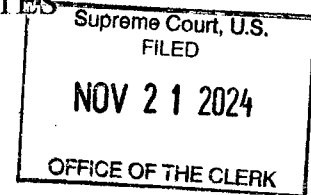


No.
24-6036

IN THE
SUPREME COURT OF THE UNITED STATES

ANTONIO MEDINA
Petitioner



vs.

MICROSOFT CORPORATION
ET AL.
Respondents

AFTER DENIAL OF PETITION FOR REVIEW
TO THE CALIFORNIA SUPREME COURT

of a Decision by the Court of Appeal Third Appellate District, Case No.
C098084, affirming an Order entered by the Superior Court for the County of
San Joaquin, Case No. STKCVUD202111122,

PETITION FOR A WRIT OF CERTIORARI

Dr. Antonio Medina
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408 365 4329
For petitioner

QUESTIONS PRESENTED

1. Whether the split in the Circuits regarding tests to grant immunity under section 230 of title 47 of the United States Code should remain unresolved.
2. Whether the conflict among many courts on the scope of Section 230 of Title 47 of the United States Code should remain unresolved.
3. Whether the circuit court of appeals split created by *Anderson v. TikTok, Inc.*, No. 22-3061 (3d Cir. Aug. 27, 2024) in a very important area of the law should be resolved.
4. Whether Defendants did enjoy immunity under Section 230 of Title 47 of the United States Code or the First Amendment to the Constitution of the United States for publishing documents sealed by a United States District Court after they curated them and removed the redactions.
5. Whether Defendants' publication of court-sealed and redacted documents, after they removed the redactions, concerns an issue of public interest and is protected by the First Amendment to the Constitution of the United States
6. Whether documents sealed by a United States District Court were public documents after defendants altered them and removed the seal/redactions.
7. Whether a complaint alleging that Defendants published court-sealed and redacted documents after they removed the redactions, is a SLAPP based on Section 230 of Title 47 of the United States Code or the First Amendment to the Constitution of the United States.

LIST OF PARTIES AND RELATED CASES

All related cases appear in the caption of the case on the cover page.

Parties:

Petitioner

Antonio Medina

Respondents

Microsoft Corporation

Pacermonitor,

Casetext,

Free Law Project And

Judith Jennison

Lower court related cases:

Medina v. Microsoft et al., Superior Court for the County of San Joaquin, Case No.

STKCVUD202111122

Medina v. Microsoft et al., Court of Appeal Third Appellate District, Case No.

C098084

Medina v. Microsoft et al., Supreme Court of The State of California Case No.

S285714

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI.

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the California Court of Appeal is attached as **Appendix A** to the petition and it is unpublished.

The denial of review by the California Supreme Court is attached as **Appendix C** and it is unpublished.

JURISDICTION

The order of the Superior Court of California striking the First Amended Complaint was entered on March 1, 2023. **Appendix B.**

The order was affirmed by the Court of Appeal on May 29, 2024. The Opinion is attached as **Appendix A.**

The California Supreme Court denied review by order filed on August 28, 2024, and a copy of the order/docket is attached as **Appendix C.**

The jurisdiction of this Court is invoked under 28 U.S. Code § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions involved are the First Amendment to the Constitution of the United States (First Amendment).

The statutory provision involved is Section 230 of Title 47 of the United States Code or 18 U.S.C (Section 230).

I. STATEMENT OF THE CASE

1. Summary of current proceedings

Summary of the action

Defendants (Individual defendants Jennison and Microsoft and Internet legal research defendants, collectively referred to as “Defendants”) were sued in California Superior Court because they defamed Plaintiff in various ways by publicizing the content of a record that had been sealed by a federal court, by stating that some documents that they provided were public when they were not and by other defamatory content that they created. They also deceived Plaintiff-Appellant giving him materially false information and placing him in a false light.

The legal research Defendants did not dispute the allegations in the

complaint but argued that it was a SLAPP¹ because part of the defaming content that they published, the sealed court records after they removed the seal and redactions, was protected activity under Section 230. They claimed that the sealed records that they modified, documents not available from the court, were public documents and a matter of public interest. The court of appeal agreed substantially repeating Defendants' arguments and affirmed based on Section 230 immunity.

2. Summary of prior proceedings

The patent infringement case where documents were sealed

The Petitioner, Dr. Antonio Medina (hereinafter also referred to as "Dr. Medina" "Medina" or "Petitioner") prosecuted in 2014 a patent infringement case against Microsoft in federal court. Defendants Jennison and Microsoft sought to maintain certain documents confidential and moved for a Protective Order. Despite being irrelevant to the motion, Individual defendant Jennison presented a defamatory purported background about Dr. Medina full of incorrect and false statements. In his opposition to Microsoft's motion for the Protective Order, Dr. Medina objected to the

¹ California's SLAPP statute, serving as somewhat of a hybrid motion to dismiss/motion for summary judgment, provides defendants a procedural device to obtain early dismissal of a plaintiff's claim that targets conduct implicating the defendant's constitutional rights of speech and petition.

facts made up by Jennison declared under oath that Microsoft's narration of events was false. A magistrate judge granted the motion in part. Without ruling on his objections, she copied almost verbatim the "background" alleged by Jennison in her order.

Dr. Medina moved to seal/strike them as false and defamatory by motion to the presiding judge Seeborg. Dr. Medina argued the motion presenting evidence that the alleged defamatory facts were false when alleged and at any other time. Judge Seeborg found that there was false and defamatory content, that the documents should not be public, and sealed that content by order of December 9, 2020. This order also has incorrect hearsay facts copied from Ms. Jennison's filings, which the Court of Appeal repeated in its Opinion.

That case is unrelated to the present one. The only connection is that the sealed documents, together with other new content, were publicized by Defendants after they removed the redacted content, in effect removing the seal.

3. Statement of facts and procedural background

A summary of the facts relevant to this case follows. Some are also found in the Opinion of the California Court of Appeal ("Opinion" **Appendix A**),

Defendants Casetext, Free Law Project, and Pacermonitor operate their private web domains where they purport to post legal opinions and other filings purportedly intended for an audience of legal researchers and attorneys to help them in the preparation and prosecution of court cases. These defendants are referred generally in the Opinion and here as the Legal Research Defendants, while the rest are referred to as the Individual Defendants.

After December 2020 Dr. Medina downloaded copies from the legal research Defendants' websites of the purported copies of public documents (a Protective Order and its Motion). They materially differ from the documents that Dr. Medina inspected in the courthouse. Defendants had removed the redactions making all content accessible. These copies created and publicized by Defendants are collectively called "the Publications" in the Complaint and other filings.

Dr. Medina also noticed that Defendants' Publications differed from the copy in the court file in that they contained no indication that they were sealed documents; they had a variety of different unrelated titles; they had added search keywords, some unrelated to the character of the document; the documents added "meta tags" and "robots files" adding false information not in the court file that mislead users about the character of the documents and

that are used to allow algorithms to display them to the audience that Defendants choose and provide publicity of Defendants' websites and financial gain to Defendants. This added information included: the removal of material content, removal of copyrights, addition of headers, titles, bogus keywords, and the way the pages are displayed in search results. All of these materially changed the character of the Publications converting the court filings into mere defamatory fake documents without any legal value. Defendants added "content" attributes that gave search engines explicit permission to show the page in search results to the general public. The use of some of this added meta information is illegal in some jurisdictions. Google has been fined for this illegal conduct.

After December 2020 Defendants falsely stated on their websites that the Publications were accurate copies or transcriptions of public documents available from the courts.

Dr. Medina examined Defendants' websites and the statements made there by the Defendants who operate websites. They are legal research sites offering court opinions and other court filings. Some they materially modified making them information content providers. With the apparent exception of Free Law Project, they allow limited free access to cases or a short free trial period, beyond that they require a subscription, opening an

account, and paying a fee. From the advertising offers made to Dr. Medina, he saw that they are primarily engaged in the business of selling legal research services. Their websites are not open to the public for information to be freely exchanged. They are not public forums. Their websites do not publish any news or anything of interest to the general public. They do not have any periodic publications of any kind. The information provided, purported court records, is transmitted one way. Their websites do not allow anyone to post anything or provide any information to Defendants other than account or subscription information. They claim that all the court documents they provide are public documents available from the courts. Searches are possible on their sites but produce incomplete, wrong results or documents that are not public court records. Dr. Medina compared various documents with the official records available from the courts and found a large number of inaccuracies, errors, and missing or added spurious and extraneous information. Defendants do not portray on their websites a true and fair picture of the results of items searched. Sometimes they produce results unrelated to the search.

Dr. Medina filed a first amended complaint in May 2022 for defamation, libel, false advertising in violation of Business and Professions Code section 17500, false light, publication of private facts, intentional misrepresentation,

and intentional infliction of emotional distress. Defendants filed anti-SLAPP motions to strike the first amended complaint.

In December 2022, Medina filed a second amended complaint pursuant to leave granted on November 29, 2009 (the December 2022 complaint).

The Superior Court granted the motion to strike the first amended complaint.

4. Disposition by the California Court of Appeal

The California Court of Appeal affirmed the order striking the First Amended Complaint issuing an Opinion, **Appendix A**.

5. Grounds for the California Court of Appeal ruling

The grounds for the California Court of Appeal striking as a SLAPP all causes of action except the cause of action for false advertising was that Defendants enjoyed immunity. The Opinion states that Microsoft and Jennison enjoyed immunity because they made in court the defamatory statements that they later transmitted to the service providers. The service providers enjoyed immunity based on section 230 as they published those statements, albeit with the redactions removed.

California's anti-SLAPP statute, Code of Civil Procedure § 425.16, was designed to combat the "disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." (Code Civ. Proc., § 425.16, subd. (a).) The Legislature

was attempting to prevent such suits from chilling rights "through abuse of the judicial process." See *Simpson Strong-Tie Co., Inc. v. Gore* 49 Cal.4th 12, 21 (2010).

Although the claims in Dr. Medina's complaint do not arise from any protected conduct within the ambit of the anti-SLAPP statute, the Superior Court and the Court of Appeal found that the anti-SLAPP statute applied to this case, in essence, because the publication of sealed court documents by the defendants was protected activity because the documents were once filed in unrelated proceedings ten years before by third parties. The Court of Appeal also held that Dr. Medina's complaint had no likelihood of success because Defendants were entitled to publish the unredacted sealed documents. The court found that Defendants published the sealed documents removing the redactions making them "public" documents. The Court of Appeal found that the United States Code section 230 protected Defendants that publish sealed court documents after the redactions were removed by them. There is no legal authority for these propositions.

6. The relief sought in the California Supreme Court

The relief sought in the California Supreme Court was to reverse the ruling of the California Court of Appeal striking causes of action as SLAPP based on section 230 and other grounds not relevant here.

7. The relief sought in this US Supreme Court proceedings

The judgment of the Court of Appeal is presently challenged in this

petition for a writ of Certiorari as it concerns section 230, which was the grounds advanced by that Court to affirm.² The California Supreme Court denied review.

II. REASONS FOR GRANTING THE PETITION

1. The main reason for granting the petition

The Opinion is in conflict with some decisions of the United States Supreme Court and US Circuit Courts. In turn, these decisions are in conflict with other decisions of the United States Supreme Court, and US Circuit Courts, and some Circuits are split about the application of Section 230 of Title 47 of the United States Code. Consideration by this court is, therefore, necessary to achieve and maintain uniformity of the court's decisions, and the integrity of the courts. This case involves more than one question of exceptional importance because it involves Internet issues on which the lower court conflicts with the authoritative decisions of the Supreme Court and other United States Courts of Appeals that have addressed the issue.

2. Certiorari should be granted to resolve current conflicts and ambiguity about the scope of § 230

There is little consensus as to the scope of Section 230. It broadly

² As explained below there is a split and conflicts in the Federal Circuits about the application of section 230.

immunizes Internet platforms, also called service providers, from liability for third-party content. No statute has had a bigger impact on the Internet than Section 230, often called the “Magna Carta of the Internet.” Thus, it is remarkable that—nearly 30 years after its enactment—basic questions about its meaning and scope remain unanswered. *Gonzalez*, 598 U.S. 617; *see also* Scott R. Anderson, Quinta Jurecic, Alan Z. Rozenshtein & Benjamin Wittes, *The Supreme Court Punts on Section 230*, Lawfare (May 19, 2023, 12:00 PM).

The key provision of Section 230—the “twenty-six words that created the Internet,” in the words of its leading historian Jeff Kosseff—is (c)(1): “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) (2018).

In most Section 230 cases, which involve a person suing an online platform or service for harm caused by third-party content, the key question is what it means for the platform or service to be “treated as the publisher or speaker” of third-party content. On one extreme, this language can be interpreted very broadly, so as to prohibit virtually all lawsuits against platforms for harm involving third-party conduct. On the other extreme, the language can be interpreted very narrowly, permitting platform liability in a

variety of contexts, such as when the platform knowingly hosts harmful third-party content or affirmatively recommends or promotes such content on its service.

In *Moody v. NetChoice, LLC*, 144 S. Ct. 2383, 2393 (2024) the Supreme Court considered social media platforms' algorithms that construct feeds to relay content to users. The Court described the platforms at issue in *Moody v. NetChoice* as ones that "cull and organize uploaded posts in a variety of ways. A user does not see everything The platforms will have removed some content entirely; ranked or otherwise prioritized what remains; and sometimes added warnings or labels." *Id.* at 2395. The Court explained that, by engaging in such activity, the platforms "shape other parties' expression into their own curated speech products." *Id.* at 2393.

Holding that "expressive activity includes presenting a curated compilation of speech originally created by others[,] " *id.* at 2400, the Court also indicated that the presence or absence of a platform's standards or preferences that govern an algorithm's choices may dictate whether the algorithm is expressive speech, *id.* at 2410 (Barrett, J., concurring), as might whether the platform is a "passive receptacle[] of third-party speech . . . that emit[s] what [it is] fed" or whether it only responds to specific user inquiries, *id.* at 2431 (Alito, J., concurring in the judgment). See also *id.* at

2409-10 (Barrett, J., concurring) (distinguishing 9 media platforms to control whether and how third-party posts are presented to other users run afoul of the First Amendment. 144 S. Ct. 2383, 2393 (2024). The Court held that a platform’s algorithm that reflects “editorial judgments” about “compiling the third-party speech it wants in the way it wants” is the platform’s own “expressive product” and is therefore protected by the First Amendment. *Id.* at 2394.

Given the Supreme Court’s observations that platforms engage in protected first-party speech under the First Amendment when they curate compilations of others’ content via their expressive algorithms, *id.* at 2409, it follows that doing so amounts to first-party speech under § 230, too. See *Doe ex rel. Roe v. Snap, Inc.*, 144 S. Ct. 2493, 2494 (2024).

However, according to the 4th Circuit, Section 230(c)(1) bars “lawsuits seeking to hold [an interactive computer] service provider liable for its exercise of a publisher’s traditional editorial functions — such as deciding whether to publish, withdraw, postpone or alter content” originated from third parties. (*Zeran v. Am. Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997). This is in conflict with *Doe*. Most courts, including the California Court of Appeal in this case, see Opinion at p. 11, followed *Zeran* and its progeny like *Barrett v. Rosenthal*, 40 Cal.4th 33 (2006) at p. 48. This broad

immunity was broadened even further when *Zeran* held that § 230(c)(1) barred both publisher *and* distributor liability. *Id.* at 331–34. Though *Zeran* has been criticized as inconsistent with the text, context, and purpose of § 230 (and was decided in an era where those traditional tools of construction were rarely consulted), the opinion was cut-and-paste copied by courts across the country in the first few years after the statute arrived. *See Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, 141 S. Ct. 13, 15–18 (2020) (Thomas, J., statement respecting denial of certiorari); *Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 746–47 (9th Cir. 2024) (Nelson, J., concurring); *See* Adam Candeub, *Bargaining For Free Speech: Common Carriage, Network Neutrality, and Section 230*, 22 Yale J.L. & Tech. 391 at 423–28, (2018).

Zeran is in conflict with a recent published opinion of the 3rd Circuit *Anderson v. TikTok, Inc.*, No. 22-3061 (3d Cir. Aug. 27, 2024) (“But § 230(c)(1) does not immunize more. It allows suits to proceed if the allegedly wrongful conduct is not based on the mere hosting of third-party content but on the acts or omissions of the provider of the interactive computer service. This is where *Zeran* went astray, wrongly reasoning that distributor liability “is merely a subset, or a species, of publisher liability.””) Emphasis added. *TikTok* has created a further circuit split.

3. Certiorari should be granted because this case is a good example of the conflicts in the application of § 230 and the opportunity to fix it

Today, § 230 rides in to rescue corporations from virtually any claim loosely related to content posted by a third party, no matter the cause of action and whatever the provider's actions as this case and others illustrate. *See, e.g., Gonzalez v. Google LLC*, 2 F.4th 871, 892–98 (9th Cir. 2021), *vacated*, 598 U.S. 617 (2023). The result is a § 230 that immunizes platforms from the consequences of their own conduct and permits platforms to ignore the ordinary obligation that most businesses have to take reasonable steps to prevent their services from causing devastating harm.

In this case, the immunity has been extended to reach absurd and legally impossible conclusions. Section 230 has been stretched beyond reason to immunize conduct that was never intended to fall under this statute. That reasoning is erroneous and dangerous. It is erroneous because a sealed document cannot be a public document by definition. It is a legal impossibility. Defendants were therefore not making available to the public a public document as they claimed, they were providing their own creation, a document where they removed the redacted content. Removing the redaction or seal and publishing them as a public document is the basis for a

lawsuit, not the basis for protection and immunity. It is dangerous because the Court's Opinion and those cases cited for support, provide an incentive, if not a roadmap, to abusers of statute³.

This conception of § 230 immunity departs from the best ordinary meaning of the text and ignores the context of congressional action. Section 230 was passed to address an old problem arising in a then-unique context, not to “create a lawless no-man’s-land” of legal liability. Some circuits have adhered to this view creating a split in the circuits about the meaning and application of § 230. *Fair Hous. Council 13 of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1164 (9th Cir. 2008) (en banc).

The alternative and best reading of § 230(c)(1) is adopting the meaning of “publisher” used by *Stratton Oakmont, Inc. v. Prodigy Services Company*, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995) and *Cubby, Inc. v. CompuServe, Inc.*, 776 F.Supp. 135 (S.D.N.Y. 1991). See *George v. McDonough*, 596 U.S. 740, 746 (2022) (“Where Congress employs a term of art obviously transplanted from another legal source, it brings the old soil with it.” So, when § 230(c)(1) prohibits treating Defendants as the

³ It also offends the courts. Defendants in effect ignored, disregarded and contravened a court order sealing documents, not only by publishing them after removing the seal, but by falsely stating that the documents that they created were public records available to the public from the courts.

“publisher” of court documents created by third parties, that means they cannot be liable for the mere act of hosting those documents. *See Malwarebytes*, 141 S. Ct. at 14–16 (Thomas, J., statement respecting denial of certiorari); *Doe ex rel. Roe v. Snap, Inc.*, 88 F.4th 1069, 1070–72 (5th Cir. 2023) (Elrod, J., dissenting from denial of rehearing en banc); Candeub, *Reading Section 230 as Written*, *supra*, at 146–51. They cannot, in short, be held liable as a publisher.

Section 230(c)(1) does not immunize more. Therefore, as the logically equivalent positive corollary, it allows suits to proceed if the allegedly wrongful conduct is not based on the mere hosting of third-party content but on the acts or omissions of the provider of the interactive computer service. This is where *Zeran* went astray, wrongly reasoning that distributor liability “is merely a subset, or a species, of publisher liability,” *Zeran*, 129 F.3d at 332. It is true that “[s]ources sometimes use language that arguably blurs the distinction between publishers and distributors.” *Malwarebytes*, 141 S. Ct. at 15 (Thomas, J., statement respecting denial of certiorari). But understanding § 230(c)(1)’s use of “publisher” to subsume distributor liability conflicts with the context surrounding § 230’s enactment. Both *CompuServe* and *Stratton Oakmont* saw two distinct concepts. *See CompuServe*, 776 F. Supp. at 138–41; *Stratton Oakmont*, 1995 WL 323710,

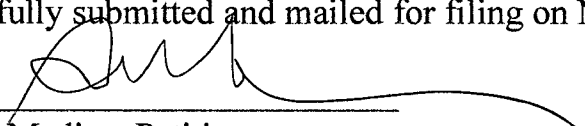
at 1–5. So did the common law of common carriers. It is implausible to conclude Congress decided to silently jettison both past and present to coin a new meaning of “publisher” in § 230(c)(1). *See Malwarebytes*, 141 S. Ct. at 14–16 (Thomas, J., statement respecting denial of certiorari).

Properly read, § 230(c)(1) says nothing about a provider’s own conduct beyond mere hosting. Defendants’ own expressive activity, does not bar Dr. Medina’s claims under § 230 because they modified the original content removing redactions of a sealed document and added their own metadata to be used for selective presentation using their algorithms. Defendants did not act as a repository of third-party content but as an affirmative promoter of such content. *See Anderson v. TikTok, Inc.*, No. 22-3061 (3d Cir. Aug. 27, 2024).

III. CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted and mailed for filing on November 21, 2024.



Antonio Medina, Petitioner