Nos. 22-277, 22-555

IN THE

Supreme Court of the United States

NETCHOICE, LLC, DBA NETCHOICE, *et al.*,

Petitioners,

v.

KEN PAXTON, ATTORNEY GENERAL OF TEXAS,

Respondent.

(For Continuation of Caption See Inside Cover)

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH AND ELEVENTH CIRCUITS

BRIEF OF *AMICI CURIAE* ELECTRONIC FRONTIER FOUNDATION, NATIONAL COALITION AGAINST CENSORSHIP, WOODHULL FREEDOM FOUNDATION, AUTHORS ALLIANCE, FIGHT FOR THE FUTURE, AND FIRST AMENDMENT COALITION IN SUPPORT OF PETITIONERS (22-555) AND RESPONDENTS (22-277)

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STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE[1]

Amici curiae file this brief on behalf of a wide spectrum of internet users in the United States and around the world who rely on online publishers, including social media, to communicate with each other and to access information online. Each amicus is a nonprofit organization whose constituencies represent a wide range of internet users. **Electronic Frontier Foundation** has worked for more than 30 years to protect the rights of all users to transmit and receive information online. **National Coalition Against Censorship** is an alliance of more than 50 national non-profit literary, artistic, religious, educational, professional, labor, and civil liberties groups that are united in their commitment to freedom of expression.[2] **Woodhull Freedom Foundation** works to advance the recognition of sexual freedom, gender equality, and is particularly concerned with governmental attempts to censor or compel online speech, as sexual expression is frequently a target of such censorship efforts. **Authors Alliance** advances the interests of authors who want to serve the public good by sharing their creations broadly, often through platforms or other forms of online distribution. **Fight for the Future** is composed of artists, engineers,

1. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae, or their counsel, made a monetary contribution intended to fund its preparation or submission.

2. The views presented in this brief are those of NCAC and do not necessarily represent the views of each of its participating organizations.

activists, and technologists who recognize that tech policy issues have a disproportionate impact on communities of color, low income people, religious minorities, political dissidents, LGBTQ people, and others who face systemic oppression. **First Amendment Coalition** is a nonprofit organization dedicated to defending freedom of speech, freedom of the press, and the people's right to know.

SUMMARY OF ARGUMENT

The First Amendment right of social media publishers to curate and edit the user speech they publish, free from government mandates, results in a diverse array of forums for users, with unique editorial views and community norms. Although some internet users are understandably frustrated and perplexed by the process of "content moderation," by which sites decide which users' posts to publish, recommend, or amplify, it's on the whole far best for internet users when the First Amendment protects the sites' rights to make those curatorial decisions.[3]

This First Amendment right to be editorially diverse does not evaporate the moment a site reaches a certain state-determined level of popularity. But both Texas House Bill 20 (HB 20) and Florida Senate Bill 7072 (SB 7072) take those protections away and force popular sites to ignore their own rules and publish speech inconsistent with their editorial vision, distorting the marketplace of ideas.

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3. As used in this brief, "content moderation" refers to the treatment of legal speech, not its actioning of illegal speech.

Content moderation by online intermediaries is an already fraught process, and government interjection of itself into that process raises serious practical and First Amendment concerns. Inconsistent and opaque private content moderation is a problem for users. But it is one best addressed through self-regulation and regulation that doesn't retaliate against the editorial process.

This Court should strike down the portions of each law now before this Court.

ARGUMENT

I. INTERNET USERS ARE BEST SERVED BY THE AVAILABILITY OF BOTH UNMODERATED AND MODERATED SOCIAL MEDIA SITES

Although both Florida and Texas purport to act on behalf of internet users, their laws deprive users of the benefits of common content moderation practices. Internet users are best served under current law, where the First Amendment preserves legal space for the emergence of a continuum of content moderation, from highly curated services to those not curated at all.

A. MODERATED PLATFORMS SERVE THE INTERESTS OF USERS AND THE PUBLIC GENERALLY

The social media sites targeted by the Florida and Texas laws are not the first online services to moderate—or edit, or curate—the user speech they publish on their sites. Online services, at least from their point of mass adoption, rarely published all legal speech submitted

to their sites. For example, most platforms for user speech banned legal, non-obscene sexual content, speech that enjoys First Amendment protection. Large-scale, outsourced content moderation emerged in the early 2000s.[4]

Many internet users greatly benefit from moderated sites. Users can find or create affinity and niche communities dedicated to certain subject matters or viewpoints and exclude others. Users can choose environments that shield them from certain kinds of legal speech, including hateful rhetoric and harassment. Users can choose services that attempt to filter out misinformation by relying on sources the user trusts. Users typically seek sites that proactively filter out spam content, that is, unsolicited and unwanted online communications often distributed in bulk.

As a result of this exercise of editorial freedom, users can choose from a variety of social media offerings, catering to a variety of interests, many of which reflect distinct editorial viewpoints, and exclude certain conflicting viewpoints. *See NetChoice, LLC v. Atty. Gen., Fla.*, 34 F.4th 1196, 1213 (11th Cir. 2022) (describing, among others, Roblox, a gaming social network primarily for young people, whose prohibitions include "any discussion of political parties or candidates").

The existence and popularity of these sites undercut Florida's and Texas's interests in limiting the curatorial freedom of social media sites in several ways. First, while unmoderated forums remain available on the Internet,

4. Jillian C. York & David Greene, *How to Put COVID-19 Content Moderation Into Context*, Brookings' TechStream (May 21, 2020), https://www.brookings.edu/articles/how-to-put-covid-19-content-moderation-into-context/, *supra* n.3.

most social media networks have, and always have had, community standards by which they limit the users' speech that may be posted to their sites. Indeed, the vast majority of social media sites, large and small, are not designed for all legal speech, topics, or users; most are specialized services with a particular subject matter focus or target user demographic. Second, through their content moderation practices, social media sites express their own curatorial and editorial philosophies, speech that is itself protected by the First Amendment. Third, compliance with the Florida and Texas laws would forbid sites from employing common editorial features and lead to absurd results.

Quora, a site with 148 million monthly active U.S. users, sees itself as a site where any user can ask questions "and get answers from people who have been there and done that" and as a "refuge from misinformation and incendiary arguments."[5] Quora thus prohibits "posting irrelevant answers or comments"; "targeted insults or profanity directed at private individuals based on personal attributes, such as physical appearance"; "hate speech," including "content that dehumanizes or calls for violence, exclusion, or segregation of protected classes" and Holocaust and Armenian Genocide denial; and "encouraging, glorifying, or promoting" harmful activities such as "self-harm (including eating disorders) and animal cruelty."[6]

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5. *Reach Over 400 Million Monthly Unique Visitors on Quora*, Quora for Business, https://business.quora.com/resources/reach-over-400-million-monthly-unique-visitors-on-quora/; (last visited Dec. 1, 2023).

6. *Platform Policies*, Quora, https://help.quora.com/hc/en-us/articles/360000470706-Platform-Policies (last updated Jun. 2023).

Pinterest, a site with 482 million worldwide monthly active users designed to visually inspire creative projects, has "community guidelines" that "outline what we do and don't allow on Pinterest."[7] Under these guidelines, Pinterest reserves the right to remove several categories of speech: "Adult content," "Exploitation," "Hateful activities," "Misinformation," "Harassment and criticism," "Private information," "Self-injury and harmful behavior," "Graphic violence and threats," "Violent actors," "Dangerous goods and activities," "Harmful or deceptive products and practices," and "Impersonation." Pinterest has special rules for comments users post on other users' "Pins," including a ban on "Irrelevant or non-purposeful material."[8] Picsart, another site for creators with over 150 million monthly active users, has a similar policy for its social Spaces forums.[9]

Strava, a social media site for athletes with over 100 million active users,[10] has Community Standards that prohibit the posting of content that is "harassing, abusive,

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7. *Community Guidelines*, Pinterest, https://policy.pinterest.com/en/community-guidelines (last visited Nov. 20, 2023); *Number of Monthly Active Pinterest Users Worldwide From 1st Quarter 2016 to 3rd Quarter 2023*, Statista, https://www.statista.com/statistics/463353/pinterest-global-mau/, (last visited Nov. 20, 2023).

8. *Community Guidelines*, Pinterest, https://policy.pinterest.com/en/community-guidelines (last visited Nov. 20, 2023).

9. Picsart, https://picsart.com/about-us; *Community Guidelines,* Picsart, https://picsart.com/community-guidelines (last visited Nov. 20, 2023).

10. *Strava's Global Community Continues Strong Growth Surpassing 100M Registered Athletes on the Platform*, Strava, https://blog.strava.com/press/100million/ (last visited Nov. 21, 2023).

or hateful, discriminatory, or that advocates violence."[11] One of Strava's main features is for cyclists and runners to share their routes, called "segments"; but Strava's Community Standards allow only "good segments" created with "common sense."[12] The Community Standards also require all users to be "inclusive and anti-racist."[13]

Peanut, a social media site aiming to be a "safe, inclusive space for women" navigating fertility, pregnancy, and motherhood similarly prohibits its millions of users from posting any content that attacks, threatens or "otherwise dehumanizes an individual or group" based on race, religion, age, socioeconomic status, or disability, among other categories.[14] "[M]isinformation," "bullying," and "nudity, pornography, sexually explicit content or sexual solicitation" are also barred. Peanut additionally prohibits users from "raising money on behalf of other individuals," requesting "financial aid," or promoting their own gift "wish lists."[15]

These are just a few examples. The internet is full of specialized services with unique editorial viewpoints—from RallyPoint, a social media site for members of the

11. *Acceptable Use Policy*, Strava, https://www.strava.com/legal/terms#conduct (updated Dec. 15, 2020).

12. *Strava Community Standards*, Strava, https://www.strava.com/community-standards (last visited Nov. 20, 2023).

13. *Id.*

14. *Community Guidelines*, Peanut, https://www.peanut-app.io/community-guidelines (last visited Nov. 17, 2023).

15. *Id.*

armed services,[16] to Ravelry, a social media site focused on knitting,[17] to Petzbe, "social media for pets" that aims to be " a PAWsitive social media experience" for "pet parents."[18]

Sites routinely limit their users to expressing only certain viewpoints, covering all types of belief systems, editorial practices the Texas law directly targets. Thus, as the 11th Circuit below noted, "Vegan Forum allows non-vegans but 'will not tolerate members who promote contrary agendas.'" *See NetChoice,* 34 F.4th at 1213. Meat-eaters, though, have available to them sites like SmokingMeatsForums.com, a "community of barbecue and outdoor cooking enthusiasts dedicated to smoking meat," which more generally bans "fighting or excessive arguing" in its user discussion forums.[19] The High Road, a firearms discussion forum, requires that all posts be "related to firearms or 'Right to Keep and Bear Arms' (RKBA) issues" and explicitly prohibits users from engaging in "discussions relating to the preparation for possible societal breakdown" or "foreign invasion."[20]

Likewise, because their editorial choices are protected by the First Amendment, social media sites are able to

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16. RallyPoint, https://www.rallypoint.com/ (last visited Nov. 21, 2023).

17. Ravelry, https://www.ravelry.com (last visited Nov. 21, 2023).

18. Petzbe, https://petzbe.com/ (last visited Nov. 21, 2023).

19. *The Rules*, SmokingMeatForums.com, https://www.smokingmeatforums.com/help/rules/ (last visited Nov. 20, 2023).

20. *Code of Conduct*, The High Road, https://www.thehighroad.org/index.php?pages/code-of-conduct/ (last visited Nov. 20, 2023).

provide forums open only to certain political or religious ideologies. As the Eleventh Circuit explained, "On the right, ProAmericaOnly promises 'No Censorship | No Shadow Bans | No BS | NO LIBERALS.' And on the left, The Democratic Hub says that its 'online community is for liberals, progressives, moderates, independent[s] and anyone who has a favorable opinion of Democrats and/or liberal political views or is critical of Republican ideology.'" *See NetChoice*, 34 F.4th at 1214. And there is GodTube, a Christian video site, which prohibits users from "promot[ing]" any "beliefs or teachings contrary to those of Christianity as articulated by the historic creeds…"[21]; and Shabbat.com, "the world's largest Jewish social network," which prohibits users from posting any content that is "missionizing, Christian or otherwise."[22]

Some social media sites have special concerns for ensuring that the information they publish is accurate, and would be handicapped in these efforts by the Florida and Texas laws which would force them to publish posts regardless of their unreliability. For example, HealthUnlocked, a social media site for health information, requires users to agree "to share information that is true and correct to the best of your knowledge and . . . that is primarily drawn from your personal experience."[23]

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21. *GodTube Community Guidelines*, GodTube, https://www.godtube.com/terms-of-use.html (last visited Nov. 17, 2023).

22. *Terms and Conditions,* Shabbat.com, *https://www.shabbat.com/terms* (last visited Nov. 17, 2023).

23. *How Communities Are Safeguarded?*, HealthUnlocked, https://support.healthunlocked.com/article/11-community-guidelines#enforcing (last visited Nov. 20, 2023).

But even sites not dedicated to limited subject matter or users have editorial policies by which they deemphasize or decline to publish users' posts.

Gettr, a "social media platform founded on the principles of free speech, independent thought and rejecting political censorship and 'cancel culture,'"[24] reserves the right to "address" content that attacks any religion or race, an inherently viewpoint-based criterion.[25]

Rumble, a video sharing alternative to YouTube that boasted 44 million monthly users in the second quarter of 2023,[26] prohibits both videos and comments on a number of viewpoint-based criteria, including a bar on content that "Promotes, supports or incites individuals and/or groups which engage in violence or unlawful acts, including but not limited to Antifa groups and persons affiliated with Antifa, the KKK and white supremacist groups and or persons affiliated with these groups."[27]

Many sites leave the moderation decisions up to

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24. *Content Creators FAQs*, Gettr, https://gettr.com/onboarding (last visited Nov. 20, 2023).

25. *Terms of Use,* Gettr, https://gettr.com/terms (last visited Nov. 20, 2023).

26. *Number of Monthly Active Rumble Users Worldwide From 3rd Quarter 2020 to 2nd Quarter 2023*, Statista, https://www.statista.com/statistics/1347599/rumble-quarterly-mau/ (last visited Nov. 21, 2023).

27. *Website Terms and Conditions of Use and Agency Agreement*, Rumble, https://rumble.com/s/terms (last visited Nov. 20, 2023).

the users themselves, a practice known as "community moderation," with Reddit and Discord among its most popular adopters. Reddit users manage and create thousands of communities, called subreddits. Although Reddit has an overriding content policy, a moderator makes the decisions within each community as guided by Reddit's "Moderator Code of Conduct."[28] Discord employs a similar model.[29] Each site thereby empowers some users to remove and down-rank other users' speech if that speech is against that community's rules.[30] As a result, while a political candidate and their speech may be highlighted in one community, the candidate may be blocked or down-ranked in another. The same is true for any particular viewpoint.

Users readily perceive that different social media sites have different editorial philosophies, even ones that hold themselves out as generally open to most subject matters and users. The evolution of what was formerly Twitter to X under new ownership provides an ongoing case study. Since the change, U.S. users' views about the character of the posts and general discourse on the site vary dramatically by political affiliation.[31] Users who

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28. *Moderator Code of Conduct*, Reddit, https://www.redditinc.com/policies/moderator-code-of-conduct (effective Sep. 25, 2023).

29. *Role of Administrators and Moderators on Discord*, Discord, https://discord.com/safety/360044103531-role-of-administrators-and-moderators-on-discord (last visited Nov 20, 2023).

30. *See, e.g.*, *Reddiquette*, Reddit, https://reddit.zendesk.com/hc/en-us/articles/205926439-Reddiquette (last visited Nov. 20, 2023).

31. Monica Anderson, *After Musk's Takeover, Big Shifts in*

preferred Twitter's old editorial viewpoint appear to have left X in large numbers, while X has undoubtedly gained new users who are attracted to its new editorial slant and features.[32]

This Court's statements in *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023), do not undermine this truth. In *Taamneh*, this Court interpreted the plaintiffs' allegations as characterizing Facebook's, Google's, and Twitter's specific engagement with ISIS's social media posts as "passive." *Id.* at 500; *see id.* at 507 (Jackson, J. concurring) ("And the Court's view of the facts—including its characterizations of the social-media platforms and algorithms at issue—properly rests on the particular allegations in those complaints."). And this Court was speaking relative to the requirement of aiding and abetting liability of "pervasive, systemic, and culpable assistance to a series of terrorist activities." *Id.* at 502. "Passive" referred to the sites' "arm's-length relationship with ISIS—which was essentially no different from their relationship with their millions or billions of other

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How Republican and Democratic Twitter Users View the Platform, Pew Rsch. Ctr., May 1, 2023, https://www.pewresearch.org/short-reads/2023/05/01/after-musks-takeover-big-shifts-in-how-republican-and-democratic-twitter-users-view-the-platform/.

32. Matthew Loh & Dominick Reuter, *Twitter Says the Huge Swings in Follower Numbers After the Deal with Elon Musk are Organic Account Creation and Deactivation*, Business Insider, Apr. 26, 2022, https://www.businessinsider.com/elon-musk-twitter-users-leaving-deal-to-buy-platform-2022-4; Michelle Faverio, *Majority of U.S. Twitter Users Say They've Taken a Break From the Platform in the Past Year*, Pew Rsch. Ctr., May 17, 2023, https://www.pewresearch.org/short-reads/2023/05/17/majority-of-us-twitter-users-say-theyve-taken-a-break-from-the-platform-in-the-past-year/.

users." *Id.* at 504. This Court did not deny that social media sites commonly express editorial viewpoint by intentionally boosting, deboosting, or removing other posts or suspending or deactivating accounts.

B. EACH LAW WILL DESTROY MANY ONLINE COMMUNITIES THAT RELY ON CURATION

Each law subjects many of these common moderation practices to onerous fines and civil actions, forcing sites to defend their specialized moderation practices in court, perhaps repeatedly, and chilling their exercise of editorial discretion. This will ultimately infringe users' rights by distorting the marketplace of ideas, and limiting the ability of online services to cater to particular interests, communities, or political viewpoints, and protect users from abuse and harassment.

The Florida law forces sites to exempt speech by and about certain privileged users—Florida electoral candidates and large "journalistic enterprises"—from their policies. The law would be a major setback to efforts to combat spam, since every action to limit the spread of spam messages might be considered an impermissible "shadow ban" under the law. Fla. Stat. § 501.2041(1)(f).[33]

The Texas law requires sites to abandon viewpoint-infused editorial policies as they became popular, requiring them to become neutral, a result that is nonsensical and contrary to the interests of internet users. Even the non-

33. SB 7072 definition of "social media platforms" does not exclude email services or limit the covered services to social media posts. § 501.2041(1)(f).

niche sites that publish diverse content and views will be hesitant to remove any unwanted legal speech from their sites, for fear that their decisions might be judged to be based on a viewpoint the user or *any other person* expressed *on or off the site*. *See* Tex. Bus. & Com. Code § 143A.002. This unwanted speech might include non-threatening violent content; false but non-harmful or non-defamatory content; or any content that is irrelevant to the site's purpose or contrary to its values, but is nevertheless protected by the First Amendment.[34] Or they might choose to avoid publishing all controversial content, a move that would result in their users seeing less speech on the sites, not more.

Each law also substantially hinders community moderation.

Although each law applies only to very popular services, its prohibitions will affect the editorial polices of services of all sizes, and cause a radical revision of a site's editorial policy as it approaches a state's arbitrary size threshold, thus defeating the expectation of its users and investors. Every service starts small, but many grow rapidly, and almost all hope to grow rapidly: TikTok needed only five years to surpass 1 billion monthly active users.[35] Every

34. *See, e.g., Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 874 (1997) (non-obscene but indecent sexual content is protected by First Amendment); *Elonis v. United States*, 575 U.S. 723, 740 (2015) (certain threatening speech is protected by First Amendment); *United States v. Alvarez*, 567 U.S. 709, 723 (2012) (certain non-harmful false speech is protected by First Amendment).

35. *See Digital 2021 October Global Statshot Report*, Datareportal, Oct. 21, 2021, https://datareportal.com/reports/digital-2021-october-global-statshot.

online service must account for such growth at its earliest stages.

C. CONTENT CURATION AFFECTS ALL USERS AND INEVITABLY FRUSTRATES MANY USERS REGARDLESS OF POLITICAL AFFILIATION

In all of these sites, editing and curation occurs: some user speech is rejected, hidden, labeled, or otherwise moderated.[36] Users may believe that a site is not adequately recommending their posts to other users or otherwise spotlighting their posts or their account as the user thinks appropriate.[37] And it is often frustrating, angering, or perplexing to users.

This may occur because the user speech clearly strayed from the site's rules. Or it may have been a close editorial call about which reasonable minds could differ. Or it may just be a mistake. Or it may be the user's misperception.

As is often said, content moderation at scale is impossible to do perfectly, and nearly impossible to do well.[38] Even when using a set of precise rules or carefully

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36. Eric Goldman, *Content Moderation Remedies*, 28 Mich. Tech. L. Rev. 1 (2021).

37. This is reflected in each state's law. The Texas law says platforms cannot "deny equal access or visibility to, or otherwise discriminate against expression." Tex. Bus. & Com. Code § 143A.001 (1). The Florida law prohibits placing "certain content or material ahead of, below, or in a more or less prominent position than others in a newsfeed, a feed, a view or search results." Fla. Stat. § 501.2041(1)(e).

38. *See, e.g.*, Mike Masnick, *Masnick's Impossibility Theorem: Content Moderation At Scale Is Impossible To Do Well*, Techdirt, Nov. 20, 2019, https://www.techdirt.com/articles/20191111/23032743367/

articulated "community standards," moderated sites often struggle to distinguish between speech that is and is not permitted. Every online forum for user speech, not just the dominant social media sites, grapples with this problem.

This is not a new problem, dating to at least 2007.[39] And likely every social media user experiences it as either a creator or audience. Nor is it limited to U.S. conservative speakers, which was the premise of both the Florida and Texas laws.

In 2022, Facebook restricted a post from Planned Parenthood of Michigan that shared an article regarding the legal availability of abortion pills online so that it was visible to only the administrators of the group to which it was posted.[40] Facebook claimed this was a mistake, and affirmed that discussions about the affordability and availability of pharmaceuticals were permitted, though "content that attempts to buy, sell, trade, gift, request or donate pharmaceuticals is not allowed."[41] Facebook also recently faced renewed criticism over the negative moderation of posts containing words pertinent to feminine hygiene, including "vulva" and "endometriosis."[42]

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masnicks-impossibility-theorem-content-moderation-scale-is-impossible-to-do-well.shtml.

39. Jillian C. York, *Silicon Values: The Future of Free Speech Under Surveillance Capitalism* 25-27 (Verso 2021).

40. Allison R. Donahue, *Facebook Takes Down Planned Parenthood Post About Medication Abortion*, Michigan Advance, Aug. 22, 2022, https://michiganadvance.com/blog/facebook-takes-down-planned-parenthood-post-about-medication-abortion/.

41. *Id.*

42. Olivia-Anne Cleary, *Facebook Has Banned Awareness Posts That Include the Words 'Period,' 'Vulva' and 'Clitoris' for Being Too*

Indeed, marginalized communities are particularly vulnerable.

Black creators have documented how their Black Lives Matter content was suppressed on TikTok; TikTok apologized and blamed it on a bug. But incidents persisted even after.[43]

A 2021 report documented that the viewpoints of communities of color, women, LGBTQ+ persons, and religious minorities are subject to over-enforcement of social media community standards, with their posts subject more frequently to mass takedowns as compared to more subtle forms of content moderation, such as warning labels and temporary demonetization, more commonly applied to the viewpoints of dominant communities, a trend that motivates amicus Fight for the Future's work in this area.[44]

In 2023, the Trans Safety Network reported finding that the words "trans," "queer," "lesbian" and "bisexual" were downranked on X and not shown in direct message

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Sexual, Glamour, Jun. 9, 2023, https://www.glamourmagazine.co.uk/article/facebook-bans-bodyform-posts-with-words-period-vulva-clitoris.

43. Megan McCluskey, *These TikTok Creators Say They're Still Being Suppressed for Posting Black Lives Matter Content*, Time, Jul. 22, 2020, https://time.com/5863350/tiktok-black-creators/; Vanessa Pappas, *A Message to Our Black Community*, TikTok, Jun. 1, 2020, https://newsroom.tiktok.com/en-us/a-message-to-our-black-community.

44. Ángel Díaz and Laura Hecht-Felella, *Double Standards in Social Media Content Moderation*, Aug. 4, 2021, https://www.brennancenter.org/our-work/research-reports/double-standards-social-media-content-moderation.

previews.[45] This finding recalls previous incidents when users discovered that Twitter had marked tweets containing the word "queer" as offensive[46] and YouTube was accused of restricting and demonetizing LGBTQ+ content.[47]

Sex worker advocates have documented how they are routinely shadowbanned across a variety of social media sites.[48]

Palestinian rights advocates have complained of unfair and biased content moderation against their views before and during the current Israel-Gaza conflict, including the removal of the Palestinian flag emoji and locking the Let's Talk Palestine and eye.on.palestine accounts from Instagram for security reasons.[49]

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45. Trans Safety Network (@trans_safety), X (Apr. 1, 2023, 4:11 AM), https://twitter.com/trans_safety/status/1642122617594212353.

46. Taylor Wofford, *Twitter Was Flagging Tweets Including the Word "Queer" as Potentially "Offensive Content*, Mic, June 22, 2017, https://www.mic.com/articles/180601/twitter-was-flagging-tweets-including-the-word-queer-as-potentially-offensive-content.

47. Megan Farokhmanesh, *YouTube Is Still Restricting and Demonetizing LGBT Videos—and Adding Anti-LGBT Ads to Some*, The Verge, June 4, 2018, https://www.theverge.com/2018/6/4/17424472/youtube-lgbt-domentization-ads-alogrithm.

48. *See* Danielle Blunt et al., *Posting Into The Void*, Hacking// Hustling, Oct. 2020, https://hackinghustling.org/wp-content/uploads/2020/09/Posting-Into-the-Void.pdf.

49. Hibaq Farah, *Pro-Palestinian Instagram account locked by Meta for 'security reasons'*, The Guardian, Oct. 26, 2023, https://www.theguardian.com/technology/2023/oct/26/pro-palestinian-instagram-account-locked-by-meta-for-security-reasons; Karen Gullo & Jillian C. York, *Platforms Must Stop Unjustified Takedowns*

D. IN PRAISE OF THE (HYPOTHETICAL) UNMODERATED FORUM

Any regulatory system must also leave open the possibility of unmoderated sites, where all legal user speech is permitted and the operator plays no role in selecting protected content or ordering its presentation.

Large unmoderated social media sites are at present highly rare. Forums that pride themselves on doing little or no moderation have not attracted nearly as many users as forums that weed out hate speech, spam, and other disruptive content.

But purely unmoderated forums, even if unpopular, would benefit internet users and the public generally by eliminating centralized editors, inhibiting the creation of silos, and allowing users to engage in free-form discussions and debates of their choosing, and find unexpected sources of ideas and information. Users' communications would not need to be actively screened, and users need not fear that they may accidentally run afoul of content rules. Unmoderated forums can be of special value to political dissidents and others who may be targeted for censorship by governments and private actors exploiting vagaries in community standards. They would provide an accessible forum for speech that is unpopular, disfavored, or inadvertently suppressed.

Unfortunately, there are not any large-scale positive models of unmoderated forums. 8kun,[50] formerly 8chan, is

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of Posts By and About Palestinians, EFF Deeplinks, Nov. 8, 2023, https://www.eff.org/deeplinks/2023/11/platforms-must-stop-unjustified-takedowns-posts-and-about-palestinians.

50. *8chan*, https://en.wikipedia.org/wiki/8chan (last visited Nov. 27, 2023).

probably the most well-known example and it is notoriously rife with hateful speech.

Nevertheless, regulatory regimes must provide for the possibility of positive models. The Florida law, for its part, would not produce unmoderated forums. Instead, it would create sites where speech by and about Florida political candidates is less moderated than other posts, even when they address the same issues. The resulting asymmetry—political candidates get to always speak, even if they violate a site's rules; other users who are not candidates do not—denies users the benefits of unmoderated forums.

II. THE FIRST AMENDMENT SUPPORTS THE CO-EXISTENCE OF UNMODERATED AND MODERATED FORUMS

The First Amendment supports the existence of online forums all along the moderation continuum: it protects sites' publication of all legal user speech and shields them from being forced to publish any content that they would otherwise choose not to publish. Both the Florida and Texas laws upset this careful balance.

A. THE FIRST AMENDMENT PROTECTS A SERVICE'S RIGHT TO CURATE USERS' SPEECH THAT IT PUBLISHES ON ITS SITE

The First Amendment protects the rights of social media services to publish both user speech and their own speech, regardless of whether they curate it a lot, a little, or not at all (and everything in between). Other than the Fifth Circuit below, every court that has considered the issue has rightfully found that private entities that operate

online forums for user speech enjoy a First Amendment right to curate that speech.

Just last term this Court reaffirmed that the state cannot force an online intermediary, in that case a web designer, "to accommodate other views," or otherwise "alter the expressive content of her message," or "interfere with her desired message." *303 Creative LLC v. Elenis*, 600 U.S. 570, 596 (2023) (internal quotation marks and citations omitted). This Court distinguished cases like *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 51-52 (2006) ("*FAIR*"), which involved only incidental burdens on speech, not direct infringements on inherently "expressive services." *303 Creative*, 600 U.S. at 596-97.[51]

A social media site's decision whether and how to publish and recommend user posts, like the web site creation in *303 Creative*, is inherently expressive and thus deserving of First Amendment protection against compelled speech.

The rule against compelled speech affirmed in *303 Creative* is well-established First Amendment law, applicable in a variety of contexts. This Court has long held that private publishers have a First Amendment right to control both the internally and externally created content of their publications. *See Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 254-55 (1974*);*

51. *FAIR* relied in part on this Court's prior holding in *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980), which also dealt only with an incidental burden on expression, and is thus similarly inapposite to the present cases. *See FAIR*, 547 U.S. at 65.

Cf. Manhattan Community Access Corp. v. Halleck, 587 U.S. ___, 139 S. Ct. 1921, 1930 (2019) (reaffirming that "when a private entity provides a forum for speech," it can "exercise editorial discretion over the speech and speakers in the forum"); *see also Los Angeles v. Preferred Communications, Inc.*, 476 U.S. 488, 494 (1986) (recognizing cable television providers' First Amendment right to "exercis[e] editorial discretion over which stations or programs to include in its repertoire"). This intrusion into the curatorial process is unconstitutional even if the compelled publication would not add costs or force the omission of desired content. *Tornillo*, 418 U.S. at 258.

The parallels between *Tornillo* and the present cases are strong.

In *Tornillo*, the law required newspapers that endorsed an electoral candidate to publish responses from the candidate's opponents. *Id.* at 243-45. The law was justified as necessary because print news media both dominated and manipulated public discourse, citing a "concentration of control of outlets to inform the public" that had become "enormously powerful" in its capacity to "manipulate popular opinion." *Id.* at 248-49.

The *Tornillo* Court did not dispute the validity of these concerns, but nevertheless found that governmental interference with editorial discretion was so anathema to the First Amendment that the remedy for these concerns must be found through "mechanism[s]" that are "consensual," not "governmental." *Id.* at 254; *see also Assocs. & Aldrich Co. v. Times Mirror Co.*, 440 F.2d 133, 134 (9th Cir. 1971) (rejecting argument that the *Los Angeles Times*' "semimonopoly and quasi-public position" justified order compelling the newspaper to publish certain advertisements). This

Court rejected the argument that "the government has an obligation to ensure that a wide variety of views reach the public." *Tornillo*, 418 U.S. at 247-48.

Tornillo set out a general principle of editorial and curatorial freedom, not a special rule for newspapers.[52] This Court consistently applies *Tornillo* in a variety of speech contexts, including thrice in this Court's 2018 term, *see Janus v. American Federation of State, County, & Municipal Employees, Council 31*, 585 U.S. , 138 S. Ct. 2448, 2463 (2018); *Nat'l Inst. of Family & Life Advocates v. Becerra*, 585 U.S. __, 138 S. Ct. 2361, 2371 (2018); *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 584 U.S. ___, 138 S. Ct. 1719, 1745 (2018) (Thomas, J., concurring), again in 2019, *Manhattan Community Access*, 139 S. Ct. at 1928, and, as noted, last term in *303 Creative*, 600 U.S. at 596.

Nor is *Tornillo* limited to publishers that primarily publish their own speech. It applies to any entity that speaks by curating and publishing the speech of others. This Court previously applied *Tornillo* in holding that the organizers of a parade had a First Amendment right to curate the participants, and thus could not be required to include a certain message in the parade, even if it was

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52. Nevertheless, the Florida law defines "social media platform" to include some newspapers: "any information service" that has either $100 million in annual revenue or 100 million monthly "platform participants." Fla. Stat § 501.2041(1)(g). The *New York Times*, for example, had an average of 145 million monthly visitors to its interactive website *nytimes.com* in 2022 and The New York Times Company (NYSE:NYT) had 2.3 billion dollars in annual revenue. *See The New York Times Company 2022 Annual Report* at 4, 29, Mar. 10, 2023, https://nytco-assets.nytimes.com/2023/03/The-New-York-Times-Company-2022-Annual-Report.pdf.

perceived as generally open for public participation, and such selectivity was not generally evident in the past. *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 569–70 (1995). As the *Hurley* Court explained, "a private speaker does not forfeit constitutional protection simply by combining multifarious voices, or by failing to edit their themes to isolate an exact message as the exclusive subject matter of the speech. Nor, under our precedent, does First Amendment protection require a speaker to generate, as an original matter, each item featured in the communication." *Id*.

Importantly, the web designer in *303 Creative* was acting, in large part, as an intermediary of others' speech—in that case, her potential same-sex-to-be-married clients. The contemplated websites would tell the story and details of the couples' weddings, and also express the designer's "message celebrating and promoting her view of marriage." *303 Creative*, 600 U.S. at 582 (internal quotation marks omitted). A viewer of that website may well associate the site with the couple themselves since it would convey the couple's "details of their unique love story," a discussion of how the couple met, their backgrounds, families, future plans, and information about the upcoming wedding; but 303 Creative would also be identified as the creator of the website somewhere on each website. *303 Creative*, 600 U.S. at 579.

Numerous courts have thus correctly applied *Tornillo* to social media sites that primarily, if not exclusively, publish user-generated content.[53]

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53. See, e.g., *O'Handley v. Padilla*, 579 F. Supp. 3d 1163, 1186-87 (N.D. Cal. 2022), *aff'd sub nom., O'Handley v. Weber*, 62 F.4th 1145 (9th Cir. 2023); *La'Tiejira v. Facebook, Inc.*, 272 F. Supp. 3d 981, 991 (S.D. Tex. 2017); *Zhang v. Baidu.com Inc.*, 10

B. SOCIAL MEDIA SITES ARE SIMILAR TO NEWSPAPERS' OPINION PAGES THAT WERE SUBJECT TO THE SPEECH MANDATE IN *TORNILLO*

Although *Tornillo* applies well beyond newspapers to any exercise of editorial or curatorial discretion, it is helpful to understand the similarities between social media sites and the op-ed pages of a newspaper, the specific forum targeted by the Florida law in *Tornillo*.

Like social media sites, op-ed pages typically publish content created by others: opinion pieces by outside contributors, letters to the editor, syndicated editorial cartoons, as well as the syndicated and wire service articles and advertisements also found elsewhere throughout the typical newspaper. [54] Indeed, much of the typical newspaper is a mix of original writing and content created by others, including also wedding, engagement, and birth announcements, and comics.

Indeed, perhaps the most powerful pronouncement

F. Supp. 3d 433, 436-37 (S.D.N.Y. 2014); *Langdon v. Google, Inc.*, 474 F. Supp. 2d 622, 629-30 (D. Del. 2007).

54. *See* Jack Shafer, *The Op-Ed Page's Back Pages: A Press Scholar Explains How the New York Times Op-Ed Page Got Started*, Slate, Sept. 27, 2010, https://slate.com/news-and-politics/2010/09/a-press-scholar-explains-how-the-new-york-times-op-ed-page-got-started.html; Michael J. Socolow, *A Profitable Public Sphere: The Creation of the New York Times Op-Ed Page*, Commc'n & Journalism Fac. Scholarship (2010), https://digitalcommons.library.umaine.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1001&context=cmj_facpub; *Op-Ed*, Wikipedia, https://en.wikipedia.org/wiki/Op-ed (last visited Nov. 27, 2023).

of freedom of the press in Supreme Court jurisprudence, *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), centered on *The Times'* role as an intermediary for the unsolicited speech of others, a paid advertisement: as the Court explained, newspapers are "an important outlet for the promulgation of information and ideas by persons who do not themselves have access to publishing facilities—who wish to exercise their freedom of speech even though they are not members of the press." *Id.* at 266.[55] More recently, the Court recognized that social media sites now play that very role by providing "perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard." *Packingham v. North Carolina*, 582 U.S. 98, 107 (2017).

Tornillo applies regardless of how selectively the speaker curates.[56] Selectivity is not an on-off switch: for both online and offline media, selectivity exists along a continuum.[57] The First Amendment shields speakers

55. The *Sullivan* Court also bolstered its actual malice rule by reference to earlier cases dealing with another type of intermediary, booksellers. *Id.* at 278-79 (citing *Smith v. California*, 361 U.S. 147 (1959); *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963)).

56. As discussed above, the major social media sites have actively curated the user content on their sites since at least 2007. The Internet users represented by amicus curiae Woodhull Freedom Foundation understand that the perception of such services as "unmoderated" typically disregards the very active removal and moderation of constitutionally protected sexual expression.

57. The Florida law makes no distinction between those services that select certain third-party content and those that are completely non-selective. *See* Fla Stat. § 501.2041(1)(g). The Texas law focuses on when selection occurs, not how selective the publisher is. *See* Tex. Bus. & Com. Code § 120.001(1)(C)(i) (emphasis added).

that combine their own speech with selective or non-selective fora for the speech of others. *See, e.g., Hurley*, 515 U.S. at 569-70. Indeed, news media is replete with historic examples of publications primarily intended to non-selectively transmit others' speech. Pennysavers, for example, local newspapers either entirely or primarily composed of classified advertisements, coupons, life milestone announcements, congratulatory messages, recipes, and public notices have a storied history.[58] The curators, theater directors, and booksellers, whose artistic freedom amicus curiae National Coalition Against Censorship defends, curate art and select plays and books along a similar continuum. Their First Amendment rights do not depend upon their falling on the proper side of some selectivity line.

C. EACH LAW'S RELIANCE ON THE SIZE OF A SITE'S USER BASE DOES NOT CURE ITS CONSTITUTIONAL DEFECTS

Each law's limited application to sites with large user bases[59] only exacerbates its constitutional defects. This Court applies strict scrutiny to laws that restrict the speech of speakers based on the size of their audiences. *See Minneapolis Star & Tribune Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 585 (1983) (striking down a law that applied only after $100,000 of ink and paper were

58. *Pennysaver*, https://www.pennysaverusa.com/ (last visited Nov. 27, 2023).

59. Florida's law applies to sites with over 100 million monthly individual users globally or to sites with gross revenues over $100 million annually. Fla. Stat. § 501.2041(1)(g). But revenues are also at least in part a measure of user base.

consumed in a year). "Where important First Amendment interests are at stake, the mass scope of disclosure is not an acceptable surrogate for injury." *Florida Star v. B.J.F.*, 491 U.S. 524, 540 (1989) (striking down a law that prohibited publication by an "instrument of mass communication" but not smaller publishers).

D. THE FLORIDA LAW FORCES ONLINE SERVICES TO FAVOR SPEECH OF POLITICAL CANDIDATES AND OTHERS OVER EVERYDAY INTERNET USERS

The Florida law also violates the First Amendment and treats users unfairly by mandating favoritism for certain speakers' online content. The law demands that online services treat the posts of Florida political candidates and highly popular "journalistic enterprises" more favorably than average internet users' posts, while at the same time impossibly requiring that all content moderation decisions be "consistent."

The law privileges the online speech of political candidates for public office in a variety of ways. Fla. Stat. § 106.072(1)(a). The statute limits how online services treat posts by political candidates on their sites before an election, even if a candidate repeatedly violates the service's policies or the law, or even if they are simply outside of the site's subject matter focus. Fla. Stat. § 106.072(2). Users who are not running for office, on the other hand, enjoy no similar privilege to disregard the site's rules. It prevents sites from using algorithms to curate, arrange, or present "content and material posted by or about" a political candidate, even if users would otherwise choose algorithmic recommendations. Fla. Stat. § 501.2041(2)(h).

The law provides similar privileges for another category of speakers: those that meet the statute's sharply underinclusive and overinclusive definition of a "journalistic enterprise." The law wisely avoids defining what journalism is but instead uses a popularity metric, with thresholds for various forms of media. Fla. Stat. § 501.2041(1)(d). The law places restrictions on a site's ability to curate those entities' posts or accounts if they violate the site's policies. The law also prevents online services from "post[ing] an addendum to" any posts from such "journalistic enterprises," Fla. Stat. § 501.2041(2)(j), even though such counter-speech measures are often presented as valuable options to taking down problematic posts.

Florida's decision to *favor* larger and powerful users is no more defensible than its decision to *disfavor* larger and powerful sites. These are speaker-based and content-based distinctions that subject the laws to strict scrutiny. *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 170 (2015); *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 812 (2000). SB 7072 fails strict scrutiny because, among other reasons, it is fatally underinclusive, and "raises serious doubts about whether Florida is, in fact, serving, with this statute the significant interests" lawmakers claim. *The Florida Star v. B.J.F.*, 491 U.S. 524, 540 (1989). Indeed, SB 7072 is akin to the Florida law found constitutionally underinclusive by this Court in *Florida Star*. *See id.* That law criminalized the disclosure of sexual assault victims' names by an "instrument of mass communication," but not by any other speaker whose disclosures could result in equal or greater harm. *Id.*

SB 7072's requirements that sites privilege political candidates' speech over other users' speech reinforces existing discrepancies in power, resources, and the

ability to disseminate speech that political candidates already enjoy over the general public.[60] For example, SB 7072 would force Facebook to revert to its widely criticized previous policy whereby it exempted certain politicians' posts from its fact-checking and hate speech rules, resulting in it publishing speech that it may have otherwise deleted, including hate speech, demonstrable falsity, and personal harassment.[61]

E. THE FIRST AMENDMENT PROTECTS EDITORIAL PRIVACY AND BARS FORCED DISCLOSURE OF EDITORIAL REASONING

Each law's requirement that users be notified of and given an explanation of the reason for a site's curatorial decision also violates the First Amendment.

Editorial freedom includes not only the right to devise and implement an editorial policy, but also protections for privacy in doing so. *See Bursey v. United States*, 466 F.2d 1059 (9th Cir. 1972) (overturning on First Amendment grounds grand jury contempt order that sought to compel disclosure of editorial decision-makers and their motives). Thus, in *Application of Consumers Union of U. S., Inc.*, the district court quashed third-party subpoenas that sought the publisher's research methodology and "procedure by which he formed his conclusions." 495 F. Supp. 582, 585 (S.D.N.Y. 1980). The court explained that discovery seeking "to examine the reportorial and editorial processes . . . would represent a substantial

60. *See* Kit Walsh & Jillian C. York, *Facebook Shouldn't Give Politicians More Power Than Ordinary Users*, EFF Deeplinks, Oct. 6, 2019, https://www.eff.org/deeplinks/2019/10/facebook-shouldnt-give-politicians-more-power-ordinary-users.

intrusion on fact gathering and editorial privacy which are significant aspects of a free press." *Id.* at 586.[62] And although this Court declined to create an absolute First Amendment evidentiary privilege when the publisher is the defendant and "there is a specific claim of injury arising from a publication that is alleged to have been knowingly or recklessly false," it stated that a "law that subjects the editorial process to private or official examination merely to satisfy curiosity or to serve some general end such as the public interest … would not survive constitutional scrutiny" under the First Amendment. *Herbert v. Lando*, 441 U.S. 153, 174 (1974).

Moreover, each law's explanation requirement imposes a heavy and ongoing burden on the covered sites, especially given the required large size of those sites' user bases. The requirements could apply to billions of decisions. This extremely costly obligation would force sites like YouTube to employ burden avoidance methods that would hinder both sites' and users' speech and First Amendment rights. To avoid high costs, sites may permit fewer user comments or posts, eliminate content moderation policies altogether, or greatly simplify content moderation rules, making automated notices easier to send, but likely causing more frequent and less targeted removal of user posts.[63]

Take, for example, YouTube, which presently moderates and provides individual notice for about 9

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62. *See also In re Consumers Union of the U.S., Inc.*, 32 Fed. R. Serv. 2d 1373 (S.D.N.Y. 1981).

63. *See* Daphne Keller, *Platform Transparency and the First Amendment* at 31-32, Journal of Free Speech Law, (Mar. 2023), https://www.journaloffreespeechlaw.org/keller2.pdf.

million videos per quarter. Under the Texas law, YouTube would be required to provide individual notice and appeal options for moderated *user comments* as well, increasing its notice and appeal obligation more than 100-fold.[64]

III. INTERNET USERS ARE BEST SERVED BY VOLUNTARY MEASURES FOR CONTENT MODERATION RATHER THAN EDITORIAL MANDATES

Internet users are best served when content moderation is governed by "mechanism[s]," that are "consensual," as this Court said in *Tornillo*, 418 U.S. at 254, however imperfect they may be. Both companies and users can look to several models for self-regulation. Amici EFF and NCAC are among a broad range of global civil society groups that authored the Santa Clara Principles.[65] The Internet Commission's annual Accountability Report aims to identify best practices scaled to an online service's maturity.[66]

Importantly, those models are not templates for regulation or legal liability. The Santa Clara Principles specifically state, "This second iteration of the Santa Clara Principles has been developed to support companies to comply with their responsibilities to respect human rights and enhance their accountability, and to assist human rights advocates in their work. **They are not designed**

64. *See id.*, at 34.

65. Santa Clara Principles, https://www.santaclaraprinciples.org/ (last visited Nov. 27, 2023).

66. *Accountability Report 2.0*, Internet Comm'n (2022), Mar. 10, 2022 https://inetco.org/report.

to provide a template for regulation."[67] In a Note to Regulators,[68] the Principles explain that its standards do not readily scale or account for the variations among online services:

> The Santa Clara Principles seeks to set standards. Some services will appropriately meet these standards. Some will appropriately meet only some of them, while others will and should exceed them. Where any particular service falls will depend on many factors—number of users, capitalization, age, focus of service, editorial priorities, user priorities—that will vary from service to service. While companies should design their services with due process in mind from the beginning, companies must have some flexibility as to how they implement the Santa Clara Principles, from their inception, and then evolving over time as the service matures. The Santa Clara Principles are thus best seen as touchstones against which any company's practices can be evaluated and compared, not as dictates.
>
> To maintain this necessary flexibility, governments should resist legal mandates that would be prohibitively expensive or practically impossible to meet. Such mandates discourage new entrants into the field and thus discourage

67. The Santa Clara Principles, https://www.santaclaraprinciples.org/ (last visited Nov. 27, 2023) (emphasis in original).

68. A Note to Regulators, https://www.santaclaraprinciples.org/regulators/ (last visited Nov. 27, 2023).

> innovation and competition. Even among well-established services, there are no metrics that readily correspond to a required level of compliance.

The Principles also discuss other obstacles to employing them as governmental mandates: the potential for political exploitation, the variation among regional and national legal systems that govern these inherently international services, and the constantly evolving landscape of available services.

IV. GOVERMENTS CAN LOOK TO NON-EDITORIAL REGULATIONS TO BENEFIT SOCIAL MEDIA USERS

Nothing in this brief should be read as broadly exempting online services from regulation. Regulatory measures that do not target the editorial process or are not enacted in retaliation against or to provide levers against disfavored editorial policies and decisions may be acceptable.

Amicus EFF supports regulations that benefit users, promote user choice and control by encouraging competition and platform interoperability,[69] measures that can address perceived platform bias.[70] Many of the same

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69. *Comment on Evaluating the Competitive Effects of Corporate Acquisitions and Mergers*, EFF, August 20, 2018, https://www.eff.org/document/eff-comments-ftc-competition-0.

70. Bennett Cyphers & Cory Doctorow, *The New ACCESS Act Is a Good Start. Here's How to Make Sure It Delivers.*, EFF Deeplinks, June 21, 2021, https://www.eff.org/deeplinks/2021/06/new-access-act-good-start-heres-how-make-sure-it-delivers.

problems that legislators seek to address through editorial interference are better through data privacy legislation.[71]

CONCLUSION

For the foregoing reasons, amici curiae urge the Court to invalidate both laws.

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71. Corynne McSherry, et. al, *Privacy First: A Better Way to Address Online Harms*, EFF, Nov. 14, 2023 https://www.eff.org/wp/privacy-first-better-way-address-online-harms.