No. 19-153

In the Supreme Court of the United States

YASMEEN DANIEL, individually, and as special administrator of the estate of Zina Daniel Haughton,
Petitioner,

v.

ARMSLIST, LLC, an Oklahoma Limited Liability Company, BRIAN MANCINI, and JONATHAN GIBBON,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Wisconsin

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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COUNTER-STATEMENT OF QUESTION PRESENTED

The Communications Decency Act (CDA) provides that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider" and that "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section," *i.e.*, 47 U.S.C. § 230.

In this case, a website published information provided by third parties pertaining to guns for sale. A buyer viewed a third-party seller's information on the website, contacted the seller, purchased the gun, and then used it in a crime. One victim sued the website, alleging that it breached duties arising from the publication of the third-party seller's information.

The issue presented is: Does the CDA permit liability to be imposed under Wisconsin law against the website based on publication of the third-party seller's information?

CORPORATE DISCLOSURE STATEMENT

Respondent Armslist, LLC is a limited liability company organized under the laws of the State of Oklahoma. Armslist, LLC does not have a parent corporation and no publicly-held corporation owns ten percent or more of its stock.

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STATEMENT

The petition concerns state-law claims brought against a classified ads service, Armslist, LLC, and its members, Brian Mancini and Jonathan Gibbon, based on Armslist's publication of information provided by third parties. Petitioner Yasmeen Daniel filed a complaint alleging that the website Armslist.com is a place where "any putative buyer can post a description of the firearm they wish to purchase and any seller can post a description of the firearm they wish to sell." Compl. ¶ 51. Buyers and sellers who view information posted on the website may contact one another through Armslist's server "by clicking on a link in their website" or by "using their counterparty's contact information (if it is listed on Armslist.com)." *Id.* ¶ 52.

Petitioner alleged that publishing information provided by third-party gun sellers on a website is dangerous, such that the act of publication creates a duty of care and tort liability running from the publisher to anyone who could foreseeably be harmed by a gun buyer who purchases from a private seller. Her overarching theory is that Armslist had a duty to exercise reasonable care in "creating a marketplace for the sale of guns." *Id.* ¶¶ 129, 154, 166, 173, 179. Her reasoning, as alleged in the complaint, proceeds as follows:

First, petitioner alleges that individuals whom the law prohibits from owning a gun are likely to "prefer a private seller to a licensed dealer" so as to avoid background checks. *Id.* ¶ 57.

Second, petitioner alleges that publishing information provided by private third-party sellers

will enable both lawful and prohibited purchasers to find a seller. *Id.* ¶¶ 55-58.

Third, petitioner alleges that because prohibited purchasers who buy guns are "dangerous" (*id.* ¶ 61) and indeed all firearm sales are (allegedly) inherently risky (*id.* ¶ 59), a website that publishes information that could lead a prohibited purchaser to find a gun owes a duty to the public to take measures "to ensure that prohibited persons are not sold firearms" (*id.* ¶ 60).

According to petitioner, the publishing of information provided by private third-party gun sellers imposed myriad duties on Armslist, including duties to: "vet the users of Armslist.com" (*id.* ¶ 61); require users to create an account to use the site and "authenticate" all account registrations (*id.* ¶ 63(a)-(b)); implement a waiting period between registration and site access (*id.* ¶ 63(c)); and prevent users from contacting one another until "their eligibility to sell and purchase firearms was confirmed," including by requiring users to upload their criminal history to the website as a condition of account registration (*id.* ¶ 63(e)-(f)).

Petitioner alleged that Armslist breached its duties arising from the publication of information provided by a third-party gun seller because its website included a search function enabling searches for, among many other things, private sellers; it did not require users to create an account before using the website; it did not "vet" or "restrict" its users, or guarantee the legality of sales; and it did not provide adequate legal counsel to its users concerning "the

laws governing firearm sales or the care required in conducting such sales." *Id.* ¶¶ 54, 134, 157. Petitioner also alleged that while Armslist allowed its users to "flag Armslist customers" for review, the menu of options for flagging content should have been more expansive. *Id.* ¶ 54(c).

The complaint alleges that Radcliffe Haughton purchased a handgun from a private seller, Devin Linn, in the parking lot of a McDonald's. Compl. ¶ 5. At the time, a restraining order prohibited Haughton from possessing a gun. *Id.* ¶ 4. Haughton used the handgun he purchased from Linn to shoot and kill four individuals, including himself, and wound four others. *Id.* ¶ 7. Haughton's victims included his wife, Zina Daniel Haughton. *Id.* Zina's daughter, Yasmeen Daniel (petitioner), brought this action on her own behalf and on behalf of her mother's estate. *Id.* ¶ 8.

Petitioner filed claims against the estate of Haughton, the buyer, and claims against Linn, the private gun seller. And she also sued Armslist, the operator of the website to which Linn had posted information about his gun for sale. Compl. ¶ 89.

The state-law claims against Armslist are for negligence (*id.* ¶¶ 128-139), negligence per se (*id.* ¶¶ 140-144), negligent infliction of emotional distress (*id.* ¶¶ 152-164), civil conspiracy (*id.* ¶¶ 165-170), aiding and abetting tortious conduct (*id.* ¶¶ 171-178), public nuisance (*id.* ¶¶ 179-188), and wrongful death (*id.* ¶¶ 189-192). Petitioner also seeks to pierce Armslist's corporate veil to reach its members, Mancini and Gibbon (*id.* ¶¶ 193-197).

Based on the complaint's allegations showing that petitioner sought to impose duties and liabilities on Armslist arising directly from its publication of third-party information, Armslist moved to dismiss under the CDA. The trial court granted the motion, but the Wisconsin Court of Appeals reversed. The intermediate state court dismissed the vast body of federal case law on which Armslist relied, stating that it did not "significantly aid in the analysis" (Pet. App. 57a ¶ 27) and was not "helpful" (Pet. App. 67a ¶ 50).

The Wisconsin Supreme Court reversed the Wisconsin Court of Appeals and affirmed the trial court's dismissal of petitioner's complaint. Pet. App. 3a. Unlike the intermediate court, the Wisconsin Supreme Court followed federal case law, including by analyzing, adopting, and applying the Ninth Circuit's en banc decision in *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157 (9th Cir. 2008) ("*Roommates*"). Pet. App. 12a-23a. In accordance with federal law, the Wisconsin court concluded that Armslist did not create or develop the information content upon which petitioner based her claims. Pet. App. 20a-23a.

The Wisconsin Supreme Court further concluded that the CDA barred petitioner's state-law claims because the claims "treated" Armslist as a publisher or speaker of third-party information and such treatment was inconsistent with the Act. Pet. App. 23a-31a. Petitioner's claims treated Armslist as a publisher because the duties that Armslist allegedly had and violated arose from its publication of third-party information about firearms. Pet. App. 24a, 28a-30a. Because the CDA barred the state-law claims

against Armslist, the trial court properly dismissed the complaint. Pet. App. 31a.

REASONS FOR DENYING THE PETITION

The Wisconsin Supreme Court correctly applied uniform federal law. Its decision does not conflict with any decision of this Court or the decision of any other court. And its decision is consistent with Congress's codified intent in enacting the CDA. This Court accordingly should deny the petition.

I. The Wisconsin Supreme Court Followed Uniform Law Construing the CDA

The Wisconsin Supreme Court's decision adopted and followed federal law, including the plain text of the statute and an extensive body of case law interpreting the statute.

The CDA expressly preempts state-law claims. It states that:

> No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

47 U.S.C. § 230(e)(3).

Armslist moved to dismiss on the ground that the allegations of petitioner's complaint established that her claims were inconsistent with § 230. In particular, her claims were inconsistent with the provision stating that:

> No provider or user 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).

Petitioner's claims sought to impose liability on Armslist because it published information provided by third parties. Therefore, the claims were "inconsistent" with the CDA, which prohibits such treatment. Petitioner's primary argument below and in her petition is that she sought to impose liability on Armslist based on content that Armslist itself developed, but the Wisconsin Supreme Court correctly applied well-settled federal law in rejecting her argument. In particular, the Wisconsin court carefully traced the reasoning and construction of the CDA set out in the Ninth Circuit's influential *en banc* decision in *Roommates*. Pet. App. 13a-23a.

Roommates addressed the issue of whether an interactive computer service (a website) had created or developed the content for which the plaintiff sought to hold the website liable. As noted, the CDA preempts state-law claims based on publication of information "provided by another information content provider." 47 U.S.C. § 230(c)(1). Therefore, if the website was an "information content provider" with respect to the information at issue, the CDA would offer it no protection from liability. *Roommates*, 521 F.3d at 1162. Construing the CDA's definition of "information content provider" (47 U.S.C. § 230(f)(3)) in the context of the statute as a whole, the Ninth Circuit held that

a website does not "develop" content provided by a third party unless the website "contributes materially" to the alleged unlawfulness of the content. *See* 521 F.3d at 1167-68.[1]

Petitioner does not argue that the Ninth Circuit misinterpreted the statute in *Roommates*. To the contrary, she argues that the Ninth Circuit's case law supports her; petitioner frames the petition as pitting the Wisconsin Supreme Court *against* the Ninth Circuit. *See* Pet. i (question presented). She explicitly argues that the Wisconsin Supreme Court's decision "cannot be harmonized with the Ninth Circuit's decision [in *Roommates*]." Pet. 21. And she contends that "the Wisconsin Supreme Court reached the opposite conclusion of the Ninth Circuit." Pet. 22.

And yet petitioner acknowledges, as she must, that the Wisconsin Supreme Court adopted the Ninth Circuit's "material contribution" test. Pet. 21. Her complaint, then, is not and cannot be that the Wisconsin court interpreted the statute differently from the Ninth Circuit or any other court, but rather that it misapplied existing federal law to this particular factual scenario. But this Court's rules caution against seeking review on this basis, stating,

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[1] The lower appellate courts have expressly adopted this construction of the CDA or issued decisions consistent with it. *See, e.g.*, *Jones v. Dirty World Entm't Recordings LLC*, 755 F.3d 398, 413 (6th Cir. 2014) ("Consistent with our sister circuits, we adopt the material contribution test …."); *Force v. Facebook, Inc.*, 934 F.3d 53, 68 (2d Cir. 2019); *Marshall's Locksmith Serv. v. Google, LLC*, 925 F.3d 1263, 1269 (D.C. Cir. 2019); *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 258 (4th Cir. 2009).

"[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Supreme Court Rule 10. Petitioner has not even demonstrated that the Wisconsin court misapplied the law, much less has she demonstrated that this case presents the rare situation in which this Court should grant review based on asserted misapplication of the law. This Court "does not sit simply to correct such errors." Stephen M. Shapiro et al., SUPREME COURT PRACTICE § 4.2 (11th ed. 2019).

Even if this Court were a court of error correction (it is not), the petition presents no error to correct. Armslist is a classified ads service. Pet. App. 4a-5a ("there is no allegation that Armslist itself participates in the purchase and sale of firearms beyond allowing users to post and view advertisements and contact information on armslist.com").[2] Petitioner's claims treat Armslist as a publisher because she bases all of them on alleged breach of duties arising from Armslist's publication of information provided by buyers and sellers of firearms. *See supra*, at 1-3. Her claims thus fall squarely within the scope of the CDA's express

[2] Petitioner asserts that "Armslist.com is an online gun marketplace specifically designed to facilitate the illegal purchase of firearms by people like Haughton, who the law forbids from buying guns." Pet. 2; *see id.* at 2-4. This statement is both false and legally insufficient to overcome Armslist's CDA immunity. Armslist is a lawful company that publishes information provided by buyers and sellers in the manner of a classified ads service. It cooperates with and aids law enforcement in conducting firearms-related investigations.

preemption provision, as the court below correctly held.

II. The Wisconsin Court's Decision Does Not Conflict with the Decisions of this Court

Although the Wisconsin Supreme Court expressly adopted federal law, petitioner claims that its decision defied federal law. Pet. 8. She even claims that "much of this Court's federalism precedent appears to be a dead letter in Wisconsin—and other courts as well." Pet. 8-9. In petitioner's view, she and the intermediate Wisconsin court stand alone in noticing a federalism argument that "virtually all courts" (Pet. 32) have somehow missed. Not surprisingly, her hyperbolic argument is mistaken.

The CDA indisputably preempts state-law causes of action because it provides that "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." 47 U.S.C. § 230(e)(3). The statutory language that this Court considered in cases on which petitioner relies (Pet. 8, 30, 31)—cases such as *Medtronic, Inc. v. Lohr*, 518 U.S. 470 (1996), and *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992)—did *not* expressly preempt state-law causes of action. Thus, these cases are fully consistent with the Wisconsin Supreme Court's decision here.

Nor is this a case in which the CDA has been interpreted to intrude upon "traditional state criminal jurisdiction," *Bond v. United States*, 572 U.S. 844, 857 (2014) (quotation marks omitted), or "the authority of the people of the States to determine the qualifications

of their government officials," *Gregory v. Ashcroft*, 501 U.S. 452, 464 (1991). This Court's decisions in *Bond*, *Gregory*, *Cipollone*, and *Medtronic* plainly do not affect the interpretation of the CDA, which explains why the Wisconsin Supreme Court did not need to discuss them expressly. That court fully respects this Court's preemption jurisprudence and applies it faithfully. *See, e.g., Lands' End, Inc. v. City of Dodgeville*, 370 Wis. 2d 500, 546 (2016); *Blunt v. Medtronic, Inc.*, 315 Wis. 2d 612, 629 (2009); *Gorton v. Am. Cyanamid Co.*, 194 Wis. 2d 203, 219-26 (1995).

III. This Case Does Not Present a Question on Which the Courts Are Divided

Petitioner fails to identify any way in which this case presents an important issue on which courts are divided. Instead, she identifies insignificant differences that could not possibly affect the outcome of this case, such that this case presents a poor vehicle for resolving them. These differences accordingly do not warrant review.

1. "Immunity." To begin, petitioner observes that the Fourth Circuit has described the CDA as creating an "immunity," while the Seventh Circuit has rejected that particular description. Pet. 14-15. Petitioner never explains how this difference in labeling affected or could ever affect this case. Nor can she. Regardless of whether the CDA creates "immunity" or, instead, a defense to liability, Armslist was entitled to judgment. The Seventh Circuit applies the CDA to bar liability just as other courts do. *See Chicago Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666, 671 (7th Cir.

2008). Petitioner identifies no court that fails to give effect to the CDA's provision preempting state-law claims.

2. "Development." Petitioner next contends that courts disagree about the interpretation of the term "development" at 47 U.S.C. § 230(f)(3). Pet. 16-17. But she identifies no conflict in the law. She does not identify a single case that has rejected the Ninth Circuit's interpretation of "development" or of 47 U.S.C. § 230(f)(3).

Petitioner's *best* case is *Shiamili v. Real Estate Group of New York, Inc.*, in which the New York court concluded that it "need not decide" whether to adopt the Ninth Circuit's approach because the defendant had CDA immunity with or without it. 17 N.Y.3d 281, 290 (2011). But this judicial conservatism—deciding no more than need be decided—does not create conflicts; it avoids them. Moreover, New York *did* adopt and "follow what may fairly be called the national consensus" that the CDA "generally immuniz[es] Internet service providers from liability for third-party content wherever such liability depends on characterizing the provider as a 'publisher or speaker' of objectionable material." *Id.* at 288-89. The Wisconsin Supreme Court likewise followed the "national consensus" here.

3. "Content." Petitioner argues that courts do not agree about whether "website design itself can qualify as content." Pet. 18. Petitioner's vague reference to "website design" is shorthand for the parts of a website that the website owner typically creates and provides, such as the name of the website, its URL, navigation

menus and links, text boxes, drop-down options, buttons, and so forth. Whether any of these elements creates or develops "content," such that the website itself provided the information that allegedly harmed plaintiff, is a question that courts must answer on a case-by-case and element-by-element basis.

The Ninth Circuit's *Roommates* opinion (on which petitioner relies) proves the point. It held that a drop-down menu on the defendant's website essentially forced users to contribute discriminatory content, and thus the drop-down menu and its pre-defined options were responsible, at least in part, for the development of that unlawful content. 521 F.3d at 1165-67. But a "blank text box" on the same website did not require users to contribute illegal content, and thus did not contribute to the illegality of content that users might choose to insert. *Id.* at 1173-74. *Roommates* shows that courts often must grapple with case-specific allegations to assess whether a website "developed" content that allegedly harmed the plaintiff.

As a result, petitioner's warnings based on hypothetical facts not before the Court fall flat. Petitioner mistakenly warns that under the prevailing interpretation of the CDA, a website named "gunsforkillersandkids.com" or "illegaldrugs.com" could not be subjected to civil liability based on harm arising from publication of a third-party post. Pet. 6. Neither *Roommates* nor the Wisconsin Supreme Court's opinion suggests this outcome. A website name that announces that the sole purpose of the website is to host illegal content may be deemed to have contributed to the illegality of content posted there. "Armslist" is *not* such a name because keeping

and bearing "Arms" is an enumerated constitutional right and not an illegal activity. And Armslist's search and other features all had lawful purposes, as the Wisconsin court held. Pet. App. 21a ("Sales of firearms by private sellers are lawful in Wisconsin.").

Petitioner also contends that the Wisconsin Supreme Court "reached a conclusion that appears contrary to those of the Washington Supreme Court and the Seventh Circuit." Pet. 18. But these courts simply applied the law to different sets of facts and allegations. As petitioner acknowledges (Pet. 17), the Washington state court followed the *Roommates* interpretation of the CDA in determining that the defendant website there materially contributed to the illegality of the website's content. *J.S. v. Village Voice Media Holdings, LLC*, 184 Wash. 2d 95, 102-03 (2015). The Seventh Circuit's decision in *City of Chicago v. StubHub!, Inc.*, 624 F.3d 363 (7th Cir. 2010), has nothing to do with the issue whether a website created harmful content; the holding of that case is that an Illinois tax did not treat the website as a publisher. *See* 624 F.3d at 366.

In short, whether "website design" qualifies as "content" is not a coherent question because "website design" is a vague category that can encompass many things. There is no generic answer to the question whether "website design" is or develops "content" and thus no conflict to resolve. Rather, courts apply the CDA to the facts before them; that different facts produce different outcomes is neither surprising nor indicative of a conflict worthy of this Court's review.

4. "Intent." Petitioner next asks this Court to resolve a purported conflict "over whether a creator's or operator's intent is relevant in deciding whether the CDA bars claims as a matter of law." Pet. 19. Petitioner does not base her claim that "intent" is relevant on the text of the statute. This is because the provision on which Armslist relies, 47 U.S.C. § 230(c)(1), contains no "intent" or "good faith" requirement. Thus, courts that have confronted the issue have held that a plaintiff does not overcome subsection (c)(1)'s protections by alleging that the defendant subjectively intended to encourage or induce unlawful content. *See Doe v. Backpage.com, LLC*, 817 F.3d 12, 21 (1st Cir. 2016); *Jones*, 755 F.3d at 413-15.

In a few cases, as petitioner observes, courts have stated that the defendant website knowingly participated in illegal conduct. Pet. 19-20. In every one of these cases, commentary about the defendant's subjective state of mind was superfluous; the defendant in these cases would *not* have been entitled to CDA immunity regardless of whether it "intended" to facilitate illegal conduct. In *Village Voice*, for example, the website operator allegedly *required* users to post content in a manner that would enable them to engage in illegal sex trafficking of underage girls. *See* 184 Wash. 2d at 102; *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1100 (9th Cir. 2019) (distinguishing *Village Voice*). While the Washington Supreme Court quoted the complaint's allegations about what the defendant knew or intended, it is doubtful that the Washington court would have reached a different result under Washington state

pleading rules if the plaintiff had *not* included allegations about the defendant's intent.

Similarly, in *FTC v. Accusearch Inc.*, 570 F.3d 1187 (10th Cir. 2009), the Tenth Circuit concluded that the defendant website itself developed illegal content—*i.e.*, the publication of confidential information—because it solicited requests for information protected by law and paid researchers to find such information. *Id.* at 1201. Although the defendant allegedly intended to generate illegal content, its intent was irrelevant; it likely would have lacked CDA protection in any event given its objective conduct. The Second Circuit's decision in *FTC v. LeadClick Media, LLC* shows even more clearly that the defendant directly participated in developing misleading content and thus was not entitled to CDA immunity. 838 F.3d 158, 176 (2d Cir. 2016). These decisions are inapplicable to the allegations here.

5. "Treated." Continuing her search for a conflict, petitioner contends that courts disagree about what it means to "treat" a website as a publisher or speaker under 47 U.S.C. § 230(c)(1). Pet. 22. Petitioner discusses cases that applied an "editorial functions" test (Pet. 22-25), but this discussion is inapposite. The Wisconsin court did not reason that Armslist stood accused of exercising "editorial functions" and then rule in favor of Armslist on that ground. Instead, it inquired whether "the duty that the plaintiff alleges the defendant violated derives from the defendant's status or conduct as a publisher or speaker." Pet. App. 24a (quoting *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1101-02 (9th Cir. 2009)). It reasoned that petitioner based each one of her state-

law claims on the breach of a duty arising from the publication of content provided by third parties. Pet. App. 28a-30a.

Petitioner observes that in some cases, courts have upheld claims against assertions of CDA immunity because the claims did not treat the defendant as a publisher. This is unremarkable and irrelevant here. For example, the CDA may not create immunity from taxation because the duty to pay taxes is not derived from one's status as a publisher. *StubHub!*, 624 F.3d at 366. But petitioner is not a tax authority and Armslist is not seeking to avoid taxes. The CDA may not create immunity against municipal ordinances that regulate rental booking transactions, *HomeAway.com v. City of Santa Monica*, 918 F.3d 676, 682-83 (9th Cir. 2019), but petitioner is not a regulatory authority and Armslist is not a broker that books transactions on its website. The CDA may not create immunity against product liability claims, *Erie Ins. Co. v. Amazon.com, Inc.*, 925 F.3d 135, 139 (4th Cir. 2019), but Armslist is not a seller or manufacturer of products. The CDA may not create immunity against failure-to-warn claims based on a special relationship between the defendant and plaintiff, *Doe v. Internet Brands, Inc.*, 824 F.3d 846, 851 (9th Cir. 2016), but petitioner has asserted no such claim here.

In sum, petitioner identifies no conflict that is remotely relevant to the question presented here, which is whether *her* claims treated Armslist as a publisher or speaker of third-party information and were therefore inconsistent with the CDA.

IV. The Courts' Construction of the CDA Is Consistent with Congressional Intent

Congress stated—in the text of the statute at issue in this case—that "[i]t is the policy of the United States … to promote the continued development of the Internet and other interactive computer services" and to "preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, *unfettered by Federal or State regulation*." 47 U.S.C. § 230(b)(1)-(2) (emphasis added). As Congress found and enacted into statute, "[t]hese services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops." 47 U.S.C. § 230(a)(2). And Congress found that the "Internet and other interactive computer services have flourished, to the benefit of all Americans, with *a minimum of government regulation*." 47 U.S.C. § 230(a)(4) (emphasis added). That is why Congress preempted state-law claims that treat service providers like Armslist as "the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1).

As against these codified statements of Congressional intent, petitioner offers the post-enactment statements of one former Congressman and two senators in support of her argument that "courts are construing the CDA contrary to congressional intent." Pet. 12-13 (capitalization in heading modified). But these three individuals' remarks are not entitled to any weight because

Congress did not vote to approve or adopt them. If anything, they tend to demonstrate that the quoted legislators were unable to persuade Congress to adopt their views.

Congress recently amended the CDA, but did not modify the courts' longstanding interpretation of the provision at issue here. In 2018, Congress enacted and the President signed the Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Pub. L. No. 115-164, 132 Stat. 1253 (2018). Congress could have modified the CDA to preclude the arguments that Armslist made in the Wisconsin courts based on decades of federal precedent. Because it did not, the most reasonable inference is that Congress approves the courts' longstanding interpretation of the Act, which carries out its codified statement of intent. *See Apex Hosiery Co. v. Leader*, 310 U.S. 469, 488-89 (1940).

Petitioner concludes by arguing that the "CDA was not intended to create a lawless no-man's-land on the internet." Pet. 32-34 (quoting *Roommates*). A better example of a strawman argument would be hard to imagine: nobody claims that the CDA creates a "lawless no-man's land on the internet." Nor does it. The third parties that create and develop information remain liable for harm that they cause. In this case, for example, petitioner named both the seller, Devin Linn, and the estate of the buyer, Radcliffe Haughton, as defendants. Similarly, as the cases cited by petitioner demonstrate, a website has no immunity from claims that do *not* treat it as a publisher or speaker of third-party information.

Here, petitioner sought to impose liability on Armslist because it published information provided by third parties. Congress preempted such liability in the CDA and the Wisconsin Supreme Court applied the CDA consistent with other courts and as Congress intended. Accordingly, there is no good reason to grant certiorari review in this case.

CONCLUSION

This Court should deny the petition for certiorari.

Dated: October 18, 2019

Respectfully submitted,

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