

**Nos. 22-277 and 22-555**

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IN THE

**Supreme Court of the United States**

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ASHLEY MOODY, ATTORNEY GENERAL OF FLORIDA,  
ET AL., PETITIONERS

v.

NETCHOICE, LLC, DBA NETCHOICE, ET AL.

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NETCHOICE, LLC, DBA NETCHOICE, ET AL.,  
PETITIONERS

v.

KEN PAXTON, ATTORNEY GENERAL OF TEXAS

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**On Writs of Certiorari  
to the United States Courts of Appeals  
for the Fifth and Eleventh Circuits**

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**AMICI BRIEF OF NATIONAL SECURITY  
EXPERTS ON BEHALF OF NEITHER PARTY**

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### CASES

<i>Brandenburg v. Ohio</i> , 395 U.S. 444 (1969) (per curiam) .....	20
<i>Holder v. Humanitarian L. Project</i> , 562 U.S. 1 (2010) .....	22
<i>Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC</i> , 141 S. Ct. 13 (2020) .....	21
<i>NetChoice, LLC v. Att’y Gen.</i> , 34 F.4th 1196 (11th Cir. 2022), <i>cert. granted in part sub nom. Moody v. NetChoice</i> , No. 22-277, 2023 WL 6319654 (U.S. Sept. 29, 2023) .....	19-20
<i>NetChoice, LLC v. Paxton</i> , 49 F.4th 439 (5th Cir. 2022), <i>cert. granted in part</i> , No. 22-555, 2023 WL 6319650 (U.S. Sept. 29, 2023) .....	20
<i>Virginia v. Black</i> , 538 U.S. 343 (2003) .....	20
<i>Zauderer v. Off. of Disciplinary Couns.</i> , 471 U.S. 626 (1985) .....	19

### STATUTES

18 U.S.C. § 2331 .....	4
47 U.S.C. § 230 .....	4, 20, 28
Social Media NUDGE Act, S. 3608 (117th Cong.) (2022) .....	20

**OTHER AUTHORITIES**

- Actioned Terrorism Content Items on Facebook Worldwide from 4th Quarter 2017 to 2nd Quarter 2023*, Statista (Sept. 20, 2023), <https://www.statista.com/statistics/1013864/facebook-terrorist-propaganda-removal-quarter> ..... 23
- Advertising Revenue in the United States from 2023 to 2027, By Medium*, Statista, <https://www.statista.com/statistics/191926/us-ad-spending-by-medium-in-2009> (last visited Dec. 5, 2023) ..... 6
- Aisha Counts & Eari Nakano, *Harmful Content Has Surged on Twitter, Keeping Advertisers Away*, Time (July 19, 2023), <https://perma.cc/3DC7-T4HR> ..... 27
- Aisha Malik, *Twitter Begins Rolling Out Its Community Notes Feature Globally*, TechCrunch (Dec. 12, 2022), <https://perma.cc/8E4S-8D86> ..... 25
- Alexander Meleagrou-Hitchens et al., *Homegrown: ISIS in America* (2020) ..... 9
- Ángel Díaz & Laura Hecht-Felella, *Double Standards in Social Media Content Moderation*, Brennan Ctr. for Just. (Aug. 4, 2021), <https://perma.cc/K4UK-2E3S> ..... 23
- Anna Gronewold, *Buffalo Shooter ‘Radicalized’ Through Fringe Online Platforms, Report Finds*, Politico (Oct. 18, 2022), <https://perma.cc/J383-EU3E> ..... 15

- Annie Y. Chen et al., *Exposure to Alternative & Extremist Content on YouTube*, ADL (Feb. 5, 2021), <https://perma.cc/WJE6-KAV9> ..... 28
- Antonia Ward, *ISIS's Use of Social Media Still Poses a Threat to Stability in the Middle East and Africa*, *Geo. Sec. Stud. Rev.* (Dec. 10, 2018), <https://perma.cc/S3TB-Q5QZ> ..... 7
- An Update to How We Address Movements and Organizations Tied to Violence*, *Meta* (Aug. 19, 2020), <https://perma.cc/R74D-7UMB>..... 21
- Belle Wong, *Top Social Media Statistics and Trends of 2023*, *Forbes Advisor* (May 18, 2023), <https://perma.cc/F58N-TEPR>..... 6
- Bennett Clifford, George Washington Program on Extremism, *Moderating Extremism: The State of Online Terrorist Content Removal Policy in the United States* (Dec. 2021), <https://perma.cc/3JG8-KSTV> ..... 17, 21
- Betsy Woodruff Swan & Mark Scott, *DHS: Extremists Used TikTok to Promote Jan. 6 Violence*, *Politico* (Sept. 6, 2021), <https://perma.cc/LY2R-8N4W> ..... 16
- Brendan I. Koerner, *Why ISIS Is Winning the Social Media War*, *Wired* (April 2016), <https://perma.cc/2X37-6D3L> ..... 8
- Brian Bennett, *Exclusive: Iran Steps Up Efforts to Sow Discord Inside the U.S.*, *Time* (June 9, 2021), <https://perma.cc/EVS4-XPV2> ..... 12

- Brian Fishman, *Dual-Use Regulation: Managing Hate and Terrorism Online Before and After Section 230 Reform*, Brookings (Mar. 14, 2023), <https://perma.cc/YDP4-7VLJ> ..... 18
- Cat Zakrzewski et al., *What the Jan. 6 Probe Found Out About Social Media, But Didn't Report*, Wash. Post (Jan. 17, 2023), <https://perma.cc/KW4X-ZVRX> ..... 16
- Cecilia Kang & Adam Goldman, *In Washington Pizzeria Attack, Fake News Brought Real Guns*, N.Y. Times (Dec. 5, 2016), <https://www.nytimes.com/2016/12/05/business/media/comet-ping-pong-pizza-shooting-fake-news-consequences.html>..... 15
- Charlie Winter et al., *Online Extremism: Research Trends in Internet Activism, Radicalization, and Counter-Strategies*, 14(2) Int'l J. Conflict & Violence (2020), <https://perma.cc/8T82-QWUV>..... 8
- Christina Pineda, *What Does ISIS Post on YouTube?*, Homeland Sec. Digit. Libr. (July 26, 2018), <https://perma.cc/Y9J8-M37B> ..... 8
- Community Standards Enforcement Report: Dangerous Organizations: Terrorism and Organized Hate*, Meta (Nov. 2023), <https://perma.cc/PN6F-PNT7>..... 19, 23
- Community Standards Enforcement Report: Fake Accounts*, Meta (Nov. 2023), <https://perma.cc/XU49-7MT6>..... 19

<i>Community Standards Enforcement Report: Hate Speech</i> , Meta (Nov. 2023), <a href="https://perma.cc/49TA-RYJT">https://perma.cc/49TA-RYJT</a> .....	19
<i>Community Standards Enforcement Report: Violence and Incitement</i> , Meta (Nov. 2023), <a href="https://perma.cc/6D77-27HR">https://perma.cc/6D77-27HR</a> .....	19
Counter Extremism Project, <i>Anwar al-Awlaki’s Ties to Extremists</i> , <a href="https://perma.cc/N5G9-SD9X">https://perma.cc/N5G9-SD9X</a> ..	9
<i>Counterspeech</i> , Facebook, <a href="https://perma.cc/B3N9-FL6P">https://perma.cc/B3N9-FL6P</a> .....	25
Cristina Criddle, <i>Social Media Job Cuts Risk Surge of Online Terrorist Content, Report Warns</i> , <i>Fin. Times</i> (Jan. 19, 2023), <a href="https://www.ft.com/content/138f4b31-f735-4b7e-820e-84e96ca7aafd">https://www.ft.com/content/138f4b31-f735-4b7e-820e-84e96ca7aafd</a> .....	29
Dana Kerr, <i>ISIS Spread Its Reach Through Twitter with 46,000 Accounts</i> , <i>CNET</i> (Mar. 8, 2015), <a href="https://perma.cc/S39T-ZS2W">https://perma.cc/S39T-ZS2W</a> .....	8
Daniel Karell et al., “ <i>Born for a Storm</i> ”: <i>Hard-Right Social Media and Civil Unrest</i> , <i>88 Am. Socio. Rev.</i> 322 (2023).....	17
Daveed Gartenstein-Ross et al., <i>Redrawing the Lines: An Assessment of the Impact of “Anti-Censorship” Legislation on Terrorist Content, Hate Speech/Harassment, and Mis/Disinformation</i> , <i>Valens Global</i> (Oct. 3, 2022), <a href="https://valensglobal.com/redrawing-the-lines">https://valensglobal.com/redrawing-the-lines</a> .....	23, 25

David Ingram, <i>Facebook Removes Pages Belonging to Far-Right Group ‘Proud Boys’</i> , NBC News (Oct. 30, 2018), <a href="https://perma.cc/6T3L-YMXW">https://perma.cc/6T3L-YMXW</a> ....	24
David Lauer, <i>Facebook’s Ethical Failures Are Not Accidental; They Are Part of the Business Model</i> , 1 AI & Ethics 395 (2021).....	28
Digital Citizens Alliance, <i>The Domestic Extremist Next Door: How Digital Platforms Enable the War Against American Government</i> (Apr. 2021), <a href="https://perma.cc/YDV8-3XJ9">https://perma.cc/YDV8-3XJ9</a> .....	10
Dina Temple-Raston, <i>A Tale of Two Radicalizations</i> , NPR (Mar. 21, 2021), <a href="https://perma.cc/4H7B-XFFN">https://perma.cc/4H7B-XFFN</a> .....	11
Erin Ailworth et al., <i>Lost in Life, El Paso Suspect Found a Dark World Online</i> , Wall St. J. (Aug. 8, 2019), <a href="https://perma.cc/G44V-UL4E">https://perma.cc/G44V-UL4E</a> .....	15
<i>Facebook Parent Culls Large Proud Boys Network from Sites</i> , AP (Aug. 25, 2022), <a href="https://apnews.com/article/technology-social-media-proud-boys-574ed28359244921286e8a78e412e0e2">https://apnews.com/article/technology-social-media-proud-boys-574ed28359244921286e8a78e412e0e2</a> .....	24
<i>Facebook Spent over \$13 Bn on Safety, Security Since 2016</i> , Reuters (Sept. 21, 2021), <a href="https://perma.cc/6USM-CUHM">https://perma.cc/6USM-CUHM</a> .....	17
<i>Foreign Influence Operations’ Use of Social Media Platforms: Hearing Before the S. Select Comm. on Intel.</i> , 115th Cong. 2 (Aug. 1, 2018) .....	13



<i>Frankfurt Terror Suspect Mistakenly Inspired by Hollywood</i> , ABC News (Aug. 31, 2011), <a href="https://perma.cc/AK2U-NVfy">https://perma.cc/AK2U-NVfy</a> .....	14
Gilad Edelman, <i>Better Than Nothing: A Look at Content Moderation in 2020</i> , Wired (Dec. 27, 2020), <a href="https://www.wired.com/story/content-moderation-2020-better-than-nothing">https://www.wired.com/story/content-moderation-2020-better-than-nothing</a> .....	29
Glenn S. Gerstell, <i>The National-Security Case for Fixing Social Media</i> , The New Yorker (Nov. 13, 2020), <a href="https://www.newyorker.com/tech/annals-of-technology/the-national-security-case-for-fixing-social-media">https://www.newyorker.com/tech/annals-of-technology/the-national-security-case-for-fixing-social-media</a> .....	12
Government’s Sentencing Memorandum, <i>United States v. Rahimi</i> , No. 16-CR-00760-RMB (S.D.N.Y. Jan. 16, 2018), ECF 188 .....	13
Hatewatch Staff, <i>Facebook’s Fight Club: How the Proud Boys Use the Social Media Platform to Vet Fighters</i> , So. Poverty L. Ctr. (Aug. 2, 2018), <a href="https://perma.cc/Z4MF-NRHR">https://perma.cc/Z4MF-NRHR</a> .....	11
Igor Bonifacic, <i>Twitter Bans Far-Right Extremist Group the Oath Keepers</i> , Engadget (Sept. 10, 2020), <a href="https://perma.cc/Y6MW-J6PQ">https://perma.cc/Y6MW-J6PQ</a> .....	24
<i>Instagram Hosting White Supremacist, Accelerationist Content</i> , Anti-Defamation League (Dec. 9, 2021), <a href="https://perma.cc/M2AT-LSGS">https://perma.cc/M2AT-LSGS</a> .....	11
<i>IS Foreign Fighters: 5,600 Have Returned Home – Report</i> , BBC (Oct. 24, 2017), <a href="https://perma.cc/2SNJ-TC6P">https://perma.cc/2SNJ-TC6P</a> .....	7

- ISIS Online: Countering Terrorist Radicalization and Recruitment on the Internet and Social Media: Hearing Before the Perm. Subcomm. on Investigations of the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. 52 (2016), <https://perma.cc/DG4K-THFN> ..... 7, 10
- J.M. Berger & Jonathon Morgan, Brookings Inst., *The ISIS Twitter Census: Defining and Describing the Population of ISIS Supporters on Twitter* (2015), <https://perma.cc/9Z9L-EU6V> ..... 8
- Jacob Ware, George Washington Program on Extremism, *The Third Generation of Online Radicalization* (June 2023), <https://perma.cc/HJT4-E8P9> ..... 17
- Jarrett Renshaw, *White House Launches Threads Account for Biden, Harris*, Reuters (Nov. 20, 2023), <https://perma.cc/P7LG-YSEM> ..... 6
- Jens F. Binder & Jonathan Kenyon, *Terrorism and the Internet: How Dangerous Is Online Radicalization?*, *Frontiers in Psych.*, Oct. 2022, <https://perma.cc/T2DZ-HYBU> ..... 10
- Joe Biden (@JoeBiden), X (last visited Dec. 4, 2023), <https://twitter.com/JoeBiden> ..... 6
- Joe Whittaker, *The Online Behaviors of Islamic State Terrorists in the United States*, 20 *Criminology & Pub. Pol’y* 177 (2021) ..... 10

- Kate Klonick, *The New Governors: The People, Rules, and Processes Governing Online Speech*, 131 *Harvard L. Rev.* 1598 (2018)..... 27
- Lorenzo Vidino & Seamus Hughes, Prog. on Extremism, *Geo. Wash. Univ., ISIS in America: From Retweets to Raqqa* (Dec. 2015), <https://perma.cc/BB3X-K6Y5>. ..... 9
- Mark Berman, *Prosecutors Say Dylann Roof ‘Self-Radicalized’ Online, Wrote Another Manifesto in Jail*, *Wash. Post* (Aug. 22, 2016), <https://perma.cc/QV6X-K6HH> ..... 15
- Mark MacCarthy, *Senator Klobuchar “Nudges” Social Media Companies to Improve Content Moderation*, *Brookings* (Feb. 23, 2022), <https://perma.cc/H7Q5-KHNH>..... 20
- Mary B. McCord, *White Nationalist Killers Are Terrorists. We Should Fight Them Like Terrorists*, *Wash. Post* (Aug. 8, 2019), <https://perma.cc/4ZMF-L4BM>..... 22
- Matthew Jones, *The Complete History of Social Media: A Timeline of the Invention of Online Networking*, *Hist. Coop.* (Nov. 9, 2023), <https://perma.cc/762U-P2XW> ..... 5
- Matthias Bartsch et al., *The Radical Islamist Roots of the Frankfurt Attack*, *Der Spiegel* (Mar. 3, 2011), <https://perma.cc/D3GU-K7UJ> ..... 14

Megan Cerullo, <i>X Has Removed Hundreds of Hamas-Linked Accounts Following Shock Attack</i> , CBS News (Oct. 12, 2023), <a href="https://perma.cc/CJM9-QRWX">https://perma.cc/CJM9-QRWX</a> .....	24
Nat'l Consortium for the Study of Terrorism & Responses to Terrorism, <i>Profiles of Individual Radicalization in the United States (PIRUS)</i> , <a href="https://perma.cc/Q8C9-KLZY">https://perma.cc/Q8C9-KLZY</a> .....	8
Nat'l Consortium for the Study of Terrorism & Responses to Terrorism, <i>The Use of Social Media by United States Extremists</i> (2018), <a href="https://perma.cc/7X3D-N4VL">https://perma.cc/7X3D-N4VL</a> .....	8
Nat'l Intel. Council, ICA 2020-00078D, <i>Foreign Threats to the 2020 US Federal Elections</i> (Mar. 10, 2021) (as declassified), <a href="https://perma.cc/J8K8-TSU9">https://perma.cc/J8K8-TSU9</a> .....	11
NPR Staff, <i>The Jan. 6 Attack: The Case Behind the Biggest Criminal Investigation in U.S. History</i> , NPR (Feb. 9, 2021, updated Nov. 17, 2023), <a href="https://perma.cc/L8BJ-MHW4">https://perma.cc/L8BJ-MHW4</a> .....	16
<i>Our Progress Addressing Challenges and Innovating Responsibly</i> , Meta (Sept. 21, 2021), <a href="https://perma.cc/648E-A4ER">https://perma.cc/648E-A4ER</a> .....	27
Paige Leskin, <i>YouTube Is 15 Years Old. Here's a Timeline of How YouTube Was Founded, Its Rise to Video Behemoth, and Its Biggest Controversies Along the Way</i> , Bus. Insider (May 30, 2020), <a href="https://perma.cc/36QM-3BJ8">https://perma.cc/36QM-3BJ8</a> .....	5

Paul M. Barrett et al., *Fueling the Fire: How Social Media Intensifies U.S. Political Polarization – And What Can Be Done About It* (Sept. 2021), <https://perma.cc/WHR8-L36T> ..... 28

Paul M. Barrett, *It’s Past Time to Take Social Media Content Moderation In-House, Just Sec.* (Jan. 18, 2023), <https://perma.cc/7NZJ-QZSQ>..... 18

President Biden (@POTUS), X (last visited Dec. 4, 2023) ..... 6

Ryan Mac et al., *Advertisers Flee X as Outcry over Musk’s Endorsement of Antisemitic Post Grows*, N.Y. Times (Nov. 17, 2023), <https://www.nytimes.com/2023/11/17/technology/elon-musk-twitter-x-advertisers.html> ..... 27

Samantha Bradshaw, *Influence Operations and Disinformation on Social Media*, Centre for International Governance Innovation (Nov. 23, 2020), <https://perma.cc/DQT4-AY3S>..... 13

Scott Shane, *In ‘Watershed Moment,’ YouTube Blocks Extremist Cleric’s Message*, N.Y. Times (Nov. 12, 2017), <https://www.nytimes.com/2017/11/12/us/politics/youtube-terrorism-anwar-al-awlaki.html> ..... 9

Second Superseding Indictment, *United States v. Kareem*, No. 15-CR-0707-PHX-SRB (D. Ariz. Dec. 22, 2015), ECF 158..... 14

Shane Huntley, Threat Analysis Group, *TAG Bulletin: Q3 2022*, Google (Oct. 26, 2022), <https://perma.cc/KF22-X3TT> ..... 25-26

Shannon Bond, *Facebook Takes Down Russian Network Impersonating European News Outlets*, NPR (Sept. 27, 2022), <https://perma.cc/TV2C-QDYQ>..... 26

Shannon Bond, *Meta Says Chinese, Russian Influence Operations Are Among the Biggest It’s Taken Down*, NPR (Aug. 29, 2023), <https://perma.cc/Z4Z9-EHER> ..... 26

Sheera Frenkel, *Meta’s ‘Biggest Single Takedown’ Removes Chinese Influence Campaign*, N.Y. Times (Aug. 29, 2023), <https://www.nytimes.com/2023/08/29/technology/meta-china-influence-campaign.html>..... 26

Sheera Frenkel, *The Storming of Capitol Hill Was Organized on Social Media*, N.Y. Times (Jan. 6, 2021), <https://www.nytimes.com/2021/01/06/us/politics/protesters-storm-capitol-hill-building.html> ..... 16

*Social Media Advertising – Worldwide*, Statista (Nov. 2023), <https://www.statista.com/outlook/dmo/digital-advertising/social-media-advertising/worldwide>..... 6

Stuart Macdonald et al., *Regulating Terrorist Content on Social Media: Automation and the Rule of Law*, 15 Int’l J. L. Context 183 (2009) ..... 18

- Tim Bernard, *What Should We Know About Government Influence on Content Moderation?*, Tech Pol’y Press (Feb. 8, 2023), <https://perma.cc/8YAS-TRP8> ..... 18
- The YouTube Team, *The Four Rs of Responsibility, Part 2: Raising Authoritative Content and Reducing Borderline Content and Harmful Misinformation*, YouTube Off. Blog (Dec. 3, 2019), <https://perma.cc/M3KE-PX6B> ..... 26
- Tristan Bove, *A Proud Boys Network Was Trying to Stealthily Mobilize on Facebook and Instagram. Meta’s Counterterrorism Team Snuffed It Out*, Fortune (Aug. 26, 2022), <https://perma.cc/5GR6-GUXF> ..... 24
- Tristana Moore, *Was the Frankfurt Airport Shooter a Lone-Wolf Jihadist?*, Time (Mar. 3, 2011), <https://perma.cc/76T4-U93N>..... 14
- United States’ Sentencing Memorandum, *United States v. Kareem*, No. 15-CR-0707-PHX-SRB (D. Ariz. Sept. 22, 2016), ECF 421..... 14
- Vera Eidelman et al., *Time and Again, Social Media Giants Get Content Moderation Wrong: Silencing Speech About Al-Aqsa Mosque Is Just the Latest Example*, ACLU (May 17, 2021), <https://perma.cc/9377-M4WK> ..... 23
- Will Carless, *Extremist Boogaloo Bois Back on Facebook Since Mar-a-Lago Raid As Anger Toward Feds Mounts*, USA Today (Sept. 27, 2022), <https://perma.cc/H45U-56ER>..... 11

*YouTube Removes Dead Extremist’s Videos*, BBC  
(Nov. 13, 2017), <https://perma.cc/8945-L72T> ..... 24

Zachary Cohen, *FBI Director Says Bureau Is Not Investigating QAnon Conspiracy “in Its Own Right,”* CNN (Apr. 15, 2021),  
<https://perma.cc/TLN9-X23E> ..... 11

Zoe Strozewski, *Twitter Suspended 44K Accounts for Promoting Terrorism, Violent Orgs in First Half of 2021*, Newsweek (Jan. 25, 2022),  
<https://perma.cc/XP7Y-8JG3> ..... 24



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

*Amici* represent a broad cross-section of the national security community and have significant operational and policy expertise in combatting terrorism. They include former career and politically appointed officials, across Republican and Democratic administrations, from the National Security Council staff, Office of the Director of National Intelligence, Central Intelligence Agency, Department of Homeland Security, Department of Justice, Federal Bureau of Investigation (FBI), Department of Defense, and Department of State, as well as former members of Congress with national security credentials and other national security experts. A complete list of *amici* is included in the Appendix.

As experienced national security experts, prosecutors, and law enforcement officials, *amici* have seen firsthand the threat that online radicalization poses to the United States. In *amici*'s experience, the use of social media platforms to radicalize, recruit, plot, and plan terrorist attacks is ubiquitous among foreign terrorist organizations and domestic extremists and can be directly traced to acts of terrorism and violence in the United States. Although *amici* appreciate that information warfare is nothing new, the rise of social media and other online platforms has created a novel and more treacherous

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

battlefield in the war, where foreign adversaries and other malign actors can spread disinformation, propaganda, and recruitment materials far more widely and effectively than ever before. These efforts increase political polarization, sow discord, generate mistrust in governments and institutions, and undermine the national security of the United States.

Our nation's security depends upon social media platforms to be responsible corporate citizens who seek out dangerous content posted by malign actors and remove it or take other measures to stop its spread. The Florida and Texas statutes at issue significantly restrict the ability of social media platforms to undertake this important work. The brief of the Solicitor General filed at the certiorari stage explained that the content-moderation provisions of both statutes hinder the platforms' ability to exercise their First Amendment rights to determine whether and how to display third-party content.

*Amici* appear here to highlight how the Florida and Texas statutes, if allowed to go into effect, will thwart the crucial efforts of social media platforms to moderate dangerous content posted by foreign terrorist groups, foreign adversaries, violent domestic extremists, and other malign actors. These statutes' enforcement would foster an environment where social media platforms refrain from removing or downranking dangerous content and from developing better methods of identifying such content and mitigating its effects, thereby tilting the battlefield in favor of those who seek to spread disinformation, sow political division, and encourage violence. Such an environment would threaten the national security of

the United States. *Amici* urge the Court to avoid such a dangerous result.

### **INTRODUCTION AND SUMMARY OF ARGUMENT**

The internet has fundamentally changed human experience in ways that previous generations could not have fathomed. It connects us with family and friends; provides endless entertainment and immediate access to news and information; engages our imaginations; allows us to shop, make travel arrangements, and pay bills at the click of a button; and exposes us to a multiplicity of ideas, beliefs, and cultures.

But the internet can also be a dark place. Terrorist groups use the internet, and social media platforms in particular, to spread propaganda; connect like-minded individuals; recruit sympathizers; plan terrorist operations; livestream terrorist attacks and executions; and incite more violence. Foreign adversaries, such as China, Russia, and Iran, regularly conduct disinformation campaigns on social media platforms targeting the United States and its allies. Domestic extremists congregate on social media, sharing conspiracy theories and hate-fueled and anti-government ideologies that provide the inspiration for intimidation, threats, and violence. Mis- and disinformation flourishes, polluting the information ecosystem with fictional narratives that influence people's beliefs, attitudes, and decision-making. All of this activity can present serious threats to the national security of the United States,

regardless of whether the online content crosses the line into being criminal.

The national security threat posed by online content has serious, real-world consequences, including inspiring violent attacks intended to intimidate and coerce the civilian population and affect government policy through intimidation and coercion—the very definition of terrorism in the U.S. Code. *See* 18 U.S.C. § 2331. The efforts made by social media platforms to moderate this content—to ban it, remove it, label it, de-prioritize it, contextualize it, or direct users away from it—are far from perfect. But there can be no doubt that the nation’s security benefits from social media content moderation efforts, however flawed they may be. In many cases, responsible social media platforms serve as important actors in efforts by governments and civil society to prevent the spread of terrorist content and harmful mis- and disinformation.

Social media platforms have unique technical expertise that they can leverage to combat online threats to national security and, under current U.S. law, have broad latitude to control content on their platforms. *See* 47 U.S.C. § 230. By contrast, given the protections of the First Amendment, government actors have more limited capabilities with respect to removing and otherwise countering online disinformation and propaganda. It is vitally important to our national security that social media platforms continue to make efforts to moderate extremist content, disinformation, and propaganda from hostile foreign governments and terrorist

groups, violent domestic extremists, and other malign actors.

The Florida and Texas statutes at issue in these cases, if allowed to go into effect, would penalize social media platforms that delete content they deem to be dangerous and harmful under their terms of service. This would be directly contrary to the national security interests of the United States. *Amici* ask this Court to recognize that the content moderation policies of social media platforms, while by no means perfect, play a critical role in advancing U.S. national security interests. This Court should ensure that platforms retain the latitude to continue to design, implement, and improve such policies.

## ARGUMENT

### **I. The Use of Social Media Platforms by Malign Actors Poses a National Security Threat.**

Modern social media is not even 20 years old,<sup>2</sup> yet it has uniquely transformed our everyday lives. The President of the United States has an X (formerly

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<sup>2</sup> Facebook debuted in 2004, Twitter two years later in 2006, and Instagram in 2010. Matthew Jones, *The Complete History of Social Media: A Timeline of the Invention of Online Networking*, Hist. Coop. (Nov. 9, 2023), <https://perma.cc/762U-P2XW>. YouTube was founded in 2005. Paige Leskin, *YouTube Is 15 Years Old. Here's a Timeline of How YouTube Was Founded, Its Rise to Video Behemoth, and Its Biggest Controversies Along the Way*, Bus. Insider (May 30, 2020), <https://perma.cc/36QM-3BJ8>.

known as Twitter) account<sup>3</sup> and recently announced his presence on Threads.<sup>4</sup> Nearly every Fortune 500 company is on social media, as are millions of smaller businesses, charities, sports teams, schools and universities, federal agencies, and state and local governments. Social media advertising revenue is projected to be more than \$72 billion in the United States and over \$207 billion worldwide in 2023.<sup>5</sup> And, of course, billions of individuals post, tweet, circulate memes, watch YouTube, dance on TikTok, and share photographs of dinners on Instagram every day.<sup>6</sup>

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<sup>3</sup> See President Biden (@POTUS), X (last visited Dec. 4, 2023), <https://twitter.com/POTUS>; Joe Biden (@JoeBiden), X (last visited Dec. 4, 2023), <https://twitter.com/JoeBiden>.

<sup>4</sup> See Jarrett Renshaw, *White House Launches Threads Account for Biden, Harris*, Reuters (Nov. 20, 2023), <https://perma.cc/P7LG-YSEM>.

<sup>5</sup> *Social Media Advertising – Worldwide*, Statista (Nov. 2023), <https://www.statista.com/outlook/dmo/digital-advertising/social-media-advertising/worldwide>. By comparison, U.S. 2023 television advertising revenue is projected at \$72.4 billion and U.S. 2023 newspaper advertising revenue is projected at \$11.1 billion. *Advertising Revenue in the United States from 2023 to 2027, By Medium*, Statista, <https://www.statista.com/statistics/191926/us-ad-spending-by-medium-in-2009> (last visited Dec. 5, 2023).

<sup>6</sup> Belle Wong, *Top Social Media Statistics and Trends of 2023*, Forbes Advisor (May 18, 2023), <https://perma.cc/F58N-TEPR> (estimating 4.9 billion people use social media worldwide).

**A. Malign actors use social media to foment violence and political discord.**

Unfortunately, malign actors take full advantage of the penetration of social media into modern society. The threat from foreign terrorist organizations, for example, is well documented. For more than a decade, foreign terrorist organizations have used the internet as a tool for radicalizing, recruiting, plotting, and planning. This phenomenon has been tracked across terrorist groups, from al-Qaeda in the Arabic Peninsula's launch of a digital magazine in 2010, to ISIS's strategic use of social media to mobilize an estimated 40,000 foreign fighters from 110 countries between 2014 and 2017.<sup>7</sup> Foreign terrorist organizations use internet platforms to disseminate terrorist propaganda, target U.S. personnel, and identify potential recruits.<sup>8</sup>

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<sup>7</sup> Antonia Ward, *ISIS's Use of Social Media Still Poses a Threat to Stability in the Middle East and Africa*, Geo. Sec. Stud. Rev. (Dec. 10, 2018), <https://perma.cc/S3TB-Q5QZ>; *IS Foreign Fighters: 5,600 Have Returned Home – Report*, BBC (Oct. 24, 2017), <https://perma.cc/2SNJ-TC6P>.

<sup>8</sup> *ISIS Online: Countering Terrorist Radicalization and Recruitment on the Internet and Social Media: Hearing Before the Perm. Subcomm. on Investigations of the S. Comm. on Homeland Sec. & Governmental Affairs*, 114th Cong. 52 (2016) (statement of Michael Steinbach, Exec. Assistant Dir., Fed. Bureau of Investigation), <https://perma.cc/DG4K-THFN>; *see also* (cont'd)

At one point in 2014, Twitter accounts of ISIS supporters numbered more than 46,000, to say nothing of accounts supporting Hamas or al-Qaeda, or accounts on other platforms.<sup>9</sup> In 2016, “social media played a primary or secondary role in the radicalization of 93.18% of Islamist extremists” in the United States.<sup>10</sup> In just a three-month period in 2018, 1,348 ISIS videos were uploaded to YouTube, at an average rate of nearly 15 videos per day.<sup>11</sup> Videos related to Anwar al-Awlaki, the American-born al-

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Charlie Winter et al., *Online Extremism: Research Trends in Internet Activism, Radicalization, and Counter-Strategies*, 14(2) *Int'l J. Conflict & Violence*, at 1, 7-9 (2020), <https://perma.cc/8T82-QWUV> (cataloging how extremist organizations use the internet, including propaganda, recruitment, logistics, and fundraising).

<sup>9</sup> Dana Kerr, *ISIS Spread Its Reach Through Twitter with 46,000 Accounts*, CNET (Mar. 8, 2015), <https://perma.cc/S39T-ZS2W> (citing J.M. Berger & Jonathon Morgan, Brookings Inst., *The ISIS Twitter Census: Defining and Describing the Population of ISIS Supporters on Twitter* 7 (2015), <https://perma.cc/9Z9L-EU6V>).

<sup>10</sup> Nat'l Consortium for the Study of Terrorism & Responses to Terrorism, *The Use of Social Media by United States Extremists* 3 (2018), <https://perma.cc/7X3D-N4VL> (citing Nat'l Consortium for the Study of Terrorism & Responses to Terrorism, *Profiles of Individual Radicalization in the United States (PIRUS)*, <https://perma.cc/Q8C9-KLZY>).

<sup>11</sup> Christina Pineda, *What Does ISIS Post on YouTube?*, Homeland Sec. Digit. Libr. (July 26, 2018), <https://perma.cc/Y9J8-M37B>; see generally Brendan I. Koerner, *Why ISIS Is Winning the Social Media War*, *Wired* (April 2016), <https://perma.cc/2X37-6D3L> (describing ISIS's social media strategy).



Qaeda leader whose jihadist propaganda “helped shape a generation of American terrorists, including the Fort Hood gunman, the Boston Marathon bombers and the perpetrators of massacres in San Bernardino, Calif., and Orlando, Fla.”<sup>12</sup> numbered, at one point, more than 70,000 on YouTube alone.<sup>13</sup>

In studies looking at the impact of social media use by foreign terrorist organizations, George Washington University’s Program on Extremism concluded in 2015 that “[s]ocial media plays a crucial role in the radicalization and, at times, mobilization of U.S.-based ISIS sympathizers,” identifying “some 300 American and/or U.S.-based ISIS sympathizers active on social media, spreading propaganda, and interacting with like-minded individuals.”<sup>14</sup> More than three-quarters of American Islamist militants studied by the New America Foundation were “active in online jihadist circles, posting jihadist material on

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<sup>12</sup> Scott Shane, *In ‘Watershed Moment,’ YouTube Blocks Extremist Cleric’s Message*, N.Y. Times (Nov. 12, 2017), <https://www.nytimes.com/2017/11/12/us/politics/youtube-terrorism-anwar-al-awlaki.html>; see also Counter Extremism Project, *Anwar al-Awlaki’s Ties to Extremists*, <https://perma.cc/N5G9-SD9X> (documenting al-Awlaki’s influence on 99 extremists, 56 in the United States and 43 in Europe); Alexander Meleagrou-Hitchens et al., *Homegrown: ISIS in America* 119 (2020) (describing court documents showing that at least 31 percent of U.S. jihadist-related offenses between 2009 and 2016 were inspired by or linked to al-Awlaki).

<sup>13</sup> Shane, *supra* note 12.

<sup>14</sup> Lorenzo Vidino & Seamus Hughes, Prog. on Extremism, Geo. Wash. Univ., *ISIS in America: From Retweets to Raqqa* ix (Dec. 2015), <https://perma.cc/BB3X-K6Y5>.

Twitter or Facebook, or were in direct contact with ISIS recruiters over social media.”<sup>15</sup> In another study focused on U.S.-based ISIS terrorism, “[s]ome online activity was . . . present in 92% of all cases; more than 80% interacted online with co-ideologues, 80% used social media platforms for at least some of their activities, [and] 36% had disseminated propaganda online.”<sup>16</sup>

Similar findings track the penetration of social media content distributed by violent domestic extremists such as neo-Nazi groups, accelerationists, illegal paramilitary organizations, and violent anarchists.<sup>17</sup> Domestic extremists that openly espouse violence, like the Proud Boys, the Boogaloo movement, and Atomwaffen (a white supremacist group), have all used mainstream social media as tools to identify potential followers, to organize, and

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<sup>15</sup> *ISIS Online*, *supra* note 8, at 69 (statement of Peter Bergen, Vice President, New Am. Found.).

<sup>16</sup> See Jens F. Binder & Jonathan Kenyon, *Terrorism and the Internet: How Dangerous Is Online Radicalization?*, *Frontiers in Psych.*, Oct. 2022, at 5, <https://perma.cc/T2DZ-HYBU> (citing Joe Whittaker, *The Online Behaviors of Islamic State Terrorists in the United States*, 20 *Criminology & Pub. Pol’y* 177 (2021)).

<sup>17</sup> See Digital Citizens Alliance, *The Domestic Extremist Next Door: How Digital Platforms Enable the War Against American Government* (Apr. 2021), <https://perma.cc/YDV8-3XJ9>.

to plan.<sup>18</sup> Indeed, observers have compared the recruitment and radicalization tactics used by violent domestic extremist groups on social media with those so successfully pioneered by foreign terrorist organizations like ISIS.<sup>19</sup> FBI Director Christopher Wray noted the similarity in 2021, testifying before Congress that “[s]ocial media has become, in many ways, the key amplifier to domestic violent extremism just as it has for malign foreign influence.”<sup>20</sup>

Foreign states too increasingly use social media as a tool to “reach US audiences directly” and manipulate discourse, attack their rivals, and undermine U.S. policy.<sup>21</sup> Russia, for example, “seeks to push disinformation in a comprehensive, integrated way, so as to give its content an aura of

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<sup>18</sup> See, e.g., Will Carless, *Extremist Boogaloo Bois Back on Facebook Since Mar-a-Lago Raid As Anger Toward Feds Mounts*, USA Today (Sept. 27, 2022), <https://perma.cc/H45U-56ER>; *Instagram Hosting White Supremacist, Accelerationist Content*, Anti-Defamation League (Dec. 9, 2021), <https://perma.cc/M2AT-LSGS>; Hatewatch Staff, *Facebook’s Fight Club: How the Proud Boys Use the Social Media Platform to Vet Fighters*, So. Poverty L. Ctr. (Aug. 2, 2018), <https://perma.cc/Z4MF-NRHR>.

<sup>19</sup> See, e.g., Dina Temple-Raston, *A Tale of Two Radicalizations*, NPR (Mar. 21, 2021), <https://perma.cc/4H7B-XFFN>.

<sup>20</sup> Zachary Cohen, *FBI Director Says Bureau Is Not Investigating QAnon Conspiracy “in Its Own Right,”* CNN (Apr. 15, 2021), <https://perma.cc/TLN9-X23E>.

<sup>21</sup> Nat’l Intel. Council, ICA 2020-00078D, *Foreign Threats to the 2020 US Federal Elections 1* (Mar. 10, 2021) (as declassified), <https://perma.cc/J8K8-TSU9>.

authenticity.”<sup>22</sup> Using fake personas on Facebook and elsewhere, Russia designs its social media campaigns to “inflare existing political tensions with calls to action, online petitions, forged evidence, and false news. This specious material is then cited by seemingly legitimate news sites established by Russia for the purpose of spreading and corroborating disinformation.”<sup>23</sup> Iran, too, has intensified its efforts on social media to “spread discord and anti-Semitic tropes inside the U.S.”<sup>24</sup>

Foreign states perceive their disinformation operations as a way to undermine the United States without crossing the threshold of declaring “war.” As one scholar put it:

From public health conspiracies to disinformation about politics, social media has increasingly become a medium used by states to meddle in the affairs of others. From China’s disinformation campaigns that painted Hong Kong democracy protestors as violent and unpopular dissidents, to Iranian-backed disinformation campaigns targeting political rivals in the Gulf, state actors

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<sup>22</sup> Glenn S. Gerstell, *The National-Security Case for Fixing Social Media*, *The New Yorker* (Nov. 13, 2020), <https://www.newyorker.com/tech/annals-of-technology/the-national-security-case-for-fixing-social-media>.

<sup>23</sup> *Id.*

<sup>24</sup> Brian Bennett, *Exclusive: Iran Steps Up Efforts to Sow Discord Inside the U.S.*, *Time* (June 9, 2021), <https://perma.cc/EVS4-XPV2>.

are turning to social media as a tool of geopolitical influence.<sup>25</sup>

Others have made the similar observation that “[t]he Russian government . . . manipulates the information ecosystem to attempt to influence American public opinion and undermine U.S. foreign and domestic policy.”<sup>26</sup>

**B. Malign actors’ online content has real-world national-security consequences.**

Malign actors—whether foreign terrorist organizations, violent domestic extremists, or adversarial foreign states—have achieved their goal of inspiring real-world consequences through their social media content. In 2016, for example, Ahmad Khan Rahimi perpetrated a bombing that injured more than 30 people in New York after viewing online materials relating to terrorism, violent jihad, and war against the United States, including downloading every issue of al-Qaeda’s online magazine, *Inspire*.<sup>27</sup> In 2014 and 2015, Abdul Kareem and his

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<sup>25</sup> Samantha Bradshaw, *Influence Operations and Disinformation on Social Media*, Centre for International Governance Innovation (Nov. 23, 2020), <https://perma.cc/DQT4-AY3S> (citations omitted).

<sup>26</sup> *Foreign Influence Operations’ Use of Social Media Platforms: Hearing Before the S. Select Comm. on Intel.*, 115th Cong. 2 (Aug. 1, 2018) (questions for the record of Laura M. Rosenberger).

<sup>27</sup> Government’s Sentencing Memorandum at 2, 4, *United States v. Rahimi*, No. 16-CR-00760-RMB (S.D.N.Y. Jan. 16, 2018), ECF 188.

friends spent hours watching ISIS-related videos and other terrorist content and declared their support for jihad; on May 3, 2015, Kareem's co-conspirators drove to a "Draw Muhammad" contest in Garland, Texas, with over 1,500 rounds of ammunition and opened fire with assault rifles, injuring a security guard before they were shot dead.<sup>28</sup> In 2011, 21-year-old Arid Uka killed two U.S. airmen at the Frankfurt airport; Uka was motivated by a YouTube video purportedly showing Muslim women being raped by American soldiers that had been lifted from a fictional anti-war movie and posted for jihadi propaganda purposes.<sup>29</sup>

Online radicalization also plays a significant role in violent attacks conducted by violent domestic extremists with no ties to foreign terrorist organizations. The massacre of nine Black worshipers at a Charleston, South Carolina, church in 2015; the killing of 23 people at an El Paso, Texas, Walmart in 2019; and the murder of ten at a Buffalo, New York, supermarket in 2022 have all been linked

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<sup>28</sup> Second Superseding Indictment at 6, 8, *United States v. Kareem*, No. 15-CR-0707-PHX-SRB (D. Ariz. Dec. 22, 2015), ECF 158; United States' Sentencing Memorandum at 2-3, *United States v. Kareem*, No. 15-CR-0707-PHX-SRB (D. Ariz. Sept. 22, 2016), ECF 421.

<sup>29</sup> See Matthias Bartsch et al., *The Radical Islamist Roots of the Frankfurt Attack*, Der Spiegel (Mar. 3, 2011), <https://perma.cc/D3GU-K7UJ>; *Frankfurt Terror Suspect Mistakenly Inspired by Hollywood*, ABC News (Aug. 31, 2011), <https://perma.cc/AK2U-NVfy>; Tristana Moore, *Was the Frankfurt Airport Shooter a Lone-Wolf Jihadist?*, Time (Mar. 3, 2011), <https://perma.cc/76T4-U93N>.

to online radicalization through social media platforms.<sup>30</sup>

Mis- and disinformation campaigns similarly can fuel violence. A 28-year-old father of two from North Carolina drove six hours and opened fire with an AR-15 at Comet Ping Pong in Northwest Washington, D.C., after reading conspiracy theories and misinformation that proliferated on social media sites in 2016 about a child-abuse ring operating in the basement of the pizza restaurant.<sup>31</sup>

And, of course, as we all know far too well, mis- and disinformation campaigns also increase political polarization and reduce trust in government and other institutions, leading directly to events like the

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<sup>30</sup> See, e.g., Mark Berman, *Prosecutors Say Dylann Roof 'Self-Radicalized' Online, Wrote Another Manifesto in Jail*, Wash. Post (Aug. 22, 2016), <https://perma.cc/QV6X-K6HH>; Erin Ailworth et al., *Lost in Life, El Paso Suspect Found a Dark World Online*, Wall St. J. (Aug. 8, 2019), <https://perma.cc/G44V-UL4E>; Anna Gronewold, *Buffalo Shooter 'Radicalized' Through Fringe Online Platforms, Report Finds*, Politico (Oct. 18, 2022), <https://perma.cc/J383-EU3E>.

<sup>31</sup> Cecilia Kang & Adam Goldman, *In Washington Pizzeria Attack, Fake News Brought Real Guns*, N.Y. Times (Dec. 5, 2016), <https://www.nytimes.com/2016/12/05/business/media/comet-ping-pong-pizza-shooting-fake-news-consequences.html>.

attack on the U.S. Capitol on January 6, 2021.<sup>32</sup> More than 1,000 people have been charged for their participation in the attack, which is tied to the death of five people and is estimated to have caused more than \$2.9 million worth of damage to the Capitol and its grounds.<sup>33</sup> In short, there is overwhelming evidence that social media content posted by malign actors poses a serious national security threat.

## **II. Content Moderation by Social Media Platforms, Though Far from Perfect, Is Critical to Fighting These Threats to National Security.**

No matter how sophisticated our national security apparatus, the U.S. government cannot by itself fight the threat posed by the social media activities of adversarial foreign powers, terrorist groups, violent domestic extremists, and other malign actors. In *amici*'s extensive professional experience, the participation of the responsible social media platforms in content removal and moderation efforts

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<sup>32</sup> See, e.g., Cat Zakrzewski et al., *What the Jan. 6 Probe Found Out About Social Media, But Didn't Report*, Wash. Post (Jan. 17, 2023), <https://perma.cc/KW4X-ZVRX>; Betsy Woodruff Swan & Mark Scott, *DHS: Extremists Used TikTok to Promote Jan. 6 Violence*, Politico (Sept. 6, 2021), <https://perma.cc/LY2R-8N4W>; Sheera Frenkel, *The Storming of Capitol Hill Was Organized on Social Media*, N.Y. Times (Jan. 6, 2021), <https://www.nytimes.com/2021/01/06/us/politics/protesters-storm-capitol-hill-building.html>.

<sup>33</sup> NPR Staff, *The Jan. 6 Attack: The Case Behind the Biggest Criminal Investigation in U.S. History*, NPR (Feb. 9, 2021, updated Nov. 17, 2023), <https://perma.cc/L8BJ-MHW4>.



is essential.<sup>34</sup> “[B]oth the American public and the U.S. government” share this understanding and “consider major social media companies not as auxiliary actors in online counterterrorism, but as the primary entities responsible for countering terrorist content online.”<sup>35</sup>

Responsible social media platforms have invested heavily in their suites of content management tools.<sup>36</sup> Commonly known as the platforms’ trust and safety mechanisms, these tools are not simple; they are complicated combinations of at least “seven categories of action: writing rules; identifying and removing violations; limiting feature access; responsibly implementing legal and political restrictions;

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<sup>34</sup> Although the migration of violent domestic extremist content to smaller, less moderated platforms such as Gab, the now-defunct Parler, and Telegram may lessen the efficacy of content moderation on the mainstream platforms, *see generally, e.g.*, Daniel Karell et al., “Born for a Storm”: *Hard-Right Social Media and Civil Unrest*, 88 *Am. Socio. Rev.* 322 (2023); Jacob Ware, George Washington Program on Extremism, *The Third Generation of Online Radicalization* (June 2023), <https://perma.cc/HJT4-E8P9>, the ubiquitousness of the mainstream platforms means that they are often used to recruit like-minded individuals to these smaller platforms, *cf. supra* note 18, increasing the need for continued diligence.

<sup>35</sup> Bennett Clifford, George Washington Program on Extremism, *Moderating Extremism: The State of Online Terrorist Content Removal Policy in the United States* 9 (Dec. 2021), <https://perma.cc/3JG8-KSTV>.

<sup>36</sup> For example, between 2016 and 2021, Facebook reportedly spent more than \$13 billion on trust and safety. *Facebook Spent over \$13 Bn on Safety, Security Since 2016*, Reuters (Sept. 21, 2021), <https://perma.cc/6USM-CUHM>.

responsibly engaging law enforcement; integrating with industry; and empowering users.”<sup>37</sup> Some of these actions are undertaken by human beings.<sup>38</sup> Others are assisted by automation, algorithmic culling, or, more recently, artificial intelligence.<sup>39</sup> Third-party reporting, including from individual users, advertisers, civil society organizations, and governments, plays a critical role in helping the social media companies identify dangerous content.<sup>40</sup>

The content moderation efforts of the platforms operate on an enormous scale. For example, in just the second quarter of 2023, Meta (including Facebook and Instagram) “actioned” or removed 1.1 million pieces of content under its dangerous organizations and individuals policies, 18 million pieces of content

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<sup>37</sup> Brian Fishman, *Dual-Use Regulation: Managing Hate and Terrorism Online Before and After Section 230 Reform*, Brookings (Mar. 14, 2023), <https://perma.cc/YDP4-7VLJ>.

<sup>38</sup> See Paul M. Barrett, *It’s Past Time to Take Social Media Content Moderation In-House*, Just Sec. (Jan. 18, 2023), <https://perma.cc/7NZJ-QZSQ> (“By 2020, 15,000 people were reviewing Facebook content, the overwhelming majority of them employed by outside contractors. About 10,000 people scrutinized YouTube and other Google properties. Twitter, much smaller and less financially successful, had 1,500.”).

<sup>39</sup> See generally Stuart Macdonald et al., *Regulating Terrorist Content on Social Media: Automation and the Rule of Law*, 15 Int’l J. L. Context 183 (2009).

<sup>40</sup> See generally Fishman, *supra* note 37; see also Tim Bernard, *What Should We Know About Government Influence on Content Moderation?*, Tech Pol’y Press (Feb. 8, 2023), <https://perma.cc/8YAS-TRP8>.

under its hate speech policy, and 10.6 million pieces of content under its violence and incitement policy.<sup>41</sup> In that same period, Facebook removed more than 676 million fake accounts, not counting the millions of attempts each day that were blocked before accounts could even be created.<sup>42</sup>

As private entities, social media companies are empowered rather than restricted by the First Amendment and have far more flexibility than the U.S. government to moderate content.<sup>43</sup> As relevant

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<sup>41</sup> *Community Standards Enforcement Report: Dangerous Organizations: Terrorism and Organized Hate*, Meta (Nov. 2023), <https://perma.cc/PN6F-PNT7>; *Community Standards Enforcement Report: Hate Speech*, Meta (Nov. 2023), <https://perma.cc/49TA-RYJT>; *Community Standards Enforcement Report: Violence and Incitement*, Meta (Nov. 2023), <https://perma.cc/6D77-27HR>.

<sup>42</sup> *Community Standards Enforcement Report: Fake Accounts*, Meta (Nov. 2023), <https://perma.cc/XU49-7MT6>.

<sup>43</sup> This is certainly not to say that all content moderation efforts of social media platforms are beyond government regulation. *Amici* do not take any position on the national security implications of transparency and disclosure requirements that comport with this Court's ruling in *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985), and recognize that the Florida and Texas laws both include provisions that the courts below found were likely to pass muster under *Zauderer*. See *NetChoice, LLC v. Att'y Gen.*, 34 F.4th 1196, 1230-31 (11th Cir. 2022), *cert. granted in part sub nom., Moody v. NetChoice* (cont'd)

to national security, the First Amendment generally prevents government actors from penalizing objectionable speech unless it is “directed to inciting or producing imminent lawless action” and “likely to incite or produce such action,” *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969) (per curiam), or constitutes a “true threat,” *Virginia v. Black*, 538 U.S. 343, 360 (2003). But private actors may remove content from their online platforms if they find it “objectionable,” as Section 230(c)(2) currently recognizes, so long as they act in good faith. Whether the expansive protection that the lower courts have read into Section 230 is appropriate is not at issue in this case

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*LLC*, No. 22-277, 2023 WL 6319654 (U.S. Sept. 29, 2023); *NetChoice, LLC v. Paxton*, 49 F.4th 439, 485-88 (5th Cir. 2022), *cert. granted in part*, No. 22-555, 2023 WL 6319650 (U.S. Sept. 29, 2023). Nor do *amici* take a position on whether government actors should deploy consumer protection laws (such as laws prohibiting deceptive practices) or other content-neutral interventions (such as screen alerts, requirements that users read content before sharing, circuit breakers that limit content amplification in certain circumstances, tools that allow for real-time fact checking, better monitoring for AI- and bot-created accounts or content, or mechanisms that allow users to turn off targeting algorithms). *See, e.g.*, Mark MacCarthy, *Senator Klobuchar “Nudges” Social Media Companies to Improve Content Moderation*, Brookings (Feb. 23, 2022), <https://perma.cc/H7Q5-KHNH>. Undersigned *amici* express no opinion on the substance or legality of the Social Media NUDGE Act, S. 3608, 117th Cong. (2022), which is the subject of MacCarthy, *supra*.

and is left for Congress and the Court to mull over on some other day.<sup>44</sup>

The social media companies also have flexibility to designate certain groups or individuals dangerous in a way that the government does not; for example, “Facebook’s Dangerous Individuals and Organizations policy classes individuals and organizations into three separate tiers, including state-designated foreign terrorist organizations in the first tier and a range of other actors, including domestic violent extremists, criminal groups, militia groups, and other violent actors into several additional tiers,” with each tier triggering particular moderation actions.<sup>45</sup> This allows social media companies to effectively remove entire networks of content that are tied to violence before they spiral out of control.<sup>46</sup> The U.S. government, on the other hand, lacks a domestic terrorism designation process, and

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<sup>44</sup> *Cf. Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, 141 S. Ct. 13, 14-18 (2020) (Thomas, J., statement respecting the denial of certiorari) (cataloging cases where courts viewed Section 230 expansively).

<sup>45</sup> Clifford, *supra* note 35, at 17.

<sup>46</sup> See *An Update to How We Address Movements and Organizations Tied to Violence*, Meta (Aug. 19, 2020), <https://perma.cc/R74D-7UMB>.

the designation of domestic groups would raise First Amendment concerns.<sup>47</sup>

Private actors' ability to curb the spread of lawful but harmful content is especially important to our national security. It is both consistent with our laws and traditions and desirable in light of the threat posed by hostile foreign governments, terrorists, violent domestic extremists, and other malign actors to ensure that social media platforms receive some protection from liability when they remove material that they consider to be dangerous, even if it is not likely to produce imminent lawless action.

The content moderation policies deployed by responsible social media platforms have not eliminated all dangerous material from their platforms, and never will. The limitations of social media content moderation policies are well documented: researchers have tracked bias, error, double standards, and just plain inexplicable decision-making in the content moderation actions

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<sup>47</sup> Mary B. McCord, *White Nationalist Killers Are Terrorists. We Should Fight Them Like Terrorists*, Wash. Post (Aug. 8, 2019), <https://perma.cc/4ZMF-L4BM>; see also *Holder v. Humanitarian L. Project*, 561 U.S. 1, 39 (2010) (leaving open the possibility that the First Amendment prohibits extending the law criminalizing the provision of material support to foreign terrorist organizations to domestic organizations).

taken by social media companies.<sup>48</sup> Working to make content moderation better is a laudable goal that platforms, civil society, governments, technology experts, and users should pursue together.

Notwithstanding all of this, the Court should not be diverted from the fact that content moderation—while far from perfect—can and does succeed in removing much of the worst extremist and violent content and dangerous mis- and disinformation from social media platforms. Between 2018 and the second quarter of 2023, Facebook “actioned” more than 191 million pieces of terrorist content.<sup>49</sup> Twitter suspended more than 44,000 accounts in just the first six months of 2021 for promoting terrorism or violent

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<sup>48</sup> See, e.g., Ángel Díaz & Laura Hecht-Felella, *Double Standards in Social Media Content Moderation*, Brennan Ctr. for Just. (Aug. 4, 2021), <https://perma.cc/K4UK-2E3S>; see also generally Daveed Gartenstein-Ross et al., *Redrawing the Lines: An Assessment of the Impact of “Anti-Censorship” Legislation on Terrorist Content, Hate Speech/Harassment, and Mis/Disinformation*, Valens Global (Oct. 3, 2022), <https://valensglobal.com/redrawing-the-lines>; Vera Eidelman et al., *Time and Again, Social Media Giants Get Content Moderation Wrong: Silencing Speech About Al-Aqsa Mosque Is Just the Latest Example*, ACLU (May 17, 2021), <https://perma.cc/9377-M4WK>.

<sup>49</sup> *Actioned Terrorism Content Items on Facebook Worldwide from 4th Quarter 2017 to 2nd Quarter 2023*, Statista (Sept. 20, 2023), <https://www.statista.com/statistics/1013864/facebook-terrorist-propaganda-removal-quarter>; see also *Community Standards Enforcement Report: Dangerous Organizations: Terrorism and Organized Hate*, supra note 41.

organizations,<sup>50</sup> and Twitter's successor, X, removed hundreds of accounts linked to the terror group Hamas immediately following the October 7, 2023, surprise attack in Israel.<sup>51</sup> The social media platforms have also removed accounts belonging to domestic violent extremists like the Proud Boys and the Oath Keepers.<sup>52</sup> Following complaints from civil society groups and researchers in 2017, YouTube removed nearly 50,000 videos featuring the terrorist cleric Anwar al-Awlaki.<sup>53</sup> In efforts to counter disinformation, platforms have developed tools to

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<sup>50</sup> Zoe Strozewski, *Twitter Suspended 44K Accounts for Promoting Terrorism, Violent Orgs in First Half of 2021*, Newsweek (Jan. 25, 2022), <https://perma.cc/XP7Y-8JG3>.

<sup>51</sup> Megan Cerullo, *X Has Removed Hundreds of Hamas-Linked Accounts Following Shock Attack*, CBS News (Oct. 12, 2023), <https://perma.cc/CJM9-QRWX>.

<sup>52</sup> David Ingram, *Facebook Removes Pages Belonging to Far-Right Group 'Proud Boys'*, NBC News (Oct. 30, 2018), <https://perma.cc/6T3L-YMXW>; Igor Bonifacic, *Twitter Bans Far-Right Extremist Group the Oath Keepers*, Engadget (Sept. 10, 2020), <https://perma.cc/Y6MW-J6PQ>; *see also* Tristan Bove, *A Proud Boys Network Was Trying to Stealthily Mobilize on Facebook and Instagram. Meta's Counterterrorism Team Snuffed It Out*, Fortune (Aug. 26, 2022), <https://perma.cc/5GR6-GUXF>; *Facebook Parent Culls Large Proud Boys Network from Sites*, AP (Aug. 25, 2022), <https://apnews.com/article/technology-social-media-proud-boys-574ed28359244921286e8a78e412e0e2>.

<sup>53</sup> *YouTube Removes Dead Extremist's Videos*, BBC (Nov. 13, 2017), <https://perma.cc/8945-L72T>.



enable real-time fact-checking.<sup>54</sup> And platforms have made efforts to redirect users away from extremism; when a user searches for terrorism or violent-extremism-related content on Facebook, for example, the platform guides the user to resources to help abandon this mindset.<sup>55</sup>

The platforms have had similar success with respect to malign content from foreign states. For example, from July to September 2022, Google terminated over 10,000 YouTube channels linked to “coordinated influence operations” by China.<sup>56</sup> Similarly, in August 2023, Meta disclosed that it had previously disrupted a Chinese government-linked influence campaign, dubbed “Spamouflage,” that originally focused on discrediting the 2019 pro-democracy protests in Hong Kong, before shifting to blame the United States for the outbreak of COVID-19. The take-down included 7,704 Facebook accounts,

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<sup>54</sup> Gartenstein-Ross et al., *supra* note 48, at 23 (“Facebook launched a fact-checking program in 2016 as part of an effort to strike a balance between enabling people to have a voice and promoting an authentic environment. The program alerted readers if the factual basis of an article was disputed, and the post distribution was subsequently reduced in users’ feeds. Google News also began adding fact-checking labels in 2016 . . . .” (internal quotation marks and footnotes omitted)); see also Aisha Malik, *Twitter Begins Rolling Out Its Community Notes Feature Globally*, TechCrunch (Dec. 12, 2022), <https://perma.cc/8E4S-8D86> (describing Twitter’s “crowdsourced fact-checking system”).

<sup>55</sup> See *Counterspeech*, Facebook, <https://perma.cc/B3N9-FL6P>.

<sup>56</sup> Shane Huntley, Threat Analysis Group, *TAG Bulletin: Q3 2022*, Google (Oct. 26, 2022), <https://perma.cc/KF22-X3TT>.

954 Facebook pages, 15 Facebook groups, and 15 Instagram accounts.<sup>57</sup>

Meta has also reported taking down thousands of fake accounts and banning links to fraudulent websites that were designed to look like legitimate news outlets' sites, but were in fact connected to a Russian influence operation aimed at eroding support for Ukraine.<sup>58</sup> Google's YouTube has done the same.<sup>59</sup>

Successful social media content moderation depends on steps taken by private entities to identify and discourage dangerous content from proliferating on the internet and requires continuous vigilance. The platforms' successes in countering dangerous content, in turn, depend upon their investment in the development and use of techniques to identify and

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<sup>57</sup> Sheera Frenkel, *Meta's 'Biggest Single Takedown' Removes Chinese Influence Campaign*, N.Y. Times (Aug. 29, 2023), <https://www.nytimes.com/2023/08/29/technology/meta-china-influence-campaign.html>.

<sup>58</sup> Shannon Bond, *Meta Says Chinese, Russian Influence Operations Are Among the Biggest It's Taken Down*, NPR (Aug. 29, 2023), <https://perma.cc/Z4Z9-EHER>; Shannon Bond, *Facebook Takes Down Russian Network Impersonating European News Outlets*, NPR (Sept. 27, 2022), <https://perma.cc/TV2C-QDYQ>.

<sup>59</sup> Huntley, *supra* note 56 (listing take-downs of Russian-linked YouTube channels on the ground that they were supportive of Russia and critical of Ukraine and its allies); *see also* The YouTube Team, *The Four Rs of Responsibility, Part 2: Raising Authoritative Content and Reducing Borderline Content and Harmful Misinformation*, YouTube Off. Blog (Dec. 3, 2019), <https://perma.cc/M3KE-PX6B>.

remediate harmful content and to direct users to less-harmful content.<sup>60</sup> The incentives for social media companies to invest in and refine their trust and safety operations are varied. Social media companies, from their infancy, have asserted an interest in protecting free speech norms.<sup>61</sup> But they also curate the speech on their platforms to protect their own brands—“out of a sense of corporate social responsibility, but also, more importantly, because their economic viability depends on meeting users’ speech and community norms.”<sup>62</sup> Preserving the incentives that allow social media companies to benefit from continued investment in more robust and

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<sup>60</sup> See, e.g., *Our Progress Addressing Challenges and Innovating Responsibly*, Meta (Sept. 21, 2021), <https://perma.cc/648E-A4ER>.

<sup>61</sup> See Kate Klonick, *The New Governors: The People, Rules, and Processes Governing Online Speech*, 131 Harv. L. Rev. 1598, 1618-22 (2018).

<sup>62</sup> *Id.* at 1625. Platforms that have reduced their trust and safety operations have seen advertisers flee. See Aisha Counts & Eari Nakano, *Harmful Content Has Surged on Twitter, Keeping Advertisers Away*, Time (July 19, 2023), <https://perma.cc/3DC7-T4HR>; see also Ryan Mac et al., *Advertisers Flee X as Outcry over Musk’s Endorsement of Antisemitic Post Grows*, N.Y. Times (Nov. 17, 2023), <https://www.nytimes.com/2023/11/17/technology/elon-musk-twitter-x-advertisers.html>.

effective content moderation policies is good for U.S. national security.<sup>63</sup>

The state laws at issue here, however, do exactly the opposite. Rather than encouraging investment in better content moderation that is more efficiently targeted, less prone to error, and better insulated from bias and prejudice, the laws would instead subject social media platform operators to substantial liability if they actively moderate content on their own platforms, even when they do so in good faith.<sup>64</sup> The laws would discourage further investment in

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<sup>63</sup> Although preserving these incentives is necessary, many of the undersigned *amici* take the view that more should be done to disincentivize platforms from amplifying extreme content to keep users on platforms longer, viewing more advertisements, and thereby generating more revenue for the social media companies. See generally Annie Y. Chen et al., *Exposure to Alternative & Extremist Content on YouTube*, ADL (Feb. 5, 2021), <https://perma.cc/WJE6-KAV9>; David Lauer, *Facebook's Ethical Failures Are Not Accidental; They Are Part of the Business Model*, 1 AI & Ethics 395 (2021); Paul M. Barrett et al., *Fueling the Fire: How Social Media Intensifies U.S. Political Polarization – And What Can Be Done About It* (Sept. 2021), <https://perma.cc/WHR8-L36T>.

<sup>64</sup> To the extent that these provisions impose liability upon social media companies “on account of—(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected,” 47 U.S.C. § 230(c)(2), they seem inconsistent with, if not preempted by, 47 U.S.C. § 230(e)(3). That section provides, in relevant part, that “[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.”

techniques for identifying and remediating harmful content. Instead, if the laws are allowed to go into effect, social media companies would benefit from doing nothing, allowing harmful content from foreign terrorist organizations, adverse foreign states, violent domestic extremists, and other malign actors to flourish on their platforms.<sup>65</sup> Under such a regime, the harm to national security cannot be overstated. *Amici*, with their years of experience in national security policy, urge the Court to consider those impacts as it reviews the decisions below.

## CONCLUSION

The content-moderation provisions of the Florida and Texas statutes will disrupt the critical efforts of social media platforms to identify and remove dangerous content from spaces that they control. This disruption would be seriously detrimental to the national security of the United States. In reviewing the decisions of the Courts of Appeals, this Court should take account of these serious implications for the nation's security.

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<sup>65</sup> See, e.g., Gilad Edelman, *Better Than Nothing: A Look at Content Moderation in 2020*, *Wired* (Dec. 27, 2020), <https://www.wired.com/story/content-moderation-2020-better-than-nothing> (quoting Evelyn Douek, Berkman Klein Center for Internet and Society, Harvard University); Cristina Criddle, *Social Media Job Cuts Risk Surge of Online Terrorist Content, Report Warns*, *Fin. Times* (Jan. 19, 2023), <https://www.ft.com/content/138f4b31-f735-4b7e-820e-84e96ca7aafd>.

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