

No. 22-393

In the
Supreme Court of the United States

ASHLEY MOODY, ATTORNEY GENERAL OF FLORIDA, ET
AL.,

Petitioners,

v.

NETCHOICE, LLC, DBA NETCHOICE, ET AL,

Respondents.

**On Writ of Certiorari to the
U.S. Court of Appeals for the Eleventh Circuit**

BRIEF FOR PETITIONER

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QUESTIONS PRESENTED

1. Whether the laws' content-moderation restrictions comply with the First Amendment.
2. Whether the laws' individualized explanation requirements comply with the First Amendment.

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SUMMARY OF THE CASE

SOCIAL MEDIA PLATFORMS ARE THIRD PARTY ENTITIES THAT USE THERE PLATFORM TO HELP EXPRESS THE

PUBLICS SPEECH, INTEREST AND THOUGHTS. IT IS ALSO A PLACE FOR COMMUNICATION. THE STATE OF FLORIDA ENACTED S.B. 7072. WHICH CREATES RESTRICTIONS AND OBLIGATIONS SUCH AS DEPLATFORMING POLITICAL CANDIDATES AND REQUIRING DETAILED DISCLOSURES ABOUT CONTENT MODERATION POLICIES. IT AIMS TO TREAT SOCIAL MEDIA PLATFORMS LIKE COMMON CARRIERS. NETCHOICE REPRESENTS SOCIAL MEDIA PLATFORMS SUCH AS INSTAGRAM, TWITTER, YOUTUBE, GOOGLE, FACEBOOK, TWITTER AND TIKTOK. HAS SUED AGAINST FLORIDA OFFICIALS FOR ENFORCING S.B.7072

SUMMARY OF ARGUMENT

The laws of content moderation and individualized explanation requirements comply with the First Amendment, for the following reasonings first the court should find that Social media should not be held at the same standard as a usual business in regards to freedom of speech, and creativity as social media business is used as a platform that allows individuals to post to a large audience and essentially is a creative space for people themselves to brand and promote themselves, unlike other businesses which are usually centered the creativity and branding among selling or producing various items. along with Social media platforms are common carriers, Common carriers are companies that open themselves to the public and must accept everyone. Lastly, as a result of social media's impact on today's society not approving the media constriction on behalf of Florida would create a dangerous precedent and infringe on the general population's development of personal opinions, additionally, this combined with statistics that present the moderating right side political view, show a reasonable standard of future interference in elections to come.

ARGUMENT

I. Social media platforms themselves do not convey a specific message regarding the image of their platform or brand, instead social media is used more as a modern-day bulletin board.

The court should find that social media platforms can not be held at the same standard of those of a usual business, as they differ in a variety of ways, first as a usual business goal is to create and uphold a specified image of a brand, and many times the ultimate goal is to keep the image of such branding, However when it comes to social media is it used more as a way for exposure, furthermore they mainly host the ideas of third parties within their platform, meaning that the court should fail to see these social media companies as a “private actors” as third parties who regular interact within the platform, themselves are the face of such company; which at its core is the reasoning as to why they're so different from that of a usual business, moreover the court should find social media platforms to be a common carrier, this means that the company accepts the general public, without any discriminatory regulations, making it open to the general public, which supreme court justice Clarence Thomas noted during *Biden v. Knight* that companies could not be treated as publishers for “information they merely distribute”. This would be different from newspapers with an editor who has to approve articles to uphold the standards of such companies. with the differences of that of a usual business serve reasonable belief that social media companies are not private actors. Additionally, even if the court chooses to view such media platforms as private actors, all

protection of fundamental rights will always have exceptions to protect the general well-being of United States citizens, such as the Fairness doctrine which establishes that content moderation itself does not bar social media companies from all creative freedom, simply the exposure of certain content. Therefore the limits based upon the media by the state of Florida are consistent with the U.S., communications policy of 1949. Social media being able to express their creative freedom in other aspects, means there is no real threat to their creative freedom, as many social media themselves have an account within the creative platform that they can have full creative control over. This means media companies are still able to actively express, support, and share ideologies they would like to be seen in support of website/app and, finally, rules related to the cancellation or suspension of a user's account, etc." Furthermore, users are warned that their content and accounts may be suspended if they break the rules and harm the community. Additionally, social media platforms are more advanced and have been recently developed, meaning they should be treated differently. For example, since technology advancements users can upload posts within seconds from their cellular device. The social media platforms have no control over what users post and can only take down the post when it goes against community guidelines. Seen in *Biden V. Knight* "Unlike newspapers digital platforms hold themselves out as organizations that focus on distributing speech of the border public." Also seen in *Biden* "Federal law dictates that companies can not be treated as the publisher or speaker" Furthermore proves that social media platforms don't

convey a certain message however they host other users' posts and messages.

Subpart A

Social media platforms cannot be held as the same standard due to their impact on society in comparison to those of a usual business.

The content moderation simply prevents a bias from forming within the media which is something regularly consumed by not only Americans, but the modern world as a whole, moreover, various studies have shown the growing influence of media consumption within today's society. Based on the article "Most Americans think social media sites censor political views" throughout the years, the article conduction of statistics found that 66% of Americans believe that the media censors certain political ideologies and do not trust the media's labeling of "inaccurate and misleading", moreover the court should find the reliance of such platforms in regards to the cultivations of ideas and views not only within the general population but especially in younger generations whose identity and ideology is actively being built, which is another critical reasoning for the court to hold social media at a different standard than that of the usual business. A study by Forbes called "How important is social media in young voters?" The article explains how crucial social media is in terms of reaching, larger, new, and more diverse audiences especially younger generations or our soon-to-be voters, the article goes on to say that because of the bias within social media

and the censorship of certain political views; “ with liberals staying in their lane with Twitter while conservatives voices have increasingly moved to parlor as their de facto platform.” The court should find that unless a platform is made with the sole idea of spreading on specific ideology they may not take active bias through post-prioritization or “shadow banning” on posts.

II.

Social media platforms should be treated as common carriers.

Common carriers are companies that are open to the public and must accept all. Additionally, according to [The first Amendment, Common carriers and Public Accommodations](#) Justice Thomas defines common carriers as “affected with the public interest,” whether the entity regulated is part of the transportation or communications industry, whether it receives countervailing benefits from the government, and whether the actor holds itself out as providing service to all”. Within the case at bar fits the description of common carriers. Social media platforms are “affected with the public” such as the public using the platform to express their interest and thoughts. Social media platforms also are regulated with communication. Ranging from posts, and comments to direct messages between users. Additionally, due to the technological advancements in our present day, social media platforms can be held as common carriers. As seen in *Biden V. Knight* `` In

many ways, digital platforms that hold themselves out to the public resemble traditional common carriers.” Also seen in the case of *Biden V. Knight* It begins to discuss the comparison of telephone companies and social media platforms. For Example, both digital platforms and telephone companies have a system where they carry out information and help people communicate.

A. Subpart A

The state can force social media platforms to become common carriers.

Although others argue that social media platforms are not common carriers the state can still treat them as common carriers. As seen in *Biden V. Knight* “Even if digital platforms are not close enough to common carriers, legislatures might still be able to treat digital platforms like places of public accommodations” Additionally, Justice O’Connor states in *Turner Broadcasting v. FCC* “It stands to reason that if congress may demand that telephone companies operate as common carriers, it can ask the same of digital platforms.” In conclusion, Social media platforms are common carriers and the state can treat them as such.

III.

The social media content moderation restrictions law does not infringe on the community guidelines, it solely adds restrictions on the protocol

after content moderation and eliminates political biases.

Based on the social media construction law itself does not change the social media platforms' "community guidelines" which serve as an outline between acceptable posts and topics and those that are considered inappropriate and unacceptable. However does create a politically biased free platform, allowing both liberal and conservative political candidates to utilize the exposure to the full extent. Furthermore, the media construction laws remain neutral while actively targeting political biases within modern-day media, such as stating that social media cannot limit the potential exposure or shadow-ban a post that was created by or about a candidate. Meaning unless the post itself directly abuses what the social media has written within their community guidelines, whether it promotes or is critical of a political candidate cannot be removed, regardless of political party. The laws also state that media platforms must apply content constructions in a consistent manner, which simply ensures that users are safe within the platform to share, express, and promote their ideology so long that they are within the platform's guidelines. Additionally, the detailed and personal explanations as to why posts or accounts themselves are being limited in regards to potential exposure allow the company to keep its online community safe while defending its community guidelines through a thorough explanation of why a post is deemed inappropriate to the general population. Allowing the online community to remain safe while being online with a

multitude of other individuals. The purpose of this law is not simply to push right-wing political views but to prevent the learning of the reasoning behind such ideology. As social media will only have a greater impact on society it's important to keep the most relied-upon source of information unbiased so that current and future generations can develop their own opinions and ideologies, that's foundation was not for the sole purpose of the media restricting them, especially if it doesn't directly violate their community guidelines.

CONCLUSION

to conclude the court should find social media companies to not be consistent with the standard of being considered as a "private actor" as they differ in a multitude of ways from those of other businesses, additionally the court should look at social media companies as common carrier over being a private actor if the court does find social media to be a private actor then it should look to the fairness doctrine to assess the social media content moderation restriction laws, which remain neutral and serve to protect the general well being of those who regularly consume and interact with social media, and prevents the restriction of potential exposure within media as it impact in today's society is grand, it for these reasons we pray the court rules in favor of the petitioner and reverse the lower court's ruling.

Prayer

It is for these reasons that we pray that the court overrules the lower court's decision and rules in favor of the petitioner.

Respectfully submitted,

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