No. S235968

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

DAWN HASSELL, et al.,
Plaintiffs and Respondents,

v.

AVA BIRD,
Defendant,

YELP, INC.,
Appellant.

After a Decision by the Court of Appeal
First Appellate District, Division Four, Case No. A143233
Superior Court of the County of San Francisco
Case No. CGC-13-530525, The Honorable Ernest H. Goldsmith

APPLICATION OF CHANGE.ORG, ENGINE, GITHUB, INC., A MEDIUM CORPORATION, PATREON, INC., SITEJABBER, AND WIKIMEDIA FOUNDATION, INC. FOR LEAVE TO FILE *AMICI CURIAE* BRIEF AND *AMICI CURIAE* BRIEF IN SUPPORT OF APPELLANT

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APPLICATION OF CHANGE.ORG, ENGINE, GITHUB, INC., A MEDIUM CORPORATION, PATREON, INC., SITEJABBER, AND WIKIMEDIA FOUNDATION, INC. FOR LEAVE TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF APPELLANT

To the Honorable Chief Justice and Honorable Associate Justices of the California Supreme Court:

Pursuant to Rule 8.520(f) of the California Rules of Court, Change.org, Engine, Github, Inc., A Medium Corporation, SiteJabber, and Wikimedia Foundation, Inc. respectfully apply for permission to file the attached *amici curiae* brief in support of petitioner Yelp, Inc. *Amici* are technology companies and nonprofit organizations with limited resources but significant impact, dedicated to the ideal of an open Internet that provides fora for free expression and citizen empowerment. *Amici* have a direct interest in ensuring that the protections of Section 230 of the Communications Decency Act continue to enable and promote innovation and integrity on their platforms and across the Internet services industry as a whole.

A legal rule that undermines the established protections of CDA § 230 threatens all Internet and technology platforms, but its effects would fall particularly hard on small collaborative platforms like *Amici* that have limited human and financial resources but significant impact and vast exposure. For these companies and organizations, the burden of responding to removal orders—combined with the looming threat of contempt sanctions—is functionally and financially equivalent to direct liability. Congress passed § 230 to level the playing field between bigger and smaller players in the Internet industry, enabling more competition among platforms and thus fostering diversity of expression and sources of

information. To exempt removal orders from § 230's immunity provision would reverse this policy objective, allowing larger and more financially secure platforms that can afford to contest such orders and absorb litigation costs to play by different rules than small collaborative platforms.

Change.org is the world's largest petition platform, a mission-driven social enterprise using technology to empower users around the world to create the change they want to make. Change.org has enabled nearly 170 million people in 196 countries to come together to create change in their communities, and has helped more than 100,000 organizations advance their causes and connect with new supporters. In the United States, more than 1,000 new petitions are launched on Change.org every day.

Engine is a technology policy, research, and advocacy organization that bridges the gap between policymakers and start-ups, working with government and a community of more than 500 high-technology, growth-oriented start-ups across the nation to support the development of technology entrepreneurship. Engine creates an environment where technological innovation and entrepreneurship thrive by providing knowledge about the start-up economy and helping government and the public to construct smarter public policy. To that end, Engine conducts research, organizes events, and spearheads campaigns to educate elected officials, the entrepreneur community, and the general public on issues vital to fostering technological innovation. Engine has worked with the White House, Congress, federal agencies, and state and local governments to discuss policy issues and draft legislation.

GitHub, Inc. is a web-based platform that enables communities of users to collaboratively develop open-source software projects. GitHub has

hosted over 46 million projects created by 9 million registered users and more than 20 million monthly visitors. GitHub-hosted software projects are often applications designed for computers or mobile devices, and they can also contain the material underpinning entire website deployments. GitHub is the Internet platform for Internet platforms—a one-stop shop where third parties can upload, store, and perfect the next popular app or site. As such, GitHub has an interest in protecting its own platform as well as the new and valuable platforms that are frequently incubated through its services.

A Medium Corporation provides an online publishing platform where people can read, write, and discuss the ideas of the day. Medium's ecosystem champions thoughtful discourse and a network that connects users with long-form writing by leaders, thinkers, entrepreneurs, artists, and journalists. More than 60 million people visit Medium each month and Medium grows by more than 140,000 new posts each week. Since 2012, tens of millions of people have spent more than seven millennia reading together on Medium.

Patreon, Inc. is a membership platform that makes it easy for artists and creators to get paid. Content creators such as artists, writers, podcasters, musicians, photographers and video makers can use Patreon's platform to send rewards and receive subscription payments from their patrons. Patreon has sent over $100M to creators.

SiteJabber is a web-based platform for consumers to find and review online businesses. Developed in part with a grant from the National Science Foundation, SiteJabber is a vital channel of communication for consumers to comment on, rate, and provide reviews of online businesses using criteria such as service, value, returns, quality, and

shipping. SiteJabber also provides consumers with a valuable shield from online scams that may otherwise be indistinguishable from other businesses.

The **Wikimedia Foundation** is a nonprofit organization based in San Francisco, California, which operates twelve free-knowledge projects on the Internet, including Wikipedia. Wikimedia's mission is to develop and maintain educational content created by volunteer contributors, and to provide this content to people around the world free of charge. In August 2016, the Wikimedia projects received 15.69 billion page views, including 7.81 billion page views on English Wikipedia. That month, users submitted nearly 13.5 million edits to Wikipedia. Since its inception, users have created over 40 million articles on Wikipedia.

No party and no counsel for any party in this case authored the proposed amicus brief in whole or in part, or made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity made a monetary contribution intended to fund the preparation or submission of the brief. *See* Cal. R. 8.520(f)(4).

Dated: April 14, 2017

Respectfully submitted,

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INTERESTS OF THE *AMICI CURIAE*

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INTRODUCTION AND SUMMARY OF ARGUMENT

The Court of Appeal's unprecedented reading of § 230 of the Communications Decency Act ("CDA") threatens to undermine the vital role of Internet platforms as modern fora for free expression and citizen empowerment. As intended by Congress and consistently interpreted by courts across the country for twenty years, § 230 has created the necessary conditions for the extraordinary growth and innovation of the Internet in the United States, where today nearly 290 million users access online services.[1] Secure in the protections of § 230's clear statutory command, interactive Internet service providers have developed pioneering platforms for collaboration, communication, and mobilization that benefit and are used by billions of people. Platforms created and supported by companies and organizations like *Amici* provide twenty-first-century opportunities for communities to engage in online free and open political discourse, cultural development, intellectual activity, and economic enterprise.

A legal rule that undermines the established protections of CDA § 230 threatens all Internet and technology platforms, but its effects would fall particularly hard on small collaborative platforms ("SCPs") that have limited human and financial resources but significant impact and vast exposure. For these companies and organizations, the burden of responding to removal orders—combined with the looming threat of contempt sanctions—is functionally and financially equivalent to direct liability. The text and purpose of § 230 make clear that it should protect SCPs not only from direct suit and the costs of litigation, but also from other forms of legal action that impose similar burdens and undermine Congress' stated

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[1] *Statistics and Facts on Internet Usage in the United States*, Statista, http://bit.ly/2gB5Ita (last visited Apr. 14, 2017).

objectives. In particular, Congress expressly passed § 230 to level the playing field between bigger and smaller players in the Internet industry, enabling more competition among platforms and thus fostering diversity of expression and sources of information. To exempt removal orders from § 230's immunity provision would reverse this policy objective, allowing larger and more financially secure platforms that can afford to contest such orders and absorb litigation costs to play by different rules than SCPs.

Faced with a situation similar to Appellant's here—that is, a binding removal order after a default judgment in a case to which the provider was never made a party—SCPs would face an impossible choice. First, they could simply blindly obey without contesting an injunction as imposed. But while there would certainly be cases where SCPs agreed that the uncontested content should be removed, in cases where they believed the content was lawful, forced removal by court order would effectively undermine the integrity of their platforms, eroding the trust of their users, stifling critical viewpoints online, and preventing SCPs from fulfilling their missions to empower and inform citizens. Second, they could try to challenge the removal order on the merits, assuming they are allowed to do so. But this would create exorbitant litigation costs that SCPs cannot afford, jeopardizing their financial positions and their ability to both attract investment and compete in the marketplace.

Moreover, in either scenario, SCPs would likely not be able to control their compliance costs, whether they willingly complied with an injunction or litigated it and lost. As has been well-documented, content that is removed from an online platform often triggers the so-called "Streisand Effect"—a phenomenon in which an attempt to delete or obscure

certain content triggers a wave of public interest. Often, users will then repost the information at issue as quickly and as often as they can in order to keep it available online. Thus, the free and open participatory model that defines SCPs would put them at the ever-present risk of noncompliance, with its attendant legal consequences, forcing SCPs to devote extensive human and technical resources to comply with even a few removal orders.

Modern technology allows even the smallest of online platforms, in terms of human or financial capital, to reach thousands if not millions of people. SCPs cannot afford to be embroiled in the conflicts that will inevitably arise among these innumerable third parties. Tampering with § 230 immunity would frustrate the development of the companies and organizations that drive our economy and facilitate the free expression and access to information that define our open society. This is exactly what Congress, in crafting the forward-thinking protections of § 230, intended to avoid.

The Court of Appeal's decision upends the longstanding status quo upon which SCPs rely to weigh risk in a volatile and fast-paced industry. In drawing a distinction between "liability" and "cause of action," the Court directly contradicted the letter and spirit of § 230 as well as all prior case law. SCPs and the millions of activists, businesses, consumers, creators, educators, students, and NGOs that depend upon them have had settled expectations for over two decades that these platforms would protect speech and access to information. The decision below betrays those expectations and undermines confidence in the security of online speech hosted by SCPs.

For these reasons, and for the reasons that follow, this Court should

reverse the Court of Appeal's decision holding that the removal order issued in this case is not barred by § 230.

ARGUMENT

I. THE COURT OF APPEAL'S UNPRECEDENTED READING OF § 230 THREATENS TO UNDERMINE THE VITAL ROLE THAT SMALL COLLABORATIVE PLATFORMS PLAY IN EMPOWERING CITIZENS, ENCOURAGING FREE EXPRESSION, AND SPURRING ECONOMIC GROWTH.

A. Section 230 has enabled small collaborative platforms to fulfill the promise of the Internet as a tool for citizen empowerment and an engine for economic growth.

Small collaborative platforms ("SCPs") have played a prominent role in the modern societal and technological revolution, especially in terms of broadening civic discourse and access to information in the age of the Internet. When Congress enacted the Communications Decency Act in 1996, it stated: "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." 47 U.S.C. § 230(a)(3). The U.S. Supreme Court, striking down other provisions of the Act as unconstitutional the following year, likewise noted that the "vast democratic forums" of the Internet offer "unlimited, low-cost capacity for communication of all kinds." *Reno v. ACLU*, 521 U.S. 844, 868–70 (1997). Today, the Internet is "bringing together the small contributions of millions of people and making them matter." Lev Grossman, *You—Yes, You—Are TIME's Person of the Year*, Time (Dec. 25, 2006), http://ti.me/W9U4Sd. The economic and social benefits of these virtual interactions, made possible through Internet intermediaries, are by

now well-documented. *See, e.g.*, *Expanding U.S. Digital Trade and Eliminating Barriers to U.S. Digital Exports: Hearing Before the Subcomm. on Trade of the H. Comm. on Ways & Means*, 114th Cong. 3 (2016) (testimony of Michael Beckerman, President and CEO, Internet Association) ("Beckerman Testimony"), http://bit.ly/2hn4bqr ("Internet platforms are the global engine of the innovation economy, with the internet sector representing an estimated 6 percent of U.S. GDP in 2014, totaling nearly $967 billion, and accounting for nearly 3 million American jobs."); Karine Perset, Org. for Econ. Co-operation & Dev., *The Economic and Social Role of Internet Intermediaries* 37–40 (2010), http://www.oecd.org/Internet/ieconomy/44949023.pdf.

There is widespread consensus that § 230 immunity is to thank for creating the underlying legal conditions enabling these enormous gains. *See* Center for Democracy and Technology, Comment Letter in the Matter of Global Free Flow of Information on the Internet (Dec. 6, 2010), http://bit.ly/2hq1rsz ("The U.S. online industry is the most dominant in the world precisely because of the protections afforded intermediaries by Section 230 and the DMCA."); Jack M. Balkin, *Old-School/New-School Speech Regulation*, 127 Harv. L. Rev. 2296, 2313 (2014) (noting that Section 230 has "made possible the development of a wide range of telecommunications systems, search engines, platforms, and cloud services without fear of crippling liability" (citation omitted)); David Post, *A Bit of Internet History, or How Two Members of Congress Helped Create a Trillion or So Dollars of Value*, Wash. Post: Volokh Conspiracy (Aug. 27, 2015), http://wapo.st/1K9AmTh?tid=ss_tw-bottom ("No other sentence in the U.S. Code . . . has been responsible for the creation of more value than

[Section 230] . . . ."). Section 230 lowers the barriers to entry in the market and levels the playing field between big and small players, enabling competition that has fostered unprecedented diversity of expression, sources of information, and economic development. *See* Beckerman Testimony at 14 ("The intermediary liability protections found in Section 230 of the CDA are a perfect example of future proofed legislation that allowed internet platforms to scale and spurred unprecedented economic growth and innovation."). Indeed, it is not too much to say that without § 230, SCPs—which provide twenty-first-century opportunities for communities to collaborate and communicate online—would not exist. *See* Post ("Virtually every successful online venture that emerged after 1996 . . . relies in large part (or entirely) on content provided by their users, who number in the hundreds of millions, or billions. . . . I fail to see how any of these companies . . . would exist without Section 230.")

SCPs are also key drivers of innovation and job creation. *See* Ian Hathaway, Ewing Marion Kauffman Found., Tech Starts: High-Technology Business Formation and Job Creation in the United States 16 (2013), http://bit.ly/2p44HNL ("[T]he net job creation rate of surviving young high-tech and [information and communications technology] firms is . . . more than twice that of businesses across the economy."); *cf.* Tim Kane, Ewing Marion Kauffman Found., The Importance of Startups in Job Creation and Job Destruction 2 (2010), http://bit.ly/1eODvIy ("[W]ithout startups, there would be no net job growth in the U.S. economy."); John Haltiwanger, Ron S. Jarmin & Javier Miranda, *Who Creates Jobs? Small Versus Large Versus Young*, 95 Rev. Econ. & Stat. 347 (2013) (highlighting the important role of business start-ups and young businesses

in U.S. job creation). *Amici* and the SCPs they represent serve, and often are, the companies and consumers that drive the economy by enabling ongoing source code development and facilitating the free flow of information that spurs creativity and innovation. *See, e.g.*, Cade Metz, *How GitHub Conquered Google, Microsoft, and Everyone Else*, Wired (Mar. 12, 2015), http://bit.ly/2naaBb4 (explaining how *Amicus* GitHub, a start-up itself, was able to compete against powerful industry players and become an indispensable "central repository for . . . free code" where now "pretty much everyone hosts their open source projects," from startups to incumbents).

In addition to economic effects, *Amici* and those they represent are perfect examples of the disproportionate sociocultural impact of SCPs. They provide opportunities for citizens to exercise their First Amendment rights to speak up on political matters, share knowledge with others, and petition for change in their communities. *See, e.g.*, Shaindel Beers, *Steve Bannon's Racist, Anti-Semitic, Misogynistic Views Don't Belong in the White House*, Change.org, http://bit.ly/2fDNTFU (last visited Apr. 14, 2017) (petitioning political leaders to remove a prominent public figure from office and garnering nearly 350,000 signatures); Andrew Cona, *Open an Investigation into Hillary Clinton and the DNC for Election Fraud*, Change.org, http://bit.ly/2nawXKr (last visited Apr. 14, 2017) (calling on the FCC to investigate due to allegations of "cheating" and "fraud" and garnering over 70,000 signatures). The plethora of such platforms ensures a diversity of outlets for all manner of speech and diversity of issues for all kinds of constituencies. *See, e.g.*, Sue Gardner, *Wikipedia, the People's Encyclopedia*, L.A. Times (Jan. 13, 2013), http://lat.ms/2oa5Wrn

(describing the "diverse collection of people [that] com[es] together" to write, edit, and debate encyclopedia entries on *Amicus* Wikimedia's Wikipedia platform).

Yet while SCPs provide immense benefits for the public good, they are the ones most vulnerable to any cracks in the § 230 flood wall.

B. Small collaborative platforms would be acutely burdened by the Court of Appeal's deprivation of § 230 immunity.

While a legal rule that diminishes the established protections of § 230 in this way threatens all Internet and technology organizations, its effects would fall particularly hard on SCPs. Modern technology enables even platforms with little human or financial capital to reach thousands if not millions of people. This asymmetry means that these companies and organizations especially cannot afford to be embroiled in the conflicts that will inevitably arise among innumerable third parties. Without § 230 immunity from court orders arising out of user content, if faced with a binding removal order after a default judgment against a third party, SCPs would face an impossible choice.

First, they might simply obey without contesting an injunction as imposed. But where SCPs believe the content at issue is in fact lawful, forced removal by court order would effectively undermine the integrity of their platforms, eroding the trust of their users and stifling critical viewpoints. Any business or person criticized online could file a tort claim and present evidence supporting their arguments, knowing full well that most third-party users will not show up to defend an online comment, petition, or review. *See* Eric Goldman, *A New Way to Bypass 47 USC 230? Default Injunctions and FRCP 65*, Tech. & Marketing L. Blog (Nov. 10,

2009), http://bit.ly/2gB6lD3 ("[T]hese cases almost always result in a default.").[2] In such a scenario, a court's determination would be based purely on the plaintiff's allegations or uncontested evidence, providing incentives for even the most disreputable business to whitewash its online reputation or maintain its market share through uncontested litigation, damaging the reputation of the platform in the process. For example, a large corporation might sue the author of an online petition posted on *Amicus* Change.org calling for a boycott of certain goods or a change in company practices,[3] alleging that the underlying accusations are baseless. Or a politician might decry in a court of law an otherwise accurate, well-sourced article posted on *Amicus* Wikimedia's Wikipedia site that does not portray him in the most favorable light. *See, e.g.*, Joe Mullin, *Wikipedia Mounts Courtroom Defense for Editor Sued by Politician*, Ars Technica (Feb. 18, 2014), https://arstechnica.com/?post_type=post&p=413861 (describing an attempt by a Greek politician to sue a Wikipedia editor for libel even though the platform publicly defended the disputed article as "supported by reputable secondary sources"). SCPs that seek to facilitate free expression

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[2] In fact, there have been a spate of recent cases in which reputation management services have sued nonexistent defendants for defamation, or have not made proper efforts to serve defendants, in order to obtain default judgments and then petition websites to remove content. *See* Eugene Volokh & Paul Alan Levy, *Dozens of Suspicious Court Cases, with Missing Defendants, Aim at Getting Web Pages Taken Down or Deindexed*, Wash. Post: Volokh Conspiracy (Oct. 10, 2016), http://wapo.st/2dbvaCm?tid=ss_tw.

[3] For one of many examples of this type of petition, see Katie Emmons, *Don't Let Tilikum's Death Be in Vain—Empty the Tanks, SeaWorld*, Change.org, http://bit.ly/2oqT67E (last visited Apr. 11, 2017) (garnering over 235,000 signatures for a petition alleging cruel animal treatment and urging that supporters "don't buy a ticket").

and offer a diversity of viewpoints might be chilled, which would confine certain controversial categories of speech to platforms with greater resources to challenge removal orders—thereby giving powerful incumbents, through their own, unregulated company policies, unchecked control over decisions about what is acceptable online speech.

Similarly, *Amicus* GitHub hosts repositories full of source code, the lifeblood of twenty-first century industry. An established Internet or software company, perhaps looking to quash competition, might sue a former employee who had signed a non-disclosure agreement and later collaborated on a project on GitHub. The company could sue the individual, obtain a default judgment for breach of contract, and then demand removal of certain content.[4] The forced removal of a single line of code or a comment could fatally disrupt a burgeoning online business or organization, many of which host the entirety of their source code on GitHub.

The collaborative nature of SCPs means that deleting the speech of one user could have a material impact on the speech of other users, due to the loss of important context. This would have far-reaching implications for *Amici* and the platforms they support. If platforms remove valid content, where the speech or work of other users may be affected by the removal, it would undermine the very purpose of participative platforms. Thus, the consequence of broadening default judgments against users to bind online

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[4] This is not just idle speculation. Consider the fact that of the hundreds of takedown requests received by *Amicus* GitHub in 2015, "fewer than twenty individual notice senders requested removal of over 90% of the content GitHub took down in 2015." *GitHub's 2015 Transparency Report*, GitHub (June 28, 2016), http://bit.ly/298w6WM.

hosts as well would be an Internet vetoed by hecklers and monopolists—a virtual world that does not reflect reality, hurting consumers and fair competition, and curtailing important and productive speech.

Second, small platforms might try to challenge a removal order on the merits, assuming they are allowed to do so, but this would create exorbitant litigation costs for those that cannot afford to take such huge legal risks. While big players in the industry might have big legal budgets to fight back against court decisions that fall short of due process and implicate important First Amendment considerations, small players like *Amici* do not. The legal uncertainty itself would jeopardize the existence of small and start-up platforms. Their success in a volatile industry is reliant on stable and workable legal rules, *see* Center for Democracy & Tech., Shielding the Messengers: Protecting Platforms for Expression and Innovation 23 (2012) ("CDT, Shielding the Messengers"), http://bit.ly/2d8ycty ("[L]iability risk and enforcement obligations create new barriers to entry that can effectively close the market to start-ups."), in no small part because unpredictability diminishes their ability to attract the capital needed to fund their activities. *See* Comput. & Commc'ns Indus. Ass'n, Comment Letter in the Matter of Sharing Economy Workshop (May 26, 2015), http://bit.ly/2hxVzO8 ("[U]ncertainty around intermediary safe harbors negatively effects [sic] venture capital investment in online businesses."); Matthew C. Le Merle, Tallulah J. Le Merle & Evan Engstrom, The Impact of Internet Regulation on Early Stage Investment 20–23 (2014), http://bit.ly/2oxswgr (finding that for tech investors an "area of consistent concern worldwide was secondary liability"); Booz & Co., The Impact of U.S. Internet Copyright Regulations on Early-Stage

Investment (2011), http://pwc.to/2hxZkDq (finding that increasing copyright liability for Internet intermediaries would reduce all-important early-stage investment by 81 percent). The derivative chilling effects that the lack of investment in SCPs would have on the Internet—including the loss of important information, and the diminished ability to speak out on political issues or to collaborate with coders—is incalculable.

Moreover, compliance in either scenario discussed above would likely be cost-prohibitive, funneling scarce resources away from product and engineering that would otherwise be allocated to building high-quality and user-friendly platforms that could attract and retain users. Removal orders, in order to be effective, will enjoin an entire platform. Yet the collaborative community models on which SCPs thrive provide open fora for user participation, allowing users to post freely vast stores of content. Given the very real potential for the Streisand Effect,[5] in which users independently repost content that has been taken down by websites, SCPs would therefore have to go to unreasonable lengths to ensure that content ordered removed does not continually reappear on their sites.

To do this, platforms would have to either implement a difficult-to-manage notice-and-takedown system or "[i]mplement[] an automated filtering system . . . requir[ing] an ISP or hosting platform to make upfront investments in hardware and software and then incur additional ongoing costs for maintenance and support costs, including personnel to handle questions and disputes." CDT, Shielding the Messengers at 23. Financing and building out these top-down procedures would be costly, and they

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[5] *See, e.g.*, Mario Cacciottolo, *The Streisand Effect: When Censorship Backfires*, BBC News (June 15, 2012), http://bbc.in/2o3jQfA (cataloguing well-known instances of this common phenomenon).

would also destroy the grassroots participative models for producing and disseminating content upon which SCPs rely.[6] Organizations risk compromising their brand integrity or reputation through filtering that inevitably casts too wide of a net or takes too heavy a hand, and SCPs cannot afford to weather the inevitable user discontent that would be engendered by the unnecessary curbing of collaboration or speech. Furthermore, at the earliest stages of their businesses, it is difficult enough for platforms to identify a successful business model and attract the right investors. SCPs cannot focus disproportionately on building out a large policy team to address the overwhelming amounts of content posted daily. The prospect of forcing leanly staffed nonprofits and start-ups to review tens of millions of comments, contributions, lines of software code, or petitions would be laughable, if the consequences of such a burden were not so severe, as the Fourth Circuit explained almost two decades ago:

> The specter of tort liability in an area of such prolific speech would have an obvious chilling effect. 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 v. AOL, Inc., 129 F.3d 327, 331 (4th Cir. 1997); *see also Eroding*

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[6] Moreover, automated filtering systems are often inaccurate and overbroad, chilling online speech even more severely than notice-and-takedown procedures that allow for human review and the exercise of judgment. *See* Sarah Jeong, *Why It's So Hard to Stop Online Harassment*, The Verge (Dec. 8, 2014), http://bit.ly/1G9dfR6 (describing such systems as "documented trainwrecks with questionable efficacy and serious free speech ramifications").

Exceptionalism: Internet Firms' Legal Immunity Is Under Threat, The Economist (Feb. 11, 2017) ("*Eroding Exceptionalism*"), http://econ.st/2lnAlo3 ("[B]eing required energetically to police their platforms . . . would be difficult and costly and could turn them into censors.").

II. THE TEXT OF § 230 PROVIDES IMMUNITY TO SMALL COLLABORATIVE PLATFORMS FROM REMOVAL ORDERS RESULTING FROM THE ACTIONS OF THEIR USERS.

Section 230 requires that SCPs be immune to the removal order at issue for three reasons. First, the language of the statute is clear and grants interactive computer service providers immunity in terms that require this result. Second, § 230(e)(3) explicitly grants immunity against both "liability" and "cause[s] of action," making online platforms immune not only to direct suit, but also to removal orders that impose a legal obligation. Finally, the statute must be interpreted consistently with the findings and policies of the United States stated in § 230(a)(4) and § 230(b)(2), requiring the removal order to be rejected in order to protect the vital publishing functions of SCPs. 47 U.S.C. §§ 230(a)(4), 230(b)(2).

First, § 230(c)(1) states that "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). Section 230(e)(3) states that "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). The Court of Appeal improperly relied on § 230(c)(1) alone as the basis of § 230 immunity, concluding that because the removal order issued against Yelp in this case

does not treat Yelp as the publisher or speaker of the content at issue, it does not violate the immunity granted by § 230. *Hassell v. Bird*, 247 Cal. App. 4th 1336, 1363 (2016). In doing so, the Court of Appeal held that issuing a removal order requiring Yelp to remove the content in question did not constitute imposing "liability" upon Yelp as prohibited by § 230(e)(3), or alternatively that even if it did constitute liability, it is not the kind of liability that the statute prohibits. *Id.* Neither of these holdings is consistent with the text of the statute.

A. The removal order issued against Yelp is a form of liability within the plain meaning of that term because it creates a legal obligation to pursue a certain course of conduct or face contempt-of-court charges.

Section 230(e)(3) of the CDA plainly prohibits issuing a removal order that requires Yelp to remove the content at issue from its website. If the removal order stands and Yelp fails to comply with it, Yelp may be "sanctioned" for "violating a court order." *Hassell*, 247 Cal. App. 4th at 1365. Accordingly, the removal order issued in this case creates a legal obligation for Yelp to pursue a certain course of conduct or face contempt-of-court charges, one that did not exist prior to the issuance of the order. Section 230(e)(3) categorically states that "no cause of action may be brought and no liability may be imposed" that is inconsistent with § 230. 47 U.S.C. § 230(e)(3). The removal order issued against Yelp creates a legal obligation that constitutes "liability" within the plain meaning of that term in § 230(e) of the CDA, and "when interpreting a statute, courts must give words their 'ordinary or natural meaning.'" *See Leocal v. Ashcroft*, 543 U.S. 1, 9 (2004) (citing *Smith v. United States*, 508 U.S. 223, 228 (1993)); *see also United States v. LKAV*, 712 F.3d 436, 440 (9th Cir. 2013) ("Words

in statutes usually carry 'their plain, natural, ordinary and commonly understood meanings.'" (citing *United States v. Romo–Romo*, 246 F.3d 1272, 1275 (9th Cir. 2001))). Dictionaries widely define "liability" as the condition of being actually or potentially subject to a legal obligation.[7]

The Court of Appeal held that "liability" does not include a removal order that creates a duty to act or face contempt-of-court charges, but this is a profoundly counter-intuitive and narrow understanding of the term "liability." If the Court of Appeal were correct on this point, direct injunctions against named parties would also fail to constitute "liability" because they too only create a duty to act or face contempt-of-court charges. In fact, the Court of Appeal's judgment grants a remedy that the court implies would be impermissible had Yelp been named. *Hassell*, 247 Cal. App. 4th at 1364. To hold that direct suit qualifies as an impermissible "liability" but the removal order at issue does not, ignores the identical nature of the remedy in each case—namely, issuing an order requiring Yelp to remove the postings or face potential contempt-of-court charges. By construing "liability" in this fashion, the Court of Appeal gives undue weight to the form of the action at issue, instead of more appropriately looking to the language of the statute and the impact of the remedy itself to evaluate its propriety. *United States v. Oakland Cannabis Buyers' Co-op.*, 532 U.S. 483, 497 (2001) ("Courts of equity cannot, in their discretion,

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[7] *Liable*, *Black's Law Dictionary* (10th ed. 2014) ("1. Responsible or answerable in law; legally obligated. 2. (Of a person) subject to or likely to incur (a fine, penalty, etc.)."); *see also Liability*, *Oxford Dictionary* (2nd ed. 1997) ("The state of being legally responsible for something."); *Liable*, *Merriam-Webster's Collegiate Dictionary* (11th ed. 2003) ("1.a: obligated according to law or equity; b: subject to appropriation or attachment. 2.a: being in a position to incur; b: exposed or subject to some usually adverse contingency or action.").

reject the balance that Congress has struck in a statute."); *see also Oregon Nat. Res. Council v Harrell*, 52 F.3d 1499, 1508 (9th Cir. 1995) ("When the effect of a mandatory injunction is the equivalent of mandamus, it is governed by the same standard."); *Burnett v. Doyen*, 220 Kan. 400, 404 (1976) ("The restraint which an order purports to impose, and not the name given to it, determines its true nature and character."). There is no language in § 230 that supports such a strained and narrow interpretation of "liability" and indeed there is language which requires a broader interpretation of liability consistent with the findings and purposes of the statute. 47 U.S.C. § 230(e)(3).

The removal order in this case renders Yelp subject to a legal obligation to remove Bird's defamatory statements from its website, and potentially subject to contempt-of-court charges if it fails to do so. Accordingly, it is clear that the removal order imposes liability on Yelp.

B. Section 230(e)(3) grants immunity to Internet platforms against both "cause[s] of action" and "liability," underscoring the broad immunity granted by § 230.

Section 230(e)(3) explicitly distinguishes between causes of action and impositions of liability, prohibiting both when it comes to state-law claims against providers or users of interactive computer services that are inconsistent with § 230. *See* 47 U.S.C. § 230(e)(3) ("[N]o cause of action may be brought and no liability may be imposed . . . .") Under the rule against surplusage, statutes must be interpreted to give effect to all of their language and minimize redundancy. *See Merx v. Gen. Revenue Corp.*, 133 S. Ct. 1166, 1178 (2013); *see also LKAV*, 712 F.3d at 440. Accordingly, the use of both terms in § 230(e)(3) suggests that "cause of action" and

"liability" must be read to have at least slightly different scope. It follows that § 230(e)(3) prohibits imposing liability against interactive computer service providers in at least some circumstances when no cause of action is alleged against them.

The Court of Appeal interpreted § 230(e)(3) to prohibit only liability attached to a cause of action alleged against an interactive computer service provider, unduly narrowing the scope of "liability" and effectively making the term redundant. The Court of Appeal concludes that issuing the removal order against Yelp "does not impose any liability on Yelp" because "Hassell filed their complaint against Bird, not Yelp; obtained a default judgment against Bird, not Yelp; and was awarded damages and injunctive relief against Bird, not Yelp." *Bird*, 247 Cal. App. 4th at 1363. Requiring that Hassell file their complaint, obtain a default judgment, or be awarded damages or injunctive relief against Yelp in order to find "liability" imposed upon Yelp, makes "liability" coextensive with "cause of action," and makes the conjunction in § 230(e)(3) meaningless repetition. The Court of Appeal relies on this erroneous reading of § 230(e)(3) to reach the conclusion that no liability is being imposed on Yelp and to distinguish the authority cited by Yelp. *Hassell*, 247 Cal. App. 4th at 1365.

C. Sections 230(a)(4) and 230(b)(2) both explicitly require that the statute be interpreted consistently with its goal of ensuring that interactive computer services remain "unfettered" by state and federal regulation.

When interpreting a statute, courts must "interpret the relevant words not in a vacuum, but with reference to the statutory context, 'structure, history, and purpose.'" *See Abramski v. United States*, 134 S. Ct. 2259, 2267 (2014) (citing *Maracich v. Spears*, 133 S. Ct. 2191, 2209

(2013)). The findings of Congress listed in § 230(a) and the policy of the United States listed in § 230(b) both require that the immunity granted by § 230(e)(3) ought be interpreted and applied broadly, rendering Yelp immune to this removal order. Section 230(a)(4) emphasizes the value of SCPs in an environment with minimal government regulation. *See* 47 U.S.C. § 230(a)(4) ("The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation."). Section 230(b)(2) states that it is the policy of the United States to preserve the vibrant free market that exists "unfettered" by federal or state regulation. *See* 47 U.S.C. § 230(b)(2) (stating legislative intent "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."). Courts must take these statements—not mere legislative history but operative statutory language—into account when interpreting other sections of the same statute.

As discussed above, the services provided by SCPs, including those of *Amici*, are of great value to millions of Americans, to our economy as a whole, and to our society that values diversity of discourse and citizen empowerment. SCPs depend upon § 230 immunity in order to focus their limited resources on innovating, rather than being overwhelmed by the costs of complying with or challenging removal orders arising out of the actions of their millions of users. Any reading of "liability" in § 230 that restricts the scope of the immunity upon which SCPs rely, and which has so enriched the economy and lives of the American people, is inconsistent with the findings of Congress expressed in § 230(a)(4). Similarly, a reading of "liability" that does not extend to removal orders issued pursuant to

injunctions against a third party undermines the "unfettered" environment that Congress sought to make "the policy of the United States" in § 230(b)(2).

III. THE COURT OF APPEAL'S RULING DEPARTS FROM UNIFORM, WELL-ESTABLISHED, AND WELL-REASONED PRECEDENT THAT SMALL COLLABORATIVE PLATFORMS HAVE RELIED UPON FOR DECADES.

Courts throughout the United States have uniformly and unambiguously interpreted § 230 to grant an immunity from direct suit and from the burdens of litigation, particularly in the context of liability for interactive computer service providers resulting from the actions of their users. The Court of Appeal inappropriately distinguishes and departs from uniform precedent on this point, in favor of a procedural distinction nowhere supported in the statute or case law, to overturn an interpretation of § 230 immunity upon which the entire interactive computer service industry has long relied.

Federal and state courts throughout the United States have consistently interpreted § 230 to provide immunity to interactive service providers for wrongs committed by their users. *See, e.g.*, *Zeran v. America Online, Inc.*, 129 F.3d 327 (4th Cir. 1997). In *Zeran*, the Fourth Circuit held that § 230 immunity prohibited imposing liability on America Online for unreasonable delay in removing defamatory messages, failure to post retractions of those messages, and failure to screen for additional postings thereafter. *Id.* The court in *Zeran* recognized that § 230 was explicitly intended to overrule *Stratton Oakmont, Inc. v. Prodigy Services Co.*, No. 30163/94, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995), a case in which an interactive computer service provider was held liable for exercising its

discretion regarding publishing the content provided by its users. The *Zeran* court held that *Stratton* was overruled by § 230 because "§ 230 precludes courts from entertaining claims that would place an interactive computer service provider in a publisher's role." *Zeran*, 129 F.3d at 330. The Fourth Circuit clarified that § 230 immunity extended to all publishing functions, holding that § 230 required that "lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred." *Id.* In doing so, the court recognized that § 230 was enacted in part "to encourage service providers to self-regulate the dissemination of offensive material over their services," rather than punishing them for attempting to do so as in *Stratton*. *Id.* at 331. The *Zeran* court recognized that by refusing to impose liability for functions of traditional publishers, § 230 preserved the free speech of such fora, enabled Internet platforms to avoid the spectre of tort liability and encouraged them to self-regulate. *Id.*

Since *Zeran*, courts have continued to apply and strengthen this rule in multiple contexts. The Ninth Circuit has been particularly clear about the duty of courts to preserve a broad immunity under § 230. For example, in *Batzel v. Smith*, 333 F.3d 1018 (9th Cir. 2003), the Ninth Circuit recognized that § 230 immunity prevented liability for forwarding an email to a listserv, holding that forwarding a message constituted publishing information primarily provided by third parties. In *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119 (9th Cir. 2003), the Ninth Circuit refused to impose liability on a dating site for false dating profiles submitted by third parties, noting that "[u]nder § 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*." *Carafano*, 339 F.3d at 1124 (emphasis added). And in *Fair Housing Council v. Roommates.com*, 521 F.3d 1157, 1174 (9th Cir. 2008), an online platform remained immune under § 230 for encouraging subscribers to provide information. The Ninth Circuit held that such encouragement did not make them information content providers and therefore compromise their immunity. *Id.* Moreover, the Ninth Circuit added that § 230 "protect[s] websites not merely from ultimate liability, but [also] from having to fight costly and protracted legal battles." *Id.* at 1175. In *Barnes v. Yahoo!, Inc.*, the court held that the CDA "protects an Internet service provider from suit" for failing to remove defamatory material, regardless of whether the theory of the plaintiff was one of negligence or defamation, and regardless of the label given to an action that is "*quintessentially* that of a publisher." 570 F.3d 1096, 1098 (9th Cir. 2009) (emphasis added). A host of other courts have also interpreted § 230 in a similarly broad fashion. *See, e.g.*, *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 254–55 (4th Cir. 2009) (holding that § 230 provides an "immunity from suit," not solely a "defense to liability"); *Ben Ezra, Weinstein, & Co. v. America Online, Inc.*, 206 F.3d 980, 986 (10th Cir. 2000) ("By deleting the allegedly inaccurate stock quotation information, Defendant was simply engaging in the editorial functions Congress sought to protect.").

Indeed, this Court has interpreted the scope of § 230 immunity to be similarly broad. In *Barrett v. Rosenthal*, the Court recognized that § 230 immunity applies to publishers and distributors because "[C]ongress did not intend to create such an exception to section 230 immunity" in an online

context. 40 Cal. 4th 33, 63 (2006). The Court specifically endorsed *Zeran*'s reasoning that "the sheer number of postings on interactive computer services would create an impossible burden in the Internet context," if each potentially defamatory statement required investigation, legal judgment and an editorial decision by the publisher or distributor. *Id.* (citing *Zeran,* 129 F.3d at 333).

Uniform § 230 case law makes it clear that actions like forwarding an email, editing a user-submitted dating profile, distributing online posts, encouraging users to post, and even failing to delete an offensive profile are all publishing functions and accordingly fall within the scope of the immunity granted to Internet platforms by § 230. *See Batzel*, 333 F.3d 1018; *Fair Housing,* 521 F.3d 1157; *Carafano*, 339 F.3d 1119; *Barnes*, 570 F.3d 1096; *Barrett*, 40 Cal. 4th 33. The removal order issued in this case orders Yelp to exercise yet another function that is typical of ordinary publishers: to remove already published content. Content removal is therefore protected by exactly the same § 230 immunity that protects all other publisher functions. The Court of Appeal distinguished each of these cases for the simple reason that Yelp is not directly subject to suit, and is instead subject to a removal order issued pursuant to a judgment against a third party. In doing so, the Court of Appeal missed the forest for the trees, focusing on the narrow procedural contexts in which § 230 has routinely been applied in order to justify departing from uniform precedent, rather than recognizing the broad immunity consistently extended to all publisher functions of Internet fora.

As the Court of Appeal notes, there is no case that limits the immunity of § 230 to direct suit only. *Hassell*, 247 Cal. App. 4 at 225.

Despite this absence of support, the Court of Appeal holds that a default judgment against a third party is a sufficient justification to create a greater legal obligation for an Internet platform than it could if that third party had been a named party, inappropriately granting injunctive relief.[8] Courts interpreting § 230 have declined to impose identical remedies in situations where Internet platforms are directly sued.[9] As in *Carafano*, courts have often noted that Congress intended exactly this result.[10] To immunize Internet platforms from direct suit, while allowing a remedy of the same effect to attach to a default judgment against a third party, is a radical

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[8] Courts have widely held that an injunction may only bind a party or someone actively working with a party to help evade the injunction's terms. Only aiders or abettors of the party against whom the original injunction runs may also be bound by the terms of the injunction. For example, in *Blockowicz v. Williams*, the Seventh Circuit refused to extend an injunction against defendants to the platform Ripoff Report without a showing that they were actively working in concert with the defendant. 630 F.3d 563 (7th Cir. 2015). In effect, as we have already argued, the removal order issued against Yelp in this case is a form of injunctive relief. Accordingly, the removal order issued against Yelp is void absent a showing that Yelp is in fact an aider or abettor of Bird.

[9] *See, e.g.*, *Goddard v. Google, Inc.*, 640 F. Supp. 2d 1193 (N.D. Cal. 2009) (dismissing complaint for allegedly fraudulent advertisement); *Hupp v. Freedom Commc'ns, Inc.*, 221 Cal. App. 4th 398 (2013) (affirming order granting motion to strike claim that the defendant breached user agreement); *Doe II v. MySpace, Inc.*, 175 Cal. App. 4th 561 (2009) (sustaining demurrer to negligence and strict liability causes of action arising from sexual assaults inflicted on minors); *Delfino v. Agilent Techs., Inc.*, 145 Cal. App. 4th 790 (2006) (affirming summary judgment in favor of employer that provided interactive computer service to employee who used the system to make threats over the Internet).

[10] *Carafano*, 339 F.3d at 1125 ("[D]espite the serious and utterly deplorable consequences that occurred in this case, we conclude that Congress intended that service providers such as Matchmaker be afforded immunity from suit.").

departure from the conclusions and reasoning found in prior precedent.

IV. THE LEGISLATIVE HISTORY OF § 230 DEMONSTRATES THAT CONGRESS INTENDED TO SHIELD SMALL COLLABORATIVE PLATFORMS FROM ANY LEGAL CONSEQUENCES ARISING OUT OF DEFAMATORY AND OTHER TORTIOUS CONDUCT BY THIRD-PARTY USERS.

Congress added § 230 to the CDA to ensure that the legislation would remain consistent with both the First Amendment and the policy goals of the landmark Telecommunications Act of 1996, to which the CDA was an amendment. Given these clear and forward-thinking goals—to foster competition, growth, and innovation across the telecommunications industry, and in particular the emerging market for Internet services—there is only one reading of § 230, as applied to this case, that is consistent with legislative intent. In order for the Internet services industry to thrive, for new entrants in the market to survive, and for platforms whose business models and missions rely on providing fora for free expression and citizen empowerment to maintain their integrity, online hosts must be shielded from injunctions arising out of actions involving third parties. As far as the legislative intent and intended effects of § 230 are concerned, the restrictive interpretation of the statutory term "liability" imposed by the courts below is a semantic distinction without a difference.

A. The CDA was passed as part of the Telecommunications Act of 1996, a comprehensive legislative effort to discourage government regulation of and encourage market competition and innovation in the Internet services industry.

The Telecommunications Act of 1996 was a comprehensive overhaul of existing law intended to account for technological

developments like the Internet and "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition." H.R. Rep. No. 104-458, at 1 (1996) (Conf. Rep.). The primary target of the Telecommunications Act was unnecessary government regulation in all of its forms.

Moreover, the Act aimed to foster competition from new entrants within distinct markets and to reduce the inherent advantages of incumbent service providers. *See* Charles B. Goldfarb, Cong. Research Serv., RL33034, Telecommunications Act: Competition, Innovation, and Reform 11–13 (2005). Such intramodal competition was seen as an important requirement to protect market innovation and to prevent the monopolization of the various sectors of the telecommunications industry. *See id.* Senator Larry Pressler, the primary sponsor of the legislation, remarked that the bill was intended to "let in new entrants" and "accelerate . . . an explosion of new investment" in telecommunications. 141 Cong. Rec. S686 (daily ed. Feb. 1, 1996) (statement of Sen. Larry Pressler). The bill would especially "encourage small, nimble companies and entrepreneurs to enter the telecommunications area." *Id.* at S687.

If the Court of Appeal's ruling were allowed to stand, its effect would be to severely undermine the ability of new entrants and SCPs, vital to the facilitation of online commerce and communication, to access and improve the industry. Not only, as *Amici* have argued, is this poor public policy. But it also runs counter to the deep convictions of Congress that market competition—not government regulation—is the best way to secure

free speech and consumer choice, and thus a flourishing Internet services industry that provides affordable and vital services to all Americans.

B. Congress added § 230 to the CDA to ensure the statute's consistency with the Telecommunications Act of 1996, affirming its central goal to prevent the chilling of online communities.

Initially proposed in the Senate as an amendment to the Telecommunications Act, the CDA took aim at indecency and obscenity online, imposing criminal sanctions on anyone who knowingly shares sexual material with minors. 47 U.S.C. § 223 (1996), *invalidated by Reno v. ACLU*, 521 U.S. 844 (1997). However, § 230 was inserted into the bill during conference to ensure that the CDA did not undermine either the First Amendment or the general purposes of the overall legislative package—namely, to encourage competition and to keep government regulation at a minimum. *See Zeran*, 129 F.3d at 330; *see also Eroding Exceptionalism* (noting that Congress added § 230 "[t]o shield firms against potentially ruinous suits, as well as to protect free speech online"). As Representative Christopher Cox, one of two sponsors of the amendment that would become § 230, cautioned on the House floor: "[T]here is a well-known road paved with good intentions." 141 Cong. Rec. H8470 (daily ed. Aug. 4, 1995) (statement of Rep. Christopher Cox). Section 230 avoided this road by explicitly leaving online service providers out of the regulatory equation and keeping the focus on the actual creators of content.

Finding that "[t]he Internet . . . offer[s] a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity," 47 U.S.C. § 230(a)(3), Congress stated that it intended "to promote the continued development of the

Internet," *id.* § 230(b)(1), and "to preserve the vibrant and competitive free market that presently exists for the Internet." *Id.* § 230(b)(2). In singling out for scrutiny a misguided state-court decision that found an online platform—having voluntarily tasked itself with monitoring content—liable for content posted by a user,[11] Congress came down quite clearly in favor of self-regulation as the exclusive control mechanism over the Internet industry. *See Barrett*, 40 Cal. 4th at 63 ("The statutory immunity serves to protect online freedom of expression and to encourage self-regulation, as Congress intended.").

Statements by sponsors and proponents of § 230 conveyed widespread concern for the necessity of Internet service provider immunity, especially in the novel context of the Internet, where responsibility for third-party content would crush online hosts given the unprecedented number of users and amount of information transmitted online. "[T]he new media is simply different," remarked then-Representative Ronald Wyden, § 230's second sponsor. 141 Cong. Rec. H8470 (daily ed. Aug. 4, 1995). "We have the opportunity to build a 21st century policy for the Internet employing the technologies and the creativity designed by the private sector," and government intervention "must not be allowed to spoil its promise." *Id.* Referring to Internet service providers, Representative Robert Goodlatte observed,

> There is no way that any of those entities . . . can take the responsibility to edit out information that is going to be coming in to them from all manner of sources onto their

[11] *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, No. 31063/94, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995), *superseded by statute*, Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

> bulletin board. . . . We are talking about something that is going to be thousands of pages of information every day, and to have that imposition imposed on them is wrong. This will cure that problem . . . .

Id. at H8471. What was true, in the eyes of Congress, of the estimated "thousands of pages of information" in 1996 is certainly true of the millions more pages of information posted daily on the Internet in 2017.

C. Congress has repeatedly ratified the uniform interpretation of federal and state courts that § 230 provides broad immunity to online hosts.

Congress has repeatedly affirmed the interpretation of § 230 immunity that federal and state courts have consistently applied. In 1997, the Supreme Court struck down most of the CDA as unconstitutional under the First Amendment. *Reno*, 521 U.S. at 849. Since then, federal and state courts have uniformly interpreted § 230 to provide broad immunity to Internet hosts from any legal consequences arising out of the actions of their users. *See supra* Section III.

Congress has relied upon and tethered new legislation to the courts' consistent interpretation of § 230. In 2000, when Congress expanded the power of federal courts to issue injunctive relief in cases involving the interstate shipment of alcohol, it made clear not to "authorize any injunction against an interactive computer service (as defined by section 230(f))." 27 U.S.C. § 122b(b)(1). In 2002, Congress enacted a statute intended to facilitate the creation of a new Internet domain for children. DOT Kids Implementation and Efficiency Act of 2002, 47 U.S.C. § 941 (2015). The accompanying committee report instructed, "The courts have correctly interpreted section 230(c) . . . . The Committee intends these

interpretations of section 230(c) to be equally applicable to those entities covered by [the new law]." H.R. Rep. No. 107-449, 2d Sess., p. 13 (2002). The cases specifically cited with approval for their reading of § 230 in the defamation context were *Ben Ezra* and *Zeran*. *Id.*; *see also Barrett*, 40 Cal. 4th at 54 (2006) (noting that this "subsequent legislative history contains explicit support for the *Zeran* court's interpretation"). Again in 2010, Congress passed the SPEECH Act, mandating that U.S. courts "shall not recognize or enforce a foreign judgment for defamation" unless the judgment "would be consistent with section 230." 28 U.S.C. § 4102(c)(1).

In each case, the reference to § 230 was made with clear approval. Successive Congresses, aware of the broad immunity applied by nearly every federal and state court of appeal that has addressed the issue, have ratified this interpretation of § 230—the only reading that is truly consistent with the original intent and general goals of the Telecommunications Act of 1996.

CONCLUSION

For the foregoing reasons, *Amici* urge this Court to reverse the decision of the Court of Appeal.

CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) or 8.360(b)(1) of the California Rules of Court, the enclosed *Amici Curiae* Brief is produced using 13-point Times New Roman type including footnotes and contains approximately 9,133 words, which is less than the total words permitted by the rules of court. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: April 14, 2017

Respectfully submitted,

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DECLARATION OF SERVICE

I, Jason M Schultz, do hereby affirm that I am, and was at the time of service mentioned hereafter, at least 18 years of age and not a party to the above-captioned action. My business address is 245 Sullivan Street #609, New York, NY 10012. I am a citizen of the United States and am employed in New York, NY.

On April 14th, 2017, I served the foregoing documents: Application for Leave to File *Amici Curiae* Brief and *Amici Curiae* Brief of Change.org, Engine, Github, Inc., A Medium Corporation, SiteJabber, and Wikimedia Foundation, Inc. in Support of Appellant, upon the parties in this action by placing true and correct copies thereof in sealed envelopes addressed to the following persons:

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CALIFORNIA SUPREME COURT
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(Original and 8 copies)

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I deposited the sealed envelopes with the United Parcel Service, with postage thereon fully prepaid. I am a resident of the county where the mailing occurred. The envelope was placed in the mail at New York, NY.

I declare under penalty of perjury that the foregoing is true and correct and that this document was executed on April 14, 2017.

By: /s/ *Jason M. Schultz*
Jason M. Schultz