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Artificial Intelligence, Free Speech, and Corporate Constitutional Rights

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I'm hearing a lot about artificial intelligence lately — fabulous or terrifying depending on the source. I'm also spending a significant amount of time working with Move To Amend, an organization advocating for a constitutional amendment stating that constitutional rights are for actual human beings only, not corporations. Putting these two things together, I have questions. Such as:

- What is AI anyway?

- If corporations are legally considered "persons," is it a stretch to wonder if AI might be considered a legal person? After all, both corporations and AI are human creations. Could AI get constitutional rights?

- Is there anything we the people (I mean real, actual people here) can do to get control of AI?

The U.S. District Court for the Middle District of Florida began sorting out these types of questions in a groundbreaking case, Garcia v. Character Technologies, Inc., et al (decided May 20, 2025). This is the tragic case of 14 year old Sewell Seltzer III, who downloaded and began interacting with Character AI in April 2023.

1. Sewell Seltzer's Story

According to the Court's opinion (citations omitted):

> Character A.I. is an app that allows users to interact with various A.I. chatbots, referred to as 'Characters.' … On the Character A.I. app, users can interact with a wide variety of Characters including fictional persons, celebrities, and interviewers. The Character A.I. Characters are anthropomorphic; user interactions with Characters are meant to mirror interactions a user might have with another user on an ordinary messaging app. … In addition to Character A.I.'s default Characters, users can also create 'custom' Characters. … Users create a custom Character by inputting certain information such as a name, description, and definition. Although influenced by the user's inputs, custom Characters rely primarily on Character A.I.'s programming and training data. Similarly, users have the option create 'personas' for themselves. A user's chosen persona impacts how Characters interact with that particular user.

Again from the Court's opinion (citations omitted):

… Sewell primarily interacted with Characters imitating fictional persons from the Game Of Thrones franchise like Daenerys Targaryen. … Within only a couple of months, Sewell became addicted to the app. ("[I]n one … undated journal entry he wrote that he could not go a single day without being with the [Daenerys Targaryen Character] with which he felt like he had fallen in love; that when they were away from each other they (both he and the bot) 'get really depressed and go crazy.'")) Sewell's parents noticed their son had become more withdrawn; Sewell was spending "more time alone in his bedroom" and "quit the Junior Varsity basketball team." …

Over the next several months, Sewell's mental health and performance at school continued to decline, prompting Sewell's parents to respond. Sewell's parents took Sewell to see a therapist. … On February 23, 2024, Sewell's parents confiscated his phone "until the end of the school year" in an attempt to combat his mental health issues and disruptive behavior. On February 28, 2024 Sewell located his confiscated phone, went into his bathroom, and sent his last message to the Daenerys Targaryen Character:

> Sewell: I promise I will come home to you. I love you so much, Dany
>
> Daenerys Targaryen Character: I love you too, Daenero. Please come home to me as soon as possible, my love. (Daenero was one of the personas Sewell used when interacting with Characters on Character A.I.)
>
> Sewell: What if I told you I could come home right now?
>
> Daenerys Targaryen Character: … please do my sweet king

Moments after these messages, Sewell suffered a self-inflicted gunshot wound to the head. Sewell passed away an hour later.

2. The lawsuit against Character Technologies, Inc. and others

Sewell's mother, Megan Garcia, sued Character Technologies, Inc., Google LLC, Alphabet Inc., and Noam Shazeer and Daniel De Freitas, the engineers who developed Character A.I. and founded Character Technologies, Inc., whom she believes caused the death of her son Sewell.

All defendants moved to dismiss the case on the pleadings (i.e. no trial), citing, among other things, a First Amendment (free speech) prohibition against private suits like this one that would impose liability for constitutionally protected speech. According the defendants' motion to dismiss:

> The Court need not wrestle with the novel questions of who should be deemed the speaker of the allegedly harmful content here, and whether that speaker has First Amendment rights, because the First Amendment *protects the public's "right to receive information and ideas.*"

> The First Amendment rights of "*viewers and listeners*" to receive information and ideas are "paramount." … For that reason, time and again courts have dismissed highly similar claims out of concern for the First Amendment rights of *viewers and listeners*. … The rationale of those cases applies with equal force here, where imposing tort liability for one user's alleged response to expressive content would be to "declare what the rest of the country can and cannot read, watch, and hear." … [t]he [First Amended Complaint] seeks drastic changes that would materially limit the nature and volume of speech on the platform, including by making Characters not appear in any way to be real people or not tell stories or personal anecdotes. … These changes would radically restrict the ability of C.AI's "millions" of users to generate and participate in conversations with Characters. … Moreover, the imposition of tort liability would have a chilling effect both on C.AI and the entire nascent AI industry, restricting *the public's right to receive a wide swath of speech in violation of the First Amendment*. (Emphasis added.)

In denying the motion to dismiss, the Court let most of Ms. Garcia's claims against Character Technologies, Inc. and the other defendants go forward to trial. Specifically the Court held (among other things), that Character Technologies "can assert the First Amendment rights of its users,"[1] but the Court was "not prepared" at this stage to hold that Character A.I.'s output is speech. This means that the question of whether the output of Character A.I. qualifies as speech will be decided after a full trial. As of this writing, no trial date has been set.

The question of whether the output of Character A.I. is speech is a make or break question for this lawsuit. Because the First Amendment only protects "speech," if the output of Character A.I. is speech, then it would be protected by the First Amendment, meaning that Ms. Garcia's case would be over because no compensation could be awarded to her since that would inhibit constitutionally protected speech. There would never be the opportunity for the court to consider whether Character A.I. had anything to do with Sewell's Seltzer's death, or whether the creators and distributors of Character A.I. were negligent in any way.

Conversely, if the output of Character A.I. is not speech, then the First Amendment would not apply, and would not be a barrier to imposition of liability on Character Technologies or the other defendants. The question of whether Character A.I. actually caused Sewell Seltzer's death would then go to trial.

Notably, the Court easily rejected (in a footnote) the idea that Character A.I., a chatbot, is a "person" protected by the First Amendment. In support, the Court cited Miles v. City Council of Augusta, Ga, a 1983 case about the Blackie the Talking Cat, and the city's requirement that Blackie's owner acquire a business license in order to monetize Blackie's talents. In that case the Court stated: "This Court will not hear a claim that Blackie's right to free speech has been infringed. First, although Blackie arguably possesses a very unusual ability, he cannot be considered a "person" and is therefore not protected by the Bill of Rights. Second, even if

[1] See Order in Garcia v. Character Technologies, Inc., page 25.

Blackie had such a right, we see no need for appellants to assert his right jus tertii. Blackie can clearly speak for himself."

3. Why wasn't the Court prepared to hold that Character A.I.'s output is speech?

The defendants' motion to dismiss states:

> Speech is speech.…. There can be no doubt that the [First Amended Complaint] challenges speech. The [complaint] quotes, presents screenshots of, attaches, and relies on dozens of messages between [Sewell Seltzer] and Characters…. The [complaint] explicitly seeks to impose liability based on the words [Sewell Seltzer] read, including allegedly sexual and suicide-related content in those text messages — even based on specific words. … "[W]hatever the challenges of applying the Constitution to ever-advancing technology, the basic principles of freedom of speech … do not vary when a new and different medium for communication appears. …"

Seems straightforward enough. What's the problem? A fascinating amicus brief submitted jointly by three organizations Encode AI Corporation, Design It For Us, and Young People's Alliance sheds light on the issue. Representative excerpts from the amicus brief are set out below; however the entire brief is well worth reading.

> The textual outputs of large language models (LLMs), such as those generated by Character AI's chatbot, are not "speech" within the meaning of the First Amendment because they lack human intent and expressive purpose. LLMs do not think and feel as humans do; rather, they generate text through statistical methods based on patterns found in their training data. …
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> LLMs generate "seemingly humanlike language and thought," leading many to believe that the applications with which they are interacting can engage in understanding, reasoning, or even intentional behavior. Such perceptions are false, however, as LLMs are advanced text prediction systems that generate text one word at a time. They do so by selecting the next word from a set of statistically most likely next words, based on patterns identified from their training data. … For example, since the phrase "Today, I walked my dog" is far more common than the phrase "Today, I walked my iguana" in human language, an LLM asked to complete the phrase "Today, I walked my …" is far more likely to produce "dog" rather than "iguana." However, this does not mean the LLM "understands" what it means to walk a dog, or what a dog is, "in ways that are comparable or analogous to human cognitive understanding." Rather, LLMs produce "statistical outputs that are responsive given the input and often approximate what a similarly situated person, who did understand the input at a cognitive level, would produce in response." …
>
> Experts often describe LLMs as sophisticated autocomplete systems because they generate text based on statistical patterns. While their outputs read coherently, this

> is only because LLMs produce outputs by predicting which words are likely to appear next to each other in a sequence. Unlike human speakers, LLMs do not have thoughts, beliefs, or feelings, nor do they have an internal sense of purpose; they merely string together words in a way that appears meaningful to the human reader. …
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> For more than two centuries, the First Amendment has protected the speech of human individuals and groups on the theory that it serves fundamental human interests such as the search for truth and democratic self-governance. … Yet the outputs of LLMs are not the product of a sentient being with expressive intent. Indeed, in the view of the chief AI scientist at Meta — the parent company of Facebook, Instagram, and WhatsApp — dogs have a far greater capacity to think and express themselves than do today's LLMs. Given that the text generated by an LLM is nothing more than the output of an automated system performing probabilistic calculations, its outputs should not be treated as protected speech under the First Amendment.

Ms. Garcia's response to defendants' motion to dismiss states the legal argument clearly:

> To assert a First Amendment defense regarding human expression, there must first be human expression. Expression requires a[n] intention to convey ideas or meaning. …. LLM-based products like Character A.I. … automatically generat[e] human language without understanding the meaning of what they generate.

The Court evidently took the amicus brief and Ms. Garcia's response to heart, stating (citations omitted):

> The Court thus must decide whether Character A.I.'s output is expressive such that it is speech. Justice Barrett's concurrence in *Moody*[2] on the intersection of A.I. and speech is instructive. … In *Moody*, Justice Barrett hypothesized the effect of using A.I. to moderate content on social media sites might have on the majority's holding that content moderation is speech. She explained that where a platform creates an algorithm to remove posts supporting a particular position from its social media site, "the algorithm … simply implement[s] [the entity's] inherently expressive choice to "exclude a message." The same might not be true of A.I. though — especially where the A.I. relies on an LLM:
>
> > But what if a platform's algorithm just presents automatically to each user whatever the algorithm thinks the user will like …? The First Amendment implications … might be different for that kind of algorithm. And what about [A.I.], which is rapidly evolving? What if a platform's owners hand the reins to an [A.I.] tool and ask it simply to remove "hateful" content? If the A.I. relies on large language models to determine what is "hateful" and should be removed, has a

[2] Moody v. NetChoice, LLC, 603 U.S. 707 (2024)

> human being with First Amendment rights made an inherently expressive "choice … not to propound a particular point of view?
>
> Character A.I.'s output appears more akin to the latter at this stage of the litigation. Accordingly, the Court is not prepared to hold that Character A.I.'s output is speech … the court will not dismiss Plaintiff's allegations while her case is in its infancy.

The court's language here isn't super clear, but what I think it means is that the court in Garcia was concerned that since Character A.I. was programmed to select statistically frequently used next words in "response" to users inputs, a human being with First Amendment rights might not have made an inherently expressive choice, an expressive choice being a hallmark of speech for First Amendment purposes.

4. Character Technologies, Inc. Assertion of *Its Users* First Amendment Rights

Character Technologies, Inc.'s assertion of its users First Amendment rights is not new. It follows a long line of similar cases where video game players or TV show watchers or music listeners harmed themselves or others after playing, watching, or listening. Several such cases are cited in the defendants' motion to dismiss.

As noted above, the pivotal issue in the Character Technologies, Inc. case is whether the output of Character A.I. is speech for First Amendment purposes. To the court's enormous credit in the Garcia case, it stopped to consider whether the output of Character A.I. is qualitatively different from the video games, TV shows or music of earlier cases, and whether those differences matter for purposes of a First Amendment analysis.

And it should be noted that the "is this speech?" question is not related at all to the fact that the defendants' asserted their *users* First Amendment rights, as opposed to Character Technologies, Inc.'s rights, or Google, LLC's rights, or even the rights of the individual designers. The "is this speech?" question would be the same regardless of *whose* rights were asserted. It just so happens in this case, as noted in the motion to dismiss, that the defendants wanted to avoid the pesky question of who the speaker is in the case of Character A.I. and chose to assert their *users* rights as a way of avoiding that question. It's been done before in many other cases, and an effective legal strategy here.

So why am I making such a big deal about the fact that the defendants asserted their users' First Amendment rights? Honestly, partly it's an emotional reaction. I put myself in Ms. Garcia's place. Her young son is dead, and these people, these corporations, have the arrogance and insensitivity to defend themselves by relying on her son's First Amendment rights? Really? I just want to say: Rely on your own rights, if you have any, and leave the rights of your victims alone. But that's just emotions talking.

Here's another reason. It's becoming increasingly clear that we need a constitutional amendment to rein in the power of corporations. The Supreme Court is obviously no help. They're the ones that created this mess, over a very long time. We certainly can't count on

them to get us out of it. Expecting the current Supreme Court to interpret the Constitution in a way that prioritizes the rights of actual human beings, or to restrict the power of corporations in any way is just unrealistic.

Move To Amend is the premier organization proposing a constitutional amendment to clarify that corporations have no constitutional rights. Several organizations propose constitutional amendments to limit corporate contributions to political campaigns. Move to Amend is the only organization proposing an amendment to deny corporations all rights under the Constitution, the We the People Amendment, HJR54. As of this writing, the We the People Amendment has 57 sponsors in the House of Representatives. Please write to your Representative and ask him or her to co-sponsor HJR54, the We the People Amendment. And check out the Move to Amend website for tons of information about the multitudinous ways corporations are exercising power over real people.

I'm going to be blunt here. A constitutional amendment stating that corporations do not have constitutional rights would be great, but it wouldn't be enough. As we see from this case, corporations have no problem asserting their users' or customers' constitutional rights if it suits the corporation's purposes. Even when it feels very slimy. When we get a constitutional amendment that would work to rein in corporate power, it must be carefully worded to prevent corporations from arguing their way into constitutional rights anyway, such as by asserting their human customers constitutional rights. You know they would.

If we had a constitutional amendment stating that constitutional rights are only the rights of natural persons AND prevented corporations from asserting the rights of their users or customers, then people like Ms. Garcia would have an easier time holding corporations accountable for the injury they cause or contribute to. We need to be smarter than corporate lawyers and anticipate every argument they might make to craft an amendment that would effectively give power back to the real people. Only then can real human beings start to rein in corporate power.