

A BILL

FOR AN ACT protecting freedom of speech on interactive computer services and social-media platforms.

Be it enacted by the people of the State of _____,

SECTION 1. The legislature finds that:

- (1) each person in this state has a fundamental and compelling interest in the free exchange of ideas and information, including the freedom of others to share and receive ideas and information;
- (2) this state has a fundamental and compelling interest in protecting civil rights, including the free exchange of ideas and information in this state;
- (3) some interactive computer services, social-media platforms, and email system providers function as common carriers, are affected with a public interest, are public accommodations, are central public forums for public debate, have enjoyed governmental support in the United States, and have cooperated with government and party officials to censor opinions and information; and
- (4) the interactive computer services, social-media platforms, and email system providers with the very largest number of users are most clearly common carriers by virtue of their market dominance.

SECTION 2. The _____ Revised Code is amended by adding Chapter XX to read as follows:

CHAPTER XX. FREEDOM OF SPEECH ON INTERACTIVE COMPUTER SERVICES,
SOCIAL-MEDIA PLATFORMS, AND EMAIL SYSTEM PROVIDERS

Sec. XX-01. DEFINITIONS. In this chapter:

(1) “Censor” means:

(A) any action that formally or functionally denies equal access or visibility to any expression, including (i) any action that edits, alters, blocks, bans, deletes, removes, deplatforms, demonetizes, de-boosts, regulates, restricts, inhibits the publication or reproduction of, denies equal access or visibility to, suspends a right to post, removes, or otherwise discriminates against expression and (ii) any action that boosts, elevates, advances, promotes, or expands access or visibility for some expression at the cost of access or visibility for other expression; or

(B) any action that formally or functionally denies equal access or visibility to any user, including (i) any action that inhibits or restricts the ability of a user to be viewed

by or to interact with another user of the platform or any other action that blocks, bans, removes, suspends a right to post, demonetizes, restricts, deplatforms, or otherwise discriminates against a user and (ii) any action that boosts, elevates, advances, promotes, or expands access or visibility for any user or users at the cost of access or visibility for any other user or users.

(2) “Expression” means any word, number, music, sound, still or moving image, or other perceivable communication.

(3) “Email system provider” means:

(A) an email provider or other program that hosts email accounts; or

(B) a message user agent, email client, webmail, computer application, or other program that permits accessing, reading, managing, composing, or sending emails; but

(C) the term does not include an email service provider or other service providing email campaigns.

(4) “Interactive computer service” means an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server. The term includes an Internet search engine but does not include an Internet service provider as defined by section _____.

(5) “Receive,” with respect to an expression, means to read, hear, look at, access, or gain access to the expression.

(6) “Social-media platform” means an Internet website, Internet system, software provider, or application that is open to the public, allows a user of the platform to create an account, and enables users to communicate with one another for the primary purpose of posting information, comments, messages, or images or otherwise disseminating expression. The term does not include:

(A) an Internet service provider as defined by section _____;

(B) an email system provider;

(C) an email service provider or service providing email campaigns; or

(D) an Internet website, service, or application:

(i) that consists primarily of information or material that is not user generated (including but not limited to news, sports, or entertainment information or material) and that is preselected by the owner or operator of the website, service, or application; and

(ii) for which any chat, comments, or interactive functionality that allows dissemination of expression by users is incidental to, directly related to, or dependent on the dissemination of the information or material described by Subparagraph (i).

(7) “Unlawful expression” means an expression that is tortious or otherwise unlawful under the constitution or laws of this state or of the United States.

(8) “User” means a person who receives expression or who posts, uploads, sends, transmits, shares, publishes, or otherwise disseminates expression through an interactive computer service, a social-media platform, or an email system provider.

Sec. XX-02. CENSORSHIP PROHIBITED.

(a) An interactive computer service that is not a social-media platform may not censor a user of the interactive computer service, the expression of such a user, or the ability of such a user to receive the expression of another person based on:

(1) the viewpoint of the user or another person; or

(2) the viewpoint represented in the user’s expression or another person’s expression.

(b) A social-media platform may not censor a user of the social-media platform, the expression of such a user, or the ability of such a user to receive the expression of another person based on:

(1) the viewpoint of the user or another person; or

(2) the viewpoint represented in the user’s expression or another person’s expression.

(c) An email system provider may not censor a user of the email system provider, the expression of such a user, or the ability of such a user to receive the expression of another person based on:

(1) the viewpoint of the user or another person; or

(2) the viewpoint represented in the user’s expression or another person’s expression.

(d) This section applies regardless of whether the viewpoint is expressed on the interactive computer service, social-media platform, email system provider, or elsewhere.

Sec. XX-03. WAIVER PROHIBITED.

(a) A waiver or purported waiver of a person’s right to bring a civil action under this chapter or any other protection provided by this chapter is void as unlawful and against public policy, and a court or arbitrator may not enforce or give effect to such a waiver, notwithstanding any choice-of-law or other provision in any contract or other agreement.

(b) The waiver prohibition described by Subsection (a) shall not apply to contractual waivers to the extent any such application of the prohibition would impair the obligation of contract in violation of the constitution of this state or of the United States.

(c) The waiver prohibition described by Subsection (a) is a public-policy and civil rights limitation on contractual and other waivers of the highest importance and interest to this state, and this state is exercising and enforcing this prohibition to the full extent permitted by the constitutions of this state and the United States.

Sec. XX-04. APPLICABILITY OF CHAPTER.

(a) This chapter applies only to a user who:

- (1) currently resides in this state;
- (2) does business in this state; or
- (3) shares or receives expression in this state.

(b) This chapter applies only to expression to the extent it is shared or received in this state.

(c) This chapter applies only to an interactive computer service, a social-media platform, or an email system provider that is open to the public or offers its services to the public and that functionally has more than 50 million active users in the United States in a calendar month, and any such interactive computer service, social-media platform, or email system provider is hereby declared to be a common carrier.

(d) This chapter applies to the maximum extent permitted by the constitution of this state and the constitution and laws of the United States, but no further than the maximum extent permitted by the constitution of this state and the constitution and laws of the United States.

Sec. XX-05. LIMITATION ON EFFECT OF CHAPTER.

(a) This chapter does not subject an interactive computer service, a social-media platform, or an email system provider to any cause of action or liability to the extent the interactive computer service, social-media platform, or email system provider is protected from causes of action or liability by federal law.

(b) This chapter does not prohibit an interactive computer service, a social-media platform, or an email system provider from censoring:

- (1) expression that the interactive computer service, social-media platform, or email system provider is specifically authorized to censor by federal law;
- (2) unlawful expression, including expression that unlawfully harasses individuals or unlawfully incites violence; or
- (3) any expression, including obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable expression, on grounds other than those described in Section XX-02.

(c) This chapter does not prohibit an interactive computer service, a social-media platform, or an email system provider from merely providing expression to a user in a particular instance in response to that user's express request in that particular instance for expression limited on the basis of viewpoint.

(d) This chapter does not prohibit an interactive computer service, a social-media platform, or an email system provider from disseminating its own commentary or other expression, except to the extent the expression (i) is disseminated in a manner that delays or otherwise diminishes the visibility of the expression of a user, or delays or otherwise denies equal access to it, or otherwise censors it, on the basis of viewpoint in violation of this chapter or (ii) disparages or otherwise comments on any user's expression in the course of its carriage or accommodation by the interactive computer service and appears on the same page as that the user's expression.

(e) This chapter does not limit or expand intellectual property law or rights.

(f) This chapter's prohibitions do not apply in cases to the extent they would violate the doctrine on the dormant Commerce Clause enunciated by the Supreme Court of the United States.

Sec. XX-06. USER REMEDIES.

(a) A user may bring:

- (1) an action against an interactive computer service, a social-media platform, or an email system provider that violates this chapter with respect to the user; or
- (2) a qui tam action against an interactive computer service, a social-media platform, or an email system provider that violates this chapter with respect to the user; but
- (3) after a user brings an action under either Subsection (a) or (b), the user may not bring an action under the other subsection, unless a user's action under Subsection (a) is held to have been waived by any choice-of-law or other provision in the user's contract or other agreement with the defendant.

(b) If the user proves that the interactive computer service, social-media platform, or email system provider violated this chapter with respect to the user, the user is entitled to recover:

- (1) actual damages or, at the election of the plaintiff, statutory damages in the amount of \$100,000 for a censored user or \$1,000 for a user affected in the ability to receive the expression of another person;
- (2) declaratory relief;
- (3) injunctive relief; and
- (4) costs and reasonable and necessary attorney's fees.

(c) In a qui tam action brought under this chapter, any damages awarded shall be divided equally between the plaintiff and this state.

(d) If an interactive computer service, a social-media platform, or an email system provider fails to promptly comply with a court order in an action brought under this section, the court shall hold the interactive computer service, social-media platform, or email system provider in contempt and shall use all lawful measures to secure immediate compliance with the order, including daily penalties sufficient to secure immediate compliance.

(e) Notwithstanding any other law, the following are not a defense to an action brought under this section:

- (1) ignorance or mistake of law;
- (2) a defendant's belief that the requirements or provisions of this chapter are or were unconstitutional;
- (3) a defendant's reliance on any court decision that has been vacated, reversed, or overruled on appeal or by a subsequent court, even if that court decision had not been vacated, reversed, or overruled when the cause of action accrued;
- (4) a defendant's reliance on any state or federal court decision that is not binding on the

court in which the action has been brought;

(5) non-mutual issue preclusion or non-mutual claim preclusion.

(f) Notwithstanding any other law, including [CITE STATE'S LONG-ARM STATUTE], the courts of this state shall have personal jurisdiction over any defendant sued under this section to the maximum extent permitted by the Fourteenth Amendment to the United States Constitution.

(g) Notwithstanding any other law, the law of this state shall apply to any civil action brought under this section, to the maximum extent permitted by the Constitution of the United States.

(h) Notwithstanding any other law, a civil action under this section shall not be subject to any provision of [CITE STATE'S ANTI-SLAPP LAW, IF IT HAS ONE].

Sec. XX-07. AFFIRMATIVE DEFENSE.

(a) A defendant against whom an action is brought under Section XX-06 may assert an affirmative defense to liability under this section if:

(1) the imposition of civil liability on the defendant will violate constitutional or federally protected rights that belong to the defendant personally; or

(2) the defendant:

(A) has standing to assert the rights of a third party under the tests for third-party standing established by the Supreme Court of the United States; and

(B) demonstrates that the imposition of civil liability on the defendant will violate constitutional or federally protected rights belonging to that third party.

The defendant shall bear the burden of proving the affirmative defense in Subsection (a) by a preponderance of the evidence.

(b) Nothing in this section or chapter shall limit or preclude a defendant from asserting the unconstitutionality of any provision or application of the law of this state as a defense to liability under section XX-06, or from asserting any other defense that might be available under any other source of law.

(c) Notwithstanding any other law, no court of this state may apply the law of another state or jurisdiction to any civil action brought under Section XX-06, unless article VI of the Constitution of the United States or the Constitution of this state compels it to do so.

Sec. XX-08. VENUE. (a) Notwithstanding any other provision of law to the contrary, a civil action brought under Section XX-06 may be brought in:

(1) the county in which all or a substantial part of the events or omissions giving rise to the claim occurred;

(2) the county of residence for any one of the natural person defendants at the time the cause of action accrued;

(3) the county of the principal office in this state of any one of the defendants that is not a

natural person;

(4) the county of residence for any one of the claimants if that claimant is a natural person residing in this state; or

(5) the county of the principal office in this state of any one of the claimants that is not a natural person.

(b) If a civil action is brought under Section XX-06 in any one of the venues described by Subsection (a), then the action may not be transferred to a different venue without the written consent of all parties.

Sec. XX-09. LIMITATIONS ON PUBLIC ENFORCEMENT. Notwithstanding any other law, the requirements of this chapter shall be enforced exclusively through the private civil actions described in Section XX-06. No direct or indirect enforcement of this section may be taken or threatened by the state, a political subdivision, a district or county attorney, or any officer or employee of this state or a political subdivision against any person or entity, by any means whatsoever, and no violation of this section may be used to justify or trigger the enforcement of any other law or any type of adverse consequence under any other law, except as provided in section XX-06. This section does not preclude or limit the enforcement of any other law or regulation against conduct that is independently prohibited by such other law or regulation, and that would remain prohibited by such other law or regulation in the absence of this section.

Sec. XX-10. IMMUNITY FROM SUIT AND LIMITS ON STATE-COURT JURISDICTION.

(a) Notwithstanding any other provision of law to the contrary, the state and each of its officers and employees shall have sovereign immunity, its political subdivisions and each of their officers and employees shall have governmental immunity, and each officer and employee of this state or a political subdivision shall have official immunity (as well as sovereign or governmental immunity, as appropriate) in any action, claim, counterclaim, or any type of legal or equitable action that challenges the validity of any provision or application of this chapter, on constitutional grounds or otherwise, or that seeks to prevent or enjoin the state, its political subdivisions, or any officer or employee of this state or a political subdivision from enforcing any provision or application of this chapter, or from hearing, adjudicating, or docketing a civil action brought under Section XX-06, unless that immunity has been abrogated or preempted by federal law in a manner consistent with the Constitution of the United States. The sovereign immunity conferred by this section upon the state and each of its officers and employees includes the constitutional sovereign immunity recognized by the Supreme Court of the United States in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), and *Alden v. Maine*, 527 U.S. 706 (1999), which applies in both state and federal court and which may not be abrogated by Congress or by any state or federal court except pursuant to legislation authorized by Section 5 of the Fourteenth Amendment.

(b) Notwithstanding any other provision of law to the contrary, the immunities conferred by Subsection (a) shall apply in every court, both state and federal, and in every adjudicative proceeding of any type whatsoever.

(c) Notwithstanding any other provision of law to the contrary, no provision of state law may be

construed to waive or abrogate an immunity described in Subsection (a) unless it expressly waives or abrogates immunity with specific reference to this section.

(d) Notwithstanding any other provision of law to the contrary, no attorney representing the state, its political subdivisions, or any officer or employee of this state or a political subdivision is authorized or permitted to waive an immunity described in Subsection (a) or take any action that would result in a waiver of that immunity, and any such action or purported waiver shall be regarded as a legal nullity and an ultra vires act.

(e) Notwithstanding any other provision of law to the contrary, no court of this state shall have jurisdiction to consider any action, claim, or counterclaim that seeks declaratory or injunctive relief, or any type of writ, that would pronounce any provision or application of this subchapter invalid or unconstitutional, or that would restrain the state, its political subdivisions, any officer or employee of this state or a political subdivision, or any person from enforcing any provision or application of this chapter, or from hearing, adjudicating, docketing, or filing a civil action brought under section XX-06, and no such relief may be awarded by any court of this state.

(f) Nothing in this section or chapter shall be construed to prevent a litigant from asserting the invalidity or unconstitutionality of any provision or application of this chapter as a defense to any action, claim, or counterclaim brought against that litigant.

(g) Notwithstanding any other provision of law to the contrary, any judicial relief issued by a court of this state that disregards the immunities conferred by Subsection (a), or the jurisdictional limitations imposed by Subsection (e), shall be regarded as a legal nullity because it was issued by a court without jurisdiction, and may not be enforced or obeyed by any officer or employee of this state or a political subdivision, judicial or otherwise.

(h) Notwithstanding any other provision of law to the contrary, any writ, injunction, or declaratory judgment issued by a court of this state that purports to restrain the state, its political subdivisions, any officer or employee of this state or a political subdivision, or any person from hearing, adjudicating, docketing, or filing a civil action brought under Section XX-06 shall be regarded as a legal nullity and a violation of the Due Process Clause of the Fourteenth Amendment, and may not be enforced or obeyed by any officer or employee of this state or a political subdivision, judicial or otherwise.

(i) Notwithstanding any other provision of law to the contrary, any officer or employee of this state or a political subdivision, judicial or otherwise, who issues, enforces, or obeys a writ, injunction, or declaratory judgment described in Subsection (h) shall be subject to suit by any person who is prevented from or delayed in bringing a civil action under Section XX-06, and a claimant who prevails in an action brought under this section shall recover:

- (1) injunctive relief;
- (2) compensatory damages;
- (3) punitive damages of not less than \$100,000; and
- (4) costs and attorney's fees.

(j) Notwithstanding any other provision of law to the contrary, any person who violates Subsections (e) or (h):

(1) may not assert and shall not be entitled to any type of immunity defense, including sovereign immunity, governmental immunity, official immunity, or judicial immunity;

(2) may not and shall not be indemnified for any award of damages or costs and attorneys' fees entered against them, or for the costs of their legal defense; and

(3) may not and shall not receive or obtain legal representation from the attorney general of this state

in any action brought under Subsection (i).

(k) Notwithstanding any other provision of law to the contrary, any person who sues and seeks any writ, injunction, or declaratory judgment that would restrain any person from hearing, adjudicating, docketing, or filing a civil action brought under Section XX-06, shall pay the costs and attorneys' fees of the person sued. A person may bring a civil action to recover these costs and attorneys' fees in state or federal court. It shall not be defense to a civil action brought under this subsection that:

(1) the plaintiff failed to seek recovery of costs or attorney's fees in the underlying action;

(2) the court in the underlying action declined to recognize or enforce the requirements of this section; or

(3) the court in the underlying action held that any provisions of this section are invalid, unconstitutional, or preempted by federal law, notwithstanding the doctrines of issue or claim preclusion.

Sec. XX-11. SEVERABILITY.

(a) Mindful of *Leavitt v. Jane L.*, 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this chapter, and every application of the provisions in this chapter, are severable from each other.

(b) If any application of any provision in this chapter to any person, group of persons, or circumstances is found by a court to be invalid, preempted, or unconstitutional, for any reason whatsoever, then the remaining applications of that provision to all other persons and circumstances shall be severed and preserved and shall remain in effect. All constitutionally valid applications of the provisions in this chapter shall be severed from any applications that a court finds to be invalid, preempted, or unconstitutional, because it is the legislature's intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds that a substantial amount of the provision's applications are invalid, preempted, or unconstitutional, judged in relation to the provision's plainly legitimate sweep, the applications that do not violate the constitution of this state and the constitution and laws of the United States shall be severed from the remaining applications and shall remain in force, and the provision shall be interpreted, as a matter of state law, as if the provision contained explicit language limiting its application to the persons, group of persons, or circumstances for which the statute's application does not violate the constitution of this state and the constitution and laws of the United States.

(c) If any court declares or finds a provision of this chapter facially unconstitutional, when discrete

applications of that provision can be enforced against a person, group of persons, or circumstances without violating the constitution of this state and the constitution and laws of the United States, those applications shall be severed from all remaining applications of the provision, and the provision shall be interpreted by every state and federal court, as a matter of state law, as if the provision contained explicit language limiting its application to the persons, group of persons, or circumstances for which the provision's application will not violate the constitution of this state and the constitution and laws of the United States.

(d) The legislature further declares that it would have enacted this chapter, and each constitutional provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of the provisions of this chapter, irrespective of the fact that any discrete provision, section, subsection, sentence, clause, phrase, or word, or applications of this chapter, were to be declared invalid, preempted, or unconstitutional, or severed from the remainder of the chapter's provisions and applications.

(e) If any provision of this chapter is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force, consistent with the severability requirements of Subsections (a), (b), (c), and (d).

(f) No court may decline to enforce the severability requirements of Subsections (a), (b), (c), (d), and (e) on the ground that severance would rewrite the statute or involve the court in legislative or lawmaking activity. A court that declines to enforce or enjoins a state official from enforcing a statutory provision is never rewriting the statute, as the statute continues to contain the exact same words as it did before the court's decision. A judicial injunction or declaration of unconstitutionality:

(1) is nothing more than an edict prohibiting enforcement that may subsequently be vacated by a later court if that court has a different understanding of the requirements of the constitution of this state or the constitution or laws of the United States;

(2) is not a formal amendment of the language in a statute; and

(3) no more rewrites a statute than a decision by the executive not to enforce a duly enacted statute in a limited and defined set of circumstances.

(g) If any state or federal court disregards any of the severability requirements in Subsections (a), (b), (c), (d), or (e), and declares or finds any provision of this chapter facially invalid, preempted, or unconstitutional, when there are discrete applications of that provision can be enforced against a person, group of persons, or circumstances without violating federal law or the federal or state constitutions, then that provision shall be interpreted, as a matter of state law, as if the legislature had enacted a provision limited to the persons, group of persons, or circumstances for which the provision's application will not violate federal law or the federal or state constitutions, and every court shall adopt this saving construction of that provision until the court ruling that pronounced the provision facially invalid, preempted, or unconstitutional is vacated or overruled.

SECTION 3.

(a) Chapter XX, as added by this Act, applies only to an action taken on or after the effective date of this Act.

(b) A person who was a user, as defined by Section XX-01, as added by this Act, before the effective date of this Act may bring an action under Section XX-06, as added by this Act, to remedy censorship of the user's ability to share or receive expression that occurred before the effective date of this Act if the censorship continues after this Act takes effect and violates Chapter XX, as added by this Act.

SECTION 4. This Act takes effect on the ____ day after the last day of the legislative session.

3-17-2024