

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

NETCHOICE, LLC, and the COMPUTER
& COMMUNICATIONS INDUSTRY
ASSOCIATION,

Plaintiffs-Appellees,

v.

ATTORNEY GENERAL, STATE OF
FLORIDA, et al.

Defendants-Appellants.

No. 21-12355

**NETCHOICE AND CCIA'S
MOTION FOR SUPPLEMENTAL BRIEFING**

**CERTIFICATE OF INTERESTED PARTES
AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to 11th Cir. R. 26.1, Appellees certify that NetChoice has no parent corporation and that no publicly held corporation owns ten percent or more of its stock. Appellees certify that the Computer & Communications Industry Association has no parent corporation and that no publicly held corporation owns ten percent or more of its stock.

Pursuant to 11th Cir. R. 26.1, Appellees certify that the following is a complete list of persons and entities known to Appellees to have an interest in the outcome of this appeal:

1. Abdo, Alex, *Attorney for Amicus Curiae*
2. Access Now, *Amicus Curiae*
3. Allen, Jason Todd, *Defendant/Appellant*
4. Allen, Kenneth Winn, *Attorney for Plaintiffs/Appellees*
5. American Center for Law and Justice, *Amicus Curiae*
6. American Civil Liberties Union of Florida, *Amicus Curiae*
7. American Civil Liberties Union, *Amicus Curiae*
8. Americans for Prosperity Foundation, *Amicus Curiae*
9. American Jewish Committee, *Amicus Curiae*
10. American Principles Project, *Amicus Curiae*
11. Amicus Populi, *Amicus Curiae*

12. Andrews, Cory L., *Attorney for Amicus Curiae*
13. Anti-Defamation League, *Amicus Curiae*
14. Ard, Joel B., *Attorney for Amicus Curiae*
15. Ard Law Group PLLC, *Attorneys for Amicus Curiae*
16. Authors Guild Inc., *Amicus Curiae*
17. Babylon Bee and Not the Bee, *Amicus Curiae*
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22. Barthold, Corbin K., *Attorney for Amicus Curiae*
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24. Becket Fund for Religious Liberty, *Amicus Curiae*
25. Bell, Daniel William, *Attorney for Defendants/Appellants*
26. Bergmayer, John, *Attorney for Amicus Curiae*
27. Berry, Thomas A., *Attorney for Amicus Curiae*
28. Blacklock, Evelyn, *Attorney for Plaintiffs/Appellees*
29. BlueSky, a Public Benefit Corporation, *Amicus Curiae*
30. Bopp Jr., James, *Attorney for Amicus Curiae*
31. Brennan, Mark W., *Attorney for Amicus Curiae*

32. Boutrous Jr., Theodore J., *Attorney for Amicus Curiae*
33. Brady Center to Prevent Gun Violence, *Amicus Curiae*
34. Brody, David, *Attorney for Amicus Curiae*
35. Brown, Bruce D., *Attorney for Amicus Curiae*
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40. Carome, Patrick J., *Attorney for Amicus Curiae*
41. Caso, Anthony T., *Attorney for Amicus Curiae*
42. Cato Institute, *Amicus Curiae*
43. Catsambas, Marietta, *Attorney for Amicus Curiae*
44. Center for American Liberty, *Amicus Curiae*
45. Center for Constitutional Jurisprudence, *Amicus Curiae*
46. Center for Democracy and Technology, *Amicus Curiae*
47. Center for Growth and Opportunity, *Amicus Curiae*
48. Center for Renewing America, *Amicus Curiae*
49. Center for Social Media and Politics at New York University, *Amicus Curiae*
50. Chamber of Progress, *Amicus Curiae*
51. Charis Lex P.C., *Attorneys for Amicus Curiae*

52. Chea, Michael A., *Attorney for Amicus Curiae*
53. Children's Health Defense, *Amicus Curiae*
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68. Consumer Technology Association, *Amicus Curiae*
69. Cooley LLP, *Attorneys for Amicus Curiae*
70. Cooper, Charles J., *Attorney for Defendant/Appellant*
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72. Cox, Christopher, *Amicus Curiae*
73. Crawford, Cynthia Fleming, *Attorney for Amicus Curiae*
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76. Developers Alliance and Software & Information Industry Association,
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77. Digital Progress Institute, *Amicus Curiae*
78. Discord Inc., *Amicus Curiae*
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86. Electronic Privacy Information Center, *Amicus Curiae*
87. Engine Advocacy, *Amicus Curiae*
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96. Florida Elections Commission, *Defendant/Appellant*
97. Florida Office of the Attorney General, *Attorneys for Defendants/Appellants*
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102. Gellis, Catherine R., *Attorney for Amicus Curiae*
103. Glassdoor, LLC, *Amicus Curiae*
104. Giffords Law Center to Prevent Gun Violence, *Amicus Curiae*
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125. Hinkle, Judge Robert L., *District Court Judge*
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136. Huebert, Jacob, *Attorney for Amicus Curiae*
137. Huston, Michael R., *Attorney for Amicus Curiae*
138. Indeed, Inc., *Amicus Curiae*
139. Information Technology & Innovation Foundation, *Amicus Curiae*
140. Information Technology Industry Council, *Amicus Curiae*
141. IP Justice, *Amicus Curiae*
142. Institute for Constitutional Advocacy & Protection, *Attorneys for Amicus Curiae*
143. Institute for Free Speech, *Amicus Curiae*
144. Interactive Advertising Bureau, *Amicus Curiae*
145. International Center for Law & Economics, *Amicus Curiae*
146. Internet Association, *Amicus Curiae*
147. Internet Society, *Amicus Curiae*
148. Internet Works, *Amicus Curiae*
149. iTexasPolitics, LLC, *Amicus Curiae*

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170. Lawrence, James R., *Attorney for Amicus Curiae*
171. Lawyers' Committee for Civil Rights Under Law, *Amicus Curiae*
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173. LGBT Tech, *Amicus Curiae*
174. Liberty Justice Center, *Amicus Curiae*
175. Linsley, Kristin A., *Attorney for Amicus Curiae*
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187. McDonald Hopkins LLC, *Attorneys for Amicus Curiae*
188. Media Law Resource Center Inc, *Amicus Curiae*
189. Miller, Randall W., *Attorney for Amicus Curiae*

190. Moms for Liberty, *Amicus Curiae*
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192. Mozilla Corporation, *Amicus Curiae*
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199. National Black Justice Coalition, *Amicus Curiae*
200. National Taxpayers Union Foundation, *Amicus Curiae*
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202. NetChoice LLC, *Plaintiff*
203. Nextdoor, Inc., *Amicus Curiae*
204. Nichols, Andrew C., *Attorney for Amicus Curiae*
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206. Nyhan, Brendan, *Amicus Curiae*
207. Oberlander, Lynn B., *Attorney for Amicus Curiae*
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209. Open Markets Institute, *Amicus Curiae*

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218. Pincus, Andrew J., *Attorney for Amicus Curiae*

219. Pinterest, Inc., *Amicus Curiae*

220. Prelogar, Elizabeth B., *Attorney for Amicus Curiae*

221. Poitier, Joni Alexis, *Defendant/Appellant*

222. Potts, Neil, *Declarant*

223. Progressive Policy Institute, *Amicus Curiae*

224. Protect Democracy Project, Inc., *Amicus Curiae*

225. Protect the First Foundation, *Amicus Curiae*

226. Public Knowledge, *Amicus Curiae*

227. Rasmusen, Eric., *Amicus Curiae*

228. Rassbach, Eric C., *Attorney for Amicus Curiae*

229. Reason Foundation, *Amicus Curiae*

230. Reddit, Inc. (RDDT), *Amicus Curiae*
231. Reporters Committee for Freedom of the Press, *Amicus Curiae*
232. Rienzi, Mark L., *Attorney for Amicus Curiae*
233. Riley, M. Chris, *Amicus Curiae*
234. Rottman, Gabe, *Attorney for Amicus Curiae*
235. Rubinfeld, Jed, *Attorney for Amicus Curiae*
236. Rumenap, Stacie D., *Declarant*
237. Rutherford Institute, *Amicus Curiae*
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250. Smith, Kymberlee Curry, *Defendant/Appellant*
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255. Strawbridge, Patrick, *Attorney for Amicus Curiae*
256. Stop Child Predators, *Amicus Curiae*
257. Szabo, Carl, *Declarant*
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259. TechFreedom, *Amicus Curiae*
260. Technet, *Amicus Curiae*
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262. Thayer, Joel, *Attorney for Amicus Curiae*
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264. Tienken, John W., *Attorney for Defendant/Appellant*
265. Townsend, Katie, *Attorney for Amicus Curiae*
266. Treadwell, Raymond Frederick, *Attorney for Defendant/Appellant*
267. Tripadvisor, LLC (TRIP), *Amicus Curiae*
268. Trump, Donald J., *Amicus Curiae*

269. Trust & Safety Foundation, *Amicus Curiae*
270. Tumbler, Inc., *Amicus Curiae*
271. Tushnet, Rebecca, *Attorney for Amicus Curiae*
272. Underwood, Barbara D., *Attorney for Amicus Curiae*
273. United States Chamber of Commerce, *Amicus Curiae*
274. Uthmeier, James William, *Attorney for Defendant/Appellant*
275. Veitch, Alexandra, *Declarant*
276. Vimeo, Inc. (VMEO), *Amicus Curiae*
277. Walters Law Group, *Attorneys for Amicus Curiae*
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279. Washington Center for Technology Policy Inclusion, *Amicus Curiae*
280. Washington Legal Foundation, *Amicus Curiae*
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285. Wikimedia Foundation, *Amicus Curiae*
286. Wilentz, Amy, *Amicus Curiae*
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294. Worger, Thomas, *Attorney for Amicus Curiae*
295. World Faith Foundation, *Amicus Curiae*
296. Wyden, Ron, *Amicus Curiae*
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298. Yang, Meng Jia, *Attorney for Plaintiff/Appellee*
299. Yelp Inc. (YELP), *Amicus Curiae*
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301. Yoo, Christopher S., *Amicus Curiae*
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s/Paul D. Clement

Paul D. Clement

MOTION FOR SUPPLEMENTAL BRIEFING

Pursuant to Federal Rule of Appellate Procedure 27 and 11th Circuit R. 27-1, NetChoice and CCIA respectfully ask the Court to order supplemental briefing in light of the Supreme Court's decision in *Moody v. NetChoice, LLC*, 144 S.Ct. 2383 (2024), remanding the case back to this Court. Florida opposes this motion and plans to file a response.

1. This case involves a constitutional challenge to Florida Senate Bill 7072, a law that overrides the choices of online services like Facebook and YouTube about what third-party content to disseminate and how. NetChoice and CCIA sued Florida in 2021 challenging the law on several grounds. The district court entered a preliminary injunction barring Florida from enforcing S.B. 7072's principal provisions, holding that (among other things) S.B. 7072 likely violates the First Amendment. *See NetChoice, LLC v. Moody*, 546 F.Supp.3d 1082 (N.D. Fla. 2021). This Court affirmed in substantial part, agreeing with the district court's conclusion that S.B. 7072's candidate, journalistic-enterprise, consistency, 30-day restriction, user opt-out, and detailed-explanation provisions likely violate the First Amendment. *See NetChoice, LLC v. Attorney General, Fla.*, 34 F.4th 1196 (11th Cir. 2022). This Court then stayed the mandate pending Supreme Court review, with the result that the District Court's preliminary injunction remains in effect. Dkt.136.

2. The Supreme Court vacated the Court’s judgment in *Moody*, 144 S.Ct. at 2409, on the ground that this Court “did not properly consider the facial nature of NetChoice’s challenge.” *Id.* at 2394. The Supreme Court explained that both this Court and the Fifth Circuit¹ “mainly addressed what the parties had focused on” in their briefing and arguments below, i.e., the laws’ application to the “curated feeds offered by the largest and most paradigmatic social-media platforms”—such as Facebook and YouTube. *Id.* The Supreme Court stated that “the laws might apply to, and differently affect, other kinds of websites and apps.” *Id.* And in “a facial challenge, that could well matter,” because “the question in such a case is whether the law’s unconstitutional applications are substantial compared to its constitutional ones.” *Id.* The Court noted that “[m]aybe the parties treated the content-moderation choices reflected in Facebook’s News Feed and YouTube’s homepage as the laws’ heartland applications because they *are* the principal things regulated, and should have just that weight in the facial analysis. Or maybe not: Maybe the parties’ focus had all to do with litigation strategy, and there is a sphere of other applications—and constitutional ones—that would prevent the laws’ facial invalidation.” *Id.* at 2398. But because those questions were not the focus of the proceedings below, the

¹ See *NetChoice, LLC v. Paxton*, 49 F.4th 439 (5th Cir. 2022).

Supreme Court vacated this Court's decision and remanded the case to this Court to consider those issues in the first instance.

3. The Supreme Court then went on to discuss how the First Amendment should apply to the services "that were the focus of the proceedings below." *Id.* at 2403. In so doing, the Court largely agreed with this Court's analysis of the First Amendment issues, while disagreeing with the Fifth Circuit's. *Id.* The Court explained that, when applied "to prevent Facebook (or YouTube) from using its content-moderation standards to remove, alter, organize, prioritize, or disclaim posts in its News Feed (or homepage)," laws like S.B. 7072 "prevent[] exactly the kind of editorial judgments this Court has previously held to receive First Amendment protection." *Id.* at 2394. That infringement of First Amendment rights cannot be justified on the ground that it is necessary "to balance the mix of speech on Facebook's News Feed and similar platforms." *Id.* After all, the "government may not, in supposed pursuit of better expressive balance, alter a private speaker's own editorial choices about the mix of speech it wants to convey." *Id.*

4. In light of the Supreme Court's decision to remand to this Court, NetChoice and CCIA respectfully ask the Court to order supplemental briefing so that the parties can address the import of the Supreme Court's decision, whether this Court can resolve the facial challenge on this record or whether a remand to the district court is necessary, and if so, whether the preliminary injunction should remain in

effect pending any necessary further proceedings, and any other relevant issues. Indeed, the Supreme Court’s decision expressly contemplates additional proceedings in this Court to determine in the first instance whether S.B.7072 prohibits a substantial amount of protected speech relative to its plainly legitimate sweep. *See id.* at 3409 (“So on remand, each court must evaluate the full scope of the law’s coverage ...”).

5. NetChoice and CCIA propose that the parties submit simultaneous supplemental briefs of no more than 9,000 words within 30 days after the Court decides this motion, followed by simultaneous response briefs of no more than 4,500 words within 30 days after the initial supplemental briefs.

6. Florida opposes this motion and plans to file a response.

Respectfully submitted,

s/Paul D. Clement
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August 2, 2024

CERTIFICATE OF COMPLIANCE

I hereby certify that:

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 821 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f) and Circuit Rule 32-4.

2. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point font.

August 2, 2024

s/Paul D. Clement
Paul D. Clement

CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/Paul D. Clement

Paul D. Clement