

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

GENEVIEVE MAHONEY,)	
a/k/a @genmahoney19,)	
an individual,)	
)	
Plaintiff,)	NO. 3:21-cv-00607
v.)	
)	Judge Campbell
)	Magistrate Judge Frensley
FACEBOOK, INC.,)	
a Delaware corporation,)	JURY DEMAND
)	
Defendant.)	

**PLAINTIFF’S NOTICE TO THE ATTORNEY GENERAL
OF THE UNITED STATES PURSUANT TO FED. R. CIV. P. 5.1
CONSTITUTIONAL CHALLENGE TO A STATUTE - 47 U.S.C. § 230 (c)(2)(A)**

TO THE UNITED STATES ATTORNEY GENERAL, MERRICK B. GARLAND, United States Department of Justice, 950 Pennsylvania Avenue, NW, Washington, D.C. 20530-0001, via Certified Mail, 7020 0090 0002 0594 7359:

PLEASE TAKE NOTICE, that on September 27, 2021, the plaintiff, Genevieve Mahoney, a Davidson County, Tennessee resident and Furman University student, known also by her Instagram handle and username, @genmahoney19, (“Genevieve”), filed a response in opposition to a motion to dismiss the complaint, filed by the defendant, Facebook, Inc. (“Facebook”). This Notice is being filed in fulfillment of Genevieve’s obligation pursuant to Fed. R. Civ. P. 5.1 (a)(1)(A).

The opposition response is Doc. 31, Page ID ## 393-420, and this paper draws into question the constitutionality of a provision in a federal statute, 47 U.S.C. § 230 (c)(2)(A), Communications Decency Act. In the paper, Genevieve submits this provision of the statute is facially invalid and unconstitutional because the statutory provision abridges “freedom of speech” protected by the First Amendment, and she argued in the paper as follows:

1. This provision of Section 230 states as follows:

47 U.S.C. § 230 Protection for private blocking and screening of offensive material

(c) PROTECTION FOR “GOOD SAMARITAN” BLOCKING AND SCREENING OF OFFENSIVE MATERIAL

(2) CIVIL LIABILITY

No provider or user of an interactive computer service shall be held liable on account of—

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected;

2. This statutory provision is facially invalid and abridges speech protected by the First Amendment, by conferring a “heckler’s veto” upon computer service providers, to restrict online material “*the provider considers*” “*objectionable,*” “*whether or not such material is constitutionally protected.*” See generally *Reno, et al. v. American Civil Liberties Union, et al.*, 521 U.S. 844 (1997); U.S. Const. am. 1.

3. Section 230 (c)(2)(A) codifies and effectuates a “heckler’s veto” in violation of the First Amendment. *See Bible Believers v. Wayne County, Michigan*, 805 F. 3d 228, 255 (6th Cir. 2015) (*en banc*).

4. Section 230 (c)(2)(A) is a content-based restriction of online speech requiring strict scrutiny analysis, and it lacks the precision that the First Amendment requires when a statute regulates the content of speech. *See Reno*, 521 U.S. at 871, 874.

5. Section 230 (c)(2)(A) is void for vagueness, and its vagueness “is a matter of special concern because it is a content-based regulation of speech, and the vagueness of such a regulation raises special First Amendment concerns because of its obvious chilling effect on free speech.” For example, the term “objectionable” is not defined in the statute, and the average person would have no reasonable basis to know or understand what “objectionable” online “material” means. *See Reno*, 521 U.S. at 871-872.

6. Section 230 (c)(2)(A) is overbroad and prohibits more online speech than is necessary to achieve a compelling government interest, and it sweeps broadly and restricts online material that “is constitutionally protected.” *See Reno*, 521 U.S. at 877.

7. Section 230 (c)(2)(A) is a prior restraint restricting online speech, and it fails to avoid “constitutional infirmity” because the regulation of online speech does not take place “under procedural safeguards designed to obviate the dangers of a censorship system.” *Southeastern Promotions Ltd. v. Conrad*, 420 U.S. 546, 559

(1975); *Freedman v. Maryland*, 380 U.S. 51, 58 (1965); *Shuttlesworth v. Birmingham*, 394 U.S. 147, 150-151 (1969).

8. In accordance with Section 230 (c)(2)(A), Congress endowed interactive computer service providers, such as Facebook, with powers to regulate speech online. Therefore, interactive computer service providers become instrumentalities of the government and are subject to constitutional limitations.

Consequently, Facebook and other interactive computer service providers are state actors under the “public function” test, when they regulate speech on their digital platforms. *Reno, et al. v. American Civil Liberties Union, et al.*, 521 U.S. 844 (1997); *Lee v. Katz*, 276 F. 3d 550 (9th Cir. 2002); *Marsh v. Alabama*, 326 U.S. 501 (1946).

Respectfully submitted this 28th day of September 2021.

**DUNCAN, HATCHER,
HOLLAND & FLEENOR, P. C.**

/s/ M. E. Buck Dougherty III
M. E. Buck Dougherty III, BPR #022474
Phillip E. Fleenor, BPR #012075
1418 McCallie Avenue
Chattanooga, TN 37404
(423) 266-2207 Telephone
(423) 265-8907 Facsimile
bdougherty@duncanhatcher.com
pfleenor@duncanhatcher.com

Attorneys for Plaintiff Genevieve Mahoney

CERTIFICATE OF SERVICE
UNITED STATES ATTORNEY GENERAL
CONSTITUTIONAL CHALLENGE - 47 U.S.C. § 230 (c)(2)(A)

I hereby certify that on September 28, 2021, a true and correct copy of the foregoing *Notice* was filed via the Court's CM/ECF filing system and served, along with a copy of Doc. 31, Page ID ## 393-420, *Plaintiff's Response in Opposition to Defendant Facebook, Inc.'s Motion to Dismiss the Complaint*, via Certified Mail, 7020 0090 0002 0594 7359, upon the United States Attorney General, as indicated below.

VIA Certified Mail - 7020 0090 0002 0594 7359

Merrick B. Garland, U.S. Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

/s/ M. E. Buck Dougherty III
M. E. Buck Dougherty III BPR #022474

CERTIFICATE OF SERVICE

I hereby certify that on September 28, 2021, a copy of the foregoing *Notice* was filed electronically via the court's CM/ECF filing system. Notice of this filing will be sent by operation of the court to all parties indicated on the electronic filing receipt, including counsel of record below.

Overton Thompson III
Courtney A. Hunter
Bass, Berry & Sims PLC
150 Third Avenue South, Suite 2800
Nashville, TN 37201
othompson@bassberry.com
courtney.hunter@bessberry.com

Counsel for Facebook, Inc.

Archis A. Parasharami
Mayer Brown LLP (DC Office)
1999 K Street, NW
Washington, D.C. 20006
AParasharami@mayerbrown.com

Counsel for Facebook, Inc.

/s/ M. E. Buck Dougherty III
M. E. Buck Dougherty III BPR #022474