

No. 21-1333

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In The  
**Supreme Court of the United States**

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REYNALDO GONZALEZ, ET AL.,

*Petitioners,*

v.

GOOGLE LLC

*Respondent.*

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

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**BRIEF OF AUTHORS ALLIANCE AND  
INTERNET CREATORS AS *AMICI CURIAE* IN  
SUPPORT OF THE RESPONDENT**

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**INTEREST OF *AMICI CURIAE*<sup>1</sup>**

*Amici curiae* are a diverse group of Internet creators and a non-profit organization that seeks to advance the interests of authors to serve the public good by sharing their creations broadly online. *Amici* Internet creators are individuals who use digital technology to make and post original creative content, such as educational, informational, and entertainment videos, which audiences can access, engage with, and share online. *Amicus* organization Authors Alliance supports Internet creators, such as academic authors, by providing information about their digital rights and by advocating for policies to help creators create, preserve, and share their works online.

*Amici* are uniquely situated to provide insight into the impact of targeted online recommendations. *Amici* creators post their creative content on digital distribution platforms like Facebook, Instagram, LinkedIn, TikTok, Twitter, and YouTube. They rely on the hosting, display, and recommendation of their content on these platforms to help promote it and to reach new audiences that might enjoy their work.

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<sup>1</sup> No counsel for a party authored this brief in whole or in part. Nonprofit organization Engine's Digital Entrepreneur Project made a monetary contribution intended to fund the preparation and submission of this brief. None of the parties or their counsel, nor any other person or entity other than Engine's Digital Entrepreneur Project, made a monetary contribution intended to fund the preparation or submission of this brief.



*Amici* creators have successfully grown their audiences, shared their creative works, and expanded their businesses with the assistance of platform recommendations. *Amicus* Authors Alliance represents authors who have similarly benefited from such curation mechanisms online. *Amici* believe that Section 230(c)(1)'s intermediary protections limiting liability for hosting third-party content include the platforms' recommendation and curation of that content, consistent with Congress's express policy goals of promoting diverse discourse and free expression online. *Amici* further believe that these protections from liability have been essential to the willingness of intermediaries to recommend the digital works of independent creators to new audiences.

*Amici* include the following:

**Authors Alliance** is a nonprofit organization that advances the interests of authors who want to serve the public good by sharing their creations broadly. Its over 2,400 members are predominately academic authors who have as their highest priority seeing their writings reach wide and diverse audiences, in many cases through platforms or other forms of online distribution.

**Brian Flanagan** is the Chief Operating Officer of Mythical Entertainment, an independent, creator-led entertainment studio that produces popular comedy, variety, culinary, and gaming shows

online, reaching an audience of 77 million YouTube subscribers.

**Dr. Bernard Hsu** is a toxicologist and creator of the [Chubbyemu](#), a YouTube channel with more than 2.7 million subscribers, which provides educational medical analysis.

**Harry Jho** is the founder and CEO of Sockeye Media LLC. He is also the co-creator of [Mother Goose Club](#), a YouTube channel with more than 9 million subscribers, which introduces preschoolers to nursery rhymes, original songs, and educational videos.

**Jeremy Johnston** is a family video blogger (“vlogger”) known for his [J House Vlogs](#) channel, which has 2.7 million subscribers on YouTube and more than 3.3 billion views. *J House Vlogs* features videos about his family, including his wife Kendra and their five children.

**Hassan Khadair** is a comedian and impressionist with 6.2 million followers on [TikTok](#) and two million followers on his [YouTube](#) channel, featuring reaction videos to Internet content.

**Dr. Rena Malik** is a urologist and pelvic surgeon who posts weekly videos about urologic, sexual, and bladder health on her [YouTube](#) channel to her 1.3 million subscribers.

**Jordan Maron** is the creator of online alias [CaptainSparklez](#). Among other channels, he hosts a

YouTube channel with 11.4 million subscribers, featuring videos of him playing popular video games.

**Kevin McCarty** is the creator of [\*The McCartys\*](#), a weekly video show on YouTube with more than six million subscribers, featuring comedic videos about his family.

**Milad Mirg** is the creator of food videos with 6.5 million [TikTok](#) followers and 4.6 million [YouTube](#) subscribers. During the height of the COVID-19 pandemic, his videos became popular as he offered behind-the-scenes looks at his fast-food job at Subway.

**Kati Morton** is a licensed therapist and the creator of a [YouTube channel](#) with 1.2 million subscribers, showcasing mental-health videos to educate and empower people.

**Nick Nimmin** is the creator of a [YouTube channel](#) with more than 800,000 subscribers where he provides tips, tools, and training to help content creators grow their businesses online.

**Sarina Peterson** and **Brianna Rapini** are two sisters on a mission to demystify high-school biology with educational and humorous cartoons in their [Amoeba Sisters](#) videos, a YouTube channel with 1.5 million subscribers.

**Emily Scott Robinson** is a singer-songwriter who launched her career as a touring artist on the

Internet, by sharing her music for free on [Bandcamp](#). In 2021, her fans fully funded her new album project in less than 24 hours via an online campaign.

**Tim Schmoyer** is the founder and creator of [Video Creators](#), a YouTube channel with 572,000 subscribers, and an agency that provides advice to creators and brands on how to grow their audiences on YouTube.

**Rachel Smith** is the creator of [Rachel's English](#), a YouTube channel with 4.6 million subscribers, featuring weekly video lessons teaching viewers how to speak conversational English.

**Devin Stone**, a practicing lawyer, is the creator of [LegalEagle](#), a YouTube channel with 2.7 million subscribers. The channel's mission is to explain the laws and legal issues faced by people in their everyday lives and bring legal literacy to the public.

**Alex Su** is a lawyer with more than 200,000 followers across LinkedIn, Twitter, Instagram, and TikTok. His content, which has received more than 100 million views, includes humorous videos, jokes, and commentary about [the legal industry](#).

**Dr. Mikhail Varshavski** is a family physician and the creator of [Doctor Mike](#), a YouTube channel with 10.4 million subscribers, which provides bi-weekly entertaining and relatable videos about common medical issues.

## SUMMARY OF ARGUMENT

Providing immunity to intermediaries for the display, recommendation, and curation of third-party content is central to the purpose of Section 230 of the Communications Act of 1934, enacted as part of the Communications Decency Act of 1996 (“Section 230”)<sup>2</sup>: Section 230’s protections for Internet platforms have enabled online creators—those who make, share, and promote innovative expression and diverse discourse online—to reach and grow new audiences on the Internet. This Court should hold that Section 230(c)(1)’s protections for intermediaries hosting third-party content extend to the targeted recommendation of that content by intermediaries.

Section 230(c)(1)’s protections have helped shape the Internet into a democratic space that promotes free expression, creativity, and innovation. When enacting Section 230, Congress expressly stated its intent to promote a free and open Internet where diverse and independent expression thrives. In the years since Section 230 was enacted, Congress has acknowledged that expression, innovation, and entrepreneurship online have flourished due, in no small part, to the statute’s immunity provision.

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<sup>2</sup> 47 U.S.C. § 230.

Platform recommendations allow such expression to flourish by elevating independent and emerging creators' works. *Amici* creators are geographically and demographically diverse individuals who make creative works online, and *amicus* Authors Alliance represents a wide and diverse group of public-minded authors. These creators use digital platforms to share their content. Platform recommendations are essential for creators to reach new and growing audiences, grow their small businesses, and disseminate diverse discourse online.

Altering Section 230's intermediary-liability protections for recommendations could have significant consequences for current and future creators and for free expression online. Major platforms might be less likely to host and promote independent creators' content. New and emerging creators may be unlikely to reach new audiences. And speech generally could be chilled online, hindering Congress' policy goals of fostering a free and open Internet.

## BACKGROUND

In the more than 25 years since Section 230 was enacted, the Internet has become a center of American life.<sup>3</sup> Today's Internet is defined by

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<sup>3</sup> In 2021, "93% of American adults use[d] the [I]nternet" with "roughly three-quarters of American adults" having access to internet service in their homes. Pew Rsch. Ctr., *Internet/Broadband Fact Sheet* (Apr. 7, 2021), <https://www.pewresearch.org/internet/fact-sheet/internet->

“millions of websites featuring user-created content.”<sup>4</sup>  
“Virtually every successful online venture that emerged after 1996 . . . relies in large part (or entirely) on content provided by their users, who number in the hundreds of millions, or billions.”<sup>5</sup>

Section 230 immunity has fostered a diverse world of independent online creators. Before the Internet, the media industry belonged to the gatekeepers. Authors who wanted to publish their works and share them with the world needed book deals with publishing houses. Filmmakers who wanted to make films needed cooperation from movie studios. Today, independent authors, filmmakers, and other creators no longer need a book publisher, major studio, or other national distributor to make and distribute their creative works. “Digital

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broadband/.

<sup>4</sup> See Christopher Cox, *Section 230: A Retrospective*, Ctr. for Growth and Opportunity, 18 (Nov. 2022), <https://www.thecgo.org/research/section-230-a-retrospective/> [hereinafter “*Section 230 Retrospective*”].

<sup>5</sup> David Post, *A bit of Internet history, or how two members of Congress helped create a trillion or so dollars of value*, Wash. Post (Aug. 27, 2015), <https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/08/27/a-bit-of-internet-history-or-how-two-members-of-congress-helped-create-a-trillion-or-so-dollars-of-value/>.

technologies and platforms enable [c]reators to bypass traditional institutional gatekeepers in the movie, music, publishing, and broadcasting industries.”<sup>6</sup> Section 230 enabled this shift: Platforms of all types and sizes can host, display, curate, and recommend diverse user-created content without fear of ruinous litigation.

Creators today create, make available, and share a wide range of creative works online. Creators are independent and diverse artists—including, among others, authors, designers, photographers, video producers, comedians, photojournalists, craftspeople, teachers, doctors, lawyers, and other professionals—who make and share “unique creative content, whether in the form of video, film, art, music, design, text, games, or any other media” to which “audiences can access and respond.”<sup>7</sup> More than 85 million people in the United States consider themselves online creators.<sup>8</sup>

The independent and diverse nature of these creators has led to an explosion of free expression, creativity, and innovation online. The subject matter of creators’ content “runs the gamut from books,

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<sup>6</sup> Richard Florida, *The Rise of the Creator Economy*, Creative Class Grp., 4 (Nov. 2022), <https://bit.ly/3XKTizj> [hereinafter “*Creator Economy Report*”].

<sup>7</sup> *Id.* at 8

<sup>8</sup> *See id.*



music, and TV and film to news, business, politics, science, and sports to popular culture, beauty and fashion, lifestyle, parenting, home improvement, travel, food and restaurants, fitness, pets, astrology, parenting, humor, [and] games.”<sup>9</sup> The “Creator Economy” is estimated to be a \$100 billion industry.<sup>10</sup>

Creators use a variety of platforms—such as Discord, Facebook, Instagram, iTunes, LinkedIn, Medium, Patreon, Pinterest, Reddit, Roblox, Spotify, Spring, Substack, TikTok, Twitch, Twitter, and YouTube—to share their works, reach audiences, and build communities.<sup>11</sup> For example, a creator might make YouTube videos and engage viewers through YouTube comments, convene her audiences with Discord servers to build a community, manage subscriptions and special-access content through Patreon, sell merchandise with Spring, and promote her content on Instagram, LinkedIn, Pinterest, and Twitter. By using platforms to create, distribute, engage with, promote, and monetize their works, creators can reach a wide audience.<sup>12</sup>

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<sup>9</sup> *Id.* at 13.

<sup>10</sup> *See id.* at 4.

<sup>11</sup> *See id.* at 4, 18.

<sup>12</sup> *See, e.g.,* Kurt Kaufer, *TikTok and Podcasts Join YouTube as Leading Creator Platforms*, AdAge (Dec. 8, 2022), <https://adage.com/article/media/tiktok-and-podcasts-join-youtube-leading-creator-platforms/2456176> (“One of the key growth and monetization strategies for creators has always been

Creators also have diverse goals. Many “are devoted hobbyists who are pursuing creative activities they are deeply passionate about.”<sup>13</sup> “A growing number are social and political activists, who are principally motivated by the desire to serve causes bigger than themselves and have social and political impact.”<sup>14</sup> Some creators, such as *amicus* Authors Alliance’s members, prioritize seeing their works reach as broad and diverse an audience as possible, and write primarily to share knowledge and new insights with the world.

Others seek to provide educational content and build connections in underserved communities. *Amicus* Rachel Smith, for example, makes educational content for those learning English as a second language. Her YouTube followers have told her that her videos have helped them feel more comfortable in everyday conversations and to earn job promotions. Similarly, *amicus* Dr. Bernard Hsu discusses case studies in medicine on his YouTube

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to go multiplatform. Expanding their footprints to other platforms allows them to showcase their creativity in new ways and reach incremental audiences.”).

<sup>13</sup> *Creator Economy Report, supra*, at 4; see, e.g., Chris Stokel-Walker, *Meet the workers who quit their jobs to become full-time YouTubers*, Fast Co. (Dec. 21, 2022), <https://www.fastcompany.com/90828284/meet-the-workers-who-quit-their-jobs-to-become-full-time-youtubers> (describing hobbyists who left established careers to pursue their passions and share videos on successful YouTube channels).

<sup>14</sup> *Creator Economy Report, supra*, at 4.

channel, often exploring rare diseases, to shed light on lesser-known medical risks for underserved populations. And *amicus* Milad Mirg, a child of Iranian immigrants, first started a YouTube channel when he was eight years old to connect with others and learn about entrepreneurship. Since then, his growing platform has created a community for those working in the fast-food industry.

Many creators are professionals who seek to have a broader reach beyond their clinical work. For example, *amicus* Kati Morton, a licensed therapist, provides mental-health advice on her YouTube channel. As a practicing therapist, she is limited in her private practice to seeing 30 to 40 people per week. But her YouTube channel has expanded her ability to help people: She now also reaches more than one million subscribers with her videos on YouTube. Similarly, *amicus* Dr. Rena Malik is a urologist and pelvic surgeon. On her YouTube channel, she shares evidence-based content about bladder and sexual health. She also reaches far more people online—more than one million viewers per week—than she reaches in her clinic, where she sees 40 to 50 patients weekly.

For millions of creators, sharing their creative works online also serves as their small businesses.<sup>15</sup> In 2021, more than 425,000 Americans were full-time

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<sup>15</sup> See *Creator Economy Report, supra*, at 8, 9, 16.

creators.<sup>16</sup> Many creators “monetize their efforts through memberships, subscriptions, digital tips, advertising, brand partnerships, endorsements, direct funding from platforms, and other forms of digital payments.”<sup>17</sup> Other have received substantial advances when platforms try “to lure high-profile figures away from traditional media companies.”<sup>18</sup> For example, *amicus* Kevin McCarty, a former teacher, hosts a comedy video channel featuring his family and makes a living through brand deals on social media and ad revenue on YouTube. In the past year, his channel has grown to more than six million subscribers and received more than eight billion views. His business has generated more than a million dollars in revenue. Similarly, Jordan Maron, the creator of popular gaming videos as CaptainSparklez, has accumulated between four to five billion views across his channels in the past 12 years, allowing him to become a full-time creator and hire employees to continue expanding his business. For many creators, building a successful small business online is the modern American dream: an opportunity to financially support themselves

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<sup>16</sup> See Oxford Econ., *The State of The Creator Economy: Assessing the Economic, Societal, and Cultural Impact of YouTube in the US in 2021*, 4 (July 22, 2021), <https://bit.ly/3WgkS6k>.

<sup>17</sup> *Creator Economy Report*, *supra*, at 8.

<sup>18</sup> *Id.* at 16. For example, newsletter platform Substack “paid a \$250,000 advance to attract the blogger Matthew Yglesias from Vox and a \$430,000 contract for two years to attract Danny Lavery, who founded the humor blog *The Toast*.” *Id.*

through their self-expression while also having a broader impact on society as a whole.

## ARGUMENT

### **I. Congress intended Section 230 to foster a free Internet where diverse and independent expression thrives.**

When Congress enacted Section 230 in 1996, it recognized the importance of free expression for Americans and the potential for the Internet to encourage debate and discourse in American society. It therefore passed legislation to immunize intermediaries to foster creativity and innovation with minimal government interference.

Congress made its intent clear in the text of the statute. Section 230's preamble explains that "[t]he rapidly developing array of Internet and other interactive computer services available to individual Americans represent[s] an extraordinary advance in the availability of educational and information[al] resources to our citizens."<sup>19</sup> The preamble further states that "[t]he Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual

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<sup>19</sup> 47 U.S.C. § 230(a)(1).

activity.”<sup>20</sup> Congress recognized that Americans increasingly were “relying on interactive media for a variety of political, educational, cultural, and entertainment services”—a statement that is even more true today.<sup>21</sup>

Based on these findings, Congress identified a broader policy goal of “promot[ing] the continued development of the Internet and other interactive computer services and other interactive media” and “preserv[ing] the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation.”<sup>22</sup> Congress wanted the Internet to flourish with minimal government interference, emphasizing that it “wanted to encourage the unfettered and unregulated development of free speech on the Internet, and to promote the development of e-commerce.”<sup>23</sup>

But Congress also recognized that “[t]he amount of information communicated via interactive computer services is . . . staggering. The specter of tort liability in an area of such prolific speech would have

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<sup>20</sup> *Id.*, § 230(a)(3).

<sup>21</sup> *Id.*, § 230(a)(5).

<sup>22</sup> *Id.*, § 230(b)(1)–(2).

<sup>23</sup> *Batzel v. Smith*, 333 F.3d 1018, 1027 (9th Cir. 2003), *superseded by statute as stated in RLI Ins. Co. v. Langan Eng’g*, 834 F. App’x 362 (9th Cir. 2021).

an obvious chilling effect.”<sup>24</sup> Because “[i]t would be impossible for service providers to screen each of their millions of postings for possible problems, interactive computer service providers might choose to severely restrict the number and type of messages posted” rather than face potential liability.<sup>25</sup>

Congress “considered the weight of the speech interests implicated and chose to immunize service providers to avoid any such restrictive effect.”<sup>26</sup> Congress therefore decided to place liability for any tortious speech on the speaker, not on the third-party intermediary hosting that speech. That is, “[Congress] opted not to hold interactive computer services liable for their failure to edit, withhold or restrict access to offensive material disseminated through their medium.”<sup>27</sup> Congress thus “made a policy choice . . . not to deter harmful speech through the separate route of imposing tort liability on companies that serve as intermediaries for other parties’ potentially injurious messages.”<sup>28</sup>

Congress enacted the necessary immunity in Section 230(c)(1), which states that “no provider or

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<sup>24</sup> *Zeran v. AOL, Inc.*, 129 F.3d 327, 331 (9th Cir. 1997).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Blumenthal v. Drudge*, 992 F. Supp. 44, 49 (D.C. Cir. 1998).

<sup>28</sup> *Zeran*, 129 F.3d at 330–31.

user of an interactive computer service<sup>[29]</sup> shall be treated as the publisher or speaker of any information provided by another information content provider.”<sup>30</sup> “Subject to certain delineated exceptions, . . . Section 230(c)(1) thus shields a defendant,” such as an online platform, “from civil liability when: (1) it is a ‘provider or user of an interactive computer service,’ as defined by § 230(f)(2); (2) the plaintiff’s claims ‘treat[]’ the defendant as the ‘publisher or speaker of information,’ *id.* § 230(c)(1); and (3) that information is ‘provided by’ an ‘information content provider,’ *id.* § 230(f)(3), other than the defendant interactive computer service,”<sup>31</sup> such as a user posting on the platform.<sup>32</sup> “In light of Congress’s objectives, the Circuits are in general agreement that the text of Section 230(c)(1) should be construed broadly in favor of immunity.”<sup>33</sup>

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<sup>29</sup> An “interactive computer service” is “any information service system” or “access software provider,” including software or a tool that can “filter, screen, allow, or disallow content; pick, choose, analyze, or digest content; or transmit, receive, display forward, . . . organize, [or] reorganize . . . content.” 47 U.S.C. § 230(f)(2), (4).

<sup>30</sup> *Id.*, § 230(c)(1).

<sup>31</sup> *Force v. Facebook, Inc.*, 934 F.3d 53, 63–64 (2d Cir. 2019) (collecting cases).

<sup>32</sup> While not directly at issue in this case, Congress also recognized the importance of allowing platforms to moderate the content they host to keep their platforms safe. *See* 47 U.S.C. § 230(c)(2).

<sup>33</sup> *Id.*



Since enacting Section 230, Congress has acknowledged the centrality of the law to “the free and open Internet.”<sup>34</sup> Section 230 “promotes free expression and innovation by protecting online platforms from a range of laws that might otherwise hold them unfairly accountable for everything their individual users may say and do online.”<sup>35</sup> In particular, Congress has acknowledged that Section 230 “has encouraged innovations ranging from the earliest online bulletin board systems to today’s platforms for social media and user-generated video.”<sup>36</sup> “For America, [S]ection 230 is very likely the reason we have a multitude of billion-dollar internet employers and the Europeans have exactly zero.”<sup>37</sup> “Without Section 230’s clear limitation on liability, it is difficult to imagine that most of the online services on which we rely every day would even exist in anything like their current form.”<sup>38</sup> In sum: “Without

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<sup>34</sup> *Allow States and Victims to Fight Online Sex Trafficking Act of 2017*, 164 Cong. Rec. S1849, S1860 (Mar. 21, 2018) (Statement of U.S. Sen. Patrick Leahy).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at S1870 (Statement of U.S. Sen. Ron Wyden).

<sup>38</sup> *Section 230 Retrospective*, *supra*, at 22. Former U.S. Representative Christopher Cox co-authored Section 230 with U.S. Senator Ron Wyden (then U.S. Representative Wyden). *See id.* at 1.

the protections of [Section] 230, the internet would be a very different place today.”<sup>39</sup>

## **II. Recommendations contribute to the flourishing of free expression, creativity, and innovation on the Internet.**

Petitioners contend that “recommendations” should “fall outside the scope of [S]ection 230(c)(1).”<sup>40</sup> But they ignore how Section 230’s protections for platform curation have created a new economy of creators who depend on their ability to share innovative and diverse discourse online, consistent with Congress’s stated policy goals in enacting Section 230. Because platforms trust that their recommendations of third-party content are immunized by Section 230(c)(1), they elevate and recommend creative works from diverse and independent creators. Many online creators owe their success in large part to digital platforms’ recommendation of their works.

Because Section 230(c)(1) immunizes platforms of all types and sizes from ruinous and costly litigation, platforms host, display, curate, and recommend third-party content to their users without fear of potential liability. Platforms curate the billions of pieces of user-created content on their services by

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<sup>39</sup> 164 Cong. Rec. S1849, *supra*, at S1860 (Statement of U.S. Sen. Leahy).

<sup>40</sup> Pets. Br. at 29.

providing personalized recommendations for content that users might find interesting, relevant, or useful to them specifically.

Such curation comes in many forms. For example, platforms “curate” information through search results by ranking results by usefulness. If a high-school biology student searches for “cell mitosis” on YouTube, she might find *amici* Sarina Peterson’s and Brianna Rapini’s *Amoeba Sister* videos, which would help her understand why cells divide and multiply. Platforms also display information on homepages, sidebars, and timelines that they anticipate is relevant or useful to a user based on their prior use of a platform. For example, TikTok’s “For You” feed provides videos that it anticipates a user will enjoy based on their prior viewing and usage history.<sup>41</sup> After watching a video, a YouTube user might also see videos on similar topics on their homepage or next in their queue.<sup>42</sup> Other platforms, like Facebook and Instagram, display information to

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<sup>41</sup> See TikTok, *How TikTok recommends videos #ForYou* (June 18, 2020), <https://newsroom.tiktok.com/en-us/how-tiktok-recommends-videos-for-you>; Ben Smith, *How TikTok Reads Your Mind*, N.Y. Times (Dec. 5, 2021), <https://www.nytimes.com/2021/12/05/business/media/tiktok-algorithm.html>.

<sup>42</sup> See YouTube, *Recommended videos*, <https://www.youtube.com/howyoutubeworks/product-features/recommendations/>.

a user in their feed based on their prior use of the service.<sup>43</sup>

Creators reach new audiences that they might not otherwise be able to reach based on these various forms of platform curation. For example, 24-year-old Steve Lacy “edged [megastar] Harry Styles out of the No. 1 position on the Billboard charts in the fall of 2022” after Mr. Lacy’s single “Bad Habit” went viral through recommended video clips on TikTok.<sup>44</sup> Similarly, YouTube launched the careers of mainstream superstars like Justin Bieber who were discovered after becoming popular on the platform.<sup>45</sup> In the context of textual works, writers who publish on platforms dedicated to fan fiction<sup>46</sup> have gone on to have successful mainstream literary careers after being “discovered” by those in the trade publishing

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<sup>43</sup> See Facebook, *What are recommendations on Facebook?*, <https://www.facebook.com/help/1257205004624246>; Facebook, *What are recommendations on Instagram?*, <https://www.facebook.com/help/313829416281232>.

<sup>44</sup> *Creator Economy Report*, *supra*, at 7.

<sup>45</sup> Fresh Air, *How YouTube became one of the planet’s most influential media businesses*, NPR (Sept. 8, 2022), <https://www.npr.org/2022/09/08/1121703368/how-youtube-became-one-of-the-planets-most-influential-media-businesses>.

<sup>46</sup> Fan fiction includes “stories involving popular fictional characters that are written by fans and often posted on the Internet.” *Fan fiction*, Merriam-Webster’s Dictionary (last updated Jan. 11, 2023), <https://www.merriam-webster.com/dictionary/fan%20fiction>.

industry.<sup>47</sup> Digital platforms thus enable outsiders to break through in ways that would have been “virtually unimaginable under the traditional music/entertainment industry.”<sup>48</sup>

*Amicus* Kati Morton has experienced how the power of recommendations on platforms can help those in need. Ms. Morton started her mental-health awareness YouTube channel over 10 years ago. Over that time, she has gained one million subscribers and reached people all over the world. She believes that she never would have been able to reach a global audience without the power of curation on YouTube, social media, and the Internet. Members of her online community have told her that they found her channel through YouTube recommendations and when searching for answers to mental-health questions. Without platforms hosting and recommending accurate, helpful content, Ms. Morton worries that a person struggling with mental-health issues would look for answers and fail to find them.

Similarly, online recommendations have fueled significant viewership growth for *amicus* Jordan Maron, creator of popular gaming videos under his alias CaptainSparklez. Mr. Maron has created

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<sup>47</sup> See, e.g., Namera Tanjeem, *50 Shades and More: 11 Published Fan Fiction Books*, BookRiot (Sept. 12, 2019), <https://bookriot.com/published-fanfiction-books/>.

<sup>48</sup> *Creator Economy Report*, *supra*, at 7.

gaming content for the past 12 years and has watched the evolution of the online video space as it has gone from niche to mainstream. In that time, he has accumulated four to five billion views across his channels on different platforms. Despite having an older YouTube channel with an established audience, he still finds that around 50 percent of his viewership comes from accounts that are not subscribed to his channel. Content-recommendation mechanisms drive that growth. While he has seen fluctuations in his viewership in the past 12 years, he believes that his audience would not exist if not for YouTube and other platforms recommending his videos to new people.

Meanwhile, *amicus* Milad Mirg believes recommendations are the single most valuable contributor to his creator business, allowing him to build a community online. When Mr. Mirg started sharing his fast-food industry work experiences on social media, he unexpectedly created a community of people who also work in the field. Few social media users, if any, search for “Subway worker” or “working a fast-food job.” Instead, he understands that recommendations enabled him to find, connect with, and help people like him. Mr. Mirg reached one million subscribers on YouTube in the first 24 days of posting about his job at Subway. He also received hundreds of thousands of comments and messages from people telling him that they were able to look at their profession—which has historically been looked down upon—in a whole new light. Viewers told him that they began to find their jobs in fast food more fun

because Mr. Mirg offered them a shift in perspective about the industry. He believes none of this would have been possible without recommendations.

The same is true for *amicus* Hassan Khadair, a comedy creator who uses puppetry in his comedic acts on YouTube. He believes that he would not have been able to garner a significant audience online without YouTube's recommendations or TikTok's "For You" page. Instead, he now reaches eight million followers across social media and has had four billion views. This success is especially important for Mr. Khadair who struggled to connect with others as an Asian American growing up in post-9/11 America. Today, thanks to social media recommendations, he believes that he can be the entertainment role model he wishes he had had when he was a child.

*Amicus* Dr. Rena Malik likewise believes that, without recommendations, it would have been nearly impossible for her to find interested viewers, reach a sizeable audience, and widely share evidence-based information. As a urologist, Dr. Malik creates evidence-based videos about bladder health, sexual health, and urologic conditions. Her videos debunk commonly held misconceptions, offer information viewers might not have known they needed, and answer questions viewers might be too embarrassed to ask. Her YouTube channel has reached nearly 200 million views, empowered viewers to talk about their health, and encouraged them to seek appropriate medical care when necessary. Dr. Malik believes that,

because so much content is shared online every day, it would be nearly impossible for her to find interested followers without recommendations. She also believes that recommendations are useful for viewers: It is important for people searching for medical information to be able to find accurate, comprehensive, evidence-based content. Without recommendations, users would struggle to sift through the billions of pieces of content to find the information useful and relevant to them.

Similarly, *amicus* Dr. Mikhail Varshavski, a board-certified family medicine physician, shares evidence-based educational content in relatable and popular formats to engage younger generations to learn about their health. Dr. Varshavski has seen how the rise in misinformation and low health literacy led his patients to make poor decisions about their health. Being able to break down complex scientific concepts and debunk misinformation for 50 million viewers monthly on *Doctor Mike* makes him a much more effective physician. He believes that this opportunity has only been possible for him because platforms, benefiting from Section 230, recommend interesting and credible content to viewers for them to enjoy.

*Amicus* Rachel Smith, the creator of the YouTube channel *Rachel's English*, has benefited from YouTube's search functionality—another kind of platform recommendation. When displaying search results, platforms curate information: That is, they



display information relevant to the search requests by ranking results by anticipated usefulness to the searcher. This is, in effect, another form of recommendation. Ms. Smith makes videos with conversational speaking lessons for those learning English as a second language. People learning English who recognize that they need help with their pronunciation or with listening comprehension often search online for resources to help. Rachel's audience has grown to more than 4.5 million subscribers through search-based recommendations.

Similarly, *amici* Sarina Peterson and Brianna Rapini believe that the search functionality on YouTube drove their channel's early success. The sisters launched their YouTube channel, *Amoeba Sisters*, to demystify biology, including topics such as DNA replication, cell cycles, biomolecules, and cell mitosis. In the early days of their channel, a large portion of their views came from users searching such terms. While many users now search "Amoeba Sisters" to find their videos, they relied on biology keyword searches to initially find an audience.

Platform recommendations also benefit niche creators whose content, like that of academic authors, might not appeal to everyone. *Amicus* Authors Alliance's diverse members have benefited from Section 230's protections, which have enabled them to find and grow audiences for their works online. Academic authors, as well as other writers without an established readership, often struggle with visibility.

A platform's ability to recommend their content to those interested in it helps those authors reach readers and accrue reputational capital. In this way, platform recommendations have enabled a wider and more diverse group of authors to disseminate their works and share new insights with the world.

Similarly, *amicus* Emily Scott Robinson believes that she owes her career as a touring artist to the Internet. From the beginning of her independent music career in 2015, she shared her music for free on Bandcamp and YouTube. Since then, she has grown a community of fans through recommendations on YouTube, Instagram, Spotify, and other streaming services. Her fandom has helped her break into the music scene, gain national recognition, and sign a record deal. She believes that being able to freely share and distribute her music on the Internet—and reach potentially interested listeners through recommended feeds on music platforms—has been essential to her career as a musician.

Similar to less-established authors and musicians, *amicus* Dr. Bernard Hsu has produced medical videos for seven years, but found that his videos only began reaching viewers once platforms began recommending them. Now his videos get millions of views. He believes that his videos, which often explore rare diseases and poisonings, couldn't have had a tangible impact without a large audience. Instead, the popularity of some of Dr. Hsu's videos has helped shed light on toxic exposures that lead to

breast cancer and underrecognized cancers that disproportionately affect young men of African descent. As a result of one of his videos on a rare sickle cell-associated kidney cancer, research studies on the disease, which had previously struggled to find participants, became fully enrolled. Dr. Hsu believes that, without platform recommendations, he would not have been able to have this degree of impact.

**III. Altering Section 230’s intermediary-liability protections for recommendations may have dire consequences for current and future creators, chilling the free flow of ideas on the Internet.**

Disturbing Section 230’s current protections for recommendations could have significant repercussions for content creators. Many platforms may be less willing to recommend, curate, or otherwise surface content if they could face liability for doing so. This would harm creators and the free flow of ideas online in at least three ways.

*First*, independent and emerging creators could see their audiences shrink. Without Section 230(c)(1) immunity for recommendations, platforms may be less likely to recommend the works of lesser-known or new creators, preferring instead to display, if any, established brands in an effort to reduce the risk of incurring liability. Some platforms today already distinguish between “verified” users (often major

brands, news organizations, and celebrities) and everyone else. This gap might become an abyss if Section 230(c)(1) protections change. For example, a platform may choose to elevate, say, news articles from major national publications like *The New York Times*, *The Wall Street Journal*, and *The Washington Post*, but opt not to promote articles from local or independent newspapers and journalists because it lacks the resources to verify the news information. This would limit the reach of those local or independent newspapers and journalists, potentially further eviscerating local and independent news media.

Similarly, without Section 230(c)(1) protections for recommendations, platforms may promote fewer smaller, more independent, and newer creators and their creative works. This would limit newer creators to their homegrown audiences in favor of corporate channels perceived to be “pre-vetted”—in other words, safer and more reliable with respect to content moderation. Platforms would become traditional gatekeepers and curtail the free flow of diverse discourse online. *Amicus* Mr. Maron believes, for example, that, if platforms change the way in which they host and recommend content, his established audience of nearly 12 million would likely survive. But he acknowledges that, for others taking a risk to build a new business or trying to find a foothold online, changes to recommendation mechanisms could be immediately disastrous.

*Amicus* Harry Jho, for example, remembers a time before platforms existed when it was difficult for emerging and independent creators to share their works. As former teachers, Mr. Jho and his wife started *Mother Goose Club* to revive nursery rhymes as teaching tools for preschoolers. They spent years trying, with limited success, to get their content distributed by traditional media platforms. But digital media platforms changed everything. Over the past 15 years, the Jhos have built a network of channels that have amassed over 30 billion views and 30 million subscribers. They have also produced live-action, animation, gameplay, and how-to videos for preschoolers and their parents, as well as over a dozen music albums. They've rejoiced as families and schools around the world have used their songs to teach children English. Without social-media platforms welcoming and promoting newcomers like the Jhos, *Mother Goose Club* might never have been able to help children around the world.

Moreover, platform changes prioritizing established brands over lesser-known independent creators might also undermine creators' small businesses—shrinking many creators' income and their ability to employ others. As *amicus* Ms. Morton's YouTube channel has grown, she has hired four people to assist with content ideas, editing, and scheduling. She has also written two books and been invited to speak all over the world. *Amicus* Dr. Varshavski too has hired both full- and part-time employees to help him produce his show. Similarly,

*amicus* Mr. McCarty acknowledges that, without internet platforms recommending his family’s videos, he would not be able to provide for his family as a full-time creator. Meanwhile, after years of developing his own YouTube channel, *amicus* Tim Schmoyer was able to launch an agency, Video Creators, to help thousands of other YouTubers grow their audience online, too.

Without recommendation mechanisms distributing creators’ work to potentially interested users, the creator economy would likely shrink: Aspiring creators may have fewer incentives or opportunities to launch their channels, and current creators might see their viewership, impact, and businesses diminish, leading to less diverse discourse online.<sup>49</sup>

*Second*, disturbing Section 230’s current protections for recommendations could reduce the flow of controversial, intellectual, or innovative free

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<sup>49</sup> Platform changes to curation mechanisms have previously had an immediate and real impact on creators’ small businesses. *See, e.g.,* Becky Hughes, *Food Businesses Lose Faith in Instagram After Algorithm Changes*, N.Y. Times (Mar. 22, 2022), <https://www.nytimes.com/2022/03/22/dining/instagram-algorithm-reels.html>. For example, when Instagram changed its algorithm to prioritize short-form videos in early 2022, “[a]ccounts that [didn’t] regularly post the short-form videos appear[ed] below those that ha[d] embraced” those videos, “resulting in a notable drop in engagement in posts—and, in turn, sales—for many small businesses.” *Id.*

expression (or content that is perceived as such by an algorithm). Facing potential liability for recommendations, platforms might be pressured to moderate the content itself more aggressively, which would also harm creators. Closely reviewing every video or post that a platform might recommend would be onerous, and likely impossible, for most platforms. Instead, platforms might opt for arbitrary or blanket moderation for recommendations. They may recommend only content falling into categories where those platforms anticipate the liability risks might be the lowest. For example, platforms might decide to only recommend news videos from major news organizations, or might decide not to recommend any news or news-related videos at all. Another platform might opt to recommend only videos about noncontroversial subjects—say, videos featuring cosmetics tutorials, cute animals, or “unboxing” of popular children’s toys. Platforms for sharing written work might similarly take a conservative approach, recommending writings by established trade authors and further entrenching major players while harming academic or less-established authors. This, too, would harm creators, because platforms would promote only the most generic, sanitized, and mainstream content while disregarding more specialized, challenging, or valuable content.

Such content moderation might particularly disadvantage creators whose content is difficult for a platform (and its algorithmic curation system) to

distinguish from harmful content.<sup>50</sup> For example, news reporting or commentary about terrorist groups and informational videos about sexual-health resources might be mistaken for harmful content and excluded from algorithmic recommendations. Creators, storytellers, and educators seeking to provide information about controversial topics would become unable to reach those who might benefit from the information.

For smaller, emerging platforms that have fewer resources for nuanced content moderation, arbitrary moderation becomes even more likely. This is particularly troubling because the ability to share information about debated and less-explored topics is essential for a vibrant democratic discourse, as recognized by Congress in enacting Section 230 and as reflected by the importance of First Amendment values in American society. Pressure to limit content recommendations for fear of litigation could hamper the free flow of creators' speech and ideas online.

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<sup>50</sup> Due to reliance on algorithmic and autonomous filtering to curate billions of pieces of user-created content, even well-meaning content moderation can have unintended impacts. For example, one study reports that YouTube's algorithmic moderation of South Korean videos deprioritized political speech in an effort to minimize hate speech on the platform. See Kitae Kim and Shin-Il Moon, *When Algorithmic Transparency Failed: Controversies Over Algorithmic-Driven Content Curation in the South Korean Digital Environment*, *Am. Behav. Scientist*, 850–51 (2021).



Instead, today, recommendations allow a diversity of speakers and speech to flourish. For *amicus* Mr. Mirg, this is essential. He believes recommendations promote viewers' freedom to choose who they want to learn from and what they want to learn. Without recommendations, he worries that our collective perspectives on every topic would be more limited. Online discourse today is not restricted to a few perspectives, cherrypicked by social-media companies seeking to minimize potential liability. Rather, creators' success is driven by recommendations based on users' own interests allowing a more diverse marketplace of ideas, because users themselves come to social media with different intellectual and cultural interests and perspectives. Similarly, *amicus* Dr. Varshavski believes that the Internet today allows for creativity, diversity, and accuracy that might not otherwise exist. From his perspective, to be successful in media in the past, a creator had to please a producer; but now, in this democratized modern world, creators answer to their audiences instead.

*Third*, changes to Section 230(c)(1) would ultimately entrench dominant platforms and limit smaller ones and new entrants. This would harm creators, too, as they rely on unique and independent platforms to reach niche and targeted audiences, and rely on competition among platforms for new and better opportunities. Smaller platforms would likely face more pressure to limit recommendations or, alternatively, would fear spending hundreds of

thousands of dollars on litigation, which is not feasible for smaller or nascent enterprises.<sup>51</sup> Investors, too, may be hesitant to invest in developing new types of platforms—a particular concern for Section 230’s drafters.<sup>52</sup> This would likely further entrench dominant players and deter new and unique platforms, ultimately leading to fewer and less diverse platforms for creators to share their expressive works.

*Amicus* Alex Su has experienced the value of competition among platforms for creators. Mr. Su first built his audience on LinkedIn when the professional-networking platform was emerging as a content competitor to other social media platforms. Historically, LinkedIn was viewed as an online resume database, Su says; but around 2016, it also began delivering more compelling content to users. Mr. Su believes that, at the time, it would have been difficult for him to build an audience on more

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<sup>51</sup> See Engine, *Startups, Content Moderation, & Section 230*, 4–5 (2021), <https://bit.ly/3XnGG15> (explaining that litigation costs can range from \$3,000 to more than \$500,000 depending on progression of case).

<sup>52</sup> See 164 Cong. Rec. S1849, *supra*, at S1870 (Statement of Sen. Ron Wyden) (“If internet startups are no longer protected by [S]ection 230 and they are exposed to the threat of near constant litigation, it is going to be a lot tougher for them to secure injections of funding and grow. Fewer venture capital firms will be willing to risk their deep pockets if their early-round investments are swallowed up by legal fees instead of paying for coders.”).

mainstream platforms that were already crowded with established creators, like YouTube. But, on an emerging content platform like LinkedIn, Mr. Su was able to quickly grow an audience. While he later expanded to other platforms, he believes that the existence of a new entrant to the social-media landscape allowed him to reach a niche audience—lawyers—through recommendations on that platform. He experienced the same dynamic when he joined TikTok in 2020, when the platform was still a newcomer on the American social-media scene. Once again, Mr. Su explains, he gained an audience quickly because there were few TikTok creators posting law-related content at the time.

Ultimately, removing intermediary immunity for recommendation and curation would shift the Internet away from its more democratic roots and likely foreclose opportunities for newer, emerging, and independent creators to find audiences. This would hurt Internet users—effectively, all of us—because they would be less likely to find relevant, thought-provoking, and entertaining content online. It also would undermine Congress’s policy of developing the Internet as “a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.”<sup>53</sup>

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<sup>53</sup> See 47 U.S.C. § 230(a)(3).

**CONCLUSION**

For the reasons set forth above, this Court should affirm the decision of the Ninth Circuit.

Respectfully submitted,

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