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NetChoice
Defending Free Speech and Free Enterprise Online

Texas HB 2206 —Relating to a prohibition of certain social media platforms developed or provided by certain foreign entities

OPPOSITION TESTIMONY

March 21, 2023

NetChoice respectfully asks you to **oppose** HB 2206.

The bill not only violates the First Amendment, it also sets a dangerous precedent of lawmakers banning access to constitutionally protected speech without substantiated evidence of national security risks. And while national security concerns are of paramount importance, they must not be weaponized against politically disfavored businesses and individuals.

Indeed, it is one thing for the government to ban access to applications on *government*-issued devices. But banning access on privately bought and privately owned devices is an extraordinary exercise of government power—and it's an unjustified and unconstitutional means to protecting national security.

1. Creates a very dangerous precedent that government can start banning our freedom to visit websites we want to access;
2. Sets a precedent that other states will weaponize to ban access to conservative websites and apps under the guise of "security";
3. Violates conservative principles of limited government and free markets; and
4. Violates the First Amendment's protection against government censorship and regulation of speech.

NetChoice fully agrees with Texas's elected officials that the *Chinese Communist Party* is a national security threat thatAmericans must take seriously. In fact, NetChoice has long argued that the United States must take seriously the CCP's goal of displacing American leadership in technology and innovation precisely because it's a national security threat.

Creating a dangerous Precedent for Speech

But we part ways on means. Rather than target businesses based on their country of origin, as HB 2206 does, NetChoice supports efforts to hold the CCP—the true threat—accountable. Banning the ability to visit a website or download an app on privately owned devices—and punishing private third parties like App Stores—does nothing to weaken the CCP. Instead, it punishes Texans who enjoy social media apps and American businesses lawfully engaged in commerce and speech dissemination.

Our concerns are not theoretical. When President Trump tried to ban TikTok and end its business arrangements by executive order, a Trump-appointed judge enjoined the government from executing the order because the government had no authority to ban Americans from accessing "informational materials."[1] If the President lacks the authority to ban TikTok on unsubstantiated national security grounds, so too do state legislatures.

Just as Texas might ban websites for national security reasons, New York and California could use similar reasoning to ban President Trump's Truth Social and conservative apps like Parler and GETTR because they might lead to another January 6th.

Legal arguments aside, it's simply bad practice to ban access to information. Just as Texas might ban websites for national security reasons, New York and California could use similar reasoning to ban President Trump's Truth Social and conservative apps like Parler and GETTR because they might lead to another January 6th. And one can easily imagine the European Union—bitter over American industry's success—banning those apps and others under the same pretext.

Even worse, the precedent could be weaponized to punish websites and apps for *promoting* free speech. California could use it to target and destroy Twitter over Elon Musk's new content-moderation policies on the grounds that Saudi Arabian-based firms invested in Twitter.

Practical Problems of HB 2206

Consider the practical impossibilities as well. An app like Twitter would be liable for featuring content a user uploaded from a "government prohibited website." And given the internet's international scope, it is unreasonable to impose liability on digital platforms, apps, and websites—all featuring billions of pieces of content—for failing to remove "government prohibited website"-originated content.

What's more, it's impossible to comply with—unless websites began screening each individual piece of content. The latter is unlawful under Section 230(c)(1) of the Communications Decency Act and the First Amendment. And it would be a disaster for the open internet.

[1] *Tiktok Inc. v. Trump*, 507 F. Supp. 3d 92 (D.D.C. 2020).

Content creation would come to a screeching halt and free speech online would cease to exist. Indeed, an obligation to screen would directly undermine the Republican Party's goal of increasing speech online and fighting against extensive moderation and filtering.

HB 2206 represents a dangerous precedent – empowering the government to control what websites Texans can visit and what apps they can download with no evidence of wrongdoing.

And as if that weren't bad enough, the bill further violates the First Amendment by failing to give adequate notice of what's required and by whom. For example, the bill doesn't even attempt to define "Social Media," leaving private entities guessing whether they must comply. That will chill even more speech as entities over-screen and moderate in their best effort to comply.

Further complicating compliance is the fact that users can download plug-ins and add-ons directly from websites. Imposing liability each time users evade restrictions is unreasonable and impracticable. The bill says nothing about how these factually fuzzy but common experiences play out under the bill's provisions.

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NetChoice understands and shares lawmakers' concerns about the CCP. But we urge Texas lawmakers to think twice before passing this unlawful and dangerous bill. States should not trample on the First Amendment.

For these reasons, we respectfully ask that you oppose HB 2206.

Sincerely,

Carl Szabo
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NetChoice