious message being conveyed by the speaker.<sup>301</sup> The court erred in considering the insulting phrases in isolation as they do not stand alone conceptually.<sup>302</sup> They are inextricably linked to—and expressive of—the religious, political, and social views expressed

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297. *Gilles v. Blanchard*, 477 F.3d 466, 467 (2d Cir. 2007).

298. *See, e.g., Gilles v. Davis*, 427 F.3d 197, 201–15 (3d Cir. 2005) (highlighting defendant James Gilles and his provocative sermons).

299. *Id.*

300. *Id.* at 202. “Are you a bestiality lover?” appears to be a crude, oblique reference to an argument made by some that homosexuality is in a class of sexual sins with bestiality. *See, e.g.,* Trent Horn, *The Bible on Homosexual Behavior*, CATHOLIC ANSWERS (May 1, 2015), <https://www.catholic.com/magazine/print-edition/the-bible-on-homosexual-behavior> (“Leviticus 18:24–25 makes it clear that actions like adultery, bestiality, and same-sex relations were part of the moral law that applied to non-Jews as well, because God had previously judged other pagan nations for engaging in these ‘defilements.’”).

301. *See* 427 F.3d at 201–15.

302. *See id.*

in the sermon that are constitutionally protected matters of public concern.<sup>303</sup> Indeed, these views are received by the crowd and the messages are debated by some of its members. As the dissent noted in *Gilles*, rather than causing violence, Brother Jim's coarse expression "provoked exactly the response desirable in a democracy: students responded to him by engaging in argument regarding important issues of religious and sexual tolerance and personal privacy."<sup>304</sup>

Moreover, the offending expression should not be judged alone, but as a part of the entire religious sermon. The law of obscenity provides an instructive analogy in its assessment of whether a work is constitutionally protected. The Supreme Court in *Miller v. California* held that when determining whether a creative work containing sexual conduct is obscene, the entire work must be evaluated and not an isolated portion of it.<sup>305</sup> Accordingly, just as one scene cannot be deemed obscene in a play or film containing serious social value, individual epithets should not be considered fighting words when they are within the parameters of a confrontational campus preacher's religious sermon. It is essentially a "work" of extemporaneous religious performance featuring crowd participation and is constitutionally protected in its totality, as it has significant social value.

*B. Confrontational Campus Preachers Are Essentially Satirists and Insult Comics Who Try to Engage and Entertain an Audience, Not Provoke Imminent Harm*

Just as individual epithets should be taken as a whole with the rest of the words of the religious performance, they should also be considered in the context of the attention-seeking and entertaining style in which the insults are expressed, which can be described as "preacher-tainment."<sup>306</sup> While the preachers' underlying motivation is religious conversion and the insults have arguably serious themes (e.g. "homosexuals and lesbians are headed for hell") their style of delivery is often comical, theatrical, exaggerated, and jaunty.<sup>307</sup> Their immediate objective is to attract and

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303. *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) ("Speech deals with matters of public concern when it can 'be fairly considered as relating to any matter of political, social, or other concern to the community.'" (quoting *Connick v. Myers*, 461 U.S. 138, 146 (1983))).

304. *Gilles v. Davis*, 427 F.3d 197, 213 (3d Cir. 2005) (Fuentes, J., dissenting).

305. 413 U.S. 15, 34 (1973) ("The First Amendment protects works which, taken as a whole, have serious literary, artistic, political, or scientific value, regardless of whether the government or a majority of the people approve of the ideas these works represent.").

306. A portmanteau of preacher and entertainment.

307. See, e.g., *Gilles v. Davis*, 427 F.3d 197, 202 (3d Cir. 2005) (explaining themes in defendant James Gilles' provocative sermons).



maintain attention amid the chaos, retorts, cheers, and jeers from the crowd.<sup>308</sup> As Brother Jim noted in an instructional video on “Campus Preaching 101,” campus preachers cannot afford to be boring or measured lest they lose their audience.<sup>309</sup> One could analogize them to an insult comic such as Don Rickles,<sup>310</sup> but with a graver purpose. Or perhaps one could see similarities with the subversive, iconoclastic comedian Lenny Bruce.<sup>311</sup> As the notorious confrontational campus preacher Brother Jed Smock noted, “Humor can be memorable, and the goal is to get students to even consider the gospel for a moment and get it stuck in their heads for when they might need it later.”<sup>312</sup>

Thus, like comedians they hone their craft and strive to keep the audience engaged with entertaining antics and debate. They know that outrageousness, theatricality, vulgarity, and comedy can be effective tools for holding eyes and ears. Most importantly, they know that this approach is the most effective way to reach an audience of college students. As Brother Jim explains in his primer for converting college students, a preacher must know their audience.<sup>313</sup> One preaches on a college campus differently than to a church or youth group. Brother Jim calls college students “rank sinners” who have a “Saturday Night Live entertainment crowd mentality” and only respect those who “talk plainly.”<sup>314</sup> Another campus preacher who studied Brother Jed Smock gave the following advice:

(1) Use the shock and awe battle plan. In the beginning preach with bold statements and actions that will get the immediate attention of others.

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308. As Sister Cindy, a confrontational evangelist stated: “Sometimes you need to be over the top to get people’s attention. They’re the methods that are most effective for us.” Battalion Multimedia, *Jed Fest 2020*, YOUTUBE (Feb. 20, 2020), [https://www.youtube.com/watch?v=ITe3\\_jH8RYQ](https://www.youtube.com/watch?v=ITe3_jH8RYQ).

309. Jim Gilles, *Campus Preaching 101 part 3*, YOUTUBE (Nov. 4, 2008), <https://www.youtube.com/watch?v=2uAuiPR788A> [hereinafter *Campus Preaching*].

310. See Peter Keepnews & Richard Severo, *Don Rickles, Comedy’s Equal Opportunity Offender, Dies at 90*, N.Y. TIMES (April 6, 2017), <https://www.nytimes.com/2017/04/06/arts/television/don-rickles-dead-comedian.html> (highlighting insulting style of Don Rickles’ comedy sets).

311. See Alexander Wohl, *America’s First Stand-Up Philosopher*, BRANDEIS MAGAZINE (Summer 2016), <https://www.brandeis.edu/magazine/2016/summer/featured-stories/bruce.html> (explaining how Lenny Bruce pushed the limits of free speech).

312. Rebbecca Hummel & Nick McConnell, *Sister Cindy, Brother Jed share viral ‘Ho No Mo’ campaign at UNL*, THE DAILY NEBRASKAN (Oct. 5, 2021), [https://www.dailynbraskan.com/news/sister-cindy-brother-jed-share-viralho-no-mo-campaign-at-unl/article\\_bf18aa48-2635-11ec-932d-0b62690ba25a.html](https://www.dailynbraskan.com/news/sister-cindy-brother-jed-share-viralho-no-mo-campaign-at-unl/article_bf18aa48-2635-11ec-932d-0b62690ba25a.html).

313. See *Campus Preaching*, *supra* note 309.

314. *Id.* at 6:30–6:52.

(2) Preach until you get a heckler even if it takes a long time. It took Brother Jed maybe even 15 minutes of preaching without a crowd before he got a heckler. But once he got one, he wouldn't let him go.

(3) Use your heckler until you get a crowd.<sup>315</sup>

To illustrate, one prominent evangelical provocateur, Brother Micah Armstrong was videoed preaching theatrically and interacting with a crowd.<sup>316</sup> He interrupts his sermon, replete with exaggerated gestures, and debates a student searching through a Bible apparently looking for scripture to support his argument.<sup>317</sup> Meanwhile, a few in the laughing, murmuring, sporadically clapping crowd implore Brother Micah to “sing ‘The Homo Song.’”<sup>318</sup> Brother Micah briefly reads the crowd, proclaims he will, and is met with cheers.<sup>319</sup> He then breaks into an artless, singsongy verse: “It’s not okay to be gay. It’s not okay to be a ho-mo . . . . It’s not in your DNA,” while the crowd laughs and the student debating him dances alongside him in mocking fashion.<sup>320</sup> It is a carnival-like, entertaining atmosphere of Brother Micah’s creation. Within it, he hopes his religious message will land on some and save their wayward souls.<sup>321</sup>

The current reigning queen of this SNL style of evangelism is Cindy Lasseter Smock, better known as “Sister Cindy.”<sup>322</sup> Sister Cindy is a confrontational campus evangelist who performs what she calls “Sister Cindy’s Slut Shaming Show,”<sup>323</sup> the videos of which have gone

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315. *Lessons Learned Preaching Open-Air with Jed Smock*, SERMONINDEX.NET, (Feb. 8, 2005), [https://www.sermonindex.net/modules/newbb/viewtopic.php?topic\\_id=4563&forum=35](https://www.sermonindex.net/modules/newbb/viewtopic.php?topic_id=4563&forum=35).

316. neophyte1267, *Brother Micah Sings His Homo Song*, YOUTUBE (Mar. 4, 2008), <https://www.youtube.com/watch?v=ge8PQnkrHU>.

317. *Id.* at 00:11–00:23.

318. *Id.* at 00:33–00:38.

319. *Id.* at 00:38–00:44.

320. *Id.* at 00:45–01:17.

321. See *Campus Preaching*, *supra* note 309.

322. See Hannah Jackson, *Why Is TikTok Turning a Hateful Radical Evangelist into a Viral Star?*, DAILY BEAST (June 7, 2021), <https://www.thedailybeast.com/why-is-tiktok-turning-sister-cindy-a-hateful-radical-evangelist-into-a-viral-star> (outlining the popular and satirical style of Sister Cindy); Cindy Smock acknowledges that her character of “Sister Cindy” is satire: “I’m trying to get them to listen, and they listened for two hours [today].” Reece Butler, *Sister Cindy and the Plight of Free Speech*, THE BUTLER COLLEGIAN (Sept. 20, 2022), <https://thebutlercollegian.com/2022/09/sister-cindy-and-the-plight-of-free-speech>.

323. See Caroline Lewis, *The Legacy of Sister Cindy’s “Slut Shaming Show”*, FSUNews.COM (Apr. 11, 2021), <https://www.fsunews.com/story/news/2021/04/11/legacy-sister-cindys-slut-shaming-show/7180774002>.

viral on social media.<sup>324</sup> She works large crowds like a professional comedian creating a festival-like atmosphere and commanding the attention of a rapt crowd that revels in her campy delivery. Sister Cindy's central message is that college students should dress modestly, abandon sexual promiscuity, or as she puts it "Ho No Mo," and repent.<sup>325</sup> She often holds signs at her events, such as:

- STOP THE WAR ON ANUSES,
- SLUT-SHAMING TIME,
- YOU DESERVE HELL,<sup>326</sup> and
- HELL IS HOT, DON'T BE A THOT.<sup>327</sup>

One of her viral, crowd favorite comedy bits is "The Margarita Speech" which is videoed on the campus of Louisiana State University (LSU).<sup>328</sup> She sets it up skillfully, warning the crowd to never "take an LSU girl to a Mexican restaurant" and proceeds to instruct the crowd what the young woman will do after each margarita she consumes.<sup>329</sup> "If you buy her one margarita, she will spread her legs," she proclaims, and the crowd cheers and claps.<sup>330</sup> "If you buy her two margaritas, she will pounce right on your *penis*," she exclaims as the crowd erupts with cheers and laughter.<sup>331</sup> Sister Cindy prowls around dramatically allowing the cheers and laughter to continue and the tension to build as several in the crowd yell out, "What about three?!"<sup>332</sup> Sister Cindy replies with perfect comedic timing: "After three margaritas, she will grab your penis and put it in her

324. See Jackson, *supra* note 322.

325. C.T. Jones, *How a Ravidly Anti-Gay Preacher Inspired a Sex-Positive Summer Jam*, ROLLING STONE (July 6, 2023), <https://www.rollingstone.com/culture/culture-features/sister-cindy-one-margarita-angel-laketa-moore-tiktok-1234783235>.

326. Hummel & McConnell, *supra* note 312.

327. See Jonathan Alday et al., *Sister Cindy Strikes Again on 'HO NO MO' Tour*, THE DAILY ILLINI (Sept. 8, 2022), [https://dailyillini.com/life\\_and\\_culture-stories/2022/09/08/sister-cindy-strikes-again-on-ho-no-mo-tour](https://dailyillini.com/life_and_culture-stories/2022/09/08/sister-cindy-strikes-again-on-ho-no-mo-tour).

328. See Jackson Dreffs, *Sister Cindy Warns Us Never to Take an LSU Girl to a Mexican Restaurant*, YOUTUBE (Feb. 28, 2022), <https://www.youtube.com/watch?v=hRPM0sLbwLg>. This inspired a hit song and video, "One Margarita." That Chick Angel TV, *One Margarita (Saucy Remix) [feat. Saucy Santana]*, YOUTUBE (Aug. 1, 2023), <https://www.youtube.com/watch?v=aPMPxI52M8M>.

329. Dreffs, *supra* note 328 at 0:58.

330. *Id.* at 01:42.

331. *Id.* at 02:02.

332. *Id.* at 02:18.

mouth!”<sup>333</sup> This goes on with Sister Cindy delivering more sexually graphic and scatological banter, and getting the enthusiastic crowd to chant along the number of margaritas while she simulates drinking them.<sup>334</sup> After the final punchline she proclaims, “[t]he moral of this little sermon is don’t ever, ever take an LSU girl to a Mexican restaurant!”<sup>335</sup>

It is evident that the satirical, attention-seeking and/or entertaining atmospheres created by Brother Jim, Brother Micah, and Sister Cindy should defeat the “imminent harm” prong of the fighting words doctrine even if their offensive utterances could be construed on their face to meet the “inflicts injury” prong.<sup>336</sup> While the expression on its face may be outrageous, the satirical style of delivery and carnival-like context in which it is delivered mitigates the potential for imminent violence.

Confrontational campus ministers, like professional comedians, vary in their entertaining skills and likeability. Just as comedians occasionally “bomb,” even Sister Cindy, currently the most popular, will occasionally provoke many in the crowd to feel more angry than amused.<sup>337</sup> Despite the outrageousness of their expression, the preacher’s intent is to proselytize to an engaged audience, not provoke violence or cause harm. Moreover, the First Amendment protects unpopular views even when they inspire vitriol.<sup>338</sup> As the Supreme Court stated in *Terminiello v. Chicago*, free speech “may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.”<sup>339</sup>

Lastly, hecklers and debaters, who routinely challenge the confrontational evangelist, assume the risk of insult. The preacher expects hecklers and debaters, and relies on them to be part of the show and provide material for the preacher to riff on. The preachers typically park themselves in spots on the quad with optimal student foot traffic, start preaching, and do not follow students around. Bold students shout out their insults and arguments, which are often met with prepared insults and retorts from preachers who possess some of the skill and practiced delivery of a

333. *Id.* at 02:35.

334. *Id.* at 03:10.

335. *Id.* at 04:10 (exclaiming after five margaritas, “she will strap it on and peg you”); *Id.* at 04:27.

336. See *supra* Part II.B; Part II.A.

337. See Emily Delgado & Lillian Poulsen, *TikTok’s Sister Cindy Draws Jeering Crowd in Iowa City with Inflammatory Message*, DAILY IOWAN (Sept. 20, 2021), <https://dailyiowan.com/2021/09/20/tiktoks-sistercindy-draws-jeering-crowd-in-iowa-city-with-inflammatory-message>.

338. See *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).

339. *Id.*

professional comedian.<sup>340</sup> If a heckler or debater challenges the confrontational preacher, they understand that they are subject to receiving personal insults as that is the cost of participating in the performance. Like those who dare heckle a professional insult comic in a nightclub, they have voluntarily “entered the ring” of a verbal skirmish with an expert, bare-knuckled pugilist. They have willingly become a participant in a spirited, open-air contest where they can attempt to match wits or best the preacher in a religious argument. Those who heckle or debate the confrontational preacher can reasonably anticipate that they will be subjected to insults and mockery, just as the preacher should expect their outrageous expression will be met with the same.

### *C. University Campuses Are a Special Public Forum for the Marketplace of Ideas*

#### 1. State College Campus Quads Are Traditional Public Fora that Allow for Vigorous Debate Free of Content and Viewpoint Restrictions

Campus quads in public universities are traditional public fora that historically have allowed for controversial expression.<sup>341</sup> These spaces, “have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use . . . has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens.”<sup>342</sup> More specifically, a traditional public forum is “any parcel of governmental property that allows for open public access and is compatible with expressive activity.”<sup>343</sup> Courts agree that the open, walkable spaces of public universities and colleges fall in this category.<sup>344</sup>

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340. Hummel & McConnell, *supra* note 312. Brother Jed Smock stated:

We’re orchestrating all this, believe me. I’ve been doing this for over 50 years. I don’t usually say things off the cuff. When I ask a question or they’re making a comment, I know what they’re going to say before they finish. So, we want to stir them out of their spiritual indifference and apathy.

*Id.*

341. See generally J. Martin Rochester, *Too Much and Too Little: Campus Demonstrations in the 1960s and Today*, 29 ACAD. QUESTIONS 422 (2016) (comparing campus demonstrations from 1960s with campus demonstrations happening recently).

342. *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 515 (1939).

343. Nathan W. Kellum, *If It Looks Like a Duck Traditional Public Forum Status of Open Areas on Public University Campuses*, 33 HASTINGS CONST. L.Q. 1, 22 (2005).

344. *Id.* at 39–40; Frank D. LoMonte & Lila Greenberg, *(Not) Ready for Their Close-Up: Camera-Shy Colleges Lose First Amendment Focus in Restricting Campus Filming*, 84 U. PITT. L. REV. 607, 620 (2023).

Physically, campus quads are similar to other traditional public fora such as streets, sidewalks, and parks as they are “accessible to the public,” a “public thoroughfare,” and “open air.”<sup>345</sup> Moreover, their essential purpose is consonant with expressive speech activity as universities historically have been devoted to free speech and the vigorous discussion of ideas necessary for learning.<sup>346</sup> Thus, as campus quads in state universities are traditional public fora, the speech within them receive the highest level of First Amendment protection.<sup>347</sup> This means any content regulation receives strict scrutiny as it must be narrowly tailored to “serve [a] compelling state interest[.]”<sup>348</sup> Regulating portions of a sermon of a confrontational evangelist is a content restriction that is not narrowly tailored and violative of the spirit of the rationale supporting free expression of ideas in the public square.

## 2. In a Competition of Values, Free Speech Should Have Primacy Over Civility and Harmony in a University Setting

The rough and tumble expression in confrontational preaching should enjoy leeway in a campus environment given higher education’s unique commitment to free speech. As the primary purpose of a university is to “discover[] and disseminate[] . . . knowledge,” a free, unfettered, and vigorous exchange of ideas is required to fulfill it.<sup>349</sup> Indeed, the university is a “special kind of small society” that does not prioritize the “fostering of friendship, solidarity, harmony, civility, or mutual respect” over the paramount value of freedom of expression.<sup>350</sup> While social harmony may properly be the highest value in other areas of society, it should be subordinate in higher education.<sup>351</sup> Freedom of expression “provides a forum for the new, the provocative, the disturbing, and the unorthodox.”<sup>352</sup> It serves as “a barrier to the tyranny of authoritarian or even majority opinion as to the rightness or wrongness of particular doctrines or

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345. Kellum, *supra* note 343 at 23.

346. *See id.* at 8.

347. *See id.* at 40 n.192.

348. *R.A.V. v. City of St. Paul*, 505 U.S. 377, 395 (1992); *e.g.*, *Reed v. Town of Gilbert*, 576 U.S. 155, 172 (2015) (holding that public sign laws that are not content neutral are subject to strict scrutiny).

349. Steve A. Benner et al., *Report of the Committee on Free Expression at Yale*, YALE COLLEGE (Dec. 23, 1974), <https://yalecollege.yale.edu/get-know-yale-college/office-dean/reports/report-committee-freedom-expression-yale>.

350. *Id.*

351. *Id.*

352. *Id.*

thoughts.”<sup>353</sup> Campus quads, while not part of the formal classroom exercise in higher education, are traditional venues for free speech and important spaces where the expression of ideas of social concern should be protected no matter how unpopular or shocking. Historically, they have been the sites for speech, protest, and debates over the important public issues of the day such as politics, war, civil rights, and free speech.<sup>354</sup> By providing an arena where such debates can be aired, they enhance the marketplace of ideas and thus aid in serving the purpose of higher education.<sup>355</sup>

Thus, a great deal of leeway for the speech of confrontational campus preachers is expected on a campus quad, where free debate should have primacy over politeness.

### CONCLUSION

There is a rich legacy of itinerant Christian preachers prominent in Mehodim in nineteenth-century America, tracing back to Saint Paul.<sup>356</sup> It is a historical tree of sorts extending branches through Walter Chaplinsky, the controversial, Jehovah's Witness evangelist whose arrest spawned the fighting words doctrine, and more recently through Brother Jim Gilles, Brother Micah Armstrong, Sister Cindy Smock, and others who employ shocking language, satire, and humor tactically to try to save the souls of college students. The Third Circuit's determination in *Gilles v. Davis* that the latter type of religious expression constitutes unprotected fighting words is wrongheaded.

First, this approach, which embraces the “inflicts injury” prong, contradicts the Supreme Court's post-*Chaplinsky* line of decisions and weakens substantially the constitutional protection for religious speech. A focus on whether objectionable speech is “especially abusive” or “akin to a racial slur,” allows government officials to make content and viewpoint-based assessments on propriety, taste, religion, politics, gender, sexual orientation, etc. At best, it is subjective and a Rorschach test of biases. At

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353. *Id.*

354. See, e.g., Karen Aichinger, *Berkeley Free Movement*, MIDDLE TENN. STATE UNIV.: FREE SPEECH CTR. (Jan. 1, 2009), <https://firstamendment.mtsu.edu/article/berkeley-free-speech-movement/> (describing the development of student protest movements at Berkeley); see Rochester, *supra* note 341, at 422.

355. These open spaces are typically in areas away from the classrooms and libraries where they do not cause undue distractions. See, e.g., Joseph Blocher, *Institutions in the Marketplace of Ideas*, 57 DUKE L.J. 821, 880–81 (2008).

356. *Gilles v. Blanchard*, 477 F.3d 466, 467 (2007).

worst, it allows for pretextual governmental punishment of speech disfavored by the police officer, prosecutor, or judge.<sup>357</sup>

Second, it ignores that the offending speech is connected to an overall religious message that enjoys strong constitutional protection. While the insults and epithets alone may have scant social value, they should not be assessed in isolation when they are part and parcel of an hours-long religious sermon. The offending speech should be considered along with the entire religious performance, similar to how works are judged under the law of obscenity, and thus be protected.

Third, this approach fails to consider that confrontational preachers are performance artists with a religious mission seeking to convey their message by attracting and holding the attention of a typically youthful audience. They are self-acknowledged satirists who create an atmosphere of an outdoor comedy club or theater through their theatrical and humorous religious performances which precludes the possibility of a context of imminent harm.<sup>358</sup> Given the pervasive atmosphere of satire and insult comedy, those who voluntarily heckle or debate the “preach-tainer” assume the risk of receiving insults.

Lastly, it disregards that college campus quads are traditional public forums that allow great latitude for discussion of controversial matters of public concern. Any regulation of such speech other than time, place, and manner receives strict scrutiny and is unconstitutionally content and viewpoint based. The protection of robust and uninhibited speech is necessary in a university community in order to maintain the marketplace of ideas and serve the purpose of higher education.

University administrators may find it beneficial to devote more resources to educating students on the importance of protecting free speech—even that perceived to be noxious and hateful—on university campuses and within society at large. Society benefits from the American tradition of a strong First Amendment that allows citizens to freely express themselves on public matters. There is a legacy of brave lawyers who have fought to uphold the constitutional principle of free expression even when they held strong personal objections to the speech they sought to protect. For example, David Goldberger, a Jewish lawyer for the American Civil Liberties Union (ACLU), felt called to represent Nazis seeking to

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357. See, e.g., Calvert, *supra* note 11, at 540–41 (stating that whether the fighting words doctrine reliance on an average person standard is inherently subjective and based on the prosecutor’s or judge’s biases).

358. See, e.g., Hummel & McConnel, *supra* note 312 (reporting on two campus preachers who claim humor and satire are key to their message).



demonstrate in Skokie, Illinois, a predominantly Jewish community.<sup>359</sup> Likewise, Allen Brown, a Jewish lawyer and ACLU volunteer, took on the case of Clarence Brandenburg, a Ku Klux Klan leader who sought to overturn his criminal conviction for giving a racist speech at a Klan rally.<sup>360</sup>

Brothers Jed and Micah, Sister Cindy, and others of their ilk ply their trade on university campuses for a specific reason: College is where future societal leaders are created and can be reached.<sup>361</sup> Students with a deep appreciation and understanding of the importance of a robust First Amendment might develop stronger analytical skills that serve them well as future leaders. Possessing a more acute awareness of its import, they may be better able to navigate situations where social views and values conflict, as well as more capable in counteracting objectionable and hateful speech with additional speech rather than resorting to censorship.

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359. David Goldberger, *The Skokie Case: How I Came to Represent the Free Speech Rights of Nazis*, ACLU (Jan. 3, 2020), <https://www.aclu.org/news/free-speech/the-skokie-case-how-i-came-to-represent-the-free-speech-rights-of-nazis>.

360. Moriel Rothman-Zecher, *The Upside of Brandenburg v. Ohio*, PARIS REV. (Jan. 6, 2020), <https://www.theparisreview.org/blog/2020/01/06/the-upside-of-brandenburg-v-ohio>.

361. Viviana Bonilla López, *Campus Preaches a Controversial Staple at Colleges Nationwide*, USA TODAY, (Oct. 21, 2011), <https://www.usatoday.com/story/college/2011/10/21/campus-preaches-a-controversial-staple-at-collegesnationwide/37387213>.