NO. 44920-0-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

J.S., S.L, and L.C.,
Respondents,

v.

VILLAGE VOICE MEDIA HOLDINGS, L.L.C., d/b/a Backpage.com; BACKPAGE.COM, L.L.C.; NEW TIMES MEDIA, L.L.C., d/b/a/ Backpage.com,
Petitioners.

AMICI CURIAE BRIEF OF THE ELECTRONIC FRONTIER FOUNDATION AND THE CENTER FOR DEMOCRACY & TECHNOLOGY IN SUPPORT OF PETITIONER BACKPAGE.COM'S MOTION FOR DISCRETIONARY REVIEW

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I. INTRODUCTION

Petitioner's Motion for Discretionary Review raises issues that have policy ramifications that go far beyond the confines of the parties' particular dispute. Specifically, Petitioner (collectively, "Petitioner" or "Backpage") asks this Court to overturn the trial court's ruling that Petitioner—an operator of an Internet website on which users can post their classified advertisements—cannot successfully invoke the categorical protections of Section 230 of the federal Communications Decency Act ("Section 230") at a motion to dismiss stage because the Petitioner posted detailed terms of use setting forth content posting rules and was otherwise allegedly aware of illegal content posted by its users. Petitioner is unquestionably correct that the trial court committed reversible error in denying its motion to dismiss.

Of particular free expression concern to *Amici* are the procedural stage of the trial court's decision and the implicit assumptions it appears to have made in its ruling. Contrary to both Section 230's plain language and its all but universal interpretation by the courts, the statute's liability protections are not lost even in the event that a service provider is aware of the potentially actionable substance of a user's posting. Moreover, if properly extended to a defendant as they are in this case, the statute's protections must necessarily be available to that defendant at the outset of the case to allow it to promptly dispose of the claims brought against it. A primary goal of Congress in passing the statute was to encourage the development of speech-facilitating technologies by shielding intermediaries not only from liability but also from the cost and uncertainty associated with litigation. If online service providers were required to engage in protracted and expensive litigation whenever

plaintiffs made unsupported allegations that providers knew about or "developed" the offending content, those services would inevitably become more expensive, more restrictive, and ultimately less available for public speech. This neither reflects what Congress intended nor what the law clearly states. *Amici* urge the Court to grant Petitioner's motion for discretionary review and to ultimately find that where the protections of Section 230 apply—as they do here—trial courts should promptly bring to an end claims from Plaintiffs who endeavor to make service providers responsible for the potentially actionable conduct of their users.

II. BACKGROUND

Amici adopt by reference the Statement of the Case in Petitioner's Motion for Discretionary Review at pages 3-7 that *Amici* believe adequately recites the relevant factual and procedural history of the case and specifically draw the Court's attention to the rationale that the trial court seems to have adopted in rejecting Backpage's motion to dismiss below. In response to Plaintiffs' complaint, in which the Plaintiffs allege that Backpage should be held tortiously liable for the actions of third-party users who allegedly offered the Plaintiffs for sex on Backpage's site, Backpage moved to dismiss on Section 230 grounds. In denying the motion to dismiss, the trial court appeared to identify two grounds warranting that denial: (1) that Backpage included detailed posting guidelines regarding what was prohibited on the site (*see, e.g.*, Backpage Appendix E (Hearing Transcript) at 40:5-40:10) and (2) that the Plaintiffs in any case alleged that Backpage knew or should have known that some or even many of the posts on its site were for illegal activities (*see, e.g.*, Backpage Appendix E at 50:8-50:10). As discussed fully below, not only

do these criteria contradict the statute and constitute reversible error, their invocation as the basis for a denial of a motion to dismiss compounds that error and threatens to further undermine the specific policy—immunity not only from *liability* but from *suit*—that Congress enacted by passing Section 230.

III. ARGUMENT

A. Section 230 Categorically Shields Intermediaries from Liability Based on the Speech of Its Users.

Section 230 of the Communications Decency Act was born from, and intended to dispense with, a broad range of legal uncertainty that enveloped Internet service providers in the early stages of the popular Internet. In the early to mid 1990s, the risk of potentially burdensome regulation and litigation emerged as a concrete threat to the development and widespread adoption of speech-facilitating Internet technologies. The most pressing concern was the profound risk presented by the imposition of traditional publisher liability on service providers. *See, e.g., Zeran v. America Online*, 129 F.3d 327, 330 (4th Cir. 1997). A related concern was the immense potential liability stemming from service providers' attempts to monitor and moderate content on its platforms, a threat underscored by the New York state appellate court decision in *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, 1995 WL 323710 (N.Y. Sup. Ct. 1995), in which the court held that an Internet service provider could be held responsible for the defamatory words of one of its users where the provider attempted (and failed) to filter objectionable content from its site. Given their ability to host and invite the development of a far greater range and volume of speech than had ever been previously possible, Internet service providers were understandably wary of the potential

exposure. Not only could service providers be held responsible for online content that they created, "a person who published or distributed speech over the Internet could be held liable for defamation even if he or she was not the author of the defamatory text, and, indeed, at least with regard to publishers, even if unaware of the statement." *Batzel v. Smith*, 333 F.3d 1018, 1026-27 (9th Cir. 2003) (citing *Stratton Oakmont*).

Faced with a multitude of policy options regarding how to respond to these concerns about the legal implications for online service providers stemming from the behavior of their users—from leaving in place traditional models of publisher tort liability to broadly shielding providers from liability for what their users do—Congress unequivocally chose the latter. *See, e.g.*, *Zeran*, 129 F.3d at 330-31 (noting that Congress chose to protect and foster the Internet as a forum for unrestrained robust communication and "not to deter harmful online speech through the separate route of imposing tort liability on companies that serve as intermediaries for other parties' potentially injurious messages"). In passing Section 230, Congress first clearly indicated that it was codifying a federal policy of non-regulation aimed at "preserv[ing] the vibrant and competitive free market that presently exists for the Internet and other interactive computer services." 47 U.S.C. § 230(b)(3). Specifically, Congress found that:

- The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity;

- The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation; and
- Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

47 U.S.C. § 230(a)(3)-(5).

Second, Congress implemented its policy preferences by granting clear statutory immunity to providers of "interactive computer services"[1] (such as website operators) for content posted on and through their services by third parties. *See, e.g.*, *Batzel*, 333 F.3d at 1020 ("Congress . . . has chosen for policy reasons to immunize from liability for defamatory or obscene speech providers and users of interactive computer services when the defamatory or obscene material is provided by someone else."). In relevant part,[2] Section 230 succinctly provides:

> 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.

47 U.S.C. § 230(c)(1). Thus, "by its terms, § 230 provides immunity to . . . a publisher or speaker of information originating from 'another

[1] "The term 'interactive computer service' means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions." 47 U.S.C. § 230(f)(2).

[2] The statute also includes a separate provision—47 U.S.C. § 230(c)(2)—that immunizes service providers for the removal (as opposed to the hosting) of objectionable material.

information content provider.'" *Green v. America Online*, 318 F.3d 465, 471 (3d Cir. 2003). While the statute does not affect the liability of users who create actionable material, Section 230 operates to "protect [online service providers] from taking on liability" and hence helps encourage the development of forums to host speech of all types in "what is right now the most energetic technological revolution that any of us has ever witnessed." 141 Cong. Rec. H8470 (daily ed. Aug. 4, 1995) (Rep. Christopher Cox speaking in support of Section 230).

Since the passage of Section 230, courts have routinely, and correctly, recognized the need to construe the statute's terms broadly to effectively carry out Congress's policy choice. *See Fair Hous. Council of San Fernando Valley v. Roommates.com*, 521 F.3d 1157, 1174-75 (9th Cir. 2008) ("We must keep firmly in mind that this is an immunity statute we are expounding, a provision enacted to protect websites against the evil of liability for failure to remove offensive content."); *Universal Commc'ns Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413, 419 (1st Cir. 2007) ("In light of these policy concerns, we too find that Section 230 immunity should be broadly construed."); *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006) ("The majority of federal circuits have interpreted the CDA to establish broad federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service.") (internal quotation marks omitted); *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1123 (9th Cir. 2003) ("[R]eviewing courts have treated § 230(c) immunity as quite robust, adopting a relatively expansive definition of 'interactive computer service' and a relatively restrictive definition of 'information content provider.'").

Congress's decision to categorically shield the providers of online speech channels has been instrumental to the development of the modern Internet: today one third of the entire world population uses the Internet[3]—disproportionately utilizing U.S.-based services—to access and distribute all manner of content, from organizing in opposition to oppressive regimes[4] to sharing pictures of children with grandparents. Today's Internet hosts content from an astonishingly broad array of voices, facilitating the speech of millions upon millions in the form of third-party contributions and would simply not be able to exist in its current form if websites were forced to second-guess their decisions about managing and presenting content that they themselves did not author. As the Fourth Circuit aptly noted, "It would be impossible for service providers to screen each of their millions of postings for possible problems. Faced with potential liability for each message republished by their services, interactive computer service providers might choose to severely restrict the number and type of messages posted." *Zeran*, 129 F.3d at 331.

B. Section 230 Explicitly Preempts All Inconsistent State Law.

Section 230 represents a specific congressional approach to a problem of national and international dimension and (not surprisingly)

[3] *See* The State of Broadband 2012: Achieving Digital Inclusion for All, Broadband Comm'n for Digital Dev. [UN agency for information and communications technology], Sept. 2012, *available at* http://www.broadbandcommission.org/Documents/bb-annualreport2012.pdf (last visited June 24, 2013).

[4] *See, e.g.*, Philip N. Howard, *et al*., *Opening Closed Regimes: What Was the Role of Social Media During the Arab Spring?* (Project on Info. and Tech. & Political Islam, Working Paper 2011.1), *available at* http://pitpi.org/wp-content/uploads/2013/02/2011_Howard-Duffy-Freelon-Hussain-Mari-Mazaid_pITPI.pdf.

therefore cannot be abrogated or undermined by contradictory approaches by state or local governments. Accordingly, as per Congress's specific intent, inconsistent state law—including state law that imposes relaxed pleading requirements—is explicitly preempted by Section 230. 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."). *See, e.g., Zeran*, 129 F.3d at 334 ("Here, Congress' command is explicitly stated. Its exercise of its commerce power is clear and counteracts the caution counseled by the interpretive canon favoring retention of common law principles."). *See also, e.g., Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977) (citations and internal quotation marks omitted) ("[W]hen Congress has unmistakably . . . ordained . . . that its enactments alone are to regulate a part of commerce, state laws regulating that aspect of commerce must fall. The result is compelled whether Congress' command is explicitly stated in the statute's language or implicitly contained in its structure and purpose.").

State and federal courts across the country have found state tort law claims to be preempted when they treat an interactive computer services provider as the publisher or speaker of information provided by third parties or when they otherwise conflict with Congress's clear instruction. *See Almeida*, 456 F.3d at 1321 ("The CDA preempts state law that is contrary to this subsection."); *Ben Ezra, Weinstein & Co. v. America Online*, 206 F.3d 980, 984-85 (10th Cir. 2000) ("47 U.S.C. § 230 creates a federal immunity to any state law cause of action that would hold computer service providers liable for information originating with a third party."); *Doe v. America Online*, 783 So. 2d 1010, 1013 (Fla. 2001)

("[We] find that section 230 does preempt Florida law as to such a cause of action based upon alleged negligence."); *Gentry v. eBay, Inc.*, 99 Cal. App. 4th 816, 830 (Cal. Ct. App. 2002) ("Other courts have applied [Section 230 immunity] to bar not only defamation claims, but other tort causes of action asserted against interactive service providers."). Indeed, Washington State law has already been enjoined as inconsistent with Section 230 on one previous occasion. Last year, Governor Gregoire signed into law SB 6251, which made it a felony to knowingly publish, disseminate, or display or to "directly or indirectly" cause content to be published, disseminated, or displayed, if it contains a "depiction of a minor" and any "explicit or implicit offer" of sex for "something of value." Wash. Rev. Code Ann. § 9.68A.104 (repealed 2013). Following the passage of the bill, Backpage and the Internet Archive filed suit in the United States District Court for the Western District of Washington seeking to block the statute on Section 230 and other grounds. *Backpage.com, LLC v. McKenna*, 881 F. Supp. 2d 1262, 1269 (W.D. Wash. 2012). In granting the respective motions for a preliminary injunction, the district court found that the law was likely expressly preempted by Section 230 because it treated websites like Backpage as the publisher or speaker of information created by its users "by imposing liability on Backpage.com . . . for information created by third parties—namely ads for commercial sex acts depicting minors." *Id.* at 1273.

As discussed below, not only should the trial court have come to a similar outcome in this matter, finding that Backpage was immunized by Section 230 for similar reasons, it also should have given the statute its

full effect by ending Plaintiffs' suit at the earliest possible stage; *i.e.*, with Backpage's motion to dismiss.

C. Section 230 Protects Intermediaries Not Only From Liability but Also From Suit Itself.

Congress correctly recognized that a grant of intermediary immunity alone would be insufficient to protect Internet speech carried on the platforms of service providers. Carrying the public speech of millions, service providers often lack sufficient incentives to vindicate their users' interests through costly litigation—even if they would prevail—where "simply" removing user content will suffice to extricate them from suit. Again, Congress could have adopted a different legal regime, one, for example, that premised immunity on complying with state or congressionally-mandated obligations to somehow screen its users' content for objectionable material. With Section 230, however, Congress plainly chose a different path. Consistent with its finding that Internet services flourished with a "minimum of government regulation," 47 U.S.C. § 230(a)(4), Congress not only protected service providers from liability in these circumstances, it immunized them from suit itself: "*[n]o cause of action may be brought* and no liability may be imposed under any State or local law that is inconsistent with this section." (emphasis added). 47 U.S.C. § 230(e)(3); *see, e.g.*, *Carafano*, 339 F.3d at 1125 ("Congress intended that service providers . . . be afforded immunity from suit"); *Ben Ezra*, 206 F.3d at 983 (holding Internet service provider "immune from suit under § 230"). Legal protections that take hold only at a later stage of a case—for example, permitting discovery even in the absence of specific fact-based allegations in a complaint of behavior that would bring a

service provider outside of Section 230's protections—would undermine the essence of the protections themselves. *See, e.g., Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 254-55 (4th Cir. 2009) ("[I]mmunity is an immunity from suit rather than a mere defense to liability and it is effectively lost if a case is erroneously permitted to go to trial.") (citation and internal quotation marks omitted).

D. Service Providers May Only Be Subject to Suit if They Become "Information Content Providers" by Actively Developing Potentially Actionable Content, and Conclusory Allegations to that Effect Are Insufficient to Defeat the Statute's Protections.

Section 230's immunity protections were designed (and have repeatedly been judicially interpreted) to be categorical and are only overcome when a covered entity plays a separate role in addition to that of a provider of an interactive computer service. Accordingly, a website operator—or any other provider of an "interactive computer service"—falls outside the protections of Section 230 only if it also becomes an "information content provider" in its own right regarding the content in question:

> The term "information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

47 U.S.C. § 230(f)(3).

Allegations that a website operator created "neutral tools" by which users engage in illegal activities are insufficient to bring a service provider outside the protections of the statute. In *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, the most recent case in which the Ninth Circuit Court of Appeals expansively considered the

scope of the statute's protections, the court held that discriminatory statements made by users in the "additional comments" section provided by the site—a neutral tool that allowed users to input additional information a blank text box—did not transform the site operator into an information content provider: "Roommates is not responsible, in whole or in part, for the development of this content, which comes entirely from subscribers and is passively displayed by Roommates." 521 F.3d 1157, 1174 (9th Cir. 2008). In *Chicago Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666, 672 (7th Cir. 2008), the Seventh Circuit came to a similar conclusion, holding that an online classified ad site was not an information content provider of allegedly discriminatory housing postings where the site operator neither asked any inherently discriminatory questions nor required any unlawful information to participate in its service. *See id.* at 671 ("Nothing in the service craigslist offers induces anyone to post any particular listing or express a preference for discrimination."). While the site operator created the classified ad forum where the offending content was posted, the court stated that treating the creation of open tools as "development" under the statute would be akin to holding that "people who save money 'cause' bank robbery, because if there were no banks there could be no bank robberies. An interactive computer service 'causes' postings only in the sense of providing a place where people can post." *Id.*

By contrast, providers of interactive computer services additionally become information content providers—and correspondingly lose Section 230 protections—when they affirmatively author or otherwise develop the substance of the content in question. While a provider may

cross that threshold in multiple ways, at minimum a service provider must directly author or develop that offending content. In *Roommates.com*, for example, while the site operator enjoyed protections regarding the creation of its open "additional comments" section, the Ninth Circuit held that it could still be held liable for requiring users to use a form, authored by the website operator, to make selections that were allegedly actionable under the Fair Housing Act. 521 F.3d at 1166 ("By requiring subscribers to provide the information as a condition of accessing its service, and by providing a limited set of pre-populated answers, Roommate becomes much more than a passive transmitter of information provided by others; it becomes the developer, at least in part, of that information."); *Goddard v. Google, Inc.*, 640 F. Supp. 2d 1193, 1198 (N.D. Cal. 2009) ("The Ninth Circuit's partial denial of immunity to the website turned entirely on the website's decision to *force* subscribers to divulge the protected characteristics and discriminatory preferences 'as a condition of using its services.'"). *See also T.C. v. Accusearch Inc.*, 570 F.3d 1187, 1199 (10th Cir. 2009) (holding that a website operator that affirmatively solicited and paid researchers to publish confidential records protected by the law was an "information content provider" for Section 230 purposes).

Online providers, however, do not become information content providers merely because plaintiffs claim—in their complaints or later—that it is so. If that was the case, Congress's intent could easily be circumvented by the inclusion of conclusory allegations to that effect and by plaintiffs' desire to engage in discovery to determine whether or not a site operator actually did anything to fall outside of Section 230's protections. In order to broadly protect providers of Internet services from

the costly, persistent threat of litigation—and ultimately to ensure the existence of robust online channels by which users can exercise their speech rights—Section 230 requires that plaintiffs allege *specific, non-speculative* behavior that a provider authored or developed the content in question or else the claim must promptly be dismissed. As the Ninth Circuit in *Roommates.com* noted:

> Websites are complicated enterprises, and there will always be close cases where a clever lawyer could argue that *something* the website operator did encouraged the illegality. Such close cases, we believe, must be resolved in favor of immunity, lest we cut the heart out of section 230 by forcing websites to face death by ten thousand duck-bites, fighting off claims that they promoted or encouraged—or at least tacitly assented to—the illegality of third parties. Where it is very clear that the website directly participates in developing the alleged illegality . . . immunity will be lost. But in cases of enhancement by implication or development by inference . . . section 230 must be interpreted to protect websites *not merely from ultimate liability, but from having to fight costly and protracted legal battles.*

521 F.3d at 1174-75 (emphasis added). *See also, e.g., McKenna*, 881 F. Supp. 2d at 1272 ("[U]nder Section 230 'any activity that can be boiled down to deciding whether to exclude material that third parties seek to post online is perforce immune.'") (citing *Roommates.com*, 521 F.3d at 1170-71); *Nemet Chevrolet*, 591 F.3d 250 (granting Section 230 immunity to a consumer complaint website, finding allegations that the site operator was an information content provider insufficiently supported by facts to survive a motion to dismiss); *Goddard*, 640 F. Supp. 2d at 1196 ("Plaintiff has not come close to substantiating the 'labels and conclusions' by which

she attempts to evade the reach of the CDA."). This bright line rule is consistent with the language of the statute, furthers Congress's stated policy preference, and should be followed here: unless an online service provider itself directly authors or develops actionable content, it is immune from liability, and unless a plaintiff can make specific factual allegations that would support a showing that the provider indeed directly authored or developed that content, claims against it must promptly fail at the outset.

E. Section 230's Grant of Immunity to Service Providers Is Automatic and Not Premised on a Lack of Knowledge of Actionable Content or the Performance of Any Affirmative Qualification.

In denying the motion to dismiss, the trial court intimated that Backpage was not able to dismiss the Plaintiffs' claims at the outset of the case because it was aware (or should have been aware) of the criminal and/or tortious nature of the content posted to website. *See, e.g.*, Backpage Appendix E (Hearing Transcript) at 40:5-40:10, 50:8-50:10. However, these and related bases raised by Plaintiffs in opposition to Backpage's motion to dismiss fail for the same reason: Section 230's grant of categorical immunity to providers of interactive computer services falls away *only* where a provider itself becomes an "information content provider." Immunity is automatically granted and can be lost only because of the direct *behavior* of a service provider (*i.e.*, that it authors or develops content directly), not based on the provider's knowledge or mental state. Congress passed Section 230 in part precisely to *take away* this kind of second-guessing and to provide a clear, baseline rule that pointed aggrieved parties towards bad actors themselves and not at the platforms on which those bad actors communicated. In this case, the trial

court could only reject Backpage's motion to dismiss if Plaintiffs had made specific factual allegations to support their conclusory assertions that Backpage fell outside the statute's protections. They did not do so.

A website operator's posting of policies for third-party contributions does not make it an information content provider. The Washington Court of Appeals has already recognized as much in *Schneider v. Amazon.com, Inc.*, holding that Amazon.com was not liable for defamatory comments on its website because it reserved through its terms of service the right to edit or remove comments. 108 Wn. App. 454, 31 P.3d 37, 41 (2001); *see also Carafano*, 339 F.3d at 1124 ("Under § 230(c), therefore, so long as a third party willingly provides the essential published content, the interactive service provider receives full immunity regardless of the specific editing or selection process."). Absent an "allegation that [a service provider is] responsible for creating or developing" the offending content, the existence of terms of service that ban certain content, "even where the self-policing is unsuccessful or not even attempted," is "irrelevant." *Schneider*, 31 P.3d at 43 (citing *Blumenthal v. Drudge*, 992 F. Supp. 44, 52 (D.D.C.1998)). Neither do website operators become information content providers by categorizing third party content. *See, e.g., Dart v. Craigslist, Inc.*, 665 F. Supp. 2d 961, 961 (N.D. Ill. 2009) (rejecting argument that Craigslist became an information content provider "by having an 'adult services' category" and enabling users to search by sexual preference); *Gentry*, 99 Cal. App. 4th at 832 (rejecting argument that eBay became a content provider for auctions of counterfeit goods by collecting and displaying positive and negative feedback, hosting an auction site, and displaying seller's product

descriptions). Neither do they become information content providers by creating tools, such as search engines, to guide users in finding third party content. *See Roommates.com*, 521 F.3d at 1167 (noting that "the broadest sense of the term 'develop' could include the functions of an ordinary search engine . . . [b]ut to read the term so broadly would defeat the purposes of section 230 by swallowing up every bit of the immunity that the section otherwise provides"); *Goddard*, 640 F. Supp. 2d at 1198 ("[E]ven if a particular tool facilitates the expression of information, it generally will be considered 'neutral' so long as users ultimately determine what content to post, such that the tool merely provides a framework that could be utilized for proper or improper purposes.") (citations and internal quotation marks omitted). Neither do they become information content providers by having actual or constructive notice of illegal content profiting from third-party content. *See, e.g.*, *Universal Commc'ns Sys.*, 478 F.3d at 420 ("It is, by now, well established that notice of the unlawful nature of the information provided is not enough to make it the service provider's own speech."). And neither do website operators become information content providers by profiting from the third-party speech of its users. *See, e.g.*, *M.A. v. Vill. Voice Media Holdings, LLC*, 809 F. Supp. 2d 1041, 1050 (E.D. Mo. 2011) ("[T]he fact that a website elicits online content for profit is immaterial; the only relevant inquiry is whether the interactive service provider 'creates' or 'develops' that content.") (citing *Goddard v. Google*, 2008 WL 5245490, *3 (N.D. Cal. Dec. 17, 2008); *Drudge*, 992 F. Supp. at 52 (holding that a website operator was immune from defamation liability, despite the fact that the site operator had contracted with a columnist to provide content at

a monthly rate of $3,000, had retained considerable editorial rights, and had promoted the columnist as a new source of unverified instant gossip).

All such attempts to impose additional conditions on the grant of Section 230 immunity must fail and have failed. So too must the trial court's decision to truncate the statute's protections and permit this case to proceed even where no disqualifying showing has been sufficiently alleged, let alone made. This Court should grant Petitioner's request for discretionary review to ensure the proper application of the statute's protections, both here and in future cases.

IV. CONCLUSION

In passing Section 230 of the Communications Decency Act, Congress made a clear legislative pronouncement that providers of online services like ISPs and website operators would not be held responsible for the acts of their users. This policy has far-reaching consequences, first and foremost ensuring a legal "safe zone" that encourages the development and widespread deployment of speech-facilitating technologies and services at low costs. This policy also by definition means that those harmed by the speech and related behavior of users of those services must seek redress not from the providers of those services but instead from the criminals and other bad actors themselves. *Amici* strongly believe that Congress struck the proper balance by placing service providers outside of the line of fire in disputes of these kinds. *Amici* ask that the Court grant Petitioner's request for discretionary review and subsequently order the trial court to grant Petitioner the full scope of the protections provided by Section 230.

Dated: June 24, 2013 Respectfully submitted,

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