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News Item

Social Media Transparency Rules, Zauderer Standard Head to Supreme Court | Lawfare

By Corbin Barthold
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> In 2021, Florida passed SB 7072, a pathbreaking (in a bad way) social media speech law. This May, the U.S. Court of Appeals for the Eleventh Circuit issued a significant opinion, NetChoice v. Moody, on that law's constitutionality. One side (Florida) has sought Supreme Court review, and the other (trade groups representing the major social media platforms) is expected to do so as well. If the Court takes the case—as it probably will, especially given that the Fifth Circuit recently rejected Moody while reviewing HB 20, a Texas law similar to SB 7072—it will likely issue a landmark ruling on whether and how states can regulate social media content moderation. Largely unnoticed, so far, is the possibility that the Court will also revisit a notoriously mysterious precedent, Zauderer v. Office of Disciplinary Counsel (1985), and reshape the law of compelled commercial speech.
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> "Put simply, with minor exceptions, the government can't tell a private person or entity what to say or how to say it." That's the main takeaway from the Eleventh Circuit's decision. SB 7072 orders social media platforms, among other things, to host certain users, carry certain posts, and moderate content "in a consistent manner." Upholding most of a preliminary injunction blocking the law, the Eleventh Circuit concluded that these provisions, which infringe platforms' editorial control over their services, likely violate the First Amendment. (The Fifth Circuit reached a very different conclusion regarding HB 20, as we'll see.)
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