No. 16-276

IN THE

Supreme Court of the United States

JANE DOE NO. 1, ET AL.,
Petitioners,

v.

BACKPAGE.COM, LLC, ET AL.,
Respondents.

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

MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF AND *AMICI CURIAE* BRIEF OF LEGAL MOMENTUM, CINDY MCCAIN, FLORIDA ABOLITIONIST, NATIONAL CENTER ON SEXUAL EXPLOITATION, THE ORGANIZATION FOR PROSTITUTION SURVIVORS, RISING INTERNATIONAL, SOJOURNER CENTER, STOLENYOUTH, STREETLIGHT USA, AND YWCA OF SILICON VALLEY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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MOTION OF *AMICI CURIAE* FOR LEAVE TO FILE BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

Amici curiae Legal Momentum, Cindy McCain, Florida Abolitionist, the National Center on Sexual Exploitation, the Organization for Prostitution Survivors, Rising International, Sojourner Center, StolenYouth, Streetlight USA, and the YWCA of Silicon Valley respectfully move for leave of Court to file the accompanying brief under Supreme Court Rule 37.3(b). Counsel for Petitioner has consented to the filing of this brief; counsel for Respondent has withheld consent.

As set forth more fully below, *amici* provide legal, advocacy, social services and other support to trafficking survivors and educate the public on the widespread harm caused by sex trafficking. *Amici* have firsthand knowledge of the nationwide harm that has resulted from the ability of websites like Backpage.com to facilitate the trafficking of women and children without fear of legal consequences. They therefore have a substantial interest in ensuring that courts enforce the Communications Decency Act in accordance with its purpose of protecting children and encouraging good-faith monitoring of online content.

Respectfully submitted,

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INTEREST OF AMICI CURIAE[1]

Legal Momentum, the Women's Legal Defense and Education Fund, is a national non-profit gender justice advocacy organization. For nearly 50 years, Legal Momentum has been advancing equal rights for girls and women through legislative efforts, impact litigation, and through direct representation of clients. Its areas of focus have included employment law, campus safety, sports, and all forms of gender-based violence. In connection with its commitment to ending gender-based violence, Legal Momentum was instrumental in drafting and helping to pass the Violence Against Women Act ("VAWA") in 1994 and its subsequent reauthorizations in 2000, 2005, and 2013. Legal Momentum considers sex trafficking to be one of the most extreme forms of violence against women. In 2013, the Trafficking Victims Protection Reauthorization Act ("TVPRA") was reauthorized as part of VAWA, criminalizing the sex trafficking of minors. Legal Momentum is involved in efforts to end gender-based violence perpetrated online, including online sex trafficking and other sex-based cybercrimes. Legal Momentum has partnered with non-profit organizations and cities throughout the country to end online commercial sexual exploitation of women and girls, including sex trafficking on Backpage.com. Additionally, for four decades, through its award-

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[1] Pursuant to Rule 37.6, amici certify that no counsel for a party authored this brief in whole or in part, and no persons other than amici curiae or their counsel made a monetary contribution to its preparation or submission.

winning National Judicial Education Project ("NJEP"), Legal Momentum has been educating judges and court officials on issues related to gender-based violence against girls and women, including cyber-related violence.

Cindy Hensley McCain serves as co-chair of the Arizona Governor's Council on human trafficking and on The McCain Institute's Human Trafficking Advisory Council. She is dedicated to efforts to reduce human trafficking in Arizona and throughout the United States, and works to improve the lives of victims of human trafficking. Through her work with The McCain Institute, she has formed critical partnerships with anti-trafficking organizations to combat online sex trafficking. Mrs. McCain is an outspoken advocate for victims bought and sold on Backpage.com.

Florida Abolitionist, founded in 2009, is an anti-trafficking organization committed to the prevention of sex trafficking and to crisis intervention for sex trafficking victims. A leading service provider in the Greater Orlando area, it runs Orlando's local trafficking hotline. It also conducts widespread outreach and awareness campaigns throughout Central Florida, including to juvenile justice centers. As part of its extensive organizing and advocacy efforts, Florida Abolitionist co-founded the Greater Orlando Human Trafficking Task Force and has partnered with the Orange County School Board for prevention education.

The National Center on Sexual Exploitation ("NCOSE") is a leading national organization exposing the links between all forms of sexual exploitation. NCOSE embraces a mission to defend

human dignity and to advocate for the universal right of sexual justice, which is freedom from sexual exploitation, objectification, and violence. To this end, NCOSE operates on the cutting edge of policy activism to combat corporate and government policies that foster exploitation, to advance public education and empowerment, and to foster united action through leading the international Coalition to End Sexual Exploitation.

The Organization for Prostitution Survivors ("OPS") is a Seattle-based non-profit organization that provides social services to women and girls who are victims of sex trafficking and commercial sexual exploitation. OPS addresses the harm caused by sex trafficking by providing survivors with supportive services. Sex trafficking is a significant problem in Seattle/King County and the State of Washington, affecting the most vulnerable among us. Most of OPS's clients were recruited as minors, often between the ages of 12-14 years old, and have been trafficked online. Backpage.com is one of the predominant sites because exploiters have found it a relatively safe and protected place to advertise. As a social service agency, OPS is reminded, on a daily basis, of the harm that online sex trafficking causes women and children, facilitated by sites such as Backpage.com.

Rising International is a direct service provider to sex trafficking victims in Northern California. In addition, Rising International founded and manages Safe and Sound, a local human trafficking prevention program. The program is designed specifically for foster youth and homeless adults, who are vulnerable to being trafficked online via sites like

Backpage.com. The program has been successful on many levels and is currently being offered to twenty high schools.

Sojourner Center is a non-profit organization, founded in 1977, that provides emergency shelter, transitional housing, and other services to people that have been affected by domestic violence and human trafficking. Serving nearly 10,000 individuals each year, it is one of the nation's largest domestic violence shelters and serves numerous victims of human trafficking, including those sold on Backpage.com. Sojourner Center also hosts the SAFE Action Project, which educates the community that sexual exploitation through force, fraud, and coercion are all forms of domestic violence, and that, with a coordinated community strategy, human trafficking can be stopped. Sojourner Center views sexual abuse, including child trafficking, as a public health epidemic that affects the entire nation.

StolenYouth is dedicated to raising awareness to support the rescue and recovery of sex trafficked youth in Seattle and across Washington State. StolenYouth has piloted a landmark high school curriculum that recruits young men as allies. It has trained 1,500 hotel and business personnel to recognize trafficking as it happens, and provided vital recovery services for over 200 trafficked youth, many of whom were trafficked online by Backpage.com or other sites. Research suggests that there are over 500 trafficked kids on Seattle streets alone and the median age of these children is just 13 years old. The problem is growing, and without intervention, it is estimated that 77% of trafficked girls will be commercially exploited as adults.

StreetLightUSA is a globally recognized residential center providing holistic care to girls ages 11-17 across the United States who have been victimized by child sex trafficking or experienced sexual trauma. Founded in 2009 and based in the Greater Phoenix area, StreetlightUSA promotes awareness, advocates for prevention, and provides 24-hour direct care to victims on a safe and secured campus. StreetlightUSA played an instrumental role in the passage of Arizona's House Bill 2699, which penalized perpetrators selling or having sex with children under the age of 14. The organization also formed a key partnership with Arizona State University ("ASU") to advance its public awareness efforts. StreetlightUSA sees firsthand, and on a daily basis, the trauma that sex trafficking has on girls, and the ease with which platforms such as Backpage.com allow girls to be sold online for sex.

YWCA Silicon Valley is a Santa Clara County non-profit organization founded in 1905 with a mission to eliminate racism and empower women. YWCA Silicon Valley provides crisis response, intervention and support services to people of all genders who are survivors of human trafficking, sex trafficking, and the commercial sexual exploitation of children. Their services for survivors of sex trafficking include in-person response, 24-crisis line, shelter, housing, counseling, therapy, case management, and advocacy. As a social service agency and provider of direct service for survivors of violence, the organization is aware of the severe harms caused by online sex trafficking, particularly to women and children. Backpage.com is one of the predominant sites that enables online sex trafficking

because it is considered a relatively safe and protected platform on which to advertise.

SUMMARY OF ARGUMENT

Twenty years ago, Congress enacted the Communications Decency Act ("CDA") for the primary purpose of preventing children from viewing indecent or otherwise harmful material online. As one sponsor of the legislation explained, the CDA represented an effort to "clean up the Internet—or the information superhighway, as it is frequently called—to make that superhighway a safe place for our children and our families to travel on." 141 Cong. Rec. S8087 (daily ed. June 9, 1995) (statement of Sen. Exon).

The same interest in protecting children led Congress to include a provision in the CDA entitled "Protection for Private Blocking and Screening of Offensive Material," which is codified at 47 U.S.C. § 230 ("Section 230"). Section 230 prohibits liablity for "Good Samaritan" website operators who publish information supplied by third parties or who take good faith steps to restrict access to objectionable content. *See* 47 U.S.C. § 230(c). The legislators who supported Section 230 emphasized that its goal was "to help encourage the private sector to protect our children from being exposed to obscene and indecent material on the Internet" by removing liability for Internet companies that "make a good faith effort to edit the smut from their systems." 141 Cong. Rec. H8471-2 (daily ed. Aug. 4, 1995) (statement of Rep. Goodlatte).

This Court has not yet interpreted the scope of Section 230. Such review is now critical, however, to correct the overbroad interpretation of Section 230

that has proliferated among federal courts. In this matter, for example, the First Circuit Court of Appeals—like several other courts—interpreted Section 230 as providing complete immunity to websites that solicit and profit from illegal content so long as the legal claims against them bear some relationship to online content provided by a third party. *See Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 18-19 (1st Cir. 2016) (collecting cases evincing courts' "preference for broad construction" of Section 230). Because Backpage's "adult" services section contains advertisements written by paid users, the First Circuit held that the site was protected from liability for aiding the Petitioners' sexual exploitation as minors, even though the Petitioners persuasively alleged that Backpage took an active role in shaping the content of the ads and deliberately tailored its website to "make sex trafficking easier." *Id.* at 29. In other words, the First Circuit granted Backpage immunity under Section 230 for deliberately facilitating the sex trafficking of the Petitioners when they were children.

This sweeping interpretation of Section 230 is not what Congress intended when it enacted legislation seeking to encourage website operators to behave responsibly. Indeed, the First Circuit's interpretation is particularly nonsensical because it interprets Section 230 in a manner that directly undermines the statute's goal of protecting children from obscenity.

Given the importance of interpreting Section 230 in a manner consistent with its purpose and the harm that will result from the First Circuit's

overbroad interpretation, amici respectually ask that this Court grant the petition for certiorari.

ARGUMENT

I. SECTION 230 WAS NOT INTENDED TO PROVIDE WEBSITE OPERATORS WITH BLANKET "IMMUNITY" FOR THEIR ILLEGAL ACTS.

Congress enacted Section 230 in 1996 to encourage Internet content providers to take affirmative actions to prevent obscene materials from reaching children by providing them with a limited defense from liability. The title of the provision, "Protection for Private Blocking and Screening of Offensive Material," makes clear that Congress intended Section 230 to serve as a shield for companies that protect children, rather than as a blanket grant of immunity to websites that facilitate sex crimes against children.

Section 230 contains two provisions that exempt website operators (and other services responsible for providing content to Internet users) from liability under certain circumstances. The first, Subsection (c)(1), precludes claims against websites that seek to treat them "as a publisher or speaker" of information provided by third parties. The second, Subsection (c)(2), protects websites that engage in good faith conduct to restrict access to objectionable material (or to help others restrict such access). Both subsections are contained under the subheading, "Protection for 'Good Samaritan' Blocking and Screening of Offensive Material."

Most courts, including the First Circuit, have misconstrued Subsection (c)(1) to create "immunity" from all civil and state criminal liability for websites

that contain content authored in part by someone other than the operator of the site. This misguided interpretation has allowed criminal activity to flourish online, because the prevailing judicial view trends towards exonerating any behavior—no matter how harmful—so long as it takes place online and bears some relationship to third-party content. *See, e.g.*, *Witkoff v. Topix LLC*, No. B257656, 2015 WL 5297912, at *6-7 (Cal. Ct. App. Sept. 10, 2015), *as modified* (Sept. 18, 2015) (affirming the trial court's holding that Section 230 protected a website allegedly designed to facilitate drug trafficking from liability related to the overdose of a user); *Gibson v. Craigslist*, No. 08-cv-7735, 2009 WL 1704355, at *3-4 (S.D.N.Y. June 15, 2009) (holding that Section 230 barred a claim against Craigslist for publishing an advertisement that sold the handgun used to shoot the plaintiff).

But as the Ninth Circuit observed, Section 230 was not meant to "create a lawless no-man's-land on the Internet." *Fair Hous. Council of San Fernando Valley v. Roomates.com*, 521 F.3d 1157, 1164 (9th Cir. 2008). Instead, the section was only intended to provide a defense to website operators acting in good faith who do not have knowledge of the harmful content on their sites. Congress never could have anticipated that courts would extend Section 230's protection to websites like Backpage that willfully solicit (and profit from) the sexual exploitation of children.

This Court has long recognized that a statute should not be interpreted "to produce a result at odds with the purposes underlying the statute" but rather "in a way that will further Congress' overriding objective." *Watt v. Western Nuclear, Inc.*, 462 U.S.

36, 56 (1983). In light of the First Circuit's departure from this fundamental principle, it is critically important that this Court grant review to realign the judicial interpretation of Section 230 with its legislative purpose.

A. Congress Only Intended For Section 230 To Protect Websites From Facing Liability As Publishers Of Third Party Content, Retaining Distributor Liability For Knowing Violations Of The Law.

Congress enacted Section 230 as a direct response to *Stratton Oakmont, Inc. v. Prodigy Services Co.*, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995). *See* H.R. Rep. No. 104-458, at 194 (1996); 141 Cong. Rec. H8470 (daily ed. Aug. 4, 1995) (statement of Rep. Cox) (stating, in introducing Section 230, that it would "protect" website operators "from taking on liability such as occurred in the *Prodigy* case in New York").

Given this origin, it is important to analyze what occurred in the *Stratton* case. The defendant, Prodigy, hosted a group of online message boards that were moderated to delete messages that exhibited "offensiveness and bad taste . . . ." *Stratton*, 1995 WL 323710 at *4 (internal citation omitted). On one such message board, Money Talk, a user posted that the plaintiffs' securities investment firm was a "major criminal fraud" filled with brokers "who either lie for a living or get fired." *Id.* at *1 (internal citation omitted). Plaintiffs sued for defamation.

The primary legal issue in the case was whether Prodigy should be treated as a "publisher" or "distributor" of the message. *Id.* at *3. This

distinction materially impacted Prodigy's potential liability, because under a traditional pre-Internet defamation analysis, a publisher can be liable for reprinting a statement even without knowledge of its defamatory nature. *See Doe v. McMillan*, 412 U.S. 306, 314 n.8 (1974) (the "republication of a libel" is "generally unprotected"); Restatement (Second) of Torts § 578 ("[O]ne who repeats or otherwise republishes defamatory matter is subject to liability as if he had originally published it."). Distributors "such as book stores and libraries," however, "may be liable for defamatory statements of others only if they knew or had reason to know of the defamatory statement at issue." *Stratton*, 1995 WL 323710 at *3.

In *Stratton*, the court noted that online message boards "should generally be regarded in the same context as bookstores, libraries and network affiliates"—*e.g.*, as mere distributors, rather than publishers. *Id.* at *5. However, because Prodigy monitored the content of its sites, the court found that it "exercised sufficient editorial control over its computer bulletin boards to render it a publisher with the same responsibilities as a newspaper." *Id.* at *3. In other words, Prodigy's laudable attempts to filter and remove indecent material from its website increased its potential liability by making it responsible for any inappropriate content on its site.

Finding this holding bad for public policy, Congress enacted Section 230 as an amendment to the CDA. The House Conference Report for the legislation that would become Section 230 explains:

> One of the specific purposes of this section is to overrule *Stratton-Oakmont v. Prodigy* and any other similar decisions which have treated

> such providers and users as publishers or speakers of content that is not their own because they have restricted access to objectionable material. The conferees believe that such decisions create serious obstacles to the important federal policy of empowering parents to determine the content of communications their children receive through interactive computer services.

H.R. Conf. Rep. 104-458 at 194 (1996). Representative Cox, a sponsor of the amendment, stated that that goal of the legislation was to encourage operators to monitor online content by protecting them from the type of liability that had arisen in *Stratton*. 141 Cong. Rec. H8470 (daily ed. Aug. 4, 1995). Representative Cox was clear that websites should not face *Stratton*-type liablity "for helping us and for helping us solve" the problem of harmful content on the Internet through increased self-monitoring. *Id.*

Thus, when Congress said it wanted to overrule *Stratton*, it simply meant that it wanted to remove the higher standard of publisher liability that *Stratton* applied for websites exercising editorial functions—particularly where those functions would protect children from accessing obscene or inappopriate materials. *See* 141 Cong. Rec. S8345 (daily ed. June 14, 1995) (statement of Sen. Coats) (stating that the goal of Section 230 was to ensure that "a company who tries to prevent obscene or indecent material under this section" would not be "held liable as a publisher for defamatory statements for which they would not otherwise have been liable"). Indeed, the plain language of Section 230 states that websites may not "be treated as the

publisher or speaker" of information provided by others, but says nothing about liability as distributors of that information. 47 U.S.C. § 230(c).

In fact, distributor liability, which attaches when a website operator "knew or had reason to know" of the challenged content on its site, is precisely the type of liability that Congress intended to preserve. *Stratton*, 1995 WL 323710 at *3. Notably, in overruling *Stratton*, Congress did not mention another key decision, *Cubby v. Compuserve Inc.*, 776 F. Supp. 135 (S.D.N.Y. 1991), which held that websites are "the functional equivalent of a more traditional news vendor" and thus should generally be treated as distributors for libel claims made against them based on third-party content. *Id.* at 140-41. Anything less, the *Cubby* court held, "would impose an undue burden on the free flow of information." *Id.* at 140. In that case, the court ultimately granted summary judgment in favor of the defendant, the issuer of a general online information service, because there was nothing to show that it "knew or had reason to know of the" defamatory statements on its service. *Id.* at 141. Congress, which never referred to *Cubby* or distributor liability at all, apparently observed no error in this decision. There is therefore no reason to believe that Congress intended to supplant the existence of distributor liability through Section 230.

Thus, Congress did not enact Section 230 to provide widespread immunity for knowing, willful violations of the law that occur through the Internet. Instead, Congress intended only that websites not face the heightened standard of liability that applies to "publishers"—as opposed to "distributors"—under a traditional defamation law analysis.

The courts that have considered this issue have largely disregarded the foregoing legislative history and have instead interpreted Section 230 expansively to obscure the distinction between liability for publishers and distributors. This broad interpretation originated with *Zeran v. America Online, Inc.*, 129 F.3d 327 (4th Cir. 1997), the first case to consider the scope of Section 230. There, the Fourth Circuit rejected the argument that distributor liability remained following the enactment of Section 230, instead holding that the "plain language" of the statute "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. Several circuit courts have adopted this interpretation, often with little more than a cursory analysis. *See, e.g.*, *Johnson v. Arden*, 614 F.3d 785, 792 (8th Cir. 2010) (relying on *Zeran* for the proposition that Section 230 immunized the defendant from liability "for material originating with a third party").[2]

The Fourth Circuit's conflation of publisher and distributor liability is unsound, particularly when applied to a case such as this one. Under a distributor liability analysis, a content distributor may be liable only when it has knowledge of the

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[2] Not all courts have agreed, however. The Seventh Circuit, for example, recognized that Section 230 "as a whole cannot be understood as a general prohibition of civil liability for web-site operators and other online content hosts." *See Chicago Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F.3d 666, 669 (7th Cir. 2008).

challenged content but distributes it anyway. Here, Backpage has concrete knowledge about the underage sex trafficking that is occurring on its website—indeed, it affirmatively encourages, and profits from, this activity. *See Jane Doe No. 1*, 817 F.3d at 17, 20-21. Congress cannot have intended to "immunize" such willful conduct—in fact, the word "immunity" does not appear in Section 230 at all. Review of the First Circuit's decision is necessary to give this Court an opportunity to resolve confusion in the Courts of Appeals by explaining that, as its legislative history makes clear, Section 230 does not protect websites that knowingly facilitate illegal activities.

B. Courts Should Interpret Section 230 In Accordance With Its Purpose Of Protecting Children From Harmful Materials And Encouraging Good Faith Content Monitoring.

It is beyond dispute that Congress' primary purpose in enacting the CDA was to protect children from viewing harmful content. *See* H.R. Conf. Rep. 104-458 at 193 (1996) (through the CDA, Congress sought to "take effective action to protect children and families from online harm"); 141 Cong. Rec. S8088 (daily ed. June 9, 1995) (statement of Sen. Exon) ("The fundamental purpose of the Communications Decency Act is to provide much-needed protection for children."); 141 Cong. Rec. S8089 (daily ed. June 9, 1995) (statement of Sen. Exon) ("The heart and the soul of the Communications Decency Act are its protection for families and children."). As Senator Exon, a sponsor of the legislation, further explained:

> [T]he information superhighway should not become a red light district. This legislation will keep that from happening and extend the standards of decency which have protected telephone users to new telecommunications devices.
>
> Once passed, our children and families will be better protected from those who would electronically cruise the digital world to engage children in inappropriate communciations and introductions.

141 Cong. Rec. S1953 (daily ed. Feb. 1, 1995) (statement of Sen. Exon).

A similar desire to protect underage Internet users drove the enactment of the amendment that became Section 230. Representative Cox, a co-sponsor of the amendment, said:

> As the parent of two, I want to make sure that my children have access to this future and that I do not have to worry about what they might be running into on line. I would like to keep that out of my house and off of my computer.

141 Cong. Rec. H8469 (daily ed. Aug. 4, 1995). Another co-sponsor of the amendment echoed this sentiment:

> We are all against smut and pornography, and, as the parents of two small computer-literate children, my wife and I have seen our kids find their way into these chat rooms that make their middle-aged parents cringe. So let us all stipulate right at the outset the importance of protecting our kids and going to the issue of the best way to do it.

141 Cong. Rec. H8470 (daily ed. Aug. 4, 1995) (statement of Rep. Wyden).

In keeping with this purpose, Section 230 was introduced "to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services" and "to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material." 47 U.S.C. § 230(b). In other words, Congress' goal in enacting Section 230 was "to help encourage the private sector to protect our children from being exposed to obscene and indecent material on the Internet" by removing "the liability of providers such as Prodigy who currently make a good faith effort to edit the smut from their systems." 141 Cong. Rec. H8471-72 (daily ed. Aug. 4, 1995) (statement of Rep. Goodlatte).

Congress hoped that the increased incentives for self-regulation would obviate the need for government regulation, which many legislators believed would impede the development of "[t]he Internet and other interactive computer services." *Id.* § 230(a)(4); *see* 141 Cong. Rec. H8470 (daily ed. Aug. 4, 1995) (statement of Rep. Cox) (stating that the amendment creating Section 230 "will establish as the policy of the United States that we do not wish to have content regulation by the Federal Government of what is on the Internet, that we do not wish to have a Federal Computer Commission with an army of bureaucrats regulating the Internet because frankly the Internet has grown up to be what it is without that kind of help from the

Government"). In fact, on the day that the amendment passed the House of Representatives, the Congressional Record's Daily Digest reported that the amendment had the twin aims of protecting "from liability those providers and users seeking to clean up the Internet and prohibiting the FCC from imposing content or any regulation of the Internet." 141 Cong. Rec. D993 (daily ed. Aug. 4, 1995).

Congress' desire to avoid federal regulation of the Internet does not mean that Congress sought to create full-fledged immunity for all willful misconduct that occurs online. In fact, the legislative history indicates precisely the opposite—Congress wanted to retain traditional liability for entities with knowledge of misconduct and others acting in bad faith. It is no coindence that both Section 230 defenses are contained under a heading stating that they are meant to apply only to a "Good Samaritan." In introducing the amendment, Representative Cox said the purpose of the language was to avoid regulation and to "protect computer Good Samaritans, online service providers, anyone who provides a front end to the Internet, let us say, who takes steps to screen indecency and offensive material for their customers." 141 Cong. Rec. H8470 (daily ed. Aug. 4, 1995); *see also* H.R. Conf. Rep. No. 104-458, at 188 (stating that Section 230 "provides 'Good Samaritan' protections from civil liability for providers or users of an interactive computer service for actions to restrict or to enable restriction of access to objectionable online material"). And the House Conference Report, in describing proposed defenses to liability similar to those incorporated in Section 230, stated that they would "assure that attention is focused on bad actors and not those who lack

knowledge of a violation or whose actions are equivalent to those of common carriers." H.R. Conf. Rep. No. 104-458, at 188. Thus, Congress never intended for "bad actors" to escape liability through the use of Section 230.

This is confirmed elsewhere in the legislative history by statements from the bill's sponsors about the type of substantive liability created by the CDA. In describing conduct that would constitute a substantive violation of the CDA's obscenity provision, Senator Exon contemplated liability for an access provider if it "were to create a menu to assist its customers in finding the pornographic areas of the network" or if "the service provider is owned or controlled by or is in conspiracy with a maker of communications that is determined to be in violation of this statute." 141 Cong. Rec. S8345 (daily ed. June 14, 1995). Similarly, co-sponsor Senator Coats stated that the CDA permitted liability for "someone who, among other things, manages the prohibited or restricted material, charges a fee for such material, provides instructions on how to access such material or provides an index of the material." *Id.* A few weeks after those statements, both the House and the Senate enacted a version of the CDA that included Section 230. At no point did any legislator ever suggest that the liability contemplated by Senators Exon and Coats had somehow been eviscerated by the defenses in Section 230.

The text and legislative history of Section 230 demonstrate that only "Good Samaritans" who do not actively solicit illegal content enjoy immunity from suit. Backpage's adult services section, the largest sex trafficking website in the United States, does not qualify for Section 230 protection. Given how far

courts have deviated from the purpose and legislative intent of Congress in interpreting Section 230, this Court should grant review to clarify the importance of the statute's "Good Samaritan" requirement.

II. IT IS CRITICALLY IMPORTANT THAT THIS COURT GRANT REVIEW TO ENSURE SECTION 230 IS NOT USED TO PROTECT WEBSITES THAT FACILITATE SEX TRAFFICKING.

The foregoing makes clear that Congress never intended for Section 230 to impede the vigorous enforcement of state criminal laws and civil laws that deter the type of illegal conduct occurring daily on Backpage. The fact that Backpage earns money from sex trafficking by hosting advertisements online, as opposed to using some other medium, should not exempt it from all liability for knowingly profiting from criminal activity.

A recent report by the Senate Permanent Subcommittee on Investigations stated that the Internet "has become an increasingly central marketplace for human trafficking in the United States." Staff of S. Permanent Subcomm. On Investigations, 114th Cong., Recommendation to Enforce a Subpoena Issued to CEO of Backpage.com, LLC at 31 (hereinafter, the "PSI Staff Report"), http://www.hsgac.senate.gov/subcommittees/investigations/hearings/human-trafficking-investigation.
With respect to children, who make up more than half of all sex trafficking victims, experts have explained that the 846% increase in reports of suspected trafficking over the past five years is "directly correlated to the increased use of the Internet to sell children for sex." *Id.* at 4 (quoting

Testimony of Yiota G. Souras, Senior Vice President & General Counsel, National Center for Missing & Exploited Children, before S. Permanent Subcomm. on Investigations, at 2 (Nov. 19, 2015)).

Backpage is the single largest facilitator of sex trafficking in the United States. *Id.* at App. 40, 47. The Senate's recent investigation into Backpage's practices shows both that Backpage is keenly aware of the sex trafficking rampant on its website and that Backpage does not monitor advertisements in good faith. In fact, the PSI Staff Report strongly suggests that Backpage has altered advertisements for the purpose of concealing evidence of criminality. *See* PSI Staff Report at 21 ("Backpage's moderation process operated to remove explicit references to the likely illegality of the underlying transaction—not to prevent illegal conduct from taking place on its site."). Thus, Backpage is not the type of innocent content provider that is entitled to the protection of Section 230. The First Circuit's ruling to the contrary cannot possibly be reconciled with the text, purpose, and legislative history of Section 230.

The fact that websites like Backpage have been permitted to facilitate criminal activity with impunity creates a grave risk of harm to the public. It is therefore critical that this Court grant review to realign the judicial interpretation of Section 230 with the purpose and legislative intent of the statute.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition for Certiorari to review the First Circuit's decision in this matter.

Respectfully submitted,

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