

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF FLORIDA  
TALLAHASSEE DIVISION**

NETCHOICE, LLC d/b/a NETCHOICE,  
a 501(c)(6) District of Columbia  
organization; and COMPUTER &  
COMMUNICATIONS INDUSTRY  
ASSOCIATION d/b/a CCIA, a 501(c)(6)  
non-stock Virginia corporation,

Plaintiffs,

v.

ASHLEY BROOKE MOODY, in her  
official capacity as Attorney General of  
the State of Florida; 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 official  
capacity as Commissioner of the Florida  
Elections Commission; KYMBERLEE  
CURRY SMITH, in her official capacity  
as Commissioner of the Florida  
Elections Commission; and PATRICK  
GILLESPIE, in his official capacity as  
Deputy Secretary of Business Operations  
of the Florida Department of  
Management Services,

Defendants.

Civil Action No.:

## **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs NetChoice, LLC (“NetChoice”) and Computer & Communications Industry Association (“CCIA”)—trade associations of online businesses that share the goal of promoting and protecting free speech and free enterprise on the Internet—jointly bring this Complaint for declaratory and injunctive relief against the Defendants in their official capacities, to enjoin the enforcement of Florida’s S.B. 7072, 2021 Leg. (Fla. 2021) (hereinafter, the “Act”),<sup>1</sup> which infringes on the rights to freedom of speech, equal protection, and due process protected by the First and Fourteenth Amendments to the U.S. Constitution. The Act also exceeds the State of Florida’s authority under the Constitution’s Commerce Clause and is preempted by Section 230 of the Communications Decency Act. Because the Act violates the constitutional rights of Plaintiffs’ members and contravenes federal law, it should be promptly enjoined before it takes effect on July 1, 2021.

### **Overview**

1. The Act, a first-of-its-kind statute, was enacted on May 2, 2021 and signed into law on May 24, 2021 to restrict the First Amendment rights of a targeted selection of online businesses by having the State of Florida dictate how those businesses must exercise their editorial judgment over the content hosted on their

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<sup>1</sup> The Act is codified in scattered sections of the Florida Statutes, including §§ 106.072, 287.137, 501.2041, 501.212. Below, the Act’s specific provisions are identified by Section (*e.g.*, “Act § 2”), as well as the provision of the Florida Statutes where they will be codified (*e.g.*, “§ 106.072”).

privately owned websites. The Act discriminates against and infringes the First Amendment rights of these targeted companies, which include Plaintiffs' members, by compelling them to host—and punishing them for taking virtually any action to remove or make less prominent—even highly objectionable or illegal content, no matter how much that content may conflict with their terms or policies.

2. These unprecedented restrictions are a blatant attack on a wide range of content-moderation choices that these private companies have to make on a daily basis to protect their services, users, advertisers, and the public at large from a variety of harmful, offensive, or unlawful material: pornography, terrorist incitement, false propaganda created and spread by hostile foreign governments, calls for genocide or race-based violence, disinformation regarding Covid-19 vaccines, fraudulent schemes, egregious violations of personal privacy, counterfeit goods and other violations of intellectual property rights, bullying and harassment, conspiracy theories denying the Holocaust or 9/11, and dangerous computer viruses. Meanwhile, the Act prohibits only these disfavored companies from deciding how to arrange or prioritize content—core editorial functions protected by the First Amendment—based on its relevance and interest to their users. And the Act goes so far as to bar those companies from adding their own commentary to certain content that they host on their privately owned services—even labeling such

commentary as “censorship” and subjecting the services to liability simply for “post[ing] an addendum to any content or material posted by a user.”

3. Under the Act, these highly burdensome restrictions apply only to a select group of online businesses, leaving countless other entities that offer similar services wholly untouched by Florida law—including any otherwise-covered online service that happens to be owned by The Walt Disney Company (“Disney”) or other large entities that operate a “theme park.” This undisguised singling out of disfavored companies reflects the Act’s true purpose, which its sponsors freely admitted: to target and punish popular online services for their perceived views and for certain content-moderation decisions that state officials opposed—in other words, to retaliate against these companies for exercising their First Amendment rights of “editorial discretion over speech and speakers on their property.” *Manhattan Community Access Corp. v. Halleck*, 139 S. Ct. 1921, 1931 (2019).

4. Rather than preventing what it calls “censorship,” the Act does the exact opposite: it empowers government officials in Florida to police the protected editorial judgment of online businesses that the State disfavors and whose perceived political viewpoints it wishes to punish. This is evident from Governor Ron DeSantis’ own press release that touts the Act as a means to “tak[e] back the virtual public square” from “the leftist media and big corporations,” who supposedly

“discriminate in favor of the dominant Silicon Valley ideology.”<sup>2</sup> The Governor’s press release also leaves no doubt about the Legislature’s unconstitutional viewpoint discrimination: quoting a state legislator, it proclaims that “our freedom of speech as conservatives is under attack by the ‘big tech’ oligarchs in Silicon Valley. But in Florida, [this] ... will not be tolerated.”<sup>3</sup>

5. Although the Act uses scare terms such as “censoring,” “shadow banning,” and “deplatforming” to describe the content choices of the targeted companies, it is in fact the Act that censors and infringes on the companies’ rights to free speech and expression; the Act that compels them to host speech and speakers they disagree with; and the Act that engages in unconstitutional speaker-based, content-based, and viewpoint-based preferences. The legislative record leaves no doubt that the State of Florida lacks any legitimate interest—much less a compelling one—in its profound infringement of the targeted companies’ fundamental constitutional rights. To the contrary, the Act was animated by a patently unconstitutional and political motive to target and retaliate against certain companies based on the State’s disapproval of how the companies decide what content to display and make available through their services.

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<sup>2</sup> Press Release, *Governor Ron DeSantis Signs Bill to Stop the Censorship of Floridians by Big Tech* (May 24, 2021) (“May 24, 2021 Gov. DeSantis Press Release”), [www.flgov.com/2021/05/24/governor-ron-desantis-signs-bill-to-stop-the-censorship-of-floridians-by-big-tech](http://www.flgov.com/2021/05/24/governor-ron-desantis-signs-bill-to-stop-the-censorship-of-floridians-by-big-tech) (last accessed May 26, 2021).

<sup>3</sup> *Id.*



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