

Moody



NetChoice, LLC



Thomas Berry

FLORIDA, 1972

PAT  
TORNILLO

"PAT TORNILLO, BOSS OF THE CLASSROOM TEACHERS ASSOCIATION (CTA) AND CANDIDATE FOR THE STATE LEGISLATURE IN THE OCT. 3 RUNOFF ELECTION, HAS DENOUNCED HIS OPPONENT AS LACKING THE KNOWLEDGE TO BE A LEGISLATOR."

"THIS IS THE SAME PAT TORNILLO WHO LED THE CTA STRIKE AGAINST THE SCHOOLCHILDREN AND TAXPAYERS OF DADE COUNTY."

"CALL IT WHATEVER YOU WILL, IT WAS AN ILLEGAL ACT AGAINST THE PUBLIC INTEREST AND CLEARLY PROHIBITED BY THE STATUTES."

"WE CANNOT SAY IT WOULD BE ILLEGAL, BUT CERTAINLY IT WOULD BE INEXCUSABLE IF THE VOTERS SENT PAT TORNILLO TO TALLAHASSEE TO OCCUPY THE SEAT FOR DISTRICT 103 IN THE HOUSE OF REPRESENTATIVES."

THE HERALD MAY THINK THEY CAN TANK MY CAMPAIGN, BUT I'VE GOT THE LAW ON MY SIDE! HERE IN FLORIDA, IF A NEWSPAPER WANTS TO CRITICIZE ME, THEY'VE GOT TO GIVE ME EQUAL SPACE.

I'M GOING TO SET THE RECORD STRAIGHT, AND THE HERALD WILL HAVE NO CHOICE BUT TO PRINT IT.

MIAMI HERALD  
OFFICES

PAT TORNILLO JUST SENT IN AN OP-ED THAT'S COMPLETELY OPPOSED TO OUR EDITORIAL POSITION. I'D REJECT IT, BUT HE SAYS THERE'S A STATE LAW FROM 1913 THAT FORCES US TO RUN IT?

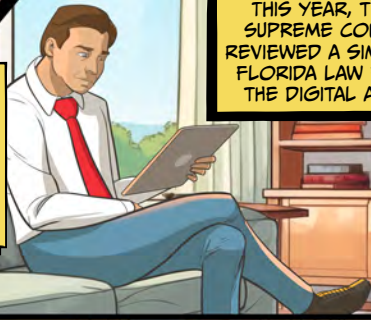
WHO CARES WHAT THE STATE LAW SAYS? I KNOW AN EVEN OLDER LAW THAT SAYS WE'VE GOT THE FREEDOM TO CHOOSE WHAT WE RUN.

IT'S CALLED THE FIRST AMENDMENT.

HISTORY HAS A WAY OF REPEATING ITSELF.



FIFTY YEARS AGO, THE U.S. SUPREME COURT REVIEWED A FLORIDA LAW FORCING NEWSPAPERS TO PRINT EDITORIALS THEY DID NOT WANT TO PRINT.



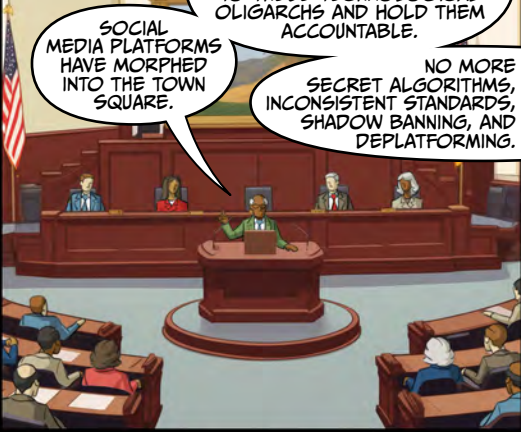
THIS YEAR, THE SUPREME COURT REVIEWED A SIMILAR FLORIDA LAW FOR THE DIGITAL AGE.

FLORIDA, 2021

IF OUR DEMOCRACY IS GOING TO SURVIVE, WE MUST STAND UP TO THESE TECHNOLOGICAL OLIGARCHS AND HOLD THEM ACCOUNTABLE.

SOCIAL MEDIA PLATFORMS HAVE MORPHED INTO THE TOWN SQUARE.

NO MORE SECRET ALGORITHMS, INCONSISTENT STANDARDS, SHADOW BANNING, AND DEPLATFORMING.



GOOD.

BIG TECH CENSORS ENFORCE THEIR RULES INCONSISTENTLY. NOW THEY'LL BE HELD ACCOUNTABLE FOR FAVORING SILICON VALLEY IDEOLOGY.



POLITICIANS WILL ALWAYS COMPLAIN THAT THE MEDIA IS BIASED AGAINST THEM.



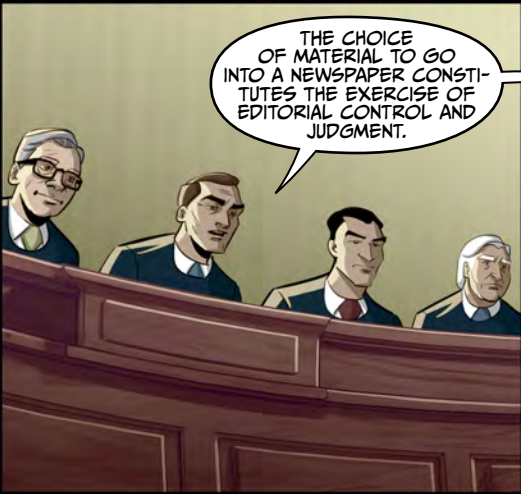
BUT WHEN THE GOVERNMENT ENACTS LAWS TO FORCE THE MEDIA TO BE "UNBIASED"—

—THOSE LAWS RAISE SERIOUS CONCERNS UNDER THE FIRST AMENDMENT FREEDOMS OF SPEECH AND THE PRESS.

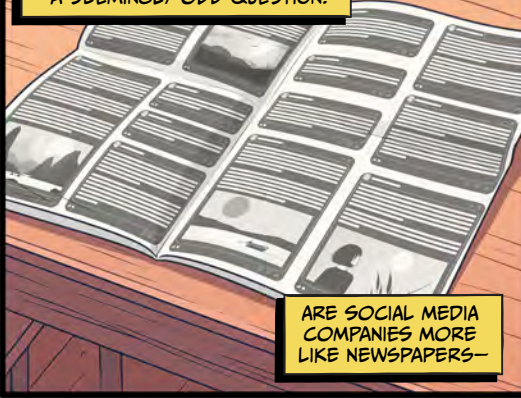


THE CHOICE OF MATERIAL TO GO INTO A NEWSPAPER CONSTITUTES THE EXERCISE OF EDITORIAL CONTROL AND JUDGMENT.

IT HAS YET TO BE DEMONSTRATED HOW GOVERNMENTAL REGULATION OF THIS CRUCIAL PROCESS CAN BE EXERCISED CONSISTENT WITH THE FIRST AMENDMENT.



WHEN FLORIDA ENACTED A RIGHT-TO-POST LAW FOR SOCIAL MEDIA 50 YEARS LATER, THE LEGAL DEBATE OVER ITS SURVIVAL BOILED DOWN TO A SEEMINGLY ODD QUESTION:



ARE SOCIAL MEDIA COMPANIES MORE LIKE NEWSPAPERS—

—OR THE POSTAL SERVICE?



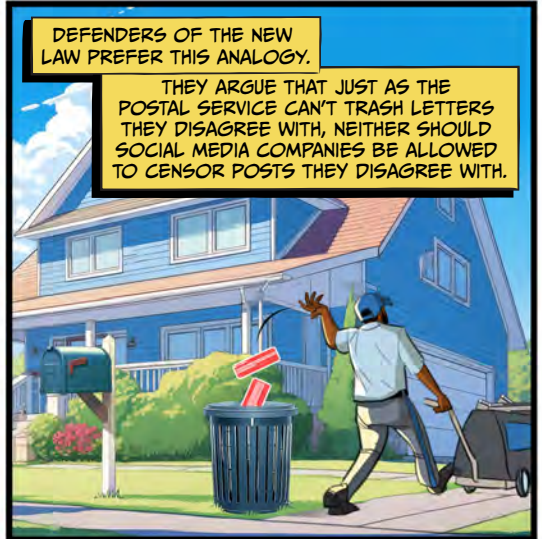
IN ONE ANALOGY, SOCIAL MEDIA IS LIKE THE POSTAL SERVICE.



EVERY ONLINE POST IS JUST A MESSAGE SENT DIRECTLY TO SUBSCRIBERS, LIKE OLD-FASHIONED SUBSCRIPTION NEWSLETTERS.

DEFENDERS OF THE NEW LAW PREFER THIS ANALOGY.

THEY ARGUE THAT JUST AS THE POSTAL SERVICE CAN'T TRASH LETTERS THEY DISAGREE WITH, NEITHER SHOULD SOCIAL MEDIA COMPANIES BE ALLOWED TO CENSOR POSTS THEY DISAGREE WITH.

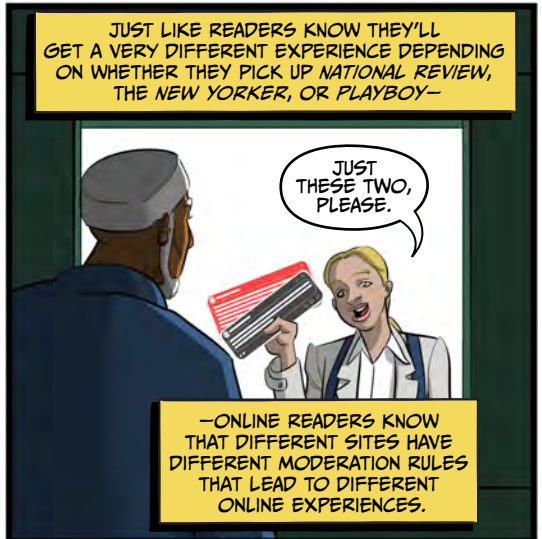


BUT IN ANOTHER ANALOGY, EACH SOCIAL MEDIA SITE IS A UNIQUE, EDITED READING EXPERIENCE.



WITH THIS VIEW, THERE IS AS MUCH DIVERSITY ACROSS SITES AS THERE IS ACROSS NEWSPAPERS AND MAGAZINES.

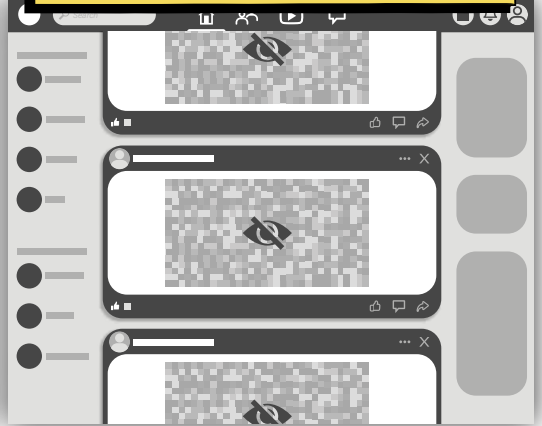
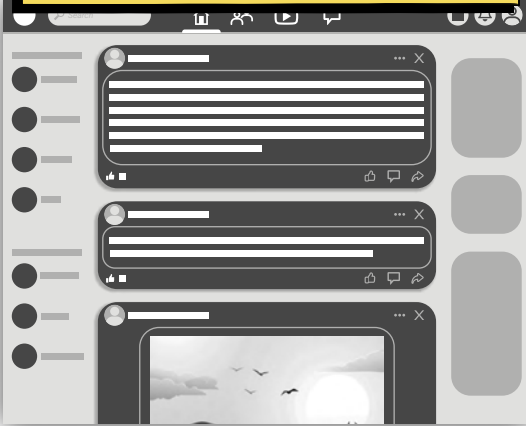
JUST LIKE READERS KNOW THEY'LL GET A VERY DIFFERENT EXPERIENCE DEPENDING ON WHETHER THEY PICK UP NATIONAL REVIEW, THE NEW YORKER, OR PLAYBOY—



—ONLINE READERS KNOW THAT DIFFERENT SITES HAVE DIFFERENT MODERATION RULES THAT LEAD TO DIFFERENT ONLINE EXPERIENCES.

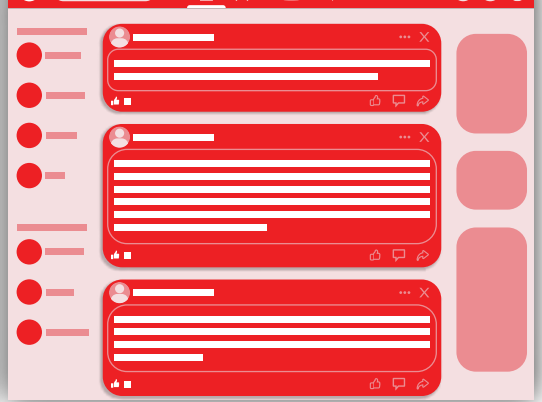
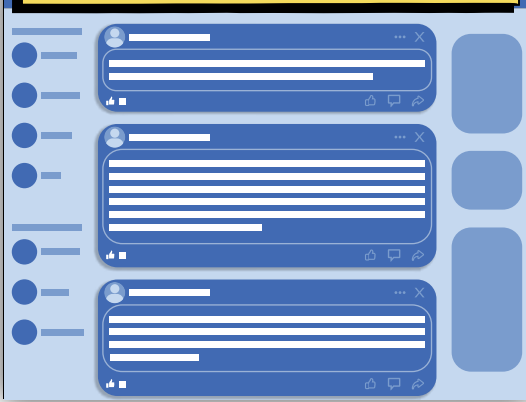
SOCIAL MEDIA SITES ARE FLOODED WITH BILLIONS OF POSTS PER DAY, WHICH ARE REVIEWED BY A MIX OF AUTOMATED AND HUMAN MODERATORS.

IF THESE SITES WEREN'T MODERATED, THEY WOULD QUICKLY BE FLOODED WITH THINGS MOST OF THEIR READERS DON'T WANT TO SEE.



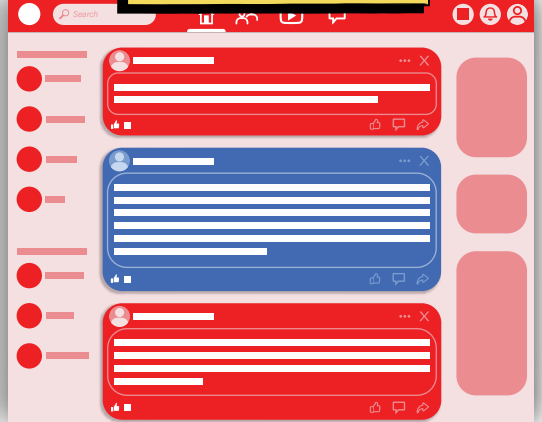
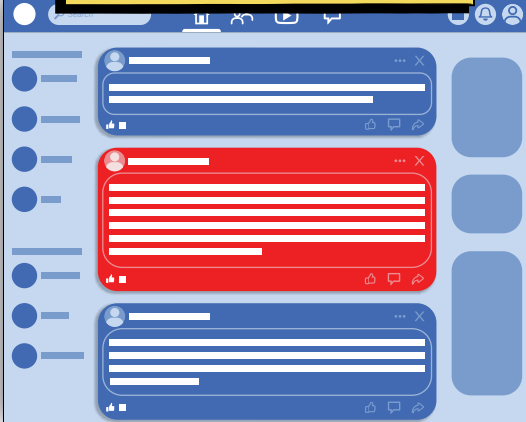
BUT MODERATION ISN'T JUST ABOUT X-RATED MATERIAL. SOME SITES HAVE A SPECIFIC POINT OF VIEW AND WANT TO LIMIT POSTS SO THAT THEY FIT THE SITE'S THEME AND PERSPECTIVE.

THESE MODERATION DECISIONS ARE WHAT MAKE SITES DISTINCT.



IF A STATE LAW FORCED SITES TO LEAVE POSTS UP AGAINST THEIR WILL—

—THIS VARIETY ACROSS PLATFORMS WOULD BE LOST.



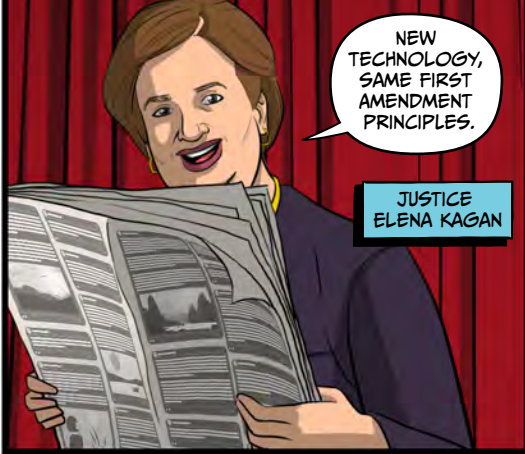
SOON EVERY PLATFORM WOULD LOOK VERY SIMILAR, WITH NO POINT OF VIEW AND NO TAILORING TO A PARTICULAR AUDIENCE'S PREFERENCES.



THE SUPREME COURT CONSIDERED THE FLORIDA LAW TOGETHER WITH A SIMILAR LAW FROM TEXAS. AND ALTHOUGH A SURPRISE TWIST PREVENTED THE COURT FROM RESOLVING THE CASES, THE COURT MADE CLEAR THAT SOCIAL MEDIA COMPANIES HAVE A FIRST AMENDMENT RIGHT TO CHOOSE WHAT THEY CARRY, JUST LIKE NEWSPAPERS.

NEW TECHNOLOGY, SAME FIRST AMENDMENT PRINCIPLES.

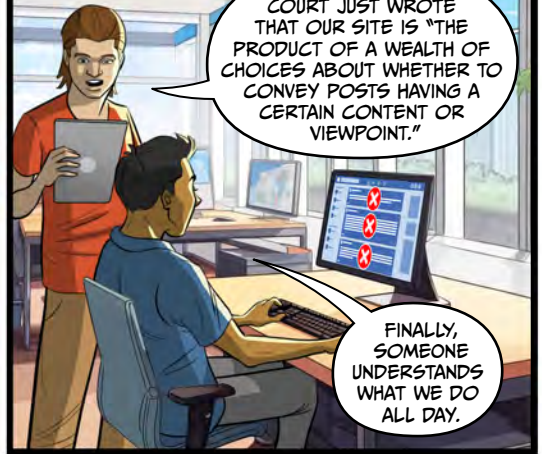
JUSTICE ELENA KAGAN



THE OFFICES OF A SOCIAL MEDIA COMPANY MIGHT LOOK A BIT DIFFERENT FROM THE MIAMI HERALD'S NEWSROOM. BUT BOTH ARE FILLED WITH REAL PEOPLE MAKING PROTECTED EDITORIAL JUDGMENTS.

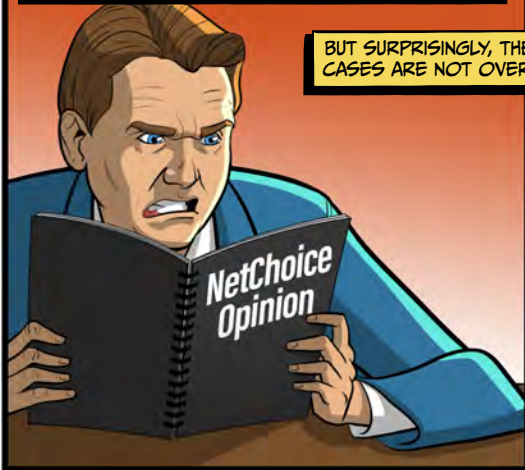
THE SUPREME COURT JUST WROTE THAT OUR SITE IS "THE PRODUCT OF A WEALTH OF CHOICES ABOUT WHETHER TO CONVEY POSTS HAVING A CERTAIN CONTENT OR VIEWPOINT."

FINALLY, SOMEONE UNDERSTANDS WHAT WE DO ALL DAY.



JUSTICE ELENA KAGAN, WRITING FOR FIVE JUSTICES, EXPLAINED THAT A STATE "MAY NOT INTERFERE WITH THOSE JUDGMENTS SIMPLY BECAUSE IT WOULD PREFER A DIFFERENT MIX OF MESSAGES."

BUT SURPRISINGLY, THE CASES ARE NOT OVER.



EVERYONE TREATED THE CASES LIKE THEY WERE ABOUT SOCIAL MEDIA. YET THE FLORIDA AND TEXAS LAWS ARE WRITTEN BROADLY, AND IT'S POSSIBLE THEY MIGHT APPLY TO OTHER TECH SERVICES BESIDES SOCIAL MEDIA SITES.



DO THESE LAWS APPLY TO RIDESHARE APPS? EMAIL? ONLINE SHOPPING?

WE CAN'T DECIDE THE CASES UNTIL WE FIND OUT.

THE FIRST AMENDMENT QUESTION MIGHT BE DIFFERENT FOR OTHER TYPES OF SITES, SO THE CASES HAVE BEEN SENT BACK DOWN TO SORT OUT THOSE ISSUES.

BUT NO MATTER WHAT, THE SUPREME COURT HAS MADE CLEAR THAT THE FIRST AMENDMENT PROTECTS SOCIAL MEDIA CONTENT REGULATION.

