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October 7, 2025

N.Y. Appellate Court Holds That Section 230 and First Amendment Protect Social Media Algorithmic Content Recommendation

In *Patterson* v. *Meta Platforms, Inc.*,[1] the New York Appellate Division, Fourth Department, held that Section 230 of the Communications Decency Act ("Section 230")—a federal statute that prohibits treating providers of "interactive computer services" as publishers of third-party content[2]—barred tort causes of action that sought to hold several social media companies liable for their algorithmic content recommendations. The *Patterson* majority held that content-recommendation algorithms, which platforms use to sort and display third-party content, are (1) publishing activity immunized under Section 230 and (2) editorial decisions protected under the First Amendment, in light of the U.S. Supreme Court's recent decision in *Moody* v. *NetChoice, LLC*.[3] The Fourth Department explained that holding to the contrary would "be inconsistent with the language of section 230," "eviscerate" its "expressed purpose," and "result in the end of the Internet as we know it."[4] *Patterson* adds to a growing list of courts that have disagreed with the U.S. Court of Appeals for the Third Circuit's decision in *Anderson* v. *TikTok, Inc.*, which held that platforms engage in first-party speech unprotected by Section 230 when they use "expressive algorithms" to curate third-party content.[5]

Factual and Procedural Background

Patterson arose from a racially motivated mass shooting that occurred at a grocery store in Buffalo, New York on May 14, 2022.[6] Survivors of the attack and family members of the victims brought civil suit in New York Supreme Court, alleging various tort causes of action, including negligence and strict products liability, against the shooter's parents and other parties that allegedly helped enable the shooter, including several social media platforms used by the

[1] 2025 WL 2092260 (N.Y. App. Div. 4th Dep't July 25, 2025), *appeal filed*, No. APL-2025-00158 (N.Y. July 31, 2025).

[2] 47 U.S.C. § 230(c)(1) ("No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.").

[3] 603 U.S. 707 (2024).

[4] *Patterson*, 2025 WL 2092260, at *2, *7.

[5] *Compare* 116 F.4th 180, 184 (3d Cir. 2024), *with M.P. by & through Pinckney* v. *Meta Platforms Inc.*, 127 F.4th 516 (4th Cir. 2025), *petition for certiorari docketed*, No. 24-1133 (U.S. May 2, 2025); *Doe (K.B.)* v. *Backpage.com, LLC*, 2025 WL 719080 (N.D. Cal. Mar. 3, 2025); *Doe* v. *WebGroup Czech Republic, a.s.*, 767 F. Supp. 3d 1009 (C.D. Cal. 2025), *appeal docketed*, No. 25-2424 (9th Cir. Apr. 15, 2025); *see also Kohls* v. *Bonta*, No. 2:24-cv-02527-JAM-CKD (E.D. Cal. Aug. 5, 2025), Dkt. No. 98; *Castronuova* v. *Meta Platforms, Inc.*, 2025 WL 1914860 (N.D. Cal. June 10, 2025); *Courtright* v. *Epic Games, Inc.*, 2025 WL 2319148 (W.D. Mo. Aug. 11, 2025); *Geegieh* v. *Unknown Parties*, 2025 WL 1769766 (D. Ariz. June 26, 2025).

[6] *Patterson*, 2025 WL 2092260, at *1.

shooter (the "social media defendants").[7] Plaintiffs alleged that the social media defendants' content-recommendation algorithms caused the shooting because the algorithms were designed to (1) suggest a stream of racist and violent content to the shooter and (2) addict the shooter to their platforms, resulting in his isolation, radicalization, and commission of mass murder.[8]

The social media defendants moved to dismiss under NY CPLR 3211 for failure to state a claim, arguing that plaintiffs attempted to hold them liable for their content-recommendation algorithms in violation of Section 230 and the First Amendment.[9] Plaintiffs conceded that Section 230 immunized the social media defendants from liability for third-party content published on their platforms and argued instead that the platforms' content-recommendation algorithms were defectively designed "products" subject to product liability, and therefore not subject to Section 230.[10]

On March 18, 2024, the New York Supreme Court denied the social media defendants' motions to dismiss. It accepted plaintiffs' product liability theory and held that plaintiffs pled viable causes of action, notwithstanding the social media defendants' Section 230 and First Amendment defenses.[11] The trial court noted that while the social media defendants may ultimately prove that their platforms are not products or do not contain the negligent features plaintiffs allege, plaintiffs' allegations were sufficient to survive a motion to dismiss.[12] The trial court also found that potential issues of causation and duty did not warrant dismissal at this early stage of the litigation.[13] The social media defendants appealed.

The Fourth Department's Decision

A three-judge Fourth Department majority reversed, finding that plaintiffs' tort causes of action against the social media defendants were barred under both Section 230 and the First Amendment. The majority also made clear that immunity under Section 230 is not "mutually exclusive" with protection under the First Amendment, and that "under no circumstances" are content-recommendation algorithms "protected by neither."[14]

First, as to Section 230, the majority found that the social media defendants indisputably qualified as providers of "interactive computer services" and that the "dispositive question" was whether the plaintiffs' tort claims sought to hold the platforms liable as publishers of third-party content (i.e., of "information provided by other content providers") or, given their use of content-recommendation algorithms, as publishers of *their own* content.[15] The majority held that Section 230 immunized the social media defendants and that their content-recommendation algorithms did not

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[7] *Id.* The social media defendants were Meta Platforms, Inc., Instagram LLC, Snap, Inc., Alphabet, Inc., Google, LLC, YouTube, LLC, Discord, Inc., Reddit, Inc., Twitch Interactive, Inc., Amazon.com, Inc., and 4chan Community Support, LLC. *Id.*

[8] *Id.*

[9] *Id.* at *2; *see also* Decision and Order at 3, *Patterson* v. *Meta Platforms, Inc.*, No. 805896/2023 (N.Y. Sup. Ct. Mar. 18, 2024), Dkt. No. 404.

[10] *Id.* at 3–5.

[11] *Id.* at 6–7.

[12] *Id.*

[13] *Id.* at 7–9.

[14] *Patterson*, 2025 WL 2092260, at *5.

[15] *Id.* at *3–4. Under 47 U.S.C. § 230(f)(2), "interactive computer service" means "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions." And under 47 U.S.C. § 230(f)(3), an "information content provider" means "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service."

"transform third-party content into first-party content" and "deprive" them "of their status as publishers."[16] The majority noted that, even accepting the social media defendants' algorithms as products, plaintiffs' strict products liability claim would still fail because it is "based on the nature of content posted by third parties."[17]

The majority reasoned that the defendants' content-recommendation algorithms merely "accomplish" at scale the "traditional publishing function" of arranging, sorting, and distributing the large volume of third-party content on their platforms.[18] The court explained that holding platforms liable as developers or creators of third-party content merely because their content-recommendation algorithms arrange, sort, display, and distribute that content would be "inconsistent" with the "language of section 230" and would "eviscerate the expressed purpose of the statute."[19]

In concluding that Section 230 immunized the social media defendants, the majority relied on the Second Circuit's decision in *Force* v. *Facebook, Inc.*[20] and the Fourth Circuit's decision in *M.P* v. *Meta Platforms Inc*.[21] The majority explained that the Fourth Circuit, citing *Force*, recently held in *M.P.* that a covered platform's "[d]ecisions about whether and how to display certain information provided by third parties are traditional editorial functions of publishers."[22] The majority also recognized the Third Circuit's decision in *Anderson* v. *TikTok, Inc*.[23] and explained that it did "not find *Anderson* to be persuasive authority," because if "content-recommendation algorithms transform third-party content into first-party content," as held by *Anderson*, "then Internet service providers using content-recommendation algorithms" would be "subject to liability for *every* defamatory statement made by third parties on their platforms."[24] This, the majority reasoned, would be "contrary to the express purpose" of Section 230, which was to protect interactive computer service providers from precisely this type of liability.[25]

Finally, the majority rejected the plaintiffs' argument that their claims did not seek to treat the social media defendants as publishers at all. Plaintiffs argued that their claims sought to hold the defendants liable for the addictiveness of the platforms, rather than on account of their publication of any particular content.[26] The majority found that plaintiffs' claims were "inextricably intertwined" with the social media defendants' "role as publishers of third-party content" because the *type* of content at issue could not be separated from plaintiffs' addiction claims.[27] Put differently, the plaintiffs did not and could not allege that the shooter would have carried out the racially charged shooting had he "become addicted to anodyne content, such as cooking tutorials or cat videos."[28]

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[16] *Patterson*, 2025 WL 2092260, at *3–4.

[17] *Id.* at *3.

[18] *Id.* at *5 ("[I]t is virtually impossible to display content without ranking it in some fashion, and the ranking represents an editorial judgment of which content a user may wish to see first.").

[19] *Id*. at *2.

[20] 934 F.3d 53 (2d Cir. 2019).

[21] 127 F.4th 516.

[22] *Patterson*, 2025 WL 2092260, at *4.

[23] 116 F.4th 180.

[24] *Patterson*, 2025 WL 2092260, at *4 (emphasis added).

[25] *Id.*

[26] *See id.* at *6.

[27] *Id.*

[28] *Id*.

Second, the majority held that the plaintiffs' claims failed because the social media defendants' content-recommendation algorithms are First Amendment-protected speech under *Moody* v. *NetChoice, LLC*.[29] The majority made clear that "section 230 and First Amendment protection are not mutually exclusive" and that the social media defendants are "protected by both" and "[u]nder no circumstances are they protected by neither."[30] Holding to the contrary "would gut the immunity provisions of section 230" and result in "the end of the internet as we know it" because social media companies that "sort and display content" would be "subject to liability for every untruthful statement made on their platforms[.]"[31] This would, according to the majority, "over time" cause the Internet to "devolve into mere message boards."[32]

Justices Bannister and Nowak dissented, and their dissent provides plaintiffs with an appeal "as of right" under NY CPLR 5601(a) to the New York Court of Appeals; plaintiffs filed their notice of appeal on July 31, 2025.[33] The dissent found that plaintiffs' allegations were based on the social media defendants' defectively designed addictive algorithms, which constitute products subject to strict product liability and do not implicate Section 230 or the First Amendment.[34] The dissent reasoned that, even if plaintiffs' claims implicated Section 230, the statute did not immunize social media defendants' content-recommendation algorithms, which went beyond traditional editorial or publishing activities and constituted "creation or development of information" by "push[ing]" specific content on specific users.[35]

Implications

Patterson is significant because it joins the growing list of courts that have disagreed with the reasoning of *Anderson* and have found that algorithmic content recommendation is both (1) within the platforms' publishing activities and immunized under Section 230 and (2) entitled to First Amendment protection as the platform's expressive activity.[36] *Patterson* is also significant because it indicates that the New York Court of Appeals will likely soon weigh in on this important interplay between Section 230 and the First Amendment, given that plaintiffs have an appeal as of right and have filed a notice of appeal.

This issue is also currently being litigated at the Ninth Circuit, in *WebGroup Czech Republic*.[37] *WebGroup* concerns a putative class action against several defendants, including two porn website operators, for hosting videos depicting the plaintiff, Jane Doe, engaged in non-consensual sexual acts as a minor, in violation of federal and state trafficking, child pornography, and privacy statutes.[38] The U.S. District Court for the Central District of California held that Section 230 immunized the website defendants from plaintiff's claims and rejected the plaintiff's argument, relying on *Anderson*, that the defendants "engage[d] in their own speech" and thus were "not immune under § 230," because

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[29] *Id.* at *5 (emphasis in original) (citing 603 U.S. at 744) ("In *Moody*, the Supreme Court determined that content-*moderation* algorithms result in expressive activity protected by the First Amendment.").

[30] *Id.*

[31] *Id.* at *7.

[32] *Id*.

[33] Notice of Appeal, *Patterson* v. *Meta Platforms*, No. CA 24-00513 (N.Y. App. Div. 4th Dep't July 31, 2025), Dkt. No. 187.

[34] *Patterson*, 2025 WL 2092260, at *8 (Bannister and Nowak, JJ., dissenting).

[35] *Id*. at *8, *11–12 (Bannister and Nowak, JJ., dissenting).

[36] *Compare Anderson*, 116 F.4th 180, *with M.P.*, 127 F.4th 516; *Backpage.com, LLC*, 2025 WL 719080; *WebGroup Czech Republic, a.s.*, 767 F. Supp. 3d 1009; *see also Kohls*, No. 2:24-cv-02527-JAM-CKD, Dkt. No. 98; *Castronuova*, 2025 WL 1914860; *Courtright*, 2025 WL 2319148; *Geegieh*, 2025 WL 1769766.

[37] No. 25-2424 (9th Cir. Apr. 15, 2025). Briefing is set to conclude on October 29, 2025. *See id.*

[38] *WebGroup Czech Republic, a.s.*, 767 F.Supp.3d at 1014.

they used their own "search and recommendation functions" to provide third-party content.[39] The court explained that the defendants did not lose Section 230 immunity by "implementing content-neutral algorithms" that generate content "based on the users' own viewing activity."[40] On appeal, plaintiff-appellant argues, citing *Anderson*, that Section 230 does not provide immunity to the defendants because they "recommend[ed] and provide[d] content to users" through "search and recommendation algorithms."[41]

The issue may also attract the attention of the Supreme Court. Justice Thomas has expressed an interest in reviewing these types of Section 230 issues. He has written that, "[i]n the platforms' world, they are fully responsible for their websites when it results in constitutional protections, but the moment that responsibility could lead to liability, they can disclaim any obligations and enjoy greater protections from suit than nearly any other industry."[42] And in his statement respecting the Supreme Court's denial of certiorari in *Malwarebytes, Inc.* v. *Enigma Software Grp. USA, LLC*, he noted that "[e]xtending § 230 immunity beyond the natural reading of the text"—which in his view courts have done by, among other things, "construing § 230(c)(1) to protect *any* decision to edit or remove content"—could have "serious consequences."[43] Justice Thomas's opinion in *Malwarebytes* has already been cited by several appellate judges who have also called for revisiting the scope of Section 230 immunity.[44]

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If you have questions about the issues addressed in this memorandum, or if you would like a copy of the materials mentioned in it, please call or email authors Joel Kurtzberg (Partner) at 212.701.3120 or jkurtzberg@cahill.com; Jason Rozbruch (Associate) at 212.701.3750 or jrozbruch@cahill.com; or Chana Tauber (Associate) at 212.701.3520 or ctauber@cahill.com; or email publications@cahill.com.

[39] *Id.* at 1020.

[40] *Id.*

[41] Appellant's Opening Brief at 32 (citing *Anderson*, 116 F.4th at 184), *WebGroup Czech Republic, a.s.*, No. 25-2424 (9th Cir. July 7, 2025), Dkt. No. 11.

[42] *Doe Through Roe* v. *Snap, Inc.*, 144 S. Ct. 2493, 2494 (2024) (Thomas, J., dissenting).

[43] 141 S. Ct. 13, 17–18 (2020) (Thomas, J., statement respecting denial of certiorari) (emphasis in original).

[44] *See, e.g.*, *Doe through Roe* v. *Snap*, Inc., 88 F.4th 1069, 1071 (5th Cir. 2023) (Elrod, J., dissenting from denial of rehearing *en banc*) (citing Justice Thomas's statement respecting denial of certiorari in *Malwarebytes* and calling for reconsideration of courts' interpretation of Section 230).