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Mr. Lyle W. Cayce
Office of the Clerk
United States Court of Appeals for the Fifth Circuit
F. Edward Hebert Building
600 S. Maestri Place
New Orleans, LA 70130

RE: *NetChoice v. Paxton*, No. 21-51178

Dear Mr. Cayce:

Defendant's reliance on *Anderson v. TikTok, Inc.*, No. 22-3061, 2024 WL 3948248 (3d Cir. Aug. 27, 2024), *see* Doc. 342, is misplaced for three primary reasons.

First, *Anderson* interpreted 47 U.S.C. §230. But Plaintiffs here prevail under the First Amendment alone, which protects websites' curation of speech "created by others." *Moody v. NetChoice, LLC*, 144 S. Ct. 2383, 2400 (2024). Defendant argues that websites "have no First Amendment protection in connection with such third-party speech." Doc. 342 at 2. This defies *Moody*—which is binding Supreme Court precedent. *See Garrett v. Lumpkin*, 96 F.4th 896, 902 & n.4 (5th Cir. 2024).

Second, HB20 covers only the largest "social media platform[s]" — those with 50 million or more monthly U.S. users. Tex. Bus. & Com. Code §120.002(b). This excludes email and websites whose primary purpose is direct messaging or commercial transactions (like Etsy, Venmo, or Uber). *Id.* §120.001(1). Any concerns about such actors, *see Moody*, 144 S. Ct. at 2398,

are not implicated here. The websites targeted by HB20 moderate content to enforce their community guidelines. *See* ROA.359; ROA.383-85; ROA.1664-1721. Using “algorithms to implement those standards” is fully protected under *Moody*. 144 S. Ct. at 2403. And hypothetical algorithms that “respond solely to how users act online,” *id.* at 2404 n.5, are not even covered by HB20 Section 7 because they would rely on user choice, not *viewpoint*, *see* Tex. Civ. Prac. & Rem. Code §143A.002(a).

Third, Anderson contradicts this Court’s decisions that §230 protects “[a]ctions quintessentially related to a publisher’s role,” including “filter[ing] content.” *Free Speech Coal., Inc. v. Paxton*, 95 F.4th 263, 286 (5th Cir. 2024); *see Doe v. MySpace, Inc.*, 528 F.3d 413, 420 (5th Cir. 2008) (“publishing, editorial, and/or screening capacities”). *Anderson* ignores §230’s text, which turns on whether a website publishes “*information provided by another information content provider.*” 47 U.S.C. §230(c)(1) (emphases added). This protection does not lapse just because decisions about displaying user-generated speech are protected by the First Amendment.

Plaintiffs respectfully request that this Court grant their pending motion for supplemental briefing (Doc. 328) to allow further discussion of these free-speech protections.

Respectfully submitted,

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