No. 24-1299

In the Supreme Court of the United States

PLANET GREEN CARTRIDGES, INC.,
A CALIFORNIA CORPORATION,
Petitioner,

V.

AMAZON.COM, INC., A DELAWARE CORPORATION, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

Petitioner Planet Green Cartridges, Inc. ("Planet Green") sued Respondents Amazon.com, Inc., Amazon.com Services LLC, and Amazon Advertising LLC (collectively, "Amazon") over third-party product listings for "remanufactured" printer ink cartridges that were allegedly false. The District Court granted Amazon's motion to dismiss with prejudice, and the Ninth Circuit affirmed on two independent grounds: (1) that Section 230 of the Communications Decency Act, 47 U.S.C. § 230, barred most but not all of Planet Green's claims; and (2) that Planet Green failed to plausibly allege any claim under Federal Rule of Civil Procedure 12(b)(6).

Planet Green does not challenge the second of these independent holdings. Instead, its petition raises two questions that bear only on the first holding:

1. Does Section 230 confer immunity on internet platforms when they knowingly permit, facilitate, and profit from third-party promotion and sale of misrepresented products on their websites?

2. Does Section 230 immunize internet platforms from civil claims based on their own conduct, including using algorithms to generate targeted advertising and product recommendations for their users?

RULE 29.6 DISCLOSURE STATEMENT

Amazon.com, Inc. has no parent corporation, and no publicly held corporation owns 10% or more of Amazon.com, Inc.'s stock.

Amazon.com Services LLC and Amazon Advertising LLC are wholly owned subsidiaries of Amazon.com, Inc.

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INTRODUCTION

This case presents an exceptionally poor vehicle for resolving any important question about the scope of Section 230. The Ninth Circuit affirmed the dismissal of Planet Green's complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), and Planet Green does not challenge that independently dispositive holding in its petition. Thus, even if this Court were to grant certiorari and somehow agree with Planet Green on its questions presented, Planet Green's case would still be dismissed.

Denial is especially warranted here given the Court's experience with *Gonzalez v. Google LLC*, 598 U.S. 617 (2023). There, after considering voluminous briefing from the parties and scores of amici—and after conducting a lengthy oral argument—the Court chose not to resolve the scope of Section 230 because the petitioner's complaint likely failed to state a claim. Here, it is not only likely that Planet Green's complaint fails to state a claim, it is certain: The Ninth Circuit's alternative and independent holding on that point is dispositive. Given that Planet Green offers this Court no avenue for reversing that holding, certiorari is unwarranted.

Planet Green's petition suffers from other vehicle defects too, and the questions it presents do not warrant this Court's review in any event. Planet Green identifies no split on its second question presented. And on its first, it asserts only a lopsided, 7-1 split *against* its position—which is illusory anyway because no circuit has held that a website provider may be held liable under Section 230 for failing to remove third-party advertisements it

allegedly knows are unlawful. Moreover, as Planet Green itself acknowledges, Congress has been actively considering legislation that could moot its objections to the consensus interpretation of the courts of appeals as to Section 230's scope. There is no compelling reason for this Court to grant certiorari now.

Finally, certiorari is unwarranted because the Ninth Circuit got it right on the merits. The Ninth Circuit applied a nuanced understanding of Section 230, concluding that the statute barred most, but not all, of Planet Green's claims. That nuanced understanding of Section 230 is both correct and consistent with other circuits' interpretation of the statute. Section 230 protects against any claim seeking to hold a website liable as the publisher of third-party content, regardless of whether the website allegedly knows of the content's unlawfulness or uses an algorithm to sort and recommend the content. For all those reasons, this Court should deny review.

STATEMENT OF THE CASE

1. Planet Green sells remanufactured and recycled ink cartridges online, including through Amazon. ER-22 (¶¶ 15-16); SER-82–86. Planet Green contends that some of its competitors offer ink cartridges on Amazon that the competitors falsely advertise as "remanufactured" or "recycled" when, in fact, the cartridges are new. ER-18 (¶ 1). Planet Green admits that these listings are "third-party seller listings" that are not created by Amazon. ER-43 (¶ 36); *see also* Pet. App. 8a ("Plaintiff admits that Defendants do not create any of the product listings containing any of the allegedly false statements").

Planet Green alleges that in June 2022, it notified Amazon of the third-party sellers' allegedly false advertisements. ER-23–24 (¶¶ 17-18). Planet Green acknowledges that Amazon took steps to investigate and remove false product listings by "ask[ing] sellers to substantiate their claims about selling remanufactured and environmentally responsible ink cartridges" and "instruct[ing]" "sellers who couldn't substantiate their product claims . . . to change their product listings." ER-73 (¶ 66). But Planet Green contends that these efforts were not enough. *See id.*

According to Planet Green, Amazon employees instead have a duty to independently "verify all listings that claim to be 'Remanufactured,' and . . . substantiate any environmental claims being made." ER-76 (¶ 71). Specifically, it contends that Amazon must conduct its own "verification process for remanufactured printer ink cartridges," including an "onsite" inspection of the seller's "remanufacturing facility" via "videoconference" before a seller is permitted to list its products for sale on Amazon's website. ER-77 (¶ 75).

2. On August 14, 2023, Planet Green filed this lawsuit. ER-179. After Amazon filed an initial motion to dismiss, Planet Green amended its complaint, bringing the following claims: (1) a false advertising claim under the Lanham Act; (2) a false association and designation of origin claim under the Lanham Act; (3) a common-law unfair competition claim; (4) a California Unfair Competition Law claim; (5) a California False Advertising Law claim; and (6) a negligence claim. ER-77–89. Through these six counts, Planet Green's complaint essentially sought to hold Amazon liable for failing to remove product listings with allegedly false information, and for using

algorithms to recommend products whose listings contained allegedly false information.

On October 24, 2023, Amazon again moved to dismiss, arguing that Planet Green's claims failed on two independent grounds, namely (1) because they were barred by Section 230 of the Communications Decency Act, and (2) because they failed to state a claim under Rule 12(b)(6). *See* ER-183 (Docket Entry No. 44); Pet. App. 11a. 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). Amazon argued that Section 230(c)(1) barred liability because Planet Green's claims sought to treat it as the publisher of third-party sellers' speech. Pet. App. 11a-12a. In addition, Amazon argued that Planet Green failed to state any plausible claim for relief on the six counts in its complaint, because Planet Green failed to allege either an actionable false statement by Amazon or a legal duty by Amazon. *See id.* at 11a.

On December 5, 2023, the District Court dismissed Planet Green's complaint with prejudice, adopting both of Amazon's independent rationales. *Id.* at 32a.

First, the District Court held that Section 230 immunized Amazon from all of Planet Green's claims. *Id.* at 11a-24a. The District Court concluded that those claims sought to treat Amazon as the publisher of the allegedly false third-party advertisements, and therefore, that Section 230(c)(1) precluded liability.

As the Court explained, under Section 230(c)(1), "'[p]ublishing encompasses "any activity that can be boiled down to deciding whether to exclude material that third parties seek to post online."'" *Id.* at 15a

(alteration in original) (citation omitted). That described Planet Green's complaint to a tee: Its "claims [were] all based on the theory that Defendants 'continue to allow [sellers of falsely labeled ink cartridges] to maintain their accounts' and 'permit them to advertise' on Defendants' website." *Id.* at 17a (quoting ER-19 (¶ 3)); *see id.* (quoting ER-45 (¶ 38) as stating that Amazon "allow[s] . . . deceptive product descriptions"); *id.* at 18a (citing ER-24–33 (¶¶ 20-21). Relying on well-established circuit precedent, the District Court went on to hold that Amazon's use of algorithms to sort product listings and recommend products to its users did not remove Amazon from Section 230's protections for publishing allegedly unlawful third-party content. *Id.* at 20a-24a.

Second, the District Court went on to hold that "even if Section 230 immunity d[id] not apply," *all* of Planet Green's claims warranted dismissal under Rule 12(b)(6). *Id.* at 24a-30a. The District Court concluded that Planet Green failed to state a claim as to the first five counts in its complaint because it "d[id] not allege that Defendants created or otherwise contributed to any of the purportedly false product descriptions." *Id.* at 24a-26a. In other words, Planet Green did not allege an actionable false statement *by Amazon*—a required element of each of the five counts. *Id.*; *see also id.* at 26a-29a (stating additional reasons Planet Green's second and third counts failed to state a claim). The District Court then concluded that Planet Green's sixth count—its negligence claim—likewise failed to state a claim because Planet Green "fail[ed] to allege a legal duty," as required by California law. *Id.* at 29a-30a (capitalization normalized).

Finally, the District Court denied leave to amend. Because Planet Green had already "had two opportunities to allege its claims" and had failed to plausibly do so, the Court held Planet Green should not get a third bite at the apple. *Id.* at 30a-32a.

3. The Ninth Circuit affirmed each of the District Court's alternative holdings in a four-page unpublished opinion. *Id.* at 2a-5a.

As to Section 230, the Ninth Circuit held that most, but not all, of Planet Green's claims were barred because they were "directed to statements published by third parties" and sought to hold Amazon liable as a publisher of those third-party statements. *Id.* at 3a. The Ninth Circuit further agreed with the District Court that Amazon's use of neutral algorithms to sort or suggest third-party content to its users did not take Amazon out of Section 230's protection. *Id.* But the Ninth Circuit held that Section 230 did not preclude Planet Green's claims that Amazon re-sold falsely advertised printer ink cartridges that customers had returned through its Amazon Warehouse and Fulfilled by Amazon program. *Id.* at 4a. It explained that any false statements made on the returned and resold ink cartridges' physical packaging were not "information provided through the Internet" and thus were not covered by Section 230. *Id.* (citation omitted).

Nevertheless, the Ninth Circuit affirmed dismissal of all of Planet Green's claims because none of those claims properly stated a claim for relief under Rule 12(b)(6). The Ninth Circuit agreed with the District Court that, "to the extent claims 1 through 5 of Planet Green's complaint (*i.e.*, all claims other than its negligence claim) survive Section 230, Planet Green has failed to allege an actionable false

statement by Amazon." *Id.* As the Ninth Circuit explained, Planet Green had not alleged that Amazon itself made any of the false statements on the cartridges' physical packaging or online listings, and "Amazon's sale of a product, without more, does not warrant treating Amazon as the maker of the statements contained within that product's commercial advertising." *Id.* at 5a.

As for Planet Green's negligence claim, the Ninth Circuit likewise agreed with the District Court that "Planet Green failed to allege a legal duty owed by Amazon." *Id.* As the Ninth Circuit explained, California law establishes that "no duty is created 'when a website facilitates communication, in a content-neutral fashion, of its users' content.'" *Id.* (quoting *Dryoff v. Ultimate Software Group, Inc.*, 934 F.3d 1093, 1101 (9th Cir. 2019), *cert. denied*, 140 S. Ct. 2761 (2020)). And Planet Green had identified no other possible source of a legal duty. Accordingly, the Court affirmed dismissal in full.

REASONS FOR DENYING THE WRIT

I. THIS CASE IS AN EXCEPTIONALLY POOR VEHICLE FOR REVIEW OF THE SECTION 230 ISSUES

Both of Planet Green's questions presented attack the Ninth Circuit's Section 230 holding. But this case is a terrible vehicle for addressing that holding. For one thing, the Ninth Circuit also affirmed dismissal on alternative and independent Rule 12(b)(6) grounds, which Planet Green does not challenge here. For another, Planet Green failed to properly develop one of its core Section 230 arguments below, and the Ninth Circuit's unpublished opinion did not address it.

A. The Ninth Circuit Affirmed Dismissal On An Alternative, Independent Ground That Planet Green Does Not Challenge Here

1. The Ninth Circuit affirmed dismissal of Planet Green's complaint on two alternative and independent grounds: (1) immunity under Section 230 (for most claims), Pet. App. 2a-4a; and (2) failure to state a claim (for all claims), *id.* at 4a-5a. The Ninth Circuit was clear that these were independent grounds. *Id.* at 4a (holding that "to the extent . . . Planet Green's complaint . . . survive[s] Section 230," dismissal is warranted under Rule 12(b)(6)).

Planet Green challenges only the first of these two grounds (Section 230 immunity) in its petition. It has thus forfeited any challenge to the second (failure to state a claim under Rule 12(b)(6)). *See* Sup. Ct. R. 14.1(a) ("Only the questions set out in the petition, or fairly included therein, will be considered by the Court."); *Day v. McDonough*, 547 U.S. 198, 203 n.2 (2006). Even if this Court were to grant certiorari and reverse on the Section 230 holding, the Rule 12(b)(6) holding would remain law of the case, binding the panel on remand. *See, e.g., Ferreira v. Borja*, 93 F.3d 671, 673 (9th Cir. 1996) ("'Under the "law of the case" doctrine, one panel of an appellate court will not reconsider questions which another panel has decided on a prior appeal in the same case.'" (citation omitted)), *cert. denied* , 519 U.S. 1122 (1997).

The Rule 12(b)(6) ground for dismissal is precisely the reason that this Court ultimately resolved *Gonzalez* in an unpublished, per curiam opinion, without addressing the Section 230 issue. In 2022, the Court granted certiorari in *Gonzalez* and a companion case, *Twitter, Inc. v. Taamneh*, which

together raised claims that three of the world's largest social media companies—Facebook, Twitter, and Google (which owns YouTube)—had aided and abetted the terrorist organization ISIS by knowingly allowing it to use their social media platforms to recruit new members and raise funds. 598 U.S. 471, 478 (2023). *Gonzalez* addressed whether Section 230 precluded liability for claims related to YouTube's use of algorithms to sort, order, and recommend third-party content, including alleged ISIS videos, to users. Pet. i, *Gonzalez v. Google LLC*, 598 U.S. 617 (2023) (No. 21-1333). *Twitter* presented the question of whether the plaintiffs had stated a claim against Twitter and Facebook for designing algorithms that allegedly recommended ISIS content and connections to users under the Justice Against Sponsors of Terrorism Act. *See* Pet. i, *Twitter, Inc. v. Taamneh,* 598 U.S. 471 (2023) (No. 21-1496). The Court held that they had not. *See Twitter*, 598 U.S. at 477-78, 506-07. Having so held, the Court then "decline[d] to address the application of § 230" to the nearly identical complaint in *Gonzalez* because that complaint likewise "appear[ed] to state little, if any, plausible claim for relief." 598 U.S. at 622.

The Court should decline to address the scope of Section 230 in this case for the same reason. The Ninth Circuit held that Planet Green failed to state any plausible claim for relief, and Planet Green has not challenged that holding. Even if this Court were to grant certiorari and agree with Planet Green on the scope of Section 230, that would have no impact on Planet Green's ultimate ability to pursue its claims. The Court's Section 230 holding would be nothing more than an advisory opinion, with no real-world impact on the case. *See Goldlawr, Inc. v. Heiman*, 369

U.S. 463, 465 n.5 (1962) (holding that because a defendant's motion was granted "on a second entirely independent ground" and "petitioner did not seek certiorari as to the second and independent ground," the writ of certiorari was dismissed as to that defendant).

2. Planet Green offers no meaningful response to this fatal vehicle defect. In a single sentence, Planet Green suggests that the Ninth Circuit's holding that it failed to plead an actionable false statement by Amazon does not bar review, because if this Court were to hold that Amazon's algorithms fall outside the scope of Section 230, then the Court would have necessarily found that Amazon was a speaker with respect to its algorithms and therefore that Planet Green had alleged an "actionable statement by Amazon." Pet. 32. In other words, Planet Green seems to obliquely suggest that the Ninth Circuit's Rule 12(b)(6) holding is somehow intertwined with its Section 230 holding, such that a reversal on the latter would result in a reversal on the former, clearing the way for Planet Green's case to proceed to discovery.

That is wrong several times over. As an initial matter, that is simply not how the Ninth Circuit, the District Court, or Planet Green itself understood these independent bases for dismissal. The Ninth Circuit and the District Court could not have been clearer that Section 230 and Rule 12(b)(6) were alternative and independent grounds for dismissing Planet Green's complaint. *See, e.g.*, Pet. App. 24a-26a (holding that dismissal was warranted under Rule 12(b)(6) "even if Section 230 immunity d[id] not apply"); *id.* at 4a (holding that "to the extent . . .Planet Green's complaint . . . survive[s] Section 230," dismissal is warranted under Rule

12(b)(6)). Indeed, in the Ninth Circuit, Planet Green listed the District Court's Rule 12(b)(6) holdings as "issues for appeal" separate and distinct from that Court's application of Section 230. *See* Pet'r's CA9 Opening Br. 5-7 (ECF No. 12). Planet Green cannot now seek to collapse two issues that it has treated as independent throughout the life of the case.

Moreover, the Section 230 and Rule 12(b)(6) issues are *not* intertwined: Answering Planet Green's first Section 230 question in its favor plainly would do nothing to show that Amazon had made an actionable false statement. On the contrary, the whole premise of that question is that Amazon should be held liable for the "*third-party* promotion and sale of misrepresented products" because Amazon allegedly knew that those third-party promotional statements were false. Pet. i (emphasis added). Even if this Court grants certiorari and answers that question in Planet Green's favor, that would not revive Planet Green's claims, which require either an actionable false statement *by Amazon*—not third parties—or a legal duty by Amazon. Thus, there is no world in which answering Planet Green's first question presented changes the result and revives Planet Green's claims.

And while Planet Green's second Section 230 question is premised on the idea that Amazon's algorithms constitute its "own conduct" that is not protected by Section 230, *id.* at ii, a ruling for Planet Green on that question still would not change the outcome of this case. Regardless of whether Section 230 protects Amazon's algorithms, the allegedly false statements in the product listings that Amazon's algorithms sort and recommend remain the statements of third-party sellers, not Amazon. *See*

Pet. App. 4a-5a ("Planet Green does not allege that Amazon *itself* made any of the false statements"; rather, the allegedly false statements "were all made by third parties." (emphasis added)). Thus, answering Planet Green's second question in Planet Green's favor would not revive Planet Green's claims either, which again all require a false statement by Amazon or the identification of a legal duty by Amazon.[1]

After this Court's experience with *Gonzalez*, it would make no sense to take a case where resolution of the questions presented could not change the outcome because the petitioner's complaint fails to state a claim. Indeed, in the last two Terms, this Court has been forced to dismiss three separate cases

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[1] As the Ninth Circuit explained, the fact that Amazon sold the allegedly falsely labeled products does not "warrant treating Amazon as the maker of the statements contained within [those] product[s'] commercial advertising." Pet. App. 5a. A grocery store, after all, is not liable for false advertisements made on a cereal box; the cereal company is. *Cf. Corker v. Costco Wholesale Corp.*, No. C19-0290RSL, 2019 WL 5895430, at *2-3 (W.D. Wash. Nov. 12, 2019) (dismissing claim against retailers of allegedly deceptively labeled coffee products that were "manufactured, produced, and packaged by third parties"). That is so even if the grocery store puts the cereal box in a prominent spot at the end of an aisle, or with the store's other "organic" food products based on the cereal box's allegedly false description of its contents as "organic." Nothing about the scope of Section 230 changes that fundamental point. *See* Pet. App. 4a-5a; *see also Baldino's Lock & Key Serv., Inc. v. Google, Inc.*, 624 F. App'x 81, 82 (4th Cir. 2015) ("[T]he locksmiths who generated the [allegedly false] information that appeared on Defendants' websites are solely responsible for making any faulty or misleading representations or descriptions of fact" under the Lanham Act); *Lasoff v. Amazon.com, Inc.*, 16-cv-0151, 2017 WL 372948, at *8 (W.D. Wash. Jan. 26, 2017) (similar), *aff'd*, 741 F. App'x 400 (2018).

as improvidently granted, presumably for latent vehicle defects. *See Laboratory Corp. of Am. Holdings v. Davis*, 605 U.S. 327, 327 (2025) (per curiam); *id.* at 328 (Kavanaugh, J., dissenting) (suggesting dismissal was due to latent mootness defect); *NVIDIA Corp. v. E. Ohman J:or Fonder AB*, 604 U.S. 20 (2024) (per curiam); *Facebook, Inc. v. Amalgamated Bank*, 604 U.S. 4 (2024) (per curiam). And this Court sees no shortage of Section 230 petitions. *See, e.g.*, *M.P. ex rel. Pinckney v. Meta Platforms, Inc.*, No. 24-1133, 2025 WL 2824590 (U.S. Oct. 6, 2025); *Doe ex rel. Roe v. Snap, Inc.*, 144 S. Ct. 2493 (2024).

If this Court believes that certiorari is warranted to address the scope of Section 230, it should grant review in a case where resolution of the question presented can make a difference to the survival of plaintiffs' claims. *Cf. Doe v. Facebook, Inc.*, 142 S. Ct. 1087, 1089 (2022) (Thomas, J.) ("concur[ring] in the Court's denial of certiorari" for Section 230 case due to vehicle issues). This is not that case.

B. The Petition Suffers From Other Vehicle Flaws

The petition suffers from other vehicle defects too. Before this Court, Planet Green argues that Section 230 does not bar claims that a website provider "knowingly" allowed false advertisements, because such providers qualify as "distributers"—and not "publishers"—under the historic common law of defamation. Pet. i, 2-3, 9-12, 26-32. Planet Green asserts that under the common law, distributors could be held liable if they knowingly distributed defamatory material, whereas publishers could be held liable even if they did not know the materials they published were defamatory. *Id.* Planet Green's

theory is that Section 230 was meant to eliminate only publisher liability, not distributor liability.

The problem is that Planet Green's Ninth Circuit briefing failed to develop that distinction. *See generally* Pet'r's CA9 Opening Br. (ECF No. 12). While Planet Green asserted that its claims were not targeted at Amazon's publication of third-party statements, because, among other reasons, they were targeted at Amazon's "importation, distribution, and sale" of products, Pet'r's CA9 Opening Br. 36-37, Planet Green did not develop any argument that the common law of defamation made a distinction between publishers of third-party statements and distributors of third-party statements. Nor did Planet Green argue that Section 230 was meant to reflect that distinction. Because this Court is "a court of review, not first view," it generally does not grant certiorari where, as here, the petitioner failed to develop below a core argument in its petition. *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005).

Even now, Planet Green has failed to present its new argument from the common law in any coherent manner. Planet Green's petition speaks primarily of "publisher liability" and "distributor liability" under the common law, but at times, it also references a mysterious third category called "supplier liability." Pet. 26-27. Planet Green never defines that third category or explains whether it is meant to be a synonym for "distributor liability," or something else entirely. And despite Planet Green's use of quotation marks (at 26), the term "supplier liability" appears nowhere in any of the five opinions that Planet Green cites (or in Planet Green's Ninth Circuit briefing). That Planet Green's presentation of these issues is confusing should come as no surprise. Because Planet

Green did not develop this argument below, it has never had to refine it.

Given that Planet Green did not meaningfully brief this issue below, the Ninth Circuit unsurprisingly did not address it. What's more, the Ninth Circuit resolved this case in an extremely brief, unpublished opinion relying entirely on already established circuit precedent. If and when this Court decides to take a case to resolve fundamental questions about the scope of Section 230, it should do so from a robustly reasoned, published opinion where the issues were well developed and well analyzed below.

II. THE QUESTIONS PRESENTED DO NOT MERIT REVIEW

Setting aside the petition's fatal vehicle defects, Planet Green's questions presented do not merit this Court's review. As to its first question presented, Planet Green presents a lopsided 7-1 split *against* its position—and even that alleged split is illusory. As to its second question presented, Planet Green does not even try to claim a split. And although this Court granted certiorari on a similar splitless question in *Gonzalez*, it has since denied petitions raising the issue (and similar issues), including most recently in *M.P.,* 2025 WL 2824590, and *Snap*, 144 S. Ct. 2493. Finally, Congress is considering legislation to amend Section 230, which may eliminate any need for this Court's review.

A. On The First Question Presented, Planet Green Asserts An Illusory, Lopsided Split Against Its Position

Planet Green's first question presented is whether "Section 230 confer[s] immunity on internet platforms when they knowingly permit, facilitate, and profit from third-party promotion and sale of misrepresented products on their websites." Pet. i. As to that question, Planet Green presents a lopsided 7-1 split *against* its position. *See id.* at 23-25 (comparing cases from the Second, Fourth, Fifth, Sixth, Ninth, Eleventh, and D.C. Circuits, on the one hand, with cases from the Seventh Circuit, on the other). But even that alleged split is illusory.

1. As an initial matter, Planet Green does not identify a single case holding an internet platform liable for "knowingly permit[ting], facilitat[ing], and profit[ing] from third-party promotion and sale of misrepresented products," as set forth in its question presented. *Id.* at i. The Ninth Circuit rejected Planet Green's attempts to hold Amazon liable on such allegations here, and other circuits have ruled the same way. *See, e.g.*, *Marshall's Locksmith Serv. Inc. v. Google, LLC*, 925 F.3d 1263, 1271 (D.C. Cir. 2019) (Garland, C.J.) (affirming dismissal under Section 230 of complaint that Google and other websites knowingly allowed inaccurate locksmith listings to appear in search results); *Baldino's Lock & Key Serv., Inc. v. Google Inc.*, 624 F. App'x 81, 82 (4th Cir. 2015) (affirming dismissal under Rule 12(b)(6) of similar claims). Thus, on Planet Green's actual question presented, there is no split—claimed or otherwise.

To the extent Planet Green instead seeks to establish a split on the broader question of whether

Section 230 precludes liability for a knowing failure to remove unlawful content (as opposed to merely precluding strict liability or negligence liability), Planet Green once again cites no case endorsing its view. At most, Planet Green contends that the Seventh Circuit has "*le[ft] open the possibility* that a platform might be liable for knowingly distributing unlawful third party content." Pet. 3 (emphasis added). But it cites no *holding* that a website can be held liable for knowingly permitting such content, in spite of Section 230's protections for publishing third-party content.

And numerous Seventh Circuit cases suggest that the Seventh Circuit would hold otherwise. For example, the Seventh Circuit has "expressed doubt that [an] online forum could be held liable for aiding and abetting a crime just because [it was] aware that users had posted ads for illegal conduct." *Webber v. Armslist LLC*, 70 F.4th 945, 956 (7th Cir. 2023) (citing *Backpage.com, LLC v. Dart*, 807 F.3d 229, 234 (7th Cir. 2015), *cert. denied*, 580 U.S. 816 (2016)); *see also Doe v. GTE Corp.*, 347 F.3d 655, 658-59 (7th Cir. 2003) ("entities that know the information's content do not become liable for the sponsor's deeds").

As Planet Green itself appears to concede, the most that its cited Seventh Circuit cases stand for is the proposition that Section 230(c)(1) does not create "immunity" but instead serves as a "'definitional clause.'" Pet. 25 (quoting *GTE*, 347 F.3d at 660, *and* citing *G.G. v. Salesforce.com, Inc.*, 76 F.4th 544, 566-67 (7th Cir. 2023); *City of Chicago v. StubHub!, Inc.*, 624 F.3d 363, 366 (7th Cir. 2010); *Chicago Lawyers' Comm. for Civ. R. Under L., Inc. v. Craigslist, Inc.*, 519 F.3d 666, 669 (7th Cir. 2008)). But whether Section 230's defense is called "immunity" or not, the

Seventh Circuit is aligned with all other circuits in holding that Section 230(c)(1) "*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); *see Klayman v. Zuckerberg*, 753 F.3d 1354, 1358-59 (D.C. Cir.) (collecting cases), *cert. denied*, 574 U.S. 1012 (2014). That the Seventh Circuit has resisted the "immunity" label does not create divergence on the key point: Section 230(c)(1) bars claims that seek to hold the defendant liable as a publisher of third-party content.

Indeed, in one of the very cases that Planet Green relies on, the Seventh Circuit held that Craigslist *could not* be held liable for discriminatory advertisements posted by third-party landlords on its website because Section 230(c)(1) precludes liability for permitting third parties to post unlawful content. *See Chicago Lawyers' Comm.*, 519 F.3d at 672. As the Seventh Circuit explained, "given § 230(c)(1), [the plaintiff] cannot sue the messenger just because the message reveals a third party's plan to engage in unlawful discrimination." *Id.* Whatever the label, that is the same liability rule that the Ninth Circuit applied here. *See* Pet. App. 2a-3a.

Planet Green's other three cases likewise reveal no meaningful split over Section 230. In *GTE*, the Seventh Circuit again affirmed dismissal of a complaint against a web-hosting service for failure to uncover and remove illegal content posted by third parties. 347 F.3d at 660-62. In *StubHub!*, the Seventh Circuit held that Section 230 was "irrelevant" because the Chicago tax that StubHub sought to avoid "d[id] not depend on who 'publishes' any information or is a 'speaker'" as required to

trigger Section 230's application. 624 F.3d at 366. And in *G.G.*, the Seventh Circuit held that Section 230 did not bar the plaintiffs' claim because that claim "d[id] not depend on Salesforce having published or spoken anything." 76 F.4th at 567. Rather, the plaintiffs sought "to hold Salesforce accountable for supporting Backpage" by "designing custom software for Backpage" and assisting "Backpage with managing its customer relationships, streamlining its business practices, and improving its profitability." *Id.* (emphasis omitted).

At bottom, all of these cases ask the same question that the Ninth Circuit asked here: Does the plaintiff's claim "treat[] an interactive computer service as the publisher of another's content"? *Webber*, 70 F.4th at 956. If so, that claim is precluded by Section 230—in the Seventh Circuit and everywhere else. *Id.*

2. Lacking any real split, Planet Green instead points to several concurrences and dissents addressing this issue, as well as to the Court's grant of certiorari in *Gonzalez*. But "dissents are just that—dissents." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 389 n.4 (2023). They do not and cannot create a circuit split worthy of this Court's review.

Moreover, while this Court granted certiorari in *Gonzalez* to address Section 230's application to algorithms that sort and recommend third-party content, this Court has never granted a petition raising the historic common-law distinction between publisher liability and distributor liability that Planet Green now presses. *See* Pet'r's Br. 7 n.3, *Gonzalez v. Google LLC*, 598 U.S. 617 (2023) (No. 21-1333) (acknowledging the petition in *Gonzalez* did not raise this issue); Resp't's Br. 48, *Gonzalez v. Google LLC*, 598 U.S. 617 (2023) (No. 21-1333) (same). On the

contrary, this Court has repeatedly denied petitions raising that question. *See, e.g.*, *Fyk v. Facebook, Inc.*, 141 S. Ct. 1067 (2021); *Delfino v. Agilent Techs., Inc.*, 552 U.S. 817 (2007). In the absence of any split (and especially in a case where the petitioner did not develop this issue below), this Court should do the same.

B. Planet Green Presents No Split On The Second Question Presented

Planet Green's second question presented is: "Does Section 230 immunize internet platforms from civil claims based on their own conduct, including using algorithms to generate targeted advertising and product recommendations for their users." Pet. ii. Numerous courts have agreed that it does. *See, e.g.*, *M.P. ex rel. Pinckney v. Meta Platforms Inc.*, 127 F.4th 516, 526 (4th Cir. 2025), *cert. denied*, No. 24-1133, 2025 WL 2824590 (U.S. Oct. 6, 2025); *Force v. Facebook, Inc.*, 934 F.3d 53, 66 (2d Cir. 2019), *cert. denied*, 140 S. Ct. 2761 (2020).

Planet Green does not identify a single case holding otherwise. Instead, Planet Green relies on the same concurring and dissenting opinions from a handful of appellate judges and two Justices of this Court referenced above. *See* Pet. 25-26. But again, such opinions do not create a split warranting review. *See supra* at 19.

Moreover, while this Court determined that the application of Section 230 to algorithms warranted review in *Gonzalez*, the Court has since denied at least one petition raising the same issue, presumably for similar vehicle problems posed by the petition here. *See M.P.*, 2025 WL 2824590. Assuming this Court continues to believe this question warrants

certiorari, it should grant review in a case where resolution of the question could change the outcome of the petitioner's case. It should not do so here, where Planet Green's case has already been dismissed on other independent grounds. *See supra* at 8-13.

C. Congress Is Currently Considering Legislation To Amend Section 230

Finally, Congress is fully aware of the judicial debates over the scope of Section 230, and it is actively engaged in evaluating possible amendments to the statute—some of which would (and have) restrict(ed) its scope and others of which would (and have) expand(ed) its scope. This Court should allow those legislative efforts to play out before taking a case that may well soon be mooted by legislation.

Congress has repeatedly amended Section 230 since 1996, including to *restrict* the scope of Section 230(c)(1)'s protections (as Planet Green urges here). Specifically, in 2018, Congress amended Section 230 to exclude sex-trafficking claims from Section 230(c)(1)'s protection for publishing unlawful third-party content. *See* Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Pub. L. No. 115-164, 132 Stat. 1253 (2018). That amendment shows that Congress can act—and has acted—to amend Section 230 when it believed the statute was operating to protect conduct that should not be protected.

At other times, Congress has *expanded* the scope of Section 230's protections. In 2008, for instance, Congress incorporated Section 230 into the Controlled Substances Act to protect online pharmacies from liability for deleting third-party content "in a manner

consistent with section 230(c)." Pub. L. No. 110-425, § 3(f), 122 Stat. 4820, 4830 (2008) (codified at 21 U.S.C. § 841(h)(3)(A)(iii)(II)). Two years later, in 2010, Congress passed a law prohibiting U.S. courts from recognizing or enforcing foreign judgments for defamation that are not "consistent with section 230." Pub. L. No. 111-223, § 3(a), 124 Stat. 2380, 2382 (2010) (codified at 28 U.S.C. § 4102(c)(1)); *see also* Pub. L. No. 107-317, § 4, 116 Stat. 2766, 2769 (2002) (codified at 47 U.S.C. § 941(e)(1)) (expanding definition of "interactive computer service[]" under Section 230(c) to include a new child-friendly domain hosted under the U.S. country domain).

Congress has also repeatedly considered bills to amend Section 230 to align with Planet Green's interpretation. In recent years, Congress has considered whether to amend Section 230 to require providers of interactive computer services to remove illegal content "not later than 4 days after receiving . . . notice" of such content, effectively creating the distinction based on knowledge that Planet Green seeks to create here.[2] Congress has also considered whether to amend Section 230 to exempt interactive computer services with more than 10 million monthly users from protection for the use of algorithms to "order, promote, recommend, [or] amplify" content that gives rise to certain civil rights or terrorism claims—which again, would amend Section 230 to align with the views Planet Green

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[2] Internet Platform Accountability and Consumer Transparency Act, S. 483, 118th Cong. § 5(c)(1)(A) (2023).

presses here.[3] And Congress has several other bills that would restrict the scope of Section 230's protection pending in front of it today.[4]

As these bills show, if Congress disagrees with the prevailing consensus of the lower courts on Section 230, it has ample opportunity to amend the law. This Court should allow that amendment process to proceed, rather than grant certiorari on an issue that could later be mooted by congressional action.

Congress's active and ongoing consideration of Section 230 strongly suggests that Congress supports the consensus interpretation of the circuit courts and when it disagrees with that interpretation, Congress will take action. *Cf. Tex. Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project*, 576 U.S. 519, 536-37 (2015) (when Congress repeatedly amends a statute while leaving the core language in place, that suggests acquiescence to the prevailing legal interpretation). For all those reasons, this Court should deny certiorari.

III. THE NINTH CIRCUIT'S RULING IS CORRECT

This Court's review is also unwarranted because the Ninth Circuit was right to invoke Section 230 as

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[3] Protecting Americans from Dangerous Algorithms Act, H.R. 2154, 117th Cong. § 2 (2021).

[4] *See, e.g.*, Digital Integrity in Democracy Act, S. 840, 119th Cong. § 2 (2025) (proposing to remove Section 230 protection for "false election administration information that the operator of a social media platform intentionally or knowingly hosts"); COLLUDE Act, S. 69, 119th Cong. § 2 (2025) (proposing to eliminate Section 230 protection for websites that remove certain political speech as part of their content moderation efforts).

an independent basis to dismiss most of Planet Green's claims. There is accordingly no pressing reason for this Court to weigh in.

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). The circuits have unanimously held 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—including the decision to remove or not remove content—regardless of how a plaintiff labels its claim. *Henderson v. Source for Pub. Data, L.P.*, 53 F.4th 110, 123 (4th Cir. 2022); *see Klayman*, 753 F.3d at 1359 (collecting cases).

Here, the Ninth Circuit correctly applied that consensus rule to the alleged facts of Planet Green's complaint, holding that claims related to Amazon's online publishing and curation of other speakers' allegedly false statements were barred by Section 230. Pet. App. 2a-3a.

Planet Green makes two arguments in response. First, Planet Green argues (at 2-3, 9-12, 26-32) that Section 230 does not provide protection for knowing failures to remove unlawful third-party content. Second, Planet Green argues (at 22-23, 25-27) that Section 230 does not provide protection for algorithmically sorting and recommending unlawful third-party content. Each argument is discussed in turn below—and neither is correct.

2. As explained, Planet Green cites no circuit court decision adopting its view that *knowingly* permitting third parties to post unlawful content is

not protected by Section 230, even though *negligently* permitting them to do so is protected. *Supra* at 16-19. That is unsurprising, because Planet Green's theory is wrong.

Section 230(c)(1) uses "publisher" in its plain-language sense, meaning "one that makes [something] public." *Webster's Third New International Dictionary of the English Language* 1837 (1993). And in ordinary parlance, publishing includes "reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content." *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1102 (9th Cir. 2009) (O'Scannlain, J.). Section 230 itself appears to recognize as much, defining "interactive computer service" to encompass "provider[s] of software" that "filter, screen, allow, or disallow content," and "organize" or "reorganize" content. 47 U.S.C. § 230(f)(2), (4).

As numerous Courts of Appeals have explained, choosing to remove content or not remove content "is something publishers do." *Barnes*, 570 F.3d at 1103. Accordingly, "to impose liability on the basis of [a decision not to remove content] necessarily involves treating the liable party as a publisher of the content it failed to remove." *Id.* (holding that Yahoo was not liable for failing to remove material in response to a user's request that it do so); *Klayman*, 753 F.3d at 1359 ("[T]he very essence of publishing is making the decision whether to print or retract a given piece of content . . . ."). As these cases explain, it makes no difference whether a user requests removal, thereby putting the website provider on notice of the content's potential defamatory or otherwise unlawful character. Regardless of whether a website has knowledge of that allegedly unlawful character,

holding the website liable for failing to remove third-party content is to hold it liable "as a publisher" of that content—precisely what Section 230(c)(1) forbids.

Planet Green contends that Congress meant to use "publisher" as a term of art derived from the common law of defamation. Pet. 2-3, 9-12, 26-32. Under the common law, Planet Green argues, publishers could be held strictly liable for publishing defamatory content, even if they did not know that content was defamatory or were only negligent in failing to discover its defamatory character. *Id.* Planet Green contends that Section 230 was meant to preclude that type of liability, but was not meant to preclude liability for knowingly providing defamatory materials as a "distributor" (*e.g.*, a bookstore).

The problem for Planet Green is that "distributors" were still considered "publishers" under the common law. As the Fourth Circuit explained nearly three decades ago, distributor liability under the common law of defamation is "merely a subset, or a species, of publisher liability, and is therefore also foreclosed by § 230." *Zeran v. Am. Online, Inc.* 129 F.3d 327, 332 (4th Cir. 1997), *cert. denied*, 524 U.S. 937 (1998). Under the common law, distributors who "perform[ed] a secondary role in disseminating defamatory matter" were often called "secondary publishers" or "disseminator publishers" because they still "t[ook] part in the publication." W. Page Keaton et al., *Prosser and Keeton on the Law of Torts* § 113, at 799, 803-04, 810-11 (W. Page Keeton ed., 5th ed. 1984); Dan B. Dobbs et al., *Hornbook on Torts* § 37.4, at 942 (2d ed. 2016) (distinguishing between "primary publishers" and other "publishers . . . called transmitters, distributors, or secondary publishers").

To be sure, the *mens rea* for primary publishers and secondary publishers was, at least historically, distinct, but both were ultimately considered "publishers" insofar as they published the defamatory statement. Thus, even under Planet Green's term-of-art reading of the statute, Section 230's prohibition on treating a website like a "publisher" prohibits holding it liable for knowingly failing to remove content.

The consequences of embracing Planet Green's contrary theory would be extreme. Under Planet Green's approach, websites would become liable for failing to remove any allegedly unlawful third-party content as soon as a user notified them of that content because the website would then have "knowledge." Under that theory, "Each notification [of a user complaint] would require a careful yet rapid investigation of the circumstances surrounding the posted information, a legal judgment concerning the information's defamatory [or otherwise unlawful] character, and an on-the-spot editorial decision whether to risk liability by allowing the continued publication of that information." *Zeran*, 129 F.3d at 333. Given the "sheer number of postings on interactive computer services," that "would create an impossible burden in the Internet context." *Id.*

Worse still, under Planet Green's view, any incomplete or imperfect attempt by a website to remove unlawful content would perversely expose the website to more liability. *See* Pet. 17 (describing Amazon's efforts to address the alleged false advertising here as constituting "a significant admission" of liability). The upshot would be to encourage websites to take one of two approaches: (1) err on the side of removing *lawful* speech in response to complaints in an effort to minimize

potential liability; or (2) remove content reporting processes altogether in an effort to avoid knowledge. Neither is compatible with Section 230's aims. On the contrary, Section 230 was meant to "promote the continued development of the Internet" and "remove disincentives for the development and utilization of blocking and filtering technologies." 47 U.S.C. § 230(b)(1), (4). Embracing Planet Green's reading would undermine those objections.

Remarkably, Planet Green embraces the extraordinary consequences of its reading. As Planet Green admits, what it really wants is for Amazon to "verify the legitimacy" of each listing for remanufactured ink cartridges *before* the listing is posted. Pet. 18. That sort of pre-posting verification is simply not possible, and it is precisely what Section 230 was designed to avoid. Amazon, of course, investigates complaints of third-party misconduct and, as in this case, takes steps to ensure the product listings posted are accurate. ER-73 (¶ 66). But no comparable marketplace is able to review every single product description before it is uploaded, and the law does not demand as much. The Ninth Circuit was therefore correct to dismiss Planet Green's complaint.

3. Planet Green also contends that Section 230 does not provide protection for a company's algorithmic sorting or recommending of third-party content because such sorting and recommending "is not traditional 'publishing activity.'" Pet. 6. Wrong again. "[A]cts of arranging and sorting content are integral to the function of publishing." *M.P.*, 127 F.4th at 526. And 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. "Placing certain

third-party content on a homepage, for example, tends to recommend that content to users more than if it were located elsewhere on a website." *Id.* But just like the decision whether to put an article on the front page of a newspaper or the back, that organizational choice is one publishers make all the time.

Numerous other courts have explained that 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. *Id.*; *see also M.P.*, 127 F.4th at 526. Indeed, in the very case that Planet Green (at 11) emphasizes Section 230 was enacted to reverse—*Stratton Oakmont, Inc. v. Prodigy Servs. Co.*,—the website had used a "software screening program [that] automatically prescreen[ed]" some posts but not others—in other words, it had used an early algorithm. No. 31063/94, 1995 WL 323710, at *2 (N.Y. Sup. Ct. May 24, 1995). 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), any interpretation of Section 230 must be consistent with Congress's rejection of the result in that case.

As a practical matter, the Internet could not function without algorithms or other organizing mechanisms. When a user searches for products on Amazon, Amazon must make a choice about how to display the thousands of search hits. Like other websites, it uses an algorithm to display the products that are most likely to appeal to the customer at the top of the list. That choice does not deprive it of Section 230's protections, as the Ninth Circuit correctly recognized.

4. Contrary to Planet Green's claims, the Ninth Circuit's approach to Section 230 immunity is nuanced and "closely hew[s] to the text" of the statute. *Barnes*, 570 F.3d at 1100. In case after case, the Ninth Circuit has explained that Section 230 immunity is "not limitless," *Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 739 (9th Cir. 2024), and does not provide "an all purpose get-out-of-jail-free card," *Doe v. Internet Brands, Inc.*, 824 F.3d 846, 853 (9th Cir. 2016); *see also Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157, 1164 (9th Cir. 2008) ("The Communications Decency Act was not meant to create a lawless no-man's-land on the Internet."). The unpublished decision here applied that nuanced and limited understanding.

Notably, in this very case, the Ninth Circuit *denied* Section 230 protection to the extent that Planet Green's claims focused on Amazon's physical distribution of allegedly falsely labeled ink cartridges. *See* Pet. App. 4a. Thus, Planet Green's hyperbolic claim (at 5) that the Ninth Circuit "g[a]ve Amazon a free pass for knowing participation in illegal distribution of falsely labeled and misrepresented ink cartridges" is simply not correct. The Ninth Circuit's decision stuck closely to the text of the statute and reached the correct result. And in any event, as explained above, that decision is fully supported by the Ninth Circuit's alternative holding that Rule 12(b)(6) independently requires dismissal of Planet Green's complaint. This Court's review is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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