

SUPREME COURT OF THE UNITED STATES

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -
ASHLEY MOODY, ATTORNEY GENERAL OF)
FLORIDA, ET AL.,)
) Petitioners,)
) v.) No. 22-277
NETCHOICE, LLC, DBA NETCHOICE,)
ET AL.,)
) Respondents.)
- - - - -

Pages: 1 through 157
Place: Washington, D.C.
Date: February 26, 2024

HERITAGE REPORTING CORPORATION
Official Reporters
1220 L Street, N.W., Suite 206
Washington, D.C. 20005
(202) 628-4888
www.hrccourtreporters.com

1 IN THE SUPREME COURT OF THE UNITED STATES
2 - - - - -
3 ASHLEY MOODY, ATTORNEY GENERAL OF)
4 FLORIDA, ET AL.,)
5 Petitioners,)
6 v.) No. 22-277
7 NETCHOICE, LLC, DBA NETCHOICE,)
8 ET AL.,)
9 Respondents.)
10 - - - - -

11
12 Washington, D.C.
13 Monday, February 26, 2024

14
15 The above-entitled matter came on for
16 oral argument before the Supreme Court of the
17 United States at 10:04 a.m.

18
19
20
21
22
23
24
25

1 APPEARANCES:
2 HENRY C. WHITAKER, Solicitor General, Tallahassee,
3 Florida; on behalf of the Petitioners.
4 PAUL D. CLEMENT, ESQUIRE, Alexandria, Virginia; on
5 behalf of the Respondents.
6 GEN. ELIZABETH B. PRELOGAR, Solicitor General,
7 Department of Justice, Washington, D.C.; for the
8 United States, as amicus curiae, supporting the
9 Respondents.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1	C O N T E N T S	
2	ORAL ARGUMENT OF:	PAGE:
3	HENRY C. WHITAKER, ESQ.	
4	On behalf of the Petitioners	4
5	ORAL ARGUMENT OF:	
6	PAUL D. CLEMENT, ESQ.	
7	On behalf of the Respondents	62
8	ORAL ARGUMENT OF:	
9	GEN. ELIZABETH B. PRELOGAR, ESQ.	
10	For the United States, as amicus	
11	curiae, supporting the Respondents	113
12	REBUTTAL ARGUMENT OF:	
13	HENRY C. WHITAKER, ESQ.	
14	On behalf of the Petitioners	154
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

(10:04 a.m.)

CHIEF JUSTICE ROBERTS: We will hear argument first this morning in Case 22-277, Moody versus NetChoice.

Mr. Whitaker.

ORAL ARGUMENT OF HENRY C. WHITAKER
ON BEHALF OF THE PETITIONERS

MR. WHITAKER: Mr. Chief Justice, and may it please the Court:

Internet platforms today control the way millions of Americans communicate with each other and with the world. The platforms achieved that success by marketing themselves as neutral forums for free speech. Now that they host the communications of billions of users, they sing a very different tune. They now say that they are, in fact, editors of their users' speech, rather like a newspaper. They contend that they possess a broad First Amendment right to censor anything they host on their sites, even when doing so contradicts their own representations to consumers.

But the design of the First Amendment is to prevent the suppression of speech, not to

1 enable it. That is why the telephone company
2 and the delivery service have no First Amendment
3 right to use their services as a choke point to
4 silence those they disfavor.

5 Broadly facilitating communication in
6 that way is conduct, not speech, and if
7 Verizon asserted a First Amendment right to
8 cancel disfavored subscribers at a whim, that
9 claim would fail no less than the claimed right
10 to censorship failed in *Pruneyard versus Robins*
11 and *Rumsfeld versus FAIR*.

12 Social networking companies too are in
13 the business of transmitting their users'
14 speech. Their users are the ones who create and
15 select the content that appears on their sites.
16 The plat -- the platforms, indeed, disavow
17 responsibility for that conduct in their terms
18 of service. The platforms do sort and
19 facilitate the presentation of user speech. But
20 this Court just last term, in *Twitter versus*
21 *Taamneh*, and the platforms themselves in
22 *Gonzalez versus Google* describe those tools as
23 little more than passive mechanisms for
24 organizing vast amounts of third-party content.

25 The platforms do not have a First

1 Amendment right to apply their censorship
2 policies in an inconsistent manner and to censor
3 and deplatform certain users.

4 I welcome your questions.

5 JUSTICE THOMAS: Counsel, it would
6 seem that this case is a facial challenge, and
7 to some extent, it relies on the overbreadth
8 doctrine, but that seems to be an odd fit since
9 Respondent represents virtually all of the
10 platforms and that it would be easy enough for a
11 platform who's affected to bring an as-applied
12 challenge.

13 Would you comment on that or at least
14 address the fact that this is a facial
15 challenge?

16 MR. WHITAKER: Certainly, Your Honor.
17 I do think that's a very significant aspect of
18 this case. It comes to the Court on a facial
19 challenge, which means that the only question
20 before the Court is whether the statute has a
21 plainly legitimate sweep.

22 I actually don't understand them, Your
23 -- Your Honor, to -- to be making an overbreadth
24 challenge, which, as I understand it, would --
25 would rely on the effects on third parties. As

1 I understand it, they're principally relying on
2 the effects on their members. If they were
3 bringing an overbreadth challenge, they would --
4 they would have to show various third-party --

5 JUSTICE THOMAS: Well, I think -- how
6 would they do that when they haven't shown that
7 there are no -- there's no way that this statute
8 can be applied that's consistent with the
9 Constitution? Have they met that?

10 MR. WHITAKER: They certainly have
11 not, Your Honor. I mean, and -- and we -- we
12 think the statute has, indeed, a plainly
13 legitimate sweep.

14 And, certainly, there are a number of
15 the platforms that are open to all comers and
16 content, much like a traditional common carrier.
17 And just -- just as a traditional common
18 carrier, consistent with the First Amendment,
19 would be subject to hosting requirements,
20 non-discrimination requirements, so too we think
21 that the platforms that satisfy that
22 characterization, which are a number of them,
23 absolutely would give this statute a plainly
24 legitimate sweep.

25 JUSTICE SOTOMAYOR: Can -- can I --

1 this is such a odd case for our usual
2 jurisprudence. It seems like your law is
3 covering just about every social media platform
4 on the Internet, and we have amici who are not
5 traditional social media platforms, like
6 smartphones and others who have submitted amici
7 brief, telling them that readings of this law
8 could cover them.

9 This is so, so broad, it's covering
10 almost everything. But the one thing I know
11 about the Internet is that its variety --
12 variety is infinite. So at what point in a
13 challenge like this one does the law become so
14 generalized, so broad, so unspecific, really,
15 that you bear the burden of coming in and
16 telling us what exactly the sweep is and telling
17 us how there is a legitimate sweep of virtually
18 -- or -- or a meaningfully swath of cases that
19 this law could cover but not others?

20 MR. WHITAKER: Well -- well, let me,
21 Your --

22 JUSTICE SOTOMAYOR: Where -- when does
23 the burden shift to the state, when it write --
24 when it writes a law so broad that it's
25 indeterminate?

1 MR. WHITAKER: I don't think so, Your
2 Honor. I still think it is their burden, as the
3 plaintiffs challenging an action of a sovereign
4 state legislature, to show that the law lacks a
5 plainly legitimate sweep.

6 But let me just say a word about the
7 -- the breadth of the law. The -- the
8 legislature did define the term "social media
9 platform," which is part of what triggers the
10 law's application, but -- but the breadth of
11 that definition, which -- which wouldn't cover
12 every single website, it -- it would -- it would
13 cover certain large websites with large revenues
14 and subscribers and the like, but the breadth of
15 the law, apart from that definition, is
16 significantly narrowed by the fact that the
17 substantive provisions of the law are regulating
18 websites that host user-generated content.
19 That's what the substantive provisions of the
20 statute apply to.

21 JUSTICE SOTOMAYOR: So let me talk
22 about Etsy. Etsy is a marketplace like -- if --
23 I'm going to try to analogize it to physical
24 space, which I think in this area is a little
25 crazy because it -- yes, in some ways, this is

1 like an online bookstore and online magazines,
2 online newspaper, online whatever you want to
3 call it, an online supermarket, but it's not
4 because, even though it has infinite space, it
5 really doesn't because viewers, myself included,
6 or users can't access the millions of things
7 that are on the Internet and actually get
8 through them and pick the things we want because
9 there's too much information. So we're limited
10 by human attention spans. So are they.

11 So our theories are a little hard, but
12 let's look at Etsy. Etsy is a supermarket that
13 wants to sell only vintage clothes, and so it is
14 going to and does limit users' content. It's a
15 free marketplace, it's open to everyone, but it
16 says to the people who come onto its marketplace
17 we only want this kind of product.

18 They're going to have to censor.
19 They're going to have to take people off.
20 They're going to have to do all the things that
21 your law say they can't do without all of these
22 conditions.

23 Why is that? Why should we be
24 permitting and under what level of scrutiny
25 would we be looking at this broad application of

1 this law that affects someone who all they want
2 to do is sell a particular kind of product and
3 they have community standards and they tell you
4 that they don't want you to curse, they don't
5 want you to talk politics, they don't want you
6 to do whatever, all they want you to do is sell
7 your product. But, if they're a public
8 marketplace, which they are, they're selling to
9 the public, this law would cover them.

10 MR. WHITAKER: I think that's right,
11 Your Honor, but -- but let me just say a word
12 about how the law might apply to Etsy.

13 First of all, it wouldn't regulate the
14 goods Etsy is offering. What our law regulates
15 is the moderation of user-generated content. So
16 it would only apply to Etsy to the extent that
17 they -- and -- and I'm not sure to what extent
18 it actually would apply to Etsy. I guess it
19 would apply somewhat, but I guess people are
20 uploading user-generated content in connection
21 with the sale of goods. And that's the conduct
22 that it would regulate. It doesn't limit what
23 goods Etsy can limit its marketplace to.

24 Let me just say a word about that. It
25 --

1 JUSTICE SOTOMAYOR: Well, it opens it
2 up for sale of goods and it tells its users --

3 MR. WHITAKER: Well --

4 JUSTICE SOTOMAYOR: -- don't, please,
5 speak about politics because that's not what our
6 marketplace is about.

7 MR. WHITAKER: And --

8 JUSTICE SOTOMAYOR: That's viewpoint
9 discrimination. This falls under a whole lot of
10 your listings and bans and disclosure
11 requirements.

12 Why are we imposing that on something
13 like this?

14 MR. WHITAKER: Well, in Pruneyard
15 versus Robins, Your Honor, this -- this Court
16 held that the State of California could regulate
17 the speech-hosting activity of a shopping mall
18 which was hosting speech as incident to --

19 JUSTICE SOTOMAYOR: But not inside the
20 stores. We said that they could come, but if
21 they go inside the store, we didn't say anything
22 that free speech -- that someone could stand --
23 stand on a platform in the middle of the store
24 and scream out their political message.

25 We said the common areas, where we're

1 permitting others to speak, we're going to let
2 this particular speaker speak anything he or she
3 wants. That's why I'm afraid of all of these
4 common law rules that you're trying to analogize
5 to.

6 MR. WHITAKER: Well -- well -- well,
7 Your Honor, I do think Etsy is similar insofar
8 as it is, in fact, hosting speech and some
9 expression as incident to some other commercial
10 enterprise. And I think that, if anything,
11 makes Etsy's speech interests even weaker than
12 the -- the social --

13 JUSTICE SOTOMAYOR: I'm out of --

14 CHIEF JUSTICE ROBERTS: Counsel, you
15 began your presentation talking about concern
16 about the power, market power and ability of the
17 social media platforms to control what people
18 do, and your response to that is going to be
19 exercising the power of the state to control
20 what goes on on the social media platforms.

21 And I wonder, since we're talking
22 about the First Amendment, whether our first
23 concern should be with the state regulating
24 what, you know, we have called the modern public
25 square?

1 MR. WHITAKER: Well, I think you
2 certainly should be concerned about that, Your
3 Honor. What -- what I would say is -- is that
4 the kind of regulation that the State of Florida
5 is imposing is one that is familiar to the law.
6 When you have businesses that have generally
7 opened their facilities to all comers and
8 content, this is the way that traditional common
9 carrier has worked -- regulation has worked for
10 centuries.

11 If you were an innkeeper and you held
12 yourself out as open to the public, you could
13 indeed be permitted to act in accordance with
14 that voluntarily chosen business model. So I
15 certainly think the Court should proceed
16 carefully, but one thing the Court, I think,
17 it's important to keep in mind is that there is
18 an important First Amendment interest precisely
19 in ensuring that large powerful businesses like
20 that that have undertaken to host massive
21 amounts of speech and have the power to silence
22 those speakers, the state has an interest, a
23 First Amendment interest, in promoting and
24 ensuring the free dissemination of ideas.

25 CHIEF JUSTICE ROBERTS: Is there any

1 aspect of social media that you think is
2 protected by the First Amendment?

3 MR. WHITAKER: Yes, Your Honor. I
4 can -- I can certainly imagine platforms that
5 would be subject to this law that would have --
6 would indeed have First Amendment rights. I
7 mean, we point out in our brief that we think
8 that if you had a -- an Internet platform that,
9 indeed, had a platform-driven message, was
10 selective on the front end, Democrats.com, I
11 think that would be a very different kind of
12 analysis compared to a company like Facebook or
13 YouTube, who is in the business of just
14 basically trying to get as many eyeballs on
15 their site as possible.

16 JUSTICE KAGAN: But why is it
17 different? You -- you know, when we talked --
18 when we had the parade case, we said they don't
19 have a lot of rules, but they have some rules,
20 and we're going to respect the rules that they
21 do have. Even though they let a lot of people
22 come in, they don't let a few people come in,
23 and that seems to be quite important to them.

24 And similarly here, I mean, Facebook,
25 YouTube, these are the paradigmatic social media

1 companies that this law applies to, and they
2 have rules about content. They say, you know,
3 you can't have hate speech on this site. They
4 say you can't have misinformation with respect
5 to particular subject matter areas.

6 And they seem to take those rules -- I
7 mean, you know, somebody can say maybe they
8 should enforce them even more than they do, but
9 they do seem to take them seriously. They have
10 thousands and thousands of employees who are
11 devoted to enforcing those rules.

12 So why aren't they making content
13 judgments, not quite as explicit as the -- the
14 kind in your hypothetical, but definitely
15 they're making content judgments about the kind
16 of speech that they think they want on the site
17 and the kinds of speech that they think is
18 intolerable.

19 MR. WHITAKER: Well -- well, there's a
20 lot -- lot in there, Your Honor. May -- maybe I
21 can start with the Hurley case. I mean, I -- I
22 think what was going on in Hurley, I think, is
23 that you had a parade that was --

24 JUSTICE KAGAN: Could -- could --
25 maybe just start with the more general question.

1 MR. WHITAKER: Sure -- sure -- sure --
2 for sure.

3 JUSTICE KAGAN: I mean, I'm happy for
4 you to talk about Hurley. I don't want to, you
5 know, get in your way.

6 MR. WHITAKER: I'll start wherever you
7 want. It's your time, not mine, Your Honor.
8 So, yeah. So, certainly, the more -- the
9 broader question about rules of the road and the
10 like.

11 Common carriers have always conducted
12 their businesses subject to general rules of
13 decorum. I think the fact that the platforms
14 have these general rules of decorum, the fact
15 remains that upwards of 99 percent -- for all
16 that content moderation, that's really a product
17 of the fact that they have so -- they host so
18 much content. But the fact remains that 99 --
19 upwards of 99 percent of what goes on the
20 platforms is basically passed through without
21 review.

22 Yes, they have spam filters on the
23 front end and the like, and that's not uniquely
24 --

25 JUSTICE KAGAN: But that 1 percent

1 seems to have gotten some people extremely
2 angry. You know, the 1 percent that's like we
3 don't want --

4 MR. WHITAKER: Well --

5 JUSTICE KAGAN: -- anti-vaxxers on our
6 site --

7 MR. WHITAKER: Sure.

8 JUSTICE KAGAN: -- or we don't want
9 insurrectionists on our site.

10 I mean, that's what motivated these
11 laws, isn't it? And that's what's getting
12 people upset about them --

13 MR. WHITAKER: Right.

14 JUSTICE KAGAN: -- is that other
15 people have different views about what it means
16 to -- to provide misinformation as to voting and
17 things like that, and, you know, that's the
18 point. There are some sites that can say this
19 kind of talk about vaccination policy is good
20 and some people can say it's bad, but it's up to
21 the individual speakers.

22 MR. WHITAKER: The fact that some
23 people are angry about the content moderation
24 policies doesn't show that is their speech.
25 And -- and my friends talk about their

1 advertisers. Well, we don't know whether the
2 advertisers think it's their speech or whether
3 they just disagree with the speech. And their
4 advertisers and people who are angry with speech
5 don't get a heckler's veto on Florida's law.

6 But even more broadly than that, I
7 mean, we know that mere -- the -- the fact that
8 a hosting decision is ideologically charged and
9 causes controversy can't be the end of the game
10 because I think Rumsfeld versus FAIR would have
11 had to come out the other way then, because, in
12 Rumsfeld, certainly, the law schools there felt
13 very strongly that the military were being
14 bigots and they didn't want them on campus.

15 And yet this Court did not look to the
16 ideological controversy surrounding those
17 decisions. Instead, it looked at objectively
18 whether the law schools were engaged in
19 inherently expressive conduct.

20 CHIEF JUSTICE ROBERTS: Well, it
21 looked at the fact that the schools were getting
22 money from the federal government, and the
23 federal government thought: Well, if they're
24 going to take our money, they have to allow
25 military recruiters on the campus. I don't

1 think it has much to do with the issues today at
2 all.

3 MR. WHITAKER: Well, Mr. Chief
4 Justice, it's difficult for me to argue with you
5 very much about what Rumsfeld versus FAIR means.

6 (Laughter.)

7 MR. WHITAKER: But let me just take a
8 crack because, I mean, I -- I think, as I -- as
9 I read your opinion for the Court, you didn't
10 rely, actually, on the funding aspect of the
11 case to reach the conclusion that what was going
12 on there was not First Amendment protected
13 conduct. You were willing to spot them that
14 the -- the -- the question would be exactly the
15 same if it were a direct regulation of speech as
16 opposed to a funding condition.

17 So I absolutely think that the
18 analysis in that case directly speaks to this.
19 And just -- just --

20 JUSTICE KAVANAUGH: Can I -- can I ask
21 you about a different precedent, about what we
22 said in Buckley? And this picks up on the Chief
23 Justice's earlier comment about government
24 intervention because of the power of the social
25 media companies.

1 And it seems like, in Buckley, in
2 1976, in a really important sentence in our
3 First Amendment jurisprudence, we said that "the
4 concept that the government may restrict the
5 speech of some elements of our society in order
6 to enhance the relative voice of others is
7 wholly foreign to the First Amendment." And
8 that seems to be what you responded with to the
9 Chief Justice.

10 And then, in Tornillo, the Court went
11 on at great length as well about the power of
12 then newspapers, and the Court said they
13 recognized the argument about vast changes that
14 place in a few hands the power to inform the
15 American people and shape public opinion and
16 that that had led to abuses of bias and
17 manipulation. The Court accepted all that but
18 still said that wasn't good enough to allow some
19 kind of government-mandated fairness, right of
20 reply or anything.

21 So how do you deal with those two
22 principles?

23 MR. WHITAKER: Sure, Justice
24 Kavanaugh. First of all, if -- if you agree
25 with me with our front-line position that what

1 is being regulated here is conduct, not speech,
2 I don't think you get into interests and
3 scrutiny and all that. I do think that the law
4 advances the -- the First Amendment interests
5 that I mentioned, but I think the -- the -- the
6 -- that interest, the interest that our law is
7 serving, if you did get to a point in the
8 analysis that required consideration of those
9 interests, our interests --

10 JUSTICE KAVANAUGH: Do you agree then,
11 if speech is involved, that those cases mean
12 that you lose?

13 MR. WHITAKER: No, I don't agree with
14 that, and -- and the reason I don't agree with
15 that is because the interests that our law serve
16 are -- are legitimate, and it's -- it's hard
17 because different parts of the law serve
18 different interests. But I think the one that
19 -- that sounds in the -- in your concern that is
20 most directly implicated would be the hosting
21 requirement applicable to journalistic
22 enterprises.

23 So one provision of the law says that
24 the platforms cannot censor, shadow ban, or
25 deplatform journalistic enterprises based on the

1 content of their publication or broadcast. And
2 that serves an interest very similar to the
3 interest that this Court recognized as
4 legitimate in Turner when Congress imposed on
5 cable operators a must-carry obligation for
6 broadcasters.

7 And -- and just as a broadcaster --
8 and what the Court said was there was not just a
9 legitimate interest in promoting the free
10 dissemination of ideas through broadcasting, but
11 it was indeed a -- a compelling interest, a
12 highly compelling interest. And so I think the
13 journalistic enterprise provision serves a --
14 that very similar issue.

15 But there are also other interests
16 that our law serves. For example, the
17 consistency provision, Your -- Your Honor, is
18 really a consumer protection measure. It --
19 it's sort of orthogonal to all that. The
20 consistency provision, which is really the heart
21 of our law, just says to the -- the platforms:
22 Apply your content moderation policies
23 consistently. Have whatever policies you want,
24 but just apply them consistently.

25 JUSTICE KAVANAUGH: Could the

1 government apply such a policy to publishing
2 houses and printing presses and movie theaters
3 about what they show? Bookstores, newsstands?

4 MR. WHITAKER: No, no --

5 JUSTICE KAVANAUGH: In other words, be
6 consistent in what kinds of content you exclude?
7 Could that be done?

8 MR. WHITAKER: I -- I don't think so,
9 Your Honor.

10 JUSTICE KAVANAUGH: And why not?

11 MR. WHITAKER: Well -- well, I think
12 that there is -- the consumer -- here, the --
13 the social media platforms, their terms of
14 service, their content moderation policies are
15 really part of the terms under which they are
16 offering their service to users. I don't think
17 that that really -- that that paradigm really
18 fits in what Your Honor is -- is talking about.

19 So -- but I -- but, look, we agree, we
20 certainly agree that a newspaper, a book -- and
21 a bookstore is engaging in inherently expressive
22 conduct. And our whole point is that these
23 social media platforms are not like those. And
24 why are --

25 JUSTICE JACKSON: Doesn't it depend on

1 exactly what they're doing? I mean, I guess the
2 hard part for me is really trying to understand
3 how we apply this analysis at the broad level of
4 generality that I think both sides seem to be
5 taking here.

6 I mean, you say what -- what is being
7 regulated here is conduct, not speech. Well, I
8 guess maybe if you're talking about Facebook's
9 news -- news feed feature. But there are lots
10 of other things that Facebook does that -- you
11 know, that might be speech, but then there might
12 be other things that Facebook does that doesn't
13 qualify as speech.

14 So don't we have to, like, drill down
15 more in order to really figure out whether or
16 not things are protected?

17 MR. WHITAKER: Actually, I don't think
18 so. I think that that precise ambiguity
19 strongly favors our position, Your Honor,
20 because, in the posture of this facial
21 challenge, all you need to look at is whether
22 there are at least some activities --

23 JUSTICE JACKSON: No, but that's --
24 no, no, no. I guess what I'm saying is you
25 mentioned the Pruneyard case or the FAIR case,

1 excuse me. I mean, we didn't say that law
2 schools, you know, as a categorical matter are,
3 you know, always engaged in unprotected speech.
4 We looked at the particular thing. This was a
5 fair and, you know, the law school was saying,
6 we don't want these certain entities in it.

7 I hear you suggesting that we can just
8 say, you know, Facebook is a common carrier and,
9 therefore, everything it does qualifies as
10 conduct and not speech. And I don't think
11 that's really the way we've done this in our
12 past precedents. So can you speak to that?

13 MR. WHITAKER: Sure. Certainly,
14 that's not what we're saying, Your Honor. I --
15 I completely agree with you that it's very
16 important to isolate what conduct the particular
17 -- each particular provision of the law is
18 regulating.

19 JUSTICE JACKSON: Not the law, the
20 entity. What is the entity doing?

21 MR. WHITAKER: Well --

22 JUSTICE JACKSON: Like we have to do
23 --

24 MR. WHITAKER: Sure.

25 JUSTICE JACKSON: -- an intersection

1 of what the law says they can't do and what in
2 particular they are doing, right?

3 MR. WHITAKER: Well, and I guess the
4 right level of generality and the general -- the
5 level of generality that's sufficient, I think,
6 to conclude that the law has a plainly
7 legitimate sweep is we are talking about the --
8 the social networking companies' activities in
9 -- in content-moderating user-uploaded content.
10 That -- that, I think, is the relevant activity,
11 and -- and that is what -- that -- that activity
12 --

13 JUSTICE JACKSON: All right. So what
14 do you do about -- what do you do with LinkedIn
15 has a virtual job fair and it has some rules
16 about who can be involved. That seems to map
17 on, I would think, to the FAIR case. Is that
18 what you're saying?

19 MR. WHITAKER: Well, I -- I -- I don't
20 -- I don't think so. I don't think it would map
21 on to our theory in this case because it sounds
22 like to me, and I'm not totally aware of all the
23 facts of LinkedIn there, but --

24 JUSTICE JACKSON: Yeah.

25 MR. WHITAKER: -- if I understand --

1 JUSTICE JACKSON: I think that's a
2 problem in this case.

3 MR. WHITAKER: Well --

4 JUSTICE JACKSON: We're not all aware
5 of the facts --

6 MR. WHITAKER: Well --

7 JUSTICE JACKSON: -- of what's
8 happening.

9 MR. WHITAKER: -- exactly. And I -- I
10 think that that -- that is one of the -- the --
11 the -- the reasons why this -- this facial
12 challenge has been very confusing to defend,
13 because we kind of don't -- we kind of don't
14 know what to defend against.

15 JUSTICE GORSUCH: Mr. Whitaker, on --
16 on that score, so we have some -- in a facial
17 challenge, we have a bit of a problem because
18 different legal principles apply in different
19 factual circumstances, and there are many
20 different defendants or plaintiffs here, sorry,
21 with different services. So that -- that's a
22 complicating feature on a -- on a facial
23 challenge.

24 But here's another one for you: What
25 about Section 230, which preempts some of this

1 law? How much of it? And how are we to account
2 for that complication in a facial challenge?

3 MR. WHITAKER: Well --

4 CHIEF JUSTICE ROBERTS: Why don't you
5 answer the question, then we'll move on.

6 JUSTICE GORSUCH: Briefly. Yeah.

7 MR. WHITAKER: Well -- well -- well, I
8 think that the Court should answer the question
9 presented, I guess.

10 JUSTICE GORSUCH: But how can we do
11 that without looking at 230?

12 MR. WHITAKER: Well, because I -- I
13 don't -- I don't think that there's any -- some
14 of this was briefed at the -- at the cert stage,
15 Your Honor. I don't think that the -- the
16 Section 230(c) preemption -- (c)(2) preemption
17 question is really going to dispose of the case.
18 You know, the district court actually reached
19 the Section 230 issue but concluded that it
20 still had to reach the constitutional issue
21 anyway.

22 JUSTICE GORSUCH: I'll get back to
23 this in my turn. Thank you.

24 CHIEF JUSTICE ROBERTS: Thank you,
25 counsel.

1 Justice Thomas, anything further?

2 JUSTICE THOMAS: Mr. Whitaker, the --
3 could you give us your best explanation of what
4 you perceive the speech to be in this case or
5 allege to be in this case?

6 MR. WHITAKER: Well, as I understand
7 their contention, it's -- it's this idea that
8 the platforms, in having content moderation
9 policies, are somehow creating a welcoming
10 community, I guess. It seems to me, at that
11 level of generality, that can't really be a
12 cognizable message -- that seems to me more like
13 a tautology than -- than a message. Basically,
14 we want the people on our sites that we want.

15 And -- and -- and I think, at that
16 level of generality, certainly, the Pruneyard
17 case would have to come out the other way
18 because, in Pruneyard, the mall certainly wanted
19 to ban leafleting because it wanted to create a
20 certain environment, and yet this Court said
21 that they did not have a First Amendment right
22 to do that.

23 JUSTICE THOMAS: I think what I was
24 more interested in is, you know, we're
25 talking -- we're using broad terms like "content

1 moderation," and throughout the briefs, you have
2 "shadow banning," "deprioritizing," and all
3 sorts of things.

4 And I guess, with these facial
5 challenges, I always have a problem that we
6 don't -- we're not talking about anything
7 specific. In an as-applied challenge, at least
8 we know what's in front of us and what your
9 interpretation or at least the state's
10 interpretation of its law is in that case. Now
11 we're just speculating as to what the law means.

12 So I'm just trying to get more of a --
13 more specificity as to what the speech is in
14 this case. They are censoring as far as I can
15 tell, and I don't know of any protected --
16 speech interests in censoring other speech, but
17 perhaps there is something else.

18 MR. WHITAKER: Well, I don't think
19 that they do have a -- certainly not a speech
20 interest. I mean, at most, I think that they
21 would have some interest in the inherently --
22 allegedly inherently expressive conduct of
23 speech. You know, that way of looking at it I
24 take it my friends from the United States agree
25 with. But we do not think they have a message

1 in censoring and deplatforming users from the
2 sites any more than the law schools in FAIR had
3 a message in booting military recruiters off
4 campus.

5 JUSTICE THOMAS: Thank you.

6 CHIEF JUSTICE ROBERTS: Justice Alito?

7 JUSTICE ALITO: Did the plaintiffs
8 raise content -- I'm sorry -- overbreadth below?

9 MR. WHITAKER: No -- no, Your Honor.
10 I'm not a -- I -- I -- I -- I can't -- I
11 couldn't find the word "overbreadth" in any of
12 their pleadings.

13 JUSTICE ALITO: Where in the record
14 would -- should I look to find a list of all of
15 the platforms that are covered by the Florida
16 statute?

17 MR. WHITAKER: Well -- well, Your
18 Honor, I'm afraid that doesn't appear in the --
19 in the record because I think that the platforms
20 were fairly cagey about which of their members
21 they thought the statute applied to. The -- the
22 record only contains three platform-specific
23 declarations: Etsy, Facebook, and YouTube.

24 So that -- that's part of the problem
25 in this case, is that we -- we -- we don't have

1 a sense of -- the record has not been fully
2 developed to answer that question, so we're kind
3 of litigating in the dark here.

4 And this was litigated on a
5 preliminary injunction at breakneck speed
6 without the -- the State having a chance to take
7 discovery, and that's part of the reasons why
8 some of these questions are difficult to answer.

9 JUSTICE ALITO: Well, I'll ask Mr.
10 Clement that argument -- that question too.

11 As to the platforms that are covered,
12 where in the record would I look to find a list
13 of all of the functions that those platforms
14 perform?

15 MR. WHITAKER: I'm not aware in the
16 record, Your Honor, of a -- an all-encompassing
17 list of all the functions the platforms perform.
18 There certainly are, as I mentioned, three
19 platform-specific declarations, also some more
20 general declarations that talk about some of
21 their -- their members more generally, but it's
22 not sort of all in one place.

23 I apologize, Your Honor.

24 JUSTICE ALITO: Does your law cover
25 any websites that primarily or even exclusively

1 engage in non-expressive conduct?

2 MR. WHITAKER: I think it does cover
3 websites that engage in primarily non-expressive
4 conduct. I mean, we would -- we would
5 characterize the social networking platforms as
6 engaging in primarily non-expressive conduct
7 in -- in -- insofar as they are hosting speech,
8 just like a traditional common carrier is not
9 engaged in -- in expressive conduct in
10 transmitting the communications of its
11 subscribers. And we do think our law would
12 apply to certainly the -- the largest -- at a
13 minimum, the largest social networking
14 platforms.

15 JUSTICE ALITO: What is the right
16 standard for a facial challenge if we think that
17 your law implicates a -- a -- a portion, a
18 percentage of expressive conduct and a portion
19 of non-expressive conduct?

20 How should we analyze that?

21 MR. WHITAKER: I think that you would
22 -- that -- so there's a -- there's --

23 JUSTICE ALITO: So we need a -- we
24 need a numerator and a denominator there, I
25 think. What -- what would they be?

1 MR. WHITAKER: Well, I -- I don't
2 think there is -- that the standard would have a
3 numerator and a denominator. Actually, Your
4 Honor, in this context, we would view it as the
5 question being whether the statute has a plainly
6 legitimate sweep without the need to compare
7 applications.

8 As I understand this Court's
9 precedents, the numerator/denominator comparison
10 would be something you would do if there were an
11 overbreadth claim in this case, but I don't
12 understand my friends to be making an
13 overbreadth claim. Maybe they'll say something
14 different, but I could not find the word
15 "overbreadth" in their -- in their pleadings.
16 In the Texas case, they do have a footnote
17 suggesting that they made an overbreadth claim
18 in the alternative.

19 JUSTICE ALITO: Thank you.

20 CHIEF JUSTICE ROBERTS: Justice
21 Sotomayor?

22 Justice Kagan?

23 JUSTICE KAGAN: I just wanted to sort
24 of understand your position, and I want to
25 narrow this to the paradigmatic social media

1 companies' sort of news feed postings, Facebook,
2 YouTube, Twitter/X.

3 So suppose that -- that I say -- just
4 take this as a given, all right? You can argue
5 with the facts, but don't.

6 (Laughter.)

7 JUSTICE KAGAN: Suppose that I say,
8 for the most part, all these places say we're
9 open for business. Post whatever you like and
10 we'll host it.

11 But there are exceptions to that and
12 clearly content-based exceptions, which the
13 companies take seriously. So let's say they say
14 there we think that misinformation of particular
15 kinds is extremely damaging to society --
16 misinformation about voting, misinformation
17 about certain public health issues -- and so too
18 we think that hate speech or bullying is
19 extremely problematic.

20 And so we are going to enforce rules
21 against this. They're only going to apply to a
22 small percentage of the things that people want
23 to post. For the most part, they're open for
24 business. But we are serious about those
25 content-based restrictions. All right?

1 So, in that world, why isn't that a --
2 you know, a -- a -- a classic First Amendment
3 violation for the state to come in and say,
4 we're not allowing -- going to allow you to
5 enforce those sorts of restrictions even though,
6 you know, you're basically -- it's like an
7 editorial judgment, you're excluding particular
8 kinds of speech?

9 MR. WHITAKER: Well -- well, Your
10 Honor, I think, if you -- I take your -- your
11 hypo to be assuming that it's -- it's First
12 Amendment protected activity, and I think that
13 what you would do in that instance, you would
14 have to run intermediate scrutiny under Turner.
15 And -- and the analysis regrettably --

16 JUSTICE KAGAN: So don't say what --
17 what I take it to be First Amendment activity.
18 I mean, do you take it to be First Amendment
19 activity?

20 MR. WHITAKER: No, no. That's our
21 whole point. I mean, again --

22 JUSTICE KAGAN: Even though they're
23 saying, yeah, we're -- we have -- we -- we are a
24 big forum for lots of messages but not for those
25 kinds of messages. We want to exclude those

1 kinds of messages.

2 Why isn't that First Amendment, a
3 First Amendment judgment?

4 MR. WHITAKER: I mean, I -- I -- I
5 think it's very -- the Court held otherwise, I
6 think, in Pruneyard because, there, there was an
7 editorial policy against leafleting too. And,
8 again, I don't buy --

9 JUSTICE KAGAN: No, that was just
10 about leafleting and the mall owner didn't have
11 any expressive views. I'm taking as a given
12 that these -- that YouTube or Facebook or
13 whatever has expressive views, there are
14 particular kinds of expression defined by
15 content that they don't want anywhere near their
16 site.

17 MR. WHITAKER: But -- but I think,
18 Your Honor, you still would have to look at the
19 objective activity being regulated, namely,
20 censoring and deplatforming, and ask whether
21 that expresses a message.

22 And because they host so much content,
23 an objective observer is not going to readily
24 attribute any particular piece of content that
25 appears on their site to some decision to either

1 refrain from or to censor or deplatform. And
2 that makes --

3 JUSTICE KAGAN: Do you think so as to
4 this -- here, this is a real-world example.
5 Twitter users one day woke up and found
6 themselves to be X users and the content rules
7 had changed and their feeds changed, and all of
8 a sudden they were getting a different online
9 newspaper, so to speak, in a metaphorical sense
10 every morning, and a lot of Twitter users
11 thought that was great, and a lot of Twitter
12 users thought that was horrible because, in
13 fact, there were different content judgments
14 being made that was very much affecting the
15 speech environment that they entered every time
16 they opened their app.

17 MR. WHITAKER: Your Honor, that
18 does -- respectfully, that does not answer
19 whether they have a message in their censorship
20 any more than, you know, the -- I'm sure people
21 objected, again, quite strenuously to the fact
22 that the law schools were permitted to interview
23 on campus. I'm sure people wanted to ban
24 leafleting at the -- the mall in Pruneyard.
25 And -- and that does not give them a message.

1 And I think the reason for that is, if
2 they are not carefully selecting the content in
3 the newspaper, they don't have a message in the
4 existence, in the mere existence, of the content
5 on the site.

6 JUSTICE KAGAN: Thank you, General.

7 CHIEF JUSTICE ROBERTS: Justice
8 Gorsuch?

9 JUSTICE GORSUCH: I just wanted to
10 give you a chance to finish up on the Section
11 230 point. I think it's Section 6 of your law
12 that says that the law is not enforceable to the
13 extent it conflicts with Section 230.

14 MR. WHITAKER: Sure, sure.

15 JUSTICE GORSUCH: So why wouldn't we
16 analytically want to address that early on in
17 these proceedings, whether in this Court or a
18 lower court?

19 MR. WHITAKER: Well, the law --

20 JUSTICE GORSUCH: And does that
21 complicate our attempt to --

22 MR. WHITAKER: Sure.

23 JUSTICE GORSUCH: -- resolve things in
24 a facial challenge?

25 MR. WHITAKER: Sure, Your Honor. And

1 I think the -- the reason is -- is because the
2 law is not facially at least preempted under
3 230(c)(2), which principally regulates
4 takedowns.

5 One reason for that is we -- we
6 understand 230(c)(2) not to sanction
7 viewpoint-based content moderation under the
8 rubric of otherwise objectionable. And there's
9 a very nice article that Professor Volokh has on
10 this in the -- in the Journal of Free Speech Law
11 where he lays this out. And we obviously
12 haven't briefed this, Your Honor.

13 The second point I would make about
14 Section 230(c)(2) is that it only applies to
15 good-faith content moderation, so to the extent
16 our law prohibits them from engaging in
17 bad-faith content moderation, that is absolutely
18 not preempted by 230(c)(2).

19 And one way to understand their
20 constitutional claims in this case, because they
21 have an expansive view of Section 230(c)(2), is
22 that they are in essence asserting a
23 constitutional right to engage in bad-faith
24 content moderation because they already have the
25 right to engage in a lot of moderation of

1 illicit content under 230(c)(2) as long as they
2 do so in good faith.

3 JUSTICE GORSUCH: And then just to
4 follow up on Justice Kagan's line of
5 questioning, you've analogized to common
6 carriers and telegraphs in particular.

7 Why is that an apt analogy here, do
8 you think?

9 MR. WHITAKER: I think it's an apt
10 analogy, Your Honor, because the -- the -- the
11 principal function of a social media site is to
12 enable communication, and it's enabling willing
13 speakers and willing listeners to talk to each
14 other.

15 And it's true that the posts are more
16 public, but I don't think that Verizon would
17 gain any greater right to censor simply because
18 it was a conference call. I don't think that
19 UPS or FedEx would gain a greater right to
20 censor books because it was a truckload of books
21 as opposed to one book.

22 And so the analogy is indeed apt. And
23 -- and so there's been talk of market power.
24 Market power is not an element, I think, of
25 traditional common carrier regulation, and,

1 indeed, some entities that are regulated as
2 common carriers, like cellphone providers,
3 operate in a fairly competitive market.

4 JUSTICE GORSUCH: Thank you.

5 CHIEF JUSTICE ROBERTS: Justice
6 Kavanaugh?

7 JUSTICE KAVANAUGH: In your opening
8 remarks, you said the design of the First
9 Amendment is to prevent "suppression of speech."
10 And you left out what I understand to be three
11 key words in the First Amendment or to describe
12 the First Amendment, "by the government."

13 Do you agree "by the government" is
14 what the First Amendment is targeting?

15 MR. WHITAKER: I do agree with that,
16 Your Honor, but I don't agree that there is no
17 First Amendment interest in allowing the
18 people's representatives to promote the free
19 exchange of ideas. This Court has recognized
20 that as a legitimate First Amendment interest in
21 the Turner case and all the way going back to
22 the Associated Press case when --

23 JUSTICE KAVANAUGH: Well, in the
24 Turner case, the intervention was, the Court
25 emphasized, unrelated to the suppression of

1 speech, the antitrust-type intervention there.
2 So I'm not sure when it's related to ensuring
3 relative voices are balanced out or there's
4 fairness in the speech or balance in the speech,
5 that that is covered by Turner.

6 Do you agree with that?

7 MR. WHITAKER: No, I don't agree with
8 that, Your Honor. Our -- our -- our interest
9 and our law --

10 JUSTICE KAVANAUGH: What did Turner
11 mean by "unrelated to" the suppression of
12 speech?

13 MR. WHITAKER: Well, we don't view our
14 law as advancing interests that are related to
15 the suppression of speech. We think that the
16 interests, for example, in protecting
17 journalistic enterprises from being censored,
18 from -- from MSNBC being censored because an
19 Internet platform doesn't like a broadcast it
20 showed on its station the other day, that is
21 just an interest in preventing from being
22 silenced. It's not an equalizing interest.
23 It's giving them a chance.

24 JUSTICE KAVANAUGH: On the editorial
25 control point, you really want to fight the idea

1 -- and I understand -- that editorial control is
2 the same thing as speech itself. And you've
3 emphasized Pruneyard over and over again.

4 But we have a whole other line of
5 cases, as you're aware, of course, Hurley, PG&E,
6 Tornillo, Turner, which emphasize editorial
7 control as being fundamentally protected by the
8 First Amendment.

9 And I understood the line between
10 Pruneyard on the one hand and those cases on the
11 other to be whether you were involved in a
12 speech, communications business, as opposed to a
13 shopping center owner, which is the other side
14 of the line.

15 Can you respond to those cases?

16 MR. WHITAKER: Sure. I guess I don't
17 dispute the general principle of editorial
18 control. I just don't think that this -- that
19 the social media platforms are engaged in
20 editorial control.

21 And, again, the -- the -- the
22 recruiters -- the law schools, excuse me, in
23 Rumsfeld versus FAIR argued that they were
24 exercising editorial control when they booted
25 military recruiters off campus and invoked

1 Tornillo explicitly. And this Court had none of
2 it.

3 So the Court does need to draw a line,
4 I think, between a selective speech host that is
5 exercising editorial control and a speech host
6 like a common carrier or like the mall in
7 Pruneyard that can indeed be regulated in
8 prevent -- in being prevented from silencing its
9 customers.

10 JUSTICE KAVANAUGH: On the selective
11 speech host point, I think you've made the point
12 to Justice Kagan that they don't eliminate much
13 speech. But didn't we deal with that in Hurley
14 as well and say that the mere fact that the
15 parade organizer usually took almost all comers
16 was irrelevant to the First Amendment interest
17 in essentially editorial control over who
18 participated in the parade?

19 MR. WHITAKER: Yeah, and I -- and I --
20 and I guess I think Hurley, Your Honor, really
21 turned more on the fact that what was the
22 activity there was a St. Patrick's Day parade
23 with a particular expressive purpose, and so
24 perhaps the -- the -- the -- it -- it could
25 still be expressive and be a little bit more

1 lenient.

2 But I would note that this Court in
3 Hurley did -- in rejecting the conduit argument,
4 relied on the fact that there was front-end
5 selection of -- of the members of the parade,
6 that the -- the parade committee -- the
7 committee that was responsible for it was doing
8 front-end selection. So I do think Hurley fits
9 our theory.

10 But I also think that selectivity is
11 totally relevant to who is the speaker. And we
12 -- we analogize in our brief to the government
13 speech cases where this Court has made that
14 exact point in a variety of cases, such as Matal
15 versus Tam and Shurtleff. And what you have
16 said is that if the government is not exercising
17 a ton of control over the speech that comes into
18 a forum, it is not speaking and it can't censor.
19 That's what this Court held in Shurtleff
20 involved.

21 JUSTICE KAVANAUGH: Thank -- thank
22 you.

23 CHIEF JUSTICE ROBERTS: Justice
24 Barrett?

25 JUSTICE BARRETT: Mr. Whitaker, I have

1 a question about this editorial control because,
2 really, when it comes to platforms that are the
3 traditional social media platforms like YouTube,
4 Instagram, you know, TikTok, Twitter/X, it all
5 rides -- it all turns on editorial control.

6 It seems to me that one distinction
7 between this and FAIR is that, here, these
8 companies are speech hosts, right? I mean, the
9 law schools in FAIR were hosting job fairs for
10 this purpose, like online recruiting. They
11 weren't gathering together a whole bunch of
12 people and saying, here, present your ideas,
13 present your posts. I mean, these social media
14 companies are hosting speech.

15 So why isn't that more like a
16 newspaper in Tornillo?

17 MR. WHITAKER: It is -- it is
18 different, Your Honor, but I think that that's
19 why we've -- we've leaned on -- also on the
20 common carrier analogy, which I think reflects
21 that a speech -- you can't just say it's a
22 speech host and go home because, if that were
23 true, Verizon could censor. Excuse me.

24 JUSTICE BARRETT: Well -- well, put
25 aside common carrier for one second and just

1 pretend -- just put common carrier to the side.
2 Just tell me why this doesn't look like the same
3 kind of editorial control we see newspapers
4 exercise.

5 MR. WHITAKER: Because the platforms
6 do not review -- it is a strange kind of editor,
7 Your Honor, that does not actually look at the
8 material that is going on its compilation. I
9 mean, in Twitter versus Taamneh, the platforms
10 told you that they didn't even know that ISIS
11 was on their platform and doing things. And it
12 is a strange kind of editor that does not even
13 know that -- the material that it is editing.

14 JUSTICE BARRETT: Is it because it's
15 not humanized? I mean would -- "humanized," not
16 human eyes. Is it because it could be an
17 algorithm that says, you know, we want to have,
18 as Justice Kagan was pointing out, terms of
19 service, we want to have this kind of site. You
20 know, or -- or -- or some say that, for example,
21 TikTok might have boosted pro-Palestinian speech
22 and reduced -- reduced pro-Israel speech.

23 That's a viewpoint, right? And if you
24 have an algorithm do it, is that not speech?

25 MR. WHITAKER: Well, it -- it might

1 be, Your Honor, but -- but, again, in -- in --
2 in Twitter and Gonzalez, the -- the platforms
3 told you that the algorithms were methods of
4 organizing -- neutral methods of organizing the
5 speech, much like the Dewey decimal system.

6 JUSTICE BARRETT: Well, that's not
7 what they're saying here. So let's -- let's
8 assume that what they're saying here, that
9 they're organizing it, you know, in ways that
10 reflect preferences, that are expressive of
11 their terms and conditions.

12 In that event, do you think it would
13 be editorial control in a First Amendment sense?

14 MR. WHITAKER: No. And I think it's
15 important to separate the organize -- and I
16 agree with Justice Jackson that it's important
17 to separate the various functions -- the
18 organizing function from the hosting function.
19 And this is a point that Professor Volokh has
20 made in his -- in his article that we cite.

21 I mean, if -- simply because they are
22 required to host certain speech, that does not
23 actually meaningfully prevent -- prevent them
24 from organizing that speech. So I think the
25 Court has to separate out regulation of the

1 organization from simply preventing them from
2 censoring.

3 And the reason, Your Honor, it is
4 different from a newspaper, I think, is two
5 principal points. First, we've been talking a
6 lot about selection, but, second, space
7 constraints. Space constraints are something
8 that this Court in FAIR and in Tornillo relied
9 on as one factor that is relevant. And the
10 social media companies have -- don't have any
11 space constraints, which means that a
12 requirement to host an additional piece of
13 content is a relatively less restriction over --

14 JUSTICE BARRETT: Well, let me just
15 interrupt you there. I mean, Justice Sotomayor
16 pointed out that even though there may not be
17 physical space constraints, there are the -- the
18 constraints of attention, right? They have to
19 present information to a consumer in some sort
20 of organized way and that there's a limited
21 enough amount of information that the -- the
22 consumer can absorb it.

23 And don't all methods of organization
24 reflect some kind of judgment? I mean, could
25 you tell -- could Florida enact a law telling

1 bookstores that they have to put everything out
2 by alphabetical order and that they can't
3 organize or put some things closer to the front
4 of the store that they think, you know, their
5 customers will want to buy?

6 MR. WHITAKER: I think, first --
7 first, let me just take a step back because one
8 of the problems here is we don't have any
9 information in this record on their algorithms.
10 It's very difficult for us to piece -- pick
11 apart what exactly the algorithms are doing.
12 You certainly could imagine, I think, to be --
13 you know, to be candid, an algorithm that could
14 be expressive.

15 As far as we can tell, if the
16 algorithms work, though, in the manner that this
17 Court described them in Twitter versus Taamneh,
18 they look more like neutral ways to reflect user
19 choice, and I don't think there's expression in
20 that.

21 Now you can imagine a different kind
22 of algorithm. If an algorithm -- if it were
23 possible to have an algorithm that made a
24 website look like a newspaper, that would be
25 different. But, again, I think the Court -- the

1 question of organization is analytically
2 distinct from the separate question of whether
3 they can be regulated in their hosting and
4 censorship.

5 JUSTICE BARRETT: Okay. So your
6 argument that it's not expressive entirely
7 depends on the hypothesis that the sorting and
8 feed functions are solely some sort of neutral
9 algorithm that's designed to user preference and
10 that they reflect no kind of policy judgment
11 based on the platform itself?

12 MR. WHITAKER: No. No, not at all,
13 actually, Your Honor, because I think that
14 preventing them from censoring does not
15 meaningfully preclude them from organizing.

16 If they're required to carry a piece
17 of content, they can organize it however they
18 want generally. I mean, there are prohibitions
19 on shadow banning and the like, but they can
20 generally organize it however they want. So a
21 prohibition on censorship and deplatforming is
22 not, I think, a meaningful interference with
23 organizing.

24 But -- but, again, on -- on
25 algorithms, I would just stress that this is

1 a -- a facial challenge. We don't have any
2 particular information on what exactly the
3 content of their algorithms are. And so I think
4 the only question there is whether there's a
5 possible state of the world under which the
6 algorithms are non-expressive.

7 JUSTICE BARRETT: Okay. Let me just
8 ask you one last question. It's about the
9 facial challenge aspect of this.

10 So Florida's law so far as I can
11 understand it is very broad, and we're talking
12 about the classic social media platforms, but it
13 looks to me like it could cover Uber, it looks
14 to me like it could cover just Google search
15 engines, Amazon Web Service, and all of those
16 things would look very different.

17 And, you know, Justice Sotomayor
18 brought up Etsy. It seems to me that they're
19 arguing -- now Etsy has a feed recommended for
20 you, right, but it also just has shops for
21 handmade goods that you can get. It looks a lot
22 more like a brick-and-mortar marketplace or flea
23 market, you know, than, you know, a place for
24 hosting speech. Okay?

25 So, if this is a facial challenge and

1 Florida's law indeed is broad enough to cover a
2 lot of this conduct which is farther away from
3 expression than these standard social media
4 platforms, why didn't you then in your brief
5 kind of defend it by pointing out, look, there's
6 all this other stuff that's perfectly fine that
7 Florida covers. We don't want, you know, some
8 person who wants to sell their goods on Etsy to
9 be suppressed because it's, you know, stuff --
10 handmarked -- handmade goods that express a
11 political view, for example.

12 MR. WHITAKER: I think we did defend
13 the application of our law to Etsy, and I think
14 I've -- I've defended that from -- from the
15 lectern, but -- but -- but I don't think you
16 need to be with me on --

17 JUSTICE BARRETT: But, I mean,
18 pointing out, I mean, I can -- I can sit here
19 and think of all kinds of applications of this
20 law that really wouldn't hit expression, but --
21 but I -- I just don't understand you to have
22 been defending the law in that way --

23 MR. WHITAKER: Well --

24 JUSTICE BARRETT: -- as opposed to
25 countering the argument that the -- the

1 platforms are not engaged in expression.

2 MR. WHITAKER: We're -- we're --
3 we're -- we're making both arguments, Your
4 Honor, to be clear. As I was -- as I was
5 discussing with Justice Sotomayor, we view Etsy
6 as not having a significant expressive interest
7 in applying its policy -- its content moderation
8 policies.

9 JUSTICE BARRETT: So is that enough to
10 just make this whole thing fail, I guess, is my
11 question. If -- if --

12 MR. WHITAKER: Yes, I think it is.

13 JUSTICE BARRETT: -- if we agree with
14 you that Etsy, it's fine for it to apply to, or
15 Uber, it's fine, you know, Amazon Web Services,
16 if we agreed with you with all that, is that
17 enough to just say, well, then this facial
18 challenge can't succeed?

19 MR. WHITAKER: Yes, because that would
20 give the law a plainly legitimate sweep, and
21 that's all the Court needs to -- to address here
22 to reject the facial challenge.

23 JUSTICE BARRETT: Thank you.

24 CHIEF JUSTICE ROBERTS: Justice
25 Jackson?

1 JUSTICE JACKSON: So I feel like
2 there's a lot of indeterminacy in this set of
3 facts and in this circumstance, as Justice Alito
4 tried to, I think, illuminate with his
5 questions. We're not quite sure who it covers.
6 We're not clear exactly how these -- these
7 platforms work.

8 One of the things I wanted to give you
9 the chance to address is the lack of clarity
10 about what the statute necessarily means.
11 You've given a couple of -- you've talked about
12 the consistency provision, for example, and
13 you've represented what you think it means, but
14 we don't have a state court determination
15 interpreting that provision, do we?

16 MR. WHITAKER: You do not, Your Honor.
17 In fact, the -- the -- the law was not allowed
18 to go into effect, so the Florida courts have
19 not had an opportunity to construe this statute
20 at all.

21 And I think that counsels strongly in
22 favor of rejecting the facial challenge because
23 this Court has considered in Washington State
24 Grange case the -- the fact that the state
25 courts have not had an opportunity to construe a

1 state law that's being attacked on its face as
2 -- as a reason to reject it for the count.

3 JUSTICE JACKSON: Can I ask you, do
4 you think this statute could be susceptible to
5 multiple interpretations? I mean, I can imagine
6 even the consistency provision, you know, well,
7 what does it mean that they have to do this
8 consistently? They have to apply the same
9 standards, or it has to substantively result in
10 the same level of preference? I could imagine
11 there you -- you could interpret that both more
12 narrowly or broadly.

13 MR. WHITAKER: There certainly may be
14 some interpretive questions, Your Honor. On
15 that point, I don't think there is any -- any
16 ambiguity. And let me just read to you what the
17 consistency provision says. It says, "a social
18 media platform must apply censorship,
19 deplatforming, and shadow banning standards in a
20 consistent manner among its users on the
21 platform."

22 And the censorship, deplatforming, and
23 shadow banning standards are the things that the
24 social media company must under a separate
25 provision of the law publicly disclose, which

1 was a disclosure requirement that the Eleventh
2 Circuit upheld.

3 JUSTICE JACKSON: Yes, I understand.

4 MR. WHITAKER: But --

5 JUSTICE JACKSON: I mean, I -- I
6 appreciate that Florida's position is that our
7 law is perfectly clear, but I -- I --

8 MR. WHITAKER: Well, no, but I think
9 that that -- that that language I just read to
10 you I think makes clear that the baseline for
11 comparison is not some abstract notion of
12 fairness.

13 JUSTICE JACKSON: All right. Well,
14 let me ask you this about that, all right? So
15 let's assume we get to the point we disagree
16 with you about whether or not expressive
17 activity is covered and we're actually applying
18 or trying to determine which standard applies,
19 that is, you know, level of scrutiny.

20 What I'm a little confused about is
21 how we evaluate, for example, the 30-day
22 restriction with respect to determining whether
23 it's content-based or content-neutral. I
24 appreciate that on its face it doesn't
25 particularly -- you know, it doesn't point to a

1 particular type of content -- content, but I
2 suppose it's applied in reference to content,
3 right?

4 MR. WHITAKER: Well, the --

5 JUSTICE JACKSON: I mean, that -- that
6 restriction is a regulated entity can only
7 change its rules, terms, and engagements once
8 every 30 days. But we would have to look at
9 what it was before and what it is now to
10 determine if there's a change. So is that a
11 content-based restriction or not?

12 MR. WHITAKER: Certainly not. I mean,
13 the -- you know, this Court held a couple terms
14 ago in the City of Austin case just that simply
15 because a regulation requires consideration of
16 content doesn't -- doesn't make it
17 content-based. And there's nothing on the face
18 of that provision that targets any particular
19 message of the platforms.

20 And -- and I think just to -- just to
21 zoom out a little bit on the 30-day provision, I
22 mean, that provision is really an adjunct to
23 the -- the consistency provision as I understand
24 it, and -- and the point of it is that it
25 wouldn't do much good to require the platforms

1 to apply their policies consistently if they
2 could just sort of constantly change them.
3 And -- and that, I think, is the point --

4 JUSTICE JACKSON: I understand. But,
5 in the application of even the consistency
6 provisions, to determine whether they're not
7 doing it consistently, aren't we also looking at
8 content to some extent? I mean, I just --

9 MR. WHITAKER: Well --

10 JUSTICE JACKSON: -- it's -- I -- I
11 think it's not necessarily as easy as it might
12 seem to determine whether or not these
13 provisions are actually content-based or
14 content-neutral.

15 MR. WHITAKER: Well, again, I -- I --
16 I don't think the fact that it requires
17 consideration of -- of content makes it
18 content-based. I think you would look at
19 whether it's targeting some kind of a message of
20 the platform, and there's nothing on the face of
21 the 30-day provision that does that, Your Honor.

22 JUSTICE JACKSON: Thank you.

23 CHIEF JUSTICE ROBERTS: Thank you,
24 counsel.

25 Mr. Clement.

1 ORAL ARGUMENT OF PAUL D. CLEMENT
2 ON BEHALF OF THE RESPONDENTS

3 MR. CLEMENT: Mr. Chief Justice, and
4 may it please the Court:

5 Florida's effort to level the playing
6 field and to fight the perceived bias of big
7 tech violates the First Amendment several times
8 over. It interferes with editorial discretion.
9 It compels speech. It discriminates on the
10 basis of content, speaker, and view -- and
11 viewpoint. And it does all this in the name of
12 promoting free speech but loses sight of the
13 first principle of the First Amendment, which is
14 it only applies to state action.

15 Florida defends its law, as you've
16 heard this morning, principally by insisting
17 that there's no expressive activity being
18 regulated. That blinks reality. This statute
19 defines the targeted websites in part by how big
20 their audience is. It regulates the content and
21 display of particular websites, and it tries to
22 prevent my clients from censoring speakers and
23 content.

24 If you are telling the websites that
25 you are -- that they can't censor speakers, you

1 can't turn around and say you're not regulating
2 expressive activity. It's all over this law.
3 And that brings it squarely within the teaching
4 of Tornillo, PG&E, and Hurley.

5 All three of those cases teach that
6 you cannot have the forced dissemination of
7 third-party speech and then reject
8 considerations of market power, misattribution,
9 or space constraints. And Reno and 303 Creative
10 make clear those principles are fully applicable
11 on the Internet.

12 Indeed, given the vast amount of
13 material on the Internet in general and on these
14 websites in particular, exercising editorial
15 discretion is absolutely necessary to make the
16 websites useful for users and advertisers. And
17 the closer you look at Florida's law, the more
18 problematic the First Amendment problems become.

19 It singles out particular websites, in
20 plain violation of Minneapolis Star. Its
21 provisions that give preferences to political
22 candidates and to edit -- and to journalistic
23 enterprises are content-based in the extreme.

24 I welcome the Court's questions.

25 JUSTICE THOMAS: Mr. Clement, if the

1 government did what your clients are doing,
2 would that be government speech?

3 MR. CLEMENT: So it might be
4 government speech, but I think it would be
5 unconstitutional government speech, which is to
6 say, when the government -- I mean, you know,
7 obviously, you have government speech cases, but
8 when what the government's doing is exercising
9 editorial discretion to censor some viewers or
10 some speakers and not others, I think that
11 plainly violates the First Amendment.

12 And I think that's essentially the
13 thrust of this Court's decision in the Manhattan
14 Community Cable case against Halleck, which is
15 that in this area, looking for state action is
16 absolutely critical. There are things that the
17 -- if the government does, is a First Amendment
18 problem and if a private speaker does, we
19 recognize that as protected activity.

20 JUSTICE THOMAS: So --

21 JUSTICE JACKSON: Mr. Clement, you --
22 oh, sorry.

23 JUSTICE THOMAS: -- can you give me
24 one example of a case in which we have said the
25 First Amendment protects the right to censor?

1 MR. CLEMENT: So I don't know that the
2 Court used that particular locution, Justice
3 Thomas, but I think that is the thrust of
4 Hurley, that is the thrust of PG&E, that is the
5 thrust of Tornillo. In all of those cases, a
6 private party did not want to convey and
7 disseminate the speech of a third party. And in
8 every case, the government said, no, we have
9 some really good reason here why this private
10 party has to disseminate the message of a third
11 party. And --

12 JUSTICE THOMAS: I've been fortunate
13 or unfortunate to have been here for most of the
14 development of the Internet.

15 (Laughter.)

16 JUSTICE THOMAS: And the argument
17 under Section 230 has been that you're merely a
18 conduit, which it -- exact -- that was the case
19 back in the '90s and perhaps the early 2000s.

20 Now you're saying that you are engaged
21 in editorial discretion and expressive conduct.
22 Doesn't that seem to undermine your Section 230
23 arguments?

24 MR. CLEMENT: With respect, Justice
25 Thomas, I mean, obviously, you were here for all

1 of it. I wasn't here for all of it. But my
2 understanding is that my clients have
3 consistently taken the position that they are
4 not mere conduits. And Congress, in passing
5 Section 230, looked at some common law cases
6 that basically said, well, if you're just a pure
7 conduit, that means that you're free from
8 liability. But, if you start becoming a
9 publisher, by keeping some bad conduct out --
10 content out, then you no longer have that common
11 law liability protection.

12 And as I understand 230, the whole
13 point of it was to encourage websites and other
14 regulated parties to essentially exercise
15 editorial discretion to keep some of that bad
16 stuff out of there, and as a result, what
17 Congress said is -- they didn't say: And you're
18 still a conduit if you do that. No, it said:
19 You shouldn't be treated as a publisher, because
20 Congress recognized that what my clients were
21 doing would, in another context, look like
22 publishing, which would come with the kind of
23 traditional defamation liability, and they
24 wanted to protect them against that precisely to
25 encourage them to take down some of the bad

1 material that, if these laws go into effect,
2 we'd be forced to convey on our websites.

3 JUSTICE JACKSON: Mr. Clement, can I
4 ask you about the facial nature of this?
5 Because my understanding is that, to strike down
6 this statute as facially unconstitutional, we
7 would have to conclude that there's no possible
8 way for this law to govern these entities and
9 their conduct.

10 So, first, do I have the standard
11 right?

12 MR. CLEMENT: With all due respect, I
13 don't think so.

14 JUSTICE JACKSON: Okay.

15 MR. CLEMENT: In the First Amendment
16 context, as my friend was indicating, the
17 question is whether or not the statute has a
18 plainly legitimate sweep. So it's not the
19 Salerno, if there's one little application
20 somewhere, that's enough to save the statute.

21 JUSTICE JACKSON: But, I mean, whose
22 burden is that? I thought it was your burden to
23 say that this statute, in almost all of its
24 applications or in most or a substantial number
25 or something, would be unconstitutional in order

1 to get it facially stricken.

2 MR. CLEMENT: So two things, Your
3 Honor. I think our burden would be -- it would
4 be our burden to say that this statute doesn't
5 have a plainly legitimate sweep. In fact, it is
6 our position, and we did make this argument
7 below and succeeded, that this statute actually
8 has no constitutional application, and part of
9 that is because none of this statute, at least
10 none of the part that's in front of you today,
11 applies unless you are a covered website.

12 JUSTICE ALITO: Does the --

13 MR. CLEMENT: And the website --

14 JUSTICE JACKSON: But -- but wait.

15 Can I just -- I don't understand. I'm sorry.

16 So no application, but we have so many
17 different applications of the law in this
18 situation precisely because it is so broad. So
19 how -- how can you say that?

20 MR. CLEMENT: Because the statute only
21 applies to websites that are a handful of
22 websites that meet the viewership threshold or
23 the total sales threshold.

24 And it's -- you know, it's not our
25 only argument, obviously, but one of our

1 arguments is you can't regulate expressive
2 activity in that kind of targeted way.

3 JUSTICE ALITO: Mr. Clement, does the
4 --

5 JUSTICE JACKSON: And those websites
6 only --

7 JUSTICE ALITO: -- does the Florida
8 law cover Gmail?

9 MR. CLEMENT: The -- the Florida law I
10 -- I think by its terms could cover Gmail.

11 JUSTICE ALITO: All right. So does
12 Gmail have a First Amendment right to delete,
13 let's say, Tucker Carlson's or Rachel Maddow's
14 Gmail accounts if they don't agree with her --
15 his or her viewpoints?

16 MR. CLEMENT: They -- they might be
17 able to do that, Your Honor. I mean, that's
18 obviously not something that has been the square
19 focus of this litigation, but lower courts have
20 looked --

21 JUSTICE ALITO: Well, if they don't,
22 then how are we going to judge whether this law
23 satisfies the -- the requirements of either
24 Salerno or overbreadth?

25 MR. CLEMENT: So it's -- you know,

1 again, I think it's the plainly legitimate sweep
2 test, which is not synonymous with overbreadth,
3 but in all events, since this statute applies to
4 Gmail, if it applies at all, because it's part
5 of Google, which qualifies over the threshold,
6 and it doesn't apply to competing email services
7 that provide identical services, that alone is
8 enough to make every application of this statute
9 unconstitutional.

10 JUSTICE KAGAN: I mean, how could that
11 be?

12 JUSTICE ALITO: Does it apply to -- go
13 ahead.

14 JUSTICE KAGAN: How could -- how could
15 that be, Mr. Clement? It's not unconstitutional
16 to distinguish on the basis of bigness, right?

17 MR. CLEMENT: It is when you're
18 regulating expressive activity. That's what
19 this Court said in Minneapolis Star. So the
20 statute in Minneapolis Star was unconstitutional
21 in all its applications. The statute --

22 JUSTICE KAGAN: If you -- you're
23 saying, if -- if -- if there were no issue here
24 of -- that this is really a subterfuge, they
25 were trying to get at a certain kind of media

1 company that -- because of their views, and the
2 only issue was it's not worth it to regulate a
3 lot of small sites, you know, we -- we only want
4 to go after the big sites that actually have
5 many millions of users, you think that's a First
6 Amendment violation?

7 MR. CLEMENT: I do. The way you're
8 asking the question suggests you think that's a
9 harder case than the one I actually have before
10 you.

11 JUSTICE KAGAN: I think it's a little
12 bit of an impossible case to say you can't go
13 after big companies under the First Amendment.

14 MR. CLEMENT: All you have to do is go
15 after all the social website -- media websites
16 or all of the websites. You don't have to draw
17 these artificial distinctions that just so, you
18 know, coincidentally happen to coincide with the
19 websites that you think have a bias that you're
20 trying to correct. And just to remind you of
21 how the statute --

22 JUSTICE KAGAN: Right, but I took that
23 out of the -- the question. Let's say that they
24 weren't going after these companies because of
25 bias or because they thought they had a slant.

1 It was just, you know, we're going after the
2 biggest companies because those are the
3 companies with the biggest impact and the most
4 number of users. How -- how could that be a
5 First Amendment violation?

6 MR. CLEMENT: Because Minneapolis Star
7 says it is, because Arkansas Writers' Project
8 says it is, and because, if you actually got to
9 analyzing their so-called consumer protection
10 interest, the consumer protection interest would
11 be exactly the same for a website with 99
12 million global users as it would be with a
13 website with a hundred million global users.
14 And so I think there are red flags over all of
15 the distinctions drawn in the statute.

16 And then, if you look at the statute
17 more closely, I mean, my goodness, the political
18 candidates provision says that you can't have
19 posts about a political candidate. I can't
20 imagine anything more obviously content-based
21 than that. That's --

22 CHIEF JUSTICE ROBERTS: Counsel, is
23 there --

24 MR. CLEMENT: -- unconstitutional in
25 every one of its applications.

1 CHIEF JUSTICE ROBERTS: -- is there
2 any aspect of the service provided on the social
3 platforms that is not protected under the First
4 Amendment or that is plainly valid under the
5 First Amendment?

6 MR. CLEMENT: I think it's all
7 protected by the First Amendment. I mean,
8 obviously --

9 CHIEF JUSTICE ROBERTS: Direct mess --
10 direct messages?

11 MR. CLEMENT: I -- I think direct
12 messages are protected under the First
13 Amendment. I think that the courts that have
14 looked at things like whether Gmail is a common
15 carrier have actually held that -- and there's a
16 case involving the RNC that has a specific
17 holding that Gmail is not a common carrier. I
18 think much of the logic of that would apply to
19 direct messaging.

20 Obviously, if this were a statute that
21 tried to address my clients only to the extent
22 that they operated a job board, this would be a
23 lot closer to FAIR and I might have a harder
24 case.

25 JUSTICE GORSUCH: So, Mr. Clement, the

1 government says your brief sometimes errs in
2 suggesting that conduit-type activity is always
3 expressive. And direct messages, Gmail, I take
4 it your view then is that providers can
5 discriminate on the basis of political views,
6 religious beliefs, maybe even race?

7 MR. CLEMENT: So, Justice Gorsuch, I
8 think you have to distinguish between two
9 things. One is sort of a status-based
10 discrimination, and the other is status as
11 speaker. And so I don't think that our clients
12 could discriminate and say you can't be on our
13 service, you can't even get access to our
14 service on the basis of race.

15 JUSTICE GORSUCH: But -- but in how
16 they use it and -- and their speech.

17 MR. CLEMENT: So --

18 JUSTICE GORSUCH: I'm talking about
19 the content of their speech.

20 MR. CLEMENT: Yeah. I think, when it
21 comes --

22 JUSTICE GORSUCH: That it has
23 something to do with religion or politics or
24 race, you can editorialize and use that
25 editorial power to suppress that speech, right?

1 MR. CLEMENT: So I think that gets to
2 a very hard question. I think it would be
3 speech, but like I think it's the --

4 JUSTICE GORSUCH: So the answer is
5 yes, we can -- we can delete emails, we can
6 delete direct messages that we don't agree with
7 based on politics, religion, or race?

8 MR. CLEMENT: Probably not in
9 application, but I do think, look, a bookstore,
10 if it wants to have a display this month to
11 celebrate black history, can they limit that
12 display just to African American authors? I
13 think the answer is probably yes.

14 JUSTICE GORSUCH: And so it is here
15 too, right?

16 MR. CLEMENT: I think the answer is
17 that there's at least First Amendment activity
18 going on there, and then you would apply the
19 equal protection clause to it, and then you
20 would decide whether or not that's permissible
21 or not. But, obviously, I think this case
22 involves editorial decisions at its heart.

23 And one thing I just want to make
24 clear on the facial challenge point just so you
25 understand how this case came to be, as you

1 heard today, my friend's principal argument is
2 this doesn't cover expressive activity at all.

3 And in the lower court, when we sought
4 a preliminary injunction, they put all their
5 eggs in that basket and they specifically said,
6 look, we don't want to do intermediate scrutiny
7 at the preliminary injunction stage, so we
8 really only have an argument to resist this
9 preliminary injunction if you hold that this is
10 not expressive activity. And they did the same
11 thing in the Eleventh Circuit. There's a -- we
12 have a footnote in our brief making it clear on
13 the pages exactly where they did this.

14 So they basically said: We either
15 want to win this on the threshold question that
16 this is not expressive activity, or we don't
17 want to get into the rest of it at this point.
18 We'll have some discovery and we'll have the
19 preliminary injunction and delay it.

20 JUSTICE ALITO: Mr. Clement --

21 JUSTICE BARRETT: Mr. Clement --

22 JUSTICE ALITO: -- does the -- does
23 the Florida law apply to Uber?

24 MR. CLEMENT: Its definition would
25 seem to apply to Uber, yes.

1 JUSTICE ALITO: So you've told us that
2 it's okay for your clients to discriminate on
3 the basis of viewpoint in the provision of email
4 services or in allowing direct messages,
5 messages from one Facebook user to another on --
6 on a private facility.

7 How about Uber discriminating on the
8 basis of viewpoint with respect to people that
9 its drivers will pick up?

10 MR. CLEMENT: So I -- I think the way
11 that --

12 JUSTICE ALITO: Is that okay?

13 MR. CLEMENT: I don't think that's
14 okay. I don't think Uber is interested in doing
15 that. I think the way the statute would apply
16 to Uber, just to make clear, is it really would
17 apply, like, on comments on the drivers or
18 comments section on something like that if Uber
19 wants to just sort of -- and -- and on Etsy, I
20 think it's the same way.

21 You know, Etsy has an ability for you
22 to put comments on the seller and whether they
23 did a nice job or a bad job. And Etsy doesn't
24 want certain comments on that, and they want to
25 clean that up to keep it to be a better place

1 for people to come and look at materials.

2 So, when you think about the
3 applications of this statute to some of the
4 things that seem less obvious, it's really
5 focused on that expressive aspect of it.

6 But, obviously, the core of the
7 statute and the motivation for the legislation
8 and the examples that my friends from Florida
9 include in their own petition appendix are about
10 much more expressive activity by the YouTubes
11 and the Facebooks of the world, excluding
12 certain speakers, and they want to override that
13 classic editorial decision.

14 JUSTICE BARRETT: But, Mr. Clement,
15 that's cut -- one of the things that's hard for
16 me about this case is let's posit that I agree
17 with you about Facebook and YouTube and those --
18 those core social media platforms.

19 Don't we have to consider these
20 questions Justice Alito is raising about DMs and
21 Uber and Etsy because we have to look at the
22 statute as a whole? And, I mean, we don't have
23 a lot of briefing on this, and this is a
24 sprawling statute and it makes me a little bit
25 nervous.

1 I'm not sure I agree with you about
2 DMs and -- and Gmail, just it -- it's not
3 obvious to me anyway that that -- that they
4 would -- that they can't qualify as common
5 carriers.

6 MR. CLEMENT: Look, I agree, you don't
7 want to decide all of that today.

8 JUSTICE BARRETT: Yeah.

9 MR. CLEMENT: But this is not here on
10 sort of final judgment. It's here on a
11 preliminary injunction. And the question is,
12 you know, do you want this law with all of these
13 unconstitutional applications enforced by every
14 Floridian, so every -- these provisions are
15 enforced by every Floridian being able to go
16 into court and get \$100,000 in civil penalties.

17 Now do you want that completely
18 antithetical law to the First Amendment to go
19 into effect while we sort out all these anterior
20 questions, or do you want it to be put on hold
21 while we can litigate all of this stuff, and if
22 it turns out there's a couple of applications
23 that are okay or somebody wants, you know,
24 briefing just on the question of whether direct
25 mail is -- is a common carrier, all that --

1 JUSTICE KAVANAUGH: And --

2 JUSTICE BARRETT: Can we escape that
3 in this posture?

4 MR. CLEMENT: Absolutely you can
5 escape that in this posture. You affirm this
6 preliminary injunction which is in place. If
7 you want to, you can point to the clear
8 litigation judgment that Florida expressly made
9 below, which is we're not going to get into all
10 of that intermediate scrutiny stuff. We don't
11 want a record on that. We're going to put all
12 our eggs in the expressive activity basket, and
13 they could not have been more clear about that
14 below and in the Eleventh Circuit, and then you
15 say this law which has all of these First
16 Amendment problems, this wolf comes as a wolf,
17 we are going to put that on hold and then we can
18 sort out some of these tertiary questions.

19 JUSTICE ALITO: Well, if that's the
20 case, Mr. Clement, to what extent is it the --
21 is it the result of your own litigation
22 decisions? You could have brought an as-applied
23 challenge limited to the two platforms that you
24 want to talk about, Facebook and YouTube.

25 But, instead, you brought a facial

1 challenge, and you claim that it's also
2 susceptible to analysis under overbreadth. So
3 you had to -- to get a preliminary injunction,
4 you had to show you had a probability of success
5 on your facial or overbreadth challenge.

6 MR. CLEMENT: And we did in --

7 JUSTICE ALITO: You can't now shift
8 and say let's -- you know, it was a good
9 preliminary injunction because it's fine as
10 applied to the platforms I want to talk about,
11 and let's forget about all the other platforms
12 that might be covered.

13 MR. CLEMENT: Well, Justice Alito,
14 first of all, we -- we did all that and we won.

15 Second of all --

16 JUSTICE ALITO: Did you bring an
17 as-applied challenge?

18 MR. CLEMENT. No, we didn't bring an
19 as-applied challenge because we think this --

20 JUSTICE GORSUCH: So --

21 MR. CLEMENT: -- we think this --

22 JUSTICE GORSUCH: So --

23 MR. CLEMENT: -- statute is
24 unconstitutional in all its applications.

25 JUSTICE GORSUCH: Exactly. And so

1 you -- you -- you suggested it could be sorted
2 out on remand, but, on remand, it's still a
3 facial challenge, and -- and there is no --

4 MR. CLEMENT: It is still a facial
5 challenge, you're right.

6 JUSTICE GORSUCH: And so, again, you
7 think all of the applications are
8 unconstitutional, right?

9 MR. CLEMENT: I -- I do because the
10 definitions are problematic, the terms --

11 JUSTICE GORSUCH: So there's nothing
12 to sort out on remand. It's done. If you
13 should prevail in this -- on a -- on a
14 preliminary injunction here, I mean, for
15 practical purposes, it's finished, and so there
16 is no opportunity to sort out anything on
17 remand.

18 MR. CLEMENT: There's the whole
19 merits. What we've shown is a likelihood of
20 success on the merits. We haven't won on the
21 merits yet.

22 JUSTICE GORSUCH: All or nothing.

23 JUSTICE JACKSON: Can I try it another
24 way? I mean, I -- I asked you before what was
25 the standard, and now you're saying that you

1 think that all applications are
2 unconstitutional, which I think is your burden
3 to establish.

4 So, if we come up with some scenarios
5 in this context in which we can envision it not
6 being unconstitutional, why don't you lose?

7 MR. CLEMENT: First of all, that's not
8 the standard with all due respect. I mean, this
9 Court has never applied the Salerno standard in
10 a First Amendment case.

11 And this would be the worst First
12 Amendment case in this Court's history if you
13 started down that road because you can always
14 put in some provision into a statute that's
15 innocuous and then you say, well, there's a
16 couple of fine things in there.

17 You look at it section by section and
18 these sections are pernicious from a First
19 Amendment standard, can't have content about a
20 political candidate. There's no constitutional
21 application to that.

22 CHIEF JUSTICE ROBERTS: Thank you,
23 counsel.

24 Just so I understand precisely, your
25 position is that the only issue before us is

1 whether or not the speech that is regulated
2 qualifies as -- not to beg the question -- the
3 expression that's before us is not speech?

4 MR. CLEMENT: I -- I think that's one
5 way to put it. Obviously, you have two
6 questions presented. You're going to be able to
7 decide whatever you think is fairly included in
8 those questions presented.

9 I'm just pointing out that as an
10 artifact of the way my friend's litigated this
11 case, you do not have a record on everything
12 that might be interesting for intermediate
13 scrutiny, and it's not my fault. It is based
14 precisely on their representations to the courts
15 below that they did not want to get into the
16 intermediate scrutiny thing, they wanted to tee
17 up the expressive activity thing.

18 CHIEF JUSTICE ROBERTS: If -- if the
19 appropriate standard is not Salerno, could you
20 articulate what you think is the appropriate
21 standard?

22 MR. CLEMENT: I think the -- the
23 appropriate standard is whether the First
24 Amendment -- the statute that implicates the
25 First Amendment has a plainly legitimate sweep.

1 CHIEF JUSTICE ROBERTS: Thank you.

2 Justice Thomas?

3 JUSTICE THOMAS: Could you again
4 explain to me why, if you win here, it does not
5 present a Section 230 problem for you?

6 MR. CLEMENT: If we win here, we avoid
7 Section 230 problems, I think, Your Honor, and
8 the reason is that 230 is a protection against
9 liability. It's a protection against liability
10 because Congress wanted us to operate as
11 publishers, and so it -- it -- it wanted us to
12 exercise editorial discretion, and so it gave us
13 liability protection.

14 But liability protection and First
15 Amendment status don't go hand in hand. I don't
16 think the parade organizer in Hurley was
17 responsible for the parade floats that go --
18 went into its parade. Historically, newsstands
19 and others aren't responsible for the materials.

20 So -- so I don't think you have to
21 sort of say it's one or the other. I mean, I
22 think the 230 protection stands alone.

23 JUSTICE THOMAS: So what is it that
24 you are editing out that fits under Section 230?

25 MR. CLEMENT: So, in some of these --

1 I mean, it depends on -- you know, in some
2 cases, it is terrorist material. In other
3 cases, it's kids that are telling other kids,
4 hey, you should do this Tide pod challenge. In
5 some cases, it's kids that are encouraging other
6 kids to commit suicide.

7 There's a whole bunch of stuff that we
8 think is, you know, offensive within the terms
9 of 230 that we're exercising our editorial
10 discretion to take out.

11 JUSTICE THOMAS: Well, but 230 does
12 not necessarily touch on offensive material. It
13 touches on obscene, lewd, lascivious, filthy,
14 excessively violent, harassing, or otherwise
15 objectionable. Do you think --

16 MR. CLEMENT: It's that last one.

17 (Laughter.)

18 JUSTICE THOMAS: Well --

19 MR. CLEMENT: I mean, we could have a
20 fine debate about, you know, the -- you know,
21 the last, you know, sort of -- you know, how
22 much of that --

23 JUSTICE THOMAS: Right.

24 MR. CLEMENT: -- you -- you sort of --
25 you know, what -- what -- what's the Latin for

1 that, the company you keep and all of that. I
2 mean, we could have that fine debate in some
3 other case, but we would certainly take the
4 position that we're protected in those judgments
5 under 230.

6 JUSTICE THOMAS: Well, I think you'd
7 make that, the ejusdem doctrine, do a lot of
8 work. But let's put that aside.

9 Tell me again exactly what the
10 expressive conduct is that, for example, YouTube
11 engages in when it -- it -- it -- or, I'm sorry,
12 Twitter deplatforms someone. What is the
13 expressive conduct and to whom is it being
14 communicated?

15 MR. CLEMENT: So, when they, you know,
16 let's say deplatform somebody for violating
17 their terms of use or for continuing to post
18 material that violates the terms of use, then
19 they are sending a message to that person and to
20 their broader audience that that material --

21 JUSTICE THOMAS: How would you know
22 someone's been deplatformed? Is there a notice?

23 MR. CLEMENT: Typically, you do get a
24 notice of that, and there's a provision --

25 JUSTICE THOMAS: No, I mean the

1 audience, the other people.

2 MR. CLEMENT: Well, they're going to
3 see that they're not there anymore. They're no
4 longer in their feed --

5 JUSTICE THOMAS: Well, but the --

6 MR. CLEMENT: -- and, presumably --

7 JUSTICE THOMAS: -- the message could
8 be they didn't want to be there anymore.
9 They're tired of it. They're exhausted.

10 MR. CLEMENT: Well, and -- and -- and
11 here's the thing. I mean, you know, that --
12 that message is then going to be carried over
13 in -- you know, this isn't just about who gets
14 excised from the platform. It's all about what
15 material people see on their individualized sort
16 of -- you know, when they tap into Facebook or
17 Twitter or -- or -- or YouTube.

18 And what they're not going to see is
19 they're not going to see material that violates
20 the terms of use. They're not going to see a
21 bunch of material that -- that glorifies
22 terrorism. They're not going to see a bunch of
23 material that glorifies suicide.

24 JUSTICE THOMAS: Is there any
25 distinction between action or editing that takes

1 place as a result of an algorithm as opposed to
2 an individual?

3 MR. CLEMENT: I don't think so, Your
4 Honor. These algorithms don't spring from the
5 ether. They are essentially computer programs
6 designed by humans to try to do some of this
7 editorial function and it's --

8 JUSTICE THOMAS: Well, but what do you
9 do with a deep-learning algorithm which teaches
10 itself and has very little human intervention?

11 MR. CLEMENT: You still had to have
12 somebody who kind of created the universe that
13 that algorithm is going to look at.

14 JUSTICE THOMAS: So who's speaking
15 then, the algorithm or the person?

16 MR. CLEMENT: I think, you know, the
17 question in these cases would be that Facebook
18 is speaking, that YouTube is speaking, because
19 they're the ones that are using these devices to
20 run their editorial discretion across these
21 massive volumes.

22 And the reason they're doing this,
23 and, of course, they're supplementing it with
24 lots and lots of humans as well, but the reason
25 they have to use the algorithms, of course, is

1 the volume of material on these sites, which
2 just shows you the volume of --

3 JUSTICE THOMAS: Okay.

4 MR. CLEMENT: -- editorial discretion.

5 JUSTICE THOMAS: Yeah, and, finally --
6 I'm sorry to keep going, Mr. Clement -- exactly
7 what are they saying?

8 MR. CLEMENT: So --

9 JUSTICE THOMAS: What is the algorithm
10 saying? I don't know. I'm not on any, you
11 know. But what is it saying?

12 MR. CLEMENT: It's saying --

13 JUSTICE THOMAS: Is it a consistent
14 message? What -- I mean, usually -- when we had
15 Hurley, the -- it was their parade and they
16 didn't want certain people in their parade. You
17 understood that.

18 What are they saying here?

19 MR. CLEMENT: They are saying things
20 like Facebook doesn't want pro-terrorist stuff
21 on our site.

22 JUSTICE THOMAS: I didn't -- I'm talk
23 -- we're not talking about terrorists here.

24 MR. CLEMENT: Well --

25 JUSTICE THOMAS: Those aren't --

1 terrorists aren't complaining about it.

2 MR. CLEMENT: Well, I think, actually,
3 we are talking about terrorism here because I
4 think, if these laws go into effect --

5 JUSTICE THOMAS: But I thought that
6 was a crime. I mean, under -- they -- as I
7 understood Florida, they said that they -- they
8 -- one provision in the Act says they -- nothing
9 that's inconsistent with Section 230. It seems
10 to me that it is consistent with Section 230.

11 MR. CLEMENT: So, Your Honor, it is --
12 you know, there are things like, if -- if you
13 have a video on how to build a bomb to blow up,
14 you know, a church or something, maybe that's
15 prohibited by sort of, you know, the -- that --
16 that kind of illegality provision. But, if
17 there's something glorifying the attacks of
18 October 7, and one of these companies wants to
19 keep that off of the sites, or is there
20 something on there that they want to -- that
21 sort of glorifies sort of, you know -- sort of
22 incredibly thin teenage bulimia and they want to
23 keep that off their site, they -- they have the
24 right to do that. And that's an important
25 message.

1 And just like in Hurley, the message
2 that they are sending is a message about what
3 they exclude from their -- their forum.

4 CHIEF JUSTICE ROBERTS: Justice Alito?

5 JUSTICE ALITO: There's a lot of new
6 terminology bouncing around in these cases, and
7 just out of curiosity, one of them is "content
8 moderation." Could you define that for me?

9 MR. CLEMENT: So, you know, look,
10 content moderation to me is just editorial
11 discretion. It's a way to take the -- the --
12 the -- all of the content that is potentially
13 posted on the site, exercise editorial
14 discretion in order to make it less offensive to
15 users and advertisers.

16 JUSTICE ALITO: Is it -- is it
17 anything more than a euphemism for censorship?
18 Let me just ask you this. If somebody in 1917
19 was prosecuted and thrown in jail for opposing
20 U.S. participation in World War I, was that
21 content moderation?

22 MR. CLEMENT: So, if the government's
23 doing it, then content moderation might be a
24 euphemism for censorship. If a private party is
25 doing it, content moderation is a euphemism for

1 editorial discretion. And there's a fundamental
2 difference between the two.

3 JUSTICE ALITO: For editorial
4 discretion, are you affirmatively saying --
5 never mind. No -- no further questions.

6 CHIEF JUSTICE ROBERTS: Justice
7 Sotomayor?

8 JUSTICE SOTOMAYOR: Mr. Clement, I'm
9 -- I'm now sort of trying to take all of this
10 in, and I think that I came into this very
11 differently than you have. I came into this
12 thinking there are different functionalities by
13 websites. So some host news, like the news feed
14 in Facebook. Some host -- like Justice Barrett
15 was talking about and others, Gmail or -- where
16 they're just letting people contact each other,
17 direct messaging.

18 And I was thinking that since I think
19 rightly this law seems to cover all of that,
20 that it's so broad, how -- but it might have
21 some plainly legitimate sweep, it might be okay
22 to require direct messaging to give you notice,
23 to be consistent, to pay attention to 30-day
24 registration. Some of these provisions might be
25 okay for those functions.

1 But you're saying to me that's not
2 true. Can you articulate very succinctly why
3 you think, at this stage on a facial challenge,
4 that we can say there is no plainly legitimate
5 sweep, that this particular law, after we sort
6 it all out below, will still survive?

7 Now I think the court below said --
8 and you try to take that out from Justice
9 Kagan's answer -- maybe I don't want to, okay,
10 is it because this law was passed with viewpoint
11 discrimination in mind? That's what the court
12 below said.

13 MR. CLEMENT: The -- the -- the court
14 below said that. And that would be a sufficient
15 basis to take out the whole law.

16 The law is also shot through with
17 content-based provisions. I think that's enough
18 to take out the whole law. It also -- the
19 entire law, every provision we challenge is
20 speaker-based in its limited reach.

21 And what this Court's cases clearly
22 say, including NIFLA, which my recollection is
23 was a facial challenge, says that when you look
24 at speaker-based distinctions, you can then open
25 the lens a little bit and see if those

1 speaker-based provisions are infused with
2 viewpoint discrimination or other discriminatory
3 influences.

4 And if you do that here -- I mean, you
5 don't have to get past the governor's official
6 signing statement to say -- to understand that
7 -- the restrictions on this statute. I mean,
8 you know, it -- it's one thing to say, well,
9 they're only getting the big companies. But,
10 when the governor is telling you we're going
11 after the viewpoints of the -- of the Silicon
12 Valley oligarchs, then all of a sudden, limiting
13 it to the biggest companies starts to tell you
14 that this is targeted like a laser beam at the
15 companies that they don't like the editorial
16 discretion that was being exercised.

17 CHIEF JUSTICE ROBERTS: Justice Kagan?

18 JUSTICE KAGAN: I mean, let me ask the
19 -- the same kind of question in a different way.
20 Suppose that, instead of this law, you -- you --
21 you had a law that was focused, it excluded the
22 kind of curated news feeds, where your argument
23 about editorial discretion sort of leaps out.

24 So this law didn't touch those. But
25 it said, you know, with respect to Gmail and

1 direct messaging and Venmo and Dropbox and Uber,
2 with respect to all of those things, a site
3 could not discriminate on the basis of
4 viewpoint, just as maybe a site couldn't
5 discriminate on the basis of race or sex or
6 sexual orientation or what have you. So it just
7 added viewpoint to the list.

8 Wouldn't that be all right?

9 MR. CLEMENT: I actually don't think
10 it would be all right because all of those
11 things are still in the expressive business.
12 And I also think --

13 JUSTICE KAGAN: Well, do you think
14 that -- you know, suppose it didn't say
15 viewpoint; it just said you can't discriminate
16 on the basis of, you know, all the usual
17 protected characteristics. Is that all right?

18 MR. CLEMENT: That would probably be
19 all right, but it wouldn't save the whole
20 statute from being --

21 JUSTICE KAGAN: Well, so this is just
22 on this statute. You know, it's just -- it's a
23 -- it's a statute about -- it excludes YouTube
24 and Facebook, you know, the Facebook news feed.

25 MR. CLEMENT: Right.

1 JUSTICE KAGAN: But it's just direct
2 messaging, Venmo, all of those kinds of things.
3 And it just said, you -- you know, we're not
4 going to let you exclude on the basis of race
5 and sex and we're also not going to let you
6 exclude people on the basis of viewpoint.

7 MR. CLEMENT: So, I mean, the first
8 part of that statute I don't think my clients
9 would even challenge. I mean, whether there's
10 an abstract First Amendment right to have the
11 black authors table for black history month --

12 JUSTICE KAGAN: And also on the basis
13 of viewpoint.

14 MR. CLEMENT: When -- when you throw
15 viewpoint into there, then I think, you know,
16 I'd have to ask my clients whether they'd
17 challenge that statute. But, obviously, that's
18 not the -- the -- the statute we have here.

19 And if you think about --

20 JUSTICE KAGAN: I guess what I'm
21 saying is in part it is the statute you have
22 here.

23 MR. CLEMENT: I -- I -- I --

24 JUSTICE KAGAN: And that's -- and --
25 and -- and -- and that gives you your plainly

1 legitimate sweep, because all it's saying is
2 that when you run a service where you're not
3 speaking, unlike in Facebook feed, where your
4 editorial discretion argument is good because
5 the -- the -- the platform is engaged in speech
6 activities.

7 Well, when you're running Venmo,
8 you're not engaged in speech activities. And
9 so, when a state says to you, you know what, you
10 have to serve everybody, irrespective of whether
11 you like their political opinions or not, then
12 it seems you have a much less good argument, but
13 this statute also says that, doesn't it?

14 MR. CLEMENT: Not really, Justice
15 Kagan. And I think we're in danger of losing
16 sight of the actual statute. So let me take you
17 to Petition Appendix 97A and the definition of
18 "censor" used in the statute.

19 It says, "censor includes any action
20 taken by a social media platform to delete,
21 regulate, restrict, edit, alter, inhibit the
22 publication or republication of, suspend a right
23 to post, remove, or post an addendum to any
24 content or material posted by a user. The term
25 also includes actions to inhibit the ability of

1 the user to be viewable or to interact with
2 another user of the social media platform."

3 Censor is all about the expressive
4 activity. Post-prioritization is all about it.
5 It specifically talks about a news feed, a feed,
6 a view, search results, and they give
7 essentially political candidates and
8 journalistic enterprises a right to sort of
9 non-discrimination, so they're going to pop up
10 there even though, like, I have no interest in
11 politics, I just want to look at, you know,
12 feeds about Italian bicycles, and I'm still
13 going to get these Florida politicians popping
14 in there? That's what the statute does.

15 And then you go through, shadow ban.
16 Shadow ban's not about any of the things you're
17 talking about. Shadow ban is all about content.
18 And then we go to journalistic enterprises.
19 They get pride of place.

20 Then we talk about
21 post-prioritization. That's all about how you
22 display the content. So like may -- maybe the
23 30-day provision, you could sort of say that,
24 well, that applies to, like, Uber, but even
25 then, if Uber wants to change its comment

1 policies because all of a sudden, you know, they
2 did one thing to try to, you know, deal with one
3 set of issues and then a problem comes up and
4 there's a whole bunch of, like, people using the
5 comments in a really rude way, like, why
6 couldn't they change their editorial policy on
7 the -- on the comments? I just don't understand
8 it.

9 And then all of the duty-to-explain
10 provisions. The duty-to-explain provisions are
11 all driven by decisions to exclude conduct --
12 content. And that happens a billion times a
13 quarter at YouTube. So that's a crushing blow.
14 It has nothing to do with some of the other
15 things you're talking about.

16 JUSTICE KAGAN: Thank you.

17 CHIEF JUSTICE ROBERTS: Justice
18 Gorsuch?

19 Justice Kavanaugh?

20 JUSTICE KAVANAUGH: Just pick up on
21 the word "censorship" because I think it's being
22 used in lots of different ways.

23 So, when the government censors, when
24 the government excludes speech from the public
25 square, that is obviously a violation of the

1 First Amendment.

2 When a private individual or private
3 entity makes decisions about what to include and
4 what to exclude, that's protected generally
5 editorial discretion, even though you could view
6 the private entity's decision to exclude
7 something as "private censorship."

8 MR. CLEMENT: Absolutely. That was
9 the whole thrust of this Court's decision in
10 Halleck. And I suppose the Hurley case might
11 have been a completely different case if that
12 was an official City of Boston parade and the
13 City of Boston decided to exclude the group.

14 The whole reason that case came down
15 the way it did unanimously is because it was a
16 private organization exercising its First
17 Amendment right to say we don't want GLIB in our
18 parade.

19 JUSTICE KAVANAUGH: How does -- how
20 does 303 fit into that?

21 MR. CLEMENT: Well, I think 303 is
22 just further evidence that, you know -- I mean,
23 you know, obviously, I think 303, where 303 is
24 most relevant is that, you know, Colorado in
25 that case tried to rely on FAIR, much the way my

1 friends here rely on FAIR, and this Court made
2 clear in 303 Creative, no, it doesn't work that
3 way. You know, this is expressive activity.

4 And -- and -- and so -- you know, and
5 the fact that my friend's best case is FAIR, I
6 think, just shows how radical this statute is,
7 because this targets expressive activity in its
8 core.

9 If the Solomon amendment said to the
10 law schools, you have to give the military equal
11 time in the classroom, I think the case would
12 have been 9/0 the other way. And that's
13 essentially what the -- what -- what Florida is
14 trying to do here.

15 JUSTICE KAVANAUGH: And then, on the
16 procedural posture, I think this is important to
17 try to understand what's exactly before us, and
18 you've gotten questions on this, but I want to
19 nail it down for my -- my benefit, which is you
20 said that they came in and opposed a PI solely
21 on the ground that what was involved here was
22 not expressive activity or speech but, instead,
23 conduct.

24 Is that accurate?

25 MR. CLEMENT: That -- that -- that's

1 accurate. It came up in the context of how much
2 discovery we were going to have before we had
3 the preliminary injunction hearing, and in that
4 context, the State says, look, we -- we're going
5 to sort of, you know, kind of rest on this kind
6 of threshold question, as my friend said, and
7 that we'll limit discovery on both sides and
8 then, in the Eleventh Circuit, it was even more
9 clear because, in the Eleventh Circuit, the
10 position of the State of Florida was like, we're
11 not going to really engage on intermediate
12 scrutiny at all. We're -- we're putting all our
13 eggs in the expressive eggs basket.

14 JUSTICE KAVANAUGH: So, if we think
15 that the statute does target expressive activity
16 in some respects and we affirm in this case,
17 what is left to Justice Gorsuch's question?
18 What's left to happen -- that just means it
19 can't go in place for the next year or two until
20 a final judgment. What -- what will happen in
21 the litigation?

22 MR. CLEMENT: So there'll be
23 litigation on the merits. I don't even think
24 we're past the point where we could amend, so if
25 this Court tells us we sure better have an

1 as-applied challenge in there, I suppose we
2 could do that.

3 But the point is the litigation will
4 go on. There will be discovery. Unless --
5 unless Florida decides at that point that the
6 writing's on the wall and it tries to pass a
7 more narrow statute, but, otherwise, there would
8 be discovery, there would be, you know,
9 essentially, the whole nine yards. But, in --
10 in the interim, I -- and -- and, you know, I
11 just can't emphasize enough particularly that
12 \$100,000 civil penalty provision.

13 JUSTICE KAVANAUGH: All that's before
14 us then is what should happen in the interim
15 before final judgment and it comes back to us
16 potentially a year or two from now. Should it
17 be in effect or not be effect until it comes
18 back to us?

19 MR. CLEMENT: Yeah.

20 JUSTICE KAVANAUGH: Correct?

21 MR. CLEMENT: If it comes back to us.
22 Yes.

23 JUSTICE KAVANAUGH: If it came back to
24 us or it goes to the court of appeals. And what
25 will happen -- I mean, you've alluded to it, but

1 what will happen in that year, do you think?
2 Because I don't think we've heard much about
3 exactly what you're concerned about.

4 In other words, you're very concerned
5 about this. That's obvious. But what -- what
6 are the specifics of that?

7 MR. CLEMENT: Well, I -- I mean,
8 honestly, if this statute goes into effect, we'd
9 sort of have to fundamentally change our
10 business models, and I think each company is
11 going to make their own judgment about how
12 they'd come into compliance.

13 I think, you know, part of the irony
14 here is that as to one -- you know, they -- they
15 say this is going to promote speech, but they
16 allow us to discriminate on the basis of content
17 as long as we do it consistently.

18 So, you know, what -- what we might do
19 in the interim, at least some of these companies
20 might do is, you know, just, like, well, let's
21 do only puppy dogs at least in Florida until we
22 can get this straightened out because that's the
23 one way that -- because, you know, these same
24 companies are getting hammered by people that
25 say we're not doing enough to keep material

1 that's harmful to children off of these sites.

2 And yet these laws make it impossible
3 for us to keep material that's -- that's harmful
4 to children off of our sites unless we take so
5 much material off of our sites that nobody can
6 say that we're not being inconsistent or not
7 discriminating. And in Texas, it's viewpoint
8 discrimination.

9 JUSTICE KAVANAUGH: Could you just say
10 a word about the word "consistency," what you
11 think that entails?

12 MR. CLEMENT: I have no idea. And one
13 of the other cases -- you know, arguments we
14 have in this case, it's just not part of the
15 preliminary injunction you have before us is a
16 vagueness challenge.

17 And I think, when you're targeting
18 editorial discretion, to put a consistency
19 requirement -- I mean, if you tried to tell The
20 New York Times to be -- I mean, I don't -- I
21 haven't met anybody who thinks The New York
22 Times is a hundred percent consistent in its
23 editorial policy.

24 But, if you put a state action
25 requirement that they editorialize consistently

1 or somebody can sue them for \$1,000 or the state
2 can haul them into court, I think that would be
3 the most obvious First Amendment violation in
4 the world.

5 JUSTICE KAVANAUGH: Thank you.

6 CHIEF JUSTICE ROBERTS: Justice
7 Barrett?

8 JUSTICE BARRETT: I have a practical
9 question. So let's assume that I agree with you
10 about YouTube and Facebook feeds, news feeds,
11 but that I don't want to say that Facebook
12 Marketplace or Gmail or DMs are not within the
13 statute's plainly legitimate sweep.

14 If I -- if I ask you the question can
15 you still win, I know that you'll say yes, but
16 how would I -- how would we write that opinion
17 given the standard --

18 MR. CLEMENT: Well, I --

19 JUSTICE BARRETT: -- without having to
20 canvass whether all of those things would be
21 within the plainly legitimate sweep?

22 MR. CLEMENT: Honestly, I'm not sure
23 -- well, I'm not sure you could reach that
24 result without definitively holding that that
25 stuff is within the plainly legitimate sweep of

1 the statute. You don't have the record for that
2 in part because of litigation decisions that
3 were made by the State of Florida. So I think
4 what you would do is you would affirm the
5 preliminary injunction, and then you would
6 perhaps lament the fact that the record here is
7 somewhat stunted, and then you would make clear
8 that there might be a possibility to modify the
9 preliminary injunction on -- on remand.

10 Now, at that point, I think, when the
11 lower court sort of sees all the details about
12 how these things actually operate, they might
13 not have the same skepticism that you're
14 starting with. But I think there's lots of ways
15 to write the decision that keeps the -- you
16 know, and, again, what's -- what's in place
17 right now is a preliminary injunction for the
18 benefit of my clients.

19 So people that haven't sued yet, I
20 mean, you know, the statute in theory could
21 apply to them. But my clients have the benefit
22 of a preliminary injunction while this
23 litigation goes forward. And, obviously,
24 anything this Court says in its opinion that
25 suggests what the future course of that

1 litigation should be, you know, is -- is going
2 to be powerfully, you know, effective in terms
3 of how this case gets litigated in the district
4 court.

5 JUSTICE BARRETT: Thank you.

6 CHIEF JUSTICE ROBERTS: Justice
7 Jackson?

8 JUSTICE JACKSON: So, Mr. Clement, I
9 just want to push back for a minute on the
10 private versus public distinction. I mean, I --
11 I think we agree that the government couldn't
12 make editorial judgments about who can speak and
13 what they can say in the public square.

14 But what do you do with the fact that
15 now, today, the Internet is the public square?
16 And I appreciate that these companies are
17 private companies, but if the speech now is
18 occurring in this environment, why wouldn't the
19 same concerns about censorship apply?

20 MR. CLEMENT: So two reasons, Your
21 Honor. I mean, one is I really do think that
22 censorship is only something the government can
23 do to you. And if it's not the government, you
24 really shouldn't label it "censorship." It's
25 just a category mistake.

1 But here's the second thing: You
2 would worry about this if websites, like the
3 cable companies in Turner, had some sort of
4 bottleneck control where they could limit your
5 ability to go to some other website and engage
6 in speech. So, if the way websites worked was
7 somehow that if you signed up for Facebook, then
8 Facebook could limit you to only 19 other
9 websites and Facebook could dictate which 20
10 websites you saw, then this would be a lot more
11 like Turner.

12 But, as this Court said in Reno in
13 1997, when it was confronted with an argument
14 about the then-fresh Turner decision, this Court
15 basically said the Internet is like the opposite
16 of Turner. You know, there's so much
17 information out there, it's so relatively easy
18 to have a new website come on and, like, reality
19 tells us that, right? You know, like, X is not
20 what Twitter was, and TikTok came out of
21 nowhere. And --

22 JUSTICE JACKSON: All right. I think
23 I get your point.

24 MR. CLEMENT: Yeah.

25 JUSTICE JACKSON: Let me just ask you

1 about the illegitimate sweep point.

2 So what is illegitimate about a
3 government regulation that attempts to require
4 these companies to apply consistently their
5 procedures? I don't -- I guess I don't
6 understand why the enforcement of sort of
7 antidiscrimination principles is illegitimate.

8 MR. CLEMENT: So consistency when what
9 is being regulated -- as a -- as a government
10 mandate when what is being regulated is
11 expressive activity is, I think, a clear First
12 Amendment violation. And I don't think -- I
13 mean, you know, some of these judgments are very
14 tricky judgments. You know, okay, well, we --
15 we're going to -- we're going to take some of
16 the stuff sort of celebrating October 7 off, but
17 we want to have some --

18 JUSTICE JACKSON: All right. What
19 about a straightforward one, right? I
20 understood that one of these was no candidate
21 can be deplatformed. That seems pretty
22 straightforward.

23 MR. CLEMENT: Right. And I think it's
24 straight --

25 JUSTICE JACKSON: Right, and so why

1 isn't that enforcing antidiscrimination
2 principles with no candidate -- if somebody is a
3 candidate for office, they can't be
4 deplatformed?

5 MR. CLEMENT: So that means they can't
6 be deplatformed no matter how many times they
7 violate my client's terms of use, no matter how
8 horrible their conduct, no matter how
9 misrepresenting they are in their speech. We
10 still have to carry it and not just have to
11 carry it, but under this statute, we have to
12 give it pride of place.

13 And it doesn't take much to register
14 as a candidate in Florida. And so this gives a
15 license to anybody, even if they're, you know,
16 somebody who's only going to poll, you know,
17 2 percent in their local precinct, they can post
18 anything they want, they can cause us to
19 fundamentally change our editorial policies and
20 have to ignore our -- our terms of use where --

21 JUSTICE JACKSON: Thank you.

22 CHIEF JUSTICE ROBERTS: Thank you,
23 counsel.

24 General Prelogar.

25

1 ORAL ARGUMENT OF GEN. ELIZABETH B. PRELOGAR
2 FOR THE UNITED STATES, AS AMICUS CURIAE,
3 SUPPORTING THE RESPONDENTS

4 GENERAL PRELOGAR: Mr. Chief Justice,
5 and may it please the Court:

6 The First Amendment protects entities
7 that curate, arrange, and present other people's
8 words and images in expressive compilations. As
9 this Court's cases have -- have held, those
10 principles cover newspaper editors, parade
11 sponsors, and web designers. It also covers
12 social media platforms. Those platforms shape
13 and present collections of content on their
14 websites, and that inherently expressive
15 activity is protected by the First Amendment.

16 That doesn't mean, though, that every
17 business that transmits speech can claim First
18 Amendment protection for that conduct. For
19 example, telephone and delivery companies that
20 carry speech from point A to point B aren't
21 shielded by the First Amendment when they
22 provide that service. But that's because
23 they're not producing any expression of their
24 own. It's not because there's some kind of
25 common carrier or communications company

1 exception to the First Amendment.

2 None of this is to say that social
3 media platforms are immune from government
4 regulation. And governments at every level
5 obviously have an important interest in
6 facilitating communication and the free exchange
7 of ideas. But, in promoting that interest,
8 governments have to stay within the bounds of
9 the First Amendment. And these state laws which
10 restrict the speech of the platforms to enhance
11 the relative voice of certain users don't
12 withstand constitutional scrutiny.

13 I welcome the Court's questions.

14 JUSTICE THOMAS: Normally, you are
15 defending regulations. But are you -- if -- if
16 -- if the U.S. Government did exactly what these
17 Petitioners -- Respondents are doing, would that
18 be government speech?

19 GENERAL PRELOGAR: So, if I'm
20 understanding the hypothetical correctly,
21 Justice Thomas, if you're suggesting that the
22 government itself would open a forum and allow
23 users to post messages on that, you know, I
24 think that that would implicate First Amendment
25 principles because the -- because the government

1 might create -- be creating something like a
2 public forum where it would itself be bound by
3 the Constitution.

4 I don't think that that would all
5 necessarily qualify as the government's own
6 speech.

7 JUSTICE THOMAS: But --

8 GENERAL PRELOGAR: But the critical
9 difference here, of course, is that these
10 platforms are private parties. They're not
11 bound by the First Amendment as an initial
12 matter.

13 JUSTICE THOMAS: The -- Mr. Clement
14 said the difference is that if the government
15 does it, it is censoring. If a private party
16 does it, it is -- I forget -- content
17 moderation. These euphemisms bypass me
18 sometimes. But -- or elude me. The -- do you
19 agree with that distinction?

20 GENERAL PRELOGAR: Yes. I mean, the
21 -- the critical difference is that, as Justice
22 Kavanaugh observed, the government's bound by
23 the First Amendment. And so, if it were to, for
24 example, dictate what kind of speech has to
25 appear and in what order, you know, that -- that

1 could create a First Amendment violation.

2 But, here, it's the private platforms
3 themselves that are making that expressive
4 choice. And our recognition here is that
5 they're creating their expressive -- their own
6 expressive product in doing so.

7 JUSTICE THOMAS: Now --

8 GENERAL PRELOGAR: These are websites
9 that are featuring text elements, speech
10 elements, photos, videos, and the platforms,
11 which are private parties not bound by the
12 Constitution, are deciding how they want that to
13 look, what content to put on it and in what
14 order. That's an inherently expressive
15 activity.

16 JUSTICE THOMAS: What are they saying?

17 GENERAL PRELOGAR: So it depends on
18 the platform, the -- the various value judgments
19 that are embodied in its content moderation
20 standards, you know. The -- the -- I think
21 there's a wide variety in the kind of content
22 that the platforms deem objectionable, the kind
23 of content they think might be harmful or will
24 drive away users and advertisers. There's no
25 one single message that each platform is

1 conveying.

2 But I guess, if you wanted to look at
3 the lowest common denominator, you know, at the
4 very least, it seems like their content
5 moderation policies embody a judgment of this is
6 material we think might be of interest to our
7 users or that the users will find interesting
8 and -- and worthy of looking at.

9 So it's a lot like the parade in
10 Hurley in that circumstance, where the Court
11 specifically said maybe you're lenient, you let
12 a lot of content in, you can't identify a single
13 discernable message from the parade as a whole,
14 but there is still the baseline of the parade
15 sponsors signaling this is something that's
16 worthy of looking at in my parade.

17 JUSTICE GORSUCH: General, you
18 indicate in your brief that NetChoice sometimes
19 errs by suggesting that the dissemination of
20 speech is always expressive activity. And I
21 just wonder how we're supposed to deal with that
22 fact if I agree with you in this facial
23 challenge context and particularly when many of
24 the platforms, while reserving the right to
25 prohibit various kinds of posts, most of which

1 are consistent with Section 230, also say and
2 guarantee users "a right to express their ideas
3 and opinions freely." I'm quoting from one of
4 them. And even if the platform disagrees and
5 they say that they "do not endorse and are not
6 responsible" -- again, I'm quoting from some of
7 these terms of service -- sure sounds a lot like
8 conduit, doesn't it?

9 GENERAL PRELOGAR: So I think there is
10 a big difference between a pure conduit, the
11 kind of company that is, you know, quite
12 literally engaged in carrying speech,
13 transmitting it, whether that's across the
14 telephone wires or via telegraph or on a
15 delivery truck like UPS and FedEx, a big
16 difference between that kind of conduct --
17 conduit and what the platforms are doing here,
18 because they're not just literally facilitating
19 users' ability to communicate with other users.
20 Instead, they're taking that and arranging it
21 and excluding it.

22 JUSTICE GORSUCH: But some of them are
23 promising that they're not going to interfere,
24 and they're promising you get to express your
25 views freely and openly, and they're promising

1 that they -- that -- and they're representing,
2 rather, that your views don't represent theirs
3 and everybody understands that.

4 And those -- those are their terms of
5 service. And -- and this is a facial challenge
6 again, and I'm -- I -- I -- I just think
7 separating the wheat from the chaff here is
8 pretty difficult.

9 Can you help us with that?

10 GENERAL PRELOGAR: Sure. And, you
11 know, I think looking at their terms of service,
12 I -- it's certainly true that many of the
13 platforms have generally indicated that they
14 welcome a wide variety of views, but it would be
15 incorrect to say that they're holding themselves
16 out as forums for all possible speech.

17 Those same terms of service contain
18 the kind of editorial policies that are at issue
19 here. And the -- the state laws are narrowly
20 targeted on the kind of speech the platforms
21 want to include. So --

22 JUSTICE GORSUCH: Yes, I --

23 GENERAL PRELOGAR: -- it wouldn't be
24 implicated in --

25 JUSTICE GORSUCH: -- I acknowledge

1 that their terms of service also include the
2 right to exclude certain -- certain speech, but
3 those are usually like the Section 230 things,
4 the way they discuss it, the lewd, lascivious,
5 obscene, the blah, blah, blah, and after that,
6 they do seem to promise a whole lot of latitude.

7 And when you look at classic common
8 carriers, it's very similar. They don't give up
9 the right to exclude certain -- certain
10 activities or speech that might be detrimental
11 to their business or that might be otherwise
12 regulated. That -- that holds true for
13 telegraphs. It holds true for telephones even.

14 But, beyond that, bare minimum,
15 they're open to all comers, and that seems to be
16 how a lot of them are representing themselves to
17 the public at least.

18 GENERAL PRELOGAR: The key difference,
19 though, with common carriers, the kinds of
20 industries that have traditionally been
21 regulated, those in the transportation sector,
22 railroads, some of the communications companies
23 and so forth, is that they're not creating any
24 kind of expressive speech product in providing
25 their service, and so government regulation that

1 says don't discriminate based on content --

2 JUSTICE GORSUCH: Well, the telegraph
3 companies argued just the opposite back in the
4 day --

5 GENERAL PRELOGAR: But I think that
6 those claims failed --

7 JUSTICE GORSUCH: -- and they lost.

8 GENERAL PRELOGAR: -- because,
9 although they are transmitting the messages,
10 they aren't themselves creating any speech on
11 the side.

12 JUSTICE GORSUCH: Oh, they said they
13 were. They -- in fact, they curated a lot of
14 the speech or tried to, including political
15 speech which they didn't agree with.

16 GENERAL PRELOGAR: I think it's wrong
17 to call that curation. It's certainly true they
18 tried to adopt certain discriminatory
19 policies --

20 JUSTICE GORSUCH: Well, whatever --
21 whatever euphemism one wishes to choose.

22 GENERAL PRELOGAR: But they weren't
23 taking that speech out and putting it into a
24 compilation that's expressive. That's the
25 difference here.

1 JUSTICE GORSUCH: On -- on that --

2 GENERAL PRELOGAR: This is a -- a --

3 JUSTICE GORSUCH: Okay, okay. So --

4 GENERAL PRELOGAR: Yeah.

5 JUSTICE GORSUCH: -- if they're not --
6 if the -- if the expression of the user is
7 theirs because they curate it, where does that
8 leave Section 230? Because the protection
9 there, as I understood it -- and Justice Thomas
10 was making this point -- was that Section 230
11 says we're not going to treat you as publishers
12 so long as you are not -- it's not your
13 communication in whole or in part is what the
14 definition says.

15 And if it's now their communication in
16 part, do they lose their 230 protections?

17 GENERAL PRELOGAR: No, because I think
18 it's important to distinguish between two
19 different types of speech. There are the
20 individual user posts on these platforms, and
21 that's what 230 says that the platforms can't be
22 held liable for.

23 The kind of speech that we think is
24 protected here under the First Amendment is not
25 each individual post of the user but, instead,

1 the way that the platform shapes that expression
2 by compiling it, exercising this kind of
3 filtering function, choosing to exclude none of
4 those things above --

5 JUSTICE GORSUCH: Let me interrupt you
6 there, I'm sorry, but -- but I understand it's
7 not their communication in whole, but it's --
8 why isn't it their communication in part if it
9 -- if it's part of this larger mosaic of
10 editorialized discretion and the whole feel of
11 the website?

12 GENERAL PRELOGAR: Well, I don't think
13 that there is any basic incompatibility with
14 immunizing them as a matter of Congress's
15 statutory choices and recognizing that they
16 retain First Amendment protection --

17 JUSTICE GORSUCH: Isn't the whole
18 premise -- I'm sorry --

19 GENERAL PRELOGAR: -- for the First
20 Amendment --

21 JUSTICE GORSUCH: -- the whole premise
22 of Section 230 that they are common carriers,
23 that -- that they're not going to be held liable
24 in part because it isn't their expression, they
25 are a conduit for somebody else?

1 GENERAL PRELOGAR: No, not at all,
2 Justice Gorsuch. I think, you know, to the
3 extent that the states are trying to argue that
4 Section 230 reflects the judgment that the
5 platforms aren't publishing and speaking here,
6 there would have been no need to enact Section
7 230 if that were the case.

8 Congress specifically recognized the
9 platforms are creating a speech product. They
10 are literally, factually publishers. And
11 Congress wanted to grant them immunity. And it
12 was for the purpose of encouraging this kind of
13 editorial discretion. That's the whole point of
14 the good samaritan blocking provision,
15 230(c)(2)(A).

16 CHIEF JUSTICE ROBERTS: General,
17 there's been a lot of talk about the procedural
18 posture of the case, how it was litigated below,
19 what's available if it -- it goes back, when it
20 goes back. I'd like your views on that.

21 GENERAL PRELOGAR: Yes. So we
22 presented our arguments in this case taking the
23 way it had been litigated at face value, and
24 what that means is that below Florida treated
25 this law as though the central provision and

1 scope was focused on the -- the true social
2 media platforms, the thing that -- the website
3 you have in mind when I use that term, things
4 like YouTube and X and Facebook.

5 And Florida's presentation to the
6 lower courts was this law isn't a regulation of
7 their speech at all and so it's valid.

8 So I understand the force of the
9 questions that the Court has been asking today
10 about are there other types of websites that
11 might be covered, could this extend to direct
12 messaging. You know, we don't really have a dog
13 in that fight. To the extent that there are
14 those other applications of the law out there,
15 that's not how Florida sought to defend it.

16 And to Justice Barrett's question, you
17 know, what should the Court do with this, it's
18 been litigated one way and now it looks like
19 maybe there are other possible applications you
20 would have in mind, I would urge the Court to
21 take a really narrow approach here.

22 Florida defended this law on the basis
23 that it could control what the true social media
24 platforms are doing with respect to their
25 expressive websites, and if I were the Court, I

1 would really want to reserve judgment on the
2 application to e-commerce sites, to -- to
3 companies like Uber, which don't seem to be
4 creating a comparable type of expressive
5 product.

6 And I think the Court could save those
7 issues for another day or for further factual
8 development in this case while looking at the
9 decision on the record that was created based on
10 those litigation judgments by the parties.

11 JUSTICE SOTOMAYOR: Am I correct --

12 CHIEF JUSTICE ROBERTS: Justice Thomas
13 --

14 JUSTICE SOTOMAYOR: I'm sorry.

15 CHIEF JUSTICE ROBERTS: -- anything
16 further?

17 Justice Alito?

18 JUSTICE ALITO: Yeah, I'm baffled by
19 your -- your -- your answer to the -- the Chief
20 Justice. Didn't Florida argue that this -- that
21 a preliminary injunction should not be issued
22 because the plaintiffs had not shown that they
23 were likely to succeed on their facial
24 challenge? Did they not make that argument?

25 GENERAL PRELOGAR: They made that

1 overarching argument, but they didn't go further
2 and say and the reason for that is because
3 here's direct messaging. It was lawful at that
4 time to have --

5 JUSTICE ALITO: All right. Well, do
6 you think that issue is not before us?

7 GENERAL PRELOGAR: I think it would be
8 hard for the Court to figure that issue out
9 because there's a lot of lack of clarity --

10 JUSTICE ALITO: Oh, well, it may be
11 hard for us to figure out, but my question was,
12 is the issue before us?

13 GENERAL PRELOGAR: I think that the
14 way Florida litigated this case makes it
15 difficult to say that the issue is properly
16 before you. Usually, the Court holds a party to
17 the arguments it pressed below and that were
18 passed upon below, and there is no court in this
19 case that has considered questions about other
20 types of platforms or about other types of
21 functionality.

22 JUSTICE ALITO: If the record is
23 insufficient to allow us to comfortably decide
24 whether the facial stand -- facial challenge
25 standard or an overbreadth standard is met,

1 isn't that the fault of the plaintiffs, and
2 isn't the remedy to vacate and remand for all of
3 that to be fleshed out, and that would not mean
4 -- that wouldn't say anything necessarily about
5 what will happen in the near future.

6 It would mean that it would be
7 litigated and perhaps, if the plaintiffs
8 developed the record in the way that Florida
9 thinks they should and provides a -- a list of
10 all of the -- all of the NetChoice members who
11 are covered by this and goes through all of the
12 functions that they perform and assesses whether
13 the law is unconstitutional in every application
14 or whether it has a legitimate scope that is
15 constitutional, then they would be entitled to a
16 preliminary injunction.

17 GENERAL PRELOGAR: So I -- I certainly
18 don't want to resist the idea that if this Court
19 thinks those issues are properly before it and
20 affect the analysis of the facial challenge,
21 notwithstanding the way the parties litigated
22 the case, I -- I don't want to stand in the way
23 of that.

24 I do think there would be a lot of
25 value, though, in the Court making clear that

1 with respect to Florida's defense of this law in
2 the lower courts, namely, the idea that the
3 state really can control the curation and
4 editorial function of the true social media
5 platforms with respect to their expressive
6 products, that seems to me a type of provision
7 that is invalid in all of its applications with
8 respect to those platforms.

9 JUSTICE ALITO: Could I just ask you
10 to comment on a few things I understood Mr.
11 Clement to say.

12 So I understood him to say that an
13 email -- that the email function could be denied
14 on the basis of -- access to that could be
15 denied on the basis of viewpoint. Direct
16 messaging could be denied on the basis of
17 viewpoint. Do you -- do you agree with that?

18 GENERAL PRELOGAR: No, we disagree
19 with that. We think that both direct messaging
20 and email service seems a little more like the
21 pure transmission of communications, so we would
22 likely put those in the box of phone company,
23 the telegraph company, Internet service
24 providers, and so forth.

25 We don't think that that's an

1 inherently expressive product in the same way as
2 the main website that has the news feed and
3 that's curating the stories and deciding how to
4 prioritize them.

5 JUSTICE ALITO: Do you -- do you agree
6 that discrimination on the basis of bigness
7 violates the First Amendment?

8 GENERAL PRELOGAR: No, I don't think
9 that on -- that on its own, simply trying to
10 regulate based on the size of a company is -- is
11 always a First Amendment problem.

12 JUSTICE ALITO: Do you agree that a
13 private party cannot engage in censorship? Let
14 me give you an example. Suppose that a private
15 law school says that any student who expresses
16 support for Israel's war with Hamas will be
17 expelled. Is that -- would that be censorship,
18 or would that be content moderation?

19 GENERAL PRELOGAR: So I think the --

20 JUSTICE ALITO: Because it's a private
21 party.

22 GENERAL PRELOGAR: Yeah. So I guess
23 the first-order question would have to be, is
24 there some kind of regulation that prohibits the
25 law school from acting in that way? So, if

1 you're thinking about a public accommodations
2 law, for example --

3 JUSTICE ALITO: No. I'm just saying
4 -- I'm just talking about terminology.

5 GENERAL PRELOGAR: Oh, colloquial
6 terminology? You know, I --

7 JUSTICE ALITO: That's -- that's not
8 censorship; that's content moderation --

9 GENERAL PRELOGAR: I -- I -- I think
10 that --

11 JUSTICE ALITO: -- because it's a
12 private party?

13 GENERAL PRELOGAR: -- the semantics of
14 it don't matter. You could say that the parade
15 in Hurley was censoring the -- the GLIB
16 contingent that wanted to march or that the
17 newspaper in Tornillo was censoring the
18 candidate who wanted to publish his speech.

19 You know, I think that the particular
20 word you use doesn't matter. What you have to
21 look at is whether what's being regulated by the
22 government is something that's expressive by a
23 private party, and, here, we think you have
24 that.

25 JUSTICE ALITO: Well, I mean, the

1 particular word that you use matters only to the
2 extent that some may want to resist the
3 Orwellian temptation to recategorize offensive
4 conduct in seemingly bland terms. But, anyway,
5 thank you.

6 (Laughter.)

7 CHIEF JUSTICE ROBERTS: Justice
8 Sotomayor?

9 JUSTICE SOTOMAYOR: General, I think
10 I'm finally understanding the argument, but let
11 me make sure I do, okay?

12 When I came in, I had the reaction
13 Justice Alito did, which is we should vacate and
14 remand. And I have been thinking about what
15 does that do to the preliminary injunction,
16 because I agree with you, as I understand what
17 the State did below, was to say we don't have to
18 offer you any justification for any part of our
19 law because everybody of these social media
20 companies are common carriers.

21 And I think what's clear is -- from
22 our questioning -- that that's not true, that
23 there are many functions that are expressive
24 that we can't say are common carriers. But,
25 even if we did say they were like common

1 carriers, the issue would be one of what's the
2 level of scrutiny.

3 And the State said there's no level of
4 scrutiny we're going to address. They basically
5 said we can do anything we want to common
6 carriers and to any of the expressive
7 platforming or deplatforming things.

8 But I don't even think that's true.
9 They can't come in and -- and I'm not sure they
10 can -- do any of these things or some of these
11 things even to common carriers if it is a sort
12 of content or viewpoint content exclusion.

13 So a common carrier doesn't have to
14 permit unruly behavior. It doesn't have to
15 permit -- it can throw somebody off the train if
16 they are threatening somebody else or if they're
17 doing other things.

18 So I guess what you're saying is let's
19 keep the injunction in place, vacate and
20 remand -- affirm on the preliminary injunction
21 but vacate and remand on the application of this
22 law and how based on what level of scrutiny
23 given the function that's at issue, correct?

24 GENERAL PRELOGAR: So we do think that
25 the Court should hold the parties to the way

1 they litigated this case and teed it up for the
2 Court's review. And it's uncommon for the Court
3 to start considering new arguments that weren't
4 presented by the party defending its law below.

5 But, if I can respond for a moment on
6 the common carrier point, Justice Sotomayor,
7 because I think you've put your finger on a
8 really important response here to many of the
9 arguments that Florida is making.

10 They suggest that the designation of a
11 platform as a common carrier or not has some
12 kind of talismanic significance. But it's
13 completely irrelevant to answering the First
14 Amendment question because it's not like
15 companies that are treated as common carriers
16 have no First Amendment rights with respect to
17 their expressive activities.

18 You know, you can take a railroad like
19 Amtrak and you can regulate it as a common
20 carrier with the transportation of passengers,
21 but if it creates some kind of magazine for
22 those passengers to peruse, that's entitled to
23 -- to full First Amendment protection.

24 And the reason that the
25 non-discrimination mandate in the common carrier

1 scenario usually poses no problem under the
2 First Amendment is there's no speech or
3 expressive activity in carrying passengers or in
4 carrying communications.

5 It's entirely different with respect
6 to the activity that Florida is seeking to
7 regulate because that is inherently expressive.
8 It's putting together literally a website with
9 pictures and video and text and arranging it.
10 And that looks just like the kind of protected
11 editorial and curatorial activity the Court has
12 recognized in other cases.

13 So whether you say they're a common
14 carrier or not we think is entirely beside the
15 point.

16 CHIEF JUSTICE ROBERTS: Justice Kagan?

17 JUSTICE KAGAN: I think I want to try
18 again on this question of, like, where does this
19 leave us? Because suppose that I agree with
20 pretty much what you said. Let's just take that
21 as an assumption, which is, you know, when
22 Florida is trying to regulate Facebook news
23 feed, well, it can't do that because Facebook
24 news feed is itself providing a kind of speech
25 product.

1 But, when Florida is trying to
2 regulate Gmail, well, maybe it can do that
3 because Gmail is not in the business of
4 providing that sort of speech product. And if
5 you take it -- if we again assume that this
6 statute covers a variety of things that are
7 Gmail-like, direct messaging and -- and Uber
8 and, you know, things that are not creating
9 speech products, and we have this First
10 Amendment doctrine that says, if you can find a
11 legitimate sweep, we can't overrule something
12 facially, but you don't really want to keep --
13 you -- you don't want -- really want to allow
14 this law to go into effect because of the
15 unconstitutional applications that you're
16 talking about with respect to all these
17 companies that are creating speech products,
18 what do we do?

19 GENERAL PRELOGAR: So I guess, if you
20 were confident that the state law had these
21 applications and that the particular provisions
22 would regulate the kinds of companies that
23 you're referring to that aren't creating an
24 expressive speech product, then I think that
25 that would poke holes in the theory of facial

1 invalidity.

2 But I don't think you can have that
3 certainty because that's not how Florida
4 litigated this case below. It's not as though
5 it said this statute is not invalid on its face
6 because it applies to Gmail or other --

7 JUSTICE KAGAN: I take your point. We
8 could just say, gosh, we can't -- we can't even
9 think about those questions because this was
10 litigated in a certain way. So that's one
11 option.

12 But suppose we think it's pretty
13 obvious that this covers a lot of stuff that
14 does not look like Facebook feed and we wanted
15 -- I mean, suppose we were to -- you know, we --
16 we can take notice of that, then what?

17 GENERAL PRELOGAR: Okay. So I think,
18 at that point, what I would do if I were the
19 Court is make clear that with respect to the
20 issues Florida did present and that the Eleventh
21 Circuit and the district court resolved, Florida
22 is wrong to say that it can apply these
23 provisions to the social media companies that
24 are engaged in creating an expressive product
25 and make that much clear.

1 Otherwise, I think, if the Court just
2 vacates and sends it back, it'll be right back
3 up here on -- in an emergency posture, again on
4 an as-applied basis, with respect to one of
5 those companies. So I think the Court can
6 decide that much. That was the issue that was
7 litigated below and decided.

8 And then, if you think that there are
9 some additional questions about the scope of the
10 Florida law and whether it might have valid
11 applications along the lines we've been
12 discussing, you know, I don't have a particular
13 interest on behalf of the United States in what
14 you do with the preliminary injunction in the
15 meantime. I think there's a lot of force to the
16 idea that this is backed up by \$100,000 in
17 penalty per violation, and that could have a
18 huge chilling effect on any protected speech out
19 there that's occurring.

20 But, you know, I think the Court could
21 say there are some unresolved issues about
22 concrete applications of this law and await
23 further factual development on that.

24 JUSTICE KAGAN: Thank you.

25 CHIEF JUSTICE ROBERTS: Justice

1 Gorsuch?

2 JUSTICE GORSUCH: This is a facial
3 challenge, right? It's an all-or-nothing deal.
4 How is a court supposed to make as-applied
5 rulings in a facial challenge on remand?

6 GENERAL PRELOGAR: I would do it based
7 on the party presentation principle and the
8 fact --

9 JUSTICE GORSUCH: No, I got the first
10 point.

11 GENERAL PRELOGAR: Yeah. Yeah.

12 JUSTICE GORSUCH: The first --

13 GENERAL PRELOGAR: So I might run out
14 of options --

15 JUSTICE GORSUCH: Yeah.

16 GENERAL PRELOGAR: -- beyond that,
17 Justice Gorsuch.

18 JUSTICE GORSUCH: After the first one,
19 I --

20 GENERAL PRELOGAR: I -- I agree that
21 these are hard questions asked --

22 JUSTICE GORSUCH: Right. So the first
23 -- it's the first one you --

24 GENERAL PRELOGAR: Now I suppose you
25 could certify to the Florida Supreme Court the

1 unresolved issues of Florida law if you think
2 that that is necessary to actually reach a
3 disposition in this case.

4 JUSTICE GORSUCH: Okay. Thank you.

5 CHIEF JUSTICE ROBERTS: Justice
6 Kavanaugh?

7 JUSTICE KAVANAUGH: I just want to
8 follow up on Justice Alito's questions, and --
9 and he'll have the opportunity since this is
10 continuing to follow up on mine if he wants to.

11 (Laughter.)

12 JUSTICE KAVANAUGH: But I think he
13 asked a good, thought-provoking, important
14 question and used the term "Orwellian."

15 When I think of "Orwellian," I think
16 of the state, not the private sector, not
17 private individuals. Maybe people have
18 different conceptions of "Orwellian," but the
19 state taking over media, like in some other
20 countries. And in Tornillo, we made clear, the
21 Court made clear, that we don't want to be that
22 -- that country, that we have a different model
23 here and have since the beginning, and we don't
24 want the state interfering with these private
25 choices.

1 Now Tornillo then dealt with -- and
2 this is my question. Tornillo dealt with the
3 idea, well, newspapers have become so
4 concentrated and so big that maybe we should
5 have a different rule. In Tornillo, in the
6 Court's opinion, Chief Justice Burger's opinion
7 for a unanimous court talked about those --
8 those changes. I mentioned those before.

9 He says, "Those changes have placed in
10 a few hands the power to inform the American
11 people and shape public opinion. The abuses of
12 bias and manipulative reportage are said to be
13 the result of vast accumulations of unreviewable
14 power in the modern media empires. In effect,
15 it is claimed the public has lost any ability to
16 respond. The monopoly of means of communication
17 allows for little or no critical analysis of the
18 media."

19 And then, though, he -- and he says,
20 "From this premise, it is reasoned that the only
21 effective way to ensure fairness and accuracy to
22 provide for some accountability is for
23 government to take affirmative action." And
24 then he goes on and explains no, we're not going
25 to do that. The First Amendment stands against

1 that. "However much validity may be found in
2 these arguments, at each point, the
3 implementation of a remedy calls for some
4 mechanism, either government or consensual. And
5 if it's governmental, that's just one brings
6 about a confrontation with the express
7 provisions of the First Amendment. Compelling
8 editors or publishers to publish that which
9 reason tells them should not be published is
10 what is at issue in this case."

11 And so he says for the Court in 1973,
12 no, we're not -- we don't have a big exception
13 to the idea that the First Amendment
14 distinguishes the state from the private sector
15 and private individuals.

16 Now here's my question. We're 50
17 years later. How does that principle
18 articulated in *Tornillo* apply to the current
19 situation, the current bigness?

20 GENERAL PRELOGAR: So I think that
21 *Tornillo* does establish a bright-line
22 proposition that the -- the state, even if it
23 has these concerns about market power and
24 dominance and control, cannot directly overtake
25 the editorial function and prevent a private

1 party that's creating an expressive product from
2 making those kinds of judgments about how to
3 present that product.

4 But, at the same time, I think that
5 there are legitimate concerns here about the
6 kind of power and influence that social media
7 platforms wield. And I want to emphasize it's
8 not like the government lacks tools to deal with
9 this. It's not as though it can't regulate at
10 all. There is a -- a whole body of government
11 regulation that would be permissible that would
12 target conduct, things like antitrust laws that
13 could be applied or data privacy or consumer
14 protection, things that we think wouldn't come
15 into any conflict with the First Amendment at
16 all.

17 And even in a situation where the
18 government does think that it's necessary to
19 regulate in a manner that's going to affect
20 protected speech rights, that's not the end of
21 the inquiry. You still have a chance as the
22 government to establish that your regulation can
23 pass constitutional muster like it did in the
24 Turner case that you were referring to earlier.

25 So I want to be very clear that we are

1 not suggesting that governments are powerless to
2 respond to some of the concerns that Justice
3 Alito mentioned. You know, I think one natural
4 place to go as a government is to disclosure, to
5 ensuring that if you think that platforms have
6 Orwellian policies, you at least make sure users
7 have information about how they're acting, what
8 their policies are, the kind of generalized
9 disclosure requirements here that were not
10 invalidated by the lower courts and aren't
11 before this Court.

12 JUSTICE KAVANAUGH: On Turner, the key
13 was content-neutral there, right?

14 GENERAL PRELOGAR: Yes. So Turner
15 concluded that the interest -- the governmental
16 interest --

17 JUSTICE KAVANAUGH: Or one key.

18 GENERAL PRELOGAR: -- that was
19 asserted there, as you put it, was unrelated to
20 the suppression of expression.

21 And the problem here, you know, my
22 friend suggested that Florida has precisely the
23 same interest. But, here, the interest that
24 Florida has asserted in affecting these content
25 moderation choices is to change the speech on

1 the platforms. It doesn't like the way that the
2 platforms are moderating content and it wants
3 them to create a new expressive product that
4 reflects the state's judgments about what should
5 go on the website, whether that's candidate
6 speech or speech by journalistic entities or
7 otherwise.

8 And that is just not an interest
9 that's unrelated to the suppression of
10 expression. So we think the Court should apply
11 intermediate scrutiny here and find that the
12 State can't get out of the starting gate with
13 that interest.

14 JUSTICE KAVANAUGH: Thank you.

15 CHIEF JUSTICE ROBERTS: Justice
16 Barrett?

17 JUSTICE BARRETT: General, I asked Mr.
18 Clement at the end this practical question,
19 which Justice Kagan also asked you, and so I
20 just want to be sure that I'm understanding
21 maybe exactly your answer to Justice Kagan. It
22 was different than Mr. Clement's to me.

23 You were pointing out to Justice Kagan
24 that if we just vacate and send it back, it's
25 going to be right up here in an emergency

1 posture on an as-applied challenge. So you were
2 encouraging us to address at least this question
3 of whether, like, the Facebook news feed or
4 YouTube, et cetera, is expressive.

5 But, if I think there are real
6 problems with some of these other applications,
7 which may be legitimate, do you think it's an
8 option to say, you know, that we think that some
9 of these editorial applications would be
10 unconstitutional, but because we don't know
11 about these other applications, they might be
12 within the statute's legitimate sweep, that
13 we're going to vacate and remand anyway and send
14 it back for the court to sort out all of those
15 other applications?

16 GENERAL PRELOGAR: So I think that
17 would be one possible approach here. You know,
18 I want to express strong agreement with the
19 instinct I think that is -- is -- underlies that
20 question that the Court shouldn't do more than
21 is necessary here with respect to the types of
22 applications that we've been discussing,
23 e-commerce, you know, Gmail, or -- or websites
24 or email servers and that kind of thing.

25 I do think they present a really

1 distinctive set of issues. And so, if you think
2 that those issues are properly in this case,
3 I -- I don't think the Court has received the
4 briefing, frankly, to try to take a stab at
5 resolving them, but it seems like it would be a
6 reasonable thing to do to send it back for
7 further factual development and consideration by
8 the lower courts.

9 JUSTICE BARRETT: Okay. And one other
10 question and this is about Section 230.

11 When you were talking to Justice
12 Gorsuch, you were pointing out the distinction
13 between the post and the post's content for
14 which, you know, the -- the platform would not
15 be liable, and then the feed, and you were
16 saying, well, the speech -- the speech that is
17 the platform's is not what's on the post, and
18 that's -- you know, the platform can't be liable
19 for that.

20 So could a platform be liable then,
21 say, if its algorithm or its feed boosted things
22 like, say, the Tide pod challenge? That's
23 different. Is that within Section 230?

24 GENERAL PRELOGAR: Yeah. So I -- I
25 think that this is, you know, a difficult issue

1 about how 230 might apply with respect to kind
2 of decisions that the platform is -- is making
3 itself with respect to how to structure its
4 service.

5 And I want to be careful here because
6 I have to confess that I haven't gone back
7 recently to look at the brief we submitted in
8 the Gonzalez case last term that I think touched
9 on some of these issues, but I do think that
10 there are circumstances where, of course, if the
11 thing that's causing harm is the platform's own
12 conduct in how it structures its service, that's
13 something that might not be immunized under
14 Section 230.

15 I think all of this is separate and
16 apart from the First Amendment issue in this
17 case, though, because, here, whether or not you
18 think that, you know, recognizing that they have
19 a speech product affects the proper
20 interpretation of the statute under 230 and
21 means that there are some situations where they
22 won't have immunity, that is a completely
23 distinct question from whether they are creating
24 a speech product that warrants First Amendment
25 protection.

1 JUSTICE BARRETT: I totally agree.
2 But I also think there are a bunch of land
3 mines. And if that's a land mine, if what we
4 say about this is that this is speech that's
5 entitled to First Amendment protection, I do
6 think then that has Section 230 implications for
7 another case, and so it's always tricky to write
8 an opinion when you know there might be land
9 mines that would affect things later.

10 GENERAL PRELOGAR: Yes. And I -- I
11 certainly would think the Court could try to
12 carefully cabin it and make clear that it's not
13 opining on the specific statutory terms in 230
14 or whether this First Amendment characterization
15 of the expressive compilation fits within the
16 provision that Justice Gorsuch cited earlier
17 about creating speech in whole or in part, and
18 the Court could very clearly outline that in its
19 decision to try to caution lower courts away
20 from conflating those two issues.

21 JUSTICE BARRETT: Thank you.

22 CHIEF JUSTICE ROBERTS: Justice
23 Jackson?

24 JUSTICE JACKSON: General, I hear you
25 struggling valiantly to set aside other kinds of

1 applications in response to a number of the
2 questions, and I guess I can't figure out why
3 those other applications aren't in this case.

4 I mean, I think Florida defended the
5 law as NetChoice challenged it, and NetChoice
6 brought a facial challenge. And I had
7 understood that to mean -- I mean, first, I was
8 a little surprised that the government's brief
9 didn't focus on that, but I had understood that
10 to mean that NetChoice, number one, bears the
11 burden in this case and, number two, that
12 NetChoice has to, you know -- I guess Mr.
13 Clement and I had a difference of opinion as to
14 how you say it, but that burden is to show that
15 there's either no valid application of this law
16 or that the law has a legitimate sweep.

17 So, if we can identify other valid
18 applications, if we see worlds in which Uber
19 and, you know, money services or whatnot could
20 be regulated, I don't understand why that just
21 doesn't mean that NetChoice has not met its
22 burden and so that's the answer.

23 GENERAL PRELOGAR: Well, I think you
24 would have to conduct it at a more granular
25 level, Justice Jackson, because it's not just

1 about what are the universe of platforms out
2 there and what functionality do they offer.

3 You'd really have to parse the
4 challenged provisions of the Florida law and
5 ask: Are those platforms, you know, engaged in
6 any kind of the relevant conduct? And I think
7 that --

8 JUSTICE JACKSON: I agree with you
9 100 percent, but the question is, isn't it
10 NetChoice's burden to have presented the case to
11 us in that way? If we don't have that
12 information, again, I say, don't they lose?

13 GENERAL PRELOGAR: So I want to say
14 again that we don't have a particular stake in
15 how you think about their own litigation
16 decisions on both sides, but this case very much
17 was teed up in the lower courts as being all
18 about what they called the Big 3 social media
19 companies. That's clearly the central aim of
20 this law. It was focused not on the Ubers of
21 the world and their comment boxes but on the
22 core function of creating an expressive website
23 that principally contains user-generated
24 components, the text and the photos and so
25 forth, and that the provisions that are

1 challenged here are the ones that are focused on
2 the type of editorial discretion that those
3 types of platforms are engaged in.

4 So I don't think it's as easy to say
5 maybe we can look in the dark recesses of this
6 law and peek around a corner and find some
7 possible valid application. That's not how
8 Florida sought to defend the law. And I think
9 it would go down a complicated road to allow the
10 core provisions of this statute to take effect.

11 JUSTICE JACKSON: I understand,
12 General, but the confusion --

13 GENERAL PRELOGAR: Yeah.

14 JUSTICE JACKSON: -- I think, is that
15 the law on its face is really broad. We've said
16 that. And other people, many people, have, you
17 know, noticed that it could apply to all sorts
18 of things. And yet you say it was litigated
19 below as if it was narrow. I appreciate that.
20 But we have a facial challenge on the -- on the
21 table.

22 GENERAL PRELOGAR: Yeah.

23 JUSTICE JACKSON: And to the extent
24 the entire law goes, then I suppose maybe these
25 other lawful applications would go too. And

1 isn't that problematic when you're talking about
2 facial challenges?

3 GENERAL PRELOGAR: Well, you are
4 looking at this in the posture of a preliminary
5 injunction, so I don't think that the Court is
6 definitively resolving and -- and, you know,
7 kind of issuing the final say on exactly what
8 the status of this Florida law is.

9 But -- but, look, I want to agree, I
10 have some sympathy here. In preparation for
11 this argument, I've been working with my team to
12 say, does this even cover direct messaging?
13 Does this even cover Gmail? And we've been
14 trying to study the Florida law and figure it
15 out ourselves. We think there's a lot of
16 ambiguity about exactly what the state law
17 provisions require.

18 I don't think, though, that that's a
19 basis to not resolve the central issue in the
20 case, which is, with respect to what we know the
21 state law does, it would require these social
22 media platforms that are creating the
23 compilation of third-party speech to
24 fundamentally alter their product that they're
25 offering. We think that's an infringement of

1 speech and the Court should say so.

2 JUSTICE JACKSON: Thank you.

3 CHIEF JUSTICE ROBERTS: Thank you,
4 counsel.

5 Rebuttal, Mr. Whitaker?

6 REBUTTAL ARGUMENT OF HENRY C. WHITAKER

7 ON BEHALF OF THE PETITIONERS

8 MR. WHITAKER: First, on the
9 procedural posture, the fact that there's no
10 record in this case is entirely NetChoice's
11 fault. It was NetChoice who insisted in
12 district court on litigating the PI very fast.
13 In fact, we actually wanted to slow it down and
14 take discovery. And what NetChoice -- we
15 actually even offered to voluntarily stay the
16 law while we did that. And NetChoice says, no,
17 we want to go fast. And they -- and the
18 district court obliged them, went fast. There
19 was no meaningful opportunity to take discovery.

20 And, in fact, when we appealed, we
21 tried to say, hey, let's litigate this case
22 while it's on appeal and do discovery. And they
23 said, no, we want to stay discovery even while
24 it's on appeal. And the district court obliged.
25 So the fact that there's no record in this case

1 is not Florida's fault. It is NetChoice's
2 fault.

3 Second, there are clearly
4 constitutional applications of this statute, and
5 contrary to what my friend said, it does apply
6 to Uber. And he read you the definition of
7 "censorship" on 97a, and right before that is
8 the definition of "deplatforming." And Uber --
9 if Uber deplatforms a user, that is covered by
10 our law. If users -- if Uber says to a
11 journalistic enterprise, I don't like the cut of
12 your jib, the broadcast you -- you did last
13 week, that is covered by our law. And so that
14 -- that is something that is there.

15 There -- and there are also -- you
16 know, it's not just Gmail. It's also WhatsApp.
17 There are messaging functions. Those are
18 constitutional applications. And the
19 consequences of my friend's argument is really
20 quite sweeping. My friend seems to think that
21 -- that even a traditional common carrier has a
22 First Amendment right, I guess, to -- to censor
23 anything. I guess that means that Verizon can
24 turn around tomorrow and have a First Amendment
25 right to kick all Democrats or all Republicans

1 off of the -- the platform, and that is -- that
2 would have sweeping consequences that I -- I do
3 not think is supported because Verizon has no
4 message in deplatforming or censoring its users.

5 And that principle is distinct from
6 what my friend from the United States is saying
7 because she's talking about, oh, well, they
8 arrange material on the site in various ways.
9 But that doesn't speak to -- at all to whether
10 they have a constitutional right to censor
11 because just because you have to carry content
12 or carry a particular user, you could still
13 arrange it.

14 And I think that's the fundamental
15 conflation -- conflation that the United States
16 does in its brief. It ignores the distinction
17 between the hosting function and the
18 organizational function, and that's something
19 that I think the Court needs to keep separate in
20 its -- in its mind. And I would -- I would
21 commend to the Court Professor Volokh's article
22 cited on page 24 of our brief that -- that makes
23 this distinction.

24 Thank you.

25 CHIEF JUSTICE ROBERTS: Thank you,

1 counsel.

2 The case is submitted.

3 (Whereupon, at 12:27 p.m., the case
4 was submitted.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Official - Subject to Final Review

\$	a.m [2] 1:17 4:2	affecting [2] 39:14 144:24	23 15:2,6 20:12 21:3,7 22:4 30:21 37:2,12,17,18 38:2,3 43:9,11,12,14,17,20 45:8 46:16 50:13 62:7,13 63:18 64:11,17,25 67:15 69:12 71:6,13 72:5 73:4,5,7,13 75:17 79:18 80:16 83:10,12,19 84:24,25 85:15 97:10 101:1,17 102:9 107:3 111:12 113:6,15,18,21 114:1,9,24 115:11,23 116:1 122:24 123:16,20 130:7,11 134:14,16,23 135:2 136:10 141:25 142:7,13 143:15 148:16,24 149:5,14 155:22,24	application [15] 9:10 10:25 55:13 61:5 67:19 68:8,16 70:8 75:9 83:21 126:2 128:13 133:21 150:15 152:7
\$1,000 [1] 107:1	ability [6] 13:16 77:21 98:25 110:5 118:19 141:15	affects [2] 11:1 148:19	applied [6] 7:8 32:21 60:2 81:10 83:9 143:13	
\$100,000 [3] 79:16 104:12 138:16	able [3] 69:17 79:15 84:6	affirm [4] 80:5 103:16 108:4 133:20	applies [10] 16:1 41:14 59:18 62:14 68:11,21 70:3,4 99:24 137:6	
1	above [1] 123:4	affirmative [1] 141:23	apply [34] 6:1 9:20 11:12,16,18,19 23:22,24 24:1 25:3 28:18 34:12 36:21 56:14 58:8,18 61:1 70:6,12 73:18 75:18 76:23,25 77:15,17 108:21 109:19 111:4 137:22 142:18 145:10 148:1 152:17 155:5	
1 [2] 17:25 18:2	above-entitled [1] 1:15	affirmatively [1] 93:4	applying [2] 56:7 59:17	
10:04 [2] 1:17 4:2	absolutely [7] 7:23 20:17 41:17 63:15 64:16 80:4 101:8	afraid [2] 13:3 32:18	appreciate [4] 59:6,24 109:16 152:19	
100 [1] 151:9	absorb [1] 51:22	African [1] 75:12	approach [2] 125:21 146:17	
113 [1] 3:11	abstract [2] 59:11 97:10	ago [1] 60:14	appropriate [3] 84:19,20,23	
12:27 [1] 157:3	abuses [2] 21:16 141:11	agree [34] 21:24 22:10,13,14 24:19,20 26:15 31:24 43:13,15,16 44:6,7 50:16 56:13 69:14 75:6 78:16 79:1,6 107:9 109:11 115:19 117:22 121:15 129:17 130:5,12 132:16 135:19 139:20 149:1 151:8 153:9	apt [3] 42:7,9,22	
154 [1] 3:14	accepted [1] 21:17	agreed [1] 56:16	area [2] 9:24 64:15	
19 [1] 110:8	access [3] 10:6 74:13 129:14	agreement [1] 146:18	areas [2] 12:25 16:5	
1917 [1] 92:18	accommodations [1] 131:1	ahead [1] 70:13	aren't [11] 16:12 61:7 85:19 90:25 91:1 113:20 121:10 124:5 136:23 144:10 150:3	
1973 [1] 142:11	accordance [1] 14:13	aim [1] 151:19	argue [4] 20:4 36:4 124:3 126:20	
1976 [1] 21:2	account [1] 29:1	AL [2] 1:4,8	argued [2] 45:23 121:3	
1997 [1] 110:13	accountability [1] 141:22	Alexandria [1] 2:4	arguing [1] 54:19	
2	accounts [1] 69:14	algorithm [13] 49:17,24 52:13,22,22,23 53:9 89:1,9,13,15 90:9 147:21	argument [29] 1:16 3:2,5,8,12 4:4,7 21:13 33:10 47:3 53:6 55:25 62:1 65:16 68:6,25 76:1,8 95:22 98:4,12 110:13 113:1 126:24 127:1 132:10 153:11 154:6 155:19	
2 [1] 112:17	accumulations [1] 141:13	algorithms [9] 50:3 52:9,11,16 53:25 54:3,6 89:4,25	arguments [9] 56:3 65:23 69:1 106:13 124:22 127:17 134:3,9 142:2	
20 [1] 110:9	accuracy [1] 141:21	Alito [43] 32:6,7,13 33:9,24 34:15,23 35:19 57:3 68:12 69:3,7,11,21 70:12 76:20,22 77:1,12 78:20 80:19 81:7,13,16 92:4,5,16 93:3 126:17,18 127:5,10,22 129:9 130:5,12,20 131:3,7,11,25 132:13 144:3	Arkansas [1] 72:7	
2000s [1] 65:19	accurate [2] 102:24 103:1	Alito's [1] 140:8	around [4] 63:1 92:6 152:6 155:24	
2024 [1] 1:13	achieved [1] 4:14	all-encompassing [1] 33:16	arrange [3] 113:7 156:8,13	
22-277 [1] 4:4	acknowledge [1] 119:25	all-or-nothing [1] 139:3	arranging [2] 118:20 135:9	
230 [35] 28:25 29:11,19 40:11,13 65:17,22 66:5,12 85:5,7,8,22,24 86:9,11 87:5 91:9,10 118:1 120:3 122:8,10,16,21 123:22 124:4,7 147:10,23 148:1,14,20 149:6,13	across [2] 89:20 118:13	allege [1] 30:5	article [3] 41:9 50:20 156:21	
230(c) [1] 29:16	act [2] 14:13 91:8	allegedly [1] 31:22	articulate [2] 84:20 94:2	
230(c)(2) [6] 41:3,6,14,18,21 42:1	acting [2] 130:25 144:7	allow [8] 19:24 21:18 37:4 105:16 114:22 127:23 136:13 152:9	articulated [1] 142:18	
230(c)(2)(A) [1] 124:15	action [7] 9:3 62:14 64:15 88:25 98:19 106:24 141:23	allowed [1] 57:17	artifact [1] 84:10	
24 [1] 156:22	actions [1] 98:25	allowing [3] 37:4 43:17 77:4	artificial [1] 71:17	
26 [1] 1:13	activities [6] 25:22 27:8 98:6,8 120:10 134:17	allows [1] 141:17		
3	activity [34] 12:17 27:10,11 37:12,17,19 38:19 46:22 59:17 62:17 63:2 64:19 69:2 70:18 74:2 75:17 76:2,10,16 78:10 80:12 84:17 99:4 102:3,7,22 103:15 111:11 113:15 116:15 117:20 135:3,6,11	alluded [1] 104:25		
3 [1] 151:18	actual [1] 98:16	almost [3] 8:10 46:15 67:23		
30 [1] 60:8	actually [23] 6:22 10:7 11:18 20:10 25:17 29:18 35:3 49:7 50:23 53:13 59:17 61:13 68:7 71:4,9 72:8 73:15 91:2 96:9 108:12 140:2 154:13,15	alone [2] 70:7 85:22		
30-day [5] 59:21 60:21 61:21 93:23 99:23	addendum [1] 98:23	alphabetical [1] 52:2		
303 [6] 63:9 101:20,21,23,23 102:2	additional [2] 51:12 138:9	already [1] 41:24		
4	address [7] 6:14 40:16 56:21 57:9 73:21 133:4 146:2	alter [2] 98:21 153:24		
4 [1] 3:4	adjunct [1] 60:22	alternative [1] 35:18		
5	adopt [1] 121:18	although [1] 121:9		
50 [1] 142:16	advances [1] 22:4	Amazon [2] 54:15 56:15		
6	advancing [1] 44:14	ambiguity [3] 25:18 58:16 153:16		
6 [1] 40:11	advertisers [6] 19:1,2,4 63:16 92:15 116:24	amend [1] 103:24		
62 [1] 3:7	affect [3] 128:20 143:19 149:9	Amendment [9] 1:4,20,24 5:2,7 6:1 7:18 13:22 14:18,		
7	affected [1] 6:11			
7 [2] 91:18 111:16				
9				
9/0 [1] 102:12				
90s [1] 65:19				
97A [2] 98:17 155:7				
99 [4] 17:15,18,19 72:11				
A				

Official - Subject to Final Review

<p>as-applied [9] 6:11 31:7 80:22 81:17,19 104:1 138:4 139:4 146:1 ASHLEY [1] 1:3 aside [3] 48:25 87:8 149:25 aspect [6] 6:17 15:1 20:10 54:9 73:2 78:5 asserted [3] 5:7 144:19,24 asserting [1] 41:22 assesses [1] 128:12 Associated [1] 43:22 assume [4] 50:8 59:15 107:9 136:5 assuming [1] 37:11 assumption [1] 135:21 attacked [1] 58:1 attacks [1] 91:17 attempt [1] 40:21 attempts [1] 111:3 attention [3] 10:10 51:18 93:23 ATTORNEY [1] 1:3 attribute [1] 38:24 audience [3] 62:20 87:20 88:1 Austin [1] 60:14 authors [2] 75:12 97:11 available [1] 124:19 avoid [1] 85:6 await [1] 138:22 aware [4] 27:22 28:4 33:15 45:5 away [3] 55:2 116:24 149:19</p> <p style="text-align: center;">B</p> <p>back [18] 29:22 43:21 52:7 65:19 104:15,18,21,23 109:9 121:3 124:19,20 138:2,2 145:24 146:14 147:6 148:6 backed [1] 138:16 bad [5] 18:20 66:9,15,25 77:23 bad-faith [2] 41:17,23 baffled [1] 126:18 balance [1] 44:4 balanced [1] 44:3 ban [5] 22:24 30:19 39:23 99:15,17 ban's [1] 99:16 banning [4] 31:2 53:19 58:19,23 bans [1] 12:10 bare [1] 120:14 Barrett [27] 47:24,25 48:24 49:14 50:6 51:14 53:5 54:7 55:17,24 56:9,13,23 76:21 78:14 79:8 80:2 93:14 107:7,8,19 109:5 145:16,17 147:9 149:1,21 Barrett's [1] 125:16 based [9] 22:25 53:11 75:7 84:13 121:1 126:9 130:10</p>	<p>133:22 139:6 baseline [2] 59:10 117:14 basic [1] 123:13 basically [8] 15:14 17:20 30:13 37:6 66:6 76:14 110:15 133:4 basis [21] 62:10 70:16 74:5,14 77:3,8 94:15 96:3,5,16 97:4,6,12 105:16 125:22 129:14,15,16 130:6 138:4 153:19 basket [3] 76:5 80:12 103:13 beam [1] 95:14 bear [1] 8:15 bears [1] 150:10 become [3] 8:13 63:18 141:3 becoming [1] 66:8 beg [1] 84:2 began [1] 13:15 beginning [1] 140:23 behalf [9] 2:3,5 3:4,7,14 4:8 62:2 138:13 154:7 behavior [1] 133:14 beliefs [1] 74:6 below [18] 32:8 68:7 80:9,14 84:15 94:6,7,12,14 124:18,24 127:17,18 132:17 134:4 137:4 138:7 152:19 benefit [3] 102:19 108:18,21 beside [1] 135:14 best [2] 30:3 102:5 better [2] 77:25 103:25 between [11] 45:9 46:4 48:7 74:8 88:25 93:2 118:10,16 122:18 147:13 156:17 beyond [2] 120:14 139:16 bias [5] 21:16 62:6 71:19,25 141:12 bicycles [1] 99:12 big [11] 37:24 62:6,19 71:4,13 95:9 118:10,15 141:4 142:12 151:18 biggest [3] 72:2,3 95:13 bigness [3] 70:16 130:6 142:19 bigots [1] 19:14 billion [1] 100:12 billions [1] 4:16 bit [6] 28:17 46:25 60:21 71:12 78:24 94:25 black [3] 75:11 97:11,11 blah [3] 120:5,5,5 bland [1] 132:4 blinks [1] 62:18 blocking [1] 124:14 blow [2] 91:13 100:13 board [1] 73:22 body [1] 143:10 bomb [1] 91:13 book [2] 24:20 42:21 books [2] 42:20,20</p>	<p>bookstore [3] 10:1 24:21 75:9 Bookstores [2] 24:3 52:1 boosted [2] 49:21 147:21 booted [1] 45:24 booting [1] 32:3 Boston [2] 101:12,13 both [6] 25:4 56:3 58:11 103:7 129:19 151:16 bottleneck [1] 110:4 bouncing [1] 92:6 bound [4] 115:2,11,22 116:11 bounds [1] 114:8 box [1] 129:22 boxes [1] 151:21 breadth [3] 9:7,10,14 breakneck [1] 33:5 brick-and-mortar [1] 54:22 brief [11] 8:7 15:7 47:12 55:4 74:1 76:12 117:18 148:7 150:8 156:16,22 briefed [2] 29:14 41:12 briefing [3] 78:23 79:24 147:4 Briefly [1] 29:6 briefs [1] 31:1 bright-line [1] 142:21 bring [3] 6:11 81:16,18 bringing [1] 7:3 brings [2] 63:3 142:5 broad [12] 4:20 8:9,14,24 10:25 25:3 30:25 54:11 55:1 68:18 93:20 152:15 broadcast [3] 23:1 44:19 155:12 broadcaster [1] 23:7 broadcasters [1] 23:6 broadcasting [1] 23:10 broadier [2] 17:9 87:20 Broadly [3] 5:5 19:6 58:12 brought [4] 54:18 80:22,25 150:6 Buckley [2] 20:22 21:1 build [1] 91:13 bulimia [1] 91:22 bullying [1] 36:18 bunch [6] 48:11 86:7 88:21,22 100:4 149:2 burden [12] 8:15,23 9:2 67:22,22 68:3,4 83:2 150:11,14,22 151:10 Burger's [1] 141:6 business [11] 5:13 14:14 15:13 36:9,24 45:12 96:11 105:10 113:17 120:11 136:3 businesses [3] 14:6,19 17:12 buy [2] 38:8 52:5 bypass [1] 115:17</p> <p style="text-align: center;">C</p>	<p>c)(2) [1] 29:16 cabin [1] 149:12 cable [3] 23:5 64:14 110:3 cagey [1] 32:20 California [1] 12:16 call [3] 10:3 42:18 121:17 called [2] 13:24 151:18 calls [1] 142:3 came [10] 1:15 75:25 93:10,11 101:14 102:20 103:1 104:23 110:20 132:12 campus [5] 19:14,25 32:4 39:23 45:25 cancel [1] 5:8 candid [1] 52:13 candidate [8] 72:19 83:20 111:20 112:2,3,14 131:18 145:5 candidates [3] 63:22 72:18 99:7 cannot [4] 22:24 63:6 130:13 142:24 canvass [1] 107:20 careful [1] 148:5 carefully [3] 14:16 40:2 149:12 Carlson's [1] 69:13 carried [1] 88:12 carrier [21] 7:16,18 14:9 26:8 34:8 42:25 46:6 48:20,25 49:1 73:15,17 79:25 113:25 133:13 134:6,11,20,25 135:14 155:21 carriers [13] 17:11 42:6 43:2 79:5 120:8,19 123:22 132:20,24 133:1,6,11 134:15 carry [6] 53:16 112:10,11 113:20 156:11,12 carrying [3] 118:12 135:3,4 Case [79] 4:4 6:6,18 8:1 15:18 16:21 20:11,18 25:25,25 27:17,21 28:2 29:17 30:4,5,17 31:10,14 32:25 35:11,16 41:20 43:21,22,24 57:24 60:14 64:14,24 65:8,18 71:9,12 73:16,24 75:21,25 78:16 80:20 83:10,12 84:11 87:3 101:10,11,14,25 102:5,11 103:16 106:14 109:3 124:7,18,22 126:8 127:14,19 128:22 134:1 137:4 140:3 142:10 143:24 147:2 148:8,17 149:7 150:3,11 151:10,16 153:20 154:10,21,25 157:2,3 cases [20] 8:18 22:11 45:5,10,15 47:13,14 63:5 64:7 65:5 66:5 86:2,3,5 89:17 92:6 94:21 106:13 113:9 135:12 categorical [1] 26:2 category [1] 109:25</p>	<p>cause [1] 112:18 causes [1] 19:9 causing [1] 148:11 caution [1] 149:19 celebrate [1] 75:11 celebrating [1] 111:16 cellphone [1] 43:2 censor [17] 4:21 6:2 10:18 22:24 39:1 42:17,20 47:18 48:23 62:25 64:9,25 98:18,19 99:3 155:22 156:10 censoring [11] 31:14,16 32:1 38:20 51:2 53:14 62:22 115:15 131:15,17 156:4 censors [1] 100:23 mentorship [18] 5:10 6:1 39:19 53:4,21 58:18,22 92:17,24 100:21 101:7 109:19,22,24 130:13,17 131:8 155:7 censured [2] 44:17,18 center [1] 45:13 central [3] 124:25 151:19 153:19 centuries [1] 14:10 cert [1] 29:14 certain [17] 6:3 9:13 26:6 30:20 36:17 50:22 70:25 77:24 78:12 90:16 114:11 120:2,2,9,9 121:18 137:10 14:2,15 15:4 17:8 19:12 24:20 26:13 30:16,18 31:19 33:18 34:12 52:12 58:13 60:12 87:3 119:12 121:17 128:17 149:11 certainty [1] 137:3 certify [1] 139:25 cetera [1] 146:4 chaff [1] 119:7 challenge [48] 6:6,12,15,19,24 7:3 8:13 25:21 28:12,17,23 29:2 31:7 34:16 40:24 54:1,9,25 56:18,22 57:22 75:24 80:23 81:1,5,17,19 82:3,5 86:4 94:3,19,23 97:9,17 104:1 106:16 117:23 119:5 126:24 127:24 128:20 139:3,5 146:1 147:22 150:6 152:20 challenged [3] 150:5 151:4 152:1 challenges [2] 31:5 153:2 challenging [1] 9:3 chance [5] 33:6 40:10 44:23 57:9 143:21 change [8] 60:7,10 61:2 99:25 100:6 105:9 112:19 144:25 changed [2] 39:7,7 changes [3] 21:13 141:8,9 characteristics [1] 96:17 characterization [2] 7:22 149:14</p>
---	--	--	--	--

Official - Subject to Final Review

<p>characterize ^[1] 34:5 charged ^[1] 19:8 CHIEF ^[45] 4:3,9 13:14 14:25 19:20 20:3,22 21:9 29:4,24 32:6 35:20 40:7 43:5 47:23 56:24 61:23 62:3 72:22 73:1,9 83:22 84:18 85:1 92:4 93:6 95:17 100:17 107:6 109:6 112:22 113:4 124:16 126:12,15,19 132:7 135:16 138:25 140:5 141:6 145:15 149:22 154:3 156:25 children ^[2] 106:1,4 chilling ^[1] 138:18 choice ^[2] 52:19 116:4 choices ^[3] 123:15 140:25 144:25 choke ^[1] 5:3 choose ^[1] 121:21 choosing ^[1] 123:3 chosen ^[1] 14:14 church ^[1] 91:14 Circuit ^[6] 59:2 76:11 80:14 103:8,9 137:21 circumstance ^[2] 57:3 117:10 circumstances ^[2] 28:19 148:10 cite ^[1] 50:20 cited ^[2] 149:16 156:22 City ^[3] 60:14 101:12,13 civil ^[2] 79:16 104:12 claim ^[6] 5:9 35:11,13,17 81:1 113:17 claimed ^[2] 5:9 141:15 claims ^[2] 41:20 121:6 clarity ^[2] 57:9 127:9 classic ^[4] 37:2 54:12 78:13 120:7 classroom ^[1] 102:11 clause ^[1] 75:19 clean ^[1] 77:25 clear ^[22] 56:4 57:6 59:7,10 63:10 75:24 76:12 77:16 80:7,13 102:2 103:9 108:7 111:11 128:25 132:21 137:19,25 140:20,21 143:25 149:12 clearly ^[5] 36:12 94:21 149:18 151:19 155:3 CLEMENT ^[109] 2:4 3:6 33:10 61:25 62:1,3 63:25 64:3,21 65:1,24 67:3,12,15 68:2,13,20 69:3,9,16,25 70:15,17 71:7,14 72:6,24 73:6,11,25 74:7,17,20 75:1,8,16 76:20,21,24 77:10,13 78:14 79:6,9 80:4,20 81:6,13,18,21,23 82:4,9,18 83:7 84:4,22 85:6,25 86:16,19,24 87:15,23 88:2,6,10 89:3,11,16 90:4,6,8,12,19,24 91:2,11 92:9,22 93:8 94:13 96:9,</p>	<p>18,25 97:7,14,23 98:14 101:8,21 102:25 103:22 104:19,21 105:7 106:12 107:18,22 109:8,20 110:24 111:8,23 112:5 115:13 129:11 145:18 150:13 Clement's ^[1] 145:22 client's ^[1] 112:7 clients ^[11] 62:22 64:1 66:2,20 73:21 74:11 77:2 97:8,16 108:18,21 closely ^[1] 72:17 closer ^[3] 52:3 63:17 73:23 clothes ^[1] 10:13 cognizable ^[1] 30:12 coincide ^[1] 71:18 coincidentally ^[1] 71:18 collections ^[1] 113:13 colloquial ^[1] 131:5 Colorado ^[1] 101:24 come ^[14] 10:16 12:20 15:22,22 19:11 30:17 37:3 66:22 78:1 83:4 105:12 110:18 133:9 143:14 comers ^[4] 7:15 14:7 46:15 120:15 comes ^[9] 6:18 47:17 48:2 74:21 80:16 100:3 104:15,17,21 comfortably ^[1] 127:23 coming ^[1] 8:15 commend ^[1] 156:21 comment ^[5] 6:13 20:23 99:25 129:10 151:21 comments ^[6] 77:17,18,22,24 100:5,7 commercial ^[1] 13:9 commit ^[1] 86:6 committee ^[2] 47:6,7 common ^[39] 7:16,17 12:25 13:4 14:8 17:11 26:8 34:8 42:5,25 43:2 46:6 48:20,25 49:1 66:5,10 73:14,17 79:4,25 113:25 117:3 120:7,19 123:22 132:20,24,25 133:5,11,13 134:6,11,15,19,25 135:13 155:21 communicate ^[2] 4:12 118:19 communicated ^[1] 87:14 communication ^[8] 5:5 42:12 114:6 122:13,15 123:7,8 141:16 communications ^[7] 4:16 34:10 45:12 113:25 120:22 129:21 135:4 community ^[3] 11:3 30:10 64:14 companies ^[32] 5:12 16:1 20:25 36:13 48:8,14 51:10 71:13,24 72:2,3 91:18 95:9,13,15 105:19,24 109:16,17 110:3 111:4 113:19 120:22 121:3 126:3 132:</p>	<p>20 134:15 136:17,22 137:23 138:5 151:19 companies' ^[2] 27:8 36:1 company ^[11] 5:1 15:12 58:24 71:1 87:1 105:10 113:25 118:11 129:22,23 130:10 comparable ^[1] 126:4 compare ^[1] 35:6 compared ^[1] 15:12 comparison ^[2] 35:9 59:11 compelling ^[3] 23:11,12 142:7 compels ^[1] 62:9 competing ^[1] 70:6 competitive ^[1] 43:3 compilation ^[4] 49:8 121:24 149:15 153:23 compilations ^[1] 113:8 compiling ^[1] 123:2 complaining ^[1] 91:1 completely ^[5] 26:15 79:17 101:11 134:13 148:22 compliance ^[1] 105:12 complicate ^[1] 40:21 complicated ^[1] 152:9 complicating ^[1] 28:22 complication ^[1] 29:2 components ^[1] 151:24 computer ^[1] 89:5 concentrated ^[1] 141:4 concept ^[1] 21:4 conceptions ^[1] 140:18 concern ^[3] 13:15,23 22:19 concerned ^[3] 14:2 105:3,4 concerns ^[4] 109:19 142:23 143:5 144:2 conclude ^[2] 27:6 67:7 concluded ^[2] 29:19 144:15 conclusion ^[1] 20:11 concrete ^[1] 138:22 condition ^[1] 20:16 conditions ^[2] 10:22 50:11 conduct ^[33] 5:6,17 11:21 19:19 20:13 22:1 24:22 25:7 26:10,16 31:22 34:1,4,6,9,18,19 55:2 65:21 66:9 67:9 87:10,13 100:11 102:23 112:8 113:18 118:16 132:4 143:12 148:12 150:24 151:6 conducted ^[1] 17:11 conduit ^[8] 47:3 65:18 66:7,18 118:8,10,17 123:25 conduit-type ^[1] 74:2 conduits ^[1] 66:4 conference ^[1] 42:18 confess ^[1] 148:6 confident ^[1] 136:20 conflating ^[1] 149:20</p>	<p>conflation ^[2] 156:15,15 conflict ^[1] 143:15 conflicts ^[1] 40:13 confrontation ^[1] 142:6 confronted ^[1] 110:13 confused ^[1] 59:20 confusing ^[1] 28:12 confusion ^[1] 152:12 Congress ^[7] 23:4 66:4,17,20 85:10 124:8,11 Congress's ^[1] 123:14 connection ^[1] 11:20 consensual ^[1] 142:4 consequences ^[2] 155:19 156:2 consider ^[1] 78:19 consideration ^[4] 22:8 60:15 61:17 147:7 considerations ^[1] 63:8 considered ^[2] 57:23 127:19 considering ^[1] 134:3 consistency ^[10] 23:17,20 57:12 58:6,17 60:23 61:5 106:10,18 111:8 consistent ^[9] 7:8,18 24:6 58:20 90:13 91:10 93:23 106:22 118:1 consistently ^[9] 23:23,24 58:8 61:1,7 66:3 105:17 106:25 111:4 constantly ^[1] 61:2 Constitution ^[3] 7:9 115:3 116:12 constitutional ^[11] 29:20 41:20,23 68:8 83:20 114:12 128:15 143:23 155:4,18 156:10 constraints ^[6] 51:7,7,11,17,18 63:9 construe ^[2] 57:19,25 consumer ^[7] 23:18 24:12 51:19,22 72:9,10 143:13 consumers ^[1] 4:23 contact ^[1] 93:16 contain ^[1] 119:17 contains ^[2] 32:22 151:23 contend ^[1] 4:19 content ^[78] 5:15,24 7:16 9:18 10:14 11:15,20 14:8 16:2,12,15 17:16,18 18:23 23:1,22 24:6,14 27:9 30:8,25 32:8 38:15,22,24 39:6,13 40:2,4 41:7,15,17,24 42:1 51:13 53:17 54:3 56:7 60:1,1,2,16 61:8,17 62:10,20,23 66:10 74:19 83:19 92:7,10,12,21,23,25 98:24 99:17,22 100:12 105:16 113:13 115:16 116:13,19,21,23 117:4,12 121:1 130:18 131:8 133:12,12 144:24 145:2 147:13 156:11 content-based ^[10] 36:12,</p>	<p>25 59:23 60:11,17 61:13,18 63:23 72:20 94:17 content-moderating ^[1] 27:9 content-neutral ^[3] 59:23 61:14 144:13 contention ^[1] 30:7 context ^[7] 35:4 66:21 67:16 83:5 103:1,4 117:23 contingent ^[1] 131:16 continuing ^[2] 87:17 140:10 contradicts ^[1] 4:22 contrary ^[1] 155:5 control ^[20] 4:11 13:17,19 44:25 45:1,7,18,20,24 46:5,17 47:17 48:1,5 49:3 50:13 110:4 125:23 129:3 142:24 controversy ^[2] 19:9,16 convey ^[2] 65:6 67:2 conveying ^[1] 117:1 core ^[5] 78:6,18 102:8 151:22 152:10 corner ^[1] 152:6 correct ^[4] 71:20 104:20 126:11 133:23 correctly ^[1] 114:20 couldn't ^[4] 32:11 96:4 100:6 109:11 Counsel ^[9] 6:5 13:14 29:25 61:24 72:22 83:23 112:23 154:4 157:1 counsels ^[1] 57:21 count ^[1] 58:2 countering ^[1] 55:25 countries ^[1] 140:20 country ^[1] 140:22 couple ^[4] 57:11 60:13 79:22 83:16 course ^[6] 45:5 89:23,25 108:25 115:9 148:10 COURT ^[94] 1:1,16 4:10 5:20 6:18,20 12:15 14:15,16 19:15 20:9 21:10,12,17 23:3,8 29:8,18 30:20 38:5 40:17,18 43:19,24 46:1,3 47:2,13,19 50:25 51:8 52:17,25 56:21 57:14,23 60:13 62:4 65:2 70:19 76:3 79:16 83:9 94:7,11,13 102:1 103:25 104:24 107:2 108:11,24 109:4 110:12,14 113:5 117:10 125:9,17,20,25 126:6 127:8,16,18 128:18,25 133:25 134:2 135:11 137:19,21 138:1,5,20 139:4,25 140:21 141:7 142:11 144:11 145:10 146:14,20 147:3 149:11,18 153:5 154:1,12,18,24 156:19,21 Court's ^[10] 35:8 63:24 64:13 83:12 94:21 101:9 113:9 114:13 134:2 141:6</p>
--	--	--	---	---

Official - Subject to Final Review

<p>courts ^[11] 57:18,25 69:19 73:13 84:14 125:6 129:2 144:10 147:8 149:19 151:17</p> <p>cover ^[17] 8:8,19 9:11,13 11:9 33:24 34:2 54:13,14 55:1 69:8,10 76:2 93:19 113:10 153:12,13</p> <p>covered ^[10] 32:15 33:11 44:5 59:17 68:11 81:12 125:11 128:11 155:9,13</p> <p>covering ^[2] 8:3,9</p> <p>covers ^[5] 55:7 57:5 113:11 136:6 137:13</p> <p>crack ^[1] 20:8</p> <p>crazy ^[1] 9:25</p> <p>create ^[5] 5:14 30:19 115:1 116:1 145:3</p> <p>created ^[2] 89:12 126:9</p> <p>creates ^[1] 134:21</p> <p>creating ^[16] 30:9 115:1 116:5 120:23 121:10 124:9 126:4 136:8,17,23 137:24 143:1 148:23 149:17 151:22 153:22</p> <p>Creative ^[2] 63:9 102:2</p> <p>crime ^[1] 91:6</p> <p>critical ^[4] 64:16 115:8,21 141:17</p> <p>crushing ^[1] 100:13</p> <p>curate ^[2] 113:7 122:7</p> <p>curated ^[2] 95:22 121:13</p> <p>curating ^[1] 130:3</p> <p>curation ^[2] 121:17 129:3</p> <p>curatorial ^[1] 135:11</p> <p>curiae ^[3] 2:8 3:11 113:2</p> <p>curiosity ^[1] 92:7</p> <p>current ^[2] 142:18,19</p> <p>curse ^[1] 11:4</p> <p>customers ^[4] 46:9 52:5</p> <p>cut ^[2] 78:15 155:11</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>D.C ^[2] 1:12 2:7</p> <p>damaging ^[1] 36:15</p> <p>danger ^[1] 98:15</p> <p>dark ^[2] 33:3 152:5</p> <p>data ^[1] 143:13</p> <p>day ^[5] 39:5 44:20 46:22 121:4 126:7</p> <p>days ^[1] 60:8</p> <p>DBA ^[1] 1:7</p> <p>deal ^[6] 21:21 46:13 100:2 117:21 139:3 143:8</p> <p>dealt ^[2] 141:1,2</p> <p>debate ^[2] 86:20 87:2</p> <p>decide ^[5] 75:20 79:7 84:7 127:23 138:6</p> <p>decided ^[2] 101:13 138:7</p> <p>decides ^[1] 104:5</p> <p>deciding ^[2] 116:12 130:3</p> <p>decimal ^[1] 50:5</p> <p>decision ^[10] 19:8 38:25 64:13 78:13 101:6,9 108:</p>	<p>15 110:14 126:9 149:19</p> <p>decisions ^[8] 19:17 75:22 80:22 100:11 101:3 108:2 148:2 151:16</p> <p>declarations ^[3] 32:23 33:19,20</p> <p>decorum ^[2] 17:13,14</p> <p>deem ^[1] 116:22</p> <p>deep-learning ^[1] 89:9</p> <p>defamation ^[1] 66:23</p> <p>defend ^[6] 28:12,14 55:5,12 125:15 152:8</p> <p>defendants ^[1] 28:20</p> <p>defended ^[3] 55:14 125:22 150:4</p> <p>defending ^[3] 55:22 114:15 134:4</p> <p>defends ^[1] 62:15</p> <p>defense ^[1] 129:1</p> <p>define ^[2] 9:8 92:8</p> <p>defined ^[1] 38:14</p> <p>defines ^[1] 62:19</p> <p>definitely ^[1] 16:14</p> <p>definition ^[7] 9:11,15 76:24 98:17 122:14 155:6,8</p> <p>definitions ^[1] 82:10</p> <p>definitively ^[2] 107:24 153:6</p> <p>delay ^[1] 76:19</p> <p>delete ^[4] 69:12 75:5,6 98:20</p> <p>delivery ^[3] 5:2 113:19 118:15</p> <p>Democrats ^[1] 155:25</p> <p>Democrats.com ^[1] 15:10</p> <p>denied ^[3] 129:13,15,16</p> <p>denominator ^[3] 34:24 35:3 117:3</p> <p>Department ^[1] 2:7</p> <p>depend ^[1] 24:25</p> <p>depends ^[3] 53:7 86:1 116:17</p> <p>deplatform ^[4] 6:3 22:25 39:1 87:16</p> <p>deplatformed ^[4] 87:22 111:21 112:4,6</p> <p>deplatforming ^[8] 32:1 38:20 53:21 58:19,22 133:7 155:8 156:4</p> <p>deplatforms ^[2] 87:12 155:9</p> <p>deprioritizing ^[1] 31:2</p> <p>describe ^[2] 5:22 43:11</p> <p>described ^[1] 52:17</p> <p>design ^[2] 4:24 43:8</p> <p>designation ^[1] 134:10</p> <p>designed ^[2] 53:9 89:6</p> <p>designers ^[1] 113:11</p> <p>details ^[1] 108:11</p> <p>determination ^[1] 57:14</p> <p>determine ^[4] 59:18 60:10 61:6,12</p> <p>determining ^[1] 59:22</p> <p>detrimental ^[1] 120:10</p>	<p>developed ^[2] 33:2 128:8</p> <p>development ^[4] 65:14 126:8 138:23 147:7</p> <p>devices ^[1] 89:19</p> <p>devoted ^[1] 16:11</p> <p>Dewey ^[1] 50:5</p> <p>dictate ^[2] 110:9 115:24</p> <p>difference ^[9] 93:2 115:9,14,21 118:10,16 120:18 121:25 150:13</p> <p>different ^[3] 4:17 15:11,17 18:15 20:21 22:17,18 28:18,18,20,21 35:14 39:8,13 48:18 51:4 52:21,25 54:16 68:17 93:12 95:19 100:22 101:11 122:19 135:5 140:18,22 141:5 145:22 147:23</p> <p>differently ^[1] 93:11</p> <p>difficult ^[6] 20:4 33:8 52:10 119:8 127:15 147:25</p> <p>direct ^[19] 20:15 73:9,10,11,19 74:3 75:6 77:4 79:24 93:17,22 96:1 97:1 125:11 127:3 129:15,19 136:7 153:12</p> <p>directly ^[3] 20:18 22:20 142:24</p> <p>disagree ^[3] 19:3 59:15 129:18</p> <p>disagrees ^[1] 118:4</p> <p>disavow ^[1] 5:16</p> <p>discernable ^[1] 117:13</p> <p>disclose ^[1] 58:25</p> <p>disclosure ^[4] 12:10 59:1 144:4,9</p> <p>discovery ^[10] 33:7 76:18 103:2,7 104:4,8 154:14,19,22,23</p> <p>discretion ^[2] 62:8 63:15 64:9 65:21 66:15 85:12 86:10 89:20 90:4 92:11,14 93:1,4 95:16,23 98:4 101:5 106:18 123:10 124:13 152:2</p> <p>discriminate ^[8] 74:5,12 77:2 96:3,5,15 105:16 121:1</p> <p>discriminates ^[1] 62:9</p> <p>discriminating ^[2] 77:7 106:7</p> <p>discrimination ^[6] 12:9 74:10 94:11 95:2 106:8 130:6</p> <p>discriminatory ^[2] 95:2 121:18</p> <p>discuss ^[1] 120:4</p> <p>discussing ^[3] 56:5 138:12 146:22</p> <p>disfavor ^[1] 5:4</p> <p>disfavored ^[1] 5:8</p> <p>display ^[4] 62:21 75:10,12 99:22</p> <p>dispose ^[1] 29:17</p>	<p>disposition ^[1] 140:3</p> <p>dispute ^[1] 45:17</p> <p>disseminate ^[2] 65:7,10</p> <p>dissemination ^[4] 14:24 23:10 63:6 117:19</p> <p>distinct ^[3] 53:2 148:23 156:5</p> <p>distinction ^[7] 48:6 88:25 109:10 115:19 147:12 156:16,23</p> <p>distinctions ^[3] 71:17 72:15 94:24</p> <p>distinctive ^[1] 147:1</p> <p>distinguish ^[3] 70:16 74:8 122:18</p> <p>distinguishes ^[1] 142:14</p> <p>district ^[6] 29:18 109:3 137:21 154:12,18,24</p> <p>DMs ^[3] 78:20 79:2 107:12</p> <p>doctrine ^[3] 6:8 87:7 136:10</p> <p>dog ^[1] 125:12</p> <p>dogs ^[1] 105:21</p> <p>doing ^[2] 4:22 25:1 26:20 27:2 47:7 49:11 52:11 61:7 64:1,8 66:21 77:14 89:22 92:23,25 105:25 114:17 116:6 118:17 125:24 133:17</p> <p>dominance ^[1] 142:24</p> <p>done ^[3] 24:7 26:11 82:12</p> <p>down ^[8] 25:14 66:25 67:5 83:13 101:14 102:19 152:9 154:13</p> <p>draw ^[2] 46:3 71:16</p> <p>drawn ^[1] 72:15</p> <p>drill ^[1] 25:14</p> <p>drive ^[1] 116:24</p> <p>driven ^[1] 100:11</p> <p>drivers ^[2] 77:9,17</p> <p>Dropbox ^[1] 96:1</p> <p>due ^[2] 67:12 83:8</p> <p>duty-to-explain ^[2] 100:9,10</p> <hr/> <p style="text-align: center;">E</p> <hr/> <p>e-commerce ^[2] 126:2 146:23</p> <p>each ^[8] 4:12 26:17 42:13 93:16 105:10 116:25 122:25 142:2</p> <p>earlier ^[3] 20:23 143:24 149:16</p> <p>early ^[2] 40:16 65:19</p> <p>easy ^[4] 6:10 61:11 110:17 152:4</p> <p>edit ^[2] 63:22 98:21</p> <p>editing ^[3] 49:13 85:24 88:25</p> <p>editor ^[2] 49:6,12</p> <p>editorial ^[47] 37:7 38:7 44:24 45:1,6,17,20,24 46:5,17 48:1,5 49:3 50:13 62:8 63:14 64:9 65:21 66:15 74:25</p>	<p>75:22 78:13 85:12 86:9 89:7,20 90:4 92:10,13 93:1,3 95:15,23 98:4 100:6 101:5 106:18,23 109:12 112:19 119:18 124:13 129:4 135:11 142:25 146:9 152:2</p> <p>editorialize ^[2] 74:24 106:25</p> <p>editorialized ^[1] 123:10</p> <p>editors ^[3] 4:18 113:10 142:8</p> <p>effect ^[11] 57:18 67:1 79:19 91:4 104:17,17 105:8 136:14 138:18 141:14 152:10</p> <p>effective ^[2] 109:2 141:21</p> <p>effects ^[2] 6:25 7:2</p> <p>effort ^[1] 62:5</p> <p>eggs ^[4] 76:5 80:12 103:13,13</p> <p>either ^[5] 38:25 69:23 76:14 142:4 150:15</p> <p>ejusdem ^[1] 87:7</p> <p>element ^[1] 42:24</p> <p>elements ^[3] 21:5 116:9,10</p> <p>Eleventh ^[6] 59:1 76:11 80:14 103:8,9 137:20</p> <p>eliminate ^[1] 46:12</p> <p>ELIZABETH ^[3] 2:6 3:9 113:1</p> <p>elude ^[1] 115:18</p> <p>email ^[6] 70:6 77:3 129:13,13,20 146:24</p> <p>emails ^[1] 75:5</p> <p>embodied ^[1] 116:19</p> <p>embody ^[1] 117:5</p> <p>emergency ^[2] 138:3 145:25</p> <p>emphasize ^[3] 45:6 104:11 143:7</p> <p>emphasized ^[2] 43:25 45:3</p> <p>empires ^[1] 141:14</p> <p>employees ^[1] 16:10</p> <p>enable ^[2] 5:1 42:12</p> <p>enabling ^[1] 42:12</p> <p>enact ^[2] 51:25 124:6</p> <p>encourage ^[2] 66:13,25</p> <p>encouraging ^[3] 86:5 124:12 146:2</p> <p>end ^[5] 15:10 17:23 19:9 143:20 145:18</p> <p>endorse ^[1] 118:5</p> <p>enforce ^[3] 16:8 36:20 37:5</p> <p>enforceable ^[1] 40:12</p> <p>enforced ^[2] 79:13,15</p> <p>enforcement ^[1] 111:6</p> <p>enforcing ^[2] 16:11 112:1</p> <p>engage ^[7] 34:1,3 41:23,25 103:11 110:5 130:13</p> <p>engaged ^[12] 19:18 26:3 34:9 45:19 56:1 65:20 98:5,8 118:12 137:24 151:5 152:3</p>
--	---	--	---	---

Official - Subject to Final Review

<p>engagements ^[1] 60:7 engages ^[1] 87:11 engaging ^[3] 24:21 34:6 41:16 engines ^[1] 54:15 enhance ^[2] 21:6 114:10 enough ^[11] 6:10 21:18 51:21 55:1 56:9,17 67:20 70:8 94:17 104:11 105:25 ensure ^[1] 141:21 ensuring ^[4] 14:19,24 44:2 144:5 entails ^[1] 106:11 entered ^[1] 39:15 enterprise ^[3] 13:10 23:13 155:11 enterprises ^[6] 22:22,25 44:17 63:23 99:8,18 entire ^[2] 94:19 152:24 entirely ^[4] 53:6 135:5,14 154:10 entities ^[5] 26:6 43:1 67:8 113:6 145:6 entitled ^[3] 128:15 134:22 149:5 entity ^[4] 26:20,20 60:6 101:3 entity's ^[1] 101:6 environment ^[3] 30:20 39:15 109:18 envision ^[1] 83:5 equal ^[2] 75:19 102:10 equalizing ^[1] 44:22 errs ^[2] 74:1 117:19 escape ^[2] 80:2,5 ESQ ^[4] 3:3,6,9,13 ESQUIRE ^[1] 2:4 essence ^[1] 41:22 essentially ^[7] 46:17 64:12 66:14 89:5 99:7 102:13 104:9 establish ^[3] 83:3 142:21 143:22 ET ^[3] 1:4,8 146:4 ether ^[1] 89:5 Etsy ^[2] 9:22,22 10:12,12 11:12,14,16,18,23 13:7 32:23 54:18,19 55:8,13 56:5,14 77:19,21,23 78:21 Etsy's ^[1] 13:11 euphemism ^[4] 92:17,24, 25 121:21 euphemisms ^[1] 115:17 evaluate ^[1] 59:21 even ^[36] 4:22 10:4 13:11 15:21 16:8 19:6 33:25 37:5,22 49:10,12 51:16 58:6 61:5 74:6,13 97:9 99:10, 24 101:5 103:8,23 112:15 118:4 120:13 132:25 133:8,11 137:8 142:22 143:17 153:12,13 154:15,23 155:21 event ^[1] 50:12</p>	<p>events ^[1] 70:3 everybody ^[3] 98:10 119:3 132:19 everyone ^[1] 10:15 everything ^[4] 8:10 26:9 52:1 84:11 evidence ^[1] 101:22 exact ^[2] 47:14 65:18 exactly ^[18] 8:16 20:14 25:1 28:9 52:11 54:2 57:6 72:11 76:13 81:25 87:9 90:6 102:17 105:3 114:16 145:21 153:7,16 example ^[13] 23:16 39:4 44:16 49:20 55:11 57:12 59:21 64:24 87:10 113:19 115:24 130:14 131:2 examples ^[1] 78:8 exception ^[2] 114:1 142:12 exceptions ^[2] 36:11,12 excessively ^[1] 86:14 exchange ^[2] 43:19 114:6 excised ^[1] 88:14 exclude ^[12] 24:6 37:25 92:3 97:4,6 100:11 101:4,6,13 120:2,9 123:3 excluded ^[1] 95:21 excludes ^[2] 96:23 100:24 excluding ^[3] 37:7 78:11 118:21 exclusion ^[1] 133:12 exclusively ^[1] 33:25 excuse ^[3] 26:1 45:22 48:23 exercise ^[4] 49:4 66:14 85:12 92:13 exercised ^[1] 95:16 exercising ^[9] 13:19 45:24 46:5 47:16 63:14 64:8 86:9 101:16 123:2 exhausted ^[1] 88:9 existence ^[2] 40:4,4 expansive ^[1] 41:21 expelled ^[1] 130:17 explain ^[1] 85:4 explains ^[1] 141:24 explanation ^[1] 30:3 explicit ^[1] 16:13 explicitly ^[1] 46:1 express ^[5] 55:10 118:2,24 142:6 146:18 expresses ^[2] 38:21 130:15 expression ^[13] 13:9 38:14 52:19 55:3,20 56:1 84:3 113:23 122:6 123:1,24 144:20 145:10 expressive ^[63] 19:19 24:21 31:22 34:9,18 38:11,13 46:23,25 50:10 52:14 53:6 56:6 59:16 62:17 63:2 65:21 69:1 70:18 74:3 76:2, 10,16 78:5,10 80:12 84:17</p>	<p>87:10,13 96:11 99:3 102:3, 7,22 103:13,15 111:11 113:8,14 116:3,5,6,14 117:20 120:24 121:24 125:25 126:4 129:5 130:1 131:22 132:23 133:6 134:17 135:3,7 136:24 137:24 143:1 145:3 146:4 149:15 151:22 expressly ^[1] 80:8 extend ^[1] 125:11 extent ^[12] 6:7 11:16,17 40:13 41:15 61:8 73:21 80:20 124:3 125:13 132:2 152:23 extreme ^[1] 63:23 extremely ^[3] 18:1 36:15, 19 eyeballs ^[1] 15:14 eyes ^[1] 49:16</p> <p style="text-align: center;">F</p> <p>face ^[7] 58:1 59:24 60:17 61:20 124:23 137:5 152:15 Facebook ^[28] 15:12,24 25:10,12 26:8 32:23 36:1 38:12 77:5 78:17 80:24 88:16 89:17 90:20 93:14 96:24, 24 98:3 107:10,11 110:7,8, 9 125:4 135:22,23 137:14 146:3 Facebook's ^[1] 25:8 Facebooks ^[1] 78:11 facial ^[37] 6:6,14,18 25:20 28:11,16,22 29:2 31:4 34:16 40:24 54:1,9,25 56:17, 22 57:22 67:4 75:24 80:25 81:5 82:3,4 94:3,23 117:22 119:5 126:23 127:24,24 128:20 136:25 139:2,5 150:6 152:20 153:2 facially ^[4] 41:2 67:6 68:1 136:12 facilitate ^[1] 5:19 facilitating ^[3] 5:5 114:6 118:18 facilities ^[1] 14:7 facility ^[1] 77:6 fact ^[30] 4:18 6:14 9:16 13:8 17:13,14,17,18 18:22 19:7,21 39:13,21 46:14,21 47:4 57:17,24 61:16 68:5 102:5 108:6 109:14 117:22 121:13 139:8 154:9,13,20, 25 factor ^[1] 51:9 facts ^[4] 27:23 28:5 36:5 57:3 factual ^[4] 28:19 126:7 138:23 147:7 factually ^[1] 124:10 fail ^[2] 5:9 56:10 failed ^[2] 5:10 121:6 FAIR ^[16] 5:11 19:10 20:5</p>	<p>25:25 26:5 27:15,17 32:2 45:23 48:7,9 51:8 73:23 101:25 102:1,5 fairly ^[3] 32:20 43:3 84:7 fairness ^[4] 21:19 44:4 59:12 141:21 fairs ^[1] 48:9 faith ^[1] 42:2 falls ^[1] 12:9 familiar ^[1] 14:5 far ^[3] 31:14 52:15 54:10 farther ^[1] 55:2 fast ^[3] 154:12,17,18 fault ^[5] 84:13 128:1 154:11 155:1,2 favor ^[1] 57:22 favors ^[1] 25:19 feature ^[2] 25:9 28:22 featuring ^[1] 116:9 February ^[1] 1:13 federal ^[2] 19:22,23 FedEx ^[2] 42:19 118:15 feed ^[17] 25:9 36:1 53:8 54:19 88:4 93:13 96:24 98:3 99:5,5 130:2 135:23,24 137:14 146:3 147:15,21 feeds ^[5] 39:7 95:22 99:12 107:10,10 feel ^[2] 57:1 123:10 felt ^[1] 19:12 few ^[4] 15:22 21:14 129:10 141:10 field ^[1] 62:6 fight ^[3] 44:25 62:6 125:13 figure ^[5] 25:15 127:8,11 150:2 153:14 filtering ^[1] 123:3 filters ^[1] 17:22 filthy ^[1] 86:13 final ^[4] 79:10 103:20 104:15 153:7 finally ^[2] 90:5 132:10 find ^[8] 32:11,14 33:12 35:14 117:7 136:10 145:11 152:6 fine ^[7] 55:6 56:14,15 81:9 83:16 86:20 87:2 finger ^[1] 134:7 finish ^[1] 40:10 finished ^[1] 82:15 first ^[109] 4:4,20,24 5:2,7, 25 7:18 11:13 13:22,22 14:18,23 15:2,6 20:12 21:3,7, 24 22:4 30:21 37:2,11,17, 18 38:2,3 43:8,11,12,14,17, 20 45:8 46:16 50:13 51:5 52:6,7 62:7,13,13 63:18 64:11,17,25 67:10,15 69:12 71:5,13 72:5 73:3,5,7, 12 75:17 79:18 80:15 81:14 83:7,10,11,18 84:23,25 85:14 97:7,10 101:1,16 107:3 111:11 113:6,15,17, 21 114:1,9,24 115:11,23</p>	<p>116:1 122:24 123:16,19 130:7,11 134:13,16,23 135:2 136:9 139:9,12,18,22,23 141:25 142:7,13 143:15 148:16,24 149:5,14 150:7 154:8 155:22,24 first-order ^[1] 130:23 fit ^[2] 6:8 101:20 fits ^[4] 24:18 47:8 85:24 149:15 flags ^[1] 72:14 flea ^[1] 54:22 fleshed ^[1] 128:3 floats ^[1] 85:17 FLORIDA ^[44] 1:4 2:3 14:4 32:15 51:25 55:7 57:18 62:15 69:7,9 76:23 78:8 80:8 91:7 99:13 102:13 103:10 104:5 105:21 108:3 112:14 124:24 125:15,22 126:20 127:14 128:8 134:9 135:6,22 136:1 137:3,20, 21 138:10 139:25 140:1 144:22,24 150:4 151:4 152:8 153:8,14 Florida's ^[9] 19:5 54:10 55:1 59:6 62:5 63:17 125:5 129:1 155:1 Floridian ^[2] 79:14,15 focus ^[2] 69:19 150:9 focused ^[5] 78:5 95:21 125:1 151:20 152:1 follow ^[3] 42:4 140:8,10 footnote ^[2] 35:16 76:12 force ^[2] 125:8 138:15 forced ^[2] 63:6 67:2 foreign ^[1] 21:7 forget ^[2] 81:11 115:16 forth ^[3] 120:23 129:24 151:25 fortunate ^[1] 65:12 forum ^[5] 37:24 47:18 92:3 114:22 115:2 forums ^[2] 4:15 119:16 forward ^[1] 108:23 found ^[2] 39:5 142:1 frankly ^[1] 147:4 free ^[10] 4:15 10:15 12:22 14:24 23:9 41:10 43:18 62:12 66:7 114:6 freely ^[2] 118:3,25 friend ^[6] 67:16 103:6 144:22 155:5,20 156:6 friend's ^[4] 76:1 84:10 102:5 155:19 friends ^[5] 18:25 31:24 35:12 78:8 102:1 front ^[5] 15:10 17:23 31:8 52:3 68:10 front-end ^[2] 47:4,8 front-line ^[1] 21:25 full ^[1] 134:23 fully ^[2] 33:1 63:10 function ^[12] 42:11 50:18,</p>
--	--	---	--	---

Official - Subject to Final Review

18 89:7 123:3 129:4,13 133:23 142:25 151:22 156: 17,18 functionalities [1] 93:12 functionality [2] 127:21 151:2 functions [8] 33:13,17 50: 17 53:8 93:25 128:12 132: 23 155:17 fundamental [2] 93:1 156: 14 fundamentally [4] 45:7 105:9 112:19 153:24 funding [2] 20:10,16 further [8] 30:1 93:5 101: 22 126:7,16 127:1 138:23 147:7 future [2] 108:25 128:5	93:15 95:25 107:12 136:2, 3 137:6 146:23 153:13 155:16 Gmail-like [1] 136:7 Gonzalez [3] 5:22 50:2 148:8 good-faith [1] 41:15 goodness [1] 72:17 goods [7] 11:14,21,23 12:2 54:21 55:8,10 Google [3] 5:22 54:14 70:5 GORSUCH [5] 28:15 29:6, 10,22 40:8,9,15,20,23 42:3 43:4 73:25 74:7,15,18,22 75:4,14 81:20,22,25 82:6, 11,22 100:18 117:17 118: 22 119:22,25 121:2,7,12, 20 122:1,3,5 123:5,17,21 124:2 139:1,2,9,12,15,17, 18,22 140:4 147:12 149:16 Gorsuch's [1] 103:17 gosh [1] 137:8 got [2] 72:8 139:9 gotten [2] 18:1 102:18 govern [1] 67:8 government [40] 19:22,23 20:23 21:4 24:1 43:12,13 47:12,16 64:1,2,4,5,6,7,17 65:8 74:1 100:23,24 109: 11,22,23 111:3,9 114:3,16, 18,22,25 115:14 120:25 131:22 141:23 142:4 143: 8,10,18,22 144:4 government's [5] 64:8 92: 22 115:5,22 150:8 government-mandated [1] 21:19 governmental [2] 142:5 144:15 governments [3] 114:4,8 144:1 governor [1] 95:10 governor's [1] 95:5 Grange [1] 57:24 grant [1] 124:11 granular [1] 150:24 great [2] 21:11 39:11 greater [2] 42:17,19 ground [1] 102:21 group [1] 101:13 guarantee [1] 118:2 guess [22] 11:18,19 25:1,8, 24 27:3 29:9 30:10 31:4 45:16 46:20 56:10 97:20 111:5 117:2 130:22 133: 18 136:19 150:2,12 155:22, 23	handmade [2] 54:21 55:10 handmarked [1] 55:10 hands [2] 21:14 141:10 happen [7] 71:18 103:18, 20 104:14,25 105:1 128:5 happening [1] 28:8 happens [1] 100:12 happy [1] 17:3 harassing [1] 86:14 hard [8] 10:11 22:16 25:2 75:2 78:15 127:8,11 139: 21 harder [2] 71:9 73:23 harm [1] 148:11 harmful [3] 106:1,3 116:23 hate [2] 16:3 36:18 haul [1] 107:2 he'll [1] 140:9 health [1] 36:17 hear [3] 4:3 26:7 149:24 heard [3] 62:16 76:1 105:2 hearing [1] 103:3 heart [2] 23:20 75:22 heckler's [1] 19:5 held [9] 12:16 14:11 38:5 47:19 60:13 73:15 113:9 122:22 123:23 help [1] 119:9 HENRY [5] 2:2 3:3,13 4:7 154:6 highly [1] 23:12 Historically [1] 85:18 history [3] 75:11 83:12 97: 11 hit [1] 55:20 hold [4] 76:9 79:20 80:17 133:25 holding [3] 73:17 107:24 119:15 holds [3] 120:12,13 127:16 holes [1] 136:25 home [1] 48:22 honestly [2] 105:8 107:22 Honor [46] 6:16,23 7:11 9:2 11:11 12:15 13:7 14:3 15: 3 16:20 17:7 23:17 24:9, 18 25:19 26:14 29:15 32:9, 18 33:16,23 35:4 37:10 38: 18 39:17 40:25 41:12 42: 10 43:16 44:8 46:20 48:18 49:7 50:1 51:3 53:13 56:4 57:16 58:14 61:21 68:3 69: 17 85:7 89:4 91:11 109:21 horrible [2] 39:12 112:8 host [15] 4:16,21 9:18 14: 20 17:17 36:10 38:22 46:4, 5,11 48:22 50:22 51:12 93: 13,14 hosting [12] 7:19 12:18 13: 8 19:8 22:20 34:7 48:9,14 50:18 53:3 54:24 156:17 hosts [1] 48:8 houses [1] 24:2 however [3] 53:17,20 142:	1 huge [1] 138:18 human [3] 10:10 49:16 89: 10 humanized [2] 49:15,15 humans [2] 89:6,24 hundred [2] 72:13 106:22 Hurley [16] 16:21,22 17:4 45:5 46:13,20 47:3,8 63:4 65:4 85:16 90:15 92:1 101: 10 117:10 131:15 hypo [1] 37:11 hypothesis [1] 53:7 hypothetical [2] 16:14 114: 20	incorrect [1] 119:15 incredibly [1] 91:22 indeed [11] 5:16 7:12 14: 13 15:6,9 23:11 42:22 43: 1 46:7 55:1 63:12 indeterminacy [1] 57:2 indeterminate [1] 8:25 indicate [1] 117:18 indicated [1] 119:13 indicating [1] 67:16 individual [5] 18:21 89:2 101:2 122:20,25 individualized [1] 88:15 individuals [2] 140:17 142: 15 industries [1] 120:20 infinite [2] 8:12 10:4 influence [1] 143:6 influences [1] 95:3 inform [2] 21:14 141:10 information [8] 10:9 51:19, 21 52:9 54:2 110:17 144:7 151:12 infringement [1] 153:25 infused [1] 95:1 inherently [8] 19:19 24:21 31:21,22 113:14 116:14 130:1 135:7 inhibit [2] 98:21,25 initial [1] 115:11 injunction [23] 33:5 76:4,7, 9,19 79:11 80:6 81:3,9 82: 14 103:3 106:15 108:5,9, 17,22 126:21 128:16 132: 15 133:19,20 138:14 153:5 innkeeper [1] 14:11 innocuous [1] 83:15 inquiry [1] 143:21 inside [2] 12:19,21 insisted [1] 154:11 insisting [1] 62:16 insofar [2] 13:7 34:7 Instagram [1] 48:4 instance [1] 37:13 Instead [6] 19:17 80:25 95: 20 102:22 118:20 122:25 instinct [1] 146:19 insufficient [1] 127:23 insurrectionists [1] 18:9 interact [1] 99:1 interest [32] 14:18,22,23 22:6,6 23:2,3,9,11,12 31: 20,21 43:17,20 44:8,21,22 46:16 56:6 72:10,10 99:10 114:5,7 117:6 138:13 144: 15,16,23,23 145:8,13 interested [2] 30:24 77:14 interesting [2] 84:12 117: 7 interests [11] 13:11 22:2,4, 9,9,15,18 23:15 31:16 44: 14,16 interfere [1] 118:23 interference [1] 53:22
--	--	--	--	---

Official - Subject to Final Review

<p>interferes ^[1] 62:8</p> <p>interfering ^[1] 140:24</p> <p>interim ^[3] 104:10,14 105:19</p> <p>intermediate ^[7] 37:14 76:6 80:10 84:12,16 103:11 145:11</p> <p>Internet ^[12] 4:11 8:4,11 10:7 15:8 44:19 63:11,13 65:14 109:15 110:15 129:23</p> <p>interpret ^[1] 58:11</p> <p>interpretation ^[3] 31:9,10 148:20</p> <p>interpretations ^[1] 58:5</p> <p>interpreting ^[1] 57:15</p> <p>interpretive ^[1] 58:14</p> <p>interrupt ^[2] 51:15 123:5</p> <p>intersection ^[1] 26:25</p> <p>intervention ^[4] 20:24 43:24 44:1 89:10</p> <p>interview ^[1] 39:22</p> <p>intolerable ^[1] 16:18</p> <p>invalid ^[2] 129:7 137:5</p> <p>invalidity ^[1] 144:10</p> <p>invalidity ^[1] 137:1</p> <p>invoked ^[1] 45:25</p> <p>involved ^[5] 22:11 27:16 45:11 47:20 102:21</p> <p>involves ^[1] 75:22</p> <p>involving ^[1] 73:16</p> <p>irony ^[1] 105:13</p> <p>irrelevant ^[2] 46:16 134:13</p> <p>irrespective ^[1] 98:10</p> <p>ISIS ^[1] 49:10</p> <p>isn't ^[14] 18:11 37:1 38:2 48:15 88:13 112:1 123:8,17,24 125:6 128:1,2 151:9 153:1</p> <p>isolate ^[1] 26:16</p> <p>Israel's ^[1] 130:16</p> <p>issue ^[18] 23:14 29:19,20 70:23 71:2 83:25 119:18 127:6,8,12,15 133:1,23 138:6 142:10 147:25 148:16 153:19</p> <p>issued ^[1] 126:21</p> <p>issues ^[12] 20:1 36:17 100:3 126:7 128:19 137:20 138:21 140:1 147:1,2 148:9 149:20</p> <p>issuing ^[1] 153:7</p> <p>it'll ^[1] 138:2</p> <p>Italian ^[1] 99:12</p> <p>itself ^[7] 45:2 53:11 89:10 114:22 115:2 135:24 148:3</p> <hr/> <p style="text-align: center;">J</p> <p>JACKSON ^[43] 24:25 25:23 26:19,22,25 27:13,24 28:1,4,7 50:16 56:25 57:1 58:3 59:3,5,13 60:5 61:4,10,22 64:21 67:3,14,21 68:3 69:1 70:11,12,14,22 71:11,22 72:22 73:1,9,25 74:7,15,18,22 75:4,14 76:20,21,22 77:1,12 78:14,20 79:8 80:1,2,19 81:7,13,16,20,22,25 82:6,11,22,23 83:22 84:18 85:1,2,3,23 86:11,18,23 87:6,21,25 88:5,7,24 89:8,14 90:3,5,9,13,22,25 91:5 92:4,4,5,16 93:3,6,6,8,14 94:8 95:17,17,18 96:13,21 97:1,12,20,24 98:14 100:16,17,17,19,20 101:19 102:15 103:14,17 104:13,20,23 106:9 107:5,6,6,8,19 109:5,6,6,8 110:22,25 111:18,25 112:21,22 113:4 114:14,21 115:7,13,21 116:7,16 117:17 118:22 119:22,25 121:2,7,12,20 122:1,3,5,9 123:5,17,21 124:2,16 125:16 126:</p>	<p>22,25 111:18,25 112:21 149:23,24 150:25 151:8 152:11,14,23 154:2</p> <p>jail ^[1] 92:19</p> <p>jib ^[1] 155:12</p> <p>job ^[5] 27:15 48:9 73:22 77:23,23</p> <p>Journal ^[1] 41:10</p> <p>journalistic ^[9] 22:21,25 23:13 44:17 63:22 99:8,18 145:6 155:11</p> <p>judge ^[1] 69:22</p> <p>judgment ^[12] 37:7 38:3 51:24 53:10 79:10 80:8 103:20 104:15 105:11 117:5 124:4 126:1</p> <p>judgments ^[11] 16:13,15 39:13 87:4 109:12 111:13,14 116:18 126:10 143:2 145:4</p> <p>jurisprudence ^[2] 8:2 21:3</p> <p>Justice ^[345] 2:7 4:3,9 6:5 7:5,25 8:22 9:21 12:1,4,8,19 13:13,14 14:25 15:16 16:24 17:3,25 18:5,8,14 19:20 20:4,20 21:9,23 22:10 23:25 24:5,10,25 25:23 26:19,22,25 27:13,24 28:1,4,7,15 29:4,6,10,22,24 30:1,2,23 32:5,6,6,7,13 33:9,24 34:15,23 35:19,20,20,22 33 36:7 37:16,22 38:9 39:3 39:3 40:6,7,7,9,15,20,23 42:3,4 43:4,5,5,7,23 44:10,24 46:10,12 47:21,23,23,25 48:24 49:14,18 50:6,16 51:14,15 53:5 54:7,17 55:17,24 56:5,9,13,23,24,24 57:1,3 58:3 59:3,5,13 60:5 61:4,10,22,23 62:3 63:25 64:20,21,23 65:2,12,16,24 67:3,14,21 68:12,14 69:3,5,7,11,21 70:10,12,14,22 71:11,22 72:22 73:1,9,25 74:7,15,18,22 75:4,14 76:20,21,22 77:1,12 78:14,20 79:8 80:1,2,19 81:7,13,16,20,22,25 82:6,11,22,23 83:22 84:18 85:1,2,3,23 86:11,18,23 87:6,21,25 88:5,7,24 89:8,14 90:3,5,9,13,22,25 91:5 92:4,4,5,16 93:3,6,6,8,14 94:8 95:17,17,18 96:13,21 97:1,12,20,24 98:14 100:16,17,17,19,20 101:19 102:15 103:14,17 104:13,20,23 106:9 107:5,6,6,8,19 109:5,6,6,8 110:22,25 111:18,25 112:21,22 113:4 114:14,21 115:7,13,21 116:7,16 117:17 118:22 119:22,25 121:2,7,12,20 122:1,3,5,9 123:5,17,21 124:2,16 125:16 126:</p>	<p>11,12,12,14,15,17,18,20 127:5,10,22 129:9 130:5,12,20 131:3,7,11,25 132:7,7,9,13 134:6 135:16,16,17 137:7 138:24,25,25 139:2,9,12,15,17,18,22 140:4,5,5,7,8,12 141:6 144:2,12,17 145:14,15,15,17,19,21,23 147:9,11 149:1,16,21,22,22,24 150:25 151:8 152:11,14,23 154:2,3 156:25</p> <p>Justice's ^[1] 20:23</p> <p>justification ^[1] 132:18</p> <hr/> <p style="text-align: center;">K</p> <p>KAGAN ^[39] 15:16 16:24 17:3,25 18:5,8,14 35:22,23 36:7 37:16,22 38:9 39:3 40:6 46:12 49:18 70:10,14,22 71:11,22 95:17,18 96:13,21 97:1,12,20,24 98:15 100:16 135:16,17 137:7 138:24 145:19,21,23</p> <p>Kagan's ^[2] 42:4 94:9</p> <p>KAVANAUGH ^[31] 20:20 21:24 22:10 23:25 24:5,10 43:6,7,23 44:10,24 46:10 47:21 80:1 100:19,20 101:19 102:15 103:14 104:13,20,23 106:9 107:5 115:22 140:6,7,12 144:12,17 145:14</p> <p>keep ^[12] 14:17 66:15 77:25 87:1 90:6 91:19,23 105:25 106:3 133:19 136:12 156:19</p> <p>keeping ^[1] 66:9</p> <p>keeps ^[1] 108:15</p> <p>key ^[4] 43:11 120:18 144:12,17</p> <p>kick ^[1] 155:25</p> <p>kids ^[4] 86:3,3,5,6</p> <p>kind ^[52] 10:17 11:2 14:4 15:11 16:14,15 18:19 21:19 28:13,13 33:2 49:3,6,12,19 51:24 52:21 53:10 55:5 61:19 66:22 69:2 70:25 89:12 91:16 95:19,22 103:5,5 113:24 115:24 116:21,22 118:11,16 119:18,20 120:24 122:23 123:2 124:12 130:24 134:12,21 135:10,24 143:6 144:8 146:24 148:1 151:6 153:7</p> <p>kinds ^[14] 16:17 24:6 36:15 37:8,25 38:1,14 55:19 97:2 117:25 120:19 136:22 143:2 149:25</p> <hr/> <p style="text-align: center;">L</p> <p>label ^[1] 109:24</p> <p>lack ^[2] 57:9 127:9</p> <p>lacks ^[2] 9:4 143:8</p> <p>lament ^[1] 108:6</p>	<p>land ^[3] 149:2,3,8</p> <p>language ^[1] 59:9</p> <p>large ^[3] 9:13,13 14:19</p> <p>larger ^[1] 123:9</p> <p>largest ^[2] 34:12,13</p> <p>lascivious ^[2] 86:13 120:4</p> <p>laser ^[1] 95:14</p> <p>last ^[6] 5:20 54:8 86:16,21 148:8 155:12</p> <p>later ^[2] 142:17 149:9</p> <p>Latin ^[1] 86:25</p> <p>latitude ^[1] 120:6</p> <p>Laughter ^[6] 20:6 36:6 65:15 86:17 132:6 140:11</p> <p>law ^[121] 8:2,7,13,19,24 9:4,7,15,17 10:21 11:1,9,12,14 13:4 14:5 15:5 16:1 19:5,12,18 22:3,6,15,17,23 23:16,21 26:1,5,17,19 27:1,6 29:1 31:10,11 32:2 33:24 34:11,17 39:22 40:11,12,19 41:2,10,16 44:9,14 45:22 48:9 51:25 54:10 55:1,13,20,22 56:20 57:17 58:1,25 59:7 62:15 63:2,17 66:5,11 67:8 68:17 69:8,9,22 76:23 79:12,18 80:15 93:19 94:5,10,15,16,18,19 95:20,21,24 102:10 124:25 125:6,14,22 128:13 129:1 130:15,25 131:2 132:19 133:22 134:4 136:14,20 138:10,22 140:1 150:5,15,16 151:4,20 152:6,8,15,24 153:8,14,16,21 154:16 155:10,13</p> <p>law's ^[1] 9:10</p> <p>lawful ^[2] 127:3 152:25</p> <p>laws ^[7] 18:11 67:1 91:4 106:2 114:9 119:19 143:12,17</p> <p>lays ^[1] 41:11</p> <p>leafleting ^[4] 30:19 38:7,10 39:24</p> <p>leaned ^[1] 48:19</p> <p>leaps ^[1] 95:23</p> <p>least ^[19] 6:13 25:22 31:7,9 41:2 68:9 75:17 105:19,21 117:4 120:17 144:6 146:2</p> <p>leave ^[2] 122:8 135:19</p> <p>lectern ^[1] 55:15</p> <p>led ^[1] 21:16</p> <p>left ^[3] 43:10 103:17,18</p> <p>legal ^[1] 28:18</p> <p>legislation ^[1] 78:7</p> <p>legislature ^[2] 9:4,8</p> <p>legitimate ^[28] 6:21 7:13,24 8:17 9:5 22:16 23:4,9 27:7 35:6 43:20 56:20 67:18 68:5 70:1 84:25 93:21 94:4 98:1 107:13,21,25 128:14 136:11 143:5 146:7,12 150:16</p> <p>length ^[1] 21:11</p>	<p>lenient ^[2] 47:1 117:11</p> <p>lens ^[1] 94:25</p> <p>less ^[5] 5:9 51:13 78:4 92:14 98:12</p> <p>letting ^[1] 93:16</p> <p>level ^[14] 10:24 25:3 27:4,5 30:11,16 58:10 59:19 62:5 114:4 133:2,3,22 150:25</p> <p>lewd ^[2] 86:13 120:4</p> <p>liability ^[7] 66:8,11,23 85:9,9,13,14</p> <p>liable ^[5] 122:22 123:23 147:15,18,20</p> <p>license ^[1] 112:15</p> <p>likelihood ^[1] 82:19</p> <p>likely ^[2] 126:23 129:22</p> <p>limit ^[7] 10:14 11:22,23 75:11 103:7 110:4,8</p> <p>limited ^[4] 10:9 51:20 80:23 94:20</p> <p>limiting ^[1] 95:12</p> <p>line ^[5] 42:4 45:4,9,14 46:3</p> <p>lines ^[1] 138:11</p> <p>LinkedIn ^[2] 27:14,23</p> <p>list ^[3] 32:14 33:12,17 96:7 128:9</p> <p>listeners ^[1] 42:13</p> <p>listings ^[1] 12:10</p> <p>literally ^[4] 118:12,18 124:10 135:8</p> <p>litigate ^[2] 79:21 154:21</p> <p>litigated ^[14] 33:4 84:10 109:3 124:18,23 125:18 127:14 128:7,21 134:1 137:4,10 138:7 152:18</p> <p>litigating ^[2] 33:3 154:12</p> <p>litigation ^[11] 69:19 80:8,21 103:21,23 104:3 108:2,23 109:1 126:10 151:15 146:25 59:20 60:21 67:19 71:11 78:24 89:10 94:25 129:20 141:17 150:8</p> <p>LLC ^[1] 1:7</p> <p>local ^[1] 112:17</p> <p>locution ^[1] 65:2</p> <p>logic ^[1] 73:18</p> <p>long ^[3] 42:1 105:17 122:12</p> <p>longer ^[2] 66:10 88:4</p> <p>look ^[37] 10:12 19:15 24:19 25:21 32:14 33:12 38:18 49:2,7 52:18,24 54:16 55:5 60:8 61:18 63:17 66:21 72:16 75:9 76:6 78:1,21 79:6 83:17 89:13 92:9 94:23 99:11 103:4 116:13 117:2 120:7 131:21 137:14 148:7 152:5 153:9</p> <p>looked ^[6] 19:17,21 26:4 66:5 69:20 73:14</p> <p>looking ^[10] 10:25 29:11 31:23 61:7 64:15 117:8,16 119:11 126:8 153:4</p>
--	--	---	---	---

Official - Subject to Final Review

<p>looks [5] 54:13,13,21 125:18 135:10</p> <p>lose [4] 22:12 83:6 122:16 151:12</p> <p>loses [1] 62:12</p> <p>losing [1] 98:15</p> <p>lost [2] 121:7 141:15</p> <p>lot [30] 12:9 15:19,21 16:20, 20 39:10,11 41:25 51:6 54:21 55:2 57:2 71:3 73:23 78:23 87:7 92:5 110:10 117:9,12 118:7 120:6,16 121:13 124:17 127:9 128:24 137:13 138:15 153:15</p> <p>lots [6] 25:9 37:24 89:24,24 100:22 108:14</p> <p>lower [10] 40:18 69:19 76:3 108:11 125:6 129:2 144:10 147:8 149:19 151:17</p> <p>lowest [1] 117:3</p> <hr/> <p style="text-align: center;">M</p> <p>Maddow's [1] 69:13</p> <p>made [12] 35:17 39:14 46:11 47:13 50:20 52:23 80:8 102:1 108:3 126:25 140:20,21</p> <p>magazine [1] 134:21</p> <p>magazines [1] 10:1</p> <p>mail [1] 79:25</p> <p>main [1] 130:2</p> <p>mail [5] 12:17 30:18 38:10 39:24 46:6</p> <p>mandate [2] 111:10 134:25</p> <p>Manhattan [1] 64:13</p> <p>manipulation [1] 21:17</p> <p>manipulative [1] 141:12</p> <p>manner [4] 6:2 52:16 58:20 143:19</p> <p>many [10] 15:14 28:19 68:16 71:5 112:6 117:23 119:12 132:23 134:8 152:16</p> <p>map [2] 27:16,20</p> <p>march [1] 131:16</p> <p>market [7] 13:16 42:23,24 43:3 54:23 63:8 142:23</p> <p>marketing [1] 4:14</p> <p>marketplace [8] 9:22 10:15,16 11:8,23 12:6 54:22 107:12</p> <p>massive [2] 14:20 89:21</p> <p>Matal [1] 47:14</p> <p>material [19] 49:8,13 63:13 67:1 86:2,12 87:18,20 88:15,19,21,23 90:1 98:24 105:25 106:3,5 117:6 156:8</p> <p>materials [2] 78:1 85:19</p> <p>matter [10] 1:15 16:5 26:2 112:6,7,8 115:12 123:14 131:14,20</p> <p>matters [1] 132:1</p> <p>mean [80] 7:11 15:7,24 16:7,21 17:3 18:10 19:7 20:8</p>	<p>22:11 25:1,6 26:1 31:20 34:4 37:18,21 38:4 44:11 48:8,13 49:9,15 50:21 51:15,24 53:18 55:17,18 58:5,7 59:5 60:5,12,22 61:8 64:6 65:25 67:21 69:17 70:10 72:17 73:7 78:22 82:14,24 83:8 85:21 86:1,19 87:2,25 88:11 90:14 91:6 95:4,7,18 97:7,9 101:22 104:25 105:7 106:19,20 108:20 109:10,21 111:13 113:16 115:20 128:3,6 131:25 137:15 150:4,7,7,10,21</p> <p>meaningful [2] 53:22 154:19</p> <p>meaningfully [3] 8:18 50:23 53:15</p> <p>means [14] 6:19 18:15 20:5 31:11 51:11 57:10,13 66:7 103:18 112:5 124:24 141:16 148:21 155:23</p> <p>meantime [1] 138:15</p> <p>measure [1] 23:18</p> <p>mechanism [1] 142:4</p> <p>mechanisms [1] 5:23</p> <p>media [38] 8:3,5 9:8 13:17,20 15:1,25 20:25 24:13,23 35:25 42:11 45:19 48:3,13 51:10 54:12 55:3 58:18,24 70:25 71:15 78:18 98:20 99:2 113:12 114:3 125:2,23 129:4 132:19 137:23 140:19 141:14,18 143:6 151:18 153:22</p> <p>meet [1] 68:22</p> <p>members [5] 7:2 32:20 33:21 47:5 128:10</p> <p>mentioned [5] 22:5 25:25 33:18 141:8 144:3</p> <p>mere [4] 19:7 40:4 46:14 66:4</p> <p>merely [1] 65:17</p> <p>merits [4] 82:19,20,21 103:23</p> <p>mess [1] 73:9</p> <p>message [23] 12:24 15:9 30:12,13 31:25 32:3 38:21 39:19,25 40:3 60:19 61:19 65:10 87:19 88:7,12 90:14 91:25 92:1,2 116:25 117:13 156:4</p> <p>messages [11] 37:24,25 38:1 73:10,12 74:3 75:6 77:4,5 114:23 121:9</p> <p>messaging [12] 73:19 93:17,22 96:1 97:2 125:12 127:3 129:16,19 136:7 153:12 155:17</p> <p>met [4] 7:9 106:21 127:25 150:21</p> <p>metaphorical [1] 39:9</p> <p>methods [3] 50:3,4 51:23</p> <p>middle [1] 12:23</p>	<p>might [32] 11:12 25:11,11 49:21,25 61:11 64:3 69:16 73:23 81:12 84:12 92:23 93:20,21,24 101:10 105:18,20 108:8,12 115:1 116:23 117:6 120:10,11 125:11 138:10 139:13 146:11 148:1,13 149:8</p> <p>military [5] 19:13,25 32:3 45:25 102:10</p> <p>million [2] 72:12,13</p> <p>millions [3] 4:12 10:6 71:5</p> <p>mind [6] 14:17 93:5 94:11 125:3,20 156:20</p> <p>mine [3] 17:7 140:10 149:3</p> <p>mines [2] 149:3,9</p> <p>minimum [2] 34:13 120:14</p> <p>Minneapolis [4] 63:20 70:19,20 72:6</p> <p>minute [1] 109:9</p> <p>misattribution [1] 63:8</p> <p>misinformation [5] 16:4 18:16 36:14,16,16</p> <p>misrepresenting [1] 112:9</p> <p>mistake [1] 109:25</p> <p>model [2] 14:14 140:22</p> <p>models [1] 105:10</p> <p>moderating [1] 145:2</p> <p>moderation [24] 11:15 17:16 18:23 23:22 24:14 30:8 31:1 41:7,15,17,24,25 56:7 92:8,10,21,23,25 115:17 116:19 117:5 130:18 131:8 144:25</p> <p>modern [2] 13:24 141:14</p> <p>modify [1] 108:8</p> <p>moment [1] 134:5</p> <p>Monday [1] 1:13</p> <p>money [3] 19:22,24 150:19</p> <p>monopoly [1] 141:16</p> <p>month [2] 75:10 97:11</p> <p>MOODY [2] 1:3 4:5</p> <p>morning [3] 4:4 39:10 62:16</p> <p>mosaic [1] 123:9</p> <p>most [10] 22:20 31:20 36:8,23 65:13 67:24 72:3 101:24 107:3 117:25</p> <p>motivated [1] 18:10</p> <p>motivation [1] 78:7</p> <p>move [1] 29:5</p> <p>movie [1] 24:2</p> <p>MSNBC [1] 44:18</p> <p>much [26] 7:16 10:9 17:18 20:1,5 29:1 38:22 39:14 46:12 50:5 60:25 73:18 78:10 86:22 98:12 101:25 103:1 105:2 106:5 110:16 112:13 135:20 137:25 138:6 142:1 151:16</p> <p>multiple [1] 58:5</p> <p>must [2] 58:18,24</p> <p>must-carry [1] 23:5</p>	<p>muster [1] 143:23</p> <p>myself [1] 10:5</p> <hr/> <p style="text-align: center;">N</p> <p>nail [1] 102:19</p> <p>name [1] 62:11</p> <p>namely [2] 38:19 129:2</p> <p>narrow [4] 35:25 104:7 125:21 152:19</p> <p>narrowed [1] 9:16</p> <p>narrowly [2] 58:12 119:19</p> <p>natural [1] 144:3</p> <p>nature [1] 67:4</p> <p>near [2] 38:15 128:5</p> <p>necessarily [5] 57:10 61:11 86:12 115:5 128:4</p> <p>necessary [4] 63:15 140:2 143:18 146:21</p> <p>need [7] 25:21 34:23,24 35:6 46:3 55:16 124:6</p> <p>needs [2] 56:21 156:19</p> <p>nervous [1] 78:25</p> <p>NETCHOICE [13] 1:7,7 4:5 117:18 128:10 150:5,5,10,12,21 154:11,14,16</p> <p>NetChoice's [3] 151:10 154:10 155:1</p> <p>networking [4] 5:12 27:8 34:5,13</p> <p>neutral [4] 4:15 50:4 52:18 53:8</p> <p>never [2] 83:9 93:5</p> <p>new [6] 92:5 106:20,21 110:18 134:3 145:3</p> <p>news [13] 25:9,9 36:1 93:13,13 95:22 96:24 99:5 107:10 130:2 135:22,24 146:3</p> <p>newspaper [10] 4:19 10:2 24:20 39:9 40:3 48:16 51:4 52:24 113:10 131:17</p> <p>newspapers [3] 21:12 49:3 141:3</p> <p>newsstands [2] 24:3 85:18</p> <p>next [1] 103:19</p> <p>nice [2] 41:9 77:23</p> <p>NIFLA [1] 94:22</p> <p>nine [1] 104:9</p> <p>nobody [1] 106:5</p> <p>non-discrimination [3] 7:20 99:9 134:25</p> <p>non-expressive [5] 34:1,3,6,19 54:6</p> <p>none [5] 46:1 68:9,10 114:2 123:3</p> <p>Normally [1] 114:14</p> <p>note [1] 47:2</p> <p>nothing [6] 60:17 61:20 82:11,22 91:8 100:14</p> <p>notice [4] 87:22,24 93:22 137:16</p> <p>noticed [1] 152:17</p> <p>notion [1] 59:11</p>	<p>notwithstanding [1] 128:21</p> <p>nowhere [1] 110:21</p> <p>number [7] 7:14,22 67:24 72:4 150:1,10,11</p> <p>numerator [2] 34:24 35:3</p> <p>numerator/denominator [1] 35:9</p> <hr/> <p style="text-align: center;">O</p> <p>objected [1] 39:21</p> <p>objectionable [3] 41:8 86:15 116:22</p> <p>objective [2] 38:19,23</p> <p>objectively [1] 19:17</p> <p>obligation [1] 23:5</p> <p>obliged [2] 154:18,24</p> <p>obscene [2] 86:13 120:5</p> <p>observed [1] 115:22</p> <p>observer [1] 38:23</p> <p>obvious [5] 78:4 79:3 105:5 107:3 137:13</p> <p>obviously [16] 41:11 64:7 65:25 68:25 69:18 72:20 73:8,20 75:21 78:6 84:5 97:17 100:25 101:23 108:23 114:5</p> <p>occurring [2] 109:18 138:19</p> <p>October [2] 91:18 111:16</p> <p>odd [2] 6:8 8:1</p> <p>offensive [4] 86:8,12 92:14 132:3</p> <p>offer [2] 132:18 151:2</p> <p>offered [1] 154:15</p> <p>offering [3] 11:14 24:16 153:25</p> <p>office [1] 112:3</p> <p>official [2] 95:5 101:12</p> <p>Okay [19] 53:5 54:7,24 67:14 77:2,12,14 79:23 90:3 93:21,25 94:9 111:14 122:3,3 132:11 137:17 140:4 147:9</p> <p>oligarchs [1] 95:12</p> <p>once [1] 60:7</p> <p>one [59] 8:10,13 14:5,16 22:18,23 28:1,10,24 33:22 39:5 41:5,19 42:21 45:10 48:6,25 51:9 52:7 54:8 57:8 64:24 67:19 68:25 71:9 72:25 74:9 75:23 77:5 78:15 84:4 85:21 86:16 91:8,18 92:7 95:8 100:2,2 105:14,23 106:12 109:21 111:19,20 116:25 118:3 121:21 125:18 133:1 137:10 138:4 139:18,23 142:5 144:3,17 146:17 147:9 150:10</p> <p>ones [3] 5:14 89:19 152:1</p> <p>online [7] 10:1,1,2,2,3 39:8 48:10</p> <p>only [25] 6:19 10:13,17 11:16 32:22 36:21 41:14 54:4</p>
--	---	---	--	--

Official - Subject to Final Review

<p>60:6 62:14 68:20,25 69:6 71:2,3 73:21 76:8 83:25 95:9 105:21 109:22 110:8 112:16 132:1 141:20 open [8] 7:15 10:15 14:12 36:9,23 94:24 114:22 120: 15 opened [2] 14:7 39:16 opening [1] 43:7 openly [1] 118:25 opens [1] 12:1 operate [3] 43:3 85:10 108: 12 operated [1] 73:22 operators [1] 23:5 opinion [1] 149:13 opinion [9] 20:9 21:15 107: 16 108:24 141:6,11 149: 8 150:13 opinions [2] 98:11 118:3 opportunity [5] 57:19,25 82:16 140:9 154:19 opposed [6] 20:16 42:21 45:12 55:24 89:1 102:20 opposing [1] 92:19 opposite [2] 110:15 121:3 option [2] 137:11 146:8 options [1] 139:14 oral [7] 1:16 3:2,5,8 4:7 62: 1 113:1 order [7] 21:5 25:15 52:2 67:25 92:14 115:25 116: 14 organization [4] 51:1,23 53:1 101:16 organizational [1] 156:18 organize [4] 50:15 52:3 53: 17,20 organized [1] 51:20 organizer [2] 46:15 85:16 organizing [8] 5:24 50:4,4, 9,18,24 53:15,23 orientation [1] 96:6 orthogonal [1] 23:19 Orwellian [5] 132:3 140:14, 15,18 144:6 other [53] 4:13 13:9 18:14 19:11 23:15 24:5 25:10,12 30:17 31:16 42:14 44:20 45:4,11,13 55:6 66:13 74: 10 81:11 85:21 86:2,3,5 87:3 88:1 93:16 95:2 100: 14 102:12 105:4 106:13 110:5,8 113:7 118:19 125: 10,14,19 127:19,20 133:17 135:12 137:6 140:19 146: 6,11,15 147:9 149:25 150: 3,17 152:16,25 others [7] 8:6,19 13:1 21:6 64:10 85:19 93:15 otherwise [7] 38:5 41:8 86: 14 104:7 120:11 138:1 145:7 ourselves [1] 153:15</p>	<p>out [55] 12:24 13:13 14:12 15:7 19:11 25:15 30:17 41: 11 43:10 44:3 49:18 50:25 51:16 52:1 55:5,18 60:21 63:19 66:9,10,16 71:23 79: 19,22 80:18 82:2,12,16 84: 9 85:24 86:10 92:7 94:6,8, 15,18 95:23 105:22 110:17, 20 119:16 121:23 125:14 127:8,11 128:3 138:18 139:13 145:12,23 146:14 147:12 150:2 151:1 153: 15 outline [1] 149:18 over [11] 45:3,3 46:17 47: 17 51:13 62:8 63:2 70:5 72:14 88:12 140:19 overarching [1] 127:1 overbreadth [14] 6:7,23 7: 3 32:8,11 35:11,13,15,17 69:24 70:2 81:2,5 127:25 override [1] 78:12 override [1] 136:11 overtake [1] 142:24 own [10] 4:22 78:9 80:21 105:11 113:24 115:5 116: 5 130:9 148:11 151:15 owner [2] 38:10 45:13</p> <p style="text-align: center;">P</p> <p>p.m [1] 157:3 PAGE [2] 3:2 156:22 pages [1] 76:13 parade [20] 15:18 16:23 46: 15,18,22 47:5,6 85:16,17, 18 90:15,16 101:12,18 113: 10 117:9,13,14,16 131:14 paradigm [1] 24:17 paradigmatic [2] 15:25 35: 25 parse [1] 151:3 part [23] 9:9 24:15 25:2 32: 24 33:7 36:8,23 62:19 68: 8,10 70:4 97:8,21 105:13 106:14 108:2 122:13,16 123:8,9,24 132:18 149:17 participated [1] 46:18 participation [1] 92:20 particular [27] 11:2 13:2 16:5 26:4,16,17 27:2 36: 14 37:7 38:14,24 42:6 46: 23 54:2 60:1,18 62:21 63: 14,19 65:2 94:5 131:19 132:1 136:21 138:12 151: 14 156:12 particularly [3] 59:25 104: 11 117:23 parties [7] 6:25 66:14 115: 10 116:11 126:10 128:21 133:25 parts [1] 22:17 party [14] 65:6,7,10,11 92: 24 115:15 127:16 130:13, 21 131:12,23 134:4 139:7</p>	<p>143:1 pass [2] 104:6 143:23 passed [3] 17:20 94:10 127:18 passengers [3] 134:20,22 135:3 passing [1] 66:4 passive [1] 5:23 past [3] 26:12 95:5 103:24 Patrick's [1] 46:22 PAUL [3] 2:4 3:6 62:1 pay [1] 93:23 peek [1] 152:6 penalties [1] 79:16 penalty [2] 104:12 138:17 people [32] 10:16,19 11:19 13:17 15:21,22 18:1,12,15, 20,23 19:4 21:15 30:14 36: 22 39:20,23 48:12 77:8 78: 1 88:1,15 90:16 93:16 97: 6 100:4 105:24 108:19 140:17 141:11 152:16,16 people's [2] 43:18 113:7 per [1] 138:17 perceive [1] 30:4 perceived [1] 62:6 percent [7] 17:15,19,25 18: 2 106:22 112:17 151:9 percentage [2] 34:18 36: 22 perfectly [2] 55:6 59:7 perform [3] 33:14,17 128: 12 perhaps [5] 31:17 46:24 65:19 108:6 128:7 permissible [2] 75:20 143: 11 permit [2] 133:14,15 permitted [2] 14:13 39:22 permitting [2] 10:24 13:1 pernicious [1] 83:18 person [3] 55:8 87:19 89: 15 peruse [1] 134:22 petition [2] 78:9 98:17 Petitioners [7] 1:5 2:3 3:4, 14 4:8 114:17 154:7 PG&E [3] 45:5 63:4 65:4 phone [1] 129:22 photos [2] 116:10 151:24 physical [2] 9:23 51:17 PI [2] 102:20 154:12 pick [4] 10:8 52:10 77:9 100:20 picks [1] 20:22 pictures [1] 135:9 piece [4] 38:24 51:12 52:10 53:16 place [12] 21:14 33:22 54: 23 77:25 80:6 89:1 99:19 103:19 108:16 112:12 133: 19 144:4 placed [1] 141:9 places [1] 36:8</p>	<p>plain [1] 63:20 plainly [19] 6:21 7:12,23 9: 5 27:6 35:5 56:20 64:11 67:18 68:5 70:1 73:4 84: 25 93:21 94:4 97:25 107: 13,21,25 plaintiffs [6] 9:3 28:20 32: 7 126:22 128:1,7 plat [1] 5:16 platform [25] 6:11 8:3 9:9 12:23 15:8 44:19 49:11 53: 11 58:18,21 61:20 88:14 98:5,20 99:2 116:18,25 118:4 123:1 134:11 147: 14,18,20 148:2 156:1 platform's [2] 147:17 148: 11 platform-driven [1] 15:9 platform-specific [2] 32: 22 33:19 platforming [1] 133:7 platforms [73] 4:11,13 5: 16,18,21,25 6:10 7:15,21 8: 5 13:17,20 15:4 17:13,20 22:24 23:21 24:13,23 30:8 32:15,19 33:11,13,17 34:5, 14 45:19 48:2,3 49:5,9 50: 2 54:12 55:4 56:1 57:7 60: 19,25 73:3 78:18 80:23 81: 10,11 113:12,12 114:3,10 115:10 116:2,10,22 117:24 118:17 119:13,20 122:20, 21 124:5,9 125:2,24 127: 20 129:5,8 143:7 144:5 145:1,2 151:1,5 152:3 153: 22 playing [1] 62:5 pleadings [2] 32:12 35:15 please [4] 4:10 12:4 62:4 113:5 pod [2] 86:4 147:22 point [39] 5:3 8:12 15:7 18: 18 22:7 24:22 37:21 40:11 41:13 44:25 46:11,11 47: 14 50:19 58:15 59:15,25 60:24 61:3 66:13 75:24 76: 17 80:7 103:24 104:3,5 108:10 110:23 111:1 113: 20,20 122:10 124:13 134:6 135:15 137:7,18 139:10 142:2 pointed [1] 51:16 pointing [6] 49:18 55:5,18 84:9 145:23 147:12 points [1] 51:5 poke [1] 136:25 policies [15] 6:2 18:24 23: 22,23 24:14 30:9 56:8 61: 1 100:1 112:19 117:5 119: 18 121:19 144:6,8 policy [7] 18:19 24:1 38:7 53:10 56:7 100:6 106:23 political [10] 12:24 55:11 63:21 72:17,19 74:5 83:20</p>	<p>98:11 99:7 121:14 politicians [1] 99:13 politics [5] 11:5 12:5 74:23 75:7 99:11 poll [1] 112:16 pop [1] 99:9 popping [1] 99:13 portion [2] 34:17,18 poses [1] 135:1 posit [1] 78:16 position [9] 21:25 25:19 35:24 59:6 66:3 68:6 83: 25 87:4 103:10 possess [1] 4:20 possibility [1] 108:8 possible [8] 15:15 52:23 54:5 67:7 119:16 125:19 146:17 152:7 Post [10] 36:9,23 87:17 98: 23,23 112:17 114:23 122: 25 147:13,17 post's [1] 147:13 Post-prioritization [2] 99: 4,21 posted [2] 92:13 98:24 postings [1] 36:1 posts [5] 42:15 48:13 72: 19 117:25 122:20 posture [9] 25:20 80:3,5 102:16 124:18 138:3 146: 1 153:4 154:9 potentially [2] 92:12 104: 16 power [15] 13:16,16,19 14: 21 20:24 21:11,14 42:23, 24 63:8 74:25 141:10,14 142:23 143:6 powerful [1] 14:19 powerfully [1] 109:2 powerless [1] 144:1 practical [3] 82:15 107:8 145:18 precedent [1] 20:21 precedents [2] 26:12 35:9 precinct [1] 112:17 precise [1] 25:18 precisely [6] 14:18 66:24 68:18 83:24 84:14 144:22 preclude [1] 53:15 preempted [2] 41:2,18 preemption [2] 29:16,16 preempts [1] 28:25 preference [2] 53:9 58:10 preferences [2] 50:10 63: 21 preliminary [22] 33:5 76:4, 7,9,19 79:11 80:6 81:3,9 82:14 103:3 106:15 108:5, 9,17,22 126:21 128:16 132: 15 133:20 138:14 153:4 PRELOGAR [56] 2:6 3:9 112:24 113:1,4 114:19 115:8,20 116:8,17 118:9 119:10,23 120:18 121:5,8,</p>
---	--	---	--	--

Official - Subject to Final Review

16,22 122:2,4,17 123:12, 19 124:1,21 126:25 127:7, 13 128:17 129:18 130:8,19, 22 131:5,9,13 133:24 136: 19 137:17 139:6,11,13,16, 20,24 142:20 144:14,18 146:16 147:24 149:10 150: 23 151:13 152:13,22 153:3 premise [3] 123:18,21 141: 20 preparation [1] 153:10 present [9] 48:12,13 51:19 85:5 113:7,13 137:20 143: 3 146:25 presentation [4] 5:19 13: 15 125:5 139:7 presented [6] 29:9 84:6,8 124:22 134:4 151:10 Press [1] 43:22 pressed [1] 127:17 presses [1] 24:2 presumably [1] 88:6 pretend [1] 49:1 pretty [4] 111:21 119:8 135: 20 137:12 prevail [1] 82:13 prevent [7] 4:25 43:9 46:8 50:23,23 62:22 142:25 prevented [1] 46:8 preventing [3] 44:21 51:1 53:14 pride [2] 99:19 112:12 primarily [3] 33:25 34:3,6 principal [3] 42:11 51:5 76: 1 principally [4] 7:1 41:3 62: 16 151:23 principle [5] 45:17 62:13 139:7 142:17 156:5 principles [7] 21:22 28:18 63:10 111:7 112:2 113:10 114:25 printing [1] 24:2 prioritize [1] 130:4 privacy [1] 143:13 private [27] 64:18 65:6,9 77:6 92:24 101:2,2,6,7,16 109:10,17 115:10,15 116:2, 11 130:13,14,20 131:12,23 140:16,17,24 142:14,15,25 pro-Israel [1] 49:22 pro-Palestinian [1] 49:21 pro-terrorist [1] 90:20 probability [1] 81:4 Probably [3] 75:8,13 96:18 problem [10] 28:2,17 31:5 32:24 64:18 85:5 100:3 130:11 135:1 144:21 problematic [4] 36:19 63: 18 82:10 153:1 problems [5] 52:8 63:18 80:16 85:7 146:6 procedural [3] 102:16 124: 17 154:9	procedures [1] 111:5 proceed [1] 14:15 proceedings [1] 40:17 producing [1] 113:23 product [19] 10:17 11:2,7 17:16 116:6 120:24 124:9 126:5 130:1 135:25 136:4, 24 137:24 143:1,3 145:3 148:19,24 153:24 products [3] 129:6 136:9, 17 Professor [3] 41:9 50:19 156:21 programs [1] 89:5 prohibit [1] 117:25 prohibited [1] 91:15 prohibition [1] 53:21 prohibitions [1] 53:18 prohibits [2] 41:16 130:24 Project [1] 72:7 promise [1] 120:6 promising [3] 118:23,24, 25 promote [2] 43:18 105:15 promoting [4] 14:23 23:9 62:12 114:7 proper [1] 148:19 properly [3] 127:15 128:19 147:2 proposition [1] 142:22 prosecuted [1] 92:19 protect [1] 66:24 protected [18] 15:2 20:12 25:16 31:15 37:12 45:7 64: 19 73:3,7,12 87:4 96:17 101:4 113:15 122:24 135: 10 138:18 143:20 protecting [1] 44:16 protection [17] 23:18 66: 11 72:9,10 75:19 85:8,9,13, 14,22 113:18 122:8 123:16 134:23 143:14 148:25 149: 5 protections [1] 122:16 protects [2] 64:25 113:6 provide [4] 18:16 70:7 113: 22 141:22 provided [1] 73:2 providers [3] 43:2 74:4 129:24 provides [1] 128:9 providing [3] 120:24 135: 24 136:4 provision [28] 22:23 23:13, 17,20 26:17 57:12,15 58:6, 17,25 60:18,21,22,23 61: 21 72:18 77:3 83:14 87:24 91:8,16 94:19 99:23 104: 12 124:14,25 129:6 149:16 provisions [18] 9:17,19 61: 6,13 63:21 79:14 93:24 94: 17 95:1 100:10,10 136:21 137:23 142:7 151:4,25 152:10 153:17	Pruneyard [10] 5:10 12:14 25:25 30:16,18 38:6 39:24 45:3,10 46:7 public [16] 11:7,9 13:24 14: 12 21:15 36:17 42:16 100: 24 109:10,13,15 115:2 120: 17 131:1 141:11,15 publication [2] 23:1 98:22 publicly [1] 58:25 publish [2] 131:18 142:8 published [1] 142:9 publisher [2] 66:9,19 publishers [4] 85:11 122: 11 124:10 142:8 publishing [3] 24:1 66:22 124:5 puppy [1] 105:21 pure [3] 66:6 118:10 129: 21 purpose [3] 46:23 48:10 124:12 purposes [1] 82:15 push [1] 109:9 put [18] 48:24 49:1 52:1,3 76:4 77:22 79:20 80:11,17 83:14 84:5 87:8 106:18,24 116:13 129:22 134:7 144: 19 putting [3] 103:12 121:23 135:8	railroad [1] 134:18 railroads [1] 120:22 raise [1] 32:8 raising [1] 78:20 rather [2] 4:19 119:2 reach [5] 20:11 29:20 94: 20 107:23 140:2 reached [1] 29:18 reaction [1] 132:12 read [4] 20:9 58:16 59:9 155:6 readily [1] 38:23 readings [1] 8:7 real [1] 146:5 real-world [1] 39:4 reality [2] 62:18 110:18 really [40] 8:14 10:5 17:16 21:2 23:18,20 24:15,17,17 25:2,15 26:11 29:17 30:11 44:25 46:20 48:2 55:20 60: 22 65:9 70:24 76:8 77:16 78:4 98:14 100:5 103:11 109:21,24 125:12,21 126:1 129:3 134:8 136:12,13 146:25 151:3 152:15 155: 19 reason [14] 22:14 40:1 41: 1,5 51:3 58:2 65:9 85:8 89: 22,24 101:14 127:2 134:24 142:9 reasonable [1] 147:6 reasoned [1] 141:20 reasons [3] 28:11 33:7 109:20 REBUTTAL [3] 3:12 154:5, 6 recategorize [1] 132:3 received [1] 147:3 recently [1] 148:7 recesses [1] 152:5 recognition [1] 116:4 recognize [1] 64:19 recognized [6] 21:13 23:3 43:19 66:20 124:8 135:12 recognizing [2] 123:15 148:18 recollection [1] 94:22 recommended [1] 54:19 record [16] 32:13,19,22 33: 1,12,16 52:9 80:11 84:11 108:1,6 126:9 127:22 128: 8 154:10,25 recruiters [4] 19:25 32:3 45:22,25 recruiting [1] 48:10 red [1] 72:14 reduced [2] 49:22,22 reference [1] 60:2 referring [2] 136:23 143:24 reflect [4] 50:10 51:24 52: 18 53:10 reflects [3] 48:20 124:4 145:4 refrain [1] 39:1	register [1] 112:13 registration [1] 93:24 regrettably [1] 37:15 regulate [14] 11:13,22 12: 16 69:1 71:2 98:21 130:10 134:19 135:7,22 136:2,22 143:9,19 regulated [16] 22:1 25:7 38:19 43:1 46:7 53:3 60:6 62:18 66:14 84:1 111:9,10 120:12,21 131:21 150:20 regulates [3] 11:14 41:3 62:20 regulating [5] 9:17 13:23 26:18 63:1 70:18 regulation [13] 14:4,9 20: 15 42:25 50:25 60:15 111: 3 114:4 120:25 125:6 130: 24 143:11,22 regulations [1] 114:15 reject [3] 56:22 58:2 63:7 rejecting [2] 47:3 57:22 related [2] 44:2,14 relative [3] 21:6 44:3 114: 11 relatively [2] 51:13 110:17 relevant [5] 27:10 47:11 51:9 101:24 151:6 relied [2] 47:4 51:8 relies [1] 6:7 religion [2] 74:23 75:7 religious [1] 74:6 rely [4] 6:25 20:10 101:25 102:1 relying [1] 7:1 remains [2] 17:15,18 remand [11] 82:2,2,12,17 108:9 128:2 132:14 133: 20,21 139:5 146:13 remarks [1] 43:8 remedy [2] 128:2 142:3 remind [1] 71:20 remove [1] 98:23 Reno [2] 63:9 110:12 reply [1] 21:20 reportage [1] 141:12 represent [1] 119:2 representations [2] 4:23 84:14 representatives [1] 43:18 represented [1] 57:13 representing [2] 119:1 120:16 represents [1] 6:9 Republicans [1] 155:25 republication [1] 98:22 require [5] 60:25 93:22 111:3 153:17,21 required [3] 22:8 50:22 53: 16 requirement [5] 22:21 51: 12 59:1 106:19,25 requirements [5] 7:19,20 12:11 69:23 144:9
---	--	---	---	--

Q

R

Official - Subject to Final Review

<p>requires [2] 60:15 61:16 reserve [1] 126:1 reserving [1] 117:24 resist [3] 76:8 128:18 132:2 resolve [2] 40:23 153:19 resolved [1] 137:21 resolving [2] 147:5 153:6 respect [22] 15:20 16:4 59:22 65:24 67:12 77:8 83:8 95:25 96:2 125:24 129:1,5,8 134:16 135:5 136:16 137:19 138:4 146:21 148:1,3 153:20 respectfully [1] 39:18 respects [1] 103:16 respond [4] 45:15 134:5 141:16 144:2 responded [1] 21:8 Respondent [1] 6:9 Respondents [8] 1:9 2:5,9 3:7,11 62:2 113:3 114:17 response [3] 13:18 134:8 150:1 responsibility [1] 5:17 responsible [4] 47:7 85:17,19 118:6 rest [2] 76:17 103:5 restrict [3] 21:4 98:21 114:10 restriction [4] 51:13 59:22 60:6,11 restrictions [3] 36:25 37:5 95:7 result [6] 58:9 66:16 80:21 89:1 107:24 141:13 results [1] 99:6 retain [1] 123:16 revenues [1] 9:13 review [3] 17:21 49:6 134:2 rides [1] 48:5 rightly [1] 93:19 rights [3] 15:6 134:16 143:20 RNC [1] 73:16 road [3] 17:9 83:13 152:9 ROBERTS [37] 4:3 13:14 14:25 19:20 29:4,24 32:6 35:20 40:7 43:5 47:23 56:24 61:23 72:22 73:1,9 83:22 84:18 85:1 92:4 93:6 95:17 100:17 107:6 109:6 112:22 124:16 126:12,15 132:7 135:16 138:25 140:5 145:15 149:22 154:3 156:25 Robins [2] 5:10 12:15 rubric [1] 41:8 rude [1] 100:5 rule [1] 141:5 rules [14] 13:4 15:19,19,20 16:2,6,11 17:9,12,14 27:15</p>	<p>36:20 39:6 60:7 rulings [1] 139:5 Rumsfeld [5] 5:11 19:10,12 20:5 45:23 run [4] 37:14 89:20 98:2 139:13 running [1] 98:7</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>sale [2] 11:21 12:2 Salerno [4] 67:19 69:24 83:9 84:19 sales [1] 68:23 samaritan [1] 124:14 same [16] 20:15 45:2 49:2 58:8,10 72:11 76:10 77:20 95:19 105:23 108:13 109:19 119:17 130:1 143:4 144:23 sanction [1] 41:6 satisfies [1] 69:23 satisfy [1] 7:21 save [3] 67:20 96:19 126:6 saw [1] 110:10 saying [26] 25:24 26:5,14 27:18 37:23 48:12 50:7,8 65:20 70:23 82:25 90:7,10,11,12,18,19 93:4 94:1 97:21 98:1 116:16 131:3 133:18 147:16 156:6 says [30] 10:16 22:23 23:21 27:1 40:12 49:17 58:17,17 72:7,8,18 74:1 91:8 94:23 98:9,13,19 103:4 108:24 121:1 122:11,14,21 130:15 136:10 141:9,19 142:11 154:16 155:10 scenario [1] 135:1 scenarios [1] 83:4 school [3] 26:5 130:15,25 schools [9] 19:12,18,21 26:2 32:2 39:22 45:22 48:9 102:10 scope [3] 125:1 128:14 138:9 score [1] 28:16 scream [1] 12:24 scrutiny [14] 10:24 22:3 37:14 59:19 76:6 80:10 84:13,16 103:12 114:12 133:2,4,22 145:11 search [2] 54:14 99:6 second [6] 41:13 48:25 51:6 81:15 110:1 155:3 Section [30] 28:25 29:16,19 40:10,11,13 41:14,21 65:17,22 66:5 77:18 83:17,17 85:5,7,24 91:9,10 118:1 120:3 122:8,10 123:22 124:4,6 147:10,23 148:14 149:6 sections [1] 83:18 sector [3] 120:21 140:16 142:14</p>	<p>see [9] 49:3 88:3,15,18,19,20,22 94:25 150:18 seeking [1] 135:6 seem [10] 6:6 16:6,9 25:4 61:12 65:22 76:25 78:4 120:6 126:3 seemingly [1] 132:4 seems [21] 6:8 8:2 15:23 18:1 21:1,8 27:16 30:10,12 48:6 54:18 91:9 93:19 98:12 111:21 117:4 120:15 129:6,20 147:5 155:20 sees [1] 108:11 select [1] 5:15 selecting [1] 40:2 selection [3] 47:5,8 51:6 selective [3] 15:10 46:4,10 selectivity [1] 47:10 sell [4] 10:13 11:2,6 55:8 seller [1] 77:22 selling [1] 11:8 semantics [1] 131:13 send [3] 145:24 146:13 147:6 sending [2] 87:19 92:2 sends [1] 138:2 sense [3] 33:1 39:9 50:13 sentence [1] 21:2 separate [7] 50:15,17,25 53:2 58:24 148:15 156:19 separating [1] 119:7 serious [1] 36:24 seriously [2] 16:9 36:13 serve [3] 22:15,17 98:10 servers [1] 146:24 serves [3] 23:2,13,16 service [21] 5:2,18 24:14,16 49:19 54:15 73:2 74:13,14 98:2 113:22 118:7 119:5,11,17 120:1,25 129:20,23 148:4,12 services [7] 5:3 28:21 56:15 70:6,7 77:4 150:19 serving [1] 22:7 set [4] 57:2 100:3 147:1 149:25 several [1] 62:7 sex [2] 96:5 97:5 sexual [1] 96:6 shadow [8] 22:24 31:2 53:19 58:19,23 99:15,16,17 shape [3] 21:15 113:12 141:11 shapes [1] 123:1 she's [1] 156:7 shielded [1] 113:21 shift [2] 8:23 81:7 shopping [2] 12:17 45:13 shops [1] 54:20 shot [1] 94:16 shouldn't [3] 66:19 109:24 146:20 show [6] 7:4 9:4 18:24 24:3 81:4 150:14</p>	<p>showed [1] 44:20 shown [3] 7:6 82:19 126:22 shows [2] 90:2 102:6 Shurtleff [2] 47:15,19 side [3] 45:13 49:1 121:11 sides [3] 25:4 103:7 151:16 sight [2] 62:12 98:16 signaling [1] 117:15 signed [1] 110:7 significance [1] 134:12 significant [2] 6:17 56:6 significantly [1] 9:16 signing [1] 95:6 silence [2] 5:4 14:21 silenced [1] 44:22 silencing [1] 46:8 Silicon [1] 95:11 similar [4] 13:7 23:2,14 120:8 similarly [1] 15:24 simply [5] 42:17 50:21 51:1 60:14 130:9 since [6] 6:8 13:21 70:3 93:18 140:9,23 sing [1] 4:17 single [3] 9:12 116:25 117:12 singles [1] 63:19 sit [1] 55:18 site [16] 15:15 16:3,16 18:6,9 38:16,25 40:5 42:11 49:19 90:21 91:23 92:13 96:2,4 156:8 sites [13] 4:21 5:15 18:18 30:14 32:2 71:3,4 90:1 91:19 106:1,4,5 126:2 situation [3] 68:18 142:19 143:17 situations [1] 148:21 size [1] 130:10 skepticism [1] 108:13 slant [1] 71:25 slow [1] 154:13 small [2] 36:22 71:3 smartphones [1] 8:6 so-called [1] 72:9 socia [1] 9:8 Social [39] 5:12 8:3,5 13:12,17,20 15:1,25 20:24 24:13,23 27:8 34:5,13 35:25 42:11 45:19 48:3,13 51:10 54:12 55:3 58:17,24 71:15 73:2 78:18 98:20 99:2 113:12 114:2 125:1,23 129:4 132:19 137:23 143:6 151:18 153:21 society [2] 21:5 36:15 solely [2] 53:8 102:20 Solicitor [2] 2:2,6 Solomon [1] 102:9 somebody [1] 16:7 79:23 87:16 89:12 92:18 107:1 112:2,16 123:25 133:15,16</p>	<p>somehow [2] 30:9 110:7 someone [3] 11:1 12:22 87:12 someone's [1] 87:22 sometimes [3] 74:1 115:18 117:18 somewhat [2] 11:19 108:7 somewhere [1] 67:20 sorry [9] 28:20 32:8 64:22 68:15 87:11 90:6 123:6,18 126:14 sort [37] 5:18 23:19 33:22 35:23 36:1 51:19 53:8 61:2 74:9 77:19 79:10,19 80:18 82:12,16 85:21 86:21,24 88:15 91:15,21,21,21 93:9 94:5 95:23 99:8,23 103:5 105:9 108:11 110:3 111:6,16 133:11 136:4 146:14 sorted [1] 82:1 sorting [1] 53:7 sorts [3] 31:3 37:5 152:17 SOTOMAYOR [19] 7:25 8:22 9:21 12:1,4,8,19 13:13 35:21 51:15 54:17 56:5 93:7,8 126:11,14 132:8,9 134:6 sought [3] 76:3 125:15 152:8 sounds [3] 22:19 27:21 118:7 sovereign [1] 9:3 space [7] 9:24 10:4 51:6,7,11,17 63:9 spam [1] 17:22 spans [1] 10:10 speaker [5] 13:2 47:11 62:10 64:18 74:11 speaker-based [3] 94:20,24 95:1 speakers [7] 14:22 18:21 42:13 62:22,25 64:10 78:12 speaking [6] 47:18 89:14,18,18 98:3 124:5 speaks [1] 20:18 specific [3] 31:7 73:16 149:13 specifically [4] 76:5 99:5 117:11 124:8 specificity [1] 31:13 specifics [1] 105:6 speculating [1] 31:11 speech [127] 4:15,19,25 5:6,14,19 12:18,22 13:8,11 14:21 16:3,16,17 18:24 19:2,3,4 20:15 21:5 22:1,11 25:7,11,13 26:3,10 30:4 31:13,16,16,19,23 34:7 36:18 37:8 39:15 41:10 43:9 44:1,4,4,12,15 45:2,12 46:4,5,11,13 47:13,17 48:8,14,21,22 49:21,22,24 50:5,22,</p>
---	--	--	--	---

Official - Subject to Final Review

24 54:24 62:9,12 63:7 64:2,4,5,7 65:7 74:16,19,25 75:3 84:1,3 98:5,8 100:24 102:22 105:15 109:17 110:6 112:9 113:17,20 114:10,18 115:6,24 116:9 117:20 118:12 119:16,20 120:2,10,24 121:10,14,15,23 122:19,23 124:9 125:7 131:18 135:2,24 136:4,9,17,24 138:18 143:20 144:25 145:6,6 147:16,16 148:19,24 149:4,17 153:23 154:1 speech-hosting [1] 12:17 speed [1] 33:5 sponsors [2] 113:11 117:15 spot [1] 20:13 sprawling [1] 78:24 spring [1] 89:4 square [5] 13:25 69:18 100:25 109:13,15 squarely [1] 63:3 St [1] 46:22 stab [1] 147:4 stage [3] 29:14 76:7 94:3 stake [1] 151:14 stand [4] 12:22,23 127:24 128:22 standard [15] 34:16 35:2 55:3 59:18 67:10 82:25 83:8,9,19 84:19,21,23 107:17 127:25,25 standards [5] 11:3 58:9,19,23 116:20 stands [2] 85:22 141:25 Star [4] 63:20 70:19,20 72:6 start [5] 16:21,25 17:6 66:8 134:3 started [1] 83:13 starting [2] 108:14 145:12 starts [1] 95:13 state [36] 8:23 9:4 12:16 13:19,23 14:4,22 33:6 37:3 54:5 57:14,23,24 58:1 62:14 64:15 98:9 103:4,10 106:24 107:1 108:3 114:9 119:19 129:3 132:17 133:3 136:20 140:16,19,24 142:14,22 145:12 153:16,21 state's [2] 31:9 145:4 statement [1] 95:6 STATES [10] 1:1,17 2:8 3:10 31:24 113:2 124:3 138:13 156:6,15 station [1] 44:20 status [3] 74:10 85:15 153:8 status-based [1] 74:9 statute [60] 6:20 7:7,12,23 9:20 32:16,21 35:5 57:10,19 58:4 62:18 67:6,17,20,23 68:4,7,9,20 70:3,8,20,	21 71:21 72:15,16 73:20 77:15 78:3,7,22,24 81:23 83:14 84:24 95:7 96:20,22,23 97:8,17,18,21 98:13,16,18 99:14 102:6 103:15 104:7 105:8 108:1,20 112:11 136:6 137:5 148:20 152:10 155:4 statute's [2] 107:13 146:12 statutory [2] 123:15 149:13 stay [3] 114:8 154:15,23 step [1] 52:7 still [17] 9:2 21:18 29:20 38:18 46:25 66:18 82:2,4 89:11 94:6 96:11 99:12 107:15 112:10 117:14 143:21 156:12 store [3] 12:21,23 52:4 stores [1] 12:20 stories [1] 130:3 straight [1] 111:24 straightened [1] 105:22 straightforward [2] 111:19,22 strange [2] 49:6,12 strenuously [1] 39:21 stress [1] 53:25 stricken [1] 68:1 strike [1] 67:5 strong [1] 146:18 strongly [3] 19:13 25:19 57:21 structure [1] 148:3 structures [1] 148:12 struggling [1] 149:25 student [1] 130:15 study [1] 153:14 stuff [10] 55:6,9 66:16 79:21 80:10 86:7 90:20 107:25 111:16 137:13 stunted [1] 108:7 subject [4] 7:19 15:5 16:5 17:12 submitted [4] 8:6 148:7 157:2,4 subscribers [3] 5:8 9:14 34:11 substantial [1] 67:24 substantive [2] 9:17,19 substantively [1] 58:9 subterfuge [1] 70:24 succeed [2] 56:18 126:23 succeeded [1] 68:7 success [3] 4:14 81:4 82:20 succinctly [1] 94:2 sudden [3] 39:8 95:12 100:1 sue [1] 107:1 sued [1] 108:19 sufficient [2] 27:5 94:14 suggest [1] 134:10 suggested [2] 82:1 144:22	suggesting [6] 26:7 35:17 74:2 114:21 117:19 144:1 suggests [2] 71:8 108:25 suicide [2] 86:6 88:23 supermarket [2] 10:3,12 supplementing [1] 89:23 support [1] 130:16 supported [1] 156:3 supporting [3] 2:8 3:11 113:3 suppose [13] 36:3,7 60:2 95:20 96:14 101:10 104:1 130:14 135:19 137:12,15 139:24 152:24 supposed [2] 117:21 139:4 suppress [1] 74:25 suppressed [1] 55:9 suppression [7] 4:25 43:9,25 44:11,15 144:20 145:9 SUPREME [3] 1:1,16 139:25 surprised [1] 150:8 surrounding [1] 19:16 survive [1] 94:6 susceptible [2] 58:4 81:2 suspend [1] 98:22 swath [1] 8:18 sweep [23] 6:21 7:13,24 8:16,17 9:5 27:7 35:6 56:20 67:18 68:5 70:1 84:25 93:21 94:5 98:1 107:13,21,25 111:1 136:11 146:12 150:16 sweeping [2] 155:20 156:2 sympathy [1] 153:10 synonymous [1] 70:2 system [1] 50:5	ted [2] 134:1 151:17 teenage [1] 91:22 telegraph [3] 118:14 121:2 129:23 telegraphs [2] 42:6 120:13 telephone [3] 5:1 113:19 118:14 telephones [1] 120:13 tells [4] 12:2 103:25 110:19 142:9 temptation [1] 132:3 term [6] 5:20 9:8 98:24 125:3 140:14 148:8 terminology [3] 92:6 131:4,6 terms [24] 5:17 24:13,15 30:25 49:18 50:11 60:7,13 69:10 82:10 86:8 87:17,18 88:20 109:2 112:7,20 118:7 119:4,11,17 120:1 132:4 149:13 terrorism [2] 88:22 91:3 terrorist [1] 86:2 terrorists [2] 90:23 91:1 tertiary [1] 80:18 test [1] 70:2 Texas [2] 35:16 106:7 text [3] 116:9 135:9 151:24 theaters [1] 24:2 theirs [2] 119:2 122:7 themselves [7] 4:14 5:21 39:6 116:3 119:15 120:16 121:10 then-fresh [1] 110:14 theories [1] 10:11 theory [4] 27:21 47:9 108:20 136:25 there'll [1] 103:22 there's [49] 7:7 10:9 16:19 29:13 34:22,22 41:8 42:23 44:3 51:20 52:19 54:4 55:5 57:2 60:10,17 61:20 62:17 67:7,19 73:15 75:17 76:11 79:22 82:11,18 83:15,20 86:7 87:24 91:17 92:5 93:1 97:9 100:4 108:14 110:16 113:24 116:21,24 124:17 127:9 133:3 135:2 138:15 150:15 153:15 154:9,25 therefore [1] 26:9 they'll [1] 35:13 thin [1] 91:22 thinking [4] 93:12,18 131:1 132:14 thinks [3] 106:21 128:9,19 third [3] 6:25 65:7,10 third-party [4] 5:24 7:4 63:7 153:23 THOMAS [42] 6:5 7:5 30:1,2,23 32:5 63:25 64:20,23 65:3,12,16,25 85:2,3,23 86:11,18,23 87:6,21,25 88:5,7,24 89:8,14 90:3,5,9,13,22,	25 91:5 114:14,21 115:7,13 116:7,16 122:9 126:12 though [17] 10:4 15:21 37:5,22 51:16 52:16 99:10 101:5 113:16 120:19 124:25 128:25 137:4 141:19 143:9 148:17 153:18 thought-provoking [1] 140:13 thousands [2] 16:10,10 threatening [1] 133:16 three [4] 32:22 33:18 43:10 63:5 threshold [5] 68:22,23 70:5 76:15 103:6 throughout [1] 31:1 throw [2] 97:14 133:15 thrown [1] 92:19 thrust [5] 64:13 65:3,4,5 101:9 Tide [2] 86:4 147:22 TikTok [3] 48:4 49:21 110:20 tired [1] 88:9 today [7] 4:11 20:1 68:10 76:1 79:7 109:15 125:9 together [2] 48:11 135:8 tomorrow [1] 155:24 ton [1] 47:17 took [2] 46:15 71:22 tools [2] 5:22 143:8 Tornillo [14] 21:10 45:6 46:1 48:16 51:8 63:4 65:5 131:17 140:20 141:1,2,5 142:18,21 total [1] 68:23 totally [3] 27:22 47:11 149:1 touch [2] 86:12 95:24 touched [1] 148:8 touches [1] 86:13 traditional [9] 7:16,17 8:5 14:8 34:8 42:25 48:3 66:23 155:21 traditionally [1] 120:20 train [1] 133:15 transmission [1] 129:21 transmits [1] 113:17 transmitting [4] 5:13 34:10 118:13 121:9 transportation [2] 120:21 134:20 treat [1] 122:11 treated [3] 66:19 124:24 134:15 tricky [2] 111:14 149:7 tried [7] 57:4 73:21 101:25 106:19 121:14,18 154:21 tries [2] 62:21 104:6 triggers [1] 9:9 truck [1] 118:15 truckload [1] 42:20 true [12] 42:15 48:23 94:2 119:12 120:12,13 121:17
---	---	---	---	--

T

Taamneh [3] 5:21 49:9 52:17
table [2] 97:11 152:21
takedowns [1] 41:4
talismanic [1] 134:12
talked [3] 15:17 57:11 141:7
talks [1] 99:5
Tallahassee [1] 2:2
Tam [1] 47:15
tap [1] 88:16
target [2] 103:15 143:12
targeted [4] 62:19 69:2 95:14 119:20
targeting [3] 43:14 61:19 106:17
targets [2] 60:18 102:7
tautology [1] 30:13
teach [1] 63:5
teaches [1] 89:9
teaching [1] 63:3
team [1] 153:11
tech [1] 62:7
tee [1] 84:16

Official - Subject to Final Review

<p>125:1,23 129:4 132:22 133:8 try^[10] 9:23 82:23 89:6 94: 8 100:2 102:17 135:17 147:4 149:11,19 trying^[14] 13:4 15:14 25:2 31:12 59:18 70:25 71:20 93:9 102:14 124:3 130:9 135:22 136:1 153:14 Tucker^[1] 69:13 tune^[1] 4:17 turn^[3] 29:23 63:1 155:24 turned^[1] 46:21 Turner^[14] 23:4 37:14 43: 21,24 44:5,10 45:6 110:3, 11,14,16 143:24 144:12,14 turns^[2] 48:5 79:22 Twitter^[10] 5:20 39:5,10, 11 49:9 50:2 52:17 87:12 88:17 110:20 Twitter/X^[2] 36:2 48:4 two^[13] 21:21 51:4 68:2 74: 8 80:23 84:5 93:2 103:19 104:16 109:20 122:18 149: 20 150:11 type^[4] 60:1 126:4 129:6 152:2 types^[6] 122:19 125:10 127:20,20 146:21 152:3 Typically^[1] 87:23</p> <hr/> <p style="text-align: center;">U</p> <p>U.S^[2] 92:20 114:16 Uber^[19] 54:13 56:15 76: 23,25 77:7,14,16,18 78:21 96:1 99:24,25 126:3 136:7 150:18 155:6,8,9,10 Ubers^[1] 151:20 unanimous^[1] 141:7 unanimously^[1] 101:15 uncommon^[1] 134:2 unconstitutional^[15] 64: 5 67:6,25 70:9,15,20 72:24 79:13 81:24 82:8 83:2,6 128:13 136:15 146:10 under^[23] 10:24 12:9 24: 15 37:14 41:2,7 42:1 54:5 58:24 65:17 71:13 73:3,4, 12 81:2 85:24 87:5 91:6 112:11 122:24 135:1 148: 13,20 underlies^[1] 146:19 undermine^[1] 65:22 understand^[31] 6:22,24 7: 1 25:2 27:25 30:6 35:8,12, 24 41:6,19 43:10 45:1 54: 11 55:21 59:3 60:23 61:4 66:12 68:15 75:25 83:24 95:6 100:7 102:17 111:6 123:6 125:8 132:16 150: 20 152:11 understanding^[5] 66:2 67:5 114:20 132:10 145: 20</p>	<p>understands^[1] 119:3 understood^[9] 45:9 90:17 91:7 111:20 122:9 129:10, 12 150:7,9 undertaken^[1] 14:20 unfortunate^[1] 65:13 uniquely^[1] 17:23 UNITED^[9] 1:1,17 2:8 3:10 31:24 113:2 138:13 156:6, 15 universe^[2] 89:12 151:1 unless^[4] 68:11 104:4,5 106:4 unlike^[1] 98:3 unprotected^[1] 26:3 unrelated^[4] 43:25 44:11 144:19 145:9 unresolved^[2] 138:21 140: 1 unreviewable^[1] 141:13 unruly^[1] 133:14 unspecific^[1] 8:14 until^[3] 103:19 104:17 105: 21 up^[25] 12:2 18:20 20:22 39: 5 40:10 42:4 54:18 77:9, 25 83:4 84:17 91:13 99:9 100:3,20 103:1 110:7 120: 8 134:1 138:3,16 140:8,10 145:25 151:17 upheld^[1] 59:2 uploading^[1] 11:20 UPS^[2] 42:19 118:15 upset^[1] 18:12 upwards^[2] 17:15,19 urge^[1] 125:20 useful^[1] 63:16 user^[12] 5:19 52:18 53:9 77:5 98:24 99:1,2 122:6, 20,25 155:9 156:12 user-generated^[4] 9:18 11:15,20 151:23 user-uploaded^[1] 27:9 users^[28] 4:16 5:14 6:3 10: 6 12:2 24:16 32:1 39:5,6, 10,12 58:20 63:16 71:5 72: 4,12,13 92:15 114:11,23 116:24 117:7,7 118:2,19 144:6 155:10 156:4 users'^[4] 4:18 5:13 10:14 118:19 using^[3] 30:25 89:19 100: 4 usual^[2] 8:1 96:16</p> <hr/> <p style="text-align: center;">V</p> <p>vacate^[6] 128:2 132:13 133:19,21 145:24 146:13 vacates^[1] 138:2 vaccination^[1] 18:19 vagueness^[1] 106:16 valiantly^[1] 149:25 valid^[6] 73:4 125:7 138:10 150:15,17 152:7</p>	<p>validity^[1] 142:1 Valley^[1] 95:12 value^[3] 116:18 124:23 128:25 variety^[6] 8:11,12 47:14 116:21 119:14 136:6 various^[5] 7:4 50:17 116: 18 117:25 156:8 vast^[4] 5:24 21:13 63:12 141:13 Venmo^[3] 96:1 97:2 98:7 Verizon^[5] 5:7 42:16 48: 23 155:23 156:3 versus^[13] 4:5 5:10,11,20, 22 12:15 19:10 20:5 45:23 47:15 49:9 52:17 109:10 veto^[1] 19:5 via^[1] 118:14 video^[2] 91:13 135:9 videos^[1] 116:10 view^[9] 35:4 41:21 44:13 55:11 56:5 62:10 74:4 99: 6 101:5 viewable^[1] 99:1 viewers^[2] 10:5 64:9 viewership^[1] 68:22 viewpoint^[17] 12:8 49:23 62:11 77:3,8 94:10 95:2 96:4,7,15 97:6,13,15 106:7 129:15,17 133:12 viewpoint-based^[1] 41:7 viewpoints^[2] 69:15 95: 11 views^[9] 18:15 38:11,13 71:1 74:5 118:25 119:2,14 124:20 vintage^[1] 10:13 violate^[1] 112:7 violates^[5] 62:7 64:11 87: 18 88:19 130:7 violating^[1] 87:16 violation^[9] 37:3 63:20 71: 6 72:5 100:25 107:3 111: 12 116:1 138:17 violent^[1] 86:14 Virginia^[1] 2:4 virtual^[1] 27:15 virtually^[2] 6:9 8:17 voice^[2] 21:6 114:11 voices^[1] 44:3 Volokh^[2] 41:9 50:19 Volokh's^[1] 156:21 volume^[2] 90:1,2 volumes^[1] 89:21 voluntarily^[2] 14:14 154: 15 voting^[2] 18:16 36:16</p> <hr/> <p style="text-align: center;">W</p> <p>wait^[1] 68:14 wall^[1] 104:6 wanted^[16] 30:18,19 35:23 39:23 40:9 57:8 66:24 84: 16 85:10,11 117:2 124:11</p>	<p>131:16,18 137:14 154:13 wants^[10] 10:13 13:3 55:8 75:10 77:19 79:23 91:18 99:25 140:10 145:2 War^[2] 92:20 130:16 warrants^[1] 148:24 Washington^[3] 1:12 2:7 57:23 way^[46] 4:12 5:6 7:7 14:8 17:5 19:11 26:11 30:17 31: 23 41:19 43:21 51:20 55: 22 67:8 69:2 71:7 77:10, 15,20 82:24 84:5,10 92:11 95:19 100:5 101:15,25 102:3,12 105:23 110:6 120:4 123:1 124:23 125: 18 127:14 128:8,21,22 130: 1,25 133:25 137:10 141:21 145:1 151:11 ways^[6] 9:25 50:9 52:18 100:22 108:14 156:8 weaker^[1] 13:11 Web^[3] 54:15 56:15 113: 11 website^[15] 9:12 52:24 68: 11,13 71:15 72:11,13 110: 5,18 123:11 125:2 130:2 135:8 145:5 151:22 websites^[28] 9:13,18 33: 25 34:3 62:19,21,24 63:14, 16,19 66:13 67:2 68:21,22 69:5 71:15,16,19 93:13 110:2,6,9,10 113:14 116:8 125:10,25 146:23 week^[1] 155:13 welcome^[4] 6:4 63:24 114: 13 119:14 welcoming^[1] 30:9 whatever^[8] 10:2 11:6 23: 23 36:9 38:13 84:7 121:20, 21 whatnot^[1] 150:19 WhatsApp^[1] 155:16 wheat^[1] 119:7 Whereupon^[1] 157:3 wherever^[1] 17:6 whether^[44] 6:20 13:22 19: 1,2,18 25:15,21 35:5 38:20 39:19 40:17 45:11 53:2 54: 4 59:16,22 61:6,12,19 67: 17 69:22 73:14 75:20 77: 22 79:24 84:1,23 97:9,16 98:10 107:20 118:13 127: 24 128:12,14 131:21 135: 13 138:10 145:5 146:3 148:17,23 149:14 156:9 whim^[1] 5:8 WHITAKER^[92] 2:2 3:3,13 4:6,7,9 6:16 7:10 8:20 9:1 11:10 12:3,7,14 13:6 14:1 15:3 16:19 17:1,6 18:4,7, 13,22 20:3,7 21:23 22:13 24:4,8,11 25:17 26:13,21, 24 27:3,19,25 28:3,6,9,15</p>	<p>29:3,7,12 30:2,6 31:18 32: 9,17 33:15 34:2,21 35:1 37:9,20 38:4,17 39:17 40: 14,19,22,25 42:9 43:15 44: 7,13 45:16 46:19 47:25 48: 17 49:5,25 50:14 52:6 53: 12 55:12,23 56:2,12,19 57: 16 58:13 59:4,8 60:4,12 61:9,15 154:5,6,8 who's^[3] 6:11 89:14 112: 16 whole^[27] 12:9 24:22 37: 21 45:4 48:11 56:10 66:12 78:22 82:18 86:7 94:15,18 96:19 100:4 101:9,14 104: 9 117:13 120:6 122:13 123:7,10,17,21 124:13 143: 10 149:17 wholly^[1] 21:7 whom^[1] 87:13 wide^[2] 116:21 119:14 wield^[1] 143:7 will^[13] 4:3 52:5 77:9 94:6 103:20 104:3,4,25 105:1 116:23 117:7 128:5 130: 16 willing^[3] 20:13 42:12,13 win^[4] 76:15 85:4,6 107:15 wires^[1] 118:14 wishes^[1] 121:21 within^[9] 63:3 86:8 107:12, 21,25 114:8 146:12 147:23 149:15 without^[7] 10:21 17:20 29: 11 33:6 35:6 107:19,24 withstand^[1] 114:12 woke^[1] 39:5 wolf^[2] 80:16,16 won^[2] 81:14 82:20 wonder^[2] 13:21 117:21 word^[10] 9:6 11:11,24 32: 11 35:14 100:21 106:10,10 131:20 132:1 words^[4] 24:5 43:11 105:4 113:8 work^[4] 52:16 57:7 87:8 102:2 worked^[3] 14:9,9 110:6 working^[1] 153:11 world^[7] 4:13 37:1 54:5 78: 11 92:20 107:4 151:21 worlds^[1] 150:18 worry^[1] 110:2 worst^[1] 83:11 worth^[1] 71:2 worthy^[2] 117:8,16 wise^[4] 8:23 107:16 108: 15 149:7 Writers'^[1] 72:7 writes^[1] 8:24 writing's^[1] 104:6</p> <hr/> <p style="text-align: center;">Y</p> <p>yards^[1] 104:9</p>
--	--	--	--	---

year ^[3] 103:19 104:16 105:
1
years ^[1] 142:17
York ^[2] 106:20,21
yourself ^[1] 14:12
YouTube ^[16] 15:13,25 32:
23 36:2 38:12 48:3 78:17
80:24 87:10 88:17 89:18
96:23 100:13 107:10 125:
4 146:4
YouTubes ^[1] 78:10

Z

zoom ^[1] 60:21