Case No. A158214

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION 1

Meghan Murphy,

Appellant,

v.

Twitter, Inc. and
Twitter International Company,

Respondents.

APPLICATION FOR LEAVE TO FILE AMICUS BRIEF OF INTERNET ASSOCIATION, FACEBOOK, INC., GLASSDOOR, INC., GOOGLE LLC, AND REDDIT, INC. IN SUPPORT OF RESPONDENTS

On Appeal from the Superior Court for the State of California,
County of San Francisco, Case No. CGC-19-573712
Hon. Ethan P. Schulman

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INTRODUCTION

Pursuant to California Rule of Court 8.200(c), Internet Association, along with Facebook, Inc., Glassdoor, Inc., Google LLC, and Reddit, Inc. (the "provider amici') (collectively, "amici"), respectfully request permission to file the attached brief as amici curiae in support of respondents. Undersigned counsel certifies that this brief was not authored, in whole or in part, by any party or any counsel for a party in the pending appeal and that no person or entity other than amici made any monetary contributions intended to fund the preparation or submission of this brief.

INTERESTS OF AMICI

Internet Association ("IA") is the only trade association that exclusively represents leading global internet companies on matters of public policy. IA's mission is to foster innovation, promote economic growth, and empower people through the free and open internet. A list of IA's members is available at https://internetassociation.org/our-members/.[1]

The provider amici are some of America's leading technology companies, offering services that enable billions of people across the United States and around the world to use the power of the internet to connect, communicate, debate, discover, and share.

Facebook, Inc. ("Facebook") provides a free internet-based social media service that gives more than two billion people the power to build community and bring the world closer together. People use Facebook to stay connected with friends and family, to discover what's going on in the world, and to share and express what matters to them. Facebook's headquarters are in Menlo Park, California.

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[1] All websites cited in this application and in the accompanying proposed brief were last visited on August 13, 2020.

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Glassdoor, Inc. ("Glassdoor") operates www.glassdoor.com, an online jobs and recruiting marketplace in which employers are anonymously rated and reviewed by employees and job seekers on important characteristics like culture, career advancement, work-life balance, the job interview experience, and benefits. Glassdoor combines a vast array of user-generated content with available job listings to help people seeking employment make better, more informed decisions about where they work. Glassdoor's headquarters are in Mill Valley, California.

Google LLC's ("Google") mission is to organize the world's information and make it universally accessible and useful. Google offers a wide variety of web-based products and services, including Search, Gmail, Google+, Drive, Docs, Maps, YouTube, and Blogger. Google's headquarters are in Mountain View, California.

Reddit, Inc. ("Reddit") operates the reddit.com platform, which is a collection of thousands of online communities attracting over 300 million monthly unique visitors that create, read, join, discuss, and vote on conversations across a myriad of topics. Reddit is based in San Francisco, California.

The services offered by the provider amici and by IA's members enable people throughout the country and the world to express themselves, both privately and publicly. Amici therefore have a direct and substantial interest in the proper interpretation and application of the federal Communications Decency Act, which has allowed online speech to flourish, fostered innovation, and enabled providers to adopt content moderation rules that protect their users—just as Congress intended. Amici also have a direct and substantial interest in preserving their right, under the First Amendment to the U.S. Constitution, to exercise control over their private platforms.

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ARGUMENT

This appeal involves two issues of critical importance to amici: the proper interpretation and application of the Communications Decency Act ("CDA"), 47 U.S.C. § 230, which immunizes providers against most claims based on the editorial decisions they make when regulating content on their platforms, and the proper interpretation and application of the First Amendment, which guarantees providers' fundamental right to exercise editorial control over their private platforms.

The positions advanced by appellant Meghan Murphy ("Murphy") in this appeal could severely restrict both the CDA's broad grant of immunity and providers' fundamental First Amendment rights. As explained in the accompanying brief, Murphy seeks to hold Twitter liable for suspending her Twitter account. She also seeks to force Twitter to carry her speech (and the speech of others) against Twitter's will. But she also goes further, asking this Court to overturn decades of judicial precedent and hold that Section 230(c)(1) of the CDA does not broadly immunize providers against claims based on their exercise of editorial discretion. She also asks this Court to adopt a novel interpretation of the First Amendment under which providers have no right or little right to exercise control over their private platforms. Murphy's positions, if accepted, would make it extremely difficult for providers to adopt and enforce content moderation rules designed to protect their users and their platforms without fear of potentially crippling liability. The result would be fewer online platforms, fewer speakers, and less speech—the opposite of what Congress intended when it enacted the CDA.

Amici's brief will assist this Court by discussing the broader legal and policy implications of this case, including how the legal rules urged by Murphy would impose unreasonable and unworkable burdens on providers.

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Amici's brief will also assist this Court by describing how adopting Murphy's positions would harm millions of users, chill online speech, discourage innovation and competition, and otherwise undermine Congress's clearly stated policy objectives.

CONCLUSION

Amici respectfully request that the Court accept the accompanying brief for filing in this case.

DATED: August 13, 2020

Respectfully submitted,

PERKINS COIE LLP

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TO BE FILED IN THE COURT OF APPEAL **APP-008**

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ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: James G. Snell (SBN 173070) FIRM NAME: PERKINS COIE LLP STREET ADDRESS: 3150 Porter Drive CITY: Palo Alto STATE: CA ZIP CODE: 94304 TELEPHONE NO.: 650.838.4367 FAX NO.: 650.838.4567 E-MAIL ADDRESS: JSnell@perkinscoie.com ATTORNEY FOR (*name*): Amicus Curiae	SUPERIOR COURT CASE NUMBER: CGC-19-573712
APPELLANT/ PETITIONER: Meghan Murphy RESPONDENT/ REAL PARTY IN INTEREST: Twitter, Inc. and Twitter International Company	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (*Check one*): [x] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE	

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INTRODUCTION

Appellant Meghan Murphy appeals from a judgment of the Superior Court for the County of San Francisco dismissing her claims against respondents Twitter, Inc. and Twitter International Company ("Twitter") under Section 230(c)(1) of the federal Communications Decency Act ("CDA"). Amici curiae respectfully urge this Court to affirm the Superior Court's ruling because its reasoning is sound and because failing to affirm would chill online speech, stifle innovation, and undermine Congress's intent in enacting Section 230(c)(1)—including Congress's intent to encourage online service providers to responsibly police their platforms.

The facts of this case are straightforward. Like virtually all service providers that facilitate the sharing of user-generated content via the internet, Twitter adopted "rules of the road" for its platform. Those rules define acceptable and unacceptable conduct and explain how Twitter moderates user content. They also make clear that Twitter may exercise its discretion to delete content or suspend user accounts to enforce its rules. *See* Brief for Respondents ("Twitter Br.") at 11, 13-16. Nobody disputes the importance of such rules, and for good reasons. If providers could not adopt and enforce such rules, then they could not protect their users and their platforms from the many forms of harmful misconduct that tend to degrade and chill online speech—including, for example, harassment. The result would be fewer speakers, fewer platforms, and far less of the free-wheeling discourse and debate that defines the internet.

As explained in the parties' briefs, Twitter found that Murphy repeatedly violated Twitter's content rules barring targeted harassment of other users. After several warnings, Twitter suspended Murphy's account. *See id*. at 16-19; *see also* 4 CT 884-86. Murphy then sued Twitter to force it to

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reinstate her account and the accounts of others who had violated Twitter's rules. *See* Murphy Br. at 17-18. The Superior Court dismissed Murphy's claims. Specifically, the Superior Court held that all of Murphy's claims sought to impose liability on Twitter for its editorial decision to suspend Murphy's account, and that Murphy's claims were therefore barred by Section 230(c)(1) of the CDA, which immunizes "'[a]ny activity that can be boiled down to deciding whether to exclude material that third parties seek to post online.'" 4 CT 895 (quoting *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1170-71 (9th Cir. 2008) (en banc)). This appeal followed.

On appeal, Murphy does not merely seek to force Twitter to publish her speech and the speech of others. She also urges this Court to fundamentally reshape the legal regime governing online speech. In particular, she asks this Court to reject "the proposition that the CDA immunizes Twitter" and other providers against claims based on the "editorial decisions" that providers make when they moderate content on their platforms. Murphy Br. at 28. That bedrock principle has been virtually undisputed since the CDA was enacted nearly 25 years ago. *See, e.g.*, *Hassell v. Bird*, 5 Cal. 5th 522, 541 (2018) (explaining, based on a long line of legal authority, that "lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred" by the CDA) (internal quotation marks and citation omitted).

Murphy's position has no basis in the law. And now is hardly the time to tear down decades of judicial precedent protecting providers who regulate their platforms. To the contrary: Given the rapidly multiplying threats to free and fair speech on the internet—including hate speech, harassment, and

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misinformation—now is the time to reaffirm providers' authority to regulate their platforms in a way that protects their users, protects their platforms, and facilitates free speech. Nevertheless, Murphy invites this Court to dramatically reduce the scope of Section 230(c)(1) immunity and thereby dramatically expand providers' legal exposure for regulating their platforms in a thoughtful, responsible way.

For the following reasons, this Court should decline that invitation and affirm the dismissal of Murphy's claims.

First, the Superior Court did not err in dismissing Murphy's claims under Section 230(c)(1) of the CDA. Courts in California and elsewhere have consistently interpreted Section 230(c)(1) to bar claims, like Murphy's claims, that seek to hold providers liable based on the editorial decisions they make when regulating content on their platforms—including decisions to suspend user accounts. This Court should reject Murphy's artful attempts to circumvent that well-established framework.

Second, Murphy's claims run afoul of the First Amendment to the U.S. Constitution. "[O]ne important manifestation of the principle of free speech is that one who chooses to speak may also decide what not to say." *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 573 (1995) (internal quotation marks and citation omitted). That is the decision that Twitter made when it declined to carry Murphy's speech on its platform. Yet Murphy's lawsuit unabashedly seeks to compel Twitter to disseminate her speech and the speech of others. That demand directly conflicts with Twitter's fundamental First Amendment "right to decide what to publish and what not to publish on its platform." *La'Tiejira v. Facebook, Inc.*, 272 F. Supp. 3d 981, 991 (S.D. Tex. 2017).

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Third, Murphy's incorrect reading of Section 230(c)(1), if adopted, would undermine Congress's clearly stated policy objectives. Dramatically increasing providers' legal exposure to claims based on their content moderation decisions, as Murphy seeks to do here, would make it all but impossible for providers to adopt and enforce rules appropriate for their users and their platforms without fear of potentially crippling liability. That, in turn, would degrade the quality of online forums, drive users away from those forums, and make it even more difficult for companies—especially emerging companies and startups—to innovate and compete. Endorsing Murphy's misguided reading of the First Amendment, under which providers have virtually no rights to control who says what on their platforms, would further chill speech and undermine providers' efforts to protect their users. Those are exactly the grim results that Congress sought to avoid when it enacted the CDA.

This Court should affirm.

STATEMENT

Amici adopt and incorporate by reference Twitter's statement of the relevant facts and procedural posture. *See* Twitter Br. at 13-22.

ARGUMENT

I. Section 230(c)(1) Of The CDA Bars Claims Based On Content Removal, Including The Types Of Claims Asserted By Murphy

For decades, courts have held that Section 230(c)(1) of the CDA immunizes service providers against claims based on the "'exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content.'" *Barrett v. Rosenthal*, 40 Cal. 4th 33, 61 (2006) (quoting *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997)). Congress immunized providers' exercise of editorial discretion "for two basic policy reasons: to promote the free exchange of information and

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ideas over the Internet and to encourage voluntary monitoring for offensive or obscene material." *Hassell*, 5 Cal. 5th at 534 (internal quotation marks and citation omitted). Congress understood that, without broad immunity for editorial decisions, providers would face potential liability every time users disagreed with those decisions. Given the "sheer number of postings on interactive computer services," that would make it prohibitively risky and costly for providers to monitor their platforms and protect their users. *Barrett*, 40 Cal. 4th at 45 (internal quotation marks and citation omitted). And if providers could not freely monitor their platforms and protect their users, then those platforms would swiftly cease to be forums for free, fair, and robust discourse, and many users would simply abandon them—chilling online speech and stifling innovation.

Thus, consistent with Congress's policy goals and the plain language of the CDA, courts have long held that Section 230(c)(1) bars most claims based on providers' exercise of editorial discretion. And because "removing content is something publishers do," it follows that editorial decisions to remove content fall comfortably within the scope of that immunity. *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1103 (9th Cir. 2009); *see also Riggs v. MySpace, Inc.*, 444 F. App'x 986, 987 (9th Cir. 2011) (holding that Section 230(c)(1) immunizes providers' "decisions to delete . . . user profiles").

It follows from those basic principles that Section 230(c)(1) prohibits Murphy from suing Twitter based on Twitter's editorial decision to suspend Murphy's account and thereby remove her content from Twitter's platform. Murphy's efforts to avoid that straightforward conclusion are misguided.

A. Murphy's Claims Are Precisely The Types Of Claims That Section 230(c)(1) Was Intended To Prohibit

First, Murphy argues that the Superior Court erred in dismissing her claims because the labels she assigns to her claims—breach of contract,

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promissory estoppel, and unfair competition—render them categorically exempt from Section 230(c)(1) immunity. *See* Murphy Br. at 29-33. But in determining the scope of that immunity, "what matters is not the name of the cause of action"; what matters is whether the cause of action seeks to impose liability for "publishing conduct." *Barnes*, 570 F.3d at 1101-03.

That is what Murphy seeks to do here. The crux of Murphy's complaint is her disagreement with Twitter's decision to prevent her from posting content by suspending her account. *See* 1 CT 25 ("Twitter has enforced its Hateful Conduct Policy in a discriminatory and targeted manner against Murphy and other users based on their political beliefs and perspectives, banning hundreds of users for expressing views critical of the idea that 'gender identity' should be regarded solely as a matter of personal choice."). And the injunctive relief Murphy seeks—which expressly aims to overrule Twitter's content moderation decisions—makes clear that she seeks to hold Twitter liable for the manner in which it exercised its editorial discretion in this case. *See* Murphy Br. at 18-19 (Murphy seeks an injunction requiring Twitter to "[l]ift any suspension or ban of, and restore access to, any 'accounts Twitter has purported to suspend or ban pursuant to its "misgendering" policy,'" and an injunction prohibiting Twitter from "enforcing its unannounced and viewpoint discriminatory 'misgendering' rule").

Thus, this is just the latest in a long line of cases in which plaintiffs have tried to circumvent Section 230(c)(1) "through the creative pleading of barred claims." *Hassell*, 5 Cal. 5th at 541-542 (internal citation and quotation marks omitted). Many courts, including the California Supreme Court and the California Court of Appeal, have wisely rejected those attempts.[2] For

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[2] *See Hassell*, 5 Cal. 5th at 541-542. ("Just as other courts have rebuffed attempts to avoid section 230 through the creative pleading of barred claims, we are not persuaded by plaintiffs' description of the situation before the

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example, in *Cross v. Facebook*, the plaintiff invoked a breach of contract theory (based on alleged "promises" in Facebook's terms of service) in an attempt to hold Facebook liable for certain content removal decisions—a theory identical to Murphy's breach of contract theory in this case. *See* 14 Cal. App. 5th 190, 201-02 (2017). The California Court of Appeal rightly held that Section 230(c)(1) barred the *Cross* plaintiff's claim because, at bottom, the claim sought to impose liability on Facebook for exercising its editorial discretion. *See id.* at 207.[3] Other courts have reached similar results and dismissed claims sounding in breach of contract, promissory estoppel, and unfair competition.[4]

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court.") (internal quotation marks and citation omitted); *see also Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1266 (9th Cir. 2016) ("declin[ing] to open the door to . . . artful skirting" of Section 230(c)(1) immunity); *Cohen v. Facebook, Inc.*, 252 F. Supp. 3d 140, 156 (E.D.N.Y. 2017) (Section 230(c)(1) bars "artfully pleaded" claims that "implicate a defendant's role . . . in publishing or excluding third party Communications."), *aff'd in part sub nom. Force v. Facebook, Inc.*, 934 F.3d 53 (2d Cir. 2019).

[3] Murphy tries to distinguish *Cross* on the ground that the plaintiff in *Cross* "had no contractual relationship with Facebook—unlike Murphy and Twitter, who did." Murphy Reply Br. at 32. In fact, the plaintiff in *Cross* sought relief under his contractual agreement with Facebook, just as Murphy purports to seek relief under her contractual agreement with Twitter. *See Cross*, 14 Cal. App. 5th at 201-02.

[4] *See, e.g.*, *Fyk v. Facebook, Inc.*, 808 F. App'x 597, 599 (9th Cir. 2020) (affirming dismissal of UCL claim and fraud claim, among others); *Fed. Agency of News LLC v. Facebook, Inc.*, 432 F. Supp. 3d 1107, 1119-20 (N.D. Cal. 2020) (breach of contract claim); *Brittain v. Twitter, Inc.*, No. 19-cv-00114-YGR, 2019 WL 2423375, at *3 (N.D. Cal. June 10, 2019) (breach of contract and promissory estoppel); *Dehen v. Does 1-100*, No. 17cv198-LAB (WCG), 2018 WL 4502336, at *3-4 (S.D. Cal. Sept. 19, 2018) (breach of contract).

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This Court should reach the same result. The gravamen of this case is Murphy's disagreement with Twitter's decision to suspend her account. The decision to suspend an account is a classic editorial decision protected by Section 230(c)(1). The CDA therefore bars Murphy's claim. *See Hassell*, 5 Cal. 5th at 558 (Kruger, J., concurring) (explaining that "Section 230 forbids a cause of action or the imposition of liability when the effect is to impose liability for, or draw the provider into litigation to defend, its past editorial judgments"); *see also Fed. Agency of News*, 432 F. Supp. 3d at 1120 ("Numerous courts have held that Section 230 immunizes a website's removal of political speech.").

Murphy argues that her claims "are not actually disguised attacks on Twitter's right to engage in content moderation—any more than a suit for breach of employment contract is a disguised attack on an employer's right to hire and fire employees, or a suit for failing to deliver goods on time is a disguised attack on a seller's right to operate its business how it pleases." Murphy Reply Br. at 32. But that analogy is inapt. Congress has not enacted a law specifically intended to guarantee "an employer's right to hire and fire employees" and to broadly prohibit claims undermining that right. Congress also has not enacted a law specifically intended to guarantee "a seller's right to operate its business how it pleases" and to broadly prohibit claims undermining that right. But Congress *has* enacted a law specifically intended to allow service providers to make editorial decisions with respect to third-party content on their platforms without facing potential liability for those decisions, and Congress *has* broadly prohibited claims undermining *that* right. Because Murphy's claims would intrude upon that right, they were properly dismissed.

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Murphy also argues that her reading of Section 230(c)(1) is supported by the California Court of Appeal's decision in *Demetriades v. Yelp, Inc.*, 228 Cal. App. 4th 294 (2014) and the Ninth Circuit's decision in *Barnes*. *See* Murphy Br. at 29-35. Her reliance on those cases is misplaced. *Demetriades* contains almost no analysis of the CDA. But the little analysis it does contain makes clear that the plaintiff in that case—who made false advertising claims challenging statements about the accuracy of Yelp's filtering software—did not seek to overrule Yelp's editorial decisions about what kinds of content should be permitted on its platform. *See* 228 Cal. App. 4th at 313. In stark contrast, Murphy's claims squarely target Twitter's exercise of editorial discretion. Indeed, as noted above, Murphy seeks an injunction expressly requiring Twitter to carry speech that, in its editorial discretion, Twitter has chosen not to carry. *See supra* at 17-18.

Murphy's reading of *Barnes* is also misguided. Murphy cites *Barnes* for the proposition that contract-based claims are not barred by Section 230(c)(1) because a provider's duty to comply arises from the specific promise the provider made, not the provider's status or conduct as a publisher. *See, e.g.*, Murphy Br. at 30. From that premise, Murphy reasons that her claims are not subject to Section 230(c)(1) immunity because she purports to base her claims on Twitter's statements about its content policies that appear in Twitter's terms of service (which form a contract between Twitter and its users) and elsewhere.

But *Barnes* specifically rejected that very gambit. Specifically, *Barnes* held that the type of promise at issue in that case—a specific oral promise made by a Yahoo! employee directly to the plaintiff—could give rise to a promissory estoppel claim outside the scope of Section 230(c)(1). In contrast, *Barnes* explained, a provider's "general monitoring policy" does not give rise

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to "contract liability" outside the scope of Section 230(c)(1) because a general monitoring policy is not an individualized promise to a specific person and therefore does not give rise to "a legal duty distinct from the . . . conduct of a publisher." *Barnes*, 570 F.3d at 1107. Here, Murphy does not allege that Twitter made any specific, individualized promises to her like the promise at issue in *Barnes*. Rather, she bases her claims entirely on Twitter's "general monitoring polic[ies]." *Barnes* precludes that theory. *See id.* at 1108; *see also Goddard v. Google Inc.*, 640 F. Supp. 2d 1193, 1201, n.6 (N.D. Cal. 2009) (*Barnes* "expressly preclude[d]" plaintiff's breach of contract claim based on Google's general "Content Policy").

Holding otherwise would have severe consequences. If, as Murphy insists, plaintiffs could avoid Section 230(c)(1) immunity simply by recasting challenges to providers' *editorial decisions* as breach of contract claims or other claims based on a purported failure to adhere to *general policies*, then the immunity would be effectively meaningless. That is not what Congress intended. *See Kimzey*, 836 F.3d at 1268-69 (refusing to adopt a rule under which "CDA immunity could be avoided" with a simple pleading maneuver because "[i]t cannot be the case that the CDA and its purpose of promoting the free exchange of information and ideas over the Internet could be so casually eviscerated") (internal quotation marks and citation omitted); *cf. Roommates.com*, 521 F.3d at 1174 ("We must keep firmly in mind that this is an immunity statute we are expounding[.]").

B. The Superior Court Properly Dismissed Murphy's Claims Under Section 230(c)(1) Of The CDA

Murphy also argues that the Superior Court erred by dismissing her claims under Section 230(c)(1) of the CDA. *See* Murphy Br. at 21-28; Murphy Reply Br. at 17-29. The Superior Court should have evaluated her claims

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solely under Section 230(c)(*2*), Murphy argues, because only Section 230(c)(2) "governs removal of allegedly 'harassing' content." Murphy Reply Br. at 11.

That is wrong. Murphy's argument turns mainly on cherry-picked dicta from *Barrett*, which observed that "Section 230(c)(1) provides immunity from claims by those offended by an online publication, while section 230(c)(2) protects against claims by those who might object to the restriction of access to an online publication." *Barrett*, 40 Cal. 4th at 49. Based on that cursory remark, Murphy asserts that Section 230(c)(1) *only* "protects against liability from [publishing] third party content," and Section 230(c)(2) *only* protects against claims based on "content removal or curation." Murphy Br. at 12. But *Barrett* did not address "content removal" at all, so it makes little sense to read *Barrett's* dicta as establishing a bright-line rule about how to analyze such editorial conduct.

Nor has Murphy's view gained traction elsewhere. Courts routinely rely on Section 230(c)(1) to dismiss claims based on content removal. For example, in *Sikhs for Justice, Inc. v. Facebook, Inc.*, the plaintiff sued Facebook for "hosting, and later blocking, [plaintiff's] online content." 697 F. App'x 526, 526 (9th Cir. 2017). The Ninth Circuit held that Section 230(c)(1) barred plaintiff's claims. Similarly, in *Domen v. Vimeo, Inc.*, the plaintiff sued because the provider "deleted . . . Plaintiffs' content." 433 F. Supp. 3d 592, 602 (S.D.N.Y. 2020). The Southern District of New York dismissed the claims under Section 230(c)(1). *See id.* at 603. Other cases are in accord.[5]

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[5] *See, e.g.*, *Fed. Agency of News*, 432 F. Supp. 3d at 1119-21 (Section 230(c)(1) barred claims "based on Facebook's decision to remove [plaintiff's] account, postings, and content"); *Mezey v. Twitter, Inc.*, No. 1:18-CV-21069-KMM, 2018 WL 5306769, at *1-2 (S.D. Fla. July 19, 2018) (Section 230(c)(1) barred claims based on plaintiff's allegation that Twitter "unlawfully suspended his Twitter account"); *Lancaster v. Alphabet Inc.*, No. 15-CV-05299-HSG, 2016 WL 3648608, at *3 (N.D. Cal. July 8, 2016) (Section

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Murphy also invokes the canon against superfluities in support of her argument. She claims that if Section 230(c)(1) is interpreted broadly to immunize providers against claims based on content removal, then Section 230(c)(1) would "swallow[] up" Section 230(c)(2), "rendering it superfluous and insignificant." Murphy Br. at 26. But as the Ninth Circuit explained in *Barnes*, that is not true:

> Subsection (c)(1), by itself, shields from liability all publication decisions, whether to edit, to remove, or to post, with respect to content generated entirely by third parties. Subsection (c)(2), for its part, provides an additional shield from liability . . . . Crucially, the persons who can take advantage of this liability shield are not merely those whom subsection (c)(1) already protects, but *any* provider of an interactive computer service. Thus, even those who cannot take advantage of subsection (c)(1), perhaps because they developed, even in part, the content at issue, can take advantage of subsection (c)(2) if they act to restrict access to the content because they consider it obscene or otherwise objectionable.

Barnes, 570 F.3d at 1105 (internal citations omitted). The Ninth Circuit recently reiterated that conclusion in *Fyk v. Facebook*, holding that Section 230(c)(1) immunized Facebook against claims based on its alleged "de-publishing" of user content and explicitly rejecting the argument that

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230(c)(1) barred claims based on "videos removed from [plaintiff's] YouTube channel"); *Levitt v. Yelp! Inc.*, No. C-10-1321 EMC, 2011 WL 5079526, at *6-8 (N.D. Cal. Oct. 26, 2011) (Section 230(c)(1) barred claims based on removal of user reviews). In fact, according to a survey of more than 500 CDA decisions issued since 1996, including decisions addressing content removal, only 19 decisions relied on Section 230(c)(2). The vast majority relied on Section 230(c)(1). Elizabeth Banker, Internet Assoc., *A Review of Section 230's Meaning & Application Based on More Than 500 Cases* at 10, *available at* https://internetassociation.org/wp-content/uploads/2020/07/IA_Review-Of-Section-230.pdf.

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applying Section 230(c)(1) to content removal decisions makes Section 230(c)(2) superfluous. 808 F. App'x at 598.

In sum, Section 230(c)(1) and Section 230(c)(2) properly address different but overlapping concerns. Interpreting Section 230(c)(1) broadly to immunize editorial decisions about "whether . . . to remove" user content therefore does not implicate any surplusage concerns. *Barnes*, 570 F.3d at 1105.[6]

II. The First Amendment Protects Editorial Discretion

The First Amendment independently bars Murphy's claims. The Court should affirm on that alternative ground, if necessary, to ensure that providers retain some discretion to exercise editorial control over their platforms.[7]

"[W]hen a private entity provides a forum for speech," the First Amendment entitles that entity to "exercise editorial discretion over the speech and speakers in the forum." *Manhattan Cmty. Access Corp. v. Halleck*, 139 S. Ct. 1921, 1930 (2019). Thus, with limited exceptions not relevant here, private entities cannot be forced to carry speech that they do not wish to carry. *See, e.g.*, *Hurley*, 515 U.S. at 573 ("[O]ne important manifestation of the principle of free speech is that one who chooses to speak may also decide

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[6] While *Barnes* and *Fyk* are not binding, "they are persuasive and entitled to great weight" because they reflect the considered and virtually unanimous view of the federal courts on a matter of federal law. *Barrett*, 40 Cal. 4th at 58. In contrast, the main case on which Murphy relies for her argument—*e-ventures Worldwide, LLC v. Google, Inc.*, No. 2:14-cv-646-FtM-PAM-CM, 2017 WL 2210029 (M.D. Fla. Feb. 8, 2017)—merits little consideration. To amici's knowledge, no other court has adopted or endorsed the surplusage analysis of *e-ventures*. And at least one court has firmly rejected it. *See Domen*, 433 F. Supp. 3d at 603.

[7] Murphy's claims also suffer from a laundry list of additional defects that further justify affirmance. *See* Twitter Br. at 53-67.

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what not to say.") (internal quotation marks and citations omitted); *Mia. Herald Publ'g Co. v. Tornillo*, 418 U.S. 241, 258 (1974) (when a private entity provides a forum for speech, such as a newspaper, the First Amendment guarantees the private entity the right to "exercise . . . editorial control and judgment" over that forum).

That foundational principle has no less force in the internet context. For example, in *Zhang v. Baidu.com, Inc.*, the plaintiff sought to compel an online service provider to change its search engine results. *See* 10 F. Supp. 2d 433, 440 (S.D.N.Y. 2014). The district court rejected the plaintiff's claims because requiring the defendant to conform its search results to the plaintiff's demands "would plainly violate the fundamental rule of protection under the First Amendment," that is, "that a speaker has the autonomy to choose the content of his own message." *Id.* (internal quotation marks and citation omitted). Similarly, in *La'Tiejira v. Facebook, Inc.*, the plaintiff alleged that Facebook was liable for "failure to timely remove" another user's post asserting that the plaintiff was a different sex than she purported to be. 272 F. Supp. 3d at 991. The district court held that the plaintiff's claims implicated Facebook's First Amendment "right to decide what to publish and what not to publish on its platform." *See id.*

This Court should reach a similar result. Here, Murphy seeks to compel Twitter to carry her speech and the speech of others who share her views. *See, e.g.*, Murphy Br. at 18-19. Twitter does not wish to carry that speech. *See* Twitter Br. at 48-50. The First Amendment therefore bars Murphy's claims.

Murphy disagrees, but her arguments are not persuasive. First, she argues that the First Amendment does not bar the enforcement of contracts or laws against false advertising. *See* Murphy Reply Br. at 36. But again, that argument distorts the nature of this case and amounts to the very sort of

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"creative pleading" that the California Supreme Court has rejected. *See Hassell*, 5 Cal. 5th at 541-542 ("Just as other courts have rebuffed attempts to avoid section 230 through the creative pleading of barred claims, we are not persuaded by plaintiffs' description of the situation before the court.") (internal quotation marks and citation omitted). In substance, Murphy sues to compel Twitter to carry speech that Twitter does not want to carry. *See infra* at 17-18, 21. No matter how artfully she frames that demand, the First Amendment does not allow Murphy to "call upon the Court to impose a penalty on [Twitter] precisely because of what it does and does not choose to say." *Baidu.com Inc.*, 10 F. Supp. 3d at 441.

Murphy also argues that this case is no different than *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622 (1994), in which the U.S. Supreme Court held that the FCC's "must carry" rules did not impermissibly intrude upon the First Amendment rights of cable operators. *See* Murphy Reply Br. at 36, 38-40. That simply is not so. As the Supreme Court made clear in a later case, *Turner* upheld significant restrictions on cable operators' First Amendment rights in large part because "[a] cable is not only a conduit for speech produced by others and selected by cable operators for transmission, *but a franchised channel giving monopolistic opportunity to shut out some speakers*." *Hurley*, 515 U.S. at 577 (emphasis added). This case is entirely different. Twitter certainly has no state-sanctioned monopoly on online speech, and Murphy has far more than a "fair shot" of expressing herself online even if she cannot do so through Twitter. *Id.* at 578.

Further, "*Turner*'s three principal rationales for applying a lower level of scrutiny to the must-carry cable regulations—namely, that cable companies were mere conduits for the speech of others, that they had the physical ability to silence other speakers, and that the regulations at issue

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were content-neutral—are inapplicable here." *Baidu.com Inc.*, 10 F. Supp. 3d at 440. Twitter is not a mere "conduit" for others' speech; the decisions it makes in designing and regulating its platform constitute its own protected expression. *See* Twitter Br. at 48-50. Nor can Twitter silence any speakers, Murphy included. Murphy continues to "express[] her political views on transgender issues . . . elsewhere on the Internet and even through a still-active account *on Twitter* that is affiliated with her own website[.]" Twitter Br. at 11-12. And, finally, the restrictions that Murphy seeks to impose—including an injunction requiring Twitter to reinstate Murphy's account and any other accounts that Twitter has found to violate its "misgendering policy"—are anything but content-neutral. Murphy Br. at 18. To the contrary, those restrictions are specifically intended to force Twitter to adopt and amplify a particular viewpoint about a matter of public concern with which Twitter disagrees and does not want to be associated.

Lastly, Murphy contends that Twitter has little or no right to exercise editorial control over its platform because its platform is "open to the public," Murphy Reply Br. at 39 (quoting *Pruneyard Shopping Ctr. v. Robins*, 447 U.S. 74, 87 (1980)), and therefore akin to a "modern public square," *id.* at 40 (quoting *Packingham v. North Carolina*, 137 S. Ct. 1730, 1732 (2017)). The gist of that argument, it seems, is that Twitter's popularity and ubiquity have transformed it from a private entity with First Amendment rights into a public forum with no power to enforce its content policies. *Id.* at 39. But Murphy does not cite a single case supporting that sweeping proposition. Nor is there any evidence that courts are likely to accept it. *Cf. Halleck*, 139 S. Ct. at 1930 (explaining that "merely hosting speech by others is not a traditional, exclusive public function"); *Freedom Watch, Inc. v. Google Inc.*, No. 19-7030, 2020 WL 3096365, at *1 (D.C. Cir. May 27, 2020) (rejecting the argument

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that Google, Facebook, Twitter, and Apple are "engaged in state action" merely because they "provide an important forum for speech"); *Prager Univ. v. Google LLC*, 951 F.3d 991, 997 (9th Cir. 2020) (holding that "digital internet platforms that open their property to user-generated content," like Twitter, do not thereby "become state actors"). Murphy's argument fails.

III. Limiting Section 230(c)(1) As Murphy Proposes Would Have Severe Consequences

Murphy supplements her legal arguments with a series of policy arguments. None is convincing. For example, Murphy argues that interpreting Section 230(c)(1) broadly will "undermine[] free expression." Murphy Br. at 39. In fact, "[t]he exact opposite is true":

> Shielding interactive computer service providers from publisher liability . . . encourages these companies to create platform[s] . . . allow[ing] for the freedom of expression [of] hundreds of millions of people around the world, just as the CDA intended.

Fields v. Twitter, Inc., 217 F. Supp. 3d 1116, 1129 (N.D. Cal. 2016) (internal quotation marks and citation omitted), *aff'd*, 881 F.3d 739 (9th Cir. 2018).

Murphy also asserts that the Superior Court's interpretation of Section 230(c)(1) will encourage "large platforms to engage in anticompetitive blocking of other sites with the assurance that their behavior will be protected[.]" Murphy Br. at 39. In a similar vein, she argues that the Superior Court's decision "undermines anti-discrimination laws" because it purportedly authorizes Twitter "to remove all women, African American, or Asian users" from its platforms. *Id.* at 40. But this case does not involve "anticompetitive blocking," and Murphy points to no evidence whatsoever that the settled understanding of Section 230(c)(1) immunity has unleashed or threatens to unleash a wave of such behavior. This case also does not involve editorial decisions based on gender, race, or any other aspect of users'

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identities. Rather, it involves editorial decisions based on the *content* of users' speech. Those are precisely the sort of decisions that Congress sought to immunize when it enacted the CDA. *See, e.g.*, *Green v. Am. Online (AOL)*, 318 F.3d 465, 472 (3d Cir. 2003) (Section 230(c)(1) "allows [providers] to establish standards of decency without risking liability for doing so").

In short, Murphy identifies no convincing policy arguments in support of her positions. But there are many policy reasons *not* to adopt her positions.

A. Limiting Section 230(c)(1) Would Discourage Responsible Self-Regulation By Providers

For starters, narrowing Section 230(c)(1) as Murphy urges would strip providers of their broad discretion to remove objectionable or offensive content that harms their users, violates their terms of service, or undermines the integrity of their platforms. Under Murphy's proposed regime, any editorial decision that an enterprising attorney could describe as arguably inconsistent with a provider's public statements—i.e., virtually *every* editorial decision—could lead to a costly and burdensome lawsuit. Moreover, if the decision at issue involved content removal, then, according to Murphy, the provider could invoke CDA immunity only if the provider could prove that the content was "obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable" *and* that the provider removed the content "in good faith." 47 U.S.C. § 230(c)(2). In other words, Section 230(c)(1) immunity would be far narrower and far less certain.

The very real and imminent threat of litigation in that scenario would make it extremely hard for providers to adopt and enforce content rules that effectively protect their users and facilitate free speech—one of Congress's principal goals in enacting the CDA. *See, e.g.*, *Zeran*, 129 F.3d at 331 (explaining that Congress "chose to immunize" providers "to encourage [them] to self-regulate"); *Levitt*, 2011 WL 5079526, at *8 ("[T]he need to

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defend against a proliferation of lawsuits, regardless of whether the provider ultimately prevails, undermines the purposes of section 230."). Consider the options in that scenario: A provider could "choose to severely restrict the number and type of messages posted" on its platform, thereby minimizing exposure to potential claims based on its editorial decisions. *Zeran*, 129 F.3d at 331. But prescreening and filtering "millions of postings for possible problems" would be extraordinarily costly and burdensome, *id.*—and could itself beget lawsuits challenging the provider's prescreening decisions. Even if a company could afford to implement that approach and navigate the attendant legal risks, the result would be a platform with little speech and hence little utility. That is why "Congress considered the weight of the speech interests implicated and chose to immunize service providers to avoid any such restrictive effect." *Id.*

Alternatively, the provider could try to minimize exposure to claims like Murphy's claims by avoiding content moderation whenever possible. *See id.* But that, too, would compromise the integrity and utility of the provider's platform by making it vulnerable to abuse and exploitation. The unfortunate experience of recent years is that without meaningful content moderation, many online services will be overrun with highly objectionable material that swamps constructive speech, chases away legitimate users, and degrades platforms. *See, e.g.*, James Rainey, *"Wikitorial" Pulled Due to Vandalism,* L.A. Times (June 21, 2005, 12:00 AM), *available at* https://www.latimes.com/archives/la-xpm-2005-jun-21-na-wiki21-story.html (describing the *Los Angeles Times*' ill-fated attempt to launch a "wikitorial" that allowed readers to post content without moderation; within days, "readers were flooding the site with inappropriate material" and editors "ordered the feature shut down immediately"). Congress specifically sought to avoid that speech-chilling

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outcome, too. *See* 47 U.S.C. § 230(b)(4) (CDA was enacted to encourage "the development and utilization of blocking and filtering technologies"); *Hassell*, 5 Cal. 5th at 534 ("Congress enacted section 230 . . . to encourage voluntary monitoring for offensive or obscene material.").

Or, finally, the hypothetical provider could try to engage in responsible self-regulation designed to protect users and maximize free speech. But under Murphy's reading of Section 230(c)(1), that thoughtful approach would expose the provider to potential litigation nearly every time it removed harmful content in an effort to pursue those goals. Considering that some providers must make content removal decisions affecting hundreds or even thousands of users at once, the burdens imposed on providers under that framework would be unworkable. So too would the burdens on courts, which could be thrust into the position of assessing the "reasonableness" of the millions of content removal decisions that occur every year.

In short, under Murphy's regime, there would be little incentive to moderate online speech in a careful and deliberate way tailored to the unique needs of a given community. Instead, the law would encourage severe over-moderation, severe under-moderation, or even no moderation at all—all of which tend to chill online speech, not encourage it. That is exactly the problem that Congress foresaw and sought to prevent when it enacted the CDA:

> [Section 230] responded to a New York state court decision, *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995). There, the plaintiffs sued Prodigy—an interactive computer service like AOL—for defamatory comments made by an unidentified party on one of Prodigy's bulletin boards. The court held Prodigy to the strict liability standard normally applied to original publishers of defamatory statements, rejecting Prodigy's claims that it should be held only to the lower "knowledge" standard usually reserved for

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> distributors. The court reasoned that Prodigy acted more like an original publisher than a distributor both because it advertised its practice of controlling content on its service and because it actively screened and edited messages posted on its bulletin boards.
>
> Congress enacted § 230 to remove the disincentives to self-regulation created by the *Stratton Oakmont* decision. Under that court's holding, computer service providers who regulated the dissemination of offensive material on their services risked subjecting themselves to liability, because such regulation cast the service provider in the role of a publisher. Fearing that the specter of liability would therefore deter service providers from blocking and screening offensive material, Congress enacted § 230's broad immunity "to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material." 47 U.S.C. § 230(b)(4).

Zeran, 129 F.3d at 331. "In line with this purpose, § 230 forbids the imposition of publisher liability on a service provider for the exercise of its editorial and self-regulatory functions." *Id*. Adopting Murphy's cramped reading of Section 230(c)(1) would eviscerate that immunity and resurrect the same "disincentives to self-regulation" that motivated Congress to enact the CDA in the first place. *Id*.

It is also worth noting that Murphy's attempt to undermine Section 230(c)(1) comes at an especially inopportune time. The challenges of content moderation in the modern era are well known. Hate speech, misinformation, and other forms of online abuse multiply daily. Meanwhile, commentators, consumers, and legislators are demanding that providers find new ways to combat those abuses without compromising the free flow of ideas online.

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Service providers are rising to those challenges.[8] But to adequately balance all the relevant concerns, providers must have the "breathing room" guaranteed by the settled understanding of Section 230(c)(1) immunity.

B. Limiting Section 230(c)(1) Would Stifle Innovation

Endorsing Murphy's "attempted end-run around" Section 230(c)(1) would also undermine competition and creativity in the online marketplace, *Hassell*, 5 Cal. 5th at 545, thereby undermining another key policy goal of Congress. If this Court holds that plaintiffs like Murphy can plead around Section 230(c)(1) simply by couching their challenges to providers' editorial discretion in the language of contract and false advertising, then a flood of copycat lawsuits will surely follow. And that onslaught of litigation would harm all providers and the entire internet economy. For example, one recent analysis concluded that narrowing the scope of legal safe harbors for internet intermediaries, including CDA immunity, "would cost the U.S. economy $75 billion annually, lower employee earnings by some $23 billion annually, and eliminate over 425,000 jobs." Christian M. Dippon, *Economic Value of Internet Intermediaries and the Role of Liability Protections*, NERA Economic Consulting at 18 (June 5, 2017), *available at* https://internetassociation.org/

[8] For example, late last year, the European Commission found that Google, Facebook, Twitter, and others had reviewed nearly 90% of identified illegal hate speech on their websites less than 24 hours after it was reported. *See* Information Note, *Assessment of the Code of Conduct on Hate Speech On-Line State of Play*, European Commission (Sept. 27, 2019), https://data.consilium.europa.eu/doc/document/ST-12522-2019-INIT/en/pdf. And many providers have successfully implemented rules that protect users from misinformation about the ongoing pandemic. *See COVID-19 Medical Misinformation Policy*, YouTube Policies, YouTube (May 20, 2020), https://support.google.com/youtube/answer/9891785?hl=en.

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wpcontent/uploads/2017/06/Economic-Value-of-Internet-Intermediaries-the-Role-of-Liability-Protections.pdf. In addition, "[t]he U.S. gross domestic product would decrease by $44 billion annually." *Id.*

Importantly, startups and emerging companies would suffer the most. "For smaller Internet services, defending a single protracted lawsuit may be financially ruinous." Eric Goldman, *Why Section 230 Is Better than the First Amendment*, 95 Notre Dame L. Rev. Reflection 33, 40 (2019). Indeed, a recent survey of legal counsel found that "the cost of defending even a frivolous claim" barred by CDA immunity may "exceed a startup's valuation." Engine, *Section 230: Cost Report* at 1, *available at* https://static1.squarespace.com/static/571681753c44d835a440c8b5/t/5c8168cae5e5f04b9a30e84e/1551984843007/Engine_Primer_230cost2019.pdf.

When it enacted the CDA, Congress expressly stated that the law was meant to "promote the continued development of the Internet and other interactive computer services and other interactive media," and "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services." 47 U.S.C. §§ 230(b)(1), (b)(2). Murphy's proposed regime would have the opposite effect: it would intensify litigation in an already litigious area, and it would magnify potential exposure that is already significant enough to represent an existential threat to many emerging companies. In short, it would stifle innovation and subject providers—both big *and* small—to the threat of "death by ten thousand duck-bites" that Section 230(c)(1) was meant to prevent. *Roommates.com*, 521 F.3d at 1174; *see also Bennett v. Google, LLC*, 882 F.3d 1163, 1166 (D.C. Cir. 2018) (explaining that "section 230 incentivized companies to neither restrict content nor bury their heads in the sand in order to avoid liability," and in doing so, "paved the way for a robust new forum for public speech as well as a

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trillion-dollar industry centered around user-generated content") (internal quotation marks and citation omitted).

C. Limiting Section 230(c)(1) Would Harm Users

Finally, but equally important, users would suffer from Murphy's attempt to scuttle the prevailing understanding of Section 230(c)(1). As explained above, by making content removal decisions more costly and riskier, Murphy's proposed regime would incentivize extreme over-moderation or extreme under-moderation of online platforms, and likely drive many providers out of business altogether. It would also make it harder (if not impossible) for providers to adopt and enforce rules to protect their users without risking massive liability. That, in turn, would undermine providers' ability to furnish online forums offering "a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity," as Congress intended. 47 U.S.C. § 230(a)(3). The result would be fewer truly vibrant online platforms for speech and fewer speakers. In short, ruling for Murphy would reduce online speech—not, as she suggests, protect it.

Adopting Murphy's novel view of providers' First Amendment rights would also contribute to that result. In essence, Murphy argues that if platforms are "open to the public," then they have little or no constitutional right to enforce content rules appropriate for their users and services. *See* Murphy Br. at 39-40. If that were the law, then providers would have no right to remove a wide range of problematic and potentially dangerous content or take other steps to protect their users and their services. That, in turn, would effectively cede control to bullies, trolls, and other bad actors; drive away more users; and further chill online speech. Fortunately, that is not the law. *See supra* at 16-25.

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CONCLUSION

For the foregoing reasons, the Superior Court's judgment should be affirmed.

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Respectfully submitted,

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I certify that this brief, exclusive of this certificate, the cover, the signature block, and the tables of contents and authorities, contains 7,195 words according to the word count function of the word-processing program used to produce the brief. The number of words in this brief complies with the requirements of Rule 8.204(c)(1) of the California Rules of Court.

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PERKINS COIE LLP

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PROOF OF SERVICE

Case No. A158214

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION 1

I, James G. Snell, declare:

I am a citizen of the United States and employed in Santa Clara County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 3150 Porter Drive, Palo Alto, California 94304-1212. On August 13, 2020, I served a copy of the foregoing documents on counsel for all parties listed below:

Application for Leave to File Amicus Brief of Internet Association, Facebook, Inc., Glassdoor, Inc., Google LLC, and Reddit, Inc. in Support of Respondents

Brief of Amici Curiae Internet Association, Facebook, Inc., Glassdoor, Inc., Google LLC, and Reddit, Inc. in Support of Respondents

☒ BY TRUEFILING: Pursuant to California Rule of Court 8.71 and Local Rule 12, TrueFiling will electronically serve the documents described above on counsel for the parties in this matter. Pursuant to California Rule of Court 8.78(a)(2), the parties have consented to electronic service. The name and electronic service addresses of the parties' counsel are:

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Document received by the CA 1st District Court of Appeal.

I also served a copy of the foregoing documents on all parties listed below as follows:

☒ BY OVERNIGHT MAIL: I deposited with Federal Express a true and correct copy of the documents described above as indicated below. Following ordinary business practices, the envelope was sealed and placed for collection by Federal Express on this date, and would, in the ordinary course of business, be retrieved by Federal Express for overnight delivery on this date.

Honorable Judge Ethan P. Schulman
San Francisco Superior Court
400 McAllister St.
Department 302
San Francisco, CA 94102

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 13, 2020, at Palo Alto, California.

By: ______________________________

James G. Snell

Document received by the CA 1st District Court of Appeal.