

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

NETCHOICE, LLC et al.,

Plaintiffs,

v.

ASHLEY BROOKE MOODY et al.,

Defendants.

CASE NO. 4:21-cv-00220-RH-MAF

ANSWER

Defendants Ashley Brooke Moody, Joni Alexis Poitier, Jason Todd Allen, John Martin Hayes, Kymberlee Curry Smith, and Patrick Gillespie, acting in their respective official capacities, hereby provide the following Answer and Defenses to the Complaint filed in this action on May 27, 2021:

The unnumbered paragraph that precedes paragraph one contains legal conclusions that do not require a response. Defendants lack sufficient information to admit or deny Plaintiffs' characterization of their goals in filing this lawsuit. Defendants deny any remaining allegations in this paragraph.

1. Admit that the Act was enacted on May 2, 2021, and signed into law on May 24, 2021. Admit that the Act was codified in the sections cited by footnote 1.

This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

2. This paragraph contains legal conclusions that do not require a response. Defendants deny the remaining allegations in this paragraph.

3. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

4. This paragraph contains legal conclusions that do not require a response. Governor DeSantis' statements about the Act speak for themselves, and Defendants deny this paragraph's characterization of those statements. Defendants deny any remaining allegations in this paragraph.

5. The legislative record supporting the Act speaks for itself, and Defendants deny this paragraph's characterization of that record. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

6. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

7. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

7a. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

7b. This paragraph contains legal conclusions that do not require a response. The cited article from the Sun Sentinel speaks for itself, and Defendants deny this paragraph's characterization of that article and the quotations it contains. Defendants deny any remaining allegations in this paragraph.

7c. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

7d. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

7e. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

8. This paragraph contains legal conclusions that do not require a response. The cited article from CL Tampa Bay and the quotations included in that article speak for themselves, and Defendants deny this paragraph's characterizations of that article. Defendants deny any remaining allegations in this paragraph.

9. This paragraph contains legal conclusions that do not require a response. Public statements made about the Act speak for themselves, and Defendants deny this paragraph's characterizations of those statements. Defendants deny any remaining allegations in this paragraph.

10. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

11. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

12. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

13. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

14. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

15. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

16. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

17. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

18. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

19. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

20. Defendants lack sufficient information to admit or deny the identities of Plaintiffs' members. Defendants deny any remaining allegations in this paragraph.

21. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

22. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

23. This paragraph contains legal conclusions that do not require a response. Defendants do not have sufficient information to admit or deny this paragraph's allegations concerning the future effects of the Act on Plaintiffs' members or whether or to what extent the Act would require Plaintiffs' members to alter the content available on their platforms. Defendants deny any remaining allegations in this paragraph.

24. This paragraph contains legal conclusions that do not require a response. To the extent this paragraph's statements about the future effect of the Act on Plaintiffs' members are deemed to be factual allegations, Defendants do not have sufficient information to admit or deny those allegations. Defendants deny any remaining allegations in this paragraph.

25. This paragraph contains legal conclusions that do not require a response. Defendants lack sufficient information to admit or deny Plaintiffs' allegations about what they anticipate concerning the State's enforcement of the Act. Defendants deny any remaining allegations in this paragraph.

26. This paragraph contains legal conclusions that do not require a response. Public officials' statements concerning the Act speak for themselves, and Defendants deny this paragraph's characterizations of those statements. Defendants deny any remaining allegations in this paragraph.

27. This paragraph contains legal conclusions that do not require a response. Defendants do not have sufficient information to admit or deny allegations concerning Plaintiffs' missions. Defendants deny any remaining allegations in this paragraph.

28. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

29. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

30. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

31. This paragraph contains legal conclusions that do not require a response. Defendants admit that they perform their official duties in the Northern District of Florida and that the Attorney General of Florida regularly conducts business and proceedings in the Northern District of Florida. Defendants deny any remaining allegations in this paragraph.

32. Defendants lack sufficient information to admit or deny the factual allegations in this paragraph. Defendants deny any remaining allegations in this paragraph.

33. Defendants lack sufficient information to admit or deny the factual allegations in this paragraph. Defendants deny any remaining allegations in this paragraph.

34. Defendants lack sufficient information to admit or deny the factual allegations in this paragraph. Defendants deny any remaining allegations in this paragraph.

35. Admit that Ashley Moody is the Attorney General of Florida. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

36. Admit that Joni Alexis Poitier is a Commissioner of and the Vice Chair of the Florida Elections Commission. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

37. Admit that Jason Todd Allen is a Commissioner of the Florida Elections Commission. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

38. Admit that John Martin Hayes is a Commissioner of the Florida Elections Commission. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

39. Admit that Kymberlee Curry Smith is a Commissioner of the Florida Elections Commission. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

40. Admit that Patrick Gillespie is the Deputy Secretary of Business Operations of the Florida Department of Management Services. Admit that the Secretary of the Department resigned in February 2021 and had not been replaced as of the time of the filing of the Complaint. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

41. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

42. Defendants admit that they would enforce the Act in accordance with its terms in the absence of an injunction or other court order prohibiting them from doing so. The remainder of this paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

43. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

44. Defendants lack sufficient information to admit or deny the factual allegations in this paragraph. Defendants deny any remaining allegations in this paragraph.

45. Defendants lack sufficient information to admit or deny the factual allegations in this paragraph. Defendants deny any remaining allegations in this paragraph.

46. This paragraph contains legal conclusions that do not require a response. Defendants lack sufficient information to admit or deny the factual allegations in this paragraph. Defendants deny any remaining allegations in this paragraph.

47. Defendants lack sufficient information to admit or deny this paragraph's factual allegations regarding the mechanisms used for content moderation. This paragraph contains a legal conclusion that does not require a response. Defendants deny any remaining allegations in this paragraph.

48. This paragraph contains legal conclusions that do not require a response. Defendants lack sufficient information to admit or deny this paragraph's factual allegations. Defendants deny any remaining allegations in this paragraph.

49. Defendants lack sufficient information to admit or deny this paragraph's factual allegations. Defendants deny any remaining allegations in this paragraph.

50. Defendants lack sufficient information to admit or deny this paragraph's factual allegations. Defendants deny any remaining allegations in this paragraph.

51. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

52. Admitted.

53. The Act's legislative history and public statements by state legislators and officials speak for themselves, and Defendants deny this paragraph's characterization of those statements. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

54. This paragraph contains legal conclusions that do not require a response. The statements by Governor DeSantis and Speaker Sprowls speak for themselves, and Defendants deny this paragraph's characterization of those statements. Defendants deny any remaining allegations in this paragraph.

55. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

56. This paragraph contains legal conclusions that do not require a response. To the extent this paragraph includes factual allegations, those allegations are denied. Defendants deny any remaining allegations in this paragraph.

57. This paragraph contains legal conclusions that do not require a response. Public statements by state legislators speak for themselves, and Defendants deny this paragraph's characterization of those statements. Defendants deny any remaining allegations in this paragraph.

58. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

59. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

60. The Act's provisions speak for themselves. Defendants deny any remaining allegations in this paragraph.

61. The Act's provisions speak for themselves. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

62. The Act's provisions speak for themselves. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

63. The Act's provisions speak for themselves. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

64. The Act's provisions speak for themselves. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

65. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

66. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

67. This paragraph contains legal conclusions that do not require a response. Characterizations of Russian law by Human Rights Watch and the New York Times speak for themselves, and Defendants deny that those characterizations have any connection to the Act. Defendants deny any remaining allegations in this paragraph.

68. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

68a. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

68b. This paragraph also contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

68c. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

68d. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

68e. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

69. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

70. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

70a. The Act's provisions speak for themselves. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

70b. The Act's provisions speak for themselves. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

70c. The Act's provisions speak for themselves. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

70d. The Act's provisions speak for themselves. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

70e. The Act's provisions speak for themselves. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

70f. The Act's provisions speak for themselves. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

71. The Act's provisions speak for themselves. The second sentence of this paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

72. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

73. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

74. The Act's provisions speak for themselves. The first and third sentences of this paragraph contain legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

75. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

76. Defendants restate and adopt their above responses to each of the paragraphs incorporated by reference.

77. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

78. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

79. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

80. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

81. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

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84. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

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87. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

88. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

89. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

90. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

91. This paragraph contains legal conclusions that do not require a response. Public statements made by elected officials about the Act speak for themselves, and Defendants deny this paragraph's characterizations of those statements. Defendants deny any remaining allegations in this paragraph.

92. This paragraph contains legal conclusions that do not require a response. Public statements made about the Act speak for themselves, and Defendants deny this paragraph's characterizations of those statements. Defendants deny any remaining allegations in this paragraph.

93. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

94. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

95. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

96. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

97. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

98. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

99. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

100. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

101. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

102. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

103. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

104. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

105. Defendants restate and adopt their above responses their previous responses to each of the paragraphs incorporated by reference.

106. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

107. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

108. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

109. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

109a. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

109b. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

109c. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

109d. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

110. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

111. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

112. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

113. Defendants restate and adopt their above responses their previous responses to each of the paragraphs incorporated by reference.

114. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

115. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

116. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

117. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

118. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

119. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

120. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

121. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

122. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

123. Defendants restate and adopt their above responses their previous responses to each of the paragraphs incorporated by reference.

124. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

125. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

126. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

127. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

128. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

129. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

130. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

131. Defendants restate and adopt their above responses their previous responses to each of the paragraphs incorporated by reference

132. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

133. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

134. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

135. The cited statute speaks for itself. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

136. The cited statute speaks for itself. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

137. The cited statute speaks for itself. Defendants deny any remaining allegations in this paragraph.

138. The cited statute speaks for itself. Defendants deny any remaining allegations in this paragraph.

139. The cited statute speaks for itself. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

140. The cited statute speaks for itself. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

141. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

142. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

143. This paragraph contains legal conclusions that do not require a response. Defendants deny any remaining allegations in this paragraph.

The paragraphs on pages 68–69 of the complaint under “PRAYER FOR RELIEF” consist of a prayer for relief that does not require a response. To the extent a response is required, Defendants deny that Plaintiffs are entitled to the relief described.

DEFENSES

Defendants assert the following defenses without admitting any of the allegations in the Complaint that have previously been denied, without assuming any burden of proof that Defendants would not otherwise bear, and reserving the right to

amend or supplement these defenses and raise counterclaims as additional facts become available or apparent in this action:

First Defense

The Complaint fails to state a claim upon which relief can be granted.

Second Defense

Plaintiffs' claims are barred by the doctrine of judicial estoppel.

Third Defense

Plaintiffs' claims are barred by the doctrine of issue preclusion.

Fourth Defense

Plaintiffs' claims are barred by the doctrine of unclean hands.

Fifth Defense

Plaintiffs have waived the relief they seek through their members' terms of service.

Sixth Defense

Insofar as 47 U.S.C. § 230 would render all or any portion of the Act unconstitutional, 47 U.S.C. § 230 is invalid and in violation of the First Amendment, the Tenth Amendment, and the principle of federalism.

Seventh Defense

Plaintiffs lack standing to bring these claims on behalf of their members.

Eighth Defense

This court should abstain from deciding these issues until Florida courts have interpreted the Act pursuant to *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941).

Ninth Defense

Plaintiffs are not entitled to equitable relief because they have an adequate remedy at law.

Tenth Defense

Defendants are immune from Commerce Clause claims stemming from their decisions not to contract with certain social media platforms because such decisions are made in Defendants' capacity as a market participant rather than as a regulator.

Reservation of Defenses

Defendants presently have insufficient knowledge or information on which to form a belief as to whether they have additional defenses. Defendants reserve the right to assert additional defenses in this action in the event that discovery or other developments indicate that such defenses would be appropriate.

PRAYER

Defendants respectfully pray as follows:

1. That the Complaint be dismissed with prejudice in its entirety;
2. That judgment be entered in favor of Defendants and against Plaintiffs

on the Complaint as a whole; and

3. That the Court award Defendants such other and further relief as the Court may deem appropriate.

Dated: July 15, 2021

/s/Blaine H. Winship
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Florida Bar No. 1008587
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Alexis Poitier, in her official capacity
as Commissioner of the Florida
Elections Commission; Jason Todd
Allen, in his official capacity as
Commissioner of the Florida Elections
Commission; John Martin Hayes, in
his official capacity as Commissioner
of the Florida Elections Commission;
and Kymberlee Curry Smith, in her
official capacity as Commissioner of
the Florida Elections Commission*

Respectfully submitted,

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David H. Thompson (450503DC)
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