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.

PARTIES TO THE PROCEEDINGS

Petitioners are the Attorney General, State of Florida, in her official capacity, Joni Alexis Poitier, in her official capacity as Commissioner of the Florida Elections Commission, Jason Todd Allen, in his official capacity as Commissioner of the Florida Elections Commission, John Martin Hayes, in his Commissioner of the Florida Elections Commission, Kymberlee Curry Smith, in her official capacity as Commissioner of the Florida Elections Commission, the Commissioner of the Florida Elections Commission, in their official capacity, and the Deputy Secretary of Business Operations of the Florida Department of Management Services, in their official capacity.

Respondents are Netchoice, LLC, and the Computer & Communications Industry Association.

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SUMMARY OF ARGUMENT

In 2021, Florida passed S.B. 7072, a law requiring social-media platforms to host speech they normally wouldn't prefer to, and to provide case-by-case disclosure for why content was censored/removed. The law classifies covered platforms of the NetChoice trade association as common carriers of information, which are obligated to protect users' speech through hosting and disseminating content.

NetChoice v. Paxton considered similar social-media content regulation restrictions within Texas' law, H.B. 20. The Fifth Circuit ruled that the law complied with the First Amendment, as social-media platforms do not have editorial judgment like newspapers. *Paxton* justified that hosting content doesn't constitute speech, and that censorship is not inherently expressive.

The Eleventh Circuit held that Florida has a "substantial interest in protecting its residents from inconsistent and unfair actions" by the platforms. S.B. 7072 §§1(9)-(10). *Moody* held that while S.B. 7072's hosting regulations were constitutional, the disclosure requirements violated the First Amendment. The Eleventh Circuit affirmed the district court's preliminary injunction for S.B. 7072's hosting rules, but reversed it for the disclosure rules. Due to the Circuit conflict, Florida officials sued and filed for a writ of certiorari.

It is long overdue for this Court to take a stance and determine whether regulating the covered

platforms' content moderation is constitutional. The marketplace of ideas must be upheld through S.B. 7072, and this Court must affirm the Fifth Circuit ruling in *NetChoice v. Paxton*.

This Court should uphold *Paxton* and side with the arguments below.

ARGUMENT

I. The covered social-media platforms are common carriers.

Social-media companies are recent creations, with the first widely-recognized social-media site being established in 1997. Esteban Ortiz-Ospina, *The Rise of Social Media, Our World in Data* (Sept. 18, 2019), https://tinyurl.com/mwz4946s. Since then, social-media platforms have revolutionized the way society communicates. Though previously intended for networking, social-media platforms have extended their reach by allowing users to "create, share, and/or exchange information and ideas in virtual communities and networks." Tufts University, *Social Media Overview*, https://tinyurl.com/mrypdmwt (last visited Dec. 6, 2023). Now, more than "4.48 billion people currently use [social-media] worldwide," and 240 million of those users are from the US. Today, social-media companies are nothing short of behemoths, and they are continuing to grow with no signs of stopping: North America's social-media usage grew by 6.96% in just one year. *See Social Media Statistics Details*, University of Maine (Sept. 2, 2021), https://tinyurl.com/ypmx7f7d. And as they do, these social-media companies will proceed to exert increasing dominance over the spread of information in the public sector.

The issue at hand, however, is that social-media companies are uniquely situated. Despite the platform social-media companies provide to users for national discussions on "central issues [of] the modern political landscape" Gregory M.

Dickinson, *Big Tech's Tightening Grip on Internet Speech*, 55 Ind. L. Rev. 101, 109 (2022), they continue to be left primarily to their own devices under the guise of being private corporations. In this way, social-media companies, left unregulated by law, are dangerous, as they "moderate content for the entire nation."

Current market giants like Facebook, X, and Youtube, attract new users through the hosting of other user-content and profiles, rather than the creation of original content published by the company itself. They "entrench" their own supremacy because, once established, they face virtually no competition. *Knight First Amend. Inst.,* 141 S. Ct. at 1224 (Thomas, J., concurring). Therefore, these public forums, which are critical to the open spread of information, are being censored without the discouragement of a competing market presence. Seeing this threat, Floridian lawmakers sought to establish a framework for governmental protection of user-rights in social-media platforms by firstly defining social-media companies as common carriers.

A. Social-media platforms are common carriers despite requiring users to agree to their community standards.

Both S.B. 7072 and the similar Texas law H.B. 20 identified the social-media companies affected by both Acts as common carriers "by virtue of their market dominance." Tex. Bus. & Com. Code § 120.002(b). Common carriers are defined as "[companies] offering services to the public over wires or satellite systems." Black's Law Dictionary,

COMMON CARRIER Definition & Legal Meaning, (2nd ed.), https://tinyurl.com/3vdrx363 (last visited Dec. 6, 2023). Social-media companies, while modern and unique, fulfill the requirements of being restricted as common carriers for they "are communications firms, hold themselves out to serve the public without individualized bargaining, and are affected with a public interest." *NetChoice, LLC v. Paxton*, 142 S. Ct. 1715, 1716 (2022).

One of the main criticisms from the Eleventh Circuit against considering social-media companies as common carriers, is that despite these companies generally holding "themselves open to all members of the public," they also "require users, as preconditions of access, to accept their terms of service and abide by their community standards." *Netchoice v. Moody*, No. 21-12355 (May 23, 2022). However, this is a grave misinterpretation of the historical application of common carrier doctrine. In *State ex rel. Webster v. Nebraska Telephone Co.*, 22 N.W. 237 (Neb. 1885), the Supreme Court of Nebraska granted a writ of mandamus to a lawyer whose office a telephone company had arbitrarily refused to put a telephone inside. The Court stated that the telephone company had "assumed and undertaken to the public" the expectation of a telephone provided to them upon request, and therefore the company could not deny the lawyer a telephone. *Id. at 239*. In affirmation with that ruling, other courts held that even though the telephone company had previously "imposed 'reasonable rules and regulations' upon their customers" prior to a purchase, they still "owed this common carrier obligation" to be indiscriminate in

their dealings. *NetChoice, LLC v. Paxton*, 142 S. Ct. 1715, 1716 (2022). In addition, a report from the University of Cincinnati Law Review argued that "when evaluating a platform's various functions, the hosting function makes an online platform more like a telephone company or transportation company because they are simply hosting someone else's speech," providing further support for this reasoning. *See* Caroline Hardig, Associate Member, University of Cincinnati Law Review Vol. 91, *How Should Courts Treat Social Media Platforms Under the First Amendment?* (Oct. 6, 2022), https://tinyurl.com/4uxpcj4z.

No one is refuting the objective truth that social-media companies are entitled to establish "reasonable rules and regulations" on what content users may publish on their platform. Social-media companies can establish baselines for ejecting spam or obscene content in the same way that telecommunications companies are "privileged by law to filter obscene or harassing expression." 47 U.S.C. § 223; see, e.g., *Carlin Commc'ns, Inc. v. Mountain States Tel. & Tel. Co.*, 827 F.2d 1291, 1292 (9th Cir. 1987). Yet, they are still common carriers and must uphold the obligations to be non-discriminant in their service. Additionally, S.B. 7072 and the State of Florida seek not to eliminate these baseline standards, but rather to protect the "forum[s] for political discussion and debate" by requiring them to "apply whatever censorship, deplatforming, and shadow banning standards [they adopt] 'in a consistent manner among [their] users.'" *NetChoice,*

LLC v. Paxton, 142 S. Ct. 1715, 1716 (2022); *Moody v. NetChoice, L.L.C.*, No. 22-277.

B. Social-media platforms are common carriers as they are conduits of information.

The Eleventh Circuit's rejection of S.B. 7072, and its assertion of common carrier status upon social-media companies heavily relied upon the assumption that because social-media companies make "individualized content- and viewpoint-based decisions about which content to disseminate and how," they are no longer content-neutral and thus exempt from abiding by common carrier mandates. *Moody v. NetChoice, L.L.C.*, No. 22-277. Other opponents of S.B. 7072 state that its regulation standards would not work because "[social-media companies] are not mere conduits [of information]." Edward W. McLaughlin, *How to Regulate Online Platforms: Why Common Carrier Doctrine is Inappropriate to Regulate Social Networks and Alternate Approaches to Protect Rights*, 90 FORDHAM L. REV. 185 (2021). However, by analyzing *Turner Broadcasting v. FCC*—the very case that both NetChoice and the Eleventh Circuit base this assumption off of—a wealth of compelling refutations surface.

Firstly, the method by which the Eleventh Circuit uses this case as an argument is misleading. It attempts to employ *Turner Broadcasting v. FCC* as evidence for evaluating S.B. 7072 under strict scrutiny, stating that, "because cable operators' decisions about which channels to transmit were

protected speech, the challenged regulation requiring operators to carry broadcast-TV channels triggered First Amendment scrutiny." Pet.App.22. This is incorrect. The Court actually asserted that "the must-carry rules are content neutral, and thus are not subject to strict scrutiny," and that the challenged regulations do not "justify application of…First Amendment scrutiny." *Turner Broadcasting v. FCC.,* 512 U. S. 622 (1994).

Secondly, although the Court identified the cable network's speech as being protected under the First Amendment, they cemented the precedent that "common-carrier-like access mandates may be imposed even on institutions—such as universities and cable operators—that are far from neutral conduits in many of their operations." Eugene Volokh, *Treating Social Media Platforms Like Common Carriers?,* 1 J. Free Speech L. 383 (2021). Even if this Court attempted to follow the reasoning of the Eleventh Circuit that "social-media platforms should be treated more like cable operators, which retain their First Amendment right to exercise editorial discretion" because "they make individualized content- and viewpoint-based decisions about which content to disseminate and how," the Eleventh Circuit's logic ultimately falls short as the Court permitted the application of common-carrier-like regulations upon non-content-neutral cable operators.

Finally, the Eleventh Circuit's logic is undermined again, this time by the very testimony of the social-media companies they aim to defend: the social-media companies have "told courts repeatedly

that they merely serve as 'conduits' for other parties' speech and use 'neutral tools' to conduct any processing, filtering, or arranging that's necessary to transmit content to users." Pet.App.41a-43a; *Moody v. NetChoice, L.L.C.*, No. 22-277. Regardless of how this Court rules on the neutrality of social-media companies, it is an irrefutable premise that they are common carriers and can be regulated by S.B. 7072.

II. Social-media platforms are obligated to host speech that they normally wouldn't prefer to.

S.B. 7072 includes a requirement for the covered social-media platforms to host speech that they would otherwise normally censor or exclude. A report from Mitchell Hamline Law Review states that "under the First Amendment, the public forum doctrine mainly serves the purposes of democracy and truth and could be perpetuated in communication services that promote direct dialogue between the state and citizens… If representative democracies are built on the grounds of deliberation, it is essential to safeguard the room for public discourse to actually happen." *See* Amélie P. Heldt, *Merging the Social and the Public: How Social Media Platforms Could Be a New Public Forum* (2020), https://tinyurl.com/567kzy3a. As a public forum and common carrier of information, these platforms have an obligation to host dialogue from different

perspectives and beliefs rather than cherry-picking what content to feature.

A. Censoring users on social-media restricts free speech.

Biden v Knight First Amendment Institute demonstrates how it is unconstitutional for public officials to exclude users from otherwise open online dialogue on social-media platforms because they disagree with their expressed beliefs. This logic further ties into the restrictions on shadow banning and deplatforming of political candidates within S.B. 7072, as deprioritizing posts "by or about" political candidates is expressive and conveys a message to users regarding the platform's opinions of certain political content. "Federal law dictates that companies cannot 'be treated as the publisher or speaker' of information that they merely distribute." *Biden v. Knight First Amend. Inst. at Columbia Univ.*, 141 S. Ct. 1220, 1224.

Furthermore, in *Paxton*, "Texas contends that §7 [of H.B. 20] does not require social media platforms to host any particular message but only to refrain from discrimination against a user's speech on the basis of 'viewpoint.'" *NetChoice, LLC v. Paxton*, 142 S. Ct. 1715, 1716 (2022). The implications of the Florida law would therefore enhance the freedom of speech without conveying a message on behalf of the platforms.

The American Bar Association contends that when private entities have full control over online forums of free speech, like the covered social-media platforms, they are "analogous to a governmental actor." The freedom of expression is a vital factor to our democracy and must be protected in all circumstances, "be it by public or private entities," and S.B. 7072 provides safeguards and regulations against the sacrifice of these values. "The U.S. Supreme Court should follow these examples from state supreme courts to relax the state action doctrine. The Court should interpret the First Amendment to limit the 'unreasonably restrictive and oppressive conduct' by certain powerful, private entities—such as social media entities—that flagrantly censor freedom of expression." David L. Hudson, Jr., *In the Age of Social Media, Expand the Reach of the First Amendment*, https://tinyurl.com/33prwwtr. By requiring these common carriers of information to disseminate speech that they generally would refrain from hosting, the Florida law contributes to the equal trade and sharing of ideas on the platforms, allowing for public discourse and free communication that reflects the will of the people.

B. The hosting requirements in S.B. 7072 are constitutional.

In *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980), the Court rejected the argument that businesses have a First amendment right not to be forced by the State to use their property as a forum for others' speech. Requiring platforms to host both sides of issues and speech would therefore uphold *PruneYard* under stare decisis. In addition, S.B. 7072 imposes mandatory hosting of content that they normally wouldn't prefer to host, which this Court also protected in *FAIR*. Since the mandatory hosting regulates conduct rather than speech, "requiring platforms to host content they'd normally censor wouldn't interfere with the message of the platform," and therefore "does not violate [the] freedom of speech." *Rumsfeld v. FAIR*, 547 US 47 (2006).

III. The operations of the NetChoice trading association do not entail editorial judgment.

NetChoice operates as a trade association for private ecommerce businesses, claiming "to make the Internet safe for free enterprise and free expression." *See* netchoice.org/about/#our-mission. As a coalition of multiple online behemoth social-media platforms such as Facebook and TikTok, NetChoice asserts in *Moody* that the platforms covered in S.B. 7072 are not public forums, but they "act much like a newspaper editor in curating the speech that they will publish." *Moody v. NetChoice, L.L.C.*, No. 22-277.

This reasoning is invalid and should not be upheld in this Court because the covered social-media platforms are not journalistic enterprises, as they simply host others' speech rather than publish their own. Over time, platforms and websites "have long exercised editorial discretion in creating and enforcing policies directed at speech that is offensive, objectionable, or otherwise contrary to the norms they seek to curate for their particular online communities." This emphasizes the importance of notifying users about the terms and regulations on the limits as well. *Moody v. NetChoice, L.L.C.*, No. 22-277.

A. The NetChoice trading association has established a self-contradictory viewpoint.

The covered platforms have wavered between whether their judgment is classified as an editorial judgment or not. In *Paxton*, the platforms' representatives told their users, "'We try to explicitly view ourselves as not editors. . . . We don't want to have editorial judgment over the content that's in your feed.' They've told the public that they 'may not monitor,' 'do not endorse,' and 'cannot take responsibility for' the content on their Platforms. They've told Congress that their 'goal is to offer a platform for all ideas.' And they've told courts—over and over again—that they simply 'serv[e] as conduits

for other parties' speech." *NetChoice, LLC v. Paxton*, 142 S. Ct. 1715, 1716 (2022). In a 2014 article titled "How Facebook Is Changing the Way Its Users Consume Journalism," published by the *New York Times*, Facebook engineer Greg Marra stated, "We try to explicitly view ourselves as not editors… We don't want to have editorial judgment over the content that's in your feed. You've made your friends, you've connected to the pages that you want to connect to and you're the best decider for the things that you care about." *See* Ravi Somaiya, *How Facebook Is Changing the Way Its Users Consume Journalism* (Oct. 26, 2014), https://tinyurl.com/ycxjdj8r. These statements entirely misaligned with the premise of NetChoice's arguments in *Moody*, which stated that S.B. 7072 abridges platforms' First Amendment rights to exercise editorial judgment of content; NetChoice claims that "respondents' members make billions of editorial decisions each day. Those decisions include choices to block or remove content or users, display content with additional context, and a wide range of other nuanced judgments about how to arrange, rank, or prioritize the material published on their websites." *See* No. 22-393.

There is a clear lack of consistency from NetChoice trading association regarding whether they utilize editorial judgment. The covered platforms have expressed desire towards both sides of editorial discretion; "they wish to be afforded the

First Amendment rights of a publisher, claiming that they hold editorial discretion over the content that appears on their platforms. Yet, at the same time, they want to be immune from liability based on the content posted to their platforms. The arguments made by these platforms in different cases are inconsistent with one another." *See* Jimmy Fraley, *Social Media Platforms as Publishers: Evaluating the First Amendment Basis for Content Moderation* (May 1, 2023), https://tinyurl.com/35bzjkye. The Court must acknowledge the numerous inconsistencies and contradictions present throughout the respondent's case when ruling.

B. The covered social-media platforms do not have the same discretion over content as newspapers.

Social-media platforms simply serve to host and distribute the content and speech created by others; they do not exist to disseminate their own speech. They cannot be classified as an editorial discretion because "unlike newspapers, digital platforms hold themselves out as organizations that focus on distributing the speech of the broader public." *Biden v. Knight First Amend. Inst. at Columbia Univ.*, 141 S. Ct. 1220, 1224.

Further, in *Miami Herald Publishing Company v. Tornillo*, 418 US 241 (1974), this Court concluded

that requiring newspapers to feature political candidates violates the First Amendment. The same logic cannot be applied to the covered social-media platforms in the NetChoice trading association because journalistic enterprises and newspapers have an intertwined relationship between their message and content, which permits editorial discretion. In contrast, social-media platforms serve to host and disseminate others' speech rather than convey their own message. "Hosting others' speech does not interfere with the platforms' own message because the platforms have no message." *See NetChoice LLC v. Attorney Gen.,* No. 21-12355 (11th Cir. June 22, 2022). The same argument regarding compelled speech can also be applied to *Hurley*, as parade organizers had the First Amendment right to exclude "marchers . . . imparting a message the organizers d[id] not wish to convey." *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston,* 515 U.S. 557 (1995). Under the precedent of *Tornillo* and *Hurley*, it is evident that excluding speech because it does not align with the speaker's message is only protected under the First Amendment for entities with editorial discretion. Since the freedom of the press and assembly are explicitly protected under the First Amendment, they are able to reap the benefits of editorial judgment, whereas social-media is not.

Judge Oldham, who ruled on *Paxton* in the Fifth Circuit, stated that "The platforms are not

newspapers. Their censorship is not speech." *See* Adam Liptak, *Supreme Court to Hear Challenges to State Laws on Social Media* (Sept. 29, 2023), https://tinyurl.com/4ue89h24.

IV. Social-media companies are not protected by the First Amendment to freely regulate, ban, or remove users & content because their restrictions do not constitute expression.

The internet has become "the modern public square." *Packingham v. North Carolina*, 137 S. Ct. 1730, 1737 (2017). Social-media companies are the backbone of the internet and the face of telecommunications today. They have the ability to puppeteer the public square using censorship to "suppress views with which they disagree." The Fifth and Eleventh Circuits had starkly opposing ideas on both what constitutes expression within the context of private businesses and to what extent those businesses could be exempt from regulation through the First Amendment.

A. Censoring content does not equate to free speech.

Instead, the Fifth Circuit declared those activities to be "censorship" that States may freely regulate without implicating the First Amendment. Judge Oldham of the Fifth Circuit in the *Paxton*

decision stated that the Court should "reject the idea that corporations have a freewheeling First Amendment right to censor what people say… The platforms are not newspapers. Their censorship is not speech." *See* Adam Liptak, *Supreme Court to Hear Challenges to State Laws on Social Media* (Sept. 29, 2023), https://tinyurl.com/4ue89h24.

B. Disseminating others' speech does not equate to speech on behalf of the platform.

The Eleventh Circuit argued that regulating content or users would indicate disapproval of certain viewpoints/content/users. However, as the Fifth Circuit found, censorship is not inherently expressive. Using *Rumsfeld v. FAIR*, 547 US 47 (2006), the Fifth Circuit contends that, just as a law school student had no way of knowing why military recruiters were dispelled from campus, a user online could only create conjecture, not legitimate fact, as to a social-media company's stance on socio-political issues based solely on the content they censor. "An observer has no way to know the platform's message unless it is joined by additional speech." *Moody v. NetChoice, L.L.C.*, No. 22-277.

In addition, the Fifth Circuit ruled in *Paxton* that S.B. 7072 does not infringe the covered platforms' First Amendment rights because "given

the Platforms' virtually unlimited capacity to carry content, requiring them to provide users equal access regardless of viewpoint will do nothing to crowd out the Platforms' own speech." The trading association is therefore obligated as a common carrier to not freely regulate, restrict, or ban users' content.

Columbia Undergraduate Law Review refers to stare decisis to further emphasize this. "Supreme Court precedent would not consider the platforms' content moderation to be protected speech or expressive conduct. Put plainly, the restriction of content moderation by social-media platforms does not violate the platforms' First Amendment rights." *See* Mohammad Hemeida, *It's Time We Defend the First Amendment on Social Media* (Dec. 24, 2022), https://tinyurl.com/4c2n56yt.

C. S.B. 7072 places restrictions on the content moderation of the covered platforms.

Under S.B. 7072, platforms must follow their own content moderation rules consistently, and uphold their varying standards for shadowbanning, deplatforming, and censorship in a consistent manner. The State has a "substantial interest in protecting its residents from inconsistent and unfair actions" on social-media sites of censoring, shadow banning, deplatforming, and applying

post-prioritization algorithms. *NetChoice, LLC v. Attorney General*, No. 21-12355 (11th Cir.) (May 23, 2022). The disclosure requirements included within S.B. 7072 "would enable users to take prompt action to reinstate their access to the page if they were wrongfully removed," which would "go a long way towards easing confusion." Stronger transparency regarding the community standards and rules for each platform's content, along with providing the opt-out alternative, would establish clarity for users to be informed of the social-media platforms' regulations and content moderation policies. *See* Sarah Ludington, *How Social Media Platforms Can Promote Compliance with the First Amendment* (Sept. 30, 2022), https://tinyurl.com/2p8xfmzd.

V. The state has a compelling state interest in protecting all viewpoints of speech on social-media platforms to contribute to the marketplace of ideas.

According to the Congressional Research Service, "restricting or compelling speech based on its content [has] the potential to expel certain ideas or viewpoints from pub Given that lic debate." *See* Congressional Research Service, *Free Speech: When and Why Content-Based Laws Are Presumptively Unconstitutional* (Jan. 10, 2023), https://tinyurl.com/7n4nz6tb. The current censorship practices of the covered platforms are limiting users'

contributions to the public square of ideas and therefore limiting freedom of expression. Although there is no explicit definition of what defines a "compelling state interest," a major factor determining whether a law fulfills this criteria is whether it is narrowly tailored to fit the government's best interests. Given that S.B. 7072 includes requirements for social-media companies to host speech that they would prefer not to, in addition to providing disclosure provisions in each instance of speech restrictions, the Florida law is narrowly tailored to support the State and its interests of protecting the freedom of speech within the marketplace of ideas.

A. It is in the state's best interest to disseminate all opinions and ideas.

The concept of the "marketplace of ideas" first emerged through Justice Oliver Wendell Holmes' opinion in *Abram v. United States*. He stated that "the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market . . . . That at any rate is the theory of our Constitution." *See* Dawn C. Nunziato, *The Marketplace of Ideas Online* (2019), https://tinyurl.com/mwkmhc4c. *Missouri v. Biden* further affirms the idea that the States "have a sovereign and proprietary interest in receiving the

free flow of information in public discourse on social-media platforms and in using social-media to inform their citizens of public policy decisions." *Missouri v. Biden,* 3:22-CV-01213.

In *Mahanoy Area School District* v. B.L, 594 US _ (2021), the Court decided that our representative democracy only works if this "marketplace of ideas" is protected. This free exchange facilitates an informed public opinion, which, when transmitted to lawmakers, helps produce laws that reflect the people's will. That protection must include the protection of unpopular ideas, for popular ideas have less need for protection. Applying these concepts to *Moody*, it is in the State's best interest to contribute to the marketplace of ideas; "It is the purpose of the Free Speech Clause of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of the market, whether it be by government itself or private licensee." *Red Lion Broadcasting Co., v. F.C.C.*, 89 S. Ct. 1794, 1806 (1969).

B. Censorship and inconsistent regulation of content does not contribute to the marketplace of ideas.

In *R.A.V v. City of St. Paul*, 505 US 377 (1992), the Court decided that the First Amendment

prevents the government from punishing speech and expressive conduct because it disapproves of the ideas expressed. A similar concept is presented within S.B. 7072, which imposes regulations of censorship on social-media platforms due to their pattern of deplatforming and shadow banning content expressing beliefs and ideas with which the platforms disagree.

An article published by the Princeton Legal Journal titled "A Plea to Act in Good Faith: How Two State Laws Challenge Social Media Platforms' Editorial Practices" conveys that "when social media companies cannot ensure good faith practices and apply their own policies without discrimination, states should have a legitimate interest to intervene and ensure private companies treat their citizens' viewpoints with equal dignity and respect." See Tori Tinsley, *A Plea to Act in Good Faith: How Two State Laws Challenge Social Media Platforms' Editorial Practices* (Jan. 10, 2023), https://tinyurl.com/2usbckjf. It is therefore relevant for Florida to seek the equal treatment of speech on private social-media platforms through the implications of S.B. 7072. "Public policy cannot be forged intelligently and democracy cannot function effectively unless people are free to hear what others have to say and to modify their own views accordingly. Preventing us from listening to others impedes our ability to find common ground, injuring the entire polity." *See* Michael Glennon, *The*

Government's Unbalanced Speech Rights Schema (Oct. 12, 2023), https://tinyurl.com/u2kz2cys.

CONCLUSION

This Court should side with the arguments below.

Respectfully submitted,

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