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In the  
Supreme Court of the United States

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

v.

NETCHOICE, LLC, DBA NETCHOICE, ET AL,  
*Respondents.*

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

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**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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**SUMMARY OF THE CASE**

**THE LEGISLATION CONCERNING CONTENT MODERATION AND THE REQUIREMENT FOR INDIVIDUALIZED EXPLANATIONS ALIGNS WITH THE FIRST AMENDMENT, SUPPORTED BY SEVERAL KEY ARGUMENTS. FIRSTLY, THE COURT SHOULD RECOGNIZE THAT SOCIAL MEDIA PLATFORMS SHOULD NOT BE HELD TO THE SAME STANDARDS AS TYPICAL BUSINESSES REGARDING FREEDOM OF SPEECH AND CREATIVITY. UNLIKE TRADITIONAL BUSINESSES FOCUSED ON SELLING OR PRODUCING VARIOUS ITEMS, SOCIAL MEDIA SERVES AS A UNIQUE PLATFORM FOR INDIVIDUALS TO EXPRESS THEMSELVES CREATIVELY, BRAND, AND PROMOTE THEIR IDENTITIES TO A BROAD AUDIENCE.**

**FURTHERMORE, SOCIAL MEDIA PLATFORMS CAN BE CONSIDERED COMMON CARRIERS, ENTITIES OPEN TO THE PUBLIC THAT MUST ACCOMMODATE EVERYONE. LASTLY, DISAPPROVING THE MEDIA RESTRICTION LAWS IN FLORIDA**

WOULD SET A DANGEROUS PRECEDENT, POTENTIALLY IMPINGING ON THE GENERAL POPULATION'S DEVELOPMENT OF PERSONAL OPINIONS. THIS CONCERN IS EXACERBATED BY STATISTICS INDICATING A BIAS IN MODERATING RIGHT-SIDE POLITICAL VIEWS, RAISING CONCERNS ABOUT POTENTIAL FUTURE INTERFERENCE IN ELECTIONS.

## SUMMARY OF ARGUMENT

THE LEGISLATION CONCERNING CONTENT MODERATION AND THE REQUIREMENT FOR INDIVIDUALIZED EXPLANATIONS ALIGNS WITH THE FIRST AMENDMENT, SUPPORTED BY SEVERAL KEY ARGUMENTS. FIRSTLY, THE COURT SHOULD RECOGNIZE THAT SOCIAL MEDIA PLATFORMS SHOULD NOT BE HELD TO THE SAME STANDARDS AS TYPICAL BUSINESSES REGARDING FREEDOM OF SPEECH AND CREATIVITY. UNLIKE TRADITIONAL BUSINESSES FOCUSED ON SELLING OR PRODUCING VARIOUS ITEMS, SOCIAL MEDIA SERVES AS A UNIQUE PLATFORM FOR INDIVIDUALS TO EXPRESS THEMSELVES CREATIVELY, BRAND, AND PROMOTE THEIR IDENTITIES TO A BROAD AUDIENCE.

## ARGUMENT

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

II.

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 theyre so different from that of a usual business, moreover the court should find social media platforms to be a common carriers, this means that the company accepts the general public, without any discriminatory regulations, making it open to the general public, In *Biden v. Knight judge c;arence thomas notes* that companies could not be treated as publishers for “information they merely distribute”. This would be different as news paper who have a editor who has to approve of articles in order to uphold the standards of such companies. with the differences of that of a usual buisness 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 ALWAYS COME WITH EXCEPTIONS TO SAFEGUARD THE GENERAL WELL-BEING OF UNITED STATES CITIZENS. THE FAIRNESS DOCTRINE, FOR INSTANCE, UNDERSCORES THAT CONTENT MODERATION DOESN'T CURTAIL THE CREATIVE FREEDOM OF SOCIAL MEDIA COMPANIES BUT RATHER GOVERNS THE EXPOSURE OF SPECIFIC CONTENT. CONSEQUENTLY, THE LIMITS IMPOSED BY THE STATE OF FLORIDA ALIGN WITH THE U.S. COMMUNICATIONS POLICY OF 1949. GIVEN THAT SOCIAL MEDIA ENTITIES CAN EXPRESS THEIR CREATIVE FREEDOM IN VARIOUS OTHER ASPECTS, THERE'S NO GENUINE THREAT TO THEIR CREATIVE FREEDOM. MANY SOCIAL MEDIA PLATFORMS HAVE DEDICATED CREATIVE SPACES WHERE THEY EXERCISE FULL CONTROL, ALLOWING THEM TO**

ACTIVELY EXPRESS, SUPPORT, AND SHARE IDEOLOGIES ON THEIR PLATFORM.

MOREOVER, RULES GOVERNING THE SUSPENSION OR CANCELLATION OF USER ACCOUNTS SERVE AS A MECHANISM TO WARN USERS ABOUT POTENTIAL CONSEQUENCES FOR VIOLATING COMMUNITY GUIDELINES AND CAUSING HARM TO THE COMMUNITY. ADDITIONALLY, THE ADVANCED AND RECENT DEVELOPMENT OF SOCIAL MEDIA PLATFORMS WARRANTS SPECIAL CONSIDERATION. TECHNOLOGICAL ADVANCEMENTS ENABLE USERS TO UPLOAD POSTS WITHIN SECONDS FROM THEIR MOBILE DEVICES, AND THE PLATFORMS HAVE LIMITED CONTROL OVER CONTENT UNTIL IT VIOLATES COMMUNITY GUIDELINES.

IN THE CONTEXT OF LEGAL PRECEDENT, AS HIGHLIGHTED IN BIDEN V. KNIGHT, DIGITAL PLATFORMS DISTINGUISH THEMSELVES FROM NEWSPAPERS BY FOCUSING ON THE BROAD DISTRIBUTION OF PUBLIC SPEECH. FEDERAL LAW STIPULATES THAT THESE COMPANIES CANNOT BE TREATED AS PUBLISHERS OR SPEAKERS. THESE ASPECTS COLLECTIVELY EMPHASIZE THE DISTINCTIVE NATURE OF SOCIAL MEDIA PLATFORMS AND THE NEED FOR NUANCED TREATMENT IN LEGAL FRAMEWORKS.

#### Subpart A

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

Content moderation serves the crucial purpose of preventing bias from permeating the media, a medium consumed not only by Americans but by the global community. Numerous studies highlight the increasing impact of media consumption in today's society. For instance, an article titled "Most Americans Think Social Media Sites Censor Political Views" reveals that 66% of Americans believe the media censors specific political ideologies, expressing skepticism about the media's labeling of information as "inaccurate and misleading."

The court should recognize the pivotal role of these platforms in shaping ideas and viewpoints, particularly within the general population and the younger generations actively constructing their identity and ideology. This aspect provides a compelling rationale for treating social media differently from traditional businesses. A Forbes study titled "How Important is Social Media in Young Voters?" underscores the significance of social media in reaching larger, newer, and more diverse audiences, especially among younger generations and future voters. The study notes the impact of biases and the censorship of certain political views within social media, influencing how liberals and conservatives engage with different platforms. Conservative voices have increasingly migrated to Parler as their de facto platform. The court should determine that unless a platform is explicitly designed to propagate a specific ideology, it should refrain from exhibiting active bias through post-prioritization or "shadow banning" on posts.

## II.

### **Social media platforms should be treated as common carriers.**

Common carriers are entities open to the public that must accept all users. According to the First Amendment, as outlined by Justice Thomas in relation to common carriers and public accommodations, these entities are considered "affected with the public interest." This designation applies to entities in the transportation or communications industry, those receiving benefits from the government, and those presenting themselves as service providers to all.

The case at hand aligns with the characteristics of common carriers. Social media platforms are inherently "affected with the public," serving as a platform for users to express their interests and

thoughts. These platforms also fall under communication regulations, encompassing posts, comments, and direct messages between users. Given the contemporary technological landscape, social media platforms can be rightfully deemed as common carriers. In the context of *Biden v. Knight*, digital platforms that present themselves to the public exhibit similarities to traditional common carriers, emphasizing their role in public discourse. The discussion commences by drawing a comparison between telephone companies and social media platforms. For instance, both digital platforms and telephone companies share a common function of facilitating the transmission of information and aiding communication among individuals.

#### **A. Subpart A**

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

While some contend that social media platforms may not be categorized as common carriers, the state still has the authority to treat them as such. This perspective is exemplified in *Biden v. Knight*, where it is noted, "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." Furthermore, Justice O'Connor's statement in *Turner Broadcasting v. FCC* reinforces this notion, suggesting that if Congress can demand that telephone companies operate as common carriers, it can similarly expect the same from digital platforms. In summary, the argument maintains that social media platforms qualify as common carriers, and the state possesses the prerogative to treat them accordingly.

#### **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.**

The social media constriction law, as it stands, upholds the integrity of social media platforms' existing "community guidelines," acting as a delineation between acceptable and inappropriate content. These guidelines serve as a vital framework, defining the boundaries for posts and discussions within the platform. However, the law goes beyond mere preservation and incorporates a significant enhancement—it establishes a politically unbiased environment, fostering equal opportunities for both liberal and conservative political candidates to harness exposure on these platforms.

One noteworthy aspect is the law's commitment to maintaining a neutral stance while addressing political biases prevalent in contemporary media. It explicitly prevents social media platforms from engaging in practices that might curtail the potential exposure of posts or employ shadow-banning tactics concerning content related to or created by political candidates. This signifies a deliberate move towards a more open, democratic digital space where diverse political voices can thrive without undue interference.

In essence, the legislation underscores a fundamental principle: unless a post directly contravenes the community guidelines established by the social media platform, it remains protected. This protection extends across the spectrum, encompassing posts that both endorse and critique political candidates, regardless of their party affiliations. The overarching goal is to foster an environment where political discourse can flourish within the predefined boundaries set by the platform.

Furthermore, the law introduces a mandate for consistent application of content restriction. This requirement ensures that users, irrespective of their ideological stance, can engage with the platform confidently, knowing that the rules are applied uniformly. The legislation also necessitates detailed and personalized explanations for any limitations imposed on post or account exposure. This not only reinforces transparency but also aids in educating users about the reasons behind content moderation decisions, thus contributing to a more informed and engaged online community.

Beyond the surface, the intent of this law extends beyond merely preventing the propagation of right-wing political views. It addresses the broader concern of fostering a learning environment for users to understand the reasoning behind various political ideologies. Given the increasing impact of social media on societal perspectives, the law underscores the critical importance of preserving the platform as a reliable, unbiased source of information. By doing so, it aims to shape a digital landscape that promotes informed, diverse, and respectful discourse among its users.

In the evolving landscape of information dissemination, it is crucial that current and future generations have the freedom to shape their own opinions and ideologies. This freedom becomes particularly significant when considering that their foundational beliefs should not be unduly influenced or restricted by media interventions, especially when their expressions fall within the bounds of established community guidelines. Allowing this freedom is vital, especially in the context of a rapidly changing world where new issues and challenges constantly emerge. The next generation's ability to navigate these complexities relies on their exposure to a diverse range of perspectives and ideas. By avoiding undue restrictions, the media becomes a catalyst for intellectual development, enabling individuals to

critically evaluate information and formulate opinions that reflect their unique experiences and values.

In conclusion, ensuring that current and future generations have the liberty to develop their own opinions and ideologies, within the bounds of community guidelines, is essential for fostering individual growth, societal progress, and the maintenance of a thriving democratic discourse in the digital realm.

## **CONCLUSION**

In conclusion, the court's deliberation should lead to the recognition that social media companies diverge significantly from the standard characterization of a "private actor," setting them apart from conventional businesses in various ways. Rather than fitting neatly into the mold of a private entity, social media platforms exhibit characteristics that align more closely with those of common carriers. Viewing them through the lens of common carriers is essential for understanding the unique role they play in facilitating public discourse and expression.

If, however, the court leans toward classifying social media as a private actor, a careful examination through the prism of the fairness doctrine becomes imperative. The social media content moderation restriction laws, inspired by the fairness doctrine, remain neutral and operate as safeguards to protect the general well-being of those actively engaging with social media platforms. By preventing undue restrictions on potential exposure within the media landscape, these laws acknowledge the profound impact of social media in today's society.

The expansive reach and influence of social media underscore the significance of upholding these content moderation laws. They serve as a crucial check against

arbitrary limitations that could impede the free flow of information and ideas. In a society where social media plays a pivotal role in shaping public opinion, safeguarding the diverse and unimpeded exchange of perspectives becomes paramount.

It is on these grounds that we earnestly implore the court to rule in favor of the petitioner, advocating for a perspective that recognizes the distinctive nature of social media platforms and the vital role they play in modern discourse. By reversing the lower court's ruling, the court would affirm the importance of fair and unbiased content moderation practices, ensuring that social media platforms continue to foster an environment that nurtures robust dialogue, diverse perspectives, and the free expression of ideas.

Respectfully submitted,

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