No. 22-277

In The Supreme Court of the United States

ATTORNEY GENERAL, STATE OF FLORIDA, et al.,

Petitioners,

v.

NETCHOICE, LLC, d.b.a. NETCHOICE, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF AMICUS CURIAE OF REYNALDO GONZALEZ, MEHIER TAAMNEH, ET AL. IN SUPPORT OF NEITHER PARTY

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INTEREST OF AMICI CURIAE[1]

The amici are Reynaldo Gonzalez, a plaintiff in *Gonzalez v. Google*, No. 21-133,[2] Mehier Taamneh, a plaintiff in *Twitter v. Taamneh*, No. 21-1496, and the other individual plaintiffs in those two cases.[3] The gravamen of the complaints in those cases is that the defendants violated the Antiterrorism Act when they permitted ISIS to post on the defendants' websites terrorist videos and text, and then affirmatively recommended that material to users, and that such recommendations are not protected by section 230(c) of the Communications Decency Act. 47 U.S.C. § 230(c). The plaintiffs assert that the murders of their family members by ISIS terrorists were caused in part by those actions of the defendants. The Florida statutory scheme in this case would have the effect of limiting the ability of social media companies such as the defendants in *Gonzalez* and *Twitter* to remove, or refuse to recommend, posted material likely to incite terrorism or violence, and of requiring such social media companies to engage in the very type of conduct which

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[1] No counsel for a party authored this brief in whole or in part, and no such counsel or a party made a monetary contribution intended to fund the preparation or submission of this brief. Counsel of record for the parties received timely notice under Rule 37 of this Court of the intent to file this brief, and counsel for the parties have consented to the filing of this brief.

[2] The section 230 issues raised by this case are largely distinct from those in *Gonzalez*. But see n. 13, *infra*.

[3] Beatriz Gonzalez, Jose Hernandez, Rey Gonzalez, Paul Gonzalez, Lawrence Taamneh, Sara Taamneh, and Dimana Taamneh.

the lawsuits in *Gonzalez* and *Twitter* contend is forbidden by federal law.

STATUTORY PROVISIONS INVOLVED

Section 230(c) of the Communications Decency Act, 47 U.S.C. § 230(c), provides:

> (c) **Protection for "Good Samaritan" blocking and screening of offensive material**
>
> (1) Treatment of publisher or speaker
>
> No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.
>
> (2) Civil liability
>
> No provider or user of an interactive computer service shall be held liable on account of –
>
> (A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or
>
> (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

Section 230(e) of the Communications Decency Act, 47 U.S.C. § 230(e)(3), provides:

> (3) State law
>
> Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

Section 230(f)(2) of the Communications Decency Act, 47 U.S.C. § 230(f)(2), provides:

> The term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

PROCEEDINGS BELOW

This case concerns a Florida statute, referred to in this litigation as S.B. 7020, which was enacted to impose a complex regulatory scheme on certain large social media companies. This action was filed by NetChoice, LLC, and another industry organization, challenging the validity of many of the provisions in S.B. 7020. The complaint challenged the Florida law on

both federal statutory and constitutional grounds. The plaintiffs asserted that many provisions of S.B. 7020 were inconsistent with or otherwise preempted by section 230 of the Communications Decency Act and violated the First Amendment.[4] The plaintiffs sought a preliminary injunction against enforcement of S.B. 7020, expressly relying on section 230[5] as well as on the First Amendment.

The district court granted the preliminary injunction. The district court first addressed the plaintiffs' section 230 claims, and concluded that several provisions of S.B. 7020 were preempted by that federal statute. App. 79a-82a. That lower court limited its constitutional analysis to disputed provisions of S.B. 7020 that it concluded were not preempted by section 230. App. 82a-93a.

On appeal, the plaintiffs again expressly challenged S.B. 7020 under section 230[6] as well as under the First Amendment. The court of appeals concluded that eight provisions of S.B. 7020 were substantially likely to be invalid (App. 66a-67a), but based its decision solely on the First Amendment. App. 17a-65a. The circuit court did not address NetChoice's argument that the provisions at issue were preempted by section

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[4] Complaint for Declaratory and Injunctive Relief, ¶¶ 131-143.

[5] Plaintiffs' Memorandum of Law in Support of Motion for Preliminary Injunction, pp. 45-49.

[6] Brief for Appellees, pp. 50-55.

230.[7] It merely commented only that the "provisions that NetChoice challenges as preempted are, for reasons we'll explain, substantially likely to violate the First Amendment." App. 17a n. 4. The court of appeals said nothing further about whether the eight provisions were preempted by section 230, but instead set out only a detailed analysis of the First Amendment issues that had been raised by the parties, resolving almost all of those constitutional issues in favor of NetChoice.

The Florida defendants have now sought review by this Court of the Eleventh Circuit's complex and detailed analysis of the constitutionality of the diverse provisions of S.B. 7020. The petition sets out two questions presented, both of which are, understandably, limited to the meaning of the First Amendment. Pet. i. The petition mentions section 230 only twice, first explaining that the district court decision was based in part on section 230 (Pet. 7), and second in noting that under section 230(c)(2) "platforms can generally remove 'obscene, lewd, lascivious, [or] filthy' material, so long as they do so in 'good faith.'" Pet. 27 (quoting 47 U.S.C. § 230(c)(2)).[8] The statutory appendix to the

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[7] The court of appeals noted that "the State . . . argues that plaintiffs are unlikely to succeed on their preemption challenge because *some* applications of the Act are consistent with § 230." App. 15a (emphasis added).

[8] This quotation is edited in a manner that suggests that section 230(c)(2)(A) only permits removal of the four types of materials set out in the quotation. The actual text of section 230(c)(2)(A) also lists three other types of materials that covered entities can remove, "excessively violent, harass, or otherwise objectionable" material. In the statute itself, the "or" comes between the sixth

petition does not include section 230, an understandable omission because the court of appeals opinion did not rely on section 230 in ruling for the plaintiffs.

SUMMARY OF ARGUMENT

The current posture of this litigation would preclude the Court from deciding the merits of the underlying dispute in a manner consistent with the principle of constitutional avoidance. The questions presented by the petition are limited to First Amendment issues, issues in this case of enormous importance and complexity. But the complaint in this action, and the plaintiff's motion for a preliminary injunction, also sought relief on a statutory ground, specifically relying on section 230. 47 U.S.C. § 230. The petition does not ask the Court to address that alternative statutory ground raised by the plaintiffs-respondents, because the court of appeals did not address that ground in enjoining enforcement of eight provisions of the Florida law. If the Court grants review, and does so only with regard to the constitutional questions presented in the petition, it will by so doing commit itself to deciding the constitutional issues raised by the petition without regard to

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and seventh, types of materials, not between (as in the petition) the third and fourth. In addition, section 230(c)(2)(A) applies, not to material that is in fact, for example, obscene or otherwise objectionable, but to material that the interactive computer service "considers to be" obscene or otherwise objectionable. As we explain below, the section 230(c)(2)(A) protection for removal of material that the interactive computer service "considers to be . . . otherwise objectionable" is inconsistent with numerous provisions of S.B. 7020.

whether some or all of those issues could instead be resolved under section 230.

The Court should not proceed in that manner. Instead, if the Court grants the petition, it should either add an additional question presented regarding whether the disputed Florida provisions are inconsistent with or otherwise preempted by section 230, or vacate the decision of the court of appeals and remand with instructions to the court of appeals to address whether any or all of the disputed provisions are inconsistent with or otherwise preempted by section 230.

ARGUMENT

I. THE COURT SHOULD ADHERE TO THE PRINCIPLE OF CONSTITUTIONAL AVOIDANCE

The dispute regarding S.B. 7020, in its current procedural posture, cannot be decided in a manner consistent with the principle of constitutional avoidance. Although the plaintiffs have clearly and repeatedly asserted a statutory ground for their challenge to numerous provisions of that statute, the petition presents only constitutional questions. If the Court were simply to grant review of the questions presented in the petition, it would be forced at the merits stage to decide constitutional questions which might well have been avoided if the court of appeals had first addressed the plaintiffs' statutory arguments.

"It is a well-established principle governing the prudent exercise of this Court's jurisdiction that normally the Court will not decide a constitutional question if there is some other ground upon which to dispose of the case," *Escambia County v. McMillan*, 466 U.S. 48, 51, (1984) (per curiam). "[T]the general rule of constitutional avoidance," *Pearson v. Callahan*, 555 U.S. 223, 241 (2009), rests on the "older, wiser judicial counsel 'not to pass on questions of constitutionality ... unless such adjudication is unavoidable.'" *Scott v. Harris*, 550 U.S. 372, 388 (2007) (Breyer, J., concurring) (quoting *Spector Motor Service, Inc. v. McLaughlin*, 323 U.S. 101, 105 (1944)).

> The Court will not pass upon a constitutional question although properly presented by the record, if there is also present some other ground upon which the case may be disposed of. This rule has found most varied application. Thus, if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter.

Ashwander v. TVA, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring). Where a complaint presents both a statutory and a constitutional challenge to the same action or statutory provision, this Court considers the statutory challenge first. *Bond v. United States*, 572 U.S. 844, 855 (2014). In the instant case, NetChoice expressly asserted in a timely manner an argument that provisions of S.B. 7020 were preempted by section 230. See *Zobrest v. Catalina Foothills School Dist.*, 509 U.S. 1, 8 (1993).

Adherence to the principle of constitutional avoidance is for several reasons particularly appropriate in this case. The Florida statute at issue here is a complex regulatory scheme, with a large number of different provisions adopted to control in various ways the activities of large social media companies. The court of appeals concluded that eight different provisions of S.B. 7020 were, for various reasons, likely inconsistent with the First Amendment. As the Eleventh Circuit's opinion makes clear, those provisions raised distinct First Amendment issues; a grant of certiorari in this posture would require this Court to resolve in a single case not one, but multiple constitutional disputes. If this Court (or the Eleventh Circuit on remand) concluded that any of those provisions is preempted by section 230, that would at the least reduce the number of constitutional issues that this Court would have to resolve.

The social media industry to which S.B. 7020 and section 230 apply is not only technically complex in ways little understood by the public, but also constantly evolving and changing in ways that are impossible to predict. The practices at issue here, and at least most of the companies to which S.B. 7020 and section 230 today apply, did not even exist when section 230 was enacted in 1996. Constitutional decisions about the application of the First Amendment to the industry as it now exists might well have to be revisited in the near future. Much of the Eleventh Circuit's analysis rests on the practical impact of a regulatory scheme like S.B. 7020 on social media companies in their

current form, and on practices and technology as they are today. The result of a First Amendment analysis of such a transient situation could easily be overtaken by events. Judicial reassessment of a statutory construction decision is far less freighted than reexamination of constitutional precedent, and if a judicial interpretation of section 230 proves troublesome in light of future events, Congress as well as the courts would be able to address that development.

The Eleventh Circuit believed that the principle of constitutional avoidance did not apply in this case.

> Of course, federal courts should generally "avoid reaching constitutional questions if there are other grounds upon which a case can be decided," but that rule applies only when "a dispositive nonconstitutional ground is available." *Otto v. City of Boca Raton*, 981 F.3d 854, 871 (11th Cir. 2020) (quotation marks and emphasis omitted). Here, whether or not the preemption ground is "dispositive," but cf. id., it isn't "nonconstitutional" because federal preemption is rooted in the Supremacy Clause of Article VI, see *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 368 (1986).

App. 17a n. 4. This analysis is unsound for two reasons. First, S.B. 7020 itself expressly provides that its provisions are enforceable only "to the extent not inconsistent with federal law and 47 U.S.C. § 230(e)(3)." F.S.A. §§ 106.072(9); 501.2041(9). Section 230(e)(3) in turn provides that "no liability may be imposed under any State ... law that is inconsistent with this section."

So to the extent that any provision of S.B. 7020 is inconsistent with section 230, the Florida law itself provides that section 230 is controlling. In this regard, sections 106.072(9) and 501.2041(9) do the work of the Supremacy Clause; section 230 would be controlling even if the Supremacy Clause did not exist.

Second, the principle of constitutional avoidance dictates that courts not decide "constitutional questions" if a case can be resolved on other grounds. *Escambia County v. McMillian*, 466 U.S. at 51; *Ashwander v. TVA*, 297 U.S. at 347. NetChoice's section 230 arguments do not require the courts to decide any disputed constitutional questions. The parties clearly disagree, but the questions about which they disagree concern only the meaning and implications of section 230, not the meaning of the Supremacy Clause.

II. THE STATUTORY GROUNDS FOR INVALIDATING PORTIONS OF S.B. 7020 ARE SUBSTANTIAL

The manifestly substantial nature of the section 230 arguments regarding many of the provisions of S.B. 7020 weighs heavily in favor of adhering in this case to the principle of constitutional avoidance. It is highly likely that NetChoice will prevail on its statutory challenge to at least some of the provisions whose constitutionality the court of appeals addressed, and whose constitutionality petitioners are now asking this Court to decide.

S.B. 7020 is expressly written to apply to entities that are covered by section 230. The state law is limited to an entity which, inter alia, "[p]rovides or enables computer access by multiple users to a computer server." F.S.A. § 501.2041(2)(g)(1). Those twelve words are taken verbatim from section 230(f)(2) of the federal statute. In S.B. 7020 this is part of the definition of a covered "social media platform." In section 230 those words are part of the definition of a covered "interactive computer service" ("ICS").

The available statutory grounds for challenging under section 230 the various provisions of S.B. 7020 fall into several distinct categories.

A. S.B. 7020 Limits the Ability of a Covered ICS to Remove Objectionable Material

Section 230(c)(2) provides in part that "[n]o provider ... of an interactive computer service shall be liable on account of – (A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider ... considers to be ... objectionable."[9] The lower courts have generally understood section 230(c)(2) to mean that an ICS cannot be held liable because it restricted access to (e.g., removed from

[9] When the governor signed S.B. 7020, he indicated that he was doing so because he disagreed with the decisions of covered interactive computer services as to what content should be considered objectionable. He stated that his purpose in approving the legislation was to "fight[ ] against [the] big tech oligarchs that . . . censor if you voice views that run contrary to their radical leftist narrative." App. 7a.

its website) materials that had been posted by a user which the interactive computer service in good faith regarded as objectionable.[10] The court of appeals recognized that section 230 "explicitly protects internet companies' ability to restrict access to a plethora of material that they might consider 'objectionable.'" App. 343a (quoting section 230(c)(2)(A)). Several provisions of S.B. 7020 in this regard impose liability for actions protected by section 230(c)(2)(A).[11]

Section 501.2041(2)(f) requires a covered entity to permit a user to "opt out of ... shadow banning algorithm categories." Section 501.2041(1)(f) defines "shadow ban[ing]" to include any action "to ... eliminate the exposure of content or material posted by a user...." Thus section 501.2041(2)(f) imposes liability on a covered ICS if, with regard to a user that has exercised the subsection (f) right to opt out, the ICS uses an algorithm to identify and "restrict access to or availability of" objectionable material from that user.

Section 501.2041(2)(b) provides that a covered entity must apply its shadow banning and censorship standards "in a consistent manner among its users."

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[10] The Court need not and should not at this stage decide whether the views of the lower courts on this or any other issues are correct. We describe these lower court opinions merely to illustrate the substantial nature of the section 230 statutory issues.

[11] As the district court explained, "[t]he legislation compels providers to host speech that violates their standards...." App. 68a. The district court concluded that section 230 preempted all provisions of S.B. 7020 that imposed liability for "a social media platform's restriction of access to posted material." App. 82a; see App. 81a.

Section 501.2041(1)(b) defines "censor" to include "any action taken ... to delete, ... restrict, ... [or] remove ... any content or material...." Thus under section 501.2041(2)(b) a covered ICS may not remove any content if the standard it applied in doing so would (in the view of state regulators or a jury in a civil action) be "[in]consistent" with the standard the ICS had applied to any other user.

Section 501.2041(2)(c) provides that a covered entity "may not make changes more than once every 30 days" in its user rules. Thus, for a period of 30 days after any change has been made in the standards a covered ICS utilizes to delineate what it considers objectionable material, the ICS could not remove user material based on a modified or supplemental standard. For example, if on June 1 a covered ICS adopted a rule requiring removal of material with racial slurs, it could not until July 1 add and apply an additional standard prohibiting and requiring the removal of material with homophobic or religious slurs.

Under section 501.2041(2)(d)(1), a covered ICS may not censor or shadow ban (and thus could not remove) "a user's content or material" unless it also notifies the user who posted or attempted to post that content of material. Absent such a notification, "restrict[ion] [of] access to" objectionable material is thus forbidden by Florida law.

Section 501.2041(2)(h) prohibits the use of algorithms by a covered ICS to shadow ban (and thus restrict access to) any "content and material posted by or

about a user who is known ... to be a candidate [as defined elsewhere in Florida law]." Thus algorithm-based deletions from a website of material by or about a candidate is forbidden, regardless of its content. Section 230(c)(2)(A) expressly bars liability for removing material that is "obscene, lewd, lascivious, filthy, excessively violent [or] harassing." Under section 501.2041(2)(h), however, a covered ICS can be held liable for removing just such materials if they are "by or about" a candidate.

Section 501.2041(2)(j) prohibits any action by a covered ICS to censor or shadow ban (and thus to restrict access to material by) "a journalistic enterprise based on the content of its publication or broadcast." Section 501.2041(d) defines "journalistic enterprises" based in part on the number of its subscribers, viewers, or monthly active users. That definition is not limited to subscribers, viewers or monthly active users in Florida or the United States. A foreign enterprise, such as the Russian state television network RT, would probably have a sufficient number of viewers, and would be within the scope of section 501.2041(2)(j) if it could show that it was "doing business in Florida." Subsection (j) does not apply to removal of content that is obscene as defined by Florida law, but under the other provisions of S.B. 7020, there is no such exception permitting the removal of obscene material.

B. S.B. 7020 Limits the Ability of a Covered ICS to Refuse to Permit Postings by a User Who Repeatedly Posted Objectionable Material

The lower courts have understood section 230(c)(2) to preclude liability when an ICS, in order to limit the "availability" of material which it in good faith considers objectionable, precludes further postings by a user who has repeatedly posted such objectionable material.[12] Those courts have assumed that section 230(c)(2) does not require an ICS to wait until each such objectionable item has been posted, and then search for and remove it, but applies when an ICS concludes that it needs to preemptively prevent further such objectionable postings from a particular user. Several provisions of S.B. 7020 in this regard impose liability for actions protected by section 230(c)(2).

Section 501.2041(1)(b) defines "censor" to include "any action taken ... to ... suspend a right to post ... any content." Section 501.2041(1)(f) defines "shadow ban" to include any action to "eliminate the exposure of a user." Thus, each of the provisions described above limiting censoring or shadow banning would

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[12] As the district court explained,

> a social-media provider sometimes bars a specific user from posting on the provider's site. This can happen, for example, when a user violates the provider's standards by engaging in fraud, spreading a foreign government's disinformation, inciting a riot or insurrection, providing false medical or public-health information, or attempting to entice minors for sexual encounters.

App. 72a.

impose liability on a covered ICS if it suspended or banned a user, even if it did so in order to limit the availability of objectionable material that the user had repeatedly posted in the past. F.S.A. §§ 501.2041(2)(b), 501.2041(2)(c), 501.2041(d)(1), 501.2041(h), 501.2041(2)(j).

Section 106.072(2) prohibits a covered ICS from "deplatforming a candidate for office who is known ... to be a candidate." Section 501.2041(1)(c) defines "deplatform" to mean permanently banning a user, or temporarily banning a user for more than 14 days. As the district court pointed out, that is inconsistent with section 230 because "deplatforming a candidate restricts access to material the platform plainly considers objectionable within the meaning of 47 U.S.C. § 230(c)(2)." App. 81a.

The court of appeals noted that the prohibitions in section 106.072(2) and 501.2041(2)(h) against deplatforming a candidate would apply "regardless of how blatantly or regularly [he or she] violate[s] a platform's ... standards." App. 61a. That is equally true of the liability imposed on covered ICSs by sections 501.2041(2)(b), 501.2041(2)(c), 501.2041(d)(1), and 501.2041(2)(j).

C. S.B. 7020 Limits the Ability of a Covered ICS to Edit, Alter, or Prioritize Posted Material

Section 230(c)(1) provides that, if certain other requirements are satisfied, an interactive computer

service may not be "treated as a publisher." 47 U.S.C. § 230(c)(1). The meaning of this phrase remains a matter of significant disagreement.[13] A number of lower courts, including the Eleventh Circuit,[14] have held that, at least in most circumstances, section 230(c)(1) protects the decisions of an ICS to edit, alter, or prioritize material that has been posted by a user. Prioritization refers to the practice of more prominently featuring certain items, typically items which the website believes a viewer will be more likely to be interested in, and thus be more likely to view and remain at the social media website, where he or she can be shown (and the website can earn revenue for) advertisements.

S.B. 7020 under certain circumstances imposes liability on covered ICSs if they edit, alter, or prioritize content posted by users. The definition of "censor"

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[13] That disagreement may to some degree be at issue in *Google v. Gonzalez*.

[14] See, e.g., *Dowbenko v. Google, Inc.*, 582 Fed. Appx. 801, 805 (11th Cir. 2014):

> Mr. Dowbenko's defamation claim is preempted under § 230(c)(1). It is uncontested that Google is an interactive computer service provider, and the article in question indicates that it was authored and posted by an "information content provider": two anonymous bloggers. Nor does the allegation that Google manipulated its search results to prominently feature the article at issue change this result. See *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997) ("[L]awsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions – such as deciding whether to publish, withdraw, postpone or alter content – are barred.").

expressly includes "any action ... to edit [or] alter ... material posted by a user." Thus, each of the S.B. 7020 provisions applying to censorship would apply to editing or altering posted material by a covered ICS, and would in some circumstances impose liability on a covered ICS for engaging in those activities. F.S.A. §§ 501.2041(2)(b), 501.2041(2)(c), 501.2041(2)(d)(1), 501.2041(2)(j).

Under certain circumstances, S.B. 7020 also imposes liability on a covered ICS for prioritizing one users's posted content over content posted by others, a practice which S.B. 7020 refers to as "post-prioritization." See F.S.A. 501.2041(1)(e). Section 501.2041(2)(h) prohibits the use of algorithms to post-prioritize material posted "by or about a user who is known ... to be a candidate."

Section 501.2041(2)(f) entitles a user to opt out of post-prioritization, thus exempting its content from the usual prioritization criteria of a covered ICS. The court of appeals noted that section 501.2041(2)(f) "forces platforms, upon a users' request, not to exercise the editorial discretion that they otherwise would in curating content – prioritizing some posts and deprioritizing others – in the user's feed." App. 47a.

Section 501.2041(2)(j) specifically provides that post-prioritization of content posted by a journalistic enterprise is permissible if based on payments by that enterprise. That suggests that post-prioritization of content posted by a journalistic enterprise would otherwise

be forbidden as such, although it is unclear why that would be so.

Before addressing any constitutional issues in this case, the Court should weed out from this thicket of statutory provisions those which are inconsistent with or otherwise preempted by section 230, or should direct the Eleventh Circuit on remand to do so.

CONCLUSION

If the Court grants the petition, it should either add an additional question presented regarding whether the disputed Florida provisions are inconsistent with or otherwise preempted by section 230,[15] or vacate the decision of the court of appeals, and remand with instructions to the court of appeals to

[15] This phrasing is important to avoid unnecessary confusion. If a provision of the Florida law were "inconsistent" with section 230, under the terms of the Florida law itself section 230 would control. F.S.A. §§ 106.072(5), 501.2041(9). In addition, a Florida provision would be preempted if it stood as an obstacle to the purposes of section 230, although such obstacle preemption might not constitute "inconsisten[cy]" within the meaning of the Florida provisions. See *Arizona v. United States*, 567 U.S. 387, 399 (2012) ("state laws are preempted when they conflict with federal law.... This includes those instances where the challenged state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' ") (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)); *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 373 (2000) ("What is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects.").

address whether any or all of the disputed provisions are inconsistent with or otherwise preempted by section 230. Doing so will not necessarily moot all the constitutional issues addressed by the Eleventh Circuit opinion, but it will at the least narrow the constitutional issues that this Court might be asked to decide, and reduce the number of provisions whose constitutionality might need to be addressed.

Respectfully submitted,

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