

SUPERIOR COURT OF PENNSYLVANIA

Armslist LLC v. Facebook, Inc.

335 A.3d 1 (Pa. Super. Ct. 2025) · No. 1307 WDA 2023 · Decided April 3, 2025

SUMMARY

The Pennsylvania Superior Court affirmed dismissal of claims by Armslist LLC, Torquelist LLC, and related individuals alleging that Facebook and Instagram violated their free-speech rights under Article I, Section 7 of the Pennsylvania Constitution by removing or restricting their accounts. The court held that the complaint did not sufficiently allege state action based on pressure from members of Congress and rejected the argument that the platforms were de facto public forums. The court affirmed the trial court’s order sustaining the demurrer and dismissing the claims with prejudice.

CASE DETAILS

COURT	Superior Court of Pennsylvania
WRITING FOR THE COURT	McLaughlin, J.; Murray, J.; King, J.
JURISDICTION	Pennsylvania Superior Court
DECIDED	April 3, 2025
DOCKET	1307 WDA 2023
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appellants appealed from an order sustaining Appellees' demurrer to their claims for declaratory and injunctive relief under Article I, Section 7 of the Pennsylvania Constitution and dismissing the complaint with prejudice.
STANDARD OF REVIEW	Review of an order sustaining a demurrer is de novo, with plenary scope of review. The court determines whether, accepting the pleaded material facts and all reasonably deducible inferences as true, the complaint states a claim for relief under any theory of law.
PRECEDENTIAL VALUE	Published and precedential
PARTIES	Armslist LLC, Torquelist LLC, Jonathan Gibbon, N. Andrew Varney, III v. Facebook, Inc., Instagram, LLC

TOPICS

- free speech
- constitutional law
- state action
- pleadings
- appellate procedure

PRACTICE AREAS

constitutional law

civil rights

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the complaint adequately alleged that Facebook and Instagram were state actors under Article I, Section 7 of the Pennsylvania Constitution because members of Congress coerced or significantly encouraged them to restrict or remove appellants' accounts.
2. Whether Facebook's and Instagram's privately owned social-media platforms were de facto public forums under Pennsylvania law such that restricting or removing appellants' accounts violated their Pennsylvania constitutional free-speech rights.

HOLDINGS

1. The complaint failed to allege that Facebook's or Instagram's actions could be attributed to Pennsylvania state action. Allegations that federal legislators criticized the platforms, requested policy changes, threatened possible future federal regulation, or proposed legislation did not plausibly establish coercion or significant encouragement sufficient to make the platforms' private conduct the conduct of the Commonwealth.
2. The complaint did not state a Pennsylvania constitutional claim based on a de facto public-forum theory. *Commonwealth v. Tate* does not extend to privately owned social-media platforms where no criminal prosecution or statutory defense to trespass is involved.

KEY QUOTATIONS

“To state a claim that the government violated the First Amendment through coercion of a third party, a plaintiff must plausibly allege conduct that, viewed in context, could be reasonably understood to convey a threat of adverse government action in order to punish or suppress the plaintiff’s speech.” (15)

“Under Tate, the government cannot impose criminal penalties for entering private property that has been opened for speech and petition activities, where there is a statutory defense for those who comply with the lawful conditions of accessing the property, and the property owner employs a standardless policy to determine who may access the property to exercise speech and petition rights.” (25)

FACTUAL BACKGROUND

Armslist and Torquelist operated online platforms concerning firearms and automotive transactions, and Jonathan Gibbon and N. Andrew Varney used Facebook and Instagram to post political commentary and related content. In 2020, Facebook and Instagram removed or restricted the appellants' accounts and implemented restrictions concerning firearms-related communications. The complaint alleged that these actions resulted from pressure by media and government officials, including members of Congress, and also alleged that the platforms held themselves out as public forums.

PROCEDURAL HISTORY

Appellants filed a second amended and supplemental complaint alleging that Facebook and Instagram removed or restricted their accounts in response to pressure from members of Congress and thereby violated their Pennsylvania constitutional free-speech rights. The Court of Common Pleas of Westmoreland County sustained Appellees' demurrer on the ground that Appellees were private entities and not state actors, and dismissed the case with prejudice. The Superior Court affirmed.

DISPOSITION

affirmed

CASES CITED

- d'Happart v. First Commonwealth Bank, 282 A.3d 704, 712 (Pa. Super. Ct. 2022)
- Riemenschneider v. D. Sabatelli, Inc., 277 A.3d 612, 614 (Pa. Super. Ct.), appeal denied, 288 A.3d 480 (Pa. 2022)
- Missouri v. Biden, 83 F.4th 350 (5th Cir. 2023), rev'd and remanded sub nom. Murthy v. Missouri, 603 U.S. 43 (2024)
- Murthy v. Missouri, 603 U.S. 43 (2024)
- Okwedy v. Molinari, 333 F.3d 339 (2d Cir. 2003) (per curiam)
- Commonwealth v. Edmunds, 586 A.2d 887, 895 (Pa. 1991)
- Oberholzer v. Galapo, 322 A.3d 153, 173 (Pa. 2024)
- Pap's A.M. v. City of Erie, 812 A.2d 591, 601, 603 (Pa. 2002)
- W. Pa. Socialist Workers 1982 Campaign v. Conn. Gen. Life Ins. Co., 515 A.2d 1331, 1335 (Pa. 1986)
- Wharton v. ?, 263 A.3d 569 (Pa. 2021)
- Jubelirer v. Rendell, 953 A.2d 514, 523 (Pa. 2008)
- DePaul v. Commonwealth, 969 A.2d 536, 547 (Pa. 2009)
- Nat'l Rifle Ass'n of Am. v. Vullo, 602 U.S. 175, 180, 188-93, 198 (2024)
- Blum v. Yaretsky, 457 U.S. 991, 1004 (1982)
- Bantam Books, Inc. v. Sullivan, 372 U.S. 58 (1963)
- R.C. Maxwell Co. v. Borough of New Hope, 735 F.2d 85, 88-89 (3d Cir. 1984)
- Platt v. Graham, No. 1:19-CV-1829, 2020 WL 6551218, at *4-*5 (M.D. Pa. Nov. 6, 2020)
- Children's Health Defense v. Meta Platforms, Inc., 112 F.4th 742, 760 (9th Cir. 2024)
- O'Handley v. Weber, 62 F.4th 1145, 1158 (9th Cir. 2023)
- Kennedy v. Warren, 66 F.4th 1199, 1207-08 (9th Cir. 2023)
- Bartley v. Taylor, 25 F. Supp. 3d 521, 532 (M.D. Pa. 2014)
- Commonwealth v. Tate, 432 A.2d 1382, 1383-91 (Pa. 1981)
- State v. Schmid, 423 A.2d 615, 630 (N.J. 1980)
- Packingham v. North Carolina, 582 U.S. 98 (2017)
- William Goldman Theatres, Inc. v. Dana, 173 A.2d 59 (Pa. 1961)

- Commonwealth v. Bishop, 217 A.3d 833, 843 (Pa. 2019)
- Commonwealth v. White, 669 A.2d 896, 899 (Pa. 1995)
- Bricklayers of W. Pa. Combined Funds, Inc. v. Scott's Dev. Co., 90 A.3d 682, 694 & n.15 (Pa. 2014)
- McShea v. City of Phila., 995 A.2d 334, 339 (Pa. 2010)

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