Nos. 22-277, 22-555

In The

Supreme Court of the United States

ASHLEY MOODY, ATTORNEY GENERAL OF FLORIDA, ET AL.,
Petitioners,

v.

NETCHOICE, LLC, D/B/A NETCHOICE, ET AL.,
Respondents.

NETCHOICE, LLC, D/B/A NETCHOICE, ET AL.,
Petitioners,

v.

KEN PAXTON, ATTORNEY GENERAL OF TEXAS,
Respondent.

On Writs of Certiorari to the United States Courts of Appeals for the Fifth and Eleventh Circuits

BRIEF OF WASHINGTON LEGAL FOUNDATION AS AMICUS CURIAE SUPPORTING RESPONDENTS IN CASE NO. 22-277 AND PETITIONERS IN CASE NO. 22-555

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QUESTION PRESENTED

Whether Texas House Bill 20's and Florida Senate Bill 7072's individualized-explanation requirements comply with the First Amendment.

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INTEREST OF AMICUS CURIAE[1]

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. WLF promotes free enterprise, individual rights, limited government, and the rule of law. It often appears as amicus in important compelled-speech cases. *See, e.g.*, *United States v. Utd. Foods, Inc.*, 533 U.S. 405 (2001); *Pac. Gas & Elec. Co. v. Pub. Utilities Comm'n of Cal.*, 475 U.S. 1 (1986).

INTRODUCTION

For parties, often the "why" of a victory or defeat does not matter. All they care about is the bottom-line result: did they win the case? But judicial opinions in a common law regime do much more than just resolve the dispute before the court. They also set out the rules of the game moving forward. That is even more true for decisions of the courts of appeals, which bind all district courts in their jurisdiction.

Even if NetChoice can win under the standard announced in *Zauderer v. Off. of Disciplinary Couns. of Supreme Ct. of Ohio*, 471 U.S. 626 (1985), this Court should not take the easy road and avoid deciding the proper First Amendment standard. Rather, for the good of the development of the law in this area, the Court should decide whether lower courts are correctly using *Zauderer* to analyze challenges like these. As described below, the answer is a resounding no. Lower courts have twisted

[1] No party's counsel authored any part of this brief. No person or entity, other than amicus and its counsel, paid for the brief's preparation or submission.

Zauderer in a manner that gives commercial speech far less protection than it deserves under the First Amendment. The Court should therefore hold that H.B. 20's and S.B. 7072's individualized-explanation provisions violate the First Amendment while applying the correct legal test.

STATEMENT

Social media platforms like Facebook, YouTube, and X "collect speech created by third parties" and make that speech "available to" users of their websites and apps. Pet. App. 4a.[2] This speech includes "text, photos, and videos." Pet. App. 4a. But they do not publish that speech in random order. Rather, the platforms aggregate, curate, edit, and organize the speech. Pet. App. 4a. So unlike "traditional media outlets," the platforms do not "create most of the original content on [their] site[s]." Pet. App. 5a. Still, the platforms differ from "internet service providers" that just "transmit[] data from point A to point B." Pet. App. 5a-6a. When users visit sites like Facebook, they "see[] a curated and edited compilation of content" resulting from the site's editorial choices. Pet. App. 6a.

Platforms "remove[] posts" and exclude users who "violate [their] terms of service or community standards." Pet. App. 6a. Platforms also "arrang[e the] available content by" "prioritiz[ing] and display[ing] posts" assisted by algorithms and other automated tools. Pet. App. 6a. These tools implement the platforms' judgments about what speech is

[2] Unless otherwise noted, all references are to the *Moody* Petition Appendix.

productive and what speech is not. The choices determine "which users' speech the [other users] will see, and in what order." Pet. App. 6a. This process fosters "online communities" and "promote[s] various values and viewpoints." Pet. App. 7a. For example, last month TikTok suppressed speech promoting terrorism. *See* Sheila Dang & David Shepardson, *TikTok to prohibit videos promoting bin Laden's 'Letter to America,'* Reuters (Nov. 16, 2023), https://perma.cc/3PLX-Q5H8.

Many States were concerned about the platforms' policies. In response, Florida passed S.B. 7072 and Texas passed H.B. 20. Although there are differences between the two, the statutes generally (1) restrict when and how platforms present user-generated content to other users; (2) require platforms individually explain content-moderation decisions to affected users; and (3) require platforms to disclose their content-moderation procedures. NetChoice obtained preliminary injunctions barring S.B. 7072's and H.B. 20's enforcement. The Eleventh Circuit affirmed the Florida injunction in part. It held that S.B. 7072's content-moderation and individualized-explanation provisions likely violate the First Amendment, but that the general-disclosure provisions are constitutional. This Court granted review because the Fifth Circuit partially split from the Eleventh Circuit's decision and vacated the Texas preliminary injunction.

SUMMARY OF ARGUMENT

I. There are at least four reasons that this Court should hold that the Fifth and Eleventh Circuits erred by applying *Zauderer* here.

A. Thirteen times in *Zauderer* this Court made clear that the test it was announcing applies only to laws governing commercial advertising. Two subsequent decisions from the Court reaffirm that principle. Yet some courts continue to question whether this Court meant what it said in *Zauderer*. The Fifth and Eleventh Circuits did so here.

B. This Court's recent commercial-speech cases show that *Zauderer* applies only when the compelled speech is uncontroversial. Not only does the content of a required disclosure have to be uncontroversial, but the subject it addresses must also be uncontroversial. Here, platforms' editorial decisions are very controversial. There are heated debates in state legislatures and on cable news about whether platforms' editorial decisions are biased and which alternatives they should adopt. This is another reason the Fifth and Eleventh Circuits erred by applying *Zauderer*.

C. This Court created confusion about *Zauderer*'s reach when it recently restated the test without a requirement that the disclosure be necessary to correct deception. Some judges have interpreted that restatement of the *Zauderer* test as a change, while others have said that this Court does not overturn precedent implicitly. This Court should reaffirm that *Zauderer* applies only when a disclosure is necessary to correct deception.

D. *Zauderer* addresses objective disclosures that the government seeks to compel. What it does not do is allow excessive governmental entanglement in editorial judgments by private parties. Yet that is what H.B. 20's and S.B. 7072's individualized-

explanation requirements do. They are meant to influence the platforms' speech by having someone always looking over their shoulder. This Court should not allow that to happen.

II. This Court need only read S.B. 7072's legislative findings, the Governor's statements when signing the bill, and Florida's Eleventh Circuit brief to see that Florida is trying to regulate political speech based on its content. The same goes for the Texas Attorney General's actions. Unhappy with the content of platforms' speech, Florida and Texas believe that they can pressure platforms to change their editorial decisions through the individualized-explanation requirements. This Court should not bless such statutes.

ARGUMENT

I. THE FIFTH AND ELEVENTH CIRCUITS ERRED BY APPLYING *ZAUDERER*.

Laws that compel speech are usually subject to strict scrutiny. *See 303 Creative LLC v. Elenis*, 600 U.S. 570, 583, 588 (2023). But the Fifth and Eleventh Circuits applied the relaxed *Zauderer* standard when analyzing the constitutionality of H.B. 20's and S.B. 7072's individualized-explanation provisions. When it applies, *Zauderer* requires only that a law not be "unduly burdensome." 471 U.S. at 651.

The Eleventh Circuit recognized that courts normally apply *Zauderer* "in the context of advertising and to the government's interest in preventing consumer deception." Pet. App. 57a. Yet the court held that "it is broad enough to cover S.B.

7072's disclosure requirements." Pet. App. 57a. This was the Eleventh Circuit's entire explanation for applying *Zauderer*. The Fifth Circuit's explanation for applying *Zauderer* is equally lacking. It distinguished two cases NetChoice cited without recognizing the prerequisites to applying *Zauderer*. Paxton Pet. App. 97a-98a.

Some courts don't think that this Court meant to create a separate test for compelled commercial speech in *Zauderer*. *See Disc. Tobacco City & Lottery, Inc. v. United States*, 674 F.3d 509, 559 n.8 (6th Cir. 2012). The D.C. Circuit has suggested that *Zauderer* and *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557 (1980) both apply the same level of intermediate scrutiny to commercial-speech regulations. *Am. Meat Inst. v. U.S. Dep't of Agric.*, 760 F.3d 18, 26-27 (D.C. Cir. 2014) (en banc). Members of this Court have questioned *Zauderer*'s reasoning and have called for it to be reexamined. *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 254 (2010) (Thomas, J., concurring); *see also Am. Beverage Ass'n v. San Francisco*, 916 F.3d 749, 762 (9th Cir. 2019) (Ikuta, J., concurring) (discussing how this Court has taken a more originalist approach to compelled commercial speech since *Zauderer* was decided). Even if this Court does not overturn *Zauderer* here, the Court should take the opportunity to clarify that *Zauderer* doesn't apply here.

A. *Zauderer* Applies Only To Regulation Of Commercial Advertising.

Zauderer "is confined to advertising, emphatically and, one may infer, intentionally." *Nat'l Assoc. of Mfrs. v. SEC*, 800 F.3d 518, 522 (D.C. Cir. 2015). This Court's opinion "explicitly identified advertising as the reach of its holding no less than thirteen times." *Id.* Later, this Court confirmed that *Zauderer* applies only in the "context" of "commercial advertising," *Id.* at 523 (quoting *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 573 (1995)).

Reading *NAM* makes one think that *Zauderer*'s scope is well defined in the D.C. Circuit. But because there was (and is) a "conflict in the circuits regarding the reach of *Zauderer*," *NAM* contains "an alternative ground for [its] decision." 800 F.3d at 524; *see id.* at 524-30 (holding that the challenged statute compelled controversial statements and lacked any means-ends fit). This gave the D.C. Circuit the ability to recently apply *Zauderer* outside the advertising context. For example, *Am. Hosp. Ass'n v. Azar*, 983 F.3d 528 (D.C. Cir. 2020) ignores *NAM*'s primary holding, cites *NAM*'s alternative holding, and says that the D.C. Circuit "has not * * * limited [*Zauderer*]" to "advertising and point-of-sale labeling." *Id.* at 541.

Similarly, the Ninth Circuit's *American Beverage Association* decision addressed an advertising regulation. Yet the court went out of its way to remove the advertising element from the *Zauderer* test. *See Am. Beverage Ass'n*, 916 F.3d at 755. At least one panel member was not pleased with

that omission. As she explained, "[t]he majority err[ed] by skipping over the threshold question regarding *Zauderer*'s applicability, namely whether the" law is regulating "commercial advertising." *Id.* at 763 (Ikuta, J., concurring).

Again, the Eleventh Circuit held that *Zauderer* is "typically applied in the context of advertising," but that it is "broad enough" to cover more. Pet. App. 57a. The Fifth Circuit did something similar. *See* Paxton Pet. App. 92a (extending *Zauderer* to "commercial enterprises").

The Fifth and Eleventh Circuits' errors are even more glaring because their decisions here removed from the *Zauderer* test an element that this Court recently retained. In *NIFLA v. Becerra*, the Court reiterated that "the disclosure requirement" in *Zauderer* "governed only 'commercial advertising,'" and that *Zauderer* itself "emphasize[s]" that the speech before it "would have been 'fully protected' if * * * made in a context other than advertising." 138 S. Ct. 2361, 2372, 2374 (2018) (quoting *Zauderer*, 471 U.S. at 637 n.7).

If this Court's thirteen clarifications in *Zauderer* itself about the test's limited scope sent mixed messages, this Court's observations in both *Hurley* and *NIFLA* should have cleared up any confusion. *Zauderer* does not apply outside the advertising context. But in the five years since *NIFLA*, four courts of appeals have ignored that straightforward rule. This Court is the only one that can tell lower courts that they may not apply *Zauderer* outside the advertising context. These cases present the Court the perfect opportunity to do so by

rejecting the Fifth and Eleventh Circuits' application of *Zauderer* here.

B. *Zauderer* Applies Only To Uncontroversial Disclosures.

Zauderer applies only when a required disclosure is "uncontroversial." *Zauderer*, 471 U.S. at 651. Again, the lower courts are gravely misconstruing this requirement. The Ninth Circuit, for example, held that "uncontroversial" refers only "to the factual accuracy of the compelled disclosure," ignoring "its subjective impact on an audience." *CTIA—The Wireless Ass'n v. Berkeley (CTIA I)*, 854 F.3d 1105, 1117 (9th Cir. 2017). The D.C. Circuit, however, held that "uncontroversial" must refer to whether "a message * * * is controversial for some reason other than a dispute about simple factual accuracy." *NAM*, 800 F.3d at 527-30 & n.28. This makes sense because *Zauderer* requires that a disclosure be both "factual" and "uncontroversial."

Again, *NIFLA* should have settled the issue. There, the challenged law required pregnancy clinics "to disclose information about * * * abortion [services], anything but an 'uncontroversial' topic." 138 S. Ct. at 2372. So the Court held that *Zauderer* did not apply. *Id.*

Still, the Ninth Circuit has "not read" *NIFLA* "as saying broadly that any purely factual statement that can be tied in some way to a controversial issue is, for that reason alone, controversial." *CTIA—The Wireless Ass'n v. Berkeley (CTIA II)*, 928 F.3d 832, 845 (9th Cir. 2019). Besides conflicting with this Court's and the D.C. Circuit's precedent, the Ninth Circuit's decision also conflicts with the Second Circuit's

decision placing outside *Zauderer* a law that "mandates discussion of controversial political topics." *Evergreen Ass'n, Inc. v. City of New York*, 740 F.3d 233, 249-50 (2d Cir. 2014).

Here, the Fifth and Eleventh Circuits simply announced that H.B. 20's and S.B. 7072's individualized-explanation provisions require disclosure of uncontroversial information. But social media is expressive and the reasons for taking editorial actions are not an uncontroversial topic. At the S.B. 7072 signing ceremony, Governor Ron DeSantis proclaimed that the statute "hold[s] Big Tech accountable" for "discriminat[ing] in favor of the dominant Silicon Valley ideology." *Governor Ron DeSantis Signs Bill to Stop the Censorship of Floridians by Big Tech* (May 24, 2021), https://perma.cc/QL47-SCM9.

This shows that Florida was trying to regulate speech "because of disagreement with the message it conveys." *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 566 (2011). "Where the government orders disclosures as a way to advance its side in a controversial matter," then "the disclosure mandate" should "bear[] greater constitutional scrutiny." Ellen P. Goodman, *Visual Gut Punch: Persuasion, Emotion, and the Constitutional Meaning of Graphic Disclosure*, 99 Cornell L. Rev. 513, 552 (2014). And even ignoring S.B. 7072's legislative history, individualized-explanation requirements for social media are controversial because the requirements inherently regulate platforms' editorial practices. Imagine a law requiring the Dallas Morning News and the Miami Herald to explain why they are covering Palestinian deaths but not the American baby being held hostage

in Israel. It is hard to imagine a more controversial topic.

In *NIFLA*, this Court held that disclosure requirements about controversial topics are not subject to the relaxed *Zauderer* test. The Fifth and Eleventh Circuits apparently disagreed here. So this is yet another area where lower court precedent ignores *NIFLA* and *Zauderer*. This Court should end this practice by rejecting the Fifth and Eleventh Circuits' decisions to apply *Zauderer* here.

C. *Zauderer* Applies Only When Disclosures Are Necessary To Correct Deception.

Zauderer is limited to speech that is "false or deceptive." *Zauderer*, 471 U.S. at 638. *Milavetz* confirms that *Zauderer* applies when a disclosure law is "directed at misleading commercial speech," 559 U.S. at 249; *see Utd. Foods, Inc.*, 533 U.S. at 416. Again, this seems clear. But unlike the first two requirements for applying *Zauderer*, this Court's most recent precedent is the source of confusion about whether the deception prong remains.

When setting forth the *Zauderer* test in *NIFLA*, this Court omitted any mention of a "correction of deception" requirement. Many lower court judges correctly believe that the correction of deception requirement is still part of *Zauderer*. For example, Judge Nguyen objected to the Ninth Circuit's "expansion" of the *Zauderer* test "to commercial speech that is not false, deceptive, or misleading." *Am. Beverage Ass'n*, 916 F.3d at 767 (Nguyen, J., concurring). She correctly believes that consumer

protection matters fall outside of *Zauderer*'s scope. Rather, *Zauderer* applies only when there are doubts about a "commercial message's accuracy"—"not its completeness." *Id.* at 767-68.

But according to the Eleventh Circuit, S.B. 7072's individualized-explanation requirements ensure that users will be "fully informed" about a platform's editorial decisions. Pet. App. 63. The Fifth Circuit assumed the same. Paxton Pet. App. 92a. In other words, both the Eleventh and Fifth Circuits believe that *Zauderer* covers laws that require "completeness"; not just those requiring "accuracy."

Under the proper reading of *Zauderer*, Texas and Florida lose. The States identify no false or deceptive statements (or even material omissions) that H.B. 20's and S.B. 7072's individuated-explanation requirements correct. In short, this Court should hold that *Zauderer* applies only to speech mandates that are meant to correct false or misleading commercial speech.

D. *Zauderer* Cannot Save Necessarily Subjective Regulations.

The individualized-explanation requirements are a quintessential example of unconstitutionally compelled speech. They "force elements of civil society to speak when they otherwise would have refrained." *Wash. Post v. McManus*, 944 F.3d 506, 514 (4th Cir. 2019). But beyond the compelled-speech problem, the individualized-explanation requirements entangle the state with platforms' editorial decisions. That is why the government likes them so much. They are meant to influence platforms' editorial choices.

The individualized-explanation requirements unconstitutionally entangle the state in platforms' editorial decisions. In *Washington Post*, the Fourth Circuit considered a statute requiring some websites to publish lists of the purchasers of political ads. The sites were then required to keep the lists so that the State could inspect them. The court found that the law contained "a compendium of traditional First Amendment infirmities." *Wash. Post*, 944 F.3d at 513. The law (1) was a "content-based regulation on speech"; (2) it "single[d] out political speech"; and (3) it "compel[led] speech." *Id.* at 513-14.

These were not the only constitutional problems. The law's inspection requirement also brought "the state into an unhealthy entanglement with news outlets." *Wash. Post*, 944 F.3d at 518. As Judge Wilkinson explained, the law required the sites to make "no less than six separate disclosures, each assertedly justified by the state's interests in informing the electorate and enforcing its campaign finance laws. But with its foot now in the door, Maryland has offered no rationale for where these incursions might end." *Id.* at 519.

The same problem exists for the individualized-explanation requirements. Today, Florida and Texas require a thorough explanation for platforms' actions. Tomorrow, they could require disclosing the internal deliberations behind each action. Although H.B. 20 and S.B. 7072 "seem designed * * * to impose the maximum available burden on the social media platforms," Pet. App. 92a (quotation omitted), the States could go further now that their feet are in the door.

The Eleventh Circuit correctly found that the individualized-explanation requirements are unconstitutional because they are "unduly burdensome." Pet. App. 64a; *cf.* Paxton Pet. App. 95a-96a ("YouTube removed over a billion comments in a three-month period."). Even using artificial intelligence, it would be impractical to give meaningful individualized explanations for each comment removed. But the undue-burden test does not solve the entanglement problem. Improper entanglement is more than the size of the burden the government imposes on the speaker. It is also, and mainly, about the government's monitoring the internal editorial process. Under the First Amendment, government cannot act as editorial overseer. Yet that is precisely what the individualized-explanation requirements are all about. They are a one-way window into platforms' editorial practices.

The individualized-explanation requirements thus bear no resemblance to slapping a disclosure on an advertisement. The distinction is key. It is the divide between a potentially lawful disclosure and unlawful entanglement. Here, the entanglement shows that the Fifth and Eleventh Circuits should not have applied the *Zauderer* test. The "greater 'objectivity' of commercial speech" is what "justifies" affording that speech a lower standard of First Amendment protection. *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 499 (1996) (quoting *Va. Pharmacy Bd. v. Va. Consumer Council*, 425 U.S. 748, 771 n.24 (1976)). But editorial judgments are necessarily subjective. To "burden platforms' editorial judgment," Pet. App. 47a, is to burden speakers' subjective evaluations about contested norms.

Suppose a law requires newspaper editors to give an individualized explanation to every author whose submitted op-ed is not selected for publication. It would be impossible for these outlets to provide "objective" criteria for their decisions. The criteria, and the choices made under them, would be open to endless challenge and debate from outside the newspaper. This hypothetical law would serve not as an "anti-deception" measure, but as a cudgel to pressure outlets into making different editorial decisions. That is why the Federal Trade Commission rejected an attempt to bar Fox News from claiming its coverage is "fair and balanced." As the then-FTC Chair said, "There is no way to evaluate this petition without evaluating the content of the news at issue. That is a task the First Amendment leaves to the American people, not a government agency." *Statement of Federal Trade Commission Chairman Timothy J. Muris on the Complaint Filed Today by MoveOn.org*, FTC (July 19, 2004), https://perma.cc/7WP7-NRCA; *cf. Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 258 (1974) (deciding what is fair "constitute[s] the exercise of editorial control and judgment" that cannot "be exercised consistent with [the] First Amendment").

The same holds true for social media. Content moderation decisions resist objective quantification. The explanations could not be evaluated without questioning the platform's subjective value judgments. This is just another reason why the Fifth and Eleventh Circuits erred by applying *Zauderer* and why this Court should explain that error.

II. THIS COURT SHOULD NOT BLESS STATUTES THAT ARE INDIRECT CONTENT-BASED RESTRICTIONS ON POLITICAL SPEECH.

The individualized-explanation requirements are meant to affect platforms' content-moderation decisions. In other words, they "manipulat[e] the marketplace of ideas." *Wash. Post*, 944 F.3d at 515. S.B. 7072's findings state that "social media platforms have unfairly censored, shadow banned, deplatformed, and applied post-prioritization algorithms to Floridians." Pet. App. 8a. The individualized-explanation requirements are part of Florida's effort to fix this alleged editorial "unfairness."

Florida admits that S.B. 7072's individualized-explanation requirements help control platforms' editorial discretion. In its opening brief before the Eleventh Circuit, Florida argued (at 3) "that social media platforms arbitrarily discriminate against disfavored speakers"—a claim that goes to editorial judgment. The brief went on to explain (at 4) that S.B. 7072 stops platforms "from abusing their power" by discriminating against speakers. It does so "by mandating disclosure." *Id.* S.B. 7072 aims to alter editorial decisions—making them less discriminatory in Florida's eyes—by requiring platforms to provide individualized explanations for their editorial judgments.

Florida then continued to dig itself a deeper hole in the brief. The individualized explanations help ensure that the rules the platforms are forced to disclose under S.B. 7072 "are actually the rules applied by the platforms." Florida CA11 Br. 5. This

shows that the requirements are a thinly veiled effort to regulate platforms' content-moderation decisions.

The First Amendment protects platforms' right to moderate content as they wish. Simply put, there is no getting around what Florida has already said: the individualized-explanation requirements belong to a cohesive statutory scheme. They cannot be uncoupled, or rescued, from S.B. 7072's unconstitutional content-moderation rules.

The Texas Attorney General's actions also demonstrate how the content-moderation rules and individualized-explanation requirements are linked. "State actors [can] use nominally neutral transparency rules to pressure platforms to restrict or privilege particular speech." Daphne Keller & Max Levy, *Getting Transparency Right*, Lawfare (July 11, 2022), https://perma.cc/4D92-7P2Y. After (then-named) Twitter barred Donald Trump, Texas began investigating its content-moderation policies. Texas's investigation effectively "demanded every document regarding every editorial decision that Twitter has ever prepared." Eric Goldman, *The Constitutionality of Mandating Editorial Transparency*, 73 Hastings L.J. 1203, 1226 (2022).

This and other requests are ongoing. They put platforms "in an impossible position, because every editorial choice [they] make[] might simultaneously trigger disclosure [to Texas]. This has an unquestionably chilling effect." Goldman, 73 Hastings L.J. at 1227. "Any time a [platform's] employee thinks about writing something related to content moderation, the employee knows that [Texas] has already demanded production of whatever the

employee chooses to write[.]" *Id.* (quotation omitted). So "[t]hrough actual or threatened enforcement" of the individualized-explanation requirements, "regulators can influence what content Internet services publish—and punish Internet services for making editorial decisions the regulators disagree with." *Id.* Florida and Texas view that as a feature, not a bug, of their statutory schemes. They are seeking a backdoor way to regulate social media content. This Court should reject these attempts at gutting the First Amendment.

CONCLUSION

This Court should affirm the Eleventh Circuit's decision and reverse the Fifth Circuit's decision as to the two questions presented, while holding that they both erred by applying *Zauderer* to the individualized-explanation requirements.

Respectfully submitted,

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