



Social Media

On December 1, a federal judge blocked a Texas law banning “censorship” on social media platforms, ruling that it violated social networks’ First Amendment right to moderate content published on their sites.

House Bill 20 was set to go into effect the following day.

Section 143A.002 states that a “social media platform or interactive computer service may not censor a user, a user’s expression, or a user’s ability to receive the expression of another person based on the viewpoint of the user or another person, or the viewpoint represented in the user’s expression or another person’s expression.”

The Texas law would have required platforms with over 50 million users to disclose all information regarding how they promote and moderate users and how they use algorithms. It also would have granted users the right to sue companies for injunctive relief and attorney fees if they felt they were wrongfully targeted.

HB 20 also would have required publication of transparency reports disclosing the number of times

content was removed and the number of users who were removed for violating content policies or terms of service.

US District Court Judge Robert Pitman issued the 30-page ruling that prevented the law from going into effect. In it, he characterized the Texas law as “replete with constitutional defects.”

Pitman asserted that “social media platforms are not common carriers.” He said that social media networks are not required to provide access to everyone and they are not neutral in transmitting users’ speech.

He also stated that social media networks “curate both users and content to convey a message about the type of community the platform seeks to foster and, as such, exercise editorial discretion over their platform’s content.”

Pitman wrote that “Social media platforms have a First Amendment right to moderate content disseminated on their platforms” and HB 20 “compels social media platforms to disseminate objectionable content and impermissibly restricts their editorial discretion.”

“HB 20 seems to place social media platforms in the untenable position of choosing, for example, to promote Nazism against its wishes or ban Nazism as a content category.” Pitman argued that “HB 20’s prohibitions on ‘censorship’ and constraints on how social media platforms disseminate content violate the First Amendment.”

Pitman also found that the provision to sue social media companies interfered with their moderation policies and chilled platforms’ First Amendment rights.

Pitman noted that the conservative networks Parler and Gab were the only social media platforms excluded from the law as they were the only ones with fewer than 50 million users.

Conservative Texas lawmakers prevented a state senator’s proposal to include them by lowering that threshold to 25 million monthly users.

Earlier this year, a comparable law was blocked in Florida on similar grounds. That case has been appealed to the 11th Circuit District Court.

Reported in: *Jurist*, September 12, 2021; *Courthouse News Service*, December 2, 2021; *ArsTechnica*, December 2, 2021.