



Written by [Bob Adelman](#) on September 19, 2022

## Federal Appeals Court Upholds Texas Bill Prohibiting Social Media From Censoring Content

The Appeals Court for the Fifth Circuit reversed a lower court's ruling in [NetChoice v. Paxton](#) on Friday, setting the stage for another appeal to the Supreme Court.

At issue is the First Amendment's guarantee of the right to free speech — "Congress shall make no law ... abridging the freedom of speech, or of the press..." — and whether Texas House Bill 20 violates or upholds it.

When Texas Governor Greg Abbott signed the bill into law last September, he stated:

Social media websites have become our modern-day public square. They are a place for healthy public debate where information should be able to flow freely — but there is a dangerous movement by social media companies to silence conservative viewpoints and ideas.

That is wrong, and we will not allow it in Texas.



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NetChoice disagreed:

The Act tramples the First Amendment by allowing [Texas] to force private businesses [i.e., Facebook, Twitter, and YouTube] to host speech they don't want to ... [and additionally allows Texas to] police and control speech online, overriding the First Amendment rights of [those businesses].

Fifth Circuit Judge Andrew Oldham, a Trump nominee with a law degree from Harvard, minced few words in his decision:

A Texas statute named House Bill 20 generally prohibits large social media platforms from censoring speech based on the viewpoint of its speaker.

The platforms urge us to hold that the statute is facially unconstitutional and hence cannot be applied to anyone at any time and under any circumstances.

In urging such sweeping relief, the platforms offer a rather odd inversion of the First Amendment. That Amendment, of course, protects every person's right to "the freedom of speech."



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But the platforms argue that buried somewhere in the person's enumerated right to free speech lies a corporation's *unenumerated* right to *muzzle* speech. [Emphasis in original]

He and fellow appeals court judges Edith Jones and Leslie Southwick rejected outright that "rather odd inversion":

Today we reject the idea that corporations have a freewheeling First Amendment right to censor what people say.

Because the district court held otherwise, we reverse its injunction and remand [return it to the lower court] for further proceedings.

Because Friday's decision is counter to a ruling by an appeals court in Florida on the same issue, it is certain to be appealed to the high court once again for final resolution.

Oldham lays the groundwork for that appeal:

The First Amendment protects speech: It generally prevents the government from interfering with people's speech or forcing them to speak.

The Platforms [NetChoice, et al.] argue that because they host and transmit speech, the First Amendment also gives them an unqualified license to invalidate laws [like Texas House Bill 20] that hinder them from censoring speech they don't like.

And they say that license entitles them to pre-enforcement facial relief against HB 20.

We reject the Platforms' attempt to extract a freewheeling censorship right from the Constitution's free speech guarantee.

The Platforms are not newspapers. Their censorship is not speech. They're not entitled to pre-enforcement facial relief. And HB 20 is constitutional because it neither compels nor obstructs the Platforms' own speech in any way.

The district court erred in concluding otherwise and abused its discretion by issuing a preliminary injunction. The preliminary injunction is VACATED, and this case is REMANDED for further proceedings consistent with this opinion.

Big Social Media sued in December, getting a judge to block the bill's enforcement.

Texas appealed to the Fifth Circuit, which lifted the sanction, but NetChoice et al. immediately appealed to the Supreme Court. The high court suspended the law pending a full review by the Fifth Circuit. Friday's decision by the Fifth Circuit overruled the lower court's sanction, setting in motion another appeal to the Supreme Court.

The Texas law bars social media platforms from acting to "block, ban, remove, de-platform, demonetize, de-boost, restrict, deny equal access or visibility to, or otherwise discriminate against expression."



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