
Eleventh Circuit Strikes Down Florida Law Intended to Prohibit Social Media Platforms from Censoring Certain Speech on Grounds That Social Media Platforms Exercise First Amendment-Protected Editorial Judgment

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On May 23, 2022, the United States Court of Appeals for the Eleventh Circuit decided *NetChoice, LLC v. Att’y Gen., Fla.*, 2022 WL 1613291 (11th Cir. May 23, 2022), in which the court held that most of the provisions in Florida S.B. 7072—a law intended to prohibit social media platforms, such as Twitter and Facebook, from censoring certain speech—were substantially likely to violate the platforms’ First Amendment free speech rights. Although the law was intended to protect First Amendment rights—i.e., to protect certain speech from censorship by social media platforms—the Eleventh Circuit determined that the law itself violated the First Amendment by restricting the social media platforms’ right to so censor and moderate as the platforms saw fit. That kind of content moderation, the court found, is constitutionally-protected “editorial judgment.” The court also held that social media platforms are not “common carriers” with lessened First Amendment rights. In so holding, the Eleventh Circuit has created a circuit split, departing from the decision of the United States Court of Appeals for the Fifth Circuit (just twelve days earlier, on May 11, 2022) to permit enforcement of the substantially similar Texas H.B. 20. It appears likely that the Supreme Court will ultimately weigh in and provide guidance regarding how the First Amendment should be applied to these statutes.

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