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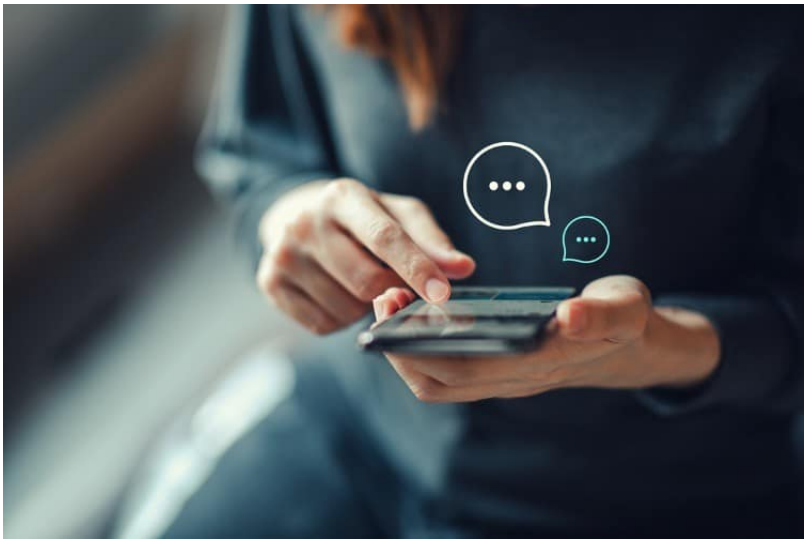
Written by **James Murphy** on May 13, 2022

Texas Law Barring Social-media Companies From Censoring Users Over Political Opinions Reinstated



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A Texas law that prohibits large social-media companies from censoring users can go into effect while a case brought by two internet lobbying groups challenging the law is decided. A panel of judges from the Fifth Circuit Court of Appeals reversed a December decision by U.S. District Judge Robert Pitman, which halted enforcement of the law due to the case against it.

At the time, Pitman ruled that certain aspects of the law were "prohibitively vague," and that "social media platforms … curate both users and content to convey a message about the type of community the platform seeks to foster and, as such, exercise editorial discretion over their platform's content."

The panel of three judges who overturned Pitman's injunction against the law included Judges Edith Jones, Leslie Southwick, and Andrew Oldham and was reportedly not a unanimous decision, although the ruling didn't say who dissented. Instead, the court simply issued a one-page ruling stating, "IT IS ORDERED that appellant's opposed motion to stay preliminary injunction pending appeal is GRANTED."

The law in question is known as HB 20 and looks to prohibit "censorship of or certain other interference with digital expression, including expression on social media platforms or through electronic mail messages."

HB 20 was passed in special session last September after dozens of Texas Democrats fled the state for over a month to avoid voting on an election-integrity bill. The bill is meant to guard against social-media censorship. Governor Greg Abbott signed the bill in September.

Abbott said at the time that the law was a response to "a dangerous movement by social media companies to silence conservative viewpoints and ideas."

The bill states that "each person in this state has a fundamental interest in the free exchange of ideas and information, including the freedom of others to share and receive ideas and information," and that "state has a fundamental interest in protecting the free exchange of ideas and information in this state."

In addition, the law requires social-media platforms with more than 50 million users to publicly disclose how content is moderated.

The law further claims that social media has become "central" to public debate and that social-media companies act as "common carriers" in the United States, which essentially means that they serve as a public square and are subject to the First Amendment guarantees of free speech.

The law's detractors disagree and claim that HB 20, in fact, violates the social-media companies' First Amendment-protected rights.

The two internet advocacy groups challenging the Texas law are NetChoice and the Computer & Communications Industry Association (CCIA), whose members include Twitter, Facebook, and Google. They vow to appeal the decision.

"HB 20 is an assault on the First Amendment, and it's constitutionally rotten from top to bottom. So of course we're going to appeal today's unprecedented, unexplained, and unfortunate order by a split 2-1 panel," tweeted Chris Marchese, counsel for NetChoice.

Texas Attorney General Ken Paxton was adamant about the law's constitutionality.

"My office just secured another BIG WIN against BIG TECH. #Texas's HB20 is back in effect. The 5th Circuit made the right call here, and I look forward to continuing to defend the constitutionality of #HB20," Paxton tweeted.

Florida has also passed similar legislation. That law was challenged by the same two internet-advocacy groups and was blocked by a federal judge, who decided, "The plaintiffs are likely to prevail on the merits of their claim that these statutes violate the First Amendment."

Both the Texas and Florida laws are essentially a challenge to Section 230 of the Communications Decency Act, which protects platforms such as Facebook and Twitter from liability regarding what others post on their websites. In essence, Section 230 protects Big Tech platforms as if they were a public service akin to the telephone company; it shields them from being treated as publishers of material, who can be sued for libel.

But in censoring certain thoughts and ideas, those platforms are making editorial decisions — something that publishers do.

Big Tech appears to want it both ways. They want the protections of Section 230, along with the ability to censor whomever they choose.