

No. 21-1333

IN THE
Supreme Court of the United States

REYNALDO GONZALEZ, *et al.*,

Petitioners,

v.

GOOGLE LLC,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF OF *AMICI CURIAE* ZIONIST
ORGANIZATION OF AMERICA AND
THE RIEDERS FOUNDATION
IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI CURIAE*¹

Amici are the Zionist Organization of America (ZOA) and the Rieders Foundation. The ZOA is the oldest pro-Israel organization in the United States whose leaders have included U.S. Supreme Court Justice Louis Brandeis. Established in 1897, the ZOA played a key role in mobilizing support for the establishment of the State of Israel. Since then, the ZOA has been on the front lines of Jewish activism, defending Israel and the Jewish people, seeking justice for American victims of international terrorism, and fighting antisemitism in all its forms.

The Rieders Foundation, established more than 30 years ago as a non-profit organization, is dedicated to enhancing Jewish culture and the civil rights of the Jewish people. Its Hatzilu division provides financial aid directly to needy members of the Jewish community. The Rieders Foundation combats all forms of anti-Jewish discrimination through litigation, including when the discrimination is expressed as anti-Israelism.

Amici have joined together to file this brief because they share a commitment to protecting the safety and security of the Jewish people.

SUMMARY OF ARGUMENT

Interactive computer service providers (such as Google and YouTube) should only be immune from liability

¹ No counsel for a party authored this brief in whole or in part, and no person other than *amici curiae*, their respective members, or their counsel made a monetary contribution to the brief's preparation and submission. The parties filed blanket consents to the timely filing of any *amici curiae* briefs.

under Section 230(c)(1) of the Communications Decency Act when they engage in traditional editorial functions (such as deciding whether to display or withdraw content), not when they target specific users and recommend and direct them to new content that helps fan the flames of hatred and violence against the Jewish community. A limited interpretation of Section 230(c)(1) would be consistent with its text and would serve crucial public policy concerns, including helping to stem the soaring problem of antisemitism and deter violent attacks and terrorism against Jews.

ARGUMENT

I. The Text of § 230(c)(1) Does Not Support Immunizing Computer Service Providers When They Make Targeted Recommendations of Content to Their Users

Congress enacted Section 230 of the Communications Decency Act in 1996, giving social media platforms immunity from some civil and criminal claims. 47 U.S.C. § 230. Relevant here, Section 230(c)(1) provides: “No 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.”

The law’s enactment was prompted by a decision of a New York state court (*Stratton Oakmont v. Prodigy Servs. Co.*, 1995 N.Y. Misc. LEXIS 229 (N.Y. Sup. Ct. May 24, 1995)), which held an internet service provider legally responsible for a defamatory message posted to one of its message boards. *Gonzalez v. Google LLC*, 2 F. 4th 871, 887 (9th Cir. 2021).

As Justice Thomas recently wrote in a statement respecting the denial of certiorari in *Malwarebytes, Inc. v. Enigma Software Group USA, LLC*, 141 S. Ct. 13 (2020), “the text of § 230(c)(1) grants immunity only from ‘publisher’ or ‘speaker’ liability.” *Id.* at 15. Yet courts have strayed from “the most natural reading of the text by giving Internet companies immunity for their own content.” *Id.* at 16.

Of particular concern is the conduct of website operators such as YouTube, a social media platform owned and operated by Google, which is used by billions of people to post, share, view and comment on videos on a wide range of topics – including videos that promote demonizing lies about Jews (e.g., that Jews started World War II, Jews were responsible for the September 11 terrorist attacks, and Jewish Americans are disloyal to their country), videos that deny or minimize the Holocaust, and videos that fuel hatred of and violence and terrorism against Jews.

These website operators do not simply post these videos – conduct for which they would be immunized from publisher liability under § 230. They collect extensive data about a user, including the user’s prior social media posts, “friends,” and viewing habits, to determine what else the user would be receptive to viewing. Based on that assessment, the website operators communicate their own messages to the user, recommending new content for the user to view.

Several judges who have rejected that § 230’s text supports sweeping immunity for website operators have explained in detail how these targeted recommendations

work. *See Force v. Facebook*, 934 F.3d 53, 76-89 (2d Cir. 2019), *cert. denied*, 140 S. Ct. 2761 (2020) (Katzmann, J., concurring in part and dissenting in part); *Gonzalez*, 2 F.4th at 913-18, 918-38 (9th Cir. 2021) (Berzon, J., concurring, and Gould, J., concurring in part and dissenting in part).

Social media operators do not make just one or two recommendations to their users; they “dominate the user experience.” *Gonzalez*, 2 F. 4th at 917. As Judge Katzmann of the Second Circuit stated, “The cumulative effect of recommending several friends, or several groups or events, has an impact greater than the sum of each suggestion. It envelops the user, immersing her in an entire universe filled with people, ideas, and events she may never have discovered on her own.” *Force*, 934 F.3d at 62-63.

Judge Katzmann provided a particularly detailed analysis of how computer service providers operate, and the dangers posed by affording them sweeping immunity under § 230. *See id.* at 76-89. The Judge delivered an ominous message about how social media has evolved since the law’s enactment, way beyond what Congress could have envisioned:

Congress could not have anticipated the pernicious spread of hate and violence that the rise of social media likely has since fomented [since § 230’s enactment]. Nor could Congress have divined the role that social media providers themselves would play in this tale. **Mounting evidence suggests that providers designed their algorithms to drive**

users toward content and people the users agreed with – and that they have done it too well, nudging susceptible souls ever further down dark paths.

Id. at 88 (emphasis added).

Website operators like Google and YouTube have no incentive to stop affirmatively recommending and directing content to their users, even though they know that their actions may encourage users' hatred of Jews and incite violence and terrorism against Jews. Indeed, website operators are financially motivated to recommend as much content as possible. The longer a user stays on the website's platform, the more the website operator earns in advertising revenues. *See Gonzalez*, 2 F. 4th at 936 (Gould, J., concurring in part and dissenting in part) ("It is not realistic to anticipate that social media companies will self-police adequately in the face of their incentives to maximize profits by maximizing advertising revenues, which means increasing the eyeballs directed to their websites.").

Joining "the growing chorus of voices" that do not support expanding immunity to website operators under § 230 when they recommend and direct content to their users (*Gonzalez*, 2 F. 4th at 913), Judge Berzon of the Ninth Circuit understood that these targeted recommendations "are well outside the scope of traditional publication." *Id.* at 914. Justice Thomas recognized that extending the immunity under § 230 "beyond the natural reading of the text can have serious consequences." *Malwarebytes*, 141 S. Ct. at 13.

This brief focuses on some of the many serious consequences our nation faces and will continue to face if computer service providers are immunized from liability when they knowingly and affirmatively steer their users to content that foments hatred of Jews and encourages violence and terrorism against them. The safety and security of an already targeted Jewish community will be further imperiled, and the rights of terror victims and their families will be seriously undermined, none of which can be what Congress intended when it enacted § 230.

II. Affording Sweeping Immunity to Computer Service Providers Under § 230(c)(1) for Making Targeted Recommendations of Information to Users Would Foment Already Soaring Antisemitism

Antisemitism, the world's oldest hatred, is climbing in the United States and around the world. The hate crime statistics that the Federal Bureau of Investigation (FBI) collected for 2020 (the most recent year reported by the FBI) reveal that although Jews comprise no more than two percent of the population in the United States, they are the most targeted religious group in this country. Close to 60 percent of the religiously motivated hate crimes are against Jews. *See* Federal Bureau of Investigation, *Hate Crime Statistics 2020*, <https://crime-data-explorer.fr.cloud.gov/pages/explorer/crime/hate-crime>.

When FBI Director Christopher Wray testified before the House Committee on Homeland Security on November 15, 2022, he stated, “Antisemitism and the violence that comes out of it is a persistent and present fact.” Noting that the FBI would be making combating antisemitism a “national priority” after recent incidents

of violence against Jews, Director Wray said that America's Jewish community "deserves and desperately needs our support because it's getting hit from all sides." Josh Kaplan, *FBI Director Warns that America's Jews 'Desperately' Need Support*, *The Jewish Chronicle*, Nov. 20, 2022, <https://www.thejc.com/news/world/fbi-director-warns-that-americas-jews-desperately-need-support-1lciKDv3Cg9dhG6vt9Ro3t>.

Every year, the Anti-Defamation League (ADL) tracks incidents of antisemitic harassment, vandalism and assault in the U.S., and publishes this information in an Annual Audit of Antisemitic Incidents. In its latest audit, for 2021, the ADL recorded 2,717 antisemitic incidents across the United States, a 34 percent increase from 2020, and a record high since the ADL began tracking antisemitic incidents in 1979. *See* Anti-Defamation League, *Audit of Antisemitic Incidents 2021*, <https://www.adl.org/audit2021>. Antisemitic incidents occurred in every state of the U.S., as well as in the District of Columbia. *Id.*

Hatred of Jews is expressed in numerous ways, including on social media. As the ADL aptly put it in a recent report on online antisemitism, social media platforms are being used "to put a new spin on an ancient form of hatred." Anti-Defamation League, *2021 Online Antisemitism Report Card*, May 3, 2022, <https://www.adl.org/resources/reports/2021-online-antisemitism-report-card>, at 4.

Antisemitic conspiracy theories abound on social media – that Jews possess extraordinary power, and they manipulate and control world governments, political figures, and financial and other institutions. Social media

conspiracy posts claim that Jews planned the 9/11 terrorist attacks, that Jews were behind the Covid pandemic, and that Jews are to blame for allegedly dangerous vaccines. *See id.* at 3-8. *See also* Center for Countering Digital Hate (CCDH), *Failure to Protect, How Tech Giants Fail to Act on User Reports of Antisemitism*, <https://counterhate.com/wp-content/uploads/2022/05/Failure-to-Protect.pdf>, at 7-19.

Jews are falsely depicted on social media as disloyal, caring more about Jewish interests and the State of Israel than the country in which they live. They are also falsely portrayed as greedy, and as liars and cheaters. *ADL 2021 Online Antisemitism Report Card* at 5.

Denying or minimizing the scope of the Holocaust is a common manifestation of antisemitism on social media. *Id.* at 5-6. According to one 2021 study, YouTube is hosting five videos with over 800,000 views that deny aspects of the Holocaust or claim that Jews made a “declaration of war” on Nazi Germany. *CCDH Report* at 12. The study also noted Twitter posts with the “well-known antisemitic hashtag ‘#holohoax’” and claims that Anne Frank’s diary was fabricated. *Id.*

Demonizing Israel and denying the right of the Jewish people to live as a nation state in their homeland – a right that is afforded to other groups of people – are manifestations of antisemitism² that are also posted

² In 2016, the International Holocaust Remembrance Alliance (IHRA) – an intergovernmental organization comprised of governments (over 35 countries around the world are members) and experts committed to combating Holocaust denial and antisemitism – adopted a non-legally binding working definition

on social media (see *ADL 2021 Online Antisemitism Report Card* at 6), including by social media users who should reasonably be expected to know better. For example, a member of the New York State Assembly shared a map of the Middle East on Twitter that failed to include Israel. The image was accompanied by the hashtag “#Free Palestine,” a phrase that is commonly used by Israel-bashers and antisemites to call for Israel’s destruction. The Assemblymember deleted the post after it was widely criticized. Carly Ortiz-Lytle, *New York State Legislator Shares Image Erasing Israel from the Map*, Washington Examiner, May 13, 2021, <https://www.washingtonexaminer.com/news/new-york-state-legislator-shares-image-erasing-israel-from-map>.

As another example, in May 2020, The New York Times published an article which focused on Israel’s

of antisemitism. The definition includes a core description of antisemitism, as well as contemporary examples of antisemitism that include examples relating to Israel. See International Holocaust Remembrance Alliance, *What is Antisemitism? Non-Legally Binding Working Definition of Antisemitism*, <https://holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>. The IHRA working definition has gained international acceptance, including by the United States government. See Exec. Order No. 13899, 84 Fed. Reg. 68779 (Dec. 11, 2019), at <https://www.federalregister.gov/documents/2019/12/16/2019-27217/combating-anti-semitism> (requiring, *inter alia*, that all executive departments and agencies charged with enforcing Title VI of the Civil Rights Act consider the IHRA definition, including the contemporary examples of antisemitism). See also Melissa Weiss, *Biden Admin ‘Enthusiastically Embraces’ Full IHRA Definition of Antisemitism*, Jewish Insider, Mar. 1, 2021, <https://jewishinsider.com/2021/03/tony-blinken-biden-ihra-definition-antisemitism/>.

dedication to fighting Covid, by quickly assembling its national resources to set up a task force that included scientists, doctors, engineers, government officials and military officers. David M. Halbfinger, *Israeli Army's Idea Lab Aims at a New Target: Saving Lives*, N.Y. Times, May 7, 2020, <https://www.nytimes.com/2020/05/07/world/middleeast/coronavirus-israel.html?smid=tw-nytimes&smtyp=cur>. Though a praiseworthy effort on Israel's part, the Times demonized the Jewish state when it promoted the article on Twitter, writing: "The Israeli Defense Ministry's research-and-development arm is best known for pioneering cutting-edge ways to kill people and blow things up. Now it is turning to saving lives." See Frank Camp, *NYT Tweet: Israel's Defense Ministry 'Known For Pioneering . . . Ways To Kill People' Now Helping In Fight Against COVID-19*, The Daily Wire, May 11, 2020, <https://www.dailywire.com/news/nyt-tweet-israels-defense-ministry-known-for-pioneering-ways-to-kill-people-now-helping-in-fight-against-covid-19>.

Young people are particularly susceptible to absorbing the many forms of antisemitism they are exposed to and encouraged to view on social media. Social media platforms "repackage" antisemitism for young people, using memes, emojis, and games. *ADL 2021 Online Antisemitism Report Card* at 7. For example, Twitch, a social media platform, streamed a modified version of a popular game called Pokemon, but it was reframed as Pokemon Clover, a game that included hateful, antisemitic tropes. *Id.* at 7-8.

Several recent research reports and surveys relating to antisemitism in the age of social media exemplify the urgency of making social media platforms legally

accountable under § 230(c)(1) when they knowingly and deliberately steer their users to content that fuels hatred of and violence against Jews. One collaborative research report was made possible with grant funding from Google’s philanthropic arm, Google.org. Amadeu Antonio Foundation, Expo Foundation and HOPE Not Hate, *Antisemitism in the Digital Age, Online Antisemitic Hate, Holocaust Denial, Conspiracy Ideologies and Terrorism in Europe*, Oct. 2021, <https://hopenothate.org.uk/wp-content/uploads/2021/10/google-report-2021-10-v3.pdf>.

After examining antisemitism across nine social media platforms or websites, including Facebook and YouTube, this report described what it characterized as its “most worrying finding”:

[W]e found antisemitism on every platform we explored. While the amount of different types of antisemitism varies between platforms, it remains possible to locate all forms and extremes of antisemitism on all platforms. . . . **[M]ajor tech platforms have created online spaces where antisemitism has been allowed to flourish with tragic and long-lasting effects, not least terrorism against Jewish communities.**

Id. at 10-11 (emphasis added).

Of particular relevance to the present case, the report focused on the reach of YouTube, which “currently claims to have over 2 billion active monthly users and to upload 500 hours of content every minute, with as many

as 81% of US adults reporting that they use the website.” *Id.* at 69. In addition to emphasizing the sheer volume of antisemitic content on YouTube, the report noted with concern that the platform “amplifies the effect of extremist content and effectively radicalises its users.” *Id.*

A second report, also issued in 2021, demonstrates that social media companies are failing to act in response to anti-Jewish content on their platforms, even if the content is specifically reported and flagged. *CCDH Report* at 4. According to these researchers, social media platforms “have become safe places to spread racism and propaganda against Jews.” *Id.*

For three consecutive years, the ADL has conducted a nationally representative survey of Americans on the subject of online hate and harassment. In its most recent report, the ADL noted that major technology companies had announced throughout 2020 and 2021 that they were taking “unprecedented action” against the longstanding hate, harassment, misinformation and conspiracy theories on their social media platforms. ADL Center for Technology & Society, *Online Hate and Harassment, The American Experience 2021*, Mar. 2021, <https://www.adl.org/online-hate-2021>, at 6. Yet this “blitz of self-regulation for technology companies” failed to yield positive results: “[T]he level of online hate and harassment reported by users barely shifted when compared to reports from a year ago.” *Id.* Thirty-six percent of the Jewish respondents to the survey experienced online harassment, more than the previous year (33%). *Id.*

Survey results issued in 2021 by the American Jewish Committee (AJC) also revealed worrisome findings.

The AJC conducted one of the largest-ever surveys of American Jews and the general public in the United States regarding their perceptions of and experiences with antisemitism. American Jewish Committee, *State of Antisemitism in America 2021*, https://www.ajc.org/sites/default/files/pdf/2022-10/Antisemitism-Report-2021_Reader-10.22.pdf. The survey confirmed that hatred of Jews continues to be a serious problem in the United States. Approximately one in four American Jews (24% of the respondents) were targets of antisemitism over the previous 12 months. *Id.* at 5. Twelve percent said that they had been targets of antisemitism online or on social media, and seven percent stated that it had happened more than once. *Id.*

The impact is alarming and should be intolerable to Jews and non-Jews alike in this country: Approximately four out of every 10 American Jews (39%) have changed their behavior out of fear of antisemitism. *Id.* at 20. Twenty-five percent have avoided posting content online that would enable others to identify them as Jews or reveal their views on Jewish issues. *Id.* Twenty-two percent say they have avoided wearing, carrying, or displaying anything that might help others identify them as Jewish. *Id.* Seventeen percent have avoided certain places, events, or situations based on concerns about their safety or comfort as Jews. *Id.*

Fear for their physical safety is warranted based on the number of recent brutal and deadly attacks that specifically targeted Jews. Three major incidents of lethal violence occurred in 2019 alone. In April of that year, an antisemite entered a crowded synagogue in Poway, California, on the last day of Passover, killing a woman

who was there to honor her late mother, and injuring three others, including the rabbi and an eight-year-old girl. Anti-Defamation League, *Audit of Antisemitic Incidents 2019*, <https://www.adl.org/audit2019>. See also Ray Sanchez & Stella Chan, *California Synagogue Shooter Sentenced to Life in Prison Without the Possibility of Parole*, CNN, Sept. 30, 2021, <https://www.cnn.com/2021/09/30/us/poway-synagogue-shooter-sentencing/index.html#:~:text=deadly%202019%20shooting%20at%20a%20Southern%20California%20synagogue>.

In December 2019, two individuals (at least one of whom was associated with an antisemitic Black Hebrew Israelite sect), stormed a kosher market in Jersey City, New Jersey, wielding five guns, including an AR-15 style rifle. They killed three people in the store (and gunned down a police officer in a cemetery): a woman who owned the store with her husband, a rabbinical student who was shopping there, and a store employee. Associated Press, *Jersey City Kosher Market Attack was ‘Fueled’ by Anti-Semitism, State’s AG Says*, Fox News, Dec. 12, 2019, <https://www.foxnews.com/us/jersey-city-kosher-market-anti-semitism>. Authorities said that the perpetrators were planning “greater acts of mayhem” in New Jersey’s Jewish community. Joe Atmonavage & Blake Nelson, *Jersey City Shooters had Massive Bomb that Could Have Killed People 500 Yards Away, Feds Say*, NJ.com, Jan. 13, 2020, <https://www.nj.com/news/2020/01/jersey-city-kosher-market-shooters-planned-other-attack-on-jewish-center-feds-say.html>.

Also in December 2019, an antisemite armed with a knife or machete entered a rabbi’s home during a Chanukah celebration in Monsey, New York, swinging the

weapon wildly at people. One person died, and several others were injured. *Charedi Man Stabbed in Monsey Chanukah attack Dies Aged 72*, Jewish News, Mar. 30, 2020, <https://www.jewishnews.co.uk/charedi-man-stabbed-in-monsey-chanukah-attack-dies-aged-72/>.

In May 2021 – when Israel was fighting a defensive war against Hamas terrorists in Gaza, who launched over 4000 rockets into Israel and targeted innocent Israeli civilians – antisemitism surged, including on social media. During that time, the ADL documented social media posts praising Hitler, promoting false antisemitic stereotypes about Jewish control, as well as calls for Israel’s destruction, including posts that stated: “GAS THE KIKES RACE WAR NOW.” Jacob Magid & JTA, *ADL: ‘Dangerous and Drastic Surge’ in Antisemitism in US Linked to Gaza Violence*, The Times of Israel, May 21, 2021, <https://www.timesofisrael.com/adl-dangerous-and-drastic-surge-in-antisemitism-in-us-linked-to-gaza-violence/>.

Also during that period, Jews were brutally and senselessly assaulted in cities across the U.S. In Los Angeles, for example, a group of men waving Palestinian flags attacked diners seated outside at a sushi restaurant, throwing punches, bottles and other objects. The attackers used antisemitic language to determine who was Jewish. Andrew Lapin/JTA, *Pro-Palestinian Demonstrators Attack Jews at LA Restaurant*, The Jerusalem Post, May 20, 2021, <https://www.jpost.com/diaspora/antisemitism/pro-palestinian-demonstrators-attack-jews-at-la-restaurant-668598>.

In New York City, a man who was observably Jewish – he was wearing a yarmulke – was violently attacked by

a mob of people as he was walking to a rally to support the State of Israel. The mob surrounded him, punched and kicked him with weapons all over his body, and sprayed pepper spray or mace in his eyes. As they attacked him, the mob yelled antisemitic words such as, “You filthy Jew. We’re going to f--king kill you. Go back to Israel. Hamas is going to kill you.” The Jewish man thankfully survived, but later said, “I was literally just in a fetal position, trying to guard my head and face, literally just trying to make it out of there alive. I thought I was going to die. I thought I was really going to die.” TOI Staff, *‘Thought I was Going to Die’: NY Jewish Man Details Assault by Pro-Palestine Mob*, The Times of Israel, May 22, 2021, <https://www.timesofisrael.com/i-thought-i-was-going-to-die-jewish-man-recounts-assault-by-pro-palestine-mob/>.

The deadliest attack on Jews in the history of the United States occurred on October 27, 2018. An antisemite entered the Tree of Life Synagogue in Pittsburgh, Pennsylvania, armed with a rifle and two handguns, during a circumcision ceremony. During his shooting spree, the perpetrator reportedly yelled, “All Jews must die!” Eleven people were killed and at least six were injured. TOI Staff & Michael Machosky, *Yelling ‘All Jews Must Die,’ Gunman Opens Fire in Pittsburgh Synagogue*, The Times of Israel, Oct. 27, 2018, <https://www.timesofisrael.com/4-reported-dead-several-injured-in-shooting-at-pittsburg-synagogue/>.

The perpetrator of this deadly rampage against Jews reportedly used social media, his Gab account, to link to YouTube videos 71 times. The videos reportedly included neo-Nazi propaganda, clips that portrayed Black people as violent thugs, and videos calling Jewish people “satanic.”

Craig Timberg, Elizabeth Dwoskin, Tony Romm & Andrew Ba Tran, *Two Years After #Pizzagate Showed Dangers of Hateful Conspiracies, They're Still Rampant on YouTube*, The Washington Post, Dec. 10, 2018, https://www.washingtonpost.com/business/technology/hateful-conspiracies-thrive-on-youtube-despite-pledge-to-clean-up-problematic-videos/2018/12/10/625730a8-f3f8-11e8-9240-e8028a62c722_story.html.

All these studies, and the examples of all the vicious unprovoked physical violence that Jews have been enduring, demonstrate that hatred of Jews and brutal, deadly violence and terrorism against Jews are serious problems in the United States, that social media platforms are playing a major role in fomenting these problems, and that social media companies are not doing enough to tackle the problems. While § 230 plainly immunizes social media companies from publishing hateful antisemitic content, the law should not protect them when they actively incite hatred, violence and terrorism against Jews, by recommending antisemitic content to their users that the users themselves did not seek out. These companies can and must be held accountable for knowingly steering their users toward extremist and bigoted views and behavior that includes lethal violence and terrorism against Jews.

III. Affording Sweeping Immunity Under § 230(c)(1) for Making Targeted Recommendations of Information to Users Would Undermine the Legal Protections Afforded to American Victims of International Terrorism

The Anti-Terrorism Act (ATA), 18 U.S.C. § 2333, allows United States nationals to recover damages for

injuries suffered “by reason of an act of international terrorism.” In 2016, Congress amended and broadened the scope of liability under the ATA by enacting the Justice Against Sponsors of Terrorism Act (JASTA), Pub. L. No. 114-222, 130 Stat. 852 (2016). Now, “any person who aids and abets, by knowingly providing substantial assistance, or who conspires with the person who committed” an act of international terrorism is also subject to civil liability. 18 U.S.C. § 2333(d)(2).

In contrast to the “modest” original goal of Section 230 (*Gonzalez*, 2 F.4th at 887), Congress made it clear that by enacting JASTA, Congress intended to provide American victims of international terrorism with “the *broadest possible basis*, consistent with the Constitution of the United States, to seek relief” against perpetrators of international terrorism. *Id.* at 889 (emphasis in original). That includes persons, entities and countries that “have provided material support, directly or indirectly, to foreign organizations or persons that engage in terrorist activities against the United States.” JASTA, § 2(b).

It is crucial that these anti-terrorism laws be fully and vigorously enforced, because America’s war on terrorism, which began in 2001 after the September 11 terrorist attacks, is far from over. In a recently issued bulletin, the U.S. Department of Homeland Security (DHS) made it clear that our country continues to face serious terrorist threats that are fomented by social media:

The United States remains in a heightened threat environment. Lone offenders and small groups motivated by a range of ideological beliefs and/or personal grievances continue

to pose a persistent and lethal threat to the Homeland. Domestic actors and foreign terrorist organizations continue to maintain a visible presence online in attempts to motivate supporters to conduct attacks in the Homeland.

U.S. Department of Homeland Security, *Summary of Terrorism Threat to the United States*, National Terrorism Advisory System Bulletin, Nov. 30, 2022, <https://www.dhs.gov/ntas/advisory/national-terrorism-advisory-system-bulletin-november-30-2022>. DHS specifically noted “the enduring threat to faith-based communities,” and singled out the Jewish community. *Id.*

Going beyond the plain text of § 230(c)(1) to afford immunity to social media platforms when they knowingly and recklessly recommend and direct specific content to selected users that will radicalize them, incite them to hate Jews, and encourage them to commit deadly violence and terrorism against Jews, undermines our country’s continuing war on terrorism. It also undermines the enforceability and effectiveness of our anti-terrorism laws which enable terror victims and their families to secure at least some measure of justice from terrorist perpetrators, and their aiders, abettors, and co-conspirators, for the senseless death and devastation they all played a role in causing.

It is already problematic that social media platforms are afforded immunity from liability under § 230(c)(1) for publishing the false and reprehensible anti-Jewish content of others. This Court should not tolerate broadening that immunity, well beyond the language of the law.

Social media platforms would not be left defenseless if they were not afforded immunity for making targeted recommendations of content to their users. They would still have available to them the same defenses that other non-immune defendants possess.

Particularly at this time of surging antisemitism and alarming physical attacks on Jews, social media platforms must be held accountable when they purposefully feed extremist antisemitic content to users and push them toward brutal and deadly violence and terrorism that threaten the safety and security of the Jewish people.

CONCLUSION

For the foregoing reasons, this Court should interpret § 230(c)(1), consistent with the language of the law, so that interactive computer service providers are immune from liability when they engage in traditional activities of publication, but not when they make targeted recommendations of information provided by another information content provider.

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