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Supreme Court Temporarily Blocks Texas Social-media Law

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On Tuesday, the U.S. Supreme Court temporarily blocked a Texas law that would make it harder for tech companies such as Facebook and Twitter to censor political content. In a 5-4 decision that made for some strange alliances, the Court granted an emergency request from the tech industries to block enforcement of the law until legal challenges are heard.

Chief Justice John Roberts and Associate Justices Brett Kavanaugh and Amy Coney Barrett joined with left-wing justices Stephen Breyer and Sonia Sotomayor in voting to block enforcement of the Texas law, while Clarence Thomas, Samuel Alito, Neil Gorsuch, and leftist justice Elena Kagan would have allowed enforcement of the law to continue.

The law in question, also known as HB 20, would prohibit Big Tech platforms from blocking, banning, or demoting posts based on political opinion. It would have also had large social-media companies go public with their system for censoring certain content.

The tech companies argued that the law violates their First Amendment-guaranteed rights.

HB 20 was passed and signed into law by Texas Governor Greg Abbott in September of last year. In December, U.S. District Judge Robert Pitman issued a stay against enforcement of the law, while litigation was pending. That stay was reversed by a three-judge panel last month, prompting this review by the Supreme Court.

NetChoice, one of two Big Tech lobbying groups opposing the new law, was happy with the temporary injunction.

“The government cannot force American businesses to host and spread a mass murderer’s vile manifesto, Putin’s anti-West propaganda, or an antisemite’s Holocaust denial,” said NetChoice counsel Chris Marchese in a statement.

“In passing HB 20, the Texas legislature ran roughshod over the First Amendment,” Marchese said, “So we’re relieved that users will remain protected from the flood of horrible content Texas would have unleashed on popular websites and services as the case proceeds in the district court.”

NetChoice’s fellow litigant, the Computer and Communications Industry Association (CCIA) touted the decision as a victory for the First Amendment.

“We appreciate the Supreme Court ensuring First Amendment protections, including the right not to be

compelled to speak, will be upheld during the legal challenge to Texas's social media law," CCIA President Matt Schruers noted. "The Supreme Court noting the constitutional risks of this law is important not just for online companies and free speech, but for a key principle for democratic countries."

Writing for himself, Gorsuch, and Thomas in dissent, Justice Alito believed that the court was infringing on Texas' sovereignty by declaring a stay on the new law.

"While I can understand the Court's apparent desire to delay enforcement of HB20 while the appeal is pending, the preliminary injunction entered by the DistrictCourt was itself a significant intrusion on state sovereignty, and Texas should not be required to seek preclearance from the federal courts before its laws go into effect," Alito wrote.

Neither the majority nor Kagen wrote to explain their decisions.

A similar law in Florida was recently struck down by a three-judge panel from the 11th Circuit Court of Appeals, which claimed that that law violated the First Amendment-protected rights of the social-media giants.

"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 panel concluded in the case of the Florida law.

Amicus or "friends of the court" briefs have been filed for both sides of the Texas law. Both the NAACP and the Anti-Defamation League have urged the court to block enforcement of the law, claiming that it will "transform social media platforms into online repositories of vile, graphic, harmful, hateful, and fraudulent content, of no utility to the individuals who currently engage in those communities."

Meanwhile, Florida, along with Alabama, Alaska, Arizona, Arkansas, Iowa, Kentucky, Mississippi, Missouri, Montana, Nebraska, and South Carolina, have filed their own "friends of the court" brief in defense of the Texas law.

Those states argue that HB 20 ensures "that its citizens of all political and geographical stripes have full access to the free flow of information and ideas."

Section 230 of the Communications Decency Act protects Big Tech companies as "common carriers" akin to telephone or utility companies. Section 230 shields these "common carriers" from litigation, so long as they don't act as publishers.

Facebook, Twitter, and the others wish to enjoy the freedom that Section 230 allows them from prosecution. But at the same time, they want to be allowed to remove content they disagree with. Many believe that in making such editorial decisions, the social-media companies are in fact acting as publishers, something Section 230 forbids. The social-media giants want it both ways. They want to flex their censorship muscles unfettered, without any repercussions on the First Amendment front.