

CASE NO. 352-332141-22

CHAD PRATHER,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
	§	
	§	
v	§	_____ JUDICIAL DISTRICT
	§	
META PLATFORMS, INC., formerly	§	
known as FACEBOOK, INC.,	§	
	§	
Defendant.	§	TARRANT COUNTY, TEXAS

**PLAINTIFFS' ORIGINAL PETITION AND APPLICATION FOR  
TEMPORARY RESTRAINING ORDER AND TEMPORARY INJUNCTION**

COMES NOW, Chad Prather (“Prather” or “Plaintiff), and brings this his Original Petition and Application for Temporary Restraining Order and Temporary Injunction and respectfully represents the following:

**I.  
DISCOVERY CONTROL PLAN**

1. Plaintiff intends to conduct discovery under Level 2 of Rule 190.3 of the Texas Rules of Civil Procedure (“TRCP”) and affirmatively pleads that this suit is not governed by the expedited-actions process in Texas Rule of Civil Procedure 169 because she seeks injunctive relief.

**II.  
CLAIM FOR RELIEF**

2. Plaintiffs seeks only nonmonetary relief.

**III.**  
**PARTIES**

3. Plaintiff Chad Prather is an individual residing in Tarrant County, Texas.

4. Defendant Meta Platforms, Inc. (“Defendant” or “Facebook”), formerly known as Facebook, Inc. is a foreign corporation whose corporate office is located at 156 University Avenue, Palo Alto, CA 94301 and who may be served with process through their registered agent, Corporation Service Company, 211 E. 7<sup>th</sup> Street, Suite 620, Austin, TX 78701-3218 or wherever it may be found.

**IV.**  
**JURISDICTION**

5. The Court has subject matter jurisdiction over this claim pursuant to Tex. Civ. Prac. & Rem. Code chapter 143A.

6. The Court has personal jurisdiction over Defendant because of its continuous and systematic contacts with the State of Texas and because Plaintiff’s claim arises out of Defendant’s specific contact with the State of Texas in censoring Plaintiff. Defendant has purposefully availed itself to be sued in Texas by its actions.

**V.**  
**FACTUAL ALLEGATIONS**

7. Plaintiff, Chad Prather, is a candidate for Texas Governor running against Governor Greg Abbott, among others, in the Republican Party primary election (the “Election”) set to take place on March 1, 2022. Early voting is currently underway.

8. On February 21, 2022, just 8 days before the Election, Defendant suspended Prather from its Facebook social media platform for at least 7 days. *See Exhibit A*, attached hereto.

9. Facebook's action against Prather severely inhibits his ability to communicate with potential voters and will cause immediate and irreparable harm by damaging his chances at winning the Election. *Id.* There is no available remedy at law to Plaintiff for this interference with his ability to effectively campaign through social media.

10. It is likely no coincidence that Facebook chose to censor Prather so close to this hotly contested Election against Gov. Abbott. While publicly speaking out against censorship on social media, Gov. Abbott has been privately negotiating a deal with Facebook to bring the company's new data center to Texas.

11. An organization known as Tech Transparency Project ("TTP") made an open records request to obtain communications between Gov. Abbott's office and employees of Facebook, among other tech companies. Gov. Abbott's office has refused to release any documents, and according to open records, the governor's office asked Attorney General Ken Paxton to take action to justify withholding the information, which has still not been released.

12. TTP's open records request did, however, uncover a letter from an attorney representing Facebook who argued that releasing the 100-plus pages of communications between the governor's office and the social media giant would uncover restricted information—such as the nondisclosure agreement between

Abbott's office and Facebook, the new data center's project codename, and the fact they were even considering another facility in Texas. The letter, attached hereto as **Exhibit B** along with an article by Texas Scorecard attached as **Exhibit C**, reveals that Gov. Abbott has been privately dealing with Facebook to give it exclusive perks, paid with taxpayer money, to build their data center in Texas.

13. The implications of this letter and the timing of Facebook's censorship of Chad Prather should shock the conscience of this Court. Prather has a massive following on Facebook and has been a vocal critic of Gov. Abbott on his social media. It appears Facebook has likely censored a highly popular grassroots candidate for governor running against Gov. Abbott for the purpose of shoring up Abbott's chances of winning the primary in order to protect Facebook's pending deal with Gov. Abbott.

14. In other words, a California-based social media platform is actively interfering in the Texas gubernatorial elections to tip the scales in favor of the sitting governor of Texas so that he can give them a sweetheart business deal using taxpayer money.

15. The Court must intervene immediately to order Facebook to reinstate Chad Prather's account without further restrictions to avoid immediate and irreparable harm not only to Prather, but to the citizens of Texas who have an interest in free and fair elections. Every passing moment that Prather's account remains suspended is continuing irreparable harm to his right to free speech, ability to campaign, and to the public interest of the citizens of Texas.

**VI.**  
**CAUSE OF ACTION**

**A. Declaratory Relief for Social Media Censorship – Tex. Civ. Prac. & Rem. Code § 143A and**

16. Plaintiff incorporates all of the factual allegations stated above and in the attached exhibits as though fully set forth herein.

17. Tex. Civ. Prac. & Rem. Code (“CPRC”) Chapter 143A was passed into law by the 87<sup>th</sup> Texas Legislature and became effective on December 2, 2021. For convenience, a complete copy of Chapter 143A is attached hereto as **Exhibit D**. This is a case of first impression regarding this new statute.

18. CPRC § 143A.002 provides: “(a) a social media platform may not censor a user, a user’s expression, or a user’s ability to receive the expression of another person based on: (1) the viewpoint of the user or another person; (2) the viewpoint represented in the user’s expression or another person’s expression; or (3) a user’s geographic location in this state or any part of this state.”

19. CPRC § 143A.007 provides: “(a) a user may bring an action against a social media platform that violates this chapter with respect to the user. (b) If the user proves that the social media platform violated this chapter with respect to the user, the user is entitled to recover: (1) declaratory relief under Chapter 37, including costs and reasonable and necessary attorney’s fees under Section 37.009; and (2) injunctive relief.”

20. Subsection (c) provides: “If a social media platform fails to promptly comply with a court order in an action brought under this section, the court shall hold the social media platform in contempt and shall use all lawful measures to secure immediate compliance with the order, including daily penalties sufficient to secure immediate compliance.” CPRC § 143A.007(c).

21. Facebook is a social media platform that has more than 50 million active users in the United States during a calendar month.

22. Plaintiff is a Facebook user who resides in the State of Texas.

23. Facebook has censored Plaintiff in violation of CPRC chapter 143A when it suspended, restricted, blocked, banned, and/or deplatformed his Facebook account on February 21, 2022 and discriminated against his expression on Facebook by denying him equal access and visibility on Facebook’s platform. Accordingly, Plaintiff seeks a declaratory relief under Chapters 37 and 143A of the CPRC that Facebook has unlawfully censored him and seeks a temporary restraining order against Facebook ordering it to immediately reinstate his account without restrictions.

**VII.**  
**APPLICATION FOR TEMPORARY RESTRAINING ORDER AND**  
**TEMPORARY INJUNCTION**

24. Plaintiff incorporates all of the factual allegations stated above and in the attached exhibits and declarations to this Petition as though fully set forth herein.

25. Plaintiff asks the Court to restrain Facebook from suspending his account and to order Facebook to fully reinstate his account with no restrictions.

26. Plaintiff requests that the Court impose daily penalties on Facebook for each day that Facebook continues to censor Plaintiff pursuant to Tex. Civ. Prac. & Rem. Code 143A.006(c) in an amount sufficient to deter Facebook.

27. Plaintiff has a probable right to relief on the merits at trial because the fact that Facebook has suspended his account is undeniable and in clear violation of CPRC Chapter 37.

28. If Plaintiff's application for temporary restraining order is not granted, Plaintiff will continue to suffer immediate and irreparable harm from not being able to communicate with his supporters and potential voters during the crucial last few days of the Election, at a time when many voters are likely still making up their minds on which candidate to choose in the Election or whether to vote at all.

29. Plaintiff has no adequate remedy at law because monetary damages are not available under any applicable law to remedy the loss of an election from inability to effectively campaign through social media, which is Plaintiff's primary way of communicating with his supporters and potential voters.

30. There is no time for notice to Defendant and a hearing on this matter because Plaintiff suffers continuing enormous harm with each passing moment he is unable to communicate on social media with his supporters and potential voters and therefore needs immediate relief.

31. Plaintiff has, nonetheless, given notice to Defendant of the relief sought in this Petition.

32. Plaintiff further requests a temporary injunction hearing to determine whether Facebook should continue to be restrained from censoring Plaintiff pending trial of this matter.

**VIII.**  
**ATTORNEYS' FEES**

33. Plaintiff requests his reasonable attorneys' fees and costs of filing this lawsuit pursuant to Tex. Civ. Prac. & Rem. Code § 37.009 and 143A.007(a)(1).

**IX.**  
**CONDITIONS PRECEDENT**

34. All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

**X.**  
**JURY DEMAND**

35. Plaintiff demands a jury trial and tenders the appropriate fee with this petition

**XI.**  
**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Chad Prather prays that the Court grant his application for temporary restraining order in the form of order attached hereto, and upon trial, award Plaintiff his reasonable attorneys' fees and court costs, grant a temporary injunction restraining Facebook from further censoring Plaintiff, grant a permanent injunction after trial on the merits, grant prejudgment and postjudgment

interest, and grant all other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

/s/ Paul M. Davis  
Paul M. Davis  
Texas Bar No. 24078401  
Paul M. Davis & Associates, P.C.  
5720 Frisco Square Blvd., # 2066  
Frisco, TX 75034  
469-850-2930  
[paul@fireduptxlawyer.com](mailto:paul@fireduptxlawyer.com)

ATTORNEY FOR PLAINTIFF  
CHAD PRATHER

# EXHIBIT A



Attached hereto, as Exhibit A-1, are true and correct copies of my email correspondence with Facebook employees related to the censorship of my account.

A true and correct copy of the comment that triggered my suspension from Facebook is attached hereto as Exhibit A-2.

Social media is one of the primary means that I use to communicate with and distribute information to my campaign supporters and potential voters. I currently have over 1.2 million followers on my personal Facebook page.

As indicated in the attached email correspondence, Facebook's restrictions apply to my personal account. While I have public accounts that are still active, the restriction of my personal account prevents me from personally managing my public pages, posting, and commenting on them. Instead, I am now forced to rely on third parties to post and comment on these pages on my behalf. Instead of being able to communicate directly through my public pages in real time, which is my usual practice, I would have to get in touch with a third party, tell them what I want communicated and wait on them to prepare the content and run it by me.

This is not a workable solution for a candidate running in a hotly contested race for governor of Texas. It prevents me from speaking directly to my supporters and potential voters. It prevents me from responding to comments and having conversations with voters. With every passing moment that I am suspended from Facebook, my ability to campaign is being irreparably injured.

I declare under penalty of perjury the foregoing is true and correct to the best of my knowledge. This declaration was executed in Tarrant County, Texas on February 24, 2022.

/s/ Chad Prather  
Chad Prather

# EXHIBIT A-1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Begin forwarded message:

**From:** Michael Blanco <mikeblanco@fb.com>  
**Date:** February 23, 2022 at 3:56:38 PM CST  
**To:** Chad Prather <chad@watchchad.com>  
**Cc:** Eva Guidarini <eguidarini@fb.com>, Zach Gregory <bzgregor@fb.com>, Danielle Kersey <daniellecyr@fb.com>  
**Subject: Re: Review**

Hi Chad,

After an investigation, we can confirm that temporary feature limits have been correctly applied to your account (<https://www.facebook.com/watchchad>) for repeatedly violating our Regulated Goods, Hate Speech, Harmful Health Content, and Bullying and Harassment policies. The intent of these feature limits is to prevent users from continuing to violate our Community Standards.

As a result of multiple violations, your account (<https://www.facebook.com/watchchad>) will be temporarily restricted, pending no additional violations of our policies.

Of note, the feature limits pertain to your personal profile (<https://www.facebook.com/watchchad>), not the public Page that you manage (<https://www.facebook.com/chadprather22>), so other Page administrators may continue to post on <https://www.facebook.com/chadprather22> until the restrictions on your personal account have been lifted. You can find instructions on how to add or manage other individuals' access to your Page here: <https://www.facebook.com/help/187316341316631>.

For more information on our Community Standards, which highlight what we do and do not allow on our platforms, visit: <https://transparency.fb.com/policies/community-standards/>.

Best,



**Michael Blanco**

Politics & Government Outreach

[mikeblanco@fb.com](mailto:mikeblanco@fb.com)

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**From:** Chad Prather <[chad@watchchad.com](mailto:chad@watchchad.com)>

**Sent:** Wednesday, February 23, 2022 9:29 AM

**To:** Michael Blanco <[mikeblanco@fb.com](mailto:mikeblanco@fb.com)>

**Cc:** Eva Guidarini <[eguidarini@fb.com](mailto:eguidarini@fb.com)>; Zach Gregory <[bzgregor@fb.com](mailto:bzgregor@fb.com)>; Danielle Kersey <[daniellecyr@fb.com](mailto:daniellecyr@fb.com)>

**Subject:** Re: Review

Any answers? This is the final days of a gubernatorial campaign in a state primary election. There was no reason to be banned for the comment in question.

Chad Prather

Prather for Texas 2022

Prather2022.com

The Chad Prather Show podcast

watchchad.com

Facebook.com/chadprather22

YouTube.com/chadprather1

twitter.com/watchchad

Please forgive typos

Sent from my iPhone

On Feb 22, 2022, at 11:34 AM, Michael Blanco <[mikeblanco@fb.com](mailto:mikeblanco@fb.com)> wrote:

Hi Chad -- I am looking into this and will circle back when I have an update for you.

<Outlook signature .gif>

**Michael Blanco**

Politics & Government Outreach

[mikeblanco@fb.com](mailto:mikeblanco@fb.com)

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**From:** Chad Prather <[chad@watchchad.com](mailto:chad@watchchad.com)>

**Sent:** Tuesday, February 22, 2022 8:23 AM

**To:** Eva Guidarini <[eguidarini@fb.com](mailto:eguidarini@fb.com)>

**Cc:** Michael Blanco <[mikeblanco@fb.com](mailto:mikeblanco@fb.com)>; Zach Gregory <[bzgregor@fb.com](mailto:bzgregor@fb.com)>

**Subject:** Re: Review

Thank you Eva. The account is <https://www.facebook.com/watchchad>

Chad Prather

Prather for Texas 2022

Prather2022.com

The Chad Prather Show podcast  
watchchad.com  
Facebook.com/chadprather22  
YouTube.com/chadprather1  
twitter.com/watchchad

Please forgive typos  
Sent from my iPhone

On Feb 22, 2022, at 7:19 AM, Eva Guidarini <eguidarini@fb.com> wrote:

Hi Chad,

Thanks for letting us know about this. I'm looping in my colleagues Michael and Zach who are the best POCs for any help you need related to the Governor's race. To help them get started looking into this for you, can you send us the link to the account in question?

Best,

<image001.gif>

**Eva Guidarini**  
State and Local Politics & Government Outreach  
[eguidarini@fb.com](mailto:eguidarini@fb.com)

---

**From:** Chad Prather <chad@watchchad.com>  
**Date:** Monday, February 21, 2022 at 8:43 AM  
**To:** Eva Guidarini <eguidarini@fb.com>, Scott Wilson <scottwilson@fb.com>  
**Subject:** Review

Could you please take a look at my Facebook suspension. This is a misunderstanding of the intent of the comment. I appreciate the consideration. Thanks for your help.

<image0.jpeg>

Chad Prather

Prather for Texas 2022  
Prather2022.com  
The Chad Prather Show podcast  
watchchad.com  
Facebook.com/chadprather22  
YouTube.com/chadprather1  
twitter.com/watchchad

Please forgive typos  
Sent from my iPhone

# EXHIBIT A-2



## Support Message



 Author

**Chad Prather** 

[Marilyn Hart](#) interesting piece of bias. Now pull the fbi reports saying an insurrection never happened. Do more research. Please for the love of God. I know you need some bad guys in your life to make you feel better but please....you're an over-spoiled first world brat that has no actual clue how the world works. Good. God. Travel the world a little bit and realize how well off you are. You've contributed nothing to the freedoms you now enjoy. Troll the internet and create your

sense of victimhood but please spare me. I literally toy with your responses on Facebook because I'm nice and sometimes have time to waste but your self-conceived sense of intelligence is beyond delusional. Take care. Get help. God bless.

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News Feed



Watch



Pages



News



Notifications



Menu

# EXHIBIT B

February 16, 2021

300 Throckmorton Street  
Suite 1700  
Fort Worth, Texas 76102

817.420.8200 *OFFICE*  
817.420.8201 *FAX*  
*winstead.com*

***CONFIDENTIAL***

direct dial: 817.420.8225  
[jhoover@winstead.com](mailto:jhoover@winstead.com)

Office of the Attorney General  
Open Records Division  
Price Daniel Building  
209 W. 14th Street, 6th Floor  
Austin, Texas 78701

Re: Public Information Act Request (the "***PIA Request***") submitted by [REDACTED]  
[REDACTED] (the "***Requestor***") to the Texas Governor's Office on January 11, 2021

Dear Sir/Madam:

Our client, Facebook, Inc. ("***FB***"), received written notice (the "***OOG Notice***") of the above-referenced PIA Request from the Office of the Governor ("***OOG***") on February 3, 2021 (see copy attached hereto as **Exhibit A**). The PIA Request relates to all "communications with all employees of" Alphabet Inc. and/or Google, Facebook Inc., Amazon.com, Inc., and Apple, Inc. "[f]or the time period of October 1, 2020 to present." The OOG Notice was delivered to FB in accordance with Section 552.305 of the Texas Public Information Act (the "***Act***") because the files requested in the PIA Request may include certain records that the OOG received from FB (the "***FB Records***"). As discussed in further detail below, FB respectfully requests that the Attorney General instruct the OOG to withhold certain portions of the FB Records from public disclosure.

### **I. Background**

Headquartered in Menlo Park, California, FB is a social media conglomerate and technology company with 17 announced data center projects around the globe and offices in 70 cities worldwide. Within the State of Texas, FB currently has one data center facility near Fort Worth as well as offices in Austin and Dallas. FB is now looking to further expand its data center capabilities by adding a new data center within the United States (the "***Target Facility***"). The Target Facility will involve significant invested capital by FB, will result in the hiring of a significant number of full-time employees in the applicable state and local community, and will create significant revenues for state and local utility providers and other businesses.

Texas is one of several states being considered by FB for the Target Facility and, accordingly, FB has been engaged in preliminary discussions with the OOG's Economic Development & Tourism Office regarding possible site locations and related economic incentives. These discussions just commenced this past August and it will likely be at least a year or two before a final site selection decision is made by FB. As indicated in the OOG's Open Records Letter Ruling Request dated February 3, 2021 to the Office of the Attorney General, the FB Records further relate "to investigating,

coordinating, and gathering information regarding potential incentives under consideration to be offered to [FB]." The OOG's ability to maintain the confidentiality of the communications and other information embodied in the FB Records is paramount to the ability of the State of Texas to remain in consideration for the Target Facility. As evidence of the sensitivities of both the OOG and FB with respect to the FB Records, FB has designated a specific project codename for its discussions with the OOG, such that FB's identity can be protected through the vetting process of the possible location of the Target Facility in the State of Texas.

## **II. Confidential FB Information**

The PIA Request specifically seeks copies, for the time period of October 1, 2020 to present, of "all communications with all employees of . . . [FB]" (all of the foregoing collectively referred to herein as the "**Requested FB Information**"). As we have confirmed with the OOG, the Requested FB Information consists of approximately 113 pages of documents. Within the Requested FB Information (also referred to herein as the "**FB Records**"), the following highly sensitive, proprietary, and confidential information of FB has not otherwise been made publicly available through any party, venue or media (collectively, the "**Confidential FB Information**"):

- The fact that FB is considering locations in the State of Texas for the Target Facility;
- The project codename for the Target Facility;
- The name of the FB subsidiary that will acquire the land for the Target Facility;
- FB project team members;
- The Nondisclosure Agreement entered into by FB and the OOG, the terms of which were heavily negotiated by the parties; and
- Email communications among FB project team members and executive officers of the OOG's Department of Economic Development & Tourism, as well as with representatives of the OOG's General Counsel (collectively, the "**Confidential Emails**").

It should be noted that the FB Records also include some email communications that are unrelated to the Target Facility (specifically, certain email communications involving FB, the OOG, and the Texas Lottery Commission and certain other email communications involving the OOG, FB, and other third parties regarding their participation in a panel discussion on social media marketing and ecommerce hosted by the OOG on October 28, 2020). However, we are not requesting that the Attorney General instruct the OOG to withhold these portions of the FB Records from public disclosure.

Clean and redacted copies of the FB Records are attached hereto as **Exhibit B** and **Exhibit C**, respectively. Also, it should be noted that the OOG has not otherwise previously disclosed any of the FB Records, and we understand that the OOG has fully redacted most if not all of the FB Records in connection with its Open Records Letter Ruling Request dated February 3, 2021 (which would be the preferred result for FB as well, as opposed to just a partial redaction of the FB Records).

We would also like to point out that (i) this same Requester submitted a similar request to the OOG last October (2020) which implicated similar FB records/information, and (ii) per a letter ruling issued on February 2, 2021, the Office of the Attorney General instructed the OOG to withhold from disclosure all such FB records/information. *See* OR2021-02715.

### **III. Third Party Request for Nondisclosure**

As a third party whose privacy or property interests may be involved in the PIA Request, FB submits this letter, in accordance with Section 552.305 of the Act, to explain its reasons why the FB Records, or at least certain portions of the FB Records (namely the Confidential FB Information), should be withheld from disclosure to the Requestor. FB objects to the OOG's disclosure of the FB Records (or, at a minimum, the Confidential FB Information) and respectfully requests that the Attorney General instruct the OOG to withhold the FB Records (or, at a minimum, the Confidential FB Information) from public disclosure. FB cites the following alternative exceptions to public disclosure under the Act:

#### **A. Section 552.131: Economic Development Information**

The Confidential FB Information is exempt from disclosure pursuant to Section 552.131 of the Act. Specifically, this exemption applies to information that:

relates to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate, stay, or expand in or near the territory of the governmental body and the information relates to: (1) a trade secret of the business prospect; or (2) commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained. *See* TEX. GOV'T CODE ANN. § 552.131.

As an initial point, and without question, the FB Records relate to economic development negotiations involving a governmental body and a business prospect that the governmental body seeks to have locate in its territory. As previously indicated, the FB Records involve economic development negotiations between FB and the OOG with respect to the potential location of the Target Facility in the State of Texas, and those negotiations are only at the very preliminary stages (as FB concurrently engages in similar negotiations with other states). Additionally (and as further discussed under Sections III.B and III.C below), the Confidential FB Information includes FB's trade secrets and relates to commercial and financial information, the disclosure of which would cause substantial competitive harm to FB if it were to be disclosed to Requestor (and in turn become publicly available to other third parties). As further discussed under Section III.C below, new data center projects are material undertakings that require a significant amount of investment capital. In this case, it should again be emphasized that FB is currently in the very preliminary stages of its site selection efforts across the United States (a process that will likely take at least another year or two to complete), so further negotiations remain pending and ongoing with various state and local governmental bodies (including the OOG, the State of Texas, and the local communities being considered in the State of Texas). In FB's experience, maintaining the confidentiality of a site selection effort is critical to the success of the underlying project. Frankly, if the FB Records become publicly available, then FB will likely withdraw from further discussions with the OOG regarding the possible location of the Target Facility in the State of Texas and focus its site selection efforts on

other states where the confidentiality of the underlying project can be maintained.

**B. Section 552.110(b): Trade Secrets**

Section 552.110(b) of the Act excepts from public disclosure information as to which "it is demonstrated based on specific factual evidence that the information is a trade secret." Section 552.110(a) of the Act further defines a "trade secret" as:

all forms and types of information, including business, scientific, technical, economic, or engineering information, and any formula, design, prototype, pattern, plan, compilation, program device, program, code, device, method, technique, process, procedure, financial data, or list of actual or potential customers or suppliers, whether tangible or intangible and whether or however stored, compiled, or memorialized physically, electronically, graphically, photographically, or in writing if: (1) the owner of the trade secret has taken reasonable measures under the circumstances to keep the information secret; and (2) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, another person who can obtain economic value from the disclosure or use of the information. *See* TEX. GOV'T CODE ANN. § 552.110(a).

With respect to the first element of the trade secret definition above, FB has taken numerous measures to keep the FB Records secret. For example, only a select group of FB employees have been involved in FB's investigatory efforts for the Target Facility and an even smaller group of FB employees has knowledge of and/or full access to the specific details surrounding the Target Facility. To further illustrate this point, (i) FB has assigned a project codename to the Target Facility and FB requires that all states interested in discussing the Target Facility use such project codename in all communications, up and until a final site has been selected by FB, and (ii) FB and the OOG have entered into a Nondisclosure Agreement (the terms of which were heavily negotiated by the parties) as a precondition to FB's disclosure to the OOG of any confidential information regarding the Target Facility. Given the importance of maintaining confidentiality until final site selection, the Confidential FB Information is under no circumstances published or otherwise publicly disseminated by FB, internally or externally. Further, by implementing project codenames and project-specific email addresses, FB's identity and involvement in a new data center project would not otherwise be disclosed to applicable third parties (such as landowners or utility providers) until after definitive agreements have been executed with such parties.

With respect to the second element of the trade secret definition above, the FB Records contain invaluable information to FB, access to which would also be highly valuable to FB's competitors. For example, the Confidential Information includes details regarding the FB project team members, the project codename for the Target Facility, the name of the FB subsidiary entity that will acquire the land for the Target Facility, and the Nondisclosure Agreement entered into by FB and the OOG, the terms of which were heavily negotiated by the parties. FB has incurred significant time and cost in developing this information and its site location strategy and, given the magnitude of invested capital involved, the development of the Target Facility will be a significant investment decision for FB (as evidenced by the fact that FB has only announced 13 data center projects throughout the United States to date). Accordingly, disclosure of such Confidential Information could allow other companies (including other social media and technology companies) who compete with FB and its various business lines to

potentially replicate and implement FB's site location strategy. Disclosure of such information could allow FB's competitors to preemptively secure preferred site locations before FB has completed its processes for the Target Facility, thus impairing FB's ability to negotiate a market appropriate land valuation with the owners of land in the same location as it is possible the that land values might artificially increase if FB and its competitors are negotiating for land in the same location.

Finally, as further discussed in Section III.A above, discussions between FB and the OOG remain in the preliminary stages and have not yet proceeded to any contract negotiation stage. As a result, none of the FB Records constitute a contract or offer terms or their functional equivalent. We raise this point to preemptively address any concerns that Section 552.0222(b) of the Act may apply to any portion of the FB Records, on the basis of contracting information for which the Act's exception for trade secrets does not otherwise apply.

As set forth above, applying the applicable statutory definition to the FB Records indicates that the Confidential FB Information is a trade secret under Texas law.

### **C. Section 552.110(c): Confidential Commercial and Financial Information**

The Confidential FB Information is also exempt from disclosure pursuant to Section 552.110(c) of the Act. Specifically, "commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained is excepted from the requirements of 552.021." *See* TEX. GOV'T CODE ANN. § 552.110(c). As further described below, the Confidential FB Information represents commercial and financial information, the disclosure of which will cause substantial competitive harm to FB.

Given the magnitude of the time and cost that must be invested in the development of a data center of the scale of the Target Facility, new opportunities for similar data centers (not only within the United States but also globally) are quite rare. Accordingly, FB's final decision regarding where to locate the Target Facility will involve a myriad of considerations, both short-term and long-term, including site location, local labor markets, local economic environment, and economic/development incentives from state and local governments. Further, FB is considering multiple sites in multiple states for the Target Facility and it is critical that FB's communications with state and local governmental bodies (*i.e.*, the Confidential Emails) are kept confidential until a final decision on site selection has been made by FB. If those discussions are prematurely made public, then FB may withdraw its interest in a particular state and could suffer substantial competitive harm if such withdrawal results in FB having to locate the Target Facility at a less favorable site in another state (due to the applicable costs and local economic conditions associated with such alternative site/state).

As indicated above, the Confidential Information includes details regarding the FB project team members, the project codename for the Target Facility, the name of the FB subsidiary entity that will acquire the land for the Target Facility, and the Nondisclosure Agreement entered into by FB and the OOG, the terms of which were heavily negotiated by the parties. If this information were made publicly available before FB has contracted for its preferred site, then other owners and operators of data center facilities would accrue otherwise unavailable insight into FB's site location strategy, without having to devote similar cost and time in developing such information (as has been already incurred by FB). Substantial competitive harm would result to FB as other parties could pursue data center projects in the same or similar locations as being considered by FB (including in the State of Texas), but at a fraction of

the time and expense. Furthermore, if the Confidential FB Information were released, then those parties (who are competing for similar economic incentives from state and local governmental authorities) could use the Confidential FB Information to modify, update and reformat their own project proposals. The disclosure of the Confidential FB Information could also prejudice FB by impairing its ability to negotiate a market appropriate land valuation with the owner of the site ultimately selected for the Target Facility. For instance, it is possible that land values might artificially increase if it becomes public knowledge that the party searching for a large tract of land is a large technology company like FB.

Finally, as further discussed in Section III.A above, discussions between FB and the OOG remain in the preliminary stages and have not yet proceeded to any contract negotiation stage. As a result, none of the FB Records constitute a contract or offer terms or their functional equivalent. We raise this point to preemptively address any concerns that Section 552.0222(b) of the Act may apply to any portion of the FB Records, on the basis of contracting information for which the Act's exception for certain commercial or financial information does not otherwise apply.

For the foregoing reasons, the Confidential FB Information represents commercial or financial information of FB, the disclosure of which would cause substantial competitive harm to FB. Accordingly, the Confidential FB Information should be withheld from disclosure under Section 552.110(c) of the Act.

#### **IV. Conclusion**

Based on the foregoing, FB hereby requests a decision from the Attorney General that the FB Records sought in the PIA Request, or at least certain portions of such FB Records (specifically, the Confidential FB Information), be excepted from disclosure under the Act. We respectfully request that the Attorney General issue an opinion or order declaring that the OOG is not required to produce any of the FB Records (or, at a minimum, the Confidential FB Information) in response to the Requestor's PIA Request. Should you require any additional information to evaluate this matter, please advise, and we will be happy to respond promptly.

Best regards,



Justin A. Hoover

#### **Enclosures**

- Exhibit A – Copy of OOG Notice
- Exhibit B – Clean copy of FB Records
- Exhibit C – Redacted copy of FB Records

cc: Justin Glawe (*w/o enclosures*)

# EXHIBIT C

# Abbott Works to Lure Facebook to Texas While Bashing Company for Censorship - Texas Scorecard

texasscorecard.com (<https://texasscorecard.com/state/abbott-works-to-lure-facebook-to-texas-while-bashing-company-for-censorship/>) · by Jacob Asmussen

While the Texas governor recently publicly bashed Facebook for censorship, he was quietly working with them behind the scenes to build a new campus in Texas—and may even give them exclusive taxpayer-funded perks.

Last month, Gov. Greg Abbott spoke out against the Big Tech behemoth for censoring free speech, saying they are assaulting the First Amendment and even calling them “un-American.” He also joined State Sen. Bryan Hughes (<https://directory.texasscorecard.com/bryan-hughes>) (R-Mineola) in announcing a proposed law to stop social media companies from discriminating based on political viewpoints.

“What Facebook and Twitter are doing, they are controlling the flow of information—and sometimes denying the flow of information,” Abbott said at a March press conference. “And they are being in the position where they’re choosing which viewpoints are going to be allowed to be presented. Texas is taking a stand against Big Tech political censorship. We’re not going to allow it in the Lone Star State.”

“Too many social media sites silence conservative speech and ideas and trample free speech,” Abbott also tweeted ([https://twitter.com/GregAbbott\\_TX/status/1368027384776101890](https://twitter.com/GregAbbott_TX/status/1368027384776101890)). “It’s un-American, Un-Texan, & soon to be illegal.”

However, at the same time, Abbott's office was privately seeking favor with Facebook, dealing with the company so they would hopefully build a second data center in Texas.

According to documents by the Tech Transparency Project (<https://www.texastribune.org/2021/04/05/texas-greg-abbott-facebook/>) provided to *The Texas Tribune*, the Project filed an open records request to Abbott earlier this year seeking communications between the governor's office and employees of certain tech companies, including Facebook.

The governor's office did not release any documents, and according to another open records request, they instead asked Attorney General Ken Paxton to justify withholding the information.

However, the request did reveal a letter ([https://static.texastribune.org/media/files/c2d4f380c186831f28a83bce2420cba6/FACEBOOK%20TX%20GOV%20LETTER%20REDACTED.pdf?\\_ga=2.178286884.1691586691.1617822418-2137413142.1611848463](https://static.texastribune.org/media/files/c2d4f380c186831f28a83bce2420cba6/FACEBOOK%20TX%20GOV%20LETTER%20REDACTED.pdf?_ga=2.178286884.1691586691.1617822418-2137413142.1611848463)) by Justin Hoover, an attorney representing Facebook, that argued releasing the 100-plus pages of communications between the governor's office and the social media giant would uncover restricted information—such as the nondisclosure agreement between Abbott's office and Facebook, the new data center's project codename, and the fact they were even considering another facility in Texas.

Not only was Abbott privately dealing with the company he publicly lambasted, but he may even give them exclusive perks to build here, paid with cash from Texas taxpayers' wallets.

In the past, Abbott has used the "Texas Enterprise Fund" to hand out "tax incentive" deals to favored corporations. What that means in reality for citizens: Normal Texans must pay full taxes to state officials, but then state officials take

that money and give it as a perk to hand-picked corporations—and also exempt those corporations from taxes.

Indeed, Tech Transparency Project Director Katie Paul said in a statement that it's "entirely likely" an agreement between Abbott's office and Facebook would "end up being a raw deal for Texas taxpayers."

"A similar data center in Tennessee granted Facebook \$19.5 million in tax incentives for a project that would only create 100 new jobs," Paul said. "If Facebook throws its weight around in Texas in the same way it did in Tennessee, it's no wonder that both the company and the governor's office are trying to keep their negotiations under wraps."

Facebook already has a \$1.5 billion data center under construction in Fort Worth, and at the time of its groundbreaking several years ago, city officials gave the tech giant a lavish tax exemption deal for the project worth \$147 million over 20 years. The center employs about 150 people.

Now, especially in light of Facebook's recent crackdown on free speech, will Abbott make an unjust "tax incentive" deal with them?

"Texas is taking a stand against Big Tech political censorship," Abbott said in March. "We're not going to allow it in the Lone Star State."

Concerned citizens may contact the governor's office.

[texasscorecard.com \(https://texasscorecard.com/state/abbott-works-to-lure-facebook-to-texas-while-bashing-company-for-censorship/\)](https://texasscorecard.com/state/abbott-works-to-lure-facebook-to-texas-while-bashing-company-for-censorship/) · by Jacob Asmussen

# EXHIBIT D

## CIVIL PRACTICE AND REMEDIES CODE

## TITLE 6. MISCELLANEOUS PROVISIONS

## CHAPTER 143A. DISCOURSE ON SOCIAL MEDIA PLATFORMS

Sec. 143A.001. DEFINITIONS. In this chapter:

- (1) "Censor" means to block, ban, remove, deplatform, demonetize, de-boost, restrict, deny equal access or visibility to, or otherwise discriminate against expression.
- (2) "Expression" means any word, music, sound, still or moving image, number, or other perceivable communication.
- (3) "Receive," with respect to an expression, means to read, hear, look at, access, or gain access to the expression.
- (4) "Social media platform" has the meaning assigned by Section [120.001](#), Business & Commerce Code.
- (5) "Unlawful expression" means an expression that is unlawful under the United States Constitution, federal law, the Texas Constitution, or the laws of this state, including expression that constitutes a tort under the laws of this state or the United States.
- (6) "User" means a person who posts, uploads, transmits, shares, or otherwise publishes or receives expression, through a social media platform. The term includes a person who has a social media platform account that the social media platform has disabled or locked.

Added by Acts 2021, 87th Leg., 2nd C.S., Ch. 3 (H.B. [20](#)), Sec. 7, eff. December 2, 2021.

Sec. 143A.002. CENSORSHIP PROHIBITED. (a) A social media platform may not censor a user, a user's expression, or a user's ability to receive the expression of another person based on:

- (1) the viewpoint of the user or another person;
- (2) the viewpoint represented in the user's expression or another person's expression; or
- (3) a user's geographic location in this state or any part of this state.

(b) This section applies regardless of whether the viewpoint is expressed on a social media platform or through any other medium.

Added by Acts 2021, 87th Leg., 2nd C.S., Ch. 3 (H.B. 20), Sec. 7, eff. December 2, 2021.

Sec. 143A.003. WAIVER PROHIBITED. (a) A waiver or purported waiver of the protections provided by this chapter is void as unlawful and against public policy, and a court or arbitrator may not enforce or give effect to the waiver, including in an action brought under Section 143A.007, notwithstanding any contract or choice-of-law provision in a contract.

(b) The waiver prohibition described by Subsection (a) is a public-policy limitation on contractual and other waivers of the highest importance and interest to this state, and this state is exercising and enforcing this limitation to the full extent permitted by the United States Constitution and Texas Constitution.

Added by Acts 2021, 87th Leg., 2nd C.S., Ch. 3 (H.B. 20), Sec. 7, eff. December 2, 2021.

Sec. 143A.004. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a user who:

- (1) resides in this state;
- (2) does business in this state; or
- (3) shares or receives expression in this state.

(b) This chapter applies only to expression that is shared or received in this state.

(c) This chapter applies only to a social media platform that functionally has more than 50 million active users in the United States in a calendar month.

(d) This chapter applies to the maximum extent permitted by the United States Constitution and the laws of the United States but no further than the maximum extent permitted by the United States Constitution and the laws of the United States.

Added by Acts 2021, 87th Leg., 2nd C.S., Ch. 3 (H.B. 20), Sec. 7, eff. December 2, 2021.

Sec. 143A.005. LIMITATION ON EFFECT OF CHAPTER. This chapter does not subject a social media platform to damages or other legal remedies to the extent the social media platform is protected from those remedies

under federal law.

Added by Acts 2021, 87th Leg., 2nd C.S., Ch. 3 (H.B. 20), Sec. 7, eff. December 2, 2021.

Sec. 143A.006. CONSTRUCTION OF CHAPTER. (a) This chapter does not prohibit a social media platform from censoring expression that:

(1) the social media platform is specifically authorized to censor by federal law;

(2) is the subject of a referral or request from an organization with the purpose of preventing the sexual exploitation of children and protecting survivors of sexual abuse from ongoing harassment;

(3) directly incites criminal activity or consists of specific threats of violence targeted against a person or group because of their race, color, disability, religion, national origin or ancestry, age, sex, or status as a peace officer or judge; or

(4) is unlawful expression.

(b) This chapter may not be construed to prohibit or restrict a social media platform from authorizing or facilitating a user's ability to censor specific expression on the user's platform or page at the request of that user.

(c) This chapter may not be construed to limit or expand intellectual property law.

Added by Acts 2021, 87th Leg., 2nd C.S., Ch. 3 (H.B. 20), Sec. 7, eff. December 2, 2021.

Sec. 143A.007. USER REMEDIES. (a) A user may bring an action against a social media platform that violates this chapter with respect to the user.

(b) If the user proves that the social media platform violated this chapter with respect to the user, the user is entitled to recover:

(1) declaratory relief under Chapter 37, including costs and reasonable and necessary attorney's fees under Section 37.009; and

(2) injunctive relief.

(c) If a social media platform fails to promptly comply with a court order in an action brought under this section, the court shall hold the social media platform in contempt and shall use all lawful measures to secure immediate compliance with the order, including daily penalties

sufficient to secure immediate compliance.

(d) A user may bring an action under this section regardless of whether another court has enjoined the attorney general from enforcing this chapter or declared any provision of this chapter unconstitutional unless that court decision is binding on the court in which the action is brought.

(e) Nonmutual issue preclusion and nonmutual claim preclusion are not defenses to an action brought under this section.

Added by Acts 2021, 87th Leg., 2nd C.S., Ch. 3 (H.B. 20), Sec. 7, eff. December 2, 2021.

Sec. 143A.008. ACTION BY ATTORNEY GENERAL. (a) Any person may notify the attorney general of a violation or potential violation of this chapter by a social media platform.

(b) The attorney general may bring an action to enjoin a violation or a potential violation of this chapter. If the injunction is granted, the attorney general may recover costs and reasonable attorney's fees incurred in bringing the action and reasonable investigative costs incurred in relation to the action.

Added by Acts 2021, 87th Leg., 2nd C.S., Ch. 3 (H.B. 20), Sec. 7, eff. December 2, 2021.