US federal appeals court rules that private technology conglomerates are not bound by First Amendment

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In a significant ruling upholding online political censorship, the US Court of Appeals for the Ninth Circuit on Thursday upheld a lower court decision dismissing a lawsuit by PragerU against Google, affirming that tech platforms are not bound by the First Amendment.

The unanimous decision by the three-judge panel said that, despite its ubiquity and public accessibility, YouTube—part of the Google conglomerate—is a "private forum" and not a "state actor" that would be obligated to respect constitutional freedoms.

Dennis Prager, a right-wing radio talk show host and publisher of videos on the YouTube channel PragerU, sued Google in October 2017 claiming that his videos were being censored by the streaming service. PragerU argued that, by restricting access, YouTube had violated its First Amendment rights and had "unlawfully censor[ed] its educational videos and discriminat[ed] against its right to freedom of speech."

Among the topics covered in hundreds of videos on the PragerU YouTube channel are abortion and gun rights, Islam and terrorism and attacks on "liberals" and the "left." YouTube began putting a "Restricted Mode" setting on several dozen PragerU videos due to their "mature" content. YouTube also "demonetized" the videos by removing the ability of third parties to advertise on them.

The appeals court ruling, which was written by Circuit Judge Margaret McKeown, states, "The Free Speech Clause of the First Amendment prohibits the government—not a private party—from abridging speech." In other words, since the censorship is not being performed by the state, but by a private party, it does not violate the First Amendment, which protects free speech.

Defending YouTube's censorship activity on its platform, the court said: "Because the state action doctrine precludes constitutional scrutiny of YouTube's content moderation pursuant to its Terms of Service and Community Guidelines, we affirm the district court's dismissal of PragerU's First Amendment claim."

This is a green light for the technology monopolies to shut down accounts, delete posts, restrict access or remove users on their platforms with impunity.

Judge McKeown based her opinion on several previous cases where the courts determined that the First Amendment has no application to censorship of speech on privately-owned platforms—in one case, a public access channel on a privately-owned cable TV system from the 1970s.

To rule otherwise, according to the Ninth Circuit, "would eviscerate the state action doctrine's distinction between government and private entities because 'all private property owners and private lessees who open their property for speech would be subject to First Amendment constraints.'"

Rejecting previous decisions that extended free speech protections to privately owned spaces that were used as public forums, the Ninth Circuit stated that private property does not "lose its private character merely because the public is generally invited to use it for designated purposes."

A secondary aspect of the ruling deals with PragerU's claim that YouTube engaged in false advertising under the Lanham Act. Prager's suit said that YouTube's marketing language that "everyone deserves to have a voice, and that the world is a better

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place when we listen, share and build community through our stories" was misleading and deceptive. In other words, PragerU's attorneys argued that if YouTube was engaged in political censorship, then its efforts to advertise itself as a free and open forum were a form of false advertising.

The 1946 Lanham Act states that false advertising that "misrepresents the nature, characteristics, qualities or geographic origin" of a product or service is liable for civil action if anyone is damaged by the action.

The Ninth Circuit dismissed YouTube's claims to uphold free speech as "puffery." The ruling states: "YouTube's braggadocio about its commitment to free speech constitutes opinions that are not subject to the Lanham Act." Phrases such as "people should be able to speak freely, share opinions, foster open dialogue, and that creative freedom leads to new voices, formats and possibilities," were, according to the Ninth Circuit, "classic, non-actionable opinions or puffery."

In response to the ruling, Google spokesperson Farshad Shadloo said the company's products "are not politically biased," and that the decision "vindicates important legal principles that allow us to provide different choices and settings to users."

Attorneys for PragerU said that the publisher would continue to pursue claims of "overt discrimination on YouTube in the state court case under California's heightened antidiscrimination, free-speech and consumer-contract law."

Thanks to the modern development of online publishing and social media, any or even every member of society has the increased capability to create and post content, express opinions, and access information from all around the world. The revolutionary potential of this new technology frightens the political establishment as well as the giant conglomerates that control and profit from it.

Essentially functioning as communications utilities spanning the globe, the social media platforms YouTube, Facebook, Twitter and the like are, under conditions of intensifying class struggle and social conflict, in danger of serving as channels for coordinating mass actions. The political establishment together with the technology monopolies, themselves dominated by Wall Street and increasingly integrated into the military and intelligence apparatus, are desperate to establish a regime of political censorship.

The Ninth Circuit ruling states plainly that the vast communications infrastructure controlled by the technology companies, which hundreds of millions of people use every day, constitutes "private property," over which the owners exercise unchecked and essentially dictatorial control. This is the state of affairs under capitalism.

These facts only underscore the necessity of freeing these revolutionary technological advances from the tyrannical hands of private owners, transforming the major technology conglomerates into public utilities under worldwide democratic control.

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