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## “Former Homosexual” Kicked Off Vimeo

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 By Arthur S. Leonard

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Vimeo, which is headquartered here in Manhattan's IAC Building, booted an "ex-gay" man's videos.

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James Domen, a self-described "former homosexual" who formed an organization called "Church United" as a non-profit religious corporation in California to promote conversion therapy, has lost his lawsuit against Vimeo, which cancelled Church United's account and deleted its videos. The Manhattan-based US Court of Appeals for the Second Circuit ruled on March 11, in a decision on a question not previously decided in the Second Circuit — that Section 230(c)(2) of the federal Communications Decency Act (CDA) protects the right of internet service providers to decide whom to host on their platforms, preempting state anti-discrimination laws. Vimeo has a policy barring the promotion of conversion therapy (which its practitioners call "sexual orientation change efforts," or SOCE) from its platform.

Circuit Judge Rosemary Pooler wrote for the court that Vimeo's policy "fell within the confines of the good-faith content policing immunity that the CDA provides to interactive computer services."

Domen describes himself as the president and founder of Church United, claiming that he "was a homosexual" for three years but "because of his desire to pursue his faith in Christianity, he began to identify as a former homosexual." He started Church United in 1994, intending to "equip pastors to positively impact the political and moral culture in their communities," and he claims to have 750 "affiliated pastors." According to Church United's website, the organization is located at 3857 Birch Street in Newport Beach, California.

Church United created a Vimeo account in 2016 and began uploading videos to the site, eventually upgrading to a "professional account" to get more bandwidth. Vimeo emailed Domen in November 2018, informing him that a moderator for the site had flagged the Church United account for "review" because "Vimeo does not allow videos that promote SOCE."

Domen was warned that if he did not remove five offending videos within 24 hours of the email, Vimeo might not only remove them but also the entire Church United account. Domen was also warned to download his videos if he didn't have a copy, in case his account was deleted. About two weeks after sending the email, Vimeo deleted Church United's account, with the explanation that "Vimeo does not allow videos that harass, incite hatred, or include discriminatory or defamatory speech."

Five specific videos were flagged as violating the policy against promoting SOCE. Church United, arguing that the videos were protected political speech, claims that it posted the videos on the

site as “part of an effort by Church United to challenge a California Assembly bill proposing to expand the state’s ban on SOCE to talk therapy and pastoral counseling.”

Domen’s lawsuit is based on California’s public accommodations law (the Unruh Act) and the New York State Human Rights Law, claiming under both statutes that Domen and Church United were the victims of discrimination because of religion and sexual orientation. They also made a freedom of speech claim under the California Constitution, which they did not pursue on appeal.

US Magistrate Judge Stuart D. Aaron granted Vimeo’s motion to dismiss the case, finding that Domen’s claims were all preempted by the CDA. Although the Second Circuit had not yet ruled on this precise situation, “where the plaintiffs sought to hold the defendant liable for removing content as opposed to permitting content to exist on its platform,” he looked to cases decided in other parts of the country with similar results. In any event, because Section 230 of the CDA preempts state statutory and constitutional claims, he concluded that “the entire case was statutorily barred.”

In upholding Judge Aaron’s ruling, Circuit Judge Pooler explained, “Section 230 [was] enacted to ‘provide immunity for interactive computer services that make ‘good faith’ efforts to block and screen offensive content,’” and the federal courts have generally held “that Section 230 immunity is broad.”

Specifically, the statute says that interactive computer service providers are immune from liability for “any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally

protected.” Thus, concluded Judge Pooler, “Vimeo is statutorily entitled to consider SOCE content objectionable and may restrict access to that content as it sees fit.”

The court rejected Domen’s argument that Vimeo was acting in bad faith because it continued to host other videos on its site which, based on their titles, Domen claims were similar to his videos that had been removed. Judge Pooler rejected this argument, stating that “the mere fact that Appellants’ account was deleted while other videos and accounts discussing sexual orientation remain available does not mean that Vimeo’s actions were not taken in good faith. It is unclear from only the titles that these videos or their creators promoted SOCE.” And, “given the massive amount of user-generated content available on interactive platforms, imperfect exercise of content-policing discretion does not, without more, suggest that enforcement of content policies was not done in good faith.”