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## Supreme Court should affirm First Amendment with NetChoice

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The Supreme Court is hearing oral arguments in the NetChoice cases on Monday, reviewing laws in Texas and Florida that would prohibit social media platforms from “censoring” certain types of speech or speakers.

While many Republicans believe these laws are necessary to protect expression, they actually deny freedom of expression to others. Furthermore, these laws are guaranteed to backfire to the detriment of all social media users, including those Republican voices the laws are attempting to protect.

The central feature of Texas’s law is that it forbids social media from moderating content based on viewpoint, while Florida’s law forbids removing or restricting posts by political candidates or journalists.

Those behind these laws have framed them as necessary to protect online speech, primarily of Republicans, from being silenced by tech companies. After Gov. Greg Abbott (R-TX) signed his state’s law, he said there is a “dangerous movement by social media companies to silence conservative viewpoints and ideas.” Gov. Ron DeSantis (R-FL) praised his state’s new law by saying that social media companies “will now be held accountable” for their bias.

While some may reject that there is a progressive bias at social media companies, as someone who, until recently, was on the team that wrote the content rules for Facebook, I can confirm it is foolish to deny what social media CEOs themselves have admitted: Many social media companies have a bias toward progressive ideas and values, and this can affect the way that policies are formed and enforced.

This doesn’t mean, though, that every content moderation decision should be presumed to be motivated by political bias. So much of content moderation isn’t political. It is instead struggling to draw clear policy lines that can be enforced evenly across billions of pieces of content posted every year. But, as is the case everywhere, there is bias, and different platforms may express that in different ways. In fact, allowing bias is what permits platforms to serve specific groups, whether it’s the LGBT community or evangelical Christians.

That said, even if you sympathize with the grievances that inspired these laws, that does not mean these laws will actually address the underlying concerns about free expression. Indeed, they are counterproductive in multiple ways.

Texas's law saying social media companies can't moderate content based on viewpoint will end in chaos. After all, what is a viewpoint? It's not defined in the law. Nazis have a viewpoint. Both Israel and Hamas have a viewpoint. Pornography is a viewpoint. Supporters of unhealthy eating disorders have viewpoints. Chiefs and 49ers fans have viewpoints.

What this means is that nearly any piece of content could represent a viewpoint. How can a tech company prove that any removal or suppression of content wasn't the result of a viewpoint? The short answer is it can't. The law all but guarantees that Texas can sue social media companies for any decision with which it disagrees.

Plus, there are plenty of cases in which platforms may explicitly want to remove certain viewpoints. Why should companies be compelled to host content that isn't illegal but goes against their values, such as Islamic State or Nazi propaganda?

Indeed, beyond the moderation and legal chaos these laws will cause, the fundamental matter is that they force social media companies to moderate as the government wishes. These laws abridge the expressive rights of these companies by forcing them to carry speech they don't want to host. Just as the *New York Times* or the *Wall Street Journal* have their own biases and can choose what appears on their editorial pages, social media companies also have biases and the right to host only the content they want.

And if Texas and Florida can force their preferences on private companies, what stops other states from forcing companies to make different moderation decisions? New York has already passed a law, which is in its own free speech legal battle, that would force companies to address "hate speech." You can expect far more and far worse laws if the Supreme Court allows the Texas and Florida laws to stand.

We don't protect free expression by having the government compel social media companies (or anyone else) to host and share the speech with which they disagree. Instead, we must strive for laws and a culture that deeply values free expression, including making the case for the value of greater expression on existing or new platforms.

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