

**NetChoice** *Promoting free speech & free enterprise on the internet*



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February 15, 2022

Chairman Curt Bramble  
Senate Business and Labor Committee  
Utah State Senate

RE: **Opposing SB 198- Electronic Free Speech Amendments.**

Chairman Bramble and members of the committee:

We respectfully ask that you **not** pass SB 198, primarily because it would be enjoined by federal courts for violating the First Amendment of the US Constitution. But if SB 198 were to somehow be enforceable, it would significantly impair how faith-based groups like the Mormon Church moderate their own social media pages, making them vulnerable to those attacking these institutions.

First, we explain why SB 198 would be set aside for violating the First Amendment. Then, we describe the unintended but likely consequences if the law were to survive constitutional challenges.

### **SB 198 violates the First Amendment of the US Constitution**

Federal Courts have already declared the transparency mandates like those in SB 198 unconstitutional. That is because they are essentially government compelled speech – which violates the First Amendment.

Both Florida and Texas enacted laws in 2021 with very similar disclosure requirements. Both laws – and specifically the disclosure requirements – were found unconstitutional. In Florida, the Federal District Court held that state’s notice-and-transparency requirements were unconstitutional under the First Amendment because they’d unduly burden—and thus chill—speech:

“The provisions at issue here do not meet the narrow-tailoring requirement. Indeed, some of the disclosure provisions seem designed not to achieve any governmental interest but to impose the maximum available burden on the social media platforms.”<sup>1</sup>

Likewise, both Texas and Florida Federal District Courts identified the discriminatory application of the law, similar to those in SB 198, subjected the Texas and Florida laws to strict scrutiny – a standard under which both were found unconstitutional. In Texas, the Federal Court held:

“HB 20 applies only to social media platforms of a certain size...The record in this case confirms that the Legislature intended to target large social media platforms perceived as being biased against conservative views and the State’s disagreement with the social media platforms’

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<sup>1</sup> *NetChoice v Moody*, Case 4:21-cv-00220-RH-MAF (N.D.F.L. June 30, 2021).

editorial discretion over their platforms. The evidence thus suggests that the State discriminated between social media platforms (or speakers) for reasons that do not stand up to scrutiny.”<sup>2</sup>

In the end, this bill violates the First Amendment and will be swiftly enjoined by courts. But if SB 198 were to become law, please consider the unintended consequences explained below.

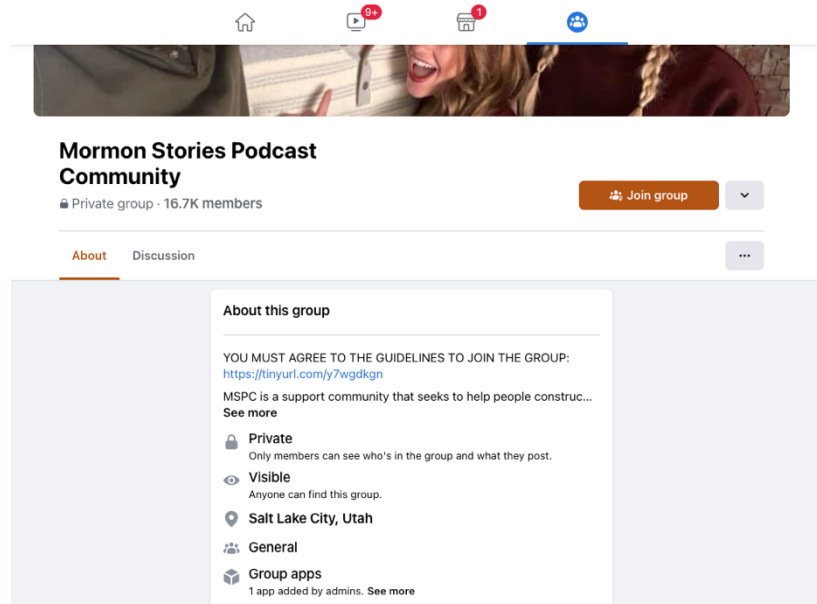
## Faith-based organizations rely on the right to remove content on Facebook pages

Users from all aspects of the political spectrum rely on the ability to enforce their content rules as they see fit, with discretion to interpret and amend their terms to meet new threats. Take for example the Facebook Page, “Mormon Stories.” Aside from Facebook’s general community guidelines, the Page Manager for Mormon Stories has their own content moderation rules. And those rules include many undefined and non-specific language, such as:

“Members may not proselytize or evangelize for any dogma - religious or secular.”

The page prohibits troublemakers from adding inappropriate content and comments to the page:

“Trolling (making statements specifically to elicit a negative response from group members) is forbidden.”



The Facebook Page “Mormon Stories” includes its own content moderation a policies and enforcement

This language provides Mormon Stories the ability to remove content as it sees fit. And trying to create

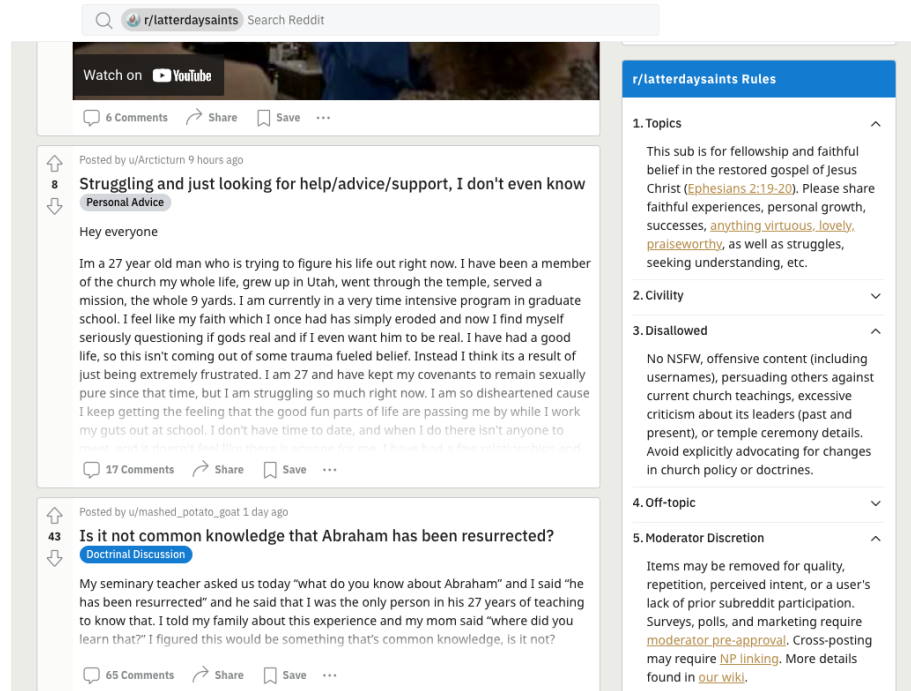
<sup>2</sup> *NetChoice v. Paxton*, Case 1:21-cv-00840-RP (W.D.T.X. Dec. 1, 2021).

specifics of words like “proselytize” or “trolling” would force retention of content the poster argues is advocacy or an opinion versus “proselytize” or “trolling.”

Likewise, the subreddit: /r/LatterDaySaints/ with over 47.0k followers has its own rules and moderators. This subreddit’s rules include a prohibition on:

“No NSFW, offensive content (including usernames), persuading others against current church teachings, excessive criticism about its leaders (past and present), or temple ceremony details. Avoid explicitly advocating for changes in church policy or doctrines.”

It’s hard to understand how one specifically defines “temple ceremony details” without spelling out the very details the moderators don’t want discussed. Likewise, clear definitions of “NSFW,” “offensive content,” or “excessive criticism” are near impossible.



The subreddit r/LatterDaySaints disallows lots of constitutionally protected speech but requires flexibility in application

And even if the bill would not subject these subcommunities to enforcement under the bill, it is possible that critics could seek to weaponize it against them. What is clear, however, is that a message board, dating site, or other social media service such as MormonDialogue.org could be subject to these requirements if it had 1,000,000 members a small fraction of the church and its potential allies.

## SB 198 Assumes only one model of content moderation

While some social media businesses engage in content moderation from the top, there are many services using content moderation practices from the bottom-up. Services like NextDoor and Reddit allow local moderators to create and enforce the rules. Likewise, services like Facebook Pages allow page owners to create and enforce their own content moderation rules.

But these moderation practices create questions about how the bill would be implemented, would the moderators of r/LatterDaySaints/ be required to complete the fillings? Would state AGs take enforcement actions against the subreddit's moderators? Would this set a precedent for legislation in other states to weaponize their copy of this law against organizations they don't like?

## **SB 198 Empowers Anti-Faith Groups**

Today the Mormon Church faces persistent criticism from former members, atheists, and others. It's not hard to see that one of those groups would post incendiary comments against Church teachings on the Mormon Stories Facebook page. Once their content was removed by the Church's Page Manager, the critics could publicly claim that their rights under SB 198 were violated by the Church and by Facebook. If the Utah AG decides to not prosecute, it's easy to see the media coverage manufactured by Church critics: *"Utah's Mormon AG won't protect the rights of citizens to criticize LDS"*

Likewise, consider an LDS-only social media platform whose content moderation standards requires adherence to Church teachings. The required specificity by SB 198 would create a content moderation policy that could be weaponized by groups to paint the Church in a dark light with a broad brush.

In essence, SB 198 gives a powerful tool to groups seeking to attack faith-based groups such as the Mormon Church.

We ask that you not advance SB 198 as it has constitutional flaws and creates negative consequences.

Sincerely,

Carl Szabo  
Vice President & General Counsel, NetChoice