No. 24-475

In the

United States Court of Appeals

for the

Ninth Circuit

JOHN DOE, an individual,
Plaintiff-Appellant,

v.

GRINDR INC., and GRINDR LLC,
Defendants-Appellees.

Appeal from the United States District Court for the Central District of California (Los Angeles), The Honorable Otis D. Wright, District Judge, No. 2:23-cv-02093-ODW-PD

BRIEF OF *AMICI CURIAE* ELECTRONIC FRONTIER FOUNDATION AND WOODHULL FREEDOM FOUNDATION IN SUPPORT OF DEFENDANTS-APPELLEES AND AFFIRMANCE

KATHLEEN R. HARTNETT
Counsel of Record
ARIANA E. BUSTOS
HARRISON B. PARK
COOLEY LLP
3 Embarcadero Center
San Francisco, CA 94111
Telephone: (415) 693-2000
khartnett@cooley.com

ALEXANDER J. KASNER
COOLEY LLP
1299 Pennsylvania Avenue, N.W.
Suite 700
Washington, DC 20004
Telephone: (650) 843-5770
akasner@cooley.com

Counsel for Amici Curiae, Electronic Frontier Foundation and Woodhull Freedom Foundation

AARON MACKEY
SOPHIA COPE
ELECTRONIC FRONTIER FOUNDATION
815 Eddy Street
San Francisco, CA 94109
Telephone: (415) 436-9333
amackey@eff.org

Counsel for Amicus Curiae, Electronic Frontier Foundation

LAWRENCE G. WALTERS
WALTERS LAW GROUP
195 West Pine Avenue
Longwood, FL 32750
Telephone: (407) 975-9150
larry@firstamendment.com

Counsel for Amicus Curiae, Woodhull Freedom Foundation

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CORPORATE DISCLOSURE STATEMENT

The undersigned counsel of record certifies that amici curiae Electronic Frontier Foundation and Woodhull Freedom Foundation are 501(c)(3) non-profit corporations, each of which has no parent corporation, and no publicly held companies have a 10 percent or greater ownership interest in either amicus.

/s/ Kathleen R. Hartnett
Kathleen R. Hartnett

Counsel of Record for Amici Curiae

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INTEREST OF AMICI CURIAE

The Electronic Frontier Foundation ("EFF") is a member-supported, nonprofit civil liberties organization that has worked for more than 30 years to protect innovation, free expression, and civil liberties in the digital world.[1] On behalf of its more than 30,000 dues-paying members, EFF seeks to ensure that the interests of its members and other users who rely on internet platforms are represented in courts considering crucial online free speech issues, including the right to transmit and receive information online.

EFF has litigated or otherwise participated in a broad range of internet free expression and intermediary liability cases because such cases often raise novel issues surrounding free expression and the rights of internet users. EFF often files amicus curiae briefs in these cases because their outcome can significantly impact, and sometimes curtail, the free expression rights of individuals who rely on internet platforms. *See, e.g.*, *Packingham v. North Carolina*, 582 U.S. 98, 104 (2017) (citing EFF's amicus curiae brief). EFF believes that 47 U.S.C. § 230 ("Section 230") is a foundational law that enables internet speech by protecting the intermediaries that host people's speech. EFF thus regularly participates in cases that seek to limit Section 230 because such limitations jeopardize users' free speech.

[1] No party's counsel authored this brief in whole or in part. No person, other than amici curiae and their counsel, funded the preparation or submission of this brief. All parties have consented to the filing of this brief.

The Woodhull Freedom Foundation ("Woodhull") is a non-profit organization that works to advance the recognition of sexual freedom, gender equality, and free expression. Woodhull's name was inspired by the Nineteenth Century suffragette and women's rights leader, Victoria Woodhull. The organization works to improve the well-being, rights, and autonomy of every individual through advocacy, education, and action. Woodhull's mission is focused on affirming sexual freedom as a fundamental human right. Woodhull is particularly concerned with preservation of broad Section 230 immunity to facilitate the robust marketplace of ideas on the internet without incentivizing censorship of user submitted content by online intermediaries. Woodhull relies on Section 230 to operate its own online platform and to publish content on third party platforms.

STATEMENT OF THE ISSUES

I. Whether the District Court correctly held that Section 230 preempted Plaintiff's claims because each claim treats Grindr as a publisher of third-party content.

SUMMARY OF ARGUMENT

Online intermediaries provide the foundational building blocks of the "'vast democratic forums of the Internet,'" which the Supreme Court has recognized as "the most important place[] . . . for the exchange of views" today. *Packingham*, 582 U.S. at 104 (quoting *Reno v. ACLU*, 521 U.S. 844, 868 (1997)). Few internet users have the technological know-how or financial resources to build their own applications ("apps") and websites, or to transmit their own email and text messages. Online intermediaries thus have proved essential in hastening the internet's evolution from a military project to a tool used by virtually everyone, and they provide the underlying structure that enables the internet "to alter how we think, express ourselves, and define who we want to be." *Id.* at 105.

The district court's decision to dismiss this case was a straightforward and sound application of Section 230, notwithstanding the troubling nature of the third-party conduct alleged. In seeking to reverse the district court's decision here, Plaintiff would have this Court narrow Section 230's protections and erode the significant benefits Congress sought in enacting the statute. This Court should decline the invitation, which would conflict with the mandate of Congress and would seriously harm online platforms, speech, and communities.

First, Section 230 has been critical to the growth of online intermediaries and thus the breadth of online activity. This success is due in part to Section 230's broad

scope, both as intended by Congress and as applied by courts across the country to a wide range of online intermediaries and platforms. Plaintiff suggests that this case is unique and that Grindr—a social networking and dating app for adults, particularly in the LGBTQ+ community—should be subject to closer scrutiny. Yet courts have repeatedly confronted allegations such as those presented by Plaintiff here about intermediaries like (and including) Grindr, and they have continually held that such intermediaries are subject to the same standards as any other online platform under Section 230. Likewise, this Court should decline Plaintiff's invitation to hold Grindr responsible for its users' misconduct. Section 230 provides that online services may not be liable for merely providing the platform on which third parties commit unlawful activity. Faced with this authority, Plaintiff claims that Grindr allowing minors to "access" user content on the platform is distinct from Grindr merely hosting such content. But this is a distinction without a difference—hosting content is, by definition, a means of facilitating access to that content. However worded, such activity is covered by Section 230. Moreover, the harms claimed by Plaintiff are not due to access, but to the actions of third parties. And though Plaintiff asserts that Grindr has been designed for "in-person sexual encounters which are criminally illegal," the only features he can point to are the ways in which everyone uses the platform as well as the app's use of geolocation. Resting liability on these allegations

would be both contrary to law (including Section 230) and would have wide-ranging implications for online intermediaries generally.

Second, the Court should reject Plaintiff's attempt to convert this straightforward case about whether an online platform can be held liable for the content and conduct of its users under Section 230 (it cannot) into a design defect dispute. A platform's decisions about how it organizes user-generated content, and the features that it uses to do so, are core publishing activities protected by Section 230. Thus, acts that Plaintiff seeks to hold Grindr liable for are either publishing activities by Grindr or the conduct of third-party users. Neither of those can serve as the basis for limiting Section 230's immunity for Grindr here. Plaintiff's theory is not only legally untenable, but it deprives users of diverse online platforms and features critical to vibrant online communities.

ARGUMENT

I. SECTION 230'S CRITICAL PROTECTIONS APPLY TO INTERMEDIARY PLATFORMS SUCH AS GRINDR.

A. Section 230's Breadth Has Been Essential to the Growth and Viability of Online Intermediaries.

In enacting Section 230 and the immunities that it provides, Congress recognized the crucial role of online intermediaries in users' ability to speak freely online. Section 230's immunities protect the architecture of the internet—the services that provide the "essential venues for public gatherings to celebrate some

views, to protest others, or simply to learn and inquire." *Packingham*, 582 U.S. at 104. When individuals can freely access others' expression through online intermediaries, users can become "pamphleteer[s]" or "town crier[s] with a voice that resonates farther than it could from any soapbox." *Reno*, 521 U.S. at 870. In this way, Section 230 has fostered the development of online services that allow everyone that power.

Section 230's robust protections for online intermediaries—videosharing services, social media websites, blogging platforms, web-hosting companies, email services, and relationship platforms, to name just a few—ensure that such intermediaries can provide the essential free expression architecture of today's internet. *See Jackson v. Airbnb, Inc.*, 2022 WL 16753197, at *2 (C.D. Cal. Nov. 4, 2022) ("The 'policy of section 230 is to avoid' the chilling of speech 'by the imposition of tort liability upon companies that do not create potentially harmful messages but are simply intermediaries for their delivery.'") (quoting *Doe v. Internet Brands, Inc.*, 824 F.3d 846, 852 (9th Cir. 2016)). The internet depends upon intermediaries, "who serve as a vehicle for the speech of others." Anupam Chander & Uyên P. Lê, *Free Speech*, 100 Iowa L. Rev. 501, 514 (2015). Indeed, they are the primary way in which most people engage with one another online.

Congress granted online intermediaries robust protections from liability in Section 230 precisely because Congress recognized the benefits of immunizing

online platforms from lawsuits related to hosting and managing user-created content, including harmful content. In particular, Congress understood that Section 230 would: (1) enable the vast development of diverse forums for free expression, and (2) incentivize services to moderate their users' expression and give users tools to manage their own online experiences. In enacting Section 230(c)(1) and companion immunities in Section 230(c)(2), Congress sought to incentivize online intermediaries to create diverse forums for user speech, both in terms of communities served and in the range of editorial approaches taken (from highly permissive to more strictly managed). Section 230's immunities allow online intermediaries to decide for themselves what user speech they host and how they host it without the specter of liability for those decisions. And internet users have benefitted greatly from Section 230, which has increased their opportunities for expression. The statute's legal protections have thus enabled a revolution in the types of forums available for everyone to speak while lowering the costs once associated with mass communications.

Congress intended this result because it understood the essential function of online intermediaries in our digital lives. In the words of Congress, "[t]he 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). And as Congress further explained,

"[i]ncreasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services." 47 U.S.C. § 230(a)(5). In passing Section 230, Congress recognized the internet's power to sustain and promote robust individual speech, a value rooted in the First Amendment. Congress sought to further encourage the already booming free speech occurring online in the mid-1990s, and to speed the development of online platforms by providing legal breathing room to service providers that host user-generated content.

Importantly, Congress had a deregulatory purpose in passing Section 230. Congress intended for the statute "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." 47 U.S.C. § 230(b)(2). In other words, "Section 230 was enacted, in part, to maintain the robust nature of Internet communication and, accordingly, to keep government interference in the medium to a minimum." *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997).

B. Plaintiff's Constricted Reading of Section 230's Scope Would Weaken Its Core Protections.

Plaintiff's interpretation of Section 230 and its application to intermediaries runs contrary to the purpose and settled caselaw regarding Section 230. For instance, in portraying the current approach for platform immunity under Section 230 as "widely criticized," Plaintiff relies on Justice Thomas's statement "respecting [the] denial of certiorari" in *Malwarebytes, Inc. v. Enigma Software Group USA, LLC,*

141 S. Ct. 13, 15 (2020). Brief of Appellant, ECF No. 14.1 ("Pl. Br.") 20. But that statement is not precedent and is contrary to existing caselaw. As a federal district court recognized in another recent case against Grindr, "[t]he majority of federal circuits have interpreted the CDA to establish broad 'federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service.'" *Doe on Behalf of Doe v. Grindr, LLC*, 2023 WL 7053471, at *2 (M.D. Fla. Oct. 26, 2023) (quoting *Almeida v. Amazon.com, Inc.*, 456 F.3d 1316, 1321 (11th Cir. 2006)).

Plaintiff further characterizes Grindr's platform as a "hook-up application," Pl. Br. 1, that "has the objective of facilitating in-person sexual occasions," *id.* at 3. And Plaintiff argues that this alleged characterization limits Section 230's application to the Grindr app. *Id.* at 29 (characterizing Grindr's liability in its "releasing a product into the stream of commerce" that could be used by, and dangerous to, minors). As an initial matter, Plaintiff's characterization of Grindr as an application meant for "facilitating in-person sexual occasions," rather than a dating app or general social-media app, is a distinction without a difference given that most people who look online for real-world companions are also looking for intimate relationships. And in any event, Plaintiff's implied urging for a unique approach to Grindr is impermissible under Section 230 and the caselaw interpreting it.

As Defendants correctly observe, this case is not unique: many courts have confronted similar fact patterns related to different platforms and nonetheless have held that Section 230 applies. Brief of Defendants-Appellees, ECF No. 30.1 ("D. Br.") 12 (citing cases brought against MySpace, Snap, and Facebook). And relatedly, the standards and application of Section 230 do not turn on the character of the intermediary. As numerous courts have recognized, Grindr qualifies for Section 230's protections just as does any other online intermediary that hosts user-generated content. *Doe v. Grindr Inc.*, 2023 WL 9066310, at *3-6 (C.D. Cal. Dec. 28, 2023); *Herrick v. Grindr LLC*, 765 F. App'x 586, 590-91 (2d Cir. 2019); *Saponaro v. Grindr, LLC*, 93 F. Supp. 3d 319, 323 (D.N.J. 2015). Likewise, courts have held that dating websites, broadly, are protected by Section 230. *E.g.*, *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1121, 1124 (9th Cir. 2003) (holding Matchmaker.com—a "commercial Internet dating service" in which users "post anonymous profiles and may then view profiles of other members in their area"—is protected as an ICS under Section 230).

After all, if the "prototypical service qualifying for" Section 230 immunity "is an online messaging board (or bulletin board) on which Internet subscribers post comments and respond to comments posted by others," then apps where the bulletin board happens to encourage romantic discourse, as opposed to political, cultural, or religious discourse, should enjoy no fewer of Section 230's protections. *Hare v.*

Richie, 2012 WL 3773116, at *15 (D. Md. Aug. 29, 2012) (quoting *FTC v. Accusearch, Inc.*, 570 F.3d 1187, 1195 (10th Cir. 2009)); *Wilson v. Twitter*, 2020 WL 3410349, at *11 (S.D.W. Va. May 1, 2020), *report and recommendation adopted*, 2020 WL 3256820 (S.D.W. Va. June 16, 2020).

Indeed, Section 230's strength stems in part from the breadth of the platforms it protects. *See Carafano*, 339 F.3d at 1123 ("reviewing courts have treated § 230(c) immunity as quite robust, adopting a relatively expansive definition of 'interactive computer service'"). Although it is impossible to catalog the many online intermediaries and approaches to hosting user speech enabled by Section 230, as they are as "diverse as human thought," *Reno*, 521 U.S. at 852, examples include:

- **Social media platforms**, which can "include both massive websites with billions of users—like Facebook, X (formerly Twitter), YouTube, and TikTok—and niche sites that cater to smaller audiences based on specific interests or affiliations—like Roblox (a child-oriented gaming network), ProAmericaOnly (a network for conservatives), and Vegan Forum (self-explanatory)," *NetChoice, LLC v. Att'y Gen., Fla.*, 34 F.4th 1196, 1204 (11th Cir. 2022);
- **Services designed to share and build knowledge**, such as Wikipedia and the Internet Archive, as well as public and academic libraries;
- **Services that enable people to create their own websites and forums**, such as WordPress and Flickr;
- **Services that allow video connections**, such as Zoom and Skype; and
- **Services that create online marketplaces**, such as eBay, Etsy, and Craigslist.

Section 230 asks only whether a platform is an interactive computer service, not what type of interactive computer service a platform happens to be. The district court correctly asked and answered that question, consistent with congressional intent and precedent. This Court should do the same.

C. Section 230's Protections Apply to Platforms Notwithstanding Their Users' Illegal Conduct.

Section 230 immunizes online services and platforms from a broad range of civil claims notwithstanding the unlawful conduct of third parties on such platforms. Indeed, the Supreme Court recently cautioned against expansive views of liability for online platforms that make their speech-disseminating features generally available: "The mere creation of those platforms, however, is not culpable." *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 499 (2023). As the Supreme Court explained, "it might be that bad actors . . . are able to use platforms like defendants' for illegal—and sometimes terrible—ends. But the same could be said of cell phones, email, or the internet generally." *Id.* Courts have widely affirmed this principle.

For example, in *Jane Doe No. 1 v. Backpage.com, LLC*, the First Circuit held that the website Backpage.com was protected by Section 230 and could not be held responsible for the illegal acts of others who sexually trafficked appellants. 817 F.3d 12, 29 (1st Cir. 2016). In *Backpage*, the court noted that "the appellants' core argument is that Backpage has tailored its website to make sex trafficking easier . . . . But Congress did not sound an uncertain trumpet when it enacted the CDA, and it

chose to grant broad protections to internet publishers" and even "[s]howing that a website operates through a meretricious business model is not enough to strip away those protections." *Id.* In *Doe v. Myspace*, the Fifth Circuit similarly held that MySpace was not liable for the actions of a third-party who sexually assaulted a minor after contacting her on the website. 528 F.3d 413, 422 (5th Cir. 2008).

Both this Court and district courts within this Circuit have often come to the same conclusion. *See, e.g.*, *Dyroff v. Ultimate Software Group, Inc.*, 934 F.3d 1093, 1100 (9th Cir. 2019) (Section 230 barred negligence and unjust enrichment claims against social networking website used by minor to purchase fentanyl from another user, causing his overdose and death); *Jackson*, 2022 WL 16753197, at *3 (ruling that Section 230 barred a decedent's negligent design claim, as it sought to hold a platform liable for a gun purchase that had resulted in the death of the decedent); *L.W. through Doe v. Snap Inc.*, 675 F. Supp. 3d 1087, 1095-96, at *4 (S.D. Cal. June 5, 2023) (dismissing misrepresentation claims under Section 230 because plaintiffs' "theories of liability plainly turn[ed] on Defendants' alleged failure to monitor and remove third-party content"). Namely, courts recognize that the "'policy of section 230 is to avoid' the chilling of speech 'by the imposition of tort liability upon companies that do not create potentially harmful messages but are simply intermediaries for their delivery.'" *Jackson*, 2022 WL 16753197, at *3 (quoting *Doe v. Internet Brands, Inc.*, 824 F.3d at 852). For example, in *Bride v. Snap Inc.*, the

court applied Section 230 to dismiss negligent misrepresentation and state consumer protection claims brought by minor users who allegedly received bullying and explicit messages from other platform users. 2023 WL 2016927, at *6 (C.D. Cal. Jan 10, 2023). As the *Bride* court held, "those claims are still predicated on content developed by [] third parties," because "had those third-party users refrained from posting harmful content, Plaintiffs' claims … would not be cognizable." *Id.* at 6.

Notably, while Section 230 provides that online intermediaries may not be held liable for their users' activities, it does not deprive victims of a remedy. As courts have repeatedly emphasized, "[p]arties complaining that they were harmed by a Web site's publication of user-generated content have recourse; they may sue the third-party user who generated the content." *MySpace, Inc.*, 528 F.3d at 419; *see also Zeran*, 129 F.3d at 330-31 ("None of this means, of course, that the original culpable party who posts defamatory messages would escape accountability . . . . Congress made a policy choice, however, not to deter harmful online speech through the separate route of imposing tort liability on companies that serve as intermediaries for other parties' potentially injurious messages.").

D. An Intermediary's Publication of Content Does Not Make the Intermediary the Content's Creator.

The district court also correctly understood that a platform's hosting of speech does not transform the platform into the creator of unlawful speech (or, here, unlawful conduct resulting from that speech). Indeed, "[m]erely providing the forum

where harmful conduct took place cannot . . . serve to impose liability onto" a provider. *M.H.v. Omegle.com, LLC*, 2022 WL 93575, at *5 (M.D. Fla. Jan. 10, 2022) Instead, for liability to follow, the platform must be "responsible for what makes the displayed content allegedly unlawful." *Jones v. Dirty World Ent. Recordings LLC*, 755 F.3d 398, 410 (6th Cir. 2014). And so, on the one hand, a platform may be liable where it "contributes materially to the alleged illegality," *Fair Housing Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1167-68 (9th Cir. 2008), or "materially augment[s] or develop[s] the unlawful content," *M.H.*, 2022 WL 93575, at *3. But merely providing a platform that others can use to create unlawful content or to engage in unlawful conduct does not create responsibility and thus liability. *See Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1270 (9th Cir. 2016) (quoting *Klayman v. Zuckerberg*, 753 F.3d 1354, 1358 (D.C. Cir. 2014)). In such instances, the platform does "nothing to enhance" what makes the content *unlawful*. *Kimzey*, 836 F.3d at 1270 (quoting *Roommates.com*, 521 F.3d at 1172).

In arguing that the Grindr bears responsibility for the conduct of its users—and asserting that the "district court broadened the immunity offered" by Section 230, Pl. Br. 3—Plaintiff muddies the critical distinction between platform and content creator. Plaintiff urges this Court to hold that a platform can be liable by virtue of allowing minor users to "access" the content. Pl. Br. 5 ("To set up a Grindr account, Grindr asks for an email address and a birth date . . . . Grindr allows users

to choose whatever birth date they want."). But allowing access to a platform is part and parcel of hosting such a platform and equally covered by Section 230.

Moreover, Plaintiff's claim here is based not on mere access to the app, but on the actions of a third party once John Doe logged in—messages exchanged between a third party and Doe, and ultimately, on unlawful acts occurring between them because of those communications. Yet exposing Defendants to liability for allowing *access* for users who misrepresent their age to problematic user-generated content essentially means exposing platforms to liability *for* problematic user-generated content, a position untenable and inconsistent with Section 230.

II. PLAINTIFF'S DESIGN-BASED ARGUMENT WOULD NULLIFY SECTION 230'S PROTECTIONS

A. Section 230 Immunizes "Design" Features Essential to Publication of Third-Party Content

The Court also should reject Plaintiff's attempt to recast his claims as based on Grindr's "design." As some courts have held, design defect claims may fall outside of Section 230's ambit if the design at issue "contributes to the development of what makes the content unlawful." *Herrick v. Grindr, LLC*, 306 F. Supp. 3d 579, 589 (S.D.N.Y. 2018) (cleaned up). Similarly, this Court has held that design defect claims will not be barred by Section 230 if wholly independent of third-party content. *Lemmon v. Snap, Inc.*, 995 F.3d 1085 (9th Cir. 2021). For example, this Court held that a negligent design claim against Snapchat's speed filter was not

barred by Section 230, but cautioned that it could have been if framed differently: "we note that the Parents would not be permitted under § 230(c)(1) to fault Snap for publishing other Snapchat-user content (*e.g.*, snaps of friends speeding dangerously) that may have incentivized the boys to engage in dangerous behavior. For attempting to hold Snap liable using such evidence would treat Snap as a publisher of third-party content, contrary to our holding here." *Id*. at 1093 n.4.

But claims—as here—that a platform's design contributed to harmful third-party content or misconduct or that the platform should have implemented other design features to stop third-party misconduct are simply claims "based on content provided by another user," and are thus nonviable under Section 230. *Herrick*, 306 F. Supp. 3d at 589.

Likewise, a platform's generally available tools for organizing and presenting information—which may be used for good or ill—are protected publication activity. As the Sixth Circuit has explained, there is a "crucial distinction between, on the one hand, taking actions (traditional to publishers) that are necessary to the display of unwelcome and actionable content and, on the other hand, responsibility for what makes the displayed content illegal or actionable." *Jones*, 755 F.3d at 414. Section 230's protection would be hollow if it did not shield the mechanisms through which online intermediaries make content available and accessible.

Publishing activity protected by Section 230 thus includes not just "deciding whether to publish or to withdraw from publication third-party content," *Lemmon*, 995 F.3d at 1091 (quoting *HomeAway.com v. City of Santa Monica*, 918 F.3d 676, 681 (9th Cir. 2019)), but also the "traditional editorial functions" necessary to make that information accessible to users, *Zeran*, 129 F.3d at 330. That is, Section 230 does not apply only when online intermediaries passively allow third parties to post on their platforms, but also applies where such intermediaries make choices about how to organize information to facilitate communication amongst users. For example, a platform can ask users to provide certain identifying information to help the site connect them with other users and notify users of third-party content that may be of interest to them. *See, e.g.*, *Jones*, 755 F.3d at 402 (platform that prompted users to post "who, what, when, where, why" for certain content immune under Section 230 for content posted in response); *Dyroff*, 934 F.3d at 1095 (platform could notify message board users of posts by other users and recommend content based on user's activity).

Plaintiff claims, however, that this case is different because Grindr allegedly is an "unreasonably dangerous product that matches children and adults for expected sexual encounters." Pl. Br. 8. But this is not a case where, for example, a platform used "[u]nlawful questions [to] solicit [] unlawful answers." *Roommates.com*, 521 F.3d at 1166 (concerning discriminatory housing ads). To the contrary, this case

involves tools generally available to the public that may be—like all tools—used for nefarious ends. That reality is insufficient to nullify Section 230's protections. Otherwise, an online platform allowing users to post text would be arguably designed for defamation, or an online video-sharing platform would be arguably designed to publish nonconsensual content. That is not the law.

Plaintiff encourages the Court to find liability based on features of Grindr that "facilitat[e] private sexual connections between users," Pl. Br. 41—but this proposal would sweep worryingly wide. Intimate relations between consenting adults of any sexual orientation are, of course, not illegal. And drawing a line around platforms that facilitate "private sexual connections," or engage in such marketing as Plaintiff suggests, *id.*, could be extrapolated to every dating website or app.

Aside from these generalities, Plaintiff argues that certain of the Grindr app's particular features (*e.g.*, geolocation and anonymity) take it outside the protection of Section 230, and also that certain of the app's features (*e.g.*, age verification) are defectively weak. But these arguments are, in substance, a challenge to Grindr's core publishing activity and thus fail under Section 230. Just as in *Herrick v. Grindr, LLC*, Plaintiff's "claims depend on a connection between the safety features Grindr allegedly is missing and Grindr's failure to remove [noncomplying] profiles," here, the minor John Doe's. *See Herrick*, 306 F. Supp. 3d at 590-91. But "[t]he existence *vel non* of safety features is meaningless in a vacuum, and their existence is only

relevant to [John Doe's] injury to the extent that such features would make it more difficult" for minors like John Doe to access the platform, or for users (like the attacker here) to connect with them. *See id.*

Plaintiff cites Grindr's "geolocation" feature, as part of the app's dangerous design. Pl. Br. 7-8. But Grindr's geolocation feature simply allows users to choose to provide their geolocation information to other users—that is, it publishes the third-party content. It is not a "defect" of Grindr that it provides "tools and functionality that are available equally to bad actors and the app's intended users." *Herrick*, 765 F. App'x at 591 (finding geolocation function protected under Section 230); *see also Herrick*, 306 F. Supp. 3d at 590 ("There is nothing . . . illegal about Grindr's drop-down menus, its geolocational function, or its sorting, aggregation, and display functions."); *In re Soc. Media Adolescent Addiction/Pers. Inj. Prod. Liab. Litig.*, 2023 WL 7524912, at *13 n. 18 (N.D. Cal. Nov. 14, 2023) (that an app's geolocation feature is immune under Section 230 is "self-evident" under Ninth Circuit authority), *motion to certify appeal denied*, No. 4:22-MD-03047-YGR, 2024 WL 1205486 (N.D. Cal. Feb. 2, 2024).

Grindr's geolocation feature has many useful purposes. Multitudes of mobile apps require or are enhanced by geolocation features—from mapping, to rideshare, to augmented reality games. Such features have no direct connection to unlawful behavior by third parties. This Court should reject any interpretation of Section 230

that would hold otherwise, as such an interpretation would be both inconsistent with the settled understanding of the statute and unworkable for a broad swath of common and lawful online activity.

Similarly, as the district court determined here, there is no daylight between Grindr's role as a publisher of third-party content and its collection of identifying information provided by a user, including age. *See Doe v. Grindr Inc.*, 2023 WL 9066310, at *3 (C.D. Cal. Dec. 28, 2023) ("although Doe frames Grindr's minimal age verification and user matching functions as a product defect, Doe's claims seek to hold Grindr liable based on its publishing of user content"). Online intermediaries may prompt users to provide certain information that helps the site organize information and connect users to content. *Carafano*, 339 F.3d at 1124 (information intermediary not liable for providing questionnaire).[2] They are also not liable where a third party provides inaccurate information, or for injuries stemming from that information. *Id.*; *Doe v. MySpace, Inc.*, 528 F.3d 413, 420 (5th Cir. 2008) (online intermediary not liable where user provided false age and was later harmed by another third-party contacted through defendant's platform).

Viewing Plaintiff's defect allegations together illustrates the practical impossibility of allowing liability for the designs and functions that enable

[2] This is so unless the site requires the user to enter content in an unlawful way, such as implementing filters based on discriminatory criteria. *Roommates.com*, 521 F.3d at 1169. No such development of content is alleged here.

publishing online. Intermediaries would risk liability where they fail to require certain information from third parties (such as by allowing for anonymous posting) and where they allow third parties to post information (such as geolocation or self-reported age). Online services would in effect have no refuge from liability. As the Eleventh Circuit recently recognized, this would have an "'obvious chilling effect'" on internet speech. *McCall v. Zotos*, 2023 WL 3946827, at *2 (11th Cir. June 12, 2023) (quoting *Zeran*, 129 F.3d at 330).

B. Protecting Platform Design Features Is Essential to Realizing the Goals of Section 230

Allowing online intermediaries freedom in designing the spaces they provide for online communities is essential to fulfilling Section 230's goal of promoting "'the robust nature of Internet communications.'" *McCall*, 2023 WL 3946827, at *2 (quoting *Zeran*, 129 F.3d at 330).

First, given the breadth of online communications, if online intermediaries cannot take steps to organize third-party content, online platforms would be unusable as a practical matter. For instance, a dating app that provided no location features whatsoever would be of little use—a platform that connected romantic partners with shared interests but, unwittingly, an ocean between them would garner few users.

Second, allowing for variations in how online intermediaries curate information facilitates diverse speech and communities. The internet is a valuable forum for speech because of the varied platforms created by online intermediaries,

each suited to facilitate different kinds of speech. Platforms that allow users to share their daily life with others can help grow and maintain bonds and community. At the same time, platforms that allow anonymity enable many to express themselves and seek critical information in ways that that may be dangerous or unavailable to them publicly. *See Dyroff*, 934 F.3d at 1100 ("Today, online privacy is a ubiquitous public concern for both users and technology companies.").

For marginalized individuals and communities—whether religious minorities, nascent political groups, or LGBTQ+ individuals—such fora may be a lifeline, both because of the communities they foster and the anonymity they promise. As Congress intended, allowing for such diversity of platforms promotes "true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity." 47 U.S.C. § 230(a)(3). If platforms are liable for these features because of third-party misuse (third parties who, to reiterate, remain liable notwithstanding Section 230), such intermediaries will be incentivized to *remove* such enhancements from their online services. The end result would be, at best, bland and sanitized communications platforms where many users will be effectively silenced.

CONCLUSION

The Court should affirm the district court's order.

Respectfully submitted,

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/s/ Kathleen R. Hartnett
Kathleen R. Hartnett
Counsel of Record
Ariana E. Bustos
Harrison B. Park
COOLEY LLP
3 Embarcadero Center
San Francisco, CA 94111
(415) 693-2000
khartnett@cooley.com
melewis@cooley.com
abustos@cooley.com

Alexander J. Kasner
COOLEY LLP
1299 Pennsylvania Ave., N.W.
Suite 700
Washington, DC 20004
akasner@cooley.com

Aaron Mackey
Sophia Cope
ELECTRONIC FRONTIER FOUNDATION
815 Eddy Street
San Francisco, CA 94109
(415) 436-9333
amackey@eff.org
scope@eff.org

Lawrence G. Walters
WALTERS LAW GROUP
195 W. Pine Avenue
Longwood, FL 32750
(407) 975-9150

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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