

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- ★ The Fairness Doctrine, which impeded the growth of conservative speech, was repealed by President Reagan.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.
 - Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969)

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
 - Nat'l Inst. of Family & Life Advocates v. Becerra, 138 S. Ct. 2361 (2018)

