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Tech Finds Its Voice On Travel Ban Even Though Things Might Get Loud

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Washington and Minnesota may be the states leading the fight against President Trump's ban against travel to the U.S. from seven predominantly Muslim nations, but the states gained some powerful allies yesterday. When 97 companies filed a so-called *amicus brief*, supporting the states in their legal action, many of the nation's most prominent technology companies joined the fight to overturn the ban, including Apple, Google, Facebook, Microsoft, Intel, Netflix, and Uber. However the legal matter is resolved, the firms have now placed themselves in public opposition to Trump, risking possible wrath and retribution down the line. What's important to understand here is why these companies are willing to take that chance and what it could mean for them.

The brief ([which can be viewed on Scribd](#)) is a fairly routine legal filing in federal cases. When interested third parties wish to be heard, they file these "friend of the court" briefs with whatever body currently has the case. At this time, it's the 9th Circuit Court of Appeals, which covers most of the western U.S. That court refused the Trump administration's request to lift District Judge James Robart's injunction blocking the executive order that put the travel ban in place. It now is up to a three-judge panel to consider whether to allow Robart's ruling to stand (which likely sets up a Supreme Court showdown), or to overturn it (effectively putting the ruling back into force).

For their part, the companies signing onto the brief made arguments that might otherwise be persuasive to Trump were the topic not one where the president believed national security was the paramount issue. Consider this section just from the opening pages:

[T]he order inflicts significant harm on American business, innovation, and growth ... [It] makes it more difficult and expensive for U.S. companies to recruit, hire, and retain some of the world's best employees ... And it threatens companies' ability to attract talent, business, and investment to the United States.

Trump has been quite outspoken about his desire to foster the creation of good jobs within the U.S. The companies are saying here rather pointedly that the executive order barring citizens of Iraq, Syria, Iran, Libya, Somalia, Sudan, and Yemen will make it more difficult to create those jobs.

The companies go on to note that Trump's order will end up doing the opposite of what the president hopes in that it, "gives global enterprises a new, significant incentive to build operations—and hire new employees—outside the United States." But while they point out the harm in economic terms, they are quick to add their belief the ban is also illegal under both the Constitution and immigration law. A recent op-ed from the libertarian Cato Institute that appeared in the *New York Times* agrees.

Among the details, however, are some rather stunning facts about the contributions of immigrants to American business. Of the Fortune 500, immigrants or their children started 200 of the companies. For small businesses, 28% are owned by immigrants. Since 2000, 1/3 of American Nobel Prize winners are immigrants. The concerns for these firms are not limited just to the potential loss of Nobelists, however. "Instability and uncertainty will make it far more difficult and expensive for U.S. companies to hire some of the world's best talent—and impede them from competing in the global marketplace," they write.

There are concerns enumerated that firms will be unable to hire workers not just from the listed countries but others that might be added to a list in the future. Further the risk of sending workers abroad who might have trouble re-entering the country will simply lead to those jobs being located outside the U.S. where free travel is easier to obtain.

The conclusion of the brief makes some of the same legal arguments that the plaintiffs -- in this case the states -- have made themselves. The exact merits of these legal arguments are for the courts to decide and while it seems likely the 9th Circuit will rule against President Trump, there is no guarantee of that outcome. Further, predicting how a currently shorthanded Supreme Court will rule seems easy -- a 4-4 tie that lets the appellate court ruling stand -- don't be surprised if the high court itself surprises.

But irrespective of the outcome of the case, there may be additional repercussions. Apple, Google, and Microsoft in particular are all waiting on a corporate tax deal that will collectively allow them to bring hundreds of billions of dollars back to the U.S. at lower rates than the current law dictates. Those dollars technically sit overseas, earned on foreign operations and await "repatriation." If Trump is angered by these firms challenging him in this way, it's possible it will affect at least the prioritization of such a deal down the road if not the terms.

Further, Apple was already in the government's crosshairs a year ago when it wouldn't help the FBI hack an iPhone related to the terrorists behind the San Bernardino shootings. Then candidate Trump didn't much care for Apple then and called for a boycott of its products. The president has also pushed for Apple to manufacture the iPhone domestically, though that currently remains unrealistic -- at least for the majority of iPhone production.

Internally, firms are dealing with their own pressures associated with the ban. Uber's CEO Travis Kalanick stepped aside from an economic advisory council of Trump's due to a combination of employee pressure, substantial driver populations from the affected countries, and a spike in people canceling their Uber accounts. At Google, employees protested en masse and co-founder Sergey Brin, saying "I am a refugee" joined a protest against the executive order at San Francisco airport.

What we're witnessing just a few weeks into the new administration is that the space where technology companies operate is becoming even more embroiled in the space where the new president believes the government must operate. Whether you share President Trump's belief that the travel ban will make the country safer or not is beside the point; he's trying to take actions he believes will protect people. This won't be the last time something the administration does gets in the way of technology companies' ability to do business in an increasingly global business environment. What remains to be seen is whether the relationship between the parties gets more adversarial from here or whether they find a way to work together.