AI, ANTITRUST, AND THE MARKETPLACE OF IDEAS

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This Essay was prepared for the Symposium titled *Antitrust Law and Oligarchy: The Intersection of Markets, Democracy, and Power* hosted by the *Fordham Law Review* on October 10, 2025, at Fordham University School of Law.

INTRODUCTION

There is increasing awareness that competition can promote democracy.[1] One way of doing so is promoting competition in the marketplace of ideas,[2] which is based on the belief that truth prevails through "the widest possible dissemination of information from diverse and antagonistic sources."[3] The marketplace of ideas is important because democracy prospers when there is an unrestrained flow of information. As U.S. Supreme Court Justice Oliver Wendell Holmes Jr. wrote, "the best test of truth is the power of the thought to get itself accepted in the competition of the market."[4] As Judge Learned Hand added, it "presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection."[5] Thus, antitrust enforcement and policies that promote competition in the marketplace of ideas can also promote democracy.

The belief that antitrust policies can promote editorial competition was contentious twenty years ago.[6] Some argued that antitrust should focus on price competition and leave editorial competition among news and entertainment sources to other agencies, such as the Federal Communications Commission.[7] But that viewpoint has diminished over the past twenty years, with courts,[8] agencies,[9] and policymakers on both the left[10] and right[11]

1. Organisation for Economic Co-Operation and Development [OECD], *The Interaction Between Competition and Democracy—Note by the United States*, at 2, DAF/COMP/WD(2024)77 (Dec. 3, 2024) [hereinafter OECD US Statement] (noting that "protecting competition supports a critical element of democracy—the broad opportunity for individuals and businesses to participate in and benefit from the economy").

2. *See id*.

3. Associated Press v. United States, 326 U.S. 1, 20 (1945).

4. Abrams v. United States, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting).

5. United States v. Associated Press, 52 F. Supp. 362, 372 (S.D.N.Y. 1943), *aff'd*, 326 U.S. 1 (1945).

6. *See* Maurice E. Stucke & Allen P. Grunes, *Antitrust and the Marketplace of Ideas*, 69 ANTITRUST L.J. 249, 249 (2001).

7. *Id.* at 275–76.

8. *See, e.g.*, United States v. Daily Gazette Co., 567 F. Supp. 2d 859, 870 (S.D. W. Va. 2008) (finding that antitrust law reaches editorial competition between newspapers in a joint operating agreement); Las Vegas Sun, Inc. v. Adelson, No. 19-CV-01667, 2024 WL 1382842, at *12 (D. Nev. Mar. 31, 2024) (finding that editorial competition for readers' attention can be the basis for an antitrust claim), *rev'd on other grounds*, No. 19-CV-01667, 2025 WL 562654 (D. Nev. Feb. 20, 2025), *rev'd and remanded*, No. 24-2287, 2025 WL 2203418 (9th Cir. Aug. 4, 2025).

9. *See generally* Statement of Interest of the United States, Childs. Health Def. v. Wash. Post Co., No. 23-cv-273 (D.D.C. July 11, 2025) [hereinafter DOJ Statement of Interest]; United States v. Vill. Voice Media LLC & NT Media LLC, No. 03CV0164, 2003 WL 21659092 (N.D. Ohio Feb. 12, 2003).

10. *See* Alexandra Geese, *It's Time to Take Free Speech Back into Our Hands*, PROMARKET (Aug. 4, 2025), https://www.promarket.org/2025/08/04/its-time-to-take-free-speech-back-into-our-hands/ [https://perma.cc/BH9G-9GBY].

11. *See* ProMarket Writers, *Transcript: FTC Chairman Andrew Ferguson Keynote*, PROMARKET (Apr. 17, 2025), https://www.promarket.org/2025/04/17/transcript-ftc-chair-andrew-ferguson-keynote/ [https://perma.cc/YQM7-K59J]; Press Release, U.S. Dep't of Justice, Justice Department Files Statement of Interest on Suppression of Competition in the Marketplace of Ideas Through Deplatforming of Rival Viewpoints (July 11, 2025), https://www.justice.gov/opa/pr/justice-department-files-statement-interest-suppression-competition

recognizing antitrust's critical role in promoting a competitive marketplace of ideas.

Initially, antitrust concerns centered on the concentration of traditional media, such as newspapers, television, and radio.[12] As more people received their news online, antitrust concern shifted to tech barons, such as Google, Meta, and X.[13]

But 2025 heralded the rise of technology at least as disruptive as the internet: generative artificial intelligence (AI) and AI large language models (LLMs), including OpenAI's ChatGPT, Google's Gemini, Anthropic's Claude, Meta's Llama and Meta AI, and xAI's Grok.[14] Could LLMs herald new business models and innovations that disrupt the dominant ecosystems of Google, Apple, Meta, Amazon, and Microsoft? Or will these "data-opolies" dominate key segments of the emerging AI foundation model supply chain? Having previously discussed the potential implications of AI on privacy, competition, and innovation,[15] this Essay considers the possible implications of LLMs on the marketplace of ideas.

Many leading LLMs are owned by, or have relationships with, the current data-opolies.[16] But some believe that AI will disrupt these data-opolies. Notably, in the search monopolization case against Google, the U.S. District Court for the District of Columbia exercised considerable constraint in fashioning remedies, partially because of its belief that AI could disrupt Google's dominance in general search.[17]

How exactly will AI impact the marketplace of ideas? And what is the role of competition and antitrust policy?

-marketplace-ideas [https://perma.cc/7KFA-WJSH] ("This Antitrust Division will always defend the principle that the antitrust laws protect . . . the marketplace of ideas").

12. *See generally* Richard R. John, *How Media Concentration in the Age of Radio Prefigured Today's Big Tech Debate*, PROMARKET (June 17, 2025), https://www.promarket.org/2025/06/17/how-media-concentration-in-the-age-of-radio-prefigured-todays-big-tech-debate/ [https://perma.cc/7BXG-JQXW]; BEN H. BAGDIKIAN, THE NEW MEDIA MONOPOLY (2004) (discussing the power of several traditional media conglomerates); ROBERT W. MCCHESNEY, RICH MEDIA, POOR DEMOCRACY: COMMUNICATION POLITICS IN DUBIOUS TIMES (1999) (discussing how federal communication laws and subsidies foster traditional media barons).

13. Biden v. Knight First Amend. Inst. at Columbia Univ., 141 S. Ct. 1220, 1221 (2021) (mem.) (Thomas, J., concurring) ("We will soon have no choice but to address how our legal doctrines apply to highly concentrated, privately owned information infrastructure such as digital platforms.").

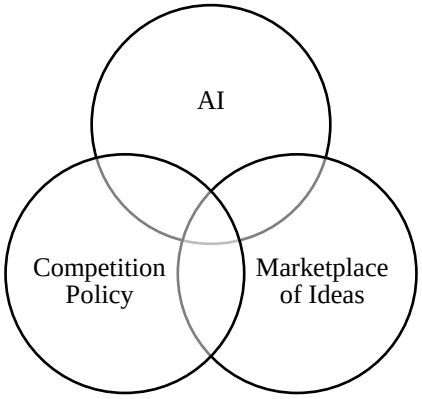
14. United States v. Google LLC, 803 F. Supp. 3d 18, 44 (D.D.C. 2025) [hereinafter *Google Remedy Case*] (noting that LLMs are a type of generative AI model "that takes text or other types of data as inputs and then generates text or other outputs based on predictions").

15. *See generally* Maurice E. Stucke, *How Will AI Accelerate the Race to the Bottom?*, CORN. J.L. & PUB. POL. (forthcoming 2026) (on file with the *Fordham Law Review*) [hereinafter Stucke, *How Will AI Accelerate*]; Maurice E. Stucke & Ariel Ezrachi, *Antitrust & AI Supply Chains*, 26 THEORETICAL INQUIRIES L. 147 (2025).

16. *See* Stucke & Ezrachi, *supra* note 15, at 164–68.

17. *Google Remedy Case*, 803 F. Supp. 3d at 36 (noting how "emergence of GenAI changed the course of this case" as a nascent competitive threat).

Figure 1



As Figure 1 illustrates, AI will likely impact the marketplace of ideas in ways beyond the reach of antitrust policy, such as the ease with which users can spread disinformation through deepfakes.[18] Likewise, algorithmic collusion and price discrimination can affect competition without directly affecting the marketplace of ideas. This Essay will consider the overlap of all three, using the Google search monopolization case as an example.

In that case, U.S. District Court Judge Amit P. Mehta noted how AI companies are striving "to transform chatbots into a kind of '[s]uper [a]ssistant'"[19] that can "help perform 'any task' requested by the user."[20] In this scenario, Google's bottleneck on general search (and its impact on the marketplace of ideas) could loosen as people shift to AI for news and information. But that is unlikely. LLMs need fresh, high-quality grounding to assess recent events, and only Google provides grounding at that scale and quality.[21] Therefore, rival LLMs must rely on Google for grounding or fall behind. This structural dependency will likely entrench Google's monopoly.

18. Jessica Dawson, *Microtargeting as Information Warfare*, 6 CYBER DEF. REV. 63, 63 (2021); *see also* UNITED NATIONS HUM. RTS. OFF. OF THE HIGH COMM'R, TAXONOMY OF HUMAN RIGHTS RISKS CONNECTED TO GENERATIVE AI 4–6, https://www.ohchr.org/sites/default/files/documents/issues/business/b-tech/taxonomy-GenAI-Human-Rights-Harms.pdf (on file with the *Fordham Law Review*) (last visited Mar. 18, 2026) (noting that disinformation created with "generative AI may be used in ways that risk inciting targeted physical violence against specific individuals or groups, or destabilising societies in ways that risk inciting widespread, sporadic, or random violence (in relation to fictional terrorist attacks, coups, or electoral fraud[)] . . . . Broadly, the generation of false, defamatory information pertaining to specific individuals constitutes an attack on a person's honour and reputation. This may result from the intentional use of generative AI models to create and disseminate defamatory disinformation or the unintentional hallucinations of generative AI models").

19. *Google Remedy Case*, 803 F. Supp. 3d at 50 (alteration in original).

20. *Id.*

21. *See infra* Part I.B.

Moreover, news organizations warned Judge Mehta how Google could leverage its dominance in search to harm the marketplace of ideas.[22] Despite recognizing this, the district court refused to address the plaintiffs' and news organizations' concerns or prevent this harm when fashioning its remedies.[23]

One could ascribe this failure to a single judge, especially compared to other courts' less constrained view of remedying harms from Google's illegal monopolization.[24] But the failure is institutional. Antitrust policy in the United States has veered far from rule-of-law ideals,[25] aided by its vacuous rule-of-reason legal standard.[26] Promoting the marketplace of ideas is even more critical now. This is not because truth will likely or always emerge—that is doubtful when the platforms are economically rewarded for attracting our attention. Instead, democracy typically advances through colloquy, not violence. For democracies to function well, the electorate must be well-informed and able to express their views without fearing violence.[27] Congress currently seems incapable of fulfilling its basic duty of regulating commerce among states. Thus, this Essay calls on states to enact legislation that a bipartisan Congress proposed several years ago.

Part I examines the role of grounding, in which search engines provide LLMs with data on recent events. Parts II and III discuss the implications of grounding on competition and the marketplace of ideas. While the solution might seem to be more competition, Part IV discusses why that is not the case in the digital economy, where behavioral advertising is a key source of revenue. Part V offers several antitrust reforms to promote healthy competition in the marketplace of ideas.

I. THE RISE OF LARGE LANGUAGE MODELS AND THE ROLE OF SEARCH ENGINES

Suppose one asked Google's and Meta's LLMs about the killing of Charlie Kirk several days after his death, specifically to contrast his killing with the

22. Memorandum of Law in Support of News/Media Alliance's Motion for Leave to Participate as Amicus Curiae at 1, *Google Remedy Case*, 803 F. Supp. 3d 18 (No. 20-cv-03010) [hereinafter NMA Amicus Brief].

23. *Google Remedy Case*, 803 F. Supp. 3d at 151.

24. *See In re* Google Play Store Antitrust Litig., 147 F.4th 917, 947 (9th Cir. 2025) (recognizing the "district court's 'large discretion' to meet the 'special needs' of the case" (quoting Ford Motor Co. v. United States, 405 U.S. 562, 573 (1972))).

25. Aaron Mak & Nate Robson, *Gail Slater Steps Down as DOJ's Antitrust Chief*, POLITICO (Feb. 12, 2026, at 11:54 ET), https://www.politico.com/news/2026/02/12/gail-slater-steps-down-as-dojs-antitrust-chief-00778156 (on file with the *Fordham Law Review*).

26. *See generally* Maurice E. Stucke, *The Good, the Bad, and the Ugly of US Antitrust*, 11 J. ANTITRUST ENF'T 283 (2023) [hereinafter Stucke, *The Good, the Bad, and the Ugly*] (compiling criticisms of the rule-of-reason standard); Maurice E. Stucke, *Does the Rule of Reason Violate the Rule of Law?*, 42 U.C. DAVIS L. REV. 1375 (2009) (same).

27. One survey asked respondents whether "using violence to stop a speech" advocating an offensive idea was acceptable. Kevin Wallsten, *Why Do So Many Young Americans Justify Political Violence?*, WALL ST. J. (Sep. 12, 2025, at 01:44 ET), https://www.wsj.com/opinion/why-do-so-many-young-americans-justify-political-violence-ee8d2e2d?st=fD9eP6 (on file with the *Fordham Law Review*). "While 93% of baby boomers and 86% of Generation X say violence is never acceptable, only 71% of millennials and 58% of Generation Z do." *Id.*

political assassinations of the 1960s. Google's Gemini, in an eight-paragraph response, differentiated the violence in four ways (nature of the target, context and motivation, rise of technology and media, and political and social response).[28] In contrast, Meta's LLM, in a two-sentence response, noted that Kirk was shot and "to check news outlets for the latest information."[29]

The disparity depends on several factors, including when one asked the question, the data on which the LLM was trained, if the LLM relies on grounding—which is also called retrieval-augmented generation (RAG)—and, if so, the source of the grounding for that LLM.

A. Training LLMs and Grounding

LLMs generally undergo several stages of training. First, the developers pretrain their LLM with large quantities of data "primarily from public web pages."[30] For example, to pretrain its Gemini LLM models, Google uses its Google Common Corpus (GCC), which consists of "large amounts of information scraped from the web and stored in a repository called Docjoins, which is 'a data structure that Google uses to store URLs.'"[31] Next, developers fine-tune their LLMs using data to achieve the desired functionality.[32]

The final step is grounding. Suppose an LLM was trained with data predating 2025. It cannot accurately opine on current events, such as "queries asking about Taylor Swift's 2025 engagement to Travis Kelce."[33] Even when trained with quality data, LLMs have "factuality" and "recency" issues.[34]

Retraining the LLM with more recent data to answer the Taylor Swift question would be costly and time consuming.[35] Instead, some LLM developers use grounding, which is "anchoring the output of a model on factual information or [an] external database."[36] An LLM is grounded "by taking the query the user enters and referring to an outside database such as a search index."[37] In responding to the Charlie Kirk query, Google's Gemini AI model used Google's proprietary search engine to ground its response

28. Maurice E. Stucke, Google Gemini, "Contrast the Killing of Charlie Kirk to the Political Assassinations in the 1960s" (Sep. 14, 2025) (on file with *Fordham Law Review*).

29. Maurice E. Stucke, Meta AI, "Contrast the Killing of Charlie Kirk to the Political Assassinations in the 1960s" (Sep. 14, 2025) (on file with *Fordham Law Review*).

30. *Google Remedy Case*, 803 F. Supp. 3d at 51.

31. *Id.* at 51–52.

32. *See id.* at 52 (noting the types of datasets that Meta AI uses for fine-tuning, for example).

33. *Id.* at 52–53.

34. *Id.* ("The capabilities of an LLM are limited by the content of its training data and when that training occurs, and their accuracy is similarly circumscribed by content and timing.").

35. *Id.* at 53.

36. *Id.* (alteration in original).

37. *Id.*

with web content and provide "links to the underlying web content."[38] Meta, in contrast, appears to lack grounding (thus its abbreviated reply).

When you ask an LLM about a breaking news story—say, a major political development—its response will depend on grounding. If it lacks grounding, the LLM can hallucinate a response or tell you to check news outlets. If the LLM has grounding, it will translate your prompt into search queries, send those queries to its partner search engine, and incorporate the most relevant recent results into its AI-generated response.[39] Thus, successful grounding requires access to a high-quality search engine.

B. How Search Results Impact the Quality of LLMs' Responses

Although LLMs may eventually displace general search queries, general search engines in 2026 served a complementary function to LLMs, especially for recent newsworthy items. To compete with ChatGPT and other LLMs, Google introduced its LLM in 2023; its AI Overviews tool in 2024; and its AI Mode in 2025, which "responds to user queries in a chatbot-style conversation, with far fewer links."[40] Interestingly, after Google introduced AI Overviews, the number of Google search queries in the United States increased by 1.5 percent to 2 percent.[41]

Even if individuals increasingly turn to LLMs for news and entertainment, these foundation models increasingly rely on grounding to yield up-to-date information.[42] Successful grounding requires the LLM to have access to "a high-quality search application program interface" (API) with a good search engine.[43] The quality of search results affects the quality of grounding and LLM responses,[44] especially for breaking news events.

Several points logically follow. First, LLMs that do not ground cannot accurately answer queries about recent news topics.[45] Second, LLMs that rely on smaller scale search engines operating with less search data will produce relatively poorer quality results, compared to LLMs relying on the

38. *Id.* at 54.

39. *Id.*

40. Isabella Simonetti & Katherine Blunt, *News Sites Are Getting Crushed by Google's New AI Tools*, WALL ST. J. (June 10, 2025, at 05:30 ET), https://www.wsj.com/tech/ai/google-ai-news-publishers-7e687141?mod=hp_lista_pos2 (on file with the *Fordham Law Review*).

41. *Google Remedy Case*, 803 F. Supp. 3d at 47. Although one might argue that the number of search queries might have been higher without AI Overviews, the testimony in the Google search case generally reinforced the complementary nature of AI. *See id.* However, there was evidence that "the volume of Google Search queries in Apple's Safari web browser declined for the first time in 22 years perhaps due to the emergence of GenAI chatbots." *Id.* at 91. But "GenAI products have not eliminated the need for [general search engines]." *Id.*

42. NMA Amicus Brief, *supra* note 22, at 9 (stating that grounding "is now the most important use of news media publisher content to Google (and has the biggest impact on publishers) for delivering current, relevant generative AI-search results in response to user queries").

43. *Google Remedy Case*, 803 F. Supp. 3d at 54.

44. *Id.* at 55 (noting that "GenAI products treat search results as fact, so the quality of search results directly impacts the quality of GenAI responses").

45. *Id.* at 53–54.

larger scale search engines for grounding.[46] Third, LLMs that rely on the leading search engine will have an even greater quality advantage (especially for unique "long tail" inquiries). Here is where the competitive search landscape becomes crucial.

C. Google's Significant Scale and Data Advantages in Search

Google has dominated general search outside of China for over a decade, with roughly a 90 percent market share.[47] But it is not just market share—it is also data-driven network effects that reinforce Google's dominance in general search over its closest rival, Bing. Given its vast ecosystem of products and services, its default settings with browsers (such as Firefox and Apple's Safari) and smartphone manufacturers, and its illegal anticompetitive restraints, Google has far more search data and personal data than Bing.[48] Google, for example, receives nine times more search queries each day than its rivals combined (and nineteen times more queries on mobile).[49] In practical terms, "[t]he volume of click-and-query data that Google acquires in 13 months would take Microsoft 17.5 years."[50]

Google then uses this data "'[a]t every stage of the search process,' from crawling and indexing to retrieval and ranking."[51] With more search and personal data than Bing, Google can continuously improve the quality of its search results. Better search quality attracts more users, especially for more unique "long-tail" search queries; more users attract more advertisers, which improves Google's monetization of search results.[52] More ad revenue allows Google to pay billions for default positions on browsers and smartphones, ensuring even more search traffic and greater scale.[53] Moreover, because "Google better understands what information users want, it is also better equipped to build a search index that contains web pages responsive to a wide range of user queries."[54] "And building and maintaining a comprehensive and fresh search index is essential to answering user queries, especially those of the long-tail variety."[55] Thus, Google's monopolization of search and search advertising enables it to maintain its dominance and prevent rivals

46. *Id.* at 85 (noting that "[a]n analysis of 3.7 million unique phrases searched on Google and/or its biggest competitor, Bing, over a seven-day period showed that 93% were seen solely by Google while just 4.8% were seen solely by Bing," and on "mobile devices, where Google has greater scale, the disparity was even higher").

47. *Search Engine Market Share Worldwide: Jan 2009–Aug 2025*, STATCOUNTER, https://gs.statcounter.com/search-engine-market-share#monthly-200901-202508 [https://perma.cc/QGK8-6MWC] (last visited Mar. 5, 2026).

48. *See* United States v. Google LLC, 747 F. Supp. 3d 1, 38 (D.D.C. 2024) [hereinafter *Google Liability Case*].

49. *Id.* at 49.

50. *Google Remedy Case*, 803 F. Supp. 3d at 79 (emphasis omitted).

51. *Id.* at 84 (alteration in original) (quoting *Google Liability Case*, 747 F. Supp. 3d at 50).

52. *Id.*

53. *Id.* (quoting *Google Liability Case*, 747 F. Supp. 3d at 161).

54. *Id.* at 87.

55. *Id.*

from scaling and improving their search results. Basically, Google's data and scale advantages translate to better search results, especially for long-tail and "fresh" queries about trending topics or recent events[56]—precisely the type of information where grounding matters for LLMs.

To ground Gemini, Google relies on its proprietary technology called FastSearch, which "delivers results more quickly than [Google] Search because it retrieves fewer documents."[57] To ground its LLM, Copilot, Microsoft relies on its search engine, Bing.[58] Many of the other leading LLMs rely on Google, Bing, or Brave's search index for grounding.[59] The implication is that LLMs that rely on Google for grounding have a competitive advantage over LLMs relying on rivals when commenting on recent news. Eventually, disadvantaged LLMs might have to switch to Google for grounding, hope their search engine will eventually scale, or build their own search infrastructure,[60] which Google estimated in 2020 would cost Apple roughly $20 billion to replicate.[61]

It makes sense for LLMs to rely on Google for grounding. But now they are in a frenemy relationship: they are simultaneously Google's customers (for grounding) while competing against Google's Gemini AI model. This raises several anticompetitive risks.

II. GROUNDING'S IMPLICATIONS ON COMPETITION

A. Anticompetitive Risks

One risk is self-preferencing: Google leveraging its historic dominance in general search to benefit its LLM, Gemini. Google could advantage its LLM over rivals by providing Gemini with superior proprietary search results.[62] A second risk is degradation. Google may degrade search results for rival AI models or limit the number of search queries per day.[63] A third risk is Google raising its rivals' costs (by charging higher fees for grounding). A fourth risk is refusal to deal: Google could refuse to provide grounding to rival LLMs. For example, OpenAI "previously sought out a partnership with Google for grounding, but Google declined."[64] As Brave noted, "Google and Bing . . .

56. *See id.*

57. *Id.* at 55 (finding that Google does not make FastSearch or FastSearch-ranked web results "directly available to third parties through an API"; instead, customers receive "only the information from those results").

58. *Id.* at 54–56.

59. *Id.* at 133.

60. *See id.* at 54 (noting how "quality issues with third-party search providers . . . compelled OpenAI to build its own search index").

61. *Google Liability Case*, 747 F. Supp. 3d 1, 43 (D.D.C. 2024). Maintaining the search engine costs billions of dollars annually. *Id.*

62. *See id.* at 55.

63. *Grounding with Google Search*, GOOGLE CLOUD (Jan. 20, 2026), https://cloud.google.com/vertex-ai/generative-ai/docs/grounding/grounding-with-google-search [https://perma.cc/JT5J-96C8] ("Grounding with Google Search has a limit of one million queries per day.").

64. *Google Remedy Case*, 803 F. Supp. 3d at 57.

do not make their search engines broadly available to other businesses," and Brave is "the only independent and commercially viable search engine API at the full scale of the global Web."[65]

B. Implications of Antitrust Risks

The district court's narrative that AI can eventually topple Google's dominance in search relies on several conditions that may not occur. First, many people would have to switch from Google to an independent LLM for search generally and for recent news and information specifically. Second, rival LLMs would need to rely on another search engine for grounding. Third, this search engine must attract sufficient traffic and personal data such that its results are of similar quality to Google's for grounding purposes. Finally, the LLM must have enough personal data on that individual to personalize the results.

These conditions present a chicken-and-egg situation for LLMs: to deliver better quality answers to recent news topics, an LLM needs good search results, which come from indexing the web and learning which specific information from these websites is most relevant to that query. But that requires scale and personal search data, which a new LLM lacks.[66] So either it partners with Google (where it risks being subject to Google's self-preferencing) or hopes that an independent search engine like Brave can eventually scale and narrow the current quality gap.

Until then, Google can leverage its search monopoly to its LLM's advantage by favoring Gemini with better, more relevant results for grounding, degrading the results it provides to smaller rival LLMs, and refusing to deal with larger LLM rivals like OpenAI. Moreover, as was the case with Microsoft's general search engine, the data-driven network effects can work against these LLMs by keeping them "stuck in place, or worse, caus[ing] a downward spiral of scale and [potential] revenue."[67] Perceiving the quality difference between Google Gemini's responses to long-tail and fresh queries and rival LLMs, users may rely more on Gemini, which, in turn, improves its results.

To illustrate, in October 2025, I asked three leading LLMs to critically assess a blog post I wrote for the Institute for New Economic Thinking, which summarized this Essay.[68] Both ChatGPT and Claude flagged as a significant error the blog's reference to Charlie Kirk's assassination. Both ChatGPT and Claude assumed he was still alive. Claude stated, "There's no

65. *Introducing AI Grounding with Brave Search API, Providing Enhanced Search Performance in AI Applications*, BRAVE (Sep. 1, 2025), https://brave.com/blog/ai-grounding/ [https://perma.cc/86W3-C4VZ].

66. *See, e.g.*, United States v. Microsoft Corp., 253 F.3d 34, 55 (D.C. Cir. 2001) (discussing this "chicken-and-egg" situation for applications and the dominant operating system).

67. *Google Remedy Case*, 803 F. Supp. 3d at 88–89.

68. Maurice Stucke, *AI, Antitrust, and the Future of the Marketplace of Ideas*, INST. FOR NEW ECON. THINKING (Nov. 17, 2025), https://www.ineteconomics.org/perspectives/blog/ai-antitrust-and-the-future-of-the-marketplace-of-ideas [https://perma.cc/Q78U-CYJ7].

credible evidence of any assassination or assassination attempt on Charlie Kirk. This appears to be either a hypothetical scenario or an error that significantly undermines the author's credibility."[69] Only Google's Gemini—grounded in Google's search index—accurately reflected the event. This disparity underscores how control over search grounding confers not only market power but directly impacts the quality of the LLM's responses, especially for "fresh" queries about recent events. When told of its error, Claude, whose knowledge cutoff at that time was January 2025, noted that this experiment

> demonstrates why the "just use search when needed" response is not sufficient. Users will not always know when an LLM is speaking beyond its knowledge, and LLMs themselves can be poor judges of their own uncertainty (as I was). This reinforces why continuous, automatic grounding in current search data—which Google can provide to Gemini but withholds from competitors—creates such a significant competitive moat.[70]

My exchange with Claude about Charlie Kirk illustrates how LLMs' disparities can affect the marketplace of ideas. Claude explained, "This was a profound lesson in epistemic humility and the exact danger [my blog post] warned about. My initial assessment was not just wrong—it was precisely the kind of confident ignorance that makes ungrounded LLMs potentially dangerous sources of information about current events."[71]

III. GOOGLE'S DOMINANCE IN SEARCH RAISES ADDITIONAL PROBLEMS IN THE MARKETPLACE OF IDEAS

These competition problems can also harm the marketplace of ideas in several ways.

A. Skewing the Content We See

Many people begin their online information-gathering journey on general search engines.[72] When many rely on a single search engine to gather information, the key bottleneck between the millions of voices on the web and the millions of people interested in those viewpoints is that search engine.

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69. Maurice E. Stucke, Claude, "Critically assess the following blog post both for accuracy and political bias" (Mar. 3, 2026) (on file with *Fordham Law Review*).

70. Maurice E. Stucke, Claude, "Interesting. When I asked several LLMs about Charlie Kirk's death, only Google's Gemini responded accurately about his death. Does Claude's response denying his death confirm the blog's point about how access to superior search indices (such as Google's search index) can confer a competitive advantage to that LLM?" (Oct. 22, 2025) (on file with the *Fordham Law Review*).

71. *Id.*

72. *Google Liability Case*, 747 F. Supp. 3d 1, 40 (D.D.C. 2024) (citing an analysis by a U.S. plaintiffs' expert that 77 percent of search sessions on Windows desktop devices began on general search engines, but that 77 percent figure is "arguably lower on mobile devices, on which users are more likely to start searches directly within an application" instead of a search engine).

If Google deems content irrelevant or of low quality, that content will not appear, or will be ranked low, in the search results.[73] That skews the marketplace of ideas in at least two ways.

First is Google's power to distort news discovery. As the European Commission found, most people click only the top results on the first page of search results. Few people click results on the second page, even fewer on the third page.[74] What does this mean in practice? By demoting a disfavored voice to the second or third page of search results, Google significantly reduces the traffic to that website, making the content effectively invisible to many who rely on the search engine for news and information.

Second is the cascading effect on LLMs. Suppose the leading LLMs—including Google Gemini—rely on Google for grounding. Google typically provides the LLM with only the first ten search results, not the second or third page of search results.[75] As a result, the LLM will not incorporate these disfavored voices, which Google relegated to the second or third page of search results, in its response to users. These users must know where to look for that disfavored viewpoint.

Granted, an LLM trained on older data can provide users with diverse viewpoints if those viewpoints are reflected in that training data. For example, an LLM without grounding could critique older Supreme Court cases. However, an LLM without grounding cannot offer the same breadth of viewpoints on recent Court cases. LLMs that rely on the leading search engine will not necessarily capture disfavored viewpoints if the search engine deems the content low quality or irrelevant. Moreover, data behind paywalls may not be accessible to the AI chatbot, so people who read paywalled news may get a different perspective than others who rely on a search engine or an AI Chatbot.

B. Weakening News Organizations' Ability to Invest in News

By skewing the traffic websites receive, the dominant search engine can also weaken news organizations' incentive and ability to invest in news. The more people use Google's search engine for news, the more dependent on Google the news websites are for traffic and advertising revenues.[76] The publishers rely on the traffic to monetize their content, whether through subscriptions or advertising.[77] But as the news publishers noted in 2025,

73. NMA Amicus Brief, *supra* note 22, at 7 (noting that Google's search engine algorithms analyze websites' data to "determine the most relevant content for users' queries").

74. European Commission AT.39740—Google Search (Shopping), 2017 paras. 456–59.

75. *Google Remedy Case*, 803 F. Supp. 3d 18, 54 (D.D.C. 2025).

76. NMA Amicus Brief, *supra* note 22, at 1.

77. United States v. Google LLC, 778 F. Supp. 3d 797, 831, 850–56 (E.D. Va. 2025); Rand Fishkin, *Who Sends Traffic on the Web and How Much?: New Research from Datos & SparkToro*, SPARKTORO (Mar. 11, 2024), https://sparktoro.com/blog/who-sends-traffic-on-the-web-and-how-much-new-research-from-datos-sparktoro/ [https://perma.cc/9CZZ-YD94].

search traffic is not free: "One of the basic (and foundational) bargains of the internet is that publishers . . . allow [general search engines] like Google to crawl their websites to develop their respective search indexes (used to provide search results) in exchange for the search referral traffic the [general search engines] generate."[78] But as Google's monopoly has grown, noted the publishers, "this quid pro quo has eroded, as Google has exploited its dominant status to extract concessions from publishers that are unavailable to Google's competitors."[79]

Many traditional news outlets have suffered with the rise of data-opolies.[80] Historically, newspapers relied on advertising and subscription revenue.[81] However, ad revenues for newspapers declined by 80 percent from 2006 to 2022—from $49 billion to $9.8 billion—and this decline was not offset by the rise in digital subscription (circulation) revenue, which increased modestly—from $10.5 billion to $11.6 billion.[82] Google and Facebook, while using newspapers' content to attract readers, have simultaneously siphoned newspapers' revenue.[83]

Once Google added AI Overviews to its search results, news websites in 2025 received even less traffic from Google—and less traffic overall.[84] The irony is that Google's AI chatbot relies on data from these third-party websites, but Google does not direct users to these websites. As Nicholas Thompson, chief executive officer of *The Atlantic*, said, "Google is shifting from being a search engine to an answer engine."[85] As a result, publishers have experienced a significant decline in traffic.

Consider Penske Media, the publisher of *Rolling Stone*. It sued Google in 2025 for increasingly using its content in AI Overviews, which Penske Media argued caused traffic to its websites to decline by more than 33 percent since

78. *See id.* at 2.

79. *Id.*

80. *See* MAURICE E. STUCKE, BREAKING AWAY: HOW TO REGAIN CONTROL OVER OUR DATA, PRIVACY, AND AUTONOMY 94, 101–02, 240–41 (2022) [hereinafter STUCKE, BREAKING AWAY]. *See generally* NEWS/MEDIA ALLIANCE, HOW GOOGLE ABUSES ITS POSITION AS A MARKET DOMINANT PLATFORM TO STRONG-ARM NEWS PUBLISHERS AND HURT JOURNALISM (2022).

81. *Newspapers Fact Sheet*, PEW RSCH. CTR. (Nov. 10, 2023), https://www.pewresearch.org/journalism/fact-sheet/newspapers/ [https://perma.cc/2RG3-JF8Q].

82. *Id.*

83. *See* STUCKE, BREAKING AWAY, *supra* note 80, at 240–41.

84. *Google Remedy Case*, 803 F. Supp. 3d 18, 150 (D.D.C. 2025) (finding that publishers are "seeing less traffic on their websites, resulting in reduced monetization and revenue"); NMA Amicus Brief, *supra* note 22, at 2 (explaining the "impact of AI summaries report[ing] that (i) generative AI-powered search reduces search referral traffic by 15% to 25%, and (ii) '60% of searches now terminate without the users clicking through to another website'" (quoting Press Release, Bain & Co., Consumer Reliance on AI Search Results Signals New Era of Marketing (Feb. 19, 2025), https://www.bain.com/about/media-center/press-releases/20252/consumer-reliance-on-ai-search-results-signals-new-era-of-marketing--bain--company-about-80-of-search-users-rely-on-ai-summaries-at-least-40-of-the-time-on-traditional-search-engines-about-60-of-searches-now-end-without-the-user-progressing-to-a/ [https://perma.cc/9FPG-BDUT])).

85. Simonetti & Blunt, *supra* note 40.

2024.[86] Google uses Penske Media's content to train and ground its LLMs: "With every article it publishes on its websites, [Penske Media] is forced to provide Google with more training and grounding material . . . adding fuel to a fire that threatens [Penske Media's] entire publishing business."[87]

A Google spokesperson disclaimed the harm alleged in Penske Media's lawsuit: "With AI Overviews, people find search more helpful and use it more, creating new opportunities for content to be discovered."[88] But in a separate monopolization case against it, Google observed how "AI is reshaping ad tech at every level" and how "the open web is already in rapid decline."[89] Why the different tone? Google, as that district court found, also monopolizes key elements of the advertising ecosystem on which many publishers rely for revenue. Google controls the leading open-web display advertising exchange; it also dominates the publisher ad server market (on which website publishers rely to auction off their display advertising space).[90] Google's illegal, anticompetitive restraints, as that district court found, further harmed web publishers.[91] In 2025, the plaintiffs asked the court to break up Google's monopoly in the ad tech stack. In response, Google argued that the government's proposed divestitures "would 'only accelerate' the [rapid] decline of the open web, 'harming publishers who currently rely on open-web display advertising revenue.'"[92] Left unsaid was how Google's AI Overviews are helping hasten that decline by reducing the search traffic to these websites.

C. News Publishers' Hobson's Choice

Many websites depend on Google for traffic to their sites and on Google's ad server tools, which help them monetize that traffic through advertising revenue. As a result of Google's monopolies in multiple markets, publishers face "an increasingly existential problem" with Google.[93] Or as the court in the Google search case colloquially put it, "publishers are caught between a rock and a hard place."[94]

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86. *See* Ben Fritz, *Rolling Stone Publisher Sues Google Over AI Summaries*, WALL ST. J. (Sep. 13, 2025, at 15:52 ET), https://www.wsj.com/tech/ai/rolling-stone-publisher-sues-google-over-ai-summaries-3afde408 (on file with the *Fordham Law Review*).

87. *Id.*

88. *Id.*

89. Emma Roth, *Google Admits the Open Web is in 'Rapid Decline'*, THE VERGE (Sep. 8, 2025, at 12:50 EDT), https://www.theverge.com/news/773928/google-open-web-rapid-decline (on file with the *Fordham Law Review*).

90. *See* United States v. Google LLC, 778 F. Supp. 3d 797, 850–56 (E.D. Va. 2025).

91. *Id*. at 864 (finding that Google forced publishers to use "a product they would not necessarily have otherwise used, by making it difficult for rival publisher ad servers to compete on the merits, and by significantly reducing rivals' market share").

92. Roth, *supra* note 89.

93. *Google Remedy Case*, 803 F. Supp. 3d 18, 150 (D.D.C. 2025).

94. *Id.*

Google, like other LLM developers, copies and uses media content from these publishers' websites to train its LLM.[95] But unlike the other developers, Google offers publishers two options: either allow Google to use the publisher's content to train its AI, including AI Overviews—which causes many users to stay within Google's ecosystem and not visit the publisher's website—or delist from Google's search index and get zero traffic from Google search.[96] Publishers who rely on Google for traffic to their websites cannot afford to be delisted from Google's search index—ergo, the Hobson's Choice.

As a result, publishers accept AI Overviews despite receiving less traffic from Google searches. The consequence is less advertising revenue, prompting more layoffs of journalists. *Business Insider* eliminated about 21 percent of its staff in 2025, "a move . . . aimed at helping the publication 'endure extreme traffic drops outside of [its] control.'"[97] In 2026, *The Washington Post* laid off one-third of its staff, in part due to declining traffic.[98] These cuts are happening in a profession already decimated by the internet. The number of people in the U.S. newspaper industry declined by 70 percent between 2006 and 2021.[99] The number of newsroom employees has more than halved, falling from 75,000 to less than 30,000.[100]

With revenues declining, more news outlets will likely pare back journalism or shut down. More counties in the United States will likely join the 200 counties in 2025 deemed news deserts.[101] Google's AI Overviews and other LLMs that rely on Google search will also decimate other

95. *News/Media Alliance Study Finds Pervasive Unauthorized Use of Publisher Content to Power Generative AI Technologies*, NEWS/MEDIA ALLIANCE (Oct. 31, 2023), https://www.newsmediaalliance.org/release-news-media-alliance-study-finds-pervasive-unauthorized-use-of-publisher-content-to-power-generative-ai-technologies/ [https://perma.cc/4E6X-XDQQ].

96. *Google Remedy Case*, 803 F. Supp. 3d at 150 (requiring publishers to choose between (1) "allow[ing] Google to crawl their content for inclusion in Google's search index," to train and fine-tune Google's AI models, and to include the publishers' content in its AI Overviews or (2) choosing the "Google Extended" option, which "allows publishers to opt out of Google using their content to train its foundation models or to ground the Gemini app and the Cloud product"). By electing the latter choice, publishers effectively opt out of "being crawled altogether." *Id.* at 151.

97. Simonetti & Blunt, *supra* note 40.

98. Alexandra Bruell, *Washington Post Lays Off One-Third of Staff in Bid to Reshape the Company*, WALL ST. J. (Feb. 4, 2026, at 17:17 ET), https://www.wsj.com/business/media/washington-post-layoffs-feburary-2026-c105b237?mod=article_inline (on file with the *Fordham Law Review*).

99. Statista Research Department, *Number of Employees in the Newspaper Industry in the United States in 2006 and 2021, by Profession*, STATISTA (Nov. 27, 2025), https://www.statista.com/statistics/626459/number-employees-newspaper-industry/ (on file with the *Fordham Law Review*).

100. *Id.*

101. *Do You Live in a News Desert?*, UNC HUSSMAN SCH. OF JOURNALISM & MEDIA, https://www.usnewsdeserts.com [https://perma.cc/5MA2-C8FK] (last visited Jan. 24, 2026) (defining news deserts as communities "with limited access to the sort of credible and comprehensive news and information that feeds democracy at the grassroots level").

contributors to the marketplace of ideas.[102] Online dictionaries, for example, are seeing decreased traffic, prompting layoffs: one insider estimated that the number of full-time commercial lexicographers declined from 200 to 25 over the past twenty years.[103]

As traditional journalism struggles, what will replace it? For over a billion people,[104] Meta is tailoring its AI to each user's context, interests, personality, culture, and "how they think about the world."[105] Meta's AI assistant, in tailoring the news to how individuals think about the world, will likely reinforce, rather than challenge, their biases and world-views, promoting echo chambers and political division.[106] And it is not just Meta. *The New York Times* reported how other AI chatbots "are going down conspiratorial rabbit holes and endorsing wild, mystical belief systems."[107] For some people, "conversations with the technology can deeply distort reality."[108]

If truth emerges from free competition with other ideas, the remedy, it seems, is to increase competition in the marketplace of ideas by removing these monopolistic bottlenecks. But as the next part explains, behavioral advertising and attention markets skew the platforms' incentives. When those incentives reward outrage and polarization, more competition may paradoxically reward falsehoods, not truths.

IV. WHY ANOTHER TIKTOK WILL NOT RESTORE THE MARKETPLACE OF IDEAS

Historically, advertising posed a conflict of interest for newspaper reporting, as advertisers "not only supplied much of the content that journalists surreptitiously called news, but they also skewed the journalists' business coverage to favor the economic interests of their clients."[109] Advertising also skews a search engine's incentives, as Google's founders

102. Greg Ip, *Will AI Choke Off the Supply of Knowledge?*, WALL ST. J. (Sep. 7, 2025, at 05:30 ET), https://www.wsj.com/tech/ai/will-ai-choke-off-the-supply-of-knowledge-8a71cbcd (on file with the *Fordham Law Review*).

103. Stefan Fatsis, *Is This the End of the Dictionary?*, ATLANTIC (Sep. 13, 2025), https://www.theatlantic.com/magazine/archive/2025/10/dictionary-survival-language-evolution/683976/ (on file with the *Fordham Law Review*).

104. TRANSCRIPT OF META PLATFORMS, INC. (META) FOURTH QUARTER 2024 RESULTS CONFERENCE CALL, META 1 (2025), https://s21.q4cdn.com/399680738/files/doc_financials/2024/q4/META-Q4-2024-Earnings-Call-Transcript.pdf [https://perma.cc/8CMV-3FDG].

105. *Id.*

106. STUCKE, BREAKING AWAY, *supra* note 80, at 235–37.

107. Kashmir Hill, *They Asked an A.I. Chatbot Questions. The Answers Sent Them Spiraling.*, N.Y. TIMES (June 13, 2025), https://www.nytimes.com/2025/06/13/technology/chatgpt-ai-chatbots-conspiracies.html (on file with the *Fordham Law Review*).

108. *Id.*; *see also* Mrinank Sharma, Miles McCain, Raymond Douglas & David Duvenaud, Who's in Charge?: Disempowerment Patterns in Real-World LLM Usage (unpublished manuscript) (on file with the *Fordham Law Review*).

109. John, *supra* note 12.

recognized.[110] Behavioral advertising skews incentives even more. WhatsApp's founders, quoting the movie *Fight Club*, explained: "Advertising has us chasing cars and clothes, working jobs we hate so we can buy shit we don't need."[111]

Fundamentally, in a behavioral advertising business model, data is collected about us, not necessarily for us. Rohit Chopra, former commissioner to the Federal Trade Commission (FTC), noted how Facebook's behavioral advertising business model is the root cause of its widespread and systemic privacy problems: "Behavioral advertising generates profits by turning users into products, their activity into assets, their communities into targets, and social media platforms into weapons of mass manipulation."[112]

That too has implications for the marketplace of ideas. The prevailing business model is not aimed at educating citizens but sustaining their attention through partisan, even toxic, content. The marketplace of ideas cannot function well when conspiracy theories, disinformation, and clickbait crowd out responsible journalism. One study examined the dispersion of all verified true and false news stories distributed on Twitter between 2006 and 2017.[113] In reviewing nearly 126,000 stories tweeted by approximately 3 million people over 4.5 million times, the study found that "falsehood diffused significantly farther, faster, deeper, and more broadly than the truth in all categories of information."[114] Falsehoods "were 70% more likely to be retweeted than the truth . . . even when controlling for the account age, activity level, and number of followers and followees of the original tweeter, as well as whether the original tweeter was a verified user."[115]

As Fyodor Dostoyevsky remarked, "[t]he trouble with man is that he's stupid. Phenomenally stupid."[116] The problem is when we collectively seek out toxic, false stories. In another experiment, a browser extension tracked 742 users on Facebook, X, and YouTube for six weeks in the summer of 2022. The browser extension "randomly hid toxic posts and comments in real-time, generating a clean experimental variation in the users' exposure to

110. Sergey Brin & Lawrence Page, The Anatomy of a Large-Scale Hypertextual Web Search Engine (unpublished manuscript) (predicting that "advertising funded search engines will be inherently biased towards the advertisers and away from the needs of the consumers" and warning of the "insidiousness" of the resulting bias).

111. *Why We Don't Sell Ads*, WHATSAPP (June 18, 2012), https://blog.whatsapp.com/why-we-don-t-sell-ads [https://perma.cc/LXR7-4DRL] (quoting FIGHT CLUB (Ross Grayson Bell, Ceán Chaffin & Art Linson 1999)).

112. FTC, DISSENTING STATEMENT OF COMMISSIONER ROHIT CHOPRA: IN RE FACEBOOK, INC., COMM'N FILE NO. 1823109 2 (July 24, 2019), https://www.ftc.gov/system/files/documents/public_statements/1536911/chopra_dissenting_statement_on_facebook_7-24-19.pdf [https://perma.cc/6JZZ-K38B].

113. *See generally* Soroush Vosoughi, Deb Roy & Sinan Aral, *The Spread of True and False News Online*, 359 SCI. 1146 (2018).

114. *Id.* at 1147.

115. *Id.*

116. FYODOR DOSTOYEVSKY, NOTES FROM THE UNDERGROUND 109 (Andrew R. MacAndrew trans., 1980).

toxic content."[117] When the extension substantially decreased these users' exposure to toxic content on Facebook, X, and YouTube (relative to the control group), several interesting findings emerged.

1. Lowering the users' exposure to toxic content on these sites reduced their engagement: "On Facebook alone, users spent approximately 9% less time daily, experienced fewer ad impressions, and generated fewer ad clicks."[118]
2. When seeing fewer toxic posts, these users themselves posted fewer toxic posts on these platforms ("the contagion effect").[119]
3. In spending less time on these sites, many of these users "partly compensated for less engagement . . . by spending more time on alternative social media platforms, such as Reddit."[120]

Another study of 51,680 political videos on TikTok during the 2024 U.S. presidential election cycle had similar findings: "[T]oxic and partisan content consistently attracts more user engagement—despite ongoing moderation efforts."[121] People were far more drawn to partisan content: 77 percent of videos analyzed "were explicitly partisan and were associated with approximately twice the engagement of nonpartisan content."[122] Partisan videos received "nearly 2.2 times more median views and

117. Rafael Jiménez-Durán, *How Toxic Content Drives User Engagement on Social Media*, PROMARKET (July 16, 2025), https://www.promarket.org/2025/07/16/how-toxic-content-drives-user-engagement-on-social-media/ [https://perma.cc/2Q2N-JGZE]; *see also* George Beknazar-Yuzbashev, Rafael Jiménez-Durán, Jesse McCrosky & Mateusz Stalinski, *Toxic Content and User Engagement on Social Media: Evidence from a Field Experiment* (CESifo, Working Paper No. 11644, 2025).

118. Jiménez-Durán, *supra* note 117 (noting the study's index "combin[ed] different metrics of engagement (active time spent, content consumed, reactions, posts, reposts, browsing sessions, ad impressions, ad clicks, and post clicks) fell by 0.054 standard deviations . . . across all three platforms, with the stronger effects on Facebook, followed by Twitter and then YouTube"); *accord* Beknazar-Yuzbashev et al., *supra* note 117, at 4 (finding that "respondents who encounter more toxic posts are 6.1 percentage points (18% relative to the mean) more likely to click to view the comment sections of the posts").

119. Beknazar-Yuzbashev et al., *supra* note 117, at 3 (finding that users in the treatment group significantly reduced the average toxicity of their own posts and comments on Facebook and Twitter by 30 percent and 25 percent relative to the mean, respectively); *see also* Adam D.I. Kramer, Jamie E. Guillory & Jeffrey T. Hancock, *Experimental Evidence of Massive-Scale Emotional Contagion Through Social Networks*, 111 PNAS 8788, 8788 (2014) (experimenting on 689,003 unsuspecting Facebook users to see whether their "emotional states can be transferred to others via emotional contagion, leading people to experience the same emotions without their awareness" and finding that, when reducing positive emotional content in their news feed, the users were less positive and more negative in their own Facebook posts and "when negative expressions were reduced, the opposite pattern occurred").

120. Jiménez-Durán, *supra* note 117; *accord* Beknazar-Yuzbashev et al., *supra* note 117, at 3 (finding that "[o]n average, users spent 1.8 more minutes per day on these non-treated platforms, representing a 22% increase relative to the mean," and that "[t]his increase was primarily driven by additional time spent on other social media websites such as Reddit").

121. Ahana Biswas, Alireza Javadian Sabet & Yu-Ru Lin, *Toxic Politics and TikTok Engagement in the 2024 U.S. Election*, 6 HARV. KENNEDY SCH. MISINFORMATION REV., no. 4, 2025, at 1, 1.

122. *Id.*

interactions compared to non-partisan videos."[123] People were even more drawn to politically "toxic" videos, which contained "insults, threats, and harassment"; these toxic videos had 2.3 percent more interactions than nontoxic videos.[124]

Many social media platforms are locked in toxic competition for our attention. Responsible journalism that "avoid[s] pandering to lurid curiosity"[125] will not necessarily flourish in this ecosystem. If a social media platform clamps down on toxic content, user engagement would likely decline, reducing the platform's revenues. Moreover, rivals would benefit as users switch to their platforms for toxic content. Toxic content on those platforms, as a result, would increase because of the contagion effect. Finally, the false, divisive narratives (which these social media platforms amplify) increase polarization.

These misaligned incentives predate LLMs, but AI accelerates these distortions. Personal data trains the AI model, which profiles us to predict what will attract and sustain our behavior and what advertisements will drive our behavior. The AI model then learns through continual experimentation what does or does not work, refining its ability to better predict and manipulate our behavior, generating even more advertising revenue that the company can use to improve its AI.[126] As the FTC found, large social media companies relied on "complex algorithmic and machine learning models that looked at, weighed, or ranked a large number of data points . . . that were intended to boost User Engagement and keep users on the platforms."[127] Greater engagement also translates to more opportunities for monetization through behavioral advertising.[128]

Foreign governments may also use AI to sow discord.[129] Governments, such as Russia, China, and North Korea, can use AI to ramp up their "massive information warfare campaigns" with even more refined microtargeting and individual-level messaging to influence behavior and with even more "insidious dis/misinformation campaigns," including deepfakes.[130]

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123. *Id.*

124. *Id*.

125. Leighton Walter Kille, *Code of Ethics of the Society of Professional Journalists*, JOURNALIST'S RES. (Mar. 30, 2009), https://journalistsresource.org/home/code-of-ethics/ [https://perma.cc/UZ6H-6FKY].

126. *See* FTC, A LOOK BEHIND THE SCREENS: EXAMINING THE DATA PRACTICES OF SOCIAL MEDIA AND VIDEO STREAMING SERVICES, at i (2024).

127. *Id.* at 51 (noting how AI models "predicted how likely a user was to be interested in or engage with content and ranked the order of the content presented").

128. *See id.*

129. Dawson, *supra* note 18, at 64 (observing that "[w]hat started as a way for businesses to connect directly with potential customers has transformed into a disinformation machine at a scale that autocratic governments of the past could only imagine"); *see also* SARAH WYNN-WILLIAMS, CARELESS PEOPLE: A CAUTIONARY TALE OF POWER, GREED, AND LOST IDEALISM 372–73 (2025) (raising a similar point about Meta).

130. Dawson, *supra* note 18, at 63; *see also* UNITED NATIONS HUM. RTS. OFF. OF THE HIGH COMM'R, *supra* note 18, at 4, 7; *supra* note 18. *See generally The Need to Protect Americans' Privacy and the AI Accelerant before the U.S. S. Comm. on Com., Sci., and Transp.*, 118th Cong. (2024) (written testimony of Udbhav Tiwari, Dir. of Global Prod. Pol'y, Mozilla).

Moreover, politicians can use the social media's AI models to propel themselves into power and maintain control.[131] Facebook, as a former executive noted, "rewards outsider candidates who post inflammatory content that drives engagement," thereby "incentivizing and rewarding the worst kinds of political ugliness."[132]

This marketplace will not necessarily reward truth; instead, it rewards content that sustains attention and manipulates behavior. This dynamic leads to an attention economy that prioritizes toxic, divisive content. Thus, another TikTok means adding another surveillance-based business model seeking to capture more of our attention, data, and money with sensationalist content.[133]

V. WHAT NEEDS TO BE DONE?

First, policymakers must curb the toxic competition arising from behavioral advertising and attention markets. As long as firms profit from keeping us engaged and getting us to buy things we might not otherwise have wanted at the highest price we are willing to pay, then their AI tools will optimize for what attracts us (division) rather than truth. Here, policymakers cannot rely on more competition or their jurisdiction's antitrust tools to rectify this market failure. Instead, policymakers must turn to privacy and consumer protection policies to align the incentives of market participants with those of consumers regarding their privacy.[134] Among such guardrails are regulations "limiting (or requiring individuals to opt out of or into) behavioral advertising and personalized recommendations."[135]

Once individuals have greater control over their data (and the inferences that AI generates from their data), policymakers can then turn to antitrust tools to promote healthy competition. But enforcers need better tools than the current Sherman Act.[136]

Let's start with what the Sherman Act can do. It can target monopolistic restraints that stifle *healthy* competition in the marketplace of ideas.[137] Although editorial competition may be cognizable under the federal antitrust

131. WYNN-WILLIAMS, *supra* note 129, at 250–51 (discussing how the Philippines' president weaponized Facebook's algorithm); *id.* at 264–66 (discussing how the campaign of President Donald J. Trump used Facebook to target voters with inflammatory misinformation and fundraising messages); *id.* at 345–59 (discussing how Meta's platforms were inflaming hate speech, violence, and ethnic tension in Myanmar).

132. *Id.* at 251–52.

133. Annika Kannen, *Unpacking TikTok Surveillance: Understanding Privacy Concerns and Implications*, AMNESTY INT'L (Jan. 9, 2024), https://aims.amnesty.nl/2024/01/09/unpacking-tiktok-surveillance-understanding-privacy-concerns-and-implications/ [https://perma.cc/29BR-YSAY].

134. *See* Stucke, *How Will AI Accelerate*, *supra* note 15.

135. *Id.* (quoting INT'L COMPETITION NETWORK, COMPETITION LAW ENFORCEMENT AT THE INTERSECTION BETWEEN COMPETITION AND PRIVACY: AGENCY CONSIDERATIONS 14 (2024), https://www.internationalcompetitionnetwork.org/wp-content/uploads/2024/12/Intersection-project-agency-considerations.pdf [https://perma.cc/8LDL-K8UC]).

136. 15 U.S.C. §§ 1–7 (1890).

137. *Id.* § 2.

laws,[138] not every restraint or harm to the marketplace of ideas is cognizable. For example, monopolists can unilaterally reduce editorial quality without violating § 2 of the Sherman Act.[139]

But antitrust can promote healthy competition in the marketplace of ideas by "preventing large companies from dominating this space."[140] One example is the United States blocking Random House from acquiring Simon & Schuster under section 7 of the Clayton Act.[141] Enforcers can also directly challenge monopolistic restraints, such as Google's exclusive dealing to maintain dominance in the general search market, "which paves the road to a richer and more vibrant and diverse marketplace of ideas."[142]

Antitrust can also eliminate the publishers' Hobson's Choice. Google is leveraging its dominance in search to advantage its LLM. Google gets the publishers' content for free.[143] In contrast, other LLMs, which lack monopoly power, cannot impose this Hobson's Choice on publishers. They, as the publishers noted, "must negotiate for access to publisher content to enable their [grounding]-based AI search."[144] Moreover, Google can leverage its dominance in search to deliver better AI results for recent topics. In fact, Google's Gemini "surpassed OpenAI's ChatGPT to become the top free app on Apple's App Store" in 2025.[145]

Consequently, in the Google search monopolization case, the federal government and a bipartisan coalition of states proposed a remedy that gave

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138. DOJ Statement of Interest, *supra* note 9, at 4–5 (noting that "antitrust laws protect all dimensions of competition," including news "competition in the marketplace of ideas" and how "the Sherman Act's prohibitions apply fully when restraints of trade limit non-price features such as the type or quality of information that may compete in the marketplace for ideas").

139. For some of the limits of antitrust and areas of policy reform, see generally Kaleb Byars, *Can Antitrust Remedy Big Tech Censorship?*, PROMARKET (Apr. 4, 2025), https://www.promarket.org/2025/04/04/can-antitrust-remedy-big-tech-censorship/ [https://perma.cc/888W-6Z8K]; Kaleb Byars, *An "Essential" Solution: Reworking the Essential Facilities Doctrine to Address Big Tech's Harm to the Marketplace of Ideas*, 91 MISS. L.J. 263 (2023).

140. OECD US Statement, *supra* note 1, at 5.

141. 15 U.S.C. §§ 12–27; *id.* § 18; Press Release, DOJ, Justice Department Obtains Permanent Injunction Blocking Penguin Random House's Proposed Acquisition of Simon & Schuster (Oct. 31, 2022), https://www.justice.gov/archives/opa/pr/justice-department-obtains-permanent-injunction-blocking-penguin-random-house-s-proposed [https://perma.cc/87F2-TNW4] (stating that the "proposed merger would have reduced competition, decreased author compensation, diminished the breadth, depth, and diversity of our stories and ideas, and ultimately impoverished our democracy").

142. OECD US Statement, *supra* note 1, at 5–6.

143. NMA Amicus Brief, *supra* note 22, at 13 (noting that "Google's actions, if allowed to continue, threaten not only to entrench its monopoly in search, but also to dilute or eviscerate the emerging value of publisher content for [grounding]").

144. *Id.*; *see also* Michelle Chapman, *OpenAI to Start Using News Content from News Corp. as Part of a Multiyear Deal*, AP (May 29, 2024, at 07:01 ET), https://apnews.com/article/openai-news-corp-a49144d381796df5729c746f52fbef19 [https://perma.cc/UZ7F-CLL6] (noting that OpenAI's licensing deals with media companies including News Corp., Associated Press, Germany's Axel Springer, Spain's Prisa Media, France's *Le Monde* newspaper and London-based *Financial Times* to use their data to train its LLM).

145. Ann-Marie Alcántara, *Google Puts Its Popular AI Video Generator into YouTube Shorts*, WALL ST. J. (Sep. 16, 2025, at 10:30 ET), https://www.wsj.com/tech/ai/youtube-shorts-veo-3-ai-video-03103dc7 (on file with the *Fordham Law Review*).

publishers a real choice: "allow Google to crawl its website contents for inclusion in Google's search index but decline to make that content available to train an LLM. Google would be required to offer the right to opt out on a product-by-product basis."[146]

The district court, however, declined to adopt the plaintiffs' proposed remedies. The court faulted the plaintiffs for failing to present any testimony from publishers.[147] But the court went on to say that Google's conduct and the proposed remedy fell outside the scope of its proceedings. It considered only Google's historical contractual arrangements with general search engine distributors. The court failed to consider whether Google was seeking to leverage its search monopoly to AI chatbots.[148] The court compounded its error by not subjecting Google to antiretaliation, anticircumvention, or self-preferencing provisions,[149] partially because it believed LLMs "already are in a better position, both financially and technologically, to compete with Google than any traditional search company has been in decades (except perhaps Microsoft)."[150] The court's reasoning is baffling. Although LLMs might eventually challenge Google's dominance in search, that will not happen soon when LLMs are dependent on search results for grounding.[151]

Nonetheless, the court acknowledged that the proceedings were "as much about promoting competition among [general search engines] as ensuring that Google's dominance in search does not carry over into the [generative AI] space."[152] But it failed to address Google entrenching its power in general search and leveraging it to favor its LLM.

This result was not preordained. As the U.S. Court of Appeals for the Ninth Circuit recently noted, district courts have broad discretion to remedy such monopolistic restraints.[153] Where a monopoly like Google has been found to violate the Sherman Act repeatedly, "the available injunctive relief is broad, including to 'terminate the illegal monopoly, deny to the defendant

146. *Google Remedy Case*, 803 F. Supp. 3d 18, 150 (D.D.C. 2025).

147. *Id.* at 151 ("The court does not doubt that publishers face new challenges because of GenAI technologies, but there can be no cure without evidence to support it.").

148. *Id.*

149. *Id.* at 38–39.

150. *Id.* at 107.

151. *Id.* at 114 (granting "Qualified Competitors" access to Google's search index to improve their search quality). While Google periodically updates its search index, these Qualified Competitors received only "a one-time snapshot of the relevant data contained in Google's Search Index at or around the time they are so certified by Plaintiffs." *Id.* at 117–18. The court found that periodic data disclosure over several years would go "beyond what is needed to 'cure the ill effects of the illegal conduct.'" *Id.* at 118 (quoting Ford Motor Co. v. United States, 405 U.S. 562, 575 (1972)).

152. *Id.* at 36.

153. *In re* Google Play Store Antitrust Litig., 147 F.4th 917, 946 (9th Cir. 2025) ("[T]he Supreme Court has repeatedly endorsed the principle that district courts are 'clothed with "large discretion" to fit the decree to the special needs of the individual case.'" (quoting *Ford Motor Co.*, 405 U.S. at 573, 577–78)).

the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future.'"[154]

But this result raises the Sherman Act's larger problems. Monopolization litigation is time-consuming and costly. For example, the FTC investigated Google for years but, over staff dissent, closed its investigation in 2013. Thereafter, the United States and state attorneys general began investigating Google in 2019.[155] In October 2020, they filed their monopolization case. After nearly three years of discovery, the district court began in September 2023 a nine-week bench trial, featuring dozens of witnesses, multiple experts, and over 3,500 exhibits. In August 2024, the court ruled in plaintiffs' favor but ordered remedies only in mid-2025. In January 2026, Google joined Nvidia, Microsoft, and Apple in becoming the fourth company ever to reach a market capitalization of four trillion dollars; that same month, Google appealed the district's court's ruling, ironically citing the intense competition it faces.[156] The appeal will likely add several more years. Still, this decade-long monopolization case might be quicker than those against IBM,[157] AT&T,[158] and Microsoft.[159] Although *Rolling Stone*'s owner is challenging Google for its Hobson's Choice, the reality is that most plaintiffs' complaints do not survive the first step of the Supreme Court's

154. *Id.* (quoting Optronic Techs., Inc. v. Ningbo Sunny Elec. Co., 20 F.4th 466, 486 (9th Cir. 2021)).

155. Brent Kendall & John D. McKinnon, *Justice Department Is Preparing Antitrust Investigation of Google*, WALL ST. J. (June 1, 2019, at 13:06 ET), https://www.wsj.com/articles/justice-department-is-preparing-antitrust-investigation-of-google-11559348795 (on file with the *Fordham Law Review*).

156. Lily Jamali, *Google Appeals Landmark Antitrust Verdict Over Search Monopoly*, BBC (Jan. 16, 2026), https://www.bbc.com/news/articles/clyn0ek5rdpo [https://perma.cc/5FNF-B4E3]; *see also* Dara Kerr, *Google Is Defiant After Losing Antitrust Lawsuit and Being Called a 'Monopolist'*, NPR (Aug. 6, 2024, at 04:44 ET), https://www.npr.org/2024/08/06/nx-s1-5064669/google-loses-antitrust-monopoly-justice-department-lawsuit [https://perma.cc/UHM5-U4C9].

157. In 1969, the United States sued IBM for illegally monopolizing the market of general purpose digital computers. Memorandum from DOJ Antitrust Div., United States' Memorandum on the 1969 Case 2 (Oct. 5, 1995). In 1975, the monopolization case went to trial. "After thousands of hours of testimony . . . and the submission of tens of thousands of exhibits," the incoming Reagan administration on January 8, 1982, withdrew its antitrust case. Jerry M. Norman, *The Antitrust Case, U.S. v. IBM, Is Tried and Eventually Withdrawn*, HIST. INFO., https://www.historyofinformation.com/detail.php?entryid=1157 [https://perma.cc/2XTX-6GP7] (last visited Jan. 24, 2026).

158. The United States sued AT&T in 1974. The monopolization trial began in 1981, the incoming Reagan administration settled the case in 1982, and the divestitures occurred in 1984. Jake Kobrick, *The Breakup of "Ma Bell":* United States v. AT&T, FED. J. CTR., https://www.fjc.gov/history/spotlight-judicial-history/breakup-ma-bell [https://perma.cc/3CYV-DHE5] (last visited Jan. 24, 2026).

159. Anna Domanska, *The Famous History of Microsoft's Antitrust Case*, INDUS. LEADERS (Feb. 18, 2018), https://www.industryleadersmagazine.com/famous-history-microsofts-antitrust-case/ [https://perma.cc/D93C-HCWX] (recounting investigations and litigation spanning from 1992 to 2004).

rule-of-reason standard.[160] But even if they do here, the publisher may still lack adequate remedies.

To address the time-consuming, costly, and unpredictable outcomes of many monopolization cases, Europe implemented the Digital Markets Act[161] and the Digital Services Act,[162] which provide clearer benchmarks for applicability and obligations. In 2021, a bipartisan coalition of Congress introduced similar legislation, including the following, among other bills:

- The American Choice and Innovation Online Act,[163] which sought to restore "competition online and ensure[] that digital markets are fair and open by preventing dominant online platforms from using their market power to pick winners and losers, favor their own products, or otherwise distort the marketplace through abusive conduct online."[164]
- The Ending Platform Monopolies Act,[165] which would allow the FTC and U.S. Department of Justice to prevent "dominant online platforms from leveraging their monopoly power to distort or destroy competition in markets that rely on that platform."[166]

Although the statutes' language could be updated to specifically address AI and grounding, the laws cure several ailments in current U.S. antitrust policy.

First, both bills more clearly demarcate covered platforms, obviating the need for courts to ramble through economic theory in defining markets.[167]

Second, instead of the current antitrust rule-of-reason legal standard, both laws prohibit several categories of conduct by dominant platforms. For example, it would be presumptively illegal, under the American Choice and Innovation Online Act, for dominant platforms to

160. Nat'l Collegiate Ath'l Ass'n v. Alston, 141 S. Ct. 2141, 2161 (2021) (stating that "courts have disposed of nearly all rule of reason cases in the last 45 years on the ground that the plaintiff failed to show a substantial anticompetitive effect[]").

161. Commission Regulation 2022/1925 of Sep. 14, 2022 O.J. (L265).

162. Commission Regulation 2022/2065 of Oct. 19, 2022 O.J. (L277).

163. S. 2992, 117th Cong. (2022); H.R. 3816, 117th Cong. (2022).

164. Press Release, H. Comm. on the Judiciary, Chairman Nadler Statement for the Markup of H.R. 3816, The American Innovation and Choice Online Act (June 24, 2021), https://democrats-judiciary.house.gov/media-center/press-releases/chairman-nadler-statement-for-the-markup-of-hr-3816-the-american-innovation-and-choice-online-act [https://perma.cc/46HN-48Z8].

165. H.R. 3825, 117th Cong. (2022).

166. Press Release, H. Comm. on the Judiciary, Chairman Nadler Applauds Committee Passage of Bipartisan Tech Antitrust Legislation (June 24, 2021), https://democrats-judiciary.house.gov/media-center/press-releases/chairman-nadler-applauds-committee-passage-of-bipartisan-tech-antitrust-legislation [https://perma.cc/FTB3-FTAN].

167. *See* H.R. 3816 § 2(g)(4) (defining covered platforms); *see also* H.R. 3825 § 5(5) (same).

- advantage their "own products, services, or lines of business over those of another business user," which would prevent Google from advantaging its foundation model with better search results for grounding;[168] or
- discriminate "among similarly situated business users," which would prevent Google from advantaging other foundation models (including those in which it has invested) with better search results for grounding, and which the publishers could argue extends to Google discriminating between publishers who allow their data to be used to train the LLMs and those who do not.[169]

Likewise, the Ending Platform Monopolies Act would target the conflict of interest when Google competes against other LLMs, while supplying (or refusing to supply) them with the search results needed for grounding. That Act would prohibit dominant platforms, like Google's search platform, from owning, controlling, or having a beneficial interest in an LLM that uses Google search for the provision of services or when owning, controlling, or having a beneficial interest in that LLM "gives rise to a conflict of interest."[170] Effectively, Google could not simultaneously operate the leading search engine while operating an LLM that relies on that search engine for grounding.

Third, to overcome the presumption of illegality, the dominant platform would have to prove with clear and convincing evidence that its conduct falls within one of the American Choice and Innovation Online Act's exceptions.[171]

Despite extensive legislative inquiry into data-opolies and bipartisan push for the legislation, neither bill received a floor vote, in part because of the data-opolies' lobbying.[172] Congress seems even less capable or interested in addressing these issues now, especially with the president stifling efforts by both Republican- and Democratic-led state legislatures to regulate AI.[173]

Consequently, if the Sherman Act, under the courts' current rule-of-reason legal standard, is an expensive tool with unpredictable results, states may respond with legislation modeled after the Digital Markets Act, American Choice and Innovation Online Act, and Ending Platform Monopolies Act.

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168. H.R. 3816 § 2(a)(1).

169. *Id.* § 2(a)(3).

170. H.R. 3825 § 2(a). The Ending Platform Monopolies Act defines a conflict of interest nonexclusively. For specifics, see *id.* § 2(b).

171. H.R. 3816 § 2(c). The House version originally limited the defenses to conduct by the dominant firm, but the Committee amended the bill to add a defense for "increas[ing] consumer welfare." The House amendment is problematic given the vacuousness of consumer welfare, how it means different things to different people, and that it does not consider upstream effects to workers and suppliers. The Senate version wisely excluded this consumer welfare defense. American Choice and Innovation Online Act, S. 2992, 117th Cong. (2022).

172. *See* Stucke, *The Good, the Bad, and the Ugly*, *supra* note 26, at 284–85.

173. *Fact Sheet: President Donald J. Trump Ensures a National Policy Framework for Artificial Intelligence*, WHITE HOUSE (December 11, 2025), https://www.whitehouse.gov/fact-sheets/2025/12/fact-sheet-president-donald-j-trump-ensures-a-national-policy-framework-for-artificial-intelligence/ [https://perma.cc/37C7-BHBU].

Twenty states have enacted privacy legislation.[174] They could enact antitrust legislation to prevent the data-opolies from stifling the marketplace of ideas.

CONCLUSION

Following Charlie Kirk's death, the governor of Utah highlighted "Kirk's focus on the free exchange of ideas and forgiving enemies, while also urging Americans to avoid the 'cancer' of social media, to engage in debates with respect and to 'stop hating our fellow Americans.'"[175] Governor Spencer J. Cox encouraged "people to log off, turn off, touch grass, hug a family member, go out and do good in your community."[176] Unfortunately, that did not stem the divisive content about Kirk on social media.[177]

Both the political left and right are concerned about the impact that attention markets and behavioral advertising are having on our children and us generally. They are also, in their own way, worried about data-opolies stifling the marketplace of ideas. Conservatives are wary of data-opolies stifling conservative viewpoints.[178] Liberals are concerned about the outsized role these tech barons have in elections and democracy.[179]

Granted, one can still discuss topics—whether online or in person. But if few hear these messages, then it is not really a marketplace of ideas. Nor is there a vibrant marketplace when a few powerful gatekeepers select what messages to broadcast. Nor is there much incentive to invest in responsible journalism when powerful gatekeepers reward sensationalist speakers who inflame passions and deprive thoughtful speakers who invested in their research of an audience.

Several states and the United States have also appealed the district court's narrow, incomplete remedies in the Google search case. Perhaps the U.S. Court of Appeals for the District of Columbia Circuit might remedy the publishers' Hobson's Choice and prevent Google from leveraging its search monopoly in AI. Alternatively, perhaps *Rolling Stone*'s publisher might

174. Stucke, *How Will AI Accelerate*, *supra* note 15.

175. Brigham Tomco, *Gov. Cox: Utah Can Lead the Nation in Addressing Political Polarization After the Kirk Assassination*, DESERETNEWS (Sep. 12, 2025, at 18:46 MDT), https://www.deseret.com/politics/2025/09/12/what-utah-governor-spencer-cox-said-about-charlie-kirk-assassination/ [https://perma.cc/X2GZ-ALXG].

176. Karen Garcia, Grace Toohey & Hannah Fry, *'A Cancer on Our Society': Toxic Social Media After Kirk Shooting Brings Call to Log Off, Put Down Phones*, L.A. TIMES (Sep. 13, 2025, at 03:00 PT), https://www.latimes.com/california/story/2025-09-13/social-media-discourse-utah-governor-comments-on-charlie-kirk-shooting [https://perma.cc/9Q6R-CY25].

177. David Bauder, *Social Media Has Us in Its Grip and Won't Let Go. The Charlie Kirk Killing Is a Case Study*, AP (Sep. 16, 2025, at 19:34 ET), https://apnews.com/article/social-media-charlie-kirk-nepal-algorithm-d0a8baf12a16b2ed870283e64ee24a19 [https://perma.cc/W43Y-6BXG].

178. *See, e.g.*, Press Release, FTC, Federal Trade Commission Chairman Andrew N. Ferguson Issues Warning Letter to Apple CEO Tim Cook (Feb. 12, 2026), https://www.ftc.gov/news-events/news/press-releases/2026/02/federal-trade-commission-chairman-andrew-n-ferguson-issues-warning-letter-apple-ceo-tim-cook [https://perma.cc/M2AS-E42R] (expressing concern about reports of Apple News systematically promoting news articles from left-wing news outlets and suppressing news articles from more conservative publications).

179. Geese, *supra* note 10.

prevail in its antitrust lawsuit. Either way, by that point, the marketplace of ideas will likely be weaker as more revenue-starved publishers shutter. While Congress should act, that, too, is unlikely. Consequently, the best bet to address the threats posed by generative AI to competition and the marketplace of ideas are the states.