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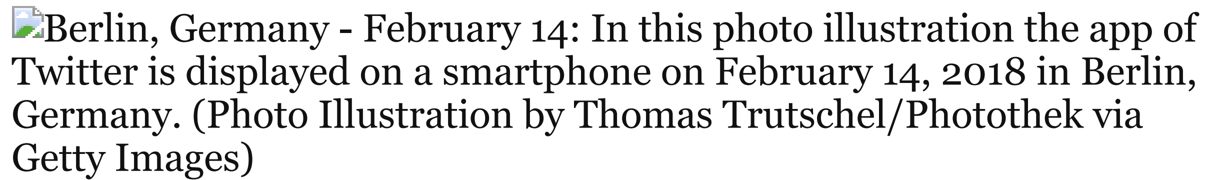
Twitter, Google, Facebook, Amazon, etc. *"...rely on public tax dollars, government tax waivers, public resources and the financing of the DNC political party, so they MUST comply..."*

Free Speech' Suit Aims to End Twitter's Political Censorship


Berlin, Germany - February 14: In this photo illustration the app of Twitter is displayed on a smartphone on February 14, 2018 in Berlin, Germany. (Photo Illustration by Thomas Trutschel/Photothek via Getty Images)

Thomas Trutschel/Photothek via Getty Images

by IAN MASON | 23 Feb 2018 | 1017

A group of free-speech lawyers filed the most serious legal challenge yet to Twitter's censorship policies Tuesday in San Francisco County Superior Court, seeking a ruling preventing Twitter from banning users purely on the basis of their views and political associations.

The 29-page complaint contends that, under a California legal doctrine that recognizes some private facilities as “public forums,” Twitter may not discriminate against speech on their platform based purely on viewpoint. If successful, it would be the first extension of that doctrine to internet social media platforms and could transform the way free speech is treated online. The suit became all the more relevant Wednesday as Twitter stood accused of locking out thousands of conservatives under the guise of cracking down on “Russian bots.”

The genesis of the suit is Twitter’s November 2017 announcement that they would start banning and sanctioning users based on their offline behavior and associations. On December 18, 2017, Twitter, five years after their top British executive described the company as “the free speech wing of the free speech party,” made good on this threat, “purging” hundreds of mostly right-wing users. Twitter’s new policy refers to association with “violent extremist groups,” and a company blog post claimed, “If an account’s profile information includes a violent threat or multiple slurs, epithets, racist or sexist tropes, incites fear, or reduces someone to less than human, it will be permanently suspended.”

One of those purged is Jared Taylor, founder and editor of “American Renaissance,” a fringe-right journal on race and immigration. He is frequently described as an “extremist” and a “white supremacist” by left-wing groups like the Southern Poverty Law Center (SPLC) and the Anti-Defamation League (ADL), the latter of which sits on Twitter’s “Trust and Safety Council,” the largely leftist group of activists and non-profits Twitter assembled in 2016 to help decide which speech to censor.

Taylor is a graduate of Yale University and Paris’s Sciences Po, the former West Coast editor of *PC Magazine*, and author of several books. He describes himself as a “white advocate” or “race realist” and condemns Nazism and antisemitism.

According to the complaint, in his more than six years on Twitter, Taylor never made threats, harassed anyone, or otherwise came under scrutiny for his behavior on the platform. Even the SPLC notes Taylor

“scrupulously avoided racist epithets [and] employed the language of academic journals” in his writings, and Taylor once wrote an article urging people to be more civil on Twitter.

As the complaint puts it:

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> Mr. Taylor has always expressed his views with respect and civility towards those who disagree. He has never engaged in vituperation or name-calling, on Twitter or elsewhere.
>
> Neither Mr. Taylor nor American Renaissance has ever promoted or advocated violence, on Twitter or anywhere else. Indeed, they have urged their followers to maintain a dignified and respectful tone towards those who disagree with them. Neither Mr. Taylor nor American Renaissance is affiliated with any groups that promote or practice violence.
>
> At no time did either Mr. Taylor’s or American Renaissance’s accounts engage in “trolling,” insults, or harassment, nor did they ever encourage anyone else to do such thing

Yet both Taylor’s personal account and that of American Renaissance were permanently banned. The only explanation Twitter gave was that the accounts were “affiliated with a violent extremist group.” Twitter refused to offer Taylor any further details including to which “violent extremist group” he was affiliated.

Representing Taylor in his effort to be reinstated to Twitter are Michigan State University Law professor Dr. Adam Candeub and Washington, DC, attorney Noah Peters, with Nevada free speech lawyer Marc Rondazza acting as local counsel. Peters spoke with Breitbart News about his complaint.

“If you’re the functional equivalent of a traditional public forum … even the private company that owns it can’t prohibit common expressive activities completely … they can’t selectively kick people out

and allow certain people to speak and not others," Peters explained of California's unique privately owned public forum doctrine.

This "*Pruneyard* Doctrine" grows out of a 1979 California Supreme Court interpretation of the California Constitution's version of the First Amendment, *Robin v. Pruneyard Shopping Center*, that held private owners could not prevent speech on their property when it functions like a traditional public venue for speech. "The classic examples are sidewalks, parks, and, in the case of *Pruneyard,* a shopping mall, a railroad terminal, probably an airport terminal, but that hasn't been squarely decided," Peters explained.

The crux of their lawsuit is that, in the 21st Century, social media platforms are the most natural "public forums" in which people exchange ideas, and that the *Pruneyard* Doctrine ought to be extended to prevent viewpoint discrimination and arbitrary restrictions on speech on these privately owned websites. Peters explained to Breitbart News the 1970s California Supreme Court's reasoning in creating the doctrine. It focused on the importance of public drives for signatures to the referendum process in California, worrying that if the privately owned public places where people congregate were closed off to flyering and signature collectors, it could do serious harm to the functioning of the political system.

Peters put it as follows:

> All of those concerns are much more amplified on Twitter. It's become the premiere forum for politicians and government agencies to communicate with people. People are holding constituent meetings, town halls – and Twitter is encouraging this. It also provides an unprecedented level of access to politicians, direct access to journalists … it would be very difficult to become a public figure or to engage in political debate if you're not on Twitter.
>
> Every candidate for public office – virtually – has a Twitter. These are circumstances that were unknown to the Pruneyard court back

> in 1979, but this is what they were aiming at on steroids. Twitter is the modern public square.

As the complaint points out, the U.S. Supreme Court called internet social media the "modern public square" last year in an 8-0 decision holding a law that made it a felony for sex offenders to use social media after their release violated the First Amendment.

Breitbart News asked Peters about the likely objection from *laissez faire* types that Twitter is a private company and should be able to do as it likes with its platform. "This affects interests that are so much larger than property rights – the ability to participate meaningfully in Democracy, to be able to speak without censorship – which are really fundamental basic rights," he replied.

Peters was quick to draw a distinction between so-called "time-place-manner" restrictions on speech, which he freely admits Twitter has a right to enforce, and viewpoint discrimination, which is challenging. "In this lawsuit we don't say that free expression means you have the right to harass and threaten people, and to be disrespectful, or to use obscene language, or to post obscene things," he tells Breitbart News. "What they can't do – and what's really inimical to free speech – is kicking people off because of their perceived off-platform affiliations and because of their viewpoints."

Breitbart News asked why Taylor, a man often reviled as a racist, would serve as the test case. "The issue in the lawsuit is not whether Taylor himself's views are right or wrong, or really anything to do with his views. The issue here is the larger principle of internet censorship and internet free speech," Peters replied.

"In every First Amendment case, the plaintiff – the person who's complaining – is an unpopular figure. You have communists, draft-dodgers, Jehovah's Witnesses, more recently you had Fred Phelps of the Westboro Baptist Church," Peters said, referencing the plaintiffs in the most famous free speech cases of the last 100 years. "Even every authoritarian country, you can always be praising whoever's in charge. You can always write things that flatter their policies. That doesn't

mean you have freedom of speech. Freedom of speech only matters when it protects viewpoints that we don't like, that are controversial."

Censorship does not start with silencing mainstream figures, Peters argues, but those on fringes:

> Twitter is not going to make Donald Trump the test case. They're not going to make Chuck Schumer the test case. They're not going to make someone who's popular the test case. It never works that way. It's always people who are on the fringes, who are widely hated, who are the ones who need the protection of the First Amendment. Jared Taylor's views are controversial. That's exactly why we have to make sure he has the right to express those views.

"The guiding principle of our First Amendment jurisprudence is that we protect the thought we hate," Peters continued, paraphrasing Supreme Court Justice Oliver Wendell Holmes Jr., the jurist who more than any other cemented our modern understanding of free speech.

The lawsuit also alleges Twitter is violating California's Unruh Civil Rights Act that prohibits discrimination on the basis of political beliefs and brings a breach of contract claim on the basis of advertising purchases Taylor made with Twitter to build his follower base only to be banned without compensation.

Twitter's recent controversies, allegedly punishing more mainstream conservatives, makes Peters's contention that what starts with Taylor doesn't end with him look prescient. Wednesday's #TwitterLockout is only the latest in a long time of scandals involving Twitter's disfavoring of right-leaning speech. A former Twitter employee told Breitbart News, "It wasn't a mistake. They defined Trump supporters as bots. The only reason they are backpedaling is [because] they got caught."

Recent undercover reporting appears to confirm years of complaints from conservatives about mistreatment, including "shadow-banning"

and unfair suspension because of liberal bias at the Silicon Valley giant. From this, it can be inferred that if Taylor's lawsuit reaches discovery and his lawyers are allowed to obtain internal Twitter documents on his banning, it may transform our understanding of how Twitter disfavors the Right online.

If Taylor prevails in the California court system and successfully expands the *Pruneyard* Doctrine to Silicon Valley's social media companies, it could entirely upend the meaning of free speech on the internet and give the — mostly conservative — voices that feel they are being silenced a cause of action against the overwhelmingly leftist and increasingly intolerant big tech.

Breitbart News contacted a Twitter representative for a comment on Candeub, Randazza, and Peters's lawsuit but received no reply.

The case is *Taylor v. Twitter*, CGC-18-564460 in San Francisco County Superior Court.

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