No. 21-51178

In the United States Court of Appeals for the Fifth Circuit

NetChoice, LLC d/b/a NetChoice, and Computer & Communications Industry Association d/b/a/ CCIA

Plaintiffs-Appellees,

v.

Kenneth Paxton, in his official capacity as Attorney General of Texas, *Defendant-Appellant.*

Leonid Goldstein, pro se

URGENT EX PARTE VERIFIED

MOTION FOR LEAVE TO INTERVENE IN SUPPORT OF OR AS A DEFENDANT-APPELANT FOR THE LIMITED PURPOSE OF ISSUANCE OF THE MANDATE IN EXTRAORDINARY CIRCUMSTANCES

(with omissions and minor modifications from the original)

Certificate of Interested Persons

<omitted>

An Affidavit with Exhibits is enclosed

Introduction

I, Leonid Goldstein, hereby move to intervene in this appeal in support of or as a Defendant-Appellant, pursuant to 28 U.S.C. § 2348, and, if this motion for leave to intervene is granted, to petition for issuing the mandate.

The term "the Platforms" refers to Google YouTube, Facebook (Meta), and Twitter.

Urgency

The Platforms collusively suppress life-saving medical information, including effective treatments for COVID-19. Most such treatments are based on ivermectin or hydroxychloroquine. More than 3,000 persons die from COVID-19 weekly,[1] mostly because of this suppression, which is protected and enabled by the district judge injunction. The Platforms are engaged in other harmful and dangerous activities.

The Need for Ex Parte Hearing

The Plaintiffs, representing the Platforms, have acknowledged the following: "From the moment users access a social media platform, everything they see is subject to

[1] https://covid.cdc.gov/covid-data-tracker/#trends_weeklydeaths_select_00; numbers for the last three weeks are incomplete.

editorial discretion by the platform in accordance with the platforms' unique policies."[2]

Platforms' Violence

The Platforms, represented by the Plaintiffs, routinely use violence to achieve their purposes. They have learned that they can do so with impunity. When the Plaintiffs filed with the Supreme Court their application against this Court decision in this case, the Platforms harassed and threatened Justices.[3] Most of this misconduct happened in the period of May 13–30 when the Supreme Court was considering the Plaintiffs' application.

While the proximate cause of this intimidation campaign is thought to be a Supreme Court draft ruling in an unrelated case, the Platforms made a business decision (not any "editorial decision") to collaborate with fringe groups, to suppress the voices of normal citizens, and to threaten Justices before and while their case was pending before the Supreme Court.

This is a pattern. The Platforms unleashed mob on the FCC Chairman Ajit Pai after the repeal of the Obamanet by the FCC under his leadership.

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[2] https://www.supremecourt.gov/DocketPDF/21/21A720/225388/20220513192559757_Supreme%20Court%20Vacatur%20Application.pdf

[3] Affidavit.Ex.04.SCOTUS_Threats

This conduct of the Platforms is a result of years of impunity.

Prevention of Harm to Justice and Justices

If the Plaintiffs learn of this motion, they might instantly file a petition for a writ certiorari with the Supreme Court, thus preventing issuance of the mandate. While the petition is pending, the Platforms are likely to resort to threats and assassination attempts against Justices again.

Intervention as of Right and/or by Permission

As a U.S. citizen and resident of Texas, I am affected by the outcome of this case. Moreover, I have been deplatformed, banned, restricted, sabotaged, and censored, and I continue to suffer from this and other misconduct by Platforms, some of which is prohibited by HB20. I am a user of Twitter and Google, and I am a former user of Facebook.

I have filed an Amicus Brief in this case (Doc.00516232867, 03/09/2022), and stand by it.

Thousands of other Texans have also suffered directly from the same or similar misconduct, and the majority of Texas's 30 million citizens and America's 330 million citizens suffer from it directly or indirectly, because of not receiving information that the Platforms wish to suppress. We are the main party of interest in this case.

The present motion is being filed as soon as possible after:

a) the decision of the Office of the Attorney General (TX OAG) not to oppose the Plaintiffs-Appellees' motion to stay (09/29/2022);
b) escalation of the Platforms' misconduct, encouraged by that decision, including deplatforming Dr. McCullough, Dallas, Texas, on 07/10/2022;[4]
c) an unhinged disinformation campaign, in which Plaintiff-Appellee NetChoice characterized this procedural snafu as a big victory for their cause (from 10/24/2022).[5]

Thus, this motion is filed in a timely manner. As TX OAG is a Defendant, it does not represent me and other citizens. Thus, this motion is an intervention as of right. I also ask to consider it for intervention by permission.

No Prejudice to Existing Parties

The goal of this intervention is to move the court to issue the mandate on the decision that was already made and published.

There is no prejudice to the rights of the existing parties. The Plaintiffs' core business includes litigation of this kind. I believe that they are compensated for it by their

[4] Affidavit.Ex.01.Dr_McCullough_Deplatforming

[5] Affidavit.Ex.05.NetChoice_Boast

members/clients. There is no prejudice to the Defendant-Appellee, whose original position is supported by this proposed intervention.

Extraordinary Circumstances

Starting about 10 years ago, Americans allowed the Platforms into our homes and lives as telecommunications tools used for communication and for data storage. About five years ago, these Platforms started covertly abusing our trust. Subsequently, they started seeing this abuse as their right. Federal and state government agencies, when controlled by certain political party and lawmakers from that party, granted the Platforms special privileges, entwined the government's business with the Platforms' business, used and continue to use the Platforms to violate the Constitution.

In September 2021, the Congress of Texas passed Bill HB20, protecting Texas consumers of huge social media platforms (more than 50 million U.S. users) from some censorship and sabotage. After more than a year of legal maneuvering, the current outcome is the legitimization of this censorship and sabotage—despite the published decision of this Court to the contrary!

The district judge opinion (*NetChoice v. Paxton*, TXWD, Case 1:21-cv-00840-RP, Doc.51) created a legal landscape much worse than one existing prior to HB20. It took from the Platforms' consumers their First Amendment rights and re-assigned

them to the Platforms: “Social media platforms have a First Amendment right to moderate content disseminated on their platforms” (p. 12); “This Court is convinced that social media platforms, or at least those covered by HB20 . . . exercise editorial discretion over their platform’s content” (p. 16).

These phrases could possibly be cited as precedent against anybody, including individuals attempting to vindicate their rights against the Platforms on grounds other than HB20. Platforms might use this decision to paint an almost infinite range of misconduct against their consumers, administration of law and justice, and other government processes as protected speech.

Today, most people are dependent on the Platforms in their personal and professional lives, especially persons below age 40, those who engage in the protected speech professionally, like journalists, and experts in the business and technology used by the Platforms.

Mostly, individuals talk to each other using Facebook. According to the district judge, Facebook has unlimited editorial rights over each conversation and may interrupt it, publish it without permission, change each *yes* to *no*, replace one of the persons in the conversation with another - for any reason, including retaliation for criticizing Facebook or its allies. Small businesses, unrelated to the tech (such as laundries) are dependent on the Platforms. The Platforms have been using this power

to suppress or to re-direct criticism, and to disinform the legal profession and lawmakers about their business models.

This is what some people endure when deplatformed by Facebook: [6]

> "only when I was erased from Facebook that I truly realized how frequently my life touched their platform. Several of my phone's apps stopped working… When you are erased from social media, you lose touch with people… Friends who did not have my new phone number found it nearly impossible to get hold of me"

The Platforms leverage this power over our daily lives in many ways. The district judge has apparently legitimized that, allowing Facebook to do that to anybody anytime. Effectively, he transferred the First Amendment rights of the People to the Platforms.

This situation is unprecedented.

Court Discretion

This court has very broad discretion in modifying its procedures to accommodate this motion to do justice.

[6] Affidavit.Ex.06.Facebook_Alleged_Whistleblower

Table of Contents

Contents

I. Summary

A. The Platforms Provide Telecommunication Services to Consumers

The Platforms are not "speech businesses." The Platforms are providers of telecommunications services (including data storage) to their consumers. The terms of the services must be accepted by both sides and are subject to contract and consumer protection laws. States regulate commerce in their territory, and pass consumer protection laws. A regulation prohibiting certain telecommunications corporations from defrauding, abusing, and/or sabotaging their consumers in certain ways does not even bring the First Amendment into play.

Designation of the Platforms as common carriers is not necessary for HB20 operation, but the Platforms had promised to their consumers to act like common carriers long before HB20.

HB20 is a consumer protection law that directly protects all Texas consumers of the Platforms (unlike a dissimilar law in Florida that directly protects only electoral candidates and "journalistic enterprises"). HB20 is also important for integrity of elections and government processes in Texas, including those of the judicial, executive, and legislative branches.

HB20 demands from the Platform little more than what they have already promised to their consumers, and to make disclosures necessary for consumers to evaluate their performance.

Some of the services offered by the Platforms to their consumers require complicated calculations and/or human decision making. Using common sense, professional judgement, and/or making business decisions in the provision of services is a norm. These are not "editorial decisions" and do not bring the First Amendment into play.

In the last five years, the Platforms have been taking liberties outside of professional judgement and permissible mistakes. They started sabotaging their consumers by bans, restrictions, and malicious manipulation, in pursuit of financial gain and

political alliances, foreign and domestic. This conduct is illegal and creates no rights for the Platforms.

B. The Platforms are State Actors

The Platforms are State Actors.

C. The Platforms use uncompensated labor of their consumers

The Platforms use the labor of their consumers without compensation (except that YouTube sometimes compensates creators). That brings into play *18 U.S. Code § 1589. Forced labor*,[7] rather than the First Amendment.

II. Platforms' Business Model

NetChoice VP Carl Szabo said in the deposition that the Platforms currently affected by HB20 are Google YouTube, Facebook, and Twitter (Doc. 00516131935, p.3 and App.236).

Facebook owns and operates Instagram. Google owns multiple other digital services, integrated with YouTube: Google Search, Gmail, Google Maps etc. Google owns Android OS, powering most smartphones. Google also funds traditional media outlets (such as the New York Times) of its choice, by paying them cash and sending visitors.[8]

[7] https://defyccc.com/peonage-was-abolished-do-twitter-facebook-and-youtube-know/ | https://archive.ph/KWq1E

[8] *Affidavit.Ex.02.Google_Funds_News*

On January 1, 2022, market capitalization of Google, Facebook, and Twitter was $1.8T (Trillions), $0.9T, and $30B, respectively, for the total of $2.7T.[9] The Platforms operate worldwide and are subject to regulation by foreign governments and political parties.[10] Those regulations extend to the US, and the Platforms' executives act in the US under control and direction of those foreign governments.

Justice Alito noted the Platforms' business models are novel. Some information about them follows.

The Platforms' "users" are their consumers. Most of the consumers' generated content that the Platforms store and/or transmit is not political or politicized, despite the impression one might get from media coverage and legal filings.

A. Consumers' Content

On Facebook and Twitter, most of the content is conversations between individuals. Some of that is important, such as setting meetings, reporting crime in real time, seeking help in an emergency, receiving alerts from the local, state, and federal governments, seeking medical advice, receiving medical information and/or advice from doctors. Also, doctors discuss medical topics among themselves, scientists discuss science etc. Many consumers' conversations that are intended to be private are made public by the Platforms.

[9] Affidavit.Section.03.Market_Caps
[10] Affidavit.Section.01.Foreign_Governments_Control_Platforms, Affidavit. Section.02.CCP_Operations

YouTube has asymmetry between creators—those who post videos—and viewers, who view and comment on them. Also, an important feature of YouTube is that third-party websites (another sort of customers) can embed videos stored on YouTube for viewing by their visitors view them.

From 2009 to 2016, the Platforms attracted hundreds of millions of consumers with the promise of providing novel telecommunication services over the Internet, some of which are described below. These services include traditional transmission of a message "from point A to point B," but also more sophisticated services.

B. Compensation for the Platforms' Services

The Platforms receive most of their revenues from showing advertising to their consumers. They downplay or conceal other forms of compensation and benefits they receive from the consumers. The Platforms

A) harvest copious amounts of the consumers' private data right from consumers' devices;

B) eavesdrop to private consumers' conversations, expose them to public, and show advertising alongside them;

C) use their consumers' labor for free, claiming a worldwide copyright license with the right to sublicense;

D) get consumers' real-life friends as new consumers.

The copious amounts of private data obtained by the Platforms from the consumers' devices allows granular targeting of ads, allowing the Platforms to set high prices.

Courts used to know contracts and business arrangements between business and their consumers, at least in general. In the case of the Platforms, hardly anybody knows these arrangements, and the Platforms prefer to maintain this status quo.

1. The Effects of the Computer Fraud and Abuse Law

The phrases like "on Facebook" or "on Facebook property" are a metaphor. Consumers use Facebook and other Platforms' services from their homes and offices, on their devices (computers and smartphones), and paying for the internet connection.[11] The consumer devices are computers protected under the *Computer Fraud and Abuse Act*, especially 18 U.S. Code § 1030(a)(2)(C). Each Platform needs a consumer's consent to exfiltrate any data from his or her device. To receive such consent, the Platform must provide or promise something of adequate value. As always, it is the duty of the party relying on a contract to show the existence of the contract.

The Plaintiffs failed to even allege existence of valid contracts between the Platforms and their consumers. They have not filed any purported contract in its entirety. Witnesses' statements arguing that consumers agreed to the Platforms' terms of

[11] https://defyccc.com/big-tech-platforms-run-on-users-private-property-first-amendment-protects-users/

services are incorrect legal conclusions, not valid evidence. The Plaintiffs failed their duty.

Moreover, no valid contracts could be formed between the Platforms and their consumers through hyperlinked texts they call "Terms of Service" and/or "User Agreements". These documents are unable to create a valid contract in the United States for more than 100 years.[12] In the absence of a valid contract, the Platforms commit a crime punishable by up to five years in prison by merely touching their consumers' private data.

Platforms' censorship of medical information, especially in the time of a pandemic, is illegal, and would remain illegal even if consumers had consented to it. **Crime is not speech.**

2. Platforms use consumers' uncompensated labor

Furthermore, the Platforms receive the labor of the consumers, who are the creators and copyright owners of the media in "social media." For example, some Twitter consumers are famous writers or scientists, who are not compensated for their work. The Platforms profit from this work and threaten the authors with punishment if their work does not meet the Platforms' requirements. **Peonage is not speech.**

[12] https://defyccc.com/wp-content/uploads/TOS-Void.pdf

3. Platforms host consumers' real assets like banks do

The Platforms collect private data of their consumers. When a consumer is a writer or professional who published on a Platform new original works, brought his or her copyrighted work from the past, and attracted audience, the Platform benefitted from that. The consumer acted on the Platform's promise that it would allow him or her to keep this investment. This investment belongs to the consumer, not to the Platform. When the Platform deplatforms, bans, or forces this consumer to quit, it essentially robs him or her of this investment.

In the analogy with banks, the Platforms not only cancel consumers' accounts, but also pocket the money in these accounts. **Theft is not speech.**

4. Obvious

50 million Americans could not agree to subject their daily conversations, reading, writing, viewing etc. to "editorial decisions" of any Platform.

Despite all the evidence that the Platforms' conduct is illegal and far from bringing the First Amendment into play, I will describe the Platforms' business model as if it were legal and will resolve doubts in their favor.

C. Platforms' Services

The Platforms enable their consumers to communicate over the Internet in novel ways. Some of possibilities services provide:

- Anonymous and pseudonymous communication
- Ability to reply to (comment on) and repost (retweet) somebody else's message
- Multicast. Twitter is the best example, for long time allowing accounts to post short messages (tweets), to subscribe to multiple other accounts ("FOLLOW"), and to receive all tweets from the FOLLOW'ed accounts in the feed.
- Many-to-many communication (groups). Facebook is a good example: one account creates a group, multiple other accounts can join it, messages from each member are visible to all members

D. Platforms' obligations

All the promises and obligations of each Platform to consumers, explicit and implicit, that the consumers reasonably relied upon when starting or continuing to use the Platform are binding on the Platform. No Platform can renounce any of them or to unilaterally change the contract to the detriment of the consumer.

Some of Platforms' obligations can be deduced from the actions of their consumers, at least a large part of whom acted reasonably. Some can be deduced from the legal landscape. Finally, the use of the Platforms by thousands (or tens of thousands) of federal and state agencies is, at least, a government endorsement of the Platforms carrying appropriate obligations. Political neutrality is only one of these. Among the Platforms' obligations in the US:

- Continuity of services
- Openness
- Neutrality and nondiscrimination
- Non-editing of user-generated content in general

Together, these are obligations of common carriage given by the Platforms to their consumers, and sufficient for HB20, which does not restrict Platforms' conduct allowed by Section 230(c)(2). For example, Facebook prohibits pornography, and HB20 does not force it to carry pornography.

Additionally, Twitter has explicitly promised to act as a utility (a synonym of 'common carrier'), and has not withdrawn this promise.[13]

1. Platforms' consumers are speakers and listeners

The promises of openness, neutrality, non-discrimination, etc. bind the Platforms to consumers in their roles as speakers and listeners/viewers/readers.

Consumers reasonably expect that any (or almost any) statesman, philosopher, scientist, or doctor can get on each of the Platforms, and to speak on it free of restrictions, threats to deplatform, and discrimination.

[13] Affidavit.Ex.03.Twitter_Utility

By deplatforming, restricting, shadow-banning, or threatening a speaker, the Platform injures not only this speaker, but also this speaker's audience and potential audience among the Platform's consumers.

2. Non-editorializing – Effects of Section 512

The Platforms host and transmit huge amounts of third-party copyright material posted by their consumers without the copyright holders' permission. In doing so, the Platforms are protected by Section 512(a) of the DMCA. 512(a) has several necessary sub-conditions, including *"(2) the transmission … is carried out through an automatic technical process without selection of the material by the service provider"* and *"(5) the material is transmitted through the system or network without modification of its content."*

This prohibits editorializing, implementing "editorial judgment" or "editorial decision" on third-party content, even attaching warning labels. Section 512 assures consumers that the Platforms are not engaged in any editorial selection or modification of the content, because it might have third-party copyright holders.

3. Statements in the Obamanet Support

Statements by the Platforms during the Obamanet / net neutrality repeal in 2017 indicated their promise to remain neutral in their handling of consumers' content. Twitter also admitted the role the Obamanet had in its success.[14]

The Platforms are internet services providers (ISP) and interactive services providers (ISP) under Sec.230. The difference between internet access services (treated harshly by government) and internet telecommunications services (the Platforms) does not exist for many consumers.

E. Advanced Platforms' Services

1. More complex services

Some services of the Platforms are complex and opaque for consumers. An example is YouTube's recommendation engine. Nevertheless, a reasonable consumer expects that these services are provided toward his or her satisfaction. Consumers are also entitled to receive professional services from the Platforms free of recklessness and malice. Most services, from a local delivery service to car repair to physician advice, involve common sense, professional judgment, and/or business decision making. These should not be confused with "editorial discretion."

[14] Affidavit.Ex.03b.Twitter_Net_Neutrality

The Platforms are not entitled to more preferential treatment than doctors, whom the Platforms sabotage. States can regulate the Platforms just as they regulate doctors.

2. The Content Moderation Fallacy

The Platforms' content moderation is part of their services. Each Platform must do content moderation in accordance with its obligations to the consumers. The Platforms have right to make mistakes, but it is not an "editorial discretion". Intentional sabotage under the delusion of "editorial discretion" is not a mistake.

3. The "Fait Accompli" Fallacy

The Platforms have been breaching their obligations since at least 2016 and escalating this misconduct. Typically, they were doing that covertly until caught. The Platforms have never told their consumers that they exercise "editorial discretion," as far as I know, even when they were claiming that in Congress. Even Congress did not pay much attention to these claims, and proposals to regulate the Platforms have been on the table for long time.[15]

Consumers' lack of knowledge, tolerance, and/or defenselessness against the Platforms' misconduct shall not be construed as consent. Even when some consumers

[15] E.g. https://www.warner.senate.gov/public/_cache/files/d/3/d32c2f17-cc76-4e11-8aa9-897eb3c90d16/65A7C5D983F899DAAE5AA21F57BAD944.social-media-regulation-proposals.pdf,

explained in https://defyccc.com/wp-content/uploads/Mark-Warner-Coercing-BigTech-since-2018.pdf

consented to some unilateral changes in the terms introduced by the Platforms, others did not.

III. Platforms are State Actors

A. Obamanet

Obamanet (sometimes called "net neutrality") refers to the conditions imposed on Americans' use of the Internet by the FCC in 2010. It was repealed by the DC Court of Appeals in 2014, worsened and re-imposed by the FCC in 2015, narrowly survived a legal challenge in 2016 and 2017 (*US Telecom v. FCC*). The FCC ordered Obamanet repeal in 2018. The Platforms' allies challenged that order in *Mozilla v. FCC, 2018* (DC Court of Appeals, Case #18-1051). I was granted a Leave to Intervene on the side of the Defendant FCC (the Brief: Doc.1756024). Finally, the Obamanet repeal came into force in 2019, except that DC Court of Appeals allowed states to pass their own versions of it. About two dozen states, including California (*Bill SB-822*), Washington, and New York reimposed the same regime by state laws with nationwide effects.

The Obamanet was probably the worst violation of the First Amendment in 220 years. Internet users connect to the internet via modem-routers installed in their homes; thus, the FCC also reached deep into our homes, violating the Fourth Amendment, too.

Under Obamanet, citizens contracting with internet service providers (ISPs), have no right to select the content for which they pay. Obamanet is why we the Platforms have so much power. On a typical fixed broadband plan, an Internet user who does not use YouTube, still must pay for the bandwidth consumed by YouTube, about 14% of the total (in 2015). Just the monetary value of the Obamanet for YouTube and Facebook was about $45 Billion annually.[16] Eliminating chances for competition is in addition to that.

Another factor is a forced exposure of the IP addresses of modem-routers inside of our homes, allowing the Platforms to harvest some of our private data without permission is another benefit granted to the Platforms by the federal government.

The Platforms have been the main beneficiaries of this regulation, in which they were mentioned by name multiple times.

B. Government Exempted Google

Government failed to protect rights of publishers and authors on the web against content copying by Google, and assertively aided it. Governments of California and New York aided the Google Books project, which resulted in giving Google a broad license to millions of copyrighted books.

[16] Affidavit.Ex.09.Obamanet_Mon_Value

C. Government Accounts on the Platforms

Federal agencies opened thousands of accounts on the Platforms and provide certain information and services exclusively through them.[17] That includes emergency alerts. Yes, the Platforms are capable to prevent delivery of emergency alerts from FEMA[18] and other government agencies to individuals whom they dislike and claim this to be protected speech.

This delegation of the government function of communicating with the public makes the Platforms state actors. This has also been seen as a guarantee of their neutrality, nondiscrimination, and universal access.

The purported agreements, that the federal government made with the Platforms, which had been hand-picked by it,[19] are shocking. It appears from them that the federal government did not only delegate the Platforms traditional government functions but elevated the Platforms above itself.[20]

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[17] Examples: Affidavit.Ex.08.Some_Gov_On_Twitter

[18] Affidavit.Ex.07.Ready_Gov

[19] https://defyccc.com/obama-hand-picked-bigtech-winners/ | https://archive.ph/cKNW1

[20] Examples: https://www.archives.gov/files/social-media/terms-of-service/tos-facebook.pdf , https://www.archives.gov/files/social-media/terms-of-service/tos-youtube.pdf;
also https://www.archives.gov/social-media/terms-of-service.html

D. State Actors Precedents

The Platforms, especially Google, have symbiotic relationship with the governments of California, Washington state and federal government (possibly except for 2017-2020 for the federal government). The Platforms have been entwined with governmental policies. If there is any doubt about symbiotic relationships between the Platforms and the federal government in the period 2010-2016, and/or Platforms' entwinement with governmental policies of that period, one need to recall the hysterical reaction of the Platforms (especially Google) when another party came to the power in the 2016 elections.

All that qualifies the Platforms as state actors under *Brentwood Academy v. Tennessee Secondary School Athletic Assn.,* 531 US 288, 297 - Supreme Court 2001 ("a private actor operates as a 'willful participant in joint activity with the State or its agents", "We have treated a nominally private entity as a state actor …, when it has been delegated a public function by the State … when it is 'entwined with governmental policies'", "private trustees to whom a city had transferred a park were nonetheless state") and under *McKeesport Hosp. v. Accreditation Council*, 24 F.3d 519, 525 (3d Cir. 1994) ("a state and an ostensibly private entity are so interdependent that state action will be found from their symbiotic relationship alone").

These symbiotic relationships, interdependence with the government, and unprecedented government support were key factors in the Platforms' ability to exceed the threshold of 50 million U.S. users.

IV. Dissent by Hon. Kavanaugh in US Telecom

The Plaintiffs attempt to rely on the dissent by then Judge Kavanaugh in *US Telecom Association v. FCC, 855 F. 3d*, DC Circuit, 2017, when the majority upheld Obamanet.

There are many differences between the FCC regulations and Texas bill HB20. The Plaintiffs try to rely only on one point in the dissent – that the First Amendment is not "use it or lose it".

There is a difference between the Platforms and internet access service providers. The latter's services have no long-term obligations attached to them. If an internet access service provider changes terms adversely to the consumer (and it is allowed in the contract), the consumer can switch to another one. The Platforms' obligations toward their consumers are enduring, possibly indefinitely, and they cannot change them unilaterally. Each consumer's account on each Platform is an investment, sometimes very large. HB20 holds the Platforms to their word. HB20 does not have the "use it or lose it" fallacy.

Also, internet access service providers are not state actors, but the Platforms are.

A. "Social Media" Regulations

Generally speaking, "social media" is as broad a term as "paper products." For the First Amendment analysis, newspapers and books are at one end, while cardboard boxes for transportation are at the opposite end. In the set of possible social media platforms, the Platforms are like a cardboard box monopoly.

Thus, the Plaintiffs cannot present a substantial question for the Supreme Court in a petition for writ certiorari.

V. Plaintiffs' Lack of Standing and Bona Fide

Warth v. Seldin, 422, 490 US - Supreme Court 1975: "to have standing a complainant must clearly allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute..." The Plaintiffs are not and did not even allege to be a proper party to resolve disputes between three huge corporations and the State of Texas.

The doctrine of associational standing aims to give small entities without resources legal standing through their associations, and to allow efficient resolution of disputes involving hundreds or thousands of such small entities. In all cases, cited by the district judge, proper associations represented many members, including small ones. In *Texas Ass'n of Manufacturers v. United States Consumer Prod. Safety Comm'n*, the Texas Association of Manufacturers represented hundreds or thousands of

manufacturers. That case cites *Hunt v. Washington State Apple Advertising Comm'n, 432 US 333 - Supreme Court 1977*: "Appellee, a statutory agency for the promotion and protection of the Washington State apple industry and composed of 13 state growers and dealers chosen from electoral districts by their fellow growers and dealers". The conditions, cited by the district judge, are required but not sufficient for associational standing.

In this case, three huge corporations hide behind two puny groups, selected out of hundreds organization paid by them.[21] NetChoice and CCIA make outlandish claims that these corporations cannot make themselves.

Also, Facebook denies that it exercises editorial discretion and welcomes regulations.

NetChoice LLC, formed in 2018,[22] is a DC lobby group rather than a trade association.[23] NetChoice is not included in the Google's list of almost 400 trade associations and lobbying groups "that receive the most substantial contributions" from Google.[24]

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[21] https://services.google.com/fh/files/misc/trade_association_and_third_party_groups.pdf

[22] https://www.causeiq.com/organizations/netchoice,271716101/

[23] "NetChoice is a coalition of trade associations, eCommerce businesses, and online consumers, all of whom share the goal of promoting convenience, choice, and commerce on the Net." https://www.linkedin.com/company/netchoice/about/

[24] https://services.google.com/fh/files/misc/trade_association_and_third_party_groups.pdf

The Plaintiffs have no standing to petition the Supreme Court for writ of certiorari and are likely to be denied if they do so.

Further, the Plaintiffs indicated absence of bona fide intent to petition the Supreme Court for writ of certiorari. On its website, NetChoice declared the current situation as an accomplished victory, and petitioning the Supreme Court "for review" as an option: "What's Next? NetChoice may petition SCOTUS for review by Dec. 2020"[25]

Finally, the Plaintiffs are not entitled to petition the Supreme Court on behalf of the Platforms, complicit in threatening or using violence against the Supreme Court's Justices.

VI. Conclusion

Thus, I am a party in interest in this appeal, and therefore respectfully requests that this Court

a) grants this motion for leave to intervene for limited purposes; and

b) issues the mandate.

[25] Affidavit.Ex.05.NetChoice_Boast

Also, this Court can issue the mandate *sua sponte*, and/or by finding that the motion by Plaintiffs to stay issuing the mandate was intended solely to delay issuing the mandate.

I ask the Court to rule on this motion within 3 business days from the filing date.

It is up to the Court to treat this motion as an ordinary, rather than *ex parte*, motion.

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