

## SCOTUS NEWS

Justices request federal government's views on Texas and Florida social-media laws

By Amy Howe on Jan 23, 2023 at 4:44 pm

The Supreme Court on Monday asked the Biden administration for its views on a pair of controversial social-media laws enacted in Texas and Florida. Passed in response to beliefs that social-media platforms were censoring their users, particularly those expressing conservative political views, both states' laws seek to regulate the content-moderation policies of social-media companies like Facebook and Twitter.

The justices asked the solicitor general to weigh in on [NetChoice v. Paxton](#) (a pending petition on the Texas law) and [NetChoice v. Moody](#) and [Moody v. NetChoice](#) (two pending petitions on the Florida law). The requests came on a [list of orders](#) from the justices' private conference on Friday.

The justices also denied review in over 50 cases, including one case challenging the constitutionality of a fine for violating federal banking laws. The denial of review in that case, [Toth v. United States](#), drew a dissent from Justice Neil Gorsuch.

### Texas and Florida cases

Monday's order in *NetChoice v. Paxton* was not the justices' first encounter with the Texas law. Known as H.B. 20, it bars social-media platforms with at least 50 million active users from blocking, removing, or "demonetizing" content based on the users' views. Technology companies challenged the law immediately, arguing that it violates their First Amendment right to control what speech appears on their platforms. The law would also prevent them, they said, from removing hate speech, political disinformation, violent videos, and other harmful content.

In May 2022, [a divided court put H.B. 20 on hold](#) while the challenges to the law continued in the lower courts. Four justices dissented from that decision. Justice Samuel Alito, in an opinion joined by Justices Clarence Thomas and Neil Gorsuch, suggested that the court's intervention was premature, while Justice Elena Kagan indicated only that she would have allowed the law to take effect.

After the [U.S. Court of Appeals for the 5th Circuit ruled for the state](#), the tech companies returned to the Supreme Court in December, asking the justices to take up their challenge. Texas Solicitor General Judd Stone agreed with the tech companies that review should be granted and urged the justices to consider both the Texas law and the Florida law at the same time.

The Florida law is known as the Stop Social Media Censorship Act. It was proposed shortly after former President Donald Trump, in the wake of the Jan. 6 insurrection at the U.S. Capitol, was suspended from Twitter and other social-media platforms. Among other things, the law bars social-media platforms from banning political candidates and "journalistic enterprises."

The U.S. Court of Appeals for the 11th Circuit [blocked Florida from enforcing most of the law's provisions](#), prompting the state to come to the Supreme Court in September. (The tech companies filed their own petition for review in October, asking the justices to review the portion of the 11th Circuit's decision upholding part of the law.) The tech companies defended the part of the 11th Circuit's decision in their favor, but nonetheless urged the justices to weigh in.

Rather than granting or denying review, the court instead opted to seek the views of the Biden administration. As a result, even if the justices ultimately decide to grant review (which seems likely, given the conflicting rulings of the two circuit courts), they almost certainly would not hear oral argument until next term, with a decision to follow sometime in 2024. Until then, both states' laws will remain on hold.

The request for the Biden administration's views also means that the justices will not decide whether to take up the Florida and Texas cases until after they issue their decisions in two other cases that could transform how social-media companies operate. Those cases, [Gonzalez v. Google](#) and [Twitter v. Taamneh](#), which will be argued next month, involve a federal telecommunications law, Section 230 of the Communications Decency Act, which provides tech companies with immunity from civil lawsuits arising from user-generated content that they host on their platforms. In both cases, the families of terrorism victims are seeking to hold the tech companies responsible for allowing ISIS to use their platforms. As [James Romoser explained in November](#), the court's rulings could create a conundrum for tech companies: A decision that curtails Section 230 could require tech companies to remove content in order to avoid expanded legal liability, while the Texas and Florida laws could restrict the companies' ability to do so.

### ***Toth v. United States***

The justices denied review in [the case of Monica Toth](#), who had asked the justices to decide whether civil penalties imposed under the Bank Secrecy Act, which requires Americans to report foreign bank accounts containing more than \$10,000, are subject to the Eighth Amendment's ban on excessive fines.

Toth's father put several million dollars in a Swiss bank account shortly before his death in 1999. For roughly a decade, Toth did not file forms to report her Swiss account; in 2010, she filed a series of forms to cover that year and earlier years. After Toth was audited in 2011, the IRS assessed a penalty for the 2007 form that she filed late. Under the act, the maximum penalty that the IRS could impose for willfully failing to file the report was the larger of two amounts: \$100,000 (the amount allowed by the law) or half of the balance in the unreported account, which in Toth's case was over two million dollars.

After the lower courts upheld the penalty, Toth came to the Supreme Court, which on Monday rejected her appeal. Justice Neil Gorsuch dissented from that decision. He wrote that the ruling by the U.S. Court of Appeals for the 1st Circuit, holding that the Constitution's ban on excessive fines did not apply to Toth's case, was "difficult to reconcile with our precedents." It would have been "well worth our time" to review Toth's case, Gorsuch argued. But "[a]s things stand," he concluded, "one can only hope that other lower courts will not repeat its mistakes."