No. 21-1333

IN THE

Supreme Court of the United States

REYNALDO GONZALEZ, *et al.*,

Petitioners,

v.

GOOGLE LLC,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF CENTER FOR RENEWING AMERICA, INC. AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

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INTERESTS OF *AMICUS CURIAE*[1]

The Center for Renewing America, Inc. is a non-profit corporation organized exclusively for charitable, religious, educational, and scientific purposes under Section 501(c)(3) of the Internal Revenue Code.

The Center for Renewing America, Inc. works to renew a consensus of America as a nation under God with a unique purpose worthy of defending that flows from its people, institutions, and history, where individuals' enjoyment of freedom is predicated on just laws and healthy communities. The Center expresses its views on behalf of all Americans who seek to further these interests free from the dominant internet platforms' discriminatory and unfair treatment for which Petitioner's and Respondent's incorrect reading of Section 230(c)(1) gives legal protection.

The Center for Renewing America urges the Court to protect American families and children, respect Section 230's text, and further Congress's manifest purpose.

SUMMARY OF ARGUMENT

At the *certiorari* stage, both Petitioner and Respondent argued that Section 230 protects internet platforms' "traditional editorial functions." Accepting such a claim would shield internet platforms, such as Google, from

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1. No counsel for a party authored any part of this brief, and no person other than *amicus curiae*, its members or its counsel made a monetary contribution intended to fund its preparation or submission. All parties have filed blanket consents.

liability created by their own unlawful speech and actions, including de-platforming users on the basis of their race or religion, making fraudulent claims to consumers, and flouting express contractual obligations. Accepting such a claim may also have unintended consequences for the analyses of state-level anti-censorship laws, such as the ones passed recently by Florida and Texas, under First Amendment and preemption doctrines.

If Congress wanted to grant Google and the other dominant internet firms such extraordinary immunity, it would have written a statute that immunized the platforms' *own* speech and actions. Section 230(c)(1) says something very different: it only protects platforms from being treated as the speaker or publisher of *third parties*' speech.

Congress wrote Section 230 to empower families to control the internet content received in the home, allowing parents to protect children from harmful or inappropriate content. To that end, the statute grants immunity to platforms for their editorial control of content—but only for the types of content listed in Section 230(c)(2), namely "obscene, lewd, lascivious, filthy, excessively violent, harassing, and otherwise objectionable" content. 47 U.S.C. § 230(c)(2).

Section 230(c)(1)'s text and plain meaning restate a liability rule that has applied to communications networks from at least the time of telegraphs. This rule protects communications networks, whether internet platforms or telephone and telegraph companies, from publisher liability created by the messages and other content that they transmit. Section 230 applies this rule

to the internet in a straightforward way: An "interactive computer service," such as Google, is "not treated as a publisher or speaker" for "information provided by *another* information content provider." 47 U.S.C. § 230(c)(1). (emphasis added).

In their filings to this Court, Petitioner and Respondent (collectively "Parties") have urged between them three different interpretations of Section 230(c)(1). Both Parties argue that Section 230 protects platforms from liability for their own speech when exercising their "traditional editorial functions." Pet. at *i*; BIO at 14. In their merits brief, Petitioners change tack and argue that the word "publisher" must be interpreted according to its technical meaning, not its "everyday meaning." Pet. Br. 20. Google argues for a "three-prong" test that functions much like the "traditional editorial function" test. BIO at 4.

These arguments all ignore the provision's plain language. Section 230(c)(1)'s text does not protect platforms from their *own* exercise of traditional editorial functions—but rather from liability caused by their users' or third-parties' speech and exercise of traditional editorial function— or, as the statute's text states, liability caused by "information provided by another information content provider, [i.e., user or third-party]." 47 U.S.C, § 230(c)(1). Relying on a flawed extension of Section 230(c)(1) beyond its text, courts have used Section 230(c)(1) to shield platforms from their own decisions and statements, giving platforms immunity from civil rights, consumer fraud, and even contract laws.

The Parties' interpretations also frustrate Congress's purpose in passing Section 230—originally written as the

"Online family empowerment" amendment and passed as part of the Communications Decency Act. As these titles suggest, Congress eliminated platform liability only for editing or removing obscene, lewd, lascivious, filthy, excessively violent, harassing, and otherwise objectionable content, as enumerated in Section 230(c)(2). Congress gave this liability relief in the hope that platforms would provide family-friendly internet environments. The parties' overbroad reading of Section 230(c)(1) would protect all of a platforms' "editorial functions" and thereby renders a nullity the protection Section 230(c)(2) provides for more specific types of editorial functions.

The distinction drawn by sections 230(f)(2-3), between interactive computer services and information content providers, is useful in answering the question whether Section 230(c)(1) protects YouTube's targeted recommendations. If, in the context of targeted recommendations, YouTube is an information content provider, i.e. an entity responsible, "in whole or in part, for the creation or development of information provided through the Internet," 47 U.S.C. § 230(f)(3), then targeted recommendations fall outside of Section 230(c)(1), which only applies to information "provided by another." This case should be remanded to determine how YouTube's algorithms create and develop "targeted recommendations." If these recommendations simply result from YouTube's transmission of "information provided by another," 47 U.S.C. § 230(c)(1), then Section 230(c)(1) may apply to YouTube's recommendations. If, however, YouTube's recommendation algorithms are responsible for the "creation or development" of new information or content, 47 U.S.C. § 230(f)(3), then YouTube is to that extent an information content provider and

Section 230(c)(1) does not apply to the relevant activities. The record lacks the facts necessary to decide this question.

ARGUMENT

Section 230(c)(1) eliminates internet platforms' "speaker or publisher" liability for "information provided by another." 47 U.S.C. § 230(c)(1). Section 230(c)(1) says nothing about legal liability for Google's *own* editorial decisions or its own statements. While Congress intended Section 230(c)(2) to protect platforms' editorial judgment, (c)(2) immunity applies only to editing certain enumerated types of content. The enumerated types of content reflect a decision to encourage internet service providers to offer families with choices of different types of content moderation.

I. Section 230(c)(1) 's Plain Language Protects Platforms From Speaker or Publisher Liability for Third Party Speech, not Their Own Speech or Actions

This Court has recognized that when "the plain language ... is unambiguous, [its] inquiry begins with the statutory text, and ends there as well." *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 138 S. Ct. 617, 631 (2018). Disregarding the statute's plain text, the Parties urge between them three different interpretations of Section 230(c)(1), none of which follow the provision's text or its plain meaning. First, the Parties argue that Section 230(c)(1) protects platforms from liability caused by exercising their own "traditional editorial function." Pet at i; BIO at 11; Second, Google argues that its recommendations have immunity under a

"three-prong" test for any internet platform decision or action concerning third-party content. BIO at 4. Third, in its merits brief, Gonzalez argues that Google is not a "publisher" under a legal technical meaning of the word, regardless of its "everyday meaning." Pet. Br. 20.

A. Section 230(c)(1)'s Text and Plain Language Contradicts the "Traditional Editorial Function" Test

Section 230(c)(1)'s text and plain language do not protect platforms' traditional editorial function or eliminate liability resulting from their own speech or action. Instead, the provision relieves Google and other "interactive computer services" from liability resulting from *their users'* publishing and speaking. *See* Adam Candeub, *Reading Section 230 as Written*, 1 J. Free Speech L. 139, 148-149 (2021).

The provision states: "No interactive computer service [e.g., Google] shall be treated as the publisher or speaker of any information provided by another information content provider [e.g., a user or website Google directs users to]." 47 U.S.C. § 230(c)(1). If Google links to a New York Times article that defames an individual, Section 230(c)(1) limits such individual's legal recourse to *The New York Times*, prohibiting legal action against Google. The liability protection involves three parties: it protects (1) platforms from (2) plaintiffs' claims about (3) users' or other third parties' unlawful publication or speech.

Section 230(c)(1)'s plain language applies to "interactive computer services" the same liability rule that historically has been applied to telegraphs, telephones, and other

communications networks. Internet platforms under Section 230, telegraph companies,[2] and telephone companies[3] are protected from liability for transmitting libelous information their users or subscribers post, send, or speak. Any aggrieved person must seek redress only from the user or subscriber of the communications network who first posted, sent, or spoke the libel.

This traditional form of liability relief for communications firms does not apply to a telephone or telegraph company's own actions, speech, or representations. By extension, Section 230(c)(1)'s text speaks only of information provided by another, and says nothing about an interactive computer service's *own* speech—or to use Parties' characterization, the exercise of Google's "traditional editorial function." Not surprisingly, traditional liability rules would not relieve a telephone company from liability for discriminating among users or making fraudulent claims about its services, *see, e.g., Smith v. SBC Commc'ns Inc.*, 178 N.J. 265, 283 (2004) (allowing Consumer Fraud Act against Bell telephone companies).

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2. *Western Union Tel. Co. v. Lesesne*, 182 F.2d 135, 137 (4th Cir. 1950); *O'Brien v. Western Union Tel. Co.*, 113 F.2d 539, 542-3 (1st Cir. 1940); *Mason v. Western Union Tel. Co.*, 125 Cal. Rptr. 53, 56 (1975); *Peterson v. W. Union Tel. Co.*, 65 Minn. 18, 23 (1896). *See generally* Adam Candeub, *Reading Section 230 As Written*, 1 J. Free Speech L. 139, 146-147 (2021) (describing the history of liability for early communications networks).

3. Restatement (Second) Of Torts § 612(2); *see also Anderson v. New York Tel. Co.*, 42 A.D.2d 151, 345 N.Y.S.2d 740 (1973), reversed on other grounds, in 35 N.Y.2d 746, 361 N.Y.S.2d 913, 320 N.E.2d 647.

Justice Thomas identified the error of courts' misreading of Section 230(c)(1). "Courts have . . . departed from the most natural reading of the text by giving Internet companies immunity for their own content." *Malwarebytes, Inc. v. Enigma Software Grp.*, 141 S. Ct. 13, 16 (2020) (statement of Thomas, J., regarding denial of certiorari). He rejected "construing § 230(c)(1) to protect any decision to edit or remove content." *Id.*

B. Section 230(c)(1)'s Plain Language, Which Refers to Content *Provided by Another*, Contradicts Google's "Three Prong" Test

Google argues for a "three-prong" approach to Section 230(c)(1), which has the same legal effect as the traditional editorial function test. Both expand Section 230 beyond a reasonable understanding of the provision's text. Google states: ("1) The defendant must use or operate "an interactive computer service," (2) the plaintiff's claim must seek to treat the defendant as "the publisher or speaker" of content; and, (3) the content must have been generated by a different "information content provider." BIO at 4.

Google's second prong omits a key requirement of Section 230(c)(1): the defendant interactive computer service must publish or speak content "*provided by another.*" By omitting this key element, courts have applied Section 230(c)(1) to internet platforms' own speech or decisions that merely concern third-party content or information—but which third-parties do not, in fact, "publis[h] or spea[k]." 47 U.S.C.§ 230(c)(1).

Google's third prong does not remedy this omission because courts consider the plaintiff an "information

content provider" under this prong. Thus, Google's test extends Section 230's platform protection from suits alleging wrongdoing by platforms' users to suits alleging wrongdoing by platforms themselves. Google's test transforms Section 230 three-party liability protection rule, i.e., Google is protected from plaintiffs alleging Google's users posted unlawful content, into a two-party protection, i.e., Google is protected from plaintiffs alleging Google's *own* unlawful activity.

As an illustration of the consequences of such a test, courts have barred under Section 230(c)(1) plaintiffs who brought civil rights challenges against internet platforms for removing content based on the platform's *own* unlawful racial or ethnic animus. *See, e.g., Sikhs for Just. "SFJ", Inc. v. Facebook, Inc.*, 144 F. Supp. 3d 1088, 1092-93 (N.D. Cal. 2015), *aff'd sub nom. Sikhs for Just., Inc. v. Facebook, Inc.*, 697 F. App'x 526 (9th Cir. 2017). In a typical analysis, the *Sikhs for Justice* court reasoned that (1) Facebook is "an interactive computer service"; (2) Sikhs for Justice's claims treat Facebook as "the publisher or speaker" of content, *i.e.,* Sikhs for Justice attempted to hold Facebook liable for its decision to remove or block content; and, (3) the content must have been generated by a different "information content provider," *i.e.,* Sikhs for Justice posted the wrongly removed or blocked content. *Id.*

As Justice Thomas observed, "With no limits on an Internet company's discretion to take down material, § 230 now apparently protects companies who racially discriminate in removing content." *Malwarebytes,* 141 S. Ct. at 17 (statement Thomas, J., regarding denial of certiorari).

Using both the "traditional editorial function" and the "three prong" test," courts have given internet platforms vast protections from liability resulting from their own speech and actions—which neither the provision's text nor any historical precedent supports. Under this misreading of Section 230(c)(1), courts have given internet platforms immunity for violating users' civil rights as in *Sikhs for Justice*,[4] making false or fraudulent claims in violation of consumer protection statutes,[5] or refusing to honor promises and commitments under contract law.[6] Recently, a California court used the doctrine to strike down claims

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4. *Domen v. Vimeo, Inc.*, 433 F. Supp. 3d 592, 605 (S.D.N.Y. 2020) ("State antidiscrimination laws ... are not exempted from the reach of the CDA" which protects Vimeo from its own decision to remove plaintiff's videos); *Nat'l Ass'n of the Deaf v. Harvard Univ.*, 377 F. Supp. 3d 49, 66 (D. Mass. 2019) ("That view, which is binding on this court, does not leave room for Plaintiffs' contention that the CDA simply does not apply to discrimination claims seeking accommodation for the disabled.").

5. *King v. Facebook, Inc.*, No. 19-CV-01987-WHO, 2019 WL 4221768, at *5 (N.D. Cal. Sept. 5, 2019), aff'd, 845 F. App'x 691 (9th Cir. 2021) ("Plaintiff's "claims [including fraud] is barred as a matter of law under the CDA [Section 230(c)(1)]"); *Milgram v. Orbitz Worldwide, Inc.*, 419 N.J. Super. 305, 319 (Law. Div. 2010) ("Plaintiffs seek to enjoin defendants from 'advertising and selling concert tickets to consumers without actually having those tickets in their possession or control.' This conduct, however, fits squarely within the CDA's purview").

6. *Goddard v. Google, Inc.*, No. C 08-2738JF(PVT), 2008 WL 5245490, at *5 (N.D. Cal. Dec. 17, 2008) ("Plaintiff's contract and negligence claims ...are barred [under] ... § 230(c)(1)."); *Murphy v. Twitter, Inc.*, 60 Cal. App. 5th 12, 28 (2021) ("rejecting plaintiff's breach of contract and promissory estoppel claims . . .[they] sought to treat the defendant as a publisher or speaker of user generated content").

alleging violation of the California Constitution and Unruh Act.[7]

II. Congress Intended to Protect Platforms' Traditional Editorial Function Only For Specific Types of Content, With the Purpose of Protecting Children and Empowering Families

To the extent Congress intended Section 230 to protect platforms' "traditional editorial functions," Congress did so in Section 230(c)(2), not Section 230(c)(1). Section 230(c)(2) gives protection *only* for an internet platform's "action voluntarily taken . . . to restrict access to or availability of materials" that are "obscene, lewd, lascivious, filthy, excessively violent, harassing, and otherwise objectionable." *See generally* Adam Candeub & Eugene Volokh, *Interpreting 47 U.S.C. § 230 (c)(2)*, 1 J. Free Speech L. 175 (2021) ("otherwise objectionable" should be read under the canon of *ejusdem generis* to include only content traditionally regulated in communication and broadcast media).

The Parties urge an interpretation that disrupts the statute's carefully considered structure. If Section 230(c)(1) protects platform's "traditional editorial functions," those functions would include "restrict[ing] access to or availability of materials" —and, therefore, Section 230(c)(2) would be rendered superfluous. Justice Thomas observed that "decisions that broadly interpret § 230(c)(1)

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7. *Prager University v. Google,* No. H047714, 2022 WL 17414495, at *4 (Cal. Ct. App. Dec. 5, 2022) ("lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred").

to protect traditional publisher functions ... eviscerated the narrower liability shield Congress included in the statute." *Malwarebytes,* 141 S. Ct. at 16 (statement of Thomas, J. concerning denial of certiorari).

Interpreting a provision in a statute to obviate another provision violates the rule against superfluity. This statutory canon requires that "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant. *Corley v. United States*, 556 U.S. 303, 314 (2009) (internal quotations omitted).

Concededly, "the canon against superfluity assists only where a competing interpretation gives effect to every clause and word of a statute." *Microsoft Corp. v. I4I Ltd. P'ship*, 564 U.S. 91, 106 (2011) (internal quotations omitted). The plain language reading urged here does give effect to every clause and word of the statute. Section 230(c)(1) protects platforms from liability resulting from their users' speech, i.e., "information provided by another," and Section 230(c)(2) protects platforms from liability for exercising their editorial function to "restrict access to or availability of" enumerated types of content.

A plain language reading also furthers Congress's intent to protect children via the Communications Decency Act. Section 230, originally a bill titled, "Online family empowerment," focuses on giving platforms incentives to eliminate material inappropriate to children. "In the brief legislative history, every legislator who spoke substantively about § 230 focused on freeing platforms to block material that was seen as not 'family-friendly.'" Candeub & Volokh, *Interpreting 47 U.S.C. § 230(c)(2)*, 1 J. Free. Speech at 185.

Petitioners describe Congress's purpose as to reduce liability for online platforms, Pet. Br. 6-7, but omit the ultimate goal of that reduction in liability: encouraging internet platforms to develop screening and moderation tools to protect children. As the legislative history makes clear, Congress passed the law to overrule a New York state case, *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, No. 31063/94, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995).[8]

Prodigy took great efforts to edit and control its content so as to protect children. In *Stratton Oakmont,* a New York state court ruled that Prodigy was liable as a "publisher" for *all* statements and posts on its bulletin board because it content moderated its bulletin boards to make them more family friendly. *Stratton Oakmont* thereby created crushing liability for any internet platform that wished to create a "family friendly" online environment—because such platforms became liable for all posts on their bulletin boards.

By passing Section 230, Congress reversed in two ways the disincentives *Stratton Oakmont* created for platforms that wanted to create more family friendly

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8. The Communication Decency Act's conference report states: "the specific purpose of this section is to overrule *Stratton-Oakmont v. Prodigy* and any other similar decisions which have treated such providers and users as publishers or speakers of content that is not their own because they have restricted access to objectionable material. The conferees believe that such decisions *create serious obstacles to the important federal policy of empowering parents to determine the content of communications their children* receive through interactive computer services." S. Rep. No. 104 -230, at 194 (1996) (Conf. Rep.) (emphasis added).

online environments. First, Section 230(c)(2) provides explicit liability relief when platforms edit or remove "obscene, lewd, lascivious, filthy, excessively violent, harassing" material. Second, Section 230(c)(1) reaffirms the traditional communications carrier liability rule for all other content, i.e., the platforms have no liability for the unlawful content they transmit. Thus, Section 230(c)(1) ensured that platforms could continue to transmit information and function as communications networks without liability just like telephone companies—but would have the extra protection of Section 230(c)(2) when they took extra steps to protect children.

Outside of the specific content categories of Section 230(c)(2), Section 230 says nothing about a platform's own decisions to edit or moderate material.

III. Congress Intended the CDA to Encourage Competition Among "Walled Garden" ISPs and Their Content Moderation Policies

When Congress wrote the Communications Decency Act, the dominant internet services used by consumers were "walled gardens" accessed through dial-up firms such as CompuServe, Prodigy, and America Online. These firms had fundamentally different business models from modern internet firms. Using proprietary server banks and operating under a subscription business model, they offered inoperable services. Each firm offered access to different content—unlike current ISPs, which offer access to generally the same set of publicly-accessible online materials. Firms could differentiate themselves through the type of content they provided. For instance, Prodigy represented that it had a more family-friendly

environment than its competitors. *Stratton Oakmont*, 1995 WL 323710, at *2 ("Plaintiffs base their claim that PRODIGY is a publisher in large measure on PRODIGY's stated policy, starting in 1990, that it was a family-oriented computer network.")

In this market, Congress assumed that ISPs would compete by providing different content screening tools and services. This expectation explains Congress's findings and policies. For instance, Congress found that the internet "services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops." 47 U.S.C. § 230(a)(2).

Similarly, Congress's stated policies demonstrate its belief that a competitive ISP market would create differentiated services that would provide families with choices in content moderation and controls. Congress stated that its policy is to "preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer service," 47 U.S.C. § 230 (b)(2); so as to "encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools," 47 U.S.C. § 230(b)(3); and "remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material," 47 U.S.C. § 230(b)(4).

Of course, the internet market did not develop as Congress envisioned when it wrote Section 230 in 1995 and passed it into law in 1996. The world wide web

protocol helped to rip down the walled gardens to provide an interoperable internet experience. And Congress did not foresee the emergence of dominant platforms such as Google or Facebook.

Regardless of these market developments, Congress's intent to give families control over the content flowing into their homes over the internet should still inform interpretation of the statute. Congress did not intend Section 230(c)(1) to give the early dial-up ISPs unprecedented immunity for their own speech and actions outside of the content types enumerated in Section 230(c)(2). There is no reason to give such unprecedented immunity to today's internet firms.

IV. The Distinction Between Interactive Computer Services and Information Content Providers Drawn by Sections 230(f)(2-3) Helps Answer Whether Section 230(c)(1) Shields Targeted Recommendations

One question presented by this case is whether targeted recommendations are "information provided by another information content provider [i.e., user]," that YouTube simply transmits, or whether targeted recommendations are YouTube's own speech. If, as Google argues, its targeted recommendations are simply transmissions of information provided by another, Section 230(c)(1) applies to targeted recommendations. If YouTube's recommendations are not "information provided by another information content provider," then, as Gonzalez argues, Section 230(c)(1) does not apply to targeted recommendations.

Congress helped answer this question by limiting Section 230(c)(1) immunity to interactive computer services, and by separately defining "interactive computer service," 47 U.S.C. § 230 (f)(2), and "information content provider," 47 U.S.C. § 230 (f)(3). Information content providers are defined as "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service." 47 U.S.C. § 230(f)(3).

Under Section 230(f)(3), therefore, to the extent YouTube's is "responsible, in whole or in part, for the creation or development of" targeted recommendations, YouTube is an information content provider responsible for its own information, and not an interactive computer service acting as the publisher or speaker of "information provided by another," as Section 230(c)(1)'s protections require.

Whether algorithms are involved in generating recommendations does not change the analysis. An algorithm can be defined as "any well-defined computational procedure that takes some value, or set of values, as input and produces some value, or set of values, as output." Thomas H. Cormen et al., Introduction to Algorithms·at 5 (MIT Press, 2001) (emphases omitted).

Whether YouTube's algorithms "creat[e] or develo[p]" information is a question of fact. Some algorithms may not generate new, or significantly new, information. For instance, if YouTube's recommendation algorithm ordered videos by popularity (number of views) on a given day, that ordering might be considered to create new information.

Similarly, ordering videos chronologically may create new information. But such new information may be so minimal that its dissemination would be little different from mere transmission of the underlying content.

Determining when significantly new information is created or developed by a platform or another information content provider would require learning more about how YouTube's algorithms work. Petitioners make this point. For instance, Petitioners argue that transmitting "website-created notification" would be protected by Section 230(c)(1), Pet. Br. 40. At the same time, URLs provided by third parties would fall outside the protections of section 230(c)(1), depending on which party, in fact, wrote the URL embedded in the provided transmitted hyperlink. Pet. Br. 38-39.

Similarly, Petitioners claim that Section 230(c)(1) covers "general search" engine results but not YouTube's recommendations, through an argument based on an interpretation of 47 U.S.C. § 230(f)(2)—and a number of technical assertions. Petitioners assert that "YouTube provides content to users, not in response to a specific request from the user, but 'based upon' what YouTube thinks the user would be interested in. In the case of a search engine, the 'user's inputs' are 'textual questions' or 'queries' from the user." Pet. Br. 44*f*.

Petitioners assert that the definition of "interactive computer service," 47 U.S.C. § 230(f)(2), requires access to a server. Petitioners then claim that "to the extent that the computer performs functions, not in response to a request from a user, but at the behest of the server's operator, YouTube's recommendation system is not

operating as a 'server.'" Pet. Br. 46. Finally, Petitioners assert that YouTube's recommendations are at the behest of the server's operator—thus placing YouTube's recommendations outside of Section 230(c)(1). Pet. Br. 47.

Petitioners' argument rests on a sequence of factual assertions about how "general" search engines as compared to YouTube's search and recommendation functions work. It is impossible to know on this record whether Petitioners' assertions about how URL, hyperlinks, and automated computer notices function are correct. The Court should not base its opinion—which will have far reaching effects on internet liability and the future of the American economy—on tenuous factual predicates.

There is a way to sort out claims and concepts that purport to represent how the internet works. This case must be remanded to the district court for further factual development.

V. "Traditional Editorial Functions" and Possible Effects on State Social Media Laws

Finally, a broad interpretation of Section 230(c)(1) could have an unintended effect on cases that have great impact on internet policy and which the Court may soon decide. For instance, the Gonzalez plaintiffs have recently submitted to this Court an *amicus curiae* brief regarding the petition for certiorari filed in *Attorney General, State of Florida, et al. v. Netchoice*, et al., No. 22-277. In their *amicus* brief, the Gonzalez plaintiffs argue that Section 230 likely preempts the Florida social media law because it interferes with internet platforms' traditional editorial functions. Brief of *Amici Curiae* Reynaldo Gonzalez,

Mehier Taamneh, et al. in Support of Neither Party, at 18 n.14.

A textual reading of the statute, which focuses on liability caused by transmitting unlawful content—not the internet platform's *own* discriminatory actions—avoids any unforeseen effect on state social media laws, such as Florida's S.B. 7020 and Texas's H.B. 20. A textual reading would allow the Court to review these laws on a clean slate.

CONCLUSION

The Court should reverse the decision of the Court of Appeals and remand the case to District Court for further factual findings.

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Respectfully submitted,

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