IN THE SUPREME COURT OF THE UNITED STATES

No. 22-555

NETCHOICE, LLC, DBA NETCHOICE, ET AL., PETITIONERS

v.

KEN PAXTON, ATTORNEY GENERAL OF TEXAS, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE AND FOR DIVIDED ARGUMENT

Pursuant to Rules 21 and 28 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case as amicus curiae and for divided argument, and respectfully requests that the United States be allowed ten minutes of argument time. The United States has filed a brief as amicus curiae supporting petitioners. Petitioners have consented to this motion and agreed to cede ten minutes of their argument time to the United States. Accordingly, if this motion were granted, the argument time would be divided as follows: 20 minutes for petitioners, 10 minutes for the United States, and 30 minutes for the respondents.

This case and the related case, Moody v. NetChoice, No. 22-277, present questions about whether and to what extent the First Amendment permits States to regulate social-media platforms. Specifically, this case concerns whether the content-moderation and individualized-explanation requirements in Texas's law regulating social-media companies, H.B. 20 (2021 Tex. Gen. Laws 3904), comply with the First Amendment. The United States has a substantial interest in the proper interpretation and application of the relevant First Amendment principles. Among other things, Congress has enacted laws governing the communications industry, including social-media platforms. See, e.g., 47 U.S.C. 230.

At the invitation of the Court, the United States filed a brief as amicus curiae at the petition stage in this case and Moody v. NetChoice. In that brief and in its merits-stage amicus brief in these cases, the United States argued that the First Amendment applies to social-media companies' content-moderation activities because the companies are engaged in expressive activity when they decide which third-party content to display to their users and how to display it. The United States further argued that H.B. 20's content-moderation and individualized-explanation requirements cannot withstand First Amendment scrutiny.

The United States has previously presented oral argument as a party or amicus in cases involving the proper application of the relevant First Amendment principles. See, e.g., 303 Creative, LLC

v. Elenis, 600 U.S. 570 (2023); Rumsfeld v. Forum for Academic & Institutional Rights, Inc., 547 U.S. 47 (2006); Turner Broad. Sys, Inc. v. FCC, 512 U.S. 622 (1994). The United States has also presented oral argument in other recent cases involving the application of the First Amendment to speech posted on social-media platforms. See Lindke v. Freed, 22-611 (argued Oct. 31, 2023); O'Connor-Ratcliff v. Garnier, No. 22-324 (argued Oct. 31, 2023). The participation of the United States in the oral argument is therefore likely to be of material assistance to the Court.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

JANUARY 2024