No. 21-1678

In The United States Court Of Appeals For The Fourth Circuit

TYRONE HENDERSON, SR., GEORGE O. HARRISON, JR., *and* ROBERT MCBRIDE, *on behalf of themselves and others similarly situated*, PLAINTIFFS-APPELLANTS,

v.

THE SOURCE FOR PUBLIC DATA, L.P., *d/b/a* PUBLICDATA.COM, SHADOWSOFT, INC., HARLINGTON-STRAKER STUDIO, INC., *and* DALE BRUCE STRINGFELLOW, DEFENDANTS-APPELLEES.

On Appeal from the United States District Court
for the Eastern District of Virginia,
Case No. 3:20-cv-294-HEH
The Honorable Henry E. Hudson, Judge

BRIEF OF DEFENDANTS-APPELLEES

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DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Local Rule 26.1, Defendants-Appellees provide the following corporate disclosure statements:

1. Defendant-Appellee The Source for Public Data, L.P., d/b/a Publicdata.com ("Public Data"), is a privately held corporation with no parent corporation. No publicly held corporation or other public entity holds 10% or more of Public Data's stock, and no publicly held corporation or other publicly held entity has a direct financial interest in the outcome of this litigation. Finally, Public Data is not a trade association.

2. Defendant-Appellee ShadowSoft, Inc. ("ShadowSoft"), is a privately held corporation with no parent corporation. No publicly held corporation or other public entity holds 10% or more of ShadowSoft's stock, and no publicly held corporation or other publicly held entity has a direct financial interest in the outcome of this litigation. Finally, ShadowSoft is not a trade association.

3. Defendant-Appellee Harlington-Straker Studio, Inc. ("Harlington-Straker Studio"), is a privately held corporation with no parent corporation. No publicly held corporation or other public entity

holds 10% or more of Harlington-Straker Studio's stock, and no publicly held corporation or other publicly held entity has a direct financial interest in the outcome of this litigation. Finally, Harlington-Straker Studio is not a trade association.

4. Defendant-Appellee Dale Bruce Stringfellow is an individual and thus has no disclosures to make.

Dated: January 7, 2022

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JURISDICTIONAL STATEMENT

Plaintiffs' jurisdictional statement is complete and correct. The district court had jurisdiction over this lawsuit under 28 U.S.C. § 1331 because Plaintiffs brought claims arising under a federal statute, the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* JA 42–46. The district court granted Defendants' Motion For Judgment On The Pleadings on all of Plaintiffs' claims, JA 97, thereby providing this Court with appellate jurisdiction pursuant to 28 U.S.C. § 1291. Plaintiffs timely appealed that dismissal and final judgment by filing their Notice Of Appeal on June 14, 2021. JA 98.

STATEMENT OF THE ISSUE

1. Whether Section 230 of the Communications Decency Act—which immunizes an "interactive computer service" from being "treated" as "publisher or speaker" of "information provided by another information content provider," 47 U.S.C. § 230(c)(1)—protects Public Data from being sued for making public records created by third-party courts available in an online, searchable database.

INTRODUCTION

Plaintiffs have attacked Public Data[1] for making public records—which can be cumbersome and expensive for the public to obtain—available and searchable in an online database, for a small fee. The service that Public Data provides is akin to those offered by Google Scholar[2] or Public Access to Court Electronic Records ("PACER"),[3] which—in Plaintiffs' own revealing words—do nothing more than make content created by third parties, such as state and federal courts, "usable or available" to the public. Dkt. 28 ("Opening Br.") at 16.[4]

A simple hypothetical shows why the district court was correct that Section 230 of the Communications Decency Act ("CDA") immunizes Public Data from Plaintiffs' lawsuit. Suppose that a court issued a public, final judgment that, on its face, incorrectly identified a particular

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[1] Because Plaintiffs have sued all Defendants as mere alter egos of one single entity, Public Data, Defendants-Appellees refer to themselves, collectively, as "Public Data" throughout this Brief. Public Data strongly disputes any assertions that the various Defendants are alter egos.

[2] Available at https://scholar.google.com/ (all websites last visited January 6, 2022).

[3] Available at https://pacer.uscourts.gov/.

[4] Citations of "Dkt. __" are to this Court's docket in this case. Citations of "R. __" refer to the district court's docket below in Case No. 3:20-cv-294-HEH.

defendant's civil moving violation as a misdemeanor. Suppose, further, that Google Scholar, PACER, and Public Data each made that court record—including with the inaccurate misdemeanor label—"usable or available," Opening Br. 16, to online users of their respective services, in their own respective formats. Section 230 would, of course, immunize these interactive computer services from liability for making that already-public court record readily available online. That would be true regardless of whether a plaintiff brought its lawsuit under state law that punishes publishing inaccurate information, or under a federal statute such as the Fair Credit Reporting Act ("FCRA"), like Plaintiffs did here. After all, imposing such liability would be treating these services "as the publisher or speaker of any information"—that is, as publishers of the already-public court record—"provided by another information content provider," 47 U.S.C. § 230(c)(1)—that is, the relevant court system.

Affirming the district court's straightforward conclusion would not have any of the broader public policy consequences that appear to concern Plaintiffs' *Amici*, while reversing that decision would make public records needlessly more difficult for ordinary citizens to find. Nothing in the district court's holding would undermine the FCRA. Plaintiffs do not

allege that Public Data creates content by matching records to consumers, scoring credit histories, and the like. Consumer reporting agencies that create such content fall outside of the district court's decision. In contrast to those FCRA-regulated entities, Public Data "merely passes along information" that it obtains from public sources such as courts by making its searchable, online, public record databases available to its customers for those customers to query. *See DiGianni v. Stern's*, 26 F.3d 346, 349 (2d Cir. 1994) (conduits of information not liable under the FCRA); *accord Mirfasihi v. Fleet Mortg. Corp.*, 551 F.3d 682 (7th Cir. 2008). Accordingly, upholding the district court's decision would simply ensure that Section 230 continues to protect from liability the online, searchable databases of public, third-party-provided information, whether the lawsuit is brought under state law or the FCRA, without implicating any of *Amici*'s public policy worries.

This Court should affirm the district court's decision and hold that Section 230 immunizes Public Data from Plaintiffs' lawsuit.

STATEMENT OF THE CASE

A. Legal Background

1. Section 230 Of The Communications Decency Act

In 1996, Congress enacted Section 230 of the CDA "to promote the internet" by "foster[ing] a largely unregulated free market online while snuffing out certain objectionable content," creating a free market largely "unfettered by Federal or State regulation." *Hepp v. Facebook*, 14 F.4th 204, 208 (3d Cir. 2021) (citations omitted). Congress "[r]ecogniz[ed] that the Internet provided a valuable and increasingly utilized source of information for citizens," and so it "carved out a sphere of immunity" to "preserve th[is] 'vibrant and competitive free market' of ideas on the Internet." *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250, 254 (4th Cir. 2009) (quoting 47 U.S.C. § 230(b)(2)); *see also Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997).

Section 230 mandates 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). An "information content provider" is "any person or entity that is responsible, in whole or in part, for the creation or

development of information provided through the Internet or any other interactive computer service." *Id.* § 230(f)(3). So, "[Section] 230 prohibits a 'provider or user of an interactive computer service' from being held responsible 'as the publisher or speaker of any information provided by another information content provider.'" *Nemet*, 591 F.3d at 254 (quoting 47 U.S.C. § 230(c)(1)).

Section 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." *Zeran*, 129 F.3d at 330. That scope of immunity is "broad," applying to any claim that would seek to "hold[ ] interactive computer service providers legally responsible for information created and developed by third parties." *Nemet*, 591 F.3d at 254. "Congress thus established a general rule that providers of interactive computer services are liable only for speech that is properly attributable to them." *Id.*

Congress inserted several exemptions to Section 230's broad immunity. Nothing in Section 230 may "impair the enforcement" of federal obscenity laws, federal laws "relating to sexual exploitation of children," or "any other Federal criminal statute." 47 U.S.C. § 230(e)(1).

Nothing in Section 230 should "be construed to limit or expand any law pertaining to intellectual property," *id.* § 230(e)(2), "to prevent any State from enforcing any State law that is consistent with this section," *id.* § 230(e)(3), "to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law," *id.* § 230(e)(4), or "to impair or limit" various civil claims or criminal prosecutions under 18 U.S.C. §§ 1591, 1595, and 2421A, *id.* § 230(e)(5). Congress did not, however, exempt FCRA or defamation claims from Section 230.

2. The Fair Credit Reporting Act

Enacted by Congress in 1970, the FCRA "regulates the consumer reporting agencies that compile and disseminate personal information about consumers" in the form of consumer reports. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2200 (2021). The FCRA defines a "consumer report" as "any written, oral, or other communication of any information . . . bearing on a consumer's credit worthiness, [etc.] . . . which is used or expected to be used . . . for the purpose of serving as a factor in establishing the consumer's eligibility for . . . credit," "employment," or "any other authorized purpose." 15 U.S.C. § 1681a(d).

A "consumer reporting agency" is an entity that "regularly" assembles or evaluates "consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties." *Id.* § 1681a(f).

Importantly, however, the FCRA does not regulate *all* information on consumers, including regulating the same information in one instance but not another, even if from the same source. *Ippolito v. WNS, Inc.*, 864 F.2d 440, 453 (7th Cir. 1988); *see also Bacharach v. Suntrust Mortg. Inc.*, 827 F.3d 432, 434–435 (5th Cir. 2016) (per curiam). For instance, an entity that acts as a mere conduit of consumer data is not a consumer reporting agency. *See DiGianni*, 26 F.3d at 349; *accord* Federal Trade Comm'n, Staff Report, *40 Years of Experience With the Fair Credit Reporting Act,* 2011 WL 3020575, at *22 (July 2011) ("Conduit functions"). An entity that does not "assembl[e] or evaluat[e]" public record data also is not a consumer reporting agency. 15 U.S.C. § 1681a(f). Thus, simply publishing public record information is insufficient to trigger any FCRA obligations.

Where applicable, the FCRA imposes several obligations on consumer reporting agencies, as relevant here. First, 15 U.S.C.

§ 1681g(a) provides that "[e]very consumer reporting agency shall, upon request . . . clearly and accurately disclose to the consumer: . . . All information in the consumer's file at the time of the request . . . [including] [t]he sources of the information." *Id.* § 1681g(a)(1)–(2). Second, 15 U.S.C. § 1681k(a) requires a "consumer reporting agency" that "furnishes a consumer report for employment purposes" containing certain "public record information" either to notify a consumer when it reports that information to a consumer report user or to "maintain strict procedures designed to insure" that the "public record information . . . is complete and up to date." *Id.* § 1681k(a)(1)–(2). Third, 15 U.S.C. § 1681b(b)(1) requires a "consumer reporting agency" that furnishes a consumer report for "employment purposes" to obtain from the user of the report certain certifications. *Id.* § 1681b(b)(1). Finally, 15 U.S.C. § 1681e(b) requires a "consumer reporting agency" to "follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." *Id.* § 1681e(b).

B. Factual And Procedural Background

1. Public Data And Its Online Database

Public Data operates an online, nationwide database of public records ("publicdata.com"). Public Data's website functions by allowing subscribing members to input search queries, which queries return corresponding public records as if the users had received those records directly from the relevant government agency. *See* JA 15, 22, 30, 31. ShadowSoft lawfully obtains those already publicly available records "directly from" a variety of local, state, and federal authorities in an unaltered form, just as other persons could do through open records laws, *see* JA 22, 27, 29, and Public Data then uploads these records to its online servers, JA 15, 26. Public Data does not create any of this content; it operates as a "public records disseminator," and "is not responsible for any inaccuracies in any database" because it merely "purchases" and "obtain[s]" various records from state agencies and courthouses. JA 25, 32 (citations omitted; emphasis omitted). Like users of Google Scholar or PACER, the users of Public Data's website may search for public records by entering various search terms into the website. Public Data's website then displays to the user the records that match that input search

criteria, as if the user had obtained the records directly from the government agency. *See* JA 22, 30–31.

Below is a comparison of the public court record data that a citizen could obtain from the Maryland Administrative Office of the Courts with the information that a Public Data member would see on publicdata.com as to that same record, upon submitting a search inquiry against Public Data's searchable, online databases:

Maryland Courts' Data R. 64-1, Ex. A at 5	Publicdata.com Information R. 64-1, Ex. B at 10–14
"CDS:POSSESS-NOT MARIJUANA," citing "CR.5.601.(a)(1)"	"CDS:POSSESS-NOT MARIJUANA," citing "CR.5.601.(a)(1)"
"CDS:POSS PARAPHERNALIA," citing "CR.5.619.(c)(1)"	"CDS:POSS PARAPHERNALIA," citing "CR.5.619.(c)(1)"
"CDS:POSSESS-NOT MARIJUANA," citing "CR.5.601.(a)(1)"	"CDS:POSSESS-NOT MARIJUANA," citing "CR.5.601.(a)(1)"
"CDS:POSS-MARIJUANA," citing "CR.5.601.(a)(1)"	"CDS:POSS-MARIJUANA," citing "CR.5.601(a)(1)"
"CDS REGIS. REMOV/ALTR LABL," citing "CR.5.902.(a)(1)"	"CDS REGIS. REMOV/ALTR LABL," citing "CR.5.902.(a)(1)"

Compare R. 64-1, Ex. A at 5, *with* R. 64-1, Ex. B at 10–14.

2. Plaintiffs' Lawsuit

Plaintiffs filed their Second Amended Complaint—the operative Complaint for purposes of this appeal—on October 30, 2020, asserting

four FCRA claims, three of which they purported to raise on a class-wide basis. JA 42–46. First, Plaintiffs alleged on behalf of themselves and a purported class that Public Data failed to disclose "consumer files" to Plaintiffs in violation of Section 1681g of the FCRA. JA 42–43. Second, Plaintiff McBride asserted a claim under Section 1681k(a), on behalf of himself and a purported class, alleging that Public Data failed to provide certain notices when furnishing a consumer report for employment purposes, or to otherwise comply with Section 1681k(a) by maintaining strict procedures to assure accuracy. JA 43–44. Third, Plaintiff McBride asserted a claim under Section 1681b(b)(1), on behalf of himself and a purported class, alleging that Public Data failed to obtain certain certifications prior to furnishing a consumer report for employment purposes. JA 44–45. Finally, Plaintiff McBride asserted an individual claim under Section 1681e(b), alleging that Public Data failed to follow reasonable procedures to assure the maximum possible accuracy of the information in his consumer report. JA 45–46.

3. The District Court Grants Judgment On The Pleadings

Public Data moved for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) on the grounds that Section 230 immunized

it from Plaintiffs' suit. JA 80–81, 83. Public Data explained that it satisfied all three elements for Section 230 immunity. R. 64 at 8–13. First, Public Data is an "interactive computer service" because, as Plaintiffs alleged, it "is an online platform that assembles all of the public records and uploads them onto Public Data's internet servers." *Id.* at 9–11 (citation omitted; alterations omitted). Second, Plaintiffs' FCRA claims all seek to hold Public Data liable as a publisher of information because Plaintiffs seek to punish Public Data for publishing public records on its website. *Id.* at 11. Third, Public Data explained—based on the Complaint's allegations *and* materials incorporated into the Complaint and attached to Public Data's Motion, *see* R. 64-1 at 4–14—that Public Data is not the information content provider for the public records that it publishes because it does not "materially contribute" or alter any content and only compiles information from other sources, R. 64 at 11–13 (citation omitted; brackets omitted).

The district court entered judgment on the pleadings in Public Data's favor under Section 230. JA 83. After explaining that Section 230 can apply to FCRA claims, JA 89–92, the court held that Public Data satisfied each of the three elements required for Section 230 immunity,

JA 92–96. First, Public Data is an "interactive computer service" because it merely purchased data through contracts or agreements and, thereafter, only "edit[ed] it like a publisher or distributor" before placing such data on its website. *See* JA 93–94. Second, Public Data is not an "information content provider" given that Plaintiffs alleged that it "do[es] not create the content" but merely "obtain[s] it from vendors, state agencies, and courthouses," and so Public Data's "purchasing, collecting, and assembling" of the information on its servers makes it a mere "access software provider." JA 94–95 (citation omitted). And third, Public Data did not create the public record content at issue because Plaintiffs nowhere alleged that Public Data "materially contribute[d] to or create[d] the content," and instead merely "manipulate[d] and sort[ed] the content" that it "derived from other information content providers." JA 95–96. In reaching this third conclusion, the district court did not consider the materials attached to Public Data's Motion—the public court records and Public Data's own readout of the same—concluding that they were not incorporated by reference in Plaintiffs' Complaint. JA 88–89.

SUMMARY OF ARGUMENT

I. Plaintiffs' claims against Public Data meet all three elements for CDA immunity, and so the district court properly granted Public Data judgment on the pleadings.

A. Public Data is an interactive computer service. Under Plaintiffs' own allegations, Public Data "assemble[s] . . . public records and upload[s] them onto Public Data's internet servers," and its domain users have "access to the information over the Internet" via Public Data's servers. JA 15, 23. Those allegations track Section 230's definition of an interactive computer service under 47 U.S.C. § 230(f)(2).

B. Plaintiffs' FCRA claims attempt to treat Public Data as the speaker or publisher of information by punishing Public Data for making the decision "*whether to publish*" public records. *Zeran*, 129 F.3d at 330 (emphasis added). The first count seeks to make Public Data liable for not disclosing certain additional information to consumers, an obligation that Plaintiffs *only* allege attaches under the FCRA because Public Data made the decision to publish public records on its website in the first place. Similarly, Plaintiffs' second count seeks to punish Public Data for not notifying certain consumers and not following certain procedures, but

again Public Data could not even arguably have these responsibilities had it not made the decision to publish public records via its online database. Plaintiffs' third count alleges that Public Data failed to obtain certain certifications before making the decision to publish certain public records. Finally, the fourth count is that Public Data did not follow certain procedures before it published allegedly inaccurate public records about one of the Plaintiffs to a prospective employer.

C. Public Data is not an "information content provider" subject to liability under Section 230 because it merely makes accessible online information already lawfully available from third parties, or "information provided by another information content provider." 47 U.S.C. § 230(c)(1). Public Data simply collects public records from various government agencies, such as courts, and then allows its customers to submit open query searches of its databases of public records. Plaintiffs acknowledge in their Second Amended Complaint that Public Data does not create any of the public records. Furthermore, the documents that Public Data provided to the district court—and which are integrated into Plaintiffs' Complaint—show further that Public Data merely uploads government records to its database nearly verbatim.

II. While this Court can and should resolve this case on the statutory text alone, if this Court deems it appropriate to consider the public policy implications of its decision here, those considerations all strongly favor upholding the district court's ruling. Reversing the district court's decision would undercut the online "free market of ideas" that Congress enacted Section 230 to protect. Such a ruling would allow lawsuits and new state laws targeting online services simply for posting already-public record information online, thus hobbling the broad availability of hard-to-find public records, which include (but are not limited to) court records. Plaintiffs' and their *Amici*'s various policy-based concerns against holding that Section 230 protects Public Data from this lawsuit miss the mark. This case targets a company for making already-public documents accessible and searchable in an easy-to-use, online format. This case does not implicate any of Plaintiffs' and their *Amici*'s hypothetical parade of horribles from far-flung areas of law.

STANDARD OF REVIEW

This Court reviews *de novo* a district court's decision on a motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c). *Mascio v. Colvin*, 780 F.3d 632, 634 (4th Cir. 2015). Analysis of a

judgment under Rule 12(c) is the same as under Rule 12(b)(6), *Mayfield v. Nat'l Ass'n for Stock Car Auto Racing, Inc.*, 674 F.3d 369, 375 (4th Cir. 2012), where a court need not accept as true allegations of "legal conclusions, elements of a cause of action, and bare assertions devoid of further factual enhancement," as well as "unwarranted inferences, unreasonable conclusions, or arguments," *Nemet*, 591 F.3d at 255 (citations omitted). When considering a motion under Rule 12(c), a court may also consider beyond the pleadings any "documents attached or incorporated into the complaint," *i.e.*, documents that are referenced in a complaint, *E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 448 (4th Cir. 2011), so long as such documents are "integral to" and "relied upon" in the complaint, and their authenticity is not in dispute, *Blankenship v. Manchin*, 471 F.3d 523, 526 n.1 (4th Cir. 2006). When allegations and such documents are in conflict, the documents should prevail, and the court need not credit contrary allegations. *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 167 (4th Cir. 2016).

ARGUMENT

I. Section 230 Shields Public Data From Plaintiffs' Claims

Section 230 provides immunity to a defendant who establishes that: (1) it is a "provider or user of an interactive computer service"; (2) the claims asserted against the defendant would "treat[ ]" the defendant "as the publisher or speaker of any information"; and (3) that information is "provided by another information content provider." 47 U.S.C. § 230(c)(1); *see Nemet*, 591 F.3d at 254. The district court correctly held that Public Data satisfied all three elements.

A. Public Data Is An Interactive Computer Service

As to the first element for Section 230 immunity, Public Data is a "provider . . . of an interactive computer service." 47 U.S.C. § 230(c)(1). Section 230 defines an "interactive computer service" as "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions." *Id.* § 230(f)(2). Public Data meets this definition because, as alleged in the Second Amended Complaint, it "assemble[s] . . . all of

the public records and upload[s] them onto Public Data's internet servers," and its domain users have "access to the information over the Internet" via Public Data's servers. JA 15, 23. The district court thus correctly held that Public Data is "an access software provider" that "operate[s] an interactive computer service" through which it "upload[s] . . . information onto [its] servers for [its] clients to access on the internet." JA 94. Plaintiffs do not challenge that holding on appeal. *See* Opening Br. 18.[5]

B. Plaintiffs' Claims Seek To Treat Public Data As Publisher

1. Under the second Section 230 element, a plaintiff must seek to "treat[ ]" the defendant "as the publisher or speaker of any information." 47 U.S.C. § 230(c)(1); *see Nemet*, 591 F.3d at 254. This applies regardless of whether publication is an "explicit element" of the claims asserted, including where liability derives from "defendant's status or conduct as a publisher or speaker." *See Force v. Facebook, Inc.*, 934 F.3d 53, 64 n.18

[5] Plaintiffs do assert in a conclusory footnote that it is "dubious" whether Public Data is an interactive computer service, Opening Br. 18 n.4, but this constitutes waiver of this issue, *see Wahi v. Charleston Area Med. Ctr., Inc.*, 562 F.3d 599, 607 (4th Cir. 2009); *Unspam Techs., Inc. v. Chernuk*, 716 F.3d 322, 330 n.* (4th Cir. 2013); *see also Foster v. Univ. of Md.-E. Shore*, 787 F.3d 243, 250 n.8 (4th Cir. 2015).

(2d Cir. 2019) (citation and emphasis omitted); "[C]ourts have invoked the prophylaxis of section 230(c)(1) in connection with a wide variety of causes of action, including housing discrimination, negligence, and securities fraud and cyberstalking." *Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 19 (1st Cir. 2016) (collected cases omitted). Simply put, lawsuits that seek to impose liability for the "exercise of a publisher's traditional editorial functions—such as deciding *whether to publish*, withdraw, postpone or alter content—are barred." *Zeran*, 129 F.3d at 330 (emphasis added).

2. The FCRA claims that Plaintiffs assert here all seek to treat Public Data as a publisher of information by punishing Public Data for making the decision whether to "publish" the public records on its searchable, online database. *Id.* After all, all of Plaintiffs' claims seek to hold Public Data liable based upon its "conduct as a publisher" of public records information. *Force*, 934 F.3d at 64 n.18 (emphasis omitted).

In their first count, JA 42–43, Plaintiffs Henderson, Harrison, and McBride allege that Public Data violated Section 1681g(a) of the FCRA, which requires a consumer reporting agency to "clearly and accurately disclose to the consumer . . . [a]ll information in the consumer's file at the

time of the request." 15 U.S.C. § 1681g(a)(1). Plaintiffs contend that Public Data "failed to produce the information [it] possessed regarding Plaintiffs . . . despite each consumer's valid request for a copy of his or her file." JA 42. But the *only* reason that these Plaintiffs allege that Public Data had any obligation under Section 1681g(a) to disclose any information to Plaintiffs is because Public Data decided to "publish," *Zeran*, 129 F.3d at 330; *see Force*, 934 F.3d at 64 n.18, public records on its website. Put another way, had Public Data not published court records on its website, Plaintiffs could not have brought their Section 1681g(a) claim, even under their own theory of that cause of action.

In the second count, JA 43–44, Plaintiff McBride alleges that Public Data violated Section 1681k(a), which requires a consumer reporting agency either to "notify the consumer" of the reporting of "public record information" or to "maintain strict procedures" to keep "adverse" public record information on the consumer "complete and up to date," 15 U.S.C. § 1681k(a)(1)–(2). Plaintiff McBride claims that Public Data failed to provide him notice under Section 1681k(a)(1) and "did not attempt to comply with any alternate provision of th[is] section." JA 43. This claim

is explicitly based upon Public Data's decision whether to "publish," *Zeran*, 129 F.3d at 330; *see Force*, 934 F.3d at 64 n.18, the relevant public records on its website.

In the third count, JA 44–45, Plaintiff McBride alleges that Public Data violated Section 1681b(b)(1) by its failure to obtain certain certifications from its users before issuing a "consumer report," 15 U.S.C. § 1681b(b)(1). Again, this count is based explicitly on Public Data's decision to "publish," *Zeran*, 129 F.3d at 330; *see Force*, 934 F.3d at 64 n.18, the relevant public record on its website.

The final count, JA 45–46, alleges that Public Data violated Section 1681e(b) by issuing an inaccurate "report" on Plaintiff McBride. Section 1681e(b) requires a consumer reporting agency to "follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates" whenever it "prepares a consumer report." 15 U.S.C. § 1681e(b). A claim arising under Section 1681e(b) requires proof "that a credit reporting agency prepared a report containing inaccurate information," *Dalton v. Cap. Associated Indus., Inc.*, 257 F.3d 409, 415 (4th Cir. 2001) (citation omitted), and the only alleged report that Plaintiffs claim that Public

Data issued regarding Plaintiff McBride is the publication of public court records on its searchable, online database. *See* JA 45. This again means that this claim explicitly seeks to hold Public Data liable for its decision whether to "publish" a public record. *Zeran*, 129 F.3d at 330; *see Force*, 934 F.3d at 64 n.18.

Thus, each claim that Plaintiffs assert against Public Data implicates its status "as the publisher or speaker" of information.

3. Plaintiffs' arguments as to why they do not seek to treat Public Data "as the publisher or speaker" of information all fail, including because they are not grounded in any statutory text.

Plaintiffs first argue that they do not seek to hold Public Data liable as a publisher because Public Data "is not akin to a magazine or a newspaper or even a public bulletin board" and, instead, gives documents "to paying customers who ask for them." Opening Br. 19–20. This argument is not based on any statutory text, as the CDA contains no "for-profit exception to [Section] 230's broad grant of immunity." *M.A. ex rel. P.K. v. Vill. Voice Media Holdings, LLC*, 809 F. Supp. 2d 1041, 1050 (E.D. Mo. 2011).

Similarly, it makes no statutory difference that Public Data "is not akin to a magazine or newspaper or even a public bulletin board." Opening Br. 19. Public Data operates akin to Google Scholar or PACER, publishing third-party-created public records onto its online database, and then allowing users to input search terms to find those public records matching the user-inputted search criteria. JA 15, 22, 29–30; *see also Ben Ezra, Weinstein, & Co. v. Am. Online Inc.*, 206 F.3d 980, 985–86 (10th Cir. 2000) (affirming finding that AOL was an interactive service provider, not an information content provider, with regards to its online provision of stock information); *Prickett v. InfoUSA, Inc.*, 561 F. Supp. 2d 646, 649, 652 (E.D. Tex. 2006) ("leading compiler of several proprietary databases" immune from liability under Section 230). As explained in more detail below, *see infra* Part II, Plaintiffs' argument would categorically remove all such searchable, online databases from Section 230 protection, undermining Congress' aim of "carv[ing] out a sphere of immunity" to "preserve th[is] 'vibrant and competitive free market' of ideas on the internet." *Nemet*, 591 F.3d at 254 (quoting 47 U.S.C. § 230(b)(2)).

Plaintiffs next erroneously argue that the FCRA claims here somehow attempt to hold Public Data liable only for non-speech conduct. Opening Br. 20–23; *accord* Dkt. 29, Amicus Brief of Federal Trade Commission *et al.* ("FTC Br.") at 18–22; Dkt. 36, Amicus Brief of National Consumer Law Center *et al.* ("NCLC Br.") at 22–27; Dkt. 37 Amicus Brief of State of Texas *et al.* ("States' Br.") at 8–12; Lawyers' Comm. Br. 13–15. But as explained above, each of Plaintiffs' claims seek to hold Public Data liable for its decision whether to "publish" certain public records, *Zeran*, 129 F.3d at 330; *see Force*, 934 F.3d at 64 n.18, onto its online, searchable database, *see supra* Part I.B.2.

Plaintiffs also appear to suggest that the FCRA claims are categorically exempt from Section 230's coverage, without grounding that argument in any statutory text. Opening Br. 38–40. Congress expressly excluded certain laws from Section 230's scope, providing that it shall have no effect on any "[f]ederal criminal statute," "law pertaining to intellectual property," "[s]tate law that is consistent with [Section 230]," "the Electronic Communications Privacy Act," or "sex trafficking law." 47 U.S.C. § 230(e)(1)–(5). "Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be

implied, in the absence of evidence of a contrary legislative intent." *TRW Inc. v. Andrews*, 534 U.S. 19, 28 (2001) (citation omitted). Congress did not exempt FCRA claims from Section 230's scope, so Plaintiffs are incorrect to argue that this Court should "impl[y]" this "additional exception[ ]." *TRW Inc.*, 534 U.S. at 28; *see Chi. Lawyers' Comm. for C.R. Under L., Inc. v. Craigslist, Inc.*, 519 F.3d 666, 671 (7th Cir. 2008).

C. Public Data Merely Makes Accessible Online Information "Provided By" Third Parties

Under the third (and final) element of Section 230 immunity, the plaintiff must be attempting to hold the interactive-computer-service provider liable for publishing information "provided by another information content provider." 47 U.S.C. § 230(c)(1). Section 230 defines an "information content provider" as "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service." *Id.* § 230(f)(3).

If an interactive-computer-service provider merely makes available online lawfully obtained information that was created by a third party, without creating or developing the content at issue, then that interactive-computer-service provider satisfies this Section 230 element. Thus, for

example, in *Nemet*, 591 F.3d 250, this Court held that "a website that allows consumers to comment on the quality of businesses, goods, and services" was immune from liability under Section 230 for various postings that were allegedly false and harmful to the plaintiff's reputation, because the website did not "create[ ]" or "develop[ ]" the posts at issue or do anything "more than a website operator performs as part of its traditional editorial function" in formatting the posts. *Id.* at 252–53, 258. As *Nemet* explained, "Congress thus established a general rule that providers of interactive computer services are liable only for speech that is properly attributable to them." *Id.* at 254; *accord Zeran*, 129 F.3d at 330 (Section 230 operates to "bar[ ]" liability for the exercise of "traditional editorial functions" such as "deciding whether to publish, withdraw, postpone, or alter content").

Similarly, in *Fair Housing Council of San Fernando Valley v. Roommates.Com, LLC*, 521 F.3d 1157 (9th Cir. 2008) (en banc), the Ninth Circuit explained that a website that "passively displays content that is created entirely by third parties . . . is only a service provider with respect to that content." *Id.* at 1162–63. Only once a website "creates [content] itself" or is otherwise "responsible, in whole or in part, for creating or

developing" content can it become a content provider falling outside of Section 230 immunity. *Id.* (citation omitted). For example, "[a] website operator who edits user-created content—such as by correcting spelling, removing obscenity or trimming for length—retains his immunity for any illegality in the user-created content, provided that the edits are unrelated to the illegality." *Id.* at 1169.

As explained below, Public Data merely makes available in its online database information that it lawfully obtained from government agencies, such as the Maryland Administrative Office of the Courts. Public Data does not create or develop that content. As the district court correctly held, this conclusion follows from the allegations Plaintiffs' Amended Complaint. *See infra* Part I.C.1. This becomes even more inescapable if this Court properly considers the documents incorporated by reference into the Amended Complaint. *See infra* Part I.C.2. The contrary arguments raised by Plaintiffs and their *Amici* are wrong. *See infra* Part I.C.3.

1. Under The Complaint's Allegations, Government Agencies Provided The Disputed Records

The allegations in the Second Amended Complaint mandate the district court's conclusion that the relevant "information content

provider," 47 U.S.C. § 230(c)(1), here is the governmental agencies from whom Public Data obtained its public records, and Public Data did not create or develop those records, *Nemet*, 591 F.3d at 258. The Second Amended Complaint alleges that Public Data allows members of the public to view public records corresponding to their search queries, which come "directly from" various local, state, and federal government agencies, mainly in unaltered form. *See* JA 15, 22, 25, 30. Public Data merely "purchase[d]" or otherwise "obtained" such records from state agencies and courthouses and then "disseminat[ed]" them to customers via its internet server, through the web-based search function. JA 15, 25, 29, 30–32 (citation omitted). Nowhere did Plaintiffs allege that Public Data created or developed any of the public records uploaded to its website. So, Public Data is plainly not "responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service," 47 U.S.C. § 230(f)(3), and it is therefore not an information content provider under Section 230.

As the district court explained, Plaintiffs' allegations establish that Public Data is, at most, an "access software provider," JA 95, without going the additional step further of alleging that Public Data is also an

"information content provider" by creating or developing the relevant public records, *Nemet*, 591 F.3d at 254; *Zeran*, 129 F.3d at 330. Plaintiffs alleged that Public Data "create[d] summaries of the charges," "sort[ed], manipulate[d] and infer[red] information" from the records it obtains, and, at most, "strip[ped] out or suppress[ed]" information. JA 95 (quoting JA 30). As the district court correctly explained, such conduct is akin to the "filter[ing], screen[ing], allow[ing], or disallow[ing] content," and "pick[ing], choos[ing], analyz[ing], or digest[ing] content" that Section 230 places within the bailiwick of an "access software provider." JA 95 (quoting 47 U.S.C. § 230(f)(4)). While an "access software provider" can, in some circumstances, be an "information content provider," that requires the provider to also "create[ ]" or "develop[ ]" the information at issue, *Nemet*, 591 F.3d at 254; *Zeran*, 129 F.3d at 330, and nothing in the Second Amended Complaint permits that additional inference.

At most, Plaintiffs allege Public Data fits within the hypothetical that the Ninth Circuit articulated in *Roommates.Com*, with the immaterial difference that the content-creators here are third-party public agencies, rather than website users: "A website operator who edits [ ] content [created by third parties]—such as by correcting spelling,

removing obscenity or trimming for length—retains [its] immunity for any illegality in the [third-party]-created content, provided that the edits are unrelated to the illegality." 521 F.3d at 1169.

2. Documents Incorporated Into The Complaint Support That Public Data Did Not Create These Public Records

The documents that Public Data attached to its Motion For Judgment On The Pleadings, R. 64-1, which the Second Amended Complaint incorporates by reference, further show that Public Data does not create or develop any of the disputed records that it posted to its website.[6] Those documents showed that Public Data displayed without legally relevant alteration or augmentation the court records from the Maryland Administrative Office of the Courts, which is fatal to any claim that Public Data is a content "creator." *See Roommates.Com*, 521 F.3d at 1169.

A court may consider documents beyond the pleadings when they are "integral" to the complaint, meaning the plaintiff's "claims . . . turn

[6] To be clear, Public Data does not argue that such documents are *necessary* to this Court's affirmance, given that Public Data is plainly not an "information content provider" based on the allegations in Plaintiffs' Second Amended Complaint alone, for the reasons explained above—reasons that do not rely at all on these additional documents. *See supra* Part I.C.1.

on," or are "otherwise based on, statements contained in the [documents]." *Goines*, 822 F.3d at 166. Here, Plaintiffs spent several paragraphs of their Second Amended Complaint addressing the content of the data displayed on publicdata.com as compared to the data provided by government agencies to allege that Public Data so alters the content as to be considered a "creator" of the information. JA 29–31, 37–38. Because Plaintiffs' claims "turn on" a comparison of the publicdata.com data display and the original government records, these documents are integral to the Second Amended Complaint, *Goines*, 822 F.3d at 166, and the district court erred in declining to consider them, JA 88–89.

The district court erroneously held, citing *Philips v. Pitt County Memorial Hospital*, 572 F.3d 176, 180 (4th Cir. 2009), that it could not consider these documents because only "explicit language referring to the documents" permits such consideration and "there is no specific reference to any Maryland court database or system" in the Second Amended Complaint here. JA 89. But *Philips* requires only that the documents be "integral to the complaint and authentic" for a district court to consider them. 572 F.3d at 180. The Second Amended Complaint not only "makes several general references as to how [Public Data] obtain[ed] criminal

history information and references to sources of public records," JA 89, but also discusses in detail Public Data's alleged practices of compiling and revising "records that originate within a public entity, such as an arm of the government like a courthouse," JA 15, and "distill[ing] criminal history information into glib statements such as those it reported for Plaintiff McBride—'POSSESSION OF PARAPHERNALIA,' 'POSSESS-NOT MARIJUANA,' and 'POSSESSION-MARIJUANA,'" JA 30. Accordingly, both the Maryland court records at issue and Public Data's formatting of those records are integral to the Complaint.

These documents plainly refute any suggestion that Public Data created or developed the public records on its website. For example, a side-by-side review of the Maryland courts' public record data that Public Data retrieved on a "Robert A. McBride" and Public Data's own display of the five criminal charges shows their near-identical nature:

Maryland Courts' Data R. 64-1, Ex. A at 5	Publicdata.com Information R. 64-1, Ex. B at 10–14
"CDS:POSSESS-NOT MARIJUANA," citing "CR.5.601.(a)(1)"	"CDS:POSSESS-NOT MARIJUANA," citing "CR.5.601.(a)(1)"
"CDS:POSS PARAPHERNALIA," citing "CR.5.619.(c)(1)"	"CDS:POSS PARAPHERNALIA," citing "CR.5.619.(c)(1)"
"CDS:POSSESS-NOT MARIJUANA," citing "CR.5.601.(a)(1)"	"CDS:POSSESS-NOT MARIJUANA," citing "CR.5.601.(a)(1)"
"CDS:POSS-MARIJUANA," citing "CR.5.601.(a)(1)"	"CDS:POSS-MARIJUANA," citing "CR.5.601(a)(1)"
"CDS REGIS. REMOV/ALTR LABL," citing "CR.5.902.(a)(1)"	"CDS REGIS. REMOV/ALTR LABL," citing "CR.5.902.(a)(1)"

Compare R. 64-1, Ex. A at 5, *with* R. 64-1, Ex. B at 10–14.[7] As this Court can see, Public Data simply ordered the Maryland courts' data into a different table format, *compare* R. 64-1, Ex. A at 5, *with* R. 64-1, Ex. B at 10–14, which is nothing "more than a website operator performs as part of its traditional editorial function," *Nemet*, 591 F.3d at 258, akin to "correcting spelling, removing obscenity, or trimming for length," *see Roommates.Com*, 521 F.3d at 1169.

[7] And both the Maryland Courts' data and the publicdata.com pages noted findings of probable cause for each. *Compare* R. 64-1, Ex. A at 6, *with* R. 64-1, Ex. B at 10–14.

3. Plaintiffs' Contrary Arguments Are Wrong

Plaintiffs argue that Public Data "created" or "developed" the public record information that it posts on its website, based only upon the allegations in the Second Amended Complaint, without considering the undisputable fact that Public Data's website merely reposts the public record information nearly verbatim. But even putting the actual content of Public Data's website aside, Plaintiffs' arguments are meritless on their own terms.

First, Plaintiffs argue that Public Data, not third parties such as courts, "created" the disputed records on Public Data's website. Opening Br. 24; *see also, e.g.*, Dkt. 39, *Amicus* Brief of The Lawyers' Comm. for Civil Rights Under Law & Nat'l Fair Housing All. ("Lawyers' Comm. Br.") at 10–13; FTC Br. 25–28. But Public Data did not "create" the court public record content displayed on its website and challenged by Plaintiffs. *See supra* Part I.C.1; *see also* Part I.C.2. Hence, the allegations in the Second Amended Complaint could only establish, at most, that Public Data "alter[s]" the public record "content" in some unspecified manner, *Zeran*, 129 F.3d at 330, which is not enough to make it an "information content provider," *see supra* Part I.C.1. As this Court

explained in *Zeran*, Section 230 operates to "bar[ ]" liability for the exercise of "traditional editorial functions" such as "deciding whether to publish, withdraw, postpone, *or alter* content." 129 F.3d at 330 (emphasis added); *accord Nemet*, 591 F.3d at 258; *Roommates.Com*, 521 F.3d at 1162–63, 1169. And, to the extent that Plaintiffs are arguing that Public Data's selection of what data to display and the placement of that data into "an original, proprietary format," JA 29, is enough to establish "content" creation, that argument is also contrary to binding case law, *see Nemet*, 591 F.3d at 257–58; *accord Ben Ezra*, 206 F.3d at 985–86.

Second, Plaintiffs argue that, at the very least, Public Data "develops" the content displayed on its website. Opening Br. 32–33. Initially, Plaintiffs waived any argument that Public Data "develops" the public-record content because they did not present that argument before the district court. *Arakas v. Comm'r, Soc. Sec. Admin.*, 983 F.3d 83, 105 (4th Cir. 2020); *see generally* R. 68 at 23–26. In any event, this assertion is wrong. "The term 'develop' . . . does not include the functions of an ordinary search engine," *O'Kroley v. Fastcase, Inc.*, 831 F.3d 352, 355 (6th Cir. 2016) (citations omitted; brackets omitted), like the service that Public Data provides, JA 29–30. Plaintiffs appear to take the position

that any website making information "usable or available," Opening Br. 16, would place an interactive computer service outside of Section 230's protection. Plaintiffs misread and erroneously attempt to expand prior precedent holding that websites that take previously nonpublic or "confidential . . . information" and make it public through a website might be said to have "developed" that information, *FTC v. Accusearch Inc.*, 570 F.3d 1187, 1198 (10th Cir. 2009), by arguing that it somehow applies to websites that merely compile already public information online for easier online viewing and searching, Opening Br. 32 (citing *Accusearch*, 570 F.3d at 1198, and *Roommates.Com*, 521 F.3d at 1168). As explained below, *see infra* Part II, this would deny CDA protection to interactive websites like Google Scholar or PACER, or to any other searchable online database.

Third, Plaintiffs criticize the district court for looking at the definition of "access software provider" to interpret the scope of Section 230's definition of "information content provider." Opening Br. 26–27. The relevant issue here is whether Public Data "creat[ed] or develop[ed]" the information at issue in this case, 47 U.S.C. § 230(f)(3), which Public Data plainly does not, meaning that it is not an

"information content provider" regardless of whether it is an "access software provider," *supra* pp. 30–32. The district court's discussion of the definition of "access software provider" properly supported this conclusion, as explained above, *see supra* pp. 30–31, based upon the well-established principle that courts must interpret statutory language in its statutory "context," "with a view to [its] place in the overall statutory scheme," *Lynch v. Jackson*, 853 F.3d 116, 121 (4th Cir. 2017) (citation omitted). That principle is particularly relevant here, given that Section 230 expressly incorporates "access software provider" into its definition of "interactive computer service." 47 U.S.C. § 230(f)(2).

Finally, Plaintiffs take the remarkable position that even if Public Data did nothing more than repost public records—*which is actually what Public Data does*, *see supra* Part I.C.2—it would still be the "information content provider" of this information because Section 230 only applies when users post information onto the interactive computer service *themselves*, such as in the case of an online message board, *see* Opening Br. 24. This atextual argument is without merit. Section 230 explains 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). Nothing in this text suggests that a "user" must be the "information content provider" for Section 230 to apply. *See, e.g.*, *Ben Ezra*, 206 F.3d at 983, 986 (finding defendant-America Online Inc. immune under Section 230 with respect to claims based on its own online posting of stock-quote information provided by a third party); *Directory Assistants, Inc. v. Supermedia, LLC*, 884 F. Supp. 2d 446, 453 (E.D. Va. 2012) (same, as to a defendant that itself compiled and disseminated links to third-party content); *Prickett*, 561 F. Supp. 2d at 649, 652 (same, as to a defendant that itself compiled "several proprietary databases" based on third-party information).

For this same reason, Plaintiffs err in arguing that the publicly available data compiled at publicdata.com was not "provided by" the various government agencies from which Public Data gets its records. Opening Br. 35–37. As Plaintiffs own allegations note, Public Data "purchase[s] and assemble[s] the[ ] data from the local, state or federal authority or from businesses who purchased the information." JA 29 (citation omitted). Thus, Public Data obtains all such information

willingly from another content provider, which "provided" that information to it. 47 U.S.C. § 230(c)(1).

II. Adopting Plaintiffs' Position Would Undermine Section 230, While Rejecting That Position Would Have None Of The Consequences That Concern Plaintiffs And Their *Amici*

This Court can and should decide this case based only upon the statutory text, as described above, because "[p]olicy considerations cannot override [the] interpretation of the text and structure of [Section 230]." *Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 188 (1994). If, however, this Court chooses to consider the public policy implications of its decision—as Plaintiffs and their *Amici* urge over and over—those considerations would strongly support affirming the district court's narrow, entirely correct decision.

A. Reversing the district court's decision would undermine the "'vibrant and competitive free market' of ideas on the internet" that Congress enacted Section 230 to protect. *See Nemet*, 591 F.3d at 254 (quoting 47 U.S.C. § 230(b)(2)). If this Court adopts any version of Plaintiffs' restrictive theories of Section 230, plaintiffs could sue interactive computer services for simply posting public record information on their websites. This would both end Public Data's

laudatory practice of making otherwise difficult-to-find information easier for the public to access and harm the internet's status as "a valuable and increasingly utilized source of information for citizens"—contrary to Congress' intent with Section 230. *Id.*

Perhaps worse, States may well take this Court's reversal of the district court's judgment here as an invitation to impose significant obligations on any website that dares to repost public information that the State would rather not see reposted. After all, if Plaintiffs are correct that the FCRA's myriad of obligations can lawfully apply, notwithstanding Section 230, simply because Public Data makes the decision to publish public records on its website, nothing in Section 230 would then limit the States from enacting statutes that impose more onerous obligations on websites for making similar publishing decisions.

This would be to the public's greater detriment, given the vital importance of easy public access to government records. "[O]ur system of government" depends upon the people's "access to the proceedings and documents of courts" and other government bodies, so that they may "learn of, monitor, and respond to the actions of their representatives and their representative institutions." *United States v. Erie Cty.*, 763 F.3d

235, 239 (2d Cir. 2014). Restricting such access by impeding the dissemination of public records online would work against this foundational principle, leading to a less "informed citizenry" and undermining "the functioning of [our] democratic society." *FBI v. Abramson*, 456 U.S. 615, 621 (1982); *accord Casillas v. Madison Ave. Assocs., Inc.*, 926 F.3d 329, 338 (7th Cir. 2019) (Barrett, J.).

B. The contrary public policy arguments that Plaintiffs and their *Amici* raise are entirely unavailing.

Plaintiffs contend, in hyperbolic fashion, that affirming the district court's ruling "would create a lawless no-man's land on the internet" by allowing companies to "create[ ] background check reports, and sell[ ] them in violation of the Fair Credit Reporting Act . . . just because it occurs online." Opening Br. 38–40. Yet, consumer reporting agencies generally create content—thereby falling outside of Section 230's scope—by assembling information about particular consumers into a consumer file, matching records to a specific individual, evaluating consumers by creating credit scores, and the like. *See* 15 U.S.C. § 1681a(f); *DiGianni*, 26 F.3d at 348–49. The *Amicus* Brief submitted by the National Consumer Law Center *et al.*, is instructive on this point. That *Amicus*

Brief explains that consumer reports can include, *inter alia*, an "'adjudication' or 'score,' which provides an overall recommendation to an employer or landlord about whether to accept the particular consumer." NCLC Br. at 12. But such an adjudication or score would presumably be created by the consumer reporting agency itself rather than a third party, *see* 15 U.S.C. § 1681a(f); *DiGianni*, 26 F.3d at 348–49, an activity that would place that consumer reporting agency outside of Section 230's immunity. This is all far afield from the conduct that Plaintiffs seek to target here, which involves the mere hosting of already-public records in an online, searchable database that users query through their self-selected search criteria.

Plaintiffs next claim that adopting the district court's interpretation of Section 230 would "immunize[ ] an internet company for disseminating information online it knows was not intended for dissemination." Opening Br. 36; *see id.* at 34. But courts have held that Section 230 does not apply when the interactive-computer service provider converts "legally protected records from confidential material to publicly exposed information," *Accusearch*, 570 F.3d at 1199, and nothing in this case seeks to call that principle into doubt. As the Tenth Circuit

held in *Accusearch*, the text of Section 230 considers an interactive-computer-service provider to be an "information content provider" of offensive content—and thus outside the scope of this Section's immunity—only if it is "'*responsible*' for the development" of that content. *Id.* (quoting 47 U.S.C. § 230(f)(3)) (emphasis added). The statutory term "responsible" "has a normative connotation," such that "one is *not* 'responsible' for the development of offensive content if one's conduct was neutral with respect to the offensiveness of the content." *Id.* at 1198–99 (emphasis added). Here, by contrast, Public Data is "neutral with respect to" any possible "offensiveness of the content," *id.*, since it merely disseminates *already publicly available information* like court records lawfully obtained from government agencies. JA 22, 26, 29, 32.

Holding that Section 230 protects Public Data would not have "unintended repercussions for the enforcement of civil rights laws." Lawyers' Comm. Br. 15. While some *Amici* claim that affirming the district court could imperil enforcement of the Voting Rights Act and Ku Klux Klan Act, the decision in *National Coalition on Black Civic Participation v. Wohl*, No. 20 Civ. 8668, 2021 WL 4254802 (S.D.N.Y. Sept. 27, 2021), that *Amici* rely upon explains why Section 230 could not

be abused in that manner. Lawyers' Comm. Br. 17–18. Any internet company that aided these sorts of voter intimidation and misleading tactics would cross the line into "creation or development of information" under Section 230(f)(3), and therefore would not benefit from Section 230 immunity. *Wohl*, 2021 WL 4254802, at *7–8 (no immunity for defendant alleged to have "discussed the [offending] robocall [at issue]" and assisted in "target[ing] specific zip codes to maximize the threatening effect the robocall would have on Black voters"). Similarly, while these *Amici* claim that affirming the district court could exempt from public accommodations laws a restaurant owner who posted a racist screed on her own website, Lawyers' Comm. Br. 20–21, this assertion is wrong because the restaurant would have presumably "create[d] or develop[ed]" that screed itself, making it an information content provider. 47 U.S.C. § 230(f)(3). Finally, in cases in which an "interactive computer service" might allow or promote unlawful actors' conduct by "profiling its users, bundling them into cohorts for advertisers, and writing the algorithm" for targeting them, Lawyers' Comm. Br. 23, such conduct actively contributes to the alleged illegality, thereby failing to receive Section 230's immunity, *Roommates.Com*, 521 F.3d at 1171.

In all, each of *Amici*'s hypotheticals is far afield from this case, where Public Data merely disseminates public court records in response to an individual's search queries, just like Google Scholar or Pacer do. JA 15, 22, 26, 29–31. Affirming the district court here would not implicate any of these potentially fraught scenarios, but would instead further Section 230's salutary goal of protecting a free and open internet.

CONCLUSION

This Court should affirm the judgment of the district court.

Dated, January 7, 2022

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 32(g), I certify the following:

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 9,092 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief 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 Microsoft Word in 14-point Century Schoolbook font.

Dated: January 7, 2022

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STATUTORY ADDENDUM

47 U.S.C. § 230. Protection for private blocking and screening of offensive material

(a) Findings

The Congress finds the following:

(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

(b) Policy

It is the policy of the United States--

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) 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;

(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

(c) Protection for "Good Samaritan" blocking and screening of offensive material

(1) Treatment of publisher or speaker

No 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.

(2) Civil liability

No provider or user of an interactive computer service shall be held liable on account of--

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).1

(d) Obligations of interactive computer service

A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

(e) Effect on other laws

(1) No effect on criminal law

Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of Title 18, or any other Federal criminal statute.

(2) No effect on intellectual property law

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) State law

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. 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.

(4) No effect on communications privacy law

Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

(5) No effect on sex trafficking law

Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit--

(A) any claim in a civil action brought under section 1595 of Title 18, if the conduct underlying the claim constitutes a violation of section 1591 of that title;

(B) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 1591 of Title 18; or

(C) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 2421A of Title 18, and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant's promotion or facilitation of prostitution was targeted.

(f) Definitions

As used in this section:

(1) Internet

The term "Internet" means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) Interactive computer service

The term "interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) Information content provider

The term "information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

(4) Access software provider

The term "access software provider" means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

(A) filter, screen, allow, or disallow content;

(B) pick, choose, analyze, or digest content; or

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of January, 2022, I filed the foregoing Brief with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

Dated: January 7, 2022

/s/Misha Tseytlin

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