

Nos. 22-277, 22-555

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.

NETCHOICE, LLC, DBA NETCHOICE, *et al.*,

Petitioners,

v.

KEN PAXTON, ATTORNEY GENERAL OF TEXAS,

Respondent.

**On Writs Of Certiorari To The
United States Courts Of Appeals
For The Fifth And Eleventh Circuits**

**BRIEF FOR INTERNET SOCIETY
AS AMICUS CURIAE SUPPORTING
NETCHOICE, LLC, DBA NETCHOICE**

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INTEREST OF AMICUS CURIAE¹

Founded in 1992, the Internet Society is a U.S. non-profit organization headquartered in Reston, Virginia, and Geneva, Switzerland, for the worldwide coordination of, and collaboration on, Internet issues, standards, and applications. The Internet Society's staff is comprised of technical experts in internetworking, cybersecurity, and network operations, among other fields, as well as policy experts in a broad range of Internet-related areas.

As a global non-governmental organization, the Internet Society believes that the Internet should be for everyone. It supports and promotes the development of the Internet as a global technical infrastructure, a resource to enrich people's lives, and a force for good in society, with an overarching goal that the Internet be open, globally connected, secure, and trustworthy. The Internet Society supports communities that seek to connect to each other through the Internet. It advances the development and application of Internet infrastructure, technologies, and open standards. The Internet Society also advocates for policies that protect the Internet and allow it to flourish for all.



¹ In accordance with this Court's Rule 37.6, amicus states that no counsel for a party authored this brief in whole or in part, and that no person other than amicus, its members, or its counsel made a monetary contribution intended to fund its preparation or submission.

SUMMARY OF ARGUMENT

The Internet empowers individuals around the world to speak, share ideas, learn, and connect. Social media platforms are an important medium for these purposes, as they facilitate easy-to-use person-to-person connections online and often do so globally. Content moderation is a critical tool of social media platforms (as well as other online communities and spaces), permitting platforms to work as designed and improving user experience in these voluntary shared spaces.

Texas and Florida have enacted laws that seek to curtail or altogether eliminate the ability for platforms to engage in content moderation. These laws put at risk core benefits of the Internet.

First, content moderation enables platforms and other online communities and spaces to provide their users a safe and useable place for discourse. They are able to block spam, prevent scammers from posting harmful content, and reduce the posting of computer-generated content (which sometimes is intended to stifle ongoing discussions by overwhelming the online space with messages). Additionally, by moderating their content, platforms can prevent and remove threatening posts that could endanger users. Content moderation allows topic-specific forums to thrive; off-topic content can be removed so specific kinds of discourse may continue uninterrupted—leading to more focused and profitable discussions.

Platforms can experiment with different technologies and types of moderation to compete for users, providing different experiences that certain users may prefer, such as profanity filters or more extensive privacy controls, for example. Content moderation also allows platforms to scale operations as they grow and avoid a morass of unwieldy and unusable content. This moderation is essential for useful and functional websites and online services. It also allows them to adjust their business model to match user demands.

Numerous online platforms depend on content moderation to facilitate user engagement and foster the user experience. In addition to the largest social media platforms like Facebook and X, smaller or more distributed platforms like Reddit, Yelp, Blogger.com, and Mastodon leverage content moderation to provide distinctive avenues for online engagement and connection. The Texas and Florida laws define “social media platforms” exceptionally broadly, sweeping in more than just Facebook, X (formerly Twitter), and YouTube. For example, the laws apparently reach the global non-profit Wikipedia website, which is entirely user-generated and involves extensive distributed editing (or “moderation”) of content by volunteers.

Moreover, the First Amendment principles delineated in this Court’s ultimate opinion likely would apply beyond the definitions and size limits set by the current Texas and Florida laws. If this Court permits these laws to stand, we would likely see a proliferation of similar state laws, expanding to require compliance from smaller platforms with fewer users and less

revenue available to hire legal compliance staff. This, in turn, would entrench the large platforms that can afford the compliance efforts across the various states. The end result would be a decrease in innovation and lower competitiveness for the United States.

The Texas and Florida laws alone will impose a massive financial burden on the impacted platforms, which go significantly beyond the most well-known social media platforms. It will be extremely costly to identify whether certain content falls within the statutes' purview and to satisfy the notification and individualized explanation requirements. Moreover, if these laws stand and similar laws proliferate, social media platforms could face up to 50 different and potentially conflicting sets of regulations and restrictions on their content moderation. The potential costs associated with compliance would squeeze out smaller platforms that could not afford to comply or dissuade platforms from engaging in any content moderation whatsoever. Either outcome will be detrimental to users and online discourse.

Second, the Court's decision in this case will be viewed around the world as a new and lower standard for what is appropriate for government regulation of social media platforms and potentially other online communities and spaces. If this Court allows these state regulations to stand, other countries likely will push the envelope even further—requiring platforms to follow even stricter and possibly conflicting rules. If the United States—which historically has been viewed by many as affording speech the highest level of

protections—were now to allow direct state regulation of critical editorial functions, then other nations would have less hesitation to impose their own strict regulations on speech.

To ensure the Internet’s continued viability as a place where person-to-person discourse can flourish, this Court should affirm the Eleventh Circuit’s opinion and reverse the Fifth Circuit’s opinion below.



ARGUMENT

The Internet provides the architecture for a range of sites and platforms—including social media sites—where people can speak, share ideas, and connect. As the Supreme Court recognized back in 1997, the Internet “provides relatively unlimited, low-cost capacity for communication of all kinds. * * * Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox.” *Reno v. ACLU*, 521 U.S. 844, 870 (1997). Social media platforms are one modern form of this capability and offer individuals a range of avenues to engage in online discourse, information sharing, and connection. In 1996, Congress expressly recognized this feature and its benefits: “The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.” 47 U.S.C. § 230(a)(3).

The current regulatory scheme has fostered “permissionless innovation,” allowing for the proliferation of a wide variety of online spaces, including social media platforms with global engagement, from large platforms like Facebook and Reddit to smaller and more distributed platforms like Mastodon, promoting freedom of expression in the United States and abroad. These platforms often rely on content moderation to facilitate user engagement, protect users online, and improve users’ experiences. Limiting content moderation will inhibit person-to-person communications, degrading the value of the Internet for individuals.

I. Content Moderation Is a Key Element That Allows the Internet to Flourish.

A. Content Moderation Serves Important Purposes for Internet Platforms.

Content moderation is essential for useful and functional social media platforms. Content moderation facilitates effective communication and interaction on the Internet.

First, a platform’s content moderation policies set the rules of the road for engagement on a particular platform, ensuring that all users are aware of what is permissible when interacting on the platform. These rules may address issues like civility and profanity, facilitating productive discourse. Alternatively, content moderation policies may define the target audience for the conversation, like users interested in hiking a particular trail or high school students learning robotics.

In some cases, moderation policies are aimed at keeping a site (or a portion thereof) “family friendly.” These limitations may also, at times, be expressly viewpoint-based or politically based, such as a site aimed at supporters of a particular political party, a site aimed at adherents to a specific religion, or a site dedicated to discussions of gardening or cooking. Content moderation policies allow these focused spaces to function by defining and enforcing the rules of engagement for any individual who participates in the space.

Second, content moderation protects users from scammers and spam that would otherwise proliferate. Without content moderation, particularly with the rise of bots and generative AI, platforms would be quickly overtaken by posts seeking to scam other users, spam them with useless information, fake products, or harmful malware (with serious cybersecurity risks), or simply drown out and shut down the conversation by posting computer-generated posts. Indeed, many users are turning away from using email services, which are plagued by scams and spam messages, and relying instead on messaging services that allow for more tailored content moderation (such as WhatsApp, Facebook Messenger, and others) to curate who can reach them and what types of content they will receive.

Third, the ability to moderate user-posted content allows platforms to prevent or remove inherently harmful posts and threats, such as exposing personal information (doxing) or bullying and harassment. These types of posts can pose a real danger to their targets. Additionally, failing to prevent or remove

harmful content harms the platform itself because users stop using the platform to avoid the harmful or threatening content. And, without content moderation, particular voices or viewpoints will likely be broadly silenced by the proliferation of harmful content online.

Fourth, content moderation ensures that topic-specific forums remain focused on the desired topics by removing off-topic content. Numerous online platforms rely on this type of content moderation to function. Take review platforms where users provide their opinions on all types of businesses, from airlines to hotels to restaurants to dentists to hair salons. Absent content moderation, those platforms could become overrun with spam reviews, fake reviews, or other kinds of nuisance posts, including posts aimed at drowning out negative reviews of particular businesses or service providers. This would wholly undermine their purpose as a space for legitimate crowd-sourced reviews. Or consider the platform GitHub, which aims to connect software developers to collaborate on software projects. GitHub's Code of Conduct provides guidelines to facilitate this purpose, discouraging off-topic comments, advertising, malicious links, and sharing sensitive information (such as personal email addresses).² These guidelines help ensure that

² See *GitHub Community Code of Conduct*, GitHub, <https://docs.github.com/en/site-policy/github-terms/github-community-code-of-conduct>.

GitHub users can successfully collaborate on software development projects.

Similarly, platforms like Reddit and Blogger.com provide spaces for niche communities to collaborate and discuss specific interests. Content moderation can be crucial. For example, on Reddit there is a “subreddit” community for Christian users with specific guidelines to foster discussions of Christian theology. The content guidelines discourage posts designed only to “mock, insult, or deride aspects of Christianity” and posts that “state, imply, or intimate that a user who professes to be Christian is not actually a Christian.”³ If these forums cannot effectively moderate content based on viewpoint, then on-point discussion will be drowned out, and the forum will not be able to function as a topic-focused discussion space.

Content moderation is also critical for ensuring that relevant, accurate, concise referenced information appears on Wikipedia across millions and millions of topics and more than three hundred languages. Without content moderation, Wikipedia could quickly become an unreliable repository of misinformation rather than “a free-content online encyclopedia written and maintained by a community of volunteers.”⁴

³ See *r/Christianity Community Guidelines*, Reddit.com, https://www.reddit.com/r/Christianity/wiki/xp/#wiki_2._don.27t_subvert_topics.2Fconversations.

⁴ See *Wikipedia*, Wikipedia.org, <https://en.wikipedia.org/wiki/Wikipedia>.

Finally, moderation allows platforms to scale operations and allocate resources. For new platforms, limiting certain content on the platform can keep costs down as operations are scaled up—for example, by focusing content on specific topics (to target a smaller audience of users), not allowing videos over a particular size (to keep storage space costs down), or limiting the number of users (to minimize all overhead costs).

B. The Texas and Florida Laws Would Broadly Impact Internet Platforms.

While Texas and Florida purport to target only the largest social media platforms, like Facebook, X, and YouTube, the breadth of their definitions for “social media platforms” reach numerous online platforms that rely heavily on content moderation to be useable. Moreover, if this Court were to approve those laws, the likely First Amendment principles established would permit any number of states to impose similar laws on both large and small social media platforms—or other types of Internet services.

Texas HB 20 defines “social media platform” as “an Internet website or application that is open to the public, allows a user to create an account, and enables users to communicate with other users for the primary purpose of posting information, comments, messages, or images”⁵ (Tex. Bus. & Com. § 120.001) and the law

⁵ Excluded from the definition are Internet service providers, electronic mail, and an online service, application, or website “(i) that consists primarily of news, sports, entertainment, or other

“applies only to a social media platform that functionally has more than 50 million active users in the United States in a calendar month” (Tex. Bus. & Com. § 120.002).

Florida SB 7072 incorporates the definition of “social media platform” outlined in Fla. Stat. § 501.2041(1)(g), which provides that a social media platform includes “any information service, system, Internet search engine, or access software provider that: 1. Provides or enables computer access by multiple users to a computer server, including an Internet platform or social media site; 2. Operates as a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity; 3. Does business in the state; and 4. Satisfies at least one of the following thresholds: a. Has gross annual revenues in excess of \$100 million * * * b. Has at least 100 million monthly individual platform participants globally.”

information or content that is not user generated but is preselected by the provider; and (ii) for which any chat, comments, or interactive functionality is incidental to, directly related to, or dependent on the provision of the content described by Subparagraph (i).” Tex. Bus. & Com. § 120.001(1)(A)-(C).

These definitions have striking breadth. Platforms like Reddit,⁶ GitHub,⁷ StackOverflow,⁸ and Wikipedia⁹ are likely covered by one or both of these laws (whether that was intended by the legislatures or not). And these platforms depend on content moderation to function correctly.

Certain likely impacted platforms, such as Reddit and Wikipedia, also rely on decentralized content moderation undertaken on a forum- or topic-level basis. Each individual subreddit community that is created can implement additional content moderation guidelines. Holding Reddit liable for content moderation taken at a community level would be unjust, and it would likely require a complete revamping of a platform to remove the features so attractive to Reddit users. On Wikipedia, where anyone can edit most of the

⁶ Publicly available data for Reddit’s active users estimate that as of April 2022, the platform had over a billion monthly active users worldwide. Kate Sukhanova, *Reddit Statistics & Key Trends for 2023*, TechReport (Aug. 25, 2023), <https://techreport.com/statistics/reddit-statistics/>.

⁷ GitHub estimates provide for more than 100 million developers. See Thomas Dohmke, *100 million developers and counting*, GitHub Blog (Jan. 25, 2023), <https://github.blog/2023-01-25-100-million-developers-and-counting/>.

⁸ StackOverflow advertises more than 100 million monthly users. See StackOverflow, <https://stackoverflow.com/>.

⁹ With more than 8 billion site visits in October 2023 (more visits than X, and about half as many as Facebook), Wikipedia likely exceeds the Florida statutory requirement of “at least 100 million monthly individual platform participants globally.” See Josh Howarth, “Most Visited Websites In The World (November 2023),” Exploding Topics (Nov. 6, 2023), <https://explodingtopics.com/blog/most-visited-websites>.

content, there are special procedures to handle strongly disputed topics.¹⁰

There are also smaller platforms that currently serve more limited communities and rely heavily on content moderation. For example, the growing platform Mastodon is a free and open-source software and social network managed by a German non-profit that provides a space for online communities through thousands of distributed servers, all operated independently. Mastodon is expressly designed to empower individual online communities to operate their own Mastodon servers with the power to self-regulate and create moderation rules specific to each server.¹¹ Many up-and-coming platforms, like Mastodon, were created because there was a desire for more moderation after bigger platforms relaxed their moderation rules. Although Mastodon and other newer platforms are relatively small now, many aspire to become much more widely used.

While the Texas and Florida laws are aimed at large social media platforms, the First Amendment principles discussed in these cases cannot be so easily limited. The key questions before the Court will establish precedent that states likely will apply beyond large social media platforms. So, this Court should consider the impact of these laws (or similar future

¹⁰ See *Wikipedia: Editorial oversight and control*, Wikipedia.org, https://en.wikipedia.org/wiki/Wikipedia:Editorial_oversight_and_control.

¹¹ See *Mastodon.org, About Us*, Mastodon.org, <https://joinmastodon.org/about>.

laws) on the full range of social media and user-generated content platforms that rely on content moderation.

Moreover, the at-issue Texas and Florida laws (and others that would likely proliferate if the Court permits TX HB 20 and FL SB 7072 to stand) will have the unintended consequence of preventing smaller social media platforms from growing. If the Texas and Florida laws are upheld as written, state governments may enact similar restrictions on content moderation for smaller social media platforms. While the largest social media platforms may have the resources and infrastructure to try to comply with potentially fifty different state laws, smaller platforms do not stand a chance—further entrenching the largest incumbents and discouraging new competitors from even launching platforms.

Further, even if this Court’s ultimate opinion could be narrowly tailored to apply only to the largest social media platforms, the high cost to comply with these laws, see *infra* I.C, will act as a barrier to entry for any platforms seeking to grow their user base. As soon as those platforms cross the arbitrary user threshold set by the Texas and Florida laws, the platform would suddenly be burdened with significant compliance costs and/or would be forced to completely overhaul its moderation activity. A startup may experience great success in launching a new platform and gaining users. But the moment the platform crosses these arbitrary user thresholds, they will suddenly need to bring on compliance teams at likely

substantial cost. Few platforms will be able to afford such costs without prohibiting content moderation entirely.

C. Legislative Restrictions on Content Moderation Will Create Significant Barriers to Internet Innovation.

Texas HB 20 and Florida SB 7072 or similar legislative restrictions will hamper innovation¹² and prevent platforms from distinguishing themselves. Platforms currently leverage their moderation policies as unique traits to compete in the marketplace for users interested in communicating with each other. If users want less or different content moderation, users or content creators can change platforms or create new platforms to meet that demand. In recent years, the increasing number of users looking for less moderation with a perceived bias against conservative viewpoints prompted the development of platforms like Parler and Truth Social that are expressly aimed at fostering conservative viewpoints.¹³ The opposite has also occurred.

¹² ISOC is not suggesting that social media platforms and the Internet generally are immune from any regulation by the federal or state governments. Speech that is illegal offline should be illegal online, and there are a range of laws that apply to all companies—such as certain antitrust and anti-discrimination laws—which would of course apply to analogous online service providers. However, the laws enacted by Texas and Florida go far beyond the bounds of acceptable regulation and risk undermining core benefits of the Internet.

¹³ We note that even these platforms, which began as spaces for zero moderation, quickly implemented content moderation policies as they determined they could not be successful without

For example, when X (formerly Twitter) changed its moderation policies, its subscriber base changed; other platforms like Mastodon, Threads, and Bluesky accelerated efforts to cater to users seeking a return to a certain level or type of content moderation. Content moderation facilitates this free market competition between online spaces.

It is axiomatic that competition leads to better innovation, and competition with content moderation and disclosures has (as a technological matter) provided for more usable websites and user interfaces. The social media user experience has improved exponentially from the initial days of Craigslist posts to the current plethora of different platforms with unique user experiences. A prohibition on moderation would unwind that innovation and inhibit future innovation to the detriment of all Internet users.

II. These Cases Will Reverberate Globally.

The impact of a decision from this Court upholding the Texas and Florida laws—and the resulting First Amendment precedent—likely would have a global impact. Millions of users around the globe use platforms created and owned by U.S.-based companies. Furthermore, suppose this Court permits the Texas and Florida laws to stand as written in the face of the First

some level of content moderation. See Matthew Feeney and Will Duffield, *Trump's Truth Social Rejects Free Speech, For Good Reason*, CATO Institute (Feb. 23, 2022), <https://www.cato.org/blog/trumps-truth-social-rejects-free-speech-good-reason>.

Amendment issues discussed by other briefs and the practical implications outlined above. In that case, other countries likely will view that decision as a green light for more extensive regulation. More authoritarian governments are likely to view government regulation of content moderation in the United States as license to demand even more stringent moderation of their citizens' access to the Internet and ability to engage in online discourse. Allowing the Texas and Florida laws to stand would weaken the United States' moral authority to speak out against more extreme regulation of speech on social media platforms in other countries. If state governments in the United States are permitted to effectively re-write platforms' moderation policies, these countries are likely to press even further.

For non-U.S.-based companies, the Texas and Florida (and potentially 48 other state laws) could prompt an exodus from the U.S. market. Companies in other parts of the world might decide that the cost of complying with what could become 50 different state regulations is too expensive and choose not to offer their platforms to users in the United States—cutting off U.S. users from both new platforms and global content.¹⁴ And significant compliance costs will make it

¹⁴ For example, Spotify—a major non-U.S.-based platform—hosts a broad range of user-generated “podcasts,” and like every other significant platform on the Internet, it imposes content moderation rules on the podcasts it hosts. In the face of burdensome U.S. state-imposed constraints of moderation (such as seen in the Texas and Florida laws), Spotify could be forced to discontinue (or limit) providing podcasts into the U.S. market.

more difficult for small, innovative startups to create global services. Curtailing innovation in this way would negatively impact Internet users worldwide.

Given the decentralized nature of the Internet, Internet regulation by certain countries or governments can (and often does) produce negative externalities elsewhere. Some governments have forced websites to engage in certain conduct worldwide, which “could lead to a global race to the bottom” as platforms seek to comply with the most restrictive regulatory rules.¹⁵ And regulations and court rulings, even if not targeted at global operations, may affect the user experience elsewhere because the Internet “doesn’t have borders that clearly delineate where one country’s legal jurisdiction stops and the next country’s begins” and because platforms (especially smaller ones) will be hard pressed to tailor user experiences to every local jurisdiction’s rules (even if that were technologically possible).¹⁶

The Internet is at its best when individuals worldwide can connect with each other and safely and

See *Spotify for Podcasters community guidelines*, Spotify.com, <https://support.spotify.com/us/podcasters/article/spotify-for-podcasters-community-guidelines/>.

¹⁵ Alex Hern, *Google takes right to be forgotten battle to France’s highest court*, The Guardian (May 19, 2016), <https://www.theguardian.com/technology/2016/may/19/google-right-to-be-forgotten-fight-france-highest-court>.

¹⁶ Christopher Groskopf & Joon Ian Wong, *Murky international laws threaten to break up the internet as we know it*, Quartz (Oct. 5, 2016), <https://qz.com/735314/the-murky-world-of-international-law-is-threatening-to-break-up-the-internet>.

usefully share information and ideas. Content moderation is key to furthering those goals.



CONCLUSION

For these reasons, the Internet Society respectfully requests that this Court affirm the Eleventh Circuit and reverse the Fifth Circuit.

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