



November 21, 2022

The Honorable Merrick B. Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Garland,

The results of this year's midterm elections make one thing clear: voters support and prioritize access to reproductive healthcare. Meanwhile, the Supreme Court, in *Gonzalez v. Google*¹, is poised to potentially jeopardize access to reproductive health information online. We write to request that the Department of Justice file a brief in support of the defendants to ensure the continued availability of life-saving reproductive resources.

Last month, the Supreme Court granted certiorari in *Gonzalez v. Google* to explore whether Section 230 protections extend to algorithmic curation of content. This includes when websites recommend, prioritize, downrank or serve content to its users; a core functionality of any online service that facilitates user-created content (e.g. search engines, social media platforms, blogs, online news publishers). In turn, Section 230 empowers online services to elevate authoritative information and promote healthy online communities.²

As Republican-controlled state legislatures across the country enact total abortion bans and attempt to restrict the availability of reproductive health information,³ women and pregnant individuals need access to credible health resources now more than ever. Online services help to facilitate such resources around the world. Without Section 230, online services might be compelled to limit access to reproductive resources, for fear of violating various state anti-abortion laws.⁴

Indeed, Section 230 is key to ensuring reproductive health information remains online and accessible, especially in Republican-controlled states. While the First Amendment already shields websites from liability for their publication decisions, Section 230 enhances this protection by assuring online services that their publication decisions – like curating and promoting reproductive health information – will not incur lengthy and expensive litigation.⁵

¹*Gonzalez v. Google, LLC*, No. 18-16700 (9th Cir. 2021).

²Banker, Elizabeth, Understanding Section 230 & the Impact of Litigation on Small Providers (April 12, 2022). Chamber of Progress. https://progresschamber.org/wp-content/uploads/2022/04/CoP_230-report_w1i.pdf

³Zakrzewski, Cat, South Carolina bill outlaws websites that tell how to get an abortion (June 22, 2022). Washington Post, <https://www.washingtonpost.com/technology/2022/07/22/south-carolina-bill-abortion-websites/>

⁴McGee, Kate, Texas universities grapple with how to provide reproductive health care information to students amid new abortion laws (July 20, 2022). Texas Tribune. <https://www.texastribune.org/2022/07/20/texas-universities-abortion-reproductive-care/>

⁵Goldman, Eric, Why Section 230 Is Better Than the First Amendment (November 1, 2019). Notre Dame Law Review, Vol. 95, No. 33, 2019, Available at SSRN: <https://ssrn.com/abstract=3351323>



Should the Court curb Section 230's protections for algorithmic curation, online services would face extreme threats of liability for promoting life-saving reproductive health information, otherwise criminalized by state anti-abortion laws. While these laws should ultimately be ruled unconstitutional, online services will face significant legal risk for promoting third-party resources for reproductive healthcare. This would be a devastating reality for women seeking reproductive resources in states where they are unavailable.

Consider the case of a woman in Texas, where in-state medical professionals are prohibited from providing guidance on abortion care and the Internet is one of few avenues that offers access to such information. If the Court erodes Section 230, those resources could disappear, as websites are rendered legally vulnerable for recommending resources to Texas citizens, in violation of Texas' law prohibiting the aiding and abetting of abortion care.⁶

Of course, in prioritizing legitimate health information from authoritative sources, websites effectively *deprioritize* (or downrank) content that deceive users. Indeed, algorithms also play a crucial role in detecting and addressing harmful content. Section 230 – in its current form – similarly averts liability for those mitigation efforts too.

The stakes could not be higher. Unsatisfied with banning abortion in their own states, Republican legislators across the country are poised to deny women choice, autonomy, and access to reproductive care throughout the nation.⁷ These efforts could have deadly consequences.⁸ At this critical moment, the Biden Administration must do everything it can to protect access to life-saving healthcare. This includes ensuring the availability of reproductive health information online for all Americans, by defending Section 230.

Chamber of Progress urges you to submit a brief in support of defendants in the case of *Gonzalez v. Google*, highlighting the importance of preserving the full extent of Section 230's protections, and safeguarding continued access to high quality reproductive health information online.

Sincerely,

Chamber of Progress
Advocates for Youth

⁶ Texas Heartbeat Act, 2021 Tex. Gen. Laws ch. 62 (codified in TEX. HEALTH & SAFETY CODE ANN. §§ 171.208 (West 2021).

⁷Kitchener, Caroline and Devlin Barrett, Antiabortion lawmakers want to block patients from crossing state lines (June 30, 2022). Washington Post. <https://www.washingtonpost.com/politics/2022/06/29/abortion-state-lines/>

⁸Zurawski, Amanda, My Pregnancy vs. the State of Texas (September, 2022). The Meteor, <https://wearethemeteor.com/texas-abortion-ban-stopped-doctors-helping-woman-miscarrying/>

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