
November 20, 2023

California Supreme Court
350 McAllister Street, Room 1295
San Francisco, CA 94102-4797

Re: *Samantha Liapes v. Facebook, Inc.*
California Supreme Court, Case No. S282529

To the Honorable Patricia Guerrero, Chief Justice of the State of California, and the Honorable Associate Justices of the California Supreme Court:

Amicus curiae NetChoice respectfully submits this letter in support of the Petition for Review filed by Defendant Facebook. The Court below issued an unprecedented ruling that would undermine operations of all organizations and businesses that advertise on the internet. We ask the Supreme Court to grant the Petition and reverse the Court of Appeal's judgment to ensure California remains a hospitable forum for the long standing, socially beneficial practice of directing information and advertisements to the people most likely to be interested in them.

I. INTEREST OF AMICUS

NetChoice is a national trade association of online businesses that works to protect free expression and promote free enterprise online.¹ NetChoice's members rank among the world's most innovative companies, including Meta, Amazon, Etsy, Google, Pinterest, Nextdoor, Snap, TikTok, and X, the company formerly known as Twitter.² NetChoice's Litigation Center advocates for free speech and a competitive online ecosystem by challenging laws that subject online businesses to disfavored treatment, and by filing *amicus curiae* briefs in cases that, like this one, could significantly affect the way businesses operate and innovate on the internet. *See, e.g., NetChoice, LLC v. Att'y Gen. Fla.*, 34 F.4th 1196, 1203 (11th Cir. 2022), cert. granted, No. 22-277 (Sept. 29, 2023); *NetChoice, LLC v. Paxton*, 49 F. 4th 439 (5th Cir. 2022), cert. granted, No. 22-555 (Sept. 29, 2023); *Chamber of Commerce of United States, NetChoice, et al. v. Franchot*, No. 21-cv-00410-LKG, 2022 U.S. Dist. LEXIS 217905 (D. Md. 2022).

¹ NetChoice is a non-stock, not-for-profit trade association organized under the laws of the District of Columbia and operating pursuant to 26 U.S.C. § 501(c)(6).

² A full list of NetChoice's members is available at <https://tinyurl.com/2tew6xna>. Although Meta Platforms, Inc. (formerly Facebook, Inc.) is a member of NetChoice, it took no part in the preparation of this letter.

NetChoice’s members, their many business partners, and the broader online information ecosystem they all operate in provide substantial value to users significantly *because* of targeted advertisements, which allow users to receive content—from political and charity messaging to entertainment promotions—that is relevant to them and allow small businesses to only pay for reaching consumers likely to be interested in their products. NetChoice has a strong interest in preserving its members’ ability to offer relevant, efficient, and effective advertisements to Californians.

II. REASONS TO GRANT REVIEW

Targeted advertising is a cornerstone of the modern economy; a rational, pro-social phenomenon that vastly predates the internet. See Noah Bartolucci, *Exhibit Presents History of Targeted Advertising*, Duke Today (Apr. 27, 2001) (describing Duke University’s exhibition chronicling advertisers’ customized appeals to niche populations since 1890).³ Diverse organizations like a Muslim women’s prayer group seeking to expand its network on Facebook and a seller of men’s orthopedic shoes seeking to market its goods on Amazon, alike, rely on particularized appeals to users—and to their benefit. See Amazon, *Custom advertising solutions, Amazon Ads* (explaining pseudonymized demographic information about users enables Amazon to provide “relevant and useful advertising.”) (last accessed Nov. 15, 2023).⁴ “By providing that consumers who desire a good end up purchasing (or participating in) it, targeted advertising ensures the market ‘clears’ and reduces deadweight loss.” Caitlin E. Jokubaitis, *There and Back: Vindicating the Listener’s Interests in Targeted Advertising in the Internet Information Economy*, 42 Colum. J.L. & Arts 85, 86 n.2 (2018).⁵

The Court of Appeal’s holding that this kind of targeted advertising violates the Unruh Civil Rights Act presents a substantial misinterpretation of both the intent and the letter of the law. The Unruh Civil Rights Act was designed to prevent arbitrary discrimination against individuals; it was not intended to impede the flow of commercial information that can be beneficial to consumers. Indeed, its “fundamental purpose . . . is the elimination of antisocial discriminatory practices—not the elimination of socially beneficial ones.” *Javorsky v. Western Athletic Clubs, Inc.*, 242 Cal.App.4th 1386, 1394-1395 (2015). Yet if the lower court’s ruling stands, it will

³ Available at <https://perma.cc/4638-LUFQ>.

⁴ Available at <https://tinyurl.com/2rdsz95s>.

⁵ Available at <https://tinyurl.com/2esmjx3>.

effectively ban NetChoice's members—and the entire online advertising industry—from offering socially beneficial services to Californians in several ways.

First, targeted advertising ensures the content users receive is relevant to their stage in life, cultural context, and other personal aspects. For instance, a retirement planning service is likely more relevant to an older demographic, while ads for maternity wear are generally most appropriate for women of childbearing age. Likewise, ads about adult content or activity are inappropriate for users under 18. If advertisers on Instagram can no longer use demographic data, ads will become substantially less relevant and less welcome—undermining the quality of their browsing experience.

Second, for small businesses, targeted online advertising is necessary for commercial viability. Small businesses and producers of niche goods rely on being able to target their advertising to specific demographic groups that are most likely to be interested in their products or services. For example, a small business selling sarees would want to pay to promote their wares to women who celebrate cultural events where such attire is worn, and a nonprofit devoted to promoting gay men's health would be wasting resources by promoting its services to all users. Barring this kind of targeting significantly reduces effectiveness and raises cost, an especially untenable option for many startups and nonprofits.

Third, reducing the viability of advertising to targeted and niche markets would negatively impact content creation generally. If ads become less effective—and thus less worthy of investing in—small content creators like bloggers and artists might struggle to find advertisers willing to sponsor their content. The result would be a homogenization of online content, as only well-established content creators could attract enough ad revenue to be sustainable. One need only look back to the pre-cable television era to recall the immense influence advertisers can have on the type of content that is commercially viable, and thus available to users. Stanley E. Cohen, *The Advertiser's Influence in TV Programming*, 8 Os. J.L. 91-117 (1970) (explaining that, before the explosion of niche television channels made available by cable, advertisers made their business contingent on approval of programming)⁶; see also University of Minnesota, *Understanding Media and Culture, Issues and Trends in the Television Industry*, Creative Commons (2016).⁷

⁶ Available at <https://tinyurl.com/hhx74s6h>.

⁷ Explaining that, pre-cable, “Sponsors...influenced program content indirectly by financially supporting shows they support and pulling funding from those they do not. For example, in 1995, Procter & Gamble, the largest television advertiser, announced it would no longer sponsor salacious daytime talk shows.” Programming was affected as a result of Procter & Gamble’s decision. Available at <https://tinyurl.com/2d35f9ph>.

Finally, the ruling may inadvertently harm the consumers it seeks to protect. Many free online services and content providers, like NetChoice’s members, rely on targeted advertising. *See generally*, Jokubaitis, *supra*. By undermining the economic model that supports free and low-cost online services, consumers might have to pay for more services and content that used to be free, or deal with a significant increase in non-targeted ads to make up for the lower efficiency. *Id.* Either way, users will bear the brunt—undermining the Unruh Act's purpose of leaving socially beneficial practices untouched.

Targeted advertising provides consumers with content that aligns with their interests and grants businesses the opportunity to promote their products or services both effectively and in a cost-effective manner. The lower court’s unprecedented interpretation of the Unruh Civil Rights Act would effectively ban the practice for California users, leading to a less personalized online experience, higher costs for small businesses, and a less vibrant and innovative online marketplace.

III. CONCLUSION

For reasons explained herein and those described by Petitioner, we urge this Court to grant review and *reverse* the judgment below.

Respectfully,

_____/s/ *Carl M. Szabo*_____
NetChoice
Carl M. Szabo

PROOF OF SERVICE

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California Supreme Court, Case No. S282529

At the time of service, I was over 18 years of age and not a party to this action. I am employed in Washington, D.C. My business address is 1401 K St., Unit 502, Washington, D.C., 20005.

On November 20, 2023, I served true copies of the following document(s) described as:

SUPPORT FOR PETITION FOR REVIEW
on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY ELECTRONIC SERVICE: I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system. Participants in the case who are not registered TrueFiling users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 20, 2023, in Washington, District of Columbia.

_____/s/ *Carl M. Szabo*_____

Name: Carl M. Szabo

SERVICE LIST

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California Supreme Court Case No. S282529

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