



The First Amendment to the U.S. Constitution guarantees five basic freedoms: (1) religion, (2) speech, (3)

Perhaps the prime example of the Supreme Court championing a positive rights approach was its 1969 decision in *Red Lion Broadcasting v. FCC*. In the *Red Lion* case, the Supreme Court upheld what was known as the fairness doctrine. The doctrine, which was generated by the Federal Communications Commission (FCC) in the 1940s, stipulated that broadcasters (on terrestrial radio and over-the-air television) had a responsibility to provide coverage of important public issues that arose in their communities and to ensure in their coverage that they fairly represented all significant viewpoints on those issues. A related aspect of the fairness doctrine stipulated that when a broadcaster aired what amounted to a personal attack on an individual or group, the broadcaster also needed to notify the target of the attack and offer free time for the target to reply.

Ruling that the fairness doctrine and its accompanying provisions “enhance, rather than abridge, the freedoms of speech and press,” the Supreme Court upheld the fairness doctrine against a broadcaster who challenged it on First Amendment grounds in *Red Lion*

Scholars such as Pickard have proposed that the United States should encourage government efforts to support public service journalism, through mechanisms such as subsidies for an expanded public media system, tax incentives for media institutions struggling financially to transition into nonprofit status, and using public infrastructure to support producing local news content in communities. Others have suggested that embrace of a positive First Amendment would allow for some government regulation of social media platforms to ensure they promote healthy dialogue rather than facilitate the spread of misinformation.

In the 2017 decision *Packingham v. North Carolina*, the U.S. Supreme Court recognized the essential role the internet and social media platforms play in providing a modern-day public square. In striking down a state law that made it a crime for a registered sex offender simply to access a commercial social networking site, such as Facebook, the Supreme Court reflected a positive First Amendment approach as it articulated why the law barring such access violated the First Amendment. “A fundamental principle of the First Amendment is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more,” Justice Anthony M. Kennedy wrote in the majority opinion. “By prohibiting sex offenders from using [social media] websites, North Carolina with one broad stroke bars access to what for many are the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge.”

See also [Censorship](#); [Fairness Doctrine](#); [Federal Communications Commission \(FCC\)](#); [First Amendment](#); [Access to Media](#)