To be Submitted by:
SCOTT WILKENS

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Erie County Clerk's Index Nos. 805896/23, 808604/23, 810316/23, 810317/23
Appellate Division–Fourth Department Docket Nos. CA 24-00513, CA 24-01448, CA 24-01447, CA 24-00524

Court of Appeals

of the

State of New York

DIONA PATTERSON, individually and as Administrator of the ESTATE OF HEYWARD PATTERSON, J.P., a minor, BARBARA MAPPS, Individually and as Executrix of the ESTATE OF KATHERINE MASSEY, SHAWANDA ROGERS, Individually and as Administrator of the ESTATE OF ANDRE MACKNIEL, A.M., a minor, and LATISHA ROGERS,

Plaintiffs-Appellants,

– against –

META PLATFORMS, INC., formerly known as FACEBOOK, INC., SNAP, INC., ALPHABET, INC., GOOGLE, LLC, YOUTUBE, LLC, DISCORD INC., REDDIT, INC., AMAZON.COM, INC., 4CHAN COMMUNITY SUPPORT, LLC,

Defendants-Respondents.

(For Continuation of Caption See Inside Cover)

BRIEF OF THE KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY AS *AMICUS CURIAE* IN SUPPORT OF APPELLEES

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– and –

4CHAN, LLC, GOOD SMILE COMPANY, INC., GOOD SMILE COMPANY US, INC., GOOD SMILE CONNECT, LLC, RMA ARMAMENT, VINTAGE FIREARMS, MEAN L.L.C., PAUL GENDRON, PAMELA GENDRON,

Defendants.

KIMBERLY J. SALTER, individually and as Executrix of the Estate of AARON W. SALTER, JR., MARGUS D. MORRISON, JR., Individually and as Administrator of the Estate of MARGUS MORRISON, SR., PAMELA O. PRICHETT, Individually and as Executrix of the Estate of PEARL LUCILLE YOUNG, MARK L. TALLEY, JR., Individually and as Administrator of the Estate of GERALDINE C. TALLEY, GARNELL W. WHITFIELD, JR., Individually and as Administrator of the Estate of RUTH E. WHITFIELD, JENNIFER FLANNERY, as Public Administrator of the Estate of ROBERTA DRURY, TIRZA PATTERSON, Individually and as parent and natural guardian of J.P., a minor, ZAIRE GOODMAN, ZENETA EVERHART, as parent and Caregiver of Zaire Goodman, BROOKLYN HOUGH, JO-ANN DANIELS, CHRISTOPHER BRADEN, ROBIA GARY, AHJALEAN SEGARS, and KISHA DOUGLAS,

Plaintiffs-Appellants,

– against –

META PLATFORMS, INC., f/k/a Facebook, Inc., INSTAGRAM LLC, REDDIT, INC, AMAZON.COM, INC., TWITCH INTERACTIVE, INC., ALPHABET, INC., GOOGLE, LLC, YOUTUBE, LLC, DISCORD INC., SNAP, INC. and 4CHAN COMMUNITY SUPPORT, LLC,

Defendants-Respondents

– and –

4CHAN, LLC, GOOD SMILE COMPANY, INC., GOOD SMILE COMPANY U.S., INC., GOOD SMILE CONNECT, LLC, RMA ARMAMENT, INC. d/b/a RMA, BLAKE WALDROP, CORY CLARK, VINTAGE FIREARMS, LLC, JIMAY'S FLEA MARKET, INC., JIMAYS LLC, MEAN ARMS LLC d/b/a Mean Arms, PAUL GENDRON and PAMELA GENDRON,

Defendants.

WAYNE JONES, Individually and as Administrator
of the Estate of CELESTINE CHANEY,

Plaintiff-Appellant,

– against –

MEAN LLC, VINTAGE FIREARMS, LLC, RMA ARMAMENT, INC., 4CHAN, LLC, 4CHAN COMMUNITY SUPPORT, LLC, PAUL GENDRON and PAMELA GENDRON,

Defendants,

– and –

ALPHABET INC., GOOGLE, LLC, YOUTUBE, LLC, REDDIT, INC.,

Defendants-Respondents.

FRAGRANCE HARRIS STANFIELD, YAHNIA BROWN-MCREYNOLDS, TIARA JOHNSON, SHONNELL HARRIS-TEAGUE, ROSE MARIE WYSOCKI, CURT BAKER, DENNISJANEE BROWN, DANA MOORE, SCHACANA GETER, SHAMIKA MCCOY, RAZZ'ANI MILES, PATRICK PATTERSON, MERCEDES WRIGHT, QUANDRELL PATTERSON, VON HARMON, NASIR ZINNERMAN, JULIE HARWELL, individually and as parent and natural guardian of L.T., a minor, LAMONT THOMAS, individually and as parent and natural guardian of L.T., a minor, LAROSE PALMER, JEROME BRIDGES, MORRIS VINSON ROBINSON-MCCULLEY, KIM BULLS, CARLTON STEVERSON, and QUINNAE THOMPSON,

Plaintiffs-Appellants,

– against –

MEAN LLC, VINTAGE FIREARMS, LLC, RMA ARMAMENT, INC., 4CHAN, LLC, 4CHAN COMMUNITY SUPPORT, LLC, PAUL GENDRON and PAMELA GENDRON,

Defendants,

– and –

ALPHABET INC., GOOGLE, LLC, YOUTUBE, LLC, REDDIT, INC.,

Defendants-Respondents.

Status of Related Litigation

Pursuant to the Rules of Practice of the New York Court of Appeals, 22 N.Y.C.R.R. § 500.13(a), *Amicus Curiae* states that it is not aware of any related litigation as of the date of filing this brief.

Corporate Disclosure Statement

In accordance with Court of Appeals rule 500.1(f), *amicus curiae* states that it is a non-profit membership organization, with no parent company and no publicly traded stock.

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Preliminary Statement

Millions of Americans turn to social media every day to learn the news, communicate with others, hear from political leaders, advocate for political change, listen to music, and watch videos. These activities—all of which involve the exercise of First Amendment rights—are facilitated by recommendation algorithms.

Social media platforms use recommendation algorithms to determine which posts any given user is most likely to find engaging (or interesting, or useful), and which other users that particular user might want to interact with. It is important to recognize that recommendation algorithms can sometimes have pernicious effects—for example, amplifying content that is sensational, extreme, false, or polarizing.[1] Nonetheless, without recommendation algorithms, many of the "vast democratic forums of the Internet," *Packingham v. North Carolina*, 582 U.S. 98, 104 (2017) (quoting *Reno v. Am. C.L. Union*, 521 U.S. 844, 868 (1997)), would be useless jumbles of information, like libraries of randomly shelved books, but on an almost unimaginable scale.

This case presents the question whether recommendation algorithms are covered by the immunity that Congress extended to platforms through Section 230

[1] *See* Benjamin Laufer & Helen Nissenbaum, *Algorithmic Displacement of Social Trust*, Knight First Amend. Inst. at Colum. Univ. (Nov. 29, 2023), https://perma.cc/23CP-EX6C.

of the Communications Decency Act. The statute is best read to immunize social media platforms' use of recommendation algorithms for the mere amplification of speech unless it "materially contributes" to the alleged illegality. This reading is faithful to the statute's text. It immunizes platforms for decisions that are inextricable from the publication of third-party content. But it leaves open the possibility of holding platforms accountable for other decisions that cause harm.

It should be acknowledged that adopting this framework would immunize some conduct that causes real harms, because some harmful conduct is the result of mere amplification and is therefore inseparable from publication. But categorically excluding recommendation algorithms from the scope of Section 230's coverage would have devastating consequences for free speech, as explained below. And legislatures can address or mitigate the harms associated with amplification through other mechanisms, including by requiring platforms to be more transparent,[2] establishing legal protections for journalists and researchers who study the

[2] *See* Laura Edelson, et al., *A Standard for Universal Digital Ad Transparency*, Knight First Amend. Inst. at Columbia Univ. (Dec. 9, 2021), https://perma.cc/9QWA-X7FB; Ramya Krishnan, *How the Supreme Court Could Encourage Platform Transparency*, Knight First Amend. Inst. at Columbia Univ. (Jan. 9, 2023), https://perma.cc/2FKY-RN2H.

platforms,[3] limiting what information platforms can collect and how they can use it,[4] and mandating interoperability and data portability.[5]

Under this framework, Plaintiffs–Appellants' claims must be dismissed. While Plaintiffs–Appellants use the language of social media "addiction," the gravamen of their claims is that Defendants–Appellees (the "Platforms") amplified particular content, which caused the shooter to commit his terrible crimes. Plaintiffs–Appellants' claims "treat" the Platforms "as publishers or speakers" of third-party content, because mere amplification of the speech alleged to cause harm is inseparable from the publication of that speech. 47 U.S.C. § 230(c)(1). Given the structure of the statute, mere amplification cannot render an information service provider "responsible, in whole or in part, for the creation or development" of the information at issue. 47 U.S.C. § 230(f)(3). The Platforms are shielded by Section

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[3] *See Platform Accountability and Transparency Act,* S. 3292, 119th Cong. (as introduced in Senate, Dec. 1, 2025); Alex Abdo, et al., *A Safe Harbor for Platform Research*, Knight First Amend. Inst. at Columbia Univ. (Jan. 19, 2022), https://perma.cc/WP5A-EVH9.

[4] *See* Fed. Trade Comm'n, *A Look Behind the Screens: Examining the Data Practices of Social Media and Video Streaming Services* (2024), https://perma.cc/NGJ7-QRHR; Jennifer King & Caroline Meinhardt, *Rethinking Privacy in the AI Era*, Stanford Univ. (Feb. 2024), https://perma.cc/U56R-5UN4.

[5] *See* Daphne Keller, *Amplification and its Discontents*, Knight First Amend. Inst. at Columbia Univ. (June 8, 2021), https://perma.cc/LAH2-7K6D; Madhavi Singh, *Reimagining Social Media Through Middleware: A Structural Path to Competition and User Agency*, 26 N.C. J.L. & TECH. 459 (2025), https://perma.cc/C623-EQZJ.

230 here because amplification, without more, does not amount to a "material contribution" to the alleged illegality.

Argument

I. Recommendation algorithms are crucial to free speech online.

Social media platforms are among the most important places "for the exchange of views," enabling users "to engage in a wide array of protected First Amendment activity on topics 'as diverse as human thought.'" *Packingham*, 582 U.S. at 104–05 (quoting *Reno*, 521 U.S. at 870). For most Americans, these platforms are now part of everyday life.[6] They "have gone from unheard-of to inescapable, [and] structure how we relate to family and friends, as well as to businesses, civic organizations, and governments." *Moody v. NetChoice, LLC*, 603 U.S. 707, 716 (2024). They serve as "principal sources for knowing current events, checking ads for employment, speaking and listening in the modern public square, and otherwise exploring the vast realms of human thought and knowledge."

[6] *See* Jeffrey Gottfried & Eugenie Park, *Americans' Social Media Use 2025*, Pew Rsch. Ctr. (Nov. 20, 2025) (survey showing that a large majority of American adults use YouTube and Facebook, and a smaller but significant number use Instagram, TikTok, WhatsApp, Reddit, Snapchat, and X (Twitter)), *available at* https://perma.cc/9JT3-4LAF; Michelle Faverio & Olivia Sidoti, *Teens, Social Media and AI Chatbots 2025*, Pew Rsch. Ctr. (Dec. 9, 2025) (survey showing that nearly all teens use YouTube, a majority use TikTok, Instagram, and Snapchat, and a smaller but significant number use Facebook, WhatsApp, Reddit, and X (Twitter)), *available at* https://perma.cc/X7Y9-QHBL.

Packingham, 582 U.S. at 107. None of this is to romanticize these platforms. They "make our lives better, and make them worse—create unparalleled opportunities and unprecedented dangers." *Moody*, 603 U.S. at 716.

Recommendation algorithms are what allow platforms to serve these functions. *See Woodland v. Hill*, 136 F.4th 1199, 1208 (9th Cir. 2025) (explaining that platforms "facilitate the discovery and sharing of available content by using algorithms to recommend tailored content to [users]"). They ensure that "[o]f the billions of posts or videos (plus advertisements) that could wind up on a user's customized feed or recommendations list, only the tiniest fraction do." *Moody*, 603 U.S. at 734. "No longer do people have to search for specific content in the vast expanse of the Internet; in today's digital landscape, social media networks and other platforms continually push individualized content to [users] based on each individual's preferences, usage, and habits." *Woodland*, 136 F.4th at 1208.

Originally, social media platforms like Facebook, Instagram, and Twitter displayed content in users' feeds in reverse-chronological order.[7] In 2011, Facebook shifted to a machine learning recommendation algorithm, which allowed it to identify the content it predicted would be most compelling to each user.[8] Instagram

[7] Arvind Narayanan, *Understanding Social Media Recommendation Algorithms*, Knight First Amend. Inst. at Colum. Univ. (Mar. 9, 2023), https://perma.cc/ZQ7M-REUD.

[8] *Id.*

and Twitter followed suit in early 2016, replacing their reverse-chronological feeds with algorithmically ranked ones.[9] By the time TikTok launched in 2016, "recommendation algorithms were successful enough that making the algorithm the core of the product would have been an obvious idea."[10]

Recommendation algorithms rely on information collected or inferred about the user—for example, their age, interests, personal relationships, browsing behavior, and the like.[11] New privacy legislation might limit what information social media platforms can collect about their users, and how they can use that information. Even if Congress enacts new privacy legislation, however, recommendation algorithms will remain important to the usability and value of most social media platforms.

II. Categorically withdrawing immunity for algorithmic recommendations would have far-reaching implications for free speech online.

Categorically excluding algorithmic recommendations from the scope of Section 230's protection—which is what Plaintiffs–Appellants are effectively

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[9] *Id.* Instagram and Twitter subsequently restored reverse-chronological display as an option—though not as the default. Nicole Nguyen, *Twitter Just Released a New "Sparkle" Button to Switch Between Algorithmic and Chronological Timelines*, BuzzFeed News (Dec. 18, 2018), https://perma.cc/TBW3-LS5N; Sarah Perez, *Instagram Launches Chronological and 'Favorites' Feeds for All Users, But They Can't Be the Default*, TechCrunch (Mar. 23, 2022), https://perma.cc/6UW8-BFJV.

[10] *Id.*

[11] *See* Fed. Trade Comm'n, *A Look Behind the Screens*, *supra* n.4.

asking the Court to do—would require social media platforms to radically change how they operate to avoid the risk of liability. These changes would have profoundly negative consequences for free speech online.

As it has been interpreted by the Second, Fourth, and Ninth Circuits, Section 230 provides important protections to social media platforms for their algorithmic recommendations of third-party content to users. *See Force v. Facebook, Inc.*, 934 F.3d 53 (2d Cir. 2019); *M.P. by and through Pinckney v. Meta Platforms Inc.*, 127 F.4th 516 (4th Cir. 2025); *Doe 1 v. Meta Platforms, Inc.*, 174 F.4th 1159 (9th Cir. 2026). The protection is substantive, in that it shields them from liability for a broad array of claims arising out of their publication of third-party content. *Id.* It is also procedural, in that it ensures that these claims are dismissed "at the earliest possible stage of the case," protecting internet intermediaries "from having to fight costly and protracted legal battles" in the first place. *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.,* 591 F.3d 250, 255 (4th Cir. 2009) (quoting *Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1175 (9th Cir. 2008) (en banc)); *see also Word of God Fellowship, Inc. v. Vimeo, Inc.*, 205 A.D.3d 23, 24 (1st Dep't 2022). The First Amendment, unlike Section 230, does not provide such procedural protections from litigation.[12]

[12] *See* Eric Goldman, *Why Section 230 Is Better Than the First Amendment*, 95 Notre Dame L. Rev. Reflection 34 (2019).

These substantive and procedural protections are important to social media platforms because, as discussed above, recommendation algorithms are essential to their operation, and to the value they provide to their users. Nearly every post that major social media platforms display to users reflects an algorithmic recommendation. Categorically excluding them from Section 230's protection would therefore have far-reaching consequences. In particular, it would very likely force platforms to choose between two paths to avoid the possibility of crushing liability: either taking down all content that could potentially subject them to suit, or disabling algorithmic recommendations and reverting to feeds sorted by chronology or some other metric that is agnostic as to content or the likely interest of the user.

The threat of liability would be real. On Plaintiffs–Appellants' theory of Section 230, a Hollywood director accused of sexually assaulting an aspiring actor could sue the platforms for defamation if they recommended stories about the allegations. Scientists criticized for their research conclusions could sue the platforms for circulating that criticism. And businesses could sue the platforms for amplifying any discussion of their alleged misconduct or malfeasance. Even if the suits were not successful, the expense of defending against them would be significant.

In response to the risk of liability, the companies would have little choice but to disable recommendation algorithms that make the sites work for their users, or to

take down large swaths of constitutionally protected speech. It is important to understand here that the platforms themselves have little stake in whether any particular category of speech stays up. In response to even a small risk of liability, the platforms are likely to remove not only speech that carries the risk of civil liability, but also speech that might give rise to litigation, even if the litigation would probably fail. Perhaps the speech that platforms take down will include the kind of speech that Plaintiffs–Appellants complain of in this case. But it will certainly include a great deal of other speech as well, including speech that is indisputably important to public discourse. Overrepresented in the removed speech would probably be the speech of political minorities, speech that is politically controversial or that relates to politically controversial topics, and speech that is critical of the powerful.

A core purpose of Section 230 was to avoid just such a result. As the Fourth Circuit explained in *Zeran v. America Online, Inc.*, decided shortly after Section 230's enactment, "Congress recognized the threat that tort-based lawsuits pose to freedom of speech in the new and burgeoning Internet medium," and viewed "[t]he imposition of tort liability on service providers for the communications of others . . . [as] simply another form of intrusive government regulation of speech." 129 F.3d 327, 330 (4th Cir. 1997). Because "[i]t would be impossible for service providers to screen each of their millions of postings for possible problems, . . . [they] might

choose to severely restrict the number and type of messages posted." *Id.* Congress "chose to immunize service providers to avoid any such restrictive effect." *Id.*

The possibility that intermediary liability will lead to suppression of speech is one the U.S. Supreme Court has highlighted in other contexts. For example, in *Smith v. California*, the Court struck down a Los Angeles ordinance that imposed strict criminal liability on a bookstore that sold obscene books, reasoning that, "[i]f the contents of bookshops and periodical stands were restricted to material of which their proprietors had made an inspection, they might be depleted indeed." 361 U.S. 147, 153 (1959).

Smith was only the first in a line of cases that recognized the dangers that imposing intermediary liability posed to free speech. The plurality opinion in *Manual Enterprises, Inc. v. Day* held that magazine publishers could not be held liable for advertisements that offered nudist photographs without proof the publisher knew at least some of the material was obscene. 370 U.S. 478, 492 (1962). There, the plurality recognized that because "publishers cannot practicably be expected to investigate each of their advertisers," and because "the economic consequences" of a single violation "might entail heavy financial sacrifice," it was likely that publishers would simply "refrain from accepting advertisements from those whose own materials could conceivably be deemed objectionable by the Post Office

Department," thereby depriving the public of materials "which might otherwise be entitled to constitutional protection." *Id.* at 493.

As the U.S. Supreme Court recognized in *Bantam Books, Inc. v. Sullivan*, the threat of liability can chill intermediaries into removing important speech even if no enforcement action is ever brought. 372 U.S. 58 (1963). In that case, the Court held that a Rhode Island commission had violated the First Amendment by threatening booksellers with liability if they sold or displayed to minors any books the commission had deemed "objectionable." *Id.* at 61, 63–64. Though the commission had not seized or banned any books, the commission's "informal sanctions—the threat of invoking legal sanctions and other means of coercion, persuasion, and intimidation"—suppressed protected speech nonetheless, because they made distributors unwilling to distribute many books. *Id.* at 67.

If recommendation algorithms were excluded from Section 230's coverage, the incentive for social media platforms to avoid liability by suppressing broad swaths of content would be especially strong. Again, platforms have little to lose by taking down content that might lead to civil liability. And with millions, even billions, of pieces of content uploaded every day, individualized review is not feasible.[13]

[13] *Moody*, 603 U.S. at 719 (observing that "the biggest social-media companies—entities like Facebook and YouTube—host a staggering amount of content.

III. Platforms are immunized for their use of recommendation algorithms for the mere amplification of speech, which cannot, as a statutory matter, "materially contribute" to the alleged illegality.

Section 230(c)(1) is best read to mean that platforms are immunized for their use of recommendation algorithms for the mere amplification of speech, which is inseparable from publishing. This reading, which many courts have already adopted, is faithful to the statute's text and purpose. It insulates internet platforms from liability for publishing others' content. But it leaves open the possibility of holding platforms liable when they are meaningfully responsible for the alleged harms. Under this reading of the statute, Plaintiffs–Appellants' claims must be dismissed.

At bottom, Plaintiffs–Appellants' claims seek to treat the Platforms as publishers of extremist and racist speech. Plaintiffs–Appellants argue that the platforms stepped beyond Section 230's protection by amplifying that speech, but mere amplification is inextricable from publication, and so it cannot—as a statutory or common-sense matter—convert the platform from a publisher of speech into a developer of that speech. To see that Plaintiffs–Appellants' complaints are fundamentally about mere amplification, it is helpful to recognize that the harm they complain about would be mitigated if Defendants–Appellees amplified the speech less, and exacerbated if they amplified it more. This distinguishes the complaints

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Facebook users, for example, share more than 100 billion messages every day. And YouTube sees more than 500 hours of video uploaded every minute.").

here from superficially similar ones that allege, e.g., that a platform violated an anti-discrimination law by directing content to some groups and not others.

While the Court should dismiss Plaintiffs–Appellants' claims, it should take care not to suggest that the statute would immunize platforms that allegedly contribute to illegality in ways that go beyond mere amplification of content. The interpretation *amicus* endorses here would not immunize a platform for taking other actions to alter or solicit user-generated content.

A. The use of recommendation algorithms to amplify speech is inextricable from publication.

Section 230(c)(1) provides that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). On its face, it applies only when a platform is being treated as a publisher, and only when the published information has been provided by a third party.

The first of these limitations restricts immunity to claims that "treat" a platform "as the publisher or speaker" of information. 47 U.S.C. § 230(c)(1). The statute does not define the term "publisher," nor does it explain what it means to "treat" a platform as a publisher. This Court and many federal circuit courts define "publication" for purposes of Section 230 as "exercis[ing] a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or

alter content." *Shiamili v. Real Estate Group of N.Y., Inc.*, 17 N.Y.3d 281, 289 (2011) (quoting *Zeran*, 129 F.3d at 330).[14]

For a plaintiff's claim to "treat" a platform "as a publisher or speaker," the platform's publication of content must be more than a "but for" cause of the plaintiff's injuries. *See Est. of Bride ex rel. Bride v. YOLO Techs., Inc.*, 112 F.4th 1168, 1176 (9th Cir. 2024); *M.P.*, 127 F.4th at 525. In other words, "the fact that third-party speech is involved somewhere in the chain of causation that led to a plaintiff's injuries does not mean that a plaintiff's claims necessarily treat a defendant as a publisher or speaker of that third-party speech." *A.B. v. Salesforce, Inc.*, 123 F.4th 788, 795 (5th Cir. 2024). Otherwise, Section 230 would provide social media platforms with a vast immunity from liability, because "publishing content is a but-for cause of just about everything [social media platforms are] involved in." *Est. of Bride*, 112 F.4th at 1176 (citation omitted).

At the same time, how a plaintiff styles its claim does not determine whether the claim treats the platform as a publisher or speaker. Otherwise, plaintiffs could "artfully plead around section 230 by casting their claims in terms of first-party conduct when they really seek to enforce a duty traditionally associated with publication." *Salesforce*, 123 F.4th at 795. What matters is "the duty that the plaintiff

[14] *See Force*, 934 F.3d at 81 (Katzmann, J. concurring in part and dissenting in part) (collecting cases).

alleges the defendant violated, including what the claimed duty requires the defendant to do." *Doe 1*, 174 F.4th at 1167 (cleaned up); *see also FTC v. LeadClick Media, LLC*, 838 F.3d 158, 175 (2d Cir. 2016) (same).

Under this framework, the "treats as a publisher" limitation is no formality. For example, the Ninth Circuit gave it decisive effect in *Lemmon v. Snap, Inc.*, holding that the plaintiffs' negligent design claim did not treat the social media platform Snapchat as a publisher or speaker. 995 F.3d 1085, 1087 (9th Cir. 2021). The plaintiffs argued that Snapchat, which allows users to take photos and videos with a smartphone camera and share them with each other, could be held liable for its allegedly negligent design of a "Speed Filter" that encouraged users to drive at excessive speeds. 995 F.3d at 1093–94. The Speed Filter allowed users to "superimpose a 'filter' over the photos or videos that they capture through Snapchat" and "record their real-life speed." *Id.* at 1088 (internal quotation marks omitted). The plaintiffs' children used the Speed Filter to record the excessive speed at which they were traveling just before the fatal crash that gave rise to the lawsuit. *Id.*

The Ninth Circuit concluded that the plaintiffs' negligent design claim did not treat Snapchat as a publisher, because Snapchat could have satisfied its alleged duty to design a reasonably safe product "without altering the content that Snapchat's users generate." *Id*. Snapchat's "alleged duty in this case thus has nothing to do with its editing, monitoring, or removing of the content that its users generate through

Snapchat." *Id.* at 1092 (citation omitted). The plaintiffs' claim was not a creative attempt to plead around Section 230, because it "merely sought to hold Snapchat liable for its own conduct, principally for the *creation* of the Speed Filter." *Id*. at 1093 (citation omitted).[15]

Consistent with the Ninth Circuit's reasoning in *Lemmon*, three of the four federal circuit courts to address the question have correctly concluded that claims seeking to hold a platform liable for its algorithmic recommendations of content treat the platform as a publisher under Section 230(c)(1). In *Force v. Facebook*, victims of Hamas attacks brought civil claims under the Anti-Terrorism Act, 18 U.S.C. § 2333, alleging that Facebook's algorithms directed terrorist content to susceptible users, and arguing that this "matchmaking" function was non-publisher activity falling outside Section 230's immunity. 934 F.3d at 65. The Second Circuit disagreed, finding "no basis in the ordinary meaning of 'publisher'" for concluding that a platform "is not the 'publisher' of third-party information when it uses tools such as algorithms that are designed to match that information with a consumer's interests." *Id.* at 66. Arranging and distributing third-party information, the court reasoned, inherently forms connections among speakers, content, and audiences—

[15] The court was careful to point out that a claim would treat Snapchat as a publisher if it sought to hold the platform liable for "publishing other Snapchat-user content (e.g., snaps of friends speeding dangerously) that may have incentivized the boys' dangerous behavior." *Id.* at 1093 n.4.

"an essential result of publishing"—whether accomplished by algorithm or by a traditional editor's judgment about placement and prominence. *Id.* at 66–67. Accepting the plaintiffs' argument would "eviscerate" the statute, the court warned, because a platform "would be ineligible for Section 230(c)(1) immunity by virtue of simply organizing and displaying content exclusively provided by third parties." *Id.* at 66.

The Fourth and Ninth Circuits have since reached the same conclusion. In *M.P. v. Meta Platforms*, which closely resembles this case, the daughter of a victim of the 2015 Charleston church shooting alleged that Facebook's recommendation algorithm was a defectively designed product that radicalized the shooter. 127 F.4th at 520. The Fourth Circuit held that the plaintiff's "claims are inextricably intertwined with Facebook's role as a publisher of third-party content," because the plaintiff could not show that the algorithm's design was unreasonably dangerous "without also demonstrating that the algorithm prioritize[d] the dissemination of one type of content over another." *Id.* at 525. "[A]cts of arranging and sorting content," the court reasoned, "are integral to the function of publishing." *Id.* at 526.

Similarly, in *Doe 1 v. Meta Platforms*, members of the Rohingya minority in Myanmar brought design defect claims against Facebook's recommendation algorithm, which they alleged amplified content that incited violence against them. 174 F.4th 1159, 1163–64 (9th Cir. 2026). They argued that "Meta should not have

built Facebook in a way that boosted incitements to violence." *Id.* at 1167. The Ninth Circuit concluded that the plaintiffs' claims treated Facebook as a publisher, because "Plaintiffs' theory is about the sharing of messages and what happens when some users interact with bad content, allegedly because of how the Facebook algorithm promoted some content whether specifically requested or not." *Id.* at 1168. The court reasoned that "Facebook's promotion of engagement-driven content through [its] recommendation algorithm, must be characterized as recommending and matching conduct," which "is the work of publishers." *Id.* at 1169.

The Third Circuit's contrary conclusion in *Anderson v. TikTok, Inc.*, is unpersuasive, and this Court should decline to follow it. 116 F.4th 180 (3d Cir. 2024). Relying on the Supreme Court's decision in *Moody*, which recognized that a platform's curation of third-party content is its own "expressive activity" protected by the First Amendment, the Third Circuit reasoned that TikTok's algorithmic recommendations constitute first party speech that is not protected by Section 230. *Anderson*, 116 F.4th at 184. That reasoning, however, "presuppose[s] that editorial decisions cannot be both an expression of a publisher's point of view (protected under the First Amendment) and a publication of a third-party's content (protected under Section 230)." *Doe (K.B.) v. Backpage.com, LLC*, 768 F. Supp. 3d 1057, 1063 (N.D. Cal. 2025). That is wrong. *See Doe 1*, 174 F.4th at 1169–70 (explaining that the use of recommendation algorithms constitutes "publication" under Section 230

notwithstanding *Moody*). The Third Circuit's reasoning would also lead to absurd results. "Immunizing platforms from being treated as publishers [under Section 230] only when they are *not* acting like publishers [for purposes of the First Amendment] would effectively nullify Section 230 and contradict its plain text." *NetChoice v. Griffin*, 812 F. Supp. 3d 905, 929 (W.D. Ark. 2025).

To conclude that claims challenging recommendation algorithms treat social media platforms as publishers does not require reaching the same result as to other alleged defects. The *In re Social Media Adolescent Addiction/Personal Injury Products Liability Litigation* currently pending in the Northern District of California illustrates the point. 702 F. Supp. 3d 809 (N.D. Cal. 2023). In partially denying the platforms' Section 230 motions to dismiss, the court held that claims challenging the platforms' recommendation algorithms treat social media platforms as publishers, because the "use of algorithms to determine whether, when, and to whom to publish third-party content" involves "traditional editorial functions that are essential to publishing." *Id.* at 833–34.

At the same time, the court concluded that plaintiffs' claims challenging many other alleged defects did not treat the platforms as publishers, because those defects "are *not* equivalent to speaking or publishing and can be fixed by defendants without altering the publishing of third-party content." *Id.* at 829. These defects included, among others, not providing effective parental controls (e.g., notification to parents

that children are using the platforms), not providing users with options to self-restrict time on the platforms, making it difficult for users to choose to delete their account, and offering appearance-altering filters. *Id.*

The Knight Institute takes no position here on whether those features are in fact protected by Section 230(c)(1), but the court's analysis nonetheless illustrates that the question of whether amplification is protected by Section 230 is distinct from the question of whether other social media functions are protected by the statute.

B. The use of recommendation algorithms for the mere amplification of third-party content does not "materially contribute" to the illegality.

If a claim does treat a platform as a publisher of information, then the applicability of Section 230 turns on the statute's second limitation, which asks whether the information at issue was "provided by another information content provider." 47 U.S.C. § 230(c)(1). The statute goes on to define an "information content provider" as anyone "responsible, in whole or in part, for the creation or development" of the information at issue. *Id.* § 230(f)(3).

Sometimes, it is easy to determine whether a platform is "responsible, in whole or in part, for the creation or development" of the content it publishes. In *Lemmon*, the Ninth Circuit had little trouble concluding that even if the plaintiffs' negligent design claim treated Snapchat as a publisher, the claim "simply does not rest on third-party content," because it does "not depend on what messages, if any,

a Snapchat user employing the Speed Filter actually sends." 995 F.3d at 1093–94. Instead, it "rests on nothing more than Snap's 'own acts'" in inducing Snapchat users to drive at excessive speeds. *Id.* at 1094 (quoting *Roommates*, 521 F.3d at 1165).

Other times, however, it is less obvious whether a platform is responsible, at least "in part," for the "creation or development" of information. *See Shiamili*, 17 N.Y.3d at 289. To address that question in harder cases, the Ninth Circuit has developed the material contribution test, which asks whether the platform "materially contributed to the alleged illegality of the content." *Roommates,* 1167–68. If the platform materially contributed, then the claim can proceed because it would hold the platform liable "for the creation or development" of that information; if the platform did not materially contribute, then the platform is immune as the mere publisher of information "provided by another information content provider." 47 U.S.C. § 230(c)(1), (f)(3).

The Ninth Circuit grounded the material contribution test on the term "development" in the statutory phrase "responsible, in whole or in part, for the creation or development" of the content at issue. 47 U.S.C. § 230(f)(3). The court explained that "development" cannot refer "merely to augmenting the content generally," because such a broad reading of the term would include "just about any function performed by a website," which "would defeat the purposes of section 230 by swallowing up every bit of immunity that the section otherwise provides."

Roommates, 521 F.3d at 1167. At the same time, interpreting "develop" too narrowly—"as applying only to content that originates entirely with the website"—would read the words "in part" out of the statute. *Id.* To give the Section 230(c)(1) immunity its "proper scope," the court held that "a website helps to develop unlawful content, and thus falls within the exception to section 230, if it contributes materially to the alleged illegality of the conduct." *Id.* at 1168 (emphasis added).

In *Shiamili*, this Court expressly declined to decide whether to adopt the material contribution test because, at the time, "no consensus ha[d] emerged concerning what conduct constitutes "development." 17 N.Y.3d at 289. In the intervening 15 years, the material contribution test has been widely adopted.[16]

The material contribution test draws a statutorily grounded and sensible line between claims that challenge a platform's own contribution to the unlawfulness of content and claims that challenge only a platform's publication of content. While the test is necessarily fact-bound, certain trends have begun to emerge in the federal circuit courts' application of the test.

First and foremost, the federal circuits that have addressed this question—the Second and Ninth Circuits—have properly concluded that a platform's mere

[16] *See Gonzalez v. Google LLC*, 2 F.4th 871, 892 (9th Cir. 2021), *vacated*, 598 U.S. 617 (2023) (collecting cases); *J.S. v. Village Voice Media Holdings, L.L.C.*, 184 Wash. 2d 95, 101–03 (2015); *Daniel v. Armslist, LLC*, 386 Wis. 2d 449, 468–77 (2019).

amplification of content created by its users does not constitute a "material contribution" to the unlawfulness at issue in those cases. *Force*, 934 F.3d at 66; *Doe 1*, 174 F.4th at 1169–70. While the amplification of unlawful content can certainly exacerbate the harm caused by that content, these courts have correctly determined that the harm of mere amplification is not distinguishable from the harm of publication. *Force*, 934 F.3d at 70; *Doe 1*, 174 F.4th at 1169–70. For this reason, amplification no more "develops" or materially contributes to user content than does publication itself, which Section 230 clearly protects. As the Second Circuit observed, "[i]t would turn Section 230(c)(1) upside down to hold that Congress intended that when publishers of third-party content become especially adept at performing the functions of publishers, they are no longer immunized from civil liability." *Force*, 934 F.3d at 67; *see also id.* at 70 (Facebook's use of recommendation algorithms to match content with users "does not describe anything more than Facebook vigorously fulfilling its role as a publisher").

But importantly, circuit courts have properly applied the material contribution test in a way that leaves room for other kinds of claims against the platforms. For instance, courts have held that Section 230(c)(1) does not immunize platforms from claims alleging that they altered content in a way that introduced illegality. Platforms alter user-generated content in myriad ways. Some alterations make that content more available or present it in new formats; others change it in ways that introduce

unlawfulness. The lower courts have drawn a line between the two, applying the material contribution test to immunize the former but not the latter.

In *Kimzey v. Yelp!, Inc.*, for example, the Ninth Circuit concluded that Yelp—a website that hosts business reviews—could not be held liable for generating a "star rating" based on a user's allegedly defamatory review of the plaintiff's business. 836 F.3d 1263, 1265–66 (9th Cir. 2016). Although Yelp's star-rating system "reduce[d]" user reviews "into a single, aggregate metric," the court held that the rating system did "'absolutely nothing to enhance the defamatory sting of the message' beyond the words offered by the user." *Id.* at 1270 (quoting *Roommates*, 521 F.3d at 1172).

Similarly, in *Marshall's Locksmith Service Inc. v. Google, LLC*, the D.C. Circuit held that Google did not become an information content provider when it converted fraudulent address information it collected from websites created by "scam locksmiths" into "pinpoints" on its digital maps. 925 F.3d 1263, 1265–66 (D.C. Cir. 2019). Although the court did not mention the material contribution test by name, it conducted the same line-drawing analysis, finding that although Google had "augmented and altered" the information, the alterations merely "represented" user-generated information "in a different format"—a function that is common to all information published online. *Id.* at 1269–70. The court held as much even though Google's presentation of the address information made it significantly more accessible to users looking for locksmiths. *Id.* at 1265.

In contrast, in *Henderson v. Source for Public Data*, the Fourth Circuit held that a credit-reporting website materially contributed to the alleged unlawfulness of the content at issue by generating misleading summaries of criminal records that suggested that the plaintiffs had committed crimes. 53 F.4th 110, 128 (4th Cir. 2022). Because the defendant went "beyond formatting or procedural alterations and change[d] the substance of the content altered" in a way that made it unlawful, the Fourth Circuit denied immunity. *Id.* at 129.

Federal circuit courts have also held that Section 230(c)(1) does not immunize platforms against claims alleging that they solicited or encouraged the unlawful content at issue, such as by requiring or specifically prompting users to input unlawful content. *See, e.g., FTC v. Accusearch Inc.*, 570 F.3d 1187, 1199 (10th Cir. 2009). Because any forum can be abused, courts have held that a platform's solicitation or encouragement must go beyond simply providing users with tools that "could be misused." *Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 744–46 (9th Cir. 2024). Likewise, courts have held that a platform does not materially contribute when it solicits lawful content but receives unlawful content instead. *See, e.g., Accusearch*, 570 F.3d at 1200–01 (interpreting *Ben Ezra, Weinstein, & Co., Inc. v. Am. Online Inc.*, 206 F.3d 980, 983–86 (10th Cir. 2000)).

But when platforms induce users to post unlawful content, or when the publication of unlawful content is their raison d'être, courts have held that platforms

cross the line between merely publishing content and developing it. In *Roommates*, for example, the defendant website—a roommate-matching service—required subscribers, as a condition of using the site, to specify discriminatory housing preferences by selecting from drop-down menus the website itself had created. *Roommates*, 521 F.3d at 1172–74. The Ninth Circuit denied immunity for the drop-down menus, emphasizing that "[t]he CDA does not grant immunity for inducing third parties to express illegal preferences." *Id.* at 1165; *see also Shiamili*, 17 N.Y.3d at 292 (discussing *Roommates.com*).

In *Accusearch*, the Tenth Circuit similarly denied immunity where a website allegedly "solicited requests for . . . confidential information and then paid researchers to obtain it." 570 F.3d at 1199. Because the platform in *Accusearch* specifically solicited private records whose publication would be unlawful, the court concluded that inducing users to submit unlawful content was the website's "raison d'être." *Id.* at 1200; *see also Shiamili*, 17 N.Y.3d at 292 (discussing *Accusearch*).

Some courts have also found platforms to make a material contribution when they actively collaborate with users to break the law. In *LeadClick*, for example, the Second Circuit denied immunity where employees from an online marketing company counseled users about how to create misleading ads for diet products without getting caught. 838 F.3d at 176.

Finally, in discriminatory advertising cases, some courts have held that platforms materially contribute to the alleged illegality when their ad delivery algorithms—which determine the specific users within an advertiser's selected audience who will actually receive an ad—discriminate on the basis of a protected characteristic such as age, gender, or race, even in the absence of a request from the advertiser. In *Liapes v. Facebook, Inc.*, the California Court of Appeal held that Section 230 did not immunize Facebook from claims that it discriminated against women and older users in the delivery of insurance advertisements. 95 Cal. App. 5th 910, 915–16 (2023). The plaintiff alleged that Facebook's ad delivery algorithm "relie[d] heavily on age and gender," and excluded women and older users from receiving insurance ads "regardless of whether the advertiser directs Facebook to limit its [delivery of ads] based on those factors." *Id.* at 924. Because Facebook's own delivery algorithm supplied and relied on those discriminatory criteria, Facebook materially contributed to the alleged illegality. *Liapes*, 95 Cal. App. 5th at 929–30; *see also Equal Rights Center v. Meta Platforms, Inc.*, No. 2025-CAB-000814 (D.C. Super. Ct. July 24, 2025) (denying Section 230 immunity to claims that Meta's ad-delivery system steered education advertisements on Facebook and Instagram based on race), *available at* https://perma.cc/BS4X-F7CW.

Such anti-discrimination claims are readily distinguishable from claims challenging mere amplification. Platforms can comply with the duty of non-

discrimination without altering the content of the advertisements. They could simply deliver ads without regard to age, gender, or race. The harm of amplification, by contrast, is inseparable from publication itself, and the only way to avoid it is to publish third-party content less, or not at all.

C. Under this framework, Plaintiffs–Appellants' claims must be dismissed.

In this case, Plaintiffs–Appellants allege that the Platforms' recommendation algorithms exposed the shooter to extremist and racist content, radicalizing him and leading to the mass shooting in Buffalo. Although Plaintiffs–Appellants also point to several other alleged design defects, their complaints focus overwhelmingly on the Platforms' use of recommendation algorithms to amplify speech and thus seek to hold the Platforms liable as publishers.

Plaintiffs–Appellants resist this conclusion by recasting their claims as defective-design claims about social media addiction. But they repeatedly allege that the shooter was radicalized by the racist and extremist speech that the Platforms' algorithms showed him.[17] Those allegations are what connect the Platforms to the shooting, and are what make Plaintiffs' claims "inextricably intertwined" with the Platforms' publication of third-party content. *M.P.*, 127 F.4th at 525. This case is

[17] This case thus bears little resemblance to *In re Social Media Adolescent Addiction*, which "involved psychological harm allegedly caused to users, not, as here, harm caused by addicted users to third parties," *Patterson*, 239 N.Y.S.3d at 735, and which did not tie the alleged addiction to any specific content.

thus unlike *Lemmon*, where Snapchat could have satisfied its alleged duty "without altering the content that Snapchat's users generate." 995 F.3d at 1092. The only way the Platforms could satisfy the duty Plaintiffs–Appellants seek to impose would be to alter, suppress, or de-amplify third-party speech. A claim that can be satisfied only through the exercise of a publisher's editorial functions treats the platform as a publisher, however it is styled.

It is unclear whether Plaintiffs–Appellants argue that the Platforms' use of recommendation algorithms "materially contributed" to the illegality at issue. *See* Salter Opening Br. at 48–50; Patterson Opening Br. 44–45. Even if so, that argument necessarily fails as a statutory matter, because recommendation algorithms, when used in a manner that is inextricable from publication, cannot materially contribute to the alleged unlawfulness. Plaintiffs–Appellants do not allege that the Platforms altered the racist content in any material way, or that they specifically solicited such content.

As discussed above, there are circumstances in which social media platforms' use of recommendation algorithms can fall outside Section 230's immunity. *See* Part III.B (discussing discriminatory ad delivery). This is not such a case, because the harm Plaintiffs–Appellants complain of—the radicalization of Platform users, leading them to commit violent acts—would be mitigated if the Platforms amplified extremist content less, and augmented if they amplified it more. That is, unlike the

discriminatory ad-delivery claims discussed above, the Platforms could not comply with the duty imposed by Plaintiffs–Appellants' claims without suppressing or de-amplifying third-party speech.

At bottom, Plaintiffs–Appellants challenge acts that are inextricable from publication. For that reason, their claims treat the Platforms as the publishers or speakers of information provided by third parties and, as such, are barred by Section 230(c)(1).

Conclusion

For the foregoing reasons, *amicus* respectfully urges this Court to affirm the Fourth Department's order granting the Platforms' motions to dismiss.

July 31, 2026

Respectfully submitted,



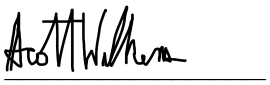
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Dated: July 31, 2026



Scott Wilkens