

## AMICI BRIEFS FILED IN KEY WEB-CENSORSHIP CASE

The battle against censorship in America is taking place in the 5th Circuit in *Netchoice v. Paxton*, and amici for free speech have just filed their briefs. The case will decide the constitutionality of the Texas social media statute, which is the most promising response to Big Tech manipulation of the nation's political, religious, cultural, and scientific debates.

The Texas statute:

- Designates the tech companies as common carriers.
- Bars them from censoring others on the basis of their viewpoints.
- Preserves the freedom of tech companies to restrict unlawful or unwholesome content.
- Provides only the mildest possible remedies—injunctive and declaratory relief, not damages.

The statute protects the free speech of Americans without limiting the free speech of the tech companies:

- The companies are common carriers, which provide conduits for the speech of others. So, when this statute bars them from viewpoint discrimination, it is only preventing them from censoring the speech of others. It is not limiting them in their own speech.
- This sort of anti-discrimination restriction on common carriers was traditionally imposed by both common law and statute. It has been applied to communications common carriers since the 19th century, without any question about its compatibility with the First Amendment.

Nonetheless, the social media companies successfully argued to Obama-appointee District Court Judge Robert Pitman that the Texas bill violated the First Amendment. In an opinion that completely ignored controlling common carrier law, Pitman ruled that, under Supreme Court precedents *Tornillo* and *Hurley*, social media platforms most closely resemble newspapers or parades. He distinguished *Turner* and *Rumsfeld*, the most relevant Supreme Court precedents, with a footnote each. Put succinctly, he treated the social media platforms as publishers, whereas in fact they are platforms for the speech of others.

The State of Texas appealed to the Fifth Circuit, and expedited oral argument is scheduled for the first week of May. Unlike Florida's hastily drafted law, this social media statute was carefully framed to avoid constitutional difficulties. And unlike the Florida law, it has attracted strong support from a surprising coalition of amici. They include some small conservative think tanks (Center for Renewing America, Claremont Institute, Heartland Institute, and American Principles Project); a prominent constitutional law scholar, Philip Hamburger; Dr. Donald W. Landry—a Columbia University medical school professor and one of the country's foremost nephrologists; the libertarian Institute for Free Speech; a group of students against censorship; and the renowned dramatist, David Mamet.

The amici briefs are available at [galileosociety.org](http://galileosociety.org)