



## The Daily Dish

# Content Moderation and SCOTUS

DOUGLAS HOLTZ-EAKIN | JULY 2, 2024

Yesterday the Supreme Court of the United States (SCOTUS) unanimously [sent back](#) to the lower courts two cases regarding Florida and Texas laws that sought to limit content moderation, saying: “The judgments are vacated, and the cases are remanded, because neither the Eleventh Circuit nor the Fifth Circuit conducted a proper analysis of the facial First Amendment challenges to Florida and Texas laws regulating large internet platforms.” Jeff Westling has a complete analysis in his [latest](#).

As Westling notes: “Conservatives have long alleged social media companies largely disfavor conservative speech on their platforms, and Texas and Florida specifically passed laws requiring platforms to remain politically neutral.” While simply sending the cases back to the lower courts might not seem like making much of a decision, the SCOTUS majority opinion indicates significant violations of the First Amendment. As Westling puts it: “As the Court made clear, the First Amendment protects social media companies that moderate user content when a company is forced to host content it would prefer to exclude, and the government cannot get its way simply by asserting an interest in better balancing the marketplace of ideas.”

While this case focuses on the First Amendment rights of the platform, the case will likely impact the long-running controversy over Section 230 of the Communications Decency Act of 1996. Section 230 gives internet platforms immunity for content users post on their sites, while also giving them the discretion to remove content they consider inappropriate. In its entirety, Section 230 reads: “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” The section has been called the [26 words that invented the internet](#) and its [importance to the economics of the digital economy](#) raises the profile of any court case regarding content moderation. As SCOTUS makes clear, social media platforms can moderate content as they see fit under the First Amendment, and it seems unlikely that Congress or a state government law will stand if it directly regulates how platforms

moderate. So going after Section 230 to open up these decisions to lawsuits may be the best avenue for lawmakers who wish to regulate speech online.

Having made clear how SCOTUS thinks the courts ought to apply the First Amendment in this context, the task remaining for the lower courts is to see if any of the provisions of the laws can survive. For the moment, however, Section 230 and the digital economy built on its foundation remain intact.