

In Q We Trust: The Spread of QAnon as a Critique of Section 230

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This note seeks to characterize QAnon as a modern hyper-religion and explore the legal implications of this description on Internet content moderation. Specifically, this note documents the potential religious freedom challenges that Congress may face in the event it decides to repeal and replace Section 230 of the Communications Decency Act. By using QAnon as contemporary case study in the perils that may arise if modern hyper-religions attempt to seek Free Exercise protections, this note highlights the complexity and peril facing Congress if they do not adopt a purposeful and comprehensive replacement for our current digital content-moderation scheme.

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I. INTRODUCTION

What makes religion? Is it the subject matter, the zeal of believers, the political and social clout of its leaders? The First Amendment guarantees, among other things, the right of the people to freely exercise their faith and provides them with protection from the establishment of a state-religion.¹ The question of what a “religion” is may have been deceptively easy to answer at the founding of the country, when the religious makeup of the founders was overwhelming Christian. But this is no longer the case. Over the past three hundred years, immigration from across the world has brought new people to these shores, and with them have come new ideas surrounding God, the afterlife, and morality. Since the 1990s, the number of U.S. adults that identified as “Christian” was about 90%. As of 2022, that number had dropped to 66%.² While these drops are the highest amongst Christian groups, the past twenty years have seen a general shift amongst Americans from all backgrounds away from traditional religions towards non-religious affiliations.³ Although there are a variety of factors contributing to this decline, an important one is the role of the Internet in introducing people to new ideas, beliefs, and creeds that they may have been less exposed to in prior generations.

The question of defining religion is further complicated when religious beliefs become intertwined with political ones, as is the case with the QAnon movement. QAnon’s unique propagation and fervor amongst adherents has resulted in “political” beliefs that are more in line with faith as opposed to real-world politics. Because of this, scholars have begun to characterize the movement as a “hyper-real religion,” a

¹ U.S. CONST. amend. I.

² *Modeling the Future of Religion in America*, PEW RSCH. CENTER (Sep. 13, 2022), <https://www.pewresearch.org/religion/2022/09/13/how-u-s-religious-composition-has-changed-in-recent-decades/> [https://perma.cc/R3PP-RSDH].

³ *Religious Change in America*, PRRI (Mar. 27, 2024), <https://www.prri.org/research/religious-change-in-america/> [https://perma.cc/6JHG-4P7Y].

religion which is built out of pop-culture symbols rather than in relation to material reality.⁴ Additionally, QAnon's repurposing of Christian imagery serves both as a view into the theological worldview of the movement as well as the way in which new members have been drawn to the ideology. QAnon is unique in how prolifically it spread in the build-up to the 2020 election, as well as its members' violence during the January 6th Insurrection.

Thus, QAnon presents a case study for future efforts to modify how Interactive Computer Services are regulated in the United States, given the present bipartisan criticism of Section 230 of the Communications Decency Act (CDA).⁵ Section 230 ensures that no operator of a computer service will be held liable as a publisher for the speech of its users.⁶ Initially passed as a way to ensure the growth of the Internet, increasing politicians have become weary of the broad protections Big Tech has been granted by this statute, which is only limited in five instances. As these calls for amending—or outright repealing—Section 230 grow louder, QAnon offers an omen of what the future of online religious expression could look like. And these issues will be important for future lawmakers to consider because of the immense impact that any future Section 230 amendments would have on the First Amendment rights—both speech and religion—of consumers and corporations.

Currently, publisher liability for interactive computer services⁷ is regulated under the Section 230 of the CDA.⁸ While the

⁴ Adam Possamai, *Yoda Goes to Glastonbury: An Introduction to Hyper-Real Religions*, in *HANDBOOK OF HYPER-REAL RELIGIONS* 1, 1 (Adam Possamai ed., 2012).

⁵ See Lauren Feiner, *Lawmakers are Trying to Repeal Section 230 Again*, *THE VERGE* (Mar. 21, 2025), <https://www.theverge.com/news/634189/section-230-repeal-graham-durbin> [<https://perma.cc/924B-EMP6>] (highlighting the most recent attempt to sunset Section 230 led by Republican Mitch McConnell and Democrat Dick Durbin).

⁶ 47 U.S.C. § 230(c)(2).

⁷ 48 U.S.C. § 230(f)(2) (defining interactive computer services as “any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server”).

⁸ 47 U.S.C. § 230

CDA has undoubtedly allowed the Internet to scale to its monolithic status over the past three decades, calls to reexamine it have grown louder each year from across the political spectrum.⁹ While most criticism of proposed CDA amendments surround questions of free speech, there are equally important issues of religious freedoms that are inherently raised when platforms regulate the content on their sites.¹⁰

Through an examination of the history and beliefs of QAnon, Part I of this paper will sift through the noise surrounding the conspiracy and extract QAnon's core beliefs. Part II will look at Supreme Court precedence regarding what definitions of religion the Court has offered. Part III will discuss the pop-culture and religious influences on the movement and how these influences make QAnon a "hyper-religion." Part IV will then examine the history of the CDA, the jurisprudence surrounding the act, and its application to religious expression. Part V will highlight the exceptions to the state-action doctrine to see whether Section 230, or any future amendments, could create constitutional requirements for interactive computer services. Part VI will overview the different categories of content moderation schemes that have been introduced in Congress and examine how each would impact religious expression on the Internet. Ultimately, this paper seeks to explore and answer how to deal with Internet provider liability when the line that divides political and religious beliefs becomes blurry.

II. THE HISTORY OF QANON

While Q's first post on October 28th, 2017, signifies the official "start" of the conspiracy, the roots of the

⁹ Ash Johnson & Daniel Castro, *Fact-Checking the Critiques of Section 230: What Are the Real Problems?*, ITIF (Feb. 22, 2021), <https://itif.org/publications/2021/02/22/fact-checking-critiques-section-230-what-are-real-problems/> [https://perma.cc/M7RM-WGN8].

¹⁰ S. 921, 118th Cong. (2023) (a speech considered amendment to the Section 230 with a religious liberty exception); S. 147, 118th Cong. (2023) (a speech amendment to Section 230 attempting to implement a "see something, say something" notice requirement for Interactive Computer Service to claim Section 230 as a defense).

movement had been present online beforehand.¹¹ QAnon's defining belief—that the United States Government is secretly run by a deep-state of Satanic pedophiles—originated in an earlier online conspiracy known as Pizzagate.¹² Pizzagate began in forums on the website 4Chan¹³ and was based on user interpretations of email communications leaked by Hillary Clinton's campaign chair, John Podesta, in November 2016.¹⁴ These emails contained references to James Alefantis, who was the owner of "Comet Ping Pong" Pizzeria in Washington D.C. and a prominent donor to the Democratic Party.¹⁵ Users speculated that repeated mentions of "cheese pizza" within the emails were a euphemism for child pornography.¹⁶ According to the Pizzagate theory, when Podesta had ordered these pizzas from Comet Ping Pong, he was actually ordering victims of an international child sex trafficking ring to these Democratic fundraising events.¹⁷ Since these emails "proved" a link between the pizzeria and the Democratic party, the connection quickly morphed into a vast conspiracy that implicated numerous government officials.¹⁸

¹¹ Alex Goldenberg et al. *The QAnon Conspiracy: Destroying Families, Dividing Communities, Undermining Democracy*, NCRI (Dec. 15, 2020), <https://networkcontagion.us/wp-content/uploads/NCRI-%E2%80%93The-QAnon-Conspiracy-FINAL.pdf> [<https://perma.cc/999U-XHF6>].

¹² Brian Holoyda, *QAnon*, BRITANNICA (Sept. 7, 2025), <https://www.britannica.com/topic/QAnon> [<https://perma.cc/CQK7-TF5T>].

¹³ 4Chan is an imageboard website that is infamous for its anonymous postings and its loose content moderation rules. The site is mostly known for helping create popular meme formats, as well as hosting some of the more disturbing Internet subgroups. Samuel Greengard, *4chan and 8chan (8kun)*, BRITANNICA (Sept. 15, 2025), <https://www.britannica.com/topic/4chan> [<https://perma.cc/WK2H-55QF>].

¹⁴ Mike Wendling, *The saga of 'Pizzagate': The Fake Story That Shows How Conspiracy Theories Spread*, BBC NEWS (Dec. 2, 2016), <https://www.bbc.com/news/blogs-trending-38156985> [<https://perma.cc/RB2D-KQV8>].

¹⁵ *Id.*

¹⁶ Amanda Robb, *Anatomy of a Fake News Scandal*, REVEAL (Nov. 16, 2017), <https://revealnews.org/article/anatomy-of-a-fake-news-scandal/> [<https://perma.cc/H2VW-2XKT>].

¹⁷ Holoyda, *supra* note 12.

¹⁸ Robb, *supra* note 16.

The Pizzagate theory rapidly gained a following on 4Chan before it was introduced to Reddit, a text-based platform in which users can engage in discussion and video sharing within specific communities known as “subreddits.”¹⁹ Pizzagate largely fell out of internet popularity amongst alt-right groups on December 4th, 2016, when Edgar Welch, a believer of the conspiracy, arrived at the Ping Pong Comet Pizzeria armed with an AR-15 to free the children himself.²⁰ After this flashpoint, the conspiracy subsided due to a combination of accurate reportings on the situation from national media and online platforms, such as Reddit and Facebook, taking steps to ban Pizzagate content.²¹ This is not to say, however, that the conspiracy, and its underlying beliefs, vanished.²²

While Pizzagate is still occasionally mentioned, the conspiracy theory is mostly remembered today as the direct precursor to QAnon.²³ At its core, QAnon is the belief that the United States government is secretly run by a group of Satan-worshipping pedophiles, and that the only person who can save the country is President Donald Trump.²⁴ The core of QAnon theory was largely developed through the posts of Q Clearance Patriot (“Q”). Q, an anonymous user on the 4Chan platform, claimed his knowledge of the conspiracy came from his position as a high-level government official.²⁵

¹⁹ *Id.*

²⁰ Affidavit in Support of a Criminal Complaint at 3, *United States v. Welch*, No. 1:16-cr-00232, (D. D.C. Dec. 12, 2016) (details that in the days before the attack, Welch had consumed Pizzagate content and texted friends shortly before the attack that he was “standing up against a corrupt system that kidnaps, tortures and rapes babies and children.”).

²¹ Wendling, *supra* note 14.

²² *Id.*

²³ Ben Goggin, *Elon Musk Has Boosted the ‘Pizzagate’ Conspiracy Theory Five Times in the Last Two Weeks*, NBC NEWS (Nov. 28, 2023, 18:09 EST), <https://www.nbcnews.com/tech/tech-news/elon-musk-boosted-pizzagate-conspiracy-theory-rcna127087> [https://perma.cc/TZ8V-DPU2].

²⁴ *The Making of QAnon: A Crowdsourced Conspiracy*, BELLINGCAT (Jan. 7, 2021), <https://www.bellingcat.com/news/americas/2021/01/07/the-making-of-qanon-a-crowdsourced-conspiracy/> [https://perma.cc/EG2M-ZP6B].

²⁵ *Id.*

The first post by Q was on October 28, 2017, on the 4Chan “/pol/” forum.²⁶ In this post, Q reported that on October 30, an arrest warrant would be issued for Hillary Clinton and both the U.S. military and the National Guard would be activated to ensure this arrest.²⁷ While this rhetoric against Mrs. Clinton was present on “/pol/” well before Q’s first post, Q represents a dramatic shift in the far-right bubble due to the unprecedented following that these posts attracted.²⁸ Q’s posts, or “drops,” would continue for the next three years across three different forum sites, until Q suddenly stopped posting shortly after Donald Trump lost the 2020 election.²⁹ Despite Q not posting in nearly four years, the strength of the QAnon movement has remained steady.³⁰ As documented by Public Religion Research Institute, the percentage of Americans, across the political spectrum, who believe in QAnon increased from 14% in 2021 to 23% in 2023.³¹

There is no single explanation for QAnon’s continued popularity. The QAnon Origins Project details how Q merely regurgitated theories that were already in full discussion on /pol/ by other “anons,”³² at the time.³³ Thus, QAnon’s popularity can be chalked up to Q giving the people what they already wanted; Q’s success was in

²⁶ /pol/, on both reddit and 4chan, is an infamous message board in which alt-right rhetoric—racism, xenophobia, misogyny, etc.—is celebrated. The name is a shorthand for “politically incorrect,” and represents a visible alt-right online community. *Id.*

²⁷ Anonymous, *QAnon Drop*, 4CHAN (Oct. 28, 2017, at 16:44 ET), <https://archive.4plebs.org/pol/thread/146981635/#q147012719> [<https://perma.cc/RL34-MG6Z>].

²⁸ Bellȳngcat, *supra* note 24.

²⁹ JOAN DONOVAN ET AL., MEME WARS: THE UNTOLD STORY OF THE ONLINE BATTLES UPENDING DEMOCRACY IN AMERICA 226 (2022).

³⁰ PRRI, THREATS TO AMERICAN DEMOCRACY AHEAD OF AN UNPRECEDENTED PRESIDENTIAL ELECTION 35-36 (2023).

³¹ *Id.*

³² *Anon*, DICTIONARY.COM, <https://www.dictionary.com/browse/anon#american-anon-2-abbreviation> [<https://perma.cc/75QG-E6KZ>] (last visited Sep. 17, 2025) (defining Anon as an abbreviation of “anonymous user” which is used as a pronoun for users on image boards like Reddit and 4Chan due to the anonymous nature of posters).

³³ Bellȳngcat, *supra* note 24.

presenting a more compelling thread to follow than other posters could.³⁴ But this explanation only paints half the picture; it presents a potential explanation for an ecosystem that permitted Q to thrive, but does not address the underlying question of what galvanized people to believe in his drops.³⁵ Research from the Network Contagion Research Institute notes that QAnon radicalized its followers by basing its narrative around the emotionally-charged topic of child abuse.³⁶

Whether inadvertent or not, QAnon's focus on pedophilia and "saving the children" allows for a clear, uncomplicated worldview.³⁷ These issues carry heavy emotional weight as child abuse and pedophilia are widely condemned by society.³⁸ Thus, many people, while not necessarily agreeing with the totality of the movement's beliefs, implicitly agree with the core desire to stop child exploitation and trafficking.³⁹ Additionally, high profile sexual abuse cases—think of Harvey Weinstein, Jeffrey Epstein, Sean "P Diddy" Combs as recent examples—give credence to these beliefs because there is truth to the base accusation; powerful men are often insulated from the repercussions of their abuse of women and children.⁴⁰ Thus, the focus on child harm and pedophilic abuse serves as a source of legitimacy, even to those who do not readily believe a deep state exists.

QAnon's focus on child abuse also serves as a "foot in the door" because it primes incoming participants for the conspiratorial ideas that follow. Once initiated by a compelling cause like child abuse, the movement's culture of Do-It-Yourself research further radicalizes individuals through the process of "baking" the trail of breadcrumbs for the individual to "find."⁴¹ The use of self-

³⁴ *Id.*

³⁵ *Id.*

³⁶ Goldenberg et al., *supra* note 11, at 7.

³⁷ *Id.*

³⁸ Daniela Stezlan et al., *Media Coverage of Pedophilia and Its Impacts on Help-Seeking Persons with Pedophilia in Germany—A Focus Group Study*, INT.

J. ENVIRON. RES. PUB. HEALTH 1, 1 (2022).

³⁹ See Goldberg et al., *supra* note 11, at 7.

⁴⁰ *Id.* at 8.

⁴¹ *Id.* at 7.

research is a powerful tool for radicalizing individuals as a form of in-group entrenchments. Self-research allowed followers to believe that they were discovering an international conspiracy for themselves, rather than the reality: they were simply putting together pre-supplied evidence that allows followers to come to their own variation of a pre-determined conclusion.⁴² This (DIY) mentality contributes to the significant variations in individual beliefs surrounding QAnon within the United States and globally.⁴³ The adaptability of the individual narratives under the larger umbrella is one of the movement's greatest strengths, serving as a near constant source of new theories.

By promoting self-research, QAnon followers create powerful in-group dynamics, where participation is always rewarded. New narratives are rarely admonished, and members seek to encourage initiates to try their hand.⁴⁴ Additionally, as new theories are rewarded through upvoting and other positive online reactions, members are encouraged to continuously theorize and look for answers everywhere.⁴⁵ This interactive nature makes the QAnon conspiracy similar to an alternate-reality game (ARG), a real-world game that involves searching for clues amongst everyday sources like newspapers, blogposts, and other non-traditional forms of game-entertainment.⁴⁶ When structured as a game with knowing participants, ARG's offer more player immersion and a stronger game narrative than what is possible in most game environments because ARG permits players the opportunity to "build-their-own-narrative". ARG games result in players feeling as though they are creating the rules and world they play in. This hands-on world-building increases the ability for players to create their own narratives as the game goes on, which in turn

⁴² *Id.* at 12.

⁴³ By 2021, QAnon had spread to over 71 countries, each with local variations of the core theme of child abuse at the hands of an unaccountable elite group. *Id.* at 7.

⁴⁴ *Id.* at 7.

⁴⁵ *Id.* at 12.

⁴⁶ *Id.*

promotes greater player engagement with the game.⁴⁷ What makes this type of engagement problematic in the context of QAnon is the deceptive nature of the game; anons (players) are set out to create their own narratives out of pre-selected clues. Because the anons are on the ground building these narratives, the fact that they are starting from a faulty premise is irrelevant by the time those theories and findings have been created and propagated amongst the community.

Specific similarities between the QAnon Conspiracy and AGRs include (1) an epic meaning at the center of the narrative, (2) a “yes and” approach to research and group interactions, and (3) the creation of a shared reality amongst the members that is distinct from outsider beliefs.⁴⁸ QAnon is unique in that it blurs the line between writer and players within this context. While Q is seen as the leader of the movement, there is no way for an average follower to conclude whether a post was written by Q or not due to the anonymous nature of sites like 4Chan.⁴⁹ QAnon’s artificial-game environment was perpetuated by those rank-and-file members who continuously reindoctrinated each other through their “research”.

The above approach has been shown to contribute to the spread and entrenchment of QAnon. So much so that QAnon has been described by commentators to be “cult-like” in nature to explain the fanaticism that has developed amongst members.⁵⁰ But if QAnon operates like a cult, then does that make anons worshippers? The question of whether QAnon could be described as a religion is crucial for understanding both the appeal of the movement as well as highlighting the potential constitutional issues with regulating similar movements when they arise in the future.

⁴⁷ Charlie Wenzel, *Is QAnon the Most Dangerous Conspiracy Theory of the 21st Century*, N.Y. TIMES (Aug. 4, 2020), <https://www.nytimes.com/2020/08/04/opinion/qanon-conspiracy-theory-arg.html> [<https://perma.cc/TV4W-AXZJ>].

⁴⁸ Goldenberg et al., *supra* note 11, at 12.

⁴⁹ *Id.* at 8.

⁵⁰ *Id.*

III. WHAT IS A RELIGION?

A curious paradox present at the core of a First Amendment analysis is the lack of a definition of religion in both the Free Exercise and the Establishment Clause. This position can be traced back to the Founding, where the Founders opted not to include a definition of religion in the Constitution.⁵¹ While forgoing a definition is a pragmatic choice—given the significant variations across beliefs, the inadequacy of our legal institutions to make such a determination, and the potential constitutional issues that defining religion could dredge up⁵²—the lack of a definition itself can be seen as problematic.⁵³ While defining such a nebulous term likely creates more problems than it would solve, the fact remains that any discussion of the First Amendment’s religious protections requires the term to be defined “because ‘the definition of religion’ plays an integral role in the articulation of any well-developed doctrine governing the constitutional separation of church and state as does the content to be assigned to the religion clauses’ two substantive terms—‘establishment’ and ‘free exercise.’”⁵⁴ In other words, without a definition, how will we know what qualifies for religious protection and what should not?

The contemporary definition of religion offered by Supreme Court was dictum in *Wisconsin v. Yoder*.⁵⁵ In *Yoder*, the Supreme Court attempted to draw a line in the sand to create a narrower understanding of religion, given

⁵¹ Jeffrey Usman, *Defining Religion: The Struggle to Define Religion Under the First Amendment and the Contributions and Insights of Other Disciplines Including Theology, Psychology, Sociology, The Arts, and Anthropology*, 83 N.D. L. REV. 123, 144-45 (2007).

⁵² *Id.* at 145.

⁵³ *Id.*

⁵⁴ *Id.* at 147-48.

⁵⁵ *Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972).

the expansion of the concept which had occurred in cases involving consciousness objectors⁵⁶—specifically *U.S. v. Seeger*⁵⁷ and *Welsh v. U.S.*⁵⁸ These shifts were the result of the Court's decision in *Torcaso v. Watkins*, which held that state governments could not favor an individual who believed in God over one that denied the existence of God.⁵⁹ The *Torcaso* holding created a theological quagmire for the Court: they had accepted the premise that a religion need not embody Western expectations of God to qualify as a religion, but they failed to provide a meaningful test to cabin religion from other social organization structures like political or philosophical beliefs.⁶⁰ Thus, while the Court had managed to avoid being forced to define religion, it was only a matter of time before they would be forced to act.

Conscientious objector cases were the first to press the Court for a clearer standard. First was *Seeger*, where the Court was faced with determining what Congress intended to convey by including a reference to a “Supreme Being” within section 6(j) of 50 U.S.C. App. § 456(j), which permitted an exception to the draft for consciousness objectors.⁶¹ The Supreme Court interpreted Congress's inclusion of “Supreme Being” in the place of “God” to mean that Congress intended to expand the category of consciousness objector to include all religions.⁶² To that end, the Court articulated that the test for if a belief was related to a Supreme Being was “whether a given belief that is sincere and meaningful[ly] occupies a place in the life of its possessor parrel to that filled by the Orthodox belief in God of one who clearly qualifies for the exemption.”⁶³ The Court based this definition of religion on the sincerity of the belief, and if that belief is held in a position that could be analogized to readily recognized

⁵⁶ See Usman, *supra* note 51, at 171.

⁵⁷ *United States v. Seeger*, 380 U.S. 163 (1965).

⁵⁸ *Welsh v. United States*, 398 U.S. 333 (1970); *Seeger*, 380 U.S. at 173.

⁵⁹ *Torcaso v. Watkins*, 376 U.S. 488, 495 (1961); Usman, *supra* note 51, at 170.

⁶⁰ See Usman, *supra* note 51, at 170.

⁶¹ *Seeger*, 380 U.S. at 174.

⁶² *Id.* at 166.

⁶³ *Id.*

religion. At the center of *Seeger*'s holding is the premise that a religious belief does not need to be tied directly to a traditional,⁶⁴ mainstream understanding of God.

Welsh involved an almost identical set of circumstances as *Seeger*, with the only major difference being that on his selective service form, Welsh crossed out the word "religious" from his conscientiousness objector application and admitted that his objections arose from readings of historical and sociological materials.⁶⁵ The U.S. government argued that in doing so, Welsh had conceded that his views were not religious and thus he was ineligible for conscientiousness objector status under section 6(j) of 50 U.S.C. App. §456 (j). The Court disagreed, instead holding that because Welsh held these beliefs "with the strength of more traditional religious convictions," Welsh had adequately shown that he was entitled to an exemption under the act.⁶⁶ Thus, although the *Welsh* decision was a plurality, *Welsh*'s holding expanded the definition of religion to include beliefs that were admittedly not religious in a traditional way, so long as the plaintiff could allege that the fervor in which they held these beliefs was akin to a traditional faith in God.⁶⁷

The Court finally addressed the definition of religion within the First Amendment context in *Wisconsin v. Yoder*. In *Yoder*, local parents belonging to different Amish sects challenged the constitutionality of a Wisconsin state statute that made education at a public or private school mandatory for all children under sixteen years old.⁶⁸ *Yoder* challenged the law on an as-applied basis because the statute forced the Amish to send their fourteen and fifteen year old children to school, which he

⁶⁴ While the Court in the 1960s would be referring to a Christian understanding of God, such a description can readily be extended to other monotheistic faiths such as Judaism and Islam.

⁶⁵ *Welsh v. United States*, 398 U.S. 333, 343 (1970).

⁶⁶ *Id.* at 343-44.

⁶⁷ While neither *Seeger* nor *Welsh* have ever been applied by the Court in the First Amendment context, these definitions are still utilized by lower circuit courts as an influence. *Usman*, *supra* note 51, at 172.

⁶⁸ *Wisconsin v. Yoder*, 406 U.S. 205, 207-09 (1972).

believed violated the Free Exercise rights of both the parents.⁶⁹

Yoder argued that attendance at high schools was antithetical to the Amish way of life because it forced Amish children into a bind in two ways. First, compulsory high school education places those children in an unfamiliar setting that was contrary to Amish beliefs; the Amish promote cooperation and simple living while high schools—both public and private—foster competition amongst students between an emphasis on grades, as well as the social pressures of conforming with the majority.⁷⁰ Second, adolescence for the Amish represents an important chapter in an individual's life where they begin to seriously engage with their faith. As a community and culture, the Amish emphasized manual labor, self-reliance, and responsibility for the family and the community through acts and examples.⁷¹ And these values derived from the Amish view of their relationship with God; a relationship that involved a rejection of material life and a return to a simple, agrarian way of life.⁷²

The Court dedicate a section of the opinion to determine whether Yoder's arguments fell within the "religion" of the Amish. The Court recognized that to make this determination, they must decide if the Amish's faith and way of life were inseparable.⁷³ The Court began with the premise that "a way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations; to have the protection of the Religion Clauses, the claims must be rooted in religious belief."⁷⁴ The Court—again as dictum—limited the expansive definitions of religion expressed in *Seeger* and *Welsh* by clarifying that secular or philosophical ways

⁶⁹ *Id.*

⁷⁰ *Id.* at 210-11.

⁷¹ *Id.* at 211.

⁷² *Id.* at 210.

⁷³ *Id.* at 215.

⁷⁴ *Id.*

of life, on their own, would not be considered religious.⁷⁵ These opinions, alongside *Torcaso*, are the most recent times that the Supreme Court has grappled with the definition of religion.⁷⁶

While the Court has never set forth a definitive definition of religion, these dicta have served as guidance for lower federal courts and state courts alike over the past fifty years.⁷⁷ Synthesizing these positions into a single definition, the United States Supreme Court defines a belief as “religious” if it is (1) sincerely held, (2) is held with a reverence analogous to a traditional belief in God, and (3) cannot be characterized as simply a philosophical or secular idea.⁷⁸ While this definition has yet to be tested before the Court, it serves as a general summation of the principles offered thus far. Additionally, it offers a reasonable starting point for analyzing the underlying religious nature of QAnon—especially on an individual level—without bogging this note down with an exhaustive breakdown of the various state and circuit court definitions. Under this standard, if a QAnon adherent were to sufficiently allege their sincerity in the beliefs of the movement, it could count as a religion under the vague definition set forth by these precedents.

IV. QANON AS A RELIGION

QAnon’s origins give it the appearance of a purely political conspiracy theory. Its focused are with politicians, political structures, and who really controls the United States. But through the language and imagery, QAnon has developed a worldview—through its use of references to both pop culture and Christianity—that position it as having more in common with religious movements than political ones.

Scholar of religion Marc-André Argentino has characterized QAnon as a “hyper-real” religion to

⁷⁵ Usman, *supra* note 51, at 172-73.

⁷⁶ *Id.* at 173.

⁷⁷ *Id.*

⁷⁸ *United States v. Seeger*, 380 U.S. 163, 166 (1965); *Welsh v. United States*, 398 U.S. 333, 343-44 (1970); *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972).

highlight both the theology and radicalism that underlies the movement.⁷⁹ A “hyper-real” religion is a term coined by sociologist Adam Possamai to refer “to a simulacrum of a religion, created out of, or in symbiosis with, popular culture, which provides inspiration for believers/consumers.”⁸⁰ Hyper-religions are created by consumers of fictional works who, through individual and group practices, transform the work into a system of beliefs that provide similar structures as traditional religions would.⁸¹ The concept is derived from Jean Baudrillard’s theory of commodity culture.⁸² For Baudrillard, capitalism and consumerism creates a system of symbols and images that are divorced from the real world; these consumer symbols only have meaning insofar as they relate to back themselves and to other consumer symbols.⁸³ This process creates a system of cultural products which gain their meaning only through references to other products, with no reference to material reality of their believers.⁸⁴ In the QAnon context, the movement represents a hyper-religion in how it grounds its theology within conspiracy theories, pop culture references, and a combination of historic facts and mythical history.⁸⁵

Each of these aspects support the characterization of QAnon as a hyper-real religion because these sources of ideological inspiration have no connection to reality outside of the references themselves. Pop culture serves as a source of doctrine as well as a means of self-propagating those messages. An example of this is the movement’s use of the “Red Pill/Blue Pill” scene from *The Matrix*, in

⁷⁹ Marc-André Argentino, *In the Name of the Father, Son, and Q: Why It’s Important to See QAnon as a ‘Hyper-Real’ Religion*, RELIGIOUS DISPATCHES (May 28, 2020), <https://religiondispatches.org/in-the-name-of-the-father-son-and-q-why-its-important-to-see-qanon-as-a-hyper-real-religion> [https://perma.cc/9NDT-S7MU].

⁸⁰ Possamai, *supra* note 4, at 1.

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Argentino, *supra* note 79.

which Neo, the protagonist, is presented with two choices; the Red Pill, which will allow him to see past the movie's false society or the Blue Pill, which will allow him to continue his life unaware of the truth of the world.⁸⁶ This scene has been co-opted by QAnon—and other right-wing groups—as a shorthand to convey to new members the essence of QAnon's outlook; that society hides truths from you and only you can decide to see past the lies.⁸⁷ And this is but one example: the movements mantra, “Where We Go One, We Go All” is lifted straight out of the 1996 Ridley Scott film *White Squall*; the central focus on child sex and sacrifice rings was pillaged from the Satanic Ritual Abuse panic of the 1980s; and the belief that adrenochrome—a byproduct of the human adrenaline system⁸⁸—is harvested from children by elites because of its alleged properties as an “immortality drug,” was stolen from Hunter S. Thompson's *Fear and Loathing in Las Vegas*.⁸⁹ It is through these pop culture references that QAnon is able to develop a “cohesive” world-view that radicalizes members through short, easy to understand phrases that carry immense baggage behind them.⁹⁰

While QAnon's trappings as a hyper-religion stem mostly from their connections to pop culture references, the movement simultaneously derives inspiration from Christian thought and imagery—again as a means of conveying their beliefs.⁹¹ This propagation is achieved

⁸⁶ Allison Rauch, *Red Pill and Blue Pill*, BRITANNICA, <https://www.britannica.com/topic/red-pill-and-blue-pill> [<https://perma.cc/8AJP-YL4E>] (last visited Apr. 25, 2025).

⁸⁷ Argentino, *supra* note 79.

⁸⁸ *Molecule of the Week Archive: Adrenochrome*, AM. CHEM. SOC'Y (Feb. 5, 2024), <https://www.acs.org/molecule-of-the-week/archive/a/adrenochrome.html> [<https://perma.cc/S67G-PF4A>]. ⁸⁹ Argentino, *supra* note 79; Dr. Joe Schwarcz, *QAnon's Adrenochrome Quackery*, MCGILL UNIV. OFF. FOR SCI. & SOC'Y (Feb. 10, 2022), <https://www.mcgill.ca/oss/article/pseudoscience/qanons-adrenochrome-quackery> [<https://perma.cc/2FQ3-U9YF>].

⁹⁰ Argentino, *supra* note 79.

⁹¹ Nicolò Miotto & Julian Droogan, ‘Stand Against the Wiles of the Devil’: Interpreting QAnon as a Pseudo-Christian Extremist Movement, 51 CRITICAL SOCIO. 503, 503 (2025).

primarily through online memes, which often contain short statements that reference a particular QAnon claim while being accompanied by a recognizable image or format that makes the information more digestible.⁹²

Memes are “cultural elements and traits whose transmission and consequent persistence, although occurring by non-genetic memes (esp. imitation), is considered as analogous to the inheritance of a gene.”⁹³ Generally speaking, memes are self-reproducing units of culture and are a way ideas are transmitted across communities and cultures. The Internet’s ability to allow for instantaneous transmission of information has led to an alternative definition of meme, which refers rather to “an image, video, piece of text, etc.... that is copied and spread rapidly by Internet users, often with slight variations.”⁹⁴ These types of memes have become an efficient method of spreading alternative messages and theories quickly across large groups of people, a phenomenon that has become well-documented in far-right groups.⁹⁵

Nicolò Miotto and Julian Droogan studied a QAnon forum for eighteen months to document the types of religious imagery utilized by anons to track any potential correlation between the religious dimensions of the movement with its links to political violence.⁹⁶ Over the course of their study, they documented and categorized one-hundred and twenty-one images into the following subcategories: purely religious, QAnon-focused, political, and pop-cultural.⁹⁷ The researchers then utilized visual

⁹² Kevin Roose, *A QAnon ‘Digital Soldier’ Marches on, Undeterred by Theory’s Unraveling*, N.Y. TIMES (Jan. 29, 2021), <http://nytimes.com/2021/01/17/technology/qanon-meme-queen.html> [<https://perma.cc/DA76-D3DK>].

⁹³ *Meme* (def. 1), OXFORD ENG. DICTIONARY (July 2023), https://www.oed.com/dictionary/meme_n?tab=meaning_and_use#12875159 [<https://perma.cc/MQ9G-FRKC>].

⁹⁴ *Id.* at (def .2).

⁹⁵ Ayesha Rascoe, *How far-right groups use memes to radicalize people*, NPR (Sept. 25, 2022, at 7:54 ET), <https://www.npr.org/2022/09/25/1124974181/how-memes-can-radicalize-you> [<https://perma.cc/54ZP-TYC8>].

⁹⁶ Miotto, *supra* note 91 at 503.

⁹⁷ *Id.* at 509.

semiotics— “the study of layered meanings and symbols to identify the messages conveyed and received”—to decipher both the literal message of these images, but also the subtle and subconscious ideas insinuated within the images.⁹⁸

Miotto and Droogan discovered that when these memes portrayed explicit religious symbols and images, these were drawn directly from Christian sources and often contained three different recurring themes: “[1] the presence of Jesus Christ, [2] a cosmic battle between God and Satan, and [3] the presence of antisemitism.”⁹⁹ They postulated that these three themes signified that QAnon had co-opted the theological and mystical elements of Christianity an attempt to create a cohesive worldview. The images being used in these memes do not appear to be randomly selected but rather portray a specific ideological belief the movement holds.¹⁰⁰ One image the researchers looked at was the famous scene of Jesus Christ walking on water, reaching out to his disciple Peter; except in this iteration, Peter is replaced by the now infamous “Pepe the Frog” meme.¹⁰¹

“Pepe the Frog” is an Internet cartoon character who originated as a part of a web series in 2005, but since the late 2010s has been adopted as a symbol by far-right groups and right-wing conspiracy theories, especially as a symbol of antisemitism.¹⁰² In this particular instance though, Miotto and Droogan posit that Pepe likely represents a QAnon adherent, while Jesus represents the “truth” of the movement, calling on the adherent to “have faith” that Q will guide him or her through the choppy waters of “The Storm”—QAnon’s apocalyptic prediction that was supposed to take place sometime around the 2020 election.¹⁰³ As Miotto and Droogan point out, this level of reference is intended to siphon the traditional

⁹⁸ *Id.* at 508.

⁹⁹ *Id.* at 509.

¹⁰⁰ *Id.* at 510-11.

¹⁰¹ *Id.* at 509.

¹⁰² *Pepe the Frog*, AM. JEWISH COMM., <https://www.ajc.org/translatehate/pepe-the-frog> [<https://perma.cc/9UWR-GVHY>] (last visited Sep. 17, 2025).

¹⁰³ Miotto, *supra* note 91 at 509-10.

authority associated with Christianity onto QAnon by co-opting Christian beliefs surrounding the Second Coming of Jesus Christ and subsequent Apocalypse.¹⁰⁴ This symbolic link then galvanizes followers into adopting a similar fanaticism similar to that held by religious fundamentalist, which can help explain QAnon's propensity for political violence as tool to achieve their desired outcome—as demonstrated in the January 6th Insurrection.¹⁰⁵

The January 6th Insurrection, while not officially a QAnon uprising, is inextricably tied with the movement and serves as the primary lens in which Americans have visualized the violence of QAnon on a national level.¹⁰⁶ But the violence of QAnon did not spontaneously appear in the weeks, or even months prior to January 6th. Virtual chatrooms and viral memes provided a unique toolkit for committed members of QAnon to continuously radicalize others. And it is through these tools that this paper takes a particular interest in QAnon. QAnon's entrenchment into the pop culture landscape has created irrevocable harm for families who no longer recognize loved ones.¹⁰⁷ But this damage could not have been achieved without the unprecedented scope of communication offered by the Internet. And in this sense—while the damage that QAnon has inflicted upon its followers, their loved ones, and society at large are unlikely to be reversable—the story of QAnon can serve as a warning sign for the rapidly approaching intersection of hyper-religions and the Internet.

As stated earlier in the previous section, the Supreme Court's definition of religion can be summarized as a belief that is (1) sincerely held, (2) is held with a

¹⁰⁴ *Id.* at 515.

¹⁰⁵ *Id.*

¹⁰⁶ Olivia Rubin et al., *QAnon Emerges as Recurring Theme of Criminal Cases Tied to U.S. Capitol Siege*, ABC NEWS (Jan. 19, 2021, at 19:31 ET), <https://abcnews.go.com/US/qanon-emerges-recurring-theme-criminal-cases-tied-us/story?id=75347445> [<https://perma.cc/CDY3-QZE5>].

¹⁰⁷ See generally Lauren Mastroni and Robyn Mooney, *I One-Hundred Thousand Percent Blame it on QAnon: The Impact of QAnon Belief on Interpersonal Relationships*, 41 JSPPR 2478 (2024) (detailing the ways in QAnon radicalization resulted in dissolutions and disruptions of romantic and familial bonds).

reverence analogous to a traditional belief in God, and (3) cannot be characterized as simply a philosophical or secular idea.¹⁰⁸ Under this definition, there is no inherent distinction between beliefs that are derived from traditional religious creeds and those derived from modern hyper-religious beliefs; the source of the belief does not matter for Establishment Clause and Free Exercise purposes.

Thus, QAnon provides an early warning sign for the Courts that there may soon come a time in which a more comprehensive definition of religion needs to be articulated. But, for the purposes of this paper, the more substantive (and immediate) concerns posed by a hyper-religion like QAnon are not only to Free Exercise Jurisprudence, but also its impact on private content moderation on the Internet. What does hyper-religious expression mean on the Internet when Big Tech is the ultimate arbitrator as to who is allowed to say what on their platforms? To understand this dimension, it is time to shift gears and look at the “twenty-six words that created the Internet”—Section 230 of the Communications Decency Act.¹⁰⁹

V. SECTION 230 LIABILITY

The Communications Decency Act (CDA) was passed in 1996 to establish a tort-liability framework for Interactive Computer Services¹¹⁰ and create a system for regulating the proliferation of obscene content online.¹¹¹ The act arose in response to the uncertainty of courts addressing cases involving the Internet in its early days. While the Internet offered immense benefits for

¹⁰⁸ *United States v. Seeger*, 380 U.S. 163, 166 (1965); *Welsh v. United States*, 398 U.S. 333, 343-44 (1970); *Wisconsin v. Yoder*, 406 U.S. 205, 215 (1972).

¹⁰⁹ JEFF KOSSEFF, *THE TWENTY-SIX WORDS THAT CREATED THE INTERNET* (Cornell U. Press 2019).

¹¹⁰ This is the term used to refer to sites such as AOL, Facebook, and TikTok; sites that permit users to upload content onto their platforms. This term comes from § 230(f)(2) of the CDA and will be used as a shorthand to refer to any online platform that permits users to post content on the site.

¹¹¹ Yaffa Meeran, *As Justice So Requires: Making the Case for a Limited Reading of § 230 of the Communications Decency Act*, 86 GEO. WASH. L. REV. 257, 260 (2018).

legitimate users, it also made torts significantly easier to commit. Filesharing sites such as Napster allowed for rampant copyright abuse, while the anonymous nature of online forums invited libelous and defamatory posts.¹¹²

When first confronting the Internet, the courts relied on the common-law distinction between publishers and distributors to determine whether the hosting sites could be liable for the activities of their users.¹¹³ The terms publisher and distributor refer to the two classification of information-dissemination entities from First Amendment jurisprudence.¹¹⁴ A publisher is an entity that takes an active role in editing the content that it presents, and thereby meets the intent requirement that the infringer either has knowledge of the offending material or should have had said knowledge.¹¹⁵ A distributor merely distributes the content out to people and thus is does not have the requisite standard of knowledge to impose derivative liability.¹¹⁶

The disparity in the treatment between the two arises out of this distinction. Publishers, by imparting their own views into their work and therefore aware of what the contents of the material is, can be held liable for infringing material as they are the speaker; distributors, in contrast, are not assumed to be aware of every piece of material that they distribute—their liability arises once they are been given notice of any infringing material.¹¹⁷ While this rationale is straightforward in the physical realm, courts soon ran into problems when they imposed this model onto the digital landscape opened up by the Internet.

Congress passed the CDA in response to two cases: *Cubby v. CompuServe, Inc.* and *Stratton Oakmont, Inc. v.*

¹¹² *Id.* at 161-62.

¹¹³ *Id.*

¹¹⁴ Jeff Kosseff, *A User's Guide to Section 230, and a Legislator's Guide to Amending It (Or Not)*, 37 BERKELEY TECH. L.J. 757, 761-65 (2022).

¹¹⁵ *Id.* at 762. (an example of a publisher would be a newspaper).

¹¹⁶ Eugene Volokh, *The Volokh Conspiracy: 47 U.S.C. § 230 and the Publisher/Distributor/Platform Distinction*, REASON (May 28, 2020, 11:44 ET), <https://reason.com/volokh/2020/05/28/47-u-s-c-%C2%A7-230-and-the-publisher-distributor-platform-distinction/> [<https://perma.cc/9U3H-6S5Z>].

¹¹⁷ *Id.*

*Prodigy Services Co.*¹¹⁸ *Cubby* involved the aforementioned company suing their competitor CompuServe, an interactive computer service, for libel.¹¹⁹ In their claim, Chubby alleged that third-party users posted libelous statements about Cubby on CompuServe's website.¹²⁰ The Southern District of New York held that because CompuServe did not engage in any editorialization of content posted on its website, CompuServe fell into the category of distributor and thus, CompuServe could not be held liable for the statements.¹²¹

This holding was disturbed by a New York state district court's decision in *Stratton Oakmont*. There, Stratton Oakmont, a New York-based brokerage firm, sued Prodigy for defamatory statements posted on Prodigy's site. Like CompuServe, Prodigy was another online information sharing service.¹²² There, the New York trial court held that because Prodigy had editorialized past postings and taken steps to regulate content on its site, Prodigy had assumed the role of a publisher.¹²³ As such, Prodigy was held strictly liable for the defamatory posts made on the site.¹²⁴

Combining the holdings of *Cubby* and *Stratton Oakmont* created a troubling standard. Interactive Computer Services were to be held strictly liable for the posts of their users, but only if they had engaged in editorializing; if the site never engaged in monitoring the content posted, they could not be held liable.¹²⁵ This

¹¹⁸ *Cubby, Inc. v. CompuServe Inc.*, 776 F. Supp. 135 (S.D.N.Y. 1991); *Stratton Oakmont Inc. v. Prodigy Servs. Co.*, No. 31063/94, 1995 WL323710 (N.Y. Sup. Ct. 1995); Jeff Kosseff, *The Gradual Erosion of the Law That Shaped the Internet*, 18 COLUM. L. REV. 1, 4 (2016).

¹¹⁹ *Cubby*, 776 F. Supp. 135, 137-8.

¹²⁰ *Id.*

¹²¹ *Id.* at 141 (holding that CompuServe, as a distributor, cannot be held liable since it did not have knew or have reason to know of the defamatory statements being made by the users).

¹²² *Stratton Oakmont*, 1995 WL 323710, at *1 (alleging defamatory statements claimed Stratton Oakmont's merger with another company had been criminal and fraudulent).

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Cubby*, 776 F. Supp. at 141; *Stratton Oakmont*, WL 323710, at *3.

standard effectively punished interactive computer services from policing the content on their sites because the only way they could be held liable for the torts of their users was from them to act.¹²⁶ Naturally, Congress was troubled by this situation; coupled with Congressional fears regarding the unprecedented access of online pornography to Americans—in particular children¹²⁷—Congress decided to act with the CDA.

Congress attempted to tackle two goals in implementing the CDA: promote the continued growth of the Internet while also encouraging Interactive Computer Services to engage in voluntary content moderation.¹²⁸ To achieve this goal, Congress elected to broadly immunize Interactive Computer Services from tort claims arising from information posted on their sites by other users.¹²⁹ Additionally, Congress mandated that under no circumstances would Interactive Computer Services be considered a publisher with respect to the content posted by another on the platform.¹³⁰ To clarify how courts were to interpret this broad immunity, Congress included five congressional findings on the Internet and set five policy goals the CDA was intended to achieve for the nation.¹³¹

Congress's factual findings were the following:

(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens. (2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops. (3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad

¹²⁶ See Meeran, *supra* note 111.

¹²⁷ 47 U.S.C. § 223.

¹²⁸ Kosseff, *supra* note 118, at 7.

¹²⁹ 47 U.S.C. § 230(c)(2).

¹³⁰ 47 U.S.C. § 230(c)(1).

¹³¹ 47 U.S.C. §§ 230(a)-(b).

avenues for intellectual activities. (4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulations. (5) Increasingly, Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.¹³²

To summarize, Congress found that the Internet, even in 1996, had exposed Americans to a variety of benefits with very little government interaction. Because of this, Congress decided to promote the growth of the Internet through a laissez-faire approach.¹³³ As a precaution, Congress originally excluded immunity for four areas of the law; interactive computer services could still be found liable for any violations of federal criminal law, intellectual property infringement, any state law that was co-extensive with the CDA, and for any violations of the Electronic Communications Privacy Act of 1986 (An act which protects the privacy of electronic, oral, and wire communications by criminalizing unauthorized disclosures, wiretaps, and other breaches of privacy)¹³⁴. Congress's goal with the CDA was to have a robust Internet in which there is an incentive to grow, but also promote self-regulation to limit the spread of obscene and obnoxious content.¹³⁵

A. The CDA Today

Those determinations were made almost thirty years ago. In many respects, Congress's goals for the CDA were achieved; the growth of the Internet since the CDA's

¹³² 47 U.S.C. § 230(a)

¹³³ 47 U.S.C. § 230(b)(2).

¹³⁴ *Electronic Communications Privacy Act of 1986 (ECPA)*, BJA, <https://bja.ojp.gov/program/it/privacy-civil-liberties/authorities/statutes/1285> [https://perma.cc/S477-522M] (last visited Sept. 17, 2025); Congress added a fifth exception in 2018 to make Internet service providers liable for any violation of federal or state sex-trafficking laws on their sites. 47 U.S.C. § 230(e).

¹³⁵ See 47 U.S.C. §§ 230(a)–(b).

passing has been exponential.¹³⁶ Today, the Internet is used by over 4.5 billion people.¹³⁷ In 2000, 52% of Americans had used the Internet; today that number has skyrocketed to 96%.¹³⁸ Undoubtably the legal structure established by Section 230 has contributed to this growth over the past few decades by fostering an innovating environment for the Internet to grow, in part by insulating Interactive Computer Service providers from liability for hosting some illegal and illicit content.

Much of the rationale behind granting broad immunity to interactive computer services was due to the policy goals Congress included within the statute. The specific policies Congress sought to achieve included the following:

- (1) To promote the continued development of the Internet and other interactive computer services and other media;
- (2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;
- (3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;
- (4) 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; and
- (5) to ensure vigorous enforcement of Federal criminal laws to

¹³⁶ Hannah Ritchie et al., *Internet*, OUR WORLD DATA, <https://ourworldindata.org/internet> [<https://perma.cc/L83T-AY6J>] (last visited Apr. 25, 2025) (explaining that Internet users grew from 77.5 million world-wide in 1996 to 5.02 billion users in 2021).

¹³⁷ Robert Kahn & Michael Aaron Dennis, *Internet*, BRITANNICA, <https://www.britannica.com/technology/Internet> [<https://perma.cc/KQP3-WZKR>] (last visited Apr. 25, 2025).

¹³⁸ *Internet, Broadband Fact Sheet*, PEW RSCH. CENTER (Nov. 13, 2024), <https://www.pewresearch.org/internet/fact-sheet/internet-broadband/> [<https://perma.cc/6VRL-ZJ6B>].

deter and punish trafficking in obscenity, stalking, and harassment by means of computer.¹³⁹

Congress's policy goals essentially were to maintain the development of the Internet by limiting the regulatory framework surrounding the Internet and placing the onus to prevent the spread of objectionable content on the Internet users themselves.¹⁴⁰ And when it came time for courts to interpret Section 230, court's took these policy goals to their extreme limits by finding interactive computer services immune from tort liability in most cases.¹⁴¹ This publisher-liability immunity was extended to user-generated content (USG)¹⁴² services,¹⁴³ providing the legal framework for the explosion of social media sites in the two decades. Courts have construed the CDA's immunity to be very broad, especially in the early days.¹⁴⁴ Although the courts today have been less inclined to apply the CDA as broadly,¹⁴⁵ Section 230 is still recognized as a powerful tort defense for Big Tech.¹⁴⁶ As criticism about the size and influence

¹³⁹ 47 U.S.C. § 230(b).

¹⁴⁰ *Id.*

¹⁴¹ See generally *Zeran v. America Online, Inc.*, 129 F.3d 327, 332 (4th Cir. 1997) (holding that the CDA precludes Internet service providers for being found liable as a distributor).

¹⁴² USG simply refers to any content posted or produced online that can be attributed to an individual in their own capacity. This sort of content is most often contrasted with branded content, which is often made by organizations or their employees to promote a brand or a product. While USG can promote brands and products, they do not have to include such promotions. See *UGC Content 101: A Comprehensive Introduction*, AM. MKTG. ASS'N (Mar. 28, 2024), <https://www.ama.org/marketing-news/user-generated-content/> [<https://perma.cc/258V-38FR>].

¹⁴³ *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1121 (9th Cir. 2003) (holding that § 230(c)(1)'s immunity extended to sites such as Metrosplash when users input false content to pass as another person).

¹⁴⁴ KOSSEFF, *supra* note 118, at 10; see also *Carafano*, 339 F.3d at 1123-25; *Zeran*, 129 F.3d at 331.

¹⁴⁵ KOSSEFF, *supra* note 114, at 165-66.

¹⁴⁶ Eric Goldman, *Why Section 230 Is Better Than the First Amendment*, 95 NOTRE DAME L. REV. 33, 37, 39 (2019).

of technology companies has increased in our everyday lives, criticism about the CDA became increasingly prominent.¹⁴⁷

B. The Underlying Ambiguity of Section 230

Criticism of the CDA boils down to two positions: first, from a textual standpoint, Section 230 is ambiguous as to how broad this immunity to publishers should be applied,¹⁴⁸ and, second, the fact that the Internet is no longer a nascent industry. As stated above, the broad application of Section 230 immunity arose out of early judicial determinations in cases such as *Zeran*.¹⁴⁹ Although Congress presumably accepted this outcome given the fact that Section 230 has only been amended once since its passage, it does not necessarily follow that Congress initially intended to grant these broad immunities for nothing.¹⁵⁰

As documented by scholar Alan Rozenshtien, Section 230 comprised only a minor part of the original CDA; much of the CDA's original provisions were dedicated to criminalizing the "knowing transmission of 'obscene' or 'indecent' messages to minors."¹⁵¹ Section 230 seemed at odds with the larger CDA statute, especially due to Section 230's intent to have interactive computer services moderate content on a voluntary—not mandatory—basis.¹⁵² This scheme, however, did not last long. Within a year of its passage, the Supreme Court struck down the anti-obscenity measures of the CDA as unconstitutionally vague in violation of the First

¹⁴⁷ *Durbin Statement on Supreme Court Ruling in Gonzales v. Google*, U.S. SENATE COMMITTEE ON THE JUDICIARY (May 18, 2023), <https://www.judiciary.senate.gov/press/releases/durbin-statement-on-supreme-court-ruling-in-gonzalez-v-google> [https://perma.cc/296E-RKX9].

¹⁴⁸ Alan Z. Rozenshtien, *Interpreting the Ambiguities of Section 230*, 41 YALE J. ON REGUL. BULL. 60, 61 (2024).

¹⁴⁹ Kosseff, *supra* note 118, at 11.

¹⁵⁰ See Rozenshtien, *supra* note 149, at 65-67 (discussing the larger legislative context of the CDA in which the drafting of § 230 took place).

¹⁵¹ *Id.* at 66.

¹⁵² *Id.*

Amendment.¹⁵³ The Supreme Court saved Section 230 by opting to sever it from the rest of the statute.¹⁵⁴ As such, those unconstitutional provisions of the original CDA are often forgotten about when discussing limits of Section 230 immunity.¹⁵⁵ While the CDA has been construed to grant broad immunity, the original legislation tied this immunity to restricting the access of indecent material under the criminal law; in other words, Interactive Computer Services' decision to regulate their content was, at some level, mandatory.¹⁵⁶

Section 230's vagueness is compounded by the inability of the Supreme Court to issue definitive rulings on the scope of Section 230's immunity. As Rozenshtien notes, in *Gonzalez v. Google*,¹⁵⁷ the Supreme Court was unable to grapple with how to apply Section 230 to instances in which a website recommends third-party content to other uses through recommendation features such as algorithms.¹⁵⁸ The case involved the family of an American citizen who was killed by members of ISIS in the 2015 Paris Terror Attacks. The family alleged that because YouTube had approved ISIS videos as suitable advertisements and placed those videos alongside content on the platform, YouTube and its parent company Google had either direct or secondary liability under the relevant anti-terror statutes.¹⁵⁹ During oral arguments, each Supreme Court Justice made clear that they had no idea how to interpret Section 230 to the facts at hand due to their lack of understanding how the Internet worked.¹⁶⁰ The Court was saved from issuing a holding on Section 230 by opting to decide the case on procedural grounds; the Court determined that the plaintiffs had failed to

¹⁵³ *Reno v. Am. C.L. Union*, 521 U.S. 844, 874 (1997) (holding that “the CDA lacks the precision that the First Amendment requires when a statute regulates the content of speech.”).

¹⁵⁴ *Id.*

¹⁵⁵ Rozenshtien, *supra* note 149, at 68.

¹⁵⁶ *Id.*

¹⁵⁷ *Gonzalez v. Google, LLC*, 598 U.S. 617, 622 (2023).

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 619.

¹⁶⁰ *Id.* (quoting Justice Kagan that “We [The Court] don’t know about these things. You know, these are not like the nine greatest experts on the Internet.”).

state a claim upon which relief could be granted and punted the Section 230 issue for another day.¹⁶¹ While this result did not surprise many commentators, it is problematic. If the Supreme Court is unsure how to implement this immunity then the scope of its immunity will be forever ambiguous.

The dangers of the Supreme Court's inability to grasp Section 230 became more pronounced the following term, when the Court took on *Moody v. NetChoice*.¹⁶² The dispute in *Moody* surrounded Texas and Florida state laws that restricted the ability of social-media platforms to "control whether and how third-party posts are presented to other users."¹⁶³ This question, while not directly implicating Section 230, raises important considerations for the statute because the Supreme Court has yet to directly address how social media algorithms, which permit the personalized feeds that are commonplace across every platform, fall within the Section 230 framework. NetChoice¹⁶⁴ challenged the constitutionality of these laws, claiming that they violated platform's First Amendment rights because by mandating what the platforms had to take down, the states were compelling the platforms to speak in a certain way.¹⁶⁵ The Court vacated and remanded the case to the lower courts on the grounds that they Court of Appeals failed to "consider the facial nature of NetChoice's challenge".¹⁶⁶

Justice Kagan, writing for the majority, suggested that both the Texas and Florida laws violated the First Amendment because they prevent "exactly the kind of editorial judgment this Court has previously held to receive First Amendment protection. It prevents a

¹⁶¹ *Gonzalez*, 598 U.S. at 622.

¹⁶² *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024).

¹⁶³ *Id.* at 717.

¹⁶⁴ NetChoice is a business association of online and digital companies that serves as a lobbying organization to help promote their associate's business interest in both Congress and the courts. According to their website, their mission is to "make the Internet safe for free expression and free expression." *About Us: Our Mission*, NETCHOICE, <https://netchoice.org/about/> [<https://perma.cc/N9PS-Y9MZ>] (Last visited Apr. 25, 2025).

¹⁶⁵ *Moody*, 603 U.S. at 717.

¹⁶⁶ *Id.*

platform from compiling the third-party speech it wants in the way it wants, and thus from offering the expressive product that most reflects its own views and priorities.”¹⁶⁷ While the Court did not hold any definitive judgment, this characterization of social media company’s First Amendment rights raises legal issues surrounding the application of Section 230. Specifically, how does Section 230 apply to algorithms especially since the statute does not consider such a concept. When, if ever, does the use of an algorithm transform the speech of an user into the speech of the platform? These contemporary questions were not contemplated in 1996—for obvious reasons—but they require urgent answers today.

When Section 230 was passed in 1996, the Internet consisted mostly of chatrooms and online forums that presented user’s posts in reverse-chronological order—a user would read the most recent post to a site and would go back in time as they scrolled through the following posts.¹⁶⁸ Today, however, most major social media companies have ditched this model for an algorithmically based model of information that uses a user’s prior history on the app and other data points to create a “feed” for the user. As an example, the Facebook algorithm has been described as relying on four metrics to determine whether to promote a post to an user: (1) popularity, (2) content type, (3) relationship, and (4) recency.¹⁶⁹ This means that just because you follow someone on Facebook does not mean that they will see your post on their feed. Additionally, users have no ability to opt out of these algorithmic programs and engage with their feed in a reverse-chronological order. These algorithms also use different metrics across different platforms—such as likes, comments, particular user engagement, and

¹⁶⁷ *Id.* at 718.

¹⁶⁸ See *The Web Back in 1996-1997*, SOLARWINDS PINGDOM (Sept. 16, 2008), <https://www.pingdom.com/blog/the-web-in-1996-1997/> [<https://perma.cc/G23H-ZXDP>].

¹⁶⁹ Clodagh O’Brien, *How Do Social Media Algorithms Work?*, DIGIT. MKTG. INST. (Apr. 28, 2023), <https://digitalmarketinginstitute.com/blog/how-do-social-media-algorithms-work> [<https://perma.cc/GF7U-74D7>].

geography¹⁷⁰—to suggest posts to users. These predictive algorithms are designed to keep users consistently engaged and have been considered one of the primary causes of social media’s biggest societal problems: privacy concerns and increased polarization.¹⁷¹ Algorithm’s role in developing online echo chambers—where people are promoted and shown content that falls in line with already held beliefs or ideas, thereby entrenching said ideas within those communities—were a key aspect of how QAnon radicalized its followers.¹⁷²

These recent legal developments suggest that Section 230, in its current form, no longer serves its original purpose of allowing the Internet to grow unhampered by government intervention. At this point, Section 230 offers Big Tech artificial legal protection from the societal consequences of their business models. The advent of the algorithm, a general term that refers to the computer programs that social media companies use to recommend and promote content on their sites, was not predicted in 1996 when the Internet consisted of chatrooms and message boards. But as calls across the political spectrum grow louder to modernize, or even replace, Section 230, much of the concerns are towards how the Speech Clause of the First Amendment would be impacted by the loss of Section 230(c)(1)’s broad grant of immunity.¹⁷³ And while these concerns are no doubt the

¹⁷⁰ Hannah Trivette, *A Guide to Social Media Algorithms and SEO*, FORBES (Oct. 14, 2022, at 7:15 ET), <https://www.forbes.com/councils/forbesagencycouncil/2022/10/14/a-guide-to-social-media-algorithms-and-seo/> [https://perma.cc/6WA8-CU5K] (describing the different metrics different platform’s factor into their algorithms).

¹⁷¹ Maria Alessandro Golino, *Algorithms in Social Media Platforms*, INST. FOR INTERNET & JUST SOC’Y (Apr. 24, 2021), <https://www.internetjustsociety.org/algorithms-in-social-media-platforms> [https://perma.cc/536H-KH2Y].

¹⁷² Brandy Zadrozny, ‘Carol’s Journey’: What Facebook Knew About How It Radicalized Users, NBC NEWS (Oct. 22, 2021, at 18:31 ET), <https://www.nbcnews.com/tech/tech-news/facebook-knew-radicalized-users-rcna3581> [https://perma.cc/344P-VWNQ].

most pressing, protecting user’s speech cannot be the full story. Specifically, *should* Big Tech companies be permitted to gatekeep and control new religious movements, both under Section 230 and any potential amendments or changes?

VI. COULD PRIVATE INTERACTIVE COMPUTER SERVICES FALL UNDER THE STATE-ACTION DOCTRINE

An individual’s religious rights are protected by the First Amendment.¹⁷⁴ Additionally, the U.S. Constitution provides protections from infringements by governments, not private actors.¹⁷⁵ The only time that a private actor may be held to constitutional standards are in circumstances that fall within the state-action doctrine.¹⁷⁶

The state-action doctrine arises out of a textual reading of the Due Process Clauses of the 5th Amendment, for the federal government, and the 14th Amendment for the state governments. Because those two clauses only relate to government entities, private parties usually fall outside the scope of most constitutional requirements. However, there are three instances in which the private parties can be found to be engaged in state action: (1) when a party engages in a traditional public function that has historically been exclusively administered by the government, (2) when there is government compulsion that underlies a private entities action, and (3) when the government acts jointly with a private entity.¹⁷⁷ If any of these criteria are met, the private entity is classified as a

¹⁷³ See, e.g., Aaron Mackey & Joe Mullin, *Sunsetting Section 230 Will Hurt Internet Users, Not Big Tech*, ELEC. FRONTIER FOUND. (May 20, 2024), <https://www.eff.org/deeplinks/2024/05/sunsetting-section-230-will-hurt-internet-users-not-big-tech> [https://perma.cc/M2BD-5LV6] (“Section 230 is essential to protecting individuals’ ability to speak, organize, and create online.”); see also Daryl Lim, *What Would Happen if Section 230 Went Away? Legal Expert Explains Consequences of Repealing ‘The Law That Built the Internet,’* THE CONVERSATION (Apr. 9, 2025, at 8:57 ET), <https://theconversation.com/what-would-happen-if-section-230-went-away-a-legal-expert-explains-the-consequences-of-repealing-the-law-that-built-the-internet253326#:~:text=The%20potential%20repeal%20of%20Section,the%20government%20and%20online%20intermediaries> [https://perma.cc/6QVR-4UZJ]

¹⁷⁴ U.S. CONST. amend. I.

¹⁷⁵ U.S. CONST. amend. V; U.S. CONST. amend. XIV, § 1.

¹⁷⁶ *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 349-50 (1974).

¹⁷⁷ *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 809 (2019).

state-actor, and is thus subject to the same constitutional restrictions as state and federal governments. The question then becomes whether these Interactive Computer Services ever fall within the above three categories with respect to the right to free speech and an individual's right to free exercise of their faith?

Beginning with the traditional, exclusive public function criterion, courts are unlikely to find that Interactive Computer Services oversee such a function. The Supreme Court has held that the category of functions that fit into this definition are "very few".¹⁷⁸ For example, the Supreme Court held in *Manhattan Cmty. Access Corp v. Halleck* that a private broadcaster is not engaged in a traditional public function when it operates a public access cable channel on behalf of a city.¹⁷⁹ The 5-4 opinion, written by Justice Kavanaugh, focused the lack of an "exclusive" government role in operating public access cable, highlighting that "private cable operators; private nonprofit organizations; municipalities; and other... organizations such as churches, schools, and libraries".¹⁸⁰ The Court currently understands the traditional, exclusive public function criterion as conjunctive, meaning the government must "have traditionally *and* exclusively performed the function."¹⁸¹ This essentially requires there must be a near-zero history of private engagement for that function to be constitutionally restrained. More importantly for the discussion of the Internet, however, is the Court's dicta in *Halleck* that "merely hosting speech by others is not a traditional, exclusive public function" and as such does not implicate the state-action doctrine. As such, commentators have predicted that it may be a fool's errand to transport a *Halleck*-like argument into the context of

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 811.

¹⁸⁰ *Id.* at 810.

¹⁸¹ *Id.* at 809.

the Internet because, for the most part, most Interactive Computer Services merely host other's speech.¹⁸²

Additionally, courts have held private actors to constitutional standards when there is a clear nexus between government pressure and a private entity's actions—signifying that the private entity's actions occurred due to government pressure that amounted to coercion.¹⁸³ In these instances, either federal or state law require private actors to comply or take specific measures to achieve a goal. Because of this underlying legal pressure, it is reasonable to say that the State is responsible for the private entities actions.¹⁸⁴ Within the context of regulating content on social media, for example, there are currently no laws that compel Interactive Computer Services to take down certain content; Section 230 expressly leaves that discretion to said providers.¹⁸⁵ Thus, there is unlikely to be a finding of express governmental coercion.

But government coercion does not necessarily have to derive from regulation; state actors can still utilize their influence to “jawbone” private actors into falling in line with the State's goal.¹⁸⁶ Under the Section 230 regime, jawboning is likely the only type of government coercion that could possibly exist within this second category. The jawboning approach can be tricky to navigate due to the parallel lines of cases that seem to lay

¹⁸² John C. Greiner & Michaela Taylor, *Five Strikes and You're Out: Courts Find That Twitter Can Restrict More Than Just Your Character Count*, ABA (Oct. 14, 2022), https://www.americanbar.org/groups/communications_law/publications/communications_lawyer/2022-fall/five-strikes-and-youre-out-courts-find-twitter-can-restrict-more-just-your-character-count/ [https://perma.cc/W6SW-23C2].

¹⁸³ *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982).

¹⁸⁴ *Id.*

¹⁸⁵ 47 U.S.C. § 230(c)(1).

¹⁸⁶ Jawboning refers to “the use of public appeals (as by a president) to influence the actions especially of business and labor leaders.” Jawboning in practice does not need to be as specific as this definition would imply, any use of authority to influence another's action could constitute jawboning. *See Jawboning*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/jawboning> [https://perma.cc/2REM-K4NV] (last visited Oct. 17, 2025).

out opposing circumstances for finding covert pressure.¹⁸⁷ As Genevieve Lakier has noted, whether a court would find covert governmental pressure depends on which of two Supreme Court cases that court adheres to, *Bantam Books v. Sullivan*¹⁸⁸ or *Blum v. Yaretsky*.

In *Bantam Books*, the Rhode Island Commission to Encourage Morality in Youth had a practice of sending notices to distributors whose books the Commission had determined contained objectionable material.¹⁸⁹ The notice typically contained either a solicitation or a gratitude thanking the distributor for their cooperation with the Commission, alongside a reminder of the Commission's authority to refer those who did not comply with their requests to the State Attorney General's office for potential prosecution.¹⁹⁰ Steps that these distributors were "expected" to take included: ceasing to order more copies of a work, cancelling any current orders, collecting any unsold copies from sellers, and sending all unsold copies back to the seller.¹⁹¹ Additionally, the State would follow up the notice with a visit by a police officer to learn whether the distributor had complied with the requests.¹⁹² Although the State characterized these notices as legal advice, the Supreme Court held that this scheme was unconstitutional because the notice did not have any procedural safeguards required for obscenity regulations, thus the scheme violated the First and Fourteenth Amendments.¹⁹³ Justice Brennan, writing for the majority, determined that—although no law expressly compelled these distributors to comply with the Commission's request—the nature of the public official's "thinly veiled threats" of criminal prosecution combined

¹⁸⁷ Genevieve Lakier, *Informal Government Coercion and The Problem of "Jawboning"*, LAWFARE (Jul. 26, 2021, at 15:52 ET), <https://www.lawfaremedia.org/article/informal-government-coercion-and-problem-jawboning> [<https://perma.cc/DZU8-KCRZ>].

¹⁸⁸ *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963); *Blum v. Yaretsky*, 457 U.S. 991 (1982); Lakier, *supra* note 188.

¹⁸⁹ *Bantam Books*, 372 U.S. at 61.

¹⁹⁰ *Id.* at 62.

¹⁹¹ *Id.* at 64.

¹⁹² *Id.* at 63.

¹⁹³ *Id.* at 64.

with little substance to actually assist distributors in complying with the law and which was subsequently accompanied by a visit from the police, amounted to a prior restraint on the distributors as was thus unconstitutional. *Bantam Books* stands for the general proposition that the government is forbidden from intimidating private entities into suppressing other people's speech by threatening them with legal consequences, "even if the threats the government makes are implicit, attenuated, and ultimately empty."¹⁹⁴

On the flip side, the Court struck a much stricter standard of underlying coercion in *Yaretsky*. In that instance, the Court considered whether there was sufficient coercion in the federal government's Medicaid regulations over nursing home facilities. Under federal regulations, nursing homes were required to create an Utilization Review Committee (URC) which periodically reviewed Medicaid recipients' status to determine if they were receiving an appropriate level of care.¹⁹⁵ The URC would then make a finding as to whether the recipient requires more, or less, care than their current facility gave them.¹⁹⁶ If URC decided that the recipient needed to be transferred to another facility, they were required to inform the State agency—in this case New York—responsible for administering the program of this change.¹⁹⁷

Plaintiffs were a class of nursing home patients who URC had determined required a lower standard of care, thus the New York Medicaid Agency required that they accept to be transferred to a facility providing a lower standard of care or lose their Medicaid benefits and stay in the current facility.¹⁹⁸ The plaintiff's alleged that the initial URC determination violated their right to due process because of both a lack of direct notice by URC of this determination and the absence of an administrative

¹⁹⁴ Lakier, *supra* note 188.

¹⁹⁵ *Blum v. Yaretsky*, 457 U.S. 991, 994 (1982).

¹⁹⁶ *Id.* at 994-95.

¹⁹⁷ *Id.* at 995.

¹⁹⁸ *Id.*

hearing to dispute the initial decision.¹⁹⁹ The Supreme Court granted certiorari in this instance to resolve an aspect of the Second Circuit's opinion, specifically how it characterized the URC-initiated transfers as state action because the "state authorities 'responded' to the challenged transfers by adjusting the patients' Medicaid benefits."²⁰⁰ The Second Circuit reasoned that this response created a sufficiently close nexus between the State and URC as to trigger the state action exception.²⁰¹

The Court rejected this characterization.²⁰² Specifically, the Court disagreed with the plaintiff's position that the ultimate factor underlying an URC determination was the state's desire to save money by revoking benefits for patients placed in inappropriate facilities.²⁰³ The plaintiff's arguments boiled down to the proposition that although the URC was an independent entity, the fact that the State would enforce an URC's determination by cutting off the patient's Medicaid benefits for failing to comply amounted to a coercive state action.²⁰⁴ But, as Justice Rehnquist understood the regulations, the plaintiffs had it backwards. Here, the decision to ultimately transfer the patient was a private one because the regulations did not make the states the decision maker for these findings; the decisions "ultimately turn on medical judgments made by private parties according to professional standards that are not established by the State."²⁰⁵ Thus, despite there being evidence that the URC program was intended to serve as a cost-saving mechanism for the state,²⁰⁶ the Court held that the regulations surrounding the URC determination did not trigger the state action exception.²⁰⁷ Thus, *Yaretsky* stands for the proposition that even when the government coerces a private actor into violating constitutional

¹⁹⁹ *Id.* at 996.

²⁰⁰ *Id.* at 998.

²⁰¹ *Id.*

²⁰² *Id.* at 1005.

²⁰³ *Id.*

²⁰⁴ *Id.* at 1005-06.

²⁰⁵ *Id.* at 1008.

²⁰⁶ *Id.* at 1026-27 (Brennan, J., dissenting).

²⁰⁷ *Id.* at 1012.

rights—in this instance the lack of a due process hearing to dispute the URC decision—state action is not implicated so long as the private entity still has the ability to decide for themselves what to do about the decision.²⁰⁸

There has been no attempt by the Supreme Court to reconcile these two decisions.²⁰⁹ The result is a patchwork system in which certain courts abide by the *Bantam Books* standard of government coercion while others follow the *Yaretsky* precedent.²¹⁰ As Section 230 currently stands, there is unlikely to be a holding that characterizes the liability scheme as governmental coercion; the statute merely permits private actors to remove content on their own volition and thus would be unlikely to trigger the coercion status under either precedent. That said, any changes to this scheme may accidentally trigger such governmental coercion depending on what a “new Section 230” would look like. This idea will be developed more when this discussion turns towards future amendments to Section 230.

Finally, state action could be found when the government acts jointly with a private entity. These instances are the most obvious examples of state action because such joint enterprises offer the clearest nexus between the state and the private action in these instances. Again, there have been no instances of cooperation between Big Tech and the federal government in which the two have jointly worked together to censor or remove posts that could be characterized as “joint action”.

Thus, under Section 230’s regime, there are currently few opportunities to characterize private content moderation by social media companies to a state action. But, given the renewed push by Republican senator Lindsey Graham and Democratic senator Dick

²⁰⁸ Lakier, *supra* note 188.

²⁰⁹ *Id.*

²¹⁰ *Id.*

Durbin²¹¹ to “sunset” Section 230 by 2027²¹², these state actions issues may arise depending on how Congress designs Section 230’s successor. Senator Graham and Durbin’s new bill would not outright replace Section 230.²¹³ As a sunset bill, what these senators are proposing is simply meant to galvanize Congress into beginning to think about what the future of Section 230 should look like.

While there have been attempts by Senator Graham, and others, to pass similar legislation,²¹⁴ this recent bill is notable in two respects. First, this bill has the support of two of the more influential senators of their respective parties; the bipartisan support behind this proposal makes it a turning point compared to most proposals that are sponsored alongside party lines. While both Democrats and Republicans dislike Section 230, they have different reasons for doing so—a topic that will be discussed at length later in this note.

Secondly, it is arguably the most politically convenient time for Congress to undertake such a monumental task as to reign in Big Tech. Current polls by Pew Research have documented that about 64% of Americans believe that social media has a more negative impact on the country than a positive one.²¹⁵ When party affiliations are taken into account, 71% of Republicans believe social media does more harm than good, while 59% of Democrats share a similar viewpoint.²¹⁶ A majority people in both parties believe that social media companies

²¹¹ At the time of this writing, Senator Durbin has just announced that he will not be seeking reelection to the Senate in 2026. What this means for the future of Section 230 remains to be seen. Shia Kapos, *Dick Durbin is Retiring from the Senate*, POLITICO (Apr. 23, 2025, at 11:30 ET),

<https://www.politico.com/news/2025/04/23/dick-durbin-retiring-from-senate-illinois-00305833> [https://perma.cc/P8ZJ-N68Z].

²¹² Feiner, *supra* note 5.

²¹³ *Id.*

²¹⁴ S. 5020, 116th Cong. § 1 (2020); S. 2972, 117th Cong. § 1 (2021).

²¹⁵ Monica Anderson, *Americans’ Views of Technology Companies*, PEW RSCH. CENTER (Apr. 29, 2024), <https://www.pewresearch.org/internet/2024/04/29/americans-views-of-technology-companies-2/> [https://perma.cc/SC5P-RNHD].

²¹⁶ *Id.*

wield too much political power.²¹⁷ Additionally, recent court decisions have held that Google has engaged in monopolistic practice, and at the time of this writing a federal court is considering whether to break off Google's flagship search engine Chrome, similar to Standard Oil;²¹⁸ simultaneously, Meta, the parent company of Facebook, is currently fighting an anti-trust case as the Federal Trade Commission accuses them of stifling competition through horizontal consolidation.²¹⁹

Thus, this new push to repeal Section 230 comes at a unique moment where there is the political will for action. Thus, if Congress is serious about repealing Section 230, then it must be prepared to deal with potential consequences that could arise out of a new content moderation scheme. This is especially so if Congress envisions federal government taking on a more robust role in combatting disinformation and preventing political censorship. If Congress opts for this route, then there are real concerns of potential state action entanglement issues in general, but especially as applied to the moderation of religious content online.

VII. OVERVIEW OF PROPOSED CDA AMENDMENTS

As documented by the Lawfare Institute, since 2020 there have been dozens of amendments that have called for some change to Section 230.²²⁰ The Lawfare Institute has categorized these different amendments into four categories: (1) limiting the scope of Section 230 by introducing more carve-outs, (2) imposing new obligations on companies that would use Section 230 as a defense,

²¹⁷ *Id.*

²¹⁸ David McCabe, *U.S. Asks Judge to Break Up Google*, N.Y. TIMES (Apr. 21, 2025), <https://www.nytimes.com/2025/04/21/technology/google-search-remedies-hearing.html> [<https://perma.cc/R8B5-9UGN>].

²¹⁹ Bobby Allyn, *The Biggest Trial in Meta's History starts Monday. Here's what to know*, NPR (Apr. 13, 2025, at 9:43 ET), <https://www.npr.org/2025/04/13/nx-s1-5358434/ftc-meta-antitrust-trial> [<https://perma.cc/566K-LRTD>].

²²⁰ *Section 230 Legislation Tracker*, Lawfare, <https://www.lawfaremedia.org/projects-series/lawfare-research-initiative/section-230-tracker> [<https://perma.cc/5CKF-WJPG>] (last visited Apr. 22, 2025).

and (3) altering the definition of Good Samaritan in Section 230 to exclude bad actors from its protections, or (4) completely repealing Section 230.²²¹ This section will examine the pros and cons of each approach, as well as touch on whether each approach would be appropriate for addressing a hyper-religious phenomenon like QAnon.

A. Amending More Carveouts to Section 230 Immunities

Currently, there are five circumstances in which Section 230 immunity does not insulate Interactive Computer Services from publisher liability.²²² Thus, the idea goes, that to “modernize” Section 230, all Congress must do is create more exceptions to the general grant of immunity. This type of amendment has already been passed by Congress when it added subsection 230(e)(5) in 2018, which eliminated Section 230 protections for Interactive Computer Services that were accused of violating federal sex trafficking laws.²²³ Examples of recent proposed carve-out include online gun sellers²²⁴, pornography sites²²⁵, and social media algorithms.²²⁶ Of all the potential paths Congress could take, the decision to add more more carve-outs represents the most politically convenient solution. At the same time, it must be recognized as a band-aid solution to the controversy surrounding Section 230.

The introduction of additional carve-outs could be a viable long-term solution, if Congress is willing to keep up with the likely never-ending task of updating Section 230. These individual exceptions to publisher-liability immunity do not adequately address the underlying policy question of whether this immunity should be granted in the first place. Additionally, because these carve-outs are often individually tailored, the political will to regarding

²²¹ *Id.*

²²² 47 U.S.C. § 230(e).

²²³ 47 U.S.C. § 230(e)(5).

²²⁴ S. 2725, 117th Cong. § 3 (2021).

²²⁵ S. 4991, 117th Cong. §2 (2022).

²²⁶ H. R. 5596, 117th Cong. (2021).

which issues to address is a potential issue. As such, there may be a risk of a “zero-sum” scenario where legislation exempting Section 230 protections for pornography sites is abandoned in favor of regulating social media sites. Additionally, this approach requires two houses of legislation and the President to find consensus as to which issue should be the focus. Absent public outcry, such as the backlash to the *Doe v. Backpage.com* decision,²²⁷ this sort of initiative is rare in Congress today.

The particularity of each of the carve-outs also makes this approach impractical for forcing Interactive Computer Services into regulating dangerous hyper-religious movements such as QAnon. While Congress would hypothetically be able to carve out liability for violent speech for example, it would be unable to write a carve-out that expressly targeted a particular movement or idea. Doing so would undoubtedly be considered content-based discrimination as well as trigger Free Exercise concerns.²²⁸ Thus, these additional carve-outs would be a weak tool for addressing problematic hyper-religions because of the immense amount of cooperation that would be required to formulate the carve-outs in the first place. Thus, the carve-out approach is a viable, albeit ad-lib, solution to amending Section 230.

B. Obligation as a Prerequisite for Section 230

Another way of amending Section 230 has been to introduce new obligations for Interactive Computer Services to claim the immunity. Examples of recent proposals have included: requiring Interactive Computer Services provide more information to users surrounding their content moderation policies;²²⁹ requiring Providers inform the Justice Department of any “suspicious

²²⁷ *Doe v. Backpage.com, LLC*, 817 F.3d 12 (1st Cir. 2016) (supporting the idea that decision to apply Section 230 immunity to Backpages, in this case being credibly accused of facilitating the sexual assault and sex trafficking of unnamed plaintiffs, was the catalyst for Congress amending Section 230 to include 230(e)(5)).

²²⁸ U.S. CONST. amend. I.

²²⁹ Online Consumer Protection Act, H.R. 4887, 118TH Cong. (2023).

transmissions” of illegal activities;²³⁰ and requiring any Interactive Computer Service who has knowledge of child sexual abuse material on their site to take it down or risk substantial fines.²³¹ These affirmative obligations carry with them significant First Amendment concerns. While certain affirmative obligations, such as those requiring sites with the requisite knowledge to take down child pornography, would fall outside of the scope of the First Amendment, it is not always clear when speech is unprotected until a court decides the issue.

Additionally, these new obligations could trigger a state-action finding. The risk stems from a clearer thread linking the actions of an Interactive Computer Service and a legal command from the government. By imposing such requirements on private Interactive Computer Services, Congress may unintentionally trigger a state action concern due to the joint undertaking of content moderation between the Services and the government.²³² Such a relationship would be devastating for any future application of an online content-moderation scheme because it would make any effort by Interactive Computer Services to comply with the new requirements immediately suspect to being characterized as governmental censorship. Thus, could inadvertently destroy Section 230, as plaintiffs will simply frame their claims as First Amendment violations to circumvent the defense.

Such an approach would not prevent the spread of a QAnon-like movement on its own. If the state action requirement were to be triggered, it would be impermissible for content moderators to censor or remove anything relating to a user’s religious belief because such an action would undoubtedly trigger First Amendment protections. So, while such affirmative obligations may achieve more comprehensive policy goals, it must be implemented in a narrow manner as to not trigger any private entanglement concerns.

²³⁰ S. 147, 118th Cong. § 4 (2023).

²³¹ S. 199, 118th Cong. § 5 (2023).

²³² See *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 809 (2019).

C. A New Definition of “Good Samaritan”

Despite its inclusion in the title of subsection 230(c), Section 230 does not currently operate as a “Good Samaritan” law. “Good Samaritan” laws are statutes that immunize individuals who choose to aid someone in need from any potential liability that could arise if the aid rendered accidentally causes additional harm.²³³ As Neil Fried describes them, “Good Samaritan” laws “typically limit liability for individuals who have no relationship to the person in jeopardy, and thus who have no obligation to lend assistance”.²³⁴ “Good Samaritan” laws promote people to help those in need, especially when they have no duty to do so, because they insulate the Good Samaritan from the common law rules surrounding negligent assistance of aid.²³⁵ But, as Fried points out, Section 230 does not operate like this; Interactive Computer Services are not strangers to their users. Rather they are businesses that have fostered a relationship with them.²³⁶

Thus, this category of Section 230 amendments seeks to implement a Good Samaritan requirement for Interactive Computer Services to benefit from the liability immunity. This approach would be characterized by a notice system in which users could inform a Computer Service Provider of a particular liable post. The Provider could then respond to that post and thereby gain the protection of Section 230. While this approach is like the “obligations” approach of amendments, its specific advantage is that a “Good Samaritan” amendment is unlikely to trigger state action concerns because a Good Samaritan law generally does not create an affirmative duty or a task on those affected by it. A Good Samaritan

²³³ Neil Fried, *Why Section 230 Isn't Really a Good Samaritan Provision*, DIGIT. FRONTIER ADVOC. (Mar. 24, 2021), <https://www.congress.gov/117/meeting/house/111407/documents/HHRG-117-IF16-20210325-SD013.pdf>. [<https://perma.cc/M3P5-Q56X>].

²³⁴ *Id.* at 1.

²³⁵ *See id.* at 2.

²³⁶ *Id.*

law immunizing an individual from being sued for negligently rendering aid to a person in need, it does not create an affirmative duty for that individual to render such aid; it only immunizes them from a potential negligence suit should they undertake that aid. Thus, a Good Samaritan amendment would not create an affirmative duty on Interactive Service Providers. It would only allow them to claim Section 230 as a defense if they have taken actions that permit them to qualify for it.²³⁷ This approach would bypass most issues surrounding state action, while also avoiding the piecemeal approach of expanding the immunity carve-outs.²³⁸

Additionally, a Good Samaritan approach would have the potential to adequately address dangerous hyper-religious movements. Again, working with the premise that there is a formal process of notifying the Computer Service Provider, users could inform sites of movements that are garnering dangerous rhetoric towards individuals, ethnic groups, or other religious or political organizations. With this information, the site can better act to determine whether these posts violate their terms of services and either remove the content if it does or leave it up after review. By still having the decision-making authority with the private company, this approach will be unlikely to implicate First Amendment concerns because this sort of system is unlikely to trigger the three main areas of state actions.²³⁹

A Good Samaritan amendment would need to be tailored that would permit Interactive Computer Services to qualify for Section 230 immunity by taking reasonable steps to limit the presence of unlawful activities on their sites, without being subject to liability for all potentially liable posts.²⁴⁰ While there have been some Good Samaritan amendments proposed in Congress, they are by far the smallest category of proposals.²⁴¹ To that end,

²³⁷ *See id.* at 4.

²³⁸ *See id.*

²³⁹ *See* Manhattan Cmty. Access Corp. v. Halleck, 587 U.S. 802, 809 (2019).

²⁴⁰ *Id.*

²⁴¹ LAWFARE, *supra* note 223.

this paper recommends adopting a Good Samaritan approach as the most efficient way to curtail the unlimited reach of Section 230 whilst at the same time promoting the core benefits that Section 230 has given.

D. Only Repealing Section 230

A fourth category of amendments are ones that simply call for repealing Section 230 and leaving Congress to figure out what a new system would look like later. Senators Durbin and Graham have adopted this approach in their most recent proposal announced in March 2025.²⁴² The logic behind this approach is that by removing Section 230 protections, Congress will essentially force Big Tech to the negotiation table to come up with something new.²⁴³ This approach would be the most inefficient and would likely uproot the Internet in the short-term for little long-term gain.²⁴⁴

By using Section 230 as a bargaining chip, Congress is playing a short-sighted game with the Internet that could radically reshape the Internet as Americans have come to know it. For starters, the goal of this approach relies on the assumption that not only will Big Tech come to the bargaining table, but also Congress will be able to agree on a single comprehensive view of what should replace Section 230.²⁴⁵ But there is good reason to doubt this approach. For starters, the only thing that Democrat and Republican critics can agree on with

²⁴² Fiener, *supra* note 5.

²⁴³ Cathy McMorris Rodgers & Frank Pallone Jr., *Sunset of Section 230 Would Force Big Tech's Hand*, WSJ (May 12, 2024, at 14:59 ET), https://www.wsj.com/opinion/sunset-of-section-230-would-force-big-techs-hand-208f75f1?gaa_at=eafs&gaa_n=AWetsqeBOZ5ogw_FbFzVpU-F_WjEnR5NNNg2tfw4iM0x5x8NokOaoIb3NQdlILtZlA%3D&gaa_ts=68f05ee6&gaa_sig=RHbzGX5cbWHjOTPSFawMHOlFFvojFRRZy9bqGxymbBpye8Gl1IPMXpapiJkWxlds8ULg-q1HQBE83WnNnhvdrQ%3D%3D [https://perma.cc/9RGQ-WQ9L].

²⁴⁴ See Chris Stokel-Walker, *Section 230 Faces a Bipartisan Repeal Effort. Experts say It's a Risky Bet*, FAST COMPANY (Mar. 24, 2025), <https://www.fastcompany.com/91304520/section-230-faces-bipartisan-repeal-effort-experts-say-its-a-risky-bet> [https://perma.cc/H94Q-PL4F].

²⁴⁵ *Id.*

what comes after Section 230 is that there will be no Section 230.

Democrats are more concerned with how Section 230 protects Interactive Computer Services that allow the spread of misinformation and other harmful content.²⁴⁶ Liberal-focused critiques highlight the role of Section 230 as a bulwark that always protects social media companies from the harms that occur on their site.²⁴⁷ Thus, Democratic concerns see the solution as requiring more social media companies to be more transparent about their algorithm and how they moderate content to qualify for the protection of Section 230.²⁴⁸ The important part of this approach is that Democratic solutions still want to leave the general principles of Section 230—the idea that the best way to moderate the Internet is to have the companies do it themselves—intact.²⁴⁹

This approach is at odds with the premises of Republican critiques of Section 230. Conservative critiques often center around the “liberal bias” of Big Tech.²⁵⁰ Conservative critics often point to these biases as a risk that Section 230 promotes censorship of conservative viewpoints in favor of liberal viewpoints that are held by the CEOs of these companies.²⁵¹ Thus, conservative proposals to supplant Section 230 often focus around limiting the type of content that Interactive Computer Services can regulate with the immunity—in their ideal world a company like Facebook would not be allowed to ban an individual like Alex Jones for his political viewpoint.

²⁴⁶ Danielle Draper, *Summarizing the Section 230 Debate: Pro-Content Moderation vs Anti-Censorship*, BIPARTISAN POL’Y CENTER (Jul. 5, 2022), <https://bipartisanpolicy.org/blog/summarizing-the-section-230-debate-pro-content-moderation-vs-anti-censorship/> [https://perma.cc/R6FR-KKZN].

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*

The fundamental issue with starting the negotiations by repealing Section 230 is that there is currently little common ground for these views to meet on. Obviously, no member of Congress is a monolith but given the entrenchment of party lines within government over the past three decades²⁵², repealing Section 230 without any sort of concrete plan is a recipe for disaster. The opposing views of liberals and conservatives on this issue can be crudely reduced to a “pro-moderation” vs. “anti-censorship” dichotomy.²⁵³ These two approaches are not necessarily at odds with one another, but the two will require a dedicated, good-faith effort by both sides to come to the negotiation table to find a suitable compromise. This across-the-aisle conciliation is rare and rarer in this hyper-partisan era of politics and thus cannot be counted on to win the day.

Additionally, the risks of failure under this approach are significantly more costly than the other three because absent Section 230, the common-law regime of *Cubby-Stratton Oakmont* will be reinstated. The reinstatement of this regime will lead to one of two results: either (1) companies will significantly step up their content moderation schemes to remove any potential liable posts as they arise, or (2) companies will cease any content moderation whatsoever as to not be found to be a publisher.²⁵⁴ Either outcome is bad for Big Tech, Congress, and the American people. Over-censorship will lead to the very issues that conservative critics now complain about wanting to fix: a chilling effect on speech and commerce across the Internet as companies scale back the public’s ability to take part in these online conversations. No censorship will lead to an even larger deluge of hate speech, libel, and misinformation as

²⁵² Drew Desilver, *The Polarization in today’s Congress has Roots That Go Back Decades*, PEW RSCH. CENTER (Mar. 10, 2022), <https://www.pewresearch.org/short-reads/2022/03/10/the-polarization-in-todays-congress-has-roots-that-go-back-decades/> [https://perma.cc/QR4B-DKZM].

²⁵³ Draper, *supra* note 248.

²⁵⁴ *Cubby, Inc. v. CompuServe Inc.*, 776 F. Supp. 135 (S.D.N.Y. 1991); *Stratton Oakmont Inc. v. Prodigy Servs. Co.*, No. 31063/94, 1995 WL323710 (N.Y. Sup. Ct. 1995).

providers turn a blind eye to the user content on their sites because as soon as they moderate, they will be liable for *every* post on their sites. For example, YouTube, the world's most popular video sharing site, saw about 30,000 hours of content uploaded every hour in 2022.²⁵⁵ There is simply no way that a site like YouTube, and much of social media for that matter, could maintain the robust content-moderation regime that would be required by *Stratton Oakmont*. The result would most likely be a collapse of Internet content moderation and the Internet as we know it.

In such a collapse, the flood gates would be open. With minimal legal incentives and protections to moderate content, the lack of content moderation will lead to an explosion of dangerous rhetoric, including more Q-Anon adjacent hyper-religious movements occurring. While there is little hard evidence to say for certain, the content moderation regime under Elon Musk's X (formerly known as Twitter) could offer a glimpse into the future. When Mr. Musk took over Twitter, a text-based service in which users can post text and videos to both their followers and the larger community, he declared it to be the return of free speech on the Internet.²⁵⁶ The way to implement free speech for Mr. Musk was to cut back on content moderation for the site.²⁵⁷ The result of this cut back in content moderation has made X (Twitter) one of the most prolific sites for far-right content to reach

²⁵⁵ Laura Ceci, *Hours of Video Uploaded to YouTube Every Minute as of February 2022*, STATISA (Apr. 11, 2024), https://www.statista.com/statistics/259477/hours-of-video-uploaded-to-youtube-everyminute/?srsltid=AfmBOorfuxgvqoW1f74jnCmbcD_6YjO2RsTH78s8JS1DJsIaGcmM4c_e [<https://perma.cc/MTU3-37S5>].

²⁵⁶ Elliot Drago, *Elon Musk and Free Speech*, JACK MILLER CENTER, <https://www.jackmillercenter.org/article/elon-musk-and-free-speech> [<https://perma.cc/BS34-JYJY>] (last visited Apr. 25, 2025).

²⁵⁷ See Barbara Ortutay & Matt O'Brien, *Musk's Latest Twitter Cuts: Outsourced Content Moderators*, AP NEWS (Nov. 13, 2022, at 20:44 ET), <https://apnews.com/article/elon-musk-twitter-inc-technology-misinformation-social-media-a469130efae8ed029a647a149c5049> [<https://perma.cc/9UYQ-3CPQ>].

millions of people.²⁵⁸ While this is just one platform's experience with content deregulation, it indicates that Interactive Computer Services may not necessarily pick up the task of content moderation in a post-Section 230 world.

²⁵⁸ J Oliver Conroy, *How Elon Musk's X Became the Global Right's Supercharged Front Page*, THE GUARDIAN (Jan. 4, 2025, at 7:00 ET), <https://www.theguardian.com/technology/2025/jan/04/elon-musk-x-trump-far-right> [<https://perma.cc/VB4F-HFP9>].