OVERWHELMING COUNTER SPEECH: A GOVERNMENT SPEECH SOLUTION TO WHITE SUPREMACIST DEMONSTRATIONS

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INTRODUCTION: GOVERNMENTS AND WHITE SUPREMACY

Only since the mid-1960s have racial minorities in the United States been recognized as and given the rights of full citizens of the country they live in, at least on paper.[2] For most of American history, governments at the national, state, and local levels discriminated against minorities, particularly African-Americans. The drafters of the Constitution did centuries' worth of harm in their statecraft by ignoring the issue of slavery at the outset of the Republic. Rather than addressing what would become the greatest scourge in America's history, the founding generation deferred to later generations who would resolve the issue by bloodshed. Yet even after slavery was abolished, state and local governments continued to practice overt and covert racial discrimination. Perhaps the worst offenders since the Founding Era were state government actors who promoted the ideals and rhetoric of white supremacy in the wake of the Civil War and Reconstruction. For instance, when Alabama's Constitutional Convention met in Montgomery to adopt the

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[2] The Civil Rights Era saw the passage of major legislation assuring that among other liberties, voting rights would not be denied on the basis of race. *See, e.g.*, The Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat.445 (codified at 52 U.S.C. § 10101 (1965)).

state's current constitution, its representatives openly and boldly declared that the Alabama state government would be one of white supremacy.[3] The convention's president, John B. Knox, stated that it was "within the limits of the Federal Constitution to establish White Supremacy in this State."[4] Knox also stated that if white supremacy was to be established it must be done by law and not by "force or fraud."[5] The representatives' intent was so egregious that the Supreme Court took judicial notice of the convention's desire when the Court struck down a state disenfranchisement law.[6] The results of the convention included widespread suppression of constitutional rights for minorities.[7]

State governments again used speech power to suppress diversity in reaction to *Brown v. Board of Education* where the Supreme Court held that segregation of public schools was unconstitutional under the Fourteenth Amendment.[8] For example, following the *Brown* decision, congressional representatives from all of the former Confederate states backed what became known as "The Southern Manifesto," which accused the Court of judicial

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[3] *See* JOURNAL OF THE ALABAMA CONSTITUTIONAL CONVENTION,,9, 12 (1901).

[4] *Id.* at 9.

[5] *Id.* at 12.

[6] *See* Hunter v. Underwood, 471 U.S. 222, 228-29 (1985) (stating that "zeal for white supremacy ran rampant at the convention.").

[7] *See* Gabriel J. Chin & Randy Wagner, *The Tyranny of the Minority: Jim Crow and the Counter-Majoritarian Difficulty*, 43 HARV. C.R.-C.L. L. REV. 65, 104-05 (2008) (linking the defunding of African-American education in Alabama to suppression of minority voting rights).

[8] Brown v. Bd. of Educ. of Topeka, Shawnee Cty, Kan., 347 U.S. 483, 493 (1953), *supplemented sub nom.* Brown v. Bd. of Educ. of Topeka, Kan. 349 U.S. 294 (1954).

overreach and threatening to destroy the "amicable relations between the white and Negro races that have been created through 90 years of patient efforts by the good people of both races."[9]

In the decades since the Civil Rights Movement, the United States has taken giant strides toward becoming a more diverse and inclusive society, at least on the surface. The election of Barack Obama to the presidency, and the increasing diversity of democratic representation, would seem to suggest that the ways of Jim Crow lie of the ash heap of history.[10] Recently though, there have been increased calls by white nationalists for more demonstrations across the United States promoting their intolerant and divisive vision for America. When white supremacist demonstrators target a town or city, those communities have struggled to combat the repercussions of these hate-filled rallies.

One prominent example occurred in August of 2017, when hundreds of white nationalists gathered in Charlottesville, Virginia, to protest the removal of a Confederate statue in a city park. Violent outbursts from protestors resulted in dozens of serious injuries and the death of one counter-

[9] 102 CONG. REC. 4459-60 (daily ed. Mar. 12, 1956) (Declaration of Constitutional Rights). Though the official title of the document was the "Declaration of Constitutional Rights" it was commonly known throughout Congress as "The Southern Manifesto." All but three southern senators signed the manifesto. *See also* Justin Driver, *Supremacies and the Southern Manifesto*, 92 TEX. L. REV. 1053 (2014).

[10] *See* Kristen Bialik, *For the Fifth Time in a Row, The New Congress is the Most Racially Diverse Ever*, PEW RESEARCH CTR. (Feb. 8, 2019), https://www.pewresearch.org/fact-tank/2019/02/08/for-the-fifth-time-in-a-row-the-new-congress-is-the-most-racially-and-ethnically-diverse-ever/.

protester.[11] In the days and weeks that followed the demonstrations in Charlottesville, headlines and news cycles provided virtually twenty-four hours of coverage about the rally, the organizers, and the response from local and national leaders.[12] Additionally, the local government and communities where these demonstrations took place had the burden and embarrassment of such hateful events occurring on their watch and in their neighborhoods.

There are numerous reasons why governments should seek to provide a powerful counter-narrative to the hateful rhetoric racists espouse. Chief among those would be renouncing the dark past where governments promoted bold and vocal racism that allowed Jim Crow to flourish for the better part of a century. However, there is another exceedingly practical reason government should use its speech power to provide a counter-narrative to hateful demonstrators: the prevention of violence that goes hand-in-hand with white supremacist demonstrations. When white nationalists come to town they bring with them a parade of violence and vitriol, invoking painful

[11] Joe Heim, *Recounting a Day of Rage, Hate, Violence and Death*, THE WASH. POST (Aug. 14, 2017), https://www.washingtonpost.com/graphics/2017/local/charlottesville-timeline/.

[12] *See* Hawes Spencer & Sheryl Gay Stolberg, *White Supremacists March on University of Virginia*, N.Y. TIMES (Aug. 11, 2017), https://www.nytimes.com/2017/08/11/us/white-nationalists-rally-charlottesville-virginia.html (initial coverage on rally); Dara Lind, *Unite the Right, the Violent White Supremacist Rally in Charlottesville, Explained*, VOX (Aug. 14, 2017), https://www.vox.com/2017/8/12/16138246/charlottesville-nazi-rally-right-uva; Rick Jervis, *Leaders from Around the Globe Denounce Charlottesville Clashes*, USA TODAY (Aug. 14, 2017), https://www.usatoday.com/story/news/2017/08/14/leaders-around-globe-denounced-charlottesville-clashes/566024001/.

images from America's dark past while deepening the historical divide among minority groups. By utilizing the government speech doctrine those in positions of authority have powerful avenues to address the past, provide a counter-narrative to hateful rhetoric, and promote a future of equality.

This article will discuss First Amendment law recognizing the government's own power to speak, and how the power and platform that was once used to espouse white supremacy and segregation can be used to promote civil rights, diversity, and equality. Part I highlights the consequences of hateful rhetoric from white supremacists both past and present and discuss why governments should use speech to counter the effect of such demonstrations. Part II explores the constitutional limits on governmental regulations of hate speech in the public square. Part III explains the government speech doctrine, examining how government can enter the marketplace of ideas to promote its own point of view. Part IV proposes avenues for governments to take when notorious hate groups come to town. I suggest that the hate-filled rhetoric these historically racist groups spew can be significantly countered by overwhelming government speech, which includes traditional and non-traditional notions of speech.

I. CHANGING COURSE: WHY GOVERNMENTS SHOULD COUNTER WHITE SUPREMACIST DEMONSTRATIONS

One of the most important tasks democratic governments perform is not only maintaining peace and order, but opposing violence and those who unnecessarily perpetuate it. Additionally, governments have a vested interest in promoting facts and truth and protecting the citizenry from the harm done by the spread of hate-filled lies, falsehoods, and misrepresentations. Both violent behavior and the attempt to sell lies as truth are commonplace at white supremacists' rallies. In addition to breaking from a dark past, government has a significant interest in preventing such vitriolic behavior in the communities it represents.

A. Like a Horse and a Carriage: White Supremacy & Violence

A 2018 report by the Anti-Defamation League revealed that white supremacists committed nearly eighty percent of all killings by extremists in the United States.[13] Such violence from white supremacists has long plagued minority communities. Even after the passing of the "Reconstruction Amendments" to the Constitution in the 1860s and 1870s, racial terror experienced by African-Americans evolved from slavery into a different form: Jim Crow and white men in white hoods.

[13] ANTI-DEFAMATION LEAGUE, MURDER AND EXTREMISM IN THE UNITED STATES IN 2018 13 (2019), https://www.adl.org/media/12480/download (last visited June 27, 2019).

The Jim Crow South, the Klan, and violence against minorities are so intrinsically linked to one another that it is nearly impossible to talk about one without talking about the others.[14] One of the worst episodes of racial terror in the United State took place in Tulsa, Oklahoma, in the early 1920s. An African-American man was accused of sexually assaulting a white woman, though it was later determined that the man "likely tripped and accidentally stepped on the woman's foot."[15] Despite the fact that the charges were dropped against the man, a white mob gathered and chased a group of armed black men who were attempting to guard the suspect.[16]. The mob entered the black business district and over a two-day period set it ablaze.[17] At the end of the rampage, over three hundred people were dead, 1,200 homes were destroyed, and over $1.5 million in damage was done.[18]

While the episode in Tulsa was not the first of its kind in post-Civil War America,[19] it was a chilling foreshadowing of a violent and bloody

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[14] *See, e.g.*, Chin & Wagner, *supra* note 7, at 88-89 (discussing the daily violence southern African-Americans face from white supremacists).

[15] Mihir Zaveri, *A White Mob Once Destroyed a Black Neighborhood in Tulsa. The City Wants to Find the Graves*, N.Y. TIMES (Oct. 4, 2018), https://www.nytimes.com/2018/10/04/us/mass-graves-tulsa-race-massacre.html.

[16] *Id*

[17] *Id.*

[18] *Id.* The article suggests this figure was in 1921 dollars. According to the Bureau of Labor Statistics, the modern figure of the cost would be around $20 million. BUREAU LABOR STATISTICS, https://www.bls.gov/data/inflation_calculator.htm (last visited Apr. 14, 2019).

[19] *See* Jamiles Lartey & Sam Morris, *How White Americans Used Lynchings to Terrorize and Control Black People*, THE GUARDIAN (Apr. 26, 2018), https://www.theguardian.com/us-news/2018/apr/26/lynchings-memorial-us-south-montgomery-alabama (highlighting studies on the number of African-Americans lynched between 1881 and 1968).

century at the hands of white supremacists. Violent outbursts were constant throughout the middle part of the twentieth century, especially following the *Brown* decision. Many whites, including those in positions of power, believed their place in society was being undermined.[20] One African-American man was shot at point-blank range after insisting on being kept on the voting rolls.[21] Perhaps the most infamous story of white aggression during this era was the tragic and unjust death of fourteen-year-old Emmett Till. Till was accused of "whistling at a white woman in the grocery store."[22] Till's body was found in the river, tied to a cotton gin fan, with a bullet hole in the back of his head.[23] Two white men were accused of Till's murder, but the jury only took an hour to deliberate before acquitting them.[24]

Even leaders of the Civil Rights Movement, despite their nation-wide recognition were often the targets of white mobs unconcerned with any consequence of their actions. The Reverend Fred Shuttlesworth, a Birmingham pastor and close friend of Dr. Martin Luther King, Jr.,

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[20] *See* James L. Hunt, *Brown v. Board of Education After Fifty Years: Context and Synopsis*, 52 MERCER L. REV. 549, 550 (2001) (some white citizens "appreciated Brown's potential to disrupt the settled order.").

[21] JAMES T. PATTERSON, GRAND EXPECTATIONS: THE UNITED STATES, 1945-1974 395 (Oxford Univ. Press, Inc., 1st Ed. 1996).

[22] *Id.* Over sixty years after Till's murder trial, the woman who accused him of whistling admitted to falsely testifying at trial; *see Emmett Till Accuser Admits to Giving False Testimony at Murder Trial: Book*, CHICAGO TRIB. (Jan. 28, 2017), https://www.chicagotribune.com/news/nationworld/ct-emmett-till-accuser-false-testimony-20170128-story.html.

[23] Patterson, *supra* note 21, at 395.

[24] *Id.* at 396. One juror quipped that if they hadn't stopped to "drink pop" they would have finished sooner.

encountered a white mob while trying to enroll his children in school. The mob overran the officers who were stationed at the school to maintain order and attacked the Shuttlesworth family with large chains and bats.[25] The encounter with the mob ended with the pastor nearly beaten to death and missing skin from his face.[26]

When young civil rights activists boarded interstate buses to challenge segregation laws in federal court, they were often met with violent resistance from white southerners, often in conjunction with the Klan. For instance, when the activists arrived in Alabama in May of 1961 they were met by white mobs who fire bombed the buses.[27] In Birmingham, the Klan struck a deal with the local police to allow for an unprotected fifteen-minute window in which to attack the activists.[28] Around thirty Klansmen awaited the bus at the terminal and attacked the activists, leaving one man with permanent brain damage.[29]

While it would be convenient to declare that the passage of the Reconstruction Amendments and even the Civil Rights Act of 1964 and Voting Rights Act of 1965 put an end to racial tensions in the United States,

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[25] *Id.* at 151.

[26] ANDREW M. MANIS, A FIRE YOU CAN'T PUT OUT: THE CIVIL RIGHTS LIFE OF BIRMINGHAM'S REVEREND FRED SHUTTLESWORTH 151-52 (1999).

[27] Louis Lusky, *Racial Discrimination and the Federal Law: A Problem in Nullification*, 63 COLUM. L. REV. 1163, 1168 (1963); *see also* Patterson, *supra* note 21, at 469 (describing the civil rights activists in the southern United States).

[28] PATTERSON, *supra* note 21, at 469.

[29] *Id.*

it would simply be false. Some even suggested that the election of Barack Obama as the first African-American president heralded the arrival of "post-racial" America.[30] However, relying on such assumptions grossly overlooks modern events that echo the darkest days of the Civil Rights Era.

When the "Unite the Right" demonstrators arrived in Charlottesville to protest the removal of a Robert E. Lee statue,[31] what ensued over those two days was a horrific rush of events that resembled a combination of Nazi night rallies from the 1930s and Klan mob tactics from the Jim Crow era. The night before the rally, a large group of white supremacists marched by torchlight— rather ironically— to Emancipation Park in Charlottesville.[32] As the Nazi-like march proceeded to the park, participants shouted the popular Nazi phrase "blood and soil," as well as anti-immigration and anti-Semitic statements like "you will not replace us" and "Jews will not replace us."[33] When the marchers arrived at the statue of Lee they were met by counter-protestors. The white supremacist marchers encircled the small group of

[30] *See* Nikole Hannah-Jones, *The End of the Postracial Myth*, THE NEW YORK TIMES MAGAZINE, (Nov. 15, 2016), https://www.nytimes.com/interactive/2016/11/20/magazine/donald-trumps-america-iowa-race.html.

[31] Sheryl Gay Stolberg & Brian M. Rosenthal, *Man Charged After White Nationalist Rally in Charlottesville Ends in Deadly Violence*, N.Y. TIMES (Aug. 12, 2017), https://www.nytimes.com/2017/08/12/us/charlottesville-protest-white-nationalist.html.

[32] The year after "Unite the Right," the City of Charlottesville voted to change the name of the park to Court Park Square. *See* Max Greenwood, *Charlottesville Votes to Rename Parks a Second Time*, THE HILL (July 17, 2018), https://thehill.com/blogs/blog-briefing-room/news/397383-charlottesville-again-changes-names-of-two-parks.

[33] Heim, *supra* note 1110.

counter-protesters and began yelling "white lives matter."[34] It was reported that "within moments, there was chaos" and by night's end both sides sustained injuries.[35] The next day brought more violence but with greater severity. Scenes from the day included clergy from a multitude of denominations standing with linked arms, quietly singing while white supremacists screamed racially charged chants mere yards away.[36] Included in the white nationalists' numbers were several armed "militia members."[37] A man later identified as a "Grand Wizard" of the Klan was captured on video shouting a racial epithet before firing a pistol into a crowd.[38]

Perhaps some of the most tragic and lasting images of the day came from the most violent moments. One incident involved an African-American man being savagely beaten in a parking garage by a group of white supremacists. The victim suffered a spinal injury, a broken arm, and several lacerations to the head.[39] The most tragic incident was the death of thirty-two-year-old Heather Heyer who was a part of the counter-protest.[40] The

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[34] *Id.*

[35] *Id.*

[36] *Id.*

[37] *Id.* Members of the so-called anti-fascist militia group "Antifa" were also armed at the protests.

[38] Sara Sidner, *Klansman Gets 4 Years in Prison for Firing Gun at "Unite the Right" Rally*, CNN (Aug. 22, 2018, 5:42 PM), https://www.cnn.com/2018/08/22/us/kkk-unite-the-right-richard-preston-sentence/index.html.

[39] Ian Shapira, *White Supremacist is Guilty in Charlottesville Parking Garage Beating of Black Man,* THE WASHINGTON POST (May 2, 2018, 6:30 AM), https://www.washingtonpost.com/local/white-supremacist-is-guilty-in-charlottesville-parking-garage-beating-of-black-man/2018/05/01/033396b4-4af9-11e8-8b5a-3b1697adcc2a_story.html?utm_term=.728d58b67f2e.

[40] Heim, *supra* note 11.

white supremacist who was later convicted of her murder rapidly drove his car into a crowd, injuring nineteen bystanders and killing Heyer.[41]

B. Countering Non-Violent Racist Speech

Even when white supremacists' demonstrations do not turn violent, governments still have a strong interest in countering such speech. One of the primary functions of governments is promoting and enforcing the rights of all citizens. When white supremacists come to town and begin spewing hate-filled rhetoric about African-Americans, the Jewish population, immigrants, and other minorities, governments should have two responsibilities: first, to assure citizens that fall into one of the target groups that they are valued members of its citizenry; second, to place the population at large on notice that such hateful and derogatory speech and ideology is not only opposed by the governing body but will be considered an affront to the ideals of government.

White supremacists have a long history of creating misinformation campaigns to bolster their ideology and rattle the sabers of their base, because as is often the case with extremist groups, facts do not matter as much as

[41] *Id.*; *see also* Vanessa Romo, *Charlottesville Jury Convicts 'Unite the Right' Protestor Who Killed Woman*, NPR (Dec. 7, 2018, 5:30 PM), https://www.npr.org/2018/12/07/674672922/james-alex-fields-unite-the-right-protester-who-killed-heather-heyer-found-guiltyguilt (recounting James Fields' actions and conviction).

results. Consider the case involving Professor Joshua Cuevus of the University of North Georgia, who drew the ire of a white supremacy group. Dr. Cuevus became the target of a "campaign of intimidation" by white supremacists following a disagreement in an online forum.[42] The group manipulated pictures of Dr. Cuevas' wife, devised ways to make it look as though he had used racial epithets, and even "suggested posing as grad students to charge that [he] forced them to fabricate data for research study."[43] Additionally, the university's faculty and administration received emails falsely claiming that Dr. Cuevas was requiring his students to write negative essays about the current presidential administration.[44]

Several cities in Colorado fell victim to neo-Nazi propaganda and other white supremacist rhetoric, including swastikas painted on garage doors of Jewish residents and a local Klan group posting flyers denigrating the LGBTQ community and "race mixing."[45] It was also noted that a white supremacist stopped a Jewish person on the street and told the person "they did not belong in the U.S. and would be killed in a gas chamber."[46] In the

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[42] Maureen Downey, *White Supremacists Target Georgia Professor With Web of Lies*, THE ATLANTA JOURNAL-CONSTITUTION (Jan. 26, 2018), https://www.ajc.com/blog/get-schooled/white-supremacists-target-georgia-professor-with-web-lies/ciyFXpInt7r9dKuFcSdDsJ/.

[43] *Id.*

[44] *Id.*

[45] Elise Schmelzer, *"Not Something We Can Ignore Anymore": White Supremacist, Extremist Activity on the Rise Across Colorado, Experts Say*, THE DENVER POST (Sept. 20, 2018, 6:00 PM), https://www.denverpost.com/2018/09/20/white-supremacy-front-range-colorado/.

[46] *Id.*

summer of 2017, NBA star LeBron James was confronted by white supremacists after finding the N-word painted on the side of his house.[47] The incident sparked reminders of other African-American athletes receiving similar treatment, such as Hank Aaron who received death threats by those who did not want an African-American to break Babe Ruth's home run record.[48] Perhaps the most staggering account occurred when two nooses were found on the property of the Smithsonian Institute on two separate occasions—one of which was located on the grounds of the National Museum of African-American History.[49] The museum's director stated that such a racist stunt was "a *painful* reminder of the challenges that African-Americas continue to face… The noose has long represented a deplorable act of cowardice and depravity—a symbol of extreme violence for African-Americans."[50]

The messages of hate and intolerance conveyed even in non-violent actions of white supremacists can be devastating for a community. Those minority residents are placed in extremely awkward and unpleasant situations that often recall a painful past. The motive of white supremacists is to

[47] Ernie Suggs, *LeBron James, the Hammer and the Everyday Burden of Being Black in America*, The Atlanta Journal-Constitution (June 1, 2017), https://www.ajc.com/news/national/lebron-james-the-hammer-and-the-everyday-burden-being-black-america/RH3KzaJNb9xn9zWPncu29N/.

[48] *Id.*

[49] Amy Held, *2nd Noose Found in D.C., This Time at African-American History Museum*, NPR (June 1, 2017, 1:10 PM), https://www.npr.org/sections/thetwo-way/2017/06/01/531034568/noose-found-at-national-museum-of-african-american-history.

[50] *Id.* (emphasis added).

promote a society in which minorities are second class citizens or do not exist at all. Governments exist to protect citizens and their rights, and that duty includes promoting a diverse body of people. How can those citizens feel safe and included in their own communities when these actions are intentionally designed to demote and denigrate a class of citizens? When white supremacists inject falsehoods and counterfeited narratives into the public sphere, how can there be proper recourse? Governments have the power not only to provide a counter-narrative but to promote the correct factual narrative. By utilizing its speech power, government has the ability to vigorously promote the values and diversity of the communities it represents.

II. CONSTITUTIONAL LIMITS ON GOVERNMENTAL ATTEMPTS TO PREVENT HATE SPEECH IN PUBLIC

When white supremacy groups plan events like "Unite the Right," the simplest solution would be to stop the event from happening in the first place. After all, when groups like the Klan or neo-Nazis organize to demonstrate, violent outbursts are never far behind, so why not stop them before they happen? Governments that attempt such censorship, however, face serious constitutional hurdles. Many countries outside the United States do not have anything that resembles the type of speech protections Americans enjoy

under the liberally construed First Amendment.[51] In fact, the speech rights under the First Amendment are recognized as such an essential right that the Supreme Court has time and time again affirmed the rights of speakers, even when they are Klansmen, neo-Nazis, or other brands of white supremacists.

A. Racists in the Wild

At the end of a decade that saw the bloodiest and most contentious events of the Civil Rights Era, the Supreme Court decided *Brandenburg v. Ohio*, in which a Klansman violated an Ohio state statute outlawing the advocacy of criminal syndicalism.[52] That advocacy amounted to the ramblings of a Klansman named Brandenburg on a series of newscasts in which he ranted about wanting African-Americans to go back to Africa, planning marches in Washington, D.C., Florida, and Mississippi, and condemning governmental suppression of the white race.[53] The Court was careful to point out that while some Klansmen in the video carried weapons, Brandenburg did not.[54] This was important because the Ohio statute specifically prohibited speakers from advocating for violence as a means of

[51] *See* Mila Versteeg, *What Europe Can Teach America About Free Speech*, THE ATLANTIC (Aug. 19, 2017), https://www.theatlantic.com/politics/archive/2017/08/what-europe-can-teach-america-about-free-speech/537186/ (highlighting speech law differences between the United States and Europe and their historical roots).

[52] Brandenburg v. Ohio, 395 U.S. 444, 444-45 (1969).

[53] *Id.* at 446-47.

[54] *Id.* at 447.

"accomplishing industrial or political reform."[55] The Court held that a statute forbidding advocacy is unconstitutional unless two factors can be shown: first, the advocacy must be directed at producing "*imminent* lawless action," and second, the lawless action is likely to occur.[56] Nothing about Brandenburg's speech was seen by the Court as likely to cause imminent lawless or violent action, and thus his speech, hateful as it may have been, was protected by the First Amendment.[57]

Only eight years after *Brandenburg* and just over thirty years since the Allied Forces declared victory over Nazi Germany, the Court decided a controversial case in which an American neo-Nazi group sued for the right to march in the predominantly Jewish city of Skokie, Illinois.[58] The Illinois city attempted to enjoin the neo-Nazis from any kind of public display.[59] The Court, however, reversed the injunction, stating in a short *per curium* opinion that First Amendment protections applied to the neo-Nazi demonstrators.[60]

The Court affirmed its limitation on suppression of hateful expression when it heard a case in which Minnesota teenagers burned a small cross within the fenced yard of an African-American family.[61] The action violated

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[55] *Id.* at 444-5445.
[56] *Id.* at 447 (emphasis added).
[57] *Id.* at 448-49.
[58] Nat'lNational Socialist Party of Am.America v. Vill.Village of Skokie, 432 U.S. 43, 43 (1977) (per curiam).
[59] *Id.*
[60] *Id.* at 44.
[61] R.A.V. v. City of St. Paul, Minn., 505 U.S. 377, 379 (19921991).

a St. Paul ordinance which prohibited the display of objects or symbols known to cause anger or alarm in others on the basis of race, religion, or gender.[62] This included displaying swastikas or burning a cross.[63] The city's argument before the Court was that such a regulation was necessary in order to "ensure the basic human rights of members of groups that have historically been subjected to discrimination . . . ."[64] The Court stated that even if the ordinance were narrowly construed to forbid unprotected "fighting words," it was still facially invalid because it was a content-based prohibition within the proscribable category of speech.[65] The Court was clear in its opinion that it believed cross burning was a "reprehensible" act, but the City of St. Paul had other options to quell such acts that did not violate First Amendment protections.[66]

The Court's decisions in this line of cases affirmed just how sacred First Amendment rights are in the United States. These rulings stand in stark contrast to levels of protection elsewhere in the world, particularly in Europe.[67] In Germany, for instance, it is illegal to display any kind of Nazi

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[62] *Id.* at 380.
[63] *Id.*
[64] *Id. at 395.*
[65] *Id.* at 381, 393.
[66] *Id.* at 396. The Court suggested that not limiting the ordinance to the "favored topics" would pass constitutional muster.
[67] *See, e.g.*, Richard Stengel, Opinion, *Why America needs a hate speech law*, WASHINGTON POST (Oct. 29, 2019, 7:20 AM), https://www.washingtonpost.com/opinions/2019/10/29/why-america-needs-hate-speech-law/ ("Since World War II, many nations have passed laws to curb the incitement of racial

symbol including the "Hitler salute."[68] By contrast, in the United States, neo-Nazism and the Klan—two of the most despised and infamous ideologies—have the right to express their hatred and vitriol in public. Even the Westboro Baptist Church, a group once dubbed "America's Most Hated Family," found safe haven under the First Amendment, despite their hateful rhetoric, which seems to be despised by all but their own.[69]

B. Westboro on the Sidewalks

In 2007, a British documentarian embedded himself with the Phelps family, founders of the notorious Westboro Baptist Church of Topeka, Kansas.[70] The documentary follows Louis Theroux as he travels with the so-called church to protest a variety of events, including the funerals of fallen United States servicepersons.[71] Four years after the airing of the documentary, the Phelps family became the focus of a Supreme Court case after they picketed the funeral of fallen United States Marine Matthew Snyder

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and religious hate"); James Kirchick, Opinion, *No, America doesn't need a hate speech law*, WASHINGTON POST (Nov. 7, 2019, 7:33 AM), https://www.washingtonpost.com/opinions/2019/11/07/no-america-doesnt-need-hate-speech-law/ ("Stengel offers post-World War II European hate speech laws as positive examples that the United States should emulate").

[68] *See* Anna Sauerbrey, Opinion, *How Germany Deals with Neo-Nazis*, N.Y. TIMES (Aug. 23, 2017), https://www.nytimes.com/2017/08/23/opinion/germany-neo-nazis-charlottesville.html.

[69] *The Most Hated Family in America* (BBC Two television broadcast Apr. 1, 2007).

[70] *Id.*

[71] *Id.*

in Maryland.[72] When Westboro came to Maryland to picket the funeral it claimed, as it always does, that dead American soldiers are God's punishment for the United States' toleration of homosexuality.[73] Matthew's father filed five tort claims against Westboro, including one for intentional infliction of emotional distress caused by the church's hateful messages directed towards his son's funeral.[74] Westboro argued that it was protected from the tort claims under the First Amendment because its speech related to matters of public importance, and such speech is the "essence of self-government."[75] The Court agreed with Westboro, stating that "speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection."[76]

The Court also stressed the importance of the locations of Westboro's speech.[77] The Court has long held there are certain areas that for "time out of mind" have been open to the public for speech.[78] Since these areas have such a long and rich history of hosting public speech, the government must have a significant reason for restricting speech which takes place on that kind of government property.[79] Speech occurring on government property is

[72] Snyder v. Phelps, 562 U.S. 443, 448 (2011).
[73] *Id.* at 448.
[74] *Id.* at 449-50.
[75] *Id.* at 452-53 (quoting Garrison v. Louisiana, 379 U.S. 64, 74-75 (1964))..
[76] *Id.* at 452 (quoting Connick v. Myers, 461 U.S. 138, 145 (1983))..
[77] *Id.* at 455-56.
[78] Frisby v. Schultz, 487 U.S. 474, 480 (1988) (citation omitted).
[79] Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45 (1983).

protected according to the type of government property, or "forum," in which the speech occurs.[80]

C. Speech on the Street: The Traditional Public Forum Doctrine

The Court has identified two types of fora widely open to a variety of private speakers: traditional public fora and designated fora.[81] While both types are commonly used by the public, white supremacist groups most often gather in areas deemed traditional public fora, such as parks, sidewalks, and streets. The government must clear an extremely high constitutional hurdle to regulate speech taking place in locations deemed to be traditional public fora.[82] The Court has established a framework to determine how or even if speech can be regulated in traditional public fora.

In *Perry Educational Association v. Perry Local Educators Association,* the Court stated that areas such as parks, sidewalks, and streets have "immemorially been held in trust for the use of the public" including expressing thought and engaging in public discourse.[83] In order for the government to apply content-based restrictions, such as selectively forbidding the speech of white supremacists, the regulation must survive strict scrutiny, the most stringent of constitutional standards. To clear this

[80] *Id.* at 44.
[81] *Id.* at 45-46 (quoting Haque v. CIO, 307 U.S. 496, 515 (1939).
[82] *Id.* at 45.
[83] *Id.* at 45-46.

high hurdle, the government must show that its speech regulation furthers a compelling government interest and that the regulation has been tailored as narrowly as possible to meet that interest.[84] The government will always have a monumental challenge meeting the two-prong test, even when the regulations appear to protect the Court itself.[85] Viewpoint-based regulations are strictly forbidden.[86]

Thus, city and state governments have almost no options in preventing white nationalist demonstrations in public forums, as such regulations would be viewpoint-based. However, this does not mean that governments lack options in responding to white supremacist demonstrations. The marketplace of ideas affords governments myriad options to provide an alternative message to the hateful message expressed by these groups.

III. THE GOVERNMENT IN THE MARKETPLACE OF IDEAS

According to the Supreme Court, government can voice its own opinion in the marketplace of ideas without violating the First Amendment. The Court began seriously recognizing government speech powers in the 1990s. In a line of First Amendment cases, the Court established that

[84] *Id.* at 45.

[85] *See* United States v. Grace, 461 U.S. 171 (1983) (striking down a federal law forbidding the distribution or display of literature in front of the United States Supreme Court Building).

[86] City of Pleasant Grove v. Summum, 555 U.S. 460, 469 (2009).

government has broad discretionary power in choosing which messages it wants to promote either with its own platform or by promoting other speakers' platforms. This understanding has become known as the government speech doctrine.

A. Origins and Scope of the Government Speech Doctrine

There perhaps could not have been a more contentious issue than the one that gave birth to the government speech doctrine in *Rust v. Sullivan*. At issue in *Rust* was Title X of the Public Health Services Act. A portion of the act prohibited projects funded under the act from advising mothers on abortions or procedures relating to abortions.[87] Recipients of Title X funds and doctors overseeing projects funded by the act filed suit stating that the anti-abortion provisions of the act violated their First Amendment rights by discriminating on the basis of viewpoint.[88] They conceded that the government could impose certain conditions on recipients of federal funds, but argued those conditions could not target or suppress "dangerous ideas."[89] The Court held that governments may selectively choose which programs to fund, and in its funding choose which messages it wishes to promote and which ones to discourage.[90] Additionally, the Court stated that deciding which messages to promote and which ones to ignore or even discourage does

[87] Rust v. Sullivan, 500 U.S. 173, 177-78 (1991).
[88] *Id.* at 181, 192.
[89] *Id.* at 192.
[90] *Id.* at 193.

not amount to viewpoint discrimination against private speakers; the government "has merely chosen to fund one activity to the exclusion of the other."[91] The Court also distinguished between government action that actively interferes with protected activity—violating constitutional safeguards— and government action that encourages activity deemed suitable for furthering public policy.[92]

The Court extended the definition of government speech in *Johanns v. Livestock Marketing Association* when it allowed the government to add its own independent and unique opinions to the marketplace of ideas rather than simply using its platform to promote or encourage policy.[93] The Court's decision was also of significance in affirming that government can use spending to promote its own speech, as will be discussed in the next section. Here the Court was asked to determine if the federal government overreached when Congress passed a law requiring the United States Department of Agriculture to collect a fee from beef producers to be used for advertising and promoting the purchase of beef products.[94] Two groups representing ranchers, along with several individuals, sued the government, claiming that the collection of the fee violated their First Amendment rights because the

[91] *Id.*
[92] *Id.*
[93] Johanns v. Livestock Mktg. Ass'n, 544 U.S. 550, 559 (2005)
[94] *Id.* at 553.

government was essentially compelling them to speak.[95] The Court disagreed, holding that government can support its programs and policies by collecting taxes, and can use that money to pay private speakers to convey "speech and other expression to advocate and defend its own policies."[96]

The Court established in the *Rust* and *Johanns* holdings that governments may express opinions and promote ideas just as private individuals might. Government has the power to place its own unique ideas into the marketplace of ideas. As the government speech doctrine evolved, the Court clarified the avenues by which governments could promote, rebuke, or create ideas and policies.

Within ten years of its ruling in *Johanns*, the Court handed down two decisions that would amplify the strength and breadth of government speech. The holdings in these cases deepened the roots of government speech power while suggesting further means for rebutting extreme and divisive rhetoric.

The city of Pleasant Grove, Utah, had a public park in which the municipal government had placed a wide variety of monuments ranging from the city's first fire station to a monolith glorifying the Ten Commandments.[97] Summum, a small religious group based in nearby Salt Lake City, wanted to purchase and place a monument in the city park citing its core tenets, or

[95] *Id.* at 556-57.
[96] *Id.* at 559.
[97] Summum, 555 U.S. at 464-65.

"Aphorisms."[98] When the city refused to accept the gifted monument, Summum sued, citing violation of their free speech rights under the First Amendment. They claimed the city had enacted viewpoint discrimination in the public forum by accepting other groups' monuments, including those dedicated to the Ten Commandments, but rejecting theirs.[99] The Court stated that while the First Amendment prohibits governments from restricting private speech, there are no such restrictions on government speech.[100] The Court further held that government has the final authority in deciding what messages it wishes to promote, specifically in this case through placing monuments, even if the government receives assistance from private sources.[101] In its reasoning, the Court stated that if a municipality had to maintain viewpoint neutrality in selecting what to display on its own property, it would have to "brace for 'an influx of clutter'" in public spaces.[102]

The State of Texas also faced a First Amendment challenge when it denied the Texas chapter of Sons of Confederate Veterans their specialty license plate design, which featured the Confederate battle flag.[103] Texas state law gave the Department of Motor Vehicles Board the discretion to approve specialty plates and allowed the board to deny such plates if the design was

[98] *Id.* at 465.
[99] *Id.* at 466.
[100] *Id.* at 467.
[101] *Id.* at 468.
[102] *Id.* at 479-80.
[103] Walker v. Tex. Div., Sons of Confederate Veterans, 135 S. Ct. 2239, 2243-44 (2015).

found too offensive to members of the public.[104] Using the ruling from *Summum* as its basis, the Court determined that specialty license plates were government speech, and thus the First Amendment did not require the government to be viewpoint-neutral as it approved or denied applications and designs for specialty plates.[105]

These cases illustrate that the government can have its own viewpoint when it speaks, and can even create its own requirements for using its platform to promote speech. Further, the ruling from these cases allow governments to prevent their own platforms from being coopted by hate groups. Consider, for example, if a white supremacy group such as the Ku Klux Klan or a neo-Nazi group wanted to erect a memorial in a local park depicting a figure in the infamous hood, an eternal burning cross, or a statue of Hitler. If a municipality were required by the Constitution to be viewpoint-neutral in selecting what messages it displayed in public, it would be handcuffed in preventing extremely offensive, racist, and harmful displays from being permanently affixed to the public landscape of its city. Similarly, consider if the so-called "White Knights of the Ku Klux Klan" or a neo-Nazi group wanted a specialty plate prominently featuring the Klan's white cross emblem or a swastika of Nazi Germany. If specialty plates were not deemed government speech, governments would be forced to print images

[104] *Id.* at 2245.
[105] *Id.* at 2249.

inseparably tied to hateful ideologies, or discontinue the specialty plate program altogether. The government speech cases preserve the ability for government to carry its own messages without being forced to promote ideas to which it is opposed. For the purposes of promoting civil rights and diversity, the *Summum* and *Walker* line of cases further strengthen governments' power to counter hate-filled speech and expression.

Monuments and license plates, of course, do not form the full picture of governmental speech powers. Perhaps the most significant power any government possesses is its spending power, often referred to as the "power of the purse." As the Court in *Johanns* expressed, government has the ability to use its spending power to create and promote messages it endorses for public policy reasons. The potential that governments wield with their spending power for speech purposes could perhaps be the most effective means in providing speech countering white supremacy while promoting civil rights and diversity, since the reach of spending can often have long-lasting and far-reaching effects.

B. The Power of the Dollar

Money is a powerful tool which can be used in a plethora of ways, both good and bad, to effect change, influence minds, or generate support or opposition for a cause. If the government chooses to fund projects, events,

and initiatives that promote diversity, especially ones that directly confront white supremacy, it speaks not only against hateful rhetoric but to the government's priority to call out such speech and stand for diversity within the community it represents.

When a government decides to provide any kind of funding, there is normally some kind of stipulation required of the recipient. The Court took up an issue regarding public library funding in which some recipients of federal dollars were not pleased with conditions Congress placed on the receipt of that money. In the late 1990s, Congress passed legislation offering federal funding to public libraries who wanted to offer internet access to the public.[106] Congress later passed additional legislation requiring libraries receiving funds for public internet access to install software that blocks images of obscenity and child pornography, while giving libraries some latitude in preventing certain sites from being filtered.[107] The American Library Association and other affiliated organizations claimed that such a requirement violated the First Amendment protections of public patrons who use the library.[108] Writing for a plurality of the Court, Chief Justice Rehnquist stated that the act in question did not violate the First Amendment because Congress has wide latitude to attach conditions to receipt of federal

[106] United States v. Am. Libr. Ass'n, 539 U.S. 194, 198-99 (2003).
[107] *Id.* at 199-201.
[108] *Id.* at 199.

assistance, so long as the conditions do not induce participants into unconstitutional activity.[109] In his reasoning, Chief Justice Rehnquist wrote that a public library does not provide internet access to "create a public forum for Web publishers to express themselves, any more than it collects books in order to provide a public forum for the authors of books to speak."[110] He also stated that a library is allowed to exercise judgment in which books it decides to place on its shelves.[111] It would be fair to state that a museum would also be afforded the same exercise in judgement in which art it chooses to commission or display. It must be noted that the ruling in *American Library Association* applied to libraries adding books to their collection. The Court in *Board of Education v. Pico* decided a matter where libraries wanted to remove books it deemed to be "anti-American, anti-Christian, anti-[Semitic], and just plain filthy."[112] Justice Brennan, writing for the plurality, stated a public school library cannot remove books simply because it does not like the content or ideas contained within.[113] Concurring with the judgement of the Court, Justice Blackmun stated that a library must show something more than a "mere desire to avoid the discomfort and unpleasantness that always accompany an unpopular viewpoint."[114]

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[109] *Id.* at 203.
[110] *Id.* at 206.
[111] *Id.* at 207.
[112] Bd. of Educ. v. Pico, 457 U.S. 853, 857 (1982).
[113] *Id.* at 872.
[114] *Id.* at 880 (Blackmun, J., concurring).

While the Court's rulings in *American Library Association* and *Pico* place specific restraints on the manner in which government can speak, there is plenty of leeway in how government can spend and promote certain viewpoints. In regards to promoting civil rights and diversity, these spending opinions opened a whole host of options in which books, art, educational programs, and community initiatives can receive government funding. Such government backing has the potential to significantly sway the impact and influence of hateful rhetoric of white supremacy groups. The only question remaining is what does the implementation of that government speech look like?

IV. OVERWHELM HATE, PROMOTE GOOD: A BLUEPRINT FOR GOVERNMENTS TO COUNTER WHITE SUPREMACY AND PROMOTE CIVIL RIGHTS & DIVERSITY

When the white supremacists behind the "Unite the Right" rally set their focus on Charlottesville, Virginia, officials in the city tried to move the rally from Emancipation Park to a less populated area of the city.[115] After a federal court ruled that the rally could go forward at Emancipation Park, the Mayor of Charlottesville released a statement on Facebook expressing that while the city was "disappointed by [the court's] ruling [the city would] abide

[115] Sarah Toy & Charles Ventura, *Federal judge allows "aJudge Allows "lt-right" rally to go aGo head as planned*, USA TODAY, Aug. 11,11th 2017, https://www.usatoday.com/story/news/2017/08/11/charlottesville-braces-itself-yet-another-white-nationalist-rally-saturday/560829001/.

by the judge's decision."[116] While the city was bound by a judicial order to allow the demonstration in that venue, other events could have been set in motion weeks or even months before the permits for the rally were granted; and while not a perfect solution, it is possible such events could have in part quelled or deterred the violence that ensued, or at least sent a clear message to the world rejecting white nationalistic hate.

A. Overwhelm the Message: An Alternative Timeline to Alt-Right Charlottesville

Applying the government speech doctrine in all of its forms to the "Unite the Right" rally in Charlottesville provides an opportunity for a direct counter message to that of the white supremacist groups. *Rust, Johanns, Walker,* and *Summum* all lay a constitutional basis for what a city like Charlottesville or even the Commonwealth of Virginia could do in response to white supremacists gathering for a rally. Assume for the sake of this example that the City of Charlottesville received notice of the rally one month before it was scheduled to take place on August 11 & 12, 2017. Instead of just trying to stop or deter the rally from happening, what if the city and state, using spending power to fund counter speech under *Johanns* and *American Library Association*, mobilized all of its resources, including its array of

[116] Mike SignerSinger, *City Statement on 8/12 Court Ruling*, FACEBOOK (Aug. 11, 2017), https://www.facebook.com/51200715628/posts/city-statement-on-812-court-ruling-while-the-city-is-disappointed-by-tonights-ru/10155559279165629/.

speech tools, to provide a massive counter-narrative to the white nationalist's hateful rhetoric and propaganda? The city and the state could mobilize all public libraries to host an entire month of events focusing on works by African-American authors, or specifically works that discuss the history and dangers of white supremacy and white nationalism. Libraries could also choose to house and prominently display collections on the state's own role in slavery, Jim Crow, and the real-life stories of minorities who were targeted by neo-Nazis or the Klan. The Library of Virginia in Richmond, which houses the commonwealth's archives, could also mobilize by hosting collections, events, and speakers not only remembering the commonwealth's own role in painful parts of its own past, but also highlighting its diverse citizenry and the important roll minorities play in the betterment of the commonwealth. The Library could also provide a mobile unit with the same kind of collections traveling to parts of the commonwealth without easy access to libraries.

This kind of mobilization alone would provide a direct confrontation to a rally such as "Unite the Right," especially if state officials used their platform and their speech to promote the initiatives. To illustrate: every time the governor or representatives of the commonwealth went on television or the radio in the days leading up to the rally, they might have said, "We know this hateful rally is coming to our city and our state, but we are hosting an

entire month promoting the beauty and diversity of our African-American, Jewish, and other minority communities." Not only would this serve as a serious rebuke of white supremacy, it would send an unmistakable message to those communities and the nation at large that the government stands with and defends its diverse population.

Some of the most startling visuals from the "Unite the Right" rally were the photographs and videos showing the size of the white nationalist groups contrasted with little to no organized rally from the other side. In general, counter-protesters attempted to confront the white supremacists face-to-face, which ultimately led to violence against those counter demonstrators. Suppose instead that on the day of the rally, the City of Charlottesville had hosted its own rally on The Lawn of the University of Virginia—a space thirty-five times larger than Emancipation Park—to include a diverse array of speakers, musicians, and artists. While the supremacy groups would have gathered a few hundred demonstrators shouting hateful ideology, at the University of Virginia thousands might have gathered to hear nationally acclaimed minority and Jewish figures like Bernice King, Bryan Stevenson, Shaun King, and Deborah Lipstadt, discussing the Holocaust, Jim Crow America, and the dangers of white supremacy.

In this scenario, the "Unite the Right" rally would still take place, protecting the First Amendment rights of the white supremacists; but the government, utilizing the power allowed to it under the First Amendment, would provide an overwhelming display of counter speech. The University of Virginia rally would also likely serve to minimize violence, as many of the counter-protesters would likely lend their support to the larger and more diverse gathering, thus reducing or preventing violent interactions with white supremacists.

Both the Court and scholars have shown such counter speech to be not only a constitutionally acceptable response to hateful speech, but an effective one. Professor Nadine Strossen, in an article published by the American Bar Association's *Human Rights Magazine*, gave numerous examples of how effective counter speech can be to disempower hate-filled speech. Professor Strossen pointed to instances such as a Florida representative who was forced to resign after using a racial slur, or the social media campaign launched against New York attorney Aaron Schlossberg when he derided a Spanish-speaking restaurant worker for not speaking English.[117] In both examples, hateful speech was rebutted by overwhelming the speakers' ideas with more speech. The Supreme Court endorsed this

[117] Nadine Strossen, *Counterspeech in Response to Changing Notions of Free Speech*, HUMAN RIGHTS MAGAZINE (2018), https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-ongoing-challenge-to-define-free-speech/counterspeech-in-response-to-free-speech/.

approach in *United States v. Alvarez* when Justice Breyer suggested that counter speech, rather than punishing the speaker, was the best remedy for disproving lies.[118] Since government is allowed to enter the speech marketplace and often possess the resources and opportunities to so, this is the perfect tool for providing a counter-narrative to hateful rhetoric from white supremacists.

B. Overwhelm with Facts: Countering White Supremacist's Lies

Government counter speech can also be useful in combating categorically false statements spewed by white supremacists. Take for instance Dr. Cuevus, the professor who was targeted with falsehoods by white supremacy groups.[119] The state board of education or the university itself could deploy counter speech in defense of Dr. Cuevas by providing specific information directly contrary to the claims being made by the white supremacists. This approach would fall into line with the Court's holding in *Alvarez* preferring more speech and disallowing the state from censoring false claims about military honors, including the Congressional Medal of Honor.[120] The Court stated that promoting or providing counter speech such as a public registry of military awards would be sufficient to advance governmental

[118] United States v. Alvarez, 567 U.S. 709, 738 (2012) (Breyer, J., concurring).
[119] *See supra* Section I.B.
[120] Alvarez, U.S. 567 at 713.

interests without violating the First Amendment rights of the speaker spreading falsehoods.[121]

Legal writers and scholars have drawn similar conclusions as to the effectiveness of using counter speech to disprove lies. In responding to the decision in *Alvarez*, one writer stated that "effective counter speech democratizes the effort against false claims…"[122] Since the government can participate in the marketplace of ideas, it too can use its speech powers to provide truth against falsehoods, including those expressed by white supremacists.

C. Promoting Civil Rights & Diversity

In addition to providing counter speech to white supremacy, government can also use speech power to promote civil rights and diversity within the community it serves by everyday means. Using the discretion afforded in cases like *Summum* and *Walker*, governments have the constitutional capacity to make a lasting impression both in the minds of residents and on the landscape of public spaces by affixing monuments that confront history and look forward to a more diverse future.

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[121] *Id.* at 738 (Breyer, J., concurring).

[122] Jeffery C. Barnum, *Encouraging Congress to Encourage Speech: Reflections on United States v. Alvarez*, 76 ALB. L. REV. 527, 558 (2013); *see also* Kathryn Smith, *Hey! That's My Stolen Valor: The Stolen Valor Act and Government Regulation of False Speech Under the First Amendment*, 53 B.C. L. REV. 775, 804–06 (2012) (analyzing the merits of counter speech against false claims).

1. Confront History

When the Equal Justice Initiative (EJI) launched its Community Remembrance Project, it did so with the intention of allowing communities all across the country to confront their participation in racial terror lynchings.[123] For communities that are willing to come face-to-face with their own history, EJI will provide a historical marker memorializing the events of a local lynching in addition to providing a monument bearing the name of every person who was lynched in that county, "creating a permanent record of racial terror violence."[124] Often, the placing of these markers and monuments has been accompanied by events which encourage conversations about the terroristic history of that community. If an event like "Unite the Right" was held in one of these towns, these markers and monuments would stand out like a bright beacon against such hate and vitriol.

2. Fight Back with the Arts

Art often speaks more loudly than a person standing behind a podium. *Summum*, *American Library Association,* and *Johanns* afford government wide decision-making power in choosing what kind of programs it wants to fund, such as the commissioning of art, monuments, and the like. In addition to holding a counter rally, a city could host a concert series made up of diverse

[123] *Community Remembrance Project*, EQUAL JUSTICE INITIATIVE, https://eji.org/community-remembrance-project.

[124] *Id.*

musicians, carefully chosen by the city. The local public library or fine arts museum could host exhibits featuring minority artisans or unveil statues and monuments of local and national civil rights leaders. These projects could be fully backed and funded by the state and local government, creating a dichotomy between the values of white supremacy and those of a diverse, multi-cultural community. A white supremacist rally will have the ability to hold a news cycle, but a government using its own right of speech to overshadow and overwhelm hate filled messages is a powerful display of community solidarity and has the potential for a longer-lasting effect. In most cases these displays by cities and states can blunt the force of the hateful demonstrations even during the current news cycle, since most journalists covering the hateful rally will feel obligated to give, at a minimum, equal coverage to any simultaneous counter-message from the government and local community.

CONCLUSION

White supremacy has long gripped the political and social landscape in America. There is no single strategy sufficient to defeat its hateful rhetoric or the violent acts that so often accompany demonstrations by its followers. Countering the white supremacist narrative will take an ongoing effort from all members of the communities that are affected by the devastating collateral

damage of white supremacy. What is proposed in this article is but one cog in a larger mechanism geared toward a more diverse society.

The biggest obstacle to accomplishing the framework of government speech laid out here is the reluctance of governments and communities to confront their ugly past. Acknowledging disastrous wrongdoings by national, state, or local governments seems a near impossibility in such a tense and divisive political climate. However, if white supremacy groups are going to continue to demonstrate in our cities there is perhaps no better response than for government to lead in providing a counter-narrative to hateful rhetoric. While there is nothing that can be done to change the events of the past, governments have many avenues to reverse the long-lasting effects of government endorsed white supremacy, including providing powerful rebuttals, promoting truth, and standing for diversity. Government has few options to deny white supremacists a public platform, but by using its speech powers it creates its own platform to overwhelm hateful rhetoric and promote a future of diversity and inclusion.