

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

## SUPREME COURT OF THE UNITED STATES

### Syllabus

#### WISCONSIN *v.* MITCHELL

CERTIORARI TO THE SUPREME COURT OF WISCONSIN  
No. 92-515. Argued April 21, 1993—Decided June 11, 1993

Pursuant to a Wisconsin statute, respondent Mitchell's sentence for aggravated battery was enhanced because he intentionally selected his victim on account of the victim's race. The State Court of Appeals rejected his challenge to the law's constitutionality, but the State Supreme Court reversed. Relying on *R. A. V. v. St. Paul*, 505 U. S. \_\_\_, it held that the statute violates the First Amendment by punishing what the legislature has deemed to be offensive thought and rejected the State's contention that the law punishes only the conduct of intentional victim selection. It also found that the statute was unconstitutionally overbroad because the evidentiary use of a defendant's prior speech would have a chilling effect on those who fear they may be prosecuted for offenses subject to penalty enhancement. Finally, it distinguished antidiscrimination laws, which have long been held constitutional, on the ground that they prohibit objective acts of discrimination, whereas the state statute punishes the subjective mental process.

*Held:* Mitchell's First Amendment rights were not violated by the application of the penalty-enhancement provision in sentencing him. Pp. 4-12.

(a) While Mitchell correctly notes that this Court is bound by a state court's interpretation of a state statute, the State Supreme Court did not construe the instant statute in the sense of defining the meaning of a particular word or phrase. Rather, it characterized the statute's practical effect for First Amendment purposes. Thus, after resolving any ambiguities in the statute's meaning, this Court may form its own judgment about the law's operative effect. The State's argument that the statute punishes only conduct does not dispose of Mitchell's claim, since the fact remains that the same criminal conduct is more heavily punished if the victim is selected because of his protected status than if no such motive obtains. Pp. 5-6.

## WISCONSIN v. MITCHELL

### Syllabus

(b) In determining what sentence to impose, sentencing judges have traditionally considered a wide variety of factors in addition to evidence bearing on guilt, including a defendant's motive for committing the offense. While it is equally true that a sentencing judge may not take into consideration a defendant's abstract beliefs, however obnoxious to most people, the Constitution does not erect a *per se* barrier to the admission of evidence concerning one's beliefs and associations at sentencing simply because they are protected by the First Amendment. *Dawson v. Delaware*, 503 U. S. \_\_\_; *Barclay v. Florida*, 463 U. S. 939 (plurality opinion). That *Dawson* and *Barclay* did not involve the application of a penalty-enhancement provision does not make them inapposite. *Barclay* involved the consideration of racial animus in determining whether to sentence a defendant to death, the most severe "enhancement" of all; and the state legislature has the primary responsibility for fixing criminal penalties. Motive plays the same role under the state statute as it does under federal and state antidiscrimination laws, which have been upheld against constitutional challenge. Nothing in *R. A. V. v. St. Paul*, *supra*, compels a different result here. The ordinance at issue there was explicitly directed at speech, while the one here is aimed at conduct unprotected by the First Amendment. Moreover, the State's desire to redress what it sees as the greater individual and societal harm inflicted by bias-inspired conduct provides an adequate explanation for the provision over and above mere disagreement with offenders' beliefs or biases. Pp. 7-10.

(c) Because the statute has no "chilling effect" on free speech, it is not unconstitutionally overbroad. The prospect of a citizen suppressing his bigoted beliefs for fear that evidence of those beliefs will be introduced against him at trial if he commits a serious offense against person or property is too speculative a hypothesis to support this claim. Moreover, the First Amendment permits the admission of previous declarations or statements to establish the elements of a crime or to prove motive or intent, subject to evidentiary rules dealing with relevancy, reliability, and the like. *Haupt v. United States*, 330 U. S. 631. Pp. 10-12.

169 Wis. 2d 153, 485 N. W. 2d 807, reversed and remanded.

REHNQUIST, C. J., delivered the opinion for a unanimous Court.