[PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 21-12355

NETCHOICE, LLC,
d.b.a. NetChoice,
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION,
d.b.a. CCIA,

Plaintiffs-Appellees,

versus

ATTORNEY GENERAL, STATE OF FLORIDA,
in their 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 official capacity as Commissioner of
the Florida Elections Commission,
KYMBERLEE CURRY SMITH,
in her official capacity as Commissioner of
Florida Elections Commission,
DEPUTY SECRETARY OF BUSINESS OPERATIONS
OF THE FLORIDA DEPARTMENT OF MANAGEMENT SERVICES,
in their official capacity,

Defendants-Appellants.

Appeal from the United States District Court
for the Northern District of Florida
D.C. Docket No. 4:21-cv-00220-RH-MAF

Before NEWSOM, TJOFLAT, and ED CARNES, Circuit Judges.

NEWSOM, Circuit Judge:

Not in their wildest dreams could anyone in the Founding generation have imagined Facebook, Twitter, YouTube, or Tik-Tok. But "whatever the challenges of applying the Constitution to

ever-advancing technology, the basic principles of freedom of speech and the press, like the First Amendment's command, do not vary when a new and different medium for communication appears." *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 790 (2011) (quotation marks omitted). One of those "basic principles"—indeed, the most basic of the basic—is that "[t]he Free Speech Clause of the First Amendment constrains governmental actors and protects private actors." *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1926 (2019). Put simply, with minor exceptions, the government can't tell a private person or entity what to say or how to say it.

The question at the core of this appeal is whether the Facebooks and Twitters of the world—indisputably "private actors" with First Amendment rights—are engaged in constitutionally protected expressive activity when they moderate and curate the content that they disseminate on their platforms. The State of Florida insists that they aren't, and it has enacted a first-of-its-kind law to combat what some of its proponents perceive to be a concerted effort by "the 'big tech' oligarchs in Silicon Valley" to "silenc[e]" "conservative" speech in favor of a "radical leftist" agenda. To that end, the new law would, among other things, prohibit certain social-media companies from "deplatforming" political candidates under any circumstances, prioritizing or deprioritizing any post or message "by or about" a candidate, and, more broadly, removing anything posted by a "journalistic enterprise" based on its content.

We hold that it is substantially likely that social-media companies—even the biggest ones—are "private actors" whose rights the First Amendment protects, *Manhattan Cmty.*, 139 S. Ct. at 1926, that their so-called "content-moderation" decisions constitute protected exercises of editorial judgment, and that the provisions of the new Florida law that restrict large platforms' ability to engage in content moderation unconstitutionally burden that prerogative. We further conclude that it is substantially likely that one of the law's particularly onerous disclosure provisions—which would require covered platforms to provide a "thorough rationale" for each and every content-moderation decision they make—violates the First Amendment. Accordingly, we hold that the companies are entitled to a preliminary injunction prohibiting enforcement of those provisions. Because we think it unlikely that the law's remaining (and far less burdensome) disclosure provisions violate the First Amendment, we hold that the companies are not entitled to preliminary injunctive relief with respect to them.

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We begin with a primer: This is a case about social-media platforms. (If you're one of the millions of Americans who regularly use social media or can't remember a time before social media existed, feel free to skip ahead.)

At their core, social-media platforms collect speech created by third parties—typically in the form of written text, photos, and

videos, which we'll collectively call "posts"—and then make that speech available to others, who might be either individuals who have chosen to "follow" the "post"-er or members of the general public. Social-media platforms include both massive websites with billions of users—like Facebook, Twitter, YouTube, and TikTok—and niche sites that cater to smaller audiences based on specific interests or affiliations—like Roblox (a child-oriented gaming network), ProAmericaOnly (a network for conservatives), and Vegan Forum (self-explanatory).

Three important points about social-media platforms: First—and this would be too obvious to mention if it weren't so often lost or obscured in political rhetoric—platforms are private enterprises, not governmental (or even quasi-governmental) entities. No one has an obligation to contribute to or consume the content that the platforms make available. And correlatively, while the Constitution protects citizens from governmental efforts to restrict their access to social media, *see Packingham v. North Carolina*, 137 S. Ct. 1730, 1737 (2017), no one has a vested right to force a platform to allow her to contribute to or consume social-media content.

Second, a social-media platform is different from traditional media outlets in that it doesn't create most of the original content on its site; the vast majority of "tweets" on Twitter and videos on YouTube, for instance, are created by individual users, not the companies that own and operate Twitter and YouTube. Even so, platforms do engage in some speech of their own: A platform, for

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