No. 25-949

In the
Supreme Court of the United States

JOHN DOE 1 AND JOHN DOE 2,
Petitioners,

v.

X CORP., F/K/A TWITTER, INC.,
Respondent.

On Petition for a Writ of Certiorari to the U.S. Court of Appeals for the Ninth Circuit

Amicus Brief of Senator Josh Hawley in Support of Petitioners

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INTEREST OF *AMICUS CURIAE*[1]

As a Member of the U.S. Senate, Chairman of the Senate Judiciary Committee's Subcommittee on Crime and Counterterrorism, and a former state attorney general with a long record of engagement on technology policy, Senator Josh Hawley has a strong interest in upholding Congress's proper purposes regarding Section 230's liability shield. If this Court does not correct errant interpretations

[1] *Amicus* provided timely notice of this brief. No counsel for a party authored any portion of this brief. No person or entity other than the *amicus curiae* signing this brief contributed money to fund the preparation or submission of this brief.

of this law, policymakers will continue to face challenges to exercising their Article I authority to effectively regulate some of the nation's most lucrative interstate commerce.

SUMMARY OF ARGUMENT

Nothing in the text, structure, or history of the Communications Decency Act's Section 230 shields internet platforms that knowingly possess and distribute child pornography. Congress drafted Section 230 to avoid publisher liability without upending distributor liability, which had its own rich common law backdrop. The Good Samaritan carveout in Section 230(c) is narrow and unrelated to any facts in this case. The Ninth Circuit's holding to the contrary represents the most extreme extension yet of Section 230 immunity in the statute's history, and is a perfect vehicle for this Court to rein in the statute's purview to the four corners of its text.

First, after declining to reach the Section 230 issue in previous terms, this Court has created a vacuum on the scope of immunity under Section 230 that has produced disarray in lower courts.

Second, nothing in Section 230 immunizes platforms that have actual, verified knowledge that they are hosting and distributing criminal content—least of all child sexual abuse material. The Ninth Circuit's contrary holding cannot be reconciled with the statute's text, which addresses only "publisher or speaker" liability; with this Court's characterization of platforms in *Twitter, Inc. v. Taamneh*, 598 U.S. 471 (2023); or with Congress's repeated legislative judgments. Congress has specifically imposed liability against digital platforms, including in the Allow States and Victims to Fight Online Sex Trafficking Act (FOSTA) amendments to Section 230 itself. This case also exposes a conceptual contradiction at the heart of platforms' legal

strategy: they cannot simultaneously claim that their content-moderation decisions are protected editorial judgments, *see Moody v. NetChoice, LLC*, 603 U.S. 707 (2024), while also claiming that those same decisions are passive publishing acts immunized by Section 230.

Third, Congress adopted Section 230 to codify the common-law distinction between publishers and distributors, not to create blanket immunity for corporations that knowingly distribute criminal material. Section 230(c)(1) removes strict publisher liability for unknowing hosts; it does not eliminate distributor liability for platforms with actual knowledge. In fact, by interpreting the "publisher or speaker" provision of subsection (c)(1) as a blanket immunity clause, courts have rendered Congress's language in subsection (c)(2) superfluous. In reality, Section 230(c)'s heading—"Protection for 'Good Samaritan' Blocking and Screening of Offensive Material"—confirms that Congress designed the statute to encourage platforms to remove harmful content, not to immunize platforms that deliberately refuse to do so.

Fourth, child sexual abuse material continues to proliferate online, to the tune of tens of millions of illegal images. Without curtailing the excesses of lower courts, victims will be effectively left without recourse that Congress has provided under FOSTA.

ARGUMENT

This case is an ideal vehicle for this Court to clarify the scope of a statute that has grown larger than its own terms. In 1996, Congress passed 47 U.S.C. § 230 ("Section 230") for a specific purpose: to help the nascent internet grow and thrive without being demolished by litigation. As websites like online message boards started hosting user-generated speech, courts began treating those sites as the publishers

of their users' speech if they engaged in any content moderation at all. *See Stratton Oakmont, Inc.* v. *Prodigy Servs. Co.*, No. 31063/94, 1995 WL 323710 at *4 (N.Y. Sup. Ct. May 24, 1995). That early doctrine effectively punished website owners for moderating offensive content in any way. *See* William E. Buehlow III, *Re-Establishing Distributor Liability on the Internet: Recognizing the Applicability of Traditional Defamation Law to Section 230 of the Communications Decency Act of 1996*, 116 W. Va. L. Rev. 313, 332 (2013) (tracing the implications of the *Stratton Oakmont* ruling). If the internet was going to continue to develop, Congress needed to clarify that websites passively hosting user-generated content wouldn't be buried in personal-injury lawsuits.

Section 230 was the congressional solution. In relevant part, that statute 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). So, for instance, when a user posts comments to social media, the platform will not be treated as the publisher of the speech—meaning that even if the speech is defamatory or otherwise unlawful, the platform is not automatically liable.

In the years since, interactive computer service providers have argued for an expansive construction of Section 230. In their view, Section 230 provides a blank check for any content-management decisions platforms make, extending even to content that their platforms affirmatively recommend. *See, e.g.*, *Force* v. *Facebook, Inc.*, 934 F.3d 53 (2d Cir. 2019) (extending Section 230 immunity to protect algorithmic recommendations). The Ninth Circuit now goes one step further, applying this sweeping immunity to

platforms' decisions to *decline* moderation, even in the most extreme cases of confirmed child pornography.

But the plain text of Section 230, along with its governing logic, says nothing about a catch-all liability shield of this magnitude. Rather, Section 230 states only that interactive computer service providers will not be treated as speakers or publishers of other users' speech. Treating Section 230 as a totalizing shield collapses an important distinction: cases where internet platforms *distribute*, but do not *publish*, content that they know or should have known is illegal. The Ninth Circuit's decision wrongly engulfed these distinctions.

I. In the absence of clarity from this Court, lower courts are scattered in attempts to define the scope of immunity.

Disarray in lower courts has only increased since this Court's decision in *Moody v. NetChoice*, LLC, 144 S. Ct. 2383 (2024). There, this Court examined the First Amendment dimensions of state laws regulating content moderation but did not address the scope of Section 230 immunity. The decision's characterization of content moderation as an exercise of editorial discretion has complicated, rather than clarified, the immunity analysis. If a platform's decisions about what content to retain or remove constitute protected editorial judgment, lower courts struggle to determine whether Section 230 immunizes those same decisions even when the platform has actual knowledge that the content depicts the sexual abuse of a child. *Moody* supplied a First Amendment vocabulary for describing platform conduct but offered no limiting principle for statutory immunity.

This is not the first time the Court has left that question unanswered. In *Gonzalez v. Google,* 598 U.S. 617

(2023), the Court granted *certiorari* to determine whether Section 230 immunized algorithmic recommendations of terrorist content, then vacated the decision below without reaching the merits. Together, *Moody* and *Gonzalez* represent two consecutive terms in which this Court had the opportunity to define the outer boundaries of Section 230 immunity and declined to do so. The consequence has been predictable: lower courts have been left to construct those boundaries on their own, applying a statute enacted in 1996 to the modern internet with varied results, lacking guidance on the most basic question of whether "publisher" immunity has any limiting principle at all.

In this Court's silence on the scope of publisher or speaker liability in subsection (c)(1), lower courts find it "hard to say" when speech is "properly attributable to the interactive computer service on which it is posted." *NetChoice v. Griffin*, No. 5:25-CV-5140, 2025 WL 3634088, at *14 (W.D. Ark. Dec. 15, 2025).

Most consequentially, the Ninth Circuit's decision in this case stands in tension with the Eleventh Circuit on whether actual knowledge of sex trafficking on a platform's servers is sufficient to overcome Section 230 immunity under the FOSTA amendments, or whether a plaintiff must additionally show that the platform engaged in some affirmative act beyond knowing retention. According to the Ninth Circuit, the FOSTA exception requires the platform's "own conduct" to constitute an independent violation of § 1591, meaning "affirmative conduct" beyond merely "turning a blind eye to illegal revenue-generating content." *Doe 1 v. Twitter, Inc.*, 148 F.4th 635, 644 (9th Cir. 2025). But the Eleventh Circuit has alluded to a different standard, requiring only that defendant platforms "had actual knowledge of . . . the underlying incident," without imposing an additional affirmative conduct requirement. *M.H.*

On behalf of C.H. v. Omegle.com LLC, 122 F.4th 1266, 1270 (11th Cir. 2024).

The Ninth Circuit itself acknowledged this tension, describing the Eleventh Circuit's analysis as addressing "a slightly different question." *Doe 1*, 148 F.4th at 643 n.3. But that undefined distinction offers no clarity to other courts. Congress did not strip Section 230 immunity for sex-trafficking claims only to have it reimposed through a judicially created affirmative-conduct requirement that appears nowhere in the statutory text. To resolve the disarray, this is an "appropriate case" to "address the proper scope of immunity under § 230." *Doe v. Facebook, Inc.*, 142 S. Ct. 1087, 1089 (2022) (mem.) (Thomas, J., respecting the denial of certiorari).

II. Congress has never protected platforms that knowingly publish or distribute child pornography.

This case presents an unprecedented factual record, far from anything contemplated by Congress during passage of the Communications Decency Act. Granting *certiorari* would provide this Court with an ideal opportunity to clarify the limits of Section 230 immunity. No recorded Section 230 case has involved a platform that (1) received a direct report identifying minor victims by name, (2) required the victim himself to submit government-issued identification, (3) had human agents for the platform review the content at issue, (4) confirmed that the subjects were minors, and (5) affirmatively decided to leave the illegal content online.

The record, in other words, does not present a case of passive or unwitting hosting. It presents a case of knowing, verified, and deliberate retention of criminal contraband—after human review, after confirmation that the subjects were minors, and after an affirmative decision to leave the

material available for public consumption. The question is whether Section 230(c)(1) immunizes that conduct.

The Ninth Circuit held that it does. In the court's view, Section 230 immunized all of Twitter's conduct because the decision to retain the material was a "quintessential publishing activity." *Doe 1 v. Twitter, Inc.*, 148 F.4th 635, 643 (9th Cir. 2025). That holding cannot be sustained. It is irreconcilable with the statute's text, with Congress's companion enactments addressing child sexual exploitation, with the conceptual framework that platforms themselves have advanced in other litigation, and with how this Court has characterized platform conduct.

A. Section 230 immunity for knowing criminal conduct would effectively nullify federal private rights of action for crimes enabled by interactive computer services.

The Ninth Circuit's blanket rule immunizing any refusal to take down illegal content would effectively nullify other statutes undergirding federal child sexual abuse protections. Congress has enacted a comprehensive framework to combat the sexual exploitation of children online. 18 U.S.C. § 2252A criminalizes the knowing possession and distribution of child pornography, including by means of a computer. Section 2255 authorizes civil remedies for victims of such offenses, permitting recovery of actual damages, attorneys' fees, and other relief. 18 U.S.C. § 2255. Sections 1591 and 1595 criminalize sex trafficking and authorize victims to pursue civil remedies against those who knowingly benefit from participation in a venture that they know involves trafficking. 18 U.S.C. §§ 1591, 1595.

Congress has also acted specifically to ensure that Section 230 does not override these protections. Subsection (e)(1) provides that "[n]othing in this section shall be

construed to impair the enforcement of" federal criminal law, including laws "relating to sexual exploitation of children." 47 U.S.C. § 230(e)(1). And in 2018, Congress enacted FOSTA, Pub. L. No. 115-164, 132 Stat. 1253, adding Section 230(e)(5), which confirms that Section 230 does not "impair or limit" civil actions under 18 U.S.C. § 1595 where the underlying conduct violates 18 U.S.C. § 1591.

The Ninth Circuit's holding effectively nullifies all these provisions as applied to platforms. If a platform with actual, verified knowledge of child pornography on its servers is nevertheless "perforce immune" under Section 230, then the civil remedies Congress codified in § 2255 and § 1595 are unavailable in the very circumstances Congress designed them to address. *Doe 1*, 148 F.4th at 642. A victim of child sexual exploitation who identifies the platform hosting the material, reports it, submits his own identification to prove his claims, and still cannot obtain relief has been left without the remedy Congress provided him. That puts Section 230 "at war" with itself and with the broader federal code, and flies in the face of courts' "duty to interpret Congress's statutes as a harmonious whole." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 502 (2018).

Sidestepping the fact that Section 230(c)(2) only grants immunity for actions that "restrict access" to—*i.e.*, take down—inappropriate content, the Ninth Circuit effectively immunized interactive computer services from even broader claims of civil liability for knowing criminal conduct that Congress legislated to prevent. In fact, the Ninth Circuit's decision as to Count 2 (knowingly benefiting from a sex-trafficking venture) subverted an explicit congressional *exception* to immunity for the very statute that enabled the private right of action. *See Doe 1*, 148 F.4th at 643-44.

Plaintiffs plausibly alleged, and the Ninth Circuit did not question, that Twitter reviewed the videos at issue, knew that the videos contained child pornography, and nonetheless kept the videos on its platform. As such, there is at least a question of fact as to whether Twitter knew that keeping the content online was facilitating a sex-trafficking venture. *See generally Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." (cleaned up and citation omitted)).

The canon of harmonization requires a reading of Section 230 that preserves the operation of these companion statutes. Where two federal provisions appear to conflict, it is this Court's "duty to interpret Congress's statutes as a harmonious whole rather than at war with one another." *Epic Sys. Corp.*, 584 U.S. at 502. Section 230(c)(1) can be given full effect without nullifying §§ 2252A, 2255, 1591, and 1595. Section 230 provides that platforms will not be treated as publishers or speakers of user content, thus eliminating strict liability for unknowing hosts, while leaving intact the *knowledge-based* liability that Congress enacted in its child-exploitation and trafficking statutes. The Ninth Circuit's reading, by contrast, treats Section 230 as an absolute bar on all civil claims against platforms, regardless of the platform's knowledge—a reading that can be maintained only by judicially vetoing § 230(e)(1) and the FOSTA amendments altogether.

B. Platforms cannot simultaneously claim editorial discretion under the First Amendment and passive-conduit status under Section 230.

The Ninth Circuit's holding also exposes a conceptual contradiction in the legal positions that major internet and

social media platforms have adopted before this Court. Such platforms have a well-trodden history of demanding First Amendment protection for so-called expressive, editorial judgments. *E.g.*, Petition for Writ of Certiorari at 13, *NetChoice, LLC v. Paxton*, 2023 WL 8437869 (No. 22-555) ("[T]he First Amendment protects private parties' editorial choices to choose whether and how to disseminate speech," which "applies to social media websites, which both publish and disseminate speech."). But to find haven in Section 230's "Good Samaritan" immunity, they have also argued that their platforms act as mere passive hosts of user expression. *E.g.*, *Doe ex rel. Roe v. Snap, Inc.*, 144 S. Ct. 2493, 2494 (2024) (Thomas, J., dissenting from the denial of certiorari) ("Platforms claim that since they are *not* speakers under §230, they cannot be subject to any suit implicating users' content, even if the suit revolves around the platform's alleged misconduct." (emphasis in original)).

These platforms cannot have their cake and eat it too. They are either publishers of speech or passive conduits for users' speech—but they've conceded time and again that they cannot be neither; and they surely aren't both.

Indeed, the platforms successfully argued before this Court that their content-moderation decisions were "expressive" choices constituting the exercise of protected "editorial control." *Moody*, 603 U.S. at 738. Justice Kagan's majority opinion accepted this characterization: "The individual messages may originate with third parties, but the larger offering is *the platform's*. . . . And in the aggregate they give the feed a particular *expressive* quality." *Id.* (emphases added). Yet in this case, Twitter seeks blanket immunity under Section 230 on the theory that its decision to keep child pornography on its platform was a "quintessential publishing activity" entitled to automatic statutory protection. 148 F.4th at 643. The tides have apparently

turned, and Twitter's editorial decision making is no longer expressive. Here and now, the platform was merely monitoring and disseminating third-party content, Twitter claims.

It is, of course, in the platforms' interest to maintain this contradiction. Equivocating on their role in "publication" allows the platforms to invoke Section 230 to shield their behavior from private suits while simultaneously invoking the First Amendment to shield their behavior from nettlesome state laws. *See Snap, Inc.*, 144 S. Ct. at 2494 (Thomas, J., dissenting from the denial of certiorari) ("In the platforms' world, they are fully responsible for their websites when it results in constitutional protections, but the moment that responsibility could lead to liability, they can disclaim any obligations and enjoy greater protections from suit than nearly any other industry.").

These positions are logically incompatible. If a platform's decision to retain content after human review is an exercise of editorial control sufficient to invoke the First Amendment, it cannot simultaneously be a passive publishing act that automatically triggers blanket Section 230 immunity. The platform must choose: either its content-moderation decisions are active, editorial, and expressive—in which case it is exercising *judgment*, not passively distributing—or they are passive, automatic, and non-expressive—in which case it cannot invoke the First Amendment to resist regulation. The Court should not permit platforms to toggle between these irreconcilable positions depending on which liability they wish to avoid. And until the Court reconciles this incompatibility, platforms will continue to use Section 230 "as a get-out-of-jail free card." *Snap, Inc.*, 144 S. Ct. at 2494 (Thomas, J., dissenting from the denial of certiorari).

C. In the vacuum of this Court's refusal to weigh in, lower courts have distorted Section 230's original meaning over time, rendering subsection (c)(2) surplusage.

Section 230(c)—titled the "Protection for *'Good Samaritan' blocking and screening* of offensive material"—has two parts, but courts have read subsection (c)(1)'s definitional statement so broadly as to read the operative immunity provision in Section 230(c)(2) out of existence. *See Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, 141 S. Ct. 13, 16-17 (2020) (Thomas, J., respecting the denial of certiorari). Subsection (c)(2) defines the outer bounds of the immunity conferred by Section 230.

Put plainly, subsection (c)(2) protects interactive computer services against claims that they took down too much content they deemed inappropriate. *See* 47 U.S.C. § 230(c)(2) ("restrict access"). And critically, the statute confers immunity for civil liability to "Good Samaritan" providers only when those takedown decisions are made "in good faith." *Id.*; *see generally infra* Section III(c). Thus, any immunity that subsection (c)(1) confers on interactive computer services must be read in harmony with the immunity conferred by subsection (c)(2). Failing to do so renders subsection (c)(2) surplusage and risks vitiating a core purpose of Section 230: the protection of children.

When Congress enacted the Communications Decency Act, Congress, led by Senator Exon of Nebraska, drafted it with a "fundamental purpose … to provide much-needed protection for children." 141 CONG. REC. S8088 (daily ed. June 9, 1995) (statement of Senator Exon); *see also* Gregory M. Dickinson, *Section 230: A Juridical History*, 28 STAN. TECH. L. REV. 1, 13 (2024). And specifically, the prevention of "erotic" pictures of "children" from circulating online was

an explicit priority for the legislation. 141 CONG. REC. S8089 (daily ed. June 9, 1995) (statement of Senator Exon).

But like so many courts, the Ninth Circuit here has read Section 230(c)(1) so broadly as to render "any activity that can be boiled down to deciding whether to exclude material that third parties seek to post online . . . perforce immune under section 230." *Doe 1*, 148 F.4th at 643 (quoting *Fair Hous. Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157 (9th Cir. 2008)). In doing so, the Ninth Circuit fabricates a strict *non*-liability rule of subsection (c)(1) for a failure to remove *known* criminal content it voluntarily reviewed after repeated requests for removal.

Tellingly, neither the Ninth Circuit nor the district court cites subsection (c)(2) even once—apparently deeming the express congressional mandate to limit civil immunity to actions to "restrict access" irrelevant. *See* 148 F.4th 635; *Doe v. Twitter, Inc.*, No. 21-CV-00485-JCS, 2023 WL 8568911, at *2 (N.D. Cal. Dec. 11, 2023). That's not how this Court reads statutes. Congress's words here "should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Corley v. United States*, 556 U.S. 303, 314 (2009) (cleaned up and citation omitted). Restoring full force to the text of Section 230(c)(2) would require reining in the Ninth Circuit's decision to ignore it.

D. No court has used Section 230 to immunize the type of actual knowledge present here.

The Ninth Circuit's holding is not only textually unsupported, it is without precedent. No court—including this one—has applied Section 230 to immunize a platform with actual knowledge of child sexual abuse material.

When this Court declined to reach the Section 230 issue in *Gonzalez*, 598 U.S. 617, the platform's knowledge was constructive at best. It derived from the algorithmic processing of ISIS propaganda—a context in which the platform's awareness of the specific content could only be imputed from the operation of its recommendation systems. Similarly, in *Force v. Facebook, Inc.*, 934 F.3d 53 (2d Cir. 2019), and *Doe v. Facebook, Inc.*, 142 S. Ct. 1087 (2022) (mem.), the platforms' knowledge had not been established through the platforms' own internal verification processes.

Here, by contrast, Twitter's knowledge was not constructive or inferred. It was actual, verified, and the product of a deliberate internal review process. Twitter required the victim to submit identification. Twitter's own agents reviewed the explicit videos. They confirmed that the subjects depicted were minors. And Twitter decided, in a written communication, that it would take "no action." This is not a case about a platform that failed to detect unlawful content amid billions of posts. It is a case about a platform that detected, verified, and then chose to retain criminal content. No past Section 230 case presented such stark facts.

This Court's analysis in *Twitter, Inc. v. Taamneh* reinforces the point. 598 U.S. 471 (2023). In *Taamneh*, the Court rejected aiding-and-abetting liability against social-media platforms for hosting ISIS content, in part because the plaintiffs had not alleged that the platforms "consciously and culpably" chose to keep the specific terrorist content at issue online. *Id.* at 497. The Court emphasized that the platforms' algorithms "appear agnostic as to the nature of the content," and that the relationship between the platforms and ISIS was "highly attenuated." *Id.* at 499-500.

Taamneh's logic implies that where a platform *does* have specific knowledge and *does* make a conscious decision to retain criminal content, the analysis changes. This case presents exactly those facts. Twitter did not unknowingly host child pornography through an agnostic algorithm. Its human agents reviewed the material, confirmed the subjects were minors, and affirmatively decided to take "no action." As Justice Thomas has observed, the courts have extended Section 230 far beyond anything that plausibly follows from the text. *See Snap*, 144 S. Ct. at 2494 (Thomas, J., dissenting from the denial of certiorari). This case presents the strongest occasion to correct that error.

Moreover, because this case addresses a degree of knowledge not contemplated by previous decisions, it does not implicate the policy concerns motivating those decisions. Many lower courts have focused as much attention on mitigating policy concerns as they have on statutory interpretation, worrying that imposing liability on platforms for user-generated content would impose "an impossible burden in the Internet context." *Zeran v. America Online, Inc.*, 129 F.3d 327 (4th Cir. 1997).

But Petitioners do not ask this Court to impose a duty to monitor. They do not seek to hold Twitter liable for content it never reviewed, or for content it failed to detect amid the volume of material posted to its platform. They merely ask the Court to hold that a platform cannot claim blanket statutory immunity after it has *already monitored*, *already verified*, and *already decided* to retain content it knows to be criminal. The distinction between a duty to monitor and accountability for knowing retention of child sexual abuse material is not a fine one. It is not for the Ninth Circuit to grant platforms greater protection than the legislature has chosen to provide.

III. Congress adopted Section 230 to codify the distinction between distributors and publishers, not to create a blanket shield for corporations that knowingly distribute child pornography.

Granting *certiorari* and reversing the Ninth Circuit's decision in this case would restore the original meaning of Section 230. Subsection (c)(1) codified the common-law distinction between publishers and distributors. It removed publisher-level strict liability so that platforms would not be deterred from moderating content. It did not remove distributor liability—that is, liability predicated on actual knowledge—because distributor liability was the mechanism by which the common law held intermediaries accountable for content they knew to be unlawful. The Ninth Circuit's contrary reading rests on *Zeran v. America Online, Inc.*, 129 F.3d 327 (4th Cir. 1997), which collapsed the publisher/distributor distinction by treating all dissemination liability as "publisher" liability. That reading was wrong when it was decided and this Court should not amplify it.

A. At common law, publisher liability and distributor liability were distinct doctrines with different knowledge requirements.

At common law, publishers and distributors were subject to different standards of liability, reflecting different degrees of involvement with the content at issue. Publishers, those who originate or select content for publication, were strictly liable for the harmful material they disseminated. A newspaper that printed a defamatory letter, for example, was liable even if it had no knowledge of the letter's falsity. *See* W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 113 (5th ed. 1984).

Distributors—bookstores, libraries, newsstands, and similar intermediaries—occupied a different position. Because they handled large volumes of material without the capacity to review each item, the common law imposed a lesser standard: a distributor was liable only if it knew or had reason to know that the material was unlawful. *See Smith v. California*, 361 U.S. 147, 153 (1959); *see also* Restatement (Second) of Torts §§ 578, 581 (Am. L. Inst. 1977). The distinction was not a technicality. Its rationale was both practical and moral.

Holding a bookstore strictly liable for every defamatory passage in every volume on its shelves would impose an impossible burden and restrict the flow of information. But a bookstore that learns that a particular volume contains defamatory content, and chooses to keep selling it, stands in a different position. The common law recognized that knowledge transforms the nature of an intermediary's responsibility. That principle is no less applicable to internet platforms than it was to their brick-and-mortar predecessors.

B. Section 230(c)(1) removed publisher liability; it did not abolish distributor liability.

The text of subsection (c)(1) 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." 47 U.S.C. § 230(c)(1) (emphasis added). The provision says nothing about "distributors." Had Congress intended to foreclose distributor liability, it could have written "publisher, speaker, or distributor," or used the broader formulation found in subsection (c)(2) ("shall be held liable on account of"). It did neither.

Three canons of construction confirm this reading.

First, the canon against surplusage. If "publisher" encompasses all disseminators, including distributors, then the word "speaker" in the same provision is superfluous—a result this Court avoids. *See Hibbs v. Winn*, 542 U.S. 88, 101 (2004) ("A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant."). The most natural reading is that "publisher" and "speaker" refer to the two categories of persons who were strictly liable at common law—publishers and the original speakers of defamatory content—while distributors, who were liable only upon knowledge, occupy a separate category that subsection (c)(1) does not address.

Second, the common law background canon. Statutes in derogation of common law are construed narrowly, in favor of retaining established principles. *Isbrandtsen Co. v. Johnson*, 343 U.S. 779, 783 (1952) ("Statutes which invade the common law . . . are to be read with a presumption favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident."). The common law distinction between publisher and distributor liability was a well-established principle at the time Section 230 was enacted. A narrow construction of subsection (c)(1), removing publisher liability but preserving distributor liability, is more consistent with this canon than the expansive reading adopted by the Ninth Circuit.

Third, the meaningful variation canon. Subsection (c)(2) uses broader immunity language than (c)(1): it provides that no provider "shall be held liable on account of" good-faith content-moderation actions. The phrase "held liable on account of" contemplates a materially broader set of content than "treated as the publisher or speaker." This difference in language should be presumed meaningful. *See*

Russello v. United States, 464 U.S. 16, 23 (1983) (stressing the significance of when "Congress includes particular language in one section of a statute but omits it in another section of the same Act"); *see also Malwarebytes, Inc.*, 141 S. Ct. at 18 (Thomas, J., respecting the denial of certiorari) (observing that the face value of the statute offers a "modest understanding" that is "a far cry from what has prevailed in court").

The Fourth Circuit's contrary holding in *Zeran v. America Online, Inc.*, collapsed the publisher/distributor distinction by holding that distributor liability is "merely a subset, or a species, of publisher liability." 129 F.3d at 332. That conclusion was driven by policy concerns about the burden that a notice-and-takedown regime would impose on early-internet platforms—not by the statutory text. *See id.* at 333. Whatever force those concerns had in 1997, they have none in a case where the platform already received notice, already investigated, and already decided to take no action. *Zeran*'s reasoning does not extend to these facts, and the Court should decline to extend it further.

C. Congress underscored the limited scope of Section 230 by labeling it a "Good Samaritan" provision.

Section 230(c) is titled "Protection for 'Good Samaritan' Blocking and Screening of Offensive Material." Under this Court's precedents, a section heading is a "telling cue" as to the provision's scope. *Yates v. United States*, 574 U.S. 528, 539-40 (2015). The heading signals Congress's design: Section 230 protects platforms that affirmatively act to block and screen harmful material—*i.e.*, Good Samaritans who *intervene*. Platforms that review harmful material, identify it as criminal, and decide to leave it in place are

the opposite. Twitter's conduct in this case is the antithesis of Good Samaritan behavior.

Good Samaritan laws, in every jurisdiction that has adopted them, protect those who attempt to render aid. They do not protect those who distribute and profit from illicit content. The same logic applies to Section 230(c). Congress created the provision so that platforms would be free to "restrict access to" material without fear of publisher liability. 47 U.S.C. § 230(c)(2)(A), (c)(2)(B); *see Stratton Oakmont, Inc.*, 1995 WL 323710 (N.Y. Sup. Ct. 1995) (the decision that prompted Section 230, holding that a platform's efforts to moderate content made it a "publisher" subject to strict liability). That rationale has no application to a platform that has already reviewed criminal content and affirmatively decided to keep it online.

IV. Millions of images of child sexual abuse material will continue proliferating unchecked online if the Court does not clarify Section 230's scope.

The Ninth Circuit's interpretation turns the Good Samaritan provision on its head. Under its holding, the more a platform knows about criminal content on its servers—and the more deliberately it chooses to retain that content—the more certain its immunity becomes, because each decision to retain content is a "publishing activity" protected by subsection (c)(1). That reading converts a statute designed to encourage the removal of harmful material into a statute that immunizes the deliberate retention of criminal content. It is contrary to the text, structure, and purpose of the statute Congress enacted.

By misconstruing Congress's guardrails in Section 230, lower courts have smashed the floodgates that could limit child sexual abuse material online. When courts first waded into liability issues animating the Communications

Decency Act in 1996, the National Center for Missing and Exploited Children (NCMEC) hadn't even created its Cyber Tipline yet. *See Stratton Oakmont, Inc.*, 1995 WL 323710, at *4; *The Missing and Exploited Children's (MEC) Program: Background and Policies*, CONG. RSCH. SERV. (Jul. 22, 2019), https://www.congress.gov/crs_external_products/RL/PDF/RL34050/RL34050.45.pdf. As the internet at that time was in its nascent beginnings, so too was the online circulation of child sexual abuse material and related reporting mechanisms. NCMEC's Cyber Tipline would go on to become the nation's preeminent source for reports of suspected child sexual exploitation from the public and electronic service providers.

In 2024, NCMEC's Cyber Tipline received more than 20 million reports from electronic service providers containing more than 62 million images, videos, and other files related to child sexual exploitation. National Center for Missing & Exploited Children, *2024 CyberTipline Report* (2025), https://www.missingkids.org/content/dam/missingkids/pdfs/cybertiplinedata2024/2024-CyberTipline-Report.pdf. An overwhelming majority of those 20-plus million reports came from the very platforms that regularly invoke Section 230's haven. National Center for Missing & Exploited Children, *2024 CyberTipline Reports by Electronic Service Providers (ESPs)* (2025), https://www.missingkids.org/content/dam/missingkids/pdfs/cybertiplinedata2024/2024-reports-by-esp.pdf.

If the Court does not grant *certiorari* to course-correct the scope of Section 230, these figures will undoubtedly rise. This Court has recognized as much. *Snap*, 144 S. Ct. at 2494 (Thomas, J., dissenting from the denial of certiorari); *see also Doe v. Facebook, Inc.*, 142 S. Ct. at 1088 (Thomas, J., respecting the denial of certiorari) (recognizing that, "[a]t the very least, before we close the door on

such serious charges, 'we should be certain that is what the law demands.'" (quoting *Malwarebytes, Inc.*, 141 S. Ct. at 18 (Thomas, J., respecting the denial of certiorari))).

As this case unfortunately illustrates, these platforms are a hotbed for child sexual abuse material. Twitter, for example, reported 686,176 instances of suspected child sexual exploitation in 2024. National Center for Missing & Exploited Children, *2024 CyberTipline Reports by Electronic Service Providers (ESPs)* (2025), https://www.missingkids.org/content/dam/missingkids/pdfs/cybertiplinedata2024/2024-reports-by-esp.pdf. That figure is more than *fifteen-fold* Twitter's 2019 reporting (45,726). National Center for Missing & Exploited Children, *2019 CyberTipline Reports by Electronic Service Providers (ESPs)* (2020), https://www.missingkids.org/content/dam/missingkids/pdfs/2019-reports-by-esp.pdf.

Time is of the essence for exploited children all over the world. Fortunately, Section 230 itself provides the remedy against violative platforms—if this Court summons the will to say so.

CONCLUSION

The decision below should be reversed.

Respectfully submitted,

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