

Censoring Social Media: Texas HB 20

There is perhaps nowhere that the extreme political polarization in the United States is felt more strongly than on social media platforms such as Twitter and Facebook. Some Republican lawmakers feel that those platforms are catering to only one view and improperly restricting voices on the other side. On September 2, 2021, Texas House Bill 20 (“HB 20”) was signed into law by Governor Greg Abbott.¹ The new law prohibits social media companies from censoring (i.e., banning, demonetizing, or otherwise restricting) user content based on “the viewpoint of the user or another person.”² The law also mandates extensive public disclosure of the content management and moderation practices of large tech platforms, including quarterly transparency reports detailing the instances in which the company removed/restricted content, users, etc. and the available remedies. A Texas resident who has been “wrongfully” censored due to their political ideology can sue under the law, or the attorney general can bring a legal action on their behalf. Although the new legislation has generated significant controversy and criticism, it is not without its proponents. Governor Abbott and supporters of HB 20 argue it is a necessary move to protect Texans’ freedom of speech in light of a “dangerous movement by social media companies to silence conservative viewpoints and ideas.”³

Critics argue that this sweeping restriction on tech companies to moderate the content on social platforms will lead to massive misinformation, hate speech, and dangerous content proliferating sites like Twitter and Facebook. Indeed, in debating Texas HB 20, Texas democrats were unable to gain sufficient support for an amendment to the law which would expressly allow platforms to remove posts related to Holocaust denial, terrorism, and vaccine disinformation. Although advocates maintain that the law does not restrict platforms from removing “offensively violent” material, the degree of control a platform maintains over the spread of misinformation and hate speech under the law remains alarmingly unclear, particularly in an era of “subjective truth.”

Texas HB 20 comes on the heels of a similar piece of legislation facing backlash and judicial scrutiny. In May, Florida Governor Ron DeSantis signed Senate Bill 7072 (known as the Stop Social Media Censorship Act), which bears many similarities to HB 20 and includes a ban on the suspension of political candidates from major social media platforms (but strangely exempts companies that also own a state theme park).⁴ A federal judge granted a preliminary injunction which prevented the law from taking effect before a court could decide its constitutionality. On September 14, Texas was joined by nine other states (Alabama, Alaska, Arizona, Arkansas, Kentucky, Mississippi, Missouri, Montana, and South Carolina) in filing an amicus brief with the 11th Circuit Court of Appeals in support of the Florida law.⁵

¹ <https://arstechnica.com/tech-policy/2021/09/texas-bans-online-censorship-with-law-similar-to-one-already-blocked-in-florida/>

² <https://legiscan.com/TX/text/HB20/2021/X1>

³ <https://arstechnica.com/tech-policy/2021/09/texas-bans-online-censorship-with-law-similar-to-one-already-blocked-in-florida/>

⁴ <https://www.theverge.com/2021/6/30/22558086/florida-social-media-theme-park-law-preliminary-injunction-lawsuit>

⁵ <https://www.texasattorneygeneral.gov/news/releases/attorney-general-paxton-leads-10-state-coalition-regulate-big-tech-censorship>

Both supporters and opponents of “anti-censoring social media” legislation proclaim their view is in accordance with the First Amendment. While the Texas law (and those similar to it) purport to protect the First Amendment rights of conservative users to freely express their political views on social media, many others have expressed serious concern about the resulting infringement upon the First Amendment rights of tech companies to moderate the content on their platforms and allow posts that violate their community standards.

Perhaps the most significant challenge to both the Florida law and HB 20 is the obvious conflict with Section 230 of the Communications Decency Act of 1996.⁶ Section 230 gives website owners the right to moderate the content on their websites without fear of legal liability. The private right of action created by the Florida and Texas laws is directly in conflict with this federal law, a point made very clear by the district judge who issued a preliminary injunction against the Florida law. Principles of federal supremacy make clear that a state law which conflict with Section 230 will (or certainly should) be struck down, meaning that HB 20’s supporters will face an uphill battle in distinguishing the two if it has any chance of survival.

On September 22, a lawsuit was filed against Texas Attorney General Ken Paxton by two major technology groups, representing companies such as Facebook, YouTube, and Twitter, alleging that HB 20 violates social media companies’ First Amendment rights to engage in their own speech and “exercise editorial discretion” over the speech posted to their platforms (in addition to violations of the Commerce, Due Process, Full Faith and Credit, and Equal Protection clauses).⁷ While it seems unlikely that HB 20 will be able to withstand judicial scrutiny, the extent to which a state can interfere with the private transactions of a company will be called into question if it is allowed to stand.

--Mackenzie Cerwick

This article examines the impact and potential legal challenges to Texas House Bill 20, signed into law this September, that aims to prohibit censorship by large tech companies on social media platforms. The legislation has generated significant controversy and is at risk of being ruled “unconstitutional” due to its conflict with federal law.

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⁶ <https://www.theverge.com/21273768/section-230-explained-internet-speech-law-definition-guide-free-moderation>

⁷ <https://gizmodo.com/big-tech-sues-texas-over-its-social-media-law-that-seem-1847730926>