No. 21-6916

In the Supreme Court of the United States

ORIGINAL

JOACHIM MARTILLO
PETITIONER

V.

TWITTER INC,
FACEBOOK INC,
LINKEDIN CORP,
A MEDIUM CORP,
THE STANFORD DAILY PUBLISHING CORP,
AND
HARVARD CRIMSON INC
DEFENDANTS

ON PETITION FOR WRIT OF CERTIORARI BEFORE JUDGMENT TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petition for a Writ of Certiorari[1]

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1 The Petition is paginated at the top right corner. The incorporated appellate documents are paginated at top center. The incorporated district court documents are paginated at the bottom.

Questions Presented

1. The opinion contained in *Malwarebytes v. Enigma* and an *obiter dictum* in *Biden v. Knight* imply that current caselaw associated with 47 U.S. Code § 230 is flawed. What is the correct interpretation of § 230?
2. The Appellate Court of *Zeran v. America Online, Inc.* used the logical fallacy called denial of the antecedent in the interpretation of § 230. Is it allowable for a Court to use a logical fallacy in interpretation of a statute?
3. Did the Appellate Court of *Zeran* violate U.S. Constitution Article I Section I by interpreting § 230 in a way that amounts to creating law?
4. The Internet/WWW is a state-supported establishment that has a definite identifiable structure that can be mapped to a location that has sublocations all over the planet. The Internet/WWW has premises that have buildings with grounds or appurtenances throughout the United States of America. The premises of the Internet/WWW may temporarily include premises of a user, whose device connects to the Internet/WWW. Since the 1950s the Internet/WWW, which has evolved from the ARPANET, was intended to become a place of accommodation for resource sharing. Now it is public. Is the Internet/WWW a place of public accommodation within the definition provided by 42 U.S. Code § 2000a?
5. Does each Defendant of the trial court proceeding provide a place of public accommodation within the definition provided by 42 U.S. Code § 2000a?
6. Whether or not the current caselaw associated with § 230 is correct, does § 230 override civil rights law including 42 U.S. Code § 1981 and 42 U.S. Code § 1982?
7. Has § 230 voided practically all civil rights law?
8. Each Defendant provides a common carriage service that hardly differs from telegraph service or telex service, each of which is a common carriage service. § 230 says nothing about common carriage. Because the federal government is not regulating an Interactive Computer Service (ICS) by means of federal common carriage law, does U.S. Constitution Article VI ¶ 2 give a state the power despite § 230 to use state common carriage law to regulate an ICS, which is a common carrier?
9. Whether or not the current caselaw associated with § 230 is

correct, does § 230 override common carriage law?

10. Has § 230 voided practically all common carriage law?

11. The district court judge did not challenge the Petitioner (Joachim) when he asserted that each Defendant was a common carrier but used an irrelevant voice precedent to assert that the Petitioner had no monetary claim under M.G.L. Chapter 159, § 1 & § 2. Is digital personal literary property, which a Defendant carries in the form of a post, comment, or tweet, "other property" according to M.G.L. Chapter 159, § 1?

12. Was the dismissal of the Petitioner's Original Complaint an abuse of discretion?

List of All Parties

Because the district court judge dismissed the Petitioner's Original Complaint before service, the only party to the proceeding is Petitioner Joachim Martillo.

Corporate Disclosure Statement

There is neither parent corporation nor publicly held company in this case because the district court judge dismissed the Original Complaint before service of the Defendants.

Related Proceedings

All proceedings directly related to this petition consist of the following.

- *Martillo v. Twitter et al.*, No. 21-1921 (U.S. Court Of Appeals for the First Circuit), Opening, Nov. 15, 2012.
- *Martillo v. Twitter et al.*, No. 1:2021cv11119 (US District Court for the District of Massachusetts), Final Order of Dismissal, Oct. 15, 2021.

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Petition for a Writ of Certiorari (continued)

Joachim Martillo (Petitioner) respectfully petitions for a writ of certiorari to the United States Court of Appeals for the First Circuit before a pending judgment. While Joachim is not an attorney, he is a legal professional and does not make this petition lightly. He humbly hopes that his reasoning becomes clear as this petition is read and that he is not guilty of hubris.

Opinions and Related Case Materials Below

Appendix A – Orders contains the district court orders.

Appendix B – Denial contains the district court denial of reconsideration.

Appendix C – Statutes contains the complete text of a statute that was excerpted in the section entitled *Statutes Involved.*

Appendix D – Civil contains the Civil Docket.

Appendix E – Appellate contains the Appellate Docket.

Appendix F – Appellant's Brief contains the Appellant's Brief with Addendum. The Addendum

contains the district court orders.

Appendix G – Appellant's Appendix contains the Appendix of the Appellant's Brief. The Appendix of the Appellant's Brief contains the district court case documents from the Original Complaint through denial of reconsideration by the district court.

While neither the district court case nor the appellate case has been published, both cases are accessible via PACER.

Jurisdiction

Joachim appealed to the Court of Appeals of the First Circuit from the final order of the district court in a case that arises from violation of U.S. federal civil rights law according to 42 U.S. Code § 2000a and 42 U.S. Code § 2000a-3 and from violation of Massachusetts common carrier law according to M.G.L. Chapter 159 § 1 and M.G.L. Chapter 159 § 2. The district court had jurisdiction according to 28 U.S.C. §§ 1331 and 1332.

The appeal is timely pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure because the Notice of Appeal in this civil case was filed within 30 days of the district court's decision. The Court of Appeals has jurisdiction pursuant to 28 U.S. Code § 1291 and 28 U.S. Code § 1294 because the October 15, 2021 decision is a final order or judgment that disposes of Joachim's claims in Civil Action No.: 20-11119-RGS.

The Appeal was assigned Case No. 21-1921. All necessary filings of the appellate case were fully entered on December 29, 2021. The jurisdiction of the Supreme Court is invoked under 28 U.S. Code § 1254(1).

Constitutional Provisions Involved

U.S. Constitution Article I Section I

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

U.S. Constitution Article VI ¶ 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding.

Statutes Involved

18 U.S. Code § 1091 – Genocide

Section 1091 of Title 18 states the following.

> **(a) BASIC OFFENSE.** — Whoever, whether in time of peace or in time of war and with the specific intent to destroy, in whole or in substantial part, a national, ethnic, racial, or religious group as such—
>
> > **(1)** kills members of that group;
> >
> > **(2)** causes serious bodily injury to members of that group;
> >
> > **(3)** causes the permanent impairment of the mental faculties of members of the group through drugs, torture, or similar techniques;
> >
> > **(4)** subjects the group to conditions of life that are intended to cause the physical destruction of the group in whole or in part;
> >
> > **(5)** imposes measures intended to prevent births within the group; or
> >
> > **(6)** transfers by force children of the group to another group;
> >
> > shall be punished as provided in subsection (b).

28 U.S. Code § 1915 – Proceedings in forma pauperis

Section 1915 of Title 28 states the following.

(e)

(1) The court may request an attorney to represent any person unable to afford counsel.

(2) Notwithstanding any filing fee, or any portion thereof, that may have been paid, the court shall dismiss the case at any time if the court determines that—

(A) the allegation of poverty is untrue; or

(B) the action or appeal—

(i) is frivolous or malicious;

(ii) fails to state a claim on which relief may be granted; or

(iii) seeks monetary relief against a defendant who is immune from such relief.

42 U.S. Code § 1981 – Equal rights under the law

(a) STATEMENT OF EQUAL RIGHTS

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "MAKE AND ENFORCE CONTRACTS" DEFINED

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) PROTECTION AGAINST IMPAIRMENT

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

42 U.S. Code § 1982 – Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

42 U.S. Code § 2000a – Prohibition against discrimination or segregation in places of public accommodation

Section 2000a of Title 42 states the following.

> **(b) ESTABLISHMENTS AFFECTING INTERSTATE COMMERCE OR SUPPORTED IN THEIR ACTIVITIES BY STATE ACTION AS PLACES OF PUBLIC ACCOMMODATION; LODGINGS; FACILITIES PRINCIPALLY ENGAGED IN SELLING FOOD FOR CONSUMPTION ON THE PREMISES; GASOLINE STATIONS; PLACES OF EXHIBITION OR ENTERTAINMENT; OTHER COVERED ESTABLISHMENTS**
>
> Each of the following establishments which serves the public is a place of public accommodation within the meaning of this subchapter if its operations affect commerce, or if discrimination or segregation by it is supported by State action:
>
> (1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;
>
> (2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises,

including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

(4) any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

42 U.S. Code § 2000a–3 – Civil actions for injunctive relief

Section 2000a–3 of Title 42 states the following.

(a) Persons aggrieved; intervention by Attorney General; legal representation; commencement of action without payment of fees, costs, or security

Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2000a–2 of this title, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved and, upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the civil action without the payment of fees, costs, or

security.

47 U.S. Code § 230 – Protection for private blocking and screening of offensive material

Section 230 of Title 47 states the following.

> **(c) PROTECTION FOR "GOOD SAMARITAN" BLOCKING AND SCREENING OF OFFENSIVE MATERIAL**
>
> > **(1) TREATMENT OF PUBLISHER OR SPEAKER**
> >
> > 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.
> >
> > **(2) CIVIL LIABILITY**
> >
> > No provider or user of an interactive computer service shall be held liable on account of—
> >
> > > **(A)**
> > >
> > > any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable,

M.G.L. Chapter 159 § 1 Duties; jurisdiction to enforce

Chapter 159, Section 1. Every common carrier of merchandise or other property shall receive, transport and forward all property offered for such purposes by other such carriers as promptly, faithfully and impartially, at as low rates of charge, and in a manner and on terms and conditions as favorable to the carrier offering such property, as he on the same day and at the same place receives, forwards and transports, in the ordinary course of business, property of a like description offered by persons other than such carriers. Such carrier

shall not discriminate against any particular person or subject him to any undue or unreasonable prejudice or disadvantage. The supreme judicial or superior court shall have jurisdiction in equity to enforce this section.

M.G.L. Chapter 159 § 2 Penalty

Chapter 159, Section 2. Every such carrier who wilfully neglects or refuses to comply with the preceding section shall forfeit not less than fifty nor more than five hundred dollars, to the person offering the property for transportation.

Complete Statutes

Complete versions of 18 U.S. Code § 1091, 28 U.S. Code § 1915, 42 U.S. Code § 2000a, 42 U.S. Code § 2000a–3, and 47 U.S. Code § 230 are reproduced in *Appendix C – Statutes*.

Rule Involved

Rule 11. Certiorari to a United States Court of Appeals before Judgment

A petition for a writ of certiorari to review a case pending in a United States court of appeals, before judgment is entered in that court, will be granted only upon a showing that the case is of such imperative public importance as to justify deviation from normal appellate practice and to require immediate determination in this Court. See 28 U. S. C. § 2101(e).

Statement

Joachim requests this Court to exercise its power and discretion under Rule 11 of its rules to grant a writ of certiorari before judgment to the United States Court of Appeals for the First Circuit.

Abuse of Discretion

Because the Original Complaint was dismissed before service under 28 U.S. Code § 1915(e)(2), the merits of the district court case are not at issue. The

appeal seeks reversal of the dismissal on the grounds of abuse of discretion and remand to district court so that the Defendants can be served and the trial can proceed.

The abuse results from the following problems in law.

1. The caselaw associated with 47 U.S. Code § 230 (c) is based on the inverse error logical fallacy, which is called denial of the antecedent.
2. The caselaw is problematic that is associated with denying that a social medium Interactive Computer Service provides a place of public accommodation within the Internet/WWW, which is itself a place of public accommodation according to the definition of a place of public accommodation within 42 U.S. Code § 2000a.
3. The relationship between 47 U.S. Code § 230 and common carriage law needs to be clarified.
4. The district court judge incorrectly applied a voice precedent to the common carriage of digital personal literary property in order to deny that Joachim had a valid monetary claim against every Defendant, each of whom is a common carrier of digital merchandise and other property under M.G.L. Chapter 159 §§ 1 & 2.

1. Logical Fallacy

The simple statement of the inverse fallacy is the following.

$$(p \to q)$$
$$\therefore (q \to p)$$

The above form is sometimes called affirmation of the consequent.

Zeran applied the inverse fallacy in contrapositive form.

$$(p \to q)$$
$$\therefore (\neg p \to \neg q)$$

In this form the inverse fallacy is sometimes called

denial of the antecedent.

In the *Zeran* appellate decision,

1. *p* represents "a social medium ICS is accused of defamation or of a similar act",
2. ¬*p* represents "a social medium ICS is not accused of defamation or of a similar act",
3. *q* represents "a social medium ICS is not a publisher", and
4. ¬*q* represents "a social medium ICS is a publisher".

The decision assumes the following principles with respect to publisher liability and editorial discretion.

1. A non-publisher has no liability and no unfettered editorial discretion.
2. A publisher has liability and unfettered editorial discretion.

The *Zeran* decision court combines the inverse fallacy with 47 U.S. Code § 230 (c)(1) to yield the following.

1. If a social medium ICS is accused of defamation or of a similar act, the social medium ICS has no publisher's liability [for libel or slander, which is present in third party content].
2. If a social medium ICS is not accused of defamation or of a similar act, the social medium ICS has a publisher's unfettered editorial discretion [to remove a user or his content].

The above fallacious interpretation of a clause within a statute is not judicial but is ideological and seems to be a covert possibly unconscious attempt unjustifiably to inject net neutrality into the federal statute even though Congress never legislated net neutrality into this statute. If the federal judiciary interprets the law on the basis of the inverse fallacy, the federal judiciary violates the U.S. Constitution Article I Section I by legislating and teaches the public that the inverse fallacy is a reasonable basis

of law.[2]

2. Place of Public Accommodation

One can understand why Plaintiff Clegg[3] believed the Cult Awareness Network to be a public accommodation. He read a definition of Establishment and saw it included a group-related meaning. By using the word "located", 42 U.S. Code § 2000a (b)(4) excludes such a group-related meaning. In determining an allowed meaning of a word or phrase, found within a statute and critical to understanding the statute, a meaning of the word or phrase should be excluded if the meaning does not make sense in all appearances or semantic-syntactic associations of the word or phrase in the statute unless there is clear reason and perhaps an explanation for the change in meaning from one point in the statute to another point in the statute.[4] A person is not said to be located in an (or the) Establishment when the Establishment is a group of human beings except perhaps when the whole human group of the Establishment is located together in exactly one place.[5] According to every other group-related meaning of Establishment, a person is called a member of an (or the)

2 Both the Appellant's Brief (p. 30a) and also the Memorandum in Support of the Motion for Reconsideration (p. 144a). contain a more detailed discussion of the use of logical fallacy in creating § 230 caselaw.

3 *Clegg v. Cult Awareness Network*, 18 F.3d 752, 755–56 (9th Cir. 1994).

4 When 42 U.S. Code § 2000a (b) uses the phrase "supported in their activities by State action as places of public accommodation", it refers to state support of a public accommodation without semantic association with discrimination or segregation in the syntax or phraseology. When 42 U.S. Code § 2000a uses the phrase "support(ed) by State action", it associates the phrase syntactically and semantically with discrimination or segregation.

5 The phrase "the military establishment" provides an example of a group-related use of the word "establishment". The military establishment does not exist without people, but the Internet/WWW is a structure that exists and functions even if no person uses it or is within it.

Establishment, which is an abstract idea in this sense – rather like the abstract idea exception of patent law. In contrast, a place of entertainment or exhibition, which a social medium ICS provides, is located within the Internet/WWW. The ICS is not a member of the Internet/WWW.

The exclusion of a group of human beings from the meaning of public accommodation in the 1964 CRA is analogous to the exclusion of a method of organizing a human activity under 35 U.S. Code § 101 patent eligibility doctrine. It is wrong to apply *Clegg* to adjudicate whether a social medium ICS provides a place of public accommodation by means of the Internet/WWW or within it because a social medium ICS is not equivalent to its group of human users. It is rare that a body of caselaw is so flawed, but the caselaw associated with dismissing a civil rights claim against a social medium ICS on the basis of *Clegg* is at best worthless but is more correctly considered harmful.

Noah v. AOL Time Warner, Inc., 261 F. Supp. 2d 532, (E. D. Va. 2003) depends on *Clegg*, fails precedentially, refers to structures,[6] and states the following.

> Title II's definition of "places of public accommodation" provides a list of "establishments" that qualify as such places. This list, without exception, consists of actual physical structures; namely any "inn, hotel, motel, ... restaurant, cafeteria, lunchroom, lunch counter, soda fountain,... gasoline station ... motion picture house, theater, concert hall, sports arena [or] stadium." 42 U.S. Code § 2000a(b) (1)-(3). In addition, § 2000a(b) (4) emphasizes the importance of physical presence by referring to any "establishment ... which is physically located within" an establishment otherwise covered, or

6 A computer program executable is transformed into a real structure that is established or located in a place in memory. See *In Re Edward S. Lowry* (Serial No. 07/181,105), 32 F.3d 1579 (Fed. Cir. 1994).

> "within ... which" an otherwise covered establishment "is physically located." 42 U.S. Code § 2000a(b) (4) (emphasis added). Thus, in interpreting the catchall phrase "other place of exhibition or entertainment" on which plaintiff relies, the statute's consistent reference to actual physical structures points convincingly to the conclusion that the phrase does not include forums for entertainment that are not physical structures or locations. 42 U.S. Code § 2000a(b) (3); see *Welsh v. Boy Scouts of America*, 993 F.2d 1267, 1269 (7th Cir. 1993) (holding that the statute, "in listing several specific physical facilities, sheds light on the meaning of 'other place of ... entertainment'"); *Clegg v. Cult Awareness Network*, 18 F.3d 752, 755 (9th Cir.1994) (holding that, by its plain language, Title ***542** II covers only "places, lodgings, facilities and establishments open to the public").

If the *Noah* Court believes that the Internet/WWW does not have physical structures and facilities, one must ask whether the *Noah* Court believes that the Internet/WWW has magical or imaginary structures and facilities.[7]

Lewis v. Google LLC, 851 App'x 723, 724 (9th Cir. 2021) depends on *Clegg* and fails precedentially. Lewis states the following.

> To conclude Google or YouTube were places of public accommodation under Title II "would obfuscate the term 'place' and render nugatory the examples Congress provides to illuminate the meaning of that term." Id. at 755. The district court did not err in dismissing Lewis's Title II claim.

Google or YouTube provides a temporarily

7 To be fair, because the *pro se* Plaintiff Saad Noah had only user's understanding of the Internet/WWW technology and less understanding of civil rights law, he was unable to explain a coherent basis for his complaint within the language of civil rights law.

assembled "place of exhibition or entertainment" like a circus and thus provides a place of public accommodation [42 U.S. Code § 2000a (b)(3)]. This place of exhibition or entertainment extends from the ICS servers to the structures that ICS software creates in a place in memory of a device on which a user's browser is running.

Despite caselaw, which butchers the English language, the science of physics, and the discipline of engineering,[8] the Internet/WWW is a state-supported establishment that has a definite identifiable structure that can be mapped to a location that like Harvard University has sublocations all over the planet. The Internet/WWW has premises that have buildings with grounds or appurtenances throughout the United States of America including at least temporarily premises of a user, who connects a device to the Internet/WWW and thus puts himself in or on the Internet just as one might be in a movie theater or on a playing field. Since the 1950s the Internet/WWW (originally the ARPANET[9]) was intended to become a place of accommodation for resource sharing. Now it is public. The Internet/WWW is a place of public accommodation within the definition provided by 42 U.S. Code § 2000a.[10]

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8 See *Richards v. United States*, 369 US 1, 9 (1962), quoted in *Welsh v. Boy Scouts of America*, 993 F.2d 1267 (7th Cir. 1993) at 1269 ("[W]e must always be cognizant of the fact that 'the legislative purpose is expressed by the ordinary meaning of the words used.'").

9 In 1969 the ARPANET connected four independent network nodes located in the University of California, Los Angeles (UCLA), in the Stanford Research Institute (SRI), in the University of California-Santa Barbara (UCSB), and in the University of Utah. The ARPANET was a place of accommodation that one entered at each of these four locations. The Internet, into which the ARPANET expanded, hardly ceases to be a place because it has become larger and open to the public.

10 The first Internet café was the café of the Dallas Infomart. It opened in 1994. Because it served coffee and tea, it was a

3. Clarification of Common Carriage Law

Federal telecommunications common carriage regulation begins in 1910 with the Mann-Elkins Act in which Congress defined both telegraph and also telephone companies to be common carriers and which gave the Interstate Commerce Commission (ICC) administrative jurisdiction over such telecommunications common carriers. This petition is not the place to provide a history of U.S. telecommunications common carriage law and regulation. Yet, it is worthwhile to mention that eventually many other telecommunications services and systems came under federal regulation including telex and Packet-Switched Public Data Networks like Tymnet or the Internet. Administrative jurisdiction was vested in a federal regulatory agency like the ICC or the Federal Communications Commission (FCC).

Federal telecommunications common carriage law never completely pre-empted state common carriage law in the U.S. telephone network. End user access for POTS (Plain Old Telephone Service) was a matter of state common carrier and public utility jurisdiction. Because the FCC has declined to exercise its statutory authority under Title II of the Communications Act (47 U.S.C. SUBCHAPTER II —COMMON CARRIERS, Part I—Common Carrier Regulation) to regulate a social medium Interactive Computer Service (ICS) in the role of a telecommunications common carrier,[11] the district

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place of public accommodation by 42 U.S. Code § 2000a (b)(2), but it was also a place of public accommodation by § 2000a (b)(3). See Lewis, Peter H., "Here's to the Techies Who Lunch," New York *Times*, Aug. 27, 1994, Section 1, p. 35. Such cafés continue to exist, e.g., The Blue Light Lobby which is located at 23 S 1st E, Rexburg, ID 83440 (contact@bluelightlobby.com) and which provides resources for Internet and PC gaming. If a public library has networked computers for members, it is an Internet café. A social medium ICS creates a public place of exhibition or entertainment within an Internet café. Such an ICS comes under § 2000a (b)(3) and § 2000a (b)(4).

11 *In the Matter of Restoring Internet Freedom*, FCC 17-166,

court judge may have agreed with Joachim when Joachim asserted that a Defendant is a work-for-carriage or fee-for-carriage common carrier. Such a Defendant has no ability to assert federal preemption of M.G.L. Chapter 159 §§ 1 & 2 according to U.S. Constitution Article VI ¶ 2.

The district court judge did not assert that § 230 exempted an ICS from common carriage law but used the irrelevant voice precedent of *Am. Tel. & Tel. Co. v. IMR Cap. Corp.*, 888 F. Sup. 221 (D. Mass. 1995) to decide Joachim has no monetary claim against defendant. The district court judge was wrong, and the ruling is dangerous because it might enable an ICS to get away with refusing to provide a customer with common carriage of digital merchandise like an electronic book or of personal literary property like an email. Such refusal could do harm to the business of the customer and leave him without meaningful recourse. Such refusal could easily violate both 42 U.S. Code § 1981 and also 42 U.S. Code § 1982.

§ 230 pertains to issues of publication and distribution and probably makes an ICS immune to liability for a third-party's false advertising, but the statute limits that immunity in the case of a third party that violates intellectual property law because distribution and publication issues are intertwined with intellectual property law. The anti-discrimination aspects of the law of public accommodation and of common carriage are almost entirely outside issues of publication and distribution. Anti-discrimination law should hardly need a specific statutory exclusion to override § 230. Common carriage law already includes

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WC Docket No. 17-108, Adopted: December 14, 2017, Released: January 4, 2018, This Declaratory Ruling is concerned with protocol layers lower than those at which a social medium ICS operates. The FCC ruling refers to 47 U.S. Code § 230 (b)(2), which is explicitly put in the category of policy and not in the category of law. Yet, civil rights and common carriage rules against discrimination co-exist with a "vibrant and competitive free market." Anti-discrimination rules do not preclude a "vibrant and competitive free market" but foster such a market.

limitation of carrier liability with respect to an item that a carrier conveys on behalf of a customer.

4. Digital Personal Literary Property

From the start of the telegraphy industry in the first half of the nineteenth century, there seems to be no successful legal challenge, which asserts that a telegraphic system cannot convey a legal writing. A system, which can convey a legal writing in digital form, can convey digital personal literary property like a post, comment, or tweet.

It is worthwhile to mention that printed matter doctrine has been extended to a digital medium substrate in *Praxair Distribution, Inc. v. Mallinckrodt Hosp. Prods. IP Ltd.*, 890 F.3d 1024 (Fed. Cir. 2018) and *C R Bard Inc. v. AngioDynamics, Inc.*, Civ. No. 15-218-JFB-SRF (D. Del. Mar. 15, 2021). This extension of printed matter document indicates that the concept of literary property exists in the absence of a paper medium or paper substrate and continues into the hi-tech world (a) that puts literary property on a digital memory substrate or on a digital waveform substrate and (b) from which paper may one day vanish.

Despite the ruling of the district court judge, Joachim has a monetary claim against each Defendant for denial of common carriage of "other property" under M.G.L. Chapter 159 §§ 1 & 2.

Summary

It cannot meet

1. the legal requirement of 28 U.S. Code § 1915(e)(2) and
2. the legal standard of *Humphries v. Various Federal USINS Employees*, 164 F.3d 936 (5th Cir. 1999)

to dismiss Joachim's Original Complaint by means of

1. logical fallacy,
2. disregarding ordinary and common English word definitions,

3. negating common carriage law,
4. negativing civil rights laws, and
5. alleging that the Internet/WWW sprang into existence *ex nihilo* in 1989 even though it reached its current state after at least 180 years of scientific, engineering, and legal development.

Opportunity to Clarify 47 U.S. Code § 230

Because Joachim's Original Complaint was dismissed under 28 U.S. Code § 1915(e)(2) before service, the merits of his case are not an issue, and the petition gives the Supreme Court an opportunity to provide guidance with respect to the interpretation of § 230 without the distraction of the merits of an ongoing case.

Reasons for Granting the Petition

The Supreme Court should grant this petition because the issues that it addresses are already before the Supreme Court in effect if not in intent on account of *Malwarebytes* and *Biden*, which have identified severe problems in § 230 caselaw. The U.S. attorney general should be intervening under 42 U.S. Code § 2000a–3 on behalf of a protected group that is facing severe public accommodation discrimination from a social medium ICS.

While Blacks suffer public accommodation discrimination on social media, the vast majority of instances of such discrimination take place when a Muslim, Arab, or Palestinian wishes to make use of a social medium-provided place of public accommodation for entertainment or for exhibition so that he can exhibit his knowledge of the ongoing conflict over Palestine or so that he can entertain himself by arguing with a Zionist.

Because Palestinians are metaphorically radioactive, the U.S. attorney general is not going to touch such a case.

Joachim suffers similar public accommodation discrimination according to the Original Complaint because he is a proud Diaspora Jew,

who rejects Zionist ideology alleging that he is defective[12] and that he can only remedy his defectiveness by participating in the ongoing genocide[13] of Palestinians and in the ongoing theft of their homeland. (Genocide is a major form of discrimination, and it is depraved to participate in an ongoing genocide or to enable one.[14])

Perhaps if the Supreme Court provides guidance with respect to § 230 and its

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12 This Zionist ideological theme is called Negation of the Diaspora (שלילת הגלות or שלילת הגולה). It asserts that the Jewish Diaspora was a waste that makes a Jew defective and that a Jew can only repair himself by taking Palestine from Palestinians, who unlike a modern Jew actually descend from Greco-Roman Judeans and other Greco-Roman Palestinians, who never left Palestine despite the fairy tale of the Roman Exile, which never took place. Both Joachim's Original Complaint (p. 118a, ¶ 41 *et seq.*) and his Memorandum in Support of the Motion for Reconsideration (p. 152a, ¶ 27 *et seq.*) address Zionism-incited antisemitism.

13 Genocide is defined to be an international crime by the *International Convention for the Prevention and Punishment of the Crime of Genocide* and to be a U.S. federal capital crime in the U.S. federal criminal code by 18 U.S. Code § 1091 – Genocide. In *Al-Tamimi v. Adelson*, No. 17-5207 (D.C. Cir. 2019), the Court of Appeals ruled that there is no political question in determining whether genocide is taking place in that part of historic Palestine under the control of the Zionist regime.

14 Americans often confuse genocide with mass murder and believe incorrectly that Holocaust-like systematic killing is required for genocide. If kings still ruled in Europe and if the King of France decreed that all Jews in France must convert to Christianity or leave, the King of France would have committed the crime of genocide of the French Jewish religious group

- even if no one died on account of the King's decree and
- even if 70 years later the size of the population of French Jewish exiles was larger than the size of the French Jewish population at the time of the decree

because the King of France exterminated or physically destroyed the Jewish religious group within the territory of France.

relationship to anti-discrimination law, Joachim's case can be restarted, and the U.S. Attorney General will intervene on his behalf, but that unlikely intervention would take a few years to play out, and there are much more pressing reasons for the Supreme Court to grant certiorari before judgment of the Court of Appeals for the First Circuit.

Can Caselaw Based in Logical Fallacy be Allowed to Stand?

A court of appeals is an important teacher within of the U.S. legal system. If one court issues a judgment based on a logical fallacy,

- another court will do the same,
- a party to a legal controversy will follow the court's example by arguing with similar illogic, and
- a rational legal system ceases to exist.

Caselaw based on a logical fallacy must be excised from the legal system as quickly as possible.

Current § 230 Caselaw Is Potentially a Source of Major Corruption

Arguendo, suppose that a political party in power wants to exclude a political figure from a major public forum. It can make a major social medium ICS aware of its desire, and the social medium ICS will probably comply in order to avoid problems in the future with the political party in power. This sort of hypothetical corruption becomes extremely important when a national election looms.

Current § 230 Caselaw Effectively Vitiates All Anti-Discrimination Law

A business currently subject to anti-discrimination law can escape anti-discrimination law by requiring a customer to use a discriminatory social medium ICS to obtain a product or service from the business. Current § 230 caselaw gives an unfettered editorial discretion to the social medium ICS to

discriminate and to remove or to exclude a user. There is no evidence that Congress had an original intent of vitiating all civil rights and common carriage anti-discrimination law.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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