No. 23-411

In The

Supreme Court of the United States

VIVEK H. MURTHY, Surgeon General, et al.,

Petitioners,

v.

MISSOURI, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF AMICUS CURIAE OF FLOOR64, INC. D/B/A THE COPIA INSTITUTE IN SUPPORT OF NEITHER PARTY

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INTEREST OF AMICUS CURIAE[1]

This is a case that complains of undue pressure having been placed on Internet platforms by state actors seeking to distort platforms' moderation decisions and thus affect what user expression could appear online. Yet while the interests of Internet platforms have been plenty presumed, as neither plaintiffs nor defendants nor intervenors, nowhere in the litigation have they been represented. This litigation is largely a tug-of-war between state actors – the Petitioners, the state Respondents, and the courts – arguing over which one gets to decide how these platform providers will be allowed to decide what expression to allow on their services. But this incursion on the First Amendment rights of platforms is happening largely in the platforms' absence, even though the result of the litigation will so directly affect them and others like them. Someone needs to speak for those affected interests and against the severe Constitutional injury they are all on the verge of incurring if the injunctive remedy endorsed by the Court of Appeals for the Fifth Circuit is allowed to go into effect.

Amicus Copia Institute accordingly submits this brief to address that injury, which will be felt far

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[1] No counsel for any party authored this brief in whole or in part. Amicus and its counsel authored this brief in its entirety. No person or entity other than amicus and its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

beyond the parties themselves.[2] The injunction at issue is one that strikes at multiple rights protected by the First Amendment and impacts all who depend on them, including amicus Copia Institute and any others similarly situated as either providers of platform services, users of platform services, or simply anyone else wishing to be able to freely interact with their own government, which this injunction additionally imperils.

The Copia Institute itself is the think tank arm of Floor64, Inc., the privately-held small business behind Techdirt.com ("Techdirt"), an online publication that has chronicled technology law and policy for 25 years.[3] In this time Techdirt has published more than 70,000 articles regarding subjects such as freedom of

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[2] The brief supports neither party in part because neither party is adequately equipped to address the constitutional injury to *others* that looms if the injunction is upheld. Although Petitioners and amicus Copia Institute both seek to have it nullified, the Petitioners argue primarily for how the injunction affects the interests of the executive branch of the federal government, whereas the Copia Institute argues instead how it affects the public, including platform-providing members of the public, such as itself. Furthermore, to the extent that any government entity has already, or may in the future, exceed its constitutional bounds to pressure how others exercise their expressive rights, the Copia Institute agrees with Respondents that there should be a remedy for that overstepping. But, for the reasons explained herein, no suitable remedy would look anything like the injunction the Fifth Circuit has allowed.

[3] Its founder and owner Michael Masnick was recently profiled in the New York Times. Kashmir Hill, *An Internet Veteran's Guide to Not Being Scared of Technology*, NEW YORK TIMES (Jul. 29, 2023), https://www.nytimes.com/2023/07/29/technology/mike-masnick-techdirt-internet-future.html.

expression and platform moderation – issues that are at the heart of this matter – as well as other topics including cybersecurity, competition, and the impact of technology on civil liberties. The site often receives more than a million page views per month and is itself a platform provider, soliciting what has amounted to nearly two million reader comments, which is a form of user expression that advances discovery and discussion around these topics. The company then uses other Internet platforms of various types, including those at issue in this case, to promote its own expression and engage with its audiences.

As a think tank the Copia Institute also produces evidence-driven white papers examining the nuance and assumptions underpinning technology policy. Then, armed with its insight, it regularly submits other advocacy instruments such as amicus briefs[4] and regulatory comments, all of which are designed to educate lawmakers, courts, and other regulators – as well as innovators, entrepreneurs, and the public – on these subjects, with the goal of influencing good policy that promotes and sustains innovation and expression. Complementing those efforts the Copia Institute additionally produces interactive games such as "Moderator Mayhem" and "Trust and Safety Tycoon,"[5] which allows players to experience the difficulties of effective platform moderation given various competing pressures that

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[4] *See*, *e.g.*, Brief *Amicus Curiae* of the Copia Institute, *Andy Warhol Foundation for the Visual Arts v. Goldsmith*, 143 S. Ct. 1258 (2023) (No. 21-869).

[5] *See*, *e.g.*, https://en.wikipedia.org/wiki/Moderator_Mayhem.

typically bear on the site management experience, including the sort at issue in this case.

As an enterprise whose business is built around engaging in expressive conduct, the behavior by both Petitioners and Respondents is highly relevant to its own endeavors. But most at issue is how its expressive interests stand to be harmed by the injunction because even if aimed at the executive branch of the federal government, and even if intended to vindicate online user expression, it nevertheless directly attacks the expressive freedoms that the Copia Institute and others, including other platform providers, depend on. The Copia Institute therefore submits this brief *amicus curiae* wearing two hats: as a longtime commenter on the issues at the heart of the underlying litigation, and as an example of those whose own First Amendment rights are threatened by this injunction and all that would follow if this one were permitted.

SUMMARY OF ARGUMENT

The injunction at issue in this case reaches far beyond the Petitioners and Respondents. It reaches anyone offering any sort of platform service – and, consequently, all who use them – because it does more than just gag Article II officials; it cuts platform providers off from their own government, and in a way that directly implicates their own expressive rights and their right to petition the government. It is a facially unconstitutional attack on multiple rights protected by the First Amendment, and one that exposes

platforms, and the users who depend on them to facilitate their expression, to the control of any state that wishes to control what expression is allowed online. Amicus Copia Institute files this brief because, despite the enormous impact on the rights of platform providers the injunction threatens to have, none have been party to this litigation, even though, if the injunction is allowed to stand, it is their rights that will fall.

ARGUMENT

I. The injunction violates the First Amendment.

Both amicus Copia Institute and the Petitioners ask this Court for the same relief: the dissolution of the injunction. The Copia Institute files, however, not to vindicate the government's interest in speaking but to vindicate the interests of those the government would speak *with*. These interests may at times overlap and align, but they are not the same, particularly on occasions where government speech does what the Respondents allege and cross the line into unconstitutionality. The Copia Institute files this brief *amicus curiae* because the remedy for such constitutional incursions by the government cannot be the further incursion on others' constitutional rights to speak, including *to it*.

A. The injunction violates the First Amendment right to petition.

The First Amendment ties together several overlapping rights. *McDonald v. Smith*, 472 U.S. 479, 490 (1985) (Brennan, J., concurring). Though not identical, they are inseparable. *Id.* (citing *Thomas v. Collins*, 323 U.S. 516, 530 (1945)). They include, along with the rights of speech, press, and assembly, the right to petition the government as "an assurance of a particular freedom of expression." *Id.* at 482. It is a right that includes the right to petition all branches of government, including administrative agencies. *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972). As "interrelated components of the public's exercise of its sovereign authority," *McDonald*, 472 U.S. at 489-90 (citing *Thomas*, 323 U.S. at 530), these "cognate" rights underpin the republican form of government. *Id.* at 482. "[T]he people may therefore publicly address their representatives, may privately advise them, or declare their sentiments by petition to the whole body; in all these ways they may communicate their will." *Id.* (citing 1 Annals of Cong. 738 (1789)).

This injunction directly obstructs the public's ability to express its will to its government officials by limiting the latter's ability to participate in the conversations. *Missouri v. Biden*, 83 F.4th 350, 396-98 (5th Cir. 2023). As we have already seen in the wake of the initial injunctive order, any injunction silencing those officials inherently also silences anyone who might

have liked to talk to them. Meetings got canceled,[6] and information about hazards stopped getting shared with the platforms that needed to know.[7] Thus not only is the injunction unconstitutional, interfering with representative governance to prevent the public from talking to their representatives, but the problems it creates are also practical for those who would like to be able to speak with the government, including its executive branch officials, and now cannot.

In the case of Internet platform providers, in its analysis the Fifth Circuit appears to have presumed that they would have no reason to want to engage with their government as they navigated content moderation issues. It cited an extensive laundry list of examples of communications between platforms and various executive branch agencies. *See*, *e.g.*, *id.* at 361-63. But then it persistently concluded, without evidence, that the communications occurred entirely on the agencies' own initiative and not at the invitation of the platforms themselves in furtherance of their own interest in engaging with these officials, or their own volitional desire to act in accordance with their input. *See*, *e.g.*,

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[6] Joseph Menn et al., *State Dept. cancels Facebook meetings after judge's 'censorship' ruling*, WASHINGTON POST (Jul. 5, 2023), https://www.washingtonpost.com/technology/2023/07/05/missouri-biden-judge-censorship-ruling-analysis/.

[7] Naomi Nix and Cat Zakrzewski, *U.S. stops helping Big Tech spot foreign meddling amid GOP legal threats*, WASHINGTON POST (Nov. 30, 2023), https://www.washingtonpost.com/technology/2023/11/30/biden-foreign-disinformation-social-media-election-interference/.

id. at 389.[8] The court assumed officials were "entangled" with platforms, instead of freely welcomed as platforms believed would benefit them. *Id.* at 387.

But such a presumption cannot withstand even the most superficial scrutiny. For example, if a platform were trying to figure out an effective policy on a topic like vaccine information, it would be logical for the platform to want to tap into the expertise of a major federal agency tasked with studying vaccine efficacy. Or if it wanted to secure its systems against attacks by hackers, it would make sense for it to consult with the agency charged with protecting the nation against cyberattacks. But with this injunction, neither agency is free to take the call, lest it convey an opinion about the subject matter that the platform is seeking to have it convey. *See* Petitioners Br. 48-49. Which means that platforms themselves are functionally barred from choosing to engage with government officials, even though such engagement should be protected by the petitioning right.

Because even if the public may still retain their literal right to petition the government for a redress of grievances in the wake of the injunction, the petitioning right itself historically has not been preconditioned

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[8] In the example this citation refers to the court concluded that when the platforms reacted to the FBI warning about "state-sponsored actors," and moderated accordingly, this moderation evinced that they perceived the FBI as a threat. The court seems to overlook the possibility that the platforms perceived the "state-sponsored actors" as the threat their moderation was reacting to.

on only contentious formality. *See Borough of Duryea, Pa. v. Guarnieri*, 131 S. Ct. 2488, 2495 (2011) ("The right to petition allows citizens to express their ideas, hopes, and concerns to their government and their elected representatives[.]"). What this injunction cuts off is dialog between the public and its government, which is enough to offend that right. In the case of platform providers, no matter how much it would serve their own expressive needs to tap governmental expertise, *see* discussion *infra* Section I.B, they must now do without this input, even if the resulting absence of information causes harm to the platforms or their users.

B. The injunction violates the First Amendment right to free expression.

The injunction does not just interfere with the right of platform providers to express themselves to its government. It also interferes with their right of free expression more generally by impinging on their ability to make the expressive decisions needed to operate their platforms. The Constitutional importance of preserving platform providers' expressive discretion in choosing what user expression to facilitate is currently before this Court in *NetChoice et al. v. Paxton*, No. 22-555, and *Moody v. NetChoice et al.*, No. 22-277. As amicus Copia Institute explained in its brief *amicus curiae* in those cases,[9] preserving that right is critical for

[9] Brief *Amicus Curiae* of Bluesky, M. Chris Riley, and Floor64, Inc. d/b/a the Copia Institute, *NetChoice et al. v. Paxton* (No. 22-555). The *NetChoice* amicus brief cited here is on behalf of administrators of platforms other than the ones implicated by

helping users speak online more, which is a declared goal this lawsuit was brought to advance. When that right of the platforms is impinged, it will only result in users being able to speak online less, because taking away the freedom platforms need to facilitate user expression will only take away their ability to facilitate it at all.

The case at hand is illustrative of what it looks like when that right is attacked because the upshot to the decision is that the Fifth Circuit has now made off-limits any moderation decision by platforms that might happen to align with what the government prefers the moderation to be like if the executive branch had at all communicated that preference. In other words, according to the Fifth Circuit's reasoning, once the government asked for the platforms to do something, the platforms effectively lost the ability to do it, no matter how much they might have independently wanted to.

The logic of the decision is troubling, but the implications are even worse. When acting in accordance with an expressed government preference can be presumed to reflect an impermissible constitutional overstep by the government, the decisions that a platform can make are inherently constrained. Platforms are now "free" to only make moderation decisions that are different from what the government wants, or ones

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this instant case. In particular they are smaller platforms without the staff support that the ones at issue here have to moderate their services, yet with no less a need to. But this injunction would impact them as much as it does the platforms involved with this case and consequently affect their rights and ability to moderate their own services as they need to.

that were made in an informational vacuum where the platform has never spoken to the government about them at all, even if that government input would have been valuable or necessary for making those decisions. *See* discussion *supra* I.A.

It is a judicial result that appears predicated on an infantilizing view of how platforms made decisions while in contact with government officials. It is one that presumes that platforms lacked the power to decide for themselves how to moderate their platforms, as if the government, by speaking to them, somehow became the final authority for the decisions the platforms were making for themselves. *See*, *e.g.*, *Missouri*, 83 F.4th at 383-84. *See also id.* at 361, 363, and 387 (assuming the platforms "capitulated" rather than *chose* to moderate how it did). The court imagines,[10] despite evidence to the contrary,[11] that none of the platforms would have moderated as they did "but for" input by the Petitioners. The court cites a litany of government communications, and the moderation decisions that followed, as if the potential connection between them inherently revealed a constitutional problem. *Id.* at 361-63. But there was no problem, because each decision described is one that the platform should have been Constitutionally free to make for itself, regardless of whether anyone in government favored the decision too.

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[10] *See*, *e.g.*, *Missouri*, 83 F.4th at 361 ("The platforms apparently yielded.").

[11] *See*, *e.g.*, *Missouri*, 83 F.4th at 371 ("To be sure, there were instances where the social-media platforms declined to remove content that the officials had identified for censorship.").

It may be true that some of the communications by members of the executive branch were beyond the pale in terms of their self-entitled pushiness and unfounded expectation that they had any right to demand any platform moderate in any particular way. *See*, *e.g.*, *id.* at 361. That certain officials may have acted as though they did is inexcusable. Amicus Copia Institute has been critical of government attempts, including those by Petitioners,[12] to try to shape online expression by pressuring platforms.[13] Furthermore, the sort of unconstitutional coercive threat Respondents complain about can happen, and when it does it is right for the courts to step in. *See*, *e.g.*, *Backpage.com, LLC v. Dart*, 807 F.3d 229 (7th Cir. 2015). But to the extent that such communications equate to a constitutional injury it is because platforms have the right of free expression enabling them to moderate as they choose. An injunction that itself attacks that right is incapable

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[12] *See*, *e.g.*, Mike Masnick, *No, The White House Isn't Colluding With Facebook To Silence Dissent; But It Sure Could Have Handled Things Better*, TECHDIRT (Jul. 16, 2021), https://www.techdirt.com/2021/07/16/no-white-house-isnt-colluding-with-facebook-to-silence-dissent-it-sure-could-have-handled-things-better/.

[13] On the other hand, the context of the communications objected to by the Fifth Circuit seems to have largely been omitted from the analysis, with the absence inaccurately painting a greater appearance of impropriety than may actually be warranted. *See*, *e.g.*, Mike Masnick, *5th Circuit Puts A Hold On Louisiana Court's Injunction Barring Gov't From Talking To Companies, After District Court Refuses To*, TECHDIRT (Jul. 14, 2023), https://www.techdirt.com/2023/07/14/5th-circuit-puts-a-hold-on-louisiana-courts-injunction-barring-govt-from-talking-to-companies-after-district-court-refuses-to/.

of providing any sort of remedy for that injury and instead only makes it worse.

And, in this case, no such injury was incurred. Even the worst of Petitioners' communications were ultimately all sound and fury signifying no actual coercion. Contrary to the Fifth Circuit's assessment, the record does not support a finding that there was any sort of punitive "or else" conveyed by executive branch officials if the platform providers ignored their input, directly or otherwise. *See Missouri*, 83 F.4th at 385-86. The court's emphasis on the inherent authority of the Petitioners as an implicit means of compulsion, *see id.* at 384-85, would also mean that no platform could ever consult with Petitioners without any subsequent action taken by the platform being tainted by the association, which would thus eviscerate the platform's petitioning right by making it impossible to ever have those conversations. *See id.* at 390 (discounting that the platforms may have wanted to incorporate the CDC's advice into its moderation decisions and considering those decisions having been "marred" by the agency's input).

Even the threats to pursue changes to Section 230 cited as an example of improper coercion fail to amount to one. *See*, *e.g.*, *id.* at 364. While pursuing those changes would have been a terrible policy to lean into, and indeed harmful to the platforms if they were implemented,[14] it was still not an actual, coercive threat. For one thing, the Petitioners were already lobbying to

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[14] *See* Brief *Amicus Curiae* of the Copia Institute et al., *Gonzalez v. Google*, 143 S. Ct. 1191 (2023) (No. 21-1333).

gut Section 230 for myriad other reasons.[15] Secondly, the Petitioners did not actually have the ability to change the law because the power needed to change it is legislative, which is not a power that the executive branch is itself endowed with. Furthermore, it is hardly a threat for an elected official to say that they are going to effectuate a policy they believe their voters want – in a democracy it is what one would normally expect elected leaders to do.

The Fifth Circuit erred in its assumption that platforms, when faced with communications with Petitioners, which the platforms themselves may have welcomed and solicited, all wilted in the face of suggestions by the Petitioners that they were somehow powerless to resist. But the platforms were not powerless, at least not then. With this injunction, however, they are now. What the Fifth Circuit has done is swap out one state actor, the Petitioners, whose coercive power was greatly overestimated, with another state actor, the courts, whose coercive power is being greatly underestimated. Because now, with the injunction, the courts can even more heavily place a thumb on the scale of possible moderation choices that a platform can make than the Petitioners ever did.

The resulting problems with the injunction are not just constitutional but practical. One concern on the

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[15] *See*, *e.g.*, Mike Masnick, *As White House Says It's 'Reviewing 230', Biden Admits His Comments About Facebook Were Misinformation*, TECHDIRT (Jul. 21, 2021), https://www.techdirt.com/2021/07/21/as-white-house-says-reviewing-230-biden-admits-his-comments-about-facebook-were-misinformation/.

latter front is that the Fifth Circuit has now essentially published something of a roadmap for a truly conniving government official to control what expression may appear online. By having sabotaged the ability of a platform provider to decide for themselves how to facilitate user expression in the face of government input, all the nefarious government official needs to do to get online expression to be moderated as it wishes is demand platforms do the opposite of what it wants and consequently make that decision off-limits.

But the constitutional implications are themselves significant, not just in the effect of the injunction, should it go into force, but in how the decision itself represents its own attack on platforms' First Amendment rights, this time by the courts themselves. The entire point of the case was to challenge the decisions the platforms had made about what user content to facilitate. As the Fifth Circuit acknowledged, it was not a challenge that could be brought against the platforms directly by the plaintiffs. *Id.* at 373 (citing *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1930 (2019)). But even though it wasn't a challenge brought against the platforms directly, *id.* at 370, the court still found a way to make the platforms' decisions subject to government review. *Id.* at 369. Only this time the review was done by the courts themselves, Monday-morning quarterbacking how the platforms had moderated, in order to decide that the decisions the platforms had made simply could not have been ones it was possible for them to have validly made. In so concluding the Fifth Circuit has now produced an

injunction that makes their ability to freely make further moderation decisions as they would choose impossible.

II. Granting standing to the state litigants allows state actors to use the courts to violate the First Amendment.

The theory of harm pressed by the individual Respondents is that because Petitioners allegedly impinged on the First Amendment rights of the platforms they wanted to use, it amounted to an impingement of their own First Amendment rights to speak. Their allegations are not that the platforms themselves violated their rights – after all, the platforms were not named defendants, nor could they be because their ability to make moderation decisions is ordinarily protected by the First Amendment, as well as Section 230. *See* 47 U.S.C. § 230(c); *Batzel v. Smith*, 333 F.3d 1018, 1028-29 (9th Cir. 2003). To route around those constitutional and statutory obstacles the individual plaintiffs instead claimed that the Petitioners had coopted the platforms' editorial independence in order to use the platforms as vehicles for Petitioners to violate these users' speech rights.

As explained above, this theory is unavailing, at minimum because the platforms' rights were not actually violated by the Petitioners, which means that the individual Respondents' rights were not either. But they were not the only plaintiffs in this case. Respondents also include two state plaintiffs, whose theory of

harm *to them as states* is even more constitutionally insidious. The lower courts erred by crediting it and finding any sort of standing to advance their claims. *Missouri*, 83 F.4th at 371. And the consequence of validating these dubious theories of constitutional harm is now actual constitutional harm arising from the Fifth Circuit blessing the very sort of state interference in expressive rights that the First Amendment forbids.

The intrusion by Missouri and Louisiana on platforms' expressive rights is not a subtle one. Its litigation may superficially appear as a dispute between state and federal authority, but at its core it is really a baldfaced attack on private rights of free expression. They brought their claims because they do not like how the platforms had exercised those rights. *See generally id.* at 371-73. The platforms chose to moderate off their systems expression that the states wanted to favor, and this lawsuit is an effort by a state actor to challenge the platforms' constitutionally-protected expressive choice to do so. That Missouri and Louisiana are not, and constitutionally cannot, challenge the platforms directly themselves is functionally immaterial. Their asking of another state actor – the courts – to force the platforms to moderate how the states prefer is as constitutionally suspect as direct action. It is a naked attempt to control what expression is favored online, and one that requires violating the platforms' rights to achieve it. The Fifth Circuit should have rebuffed the states' attempted assault on the platforms' First Amendment rights, not enabled it.

By nevertheless finding that the states of Louisiana and Missouri had a judicially cognizable interest in being able to force platforms to facilitate certain views online the Fifth Circuit has essentially given these states veto power over what views platforms can favor, despite the First Amendment's clear prohibition against such meddling in the exercise of free expression. But it has not just given it to *these* states; it has given it to *all* states, including those who would have their own potentially conflicting preferences for what speech to favor. By finding standing for Louisiana and Missouri the Fifth Circuit has created a situation where states will now be competing for the editorial souls of platforms. While this case complains of expression being removed that happens to conflict with the values of the current presidential administration, the injunction is not limited to such situations, nor even this administration. As it is, platforms already remove expression that may be disfavored by other administrations, yet favored by states with different political priorities than the plaintiff states here.[16] With this decision platforms have become spoils for states to fight over, using the courts as the battleground, instead of remaining private actors capable of the independent editorial independence the First Amendment was supposed to leave them free to exercise.

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[16] *See*, *e.g.*, Eli Rosenberg, *Facebook blocked many gay-themed ads as part of its new advertising policy, angering LGBT groups*, WASHINGTON POST (Oct. 3, 2018), https://www.washingtonpost.com/technology/2018/10/03/facebook-blocked-many-gay-themed-ads-part-its-new-advertising-policy-angering-lgbt-groups/.

It is also editorial independence that Section 230 is supposed to protect. Section 230 not only shields moderation decisions from litigation challenge, but it pointedly forbids states from interfering with that immunity. 47 U.S.C. § 230(e)(3). Allowing state plaintiffs to bring this action, challenging those moderation decisions, directly contravenes the policy codified by Congress. In doing so it also directly invites the exact same conflict that Congress had anticipated and sought to avoid, with individual states seeking to regulate Internet platforms according to their own individual agendas born from their own individual political priorities. The statute's preemption clause should have ensured states sat on the sidelines when it came to regulating the Internet via editorial pressure on platforms. The Fifth Circuit erred in allowing, via the collateral effects of litigation, states to do what they could not do directly.

That the Fifth Circuit framed the states' claims as seeking to vindicate their own speech interests only further impugns its decision. *See Missouri*, 83 F.4th at 366 ("Accounts run by state officials were often subject to censorship, too."); *id.* at 372 ("These acts of censorship confer standing for substantially the same reasons as those discussed for the Individual Plaintiffs."). Validating their complaints endorses the alarming idea that the states had the right to unilaterally co-opt the services of a private party in order to speak, despite the significant constitutional concerns raised by such flexing of state power.[17] Presuming such an

[17] Similar constitutional concerns pervade the states' claims that this lawsuit was about vindicating its own citizens' right to petition. As argued above, the public does of course have that

entitlement in order to permit the states' claims also flouts the Constitution's prohibition on compelled speech because it would mean that platforms must allow states to speak through them, even if it is in a way that is inconsistent with their own editorial prerogative. *See 303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 2322 (2023). While the states may have a right to speak on their own behalf, *Missouri*, F.4th at 372, as this Court has found it does not follow that they have the right to force anyone else to help them do that speaking.

Allowing any of the Respondent plaintiffs to use the courts to challenge platforms' protected decisions is constitutionally dubious on its face. But to allow the state plaintiffs to do so presents its own constitutional horrors. An injunction built to vindicate those state plaintiffs' interests is inherently suspect and must be dissolved.

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right. *See* discussion *supra* I.A. But the right of the public to express itself to the government does not also include the right to conscript another private party to help it do it. Nor does it grant anyone in the government the power to force a private party to help facilitate a petitioning right any more than it allows the government to force a private party to facilitate any expression. The Fifth Circuit therefore erred in allowing the states to use such a claim, ostensibly to vindicate the petitioning right of some, as a vector for extinguishing the same right of the platforms.

CONCLUSION

For the forgoing reasons, this Court should find the injunction unconstitutional and dissolve it.

Respectfully submitted,

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