No. ____

IN THE

Supreme Court of the United States

M.P., BY AND THROUGH JENNIFER PINCKNEY, AS PARENT, NATURAL GUARDIAN, AND NEXT FRIEND,

Petitioner,

v.

META PLATFORMS INC., F/K/A FACEBOOK, INC., FACEBOOK PAYMENTS INC., FACEBOOK TECHNOLOGIES LLC, INSTAGRAM, LLC, SICULUS INC., FACEBOOK HOLDINGS LLC,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

According to a member of Meta's "Core Data Science Team," its product, Facebook, knowingly creates negative "emotional contagion" through algorithms that prioritize divisive and polarizing content, including hate speech and misinformation about racial groups. Facebook does this to drive use. It was thus foreseeable, and actually foreseen, by Meta that Facebook could radicalize vulnerable minds and lead them to violence. By design, Facebook provided individualized recommendations based on personal profiles created within the application that, according to Facebook's first Director of Monetization "rais[ed] the voices of division, anger, hate, and misinformation to drown out the voices of truth, justice, morality, and peace." After Facebook's algorithms recommended (1) viewing inflammatory content and (2) joining white supremacist groups to Dylann Roof, Roof became radicalized in large part by his Facebook activity. He then entered Plaintiff M.P's church and murdered her father, Reverend Clementa Pinckney, and eight parishioners in an effort to "start a race war." The questions presented are:

(1) Do M.P.'s state common law tort claims adequately plead conduct by Facebook in recommending content to Dylann Roof that fall outside of Section 230 "immunity?"

(2) Do M.P.'s state common law tort claims adequately plead conduct by Facebook in recommending groups to Dylann Roof that fall outside of Section 230 "immunity?"

PARTIES TO THE PROCEEDINGS

The Petitioner in this case is a Jane Doe plaintiff who is a minor raising these claims through her mother, Jennifer Pinckney. Petitioner was the plaintiff and appellant below.

The Respondents are Meta Platforms Inc., f/k/a Facebook, Inc., Facebook Payments Inc., Facebook Technologies LLC, Instagram, LLC, Siculus Inc., and Facebook Holdings LLC. They were defendants and appellees below.

RELATED PROCEEDINGS

U.S. Court of Appeals for the Fourth Circuit:

M.P. v. *Meta Platforms, Inc.*, No. 23-1880 (Feb. 4, 2025)

U.S. District Court for the District of South Carolina:

M.P. v. *Meta Platforms, Inc.*, No. 2:22-cv-3830 (Oct. 12, 2023)

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This Court already has acknowledged the first question presented here is worthy of review and desperately needs it. And the second question is not as close an issue. Two years ago, the Court took up the first question but resolved the case on other grounds. In the interim, there have only been more victims as social media companies enjoyed near complete immunity from claims that cause businesses in other industries to make sure their products are safe. These companies, including Meta, have acted with impunity, refusing at every turn to change their algorithms even to neutrally provide information.

Through Facebook, Meta is itself a purveyor of extreme views and misinformation. Meta's own documents and whistleblowers have established that it is not a neutral conduit simply publishing information or applying editorial discretion on what to broadly show the public and in what manner. It determines what its users *privately* see on an individual basis, and it purposefully feeds more extreme content and group recommendations to people who will be most affected by it, most inclined to continue looking at more of it, and most inclined to be radicalized by it.

Neither Section 230's text nor its history suggests that Meta should be immune to suit for its own choices to manipulate users by recommending the most damaging content possible. And neither Section 230's text nor its history provides immunity for suggesting that a person join a group of white supremacists. But the Fourth Circuit's ruling, following on its own seminal atextual precedent on this provision, immunizes both.

Congress enacted Section 230(c) to provide protection for services' efforts to *prevent* extremism obscenity, and defamation. Under Section 230(c), a provider acting as moderator and eliminating extremist, obscene, or defamatory posts does not render the provider a "publisher" or "speaker" for those posts. And the provider is immunized against claims by the posts' originators that it unlawfully removed them. That is it. It does not provide the broad immunity the Fourth Circuit found with no textual or policy basis.

The circuit courts and their judges are in disarray on the issue. The Fourth Circuit started the Courts of Appeals down the wrong path, holding that Section 230 *increased* protection for providers who do nothing to protect users. Most other circuits followed along, adopting some version of broad immunity. There is a circuit conflict, as the Seventh Circuit and Third Circuit have properly applied Section 230's text and recognized that it does not grant immunity to providers who participate in the spread of harmful content by recommending it to users. Also, the Fifth Circuit has tailored its application and numerous circuit judges spread across several circuits have now called for a full course correction. But that course correction will not happen in the circuit courts. This case is an example of how, for the most part, they will continue to apply their wrong-headed precedents over vigorous dissents. Only this Court can provide the desperately needed change these judges are calling for.

OPINIONS BELOW

The opinion of the Fourth Circuit is reported at 127 F. 4th 516 and is reproduced at page 1a of the appendix to this petition ("Pet. App."). The decision of the district court is reported at 692 F. Supp. 3d 534 and is reproduced at Pet. App. 31a.

JURISDICTION

The decision of the Fourth Circuit was entered on February 4, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1). The district court had jurisdiction under 28 U.S.C. §§ 1331 and 1332.

STATUTORY PROVISIONS INVOLVED

47 U.S.C. § 230(c) provides:

> (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, whether or not such material is constitutionally protected; or
>
> (B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).

STATEMENT OF THE CASE

A. Statutory Background

Congress enacted Section 230 as part of the Telecommunications Act of 1996. *Force* v. *Facebook, Inc.*, 934 F.3d 53, 77 (2d Cir. 2019) (citing Pub. L. 104-104, § 509, 110 Stat. 56, 56, 137-39) (Katzmann, J. concurring in part, dissenting in part). In constructing the Act, "the Internet was an afterthought" and social media was unimaginable. *Id.* at 78. Facebook would not debut until 2004, eight years later. *Facebook*, Britannica, http://bit.ly/3RlkP9o. Around the time of Section 230's enactment, the Internet had about forty million users worldwide. *Reno* v. *ACLU*, 521 U.S. 844, 850 (1997). Now, billions of people—over half of the world's population—use it. Statisia, Digital Population Worldwide, https://bit.ly/4j9mIC2.

Section 230(c) was part of a floor amendment to the Telecommunications Act aimed at protecting children from indecent online content. 141 Cong. Rec. H8468-69 (Aug. 4, 1995). Its sponsors specifically sought to prevent the effects of two New York decisions that "provide[d] a massive disincentive for the people who might best help us control the Internet" from doing so. *Id.* at H8469.

First, in *Cubby, Inc.* v. *CompuServe, Inc.*, 776 F. Supp. 135 (S.D.N.Y. 1991), the court held that CompuServe, one of the first online computer services, could not be liable for defamation as a "publisher" of a news article posted "in a publication carried on [its] computerized database." *Id.* at 137, 139-40. If CompuServe were liable, the court explained, given it did not participate in creating or publishing the material, it could only be as a "distributor." *Id.* at 141.

But distributors can be liable only if they knew or should have known of the defamatory material, and CompuServe just provided a bulletin board for posting the material. *Id.* According to Section 230's sponsor, it was inappropriate that CompuServe "just let everything come onto your computer without, in any way, trying to screen it or control it," and yet its failure to moderate content helped it avoid liability. 141 Cong. Rec. H8469.

Second, in *Stratton Oakmont, Inc.* v. *Prodigy Services Co.*, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995), the court held a company liable for defamation when it made a good faith attempt to monitor messages on its computer network, an act that the court concluded rendered it a "publisher," rather than just a distributor. *Id.* at *3-*4. As a publisher, the company was liable for defamatory content that appeared on its services, regardless of whether the company knew about it, should have known about it, promoted it, or participated in its dissemination. *Id.*

Section 230's sponsors decried these decisions as "backward" for placing "higher" liability on services that attempted to protect users by "exercis[ing] some control over offensive material," than on those who did nothing to moderate their user created content. 141 Cong. Rec. H8470 (internal quotation marks omitted). Accordingly, the sponsors proposed Section 230(c)—entitled "Protection for 'Good Samaritan' blocking and screening of offensive material." Section 230(c) contains two distinct subsections, both of which provide an incentive for services to actively combat offensive content, "to help us control, at the portals of our computer, at the front door of our house, what comes in and what our children see." *Id.*

Section 230(c) first provides that Internet Service Providers who police offensive content will be in no worse position than providers who do nothing. Under Section 230(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." The sponsors suggested this precisely worded text that, contrary to *Cubby*, expressly put providers that take measures to protect users from harmful content on the same plane as those who do not by deeming them distributors, rather than publishers or authors, of the content. Congress adopted this highly specific proposed text. It easily could have made Section 230(c)(1) much broader by saying "interactive computer services shall not be held liable on account of information provided by another information content provider." It did not.

Section 230(c)(2) "responds . . . directly" to the decision in *Stratton. Force*, 934 F.3d at 64 n.16. It provides incentives to Internet Service Providers to "block[] and screen[] offensive material," by giving Providers absolute immunity for those efforts from anyone who might sue them for taking offensive content down or enabling others to block offensive content. 47 U.S.C. § 230(c)(2). This provision was promulgated to protect service providers from lawsuits by content providers whose content has been restricted. *See Enigma Software Grp. USA, LLC* v. *Malwarebytes, Inc.*, 946 F.3d 1040, 1046–47 (9th Cir. 2019) (internal citation omitted) ("By immunizing internet-service providers from liability for any action taken to block, or help users block offensive and objectionable online content, Congress overruled *Stratton Oakmont* and thereby encouraged the development of more sophisticated methods of online

filtration."). Together, the two provisions in Section 230(c) ensure that a provider is not worse off by using its technology to curb offensive content.

B. Factual Background

1. Meta is pursuing just the opposite of Section 230's intent. It *promotes* offensive content. Meta's primary social media platform, Facebook, guides communication over its pages and systems, it does not just facilitate the discussion. JA010-11. And Meta wields that power toward its primary goal—profit. JA037. Thus, it is not a mere conduit of information from one person to another—it participates in the discussion by recommending that individual users consume particular content and join particular groups. JA030.

Facebook drives engagement through confidential and proprietary algorithms that use artificial intelligence to "individually tailor each user's online experience in a way best designed to modify that user's behavior"—to get that user to keep using Facebook as much as possible. JA011. The more users engage, the more money Meta makes. These choices of what content to promote are not writ-large decisions of broad categories of information the public needs or wants to consume—they are based on individual action and unique recommendations provided to each user based on his or her own behavior on Facebook (and on other applications that Facebook invades). JA039-41; Kate O'Flaherty, *All the Ways Facebook Tracks You and How to Stop It*, Forbes (May 8, 2021), https://bit.ly/3G85RkB.

Until recently, how Facebook uses this data was a black box. But now, whistleblowers have provided some limited insight into how Facebook intentionally

manipulates users. JA012. Still much will remain unknown until Facebook is forced to disclose the full extent of its knowledge and intent in discovery.

We do know that Facebook's algorithms are designed to modify behavior by creating a self-affirmation feedback loop that continues to grow as a user receives more and more misinformation—and Meta wants it that way. JA022. As the Complaint alleges, "Facebook has determined through years of study and analysis [that] hate and toxicity fuel its growth far more effectively than updates about a user's favorite type of latte." JA030. That hate draws users and generates more hate as the most toxic and misinformative posts are promoted to the people most vulnerable to reaction. *Id.* That, in turn, creates incentives for people and groups who post to create more incendiary content that Facebook can then promote to these same vulnerable people, and the cycle begins again. *Id.*

Facebook whistleblower Frances Haugen provided Facebook's own research establishing that fostering negative emotions in young users pushes higher engagement numbers. JA033. Facebook calls this "emotional contagion." JA041. It tested how emotional content caused more or less engagement. *Id.* It found that reducing the positive content in a person's News Feed led to users posting more negative items in their News Feeds, creating "massive-scale contagion via social networks." JA041.

A high-ranking Facebook executive, Andrew Bosworth, acknowledged in an internal memorandum after a shooting was live-streamed on the platform that "[t]he ugly truth is that we believe in connecting people so deeply that *anything* that allows us to

connect more people more often is *de facto* good." JA032 (emphasis added). "Anything" apparently includes cultivating violent extremists.

Haugen testified to Congress that "[t]he company's leadership knows how to make Facebook and Instagram safer but won't make the necessary changes because they have put their astronomical profits before people." JA036 (internal quotation marks omitted). And Facebook's first Director of Monetization said Facebook "took a page from Big Tobacco's playbook." JA042. It "worship[s] at the altar of engagement and cast[s] other concerns aside, raising the voices of division, anger, hate, and misinformation to drown out the voices of truth, justice, morality, and peace." *Id*.

A normal balancing factor for a company is the significant liability it may face for personal injuries from this sort of conduct. But given most of the judiciary's overbroad interpretation of Section 230, Meta has no such incentive. JA036.

Meta does nothing to adjust its algorithms against this emotional manipulation when it receives data via internal Facebook memoranda that say things like: "Our algorithms exploit the human brain's attraction to divisiveness" and that the platform would thus push "more and more divisive content in an effort to gain user attention and increase time on the platform." JA039 (internal quotation marks omitted). That discovery came a couple of years after another internal discussion finding that "64% of all extremist group joins are due to our recommendation tools" such as "Groups You Should Join" or "Discover" algorithms. JA058. Facebook knows that its "recommendation

systems grow the problem." JA049 (internal quotation marks omitted).

Facebook thus does not create extremists out of whole cloth. But it also is not just a fabric store. It curates the individual fabric choices, suggests the patterns and the stitches, and unfortunately, the outcome is not just an ugly outfit. The outcome is emotionally damaged populations that are more likely to produce a Dylann Roof than ever before. Facebook knows its algorithms are radicalizing people and making them far more dangerous than they otherwise would be. Facebook also knows these same algorithms drive up its usage numbers, and thereby, its revenue. But that is no excuse. Haugen disclosed that there are "research, reports and internal posts that suggest Facebook has long known its algorithms and recommendation systems push some users to extremes." JA045 (internal quotation marks and citation omitted). Dylann Roof invading a church and killing parishioners is a natural consequence of actions, and it is not an isolated incident. JA051-52.

2. Dylann Roof was a young man raised in an environment where he was *not* taught to hate based on race. JA024. Yet, after being exposed to Facebook's "emotional contagion," the predictable—and predicted by Facebook—result occurred. The particularly vulnerable 21-year-old Roof targeted Emanuel AME Church because of its prominence in the community. JA024-25. He went to that church, engaged in Bible study with members, and then announced he was there "to kill Black people" and murdered nine churchgoers, including Reverend Pinckney, in cold blood. JA061.

Roof began down this path searching for information regarding "black on white crime" after the Trayvon Martin shooting in 2012. JA024. He then moved to Facebook, posting a picture of himself wearing a jacket with symbols adopted by modern white supremacy groups and engaging with those groups. JA061.

Roof's defense attorney noted that "'every bit of [Roof's] motivation came from things he saw on the Internet.'" JA027 (internal quotation marks omitted). And his "manifesto" revealed that he grew increasingly radicalized in the months leading to the mass shooting. JA029. "Roof did not just find but was directed by Facebook, based on its algorithms' knowledge of Roof's engagement on the internet (both on and off of Facebook), to groups or communities in which his views were cultivated, developed and made more extreme." JA034. That led to the real-world consequence—completely foreseeable to Facebook—of Roof engaging in mass murder.

3. Plaintiff Minor Person Pinckney was there. JA062. She had to suffer the trauma of hearing her father and eight others shot dead while she hid under a desk with her mother. JA062. She heard the screams, and she heard Roof try to open the locked door to the office where they hid. JA062. She, of course, feared for her own safety, as well as the safety of her mother, her father, and the other parishioners. JA062.

C. Procedural Background

1. M.P. through her mother, Jennifer Pinckney, sued Meta, related entities, and certain Russian misinformation actors in the District of South Carolina. Pet. App. 4a. She asserted claims under

South Carolina law for design defect, negligence, and intentional infliction of emotional distress and a claim under federal law for violating the Ku Klux Klan Act. JA063-70. The complaint clearly sought to hold Meta liable for its own conduct in manipulating Roof's state of mind through recommendations of both content and groups. M.P. "expressly disclaim[ed] all claims seeking to hold the Meta Defendants liable as the publisher or speaker of any content provided, posted, or created by third parties." JA023. The litigation is based on the fact that "Facebook's algorithms are not *neutral*. The algorithms do not merely recommend content based on users' previously expressed interests. Rather, to maximize engagement, they are heavily biased toward promoting content that will enrage, polarize, and radicalize users." JA048.

The Meta defendants moved to dismiss M.P.'s claims under Section 230, and the district court granted the motion. Pet. App. 32a. The district court found that circuit courts were "in general agreement that the text of Section 230 should be construed broadly in favor of immunity." Pet. App. 35a. But it failed to note the Seventh Circuit's rejection of that approach. The district court also did not have the benefit of the opinions in the past year that have deepened the divisions among the circuits. Thus, it ruled that Section 230 bars all of M.P.'s state law causes of action. Pet. App. 38a. The court further ruled that M.P.'s claim under the Ku Klux Klan Act had not been plausibly pleaded. Pet. App. 40a.

2. Over a cogent dissent from Judge Rushing, the Fourth Circuit affirmed on appeal. Pet. App. 20a. It ruled that the essential question was whether the claims thrust the defendant into the role of a publisher of the underlying information, and the

claims here did that. Pet. App. 11a-12a. According to the Fourth Circuit, it must consider whether the plaintiff seeks to hold a service provider liable for "'deciding whether to publish, withdraw, postpone or alter content.'" Pet. App. 11a. But in the Fourth Circuit, *promoting and recommending* content falls within that category. Pet. App. 12a. And with respect to recommending groups, in a footnote, the Fourth Circuit merged its Section 230 and plausibility rulings, stating that the Complaint did not plead with specificity which hate groups Roof joined on Facebook. Pet. App. 13a n.6. The Fourth Circuit did not cite any authority for the proposition that pleading with specificity is required, nor did it provide M.P. with the opportunity to amend the complaint.

The Fourth Circuit further noted that "newspaper editors choose what articles merit inclusion on their front page and what opinion pieces to place opposite the editorial page." Pet. App 14a. But it failed to acknowledge that newspapers do not build psychological profiles of individual readers and make individual choices of what articles not only to provide, but to *promote and recommend* to the individual reader with the intent of inducing "emotional contagion."

The court then added that it did not believe M.P.'s state tort claims were plausibly pleaded because she did not sufficiently plead proximate causation. Pet. App. 16a. The Fourth Circuit acknowledged that foreseeability is the basis of proximate cause, but it found that all the allegations in the complaint that Roof's conduct was not just foreseeable but actually foreseen by Facebook was not enough. Pet. App. 17a-18a. According to the Fourth Circuit, M.P. needed to plead with such specificity as to establish "how much

time Roof spent on Facebook" and the failure to do so meant—despite Facebook's internal memoranda saying otherwise—that Roof's violence was not "a natural and probable consequence of his Facebook use." Pet. App. 18a. The Fourth Circuit also affirmed dismissal of the federal claims for failure to state a plausible claim. Pet. App. 19a-20a.

3. Judge Rushing disagreed with respect to M.P.'s negligence claims. Pet. App. 21a. She acknowledged that under Fourth Circuit precedent, Facebook's content recommendations are protected under Section 230. Pet. App. 21a. "But M.P. also alleges that Facebook culpably recommended that Roof join extremist groups on Facebook, where his radical views were cultivated." Pet. App. 21a. And that allegation "underlie[s] all three state-law causes of action." Pet. App. 23a. Judge Rushing noted that Section 230 does not bar actions based on recommending joining groups "because recommending a group, person, or event is Facebook's own speech, not that of a third party." Pet. App 24a.

Judge Rushing also recognized that M.P. plausibly pleaded her negligence claim with respect to recommendations, but she would remand the issue to the district court to resolve it in the first instance. Pet. App. 27a-28a. She noted that the complaint "alleges Roof 'joined extremist groups on Facebook'" and Facebook directed him to those groups. Pet. App. 27a. She also credited allegations that Facebook knew that it would radicalize its users as a result of its business plan. Pet. App. 27a. Judge Rushing concluded that "[b]ecause the district court did not address causation and M.P. has had no opportunity to amend her complaint to correct its deficits (if any exist), [she] would not affirm dismissal of M.P.'s

negligence claims on [the] alternative ground." Pet. App. 28a.

REASONS FOR GRANTING THE WRIT

I. The circuits are intractably divided on how to interpret Section 230.

The circuit courts are divided over the proper application of § 230(c)(1). Until recently, the divide had been lopsided, with nearly all of the circuits, save the Seventh, mistakenly following the lead of one early case. That case announced that § 230(c)(1) grants Internet Service Providers "broad immunity" for almost all conduct involving third-party content, regardless of the role the platform played and the claim asserted. In recent years a growing chorus of judges from these circuits have spoken out, declaring the leading interpretation of § 230(c)(1) was wrong from the start and even more problematic now in light of the proliferation and sophistication of the public's Internet use today. Now, the Third Circuit has joined the Seventh, the Fifth Circuit has more narrowly tailored its view of immunity, and numerous circuit judges elsewhere have expressly called for this Court's intervention on this issue.

1. From the earliest cases, the lower courts mistakenly applied Section 230(c)(1). "[T]he first appellate court to" address § 230(c)(1)'s scope was the Fourth Circuit in *Zeran* v. *America Online, Inc.,* 129 F.3d 327 (4th Cir.1997). *See Malwarebytes, Inc.* v. *Enigma Software Grp. USA, LLC*, 141 S. Ct. 13, 15, 208 L. Ed. 2d 197 (2020). The complaint alleged AOL committed various torts when it "unreasonably delayed . . . removing defamatory messages" about the plaintiff that an unknown user had posted to AOL's online "bulletin boards," "refused to post retractions of

those messages, and failed to screen for similar postings thereafter." *Zeran*,129 F.3d at 327-28.

Affirming judgment on the pleadings, the Fourth Circuit found AOL "immune" from all of the plaintiff's claims under § 230(c)(1) in a sweeping opinion. *Id.* at 330. Focusing on what it perceived to be the "policy" and "purpose" behind the statute, the Fourth Circuit concluded "§ 230 creates a federal immunity [for] *any* cause of action that would make service providers liable for information originating with a third-party user of the service." *Id.* (emphasis added). Because all the plaintiff's claims centered on the unknown poster's defamatory statements, the Fourth Circuit found AOL entirely immune from suit. *Id.*

The Fourth Circuit did not stop there. It also squarely rejected the plaintiff's argument that Section 230 "eliminates only publisher liability," but leaves "distributor liability intact." *Id.* at 331. As the plaintiff correctly pointed out, Section 230(c)(1) says that no "interactive computer service shall be treated as the *publisher* or *speaker* of any information provided by another information content provider," but says nothing about whether it may be treated as a "distributor" of such content, nor does it state providers shall be "immune." *Id.* at 330. Nevertheless, the Fourth Circuit concluded the plaintiff read too much "significance" into the legal distinction between publisher and distributor and that "distributor liability . . . is merely a subset, or a species, of publisher liability, and is therefore also foreclosed by § 230." *Id.* at 332. In other words, the Fourth Circuit did the exact opposite of what the sponsors of § 230 intended: It took the decision in *Cubby* that Section 230's sponsor decried and *expanded* its

protection for Internet platforms that do nothing to protect users.

2. This abject failure to follow both text and purpose caught on. Following *Zeran*'s lead, "[t]he majority of federal circuits" have interpreted § 230(c)(1) "to establish broad 'federal immunity'" for online platforms from "*any* cause of action" involving third-party created content.[1] *See Almeida* v. *Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006) (emphasis added) (quoting *Zeran*); *see also Jones* v. *Dirty World Entertainment Recordings, LLC*, 755 F.3d 398, 406-07 (6th Cir. 2014) ("Although § 230(c)(1) does not explicitly mention immunity or a synonym thereof, this and other circuits have recognized the provision" "immunizes providers of interactive computer services against liability arising from content created by third parties.") (citing, inter alia, *Zeran*); *Marshall's Locksmith Service Inc.* v. *Google, LLC*, 925 F.3d 1263, 1267 (D.C. Cir. 2019) ("[Section] 230 immunizes internet services for third-party content that they publish . . . against causes of actions of all kinds.").

The Seventh Circuit was the lone outlier in sticking to Section 230's text and declining to follow

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[1] Several state Supreme Courts also have relied on the Fourth Circuit's reasoning in *Zeran*. *Doe* v. *Am. Online, Inc.*, 783 So. 2d 1010, 1013-17 (Fla. 2001) ("We find persuasive the reasoning of . . . the Fourth Circuit in *Zeran*[.]"); *Shiamili* v. *Real Est. Grp. of New York, Inc.*, 17 N.Y.3d 281, 288, 952 N.E.2d 1011, 1016 (2011) ("Both state and federal courts around the country have 'generally interpreted Section 230 immunity broadly[.]'") (quoting extensively from *Zeran*); *Daniel* v. *Armslist, LLC*, 386 Wis. 2d 449, 464, 926 N.W.2d 710, 717 (Wis. 2019) ("Section 230(c)(1) . . . immuniz[es] interactive computer service providers from liability for publishing third-party content.").

Zeran's lead until recently. It has repeatedly recognized that Section 230(c)(1) does not create immunity at all. *Doe* v. *GTE Corp.*, 347 F.3d 655, 660 (7th Cir. 2003) (Section 230(c)(1) is "a definitional clause rather than . . . an immunity from liability"). In the Seventh Circuit's view "§ 230(c)(1) forecloses any liability that depends on deeming the ISP a 'publisher'—defamation law would be a good example of such liability—while permitting the states to regulate ISPs in their capacity as intermediaries." *Id.*; *see also City of Chicago, Ill.* v. *StubHub!, Inc.*, 624 F.3d 363, 366 (7th Cir. 2010). Thus, "Section 230 shields defendants from legal claims where the beginning and end of a defendant's alleged misconduct is making third-party content available for others to consume. *Angelilli* v. *Activision Blizzard, Inc.*, 2025 WL 1181000 at *5 (N.D. Ill. Apr. 23, 2025). As one Seventh Circuit panel aptly explained, other circuits' broad interpretation of Section 230 would also immunize websites like Napster "designed to help people steal music" or other material protected by copyright, a position "incompatible" with this Court's opinion in *Metro–Goldwyn–Mayer Studios Inc.* v. *Grokster, Ltd.*, 545 U.S. 913 (2005). *Chicago Lawyers' Committee for Civil Rights Under Law, Inc.* v. *Craigslist, Inc.*, 519 F.3d 666 (7th Cir. 2008).

As the years passed, and social media and Internet use proliferated—and became more sophisticated—courts applied the "broad immunity" announced in *Zeran* and to various claims. Courts have found § 230(c)(1) immunizes online platforms from claims that the design and features of their websites facilitate human trafficking and child sex trafficking. *Jane Doe No. 1* v. *Backpage.com, LLC*, 817 F.3d 12, 16–21 (1st Cir. 2016); *M.A. ex rel. P.K.* v. *Vill. Voice*

Media Holdings, LLC, 809 F. Supp. 2d 1041, 1049 (E.D. Mo. 2011). Other courts immunized social media platforms from claims that their recommendation algorithms promote and contribute to terrorist activity. *See Force*, 934 F.3d 53 ((finding Facebook immune from federal anti-terrorism claims that its algorithms enabled Hamas terrorist attacks in Israel); *Gonzalez* v. *Google LLC*, 2 F.4th 871, 880 (9th Cir. 2021), *vacated and remanded*, 598 U.S. 617 (2023) (finding numerous social media platforms immune from anti-terrorism claims that their recommendation algorithms promoted and furthered ISIS terrorist attacks). Still others have found § 230(c)(1) immunizes app developers for failing to include safety features to protect users from impersonation, harassment, and "other dangerous conduct" performed by other app users. *See Herrick* v. *Grindr LLC*, 765 F. App'x 586, 588 (2d Cir. 2019) (app developer immune from claims that its "'hook up' application" was defectively designed because it permitted third-party to impersonate plaintiff and direct other users to plaintiff's home).

3. The ever-expanding scope of "§ 230(c)(1) immunity" outside the Seventh Circuit has drawn skepticism from some and vigorous dissents from others. In *Force*, Second Circuit Chief Judge Katzmann pushed back against the majority's further extension of this questionable precedent. Judge Katzmann dug deep into the text and legislative history of § 230 to conclude the statute "does not protect Facebook's friend- and content-suggestion algorithms." 934 F.3d at 82. As Judge Katzmann explained, Facebook cannot be immune from claims arising from *its own* messaging and *its own* conduct, both of which fall far outside the scope of § 230(c)(1)

protection. *Id.* at 77-84 (criticizing majority for "extend[ing] a provision that was designed to encourage computer service providers to shield minors from obscene material so that it now immunizes those same providers for allegedly connecting terrorists to one another").

In *Gonzalez*, Ninth Circuit Judges Berzon and Gould "join[ed] the growing chorus of voices calling for a more limited reading of the scope of section 230 immunity." 2 F.4th at 913-52. Judge Berzon concurred, but wrote that "if not bound by Circuit precedent, [she] would hold that" § 230(c)(1) does not protect "activities that promote or recommend content or connect content users to each other" like the recommendation algorithms utilized by social media platforms. *Id.* at 913. Like Judge Katzmann, Judge Berzon explained "the term 'publisher' under section 230 reaches only traditional activities of publication and distribution—such as deciding whether to publish, withdraw, or alter content." *Id.* "Nothing in the history of section 230 supports a reading of the statute so expansive as to" include "targeted recommendations and affirmative promotion of connections and interactions among otherwise independent users" as "traditional" publisher functions. *Id.* at 13-14.

Judge Gould went further. He dissented from the majority's immunity findings, attaching the entirety of "Chief Judge Katzmann's cogent and well-reasoned opinion . . . in *Force*" to his dissent. *Id.* at 920, 938-52. In Judge Gould's "view, Section 230 was not intended to immunize," and should not be read to "give social media platforms total immunity" for all claims involving user-generated content. *Id.* at 920, 921. Judge Gould would have held "that Plaintiffs' claims

do not fall within the ambit of Section 230 because Plaintiffs d[id] not seek to treat Google as a publisher or speaker of the ISIS video propaganda." *Id.* at 921. Rather, Plaintiffs sought to hold Google accountable for "act[ing] affirmatively to amplify and direct ISIS content, repeatedly putting it in the eyes and ears of persons who were susceptible to acting upon it." *Id.*

And in *Doe* v. *Snap, Inc.*, *seven* judges from the Fifth Circuit, led by Judge Elrod, joined the chorus calling for change. 88 F.4th 1069 (5th Cir. 2023). The district court and the Fifth Circuit panel followed settled Fifth Circuit precedent in finding Snap immune from suit under Section 230. *Id*. at 1070 (Elrod, J. dissenting). The judges in dissent from denial of *en banc* rehearing voted to "revisit[]" the Fifth Circuit's "erroneous interpretation of Section 230" that granted "sweeping immunity for social media companies." *Id*. Having failed to garner enough votes for en banc review, Judge Elrod implored this Court to resolve the issue. *Id*. at 1073.

Then, in the Ninth Circuit, Judge Nelson wrote a concurrence *to his own Opinion of the Court* acknowledging that he was bound by faulty precedent in a Section 230 case and noting that Ninth Circuit "precedent, and the incentives it can create, conflicts with the statutory scheme." *Calise* v. *Meta Platforms, Inc.*, 103 F.4th 732, 747 (2024) (Nelson, J., concurring).

4. The split is now deepening. The Third Circuit joined the Seventh Circuit in 2024 with *Anderson* v. *TikTok*, 116 F.4th 180 (3d Cir. 2024). There, TikTok, "via its algorithm, recommended and promoted videos posted by third parties to ten-year-old Nylah Anderson on her uniquely curated 'For You Page.'" *Id*.

at 181. One of those videos suggested that she participate in a "blackout challenge" involving self-asphyxiation. *Id*. Nylah unintentionally hanged herself trying to complete the challenge, and her mother sued TikTok asserting, among other things, strict liability and negligence. *Id*. at 181-82.

The Third Circuit analyzed Section 230 and recognized that interactive computer services are only protected from liability "if they are sued for someone else's expressive activity or content," but not "if they are sued for their own expressive activity or content." *Id*. at 183. Based in part on this Court's discussion of recommendation algorithms in *Moody* v. *NetChoice, LLC*, 144 S. Ct. 2383 (2024), the Court ruled that the recommendation was TikTok's own expressive activity because it decided "'on the third-party speech that [would] be included in or excluded from a compilation—and then organize[d] and present[ed] the included items'" on the user's page. *Anderson*, 116 F.4th at 184. Thus, Section 230 did not bar Anderson's claims. *Id*. Concurring, Judge Matey added that "the ordinary meaning of § 230 provides TikTok immunity from suit for hosting videos created and uploaded by third parties. But it does not shield more." *Id*. at 186 (Matey, J. concurring).

In *A.B.* v. *Salesforce, Inc.*, the Fifth Circuit tapered its extremely broad approach to Section 230, holding that Salesforce could be held liable for providing background software to Backpage, which was under investigation for sex trafficking. 123 F.4th 788, 797 (5th Cir. 2024). According to the Fifth Circuit, Section 230 did not protect Salesforce's conduct because it allegedly "knowingly assisted, supported, and facilitated sex trafficking by selling its tools and operational support to Backpage even though it knew

(or should have known) that Backpage was under investigation for facilitating sex trafficking." *Id*.

The changing tide suggests that the few circuits that have not ruled yet also will follow the trend. But that will just deepen the divide. As this case shows, some circuits will remain entrenched and apply the broadest possible immunity based on *Zeran*, rather than applying the text as written. See also *Doe* v. *Grindr* 128 F.4th 1148, 1153 (9th Cir. 2025) (claims by raped 15-year-old that Grindr defectively designed its product to allow underage users barred by Section 230). And internet computer services apparently know the writing is on the wall and courts are more inclined to apply the plain text of Section 230—neither TikTok nor Salesforce petitioned this Court to review their losses. But the division should not persist. Whether a victim has a remedy against Meta's conduct will depend on whether he or she was shot or raped or defrauded in South Carolina, where there is no remedy, in Indiana, where there is, or in one of the circuits where the scope of Section 230 is unclear. Only this Court's intervention can end the abusive, atextual immunity that divides the circuits once and for all.

II. It is beyond dispute that this case presents a question of exceptional importance.

In October of 2022 this Court granted certiorari in *Gonzalez* v. *Google* "to review the Ninth Circuit's application of § 230." 598 U.S. at 622; (citing 143 S.Ct. 80). At the time it granted the *Gonzalez* petition, this Court, indisputably, acknowledged the need to review the circuit courts' interpretations of Section 230. *Id.* In the years prior, Justice Thomas had repeatedly urged the Court to "address the proper scope of

immunity under § 230 in an appropriate case." *Doe* v. *Facebook, Inc.*, 142 S. Ct. 1087, 1089 (2022) (Thomas, J. respecting the denial of certiorari) (noting the case was not appropriate because it was still ongoing, meaning the court lacked jurisdiction because there was not yet a "[f]inal judgement[] or decree[]" to review); *Malwarebytes*, 141 S. Ct. 13, 18 (Thomas, J. respecting the denial of certiorari) ("[W]e need not decide today the correct interpretation of § 230. But in an appropriate case, it behooves us to do so.").

Unfortunately, *Gonzalez* was not the appropriate case. The Court was unable to answer the question presented because of a latent defect. The Court "decline[d] to address the application of § 230" to plaintiffs' complaint because, in light of its decision in *Twitter, Inc.* v. *Taamneh*, 598 U.S. 471 (2023), it appeared plaintiffs' complaint failed to state a "plausible claim for relief" under the federal Antiterrorism Act. 598 U.S. at 622. Plaintiffs' claims were "materially identical to those at issue in" *Twitter*. So when the Court determined the plaintiff in *Twitter* failed to state a viable claim for relief, it concluded the plaintiff in *Gonzalez* did too. The Court remanded the case without taking up Section 230, thus leaving this pressing question unanswered.

1. In the past few years, more cases have arisen, the division among the circuits has deepened, and social media companies continue to refuse to change with the vast majority of cases arising in circuits where they enjoy immunity for their own culpable conduct.

Facebook is business with a pure profit motive, just like a car company, a drug company, or a tobacco company. But unlike businesses in other industries,

Facebook has enjoyed a judicially created immunity grafted onto a statute whose text only purports to render it safe from liability for the conduct of others. Because of the judiciary's overbroad reading, harming people does not affect the bottom line the way it does for other businesses. With Section 230 immunity in hand, social media platforms are exploiting *Zeran* and doing next to nothing to address the dangers their platforms pose to the public for fear that any action they take might also decrease membership, usage, and revenue.

Recall the internal memo where a Facebook executive wrote: "[t]he ugly truth is that we believe in connecting people so deeply that *anything* that allows us to connect more people more often is *de facto* good." JA032. If a car company executive said the same thing in defense of refusal to end exploding gas tanks—claiming people cannot afford cars to connect to each other if they add expensive safety features, and it is the fault of the driver who rear ends the Pinto—it would be front and center as evidence of ill intent. One can imagine similar statements on the value of pharmaceutical drugs and, 40 years ago, the social aspect of tobacco smoking. This petition does not challenge Congress's power to limit liability when a social media company makes a dangerous algorithm or when a car company uses exploding gas tanks; it challenges the Fourth Circuit's (and others') atextual expansion of Congress's narrow limitation on liability stated in Section 230(c).

Facebook has "targeted and [taken] advantage of peoples' worst impulses and negative emotions." JA030. It "made a corporate decision to exploit the hate" and continues to do so relentlessly. *Id*. It knows how to make the platform safer. JA036. But it sticks

with, according to internal documents, "algorithms [that] exploit the human brain's attraction to divisiveness." JA039. And this works. A recent study established that sources of information on Facebook that are known for providing misinformation received six times the engagement as trustworthy news sources. JA041. This is not random, nor is it simple user choice. Facebook *recommends* these sources of misinformation and rancor.

To Facebook, growth is an inherent good and the company's end—"all the work we do in growth is justified. All the questionable contact importing practices. All the subtle language that helps people stay searchable by friends. All of the work we do to bring more communication in." JA032. After all, "the best products don't win. The ones everyone use win." *Id*. And the more teenagers felt negative emotions based on what they saw on the app, the more they used the app. JA033. Facebook has no interest in being a neutral publisher of information despite the fact that there are myriad ways to fix its algorithmic predisposition to misinform and radicalize. JA047-48. Conspiracies and misinformation sell, particularly to the young and vulnerable. So, Facebook *promotes* that content. JA048. It does not simply publish it or even editorially arrange it.

These facts only have become available recently due to leaked documents and whistleblower testimony. JA045. Facebook guards all of this information carefully. JA045-46. And the extent of its knowledge and malicious intent cannot be fully known until discovery. As Haugen plainly stated, "[o]nly Facebook knows how it personalizes your [f]eed for you." JA046.

The import of the questions presented is clear. Social media companies must be held accountable for the harms they are imposing on America's youth through their own misconduct radicalizing them and victimizing them. But only this Court can remove the extra immunity that lower courts have read into Section 230.

2. This case presents an ideal vehicle to resolve the meaning of Section 230(c)(1), particularly with respect to the question raised in *Gonzalez* regarding recommendation algorithms. The questions are squarely presented here: the Complaint plainly raises product liability and failure to warn claims asserting that the Facebook algorithms proximately caused the injuries here—Facebook's own conduct in recommending both certain content and recommending groups materially contributed to Roof's radicalization. Roof's violence was foreseeable and actually foreseen by Facebook, but Facebook threw caution to the wind in the name of unencumbered "growth."

Facebook's additional defenses are no reason to pass this opportunity to provide desperately needed guidance. Just about all cases involving Section 230 will contain alternative defenses because those defenses are untested. Courts have dismissed so many of these cases based on Section 230. This is not an aiding and abetting case, like *Gonzalez*; it is a product liability case. And the Fourth Circuit's countenance of Facebook's assertion of lack of proximate cause is of no moment. Pet. App. 16a-18a. That ruling is clearly colored by the Fourth Circuit's faulty reasoning on Section 230, given it fails to recognize numerous allegations regarding Facebook's purposeful manipulation of users to assert that M.P. does not "provide any factual foundation causally

linking Roof's Facebook use to his crimes of murder." Pet. App. 18a. The dissent correctly recognizes that the appropriate course is to for the district court to resolve whether the claims are plausibly pleaded "in the first instance with respect to M.P.'s negligence claims about Facebook's own conduct like recommendations" and potentially provide an opportunity to amend the complaint. Pet. App. 26a-28a.

An approach of denying petitions based on circuit courts placing alternative grounds for their affirmances in opinions could provide an incentive to judges on those courts to throw in weak alternative grounds whenever their opinions rest on shaky reasoning that may be reversed if this Court reviews it on the merits—as is the case here. The fact that neither Twitter nor Salesforce petitioned for this Court's review after *losing* on Section 230 says it all. The proponents of broad immunity are aware that there is no textual or historical basis for the sweeping immunity granted to companies like Facebook, and alternative grounds for affirmance imbued with the faulty reasoning under Section 230 should not preclude review.

Broad immunity under Section 230 should be resolved here and now, as the delay only creates more and more victims. Overbroad immunity under Section 230 is a judicially created problem, and this Court's intervention is the solution.

CONCLUSION

For the foregoing reasons, the petition should be granted, the judgment below should be reversed, and the case should be remanded for further proceedings.

Respectfully submitted,

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APPENDIX

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APPENDIX A

PUBLISHED

United States Court of Appeals
for the Fourth Circuit

No. 23-1880

M.P., a minor, by and through, Jennifer Pinckney, as Parent, Natural Guardian, and Next Friend,

Plaintiff-Appellant,

v.

META PLATFORMS INC., f/k/a Facebook, Inc.; FACEBOOK PAYMENTS INC.; FACEBOOK TECHNOLOGIES LLC; INSTAGRAM, LLC; SICULUS INC.; FACEBOOK HOLDINGS LLC; INTERNET RESEARCH AGENCY LLC, a/k/a Mediasintez llc, a/k/a Glavset LLC, a/k/a Mixinfo LLC, a/k/a Azimut LLC, a/k/a Novinfo LLC; CONCORD MANAGEMENT AND CONSULTING LLC; CONCORD CATERING; YEVGENIY VIKTOROVICH PRIGOZHIN,

Defendant-Appellee.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Richard Mark Gergel, District Judge. (2:22-cv-03830-RMG)

Argued: September 26, 2024
Decided: February 4, 2025

Before DIAZ, Chief Judge, RUSHING, Circuit Judge and KEENAN, Senior Circuit Judge.

Affirmed by published opinion. Senior Judge Keenan wrote the opinion, in which Chief Judge Diaz joined. Judge Rushing wrote an opinion concurring in the judgment in part and dissenting in part.

ARGUED: Marc Joseph Mandich, Francois Michael Blaudeau, SOUTHERN INSTITUTE FOR MEDICAL & LEGAL AFFAIRS LLC, Birmingham, Alabama for Appellant. Jacob Thomas Spencer, GIBSON, DUNN & CRUTCHER LLP., Washington, D.C., for Appellee. **ON BRIEF:** Evan T. Rosemore, SOUTHERN MED LAW, Homewood, Alabama for Appellants. Helgi C. Walker, Jessica L. Wagner, GIBSON, DUNN & CRUTCHER LLP., Washington, D.C., For Appellee.

BARBARA MILANO KEENAN, Senior Circuit Judge:

In 1996, Congress enacted 47 U.S.C. § 230, commonly known as Section 230 of the Communications Decency Act. In Section 230, Congress provided interactive computer services broad immunity from lawsuits seeking to hold those companies liable for publishing information provided by third parties. Plaintiff-Appellant M.P. challenges the breadth of this immunity provision, asserting claims of strict products liability, negligence, and negligent infliction of emotional distress under South

Carolina law. In these claims, she seeks to hold Facebook, an interactive computer service, liable for damages allegedly caused by a defective product, namely, Facebook's algorithm that recommends third-party content to users. M.P. contends that Facebook explicitly designed its algorithm to recommend harmful content, a design choice that she alleges led to radicalization and offline violence committed against her father.[1]

The main issue before us is whether M.P.'s state law tort claims are barred by Section 230. The district court below answered this question "yes." We agree. M.P.'s state law tort claims suffer from a fatal flaw; those claims attack the manner in which Facebook's algorithm sorts, arranges, and distributes third-party content. And so the claims are barred by Section 230 because they seek to hold Facebook liable as a publisher of that third-party content. Accordingly, we conclude that the district court did not err in granting Facebook's motion to dismiss.

I.

A.

Because this appeal involves the district court's dismissal of M.P.'s complaint under Federal Rule of Civil Procedure 12(b)(6), we take "as true all of the factual allegations contained in the complaint" and state the facts in the light most favorable to the plaintiff. *E.I. du Pont de Nemours & Co. v. Kolon*

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[1] M.P. also asserts a federal cause of action under 42 U.S.C. § 1985(3), seeking damages for an alleged conspiracy to deprive her of her civil rights. We address that claim and a related argument *infra* Part II.B.

Indus., Inc., 637 F.3d 435, 440 (4th Cir. 2011) (citation omitted). As stated in the complaint, in June 2015, Dylann Roof shot and killed nine people at Mother Emanuel AME Church in Charleston, South Carolina. Among the dead was M.P.'s father, Reverend Clementa Pinckney. M.P. was present when her father was murdered.

M.P. later filed suit against Defendant-Appellee Meta Platforms, Inc. and five of its subsidiaries (collectively, Facebook) asserting that they were civilly liable for damages caused by Roof's crimes.[2] M.P. alleges in her complaint that Roof was "radicalized online by white supremacist propaganda that was directed to him by the Defendants." She also asserts that, in 2012, when Roof "looked to Google in search of answers for 'black on white crime,'" Google directed him "to a website run by a White nationalist group called the Council of Conservative Citizens." M.P. avers that this Google search marked the beginning of Roof's radicalization process.

M.P. also alleges in her complaint that Facebook's "design and architecture" played a substantial role in Roof's radicalization. According to M.P., Facebook is optimized to "maximize user engagement" because user "engagement determines [the company's] advertising revenue, which determines [the company's] profits." Citing various studies, M.P. alleges that divisive content, including extremist and

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[2] M.P. also has sued various Russian defendants for "promot[ing] white supremacist theories and plant[ing] hundreds of hate propaganda messages online meant to inspire and grow the white supremacy movement" in the United States. However, because these defendants are not part of this appeal, this opinion focuses solely on M.P.'s allegations against Facebook.

racist content, results in the highest level of viewer engagement on Facebook. And so M.P. asserts that to maximize viewer engagement, Facebook, through its content-sorting algorithm, promotes that type of content, particularly to those who express an interest in it. M.P. alleges that "repeated exposure to [such] inflammatory [content] result[s] in emotional desensitization," while "extended" exposure to "extremist content" leads to "radicalization." And M.P. further asserts that Facebook's quest for user engagement and profit has led to multiple instances of offline violence. *See, e.g.*, J.A. 35 (detailing Facebook's alleged role in the Rohingya genocide in Burma).

M.P. alleges that Facebook's algorithm fed Roof content that "nurtured, encouraged, and ultimately served to solidify and affirm" his racist, violent views. She further asserts that Facebook's algorithm recommended extremist groups to Roof and that he "joined [these] extremist groups on Facebook." As evidence of Facebook's role in Roof's radicalization, M.P. points to Roof changing his Facebook "profile photo" to include white supremacist symbols shortly before he murdered M.P.'s father. In sum, M.P. contends that Facebook is partially responsible for Dylann Roof's murder of nine innocent people, including her father.

M.P.'s complaint contains both state and federal law claims against Facebook. As stated above, in her claims under South Carolina law, M.P. alleges strict products liability (Count I), negligence (Count II), and negligent infliction of emotional distress (Count III). All three state law tort claims rely on the contention that Facebook, "as designed, was in a defective

condition unreasonably dangerous to the user when it left the control of the defendant." *See* J.A. 63 (strict products liability); J.A. 65 (negligence); J.A. 66 (negligent infliction of emotional distress). In her federal law claim, M.P. alleges that Facebook participated in a civil conspiracy in violation of 42 U.S.C. § 1985(3).

In response to M.P.'s allegations, Facebook filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). The district court granted Facebook's motion and entered final judgment in favor of Facebook under Federal Rule of Civil Procedure 54(b).[3] The court held that M.P. failed to

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[3] Rule 54(b) permits a trial court in a case involving multiple parties or multiple claims to enter final judgment with regard to only some of the parties or some of the claims when the court "expressly determines that there is no just reason for delay." Fed. R. Civ. P. 54(b). We treat Rule 54(b) issues as jurisdictional, *Braswell Shipyards, Inc. v. Beazer E., Inc.*, 2 F.3d 1331, 1336 (4th Cir. 1993), and we review a district court's Rule 54(b) certification for abuse of discretion, *Kinsale Ins. v. JDBC Holdings, Inc.*, 31 F.4th 870, 874 (4th Cir. 2022). To comply with Rule 54(b), a district court must "first determine that it is dealing with a 'final judgment'" and next decide "whether there is any just reason for delay." *Curtiss-Wright Corp. v. General Elec. Co.*, 446 U.S. 1, 7–8 (1980). A district court's findings of fact on this issue generally are necessary to enable appellate review of a Rule 54(b) order, and so our usual course when a district judge has failed to engage in such an analysis has been to "vacate the Rule 54(b) certification and remand (with instructions) for a statement of reasons supporting certification." *Braswell Shipyards*, 2 F.3d at 1336.

Here, the district court's Rule 54(b) certification did not provide any specific reasons supporting certification but merely referred in general to the reasoning of the parties. Nevertheless, the parties amply stated their reasons for the court's consideration. We have reviewed those reasons, and we find that they justify

state a plausible claim for relief against Facebook. In making this determination, the court first concluded that Section 230 bars M.P.'s state law tort claims. The court then determined that M.P. failed to plausibly allege a claim under 42 U.S.C. § 1985(3). M.P. now appeals from the district court's judgment.

II.

We review de novo the district court's holding granting Facebook's motion to dismiss. *E.I. du Pont de Nemours*, 637 F.3d at 440. To survive a motion to dismiss, a complaint must contain sufficient facts to state a claim that is "plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In determining whether a plaintiff has stated a plausible claim to relief, we draw all reasonable inferences in favor of the plaintiff. *Edwards v. City of Goldsboro*, 178 F.3d 231, 244 (4th Cir. 1999). "[B]ut we need not accept the legal conclusions drawn from the facts, and we need not accept as true unwarranted inferences, unreasonable conclusions, or arguments." *Giarratano v. Johnson*, 521 F.3d 298, 302 (4th Cir. 2008) (internal quotation marks and citation omitted).

A.

We first consider M.P.'s South Carolina claims (state tort claims) of strict products liability, negligence, and negligent infliction of emotional distress. We agree with the district court that Section 230 bars these claims that M.P. asserts against

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Rule 54(b) certification. Thus, "although further explanation from the district court undoubtedly would have been helpful, we hold that the [district] court did not abuse its discretion in certifying its judgment as final under Rule 54(b)." *Fox v. Balt. City Police Dep't*, 201 F.3d 526, 532 (4th Cir. 2000).

Facebook. But even apart from any consideration of Section 230, we still would be required to affirm the dismissal of those claims because M.P. has failed to plausibly allege proximate causation under South Carolina law.

1.

We begin with Section 230. As stated above, M.P.'s state tort claims rely on common law theories of strict products liability, negligence, and negligent infliction of emotional distress. Under South Carolina law, there are notable differences between a strict products liability claim and a negligence claim. *See Bragg v. Hi-Ranger, Inc.*, 462 S.E.2d 321, 326 (S.C. Ct. App. 1995) (explaining that "under a negligence theory, the plaintiff bears the additional burden of demonstrating the defendant (seller or manufacturer) failed to exercise due care in some respect, and, unlike strict liability, the focus is on the conduct of the seller or manufacturer, and liability is determined according to fault"). These differences, however, are immaterial to our present analysis, which addresses whether Facebook is immunized by Section 230 from M.P.'s state tort claims because those claims treat Facebook as a publisher of third-party information. Accordingly, we will address M.P.'s state tort claims collectively.

The origins of Section 230 can be traced to a 1995 New York state court case, *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, No. 31063/94, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995) (unpublished). In that case, a New York court considered a defamation action against an interactive computer service, Prodigy. In doing so, the court confronted the novel question whether to treat Prodigy as (1) a publisher of information, subject to strict liability for defamatory

statements, or as (2) a distributor, which could be held liable under New York common law only if it had knowledge of the defamatory character of the published statements. *Cubby, Inc. v. CompuServe, Inc.*, 776 F. Supp. 135, 139 (S.D.N.Y. 1991) (collecting cases) (explaining the distinction between publishers and distributors under New York law). The New York court determined that Prodigy was more akin to "an original publisher than a distributor both because it advertised its practice of controlling content on its service and *because it actively screened and edited messages posted on its bulletin boards*." *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997) (emphasis added) (discussing *Stratton Oakmont, Inc.*, 1995 WL 323710). In other words, because Prodigy attempted to regulate the information on its website, the court held that Prodigy had subjected itself to publisher liability.

When presented with this decision, Congress viewed the result as threatening "the vibrant and competitive free market that [existed] for the Internet and other interactive computer services." 47 U.S.C. § 230(b)(2). In Congress' view at the time, "the imposition of tort liability on service providers for the communications of others represented … simply another form of intrusive government regulation of speech." *Zeran*, 129 F.3d at 330. Congress responded to this concern by enacting Section 230. *Id.* at 331; *see also* 47 U.S.C. § 230(b)(4).

Among other things, Section 230 states that "[n]o provider or user of an interactive computer service[4]

[4] Section 230 defines the term "interactive computer service" as "any information service, system, or access software provider that provides or enables computer access by multiple users to a

shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). Section 230 further provides that "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." *Id.* § 230(e)(3). We have determined that, taken together, this statutory language establishes broad immunity from "'any cause of action that would make service providers liable for information originating with a third-party user of the service.'" *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 254 n.4 (4th Cir. 2009) (quoting *Zeran*, 129 F.3d at 330). The broad immunity conferred by Section 230 thus is restricted to claims that are "based on the interactive computer service provider's *publication of a third party's speech*." *Erie Ins. Co. v. Amazon.com, Inc.*, 925 F.3d 135, 139 (4th Cir. 2019) (emphasis added) (citing *Zeran*, 129 F.3d at 330).

To establish immunity under Section 230, a defendant must show that "(1) [t]he defendant is a provider or user of an interactive computer service; (2) the plaintiff's claim holds the defendant responsible as the publisher or speaker of any information; and (3) the relevant information[5] was provided by another information content provider." *Henderson v. Source for Pub. Data, L.P.*, 53 F.4th 110, 119 (4th Cir. 2022) (internal quotation marks and citations omitted). In

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computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions." 47 U.S.C. § 230(f)(2).

[5] We treat the terms "information" and "content" as synonymous in this opinion.

the present case, the parties do not debate that Facebook is a provider or user of an interactive computer service (element 1). Nor is there any meaningful disagreement between the parties that relevant information "was provided by another information content provider" (element 3). Instead, the present dispute centers on whether M.P.'s state tort claims seek to hold Facebook responsible as the publisher of third-party information (element 2).

M.P. argues that the district court erred in concluding that her state tort claims treat Facebook as a publisher of third-party content. She contends that those claims are centered on Facebook's "*own design* meant to facilitate radicalization and compulsive use of the platform by driving extreme emotional reactions." M.P. thus characterizes her state tort claims as solely dealing with Facebook's algorithm, which she treats as a "product." We are not persuaded by M.P.'s argument.

Under our precedent, "a claim … treats the defendant 'as the publisher or speaker of any information' under § 230(c)(1) if the claim (1) bases the defendant's liability on the disseminating of information to third parties and (2) imposes liability based on the information's improper content." *Henderson*, 53 F.4th at 123. In making this determination, we do not take a formalistic approach, looking abstractly to the elements of a cause of action. *Id.* at 124. Instead, we conduct a case-specific approach, examining what a plaintiff in a particular case must prove. *Id.* "Our precedent demands that we ask whether the claim 'thrust[s]' the interactive service provider 'into the role of a traditional publisher.'" *Id.* at 121 (quoting *Zeran*, 129 F.3d at

332). That is, we consider whether a plaintiff's allegations seek "to hold a service provider liable for … deciding whether to publish, withdraw, postpone or alter content" provided by third parties. *Zeran*, 129 F.3d at 330.

Our decision in *Erie Insurance Co. v. Amazon.com, Inc.*, 925 F.3d 135 (4th Cir. 2019) serves as a practical example of the analysis that we must conduct. In that case, a plaintiff brought an action against Amazon as the seller of a defective product. *Id.* at 139– 40. While Amazon admittedly published third-party speech in marketing the product, we rejected the defendant's immunity claim asserted under Section 230, because the plaintiff's claim was not based on "the *content of [that] speech*" but rested on the characteristics of the product itself. *Id.* (emphasis in original). As we later emphasized in *Henderson*, to trigger the immunity shield of Section 230, the interactive service provider's act of publishing information must be more than a "but-for cause of the harm." 53 F.4th at 122– 23.

By contrast, in *Zeran v. America Online, Inc.*, 129 F.3d 327 (4th Cir. 1997), the plaintiff's claims were based entirely on the defendant's publication of third-party speech. The plaintiff alleged that the defendant negligently and "unreasonably delayed in removing defamatory messages posted by an unidentified third party, refused to post retractions of those messages, and failed to screen for similar postings thereafter." *Id.* at 328. Because the plaintiff sought to hold the service provider "liable for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content," *id.* at 330, we determined that the defendant fell "squarely within th[e] traditional definition of a

publisher and, therefore, [was] clearly protected by § 230's immunity," *id.* at 332.

The case before us is more like *Zeran* than like *Erie Ins. Co.* M.P.'s state tort claims are inextricably intertwined with Facebook's role as a publisher of third-party content. M.P. seeks to hold Facebook liable for disseminating "improper content" on its website. *Henderson*, 53 F.4th at 120–21. Crucially, M.P. cannot show that Facebook's algorithm was designed in a manner that was unreasonably dangerous for viewers' use without also demonstrating that the algorithm prioritizes the dissemination of one type of content over another. Indeed, without directing third-party content to users, Facebook would have little, if any, substantive content. Simply stated, M.P. takes issue with the fact that Facebook allows racist, harmful content to appear on its platform and directs that content to likely receptive users to maximize Facebook's profits.[6]

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[6] The dissent makes much of Facebook's "groups you should join" algorithm. *See infra* pp. 24–25. The dissent argues that through this algorithm, Facebook "explicitly communicates" with users by recommending that they join various groups, including extremist groups. Accordingly, the dissent concludes that Facebook can be held liable for this particular conduct. *See infra* pp. 25–26. But the dissent's argument misconstrues M.P.'s complaint. M.P. does not allege that Roof ever saw the words "groups you should join" on Facebook. Nor does she claim that Facebook recommended that Roof join a specific hate group or that Roof actually joined any such group based on a Facebook algorithm referral. So, the dissent ultimately argues a case that M.P. does not make. We thus express no opinion on whether Section 230 immunizes Facebook from liability arising out of that company's "groups you should join" algorithm.

While there is widespread concern about Facebook's use of its algorithm to arrange and sort racist and hate-driven content, acts of arranging and sorting content are integral to the function of publishing. *See Force v. Facebook, Inc.*, 934 F.3d 53, 66 (2d Cir. 2019) ("[A]rranging and distributing third-party information inherently forms 'connections' and 'matches' among speakers, content, and viewers of content, whether in interactive internet forums or in more traditional media. That is an essential result of publishing."). For instance, newspaper editors choose what articles merit inclusion on their front page and what opinion pieces to place opposite the editorial page. These decisions, like Facebook's decision to recommend certain third-party content to specific users, have as a goal increasing consumer engagement. *See, e.g.*, *Above the Fold*, *Cambridge Business English Dictionary* (2011) (explaining that newspaper editors place the stories they think "will sell the newspaper … above the fold"). But a newspaper company does not cease to be a publisher simply because it prioritizes engagement in sorting its content. And the fact that Facebook uses an algorithm to achieve the same result of engagement does not change the underlying nature of the act that it is performing. Decisions about whether and how to display certain information provided by third parties are traditional editorial functions of publishers, notwithstanding the various methods they use in performing that task.[7]

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[7] M.P.'s allegation that Facebook "auto-generated" the Council of Conservative Citizens' Facebook page does not alter this result. M.P. has not alleged that Roof saw this "auto-generated" page, joined the group, or even "followed" that page. Without further

In reaching this conclusion, we find persuasive the decisions of our sister circuits holding that an interactive computer service does not lose Section 230 immunity because the company automates its editorial decision-making. *See Force*, 934 F.3d at 67 (noting that "'so long as a third party willingly provides the essential published content, the interactive service provider receives full immunity regardless of the specific edit[orial] or selection process'" (quoting *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1124 (9th Cir. 2003))); *Marshall's Locksmith Serv. Inc. v. Google, LLC*, 925 F.3d 1263, 1270–71 (D.C. Cir. 2019) (explaining that the use of a neutral algorithm "to present … third-party data in a particular format" is protected by Section 230); O'Kroley v. Fastcase, Inc., 831 F.3d 352, 355 (6th Cir. 2016) (finding that Google was immunized by Section 230 for performing "some automated editorial acts on the content, such as removing spaces and altering font"). Because Facebook has chosen to automate much of its editorial decision-making, including the publishing of information that forms the basis of M.P.'s state tort claims before us, those claims are barred by the broad immunity conferred by Section 230.

We recognize that there is a growing body of literature exploring the various harms resulting from the ongoing evolution of social media companies, like Facebook, which have expanded their reach under the

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factual enhancement, these allegations are insufficient to state a claim. Thus, the fact that Facebook may have contributed to the formation of this Facebook page is not materially significant to our analysis here.

protective shield of Section 230.[8] But the conclusions reached by these authors cannot serve as a basis for us to restrict the application of Section 230. We are not free to disregard Section 230 or to limit its application based on our own assessment of the merits of its expansive reach. The question whether, and to what extent, Section 230 should be modified is a question for Congress, not for judges.

In sum, we conclude that M.P.'s state tort claims seek to hold Facebook "responsible 'as the publisher or speaker of [third-party] information.'" *Henderson*, 53 F.4th at 119. Accordingly, we hold that the district court did not err in holding that these state tort claims are precluded by Section 230.

But even if Section 230 did not immunize Facebook from M.P.'s state tort claims, all her claims under South Carolina law would fail for the additional reason that M.P. did not plausibly allege under South Carolina law the required element of proximate causation. All three state tort claims, namely, strict products liability, negligence, and negligent infliction of emotional distress, require that a plaintiff plausibly allege proximate causation. *Bray v. Marathon Corp.*, 588 S.E.2d 93, 95 (S.C. 2003) (citation omitted) (products liability claims require proof that a defective product was the proximate cause of injury); *Jolly v.*

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[8] *See, e.g.*, Adam D. I. Kramer, *et al.*, *Experimental Evidence of Massive-Scale Emotional Contagion Through Social Networks*, 111 PNAS 8788 (2014); Max Fisher & Amanda Taub, *How Everyday Social Media Users Become Real-World Extremists*, N.Y. Times (Apr. 25, 2018), http://www.nytimes.com/2018/04/25/world/asia/facebook-extremism.html [https://perma.cc/VS4J-5CRS] (last visited Oct. 29, 2024).

Gen. Elec. Co., 869 S.E.2d 819, 828 (S.C. Ct. App. 2021) (noting that a plaintiff claiming negligence must show that the defendant's negligence was the proximate cause of her injury); *Kinard v. Augusta Sash and Door Co.*, 336 S.E.2d 465, 467 (S.C. 1985) (for a defendant to be held liable for negligent infliction of emotional distress, a plaintiff must prove, among other things, that the defendant's negligence caused death or serious physical injury to another person). Yet, M.P. has not done so in the present case.[9]

To plausibly allege causation under South Carolina law, a plaintiff must aver "both causation in fact, and legal cause." *Oliver v. S.C. Dep't of Highways & Pub. Transp.*, 422 S.E.2d 128, 130 (S.C. 1992). "Causation in fact is proved by establishing the injury would not have occurred 'but for' the defendant's negligence." *Whitlaw v. Kroger Co.*, 410 S.E.2d 251, 253 (S.C. 1991) (quoting *Bramlette v. Charter-Med.-Columbia*, 393 S.E.2d 914, 916 (S.C. 1990)). Meanwhile, "the touchstone of proximate [or legal] cause in South Carolina is foreseeability." *Young v. Tide Craft, Inc.*, 242 S.E.2d 671, 675 (S.C. 1978). To be foreseeable, a plaintiff's injury must be "a natural and probable consequence of [the defendant's negligence]." *Bramlette*, 393 S.E.2d at 916. A defendant "cannot be charged with 'that which is unpredictable or that which could not be expected to happen.'" *Young*, 242 S.E.2d at 676 (quoting *Stone v. Bethea*, 161 S.E.2d

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[9] Although the district court did not address the issue of causation, the issue was fully briefed by the parties in the district court and in this appeal. So we may consider the issue as a separate basis for affirming the district court's judgment. *See Strickland v. United States*, 32 F.4th 311, 372 n.18 (4th Cir. 2022).

171, 173 (S.C. 1968)). In determining whether a particular injury was foreseeable, the defendant's conduct must be viewed "in the light of attendant circumstances." *Stone*, 161 S.E.2d at 173.

Here, M.P. has not plausibly alleged that Facebook was the proximate cause of her injuries. Her specific allegations involving Roof's use of Facebook are that (1) he viewed extremist content on Facebook; (2) he "joined extremist groups on Facebook;" and (3) shortly before June 2015, he changed his Facebook profile picture to one that included white supremacist symbols. Notably, M.P. does not allege how much time Roof spent on Facebook or how he became radicalized on the platform. Nor does M.P. provide any factual foundation causally linking Roof's Facebook use to his crimes of murder. In short, M.P. does not offer a plausible argument, or otherwise point to supporting allegations, that Roof's horrific acts were a natural and probable consequence of his Facebook use. We therefore conclude that M.P.'s tort claims under South Carolina law are fatally flawed for the additional reason that M.P. failed to plausibly allege that Facebook was the proximate cause of her injuries.

B.

Finally, we address M.P.'s federal claims. M.P. makes two arguments. First, she contends that the district court erred in dismissing her claim for relief under 42 U.S.C. § 1985(3). That section permits an individual to bring a civil action for damages based on a conspiracy to deprive a plaintiff of her civil rights. 42 U.S.C. § 1985(3). In the present case, M.P. contends that she adequately alleged a claim under this statute by asserting that Facebook conspired with others to deprive African Americans of their fundamental right

to vote by permitting misinformation and hate speech to exist on Facebook's social media platform.

Second, M.P. submits on appeal that the district court erred by "ignor[ing] entirely" her purported claim under 42 U.S.C. § 1986. Under that statute, an individual may file suit against anyone who has knowledge of a Section 1985 conspiracy and neglects or refuses to prevent it, despite having the power to do so. *Strickland*, 32 F.4th at 360. We examine each argument in turn.

We first address the Section 1985 claim and conclude that M.P. has forfeited any challenge to the district court's dismissal of that claim. The only reference in M.P.'s appellate brief to the district court's alleged error in dismissing this claim appears in the "Statement of the Issues" section of her brief. Previously, we have explained that "'contentions not raised in the argument section of the opening brief are abandoned.'" *Adbul-Mumit v. Alexandria Hyundai, LLC*, 896 F.3d 278, 290 (4th Cir. 2018) (quoting *United States v. Al-Hamdi*, 356 F.3d 564, 571 n.8 (4th Cir. 2004)). Applying this rule here, we affirm the district court's dismissal of M.P.'s Section 1985 claim against Facebook.

We next consider M.P.'s argument that the district court erred by failing to consider her claim under 42 U.S.C. § 1986. We first observe that M.P. does not mention Section 1986 in her complaint and relies almost exclusively on one conclusory allegation in a 68-page complaint to assert her claim. Thus, there is a threshold question whether M.P. put Facebook on notice that she was alleging a claim under Section 1986. *See Sansotta v. Town of Nags Head*, 724 F.3d 533, 548 (4th Cir. 2013) (citing *Twombly*, 550 U.S. at

555); *but see Stanton v. Elliott*, 25 F.4th 227, 238 (4th Cir. 2022) (explaining that plaintiffs are not required to "put a claim under a special heading, quote the statute, or use magic words to make out a claim"). Nevertheless, we need not resolve the question whether the claim was adequately pleaded because any such claim was untimely made.

Section 1986 provides a one-year limitations period. *See* 42 U.S.C. § 1986 ("But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."). M.P. commenced this action in November 2022. However, M.P.'s Section 1986 claim could not have accrued any later than April 2019, when she alleges that she learned about the purported Section 1985 conspiracy to deprive African Americans of their right to vote. Thus, because M.P. filed her complaint in 2022, more than three years after her Section 1986 claim accrued, that claim is barred by the one-year statute of limitations.[10] We therefore conclude that the district court did not commit reversible error in failing to address M.P.'s Section 1986 claim. Accordingly, we affirm the district court's dismissal of M.P.'s federal claims.

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[10] M.P. urges us to consider South Carolina Code § 15-3-40, which tolls personal injury claims advanced by minor plaintiffs until they reach the age of 18. But this state statute is not applicable here. M.P. is asserting a federal claim under a federal statute. In such circumstances, the default federal rule is that "a statute of limitations runs against all persons, even those under a disability, unless the statute expressly provides otherwise." *Vogel v. Linde*, 23 F.3d 78, 80 (4th Cir. 1994). Section 1986's text contains no such tolling rule. So South Carolina's tolling provision cannot save M.P.'s untimely Section 1986 claim.

III.

For these reasons, we affirm the district court's judgment granting Facebook's motion to dismiss.

AFFIRMED

RUSHING, Circuit Judge, concurring in the judgment in part and dissenting in part:

Section 230 of the Communications Decency Act, 47 U.S.C. § 230, as interpreted by this Court, grants broad immunity to interactive computer services for publishing content provided by others. I agree with the majority that we are not free to disregard or modify Section 230 "based on our own assessment of the merits of its expansive reach." *Supra*, at 15. But I disagree with the majority about how far Section 230's protection extends. In her complaint, M.P. alleges that Facebook acted culpably by inundating her father's murderer, Dylann Roof, with violent racist content that radicalized him, resulting in his act of violence. Under our precedent, Section 230 protects Facebook from liability for those editorial decisions, as the majority correctly concludes. But M.P. also alleges that Facebook culpably recommended that Roof join extremist groups on Facebook, where his radical views were cultivated. Recommending that a user join a group, connect with another user, or attend an event is Facebook's own speech, for which it can be held liable, even under this Court's precedent. Unlike the majority, I would reverse the district court's dismissal of M.P. negligence claims on Section 230 grounds and remand her claims regarding Facebook's own conduct, including its group recommendations, for further proceedings.

As for M.P.'s strict products liability claim and federal claims, I would affirm the district court's dismissal. Therefore, I respectfully concur in the judgment in part and dissent in part.

I.

Section 230 preempts any state cause of action that is inconsistent with its prohibition on treating a "provider or user of an interactive computer service . . . as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1); *see id.* § 230(e)(3). Our Court has interpreted Section 230 to grant "broad immunity" to interactive computer services. *Zeran v. America Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997). "But it does not insulate a company from liability for all conduct that happens to be transmitted through the internet." *Henderson v. Source for Pub. Data, L.P.*, 53 F.4th 110, 129 (4th Cir. 2022). Instead, a defendant claiming the protection of Section 230(c)(1) must establish that "(1) [t]he defendant is a 'provider or user of an interactive computer service,'" which the parties agree Facebook is; "(2) the plaintiff's claim holds the defendant responsible 'as the publisher or speaker of any information'; and (3) the relevant information was 'provided by another information content provider.'" *Henderson*, 53 F.4th at 119 (quoting 47 U.S.C. § 230(c)(1)).

A claim treats the defendant as a publisher or speaker of information "when it (1) makes the defendant liable for publishing certain information to third parties, and (2) seeks to impose liability based on that information's improper content." *Henderson*, 53 F.4th at 120–121. A "'but-for' causal relationship

between the act of publication and liability" is insufficient for immunity. *Id.* at 122.

Further, the information at issue in the plaintiff's claim must be "provided by *another* information content provider." 47 U.S.C. § 230(c)(1) (emphasis added). Section 230(c)(1) does not protect a defendant who "is responsible, in whole or in part, for the creation or development of [the] information" at issue. *Id.* § 230(f)(3) (defining "information content provider"). In other words, "providers of interactive computer services are liable . . . for speech that is properly attributable to them." *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 254 (4th Cir. 2009).

M.P. alleges that Facebook designed its system and underlying algorithms to "prioritiz[e] divisive and polarizing content, including hate speech and misinformation about racial groups/minorities, especially when delivering content to users [likely to engage with it] and recommending that [those] users make new connections or join new groups." J.A. 30. These basic allegations underlie all three state-law causes of action M.P. asserts: strict products liability, negligent products liability, and negligent infliction of emotional distress. Her complaint focuses on two categories of allegedly defective products: (1) algorithms that "provide more violent and angry racially based content to those users the algorithm deem[s] likely to engage" with it, for example, by "fill[ing] users' News Feeds with disproportionate amounts of hate speech and misinformation," and (2) algorithms that "recommend that susceptible users join extremist groups." J.A. 34, 39, 58.

Applying our Court's precedent, the majority correctly concludes that Section 230 bars M.P.'s causes of action based on the first category of alleged defects in Facebook's algorithms prioritizing certain kinds of third-party content. Though framed in products liability verbiage, M.P.'s claims undoubtedly seek to hold Facebook liable for disseminating on its platform improper content provided by others. As the majority explains, Facebook's decisions about "whether and how to display certain informationprovided by third parties," including which third-party information to prioritize in order to maximize consumer engagement, are akin to "'a publisher's traditional editorial functions.'" *Supra*, at 12–14 (quoting *Zeran*, 129 F.3d at 330). M.P. attempts to characterize the curated collection of negative third-party content Facebook displays on a susceptible user's News Feed as Facebook's own speech. *See*, *e.g.*, *Anderson v. TikTok, Inc.*, 116 F.4th 180, 184 (3d Cir. 2024) (holding that TikTok's algorithm—which "'[d]ecid[ed] on the third-party speech that will be included in or excluded from a compilation'" and then "'organiz[ed] and present[ed] the included items'" on users' pages—was TikTok's own speech and not protected by Section 230 (quoting *Moody v. NetChoice, LLC*, 144 S. Ct. 2383, 2402 (2024))). But as the majority concludes, M.P.'s characterization cannot evade our precedent, which immunizes interactive computer services for publishing third-party content regardless of the services' knowledge or intent. *See Zeran*, 129 F.3d at 332–333; *Anderson*, 116 F.4th at 184 n.13 (noting the conflict between the Third Circuit's decision and *Zeran*). So the majority correctly affirms dismissal of

M.P.'s claims based on Facebook publishing and prioritizing hateful third-party content.

I disagree with the majority, however, regarding the second category of allegedly defective products: algorithms that recommend Facebook users join extremist groups. Section 230 does not bar M.P.'s claims based on those defects because recommending a group, person, or event is Facebook's own speech, not that of a third party.

Through features like "Groups You Should Join," Facebook recommends groups, people, and events to its users. *See* J.A. 49, 58. Unlike the implicit recommendation that attends any editorial decision to feature certain third-party content, Facebook's recommendations of groups, people, and events involve platform-produced text that explicitly communicates to the user. The statement "'You Should Join' this hate group" is Facebook's own speech; it cannot be attributed to any third party. That statement qualifies as "information" created by Facebook itself. 47 U.S.C. § 230(f)(3). When Facebook creates such information and disseminates it on its platform, Facebook is the "information content provider." *Id.* Thus, holding Facebook responsible for its own recommendations is not treating it "as the publisher or speaker of any information provided by another." *Id.* § 230(c)(1). And our precedent leaves ample room for liability when interactive computer services are making recommendations as opposed to merely hosting or arranging third-party content. *See Henderson*, 53 F.4th at 128 (holding that a defendant is an "information content provider" if it "materially contributed" to the "information relevant to liability"); *Nemet Chevrolet*, 591 F.3d at 254 (explaining that

interactive computer services are liable "for speech that is properly attributable to them").

M.P. alleges that Facebook's algorithms base its group recommendations in part on analysis of a user's "engagement on the internet (both on and off of Facebook)," and that those algorithms "recommend that susceptible users join extremist groups." J.A. 34. The input of that process is undoubtedly third-party conduct; for example, M.P. alleges that Facebook's algorithms analyzed Roof's online behavior. But the output—Facebook's recommendation that Roof join an extremist group—is just as undoubtedly Facebook's own conduct. True, after Roof joined an extremist group on Facebook, he would have seen information provided by that group, for which Facebook may have acted solely as publisher. But M.P. seeks to hold Facebook accountable for *recommending that Roof join the group in the first instance*, even if she cannot hold Facebook to account for publishing the group's content on its platform. As the late Judge Katzmann explained, "[t]he fact that Facebook also publishes third-party content should not cause us to conflate its two separate roles with respect to its users and their information." *Force v. Facebook, Inc.*, 934 F.3d 53, 83 (2d Cir. 2019) (Katzmann, J., concurring in part and dissenting in part). In one role, Facebook acts as publisher of its users' content, and Section 230 provides immunity. But in the role relevant here, Facebook is not "also immune when it conducts statistical analyses of that information and delivers a message based on those analyses," like a recommendation to join a particular group. *Id.* That message is Facebook's own and is not encompassed within the traditional editorial functions that Section 230 immunizes.

Because Section 230(c)(1) shields Facebook only from claims holding it liable as a publisher or speaker of information provided by another, it does not bar M.P.'s claims to the extent they seek to hold Facebook accountable for recommending that Roof join extremist groups. Therefore, I would reverse the district court's Section 230 ruling as regards this category of allegations.

II.

The majority affirms dismissal of all M.P.'s state law claims for the additional reason that M.P. failed to plausibly allege proximate causation. The district court did not address causation, and I would remand for it to do so in the first instance with respect to M.P.'s negligence claims about Facebook's own conduct like recommendations. However, one of M.P.'s state law claims—strict products liability—need not be remanded because it fails for the separate reason that M.P. has not alleged she is a user or consumer of Facebook or its algorithms.[1]

A.

Although causation ultimately may be difficult to prove in this case, M.P. likely has pled enough to nudge her negligence claims over the line of plausibility and earn discovery into whether Roof's violence was a foreseeable consequence of Facebook's conduct. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678

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[1] Facebook contends that M.P. "must satisfy the user-or-consumer element for each claim" she brings, including negligent products liability. Response Br. 56. The cases Facebook cites, however, do not support the proposition that South Carolina law restricts negligent products liability claims to the user or consumer of the defective product.

(2009). Consider her allegations about Facebook's group recommendations. M.P. alleges that Roof "joined extremist groups on Facebook." J.A. 24. She alleges that, "based on . . . Roof's engagement on the internet," Facebook's algorithms directed him "to groups or communities in which his views were cultivated, developed, and made more extreme." J.A. 34. She alleges that "64% of all extremist group joins are due to [Facebook's] recommendation tools." J.A. 58. And she alleges that it was "foreseeable, and indeed known to Facebook," that "by recommending extremist groups to those perceived susceptible to such messaging[,] Facebook would radicalize users like Roof, causing them to support or engage in dangerous or harmful conduct in the offline world." J.A. 34; *see also*, *e.g.*, J.A. 21 ("Facebook/Meta knew at least by 2014 that online radicalization leads to offline violence."); J.A. 51–52 (alleging other instances in which "Facebook's tendency to cause real-world violence by radicalizing users online has been demonstrated").

"Ordinarily, the question of proximate cause is one of fact for the jury." Jolly v. Gen. Elec. Co., 869 S.E.2d 819, 828 (S.C. Ct. App. 2021), aff'd sub nom., Jolly v. Fisher Controls Int'l, LLC, 905 S.E.2d 380 (S.C. 2024) (internal quotation marks omitted); see also Grooms v. Minute-Maid, 267 F.2d 541, 546 (4th Cir. 1959); Padgett v. Colonial Wholesale Distrib. Co., 103 S.E.2d 265, 270 (S.C. 1958). Although we can and do affirm dismissals for failure to adequately plead causation, I find the question in this case much closer than the majority does. Because the district court did not address causation and M.P. has had no opportunity to amend her complaint to correct its deficits (if any exist), I would not affirm dismissal of

M.P.'s negligence claims on this alternative ground. Instead, I would remand her negligence claims regarding Facebook's own conduct for further proceedings.

B.

M.P.'s strict products liability claim, however, fails for a separate, incurable reason. Under South Carolina law, "[o]ne who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm *caused to the ultimate user or consumer*, or to his property," if "[t]he seller is engaged in the business of selling such a product," and "[i]t is expected to and does reach the user or consumer without substantial change in the condition in which it is sold." S.C. Code Ann. § 15-73-10(1) (emphasis added). M.P. alleges that Facebook defectively designed "its system and that system's underlying algorithms" and she was injured as a result. J.A. 63. But M.P. does not claim that she was a user or consumer of Facebook or its algorithms, as the statute requires. Consequently, she cannot bring a strict products liability claim under South Carolina law.

While M.P. recognizes she is "a step removed from actual 'use' of the product," she argues that "such downstream harms can be remedied" under South Carolina's strict liability statute because they are "foreseeable." Opening Br. 61. The South Carolina Supreme Court, however, has squarely rejected the invitation to "includ[e] a foreseeability analysis in a determination of whether a plaintiff constitutes a 'user' under section 15-73-10." Lawing v. Univar, USA, Inc., 781 S.E.2d 548, 556 (S.C. 2015). As that

court has explained, "§ 15-73-10 limits liability to the user or consumer" of the product, Bray v. Marathon Corp., 588 S.E.2d 93, 96 (S.C. 2003), which terms do not include "all persons who could foreseeably come into contact with the dangerous nature of a product," Lawing, 781 S.E.2d at 556 (internal quotation marks omitted). Because M.P. does not allege that she was a user or consumer of Facebook or its algorithms, I would affirm the district court's dismissal of her strict products liability claim on this alternative ground.

III.

Finally, as for M.P.'s federal claims, I agree with the majority that we must affirm. M.P. waived any challenge to the district court's dismissal of her 42 U.S.C. § 1985(3) claim by not contesting it in this Court. And the district court did not err in failing to address a purported 42 U.S.C. § 1986 claim that did not appear in her complaint.

* * *

Accordingly, I would affirm dismissal of M.P.'s federal claims and strict products liability claim. I would reverse the district court's Section 230 ruling and remand M.P.'s negligence claims regarding Facebook's own conduct, like group recommendations, for further proceedings. Because the majority reaches a different conclusion regarding M.P.'s negligence claims, I respectfully concur in the judgment in part and dissent in part.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA CHARLESTON DIVISION

M.P., a minor, by and through, Jennifer Pinckney, as Parent, Natural Guardian, and Next Friend, Plaintiff, v. Meta Platforms, Inc. (f/k/a Facebook, Inc., a Delaware Corp.); Facebook Holdings, LLC; Facebook Payments, Inc.; Facebook Technologies, LLC; Instagram, LLC; Siculus, Inc.; Internet Research Agency, LLC (a/k/a Mediasintez LLC a/k/a Glavset LLC a/k/a Mixinfo LLC a/k/a Azimut LLC a/k/a Novinfo LLC); Concord Management and Consulting LLC; Concord Catering & Yevgeniy Viktorovich Prigozhin, Defendants.	§ Case No. § 2:22-cv-3830-RMG § § § § **AMENDED** § **ORDER** § **AND OPINION** § § § § § § § § § § § § § § § § §

This matter is before the Court on Meta Defendants'[1] Motion to Dismiss (Dkt. No. 27).

[1] Meta Defendants are Meta Platforms, Inc. Facebook Holdings,

Plaintiff has responded in opposition (Dkt. No. 32), and Meta Defendants have replied (Dkt. No. 36). For the reasons set forth below, the Meta Defendants' motion is granted.

I. Background

The Meta Defendants, who own and/or operate the interactive computer service Facebook, have moved to dismiss Plaintiff's complaint which seeks to hold them liable for the July 15, 2015 racially inspired murderous assault by Dylann Roof on parishioners attending a bible study class at Emanuel AME Church, one of the most notorious incidents of racial violence in modern American history. Plaintiff is the daughter of Reverend Clementa Pinckney, one of the nine victims of that tragic assault on Emanuel AME Church and among South Carolina's most revered political and religious leaders.

Plaintiff alleges claims against the Meta Defendants under state common law causes of action of strict liability (Count I), negligence (Count II), and negligent infliction of emotional distress (Count III). Additionally, Plaintiff alleges under Count IV that the Meta Defendants and various Russian bad actors conspired to deprive her of privileges as an American citizen under 42 U.S.C. § 1985(3), commonly referred to as the Ku Klux Klan Act. The Meta Defendants assert that Plaintiff's state common law claims are barred by Section 230 of the Communications Decency Act, which provides as follows:

LLC; Facebook Payments, Inc.;

Facebook Technologies, LLC; Instagram, LLC, Siculus, Inc.

> 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. . . . No cause of action may be brough and no liability may be imposed under any State or local law that is inconsistent with this section.

47 U.S.C. § 230(c)(1) and (e)(3).

The Meta Defendants further assert the Plaintiffs claim under the Ku Klux Klan Act fails to satisfy the elements of a § 1985(3) and lacks any specificity regarding the allegations that the "Meta Defendants conspired with the Russian Defendants to deprive African Americans of their fundamental right to vote and equal protection of the laws" and "knowingly conspired with the Russians to sow discord by using online radicalization to deprive African Americans of their fundamental right to vote and equal protection of the law." (Dkt. No. 1, ¶¶ 51, 52).

The essence of Plaintiff's common law claims is that Facebook's "design and architecture," which includes algorithms allegedly designed to maximize engagement without regard to the social harm, takes Facebook out of the safe harbor of Section 230 provided to interactive computer services acting as publishers of the product of third parties. (*Id.*, ¶¶ 98-137). Plaintiff alleges that Facebook's algorithms directed Dylann Roof to material of "white supremacists/nationalists and Russian state operatives" and aided and abetted "these evil actors in their brainwashing and radicalizing of users." (*Id.*, ¶ 137). The Meta Defendants assert that their structure and design of Facebook perform the traditional work of a publisher of third parties' materials and that

Section 230 provides immunity from state common law claims such as those asserted by Plaintiff.

II. Standard

A Rule 12(b)(6) motion for failure to state a claim upon which relief can be granted "'challenges the legal sufficiency of a complaint.'" *S.C. Elec. & Gas Co. v. Whitfield*, Civil Action No.: 3:18-cv-1795-JMC, 2018 WL 3587055, *4 (July 26, 2018) (quoting *Francis v. Giacomelli*, 588 F.3d 186, 192 (4th Cir. 2009); *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992) ("A motion to dismiss under Rule 12(b)(6) . . . does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.")). To be legally sufficient, a pleading must contain a "'short and plain statement of the claim showing that the pleader is entitled to relief.'" *Id.* (quoting Fed. R. Civ. P. 8(a)(2)).

A Rule 12(b)(6) motion should not be granted unless it appears certain that the plaintiff can prove no set of facts that would support her claim and would entitle her to relief. *Id.* (citing *Mylan Labs., Inc. v. Matkari*, 7 F.3d 1130, 1134 (4th Cir. 1993)). When considering a Rule 12(b)(6) motion, the court should accept as true all well-pleaded allegations and should view the complaint in a light most favorable to the plaintiff. *Id.* (citing *Ostrzenski v. Seigel*, 177 F.3d 245, 251 (4th Cir. 1999); *Mylan Labs., Inc.*, 7 F.3d at 1134.). "'To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "'A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable

for the misconduct alleged.'" *Id.* (quoting *Iqbal*, 556 U.S. at 678).

III. Discussion

A. Counts I, II, and III.

This Court does not address the scope and application of Section 230 on a blank slate. Indeed, there is a quarter of a century of case law since the adoption of Section 230 in 1996 that has addressed highly analogous claims by victims of terrorist violence and other wrongful conduct inflicted by actors who accessed and consumed hate material on social media sites. The very first appellate court case which addressed the scope of Section 230 immunity was the Fourth Circuit's decision in *Zeran v. America Online, Inc.*, 129 F.3d 327 (4th Cir. 1997). The *Zeran* court held:

> By its plain language, § 230 creates a federal immunity to any cause of action that would make service providers liable for information originating with a third party user of the service. Specifically, § 230 precludes courts from entertaining claims that would place a computer service provider in a publisher's role. Thus, lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional functions—such as deciding whether to publish, withdraw postpone, or alter content—are barred.

Id. at 330

Since *Zeran*, other circuit courts have been in general agreement that that the text of Section 230 should be construed broadly in favor of immunity. *See,*

e.g., *Force v. Facebook*, 934 F.3d 53, 64 (2d Cir. 2019); *Federal Trade Commission v. LeadClick Media, LLC*. 838 F.3d 158, 173 (2d Cir. 2016); *Jane Doe 1 v. Backpage,com LLC*, 817 F.3d 12, 18 (1st Cir. 2016); *Jones v. Dirty World Entertainment Recordings, LLC*, 755 F.3d 398, 408 (6th Cir. 2014); *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008); *Almeida v. Amazon, Inc.* 456 F.3d 1316, 1321 (11th Cir. 2006); *Carafano v. Metrosplash.com, LLC*, 339 F.3d 1119, 1123 (9th Cir. 2003).

The *Zeran* court viewed Section 230 as a policy choice by Congress, weighing the potential benefits of a robust forum for "true diversity of political discourse" unfettered by potential tort liability of the internet service providers, against the potential harm associated with unregulated speech accessible to all. 129 F.3d at 330-331. Having determined that "tort based lawsuits" posed a threat "to freedom of speech in the new and burgeoning internet medium," Congress opted to provide broad immunity to service providers which published the materials of third parties. *Id*. at 330.

In recent years, plaintiffs have sought to plead around Section 230 immunity by asserting product liability claims based on the theory that the algorithms and internal architecture of social media sites direct hate speech to persons inclined to violence and inflict harm on minorities and other victims of random acts of violence. They argue that the algorithms are well beyond the function of traditional publishers and that the social media sites themselves are a defective product.

In *Force*, the plaintiffs, American citizens who were injured by terrorist attacks by Hamas in Israel,

asserted that Facebook facilitated and abetted a terrorist organization whose members utilized its services. *Force*, 934 F.3d at 53. By making its forum open to terrorists and "actively bringing Hamas' message to interested parties" through its algorithms, plaintiffs argued that the design of Facebook rendered it a non-publisher outside the umbrella of Section 230. The Second Circuit rejected this argument:

> We disagree with plaintiffs' contention that Facebook's algorithms renders it a non-publisher . . . . [A]rranging and distributing third party information inherently forms "connections" and "matches" among speakers, content, and viewers of content, whether in interactive internet forums or in more traditional media. That is an essential result of publishing. Accepting plaintiffs' argument would eviscerate Section 230(c)(1); a defendant interactive computer service would be ineligible for Section 230(c)(1) immunity by virtue of simply organizing and displaying content exclusively provided by third parties.

Id. at 66.

The Ninth Circuit, in *Dyroff v. Ultimate Softweare Group, Inc*., 934 F.3d 1093 (9th Cir. 2019), recently took the same approach regarding a claim that a service provider's algorithms facilitated a communication between a drug seeker and a drug dealer, which ultimately resulted in the drug seeker's overdose death. In rejecting the plaintiff's product defect claim, the Ninth Circuit explained:

> It is true that Ultimate Software used features and functions, including algorithms,

> to analyze user posts on Experience Project and recommended other user groups. This includes the heroin- related discussion group to which [the drug seeker] posted and (through emails and push notifications) to the drug dealer who sold him the fentanyl laced heroin. Plaintiff, however, cannot plead around Section 230 immunity by framing these website features as content. We have held that what matters is whether the claims inherently require the court to treat the defendant as a publisher or speaker of content provided by another. If they do, then Section 230(c)(1) provides immunity from liability.

Id. at 1098.

Plaintiff here, just as the plaintiffs in other cases where they or their loved ones suffered injury or death following a wrongdoer accessing and using a social media website, argue that enormous harm has been inflicted on them and others by Congress' policy decision to provide Section 230 immunity to interactive computer services. Courts, having made a textual reading of the broad language of Section 230, have consistently interpreted the statute to bar claims seeking to hold internet service providers liable for the content produced by third parties. The balancing of the broad societal benefits of a robust internet against the social harm associated with bad actors utilizing these services is quintessentially the function of Congress, not the courts.

The Court finds that Section 230 bars Plaintiff's state common law claims asserted in Counts I, II, and III. The Meta Defendants' motion to dismiss Counts I, II, and III is granted.

B. Count IV:

Plaintiff further asserts a claim under 42 U.S.C. § 1985(3) asserting that the Meta Defendants conspired with various Russian bad actors[2] to deny her rights as an American citizen. To assert a claim under § 1985(3), a plaintiff must plausibly allege:

> (1) a conspiracy of two or more persons (2) who are motivated b a specific class-based, invidiously discriminatory animus to (3) deprive plaintiff of the equal enjoyment of rights secured by the law to all, (4) and results in injury to the plaintiff as (5) a consequence of an overt act committed by the defendants in connection with the conspiracy.

Strickland v. United States, 32 F.4th 311, 360 (4th Cir. 2022).

A plaintiff asserting a § 1985(3) claim must "show an agreement or 'meeting of the minds' by defendants to violate [plaintiff's] constitutional rights." *Simmons v. Poe*, 47 F.3d 1370, 1377 (4th Cir. 1995). This requires a showing that there was a "single plan, the essential nature and general scope of which was known to each person who is to be held responsible for its consequences." *Id.* at 1378. General conclusory statements regarding a conspiracy are insufficient, even at the pleading stage, to survive a motion to

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[2] Russian Defendants are Internet Research Agency, LLC; Concord Management and Conuslting LLC; Concord Catering & Yevgeniy Viktorovich Prigozhin. There is no evidence that any of the Russian Defendants have been served and they have made no appearance in this case.

dismiss. This requires allegations identifying "the persons who agreed to the alleged conspiracy, the specific communications amongst the coconspirators, or the manner in which any such communications were made." *A Society Without a Name v. Virginia*, 655 F.3d 342, 347 (4th Cir. 2011).

Measured by these standards, Count IV plainly does not plead a plausible claim under § 1985(3). The complaint alleges that the "Meta Defendants conspired with the Russian Defendants to deprive African Americans of their fundamental right to vote and equal protection of the law . . . and worked together to use Facebook's algorithms to proliferate race-based hate and amplify lies promoting violence against African Americans and discouraging them from voting." (Dkt. No. 1, ¶ 51). The Complaint is bereft of any details of such an alleged conspiracy, including which specific individuals conspired, how they communicated, the details of any meetings, and the substance, purpose, or scope of the alleged conspiracy.

The Supreme Court recently addressed a similar case that asserted a cause of action under the Justice Against Sponsors of Terrorism Act, 18 U.S.C. § 2333(a), (d)(2), which authorizes United States nationals to sue anyone who conspires with international terrorists to commit acts of terrorism or aids and abets such acts. A unanimous United States Supreme Court held in *Twitter v. Taamneh*, 143 S. Ct. 1206 (2023), that a social media provider can be held liable under the Terrorism Act only upon a showing that it "consciously, voluntarily and culpably" participated in the terrorist act. *Id.* at 1230. The Court rejected the argument that a social media company's

algorithms could constitute substantial assistance to terrorists:

> To be sure, plaintiffs assert that the defendants' "recommendations" algorithms go beyond passive aid and constitute active, substantial assistance . . . . As present here, the algorithms appear as to the nature of the content, matching any content (including ISIS' content) with any user who is more likely to view that content. The fact that these algorithms matched some ISIS content with some users does not convert defendants' passive assistance into active abetting.

Id. at 1226-27.

The Court finds that Count IV fails to plausibly allege a claim under § 1985(3) that meets the well-established standards of *Strickland* and other Fourth Circuit case law. The Court grants the Meta Defendants' motion to dismiss Count IV.

IV. Conclusion

For the reasons above, the Court **GRANTS** Meta Defendants Motion to Dismiss (Dkt. No. 27). This Order does not affect the pending claims against the Russian Defendants identified in Footnote 2.

s/ Richard Mark Gergel
Richard Mark Gergel
United States District Judge

September 14, 2023
Charleston, South Carolina

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA CHARLESTON DIVISION

M.P., a minor, by and through, Jennifer Pinckney, as Parent, Natural Guardian, and Next Friend, Plaintiff, v. Meta Platforms, Inc. (f/k/a Facebook, Inc., a Delaware Corp.); Facebook Holdings, LLC; Facebook Payments, Inc.; Facebook Technologies, LLC; Instagram, LLC; Siculus, Inc.; Internet Research Agency, LLC (a/k/a Mediasintez LLC a/k/a Glavset LLC a/k/a Mixinfo LLC a/k/a Azimut LLC a/k/a Novinfo LLC); Concord Management and Consulting LLC; Concord Catering & Yevgeniy Viktorovich Prigozhin, Defendants.	§ Case No. § 2:22-cv-3830-RMG § § § § **ORDER** § § § § § § § § § § § § § § § § § § §

This matter is before the Court on the joint motion of Plaintiff and the Meta Defendants[1] (Dkt. No. 51) to

[1] Meta Defendants are Meta Platforms, Inc. Facebook Holdings, LLC; Facebook Payments, Inc.; Facebook Technologies, LLC;

amend the judgment previously entered (Dkt. No. 40) and to state in the amended judgment that the amended order granting the motion to dismiss (Dkt. No. 47) applied only to the Meta Defendants. The motion is brought pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

In order to enter a Rule 54(b) certification, the Court must follow a two step process. First, the Court must determine that the judgment is final. Second, the Court must determine if there is any just reason for the delay in the entry of judgment. *Braswell Shipyards, Inc. v. Beazer East, Inc.*, 2 F.3d 1331, 1335-36 (4th Cir. 1993).

The Court has reviewed the joint motion and record in this matter and finds that the judgment against the Meta Defendants is final and that there is no just reason to delay the entry of the judgment regarding the Meta Defendants. Consequently, the Court grants the joint motion (Dkt. No. 51) and directs the Clerk to enter an amended judgment applicable only to the Meta Defendants. The claims against the remaining defendants continue before this Court.

AND IT IS SO ORDERED

s/ Richard Mark Gergel
Richard Mark Gergel
United States District Judge

October 12, 2023
Charleston, South Carolina

Instagram, LLC, Siculus, Inc.