



Justice Clarence Thomas Calls for Supreme Court to Reevaluate ‘Proper Scope of Immunity’ for Big Tech Under Section 230

Description

USA: Associate Justice Clarence Thomas sits during a group photo of the Justices at the Supreme Court in Washington, DC on April 23, 2021.

In a [statement](#) on the Supreme Court’s denial of certiorari in [Jane Doe v. Facebook](#), Justice **Clarence Thomas** urged the justices to “address the proper scope of immunity under §230” available to internet companies.

Calls to “[repeal Section 230](#)” have become a rallying cry for conservatives who argue, as petitioners [did](#), that §230 “has strayed far from its origins and text,” and that Big Tech needs to be reined in.

The law is a section of the [Communications Decency Act of 1996](#) which shields internet companies acting as intermediaries from liability based on what users post. Under the current version of §230, platforms such as Facebook and Twitter are not “publishers,” and are not responsible for defamation or similar claims based on user-created content that violates the law.

The case presented to SCOTUS involved an adult male sexual predator who used Facebook to lure a 15-year-old girl to a meeting. The predator repeatedly raped and beat the girl, then trafficked her for sex. The girl, known in court documents only as “**Jane Doe**,” escaped and sued Facebook in Texas state court, claiming that Facebook violated the Lone Star State’s anti-sex-trafficking statute and committed various common law offenses.

Doe’s statutory sex-trafficking claim was permitted to go forward, but the Texas Supreme Court dismissed Doe’s common law claims, ruling that they were barred by §230. Justice Thomas agreed that SCOTUS’s refusal to consider the case was correct — but only because of a procedural issue. Thomas was quick to clarify that he believes it is time to reconsider the protections granted by §230; but because the Texas Supreme Court allowed Doe’s sex-trafficking claim to proceed, the court’s ruling was not sufficiently “final” for SCOTUS to review.

Thomas was clear: In a case without this procedural glitch, he would be more than happy to reconsider

the rules on how §230 has “confer[red] sweeping immunity on some of the largest companies in the world.”

He elaborated, making a case for holding Facebook accountable for prioritizing profits over safety:

Here, the Texas Supreme Court afforded publisher immunity even though Facebook allegedly “knows its system facilitates human traffickers in identifying and cultivating victims,” but has nonetheless “failed to take any reasonable steps to mitigate the use of Facebook by human traffickers” because doing so would cost the company users—and the advertising revenue those users generate.

Thomas called it “hard to see” why §230 should give Big Tech protection from liability for companies’ “own ‘acts and omissions.’” In a case with “such serious charges,” said the justice, the Court “should be certain” that the law truly demands such protection for internet companies.

Legal observers were quick to pick up on Thomas’ signals, some commenting that the justice’s statement is a “warning shot” or “another swipe” indicating Thomas’s desire to “clamp down” on §230’s reach.

SCOTUS Justice Thomas fires warning shot at Section 230: “We should, however, address the proper scope of immunity under §230 in an appropriate case.”

— Tim Kephart (@timkephart33) [March 7, 2022](#)

Thomas clearly would like to clamp down on the immunity conferred by section 230 on social-media sites like Facebook. No other justice joined his statement today.
<https://t.co/Ji31DCebmB>

— Steven Mazie (@stevenmazie) [March 7, 2022](#)

Clarence Thomas takes another swipe at Section 230 immunity for internet platforms
<https://t.co/BLZLDIYzHi> pic.twitter.com/lzDgDckpxH

— Mark Joseph Stern (@mjs_DC) [March 7, 2022](#)

During his presidency, **Donald Trump** often [railed against](#) §230, despite the former president’s penchant for using social media in precisely the manner that would likely be impossible without shielding internet companies from liability for his posts. Others have suggested that shield is the key reason why Trump’s Twitter account lasted as long as it did in the first place.

Justice Clarence Thomas has also spoken out about the need to rein in big tech’s authority more generally. In a 2021 concurrence, Thomas [criticized “unprecedented” amount of “control”](#) possessed by a few social media companies.

“We will soon have no choice but to address how our legal doctrines apply to highly concentrated, privately owned information infrastructure such as digital platforms,” Thomas wrote.”

In his concurrence, Thomas even suggested that §230 could potentially violate the First Amendment by providing immunity to social media platforms.

!!! Thomas cites arguments that Section 230, which provides immunity to platforms for third-party content, *violates the First Amendment.* <https://t.co/2zx7nCtlAzpic.twitter.com/jgjz2xIBNL>

— Mark Joseph Stern (@mjs_DC) [April 5, 2021](#)

[image via Erin Schaff-Pool/Getty Images]

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