No. 24-1133

IN THE
Supreme Court of the United States

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

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

BRIEF IN OPPOSITION

HELGI C. WALKER
Counsel of Record
JACOB T. SPENCER
JESSICA L. WAGNER
ZACHARY TYREE
JEFF LIU
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, D.C. 20036
(202) 955-8500
hwalker@gibsondunn.com

Counsel for Respondents

QUESTIONS PRESENTED

In June 2015, Dylann Roof shot and killed nine people, including Petitioner M.P.'s father, the Reverend Clementa Pinckney, at Mother Emanuel AME Church in Charleston, South Carolina. Petitioner seeks to hold Meta Platforms, Inc. and five of its subsidiaries liable for Roof's senseless acts of violence because he was purportedly radicalized online.

The Fourth Circuit affirmed the district court's dismissal of Petitioner's state common-law tort claims against Meta, holding that Section 230 bars the claims because they seek to hold Meta liable as the publisher of third-party content and, alternatively, that the complaint fails to state a claim under South Carolina law because the complaint does not plausibly allege proximate causation.

The questions presented are:

1. Whether Petitioner's state common-law tort claims adequately plead conduct by Meta in recommending third-party content to Dylann Roof that falls outside of Section 230 immunity.

2. Whether Petitioner's state common-law tort claims adequately plead conduct by Meta in recommending groups to Dylann Roof that falls outside of Section 230 immunity.

RULE 29.6 STATEMENT

Pursuant to this Court's Rule 29.6, undersigned counsel state that Meta Platforms, Inc. is a publicly traded corporation that does not have any parent corporation. No publicly held corporation owns 10% or more of Meta Platforms, Inc.'s stock. Meta Payments Inc. (f/k/a Facebook Payments Inc.) is a wholly-owned subsidiary of Meta Platforms, Inc. Meta Platforms Technologies, LLC (f/k/a Facebook Technologies, LLC) is a subsidiary of Meta Platforms, Inc.; the sole member of Meta Platforms Technologies, LLC is Meta Platforms, Inc. Instagram, LLC is a subsidiary of Meta Platforms, Inc.; the sole member of Instagram, LLC is Meta Platforms, Inc. Siculus Inc. is a wholly-owned subsidiary of Meta Platforms, Inc. Facebook Holdings, LLC is a subsidiary of Meta Platforms, Inc.; the sole member of Facebook Holdings, LLC is Meta Platforms, Inc.

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BRIEF IN OPPOSITION

Respondents Meta Platforms, Inc., formerly known as Facebook, Inc., Meta Payments Inc. (f/k/a Facebook Payments Inc.), Meta Platforms Technologies, LLC (f/k/a Facebook Technologies, LLC), Instagram, LLC, Siculus Inc., and Facebook Holdings, LLC respectfully submit that the petition for a writ of certiorari should be denied.

STATEMENT

Petitioner M.P. seeks review of whether her complaint "adequately plead[s] conduct" that falls outside the scope of Section 230 of the Communications Decency Act of 1996. Pet. i. This Court does not ordinarily grant review to analyze the adequacy of a particular complaint's allegations, Sup. Ct. R. 10, and this case would be a uniquely unsuitable vehicle for addressing any legal questions about Section 230's application. The Court should deny review.

Three years ago, this Court granted certiorari in *Gonzalez v. Google LLC* to review the Ninth Circuit's application of Section 230. See 598 U.S. 617, 619 (2023) (per curiam). After full briefing and oral argument, the Court ultimately "decline[d] to address the application of § 230 to a complaint that appear[ed] to state little, if any, plausible claim for relief." *Id.* at 622.

This petition suffers from an even more glaring vehicle problem. Unlike *Gonzalez*, where the inadequacy of the underlying claims simply loomed in the background, the Fourth Circuit held here that Section 230 bars Petitioner's claims *and* affirmatively held in the alternative that Petitioner's complaint does *not* state a plausible claim for relief. Specifically, the

court held that Petitioner failed to plausibly allege that Facebook proximately caused Dylann Roof's horrific murders as a matter of South Carolina law.

Petitioner does not seek review of that fully adequate and independent state-law holding. Instead, she invites an advisory opinion about the application of Section 230 to what her petition describes as content and group recommendations. Even if the Court were to grant review and reverse the Fourth Circuit's Section 230 holding, it would not alter the Fourth Circuit's judgment. This Court is not in the business of issuing that kind of advisory ruling.

Other vehicle problems plague the petition, too. For example, Petitioner's second question presented concerning group recommendations is not properly presented for this Court's review. The Fourth Circuit did not consider the application of Section 230 to recommendations to join groups on Facebook because it concluded that the complaint did not raise the issue. Pet. App. 13a. Moreover, rather than presenting a legal question as to which the petition asserts a circuit conflict, *both* of Petitioner's questions, as framed, merely ask the Court to review the factual sufficiency of the allegations in her complaint.

The petition should be denied.

1. The allegations in this case—and the underlying facts of Roof's crimes—are horrific. On June 17, 2015, Dylann Roof entered Mother Emanuel AME Church with the intent to murder its congregants. Pet. App. 4a; JA006 (¶ 1). After joining a Bible study, Roof shot and killed the Reverend Clementa Pinckney and eight other parishioners. Pet. App. 4a; JA006

(¶ 2). Petitioner M.P. is Reverend Pinckney's daughter, and she was present when Roof murdered her father. Pet. App. 4a; JA006, JA062 (¶¶ 1–2, 169).[1]

The complaint describes Roof as "a classic lone wolf"—characterized by "toug[h] to predict" behavior and "unrestrained violence"—who "radicalized" online. JA023–024 (¶ 56). Citing Roof's own "manifestos," the complaint alleges that he was motivated by white supremacist beliefs he encountered on websites—other than Facebook—following the 2012 death of Trayvon Martin. Pet. App. 4a; JA024–025 (¶ 60). According to the complaint, Roof "began the radicalization process [by] performing a Google search for 'black on white crime' which took him to the website of a South Carolina-based hate group named the Council of Conservative Citizens (formerly the White Citizens' Council)." JA061 (¶ 166); see Pet. App. 4a.

The complaint alleges that Roof "had a Facebook page," JA010 (¶ 13), but it acknowledges that Roof "did not spend that much time on Facebook and was not particularly active with posting," JA061–062 (¶ 167). Although the complaint does not allege "how he became radicalized on [Facebook]," Pet. App. 18a, it alleges in conclusory fashion that "Facebook was a factor" in Roof's radicalization process, JA025 (¶ 62). The complaint does not describe any particular post, video, or comment that Roof ever purportedly viewed on Facebook. It asserts that Roof "joined extremist

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[1] Because the petition stems from the grant of Meta's motion to dismiss, the facts are described here as alleged in the complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). "JA" citations refer to the joint appendix filed in the Fourth Circuit. Dkt. 23, *M.P. v. Meta Platforms Inc.*, No. 23-1880 (4th Cir. Jan. 17, 2024).

groups on Facebook," JA024–025 (¶ 60), but never "claim[s] that Facebook recommended that Roof join a specific hate group or that Roof actually joined any such group based on a Facebook algorithm referral," Pet. App. 13a n.6. Nor does the complaint allege that Roof ever discussed Facebook in any of his racist "manifestos," despite detailing other sites that purportedly contributed to his radicalization. See JA024–025, JA061 (¶¶ 60, 166) (citing Roof's manifesto). The only specific detail that the complaint alleges about Roof's activity on Facebook is that he changed his "profile photo" three weeks prior to the shooting. JA010 (¶ 13); see Pet. App. 5a.

2. The complaint brings three claims against Meta under South Carolina law for strict products liability, JA063–065 (¶¶ 170–186), negligent design defect, JA065–066 (¶¶ 187–193), and negligent infliction of emotional distress via a product, JA066–067 (¶¶ 194–203). It also includes a claim for conspiracy to violate civil rights under 42 U.S.C. § 1985(3), JA067–070 (¶¶ 204–216). See Pet. App. 5a–6a.

The complaint alleges that Facebook "facilitate[s] . . . ways" in which "billions of users" "seek and share information, engage in debate, and participate in society." JA010–011 (¶ 14). To sort the vast quantity of content those users create, Facebook uses "algorithmic systems" to "process . . . data" about the content and each user's interests, and then "tailor[s] each user's online experience" so that the site is accessible and useful. *Ibid.*

The complaint's theory is that Facebook is designed to "maximize user engagement, promoting and encouraging time spent on the platform." JA009–010 (¶ 12); see Pet. App. 4a. According to the complaint,

because "provocative content" (*i.e.*, content that is "inflammatory," "negative," or "divisive") is the most "engaging," Facebook's algorithms "promot[e]" that material—*i.e.*, display it more prominently in users' feeds. JA009–012, JA030–031, JA039 (¶¶ 12, 17, 80, 103); see Pet. App. 4a–5a. The complaint alleges that "repeated exposure to [such] inflammatory [content] result[s] in emotional desensitization," while "extended" exposure to "extremist content" leads to "radicalization." JA021–022 (¶ 48).

The complaint acknowledges that Meta does not "have any animus toward people of color." JA031 (¶ 81). Meta's "Community Standards," which the complaint references, JA025, JA031–032 (¶¶ 63, 82), "prohibit hate speech, harassment, and attempts to incite violence through the platform." Facebook's Civil Rights Audit – Final Report 42 (July 8, 2020), tinyurl.com/b2aas2bw. Nonetheless, the complaint alleges that, due to its "engagement"-based algorithmic sorting, "Facebook directly enabled and allowed white supremacy groups and foreign governments to target Americans with messages and video content meant to sow racial discord." JA025–026 (¶ 64).

The complaint further alleges that by allowing "fictitious social media accounts to stoke racial tensions," Meta "participated in [a] conspiracy" with the Russian government ("Russian Defendants") to "interfer[e] with the right of African Americans to vote" and otherwise deprive them of their civil rights under 42 U.S.C. § 1985(3). JA068–69 (¶¶ 207, 210).

3. The district court dismissed all claims against Meta. The court ruled that Petitioner's state-law products claims are barred by Section 230. It explained that "a quarter of a century of case law since the adoption of Section 230 in 1996" has rejected

"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." Pet. App. 35a. Under established precedent, Section 230 bars "lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional functions," including "whether to publish, withdraw[,] postpone, or alter content"—the very actions Petitioner pled as a basis for liability against Meta. *Ibid.* (quoting *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997)).

The court separately rejected Petitioner's civil-rights conspiracy claim under 42 U.S.C. § 1985(3) because the complaint was "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." Pet. App. 40a.

4. The Fourth Circuit affirmed the district court's dismissal of all claims against Meta, holding that Section 230 barred the state-law claims and, alternatively, that the complaint failed to state a claim.

On the state-law claims, the court first "agree[d] with the district court that Section 230 bars these claims." Pet. App. 7a–8a. The Fourth Circuit explained that, though framed in the language of product design, the state-law claims "attack the manner in which Facebook's algorithm sorts, arranges, and distributes third-party content," and thus "seek to hold Facebook liable as a publisher of that third-party content." *Id.* at 3a. Because "acts of arranging and sorting content are integral to the function of publishing," the Fourth Circuit reasoned that Meta operates like a traditional newspaper editor. *Id.* at 14a. And like "a newspaper company," Meta "does not cease to be a

publisher simply because it prioritizes engagement in sorting its content." *Ibid.* "[T]he 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." *Ibid.* "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." *Ibid.*

"[E]ven apart from any consideration of Section 230," the Fourth Circuit held in the alternative that it "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." Pet. App. 8a. The court of appeals explained that "[a]ll" of the state-law claims require that Petitioner allege "proximate causation"—*i.e.*, foreseeability. *Id.* at 16a–17a. But the only "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." *Id.* at 18a (quotation marks omitted). Petitioner did "not allege how much time Roof spent on Facebook or how he became radicalized on the platform," or "any factual foundation causally linking Roof's Facebook use to his crimes of murder." *Ibid.* The court therefore held that Petitioner "does not offer a plausible argument . . . that Roof's horrific acts were a natural and probable consequence of his Facebook use." *Ibid.* That "additional reason" independently supported affirmance. *Ibid.*

Finally, the Fourth Circuit held that Petitioner "forfeited any challenge to the district court's dismissal of" the Section 1985 claim by failing to brief the

issue. Pet. App. 19a. And the court held that Petitioner had not timely asserted any claim under 42 U.S.C. § 1986. *Id.* at 19a–20a. Petitioner does not seek review of the Fourth Circuit's dismissal of the federal-law claims in this Court.

Judge Rushing concurred in part and dissented in part. She agreed with the majority that "[t]hough 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," and Facebook's "decisions about 'whether and how to display'" third-party content "are akin to 'a publisher's traditional editorial functions.'" Pet. App. 24a. Nonetheless, Judge Rushing opined that group recommendations are not barred by Section 230. *Id.* at 25a.

Judge Rushing would not have decided causation in the first instance, though she would have affirmed dismissal of the state-law strict products-liability claim on the independent ground that Petitioner failed to allege that she was "a user or consumer of Facebook or its algorithms, as the [state products-liability] statute requires." Pet. App. 29a–30a.

REASONS FOR DENYING THE PETITION

Petitioner seeks review of whether her particular pleadings *adequately alleged* conduct that falls outside the scope of Section 230 of the Communications Decency Act of 1996. See Pet. i. There is no basis for the Court to consider these case-specific questions, which do not meet the Court's standards for certiorari.

But even if the petition had presented legal questions regarding Section 230 beyond the adequacy of her case-specific allegations, Petitioner's case is rife with vehicle problems. The Fourth Circuit correctly

dismissed Petitioner's state-law claims on adequate and independent state-law grounds that she has *not* asked this Court to review. Any opinion from this Court on the Section 230 questions presented would therefore be purely advisory. Especially after this Court's experience in *Gonzalez*, it would make no sense to tackle the Section 230 question in a case where its decision could make no difference to the outcome.

Further complicating this Court's review, the Fourth Circuit expressly declined to reach the second question presented because it concluded that the complaint did not allege particular facts regarding any group recommendations made to Roof on Facebook. Consistent with longstanding practice, this Court should not address the application of Section 230 to group recommendations in the first instance.

Even setting aside those insurmountable procedural hurdles, there is no reason to grant review. The courts of appeals are largely in accord on the proper interpretation of Section 230. And the decision below is correct.

This Court should deny review.

I. THIS CASE IS AN EXCEPTIONALLY POOR VEHICLE FOR ADDRESSING THE APPLICATION OF SECTION 230

Petitioner seeks review of two questions regarding the adequacy of her pleadings in relation to Section 230. Even if those questions were certworthy, the Court's resolution of them would make no difference to the outcome of this case. Because the Fourth Circuit independently dismissed Petitioner's claims on state-law grounds that she does not challenge here, any opinion from the Court on Section 230 would be

advisory. Given the many vehicle problems that plague the petition, including the Fourth Circuit's explicit refusal to address the second question presented, there is no reason to grant review.

A. The Questions Presented Call For An Advisory Opinion

Resolving the questions presented would require the Court to issue an advisory opinion that it "is without power to give." *Asbury Hosp. v. Cass Cnty.*, 326 U.S. 207, 213–14 (1945); see *TransUnion LLC v. Ramirez*, 594 U.S. 413, 424 (2021) (similar).

The Fourth Circuit's judgment rests on multiple, independent holdings, including one that rests entirely on state law. The court ruled that Petitioner's "state tort claims are precluded by Section 230." Pet. App. 16a. Alternatively, it held that—"even if Section 230 did not immunize Facebook from M.P.'s state tort claims"—"all" of the state-law claims fail because they do "not plausibly allege under South Carolina law the required element of proximate causation." *Ibid.*

Petitioner has not challenged the holding that there was no proximate causation, presumably recognizing that case-specific questions of South Carolina tort law are not remotely certworthy. But having failed to challenge that adverse state-law holding in her questions presented, she has forfeited the opportunity to do so. "Only the questions set out in the petition, or fairly included therein, will be considered by the Court." Sup. Ct. R. 14.1(a); see *Day v. McDonough*, 547 U.S. 198, 203 n.2 (2006).

Petitioner's decision not to challenge the Fourth Circuit's proximate causation holding means that any opinion this Court might offer on the Section 230 questions would be purely advisory. This Court "does

not review lower courts' opinions, but their *judgments*." *Jennings v. Stephens*, 574 U.S. 271, 277 (2015); *e.g.*, *Amgen Inc. v. Sanofi*, 598 U.S. 594, 615 (2023) ("we review judgments of the lower courts, not statements in their opinions"); *Herb v. Pitcairn*, 324 U.S. 117, 126 (1945) ("our power is to correct wrong judgments, not to revise opinions"). Because the judgment stands on an independent ground not challenged here, any opinion from this Court on the Section 230 questions would have no effect on the outcome.

As the Court has repeatedly held in similar circumstances, if the lower court would necessarily render "the same judgment" after this Court "corrected its views of federal laws, [the Court's] review could amount to nothing more than an advisory opinion." *Herb*, 324 U.S. at 126; see *United States v. Buzzo*, 85 U.S. (19 Wall.) 125, 129 (1873) ("To decide the question proposed . . . would avail nothing. . . . The case must therefore be dismissed."); *Lederer v. McGarvey*, 271 U.S. 342, 344 (1926) (similar); *Flournoy v. Wiener*, 321 U.S. 253, 261–62 (1944) ("Our opinion on that subject would be advisory only, since there is nothing before us on which we could render a decision that would have any controlling effect on the rights of the parties."); *Sec'y of Agric. v. Central Roig Refin. Co.*, 338 U.S. 604, 619–20 (1950) (resolution of a question that could make no difference amounts to "an empty discussion" and "would in effect be merely an advisory opinion on a delicate subject").

This Court is not in the business of rendering advisory opinions, and the petition should be denied on this ground alone.

B. At A Minimum, This Petition Would Be An Exceptionally Poor Vehicle

Even if Petitioner were not seeking an advisory opinion, this case still would be a remarkably poor vehicle for addressing the questions presented.

1. The Court typically declines to review questions that—as here—will not change the underlying judgment in the case. Just two years ago, this Court declined to address the application of Section 230 after it became apparent that the underlying complaint likely did not state a plausible claim for relief. See *Gonzalez v. Google LLC*, 598 U.S. 617 (2023) (per curiam). While the deficiencies of the underlying claims, which arose under federal law, were merely lurking in the background in *Gonzalez*, here the deficiencies of state-law claims are front and center in the form of an alternative holding. The Court should not grant certiorari in the face of an unchallenged alternative state-law holding that the underlying complaint does *not* state a plausible claim for relief.

In *Gonzalez*, this Court "decline[d] to address the application of § 230 to a complaint that appears to state little, if any, plausible claim for relief." 598 U.S. at 622. The Court had granted certiorari to consider the application of Section 230 to Anti-Terrorism Act claims against Google based on "the use of YouTube, which Google owns and operates, by ISIS and ISIS supporters." *Id.* at 621–22. But in a related case, *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 478 (2023), the Court simultaneously held that "materially identical" secondary liability claims under the Anti-Terrorism Act failed on their merits, *Gonzalez*, 598 U.S. at 622. And other holdings in the Ninth Circuit's underlying decision appeared to foreclose direct liability claims under the Anti-Terrorism Act. Together, this Court's

decision in *Twitter* and the Ninth Circuit's "unchallenged holdings" meant that "much (if not all) of plaintiffs' complaint seem[ed] to fail"—regardless of Section 230. *Ibid.* The Court therefore declined to adjudicate the Section 230 issue in a case where it most likely would not have had any effect on the judgment.

Petitioner concedes (Pet. 25) that "*Gonzalez* was not the appropriate" vehicle for resolving the scope of Section 230 because of "a latent defect." But here, the defect is not latent: The Fourth Circuit's actual independent alternative holding on proximate causation, which Petitioner has not challenged, means that *nothing* in the complaint will survive, no matter what the Court might say about Section 230.

Petitioner's only attempt to distinguish *Gonzalez* is that "[t]his is not an aiding and abetting case." Pet. 28. But the reason *Gonzalez* did not reach the Section 230 question had nothing to do with the type of claims asserted; what mattered was that the complaint stated "little, if any, plausible claim for relief." 598 U.S. at 622. There is no plausible claim here, either.

Petitioner does not attempt to argue that the Court's decision on Section 230 here could make any difference to the outcome. Petitioner simply posits—without any argument or citation—that the Fourth Circuit's proximate causation holding is "of no moment" and was "clearly colored by the Fourth Circuit's faulty reasoning on Section 230." Pet. 28. But the state-law ground was not intertwined with the Fourth Circuit's Section 230 analysis. To the contrary, the Fourth Circuit explicitly noted that the proximate causation holding was an "additional" basis to affirm dismissal of the claims, "*even if* Section 230 did not immunize Facebook from M.P.'s state tort claims." Pet. App. 16a, 18a (emphasis added). "[W]here there

are two grounds, upon either of which the judgment of the trial court can be rested, and the appellate court sustains both, the ruling on neither is *obiter*, but each is the judgment of the court, and of equal validity with the other." *Union Pac. R.R. Co. v. Mason City & Fort Dodge R.R. Co.*, 199 U.S. 160, 166 (1905).

Petitioner insists that the Court should grant review anyway, lest it "incentiv[ize]" lower courts to "throw in weak alternative grounds" to evade this Court's review. Pet. 29. That aspersion has nothing to commend it. "There are proper occasions for alternative holdings," *particularly* for "lower courts." *Cal. Fed. Sav. & Loan Ass'n v. Guerra*, 479 U.S. 272, 296 (1987) (Scalia, J., concurring in the judgment). And the alternative grounds here are anything but "weak" under well-established South Carolina law.[2] In any event, Petitioner declined to seek review of the Fourth

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[2] The proximate causation deficiencies are both glaring and case-specific. As the Fourth Circuit explained, the complaint contains only three "specific allegations involving Roof's use of Facebook": "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." Pet. App. 18a. But the complaint does not "provide any factual foundation causally linking Roof's Facebook use to his crimes of murder." *Ibid.* It does not allege how Roof "became radicalized on the platform," or even "how much time Roof spent on Facebook." *Ibid.* And Petitioner did 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." *Ibid.* South Carolina courts have consistently dismissed similar complaints for failure to allege proximate causation. See, *e.g.*, *Bishop v. S.C. Dep't of Mental Health*, 502 S.E.2d 78, 83–84 (S.C. 1998); *Hensley v. Heavrin*, 282 S.E.2d 854, 855 (S.C. 1981) (per curiam); *Hubbard v. Taylor*, 529 S.E.2d 549, 553–54 (S.C. Ct. App. 2000); *Crolley v. Hutchins*, 387 S.E.2d 716, 717–18 (S.C. Ct. App. 1989).

Circuit's proximate causation holding, presumably out of recognition that such a state-law issue is not remotely certworthy. That is a reason to deny the petition, not to grant it.

2. Even apart from the fundamental problems created by the unchallenged alternative state-law holding, Petitioner's factbound framing of the questions presented renders them especially unsuitable for review.

Petitioner specifically asks this Court to review whether her state-law tort claims "adequately plead[ed] conduct" sufficient to fall outside Section 230. Pet. i. Answering those specific questions would require the Court to sort through the particular allegations about Dylann Roof, the third-party content to which he was exposed online before the horrific and senseless murders at Mother Emanuel AME Church, and the nature of Facebook's algorithms to address the complaint's sufficiency. And at the end of that review, the Court's answers to the questions presented, as framed, would be good for this complaint only.

Resolving the factual sufficiency of a complaint is not one of the "compelling reasons" for granting certiorari, and a request to engage in case-specific review is a poor candidate for the exercise of the Court's "judicial discretion." Sup. Ct. R. 10. Indeed, "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law"—essentially what Petitioner requests here. *Ibid.*; see *California v. Carney*, 471 U.S. 386, 398 n.8 (1985) (Stevens, J., dissenting) ("In general, correction of error . . . is not a sufficient basis for Supreme Court intervention." (citation omitted)).

3. Petitioner's second question presented—regarding application of Section 230 to group recommendations—is not properly presented for this Court's review.

The Fourth Circuit "express[ed] no opinion on whether Section 230 immunizes Facebook from liability arising out of that company's 'groups you should join' algorithm." Pet. App. 13a n.6. And it faulted the dissent for focusing on this issue and "argu[ing] a case that M.P. does not make." *Ibid.* As the court explained, the complaint "does not allege that Roof ever saw the words 'group you should join' on Facebook." *Ibid.* Nor does it allege that "Facebook recommended that Roof join a specific hate group or that Roof actually joined any such group based on a Facebook algorithm referral." *Ibid.*

As the Court has "said many times before," it is "a court of 'review,' not of 'first view.'" *PDR Network, LLC v. Carlton & Harris Chiropractic, Inc.*, 588 U.S. 1, 8 (2019) (quoting *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005)). Accordingly, "[t]he Court does not ordinarily decide questions that were not passed on below." *City & Cnty. of San Francisco v. Sheehan*, 575 U.S. 600, 609 (2015). Since the Fourth Circuit expressly declined to address Section 230's application to group recommendations, this Court should not do so in the first instance.

Indeed, to address the second question presented, the Court would first have to parse the complaint and determine that the Fourth Circuit erred in holding that the complaint does not plead that Roof had extremist groups recommended to him. Only then could the Court even consider whether the complaint alleged facts that escape Section 230. That is hardly a

sound use of this Court's "judicial discretion." Sup. Ct. R. 10.

4. Finally, beyond the Fourth Circuit's holding on proximate causation, Petitioner's claims fail for a host of other state-law reasons. As Judge Rushing herself explained, for example, Petitioner's strict products-liability claims fail under South Carolina law because "M.P. does not claim that she was a user or consumer of Facebook or its algorithms, as the [state] statute requires." Pet. App. 29a. Under South Carolina law, a manufacturer is strictly liable—subject to certain conditions—only "for physical harm caused to the ultimate user or consumer." S.C. Code Ann. § 15-73-10(1); *Bray v. Marathon Corp.*, 588 S.E.2d 93, 96 (S.C. 2003). Because M.P. does not fall into that category, she cannot bring strict products-liability claims. That conclusion is another "alternative ground" that stands between the Fourth Circuit's judgment and this Court's review of the first question presented. Pet. App. 29a–30a.

And there are at least two others, as Meta explained below. First, the complaint fails to allege that Meta was the factual, or but-for, cause of Roof's actions, alleging instead that Roof discovered white supremacist thinking through *other* websites found via a *Google* search. C.A. Response Br. 36–38, Dkt. 35, *M.P. v. Meta Platforms Inc.*, No. 23-1880 (4th Cir. Mar. 18, 2024). Second, Petitioner's state-law claims rest on the premise that Facebook is a product. See C.A. Response Br. 43; see also *Fields v. J. Haynes Waters Builders, Inc.*, 658 S.E.2d 80, 90–91 (S.C. 2008); *Bragg v. Hi-Ranger, Inc.*, 462 S.E.2d 321, 326 (S.C. Ct. App. 1995). Under South Carolina law, however, Facebook is an intangible communications service, not a product. See C.A. Response Br. 43–49; see also *In re*

Breast Implant Prod. Liab. Litig., 503 S.E.2d 445, 448–49 (S.C. 1998); *Laurens Elec. Coop., Inc. v. Altec Indus., Inc.*, 889 F.2d 1323, 1324 (4th Cir. 1989).

Given those many state-law offramps, the complaint does not state a claim on multiple fronts and will be dismissed regardless of anything this Court might say about Section 230. Simply put, this is a worse case than *Gonzalez* in which to resolve any issues about the scope of Section 230.

II. THIS CASE DOES NOT OTHERWISE MERIT REVIEW

Even apart from the insurmountable vehicle problems, Petitioner offers no good reason to grant review here. In fact, the decision below rests on established Section 230 principles *all* circuits endorse. The Fourth Circuit correctly construed Section 230 to bar claims seeking to hold an interactive computer service provider liable for harms stemming from third-party content purportedly published on its service.

A. Petitioner Presents No Certworthy Split

Despite acknowledging that "nearly all of the circuits" have historically aligned on Section 230's scope, Petitioner strains to conjure conflict among the circuits based on "recen[t]" decisions of the Third, Fifth, and Seventh Circuits. Pet. 16, 19. But those courts have not broken rank. To the extent there is *any* disagreement about Section 230, it involves a lopsided split on a narrow question that requires further percolation and does not warrant this Court's review here.

Certainly, the circuits are not in disagreement on Petitioner's factbound questions presented: whether

"M.P.'s state common law tort claims adequately plead conduct by Facebook" that falls outside of Section 230. Pet. i. Whether a complaint contains "enough factual matter" to surmount Section 230 is a specific, individualized question, not the basis for a circuit split. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). That is reason enough to deny the petition.

But even if Petitioner's questions presented were construed to raise broader Section 230 issues, any purported disagreement among the lower courts is not implicated here. As Petitioner acknowledges, the decision below rests on two premises: (1) Section 230 precludes liability against an interactive computer service provider for any claim that "thrust[s] the defendant into the role of a publisher of" third-party content; and (2) algorithmically "*recommending* content falls within" a publisher's traditional role. Pet. 13–14.

Petitioner's asserted split depends on mixing and matching holdings on those two distinct premises and on misreading or ignoring binding precedent in those courts purportedly opposite the Fourth Circuit.

1. The circuits are united on the Fourth Circuit's major premise. *Every* court of appeals to consider Section 230's scope has correctly concluded that it precludes liability against an interactive computer service provider for any claim seeking to impose liability for third-party content based on the provider's exercise of a publisher's traditional editorial functions. See, *e.g.*, *Monsarrat v. Newman*, 28 F.4th 314, 319 (1st Cir. 2022); *Force v. Facebook, Inc.*, 934 F.3d 53, 66 (2d Cir. 2019); *Green v. Am. Online, Inc.*, 318 F.3d 465, 468 (3d Cir. 2003); *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 331 (4th Cir. 1997); *Doe v. MySpace, Inc.*, 528 F.3d 413, 420 (5th Cir. 2008); *Jones v. Dirty World*

Ent. Recordings, LLC, 755 F.3d 398, 406–07 (6th Cir. 2014); *Webber v. Armslist LLC*, 70 F.4th 945, 956 (7th Cir. 2023); *Johnson v. Arden*, 614 F.3d 785, 791–92 (8th Cir. 2010); *Doe v. Grindr Inc.*, 128 F.4th 1148, 1151 (9th Cir. 2025); *Ben Ezra, Weinstein, & Co. v. Am. Online Inc.*, 206 F.3d 980, 984–85 (10th Cir. 2000); *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006); *Marshall's Locksmith Serv. Inc. v. Google, LLC*, 925 F.3d 1263, 1267 (D.C. Cir. 2019).

Petitioner contends that the Seventh Circuit has treated Section 230 as only a "definitional clause." Pet. 19. But the Seventh Circuit recently reiterated—in a decision Petitioner ignores—that Section 230 "precludes liability *whenever* the cause of action treats an interactive computer service as the publisher of another's content." *Webber*, 70 F.4th at 956 (emphasis added). Although the Seventh Circuit stated more than 20 years ago that Section 230(c)(1) could *potentially* be read "as a definitional clause," *Doe v. GTE Corp.*, 347 F.3d 655, 660 (7th Cir. 2003), the Seventh Circuit has since rejected that possibility, see *Webber*, 70 F.4th at 955–56. True, the Seventh Circuit continues to resist the word "immunity," but two decades of cases confirm that any disagreement is semantic rather than substantive. *E.g.*, *ibid.*; *Huon v. Denton*, 841 F.3d 733, 741 (7th Cir. 2016).

The Fifth Circuit certainly did not adopt a contrary position in *A.B. v. Salesforce, Inc.*, 123 F.4th 788 (5th Cir. 2024). Far from deepening any split, the Fifth Circuit underscored that its approach is "*consistent with* the precedent of [its] sister circuits." *Id.* at 796 (emphasis added). Citing its longstanding precedents, the court of appeals reaffirmed the basic principle that Section 230 precludes liability against a defendant for violating any duty that "requires the

exercise of functions traditionally associated with publication." *Id.* at 793. The court merely concluded under the particular facts of that case that the defendant was not being treated as a publisher when plaintiffs sought to hold it liable for allegedly selling "operational support" to Backpage. *Id.* at 797.

The Third Circuit has likewise long recognized that Section 230 bars "lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions." *Green*, 318 F.3d at 471. The court did not depart from that rule in *Anderson v. TikTok, Inc.*, 116 F.4th 180 (3d Cir. 2024). To the contrary, *Anderson* reaffirmed that Section 230 "immunize[s]" online service providers "from liability based on content posted by third parties" if the liability arises from "third-party speech." *Id.* at 182–83.

2. To the extent there is disagreement among the circuits on *any* issue, it involves a single circuit that has broken from the others as to the Fourth Circuit's minor premise—that Section 230 protects algorithmic publishing. In general, as the Fourth Circuit recognized, the circuits are in agreement on this premise too: Section 230 bars lawsuits that seek to hold websites liable for "us[ing] algorithms to suggest content to users." *Force*, 934 F.3d at 65; see *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1098 (9th Cir. 2019) (holding that § 230 barred a lawsuit seeking to hold a website liable for "us[ing] features and functions, including algorithms, to analyze user posts . . . and recommen[d] other user groups"); Pet. App. 14a–15a (collecting cases). But in *Anderson*, the Third Circuit reasoned that a platform's recommendation algorithm constitutes its "own expressive activity" under *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024), that is

not covered by Section 230. 116 F.4th at 184. According to the Third Circuit, Section 230 immunizes a defendant from suit only for publishing "third party speech," which a recommendation algorithm is not—at least when the algorithmic outputs are "not based solely on a user's online inputs." *Id.* at 182–84.

Anderson was a one-off, as other courts have recognized. See, *e.g.*, *Doe v. WebGroup Czech Republic, a.s.*, 767 F. Supp. 3d 1009, 1020 (C.D. Cal. 2025) (discussing *Anderson*'s "distinct facts"); *Patterson v. Meta Platforms, Inc.*, 2025 WL 2092260, at *5 (N.Y. App. Div. July 25, 2025) (declining to follow *Anderson*). To the extent that *Anderson* creates a split on the treatment of recommendation algorithms, it is extremely lopsided and warrants further percolation unless and until another circuit joins the Third Circuit or the Third Circuit itself provides further direction on the precise contours of *Anderson*.

Anderson itself was self-consciously narrow, and it is not at all clear that this case would have come out differently in the Third Circuit under *Anderson*. The court of appeals explained that it "reach[ed] [its] conclusion" that algorithmic recommendations were TikTok's own content "specifically because" the algorithmic output there "was not contingent upon any specific user input." 116 F.4th at 184 n.12. Thus, "*Anderson* d[id] not disturb the long-standing precedent that online service providers do not create content or lose Section 230 immunity simply by implementing content-neutral algorithms that generate related searches or user-uploaded content based on the users' own viewing activity." *WebGroup Czech Republic*, 767 F. Supp. 3d at 1020. Indeed, the court made crystal clear that it was not "weigh[ing] in on whether other

algorithms" were protected by Section 230. *Anderson*, 116 F.4th at 183 n.10.

Here, Petitioner alleges that it was *Dylann Roof* who "looked to Google in search of answers for 'black on white crime'"; *Roof* who "chang[ed] his Facebook 'profile photo' to include white supremacist symbols"; and *Roof's* "racist, violent views" that purportedly led "Facebook's algorithm" to "fe[e]d Roof content." Pet. App. 4a–5a. To the extent the complaint plausibly alleges that Roof viewed *any* radicalizing content on Facebook, that content stemmed from Roof's "specific user input." *Anderson*, 116 F.4th at 184 n.12.

3. Unable to point to any real conflict, Petitioner relies on dissenting or separate statements of individual judges in the Second, Fifth, and Ninth Circuits. See Pet. 20–22. Yet "dissents are just that—dissents." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 389 n.4 (2023) (plurality). And the views they advocate "do not speak" for any court of appeals. *Ibid.*

In short, there is no substantial disagreement among the circuits regarding Section 230, and any disagreement implicates issues that would not affect the outcome of this case anyway.

B. The Decision Below Is Correct

The decision below represents an unremarkable application of settled Section 230 principles. Section 230 bars any claim that seeks to impose liability based on a publisher's traditional editorial functions, including how to arrange and sort third-party content. And that rule applies with equal force when those functions are accomplished by an algorithm. Contrary to Petitioner's contention, the courts of appeals' unanimous interpretation of Section 230 does not rest on

"policy" or "purpose," Pet. 17, but on "a careful exegesis of the statutory language," *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1100 (9th Cir. 2009) (O'Scannlain, J.).

1. Section 230(c)(1) states that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). Thus, as all agree, see *supra* pp. 19–20, Section 230 prohibits "treat[ing]" the defendant as a "publisher" of third-party content. And the circuits have unanimously concluded that a claim "treats" a defendant as a publisher when it "bases the defendant's liability" on its exercise of a publisher's traditional editorial functions—regardless of how a plaintiff labels its claim. *Henderson v. Source for Pub. Data, L.P.*, 53 F.4th 110, 123 (4th Cir. 2022); *e.g.*, *Barnes*, 570 F.3d at 1102 (considering whether "duty" for underlying liability "derives from the defendant's status or conduct as a 'publisher or speaker'").

Indeed, by its text, Section 230 applies to *any* claim seeking to impose liability for a publisher's traditional editorial functions. Congress enacted Section 230 to abrogate a New York state court decision holding that an internet service provider could be liable for defamation, *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995), but "statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils," *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 79 (1998). And nothing in Section 230's text is limited to defamation. Rather, Section 230(e)(3) expressly 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." 47 U.S.C. § 230(e)(3) (emphases added). As Judge O'Scannlain

observed, Section 230's *text* "precludes courts from treating internet service providers as publishers *not just* for the purposes of defamation law . . . *but in general*." *Barnes*, 570 F.3d at 1104 (emphases added).[3]

2. In the ordinary sense, "publication involves reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content." *Barnes*, 570 F.3d at 1102 (citing Webster's Third New International Dictionary 1837 (Philip Babcock Gove ed., 1986)). "[A]cts of arranging and sorting content are integral to the function of publishing." Pet. App. 14a; see Above the Fold, Cambridge Business English Dictionary (2011) (explaining that newspaper editors place the stories they think "will sell the newspaper . . . above the fold") (cited at Pet. App. 14a).

While "arranging and distributing third-party information inherently" promotes some content over others, that is "an essential result of publishing." *Force*, 934 F.3d at 66. As the Fourth Circuit explained here, newspaper editors implicitly make content recommendations when they "choose what articles merit inclusion on their front page and what opinion pieces to place opposite the editorial page." Pet. App. 14a. It is no different on the internet: "Placing certain third-party content on a homepage . . . tends to recommend that content to users more than if it were located elsewhere on a website." *Force*, 934 F.3d at 66. Whether in print or online, all of these editorial decisions, including "Facebook's decision to recommend certain

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[3] Petitioner faults courts for extending Section 230's protections from common law "publishers" to "distributors," but she does not explain how that defamation-specific distinction would make any difference here, since her claims do not involve defamation. Pet. 17–18.

third-party content to specific users, have as a goal increasing consumer engagement." Pet. App. 14a.

Under these principles, the Fourth Circuit correctly concluded that Petitioner's claims "are inextricably intertwined with Facebook's role as a publisher of third-party content," because they all seek to impose liability based on the purportedly "harmful content [that] appear[s] on [Facebook]," and that Meta allegedly "directs . . . to likely receptive users." Pet. App. 13a. Although Plaintiff couches her claims in products-liability law, at bottom she takes issue with the way Meta chooses to publish third-party content to its users.

3. The Fourth Circuit also correctly concluded that "an interactive computer service does not lose Section 230 immunity because the company automates its editorial decision-making." Pet. App. 15a. There is "no basis in the ordinary meaning of 'publisher'" or "the other text of Section 230" to limit the statute's protections when a platform "uses . . . algorithms" to accomplish traditional editorial functions. *Force*, 934 F.3d at 66; see Pet. App. 14a; *Dyroff*, 934 F.3d at 1098. To the contrary, Section 230's text confirms that it covers such publishing. It defines an "interactive computer service" to include providers of "software" or "tools" that "filter," "pick, choose," "reorganize," "display," or "forward" content. 47 U.S.C. § 230(f)(2), (4). And it expressly contemplates that websites that use "tools" to "filter," "pick," "reorganize," and "forward" third-party content for "display" may invoke § 230(c)(1)'s protections. Indeed, Section 230 aims "*to promote*" those tools. *Id.* § 230(b)(1) (emphasis added).

Moreover, as Petitioner details, Pet. 10–11, Congress enacted Section 230 in direct response to a New

York state court decision holding an online message board liable for *all* the content on the board merely because it had used a "software screening program [that] automatically prescreen[ed]" some posts but not others—*i.e.*, an algorithm. *Stratton Oakmont*, 1995 WL 323710, at *2. Given that *Stratton Oakmont* was the principal "mischief at which th[e] section aimed," *Ash Sheep Co. v. United States*, 252 U.S. 159, 169 (1920), no interpretation of Section 230 could stand if it would render the statute inoperative in the very scenario that it was enacted to address.

Thus, as the Fourth Circuit explained, "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." Pet. App. 14a. "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." *Ibid.*

4. Nor does it make a difference that Facebook's editorial choices reflect its own editorial judgments that are protected by the First Amendment. See *NetChoice*, 603 U.S. at 718; contra Pet. 23. There is no inconsistency in holding *both* that a platform's editorial decisions can constitute publishing activity (meriting First Amendment protection) *and* that such decisions involve publication of third-party content (meriting Section 230 protection). See *Castronuova v. Meta Platforms, Inc.*, 2025 WL 1914860, at *5 (N.D. Cal. June 10, 2025). Indeed, if Section 230 is inapplicable to publication activity that qualifies as the website's "own expressive activity," Pet. 23, then Section 230 is a dead letter because *all* traditional publishing activity is First-Amendment protected, see, *e.g.*,

Turner Broad. Sys., Inc. v. FCC, 512 U.S. 622, 653 (1994) (First Amendment protects "newspapers' 'editorial control and judgment'"); *NetChoice*, 603 U.S. at 729–30.

At bottom, Petitioner gets Section 230 exactly backwards. Section 230 was enacted to overrule *Stratton Oakmont*, which held that a website could be held liable for disseminating defamatory third-party content on the theory that it became a "publisher" of that content because it exercised "editorial control over the content of messages posted on its computer bulletin boards." 1995 WL 323710, at *2. If Section 230 protects anything, it protects platforms' curation of third-party content. Yet under Petitioner's approach, websites could be held liable for that precise activity. That cannot be right. Congress well understood the threat that extending common-law publisher liability to websites that exercise editorial discretion posed to the then-nascent internet. If the only way for services such as Prodigy to avoid liability for third-party content was to refrain from exercising any editorial discretion, then the internet would soon become dominated by all manner of offensive content. That is the last thing Congress wanted. Instead, it wanted to encourage websites to exercise their own editorial discretion in excluding the worst third-party materials without fear that they would become liable for any third-party speech that survived the editorial screen. And Congress did so by protecting websites from all claims that "trea[t]" them "as the publisher or speaker" of "any information provided by another." 47 U.S.C. § 230(c)(1).

5. With no serious textual argument, Petitioner ultimately resorts to "policy" and "purpose." Pet. 17.

On Petitioner's telling, Section 230 must be "narrow[ed]" and "[s]ocial media companies must be held accountable" for harmful third-party content. Pet. 10, 26, 28. The Congress that enacted Section 230 took a different view: Because the growth of "interactive computer services available to individual Americans represent[s] an extraordinary advance," Congress declared it the "policy" of the United States "to promote the continued development of . . . interactive computer services" and to "preserve" such services "unfettered by Federal or State regulation." 47 U.S.C. § 230(a)(1), (b)(1)–(2). Petitioner's suggestion (Pet. 5) that the modern internet warrants a different policy call is "properly addressed to Congress, not this Court." *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 368 (2018).

* * *

In the decision below, the Fourth Circuit correctly affirmed dismissal of Petitioner's complaint because it sought to hold Meta liable for content that others allegedly posted on Facebook. That unremarkable conclusion would not warrant this Court's review, even if it were the sole basis on which the Fourth Circuit affirmed. In all events, the decision would be sustained based on the independent and alternative state-law holding.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

HELGI C. WALKER
Counsel of Record
JACOB T. SPENCER
JESSICA L. WAGNER
ZACHARY TYREE
JEFF LIU
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, D.C. 20036
(202) 955-8500
hwalker@gibsondunn.com

Counsel for Respondents

August 8, 2025