

APL-2025-00158
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Appellate Division–Fourth Department Docket No. CA 24-00513

Court of Appeals
of the
State of New York

DIONA PATTERSON, individually and as Administrator of the Estate of HEYWARD PATTERSON, J.P., a minor, BARBARA MAPPS, individually and as Executrix of the Estate of KATHERINE MASSEY, SHAWANDA ROGERS, Individually and as Administrator of the Estate of ANDRE MACKNIEL, A.M., a minor, and LATISHA ROGERS,

Plaintiffs-Appellants,

– against –

META PLATFORMS, INC., formerly known as FACEBOOK, INC., SNAP, INC., ALPHABET, INC., GOOGLE, LLC, YOUTUBE, LLC, DISCORD INC., REDDIT, INC., AMAZON.COM, INC., 4CHAN COMMUNITY SUPPORT, LLC,

Defendants-Respondents.

(For Continuation of Caption See Inside Cover)

AMICUS CURIAE BRIEF OF TECHFREEDOM
IN SUPPORT OF DEFENDANTS-RESPONDENTS AND AFFIRMANCE

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– and –

4CHAN, LLC, GOOD SMILE COMPANY, INC., GOOD SMILE COMPANY
US, INC., GOOD SMILE CONNECT, LLC, RMA ARMAMENT, VINTAGE
FIREARMS, MEAN L.L.C., PAUL GENDRON, PAMELA GENDRON,

Defendants.

*APL-2025-00158, APL 2025-00165, APL 2025-00169, APL 2025-00170 will
be heard together for oral argument

CORPORATE DISCLOSURE STATEMENT

Pursuant to Court of Appeals Rules 500.1(f) and 500.13(a), TechFreedom discloses that it does not have any corporate parents, subsidiaries or affiliates.

STATEMENT OF RELATED LITIGATION

There are no actions or proceedings pending in any court of this State related to this appeal at the time of filing this brief.

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INTEREST OF AMICUS CURIAE*

TechFreedom is a nonprofit, nonpartisan think tank based in Washington, D.C. It is dedicated to promoting technological progress that improves the human condition.

TechFreedom's experts have long been at the forefront of the fight to protect Section 230, the bulwark of online free expression. Through its articles, reports, congressional testimony, legal briefs, regulatory comments, and more, TechFreedom seeks to explain why Section 230 is so important, and why eliminating or gutting it would be a catastrophic mistake. See, e.g., Corbin K. Barthold, *Section 230 Heads to the Supreme Court*, Reason (Nov. 4, 2022), <https://bit.ly/3QoUtC1>; Platform Responsibility & Section 230: Filtering Practices of Social Media Platforms, Hearing Before the House Comm. on the Judiciary (Apr. 26, 2018) (testimony of Berin Szóka), <https://bit.ly/3Wdbqkd>; Br. of TechFreedom as Amicus ISO Petitioner, *Gonzalez v. Google LLC*, No. 21-1333 (U.S., Jan. 18, 2023).

* No party's counsel authored any part of this brief. No one, apart from TechFreedom and its counsel, contributed money intended to fund the brief's preparation or submission.

QUESTION PRESENTED & PRELIMINARY STATEMENT

This appeal asks whether online service providers lose the protections of the First Amendment and Section 230 of the Communications Decency Act if they rely on software—namely algorithms, which increasingly involve machine learning—to implement the operators’ and providers’ editorial and curatorial judgments at the scale the modern Internet demands. They do not, as the Appellate Division correctly held.

In short, he became so absorbed in his books that he spent his nights from sunset to sunrise, and his days from dawn to dark, poring over them; and what with little sleep and much reading his brains got so dry that he lost his wits.

Miguel de Cervantes, *Don Quixote* (1605)

Humans are fascinated by stories and ideas. Perhaps that is why each new medium of communication provokes anxiety about its supposed power to unmoor impressionable minds. Before long, though, the fears about each new medium come to look quaint. Books drive men mad. Pamphlets promote disobedience to authority. Novels seduce the young into idleness. Comic books breed violence. Television breeds violence. Video games breed violence. Every time, we are told that *this* time is different. *This* new medium, unlike the last, is *uniquely* dangerous and corrupting. *This* new medium will rob other people—it’s always *other* people, usually children—of reason and virtue.

Now it is social media’s turn. Plaintiffs have sued the defendant social media companies for deploying features that supposedly “addict” users to its platform.

What the plaintiffs really object to, however, is speech itself. Minors spend time on social media because, when they're there, they see speech they're *interested in seeing*. Plaintiffs are concerned that the speech is *too powerful*. They think social media users are like Don Quixote, transfixed by stories and ideas.

We write to elaborate on why the plaintiffs' case fails under Section 230. Section 230 protects websites from liability for exercising the traditional editorial functions of a publisher—preparing, arranging, and distributing third-party content. The features the plaintiffs attack—such as autoplay, infinite scroll, and notifications—are nothing more than digital methods of making editorial choices about how to display user-generated material. Courts of appeals have consistently recognized that such choices fall within Section 230. Presenting content in a way that engages users is part and parcel of publishing. To hold otherwise would turn Section 230 on its head by stripping immunity from websites for becoming too effective at the very publishing functions the statute protects.

Plaintiffs attempt to escape this settled law by rebranding publishing decisions as product design. But there is no coherent way to separate the act of publishing content from the choices involved in presenting it. Infinite scroll, autoplay, and notifications have no meaning apart from the user-generated content they deliver; without content, they are empty vessels. Section 230 draws no line between

traditional editorial devices, such as headlines or chapter breaks, and their digital counterparts. Because the challenged features are inseparable from the publication of third-party speech, the Fourth Department correctly applied Section 230 protection.

ARGUMENT

I. Plaintiffs Attempt to Flout Section 230’s Protection of Publishing.

Section 230(c)(1) provides that a website shall not be “treated as the publisher” of most third-party content it hosts and distributes. 47 U.S.C. § 230(c)(1). Under the ordinary meaning of the word, a “publisher” prepares information for distribution and disseminates it to the public. See, e.g., “Publish,” Merriam-Webster.com Dictionary, <https://tinyurl.com/yc6uk64s> (viewed Oct. 6, 2025). Under Section 230, therefore, a website is protected from liability for posting, removing, arranging, and otherwise organizing third-party content. See, e.g., *Zeran v. Am. Online*, 129 F.3d 327, 330 (4th Cir. 1997). In other words, Section 230 protects a website as it fulfills a publisher’s traditional role. And one of Section 230’s stated purposes is to “promote the continued development of the Internet”—so the statute plainly envisions the protection of new, technology-driven publishing tools as well. 47 U.S.C. § 230(b)(1).

The supposedly “addictive” features plaintiffs challenge are nothing more than publishing decisions: the cadence of content delivery (autoplay), the quantity of content delivered (infinite scroll), and the choice of what content to highlight (notifications). These are classic editorial decisions about “whether and how to display” third-party material, and they fall squarely within Section 230. *Marshall’s Locksmith Serv. Inc. v. Google, LLC*, 925 F.3d 1263, 1270-71 (D.C. Cir. 2019). This is the prevailing view among the courts of appeals. Compare, e.g., *id.* (mode of “display” protected); *M.P. v. Meta Platforms, Inc.*, 127 F.4th 516, 526 (4th Cir. 2025) (“format” protected); *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1097 (9th Cir. 2019) (“recommendations and notifications” protected); *Angelilli v. Activision Blizzard, Inc.*, 781 F. Supp. 3d 691, 699-700 (N.D. Ill. 2025) (addiction claims against video game platform based on its “socializing effects” barred because they implicate the effect of content on users) with *Anderson v. TikTok, Inc.*, 116 F.4th 180 (3d Cir. 2024) (breaking with the prevailing view without explaining how Section 230 distinguishes between publishing and non-publishing display features). That such decisions often aim to “increas[e] consumer engagement” does not strip them of protection. *M.P.*, 127 F.4th at 526. A publisher does not lose immunity simply because it wants more readers and so “prioritizes engagement.” *Id.*

The Second Circuit’s decision in *Force v. Facebook, Inc.*, 934 F.3d 53 (2d Cir. 2019), is especially instructive. The plaintiffs there argued that “Facebook’s algorithms make [] content more ‘visible,’ ‘available,’ and ‘usable.’” They asserted that “Facebook’s algorithms suggest third-party content to users ‘based on what Facebook believes will cause the user to use Facebook as much as possible[,]’” and that “Facebook intends to ‘influence’ consumers’ responses to that content.” *Id.* at 70. As here, the plaintiffs’ core claim was that presenting content in an especially attractive way takes a website outside Section 230. But the Second Circuit disagreed. Nothing in the text of Section 230, it observed, suggests that a website “is not the ‘publisher’ of third-party information when it uses tools such as algorithms that are designed to match that information with a consumer’s interests.” *Id.* at 66. In fact, it noted, the use of such tools promotes Congress’s express policy “to promote the continued development of the Internet.” *Id.* (quoting 47 U.S.C. § 230(b)(1)).

By “making information more available,” the Second Circuit wrote, Facebook was engaging in “an essential part of traditional publishing.” *Id.* at 70. It was doing what websites have done “on the Internet since its beginning”—that is, “arranging and distributing third-party information” in a manner that “forms ‘connections’ and ‘matches’ among speakers, content, and viewers of content.” *Id.* at 66-67. It “would turn Section 230(c)(1) upside down,” the court concluded, to hold that Congress

intended to revoke Section 230 protection from websites that, whether through algorithms or otherwise, “become especially adept at performing the functions of publishers.” *Id.* at 67. The Second Circuit had no authority, in short, to curtail Section 230 on the ground that by deploying algorithms, Facebook had “fulfill[ed] its role as a publisher” too “vigorously.” *Id.* at 70.

As the Second Circuit recognized, it would be exceedingly difficult, if not impossible, to draw logical lines, rooted in law, around how a website presents third-party content. What in Section 230 would allow a judge to say that putting a story on page A1 of a newspaper is immunized, but putting a post atop a “For You” feed is not? What in the statute supports treating more newspaper pages as protected, but autoplay as unprotected? What in the statute could justify drawing a line between magazine cover headlines and social-media notifications? Section 230 has nothing to say about such distinctions. Cf. Ryan Calo, *Courts Should Hold Social Media Accountable—But Not By Ignoring Federal Law*, Harv. L. Rev. Blog (Sept. 10, 2024), <https://tinyurl.com/fb6f7n4j> (“[I]f ... a platform can be held liable just for the way it distributes content, then TikTok or YouTube or anyone could be held liable for alphabetizing content, let alone displaying it in accordance with popularity.”).

At bottom, plaintiffs ask the court to withhold Section 230 protection based on a belief that defendant social media companies “fulfill[] [their] role as a publisher” too “vigorously.” *Force*, 934 F.3d at 70.

II. Plaintiffs Wrongly Recast Publishing Decisions as Product “Design Choices.”

Rather than accept that the challenged features are publishing decisions protected by Section 230, plaintiffs try to reframe them as “design choices.” Brief for Plaintiffs-Appellants Kimberly J. Salter, et al. at 33, 35, 37; Reply Brief for Plaintiffs-Appellants Kimberly J. Salter, et al. at 10; Reply Brief for Plaintiffs-Appellants at 17. They claim that “the complaints include allegations that do not implicate content at all— including, for example, that Gendron’s addiction to social media itself (apart from the content he consumed) led him to commit this tragedy.” Brief for Plaintiffs-Appellants Kimberly J. Salter, et al. at 30, 31. Specifically, plaintiffs allege that “the architecture of the Defendants’ apps together with specific design features ... created a foreseeable risk of violence that came to fruition.” Reply Brief for Plaintiffs-Appellants at 11. Plaintiffs argue that “[t]hese features cannot be analogized to how a publisher chooses to allow the viewing of content....” *Id.* But it is illogical to suggest that social media features, alone, caused the alleged harm.

Features such as autoplay, infinite scroll, and notifications derive all their power from third-party content. Infinite scroll and autoplay present more user posts

or videos; notifications present alerts about users’ activity or interactions. In each instance, the alleged harm arises only if the underlying content is something someone *wants to see*. The features have no independent force; no appeal of their own. If posts contained random letters and videos showed paint drying, no one would read or watch—no “addiction” could possibly occur. Stripped of content, the “features” are useless shells. These features are quintessential publishing decisions—decisions about how, when, and in what form to present others’ speech.

The Supreme Court’s (non-)decision in *Gonzalez v. Google LLC*, 598 U.S. 617 (2023), proves the point. The petitioners argued that algorithmic recommendations fall outside Section 230. The United States agreed. It proposed that Section 230 covers “hosting ... content,” but not “designing and implementing ... targeted-recommendation algorithms.” Br. of U.S., p. 12, *Gonzalez v. Google LLC*, No. 21-1333 (U.S. Dec. 7, 2022).

Google’s response explained why this line is illusory. Some websites provide a nearly unfiltered feed of third-party content. Others hand-pick certain third-party content and give it prominent placement on a homepage. YouTube presents third-party content in part “based on predictions of what users might consider relevant.” Br. of Google LLC, p. 41, *Gonzalez v. Google LLC*, No. 21-1333 (U.S. Jan. 12, 2023). But as Google’s brief underscored, the government could not “offer any

limiting principle” for parsing these varied methods of organizing third-party content into one category that is protected by Section 230, and another that is not. *Id.* 45.

Google had it right—as became abundantly clear at oral argument. The government’s counsel claimed that YouTube can use “algorithms to identify users who are likely to be especially receptive” to a message, and to target the message at those users specifically. *Gonzalez v. Google LLC*, No. 21-1333, OA Tr. 113 (U.S. Feb. 21, 2023). That capacity, he insisted, was what placed YouTube on the far side of the government’s newly concocted Section 230 line.

The justices were unpersuaded. “Well,” said Justice Thomas at one point, “I’m still confused.” *Id.* 72. “How do we draw a line,” Justice Sotomayor reflected; “that’s where my colleagues [still] seem to be suffering.” *Id.* 97. Under the government’s theory, Justice Kavanaugh opined, “lawsuits will be nonstop.” *Id.* 81. Justice Kagan summed things up:

The problem [with the government’s position] is that in trying to separate the content from the choices that are being made, whether it’s by YouTube or anyone else, you can’t present this content without making choices. So, in every case in which there is content, there’s also a choice about presentation and prioritization. And the whole point of suits like this is that those choices [inherently] amplify certain messages.

Id. 75-76. As Justice Kagan saw, the government’s line was no line at all.

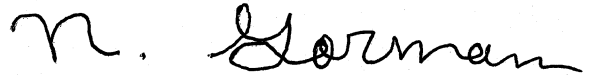
The Court ultimately concluded, in a short per curiam opinion, simply that “plaintiffs’ complaint—independent of §230—states little if any claim for relief.” *Gonzalez*, 598 U.S. at 622. The justices wanted to decide a Section 230 case, but they did not. Why? Partly because they could not separate “targeted” recommendations from “untargeted” ones, or “sophisticated” algorithms from “unsophisticated” ones. They left the broad “publisher” protections of Section 230 squarely in place because there is no sound way to narrow them.

Although *Gonzalez* addressed algorithmic recommendations, the same problem arises with the features plaintiffs challenge here. Section 230 makes no distinction between traditional editorial choices, like boldface headlines or cliffhanger chapter breaks, and digital ones, like autoplay or notifications. On the contrary, Section 230 seeks “to promote the continued development of the Internet.” 47 U.S.C. § 230(b)(1).

CONCLUSION

The Court should affirm.

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Respectfully submitted,
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