

No. 23-961

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**In the Supreme Court of the United States**

JOHN DOE, Through Friend Jane Roe,  
*Petitioner,*

*v.*

SNAP, INC., doing business as SNAPCHAT, L.L.C.,  
doing business as SNAP, L.L.C.,  
*Respondent.*

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

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**BRIEF FOR SEATTLE SCHOOL  
DISTRICT NO. 1, CENTER FOR  
HUMANE TECHNOLOGY, AND HEAT  
INITIATIVE AS *AMICI CURIAE* IN  
SUPPORT OF THE PETITION FOR A  
WRIT OF CERTIORARI**

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**INTEREST OF AMICI CURIAE**

Amicus Curiae Seattle School District No. 1 (“Seattle Public Schools”) is the largest K–12 public school system in Washington state. Seattle Public Schools has a deep commitment to every student’s journey—to ensure that each student will graduate ready for college, career, and life. In keeping with this commitment, Seattle Public Schools provides a range of health services to its students, including mental health services. Accordingly, Seattle Public Schools has an interest both in the physical and mental health of its students, along with resources it offers students.<sup>1</sup>

Like school districts across the country, Seattle Public Schools is one of the primary providers of mental health services for its students. In this capacity, Seattle Public Schools has been strained by the number of students experiencing mental health crises and in need of mental health services. In part, this crisis is fueled by the wide range of negative impacts social media platforms have on adolescents’ health, including an increased risk of sexual abuse.

Amicus Center for Humane Technology (“CHT”) is a 501(c)(3) organization dedicated to advocating for

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<sup>1</sup> Seattle Public Schools provided timely notice to counsel of record of intent to file this brief along with other amici per Supreme Court Rule 37.2 via email on April 8, 2024. No counsel for any party has authored the brief in whole or in part. No counsel for any party made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity, other than the amici curiae, their members, or their counsel, made a monetary contribution to the preparation or submission of the brief.



comprehensive reform at the state and federal levels to ameliorate the profound consequences that digital technology products continue to inflict on individuals and communities. CHT has a strong interest in supporting efforts which highlight how the design of technology products cause harm and how companies should be held liable for the choices they make to build their products with unsafe designs.

Amicus Heat Initiative, a 501(c)(3) organization, is a collective effort of concerned child safety experts and advocates encouraging leading technology companies to detect and eradicate child sexual abuse images and videos on their platforms. Established in 2023, Heat Initiative aims to increase pressure on companies by deploying timely, strategic, and surgical tactics through targeted corporate campaigns. The Heat Initiative sees a future where children's safety is at the forefront of any existing and future technological developments.



## SUMMARY OF ARGUMENT

Snapchat's product design makes it the app of choice for adults to groom children for sexual abuse. Its primary design feature is that messages sent via Snapchat disappear as soon as they are read. This feature, sometimes called "ephemeral messaging," has led Senator Marsha Blackburn (R-Tennessee) to call Snapchat "a child predator's dream," and Senator Dick Durbin (D-Illinois) to call Snapchat "a perfect tool for sexual predators." *See Blackburn: Snapchat is*

*a Child Predator’s Dream*, Marsha Blackburn News (July 11, 2019), <https://tinyurl.com/3kx3tndh> [<https://perma.cc/23MU-RVYX>]; *see also* Justin Hendrix *et al.*, *Transcript: US Senate Judiciary Committee Hearing on “Big Tech and the Online Child Sexual Exploitation Crisis”*, Tech Pol’y Press (Jan. 31, 2024), <https://tinyurl.com/5n7k6m3h> [<https://perma.cc/K3XZ-6GRF>].

This case exemplifies these bipartisan concerns. Doe was groomed as a high school sophomore by his science teacher. The teacher seduced Doe by sending him sexually explicit photos of herself via Snapchat. Like all messages sent via Snapchat, these messages disappeared once Doe viewed them. The teacher’s online grooming of Doe led to an in-person sexual relationship, during which the teacher directly provided, or financed the purchase of, drugs that she encouraged Doe to take before having sex. The illicit relationship continued until Doe overdosed on drugs provided or financed by his teacher. Following the overdose, Doe’s guardian investigated and discovered that Doe’s teacher not only supplied the drugs to Doe, but also initiated a sexual relationship with him. Doe eventually filed suit against the teacher, the school district, and Snap, Inc., doing business as Snapchat, L.L.C. (collectively, “Snap”). Against Snap, Doe brought claims for negligent undertaking, negligent design, and gross negligence under Texas law. Pl.’s Original Compl. (“Complaint” or “Compl.”) ¶¶ 40–48, *Doe, through Roe v. Snap, Inc.* (“*Doe*”), No. 22-cv-00590 (S.D. Tex. Feb. 24, 2022), ECF No. 1.

The district court dismissed Doe’s negligence-based claims against Snap. Pet. Writ Cert., App. B,

4a–39a. It held that 47 U.S.C. § 230 (“Section 230”) provided immunity to Snap as a publisher of information created by third parties. *Id.* at 34a. On appeal, the Fifth Circuit affirmed and denied a petition for rehearing en banc. Pet. Writ Cert. (“Petition”), App. C, 40a–48a. But seven of the fifteen judges polled voted in favor of rehearing en banc. *Id.* at 41a. In a written dissent from the denial joined by the six other dissenting judges, Judge Jennifer Walker Elrod wrote that refusing to grant the en banc petition “le[ft] in place sweeping immunity for social media companies that the text cannot possibly bear.” *Id.*

Judge Elrod is correct. While Section 230 provides Snap immunity from being “treated as the publisher or speaker of any information provided by another information content provider,” Section 230 does not provide Snap immunity in its role as a product designer. After all, the basis for Doe’s cause of action is negligence based on Snapchat’s product design, not the underlying messages sent by Doe’s teacher. As the Complaint alleges, “Snapchat’s disappearing-messages function provided the perfect cover and opportunity for [the teacher] to prey on her students[,]” including by sending “messages to Doe using Snapchat in order to cultivate a sexual relationship.” Compl. ¶ 12. It is Snap’s implementation of disappearing messages, not the content of the teacher’s messages themselves, that animates Doe’s claims against Snap. Accordingly, Doe does not seek to treat Snap as a publisher or speaker, rendering Section 230 inapplicable to Doe’s claims.

Clarifying Section 230's scope is critical given that Doe's experience is tragically common. According to a survey by the *Pew Research Center* and calculations from the *United States Census Bureau*, more than 7.7 million youth use Snapchat. See Emily A. Vogels *et al.*, *Teens, Social Media and Technology 2023*, Pew Rsch. Ctr. (Dec. 11, 2023), <https://tinyurl.com/544pdy4m> [<https://perma.cc/MB49-AMLF>] (60 percent of 13 to 17 year olds use Snapchat); see also *U.S. and World Population Clock*, U.S Census Bureau, <https://tinyurl.com/255fy8n6> [<https://perma.cc/E8PN-WX3U>] (last visited Apr. 12, 2024) (calculating the United States resident population of 13 to 17 year olds as 12,874,000 based on a total United States resident population of approximately 336,217,000, 6.49 percent of whom are between the ages of 13 and 17). Further, according to a study by *Thorn*, an international non-governmental agency that works to combat the sexual exploitation of children, 7 percent of all minors who use Snapchat reported an online sexual interaction with someone whom they believed was 18 or older. *Responding to Online Threats: Minors' Perspectives on Disclosing, Reporting, and Blocking in 2021* at 20, Thorn (Feb. 2023), <https://tinyurl.com/yc7dyzan> [<https://perma.cc/XKJ2-AQPR>]. Snapchat's disappearing messages design feature has made it "a haven for child predators to be able to both exchange child pornography with each other, and to be able to induce children to send pictures of them to the predator." Here & Now, *Snapchat 'Has Become A Haven' For Child Predators, Criminal Justice Scholar Says*, WBUR (Jan. 23, 2018), <https://tinyurl.com/yc33d335> [<https://perma.cc/R7YV-P7VQ>]. Sometimes, as

in this case, that interaction has led to in-person sexual abuse.

Doe’s claims against Snap are based not on Snapchat’s publishing of third-party content, but on Snap’s own conduct—negligently designing and developing a digital platform that facilitates illicit and predatory conduct, marketing this platform to minors, and failing to use the data it collects from users to protect minors such as Doe. Whether Doe would ultimately prevail on the merits of such claims is not at issue in this petition. The sole question presented is whether Section 230 bars Doe from pursuing *any* claims against Snap, simply because third-party conduct was also involved. Amici encourage the Court to grant the Petition to clarify that Section 230’s protections do not extend to claims brought against interactive computer service providers based on their own tortious misconduct.

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## ARGUMENT

### I. SNAPCHAT’S DESIGN FEATURES PRESENT HEIGHTENED RISKS FOR CHILDREN USING THE PLATFORM

#### A. Snapchat’s defining product feature— disappearing messages—makes it “a child predator’s dream.”

Sexual predators like to use Snapchat for a simple reason: its messaging service, through which users exchange text messages, photos, and videos, is ephemeral. Once viewed, the messages disappear. This product design feature makes Snapchat a

welcome, useful, and effective tool for sexual predation and grooming.<sup>2</sup>

In prepared remarks for a Senate Judiciary Committee hearing convened to discuss child safety concerns, Senator Blackburn stated that “Snapchat by its very nature is a child predator’s dream.” *Blackburn: Snapchat is a Child Predator’s Dream*. During a Senate Judiciary Committee hearing held earlier this year, Senator Durbin similarly stated that Snapchat is “a perfect tool for sexual predators.” Hendrix *et al.*, *Transcript: US Senate Judiciary Committee Hearing on “Big Tech and the Online Child Sexual Exploitation Crisis”*. The bipartisan concern expressed about Snapchat’s design is warranted.

In a recent study of trends in victimization on Snapchat, researchers noted that Snapchat, while not as large as platforms like Instagram, “defines itself by its unique features, most notably with its self-deleting messages, photos (‘Snaps’), and videos, which delete upon viewing by the recipient, and with its ability to notify users if a screenshot was taken of the message content.” Kelly Huie *et al.*, *Identifying trends and patterns in offending and victimization on Snapchat: a rapid review* at 2, Sec. J. (2023), <https://tinyurl.com/yc4tum3c> [<https://perma.cc/K7YL-82AN>]. This feature “lets users send messages to one another that disappear within seconds.” Katie Benner, *How*

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<sup>2</sup> The *Merriam-Webster Dictionary* defines the relevant meaning of the verb “groom” as “to build a trusting relationship with (a minor) in order to exploit them especially for nonconsensual sexual activity.” *Merriam-Webster Dictionary*, <https://tinyurl.com/2f98urk5> [<https://perma.cc/S3H8-RZWA>] (last visited Apr. 12, 2024).

*Snapchat Is Shaping Social Media*, N.Y. Times (Nov. 30, 2016), <https://tinyurl.com/svaskksd> [<https://perma.cc/AU7J-TTBS>]. Thus, “it can almost be impossible to see what snaps are being sent or received—which makes it easier for inappropriate content or bullying content to be shared and sent.” Melissa Klurman, *Is Snapchat Safe for Kids?*, Parents (Aug. 3, 2023), <https://tinyurl.com/rmbxv4ze> [<https://perma.cc/TV8W-QLT8>].

That Snapchat’s design facilitates predatory and illicit conduct has been recognized by researchers, law enforcement, and other observers for many years. In 2018, Adam Scott Wandt, assistant professor of public policy at John Jay College of Criminal Justice, explained that Snapchat’s “unique . . . disappearing trick” has made the platform “a haven for child predators to be able to both exchange child pornography with each other, and to be able to induce children to send pictures of them to the predator.” Here & Now, *Snapchat ‘Has Become A Haven’ For Child Predators, Criminal Justice Scholar Says*. As early as 2016 and 2017, news headlines warned that *Predators target underage children on Snapchat*<sup>3</sup> and *Investigators say more predators using Snapchat to victimize children*.<sup>4</sup> In 2019, *Forbes* published an article titled, *Snapchat Has Become A ‘Haven For*

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<sup>3</sup> Xavier Walton, *Predators target underage children on Snapchat*, 13 News Now (June 22, 2016), <https://tinyurl.com/5nrnved2> [<https://perma.cc/888H-4G7P>].

<sup>4</sup> Courtney Gerrish, *Investigators say more predators using Snapchat to victimize children*, WTMJ-TV Milwaukee (Dec. 8, 2017), <https://tinyurl.com/53625s9y> [<https://perma.cc/6ENL-DPZN>].

*Child Abuse' With Its 'Self-Destructing Messages'*, citing an investigation by UK newspaper the *Sunday Times*, which found “thousands of reported cases that have involved Snapchat since 2014.”<sup>5</sup> An Australian cyber safety expert warned in 2021 that Snapchat is a “child predator’s favorite app” and urged parents not to let their kids use it.<sup>6</sup>

The problem has only become more severe. In 2023, Snapchat was involved in nearly half of all reported online grooming crimes against children in the UK.<sup>7</sup>

The prevalence of such activity on Snapchat is no coincidence; perpetrators recognize the protection this feature provides them. Indeed, during the January 2024 Senate Judiciary Committee hearing on Big Tech and the Online Child Sexual Exploitation Crisis, Senator Durbin recounted a law enforcement proceeding involving a child sexual predator who admitted using Snapchat for this very reason. According to Senator Durbin, “The man admitted that he only used Snapchat with [the child] and not any

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<sup>5</sup> Zak Doffman, *Snapchat Has Become A 'Haven For Child Abuse' With Its 'Self-Destructing Messages'*, Forbes (May 26, 2019), <https://tinyurl.com/5uuh6xbd> [<https://perma.cc/5PZW-QTU5>].

<sup>6</sup> Katie Davis, *'NO SAFE WAY TO USE IT' Snapchat is a 'child predator's favorite app and parents shouldn't let their kids use it,' cybersecurity expert warns*, U.S. Sun (Aug. 6, 2021), <https://tinyurl.com/2p83hax> [<https://perma.cc/K3BY-LQPZ>].

<sup>7</sup> Charles Hymas, *Snapchat accounts for nearly half of recorded online grooming crimes against children*, The Telegraph (Aug. 15, 2023), <https://tinyurl.com/yw56mfw8> [<https://perma.cc/PW8M-V9KN>].



other platforms because he ‘knew that chats would go away.’” Hendrix *et al.*, *Transcript: US Senate Judiciary Committee Hearing on “Big Tech and the Online Child Sexual Exploitation Crisis”*. Once the messages have disappeared, they are not retrievable by users—nor even by law enforcement with a warrant.

Simply put, Snapchat’s disappearing messages feature makes it the tool of choice for perpetrators of child sexual abuse.

**B. Social media companies have a duty to take reasonable care in designing their platforms to be safe for the children using them.**

Sexual abuse and exploitation of children online is a serious and known problem. As a recent article in the *Journal of American Medicine* (“JAMA”) summarized, “a substantial proportion of young people have experienced online child sexual abuse.” David Finklehor *et al.*, *Prevalence of Online Sexual Offenses Against Children in the US* at 9, JAMA (Oct. 14, 2022), <https://tinyurl.com/pcr3dw8y> [<https://perma.cc/VD2Z-7SDM>]. More than 10.3 percent of all respondents to a JAMA survey reported “the experience of being threatened, forced, or strongly pressured to provide someone with sexual images” before they were 18 years old. *Id.* at 6. “Online grooming,” which the study defined “exclusively [as] solicitations from and exchanges with adults, had a prevalence rate of 5.4%” among survey respondents. *Id.* at 7.

The study by *Thorn* reached similarly disturbing conclusions. The study found that 25 percent of all minors, including 19 percent of all minors between the ages of 9 and 12 and 29 percent between the age of 13 and 17, reported an online sexual interaction with someone whom they believed was 18 or older. *Responding to Online Threats: Minors' Perspectives on Disclosing, Reporting, and Blocking in 2021* at 8.

At the same time, social media companies intentionally market their platforms to children and teens. Snapchat is especially popular among children and adolescents. According to a 2023 survey by the *Pew Research Center*, 60 percent of United States youth between the ages of 13 and 17 use Snapchat, and more than half of them check Snapchat at least once daily. *Vogels et al., Teens, Social Media and Technology 2023*. That equals approximately 7.7 million kids between the ages of 13 and 17 who use Snapchat in the United States. *U.S. and World Population Clock*

Snapchat's platform heightens the risk of such interactions for children younger than thirteen as well. Although Snapchat's terms of use require users to be at least thirteen, many younger children use Snapchat by evading the app's age requirement,<sup>8</sup> a

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<sup>8</sup> Snap's deficient age verification tools are also subject to pending litigation in both federal and state court. *See In re: Soc. Media Adolescent Addiction/Pers. Inj. Prods. Liab. Litig.*, No. 4:22-md-03047-YGR, --- F. Supp. 3d ----, 2023 WL 7524912 at \*\*11–12 (N.D. Cal. Nov. 14, 2023) (holding numerous design defect product liability claims against social media companies, including Snap, were not barred because they did not implicate

fact known to Snap. Indeed, during a hearing before the U.K. Parliament’s Culture Media and Sport Committee, Snap admitted that children younger than 13 were able to bypass the company’s safeguards when signing up for Snapchat. See Anthony Cuthbertson, *Snapchat admits its age verification does not work*, *The Indep.* (Mar. 19, 2019), <https://tinyurl.com/34pkenpm> [<https://perma.cc/P5UE-338K>] (recounting the hearing).

In this context—where social media companies are actively promoting their platforms to children, while aware of the serious risk of online exploitation and sexual abuse of minors—these companies can and should be held responsible for failing to take reasonable care in the design of their platforms. Section 230 was not intended to provide broad immunity for product design features that allow online abuse to flourish, nor for a company’s failure to address hazards in its design after they become known.

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publishing or monitoring third-party content—like Snap’s deficient age verification tools).

**II. SECTION 230 DOES NOT SUPPORT IMMUNITY FOR “THE PREDICTABLE CONSEQUENCES OF” SNAPCHAT’S “DESIGN”**

**A. In designing a platform that facilitates dangerous conduct such as sexual predation, Snap is not acting as a publisher.**

Doe seeks to hold Snap liable for negligent undertaking, negligent design, and gross negligence. Pet. Writ Cert. 14–15. These causes of action against Snap are premised on Snapchat’s product design—not on it being a “publisher or speaker” of the communications Doe received via the app. As the Ninth Circuit explained in another case involving Snap, Section 230 does not provide protection from “being sued for the predictable consequences of designing Snapchat in such a way that it allegedly encourages dangerous behavior.” *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1094 (9th Cir. 2021) (quoting *Fair Hous. Council San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1170 (9th Cir. 2008)). Similarly here, Doe alleges that Snap designed Snapchat in a way that encourages and facilitates dangerous behavior.

The district court misconstrued Doe’s claims against Snap as “seek[ing] to hold Snap liable for messages and photos sent by” the teacher who groomed and sexually abused Doe. Pet. Writ Cert., App. B, 4a–39a at 37a. But Doe’s claims against Snap are based on Snap’s conduct as a designer and developer of the Snapchat platform, not as a publisher. Doe alleges that Snap “negligently

design[ed] its application Snapchat” to “automatically delete[] messages and images sent by users after a short period of time.” Compl. ¶ 46. “Snapchat’s disappearing-messages function provided the perfect cover and opportunity for [the teacher] to prey on her students.” *Id.* ¶ 12. Snap therefore “creat[ed] an environment where adults can interact with underage users with assurances that there will be no long-lasting evidence of those interactions.” *Id.* ¶ 46. As a result, Doe alleged that Snap, “by design, allows pedophiles to prey on [minors] with apparent impunity.” *Id.* ¶ 48. These allegations do not hinge on the content of the messages or photos sent by the teacher who groomed Doe or on Snap’s publisher capacity. Instead, the gravamen of Doe’s allegations is the way that Snapchat works and Snap’s role as a designer of a digital platform.

Because this case is about holding Snap accountable for its own product design, not as simply a publisher, Doe’s claims fall outside of the ambit of Section 230. To the degree Fifth Circuit law holds otherwise, this precedent should be revisited, as Judge Elrod urged in her dissent from the denial of rehearing en banc below.

**B. As the dissenting judges below and other members of the federal judiciary have recognized, the text of Section 230 does not support blanket immunity for social media companies.**

Joined by six other dissenting Fifth Circuit judges, Judge Elrod wrote that the denial of rehearing “leav[es] in place sweeping immunity for social media companies that the text cannot possibly bear.” Pet.

Writ Cert., App. C, 40a–48a at 41a. The Fifth Circuit’s decision is another example of what one Justice has characterized as “the too-common practice of reading extra immunity into statutes where it does not belong[.]” *Id.* at 41a–42a (quoting *Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, 141 S. Ct. 13, 15 (2020) (internal citation omitted) (Thomas, J., statement respecting denial of certiorari)).

Judge Elrod and the dissenters below are in good company in criticizing this “atextual immunity.” *Id.* at 42a. For example, in *Force v. Facebook, Inc.*, Second Circuit Chief Judge Katzmann concluded that Section 230 “does not protect Facebook’s friend- and content-suggestion algorithms.” 934 F.3d 53, 82 (2d Cir. 2019) (Katzmann, J., dissenting). The plaintiffs in *Force* were United States citizen victims, and relatives and representatives of the estates of those victims, of several terrorist attacks committed by Hamas in Israel. *Id.* at 57. They sued Facebook for unlawfully providing Hamas with a communications platform that enabled those attacks. *Id.* The majority held that Facebook’s use of algorithms to make the content posted by Hamas more visible, available, and useable was simply “an essential part of traditional publishing[.]” *Id.* at 70. But, as Judge Katzmann pointed out, Section 230 “does not protect Facebook’s friend- and content-suggestion algorithms[.]” which “create and communicate its own message: that it thinks you, the reader—you, specifically—will like this content.” *Id.* at 82 (Katzmann, J., dissenting).

Similarly, in *Gonzalez v. Google LLC*, Ninth Circuit Judge Berzon wrote separately to state that she was constrained by Circuit precedent but believed

that Section 230(c)(1) does not immunize “activities that promote or recommend content or connect users to each other.” 2 F.4th 871, 913 (9th Cir. 2021) (Berzon, J., concurring). Judge Berzon noted that the website defendants—Google, Twitter, and Facebook—went far beyond “decisions to moderate content, restrict users, or allow third parties full freedom to post content and interact with each other[.]” which are activities shielded from liability under Section 230. *Id.* at 914. The defendants also employed algorithms to “suggest new connections between people and groups and recommend long lists of content, targeted at specific users[.]” thereby “amplify[ing] and direct[ing] content, including violent ISIS propaganda” at the heart of the case, “to people the algorithm determines to be interested in or susceptible to those messages and thus willing to stay on the platform to watch more.” *Id.* Writing separately to concur in part, Judge Gould explained that “Section 230 was not intended to immunize, nor does its literal language suggest that it immunizes, companies providing interactive computer services from liability from serious harms knowingly caused by their conduct.” *Id.* at 920 (Gould, J., concurring in part, dissenting in part).

### CONCLUSION

For the above reasons, this Court should grant the petition for a writ of certiorari to address the question of whether 47 U.S.C. § 230 immunizes internet service providers from any suit based on their own tortious misconduct simply because third-party content is also involved.

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