

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 FOR REDDIT, INC. AND REDDIT MODERATORS
AS AMICI CURIAE IN SUPPORT OF RESPONDENT**

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QUESTION PRESENTED

Does Section 230(c)(1) of the Communications Decency Act, 47 U.S.C. § 230(c)(1), immunize “interactive computer services” such as websites when they make targeted recommendations of information that was provided by another information-content provider, or does it limit the liability of interactive computer services only when they engage in traditional editorial functions such as deciding whether to display or withdraw information provided by another content provider?

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INTEREST OF THE AMICI CURIAE¹

Reddit, Inc. is a community of online communities. Reddit provides a platform for Internet users (called “Redditors”) to connect with each other in communities (called “subreddits”) that are based on shared interests.² Reddit is one of the most popular sites on the Internet, with more than 50 million active users every day. But Reddit’s approach to content moderation makes it different from many social media companies. As explained below, Reddit relies on a bottom-up, community-based approach where individual users—not the company—take the lead.

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

² REDDIT, <https://www.reddit.com> (last visited Jan. 16, 2023).

Redditors create and organize their own subreddits devoted to their specific interests. They establish their own rules governing what content is acceptable within their subreddit. And those rules are enforced by users themselves. Redditors also directly control the degree to which user-generated content items like posts, comments, and media are visible on the platform. The display of content on Reddit is thus primarily driven by humans—not by centralized algorithms.

Amici are also Reddit moderators who volunteer their time to make Reddit work. Amicus u/AkaashMaharaj is one of the moderators of r/Equestrian—a subreddit dedicated to “all horsepeople, horse lovers, and fans of equestrian sports.”³ Amicus u/Halaku moderates multiple subreddits, including one focused on a specific field of computer science and another on a particular rock band.⁴ Like all Reddit moderators, these amici are volunteers. They are not Reddit employees, and they receive no compensation for their work. But they are nevertheless vital to the day-to-day success of their respective subreddits. They ensure that discussions stay on-topic and remove content that violates their communities’ rules. They help members find content by highlighting useful or interesting posts or comments. And they respond to questions from the community. The moderator amici do this work without pay for the same reason that other people volunteer to lead book clubs or recreational hockey teams: they value the sense of community, and the opportunities that their subreddits provide for self-expression, learning, and fun. Amicus

³ EQUESTRIAN, <https://www.reddit.com/r/Equestrian> (last visited Jan. 16, 2023).

⁴ INFORMATICS, <https://www.reddit.com/r/Informatics> (last visited Jan. 16, 2023); WELCOME TO THE EVANESCENCE SUBREDDIT!, <https://www.reddit.com/r/Evanescence> (last visited Jan. 16, 2023);

u/Halaku explains that moderators work “for the good of the community.” Or in the words of u/AkaashMaharaj, they offer “a form of public service, in the hopes that [their] sound stewardship of [their] subreddits will contribute to the wellbeing of the ... community.”

Together, Reddit and its volunteer moderators provide Internet users with a vibrant place for free expression, and they create opportunities to find community and belonging with others all across the world.

SUMMARY OF ARGUMENT

A. Section 230 protects Reddit’s community-based approach to content moderation. The overwhelming majority of content rules on Reddit are made and enforced by *users*, not by Reddit itself. It is users who decide the topic of any given community and what content the community will accept or reject. Those rules are enforced by volunteer user-moderators. Users also directly determine what content gets promoted or becomes less visible by using Reddit’s innovative “upvote” and “downvote” features. All of those activities are protected by Section 230, which Congress crafted to immunize Internet “users,” not just platforms. And Section 230 has been instrumental in enabling the communities of Reddit to flourish.

B. Section 230 protects Reddit, as well as Reddit’s volunteer moderators and users, when they promote and recommend, or remove, digital content created by others. Without robust Section 230 protection, Internet users—not just companies—would face many more lawsuits from plaintiffs claiming to be aggrieved by everyday content-moderation decisions. Reddit’s moderators have been sued in the past, and Section 230 was the tool that allowed them to quickly and inexpensively avoid frivolous litigation.

C. Congress designed Section 230 to enable effective content moderation, and automated tools are essential to help humans moderate the infinite sea of Internet content. While petitioners and some of their amici attempt to cast aspersions on algorithms, an algorithm is simply a human-created rule for handling a particular situation, which can then be applied on a scale that humans could never achieve. Reddit gives its user-moderators access to algorithmic tools that they can customize to make day-to-day content moderation less burdensome and more effective. Section 230 was designed to incentivize the creation of algorithmic tools like these, and there is no principled basis to take their use outside the statute’s protection.

D. A sweeping ruling narrowing Section 230 protections risks devastating the Internet. It is smaller and start up platforms especially that depend on Section 230 to foster diverse approaches to content moderation and to challenge the dominant industry leaders. If Section 230 needs to change, then it should be Congress that decides what changes to make and how broadly they should sweep.

ARGUMENT

Congress created Section 230 of the Communications Decency Act, 47 U.S.C. § 230, with platforms like Reddit in mind. It enacted the statute to overrule *Stratton Oakmont, Inc. v. Prodigy Services Co.*, No. 31063/95, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995) (unpublished), which had held that an Internet message board (Prodigy) could be found liable for refusing to remove an allegedly defamatory comment that a user had posted on its platform. See *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1163 (9th Cir. 2008). The *Stratton Oakmont* court had reasoned that Prodigy had become a “publisher” of that user’s (alleged) defamation under state law “because it voluntarily deleted some

messages from its message boards on the basis of offensiveness and bad taste, and was therefore legally responsible for the content of defamatory messages that it failed to delete.” *Ibid.* (cleaned up).

Congress recognized that the reasoning of *Stratton Oakmont* would disincentivize online platforms from moderating and curating the content on their platforms, to the detriment of all users. It responded by passing Section 230. Congress recognized that it is “impossible for [online] service providers to screen” all content created by Internet users for illegal or tortious material. *Zeran v. America Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997). And Congress specifically sought to erase the *Stratton Oakmont* rule that online platforms’ efforts to voluntarily police their corner of the Internet—whether by taking user-generated content down or leaving it up—could be the very conduct that subjected them to liability. *See Fair Housing Council*, 521 F.3d at 1163. Congress understood that users cannot have a satisfying Internet experience without moderation to help them navigate the vast sea of online content, and it specifically sought to allow “some editing on user-generated content without [the editor] thereby becoming liable for all defamatory or otherwise unlawful messages that they didn’t edit or delete.” *Ibid.*

The relevant text of Section 230 is straightforward—and intentionally broad. “No provider or user of an interactive computer service” (*e.g.*, a website) can be held liable “as the publisher or speaker of any information provided by another information content provider.” 47 U.S.C. § 230(c)(1).

Every court of appeals to consider that provision since its enactment in 1997 has reached “general agreement that the text of Section 230(c)(1) should be construed broadly in favor of immunity.” *Force v. Facebook, Inc.*,

934 F.3d 53, 64 (2d Cir. 2019) (citing cases). By broadly providing that “[n]o provider or user ... can be held liable,” the plain text of Section 230(c)(1) extends immunity beyond defamation to other types of claims as well, such as those for wrongful death, negligence, infliction of emotional distress, or unfair competition. *See, e.g., Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1096–1097 (9th Cir. 2019); *Herrick v. Grindr LLC*, 765 F. App’x 586, 591 (2d Cir. 2019); *Perfect 10, Inc. v. CCBill LLC*, 488 F.3d 1102, 1118 (9th Cir. 2007). And as every court of appeals to consider the issue more recently has held, Section 230 also extends immunity to online platforms and users in situations where allegedly unlawful third-party content was located through recommendation or notification tools, because those tools merely *facilitate* access to information that was created by someone else. The tools and their users do not themselves create, publish, or adopt the content of others. *See* Pet. App. 34a–38a; *Force*, 934 F.3d at 57; *Dyroff*, 934 F.3d at 1094.

Petitioners and some of their amici seek to upend these longstanding, vital protections for the online marketplace of ideas by dramatically altering the prevailing interpretation of Section 230. But accepting their proposals would risk devastating the Internet and broadly expanding liability for Internet users—not just platforms.

A. Section 230 is vital to protecting a community-based approach to content moderation

1. Many cases involving Section 230, and many conversations surrounding potential revisions to the statute, are premised on the assumption that online companies moderate online content from the center, through an industrialized model that relies on armies of contractors or artificial-intelligence algorithms. *See, e.g., NetChoice, LLC v. Att’y Gen. of Fla.*, 34 F.4th 1196, 1210 (11th Cir.

2022) (stating that, on “social media platforms like Facebook, Twitter, YouTube, and TikTok,” a platform that “removes or deprioritizes a user or post” does so by “mak[ing] a judgment about whether and to what extent it will publish information to its users—a judgment rooted in the platform’s own views about the sorts of content and viewpoints that are valuable and appropriate for dissemination on its site”); *NetChoice, L.L.C. v. Paxton*, 49 F.4th 439, 452 (5th Cir. 2022) (discussing Texas legislation describing social media platforms as “internet censors”). But that approach to content moderation is not feasible for all online platforms, especially for startups and small- or medium-sized companies. And it has questionable utility anyway, because even tens of thousands of contractors could not effectively sift through content created by billions of Internet users.

The only thing that scales with Internet users are the users themselves. That is why Reddit works differently and empowers its users to take the lead when it comes to moderating and curating their own communities. Reddit uses a unique governance model that in many respects mirrors our National democracy: users self-organize, establish and enforce their own rules, and vote. That approach gives users shared responsibility for how the platform works, and it puts content moderation primarily in users’ hands. And it is a core reason why Reddit attracts so many users to the site. As u/AkaashMaharaj explains: “The fact that Reddit has delegated moderation to volunteer human beings, supported by automated tools, is the platform’s single greatest strength. It is a model that should be fostered and encouraged at other social media platforms,” because the best way to achieve public accountability and transparency is not through “impersonal systems shielded inside black boxes”; instead, these

goals are best met if online communities “are led first and last by humans.”

Redditors self-organize into communities known as subreddits, denoted by an “r/” before their names. There are currently more than 100,000 active subreddits covering an endless variety of topics. r/Breadit helps people make the perfect sourdough; r/beyondthebump offers suggestions for making the transition from pregnancy to parenthood; r/Christianity discusses Christianity and all aspects of Christian life; and r/CFB provides a forum for discussing all-things college football, in a space that its members affectionately call “The Internet’s Tailgate.”⁵

Subreddits can be serious, humorous, creative, inspirational, absurd, or contemplative. Within these subreddits, Redditors have conversations—sometimes serious and in-depth, sometimes fleeting and whimsical—by sharing stories, asking or answering questions, submitting links, uploading images and videos, or replying to one another in comment threads.

2. There are diverse rules for posting content on Reddit, but the vast majority of them are not written by Reddit or Reddit’s employees. They are instead written by each subreddit’s users to govern their own communities. Subreddit rules are tailored to the unique needs and designs of a community, and they tend to be far more specific than the overarching rules in Reddit’s own Content Policy.⁶ Many subreddit rules are designed to ensure that

⁵ <https://www.reddit.com/r/CFB> (last visited Jan. 16, 2023).

⁶ Reddit’s Content Policy sets the fundamental rules that everyone on the platform must follow. REDDIT CONTENT POLICY, <https://www.redditinc.com/policies/content-policy> (last visited Jan. 16, 2023). The Content Policy has only eight rules, drawn from Reddit’s core principles, and they are limits that almost everyone would agree about. For instance: Reddit prohibits harassment and threats

the discussion in their forum stays on topic. In r/Equestrian, for example, all of the posts must “be genuinely related to Equestrianism.”⁷ A post in r/Equestrian predicting next year’s Heisman Trophy winner would not violate Reddit’s site-wide Content Policy, but it would violate the subreddit’s rules, because people come to r/Equestrian to read and talk about horses—they don’t want to wade through tailgate talk to get there.

Subreddit rules also determine what kind of content about a topic belongs in a particular community. r/Science is for discussing scholarly scientific research, whereas r/Sciencejokes is for sharing a knock-knock joke that would amuse a chemistry teacher. Some subreddits devoted to religious topics prohibit proselytization,⁸ whereas other subreddits seek to foster fair-minded debate about religion by permitting advocacy for particular beliefs so long as each post “include[s] a thesis statement and argument.”⁹ For another community, r/AskHistorians, the rules are notable for their length, with pages describing

of violence; posting another person’s confidential or personal information; posting sexual or suggestive content involving minors; and posting illegal content or posts that would facilitate illegal transactions.

⁷ EQUESTRIAN, <https://www.reddit.com/r/Equestrian> (last visited Jan. 16, 2023).

⁸ *See, e.g.*, RELIGION ON REDDIT, <https://www.reddit.com/r/religion> (last visited Jan. 16, 2023); A RABBI WALKS INTO A BAR..., <https://www.reddit.com/r/judaism> (last visited Jan. 16, 2023); CHRISTIANITY, <https://www.reddit.com/r/christianity> (last visited Jan. 16, 2023); ISLAM, <https://www.reddit.com/r/islam> (last visited Jan. 16, 2023).

⁹ DISCUSS AND DEBATE RELIGION, <http://www.reddit.com/r/debatereligion> (last visited Jan. 16, 2023).

nuanced expectations about sources, plagiarism, digression, and humor.¹⁰

These rules emerge from users' experience with the community, and they can evolve over time. In some instances, the subreddit rules are aimed at ensuring that Redditors all across the world can discuss difficult issues. Amicus u/AkaashMaharaj explains, for example, that people in r/Equestrian often discuss complex issues of animal welfare that can excite passions. The subreddit's rules against personal attacks, character assassination, and willful disinformation help keep that community vibrant and attractive, rather than a cesspool of hate.

Users tend to become active members of any particular community *because* they share the values in the subreddit's rules. If a particular user does not share those values, she will move on to another subreddit, or start her own with new rules as the guiding principles. As u/Halaku puts it, "one of the strengths of Reddit is that if a violator feels that they have been unfairly treated, they can move to another subreddit community that covers similar material, or start a brand new subreddit community to cover similar material if they wish to use that option."

3. Rules on Reddit are enforced principally by users, not by Reddit itself. Volunteer moderators are empowered to remove any post that is inconsistent with the site-wide Content Policy or the subreddit-level rules. That method of content moderation allows Reddit to give its users the freedom to set the boundaries for what is and is not allowed in each of the site's more than 100,000 active subreddits. It would be impossible to marshal an army of contractors large and sophisticated enough to make sure

¹⁰ SUBREDDIT RULES, <https://www.reddit.com/r/AskHistorians/wiki/rules> (last visited Jan. 16, 2023).

that posts in r/Equestrian stick to horses, or to redirect a post in r/AskHistorians that is improperly submitted “solely for the purpose of being funny.” *Ibid.* The work that volunteer moderators like amici do every day at the community level is the most scalable and innovative solution to the challenges of moderating online content today.

Reddit users who are *not* moderators also play a critical role in content moderation through Reddit’s voting system. Every Reddit user has the power to “upvote” content they like or “downvote” content they don’t. Many other social-media platforms offer some version of an affirmation function—*e.g.*, to “like,” “heart,” or “favorite” content that the user enjoys—but the additional downvote on Reddit is more unique and equally important, because that is how community culture is made. The downvote allows any member of a community—not just a moderator—to reject transgressive behavior or low-quality content. Downvoted content becomes less visible, and if it is downvoted enough, it will eventually be hidden entirely from the default view of the community.

Reddit’s voting system essentially turns every user into a content curator. The fact that voting is anonymous on Reddit encourages broader participation and honesty. And voting is important beyond individual posts because accrued upvotes and downvotes feed into a user’s reputation score, which Reddit calls “karma.” A user’s karma score is publicly visible to all other users, and is an indicator of the constructiveness (or lack thereof, if the score is negative) of a user’s participation on Reddit. A given subreddit might even decide to increase or decrease the visibility of posts by users with certain karma scores. Quantifying a user’s reputation in this way based on peer voting thus incentivizes good behavior, and it is yet

another example of Reddit’s user-based approach to content moderation and curation.

Reddit’s distinctive, community-based approach to content moderation works. In a survey that Reddit commissioned in September 2019, 89% of respondents said there is a community for everyone on Reddit, 74% said Reddit is where they learn about the topics they love the most, and 72% recognized conversations on Reddit as more on-topic than anywhere else on social media.¹¹

4. Section 230 has been instrumental in enabling Reddit’s content-moderation model to flourish and improve, particularly as Reddit communities grow and raise new and more complicated issues to solve. Without Section 230, many of Reddit’s innovations in content moderation could never have happened, because good-faith moderation activities by Reddit moderators and users would have exposed them to the risk of liability.

In important respects, Reddit today looks very much like the Prodigy site of the early 1990s. And the fundamental questions that Reddit users confront every day—whether to affirm another user’s post by upvoting or to criticize a post by downvoting, and whether to leave up a post or rule it out of bounds in a forum—are precisely the sort of determinations that Congress crafted Section 230 to protect. Like Prodigy forum moderators, Redditors undertake content moderation with the goal of improving the platform for everyone. Before Section 230, very similar efforts caused the *Stratton Oakmont* court to allow Prodigy to be sued for defamation. But Congress recognized that a rule of liability like that one would not work

¹¹ See Reddit, YPulse, THE POWER OF COMMUNITY, <https://www.redditinc.com/assets/case-studies/Reddit-x-Ypulse-The-Power-of-Community-White-Paper-9.23.19.pdf> (last visited Jan. 17, 2023).

for the digital age. And it specifically recognized that special protection was needed for many different kinds of content-moderation approaches. That is why Congress drafted the statute broadly to extend beyond defamation claims and create immunity for *any* claim that would hold an online platform or its users liable as the “publisher or speaker” of content created by someone else. 47 U.S.C. § 230(c)(1).

B. Section 230 protects Reddit, its users, and its volunteer moderators as they interact with online content created by others

Section 230 does not provide protection just for online platforms. The statutory immunity is also indispensable to protecting Internet “user[s],” 47 U.S.C. § 230(c)(1), including Redditors. The broad immunity afforded by Section 230 is what enables users to moderate and interact with online content without fear of being held liable for speech that is not their own.

Petitioners seek to curtail the protections of Section 230 in order to pursue claims against Google. They assert, first, that the terms “publisher or speaker” in Section 230 should have a narrow meaning drawn from the law of defamation. In the alternative, petitioners attempt to draw a distinction between classic moderating functions (*i.e.*, leaving another user’s post up versus taking it down) and what they call “recommendations.” But any diminution of Section 230 protection along the lines advocated by petitioners and their amici would have disastrous implications for all Internet users.

1. It is not enough for Section 230 to offer protection only if a claim seeks to treat the defendant as a “publisher or speaker” in the narrow, defamation sense. Defamation is not the only claim that Reddit users might face without Section 230 immunity; litigious individuals who feel

wronged by any content-moderation decision could and would pursue any number of other legal theories.¹² A plaintiff might claim emotional distress from a truthful but hurtful post that gained prominence when a moderator highlighted it as a trending topic. Or a plaintiff might claim interference with economic relations arising from an honest but very critical two-star restaurant review. On petitioners’ reading of Section 230, the statute would not protect a user or moderator sued for leaving up or upvoting one of those posts, despite the fact that the “information [was] provided by another information content provider,” 47 U.S.C. § 230(c)(1), because publication in the defamation sense may not be an element of the plaintiff’s claims.

2. Reddit demonstrates why petitioners’ fallback proposal—to carve out “recommendations” from Section 230’s protection—is entirely impracticable.

“Recommendations” are the very thing that make Reddit a vibrant place. It is users who upvote and downvote content, and thereby determine which posts gain prominence and which fade into obscurity. Unlike many social media platforms, content on Reddit is primarily ranked and curated by the upvotes and downvotes of the users themselves. Moderators take an active role as well, such as by “pinning” content that they find particularly worthy of attention at the top of a given subreddit, or by providing a list of “related” subreddits (like r/AskVet on

¹² Reddit has been sued, for example, under Texas’ new law regulating social media platforms, HB 20, for a volunteer moderator’s decision to ban a user who called the fictional character Wesley Crusher a “soy boy” in the r/StarTrek subreddit. *See* Petition: Small Claims Case, *Cox v. Reddit, Inc.*, No. S22-87J1 (Just. Ct. Denton Cnty., Tex. May 17, 2022) (plaintiff claims to have been “banned and/or de-platformed from r/StarTrek for posting a lawful opinion about a fictional character”).

the r/Dogs subreddit) on the side of their page.¹³ Those community-focused decisions are what enables Reddit to function as a true marketplace of ideas, where users come together to connect and exercise their fundamental rights to freedom of speech, freedom of association, and freedom of religion.

3. Without the broad protection of Section 230 that has prevailed in all the courts of appeals, moderating online content would subject Internet users to grave risks that many will not be willing to take on. Moderating online content will inevitably produce some unhappy people, and some of those will be litigious. As recounted by u/Halaku, “moderation teams often have to resolve situations caused by [malicious] individuals ... [intended] to cause problems and provoke hostile reactions, commonly known as ‘trolling.’” And moderators’ “ability to moderate these posts and comments—to separate the wheat from the chaff—is vital to enabling the subreddit to function as a community, without becoming a scorched plain of irrelevant and predatory material.”

Section 230 enables users and moderators who are the targets of frivolous lawsuits based on others’ content to see them quickly and inexpensively dismissed—or better yet, never filed in the first place. But if petitioners succeed in this case in allowing a plaintiff to overcome Section 230 merely by pleading that the defendant made a “recommendation,” then artful pleading will make it possible for plaintiffs to survive motions to dismiss and thereby drive users offline. Simply put, many everyday Internet users will not volunteer their time to moderate their communities if doing so carries a serious risk of being sued for

¹³ DOGS: WOOF, <https://www.reddit.com/r/dogs> (last visited Jan. 16, 2023).

“recommending” a defamatory or otherwise tortious post that was created by someone else.

The concern is not hypothetical. Reddit users have been sued in the past and benefited greatly from Section 230’s broad protection. For example: When Redditors in the r/Screenwriting community raised concerns that particular screenwriting competitions appeared fraudulent, the disgruntled operator of those competitions sued the subreddit’s moderator and more than 50 unnamed members of the community. *See* Complaint ¶ 15, *Neibich v. Reddit, Inc.*, No. 20STCV10291 (Super. Ct. L.A. Cnty., Cal. Mar. 13, 2020).¹⁴ The plaintiff claimed (among other things) that the moderator should be liable for having “pinn[ed] the Statements to the top of [the] [sub]reddit” and “continuously commente[d] on the posts and continually updated the thread.” *Ibid.* What’s more, that plaintiff did not bring just defamation claims; the plaintiff also sued the defendants for intentional interference with economic advantage and (intentional and negligent) infliction of emotional distress. *Id.* ¶¶ 37–54. Because of the Ninth Circuit decisions broadly (and correctly) interpreting Section 230, the moderator was quickly dismissed from the lawsuit just two months later. *See generally* Order of Dismissal, *Neibich v. Reddit, supra* (May 12, 2020). Without that protection, the moderator might have been tied up in expensive and time-consuming litigation, and user speech in the r/Screenwriting community about possible scams—

¹⁴ *See also* REDDIT, *r/screenwriting under fire as a “Screenplay Contest Manager” files a defamation lawsuit against Reddit, a Moderator, and 50+ anonymous Redditors who talked poorly about his contests while going through great lengths to unmask everyone.*, https://www.reddit.com/r/SubredditDrama/comments/l5cbbs/rscreenwriting_under_fire_as_a_screenplay_contest (last visited Jan. 16, 2023).

a matter of public concern—would almost certainly have been chilled.

The largest online platforms have the resources to defend themselves when they or their employees are sued in content-moderation disputes. But for smaller entities and ordinary Internet users, the prospect of defending a lawsuit, even a frivolous one, will be intimidating and expensive.¹⁵ That prospect would likely deter users from volunteering to become moderators on Reddit with only a weakened Section 230, and it may deter users from even engaging on the platform by upvoting, downvoting, commenting, or taking other actions that can increase or decrease the visibility of other users' posts. As the California Supreme Court has observed, “[a]ny investigation of a potentially defamatory Internet posting is ... a daunting and expensive challenge,” and “even when a defamation claim is ‘clearly nonmeritorious,’ the threat of liability ‘ultimately chills the free exercise of expression.’” *Barrett v. Rosenthal*, 146 P.3d 510, 525 (Cal. 2006) (citations omitted); see *ibid.* (applying Section 230 protection to a platform user).

C. Section 230 was designed to incentivize automated tools to help humans moderate content

Congress’s central objective in enacting Section 230 was to overturn *Stratton Oakmont* and enable platforms and their users to moderate online content, because Congress understood that effective content moderation is essential for users to have a satisfying online experience. Moderation is what makes it possible for users interested in horsemanship or rock-band lyrics to find and read

¹⁵ Petitioners’ amicus curiae CHILD USA asserts (Br. 17) that platforms “are vastly larger, wealthier, and more powerful than were the online service providers of two decades ago.” But the same cannot be true of the average platform user.

about *those things*, as opposed to science jokes or college football news. Congress thus provided that content-moderating activities—whether taking posts down or promoting them—will not cause a platform or user to be treated as the “publisher or speaker” of a post created by someone else, even if that post proves to be defamatory or otherwise unlawful. 47 U.S.C. § 230(c)(1).

Because the amount of online content is so unimaginably vast, Internet platforms and their users necessarily rely on automated tools to moderate content. Petitioners and some of their amici attempt to cast algorithms as dangerous or harmful, and they suggest that the established interpretation of Section 230 should be changed in light of modern algorithmic developments.¹⁶ But an algorithm is nothing more or less than a human-created rule for responding to a particular situation, which can then be repeatedly applied. And when it comes to moderating content online, algorithmic rules can provide effective content moderation on a scale that human beings could never achieve on their own. Reddit’s experience shows why the work of human beings, supported by automated tools, is the best way to moderate content and maximize the Internet’s usefulness.

1. For one thing, search functionality relies on “recommendation” algorithms that the Internet could not function without. When a user types a phrase into the “Search Reddit” bar, the program sifts through billions of pieces of content to find what the user is looking for and

¹⁶ See, e.g., Brief of Amici Curiae Counter Extremism Project (CEP) and Hany Faid at 7 (asserting that algorithms create “dangerous echo changers”); Brief of Amicus Curiae CHILD USA at 26 (arguing that algorithms exploit user vulnerabilities to maximize company profit); Brief of Amicus Curiae Anti-Defamation League at 8 (arguing that algorithms amplify hate and extremism).

display responsive posts, comments, communities, or people. Users can filter the results by subreddits, or they can access “Search Reddit” from within a given subreddit and thereby limit their search to content posted within that community. Users can also customize their searches, for example, by updating their viewing settings to prioritize content that is “new” or “hot” (based on the number, timing, and breakdown of user votes).¹⁷ All of these search functions rely on algorithms to essentially “recommend” responsive content based on a user’s input. And without search functions like these, the Internet would just be an infinite sea of noise.

Petitioners attempt to assure this Court (Br. 38) that they do not seek to diminish Section 230’s protection for search functionality on the Internet, even though a search result would seem to be the quintessential example of a platform providing an individualized “recommendation of third-party content,” Pet. Br. 16. It is entirely unclear, however, where future plaintiffs and courts might draw the line between protected versus unprotected content-moderation algorithms. Those plaintiffs might assert that a search-query response is the platform providing its *own* message that it “thinks you, the [user]—you, specifically—will” find this content responsive to your question. *Force v. Facebook*, 934 F.3d 53, 82 (2d Cir. 2019) (Katzmann, C.J., concurring in part and dissenting in part). That interpretation would cripple “search” functionality to finding only what one already knew to look for.

Reddit’s experience shows why the lines suggested by petitioners certainly would not work. What makes Reddit special, including its search functionality, is finding

¹⁷ See, e.g., POPULAR, <https://www.reddit.com/r/popular> (last visited Jan. 16, 2023) (displaying sorting options immediately below “Popular posts” towards the top of the page).

content that you did not know you were looking for, that was “recommended” by human beings voting on that content. While petitioners emphasize (Br. 44) the fact that an Internet query is written by the person using a search engine, there are many inputs relevant to a search on Reddit besides the user’s textual input. For instance, if a user searches for “electric circuit” on the r/explainlikeimfive subreddit, the search does not simply yield whatever post is the most relevant to circuitry; instead, the result will display posts that are both relevant to circuitry and that involve high-quality, “layperson-friendly explanations” about how electrical circuits work—results that are derived directly from the self-moderation efforts of the r/explainlikeimfive community. Does that mean the moderators of the subreddit helped recommend the content?

2. Reddit also provides its moderators with the “Automoderator,” a tool that they may use (but are not required to use) to assist in curating content for their community. Automoderator allows a moderator to automatically take down, flag for further review, or highlight content that contains certain terms or has certain features. For instance, Automoderator might be configured to automatically remove any links to specific websites devoted to pirated content, thereby ensuring compliance with a subreddit’s rule against posting pirated television episodes. Automoderator can also be used to automatically “flair” (*i.e.*, highlight) or pin posts with certain indications of relevance to the top of a subreddit. Users can fashion any number of rules based on other inputs too, such as the number of votes or the reputation (in Reddit parlance, “karma”) of the poster.¹⁸

¹⁸ See FULL AUTOMODERATOR DOCUMENTATION, https://www.reddit.com/wiki/automoderator/full-documentation/#wiki_actions (last visited Jan. 16, 2023).

The Internet could not function without algorithmic tools like these, and neither could Reddit. As explained by u/Halaku, “Subreddit communities can have up to tens of millions of active subscribers, as well as anyone on the Internet who creates an account and visits the community without subscribing. Moderation teams simply can’t handle tens of millions of independent actions without assistance. Losing this automation [of Automoderator] would be exactly the same as losing the ability to spamfilter email, leaving users to hunt and peck for actual communications amidst all the falsified posts from malicious actors engaging in hate mail, advertising spam, or phishing attempts to gain financial credentials.” In short, no group of human beings could manually sift through the vast universe of content on Reddit or many other online platforms without automated tools. And that sifting is crucial not only to remove unwanted content, but to highlight and surface—or as petitioners might put it, to “recommend”—relevant, high-quality content as well. If this Court accepted petitioners’ contention that algorithmic actions fall outside the protections of Section 230, then the consequence would be to punish Reddit’s volunteer moderators for using tools to better serve their communities.

At bottom, neither petitioners nor their amici have offered any principled basis to distinguish an automated recommendation of a “next video” on YouTube from a search-query result on Google from a Reddit post about breadmaking that was highlighted by the Automoderator because the recipe received so many upvotes. Those are all simply human-designed ways of sifting, sorting, and organizing online content for the benefit of Internet users. And that moderating function is the core activity that Congress created Section 230 to protect.

D. A sweeping ruling narrowing Section 230’s protections would risk devastating the Internet

1. Petitioners’ broadest theories (Br. 46) seek to upend the settled interpretation of Section 230 in the courts of appeals by claiming that a platform and its users are no longer “acting as” providers of information services anytime they send or recommend content that a user did not specifically request. That theory has no foundation in the statutory text. It would erase precisely the sort of protection for content moderation that Section 230 was created to provide. And it would dramatically curtail the vibrancy of the Internet.

Reddit provides a particularly strong example of why Section 230’s protections are necessary. Its user-focused content-moderation model empowers users to make decisions that might otherwise be made by employees or contractors. Reddit’s model demonstrates how ordinary Internet users—not just online platforms—would be severely harmed by a ruling from this Court that cut back the prevailing protections of Section 230. Reddit also proves the fundamental defects in the attempted distinctions proposed by petitioners between “recommendations” and other types of moderation actions: The entire Reddit platform is built around users “recommending” content for the benefit of others by taking actions like upvoting and pinning content. There should be no mistaking the consequences of petitioners’ claim in this case: their theory would dramatically expand Internet users’ potential to be sued for their online interactions.

2. Rolling back Section 230 would also severely harm small, start up platforms. While Reddit has a sizable user base—normally more than enough to be considered a large company—in the tech world it is an underdog compared to its nearest competitors, which are public com-

panies 10 to 100+ times its size. Section 230 gave Reddit the freedom to experiment with a model of online community self-governance that has become one of the world's most popular websites.

It is smaller and emerging online platforms that need that protection the most. And it is the broad protection offered by Section 230—the freedom to design the best possible place for users, without fear of being held liable for a post created by someone else—that will enable tomorrow's emerging platforms to challenge the industry leaders. Even modest changes to the prevailing Section 230 protection will create substantial regulatory burdens on the entire industry that will inevitably benefit the largest, most entrenched companies by imposing disproportionate costs on smaller competitors.

3. Judge Katzmann's partial dissent in *Force* was right about two things: First, "Congress grabbed a bazooka" when it wrote the liability-insulating provisions of the Communications Decency Act. *Force*, 934 F.3d at 80. The language that Congress chose includes no carveout for targeted recommendations. Second, "[w]hether, and to what extent, Congress should allow liability for tech companies" when targeted recommendations are involved "is a question for legislators, not judges." *Id.* at 88.

It may very well be true that our society should reexamine the duties of technology companies and their users in light of the rapid evolution over the last decade of the Internet, social media, and targeted recommendations. But it must be Congress that decides what those changes should be and how broadly they should sweep. Judicial interpretation should not move at Internet speeds, and there is no telling what a sweeping order removing targeted recommendations from the protection of Section 230 would do to the Internet as we know it. Unless and

until Congress alters Section 230, petitioners should not be permitted to seek recovery from Google, Reddit, or any Internet users who are not the original source of the third-party content that allegedly caused harm.

CONCLUSION

The judgment of the court of appeals should be affirmed.

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