



HOUSE CIVIL JUSTICE COMMITTEE – Opponent Testimony, HB 441, April 5th, 2022

Chairman Hillyer, Vice Chair Grendell, Ranking Member Galonski, and members of the committee, thank you for holding this hearing and for the opportunity to provide testimony.

My name is Jeff Dillon, and I am the Ohio Legislative Director for Americans for Prosperity (AFP). As one of the largest grassroots organizations in the country, AFP is driving long-term solutions to some of the country's biggest problems. Our organization, and its thousands of activists across Ohio, are dedicated to breaking barriers that stand in the way of people realizing their full potential. Removing or reducing these barriers, in whatever forms they take, helps move our society toward one of mutual benefit, where people succeed by helping others improve their lives and by transforming their communities. Accordingly, I am here to express opposition to House Bill 441.

HB 441, while well-intentioned, misses the mark in several important ways.

First, the bill just outright declares social media companies to be common carriers simply because they have market dominance. When thinking about common carriers, traditionally phone companies, they are merely involved in the transmission of speech between individuals. Social media companies do not simply do this. They screen content either manually or utilizing algorithms and decide whether to moderate or curate the content accordingly. This is an exercise of editorial discretion, which is protected under the First Amendment. This is a point raised by Judge Robert Pitman in the lawsuit that was filed after Texas passed a similar legislation late last year.

Second, HB 441 will play into the favor of incumbents, who could afford the compliance costs. By setting the threshold for falling into the coverage of this legislation, the legislature is setting an arbitrary cap on the success of companies to grow. As a startup experiences success and user growth edges closer to 50 million, which if the app goes viral is something that could happen rather easily, they may elect to sell their company rather than build it up further to avoid compliance costs. This legislation would easily capture rising popular alternative social media platforms like Rumble and the soon to be launched TRUTH social, former President

Trump's social media endeavor. For reference, Rumble has 39 million monthly active users as of January 2022, and with their partnership with TRUTH Social, which will reportedly attract over 50 million users, would throw both platforms under the regulatory scrutiny of this law.

Lastly, this legislation as written faces a legitimate and real threat of facing challenges on constitutional grounds for violating the First Amendment. As stated previously, editorial discretion for social media companies to curate the content on their private property is protected under the First Amendment and was something addressed in the lawsuits in both Texas and Florida last year. Taxpayer money is limited and valuable, and the cost of litigation would cost Ohio taxpayers hundreds of thousands of dollars of their hard-earned money defending a law that is so clearly riddled with constitutional concerns; that money could be better spent helping tackle other real, pressing issues facing Ohio today.

Thank you again, Chairman Hillyer, for the opportunity to provide testimony, and I'm happy to do my best to answer any questions the committee might have at this time.

Americans for Prosperity (AFP) exists to recruit, educate, and mobilize citizens in support of the policies and goals of a free society at the local, state, and federal level, helping every American live their dream – especially the least fortunate. AFP has more millions of activists across the nation, a local infrastructure that includes 35 state chapters, and has received financial support from more than 100,000 Americans in all 50 states. For more information, visit www.AmericansForProsperity.org.