NO. 23-961

In the
Supreme Court of the United States

JOHN DOE,

Petitioner,

v.

SNAP, INC., doing business as SNAPCHAT, L.L.C., doing business as SNAP, L.L.C.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The petition follows from the dismissal of claims seeking to hold Snap Inc. ("Snap") liable for the wrongful conduct of an unrelated third party—a high school teacher who openly engaged in a sexual relationship with petitioner, a student in her classroom, and who, in addition to her in-person communications, allegedly sent petitioner messages both by text and on the Snapchat application. Because the only alleged connection between Snap and petitioner's injuries was the publication of the teacher's messages on Snapchat, the courts below held that petitioner's claims against Snap were barred under 47 U.S.C. § 230. As courts have uniformly held, that provision protects internet service providers from liability for publishing third-party content.

The question presented is:

Does 47 U.S.C. § 230 protect an internet service provider from liability when the sole alleged connection between the service provider's conduct and a plaintiff's injury is the service provider's publication of third-party content?

CORPORATE DISCLOSURE STATEMENT

Respondent Snap Inc. ("Snap") is a Delaware corporation. Snap is not owned by any parent company. With respect to any public entity that owns 10% or more of Snap's stock, Snap discloses that in November 2017, Tencent Holdings Limited ("Tencent") informed Snap that it purchased 10% or more of Snap's capital stock. Because Snap's Class A common stock is non-voting, Tencent is not obligated to disclose changes in its ownership of Snap's Class A common stock.

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INTRODUCTION

The petition should be denied because this case does not implicate any split in authority, raise any difficult legal issues, or present any question worthy of this Court's review. The petition invites the Court to consider the limits of 47 U.S.C. § 230, but the facts of this case, as alleged in petitioner's complaint, place Snap squarely within the heartland of that provision. Because the statute's plain text forecloses petitioner's claims, this case is a poor vehicle for the referendum on section 230 that petitioner and his *amici* seek.

Impliedly conceding this point, petitioner erects a straw man in his question presented: whether section 230 "immunize[s] internet service providers from any suit based on their own tortious misconduct simply because third-party content is also involved." Pet. i. Neither the court below nor any other court of appeals has ever held that section 230 immunizes internet service providers from any and all claims "simply" because third-party content is "involved." Instead, the circuit courts uniformly agree that section 230 shields providers from liability only for injuries allegedly caused by the third-party content they publish. The court's decision below is consistent with the uniform view of federal courts across the country. Although petitioner attempts to reframe his claims to escape that straightforward conclusion, artful pleading cannot change the gravamen of his complaint, which relies exclusively on the harm caused by third-party content published on Snapchat.

This case is also a poor vehicle for addressing any broader issues concerning section 230's scope. This case does not present the question regarding "targeted

recommendations" on which this Court granted certiorari in *Gonzalez v. Google, LLC*, 598 U.S. 617 (2023) (per curiam). Nor does it implicate any other debates regarding section 230's outer boundaries. Moreover, as in *Gonzalez*, this case is not suitable for review because petitioner's complaint fails to state any plausible claim for relief. As Snap has argued throughout this litigation, petitioner's claims fail irrespective of section 230 because he has not alleged causation or any facts giving rise to a legal duty. Petitioner's teacher made the (illegal) decision to approach petitioner in her classroom and to prey on him sexually. Snapchat is no more responsible for the teacher's criminal acts than the phone company that hosted her text messages to petitioner or the car that drove the teacher to school.

Some commentators and advocacy groups have recently argued that technology has evolved in ways that warrant evaluating changes to section 230. Whatever the merits of those arguments, they belong before Congress—not the courts, which resolve only actual cases and controversies. Despite petitioner's focus on broad policy questions, this Court has no power to rework statutes at the behest of parties or to issue advisory opinions on questions of public policy. Indeed, the Court's intervention would be especially unwarranted here in light of Congress's ongoing deliberations involving section 230. Elected representatives are well aware of the various policy-laden criticisms of section 230, but they have not taken the actions that petitioner and his *amici* call for. This Court should not accept this invitation to bolt ahead of Congress to "update" the law.

STATEMENT OF THE CASE

1. The alleged facts of this case are disturbing, but they have little to do with Snap. When John Doe was a high school sophomore, his science teacher, Bonnie Guess-Mazock, sexually abused him, taking advantage of her position to initiate and continue an improper relationship not only with Doe but also with other students in person "on school grounds." Supp.App. 3–6 ¶¶ 8, 10–11, 15–16. Doe was vulnerable to Mazock's overtures because his "life was turbulent and chaotic." Supp.App. 3 ¶ 8. "His father abandoned him and his mother was murdered." Supp.App. 3 ¶ 8. Knowing that he "was disadvantaged," Mazock "preyed on Doe." Supp.App. 3 ¶ 10.

Mazock "used her authority as a teacher at the school to have Doe stay with her in the classroom after the rest of the class was dismissed." Supp.App. 3 ¶ 10. She "met with Doe alone with the door to the classroom closed," Supp.App. 3 ¶ 10., where she "began to groom Doe for a sexual relationship," Supp.App. 4 ¶ 11. In addition to speaking with Doe in person and in her classroom, she also communicated with him by electronic means, sending him traditional text messages and messages on Snapchat, both of which allegedly contained sexually explicit material. Supp.App. 4–5 ¶¶ 11, 12, 14.

Mazock "began to see Doe outside of the classroom in order to further promote a sexual relationship." Supp.App. 4 ¶ 13. The two would often meet in person to have sex, either in her vehicle or in his bedroom. Supp.App. 4–5 ¶ 13. Mazock provided Doe "with money and drugs on multiple occasions," Supp.App. 5

¶ 13, and their "sexual and romantic relationship … developed rapidly and overtly," Supp.App. 5 ¶ 14. Mazock "made no secret of her interest in Doe," and their sexual relationship was "an open secret that students frequently discussed." Supp.App. 5–6 ¶ 15.

After Doe overdosed on drugs that Mazock had given him, Doe's guardians investigated and discovered the illicit relationship. Supp.App. 6 ¶ 16. Mazock ultimately pleaded guilty to sexually assaulting a child. She is now serving a ten-year prison sentence. *See Texas v. Guess-Mazock*, No. 22-01-00974 (359th Dist. Ct., Montgomery County, Tex. Oct. 3, 2022).

2. On February 24, 2022, Doe's legal guardian, Jane Roe, sued Mazock, the school district, and Snap in the Southern District of Texas, and the suit was assigned to then-Chief Judge Lee H. Rosenthal.

The court dismissed the claims against the school board. *See* D. Ct. Dkt. 64. The court explained that petitioner had not alleged any facts that could support a causal connection between the school district's policies and his particular injury. For example, petitioner did not allege that Mazock had a criminal or employment record that would raise "red flags about" Mazock's "danger to students or likelihood to make students the object of sexually predatory behavior." *Id.* at 8.

The claims against Snap were more attenuated and relied on generalized concerns about Snapchat. Petitioner did not allege that Snap monitored the messages between Mazock and Doe or had any knowledge of those messages. Instead, noting that

Snap has generally taken steps to prohibit explicit content and report any instances of child sexual exploitation to authorities, petitioner argued that Snap should be liable for the content of Mazock's messages. *See* Supp.App. 13–14 ¶¶ 40, 42. Petitioner pressed three causes of action: (1) negligent undertaking for failure to "protect" minor users by monitoring private messages and "interven[ing]" based on the content of messages, Supp.App. 13–15 ¶¶ 40, 43, 44; (2) negligent design for allowing minors to create accounts and for the ephemeral nature of the Snapchat messages, which, in addition to in-person encounters and traditional text messages, were allegedly one of "the means" the teacher used "to seduce Doe and sexually assault him," Supp.App. 15–16 ¶¶ 46, 47; and (3) gross negligence for failure to "fully and adequately" "monitor content," Supp.App. 16 ¶ 48.

Petitioner did not allege that Snap had altered, curated, or promoted third-party content from its platform. Instead, apart from conclusory allegations, the only alleged connection between Snap and Doe's injuries is that some of the messages Mazock sent Doe were sent through Snapchat. Supp.App. 4–5 ¶¶ 11–12, 14. Petitioner does not allege that he or anyone else reported Mazock's illegal conduct to Snap or that Snap was otherwise aware of Mazock's actions. And while petitioner cursorily alleges that Snap's decision to allow ephemeral messaging (a feature common to many communication platforms) is a design defect, he does not plausibly allege that ephemeral messages were what caused Mazock to prey on him. Petitioner concedes that Mazock first met and approached him in-person, carried on her relationship with him

"overtly" at school, and sent him traditional (non-ephemeral) text messages in addition to their communications on Snapchat. In any event, allowing the deletion of content is a prototypical editorial choice protected by section 230.

Snap moved to dismiss on several grounds: First, petitioner's claims were foreclosed by section 230. D. Ct. Dkt. 20 at 6–17. Second, petitioner failed to state a claim because he did not plausibly allege that Snap was a proximate cause of Doe's injuries. *Id.* at 18–21. Third, petitioner did not plausibly allege that Snap had a legal duty to protect Doe from Mazock's crimes. *Id.* at 21–23.

Chief Judge Rosenthal dismissed petitioner's claims against Snap as barred by section 230. App. 34–38. Because of that determination, Judge Rosenthal did not reach Snap's other arguments in favor of dismissal. App. 38 n.4.

3. Petitioner appealed. In the Fifth Circuit, he "d[id] not address" the merits of his claims. C.A. Appellant Br. (Dkt. 24) at 14. Nor did he offer any narrowing construction of section 230 that would allow his claims to proceed. He did not argue that the district court's application of controlling precedent was erroneous, and he conceded that "Snap may be immune" "under precedent from the Fifth Circuit" that the panel was "bound to follow." *Id.* at 32.

The Fifth Circuit affirmed. The panel explained that petitioner's claims were foreclosed by section 230:

> [A]s Doe himself acknowledges, [his arguments are] contrary to the law of our circuit: "Parties complaining that they were

> harmed by a Web site's publication of user-generated content … may sue the third-party user who generated the content, but not the interactive computer service that enabled them to publish the content online."

App. 3 (quoting *Doe v. MySpace, Inc.*, 528 F.3d 413, 419 (5th Cir. 2008)).

The Fifth Circuit *sua sponte* considered en banc review. A majority of the judges voted against rehearing. App. 40. Judge Elrod authored a separate statement dissenting from the denial of rehearing en banc, which other judges joined. App. 41.

REASONS FOR DENYING THE PETITION

The Court should deny the petition. Snap's only alleged connection to petitioner's injuries is that some of Mazock's messages to him were sent through Snapchat. Section 230 by its plain text precludes liability in that context; indeed, petitioner's claims are at the core of section 230's protections for internet service providers. While petitioner tries to repackage his allegations as "distributor-liability" or design-defect claims, federal courts uniformly hold that such artful reframing of claims arising exclusively from the content of others cannot avoid the application of section 230. Moreover, the complaint does not actually state a claim on either of those theories, and a case lacking any plausible claim for relief is not a suitable vehicle for considering section 230's proper scope.

I. This Case Does Not Implicate Any Split in Authority.

This case involves communications between users of an internet service provider's platform (Snapchat), where the provider (Snap) has no involvement except to allow users to send content to each other. There is no serious dispute—let alone a circuit split—over whether section 230 applies in that context.

1. Petitioner's claims fall within the heartland of section 230 because they rely at bottom on his assertion that Snap should not have published the messages that Mazock sent to Doe. No federal court disagrees that section 230, by its plain terms, applies in that context: "[T]he uniform view of federal courts interpreting [section 230] requires dismissal of claims alleging that interactive websites … should do more to protect their users from the malicious or objectionable activity of other users." *In re Facebook, Inc.*, 625 S.W.3d 80, 83 (Tex. 2021), *cert denied sub nom. Doe v. Facebook, Inc.*, 142 S. Ct. 1087 (2022) (Mem.). "State-law plaintiffs may hold liable the person who creates or develops unlawful content, but not the interactive computer service provider who merely enables that content to be posted online." *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 254 (4th Cir. 2009).

2. This Court is familiar with arguments for restricting section 230's scope. But those arguments have focused on contexts in which internet service providers either (a) affirmatively create or curate content or (b) remove or restrict access to content. None of those issues is presented here.

Petitioner instead presents a different question: "Does 47 U.S.C. Section 230 immunize internet service providers from any suit based on their own tortious misconduct simply because third-party content is also involved?" Pet. i. That question is based on a faulty premise. No court has ever held that section 230 frees internet service providers from liability for "any" claim "simply" because "third-party content is also involved." Pet. i. Instead, courts have consistently concluded that a provider *can* be held liable for its own conduct—even when third-party content is "also involved." *See FTC v. LeadClick Media, LLC*, 838 F.3d 158, 176–77 (2d Cir. 2016) (holding that section 230 did not preclude liability where service provider directly participated in deceptive scheme); *FTC v. Accusearch Inc.*, 570 F.3d 1187, 1197–99 (10th Cir. 2009) (holding that section 230 did not preclude claim where service provider allegedly developed specific content that was source of liability); *Fair Housing Council v. Roommates.com, LLC*, 521 F.3d 1157, 1166 (9th Cir. 2008) (en banc) (similar); *see also Mass. Port Auth. v. Turo Inc.*, 166 N.E.3d 972, 978–79 (Mass. 2021) (collecting cases). Where, as here, however, the only "conduct" an internet service provider is alleged to have engaged in is providing a platform for communications, section 230 applies.

Courts uniformly agree, too, that a plaintiff cannot circumvent section 230 through creative pleading: "The cases are … uniform in holding that a plaintiff in a state tort lawsuit cannot circumvent section 230 through 'artful pleading' if his 'allegations are merely another way of claiming that a defendant was liable' for harms occasioned by 'third-party-generated content' on its website." *In re Facebook*, 625

S.W.3d at 90 (alteration adopted) (quoting *MySpace*, 528 F.3d at 420); *see also Klayman v. Zuckerberg*, 753 F.3d 1354, 1358–60 (D.C. Cir. 2014) (claim that website's delay in removing third-party content violated duty of care was precluded because it depended on treating website as publisher of the third-party content); *Wozniak v. YouTube, LLC*, 100 Cal. App. 5th 893, 913 (2024) (concluding that negligent design claims "predicated on … scam videos" are precluded by section 230); *L.W. ex rel. Doe v. Snap Inc.*, 675 F. Supp. 3d 1087, 1097 (S.D. Cal. 2023) (applying section 230 because "the harm animating Plaintiffs' claims is directly related to the posting of third-party content on Snapchat" (cleaned up)).

3. Petitioner's assertion of a circuit split in which "[t]he Seventh Circuit is the lone outlier," Pet. 22, is inaccurate. The "circuit split" perceived by petitioner reflects nothing more than the Seventh Circuit's quibble with the term "immunity," a semantic issue that other courts have likewise acknowledged. *See Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100 (9th Cir. 2009), *as amended* (Sept. 28, 2009) (noting that the text does not contain the word "immunity"). Petitioner himself characterizes the Seventh Circuit as holding that section 230 "forecloses any liability that depends on deeming the [internet service provider] a 'publisher,'" Pet. 22 (quoting *Doe v. GTE Corp.*, 347 F.3d 655, 660 (7th Cir. 2003)). Substantively, the Seventh Circuit's approach to section 230 is no different from holdings reached by other courts, including the Fifth and Ninth Circuits. *See MySpace*, 528 F.3d at 419–20; *Barnes*, 570 F.3d at 1102; *In re Facebook*, 625 S.W.3d at 90 (collecting cases).

Petitioner's claims would fail under the reasoning of all three Seventh Circuit cases he cites: First, notwithstanding petitioner's selectively edited quotes, *see* Pet. 22, *Doe v. GTE Corp.* declined to decide which of several "possib[le]" understandings of section 230 was "superior." 347 F.3d at 660. The court explained that "the difference" between competing interpretations "matters only when some rule of state law *does* require [internet service providers] to protect third parties who may be injured by material posted on their services." *Id.* Because the plaintiff failed to allege such a duty, his claims failed irrespective of section 230. *Id.* at 660–62. Here, too, petitioner has not plausibly alleged that Snap had a legal duty to prevent a high school teacher—who was never reported to Snap and whom even the teacher's employers did not know was engaged in illegal conduct—from preying on him, so his claims fail independently of section 230. *See* C.A. Appellee Br. (Dkt. 35) at 32–33.

Second, in *Chicago Lawyers' Committee for Civil Rights Under Law, Inc. v. craigslist, Inc.*, the Seventh Circuit held that when an internet service provider acts as a neutral courier for a message that "reveals a third party's plan to engage in unlawful discrimination," a plaintiff "cannot sue the messenger." 519 F.3d 666, 672 (7th Cir. 2008), *as amended* (May 2, 2008). "If craigslist 'causes' the discriminatory notices, then so do phone companies and courier services (and, for that matter, the firms that make the computers and software that owners use to post their notices online), yet no one could think that Microsoft and Dell are liable for 'causing' discriminatory advertisements." *Id.* at 672. Applying

Chicago Lawyers' reasoning, section 230 bars petitioner's claims because Snap's only alleged connection to petitioner's injuries was to publish the content of another.

Third, in *City of Chicago v. StubHub!, Inc.*, the Seventh Circuit considered whether section 230 could block a city from imposing a tax on ticket sales. 624 F.3d 363 (7th Cir. 2010). Although the court stated that section 230 "does not create an 'immunity' of any kind," the court acknowledged that section 230 "limits who may be called the publisher of information that appears online," which "might matter to liability" in contexts such as "defamation, obscenity, or copyright infringement." *Id.* at 366. Because the city's tax did not "depend on who 'publishes' any information or is a 'speaker,'" section 230 was "irrelevant." *Id.* Here, by contrast, petitioner seeks to hold Snap liable for publishing the content of another.

Neither the Seventh Circuit nor any other circuit has ever held that section 230 applies merely because third-party content is involved; instead, those courts analyze the nature of a plaintiff's claims to determine whether they "inherently require[] the court to treat the defendant as the 'publisher or speaker' of content provided by another." *Barnes*, 570 F.3d at 1101–02; *see also G.G. v. Salesforce.com, Inc.*, 76 F.4th 544, 567 (7th Cir. 2023) ("We agree with the Ninth Circuit that we must focus on 'whether the duty that the plaintiff alleges the defendant violated derives from the defendant's status or conduct as a publisher or speaker.'" (quoting *Barnes*, 570 F.3d at 1102)); *Webber v. Armslist LLC*, 70 F.4th 945, 952, 955–57 (7th Cir. 2023) (summarizing circuit precedents and concluding

that section 230 "precludes liability" on claims arising from conduct as a "publisher or speaker of third-party content").

The courts thus uniformly agree that section 230's application in cases involving third-party content depends on a claim-specific analysis to determine whether the defendant is a publisher of that content. There is accordingly no relevant split in authority that warrants this Court's review.

II. This Case Is a Poor Vehicle for Addressing Section 230's Proper Scope.

This case is also a poor vehicle for addressing section 230's proper scope. Because the statute squarely bars petitioner's claims, this case does not implicate any potential concerns about overbroad interpretations. Moreover, although the petition alludes to questions about distributor and design-defect liability, the complaint's allegations do not state any claim that implicates those theories. In addition, the complaint's failure to state a plausible claim for relief is a latent vehicle defect. As this Court recognized in *Gonzalez*, a meritless suit is not the right context to explore the limits of section 230.

A. This Case Does Not Implicate Any Concerns About Overbroad Applications of Section 230.

1. As noted above, petitioner's claims against Snap fall within the core of section 230's protections. The sole alleged connection between Snap and the injuries Doe suffered is that Mazock used Snapchat as one means of communicating with him. *See* Supp.App. 4 ¶ 11 (Mazock "sen[t] seductive photos of

herself appended with solicitous messages"); Supp.App. 4 ¶ 12 (Mazock "used Snapchat to send sexually explicit images of herself to Doe"). Section 230 squarely forecloses petitioner's suggestion that Snap should be liable for failing to prevent Mazock from sending those messages.

Section 230 provides that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). There is no dispute that Snap is an "interactive computer service" provider. *See* App. 34. Nor does petitioner dispute that Mazock's Snapchat messages were third-party content (*i.e.*, "provided by another information content provider"). 47 U.S.C. § 230(c)(1).

Section 230 thus precludes the claims against Snap as long as petitioner's theory of liability depends on treating Snap "as the publisher or speaker of" Mazock's messages. It plainly does. *See* Supp.App. 15 ¶ 44 (alleging that Snap "fail[ed] to intervene when an adult started sending sexually explicit messages and images to a minor"); Supp.App. 15–16 ¶¶ 46–47 (alleging that Snapchat "provided the means" for Mazock to groom Doe); Supp.App. 16 ¶ 48 (alleging that Snap breached a duty regarding "the use of its product" by Mazock). As a matter of "common sense" and the "common definition of what a publisher does," publication involves "reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content." *Barnes*, 570 F.3d at 1102. Because petitioner asserts that Snap should have reviewed Mazock's messages and censored or blocked

them, petitioner seeks to treat Snap as the publisher of Mazock's messages. Section 230's plain text precludes that claim.

2. With no response to the statute's plain text, petitioner relies on a narrow understanding of section 230's "purpose." Pet. 2, 5, 21; *see also id.* at 5–8 (arguing that the "aim[]" of section 230(c) is to protect children from inappropriate online content). But section 230 does not impose any affirmative obligations on service providers to monitor private communications. And while reducing disincentives for content filtering may have been one of section 230's purposes, it was far from the only purpose. *See* 47 U.S.C. § 230(b) (identifying various policy goals). As this Court has observed, it "frustrates rather than effectuates legislative intent simplistically to assume that whatever furthers the statute's primary objective must be the law." *Norfolk S. Ry. Co. v. Sorrell*, 549 U.S. 158, 171 (2007) (emphasis omitted) (quoting *Rodriguez v. United States*, 480 U.S. 522, 525–26 (1987) (per curiam)).

In fact, petitioner's theory of liability here would undermine the very purpose he now selectively emphasizes. For example, petitioner cites Snap's ongoing efforts to protect children, such as its policy of reporting all known instances of child sexual exploitation to the authorities, as evidence that Snap undertook "a duty … to protect its young users"—and then faults Snap for allegedly not "perform[ing] that duty fully and reasonably." Supp.App. 13–14, 16 ¶¶ 40, 43, 48. The perverse implication of that theory is that Snap would have been better off if it had never made any efforts to protect its users.

B. This Case Does Not Raise the "Targeted Recommendation" Issue on Which This Court Granted Certiorari in *Gonzalez*.

Citing *Gonzalez*, petitioner also asserts that this Court has "already recognized" "the need to review the scope of Section 230." Pet. 18. But the Court did not grant certiorari in *Gonzalez* to consider the scope of section 230 writ large, as though the Court were a council of revision empowered to issue advisory opinions. The question presented in *Gonzalez* was whether section 230(c)(1) protects service providers from liability "when they make targeted recommendations of information provided by another information content provider, or only … when they engage in traditional editorial functions (such as deciding whether to display or withdraw) with regard to such information." *Gonzalez v. Google LLC*, No. 21-1333 (U.S.), *cert. granted* (Oct. 3, 2022). As the Ninth Circuit explained, the *Gonzalez* plaintiffs' theory of liability was based on Google's recommendation of specific content to specific users. *Gonzalez v. Google LLC*, 2 F.4th 871, 881 (9th Cir. 2021), *vacated*, 598 U.S. 617 (2023) (per curiam). The plaintiffs alleged that Google "use[d] computer algorithms to match and suggest content to users based upon their viewing history," *id.*, which resulted in "recommend[ing]" ISIS videos to users likely to be sympathetic to ISIS's message.

Targeted recommendations—and this Court's grant of certiorari in *Gonzalez*—have nothing to do with this case. The complaint does not allege that Snap engages in such practices at all, much less that it does so in any way relevant to petitioner's injuries.

C. This Case Does Not Raise Questions of Distributor Liability, Design-Defect Liability, or Any Other Issues Discussed by Dissenting Judges.

1. Petitioner contends that he seeks to hold Snap liable as a "distributor" and not a "publisher." As an initial matter, petitioner never articulated this publisher/distributor distinction in his complaint. And in any event, as petitioner recognizes, his "distributor liability" theory requires allegations establishing that Snap "knew, or should have known, of the illicit nature of the communications between Doe and his teacher on its platform." Pet. 29. Petitioner's complaint contains no such allegations. *See* Supp.App. 3–7, 13–16 ¶¶ 8–18, 40–48. Petitioner does not allege that he or anyone else reported the teacher's illicit messages or that Snap otherwise failed to respond to any specific reports of illegal activity. Nor are there any allegations to support an inference of constructive knowledge.

Petitioner's allegations that "Snapchat monitors its users' activities," Supp.App. 7 ¶ 18, and "gathers data and monitors messages for its own marketing purposes," Supp.App. 13 ¶ 41, do not raise a plausible inference that Snap should have known not only of the *fact* of particular messages between Mazock and Doe but also of their *content*. Snap's alleged collection of metadata does not mean that Snap knew about the content of Mazock's illegal messages—any more than a phone company that maintains call logs should be deemed to know the content of its subscribers' telephone conversations. Likewise, petitioner's allegations regarding Snap's "dedicated Safety and

Support teams" and its team that responds to "abuse incidents," Supp.App. 14 ¶ 42, do not plausibly suggest that Snap monitors the content of private communications in such a way that it should have been aware of specific inappropriate messages between Mazock and Doe. Petitioner has therefore failed to state a claim even under his own understanding of distributor liability. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("[W]here a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of entitlement to relief.'" (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)).

2. Petitioner also characterizes his claims as alleging liability for a design defect, but the alleged "defect" here is simply the alleged failure to adequately censor third-party content. That is the same kind of claim that was presented in *Stratton Oakmont, Inc. v. Prodigy Services Co.*, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995), which Congress abrogated by enacting section 230. There, the court held that the defendant could be liable as the publisher of libelous posts on its online "bulletin boards" because it exercised editorial control in some respects. *Id.* at *1–5. Petitioner considers *Stratton Oakmont* crucial to understanding section 230's proper scope. *See* Pet. 6–8. But under petitioner's theory, the plaintiffs there would have prevailed even after the passage of section 230 if only they had alleged that the "design" of the bulletin boards was "defective" in light of the defendant's inadequate content-monitoring.

Petitioner's "design defect" argument is no more than a generalized attack on the Snapchat platform disconnected from any alleged facts. For example, although petitioner criticizes the ephemeral nature of messages on Snapchat, *see, e.g.*, Pet. 14–15, there is no allegation that ephemerality *caused* Mazock to abuse Doe or even that it prevented Mazock's crime from being discovered. The complaint also alleges that Mazock's illicit relationship with Doe developed "overtly," including via in-person grooming on school grounds that was so apparent as to be an "open secret," and through traditional text messages that were obviously inappropriate. *See* Supp.App. 5–6 ¶¶ 14–15. But to plead a viable design-defect claim, the plaintiff must show "that the product defect was a producing cause of the damages or injuries," *Coleman v. Cintas Sales Corp.*, 40 S.W.3d 544, 550 (Tex. Ct. App. 2001), meaning that it was both "a substantial cause of the event in issue" and "a but-for cause, namely one without which the event would not have occurred," *Ford Motor Co. v. Ledesma*, 242 S.W.3d 32, 46 (Tex. 2007). No allegations come close to meeting that requirement.

To the extent petitioner challenges the appropriateness of ephemeral messaging generally, that is clearly a challenge to an editorial decision protected by section 230. *See, e.g.*, *Barnes*, 570 F.3d at 1102 ("[P]ublication involves … deciding whether to publish or to withdraw from publication third-party content"); *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997) (noting that "traditional editorial functions" include "deciding whether to publish" or "withdraw ... content"); *Universal Commc'n Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413, 422 (1st Cir. 2007)

(holding that section 230 protects a service provider's "inherent decisions about how to treat postings generally"). Online publishers frequently make the decision to allow messages to be deleted. Most email or text messaging software, for instance, allows a message to be deleted permanently—as opposed to merely being put in a "trash" folder, where it remains to be retrieved later. A plaintiff might allege that this feature enabled illicit communication, including from child abusers (indeed, petitioner could have brought that very claim, given how heavily his complaint relies on text messages between Mazock and Doe). Section 230, however, squarely forecloses liability in those circumstances. *Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 22 (1st Cir. 2016) ("[C]laims that a website facilitates illegal conduct through its posting rules necessarily treat the website as a publisher or speaker of content provided by third parties and, thus, are precluded by section 230(c)(1).").

Given the lack of any alleged connection between the particular design features petitioner suggests are "defects" and Doe's injuries, it is clear that petitioner is not seeking to adjudicate a concrete dispute about the safety of a product. Instead, he is asking the Court to pass judgment on which features of Snapchat are or are not appropriate. But that is not the role of the courts. *See Pegram v. Herdrich*, 530 U.S. 211, 221 (2000) (explaining that "judgment about socially acceptable … risk" is "not wisely required of courts" and noting that the legislature is the "preferable forum" for "judgments of social value"); *cf. Brockert v. Wyeth Pharms., Inc.*, 287 S.W.3d 760, 770 (Tex. Ct. App. 2009) (noting that "a plaintiff cannot prove design defect by claiming that defendant should have

sold an entirely different product"). Petitioner's attempt to package his allegations as "design defect" claims therefore fails.

3. Petitioner also leans heavily on dissenting opinions and statements by circuit judges who have "called for this Court's intervention on" section 230(c)(1). Pet. 19. But this case does not implicate the disagreements between those judges and their colleagues in the majority. This case does not involve an internet service provider allegedly curating content, abetting content creation, or helping users identify and connect with other like-minded users. *See Force v. Facebook, Inc.*, 934 F.3d 53, 76 (2d Cir. 2019) (Katzmann, C.J., concurring in part and dissenting in part) (concluding that "friend- and content-suggestion algorithms" are not part of acting as a publisher); *Gonzalez*, 2 F.4th at 913 (Berzon, J., concurring) (stating that if not bound by circuit precedent, she would hold that the term "publisher" "does not include activities that promote or recommend content or connect content users to each other"). Nor does this case present the issue, highlighted by Judge Elrod's dissent from denial of rehearing en banc, of a platform itself creating content. *See* App. 47 ("Where platforms take this content curation a step further, so as to become content *creation*, they cannot be shielded from liability.").

There is also no allegation that Snap improperly *removed* content. *See Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, 141 S. Ct. 13, 16–17 (2020) (Thomas, J., statement respecting denial of certiorari). Nor does this case implicate the First Amendment

questions the Court raised during oral arguments in *Moody v. Netchoice, LLC* (No. 22-277) and *Netchoice, LLC v. Paxton* (No. 22-555). *See Moody* Oral Argument Tr. at 85:23–87:8 (U.S. Feb. 26, 2024); *Paxton* Oral Argument Tr. at 10:2–11:17 (U.S. Feb. 26, 2024). And as discussed above, questions about "distributor liability" or design-defect claims are not implicated here because petitioner's allegations do not state such claims.

In sum, petitioner has not provided any path for the Court to address the limits of section 230's proper scope. The Court is left either to ignore petitioner's deficient allegations (and pretend that his complaint alleges something else) or to take petitioner's allegations for what they are (and rewrite section 230's plain text). That dilemma crystallizes the problems with granting review in this case.

D. Petitioner Has Not Stated Viable Claims.

1. This Court recognized the importance of selecting a proper vehicle when, in *Gonzalez*, it "decline[d] to address the application of § 230 to a complaint that appears to state little, if any, plausible claim for relief." 598 U.S. at 622. Petitioner concedes that a complaint that does not state a plausible claim for relief has a "latent defect" and is "not [an] appropriate case" for this Court's review. Pet. 18–19. Because this case suffers from that very defect, it is not an appropriate vehicle for the Court to address the scope of section 230. *Cf. Devillier v. Texas*, 601 U.S. 285, 292 (2024) (explaining that it would be "imprudent" for the Court to decide the question presented "without satisfying ourselves of the premise" on which it rested).

This case is an especially poor vehicle because, as Snap has argued throughout this litigation, petitioner's claims fail as a matter of law regardless of section 230 for two independent reasons: (1) he failed to plausibly allege causation, and (2) he failed to plausibly allege facts giving rise to a legal duty. *See* D. Ct. Dkt. 20 at 17–23; C.A. Appellee Br. (Dkt. 35) at 28–33. As in *Gonzalez*, the Court should not address the application of section 230 to claims that so obviously lack merit.

2. Each of petitioner's claims requires him to establish that Snap *caused* his injuries. *See Doe v. Messina*, 349 S.W.3d 797, 800 (Tex. Ct. App. 2011) (negligent undertaking); *Dewayne Rogers Logging, Inc. v. Propac Indus., Ltd.*, 299 S.W.3d 374, 385 (Tex. Ct. App. 2009) (negligent design); *Kalinchuk v. JP Sanchez Constr. Co.*, 2016 WL 4376628, at *2 (Tex. Ct. App. Aug. 17, 2016) (gross negligence). "The components of proximate cause are cause in fact and foreseeability." *Doe v. Boys Club of Greater Dallas, Inc.*, 907 S.W.2d 472, 477 (Tex. 1995). "Cause in fact is not shown if the defendant's negligence did no more than furnish a condition which made the injury possible." *Id.*

Here, petitioner alleges, at most, that Snap furnished one of the channels through which some of Mazock's inappropriate messages were transmitted *after* Mazock met Doe in her classroom and preyed on him in person. But Snapchat is no different in that respect from "cell phones, email, or the internet generally," all of which can be used for illegal ends. *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 499 (2023). That a criminal might exploit a particular feature of a

publicly available service to commit a crime does not make the service provider liable for the crime. *Id.* (stating that in general, an internet or cell service provider would not be liable for a drug deal brokered over their services "even if the provider's conference-call or video-call features made the sale easier").

Petitioner's own allegations confirm that Snap did not cause Doe's injuries: Mazock began to groom him for a sexual relationship at an *in-person* meeting, Supp.App. 3–4 ¶¶ 10–11, and their relationship continued in person, Supp.App. 4–5 ¶ 13. When Mazock communicated with Doe electronically, she used "traditional text message[s]" as well as Snapchat. Supp.App. 5 ¶ 14. Petitioner has alleged at most a "highly attenuated" relationship between Snap and Mazock's crime. *Taamneh*, 598 U.S. at 500.

3. Petitioner has also failed to plausibly allege that Snap had a legal duty to protect him from his teacher's crimes. Under Texas law, "a defendant has no duty to prevent the criminal acts of a third party who does not act under the defendant's supervision or control." *Allen v. Walmart Stores, L.L.C.*, 907 F.3d 170, 179 (5th Cir. 2018) (quoting *LaFleur v. Astrodome-Astrohall Stadium Corp.*, 751 S.W.2d 563, 564 (Tex. Ct. App. 1988)). Petitioner has not made any allegations that could plausibly support an exception to that rule. *Cf. Doe v. MySpace, Inc.*, 474 F. Supp. 2d 843, 850 (W.D. Tex. 2007) (discussing special relationships that may give rise to a duty to control a third party's conduct).

As petitioner acknowledges, when an "underlying claim" is "not viable on its face," it is "not the right vehicle" for granting certiorari. Pet. 1. The lack of a

plausible factual basis for petitioner's claims is a serious "impediment" to this Court's review. Pet. 1. And if the Court were to address the scope of section 230 here, petitioner's case would "proceed," Pet. 29, 30, only to another dismissal with prejudice.

III. Congress, Not This Court, Should Decide Whether and How to Modify Section 230.

No court interpreting section 230 has ever permitted liability in the circumstances of this case. Because this case falls well within section 230's longstanding protections, what petitioner seeks is ultimately a wholesale rewrite of the statute. But this Court's role is to resolve cases and controversies—not weigh in on abstract policy debates. While some critics of the current regulatory framework have pointed to changes in technology over the years as a rationale for revising section 230, this Court is not the proper forum for resolving those disputes.

Congress is currently in the middle of an intense study of issues related to section 230. *See* Pet. 30–31 (acknowledging draft legislation pending in Congress and recent Senate committee hearing on the subject of protecting children online); Seattle Sch. Amicus Br. 7, 9–10 (discussing Senate committee hearing). Although Congress has seen fit to preserve the framework it established in section 230 for the better part of three decades, it is also well aware of recent calls for legislative change. Congress is far better suited than any court to assess the various policy tradeoffs, especially in a field of rapidly evolving technologies and politically charged debates about privacy, censorship, and free expression.

Petitioner suggests that this Court's intervention is warranted because there is no "certainty" that pending legislation will pass. Pet. 31. But Congress has shown that it can and will reconsider aspects of section 230 when such changes are supported by a consensus of elected representatives, as illustrated by Congress's recent amendments to exempt claims for violations of sex-trafficking laws. *See* 47 U.S.C. § 230(e)(5), Pub. L. No. 115-164, § 4, 132 Stat. 1253, 1254 (2018). Petitioner argues that "Congress's clear intent in passing [s]ection 230 was to protect children from sexual dangers on the internet." Pet. 30. Congress's 2018 amendment and its ongoing deliberations about further reform reflect its continued commitment and attention to that issue.

In any event, that Congress has not yet taken the action that petitioner urges, *see* Pet. 31, does not provide an excuse for the judiciary to "update" the law. "If judges could add to, remodel, update, or detract from old statutory terms," that "would risk amending statutes outside the legislative process reserved for the people's representatives." *Bostock v. Clayton County*, 590 U.S. 644, 655–56 (2020).

This Court has repeatedly declined to rework section 230 in light of new policy concerns. *See King v. Meta Platforms, Inc.*, 144 S. Ct. 817 (2024) (Mem.); *Does v. Reddit, Inc.*, 143 S. Ct. 2560 (2023) (Mem.); *Fyk v. Facebook, Inc.*, 143 S. Ct. 1752 (2023) (Mem.); *Doe v. Facebook, Inc.*, 142 S. Ct. 1087 (2022) (Mem.); *Domen v. Vimeo, Inc.*, 142 S. Ct. 1371 (2022) (Mem.); *Lewis v. Google LLC*, 142 S. Ct. 434 (2021) (Mem.); *Diez v. Google, Inc.*, 142 S. Ct. 139 (2021) (Mem.); *Fyk v. Facebook, Inc.*, 141 S. Ct. 1067 (2021) (Mem.). The

Court should likewise reject petitioner's invitation to substitute judicial lawmaking for the natural workings of the political process.

CONCLUSION

The Court should deny the petition for certiorari.

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