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On May 24th, 2021, the Governor of Florida, Ron DeSantis signed Senate Bill 7072– "[A] sweeping set of restrictions on how the companies that run . . . [social media] websites shall moderate what is said on them."[1] The bill "impos[es] severe restrictions on the editorial freedom of large social media platforms,"[2] such as Facebook and Twitter. It would require such platforms to display any and all posts by registered political candidates[3] and media organizations,[4] even if the posts violate the platforms' "rules of conduct."[5] Governor DeSantis said the purpose of the bill is to ensure that "real Floridians . . . are guaranteed protection against the Silicon Valley elites."[6] Proponents of the bill view it as an attempt to "tak[e] back the virtual public square as a place where information and ideas can flow freely." The bill has many supporters, including Lieutenant Governor Nunez, State Senate President Wilton Simpson, Speaker Chris Sprowls, State Senator Ray Rodrigues, and State Representative Blaise Ingoglia. All of them had words of support for the piece of legislation.[7]

It wasn't long before the legislation was challenged in federal court in a First Amendment suit against the state,[8] which resulted in Judge Robert Hinkle of the U.S. District Court for the Northern District ordering a preliminary injunction.[9] The State of Florida appealed to the U.S. Court of Appeals of the 11th Circuit and now awaits a decision to see whether it will be allowed to enforce the law.[10]

The bill and lawsuit come at a time when freedom of speech on social media, is debated.[11] As was made clear during President Trump's presidency,[12] social media is playing an ever-growing role in our politics and the discourse around freedom of speech protections.[13]

On January 8th, 2021, President Trump's Twitter account was permanently suspended.[14] Twitter made the decision to suspend his Twitter account after assessing two of his tweets under their "Glorification of Violence" policy and cited a number of factors as reasons for their determination that his tweets would incite violence.[15] Twitter's permanent suspension of then-President Trump is just one example of the considerable latitude social media websites have in deciding what content they do and do not allow to be posted on their websites.[16]

Count 1 of the complaint alleges Florida's Social Media Bill (SB 7072) violates the First Amendment's free-speech clause by interfering with the providers' editorial judgment, compelling speech, and prohibiting speech.[17] As discussed above, social media providers have considerable control over their platforms.[18] However, according to Justice Hinckley, there are areas of the law where the First Amendment rights of social-media providers are "not so clearly settled." The plaintiff NetChoice, argues that "[Social media platforms] should be treated like any other speaker. The State of Florida on the other hand claims that there should be some restrictions on these platforms, arguing "social media providers are more like common carriers, transporting information from one person to another much as a train transports people or products from one city to another." Justice Hinckley considered five cases to conclude that social media platforms "fall 'in the middle'" of the common carrier analysis. [19]

Some believe that Judge Hinckley reached the right conclusion, that SB 7072 violates the First Amendment but found his analysis of the common carrier issue to be a flaw, [20] viewing the case as a missed opportunity to invalidate the bill on different First Amendment grounds.[21] They believe the cases cited in the opinion establish " a law compelling social media companies to host certain speech is 'subject to First Amendment scrutiny,'" and also "that such a law presumptively violates the First Amendment by forcing those companies to 'alter the expressive content' . . . of their websites".[22] Under this interpretation, the question is resolved with an immediate presumption of First Amendment violation in addition to strict scrutiny.

Some legal experts believe the 11th Circuit will uphold the ruling because of the clear violations.[23] It is also true that the 11th Circuit can go even further and give definitive guidance

onto whether the "common carrier" theory of social media has legal grounding or whether it was wrong for the Justice to give credence to such a theory. If the 11th Circuit similarly decides that there are situations where social media platforms are in the middle, then a whole area of the law could develop where future statutes are narrowly drafted and fall into the exception laid out in Rumsfeld and Robins.[24] If the 11th Circuit decides to adopt the District Court's reasoning, then it stands that social media platforms will be treated like any other person in terms of receiving first amendment rights and it would be hard for states like Florida to pass legislation similar to SB 7072 even on narrower grounds.[25]

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7. Id.
8. Barry & Bembridge, supra note 2.
9. NetChoice, LLC v. Moody, F.Supp 3.d 2021 WL 2690876 at *1 (June 30, 2021).
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11. Brett M. Pinkett, The Limits of Free Speech in Social Media, Accessible L. (April 26, 2021), https://accessiblelaw.untdallas.edu/limits-free-speech-social-media .
12. Pinar Yildirim, How Social Media Is Shaping Political Campaigns, UPenn, https://knowledge.wharton.upenn.edu/article/how-social-media-is-shaping-political-

campaigns/ (August 17, 2020) (“Donald Trump takes to Twitter almost daily to express himself without the filter of traditional media.”).

13. Guy Schleffer & Benjamin Miller, The Political Effects of Social Media Platforms on Different Regime Types, TNSR http://tnsr.org/2021/07/the-political-effects-of-social-media-platforms-on-different-regime-types/ (2021) (“American social media platforms can affect the political systems of different states in varying ways); Statista Research Department, Social Media and Politics in The United States, Statista (Feb. 28, 2022), http://www.statista.com/topics/3723/social-media-and-politics-in-the-united-states/ (“[M]any Americans are now getting live news updates on their social media feeds, these platforms are . . . increasingly powerful political tools.”); Yildirim, supra at note 11 (“[S]ocial media has changed the game, allowing incumbents and newcomers alike to speak directly to constituents on everything from policy to what they had for dinner.”).
14. Twitter, Permanent Suspension of @realDonaldTrump, Twitter (Jan. 2021) https://blog.twitter.com/en_us/topics/company/2020/suspension.
15. Id.; Glorification of Violence Policy, Twitter (March 2019), https://help.twitter.com/en/rules-and-policies/glorification-of-violence.
16. NetChoice, LLC v. Moody, 2021 WL 2690876 *1, *3(N.D. Fla. June 30, 2021).
17. Id.
18. Id. at *7 ([A] primary function of social-media providers is to receive content from users and in turn to make the content available to other users, the providers routinely manage the content, allowing most, banning some, arranging content in ways intended to make it more useful or desirable for users, sometimes adding the providers’ own content).
19. Id. (“After comparing, on the one side, Miami Herald, Hurley, and PG&E, and, on the other, Rumsfeld and PruneYard, Judge Hinkle concluded that social media websites fall ‘in the middle” between being “like any other speaker” and “like common carriers.’”).
20. See Barthold, supra note 1 (“[H]is opinion makes a number of astute, laudable, and impeccably correct points”).
21. Id.
22. Id.
23. Aspuru, supra note 10 (“top legal experts predict the law is doomed over challenges that it is flatly unconstitutional.”)
24. Rozenshtein, supra note 4 (“Many critics of Big Tech—not only DeSantis but also politicians in other states, such as Texas, that are considering bills similar to Florida’s—have used terms like “town square” and “public forum” in arguing that the First Amendment constraints, rather than protects, the editorial discretion of large websites.”).
25. Id. (“No one, not even a political candidate, has a First Amendment right to force a private actor that is not a public forum (or some other form of de facto state actor) to provide a platform for speech. On the contrary, tech companies have a First

Amendment right to free speech and free association–and may therefore decide whom they will and will not host.")