Appeal No. 24-465

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JASON FYK
Plaintiff-Appellant,

v.

FACEBOOK, INC.
Defendant-Appellee.

Appeal of January 12, 2024, Order Denying Motion for Relief Pursuant to Fed. R. Civ. P 60(B) and Terminating Motion Re: Constitutionality of 47 U.S.C. Sec. 230(C)(1) [D.E. 74] by Hon. Haywood S. Gilliam, Jr. of the U.S. District Court for the Northern District of California, 4:18-cv-05159-HSG

APPELLANT'S PETITION FOR REHEARING *EN BANC*

GREYBER LAW, PLLC
Jeffrey L. Greyber, Esq. (*pro hac vice*)
jgreyber@greyberlaw.com
9170 Glades Rd., #161
Boca Raton, FL 33434
(561) 702-7673 (o)
(833) 809-0137 (f)

PUTTERMAN | YU | WANG, LLP
Constance J. Yu, Esq. (SBN 182704)
cyu@plylaw.com
345 California St., Suite 1160
San Francisco, CA 94104-2626
(415) 839-8779 (o)
(415) 737-1363 (f)

Attorneys for Plaintiff-Appellant

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I. Introduction / Summary Of This Petition

According to a Gallup poll, public confidence in the judiciary has plummeted, with a 35% decrease reflecting growing distrust in the courts – this case exemplifies why. Appellant's, Jason Fyk's ("Fyk"), pursuit of basic justice has been obstructed at every turn, exposing systemic bias and judicial failures / evasions within his California Courts. The situation has deteriorated so profoundly that members of Congress have approached Fyk about the prospect of testifying in impeachment proceedings against Judges involved in his case. When judicial misconduct is so blatant that it warrants congressional scrutiny, the system is inherently broken.

From the outset, Fyk faced a deeply flawed and biased process. Judge White dismissed his case without leave to amend, distorted the facts as pleaded, fully endorsed Appellee's, Facebook, Inc.'s ("Facebook"), demonstrably false arguments (at the pleading stage where "factual" deference to Defendant Facebook was improper), and, perhaps most damningly, held millions in tech stocks – a conflict of interest, which is likely what prompted Judge White to *sua sponte* recuse himself as "disqualified" more than five years into the case. When Fyk appealed this biased decision, the Ninth Circuit ignored Judge White's partiality, denied Fyk's well-reasoned surplusage argument (later affirmed by courts), and entirely overlooked the statute's "Good Samaritan" general provision. Instead, this Court rubber-stamped Judge White's flawed reasoning sans meaningful analysis.

Fyk's petitions for *en banc* review and SCOTUS review were subsequently denied, despite the national significance of his case. His legal arguments were / are indisputable and perhaps too compelling, as granting him a hearing would force his Courts to confront their longstanding errors.

For instance, the Ninth Circuit's *Barnes* test incorrectly uses "a publisher," while the Fourth Circuit's *Henderson* test (now conflicting with the Ninth Circuit) accurately interprets §230's text as "the publisher or speaker." Despite this, the California judiciary persisted in its obvious errors, including the December 11, 2024, Memorandum from this Court. *See* [D.E. 27.1]. When Fyk returned to District Court, Judge White doubled down, rewriting the statute (divesting the statute of its "Good Samaritan" general provision) instead of applying it as written or intended, violating the separation of powers and rendering §230(c)(1) unconstitutional as applied.

Adding insult to injury, this Court shrugged off Fyk's *Enigma* / "Good Samaritan" arguments in his second appeal as "untimely," ignoring SCOTUS' recent affirmation, which reset the timeliness clock – a critical fact this Court ignored. Fyk filed another motion highlighting this error, but it was dismissed without explanation in a paperless order. Troublingly, Facebook never raised timeliness as a defense, and Judge White never mentioned it – this Court invoked "untimeliness" *sua sponte* to shield Facebook. Instead of addressing these legal failures, this Court prioritized

protecting Facebook over justice, forcing Fyk to fight judicial misconduct rather than Facebook's misconduct.

While the California judiciary (at least in Fyk's case) has repeatedly failed / evaded, courts in other jurisdictions are correctly interpreting and applying §230. For example, the Third Circuit's decision in *Anderson* demonstrated how platforms can be held accountable for harmful content recommendations (manipulation of others' content – the same principle central to Fyk's case) under a proper application of §230(c)(1). *Anderson* directly conflicts with this Court's handling of Fyk's claims, as well as the Fourth Circuit's *Henderson* decision. Had Fyk's case been carefully considered and resolved early, it might have set a precedent discouraging platforms like TikTok from misusing §230 to promote harmful challenges like the "blackout challenge," potentially saving children's lives. Instead, the mishandling of §230(c)(1) in Fyk's case has allowed Big Tech to evade accountability and emboldened unchecked content provision and development practices. Furthermore, the errors of Fyk's California Courts have facilitated the rise of the Censorship Industrial Complex, where §230's ambiguity is exploited as antitrust leverage over Big Tech to induce censorship of Americans, as evidenced in cases like *Missouri, et al. v. Biden, et al.*, No. 2:22-cv-01213 (W.D. La.), *Webseed, Inc., et al. v. DOS, et al.*, No. 24-cv-576 (W.D. TX), and *Cancer Step Outside the Box, LLC, et al. v. DOS, et al.*, No. 3:24-cv-01465 (M.D. TN).

By the time Fyk filed his third round of challenges (reconsideration motion practice) in District Court, highlighting significant legal developments like *Dangaard* (which eviscerated Fyk's initial decision), *Henderson*, and *Anderson*, for examples, Judge White recused himself as previously mentioned. Judge Gilliam, Jr., then took over but simply rubber-stamped Judge White's prior erroneous rulings, dismissing key legal developments as irrelevant or not "controlling." Judge Gilliam, Jr., claimed nothing other than *Lemmon* and *Enigma* were "controlling," while again ignoring *Enigma* as untimely and dismissing *Lemmon* as irrelevant. Judge Gilliam, Jr., even disregarded his own precedent from his own *Rumble* decision. This repeated judicial evasion raises troubling questions about whether the Judges (including the most recent Panel responsible for [D.E. 27.1]) are even reviewing Fyk's case or whether clerks, potentially protecting Big Tech, are intercepting and derailing his arguments – a very real concern given the state of affairs in this country.

Simultaneously with Fyk's 60(b) motion practice, he filed a "non-forfeitable" constitutional challenge under Rule 5.1, based on Judge White's unconstitutional rewrite of the law in [D.E. 51], but Judge Gilliam, Jr., terminated it as "freestanding," blatantly mischaracterizing its procedural foundation. In yet another alarming display of bias, Judge Gilliam, Jr., even threatened Fyk's counsel's *pro hac vice* status if Fyk returned to Court without "controlling law." In other words, Judge Gilliam, Jr., advised Fyk that, unless a higher court corrected his errors, Fyk would

be denied representation. This threat to deprive Fyk of legal counsel, unless he could compel a higher court (like this Court) to fix the California judiciary's glaring mistakes, represents a bias so egregious it should disqualify Judge Gilliam, Jr., from handling any of Fyk's matters in the future.

Undeterred, Fyk appealed again to this Court, refusing to be denied due process. Yet again, this Court denied his appeal, ignoring procedural facts, making material errors, and ignoring his Reply Brief entirely. *See* [D.E. 27.1]. It disregarded conflicts with other circuits (*e.g., Anderson* and *Henderson*), overlooked the relevance of *Lemmon* (despite its explanation in *Wozniak*), failed to address new controlling Ninth Circuit law in *Diep* (raised in Fyk's reply) and *Bonta*, continued to sideline *Enigma*, and ignored inconsistencies in Fyk's District Court (*e.g., Dangaard*, *Bright Data*, *Rumble*). Adding to the absurdity, the Court required Fyk to file a "separate and independent action" for his constitutional challenge while simultaneously labeling it "freestanding" (a definitionally circular contradiction).

This case reveals a troubling reality – Fyk has spent over six years fighting not Facebook, but a biased California judiciary bent on shielding Big Tech. This is no longer *Fyk v. Facebook*, but *Fyk v. California Courts*. The refusal to apply §230 as written and intended has broken the internet, turned it into a "lawless no-man's-land," cost lives, created U.S. Government antitrust leverage over Big Tech, eroded free speech, and cast doubt on the existence of justice in California.

This case satisfies all the requirements for both panel rehearing and rehearing *en banc*, as outlined in [D.E. 27.2] and detailed below – not just one, but *every requirement*. This is a Petition for Rehearing *En Banc*.

II. Summary Of This Court's December 11, 2024, Memorandum [D.E. 27.1]

Like the underlying Judge Gilliam, Jr., rulings up on this appeal, this Court's December 11, 2024, Memorandum [D.E. 27.1] really added nothing meaningful to the analysis.[1] Once again, it represents judicial evasion. This aligns with the requirements for both a petition for panel rehearing and a petition for rehearing *en banc*, as outlined in [D.E. 27.2]. The aim of this Petition for Rehearing *En Banc* is to detail what this Court overlooked within the parameters specified in [D.E. 27.2].

III. Legal Analysis

A. Legal Standard

Sections (1)A and (1)B of [D.E. 27.2] read as follows:

> A party should seek panel rehearing only if one or more of the following grounds exist:
>
> - A material point of fact or law was overlooked in the decision;
> - A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
> - An apparent conflict with another decision of the Court was not addressed in the opinion.

[1] Pursuant to [D.E. 27.2] a copy of [D.E. 27.1] is attached hereto as **Exhibit A** for this Court's ease of reference.

> A party should seek en banc rehearing only if one or more of the following grounds exist:
>
> - Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
> - The proceeding involves a question of exceptional importance; or
> - The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

[D.E. 27.2].

B. Material Points Of Fact Or Law Were Overlooked, And This Court Overlooked Changes In Law

This section addresses the first two prongs of panel rehearing, combined to avoid repetition, as this Court (and Fyk's District Courts) have consistently ignored or failed to meaningfully analyze everything Fyk has argued since Day 1 – arguments that have been entirely on point throughout. In short, this Court and its District Courts have *missed everything*, necessitating the inclusion of all six rehearing prongs (panel and/or *en banc*) in this Petition for Rehearing *En Banc*.

1. Case Law

This appeal commenced (vis-à-vis the Opening Brief) on March 8, 2024. *See* [D.E. 5]. Briefing concluded (vis-à-vis the Reply Brief) on July 1, 2024. *See* [D.E. 18]. Moreover, by Federal Rule of Appellate Procedure 28(j) letter dated September 3, 2024 [D.E. 22.1], Fyk placed *Anderson v. TikTok, Inc.*, No. 22-3061, 2024 WL 3948248 (3d Cir. Aug. 27, 2024) before this Court. And, by Rule 28(j) letter dated

October 25, 2024 [D.E. 25.1], Fyk placed *Republican National Committee v. Google, LLC*, No. 2:22-cv-01904, 2024 WL 3595538 (E.D. Cal. Jul. 31, 2024) and *Doe v. Snap, Inc.*, 144 S.Ct. 2493 (Jul. 2, 2024) before this Court.[2]

As pointed out in his Reply Brief, between the time Fyk filed his Opening Brief and Reply Brief, this Court's *Diep v. Apple, Inc.*, No. 22-16514, 2024 WL 1299995 (9th Cir. Mar. 27, 2024) decision issued, the Northern District of California Court's *X Corp v. Bright Data LTD.*, No. 23-03698-WHA, 2024 WL 2113859 (N.D. Cal. May 9, 2024) decision issued, and the California state court *Wozniak, et al. v. YouTube, LLC, et al.*, 319 Cal. Rptr. 3d 597 (Ct. App. 6th Dist. Apr. 2, 2024) decision issued. And, post-briefing, on September 4, 2024, this Court's *X Corp. v. Bonta*, 116 F.4th 888 (9th Cir. 2024) decision issued.

This Court's December 11, 2024, Memorandum [D.E. 27.1] failed to substantively address its *Diep* and *Lemmon* decisions, both of which conflict with the disposition of this case. Notably, *Diep* was a recent Ninth Circuit decision issued after Fyk's March 2024 Opening Brief and before his July 2024 Reply Brief. Additionally, this Court once again overlooked the profound relevance of its *Enigma* decision, denying Fyk's use of it as "untimely," despite his timely invocation following SCOTUS' affirmation of same.

[2] Of note, the *RNC* decision is pending appeal in this Court. Fyk reserves any and all prospective rights with respect to this Court's looming *RNC* decision, as well as any other case law that issues prospectively.

Furthermore, this Court's September 4, 2024, *Bonta* decision echoes what *Enigma* asserts: "the purpose of Section 230(c) is to provide protection for 'Good Samaritan' blocking and screening of offensive material, so that a website may 'self-regulate offensive third party content without fear of liability.'" *Bonta*, 116 F.4th 888 at 896 (internal citation omitted). Whether through *Enigma* or *Bonta*, this Court continues to disregard §230's "Good Samaritan" general provision in Fyk's case, which is constitutionally untenable. This ongoing failure to apply its own case law has resulted in one erroneous Fyk decision after another.

2. Rule 60(b)(5) Versus Rule 60(b)(6)

This Court's December 11, 2024, Memorandum mistakenly endorsed Judge Gilliam, Jr.'s conflation of Rules 60(b)(5) and 60(b)(6), rendering Rule 60(b)(6) surplusage to Rule 60(b)(5). Specifically, the Court erroneously held that a "controlling" change in law under Rule 60(b)(5) is required to trigger a Rule 60(b)(6) extraordinary circumstances analysis.

First, Rule 60(b)(6) relief is not somehow triggered by a change in case law. This Court incorrectly made satisfaction of Rule 60(b)(5) a condition precedent to pursuit of Rule 60(b)(6) relief. This is wrong and necessitates rehearing – a change of law is not required under Rule 60(b)(5) to trigger the *Phelps* extraordinary circumstances analysis of 60(b)(6). Rule 60(b)(6) is a "catch-all" provision that applies when extraordinary circumstances justify reopening a final judgment (*e.g.*,

like a judge owning millions in technology stocks). SCOTUS and this Court have made this clear in several cases. *See, e.g.*, *Gonzalez v. Crosby,* 545 U.S. 524, 535 (2005) (determining that Rule 60(b)(6) is reserved for cases of extraordinary circumstances, and these circumstances are not limited to changes in the law; they can include judicial misconduct, denial of due process, or significant factual developments); *Liljeberg v. Health Services Acquisition Corp.,* 486 U.S. 847, 864 (1988) (determining that relief under 60(b)(6) may be warranted for reasons like judicial bias or conflicts of interest, which undermine the integrity of the judicial process); *Riley v. Filson,* 933 F.3d 1068, 1071 (9th Cir. 2019) (determining that extraordinary circumstances may arise from a variety of factors, including procedural irregularities or misconduct, and that Courts must weigh all relevant factors, not just changes in law).

Second, in continuing to deny Rule 60(b)(5) relief, this Court (and Judge Gilliam, Jr.) wrongly believe that Rule 60(b)(5) requires a change in law to be "controlling" in order for 60(b)(5) to be available. This Court erred in such rigidity, and, regardless, as we have discussed elsewhere in this Petition, we have provided this Court with changes in "controlling" case law that do not square with the disposition of Fyk's case. We will briefly discuss the rigidity of this Court's (and Judge Gilliam, Jr.'s) change in "controlling" law prerogative.

Rule 60(b)(5) does not require legal change to be "controlling," but, rather, significant and relevant enough to render continued enforcement of the prior judgment inequitable (*e.g.*, *Dangaard's* direct contradiction to Fyk's case). Relief is permitted if a "significant change in law" affects the judgment's validity. While not binding, persuasive authority or legal developments that materially impact the judgment's context can suffice if they show inequity in enforcement. *See, e.g.*, *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992) (SCOTUS emphasized Rule 60(b)(5)'s flexibility, allowing relief for inequities caused by significant legal changes, even if non-binding, when continued enforcement is unfair or contrary to current standards).

Relief may also be granted when enforcing the judgment becomes detrimental to the public interest or creates substantial inequities due to changes in law, even if those changes are not directly controlling. *See, e.g.*, *Horne v. Flores*, 557 U.S. 433 (2009) (SCOTUS emphasized that Rule 60(b)(5) permits relief when prospective application of a judgment is no longer equitable due to changed circumstances, whether from controlling or persuasive legal developments).

3. Rule 5.1 Constitutional Challenge

As to points of law or fact overlooked, this Court engaged in circular reasoning by ratifying Judge Gilliam, Jr.'s disposition of Fyk's Rule 5.1 constitutional challenge. As detailed in prior briefing, Fyk brought his Rule 5.1

challenge as soon as he was eligible to do so. It is illogical (and judicially uneconomical) to suggest that a separate legal action should have been filed when the impetus for the challenge arose from Judge White's unconstitutional divestment of §230's "Good Samaritan" provision *via* [D.E. 51]. Even if a separate action had been filed, it would have been routed to Judge Gilliam, Jr., and consolidated. Moreover, both Judge Gilliam, Jr., and this Court acknowledged the constitutional challenge as an independent action by labeling it "freestanding." When does "freestanding" not mean "independent"? The reasoning used to eliminate Fyk's non-forfeitable constitutional challenge (and this Court's rubber-stamping of same) epitomizes absurd circular logic, with serious consequences, including the denial of justice for Fyk.

C. Conflicts Within This Court Exist, Which Were Not Addressed By This Court

As discussed in the preceding section of this Petition, this Court's decision-making in this case has overlooked conflicting case law from within this Circuit, its District Courts, and other Circuit Courts.

Within this Court, conflicting case law includes the *Bonta* and *Diep* decisions, as well as *Enigma* and *Lemmon*. In its District Court system, conflicting cases include the Northern District of California's *Dangaard* and *Bright Data* decisions, and the Eastern District of California's *RNC* decision. From other Circuit Courts,

conflicting authority includes the Third Circuit's *Anderson* and the Fourth Circuit's *Henderson* decisions.

This Court's December 11, 2024, Memorandum [D.E. 27.1] failed to address any of this conflicting case law. It is particularly egregious that the Court overlooked its own controlling authority (*Diep* and *Bonta,* as well as *Enigma* and *Lemmon*). Equally troubling is this Court's tolerance of conflicting District Court decisions (*Dangaard*, *Bright Data,* and *RNC*) and its outlier status compared to other Circuit Courts (*Anderson* and *Henderson*). These oversights demand correction.

D. Review By This Entire Court Is Necessary To Secure Uniformity

As outlined in Fyk's briefing in this appeal (and as noted in prior sections of this Petition), there has been no uniformity between the disposition of his case and other California cases. The lack of uniformity, certainty, and predictability was directly addressed, for example, in Section III.C of Fyk's Reply Brief. This Court must review this case *en banc* for the first time, as it refused Fyk's prior *en banc* requests.

There is no uniformity between Fyk's case and this Court's decisions in similar cases, its District Courts' rulings, or other Circuit Courts' decision-making, as discussed above. This inconsistency is unacceptable. The full Court, sitting *en banc,* must finally deliver uniform justice to Fyk.

E. This Proceeding Involves Questions Of Exceptional Importance

There is exceptional importance and danger in delay of resolving §230 properly in relation to Fyk's case:

> The question whether § 230 immunizes platforms for their own conduct warrants th[is] Court's review. [...] This petition present[s] the Court with an opportunity to do what [the Supreme Court] could not in *Gonzalez* and squarely address § 230's scope.
>
> Although the [Supreme] Court denies certiorari today, there will be other opportunities in the future [like this one]. But make no mistake about it – there is danger in delay. Social-media platforms have increasingly used § 230 as a get-out-of-jail free card.

Doe v. Snap, Inc., 144 S.Ct. 2493, 2494 (2024).

The misinterpretation / misapplication of §230 in Fyk's case has created a "lawless no-man's-land," enabling platforms to wield absolute immunity (*e.g.*, a §230(c)(1) "get-out-of-jail free card"). The inconsistent rulings discussed in Fyk's appellate briefing and Section III.C.1 of this Petition, including the failure to address nearly identical circumstances (*Dangaard* and *Fyk*), highlight the urgent need for *en banc* review. Without definitive resolution, platforms will continue exploiting §230(c)(1) as an unlimited liability shield, suppressing civil liberties and evading accountability, resulting in constitutional harm (*e.g.*, deprivation of due process and free speech), systemic harm, and erosion of fairness and justice. The danger of delay cannot be overstated.

Section 230 is central to the modern Censorship Industrial Complex, and its ambiguity (largely stemming from inconsistent California court rulings) has become a tool for Government leverage over Big Tech, enabling censorship and shielding platforms from accountability. Fyk's case illustrates this danger – deprivation of rights, systemic censorship, and anti-competitive practices disguised as neutral moderation. By failing to address §230(c)(1)'s proper application and constitutionality, this Court has perpetuated these harms, leaving Americans like Fyk without recourse while platforms like Facebook evade accountability.

The stakes are exceptionally high. For example, TikTok's misuse of §230(c)(1) to promote harmful content like the "blackout challenge" has cost lives. A proper interpretation in Fyk's case could have prevented such tragedies by ensuring platforms are not shielded for their own publishing conduct. The *Anderson* decision, for instance, distinguishes between hosting third-party content and affirmative publishing, a distinction central to Fyk's case, where Facebook's anti-competitive actions caused direct harm. Yet delays in resolving §230's ambiguity have escalated systemic harm, including loss of lives and constitutional rights.

This Cout has acknowledged that §230 case law is unsettled, creating a patchwork of judicial "discretion" that undermines free speech and fair competition. Fyk's case provides an opportunity for *en banc* review to unify the interpretation / application of §230 and address these systemic harms. Correcting the misapplication

in Fyk's case will restore fair competition, prevent the misuse of immunity to dominate markets, and ensure adherence to the good-faith standards Congress intended.

Misapplication of §230 has stripped Fyk and others of due process, free speech, and economic liberties. Section 230(c)(1) was never intended to shield platforms from accountability for deliberate, harmful actions, just as self-defense cannot excuse unrelated unlawful conduct. This Court must determine whether §230(c)(1) protects affirmative publishing conduct and whether the "Good Samaritan" general provision applies universally to all §230 defenses, as already determined in *Enigma* and *Bonta*. If these issues remain unresolved, the Court must confront Fyk's Rule 5.1 challenge – whether §230(c)(1) is unconstitutional as applied, particularly in light of Judge White's decision to divest §230 of its general provision. *See* [D.E. 51]. Allowing platforms to deprive civil liberties without legal remedy raises profound due process concerns.

The time for judicial clarity in California is now. *En banc* review is essential to set a consistent precedent that protects civil liberties, ensures justice, and restores public trust. Lives, markets, free speech, and due process (all of exceptional importance) depend on decisive action in this case.

F. This Court's Decision-Making Conflicts With The Decision-Making Of Other Circuit Courts, And There Is An Overriding Need For National Uniformity

As detailed in earlier sections of this Petition, this Court's decision-making in Fyk's case directly conflicts with the Third Circuit's *Anderson* decision and the Fourth Circuit's *Henderson* decision. This inconsistency should not persist, and this Court should not rely on SCOTUS to rectify its errors or force Fyk into the extremely costly process of seeking SCOTUS review for a third time. Instead, it is imperative for this Court to acknowledge that its rulings in Fyk's case conflict with correct decisions from this Circuit, from this Circuit's District Courts, and from other Circuit Courts, rectify its wrongful handling of Fyk's case (finally delivering justice more than six years into this lawsuit), and promote national uniformity in the process.

IV. Conclusion

This case presents extraordinary circumstances that demand immediate *en banc* review. The misapplication of §230(c)(1) in Fyk's case exemplifies the systemic harms caused by California Courts' inaction, harms that have turned the internet into a "lawless no-man's-land." This Court's refusal to resolve conflicts between its own decisions (*e.g.*, *Enigma*, *Lemmon*, *Diep*, and now *Bonta*), its District Courts (*e.g.*, *Dangaard*, *RNC*, and *Bright Data*), and other circuits (*e.g.*, *Anderson* and *Henderson*) perpetuates a lack of judicial uniformity and platform accountability. California courts, as the primary jurisdiction handling internet-

related cases, bear a unique responsibility to address the ambiguity they have fostered for over two decades. The dangers of further delay rest squarely on this Court's shoulders.

Other Circuit Courts, more committed to addressing these profound issues, are recognizing and correcting this Court's misinterpretations of §230. Cases like *Anderson* and *Henderson* reflect a growing judicial focus on ensuring platforms are not shielded for their own affirmative content manipulation. These changes in case law (arguments Fyk has raised since Day 1) underscore the urgency of resolving his case properly. This Court's continued inaction emboldens platforms to exploit §230 to suppress civil liberties, evade accountability, and perpetuate harm.

It is no mystery why this Court hesitates. Big Tech has built its business model on biased and clandestine content provision and development, disguised as neutral interactive computer services. Fyk acknowledges that addressing §230's misinterpretation / misapplication poses an existential threat to these companies, as their immunity from accountability would collapse. The economic interests of these corporations, however, cannot and must not supersede law and/or constitutional rights like free speech and due process, children's lives, and/or the principles of fairness and justice. The stakes of continued judicial evasion are profound, with real-world consequences including the erosion of public trust, systemic censorship, and loss of life.

Fyk's case provides a pivotal opportunity for this Court to do what it should have done five years ago – lead by example. *En banc* review can finally deliver long-overdue justice to Fyk, clarify §230's proper scope, and restore coherence among courts and the law. This Court has both the authority and the affirmative duty to protect civil liberties, ensure fair competition, and hold platforms accountable for their actions. Failure to act decisively undermines the Constitution and enables ongoing harm by platforms that prioritize profit over public safety and fundamental rights.

The time for judicial clarity is now. This Court must seize the opportunity to resolve the ambiguities surrounding §230 (ambiguities that the California judiciary is largely, if not entirely, responsible for), establish a consistent and just precedent, and restore public trust in the judicial system. Lives, free speech, and the integrity of our constitutional framework depend on it.

Plaintiff-Appellant, Jason Fyk, respectfully petitions this Court for rehearing of [D.E. 27.1] *en banc* and/or for this Court's providing Fyk with any other relief that is deemed equitable, just, or proper.

CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that this Petition for Rehearing *En Banc* complies with [D.E. 27.2] because the type-volume limitation does not exceed 4,200 words (this Petition includes 4,200 words), this Petition has been filed within

fourteen days of [D.E. 27.1], this Petition is accompanied by a copy of [D.E. 27.1] which is Memorandum that is the subject of this Petition (*see* Ex. A), and this Petition is accompanied by a Form 11 Certificate of Compliance (*see* Ex. B). This Petition complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this brief has been prepared in a proportionately spaced typeface using Times New Roman 14-point font.

Dated: December 24, 2024.

Respectfully Submitted,

/s/ Jeffrey L. Greyber
Jeffrey L. Greyber, Esq.
pro hac vice admitted
Greyber Law, PLLC
9170 Glades Rd., #161
Boca Raton, FL 33434
jgreyber@greyberlaw.com
(561) 702-7673 (o); (833) 809-0137 (f)

Constance J. Yu, Esq.
SBN: 182704
Putterman | Yu | Wang, LLP
345 California St., Ste 1160
San Francisco, CA 94104-2626
cyu@plylaw.com
(415) 839-8779 (o); (415) 737-1363 (f)
Attorneys for Plaintiff-Appellant, Fyk

CERTIFICATE OF SERVICE

I hereby certify that on December 24, 2024, I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM / ECF system. Participants in the case who are registered CM / ECF users will be served by the appellate CM / ECF system.

/s/ Jeffrey L. Greyber
Jeffrey L. Greyber, Esq.