No. 21-12355

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

NETCHOICE LLC, ET AL.,

Plaintiffs-Appellees,

v.

ATTORNEY GENERAL, STATE OF FLORIDA, ET AL.,

Defendants-Appellants.

On Appeal from the United States District Court
for the Northern District of Florida,
No. 4:21-cv-00220-RH-MAF

BRIEF FOR *AMICUS CURIAE* INTERNET ASSOCIATION IN SUPPORT OF APPELLEES AND AFFIRMANCE

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1-1, the undersigned hereby certifies that Amicus Curiae Internet Association ("IA" or "Amicus") is not a publicly held corporation, does not have a parent corporation, and has not issued stock. Therefore, no publicly traded corporation owns ten percent or more of its stock.[1]

Amicus also certifies, pursuant to Circuit Rule 26.1-2(b), that it is aware of no additional attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this particular case on appeal other than those listed in the appellants', appellees', and other amici's certificates.

/s/ *Patrick J. Carome*
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[1] Amicus further states, pursuant to Federal Rule of Appellate Procedure 29, that none of the counsel for the parties in this litigation has authored this brief, in whole or in part. Furthermore, no party, party's counsel, or person—other than Amicus, its members, or its counsel—contributed money that was intended to fund preparing or submitting this brief. All parties have consented to the filing of this brief. *See* Fed. R. App. P. 29(a)(2).

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Bennett v. Google, LLC,
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Dowbenko v. Google Inc.,
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Force v. Facebook, Inc.,
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Gade v. National Solid Wastes Management Association,
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Green v. America Online (AOL),
318 F.3d 465 (3d Cir. 2003)....12, 13

Howard v. America Online, Inc.,
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TABLE OF AUTHORITIES

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Jane Doe No. 1 v. Backpage.com, LLC,
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Kinderstart.com LLC v. Google, Inc.,
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Millan v. Facebook, Inc.,
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Murphy v. Twitter, Inc.,
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1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995) 4, 5

United States v. Stevens,
559 U.S. 460 (2010)....................18

Washington Post v. McManus,
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Zango, Inc. v. Kaspersky Lab, Inc.,
2007 WL 5189857 (W.D. Wash. Aug. 28, 2007), *aff'd*, 568 F.3d
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Zeran v. Am. Online, Inc.,
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STATUTORY PROVISIONS

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Fla. Stat.
§ 106.072(2) 12
§ 501.2041 .... 12, 13, 15, 19

LEGISLATIVE MATERIALS

H.R. Rep. No. 104-458 (1996) 5

S.B. 7072, 2021 Leg. (Fla. 2021) .... *passim*

141 Cong. Rec. 21,999 (1995) 5, 6

OTHER AUTHORITIES

About GAB.com, GAB, https://gab.com/about 10

Alex Traub, *Why Humans, Not Machines, Make the Tough Calls on Comments*, N.Y. Times (Oct. 26, 2021), https://www.nytimes.com/2021/10/26/insider/why-humans-not-machines-make-the-tough-calls-on-comments.html 22

An Update on Our Continuity Strategy During COVID-19, TWITTER (updated Apr. 1, 2020), https://blog.twitter.com/en_us/topics/company/2020/An-update-on-our-continuity-strategy-during-COVID-19 17

Brian Dean, *Reddit Usage and Growth Statistics*, BACKLINKO, https://backlinko.com/reddit-users (updated Oct. 2021) 21

Community Guidelines, PINTEREST, https://policy.pinterest.com/en/community-guidelines 8

TABLE OF AUTHORITIES

Page

Community Standards Enforcement Report-Q3 2021, *Transparency Center*, FACEBOOK (Nov. 2021), https://transparency.fb.com/data/community-standards-enforcement/ 21

Coronavirus: Staying Safe and Informed on Twitter, Broadening Our Guidance on Unverified Claims, TWITTER (Apr. 22, 2020), https://blog.twitter. com/en_us/topics/company/2020/covid-19.html#misleadinginformationupdate....17

Coronavirus: Staying Safe and Informed on Twitter, COVID-19 Account Verification, TWITTER (Mar. 20, 2020), https://blog.twitter.com/en_us/topics/ company/2020/covid-19.html#misleadinginformationupdate....17

Coronavirus: Staying Safe and Informed on Twitter, Global Expansion of the COVID-19 Search Prompt, TWITTER (Mar. 4, 2020), https://blog.twitter.com/ en_us/topics/company/ 2020/covid-19.html#misleadinginformationupdate 17

Coronavirus: Staying Safe and Informed on Twitter, Launch of a New Dedicated #KnowTheFacts Search Prompt, TWITTER (Jan. 29, 2020), https://blog. twitter.com/en_us/topics/company/2020/covid-19#misleadinginformationupdate 17

Coronavirus: Staying Safe and Informed on Twitter, Updating Our Approach to Misleading Information, TWITTER (May 11, 2020), https://blog.twitter.com/ en_us/topics/company/2020/covid-19.html#misleadinginformationupdate....18

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Do Not Post Violent Content, Account and Community Restrictions, REDDIT, https://www.reddithelp.com/en/categories/rules-reporting/account-and-community-restrictions/do-not-post-violent-content (last updated Sept. 2021)....9

GETTR, https://www.gettr.com/onboarding 10

TABLE OF AUTHORITIES

Page

Housing Data, Inventory, ZILLOW (Jan. 31-2018-Sept. 30, 2020), https://www.zillow.com/ research/data/*How does Vimeo define hateful, harassing, defamatory, and discriminatory content?* VIMEO, https://vimeo.zendesk.com/hc/en-us/articles/224978328-How-does-Vimeo-define-hateful-harassing-defamatory-and-discriminatory-content- 21

How does Vimeo define hateful, harassing, defamatory, and discriminatory content? VIMEO, https://vimeo.zendesk.com/hc/en-us/articles/224978328-How-does-Vimeo-define-hateful-harassing-defamatory-and-discriminatory-content- 9, 10

Jeff Kosseff, *Defending Section 230: The Value of Intermediary Immunity*, 15 J. Tech. L. & Pol'y 123 (Dec. 2010) 8, 11

Marina Pasquali, *Number of Active Etsy Sellers from 2012 to 2020*, STATISTA (July 7, 2021), https://www.statista.com/statistics/409374/etsy-active-sellers/ 21

Reddit Transparency Report 2020, REDDIT, https://www.redditinc.com/ policies/transparency-report-2020 9

Terms of Use, GETTR, https://www.gettr.com/terms (last updated Sept. 25, 2021) 10

Tracy McGraw, *Spending 2020 Together on Twitter, Insights*, TWITTER, https://blog.twitter. com/en_us/topics/insights/2020/spending-2020-together-on-twitter (Dec. 7, 2020) 21

Website Terms of Service, GAB, https://gab.com/about/tos (last updated Apr. 10, 2020) 10

IDENTITY AND INTERESTS OF AMICUS CURIAE

Internet Association ("IA" or "Amicus") represents the interests of a broad array of internet companies and their customers, advocating for protecting internet freedom and free speech, promoting innovation and economic growth, and empowering customers and users.[2] Given this focus and IA's diverse membership of the world's leading internet companies, IA offers distinct information and perspective concerning the issues in this litigation. Indeed, IA member platforms host billions of pieces of new content every day, using a variety of techniques—including human review and machine learning—to evaluate posts, images, videos, and other content, and restrict access to content that violates their community standards. IA and its members thus have a deep knowledge of content moderation and its challenges. Based in part on that expertise, courts have permitted IA to file amicus briefs in many other cases that touch on these issues, *see, e.g.*, *Domen v. Vimeo, Inc.*, No. 20-616 (2d. Cir. Aug. 7, 2021), ECF No. 75, including in the district court in this case, *see* ECF No. 77.

Amicus's members also have a substantial interest in this case because S.B. 7072 attempts to dictate how they shall (or shall not) moderate third-party content on their online platforms. Many of IA's members would likely qualify as "social

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[2] A complete list of Internet Association members is available at http://internetassociation.org/our-members/.

media platforms" under S.B. 7072. S.B. 7072 thus threatens those members' ability to adopt, adapt, and enforce editorial and curatorial standards intended to reflect and promote the diverse views of each individual platform and the community it serves. Content moderation is essential to the operations and expression of Amicus's members; indeed, the success and identities of these online businesses—to say nothing of the vitality of online media generally—depends on their ability to moderate content quickly and efficiently without exposure to the burdens, chilling of expression, and uncertainty posed by state laws that interfere with that process and potentially subject them to investigations, sanctions, and lawsuits.

INTRODUCTION AND SUMMARY OF ARGUMENT

S.B. 7072 should be enjoined on numerous grounds, most notably because it violates the First Amendment. While this brief touches upon that constitutional infirmity, it principally focuses on why Section 230 of the federal Communications Decency Act independently requires affirmance.

For more than two decades, Section 230 has formed the foundation for the modern internet by protecting the rights of online platforms, not the government, to choose what content they disseminate. As discussed in Parts I and II below, Section 230's text, history, and purpose—reinforced by an unbroken line of court decisions—all make clear that this system of *self*-regulation was the law's intended result. Every aspect of S.B. 7072 flies in the face of those protections because it

seeks to replace the discretion guaranteed by Section 230 with one State's vision of what material should be permitted online. Such interference with federal law is plainly preempted.

Even if S.B. 7072 were not preempted, the First Amendment independently bars its assault on the protected editorial discretion that underlies content moderation. The State and its amici's arguments to the contrary are meritless. In particular, as discussed in Part III below, their erroneous contention that online platforms are common carriers is refuted by Section 230.

The district court's preliminary injunction should be affirmed for these reasons, in addition to those given in NetChoice's brief.

ARGUMENT

I. CONGRESS ENACTED SECTION 230 TO ENCOURAGE ONLINE SERVICES TO SELF-REGULATE CONTENT ON THEIR PLATFORMS

A. Section 230's Text, History, And Purpose Demonstrate That It Guarantees Online Services Broad Leeway To Moderate Content

The text of Section 230 grants online services substantial discretion to moderate content. The statute explicitly aims to empower platforms to develop their own community standards for content on their platforms and to make their own independent decisions regarding how to enforce those standards. In particular, Section 230 broadly protects platforms from litigation and liability related to publishing third-party content, *see* 47 U.S.C. §230(c)(1), as well as "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," *id.* §230(c)(2)(A).

The history and purpose of Section 230 confirm that the statute both prohibits restrictions on content moderation and was enacted to promote active and discretionary self-regulation. Section 230 was passed in response to *Stratton Oakmont, Inc. v. Prodigy Services Co.*, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995). Prodigy operated an online bulletin board service with two million users and held itself out as operating a "family oriented" website. *Id.* at *2-3. In pursuit of that goal, the company issued "content guidelines" and used screening software to remove offensive or objectionable content. *Id.* But Prodigy's efforts backfired; the New York court ruled that Prodigy could be liable for third-party content on its bulletin boards because, rather than allowing all messages, Prodigy had made "decisions as to content" by "actively utilizing technology and manpower to delete notes from its computer bulletin boards on the basis of offensiveness and bad taste." *Id.* at *4 (citations and quotations omitted).

Congress enacted Section 230 the following year to reject the "massive disincentive" that *Stratton* had created for online providers to self-regulate content on their platforms. 141 Cong. Rec. 21,999, 22,045 (1995) (statement of Rep. Cox). The Conference Report for the statute explained that "[o]ne of [its] specific

purposes" was to overrule *Stratton* and instead protect providers from liability for "restrict[ing] access to objectionable material," even if, like Prodigy, they do not manage to remove all of it. H.R. Rep. No. 104-458, at 194 (1996) (Conf. Rep.).

Section 230's legislative history likewise reflects that Congress intended to encourage voluntary content moderation and prevent government interference with such decisions. A cosponsor explained that Section 230 sought to "help … along" "the opportunity for education and political discourse that [the internet] offers" by taking the "Government … out of the way and let[ting] parents and individuals control it rather than Government doing that job for us." 141 Cong. Rec. at 22,045 (statement of Rep. Cox). Said otherwise, Congress did not want an "army of bureaucrats regulating the Internet." *Id.* Another cosponsor explained that platforms could not possibly "take the responsibility to edit out information that is going to be coming into them from all manner of sources…. [T]hat is going to be thousands of pages of information every day, and to have that imposition imposed on them is wrong." 141 Cong. Rec. at 22,046 (statement of Rep. Goodlatte).

Section 230's findings, policy pronouncements, and structure reflect Congress's intent to prohibit restrictions on content moderation and encourage self-regulation. The statute provides "[p]rotection for 'Good Samaritan' blocking and screening of offensive material." 47 U.S.C. §230(c). Indeed, the entire provision is titled, "Protection for *private* blocking and screening of offensive material." *Id.*

§230 (emphasis added). The statute also sets forth Congress's finding that "the Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation." *Id.* §230(a)(4). Congress explained that "[i]t is the policy of the United States ... to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." *Id.* §230(b)(2). Congress further stated that it enacted Section 230 "to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material." *Id.* §230(b)(4). And it similarly expressed that the statute was meant "to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet." *Id.* §230(b)(3).

Unsurprisingly, then, courts have recognized that Congress enacted Section 230 to "'encourage service providers to *self-regulate* the dissemination of offensive material over their services.'" *Bennett v. Google, LLC*, 882 F.3d 1163, 1164 (D.C. Cir. 2018) (emphasis added); *see also Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 19 (1st Cir. 2016) ("Congress sought to encourage websites to make efforts to screen content without fear of liability."); *Attwood v. Clemons*, 526 F. Supp. 3d 1152, 1170 (N.D. Fla. 2021) ("Congress has chosen to allow *private* companies and

private users to censor."). Indeed, Congress worried that without Section 230, providers might "abstain from self-regulation" entirely. *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 333 (4th Cir. 1997).

B. Section 230 Is Accomplishing Congress's Goal Of Encouraging Active And Diverse Content Moderation

The growth of internet platforms that cater to diverse communities and employ varied moderation practices show that Section 230 is serving its intended purpose. Many platforms voluntarily engage in socially beneficial content moderation. *See* Kosseff, *Defending Section 230: The Value of Intermediary Immunity*, 15 J. Tech. L. & Pol'y 123, 154-55 (Dec. 2010). And by allowing platforms to self-police rather than having the government set their standards, platforms with different values and user bases may express themselves through distinct content-moderation approaches specifically tailored to the diverse needs of the communities they seek to foster. That results in a marketplace that allows people to choose among platforms with different content-moderation practices and identities that cater to different audiences. *Id.* at 153-155.

IA member Pinterest, for example, is an image-sharing and social media company that expresses its community values by prohibiting "antagonistic, explicit, false or misleading, harmful, hateful, or violent content or behavior" in order to serve

its mission of "bring[ing] everyone the inspiration to create a life they love."[3] By contrast, IA member Reddit's decentralized, community-based moderation system is intended to empower the site's users themselves—"akin to a democracy, wherein everyone has the ability to vote and self-organize, follow a set of common rules, establish community-specific norms, and ultimately share some responsibility for how the platform works."[4] And while online providers that (like Prodigy) seek to create "family-oriented" platforms may broadly prohibit violent or graphic content, others may allow such content in particular contexts, such as for "educational, newsworthy, artistic, satire" or "documentary" purposes, or may require users posting such content to self-identify it so others can easily avoid it.[5]

Still other platforms may adopt moderation practices based on their particular value systems. Religious dating sites, for example, may have posting guidelines reflecting their commitment to the communities they seek to support and serve, such as Christian Mingle, which promotes a style of user interactions designed to create

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[3] *Community Guidelines*, PINTEREST, https://policy.pinterest.com/en/community-guidelines. All websites in this brief were last visited on November 15, 2021.

[4] *Reddit Transparency Report 2020*, REDDIT, https://www.redditinc.com/policies/transparency-report-2020.

[5] *E.g.*, *Do Not Post Violent Content, Account and Community Restrictions*, REDDIT, https://www.reddithelp.com/en/categories/rules-reporting/account-and-community-restrictions/do-not-post-violent-content.

"meaningful, long-lasting relationship[s]" and "Christian dating happiness."[6] Even platforms with more generalist audiences may adopt content-moderation policies that express specific values, like Vimeo, which prohibits "content that displays a demeaning attitude toward specific groups, including … [v]ideos that promote Sexual Orientation Change Efforts."[7] And some websites may choose moderation practices reflecting particular political outlooks. For instance, Gab—a social media website that offers what it considers "a fresh take on … social networking" and "strives to be the home of free speech online"[8]—chooses to avoid "proscrib[ing] offensive speech" and broadly allows "written expression that is protected political, religious, symbolic, or commercial speech under the First Amendment" with limited exceptions.[9] Meanwhile GETTR, which describes itself as "founded on the principles of free speech, independent thought and rejecting political censorship and 'cancel culture,'"[10] seeks to protect users from harmful or "otherwise objectionable

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6 *Dating Safety Tips*, CHRISTIAN MINGLE, https://about.christianmingle.com/en/safety-en/.

7 *How does Vimeo define hateful, harassing, defamatory, and discriminatory content?* VIMEO, https://vimeo.zendesk.com/hc/en-us/articles/224978328-How-does-Vimeo-define-hateful-harassing-defamatory-and-discriminatory-content-.

8 *About*, GAB, https://gab.com/about.

9 *Website Terms of Service*, GAB, https://gab.com/about/tos.

10 GETTR, https://www.gettr.com/onboarding.

or inappropriate" content by reserving the right, "in its sole discretion," to "reject, delete, move, re-format, remove, or refuse to post" user content.[11]

The freedom of platforms to choose, develop, and follow varying community standards and moderation practices is essential to offering secure, desirable, and functional services that express the values of the platforms and their intended participants and audiences. Under this free-market approach to content moderation, platforms "seek to please their customers" and therefore "are more likely than courts to develop content standards that conform to basic community values." Kosseff, 15 J. Tech. L. & Pol'y at 153.

II. SECTION 230 PREEMPTS STATE LAWS LIKE S.B. 7072 THAT PROHIBIT, DISCOURAGE, OR OTHERWISE INTERFERE WITH CONTENT MODERATION

A. Longstanding Precedent Shows That S.B. 7072 Is Preempted

Congress expressly preempted all state laws that, like S.B. 7072, are "inconsistent" with Section 230. 47 U.S.C. §230(e)(3). S.B. 7072 is also implicitly preempted because it is fundamentally "[in]consistent with the structure and purpose" of Section 230. *Gade v. National Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992) (O'Connor, J., plurality op.); *accord Boggs v. Boggs*, 520 U.S. 833, 844 (1997). Specifically, subsections 230(c)(1) and 230(c)(2)—which respectively bar "treat[ing]" platforms as "publishers" of third-party content and holding platforms

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[11] *Terms of Use*, GETTR, https://www.gettr.com/terms.

liable "on account of" "voluntar[y]," "good faith" actions "to restrict access to or availability of material" that they "consider to be ... objectionable" (even if the content is "constitutionally protected")—operate in tandem to shield platforms from liability for decisions concerning what content to publish and what content to block or suppress.

As the Ninth Circuit explained in *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1105 (9th Cir. 2009), subsection 230(c)(1) "shields from liability all publication decisions, whether to edit, to remove, or to post, with respect to content generated entirely by third parties." This Court and others have similarly recognized that subsection 230(c)(1) protects online service providers' decisions about what content to publish on their platforms. *See Dowbenko v. Google Inc.*, 582 F. App'x 801, 805 (11th Cir. 2014). In *Klayman v. Zuckerberg*, 753 F.3d 1354, 1359 (D.C. Cir. 2014), for instance, the D.C. Circuit held that Facebook could not be held liable for "allowing [objectionable] pages to exist on its website" and then belatedly removing those pages, explaining that "the very essence of publishing is making the decision whether to print or retract a given piece of content." And in *Murphy v. Twitter, Inc.*, 274 Cal. Rptr. 3d 360, 363 (Cal. Ct. App. 2021), the California Court of Appeal likewise recognized that subsection 230(c)(1) protects platforms' editorial decisions, specifically holding that the subsection preempted state-law claims challenging Twitter's enforcement of its rule against "messages critical of transgender women."

Subsection 230(c)(2)(A) complements the "publisher" protection granted in subsection 230(c)(1).[12] It allows online providers to establish "standards of decency without risking liability for doing so." *Green v. Am. Online (AOL)*, 318 F.3d 465, 472 (3d Cir. 2003). But given the wide range of platforms on the internet, there can be no one objective "standard[] of decency." *Id.* Accordingly, "Section 230(c)(2)(A) … does not require that the material actually be objectionable; rather, it affords protection for blocking material 'that the provider or user considers to be' objectionable." *Zango, Inc. v. Kaspersky Lab, Inc.*, 2007 WL 5189857, at *4 (W.D. Wash. Aug. 28, 2007), *aff'd*, 568 F.3d 1169 (9th Cir. 2009).

This consistent line of decisions applying subsections 230(c)(1) and 230(c)(2) clearly precludes laws, such as S.B. 7072, that purport to regulate, and impose liability based upon, platforms' decisions about what third-party content to publish, suppress, or remove. S.B. 7072 would impose liability on an online platform for, among other things, (1) deplatforming, post-prioritizing, or shadow banning political candidates or content *about* such candidates, §§106.072(2), 501.2041(2)(h);

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[12] Although complementary, subsection 230(c)(2) "provides an additional shield from liability" in circumstances where subsection 230(c)(1) might not apply—for example, where a service provider "developed, even in part, the content at issue" or took action that did not involve "publishing or speaking, but rather … restrict[ing] access to obscene or otherwise objectionable content" in some other way. *Barnes*, 570 F.3d at 1105. The State is thus wrong that applying subsection 230(c)(1) to providers' decisions to remove or screen content would render subsection 230(c)(2) superfluous. *See* State Br. 18.

(2) censoring, deplatforming, or shadow banning a "journalistic enterprise" or its content, §501.2041(1)(d), (2)(j); (3) failing to "apply censorship, deplatforming, and shadow banning standards in a consistent manner among its users on the platform," §501.2041(2)(b); and (4) changing their "user rules, terms, and agreements ... more than once every 30 days," §501.2041(2)(c). These provisions (and others) are preempted because each interferes with platforms' discretion under subsections 230(c)(1) and 230(c)(2) to publish or moderate content based on whether the provider believes the content objectionable.

Start with the prohibitions on post-prioritization, shadow banning, and inconsistent content moderation, which all run afoul of subsection 230(c)(1) by imposing liability based on a platform's publishing decisions. S.B. 7072 defines "post-prioritization" as "action … to place, feature, or prioritize certain content or material ahead of, below, or in a more or less prominent position than others in a newsfeed, a feed, a view, or in search results." §501.2041(1)(e). And the law defines "shadow ban[ning]" as "limit[ing] or eliminat[ing] the exposure of a user or content or material posted by a user to other users of the social media platform." §501.2041(1)(f). Each of these prohibitions, along with the consistency requirement, necessarily impose liability based on a platform's decision to publish, or prioritize, some content but not others.

To illustrate, consider a situation in which Carrol's post is removed for violating a platform's community standards, but Dana's seemingly identical post is left untouched. If Carrol sues the platform based on that "inconsistent" treatment, she would necessarily be attempting to impose liability for the platform not removing—i.e., publishing—Dana's post. Likewise, if Carrol sued because some posts from Dana and many other users were prioritized over hers, or because relative to Dana's posts Carrol's posts had been "shadow banned," such a claim would necessarily turn on the platform's having disseminated—i.e., published—Dana's and those other users' posts more prominently. Such claims run afoul of subsection 230(c)(1) by "treat[ing]" the platform as a "publisher" of third-party content. *See Force v. Facebook, Inc.*, 934 F.3d 53, 71 (2d Cir. 2019) (rejecting argument "that Facebook should not be afforded Section 230[(c)(1)] immunity because Facebook has chosen to undertake efforts to eliminate objectionable and dangerous content but has not been effective or consistent in those efforts").

These moderation activities—along with decisions to deplatform or "censor" certain entities or individuals—are also protected by subsection 230(c)(2)(A). Returning to our hypothetical users, the platform removed Carrol's post because the platform determined that it violated the platform's community standards or was otherwise objectionable. Subsection 230(c)(2)(A) plainly protects a platform from liability for such good faith efforts to moderate objectionable content. A platform

would likewise be protected in prioritizing content it considers to be non-objectionable ("post-prioritization") or limiting the exposure of content it deems objectionable ("shadow banning")—in other words, for its actions "to restrict access to or availability of material" that the platform in "good faith" considers to be "objectionable." 47 U.S.C. §230(c)(2)(A).

This stylized example demonstrates how Section 230's components work together to immunize online service providers for content-moderation efforts, which inevitably involve decisions both to publish and remove (or prioritize or de-prioritize) content. More importantly, Carrol and Dana's situation demonstrates that both subsections 230(c)(1) and 230(c)(2) operate to preempt, in every possible application, S.B. 7072's limits on providers' discretion to publish or moderate content.

S.B. 7072's prohibition against platforms changing their "user rules, terms, and agreements ... more than once every 30 days," §501.2041(2)(c), also invariably conflicts with the protections subsections 230(c)(1) and 230(c)(2) afford by severely hindering platforms' ability to adapt to new circumstances that may rapidly emerge on the internet. Platforms must act nimbly to adapt their policies and respond to developments in this highly dynamic space. These sorts of quickly evolving moderation practices—which are employed to combat a variety of threats, from violence against ethnic minorities to vaccine misinformation—would be impossible

under laws constraining the frequency with which platforms may change their policies or practices. Yet under S.B. 7072, each and every change would restart an arbitrary 30-day clock, freezing the then-extant set of policies in place. And as this problematic 30-day cycle repeats itself, platforms would forever be left at least a step behind, prohibited from protecting their users and the public.

The ongoing COVID-19 pandemic well-demonstrates the need for rapid adjustments to content-moderation policies and practices. IA member Twitter, for example, implemented a policy on COVID-19 misinformation soon after the pandemic began, launching a search prompt that ensured users seeking information about COVID-19 were "met with credible, authoritative information first."[13] Within months, it expanded that search prompt globally.[14] Less than two weeks later, Twitter announced new enforcement guidance, broadening its definition of harm to address COVID-19 misinformation.[15] Days afterward, it announced that it had

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[13] *Coronavirus: Staying Safe and Informed on Twitter, Launch of a New Dedicated #KnowTheFacts Search Prompt*, TWITTER (Jan. 29, 2020), https://blog.twitter.com/en_us/topics/company/2020/covid-19#misleadinginformationupdate.

[14] *Coronavirus: Staying Safe and Informed on Twitter, Global Expansion of the COVID-19 Search Prompt*, TWITTER (Mar. 4, 2020), https://blog.twitter.com/en_us/topics/company/ 2020/covid-19.html#misleadinginformationupdate.

[15] *An Update on Our Continuity Strategy During COVID-19*, TWITTER (Mar. 16, 2020; updated Apr. 1, 2020), https://blog.twitter.com/en_us/topics/company/2020/An-update-on-our-continuity-strategy-during-COVID-19.

begun to verify accounts that provided credible COVID-19 updates.[16] Such iterative changes continued over the next several months, including a prohibition on "unverified claims [related to COVID-19] that have the potential to incite people to action"[17] and "new labels and warning messages that will provide additional context and information on some Tweets containing disputed or misleading information related to COVID-19."[18] Section 230 protects this ability to make editorial and moderation decisions that a platform, like Twitter, considers necessary to address or respond to current events.

B. The State's Arguments To The Contrary Are Unavailing

The State's primary response to these clear and many-faceted conflicts with Section 230 is to argue that there are some circumstances where S.B. 7072 could be applied consistently with federal law, such that S.B. 7072 is not facially preempted. But the State misconstrues the test for a facial challenge, claiming incorrectly that there must be "'no set of circumstances … under which the [state statute] would be

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16 *Coronavirus: Staying Safe and Informed on Twitter, COVID-19 Account Verification*, TWITTER (Mar. 20, 2020), https://blog.twitter.com/en_us/topics/company/2020/covid-19.html#misleadinginformationupdate.

17 *Coronavirus: Staying Safe and Informed on Twitter, Broadening Our Guidance on Unverified Claims*, TWITTER (Apr. 22, 2020), https://blog.twitter.com/en_us/topics/company/2020/covid-19.html#misleadinginformationupdate.

18 *Coronavirus: Staying Safe and Informed on Twitter, Updating Our Approach to Misleading Information*, TWITTER (May 11, 2020), https://blog.twitter.com/en_us/topics/company/2020/covid-19.html#misleadinginformationupdate.

valid.'" State Br. 10. As the Supreme Court has recognized, a state law need not be preempted in every conceivable circumstance to be facially preempted. *See Arizona v. United States*, 567 U.S. 387, 410 (2012) (holding state immigration law "creates an obstacle to the full purposes and objectives of Congress … [and] is preempted by federal law" even though the state law could be applied consistently with federal law in certain circumstances). Instead, the Supreme Court has held that a law may be facially invalid where "'a substantial number of its applications are unconstitutional.'" *United States v. Stevens*, 559 U.S. 460, 473 (2010). For the reasons already explained, this is plainly the case for S.B. 7072.

But the State's arguments fall short even under its own (erroneous) standard. As illustrated above, application of any of the provisions of S.B. 7072 necessarily conflicts with Section 230—generally twice over, running into both subsection 230(c)(1) and 230(c)(2)(A). The State's more specific arguments fare no better. "[M]ost important[ly]," the State contends that certain applications of S.B. 7072 are permissible because subsection 230(c)(2) requires a provider to moderate content in "good faith." *See* State Br. 13-14. As an initial matter, subsection 230(c)(1) does *not* contain a good faith requirement and thus preempts S.B. 7072's attempt to regulate providers' editorial decisions regardless of the state statute's interaction with subsection 230(c)(2). And more to the point, S.B. 7072 itself does not include a "good faith" exception. Instead, it facially prohibits, for example, all

"inconsistent" platform moderation. §501.2041(2)(b). As the district court correctly recognized, "[g]ood faith, for this purpose, is determined by federal law, not state law"—meaning that the State (and state courts) cannot impose their own idiosyncratic view as to what counts as bad faith. App.1710. S.B. 7072's text thus demonstrates that there is no circumstance in which it can be applied consistent with Section 230.

The State also errs in arguing that requiring consistency is not the same as "regulat[ing] content moderation." State Br. 14-15. That is nonsensical. To start, it disregards that Congress enacted Section 230 specifically to protect providers who "remove[] some—but not all—offensive material from their websites." *Bennett*, 882 F.3d at 1166. S.B. 7072 directly contradicts that congressional mandate by imposing liability for decisions to remove or restrict some but not other content. In other words, Section 230's protections apply where a provider "undertake[s] efforts to eliminate objectionable" content, even where it "has not been effective or *consistent* in those efforts." *Force*, 934 F.3d at 71 (emphasis added).[19]

More fundamentally, the State's argument ignores the realities of the internet, which preclude the absolute consistency in content moderation that S.B. 7072 tries

[19] The State likewise errs in arguing (State Br. 15) that "deplatforming" is not "action … to restrict access to or availability of material"—as suspending or deleting a user's account necessarily restricts access to content posted by that user. *See Dipp-Paz v. Facebook*, 2019 WL 3205842, at *3 (S.D.N.Y. July 12, 2019).

to mandate. In enacting Section 230, Congress recognized that it would be "impossible for service providers to screen each of their millions of postings for possible problems," given the already "staggering" amount of information generated and communicated by users. *Zeran*, 129 F.3d at 331. Yet those "millions of postings" from when the statute was enacted have now skyrocketed into the billions. For example, last year Twitter hosted more than 700 million Tweets about elections; more than 2 billion Tweets about sports, and more than 7,000 Tweets per minute about television and movies.[20] Even on "smaller" platforms, the amount of user-generated content is still staggering; for example, the real estate website Zillow featured 1,103,657 active listings as of September 30, 2021,[21] the independent seller platform Etsy hosted more than 4.3 million sellers in 2020,[22] and Reddit has 52 million daily active users.[23] And although the relative portion of potentially violative or objectionable content is small, in absolute numbers it is very large. In the third quarter of 2021, for instance, Facebook took action on 9.2 million pieces of content

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[20] McGraw, *Spending 2020 Together on Twitter, Insights*, TWITTER (Dec. 7, 2020), https://blog.twitter.com/en_us/topics/insights/2020/spending-2020-together-on-twitter.

[21] *See Housing Data, Inventory*, ZILLOW, https://www.zillow.com/research/data/ (inventory Excel linked for download).

[22] Pasquali, *Number of Active Etsy Sellers from 2012 to 2020*, STATISTA (July 7, 2021), https://www.statista.com/statistics/409374/etsy-active-sellers/.

[23] Dean, *Reddit Usage and Growth Statistics*, BACKLINKO (Oct. 12, 2021), https://backlinko.com/reddit-users.

for bullying and harassment, 1.8 million pieces of content for child nudity and physical abuse, 9.8 million pieces of content for terrorism, 2 million pieces of content for organized hate, and 1.8 billion fake accounts.[24]

Considered against the vast volumes of content and numbers of users on today's internet, there is simply no way for a platform to review every one of these posts to ensure consistent application of its rules or standards, or to establish standards that anticipate every possible type of objectionable content that any random user, among its millions or billions, might invent. Even when users or technology flag possible community standards violations, and even when platforms have clear training on the standards' implementation, moderation decisions are often still subject to the inevitable fallibility and/or inconsistencies of human reviewers or automated review mechanisms.[25] And because no one person could possibly review every content violation, and different people may apply the same standard differently, there are bound to be different moderation decisions. The only way to avoid those moderation shortfalls—and engage in "consistent" moderation—would

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[24] *Community Standards Enforcement Report, Transparency Center*, FACEBOOK (Nov. 2021), https://transparency.fb.com/data/community-standards-enforcement/.

[25] *See* Traub, *Why Humans, Not Machines, Make the Tough Calls on Comments*, N.Y. Times (Oct. 26, 2021), https://www.nytimes.com/2021/10/26/insider/why-humans-not-machines-make-the-tough-calls-on-comments.html (describing the New York Times' partially automated moderation practices).

be to eschew moderation altogether. A "consistency" requirement would thus bar most, if not all, efforts to enforce community standards on a provider's service.

Upholding S.B. 7072's "consistency" requirement would also (ironically) permit a patchwork of inconsistent regulatory regimes. Under the State's reading of Section 230's preemptive sweep, any state could follow Florida's lead and impose its own view of what should or should not appear online. Consider, for example, a state that passes a law encouraging online platforms to restrict access to posts contravening FDA vaccine guidance. Or even a state law that prohibits "inconsistent moderation" with a different definition of consistency. Compliance with such provisions might well run afoul of S.B. 7072, putting an online platform in an impossible position.

Yet another problem with S.B. 7072's demand for "consistent" content moderation is that, at least in this context, what qualifies as "consistent" is highly nebulous. The Florida legislature did not even attempt to define the term. Must a platform take precisely the same enforcement action against users who publish the exact same content or category of content, does a sliding scale apply, or is there some other measure of consistency? However the term "consistent" might be interpreted, it would be very difficult, if not impossible, to apply any rule of consistency to activities and decisions that are as varied and subjective as moderating and curating the unimaginably diverse types of third-party content that are constantly being

posted through online platforms with the relentlessness of countless firehoses. Because context matters, and something that is offensive or hateful in one setting may be empowering or educational in another, any attempt to moderate has the potential to be deemed "inconsistent." So rather than encouraging varied approaches to content moderation, S.B. 7072 would effectively mandate a uniform approach to content moderation: none. That outcome is entirely inconsistent with Section 230's text and "'object and policy,'" and S.B. 7072 is therefore preempted. *Gade*, 505 U.S. at 98 (O'Connor, J., plurality op.).

Finally, the State argues that the term "otherwise objectionable" in Section 230 does not apply to viewpoint-based moderation. *See* State Br. 15-16. That assertion lacks any support in the statute or caselaw interpreting Section 230. Moreover, it is inconsistent with the *subjective* standard of "objectionableness" that Section 230 expressly prescribes. As numerous courts have recognized, Section 230 encourages providers to moderate content that *they* consider objectionable. *E.g.*, *Domen v. Vimeo, Inc.*, 433 F. Supp. 3d 592, 603 (S.D.N.Y. 2020), *aff'd on other grounds*, 2021 WL 4352312 (2d Cir. Sept. 24, 2021); *see also supra* p.12. That subjective standard furthers Congress's desired hands-off approach and allows *providers*—not the government—to determine what content is permitted on their platforms based on the needs of the online community they seek to foster. That decision-making process necessarily is based on the provider's viewpoint of what

constitutes hateful, abusive, or otherwise objectionable content. Prohibiting providers from making these sorts of editorial decisions would conflict with the broad discretion afforded by Section 230.

In sum, in enacting Section 230, Congress sought to avoid the "'obvious chilling effect'" from "holding website operators liable for [third-party] content," while simultaneously "encourag[ing] websites to make efforts to screen content without fear of liability." *Backpage.com*, 817 F.3d at 19. Section 230's broad protections have served as foundations for the development and growth of the internet as a medium for free expression and commerce, *see Bennett*, 882 F.3d at 1166, and this Court should not permit the State to undermine them.

III. S.B. 7072 VIOLATES THE FIRST AMENDMENT FOR NUMEROUS REASONS, INCLUDING BECAUSE ONLINE SERVICES THAT ENGAGE IN CONTENT MODERATION ARE NOT COMMON CARRIERS

For the reasons given in NetChoice's brief (at 22-50), the district court also correctly concluded that Plaintiffs are overwhelmingly likely to succeed on their First Amendment challenges to S.B. 7072. *See* APP1718-1723. The content-moderation decisions and community standards that S.B. 7072 targets are protected, expressive choices about the content that online platforms wish to disseminate, restrict, or block. Indeed, as described above, the experiences of IA's own members demonstrate how content-moderation policies are used to shape online communities. *See supra* pp.7-10. And there are many other ways in which social media platforms

might express their views through content moderation. A political party could create a platform for grassroots organizing, employing content moderation to promote the ability of itself and its users to develop a community interested in achieving the same policy goals. A church might use a social media site to connect members of its faith, yet decide that creating a space for spiritual growth requires excluding posts attacking tenants of the faith. Such decisions are both necessary to create vibrant online communities and indistinguishable from those made by a parade organizer, a bookstore owner, or a newspaper editor. The First Amendment thus precludes S.B. 7072's effort to "force[] [online platforms] to speak in a way they would not otherwise." *Washington Post v. McManus*, 944 F.3d 506, 518 (4th Cir. 2019).

One of the several—and meritless—ways that the State and its amici try to avoid this body of precedent is to argue that the online platforms S.B. 7072 would regulate are common carriers. *See, e.g.*, State Br. 34-39; Babylon Bee Br. 20-26; Institute for Free Speech Br. 2, 10-11. Indeed, some go so far as to make the absurd assertion that Section 230 itself confirms that status. *See* State Br. 38; *see also* Babylon Bee Br. 26. According to them, this supposed common-carrier status waters-down the First Amendment protections that the targeted platforms enjoy. For the reasons given in NetChoice's brief (at 38-42), this is nonsense. In particular, as the present brief now elaborates, every aspect of Section 230, to say nothing of the

reality of how social media functions, confirms that the platforms at issue here are not common carriers.

First, Section 230 was enacted as part of the Telecommunication Act of 1996, which expressly recognizes that "interactive computer services"—the very category of services that Section 230 defines for purposes of establishing who it protects, *see* 47 U.S.C. §230(f)(2)—are not common carriers. The Telecommunication Act distinguishes between regulated providers that are common carriers and those that are not, and imposes certain obligations only on the former. *See, e.g.*, Sec. 3(a)(49) ("A telecommunications carrier shall be treated as a common carrier under this Act[.]") (codified at 47 U.S.C. §153). Most importantly, the Act then expressly states that it does not impose common-carrier obligations on "interactive computer services." *See* Sec. 502 ("Nothing in this section shall be construed to treat interactive computer services as common carriers or telecommunications carriers.") (codified at 47 U.S.C. §223); *see also id.* ("The use of the term 'telecommunications device' in this section … does not include an interactive computer service."). Against this regulatory backdrop, courts have repeatedly held that online platforms, including ones that S.B. 7072 targets, are not common carriers under federal law. *See, e.g.*, *Howard v. America Online, Inc.*, 208 F.3d 741, 753 (9th Cir. 2000) (holding AOL is not a "common carrier"); *Kinderstart.com LLC v. Google, Inc.*, 2006 WL 3246596, at *10-11 (N.D. Cal. July 13, 2006) (finding Google is not a

"common carrier"); *Millan v. Facebook, Inc.*, 2021 WL 1149937, at *3 (Cal. Ct. App. Mar. 25, 2021) (unpublished) ("Facebook does not satisfy the definition of a 'common carrier.'").

Second, Section 230's text demonstrates that its protections are inconsistent with common-carrier obligations (in particular nondiscrimination) because it applies to, and expressly protects, online services that actively engage in subjective content moderation—unlike the kinds of passive conduits that the State and its amici argue have been recognized as common carriers. State Br. 34-35; Babylon Bee Br. 22-24. As discussed above, Section 230 encourages online services to moderate content and provides protections for those editorial decisions. Further, Section 230 expressly applies (via the definition of "interactive computer services, 47 U.S.C. §230(f)(2)) to "access software providers," which are defined in turn as "provider[s] of software …, or enabling tools that" "filter, screen, allow, or disallow content," or "pick, choose, analyze, or digest content." *Id.* §230(f)(4). This statutory text further underscores that "interactive computer services" are entities that not only may, but are expected to, actively moderate content. Additionally, the plain text within Section 230 establishes that the statute protects content-moderation decisions regardless of whether they restrict or block content that "is constitutionally protected," further negating any notion that online platforms are common carriers

that must be indiscriminately open to all comers. *Id.* §230(c)(2)(A); *see also* State Br. 37-39.

Third, Section 230's history and purpose reflect that the statute does the opposite of imposing common-carrier obligations on online services that moderate content. As discussed, Section 230 establishes a regulatory framework completely at odds with common carriage because it *encourages* online services to subjectively moderate, and therefore differentiate amongst, content. *Supra* Part I. For that reason, while Section 230 provides that online services shall not be treated as "the publisher" of "information provided by another information content provider," the law simultaneously contemplates that covered services will be more than mere conduits for information. Indeed, common carriage is incompatible with the very concept of a social media service and other online platforms protected by Section 230 because building a social media platform, and fostering a community on that platform, necessarily involves editorial judgments and expression by the platform operator. *Supra* pp.7-10. That distinguishes social media platforms from the kinds of entities the State and its amici contend have traditionally been treated as common carriers. "[Un]like [the] telegraph and telephone lines of the past," State Br. 37—which could and did convey communications without regard for their content—social media platforms simply must differentiate between content to function. As explained, that differentiation both makes social media platforms usable and allows

providers to create a community that will attract users—the "social," in "social media." *Supra* pp.7-10.

Against these clear indications that Section 230 precludes, rather than supports, regulating online platforms as common carriers, the State and its amici point to the "benefit" Section 230's liability protections supposedly "confer[]" on platforms. State Br. 38; *see also* Babylon Bee Br. 25. For example, defendants' amici characterize Section 230 as part of a "bargain" by which providers "receive special government favors in exchange for higher levels of government regulation." Babylon Bee Br. 25-26 (internal quotation marks omitted). But Section 230's protections were not extended as part of such an exchange. Again, Congress granted online platforms liability protections "to preserve the vibrant and competitive free market … for the Internet and other interactive computer services," without interference by an "army of bureaucrats" and "unfettered by Federal or State regulation," *supra* pp.5-6—in other words, to encourage them to take the very voluntary content-moderation actions S.B. 7072 seeks to prohibit under the guise of the common carrier doctrine. Section 230's *self*-regulatory scheme thus represents an entirely different kind of "bargain," through which Congress conferred benefits to promote conduct inconsistent with the obligations of common carriers. As a result, the statute only confirms that the common carrier doctrine has no relevance here.

CONCLUSION

This Court should affirm the district court's order preliminarily enjoining S.B. 7072.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(a)(7)(C), the undersigned hereby certifies that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B)(i).

1. Exclusive of the exempted portions of the brief, as provided in Fed. R. App. P. 32(a)(7)(B), the brief contains 6,498 words.

2. The brief has been prepared in proportionally spaced typeface using Microsoft Word in 14 point Times New Roman font. As permitted by Fed. R. App. P. 32(a)(7)(B), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

/s/ *Patrick J. Carome*
PATRICK J. CAROME

November 15, 2021

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of November, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

/s/ *Patrick J. Carome*
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