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INTERNET CENSORSHIP IN THE TIME OF A GLOBAL PANDEMIC: A PROPOSAL FOR REVISIONS TO SECTION 230 OF THE COMMUNICATIONS DECENCY ACT

Braxton Johnson¹ and Alex Dewsnp²

I. INTRODUCTION

The indefinite Twitter ban in 2020 on the President of the United States, Donald J. Trump, catalyzed the debate on the amount of power that social media companies should be allowed to wield concerning censorship and content moderation.³ In contrast, Elon Musk's more recent purchase of Twitter has been coupled with promises of looser content-moderation policies allowing for more controversial content to remain on the platform and the reinstatement of various users that had been banned or censored under Twitter's previous ownership.⁴ This discussion has not been left unacknowledged by the Supreme Court; in the 2021 *Biden v. Knight* case surrounding

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3 Tara Andryshak, *Twitter, Trump, and the Question of the First Amendment*, *Syracuse Law Review* (Jan. 6, 2023, 2:34 PM), <https://lawreview.syr.edu/twitter-trump-and-the-question-of-the-first-amendment/>.

4 Mike Isaac et al, *Inside Elon Musk's Big Plans for Twitter*, *The New York Times* (Jan. 14, 2023, 4:45 PM), <https://www.nytimes.com/2022/05/06/technology/elon-musk-twitter-pitch-deck.html>.

President Trump’s removal from Twitter, Justice Clarence Thomas stated, “We will soon have no choice but to address how our legal doctrines apply to highly concentrated, privately owned information infrastructure such as digital platforms.”⁵

The role of social media today has led to unprecedented levels of technological advancements, instant communication, and global connectivity. Consequently, social media companies’ capability to monitor posts, influence feeds using algorithms, and censor content has drawn scrutiny; these globally used platforms, with millions of worldwide users, are tied to the First Amendment and the rights of individual users in the United States.

Recently, this discussion has revolved around how social media companies operate, how state legislation affects their operation, and how these companies influence world events. Per Justice Thomas’ view, this paper argues that Section 230 of the Communications Decency Act, which governs how the relationship between content moderation and liability for social media corporations, must be amended and revised to increase the liability of social media corporations. As it currently stands, Section 230 allows social media corporations to circumvent the First Amendment rights of American citizens.⁶ Furthermore, this article proposes that high-profile social media accounts be classified into categories, such as government or business accounts, so that common carrier law and principles from Section 230 can properly outline the relationship between corporate liability and pure free speech.

II. BACKGROUND

Two opposing decisions regarding state bills brought forth in 2021 escalated the debate over the future relationship between the First Amendment and social media platforms. In Texas, legislation known as House Bill 20 was passed by the state legislature and later

5 Eric Cervone, *What Is the Future of Social Media Regulation?*, The Regulatory Review (Jan. 25, 2023, 3:00 PM), <https://www.theregreview.org/2021/07/12/cervone-future-social-media-regulation/>.

6 47 U.S.C. § 230 (1996).

upheld by the Fifth Circuit Court of Appeals deeming social media platforms as common carriers, consequently limiting a platform's ability to moderate content based on an individual's viewpoints.⁷ The case, *NetChoice, LLC v. Paxton*, was brought forth against the Texas legislature for passing H.B. 20. Although the Supreme Court lifted the preliminary injunction made by the Fifth Circuit, NetChoice has still chosen to appeal the constitutionality of the Bill. The Fifth Circuit upheld the bill and, as a result, upheld the bill's classification of social media as common carriers. Consequently, this classification forces social media companies to enact nondiscrimination policies. The Court also asserted that platforms do not have editorial discretion over the content their users publish.⁸

Around the same time as the actions taken towards H.B. 20, in 2022 Florida's legislature attempted to pass a similar bill, Senate Bill 7072. This legislation primarily attempted to prohibit account bans and suspensions of Floridian political candidates and "journalistic enterprises" from their platforms. In addition, the legislation required platforms to allow users to opt out of algorithmic displays of content and required platforms to provide a written justification for every suspended account. Most notably, though, S.B. 7072 attempted to create a common carrier classification for social media companies.⁹ Immediately, S.B. 7072 was stalled by a preliminary injunction that deemed it to be in violation of the First Amendment. Florida state officials appealed the injunction and on May 23, 2022, Eleventh Circuit Judge Kevin C. Newsom held that social media platforms were not common carriers, stating that the ability to suspend or ban political candidates was within their First Amendment rights.¹⁰ The ruling also stated that requiring social media platforms to allow users to opt out of their algorithms violated the First Amendment

7 Tex. H.B. 20 (2021).

8 *NetChoice, LLC v. Paxton*, No. 21-51178 (5th Cir. 2022).

9 Fla. S.B. 7072 (2022).

10 Achutha Raman and Calvin Kim, *Case: NetChoice v. Moody*, Civil Rights Litigation Clearinghouse (Jan. 5, 2023, 3:15 PM), <https://clearinghouse.net/case/18161/#:~:text=On%20May%202023%2C%202022%2C%20the.platforms%20were%20not%20common%20carriers.>

and that justifying each action related to content moderation was unduly onerous and impossible for the companies to comply with.¹¹

Florida Attorney General Ashley Moody filed a petition in September 2022 for the Supreme Court to act on the issue after the two federal appeals courts issued contradictory rulings in Texas and Florida. Now, these opposing decisions will almost certainly be settled by the Supreme Court, though the timing of the Court's decision is not yet certain.¹²

Two additional cases currently on the Supreme Court docket offer an understanding as to why the discussion between legal doctrines and social media is at a pivotal point. First, *Gonzalez v. Google* will be argued before the Supreme Court in 2023 and will take on Section 230 of the Communications Decency Act to decide if Section 230 unduly protects social media platforms against disseminating harmful content.¹³ In 2015, Nohemi Gonzalez, a U.S. citizen, was killed in a terrorist attack in Paris, France. Subsequently, ISIS claimed responsibility for the attack through a written statement and YouTube video. The father of Nohemi Gonzalez alleges that Google "aided and abetted international terrorism by allowing ISIS to use its platform."¹⁴

The second case, *Twitter v. Taamneh*, will be argued before the Supreme Court and is based on the same facts as *Gonzalez v. Google*. Specifically, this case will answer if an internet platform "knowingly" provides substantial assistance in aiding international terrorism when it could have taken more action to prevent such terrorism, and if an internet platform can be responsible for aiding international terrorism under 18 U.S.C. § 2333 even if the platform's

11 *NetChoice LLC et al v. Moody et al*, No.4:2021cv00220 - Document 113 (N.D. Fla. 2021).

12 Adam Liptak, *Supreme Court Puts Off Cases on Social Media Moderation*, The New York Times (Jan. 23, 2023, 1:38 PM), <https://www.nytimes.com/2023/01/23/us/scotus-internet-florida-texas-speech.html>.

13 *Gonzalez v. Google, LLC*, No. 18-16700 (9th Cir. 2021).

14 *Gonzalez v. Google LLC*, Oyez, (Jan 31, 2023, 3:00 PM), <https://www.oyez.org/cases/2022/21-1333>.

services had no connection to the alleged terrorism.¹⁵ Put simply, the case will seek to answer if a social media platform aids international terrorism by *not* taking considerable action to remove harmful content from its platforms. These two cases will challenge the interplay between First Amendment doctrines and the powers of social media companies, drawing heavily on Section 230, an outdated provision that helped shape the creation of the internet as it is known today.

III. KEY TERMS

Section 230 of the Communications Decency Act

Section 230 of the Communications Decency Act was enacted in 1996 and aims at protecting speech by immunizing social media platforms from speech posted by users. It states:

“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.”¹⁶ These words have often been coined as the “words that made the modern internet.” Essentially, Section 230 puts the liability on the users for their own actions rather than social media platforms for simply carrying the speech. Furthermore, Section 230 permits operators of social networks to moderate content as they see fit. This provision is consistent with First Amendment publisher protections. Also, this provision aims at incentivizing users to exercise speech in online communities and platforms where their viewpoints are most accepted.¹⁷

15 *18 U.S. Code § 2333 - Civil remedies*, Legal Information Institute at Cornell Law School, (Jan. 7, 2023, 8:53 PM), <https://www.law.cornell.edu/uscode/text/18/2333>.

16 47 U.S.C. § 230 (1996)

17 Valerie C. Brannon et al, *Section 230: An Overview*, Congressional Research Service (Jan. 14, 2023, 3:21 PM), <https://crsreports.congress.gov/product/pdf/R/R46751>.

Common and Private Carriers

A common carrier is defined as “a person or a commercial enterprise that transports passengers or goods for a fee and establishes that their service is open to the general public.”¹⁸ Typical examples of common carriers include a shipowner, railroad, airline, taxi service, etc. In contrast, a private carrier is a person or a commercial enterprise that only agrees in particular circumstances to transport passengers or goods. Private carriers differ from common carriers because they do not establish that their service is open to the general public. In other words, private carriers enter a contract with each customer without the assumption that a similar contract will be available to the next customer.¹⁹ Currently, social media corporations are private carriers. While common carriers are governed by the Federal Communications Provisions, private carriers, or private corporations are run by individuals.

Censorship

Censorship occurs when individuals impose personal, political, or moral values on others through the means of suppression of words, images, or ideas.²⁰ Censorship can be carried out by public as well as private groups, and the label of “censorship” has often been attributed to social media platforms’ removal of posts that impose values or ideas deemed offensive, dangerous, or violence-inducing. In H.B. 20 (Texas), *censorship* is conveyed as a form of conduct, and according to this bill, if a social media platform were to remove a user’s post, that act of censorship could be deemed illegal, depending on the content of the post. While this behavior on the part of

18 *Common Carrier*, Legal Information Institute at Cornell Law School, (Jan. 4, 2023, 4:35 PM), https://www.law.cornell.edu/wex/common_carrier.

19 *Common Carrier*, Encyclopedia Britannica, (Feb. 5, 2023, 5:36 PM), <https://www.britannica.com/topic/common-carrier>.

20 Elizabeth R. Purdy, *Censorship*, The First Amendment Encyclopedia, (Jan. 6, 2023, 3:13 PM), <https://www.mtsu.edu/first-amendment/article/896/censorship>.

social media companies has not necessarily been deemed illegal nationwide, the argument will be made that the current composition of social media corporations reflects that of a common carrier (as explained in the following section, Public v. Private Corporations), and should therefore be deemed illegal as H.B. 20 would support.

IV. PROOF OF CLAIM

A. Damages to American Freedom

Social media corporations' power over content moderation ultimately damages American freedom. The foundational legal doctrine governing free speech is the First Amendment of the United States Constitution, which affirms that "Congress shall make no law... abridging the freedom of speech, or of the press."²¹ Part of the First Amendment's original intent was to protect U.S. citizens from the U.S. government creating legislation that had the potential to restrict an individual's freedom of speech.²² Paradoxically, Americans have witnessed social media companies exercising their ability and legal right to censor the speech of anyone, even government officials, based on viewpoints that are deemed inflammatory or offensive by the standards of the day. The rights that social media companies often draw upon relate to two sets of legal precedents. First, Section 230 of the Communications Decency Act grants immunity to platforms to moderate content under the identity that platforms act as publishers. This article takes the stance that social media platforms are not publishers; rather, they have evolved to mimic a "public

21 *Historical Background on Free Speech Clause*, Constitution Annotated, (Jan. 2, 2023, 7:34 PM), https://constitution.congress.gov/browse/essay/amdt1-7-1/ALDE_00013537/#:~:text=First%20Amendment%3A,for%20a%20redress%20of%20grievances.

22 Geoffrey R. Stone et al, *Freedom of Speech and the Press*, National Constitution Center, (Jan. 5, 2023, 5:40 PM,) <https://constitutioncenter.org/the-constitution/amendments/amendment-i/interpretations/266#:~:text=%E2%80%9CCongress%20shall%20make%20no%20law,write%2C%20except%20in%20exceptional%20circumstances>.

square.”²³ Second, social media corporations are private entities that allow them certain rights, including censorship, as opposed to public companies. This article takes the position, however, that social media corporations have outgrown the original intent behind the rights given to private corporations and now pose potential threats to communication-related to politics as well as the First Amendment rights of individuals. Social media corporations, acting under outdated Section 230 provisions, damage American freedom in three aspects of American life: politics, business, and fundamental human rights.

First, opposing legislation passed in Texas and Florida indicate potential damages to American politics. While Texas H.B. 20 aims at making social media companies liable for unlawful content moderation, Florida S.B. 7072 explicitly deems the prohibition of content moderation of Floridian political candidates as unconstitutional. It is important to note that these opposing laws resulted in a submission of a writ of certiorari before the Supreme Court, indicating the growing concern about social media corporations’ power and how the American people are responding to that power. While this discussion is resurfacing, the discussion between the interplay of freedom of speech and the mediums that produce speech is long-standing.

Social media corporations currently damage American businesses in several ways. High barriers to entry exist in the social media market, as evidenced by the story of Parler. In 2018, this social media company showed that it is possible to get past the barriers to entry in the social media market, by gaining a sizable number of users in a short time in part due to the endorsements by political actors. However, access to Parler’s servers was quickly shut down by Amazon shortly after its initial successful entry into the market. The application was then removed from the various online app stores such as Google and Apple, rendering it extremely difficult to download onto the average person’s mobile phone. Parler only made a return to places such as the Google store after the creators

23 Jameel Jaffer, *Digital Journalism and the New Public Square*, Knight First Amendment Institute at Columbia University, (Jan. 12, 2023, 4:45 PM), <https://knightcolumbia.org/content/digital-journalism-and-the-new-public-square>.

of Parler were forced to find their own servers. In the words of Richard Samuelson, professor of government at Hillsdale College's Van Andel Graduate School of Statesmanship, "...what was done to shut down Parler was the equivalent of telling someone to find another printer to publish their piece back in an age when printing presses were scarce."²⁴ Put simply, the dominant market shareholders must allow free and open discourse that is necessary for true discussions and debates to take place.

Third, Section 230 of the Communications Decency Act has potentially damaged fundamental human rights, specifically the right to life. In the Declaration of Independence Thomas Jefferson penned: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness." Related to these famous lines, *Gonzalez v. Google* and *Twitter v. Taamneh* are two cases dealing with the loss of life as a result of an ISIS terrorist attack coordinated through YouTube. If social media platforms have capabilities protected under Section 230 to moderate and curate content, in which they actively participate, it is outrageous that videos from one of the most dangerous terrorist groups in the world were allowed to be posted long enough for coordinated, dangerous action to take place. When President Trump's various accounts were immediately banned after his infamous January 6th posts, surely social media corporations could have also censored activity by ISIS on their platform happening around the same time.²⁵ In this instance, Section 230 failed to protect against dangerous online content, which in turn affected the family's fundamental right to life. Many applauded how efficiently contentious political content was censored, though little was said about the failure to censor dangerous, life-threatening content.

24 Richard Samuelson, *Poor Richard's Rules for Big Tech*, Law and Liberty, (Jan. 2, 2023, 6:30 PM), <https://lawliberty.org/franklins-wisdom-on-big-tech/>.

25 *The Twitter Isis Census— Defining and describing the population of ISIS supporters on Twitter*, The Brookings Institute, (Feb. 16, 2023, 12:44 PM), https://www.brookings.edu/wp-content/uploads/2016/06/isis_twitter_census_berger_morgan.pdf.

In 2023, the Supreme Court will determine the scope of Section 230's immunities it grants to social media corporations and the content they host. While this article does not deem Section 230 obsolete, the case can be made for restricting Section 230's scope. A revision to this statute should require social media corporations to moderate content when it directly affects someone's life and impose punishments if they fail to do so. Furthermore, Section 230 should not permit content moderation based on the user's viewpoint.

B. Modern Reforms to Section 230

Section 230 of the Communications Decency Act is built upon outdated precedent and reforms should be passed to match a modern context of the reality of social platforms. Section 230 has two fundamental principles. First, it immunizes social media platforms from content posted by users. On this point, the main argument in *Gonzalez v. Google* is whether immunity from user-generated content also protects the algorithmic recommendations made by social media platforms to those users, particularly when the algorithm suggests something potentially offensive or dangerous.²⁶ This poses the question: can algorithmic recommendations be classified as direct speech from the social media company? Second, Section 230 permits social media platforms to moderate user-generated content. For example, In *Zeran v. America Online, Inc.*, a federal appeals court said that Section 230(c)(1) bars "lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter the content."²⁷ Along this line of thinking, Section 230(c)(2) states that service providers and users may not be held liable for voluntarily acting in good faith to restrict access to "obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable" material.

26 *Gonzalez v. Google and the fate of Section 230*, Brookings Institution, (Feb. 16, 2023, 12:39 PM), <https://www.brookings.edu/events/gonzalez-v-google-and-the-fate-of-section-230/>.

27 *Zeran v. America Online*, 129 F.3d 327 (4th Cir. 1997).

The issue with current interpretations of Section 230 lies in the fact that there is a difference between distributor liability and publisher liability. While publisher liability “attaches to the dissemination of speech in general,” distributor liability “only exists where the distributor knows or should have known that the material he distributes is illegal.”²⁸ Section 230 explicitly protects platforms from publisher liability; however, it does not differentiate distributor liability. Clarification by the Supreme Court of distributor liability’s role in Section 230 would protect the American people and modernize the law to better fit this Internet Age. If social media companies can be held liable for specifically distributing harmful content, then future cases similar to *Twitter v. Taamneh* and *Gonzalez v. Google* will hold social media corporations accountable, and the power of social media platforms will be reduced. As corporations become liable for the content they post, they will be incentivized to only censor content that explicitly makes them liable for a suit.

Furthermore, the provisions in Section 230 are outdated based on several claims. First, Section 230 of the Communications Decency Act was passed by Congress in 1996. Around 1996, 40 million people were using the Internet. By 2019, more than 4 billion people were using the Internet, with 3.5 billion people having accounts on social media platforms.²⁹ Specifically, 70 percent of Americans use at least one social media site to engage with content, share information, or entertain themselves.³⁰ Thus, what once protected a relatively smaller group of Americans has exponentially grown over the years. While Section 230’s initial intent was to help the internet grow, its immunity provision, including provisions to moderate content, currently undermines First Amendment principles of America’s freedom of speech because they give social media corporations an unprecedented amount of power over speech regulation, monitoring, and influencing.

28 *Gonzalez v. Google, LLC*, No. 18-16700 (9th Cir. 2021).

29 *Section 230*, Electronic Frontier Foundation, (Jan. 2, 2023, 6:30 PM), <https://www.eff.org/issues/cda230>.

30 *Social Media Fact Sheet*, Pew Research Center, (Jan. 2, 2023, 6:35 PM), <https://www.pewresearch.org/internet/fact-sheet/social-media/>.

Second, social media corporations can use this power to unduly influence global events. The cases of *Gonzalez v. Google* and *Twitter v. Taamneh*, along with Meta's announcement of former President Trump's account reinstatement are examples of current laws allowing social media corporations to influence global events.³¹ The former will deal with the current legal repercussions of Section 230 while the latter reflects a modern example of the issues with Section 230. Specifically, the decision in *Gonzalez v. Google* will answer if Section 230(c)(1) immunizes social media corporations when they make content recommendations that are targeted to specific users or if they are only granted immunity for basic editorial functions, such as simply displaying content. *Gonzalez v. Google* and *Twitter v. Taamneh* both indicate that if social media corporations have the technological ability to recommend content via an algorithm, then it is reasonable that they can quickly censor content via an algorithm. If social media platforms are capable of quickly moderating other content, such as contentious political content, then these capabilities would surely transfer to censoring an ISIS video. Therefore, social media corporations should be incentivized to remove content related to direct threats by limiting their distributor liability.

By contrast, the reasons given for Donald Trump's removal from platforms for questionable posts did not blatantly scream illegality; while President Trump was removed from social media platforms expeditiously, many videos posted by ISIS posted at the same time were not removed. The recent, at-will reinstatement of Trump's social media accounts creates issues for the current legal definition of social media corporations, as this behavior shows how social media corporations act as publishers even though their currently defined, protected role is upheld as mere content distributors. If social media corporations can curate, monitor, influence, censor, and reinstate as they please, Section 230 is giving platforms many privileges affording to publishers, just without the necessary liability that publishers take on. Additionally, while this article argues that

31 Nick Clegg, *Ending Suspension of Trump's Accounts With New Guardrails to Deter Repeat Offenses*, Meta, (Jan. 25, 2023, 7:45 PM), <https://about.fb.com/news/2023/01/trump-facebook-instagram-account-suspension/>.

Section 230 needs limits, it is also important to note that if social media corporations are creating mediums that affect the American people, then they must use their capabilities to follow through with that protection through censoring threats. The pending 2023 *Twitter v. Taamneh* case will rule if a social media platform could be charged with aiding and abetting terrorism because it could have taken more aggressive action in combating the video ISIS posted. While this case is not directly related to the overall claim of this article, it further demonstrates issues tangential to social media corporations' unchecked power.

Since over half of the population utilizes social media platforms and the rate of new users is slowing year by year, many agree that the bulk of widespread Internet growth is over.³² This is another compelling element that helps show how Section 230, and the reasons for its original creation, is outdated. If social media corporations are protected from publisher liability, they should not be curating content, censoring political free speech, and reinstating presidents long after their office has changed hands. Thus, Section 230 should not be able to "edit" users' posts unless they are illegal, because they are not liable for those posts. In a logical sense, the mere fact that they choose to censor posts indicates they disagree with those posts.

C. Common Carriers

Social media's immense growth over the past decade suggests that platforms should be classified as common carriers. In the United States, common carriers have long been defined as any entity that provides transportation or communication services to the public on a nondiscriminatory basis.³³ Some examples of common carriers include telephone companies (landlines), postal services, cable companies, and internet service providers. Currently, the common

32 Max Roser, Hannah Ritchie, and Esteban Ortiz-Ospina, *Internet, Our World in Data*, (Feb. 16, 2023, 1:07 PM), <https://ourworldindata.org/internet>.

33 *Common Carrier*, Legal Information Institute at Cornell Law School, (Jan. 4, 2023, 4:35 PM), https://www.law.cornell.edu/wex/common_carrier.

carrier legal framework is not best suited for social media platforms for several reasons such as the nature of broad and complex services that social media provides; content moderation could be prohibited; a common carrier classification could reduce their ability to generate revenue; and social media corporations are already subject to regulations.

While this briefly describes why social media corporations would not fit under current common carrier law, the benefits of social media corporations being classified as common carriers outweigh the costs. If social media platforms were classified as common carriers, they would be non-discriminatory, transparency would increase, and most importantly they would be subject to government oversight and enforcement. While current common carrier law may not be suitable for social media corporations, this article argues that similar legislation must be created to define social media entities as common carriers.

Social media corporations should be classified as common carriers based on historical precedent, legal precedent, and logic. The United States is no stranger to developments in technology; the fundamental principle behind common carriers is to provide services for the public without discrimination. In legal history, common carriers were initially transportation services and have evolved to also include communication services. Regulation of communication services as common carriers was formalized with the Communications Act of 1934, which ultimately established the Federal Communications Commission and gave it the power to regulate communication services as common carriers.³⁴ Additionally, communication services evolved into cable television and the Internet. Consequently, the Telecommunications Act of 1996 codified the classification of these communication services as common carriers through a federal legal framework. Thus, as technology has evolved, the historical precedent has shown that the law also evolves to best provide for the American community.

34 *The Communications Act of 1934*, U.S. Department of Justice, (Feb. 4, 2023, 4:55 PM), <https://bja.ojp.gov/program/it/privacy-civil-liberties/authorities/statutes/1288>.

Common carrier legal precedent also indicates that social media platforms should be classified as common carriers. *AT&T Corp. v. Iowa Utilities Board* dealt with the constitutionality of state regulations that required AT&T to share its network with other companies to promote competition. The Supreme Court ultimately found that state regulation of the telecommunications industry was permitted, so long as the regulation was non-discriminatory.³⁵ This ruling is important because it sets precedent for telecommunications companies to be regulated by the government, instead of privately regulated. Although social media corporations are not technically defined as telecommunications companies, their functions are virtually identical. Both allow users to communicate with each other in several forms, but social media corporations offer more functions to users, such as direct messaging, WIFI calling, video calling, and live video events. Therefore, if users of social media platforms have more freedom than telecommunication providers, such as AT&T, but their conduct is ultimately controlled by the platform, then it would make sense that the U.S. can also regulate social media corporations as common carriers with an appropriate framework. For example, while common carriers are non-discriminatory by nature, platforms would need some discretion to moderate content that inherently creates harm or is blatantly unlawful. Similar to this proposal, both Texas H.B. 20 and Florida S.B. 7072 called for this common carrier classification in conjunction with the ability to moderate content that is unlawful according to current guidelines.

Other legal precedent includes the First Amendment precedent that should apply to include social media corporations. Inherently, social media corporations are mediums for distributing speech but are not expressing speech themselves. However, their ability to curate content, and alter political realms, implies that social media platforms are expressing speech. As such, social media platforms should be able to curate content when the content creates situations like *Gonzalez v. Google* but should not curate content when the viewpoint is not of popular opinion.

35 *AT&T Corporation v. Iowa Utilities Board*, No. 97-826 (8th Cir. 1999).

Last, there are also logical arguments to be made about the functional aspect of social media in today's world and consequently in the legal and political realm. Essentially, social media is evolving into a public square. The main function of a common carrier is to create an accessible public utility. Subsequently, the concept of a public square is backed by the idea that it is available to all the public and governed by the laws of the land. Extending this analogy, it would be likely that private firms also operate in this public square. If what is said within a public square by an owner of one of the businesses is provocative, that is within his First Amendment rights. If what is said within a business by a common person is provocative, then the business owner could remove the person from his premise. However, the business could be affected due to negative perceptions surrounding the person's removal from the premise. Similarly, social media corporations have public and private aspects that cannot be ignored. They are public in the sense that public officials use social media platforms to campaign and distribute important information. They are private in the sense that businesses, including individuals, use social media platforms for monetization. In essence, this public and private interplay within social media resembles a public square in virtually all respects.

Given this relationship between social media and the public square, it may be worthwhile to adopt legislation that would allow current laws to match the landscape of social media. For example, Florida S.B. 7072 intended to stop censorship of Florida government officials. The idea of censorship in any sense is negative. However, some aspects of social media, such as government accounts, may need to be designated as "official government accounts" and be governed by non-discriminatory aspects of common carrier law. This would allow government accounts to operate as government officials normally would under the U.S. Constitution, without the fear of being censored and cut off from the digital world. In contrast, business accounts may also need to be designated as "official business accounts" and continue to fall under private corporate law. This is a realistic model because social media interactions are reflections of tangible interactions, which are governed by certain laws depending on where the tangible interaction occurred.

Thus, there is logic behind the idea that digital platforms reflect the tangible world. As previously mentioned, the First Amendment serves to protect American citizens from being censored by the government. Furthermore, when public and private entities conjoin on a social platform the platforms are given powers over those entities' accounts, including government accounts. Thus, if social media accounts acted like a public square, where individuals, businesses, and government physically coexist, then these entities would need to be designated respectively in order to digitally coexist. This restructuring would not be difficult, as social media corporations such as Meta and Twitter already have processes in place to verify that accounts are who they say they are. Overall, this will create clarity about appropriate censorship ultimately determined by the classification of the account.

V. CONCLUSION

The influence that social media corporations have on free speech has been scrutinized through news outlets, state legislation, and current Supreme Court cases. Through several world events and imminent Supreme Court cases, this article has shown that social media corporations have become too powerful and are ultimately circumventing the First Amendment of the United States Constitution. These corporations have effectively risen above the power of the government and control America's political landscape through content moderation and censorship. As technology continues to advance and connect the world, further discussion between the rights of corporations and the right to free speech of individuals will be necessary.

To combat these damages to American freedom, this article has proposed two solutions. First, Section 230 of the Communication Decency Act should be amended to better reflect the modern age of the Internet. Specifically, given social media platforms' behavior in moderating and recommending content through algorithms, these platforms should have increased liability for what they allow to be posted on their website and what they decide to censor. This increased liability will result in less censorship as corporations will be required to spend more time filtering potentially harmful content,

rather than controversial political content. Second, social media platforms should adopt certain characteristics of common carrier law to better reflect how they behave as an entity within the United States. This article has argued that social media is analogous to a public square, where the government must interact with private businesses. To mirror this concept of a public square within the realm of social media, high-profile accounts, such as government and business accounts, should be classified as separate entities governed by the same laws that government officials and private businesses are governed by.

In conclusion, in the decision of *NetChoice v. Moody*, Judge Newson declared that social media platforms are not “dumb pipes,” referring to the fact that they are not common carriers.³⁶ Social media platforms are not “dumb pipes,” but rather complex and constantly changing organisms; however, because social media platforms are reflections of the tangible world, it is unfair to classify them as an entity that does not share many of the traits of common carriers. Therefore, laws that effectively and separately govern business and government entities should also apply to their respective social media accounts to better align with the U.S. Constitution and follow the First Amendment.

36 *NetChoice, LLC v. Attorney Gen.*, Casetext: Smarter Legal Research, (Feb. 4, 2023, 4:35 PM), <https://casetext.com/case/netchoice-llc-v-attorney-gen>.