COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court

FOR THE COMMONWEALTH OF MASSACHUSETTS
No. SJC-13747

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff-Appellee,

v.

META PLATFORMS, INC., AND INSTAGRAM, LLC,

Defendants-Appellants.

ON DIRECT APPELLATE REVIEW FROM AN ORDER
OF THE SUPERIOR COURT FOR SUFFOLK COUNTY,
No. 2384CV02397

BRIEF OF *AMICI CURIAE* NETCHOICE AND CHAMBER OF PROGRESS IN SUPPORT OF APPELLANTS AND REVERSAL

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Dated: November 14, 2025

Corporate Disclosure Statement

Amicus Curiae NetChoice has no parent company and no publicly held corporation owns ten percent or more of its stock.

Amicus Curiae Chamber of Progress has no parent company and no publicly held corporation owns ten percent or more of its stock.

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Interest of *Amici Curiae*[1]

NetChoice is a national trade association of online businesses that share the goal of promoting free enterprise and free expression on the Internet. For over two decades, NetChoice has worked to ensure the Internet remains innovative and free. NetChoice advocates on behalf of its membership by, among other things, participating in litigation involving issues of vital concern to the online community and by filing amicus curiae briefs. A list of NetChoice's members is available at: https://perma.cc/39B2-E55T.

Chamber of Progress is a tech-industry coalition devoted to a progressive society, economy, workforce, and consumer climate. Chamber of Progress backs public policies that will build a fairer, more inclusive country in which the tech industry operates responsibly and fairly, and in which all people benefit from technological leaps. Chamber of Progress seeks to protect Internet freedom and free speech, promote innovation and economic growth, and empower technology customers and users. In keeping with that mission, Chamber of Progress believes that allowing a diverse range of websites and philosophies to flourish will benefit everyone—consumers, store owners, and application developers.

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[1] *Amici* submit this brief under Mass. R. App. P. 17(a) and the Court's March 19, 2025, order. Pursuant to Mass. R. App. P. 17(c)(5), *Amici* declare that no party or party's counsel authored the brief in whole or in part, no one other than *Amici*, their members, or their counsel contributed money intended to fund the brief's preparation or submission, and neither *Amici* nor their counsel represent or have represented any of the parties to this appeal in another proceeding involving similar issues, or was a party or represented a party in a proceeding or legal transaction that is at issue in this appeal. Although Appellant Meta is a NetChoice member, Appellant Meta did not contribute money that was intended to fund preparing or submitting the brief.

Chamber of Progress's work is supported by its corporate partners, but its partners do not sit on its board of directors and do not have a vote on, or veto over, its positions. Chamber of Progress does not speak for individual partner companies, and it remains true to its stated principles even when its partners disagree. A list of Chamber of Progress's members is available at: https://perma.cc/AXD5-6MM9.

Introduction

This Court has the opportunity to address a critically important question of law regarding protections affecting a wide array of online service—and the billions of people that use them. As the United States Supreme Court has observed, "the vast democratic forums of the Internet, in general, and social media, in particular" have become the "the most important places . . . for the exchange of views[.]" *Packingham v. North Carolina*, 582 U.S. 98, 104 (2017). 47 U.S.C. § 230 ("Section 230") is what has enabled online services, like Instagram, to serve as fora for protected speech without the threat of ruination from a deluge of lawsuits.

When Congress enacted Section 230 in 1996, it did so in the context of the rapid development of new online services where users could, for the first time, create and share information with other users around the world. Congress saw extraordinary promise in that development. It recognized that interactive computer services could "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). Congress also understood a serious risk: if those services could be held liable for what billions of users said and did online, innovation would collapse under the weight of litigation.

To avoid that outcome, Congress enacted Section 230 to promote "the continued development of the Internet and other interactive computer services," and 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." *Id.* § 230(b)(1)-(2). The statute struck a deliberate balance—it encouraged

responsible content moderation while ensuring that online services would not be punished for disseminating, organizing, or removing third-party speech. In short, Congress wanted the internet to grow, not retreat in fear of a flood of lawsuits.

That protection has proven indispensable to both websites and those who use them. Section 230 helped foster the growth of the diverse range of online services that now define modern communication and commerce: social media networks, marketplaces, review sites, video-sharing services, livestreaming tools, dating apps, and collaborative knowledge projects like Wikipedia and Khan Academy, among others. These services empower users to express themselves, learn, and connect using innovative features that enable users to create and share engaging content in new ways.

Along with the First Amendment, Section 230's protections provide complementary safeguards for online services' decisions about how to present and organize users' speech. *See id.* § 230(f)(2), (f)(4). And by ensuring that online services can innovate without the constant threat of litigation, Section 230 preserves an innovative, constantly evolving internet—one that reflects the very purpose Congress identified nearly three decades ago.

Summary of Argument

Congress enacted Section 230 to ensure that the internet could develop as a space for communication, innovation, and free expression—without being smothered by litigation. Recognizing that the threat of endless lawsuits could cripple emerging online services, Congress created a broad and technology-neutral protection: no provider or user of an interactive computer service "shall be treated as the publisher or speaker" of third-party content, and "[n]o cause of action may be brought" under inconsistent state laws. *Id.* § 230(c)(1), (e)(3). Those words reflect Congress's intent to both protect online services from liability *and* from the burdens of being sued at all.

Under Massachusetts's doctrine of present execution, a denial of immunity from suit is reviewable on interlocutory appeal, because the right to immunity is lost once litigation proceeds. *See Kent v. Commonwealth*, 437 Mass. 312, 315-16 (2002) (discussing governmental immunity). Section 230's text and purpose confirm that the statute provides immunity from suit as well as immunity from liability. Congress sought to prevent precisely the chilling effect that accompanies litigation over user-generated content—where even a meritless suit can impose ruinous costs, compel over- and under-removal of speech, deter the development of new speech-facilitating services or features, and inhibit new entrants from building services that enable user expression. Courts across the country have recognized Section 230 as conferring immunity from suit.

Section 230 bars the Commonwealth's claims on the merits. Courts across the nation have held that the statute protects both *whether* an online service publishes

user content, and also *how* it does so. *M.P. v. Meta Platforms Inc.*, 127 F.4th 516, 526 (4th Cir. 2025), *cert. denied*, 2025 WL 2824590 (U.S. Oct. 25, 2025). Features like notifications, Reels, "infinite scroll," autoplay, and ephemeral content are all integral to Meta's publishing activities. They are the modern equivalents of deciding which articles to place on the front page, whether to include images, and how to organize a newspaper. Imposing liability for those publication mechanisms would contradict Congress's deliberate choice to encourage innovation in how online services organize and facilitate user speech.

Section 230 has succeeded in doing what Congress intended. Its protections have enabled the growth of a diverse and dynamic internet—one that includes social networks, review sites, marketplaces, collaborative knowledge repositories, and creative websites serving billions of users. Weakening Section 230's protections would reverse nearly three decades of innovation and user empowerment. Because Section 230 provides immunity from suit, the denial of that immunity is immediately appealable under the doctrine of present execution. And because the Commonwealth's claims target features integral to the publication of user content, they are barred by Section 230 as a matter of law.

For these reasons, this Court should reverse the Superior Court's decision and dismiss the Commonwealth's complaint with prejudice.

Argument

I. Under the Doctrine of Present Execution, Meta's Appeal Is Properly Before the Court on the Ground That Section 230 Provides Immunity From Suit as Well as From Liability.

As this Court has explained, "in narrowly limited circumstances, where an interlocutory order will interfere with rights in a way that cannot be remedied on appeal from a final judgment, and where the order is collateral to the underlying dispute in the case, . . . a party may obtain full appellate review of an interlocutory order under our doctrine of present execution." *Lynch v. Crawford*, 483 Mass. 631, 634 (2019) (cleaned up).

Those conditions are satisfied where a defendant asserts immunity from suit and that immunity is denied. "[A]n order denying a motion to dismiss based on immunity from suit enjoys the benefit of the present execution rule because it is a final order that meets the criteria for immediate appeal." *Kent*, 437 Mass. at 316. This is because "the right to immunity from suit is effectively lost as litigation proceeds past motion practice." *Id.* (cleaned up); *see also Estate of Moulton v. Puopolo*, 467 Mass. 478, 485 (2014) ("A defendant has the right to an immediate appeal under the doctrine of present execution where protection from the burden of litigation and trial is precisely the right to which it asserts an entitlement.").

Moreover, "[t]he denial of a motion to dismiss on immunity grounds is always collateral to the rights asserted in the underlying action because it 'is conceptually distinct from the merits of the plaintiff's claim that his rights have been violated.'" *Kent*, 437 Mass. at 317 (quoting *Mitchell v. Forsyth*, 472 U.S. 511, 527-29 (1985)). Thus, even where the trial court ultimately disagrees as to whether the defendant is

entitled to immunity, an interlocutory appeal under the doctrine of present execution remains proper to challenge the denial of that contention. *Moulton*, 467 Mass. at 485-86.

The operative question, therefore, is whether Section 230 provides interactive computer service providers like Meta and Instagram, with immunity from suit. Where a defendant claims immunity "provided by statute," this Court "discern[s] whether the right to immunity is from suit or from liability, because only immunity from suit entitles a party to an interlocutory appeal under the doctrine of present execution." *Lynch*, 483 Mass. at 634-35. Even if a statute does not expressly use the phrase "immunity from suit," that is not dispositive. Instead, the Court "look[s] to the language of the entire statute and, where there is ambiguity, appl[ies] traditional standards of statutory interpretation to determine whether the Legislature intended to grant immunity from suit." *Id.* at 633.

This inquiry focuses on legislative purpose: "we seek to determine the intent of the Legislature in enacting [the statute], ascertained from all its words . . . considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished." *Id.* at 639 (cleaned up). The Court examines the statute as a whole to construe its provisions in harmony, avoiding internal contradictions. *Id.*

This Court's reasoning in *Lynch v. Crawford* is instructive. In *Lynch*, this Court held that both the federal Volunteer Protection Act ("VPA"), 42 U.S.C. §§ 14501-05, and its Massachusetts analog, G.L. c. 231, § 85W, confer immunity from suit, not merely immunity from liability. The VPA provides that, in particular

circumstances, "no volunteer . . . shall be liable." 42 U.S.C. § 14503(a). And this Court concluded that Congress's intent to protect volunteers from "liability abuses" necessarily encompassed the burdens and deterrent effects of litigation itself. *Lynch*, 483 Mass. at 639-40. Congress had expressly found that "the willingness of volunteers to offer their services is deterred by the potential for liability actions," and that "high liability costs and unwarranted litigation costs" increased insurance costs for nonprofit organizations. *Id*. (quoting 42 U.S.C. § 14501(a)(1)-(6)).

From those findings, this Court reasoned that Congress "must have intended the VPA to provide qualified immunity from suit, not merely immunity from liability," because a volunteer's "liability risk" includes "being dragged into litigation and having to incur the considerable time, expense, and burdens of such litigation." *Id.* at 640-41. Without immunity from suit, the statutory purpose—to encourage volunteer participation free from the chilling effect of lawsuits—would be frustrated. Accordingly, denials of motions to dismiss asserting such immunity are immediately appealable under the doctrine of present execution. *Id.* at 640.

A. Section 230 Confers Immunity From Suit, Not Merely From Liability.

The same reasoning applies with even more force to Section 230. Like the VPA, Section 230 contains both operative immunity language and express congressional findings that reveal an intent to protect a class of socially valuable actors from the chilling and burdensome effects of litigation. That understanding of Section 230's plain text and intent has been recognized by multiple federal courts of appeals.

Section 230(c)(1) provides that "[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). And to provide this protection with its greatest effect, Section 230(e)(3) declares: "*No cause of action may be brought* and no liability may be imposed under any State or local law that is inconsistent with this section." (emphasis added).

Reading Section 230's plain text as a whole, therefore, confirms that Congress meant to provide immunity from suits themselves. The prohibition on bringing a cause of action mirrors the language and protective purpose this Court recognized in *Lynch*: where the problem Congress sought to address is the deterrent effect of being sued, the remedy must be immunity from suit. If Congress had intended merely to spare online services from adverse judgments, then it would not have barred the very initiation of claims.

Section 230's findings and purposes confirm that intent to provide immunity from suit. Congress found that "the Internet and other interactive computer services have flourished . . . with a minimum of government regulation," and declared a policy "to promote the continued development of the Internet and other interactive computer services and other interactive media," and "to preserve the vibrant and competitive free market that presently exists for the Internet . . . unfettered by Federal or State regulation." *Id.* § 230(a)(4), (b)(1)-(2). Those aims are incompatible with a regime in which online services must regularly endure costly litigation from potentially billions of users. Just as in *Lynch*, where Congress's purpose could not be fulfilled if volunteers faced the costs and deterrents of litigation, the same logic applies here: If services must litigate meritless claims through trial, the very innovation and progress that Congress sought to encourage would be chilled.

The statute's legislative history underscores this understanding. Former Representative Christopher Cox was one of the drafters of Section 230. He explained that Section 230 was enacted to correct the "powerful and perverse incentive" created by *Stratton Oakmont v. Prodigy Services Co.*, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995), which punished online services for moderating harmful content. Congress enacted Section 230 because "good faith content moderation should not be punished," and so that websites would not be "exposed to lawsuits for everything from users' product reviews to book reviews." Christopher Cox, *The Origin and Original Intent of Section 230 of the Communications Decency Act*, Richmond J.L. & Tech. Blog ¶¶ 28, 45 (2020), https://perma.cc/NNN8-YR42. To ensure uniform protection and avoid state-by-state litigation, Congress included Section 230(e)(3) to bar inconsistent causes of action outright "because the essential purpose of Section 230 is to establish a uniform federal policy, applicable across the internet, that avoids results such as the state court decision in *Prodigy*." *Id.* ¶ 48.

So multiple federal courts of appeals have held that Section 230 unequivocally provides "*an immunity from suit* rather than a mere defense to liability," *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 254 (4th Cir. 2009) (emphasis added). Indeed, from the start, federal courts have recognized that Section 230 provides immunity from suit. In the Fourth Circuit's foundational ruling on Section 230's protections, that Court explained:

> By its plain language, § 230 creates a federal *immunity* to any cause of action that would make service providers liable for information originating with a third-party user of the service. Specifically, § 230 precludes courts from entertaining claims that would place a computer

> service provider in a publisher's role. Thus, lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions—such as deciding whether to publish, withdraw, postpone or alter content—are barred.

Zeran v. Am. Online, Inc., 129 F.3d 327, 330 (4th Cir. 1997) (emphasis added). And in reaffirming *Zeran* more than two decades later, the Fourth Circuit further stated: "Congress carved out *a sphere of immunity* from state lawsuits for providers of interactive computer services to preserve the vibrant and competitive free market of ideas on the Internet." *Nemet*, 591 F.3d at 254 (emphasis added) (cleaned up). And courts have "recognized the 'obvious chilling effect' the 'specter of tort liability' would otherwise pose to interactive computer service providers given the 'prolific' nature of speech on the Internet." *Id.* (quoting *Zeran*, 129 F.3d at 331).

Other Circuits have done likewise, holding that Section 230 protects online services "not merely from ultimate liability, but from having to fight costly and protracted legal battles*." Fair Hous. Council v. Roommates.com, LLC*, 521 F.3d 1157, 1175 (9th Cir. 2008) (en banc). The en banc Ninth Circuit, anticipating cases such as this one, noted specifically that "there will always be close cases where a clever lawyer could argue that something the website operator did encouraged the illegality. Such close cases, we believe, must be resolved in favor of immunity, lest we cut the heart out of section 230 by forcing websites to face death by ten thousand duck-bites, fighting off claims that they promoted or encouraged—or at least tacitly assented to—the illegality of third parties." *Id.* at 1174. Accordingly, courts may apply Section 230 "at the earliest possible stage of the case." *Force v. Facebook, Inc.*, 934 F.3d 53, 63 n.15 (2d Cir. 2019).

Thus, consistent with this Court's decision in *Lynch v. Crawford*, Section 230's text, structure, and purposes demonstrate that it confers immunity from suit. Requiring providers to bear the burdens of litigation would recreate the very deterrent effect that Congress meant to prevent. Because the immunity provided by Section 230 is an immunity from suit as well as liability, this Court should find that a denial of that immunity is immediately appealable under the doctrine of present execution.

B. Section 230's Immunity From Suit Protects Both Online Services and the Users They Serve.

Section 230's immunity from suit also protects two important public interests.

First, it protects websites from onerous legal disputes over their decisions to remove some pieces of content while retaining others. This immunity is crucial to encouraging websites to curate positive online experiences for their users, develop tools and techniques for screening content that offends the communities or experiences the websites seek to develop, and prevent individuals and courts from second-guessing these quintessential publishing decisions. As Professor Eric Goldman explains, since Section 230's enactment in 1996, "the Internet has emerged as one of the most important innovations ever," creating "valuable, new user-generated content . . . services that never existed in the offline world, such as Wikipedia's crowdsourced encyclopedia, consumer review websites like Yelp, and user-uploaded video sites like YouTube." Eric Goldman, *Why Section 230 Is Better Than the First Amendment*, 95 Notre Dame L. Rev. Reflection 33, 33-34 (2019) (cleaned up). These online services "provide Internet users with an unprecedented ability to

express themselves to a global audience" and have generated "new jobs and wealth." *Id.* at 34 (cleaned up).

That protection is effective because it prevents defendants from being forced to litigate at all. "Section 230(c)(1)'s early dismissals are valuable to defendants," Goldman notes, because "[t]hey reduce the defendant's out-of-pocket costs to defeat an unmeritorious claim. For smaller Internet services, defending a single protracted lawsuit may be financially ruinous." *Id.* at 41-42. Those early dismissals also conserve judicial resources and "take meritless litigation off court dockets, freeing up the courts to handle other cases more carefully or quickly." *Id.* at 41.

Industry analysis underscores the same point. Engine, an organization representing startups and small online services, explains that Section 230 "accomplishes two critical goals: it gives platforms the freedom to moderate user content without fear of liability and prevents them from facing costly lawsuits any time a user says something potentially illegal online." Engine, *Section 230: Cost Report* (2019), https://perma.cc/2RUQ-SYC7. For early-stage companies, "the cost of defending even a frivolous claim can exceed a startup's valuation." *Id.* Section 230 therefore "protects startups not only by preventing massive monetary judgments for hosting user-generated content but, more importantly, by sparing them from the high legal costs of defending even meritless lawsuits." *Id.*

Second, Section 230's immunity from suit also protects the ability of internet users to create and share content online. Because online services that disseminate user-generated content "rarely make a lot of money from any single item of third-party content," the rational response to legal threats would be to remove speech pre-

emptively. Goldman, *supra*, at 41. As Professor Goldman warns, "[t]his causes 'collateral censorship': the proactive removal of legitimate content as a prophylactic way of reducing potential legal risk and the associated potential defense costs." *Id.*

In short, Section 230's protection from suit enables the continued existence of the dynamic Internet envisioned by Congress. By allowing early resolution of meritless claims, it ensures that online services—especially small and emerging ones—can continue to disseminate diverse speech, invest in content moderation, and innovate without being driven out of business by the threat of litigation itself. That immunity preserves not only the vitality of online services but also the ability of millions of users to speak, learn, and connect freely.

Reading Section 230 to confer only post-judgment immunity from liability would frustrate those purposes. The deterrent effect of litigation, even when ultimately unsuccessful, can inhibit moderation efforts, discourage innovation, and suppress lawful speech. Immunity from suit therefore functions as the means by which Congress sought to ensure that interactive computer services could continue to provide online services that enable users' expression and communication.

Because the immunity afforded by Section 230 protects against the burdens of litigation itself, an order denying that protection affects a right that cannot be vindicated after final judgment. Under this Court's precedents, such an order falls within the narrow class of interlocutory rulings properly subject to review under the doctrine of present execution.

II. Section 230 Bars Claims Targeting a Service's Publication Tools.

Section 230(c)(1) states that "[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). Courts have consistently held that this protection must be construed broadly. *See Universal Commc'n Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413, 418 (1st Cir. 2007); *Mass. Port Auth. v. Turo Inc.*, 487 Mass. 235, 240 (2021).

Here, the Commonwealth alleges that Meta, through the use of features including notifications, Reels, "infinite scroll," autoplay, and ephemeral content, has violated the Massachusetts Consumer Protection Act, M.G.L. Chapter 93(A) and created a public nuisance. The Commonwealth's claims, however, would impose liability on Meta for the very features that make such services function as publishers of user expression. Imposing liability for these speech-facilitating features would undermine Congress's intent to protect intermediaries that enable and organize user-generated content.

Section 230's protections extend to whether and how an online service decides to publish user-generated content. As the First Circuit held in *Lycos*, "if the cause of action is one that would treat the service provider as the publisher of a particular posting, immunity applies not only for the service provider's decisions with respect to that posting, but also for its inherent decisions about how to treat postings generally." 478 F.3d at 422. And other federal circuit courts have held this includes

"content-neutral tools used to facilitate communications." *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1096 (9th Cir. 2019).[2]

Multiple federal courts have applied Section 230's command to hold that different types of online publishing tools are protected, including: group recommendations, alerts and notifications, and anonymity, *Dyroff*, 934 F.3d at 1098, personalized algorithmic recommendations, *Force v. Facebook, Inc.*, 934 F.3d 53, 66 (2d Cir. 2019), geolocation features and "lack of safety features," *Doe v. Grindr Inc.*, 128 F.4th 1148, 1153 (9th Cir. 2025), *cert denied*, No. 24-1202, 2025 WL 2906619, at *1 (U.S. Oct. 14, 2025), ephemeral content, *Doe through Next Friend Roe v. Snap, Inc.*, No. CV H-22-00590, 2022 WL 2528615, at *13 (S.D. Tex. July 7, 2022), *aff'd sub nom.*, No. 22-20543, 2023 WL 4174061 (5th Cir. June 26, 2023), *cert denied*, 144 S. Ct. 2493 (2024).

The Fourth Circuit's decision in *M.P.*, involving tort claims similar to those advanced here, held that "claims attack[ing] the manner in which Facebook's algorithm sorts, arranges, and distributes third-party content" are barred because they "seek to hold Facebook liable as a publisher of that third-party content." 127 F.4th at 521. The court rejected the plaintiff's argument that Facebook's recommendation

[2] Indeed, as the Supreme Court's decision in *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024) confirms, the decisions about curation, organization, and dissemination of speech on Meta's services like Facebook and Instagram are protected by the First Amendment—no different than "traditional media's rights." *Id.* at 716. Section 230 implicitly recognizes that First Amendment activity occurs because it provides immunity from liability *as a publisher*. Accordingly, the question of immunity from liability does not change when these publication decisions are introduced. *Contra Anderson v. TikTok, Inc.*, 116 F.4th 180 (3rd Cir. 2024).

system rendered it a "product manufacturer," explaining that "acts of arranging and sorting content are integral to the function of publishing." *Id.* at 523, 526. As in traditional media, "[d]ecisions about whether and how to display certain information provided by third parties are traditional editorial functions of publishers." *Id.* at 526.

Likewise, the Second Circuit in *Force v. Facebook, Inc.*, held that Facebook's use of algorithmic tools to present users with content relevant to their interests was an editorial choice about how to publish users' speech. 934 F.3d at 67. As *Force* explained:

> Like the decision to place third-party content on a homepage, for example, Facebook's algorithms might cause more such 'matches' than other editorial decisions. But that is not a basis to exclude the use of algorithms from the scope of what it means to be a 'publisher' under Section 230(c)(1) . . . . But it would turn Section 230(c)(1) upside down to hold that Congress intended that when publishers of third-party content become especially adept at performing the functions of publishers, they are no longer immunized from civil liability.

Id. The same reasoning applies to the features at issue here: they are tools for publishing and displaying users' speech and, therefore, Section 230 bars the Commonwealth's claims based upon them.

This is consistent with Congress's intent to support the growth of innovative and diverse online services for publishing users' speech. "[C]ongress drafted Section 230 in light of its understanding of the capabilities of then-extant online platforms and the evident trajectory of Internet development," which "[e]ven at the time . . . made numerous decisions about *how to present, arrange, and screen content*." Amicus Br. of Sen. Ron Wyden and Former Rep. Christopher Cox at 2-3, *Gonzalez v. Google*, No. 21-1335 (U.S. Jan. 19, 2023) (emphasis added). "Congress drafted Section 230

in a technology-neutral manner that would enable the provision to apply to subsequently developed methods of presenting and moderating user-generated content." *Id.* at 3. In urging the United States Supreme Court to find that Section 230 immunized automated content recommendation systems, Senator Wyden and Former Representative Cox explained, "Section 230 protects targeted recommendations to the same extent that it protects other forms of content curation and presentation. Any other interpretation would subvert Section 230's purpose of encouraging innovation in content moderation and presentation." *Id.* at 26; *see also* 47 U.S.C. § 230(b)(2), (b)(4).

Congress intended Section 230 to both enable the development of innovative services and diverse fora for free expression, and to encourage services to moderate the content on their sites voluntarily. In the nearly three decades since its enactment, Section 230's protections have enabled the development of an incredibly diverse range of online services, including social media services, ecommerce websites, dating apps, livestreaming services, and crowd-sourced knowledge resources and archives, to name but a few. These services are all designed to serve different audiences, with different features and policies. They enable users to create and share content in different and engaging formats.

The Commonwealth's claims against Meta and Instagram would do exactly what Congress sought to avoid: hold Meta and Instagram liable for features integral to publication that would compel online services to redesign their services to minimize legal exposure rather than to foster expression. As the Fourth Circuit observed,

any narrowing of Section 230's scope "is a question for Congress, not for judges." *M.P.*, 127 F.4th at 527.

Conclusion

For the foregoing reasons, this Court should reverse the Superior Court's decision and dismiss the Commonwealth's complaint with prejudice.

Dated: November 17, 2025

Respectfully submitted.

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Certification Under Mass. R. App. 17(c)(9)

I, Steven P. Lehotsky, certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs, including but not limited to Rules 17 and 20. This brief contains 4836 non-excluded words, which I ascertained using Microsoft Word's word count function. Except on its cover, the brief uses Times New Roman 14-point font and was composed in Microsoft 365 Word.

Respectfully submitted.

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I, Steven P. Lehotsky, certify that on November 17, 2025, on behalf of amici NetChoice and Chamber of Progress, I electronically filed the foregoing via eFileAndServe. I also served a copy of the foregoing on Defendants-Appellants via email at the following addresses:

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I further certify that I first served a copy of this brief on November 14, 2025, and filed this corrected brief in response to the Court's November 17, 2025, order.

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