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 DEVELOPERS ALLIANCE AND **SOFTWARE & INFORMATION INDUSTRY** ASSOCIATION AS AMICI CURIAE IN SUPPORT OF NETCHOICE, LLC AND CCIA

SONAL N. MEHTA WILMER CUTLER PICKERING HALE AND DORR LLP 2600 El Camino Real, Ste. 400 WILMER CUTLER PICKERING Palo Alto, CA 94306

HANNAH E. GELBORT WILL C. DARIO WILMER CUTLER PICKERING HALE AND DORR LLP 60 State Street

Boston, MA 02109

ARI HOLTZBLATT Counsel of Record ALLISON M. SCHULTZ HALE AND DORR LLP 2100 Pennsylvania Ave., NW Washington, DC 20037 (202) 663-6000 ari.holtzblatt@wilmerhale.com



TABLE OF CONTENTS

		Page	9
TAB	LE	OF AUTHORITIESii	i
INTI	ERI	EST OF AMICI CURIAE1	l
		OUCTION AND SUMMARY OF SUMENT2	2
ARG	UM	ENT6	3
A A	ALGO AMP CUR	TWARE DEVELOPERS DESIGN ORITHMS AS TOOLS TO EXECUTE AND LIFY A WEBSITE'S EXPRESSION BY ATING AND MODERATING CONTENT ATED BY OTHERS	3
A		Algorithms Operationalize A Website's Content Policies And Priorities6	3
F	1	Websites Create Many Different Algorithms To Implement Myriad Content-Related Policies11	1
]	I. Websites deploy moderation algorithms to detect and remove content that violates their expressive standards	1
	2	2. Websites deploy prioritization and ranking algorithms to match content to interested users19)
	ę	3. Algorithms complement and facilitate websites' human moderation and curation efforts25	3
	۷	1. Developers refine websites' content prioritization, ranking, and moderation strategies and	



TABLE OF CONTENTS—Continued

	Page
algorithms to maintain the desired messaging	25
II. THE FACT THAT WEBSITES IMPLEMENT THEIR EDITORIAL AND CURATORIAL DECISION MAKING THROUGH ALGORITHMS DOES NOT STRIP THEM OF FIRST AMENDMENT PROTECTION	28
A. The First Amendment Protects Editorial And Curatorial Decision Making	
B. The Same Protections Apply To Coded Algorithms Designed To Curate And Organize Content Created By Others	30
CONCLUSION	35



TABLE OF AUTHORITIES **CASES**

Page(s)
Bartnicki v. Vopper, 532 U.S. 514 (2001)28
Hurley v. Irish-American Gay, Lesbian, & Bisexual Group of Boston, 515 U.S. 557 (1995)2, 5, 6, 23, 29, 30, 32, 34
Los Angeles v. Preferred Communications, Inc., 476 U.S. 488 (1986)29
Manhattan Community Access Corp. v. Halleck, 139 S. Ct. 1921 (2019)29
Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974)
Pacific Gas & Electric Co. v. Public Utilities Commission of California, 475 U.S. 1 (1986)29
Rumsfeld v. Forum for Academic & Institutional Rights, Inc., 547 U.S. 47 (2006)32, 34
Seattle Times Co. v. Rhinehart, 467 U.S. 20 (1984)31
Sorrell v. IMS Health Inc., 564 U.S. 552 (2011)28, 31
Turner Broadcasting System, Inc. v. FCC, 512 U.S. 622 (1994)29
Twitter, Inc. v. Taamneh, 598 U.S. 471 (2023) 32, 33
STATUTORY PROVISIONS
Fla. Stat. §501.2041
Tay Rus & Com Coda \$120.051 25



TABLE OF AUTHORITIES—Continued

Pag Tex. Civ. Prac. & Rem. Code §143A.002	_
OTHER AUTHORITIES	
About, Etsy, https://www.etsy.com/about (visited Dec. 6, 2023)20, 2	21
Adult Nudity and Sexual Activity: Policy Details, Meta Transparency Center, https://transparency.fb.com/en-gb/policies/community-standards/adult-nudity-sexual-activity/ (visited Dec. 6, 2023)14, 1	15
Anti-Defamation League, Sliding Through: Spreading Antisemitism on TikTok by Exploiting Moderation Gaps (Nov. 20, 2023), https://www.adl.org/resources/ blog/sliding-through-spreading-antisemitism-tiktok-exploiting-moderation-gaps	27
BBC, Inputs and Outputs, https://www.bbc .co.uk/bitesize/topics/zs7s4wx/arti- cles/z7wckty#z9cybqt (visited Dec. 6, 2023)	.8
Bernal, Natasha, Facebook's Content Modera- tors Are Fighting Back, Wired (Nov. 6, 2021), https://www.wired.co.uk/article/face- book-content-moderators-ireland	24
Blazina, Carrie & Galen Stocking, Key Facts About Parler, Pew Research Center (Oct. 20, 2022), https://www.pewre- search.org/short-reads/2022/10/20/fast- facts-about-parler-as-kanye-west-report- edly-plans-acquisition-of-site/	7



DOCKET A L A R M

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

