

# [***Master Storyteller Highlights the Need for Free Speech | Opinion***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:6BH5-HBX1-JBR6-94TY-00000-00&context=1516831)

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**Byline:** Morgan Marietta

**Highlight:** NetChoice v. Paxton could be the most consequential First Amendment case in a generation—one that could even outlive the headline-grabbing Trump v. Anderson.

**Body**

The [*Supreme Court*](https://www.newsweek.com/topic/supreme-court?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships) made headlines this week in its unanimous rejection of Colorado's bid to deny [*Donald Trump*](https://www.newsweek.com/topic/donald-trump?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships) access to the ballot. But that hot-button issue has obscured the fact that Justices are about to consider an even more pressing demand: the public right to access information. *NetChoice v. Paxton* could be the most consequential First Amendment case in a generation—one with the potential to set precedent that far outlives the headline-grabbing *Trump v. Anderson*.

*NetChoice v. Paxton* challenges the constitutionality of a Texas law that prohibits social media companies from engaging in viewpoint discrimination through censorship, deplatforming, or shadowbanning. The law's champions argue that social media giants like X (formerly [*Twitter*](https://www.newsweek.com/topic/twitter?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships)) have become "common carriers"—enterprises that are indispensable for public communication and therefore must accept all customers, just as telephone companies, railroads, or utilities cannot discriminate based on users' political viewpoint. Absent such a declaration, Silicon Valley oligarchs freely discriminate against ideas from the Right, exploiting their control of hidden algorithms that determine what we do and don't see.

The tech companies tell a different story. The tactics of marginalizing or even blocking speech, they argue, are only deployed to combat harmful misinformation or to eliminate speech dubbed hateful, demeaning, or otherwise hurtful to users.

The Justices will read hundreds, if not thousands, of pages of petitions and briefs before weighing in. But they could save themselves some trouble by just reading the [*amicus brief*](https://www.supremecourt.gov/DocketPDF/22/22-555/298394/20240123095304574_22-555%20Amicus%20Brief.pdf)—a "metaphorical short story"—submitted by Pulitzer Prize-winning playwright David Mamet, the writer behind *Glengarry Glen Ross* and *The Untouchables*.

Mamet managed to convey the facts and law in a mere three pages. He got to the heart of the issue in [*Netchoice v. Paxton*](https://www.scotusblog.com/case-files/cases/netchoice-llc-v-paxton/) in trademark fashion: if we can't have reliable information about the world—a map to tell us where we are—then it doesn't matter if those doing the censoring are the government, or private companies, or private companies in cahoots with government.

The story tells of a pilot who "can't find the objects the chart informed him he'd see." He observes the features below, "but he found no corresponding position on his map. A pilot in this situation might conclude he'd simply picked up the wrong map. But what if the government and its privileged conduits prohibited him from choosing another?" Mamet argues, better than I could, that the purpose of the First Amendment is to protect the free flow of information, which leads to the availability of truth as best as we can find it in a free society. All the rest is subterfuge.

Silicon Valley's recent Supreme Court appearances may hamstring their ability to fight the Texas law. When [*accused of abetting terrorism*](https://www.scotusblog.com/case-files/cases/twitter-inc-v-taamneh/), Twitter and YouTube argued at the Supreme Court last year that posts on their sites are not their own speech. The companies are only the hosts, with no responsibility to moderate posts. But when they want to regulate posts they don't like, then these companies are speakers with full rights under the First Amendment to free speech and association. If social media posts belong to the citizens who make them rather than the companies that host them, the role of the First Amendment shifts from empowering companies to protecting citizens.

"I don't know of any protected speech interests in censoring others' speech," Justice [*Clarence Thomas*](https://www.newsweek.com/topic/clarence-thomas?utm_source=Synacor&utm_medium=Attnet&utm_campaign=Partnerships) said in oral arguments. On the contrary, the protection of free speech is a clear constitutional interest. Often the government is the violator of the First Amendment, but in this case, it is acting as the defender. As the advocate for the state of Florida phrased it, when "large, powerful businesses...have undertaken to host massive amounts of speech and have the power to silence those speakers, the state has an interest, a First Amendment interest, in promoting and ensuring the free dissemination of ideas."

Law is often about which story we believe—the prosecution's narrative of evil intent or the defense's narrative of mistaken identity; the plaintiff's claim of greed leading to negligence or the company's tale of an honest mistake exploited by lawyers looking for deep pockets. The plaintiffs in *NetChoice* are facing not only formidable litigators from Texas and Florida, but a master of storytelling in Mamet.

In the film *The Verdict*, written by Mamet many years ago, Paul Newman's character delivers a prescient closing argument to the jury: "We become tired of hearing people lie. And after a time we become dead, a little dead.... We doubt ourselves. We doubt our beliefs. We doubt our institutions." Newman's speech is still as fresh today as it was when I heard it in theaters as a 12-year-old boy, but it has taken on renewed urgency today. It anticipated our own age, when misrepresentation is rampant and doubt in public institutions is commonplace.

Mamet's amicus brief argues that lies prevail when they go unchallenged. If the map no longer matches the territory, in the [*phrase*](https://newcriterion.com/blogs/dispatch/mamets-map) Mamet invokes for this constitutional controversy, we are far past arguing about exactly who is censoring the real maps—government, social media companies, or the two working together—or whether state governments can act to protect a free market of ideas.

In an era when serious people argue that the Constitution itself demands that we must remove a major party candidate from the ballot in order to save democracy, and that a law supporting free speech online is a violation of the First Amendment, we need Mamet—and compelling allegories—more than ever.

*Morgan Marietta is Dean of the Center for Economics,* ***Politics*** *& History at the University of Austin.*

*The views expressed in this article are the writer's own.*

[*Link to Image*](https://d.newsweek.com/en/full/2359606/supreme-court-building.jpg)

**Graphic**

Supreme Court building

Robert Nickelsberg/Getty Images

WASHINGTON, DC - FEBRUARY 29: A view of the front of the U.S. Supreme Court is seen February 29, 2024 in Washington, DC. The Supreme Court decided to take up former President Donald Trump's claim that he is immune from prosecution for actions he took in office.

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