



## Civics Essay Contest 2024:

### Should social media platforms have a right to restrict political speech?

Social media has revolutionized how we access news and information. Unlike newspapers or TV broadcasts, social media platforms do not usually create content – they host content created by users. But social media platforms also “moderate” user content. They prioritize or de-prioritize posts, remove content that violates community standards, and restrict or ban users who violate those standards.

The Supreme Court will soon consider the constitutionality of controversial laws in Texas and Florida that would regulate how large social media companies like Facebook, TikTok, and X (formerly known as Twitter) control content posted on their sites. The Court is likely to address whether social media platforms have the right to restrict political speech and if so, to what extent.

The U.S. District Court for the Eastern District of Tennessee, Chattanooga Division, and the Chattanooga Chapter of the Federal Bar Association invite local middle school and high school students to share their thoughts on this issue in the 6<sup>th</sup> Annual Civics Essay Contest.

Three high school students and three middle school students will win the following prizes:

First Place: \$500

Second Place: \$250

Third Place: \$100

**Submission deadline: March 29, 2024**



## **Introduction**

Before social media, most people kept up with current events through newspapers, radio, and television. These media outlets decide which news stories to present to the public and also create the content itself. Because they create the content, traditional media outlets can be held responsible for false or harmful content.

In contrast, social media companies primarily provide a platform for user-created content. Legislation like 47 U.S.C. § 230, a portion of the federal Communications Decency Act of 1996, provides social media companies with protection from liability for the content posted by people using their platforms.

Yet large social media platforms do more than just host user content. They also use algorithms to prioritize or de-prioritize content, making a user's post more or less likely to be seen by others. They remove posts that violate community standards and ban – or “deplatform” – users who they determine violate these standards. Some platforms attach flags or cautions to posts that may contain what they deem to be misinformation or unfounded claims, such as inaccurate news or altered images purporting to be real. These are some of the ways that social media platforms “moderate” user content.

## **State Legislative Response**

Several states have enacted laws to address what lawmakers perceived as bias in how platforms use these content-moderation tools. In particular, some lawmakers in Texas and Florida believed that platforms were moderating content in a way that censored conservative viewpoints. NetChoice, a group that represents large social media platforms such as Facebook, X (formerly known as Twitter), YouTube, and TikTok, challenged these laws in Florida and Texas.

## **Current Litigation**

In the Florida case, the Eleventh Circuit Court of Appeals held that social media companies are protected by the First Amendment right to free speech when they choose whether and how to moderate user content on their platforms. In the Texas case, the Fifth Circuit Court of Appeals disagreed. It held that the First Amendment protects the right to free speech, and what the platforms were doing was censorship, not speech. In broad terms, the Eleventh Circuit treated social media companies more like traditional media outlets such as newspapers, while the Fifth Circuit treated them more like entities that provide a public service.

These cases raise serious questions about whether social media platforms should be restricting political content and, if so, to what extent. On September 29, 2023, the Supreme Court of the United States agreed to consider the constitutionality of the social media laws in Florida and Texas.

## Essay Requirements:

Students are invited to consider the question: “**Should social media platforms have the right to restrict political speech?**”

For this essay, imagine you are a Supreme Court Justice. How would you rule on this issue?

Your essay should:

1. State your decision;
2. Present your best arguments in support of your decision;
3. Cite relevant sources, statutes, cases, and/or historical events that support your position;  
and
4. Be no more than 1,000 words if you are a high school student and no more than 500 words if you are a middle school student.

Please submit your essay to [chattcivicsessay@gmail.com](mailto:chattcivicsessay@gmail.com). Be sure to include the submission form attached to this flyer.

You may also mail your essay and cover sheet to Civics Essay Contest, Attn: Kelly L. Walsh, U.S. Courthouse, 900 Georgia Avenue, Chattanooga, TN 37402.

Essays must be emailed or postmarked by **March 29, 2024**.

The contest is open to public, private, and home school students in grades 6 to 12 from Bedford, Bledsoe, Bradley, Coffee, Franklin, Grundy, Hamilton, Lincoln, McMinn, Marion, Meigs, Moore, Polk, Rhea, Sequatchie, Warren, and Van Buren Counties.

## Case Summary Resources

**Reading Tip** → The cases discussed below are complex and deal with many tricky issues. These summaries focus on whether the First Amendment protects social media platforms when they moderate user content or speech.

In considering these cases, it’s important to know that unlawful speech, such as specific threats of violence against a particular person or group, is not at issue. Certain federal laws authorize restriction of unlawful or criminal speech, so focus on the other types of speech that might be restricted or de-prioritized, such as political speech.

***NetChoice, LLC v. Attorney General of Florida, 34 F.4th 1196 (11th Cir. 2022)***

A Florida statute called Senate Bill 7072 was enacted to combat what legislators viewed as bias against conservative voices on large social media platforms. The lawmakers found that large social media platforms were similar to public utilities and so the State of Florida had an interest in protecting users from inconsistent or unfair actions by the platforms.

The statute had four components that are relevant to your decision. First, it prohibited social media platforms from “de-platforming” (temporarily or permanently banning) any political candidate using the platform. Second, it prohibited the platforms from “deprioritizing” posts about a political candidate. In other words, social media companies were not allowed to make content about a political candidate less visible to other users. Third, the statute prohibited social media platforms from censoring or banning journalism outlets based on the content of their broadcasts or publications. Fourth, it required that all censorship standards be applied in a consistent manner across all users on the platform.

NetChoice sued on behalf of the large social media companies that the law targets, arguing that the Florida statute violated the companies’ First Amendment right to free speech. It argued that content-moderation decisions, like which posts to remove or deprioritize and which users to ban, are “editorial judgments” that are protected by the First Amendment.

The Eleventh Circuit first held that social media platforms are private companies with First Amendment rights. The court reasoned that when they publish or disseminate information, they are engaging in “speech” within the meaning of the First Amendment. The court held that “when a platform removes or deprioritizes a user or post, it makes a judgment about whether and to what extent it will publish information to its users – a judgment rooted in the platform’s own views about the sorts of content and viewpoints that are valuable and appropriate for dissemination on its site.” The court reasoned that when a social media company removes or deprioritizes a post that it believes has inflammatory political rhetoric or contains misinformation, the platform “conveys a message” even though the content is generated by a user of the platform.

The Eleventh Circuit held that decisions about what content to boost or restrict were “editorial judgments” protected by the First Amendment. It found that most of the Florida law was likely unconstitutional.

***NetChoice, LLC v. Paxton, 49 F. 4th 439 (5th Cir. 2022)***

A Texas statute called House Bill 20 prohibited large social media platforms from censoring speech based on the “viewpoint” of its speaker. The Texas state legislature found that these platforms were “central public forums for public debate.”

The Texas law would prohibit a social media platform from censoring “a user, a user’s expression, or a user’s ability to receive the expression of another person” based on the viewpoint of the user or the viewpoint expressed in the post, video, etc. The statute defined “censor” to mean block, ban, remove, de-platform, restrict, deny visibility to, or otherwise discriminate against.

The social media companies sued, arguing that their content moderation was protected speech under the First Amendment. In other words, they argued that they were exercising their First Amendment rights when they removed certain content, banned certain users, and made certain posts more or less visible to others. The Fifth Circuit disagreed, characterizing these actions as censorship. The court explained that the First Amendment protects free speech, not censorship.

Unlike the Eleventh Circuit, the Fifth Circuit found that the social media companies were not exercising “editorial judgment” when they restricted the speech of users on their platforms. Courts have recognized that traditional media outlets may exercise editorial judgment over what they choose to air or publish. For example, cable companies can exercise editorial judgment over which stations or programs they put on the air. Newspapers are allowed to exercise editorial judgment in deciding not to publish certain articles or news items. But a newspaper or television news program has responsibility for the content they edit and present – if it is false and causes harm, the outlet might be found liable. In contrast, social media companies disclaim any responsibility for user-generated content they host on their platforms.

The court also held that the social media companies were “common carriers.” This is a legal term that applies to private entities that play such an important role in the communication or transportation of the general public that States can require them to provide their services without discrimination. Historically, “common carriers” have included telegram, telephone, and railroad companies.

The Fifth Circuit observed that social media platforms are central to public discourse in modern life. People depend on these platforms to communicate with one another about family, art, culture, politics, science, religion, and business. Based on the centrality of social media in modern communication, the court held that social media platforms are “common carriers,” so the State could require them to provide services to the public without discrimination.

## What Do You Think?

Below are some questions to get you thinking about your decision. Ask yourself →

- How are the laws in Florida and Texas similar? How are they different?
- What is the harm that lawmakers sought to avoid when they enacted these laws?
  - What would happen if social media companies could censor any content they wanted on their platforms?
- What is the harm that social media platforms sought to avoid in moderating user content on their platforms?
  - What would happen if users could post anything they wanted on social media, regardless of whether it was true?
- In what ways are social media companies similar to traditional media outlets like newspapers, radio, and TV broadcasts? In what ways are they different?
- Did you notice that the Fifth Circuit calls the activity of the social media platforms “censorship,” while the Eleventh Circuit calls it “content moderation”? What do you think the difference is? Is there a difference?

**Disclaimer:** Please note that the foregoing materials are derived from the FBA’s national contest resources, available at <https://www.fedbar.org/about-us/outreach/civics-essay-contest/2024-resources/> (last accessed February 22, 2024). The FBA’s 2024 contest resources, in turn, cite to other original source material that is omitted here.

The case summaries and other material contained in this essay prompt are provided solely for the purpose of the student essay contest. **They do not reflect the views or opinions of the Chattanooga Chapter of the FBA or the U.S. District Court for the Eastern District of Tennessee.**

**Federal Court Civics Essay Contest  
2024 Submission Form**

Name: \_\_\_\_\_

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Telephone Number: \_\_\_\_\_

School: \_\_\_\_\_

Grade Level: \_\_\_\_\_

By signing this form, I certify that the essay I am submitting is my own original work; that I have followed all applicable copyright laws and fair use practices; that I am a public, private, or home school student from Bedford, Bledsoe, Bradley, Coffee, Franklin, Grundy, Hamilton, Lincoln, McMinn, Marion, Meigs, Moore, Polk, Rhea, Sequatchie, Warren, or Van Buren County; and that the contest sponsors (the District Court for the Eastern District of Tennessee – Chattanooga Division and the Chattanooga Chapter of the Federal Bar Association) may publish all or excerpts of my essay on their websites and in other print publications, with appropriate credit to me as the author.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_