



## Limitations of the First Amendment

The First Amendment makes sure the United States government does not overstep in regulating speech and expression. It does not determine how private companies choose to censor content and people.

This is complicated because much of our conversation and connection happens in spaces such as social media or online platforms, which are overseen by private companies and therefore not subject to the First Amendment. This has created confusion for users who misunderstand how First Amendment rights impact the policies of online platforms, social media companies, and/or financial institutions.

Section 230 of the Communications Decency Act is often cited in relation to First Amendment limitations and online platforms. Section 230 protects private companies, such as social media platforms, from being held accountable for what individual users post on their site.<sup>1</sup> This means that private companies, such as Meta or Reddit, are allowed to moderate their platforms in accordance with the law and their own acceptable use policies without risk of being sued for potentially harmful content posted by individual users. In other words, the blackboard (aka the social media company) isn't held responsible for what the chalk (aka the user) writes.

Section 230 is vital for upholding First Amendment values because it ensures that private companies aren't forced into overly censoring users just to avoid legal action. Censoring users out of fear of legal consequences usually leads to excessive censorship of sexual content, including sexual expression, LGBTQ+ content, and sex education. For example, without Section 230 and First Amendment protections, sites might preemptively ban posts sharing life-saving information about miscarriages or abortion, if they are shared by users in states where abortion is not legal.

While private companies are still subject to anti-discrimination laws in certain circumstances, they are legally allowed to decide which content is allowed and what is banned on their sites, based on their own internal policies. Federal laws like FOSTA/SESTA also influence which online content platforms ban. This has led to censorship or exclusion

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<sup>1</sup> CDA § 230.

of sexual content and sexual performers because individual companies get to decide, based on their own values and associated legal risks, who they allow access to. This type of censorship is legal in the United States but in conflict with the Universal Declaration of Human Rights, which includes the right to freedom of expression for all.<sup>2</sup>

Upholding and understanding the First Amendment are of utmost importance for protecting America's democracy. However, it is also important to understand how censorship occurs and impacts users at the organizational level.

## **Does the First Amendment guarantee equal access to platforms?**

No, the First Amendment does not require that private companies allow all users access to social or financial platforms.

Social media companies, banks, and credit card processors are private companies and therefore not legally obligated under the First Amendment to host speech or users they choose to exclude. This means that payment processors, such as Venmo, Mastercard, and PayPal, and social media companies, such as Meta, can ban users who violate their policies. These platforms and payment services are significant for many small businesses in generating and maintaining their income. However, access to these services is not a guaranteed right, and companies can legally ban users.

People most likely to be banned are those suspected of using platforms for illegal conduct or for legal conduct that feels risky to the company; this has included adult content creators whose material is sexually explicit, independent booksellers who sell material the company finds controversial,<sup>3</sup> and even the United States president, Donald Trump, when his tweets were deemed violent.<sup>4</sup>

The Supreme Court has historically ruled that private organizations should control their own expressive conduct.<sup>5</sup> This is essential to the First Amendment because it blocks government overreach into private decision-making.

But just because financial and platform discrimination is legal does not mean that it's harmless. This is especially true for sex workers, adult content creators, reproductive justice and abortion access groups, and LGBTQ+ organizations, who are routinely denied

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<sup>2</sup> United Nations, 1948

<sup>3</sup> Webber & Franco, 2024

<sup>4</sup> Fischer & Gold, 2021

<sup>5</sup> Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc

access to banking services, deplatformed by payment processors, or restricted by online platforms.<sup>6 7 8 9</sup>

Losing access to financial services can quickly lead to financial instability for users, as payment processors can freeze accounts with funds still in them and make it difficult for users to set up new accounts elsewhere. Not only does this make it harder for banned users to accept payments for their work, but it also leaves them without proof of “legitimate” income for tax compliance, housing, and healthcare. Additionally, losing access to safe, secure methods of payment transfer can put people at greater risk. For example, when pressure from payment processors pushed OnlyFans to briefly consider banning sexually explicit content, many content creators became concerned about how they would make ends meet.<sup>10</sup> Closure of dating and escort platforms after the passage of FOSTA/SESTA caused many sex workers to pursue unsafe, in-person sex work to make up for their income loss.

Additionally, being kicked off social media and other online platforms removes access to marketing, visibility, and community, all of which are critical for maintaining financial security and safety through connections with peers and colleagues.

Financial censorship doesn’t violate the First Amendment, but it does silence lawful expression, undermine livelihoods, and often functions as a back-door method to erase sexual and gender expression online. These disputes raise serious concerns about corporate power and lack of transparency that must be addressed through better policy and public pressure, not government censorship. In 2025, President Trump passed an executive order guaranteeing fair banking for all Americans and addressed the use of financial censorship and debanking as a method of discrimination.<sup>11</sup>

## **Do social media platforms have to respect your First Amendment rights?**

No, most online platforms are not bound by the First Amendment because they are not government-owned.

Even though social media platforms often feel like public squares, they are still controlled by private companies and therefore not subject to the First Amendment. This means that users

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<sup>6</sup> Webber & Franco, 2024

<sup>7</sup> Malcolm, 207

<sup>8</sup> Belcher, 2021

<sup>9</sup> Electronic Frontier Foundation, n.d.

<sup>10</sup> Chan, 2021

<sup>11</sup> Trump, 2025

cannot sue them for civil rights violations when their speech is censored. Conversely, under Section 230, these platforms cannot be held legally liable for potentially harmful content posted on their sites, which prevents them from over-censoring users to avoid potential legal consequences. However, this also means they can and do remove otherwise constitutionally protected expression.

There are numerous ways in which this limitation complicates sexual freedom. The first is that by protecting First Amendment rights for online platforms, there is less government regulation of content that users share there. Some policymakers critique this freedom, arguing that this can lead to an increased risk of dangerous content being shared, namely CSAM (child sexual abuse material). The fight against CSAM has become a common argument for increasing government regulation and rolling back First Amendment rights for online platforms. However, online platforms are currently required to report and disable CSAM if they discover it and aid law enforcement in their search for any related crime.<sup>12</sup> Many companies have created their own internal processes for monitoring illegal activity<sup>13</sup> and these processes, when implemented, have significantly detected and removed instances of CSAM.<sup>14</sup> Therefore, private companies are already required to limit the spread of CSAM without overturning Section 230 and forgoing First Amendment rights.

The second way sexual freedom is complicated by First Amendment limitations is that many private platforms overreact to sexual content in an effort to get ahead of potential public or legal pushback.

For example, FOSTA/SESTA is a law that permits online platforms to be sued or prosecuted if they are found to be facilitating sex trafficking. This led to platforms purging all sexual content for fear of legal consequences, erasing spaces where sex workers, LGBTQ+ people, and sexual health educators found safety, information, and community.<sup>15</sup> The bans were not unconstitutional because the platforms are private companies that chose not to protect these communities with a more nuanced response to FOSTA/SESTA. This response was a violation of the human rights principle that communities be able to speak freely in the digital spaces where public life now occurs.<sup>16</sup> (Learn more about the impacts of FOSTA [here](#)).

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<sup>12</sup> 18 U.S.C. § Chapter 110

<sup>13</sup> Holderness, 2025

<sup>14</sup> Teunissen & Napier, 2022

<sup>15</sup> Blunt & Wolf, 2019

<sup>16</sup> United Nations, 1948

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