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December 5, 2023

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WLF Urges Supreme Court To Apply Correct Test For Compelled Speech In Important First Amendment Cases

(*Moody v. NetChoice*; *NetChoice v. Paxton*)

“The Eleventh and Fifth Circuits’ applying *Zauderer* continues a trend of lower courts ignoring Supreme Court precedent.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today filed an amicus curiae brief urging the U.S. Supreme Court to strike down the individualized-explanation requirements in Florida Senate Bill 7072 and Texas House Bill 20.

Rather than apply strict or even intermediate scrutiny to these compelled speech provisions, the Fifth and Eleventh Circuits applied the relaxed undue burden standard in *Zauderer v. Office of Disciplinary Counsel*. As WLF’s brief explains, these decisions made four fundamental errors when they applied *Zauderer* here. Any one of those errors alone would be enough to apply strict or intermediate scrutiny.

First, *Zauderer* cannot be applied to statutes that compel speech outside the context of advertising. Second, *Zauderer* cannot be applied to statutes that compel speech on controversial topics. Third, *Zauderer* does not govern when a compelled commercial speech requirement seeks to promote consumer welfare in general instead of seeking to correct a commercial entity’s false or deceptive statements. Finally, *Zauderer* cannot be applied to necessarily subjective regulations. WLF’s brief also highlights the fact that H.B. 20 and S.B. 7072 are not-so-veiled attempts at regulating the content of political speech. The Supreme Court should not allow such regulations to stand. Rather, it should apply the correct test and strike down the individualized-explanation requirements.

Celebrating its 46th 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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