

Cooper & Kirk

Lawyers

A Professional Limited Liability Company

Brian W. Barnes
(202) 220-9623
bbarnes@cooperkirk.com

1523 New Hampshire Avenue, N.W.
Washington, D.C. 20036

(202) 220-9600
Fax (202) 220-9601

April 22, 2022

VIA ECF

David J. Smith
Clerk of Court
U.S. Court of Appeals for the Eleventh Circuit
56 Forsyth St., N.W.
Atlanta, Georgia 30303

Re: *NetChoice, LLC v. Attorney General, State of Florida*, No. 21-12355

Dear Mr. Smith:

Pursuant to Rule 28(j), Defendants submit this letter to inform the Court of an amendment to the law at issue in this appeal. Today, the Governor of Florida signed Senate Bill 6-C (copy attached as Ex. A). S.B. 6-C amends the definition of “Social Media Platform” in Florida Statutes Section 501.2041(g) by repealing the exemption for “a company that owns and operates a theme park or entertainment complex.” S.B. 6-C, § 1. This amended definition of “Social Media Platform” is effective immediately. *Id.* at § 4.

In the April 19, 2022 proclamation authorizing the State Legislature to consider this legislation during a Special Session (copy attached as Ex. B), the Governor explained that the theme park exemption was “severable from and unnecessary to effectuate the law regulating social media platforms.” Proclamation to the Honorable Members of the Florida Senate and House of Representatives (Apr. 19, 2022). The Governor also noted that the district court decision that is the subject of this appeal raised doubts about the constitutionality of the theme park exemption and its severability from the rest of the law that Plaintiffs challenge. *Id.* The Governor requested that the State Legislature reconsider the theme park exemption, and the State Legislature promptly did so.

Since Florida has repealed the theme park exemption, Plaintiffs’ arguments related to that provision of the Act are moot. *See Del Castillo v. Sec’y, Fla. Dep’t of Health*, 26 F.4th 1214, 1218 n.1 (11th Cir. 2022) (amendment to statute moots First Amendment challenge “to the extent that it removes challenged features of the prior law”); *Pls-Appellees’ Br.* at 1, 30, 45–46, 49–50. The other statutory provisions at issue in this appeal remain in place.

/s/ Brian W. Barnes

Brian W. Barnes

*Counsel for Defendant-Appellant Patrick
Gillespie, in his official capacity as Deputy
Secretary of Business Operations of the
Florida Department of Management
Services*

EXHIBIT A

20226Cer

1
2 An act relating to social media platforms; amending s.
3 501.2041, F.S.; revising the definition of the term
4 "social media platform"; reenacting ss. 106.072(1)(c)
5 and 287.137(1)(f), F.S., relating to social media
6 deplatforming of political candidates and antitrust
7 violations, denial or revocation of the right to
8 transact business with public entities, and denial of
9 economic benefits, respectively, to incorporate the
10 amendment made to s. 501.2041, F.S., in references
11 thereto; providing an effective date.
12

13 Be It Enacted by the Legislature of the State of Florida:
14

15 Section 1. Paragraph (g) of subsection (1) of section
16 501.2041, Florida Statutes, is amended to read:

17 501.2041 Unlawful acts and practices by social media
18 platforms.—

19 (1) As used in this section, the term:

20 (g) "Social media platform" means any information service,
21 system, Internet search engine, or access software provider
22 that:

23 1. Provides or enables computer access by multiple users to
24 a computer server, including an Internet platform or a social
25 media site;

26 2. Operates as a sole proprietorship, partnership, limited
27 liability company, corporation, association, or other legal
28 entity;

29 3. Does business in the state; and

20226Cer

30 4. Satisfies at least one of the following thresholds:

31 a. Has annual gross revenues in excess of \$100 million, as
32 adjusted in January of each odd-numbered year to reflect any
33 increase in the Consumer Price Index.

34 b. Has at least 100 million monthly individual platform
35 participants globally.

36
37 ~~The term does not include any information service, system,~~
38 ~~Internet search engine, or access software provider operated by~~
39 ~~a company that owns and operates a theme park or entertainment~~
40 ~~complex as defined in s. 509.013.~~

41 Section 2. For the purpose of incorporating the amendment
42 made by this act to section 501.2041, Florida Statutes, in a
43 reference thereto, paragraph (c) of subsection (1) of section
44 106.072, Florida Statutes, is reenacted to read:

45 106.072 Social media deplatforming of political
46 candidates.—

47 (1) As used in this section, the term:

48 (c) "Social media platform" has the same meaning as in s.
49 501.2041.

50 Section 3. For the purpose of incorporating the amendment
51 made by this act to section 501.2041, Florida Statutes, in a
52 reference thereto, paragraph (f) of subsection (1) of section
53 287.137, Florida Statutes, is reenacted to read:

54 287.137 Antitrust violations; denial or revocation of the
55 right to transact business with public entities; denial of
56 economic benefits.—

57 (1) As used in this section, the term:

58 (f) "Person" means a natural person or an entity organized

20226Cer

59 under the laws of any state or of the United States which
60 operates as a social media platform, as defined in s. 501.2041,
61 with the legal power to enter into a binding contract and which
62 bids or applies to bid on contracts let by a public entity, or
63 which otherwise transacts or applies to transact business with a
64 public entity. The term includes those officers, directors,
65 executives, partners, shareholders, employees, members, and
66 agents who are active in the management of an entity.

67 Section 4. This act shall take effect upon becoming a law.

SENATE BILL NO. 6-C

THIS ACT originated in the Senate; has passed the Senate on April 20, 2022; and has been examined and found to be correctly enrolled.



President of the Senate



Secretary of the Senate

PASSED the House of Representatives on April 21, 2022.



Speaker of the House of Representatives



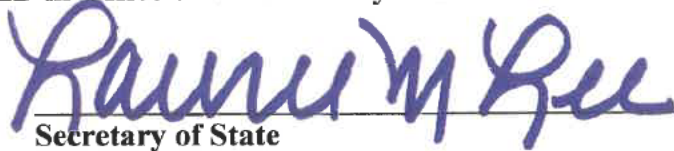
Clerk, House of Representatives

APPROVED this 22nd day of April, 2022



Governor

FILED in Office of the Secretary of State:



Secretary of State

By _____

2022 APR 22 PM 4:06
OFFICE OF THE SECRETARY OF STATE
TALLAHASSEE, FL

FILED

EXHIBIT B

PROCLAMATION

STATE OF FLORIDA
EXECUTIVE OFFICE OF THE GOVERNOR
TALLAHASSEE

TO THE HONORABLE MEMBERS OF THE
FLORIDA SENATE AND HOUSE OF REPRESENTATIVES

WHEREAS, the Florida Constitution of 1885 did not prohibit special laws granting privileges to private corporations; and

WHEREAS, the Florida Constitution was revised by the Florida electorate on November 5, 1968; and

WHEREAS, the Florida Constitution of 1968 generally disfavors special laws as opposed to general laws, but permits the creation of independent special districts that appropriately serve the public interest; and

WHEREAS, Article III, Section 11(a)(12) of the Florida Constitution of 1968 prohibits special laws granting privileges to private corporations; and

WHEREAS, independent special districts exist that were established prior to November 5, 1968, and that have not been re-established, ratified, or otherwise reconstituted by a special act or general law after November 5, 1968; and

WHEREAS, it is necessary to review such independent special districts to ensure that they are appropriately serving the public interest; and

WHEREAS, it is also necessary to consider whether such independent special districts should be subject to the special law requirements of the Florida Constitution of 1968; and

WHEREAS, it is further necessary to periodically review exceptions to generally applicable laws that are given to select corporations; and

WHEREAS, on May 24, 2021, Florida enacted the first-of-its-kind law to protect consumers from arbitrary censorship by social media platforms; and

WHEREAS, the law, Section 501.2041, Florida Statutes, exempts any company that owns and operates a theme park or entertainment complex from the definition of a “social media platform”; and

WHEREAS, on June 30, 2021, a federal court temporarily enjoined Section 501.2041, Florida Statutes, in part because such exemption would likely not survive under the First Amendment; and

WHEREAS, the federal court questioned whether it could sever the exemption for theme parks and entertainment complexes because the court concluded that (i) the Legislature was “apparently unwilling to subject favored Florida businesses to the statutes’ onerous regulatory burdens” and (ii) the court could not “impose these burdens on the statutorily excluded entities when the Legislature has not passed, and the Governor has not signed, a statute subjecting these entities to these requirements,” *NetChoice, LLC v. Moody*, 546 F. Supp. 3d 1082, 1094 (N.D. Fla. 2021); and

WHEREAS, Florida appealed this ruling to the United States Court of Appeals for the Eleventh Circuit in Case No. 21-12355; and

WHEREAS, oral argument before the Eleventh Circuit is scheduled to occur on April 28, 2022, and Florida must prevail in its position that a state can regulate the arbitrary and inconsistent censorship practices of social media platforms due to the platforms’ unprecedented power over the free flow of information and ideas; and

WHEREAS, the law’s exemption for theme parks and entertainment complexes is severable from and unnecessary to effectuate the law regulating social media platforms; and

WHEREAS, the Legislature should make clear that Florida intends to continue to protect consumers from the arbitrary and inconsistent censorship of social media platforms in a viewpoint-neutral manner; and

WHEREAS, I have called a Special Session commencing at 12:00 p.m., Tuesday, April 19, 2022, and extending no later than 11:59 p.m., Friday, April 22, 2022; and

WHEREAS, it is prudent to expand the call for this Special Session.

NOW, THEREFORE, I, RON DESANTIS, Governor of the State of Florida, by virtue of the power and authority vested in me by Article III, Section 3(c)(1) of the Florida Constitution, do hereby proclaim as follows:

Section 1. The call to the Legislature of the State of Florida for this Special Session is expanded for the sole purpose of considering (a) legislation relating to independent special districts, and (b) legislation to amend Section 501.2041, Florida Statutes.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed to this Proclamation expanding the call to the Legislature in Special Session at the Capitol, this 19th day of April, 2022.



RON DESANTIS, GOVERNOR

ATTEST:



SECRETARY OF STATE

2022 APR 19 AM 8:55
DEPARTMENT OF STATE
TALLAHASSEE, FL

FILED