NO. _____

In the Supreme Court of the United States

LAURA LOOMER, INDIVIDUALLY,
AS A CANDIDATE FOR UNITED STATES CONGRESS, ET AL.,

Petitioners,

v.

META PLATFORMS, INC., ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the Ninth Circuit's application of res judicata, barring claims based on new material facts arising after prior judgments, conflict with this Court's precedent in *Whole Woman's Health v. Hellerstedt*, 579 U.S. 582 (2016), and create a circuit split with the Fifth and Seventh Circuits on whether post-judgment facts permit new RICO claims, particularly in the context of ongoing social media censorship affecting electoral fairness?

2. Does the Ninth Circuit's broad application of Section 230 immunity under 47 U.S.C. § 230 to alleged coordinated censorship by social media platforms conflict with district court precedent in *Dangaard v. Instagram, LLC*, 2022 WL 17342198 (N.D. Cal. Nov. 30, 2022), and raise significant public policy concerns about immunizing platforms engaged in unlawful conspiracies influenced by government and corporate actors?

3. Did the Ninth Circuit misapply this Court's precedent in *Boyle v. United States*, 556 U.S. 938 (2009), by imposing an overly restrictive standard for pleading a RICO enterprise and disregarding new evidence of coordinated censorship, undermining RICO's role in addressing conspiracies that threaten democratic processes?

PARTIES TO THE PROCEEDINGS

Petitioners

- Laura Loomer, individually and as a candidate for United States Congress
- Laura Loomer for Congress, Inc.

Respondents

- Meta Platforms, Inc.
- Mark Zuckerberg
- X Corp.
- Jack Dorsey
- The Procter & Gamble Company
- Does 1-100 (unnamed federal officials)

CORPORATE DISCLOSURE STATEMENT

Laura Loomer for Congress, Inc. is a not-for-profit corporation organized under the laws of Florida. It has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Ninth Circuit

No. 23-3158

Laura Loomer, as an individual and in her capacity as a Candidate for United States Congress; Laura Loomer for Congress, Inc., *Plaintiffs-Appellants,* v. Mark Zuckerberg, in his capacity as CEO of Meta Platforms, Inc. and as an individual; Twitter, Inc.; Jack Dorsey, in his capacity as former CEO of Twitter, Inc. and as an individual; Meta Platforms, Inc.; the Procter & Gamble Company, and Does 1-100, individuals, *Defendants-Appellees.*

Final Opinion: March 27, 2025

United States District Court, Northern District of California, San Francisco Division

Case No. 3:22-cv-02646-LB

Laura Loomer, et al., *Plaintiffs,* v.
Mark Zuckerberg, et al., *Defendants.*

Order Granting Motion to Dismiss: September 30, 2023

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The district court's order dismissing Petitioners' First Amended Complaint (FAC) with prejudice is reproduced at App.7a. The Ninth Circuit's unpublished memorandum disposition, filed March 27, 2025, is reproduced at App.1a. The Ninth Circuit's mandate was issued April 18, 2025. (DktEntry: 66.1).

JURISDICTION

The Ninth Circuit entered judgment on March 27, 2025 (App.1a). No rehearing was sought, and no extension of time to file this petition was granted. This Court has jurisdiction under 28 U.S.C. § 1254(1). The petition is timely filed by June 25, 2025, per Sup. Ct. R. 13.1.

STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 1962(c)

> It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

47 U.S.C. § 230(c)(1)

> No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

INTRODUCTION

This case presents a critical opportunity for the Court to address the application of civil RICO under 18 U.S.C. § 1962(c), (d), the scope of Section 230 immunity under 47 U.S.C. § 230, and the doctrine of res judicata in the context of alleged coordinated censorship by social media platforms, a practice with profound implications for political discourse and electoral fairness. Petitioners Laura Loomer, individually, as a congressional candidate, and through Laura Loomer for Congress, Inc., allege that Respondents Meta Platforms, Inc., Mark Zuckerberg, X Corp., Jack Dorsey, The Procter & Gamble Company (P&G), and unnamed

federal officials (Does 1-100) formed a racketeering enterprise, termed the "Community Media Enterprise," to unlawfully suppress conservative political speech, specifically targeting Loomer's 2020 and 2022 congressional campaigns in Florida's 21st and 11th Districts. The First Amended Complaint (FAC) and Second Amended Complaint (SAC) assert RICO claims based on predicate acts of wire fraud (18 U.S.C. § 1343), extortion (18 U.S.C. § 1951), material support to designated terrorist organizations (18 U.S.C. § 2339B), and advocating the overthrow of government (18 U.S.C. § 2385), alleging a conspiracy involving government pressure, corporate collusion, and biased content moderation that stifled Loomer's ability to communicate with voters, raise funds, and compete in federal elections (3-ER-503, 608–619; DktEntry: 15.5, at 844–928).

STATEMENT OF THE CASE

A. Factual Background

1. Laura Loomer's Social Media Presence and Congressional Campaigns

Laura Loomer, a prominent conservative activist and investigative journalist, built a significant social media presence on Meta's platforms (Facebook and Instagram) and X (formerly Twitter), amassing over 260,000 Twitter followers by November 2018 and a substantial following on Facebook (3-ER-568; DktEntry: 15.5, at 901). X Corp. cited violations of its Hateful Conduct Policy, which prohibits targeted harassment and hateful imagery (3-ER-568; X Corp. Brief, DktEntry:

22.1, at 17). On May 2, 2019, Meta banned Loomer's personal Facebook account under its Dangerous Individuals and Organizations Policy, labeling her a "dangerous individual" for associating with figures like Gavin McInnes and Faith Goldy, deemed "hate figures" by Meta (3-ER-568; DktEntry: 15.5, at 901).

On August 2, 2019, Loomer announced her candidacy for Florida's 21st Congressional District, aiming to challenge incumbent Representative Lois Frankel in the 2020 general election (3-ER-569; DktEntry: 15.5, at 901). She won the Republican primary on August 18, 2020, but faced significant obstacles due to platform censorship (3-ER-576; DktEntry: 15.5, at 908). On September 1, 2021, Loomer announced a second campaign for Florida's 11th Congressional District, following redistricting, but lost the Republican primary to Daniel Webster on August 23, 2022 (3-ER-577; DktEntry: 15.5, at 909). Social media is critical to campaigns, especially during COVID-19 restrictions that limited traditional campaigning methods like door-to-door canvassing and public events (3-ER-570; DktEntry: 15.5, at 904). Loomer had no social media for any of her campaigns due to social media bans.

In November 2019, Meta removed Loomer's "Laura Loomer for Congress" campaign page, citing violations linked to her prior personal account ban rather than specific campaign content (3-ER-570; DktEntry: 15.5, at 903). In July 2020, Meta prohibited Loomer from running campaign advertisements, further limiting her outreach during the critical months leading up to the November 3, 2020, election, which she lost to Frankel (3-ER-574–576; DktEntry: 15.5, at 907–908). These actions, Petitioners allege, were part of a coordinated

effort to suppress conservative candidates, causing irreparable harm to Loomer's electoral prospects.

2. Alleged Coordinated Censorship by Respondents

The FAC and SAC allege that Respondents Meta Platforms, Inc., Mark Zuckerberg, X Corp., Jack Dorsey, The Procter & Gamble Company, and unnamed federal officials (Does 1-100, including FBI and White House personnel) formed a racketeering enterprise, the "Community Media Enterprise," with Google, YouTube, and Instagram, to unlawfully censor conservative political speech, specifically targeting Loomer's campaign communications to influence U.S. congressional elections (3-ER-580; DktEntry: 15.5, at 844). The enterprise's operations involved a sophisticated conspiracy leveraging platform policies, corporate pressure, and government influence, as detailed below:

- **P&G's Coercive Pressure**: In April 2019, P&G's Chief Brand Officer, Marc Pritchard, announced at the Association of National Advertisers (ANA) Media Conference that P&G required advertising platforms to demonstrate "complete control" over content to secure its substantial advertising revenue, signaling an intent to influence moderation policies (3-ER-572; DktEntry: 15.5, at 905). In May 2019, P&G allegedly provided Meta with a list of individuals, including Loomer, to be banned unless they publicly disavowed affiliation with the Proud Boys, a group arbitrarily designated as a hate organization by Meta (3-ER-572–573; DktEntry: 15.5, at 905). P&G reportedly threatened to withdraw its advertising funds, which constitute a significant portion of Meta's revenue,

if these bans were not implemented, an action Petitioners characterize as extortion under the Hobbs Act, 18 U.S.C. § 1951 (3-ER-572–573; Dkt-Entry: 15.5, at 905). The SAC alleges that Joshua Althouse, a Meta employee, confirmed to Loomer that P&G's pressure was a direct factor in her ban, as Meta sought to preserve its lucrative advertising agreements with P&G, a major multinational corporation (2-ER-208–209). This coercion, Petitioners argue, demonstrates P&G's central role in the enterprise's efforts to suppress conservative voices (DktEntry: 15.5, at 905–906).

- **Government Coordination with Platforms**: The FAC alleges that federal officials, including personnel from the FBI and White House, collaborated with Meta and X Corp. to suppress conservative content, amplifying the enterprise's impact on political discourse (3-ER-504–505, 515; Dkt-Entry: 15.5, at 925). Specific instances include the coordinated suppression of the 2020 Hunter Biden laptop story, published by the *New York Post* on October 14, 2020, which alleged compromising information about then-presidential candidate Joe Biden's son (3-ER-504–505; DktEntry: 15.5, at 925). The FBI, citing concerns about potential "hack-and-leak" operations, pressured X Corp. to restrict the story's visibility, resulting in the temporary suspension of the *New York Post*'s account and the blocking of links to the article (2-ER-115–118). Another example is the 2021 banning of journalist Alex Berenson from X for posting content questioning the efficacy and safety of COVID-19 vaccines, allegedly influenced by White House pressure to curb "misinformation"

(3-ER-517, 547, 565). The FAC further contends that Meta and X Corp. selectively enforced their content moderation policies by allowing accounts associated with designated terrorist organizations, such as Hamas, Hezbollah, and the Taliban, to remain active, while aggressively targeting conservative figures like Loomer (3-ER-595–599; DktEntry: 15.5, at 925–926). Petitioners characterize this selective enforcement as evidence of the enterprise's discriminatory intent, constituting material support to terrorists under 18 U.S.C. § 2339B (3-ER-595–599; DktEntry: 15.5, at 923–926).

- **Predicate Acts Supporting RICO Claims**: The FAC identifies four primary predicate acts under 18 U.S.C. § 1961 to support the RICO claims:
- **Wire Fraud (18 U.S.C. § 1343)**: Meta and X Corp. engaged in wire fraud by publicly representing their platforms as neutral spaces for political candidates to engage with voters, while privately implementing policies and algorithms designed to censor conservative content, including Loomer's campaign communications (3-ER-591–592; Dkt-Entry: 15.5, at 917–921). For example, Meta's October 2019 statements by Zuckerberg and spokesman Nick Clegg promised non-censorship of political ads, inducing candidates like Loomer to rely on the platform, only to face targeted suppression (DktEntry: 15.5, at 848–849, 920–921). This generated over $100 million in ad revenue from campaigns like Donald Trump's (DktEntry: 15.5, at 921).
- **Extortion (18 U.S.C. § 1951)**: P&G's threats to withdraw advertising revenue unless Meta banned

Loomer and other conservatives are alleged as extortionate acts, involving the wrongful use of economic fear to coerce Meta's compliance (3-ER-572–573; DktEntry: 15.5, at 905–906). Meta's compliance, confirmed by Althouse, furthered the enterprise's censorship scheme (2-ER-208–209).

- **Advocating Overthrow of Government (18 Material Support to Terrorists (18 U.S.C. § 2339B)**: Meta and X Corp.'s allowance of Hamas, Hezbollah, and Taliban accounts, while banning conservative figures, is alleged to provide communications facilities to designated terrorist organizations, facilitating their propaganda efforts (3-ER-595–599; DktEntry: 15.5, at 923–926).
- **Advocating Overthrow of Government (18 U.S.C. § 2385)**: Meta's failure to remove posts by groups like Abolish ICE Denver, which threatened government officials with phrases like "FIRE TO THE PRISON," is alleged to constitute advocacy for overthrowing government (DktEntry: 15.5, at 927–928).

These predicate acts, conducted from 2018 to 2022, form a pattern of racketeering activity aimed at silencing conservative candidates, with Loomer as a primary target (3-ER-608–619; DktEntry: 15.5, at 910–928).

3. Impact on Loomer's Political Campaigns and Public Discourse

The alleged coordinated censorship had a devastating impact on Loomer's congressional campaigns, undermining her ability to engage with voters and compete effectively. The removal of her "Laura Loomer

for Congress" page in November 2019 eliminated a critical channel for communicating policy positions, organizing events, and soliciting donations, resulting in significant reputational damage and financial losses (3-ER-570; DktEntry: 15.5, at 903). The July 2020 prohibition on campaign advertisements further restricted her outreach during the 2020 election cycle, costing tens of thousands of dollars in potential donations and reducing her volunteer base, contributing to her loss to Representative Lois Frankel on November 3, 2020 (3-ER-574–576; DktEntry: 15.5, at 907–908). During her 2021–2022 campaign for Florida's 11th District, algorithmic demotion of her posts on Meta and X platforms reduced their visibility, limiting engagement with voters and supporters (3-ER-577; DktEntry: 15.5, at 909). These actions played a significant role in her marginal defeat in the August 23, 2022, Republican primary against Daniel Webster (3-ER-577; DktEntry: 15.5, at 909).

B. Procedural History

1. District Court Proceedings

On May 2, 2022, Petitioners filed this action in the United States District Court for the Northern District of California, alleging violations of the Racketeer Influenced and Corrupt Organizations Act (RICO) under 18 U.S.C. § 1962(c) (substantive violation) and § 1962(d) (conspiracy) (3-ER-503). The basis for federal jurisdiction was 28 U.S.C. § 1331, as the case arose under federal law (RICO and 47 U.S.C. § 230). The FAC, filed on August 29, 2022, named Meta Platforms, Inc., Mark Zuckerberg (in his capacity as CEO and individually), X Corp., Jack Dorsey (in his capacity as former CEO and individually), The Procter & Gamble Company, and Does 1-100 (unnamed federal officials),

asserting that Respondents formed the "Community Media Enterprise" to unlawfully censor conservative speech through a pattern of racketeering activity (3-ER-503, 608–619; DktEntry: 15.5, at 844). The FAC detailed the predicate acts of wire fraud, extortion, material support to terrorists, and advocating the overthrow of government, alleging that these acts were orchestrated to suppress Loomer's campaign communications and influence federal elections (3-ER-608–619; DktEntry: 15.5, at 910–928).

Respondents moved to dismiss the FAC under Federal Rule of Civil Procedure 12(b)(6), arguing three primary grounds:

- **Res Judicata**: Meta and X Corp. contended that Loomer's claims were barred by res judicata due to her prior lawsuits challenging the same 2018–2019 account bans, including *Freedom Watch, Inc. v. Google, Inc.*, 368 F. Supp. 3d 30 (D.D.C. 2019), *aff'd*, 816 F. App'x 497 (D.C. Cir. 2020); *Illoominate Media, Inc. v. CAIR Found.*, 2019 WL 13168767 (S.D. Fla. Nov. 19, 2019); and *Loomer v. Facebook, Inc.*, 2020 WL 2926357 (S.D. Fla. Apr. 13, 2020), all of which were dismissed (Meta Brief, DktEntry: 21.1, at 15–25; X Corp. Brief, DktEntry: 22.1, at 12–30).
- **Section 230 Immunity**: Meta and X Corp. argued that Section 230(c)(1) of the Communications Decency Act, 47 U.S.C. § 230, immunized them from liability for content moderation decisions, as Loomer's claims sought to hold them accountable for removing or restricting her content (Meta Brief, DktEntry: 21.1, at 26–32; X Corp. Brief, DktEntry: 22.1, at 31–40).

- **Failure to Plead a RICO Enterprise**: All Respondents, including P&G, asserted that Petitioners failed to allege a RICO enterprise under *Boyle v. United States*, 556 U.S. 938 (2009), as the FAC did not establish a common purpose, structure, or longevity, and described lawful business conduct rather than racketeering activity (Meta Brief, DktEntry: 21.1, at 33–36; X Corp. Brief, DktEntry: 22.1, at 41–48; P&G Brief, DktEntry: 25.1, at 5–12).

On September 30, 2023, the district court granted Respondents' motions to dismiss the FAC with prejudice (1-ER-2–29). The court held that: (1) res judicata barred claims against Meta and X Corp., as Loomer's prior lawsuits addressed the same "transactional nucleus of facts" (the 2018–2019 account bans), despite her allegations of new campaign-related censorship; (2) Section 230(c)(1) immunized Meta and X Corp. from liability for their content moderation decisions; and (3) Petitioners failed to plead a RICO enterprise against all Respondents, including P&G, because the allegations described lawful business conduct (*e.g.,* P&G's advertising decisions, Meta's and X's content moderation) rather than a coordinated enterprise with a common purpose, structure, and longevity (1-ER-15–29). The court also denied Petitioners' motion for leave to file the SAC, finding that the proposed amendments, including additional allegations of P&G's pressure and government coordination, were futile and would not cure the FAC's deficiencies (1-ER-29). The SAC's new allegations, such as Joshua Althouse's confirmation of P&G's role and references to the Twitter Files, were deemed insufficient to establish a viable RICO enter-

prise or overcome res judicata and Section 230 barriers (1-ER-29).

2. Ninth Circuit Appeal and Memorandum Disposition

Petitioners appealed to the United States Court of Appeals for the Ninth Circuit, challenging the district court's dismissal on three grounds: (1) res judicata did not bar their claims, as new material facts—post-2019 campaign censorship, P&G's coercive actions, and government coordination—distinguished this case from prior lawsuits; (2) Section 230 immunity did not apply to claims alleging coordinated censorship as part of a RICO enterprise, as opposed to mere publisher liability; and (3) the FAC and proposed SAC adequately pleaded a RICO enterprise under *Boyle*, supported by allegations of a structured conspiracy involving predicate acts of wire fraud, extortion, material support to terrorists, and advocating the overthrow of government. Respondents defended the dismissal, reiterating their arguments on res judicata, Section 230, and the absence of a RICO enterprise, emphasizing that Petitioners' allegations described routine business conduct rather than racketeering activity (Meta Brief, DktEntry: 21.1, at 15–36; X Corp. Brief, DktEntry: 22.1, at 12–48; P&G Brief, DktEntry: 25.1, at 5–12).

On March 27, 2025, the Ninth Circuit affirmed the district court's dismissal in an unpublished memorandum disposition, focusing primarily on Petitioners' failure to plead a RICO enterprise under *Boyle*. (App.1a, DktEntry: 65.1, at 1–7). The court held that the FAC's allegations of the "Community Media Enterprise" did not establish a RICO enterprise, as they lacked

sufficient facts to demonstrate: (A) a common purpose beyond generic goals of "making money, acquiring influence over other enterprises and entities, and other pecuniary and non-pecuniary interests" (App.4a); (B) a structure or organization, as the FAC merely alleged that Respondents, along with unspecified others like YouTube and Google, constituted an enterprise without detailing their roles or interactions; and (C) longevity necessary to accomplish the purpose, as the FAC provided no specific allegations of the enterprise's duration beyond a vague reference to a "long-lasting relationship" (App.5a, DktEntry: 65.1 at 4–5); citing *Eclectic Properties E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 997 (9th Cir. 2014); *Boyle*, 556 U.S. at 946, 948. The court concluded that these deficiencies rendered the substantive RICO claim under § 1962(c) implausible under *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007) (App.5a DktEntry: 65.1 at 5).

The Ninth Circuit also dismissed the RICO conspiracy claim under § 1962(d), reasoning that a conspiracy claim cannot stand without a viable substantive RICO violation, citing *Howard v. Am. Online Inc.*, 208 F.3d 741, 751 (9th Cir. 2000) (App.5a, DktEntry: 65.1 at 6). The court upheld the district court's denial of leave to amend, finding that the SAC's additional allegations, including P&G's pressure and government coordination, would not cure the FAC's failure to plead a RICO enterprise (App.6a, DktEntry: 65.1 at 6–7); citing *Chodos v. W. Publ'g Co.*, 292 F.3d 992, 1003 (9th Cir. 2002); *Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc.*, 911 F.2d 242, 247 (9th Cir. 1990). Because the failure to plead a RICO enterprise was dispositive, the Ninth Circuit declined to

address the district court's findings on res judicata and Section 230 immunity, which barred claims against Meta and X Corp., stating that it was "unnecessary" to reach those issues (App.6a, DktEntry: 65.1 at 7 n.3). The Ninth Circuit issued its mandate on April 18, 2025, formalizing the judgment (DktEntry: 66.1).

C. New Evidence Supporting Petitioners' RICO Claims

Since the district court's dismissal, new evidence has emerged that bolsters Petitioners' allegations of a coordinated censorship enterprise, providing critical context for the case's significance and supporting the need for this Court's review. This evidence, unavailable during Loomer's prior lawsuits or the initial district court proceedings regarding the FAC, includes:

1. Twitter Files Revelations

The Twitter Files, a series of internal X Corp. (then Twitter) documents released to the public between December 2, 2022, and January 31, 2023, revealed extensive communications between X and federal officials, including the FBI, aimed at suppressing specific content deemed undesirable by government actors (2-ER-115–118). A prominent example is the coordinated effort to limit the dissemination of the 2020 Hunter Biden laptop story, published by the *New York Post* on October 14, 2020, which alleged compromising information about then-presidential candidate Joe Biden's son (2-ER-115–118; DktEntry: 15.5, at 925). The FBI, citing concerns about potential "hack-and-leak" operations, pressured X to restrict the story's visibility, resulting in the temporary suspension of the *New York Post*'s account and the blocking of links to the article (2-ER-115–118).

The Twitter Files further disclose that X's content moderation policies were frequently influenced by direct communications from federal officials, including requests to remove or demote posts labeled as "misinformation," such as those questioning COVID-19 policies or election integrity (2-ER-115–118). For example, X banned journalist Alex Berenson in 2021 for posts questioning vaccine efficacy, allegedly under White House pressure (3-ER-517, 547, 565). These revelations undermine Respondents' claims that their content moderation decisions were independent business judgments, as alleged in their Ninth Circuit briefs (X Corp. Brief, DktEntry: 22.1, at 30–31), and support Petitioners' contention that Meta and X acted as components of a coordinated enterprise influenced by external actors (2-ER-115–118; DktEntry: 15.5, at 925). The Twitter Files were not available during Loomer's prior lawsuits or the district court proceedings in connection with the FAC, making them a significant new development that strengthens the plausibility of Petitioners' RICO enterprise allegations.

2. Mark Zuckerberg's Letter to the House Judiciary Committee

On August 26, 2024, Mark Zuckerberg, CEO of Meta Platforms, Inc., sent a letter to the House Judiciary Committee, admitting that Meta had complied with requests from White House officials to censor certain COVID-19-related content, including content later proven to be true, such as the theory that the virus may have originated from a laboratory leak in Wuhan, China (2-ER-187–196; DktEntry: 50.1, *Murthy v. Missouri*, 603 U.S. 43, 51–72 (2024)). Zuckerberg's letter details instances where Meta removed or demoted content at the White House's behest, even

when such content did not violate Meta's existing community standards, driven by fears of regulatory repercussions like amendments to Section 230 or antitrust actions (2-ER-187–196). This admission directly supports Petitioners' allegations that Meta's censorship of conservative content, including Loomer's campaign communications, was influenced by external actors, including government officials, as part of a coordinated effort (3-ER-513–514; DktEntry: 15.5, at 925).

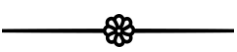
Petitioners argue that this acknowledgment lends credence to their claim that Meta's actions were part of a racketeering enterprise designed to suppress specific political viewpoints, particularly those of conservative candidates like Loomer, to influence electoral outcomes (3-ER-513–514). The letter, unavailable during the district court proceedings or Loomer's prior lawsuits, provides critical new evidence that enhances the plausibility of Petitioners' RICO claims and underscores the need for this Court to review the Ninth Circuit's dismissal.

3. House Judiciary Committee Report and Additional Corroborating Evidence

The House Judiciary Committee's report, *The Censorship-Industrial Complex* (May 1, 2024), further corroborates Petitioners' allegations by documenting extensive interactions between government agencies, including the FBI and White House, and social media platforms like Meta and X Corp. (DktEntry: 50.1, *Murthy*, 603 U.S. at 40–41). The report details a pattern of government pressure on platforms to suppress content labeled as "misinformation," including conservative political speech, during the 2020 and 2022

election cycles. *Id.* It highlights specific instances where platforms complied with government requests to remove or demote content, even when such content was protected speech or factually accurate, aligning with Petitioners' claims of selective enforcement. *Id.*

Additional evidence, such as congressional testimony in 2023, reinforces the pattern of coordination. Testimony revealed that platforms engaged in "content moderation roundtables" with government officials to align their policies with federal priorities, a practice that facilitated the enterprise's censorship efforts (2-ER-115–118; DktEntry: 15.5, at 925). This evidence, combined with the Twitter Files released by Elon Musk in late 2022 and early 2023, and Zuckerberg's letter, provides a robust factual basis for Petitioners' RICO claims, demonstrating a structured and sustained effort to suppress conservative speech that was not fully litigated in prior lawsuits.



REASONS FOR GRANTING THE PETITION

This petition presents three compelling reasons for granting certiorari, each addressing a significant legal question with profound implications for the application of civil RICO, the scope of Section 230 immunity, and the doctrine of res judicata in the context of social media censorship, which directly impacts the fairness and integrity of democratic elections. Pursuant to Sup. Ct. R. 10, these issues involve conflicts with this Court's precedent, circuit splits, and matters of national importance.

I. The Ninth Circuit's Application of Res Judicata Conflicts with This Court's Precedent and Creates a Circuit Split on Whether New Material Facts Post-Judgment Create New RICO Claims

The Ninth Circuit's affirmance of the district court's res judicata holding, which barred claims against Meta and X Corp., conflicts with this Court's precedent in *Whole Woman's Health x. Hellerstedt*, 579 U.S. 582 (2016), and creates a circuit split with the Fifth and Seventh Circuits on whether new material facts arising after prior judgments permit new RICO claims. This issue is of national importance, as it determines plaintiffs' ability to seek redress for ongoing harms in rapidly evolving technological contexts like social media censorship, which significantly affects electoral fairness and public discourse.

A. The Ninth Circuit's Res Judicata Analysis Misapplies *Hellerstedt* by Ignoring New Material Facts

In *Hellerstedt*, this Court held that res judicata does not preclude claims based on material facts that arise after a prior judgment, especially when significant public interests are at stake. 579 U.S. at 604–05. The Court endorsed the Second Restatement of Judgments, which permits new actions when a "slight change of circumstances" creates distinct harms that could not have been addressed in prior litigation. *Id.*; citing Restatement (Second) of Judgments § 24, cmt. f. This principle builds on *Lawlor v. Nat'l Screen Serv. Corp.*, 349 U.S. 322, 328 (1955), which allowed new antitrust claims based on post-judgment violations, recognizing

that new conduct constitutes distinct claims not barred by res judicata.

In this case, Petitioners allege a series of new material facts that post-date the judgments in Loomer's prior lawsuits, namely *Freedom Watch, Inc. v. Google, Inc.*; *Illoominate Media, Inc. v. CAIR Found;* and *Loomer v. Facebook, Inc.*, 2020 WL 2926357 (S.D. Fla. Apr. 13, 2020). These prior suits challenged the 2018 suspension of Loomer's Twitter account and the 2019 ban of her Facebook personal account, focusing on the platforms' content moderation decisions affecting her individual speech as a journalist and activist (3-ER-568; DktEntry: 15.5, at 901). In contrast, the current action alleges distinct harms arising from post-2019 censorship acts specifically targeting Loomer's congressional campaigns, including:

- **Meta's Removal of Loomer's Campaign Page**: In November 2019, Meta removed the "Laura Loomer for Congress" page, disrupting her ability to organize and communicate with voters during the 2020 election cycle (3-ER-570; DktEntry: 15.5, at 903). This action was distinct from the 2019 personal account ban, as it targeted her campaign entity, which did not exist at the time of the earlier ban (DktEntry: 15.5, at 904).
- **Prohibition on Campaign Advertisements**: In July 2020, Meta prevented Loomer from running campaign advertisements, limiting her outreach during a critical phase of the 2020 election (3-ER-574–575; DktEntry: 15.5, at 907). This restriction also applied to Political Action Committees (PACs) attempting to advertise on her behalf, further stifling her campaign (DktEntry: 15.5, at 907).

- **Ongoing Censorship in 2021–2022**: During her 2021–2022 campaign for Florida's 11th District, Loomer faced deplatforming on both Meta and X platforms, preventing her from posting which negatively impacted voter engagement and awareness of her campaign. (3-ER-577; DktEntry: 15.5, at 909).
- **New Evidence of Coordinated Censorship**: The Twitter Files (Dec. 2, 2022–Jan. 31, 2023), Zuckerberg's letter (Aug. 26, 2023), and the House Judiciary Committee's report (May 1, 2024) reveal government and corporate coordination in censoring conservative content, including Loomer's campaign communications (2-ER-115–118, 187–196; DktEntry: 15.5, at 925–928). For example, the Twitter Files document FBI pressure on X to suppress the Hunter Biden laptop story, while Zuckerberg's letter admits Meta's compliance with White House requests to censor COVID-19 content (2-ER-115–118, 187–196).

These new facts fundamentally alter the scope and nature of Petitioners' claims, as they focus on interference with Loomer's electoral activities as a congressional candidate, a distinct harm from the personal account bans litigated in prior suits. The prior lawsuits could not have addressed the 2019–2022 campaign censorship, as those acts occurred after the relevant judgments, nor could they have incorporated the new evidence of P&G's pressure and government coordination, which was not publicly available until after 2022 (2-ER-115–118, 187–196; DktEntry: 15.5, at 905, 925–928). For instance, the *Freedom Watch* case, dismissed in 2019, challenged X's 2018 ban and did not involve Meta's 2019–2020

campaign-related actions or P&G's alleged extortionate threats. 368 F. Supp. 3d at 33–34. Similarly, *Illoominate Media* (2019) and *Loomer v. Facebook* (2020) focused on individual bans without addressing the broader enterprise alleged here, which includes P&G and federal officials as co-conspirators. 2019 WL 13168767, at *1–2; 2020 WL 2926357, at *1.

The district court, whose res judicata finding was implicitly affirmed by the Ninth Circuit's decision not to disturb it, held that all of Petitioners' claims arose from the same "transactional nucleus of facts" as the prior lawsuits, namely the 2018–2019 account bans (1-ER-20–21; App.6a, DktEntry: 65.1, at 7 n.3). This conclusion misapplies *Hellerstedt* by conflating the earlier personal account bans with the subsequent campaign-specific censorship, which caused distinct injuries such as lost campaign funds, reduced voter engagement, and reputational damage during the 2020 and 2022 elections (3-ER-577; DktEntry: 15.5, at 909). The district court's analysis also ignored the new evidence of P&G's coercive actions and government coordination, which fundamentally changes the legal and factual basis of the claims by introducing a RICO enterprise that was not, and could not have been, litigated in the prior suits (2-ER-115–118, 187–196; DktEntry: 15.5, at 905, 925–928). By failing to recognize these new material facts, the Ninth Circuit's affirmance violates *Hellerstedt*'s principle that res judicata should not bar claims arising from post-judgment conduct, particularly when significant public interests, such as electoral fairness, are implicated.

B. Circuit Split on the Application of Res Judicata to Post-Judgment Facts

The Ninth Circuit's res judicata analysis, as reflected in its affirmance of the district court's ruling, creates a clear circuit split with the Fifth and Seventh Circuits, which adopt a more flexible approach to res judicata when new material facts arise after prior judgments. In *Test Masters Educational Services, Inc. v. Singh*, 428 F.3d 559 (5th Cir. 2005), the Fifth Circuit held that res judicata did not bar a new trademark infringement claim based on post-judgment acts of infringement, recognizing that new conduct creates distinct claims with separate injuries. *Id.* at 571–72. The court emphasized that requiring plaintiffs to anticipate and litigate all future violations in a single suit would be impractical and unjust, particularly when new facts alter the scope of the harm. *Id.* Similarly, in *Supporters to Oppose Pollution, Inc. v. Heritage Group*, 973 F.2d 1320 (7th Cir. 1992), the Seventh Circuit permitted a new environmental lawsuit based on post-judgment violations of pollution regulations, rejecting res judicata where new facts demonstrated ongoing harm that could not have been addressed in the prior litigation. *Id.* at 1325–26. The Seventh Circuit reasoned that res judicata should not be a barrier to addressing new wrongs, especially when they involve continuing violations with significant public impact. *Id.*

In contrast, the Ninth Circuit's approach, as articulated in the district court's ruling and affirmed in the memorandum disposition, aligns with a stricter interpretation of res judicata, as seen in *Monterey Plaza Hotel Limited Partnership v. Local 483*, 215 F.3d 923 (9th Cir. 2000). In *Monterey Plaza*, the Ninth

Circuit barred a RICO claim based on prior litigation over the same labor dispute, holding that all claims arising from the same "transactional nucleus of facts" must be brought in the initial suit, even if new conduct occurred post-judgment. *Id.* at 928. In the present case, the district court applied this standard to dismiss Petitioners' claims, concluding that the 2018–2019 account bans encompassed all subsequent censorship acts, including those targeting Loomer's campaigns in 2019–2022 (1-ER-20–21). The Ninth Circuit's failure to disturb this finding implicitly endorses *Monterey Plaza*'s rigid approach, which requires plaintiffs to litigate all potential claims in a single action, regardless of new facts or harms (App.6a, DktEntry: 65.1, at 7 n.3).

This circuit split has significant implications for plaintiffs seeking to challenge ongoing harms in dynamic contexts like social media censorship, where new acts of suppression can occur continuously and unpredictably. The Fifth and Seventh Circuits' flexible approach allows plaintiffs to address new wrongs, such as Meta's 2019–2020 campaign censorship or the coordinated enterprise revealed by the Twitter Files and Zuckerberg's letter, without being barred by prior judgments that could not have anticipated these developments (2-ER-115–118, 187–196; DktEntry: 15.5, at 905, 925–928). The Ninth Circuit's stricter standard, however, forecloses such claims, effectively granting platforms and their collaborators immunity for new censorship acts by tying all claims to the initial conduct, such as the 2018–2019 bans. This discrepancy creates uncertainty for plaintiffs nationwide and undermines the ability to hold platforms

accountable for evolving patterns of misconduct that impact electoral processes and public discourse.

The split is particularly pronounced in the context of RICO claims, which often involve complex, ongoing conspiracies that unfold over time. The Fifth and Seventh Circuits' approach accommodates RICO's purpose of combating sustained patterns of racketeering activity by allowing new claims based on post-judgment predicate acts, as seen in *Test Masters* and *Supporters to Oppose Pollution*. By contrast, the Ninth Circuit's approach risks undermining RICO's effectiveness by barring claims that allege new predicate acts, such as P&G's alleged extortion, Meta's wire fraud, or the allowance of terrorist content, simply because they relate to the same platforms involved in prior litigation (DktEntry: 15.5, at 910–928). This restrictive interpretation could allow enterprises to continue their racketeering activities without fear of legal challenge, as plaintiffs would be unable to bring new claims based on subsequent conduct.

C. National Importance of Res Judicata Standards in the Context of Social Media Censorship

The circuit split on the application of res judicata to post-judgment facts is of paramount national importance, as social media platforms have become indispensable to political campaigns and public discourse, with Meta serving approximately 3 billion users and X reaching over 330 million (DktEntry: 15.5, at 912). The alleged censorship of a congressional candidate like Loomer, which Petitioners claim was orchestrated by a coordinated enterprise involving major corporations and government actors, raises serious concerns about

the fairness and integrity of federal elections (3-ER-580; DktEntry: 15.5, at 904). The removal of Loomer's campaign page, restrictions on her advertisements, and algorithmic demotion of her posts allegedly limited her ability to reach voters, raise funds, and compete effectively, skewing the electoral process in favor of her opponents, Lois Frankel in 2020 and Daniel Webster in 2022 (3-ER-570, 574–577; DktEntry: 15.5, at 903–909). Such actions, if unchecked, could set a precedent for platforms and their collaborators to manipulate electoral outcomes by selectively suppressing candidates' speech, undermining the democratic principle that voters should have access to diverse viewpoints to make informed decisions.

Platforms like Meta and X serve as gatekeepers of political discourse, with the power to amplify or suppress candidates' messages at scale (DktEntry: 15.5, at 841–843). The Twitter Files reveal that government officials actively engaged with platforms to shape content moderation policies, while Zuckerberg's letter admits to Meta's compliance with such requests, raising questions about the extent to which private platforms act as proxies for external actors (2-ER-115–118, 187–196; DktEntry: 15.5, at 925). These developments were not available during Loomer's prior lawsuits, which focused solely on the 2018–2019 bans, and they fundamentally alter the legal and factual landscape of Petitioners' RICO claims. Without this Court's intervention to resolve the circuit split and clarify res judicata's application, plaintiffs nationwide will face inconsistent barriers to challenging ongoing censorship, undermining the ability to protect electoral fairness and public discourse in the digital age.

Granting certiorari on this issue would provide much-needed clarity on the scope of res judicata in complex litigation involving social media censorship, ensuring that plaintiffs can seek redress for new harms without being foreclosed by prior judgments that could not have addressed subsequent conduct. This Court's review is essential to harmonize circuit precedent, align res judicata with the realities of modern technology, and safeguard the democratic process by allowing candidates like Loomer to challenge coordinated efforts to suppress their campaign communications.

II. The Ninth Circuit's Broad Application of Section 230 Immunity to Alleged Coordinated Censorship Conflicts with District Court Precedent and Raises Significant Public Policy Concerns

The Ninth Circuit's implicit affirmance of the district court's application of Section 230 immunity to shield Meta and X Corp. from liability for their alleged role in a coordinated censorship enterprise conflicts with district court precedent in *Dangaard x. Instagram, LLC*, 2022 WL 17342198 (N.D. Cal. Nov. 30, 2022), and raises profound public policy concerns about immunizing platforms that engage in unlawful conspiracies, particularly when influenced by government and corporate actors. The new evidence presented in *Murthy v. Missouri*, 603 U.S. 43 (2024), the Twitter Files, and Zuckerberg's letter further underscores the need for this Court to clarify the boundaries of Section 230 immunity in cases involving coordinated misconduct (DktEntry: 15.5, at 871–872, 925–928).

A. Conflict with District Court Precedent in *Dangaard* and Related Cases

Section 230(c)(1) of the Communications Decency Act, 47 U.S.C. § 230, provides that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." This immunity is intended to protect platforms from liability for content posted by third parties, allowing them to moderate content without facing lawsuits for defamation or similar claims. *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1170–71 (9th Cir. 2008). However, courts have recognized limitations to this immunity, particularly when a platform's actions go beyond traditional publisher functions and contribute to unlawful conduct. In *Dangaard v. Instagram, LLC*, a district court in the Northern District of California held that Section 230 does not immunize platforms when they design automated tools, such as algorithms, to facilitate unlawful activities, such as anticompetitive censorship or the promotion of harmful content. 2022 WL 17342198, at *4–5. The court reasoned that designing systems that actively enable illegal conduct, as opposed to merely hosting third-party content, removes a platform from Section 230's protective scope. *Id*. Similarly, in *Dyroff v. Ultimate Software Group, Inc.*, 934 F.3d 1093 (9th Cir. 2019), the Ninth Circuit clarified that Section 230 immunity does not extend to platform actions that "materially contribute" to unlawful conduct, such as designing systems that facilitate illegal transactions or discriminatory practices. *Id*. at 1097–98.

Petitioners allege that Meta and X Corp. engaged in conduct that falls outside Section 230's immunity by actively participating in a RICO enterprise designed to unlawfully censor conservative political speech, including Loomer's campaign communications (3-ER-580, 611–612; DktEntry: 15.5, at 844). Specifically, the FAC and SAC contend that Meta and X Corp. used sophisticated algorithms to suppress conservative content, such as Loomer's campaign page and posts, in response to coercive pressure from P&G and government officials, rather than as independent editorial decisions (3-ER-570, 574–575; 2-ER-208–209; DktEntry: 15.5, at 871–872). For example, Meta's removal of Loomer's campaign page in November 2019 and its prohibition on her running advertisements in July 2020 were allegedly driven by algorithms programmed to target conservative candidates, influenced by P&G's threats to withdraw advertising revenue and government directives to curb "misinformation" (3-ER-572–575; 2-ER-208–209; DktEntry: 15.5, at 905, 925). Similarly, X Corp.'s algorithmic demotion of Loomer's posts during her 2021–2022 campaign reduced their visibility, allegedly as part of the enterprise's broader effort to suppress conservative voices (3-ER-577; DktEntry: 15.5, at 909). Petitioners argue that these actions constitute "material contributions" to the unlawful censorship enterprise, akin to the algorithmic facilitation of illegal conduct in *Dangaard* and *Dyroff*, and thus fall outside Section 230's immunity.

The district court, whose Section 230 ruling was implicitly affirmed by the Ninth Circuit's decision not to disturb it, applied Section 230 immunity broadly, concluding that all of Petitioners' claims against Meta and X Corp. sought to hold them liable as publishers

for removing or restricting Loomer's content (1-ER-23–24; App.6a, DktEntry: 65.1, at 7 n.3). The court reasoned that Meta's and X's content moderation decisions, including the removal of Loomer's campaign page and the restriction of her advertisements, were quintessential publisher activities protected by Section 230(c)(1) (1-ER-23–24). However, this analysis failed to engage with *Dangaard*'s exception for platform actions that facilitate unlawful conduct, such as the alleged use of algorithms to execute a coordinated censorship scheme. The district court also ignored Petitioners' allegations that Meta and X Corp.'s actions were driven by external coercion from P&G and government officials, which, if true, would transform their conduct from independent publisher decisions to participation in a racketeering enterprise (3-ER-513–514; 2-ER-208–209; DktEntry: 15.5, at 905, 925). The Ninth Circuit's failure to address *Dangaard* or *Dyroff* in its memorandum disposition creates an inconsistency with persuasive district court precedent and Ninth Circuit case law, as it implicitly endorses a broad interpretation of Section 230 that immunizes platforms even when their actions contribute to unlawful conspiracies (App.6a, DktEntry: 65.1, at 7 n.3). This conflict is particularly significant in the context of RICO claims, which target coordinated misconduct rather than isolated publisher decisions. By applying Section 230 to bar Petitioners' claims without considering the enterprise allegations or the *Dangaard* exception, the Ninth Circuit risks creating a precedent that shields platforms from liability for participating in unlawful schemes, undermining the accountability mechanisms provided by statutes like RICO.

B. Public Policy Implications of Immunizing Platforms Engaged in Alleged Unlawful Conspiracies

The Ninth Circuit's implicit endorsement of broad Section 230 immunity raises significant public policy concerns, particularly in light of new evidence presented. In *Murthy v. Missouri*, Justice Alito highlights in his dissent the potential for government influence to transform platform actions into coordinated censorship (DktEntry: 50.1, *Murthy*, 603 U.S. at 78–81). Alito emphasized that such pressure can convert private platform decisions into actions influenced by external actors, raising serious questions about the integrity of public discourse, particularly during election periods. *Id*. The Twitter Files similarly reveal that the FBI engaged with X to suppress the 2020 Hunter Biden laptop story, citing concerns about "misinformation" and potential foreign interference, actions that Petitioners allege were part of a broader effort to limit conservative speech (2-ER-115–118; DktEntry: 15.5, at 925). Mark Zuckerberg's letter to the House Judiciary Committee (August 26, 2024) further confirms that Meta complied with White House requests to censor content, including true information, under pressure from government officials (2-ER-187–196; DktEntry: 15.5, at 925).

Immunizing platforms under Section 230 in such circumstances risks creating a loophole that allows platforms to engage in unlawful conspiracies without accountability, particularly when their actions impact electoral fairness. The alleged censorship of Loomer's campaign page, advertisements, and posts limited her ability to communicate her policy positions, mobilize supporters, and raise funds, effectively tilting the elec-

toral playing field in favor of her opponents (3-ER-570, 574–577; DktEntry: 15.5, at 903–909). If platforms can shield themselves from liability under Section 230 for actions taken as part of a coordinated censorship enterprise, candidates and voters may face ongoing barriers to accessing diverse political viewpoints, undermining the democratic process.

C. Urgent Need for Clarity on the Scope of Section 230 Immunity

The need for this Court to clarify the scope of Section 230 immunity is urgent, given the increasing influence of social media platforms on political discourse and the emergence of new evidence revealing coordinated censorship efforts. The Ninth Circuit's ruling, by implicitly endorsing the district court's broad application of Section 230, risks setting a precedent that immunizes platforms from liability for participating in unlawful conspiracies, even when their actions are driven by external coercion rather than independent editorial judgment (App.6a, DktEntry: 65.1, at 7 n.3). This precedent could embolden platforms and their collaborators to engage in selective censorship without fear of legal repercussions, particularly targeting candidates during critical election periods. The *Murthy v. Missouri* decision, while resolved on standing grounds, left unresolved critical questions about the extent to which government influence on platform moderation decisions implicates public policy concerns. 603 U.S. at 48-50. Justice Alito's dissent in *Murthy* emphasized the need for judicial scrutiny of such influence, noting that government pressure can transform private actions into coordinated efforts that undermine public discourse. *Id*. at 78-81 (Alito, J., dissenting); (DktEntry: 50.1, at 51–53). The Twitter Files and Zuckerberg's letter

provide concrete evidence of such pressure, revealing that Meta and X Corp. complied with government requests to censor content, including Loomer's campaign communications, as part of a broader enterprise (2-ER-115–118, 187–196; DktEntry: 15.5, at 925). These sources collectively demonstrate that Meta and X Corp.'s actions, including the censorship of Loomer's campaign communications, were part of a coordinated enterprise rather than isolated editorial decisions, undermining the district court's and Ninth Circuit's reliance on Section 230 immunity.

This Court's precedent in *Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC.*, 141 S. Ct. 13 (2020), underscores the need for clarity on Section 230's scope. In *Malwarebytes*, Justice Thomas, in a statement respecting the denial of certiorari, criticized the overly broad interpretation of Section 230 by lower courts, noting that it has been stretched beyond its original purpose of protecting platforms from liability for third-party content to shield them from accountability for their own actions. *Id.* at 16-18 (Thomas, J., statement). The present case exemplifies this concern, as the Ninth Circuit's ruling effectively immunizes Meta and X Corp. for their alleged participation in a RICO enterprise, despite evidence of coordinated misconduct involving P&G and government officials (DktEntry: 15.5, at 905, 925–928). Without this Court's intervention, platforms may continue to exploit Section 230 to evade liability for actions that materially contribute to unlawful conspiracies, particularly those affecting electoral fairness.

Granting certiorari on this issue will allow the Court to resolve the conflict between the Ninth Circuit's broad application of Section 230 and the narrower

approach in *Dangaard* and *Dyroff*, providing clarity on whether platforms can claim immunity when their actions, such as algorithmic censorship driven by external coercion, facilitate unlawful enterprises. This clarification is critical to ensuring that platforms cannot use Section 230 as a shield to suppress political speech, especially during elections, without accountability. The Court's review will also address the public policy concerns raised by *Murthy*, the Twitter Files, and Zuckerberg's letter, safeguarding the integrity of democratic discourse in the digital age.

III. The Ninth Circuit's Dismissal of Petitioners' RICO Claims Misapplies This Court's Precedent on Enterprise Pleading and Disregards New Evidence of Coordinated Censorship

The Ninth Circuit's dismissal of Petitioners' RICO claims under 18 U.S.C. § 1962(c) and (d) for failure to plead a viable enterprise misapplies this Court's precedent in *Boyle*, by imposing an overly restrictive standard for pleading a RICO enterprise and disregarding new evidence of coordinated censorship. This error undermines RICO's purpose of combating complex conspiracies, particularly those threatening electoral fairness, and warrants certiorari to ensure that plaintiffs can challenge coordinated misconduct by powerful actors in the digital public square.

A. Misapplication of *Boyle's* Enterprise Standard and Failure to Credit Plausible Allegations

In *Boyle*, this Court held that a RICO enterprise requires only: (1) a common purpose, (2) relationships among those associated with the enterprise, and (3)

longevity sufficient to permit the pursuit of the enterprise's purpose. 556 U.S. at 946. The Court emphasized that a RICO enterprise need not have a formal structure, hierarchy, or chain of command, and can include informal associations united by a shared unlawful goal. *Id.* at 948. The enterprise must be distinct from the pattern of racketeering activity, but plaintiffs need only allege facts plausibly showing that the defendants acted together to conduct the enterprise's affairs through illegal means. *Id.*; *see also H.J. Inc. v. Nw. Bell Tel. Co.*, 492 U.S. 229, 249 (1989).

The FAC and SAC allege that Respondents, along with Google, YouTube, and Instagram, formed the "Community Media Enterprise" with the common purpose of suppressing conservative political speech to influence U.S. elections, specifically targeting Loomer's 2020 and 2022 congressional campaigns (3-ER-580; DktEntry: 15.5, at 844). The complaints detail relationships among the defendants, including P&G's alleged extortionate pressure on Meta to ban Loomer and other conservatives, confirmed by Meta employee Joshua Althouse, and government officials' coordination with Meta and X Corp. to censor content, as evidenced by the Twitter Files, Zuckerberg's letter, and the House Judiciary Committee's report (3-ER-572–573, 513–514; 2-ER-115–118, 187–196, 208–209; DktEntry: 15.5, at 905, 925–928). The enterprise's longevity is demonstrated by its actions from 2019 to 2022, including the removal of Loomer's campaign page in November 2019, the prohibition of her advertisements in July 2020, and the algorithmic demotion of her posts during the 2021–2022 campaign (3-ER-570, 574–577; DktEntry: 15.5, at 903–909). The FAC identifies specific predicate acts—wire fraud, extortion,

material support to terrorists, and advocating the overthrow of government—conducted through the enterprise's coordinated efforts, distinct from the enterprise itself (3-ER-608–619; DktEntry: 15.5, at 910–928).

The Ninth Circuit, affirming the district court, held that the FAC failed to plead a RICO enterprise because it did not sufficiently allege a common purpose, structure, or longevity, describing the enterprise as a vague collection of entities pursuing generic goals of "making money" and "acquiring influence" (App.4a-5a, DktEntry: 65.1, at 4–5; citing *Eclectic Properties E., LLC*, 751 F.3d 990 at 997. This ruling misapplies *Boyle* by imposing a heightened pleading standard beyond what is required under *Iqbal* and *Twombly*. *Boyle* explicitly rejects the need for a formal structure, yet the Ninth Circuit faulted the FAC for lacking detailed roles or interactions among the defendants, ignoring plausible allegations of coordination, such as P&G's threats, Meta's compliance, and government pressure (556 U.S. at 948; 3-ER-572–573, 513–514; 2-ER-208–209). The court also disregarded the FAC's allegations of a specific common purpose—suppressing conservative speech to influence elections—which goes beyond generic profit motives and is supported by new evidence of targeted censorship (DktEntry: 15.5, at 844, 925–928). By dismissing the RICO claims as implausible without crediting these allegations, the Ninth Circuit contravened *Boyle*'s flexible standard and *Iqbal*'s requirement to accept plausible factual allegations as true. 556 U.S. at 678–79.

The Ninth Circuit's failure to distinguish this case from *Eclectic Properties* and its imposition of a rigid enterprise standard conflict with *Boyle*'s lenient requirements, warranting this Court's review to correct

the misapplication and ensure RICO's applicability to complex conspiracies in the digital context.

B. New Evidence Bolsters the Plausibility of a RICO Enterprise

The new evidence emerging after the district court's dismissal—the Twitter Files, Zuckerberg's letter, and the House Judiciary Committee's report—bolsters the plausibility of Petitioners' RICO enterprise allegations, further highlighting the Ninth Circuit's error in dismissing the claims. The Twitter Files reveal extensive government-platform coordination, including FBI requests to suppress the 2020 Hunter Biden laptop story and White House pressure to remove vaccine-related content, demonstrating a pattern of external influence on content moderation decisions (2-ER-115–118; DktEntry: 15.5, at 925). Zuckerberg's letter admits Meta's compliance with White House requests to censor accurate COVID-19 content, driven by regulatory fears, supporting Petitioners' claim that Meta's actions were part of a coordinated enterprise rather than independent editorial decisions (2-ER-187–196). The House Judiciary Committee's report documents a "Censorship-Industrial Complex" involving government agencies and platforms, with specific instances of content suppression during the 2020 and 2022 elections (DktEntry: 50.1, *Murthy*, 603 U.S. at 40–41). This evidence, unavailable at the time of the FAC's filing, strengthens the allegations of a structured enterprise with a common purpose of censoring conservative speech, including Loomer's campaign communications (DktEntry: 15.5, at 925–928).

This ruling was erroneous, as the new evidence directly addresses the Ninth Circuit's concerns about the enterprise's structure and purpose, providing specific instances of coordination among Respondents and other actors (2-ER-115–118, 187–196, 208–209). The longevity of the enterprise is further evidenced by its actions spanning 2019 to 2022, including the sustained censorship of Loomer's campaigns (3-ER-570, 574–577). By dismissing the SAC's amendments as futile, the Ninth Circuit failed to credit this new evidence, which enhances the plausibility of the RICO claims and underscores the need for this Court's review to ensure that plaintiffs can incorporate post-filing evidence in dynamic cases involving ongoing conspiracies.

C. Importance of RICO as a Tool to Address Coordinated Censorship Conspiracies

RICO was enacted to combat organized, systemic misconduct, particularly conspiracies that evade traditional legal remedies due to their complexity and coordination. *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 498–99 (1985). The alleged "Community Media Enterprise" exemplifies such misconduct, involving major corporations (Meta, X Corp., P&G), government officials, and other entities (Google, YouTube, Instagram) allegedly working together to suppress conservative speech and influence elections (3-ER-580; DktEntry: 15.5, at 844). The Ninth Circuit's restrictive application of *Boyle* undermines RICO's purpose by imposing pleading requirements that prevent plaintiffs from challenging sophisticated conspiracies in the digital age, where social media platforms wield unprecedented control over political discourse (DktEntry: 15.5, at 841–843, 912).

Social media platforms serve as the modern public square, and their ability to suppress candidates' communications can skew elections by limiting voter access to diverse viewpoints. *Biden v. Knight First Amendment Inst. at Columbia Univ.*, 593 U.S. ___ (2021) (Thomas, J., concurring). These harms, coupled with new evidence of a coordinated enterprise, underscore the need for RICO as a tool to hold platforms and their collaborators accountable for undermining democratic processes.

The Ninth Circuit's dismissal of the RICO claims, by requiring a level of specificity beyond *Boyle*'s flexible standard, sets a dangerous precedent that could insulate powerful actors from liability for coordinated misconduct. This Court's precedent in *H.J. Inc.* and *Sedima* emphasizes RICO's broad remedial purpose, which is frustrated when courts impose overly stringent pleading requirements. 492 U.S. at 249; 473 U.S. at 498–99. Granting certiorari will allow the Court to reaffirm *Boyle*'s lenient enterprise standard, ensuring that RICO remains an effective mechanism for addressing conspiracies that threaten electoral integrity. This review is particularly urgent given the national importance of protecting political discourse in the digital age, where platforms' actions can have far-reaching consequences for democracy.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for a writ of certiorari to address: (1) the Ninth Circuit's misapplication of res judicata, which conflicts with *Whole Woman's Health v. Hellerstedt* and creates a circuit split with the Fifth and Seventh Circuits; (2) the Ninth Circuit's overbroad application of Section 230 immunity, which conflicts with *Dangaard v. Instagram, LLC* and raises significant public policy concerns; and (3) the Ninth Circuit's misapplication of *Boyle v. United States*, which undermines RICO's role in combating coordinated censorship conspiracies. These issues are of paramount national importance, as they implicate the fairness of federal elections and the integrity of public discourse in the digital age. The Court's review will provide critical clarity on these legal questions, ensure accountability for platforms and their collaborators, and safeguard democratic processes.

Respectfully submitted,

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