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# PLURALISM AND LISTENERS' CHOICES ONLINE

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“The plain, if at times disquieting, truth is that in our pluralistic society, constantly proliferating new and ingenious forms of expression, ‘we are inescapably captive audiences for many purposes.’”<sup>1</sup>

The speech and technology world has changed dramatically, even unimaginably, since Justice Powell penned these words about drive-in movie theaters. In attempting to grapple with this quandary in the contemporary era, James Grimmelmann offers us the provocative and original paper, *Listeners’ Choices Online*.<sup>2</sup> His contribution to this Symposium builds on earlier work in which he argues for a theoretical approach to free speech that makes listeners’ interests the central focus of First Amendment doctrine.<sup>3</sup> As he argues in the earlier paper, freedom of expression involves what he calls a “matching problem”—ideally lining up speakers with listeners who want to hear their expression, but not with listeners who do not.<sup>4</sup>

The current paper is simultaneously both too complex and too nuanced to adequately summarize in this brief Comment, but here are a few of his main points as I interpret them, and that my comments will address.

- Facilitating matching between willing speakers and willing listeners is the goal of a system of free speech. In that regard, “*listeners’ choices matter more than speakers’*. . . . A consistent

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1. *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 210 (1975) (quoting *Rowan v. U.S. Post Off. Dep’t*, 397 U.S. 728, 736 (1970)).

2. James Grimmelmann, *Listeners’ Choices Online*, 98 S. CAL. L. REV. 1231 (2025) [hereinafter, *Listeners’ Choices Online*].

3. James Grimmelmann, *Listeners’ Choices*, 90 U. COLO. L. REV. 365, 365, 372–73 (2019).

4. *Id.* at 366.

commitment to protecting these willing speaker-listener pairs results in a system of First Amendment law that regularly defers to listeners' choices."<sup>5</sup>

- Applying that model resolves some of the important First Amendment questions arising from the regulation of contemporary electronic speech media.
- It is useful to disaggregate communication media into four types, each of which presents distinct matching challenges: (1) Broadcast (television, radio, cable); (2) Delivery (telephone, email, messaging); (3) Hosting (providers of space for speech, but not engaged in speech themselves); and (4) Selection (directing listeners to specific content via algorithms based on the perception of listener preferences).<sup>6</sup> Currently, hosting and selection functions are frequently combined, though that does not have to be so.<sup>7</sup>
- Selection intermediaries play a key role in determining what listeners hear or see. This is an essential function because the sheer volume of speech available on the Internet creates otherwise insurmountable attention scarcity problems for listeners.<sup>8</sup>
- This listeners' choice model allows for limited regulatory interventions on the media's selection functions that would not violate the First Amendment.
- It would violate the First Amendment for regulators to prohibit intermediaries from offering listeners the ability to choose what speakers to listen to because that interferes with listeners' right to listen.<sup>9</sup>
- However, the government may permissibly intervene when a search engine (or, presumably, other selection intermediary) is dishonest or disloyal to its users, "when it shows them results that (objectively) differ from the engine's own (subjective) judgment about what the users are likely to find relevant,"<sup>10</sup> because that also interferes with listeners' interests.

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5. *Id.*

6. *Listeners' Choices Online*, *supra* note 2, at 1249–64.

7. *Id.* at 1265.

8. *Id.* at 1261–62.

9. *Id.* at 1265.

10. *Id.* at 1261.

- It would also be permissible to have a rule requiring pure selection intermediaries to treat first-party content evenhandedly with content posted by third parties.<sup>11</sup>
- “Seeing the Internet from listeners’ perspective is a radical leap. It requires making claims about the nature of speech and about where power lies online that seem counterintuitive if you are coming from the standard speaker-oriented First Amendment tradition. But once you have made that leap, and everything has snapped into focus again, it is impossible to unsee.”<sup>12</sup>

There is much to admire in Professor Grimmelmänn’s paper. It makes a number of important and original contributions to thinking about the regulation of social media and is in many parts completely persuasive. First, consistent with the objective of this Symposium, it highlights listeners’ interests as a basis to evaluate the American system of freedom of expression. It is indisputable that the Supreme Court and legal scholars have underappreciated the role of listeners’ interests in articulating First Amendment doctrine.<sup>13</sup> The primary context in which the Supreme Court expressly considers listener interests involves unwilling listeners as captive audiences, but those are the only cases that place listeners’ interests at center stage.<sup>14</sup> The Court has upheld legal rules that bar speakers from imposing speech on unwilling listeners when the listeners’ “substantial privacy interests are being invaded in an essentially intolerable manner.”<sup>15</sup> Even in captive audience situations, as Grimmelmänn points out, under current doctrine the interests of willing listeners will sometimes outweigh the rights of unwilling listeners, particularly if it is easy for the latter to avoid the speech.<sup>16</sup>

*Listeners’ Choices Online* also offers us a way out of the ongoing effort to find the appropriate perspective through which to evaluate how First Amendment doctrine should apply to the contemporary media environment. Much recent scholarship has struggled with this question, with legal scholars

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11. *Id.* at 1264–66.

12. *Id.* at 1282.

13. *But see* Leslie Kendrick, *Are Speech Rights for Speakers?*, 103 VA. L. REV. 1767, 1775–79 (2017) (observing that although much First Amendment doctrine is expressed in terms of protecting speaker interests, in many cases the resulting legal framework is ultimately designed with listeners in mind). That argument does not, of course, detract from the proposition that we have much to learn from focusing more explicitly on listeners’ interests.

14. *See, e.g.,* *Erznoznick v. City of Jacksonville*, 422 U.S. 205, 210 (1975); *Cohen v. California*, 403 U.S. 15, 21–22 (1971).

15. *Cohen*, 403 U.S. at 21.

16. *Listeners’ Choices Online*, *supra* note 2, at 1271–73.

sometimes seeking to find appropriate analogies from regulation of past communication technologies to justify a legal framework for thinking about the regulation of social media platforms.<sup>17</sup> Is cable television like traditional television and radio broadcast media? Does regulation of telephone services offer any insight into how we ought to regulate digital communications? Is Facebook more like a parade or a shopping mall? Can social media companies be treated like common carriers, subjecting them to greater regulatory constraints than would otherwise be permissible to impose on private companies engaged in speech?<sup>18</sup>

None of the analogies work perfectly, however, because each different electronic speech medium bears some distinguishing features that complicate the analysis.<sup>19</sup> Some, as the article points out, are mere vessels for delivery of content, while others engage in important speech-impacting selection decisions that help listeners sort through the onslaught of online content, but, in doing so, may affect listeners' interests by providing them content they do not want to hear or directing them away from content they would welcome.<sup>20</sup>

The Supreme Court has only just dipped its toes in the water, in its dicta in last term's *Moody v. NetChoice, LLC*, with the majority opinion stating unequivocally that "[l]ike the editors, cable operators, and parade organizers this Court has previously considered, the major social-media platforms are in the business, when curating their feeds, of combining 'multifarious voices' to create a distinctive expressive offering."<sup>21</sup> But as Grimmelmann points out, that is looking at the challenged state laws exclusively from the platforms' perspective, and not the listeners'.<sup>22</sup>

Rather than attempting to argue purely by analogy with past regulations of earlier media technologies, Grimmelmann's paper elegantly uses listeners' interests and choices as an organizing principle that cuts across these different media to create a coherent First Amendment model for evaluating media regulations. He suggests that focusing on these interests

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17. See, e.g., Jack M. Balkin, *How to Regulate (and Not Regulate) Social Media*, 1 J. FREE SPEECH L. 71, 89–96 (2021).

18. See, e.g., Ashutosh Bhagwat, *Why Social Media Platforms Are Not Common Carriers*, 2 J. FREE SPEECH L. 127, 151–56 (2022); Eugene Volokh, *Treating Social Media Platforms Like Common Carriers?*, 1 J. FREE SPEECH L. 377, 454–62 (2021).

19. See Gregory M. Dickinson, *Beyond Social Media Analogues*, 99 N.Y.U. L. REV. 109, 116–23 (2024) (criticizing the analogy-based approach to establishing norms for regulating social media).

20. See *Listeners' Choices Online*, *supra* note 2, at 1287–88.

21. *Moody v. NetChoice, LLC*, 144 S. Ct. 2383, 2405 (2024) (quoting *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos., Inc.*, 515 U.S. 557, 569 (1995)).

22. *Listeners' Choices Online*, *supra* note 2, at 1262–64.

allows us to see more clearly the competing speech interests involved in ways that the purely analogical approach simply cannot. His listeners' choice theory emphasizes matching speakers to willing listeners, which can be accomplished by structural designs, by some content neutral government regulation, and, in part, by requiring the separation of hosting and selection functions in ways that maximize these speaker-listener connections.<sup>23</sup>

While Professor Grimmelmann's model is intriguing and helps us think about media regulation in useful ways, I offer three modest thoughts, two focused on whether, in some circumstances, prioritizing listeners' rights may come at the expense of other important First Amendment values, and one questioning whether there is a need for further promoting listeners' choices on social media given the increasing market for niche social media sites.<sup>24</sup>

1. *Prioritizing Listeners' Choices May Diminish Public Discourse*

First, permitting limited regulation of selection intermediaries to protect listeners' interests could, in some cases, have deleterious effects on public discourse. Even the modest regulatory interventions that Grimmelmann suggests would be permissible to advance listeners' interests could be leveraged to challenge selection intermediaries' decisions to offer a more balanced, fact-checked feed to their subscribers. Or, even if those effects do not come to fruition, the very existence of regulatory interventions might deter selection intermediaries from experimenting with innovations to promote delivery of a greater diversity of content that does not cater purely to listeners' interests.

Consider a hypothetical new platform calling itself Balanced Social Media ("BSM"). Following Grimmelmann's model, let us assume that a different company is the host for BSM, which exclusively serves a selection function. BSM designs an algorithm that, for the most part, favors listeners' choices of content, but adds three specific features that veer from the default rule. First, it builds in its own fact-checking mechanism that flags content posted by third-party users that may be objectively false or come from sources that have proven unreliable or inaccurate in the past. The BSM algorithm will still direct the user to that content, but the content will be marked with a red flag that warns the user that the factual foundation of the material may not be valid, and provides a link to a source that disputes the factual validity of the original post.

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23. *Id.* at 1232–37, 1265–67.

24. I am also unconvinced that Grimmelmann's model is generalizable beyond the electronic media context. However, that is not the ambition of his paper.

Second, the algorithm is designed to monitor users' feeds to determine if they are seeking content that is unilaterally biased toward one particular ideology, for example, if a user reads only content posted by Fox News or MSNBC. If the algorithm identifies users who seek ideologically unbalanced content, it will occasionally feed such users some third-party content that comes from a dissimilar political perspective. This counter-ideological feed could come randomly or perhaps after the user has viewed ten consecutive stories from sources with their preferred ideological perspective.

Alternatively, BSM could instead offer a slightly less intrusive option under which, rather than posting counter-ideological content, BSM could give the user a warning or notice to the effect that the user has been reading content that is exclusively coming from sources with a specific political orientation and asking if the user would like to see something from a different perspective. This might operate in a manner like TikTok's option for its users to set a daily screen time limit and be notified when they have reached that limit.<sup>25</sup> Under my hypothetical, however, users would not be able to turn off this setting.

Third, BSM occasionally posts its own independent content on the platform that discusses issues regarding the responsible use of social media and the importance of ensuring that information is factually accurate before posting it. As with the counter-ideological posts, it will feed periodically into all users' feeds. BSM users cannot opt out of any of these functions; though, of course, they may decide they do not want to use BSM. When users sign up to use BSM, they are fully informed about the algorithm's functions, which they agree to as part of the Terms of Service ("TOS"). The TOS even says, "BSM offers a new vision of social media, one that will deliver content that you did not ask for, or even that you do not want to see (of course, we cannot make you read it, that is up to you!). The goal of our model is to expose all people to a range of ideologically diverse content."

Grimmelmann's model seems to suggest that lawmakers might be able to forbid BSM to adopt these innovative features because they do not fully promote listeners' choices. The fact-checking flags and counter-ideological feeds are content that many users may not wish to see; indeed, they may be viscerally repelled by these posts, particularly if this interferes with their ability to experience the emotional resonance associated with speech that highlights their own world views.<sup>26</sup> He suggests that regulators may be able

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25. *Screen Time*, TIKTOK, <https://support.tiktok.com/en/account-and-privacy/account-information/screen-time> [https://perma.cc/5E64-3RTR].

26. On the emotional value associated with the consumption of even false information, see Alan

to restrict selection intermediaries' use of such algorithms to the extent that "it shows [users] results that (objectively) differ from the engine's own (subjective) judgment about what the users are likely to find relevant."<sup>27</sup> In fact, BSM's model is *designed* to show user content they do not want to see. In Grimmelmann's terms, the intermediary is being disloyal to its users (although because the algorithm's functions are fully disclosed in the TOS, they can argue they are not being dishonest).<sup>28</sup>

Moreover, the BSM-produced content (and maybe even the fact-checking posts) can be viewed as first-party content.<sup>29</sup> BSM is in some sense trying to compete in the social media market by offering a new way of delivering content. Would a pure listener-based approach result in such experiments being shut down by regulators because they are occasionally giving their first-party content priority over content posted by third parties?<sup>30</sup> That is, by feeding users first-party content in the form of sermons on the importance of truth in the responsible use of social media, has BSM interfered with listener choice? Because *Moody* holds that social media platforms are speakers when they make decisions about content moderation,<sup>31</sup> they are unquestionably speakers if they are producing their own content. How would Grimmelmann's model address the tension between a regulation prohibiting BSM from prioritizing first-party content to protect listeners' choice and the platform's First Amendment speech rights?

To the disloyalty argument, Grimmelmann might respond that because BSM is transparent about its algorithm, it is not actually being disloyal *or* dishonest to its users.<sup>32</sup> Listeners who do not want this type of balanced

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K. Chen, *Free Speech, Rational Deliberation, and Some Truths About Lies*, 62 WM. & MARY L. REV. 357, 423–24 (2020).

27. *Listeners' Choices Online*, *supra* note 2, at 1261.

28. *Id.*

29. Another question worth considering is whether even paid advertising could be construed as first-party content. Even though it is produced by a third-party, which pays the selection intermediary to distribute its content, it is being promoted by the intermediary without regard to listener interests. Surely, selection intermediaries cannot be forbidden to prioritize advertising content or the entire economic model under which social media platforms operate would collapse.

30. *Listeners' Choices Online*, *supra* note 2, at 1276–79. Grimmelmann qualifies this statement by saying this would apply to only pure selection intermediaries, so perhaps BSM would not be subject to regulation to the extent that it is holding itself out as a content producer as well as an intermediary. But even pure selection intermediaries might flag content with fact-checking warnings, and those posts presumably could be understood as promoting first-party content.

31. *Moody v. NetChoice, LLC*, 144 S. Ct. 2383, 2405–06 (2024).

32. That is, assuming all subscribers read and fully understand the TOS, which is highly unlikely. A 2017 study by Deloitte found that 91% of people consent to TOS agreements without reading them. For respondents aged 18–34, the percentage rose to 97%. See Jessica Guynn, *What You Need to Know*

approach can simply choose a different platform that better suits their listening tastes. However, while BSM is certainly giving listeners choice at the first level (platform selection), its model will inevitably result in some BSM users receiving speech at the second level (content selection) that they subjectively do not want to hear.

## 2. *Elevating Listeners' Choices Could Encourage Information Silos*

A closely related concern with a system of electronic media regulation focusing primarily on promoting listeners' interests is whether such an emphasis could have the broader systemic effect of exacerbating ideological information silos even more than under the current system.<sup>33</sup> An important function of a system of free expression is, of course, promoting robust public discourse. Public discourse is inherently oppositional—speakers of different viewpoints must be able to engage each other for it to meaningfully occur.

In many cases, speakers desire to reach listeners whom they believe will be persuaded by their messages if those listeners only had an opportunity to hear them. Anti-abortion advocates may sincerely believe that if women considering abortions only had more information, they would make different choices. Protesters concerned about the humanitarian crisis associated with Israel's military actions in Gaza would like to reach those who are unconditionally sympathetic to Israel's right to defend itself because they think, with additional information, these listeners may modify their positions. On social media as well, speakers try to convince unwilling listeners of the virtues of their political positions. Preaching only to the converted does not facilitate healthy discourse.

Outside of the captive audience context, which is almost exclusively applied to unwanted speech in one's home,<sup>34</sup> a key function of the First Amendment is served by advancing the interests of speakers to influence

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*Before Clicking 'I Agree' on That Terms of Service Agreement or Privacy Policy*, USA TODAY (Jan. 29, 2020, 2:21 PM), <https://www.usatoday.com/story/tech/2020/01/28/not-reading-the-small-print-is-privacy-policy-fail/4565274002> [<https://perma.cc/C2JQ-LHFQ>].

33. See, e.g., Dawn Carla Nunziato, *The Marketplace of Ideas Online*, 94 NOTRE DAME L. REV. 1519, 1527 (2019).

34. See *Rowan v. U.S. Post Off. Dep't*, 397 U.S. 728, 738 (1970) ("That we are often 'captives' outside the sanctuary of the home and subject to objectionable speech and other sound does not mean we must be captives everywhere." (quotation omitted)); *But see FCC v. Pacifica Found.*, 438 U.S. 726, 730, 748 (1978) (upholding placement of Federal Communications Commission order indicating that licensed radio station "could have been the subject of administrative sanctions" for broadcasting program that violated FCC's indecency regulations during daytime hours (quoting 56 F.C.C.2d 94, 99)); *Lehman v. City of Shaker Heights*, 418 U.S. 298, 302, 304 (1974) (holding that passengers on rapid transit street cars are captive audiences). Under Grimmelmann's model (and in my view, as well), it would certainly seem that *Pacifica* was wrongly decided because favoring the unwilling listeners' interests there meant cutting off speech to many willing listeners. *Listeners' Choices Online*, *supra* note 2, at 1269–70.



those who are not inclined to agree with them.<sup>35</sup> As the Supreme Court has recognized:

[Speech] may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea.<sup>36</sup>

These express values are in direct tension with a purely listener-based approach. This may be particularly true of speech on social media, which the Court has argued is one of the “most important places . . . for the exchange of views.”<sup>37</sup>

Thus, a second concern I have with a model prioritizing listeners’ choices over speakers’ is that its application, in many contexts, may impede what we might describe as lawful, but uncomfortable, speech that is intended to persuade.<sup>38</sup> If listeners can confine themselves only to speech they want to hear, even in the social media context, then prioritizing that interest can operate as a kind of quiet heckler’s veto. In a social media environment in which listeners’ choice prevails, it is hard to imagine how persuasion might work, either individually or collectively. Are there any situations involving such speech through media in which the default position is not valuing the listener over the speaker, and if so, how could that decision be implemented?

Perhaps our society is headed in this direction already given that, as Grimmelmann observes, even in the absence of regulation of selection intermediaries, listeners might deploy a combination of pure hosting platforms with middleware, a third-party software that allows them to customize their feeds at an even greater level of detail.<sup>39</sup> While this, too, would benefit listeners’ choices, it would move us in the direction of a more atomized speech universe—which is not necessarily a good thing, but at least it would not be the product of government intervention.

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35. This is setting aside other narrow areas in which unwanted speech causes cognizable harms, such as with true threats. *See* *Virginia v. Black*, 538 U.S. 343, 359 (2003) (defining true threats, which are not protected under the First Amendment, as “statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals”).

36. *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).

37. *Packingham v. North Carolina*, 582 U.S. 98, 104 (2017).

38. On the importance of persuasion as a free speech value, see generally David A. Strauss, *Persuasion, Autonomy, and Freedom of Expression*, 91 COLUM. L. REV. 334 (1991).

39. *Listeners’ Choices Online*, *supra* note 2, at 1279–81.

### 3. *Market Responses Are Already Enhancing Listeners' Choices*

Finally, one could argue that market forces are already moving toward a listener-centric model with the proliferation of niche social media platforms, even in the absence of regulatory interventions.<sup>40</sup> There is some evidence that users are beginning to migrate from more general social media sites such as X (formerly known as Twitter), to special interest platforms where they can avoid the cacophony of hostile rhetoric in favor of sites where they can engage with a smaller cohort of people who share common interests. That development certainly enhances listener choice without risking the possible unintended consequences of regulations designed to promote listeners' choice.

Especially during the 2024 election season, there seemed to be growing dissatisfaction with general social media sites because of the unavoidability of sometimes harsh political discourse. It was not uncommon to hear calls for platforms dedicated to only discussion of books, movies, music, gaming, and other mostly nonpolitical (or, at least, not primarily political) topics that listeners sought out to find some respite. Sports lovers initially were the exception to this rule, although even those users have now started fleeing X.<sup>41</sup>

Available statistics suggest that the market has responded to this interest and is already enhancing listener choice by serving its own matching function. About 115,000 users deactivated their X accounts on the day after the November 2024 Presidential Election.<sup>42</sup> No matter how the total user base is measured, that is a very small percentage, which is unsurprising because network effects deter people from leaving even platforms with which they are dissatisfied. Of course, people can maintain active X accounts while still seeking out other outlets for speech. In comparison, niche social media platforms are still quite small. One of the largest, Goodreads, a

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40. Aisha Jones, *The Rise of Niche Social Media Platforms: Opportunities for Community Building*, KUBBCO (Feb. 7, 2024), <https://www.kubbco.com/blog/the-rise-of-niche-social-media-platforms-opportunities-for-community-building> [https://perma.cc/V8ZP-NHWP].

41. Compare Jesus Jiménez, *As Users Abandon X, Sports Twitter Endures*, N.Y. TIMES (Oct. 27, 2023), <https://www.nytimes.com/2023/10/27/sports/sports-twitter-x-elon-musk.html> [https://web.archive.org/web/20250127170503/https://www.nytimes.com/2023/10/27/sports/sports-twitter-x-elon-musk.html], with Will Leitch, *The Slow, Painful Death of Sports Twitter*, N.Y. MAG.: INTELLIGENCER (Feb. 27, 2024), <https://nymag.com/intelligencer/article/the-slow-painful-death-of-sports-twitter-under-elon-musk.html> [https://web.archive.org/web/20240927124315/https://nymag.com/intelligencer/article/the-slow-painful-death-of-sports-twitter-under-elon-musk.html].

42. Kat Tenbarge & Kevin Collier, *X Sees Largest User Exodus Since Elon Musk Takeover*, NBC NEWS (Nov. 13, 2024, 1:40 PM), <https://www.nbcnews.com/tech/tech-news/x-sees-largest-user-exodus-musk-takeover-rcna179793> [https://perma.cc/FZ3E-3XKQ].

platform to share book recommendations, had about 150 million users as of 2023.<sup>43</sup> Houzz, a home design social media platform, reportedly has about 70 million users.<sup>44</sup> A platform for movie lovers (especially indie) called Letterboxd now has about 17 million users.<sup>45</sup> Reddit, while open to a wide range of users, is well known for facilitating smaller communities to generate discussion of interest, and now has about 91 million daily active users.<sup>46</sup> Finally, Substack, a platform for distributing individualized newsletters to both paid and unpaid subscribers, now has approximately 50 million subscribers.<sup>47</sup>

It may seem somewhat contradictory to fret about information silos while simultaneously celebrating the expansion of niche social media sites. To address this briefly, I would argue that the siloing problem is much more problematic on the larger, omnibus social media platforms than with niche social media platforms. Political discourse is one of the main features of the larger platforms, so cutting off speech that is ideologically diverse is truly undermining the opportunities for persuasion. In contrast, the niche social media sites are mostly excluding posts about other topics not because of any ideological commitments, but rather to help filter out what they regard as irrelevant information. That is not to say that political discourse cannot arise in the context of these niche sites,<sup>48</sup> but it is at least less likely to do so. And, of course, these users may be walling themselves off from *any* political speech, which could be problematic for public discourse in the long run. But there is nothing to suggest that these users might not still engage in political discourse on other platforms or in other contexts of communication in their non-online lives.

43. Phil Stamper-Halpin, *How to Reach More Readers on Goodreads*, PENGUIN RANDOM HOUSE: NEWS FOR AUTHORS (Sept. 2023), <https://authornews.penguinrandomhouse.com/how-to-reach-more-readers-on-goodreads> [https://perma.cc/4JP5-8D9C].

44. Terri Williams, *2025 Houzz Home Design Trends: These Are the Top 10 Predictions*, FORBES (Oct. 31, 2024, 4:07 AM), <https://www.forbes.com/sites/terriwilliams/2024/10/31/2025-houzz-home-design-trends-these-are-the-top-10-predictions> [https://perma.cc/CCH3-42Z9].

45. Jill Goldsmith, *Letterboxd, Indie Cinema's Secret Weapon, Hit 17 Million Members—Here Are Their Top 2024 Films*, DEADLINE (Jan. 8, 2025, 9:11 AM), <https://deadline.com/2025/01/letterboxd-indie-films-members-surge-in-2024-favorite-films-1236251217> [https://perma.cc/U6Y7-EGP9].

46. David Curry, *Reddit Revenue and Usage Statistics (2025)*, BUSINESS OF APPS, <https://www.businessofapps.com/data/reddit-statistics> [https://perma.cc/3JLY-DYYF].

47. Max Tani, *Substack Wants to Do More Than Just Newsletters*, SEMAFOR (Oct. 6, 2024, 4:58 PM), <https://www.semafor.com/article/10/06/2024/substack-wants-to-do-more-than-just-newsletters> [https://perma.cc/SR96-WCPC]; *A New Economic Engine for Culture*, SUBSTACK, <https://substack.com/about> [https://web.archive.org/web/20250331060253/https://substack.com/about].

48. I would certainly be the last to argue that things such as art or music do not evoke important social and political meaning. See generally MARK V. TUSHNET, ALAN K. CHEN & JOSEPH BLOCHER, *FREE SPEECH BEYOND WORDS: THE SURPRISING REACH OF THE FIRST AMENDMENT* (2017).

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Notwithstanding my limited reservations and questions, I wholeheartedly welcome Professor Grimmelmann's important and valuable contribution to thinking about the complex constitutional and social issues associated with regulation of electronic media in the current climate. Continued efforts to meaningfully apply standard First Amendment doctrine to new media allow us all to think critically about the best way forward.