SB 1722 Technical Paper March 19, 2019

This is a technical paper from the Computer Law Committee of the Business Law Section of the Florida Bar relating to SB 1722, the proposed Stop Social Media Censorship Act.

In Packingham v. North Carolina, 137 S. Ct. 1730, 1738 (2017), the U.S. Supreme Court held unconstitutional a North Carolina law making it a felony for a registered sex offender to gain access to a number of websites, including commonplace social media websites like Facebook and Twitter. It is respectfully requested that the Legislature consider that SB 1722, which compels social media platforms not to censor certain religious and/or political speech, is facially unconstitutional under the First Amendment because the bill compels the social media platform to publish, that is "speak", in a certain manner. The Supreme Court in Packingham stated:

"A fundamental principle of the First Amendment is that all persons have access to places where they can speak and listen, and then, after reflection, speak and listen once more. The Court has sought to protect the right to speak in this spatial context. A basic rule, for example, is that a street or a park is a quintessential forum for the exercise of First Amendment rights. See Ward v. Rock Against Racism, 491 U. S. 781, 796, 109 S. Ct. 2746, 105 L. Ed. 2d 661 (1989). Even in the modern era, these places are still essential venues for public gatherings to celebrate some views, to protest others, or simply to learn and inquire.

While in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace—the 'vast democratic forums of the Internet' in general, Reno v. American Civil Liberties Union, 521 U. S. 844, 868, 117 S. Ct. 2329, 138 L. Ed. 2d 874 (1997), and social media in particular. Seven in ten American adults use at least one Internet social networking service. Brief for Electronic Frontier Foundation et al. as Amici Curiae 5-6. One of the most popular of these sites is Facebook, the site used by petitioner leading to his conviction in this case. According to sources cited to the Court in this case, Facebook has 1.79 billion active users. Id., at 6. This is about three times the population of North America.

Social media offers 'relatively unlimited, low-cost capacity for communication of all kinds.' Reno, supra, at 870, 117 S. Ct. 2329, 138 L. Ed. 2d 874. On Facebook, for example, users can debate religion and politics with their friends and neighbors or share vacation photos. On LinkedIn, users can look for work, advertise for employees, or review tips on entrepreneurship. And on Twitter, users can petition their elected representatives and otherwise engage with them in a direct manner. Indeed, Governors in all 50 States and almost every Member of Congress have set up accounts for this purpose. See Brief for Electronic Frontier Foundation 15-16. In short, social media users employ these websites to engage in a wide array of protected First Amendment activity on topics 'as diverse as human thought.' Reno, supra, at 870, 117 S. Ct. 2329, 138 L. Ed. 2d 874 (internal quotation marks omitted)." Packingham v. North Carolina, 137 S. Ct. 1730, 1735-36 (2017)

The Court concluded "[i]t is well established that, as a general rule, the Government 'may not suppress lawful speech as the means to suppress unlawful speech.' Ashcroft v. Free Speech Coalition, 535 U. S., at 255, 122 S. Ct. 1389, 152 L. Ed. 2d 403. That is what North Carolina has

done here." Packingham v. North Carolina, 137 S. Ct. 1730, 1738 (2017)(holding unconstitutional a North Carolina law making it a felony for a registered sex offender to gain access to a number of websites, including commonplace social media websites like Facebook and Twitter).