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WLF Asks U.S. Supreme Court to Clarify When State Governments May Compel Speech

(*NetChoice, LLC v. Attorney General, State of Florida*)

“Zauderer has long been a source of confusion for the lower courts. The time has come for the Court to intervene and clarify, at long last, what *Zauderer* means.”

—Cory Andrews, WLF General Counsel & Vice President of Litigation

WASHINGTON, DC— Washington Legal Foundation (WLF) today filed an *amicus curiae* brief urging the U.S. Supreme Court to review—and ultimately to strike down—a decision of the U.S. Court of Appeals for the Eleventh Circuit upholding certain “transparency rules” in Florida’s new social media law, SB7072. WLF joined TechFreedom’s *amicus* brief, which was prepared in house by Corbin K. Barthold and Berin Szóka.

Although the Eleventh Circuit correctly struck down SB7072’s intrusive “content moderation” rules, it largely upheld the transparency rules. Those rules require internet platforms to (1) publish the standards—including detailed definitions—they use to moderate content, (2) publish in advance changes to their terms of service, (3) provide users the view counts of each post, and (4) disclose free advertising given to a political candidate. Rather than apply strict or even intermediate scrutiny to these compelled speech provisions, the Eleventh Circuit upheld these rules under the relaxed undue burden standard in *Zauderer v. Office of Disciplinary Counsel*.

As WLF’s brief explains, the Eleventh Circuit’s decision glosses over the immense confusion and controversy that the *Zauderer* test has produced. First, can the test be applied to a law—like SB7072—that compels speech outside the context of advertising? Second, what does it mean for a law to compel “uncontroversial” speech? And third, does the test govern when a compelled commercial speech law seeks to promote consumer welfare in general, or only when such a law seeks to correct a commercial entity’s false or deceptive statements? Each of these questions has generated division not only among the courts of appeals, but also between those courts and the Supreme Court. Because such compelled-speech requirements bring the state into an unhealthy entanglement with the editorial process, there is no logical limit to governmental demands to supervise how platforms decide what speech to disseminate.

Celebrating its 45th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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