

No. 21A720

In the Supreme Court of the United States

NETCHOICE, L.L.C., d/b/a NetChoice, and
COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION, d/b/a CCIA,
Applicants,

v.

KEN PAXTON, in his official capacity as Attorney General of Texas,
Respondent.

ON EMERGENCY APPLICATION TO VACATE STAY OF PRELIMINARY INJUNCTION ISSUED
BY THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

**MOTION FOR LEAVE TO FILE AS *AMICI CURIAE* AND BRIEF OF CHAMBER OF
PROGRESS, ANTI-DEFAMATION LEAGUE, CONNECTED COMMERCE COUNCIL,
CONSUMER TECHNOLOGY ASSOCIATION, ENGINE ADVOCACY, FAMILY
ONLINE SAFETY INSTITUTE, HONR NETWORK, INFORMATION TECHNOLOGY &
INNOVATION FOUNDATION, INTERACTIVE ADVERTISING BUREAU,
IP JUSTICE, LGBT TECH INSTITUTE, MULTICULTURAL MEDIA, TELECOM AND
INTERNET COUNCIL, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE, NATIONAL HISPANIC MEDIA COALITION, OUR VOTE
TEXAS, SOFTWARE & INFORMATION INDUSTRY ASSOCIATION, STOP CHILD
PREDATORS, TECHNET, TEXAS STATE CONFERENCE OF THE NAACP, AND
WASHINGTON CENTER FOR TECHNOLOGY POLICY INCLUSION
AS *AMICI CURIAE* IN SUPPORT OF
EMERGENCY APPLICATION TO VACATE STAY OF PRELIMINARY INJUNCTION**

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MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*¹

TO THE HONORABLE SAMUEL A. ALITO, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:

Chamber of Progress, Anti-Defamation League, Connected Commerce Council, Consumer Technology Association, Engine Advocacy, Family Online Safety Institute, HONR Network Inc., Information Technology & Innovation Foundation, Interactive Advertising Bureau, IP Justice, LGBT Tech Institute, Multicultural Media, Telecom and Internet Council, National Association for the Advancement of Colored People, National Hispanic Media Coalition, Our Vote Texas, Software and Information Industry Association, Stop Child Predators, TechNet, Texas State Conference of the NAACP, and Washington Center for Technology Policy Inclusion, respectfully move this Court for leave to file the enclosed brief as *amici curiae* in support of the applicants' emergency application for immediate administrative relief and to vacate stay of preliminary injunction issued by the United States Court of Appeals for the Fifth Circuit.

Amici are organizations dedicated to ensuring that consumers can enjoy a healthy online environment where they can effectively and efficiently work, play, learn, shop, connect, and express themselves without harassment, disinformation, and incendiary content. To keep online services inclusive, useful, and safe, online providers take a variety of ac-

¹ No counsel for a party authored this brief in whole or in part, and no party other than amicus or its counsel contributed financially to the preparation or submission of the brief. Due to the expedited briefing schedule set by the Court, it was not feasible to give the parties 10 days' notice of the filing of this brief as ordinarily required by this Court's Rule 37.2(a). All parties' counsel consented to the filing of this brief, notwithstanding the shortened notice.

tions, often referred to as content moderation. Online providers understand that these actions are necessary to support the innovation economy and promote equitable access to the benefits of technological innovations.

Chamber of Progress is a technology industry coalition devoted to a progressive society, economy, workforce, and consumer climate. It is an industry organization that backs public policies that will build a fairer, more inclusive country in which all people benefit from technological leaps. Its work is supported by corporate partners, many of whom will be subject to the law at issue.

The Anti-Defamation League (ADL) was founded in 1913 to combat anti-Semitism and other forms of discrimination, to advance goodwill and mutual understanding among Americans of all creeds and races, and to secure justice and fair treatment for all. Today, ADL is one of the world's leading anti-hate organizations, combating all types of prejudice and working to eradicate hate both online and offline. ADL has long played a leading role in raising awareness about hate on the Internet and working with major industry providers to address the challenge it poses.

The Connected Commerce Council (3C) is a nonprofit membership organization with a single goal: to promote small businesses' access to essential digital technologies and tools.

As North America's largest technology trade association, Consumer Technology Association is the technology sector. Its members are the world's leading innovators—from startups to global brands—helping support more than 18 million American jobs. Consumer Technology Association owns and produces CES®—the most influential technology event in the world.

Engine Advocacy is a nonprofit technology policy, research, and advocacy organization that bridges the gap between policymakers and startups. Engine works with government representatives and a community of high-technology, growth-oriented startups across the nation to support the development of technology entrepreneurship.

The Family Online Safety Institute (FOSI) is an international non-profit organization whose mission is to make the online world safer for kids and their families. FOSI encourages enlightened public policy, industry best practices and good digital parenting.

HONR Network is a nonprofit organization founded in 2014 by Lenny Pozner, whose son was murdered during the Sandy Hook school massacre. HONR Network began as an advocate for the survivors and the victims of mass casualty, and highly publicized, violent incidents, who were revictimized online by conspiracy theorists. Since then, the organization has grown to provide guidance and support for those affected by online harassment, working to empower, educate, and advocate on policy for safer, more inclusive online experiences for all.

Founded in 2006, Information Technology & Innovation Foundation (ITIF) is an independent 501(c)(3) nonprofit, nonpartisan research and educational institute—a think tank. Its mission is to formulate, evaluate, and promote policy solutions that accelerate innovation and boost productivity to spur growth, opportunity, and progress.

The Interactive Advertising Bureau (IAB) is an advertising industry trade association that develops industry standards, conducts research, and provides legal support for the online advertising industry. Through its public policy advocacy, IAB works to build a sustainable and consumer-centric media and marketing ecosystem and raise the industry's political visibility and profile as a driving force in the global economy through grassroots advocacy, member fly-ins, research, and public affairs campaigns.

IP Justice, an international 501(c)(3) nonprofit charitable organization based in the United States, has been operating as an international technology rights and civil liberties organization since 2002. It promotes intellectual freedoms and advancement through Internet freedom, innovation policy, and a balance of intellectual property rights between content holders and users.

LGBT Tech Institute is a national, nonpartisan group of LGBT organizations, academics, and high technology companies. It engages with critical technology and public policy leaders about media technology, and telecommunications issues of specific concern to LGBTQ communities.

The Multicultural Media, Telecom and Internet Council (MMTC) is the tech, media, and telecom (TMT) industries' leading non-partisan, national nonprofit diversity organization. MMTC has worked tirelessly to promote and preserve equal opportunity, civil rights, and social justice in the mass media, telecom, and broadband industries, and to close the digital divide on behalf of its members and constituents and others involved in the TMT industries.

The National Association for the Advancement of Colored People (NAACP) is the oldest and largest civil rights organization in the United States. The Texas State Conference of the NAACP (Texas NAACP) is the oldest and one of the largest and most significant organizations promoting and protecting the civil rights of people of color in Texas. The first Texas branches of the NAACP were formed in 1915, and the Texas State Conference was formally organized in 1937. Since then, the Texas NAACP has used litigation, policy advocacy, community organizing, and public education to ensure the political equality of all Texans. The NAACP's and Texas NAACP's mission is to achieve equity, political rights, and social inclusion by advancing policies and practices that expand human and civil rights,

eliminate discrimination, and accelerate the well-being, education, and economic security of Black people and all persons of color. The NAACP and Texas NAACP are keenly aware that HB20 would force platforms to host content that advocates for the reduction and/or elimination of civil rights, promotes discrimination, and threatens the well-being, education, and economic security of Black people and all persons of color.

The National Hispanic Media Coalition (NHMC) is a 36-year-old nonprofit 501(c)(3) civil rights organization that was founded to eliminate hate, discrimination, and racism toward the Latinx community. NHMC educates and increases the visibility of Latinx from Washington D.C. to Hollywood and around the world. NHMC collaborates with other civil rights organizations to safeguard democracy in the United States of America.

Our Vote Texas is a nonprofit organization dedicated to advancing voter rights education and civic engagement in the state of Texas through advocacy and community outreach.

The Software & Information Industry Association (SIIA) is the principal trade association for the software and digital information industries. SIIA's membership includes more than 400 software companies, search engine providers, data and analytics firms, and digital publishers that serve nearly every segment of society, including business, education, government, healthcare, and consumers. It is dedicated to creating a healthy environment for the creation, dissemination, and productive use of information.

Stop Child Predators (SCP) brings together a team of policy experts, law enforcement officers, community leaders, and parents to launch state and federal campaigns to inform lawmakers and the public about policy changes that will protect America's children from sexual predators. Recognizing that sex offender management and child safety must be

addressed both in the real world and the online world, SCP launched the Stop Internet Predators initiative in 2008 to specifically focus on protecting children from online offenders.

TechNet is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy by advocating a targeted policy agenda at the federal and fifty-state levels. TechNet's diverse membership includes dynamic American businesses ranging from startups to the most iconic companies on the planet, representing over four million employees and countless customers.

The Washington Center for Technology Policy Inclusion (WashingTECH) is a 501(c)(3) nonprofit, nonpartisan platform headquartered in Fairfax, Virginia. Its mission is to fight for a safer and more trustworthy internet by teaching technology law & policy to everyone who wants to shape it.

Amici and their members have a strong interest in reinstatement of the district court's preliminary injunction prohibiting Texas from enforcing Texas House Bill 20 (HB20) while the courts determine its legality. HB20 poses a direct threat to healthy and safe online communities by restricting, undermining, and burdening the ability of online providers to exercise their First Amendment rights to moderate content on their private services. *Amici* therefore seek to file this brief in order to further support the applicants' showing that vacating the Fifth Circuit's stay of the district court's preliminary injunction is critical to prevent enormous irreparable harm and to protect the public interest while the legality of HB20 is adjudicated.

May 17, 2022

Respectfully submitted,

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ASSOCIATION, STOP CHILD PREDATORS, TECHNET, TEXAS STATE
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INTRODUCTION AND INTERESTS OF *AMICI CURIAE*

The advent of the Internet created powerful new means for people to gather socially, providing us novel ways to share our stories, to mourn and celebrate together, and to discuss—indeed, often debate—topics ranging the entire breadth of human experience. Online platforms allow friends and family not just to keep in touch, but to maintain lively conversations across time and distance. These communities have created millions of new relationships—from the professional to the romantic. Countless businesses have been built with these platforms. Many people have found celebrity online, be it for a popular video series, a newly discovered musical talent, or a simple tweet gone viral. Yet far more of us consume this content, passively enjoying the creative talents of others. We turn to social media for entertainment, for news, for education, and for self-expression.

The power of these platforms derives from their immediacy, interactivity, and diversity of content driven by users who not just create content, but also react, share, and comment. Yet those very features that make platforms compelling also introduce risks of misuse that, if unchecked, can overrun services. Absent basic content moderation, unsolicited commercial advertisements—often referred to as “spam” in Internet vernacular—will quickly overtake a platform, drowning out the valuable content. And that is just the start. Vile, graphic videos and images can proliferate. Reprehensible speech—such as the glorification of terrorist attacks and the dissemination of pro-Nazi views—will target communities struggling to recover from violence and loss. Hostile foreign governments may hijack these platforms to engage in disinformation campaigns on American soil.

Recognizing these realities, online platforms have designed their communities to employ a wide variety of content moderation policies. While the precise rules differ across sites according to their purposes, these platforms broadly seek to create experiences for

their users that are safe, productive, and enjoyable. Indeed, it is no leap of logic to recognize that the most successful platforms—those with the most regular users—have adopted policies that provide consumers the sort of online environment they most wish to join.

Texas House Bill 20 (HB20) threatens to eviscerate this content moderation overnight. For only those online platforms that are the most successful—those with 50 million or more regular users—Texas would hold that, if a platform allows discussion of a general topic or category, it is effectively prohibited from engaging in content moderation as to that issue. If a platform allows discussion of current events, HB20 would apparently preclude moderation of disinformation campaigns coordinated by foreign powers regarding the ongoing hostilities in Ukraine. If a platform hosts videos encouraging animal conservation, it may be forced to host videos depicting graphic animal cruelty. If a platform allows discussion of matters touching on race, it could not moderate speech glorifying the recent racially-motivated murder of 10 people at a supermarket in Buffalo. Depraved racist ideologies would find safe harbor under HB20, with platforms forced to distribute the “viewpoint” of individuals who assert that those murdered were not worthy of life because of the color of their skin.

As applicants have demonstrated, the First Amendment does not tolerate such enormous infringement of the essential rights of the owners and operators of these platforms. These are privately owned spaces, and the platform operators may employ content moderation rules to establish the sort of communities their users wish to enjoy.

Amici focus on the enormous practical consequences that would result if the Fifth Circuit’s recent order staying the district court’s injunction is left unremedied. At present, platforms rely on content moderation to help millions of Americans work, play, learn, shop, connect, and express themselves on online platforms free from harassment, disinformation,

and incendiary content. But, by foreclosing any meaningful ability of platforms to engage in content curation, HB20 erases their very utility and threatens severe harm to platforms and to their users. It also requires platforms to redesign their essential operations worldwide and to implement onerous notice-and-appeal processes for each of the billions of pieces of content moderated.

The Fifth Circuit’s single-sentence unreasoned order staying the preliminary injunction and catapulting HB20 into immediate effect will cause devastating harms. It places platforms in an impossible position—they must either immediately suspend the vast majority of content moderation on a global basis, allowing their services to be overrun with spam, scams, fraud, disinformation, hate speech, and all manner of graphic and reprehensible content, or they must risk countless lawsuits and state enforcement actions for limiting distribution or the availability of content from or of interest to Texans. The Court should act quickly to preserve the status quo.

SUMMARY OF ARGUMENT

HB20 will have an unprecedented detrimental effect on online platforms as we know them. It will transform social media platforms into online repositories of vile, graphic, harmful, hateful, and fraudulent content, of no utility to the individuals who currently engage in those communities. And it will flood otherwise useful web services with wasteful and irrelevant content. A single-sentence, unreasoned order is an unwarranted way to mandate this devolution. The equities strongly favor vacating the Fifth Circuit’s stay of the district court’s preliminary injunction.

I. To appreciate the magnitude of the harm that HB20 will cause requires placing content moderation in historical context. Content curation is nothing new—in fact, quite the opposite. Businesses that distribute third parties’ messages have long done the same.

Bookstores choose which books to stock and to promote; newspapers choose which letters to the editor to publish. Online platforms do the same. They choose what types of user-generated content fit the platform—whether targeted to social interactions (like Facebook), video sharing (like YouTube), character-limited conversation (like Twitter), professional networking (like LinkedIn), travel reviews (like Tripadvisor), or product reviews (like Amazon). As part of their content-curation choices, platforms must also choose what content *not* to distribute. Platforms have long used terms and conditions and policy statements to advise users of what content is appropriate for the platform and what content is not. Through these processes, platforms engage in their own expression and protect their community—by removing or limiting spam, scams, fraud, phishing, fake accounts, state-sponsored misinformation, hate speech, violence, threats, and abusive and offensive content.

II. HB20 guts platforms’ ability to engage in content curation, harming the communities they have built. HB20’s “censorship” ban precludes platforms from taking any adverse action based on “viewpoint,” leaving platforms with an impossible task. They can either remove an entire category—say, the Ukraine invasion—or they must disseminate Russian state-owned propaganda about it. Examples abound—by allowing content discussing the harmful effects of opioid addiction or promoting supportive resources for addiction,² platforms will apparently have to allow content celebrating opioid abuse; by distributing memorials of victims of terrorist attacks, platforms will have to host content glorifying the terrorists. Platforms will be powerless to moderate racist manifestos; HB20 would force the hosting of content praising race-based murders and hate-filled rhetoric that Black

² Nicole Nguyen, *Instagram Will Show a “Get Support” Pop-Up When Users Search Opioid-Related Hashtags*, BuzzFeed News (Sept. 12, 2018), perma.cc/6AGD-7AT2.

Americans are not entitled to basic human rights. The result will be platforms overrun with content that, while technically lawful, is far out of step from what users wish to view.

HB20's disclosure and appeal provisions likewise cause their own irreparable harms. HB20 requires platforms to provide descriptions of the methods they use to moderate content every six months—giving malicious actors the recipe for evading platforms' rules. These biannual disclosures will make it easier for these entities to overtake platforms with spam, scams, pornography, and illegal activity in addition to the lawful but offensive content they must permit. And HB20's appeal procedures are further designed to gut content moderation. Platforms remove *billions* of pieces of content quarterly—most of which is spam. But HB20 requires giving notice and allowing an appeal for every single content moderation action with a Texas nexus. And, given that HB20 sweeps in all content that could be “receive[d]” by a user in Texas (Tex. Civ. Prac. & Rem. Code § 143A.002(a)), the law is boundless, creating crushing—and likely impossible—administrative burdens.

III. Preliminary injunctive relief is meant for precisely these circumstances. If the Fifth Circuit's order stands, Texas will immediately enforce HB20. That will cause enormous and irreparable harm. Because HB20 has putative *worldwide* effect, it will cause platforms to confront impossibly conflicting laws, as the demands of HB20 cannot be squared with differing legal obligations that arise in other jurisdictions. And even if there were a way to comply with HB20's requirements, its provisions would result in platforms being deluged with oppressive, offensive, and flatly false propaganda, causing users and advertisers to flee the platforms altogether. Moreover, by essentially barring meaningful content moderation, HB20 risks real-life harm—from a scam that takes an elderly individual's savings to reprehensible bullying that encourages a child to harm herself.

It is imperative that the Court act to preserve the status quo, until the legality of HB20 may be fully adjudicated.

ARGUMENT

I. PLATFORMS RELY UPON CONTENT MODERATION TO CREATE SAFE, PRODUCTIVE, AND ENJOYABLE USER EXPERIENCES.

Successful online platforms create digital spaces that their users wish to inhabit. Some are professional networks that help create new business opportunities. Other platforms allow us to share our daily thoughts in short bursts, from the profound to the silly. Yet other platforms allow us to upload and share videos or images that we create. These platforms have created an array of online communities, allowing us to interact in a variety of meaningful ways.

From the beginning, while allowing their users to contribute their own, individual content, platforms have formed rules governing *what* content it will allow. *See Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, 1995 WL 323710, at *2 (N.Y. Sup. Ct. 1995) (describing “content guidelines” of an early online finance message board). And, for that content it permits, platforms choose *how* that material is to be displayed to users.

These content curation policies are hardly surprising, as platform owners have always chosen what content they will disseminate and the manner in which they will organize their content for users. Magazines and newspapers choose what stories they will publish, and where in the publication they will appear. They likewise choose which reader-generated letters they will print, and how and when they will print them. Bookstores and newsstands choose the material they will offer; some of their wares will be prominently displayed in the front, while other material will be kept in the rear, tucked away on a bottom shelf.

Platforms of all sorts curate the content they offer to create the experience that they intend for their customers. If those experiences are positive and well-received, the platforms will thrive. Just as a bookstore will organize its contents to be readily accessible to its customers, even placing some books in the front window to draw passers-by in, online platforms arrange content to entice, inform, and even delight its users. Some platforms organize content topically, like Reddit’s “subreddits” devoted to particular subjects. Others make recommendations, like Facebook’s “suggested for you” posts. Yet others highlight popular content, like Twitter’s “trending” feature. These features create the very essence of the online communities.

In fact, the enormous volume of material posted online enhances the need for platforms to curate content. Users generally engage with platforms because there is content that they wish to see—be it breaking news or posts from their close friends or discussions on a topic of particular interest. Many platforms have mechanisms to individually prioritize content for each of their millions of users, finding individualized harmonies among the din of otherwise irrelevant posts. These tools are one essential form of content moderation.

As night follows day, choices about what content *to* distribute necessarily requires choices about what content *not* to distribute. It is unremarkable that a children’s bookstore would not stock romance novels or that a home-and-garden television network would not air a baseball game. No shopper or viewer would be surprised. The same goes for online platforms. Choices about the content that the platform will not distribute are just as crucial in creating and preserving the platform’s experience. Take, for example, YouTube. Along with its flagship online video-sharing site, the company offers a separate application and website called YouTube Kids with content specifically curated for children. The content

available on each is, of course, markedly different—and expectedly so. And it is the direct result of platforms engaging in careful content moderation.

Content moderation thus enables platforms to foster online communities that fit the needs and values of the platform and its users and advertisers. To do so, platforms have long included standard terms and conditions limiting the content that may be published on their platforms. And users have long agreed to and accepted these terms.

Consider Facebook. It began as a social community for college students and, by September 2006, for most anyone over 13 years of age. *See* Meta, Our History, about.facebook.com/company-info. Facebook’s November 2007 terms of service barred users from posting “any content that we deem to be harmful, threatening, unlawful, defamatory, infringing, abusive, inflammatory, harassing, vulgar, obscene, fraudulent, invasive of privacy or publicity rights, hateful, or racially, ethnically or otherwise objectionable” and warned that it might remove violative content and terminate or bar membership. Facebook, *Terms of Use* 2-3, 8 (Nov. 15, 2007), perma.cc/T65S-63LW. Through these terms, Facebook made clear the type of community that it hoped to foster. As its popularity confirms, users and advertisers liked the community that Facebook created.

LinkedIn has a purposefully different flavor. It is intended for professional connections. LinkedIn policy requires that content be kept “professionally relevant” as well as safe and trustworthy. *See* LinkedIn, *Professional Community Policies* (visited May 15, 2022), perma.cc/V4NX-TUDZ. Violating these policies can result in a user’s account being restricted, suspended, or terminated, and LinkedIn warns that it need not publish any particular content and can remove it with or without notice. LinkedIn, *User Agreement* ¶¶ 2.5, 3.4 (Feb. 1, 2022), perma.cc/B8EK-5LCX.

Tripadvisor has different terms tailored to its community’s needs. Tripadvisor specifically prohibits posting comments “that are not relevant to travel or incite non-travel related discussions” and warns that such content will be removed. Tripadvisor, *Content & Community Guidelines* (May 4, 2022), perma.cc/Y529-LEPL.

Amazon similarly has policies keeping its product reviews “helpful, relevant, meaningful, and appropriate.” Amazon, *Community Guidelines* (visited May 15, 2022), perma.cc/SLZ7-LCT8. Amazon makes clear that violating the guidelines threatens the trustworthiness, safety, and utility of its community and that content may be removed or accounts suspended or terminated for violating them. *Id.*

Through enforcing these policies, platforms foster and protect the purpose of their community. Particularly in the online context, the ease of posting and reproducing content means that, absent content moderation policies, platforms would be overrun with lawful but nonetheless awful, irrelevant, low-quality, and nuisance content. Platforms thus use their policies to preclude activity that, while not in violation of the law, is destructive of the platform itself.

These harmful activities include content like spam, phishing, scams, and deceptive practices. For example, YouTube bars video spam—including videos that are excessively posted, that promote get-rich-quick schemes, or that direct viewers to sites spreading harmful software, among many other things. *See* YouTube, *Spam, Deceptive Practices, & Scams Policies* (visited May 15, 2022), perma.cc/NR5H-ZMPJ. YouTube also bars spam in its comments section, precluding users from leaving large amounts of identical or repetitive comments, comments intended to gather personal information from viewers, or comments that misleadingly direct viewers to other sites. *Id.* Facebook similarly has policies designed to protect against spam; for example, it bars posting content at very high frequencies, posts

that direct users off the site through misleading links, or messages that offer false or non-existent services or functionality. Meta, *Facebook Community Standards: Spam* (visited May 17, 2022), perma.cc/WD7C-ZTVF.

Platforms also moderate extreme and misleading messaging—including pro-Nazi speech, support of terrorism, and misinformation campaigns. Recently, platforms have aggressively removed disinformation intended to skew public perceptions about the Russian invasion of Ukraine. *See, e.g.,* Shannon Bond, *Facebook, YouTube and Twitter Remove Disinformation Targeting Ukraine*, Nat'l Pub. Radio (Feb. 28, 2022), perma.cc/CM5Q-P9KT. These efforts have included stemming the flow of state-backed campaigns by using warning labels and downranking Russian state-media propaganda pertaining to the Ukraine invasion. *See, e.g.,* Taylor Hatmaker, *Instagram Warns Users Who Share Russian State Media, Hides Following Lists in Russia and Ukraine*, TechCrunch (Mar. 8, 2022), perma.cc/4QFU-EVX5.

Similar actions have been taken against pro-China organizations spreading disinformation about the origins of the Covid-19 pandemic. For example, Twitter removed accounts contending that the Covid-19 virus was spread to China by the U.S. military or by a shipment of Maine lobsters. *See* Michelle Shen, *Twitter Accounts Tied to China Lied that Covid Came from Maine Lobsters*, USA Today (Oct. 22, 2021), perma.cc/9BCF-B2YN. Facebook removed more than 600 accounts, pages, and groups from a Chinese influence organization spreading posts alleging that the United States was pressuring the World Health Organization to blame China for the Covid-19 virus. Shannon Bond, *Facebook Takes Down China-based Network Spreading False Covid-19 Claims*, Nat'l Pub. Radio (Dec. 1, 2021), perma.cc/SJ5A-NM48.

Platforms also moderate hate speech, like content that denies or distorts the Holocaust, espouses a hope that members of a certain nationality would all die, or that praises harassment of members of a particular religion. See Meta, *Removing Holocaust Denial Content* (Oct. 12, 2020), perma.cc/WWW4-BCLZ; Twitter, *Hateful Conduct Policy* (visited May 15, 2022), perma.cc/ZBT4-PJMT; Brooke Auxier, *About One-in-Five Americans Who Have Been Harassed Online Say It Was Because of Their Religion* (Feb. 1, 2021), perma.cc/T3UT-AQHV.

Platforms also may restrict content promoting self-harm, especially that directed to minors. Indeed, federal lawmakers on both sides of the aisle have urged platforms to take steps to help support teen users' mental health. Amanda Silberling, *Facebook Grilled in Senate Hearing over Teen Mental Health*, TechCrunch (Sept. 30, 2021), perma.cc/PN23-M5E6. Platforms accordingly moderate an array of content that, although not unlawful, could nonetheless be extremely dangerous for impressionable users, including content promoting eating disorders, practices of self-mutilation, and even suicide.

Similarly, content glorifying violence or the suffering of others may be removed or subject to a content warning. See Meta, *Facebook Community Standards: Violent and Graphic Content* (visited May 17, 2022), perma.cc/T8ZU-RDZD. Facebook bars non-medical videos of dismemberment, visible internal organs, human burning, and throat-slitting, but applies content warnings and age-gates to videos in the medical setting or to photos depicting these same topics. Facebook likewise applies content warnings and age-gates to content involving animal cruelty or abuse.

Platforms moderate content that attempts to groom minors for sexual encounters, celebrates child sexual abuse, and involves the non-consensual posting of another’s intimate images.³ Platforms may limit publication of private information of users, or content that impersonates others.⁴ And this is just a small sampling of the range of content subject to moderation.

Achieving content moderation at the scale of these online platforms is a herculean task. Platforms remove millions or even billions of pieces of content for violating policies every year. To put it in context, in the fourth quarter of 2021, Facebook removed 1.7 billion fake accounts—nearly the same number as it has active daily users.⁵ Over the same period, YouTube removed more than 1.26 billion comments, 99.5% of which were spam, and more than 3.8 million channels, 89% of which were spam.⁶ Twitter suspends over half a million spam accounts *per day*⁷—more than 130 million in the first half of 2021.⁸ As these numbers reflect, content moderation is essential to a platform’s ability to provide the community that it desires.

³ See Meta, *Facebook Community Standards: Child Sexual Exploitation, Abuse and Nudity* (visited May 17, 2022), perma.cc/F5LM-MXDV; YouTube, *Child Safety Policy* (visited May 17, 2022), perma.cc/5SHG-5DNM; Twitter, *Non-Consensual Nudity Policy* (Nov. 2019), perma.cc/52DA-YR7R; Reddit, *Never Post Intimate or Sexually Explicit Media of Someone Without Their Consent* (Mar. 7, 2022), perma.cc/Y94G-CZFC.

⁴ See Reddit, *Is Posting Someone’s Private or Personal Information Okay?* (July 13, 2020), perma.cc/F5FP-CCF7; Meta, *Facebook Community Standards: Account Integrity and Authentic Identity* (visited May 17, 2022), perma.cc/HF9T-V5QH.

⁵ See Meta, *Facebook Community Standards Enforcement Report: Fake Accounts* (Feb. 2022), ti.nyurl.com/3xxe8vue; Meta, *Meta Reports First Quarter 2022 Results* (Apr. 27, 2022), perma.cc/3V4M-FS6H.

⁶ Google, *Transparency Report: YouTube Community Guidelines Enforcement* (visited May 15, 2022), ti.nyurl.com/5cp5npev.

⁷ Parag Agrawal (@paraga), Twitter (May 16, 2022 12:26 PM), perma.cc/33VK-46B3.

⁸ Twitter, *Platform Manipulation* (Jan. 25, 2022), perma.cc/2ZQL-LMPR.

Platforms thus use carefully calibrated moderation policies to build the environments they wish to make available to users. These moderation decisions cut across an enormously broad range of topics. And there are a wide variety of moderation tools available, including content prioritization or demotion, suspension or removal of entire accounts, removal of certain content, age-gating, affixing labels or warnings, among a host of other techniques.⁹ There is simply no one-size-fits-all solution for content moderation. The variety of approaches taken by online platforms only serves to confirm that decisions about what content to distribute—and how to display it—constitute core expressive activity.

II. HB20 DECIMATES PLATFORMS’ EFFORTS TO EFFECTIVELY AND USEFULLY CURATE CONTENT.

For the select few platforms to which it applies, HB20 upends most all of these content-moderation policies that providers and users rely upon to structure their online communities. It does so through three principal provisions—it prohibits so-called “censorship” in an enormously broad way, it orders disclosure of the tools that platforms use to restrict the proliferation of malicious content, and it requires individualized notice-and-appeal procedures to accompany the millions—if not billions—of moderation actions taken by platforms each year. Collectively, these requirements essentially eliminate the ability of a platform to meaningfully moderate content that is displayed to users.

A. The Act forces disgraceful and wasteful speech onto platform users.

HB20 broadly bars a platform from “censor[ing]” a user, the user’s expression, or the user’s ability to receive another’s expression based on viewpoint. Tex. Civ. Prac. &

⁹ Reddit, *Reddit Content Policy* (visited May 17, 2022), perma.cc/XMD7-92SF (describing “variety of ways of enforcing our rules”); Twitter, *Our Range of Enforcement Options* (visited May 17, 2022), <https://perma.cc/R48Y-HG5Y> (describing the different levels of enforcement actions, ranging from “Tweet-level” to “Account-level” enforcement).

Rem. Code § 143A.002. It provides limited exceptions for illegal content, content flagged by an organization fighting child-sexual exploitation, or content that directly incites criminal activity or specifically threatens violence against certain protected classes. *See* Tex. Civ. Prac. & Rem. Code §§ 143A.006, 143A.001(5).

In this way, HB20 effectively bars platforms from engaging in the content curation that they have long employed and that users expect. Instead, it effectively compels platforms to choose between foregoing *any* “viewpoint”-based content curation or removing entire content categories from its platform. *See* Tex. Civ. Prac. & Rem. Code § 143A.002. Examples abound of harmful but not-illegal content that cannot be censored under HB20.

Platforms could not moderate pro-Nazi speech—that is, unless they also moderated all content pertaining to political ideologies. They could not moderate speech denying the Holocaust—at least not without banning all content remembering or educating about the Holocaust. They could not remove speech glorifying terrorist attacks against the United States—unless they also remove speech decrying, memorializing, or educating about terrorist attacks against the United States. Platforms could not combat misinformation from foreign governments, like misleading propaganda regarding Uyghurs in China or other issues of public concern, unless they likewise banned truthful information provided by the U.S. State Department. They could not moderate speech promoting eating disorders, self-cutting, and suicide—that is, without also barring content providing resources for those suffering from eating disorders or contemplating self-harm.¹⁰

¹⁰ Currently, some platforms place prominent links to organizations that can provide support to individual contemplating suicide when they search for suicide or self-injury related content. *See* Meta, *Facebook Community Standards: Suicide and Self Injury* (visited May 17, 2022), perma.cc/9JL9-GJP9. Because this is a form of content moderation, HB20 would appear to preclude these efforts to promote the public welfare.

If platforms allow any discussion or material relating to elections, then they will be forced to display false or misleading information designed to suppress votes or intimidate voters. HB20 would require the publication of blatant lies that serve no purpose other than to thwart democracy. And HB20 would preclude platforms from removing content that celebrates race-based killing; indeed, deranged content that promotes the destruction of an entire race would be precluded from moderation, unless it meets the narrow legal definition of incitement. HB20 would thus render platforms powerless to stop their private spaces from being used as breeding grounds for radicalization and recruiting of those who will engage in the most terrifying and destructive of acts.

Beyond being forced to host this sort of loathsome content, platforms would be barred from providing age-gates, content warnings, context, or links to fact-checking sources that help contextualize information shared on a platform. These activities would “restrict” or “deny equal access” to content under the State’s definition of “censor.” Tex. Civ. Prac. & Rem. Code § 143A.001(1). For example, HB20 would effectively prevent a platform from placing content warnings over nudity, profanity, a video of a beheading of an American by terrorists, or the intentional harming of an animal. Indeed, platforms could be barred from failing to promote vile or graphic content if they promote access to content users actually want.

The problem is particularly acute with respect to platforms that design communities for use by children. Several platforms offer—and many parents seek—safe spaces online that children can visit without being exposed to age-inappropriate content or content inconsistent with the family’s values. Millions of children visit websites and applications like YouTube Kids and Roblox to view videos or play games. *See* Aaron Smith et al., *Many Turn to Youtube for Children’s Content, News, How-To Lessons*, Pew Research Center (Nov. 7,

2018), perma.cc/JUD8-459M; *Factbox: The Nuts and Bolts of Roblox*, Reuters (Nov. 19, 2020), perma.cc/9X3J-ACNB. These platforms must carefully moderate the content published on their sites to protect the children for whom their communities are designed.

HB20, however, undermines any ability to offer a safe and age-appropriate platform geared toward children. It hamstring platforms from offering positive and educational experiences for children because they must also permit the vile and offensive side of these issues. For example, platforms with content teaching children how to care for animals would apparently be obligated to also display graphic content of animal cruelty—a reprehensible, yet legal, form of expression. If a platform hosts user-generated content that discusses race, it would apparently be obligated to also display content praising racism. Content educating children about religions would have to be accompanied by content vilifying religious differences.

The reality is that there is a mismatch between the speech the First Amendment protects from *government* regulation and the speech that users and platforms want as part of their online communities. Compare Cong. Research Serv., *The First Amendment: Categories of Speech* (2019), perma.cc/V6KB-5UEV, with Anti-Defamation League, *Online Hate and Harassment: The American Experience 2021* § 8 (2021), perma.cc/CBV2-SQ23; Sophie Bertazzo, *Online Harassment Isn't Growing—But It's Getting More Severe*, Trust Magazine (June 28, 2021), perma.cc/2259-2GX7. Platforms moderate—and users *want* them to moderate—more broadly than the First Amendment's limits on the government's regulation of speech, including:

- all manner of threats,¹¹ not merely “true threats” unprotected by the First

¹¹ See, e.g., Twitter, *Abusive Behavior* (visited May 17, 2022), perma.cc/N8Z8-YT3Z.

Amendment (*see Virginia v. Black*, 538 U.S. 344 (2003));

- content that dehumanizes or discriminates against individuals based on perceived membership in a protected class,¹² not merely specific threats of violence against protected-class members as Texas allows (*see Tex. Civ. Prac. & Rem. Code § 143A.006(a)(3)*);
- content that sexualizes children,¹³ even if it does not involve actual children (*see, e.g., Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002) (holding ban on virtual child pornography unconstitutional)), does not contain “visual” depictions of children (*New York v. Ferber*, 458 U.S. 747, 764 (1982)), or has not been flagged by a state-chosen organization (Tex. Civ. Prac. & Rem. Code § 143A.006(a)(2)).

The sad reality is that misleading, vile, hateful, graphic, or offensive content has an outsized ability to drown out other material online. It takes little imagination to identify a harmful message that ostensibly provides a “viewpoint” opposite to almost any form of constructive content. This results inevitably in platforms having to choose between silencing virtually all categories of content or allowing horrific messages and images to run roughshod across a platform.

Because of this, prohibiting platforms from taking action against legal—yet reprehensible—content will inevitably result in severe harm to platforms and to their users. Platforms without any content (because of category eliminations) or inundated with distasteful content will be effectively unusable for most, if not all, legitimate users. The latter situation

¹² *See, e.g., Meta, Facebook Community Standards: Hate Speech* (visited May 17, 2022), perma.cc/4G4V-HXG8.

¹³ *See, e.g., YouTube, Child Safety Policy* (visited May 17, 2022), perma.cc/5SHG-5DNM.

presents particular risk for vulnerable communities like children who may be exposed to age-inappropriate content, teens who may be exposed to content encouraging self-harm,¹⁴ the elderly who are targets for scams,¹⁵ or for groups that are repeatedly and specifically targeted for hate and harassment on account of their gender, sex, race, nationality, religious affiliation, or sexual orientation.¹⁶

The draconian sanctions available under HB20 will magnify its consequences, forcing platforms to take drastic actions to avoid outsized risk. HB20 not only enables lawsuits by the Texas Attorney General, but also by private citizens, who may collect attorneys' fees and costs. Tex. Civ. Prac. & Rem. Code §§ 143A.007(b)-(c), 143A.008(b). Texas courts are specifically empowered to issue daily fines against platforms, in the event of any failure to achieve "immediate compliance." *Id.* § 143A.007(c). This litigation risk is far from hypothetical, as lawsuits have already been filed under HB20.¹⁷ And, outside HB20, users already bring a range of actions challenging content moderation. *See Daniels v. Alphabet, Inc.*, 2021 WL 1222166 (N.D. Cal. Mar. 31, 2021) (conspiracy theories); *Children's Health Defense v. Facebook, Inc.*, 546 F. Supp. 3d 909 (N.D. Cal. 2021) (vaccine and health misinformation); *Domen v. Vimeo, Inc.*, 991 F.3d 66 (2d. Cir. 2021) (sexual orientation conversion therapy). With HB20, the floodgates would open.

¹⁴ Steven Sumner et al., *Temporal and Geographic Patterns of Social Media Posts About an Emerging Suicide Game*, 65 J. Adolescent Health 94-100 (2019).

¹⁵ Attorney General of Texas, *Senior Scams* (visited May 17, 2022), perma.cc/XY4S-PAXN (noting scams targeting seniors "are especially common online"); AARP, *Older Americans' Cybercrime Losses Soared to \$3 Billion in 2021* (Apr. 5, 2022), perma.cc/M5FB-65JM.

¹⁶ Emily A. Vogels, *The State of Online Harassment*, Pew Research Center (Jan. 13, 2021), perma.cc/4CZN-5TGU (finding that 40% of Americans have experienced online harassment).

¹⁷ *See* Tim Cushing & Mike Masnick, *Court Ignores That Texas Social, Media Censorship Law Was Blocked As Unconstitutional: Orders Meta To Reinstate Account*, *techdirt* (Mar. 4, 2022), perma.cc/H3VT-R85U.

Even the removal of obviously illegal content could be chilled by this litigation risk. Platforms may employ automated detection technologies to identify illegal content, intellectual property infringement, or child sexual abuse. Platforms have invested substantial resources in developing sophisticated automated tools to fight child sexual abuse by quickly identifying and removing content depicting such abhorrent acts, contributing to the 29.1 million online provider reports to the National Center for Missing and Exploited Children of child sexual abuse imagery and other abuse in 2021.¹⁸ They have also developed similar tools to fight piracy on a broad scale—tools like Meta’s Rights Manager and YouTube’s Content ID.¹⁹ *See* 17 U.S.C. § 512. These measures protect intellectual property rights *millions* of times every day. That said, as sophisticated as these tools are, they come with small error rates, with each error potentially resulting in litigable claims of “censorship” under this Texas law. HB20 is thus a strong disincentive for platforms to innovate and collaborate on improving automatic detection measures of illegal material, which will harm child victims of abuse and stymie content owners trying to police their rights in the Internet era.

HB20 will inevitably thrust upon platform users vast swaths of harmful and wasteful content, or little content at all. The harms that will result from this total overhaul of platforms’ communities—harms suffered by platforms, their users, and their advertisers—cannot be meaningfully repaired if the applicants ultimately secure a favorable judgment. The equities thus strongly support retaining the content-moderation status quo while the courts adjudicate the legality of HB20’s “censorship” ban.

¹⁸ Gabriel J.X. Dance & Michael H. Keller, *Tech Companies Detect a Surge in Online Videos of Child Sexual Abuse*, N.Y. Times (Feb. 7, 2020), perma.cc/CAP3-ARR3; Nat’l Center for Missing & Exploited Children, *CyberTipline 2021 Report* (visited May 17, 2022), perma.cc/H3S5-5HND.

¹⁹ YouTube, *How Content ID Works* (visited May 16, 2022), perma.cc/J22X-DFLT; Facebook, *Rights Manager* (visited May 16, 2022), rightsmanager.fb.com/.

B. The Act compels disclosure of monitoring methods to malicious actors.

Other provisions of HB20 will cause additional irreparable harms by taking effect. HB20 requires providers to disclose substantial information about the methods platforms use to enforce content moderation policies. *See* Tex. Bus. & Com. Code § 120.053(a)(7) (requiring bi-annual report with a “description of each tool, practice, action, or technique used in enforcing the acceptable use policy”). While many of the covered platforms and *amici* organizations support enhanced transparency, HB20’s requirements go well beyond what is necessary for adequate content moderation.

This disclosure obligation will have disastrous consequences for keeping spam, child sexual abuse materials, and other distasteful content off platforms. This is a problem of monumental import for platforms. Facebook took action against 1.2 billion spam postings²⁰ and 27.3 million posts relating to pornography or sexual activity in a single quarter.²¹ Over the same period, YouTube removed more than 3.4 million spam videos and 163,743 videos for sexual content.²² In the first half of 2021, Twitter challenged more than 130 million suspected spam accounts and took action on more than 456,000 accounts involving child sexual exploitation.²³

As it stands now, platform operators must constantly update and refine their processes to block such content because those who seek to hijack online platforms for their own profit continually evolve their strategies to evade moderation. As one researcher put

²⁰ Meta, *Facebook Community Standards Enforcement Report: Spam* (Feb. 2022), tinyurl.com/4trwdkew.

²¹ Meta, *Facebook Community Standards Enforcement Report: Adult Nudity and Sexual Activity* (Feb. 2022), tinyurl.com/22ef6nma.

²² Google, *Transparency Report: YouTube Community Guidelines Enforcement* (visited May 15, 2022), tinyurl.com/5cp5npev.

²³ Twitter, *Platform Manipulation* (Jan. 25, 2022), perma.cc/2ZQL-LMPR; Twitter, *Rules Enforcement* (Jan. 25, 2022), perma.cc/QT5S-9AQ8.

it, “[b]oth the spammers and spam filter-builders are under pressure to evolve or die.” Jean Whitmore, *The Arms Race of Models: Complexify or Die* 9 (June 24, 2021), ssrn.com/abstract=3867464; see also Kevin Gosschalk, *AI vs. AI: The Digital Arms Race to Fight Fraud* (Oct. 24, 2019), tinyurl.com/9f7jb9w6. Twitter’s CEO explained these concepts just yesterday—that “fighting spam is incredibly dynamic” because “[t]he adversaries, their goals, and tactics evolve constantly” in response to platforms’ efforts. Parag Agrawal (@paraga), [Twitter.com](https://twitter.com) (May 16, 2021), perma.cc/33VK-46B3.

The excessive disclosures required by HB20 would inevitably enable bad actors, spammers, and scammers to better circumvent content moderation techniques. These disclosure obligations will cause platforms and their users to be inundated by malicious content. Rather than fix anything, HB20’s disclosure obligation will only further exacerbate the problem because it gives ill-intentioned actors insight into the new tools and will have a chilling effect on the innovation of improved methods to detect and counter such content.

C. The Act’s reporting and appeals requirements would render content moderation functionally impossible.

HB20 also imposes burdensome procedural obligations. For apparently any act of content moderation, the platform must “notify the user” and “explain the reason the content was removed.” Tex. Bus. & Com. Code § 120.103(a)(1). All users then have a right “to appeal the decision to remove the content,” and the platform must in turn “provide written notice to the user” regarding the result of the adjudication. *Id.* § 120.103(a)(2) & (3). And platforms must complete these appeals within 14 days. *Id.* § 120.104.

Given that some platforms—particularly those targeted by HB20—moderate hundreds of millions if not billions of pieces of content each year, there is no meaningful way

to create the procedures required by HB20 at this scale. Take, for example, the 1.7 billion fake accounts that Facebook removed in the fourth quarter of 2021. HB20 would apparently obligate Facebook to send presumably billions of notices and ultimately adjudicate an enormous number of appeals. The same procedures would attach to YouTube, with the 1.26 billion comments it removed (99.5% of which were spam) in the fourth quarter of 2021.

These demands exact an enormous toll on platforms, particularly when coupled with HB20's timing requirements and multiplied across the many types of content they remove. Platforms will thus be forced to either forgo content moderation in its entirety or reduce moderation to only a shadow of the role it currently plays in curating user experiences. Either way, it is the users who will ultimately lose the services that they currently enjoy.

III. IF HB20 TAKES IMMEDIATE EFFECT, CHAOS WILL ENSUE ONLINE WITH DISASTROUS AND IRREPARABLE CONSEQUENCES.

Unless this Court restores the injunction, pending full review by the Fifth Circuit and then disposition of a petition for writ of certiorari, HB20 will inflict severe harm, before its legality is fully adjudicated. Swift action is necessary to preclude such a baleful result.

To start with, HB20 results in blatant violations of the First Amendment rights of platform providers. The only reasoned opinion below found the constitutional violations obvious. Yet the Fifth Circuit's order staying the district court's preliminary injunction allows HB20 to take immediate effect while the Fifth Circuit decides the State's appeal. In the meantime, platforms will "unquestionably" suffer irreparable injury as a result of the State's violation of their First Amendment, among other, rights. *See* Appl. 39 (quoting *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (per curiam)).

Additionally, with its putative *worldwide* effect, HB20 will impose conflicting obligations on platform providers, rendering lawful global operations a practical impossibility.

Because HB20 applies to Texas users’ “ability to receive the expression of another person” (Tex. Civ. Prac. & Rem. Code § 143A.002(a)), HB20’s obligations appear to reach content anywhere in the *world* it may originate. Online platforms, accordingly, cannot fashion solutions for Texas users alone. Rather, a decision to remove a user from a platform who resides an ocean away from Texas would nonetheless appear to violate the straightforward text of the Texas law. If platforms wish to remain online in Texas, HB20 appears to contemplate that it will have *global* effect, restricting their ability to moderate users and the content they provide, no matter where on Earth those users may reside.

That creates impossibly conflicting legal obligations. To take just one example, many countries (such as Austria, Germany, and Hungary) have penal laws that bar the denial of the Holocaust and the display of Nazi symbols and propaganda. In the United States, while such speech is broadly recognized as abhorrent, it is not “unlawful expression” within the meaning of HB20, as that term is expressly limited to “expression that is unlawful under the United States Constitution, federal law, the Texas Constitution, or the laws of this state.” Tex. Civ. Prac. & Rem. Code §§ 143A.001(5), 143A.006(a)(4). What then is a platform to do if a user, located in a country that outlaws dissemination of Nazi propaganda, posts such material? Local law would render that conduct a crime—and some countries, including Germany, *compel* the platform to remove the content. Yet HB20 purports to establish a right for a Texas-based user “to receive the expression of another person,” free of moderation based on “the viewpoint” expressed by that person. *Id.* § 143A.002(a). HB20’s global effects confirm its extraordinary implications—and the sheer impossibility of meaningful compliance with its terms.

It is likewise unclear that platforms, unable or unwilling to redesign their services to ensure only viewpoint-neutral content moderation upon notice of the Fifth Circuit’s stay,

could comply by suspending services to Texans. HB20 prohibits platforms from limiting “a user’s ability to receive the expression of another person based on . . . a user’s geographic location in this state.” Tex. Civ. Prac. & Rem. Code § 143A.002(a)(3). By going into effect, HB20 thus opens the floodgates to a potential deluge of private lawsuits arising from a law with which platforms cannot feasibly comply.

To the extent that platforms can comply with this most extraordinary law, HB20 will result in the wholesale lifting of content moderation. The resulting deluge of hate speech, graphic images and video, and vile content of all forms is not what users want, and experiencing it will irreparably damage the platform’s goodwill and reputation. *See, e.g., Paulsson Geophysical Servs., Inc. v. Sigmar*, 529 F.3d 303, 313 (5th Cir. 2008) (holding that damage to goodwill could not be quantified, supporting irreparable injury); *Valley v. Rapides Parish Sch. Bd.*, 118 F.3d 1047, 1056 (5th Cir. 1997) (holding “threat of injury to [plaintiff’s] reputation . . . sufficient to satisfy irreparable injury”). The predictable result is that users and advertisers will leave the platforms in droves, resulting in irretrievably lost good will and reputation.²⁴ Many users and advertisers may never return even once HB20 is ultimately struck as unlawful.

The risks here, however, run deeper than a conflict of laws, and they are more grave than economic injuries to platforms. As our experiences teach us time and again, the content that users of online communities share can have dire real-life consequences.

With platforms unable to effectively moderate scammers, messages preying on vulnerable populations, including the elderly, will proliferate online. The uptick of this content

²⁴ The loss of advertisers over content is hardly speculative. *See, e.g.,* Daisuke Wakabayashi & Sapna Maheshwari, *Advertisers Boycott YouTube after Pedophiles Swarm Comments on Videos of Children*, N.Y. Times (Feb. 20, 2019), perma.cc/7CCX-5LWD; Tiffany Hsu & Eleanor Lutz, *More than 1,000 Companies Boycotted Facebook. Did It Work?*, N.Y. Times (Aug. 1, 2020), perma.cc/AW3L-3AXJ.

will predictably result in yet more people being tricked into sending money to scammers or disclosing financial information, leading to identity theft and financial ruin. Platforms will be powerless to regulate speech praising terrorists and those who engage in murderous campaigns, with horrendous potential ramifications if even a single person engages in copycat activity. And they may be precluded from protecting children from age-inappropriate content, including reprehensible messages encouraging our youth to engage in self-destructive activities. Given the millions of online interactions that occur each hour, if not each minute, there can be no serious doubt that precluding platforms from moderating destructive content risks real, tangible harms.

In view of the modern online ecosystem, the effects of HB20 going into force would be staggering. Not only would it destroy online platforms as we know them, but it would eviscerate the enormous efforts taken by those platforms to promote safety—both online and offline.

CONCLUSION

The Court should vacate the Fifth Circuit's stay of the District Court's preliminary injunction, leaving that injunction in force pending both the Fifth Circuit's issuance of a decision and resolution by this Court of any subsequent petition for writ of certiorari.

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Respectfully submitted,

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