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 PETITIONERS

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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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INTRODUCTION

Over the past two decades, social media platforms have emerged as a primary means of expressing political, social, or personal beliefs for millions upon millions of people. Platforms such as Facebook, Instagram, and X serve as essential gateways guiding the most deeply held convictions from the depths of the soul to the public sphere, enhancing the competitiveness of the "marketplace of ideas" which the First Amendment protects, and preventing established social norms from going unchallenged. In recent years, however, users of social media platforms have increasingly found themselves unable to express their deeply held viewpoints, due to the policy of social media companies. To prevent this restriction of individual's free speech rights, Florida enacted SB 7072, which requires social media companies to undergo certain procedures before deplatforming an individual. As to be expected with such a law, Netchoice LLC, in conjunction with the Computer & Communications Industry Association, filed suit to invalidate the law, claiming it went against platforms' right to free speech under the first amendment.

SUMMARY OF ARGUMENT

SB 7072 falls well within the bounds of constitutionality when measured against the many tests made to determine whether a law meets scrutiny. Because the speech which social media companies hold is commercial speech, the most appropriate test for the court to use is the Central Hudson test, which says that in order for regulation of that speech to be lawful, "it must be determined whether the asserted governmental interest to be served by the restriction on commercial speech is substantial" and "it must then be decided whether the regulation directly advances the governmental interest asserted, and whether it is not more extensive than is necessary to serve that interest." *Central Hudson Gas & Elec. v. Public Svc. Comm'n*, 447 U.S. 557 (1980). SB 7072 clearly passes this test. The law enhances individual protections of Freedom of speech, while regulating the non-expressive conduct of the companies that deprive it; it directly serves the compelling interest of enhancing the number of ideas in the public sphere; and it limits the activities of the companies no more than is necessary to further said interest. It is imperative that the court acts now to

differentiate social media platforms from its past decisions on traditional media such as newspapers, and create a precedent that these platforms' speech can be limited because of the substantial interest that is held in protecting the voices of political candidates, journalistic enterprises, and the people as a whole.

ARGUMENT

I. Florida has substantial interest in regulating social media companies

A. The enormous influence of social media

Millenia ago, the Roman forums were bustling epicenters of social, religious, and political speech. They were the heart of civic engagement, where lively debate and dissemination of information and ideas took place, and anyone, regardless of class, could freely and expressively voice their opinions. In the 1600's, the Puritans of New England adopted practices akin to this in their town meetings. Social media platforms serve as a contemporary parallel to these historical public forums, on which any person, regardless of demographic, can freely express their ideas

and opinions. The court has affirmed this comparison: in *Packingham v North Carolina* it defined social media as a "modern public square," *Packingham v. North Carolina*, 582 U.S. (2017) pointing out the extent of its influence in society, being "the principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge" (*Id*). Whereas a few decades ago almost all news was spread through traditional media sources such as newspapers, television, and radio, social media has significantly altered this landscape. In 2005, just 5% of adults in the United States used social media platforms; the percentage approached half of the country by 2011, and by 2021 that number had risen to 72% of the country's population (Social Media Fact sheet, PEW RESEARCH CENTER: INTERNET, SCIENCE & TECH (2021)), http://tinyurl.com/39xxeym9, with approximately half of Americans regularly consuming news from platforms such as Facebook, Youtube, and Instagram. (Social Media and News Fact sheet, PEW RESEARCH CENTER'S JOURNALISM PROJECT (2023), http://tinyurl.com/4v5fe8sz).

B. Consumer protection

Opponents of Florida's law claim that it was passed with the sole purpose being to "target certain entities 'because of disapproval of the ideas expressed'" (*Netchoice, LLC*). They have the idea therefore, that the bill is simply "a legislative distillation of Republican anger." (Gilad Edelman, FLORIDA'S NEW SOCIAL MEDIA LAW WILL BE LAUGHED OUT OF COURT WIRED (2021), http://tinyurl.com/7t9p4can.) However, because the influences of social media and the internet are "so new, so protean, and so far reaching" *Packingham v. North Carolina*, 582 U.S. (2017), and platforms have at least some influence over 72% of Americans, (Social Media Fact sheet, PEW RESEARCH CENTER: INTERNET, SCIENCE & TECH (2021), http://tinyurl.com/39xxeym9) the "digital platforms" are given "enormous control over speech." *Biden v. Knight First Amend. Inst. at Columbia Univ.,* 141 S. Ct. 1220 (2021). It is therefore hard to argue against the Florida legislature's substantial interest in creating a bill which protects "users…control over their personal information" and "residents from inconsistent and unfair actions by social media platforms." (Florida Senate Bill 7076). Even if we accept

NetChoice's claims that the legislature was at least partially biased, the bill protects liberal and conservative ideology equally from companies' potential misuse of power as "foreclosing access… prevents users from engaging in the legitimate exercise of First Amendment rights," *Packingham v. North Carolina*, 582 U.S. (2017) regardless of political beliefs.

SB 7072 specifically targets two critical state interests: the battle against platforms' power to "distort the marketplace of ideas" (Ashley Moody, PETITION FOR WRIT OF CERTIORARI. (SEPT. 21, 2022)) and by proxy, the fairness of Florida's elections. The law does this by singling out "journalistic enterprises" (Florida Senate Bill 7076) and people "known by the social media platform to be a candidate" (*Id*) as parties "likely to have important contributions to the public square" (Ashley Moody, PETITION FOR WRIT OF CERTIORARI. (SEPT. 21, 2022)).

1. Journalistic Enterprises

Numerous events in recent history have substantiated and validated the fear of social media companies eroding public trust in information. They have "enormous influence over the distribution of news" *Tah v. Glob. Witness Publ'g, Inc.*, 991 F.3d 231 (D.C. Cir. 2021), and have used this power to silence stories by journalistic enterprises. In the days leading up to the 2020 presidential election, the popular social media platform Facebook reduced the distribution of a negative story pertaining to the son of then candidate Joe Biden, possibly helping him win the presidency in the finishing stretch of his campaign. (KAYLA GASKINS | The National Desk, WHY FACEBOOK SUPPRESSED DAMAGING HUNTER BIDEN STORY AHEAD OF 2020 ELECTION KECI (AUG. 29, 2022), http://tinyurl.com/2aamcvyj). Also in 2020, Facebook was blasted for removing the accounts of dozens of Middle Eastern activists and journalists due to a mis-categorization of them as terrorists. (Olivia Solon, "facebook doesn't care": Activists say accounts removed despite Zuckerberg's free-speech stance, (NBCNEWS.COM (JUNE 15, 2020), HTTP://TINYURL.COM/3XDJDJE3). And in the same year, Black

Lives Matter activists were censored on a mass scale by the same platform, with posts denouncing racism being removed. (Craig Silverman, BLACK LIVES MATTER ACTIVISTS SAY THEY'RE BEING SILENCED BY FACEBOOK BUZZFEED NEWS (June 19, 2020), http://tinyurl.c-om/5bfm9fuk). With such prominent events affecting all sides of the political spectrum being censored by social media companies and so often changing the outcome of said events, it is a valid concern of Florida's to ensure that these companies cannot act on their inherent biases, stifling certain journalistic enterprises and interest groups, thereby impeding the equitable flow of information to the people. It is clear that making sure the "public has access to a multiplicity of information sources is a governmental purpose of the highest order." *Turner Broadcasting Sys., Inc. v. FCC*, 512 U.S. 622 (1994).

2. Political candidates

SB 7072 says that "a social media platform may not willfully deplatform a candidate for office who is known by the social media platform to be a candidate." (Florida Senate Bill 7076). In *Brnovich v. DNC*, the court found that

"ensuring that every vote is cast freely, without intimidation or undue influence, is also a valid and important state interest," *Brnovich v. Democratic National Committee*, 594 U.S. (2021) and when some candidates are favored by companies and some are less so, even if it is not purposeful, it can undermine the fairness of an election which is so fundamental to democracy. By preventing censorship of political candidates, the law seeks to mitigate the undue influence of external entities on elections, thereby making it a subject of substantial interest.

C. Guarding against the social media monopolies

The 11th circuit argued platform censorship had minimal impact on the discussed entities because "political candidates and large journalistic enterprises have numerous ways to communicate with the public besides any particular social-media platform." *NetChoice, LLC, et al. v. Attorney General, State of Florida, et al.*, No. 21-12355 (11th Cir. 2022). However, the claim warrants re-examination due to the truth of contemporary platform dynamics.

Because so few social media companies are used by so many, especially in the age of the "meta monopoly" (Siwar Cheimbi, META MONOPOLY: A NEW ERA OF SOCIAL MEDIA DOMINANCE: GOMYCODE (July 17, 2023), http://tinyurl.com/bddetvwd), Netchoice's claim is not in fact plausible. If a candidate is kicked off a large platform like X (formerly known as twitter), on which an estimated ⅓ of posts are political in nature (Samuel Bestvater, POLITICS ON TWITTER: ONE-THIRD OF TWEETS FROM U.S. ADULTS ARE POLITICAL PEW RESEARCH CENTER - U.S. POLITICS & POLICY (June 16, 2022), http://tinyurl.com/2evuvwr2), or cannot meet the guidelines of Meta, which has control over Facebook, Threads, and Instagram, they lose influence on an enormous population of Americans - about 95.4 million people on X (Rohit Shewale, TWITTER STATISTICS IN 2023 - (FACTS AFTER "X" REBRANDING) DEMANDSAGE (Sept. 16, 2023), http://tinyurl.com/bds3z4uc) and 143 million people on Instagram (Stacy Jo Dixon, COUNTRIES WITH MOST INSTAGRAM USERS 2023 STATISTA (Jan 2023), http://tinyurl.com/657tncs7). They cannot just switch to another platform, because there are simply not enough platforms which

are equally as highly frequented as the top one percent.

II. The law meets the standards of the Constitution

A. Platforms do not exercise traditional editorial discretion

The court has protected newspapers editorial discretion from government manipulation in multiple cases. In *Near v. Minnesota*, the courts found that "liberty of the press is within the liberty safeguarded by the due process clause of the Fourteenth Amendment from invasion by state action." *Near v. Minnesota*, 283 U.S. 697 (1931). Then, in *Miami Herald Pub. Co. v. Tornillo*, the court found that "Governmental compulsion on a newspaper to publish that which 'reason' tells it should not be published is unconstitutional." *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241 (1974). Opponents of SB 7072 claim that these protections apply just as much to social media companies, and that therefore the law is not constitutional.

However, social media platforms do not exercise editorial discretion in the traditional sense that the court has protected in these precedents. Newspapers exercise editorial discretion on a minute level, as obvious in the Society of Professional Journalists Code of Ethics. (*Santa Clara principles on transparency and accountability in content moderation*. SANTA CLARA PRINCIPLES, HTTP://TINYURL.COM/MU3BMRA9). Social media platforms on the other hand, "streamline the censorship process by teaching algorithms." (Faithe J Day, ARE CENSORSHIP ALGORITHMS CHANGING TIKTOK'S CULTURE? MEDIUM (Dec. 10, 2021), http://tinyurl.com/mr3ssjn5). They do not check every post for content "contrary to the norms they seek to curate for their particular online communities" (*Netchoice, LLC*), because with the sheer number of posts every day, that would be impossible. Journalism in the traditional sense includes "taking responsibility for one's work and explaining one's decisions to the public" (Santa Clara *principles on transparency and accountability in content moderation*, SANTA CLARA PRINCIPLES, HTTP://TINYURL.COM/MU3BMRA9) and being held accountable for one's stories because of the

level of scrutiny that they must pass to be published. Social media companies do not take this responsibility. They have repeatedly said that what happens on their platforms does not represent what they as a company believe, with Facebook's Terms of Service stating "We do not control or direct what people and others do or say, and we are not responsible for their actions or conduct (whether online or offline) or any content they share (including offensive, inappropriate, obscene, unlawful, and other objectionable content)." Terms of Service, FACEBOOK, HTTP://TINYURL.COM/4NSZK7CW. By their own claims, social media companies do not and cannot exercise editorial discretion on the level that newspapers do and have been historically protected in. And, even if social media companies were to be treated similar to newspapers under the law, "liberty of the press is not an absolute right, and the State may punish its abuse." *Near v. Minnesota*, 283 U.S. 697 (1931). The courts have not yet set a conclusive precedent on the editorial discretion of social media platforms, and it is now its duty to delineate these boundaries.

B. Platforms engage in commercial speech as common carriers

1. The platforms speech is not inherently expressive

Netchoice contends that the first amendment protects social media companies "editorial discretion over what speech to disseminate and how." (*Netchoice, LLC*). They argue that when a platform removes a user or censors content, "those sorts of actions necessarily convey some sort of message." *NetChoice, LLC, et al. v. Attorney General, State of Florida, et al.*, No. 21-12355 (11th Cir. 2022). However, an issue arises that even if a platform makes decisions which they believe are expressive, this expressive nature cannot necessarily be discerned by all. In *FAIR*, the court found that "the conduct regulated by the Solomon amendment is not inherently expressive" because "an observer who sees military recruiters interviewing away from the law school has no way of knowing whether the law school is expressing its disapproval of the military, all the law school's interview rooms are full, or the military recruiters decided for reasons of their own that they would rather

interview someplace else." *Rumsfeld v. Forum for Acad. & Institutional Rights, Inc*., 547 U.S. 47 (2006). Similarly, the actions that platforms take to remove certain users and content, is not "inherently expressive" because "the expressive component… is not created by the conduct itself but by the speech that accompanies it" (*Id*). In other words, when a platform censors, an outside observer has no way of knowing what exactly the purpose or message is without additional explanatory speech, which SB 7072's disclosure rules require. Without proper disclosure, the act of deplatforming a user does not, in and of itself, constitute speech, and requires the detailed explanation provisions of the Florida law to make it such.

2. Social media companies do not incur significant injuries

Numerous times, Netchoice has invoked *Hurley* to defend the speech of platforms from disclosure because the court found that "a private speaker does not forfeit constitutional protection simply by combining multifarious voices." *Hurley v. Irish-Am. Gay, Lesbian &*

Bisexual Grp., 515 U.S. 557 (1995). However, unlike the parade organizers who, by a parade's very nature, were engaging in an inherently expressive action, social media companies do not necessarily create an expressive message when they censor. Rather, they merely make themselves more approachable to advertisers who "do not wish to pay to have their advertisements disseminated alongside offensive material." (*Netchoice, LLC*). Yet, no rational person would think that just because an advertisement is in the proximity of content that they perceive to be offensive, that the advertiser necessarily endorses the content. Moreover, advertisements on most social media platforms are laid out in such a way that they are not often even on the same page as user generated content, further reducing the likelihood of association between the two. It is therefore not rational to claim that platforms hosting speech that is contrary to their or their advertisers ideology suffer any significant harm to profits.

Furthermore, in the *Pruneyard* case, the court held that the "First Amendment does not prevent a private shopping center owner from prohibiting the distribution on center premises

of handbills unrelated to the center's operations" and that "a State, in the exercise of its police power, may adopt reasonable restrictions on private property so long as the restrictions do not amount to a taking without just compensation." *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980). SB 7072 does not reasonably inhibit a company's business with advertisers, so the state is, by the holdings in *Pruneyard*, able to impose certain requirements that allow users to maintain some of their free speech rights on the social media platforms "private property."

3. Social media companies engage in commercial speech

In other words, without SB 7072's requirements, the form of speech that social media companies truly hold is commercial speech: "expression related solely to the economic interests of the speaker and its audience." *Central Hudson Gas & Elec. v. Public Svc. Comm'n*, 447 U.S. 557 (1980). This has historically been subjected to regulation to a greater degree than the primarily ideological speech which the first amendment was made to protect, as "the Constitution accords a lesser

protection to commercial speech than to other constitutionally guaranteed expression" (*Id*). For example, in *Zauderer v. Office of Disc. Counsel*, the court held that states may compel commercial speech of advertisers "as long as disclosure requirements are reasonably related to the State's interest." *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985). By this reasoning, because the states have substantial interest in protecting its residents from the undue influence of social media companies, disclosure requirements are legal.

4. Social media companies are common carriers

Netchoice denies the claim that social media companies have "common carrier status," saying that they "do not provide their services to the public on an indiscriminate and neutral basis." (*Netchoice, LLC*). The 11th Circuit agreed, saying that "platforms have never acted like common carriers." *NetChoice, LLC, et al. v. Attorney General, State of Florida, et al.*, No. 21-12355 (11th Cir. 2022). Judge Oldham of the Fifth Circuit however, pointed

out that this reasoning is circular: "a firm can't become a common carrier unless the law already recognizes it as such, and the law may only recognize it as such if it's already a common carrier." *NetChoice v. Paxton*, No. 21-51178 (5th Cir. 2022). The reasoning of Netchoice and the 11th Circuit is flawed; social media companies are expected to, except in special circumstances, serve all internet goers.

A common carrier is a "commercial enterprise that transports passengers or goods for a fee and establishes that their service is open to the general public," (Common carrier, LEGAL INFORMATION INSTITUTE (June 2021), http://tinyurl.com/ycx4wuxv) and they are "responsible for every loss or damage, however occasioned." *Propeller Niagara v. Cordes*, 62 U.S. 21 How. 7 7 (1858). Social media companies' services are generally open to the public, and are businesses that transport information and ideas, making them both "common" and "carriers." In *Biden v Knight*, the court said that "certain businesses… serve all comers," and that these businesses were "known as common carriers." *Biden v. Knight First Amend. Inst. at Columbia Univ.*, 141 S. Ct. 1220 (2021). Furthermore, the court said that "a business, by

circumstances and its nature, may rise from private to public concern and consequently become[s] subject to governmental regulation" (*German Alliance Ins. Co. v. Lewis*, 233 U.S. 389 (1914)) like the regulation which is on common carriers. Because the domain of social media companies has become so inflated, they meet the definition to be treated as common carriers. They have entered the realm of public interest, with hundreds of millions of users, offering "relatively unlimited, low-cost capacity for communication of all kinds," *Reno v. ACLU*, 521 U.S. 844 (1997) and need to be regulated as such.

C. Protecting the constitutional election integrity

As common carriers, social media companies have the responsibility to not take any actions likely to influence elections. The regulations which SB 7072 puts in place directly advance the causes of fair elections. Although Netchoice claims that the "compelled disclosure obligations" are "burdensome" (*Netchoice, LLC*) and the bill is "ideologically biased" *NetChoice, LLC, et al. v. Attorney General, State of Florida, et al*., No. 21-12355

(11th Cir. 2022), they are incorrect. As explained earlier, the law does not necessarily restrict the speech of the platforms, because as held in *FAIR*, hosting does not, in and of itself, constitute speech. Its requirement to host political candidates is legally just because of the "valid and important state interest" that is protecting voters from "intimidation or undue influence." *Brnovich v. Democratic National Committee*, 594 U.S. (2021). Therefore, even if SB 7072 did constitute compelled speech, "the first amendment does not prevent restrictions directed at conduct from imposing incidental burdens on speech," *United States v. O'Brien*, 391 U.S. 367 (1968) so candidates' freedom of speech from platform intervention is constitutionally protected due to the substantial interest that Florida holds in maintaining fair elections.

Of course, candidates have said things that are unacceptable and things that have been incendiary. Former President Trump made tweets like "you'll never take back our country with weakness. You have to show strength, and you have to be strong" and "be there; will be wild" when claiming election fraud, and many have described these remarks as "incitement of

insurrection." (Graeme Massie, The trump tweets that security experts say led to the Capitol Riots, THE INDEPENDENT (Jan 18, 2021), http://tinyurl.com/ydftucku). However, even if people see these types of comments as inappropriate, it is still important that they are exposed to them. Voters can only be truly informed when they are able to hear the whole range of a candidate's personality and agenda, and censorship inhibits this important tool.

On the other hand, when a platform restricts a candidate's speech just because it goes against the company's political ideologies, it greatly influences the outcomes of elections. Politicians, especially in this era, are bully pulpits, speaking directly to the public. And because social media allows a person to "become a town crier with a voice that resonates farther than it could from any soapbox," *Reno v. ACLU*, 521 U.S. 844 (1997) being removed from the platforms means that candidates cannot reach nearly as large of an audience and therefore win fewer votes. When platforms go against their duties as common carriers to ensure that all information gets to the people unfiltered so that they can make the right decisions in the voting booth, it causes a

ripple effect through how an election plays out. By making it so that platforms do not "willfully deplatform a candidate for office who is known by the social media platform to be a candidate" (Florida Senate Bill 7076), SB 7072 ensures that politicians' voices are heard so that elections cannot be unfairly skewed towards the sentiments held by each platform.

D. Proper flow of information is a fundamental constitutional interest

As common carriers, social media companies must not engage in commercial speech that limits or inhibits the flow of information to the public. SB 7072's requirements to host journalistic enterprises is clearly constitutional by merit of the "assuring that the public has access to a multiplicity of information sources" being "a governmental purpose of the highest order. *Turner Broadcasting Sys., Inc. v. FCC*, 512 U.S. 622 (1994). It is of vital importance for people to be able to make decisions for themselves without being overly influenced by the particular ideological background that the platform comes from. It is understandable for a platform

to want to "foster a positive, diverse community," (Community guidelines: Facebook help center, COMMUNITY GUIDELINES | FACEBOOK HELP CENTER, HTTP://TINYURL.COM/49H4FV2M) but free speech of political candidates and journalistic enterprises is a basic foundation of a free and fair society, so Florida's provisions to ensure it are constitutionally valid.

III. The requirements of Florida's law are not unduly burdensome

A. Consistency in moderation is possible

The respondents stated that the individualized explanation requirements of the bill were "unduly burdensome" as "social media websites remove millions of posts per day" and "Florida's law would require them to provide a 'precise and thorough' explanation for each and every one of those decisions." (*Netchoice, LLC*). The provisions they point to require "thorough rationale explaining the reason that the social media platform censored the user" and an "explanation of how the social media platform became aware of the censored content or material, including a thorough explanation of the algorithms used." (Florida Senate Bill

7076). Netchoice further contends that it is impossible for social media companies to exercise the provision requiring that platforms "apply… standards in a consistent manner" (*Id*) because consistency was "undefined" (*Netchoice, LLC*) in the bill and therefore there was no way of consistently regulating all users. Consistency, contrary to Netchoice's contentions, should not need to be defined. One of the most foundational principles of the country, "that all men are created equal," (*1776*) applies to content moderation decisions that platforms exercise, and is the very definition of consistency in this matter. In other words, no matter the demographics or ideological orientations of users, they must all be treated equally by the algorithms and decisions that make up the moderation of content. Furthermore, the idea that consistency is impossible when it comes to the deletion and moderation of millions of posts a day is not completely accurate. Platforms "streamline the censorship process by teaching algorithms" (Faithe J Day, ARE CENSORSHIP ALGORITHMS CHANGING TIKTOK'S CULTURE? MEDIUM (Dec. 10, 2021), http://tinyurl.com/mr3ssjn5); it's not like they have hundreds of thousands of

employees looking through every post to check if they align with the platform's guidelines; the individualized explanations requirements simply need to be done by unbiased algorithms.

There is therefore very little burden outside of changing a bit of code. In fact, the companies themselves have debunked the claim that the requirements are unduly burdensome, having called for notice to users about "what types of content are prohibited by the company and will be removed, with detailed guidance and examples of permissible and impermissible content." (Santa Clara principles on transparency and accountability in content moderation, SANTA CLARA PRINCIPLES, HTTP://TINYURL.COM/MU3BMRA9).

B. Terms and conditions should not be malleable

Other provisions within the bill, such as the platforms not being able to "make changes more than once every 30 days" and being required to "inform each user about any changes," (Florida Senate Bill 7076) ensure that companies stick to their guidelines and can be easily defended with common sense. If the goal of the bill is to protect Floridian social

media consumers "from inconsistent and unfair actions," (*Id*) then it is reasonable to ensure that the terms and conditions which the users agree to are followed. It is unfair for companies to punish users for rules that they are not aware of, and it is impossible for users to know the rules if they are not alerted when they are changed. And if these rules are constantly changing, not only is it impossible for users to be aware of the rules, but it is impossible for companies to alert them of every change. Furthermore, when platforms are limited to only changing rules once every 30 days, they are more thought out and become inherently less arbitrary, further protecting users. These provisions are in no way burdensome to social media companies unless they intend to engage in deceptive practices.

C. Opt out and user data provisions require little burden

The provisions which require platforms to provide mechanisms to "opt out of post-prioritization and shadow banning algorithm categories" (Florida Senate Bill 7076) ensures that users can, if they want, be completely

uninfluenced by the possibly biased algorithms which run their feeds. They contribute to the interests of the state of Florida, and do not impede on the business aspects of social media companies. There is no burden in requiring these opt outs other than a few basic changes to the platform's code. And the provisions within the bill having to do with providing a users data to them on request also does not impede on the business aspect of social media companies, so similarly entail very little burden.

D. What ever burden exists is due

Of course SB 7072 is burdensome in some ways, as all laws are, but the fact of the matter is that when the interest that Florida has is as great as it is in curtailing censorship, it must be. Established constitutional precedent simply requires that "the incidental restriction on alleged First Amendment freedom is no greater than is essential to that interest," *United States v. O'Brien*, 391 U.S. 367 (1968) and the interest is certainly substantial enough to make the small amount of burden that the law creates, fundamentally due.

CONCLUSION

SB 7072 is a highly controversial bill for many reasons, but when all is said and done, these reasons are unfounded and the court must rule against the almost unlimited editorial discretion of social media platforms.

The erosion of truth due to censorship is an obvious issue in many respects. And it is in the substantial interest of states to regulate the level of discretion that these companies have, because of the enormous substantive and potential impacts that stem from the practice of biased people and algorithms using censorship methods to silence the voices of political candidates and journalistic enterprises that do not conform to their beliefs. It is a key to democracy that all voices are heard, and because social media is the most prominent place for speech in modern times, regulations are necessary for our democracy to continue to function in the future. Because of this interest and the fact that platforms editorial discretion does not meet the standards of the traditional discretion that has been protected in the past, the law is in fact constitutional and the court must create a precedent to reflect that. Netchoice's argument that provisions within

the law are unduly burdensome is also incorrect. The small amount of burden that the law creates is very much due because of the importance of consistent moderation.

It can be difficult to reconcile with the fact that limiting speech is sometimes necessary: that in order for speech of the people to be upheld, corporate speech must sometimes be restricted. However, the court must look past these reservations, and do what protects the function of democracy the most, and in this case, the decision which most effectively meets this goal is upholding Florida's law.

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