

Tech industry appeals the bad Texas social media law to the Supreme Court

Tech industry trade organizations NetChoice and the Computer Communications Industry Association have appealed directly to the Supreme Court for an emergency stay of the Texas social media law known as HB 20. The law, which creates liability for content moderation decisions that are based on “the viewpoint of the user or another person,” could make it impossible to enforce bans on hate speech – or to even moderate platforms at all. HB 20 was successfully blocked in court late last year, and then unblocked by an appeals court on Wednesday without explanation.

“Texas HB 20 strips private online businesses of their speech rights, forbids them from making constitutionally protected editorial decisions, and forces them to publish and promote objectionable content,” said NetChoice counsel Chris Marchese in a press release. “The First Amendment prohibits Texas from forcing online platforms to host and promote foreign propaganda, pornography, pro-Nazi speech, and spam.”

In the appeals hearing preceding the court’s decision to unblock HB 20, the three-judge panel on the Fifth Circuit appeared to be confused about many of the basic terms being used – one judge seemed to think that Twitter was not a website, and another seemed to think there was no difference between a phone company like Verizon and a social media company like Twitter or Facebook.

NetChoice won a similar case in Florida last year, making the constitutional issues in this case even more pressing to

address.

By going directly to the Supreme Court, NetChoice and CCIA have chosen to skip “en banc” review, in which the Fifth Circuit would have assembled a larger panel to review the decision of the original panel. NetChoice’s emergency stay request will be reviewed by Justice Samuel Alito, who might decide unilaterally or refer the matter to court at large. If granted, the request would mean that HB 20 is once again blocked, pending further legal proceedings.

At the moment, the Supreme Court has a solid conservative majority, including Justice Clarence Thomas, whose views on Twitter moderation seem to echo HB 20, and whose wife’s Facebook posts promoted the January 6th rally that turned into an insurrection and also resulted in Donald Trump getting banned on Twitter.

<https://www.theverge.com/2022/5/13/23072310/netchoice-texas-social-media-law-supreme-court-appeal>