

No. B335533

IN THE COURT OF APPEAL  
FOR THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT, DIVISION TWO

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SNAP INC.,  
*Defendant-Petitioner,*

v.

SUPERIOR COURT OF THE STATE OF  
CALIFORNIA, COUNTY OF LOS ANGELES,  
*Respondent,*

AMY NEVILLE; AARON NEVILLE; JAIME PUERTA MARIAM  
HERNANDEZ; CINDY CRUZ SARANTOS; BRIDGETTE  
NORRING; JAMES MCCARTHY; KATHLEEN MCCARTHY;  
SAMANTHA MCCARTHY; MATTHEW CAPELOUTO;  
CHRISTINE CAPELOUTO; PERLA MENDOZA; SAMUEL  
CHAPMAN; DR. LAURA ANN CHAPMAN BERMAN; JESSICA  
DIACONT; E.B.; AND P.B.,  
*Plaintiffs-Real Parties in Interest*

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Los Angeles County Superior Court  
Case No. 22STCV33500  
Hon. Lawrence P. Riff, Presiding, Department 7

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**APPLICATION FOR LEAVE TO FILE BRIEF AS AMICI  
CURIAE; BRIEF OF AMICI CURIAE CHAMBER OF  
PROGRESS, NETCHOICE, AND TACO**

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## **CERTIFICATE OF INTERESTED ENTITIES**

Pursuant to California Rule of Court 8.208, Chamber of Progress, NetChoice, and Team Awareness Combating Overdose state that they are nonprofit organizations, have no parent corporations, and no publicly held corporation owns more than 10% of their stock.

/s/ Trenton Norris  
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**APPLICATION FOR LEAVE TO FILE  
BRIEF OF AMICI CURIAE**

Under California Rule of Court 8.200(c) and 8.487(e)(2), Chamber of Progress, NetChoice, and Team Awareness Combating Overdose (“Amici”) request leave to file the attached brief as amici curiae in support of Snap, Inc.’s Petition for Writ of Mandate. Amici certify under Rule of Court 8.520(f)(4) that no party or counsel for any party authored this brief in whole or in part or made monetary contributions intended to fund the preparation or submission of the proposed brief.

**Chamber of Progress** is a tech-industry coalition devoted to a progressive society, economy, workforce, and consumer climate. Chamber of Progress backs public policies that will build a fairer, more inclusive country in which the tech industry operates responsibly and fairly, and in which all people benefit from technological leaps. Chamber of Progress seeks to protect Internet freedom and free speech, promote innovation and economic growth, and empower technology customers and users. In keeping with this mission, Chamber of Progress believes that Section 230 is essential to supporting a robust online speech environment. Chamber of Progress’s work is supported by its corporate partners, but its partners do not sit on its board of directors and do not have a vote on, or veto over, its positions. Chamber of Progress does not speak for individual partner companies, and it remains true to its stated principles even when

its partners disagree.<sup>1</sup>

**NetChoice** is a national trade association of online businesses that share the goal of promoting free enterprise and free expression on the Internet. NetChoice’s members operate a variety of popular websites, apps, and online services, including Meta (formerly Facebook), YouTube, and Etsy. NetChoice’s guiding principles are (1) promoting consumer choice, (2) continuing the successful policy of “light-touch” Internet regulation, and (3) fostering online competition to provide consumers with an abundance of services.

**Team Awareness Combating Overdose** (“TACO”) is the only national overdose prevention nonprofit led by students for students. In 2020, a friend’s death near campus drove a group of students to launch TACO as an education and awareness campaign on social media. TACO has grown to provide students and young adults across the country with free and rapid access to science-backed overdose prevention materials that have now saved over 1,000 lives. TACO’s student volunteers utilize social media as a free channel to share health-promoting content with

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<sup>1</sup> Chamber of Progress’s partners include Airbnb, Amazon, Apple, Automattic, Chime, Circle, CLEAR, Coinbase, Creative Juice, Cruise, DoorDash, Earnin, Etsy, Google, Grayscale, Grubhub, Heirloom Carbon, Instacart, itselectric, Lyft, Meta, Paradigm, Pindrop, Ripple, SmileDirectClub, StubHub, Turo, Uber, Waymo, Zillow, and Zoox.

millions of viewers and instantly notify their local communities about recent peer-reviewed studies, when and where to access materials, and peer reports of fentanyl-contaminated substances being present near their campuses.

In light of Amici’s collective concerns, Amici respectfully request that the Court accept the accompanying brief of amici curiae for filing in this case.

**BRIEF OF AMICI CURIAE**

**INTRODUCTION AND SUMMARY OF ARGUMENT**

Amici urge the Court of Appeal to grant the petition in order to clarify the scope of immunity under Section 230 of the Communications Act, as amended, which is an important issue requiring immediate review. If left unaddressed, the trial court’s decision, which is contrary to law and outside the overwhelming case law, will have detrimental consequences for millions of individuals who enjoy and rely on Internet services.

By denying immunity for third-party content, the trial court’s decision renders Section 230 nearly meaningless, creating confusion and inviting frivolous litigation against Internet services that Section 230 is meant to prevent. Relying on the trial court’s decision, plaintiffs could sue services for alleged harms tied to third-party content merely by asserting that the service’s design facilitated the content. The resulting wave of drawn-out litigation—or its mere threat—would pressure, if not

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practically force, services to remove legitimate content and drop key design features like encryption, undermining the Internet’s vibrancy and threatening users’ privacy and safety. Because Congress enacted Section 230 precisely to prevent such mayhem, the Court of Appeal should intervene before abusive litigation proliferates.

**I. Without intervention by this Court, the trial court’s decision would make Section 230 nearly obsolete, inviting the same type of litigation that Congress meant to prevent.**

Section 230 grants service providers immunity for the publication of third-party content. But the trial court looks past this purpose—and a sea of judicial precedent—to read Section 230 to effectively grant no immunity at all. Unless this Court intervenes, this decision will lead to litigious abuse and forum shopping in contravention of Section 230.

**A. Section 230 immunizes certain Internet services from claims involving harms tied to third-party content, as courts have long made clear.**

Section 230 instructs: “No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” (47 U.S.C. § 230(c)(1).) Further, “[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.” (*Id.* §

230(e)(3).) This framework is intended “to promote the continued development” of Internet services and “preserve the vibrant and competitive free market” for these services “unfettered by Federal or State regulation.” (*Id.* § 230(b).)

Courts have affirmed that Section 230 gives service providers “broad immunity” from claims based on third-party content. (See *Barrett v. Rosenthal* (Cal. 2006) 40 Cal.4th 33, 39; see also *Perfect 10, Inc. v. CCBill LLC* (9th Cir. 2007) 488 F.3d 1102, 1118 [“The majority of federal circuits have interpreted the CDA to establish broad ‘federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service’” [quoting *Almeida v. Amazon.com, Inc.* (11th Cir. 2006) 456 F.3d 1316, 1321]]). As the Supreme Court of California has explained, this immunity safeguards “the vigor of Internet speech.” (*Barrett*, 40 Cal.4th at p. 45.).

Litigants cannot circumvent these protections through “creative pleading.” (*Kimzey v. Yelp! Inc.* (9th Cir. 2016) 836 F.3d 1263, 1265; see also *Hassell v. Bird* (Cal. 2018) 5 Cal.5th 522, 543 (plur. opn.) [“Plaintiffs’ attempted end-run around section 230 fails.”].) “[A]ny activity that can be boiled down to deciding whether to exclude material that third parties seek to post online is perforce immune under section 230.” (*Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC* (9th Cir. 2008) 521

F.3d 1157, 1170-71 (en banc).) Such activity “is the very activity Congress sought to immunize by passing [Section 230].” (*Id.* at p. 1172 fn. 32.)

Accordingly, where a parent sued an Internet service for allegedly connecting her son with a drug dealer, resulting in the son’s overdose, the Ninth Circuit concluded that the plaintiff could not “plead around Section 230 immunity.” (*Dyroff v. Ultimate Software Group, Inc.* (9th Cir. 2019) 934 F.3d 1093, 1098). As the Ninth Circuit noted, “the circumstances and facts” were “tragic.” (*Id.* at p. 1094.) But the pleading failed because, under Section 230, “what matters is whether the claims ‘inherently require[] the court to treat the defendant as the “publisher or speaker” of content provided by another,’” and “[i]f they do,” the defendant is immune. (*Id.* at p. 1098 [quoting *Barnes v. Yahoo!, Inc.* (9th Cir. 2009) 570 F.3d 1096, 1102]). Ultimately, this policy reflects Congress’s determination about how to allocate liability involving a technology as important and complex as the Internet.

**B. The trial court read this immunity out of Section 230, opening the floodgates to litigious abuse and forum shopping.**

Despite Congress’s purpose in creating Section 230 and decades of judicial precedent, the trial court “diverged from the prevailing interpretation of section 230,” (see *Barrett*, 40 Cal.4th at p. 39), concluding that plaintiffs’ claims based on third-party

content may proceed. If this Court does not swiftly intervene, the decision will generate a slew of litigation and forum shopping in California courts, making them the favored forum for plaintiffs seeking to evade Congress’s directive as reflected by Section 230.

The trial court’s decision acknowledges existing precedent but chooses not to apply it. It notes that the California Supreme Court rejected a distinction between publishers and distributors under Section 230 yet still bases its reasoning on one. (Compare *Barrett*, 40 Cal.4th at p. 39, with *Neville v. Snap, Inc.* (Super. Ct. L.A. County, 2024, No. 22STCV33500).)<sup>2</sup> Of the California Court of Appeal decisions available, the court leans on *Liapes v. Facebook* while relegating to a footnote *Doe II v. Myspace Inc.* (See (2023) 95 Cal.App.5th 910; (2009) 175 Cal.App.4th 561.) But *Doe II*, an established decision untouched by the California Supreme Court, presents an analogous scenario to the present case. It involved claims that MySpace facilitated sexual assault—in other words, claims that real-world harms arose due to connections made on a platform. By contrast, *Liapes*, currently under review by the California Supreme Court, involved the very

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<sup>2</sup> The common law imposes liability differently for “publishers” (like newspapers) and “distributors” (like newspaper vendors and booksellers). (*Barrett*, 40 Cal.4th at p. 39.) The California Supreme Court, following a rule adopted “in all other jurisdictions,” concluded that Congress did not carry this distinction over into Section 230, despite the trial court’s reasoning otherwise. (*Id.* at p. 58.).

different circumstance of a platform allegedly discriminating in violation of a state statute. Moreover, the trial court's decision merely mentions the Ninth Circuit's *Dyroff* opinion as a case cited by Snap, despite *Dyroff* being on nearly all fours with Plaintiffs' claims.

In looking past precedent, the trial court reached the wrong result. As noted, Section 230 forbids "creative pleading" (see *Kimzey*, 836 F.3d at 1265) and thus bars claims that create a "duty [that] would necessarily require an [I]nternet company to monitor third-party content." (*HomeAway.com, Inc. v. City of Santa Monica* (9th Cir. 2019) 918 F.3d 676, 682 [quoting *Doe v. Internet Brands* (9th Cir. 2016) 824 F.3d 846, 851]). Plaintiffs' theories would require exactly such monitoring, meaning the court should have found the theories failed as a matter of law.

In essence, the trial court has read immunity for third-party content out of Section 230. The trial court reasons that Plaintiffs' claims are based on the design of Snap's platform, not third-party content. But under this reading, plaintiffs could circumvent Section 230 simply by asserting that a service was designed to host harmful content. Imagine a website that allows users to post candid and graphic coverage of the wars in Ukraine or Gaza. In some vague sense, the website is arguably "designed" to host violent content. A plaintiff could note this and sue for harms allegedly caused by distributing such coverage. In other

words, under the trial court’s reading, litigants have a free pass to sue services for third-party content deemed harmful.

The opportunities for abuse are plain. Section 230 was enacted precisely to immunize defendants from liability where plaintiffs assert that Internet services have caused harm by publishing third-party content. In other words, Section 230 was meant for this case. Yet the trial court concludes otherwise, inviting litigants to forum shop—clogging California courts in the process—and creatively frame their claims as about design, not content. As this case shows, that reframing is trivial for a plaintiff’s attorney, but it renders Section 230 a nullity.

**II. Left unaddressed, the trial court’s decision would compel services to remove content and forgo or limit essential features, putting safety and privacy at risk.**

Faced with the litigation risks created by the trial court, services will be pressured to change their content policies and features in ways that impair speech and expression. This is exactly what Congress feared and requires swift intervention by this Court. (See *Barrett*, 40 Cal.4th at p. 45 [noting that imposing “liability would defeat” Section 230’s purposes “by encouraging providers to restrict speech”]; *Hassell*, 5 Cal.5th at p. 547 [noting potential for “stifling, skewing, or otherwise manipulating online discourse”].)

**A. Services would be compelled to remove any arguably controversial content, including harm reduction resources aimed at educating people about drug use and recovery.**

Due to the new potential for litigation, the trial court’s decision pressures services to prohibit *any* content that could conceivably be tied to a real-world harm. This would banish or severely curtail discussion of innumerable topics that even arguably present the slightest amount of controversy. Given the facts of this case, it would especially endanger discussions aimed at educating people about drug use harm reduction,<sup>3</sup> and recovery. The consequences would be similar to those observed under FOSTA-SESTA and the Illicit Drug Anti-Proliferation Act of 2003 Act.<sup>4</sup>

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<sup>3</sup> Harm reduction, “a key pillar in the U.S. Department of Health and Human Services’ Overdose Prevention Strategy,” refers to “an evidence-based approach” that “emphasizes engaging directly with people who use drugs to prevent overdose and infectious disease transmission; improve physical, mental, and social wellbeing; and offer low barrier options for accessing health care services, including substance use and mental health disorder treatment.” (*Harm Reduction*, Substance Abuse Mental Health Servs. Admin. <<https://www.samhsa.gov/find-help/harm-reduction>> [as of Mar. 4, 2024].)

<sup>4</sup> As discussed below, FOSTA-SESTA is a pair of bills (“Allow States and Victims to Fight Online Sex Trafficking Act” and “Stop Enabling Sex Traffickers Act”) that reformed Section 230 and is agreed to have caused harm, despite the goal of reducing sex-trafficking. (See 18 U.S.C. § 1591(a); 47 U.S.C. § 230(f).)

As noted in Section II, the trial court’s decision allows plaintiffs to short-circuit Section 230 simply by asserting that a service was designed to host harmful content, which will cause services to remove any content theoretically tied to real-world harms. The range of such consent is endless. Many Pulitzer Prize-winning photographs convey graphic images of violence, suffering, or nudity that a plaintiff could argue led to some harm, even while these images are some of the most important, influential, and celebrated news reporting. (See, e.g., Sara Pepitone, *10 Images from the Newseum’s Pulitzer Prize Photo Gallery* (2016) <<https://bit.ly/3ONvDw1>>; *Pulitzer Prize for Breaking News Photography*, The Pulitzer Prizes <<https://bit.ly/49HwINO>> [as of Mar. 4, 2024].) Other content might include discussions of mental health and self-harm, experimental medical treatments, or hunting and gun safety, all of which could be tied to people pursuing harmful actions offline.

Of particular concern here, services would be discouraged from hosting any content involving illicit substances, including recovery and harm reduction, which would restrict access to critical resources. This would likely happen because platforms often moderate content using keywords or artificial intelligence

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Similarly, the Illicit Drug Anti-Proliferation Act of 2003 is part of a U.S. policy aimed at party drugs that has been credited with harm. (See 21 U.S.C. §§ 843, 856.)

and may remove anything that discusses drugs, good or bad. The Internet supports a wide variety of information aimed at educating users and their loved ones about drug use and safety. For example, there are online campaigns to inform people about fentanyl testing strips and Naloxone, a life-saving treatment for opioid overdoses.<sup>5</sup> Reddit houses many discussion forums dedicated to addiction and substance abuse recovery,<sup>6</sup> providing community support for struggling people, which is crucial for keeping people safe.<sup>7</sup> Likewise, there are many subreddits dedicated to individuals seeking to support their loved ones struggling with addiction.<sup>8</sup> If the trial court’s decision stands,

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<sup>5</sup> TACO < <https://www.tacoinc.org> > as of Mar. 4, 2024).

<sup>6</sup> *r/stopdrinking*, Reddit <<https://www.reddit.com/r/stopdrinking>> (as of Mar. 4, 2024); *r/addiction*, Reddit <<https://www.reddit.com/r/addiction>> (as of Mar. 4, 2024); *r/OpiatesRecovery*, <<https://www.reddit.com/r/OpiatesRecovery>> (as of Mar. 4, 2024).

<sup>7</sup> Samantha J. Lookatch et al., *Effects of Social Support and 12-Step Involvement on Recovery Among People in Continuing Care for Cocaine Dependency*, (2019) 54 Substance Use Misuse 2144 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6803054/>> (as of Mar. 4, 2024) (“Social support has long been identified as vital to sustained recovery for individuals with substance use disorders. . . . Research has repeatedly found that those with stronger social support networks remain in treatment longer, and have better recovery outcomes with a decreased likelihood of return to use.”).

<sup>8</sup> *r/ChildrenofAddicts*, Reddit <<https://www.reddit.com/r/ChildrenofAddicts>> (as of Mar. 4,

this content and anything adjacent may be impossible for services to support without serious legal risks because there is a chance that drug-related discussions—such as how to help someone overdosing—might attract attention for facilitating drug abuse. Popular social media platforms may prohibit such content entirely, and search engines might deprioritize such content in results.

The consequences would be similar to those under FOSTA-SESTA, a recent example demonstrating how websites react when Section 230’s protections are even marginally narrowed.<sup>9</sup> FOSTA-SESTA amended Section 230 by removing immunity from sex-trafficking laws. Advocacy groups fiercely opposed enactment, arguing that FOSTA-SESTA failed to “address the root causes of child trafficking (such as poverty and youth homelessness)” and instead would create other problems.<sup>10</sup> But the bills passed, leading to the wide removal of adult content,

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2024); *r/AlanonFamilyGroups*, Reddit, <<https://www.reddit.com/r/AlanonFamilyGroups>> (as of Mar. 4, 2024); *r/AdultChildren*, Reddit, <<https://www.reddit.com/r/AdultChildren>> (as of Mar. 4, 2024).

<sup>9</sup> Known in full as the “Allow States and Victims to Fight Online Sex Trafficking” and “Stop Enabling Sex Traffickers” Acts.

<sup>10</sup> Sascha Cohen, *How Anti-Sex Work Legislation is About to Get Worse*, (Sept. 25, 2023) The Nation <<https://www.thenation.com/article/society/fosta-sesta-avs-bills-sex-work>> (as of Mar. 4, 2024).

including legitimate sex work resources.<sup>11</sup> Craigslist removed its entire “Personals” section, explaining that “[a]ny tool or service can be misused” and that that company could not “take such risk without jeopardizing all [its] other services.”<sup>12</sup> Google, Reddit, Microsoft, and its subsidiary Skype all changed their content policies.<sup>13</sup>

Alarming,ly, FOSTA-SESTA has hobbled law enforcement in investigating sex trafficking,<sup>14</sup> and advocates are unable to

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<sup>11</sup> Aja Romano, *A New Law Intended to Curb Sex Trafficking Threatens the Future of the Internet as We Know It*, Vox (July 2, 2018) <<https://www.vox.com/culture/2018/4/13/17172762/fosta-sesta-backpage-230-internet-freedom>> (as of Mar. 4, 2024); see also Megan Farokhmanesh, *Anti-Sex Trafficking Law FOSTA is Hurting Online Sex Educators Too*, (May 16, 2018) The Verge <<https://www.theverge.com/2018/5/16/17360458/anti-sex-trafficking-law-fosta-sex-work-education-oschool>> (as of Mar. 4, 2024).

<sup>12</sup> Samantha Cole, *Craigslist Just Nuked Its Personal Ads Section Because of a Sex-Trafficking Bill*, (Mar. 23, 2018) Vice <<https://www.vice.com/en/article/wj75ab/craigslist-personal-ads-sesta-fosta>> (as of Mar. 4, 2024).

<sup>13</sup> Romano, *supra* fn. 11.

<sup>14</sup> Mike Masnick, *Police Realizing That SESTA/FOSTA Made Their Jobs Harder; Sex Traffickers Realizing It's Made Their Job Easier*, (May 14, 2018) Techdirt <<https://www.techdirt.com/2018/05/14/police-realizing-that-sesta-fosta-made-their-jobs-harder-sex-traffickers-realizing-made-their-job-easier/>> (as of Mar. 4, 2024).

reach victims.<sup>15</sup> Without resources and forced on the street, the most vulnerable workers were put in great danger. “[R]eports from legal scholars, researchers, and the Government Accountability Office conclude that the law has been counterproductive at best and deadly at worst, confirming the early fears.”<sup>16</sup> In the years after the law’s passage, “sex work advocacy groups have reported a spike in the number of missing and dead sex workers across the country,”<sup>17</sup> which has disproportionately harmed transgender women of color.<sup>18</sup>

The consequences of leaving the trial court’s decision in place would also resemble those under drug policies like the Illicit Drug Anti-Proliferation Act of 2003 that aim to reduce the proliferation of drugs at raves by holding organizers criminally

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<sup>15</sup> Siouxsie Q, *Anti-Sex-Trafficking Advocates Say New Law Cripples Efforts to Save Victims*, (May 25, 2018) Rolling Stone <<https://www.rollingstone.com/culture/culture-features/anti-sex-trafficking-advocates-say-new-law-cripples-efforts-to-save-victims-629081>> (as of Mar. 4, 2024).

<sup>16</sup> Cohen, *supra* fn. 10.

<sup>17</sup> Liz Tung, *FOSTA-SESTA Was Supposed to Thwart Sex Trafficking. Instead, It’s Sparked a Movement*, (July 10, 2020) WHYY <<https://whyy.org/segments/fosta-sesta-was-supposed-to-thwart-sex-trafficking-instead-its-sparked-a-movement/>> (as of Mar. 4, 2024).

<sup>18</sup> Anna North, *The LGBTQ Rights Issue 2020 Democrats Still Aren’t Talking About*, (Nov. 4, 2019) Vox <<https://www.vox.com/identities/2019/11/4/20913671/sex-work-workers-lgbtq-fosta-sesta-2020>> (as of Mar. 4, 2024).

liable for drug use at events. These policies caused venues and organizers to exercise such extreme caution that they “stopped doing anything that would implicate them in illicit drug use, including providing medical or educational services for drug users.”<sup>19</sup> These policies also inhibit free expression, holding organizers accountable for the actions of attendees and discouraging a popular way for people to express themselves through music and dancing.<sup>20</sup>

Unfortunately, it is already difficult for advocates to share important information about drug safety online, and the trial court’s decision will only make this worse. For example, Facebook has blocked or demoted user posts warning about drugs laced with fentanyl, sharing information about harm reduction, or educating people about Naloxone.<sup>21</sup> This sort of moderation is

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<sup>19</sup> German Lopez, *How the War on Drugs Made Raves More Dangerous*, (Feb. 23, 2015) Vox  
<<https://www.vox.com/2014/10/3/6880715/RAVE-Act-joe-biden-molly-mdma-ecstasy-party-drugs-risks>> (as of Mar. 4, 2024).

<sup>20</sup> See *DEA Must Not Be Allowed to Chill Speech or Shut Down Electronic Music Events*, (Sept. 11, 2003) ACLU  
<<https://www.aclu.org/documents/dea-must-not-be-allowed-chill-speech-or-shut-down-electronic-music-events>> (as of Mar. 4, 2024).

<sup>21</sup> Maya Szalavitz, *Facebook is Censoring Posts That Could Save Opioid Users’ Lives*, (July 2, 2019) Vice  
<<https://www.vice.com/en/article/qv75ap/facebook-is-censoring-harm-reduction-posts-that-could-save-opioid-users-lives>> (as of

not surprising, given the volume of information that websites must address and still-improving moderation methods. Indeed, a key reason for Section 230 is to enable Internet services to make an enormous amount of diverse, dynamic third-party content available without risking astronomical liability. (*Cf. Barrett*, 40 Cal.4th at p. 45 “[T]he sheer number of postings on interactive computer services would create an impossible burden in the Internet context.”]). If the trial court’s decision stands, websites across the board would be forced to drastically narrow access to information on drug safety.

**B. Services would also be compelled to stop offering or limit popular features that promote privacy and wellbeing.**

Just as the trial court’s decision encourages censorship, it also pressures services to drop features that support privacy and mental wellbeing online. This is because Plaintiffs’ legal theories are based on supposed design defects involving such features, thus exposing services to legal risks for maintaining them.

For example, the complaint attacks Snap’s ephemerality features as harmful, even though these features facilitate healthy

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Mar. 4, 2024); Ryan Hampton, *Free Speech Restrictions on Social Media Could Squash Harm Reduction and Addiction Recovery Efforts*, (Dec. 5, 2021) The Hill <<https://thehill.com/blogs/congress-blog/politics/584424-free-speech-restrictions-on-social-media-could-squash-harm>> (as of Mar. 4, 2024).

social expression and privacy. “Default deletion of content makes it easier to share every day, mundane talk that is valuable in the moment for maintaining relationships but not worth saving.”<sup>22</sup> Ephemeral communication “reduces self-consciousness in communication,” allowing users not “to worry about unintended audiences and long-term exhibition of content” and enabling “creative, funny, even self-deprecating content [users] would hesitate to put on other social media.”<sup>23</sup> In most respects, this is how people have been accustomed to communicating for millennia. Friends say things in conversation to one another, but things are forgotten or lost with time; not everything is meant to be recorded forever. Moreover, by deleting data, Snap’s features reduce the risk of data breaches and mitigate the general concern that everything a person does is permanent on the Internet.

Alarming, Plaintiffs’ theories suggest that encryption is unsafe for services to offer because, naturally, encrypted content is less likely to be inaccessible to parents or law enforcement. This is profoundly concerning because encryption is essential for

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<sup>22</sup> Bin Xu et al., *Automatic Archiving versus Default Deletion: What Snapchat Tells Us About Ephemerality in Design* (2016) CSCW Conf. Comput. Support Coop. Work at p.1662. <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6169781/>> (as of Mar. 4, 2024).

<sup>23</sup> *Id.*

Internet privacy.<sup>24</sup> Users rely on encryption to help keep their digital conversations confined to intended audiences. Without encryption, any private discussion among friends, family, lovers, or colleagues could immediately become public. Users would live in fear of having sensitive information disclosed, such as medical diagnoses or experiences with sexual assault. Marginalized groups like the LGBTQ+ community especially rely on encryption to avoid revealing information publicly that could put them in danger.<sup>25</sup> People with political, religious, or social views outside the mainstream also depend on encryption to support candid discussion, and encryption is essential in the business and legal worlds to facilitate discussion that, if leaked, could reveal proprietary information and attorney-client communications.<sup>26</sup>

## CONCLUSION

To ensure that the trial court's decision does not cause the mayhem that Section 230 is meant to prevent, and thus to promote a safe and vibrant Internet in line with decades of

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<sup>24</sup> Jennifer Stisa Granick & Daniel Kahn Gillmor, *The Vital Role of End-to-End Encryption*, (Oct. 20, 2023) ACLU <<https://www.aclu.org/news/privacy-technology/the-vital-role-of-end-to-end-encryption>> (as of Mar. 4, 2024).

<sup>25</sup> *Encryption*, LGBT Tech <<https://www.lgbttech.org/encryption>> (as of Mar. 4, 2024).

<sup>26</sup> *Email Encryption: A Must-Have for Business Communication*, Mailchimp <<https://mailchimp.com/resources/email-encryption/>> (as of Mar. 4, 2024).

judicial precedent, the Court should intervene and clarify the scope of Section 230 immunity in this case.

Dated: March 6, 2024

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I certify pursuant to California Rules of Court 8.204 and 8.504(d) that this Brief of Amici Curiae Chamber of Progress, NetChoice, and TACO is proportionally spaced, has a typeface of 13 points or more, contains 4,262 words, excluding the cover, the tables, the signature block, verification, and this certificate, which is less than the total number of words permitted by the Rules of Court. Counsel relies on the word count of the Microsoft Word word-processing program used to prepare this brief.

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## CERTIFICATE OF SERVICE

I am over the age of 18 years and not a party to the within action. My business address is 4 Embarcadero Center, Suite 3500, San Francisco, CA 94111.

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