

Nos. 22-277 & 22-555

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**In the Supreme Court of the United States**

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ASHLEY MOODY, ATTORNEY GENERAL OF FLORIDA, *et al.*,  
*Petitioners,*

*v.*

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

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

*v.*

KEN PAXTON, ATTORNEY GENERAL OF TEXAS.

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

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**BRIEF OF AMERICAN JEWISH COMMITTEE AS *AMICUS  
CURIAE* IN SUPPORT OF RESPONDENTS IN NO. 22-277  
AND IN SUPPORT OF PETITIONERS IN NO. 22-555**

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....ii

INTEREST OF AMICUS CURIAE ..... 1

SUMMARY OF ARGUMENT ..... 1

ARGUMENT ..... 2

    I. Online Hate Contributes to Offline Violence. .... 2

        A. The Tree of Life Synagogue Mass  
           Shooting ..... 3

        B. The Christchurch Massacre ..... 5

        C. The Buffalo Supermarket Shooting..... 6

    II. Content Moderation Is an Important Tool for  
        Minimizing the Spread of Hateful Messages  
        About Faith and Ethnic Groups. .... 8

    III. Texas’s and Florida’s Laws Impede Efficient,  
        Effective Content Moderation in Response to  
        Online and Offline Hate..... 11

CONCLUSION ..... 13

**TABLE OF AUTHORITIES**

	<b>Page(s)</b>
 <b>Cases</b>	
<i>Miami Herald Publ'g Co. v. Tornillo</i> , 418 U.S. 241 (1974) .....	8
<i>Pac. Gas &amp; Elec. Co. v. Pub. Utils.</i> <i>Comm'n of Cal.</i> , 475 U.S. 1 (1986) .....	12
<i>Reno v. ACLU</i> , 521 U.S. 844 (1997) .....	8
 <b>Statutes</b>	
FLA. STAT.	
§ 501.2041(2)(b) .....	11
§ 501.2041(2)(c) .....	11
§ 501.2041(2)(h) .....	11
TEX. CIV. PRAC. & REM. CODE	
§ 143A.002(a)(1) .....	11
§ 143A.002(a)(2) .....	11
§ 143A.006 .....	11
 <b>Miscellaneous</b>	
ANN. REP. OF U.S. COMM'N ON INT'L RELIGIOUS FREEDOM (2020) .....	10
ANN. REP. OF U.S. COMM'N ON INT'L RELIGIOUS FREEDOM (2021) .....	10

ANN. REP. OF U.S. COMM’N ON INT’L  
RELIGIOUS FREEDOM (2022)..... 10

U.S. COMM’N ON INT’L RELIGIOUS  
FREEDOM, *Issue Update: Religious  
Freedom Concerns In The European  
Union* (JUL. 2023),..... 10

Alex Amend, *On Gab, Domestic Terrorist  
Robert Bowers Engaged With Several  
Influential Alt-Right Figures*,  
SOUTHERN POVERTY LAW CENTER  
HATEWATCH BLOG (Nov. 1, 2018)..... 4, 5

Kyle Chayka, *The Online Spaces That  
Enable Mass Shooters*, THE NEW  
YORKER (May 19, 2022) ..... 5, 6, 7

Armin Lange, *The Religious Memory of  
Antisemitism-The Pittsburgh Shooter  
between Christian White Supremacist  
and Islamicist Agitation*, 18  
ACADEMIC JOURNAL OF RELIGIOUS  
EDUCATION, (2019)..... 4

Binny Mathew et. al., *Spread of Hate  
Speech in Online Social Media* (Dec. 4,  
2018) (unpublished manuscript) ..... 4, 8

Center for Technology and Society, *Online  
Antisemitism Increased After Hamas  
Attack*, ANTI-DEFAMATION LEAGUE  
BLOG (Nov. 9, 2023)..... 9

Campbell Robertson, et al., *11 Killed in Synagogue Massacre; Suspect Charged With 29 Counts*, N.Y. TIMES (last updated Oct. 29, 2018)..... 3

Kevin Roose, *A Mass Murder of, and for, the Internet*, N.Y. TIMES (Mar. 15, 2019),..... 5, 6

Alina Selyukh, *Amazon Says Parler Systematically Unwilling To Remove Violent Content*, NPR (Jan. 13, 2021)..... 9

Yannick Veillieux-Lepage, et al., *The Christchurch Attack Report: Key Takeaways on Tarrant’s Radicalization and Attack Planning*, Int’l Centre for Counter-Terrorism (Dec. 18, 2020)..... 6

## INTEREST OF AMICUS CURIAE<sup>1</sup>

*Amicus* American Jewish Committee (AJC) is a staunchly nonpartisan global advocacy organization that engages with leaders at the highest levels of government and civil society to counter antisemitism and advance democratic values. AJC believes that the well-being of the Jewish community is linked to that of other faith and ethnic groups in the United States and abroad.

AJC's mission requires vigilant attention to resurgent hate, including antisemitism in all its guises. As part of its work, AJC closely monitors acts of hate directed at faith and ethnic groups. As online services like social media have emerged as dominant global forums for communication, AJC has closely monitored the connection between hateful speech on those services and acts of real-world violence against Jews and other faith and ethnic groups. AJC respectfully submits this *amicus* brief in the hope that its experience in this area will aid the Court in its consideration of these cases.

## SUMMARY OF ARGUMENT

Private online services have a First Amendment right to engage in content moderation—choosing what types of speech to permit, or not permit, on their websites. While supporting that constitutional value, this brief focuses on certain practical consequences that flow from the freedom to moderate online content. In short, online speech is not hermetically sealed off from the real world, and in some

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<sup>1</sup> No counsel for any party authored this brief in whole or in part, and no entity or person aside from *amicus* and its counsel made any monetary contribution toward the preparation or submission of this brief.

tragic cases, online hate contributes to horrific offline violence.

Individuals who want to incite or celebrate offline violence against faith and ethnic groups often use private social media services to do so. And research shows that hateful or violent online rhetoric can encourage unstable and potentially violent individuals to act on their extreme views. So does tragic recent experience: Mass casualty events like the shootings of the Tree of Life Synagogue in Pittsburgh in 2018, of Muslim worship sites in Christchurch in 2019, and of a predominantly black supermarket in Buffalo in 2022 were each fueled by hateful online content.

Recognizing the relationship between online hate and offline violence, many online services have chosen to moderate third-party content to mitigate this danger. Different services have taken different approaches to this problem and with varying degrees of success. But, *amicus* submits, it is essential that they retain the freedom to do so—and to respond quickly, decisively, and efficiently, before violent online rhetoric materializes in the real world. The state laws under review would impede that freedom, with potentially grave real-world consequences. This Court should affirm in No. 22-277 and reverse in No. 22-555.

## ARGUMENT

### I. Online Hate Contributes to Offline Violence.

Online social media services are home to the full range of human expression. Unfortunately, that includes a good deal of extremist or hateful rhetoric. *Amicus* deplores the prevalence of hateful speech and conspiracy theorizing online, often directed at Jews and other faith and ethnic groups. *Amicus* views content moderation directed at

removing such content as good policy in its own right: Reducing the spread of antisemitic and other hateful messages is a worthy goal even apart from any real-world consequences it might have.

Whatever one's views about the degree to which hateful speech should be permitted on social media services, however, the unfortunate reality is that online hate does not always stay online. Instead, as recent tragedies demonstrate, online hate often contributes to offline violence. Worse yet, online hate and real-world violence often interact in a vicious cycle: a perpetrator is radicalized and encouraged by extremist content on internet social media services; the perpetrator then commits an act of extremist violence in the real world; and finally, that offline violence is recycled through the same online services as an affirmation of the same extremist views that will incite others to perform the next offline act of violence. Three recent tragedies exemplify this vicious cycle.

#### **A. The Tree of Life Synagogue Mass Shooting**

On October 27, 2018, a shooter burst into Pittsburgh's Tree of Life Synagogue during Shabbat morning services, shouting antisemitic slurs as he opened fire on the innocent worshipers.<sup>2</sup> To date, this was the deadliest attack on the Jewish community in the United States, in which eleven people were killed and six wounded, including several Holocaust survivors.<sup>3</sup>

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<sup>2</sup> Campbell Robertson, et al., *11 Killed in Synagogue Massacre; Suspect Charged With 29 Counts*, N.Y. TIMES (last updated Oct. 29, 2018), <https://www.nytimes.com/2018/10/27/us/active-shooter-pittsburgh-synagogue-shooting.html>.

<sup>3</sup> *Id.*



In the days leading up to the attack, the shooter posted anti-immigrant polemics and antisemitic conspiracy theories on Gab, his favored social media service. The shooter's Gab profile featured the tagline "Jews are the children of satan" alongside the numbers "14:88," a coded reference to white supremacist slogans from Hitler's Europe.<sup>4</sup> His posts displayed clear antisemitic hatred: "Kikes are enemy number one. Dealing with anything after will be a relative piece of cake. I will not fire on someone who is shooting my enemy."<sup>5</sup>

Subsequent analysis showed that much of the graphic and violent content on the Pittsburgh shooter's account was reposted from elsewhere, including from accounts maintained by Neo-Nazi groups.<sup>6</sup> The gunman was able to develop and find encouragement for his antisemitic murders through conspiracy theories and violent imagery that was ubiquitous on Gab.<sup>7</sup>

After a sustained period steeped in anti-Jewish hatred and blood libels, the shooter's last message before committing the mass shooting at Tree of Life Synagogue

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<sup>4</sup> Armin Lange, *The Religious Memory of Antisemitism-The Pittsburgh Shooter between Christian White Supremacist and Islamicist Agitation*, 18 THEO WEB, ZEITSCHRIFT FUR RELIGIONSPADAGOGIK ACADEMIC JOURNAL OF RELIGIOUS EDUCATION, 7 (2019), [https://www.theo-web.de/fileadmin/user\\_upload/04.pdf](https://www.theo-web.de/fileadmin/user_upload/04.pdf).

<sup>5</sup> Binny Mathew et. al., *Spread of Hate Speech in Online Social Media*, 7 (Dec. 4, 2018) (unpublished manuscript), <https://arxiv.org/pdf/1812.01693.pdf>.

<sup>6</sup> Lange, *supra*, at 6, 7–8.

<sup>7</sup> Alex Amend, *On Gab, Domestic Terrorist Robert Bowers Engaged With Several Influential Alt-Right Figures*, SOUTHERN POVERTY LAW CENTER HATEWATCH BLOG (Nov. 1, 2018), <https://www.splcenter.org/hatewatch/2018/11/01/gab-domestic-terrorist-robert-bowers-engaged-several-influential-alt-right-figures>.

read: “HIAS likes to bring invaders in that kill our people. I can’t sit by and watch my people get slaughtered. Screw your optics, I’m going in.”<sup>8</sup> (HIAS refers the Hebrew Immigrant Aid Society, which now seeks to help predominantly non-Jewish immigrants seek refuge on new shores).

### **B. The Christchurch Massacre**

On March 15, 2019, a gunman entered two Christchurch, New Zealand mosques and proceeded to murder 51 innocent people, in the deadliest terrorist attack in modern New Zealand history.<sup>9</sup> The Christchurch shooter was motivated by hate, encouragement, and affirmations that he had encountered online for years prior to the massacre.<sup>10</sup> The Christchurch shooter wrote a 74-page manifesto entitled “The Great Replacement,” in which he espoused conspiracy theories about a genocide against white people.<sup>11</sup> Like the Pittsburgh shooter, the gunman focused on “anti-immigrant sentiment,” “racialised traditions,” and “racist exhortations,” including references commonly found on far-right pages.<sup>12</sup> The manifesto, which was posted to 8chan and Twitter (now “X”), named specific internet figures as means to increase online traffic about it.<sup>13</sup>

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<sup>8</sup> *Id.*

<sup>9</sup> Kyle Chayka, *The Online Spaces That Enable Mass Shooters*, THE NEW YORKER (May 19, 2022), <https://www.newyorker.com/culture/infinite-scroll/the-online-spaces-that-enable-mass-shooters>.

<sup>10</sup> Kevin Roose, *A Mass Murder of, and for, the Internet*, THE N.Y. TIMES (Mar. 15, 2019), <https://www.nytimes.com/2019/03/15/technology/facebook-youtube-christchurch-shooting.html>.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

Horribly, the Christchurch shooter reaffirmed the centrality of social-media-derived hate to his motivation by livestreaming his murderous spree directly to Facebook, unrestricted, for anyone to see. As the New York Times noted, “a surprising thing about it [was] how unmistakably *online* the violence was, and how aware the shooter on the video-stream appears to have been about how his act would be viewed and interpreted by distinct internet subcultures.”<sup>14</sup>

Footage of the killings quickly spread across the internet. Commenters celebrating the hateful murders connected the shooter’s actions to the Pittsburgh synagogue shooting. Media services like Twitter, Facebook, YouTube, and Reddit rapidly removed footage as it arose but—of course—it was too late to undo all of the damage caused by the shooter’s online radicalization. As the shooter himself agreed, YouTube was “a significant source of information and inspiration” for his planned mass-murder.<sup>15</sup>

### C. The Buffalo Supermarket Shooting

On May 22, 2023, a gunman carried out a racist mass shooting at a supermarket predominantly frequented by Black people in Buffalo, New York. The shooter “spent many months developing his hate crime on the internet.”<sup>16</sup> In the months before the attack, he joined a weapons-focused group on the online chat forum Discord to discuss the efficacy of body armor under the username

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<sup>14</sup> *Id.*

<sup>15</sup> Yannick Veillieux-Lepage, et al., *The Christchurch Attack Report: Key Takeaways on Tarrant’s Radicalization and Attack Planning*, INT’L CENTRE FOR COUNTER-TERRORISM (Dec. 18, 2020), <https://www.icct.nl/publication/christchurch-attack-report-key-takeaways-tarrants-radicalization-and-attack-planning>.

<sup>16</sup> Chayka, *The Online Spaces That Enable Mass Shooters*.

Jimboboi.<sup>17</sup> The Buffalo shooter also paid direct homage to the Christchurch shooting, stating that he intended to carry out the attack on its third anniversary.<sup>18</sup> A self-described ethno-nationalist, he wrote a manifesto documenting his concerns with a perceived genocide against white people, and—also like the Christchurch shooter—chose to livestream his attack on Twitch to send a message.<sup>19</sup> Though Twitch was able to remove the stream within two minutes, the footage documenting the murders had already begun to spread across the internet, reaching millions of viewers on other services such as X.<sup>20</sup>

\* \* \*

The point of these examples is not to fix blame on social media services for the horrific actions of violent individuals but to illustrate that social media—and the internet more generally—is not hermetically sealed off from the real world. To the contrary, social media and the internet are often intimately connected to the offline behavior of users, including some who are spurred on to acts of hateful violence.<sup>21</sup>

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Amicus* recognizes the limits of anecdotal evidence in these circumstances. But *amicus* knows from its own experience that “scientific” evidence isolating the effects of hateful speech is difficult to obtain: for good reason, researchers are generally reluctant to run controlled experiments that, if successful, would result in the treatment group becoming *more* inclined to engage in violence against Jews or other minority groups.

## II. Content Moderation Is an Important Tool for Minimizing the Spread of Hateful Messages About Faith and Ethnic Groups.

Social media services perform a vital role in our democracy—surely far beyond even the “vast democratic forums of the Internet” that existed in the early days of the World Wide Web. *Reno v. ACLU*, 521 U.S. 844, 868 (1997). At the same time, large social media services like Meta, TikTok, YouTube, and X are private companies with First Amendment rights of their own. Those rights include the right to engage in basic content moderation, which inherently involves editorial discretion protected by the First Amendment. *See, e.g., Miami Herald Publ’g Co. v. Tornillo*, 418 U.S. 241, 258 (1974).

Many social media companies choose to exercise their First Amendment rights to minimize the spread of hate speech and other violent rhetoric on their services through content moderation of various forms—with good reason, as illustrated by the examples above. Without content moderation, social media services can quickly be overwhelmed by violent rhetoric and harassment. For services like Gab, which allows users to post hateful content without fear of repercussion or removal, hateful content is ubiquitous relative to other services. Researchers found that hateful content is 2.4 times more common on Gab as it is on X.<sup>22</sup>

Similarly, Parler, another service that avoids serious content moderation, allegedly allowed a backlog of 26,000 reports of content that ran afoul of its standards, some of

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<sup>22</sup> Mathew et. al., *supra* at 2 (Dec. 4, 2018).

which advocated violence against Black and Jewish people, lawmakers, tech CEOs, and police officers.<sup>23</sup>

Without meaningful content moderation, many of the most dangerous and abusive voices begin to embolden similarly inclined users and drown out others. One study surveyed 21 million Gab posts and found that posts by hateful users “tend to spread faster, farther, and wider as compared to normal users.”<sup>24</sup>

In the weeks following the October 7, 2023 Hamas attacks on Israel, for example, the Global Project Against Hate and Extremism found a nearly 500% increase in both antisemitism and Islamophobia on some services.<sup>25</sup> Though the proliferation of hateful content was more pronounced on services that the Global Project Against Hate and Extremism terms “fringe” such as 4chan, Gab and Bitchute, it found a similar uptick on mainstream services such as Facebook and X, which saw a 28% and 919% increase in antisemitism respectively.<sup>26</sup>

These phenomena are even more troubling in an era of escalating antisemitism and Islamophobia around the world. In recent years, the United States Council on International Religious Freedom (USCIRF) has documented an “increase in anti-Semitic incidents, including discrimination, defamation, Holocaust denial,

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<sup>23</sup> Alina Selyukh, *Amazon Says Parler Systematically Unwilling To Remove Violent Content*, NPR (Jan. 13, 2021), <https://www.npr.org/sections/insurrection-at-the-capitol/2021/01/13/956362434/amazon-says-parler-systematically-unwilling-to-remove-violent-content>.

<sup>24</sup> *Id.*

<sup>25</sup> See Center for Technology and Society, *Online Antisemitism Increased After Hamas Attack*, ANTI-DEFAMATION LEAGUE BLOG (Nov. 9, 2023), <https://www.adl.org/resources/blog/online-antisemitism-increased-after-hamas-attack>.

<sup>26</sup> *Id.*

hate speech on the Internet, and vandalism of synagogues, cemeteries, and other community institutions.”<sup>27</sup> Both “Muslims and Jews have faced rising levels of xenophobia and discrimination,”<sup>28</sup> including a “wave of misinformation targeting religious minorities” in the wake of the pandemic.<sup>29</sup> In its 2023 “Issue Update” on “Religious Freedom Concerns in the European Union,” the USCIRF noted an increase in anti-Semitic violence in Europe, and commented “[d]espite official efforts to combat antisemitism and anti-Muslim hatred, both forms of hatred continue to rise.”<sup>30</sup> Of course, no systematic effort—whether official or unofficial—will be perfect. But precisely for that reason, it is essential that private services that would seek to stem the flow of hateful content through their websites and into the real world retain the freedom to do so.

*Amicus* recognizes that reasonable people can, and do, disagree about the appropriate degree of content moderation on social media. But *amicus* urges this Court to recognize the critical freedom that the First Amendment protects for private companies to make their own choices about content moderation. Responsible social media services must retain the freedom to quickly and

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<sup>27</sup> ANN. REP. OF U.S. COMM’N ON INT’L RELIGIOUS FREEDOM 87 (2020), [https://www.uscirtf.gov/sites/default/files/USCIRF%202020%20Annual%20Report\\_42720\\_new\\_0.pdf](https://www.uscirtf.gov/sites/default/files/USCIRF%202020%20Annual%20Report_42720_new_0.pdf).

<sup>28</sup> ANN. REP. OF U.S. COMM’N ON INT’L RELIGIOUS FREEDOM 68 (2022), <https://www.uscirtf.gov/sites/default/files/2022%20Annual%20Report.pdf>.

<sup>29</sup> ANN. REP. OF U.S. COMM’N ON INT’L RELIGIOUS FREEDOM 87 (2021) [https://www.uscirtf.gov/sites/default/files/2021-04/2021%20Annual%20Report\\_0.pdf](https://www.uscirtf.gov/sites/default/files/2021-04/2021%20Annual%20Report_0.pdf).

<sup>30</sup> *Issue Update: Religious Freedom Concerns In The European Union*, U.S. COMM’N ON INT’L RELIGIOUS FREEDOM 5–6 (Jul. 2023), [https://www.uscirtf.gov/sites/default/files/2023-07/2023%20Status%20of%20FoRB%20Issue%20Update\\_07.19.pdf](https://www.uscirtf.gov/sites/default/files/2023-07/2023%20Status%20of%20FoRB%20Issue%20Update_07.19.pdf).

efficiently respond when their services are used as tools to propagate hate and violence in the real world.

### **III. Texas’s and Florida’s Laws Impede Efficient, Effective Content Moderation in Response to Online and Offline Hate.**

The state laws under review in these cases make content moderation less efficient and, at worst, impossible.

Texas’s law, the more burdensome of the two, explicitly prevents social media companies from restricting content based on the viewpoint expressed. TEX. CIV. PRAC. & REM. CODE § 143A.002(a)(1)-(2). While Although the Texas statute has made exceptions for direct incitement to violence, it would still prevent online services from regulating and eliminating other hateful content on their websites. *Id.* § 143A.006. And of course, legal and regulatory uncertainty about what types of speech may or may not be restricted will slow down efforts to combat real threats.

Florida’s requirement that social media companies cannot make changes to their user rules more than once every thirty days hampers services’ ability to respond when malicious actors find ways around the rules. FLA. STAT. § 501.2041(2)(c). Florida also requires services to apply their content moderation standards “in a consistent manner” without providing clear guidance on how to comply. *Id.* § 501.2041(2)(b). Florida’s law makes it unlawful for a social media service to “shadow ban” or deprioritize content if it involves a candidate, providing an immense loophole that can be easily exploited by hateful actors online. *Id.* § 501.2041(2)(h). Under the Florida law, social media companies are forced to leave alone certain potentially hateful speech, cannot quickly respond when



bad actors find holes in their standards, and can always be second-guessed when making thousands of difficult decisions about how to enforce their rules.

Each law thus requires social media services to “use [their] property as a vehicle for spreading a message with which it disagrees.” *Pac. Gas & Elec. Co. v. Pub. Utils. Comm’n of Cal.*, 475 U.S. 1, 17 (1986) (plurality opinion). Worse, for practical purposes, under both laws, content moderation would become considerably more cumbersome, online harassment more prevalent, and real-world violence more likely. When faced with such barriers to content moderation, some online services may reasonably conclude that the safest course of action is to avoid content moderation altogether. Others may still do their best, but in a regulatory environment that will inevitably slow them down.

Simply put, the state laws under review would make content moderation unreasonably difficult, and all the more so when it is necessary to moderate content at scale. Indeed, Texas and Florida appear to have designed their laws to target some of the largest online services *because* of their ubiquity. *Amicus* recognizes the important responsibility that large social media services play in the flow of information and ideas online. Precisely for that reason, however, hampering online services’ freedom to moderate hateful content will allow such content to spread widely, risking tragic real-world effects.

**CONCLUSION**

The judgment of the Court of Appeals in No. 22-277 should be affirmed. The judgment of the Court of Appeals in No. 22-555 should be reversed.

Respectfully submitted.

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