No. 21-1333

In The Supreme Court of the United States

REYNALDO GONZALES, et al.,

Petitioners,

v.

GOOGLE LLC,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE AS *AMICUS CURIAE* IN SUPPORT OF NEITHER PARTY

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INTEREST OF *AMICUS CURIAE*

Giffords Law Center to Prevent Gun Violence (Giffords Law Center) is a non-profit policy organization serving lawmakers, advocates, legal professionals, gun violence survivors, and others who seek to reduce gun violence and improve the safety of their communities.[1]

Founded in 1993 after a gun massacre at a San Francisco law firm, the organization was renamed Giffords Law Center in October 2017 after joining forces with the gun-safety organization led by former Congresswoman Gabrielle Giffords.

Today, through partnerships with gun violence researchers, public health experts, and community organizations, Giffords Law Center researches, drafts, and defends the laws, policies, and programs proven to effectively reduce gun violence. Its attorneys track and analyze firearm legislation, evaluate policy proposals regarding gun-violence prevention, and participate in litigation nationwide. The organization has provided courts with *amicus* assistance in many important cases involving guns and gun violence.

Giffords Law Center takes no position on whether Section 230(c)(1) of the Communications Decency Act should immunize respondent Google LLC in this case

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[1] No party or counsel for a party authored this brief in whole or in part. No party, counsel for a party, or person other than *amicus curiae* or its counsel made any monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of *amicus* briefs.

for allegedly making "targeted recommendations" of terrorist recruitment videos on its YouTube platform. *See* Pet. i, 10-12. But the Court's resolution of this question will have far-reaching consequences beyond the context of international terrorism. Online social media has become "integral to the fabric of our modern society and culture." *Packingham v. North Carolina*, 137 S. Ct. 1730, 1738 (2017). Giffords Law Center files this brief to put in context the increasingly direct and troubling connection between the use of social media for glorifying hate and violence and hate-motivated mass shootings in the United States.

INTRODUCTION AND SUMMARY OF ARGUMENT

Recent events have made clear that the spread of hate and promotion of violence online is connected to real-world tragedy and death.

The horror of mass shootings in the United States has become a self-perpetuating cycle. Columbine, Virginia Tech, Tucson, Fort Hood, Santa Barbara, Aurora, Sandy Hook, Charleston, San Bernardino, Orlando, Sutherland Springs, Las Vegas, Parkland, Pittsburgh, Thousand Oaks, El Paso, Dayton, Odessa, Boulder, Buffalo, Uvalde . . . Highland Park, Colorado Springs—the list goes on.

The shooters responsible for these tragedies are almost universally isolated young men. Many were inspired to commit mass murder after becoming infatuated with previous mass shooters and their extremist,

racist, and misogynous ideologies, which proliferate on various online social media platforms. The shooters sought to copy their predecessors and—by publishing "manifestos" online and sometimes even live-streaming their attacks—hoped to inspire others to idolize and copy them. All too often their hopes have been realized.

This brief examines the role of social media in three recent hate-motivated mass shootings in the United States. In some of these tragedies, the shooter made direct online threats to targeted groups before the attack, which remained visible on social media even after the attack. In others, the shooter actively participated in extremist online groups that have thrived online for years without being taken down by the websites hosting them. And, in one case, the shooter livestreamed his attack, and mainstream social media sites subsequently promoted the video of the attack along with paid advertisements. Perhaps most alarming, in each case, the shooter's online trail continues to be widely shared and glorified across social media, further perpetuating the cycle of hate and mass murder.

The ubiquity of online hate speech also chills the ability of other speakers to speak freely online, transforming what was intended to be an open marketplace of ideas into an increasingly toxic space where the loudest and angriest voices drown out the rest.

In a time of increasing political strife, online hate speech presents a real-world threat to our democracy and to the lives of Americans.

ARGUMENT

I. There is an epidemic of online hate speech and hate-motivated gun violence in the United States.

Online hate speech and harassment is a major problem in the United States. In a 2021 survey, 41% of Americans reported that they had experienced online harassment, and 27% reported that they had experienced severe online harassment, meaning that they had experienced sexual harassment, stalking, physical threats, swatting, or doxing. Anti-Defamation League, Online Hate and Harassment: The American Experience 2021 (May 3, 2022).[2]

Americans also reported disturbingly high levels of online harassment and hate speech targeting their race, ethnicity, religion, gender identity, sexual orientation, or disability. Fifty-nine percent of African-American respondents reported that they had been targeted with race-based harassment online, while 57% of Muslim respondents reported online harassment targeting their religion. *Id.* Perhaps most alarmingly, of those who reported being threatened online, only 14% said that the online platform deleted the

[2] https://www.adl.org/online-hate-2021.

threatening content, and only 17% stated that the online platform blocked the perpetrator who posted the threatening content. *Id.*

While most social media companies have taken steps to address hate speech and harassment, their platforms remain the dominant place where people are targeted by hate speech and harassment online. According to the same 2021 study, 75% of those who experienced online harassment reported that at least some of that harassment occurred on Facebook. *Id.*

As online hate speech and harassment have increased, so too have hate crimes in the United States. According to the FBI, between 1996 and 2014, the number of hate crimes generally declined in the United States. Ari Freilich, How America's Gun Laws Fuel Armed Hate, Giffords Law Center (May 23, 2022).[3] Beginning in 2015, however, the number of hate crimes began to rise, with an alarming 48% increase from 2015 to 2020. *Id.*

And these numbers are likely an extreme undercount. Recent data from the Bureau of Justice Statistics National Crime Victimization Survey suggests that 305,390 Americans experienced hate crime victimizations—42 times as many hate crime victimizations per year as reported by the FBI. *Id.* (citing U.S.

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[3] https://giffords.org/lawcenter/report/how-americas-gun-laws-fuel-armed-hate/. The FBI defines a hate crime as "a criminal offense against a person or property motivated in whole or in part by an offender's bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity." *Id.*

Dep't of Justice, Bureau of Justice Stats., Hate Crime Victimization, 2005-2019 (Sept. 21, 2021)). Put differently, official data from the Department of Justice suggests a hate crime occurs in the United States at least *every two minutes*.

There is a deadly nexus between hate-motivated violence and firearms. Over 10,300 people are victims of hate crimes involving firearms each year. *Id.* When firearms are used in hate crimes, victims are 2.4 times more likely to be seriously injured. Alex Nguyen, Hate Crimes Rose Drastically in 2020, Giffords Law Center (Sept. 10, 2021).[4]

In addition to the direct victims of these crimes, hate-motivated gun violence also victimizes the entire targeted community and instills fear in members of the protected group. For example, the shootings at synagogues in Pittsburgh and Poway caused members of Jewish communities across the United States to fear for their safety. Holly Lebowitz Rossi, *For Synagogues, High Holidays Welcome Is Complicated by Security Needs*, Religion News Service (Sept. 24, 2019); Faygie Holt, *Following Pittsburgh and Poway, Security Has Become Top Priority at Jewish Summer Camps*, Jewish News (June 20, 2019). Similarly, the shooting at Pulse nightclub in Orlando made people more afraid to gather in LGBTQ spaces. Noah Remnick, *At Stonewall Inn, a Gay Rights Landmark, a Vigil in Pride and Anger*, N.Y. Times (June 12, 2016). Indeed, those who

[4] https://giffords.org/blog/2021/09/hate-crimes-rose-drastically-in-2020/.

commit hate-motivated mass shootings often expressly intend to broadly intimidate the members of their targeted group.

Researchers continue to investigate why hate crimes are rising in the United States and the role of online hate speech in this disturbing trend. The examples below describe how hate speech on social media platforms has been a significant factor in three recent hate-motivated mass shootings.[5]

II. Online hate and glorification of violence played an integral role in the Santa Barbara, Charleston, and Buffalo mass shootings.

A. Santa Barbara.

In May 2014, a 22-year-old man stabbed three people to death in his apartment. Kashmir Hill, *The Disturbing Internet Footprint of Santa Barbara Shooter Elliot Rodger*, Forbes (May 24, 2014). He then drove through Santa Barbara, shooting from his car and murdering three more individuals and injuring thirteen. *Id.* Before the shooter died by suicide from his own weapon, he uploaded a video to YouTube describing his plans to "punish" the girls of Santa Barbara for

[5] In order to respect the victims and survivors and to avoid glorifying these crimes, and in accordance with commonly accepted style standards, this brief omits the names of the individuals who committed these mass shootings. The only times the names appear are when they were included in the title of a cited news article.

having "never been attracted" to him. *Id.* The gunman left a trail of hate and anger online. Not only were his own beliefs reinforced and strengthened by online echo chambers, but his violently misogynous videos and posts have since repeatedly been shared and glorified on social media, including by later mass shooters.

The Santa Barbara shooter was an active member of an online community where individuals shared and expressed misogynous and hate-filled views toward women. A year before his attack, the Santa Barbara shooter discovered a website where many people shared their common hatred of women, which "confirmed his theories about how wicked and degenerate women really are." *Id.* He also posted multiple videos on YouTube complaining how women unfairly rejected him, including one where he described his plans for "retribution." *Id.* He shared a 141-page autobiography overflowing with hatred of women and jealousy of those in sexual relationships. *Id.*

The shooter had been receiving mental health treatment. *Id.* His parents saw the YouTube videos—and even reported him to the police. *Id.* Yet it was not enough to stop him from executing what he called a "Day of Retribution." *Id.*

In the wake of the attack, social media platforms, including mainstream platforms like YouTube, allowed a community of misogynous followers to glorify and promote the shooter's actions and ideology. He has become a hero to the misogynous "involuntary celibate" or "incel" community. BBC News, *Elliot Rodger: How*

Misogynist Killer Became 'Incel Hero' (Apr. 26, 2018). For years, videos circulated on YouTube that honored him. *Id.* Shirts glorifying him have been available for purchase online. *Id.*

The online incel community continues to glorify the Santa Barbara shooter, treating him as a hero to the movement and referring to him with monikers like "sweet prince" and canonizing him as a "Saint." Stassa Edwards, *Saint Elliot Rodger and the 'Incels' Who Canonize Him*, Jezebel (Apr. 27, 2018). Online forums have declared the date of the Santa Barbara mass shooting a holiday—"a day to celebrate . . . the retribution." *Id.*

Subsequent mass murderers have also praised the Santa Barbara shooter. The Parkland shooter, who killed 17 in February 2018, expressed his admiration in a YouTube comment. *Id.* In April 2018, in Toronto, Canada, a man drove a van onto a sidewalk and killed ten people. *Id.* The driver posted to Facebook declaring that "[t]he Incel Rebellion has already begun!" and stating: "All hail the Supreme Gentleman," and referring to the Santa Barbara shooter by name. *Id.*

The Santa Barbara shooter's online influence continues to be connected to acts of misogynous violence. For example, in July 2021, federal agents arrested a 22-year-old Ohio man who had posted online about his plans to "slaughter" some 3,000 women "out of hatred, jealousy, and revenge." Jonathan Franklin, *An Ohio Man Pleads Guilty to Plotting a Mass Shooting of College Women in 2020*, NPR (Oct. 13, 2022). The man's online footprint repeated the violent language of

the incel community and lauded the Santa Barbara shooter. *Id.*

The Santa Barbara shooter is today still frequently referred to in online incel message boards, which are teeming with suicidal and homicidal threats and misogynous hate speech. Anti-Defamation League, Incels (Involuntary Celibates) (Aug. 29, 2022).[6] These online messages of hate and violence have real-world consequences: law enforcement officials believe people identifying themselves as incels murdered at least 47 people in North America in the past six years, and that is likely a low estimate. *Id.* YouTube videos promoting the incel movement have been viewed over 24 million times. Taylor Lorenz, *The Online Incel Movement Is Getting More Violent and Extreme, Report Says*, Wash. Post (Sept. 23, 2022). Each month, 2.6 million people visit one of the most popular forums for incels. *Id.* Messages on that forum frequently discuss and praise rape and even pedophilia. *Id.* Disturbingly, this hateful content continues to propagate: posts about mass murder have increased by 59% in just 2021 and 2022 alone. *Id.*

B. Charleston.

On June 17, 2015, congregants at the Mother Emanuel African Methodist Episcopal Church in Charleston, South Carolina welcomed a 21-year-old white man into their Wednesday night bible study group. *Timeline of the Shooting at Emanuel AME Church in Charleston*,

[6] https://www.adl.org/resources/backgrounder/incels-involuntary-celibates.

Associated Press (Jan. 10, 2017). Members of the 200-year-old Black congregation were accustomed to outside visitors. With its rich history, distinctive architecture, and central locale in Charleston's downtown historic district, the church often drew tourists from out-of-town. *See* Jonathan Weisman, *Killings Add a Painful Chapter to Storied History of Charleston Church*, N.Y. Times (June 18, 2015).

That evening, however, as the bible study came to a close, the young man the congregants had just welcomed into their place of worship pulled out a gun and opened fire on them, killing nine—including community and religious leaders, a grandmother, a mother of four, and a recent college graduate—while their fellow congregants watched on in terror. *See id.*; *The Victims: 9 Were Slain at Charleston's Emanuel AME Church*, NPR (June 18, 2015).

When questioned about his motives, the self-proclaimed white supremacist explained that he had "wanted to start a 'race war.'" Dep't of Justice, Press Release, Justice Department Announces Multi-Million Dollar Civil Settlement in Principle in Mother Emanuel Charleston Church Mass Shooting (Oct. 28, 2021). The shooter specifically targeted that church for its historical significance as a pillar of the Black community in Charleston and its prominent role in the struggle for racial equality. *Id.*; Weisman, *above*.

Investigations after the attack have shown that the Charleston shooter was radicalized by online white supremacist ideology and hate speech. Prosecutors at

his criminal trial presented the jury with extensive evidence that the shooter had "self-radicalized" online, without any real-world personal association to white supremacist groups or individuals. Mark Berman, *Prosecutors Say Dylann Roof 'Self-Radicalized' Online, Wrote Another Manifesto in Jail*, Wash. Post (Aug. 22, 2016). His defense counsel agreed, arguing that the shooter was "simply regurgitating . . . slogans and . . . bits and pieces of facts that he [had] downloaded from the internet directly into his brain." Rebecca Hersher, *What Happened When Dylann Roof Asked Google for Information About Race?*, NPR (Jan. 10, 2017).

For example, after Trayvon Martin's death, the Charleston shooter reportedly used Google to search for "black on white crime." *Id.* One of the top results on Google was the website for the Council of Conservative Citizens, a known white supremacist hate group. *Id.* Although it is impossible to reproduce the exact results of the shooter's Google search, reporters who performed the same search after the shooting also received, as top results, multiple white supremacist websites. Worse, Google's "autocomplete" feature suggested deeply problematic search terms. For instance, when the reporter typed the letters "b-l-a-c-k o-n," Google's top autocompleted suggestion was "black on white crime." *Id.*

In the wake of the Charleston shooting, users on social media platforms have glorified the shooter's actions and white supremacist ideology. Gab, a fringe social media platform known to be a haven for white supremacists, hosts an active community of white supremacists who voice their support for the Charleston

shooter. Anti-Defamation League, *Hardcore White Supremacists Elevate Dylann Roof to Cult Hero Status*, ADL Blog (Feb. 6, 2019).[7] One member of this online community who "fantasized about killing Jews and blacks" and "believed there would be a race revolution and . . . wanted to expedite it" was arrested in Washington D.C. for illegally possessing a firearm and a high-capacity magazine. *Id.*; Spencer S. Hsu and Peter Hermann, *D.C. Man Arrested on Gun Charge after Relatives Alert Police to his Alleged White Nationalist Outbursts*, Wash. Post (Nov. 13, 2018).

Online hate speech celebrating the Charleston shooter has continued to proliferate, leading to copycat incidents. *See*, *e.g.*, Zack Beauchamp, *An Online Subculture Celebrating the Charleston Church Shooter Appears to be Inspiring Copycat Plots*, Vox (Feb. 7, 2019). The real-world consequences of amplifying this hateful, violent content online are obvious and deeply troubling. *See* Congressman Eric M. Swalwell & R. Kyle Alagood, *Homeland Security Twenty Years After 9/11: Addressing Evolving Threats*, 58 Harv. J. on Legis. 221, 235 (2021) ("The ideologies of white supremacy and anti-government militancy, coupled with conspiracy theories, have had devastating effects in communities across the country—particularly when people with access to firearms both adopt and act on such ideologies.").

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[7] https://www.adl.org/blog/hardcore-white-supremacists-elevate-dylann-roof-to-cult-hero-status.

C. Buffalo.

On a Saturday afternoon in May 2022, a heavily armed 18-year-old man drove from his home in Conklin, New York, to a "Tops" supermarket in a predominantly Black neighborhood in Buffalo. His stated intention was "killing as many blacks as possible." Office of the N.Y. State Att'y Gen. Letitia James, Investigative Report on the Role of Online Platforms in the Tragic Mass Shooting in Buffalo on May 14, 2022 (Oct. 18, 2022), at 9.[8] While livestreaming his attack, he proceeded to shoot and kill ten people, including an armed security guard, and injure three others. *Id.* at 1, 9-10. As comprehensively detailed in an official investigative report from the New York Attorney General's Office, online platforms played a critical role in the Buffalo tragedy—before, during, and after the shooting. The shooter was radicalized online, he used a variety of online sources to prepare for and plot the attack, and by livestreaming his attack and publishing his private diary and "manifesto" online, he hoped to inspire future hate-based mass shootings.

By his own account, the Buffalo shooter's radicalization occurred entirely online. *Id.* at 6. Material on websites like 4chan, Reddit, and Discord inspired the shooter to commit mass murder.

The Buffalo shooter's radicalization began when he viewed online material related to the 2019 mass shooting at two mosques in Christchurch, New Zealand.

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[8] https://ag.ny.gov/sites/default/files/buffaloshooting-online platformsreport.pdf.

Like the Buffalo shooter, the Christchurch shooter also livestreamed his attack and published an online manifesto that espoused the white supremacist "Great Replacement" theory. *Id.* at 3, 17. Hundreds of people on Facebook watched the video of the Christchurch mass shooting in real-time, and the video was uploaded more than a million times to that website in just the twenty-four hours following the shooting. *Id.* at 18.

The Buffalo shooter discovered a clip of the Christchurch shooting on 4chan in May 2020. *Id.* at 19. As he described it, viewing the Christchurch video started his "real research in the problems with immigration and foreigners in our White lands," and without the Christchurch livestream, the Buffalo shooter "would likely have no idea about the real problems the West is facing." *Id*. After viewing the Christchurch shooter's livestream and reading his manifesto online, the Buffalo shooter sought to "follow [the Christchurch shooter's] lead and the attacks of so many others like him." *Id*. The Buffalo shooter continued to develop his radical white supremacist ideology through discussion groups on 4chan and Reddit, and began chronicling his beliefs in a private diary on the Discord website. *Id.* at 24-27.

In his diary, the Buffalo shooter credited the development of his ideology primarily to 4chan, stating that he wasn't initially "racist against blacks though, maybe uncomfortable around the majority of them." Instead, he "really turned racist when 4chan started giving [him] facts"—"facts" that were nothing but racist tropes—describing Black people as "intellectually

and emotionally inferior." *Id.* at 24. In the early stages of planning his attack, the shooter wrote that "[e]very time I think maybe I shouldn't commit to an attack I spend 5 min [on 4chan], then my motivation returns." *Id.* Through his immersion in these radical hate-based online communities, the Buffalo shooter began to study and idolize not only the Christchurch shooter, but also the Charleston shooter—described above—and others who subscribed to white supremacist beliefs and committed hate-based atrocities in Norway and Germany. *See id.* at 19-20, 31.

The Buffalo shooter also used social media platforms to justify and plan his attack. He created a private diary on a Discord "server" and restricted access only to himself until the day of the shooting. *Id.* at 8, 24-30. Beginning in November 2021, the shooter began writing in the diary to provide a window into his ideological beliefs, activities, and relationships in the months leading up to his attack. *Id.* at 20, 24. Having himself been influenced by previous mass shooters' manifestos and graphic content, the Buffalo shooter understood the power of these materials to recruit others to commit mass violence, and he expressly intended his writings to encourage others to follow in his footsteps. *Id.* at 20. He wrote that he would livestream the attack and publish his manifesto online "to increase coverage and spread [his] beliefs," and that doing so would also give him "motivation" because he knew "that some people would be cheering for him." *Id.* at 31.

The Buffalo shooter also extensively used various online platforms to educate himself about, and in some

cases acquire, the weapons and armor that he would eventually bring to Buffalo. *Id.* at 28. His writings on Discord reflect months of research he conducted on the equipment he would need to carry out his stated goals to "kill as many blacks as possible" and "avoid dying." *Id.* at 28. Through 4chan and Discord, he collected advice about ballistics and protective gear, the use of which helped him survive an early exchange of gunfire with, and ultimately kill, Aaron Salter, an armed security guard at the Tops supermarket. *Id.* at 28-30.

The Buffalo shooter's writings—still widely available online—effectively serve as both an "inspirational guide and instructional manual for the next mass shooter." *Id.* at 20.

And the Buffalo shooter expected these writings to reach a wide audience. Influenced by the previous hate-based mass shootings that had been glorified and publicized online, the Buffalo shooter created a detailed plan to maximize the publicity and impact of his crimes. *See id*. at 31. On the day of the attack, the shooter invited Discord users to access his private server where they could access his manifesto, the hundreds of pages he had written in his private diary, and a link to a livestream on Twitch, a livestreaming service owned by Amazon. *Id.* at 9, 32. The shooter then broadcasted himself driving to the Tops supermarket and beginning to shoot and kill the customers there. *Id.* at 33. One of the livestream viewers, who accepted the shooter's invitation to view the broadcast, submitted a report to Twitch, and the company terminated

the livestream, but not until about one minute after the shooting began. *Id.* at 33.

Another viewer, however, then uploaded a video of the livestreamed attack to a file-sharing site and posted a link to the uploaded video on 4chan. *Id.* at 34. Others followed suit, sharing the video on Reddit and Twitter. *Id.* In the following days, the video was shared on these and other websites thousands of times. *Id.* The shooter's writings were also widely shared on social media. *Id.* at 37.

In the days following the attack, mainstream websites like Facebook and Twitter were reported to have run advertisements next to footage of the shooting. *Id.* at 39-40. The New York Times reported that on Facebook, in the days immediately following the attack, "searches for terms associated with footage of the shooting have been accompanied by ads for a horror film, clothing companies and video streaming services." *Id.* at 39 (quoting Ryan Mac, *Facebook Has Been Monetizing Searches for the Buffalo Shooting Video*, N.Y. Times (May 19, 2022)). Facebook also recommended search terms related to the shooting, noting that they were "popular now" on the platform. *Id.* Twitter was likewise advertising promoted content alongside search results related to the shooting, and for weeks after the attack, was "auto-suggesting" a search for "buffalo live stream video" to users who only entered the partial query "buffal." *Id.* (citing Amanda Silberling, *Facebook and Twitter Still Can't Contain the Buffalo Shooting Video*, TechCrunch (May 17, 2022)). And Tik-Tok continued to auto-suggest the shooting video

for weeks after the attack, although without the advertising. *Id.* at 40.

Witnesses, survivors, and families of victims of the Buffalo shooting have understandably suffered another layer of trauma because of the wide availability of the Buffalo shooting video. As one community leader noted, "That video was everywhere in East Buffalo, and the families have to continue to relive the tragedy." *Id.* at 14.

III. Online hate speech chills free speech.

Section 230 was designed to ensure that the Internet would remain a thriving marketplace of ideas. In enacting Section 230, Congress found that the Internet had the chance to offer "a forum for a true diversity of political discourse," and sought to "preserve the vibrant and competitive free market that presently exists for the Internet." 47 U.S.C. §§ 230(a)(3), (b)(2).

Social media companies have resisted regulation or content moderation on the theory that such efforts would stifle this marketplace of ideas and infringe the free-speech rights of their users. And yet, by fostering and promoting hate speech across their platforms, *social media companies have in fact often chilled free speech* and other protected First Amendment activities, both online and in the real world.

Research has shown that many social media users "self-censor" themselves when posting online to avoid being targets of hate speech and harassment. *See*, *e.g.*,

Kalyani Chadha et al., *Women's Response to Online Harassment*, 14 Int'l J. of Commc'n 239, 241 (2020); Amanda Lenhart et al., *Online Harassment, Digital Abuse, and Cyberstalking in America*, Data & Society Rsch. Inst. (Nov. 21, 2016).[9] This burden of self-censorship disproportionately falls on young women, people of color, and LGBTQ individuals. Lenhart, *Online Harassment*, at 4. Studies have shown that members of these groups will often adopt defensive self-censoring strategies where they avoid talking about topics that could make them targets of future online harassment. *Id.*; Chadha, *Women's Response to Online Harassment*, at 250-51.

When hate speech and harassment permeate social media platforms, many people "will choose simply to abstain from protected speech," a response that harms not only the silenced speaker "but society as a whole, which is deprived of an uninhibited marketplace of ideas." *Virginia v. Hicks*, 539 U.S. 113, 119 (2003). This result runs contrary to Congress's express purpose in enacting Section 230. Rather than preserving a free marketplace of ideas, social media companies have effectively put the thumb on the scale of those who shout the loudest. Over time, this emboldens extremists to transform their online hate speech into real-world violence.

The events of January 6 provide a profound example of the role social media plays in transforming

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[9] https://www.datasociety.net/pubs/oh/Online_Harassment_2016.pdf.

speech into action. The insurrectionists responsible for attacking the Capitol used social media extensively to organize and promote their activities. In the build-up to January 6, social media companies largely failed to address growing threats of real-world violence, even as these threats dominated discussions on the platforms.

For example, Facebook invested substantial resources in 2020 to addressing hate speech and misinformation on its social media platforms in the weeks and months before the election. After the election, however, Facebook "rolled back" and "largely disbanded" many of the teams working to prevent the proliferation of hate speech and misinformation. Craig Timberg et al., *Inside Facebook, Jan. 6 Violence Fueled Anger, Regret over Missed Warning Signs*, Wash. Post (Oct. 22, 2021). Between the election and the January 6 attack on the Capitol, Facebook saw an explosion of threats and hate speech. Craig Silverman et al., *Facebook Hosted Surge of Misinformation and Insurrection Threats in Months Leading Up to Jan. 6 Attack, Records Show*, ProPublica (Jan. 4, 2022) ("Facebook groups swelled with at least 650,000 posts attacking the legitimacy of Joe Biden's victory . . . with many calling for executions or other political violence."). In internal documents, Facebook employees acknowledged the role the company's actions played in the events of January 6. As one Facebook employee wrote that day: "We've been fueling this fire for a long time and we shouldn't be surprised it's now out of control." Bill Chappell, *The Facebook Papers: What You Need to*

Know about the Trove of Insider Documents, NPR (Oct. 25, 2021).

Sadly, the use of violence and intimidation to interfere with the political process is not unique to January 6. Giffords Law Center has compiled a representative sampling of dozens of recent incidents where armed protestors openly carried firearms to stoke fear and chill others from engaging in protected First Amendment activities. Giffords Law Center, Armed Protestors Inspire Fear, Chill Free Speech (updated on Sept. 27, 2022);[10] *see also* Mike McIntire, *At Protests, Guns Are Doing the Talking*, N.Y. Times (Nov. 26, 2022). In the weeks before the 2022 midterm elections, armed extremists staked out ballot boxes and polling places, often motivated by false and racist claims of voter fraud perpetuated on social media. *See*, *e.g.*, Anti-Defamation League, Conspiracy Theorists and Extremists Using Various Tactics to Manipulate US Election Process (Oct. 19, 2022);[11] Ellen Ioanes, "*Stop the Steal" Conspiracy Theories Are Coming for Swing State Ballot Boxes*, Vox (Oct. 30, 2022).

This Court has observed that almost all Americans today use social media in some form to "engage in a wide array of protected First Amendment activities on topics 'as diverse as human thought.'" *Packingham*, 137 S. Ct. at 1735-36 (quoting *Reno v. Amer. Civil*

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[10] https://giffords.org/lawcenter/report/armed-protesters-inspire-fear-chill-free-speech/.

[11] https://www.adl.org/resources/blog/conspiracy-theorists-and-extremists-using-various-tactics-manipulate-us-election.

Liberties Union, 521 U.S. 844, 870 (1997)). Social media can be a democratizing force, empowering previously unheard and silenced voices to participate in the national conversation.

But social media can also draw out the worst parts of our nature. A new generation of white supremacists and domestic terrorists have come of age on social media. These emboldened extremists are not simply shouting into the void—their voices are being purposefully amplified by social media and they are arming themselves with deadly weapons in real life, inflicting real-world harm in communities across this country.

Social media companies have taken steps to address the growing threat of online hate speech and real-world gun violence. More must be done. Online hate speech on social media has played a central role in multiple horrific hate-motivated mass shootings in this country. Social media companies have a role to play in both preserving the Internet as a true free marketplace of ideas and protecting the lives of those who would be targets of real-world, hate-motivated gun violence. This Court should interpret Section 230 with this role in mind.

CONCLUSION

Giffords Law Center urges the Court, in interpreting the scope of immunity under Section 230(c)(1), to consider the role that social media has played in fueling hate-based gun violence in the United States.

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December 6, 2022