

No. 21-56293

**In the United States Court of Appeals
for the Ninth Circuit**

JANE DOES NO. 1–6, ET AL.,
Plaintiffs and Appellants,

vs.

REDDIT, INC.,
Defendant and Appellee.

APPEAL FROM THE JUDGMENT OF THE U.S. DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
JUDGE JAMES V. SELNA, CASE No. 8:21-cv-00768-JVS-KES

**MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF
AMICUS CURIAE IN SUPPORT OF PLAINTIFFS AND
APPELLANTS**

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**MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE IN
SUPPORT OF APPEAL**

CHILD USA respectfully submits this Motion for Leave to Appear as *Amicus Curiae* and File a Brief in Support of Plaintiffs-Appellants' Opening Brief and Urging Reversal of the Decision Below, pursuant to Fed. R. App. Pro. 29 & 32. Per Circuit Rule 29-3, movant endeavored to obtain the consent of all parties to the filing of the brief before filing this motion seeking permission. Appellants' opening brief was submitted for review on February 28, 2022 and filed by the clerk on March 2, 2022.

INTEREST OF CHILD USA AS *AMICUS CURIAE*

CHILD USA is the leading national non-profit think tank fighting for the civil rights of children. CHILD USA engages in in-depth legal analysis and cutting-edge social science research to determine the most effective public policies to protect children from sexual abuse and online exploitation and ensure access to justice for victims.

CHILD USA's interests in this case are directly correlated with its mission to increase child protection and public safety, to ensure that individuals and entities are held accountable for their wrongful conduct that harms children, and to eliminate barriers to justice for victims of sexual abuse and online exploitation. CHILD USA is an expert on the proximate, immediate, and persistent harms to child-victims whose imagery is trafficked online, the ways in which digital communication

platforms like Reddit exacerbate this abuse and the attendant harms, and on the measures Congress has taken to address the epidemic of sex trafficking and exploitation by holding entities like Reddit accountable. CHILD USA therefore has a substantial interest in ensuring that courts uphold the broad remedial purpose of Congress's anti sex-trafficking legislation.

**THE *AMICUS CURIAE* BRIEF WOULD AID THIS COURT IN
CONSIDERATION OF THE ISSUES ADDRESSED BY PLAINTIFFS-
APPELLANTS ON APPEAL**

The District Court erroneously concluded that Plaintiffs-Appellants' §1595 claim was preempted by the Communications Decency Act ("CDA"); however, there is nothing in the CDA's text or legislative history that shields platforms like Reddit from liability based on their own wrongful conduct—here the participation in an illegal sex trafficking venture. CHILD USA is concerned that the decision below, if permitted to stand, would provide a shield to powerful internet companies with broad reach, while leaving the vulnerable victims of sex trafficking—many of whom are children—powerless and unprotected online.

CHILD USA is uniquely positioned to provide this Court with the social science research on the prevalence and effects of online child exploitation, highlighting our understanding of the impact on children and victims of sex-trafficking should the District Court decision be permitted to stand.

Finally, CHILD USA can assist this Court by providing an extensive overview of the legislative history behind Congress's anti-sex trafficking laws, the CDA including Section 230 immunity, as well as how courts have attempted to reconcile these two areas of the law.

CONCLUSION

For the foregoing reasons, CHILD USA respectfully requests that this Court enter an Order granting this Motion for Leave to Appear as *Amicus Curiae* and accepting the *Amicus* brief attached hereto in consideration of Plaintiffs-Appellants' Opening Brief and in support of reversal.

Respectfully submitted 7th day of March 2022,

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AMICUS CURIAE BRIEF

RULE 29 STATEMENTS

Pursuant to Fed. R. App. P. 29(a)(4)(E), *Amici* affirm that no party or party's counsel authored the brief in whole or in part or contributed money that was intended to fund preparing or submitting the brief. No person other than *Amici*, their members, or their counsel contributed money that was intended to fund preparing or submitting the brief.

Dated: March 7, 2022

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IDENTITY AND INTEREST OF CHILD USA & ITS SOURCE OF AUTHORITY FOR FILING AN AMICUS BRIEF

Pursuant to Fed. R. App. P. 29 & 32, CHILD USA submits this brief in support of Plaintiffs-Appellants' Opening Brief and urging reversal of the decision below.

CHILD USA is the leading national non-profit think tank fighting for the civil rights of children. CHILD USA engages in in-depth legal analysis and cutting-edge social science research to determine the most effective public policies to protect children from sexual abuse and online exploitation and ensure access to justice for victims. Distinct from an organization engaged in the direct delivery of services, CHILD USA produces evidence-based solutions and information needed by policymakers, organizations, courts, media, and society as a whole to increase child protection and the common good.

CHILD USA's interests in this case are directly correlated with its mission to increase child protection and public safety, to ensure that individuals and entities are held accountable for their wrongful conduct that harms children, and to eliminate barriers to justice for victims of sexual abuse and online exploitation. CHILD USA is an expert on the proximate, immediate, and persistent harms to child-victims whose imagery is trafficked online, the ways in which digital communication platforms like Reddit exacerbate this abuse and the attendant harms, and on the measures Congress has taken to address the epidemic of sex trafficking and exploitation by holding entities like Reddit accountable. CHILD USA therefore has

a substantial interest in ensuring that courts uphold the broad remedial purpose of Congress's anti sex-trafficking legislation.

INTRODUCTION

Since its recognition under Federal law in 2002, sex trafficking has become one of fastest growing organized crimes in the world. Human Trafficking Institute, *2020 Federal Human Trafficking Report* 3, available at <https://www.traffickinginstitute.org/wp-content/uploads/2021/06/2020-Federal-HumanTrafficking-Report-Low-Res.pdf>. The internet has significantly expanded the market for traffickers and their customers. Indeed, online exploitation and abuse of children has increased by 422% over the last 15 years. U.S. SENT'G COMM'N, FEDERAL SENTENCING OF CHILD PORNOGRAPHY: PRODUCTION OFFENSES 3 (2021), https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2021/20211013_Production-CP.pdf. Tragically, the demand for child sexual abuse material ("CSAM") has grown even more in recent years, with the COVID-19 crisis creating a "perfect storm" for CSAM to proliferate as children spent more—often unsupervised—time online. In 2020, 65.4 million images and video files of CSAM were reported to the National Center for Missing and Exploited Children's ("NCMEC") CyberTipline, the highest number of reports ever received in a single year. *Overview*. (2020). National Center for Missing and Exploited Children. <https://www.missingkids.org/gethelpnow/cybertipline>. While this

material is transmitted behind a screen, the images and videos depict *actual* crimes and egregious sexual violations against children. Not only do these images and videos document victims' exploitation and abuse, but each time a child victim's image is redistributed, collected, and viewed, their abuse is perpetuated, and that child is re-victimized.¹ Warren Binford et al., *Beyond Paroline: Ensuring Meaningful Remedies for Child Pornography Victims at Home and Abroad*, 35 CHILD. LEGAL RTS. J. 117, 117–62 (2015).

For decades, these heinous crimes were brazenly enabled by the online platforms that were increasingly exempt from liability under courts' de-facto immunity regime. This regime persisted despite the legislative intent behind Section 230 and the passage of the Trafficking Victims Protection Act of 2000 ("TVPA") and its subsequent iterations. Concerned that the misapplication of Section 230 immunity had created an impenetrable fortress protecting companies from any accountability including for their own unlawful conduct, Congress was forced to act. The District Court's decision to immunize Reddit for its refusal to prevent, detect, and remove known CSAM from its platform or to ban repeat offenders' intent on trafficking victims' imagery, eviscerates the law's progress and thus begs for reversal.

ARGUMENT

The District Court erroneously concluded that Plaintiffs-Appellants' §1595 claim was preempted by the CDA; however, there is nothing in the CDA's text or legislative history that shields platforms like Reddit from liability based on their own wrongful conduct—here the participation in an illegal sex trafficking venture. In fact, for two decades Congress has evinced its intent to combat sex trafficking, to protect children from exploitation, and to ensure accountability for those who knowingly benefit from child sexual exploitation and abuse. The District Court's decision is antithetical to these directives and, if adopted, would effectively deprive victims—many of whom are children—access to justice that Congress so clearly promised. It would do so without providing victims the benefit of any fact-finding that would show that Reddit knowingly places its own profits above the safety of our most vulnerable members of society. Amici therefore respectfully submits that this Court reverse the decision below to ensure that victims of companies like Reddit that knowingly, or recklessly, aid their abusers are not unreasonably shut-out of court.

I. THE DISTRICT COURT’S DECISION, IF ADOPTED, WOULD EVISCERATE DECADES OF LEGISLATIVE ENACTMENTS THAT HAVE SOUGHT PROTECTION, ACCOUNTABILITY, AND JUSTICE FOR SEX TRAFFICKING VICTIMS

When Congress expanded Section 1595 under the Trafficking Victims Protection Reauthorization Act of 2008 (“TVPRA”), it made clear that the law required all parties, including online platforms like Reddit, to comply with the law or face civil liability even if they are not themselves a perpetrator. Amended Pub. L. No. 110-457, title II, § 221(2) (Dec. 23, 2008). The District Court’s decision fails to reconcile the purpose of the immunity provided by the CDA with that of the TVPRA to criminalize sex trafficking and provide victims access to justice. If the District Court’s reasoning is accepted, it would eviscerate the protections of FOSTA and allow Reddit the unrestricted ability to profit from the sexual exploitation of children.

A. Section 230 of the CDA Was Never Intended to Immunize Websites Like Reddit Whose Criminal and Tortious Behavior Undermine Child Safety

Congress passed the CDA in 1996 for the clear purpose of ensuring that the internet, then in its infancy, would be “**a safe place for our children and our families.**” 141 Cong. Rec. S8087 (daily ed. June 9, 1995) (statement of Sen. Exon) (emphasis added). The same interest in protecting children prompted Congress to enact the amendment titled “Protection for “Good Samaritan” Blocking and

Screening of Offensive Material,” that eventually became Section 230 of the CDA. See, e.g., 141 Cong. Rec. S8089 (daily ed. June 9, 1995) (statement of Sen. Exon) (“**The heart and the soul of the Communications Decency Act are its protection for families and children.**”) (emphasis added). More precisely, Section 230 was intended to serve two purposes: 1) to eliminate barriers to the development and use of technologies that would “**empower[ing] parents to determine the content of communications their children receive through interactive computer services**” by absolving providers of liability for their “good faith” attempts at restricting user access to obscene and indecent materials on their platforms; and 2) to limit federal regulation of the internet which members were concerned would stymie innovation. 141 Cong. Rec. (daily ed. Aug. 4, 1995). (statement of Rep. Goodlatte); H.R. Conf. Rep. 104-458 at 194 (1996).

While Congress sought to avoid federal regulation of the internet, nothing in the language of Section 230 creates the kind of sweeping immunity for all online misconduct imputed by the decision below. To the contrary, the legislative history suggests that Congress wanted to retain liability for entities with knowledge of illegal conduct and others acting in bad faith. See, e.g., 141 Cong. Rec. S8345 (daily ed. June 14, 1995) (commentary by Sen. Coates) (explaining that the CDA permitted liability for “someone who, among other things, manages the prohibited or restricted material, *charges a fee for such material*, provides instructions on how to access

such material or provides an index of the material (*emphasis added*). As this Court correctly observed in *Fair Hous. Council of San Fernando Valley v. Roomates.com*, Section 230 was not meant to “create a lawless no-man’s-land on the Internet,” but rather to provide a *limited defense* from liability for providers who monitor objectional material, but in good faith fail to capture all harmful content on their platforms. 521 F.3d 1157, 1164 (9th Cir. 2008); See also, *Doe v. Internet Brands, Inc.*, 824 F.3d 846, 853 (9th Cir. 2016) (“Congress has not provided an all purpose get-out-of-jail-free card for businesses that publish user content on the internet, though any claims might have a marginal chilling effect on internet publishing businesses.”).

Congress did not intend for courts to extend protection to website companies, like Redditt, that discover illegal content on their platforms and not only fail to remove it, but also profit from its proliferation on their platform. Reddit is hardly the kind of “Good Samaritan” actor congress sought to protect when it passed Section 230.

The District Court’s interpretation of Section 230 immunity conflicts with the statute’s plain text and subverts the law’s purpose of protecting children from obscene and indecent material online. Considering the District Court’s departure from this principle, this Court must reverse the decision below to realign the judicial interpretation with Congress’s overriding policy objectives.

B. Congress Passed the TVPA and TVPRA to Expand the Scope of Liability for Those Involved in Sex Trafficking

By the 20th century, online sex-trafficking was ubiquitous. To combat the proliferation of this “modern day slavery,” Congress passed the Trafficking Victims Protection Act (“TVPA”)—the first federal law to independently recognize child sex trafficking as a crime. Pub. L. No. 106-386, 114 Stat. 1464, 1486–88 (Oct. 28, 2000). Since federal recognition of sex trafficking, Congress has continued to expand the scope of liability for those involved in sex trafficking. In 2003, Congress expanded the law through the Trafficking Victims Protection Reauthorization Act (“TVPRA”) which allowed victims to bring civil suits against their traffickers and other co-defendants, regardless of whether there was a criminal action arising out of the same facts. P.L. 108-193, § 4(a)(4)(A).

In 2008, Congress once again amended the TVPRA to the present, operative form by expanding criminal and civil liability for individuals beyond that of the mere perpetrator. 18 U.S.C. §1595(a). That is, the TVPRA permits two distinct causes of action—perpetrator claims against a person who directly violates the criminal trafficking statute, and beneficiary claims against a person or entity who may not be liable as a direct perpetrator but who “knowingly benefits, financially or by receiving anything of value from participation in a venture which that person **knew**

or should have known has engaged in an act in violation of this chapter.” 18 U.S.C. § 1595(a)(emphasis added).

When Congress passed the TVPRA, it was focused on empowering victims and giving them a sense of agency over their case. See Kathleen Kim & Kusia Hreshchyshyn, *Human Trafficking Private Right of Action: Civil Rights for Trafficked Persons in the United States*, 16 HASTINGS WOMEN’S L.J. 1, 17 (2004). Specifically, the expansion was intended to create pathway for victims to bring civil suits against online platforms like Reddit that host trafficking content.

Unfortunately, courts have struggled to reconcile the purpose of the immunity provided by the CDA, which predates the TVPRA, with the broad remedial purpose of the TVPRA. The District Court’s decision epitomizes the most common outcome of such uncertainty—victims are completely barred from seeking judicial relief against third-party beneficiaries of their abuse.

C. Congress Passed FOSTA to Provide a Necessary Solution to the Serious Problem of Online Platforms Knowingly Violating the TVPRA

In the years following the passage of TVPRA, websites hosting or profiting from sex trafficking content increasingly turned to Section 230 to shield themselves from criminal or civil liability. Danielle Citron & Benjamin Wittes, *The Internet Won’t Break*, 86 FORDHAM L. REV. 401, 404 (2017). The most prolific violator, the

now defunct Backpage.com, had been so successful in utilizing Section 230 as a defense against liability for their knowing facilitation of child sex-trafficking through their posting and advertising procedures, that Congress launched a formal investigation into the problem. See *Backpage.com's Knowing Facilitation of Online Sex Trafficking*: Hearing Before the Subcomm. on Investigations of the S. Comm. On Homeland Security & Governmental Affairs, 115th Cong. (2017). Although Section 230 was supposed to encourage self-regulation, Congress found that many websites had instead become “reckless” in allowing for the sex trafficking of children on their platforms and that website owners did little to prevent it. *Id.* It was in direct response to this egregious misapplication of Section 230 immunity that Congress passed FOSTA in 2018. With the desire to ensure websites like Backpage could not use Section 230 as a shield for its own illegal conduct, FOSTA amended Section 230 to include an express exemption from claims under the TVPRA to the broad immunity created by the CDA. 47 U.S.C. §230(e)(5)(A) (“Nothing in this section . . . shall be construed to impair or limit . . . any claim in a civil action brought under section 1595 of title 18, if the conduct underlying the claim constitutes a violation of section 1591 of that title”). Through this exception, Congress intended to restore victims’ access to justice and hold tech companies accountable when they knowingly or negligently ignore trafficking on their websites. 164 Cong. Rec. H 1290, 1295 (Feb. 27, 2018) (McMorris Rodgers). As Congress clarified, Section 230

“does not prohibit the enforcement against providers and users of interactive computer services of Federal and State criminal and civil law relating to sexual exploitation of children or sex trafficking” because it “was never intended by Congress to provide legal protection to websites that unlawfully promote and facilitate prostitution and contribute to sex trafficking.” H.R. Rep. No. 115-572 (2018) (emphasis added). See also, Pub. L. No. 115-164 §4, 132 Stat. 1253, 1254 (header: “ensur[e] ability to enforce federal and state criminal and civil law relating to sex trafficking”) (emphasis added).

Although Backpage was one impetus for Congressional investigation, neither the language of FOSTA nor its legislative history limits its immunity exemption to a particular actor. In fact, Congress explicitly rejected such a limitation, noting that FOSTA would allow “vigorous criminal enforcement against all bad-actor websites, not just Backpage.com, through the creation of a new federal law and by explicitly permitting states to enforce criminal laws that mirror this new federal law and current federal sex trafficking law.” H. Rep. No. 115-572, pt. 1, at 5. FOSTA merely “close[d] the loophole,” so that victims could “bring to justice” to online platforms that were found to be facilitating online exploitation and abuse. *Id.*

There is simply no indication that Congress intended that a website had to be a criminal perpetrator of sex trafficking or else be immune from liability. To the contrary, Congress was moved by the victims’ testimony of their revictimization by

the online platforms that refused to remove their imagery, and ultimately rejected amendments that would “protect websites that identify sex trafficking ads and then leave them up in order to continue profiting from them.” 164 Cong. Rec. S 1827, 1829 (Blumenthal); see also, 164 Cong. Rec. H 1290, 1292-93 (Feb. 27, 2018) (Jackson Lee).

Despite the passage of FOSTA, the District Court rewrote Section 230(e)(5)(A) to effectively eliminate Section 1595 beneficiary liability claims against online platforms like Reddit. The fact that Reddit profits from the illegal content posted on its online platform rather than in some other medium, does not exempt it from all liability for its own criminal activity. FOSTA was passed to prevent precisely such an argument.

II. THE DISTRICT COURT’S DECISION UNDERMINES FOSTA’S REMEDIAL PURPOSE BY DENYING VICTIMS THE OPPORTUNITY FOR DISCOVERY

The extent of Reddit’s actual or constructive knowledge is, or should be, a fact-intensive inquiry; however, the District Court’s dismissal of the case at the pre-discovery stage, has all but foreclosed on victims’ ability to prove that Reddit knowingly facilitated and benefited from the trafficking of their imagery on their platform.

Indeed, courts have recognized the dangers of granting a motion to dismiss based on the CDA’s limited immunity defense. See, e.g., *CYBERSitter, LLC v.*

Google, Inc., 905 F. Supp. 2d 1080, 1086 (C.D. Cal. 2012) (“Because Defendant’s entitlement to immunity under the CDA depends on whether Defendant ‘developed’ or materially contributed to the content of these advertisements, it is too early at this juncture to determine whether CDA immunity applies.”). Most recently, Justice Thomas decried courts continued use of Section 230 to bar claims from advancing to discovery and urged courts to refrain from “reading extra immunity into statutes where it does not belong.” *Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, 141 S. Ct. 13, 15 (2020). See also *id.* at 18 (“Paring back the sweeping immunity courts have read into §230 would not necessarily render defendants liable for online misconduct. It simply would give plaintiffs a chance to raise their claims in the first place. Plaintiffs still must prove the merits of their cases, and some claims will undoubtedly fail”).

Similarly, Congress has recognized the importance of discovery in cases of online sex trafficking, observing that internet companies believed they “would be able to win again in court and deny us our opportunity to look at the documents and to look at the underlying evidence that one should always look at in an investigation.” 164 Cong. Rec S 1827, 1830 (Sen. McCaskill).

Without the ability to engage in discovery, there will be no serious consideration of how much Reddit knew about the likelihood of harm to children accessing its platform. This is especially important given the sophisticated

algorithms implemented by online platforms that prioritize user engagement and profitability, often at the expense of children's safety. See, e.g., Wells, G., Horwitz, J., & Seetharaman, D., *Facebook Knows Instagram is Toxic for Teen Girls, Company Documents Show*, THE WALL STREET JOURNAL (Sep. 14, 2021), https://www.wsj.com/articles/facebook-knows-instagram-is-toxic-for-teen-girls-company-documents-show-11631620739?mod=hp_lead_pos7; Craig Timberg, *YouTube Says It Bans Preteens But Its Still Delivering Troubling Content to Young Children*, THE WASHINGTON POST (Mar. 14, 2019), <https://www.washingtonpost.com/technology/2019/03/14/youtube-says-it-bans-preteens-its-site-its-still-delivering-troubling-content-young-children/>

Congress has unequivocally declared its intention that victims of sex trafficking — frequently vulnerable children — have their day in court. 164 Cong. Rec. S 1827 (Mar. 20, 2018) (Sen. Blumenthal). Yet by cutting off victims' opportunity to gather discovery into Reddit's practices, the District Court completely undermined the purpose of FOSTA, denying them the access to justice Congress so clearly promised.

The District Court's decision, if permitted to stand, would provide a shield to powerful internet companies with broad reach, while leaving the less technologically sophisticated victims of sex trafficking—many of whom are children—powerless and exposed online. Therefore, it is critical that this Court reject Reddit's motion to

dismiss, in order to ensure that the TVPRA and FOSTA-SESTA have any meaning. If this case cannot proceed to discovery, children everywhere are unprotected from online sex trafficking and re-victimization.

CONCLUSION

Amici respectfully submits that this Court should reverse the District Court Order and find that Section 230 does not protect Reddit from accountability for unlawful activity on their platform when they knowingly facilitate the trafficking of victims' abusive imagery and profit financially from the ensuing harm.

Respectfully Submitted,

Dated: March 7, 2022

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CERTIFICATE OF COMPLIANCE UNDER RULE 32(g)(1)

This brief complies with type-volume requirement of Rule 29(5) of the Federal Rules of Appellate Procedure because it contains 3,820 words, not including the items excluded under by Rule 32(f) of the Federal Rules of Appellate Procedure, which is not more than one-half the maximum word count (13,000) authorized by Rule 32(a)(7)(B)(i) of the Federal Rules of Appellate Procedure for the party's principal brief. This brief complies with the typeface and type-style requirements of Rules 32(a)(5) and 32(a)(6) of the Federal Rules of Appellate Procedure because the brief was prepared using Microsoft Word in 14-point Times New Roman font, which is a proportionately spaced serif typeface.



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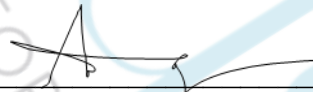
9th Circuit Case Number(s) U.S.C.A. Docket No. 21-5693

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the **MOTION FOR LEAVE TO FILE BRIEF AND BRIEF OF AMICUS CURIAE IN SUPPORT OF PLAINTIFFS AND APPELLANTS** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on March 7, 2022.

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