No. 25-949

IN THE

Supreme Court of the United States

JOHN DOE 1 AND JOHN DOE 2,

Petitioners,

v.

X CORP., SUCCESSOR IN INTEREST TO TWITTER, INC.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the court of appeals correctly applied the longstanding consensus interpretation of Section 230(c)(1) of the Communications Decency Act, 47 U.S.C. § 230(c)(1), to bar petitioners' claims seeking to hold an online platform liable for not removing more quickly allegedly unlawful third-party content.

2. Whether the court of appeals correctly applied the exception to Section 230 protection in the Fight Online Sex Trafficking Act, 47 U.S.C. § 230(e)(5)(A), to petitioners' allegations.

RULE 29.6 DISCLOSURE STATEMENT

X Corp. is wholly owned by X Holdings Corp. X Holdings Corp. is wholly owned by X.AI Holdings LLC. X.AI Holdings LLC is wholly owned by Space Exploration Technologies Corp. No publicly held corporation owns 10 percent or more of the stock of X Corp., X Holdings Corp., X.AI Holdings LLC, or Space Exploration Technologies Corp.

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INTRODUCTION

Arising from a suit against Twitter based on alleged violations of law occurring in 2020,[1] this is the latest in a series of petitions urging this Court to disrupt the settled interpretation of Section 230(c)(1) of the Communications Decency Act, 47 U.S.C. § 230(c)(1), on which the digital economy has relied for nearly 30 years. Like others who have raised variations on the same arguments, petitioners do not come close to justifying that destabilizing step.

As petitioners concede (Pet. 12, 14), every federal court of appeals to analyze Section 230(c)(1) since its enactment in 1996 has agreed on how to read the core statutory command. Specifically, the directive that "[n]o provider … of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider" bars claims arising from a platform's conduct as a publisher of third-party content.[2] In

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[1] Years after the events at issue in this case, Twitter, Inc. merged into X Corp. and no longer exists. The Twitter platform was renamed to "X." Given the timing of the events at issue, respondent refers to itself and the X platform as "Twitter" herein.

[2] *See, e.g.*, *Monsarrat v. Newman*, 28 F.4th 314, 319 (1st Cir. 2022); *Force v. Facebook, Inc.*, 934 F.3d 53, 66 (2d Cir. 2019); *Green v. AOL, Inc.*, 318 F.3d 465, 468 (3d Cir. 2003); *Zeran v. AOL, Inc.*, 129 F.3d 327, 330-31 (4th Cir. 1997); *Doe v. MySpace, Inc.*, 528 F.3d 413, 420 (5th Cir. 2008); *Jones v. Dirty World Ent. Recordings LLC*, 755 F.3d 398, 406-07 (6th Cir. 2014); *Webber v. Armslist LLC*, 70 F.4th 945, 956 (7th Cir. 2023); *Johnson v. Arden*, 614 F.3d 785, 791-92 (8th Cir. 2010); *Doe v. Grindr Inc.*, 128 F.4th 1148, 1151 (9th Cir. 2025); *Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 740 (9th Cir. 2024); *Dyroff v. Ultimate*

short, "lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred." *Zeran*, 129 F.3d at 330.

The courts' uniform interpretation of Section 230(c)(1) has not occurred in a vacuum. Congress has ratified the consensus construction by repeatedly amending and extending Section 230 without materially altering the long and well-understood prescription of Section 230(c)(1).[3] Legislative

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Software Grp., Inc., 934 F.3d 1093, 1097-98 (9th Cir. 2019); *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1101-02 (9th Cir. 2009); *Ben Ezra, Weinstein, & Co. v. AOL Inc.*, 206 F.3d 980, 984-85 (10th Cir. 2000); *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006); *Marshall's Locksmith Servs. Inc. v. Google, LLC*, 925 F.3d 1263, 1267 (D.C. Cir. 2019).

[3] Pub. L. No. 105-277, div. C, tit. XIV, § 1404(a), 112 Stat. 2681-739 (1998) (amending and reorganizing subsections in Section 230); Pub. L. No. 106-113, div. B, § 1000(a)(9) [tit. III, § 3005], 113 Stat. 1536, 1501A-550 (1999) (incorporating Section 230 into the Lanham Act); Pub. L. No. 106-386, div. C, § 2004(a), 114 Stat. 1548 (2000) (incorporating Section 230 into the Federal Alcohol Administration Act); Pub. L. No. 107-317, § 4, 116 Stat. 2767 (2002) (defining certain entities that qualify as interactive computer services under 47 U.S.C. § 230(c)); Pub. L. No. 109-248, tit. V, § 502(a), 120 Stat. 625 (2006) (incorporating Section 230 into amendment to Child Protection and Obscenity Enforcement Act); Pub. L. No. 109-347, tit. VIII, § 802(a), 120 Stat. 1953 (2006) (incorporating Section 230 into new provision in the Unlawful Internet Gambling Enforcement Act); Pub. L. No. 110-425, § 3(a), 122 Stat. 4821 (2008) (incorporating Section 230 into the Controlled Substances Act); Pub. L. No. 111-223, § 3(a), 124 Stat. 2381 (2010) (barring enforcement of certain foreign defamation judgments inconsistent with Section 230); Pub. L. No. 115-164, §§ 3(a), 4(a), 132 Stat. 1253, 1253-54 (2018) (amending Section

materials accompanying those amendments have expressly indicated that "courts have correctly interpreted section 230(c)," H.R. REP. NO. 107-449, at 13 (2002) (citations omitted), and that the provision is "an essential underpinning of the modern internet," S. REP. NO. 116-17, at 83 (2019). The Executive Branch has concurred that Section 230(c)(1) "is most naturally read to prohibit courts from holding a website liable for failing to block or remove third-party content." Brief for the United States as Amicus Curiae in Support of Vacatur, *Gonzalez v. Google LLC*, No. 21-1333, 2022 WL 17650509, at *8 (Dec. 7, 2022).

The unanimous Ninth Circuit panel in this case (Forrest, J., joined by McKeown and Sanchez, JJ.) applied that settled position to bar petitioners' claims to the extent they sought to hold Twitter liable for not removing third-party posts from the platform as quickly as petitioners assert that Twitter should have. Pet.App.2a-13a. That holding accords with the interpretation of all other circuits. *See supra* note 2. Moreover, it reflects standard application of the consensus interpretation: barring claims that depend on a platform's alleged failure to alter posted third-party content—a paradigmatic publisher function. Petitioners do not suggest that any court in the country would have decided those claims differently.

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230 and incorporating it into new criminal statute); Pub. L. No. 115-264, tit. II, § 202(a)(2), 132 Stat. 3728, 3728-37 (2018) (clarifying scope of 47 U.S.C. § 230(e)); Pub. L. No. 119-12, § 2(a)(2), 139 Stat. 55, 56 (2025) (incorporating definitional provision from Section 230).

Contrary to petitioners' characterization, the court of appeals did not confer blanket immunity for any claim arising from harmful online content. It held that two of petitioners' state-law claims were *not* barred by Section 230(c)(1) on the theory that the underlying duties did not necessarily require Twitter to act as a publisher. Pet.App.14a-20a. Those claims are therefore proceeding and could result in some recovery for petitioners. That posture makes this case a particularly poor vehicle for reviewing the scope of Section 230(c)(1), even compared with others in which this Court has declined to review the same question.

As a seeming afterthought, petitioners briefly contest (Pet. 30-34) the Ninth Circuit's determination that none of their sex-trafficking claims are saved by the exception to Section 230 protection created in the Fight Online Sex Trafficking Act of 2018 ("FOSTA"), 47 U.S.C. § 230(e)(5)(A). But the court of appeals correctly applied that narrow exception—which applies only to claims in which the defendant engaged in affirmative conduct violating a federal criminal sex-trafficking provision, *see id.*—and petitioners do not suggest any grounds for taking up their second question presented other than case-specific purported error correction.

Although the court of appeals' application of FOSTA does not warrant this Court's review, FOSTA itself illuminates the proper way forward for petitioners and their amici, who fault the current approach to platform immunity on policy grounds: They should direct their arguments to Congress, rather than to this Court. Congress has been willing to legislate in this area repeatedly over the past 30

years, and the Legislature is the appropriate branch to consider revising the long-settled law of Section 230.

STATEMENT

A. Statutory Framework

1. At common law, a publisher such as a magazine or newspaper could be held liable for defamatory material in its publication because it presumptively exercised editorial judgment over what content to include. *See, e.g.*, *Cianci v. New Times Publ'g Co.*, 639 F.2d 54, 61 (2d Cir. 1980); RESTATEMENT (SECOND) OF TORTS § 578. In the early years of the Internet, the decision in *Stratton Oakmont, Inc. v. Prodigy Services Co.*, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995), exposed how awkwardly that common-law rule translated into cyberspace. There, an online platform (Prodigy) hosted bulletin boards containing third-party posts. *Id.* at 2-4. Because Prodigy exercised some editorial control over the posts, the court treated it as a publisher subject to liability for a user's defamatory statements. *Id.* at 3-5. Had Prodigy not engaged in such editorial control, it would have avoided that result. *Id.* at 5. Thus, *Stratton Oakmont* gave online platforms an incentive to eschew content moderation for the sake of avoiding publisher liability. *See id.*

A year later, in 1996, Congress enacted Section 230 in response to *Stratton Oakmont*. Both the House and Senate Conference Reports explained that "[o]ne of the specific purposes of [Section 230] is to overrule *Stratton-Oakmont* … and any other similar decisions which have treated [online platforms] and users as

publishers or speakers of content that is not their own." H.R. CONF. REP. 104-458, at 194 (1996); S. CONF. REP. 104-230, at 194 (1996). And courts have long recognized that "Congress enacted § 230 to remove the disincentives to self-regulation created by the *Stratton Oakmont* decision." *Zeran*, 129 F.3d at 331.

Section 230(c)(1) accomplishes that objective by providing that "[n]o provider … of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). From the earliest cases after the statute's enactment up until today, courts have applied that language—consistent with its plain meaning—to "preclude … claims that would place a computer service provider in a publisher's role." *Zeran*, 129 F.3d at 330; *see supra* note 2 (collecting cases). Of particular relevance here, courts have uniformly applied Section 230(c)(1)'s directive not to treat online platforms as publishers to preclude liability both for *taking down* assertedly objectionable material *and* for *not taking down* such material, because both are paradigmatic exercises of publisher functions. *See supra* note 2.[4]

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[4] *See also Green*, 318 F.3d at 471 (holding claims barred where AOL was sued for "decisions relating to the monitoring, screening, and deletion of content" that were "quintessentially related to a publisher's role"); *Universal Commc'n Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413, 422 (1st Cir. 2007) (holding immunity applies not only to decisions about a specific post, but also to "inherent decisions about how to treat postings generally," including "a decision not to delete a particular posting"); *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*,

2. In the decades since 1996, Congress has repeatedly amended and extended portions of Section 230 without ever revising the core language of Section 230(c)(1) that courts have uniformly construed in the way just described. *See supra* note 2.

FOSTA is one such amendment of Section 230. Pub. L. No. 115-164, 132 Stat. 1253 (2018). Congress enacted FOSTA in response to conduct by a small number of websites that deliberately and actively facilitated prostitution and sex trafficking. *Id.* § 2(2). Determining that "clarification" of Section 230 "was warranted to ensure that [it] does not provide such protection to such websites," *id.* § 2(3), Congress provided that "[n]othing in" Section 230 "shall be construed to impair or limit … any claim in a civil action brought under section 1595 of title 18"—a statute allowing civil claims for sex trafficking—"if

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521 F.3d 1157, 1170-71 (9th Cir. 2008) (*en banc*) ("[A]ny activity that can be boiled down to deciding whether to exclude material that third parties seek to post online is perforce immune under section 230." (citation omitted)); *MySpace*, 528 F.3d at 420 (rejecting artful pleading where the allegations were "merely another way of claiming that MySpace was liable for publishing the communications" and thus challenged "monitoring, screening, and deletion of content" (citation omitted)); *Barnes*, 570 F.3d at 1102 (holding that "publication involves reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content"); *Jones*, 755 F.3d at 416 (adopting the rule that Section 230 bars claims based on "a publisher's traditional editorial functions such as deciding whether to publish, withdraw, postpone or alter content"); *Klayman v. Zuckerberg*, 753 F.3d 1354, 1359–60 (D.C. Cir. 2014) (holding Facebook immune because "the very essence of publishing is making the decision whether to print or retract a given piece of content").

the conduct underlying the claim constitutes a violation of section 1591 of that title," 47 U.S.C. § 230(e)(5). Section 1591, in turn, imposes criminal liability where a defendant either (1) knowingly recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits a person for a commercial sex act or (2) knowingly benefits from participation in a venture that does so. 18 U.S.C. § 1591(a). "[P]articipation in a venture" means "knowingly assisting, supporting, or facilitating" that offense. *Id.* § 1591(e)(4).

B. Factual Background

When petitioners were minors in 2017, they were tricked into sending explicit photos of themselves to unknown perpetrators on Snapchat—an online messaging application unaffiliated with Twitter. Pet.App.179a.[5] The perpetrators used the photos to blackmail petitioners into sending explicit videos of themselves through means other than Twitter. Pet.App.179a-180a. John Doe 1, whose phone was used to send the photos and videos, subsequently cut off communications with the perpetrators. Pet.App.180a. Petitioners never heard from the perpetrators again. *Id.* Petitioners do not allege any connection between Twitter and those events of 2017.

About three years later, in January 2020, petitioners learned that an unknown person posted videos of them to Twitter. Pet.App.183a. John Doe 1 and his mother reported the videos to Twitter using

[5] The factual background recounted here is drawn from petitioners' first amended complaint. Pet.App.145a-213a.

its content-reporting interface three times, beginning on January 21, 2020. Pet.App.184a-187a. They also emailed Twitter about the videos. Pet.App.185a, 187a. A week later, Twitter responded, stating that it had reviewed the videos without finding a violation of its policies. Pet.App.188a-189a. Shortly thereafter, John Doe 1's mother contacted an agent of the U.S. Department of Homeland Security, and the agent contacted Twitter. Pet.App.192a. Twitter then removed the videos on or around January 30, 2020—a total of nine days after first receiving the report from John Doe 1. *Id.* Twitter also suspended the accounts that posted the videos and reported the videos to the National Center of Missing & Exploited Children ("NCMEC"). Pet.App.192a.

C. Proceedings Below

1. On January 20, 2021, John Doe 1 filed his initial complaint. D. Ct. Dkt. 1.[6] He subsequently filed an amended complaint that added a new plaintiff, John Doe 2, and asserted 13 claims for relief. Pet.App.145a-214a. Those claims included: a federal claim for knowingly engaging in sex trafficking in violation of 18 U.S.C. §§ 1591(a)(1) and 1595 (Count I) (Pet.App.193a-195a); a federal claim for benefiting from a sex-trafficking venture in violation of 18 U.S.C. §§ 1591(a)(2) and 1595 (Count II) (Pet.App.195a-197a); a federal claim for receipt and distribution of child pornography in violation of 18 U.S.C. §§ 2252A and 2255 (Count IV) (Pet.App.198a-200a); a products-liability claim under California law (Count V)

[6] "D. Ct. Dkt." refers to the district court docket for *Doe #1 v. X Corp.*, No. 21-cv-0485 (N.D. Cal.).

(Pet.App.200a-203a); and a negligence *per se* claim under California law (Count XIII) (Pet.App.205a-206a).

The district court dismissed all but one of petitioners' claims on the ground that they were barred by Section 230(c)(1). Pet.App.53a-144a. The sole remaining claim was that Twitter knowingly participated in a sex-trafficking venture in violation of 18 U.S.C. §§ 1591(a)(2) and 1595 (Count II). Pet.App.103a-129a. The district court reasoned that this claim was exempt from Section 230(c)(1) based on FOSTA. Pet.App.128a. In doing so, the district court ruled that petitioners need not allege that Twitter itself, as opposed to third parties, had violated the criminal sex-trafficking statute, 18 U.S.C. § 1591.

2. The parties pursued interlocutory cross-appeals under 28 U.S.C. § 1292(b) on certain claims. Pet.App.25a. On petitioners' appeal, the Ninth Circuit affirmed the district court's dismissal of the claims that Twitter (1) knowingly engaged in sex trafficking in violation of 18 U.S.C. §§ 1591(a)(1) and 1595 (Count I) and (2) possessed and distributed child pornography in violation of 18 U.S.C. §§ 2252A, 2255 (Count IV). Pet.App.25a-26a. The Ninth Circuit held that those claims "target[] 'activity that can be boiled down to deciding whether to exclude material that third parties seek to post online,'" and "such activity 'is perforce immune under section 230.'" Pet.App.29a (citation omitted).

On Twitter's appeal, the Ninth Circuit reversed the denial of Twitter's motion to dismiss the remaining claim (Count II) on the ground that it was

contrary to an intervening decision, *Does v. Reddit, Inc.*, 51 F.4th 1137 (9th Cir. 2022). Pet.App.27a-28a. *Reddit* held that, "for a plaintiff to invoke FOSTA's immunity exception, she must plausibly allege that the website's own conduct violated section 1591." 51 F.4th at 1141. And *Reddit* held that this standard is not satisfied when a website merely "provides a platform where it is easy to share child pornography" or "fails to remove child pornography even when users report it." *Id.* at 1145. The Ninth Circuit accordingly remanded "for further proceedings to be conducted in a manner consistent with [*Reddit*]." Pet.App.29a.

Petitioners sought rehearing and rehearing *en banc*, but the panel unanimously voted to deny the petition and no judge requested a vote to rehear the matter *en banc*. 9th Cir. Case No. 22-15103, Dkt. 83.

3. Following remand, the district court dismissed petitioners' remaining claim (Count II) on the ground that it too was barred by Section 230(c)(1) and was not exempt under FOSTA. Pet.App.30a-50a. The court ruled that "the conduct alleged in this case amounts to 'turning a blind eye' rather than 'active participation' in sex trafficking and therefore does not amount to a criminal violation of section 1591(a)(2)," as required by FOSTA. Pet.App.49a (citation omitted).

4. On appeal of the final judgment in its entirety, the Ninth Circuit affirmed in part and reversed in part. Pet.App.2a-21a.

a. The panel affirmed the dismissal of the two federal claims that petitioners raised (Counts II and IV) as barred by Section 230(c)(1), explaining that

they "hinge[d] on Twitter's role as a publisher of third-party content, which triggers § 230." Pet.App.2a. Applying the consensus interpretation of Section 230 that has prevailed across all courts of appeals for three decades, the panel observed that "Congress enacted § 230 to protect internet-based publishers of third-party content from liability," and that "[a] 'publisher' is someone who 'reviews material submitted for publication, perhaps edits it for style or technical fluency, and then decides whether to publish it.'" Pet.App.3a (citation omitted). Thus, "[a] claim that obliges the defendant to 'monitor third-party content' to avoid liability also treats the defendant as a publisher'" in violation of Section 230(c)(1). Pet.App.4a (citation omitted). Because petitioners plainly sought to require that Twitter monitor third-party content to avoid liability, the panel held that Section 230(c)(1) barred petitioners' federal claims. Pet.App.2a.

The panel rejected petitioners' contention that their claim for knowingly benefiting from a sex-trafficking venture (Count II) was exempt from Section 230(c)(1) based on FOSTA. As the panel explained, petitioners could not satisfy the exception unless they "plausibly allege[d] that [Twitter's] own conduct violated section 1591." Pet.App.11a (citation omitted). That required allegations showing that Twitter engaged in "affirmative conduct" that "constitute[d] 'assistance, support, or facilitation' of sex trafficking for which § 1591 attaches criminal (and, correspondingly, civil) liability." Pet.App.12a (citation omitted). Here, the panel recognized, "Twitter did not 'actually engage[] in some aspect of

the sex trafficking,' as a legal matter, by failing to remove known child pornography from its platform." *Id.* (citation omitted).

b. The Ninth Circuit panel took a different view of two of petitioners' state-law claims, which it perceived as falling outside of Section 230(c)(1)'s scope.

First, the panel concluded that Section 230(c)(1) did not immunize Twitter from petitioners' design-defect claim based on "[r]eporting [i]nfrastructure" that is "difficult" to use. Pet.App.14a-15a. The panel characterized these allegations as relating "solely to product design," emphasizing petitioners' contention that, for example, Twitter makes it too difficult to report child pornography by requiring users to locate a separate form unique to such reports. Pet.App.14a. Although the panel recognized that complying with the design duty *might lead* to monitoring or other publication activities, it reasoned that Twitter could fulfill any duty to cure the alleged deficiencies without *necessarily* having to engage in monitoring, removing, or otherwise engaging with third-party content—for example, by enabling reporting of content sent via private messaging. Pet.App.15a (citation omitted). The panel therefore held that the claim did not seek to hold Twitter responsible as a publisher for purposes of Section 230(c)(1)'s protection. *Id.* (citation omitted).

Second, the panel held that Section 230(c)(1) does not bar petitioners' negligence *per se* claim, premised on Twitter's alleged failure under 18 U.S.C. § 2258A promptly to report the videos to NCMEC. Pet.App.18a-20a. While acknowledging that Twitter's reporting duty arises in part because its platform

allows third-party uploads, the panel explained that a "but-for" connection to publishing is not the proper test. Pet.App.20a (citation omitted). By the panel's reasoning, once Twitter reviewed the videos, it had "actual knowledge" and was obligated promptly to notify NCMEC—a duty that requires neither content monitoring nor any publication-related action that triggers Section 230(c)(1)'s protection. *Id.*

c. Twitter petitioned for panel rehearing and rehearing *en banc* as to the state-law claims, but the petition was denied. Pet.App.22a-23a. Petitioners did not seek any form of rehearing on the claims at issue in their certiorari petition.

REASONS FOR DENYING THE PETITION

Petitioners purport to present two questions: (1) "Whether [Section 230] immunity applies to the knowing possession and distribution of child pornography," and (2) "Whether [Section 230] immunity applies to knowingly benefiting from a sex-trafficking venture." Pet. i. Although not entirely clear, it appears that petitioners intend for those questions to correspond to (1) the Ninth Circuit's application of the 30-year-old nationwide consensus interpretation of Section 230(c)(1) to bar their federal claims, and (2) the Ninth Circuit's rejection of their invocation of the FOSTA exception.

Neither question warrants this Court's review. The first question neither occasions a circuit conflict nor implicates any other ground for this Court's intervention. To the contrary, as petitioners largely concede, their arguments on the proper interpretation of Section 230(c)(1) have been extensively reviewed

and uniformly rejected by dozens of decisions across a vast range of appellate courts across the country over three decades. That sweeping consensus is correct, it has been ratified by Congress, and it has long been relied upon by a crucial sector of the U.S. economy. Petitioners' contrary position rests almost entirely on isolated dissents, often from a single Justice. Although those views warrant respect, they do not provide a compelling basis for this Court to disturb the unanimous construction of Section 230(c)(1). As this Court recently noted in a related context, "settled principles … have served the Nation well over many years, even as one communications method has given way to another." *Moody v. NetChoice, LLC*, 603 U.S. 707, 733-34 (2024). Any change to those principles should come from Congress, not this Court.

On the second question, which the petition treats as an afterthought, petitioners ostensibly seek nothing more than purported error correction of the Ninth Circuit's application of FOSTA. But the Ninth Circuit's case-specific application of FOSTA was correct and does not merit review in any event.

Those reasons amply suffice to deny the petition, but there are more. This is an especially inapt vehicle for reviewing the scope of Section 230(c)(1) because petitioners *prevailed* before the Ninth Circuit in overcoming a motion to dismiss two of their claims on Section 230(c)(1) grounds. This down-the-middle panel decision is thus hardly the poster child for purported abuse of Section 230 that petitioners and their amici portray. The case's interlocutory posture further weighs against review. And this Court has recently denied other petitions presenting similar

questions that provided considerably better vehicles. The Court should do the same for this inferior offering.

I. Petitioners' First Question Presented Does Not Warrant This Court's Review.

With their first question presented, petitioners seek review of the uniform judicial interpretation that has formed around the longstanding, undisturbed text of Section 230(c)(1). Notably, the established interpretation has been adopted by every appellate court to consider it over the past 30 years, has been ratified by Congress when it amended *other* aspects of Section 230 while leaving Section 230(c)(1) intact, and has been applied in straightforward fashion below. These circumstances do not warrant this Court's intervention.

A. Courts Have Unanimously Rejected Petitioners' Proposed Constructions Of Section 230(c)(1).

Although their precise position is not always easy to identify, petitioners appear to resist the application of Section 230(c)(1) to their claims on three principal (and partially overlapping) grounds. First, petitioners contend that Section 230(c)(1) does not apply to the *non-removal* of offensive content from an online platform (for at least some period of time), as compared to the *removal* of such content from the platform. Pet. 13-14. Second, petitioners contend that Section 230(c)(1) does not protect the non-removal of offensive content from a platform where the platform operator has *actual knowledge* of its presence on the platform. Pet. 18-19. Third,

petitioners contend that Section 230(c)(1) does not protect the non-removal of *child pornography or other content that could support criminal liability* where the platform operator has actual knowledge of its presence on the platform. Pet. 24-27. Each of those arguments has been consistently and correctly rejected by courts, and petitioners provide no basis for this Court to disturb the long-settled consensus.

1. Petitioners first argue that Section 230(c)(1)'s direction that online platform operators shall not be "treated as the publisher" of third-party content must be read narrowly to protect only against actions by a platform operator to take down objectionable content. Pet. 13-14 (citing *Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, 141 S. Ct. 13, 14 (2020) (Thomas, J., respecting the denial of certiorari)). But every court to address that issue over the past 30 years has disagreed, *see supra* note 4, and rightly so given the ordinary meaning of Section 230(c)(1)'s direction not to treat an online platform as a "publisher."

As Judge Wilkinson explained for a unanimous Fourth Circuit panel in 1997, "a publisher's traditional editorial functions" are not limited to taking down particular content; they also include "deciding whether to publish, … postpone or alter content." *Zeran*, 129 F.3d at 330. And given that nothing in Section 230(c)(1) suggests that only some publisher functions are covered, the statute bars "any claims that would place a computer service provider in a publisher's role … are barred." *Id.; see also* U.S. Amicus Br., *Google*, *supra*, 2022 WL 17650509, at *8 (Section 230(c)(1)'s "text is most naturally read to

prohibit courts from holding a website liable for failing to block or remove third-party content").[7]

Petitioners emphasize that Section 230(c) is titled "Protection for 'Good Samaritan' blocking and screening of offensive material." Pet. 11-13, 15, 18, 22, 26-27, 34, 37. But the "title of a statute ... cannot limit the plain meaning of the text," *Pa. Dept. of Corr. v. Yeskey,* 524 U.S. 206, 212 (1998) (citation omitted), and the operative statutory text extends beyond that, as courts have repeatedly recognized in precisely this context, *see, e.g.*, *Barnes*, 570 F.3d at 1105; *Banaian v. Bascom*, 281 A.3d 975, 980 (N.H. 2022) (rejecting argument that the title of Section 230(c) should be used to narrow language of the statute).

Petitioners relatedly contend that, because Subsection (2) of Section 230(c) provides specific protection against suits for certain acts to remove content, Section 230(c)(1) must not cover decisions to remove content. Pet. 25-27. But that argument—which suggests that "publisher" should be given less than its full ordinary meaning—fails to account for the distinct coverage of those provisions. "Subsection (c)(1), by itself, shields from liability all publication decisions, whether to edit, to remove, or to post, with respect to content generated entirely by third parties."

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[7] Although petitioners claim there is a "growing chorus" of judges supporting their position (Pet. 15), many are not singing the same tune at all. For example, Judge Berzon's concurrence, which petitioners cite for this proposition, argues that "section *230 reaches only traditional activities* of publication and distribution—*such as deciding whether to publish, withdraw, or alter content* …." *Gonzalez v. Google LLC*, 2 F.4th 871, 913 (9th Cir. 2021) (Berzon, J., concurring) (emphasis added).

Barnes, 570 F.3d at 1105. "Subsection (c)(2), for its part, provides an additional shield from liability, but only for 'any action voluntarily taken in good faith to restrict access to or availability of material that the provider ... considers to be obscene ... or otherwise objectionable.'" *Id.* "Crucially, the persons who can take advantage of this liability shield are not merely those whom subsection (c)(1) already protects, but *any* provider of an interactive computer service." *Id.* "Thus, even those who cannot take advantage of subsection (c)(1), perhaps because they developed, even in part, the content at issue … can take advantage of subsection (c)(2) if they act to restrict access to the content because they consider it obscene or otherwise objectionable." *Id.*

Contrary to petitioners' suggestions, the consensus reading of Section 230(c)(1) does not mean that all claims against online platforms for assertedly harmful conduct will be barred. Lower courts have consistently recognized that a claim survives Section 230(c)(1) when the asserted duty arises independent of any publishing function—*e.g.*, a promissory duty to remove content a platform already agreed to take down, *see Barnes*, 570 F.3d at 1107-09, or a failure to warn about a criminal conspiracy operating entirely off the platform, *see Doe v. Internet Brands, Inc.*, 824 F.3d 846, 853 (9th Cir. 2016). The Ninth Circuit applied that understanding here, allowing petitioners' design-defect and negligence *per se* claims to proceed. Pet.App.14a-15a, 20a.

2. Petitioners next contend that Section 230(c)(1) does not apply when a platform operator declines to take down objectionable third-party content with

"actual knowledge" that it is on the platform. Pet. 18-19. But every court to address that argument has rejected it, too: As lower courts have agreed, a platform operator is not any less of a "publisher" under Section 230(c)(1) merely because it exercises publisher functions with knowledge rather than ignorance. At most, a publisher's knowledge affects when a duty attaches—not whether the duty derives from publication. *See, e.g.*, *Marshall's Locksmith*, 925 F.3d at 1269 ("notice of the unlawful nature of the information provided is not enough to make it the service provider's own speech); *Jones*, 755 F.3d at 407 (similar); *Lycos*, 478 F.3d at 420 (similar); *Zeran*, 129 F.3d at 333 (similar)

Imposing liability based on a platform operator's knowledge would also chill protected speech. "Because service providers would be subject to liability only for the publication of information, and not for its removal, they would have a natural incentive simply to remove messages upon notification, whether the contents were defamatory or not." *Zeran*, 129 F.3d at 333. But that replicates the regime that Congress adopted Section 230(c)(1) to avoid. *Id.* at 331. "[L]ike strict liability, liability upon notice has a chilling effect on the freedom of Internet speech." *Id.* at 333; *accord MySpace*, 528 F.3d at 419. Similarly, platforms fearing knowledge-based liability in this context might opt to blind themselves to any and all content. In this respect, too, petitioners' knowledge-based carveout from Section 230 threatens to defeat a defining statutory purpose: "to remove the disincentives to self-regulation created by the *Stratton Oakmont* decision." *Zeran*, 129 F.3d at 331.

3. Narrowing their position further, petitioners contend that Section 230(c)(1) does not apply to a knowing decision not to remove child pornography or other criminal content from a platform. Pet. 24-27. But that argument, too, departs from the statutory text and has been repeatedly rejected by courts.

Child pornography is the most serious category of harmful content that platforms encounter—a fact no one disputes and Twitter does not minimize. But that is a difference of degree, not of legal kind. Courts have uniformly applied Section 230(c)(1) to bar claims that seek to treat a website as the publisher of a third party's obscenity, illegal pornography, or other arguably criminal content. *See, e.g.*, *Force*, 934 F.3d at 59 (content that encouraged terrorism); *Barnes*, 570 F.3d at 1098 (nonconsensual nude images); *Dyroff*, 934 F.3d at 1095 (content facilitating illegal drug sales). Indeed, a foundational premise of Section 230 is that websites hosting third-party content cannot be charged with screening all such content; to hold that offending content of any particular stripe disables the statutory immunity would contravene that premise and expose websites to potential liability simply because their screening has been imperfect in some way.

Petitioners argued below that child pornography is not "information" under Section 230(c)(1). *See, e.g.*, Pet.App.88a. But the district court rejected that argument (*id.*), and petitioners do not raise it in this Court. Some amici do, *see* Br. of Florida et al. as *Amici Curiae* at 14, but the statute does not support their

position. Section 230(c)(1) applies to "any information," 47 U.S.C. § 230(c)(1), and there is no basis to conclude that Congress excluded child pornography or any other particular type of information from that capacious term—which amply encompasses images, both static and moving. Notably, Section 230 makes clear that it does not "impair the enforcement of" *criminal* statutes relating to child pornography. *See id.* § 230(e)(1) ("Nothing in this section shall be construed to impair the enforcement of … chapter … 110 (relating to sexual exploitation of children) of title 18 ...."). That direction makes no sense unless Section 230(c)(1) covers child pornography.

B. Congress Has Ratified The Unanimous Interpretation of Section 230(c)(1).

Petitioners are bidding to disturb not only the uniform consensus of appellate courts regarding Section 230, but also Congress's ratification of the consensus. When a statute "has been given a uniform interpretation by inferior courts …, a later version of that act perpetuating the wording is presumed to carry forward that interpretation." Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts*, § 54, at 322 (2012); *see, e.g., Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Communities Project, Inc.*, 576 U.S. 519, 536 (2015) (explaining that "Congress accepted and ratified the unanimous holdings of the Courts of Appeals" when it amended the relevant statute while "adhering to the operative language" that the courts had interpreted).

That is exactly what has happened here. Congress has repeatedly extended and amended parts of Section 230 without revising the core language that underlies the courts' unanimous construction of Section 230(c)(1). *See supra* note 2. That is not an accident of inattention. When Congress has concluded that Section 230 was shielding conduct that it wanted to reach, it acted to address the problem. In 2018, for example, Congress enacted FOSTA, creating targeted carve-outs for civil claims under 18 U.S.C. § 1595 and certain state sex-trafficking statutes. 47 U.S.C. § 230(e)(5)(A). In 2025, Congress enacted the TAKE IT DOWN Act, Pub. L. No. 119-12, criminalizing nonconsensual publication of intimate images and imposing platform notice-and-takedown obligations. On both occasions (along with many others), Congress enacted targeted legislative corrections—rather than adding a general knowing-wrongdoing exception—and it declined to disturb Section 230(c)(1)'s baseline publisher-function rule. That approach reflects a deliberate decision to leave Section 230(c)(1)'s baseline protection intact.

Indeed, Congress has expressly considered broader reforms of Section 230 without enacting them. The EARN IT Act—conditioning Section 230 immunity on compliance with child-safety standards—was introduced in three successive Congresses but never passed. *See* S. 3398, 116th Cong. (2020); S. 3538, 117th Cong. (2022); S. 1207, 118th Cong. (2023). The DEFIANCE Act, addressing nonconsensual deepfake imagery, met the same fate. *See* 170 Cong. Rec. S5174 (daily ed. July 23, 2024). Most relevant here, the STOP CSAM Act—which would pierce Section 230

immunity and allow victims of child sexual exploitation to sue platforms that knowingly host child pornography—passed the Senate Judiciary Committee, was reported to the Senate, and still awaits floor action. *See* S. 1829, 119th Cong. (2025).

The petition thus asks this Court to do what Congress has considered but declined to do. But the question whether to revise Section 230's core immunity belongs to Congress, and "Congress's continual reworking of" Section 230—"but never the [publisher-function] rule" repeatedly confirmed in lower-court decisions—"further supports leaving th[ose] decision[s] in place." *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 457 (2015).

C. The Decision Below Correctly Applied The Congressionally Ratified Consensus Interpretation Of Section 230(c)(1).

The decision below correctly applied the longstanding, congressionally ratified consensus interpretation of Section 230(c)(1) to bar petitioners' federal claims. Pet.App.3a-21a. No aspect of the panel's partial affirmance departs from the consensus view or is otherwise remarkable. The panel asked whether petitioners' asserted duty "springs 'from the defendant's status as a publisher'" or "requires the defendant to act as a publisher." Pet.App.8a. Recognizing that a "'publisher' is someone who 'reviews material submitted for publication, perhaps edits it for style or technical fluency, and then decides whether to publish it,'" Pet.App.3a, the panel explained that a "claim that obliges the defendant to 'monitor third-party content' to avoid liability also

treats the defendant as a publisher'" in violation of Section 230(c)(1), Pet.App.4a.

Specifically, the Ninth Circuit correctly held that Count II (sex trafficking) and Count IV (child pornography) "hinge[d] on Twitter's role as a publisher of third-party content." Pet.App.2a. As to Count II, petitioners' theory of liability sought to "impose[] a monitoring obligation" on Twitter. Pet.App.10a. "[T]he only way for Twitter to avoid the unlawful benefit from hosting child pornography would be to remove third-party posts—a quintessential publishing activity." *Id.* Count IV similarly targeted "activity that can be boiled down to deciding whether to exclude material that third parties seek to post online." Pet.App.29a.

The Ninth Circuit's view on these points was confirmed by petitioners' complaint. Petitioners alleged, in Count II, that Twitter was "notified" of the offending material but that the material "continu[ed] to be distributed on its platform." Pet.App.196a. Petitioners similarly alleged, in Count IV, that Twitter was "notified" of the material but "maintained" it on its platform "after such notice." Pet.App.199a. Counts II and IV thus plainly sought to hold Twitter liable for not proceeding more swiftly in removing third-party content. Indeed, the crux of petitioners' claims, as stated in the introduction of their complaint, is that "Twitter refused to remove the illegal material." Pet.App.148a. Thus, as the Ninth Circuit held, petitioners' "complaint targets 'activity that can be boiled down to deciding whether to exclude [third-party] content,'" and such activity "is perforce immune under section 230." Pet.App.29a. That

holding accords with the plain language of Section 230(c)(1) as applied to petitioners' claims.

That, however, is not all the Ninth Circuit did. The petition portrays the decision below as a sweeping endorsement of platform immunity for knowing misconduct—a ruling that leaves victims without recourse, no matter how badly a platform allegedly behaved. But the Ninth Circuit did not hold that Section 230(c)(1) immunizes Twitter from all claims arising from child pornography on its platform. It held that two claims were *not* barred and remanded them for further proceedings. The court reversed dismissal of petitioners' product-liability theory premised on Twitter's defective reporting infrastructure—the claim that Twitter's tools for reporting child pornography were inadequately designed. Pet.App.14a–15a. The court concluded that theory did not "seek to hold Twitter responsible as a publisher or speaker" and did not "turn[] on … publication of any content." *Id.* The court also reversed dismissal of petitioners' negligence *per se* claim based on Twitter's failure to report child pornography to NCMEC as required by 18 U.S.C. § 2258A. Pet.App.18a–21a. There, the court held that once Twitter obtained actual knowledge of the content—as demonstrated by its own representation that it had "reviewed the content"—a reporting duty arose that was "sufficiently distinct from any duty 'associated with publication'" to fall outside Section 230's protection. Pet.App.20a.

In short, petitioners' theories that allegedly did not implicate publisher functions survived Section 230. That result does not reflect a court "disregard[ing]

knowing criminal wrongdoing," Pet. 18. Rather, it maintains a line based on the publisher-function rule and allows claims to proceed so long as they purportedly do not transgress that line. The claims that were dismissed were dismissed because they sought to hold Twitter liable for decisions about whether to remove or retain third-party content—decisions the statute expressly protects.

II. Petitioners' Second Question Presented Does Not Warrant This Court's Review.

Petitioners' second question presented is "[w]hether [Section 230] Samaritan immunity applies to knowingly benefiting from a sex-trafficking venture." Pet. i. Read literally, that question seems to ask nothing more than whether the FOSTA exception (or a paraphrased shorthand version of it) is actually an exception to Section 230's protection. That is hardly a question warranting this Court's review: the FOSTA exception is indeed an exception, but that alone does not resolve anything in this case.

When petitioners finally turn to their FOSTA argument (buried at Subsection II.C.2 of the petition), it appears that the question they actually want this Court to decide is whether the Ninth Circuit properly applied FOSTA to their allegations. Pet. 30-34. But that case-specific request for purported error correction does not warrant this Court's review under any circumstances, and petitioners' attempt is particularly unworthy because the Ninth Circuit did not err in applying FOSTA.

As noted above, FOSTA created an exception to Section 230 protection for a civil sex-trafficking claim

under 18 U.S.C. § 1595 "if the conduct underlying the claim constitutes a violation of [18 U.S.C. §] 1591." 47 U.S.C. § 230(e)(5)(A). The pertinent provision of Section 1591—subsection (a)—imposes criminal liability on a person or entity who "knowingly" (1) in interstate commerce "recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person" or (2) "benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of" paragraph (1) "knowing … that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act." 18 U.S.C. § 1591(a). "The term 'participation in a venture' means knowingly assisting, supporting, or facilitating a violation of subsection (a)(1)." *Id.* § 1591(e)(4).

Petitioners do not dispute that FOSTA required them to allege facts showing that Twitter itself, rather than a third party, committed a criminal violation of Section 1591. *See* Pet. 31-34. Instead, petitioners argued that Twitter allegedly violated Section 1591(a)(2) because it allowed unlawful content to remain on its platform with "actual knowledge" of that content. Pet. 33. Knowledge alone, however, is insufficient to establish a violation of Section 1591(a)(2). As the Ninth Circuit recognized, even assuming the truth of petitioners' allegations, "Twitter did not 'actually engage[] in some aspect of the sex trafficking,' … by failing to remove known child pornography from its platform." Pet.App.12a. And knowingly benefiting from participation in a sex-trafficking venture "requires actual knowledge and 'a

causal relationship between affirmative conduct furthering the sex-trafficking venture and receipt of a benefit." Pet.App.38a-39a. "[M]erely turning a blind eye to illegal revenue-generating content does not establish criminal liability under § 1591." Pet.App.12a.

Petitioners and their amici elide the language of Section 1591, conflating active participation in sex trafficking with allowing child pornography to remain on a platform. *See* Pet. 30-34; Br. of Florida and 16 Other States at 14; Br. of Tim Tebow Foundation and Child Protection Organizations at 18-20. There are specific statutes that criminalize the latter. *See, e.g.*, 18 U.S.C. §§ 2252(a), 2252A(a). But FOSTA does not provide that alleging a violation of those statutes exempts a claim from Section 230(c)(1). Rather, FOSTA requires that "the conduct underlying the claim constitute[] a violation of section 1591," the sex-trafficking statute. 47 U.S.C. § 230(e)(5)(A). And petitioners were unable to allege any knowing, active participation by Twitter in a sex-trafficking venture.

Moreover, although the Ninth Circuit did not reach the issue, petitioners offered no allegations that Twitter engaged in any conduct while knowing that petitioners would "*be caused* to engage in a commercial sex act." 18 U.S.C. § 1591(a) (emphasis added). "[T]he statute uses the future tense." *United States* v. *Wearing,* 865 F.3d 553, 556 (7th Cir. 2017). And "[t]he term 'commercial sex act' means any sex act, on account of which anything of value is given to or received by any person." *Id.* § 1591(e)(3). Thus, Section 1591(a)(2) targets conduct that eventually *leads to* a commercial sex act. Here, however, any

"commercial sex act" occurred in 2017 when petitioners were tricked and coerced into sending images of themselves to a third party. Pet.App.179a-181a. Twitter was not alerted to the images of petitioners on its platform until 2020. Pet.App.183a-184a. Therefore, Twitter could not possibly have engaged in conduct while knowing that petitioners would "be caused to engage in a commercial sex act," 18 U.S.C. § 1591(a), because any such "commercial sex act" had concluded years earlier.

In short, the Ninth Circuit's application of FOSTA was correct, and petitioners cannot satisfy the exceptions for additional reasons that the Ninth Circuit did not need to address. Those highly fact-bound issues do not warrant this Court's review.

III. This Petition Is A Poor Vehicle For Reviewing Either Question Presented.

This Court has repeatedly denied certiorari in Section 230 cases presenting similar questions, *see* Br. in Opp., at 6-7 n.1, *Doe v. Grindr Inc.*, No. 24-1202 (2025) (cataloguing denials from 1998 through 2025), and many of those petitions offered stronger vehicles than this one. Having properly denied those petitions, the Court should deny this one *a fortiori* because it is a particularly poor vehicle.

To begin, petitioners prevailed in significant part in the decision below, winning a reversal of the district court's grant of the motion to dismiss their state-law claims on Section 230(c)(1) grounds. Pet.App.13a-15a, Pet.App.18a-20a. This is hardly a case, therefore, in which the lower courts have been overly protective of

online platforms under Section 230, notwithstanding petitioners' characterization. *See, e.g.*, Pet. 14.

Relatedly, because petitioners' state-law claims are now proceeding in the district court, the case comes to this Court in an interlocutory posture. But this Court "generally await[s] final judgment in the lower courts before exercising [its] certiorari jurisdiction." *VMI v. United States*, 508 U.S. 946 (1993) (Scalia, J., responding to the denial of the petition for writ of certiorari), and it should do the same here.

In addition, this is an inapt vehicle for a broad reconsideration of Section 230(c)(1) because petitioners' asserted harm is untethered from the conduct that they contend falls outside the statutory immunity. In their complaint, Petitioners alleged that—before they reported the videos to Twitter—they learned from their classmates about the posts and that "many students in the school had viewed them." Pet.App.183a. Petitioners further alleged that "the circulation of the[] videos" caused them to suffer "teasing, harassment, [and] vicious bullying," resulting in "severe anguish and embarrassment." Pet.App.183a. These alleged harms predate Twitter's alleged delay in removing the posts after it allegedly had "actual knowledge" of them. That is, by petitioners' own account, they had suffered all or most of their injury before Twitter knew of the posts. Nor do petitioners explain even how such harms were meaningfully increased by the period of days that it took Twitter to remove the posts following their initial report. In sum, while petitioners paint this as an egregious case where a platform knowingly cultivated

offending content, their gravamen of complaint is simply that Twitter should have done more, faster, to remove the content at issue. That renders this case a poor vehicle for deciding the outer limits of Section 230(c)(1).

These vehicle defects become even starker when comparing the petition with other recent, unsuccessful petitions that have raised similar arguments for reconsidering Section 230(c)(1). In *Snap*, for example, petitioners invoked Justice Thomas's *Malwarebytes* statement, pressed the same distributor-liability argument that petitioners advance here, and urged the Court to act in the face of serious harm to children. Pet. for Writ of Certiorari, *Doe v. Snap, Inc.*, No. 23-961 (U.S. Mar. 1, 2024). The petition in *Snap*, moreover, lacked many of the flaws present in this petition: every claim had been dismissed on Section 230 grounds with no alternative holdings remaining, and seven circuit judges had dissented from the denial of *en banc* rehearing. The Court denied review anyway.

The Court has also had before it a narrower, better-developed Section 230 question in *Reddit*—and declined that too. That petition presented the question whether the FOSTA exception, 47 U.S.C. § 230(e)(5)(A), is limited to Section 1595 claims where the defendant's own conduct violates Section 1591. Pet. for Writ of Certiorari, *Does Nos. 1-6 v. Reddit*, No. 22-695 (U.S. Jan. 23, 2023). The petition also arose from a final judgment and identified genuine lower-court disagreement on a discrete statutory question. Petitioners here do nothing like that. They seek wholesale reconsideration of Section 230(c)(1)'s

publisher rule, on which they acknowledge every circuit agrees. And to the extent they address FOSTA, they challenge only a case-specific holding.

This Court's pattern of denials on Section 230 decisions reflects due deference to legislative prerogatives. While policy debates may persist over Section 230's proper scope, those are reserved for Congress to address, as Congress has done multiple times, including recently via FOSTA and the Take It Down Act. If Congress does not see fit to disturb the lower courts' longstanding, uniform interpretation of Section 230, neither should this Court.

CONCLUSION

The Court should deny the petition.

Respectfully submitted,

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