

STEVENS, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 01–1107

VIRGINIA, PETITIONER *v.* BARRY ELTON BLACK,
RICHARD J. ELLIOTT, AND JONATHAN O'MARA

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF VIRGINIA

[April 7, 2003]

JUSTICE STEVENS, concurring.

Cross burning with “an intent to intimidate,” Va. Code Ann. §18.2–423 (1996), unquestionably qualifies as the kind of threat that is unprotected by the First Amendment. For the reasons stated in the separate opinions that Justice White and I wrote in *R. A. V. v. St. Paul*, 505 U. S. 377 (1992), that simple proposition provides a sufficient basis for upholding the basic prohibition in the Virginia statute even though it does not cover other types of threatening expressive conduct. With this observation, I join JUSTICE O’CONNOR’s opinion.