

Convicted Stalker Asserts Free Speech Rights in Case before US Supreme Court



The US Supreme Court is considering the case of Billy Counterman, a convicted stalker who claims that the thousands of unwanted Facebook messages he sent to singer-songwriter Coles Whalen in Colorado were protected under the First Amendment. Counterman, who was found guilty in a 2017 trial and sentenced to 4-1/2 years in prison, is challenging his conviction under a Colorado stalking law after a state court ruled that his messages were a threat and, therefore, not constitutionally shielded.

During arguments in the case, the justices explored when offensive statements rise to the level of a true threat, which the Supreme Court has long viewed as a type of speech that falls outside of constitutionally protected free speech. The stalking law does not require proof of a speaker's subjective intent to intimidate. Rather, Counterman was convicted based on a showing that his messages would cause a "reasonable person" serious distress, a so-called objective legal standard.

Counterman has a history of making violent threats to women and was on supervised release from one such federal conviction during the two years he continuously messaged Whalen. Whalen has described the messages from Counterman as life-threatening and life-altering. Counterman's communications to Whalen included messages that read: "Was that you in the white Jeep?" and "You're not being good for human relations. Die. Don't need you." Others used expletives.

Whalen said the messages eventually left her paralyzed with fear and anxiety, causing her to cancel shows, turn down career opportunities, apply for a concealed handgun permit and sleep with a light on. In 2016, she discussed her concern about the messages with a family member, who alerted law enforcement. Colorado prosecutors later that year charged Counterman with stalking, which state law defines in part as communication that "would cause a reasonable person to suffer serious emotional distress."

Don't let lack of experience hold you back. BCG Attorney Search has entry-level legal job opportunities.

Counterman contends that prosecutors should be required to prove a speaker's intent to threaten before stripping offending speech of its legally protected status. Conservative Justice Clarence Thomas noted that a speaker's intent need not be proven in cases involving obscenity, another type of speech outside First Amendment protection. However, some justices questioned whether using a reasonable person standard to assess purported threats might lead to improper convictions. Conservative Justice Neil Gorsuch said, "Reasonable people may deem things harmful, hurtful, threatening, and we're going to hold people liable willy-nilly for that?"

The First Amendment prohibits the government from enacting laws "abridging the freedom of speech," but the US Supreme Court has decided that the provision does not protect true threats. Counterman, citing mental illness and delusions, argued his statements were never intended to be threatening and were thus protected speech.

The decision in this case could have significant implications for interpreting the First Amendment's free speech protections. It remains to be seen whether the Supreme Court will uphold Counterman's conviction or establish a new legal standard for assessing whether offensive speech constitutes a true threat.