

Old Meets New: the 1st, 4th, and 5th Amendments face the digital world

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By Pierre Grosdidier, Houston, Texas
August 12, 2021

1

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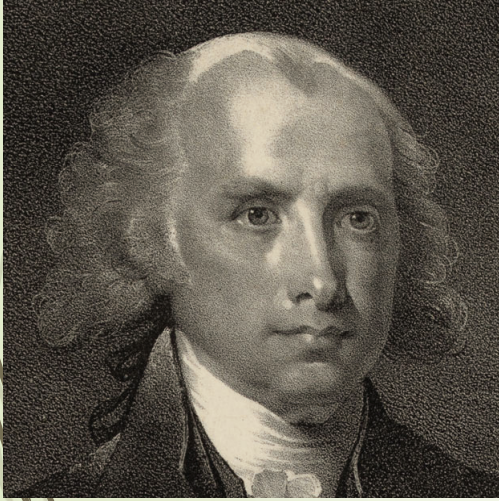
DANKE!
THANK YOU!
MERCI!
GRAZIE!
GRACIAS!
DANK JE WEL!

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1791 Bill of Rights



1st

4th

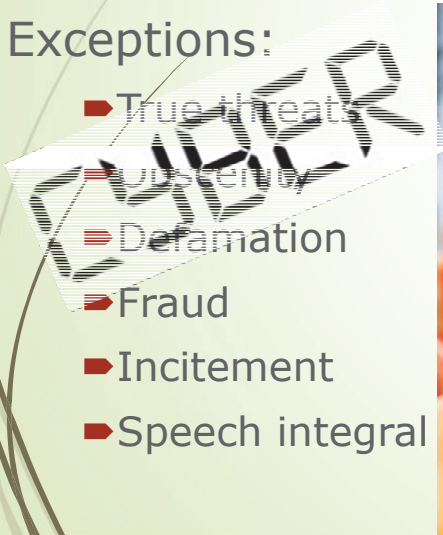
5th

2020s



1st Amend.

- "Congress shall make no law . . . abridging the freedom of speech"
- Exceptions:
 - True threats
 - Obscenity
 - Defamation
 - Fraud
 - Incitement
 - Speech integral



1st Amend. and cyberstalking statutes

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



- 18 U.S.C. § 2261A(2), the federal cyberstalking statute



18 U.S.C. § 2261A(2)(B) (2013)

E.g., flag burning is expressive conduct:

~ *Texas v. Johnson*

~ *U.S. v. Eichman*

to kill, injure, harass, intimidate, . . . ,
any interactive computer service or . . . ,
to engage in a **course of conduct** that—

- (B) causes, *attempts to cause*, or would reasonably be expected to cause substantial emotional distress to [another person shall be punished].

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