The Unconstitutionality of Social Media Censorship

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The United States of America, at its core, is defined by each individual citizen's rights to life, liberty, and the pursuit of happiness. Unfortunately for Thomas Jefferson and the rest of the Second Continental Congress, these words were imprinted on the Declaration of Independence more than a half of a century before the invention of the telephone. Since their inscription on that day in 1776 and further clarification within the Constitution and the Bill of Rights, a recurrent theme of American legal debate is how to best-apply these principles to the modern day.[1] Recently, this debate has arisen regarding the topic of social media, and the right of social media platforms to censor controversial speech. Though it is admittedly difficult to determine whether individual privately-owned social networks should have the right to censor speech, the overarching issue becomes clearer when examined through a historical lens of United States legal proceedings. According to the precedent set by the Supreme Court in their decisions regarding the cases of *Reno v. American Civil Liberties Union*, *Ashcroft v. American Civil Liberties Union*, and *R.A.V v. City of St. Paul*, the content-based censorship of speech on the internet is generally unacceptable under the Constitution. Though the rights of privately-owned companies to act in their own best interest are reinforced by the same document that emphasizes this point, the censorship of speech on social media, from the perspective of the American court system, is unconstitutional.

In the United States, the Communications Decency Act of 1996 was the first significant governmental effort to regulate the content of the internet.[2] The act was created to limit the exposure of pornography to minors on the internet. Although the Act's motivation was presumably morally just, many libertarian groups viewed the act as unconstitutional under the

[1] Vick, Douglas W. "The Internet and the First Amendment." *The Modern Law Review* Vol. 61, No. 3 (May, 1998), pp. 414.
[2] Vick, "The Internet and the First Amendment," pp. 415.

First Amendment.[3] This backlash culminated in the Supreme Court case of *Reno v American Civil Liberties Union*, in which the plaintiffs argued that the act infringed on their rights guaranteed in the First Amendment. Following the proceedings, the Supreme Court voted unanimously in favor of this position. The Court held that the act violated the First Amendment because its regulations amounted to a content-based blanket of free speech.[4]

The significance of this decision is not that a rather weak piece of legislation was deemed unconstitutional. Rather, the conclusion of the Supreme Court emphasized the strict scrutiny that would be imposed on any legislation seeking to regulate content that appears on the internet. This decision implied that communicating over computer-based systems was more analogous to publishing a pamphlet or having an informal conversation than communicating through the broadcast media. In addition, the Court noted that, "the receipt of information on the internet requires a series of affirmative steps more deliberate and directed than turning a dial."[5] In other words, it was much easier to unintentionally view obscene content on television than it was on the internet.

The Supreme Court has applied this sentiment to further decisions regarding the internet. In 1998, Congress passed the Child Online Protection Act (COPA) to prevent minors from accessing pornography online. The American Civil Liberties Union (ACLU), in turn, sued in federal court for the prevention of the Act citing that it infringed on their rights guaranteed by the First Amendment. In a 5-4 decision, the court once again ruled in favor of the litigants, finding that, "Congress had not yet met its burden to show that the COPA requirements were more effective than other methods of protecting minors."[6] The sensitivity with which the Supreme

[3] Vick, "The Internet and the First Amendment," pp. 415.
[4] Reno v. American Civil Liberties Union, 521 U.S. 844 (1997)
[5] Vick, "The Internet and the First Amendment," pp. 419.
[6] Ashcroft v. American Civil Liberties Union, 542 U.S. 656 (2004)

Court handled the cases of *Reno v. American Civil Liberties Union* and *Ashcroft v. American Civil Liberties Union* can be attributed to the intense distrust of governmental interference with the American citizen's right to freely communicate. In addition to this core belief, the specific language utilized in this decision also holds significance. The idea that Congress needs to "meet its burden" can be attributed to the Supreme Court case of *R.A.V. v. City of St. Paul*, which also holds significance in the debate of social media censorship.

The case of *R.A.V. v. City of St. Paul* revolved around a group of teenagers burning a cross on a black family's front lawn. Much like the exposure of minors to pornography, the average American citizen would theoretically agree that this act was, at the very least, disrespectful. However, the case was elevated to the Supreme Court due to the local ordinance that they were charged under, which indicated the illegality of a display of a symbol that "arouses anger, alarm, or resentment in others on the basis of race, color, creed, religion, or gender."[7] In a unanimous vote, the Court held the ordinance invalid due to the fact that, "it prohibits otherwise permitted speech solely on the basis of the subjects the speech addresses."[8] In addition, the Court cited that the First Amendment prohibits the government from banning speech on the basis of their own disagreement with the message. Specifically, they noted that the banning of only certain types of speech, "creates the possibility that the city is seeking to handicap the expression of particular ideas."[9] This decision has an incalculable impact on the idea of social media censorship, as the Supreme Court has clearly demonstrated their own unwillingness to ban certain types of speech on the basis of content.

[7] R.A.V. v. St. Paul, 505 U.S. 377 (1992)
[8] R.A.V. v. St. Paul, 505 U.S. 377 (1992)
[9] R.A.V. v. St. Paul, 505 U.S. 377 (1992)

The Supreme Court cases of *Reno v. American Civil Liberties Union*, *Ashcroft v. American Civil Liberties Union*, and *R.A.V. v. City of St. Paul* each contribute unique perspectives to the debate of whether social media platforms should be permitted to censor controversial speech. According to the cases involving the American Civil Liberties Union, the strong protections of the First Amendment regarding freedom of speech disallow most cases of censorship of the internet. Additionally, *R.A.V. v. City of St. Paul* established the legal precedent that the government cannot regulate speech based on content alone. These three Supreme Court cases ultimately indicate the unconstitutionality of the censorship of speech on the internet, and clearly summarize the lengthy legal precedent demonstrating the illegality of individual social media companies censoring speech on their own platforms.

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