

Nos. 22-277, and 22-555

IN THE  
**Supreme Court of the United States**

---

ASHLEY MOODY, ATTORNEY GENERAL OF FLORIDA,  
ET. AL.,

*Petitioners,*

v.

NETCHOICE LLC, ET AL.

*Respondents.*

---

NETCHOICE LLC, ET AL.,

*Petitioners,*

v.

KEN PAXTON, ATTORNEY GENERAL OF TEXAS,

*Respondents.*

---

**On Writs of Certiorari  
to the United States Courts of Appeals  
for the Fifth and Eleventh Circuits**

**BRIEF OF *AMICI CURIAE*, THE  
MODERATORS OF R/LAW AND R/SCOTUS**

GABRIEL LATNER  
*Counsel of Record*  
Advocan Law LLP  
157 Adelaide W #300  
Toronto, ON,  
M5H 4E7  
(202) 813-0880  
gabriel@advocan.ca

**QUESTION PRESENTED**

1. Whether the laws' content-moderation restrictions comply with the First Amendment?

## TABLE OF CONTENTS

QUESTION PRESENTED.....	i
TABLE OF AUTHORITIES.....	iii
INTEREST OF <i>AMICI CURIAE</i> .....	1
Reddit Allows Users Like Amici to Create and Curate Their Own Social Media Platforms (“Subreddits”). .....	1
Amici Operate the R/Law and R/Scotus Subreddits.....	3
SUMMARY OF ARGUMENT.....	6
ARGUMENT .....	6
Amici Censor Irrelevant and Inappropriate Speech to Cultivate Healthy Online Communities Built on Common Interests. This Includes Removing Death Threats Aimed at Members of This Court.....	9
Amici Could Be Sued for Censoring Internet Trolls Who Are Calling for the Execution of Supreme Court Justices.....	19
Those Who Are “Censored” by Amici Can Speak Elsewhere. ....	22
CONCLUSION .....	26

## TABLE OF AUTHORITIES

### CASES

<i>Manhattan Cmty. Access Corp. v. Halleck</i> , 139 S.Ct. 1921 (2019).....	7, 8, 26
<i>NetChoice LLC v. Paxton</i> , 49 F.4th 439 (5th Cir. 2023) .....	7

### STATUTES

Tex. Bus. & Com. Code § 120.001	19
Tex. Bus. & Com. Code § 143A.008	21

### OTHER AUTHORITIES

<i>Patriots.win</i> , “TRUMP TWEET DADDY SAYS BE IN DC ON JAN. 6 <sup>TH</sup> ” available at <a href="https://tinyurl.com/y57zawe5">https://tinyurl.com/y57zawe5</a> .....	24
r/IamA, “I am Barack Obama, President of the United States – AMA,” available at <a href="https://tinyurl.com/298y6m7w">https://tinyurl.com/298y6m7w</a> .....	9
r/IamA, “I’m Bill Gates, co-chair of the Bill & Melinda Gates Foundation. Ask Me Anything,” available at <a href="https://tinyurl.com/4mb38rs6">https://tinyurl.com/4mb38rs6</a> .....	9
r/IamA, “Me COOKIE MONSTER. Me want you to come visit me on Sesame Street! Me will bring da COOKIES! AMA,” available at <a href="https://tinyurl.com/yc3y8tss">https://tinyurl.com/yc3y8tss</a> .....	9
<i>Reuters</i> , “Reddit bans 'The_Donald' forum amid broad social media crackdown,” June 29, 2020, available at. <a href="https://tinyurl.com/a63t95mc">https://tinyurl.com/a63t95mc</a> .....	23
<i>Washington Post</i> , “TheDonald’s owner speaks out on why he finally pulled plug on hate-filled site.” February 5, 2021, available at <a href="https://archive.is/hrbNs">archive.is/hrbNs</a> ..	24

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

*Amici* are the volunteer moderators of two Reddit communities (‘subreddits’) focused on legal issues: r/law, and r/SCOTUS. They are directly affected by the two laws under consideration.

This extended interest statement explains *amici*’s somewhat unique position and expertise.

*Reddit Allows Users Like Amici to Create and Curate Their Own Social Media Platforms (“Subreddits”).*

Reddit is the self-described “front page of the internet.”

All content on Reddit – which generally consists of text, images, videos, or links to other websites – is submitted (‘posted’) by its users. These posts are made to specific sub-domains called ‘subreddits’. Each subreddit has a distinct URL. For example, r/law’s URL is reddit.com/r/law.

Subreddits are created and controlled by users (moderators). Any Reddit user can create a new subreddit and become its first moderator.

Moderators can make several choices about how to run their subreddits. They can make them public, so anyone with an internet connection can view the subreddit and its posts. Or a subreddit can be made private in which case only approved users have access.

---

<sup>1</sup> No party’s counsel authored any part of this brief. No person or entity, other than *amici* and their counsel, paid for the brief’s preparation or submission.

Once a post has been created, other users can interact with it by commenting or voting. A post can be ‘upvoted’ or ‘downvoted’. Posts with a higher net vote, will (generally) appear higher up on a subreddit’s page.

Moderators can also control how users interact with a specific post. They can ‘lock’ a post (preventing further comments), and they can ‘sticky’ a post (keeping it at the top of the list of the subreddit’s post, regardless of how many votes it gets).

Moderators can also:

- delete posts and comments;
- ban users from the subreddit (a banned user cannot post or comment, but can still view the subreddit unless it is set to private); and,
- allow only pre-approved users to make posts, or comment.

Moderators can use automated tools to help administer their subreddits. One popular tool uses keywords to screen and remove posts and comments containing racial slurs or other prohibited content. Automatic moderation is necessary given the volume of content that gets posted on an hourly basis.

There are subreddits for *everything* – in some cases, more than one subreddit. Most are very small, with only a handful of members. Some are extremely peculiar. Some, it must be noted, are devoted to pornography, and not the sort published by Playboy. Any justice or clerk who elects to do some research from a government computer is forewarned.

*Amici Operate the R/Law and R/SCOTUS  
Subreddits.*

As of writing, r/law has more than 230,000 subscribers (i.e. user accounts that have chosen to see posts on r/law as part of their personalized feed). This puts r/law in the top one percent of subreddits by size. By comparison, r/SCOTUS has only 46,000 subscribers, but is still in the top two percent. (As noted, there are *a lot* of subreddits.) On occasion, content from these two subreddits becomes popular enough that it is visible on r/all, a feed of the most popular content on Reddit, visible to all 430,000,000 users, whether or not they have subscribed to the subreddits.

R/law is “a place to discuss developments in the law and the legal profession.” Its top post of all time is this screenshot of a tweet:



More serious topics are covered, and the subreddit saw a huge influx of users and content during the Trump presidency and its many legal entanglements. R/law currently averages 40,000 unique visitors each

day and had just under seven *million* page views in September 2023.<sup>2</sup>

R/SCOTUS is a smaller subreddit devoted to “covering the Supreme Court of the United States, its past, present and future cases, its members, and its impact on the nation.” Its top post of all time was a link to this Court’s decision in *Dobbs*. It had approximately 400,000 page views in September.

*Amici*, the moderators of these two subreddits, are self-processed censors. They are trying to maintain a certain standard of substantive, constructive, conversation. To do that, they must remove content that does not enrich – or worse, actively harms – the subreddits.

A stickied post on r/law – the first post that any visitor to the subreddit will see – sets the expected tone, and outlines the moderators’ censorship policies:

This is not a place to be wrong and belligerent on the Internet. If you want to talk about the issues surrounding Trump, the warrant, 4th and 5th amendment issues, the work of law enforcement, the difference between the New York case and the fed case, his attorneys and their own liability, etc. you are more than welcome to discuss and learn from each other. You don't have to get everything exactly right but be open to learning new things.

---

<sup>2</sup> To the best of *amici*’s knowledge, this only includes users who visit the specific subreddit, and not users who view the subreddit’s content through the “r/all” feed.



You are not welcome to show up here and "tell it like it is" because it's your "truth" or whatever. You have to at least try and discuss the cases here and how they integrate with the justice system. Coming in here stubborn, belligerent, and wrong about the law will get you banned. And, no, you will not be unbanned.<sup>3</sup>

r/SCOTUS, has a similar, but lengthier, policy under the title “Things that will get you banned.”<sup>4</sup>

Not everyone approves of *amici* and their policies. For example, the aptly named user “HateSpeechLuvr” had this to say about one moderator:

u/HateSpeechLuvr · [N](#) [P](#) 2 years ago [Quote](#) [Report](#) [source](#)

Orangejulius is a faggot pedophile nigger who needs to be shot.

Under the challenged laws, removal of such a scintillating contribution to legal discourse would require *amici* to provide HateSpeechLuvr with an individualized explanation for the removal, *and* expose *amici* to the risk of legal action by the state, or, more dangerously, private actors (like Mr. Luvr).

*Amici* would like to continue to maintain r/law and r/SCOTUS as forums for productive conversations about topics that interest them.

They would rather not be sued for their efforts.

---

<sup>3</sup> r/law, “This is not a place to be wrong and belligerent about it,” available at <https://tinyurl.com/4tukt84m>.

<sup>4</sup> r/SCOTUS, “Things that will get you banned,” available at <https://tinyurl.com/3ssr8rc7>.

## SUMMARY OF ARGUMENT

*Amici* moderate the social media platforms *r/law* and *r/SCOTUS* on the website *reddit.com*. Through content curation and careful moderation, they have built and maintained a significant audience interested in viewing and constructively contributing to these internet forums.

Now, Florida and Texas are trying to commandeer the audience and platform *amici* have built, and force *amici* to host and publish content that *amici* object to. This content includes inappropriate remarks (and even threats) directed at members of this Court.

As distasteful as this content may be, it is protected by the First Amendment. But that protection only extends to government actors. *Amici* are private actors, and the forums they control are *private* forums. Those who are censored are free to make their own websites to host their speech. They are not free to hijack *amici's* websites.

These laws violate the First Amendment and should be struck down.

## ARGUMENT

The position of the states, and the Fifth Circuit below, is incompatible with this Court's holdings that the First Amendment cannot force a private actor to carry or subsidize another's speech.

If Texas and Florida had passed laws prohibiting 'view-point discrimination' by, say, traditional publishers, sign painters, or cake decorators, not even the Fifth Circuit would have entertained their

legitimacy, even if the result was corporations “muzzling” individual speakers. *NetChoice LLC v. Paxton*, 49 F.4th 439, 445 (5th Cir. 2023).

These doctrinal arguments are more than ably made by counsel for NetChoice and the CCIA.

They were also made, succinctly, by r/law user “MrFrode,” who, in response to the Fifth Circuit’s decision, commented that “*Manhattan Community Access Corp. V. Halleck* would like to say hello.”

*Halleck* doesn’t just say hello. It says:

[W]hen a private entity provides a forum for speech, the private entity is not ordinarily constrained by the First Amendment because the private entity is not a state actor. The private entity may thus exercise editorial discretion over the speech and speakers in the forum.

...

[A] private entity who provides a forum for speech is not transformed by that fact alone into a state actor. After all, private property owners and private lessees often open their property for speech. Grocery stores put up community bulletin boards. Comedy clubs host open mic nights...

If the rule were otherwise, all private property owners and private lessees who open their property for speech would be subject to First Amendment constraints and would lose the ability to exercise what they deem to be appropriate editorial discretion within that open forum. Private property owners and

private lessees would face the unappetizing choice of allowing all comers or closing the platform altogether. "The Constitution by no means requires such an attenuated doctrine of dedication of private property to public use." *Hudgens*, 424 U.S. at 519, 96 S.Ct. 1029 (internal quotation marks omitted). Benjamin Franklin did not have to operate his newspaper as "a stagecoach, with seats for everyone." F. Mott, *American Journalism* 55 (3d ed. 1962). That principle still holds true. As the Court said in *Hudgens*, to hold that private property owners providing a forum for speech are constrained by the First Amendment would be "to create a court-made law wholly disregarding the constitutional basis on which private ownership of property rests in this country." 424 U.S. at 517, 96 S.Ct. 1029 (internal quotation marks omitted). The Constitution does not disable private property owners and private lessees from exercising editorial discretion over speech and speakers on their property." *Halleck*, 139 S.Ct. 1921 at 1930.

Unless this Court intends to overturn *Halleck*, it is dispositive of the question presented.

For that reason, *amici's* submissions do not focus on the law. Instead, *amici* hope to offer the Court the benefit of their experience dealing with all the wonderful and terrible things the internet has to offer.

*Amici Censor Irrelevant and Inappropriate Speech to Cultivate Healthy Online Communities Built on Common Interests. This Includes Removing Death Threats Aimed at Members of This Court.*

As noted by the Solicitor General, this Court has repeatedly held that censorship itself is a form of expression. *See*, Brief *Amicus Curiae* of the United States in Support of Certiorari, at p.14.

In fact, some kinds of expression can **only** flourish in heavily moderated or curated forums.

Consider one of the most popular subreddits, r/IamA (standing for both ‘I am a’ and ‘ask me anything’), which features interviews with interesting people, with the questions asked directly by users. It has more than 23 million subscribers, and has featured interviews with illustrious subjects including (then sitting) President Obama,<sup>5</sup> Bill Gates,<sup>6</sup> and Sesame Street’s Cookie Monster.<sup>7</sup>

Given the size of its audience, there are a lot of people who want the publicity and attention that being interviewed on r/IamA affords. However, not everyone can be an interview subject. The moderators

---

<sup>5</sup> r/IamA, “I am Barack Obama, President of the United States – AMA,” available at <https://tinyurl.com/298y6m7w>.

<sup>6</sup> r/IamA, “I’m Bill Gates, co-chair of the Bill & Melinda Gates Foundation. Ask Me Anything,” available at <https://tinyurl.com/4mb38rs6>

<sup>7</sup> r/IamA, “Me COOKIE MONSTER. Me want you to come visit me on Sesame Street! Me will bring da COOKIES! AMA,” available at <https://tinyurl.com/yc3y8tss>.

have rules, which they enforce. Posts by people not considered notable or interesting enough are removed, as are posts by would-be interviewees who cannot prove their *bona fides*.

Under the challenged laws, when the moderators of r/IamA remove these ‘uninteresting’ posts, those posters are being illegally censored.

They are being censored – in the same way that an opinions editor is engaged in ‘censorship’ when choosing to publish an op-ed by a prominent person, instead of some random individual no one has ever heard of, like that guy with a boot on his head.<sup>8</sup>

This censorship is what makes subreddits valuable. Censorship is a feature, not a bug, and these platforms will not function properly if Texas and Florida prohibit *amici* and other moderators from removing off-topic or otherwise unwelcome content.<sup>9</sup>

If r/IamA wasn’t selective, and didn’t require posters to prove their identities, it wouldn’t have nearly the same attraction. (This is not speculation. R/AMA is similarly formatted, but less moderated subreddit, which lets anyone post, and does not require proof of any kind. It has less than five percent of r/IamA’s members, and a fraction of its pageviews.)

*Amici* censor r/law and r/SCOTUS for the same reasons – to foster a particular kind of expression.

---

<sup>8</sup> e.g., “Vermin Supreme” *Wikipedia*, available at [https://en.wikipedia.org/wiki/Vermin\\_Supreme](https://en.wikipedia.org/wiki/Vermin_Supreme)

<sup>9</sup> Which is entirely inconsistent with the argument that SMPs are common carriers.

But they also remove content simply because they find it repulsive, and do not want to be associated with it. For example:



r/scotus  
u/BharatiyaNagarik · 2y

**By a 5–4 vote, with Roberts joining the liberals, the Supreme Court REFUSES to block Texas' six-week abortion ban.**



Bill27timesEpstein · 2y




Hahahahaha...you whores can't get cream pied no more....hahaha...learn to take responsibility for your actions instead of killing....hahaha hahaha

 r/law  
u/bobbyw24 · 6h

### Supreme Court's John Roberts says judicial system 'cannot and should not live in fear'



 207   79  Mod  Award

 wiedmaier · 5h 

We've got the guillotine, you'd better run.

...   Reply  1 









 r/scotus  
u/newzee1 · 12d







## It Turns Out John Roberts Was Right About Supreme Court Ethics Rules



 1369   130  Moderate

[VIEW PARENT COMMENT](#)

 doctorkanefsky · 11d   
Corrupt justices should face justice on the national mall.  
...   Reply  3 

 Bear71 · 10d   
Yep set up some nice shiny guillotines!  
...    2 

 r/law  
u/bobbyw24 · 4h

### Supreme Court's John Roberts says judicial system 'cannot and should not live in fear'



 142   54  Mod  Award



BakedSwagger · 1h



I strongly disagree. Once some judges learn that what happened to Marie Antoinette can happen to them too, I doubt they'd be quite so brazen and arrogant

...   Reply  2 



r/scotus  
u/Lollifroll · 1y · i.redd.it

### Justice Jackson's Official SCOTUS Portrait



854



46



Mc



Equivalent\_Fennel795 · 1y

Is that a woman?



Reply

1



r/scotus  
u/muhabeti · 1y



### Group offers up to \$250 for SCOTUS justices sightings after Kavanaugh protest



608



235



Moderate

VIEW PARENT COMMENT



cultivandolarosa · 1y



Promoting violence is the only rational response, which is why the authorities don't want you to do it.



Reply



-6



 r/scotus  
u/jgeorge20 · 1y

### Sotomayor praises Clarence Thomas: 'He is a man who cares deeply about the court as an institution'



 236   238  Moderate

 Lucky-Wrap-9039 · 1y 

Wow didn't know Sotomayor was a Nazi.

...   Reply  1 



### Supreme Court Justice Neil Gorsuch again doesn't wear mask on bench, Sotomayor and Breyer log in remotely



↑ 65 ↓    💬 26    🛡 Moderate



RigobertoRumer1972 · 1y



Yeah well Neil can Gorsuch a dick

⋮    🛡    ↩ Reply    ↑ 1 ↓

This is some of the *mildest* content *amici* have ‘censored’.

They’ve also had to remove much worse, including posts containing the physical addresses of the Justices, their clerks, and court staff, as well as celebrations of the death of Justice Ginsburg.

This is the speech that *amici* are censoring. This is the censorship that HB20 will prohibit.

*Amici Could Be Sued for Censoring Internet Trolls  
Who Are Calling for the Execution of Supreme Court  
Justices.*

The core definition of an SMP under HB20 is “an Internet website or application that is open to the public, allows a user to create an account, and enables users to communicate with other users for the primary purpose of posting information, comments, messages, or images,” Tex. Bus. & Com. Code § 120.001.

In addition to Reddit, Facebook, YouTube, Twitter, and TikTok, the statutory definition captures:

- SSRN, Academia.edu, and other SMPs where academics self-publish research.
- Wikipedia, and all other ‘wikis’ that rely on users to author and edit (i.e. ‘censor’) articles.
- StackExchange, Quora, and other question-and-answer websites, some of which are devoted to highly technical fields.
- Any web forum or bulletin board, and the entirety of UseNet.
- Any platform that allows users to create and share their own websites, blogs, videos, music, or podcasts (including Blogger, Wix, WordPress, Tumblr, Medium, and Soundcloud, as well as YouTube).
- Platforms that let users self-publish art and fiction, including Wattpad, DeviantArt, Imgur, and Amazon Kindle.



- E-Commerce platforms that let anyone sign up to advertise and sell their products, including Amazon Marketplace, eBay, and Etsy.
- Websites like GitHub, that host user generated computer code (including a significant portion the world’s free and open-source software).
- Dating apps and websites like Tinder and OkCupid. (Where the users *are* the content!)

As a result of the language used in drafting these laws, effectively any website or app that features user-generated content must operate under the assumption that it is an SMP, and subject to these laws (including all the risks and penalties that they impose).<sup>10</sup>

Those risks are not insignificant. HB20 prohibits certain conduct *by*, and authorizes actions *against*, SMPs themselves (i.e. the website or application) rather than the entities that own or operate them.

When HB20 authorizes the Attorney General to “bring an action to enjoin a violation or potential violation,” it is authorizing Mr. Paxton and his successors to sue *amici* if they choose not to publish content they find objectionable (like threats against

---

<sup>10</sup> The user thresholds, while evidence that the states intended to target specific SMPs, do not alleviate this concern. First, these thresholds are entirely arbitrary. Second, as noted at p.4, footnote 2, it is unclear whether *all* of Reddit’s 430 million active users would count towards the threshold for any individual subreddit.



members of this Court). Tex. Bus. & Com. Code § 143A.008.

If the Attorney General of Texas (who has not been treated kindly by the subreddits' users)<sup>11</sup> decides that the moderation policies of *r/law* and *r/SCOTUS* (or *r/Texas*) violate HB20, he doesn't need to sue Reddit Inc. (the California based, multi-billion-dollar corporation that owns and operates Reddit). Instead, he is empowered to bring an action against the *moderators* to enforce compliance. In fact, the statute is broadly enough worded that the Attorney General could bring an action for an injunction requiring all ISPs in Texas to block the 'offending' SMP (which is the only way that HB20 could be enforced against foreign or decentralized SMPs), creating Texas's own version of China's Great Firewall. (All, of course, in the name of "protecting" speech, and "chilling" censorship.)

Even if the Honorable Attorney General declines to exercise his prosecutorial discretion, HB20 authorizes individual users like HateSpeechLuvr to sue SMPs directly (if they're located in Texas). Tex. Bus. & Com. Code § 143A.008.

*Amici* have no way of knowing if HateSpeechLuvr or any other user who visits their subreddits is from Texas, and so every moderation decision would necessarily be impacted by the potential threat of

---

<sup>11</sup> For example, the comments on *r/law*, "Texas Attorney General Ken Paxton Likely Broke Laws, Republican Investigation Finds," available at <https://tinyurl.com/3xbntn6w>

litigation (consistent with the Fifth Circuit's view that these laws chill censorship).

*Those Who Are "Censored" by Amici Can Speak  
Elsewhere.*

If someone sitting in the gallery of the Supreme Court stood up and started screaming, they would be very swiftly removed (and potentially prosecuted). The Supreme Court cannot function if there are hecklers drowning out the conversation the Justices are trying to have with counsel.

R/SCOTUS and r/law cannot function if there are hecklers (on the internet, we call them trolls) drowning out substantive conversations with an unending stream of vulgar, racist, sexist, or just plain *stupid*, argle-bargle.

*Amici* choose instead to ban the trolls. This does not silence the trolls. The internet provides them with an unlimited number of alternative bridges to haunt and howl under.

A Reddit user who is banned from (or just doesn't like the moderation policies of) r/law or r/SCOTUS is free to create their *own* subreddit, devoted to the same topic, but with different rules. Creating a new subreddit is completely free and requires minimal effort. All you need is an account.

A user dissatisfied with the way that Reddit *as a whole* is censored or operated has an even bolder option: they can create their own website.

That is what one cert-stage *amicus* did. Former president Trump got kicked off Twitter, so he went

and started his own SMP called “Truth Social,” where he gets to decide who gets published, and who gets deplatformed.<sup>12</sup>

The system works!

That wasn’t sarcasm. Trump didn’t like how he was treated on Twitter, so he created Truth Social. Now, there is one more SMP for users to choose from. There is more speech, on more platforms, not less.

And all because of the “censorship” that so frightens Florida, Texas, and the Fifth Circuit.

Less prominent and wealthy individuals have the same option. Making websites is easy, cheap and (for the time being) requires no special government permits.

This is not mere speculation. R/The\_Donald was once a popular subreddit (with more than 800,000 members) devoted to promoting the former president, whom they, with increasingly alarming sincerity, called the “God Emperor of the United States.” Eventually, Reddit Inc. chose to shut it down entirely due to its members’ bigotry and repeated calls for violence.<sup>13</sup>

Instead of being silenced, a large section of r/The\_Donald’s userbase migrated to a new SMP, ‘TheDonald.Win’, where they continued expressing themselves freely **until the website’s owner and**

---

<sup>12</sup> Which has so few users that it wouldn’t be subject to either of the challenged laws.

<sup>13</sup> *Reuters*, “Reddit bans ‘The\_Donald’ forum amid broad social media crackdown,” June 29, 2020, available at <https://tinyurl.com/a63t95mc>.

**creator** shut it down in the wake of the January 6 capitol attack.<sup>14</sup>

The community then moved to a third site, Patriots.win, which is still operational. Its top post of all time is the former president’s tweet calling for a “big protest” in DC on January 6, 2021. The top comment on that post is: “Well, shit. We've got marching orders, frens.”<sup>15</sup>

This is the horrible beauty of the internet. True censorship is impossible. Any speaker or community kicked off one platform can find or build a new one with ease.

What you can’t get easily is an audience. For that, you need to build a platform that people want to use or create content they want to look at.

And that’s what these laws are really about: eyeballs, audiences, and *reach*. As the name suggests, social media *platforms* make great bully-pulpits.

These laws are not about protecting speech. They’re about politicians ensuring that a favored constituency has access to someone else’s megaphone to spread a message

That only SMPs with many millions of users are targeted by these laws reinforces the point: if the state aims to compel publication of favored speech, it is

---

<sup>14</sup> *Washington Post*, “TheDonald’s owner speaks out on why he finally pulled plug on hate-filled site.” February 5, 2021, available at [archive.is/hrbNs](https://archive.is/hrbNs).

<sup>15</sup> *Patriots.win*, “TRUMP TWEET DADDY SAYS BE IN DC ON JAN. 6<sup>TH</sup>” available at <https://tinyurl.com/y57zawe5>.

natural to target *The New York Times* instead of a neighborhood newsletter.

Fortunately, the First Amendment protects Twitter and Facebook's right to ban nazis, as surely as it protects the Cattlemen's Association's right not to give PETA access to its mailing list.

## CONCLUSION

To strip away all veneers: the far-right wing of the electorate feels like it can't compete in the marketplace of ideas, because it keeps getting kicked off the most popular websites for saying things that offend the operators, other users, or worst of all, the advertisers.

In two states where that delightfully illiterate-yet-verbose constituency has a lot of political power, it has lobbied for laws that would force others to subsidize and facilitate its message.

The First Amendment cannot, and does not, permit that. Racist nazi trolls are free to follow Mr. Trump's example and start their own forums. They are not free to take over and destroy the forums that *amici* and others have built up through years of work.

For these reasons, and so many others, the question presented should be answered in the negative, *Halleck* should be reaffirmed, and HB20 should be struck down.

Respectfully submitted,

GABRIEL LATNER

*Counsel of Record*

Advocan Law LLP

157 Adelaide W #300

Toronto, ON, M5H 4E7

(202) 813-0880

December 7, 2023