



Court Rules Against Florida Law That Would Curb Social-media Censorship

On Monday, a federal appeals court found that a Florida law that would have held social-media companies such as Twitter, Facebook, and Instagram responsible for banning political speech on their platforms was unconstitutional. The Florida law is similar to a Texas law that a different federal appeals court allowed to be enforced.



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The order, issued by a three-judge panel for 11th Circuit Court of Appeals, upheld a Florida judge's injunction of the law based on Florida [Senate Bill 7072](#), which Governor Ron DeSantis signed in May of last year. The law would have held social-media companies liable for "willfully deplatforming a candidate" and would have authorized Florida's Department of Legal Affairs "to investigate suspected violations under the Deceptive and Unfair Trade Practices Act."

The [decision](#) was unanimous from Judges Kevin Newsom, Gerald Tjoflat, and Ed Carnes.

"Social media platforms exercise editorial judgment that is inherently expressive. When platforms choose to remove users or posts, deprioritize content in viewers' feeds or search results, or sanction breaches of their community standards, they engage in First-Amendment-protected activity," Newsom wrote.

The law would have also required that social-media companies disclose their content-moderation criteria.

"Some of these massive, massive companies in Silicon Valley are exerting a power over our population that really has no precedent in American history," DeSantis said in May 2021 during the bill-signing ceremony. "One of their major missions seems to be suppressing ideas."

The suit against the law was brought by lobbying groups Netchoice and Computer and Communications Industry Association, which boasts most Big Tech companies as members. The same two plaintiffs are suing against the Texas law.

Ironically, the panel ruled that the First Amendment rights of the social-media companies were at risk because of the law.

"We hold that it is substantially likely that social media companies — even the biggest ones — are 'private actors' whose rights the First Amendment protects," the ruling stated. "The State of Florida insists that they aren't [private actors], and it has enacted a first-of-its-kind law to combat what some of its proponents perceive to be a concerted effort by 'the "big tech" oligarchs in Silicon Valley' to 'silence' 'conservative' speech in favor of a 'radical leftist' agenda."

"The First Amendment protects platforms and their right to moderate content as they see fit — and the government can't force them to host content they don't want," argued Netchoice vice president Carl Szabo, who thought the decision boded well for any future Supreme Court fight regarding the similar Texas law.

"This makes it even more likely that the U.S. Supreme Court will overturn the 5th Circuit's split



Written by [James Murphy](#) on May 24, 2022

decision on the similar Texas law,” Szabo said.

Or is it possible that the conservative leaning court will find both the Florida and the [Texas](#) laws to be reasonable in that they both seek to protect the First Amendment rights of consumers?

Opponents of the law argue that social-media censorship is protecting the public from disinformation and hostile state actors.

“When a digital service takes action against problematic content on its own site — whether extremism, Russian propaganda, or racism and abuse — it is exercising its own right to free expression,” said CCIA president Matt Schruers.

Whether we like it or not, social media has become the new equivalent of the public square. As the Texas law states, social-media platforms with their millions of users have become “central” to public discourse. Having biased gatekeepers removing ideas that they find unseemly is anathema to the First Amendment, which the ruling cites as their reason for overturning the law.

Facebook, Twitter, and the others are already protected by Section 230 of the Communications Decency Act, which shields them from prosecution for peoples’ opinions on their sites. They already cannot be held liable for opinions posted on their websites. They should lose that protection if they are editing or censoring thought on their platforms, which essentially makes them publishers and not just a public service.



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