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THE DOCKET

Moody v. NetChoice & NetChoice v. Paxton

Civics is all around us. The United States Supreme Court is the highest court in the land. Through its power of judicial review, its decisions have a lasting impact on "We the People". So what is the Court hearing this session and how might the justices rule? Let's help each other expand our civic literacy.

The Case of Digital Speech Rights and Content Moderation

The Facts of *Moody v. NetChoice* & *NetChoice v. Paxton*:

In 2021, the Florida and Texas legislatures passed controversial laws that attempt to regulate large social media companies. This is because social media platforms curate and edit content in various ways, such as prioritizing posts or removing posts they deem in violation of their standards. This was particularly true concerning the [events of January 6, 2021](#). Consequently, the Florida and Texas legislatures believed these platforms were demonstrating bias, and unfairly censoring conservative content and users with conservative political views.

Florida's [S.B. 7072](#) and Texas's [HB 20](#) both place restrictions and requirements on social media platforms in an attempt to prohibit the censoring of speech based on the viewpoint of the speaker. Both states' laws outline specific provisions the limit the choices social media platforms can make about which user-generated content is presented to the public and how it is presented. They also require individualized explanations to users if their posted content is moderated.

NetChoice, representing social media platforms – including Google, which owns YouTube, X (formerly Twitter), and Meta, which owns Facebook – went to federal court to challenge the laws. The tech groups assert that as private companies, the [First Amendment](#) protects their right to decide what content they will or will not make available. "Just as Florida may not tell the New York Times what opinion pieces to publish or Fox News what interviews to air, it may not tell Facebook and YouTube what content to disseminate." ([Brief for the Respondents](#), NetChoice, p.2)

The states argue however, that these social media platforms are not creators of content and therefore their conduct as "hosts to third-party speech" is subject to regulation. They claim that First Amendment protections do not apply as these companies are more similar to "common carriers" like a telephone company. The states rely on the premise that "the First Amendment does not protect conduct the same as it protects speech" and that in the past, the Court has held that "a business establishment that is open to the public to come and go as they please generally has no inherently expressive interest in silencing its customers". ([Brief for the Petitioners](#), Moody, p. 16 & 17)

In *Moody v. NetChoice*, the U.S. District Court for the Northern District of Florida Tallahassee Division granted NetChoice's motion for a [preliminary injunction](#). The federal district court found that the Act in question does not survive [strict scrutiny](#) and its provisions violate platforms' First Amendment rights. The U.S. Court of Appeals for the 11th Circuit affirmed and left the ruling in effect.

In *NetChoice v. Paxton*, the U.S. District Court for the Western District of Texas, Austin Division put the state's law on hold, arguing that social media platforms exercising editorial discretion is protected by the First Amendment. But the 5th Circuit [disagreed](#). The tech groups submitted an application to the U.S. Supreme Court to [vacate](#) the stay, and in May 2022, the Court [temporarily blocked](#) the law while appeals continued in lower courts. Ultimately, the 5th Circuit ruled for Texas and upheld the law, prompting the return to the Supreme Court.



After asking the Biden administration for [its views](#) on the laws, the U.S. Supreme Court granted certiorari in both cases on September 29, 2023 and heard oral arguments for both on February 26, 2024.

The Court is being asked to address two questions:

1. Whether the Texas and Florida laws' content-moderation restrictions comply with the First Amendment.
2. Whether the Texas and Florida laws' individualized-explanation requirements comply with the First Amendment.

During oral arguments ([Docket 22-277](#)) ([Docket 22-555](#)), the justices expressed two main concerns. The first was they were not keen on deciding such a consequential question as to the constitutionality of a statute without knowing the specifics of how it would be enforced since the laws had not yet taken effect. The second was over the parties' all-or-nothing approaches to the legal questions involved and to the parties' analogies comparing social media companies to other industries featured in prior First Amendment cases.

Federal Statute and Supreme Court Precedent Used in this Case:

- [United States v. O'Brien](#) (1968): The Court established a test for determining when governmental regulation involving symbolic speech is justified. The regulation must be unrelated to content and narrowly tailored to achieve the government's interest.
- [Miami Herald Publishing Co. v. Tornillo](#) (1974): The Court ruled that a "right to reply" statute that granted political candidates criticized by any newspaper the right to have their response to the criticism published was unconstitutional.
- [Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.](#) (1995): The Court ruled that requiring private citizens who organize a parade to include a group expressing a message that the organizers don't agree with violates the First Amendment.
- [Turner Broadcasting System, Inc. v. Federal Communications Commission](#) (1997): The Court ruled that requiring cable operators to set aside channels for local broadcasts was not a First Amendment violation of their editorial autonomy as the government has an independent interest in preserving a multiplicity of broadcasters.
- [Rumsfeld v. Forum for Academic and Institutional Rights, Inc.](#) (2006): The Court ruled that withholding federal funds from colleges that restrict the access of military recruiters is constitutional as it regulated conduct, not speech.
- [303 Creative LLC v. Elenis](#) (2023): The Court ruled that the government generally cannot compel a person to espouse its preferred messages.
- [47 U.S.C. § 230](#): Protections for private blocking and screening of offensive material online as well as establishes the principle that individuals are responsible for their own actions and statements online, but not those of others. Protects companies from civil suits that are based on what others say online.



To Think and To Do: The [First Amendment](#) to the U.S. Constitution guarantees that the government will not make laws prohibiting the exercise of free speech. However, history has shown that while rights are protected, they are not absolute. Given the precedents and statute cited in this case, and the complexities of social media platforms becoming the "modern public square", how do you think the U.S. Supreme Court will rule? Explain.

