No. 24-1133

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

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INTRODUCTION

There is no dispute here that the circuit courts are divided on a question of extreme importance. Nor does Meta confront the fact that this Court already has deemed the central question here—whether Section 230 shields internet service providers from liability when their algorithms intentionally induce "emotional contagion" and radicalize users who ultimately inflict direct harm—worthy of review. Here, Meta's product, Facebook, jointly with other internet services, radicalized Dylann Roof, causing him to murder nine parishioners as they engaged in bible study. One of the victims was M.P.'s father, Reverend Clementa Pinckney. He was killed as M.P. hid under a desk with her mother in the church offices, listening to the horror and hoping not to be another victim.

Thankfully, Facebook whistleblowers have come forward and established that this conduct was not just foreseeable, but Meta actually foresaw it. Until and unless this Court grants review, though, we will never know the full scope of Meta's and other social media companies' knowledge because the vast majority of circuits apply Section 230 to create an "immunity" that shields these companies from discovery.

Meta, of course, attempts to minimize the critically important question here, instead erecting a straw man to claim that this case is not the right vehicle to decide this question that has divided the circuits and given social media companies license to disregard the safety of their users and their users' victims. It asserts that M.P. requests an "advisory opinion" based on a false claim that M.P. did not request that the Court vacate the Fourth Circuit's alternative ground for affirmance.

But the petition expressly requests vacating the entire judgment. The purported alternative grounds for affirmance are based on the same faulty reasoning that supports Section 230 "immunity." So the correct decision on Section 230 also would undermine the Fourth Circuit's reasoning on causation and pleading of M.P.'s claims, warranting remand for the Fourth Circuit to reconsider and appropriately remand to the district court to consider the strength of the pleading (and whether to allow amendment) in the first instance.

Here, the Fourth Circuit decided the case based on the Section 230 issue that has intractably divided the circuits and then applied that reasoning to further attempt to undermine the complaint. So, far from requesting an advisory opinion, this case presents the ideal vehicle to answer the questions the Court attempted to resolve in *Gonzalez* v. *Google* but failed to because interpretation of the federal statute on which the claims were based resolved the case. This Court should grant the writ and properly construe Section 230 as so many circuit judges have requested.

ARGUMENT

I. The circuits are intractably divided on the important question of how to interpret Section 230's application to social media algorithms.

The circuit courts are divided on the key question here, and Meta has no response. Meta is correct that the circuits are united on what Meta calls the Fourth Circuit's major premise—that Section 230 precludes liability for simply publishing third-party content. BIO at 19. It is unclear why Meta finds it relevant to

prioritize this argument when nothing in the Petition suggests otherwise.

On the critical question here, whether Meta's non-neutral algorithms designed to foment fear, hate, and vitriol are protected "publishing" activities under Section 230, Meta's analysis of the division among the circuits runs far afield and yet still concedes the circuits are divided. Meta describes the legal issue here as the Fourth Circuit's "minor premise," BIO at 21, that Section 230 immunizes social media companies from liability when their own negligently designed software that promotes and encourages harmful content. Meta concedes that the Third Circuit diverges from the Fourth and its disciple circuits, BIO at 21-22, but it misses the mark with respect to the Seventh.

In an odd attempt to undermine the Petition's Seventh Circuit analysis, Meta relies on precedent that reinforces it. Meta cites these cases for the proposition that the Section 230 precludes liability for claims that " 'treat[] an interactive computer service as the publisher of another's content' " as if that makes a difference. BIO at 20 (citation omitted). But the question here is whether these claims, which assert liability based on Facebook's conduct in recommending posts and recommending groups, treat Facebook as a publisher. Pet. 28. They do not. Pet. 13-14.

Meta's primary case, *Webber* v. *Armslist*, 70 F.4th 945 (7th Cir. 2023), clearly draws that distinction in stating "the CDA does not preclude liability against companies 'for creating and posting, inducing another to post, or otherwise actively participating in the posting of' content." *Id*. at 956-57 (citation omitted). In

Meta's other case, *Huon* v. *Denton*, 841 F.3d 733 (7th Cir. 2016), the Seventh Circuit applied that principle to *reverse* the district court's ruling that Section 230 barred the plaintiff's claims after allowing *four* amended complaints. There, in a defamation case, the court acknowledged that an allegation the Defendant posted comments (though not necessarily the defamatory one) was enough. *Id*. at 742. The court also relied on the allegation, common to this case, that "the Defendants induced the [defamatory] comments." *Id*. at 743. That is exactly what the complaint here alleges. Facebook's algorithms that individually identify the posts needed to further enrage the user to send more posts to that user are not simple acts of publishing—they are acts of participation in posting content to the most vulnerable, and they induce further posting of inflammatory content. JA030 & 037. Meta's Seventh Circuit citations only reinforce that the Seventh Circuit sits opposite the Fourth Circuit in this divide.

Meta notes that the New York Court of Appeals joined the majority circuits and states and declined to follow the Third Circuit, but that further proves that more "percolation" will not resolve the conflict. BIO at 18. The Court recognized three years ago that the issue did not need more percolation and granted the writ in *Gonzalez* v. *Google LLC*, 598 U.S. 617, 621-22 (2023). The intervening years have only established that some circuits will join the Seventh Circuit, like the Third Circuit did, while others stay entrenched with the Fourth. Meta also attempts to undermine the Third Circuit's position by pointing to a California district court case that noted the Third Circuit's decision involved "'distinct facts.'" BIO at 22, quoting *Doe* v. *WebGroup Czech Republic, a.s.*, 767 F. Supp. 3d

1009, 1020 (C.D. Cal. 2025). Meta does not reveal that the "distinct facts, however, demonstrate the defendant's independent role of creating a tailored compilation of various videos, thereby developing its own curated content"—exactly the conduct alleged here. *Id*. at 1020.

Against the Seventh and Third circuits, most of the remaining circuits have joined the fourth in taking the vastly overbroad approach to Section 230 that a party's conduct beyond publishing information, such as by promoting emotional contagion with algorithms designed to make people feel worse to keep them engaged, also is protected by Section 230. Pet. 18. The Fifth Circuit is narrowing its construction of Section 230, though. Pet. 23-24. As time goes on, the division among the courts only deepens. There is nothing else to wait for.

Indeed, with all its quibbles and over what some circuits have ruled at the edges, Meta does not even address the point that this Court already has deemed the issue certworthy by granting the petition in *Gonzalez* v. *Google*. Nor does Meta have *anything* to say against the importance of the issue. Since *Gonzalez*, more cases have arisen where people have died, like this one, and more cases involve children who have been killed, *Anderson* v. *TikTok*, 116 F.4th 180 (3d Cir. 2024), raped, *Doe* v. *Snap, Inc.*, 2023 WL 4174061 (5th Cir. June 26, 2023), and exploited, *Doe* v. *Twitter, Inc.*, __ F.4th __, 2025 WL 2178534 (9th Cir. Aug. 1, 2025). And the issue has evaded review, in part, because companies do not even challenge their losses in the courts of appeals here. Pet. 24 (noting companies' choices not to file petitions for writs of certiorari in *Anderson* or in *A.B.* v. *Salesforce, Inc.*, 123 F.4th 788, 797 (5th Cir. 2024)).

But the issue must be reviewed as soon as possible. Currently, social media companies enjoy an atextual "immunity" that no other industry has. Car companies have to balance design elements with tort liability for making the roads more dangerous; drug companies face liability for how they design medications; the tobacco companies faced critical, behavior-changing liability for knowingly creating an addictive product that hurt people. *See* Pet. 26.

Facebook's whistleblower established that "Facebook has long known its algorithms and recommendation systems *push* some users to extremes." JA045 (emphasis added). Meta "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. Meta does not dispute that in its BIO. And given its *only* motivations are profits and growth, Pet. 25-26, immunity to tort liability has allowed it to dismiss *internal* concerns that its "algorithms exploit the human brain's attraction to divisiveness" and create "emotional contagion," causing a spiral where the platform pushes "more and more divisive content in an effort to gain user attention and increase time on the platform." JA039 (cleaned up).

Discovery likely would yield more brazen statements of Meta's disregard for any duty to ensure the safety of its products, but the Fourth Circuit and the circuits that follow it have prevented light from shining on Meta's practices. Numerous other circuits have joined the Fourth and continue to protect social media companies with this unique, atextual, judicially-created immunity. And the victims are piling up. The passing years since *Gonzalez* have only

reinforced that the Court was right the first time. The issue needs to be resolved as soon as possible.

II. This case is the appropriate vehicle to resolve the application of Section 230.

This case is an ideal vehicle to resolve the major and recurring questions regarding Section 230's applicability to social media algorithms. Pet. 28-30. Meta's assertions that it is not a proper vehicle are specious. Meta's primary premise in asserting a vehicle problem—that resolving the application of Section 230 would require an "advisory opinion"—is plain false. The merits case would require the Court to reach the other part of the question presented, adequate pleading, only to the degree necessary to recognize that the Fourth Circuit should not have guessed at the question in the first instance and to remand the pleading question for the district court to resolve.

Apparently the phrasing of the questions presented caused quite a conundrum for Meta, as it has taken the mutually exclusive positions that they both (1) fail to address the Fourth Circuit's ruling that the Complaint did not adequately plead the claims, BIO at 13, and (2) require the Court to delve into the complaint to assess the scope of M.P.'s claims, BIO at 15. The former is plain wrong. The latter is partially accurate, though Meta's alarmist position that the Court must carefully parse the claims in a way that renders an opinion useless in other cases is pure fantasy.

All cases depend on the facts to some degree, and the Court's rulings are properly applied based on similarities and distinctions on the facts of the case as applied to the legal rule stated. Here, the Court's

recognition that Section 230 does not immunize Meta's conduct in creating and deploying faulty algorithms that induce "emotional contagion" would apply to myriad applications of Section 230 outside the facts of this case. Indeed, in *Gonzalez*, industry amici falsely proclaimed that a ruling narrowing the judicially-created overbroad scope of Section 230 would mean the end of the internet. *E.g. Gonzalez* v. *Google*, No. 21-1333, Brief for Reddit, Inc. and Reddit Moderators as Amici Curiae in Support of Respondent at 22 (filed Jan. 19, 2023) ("A sweeping ruling narrowing Section 230's protections would risk devastating the Internet"). Of course, that is not true. Right now, the public record establishes that Meta could render Facebook's algorithms safer but it chooses not to because it is protected by this atextual immunity. That notion comes from the concept that publishing third-party content does not make a neutral conduit the cause of the negative outcomes created by that content. But the premise here is that Facebook was not a neutral conduit, and with its individually curated promotion of content, Facebook engaged in its own expressive activity designed to radicalize Dylann Roof. Not only was that radicalization both foreseeable and foreseen by Facebook, Pet. 28, it was deliberately designed to lead Roof down the rabbit hole of hate.

The Fourth Circuit's error with respect to its alternative grounds for affirmance is that it presumed to parse the claims with the skewed lens of its Section 230 ruling, not even acknowledging its role as a court of review, "not of first view." BIO at 16 (citation omitted). The Fourth Circuit failed to acknowledge the possibility of amending the complaint or even giving the district court the opportunity to review the

complaint in the first instance in light of a correct ruling under Section 230. Pet. 28-29. For that reason, correcting the Fourth Circuit's analysis of Section 230 certainly would make a difference in the outcome because it would cause the district court to review the claims in the first instance as stated in the Complaint and not foreclosed by the Fourth Circuit's faulty reasoning on Section 230.

Reasonable minds clearly can differ with the Fourth Circuit's majority on whether the Complaint sufficiently pleaded M.P.'s claims under South Carolina law—both with respect to content recommendations and group recommendations—for the reasons stated in Judge Rushing's dissent, Pet. App. 27a ("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"). That at least suggests that the district court should have the opportunity to review the Complaint. And if the district court finds the Complaint insufficient, M.P. should have the opportunity to amend, as noted in Judge Rushing's dissent. Pet App. 28a; *see also* Fed. R. Civ. P. 15(a)(2) ("The court should freely give leave when justice so requires.").

So this case is far different from *Gonzalez*, where the Court determined the scope of the *federal* claim in that case to exclude aiding and abetting liability in another case. *Gonzalez*, 598 U.S. at 622. Because the only claim in *Gonzalez* asserted aiding and abetting liability based on the same statute, it was reasonable for this Court to remand to resolve the case under the newly clarified federal law.

The Court need not delve into a thorough review of the Complaint. It need only review it enough to recognize that "the question in this case [is] much closer than the majority" found and "M.P. has had no opportunity to amend her complaint to correct its deficits (if any exist)". Pet. App. 28a, Rushing, J. dissenting (parenthetical in original). Then, it can order remand so that the district court may be allowed to do what district courts do. The Fourth Circuit's alternative rulings are not impediments to this Court hearing and resolving this critical question that has evaded review.

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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