

# Brash tech lobby drives social media battles to Supreme Court

February 22 2024, by Isaiah Poritz, Tonya Riley, Bloomberg News

---



Credit: Unsplash/CC0 Public Domain

After California passed a law forcing digital platforms to adopt privacy guardrails and safety standards for young users, Carl Szabo had a blunt warning for legislators attending the nation's biggest conference for state

policymakers: "The lawsuits are coming."

Over the past decade, Szabo and his colleagues have transformed NetChoice, their small, right-leaning lobby known for its brash tactics, into Silicon Valley's litigation powerhouse.

With Meta Platforms Inc., TikTok Inc., and X Corp. among its members, the Washington-based trade association's won injunctions against laws regulating social media in five states.

The US Supreme Court will hear challenges on Monday to the constitutionality of the Florida and Texas laws. Each was introduced by Republican legislators after social media platforms suspended accounts supporting the January 6 Capitol attack, and aimed to prevent companies from "censoring" posts.

The spotlight reflects NetChoice's outsized role in a free-speech debate that's drawn increasingly more political, legal, and governmental scrutiny, from state capitols to Congress.

It doesn't publicly disclose how much money it receives from each member, but NetChoice's total revenue jumped from just over \$3 million in 2020 to \$34 million in 2022, according to public tax records. The group also has built a lobbying presence in 26 states, and opened a new litigation center last year.

Unlike other trade associations, NetChoice's member companies don't have a say in whether the group brings a lawsuit, its leaders say. That has allowed the relatively small firm—about a dozen employees, with only four focused on litigation—to move nimbly and punch above its weight in influencing internet policy by targeting [state laws](#) in court.

"When there's a threat, when there's an opportunity, we will act," Szabo,

the general counsel for more than a decade, said in an interview with Bloomberg Law. "That's kind of a running theme in our DNA."

Critics paint the group as an attack dog willing to "weaponize" the First Amendment in a bid to stop any internet regulation—bringing cases in a way that shields its members from having to take a public stance. Some cite its successful challenges to laws governing how platforms treat underage users.

"NetChoice isn't interested in an actual debate because they would rather concern troll on behalf of their Big Tech members who have a vested interest in profiting off of kids rather than protecting their youngest users," said Nichole Rocha, Head of US Affairs at children's online advocacy group 5Rights.

Adam Kovacevich, a former Google lobbyist who helms the left-leaning tech trade association Chamber of Progress, said many tech trade groups are afraid of harming their relationships with legislators, which makes them hesitant to bring lawsuits. NetChoice is not, he said.

"They have established themselves as a voice that is willing and eager to litigate," Kovacevich said. "I think of it as moving at the speed of politics."

## **Starting small**

NetChoice was founded in 2001 by a coalition of online businesses hoping to fight what they described as "threatened middlemen"—the brick-and-mortar businesses concerned by the rapid rise of online competitors, such as liquor stores and auction houses.

EBay, Orbitz and 1-800-Contacts were among the group's founding members. It also had the support of then-Connecticut Sen. Joseph

Lieberman, Democrats' 2000 vice presidential nominee.

The trade group's leaders shun the description "libertarian," to keep their distance from the political party of the same name. But from the start they made clear its libertarian values, arguing the internet economy should remain free of government intrusion, or "protectionist legislation or regulation."

Several of NetChoice's current and former employees have attended or teach at George Mason University's Antonin Scalia Law School, a school with a reputation as a hub for libertarian and pro-business ideology.

The lobby has also long maintained ties to the free-market network of nonprofits funded by billionaires Charles and David Koch.

NetChoice president Steve DelBianco, a former IT consulting executive, sat on the private industry advisory council for the American Legislative Exchange Council, or ALEC, a group that has received millions in funding from the Kochs. And NetChoice has partnered throughout the years with Americans for Tax Reform, which receives funding from Koch-affiliated foundations.

Szabo came aboard in 2011 after stints at major law firms Arnold & Porter and Wildman Harrold, where he developed a reputation as an early expert on internet and telecommunications law.

NetChoice's early policy priorities focused on fighting government regulations that would have hindered the growth of e-commerce, such as efforts to force companies to register in US states.

The group's priorities morphed as the internet changed and social media companies including Meta—then Facebook—and Google joined the trade association in 2012. When lawmakers and the public turned on the

tech industry, NetChoice stepped up as one of its most ardent defenders.

Tech lobbying groups are traditionally buttoned-up and formal, but NetChoice's leaders are known for being mouthy and impolitic.

NetChoice has sharply criticized the Biden administration, knocking it for excessive red tape and "poorly written" attempts to rein in artificial intelligence.

Szabo personally has positioned himself as a major antagonist of Biden, an unheard-of position among tech groups, which often seek to ingratiate themselves with the sitting administration. A headline on one of Szabo's Fox News op-eds warns, "Biden is coming for your job."

Szabo drew criticism last year when he testified at a Maryland state legislative hearing against proposed online safety protections for minors in the state, but identified himself only as a Maryland parent. (NetChoice spokesperson Krista Chavez said Szabo disclosed his position in written testimony ahead of the hearing.)

He also drew scorn for proposing a "Genius Bar for Parents"—a reference to the walk-up support desk in Apple stores—as a solution to the concerns around the internet's impact on minors' mental health.

"You might want to get this man some media training before you let him talk to the press again," Kevin Liao, a communications consultant who has supported initiatives to increase children's online safety, said of Szabo.

Szabo doesn't dispute being more outspoken and aggressive than the typical lobby shop.

"We are passionate, happy warriors," he said.

## Red state challenges

NetChoice not only moves quickly, but the group's conservative credentials have helped bolster its case against the typically Republican-backed social media laws.

"When we communicate with red states, being aligned on the right is of course helpful, because you're automatically treated as part of the group," Szabo said. "You're given an obvious credibility check."

He testified against the Florida and Texas bills as they moved through state legislatures in Tallahassee and Austin in 2021.

Both proposals were brought by Republicans who had accused the major tech companies of liberal bias and censorship of conservative voices. They sought to block social media platforms from removing or demoting posts based on the "viewpoint" of the poster, even if the posts violated established community guidelines.

NetChoice hired the DLA Piper law firm to write a memo to legislators outlining the laws' constitutional problems.

"For NetChoice, litigation is a last resort," Szabo said. "We work in [good faith](#) with lawmakers to prevent unconstitutional bills from becoming unconstitutional laws."

Not everyone agrees. When Utah lawmakers unveiled new proposals this month to strengthen their social media laws, one sponsor, state Sen. Mike McKell, specifically cited a lack of good faith negotiating by tech companies and their proxies. He said lawsuits from trade groups "undermined the credibility of the discussions," but he didn't cite NetChoice by name.

Unlike in a gridlocked Congress, a bill in a state legislature can become law in as little as a week.

When Florida and Texas passed the laws, "we knew that it was opening the floodgates" for similar bills in other states, said Chris Marchese, director of NetChoice's litigation center. Over the next two years, Arkansas, California, Ohio, and Utah also passed bills regulating large social media websites, with a focus on enforcing child safety standards and age verification. NetChoice is challenging those laws as well.

In June 2021, NetChoice joined with another tech group, the Computer & Communications Industry Association, to sue Florida, less than a month after the bill there was enacted. CCIA represents the largest tech companies, including Amazon, Apple, Google and Meta. The two groups challenged Texas' law months later.

They contend that businesses have a First Amendment right to curate the kind of content they want on their platforms. The laws would allow states to improperly control speech online and prevent platforms from removing items such as incendiary, hate-filled posts from neo-Nazi and Ku Klux Klan supporters, the groups argue.

Florida and Texas maintain that platforms such as Facebook or X can be regulated as "common carriers," like utility and telephone companies.

Federal district courts in both states quickly enjoined the states from enforcing the laws, but the subsequent appeals brought divergent opinions.

The Atlanta-based US Court of Appeals for the Eleventh Circuit upheld the injunction against Florida. The New Orleans-based Fifth Circuit reversed the Texas injunction.

Both appealed to the US Supreme Court. When the justices hear oral arguments next week, former US Solicitor General Paul Clement, one of the country's best known conservative lawyers, will present the case on NetChoice's behalf.

## Defining the arguments

Given its polarizing policy positions, NetChoice has its share of critics in Washington.

"Starting the litigation center and being really aggressive about challenging statutes before they're enforced shows how NetChoice and its members are really serious about preserving the kind of lawlessness that has defined the internet," said Megan Iorio, senior counsel and amicus director at the Electronic Privacy Information Center, a prominent advocate in such battles since the 1990s.

EPIC opposes the Florida and Texas laws, but the group is one of several that has warned that NetChoice's wide swing could lead to a ruling that poses threats to any efforts to regulate the industry. EPIC filed amicus briefs supporting neither party in the cases.

Because it's a trade group representing companies and not individuals, NetChoice's arguments about upholding the First Amendment ring hollow, said George Washington Law Professor Daniel Solove.

"NetChoice is trying to raise arguments about speech that are really arguments that are not NetChoice's to make," he said.

Whether or not the justices agree will have serious implications for how tech fights regulation attempts.

Despite the partisan criticism, the cases NetChoice has chosen to litigate

have drawn bipartisan support.

The Biden administration is backing NetChoice's position before the Supreme Court. US Solicitor General Elizabeth Prelogar is expected to assert in an argument to the justices that Texas and Florida's laws will prevent social media platforms from taking down hate speech and misinformation.

If the laws are upheld, social media platforms will be flooded "with a ton of LGBTQ+ hate and a ton of racial discrimination," said Jess Miers, senior counsel at the tech trade group Chamber of Progress.

NetChoice's cases have also united tech companies that might otherwise be at odds.

Yelp Inc., which isn't a NetChoice member, doesn't agree with the trade association's push to block federal antitrust legislation targeting large online platforms. But the review company, which has tussled with Google on antitrust issues for years, still supported NetChoice's position at the Supreme Court with an amicus brief.

And while all eyes will be on the [oral arguments](#) next week, a growing number of similar social media laws are being considered across the country. NetChoice's leaders sees it as their moment to shine.

"We want ours to be the premier litigation center for free expression and free enterprise on the internet," Szabo said. "That is our goal."

2024 Bloomberg L.P. Distributed by Tribune Content Agency, LLC.

Citation: Brash tech lobby drives social media battles to Supreme Court (2024, February 22) retrieved 10 May 2024 from <https://techxplore.com/news/2024-02-brash-tech-lobby-social-media.html>

This document is subject to copyright. Apart from any fair dealing for the purpose of private study or research, no part may be reproduced without the written permission. The content is provided for information purposes only.