

Does the First Amendment apply to social media outlets like Twitter, Facebook, etc.?

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The extent of the First Amendment has been a popular [topic](#) in the news recently, specifically regarding social media outlets like Facebook and Twitter. As social media platforms and usership continue to grow, so has the extent to which free speech applies to them. In understanding how the First Amendment applies to these organizations, one must look at precedent, albeit limited, and how the independent organizations confront arising conflicts.

In 2017, *Packingham v. North Carolina* was argued in the [Supreme Court](#). The case involved a convicted sex-offender from North Carolina, Lester Packingham, who was arrested for using Facebook to post about a traffic court experience in 2010. A North Carolina state law exists prohibiting sex offenders from using social media. *Packingham* was a landmark case in defining the realm of free speech for social media platforms. The court unanimously ruled the North Carolina statute unconstitutional, and the case is quite significant as it is one of the first cases to address the relationship between the First Amendment and social media sites.

Furthermore, there is not a lot of precedent to reference regarding social media free speech regulations. Even when looking at other prominent historical First Amendment Supreme Court cases before 1990, such as [Whitney v. California](#) or [Tinker v. Des Moines Independent Community School District](#), none involve the Internet or social media simply because the Internet was not invented yet. Cases that do involve the Internet such as [Reno v. American Civil Liberties Union](#) or [United States et. al v. American Library Association](#) have established precedent for how the First Amendment applies to the Internet, but not specifically how it applies to social media. The last Supreme Court case involving social media and the First Amendment before *Packingham* came in 2015 with [Elonis v. United States](#), which addressed the First Amendment, but the majority decision did not rule on First Amendment matters. The *Packingham v. North Carolina* case brief stated that “the Internet’s forces and directions are so new, so protean, and so far reaching that courts must be conscious that what they say today may be obsolete tomorrow.” Additionally, there is some precedent in lower courts regarding social media and free speech, such as [Bell v. Itawamba County School Board](#), a case in the Fifth Circuit Court of Appeals that ruled that public schools can punish a student for using Facebook and Youtube as a platform for posting song lyrics that referenced an alleged sexually relationship between two teachers and female students. The case, while useful in understanding public schools’ role in matters of social media, is not helpful in determining to what extent the First Amendment applies to social media outlets.

Many people are under the impression that the First Amendment allows them to say or “post” whatever they want, regardless of the extremity or the vigor of the opinion. Recently, Facebook [removed](#) the Alex Jones “Infowars” far-right podcast citing a violation in the company's social networks policy against hate speech. Youtube, Spotify, and LinkedIn, among others, followed suit in removing Jones and other “far-right sites”. The move caused somewhat of an uproar among some Republicans, notably Ted Cruz, who [said](#) that Facebook has become an “arbiter of free speech”. As Facebook and Twitter are private businesses, they individually have the power

to determine their policy regarding hate speech, obscene language, and harassment, but also what is considered a violation of such policy—all without the interjection of a third-party. Facebook [bans](#) hate speech, yet allows for humor, satire, or social commentary related to these topics;” Twitter [bans](#) “excessively violent images in profiles and headers.”

In October 2018, the Supreme Court [announced](#) they will hear a case entitled [Manhattan Community Access Corp. v. Halleck](#) that will define what a public forum is and will address the issue of: “under what circumstances can a private entity... be deemed a state actor subject to claims under the First Amendment?” The oral argument will be heard in late February, and the decision could clarify many lingering questions regarding the First Amendment and how they coincide with private technology companies.

The *Packingham* [opinion](#) noted the importance of social media and websites to a private citizen: “Websites can provide perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard.” With no finite definition or statute to the range of the First Amendment in regards to social media, is it acceptable for people to assume that free speech does not extend to social media?