No. 21-459

In the Supreme Court of the United States

JANE DOE, PETITIONER

v.

FACEBOOK, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

BRIEF FOR THE STATE OF TEXAS AND 24 OTHER STATES AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE

Amici curiae are the States of Texas, Alabama, Alaska, Arizona, Arkansas, Florida, Georgia, Indiana, Kansas, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Missouri, Montana, Nebraska, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, and Virginia.*

Child sex trafficking is surely one of history's most heinous crimes. Petitioner alleges that she was trafficked through the use of Facebook's online platform. She further alleges that Facebook failed to warn her of the dangers of human trafficking because its business model depends on maximizing contacts between users—including contacts with minors. In response, Facebook asserted that section 230 of the federal Communications Decency Act ("CDA") provides it with absolute immunity from Petitioner's suit.

Amici States have an interest in protecting their citizens from human trafficking and enabling survivors to obtain redress for the egregious harms they suffer. Combating trafficking is a priority for attorneys general around the nation. Amici States also have an interest in enforcing their laws unless they are clearly preempted by federal law. Because Facebook has proposed an overbroad interpretation of section 230 that would improperly preempt state law and deny compensation to trafficking victims, this proceeding implicates those interests.

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* No counsel for any party authored this brief, in whole or in part. No person or entity other than amici contributed monetarily to its preparation or submission. On October 15, 2021, counsel of record for all parties received notice of amici's intention to file this brief.

SUMMARY OF ARGUMENT

I. Section 230 prevents an online platform operator from being treated as the speaker or publisher of third-party content. 47 U.S.C. § 230(c)(1). It protects a platform operator that makes a good-faith effort to restrict access to objectionable content. *Id.* § 230(c)(2)(A). And it preempts only inconsistent state law. *Id.* § 230(e)(3).

Petitioner alleges that Facebook failed to warn her of known dangers of using its platforms. She further alleges that Facebook benefits from facilitating the trafficking of minors. None of her claims relies on treating Facebook as the speaker of any third party's words. Section 230 is therefore inapplicable here. Petitioner's claims seek to hold Facebook accountable for its own allegedly wrongful acts and omissions, not for the speech of others or for Facebook's good-faith attempts to restrict access to objectionable content.

The categorical immunity asserted by Facebook is inconsistent with section 230's plain language, which immunizes platform operators only from claims premised on either third-party speech being attributed to the operator or claims premised on good-faith efforts to restrict access to objectionable content. Failure-to-warn and products-liability claims rely on neither. And the precedent supporting Facebook's position arose out of a defamation context in the early days of the Internet. The Court should provide a faithful interpretation and decline to read additional immunity into the statute.

II. The Court's review here is especially important because the proper interpretation of section 230 is more than an academic exercise. Human trafficking subjects many of the most vulnerable Americans to inhuman treatment. Traffickers often rely on online platforms to

recruit victims or advertise opportunities for exploitation. And section 230 has also been improperly invoked in other contexts to deny plaintiffs the protections guaranteed to them by law.

Reading section 230 in a disciplined way that honors Congress's plain language will not destroy the Internet. Properly interpreted, section 230 provides key protections for online actors without affording them the textually unjustifiable absolute immunity that many platform operators demand. It is possible to combat trafficking and other abuses while ensuring that legitimate online businesses that take good-faith measures to avoid facilitating illegal activity can continue to thrive.

Finally, this is "an appropriate case" for the Court to "consider whether the text of this increasingly important statute aligns with the current state of immunity enjoyed by Internet platforms." *Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, 141 S. Ct. 13, 14 (2020) (Thomas, J., statement respecting the denial of certiorari). This proceeding squarely requires the proper interpretation of section 230, and no vehicle problems counsel against the Court's review.

ARGUMENT

I. Section 230 Does Not Immunize Facebook for Its Own Alleged Wrongdoing.

Section 230 prevents a court from treating a provider of interactive computer services as the publisher or speaker of information provided by another information content provider. 47 U.S.C. § 230(c)(1). And it protects a provider that makes a good-faith effort to restrict access to objectionable content. *Id.* § 230(c)(2)(A). But it does not confer broad immunity on a provider merely because a claim involves third-party content.

Here, Petitioner's claims do not require treating Facebook as the publisher or speaker of information posted by a third party. Instead, Petitioner seeks to hold Facebook responsible for enabling and benefitting from the use of its platforms for sex trafficking and for failing to warn users of the risks of using its platforms. Supreme Court of Texas Mandamus Record ("MR") 17–30, 32–36. That is, Petitioner is not alleging that Facebook is liable for what the *traffickers* said, but for what *Facebook* did or did not do. *See, e.g.*, MR.8 (alleging that Facebook uses proprietary algorithms to connect users with each other), 20 (alleging that "Facebook facilitates human trafficking by identifying potential targets, like Jane Doe, and connecting traffickers with those individuals"), 17 (alleging that "Facebook has permitted sex traffickers unfiltered access to the most vulnerable members of our society while actively blocking parental access to Facebook accounts" and that Facebook provides traffickers "an unrestricted platform"), 32–33 (alleging that Facebook failed to warn Petitioner of the dangers of grooming and recruitment to trafficking and failed to report suspicious messages). Therefore, section 230 provides Facebook no protection.

The precedent on which Facebook relied in state court is conspicuously flawed. It rests on a handful of decisions that deviated from the plain language of section 230 in an effort to protect nascent Internet providers in an era before the scourge of online human trafficking. Those decisions have perversely allowed online businesses to use a statute intended to promote decency and protect children as a shield to evade liability for facilitating rampant abuse. This Court should not follow that path. As a matter of first impression, it should recognize

the effect of nothing more nor less than the statute's plain language.

A. Section 230 does not preempt Petitioner's claims.

1. Section 230 provides limited protection from liability for third-party content and good-faith efforts to screen offensive material.

Entitled "Protection for private blocking and screening of offensive material," section 230 limits the liability of providers of an interactive computer service in targeted ways. Its centerpiece is subsection (c), "Protection for 'Good Samaritan' blocking and screening of offensive material." That subsection provides two key limitations on liability.

First, subsection (c)(1) states that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." To determine whether subsection (c)(1) applies, a court should therefore consider each necessary element of each of the plaintiff's causes of action. If an element requires treating the defendant as the speaker or publisher of third-party content, subsection (c)(1) provides a defense to that action. But if no element requires such treatment, then allowing the cause of action to proceed is consistent with subsection (c)(1) by its own terms. *See Doe v. Internet Brands, Inc.*, 824 F.3d 846, 851 (9th Cir. 2016) (noting that "section 230(c)(1) bars only liability that treats a website as a publisher or speaker of content provided by somebody else"); *J.S. v. Vill. Voice Media Holdings, L.L.C.*, 359 P.3d 714, 719 (Wash. 2015) (Wiggins, J., concurring) ("The plain language of subsection 230(c) permits liability for causes of action that do not treat the

user or Internet service provider (ISP) as a publisher or a speaker."); Mary Graw Leary, *The Indecency and Injustice of Section 230 of the Communications Decency Act*, 41 Harv. J.L. & Pub. Pol'y 553, 590 (2018) (noting that "as long as a plaintiff does not treat the defendant as a publisher or a speaker, he can proceed with a cause of action").

Second, subsection (c)(2)(A) protects a "provider or user of an interactive computer service" from liability "on account of . . . any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be" objectionable. Similarly, subsection (c)(2)(B) limits liability for "any action taken to enable or make available to information content providers or others the technical means to restrict access to material." By their plain language, these provisions protect only the *restriction*, not the dissemination, of content.

Section 230 further provides: "Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." 47 U.S.C. § 230(e)(3). In other words, subsection (e)(3) permits a State to enforce consistent state law while providing immunity from suit and liability for claims that are inconsistent with its provisions.

2. Because Petitioner's claims do not treat Facebook as a speaker or publisher of third-party content or target a restriction of content, section 230 is inapplicable here.

Petitioner brought five claims against Facebook: negligence, gross negligence, negligent undertaking, products liability, and benefitting from human trafficking

under Texas Civil Practice and Remedies Code section 98.002. MR.32–36. The Supreme Court of Texas correctly held that section 230 did not bar Petitioner's statutory claim, *In re Facebook, Inc.*, 625 S.W.3d 80, 96–101 (Tex. 2021) (orig. proceeding), and that claim is not at issue here. But the court erred in concluding that section 230 required dismissal of Petitioner's common-law claims. *Id.* at 93–96. Those claims do not require treating Facebook as a speaker or publisher of content produced by the traffickers or target a restriction of content.

Under Texas law, the elements of negligence are the existence of a legal duty, a breach of that duty, and damages proximately caused by the breach. *Bustamante v. Ponte*, 529 S.W.3d 447, 456 (Tex. 2017). Petitioner's pleadings, taken as true, satisfy these elements. Petitioner alleges that Facebook owed a duty to warn her of known dangers on its platforms, including grooming and recruitment by sex traffickers. MR.32. She further alleges that Facebook breached that duty by, among other things, failing to warn her or implement awareness campaigns calling attention to the dangers of using Facebook's platforms. *Id.* at 32–33. And Petitioner alleges that she was harmed by Facebook's negligence. *Id.* at 33.

None of the elements of negligence requires treating Facebook as a speaker or publisher of content posted by traffickers. Petitioner is not suing Facebook *as the speaker*; she is not alleging that *Facebook* groomed her, recruited her, or trafficked her. Rather, Petitioner seeks to hold Facebook liable for its own speech—or, more specifically, its silence. *See, e.g.*, *id.* (noting "Facebook's failure to publish self-produced warnings"). Moreover, Facebook could fulfill its alleged duty to Petitioner without altering the content of any third-party post.

Section 230(c)(1) does not preclude liability for this failure-to-warn claim.

Nor does Petitioner's negligence claim seek to hold Facebook liable for an "action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be" objectionable or for an "action taken to enable or make available to information content providers or others the technical means to restrict access to" objectionable material. 47 U.S.C. § 230(c)(2). Far from alleging that Facebook improperly *restricted* information, Petitioner alleges that Facebook's business model and habitual practices facilitate trafficking and that Facebook fails to take reasonable actions to protect minors despite being aware that its platforms are used for trafficking. MR.7–26.

Of course, without the third-party content produced by the traffickers, Petitioner would not have sustained the injuries she alleges. But section 230 does not preempt Petitioner's claims merely because third-party content is a "but-for" cause of her injuries. *See Internet Brands*, 824 F.3d at 853 (noting that "the CDA does not provide a general immunity against all claims derived from third-party content").

Similarly, Petitioner's claims for gross negligence and negligent undertaking do not implicate section 230. Gross negligence under Texas law requires "an act or omission involving subjective awareness of an extreme degree of risk, indicating conscious indifference to the rights, safety, or welfare of others." *State v. Shumake*, 199 S.W.3d 279, 287 (Tex. 2006). Petitioner alleges that Facebook's failure to warn was grossly negligent in light of the extreme risk of harm to her. MR.34. And Petitioner's negligent-undertaking claim differs from her negligence claim only in alleging that Facebook

undertook to warn users of illegal conduct on its platforms but failed to exercise reasonable care. *Id.* at 35; *see Torrington Co. v. Stutzman*, 46 S.W.3d 829, 837 (Tex. 2000) (noting that "a duty to use reasonable care may arise when a person undertakes to provide services to another, either gratuitously or for compensation"). Again, these claims rest upon Facebook's own conduct, and they neither treat Facebook as the speaker or publisher of the traffickers' speech nor target Facebook for any restriction of speech. Section 230 therefore has nothing to say about these claims.

Likewise, section 230 does not block Petitioner's products-liability claim. According to Petitioner, Facebook marketed its online platform to minors without providing adequate warnings or instructions regarding the risks of human trafficking. MR.36. Petitioner also alleged that "Facebook misrepresented its product[']s performance and/or safety to government officials and/or agencies." *Id.* This claim seeks to hold Facebook accountable for its own alleged acts and omissions. The claim treats Facebook as the designer and marketer of a dangerously defective product—not as the speaker or publisher of third-party content.

Because Petitioner's claims are not inconsistent with section 230, they are not preempted. *See* 47 U.S.C. § 230(e)(3) ("No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.").

B. Courts have improperly read additional immunity into section 230.

As shown above, the plain language of section 230 renders it inapplicable to Petitioner's claims. Facebook nevertheless argued in state court that section 230 preempts those claims because it offers "broad

immunity" for "all claims stemming from . . . publication of information created by third parties." Brief of Relator at xiv, *In re Facebook, Inc.*, 625 S.W.3d 80 (Tex. 2021) (orig. proceeding) (No. 20-0434), 2020 WL 4722909 (quoting *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008)). And Facebook insisted that "courts have issued hundreds of decisions" supporting its expansive interpretation. *Id.* at 1.

Although "courts have built a mighty fortress protecting platforms from accountability for unlawful activity on their systems," Danielle Keats Citron & Benjamin Wittes, *The Internet Will Not Break: Denying Bad Samaritans § 230 Immunity*, 86 Fordham L. Rev. 401, 406 (2017), that fortress rests on a flawed foundation. The expansive-immunity understanding of section 230 comes from a small number of early decisions that arose in a very different historical and legal context. This proceeding presents the Court with an opportunity to reject lower courts' misleading, erroneous, and atextual analysis. The Court should abide by the statute's text and support the efforts of Congress and the States to combat the horrors of human trafficking.

The Fourth Circuit's decision in *Zeran v. America Online, Inc.*, 129 F.3d 327 (1997), set a false trajectory. *See* Leary, *supra*, at 574 (noting that *Zeran* "began a string of broad interpretations"). *Zeran* was decided in 1997, when courts still needed to explain what the Internet is. 129 F.3d at 328; *see* Leary, *supra*, at 558 ("The Internet of 1996 is unrecognizable today."). The plaintiff sought "to hold AOL liable for defamatory speech initiated by a third party." *Zeran*, 129 F.3d at 330. Rather than adhere to the statute's text and analyze whether the plaintiff's claim required treating AOL as the speaker or publisher of third-party defamatory speech, the *Zeran*

court repeatedly considered section 230's purported "purpose" and the ills the court believed would follow if it ruled in the plaintiff's favor. *See, e.g.*, *id.* at 330 (discussing "[t]he purpose of this statutory immunity"), 331 (discussing "Congress' purpose in providing the § 230 immunity"), 333 (expressing concern over the "practical implications" of liability). The court expanded section 230's plain meaning, stating—without textual support—that the provision "creates a federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service." *Id.* at 330. And it discarded the common-law distinction between "publisher" liability and "distributor" liability, *see id.* at 331–34, a dubious doctrinal shift, *Malwarebytes*, 141 S. Ct. at 15 (Thomas, J., statement respecting the denial of certiorari).

Courts following *Zeran* have "produced an immunity from liability that is far more sweeping than anything the law's words, context, and history support." Citron & Wittes, *supra*, at 408. "[A]lthough § 230 was never intended to create a regime of absolute immunity for defendant websites, a perverse interpretation of the non-sex-trafficking jurisprudence for § 230 has created a regime of de facto absolute immunity from civil liability or enforcement of state sex-trafficking laws." Leary, *supra*, at 557. "Adopting the too-common practice of reading extra immunity into statutes where it does not belong, courts have relied on policy and purpose arguments to grant sweeping protection to Internet platforms." *Malwarebytes*, 141 S. Ct. at 15 (Thomas, J., statement respecting the denial of certiorari) (citation omitted).

As a result, online actors "have been protected from liability even though they republished content knowing it might violate the law, encouraged users to post illegal

content, changed their design and policies for the purpose of enabling illegal activity, or sold dangerous products." Citron & Wittes, *supra*, at 408 (footnotes omitted). For example, in *Jane Doe No. 1 v. Backpage.com, LLC*, victims of sex trafficking alleged "that Backpage, with an eye to maximizing its profits, engaged in a course of conduct designed to facilitate sex traffickers' efforts to advertise their victims on the website." 817 F.3d 12, 16 (1st Cir. 2016). The plaintiffs further alleged that "Backpage's expansion strategy involved the deliberate structuring of its website to facilitate sex trafficking," that "Backpage selectively removed certain postings made in the 'Escorts' section (such as postings made by victim support organizations and law enforcement 'sting' advertisements) and tailored its posting requirements to make sex trafficking easier," and that Backpage removed metadata from uploaded photographs to protect traffickers. *Id.* at 16–17. As a result of being trafficked through Backpage, one plaintiff was allegedly raped over 1,000 times. *Id.* at 17.

Yet the court embraced a "broad construction" of section 230 and "a capacious conception of what it means to treat a website operator as the publisher or speaker of information provided by a third party." *Id.* at 19. The court focused on "but-for" causation—that is, there would have been no harm "but for the content of the postings," *id.* at 20—and held that each decision Backpage made, even if intended to facilitate sex trafficking, was undertaken as a "publisher" and therefore entitled to protection under section 230, *id.* at 20–21.

Courts have strayed so far from the statute's text that they now extend immunity to online platforms even when the plaintiff is not "trying to hold the defendants liable 'as the publisher or speaker' of third-party

content" but only for "the defendant's own misconduct." *Malwarebytes*, 141 S. Ct. at 18 (Thomas, J., statement respecting the denial of certiorari); *see* Citron & Wittes, *supra*, at 413–14 (giving examples of "providers and users whose activities have been immunized or seem likely to enjoy immunity from liability under the broad approach to § 230"). The attorneys general from 44 States, the District of Columbia, and two Territories have pointed out to Congress that courts have interpreted section 230 too broadly and reached "the perverse result" of protecting those who knowingly profit from illegal activity. Letter from Nat'l Ass'n of Att'ys Gen. to Cong. Leaders (May 23, 2019), https://tinyurl.com/naag2019 (all cited websites last visited October 23, 2021).

The Supreme Court of Texas was largely persuaded by what it deemed "[a]bundant judicial precedent" and a "national consensus." *Facebook*, 625 S.W.3d at 90. That is why it held that section 230 barred Petitioner's common-law claims. *Id.* at 93–96. But the court recognized the possibility that "courts have systematically misread section 230." *Id.* at 90. The court discussed "the view recently proffered by Justice Thomas, under which 'the sweeping immunity courts have read into' section 230 should be scaled back or at least reconsidered," *id.* (quoting *Malwarebytes*, 141 S. Ct. at 18 (Thomas, J., statement respecting the denial of certiorari)), and concluded that "Justice Thomas's recent writing lays out a plausible reading of section 230's text," *id.* at 91. Having concluded that there were two "reasonable" interpretations of section 230—a "limited view" and a "broader view"—the court declined to determine "[w]hich reading is superior," noting only that this was "a question the U.S. Supreme Court may soon take up." *Id.*

The state court's reluctance to depart from the path taken by many federal courts in interpreting a federal statute is perhaps understandable. But this Court should read section 230 with fresh eyes, interpret it "in a manner more consistent with its text, context, and history," Citron & Wittes, *supra*, at 415, and hold that it does not shield Facebook from Petitioner's claims.

II. The Court Should Grant Review to Combat Human Trafficking and Other Harmful Online Conduct.

Following the statute's plain text is critical, given the stakes involved in combating child sex trafficking and other forms of online exploitation. Rejecting Facebook's broad, atextual interpretation of its immunity will threaten neither the vibrancy of online discourse nor the viability of providing online services. And no vehicle problems should discourage the Court's review.

A. Fidelity to the statutory text will help combat human trafficking and other pervasive evils.

"[H]uman trafficking has been identified as the fastest growing criminal enterprise in the world." Leary, *supra*, at 555. According to the International Labour Organization, about 40 million people are enslaved throughout the world, a quarter of whom are children. Int'l Labour Org., *Forced Labour, Modern Slavery and Human Trafficking*, https://tinyurl.com/ilopage. And, at any given time, there are about 79,000 victims of youth and minor sex trafficking in Texas alone. Tex. Att'y Gen., *Initiatives*, *Human Trafficking*, https://www.texasattorneygeneral.gov/initiatives/human-trafficking.

Moreover, "[i]t is not surprising that these businesses have migrated to the Internet, because sex trafficking is not only a crime but also a highly lucrative

business." Leary, *supra*, at 571. "Legal online advertising platforms provide traffickers and purchasers a highly convenient forum with limited public exposure." *Id.* at 572. For this reason, "sex trafficking has exploded in large part due to the Internet." *Id.* at 599. And online sex trafficking, especially through social media, has worsened during the COVID-19 pandemic. A 2021 report by the federal government noted that "NGOs reported an increase in traffickers' use of the internet to recruit and advertise victims during the pandemic" and that "NGOs also noted a growing trend of misinformation about human trafficking spreading throughout communities and through social media." U.S. Dep't of State, 2021 Trafficking in Persons Report: United States, https://tinyurl.com/2021ustraffickingreport; *see also* Nicola A. Boothe, *Traffickers' "F"ing Behavior During a Pandemic: Why Pandemic Online Behavior Has Heightened the Urgency to Prevent Traffickers from Finding, Friending and Facilitating the Exploitation of Youth via Social Media*, 22 Geo. J. Gender & L. 533, 554–58 (2021). By straying from the plain language of section 230, courts have unwittingly contributed to the problem by reading into the statute "de facto absolute immunity . . . for the market operators." Leary, *supra*, at 621. Giving force only to the statute's limited and targeted language will help hold online businesses accountable for their complicity in exploiting the most vulnerable Americans.

Nor is human trafficking the only form of harmful online behavior that has enjoyed the protection of an overbroad reading of section 230. *See* Citron & Wittes, *supra*, at 413–14. For example, a federal district court in Virginia recently concluded that section 230 provided "immunity" from the plaintiffs' claims that the

defendants had violated the federal Fair Credit Reporting Act by selling inaccurate or misleading criminal-history reports online and failing to follow statutory requirements. *Henderson v. Source for Pub. Data, L.P.*, No. 3:20-CV-294-HEH, 2021 WL 2003550, at *1–2, *6 (E.D. Va. May 19, 2021). Such reports are a significant nationwide problem. "[A] flawed consumer report can have adverse consequences for both the job-seeking consumer—who loses a conditional offer of employment—and the employer—who rescinds an offer from a potentially valuable and otherwise qualified employee." Noam Weiss, *Combating Inaccuracies in Criminal Background Checks by Giving Meaning to the Fair Credit Reporting Act*, 78 Brook. L. Rev. 271, 273 (2012) (footnotes omitted). Internet background checks pose unique problems for regulators and consumers. *See* Alexander Reicher, *The Background of Our Being: Internet Background Checks in the Hiring Process*, 28 Berkeley Tech. L.J. 115, 132–35 (2013). And according to the National Consumer Law Center, "[a]bout 94% of employers and about 90% of landlords use criminal background checks to evaluate prospective employees and tenants," yet the background-screening industry is plagued by "an industry-wide lack of accountability," "incentives to cut corners," and "common poor practices." Nat'l Consumer L. Ctr., *Broken Records Redux: How Errors by Criminal Background Check Companies Continue to Harm Consumers Seeking Jobs and Housing* (Dec. 9, 2019), https://tinyurl.com/brokenrecordsredux. The plaintiffs' appeal is pending before the Fourth Circuit. *Henderson v. Source for Pub. Data, L.P.*, No. 21-1678 (4th Cir. June 15, 2021).

B. Fidelity to the statutory text will not endanger legitimate online business.

In state court, Facebook suggested that a decision trimming back a broad interpretation of section 230 immunity would "impact[] the ability of the Internet to continue functioning as we know it." Brief of Relator, *supra*, at 12. But "the 'Internet as we know it' is not what we want it to be, particularly when it comes to sex trafficking, pornography, child sex-abuse images, and exploitation." Leary, *supra*, at 554. And "[i]t is clear that, whatever § 230 did for the legitimate digital economy, it also did for the illicit digital economy." *Id.* Although section 230 "has enabled innovation and expression," "its overbroad interpretation has left victims of online abuse with no leverage against site operators whose business models facilitate abuse." Citron & Wittes, *supra*, at 404.

Section 230 "is a kind of sacred cow—an untouchable protection of near-constitutional status," *id.* at 409, but there is reason to doubt whether "courts' sweeping departure from the law's words, context, and purpose has been the net boon for free expression that the law's celebrants imagine," *id.* at 410. Scholars have pointed out that a broad interpretation of section 230 can chill speech by protecting those who use online platforms to threaten and harass others into silence. *Id.* at 411. Interpreting section 230 in a manner consistent with its plain language will still provide robust protections to online platform operators by preventing them from being treated as speakers or publishers of third-party content. *See* 47 U.S.C. § 230(c)(1). Rather than destroying the Internet's free exchange of ideas, a faithful interpretation would foster that freedom by helping to make the Internet a safer place to speak.

Nor would rejecting Facebook's expansive reading of section 230 immunity endanger the legitimate online economy. "Paring back the sweeping immunity courts have read into § 230 would not necessarily render defendants liable for online misconduct. It simply would give plaintiffs a chance to raise their claims in the first place." *Malwarebytes*, 141 S. Ct. at 18 (Thomas, J., statement respecting the denial of certiorari). Plaintiffs, including the one in this proceeding, must still prove their cases. *See id.* Honoring Congress's enacted language "will reduce opportunities for abuses without interfering with the further development of a vibrant internet or unintentionally turning innocent platforms into involuntary insurers for those injured through their sites." Citron & Wittes, *supra*, at 423.

The Internet "as we know it," Brief of Relator, *supra*, at 12, provides virtually unlimited access to knowledge, entertainment, and social interaction. But it is also a medium for some of humanity's darkest and most destructive actions. Properly construing section 230 and rejecting Facebook's claim to absolute immunity is one step in nurturing a safer online future for all Americans.

C. This is an appropriate case for reining in judicial interpretations of section 230 immunity.

Section 230 was the sole basis for Facebook's motion to dismiss in state court. *Facebook*, 625 S.W.3d at 87. The Supreme Court of Texas's decision that Petitioner's common-law claims must be dismissed rested solely on its interpretation of section 230 immunity. *Id.* at 87, 93–96, 101. And because of the procedural posture, there were no relevant factual disputes. *See id.* at 87; *see also* Tex. R. Civ. P. 91a.1 (providing that, for purposes of a motion to dismiss, "[a] cause of action has no basis in law if the

allegations, *taken as true*, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought") (emphasis added).

The legal question of section 230 immunity is thus squarely presented here. And given that Petitioner was allegedly subjected to child sex trafficking through Facebook's willful indifference and pursuit of profit over user safety, the stakes could hardly be higher. The Court should grant the petition, reverse the Supreme Court of Texas's judgment as to Petitioner's common-law claims, and allow Petitioner her day in court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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