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# News & Insights

## Denver Attorney Kirk McGill for The Register - Supreme Court orders rethink on Texas, Florida laws banning web moderation

July 1, 2024

*The Register*

https://www.theregister.com/2024/07/01/supreme_court_social_media/

While the state laws would fail constitutional scrutiny if applied to a curated news stream, said Kirk McGill, an attorney with Hall Estill, they might survive a challenge if applied to a more automated content moderation process.

"In other words, the court held that the free speech rights of social media companies are only implicated where they are engaging in expression by picking and choosing what postings to show," said McGill. "The more automated that process, the less First Amendment implications there are, and therefore the less free speech protections would apply."

This may have implications for AI-based moderation, because automated processes could be deemed insufficiently expressive to qualify for First Amendment protection, McGill suggests.

The decision, he added, is also likely to make it harder for ByteDance, the Chinese parent of TikTok, to avoid being forced to sell its US subsidiary.

"A central part of TikTok's argument is that it provides a forum for other people to speak, and the law requiring it to sell or be banned infringes on the free speech of those users," said McGill.

"But the court's holding here would appear to foreclose that argument by holding that the impact on the users is entirely irrelevant to an analysis of whether a law affecting the company is constitutional."

## Attorneys

- Dr. J. Kirk McGill Esq.