

Nos. 22-277 and 22-555

In The
Supreme Court of the United States

ASHLEY MOODY, in her official capacity
as Attorney General of Florida, et al.,

Petitioners,

v.

NETCHOICE, LLC; and Computer &
Communications Industry Association,

Respondents.

NETCHOICE, LLC; and Computer &
Communications Industry Association,

Petitioners,

v.

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

Respondent.

**On Writs Of Certiorari To The
United States Courts Of Appeals
For The Fifth And Eleventh Circuits**

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

KELLY M. PERCIVAL
Counsel of Record
WILLIAM T. CLARK
GIFFORDS LAW CENTER TO
PREVENT GUN VIOLENCE
268 Bush Street, # 555
San Francisco, CA 94104
(415) 433-2062
kpercival@giffords.org

DOUGLAS N. LETTER
SHIRA LAUREN FELDMAN
BRADY CENTER TO PREVENT
GUN VIOLENCE
840 First Street NE,
Suite 400
Washington, DC 20002
(202) 370-8100
dletter@bradyunited.org

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTEREST OF <i>AMICI CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	3
ARGUMENT	5
I. There is an epidemic of online hate speech and hate-motivated gun violence in the United States.....	5
II. Online hate and glorification of violence played an integral role in the Santa Barbara, Charleston, and Buffalo mass shootings	8
A. Santa Barbara	8
B. Charleston	11
C. Buffalo	15
III. Online hate speech chills free speech.....	20
CONCLUSION.....	25

TABLE OF AUTHORITIES

	Page
CASES	
<i>Counterman v. Colorado</i> , 143 S. Ct. 2106 (2023).....	21
<i>Packingham v. North Carolina</i> , 137 S. Ct. 1730 (2017).....	2, 24
<i>Reno v. Amer. Civil Liberties Union</i> , 521 U.S. 844 (1997).....	24
<i>United States v. Lee</i> , Dkt. No. 23-cr-1694 (D. Ariz. Oct. 24, 2023).....	11
<i>Virginia v. Hicks</i> , 539 U.S. 113 (2003).....	21
CONSTITUTIONAL PROVISIONS	
U.S. Const. amend. I	20, 23
OTHER AUTHORITIES	
Alex Nguyen, <i>Hate Crimes Rose Drastically in 2020</i> , Giffords Law Center (Sept. 10, 2021), https://giffords.org/blog/2021/09/hate-crimes-rose-drastically-in-2020/	7
Amanda Lenhart et al., <i>Online Harassment, Digital Abuse, and Cyberstalking in America</i> , Data & Society Rsch. Inst. (Nov. 21, 2016), https://www.datasociety.net/pubs/oh/Online_Harassment_2016.pdf	21
Amanda Silberling, <i>Facebook and Twitter Still Can't Contain the Buffalo Shooting Video</i> , TechCrunch (May 17, 2022).....	20

TABLE OF AUTHORITIES—Continued

	Page
Anti-Defamation League, Conspiracy Theorists and Extremists Using Various Tactics to Manipulate US Election Process (Oct. 19, 2022), https://www.adl.org/resources/blog/conspiracy-theorists-and-extremists-using-various-tactics-manipulate-us-election	23
Anti-Defamation League, <i>Hardcore White Supremacists Elevate Dylann Roof to Cult Hero Status</i> , ADL Blog (Feb. 6, 2019), https://www.adl.org/blog/hardcore-white-supremacists-elevate-dylann-roof-to-cult-hero-status	13, 14
Anti-Defamation League, Incels (Involuntary Celibates) (Aug. 29, 2022), https://www.adl.org/resources/backgroundunder/incels-involuntary-celibates	11
Anti-Defamation League, Online Hate and Harassment: The American Experience 2021 (May 3, 2022), https://www.adl.org/online-hate-2021	5, 6
Ari Freilich, How America’s Gun Laws Fuel Armed Hate, Giffords Law Center (May 23, 2022), https://giffords.org/lawcenter/report/how-americas-gun-laws-fuel-armed-hate/	6, 7
BBC News, <i>Elliot Rodger: How Misogynist Killer Became ‘incel hero,’</i> (Apr. 26, 2018).....	9
Bill Chappell, <i>The Facebook Papers: What You Need to Know about the Trove of Insider Documents</i> , NPR (Oct. 25, 2021).....	22

TABLE OF AUTHORITIES—Continued

	Page
Brief of Giffords Law Center to Prevent Gun Violence as <i>Amicus Curiae</i> , <i>Gonzalez v. Google</i> , 598 U.S. 617 (2023)	3
Congressman Eric M. Swalwell & R. Kyle Alagood, <i>Homeland Security Twenty Years After 9/11: Addressing Evolving Threats</i> , 58 Harv. J. on Legis. 221 (2021)	14
Craig Silverman et al., <i>Facebook Hosted Surge of Misinformation and Insurrection Threats in Months Leading Up to Jan. 6 Attack</i> , <i>Records Show</i> , ProPublica (Jan. 4, 2022)	22
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)	12
Ellen Ioanes, “ <i>Stop the Steal</i> ” <i>Conspiracy Theories Are Coming for Swing State Ballot Boxes</i> , Vox (Oct. 30, 2022)	23
Faygie Holt, <i>Following Pittsburgh and Poway, Security Has Become Top Priority at Jewish Summer Camps</i> , Jewish News (June 20, 2019)	7
Giffords Law Center, <i>Armed Protestors Inspire Fear, Chill Free Speech</i> (updated on Dec. 15, 2022), https://giffords.org/lawcenter/report/armed-protesters-inspire-fear-chill-free-speech/	23

TABLE OF AUTHORITIES—Continued

	Page
Global Project Against Hate and Extremism, Americans’ Fears Suppressing Participation in Democracy (Aug. 4, 2022), https://global-extremism.org/post/fear-and-elections/	23
Holly Lebowitz Rossi, <i>For Synagogues, High Holidays Welcome Is Complicated by Security Needs</i> , Religion News Service (Sept. 24, 2019)	7
Jonathan Franklin, <i>An Ohio Man Pleads Guilty to Plotting a Mass Shooting of College Women in 2020</i> , NPR (Oct. 13, 2022)	10
Jonathan Weisman, <i>Killings Add a Painful Chapter to Storied History of Charleston Church</i> , N.Y. Times (June 18, 2015)	12
Kalyani Chadha et al., <i>Women’s Response to Online Harassment</i> , 14 Int’l J. of Commc’n 239 (2020)	21
Kashmir Hill, <i>The Disturbing Internet Footprint of Santa Barbara Shooter Elliot Rodger</i> , Forbes (May 24, 2014)	8, 9
Mark Berman, <i>Prosecutors Say Dylann Roof ‘Self-Radicalized’ Online, Wrote Another Manifesto in Jail</i> , Wash. Post (Aug. 22, 2016)	13
Noah Remnick, <i>At Stonewall Inn, a Gay Rights Landmark, a Vigil in Pride and Anger</i> , N.Y. Times (June 12, 2016)	7

TABLE OF AUTHORITIES—Continued

	Page
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), https://ag.ny.gov/sites/default/files/buffalo-shooting-onlineplatformsreport.pdf	15-20
Patrick LaKamp, <i>As Racist Killer Apologizes, Judge, Attorneys Say Racism Still Must be Confronted After Buffalo Massacre</i> , Buffalo Post (Feb. 15, 2023), https://buffalonews.com/news/local/crime-and-courts/as-racist-killer-apologizes-judge-attorneys-say-racism-still-must-be-confronted-after-buffalo-massacre/article_b4a4fc5c-ad60-11ed-a376-a3ddb723aa1e.html	16
Rebecca Hersher, <i>What Happened When Dylann Roof Asked Google for Information About Race?</i> , NPR (Jan. 10, 2017).....	13
Ryan Mac, <i>Facebook Has Been Monetizing Searches for the Buffalo Shooting Video</i> , N.Y. Times (May 19, 2022).....	19
Spencer S. Hsu and Peter Hermann, <i>D.C. Man Arrested on Gun Charge after Relatives Alert Police to his Alleged White Nationalist Outbursts</i> , Wash. Post (Nov. 13, 2018)	14
Stassa Edwards, <i>Saint Elliot Rodger and the ‘Incels’ Who Canonize Him</i> , Jezebel (Apr. 27, 2018)	10

TABLE OF AUTHORITIES—Continued

	Page
Taylor Lorenz, <i>The online Incel Movement Is Getting More Violent and Extreme, Report Says</i> , Wash. Post (Sept. 23, 2022)	11
<i>The Victims: 9 Were Slain at Charleston’s Emanuel AME Church</i> , NPR (June 18, 2015)	12
<i>Timeline of the Shooting at Emanuel AME Church in Charleston</i> , Associated Press (Jan. 10, 2017)	11, 12
U.S. Dep’t of Justice, Bureau of Justice Stats., <i>Hate Crime Victimization, 2005–2019</i> (Sept. 21, 2021)	6
Zack Beauchamp, <i>An Online Subculture Celebrating the Charleston Church Shooter Appears to be Inspiring Copycat Plots</i> , Vox (Feb. 7, 2019)	14

INTEREST OF *AMICI 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.

Brady Center to Prevent Gun Violence (Brady) is the nation's longest-standing non-partisan, non-profit

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 *amici curiae* or their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

organization dedicated to reducing gun violence through education, research, and legal advocacy.

Brady was founded in 1974, as the National Council to Control Handguns (later, Handgun Control, Inc. or “HCI”). Shortly after Jim “the Bear” Brady was shot and partially paralyzed during an assassination attempt against President Reagan in 1981, Sarah Brady, his wife, began working with HCI. Through Jim and Sarah Brady’s work with HCI, they led the fight to pass the federal background check legislation ultimately known as the “Brady Bill.” HCI was renamed in their honor in 2000.

Today, Brady continues to uphold Jim and Sarah Brady’s legacy by uniting people from coast to coast, progressives and conservatives of every race, ethnicity, and identity, to combat the epidemic of gun violence. Brady works across Congress, courts, and communities, uniting gun owners and non-gun-owners alike, to take action to prevent gun violence. Brady has a substantial interest in ensuring that the Constitution is construed to protect Americans’ fundamental right to live. Brady has filed numerous briefs as *amicus curiae* in cases that implicate gun violence prevention.

Amici take no position on the constitutionality of the challenged laws in this case. *Amici* file this brief because the Court’s resolution of this challenge may have consequences that reach beyond the two laws directly at issue. 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). *Amici* file this brief to highlight the increasingly direct and troubling connection between the glorification of hate and violence on social media and hate-motivated mass shootings in the United States.²

◆

INTRODUCTION AND SUMMARY OF ARGUMENT

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

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, Nashville, Jacksonville, Lewiston—the list goes on.

The shooters responsible for these tragedies are frequently isolated and deeply troubled young men. Many were inspired to commit mass murder after becoming infatuated with previous mass shooters and their extremist, racist, and misogynous ideologies,

² Giffords Law Center has previously filed a similar *amicus* brief highlighting the connection between online hate speech and real world gun violence in another case before this Court on social media issues. *See* Brief of Giffords Law Center to Prevent Gun Violence as *Amicus Curiae*, *Gonzalez v. Google*, 598 U.S. 617 (2023).

which proliferate on various online social media platforms. These shooters often sought to copy their predecessors and—by publishing “manifestos” online and sometimes even livestreaming 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 alongside paid advertisements.

In each case, and in other shootings not discussed in detail in this brief, the shooter’s online trail has been widely shared and glorified across social media, further perpetuating the cycle of hate and mass murder.

Across social media platforms, hate speech has been tolerated, fostered, and even promoted. In a time of increasing political strife, online hate speech presents a real-world threat to our democracy and to the lives of every human being in America.



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).³

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

Social media platforms remain the dominant place where people are targeted by hate speech and

³ <https://www.adl.org/online-hate-2021>.

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).⁴ But beginning in 2015, the number of hate crimes began to rise, with an alarming 48% increase from 2015 to 2020. *Id.*

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. Dep't of Justice, Bureau of Justice Stats., *Hate Crime Victimization, 2005–2019* (Sept. 21, 2021)). Under that number, a hate crime occurs in the United States at least every two minutes.

There is a well documented deadly nexus between hate-motivated violence and firearms. Over 10,300

⁴ <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.*

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).⁵

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 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

⁵ <https://giffords.org/blog/2021/09/hate-crimes-rose-drastically-in-2020/>.

platforms has been a significant factor in three recent hate-motivated mass shootings.⁶

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 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 online, but his violently misogynous videos and posts have since repeatedly been shared and glorified on social media, including by later mass shooters.

⁶ 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.

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 students 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).⁷ These online messages of hate and violence have real world consequences: 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, and posts about mass murder have increased by 59% in just 2021 and 2022 alone. *Id.* In October 2023, a self-described “former incel” was arrested for threatening on Snapchat to commit a mass shooting at the University of Arizona. *United States v. Lee*, Dkt. No. 23-cr-1694 (D. Ariz. Oct. 24, 2023) (Complaint). In his threats, the individual directly invoked the Santa Barbara shooting, calling it “the day of retribution.” *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*

⁷ <https://www.adl.org/resources/backgrounder/incels-involuntary-celibates>.

Church in Charleston, 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 others watched 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.* After the Charleston shooting, reporters who performed the same search 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).⁸ 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 including the massacre in Buffalo, described below. *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 type of 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.”).

⁸ <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 drove over 200 miles from his home in predominantly white Conklin, New York, to a Tops Friendly Markets in a predominantly Black neighborhood on the East Side of 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 9.⁹ 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, both before 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. Social media products inspired the shooter to commit a racist mass murder. As the shooter’s own attorney has since stated in court, “The racist hate that motivated this crime was spread through on-line platforms. . . .”

⁹ <https://ag.ny.gov/sites/default/files/buffaloshooting-online-platformsreport.pdf>.

Patrick LaKamp, *As Racist Killer Apologizes, Judge, Attorneys Say Racism Still Must be Confronted After Buffalo Massacre*, Buffalo Post (Feb. 15, 2023).¹⁰

The Buffalo shooter’s radicalization began when he viewed online material related to the 2019 mass shootings at two mosques in Christchurch, New Zealand. Like the Buffalo shooter, the Christchurch shooter also livestreamed his attacks 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 Facebook 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, he “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,

¹⁰ https://buffalonews.com/news/local/crime-and-courts/as-racist-killer-apologizes-judge-attorneys-say-racism-still-must-be-confronted-after-buffalo-massacre/article_b4a4fc5c-ad60-11ed-a376-a3ddb723aa1e.html.

Discord, 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 explained the role that social media products, such as 4chan, played in the development of his ideology, stating that he was not initially “racist against blacks though, maybe uncomfortable around the majority of them.” Instead, he “really turned racist when 4chan started giving [him] facts that they were 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 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 publish the livestream of the attack and his manifesto online “to increase coverage and spread [his] beliefs,” and that doing so would also give him “some motivation” because he knew “that some people would be cheering for him.” *Id.* at 31.

The Buffalo shooter also extensively used 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 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, Discord, Reddit, and other platforms, he collected advice about ballistics and protective gear, the use of which helped him survive an early exchange of gunfire with, and ultimately murder, Aaron Salter, a retired police officer serving as an armed security guard at the Tops supermarket. *Id.* at 28–30.

The Buffalo shooter’s online writings effectively serve as both an “inspirational guide and instructional manual for the next mass shooter.” *Id.* at 20.

Once he had committed to go through with the attack, the Buffalo shooter—influenced by the previous hate-based mass shootings that had been glorified and publicized online—created a detailed plan to maximize the publicity and impact of his attack. *See id.* at 31. On

the day of the attack, the shooter invited Discord users to access his personal server where they could view his manifesto, the hundreds of pages he had written in his private diary, and a link to a livestream on Twitch, a livestreaming product owned by Amazon. *Id.* at 9, 32. Using that link, 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 two minutes after the shooting began. *Id.* at 3.

Another viewer, however, then uploaded a video of the livestream 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, “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 TikTok continued to auto-suggest the shooting video to its users for weeks after the attack, without accompanying 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 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.

Social media companies have resisted regulation or content moderation on the theory that such efforts would stifle the 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).¹¹ 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 entire topics, not just viewpoints, 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); *see also* *Counterman v. Colorado*, 143 S. Ct. 2106, 2123 (2023) (Sotomayor, J., concurring in part and concurring in the judgment) (“[I]solated threatening speech can do real harm. Such speech not only disrupts lives, it can silence the speech of others who become afraid to speak out.”). Thus, rather than preserving a free marketplace of ideas, social media

¹¹ https://www.datasociety.net/pubs/oh/Online_Harassment_2016.pdf.

companies have effectively put the thumb on the scale of those who shout the loudest and threaten others into silence. Over time, this empowers extremists to transform their online hate speech into real-world violence.

The events of January 6 provide a profound example of this transformation. The insurrectionists responsible for attacking the Capitol used social media products extensively to organize and promote their activities. In the build-up to January 6, social media companies failed to address these growing threats of real-world violence, even as these threats dominated discussions on the platforms. 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 Dec. 15, 2022).¹² 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);¹³ Ellen Ioanes, *“Stop the Steal” Conspiracy Theories Are Coming for Swing State Ballot Boxes*, *Vox* (Oct. 30, 2022). And a poll conducted last year underscores how these acts have increasingly frightened and intimidated American voters: less than half of all respondents—just 41%—reported that they feel safe at their polling places. *Global Project Against Hate and Extremism, Americans’ Fears Suppressing Participation in Democracy* (Aug. 4, 2022).¹⁴ Hispanic, Black, and young voters aged 18 to 25, moreover, reported feeling safe at even lower rates. *Id.*

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

¹² <https://giffords.org/lawcenter/report/armed-protesters-inspire-fear-chill-free-speech/>.

¹³ <https://www.adl.org/resources/blog/conspiracy-theorists-and-extremists-using-various-tactics-manipulate-us-election>.

¹⁴ <https://globalextrmism.org/post/fear-and-elections/>.

on topics ‘as diverse as human thought.’” *Packingham*, 137 S. Ct. at 1735–36 (quoting *Reno v. Amer. Civil 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—they are arming themselves with deadly weapons in real life and inflicting real-world harm in communities across this country.

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 marketplace of ideas and protecting the lives of those who would be targets of real-world, hate-motivated gun violence.



CONCLUSION

Amici take no position on how this particular dispute should be resolved, but instead ask the Court to consider the role that social media has played in fueling hate-based gun violence in the United States when considering this challenge.

Respectfully submitted,

KELLY M. PERCIVAL
Counsel of Record

WILLIAM T. CLARK
GIFFORDS LAW CENTER TO
PREVENT GUN VIOLENCE
268 Bush Street, # 555
San Francisco, CA 94104
(415) 433-2062
kpercival@giffords.org

DOUGLAS N. LETTER
SHIRA LAUREN FELDMAN
BRADY CENTER TO PREVENT
GUN VIOLENCE
840 First Street NE, Suite 400
Washington, DC 20002
(202) 370-8100
dletter@bradyunited.org

December 6, 2023