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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA

15
16 **TWITTER, INC.**

17 **Plaintiff,**

18 **v.**

19
20 **KEN PAXTON,**
in his official capacity as Attorney
21 **General of Texas,**

22 **Defendant.**

Case No. 3:21-CV-01644

**MOTION FOR LEAVE TO FILE
BRIEF OF THE REPORTERS
COMMITTEE FOR FREEDOM OF
THE PRESS, CENTER FOR
DEMOCRACY AND
TECHNOLOGY, ELECTRONIC
FRONTIER FOUNDATION, MEDIA
LAW RESOURCE CENTER, INC.,
AND PEN AMERICA AS AMICI
CURIAE IN SUPPORT OF
PLAINTIFF**

Judge: Maxine Chesney

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1 Proposed amici curiae, the Reporters Committee for Freedom of the Press
2 (“Reporters Committee”), Center for Democracy and Technology, Electronic Frontier
3 Foundation, Media Law Resource Center, Inc., and PEN America, respectfully move
4 this Court for leave to submit the attached amici curiae brief in support of Plaintiff’s
5 Motion for Temporary Restraining Order and Order to Show Cause Why a
6 Preliminary Injunction Should Not Issue (“Plaintiff’s Motion”). The proposed brief
7 is attached to this Motion.
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10 The Reporters Committee is an unincorporated nonprofit founded by leading
11 journalists and media lawyers in 1970 when the nation’s news media faced an
12 unprecedented wave of government subpoenas forcing reporters to name confidential
13 sources. Today, its attorneys provide pro bono legal representation, amicus curiae
14 support, and other legal resources to protect First Amendment freedoms and the
15 newsgathering rights of journalists.
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18 Center for Democracy & Technology (“CDT”) is a non-profit public interest
19 organization. For more than 25 years, CDT has represented the public’s interest in an
20 open, decentralized internet and worked to ensure that the constitutional and
21 democratic values of free expression and privacy are protected in the digital age.
22 CDT regularly advocates in support of the First Amendment and protections for
23 online speech before legislatures, regulatory agencies, and courts.
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26 The Electronic Frontier Foundation (“EFF”) is a non-profit, member-supported
27 civil liberties organization working to protect digital rights. Founded in 1990 and
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1 based in San Francisco, California, EFF has more than 37,000 active donors and
2 dues-paying members. EFF represents the interests of technology users in both court
3 cases and broader policy debates surrounding the application of law in the digital age.
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5 The Media Law Resource Center, Inc. (“MLRC”) is a non-profit professional
6 association for content providers in all media, and for their defense lawyers,
7 providing a wide range of resources on media and content law, as well as policy
8 issues. These include news and analysis of legal, legislative, and regulatory
9 developments; litigation resources and practice guides; and national and international
10 media law conferences and meetings. The MLRC also works with its membership to
11 respond to legislative and policy proposals, and speaks to the press and public on
12 media law and First Amendment issues. It counts as members over 125 media
13 companies, including newspaper, magazine and book publishers, TV and radio
14 broadcasters, and digital platforms, and over 200 law firms working in the media law
15 field. The MLRC was founded in 1980 by leading American publishers and
16 broadcasters to assist in defending and protecting free press rights under the First
17 Amendment.
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22 PEN American Center, Inc. (PEN America or PEN) is a nonprofit organization
23 that represents and advocates for the freedom to write and freedom of expression,
24 both in the United States and abroad. PEN America is affiliated with more than 100
25 centers worldwide that comprise the PEN International network. Its Membership
26 includes more than 7,500 journalists, novelists, poets, essayists, and other
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1 professionals. PEN America stands at the intersection of journalism, literature, and
2 human rights to protect free expression. PEN champions the freedom of people
3 everywhere to write, create literature, convey information and ideas, and express their
4 views, recognizing the power of the word to transform the world. PEN America
5 supports the First Amendment and freedom of expression in the United States.
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8 Plaintiff consents to the filing of this brief. Defendant does not oppose this
9 Motion for Leave to file an amicus brief.

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11 Federal district courts have inherent authority to consider submissions from
12 amicus curiae in connection with proceedings pending before them. Indeed,
13 “[d]istrict courts frequently welcome amicus briefs from non-parties concerning legal
14 issues that have potential ramifications beyond the parties directly involved or if the
15 amicus has unique information or perspective that can help the court beyond the help
16 that the lawyers for the parties are able to provide.” *NGV Gaming, Ltd. v. Upstream*
17 *Point Molate, LLC*, 355 F. Supp. 2d 1061, 1067 (N.D. Cal. 2005) (quotation and
18 citation omitted). This discretion is liberal, requiring only that an applicant
19 demonstrate that its “participation is useful or otherwise desirable to the court.” *See*
20 *Woodfin Suite Hotels, LLC v. City of Emeryville*, No. C 06-1254 SBA, 2007 U.S.
21 Dist. LEXIS 4467, at *7 (N.D. Cal. Jan. 9, 2007) (quoting *In re Roxford Foods Litig.*,
22 790 F.Supp. 987 (E.D. Cal. 1991)).
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27 Amici have a strong interest in protecting the free flow of information to the
28 public, of which private speakers, including, but not limited to, news organizations,

1 are a key part. Amici are concerned with the potential chilling effect this
2 investigation may have on public discourse and how permitting an inquiry into
3 political content curation by online platforms would contravene the rule articulated
4 by the U.S. Supreme Court in *Miami Herald Pub. Co. v. Tornillo*—that
5 “governmental regulation” of “editorial control and judgment” cannot be “exercised
6 consistent with First Amendment guarantees of a free press[.]” 418 U.S. 241, 258
7 (1974). The proposed amici curiae brief also offers additional information on how
8 the particular constitutional right at issue here—the discretion of a private speaker to
9 disseminate or not disseminate lawful speech without government interference—is
10 vulnerable to regulatory pressure, including through government investigations
11 pursuant to deceptive practices statutes such as the Texas Deceptive Trade Practices-
12 Consumer Protection Act (“DTPA”). While laws such as the DTPA serve laudable
13 goals, using them to enforce viewpoint neutrality by private speakers presents the
14 temptation to compel platforms to carry speech perceived as favorable to the
15 government, or, at the very least, that platforms would not otherwise carry. When
16 deployed in this way, such laws may threaten First Amendment guarantees.
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22 For the foregoing reasons, proposed amici curiae respectfully request leave to
23 file the attached brief.
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