COMPETITIVE ENTERPRISE INSTITUTE

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Comments of the Competitive Enterprise Institute

RE: 15 CSR 60-19.010 Definitions; 15 CSR 60-19.020 Prohibition on Restricting Choice of Content Moderation

On behalf of the Competitive Enterprise Institute (CEI), I appreciate the opportunity to comment on the social media rules proposed by the Attorney General's Office: 15 CSR 60-19.010 Definitions and 15 CSR 60-19.020 Prohibition on Restricting Choice of Content Moderation. Founded in 1984, CEI is a non-profit research and advocacy organization that focuses on regulatory policy from a free market perspective.

Chuck Berry, a native of Missouri, once offered a simple but profound warning: "Don't let the same dog bite you twice."[1] Speaking on the release of these proposed rules, Missouri Attorney General, Andrew Bailey, said, "Missouri becomes the first state in America to take real, enforceable action against corporate censorship. I'm using every tool to ensure Missourians—not Silicon Valley—control what they see on social media."[2] However, this is not the first attempt by a state government to interfere with social media platforms' content moderation decisions.

In *Moody v. NetChoice*, the Supreme Court assessed a Texas law preventing social media companies from removing or limiting certain user generated content. The Court said,

> The reason Texas is regulating the content-moderation policies that the major platforms use for their feeds is to change the speech that will be displayed there. Texas does not like the way those platforms are selecting and moderating content, and wants them to create a different expressive product, communicating different values and priorities. But under the First Amendment, that is a preference Texas may not impose.[3]

[1] Peri Fluger, "*Flowers v. Board of Probation & Parole*: The Parolee's Cujo, the Commonwealth Court Determines Assaultive Behavior Includes an Attack by a Dog under a Parolee's Control," *Widener Law Journal*, Vol. 20 (2011), p. 615.
[2] "Attorney General Bailey Files Groundbreaking Rule to End Big Tech's Censorship Monopoly and Protect Online Speech," Andrew Bailey, Missouri Attorney General, press release, May 6, 2025, https://ago.mo.gov/attorney-general-bailey-files-groundbreaking-rule-to-end-big-techs-censorship-monopoly-and-protect-online-free-speech/.
[3] *Moody v. NetChoice*, 603 U.S. 707, 743 (2024).

The Supreme Court's ruling in *Moody* suggests that Missouri would be inviting the "same dog bite" about which Chuck Berry warned. The Court's reasoning regarding Texas's constitutional overreach would apply equally to Missouri's proposed rules.

The attorney general's proposal would force covered social media companies to offer users the option to choose their own third-party content moderator, ensuring that content not prohibited by that chosen moderator is viewable, rather than relying solely on the platform's moderation. The First Amendment is implicated by the proposed rules because they supplant social media platforms' editorial discretion with that of potentially countless third parties.

The act of editing, curating, and selecting content is not merely a technical or administrative task. At its core, it is a form of expression. The Court in *Moody* made this clear. Relying on *Miami Herald Publishing Co. v. Tornillo*, the Court said,

> Consider again an opinion page editor, as in *Tornillo*, who wants to publish a variety of views, but thinks some things off-limits . . . . "The choice of material." The "decisions made [as to] content," the "treatment of public issues"—"whether fair or unfair"—all these "constitute the exercise of editorial control and judgement." *Tornillo*, 418 U.S., at 258. For a paper and for a platform too. And the Texas law (like Florida's earlier right-of-reply statute) targets those expressive choices—in particular, by forcing the major platforms to present and promote content on their feeds that they regard as objectionable.[4]

The proposed rules are akin to forcing a newspaper, as in *Tornillo*, to allow every subscriber to choose their own opinion page editor or editorial board. This plan is not only constitutionally problematic but also a logistical disaster, as illustrated by the projected $50,000,000 compliance costs associated with the rules in just the first two years alone.

The attorney general's posting in the *Missouri Register* fundamentally misunderstands the Supreme Court's ruling in *Moody*. This regulatory proposal does not "protect access." It forces social media companies to surrender their ability to curate their own expressive product, by essentially "coercing speakers to provide more of some views or less of others."[5]

The resources of Missouri taxpayers should not be wasted promulgating and ultimately defending regulations that so clearly run contrary to First Amendment to the U.S. Constitution.

Respectfully submitted,

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[4] *Id.* at 738 (quoting *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 258 (1974)).
[5] 603 U.S. at 733.