AI and First Amendment Rights Implications

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Despite Big Tech's recent claims, a federal judge in Florida ruled that an AI chatbot's output is not entitled to First Amendment protection.[1] The questions around artificial intelligence and First Amendment rights emerged as AI tools were used on social media platforms to exercise editorial discretion over online content.[2] The First Amendment jurisprudence recognizes online platforms' editorial discretion as a form of protected speech, even if this decision-making function employs AI.[3]

The substitution of human editors or traditional algorithm methods for artificial intelligence has raised numerous concerns.[4] First, AI possesses strong manipulation capabilities that can influence human behavior online and offline.[5] Second, the increase of AI performing human editorial functions means less platform control over the content presented to users.[6] Finally, AI systems are unpredictable and do not exercise their reasoning and judgment in the same capacity as a human to be entitled to free-speech rights.[7]

The Supreme Court in *Moody v. NetChoice* discussed the challenges arising from the use of AI to moderate online content.[8] Justice Barrett highlighted that the First Amendment protects human beings' freedom of expression and that relying on large language models to make discretionary choices rather than humans is problematic because it would extend constitutional protection to machines.[9] There is no controversy over individuals' constitutional rights to express their ideas and beliefs; however, the notion that AI should be entitled to similar protections has been met with skepticism.[10]

Machine learning programs differ from traditional programming techniques.[11] These systems write their own rules and can make predictions that are dissociated from programmers'

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[1] Nitasha Tiku & Leo Sands, *Judge Rejects Claim Chatbots Have Free Speech in Suit Over Teen's Death*, WASH. POST (May 22, 2025) https://www.washingtonpost.com/nation/2025/05/22/sewell-setzer-suicide-ai-character-court-lawsuit/ [https://perma.cc/5D65-7CSW (Google and Character.AI are accused of being liable for the death of a 14-year-old who committed suicide after conversations about self-harm with an artificial intelligence chatbot).

[2] Alec Peters, *Machine Manipulation: Why an AI Editor Does Not Serve First Amendment Values*, 95 U. COLO. L. REV. 307, 309 (2024).

[3] Id.; Mackenzie Austin & Max Levy, *Speech Certainty: Algorithmic Speech and the Limits of the First Amendment*, 77 STAN. L. REV. 1, 5–9 (2025).

[4] Peters, *supra* note 2, at 311.

[5] *Id.* at 333.

[6] *Id.* at 349.

[7] *Id.* at 359.

[8] Moody v. Netchoice, LLC, 144 S. Ct. 2383, 2409 (2024).

[9] *Id.*

[10] See *Id.*

[11] Austin & Levy, *supra* note 3, at 42–43.

specific intentions due to their complex training process.[12] This configuration created a phenomenon known as the "black box problem," in which a programmer cannot explain the path an AI system follows to reach a given conclusion.[13] This lack of human control over AI programs' behavior brings uncertainty to their output,[14] and speech cannot receive First Amendment protection unless the speaker knows what is being communicated.[15]

Conferring AI free speech rights, whether for exercising editorial decision-making functions or for generating outputs in chatbot assistants, raises not only complex constitutional questions but also ethical and social implications. AI systems, unlike humans, do not make assumptions or offer guarantees in their judgments;[16] their outputs lack predictability and certainty, which require careful consideration before granting First Amendment protection.[17] The AI decision-making process is not fully understood and fails to account for the inherent values that guide human judgment. This lack of alignment poses a serious risk of harm to society.

[12] *Id.* at 42.
[13] *Id.* at 60.
[14] *Id.* at 67; Peters, *supra* note 2, at 351.
[15] Austin & Levy, *supra* note 3, at 68.
[16] Peters, *supra* note 2, at 356.
[17] See Austin & Levy, *supra* note 3, at 84-87.