



Tech industry, advocacy groups join forces to oppose Texas social media law

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An unlikely group of allies — made up of tech industry groups and advocacy organizations that are usually on opposing battle lines — is forming a joint front to push back on a newly instated Texas law that hinders social media companies' ability to remove content and users that violate platform rules.

Tech industry groups, civil society organizations and even a conservative think tank are asking the Supreme Court to intervene and block the Republican-backed law after an appeals court last week reinstated it even as litigation remains pending on its ultimate fate.

The request to the Supreme Court is being led by NetChoice and the Computer and Communications Industry Association, and amicus briefs have been filed with support from the Anti-Defamation League, the NAACP, the Center for Democracy and Technology, the libertarian Cato Institute — and dozens more.

You end up having all these groups concerned about our lawsuit because they understand that the First Amendment implications here are far beyond just tech," Chris Marchese, a counsel for NetChoice, told reporters Wednesday.

"This is more than just Google, YouTube and Facebook. This is really about what can the government force private individuals and private businesses to do," he said.

The decision that lies before the Supreme Court is whether to take immediate action to block the law as the CCIA and NetChoice case against it continues in the lower court. The request comes after the appeals court reversed a block on the law last week while an ultimate judgment of the law's merits remains under consideration.

The law is going into effect at a precarious time — with critics slamming tech companies' handling of dangerous misinformation and hate speech following the deadly mass shooting in

Buffalo, N.Y. Companies have come under scrutiny over clips of the shooting spreading online and faced accusations that they are not taking a hard enough stance against extremist content.

And the debate around the law is heating up as the fate of former President Trump's now suspended accounts on mainstream platforms is up in the air in the lead up to a potential 2024 run. The law could potentially force or compel companies to reinstate previously removed users, including Trump.

Meta, Facebook's parent company, has said Trump will remain banned until 2023, at which time it may allow him to return based on an evaluation of the "risk to public safety." YouTube has yet to make a definitive decision on Trump's presence on the platform, but CEO Susan Wojcicki last year said his account will only be reinstated when the risk of violence has decreased. Twitter, which was previously the former president's most frequented platform, made the most definitive decision to fully ban Trump, but that decision may be overturned if Elon Musk is successful in his bid to buy the company.

Spokespeople for Facebook and Twitter declined to comment. A spokesperson for Google, YouTube's parent company, did not respond to a request for comment.

The bill, signed by Gov. Greg Abbott (R) in September, forbids social media companies with more than 50 million monthly users from banning users based on political views.

Marchese said if it remains in place, the platforms could be compelled to reinstate banned politicians including Trump, because it is "so poorly written" it encourages plaintiffs to "bring as many novel and creative lawsuits as possible."

Matt Schruers, president of the CCIA, said he agrees the law is ambiguous, but said there would be a strong argument for companies to not have to reverse content decisions in place prior to it taking effect.

Republicans have been accusing platforms of censoring content with an anti-conservative bias, a narrative boosted by the suspensions of Trump's accounts over posts he made related to the Jan. 6, 2021, attack on the Capitol. Despite a lack of evidence to back the claims of biased censorship, the law opens the floodgates for users to sue companies over bans even if they violated the platforms' rules.

Even the Real Facebook Oversight Board, an activist group that formed to hold Facebook accountable and is nearly always in opposition of the tech giant and the industry groups that back it, is against the law.

"Tech companies may have their reasons for opposing the law – they want as little interference as possible. But in this case they're right – the Texas law stands in the way of critical safeguards against hate speech and incitement to violence. We need policy oversight, but it has to be good policy and this is not," a spokesperson for the group said in a statement.

As a whole, the amicus briefs argue the law violates the First Amendment by taking away private entities' rights to decide what content they display and host, and does so in a way that would lead platforms to leave dangerous content online, including pro-terrorist content, animal abuse and pornography and hate speech.

“I think the organizations opposing this law realize that this type of approach that Texas has taken could easily be used from either a right wing or left wing perspective,” said Thomas Berry, a research fellow at Cato Institute.

“So it may be Texas today, but it could easily be a blue state next year that puts in place similar restrictions on the rights of editors. So it's more important to draw a principled line based on what are the First Amendment rights of publishers — and it shouldn't matter whether those rights are being infringed by a conservative state or a liberal state in order to achieve a conservative outcome or a liberal outcome,” he said.

The request was filed to Justice Samuel Alito, who oversees the Fifth Circuit. Marchese said they expect Alito will review the filings and write a memo to the rest of the conference, and said there could be a vote from justices on whether to block the law by Friday.

It's not certain if there will be a written opinion along with the decision, but the case is largely expected to come back to the Supreme Court depending on how it plays out before the Fifth Circuit appeals court.

If not, NetChoice and CCIA expect another case they have lodged against a similar Florida bill will ultimately make its way to the high court.