

**In the
Supreme Court of the United States**

JASON FYK,

Petitioner,

v.

FACEBOOK, INC.,

Respondent.

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

**BRIEF OF AMICI CURIAE
AMERICAN MADE FOUNDATION, ET AL.
IN SUPPORT OF PETITIONER**

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTERESTS OF <i>AMICI CURIAE</i>	1
SUMMARY OF THE ARGUMENT	4
ARGUMENT	13
I. The Ninth Circuit’s Interpretation and Application of the CDA Transformed the Act into a Mechanism for Censorship and Manipulation of Free Speech, Which Violated the First Amendment of the United States Constitution.....	13
II. The Ninth Circuit’s Interpretation and Application of the CDA Transformed the Act into a Mechanism by Which to Deprive Litigants of Their Right to a Fair Hearing in Violation of the Due Process Clause of the Fifth Amendment of the United States Constitution.....	15
III. The Ninth Circuit’s Interpretation and Application of the CDA, Resulted in Disparate Treatment of Similarly Situated Litigants; Thereby, Violating the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.....	16
CONCLUSION.....	18
APPENDIX	20
Identity of Amici Curiae.....	1a

TABLE OF AUTHORITIES

Page

CASES

<i>Brown v. Board of Education</i> , 347 U.S. 483 (1954)	16
<i>Dangaard v. Instagram</i> , No. C 22-01101 WHA, 2022 WL 17342198	17

CONSTITUTIONAL PROVISIONS

U.S. Const., amend. I.....	2, 6, 7, 9, 11, 12, 13, 14
U.S. Const., amend. V.....	15, 16
U.S. Const., amend. XIV.....	12, 16, 17, 18

STATUTES

47 U.S.C. § 230(c)(1)	7, 12, 13, 15, 16
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JUDICIAL RULES

Sup. Ct. R. 37	1
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INTERESTS OF THE AMICI CURIAE¹

Pursuant to Supreme Court Rule 37, the AMERICAN MADE FOUNDATION ET AL. respectfully submits this brief of *Amici Curiae* in support of the Plaintiff-Appellant, Jason Fyk. A full list of the Amici Curiae is include in the Appendix at App.1a.

The AMERICAN MADE FOUNDATION (hereinafter referred to as “AMF”) is a nonprofit organization dedicated to defending constitutional rights, free speech and the implementation of a fair and just legal system. AMF advocates for the responsible application of law to ensure that corporate entities do not unduly suppress individual liberties, particularly in the digital age. AMF advocates that the Constitution be adhered to and followed as the north star by which our nation sets its sail. AMF submits this brief to highlight the constitutional and procedural misapplications of Section 230 of the Communications Decency Act (hereinafter referred to as “Section 230”) and to urge this Court to restore the statute’s original intent.

The GATEWAY PUNDIT is one of the nation’s largest online news outlets and is committed to promoting and protecting all forms of free speech. The Gateway Pundit joins all other *Amici Curiae* herein and

¹ Pursuant to Rule 37.6, *Amici Curiae* affirm that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, its members, or its counsel made a monetary contribution to its preparation or submission. Per Rule 37.2, both parties were given timely notice of the Amici’s intent to file.

expresses its concern that Section 230 of the Communication Decency Act has been co-opted by a partnership between big tech and the Federal Government to mutate the CDA into a means of censoring free speech, all in violation of the First Amendment of the Federal Constitution.

The FREE SPEECH FOUNDATION, d/b/a America's Frontline Doctors (AFLDS) is a staunch defender of the First Amendment, free speech, and medical freedom. AFLDS opposes social media censorship and physician censorship in all forms. AFLDS's commitment to fighting censorship includes support of the Plaintiff-Appellant in this matter, as well as the filing of *amicus curiae* briefs in support of the respondent in *Murthy v. Missouri* (Sup. Ct. No. 23-411), and the petitioner in *Kory v. Bonta* (Sup. Ct. No. 24-932), and in many other cases.

THEY'RE YOUR KIDS FOUNDATION and THE COALITION AGAINST GOVERNMENT OVERREACH, advocate for citizen's fundamental freedoms and share in the concern that government overreaches when it provides both the impetus and protection for those who censor free speech, by way of claiming Section 230 immunity, which in reality promotes government control of free speech and violates our First Amendment protections.

DINO PORAZZO, JR., former CEO of AFF Media, Inc., a media company that was censored multiple times by Facebook, for simply reposting articles written by other news organizations. AFF Media also notes that Facebook, a company that should be a defender of the media's free speech protections, is instead, one of the most egregious offenders of the First Amendment.

ANNIE MARIE DELGADO, a Florida State Director with the RNC, as well as National President of Conservative Watch, USA, experienced first-hand, Facebook censoring, shadow banning and outright deleting pages of political organizations. Organizations, which should have been subject to the greatest constitutional protections, were simply shut down overnight by Facebook.

CHRISTOPHER GLEASON reports having multiple businesses “digitally assassinated” by Facebook. These businesses were censored and ultimately destroyed by Facebook, while Facebook claimed immunity under Section 230 of the CDA.

DR. MARY TALLEY BOWDEN, of AMERICANS FOR HEALTH FREEDOM reports being targeted and censored by Facebook during the pandemic for simply having a medical and political viewpoint that differed from the viewpoint of the Federal Government and Facebook. Not only was Dr. Bowden censored and banned from Facebook, she was also reported to the Texas Medical Board for potential disciplinary action.

JERROD SESSLER, businessman and congressional candidate for Washington’s Fourth District, reports that he was censored beginning in March 2020, because he expressed an opinion that was contrary to the Federal Government’s official opinion during the Covid-19 pandemic. Candidate Sessler’s campaign for Congress was even prevented from placing ads on Facebook, a restriction not imposed on his political opponent.

JOHN STUBBINS, host of the show Indivisible, asserts that his show was targeted by social media “fact checkers”, who were less concerned with the facts and more concerned with curtailing political speech contrary to their political outlook.

COL. ROB MANESS (USAF Retired), Chairman of the GatorPAC, LLC, avers that Facebook's targeting and censorship of GatorPAC has resulted in a 99.5% loss of its online traffic, as well as at least \$500,000 in lost revenue.

SUSAN PRAGER, recounts that much like the Plaintiff-Appellant in this matter, PragerU has been targeted and censored by social media platforms, that use the CDA as a shield to avoid liability, which was never the intent of Congress. Accordingly, this Court should clarify the exact scope and breath of the CDA.



SUMMARY OF THE ARGUMENT

According to the Plaintiff-Appellant's Petition for Writ of Certiorari, the Plaintiff-Appellant, Jason Fyk (hereinafter referred to as "Fyk"), built a multi-million dollar on-line business, which ultimately grew to over 25,000,000 followers and generated more than \$300,000 in monthly revenue. (Pet. Writ, pg. 8).² Fyk, further contends that he built his online business on Facebook's purportedly free platform, only to later find that he was the victim of Facebook's deceptive trade practices. (*Id.* at 9). More specifically, Fyk alleges Facebook engaged in "anticompetitive content manipulation schemes", including a "paid-for-reach" advertising model. (*Id.*).

Fyk, also asserts that because he refused to pay Facebook, Facebook then censored Fyk by using its plat-

² References to the Appellant-Plaintiff's Writ of Certiorari are abbreviated "Pet. Writ", followed by the corresponding page number.

form to direct online users to one of Fyk's competitors, Red Blue Media, an entity that had paid Facebook \$22,000,000 in advertising fees. (*Id.* at 9 & 10). Facebook also unpublished six (6) of Fyk's web pages; thereby, rendering the remainder of Fyk's business assets worthless. (*Id.* at 9).

When requested to reinstate Fyk's pages, Facebook explicitly denied reinstatement of said pages unless and until the pages in question were sold to Red Blue Media. (*Id.* at 10). Facing no other alternative, Fyk ultimately was forced to sell several of his business pages to Red Blue Media at a drastically reduced market value. (*Id.*).

The pages, which were deemed "offensive" under Fyk's ownership, were then deemed appropriate and reinstated in their exact same form under Red Blue Media's ownership. (*Id.*). Moreover, about December 2024, Mark Zuckerberg, founder, chairman and chief executive officer of Facebook, admitted that Facebook was acting under government pressure and/or directive. (*Id.* at 28).

The *Amici Curiae* wish to impress upon this Honorable Court, that Fyk's mistreatment at the hands of Facebook is not an isolated incident, but one that is becoming more and more commonplace, as the following examples illustrate.

Amicus Curiae JIM HOFT, owner and founder of the Gateway Pundit, asserts that the Gateway Pundit is presently the fifth largest conservative news site in the United States. In 2016, Facebook accounted for one-third of the Gateway Pundit's internet traffic. However, today, after years of being targeted by Facebook, the Gateway Pundit's internet traffic asso-

ciated with Facebook has been reduced to less than 2%. Moreover, normal business conditions or market fluctuations are not the reason for such a dramatic decrease in traffic. The Gateway Pundit has been censored and blacklisted, as well as mendaciously “fact-checked” by Facebook, resulting in the suppression of its content and web traffic. All of the information regarding the Gateway Pundit has been checked and verified as in 2024 the Gateway Pundit was a lead plaintiff in *Murthy v. Missouri* (Sup. Ct. No. 23-411), which was argued in front of this very Court.

Amicus Curiae JOSEPH HOLT, correspondent for the Gateway Pundit, reminds us that even individual correspondents are being targeted. Joseph Holt has been censored and shadow banned by Facebook, since becoming a correspondent for the Gateway Pundit in 2016. More recently, Joseph Holt has had his articles regarding President Trump and corruption in the Biden Administration censored by Facebook, all in violation of his First Amendment protections.

Amicus Curiae GARY S. FRANCHI, founder and chief correspondent of Next News Network, avers that the Next News Network has endured a devastating crackdown on its internet commentary by YouTube. Next News Network specifically asserts that YouTube censored its online content, content that should have been protected by the First Amendment of the United States Constitution, by forcing the deletion of over 30,000 videos totaling more than one billion views, resulting in years of work being lost, reduction in revenue and lost audience trust. Next News Network has a direct, urgent stake in ending the weaponization of Section 230 of the CDA and restoring Constitutional protection to the digital public square so government

coordinated pressure cannot override First and Fifth Amendment protections.

Amicus Curiae ROCHELLE “SILK” RICHARDSON, a media personality most commonly associated with “Diamond and Silk”, reports that she has been “targeted, shadow banned, censored and throttled” by Facebook since 2017. Silk further reports that Facebook routinely censored her by fact-checking her opinions, demonetizing her numerous times and on April 5, 2018, Silk’s content and brand were deemed by Facebook to be “unsafe to the community”. In reality, Silk posed no threat to any community, but rather expressed a conservative point of view that was inconsistent with Facebook’s politics. Silk’s opinions should have been protected by her First Amendment rights, but instead they were censored by Facebook. Silk succinctly recounts feeling helpless as she was diminished and ultimately destroyed by Facebook, who hides its bad acts behind Section 230(c)(1) of the CDA.

Amicus Curiae DINO PORAZZO, JR., CEO of AFF Media, Inc., reports that AFF Media was shutdown several times by Facebook due to articles that were actually written by and/or appeared in the Washington Post, the New York Times, the Guardian and many other media outlets. Facebook, ultimately destroyed AFF Media by censoring and shadow banning AFF Media.

Amicus Curiae ANNIE MARIE DELGADO, reports that she worked for the Trump campaign in 2016, first as Florida State Director of Grassroots and Coalitions and as HQ Manager for the RNC in Palm Beach County, Florida, then transitioned and became the president of Trump Team 2020 Florida, LLC in 2017. Delgado further reports that the political organ-

izations, with which she was associated had chapters all across the state of Florida. The chapters all had Facebook pages totaling thousands of members; however, in 2019, Facebook started suppressing postings and blocking the political organizations for sixty (60) and ninety (90) days at a time. After the 2020 election, the majority of all the chapter pages on Facebook were deleted without notice and without ability to retrieve them. The political chapters lost thousands upon thousands of members' contact information due to Facebook's hostile practice of censoring political speech.

In 2021, Delgado transitioned to Conservative Watch USA as national president. Once again, Facebook deleted the pages of multiple chapters across the country, without notice and without any ability to retrieve the information on those pages. Conservative Watch USA, LLC is now completely inaccessible, along with other chapter pages for the political organization. Facebook shadow banned and censored Conservative Watch, during the pandemic as well, shutting down any comments regarding Covid. Conservative Watch received thousands of likes and comments, now the organization is fortunate to receive enough web traffic to result in 25 likes.

Amicus Curiae CHRIS GLEASON, asserts that Facebook, Twitter, Google, and other "Big Tech" corporations have deplatformed and destroyed no less than four of his businesses, by censoring dissenting political views and crushing competition in the marketplace. This repeated pattern of abuse has been protected under deeply flawed Section 230 immunity claims. Gleason further asserts that Facebook is the most egregious, of the Big Tech Companies with Facebook, "digitally assassinating" Gleason, his family members, business

associates, and supporters, all while claiming immunity under the CDA.

Amicus Curiae MARY TALLEY BOWDEN, M.D., of Americans for Health Freedom, reports that during the pandemic, she was removed from every major social media platform for sharing factual information regarding Covid. After simply posting “Vaccine mandates are wrong”, Houston Methodist Hospital, accused her of spreading “dangerous misinformation”, which led Facebook to suspend her privileges and report her to the Texas Medical Board. These actions caused Dr. Bowden irreparable damage to her reputation, a lengthy and expensive legal battle, and prevented her from sharing important information with the public. Though some may have questioned Dr. Bowden’s comments at the time, her views have ultimately been proven correct. As succinctly noted by Dr. Bowden, the public should not be denied the opportunity to hear other points of view, particularly during an emergency situation.

Amicus Curiae JERROD SESSLER, businessman and federal candidate for Washington’s fourth congressional district, reports that In March of 2020, he began speaking out on Facebook about the fear being incited by the Covid-19 pandemic. Candidate Sessler was censored by Facebook and banned from Twitter for nothing more than exercising his free speech rights under the First Amendment. Moreover, during his congressional campaign, he was prevented from placing ads on Facebook. This, among other much worse attributes of censorship, creates an unlevel playing field for political discourse. This unlevel playing field is allowed to continue because of Section 230 of the CDA, which allows companies like Facebook to avoid liability.

Amicus Curiae JOHN STUBBINS, hosts Indivisible, a show he reports that was targeted early on, along with everyone else who was canceled, censored, demonetized, shadow banned, search banned, had shows taken down and removed from public view, all because social media platforms like Twitter, YouTube & Facebook utilized so called “fact checkers”, who flagged and removed content simply because they did not agree with the subject matter on a specific show. Instead of facts, social media companies used these “fact checkers” as an excuse to censor political speech and opinions. The actions that these social media platforms took against Indivisible harmed both the show and Stubbins personally by causing delays, an entire restructuring of their web presence, which cost one (1) full year in show production, and revenue from sponsorships, just to name a few issues. These platforms not only infringed on free speech rights, but cost the targeted shows plenty while doing so.

Amicus Curiae COLONEL ROB MANESS (USAF retired), Chairman of GatorPAC, LLC, a Veterans Leadership Fund project reports that GatorPAC has suffered tremendously under Facebook, including censorship of all of GatorPAC’s webpages, especially the @colrobmaness page. This censorship includes, but is not limited to, loss of revenue that exceeds \$500,000 since the censorship began October 2020, and the websites reach has dropped to less than 0.5% of its organic audience of over 2,000,000 followers.

Amici Curiae MARLY HORNIK, CEO, and Harry Haury, Chairman, of United Sovereign Americans note their vested interest in *Fyk v. Facebook* being grounded in the principle of legitimate representative government. Specifically, Social media companies can-

not both offer platforms for free exchange of ideas, put their thumb on the scale regarding unnatural advancement of particular ideas otherwise protected under the First Amendment, and receive blanket immunity for these hidden acts of cultural and political influence via federal law. This would be an egregious abuse of privilege under normal circumstances, but when applied to critical election information and free speech it injects a private, invisible and extremely powerful bias into what should be a free and open debate about our collective destiny as a nation, and which candidates or platforms citizens believe will best serve as a representative in furtherance of that vision.

Amici Curiae DENNIS PRAGER and SUSAN PRAGER, assert that what has been done under the auspices of 47 U.S.C. § 230 to Plaintiff-Appellant Jason Fyk, to PragerU (the online non-profit educational institution co-founded by Dennis Prager and Susan Prager), and to countless others was an abuse of Section 230 of the CDA, which was meant to allow for platforms to permit freedom of speech without having to worry about being subject to publisher's liability for third party posts, and without being categorized as a publisher if they blocked, removed, or otherwise censored (or provided the user tools to do so) certain very specific types of content that are spelled out in the statute. Somehow, despite its explicit language and its inclusion of congressional findings and the purpose of the statute, many courts have managed to misunderstand and misapply the law for nearly three decades. *Fyk v. Facebook* offers the Court a perfect opportunity to correct the lower courts' error upon error in applying this statute to the multitude of cases brought before it.

The CDA was never meant to allow platforms to engage with impunity in what would otherwise be unfair competition, theft, censorship and other unconstitutional behavior. The CDA was never meant to allow platforms to censor any and all speech its management doesn't like (or to do so secretly at the behest of the government) — speech having nothing to do with the type of material the statute explicitly targets — yet still escape publisher liability by hiding behind Section 230. The Pragers respectfully encourage the Court to grant certiorari in this case and clarify for all the meaning, purpose, and proper application of 47 U.S.C. § 230.

As it relates to the case at bar, ultimately, Fyk filed suit against Facebook in the United States District Court in the Northern District of California, alleging Facebook, *inter alia*, engaged in a variety of tortious business conduct.³ (*Id.* at 12)., The trial court ultimately dismissed Fyk's claims against Facebook, holding that Section 230(c)(1) of the CDA barred Fyk's claims against Facebook. (*Id.*). Fyk appealed the matter asserting that Facebook censored Fyk's online business content, in violation of his First Amendment freedom of speech and freedom of press rights, as well as violating his Due Process rights under the Fifth Amendment and his Equal Protection rights under the Fourteenth Amendment. (*Id.*). The appellate court affirmed the trial court's decision, resulting in the filing of the

³ Although the Plaintiff-Appellant has raised a variety of claims related to tortious business conduct, the *Amici Curiae* identified herein are focused on Constitutional violations of the First, Fifth and Fourteenth Amendments and take no position regarding any potential violations of consumer protection acts or any contractual issues between the parties.

underlying Writ of Certiorari, as well as this Brief *Amici Curiae*.



ARGUMENT

I. The Ninth Circuit's Interpretation and Application of the CDA Transformed the Act into a Mechanism for Censorship and Manipulation of Free Speech, Which Violated the First Amendment of the United States Constitution.

The First Amendment to the United States Constitution prevents the making of laws respecting an establishment of religion, prohibiting the free exercise of religion; or abridging the freedom of speech, the freedom of the press, the freedom of assembly, or the right to petition the government for redress of grievances. (U.S. Const. Amend. I)

As it relates to the interpretation and application of the CDA, the Ninth Circuit has interpreted Section 230(c)(1) as a means to claim immunity from liability, rather than an affirmative defense, as was the intended use when passed by Congress. The Ninth Circuit's interpretation of the CDA has allowed social media platforms to censor and abridge the free speech of content creators in violation of the express requirements of the First Amendment.

As the Plaintiff-Appellant's brief explicitly demonstrates, Facebook, at the behest and/or direction of the Federal Government, has a continuous and systematic history of censoring and abridging the free speech

rights and free press protections of Fyk, as well as numerous *Amici Curiae*.

In the instant case, not only did Facebook, impinge on the Plaintiff-Appellant's First Amendment rights, by shadow banning and redirecting web traffic away from Fyk's web sites in favor of Fyk's competitors. Facebook's voluntary actions severally abridged Fyk's ability to reach more than 25,000,000 followers and resulted in the abridgment of Fyk's First Amendment rights.

Prior to the advent of the internet, it seemed unthinkable that government would venture into the proverbial, town square, the historic incubator of free speech, and censor citizens based on the content of their message. However, the advent of the internet has allowed the Federal Government the ability to partner with social media companies to shut down speech in the "digital town square" by shadow banning and black-listing disfavored websites. Censorship that was not possible prior to the digital age, now becomes not only possible, but easy to accomplish with the simple reprogramming of a line of computer code.

As the experiences of Fyk, as well as the several *Amici Curiae*, explicitly exemplify, Facebook has, with the endorsement and/or encouragement of the Federal Government censored and abridged First Amendment rights, such that granting the Plaintiff-Appellant's Writ of Certiorari is not only justified, but required for the interests of constitutional fidelity.

II. The Ninth Circuit's Interpretation and Application of the CDA Transformed the Act into a Mechanism by Which to Deprive Litigants of Their Right to a Fair Hearing in Violation of the Due Process Clause of the Fifth Amendment of the United States Constitution.

The Fifth Amendment to the United States Constitution ensures due process of law, meaning no person shall be deprived life, liberty or property without first having the opportunity to be heard and treated fairly. (U.S. Const. Amend. V)

As it relates to the interpretation and application of the CDA, the Ninth Circuit has interpreted Section 230(c)(1) as a means to claim immunity from liability, rather than an affirmative defense, as was the intended use when passed by Congress. The Ninth Circuit's interpretation of the CDA has allowed social media platforms to claim absolute immunity, which denies aggrieved parties their ability to be heard prior to deprivation of liberty and property, as required by the Fifth Amendment.

More specifically, in an effort to protect his Due Process rights, Fyk brought suit to hold Facebook accountable relative to its Fifth Amendment violations, by bringing suit in the United States District Court for the Northern District of California.

However, prior to any hearing, prior to any exchange of discovery between the parties, Facebook sought and was granted a dismissal of Fyk's action based on the Ninth Circuit's interpretation that Section 230 of the CDA grants defendants absolute immunity

rather than an affirmative defense that must be pled and explored through discovery.

The Ninth Circuit's interpretation that Section 230 of the CDA is an absolute defense, rather than an affirmative defense, violates the Due Process requirements of the Fifth Amendment by denying Fyk the ability to propound interrogatories, depose interested parties, and otherwise conduct discovery. Moreover, the Ninth Circuit's current interpretation and application of Section 230 precludes Fyk's ability to have a hearing prior to deprivation of his property interests, which violates the express Due Process requirements of the Fifth Amendment

III. The Ninth Circuit's Interpretation and Application of the CDA, Resulted in Disparate Treatment of Similarly Situated Litigants; Thereby, Violating the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

The Fourteenth Amendment of the United States Constitution addresses, *inter alia*, equal protection under the law, and due process, particularly in relation to state actions. (U.S. Const. Amend XIV). Often referred to as the Equal Protection Clause, the Fourteenth Amendment forbids the disparate treatment of similarly situated litigants. (*Id.*) Equal Protection has been the cornerstone of many civil rights cases, including *Brown v. Board of Education*, 347 U.S. 483 (1954), which struck down "separate but equal" educational facilities. (*Id.*)

As it relates to the interpretation and application of the CDA, the Ninth Circuit has interpreted Section 230(c)(1) as a means to claim immunity from liability,

rather than an affirmative defense, as was the intended use when passed by Congress. The Ninth Circuit's interpretation of the CDA has led to inconsistent application and disparate treatment of similarly situated litigants, as more fully discussed, *infra*, in violation of the Equal Protection Clause of the Fourteenth Amendment.

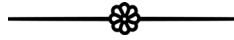
Consider the case of *Dangaard v. Instagram*, also filed in the United States District Court for the Northern District of California. In *Dangaard*, the plaintiffs alleged that the defendants in that action orchestrated a scheme through which they caused certain content creators to be blacklisted⁴ by certain social media platforms for the purpose of reducing competition. (See generally, *Dangaard v. Instagram*). Just as Facebook did in this matter, Facebook in *Dangaard*, asserted immunity pursuant to Section 230.

Although Facebook, in this matter was granted immunity pursuant to Section 230, the *Dangaard* Court came to a completely different interpretation of Section 230, concluding that Facebook's request for immunity from suit was inconsistent with the CDA's express history and intent. (*Id.*)

Accordingly, not only does the Ninth Circuit's interpretation and application of the CDA result in disparate treatment of similarly situated litigants, it has also resulted in disparate treatment of the exact same litigant in the exact same court, which results in a *prima facie* violation of the Equal Protection Clause

⁴ Blacklisting is a process whereby social media accounts are identified to certain social media platforms in a way to prompt those platforms to suspend or delete those accounts or otherwise reduce their visibility.

of the Fourteenth Amendment of the United States Constitution.



CONCLUSION

Based upon the foregoing, *Amici Curiae* respectfully submit to this Honorable Court that Section 230, as currently applied, has led to monopolistic control over digital discourse, mass censorship, election interference, and the erosion of constitutional freedoms. The weaponization of misinformation suppression has deprived Americans of their right to a free and fair press.

The Supreme Court has the power to restore Section 230 to its proper legal framework, ensuring that Big Tech cannot hide behind immunity while acting as editorial gatekeepers.

For these reasons, the American Made Foundation and all other *Amici Curiae* urge this Court to grant certiorari and take decisive action to correct the judicial misinterpretations of Section 230.

Respectfully submitted,

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