

Nos. 22-277 and 22-555

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In the Supreme Court of the United States

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

v.

NETCHOICE, LLC D/B/A NETCHOICE, ET AL.

NETCHOICE, LLC D/B/A NETCHOICE,  
ET AL., PETITIONERS

v.

KEN PAXTON, ATTORNEY GENERAL OF TEXAS

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

**BRIEF FOR REDDIT, INC. AS AMICUS CURIAE  
IN SUPPORT OF RESPONDENTS IN NO. 22-277  
AND PETITIONERS IN NO. 22-555**

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**INTEREST OF THE AMICUS CURIAE<sup>1</sup>**

Reddit, Inc. provides a platform for Internet users (called “Redditors”) to connect with each other in online communities (called “subreddits”) that are based on shared interests and governed by volunteer users (called “moderators”).<sup>2</sup> Reddit is one of the most popular sites on the Internet, with more than 50 million active users every

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<sup>1</sup> Pursuant to this Court’s Rule 37.6, counsel for amicus curiae states that no counsel for any party authored this brief in whole or in part, and no party or counsel for a party, or any other person other than amici curiae and its counsel, made a monetary contribution to fund the preparation or submission of this brief.

<sup>2</sup> REDDIT, <https://www.reddit.com> (last visited Dec. 4, 2023).

day. Reddit utilizes a community-based approach to content moderation: it relies primarily on individual users to establish and enforce their own rules governing what topics are acceptable and how those topics may be discussed in each subreddit, and to vote on what content should rise in prominence on the platform. The display of content on Reddit is thus primarily driven by humans—not by centralized algorithms.

Reddit is a vibrant place for free expression that provides opportunities for Redditors to find community, belonging, and discourse with other people all across the world. Reddit was also one of the first companies to be named as a defendant in a lawsuit under Texas’s House Bill 20 (HB 20) after a Reddit user was sanctioned by other users for breaking a rule against making rude comments in a forum for discussing *Star Trek*. That meritless litigation demonstrates the severe and immediate threat that both HB 20 and Florida Senate Bill 7072 (SB 7072) pose to free expression online.

#### SUMMARY OF ARGUMENT

A. Reddit’s experience powerfully demonstrates the First Amendment risks posed by the content-moderation restrictions and individualized-explanation requirements of HB 20 and SB 7072. Reddit is one of the few companies to have already been sued under HB 20. Specifically, Reddit was sued by a disgruntled user who was ejected *by other users* from a subreddit community dedicated expressly to *friendly* discussion of the *Star Trek* franchise. That experience underscores the torrent of wasteful litigation potentially awaiting Reddit and other platforms under HB 20 and SB 7072 if this Court upholds those laws. And the *Star Trek* lawsuit demonstrates the impact these laws would likely have on the speech and associational rights of the humans who use these platforms—not just

on the platforms themselves. On Reddit, the members of each community *themselves* write and enforce their own subreddit-level rules, including the rule that users must “Be nice” when discussing *Star Trek* in that particular space. Just as everyday people have a right to set the rules (even seemingly arbitrary ones) for discussions in their private book clubs without government control, Texas cannot tell Redditors that they must treat all speech “equal[ly]” in their online discussion groups. Tex. Civ. Prac. & Rem. Code § 143A.001(1).

**B.** The self-governance features that distinguish the Reddit platform—community-developed rules, volunteer-led rule enforcement, and user-driven content prioritization—are all aspects of protected expression under the First Amendment because they advance the free-speech and free-association rights of both Reddit and its users. Reddit’s user-driven model allows people to discuss shared interests consistent with a shared set of values. Redditors express themselves and define their own communities by writing and enforcing the rules that govern each of more than 100,000 active subreddits on Reddit, as well as by upvoting or downvoting content based on their perception of its quality. Reddit’s model epitomizes the First Amendment ideal of self-determination—not government regulation—for the marketplace of ideas.

HB 20 and SB 7072 threaten Reddit’s user-centric model of expressive association. State restrictions on, for example, “remov[ing],” “de-boost[ing],” and “deny[ing] equal access or visibility to” particular content would strip Reddit, its moderators, and everyday Redditors of the very tools that they use to define their communities. Tex. Civ. Prac. & Rem. Code § 143A.001(1). The States’ requirements for detailed, technical, and individualized explanations for moderation decisions would also place

intolerable burdens on the volunteer moderators who are essential to Reddit's platform. Texas's and Florida's attempts to impose those restrictions violate users' First Amendment rights, as well as those of Reddit itself. Reddit is intentionally designed to allow for *inconsistency* by encouraging its myriad communities to distinguish and express themselves through various forms of moderation, while maintaining space for most across the platform. The First Amendment does not permit Texas and Florida to subvert Reddit's approach to content moderation in favor of a government-defined model for online expression.

#### ARGUMENT

Redditors come to the platform to exercise their fundamental “right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.” *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 647–648 (2000) (quoting *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984)). Indeed, the Internet makes it possible for Redditors to engage in “the most participatory form of mass speech yet developed[.]” *Reno v. American Civ. Liberties Union*, 521 U.S. 844, 863 (1997) (citation omitted). And notably, users on Reddit exercise self-determination and self-governance by “decid[ing] for [themselves] the ideas and beliefs deserving of expression, consideration, and adherence” within their own sub-reddit communities. *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641 (1994).

HB 20 and SB 7072 subvert that fundamental right in the name of purportedly seeking viewpoint balance. But this Court has repeatedly rejected the argument that viewpoint balance justifies intrusions upon the speech and associational rights involved in curating content. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 48–49 (1976); *Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 260 (1974). The States



have violated the First Amendment by enacting laws to dictate a homogenous, government-defined model of expression instead of the “multifarious voices” that define Reddit. *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 558 (1995).

Not only do these laws fail to comport with the Constitution’s demands; if allowed to stand, they would subvert Reddit’s uniquely expressive approach to content moderation and prioritization. The States’ laws would continually force Reddit into court to defend the idiosyncratic, subreddit-level rules created by individual users to organize Reddit’s multitude of communities. And those laws would impose heavy explanatory burdens on both Reddit and the volunteer moderators upon whom the Reddit community and model depend. Upholding these laws would thus serve only to further entrench the handful of large, centralized social media platforms that already dominate speech online and that, ironically, are the original targets of this legislation.

This Court should hold that the content-moderation restrictions and individualized-explanation requirements of HB 20 and SB 7072 violate the First Amendment.

**A. Reddit’s experience demonstrates how HB 20 and SB 7072 enable platforms to be sued for content moderation that advances free-speech and free-association rights.**

Reddit has already been sued under HB 20 over a decision by the volunteer moderators of one of its communities to enforce that subreddit’s user-developed community rules. While that particular suit was dismissed on procedural grounds, it underscores the flood of potential lawsuits that are likely to arise from HB 20 and SB 7072, as well as the laws’ chilling effects on the First

Amendment free-speech and free-association rights of platforms and their users.

1. The HB 20 lawsuit against Reddit started on the r/StarTrek subreddit. Like any other subreddit on the Reddit platform, r/StarTrek is a community of users that is self-organized around a shared interest: it was created by a group of Redditors “to provide a casual, constructive, and most importantly *welcoming* place on the internet to talk about Star Trek.”<sup>3</sup> Like all subreddits, r/StarTrek is primarily governed by rules written by its own members—not by Reddit. For example, with limited exceptions, anything submitted to the r/StarTrek subreddit “must be **directly** about the Star Trek franchise. The shows, movies, books, merchandise etc.”<sup>4</sup> Posts about other science fiction franchises (say, *Star Wars*) are not allowed, nor are posts about the personal lives of actors—even *Star Trek* actors. That rule keeps the discussions within r/StarTrek on topic: People who visit r/StarTrek want to read and talk about the *Star Trek* universe—not cooking, college football, or celebrity happenings. Other rules on r/StarTrek establish a system to prevent spoilers so that community members do not ruin surprises from recent episodes for others.

Most relevant here, r/StarTrek has a “Be nice” rule that forbids “[i]nsulting or disparaging remarks about any human being.”<sup>5</sup> The leaders of r/StarTrek elaborate on that rule by pointing to “Wheaton’s Law,” coined by the actor and writer Richard William Wheaton III who played Wesley Crusher in *Star Trek: The Next Generation*.

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<sup>3</sup> MISSION STATEMENT (emphasis added), <https://www.reddit.com/r/startrek/wiki/missionstatement/> (last visited Dec. 4, 2023).

<sup>4</sup> GUIDELINES, <https://www.reddit.com/r/startrek/wiki/guidelines/> (last visited Dec. 4, 2023).

<sup>5</sup> *Ibid.*

That law is, simply, “Don’t be a dick.”<sup>6</sup> The “Be nice” rule is part of what shapes the viewpoint of this specific expressive association on the Reddit platform. The people who created and oversee this particular space have chosen to insist that the dialogue within it be polite and constructive, as opposed to other communities—including other *Star Trek* related communities—that have intentionally adopted a more anything-goes approach.<sup>7</sup>

2. On Reddit, unlike many other platforms, users self-organize. Each subreddit includes its own *volunteer* moderators—who are not Reddit employees and who enforce their community’s rules when other users violate them. In 2022, the moderators of r/StarTrek determined that a Redditor violated the “Be nice” rule when one of his posts called Mr. Weaton’s Wesley Crusher character a “soy boy”—a pejorative term used by internet trolls.<sup>8</sup> In accordance with the r/StarTrek rules, the post was removed by a volunteer moderator empowered by the Reddit terms of use to remove any post inconsistent with subreddit-level rules.<sup>9</sup> A volunteer moderator also banned the user from r/StarTrek, but not from the Reddit website or any other subreddits.

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<sup>6</sup> WHEATON’S LAW, <https://knowyourmeme.com/memes/wheatons-law> (last visited Dec. 4, 2023).

<sup>7</sup> ACTIVE STAR TREK SUBREDDITS, <https://www.reddit.com/r/DaystromInstitute/wiki/treksubs/> (last visited Dec. 4, 2023).

<sup>8</sup> SOY BOY, <https://knowyourmeme.com/memes/soy-boy> (last visited Dec. 4, 2023).

<sup>9</sup> See REDDIT USER AGREEMENT, <https://www.redditinc.com/policies/user-agreement-september-25-2023> (last visited Dec. 4, 2023); see also MODERATOR CODE OF CONDUCT, <https://www.redditinc.com/policies/moderator-code-of-conduct> (last visited Dec. 4, 2023) (incorporated by reference into the Reddit User Agreement).

Rather than take his content to one of the dozens of other *Star Trek* subreddits that lack r/StarTrek’s “Be nice” rule, the banned user responded by suing Reddit under HB 20. He filed a petition in a Texas small claims court claiming to have “been unlawfully censored by” Reddit, asserting that he had been “banned and/or de-platformed from r/StarTrek for posting a lawful opinion about a fictional character.”<sup>10</sup>

Put in the terms of HB 20, “the viewpoint represented in the plaintiff’s expression” in the r/StarTrek case was that Wesley Crusher is a “soy boy.” Tex. Civ. Prac. & Rem. Code § 143A.002(a)(2). And that viewpoint was “censored” by the Reddit platform thanks to the “Be nice” rule written and enforced by the r/StarTrek community. The user therefore sought \$20,000 in damages against Reddit. He also invoked HB 20’s remedial provisions to seek declaratory and injunctive relief whereby a court would order him to be reinstated in r/StarTrek to continue hurling insults in a forum organized with the express purpose of fostering only good-natured conversations about *Star Trek*. *See id.* § 143A.007(b)(2).

3. The Texas state court never reached the merits of the r/StarTrek claim because the case was dismissed on procedural grounds.<sup>11</sup> But this real-life example of HB 20 in action demonstrates how that law (and SB 7072) will give rise to absurd results that threaten the First Amendment rights of users and platforms alike.

Since its creation in 2008, r/StarTrek has developed into a community of over 687,000 Redditors. Those users

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<sup>10</sup> *See* Petition: Small Claims Case, *Cox v. Reddit, Inc.*, No. S22-87J1 (Just. Ct. Denton Cnty., Tex. May 17, 2022).

<sup>11</sup> After an appearance by counsel and briefing, the case was dismissed for lack of personal jurisdiction over Reddit.

join r/StarTrek to participate in the “*welcoming* place” described in the r/StarTrek mission statement. In doing so, they agree to “Be nice,” both as a guardrail for their own speech and as a signal of the kind of community in which they want to participate. The injunctive relief sought under HB 20 would have frustrated the expressive associational rights of those 687,000 other Redditors to participate in a community of their choosing, in accordance with rules that they collectively develop and enforce. And HB 20 would have stopped them from exercising their own rights to express their disagreement with the user-plaintiff by removing him and his post to ensure that the content curated on r/StarTrek accords with its mission statement.

The view that Wesley Crusher is a “soy boy” is undoubtedly protected by the First Amendment; the user who made that post on Reddit would be entitled to hold a sign with that message in a public park or to print and distribute leaflets making that claim. But he *did not* have a right to express that message in a digital space managed and controlled by others with a different viewpoint. Texas obviously could not force a homeowner organizing a book club to accept this user as a member without “block[ing]” or “ban[ning]” him, or to treat his message “equal[ly]” with all others in the group. Tex. Civ. Prac. & Rem. Code § 143A.001(1); *see Boy Scouts*, 530 U.S. at 648. Nor could the State force a parade organizer to accept this person’s Wesley Crusher message in its display. *See Hurley*, 515 U.S. at 558. For much the same reason, the First Amendment does not permit Texas to force the Redditors who run r/StarTrek to accept a message contrary to their rule that *Star Trek* must be discussed only in a friendly way within their space.

**B. Government interference through laws like Texas’s and Florida’s infringes on the speech and associational rights of Reddit and its users.**

The restraints and requirements in HB 20 and SB 7072 are fundamentally incompatible with Internet users’ freedoms of speech and expressive association, as well as Reddit’s own First Amendment right to curate its platform through its community-driven model for content moderation and prioritization.

**1. The content-moderation restrictions in HB 20 and SB 7072 undermine Redditors’ self-governance, their ability to define and enforce their own content rules in their spaces, and their right to expressive association.**

HB 20 purports to prohibit “censorship” based on “the viewpoint of the user or another person” or “the viewpoint represented in the user’s expression or another person’s expression.” Tex. Civ. Prac. & Rem. Code § 143A.002(a). “Censor” is defined broadly, including “to block, ban, remove, deplatform, demonetize, de-boost, restrict, deny equal access or visibility to, or otherwise discriminate against.” *Id.* § 143A.001(1). Attempts to obtain prior consent through terms of use are deemed impermissible waivers and “void as unlawful and against public policy.” *Id.* § 143A.003. As a result, HB 20 prohibits the very activities that underpin Reddit’s model of self-governance: community-driven rule development, user-led enforcement, and user-determined content promotion. The same is true of SB 7072. Both laws infringe not just Reddit’s own First Amendment rights, but crucially, those of its users.

a. As Reddit’s r/StarTrek case illustrates, every community on Reddit has its own set of unique rules, tailored to its purpose and viewpoint. Reddit’s model, in which

most rules exist at the subreddit level, gives Redditors the freedom to set and enforce the boundaries for what types of speech are and are not allowed in each of the site’s more than 100,000 active subreddits.<sup>12</sup>

The subreddit rules, almost as much as their topics, constitute community-organizing principles that determine who joins and how users engage. *Star Trek* fans alone make up dozens of subreddits, with hundreds of collective rules across them. Many do not have a “Be nice” rule, or at least not one as strict as that on r/StarTrek. For example, r/StarTrekGifs advises: “this is not a cuddle puddle sub. We don’t need to be friends. But we would like all participants to just be civil and show some common decency.”<sup>13</sup> On r/DaystromInstitute, a subreddit founded with the goal of “foster[ing] and encourag[ing] in-depth discussion about *Star Trek*,” the primary rule is that posters “are required to **explain** the reasoning behind [their] posts and comments.”<sup>14</sup> Heeding its own principle, the r/DaystromInstitute Code of Conduct offers nearly 3,000 words of explanation for its fifteen rules, most of which link out to equally thorough (and lengthy) per-rule explanations. For those who don’t want to read or follow r/DaystromInstitute’s rules, there’s r/ShittyDaystrom,

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<sup>12</sup> Reddit’s site-wide Content Policy applies to all content on the site and is enforced by Reddit employees; subreddits are free to set community-specific rules, so long as content in their communities complies with Reddit’s overarching site-wide rules. The decision to manage the platform through two levels of moderation is an act of editorial discretion by Reddit that sets it apart from many other platforms. That choice is itself protected by the First Amendment for the reasons explained below.

<sup>13</sup> STAR TREK GIFS, <https://www.reddit.com/r/startrekgifs/> (last visited Dec. 4, 2023).

<sup>14</sup> CODE OF CONDUCT, <https://www.reddit.com/r/DaystromInstitute/wiki/codeofconduct/> (last visited Dec. 4, 2023).

which invites what that group’s organizers describe as “shitty discussion of everything and anything related to the Star Trek franchise” without additional restrictions.<sup>15</sup>

As the *Star Trek* ecosystem on Reddit illustrates, each subreddit’s rules can be as strict, sparse, or absurd as its members choose; the Reddit platform as a whole accommodates a wide range of communities and modes of discourse. Subreddit-level rules can be creative and diverse and will naturally tend to both mirror and reinforce the values and styles of their respective communities. Subreddits devoted to (more) serious topics, like religion, have the same variation in rules as those about *Star Trek*. Some prohibit proselytization,<sup>16</sup> while others permit advocacy for beliefs so long as each post “include[s] a thesis statement and argument.”<sup>17</sup> Again, this community-driven approach to rulemaking ensures that Redditors can find and participate in the discussions of their choosing and avoid content that they find uninteresting or objectionable, while also ensuring there is space on the platform for anyone to find or start a new subreddit that suits their needs and preferences.

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<sup>15</sup> SHITTY DAYSTROM INSTITUTE, <https://www.reddit.com/r/ShittyDaystrom/> (last visited Dec. 4, 2023).

<sup>16</sup> See, e.g., RELIGION ON REDDIT, <https://www.reddit.com/r/religion> (last visited Dec. 4, 2023) (rule against proselytization); A RABBI WALKS INTO A BAR ..., <https://www.reddit.com/r/judaism> (last visited Dec. 4, 2023) (same); CHRISTIANITY, <https://www.reddit.com/r/christianity> (last visited Dec. 4, 2023) (same); ISLAM, <https://www.reddit.com/r/islam> (last visited Dec. 4, 2023) (same).

<sup>17</sup> See DISCUSS AND DEBATE RELIGION, <https://www.reddit.com/r/DebateReligion/> (last visited Dec. 4, 2023) (“Posts must have a thesis statement as their title or their first sentence. ... Posts must also contain an argument supporting their thesis. An argument is not just a claim. You should explain why you think your thesis is true and why others should agree with you.”).



This diversity of communities and of discourse are precisely what makes Reddit special. And those principles of self-determination and self-governance are a core part of the right of expressive association that the First Amendment protects. *See Boy Scouts*, 530 U.S. at 647–648 (“[I]mplicit in the right to engage in activities protected by the First Amendment is a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.”) (cleaned up). Users tend to become active members of a given community on Reddit *because* they share the values embodied in the subreddit’s rules. A user can and will move on to another subreddit with different rules, or start her own subreddit with her own rules, if she feels constricted and unable to express her viewpoint or, conversely, unprotected by the rules of a given subreddit.

b. Reddit’s system of community-led rule development could be severely stifled by the speech restraints at issue here. SB 7072, for example, requires that online platforms “apply censorship, deplatforming, and shadow banning standards in a consistent manner.” Fla. Stat. § 501.2041(2)(b). But the whole point of Reddit is that subreddit-level rules are *inconsistent*. A funny meme might be upvoted to a place of prominence on r/StarTrekGifs; but it will be removed and might even get a user banned from r/DaystromInstitute.<sup>18</sup> The First Amendment pro-

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<sup>18</sup> *See* STAR TREK GIFS, <https://www.reddit.com/r/startrekgifs/> (last visited Dec. 4, 2023) (“r/startrekgifs Rules” ... “This is a sub for gifs only.”); *but see* DAYSTROM RESEARCH INSTITUTE, <https://www.reddit.com/r/DaystromInstitute/> (last visited Dec. 4, 2023) (“Memes, image macros, gifs, videos, greentexts, Reddit in-jokes, and other content of this type is not permitted in Daystrom.”).

tects Reddit’s own freedom to curate the content on its platform in that way.<sup>19</sup>

SB 7072’s restriction on “chang[ing] ... user rules, terms, and agreements ... more than once every 30 days” is equally inhospitable to the Reddit model. Fla. Stat. § 501.2041(2)(c). Rules across Reddit’s more than 100,000 subreddits change each and every day. Indeed, the power that Reddit vests in subreddits to update their rules as the needs of their communities evolve, and in every Redditor to start a new subreddit based on her own rules if she feels that her viewpoints and associational preferences are unaccommodated by existing communities, are among the very ways by which Reddit maximizes the range of expression on the platform. Requiring consistent rules across Reddit and restricting Redditors’ ability to change those rules would steamroll their rights to set the idiosyncratic standards that define communities and express and enforce their values.<sup>20</sup>

c. In short, this Court’s precedent establishes that every subreddit is engaged in expressive association—in fact, each community has banded together to engage in a *public* form of expression. *See Boy Scouts*, 530 U.S. at 648 (“The First Amendment’s protection of expressive

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<sup>19</sup> As then-Judge Kavanaugh has explained, the government cannot tell platforms “what content to favor” any more than it can “tell Amazon or Politics & Prose what books to promote; or tell The Washington Post or the *Drudge Report* what columns to carry; or tell ESPN or the NFL Network what games to show; or tell How Appealing or Bench Memos what articles to feature.” *U.S. Telecom Ass’n v. FCC*, 855 F.3d 381, 435 (D.C. Cir. 2017) (Kavanaugh, J., dissenting from denial of rehearing en banc).

<sup>20</sup> That requirement would also undermine Reddit’s purpose—like the purpose of the First Amendment itself—to “secure the widest possible dissemination of information from diverse and antagonistic sources.” *Buckley*, 424 U.S. at 48–49 (cleaned up).

association is not reserved for advocacy groups. But to come within its ambit, a group must engage in some form of expression, whether it be public or private.”). HB 20 and SB 7072 violate the First Amendment because, as this Court has recognized, “[t]he forced inclusion of an unwanted person in a group infringes the group’s freedom of expressive association if the presence of that person affects in a significant way the group’s ability to advocate public or private viewpoints.” *Id.* at 648.

**2. The “censorship” restrictions in HB 20 and SB 7072 undermine the voting system on Reddit, where individual users express themselves by upvoting or downvoting content that they embrace or reject.**

HB20 and SB 7072 would also unconstitutionally prevent Redditors from participating in how content is sorted and displayed on Reddit. HB 20 broadly prohibits what it calls viewpoint-based “censorship,” which includes actions to “de-boost, ... deny equal access or visibility to, or otherwise discriminate against” content that does not itself violate the First Amendment. Tex. Civ. Prac. & Rem. Code § 143A.001(1). At the heart of content prioritization and promotion on Reddit lies Reddit’s voting system. Every Redditor has the power to upvote or downvote content. Consistently upvoted content will rise to the top of the platform so that other users can see and interact with it.<sup>21</sup> Conversely, downvoted content becomes less visible across the platform. And if certain content is downvoted enough, it will eventually be hidden entirely from the default view of the community. The downvote allows any member of a community—not just a moderator—to reject

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<sup>21</sup> See generally THEORY OF REDDIT, What Does it Really Mean to Upvote/Downvote a Post?, [https://www.reddit.com/r/TheoryOfReddit/comments/1lpws2/what\\_does\\_it\\_really\\_mean\\_to\\_upvotedownvote\\_a\\_post/](https://www.reddit.com/r/TheoryOfReddit/comments/1lpws2/what_does_it_really_mean_to_upvotedownvote_a_post/) (last visited Dec. 4, 2023).

transgressive behavior or low-quality content as *she* understands it within the mission of a given subreddit.

Reddit’s voting system thus essentially turns every user into a content curator. That voting is anonymous and wholly decentralized encourages broader participation. And voting is important beyond individual posts because accrued upvotes and downvotes feed into a user’s reputation score that Reddit calls “karma.” A user’s karma score is a publicly visible indicator of the constructiveness (or lack thereof, if the score is negative) of her participation on Reddit. Many subreddit communities don’t allow posts by users whose karma scores fall below a particular threshold. In other words, in addition to content being prioritized or de-prioritized based on the number of upvotes or downvotes accrued, content on Reddit may also be prioritized or de-prioritized based on the reputation of the poster, as determined by her own community.

Often Redditors upvote or downvote content based on the viewpoint represented in a particular post; the whole point of upvoting and downvoting on Reddit is to identify high-quality and low-quality content. A post expressing the viewpoint that dogs are the best pet may well rise to prominence on r/Dogs but would likely be downvoted or removed from r/Cats.<sup>22</sup> Users’ downvotes, and Reddit’s corresponding actions to decrease the prominence of downvoted content, are both important parts of Redditors’ expressive freedom to keep r/Cats an enjoyable place for cat lovers and those interested in cat care. The Texas and Florida laws would absurdly force r/Cats to equally feature non-cat content. Doing so would ultimately make online spaces like Reddit worse for everyone

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<sup>22</sup> See DOGS: WOOF, <https://www.reddit.com/r/dogs> (last visited Dec. 4, 2023); *but see* CATS, <https://www.reddit.com/r/cats/> (last visited Dec. 4, 2023).

and undermine users’ expressive associational rights that are “an indispensable means of preserving other individual liberties.” *Roberts*, 468 U.S. at 618.

SB 7072 similarly violates the First Amendment by banning the use of “post-prioritization or shadow banning algorithms” on content posted by or about a user who is known by the platform to be a political candidate, as well as by banning “censor[ing], deplatform[ing], or shadow ban[ning] a journalistic enterprise based on the content of its publication or broadcast.” Fla. Stat. § 501.2041(2)(g) and (j). The users who operate even a subreddit like r/NeutralPolitics would find it impossible to comply with those prohibitions. While that forum is “dedicated to evenhanded, empirical discussion of political issues,” posts are still voted up and down by users so that excellent content rises to the top and low-quality content fades into the background.<sup>23</sup> Content in that forum would inevitably include posts that are about political candidates or that link to articles by journalistic enterprises. Yet the very fact of upvoting or downvoting appears to fit Florida’s definition of a “shadow ban,” which includes “to limit or eliminate the exposure of a user or content or material posted by a user to other users of the social media platform.” Fla. Stat. § 501.2041(1)(f).

While Texas and Florida would wrest from Redditors the power to decide what good or bad expression is, this Court has recognized that the First Amendment forbids them from doing so: “No government ... may affect a ‘speaker’s message’ by ‘forc[ing]’ her to ‘accommodate’ other views.” *303 Creative LLC v. Elenis*, 600 U.S. 570, 596 (2023) (citation omitted); see *Turner Broadcasting*, 512 U.S. at 641–642; *Buckley*, 424 U.S. at 48–49.

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<sup>23</sup> NEUTRAL POLITICS: EVIDENCE. LOGIC. RESPECT, <https://www.reddit.com/r/NeutralPolitics/> (last visited Dec. 4, 2023).

**3. The individualized-explanation requirements in HB 20 and SB 7072 would create insurmountable burdens to Reddit’s user-led model.**

HB 20 and SB 7072 are unconstitutional for the additional reason that they would impose burdensome requirements on Reddit to justify every content-moderation decision by the numerous volunteer moderators of its over 100,000 active communities. SB 7072 requires social media platforms like Reddit to provide a written rationale within seven days of “censor[ing],” “shadow ban[ning],” or “deplatform[ing]” a user, along with an explanation about how the platform “became aware” of the post at issue, “including a thorough explanation of the algorithms used, if any, to identify or flag the user’s content or material as objectionable.” Fla. Stat. § 501.2041(2)(d)(1), (3). HB 20 includes a similar requirement, and it further requires platforms to “allow the user to appeal the decision to remove the content to the platform.” Tex. Bus. & Com. Code § 120.103(a)(2). Platforms must address those appeals within 14 days. *Id.* § 120.104.

NetChoice has already explained how those requirements are practically impossible to satisfy for most digital platforms. *See* Brief for Respondent in No. 22-277 at 15, 39–40; Brief for Petitioners in 22-555 at 6–7, 50–53. But those requirements are *literally* impossible for Reddit, where most of more than 100,000 active subreddits have their own sets of rules of dizzying complexity. Requiring Reddit to provide detailed explanations for hundreds of thousands of individual volunteer moderators’ enforcement decisions, based on the bespoke rules of their particular user-governed communities aided by tools created by Reddit engineers, would be nonsensical and im-

possible.<sup>24</sup> And requiring Reddit’s volunteer user moderators themselves to pen “a thorough rationale” every time a rule is enforced, as well as a “precise and thorough explanation” of how a post was surfaced to them, would be similarly absurd and impermissibly burdensome.<sup>25</sup>

The First Amendment protects Reddit’s viewpoint that users should be able to govern themselves and implement their own rules for their communities. Likewise, it protects Redditors themselves in exercising their speech and associational choices on and through the Reddit platform. Texas and Florida may not outlaw that vibrant model by imposing draconian administrative obligations on it.

\* \* \*

The State laws at issue here may have been intended to target a small number of dominant “social media platforms” that engage in top-down, company-determined content moderation. Pet. App. in No. 22-555 at 66a–67a (quoting Tex. Bus. & Com. Code § 120.001(1)). But the laws are so broadly written and poorly targeted that they

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<sup>24</sup> Although Reddit has created Automoderator tools for moderators to use, even that tooling is designed to be customized by the moderators to the needs of each subreddit, rather than to reinforce a single, centralized mode of discussion. *See* FULL AUTOMODERATOR DOCUMENTATION, [https://www.reddit.com/wiki/automoderator/full-documentation/#wiki\\_actions](https://www.reddit.com/wiki/automoderator/full-documentation/#wiki_actions) (last visited Dec. 4, 2023).

<sup>25</sup> The volume of content just on Reddit alone brings into focus the astronomical burden that Texas and Florida have sought to impose with their explanation and appeal requirements. Between January and June 2023, moderators removed 86,962,475 pieces of content on Reddit, while Reddit employees deleted 81,725,022 pieces (78.6% of which was spam). Taken together, that’s nearly a million moderator- or employee-led removal decisions each day. *See* TRANSPARENCY REPORT: JANUARY TO JUNE 2023, <https://www.redditinc.com/policies/2023-h1-transparency-report> (last visited Dec. 4, 2023).

sweep in companies like Reddit, which has already been sued under HB20. Reddit, as a collection of over 100,000 user-created and -run communities organized around nearly as many passions, with individualized rules designed to foster those communities' expressive association, certainly isn't like "Verizon or AT&T." *Ibid.* And Texas's and Florida's attempts to outlaw Reddit's associational rules in the name of achieving viewpoint balance is anathema to the Constitution. As this Court has explained: "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment." *Buckley*, 424 U.S. at 48–49; *see also* *303 Creative LLC*, 600 U.S. at 596–597.

#### CONCLUSION

The judgment of the Eleventh Circuit in No. 22-277 should be affirmed. The judgment of the Fifth Circuit in No. 22-555 should be reversed.

Respectfully submitted,

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