No. 24-732

IN THE
SUPREME COURT OF THE UNITED STATES

CHILDREN'S HEALTH DEFENSE,

Petitioner,

v.

META PLATFORMS, INC., MARK ZUCKERBERG,
THE POYNTER
INSTITUTE FOR MEDIA STUDIES, INC.,
SCIENCE FEEDBACK,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT
THE POYNTER INSTITUTE FOR MEDIA
STUDIES, INC.

MARK R. CARAMANICA
  Counsel of Record
THOMAS & LOCICERO PL
601 South Boulevard
Tampa, FL 33606
(813) 984-3060
mcaramanica@tlolawfirm.com

May 27, 2025

QUESTIONS PRESENTED

In this matter, Petitioner Children's Health Defense ("CHD") brought multiple counts against all Respondents ranging from alleged *Bivens* claims to civil RICO and Lanham Act violations. But the questions it now brings to this Court on certiorari petition (the "Petition") address but a sliver of its original, fully dismissed, case. Importantly for Respondent The Poynter Institute for Media Studies, Inc. ("Poynter") those questions, as framed by CHD, do not implicate any of the now-rejected claims it brought against Poynter.

CHD does not seek to have this Court review any claims against Poynter. Rather, in its Petition, CHD only urges this Court grant certiorari to determine whether it has stated an equitable free speech claim against Meta Platforms, Inc. ("Meta") (*see* Pet. at 4), the singular portion of this case that was not *unanimously* affirmed by the Ninth Circuit appellate court.

Accordingly, CHD has framed the Questions Presented solely in terms of: (1) whether and under what factual circumstances, if any, Meta can be considered a state actor for purposes of finding a First Amendment violation; and (2) whether an interactive computer service provider entitled to immunity under 47 U.S.C. § 230 can be considered a state actor when it allegedly effectively cedes control of third-party content moderation decisions or policies to government. *See* Pet. at i.

Given these questions only implicate the single equitable relief claim CHD seeks to revive against Meta and corresponding factual allegations unrelated to Poynter, Poynter respectfully defers to and adopts by incorporation any counterstatement of the Questions Presented set forth in Meta's response to the Petition.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

The Poynter Institute for Media Studies, Inc. has no parent corporation and issues no stock.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

INTRODUCTION

CHD is not asking this Court to review any action below with regard to Poynter. Thus, CHD's writ should be denied as to Poynter.

The Petition itself supports denial of the writ. As discussed more fully in the next section, all claims brought against Poynter in this matter were dismissed with prejudice by the District Court. That dismissal was then unanimously affirmed by the Ninth Circuit Court of Appeals. In its Petition, CHD does not seek to disturb any of those rulings. In fact, aside from being listed as a respondent on the Petition's cover, Poynter is not mentioned once in the actual Petition. For this reason alone, the writ against Poynter can be denied.

In fact, CHD seeks to revive only a dismissed claim of equitable relief against Meta for an alleged First Amendment violation based on purported allegations that it became a state actor by essentially doing the federal government's bidding with respect to certain content moderation actions on its Facebook platform. Poynter maintains that claim too was properly dismissed below and this Court need not grant CHD's petition with respect to Meta. On the more substantive grounds for denial, however, Poynter again defers to Meta's arguments and incorporates them by reference.

STATEMENT OF THE CASE

This section focuses on the claims made in this case as relevant at this stage to Poynter. CHD filed its lawsuit in this matter in August of 2020 in the Northern District of California. In response to motions to dismiss and by agreement of the parties, it thereafter twice amended its complaint. *See* Pet. at 98a, n.2 (District Court Opinion). Ultimately, CHD's Second Amended Complaint contained counts against the defendants for: (1) First and Fifth Amendment *Bivens* violations; (2) Lanham Act false advertising; (3) civil RICO; and (4) declaratory relief. *See* Pet. at 96a.

The served parties[1] (Poynter, Meta, and Mark Zuckerberg) filed motions to dismiss the Second Amended Complaint. In June of 2021, the District Court granted those motions, with prejudice.

CHD appealed the District Court's ruling in full. The Ninth Circuit fully affirmed the District Court's ruling. *See* Pet. at 2a. However, in an opinion concurring in part and dissenting in part with the majority ruling, one panel member took exception to a single portion of the majority's ruling. In dissent, Judge Collins wrote that he would find that CHD had plausibly alleged a First Amendment claim for injunctive relief against Meta. *See* Pet. at 42a. In all other respects, to include affirming the District Court's dismissal of all claims against Poynter, Judge Collins concurred with the majority. *See* Pet. at 42a.

---

[1] A fourth named defendant, Science Feedback, was never served.

CHD's Petition springs from Judge Collins' dissent, seeking revival only of an equitable First Amendment claim, and only against Meta. *See* Pet. at 4. It further concedes it is no longer pursuing any Lanham Act or civil RICO claims. *See* Pet. at 4, n. 3. The Petition, which in all respects is silent as to Poynter, should therefore be denied as to Poynter.

REASONS FOR DENYING WRIT

As noted above, CHD simply seeks no relief from this Court as to Poynter. Thus, this Court should not now, or ever, entertain any such relief because it has not been raised by CHD. *See Moore v. Harper*, 600 U.S. 1, 36 (2023) ("We decline to address whether the North Carolina Supreme Court strayed beyond the limits derived from the Elections Clause. The legislative defendants did not meaningfully present the issue in their petition for certiorari or in their briefing, nor did they press the matter at oral argument."); Sup. Ct. R. 14.1.(a) ("Only the questions set out in the petition, or fairly included therein, will be considered by the Court."). CHD has thus abandoned any further right to challenge any ruling below with respect Poynter. *See Communist Party of U.S. v. Subversive Activities Control Bd.*, 367 U.S. 1, 31-32 (1961) ("We hold that the Communist Party abandoned its claim of error in the Board's denial of its motion to require the Gitlow documents produced, by failing to raise that question in its previous petition for certiorari here."). Consequently, the writ must be denied as to Poynter.

As to the relief CHD does seek in its Petition, Poynter again mantains that this Court should deny the writ and adopts and incorporates by reference the response filed by Meta.

CONCLUSION

In its Petition, CHD seeks no relief from this Court regarding any claims brought against Poynter in the Second Amended Complaint—all of which were dismissed with prejudice by the District Court, with that dismissal then being unanimously affirmed on appeal. For this simple reason, the Petition must, at the very least, be denied as to Poynter.

For the additional reasons set forth by Meta in its response to CHD's Petition, and incorporated herein by reference, the narrow equitable relief sought to be revived against Meta should also not be reviewed.

Thus, for all of the foregoing reasons, CHD's petition for writ of certiorari should be denied in full.

Respectfully submitted,   Dated: May 27, 2025

/s/ *Mark R. Caramanica*
Mark R. Caramanica
 Counsel of Record
THOMAS & LOCICERO PL
601 South Boulevard
Tampa, FL 33606
(813) 984-3060
mcaramanica@tlolawfirm.com