

Supreme Court hears arguments on state laws restricting social media platforms from suppressing content

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On Monday, the Supreme Court heard almost four hours of oral arguments on two lawsuits challenging the constitutionality of Florida and Texas laws intended to limit the authority of giant social media platforms such as Facebook, YouTube, Instagram and Twitter/X to suppress content or bar users altogether.

The laws were enacted by neofascist Republicans in control of Florida and Texas after Facebook and Twitter “deplatformed” Donald Trump for attempting to overthrow the 2020 election.

The enactments reflect fabricated and exaggerated claims of social media “censorship” of right-wing content and users. Of course no comparable measures were taken to protect free speech after the *World Socialist Web Site* proved that Google algorithms deliberately suppressed its content and that of other left-wing internet publications.

The two state laws have some differences, but both attempt to significantly limit the authority of social media companies to boost or suppress user-generated content through various complex mechanisms. Both impose “transparency” requirements that social media platforms explain their actions whenever specific measures have been taken to suppress content or bar users.

NetChoice, a trade group representing the major social media platforms, sued in Florida and Texas federal courts to block the laws. The Eleventh Circuit Court of Appeals enjoined Florida in *Moody v. NetChoice*, while the Fifth Circuit reversed a lower court injunction, upholding the Texas law in *NetChoice v. Paxton*. The implementation of the Texas law has been stayed by the Supreme Court so neither law has taken effect. The cases were consolidated for

Monday’s argument.

Underscoring the right-wing character of the social media giants and their legal argument, they chose a conservative darling for their lawyer. Paul Clement, a former solicitor general for the George W. Bush administration, has argued in the Supreme Court to deny Guantánamo Bay prisoners their constitutional rights, to ban same-sex marriages, to invalidate gun control measures, to overturn Obamacare and to defend Republican gerrymandering.

Wrapping himself in the Constitution that he usually attacks, Clement argued Monday that social media platforms have First Amendment protection to censor content and ban users, even from direct messaging functions like gmail, because they are essentially newspapers with unlimited authority to “moderate content.”

The Biden administration’s solicitor general, Elizabeth Prelogar, supported Clement’s position, stating that “these state laws which restrict the speech of the platforms to enhance the relative voice of certain users don’t withstand constitutional scrutiny.”

In other words, the social media companies and the Biden administration agree that the Constitution protects the right of these gargantuan companies to manipulate public discourse by amplifying some views and suppressing others.

Judging from their comments during the arguments, most of the justices seemed skeptical of the state laws. Elena Kagan, one of the three moderate justices, suggested that prohibiting a social media giant from suppressing certain content would be “a classic First Amendment violation,” noting that the two laws were motivated by people “angry” and “upset” that “anti-

vaxxers” and “insurrectionists” were being barred from the platforms.

Clarence Thomas and Samuel Alito, the most extreme right-wing justices, scoffed openly at Clement’s arguments, however. “Can you give me,” Thomas asked Clement, “one example of a case in which we said that the First Amendment protects the right to censor?” Thomas added later, “Mr. Clement said the difference is that if the government does it, it is censoring. If a private party does it, it is—I forget—content moderation. These euphemisms bypass me sometimes.”

Alito asked Clement, “Do you agree that a private party cannot engage in censorship?” He then posed an absurd hypothetical: “Suppose that a private law school says that any student who expresses support for Israel’s war with Hamas will be expelled. Would that be censorship, or would that be content moderation?” Of course, there are no reports of such an expulsion, but there has been widespread retaliation against students and professors who have voiced opposition to the Zionist genocide in Gaza.

Brett Kavanaugh stated that the social media companies, as private entities, were not subject to the First Amendment, and “editorial control” of their content is “fundamentally protected by the First Amendment.” Chief Justice John Roberts and Justice Amy Coney Barrett seemed to agree with Kavanaugh, indicating a significant split with Thomas and Alito.

The comments of the justices, along with their unusual lineup, make forecasting the outcome impossible. The Supreme Court’s decision, which is expected in late June, could strike down or uphold the laws in their entirety. Most observers, however, predict that the majority will find some middle ground, and perhaps send the cases back to the lower courts with directions for additional proceedings to differentiate among the various social-media functions.

Regardless, for the working class there is no principled difference between the social media giants and the right-wing state governments attempting to exercise power over their content and users. It is a conflict within the ruling class and the capitalist state over who will control the levers of political censorship.

The social media corporations are thoroughly integrated into the capitalist state apparatus and function as its mouthpiece, especially in relation to

issues of vital interest to the capitalist class, in particular the suppression of genuine socialism. Their goal, aside from raking in boatloads of money, is keeping the masses as misinformed and ignorant as possible, promoting pro-war and pro-imperialist lies and propaganda, and conspiring against democratic rights.

The unfettered censorship by the social media giants violates fundamental democratic rights, but so do the right-wing attacks by Texas and Florida. The working class must take an independent position, that social media and the internet as a whole be placed under public ownership and democratic control by working people, dedicated to the free flow of information and commentary, in the interest of society as a whole.



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