

Question: Has Section 230 created an environment where Big Tech feels that they are able to censor whomever or whatever they want without regard to the principle of free speech?

Answer: Yes, though I don't believe this is the fault of the provision itself, but of courts that have, in Justice Thomas's words, "construed this provision expansively to confer sweeping immunity on some of the largest companies in the world." ⁱ The courts have relied on policy and purpose arguments to interpret Section 230 too extravagantly. The provision does not support such broad interpretation, nor was it intended to. Consequently, tech companies have been granted power and influence over public discourse that was not contemplated by Congress when it passed Section 230.

Question: What does the future look like without Section 230 reform?

Answer: Without reform, Big Tech companies will continue their viewpoint censorship under the guise of good faith "content moderation." Disfavored views will remain suppressed in the public square. However, individual states will continue passing their own laws to address this problem, and the Supreme Court will have to make a final determination on whether lower courts have properly interpreted Section 230. This is likely to happen soon. The Fifth Circuit Court of Appeals and the Eleventh Circuit Court of Appeals reached different conclusions on the constitutionality of state laws in Texas and Florida that were designed to prohibit viewpoint discrimination on social media. The law in Texas was upheld. The law in Florida was struck down. The Supreme Court will need to address this circuit split and decide which lower court got it right, and possibly offer their own interpretation of Section 230 that will shape law in this area moving forward.

ⁱ See Justice Thomas's concurring opinion in the case of *Malwarebytes Inc. v. Enigma Software Group USA, LLC*.