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

CANCER STEP OUTSIDE THE BOX, LLC; TY BOLLINGER (principal owner) and CHARLENE BOLLINGER (principal owner),	
Plaintiffs,	**Civil Action No.: 3:24-cv-01465**
-vs-	**PLAINTIFFS' OMNIBUS RESPONSE IN OPPOSITION TO THE PLATFORM DEFENDANTS' APRIL 21, 2025, MOTIONS TO TRANSFER [D.E. 41-47]**
DEPARTMENT OF STATE, GLOBAL ENGAGEMENT CENTER, DEPARTMENT OF DEFENSE, DEPARTMENT OF HOMELAND SECURITY, CYBERSECURITY AND INFRASTRUCTURE SECURITY AGENCY, FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES, CENTER FOR COUNTERING HATE, INC., MEDIA MATTERS FOR AMERICA, CENTER FOR INTERNET SECURITY, INC., META PLATFORMS, INC. (f/k/a FACEBOOK, INC., GOOGLE, LLC, X CORP. (f/k/a TWITTER, INC), JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, JOHN DOE 4, JOHN DOE 5, JOHN DOE 6, JOHN DOE 7, JOHN DOE 8, JOHN DOE 9 and JOHN DOE 10,	
Defendants.	

Like *Missouri v. Biden*, this Censorship Industrial Complex ("CIC") case arises *entirely* from what has been described as "the most massive attack against [constitutional rights, namely] free speech in United States history,"[1] along with numerous other unlawful actions stemming from same. The case commenced on December 16, 2024, and does not arise from (*nor is it governed by*) any of the three Platform Defendants' independent Terms of Service ("TOS"). *See* [D.E. 1].

[1] The finding of District Court Judge Doughty in Missouri, et al. v. Biden, et al., No. 2:22-cv-01213 (W.D. La.), a case similar to this, albeit a legally inferior case. *See, e.g.*, [D.E. 7] at ¶61.

After party admissions began to surface concerning the CIC, an Amended Complaint was filed on January 23, 2025. *See* [D.E. 7]. On April 21, 2025, the Platform Defendants (Meta Platforms, Inc., "Meta," Google, LLC, "Google," and X Corp., "X") filed motions to transfer this action (Meta and Google to California, and X to Texas). *See* [D.E. 41] – [D.E. 47]. Transfer would not serve the interests of justice – this action should remain together and with this Court.

I. BRIEF CASE BACKGROUND

Preliminarily, we suggest that it is imperative for this Court (in adjudicating this motion practice) to at least read the Amended Complaint's "Nature of Action" section. *See* [D.E. 7] at 5-21. From that, it should be clear this is not a routine social media case involving a single platform / single user, as the Platform Defendants suggest in their strained effort to invoke their independent / adhesive TOS (and associated forum selection clauses ("FSC"). This case involves multiple Defendants (including government agencies and NGOs) that are not contemplated by the TOS.

The Platform Defendants urge this Court to ignore the extraordinary nature of these facts in seeking to fracture this case and scatter its pieces across the country (TN, CA, TX, and potentially other jurisdictions), thereby severely prejudicing Plaintiffs, wasting judicial resources, and inviting inconsistent rulings. The epitome of inefficient and manifest misjustice.[2]

Plaintiffs, Cancer Step Outside the Box, LLC ("CSOB") and Ty and Charlene Bollinger (the "Bollingers"), filed this lawsuit against multiple Government agencies, non-governmental organizations ("NGOs"), and major technology companies (the Platform Defendants). The Amended Complaint [D.E. 7] details a coordinated censorship effort that *began outside the Platforms* (Government and NGOs) and later enlisted the Platforms to target Plaintiffs' speech and

[2] Even the Government Defendant's May 20, 2025, filing [D.E. 55] recognize that severing this case and scattering it across the nation would be a logistical nightmare and/or not judicially economical (courts or parties) and/or likely produce inconsistent results. *See id.*

business. Because this effort originated independently of any Platform's TOS, the claims fall well outside the contractual scope the Platform Defendants seek to invoke.

Furthermore, the constitutional issues raised in this case really stem from the broader CIC, where the Government used both *protection* and *pressure* to influence Big Tech as instruments to suppress speech that challenges its preferred narratives. This coordinated effort includes the creation and dissemination of government-aligned messaging, facilitated in part by the Smith-Mundt Modernization Act of 2012, authorizing domestic influence operations. Plaintiffs' inclusion in the so-called "Disinformation Dozen" is just one example of the Government's *ongoing* campaign to silence dissent, an effort that began well before any Platform TOS were implicated.

The CIC, spearheaded by the Government Defendants, has been operating behind the scenes for over a decade, well before Big Tech became involved. When COVID-19 emerged and public dissent threatened the Government's narrative and political agenda, the Government Defendants moved swiftly to silence opposing views and facilitate widespread public indoctrination. To do so, myriad NGOs (*e.g.*, the Center for Countering Digital Hate, "CCDH") manufactured, at the Government's behest, fictitious smear data concerning individuals and companies that did not share the Government's views on COVID-19 (with Plaintiffs and their so-called "Disinformation Dozen" at the apex of the Government's COVID-19 dissenter list). The Government then proceeded, through serious threats and coercive pressure,[3] to compel the Platform Defendants, aided by fabricated reports from aligned NGOs, to eliminate Plaintiffs (among many others) from the modern public square of social media. This coordinated effort, rising to the level of collusion or conspiracy, resulted in unconstitutional censorship and wholesale

[3] For example, *via* threats to "scrutinize" Big Tech's Section 230 of the Communications Decency Act ("CDA," 47 U.S.C. §230) "immunity," exposing Big Tech up to a flood of antitrust litigation.

violation of Plaintiffs' First Amendment rights, along with numerous other unlawful acts. That the Platform Defendants ultimately capitulated to the Government's strong-arm demands (as parties like Meta have now explicitly admitted) by "unpublishing" dissenting voices does not retroactively convert the CIC-driven constitutional violations at the heart of this case into a routine social media computer service dispute. That such censorship occurred way down the causal chain does not subject this litigation to the TOS / FSCs, as the motions to transfer would have this Court believe.

None of the causes of action advanced in the Amended Complaint have anything to do with or relate to the Platform Defendants' so-called contracts (i.e., TOS) containing purportedly enforceable FSCs. Plaintiffs assert several legal claims, including violations of the First Amendment, ultra vires actions beyond statutory authority, and violations of the Administrative Procedure Act. Plaintiffs also allege civil conspiracy, negligence, tortious interference with business relationships, and practicing medicine without a license against the Platform Defendants. Additionally, Plaintiffs seek the revocation of the 501(c)(3) status of NGOs like the CCDH, claiming these organizations engaged in unconstitutional political activities, for example, contrary to their tax-exempt status duties. Moreover, treason is alleged. Again, this action is anything but some social media services contractual dispute implicating the Platform Defendants' TOS / FSCs.

For example, where do the TOS "contract" with Plaintiffs to waive free speech rights (as if such Constitutional guarantees can be contracted away – they cannot)? Nowhere. Where do the TOS authorize Big Tech's collusion with the Government and foreign and domestic NGOs to censor Plaintiffs, erase their voices, and destroy them economically, reputationally, and emotionally? Nowhere. Where do the TOS authorize Platforms to suppress dissent at the Government's behest and replace it with state-sponsored propaganda? Nowhere. Where do the TOS legalize the unconstitutional and unlawful conduct alleged in the Amended Complaint—

including what Plaintiffs submit amounts to treason? Nowhere. Plaintiffs never agreed to any of that because such terms would be facially unconstitutional, unconscionable, and FSC overreach. None of the causes of action in the Amended Complaint arise from the Platform Defendants' so-called contracts or the fine-print FSCs embedded therein. The TOS / FSC are not at issue here.

Plaintiffs seek both monetary and injunctive relief. Injunctive relief to end the unconstitutional conduct they have endured, damages for economic losses, and the revocation of tax-exempt status for certain NGOs.

II. BRIEF SUMMARY OF PLATFORM DEFENDANTS' MOTIONS TO TRANSFER

X's motion to transfer [D.E. 41-42] argues that the Middle District of Tennessee is not the proper venue for the case and requests transfer of the claims against it to the Northern District of Texas. The basis for this request is a FSC in X's TOS mandating social media service dispute resolution in Texas. X asserts that the FSC is applicable, mandatory, valid, and enforceable, and that Plaintiffs agreed to these terms by continuing to use their X accounts. X contends that Plaintiffs' non-contract claims are somehow related to the computer services provided by X, thus falling under the scope of the FSC. X further contends that Plaintiffs cannot demonstrate that public interest factors overwhelmingly disfavor the transfer. X's motion concludes by requesting that the Court sever and transfer the claims against it to the Northern District of Texas.

Google's motion to transfer [D.E. 45-46] seeks transfer to the Northern District of California, citing a supposedly mandatory FSC in its TOS. Google argues that the clause is mandatory and enforceable, and that Plaintiffs cannot rebut the presumption of its enforceability. The motion contends that Plaintiffs' claims against Google solely arise from the suspension of a YouTube channel, which is governed by Google's TOS. Google contends Plaintiffs' choice of forum should not be given weight and that public interest factors do not justify retaining the case

in Tennessee. Google also suggests that if the entire case is not transferred, the claims against Google should be severed and transferred to California.

Meta's transfer motion also seeks transfer to the Northern District of California. Meta argues that Plaintiffs' creation of Facebook and Instagram accounts automatically requires this matter being shipped off to California. Meta's motion asserts that Meta's FSCs are applicable, mandatory, valid, and enforceable, and that public-interest factors do not justify disregarding the parties' purported agreement. Meta contends that Plaintiffs' non-contract claims, revolving around the tangled web that is the CIC, somehow solely arise from actions taken by Meta in accordance with its TOS, such as content moderation decisions, which are covered by the FSCs. Meta further argues that enforcing the FSC would not interfere with public policy and that the Northern District of California is a fair forum with comparable remedies. Meta requests that the claims against it be severed and transferred to the Northern District of California.

III. BRIEF SUMMARY OF THIS OMNIBUS RESPONSE

First, does the scope of this case falls within the four corners of the Platforms' TOS? The scope of this case extends well beyond the social media services contemplated by the TOS – this is not a contractual dispute involving Big Tech's ordinary carrying out of interactive computer services contemplated within the TOS. Instead, this case centers on significant constitutional violations by Defendants, including Government-coerced censorship and anti-competitive practices, which not only began before Big Tech entered the nefarious fray, but fall entirely outside the scope of any TOS. The heart of this case is the Platforms being heavily coerced and fully directed by (likely conspiratorially) Government Defendants to censor Plaintiffs' voices *via* censorship (restraint of Plaintiffs' individual civil liberties) bolstered by fabricated "disinformation" / "misinformation" data conjured up by NGOs (*e.g.*, CCDH) at the Government

Defendants' behest. If this was a routine content-filtering case involving *only* Big Tech and their standard provision of interactive computer services (in the realm of §230(c)), the Platforms' argument might have had merit. This case is far from that, not falling within the scope of the Platforms' TOS / FSCs because this action involves far more than the Platforms' interactive computer services and includes more party Defendants than just Big Tech.

Second, are the TOS (and FSCs) even contractually valid? In this analysis, the legal considerations around FSCs (excluding private interests, not part of the analysis) actually favor the Plaintiffs, not the Platforms. For example, "fraud" and "overreach" apply here in the Court's forum selection enforceability assessment. As another example, Plaintiffs will not receive fair treatment ("their day in court") in the N.D. Cal., for example, where the court has shown nearly two-and-a-half decades of Big Tech bias, with case law overwhelmingly benefiting these companies. Transferring this matter to the N.D. Cal., for example, would compromise any assurance of objectivity / neutrality in resolving this dispute. Moreover, Tennessee absolutely has a strong public interest in the appropriate adjudication of a dispute revolving around Tennesseans' First Amendment rights being deprived by Californians (Platform Defendants) and District of Columbians (Government Defendants and CCDH), for examples.

This entire nation is plagued by the nefarious conduct spelled out in the Amended Complaint. *See, e.g.*, [D.E. 7] at ¶36. Strong public policy / interest weighs in favor of having Tennessee adjudicate the Tennessee Plaintiffs' action amidst the constitutional rights back-drop of this matter (constitutional rights that cannot be overridden by any "contract"), especially given the aforementioned California judiciary's bias in Big Tech disputes. Moreover, given the significant harm to Plaintiffs' businesses (all felt in Tennessee), Tennessee has a strong public interest in adjudicating a matter with substantial implications for its local economy. Plaintiffs' workforce, for

example, has been harmed by Defendants' wrongdoing. These employees are Tennesseans, and Tennessee has a strong public interest in protecting its workforce / local economy.

Third, the transfer motions argue (or at least suggest) that the location of harm / injury was California or Texas, not Tennessee, and that Plaintiffs accordingly cannot establish §1391(b)(2) venue. This argument is flat wrong. The location of harm / injury can certainly be considered where the harm / injury was suffered / felt by the Plaintiffs (here, Sumner County). Plaintiffs need only establish one of §1391(b)'s subparts in order to confer venue in this Court, and Plaintiffs' suffering / feeling the harm of Defendants' wrongdoing in Sumner County plainly satisfies the "substantial part of the events or omissions giving rise to the claim occurred" language of §1391(b)(2). Moreover, venue can arise in more than one jurisdiction; *i.e.*, it is irrelevant whether venue could have been somewhere in Texas or California, so long as venue is also proper in this Court as it is.

IV. LEGAL ANALYSIS

A. Legal Standard(s)

1. Enforceability of FSC

The legal standard for assessing transfer pursuant to a FSC involves several key principles and considerations. The existence of a valid FSC in the contract in dispute is a factor that should be part of the court's analysis when considering a motion to transfer, ***but such a clause may be ignored as a factor if it does not clearly apply to the action or its binding nature is uncertain or disputed.*** *See* Fed. Prac. & Proc. (Wright & Miller), 14D Fed. Prac. & Proc. Juris. §3803.1 (4th ed.)

> [A FSC is enforceable] unless plaintiffs can clearly show that enforcement would be unreasonable and unjust, or that the clause was invalid for such reasons as fraud or overreaching. The presumptive validity of the [FSC] may also be set aside if plaintiffs can show that trial in the contractual forum will be so gravely difficult and inconvenient that they will for all practical purposes be deprived of their day in court, or if enforcement would contravene a strong public policy of the forum state.

Lakeside Surfaces, Inc. v. Cambria Co., LLC, 16 F.4th 209, 217-218 (6th Cir. 2021) (internal citations omitted); *Branch v. Mays*, 265 F.Supp.3d 801 (E.D.Tenn. 2017) (In determining the enforceability of a FSC, courts must consider: (1) Whether the clause was obtained by fraud, duress, or other unconscionable means; (2) Whether the designated forum would ineffectively or unfairly handle the suit; and (3) Whether the designated forum would be so seriously inconvenient such that requiring the plaintiff to bring suit there would be unjust).

In assessing a transfer motion predicated on a FSC, the Court must first determine whether the FSC … is a contractually valid FSC. *See, e.g., Atl. Marine Const. Co, Inc. v. U.S. Dist. Court for W.D. Tex.*, 134 S.Ct. 568, 581 n.5 (2013); *see also, e.g., Braspetro Oil Services Co. v. Modec USA, Inc.*, 240 Fed.Appx. 612, 616 (5th Cir. 2007) (enforcing a FSC "requires first assessing the clause's contractual validity and its scope," whether the case falls within the scope of the clause).

As to the first prong of the analysis (contractual validity), FSCs may be considered unreasonable / unenforceable if:

> (1) the incorporation of the [FSC] into the agreement was the product of fraud or overreaching; (2) the party seeking to escape enforcement 'will for all practical purposes be deprived of his day in court' because of the grave inconvenience or unfairness of the selected forum; (3) the fundamental unfairness of the chosen law will deprive the plaintiff of a remedy; or (4) enforcement of the [FSC] would contravene a strong public policy of the forum state.

Braspetro Oil Servs. Co. at 615 (5th Cir. 2007) (internal citations omitted). As to the fourth sub-prong (public policy / interest) of the first prong, these factors are considered: (1) the administrative difficulties flowing from court congestion; (2) the local interest in having localized interests decided at home; (3) the familiarity of the forum with the law that will govern the case; and (4) the avoidance of unnecessary problems of conflict of laws of the application of foreign law. *See Atl. Marine Const. Co., Inc.* at 581–582.

As to the second prong of the transfer analysis (scope):

> To determine whether the [FSC] applies to the type of claims asserted in the lawsuit, courts look to the language of the parties contract to determine which causes of action are governed by the [FSC] ... . If the substance of the plaintiff's claims, stripped of their labels, does not fall [in the FSC scope], the clause cannot apply.

Marinechance Shipping, Ltd. v. Sebastian, 143 F.3d 216, 222 (5th Cir.1998).

2. Location of Harm / Injury

In determining venue, courts look to §1391(b)'s three subsections. If a case's chosen venue falls under one of the three subsections, venue is proper. *See Atlantic Marine Const. Co.* at 577). §1391(b)(2) confers venue "in a 'judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.'" *Id.* As to location of harm / injury, the Court may consider where the harm was inflicted *and* felt to determine the location of "a substantial part of the events" under §1391(b). Ultimately, "venue may lie in multiple jurisdictions." *Julia R. Swords Trust v. C.I.R.*, Nos. 14-2279, 14-2282, 14-2283, 2014 WL 7929830, *1 (6th Cir. Dec. 18, 2014). The injuries here were intended to be felt in Sumner County, this Court is a proper venue here.

B. The FSCs Are Invalid And/Or Unenforceable For Myriad Reasons

The (un)enforceability of a FSC involves a two-part analysis. One part of the analysis is the validity of the "contract" in which the FSC is found, and this assessment is broken out into sub-considerations ("fraud" / "overreach," "day in court," "public policy / interest"). The other part of the analysis is whether the gravamen of a complaint (allegations, causes of action, parties) falls within the scope of the "contract" containing the FSC; *i.e.*, here, whether the gravamen of the Amended Complaint involves the ordinary interactive computer services contemplated by the Platforms' TOS or something else. We first address scope, then contractual validity.

1. The Scope of This Case Has Nothing To Do With The Platforms' TOS

This lawsuit is multi-faceted regarding the interrelationships between the various actors / wrongdoers / Defendants and the acts / wrongs flowing from those relationships. The second

through eleventh averments of the Amended Complaint are worth recasting to punctuate what the nature (scope) of this action is (which, again, is *not* a basic spat with Big Tech about provision of interactive computer services, which such basic spat might arguably implicate TOS / FSC):

> *This case confronts the most insidious assault on free speech in modern history* (recently admitted to by Meta, at the very least, as discussed below) – a systemic, systematic effort by the Government to suppress dissent (*i.e.*, suppress American voices that rightfully choose not to submit to the Government's preferred narrative), employed over decades with increasing sophistication and coordination with Big Tech (*e.g.*, Meta, X, Google), aided and abetted by foreign (*e.g.*, CCDH) and domestic (*e.g.*, MMA) entities / non-governmental organizations (NGOs). In partnership with the aforementioned private tech companies and NGOs, the Government has weaponized the digital landscape (including social media platforms, which are widely considered the modern public square) to silence opposition and control public discourse. *At minimum, at least one Government agency (e.g., DOS / GEC, DHS / CISA, or DOD), in close collaboration with at least one NGO (e.g., CCDH, MMA or CIS), worked with or pressured at least one Platform (e.g., Facebook, Google, or Twitter) to directly censor or interfere with the free speech and / or business relationships of at least one plaintiff (e.g., Ty and / or Charlene Bollinger).*

Id. at ¶2 (emphasis in original) (footnote omitted).

> This is not merely an attack on free speech / press (Constitutionally guaranteed right under the First Amendment), it is a calculated manipulation of economic power, where Big Tech's anti-competitive interests align with the Government's desire to snuff out dissent. Together, they have monopolized the Internet's digital information markets, conveniently shielded from accountability by Government's own misinterpretation / misapplication of Title 47, United States Code, Section 230 (the Communications Decency Act, "CDA").

Id. at ¶3.

> Under the guise of combating "misinformation" and / or "disinformation," the Government coerces private platforms (Interactive Computer Service Providers, *e.g.*, Big Tech) to do what the Government is Constitutionally prohibited from doing – silencing dissent. Big Tech complies because it benefits from the Government's (*i.e.*, executive, legislative, and judicial) overbroad, whimsical, and unconstitutional interpretation of Section 230, which allows these companies to maintain their monopolies without liability exposure. This coercive / cooperative arrangement operates not only as a violation of free speech but also in direct contravention of the Due Process rights of many Americans seeking legal remedy against Big Tech corporations.

Id. at ¶4.

> This clandestine situation echoes the same kind of tyranny that led to the American Revolution, where the Founders fought against a "foreign" government that sought to suppress dissent and control public opinion. A maxim dictating that "what cannot be done directly cannot be done indirectly" applies here – the Government's acts are unconstitutional, illegal, inequitable, and statutorily repugnant, even when carried out through private entities (Government in partnership with foreign and domestic NGOs and Big Tech). This is not a hypothetical erosion of rights, it is an immediate and direct threat to the First Amendment, an absolute pillar of what America stands on and for … there is a reason the First Amendment comes first in the Bill of Rights, and this case exemplifies that reason.

Id. at ¶5.

> When Government and private entities act in concert with each other to the degree of joint participation as here (conspiratorially, we submit), heightened scrutiny is required. At the heart of this case is the Government's deliberate manipulation of both free speech and competitive information markets, wielding its influence to control liability and legal remedies. Social Media platforms (once intended to be open forums) have been repurposed into Instruments of Government censorship, suppressing dissent in exchange for the Government's protection / preservation of their monopolies. Platforms like Facebook (Meta), Twitter (X), and Google have been empowered to dominate the Internet's information space, surveil citizens, and eliminate content that challenges (or even just questions) Government policies and / or philosophies. Again, as will be discussed below, Meta (at the very least) has recently admitted to pretty much everything (if not everything) averred in this Amended Complaint.

Id. at ¶6.

> This dangerous entwining of Big Tech, NGOs, and the Government strengthens the stranglehold on the marketplace of ideas. Big Tech now acts as both the enforcer of Government censorship and as the beneficiary of its overbroad legal immunity (*i.e.*, civil liability protection) under Section 230, which such misapplied liability protection has spiraled out of control into a lawless Internet no-man's-land.

Id. at ¶7.

> This case exposes not only the unconstitutional partnership between Government and Big Tech, but also the broader economic and foreign motivations behind it. Big Tech has become an unaccountable monopoly, silencing critics and advancing the Government's agenda, alongside other censorship-oriented NGOs (*e.g.*, CCDH, MMA). These foreign actors (CCDH, at least), driven by their own objectives, have collaborated with both Big Tech and the Government to suppress domestic speech that challenges domestic and global narratives. Plaintiffs (like so many others) have

> had their voices *concretely* and *particularly* erased from the modern public square as a result of this coordinated effort, as well as having had their lives turned upside down amidst, for example, immense reputational degradation, all while Big Tech continues to act without consequence.

Id. at ¶8.

> At stake is not merely the future of free expression in America, but the very survival of our Constitutional Republic. If the Government eradicates (or even erodes) the First Amendment (which absolutely positively cannot be allowed), then what follows? The Second Amendment? The Fifth Amendment? Those who seek to undermine our God-given / natural-born rights (*e.g.*, the Establishment) have no end in sight (to call a fig a fig, the Administrative State's desire is to set the entire Constitution ablaze), but their efforts necessarily begin with the control and / or destruction of free speech.

Id. at ¶9 (footnote omitted).

"The entanglement of Government censorship, Big Tech's economic interests, and foreign influences threatens both individual rights and the foundation of a free society." *Id.* at ¶10. "As the last pillar upholding individual civil liberties worldwide, the U.S. Constitution's fall would signal the collapse of freedom globally. This case accordingly transcends the immediate rights of the Plaintiffs, it stands as a vital opposition to tyranny on a global scale. This Court simply cannot fail in its duty here, too much is at stake." *Id.* at ¶11.

This conspiratorial web between Government, Big Tech, and other foreign and domestic NGOs has absolutely nothing to do with the ordinary *private* (*i.e.*, involving just the platform and user) interactive computer services contemplated by the Platforms' TOS containing the FSCs at issue; *i.e.*, the gravamen of the Amended Complaint falls ***far*** outside the scope of the TOS "contract." This is not the product of artful draftsmanship; rather, this is the product of what this case is really about (a conspiratorial web, coerced by the Government, aimed at violating constitutional rights and effectuating other illegalities through the Government's tools and instruments; here, Big Tech, CCDH, *etc.*) and what this case is not about (a contract between the

platform and user pertaining to ordinary interactive computer services contemplated by the TOS; *i.e.*, a contract pertaining exclusively to the individual conduct of Platform Defendants). The Platforms' decisions to eradicate Plaintiffs from their social media spaces had nothing to do with independent content filtering practices related to ordinary interactive computer services contemplated within TOS; *i.e.*, this is not a 47 U.S.C. §230(c) case. And, at best, the Platforms' decision to eliminate the existence of Plaintiffs on social media at the end of the CIC detailed here (if that is somehow considered ordinary (un)publishing decision-making, which we submit is ludicrous) was about 5, or 6, or 7 links down the proximate causation chain; *i.e.*, so tenuous and remote from the heart of this action that the gravamen of the scope of this case absolutely cannot be what the Platform Defendants argue to pull off severance and transfer to multiple jurisdictions.

In addition to the common allegations of the Amended Complaint *prima facie* falling outside the scope of social media services contemplated by the Platforms' TOS (which is the only reason this Court needs to deny the transfer motions), the Amended Complaint's causes of action fall outside the scope of ordinary interactive computer services contemplated by the TOS. Counts I-II (re: all Defendants) pertain to the abridgement of Plaintiffs' constitutionally guaranteed free speech and free press rights, respectively. *See* [D.E. 7] at ¶¶711-720. The constitutionally repugnant wrongdoing at issue in Counts I-II has nothing to do with ordinary interactive computer services contemplated by the TOS, as if constitutional rights can be contracted around anyway.[4]

Count VII (re: all Defendants) pertains to the civil conspiracy that is the CIC. *See id.* at ¶¶762-768. Within this Count, there is a particularly poignant averment worthy of citation:

> This entire Amended Complaint outlines Defendants' conspiracy to censor the Disinformation Dozen, inclusive of Plaintiffs … . Every single element of a conspiracy cause of action is laid out in the Common Allegations *ad nauseum*.

[4] Counts III-VI (re: Government Defendants) not acutely germane to this motion practice; but, even those Counts demonstrate this case is not a social media services contract dispute.

> Common design between two or more persons – check (eradicate free speech, among other things). Concerted action of an unlawful purpose – check (the organization and premeditation amongst Defendants to carry out eradication of free speech was extensive). Dozens of overt acts carried out by Defendants to eradicate free speech are discussed above – check. And the Plaintiffs have been crushed (monetarily, reputationally, *et cetera*) as a result; *i.e.*, badly injured – check.

Id. at ¶763. And yet the Platforms' transfer motions argue that the scope of this case is nothing more than a social media services dispute with Big Tech that triggers FSCs. Really? "*The Censorship Industrial Complex was orchestrated and collaborated and premeditated amongst all Defendants, and all Defendants voluntarily undertook their part in carrying out the Censorship Industrial Complex and injuring the Plaintiffs." Id.* at ¶765 (emphasis in original).

Count VIII (re: the Platform Defendants, and NGOs such as CCDH) involves violation of Tennessee's Unfair Competition / Antitrust Statutes. *See* [D.E. 7] at ¶¶770-778. First, as it relates to this section of the brief (the conduct complained of in the Amended Complaint falling outside TOS scope), the TOS should not be allowed to abrogate Tennessee statutes. But, second, these causes of action implicate the next section of this brief (Tennessee having a public interest cutting against enforcement of the TOS' FSCs).

Count IX (re: the aforementioned Defendants) involves the negligence of the Platform Defendants (and NGOs such as CCDH) in carrying out (without any independent thought) the Government's demanded censorship of Plaintiffs. *See* [D.E. 7] at ¶¶779-782. Negligence hinges on the (un)reasonableness of the aforementioned Defendants' conduct. Negligent / unreasonable conduct is not something contracted to between the parties in the TOS; *i.e.*, Count IX falls outside the TOS scope in that it (and every Count and averment in the Amendment Complaint) do *not* implicate the ordinary interactive computer services contemplated in the TOS.

Count X (re: the aforementioned Defendants) involves these Defendants' tortious interference with business relationships / prospective economic advantage. *See id.* at ¶¶783-786.

Tortious interference is not something contracted to by the parties in the TOS; *i.e.*, Count X falls outside the TOS' scope in that it (and every single Count and averment in the Amendment Complaint) do *not* implicate the ordinary interactive computer services contemplated in the TOS.

Counts XI – XV (re: just the Platform Defendants) involve the Platform Defendants' negligent misrepresentations, negligent designs, fraud, and promissory estoppel, respectively, concerning what their social media services were supposed to be, [D.E. 47] at ¶¶787-808, and the unlicensed practice of medicine (Count XV, *id.* at ¶¶809-116) concerning the Platforms' playing Doctor / God as to medical opinions and advice. While these Counts *remotely and marginally* involve the social media services contemplated in the TOS, the Plaintiffs' claims of negligent misrepresentation, fraud, and promissory estoppel (as alleged and applied here) align with the fraud exception to FSC enforceability, discussed in the next section. And the unlicensed practice of medicine certainly does not fall within the scope of the TOS.

Finally, Count XVI (re: the Government Defendants) alleges treason. This Count is not acutely germane to this motion practice (like III-VI, *see* n. 4, *supra*), but again demonstrates the gravamen of this suit does *not* implicate the ordinary social media service "contract" (TOS / FSC).

Given 99.9% of the averments and causes of action have absolutely nothing to do with the subject matter of the TOS that contain FSC, the scope of this action simply does not get swallowed by the FSCs that would wreak havoc on the overall dispute by severing and transferring all over the place; *i.e.*, this action does not fall victim to the FSCs, the transfer motions are due to be denied.

2. The TOS Are Contractually Invalid (Unreasonable To Enforce)

At the threshold of the contractual validity analysis, there is the fact that the TOS are unenforceable contracts of adhesion. An adhesion contract is defined as "a standard-form contract prepared by one party, to be signed by the party in a weaker position, usually a consumer, who has

little choice about its terms." Garner, Bryan A., *Black's Law Dictionary* at 139 (2d pocket ed., 2001). It cannot be legitimately disputed that the TOS are something other than adhesion contracts; *i.e.*, something other than "take it or leave it" contracts that consumers have no say over. The interplay between adhesion contract tenets and FSC enforceability is nicely addressed by the dissenting opinion in *Carnival Cruise Lines, Inc. v. Shute*, 111 S.Ct. 1522 (1991):

> [FSCs] in passenger tickets involve the intersection of two strands of traditional contract law that qualify the general rule that courts will enforce the terms of a contract as written. Pursuant to the first strand, courts traditionally have reviewed with heightened scrutiny the terms of contracts of adhesion, form contracts offered on a take-or-leave basis by a party with stronger bargaining power to a party with weaker power. Some commentators have questioned whether contracts of adhesion can justifiably be enforced at all under traditional contract theory because the adhering party generally enters into them without manifesting knowing and voluntary consent to all their terms. …
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> The second doctrinal principle implicated by [FSCs] is the traditional rule that 'contractual provisions, which seek to limit the place or court in which an action may ... be brought, are invalid as contrary to public policy.' … Although adherence to this general rule has declined in recent years, particularly following … *The Bremen v. Zapata Off-Shore Co.*, 92 S.Ct. 1907 (1972), the prevailing rule is still that [FSCs] are not enforceable if they were not freely bargained for, create additional expense for one party, or deny one party a remedy. …

Id. at 1530-1532 (various internal citations omitted).

This case does not involve a scenario such as that found in *The Bremen* where the parties freely negotiated the contractual instrument at issue (here, the TOS). Rather, the TOS are indisputably adhesion contracts wherein Plaintiffs had zero say / negotiation right as to the terms of same. "The prevailing rule is [accordingly] still that FSCs are not enforceable if they were not freely bargained for, create additional expense for one party, or deny one party a remedy." *Id.* at 1531. Given the FSCs at issue here were not freely bargained for (not to mention, would involve additional expense for Plaintiffs if forced to litigate in multiple foreign jurisdictions across the

country and also would place, in part, Plaintiffs in a highly biased California court system where there is a significant likelihood Plaintiffs would be denied remedies available outside the N.D. Cal. Court), the FSCs in the TOS "are not enforceable" under the "still prevailing" rules set forth above.

But, in an abundance of caution, we move on with discussion of other considerations for courts in assessing the validity of contracts containing a FSC ("fraud" / "overreach," "deprivation of day in court," "unfairness of chosen law," and "public policy").

a. The FSCs Are The Product Of Overreach And Fraud (Unenforceable)

There is also contract unconscionability: "[t]he principle that a court may refuse to enforce a contract that is unfair or oppressive because of … overreaching contractual terms, especially terms that are unreasonably favorable to one party while precluding meaningful choice for the other party." *Black's Law Dictionary* at 731. We turn to FSC overreach / unconscionability.

First, there is no way that parties can contract around the U.S. Constitution or Tennessee law or otherwise contract as to illegality (which are the only kinds of causes of action included in the Amended Complaint because those are the only causes of action flowing from the common allegations). To say that the FSCs' scope captures Amended Complaint Counts set forth above, therefore, would be the epitome of contractual "overreach," militating in favor of this Court not enforcing the FSCs. Second, Counts XI-XIII implicate the negligent misrepresentations, negligent designs, and fraudulent representations (all of which is promissorily estopped, Count XIV) made by the Platform Defendants' regarding their social media services. Causes of action concerning fraud lacing the very services implicated by FSCs render the FSCs inoperable.

b. If This Matter Is Transferred To The N.D. Cal. Court As To Meta And Google, Plaintiffs Would Be Deprived Of Justice (*e.g.*, Due Process)

Undersigned counsel has been quagmired in the N.D. Cal. and the Ninth Circuit for over six years in a case where the courts have repeatedly failed to follow the letter of the law, Rule of

Civil Procedure, Congressional intent, or even the Constitution. *See, e.g., Fyk v. Facebook*, No. 4:18-cv-05159-HSG (N.D. Cal.). There, despite numerous disputed factual allegations in a verified complaint, the court applied §230(c)(1) as an absolute *immunity from suit*, improperly treating it as a jurisdictional bar rather than an affirmative defense. The California courts have systematically ignored these procedural and substantive errors to preserve manifest injustice, shielding Big Tech from accountability in direct contradiction to statutory text and constitutional principles.

Undersigned (in good standing in 20++ jurisdictions) attests based on firsthand experience that: (1) over the course of more than six years litigating the *Fyk* matter, undersigned has personally reviewed several dozen Big Tech-related cases in California courts, and (2) with few exceptions, the N.D. Cal. has consistently exhibited a pronounced and troubling Big Tech bias.

That bias was evident in *Fyk*, where the original judge disqualified himself after Fyk uncovered that the judge held millions of dollars in Big Tech stock that could be adversely affected by a ruling in Fyk's favor. The case was then reassigned to another judge, who summarily disregarded all the evolving §230(c)(1) case law and refused and to address Fyk's constitutional challenges. Notably, the latter judge has since disqualified himself in *Webseed v. X Corp.*, which Google's transfer motion classifies as a case "nearly identical" to this one, raising further questions about impartiality in the N.D. Cal. forum. Transfer to the N.D. Cal. Court, for example, would deprive Plaintiffs of fair adjudication and constitutionally guaranteed "day in court."

Plaintiffs vehemently dispute the notion that germane California law does not conflict with germane Tennessee law and/or that Plaintiffs will receive justice in California. Any legal practitioner who opines that the California court system offers a fair shake to those litigating against Big Tech simply is not abreast of evolving case law and/or legal trends. Indeed, once again, even Zuckerberg (Facebook / Meta) has recognized the California court system's Big Tech bias,

admitting that Meta is moving operations to Texas because of this. *See, e.g.*, [D.E. 7] at pp. 44-45. And, again, X is already in Texas … presumably for similar reasons.

There is a reason why Ninth Circuit (California) prerogatives as to internet law (*e.g.*, 47 U.S.C. §230) are being eviscerated by sister circuit courts; *e.g.*, the Third Circuit (*see, e.g.*, *Anderson v. TikTok, Inc.*, No. 22-3061, 2024 WL 3948248 (3d Cir. Aug. 27, 2024)), the Fourth Circuit (*see, e.g., Henderson v. The Source for Public Data, L.P., et al.*, 53 F.4th 110 (4th Cir. 2022)), and the Fifth Circuit (*see, e.g., A.B. v. Salesforce, Inc.*, 123 F.4th 788 (5th Cir. 2024)). The reason is that California courts, by and large, selectively mishandle legal disputes involving Big Tech, consistently "immunizing" these companies regardless of the applicable procedure, statutory text, congressional intent, constitutional protections, or the actual merits of the case.

And, there is absolutely conflict between California and Tennessee federal law, from within this very Court. Whereas California federal courts uniformly wrongly believe that §230 is an automatic, *carte blanche* immunity from suit, this Court (Judge Trauger) properly recognizes that such is a mere affirmative defense that requires discovery to unfold first and revisitation at the summary judgment stage (if at all):

> The [CDA] statutory language does not speak in terms of immunity and does not deprive courts from exercising personal jurisdiction, but rather *provides a defense to liability* for any cause of action-such as a claim for defamation-that would treat an 'interactive computer service' as a publisher or speaker of information.
>
> Courts have treated this statutory language as granting internet service providers and websites immunity from liability in defamation suits-provided that the service provider or website in question did not participate in the creation of the defamatory statements-*but have not treated the statute as granting immunity from suit*. …
>
> The distinction between statutory immunity from liability and immunity from suit-that is, immunity from being hailed into federal court at all-is an important one. As the [SCOTUS} has noted, '[i]t is firmly established in our cases that the absence of a valid (as opposed to arguable) cause of action does not implicate subject-matter jurisdiction, *i.e.*, the courts' statutory or constitutional power to adjudicate the case.' *Steel Company v. Citizens for a Better Environment*, 523 U.S. 83, 88 (1998).

… Not all defenses to liability (in fact, very few) implicate the court's power to exercise its jurisdiction over a particular entity or individual. Courts are charged with determining questions of jurisdiction before addressing the merits of the case. *See Northwestern Nat'l Casualty Co. v. Global Moving & Storage Inc.,* 533 F.2d 320, 323 (6th Cir.1976) (holding that the district court was in error when it addressed the merits of the case 'before it determined that it had the requisite personal jurisdiction'). For this reason it is important that the court not confuse questions of jurisdiction with questions of liability on the merits.

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… To summarize, in the absence of direct statutory or Constitutional authority, courts have not permitted defendants to 'immunize' themselves from being hailed into federal court on the basis of traditional defenses to liability, even where those defenses are labeled 'immunities.'

Although courts speak in terms of 'immunity' with regard to the protections afforded by the CDA, this does not mean that the CDA has created an 'immunity from suit' or otherwise implicated this court's personal jurisdiction. Rather, the CDA has created a broad defense to liability. Whether or not that defense applies in any particular case is a question that goes to the merits of that case, and not to the question of jurisdiction. See We, Inc., 174 F.3d at 329 ('[W]e have been unable to find any case holding that the burden of litigation on a private defendant justifies an immunity from suit as well as a defense to liability.')

The importance of this distinction is well-illustrated by the facts at hand. …Whether or not the defendants did, in fact, participate in the creation of the alleged content is inextricably tied to the merits of the plaintiff's defamation claim, if not each of its claims, and *requires a factual determination that is not appropriately made at this early stage of the litigation. Ruling on that issue requires inquiry into a factual record that will not exist until the parties have been afforded ample time to complete discovery.*

[W]here matters outside the pleadings have been submitted for the court's consideration of a motion to dismiss, the court 'shall' treat the motion as a motion for summary judgment and shall give the parties a 'reasonable opportunity to present all material made pertinent to such a motion by Rule 56.' Fed.R.Civ.P. 12(b). Therefore, in order for the court to consider the defendants' arguments on the merits, the defendants' motion must be analyzed as a Motion for Summary Judgment.

… Additionally, the Sixth Circuit has held that, '[b]efore ruling on summary judgment motions, a district judge must afford the parties adequate time for discovery, in light of the circumstances of the case.' *Plott v. General Motors Corp.,* 71 F.3d 1190, 1195 (6th Cir.1995) (citing *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 250 n. 5 (1986) (stressing the importance of allowing ample time for

discovery); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (same)).

> … *However, the court has found that the defendants' arguments-concerning 'immunity' under the CDA-go to the merits of the plaintiffs' claims, and not to jurisdiction.* Because the plaintiff's motion to lift stay was predicated on the need to rebut the plaintiff's immunity arguments, the court will grant the plaintiff's motion on the basis of Rule 56(f) and in accordance with the Sixth Circuit's stricture that 'a district judge must afford the parties adequate time for discovery' before ruling on a summary judgment motion. *Plott*, 71 F.3d at 1195.

Energy Automation Systems, Inc. v. Xcentric Ventures, LLC, No. 3:06-1079, 2007 WL 1557202, *12-15 (M.D. Tenn. May 25, 2007) (emphasis added) (internal footnotes and various citations omitted). *If this matter is transferred to California and subjected to California law, correct case law of this jurisdiction (e.g., Energy Automation Systems) would be nullified and Plaintiffs would be deprived of justice as nearly every other litigant (like Fyk) against Big Tech is in the N.D. Cal.*

The high likelihood that Plaintiffs will experience injustice in California (because of the California court system's Big Tech bias and/or being stripped of correct Tennessee case law such as that from Judge Trauger discussed above) is further bolstered by the reality that, if this Court wrongly sends this matter to California, this Court is wrongly determining that Plaintiffs' lawsuit arises out of the ordinary interactive computer services (and ordinary interactive computer services provision terms) contemplated by the TOS. If that is the case, there is a very high probability that the Ninth Circuit will wrong Plaintiffs just as it has wronged countless other users over the years with respect to §230 "immunity." Just as the Fifth Circuit recognized in *A.B. v. Salesforce, Inc.*, 123 F.4th 788 (5th Cir. 2024), §230 immunity does not apply when the alleged misconduct falls outside the routine provision / causal chain of interactive computer services contemplated by a platform's TOS. The same logic applies to forum selection – Platform Defendants cannot use boilerplate TOS clauses to forum-shop this constitutional case into the N.D. Cal. (a jurisdiction widely viewed as biased in Big Tech's favor) or any other jurisdiction for that matter.

This very issue is currently headed to the Fifth Circuit in *Webseed, Inc. v. DOS, et al.*, as Plaintiffs there are petitioning for a writ of mandamus to reverse the improper transfer to California under circumstances strikingly similar to those here. Hypocritically, X Corp. (now seeking transfer to Texas) argued in *Webseed* that that W.D. Tex. court should send the case to the N.D. Cal. Such inconsistent positions illustrate the Big Tech self-serving forum shopping / manipulation at play, underscoring why transfer should be denied here.

c. Public Policy Cuts Against Transfer

Missouri v. Biden, a strikingly similar case, was deemed one of the most important cases in U.S. history, and this case outclasses that case by far. The Platform Defendants' transfer motions, however, would have this Court believe that there is nothing extraordinary or public policy oriented about this globally impactful case. Plainly, Tennessee has a compelling public interest in protecting its citizens (here, Plaintiffs and their employees) from any governmental erosion of constitutionally guaranteed rights. Given the documented history of Big Tech bias in the N.D. Cal., this Court has a duty to safeguard the constitutional rights at the heart of this action.

Further, Tennessee has a strong public interest in preventing non-Tennesseans (like the Platform Defendants) from circumventing its statutes and/or its case law (*e.g.*, Judge Trauger's decision cited above). Tennessee should seek to ensure that Big Tech does not undermine its unfair competition and antitrust laws (Count VIII), for example. Tennessee law (whether statute or case law) reflects Tennessee's own policy prerogatives, not those of California or any other state. Transferring this case to the Big Tech–biased N.D. Cal., or fragmenting it across multiple jurisdictions, would undermine the enforcement of Tennessee law and deprive the state of its right to see its legal standards applied within its borders.

Tennessee has a strong public interest in protecting its workforce / economy, not California (favoring its Silicon Valley workforce). Plaintiffs, and their employees, are Tennesseans based in Sumner County, and the vast majority of Plaintiffs' business flows through the Tennessee economy. Nowhere else (CA or TX) has a vested interest in safeguarding Tennessee's workforce / economy, Tennessee does. As outlined in this brief, the harms / injuries experienced by Plaintiffs, along with the resulting impact on their employees, have been felt solely in Sumner County. This Court should retain this case in its entirety to ensure that the Tennessee workforce and economy are not compromised by the actions of foreign Platform Defendants or biased foreign courts.

V. BRIEF CONCLUSION

To put the TOS in perspective, imagine a tenant in an apartment complex owned by a mega-corporation. The lease outlines standard terms (*e.g.*, rent payments, maintenance obligations, and conduct restrictions). One day, the landlord unexpectedly evicts the tenant mid-month, citing a vague provision allowing removal of tenants deemed "potentially harmful." Later, the tenant discovers the city government pressured the landlord to evict because the government (or its partner NGOs) found him undesirable (perhaps due to political beliefs, race, or other protected characteristics, for examples). The landlord then uses the lease as a false pretext (as part of its fraudulent overreach scheme to maintain favor with the government) to conceal that the eviction resulted from neither an independent landlord decision nor any actual lease violation, but, rather, a directive from the government to apply the lease differently to remove the tenants on behalf of the city. The tenant's prospective action concerning the government's illegal collusion with the mega-corporation landlord by no means will arise out of the terms of the rental lease, as the eviction was not the result of things like rent payment, maintenance obligations, or conduct restrictions; *i.e.*, the prospective action will not take issue with a breach of the lease contract and

the trier of fact will not have to engage in an interpretation of the lease contract, as the conspiracy / collusion litigation will not arise out of the lease contract.

Same here. The Platform Defendants = landlords, the platforms = apartments, the Plaintiffs = platform tenants / users, and the TOS = lease. The Government Defendants, vis-à-vis the Censorship Industrial Complex, effectuated the eviction of Plaintiffs from the platforms to, among other things, quash Plaintiffs' speech / press (in contravention of the First Amendment). The TOS does not contemplate Government-inspired eviction (in particularly when underlain by motives that contravene the Constitution; *e.g.*, deprivation of free speech / press), just like a rental property lease agreement does not contemplate Government-inspired eviction.

In realizing the true nature of this action, this Court must not conflate a Government-orchestrated censorship scheme (what the case is really about) with a mere contract dispute over TOS (what this case is not about in any way, shape, or form). The property rental lease itself is irrelevant to whether the Government conspired with the landlord to unlawfully target specific tenants, just as TOS (and FSCs embedded therein) are irrelevant when Big Tech censorship is directed by Government and/or coordinated with private NGOs. The FSCs do not apply to Plaintiffs' extra-contractual claims (which, once more, is every single cause of action and related allegation found within the Amended Complaint), especially given Government's constitutionally repugnant wrongdoing is inextricably intertwined with that extra-contractual conduct.

WHEREFORE, Plaintiffs respectfully request entry of an Order (a) denying the Platform Defendants' motions to transfer [D.E. 41-47], with this Court accordingly maintaining jurisdiction, (b) affording Plaintiffs any other relief the Court deems equitable, just, or proper.

Dated: May 21, 2025.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 21, 2025, I electronically filed the foregoing documents with the Clerk of the Court by using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record *via* Notices of Electronic Filing generated by CM/ECF.

/s/ Jeffrey L. Greyber
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