

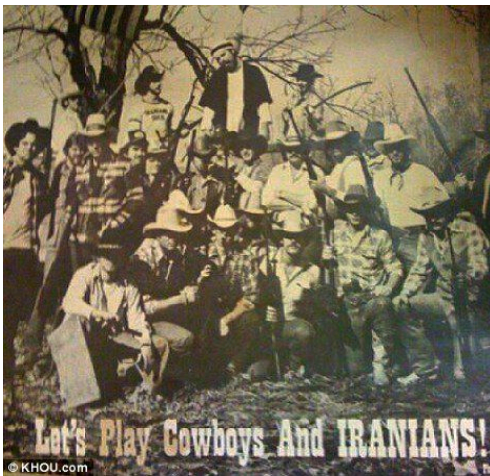


کانون وکلای ایرانی در آمریکا

# IRANIAN AMERICAN BAR ASSOCIATION

## Is "Hate Speech" Constitutionally Protected?

November 21, 2011 - Washington DC



A BBQ restaurant in Texas displays this poster on its walls titled "Let's Play Cowboys and Iranians," depicting the lynching scene of an Iranian man. In the wake of outcry by the Iranian- American community over the image and content of the poster, the Iranian American Bar Association and Pars Equality Center address the legality of the poster when analyzed under First Amendment principles and jurisprudence.

One of the fundamental rights afforded to all Americans under the First Amendment to the United States Constitution is the freedom of speech. Generally speaking, this right extends to all forms of expression, even to opinions that most would consider insulting, offensive, and outrageous.



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In addition to protecting "pure speech" expressed in demonstrations, rallies, picketing, leaflets, etc., the First Amendment also protects "symbolic speech," whose main purpose is to communicate ideas in a symbolic (but not necessarily verbal) fashion.

The United States Supreme Court has defined hate speech as any communication that disparages a person or a group on the basis of some characteristic such as race, color, ethnicity, gender, sexual orientation, nationality, religion, or other characteristic. In the United States, most forms of hate speech are protected by the U.S. Constitution, and laws prohibiting such speech have been deemed unconstitutional by the Supreme Court, with the exception of hate speech deemed to fall into various categories such as obscenity, defamation, incitement to riot, and fighting words. Using principles set forth by the Supreme Court, even in cases where speech would arguably encourage violence, the speech is rendered unlawful only if the threat of violence is imminent and the speech is likely to produce such violence.

The "imminence" requirement sets a high hurdle before hate speech can justifiably be proscribed by the state. Speech merely advocating violence is not likely to render it outside of constitutional protections; the words must be directed to incite or produce imminent lawless action, and must be likely to produce that violence as well. By way of example, a fiery speech urging an angry racist mob to immediately assault an Iranian man in its midst probably qualifies as incitement of an imminent threat against the potential victim. But a poster, magazine article, or any publication aimed at stirring up racial hatred, most likely does not qualify as an imminent threat, and would likely be protected by the First Amendment.

In the past, groups such as the Aryan Nation and the Klu Klux Klan have been permitted to march on public streets (subject to reasonable time, place, and manner restrictions) exercising their First Amendment rights. More recently, the U.S. Supreme Court held that church members picketing

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military funerals with signs that read "Thank God for Dead Soldiers" and "Fags Doom Nations" to communicate their belief that God hates the United States for its tolerance of homosexuality in the military, were entitled to First Amendment protection despite their offensive and emotionally upsetting effect on the intended recipients of their Hate Speech. Thus subject to the few exceptions discussed above, expressing hateful opinions about minority groups, even if intended to cause their members distress, and to generate contempt and loathing, is usually protected by the First Amendment.

While displaying the offensive poster "Let's Play Cowboys and Iranians" is protected by First Amendment principles, the Iranian-American community, and the community at large should not feel hindered in expressing outrage over the distasteful and inflammatory poster. The purpose of the First Amendment is to encourage a robust healthy debate, and as such, it is vitally important that all viewpoints be expressed in the free marketplace of ideas.

This bulletin is for educational and information purposes only and should not be regarded as legal advice. If you have any further questions, please do not hesitate to contact the Iranian American Bar Association at [info@iaba.us](mailto:info@iaba.us) or Pars Equality Center at (650) 321-6400 [info@parsequalitycenter.org](mailto:info@parsequalitycenter.org).

## About IABA

With over 1500 members and chapters in 8 different metropolitan areas around the country, the Iranian American Bar Association ("IABA") is one of the most prominent minority bar associations in the United States. IABA chapters hold networking events, publish articles on key legal developments, and provide outreach to lawyers and law students. IABA also provides an annual scholarship to law students looking for assistance and provides lawyer mentors for those seeking guidance and helps serve the Iranian-American community and the community at-large by providing legal advocacy on important issues



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