

**The Continued Ability of Online Platforms  
to Engage in Content Moderation and  
Enforce Terms of Service**

***An analysis of the Supreme Court’s decision in  
Moody v. NetChoice, LLC and Implications***

*Content moderation is a form of speech protected  
by the First Amendment and is essential to  
fostering a kinder online environment*

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**I. Introduction**

Today, billions of users around the world use online platforms known as social media. Online platforms such as Facebook and YouTube allow users to upload content that is shared with others. Such online platforms often choose to edit, filter, remove, demote, or label the content that third-party users upload on their platforms in a process called content moderation. Content moderation is essential to reducing the presence of online hate and content that is threatening and/or demeaning to minorities. Without moderation, the internet would be threatened with online chaos.

Critics of content moderation argue that some online platforms moderate content in a way that is confusing, arbitrary, and discriminatory, and presents a skewed view of political standpoints.<sup>1</sup> These critics take the position that government regulation over online platforms is needed.

Even if such criticism is valid in any way, preventing or chilling moderation through government regulation may render marginalized communities vulnerable to attack if online platforms are unable to remove content that encourages or condones violence or hate given the correlation between social media and real-world violence.<sup>2</sup> Without content moderation, communication channels may be subject to violent and harmful content, which diminishes the online environment.

Content moderation can play an important societal purpose in shielding users from harmful content or, as some may call it, promoting compassion. Content moderation, when carefully implemented, can be a valuable tool to help curb violence, promote compassion, facilitate collaboration, and encourage conversation to create a healthy and civil online community for individuals to interact with each other.<sup>3</sup> Thus, content moderation in an ideal form can help to ultimately foster understanding and boost empathy among different societal groups.

The scope of permissible content moderation was addressed by the Supreme Court of the United States in *Moody v. NetChoice, LLC* (“*Moody*”),<sup>4</sup> and a majority of the Supreme Court essentially said that the First Amendment protects online platforms’ right to enforce their policies and moderate user-generated content, as that is deemed the expressive voice of the platforms.

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<sup>1</sup> Yeva Mikaelyan, Reimagining Content Moderation: Section 230 and the Path to Industry-Government Cooperation, 41 Loy. L.A. Ent. L. Rev. 179, 201 (2021).

<sup>2</sup> Caroline Jones, The Revolution Will Not Be Moderated: Examining Florida and Texas’s Attempts to Prohibit Social Media Content Moderation, 32 Am. U. J. Gender Soc. Pol’y & L. 209, 210–11 (2023).

<sup>3</sup> Nadine Strossen, The Paradox of Free Speech in the Digital World: First Amendment Friendly Proposals for Promoting User Agency, 61 Washburn L.J. 1, 26–27 (2021) (“Moderation allows online platforms to limit content in order to create affinity or niche communities dedicated to certain subject matters or viewpoints, or to remove hateful or harassing speech that may hinder the ability of targeted users to engage with the platform.”)

<sup>4</sup> *Moody v. NetChoice, LLC*, 144 S. Ct. 2383 (2024).

This White Paper examines what the Supreme Court said in *Moody* concerning the ability of social media platforms to moderate content, as well as other related issues that may affect future content moderation.

## **II. The Supreme Court Decision in *Moody***

### **a. Background**

In 2021, stemming from concerns that online platforms may be biased against politically conservative voices,<sup>5</sup> Florida and Texas enacted statutes to regulate the content moderation activities of online platforms. While the laws enacted by the two states have slight differences, such as the scope of entities covered, both laws have provisions that (i) restrict online platforms' ability to moderate content, and (ii) require general and individualized disclosures of the platforms' content moderation policies and decisions.

Shortly after these laws were enacted, NetChoice LLC, an advocacy group, and the Computer & Communications Industry Association (collectively "NetChoice"), which are trade associations with members such as Facebook and YouTube, brought lawsuits in the federal district courts of Florida and Texas and asked the courts to stop the enforcement of the laws, arguing that the laws violated the First Amendment rights of online platforms. Among other arguments, the states argued that states are allowed to regulate content moderation because platforms do not engage in protected speech when hosting third-party content, while NetChoice argued that online platforms use editorial judgment to create a community that appeal to certain groups, which is inherently expressive and protected.

Federal district courts in Florida and Texas both ruled in favor of NetChoice and granted the preliminary injunction, suspending the enforcement of the state laws. Both states appealed, and the federal appellate courts reached

contrasting decisions. The Fifth Circuit (reviewing Texas's law) reversed the preliminary injunction, holding that content moderation by online platforms do not qualify as speech and do not violate the First Amendment, whereas the Eleventh Circuit (reviewing Florida's law) upheld the preliminary injunction (except for the general disclosure provision, discussed below), holding that online platforms' decisions on content moderation qualify as speech protected by the constitution.

The Supreme Court took the matter under review and handed down its decision on July 1, 2024. While the Supreme Court unanimously vacated and remanded the decision on procedural grounds, the majority opinion set forth useful guidance for the lower courts, arguably in the form of dicta,<sup>6</sup> that provide insight into how and whether online platforms may continue to engage in content moderation.

### **b. Majority Ruling**

All nine Justices of the Supreme Court agreed to vacate and remand the case on procedural grounds and did not reach the merits of the case, which means they did not make a binding ruling on whether the state laws were in fact likely to be found unconstitutional. This is because, based on how NetChoice filed the cases, the lower courts had to determine whether the state laws were invalid for everyone by determining whether the unconstitutional applications of the state laws outweighed the constitutional applications (*i.e.*, analyzing a facial challenge), however, the courts had not done so but rather analyzed the cases as specifically applied to certain functions of certain social media platforms (*i.e.*, analyzing an as-applied challenge), which was a procedural error in the Supreme Court's view.

Even though the Supreme Court's decision did not reach the merits, the majority opinion (written by Justice Kagan)<sup>7</sup> set forth useful guidelines on content moderation that help guide the content

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<sup>5</sup> This White Paper does not evaluate whether conservative voices in fact are chilled, an allegation platforms dispute.

<sup>6</sup> Dicta means an observation by the court that is not binding in effect but can be used as persuasive authority.

<sup>7</sup> Justices Roberts, Sotomayor, Kavanaugh, and Barrett joined Justice Kagan's majority decision in full and Justice Jackson joined most parts of the opinion.

moderation activities of social media platforms. Two key principles can be distilled from the majority opinion.

First, content moderation—presenting a curated and edited compilation of content generated by third-party users—is itself a form of speech that creates “a distinctive offering” and is protected by the First Amendment. This is true even when online platforms choose to moderate only a small amount of content posted on their websites. While the individual contents originate with third parties, the larger message created through editing and curating user-generated content originates with the platforms.

Second, the government cannot force online platforms to exclude or include certain content to attain balance of speech that the government thinks as ideal since that would alter the compilation curated by the platforms and interfere with protected speech. The government cannot advance certain viewpoints by suppressing the expression of online platforms because that would enable the government to control the expression of ideas, which is what the First Amendment protects.

Applying these principles, a majority of the Supreme Court found that the Texas and Florida laws would likely be unconstitutional when applied to platforms akin to Facebook’s News Feed or YouTube’s homepage. These platforms host content uploaded by third-party users and moderate content by using algorithms<sup>8</sup> to ensure that user-generated content complies with the platforms’ policies. According to the majority opinion, this type of content moderation would be an expressive activity protected by the First Amendment, and the government cannot interfere to achieve its desired balance of ideology.

*The majority opinion in Moody concluded that curating and editing compilations of third-party generated content pursuant to the online platforms’ policies is itself a form of speech protected by the First Amendment, and the government cannot regulate online platforms to achieve an ideological balance the government deems proper.*

### c. Concurring Opinions

Four Justices wrote concurring opinions, which means they agreed with the majority’s judgment to vacate and remand the case for procedural reasons but had other points to add or they disagreed with the rationale or other parts of the majority’s opinion. The key points from each concurring opinion are summarized below.

- Justice Barrett: Judge Barrett joined the majority opinion in full, but added concerns about the dangers of bringing a facial challenge and raised questions about how the First Amendment analysis would fare against (i) algorithms that respond solely to user behavior, (ii) the developing technology including artificial intelligence (“AI”) if such technology takes over the activities that are currently protected by the constitution, or (iii) content moderation decisions made by foreign corporations or persons and implemented by U.S. corporations or persons.
- Justice Jackson: Justice Jackson pointed out the need for further factual development for the lower courts to fully and fairly address the facial challenge raised, and chided the majority for providing a preview of the potential ruling on the merits by treating the case as an as-applied challenge.
- Justice Thomas: Justice Thomas stated that courts should be guided by the

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<sup>8</sup> The majority noted that online platforms use algorithms to moderate content, thus, likely acknowledged that content moderation activities are protected by the First Amendment not only when content is directly edited and curated by humans, but also when curated and edited by humans through the use of algorithms.

common carrier doctrine.<sup>9</sup> Also, while facial challenges have been brought many times before without challenge at the Supreme Court, Justice Thomas strongly suggested that facial challenges should not be allowed in the jurisprudence because it fundamentally conflicts with Article III of the U.S. Constitution, which bestows power to the federal courts to hear cases and controversies for parties before the court, whereas facial challenges allow plaintiffs to bring suit in federal court even if they had not been injured.

- Justice Alito<sup>10</sup>: Justice Alito criticized the majority’s review of the merits of the case as unnecessary and unjustified. Justice Alito raised concerns that the record was incomplete, not all compilations have expressive characteristics, not all compilations express a collective point, and not all messages by a compiler are affected even if forced to accommodate with regulations. He criticized the majority for resting on wholly conclusory assumptions that lacked evidentiary support. Justice Alito also criticized the majority for failing to address the argument that platforms are to be considered as common carriers.

While the concurring opinions do not have binding effect, they are helpful to understand the current and potential issues concerning content moderation and how the issues may evolve.

### III. Open Issues Concerning Content Moderation

The majority opinion in *Moody* concluded that a platform’s curated or edited compilation of user-generated content is speech protected by the First Amendment. However, there are questions unanswered by the Supreme Court and other related First Amendment issues that may affect the future of content moderation. We briefly address some of these issues.<sup>11</sup>

1. Will platforms have to disclose their content moderation practices?

The so-called disclosure provisions enacted by Texas and Florida require online platforms to publish their content moderation policies (*i.e.*, general disclosure requirement) and explain the reasons for their content moderation decisions to affected third-party users (*i.e.*, individualized explanation requirement). The Eleventh Circuit did not find issue with the general disclosure requirement but found that the individualized disclosure requirement was unduly burdensome as it would require online platforms to explain millions of decisions each day. The Fifth Circuit found that both disclosure requirements were not unduly burdensome because they involved the type of uncontroversial and factual information allowed to be compelled under the law and platforms would only need to improve the process they already had in place.

The majority opinion did not directly address the disclosure provisions except to note in a footnote that disclosure requirements may be

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<sup>9</sup> The common carrier doctrine gives states the power to “impose nondiscrimination obligations on communication and transportation providers that hold themselves out to serve all members of the public without individualized bargaining.” *NetChoice, L.L.C. v. Paxton*, 49 F.4th 439, 469 (5th Cir. 2022), *cert. granted in part sub nom. NetChoice, LLC v. Paxton*, 144 S. Ct. 477 (2023), and *vacated and remanded sub nom. Moody v. NetChoice, LLC*, 144 S. Ct. 2383 (2024).

<sup>10</sup> Justice Alito’s opinion was joined by Justice Thomas and Justice Gorsuch.

<sup>11</sup> Besides the issues addressed in this White Paper, the following issues were not addressed by the Supreme Court, which are left for future determination: (i) whether online platforms that entirely outsource curation to users can be considered to be expressing its own views that affords constitutional protection; (ii) whether constitutional protection should be afforded where the content moderation decisions are implemented by U.S. persons or corporations but directed and controlled by overseas persons or corporations that are not protected by the First Amendment; and (iii) how services offered by online platforms different from news feeds, such as “direct messaging, events management, email filtering, customer reviews, payments, and ride-sharing” would fare under the constitutional analysis. *See generally Moody*, 144 S. Ct. 2383.

unconstitutional “if they unduly burden expressive activity.”<sup>12</sup> This means disclosure provisions would be unconstitutional if complying with the provisions is so burdensome that online platforms give up exercising their editorial decision-making. But then, Justice Alito raised doubt on whether the disclosure provisions would truly be unduly burdensome, especially since many companies are already complying with the disclosure requirements under the European Union’s Digital Services Act.

The European Union (“EU”) has a significantly different approach from the United States when it comes to regulating online platforms. The United States prefers not to intervene and does not currently have a specific federal regulation on content moderation,<sup>13</sup> but the EU uses a more comprehensive approach to regulate online platforms and has promulgated law that affects the content moderation activities of online platforms.<sup>14</sup>

For instance, the EU’s Digital Services Act requires online platforms to adopt measures that reduce harmful content and ensure transparency.<sup>15</sup> Companies are required to prevent the spread of harmful content and share internal data with regulators. And when a content moderation decision is made, the Digital Services Act requires companies to provide affected third-party users with notice and an explanation, as well as an opportunity appeal a content moderation decision. Violation of the Digital Services Act could result in a fine of up to 6% of a company’s annual global turnover, and repeat violators may be banned from doing business in

Europe. Due to the harsh penalties, online platforms may have some incentive to set their content moderations in line with the EU standards even though the United States provides more leeway and freedom.<sup>16</sup>

In the United States, there have been attempts to regulate online platforms at the federal level but such attempts have failed so far, and there currently is no federal regulation on content moderation including the disclosure requirements.<sup>17</sup> Based on the lack of legislation, lack of guidance from *Moody*, and the different rulings handed down by the federal appellate courts, it is unclear whether online platforms will be required to implement any individualized explanation requirements in the future. Nonetheless, we do know that two federal appellate courts were at least in agreement with the general disclosure provisions; thus, it may be safe to assume that companies are likely to be required to publish their content moderation policies and practices in some fashion.

2. Are algorithm responses to user behavior or preference protected by the First Amendment?

The majority in *Moody* expressly did not address whether content moderated solely in response to user behavior or preference, without accounting for a company’s content moderation policies, would be afforded constitutional protection. On the other hand, Justice Barrett noted in her concurring opinion that an algorithm that simply presents posts based on what it thinks a user would like, without considering a platform’s

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<sup>12</sup> *Moody*, 144 S. Ct. at 2399 (“[U]njustified or unduly burdensome disclosure requirements might offend the First Amendment by chilling protected commercial speech.”) (citing *Zauderer v. Office of Disciplinary Counsel of Supreme Court of Ohio*, 471 U.S. 626 (1985)).

<sup>13</sup> The First Amendment and Section 230 of the Communications Act of 1934, as amended, are the two laws that most affect content moderation efforts in the United States.

<sup>14</sup> Karanjot Gill, *Regulating Platforms’ Invisible Hand: Content Moderation Policies and Processes*, 21 *Wake Forest J. Bus. & Intell. Prop. L.* 171, 183–87 (2021).

<sup>15</sup> Anupam Chander, *When the Digital Services Act Goes Global*, 38 *Berkeley Tech. L.J.* 1067, 1068–69 (2023).

<sup>16</sup> Dawn Carla Nunziato, *The Digital Services Act and the Brussels Effect on Platform Content Moderation*, 24 *Chi. J. Int’l L.* 115 (2023).

<sup>17</sup> The United States lawmakers had proposed the Platform Accountability and Consumer Transparency Act, which would have imposed disclosure and transparency requirements to platforms, however, the bill did not pass. S. 797, Bill Track 50, <https://www.billtrack50.com/billdetail/1349083> (last visited Nov. 4, 2024).

content moderation policies, may not be viewed as implementing the platform’s expressive decision.

While the issue is currently left unanswered, Justice Barrett’s concurring opinion indicates that content moderation that occurs outside of a platform’s published policy may not be afforded constitutional protection. This distinction is arguably defensible if the underlying presumption for affording constitutional protection for content moderated by a platform pursuant to its policy is that the platform’s expressive viewpoints are reflected solely in its moderation policy. In like vein, Judge Alito noted that “not all compilers express a message of their own.” However, it is possible for a practice of limiting content based on user behavior or preference to be deemed expressive—expressing the preferences of the platform.

### 3. Will AI-generated decisions be protected by the First Amendment?

With the emergence of AI, some are questioning whether content moderated by AI should receive the same protection as content moderated by humans. Justice Barrett and Justice Alito raised this concern in their opinions by asking whether content moderation activities engaged by AI would trigger First Amendment protection and whether AI-made decisions outside the scope of the programmers’ understanding would be equally protected as decisions made by humans.

Some may argue that editorial decisions made by AI should be afforded the same constitutional protection as the editorial decisions made by

humans to protect the rights of the humans that utilize AI.<sup>18</sup> Also, since the Supreme Court is reluctant to create new categories of unprotected speech,<sup>19</sup> some may think it harmless to protect AI-generated decisions as long as they do not fall under any of the categories of speech excluded from the First Amendment, such as obscenity or speech integral to criminal conduct.<sup>20</sup>

However, the concern with AI lies with its ability to generate content that cannot be predicted or contemplated by humans because AI is able to change, adapt, and grow based on new data. This characteristic differentiates AI from algorithms that proceed in a logical and predictable way pursuant to a set of instructions to produce an output.<sup>21</sup> Because AI displays a level of independence and creates messages not directed or controlled by human creators, some argue that AI-generated decisions should not be afforded the same protection afforded to humans.<sup>22</sup>

To counter this argument, some say that AI-generated decisions should be protected for the sake of the listeners’ right to receive information, independent of the right to speak.<sup>23</sup> The right to receive information is afforded protection under the First Amendment to “preserve an uninhibited marketplace of ideas in which truth will ultimately prevail.”<sup>24</sup> However, it appears that the right to receive information has only been derivative of others’ right to speak so far, thus, may not be recognized without a corresponding protected speech.<sup>25</sup> One federal appellate court noted that the right to listen is relevant when there

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<sup>18</sup> Eugene Volokh, Mark A. Lemley, Peter Henderson, Freedom of Speech and Ai Output, 3 J. Free Speech L. 651 (2023).

<sup>19</sup> *United States v. Stevens*, 559 U.S. 460, 472 (2010) (refusing to carve out new category of speech outside the scope of the First Amendment).

<sup>20</sup> *Id.* at 460 (noting “obscenity, defamation, fraud, incitement, and speech integral to criminal conduct” as “narrowly limited classes of speech”) (internal citations omitted).

<sup>21</sup> Philip Sales, Algorithms, Artificial Intelligence, and the Law, 105 *Judicature* 22, n. 3 (2021).

<sup>22</sup> Madeline Lamo and Ryan Calo, Regulating Bot Speech, 66 *UCLA L. Rev.* 988, 1004 (2019).

<sup>23</sup> Volokh et al., *supra* n. 29 at 659.

<sup>24</sup> *Red Lion Broad. Co. v. F.C.C.*, 395 U.S. 367, 390 (1969).

<sup>25</sup> Karl Manheim & Jeffery Atik, AI Outputs and the Limited Reach of the First Amendment, 63 *Washburn L.J.* 159, 177 (2024).

is a “willing” speaker.<sup>26</sup> It is argued that AI, however, does not possess the ability to form human-like intent, thus, cannot be a “willing” speaker.<sup>27</sup>

Another factor to consider is the risk and confusion arising from the use of synthetic media such as deepfakes and the difficulties in distinguishing human-generated content versus AI-generated content.<sup>28</sup> AI entails many uncertainties and has significant potential to pose serious risks of distorting reality, thus, a certain level of government regulation over AI may be necessary or even beneficial; however, regulatory efforts may be stifled if AI-generated decisions are afforded the same constitutional protection as human-generated decisions.

AI is constantly developing and issues concerning AI are likely to involve highly fact-specific inquiries, thus, we may not be seeing a one-for-all rule concerning AI anytime soon. However, as long as there is a likelihood that AI-generated decisions will receive less protection than human-generated decisions, companies may be required to disclose whether and how they use AI to moderate content.

4. Will Section 230 continue to afford broad immunity for online platforms against liability arising from third-party generated content?

Section 230 of the Communications Act of 1934, as amended (“Section 230”), was enacted in 1996

to grant immunity for online platforms from liability for information uploaded by third-party users, but not for information developed by the online platforms or for activities unrelated to third-party content.<sup>29</sup>

While the Supreme Court hasn’t issued a definitive ruling that significantly alters Section 230’s protections, the lower courts have broadly interpreted the statute as providing extensive immunity for online platforms from liability for content that originate with third-party users. Accordingly, online platforms have used Section 230 as a powerful defense when faced with potential liability arising from third-party generated content. For example, online platforms have avoided liability even after hosting false information about a minor’s age,<sup>30</sup> improper videos,<sup>31</sup> and defamatory content<sup>32</sup> on their platforms. Also, platforms have been criticized for content moderation enabling cyber-stalking, cyber-bullying, or terrorism.<sup>33</sup>

Critics have argued for reformation of Section 230 since that law makes it impossible to hold online platforms accountable for content uploaded on their platforms. Also, critics say, Section 230 reduces the incentive for online platforms to address unlawful activities, such as sexual exploitation of minors, sale of illicit drugs, or cyberstalking that happen on the platforms because the operators are less legally obligated to review and remove harmful content by third-

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<sup>26</sup> *Pennsylvania Fam. Inst., Inc. v. Black*, 489 F.3d 156, 166–67 (3d Cir. 2007) (“In order to show the existence of a willing speaker for the purposes of establishing third party standing, a party must at least demonstrate that but for a regulation, a speaker subject to it would be willing to speak.”).

<sup>27</sup> Chris Lewis, J.D., *The Need for A Legal Framework to Regulate the Use of Artificial Intelligence*, 47 U. Dayton L. Rev. 285, 288 (2022).

<sup>28</sup> Nina I. Brown, *Deepfakes and the Weaponization of Disinformation*, 23 Va. J.L. & Tech. 1, 5–6 (2020).

<sup>29</sup> 47 U. S. C. §230 (1996). Section 230 also shields platforms from liability for efforts to remove content that is “obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.” *Id.*

<sup>30</sup> *See e.g., Doe v. MySpace, Inc.*, 528 F.3d 413 (5th Cir. 2008), *cert denied*, 129 S. Ct. 600 (2008) (declining to hold MySpace liable under Section 230 against allegations of failure to place measures to prevent minors from lying about their age).

<sup>31</sup> *See e.g., Doe v. GTE Corp*, 347 F.3d 655 (7th Cir. 2009) (declining to hold platform liable under Section 230 against allegedly improper videos hosted on the website).

<sup>32</sup> *See e.g., Zeran v. Am. Online, Inc.*, 129 F.3d 327 (4th Cir. 1997) (declining to hold AOL liable under Section 230 for defamatory speech initiated by a third-party).

<sup>33</sup> Gregory M. Dickinson, *The Internet Immunity Escape Hatch*, 47 B.Y.U. L. Rev. 1435, 1445–46 (2022).

party users.<sup>34</sup> Moreover, with the *Moody* decision rendered, some voice their concern that online platforms can claim for immunity under Section 230 for user-generated content on their platforms and at the same time, resist state regulation for moderating the exact same user-generated content.<sup>35</sup>

Nonetheless, a recent decision from a federal appellate court that was handed down approximately two months after *Moody* suggests that *Moody* may have (albeit unintentionally) started to nibble away the broad immunity afforded to platforms by Section 230. In *Anderson v. TikTok*,<sup>36</sup> a mother brought action against TikTok alleging that her daughter died while attempting the “blackout challenge” after viewing a video promoted by TikTok. The federal district court ruled that Section 230 provided immunity for TikTok since the blackout challenge video was generated by a third-party user. The appellate court reversed, holding that Section 230 did not provide protection because TikTok’s algorithms which curated and recommended the content to users was TikTok’s own expressive activity.<sup>37</sup>

Although it may be too early to say with certainty, the appellate decision in *Anderson* shows that online platforms may no longer be shielded from liability under Section 230 if their content moderation activities contribute to the damage, and shows that *Moody* may have actually chipped away the broad protection afforded to online platforms under Section 230. We will need to see how the Supreme Court eventually weighs in.

*There are important questions left unanswered by Moody, and how these questions are resolved along with the ongoing development in technology and law will further shape and determine the future content moderation activities by online platforms.*

#### IV. Conclusion

Online platforms are extremely powerful and influential tools for communicating and sharing ideas, thoughts, feelings, and experience. With billions of users around the globe, the reach of social media is unparalleled. Thus, content moderation, when thoughtfully implemented, can have a powerful impact in facilitating collaboration and promoting compassion, while curbing violence and hate in our society. The question is, can online platforms do so?

*Moody* establishes that online platforms have a First Amendment right to pursue content moderation in this fashion. The majority opinion in *Moody* confirmed that moderating user-generated content in compliance with a platform’s policy is a form of expression protected by the constitution and that the government cannot regulate online platforms to achieve an ideological balance it deems proper. This means that online platforms are allowed to have a voice and to express that voice through content moderation.

While *Moody* provides some clarity on content moderation however, there are still myriad uncertainties and intertwined issues that need to be resolved. Section 230 may face reformation, the political landscape will continue to affect policy decisions, state legislatures will continue to enact or revise their laws to regulate platforms,

<sup>34</sup> Department of Justice’s Review of Section 230 of the Communications Decency Act of 1996, <https://www.justice.gov/archives/ag/department-justice-s-review-section-230-communications-decency-act-1996> (last visited, Oct. 13, 2024).

<sup>35</sup> *Doe Through Roe v. Snap, Inc.*, 144 S. Ct. 2493, 2494 (2024) (Thomas J., dissenting from denial of certiorari) (“In the platforms’ world, they are fully responsible for their websites when it results in constitutional protections, but the moment that responsibility could lead to liability, they can disclaim any obligations and enjoy greater protections from suit than nearly any other industry. The Court should consider if this state of affairs is what § 230 demands.”)

<sup>36</sup> *Anderson v. TikTok, Inc.*, 116 F.4th 180 (3d Cir. 2024).

<sup>37</sup> *Id.* at 184 (“TikTok’s algorithm, which recommended the Blackout Challenge to Nylah . . . was TikTok’s own ‘expressive activity,’ and thus its first-party speech.”) (internal citations omitted).



and new technologies and laws will continue to emerge and develop. Thus, companies will need to closely monitor the developments to see how the changes affect content moderation and to ensure compliance with the laws.

As of today, however, one takeaway from *Moody* is that online platforms are allowed to enforce their policies to moderate content in a way that promotes compassion.

*Under Moody, online platforms are allowed to enforce their policies to moderate third-party generated content in a way that promotes compassion.*