



The New Public Square: How The First Amendment Affects Social Media

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>4,480,000,000

Social media users worldwide projected in 2022

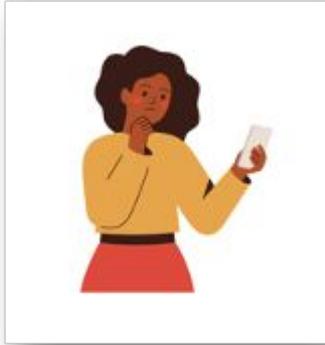
48%

U.S. adults who get their news from social media “often” or “sometimes”

72%

U.S. adults who say social media companies have too much power and influence in politics

Key Players



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Any decision will be in part a result of a balancing act where our desire to *limit the harmful effects of dangerous speech is weighted against our respect for the protections enshrined in the Constitution.*

Packingham v. North Carolina (2017)

Undeniable right to internet access

Prager University v. Google, Inc. (2020)

The First Amendment governs only governmental restrictions on speech

Knight Institute v. Trump (2017), Davison v. Randall (2019)

Viewpoint based exclusion from the forum violates the First Amendment

1. First Amendment rights translated to social media
2. Social media companies have rights, and are not bound by First Amendment standards for speech restrictions
3. Different rules for government officials acting in their official capacity on social media
 - Government action on social media the first challenge to be addressed

Rights, Responsibilities

Government

- “Congress shall make no law... abridging the freedom of speech...”

Individual

- Right to free speech, including symbolic speech

Private Entity

- Right to establish a platform
- Right to moderate content on the platform

Potential Solutions

Revisions to Section 230

Section 230 of the Communications Decency Act (1996):

Federal law that provides liability protection for online service providers when they transit or take down user-generated content

- Establish greater accountability on behalf of social media companies.
 - Clarifying the scope of immunity provisions in the bill

“If the aim is to ensure that speech is not smothered, then the more glaring concern must perforce be the dominant digital platforms themselves.”

- Justice Clarence Thomas

Potential Solutions

Public Declarations

- Classify government officials' social media posts as public declarations
- Eliminate comment sections
- Responsibility of the platform initially
- Allows the official to remain in efficient communication with constituents

Potential Solutions

Government Oversight & Self-Regulation

- U.S. Government requires all social media platforms to abide by their own “terms of service”
- Vests enforcement power with the FCC, FTC, SEC
- Forced adherence through government lawsuits or civil litigation

What to Look For

1. Relative Inaction
2. Emphasis on Private Entities' Rights
3. Emphasis on Individuals' Rights

Discussion & Conclusion

Key Players: Individual Citizens, the Government,
Private Entities

Learning Curve

**Balancing Rights, Responsibilities, &
Freedoms**

Q&A