TOP 5 CONSTITUTIONAL AND POLICY PITFALLS OF BILLS LIMITING CONTENT MODERATION

1. The Government cannot create a Fairness Doctrine for the internet
   - The Fairness Doctrine, which impeded the growth of conservative speech, was repealed by President Reagan.
   - The US Supreme Court found the Fairness Doctrine was limited only to broadcast — and did not apply to cable TV and by extension the internet.

2. The Government cannot interfere with contracts already in effect
   - Article I, Section 10, Clause 1 of the United States Constitution, the Contracts Clause, prohibits the Government from voiding existing contracts.

3. The Government cannot violate the Free Exercise Clause of the US Constitution
   - As Chief Justice Roberts and the other Court Conservatives found, a state cannot condition funding on adoption of government-approved views.
     ○ Espinoza v. Montana Department of Revenue, 591 US _, (2020)

4. Frustrates the ability to stop terrorist content, SPAM, and offensive content on religious pages
   - This would mean a social media platform could be violating law if it removed any of the following:
     ○ Antifa or ISIS recruitment – denies views of those who hate America
     ○ SPAM messages – denies the viewpoint of the spammer
     ○ Atheist or abortion advocacy posted to a church’s Facebook or YouTube

5. Government cannot compel speech - i.e., force a website or platform to allow content they don’t want.
   - Courts have long held that the government can’t force private businesses to engage in speech that is counter to their interests as it is a violation of the First Amendment