IN THE
SUPREME COURT OF THE UNITED STATES

No. ___

TIKTOK, INC.; BYTEDANCE, INC.,

Applicants,

v.

TAWAINNA ANDERSON, INDIVIDUALLY AND AS ADMINISTRATIX OF THE ESTATE OF N.A., A DECEASED MINOR,

Respondent.

APPLICATION TO THE HON. SAMUEL A. ALITO, JR. FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Pursuant to Supreme Court Rule 13(5), TikTok, Inc., and ByteDance, Inc., (Applicants), hereby move for an extension of time of 30 days, to and including February 20, 2025, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be January 21, 2025.

In support of this request, Applicants state as follows:

1. The United States Court of Appeals for the Third Circuit rendered its decision on August 27, 2024 (Exhibit 1) and denied a timely petition for rehearing *en banc* on October 23, 2024 (Exhibit 2). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. This case concerns the application of Section 230 of the Communications Decency Act to state-law claims seeking to hold Applicants liable for the editorial judgments they make when they curate compilations of others' content via their expressive algorithms. Under §230(c)(1), "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. §230(c)(1). For the better part of three decades, federal courts of appeals have unanimously interpreted §230 to prohibit lawsuits that seek to hold a website liable for "its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content." *Zeran v. Am. Online*, 129 F.3d 327, 330 (4th Cir. 1997). That universal understanding of §230 has been pivotal to the development of the modern Internet.

3. In this case, Respondent Tawainna Anderson alleges that TikTok's algorithm delivered to her daughter a so-called "blackout challenge" video, which encouraged viewers to choke themselves until passing out using objects similar to belts and purse strings. Ex.1 at 5. She alleges that Nylah died after attempting to replicate the content depicted in the video. Ex.1 at 5. In line with the well-established understanding of §230, the district court dismissed Respondent's suit against Applicants because her claims are "'inextricably linked' to the manner in which [Applicants] choose to publish third-party user content." *Anderson v. TikTok, Inc.*, 637 F.Supp.3d 276, 281 (E.D. Pa. 2022); Ex.1 at 6.

4. In the decision below, the Third Circuit reversed the district court's dismissal. The court began by noting that, under §230(c)(1), websites "are immunized only if they are sued for someone else's expressive activity or content (i.e., third-party speech), but they are not immunized if they are sued for their own expressive activity or content (i.e., first-party speech)." Ex.1 at 7. The court then noted that this Court in *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024), "held that a platform's algorithm that reflects 'editorial judgments' about 'compiling the third-party speech it wants in the way it wants' is the platform's own 'expressive product' and is therefore protected by the First Amendment." Ex.1 at 9. From there, the court reasoned that *NetChoice* concluded "that platforms engage in protected first-party speech under the First Amendment when they curate compilations of others' content via their expressive algorithms," and that "it follows that doing so amounts to first-party speech under § 230, too." Ex.1 at 9. Based on this analysis, the court concluded that §230 did not bar Respondent's claims. Ex.1 at 10-11. Because TikTok's algorithm "decides on the third-party speech that will be included in or excluded from a compilation—and then organizes and presents the included items" to users, the Third Circuit reasoned that the algorithm was "TikTok's own 'expressive activity'" for §230 purposes. Ex.1 at 10 (brackets omitted). Accordingly, the court held that "§ 230 does not bar Anderson's claims" because "TikTok's own expressive activity" is the basis for her suit. Ex.1 at 10-11.

5. The Third Circuit's decision misapplies this Court's analysis in *NetChoice* and cannot be reconciled with the unbroken line of decisions in the courts

of appeals holding that §230 prohibits lawsuits that seek to hold a website liable for "its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content." *Zeran*, 129 F.3d at 330. Indeed, even the Third Circuit recognized that its holding "may depart" from decisions from "other circuits." Ex.1 at 6-7, 11 n.13 (listing decisions from the First, Second, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and D.C. Circuits). The Third Circuit did not engage with the reasoning of any of those decisions. It instead dismissed them all as having "pre-dated NetChoice." Ex.1 at 12 n.13. But the notion that this Court upended decades of settled lower-court precedent about how to interpret §230 *sub silentio* in an opinion that did not even discuss §230—just one year after studiously avoiding disturbing the lower court consensus on §230, *see Gonzalez v. Google LLC*, 598 U.S. 617 (2023) (per curiam)—beggars belief. *NetChoice* simply accepted the industry's argument that websites engage in First Amendment protected editorial judgment in deciding whether and how to display content. It did not hold that third-party speech becomes a website's own speech simply because the website displays and organizes it. Indeed, Congress enacted §230 to encourage websites to exclude problematic third-party content by effectively overruling a case that held that, so long as a website exercised "editorial control over the content of messages posted on its" site, it could be held liable for publishing the third-party speech that escaped the editor's pen. *See Stratton Oakmont, Inc. v. Prodigy Serv. Co.*, 1995 WL 323710, at *2 (N.Y. Sup. Ct. May 24, 1995). If the panel were correct that websites lose §230

protection whenever they exercise "editorial judgment[]" over the third-party content on their services, Ex.1 at 9, then §230 accomplished nothing.

6. Applicants' counsel, Paul D. Clement, has substantial briefing and argument obligations between now and the current due date of the petition, including oral argument in *Academy of Allergy & Asthma in Primary Care v. Louisiana Health Service & Indemnity Co.*, No. 23-30925 (5th Cir.) (Jan. 6); a response brief in *NetChoice, LLC v. Moody*, No. 4:21-cv-00220 (N.D. Fla.) (due Jan. 8); an amicus brief in *Garland v. Texas Top Cop Shop, Inc.*, No. 24A653 (U.S.) (due Jan. 10); a response brief in *LSP Transmission Holdings II, LLC v. Huston*, Nos. 24-3248 & 24-3249 (7th Cir.) (due Jan. 17); and oral argument in *Chappell v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints*, No. 2:24-md-03102 (D. Utah) (Jan. 17).

7. Applicants' counsel thus requests a modest extension of time to prepare a petition that fully addresses the important and far-reaching issues raised by the decision below.

WHEREFORE, for the foregoing reasons, Applicants request that an extension of time to and including February 20, 2025, be granted within which Applicants may file a petition for a writ of certiorari.

Respectfully submitted,

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