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THE FREE STATE FOUNDATION

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Media Advisory

October 1, 2018

Contact: Randolph May at 202-285-9926

FSF's Randolph May Predicts California's New Internet Regulation Law Won't Survive

Free State Foundation President Randolph J. May issued the following statement in response to California Governor Jerry Brown's signing of California's new law regulating Internet service providers.

"The Department of Justice has already filed suit to preempt the newly adopted California law which would regulate Internet service providers (ISPs) much more stringently than would the federal government, which has concluded that Internet services should be lightly regulated. For example, the new law imposes public utility-like regulation on ISPs and even includes a ban on popular 'free data' services. The California law is highly unlikely to survive judicial scrutiny.

There is no doubt that Internet services are national, even transnational, in scope. Internet communications do not respect state boundary lines drawn on a map and California does not, and could not, maintain otherwise. And there is no doubt that the California law conflicts with the clearly-articulated national policy that this form of interstate commerce should not be subject to stringent state regulation that deters investment and innovation in Internet services, thereby harming consumers.

At least since Chief Justice John Marshall's landmark opinion in *Gibbons v. Ogden* in 1824, it has been 'unequivocally manifest' that, under the Constitution's Commerce Clause, the federal government 'may control the State laws, so far as it may be necessary to control them, for the regulation of commerce.' Marshall declared that the federal government's power to regulate commerce is complete and 'may be exercised to its utmost extent, and acknowledges no limitations.'

When the FCC preempted state laws and regulations in the 1980s that conflicted with its policy of light-touch regulation of Internet services (then

called enhanced services), the courts upheld the federal preemption of these admittedly interstate services. The result almost certainly is going to be the same today."

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Randolph J. May, President of the Free State Foundation, is a former FCC Associate General Counsel and a former Chairman of the American Bar Association's Section of Administrative Law and Regulatory Practice. Mr. May is a past Public Member and a current Senior Fellow of the Administrative Conference of the United States, and a Fellow at the National Academy of Public Administration.

Mr. May is a nationally recognized expert in communications law, Internet law and policy, and administrative law and regulatory practice. He is the author of more than 200 scholarly articles and essays on communications law and policy, administrative law, and constitutional law. Most recently, Mr. May is the co-author, with FSF Senior Fellow Seth Cooper, of the recently released [A Reader on Net Neutrality and Restoring Internet Freedom](#) and [#CommActUpdate - A Communications Law Fit for the Digital Age](#) as well as [The Constitutional Foundations of Intellectual Property](#), and is the editor of the book [Communications Law and Policy in the Digital Age: The Next Five Years](#). He is the author of *A Call for a Radical New Communications Policy: Proposals for Free Market Reform*. And he is the editor of the book, *New Directions in Communications Policy* and co-editor of other two books on communications law and policy: *Net Neutrality or Net Neutering: Should Broadband Internet Services Be Regulated* and *Communications Deregulation and FCC Reform*.

* * *

The Free State Foundation's newest book, [A Reader on Net Neutrality and Restoring Internet Freedom](#), by Randolph May and Seth Cooper, is available from Amazon [here](#) in paperback for \$9.95 or for your Kindle [here](#) for \$2.99. And it is available [here](#) from Apple and other booksellers in various e-book formats for \$2.99 or less. Read more about the book [here](#).

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