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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

JOHN DOE #1 AND JOHN DOE #2,
 Plaintiffs,
 v.
 TWITTER, INC.,
 Defendants.

Case No. 3:21-cv-00485-JCS

**BRIEF OF AMICI CURIAE ANTI-
 TRAFFICKING ORGANIZATIONS IN
 SUPPORT OF PLAINTIFFS' OPPOSITION
 TO DEFENDANT TWITTER INC.'S
 MOTION TO DISMISS**

Date: July 30, 2021
 Time: 9:30 a.m.
 Judge: Hon. Joseph C. Spero

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CORPORATE DISCLOSURE STATEMENT

Amici Curiae 3Strands Global Foundation, AACI, Bay Area Anti-Trafficking Coalition, Bridge Network, Children’s Advocacy Institute, Coalition Against Trafficking in Women, Community Solutions, Frederick Douglass Family Initiatives, Human Rights for Kids, Love Never Fails, Organization for Social Media Safety, Rights4Girls, and World Without Exploitation state that they do not have parent corporations. No publicly held corporation owns 10 percent or more of any stake or stock in any Amici Curiae.

1 **STATEMENTS OF INTEREST**

2 **3Strands Global Foundation** is a national non-profit organization dedicated to ending
3 human trafficking. 3Strands Global Foundation has spent over a decade combatting human
4 trafficking and exploitation through prevention programs. As a nonprofit our interest and support
5 in this case is clear, 3Strands Global Foundation must protect all vulnerable populations from
6 online sexual abuse and exploitation, and hold accountable those who do not.

7 **AACI** is a non-profit organization founded in 1973 that serves individuals and families
8 with cultural humility, sensitivity, and respect, and that advocates for and serves the marginalized
9 and ethnic communities in Santa Clara County. AACI provides a diverse range of health,
10 behavioral health, and wellness services and advocacy to strengthen the resilience and hope of our
11 community members.

12 **Bay Area Anti-Trafficking Coalition** is a non-profit organization who seeks to disrupt
13 the business of human traffickers by training frontline employees to recognize and report
14 trafficking where they work, move, and sleep.

15 **Bridge Network** is a California based non-profit organization providing direct services to
16 at-risk youth and survivors of human trafficking. All children deserve a life free from violence
17 and exploitation; Bridge Network provides a safe space for youth to build healthy relationships
18 and connect to a variety of resources and services.

19 **Children's Advocacy Institute (CAI)**, a non-profit organization founded in 1989, is one
20 of the nation's premiere academic, research, and advocacy organizations working to improve the
21 lives of children and youth, with a special emphasis on child victims of abuse or neglect. For
22 more than a decade, CAI has utilized its multi-faceted advocacy approach to eliminate the
23 commercial sexual exploitation of children (CSEC) and improve outcomes for victims.

24 **Coalition Against Trafficking in Women (CATW)**, a non-profit founded in 1988, is one
25 of the oldest international organizations dedicated to ending the trafficking and sexual
26 exploitation of women and girls worldwide. Their global coalition includes women's rights and
27 human rights advocates, front-line services providers, survivor leaders and others committed to
28 ensuring that governments enact and implement laws and policies that effectively prevent,

1 suppress, and punish human trafficking and support survivors.

2 **Community Solutions** is a California non-profit organization that provides a
3 comprehensive spectrum of prevention, intervention, treatment, and residential services to the
4 communities of Santa Clara and San Benito Counties. Community Solutions provides services
5 and support to help children, families, and individuals overcome the challenges posed by mental
6 health issues, substance abuse, trauma, severe family dysfunction, sexual and domestic violence,
7 and human trafficking.

8 **Frederick Douglass Family Initiatives (FDFI)** is a non-profit organization that advocates
9 for a more equitable world focused specifically on the eradication of racism and human
10 trafficking. FDFI has created human trafficking prevention programs, advocated for online
11 safety, and supports at risk kids who are vulnerable to sex trafficking.

12 **Human Rights for Kids** is a non-profit organization dedicated to the promotion and
13 protection of children's human rights. Human Rights for Kids uses an integrated, multi-faceted
14 approach which consists of research, public education, grassroots organizing, policy advocacy,
15 and strategic litigation to advance critical human rights on behalf of the most vulnerable and
16 victimized children in the United States.

17 **Love Never Fails** is a California non-profit dedicated to ending human trafficking. First
18 founded in 2011, Love Never Fails is committed to empowering all people to express and
19 experience their best sense of humanity. Their focus is on restoring, educating, and protecting
20 survivors of human trafficking and their community.

21 **Organization for Social Media Safety** is a national, non-profit consumer protection
22 organization focused exclusively on social media. Through a comprehensive approach that
23 includes advocacy, technology development, and education, the Organization for Social Media
24 Safety works to protect against all social media-related dangers like human trafficking,
25 cyberbullying, hate speech, and propaganda.

26 **Rights4Girls** is a non-profit human rights organization working to end sex trafficking and
27 gender-based violence in the United States. It advances public policy through legislative
28 advocacy, engagement, research, and education. Rights4Girls advocates for the dignity and rights

1 of young women and girls—so that every girl may live a life free of violence and exploitation.

2 **World Without Exploitation** (World WE) is a non-profit national coalition of 200 anti-
3 trafficking organizations around the United States. World WE seeks to bring the anti-trafficking
4 movement together to create a world where no person is bought, sold, or exploited. World WE
5 advances public policy through legislative advocacy, engagement, and education both on the state
6 and federal levels.

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INTRODUCTION

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2 Amici Curiae 3Strands Global Foundation, AACI, Bay Area Anti-Trafficking Coalition,
3 Bridge Network, Children’s Advocacy Institute, Coalition Against Trafficking in Women,
4 Community Solutions, Frederick Douglass Family Initiatives, Human Rights for Kids, Love
5 Never Fails, Organization for Social Media Safety, Rights4Girls, and World Without Exploitation
6 (collectively, “Amici”) submit this brief in support of Plaintiffs’ Opposition to Defendant Twitter
7 Inc.’s Motion to Dismiss, ECF No. 55 (Opp’n). Amici bring decades of experience in education,
8 advocacy, and direct services for survivors of human trafficking, and include among them leaders
9 and advocates who were themselves trafficked as vulnerable children. Amici are experts on the
10 devastation caused by online sexual exploitation, on the ways in which online platforms like
11 Twitter exacerbate this abuse, and on the measures Congress has taken to end it by holding
12 companies like Twitter accountable.

13 The underlying case of John Doe #1 and John Doe #2 illustrates the tremendous harm and
14 re-victimization that internet companies can cause vulnerable children if the law with respect to
15 Child Sexual Abuse Material (CSAM) is not followed. As is well recognized, CSAM includes
16 any online content that depicts the sexual abuse and exploitation of children. Not only are these
17 images criminal, child victims suffer re-victimization each time an image of their sexual abuse is
18 shared and viewed online. In a recent survey led by the Canadian Centre for Child Protection, 67
19 percent of CSAM survivors said the distribution of their images impacts them differently than the
20 hands-on abuse they suffered “because the distribution never ends and the images are
21 permanent.”¹ Proliferation of CSAM has even led to suicide.² Here, because of Twitter’s
22 pernicious disregard for John Doe #1 and John Doe #2, 167,000 or more viewers accessed,
23 downloaded, and shared CSAM documenting their sexual abuse. Opp’n at 10.

24 Congress passed the Fight Online Sex Trafficking Act and Stop Enabling Sex Traffickers

25 _____
26 ¹ National Center for Missing and Exploited Children, *Child Sexual Abuse Material—Overview*,
available at <https://www.missingkids.org/theissues/csam>.

27 ² Julia Prodis Sulek, *Audrey Pott: Boys admit to sexually assaulting teen*, Mercury News (Jan. 14,
28 2014) available at <https://www.mercurynews.com/2014/01/14/audrie-pott-boys-admit-sexually-assaulting-saratoga-teen-who-committed-suicide/>.

1 Act (collectively, FOSTA-SESTA) to address the crisis of sexual exploitation, by holding social
2 media companies like Twitter accountable for their central role in online sex trafficking.
3 Twitter’s motion to dismiss asks the Court to ignore this Congressional directive, making the very
4 same arguments that prompted Congress to pass FOSTA-SESTA in the first place. Amici
5 therefore respectfully submit that Twitter’s motion should be denied.

6 ARGUMENT

7 **A. Online Platforms Like Twitter Are Now the Primary Venue for Sexual** 8 **Exploitation.**

9 According to the 2020 Federal Human Trafficking Report issued by the Human
10 Trafficking Institute, online solicitation “has dwarfed other tactics used by traffickers to solicit
11 buyers of commercial sex for over a decade, appearing as the primary form of solicitation in over
12 twice as many criminal cases as any other method each year since 2008.”³ The internet is now
13 the primary way that traffickers “recruit sex trafficking victims and solicit buyers of commercial
14 sex.”⁴ In 2020, 83 percent of trafficking cases involved online platforms as the primary source
15 of solicitation.⁵

16 Alarming, even more children than adults are recruited online to be exploited as victims
17 of trafficking.⁶ The U.S. National Center for Missing and Exploited Children directly correlated
18 an 846 percent increase in child sex trafficking reports from 2010 to 2015 to the growing use of
19 the internet to sell children for sex.⁷ Internet platforms—including social media—have
20 substantially exacerbated the distribution of CSAM because they “provide offenders with the
21 unparalleled opportunity to access, possess, and trade child sexual abuse images and material,
22 often anonymously.”⁸ To date, the Child Victim Identification Program has identified 322

23 ³ Human Trafficking Institute, *2020 Federal Human Trafficking Report 3*, available at
24 <https://www.traffickinginstitute.org/wp-content/uploads/2021/06/2020-Federal-Human-Trafficking-Report-Low-Res.pdf>.

25 ⁴ *Id.* at 4.

26 ⁵ *Id.* at 49.

27 ⁶ *Id.* at 43.

28 ⁷ S. Hrg. 115-6, before Subcom. on Investigations (Jan. 10, 2017).

⁸ Canadian Centre for Child Protection, *Survivors’ Survey 2* (2017), available at
https://protectchildren.ca/pdfs/C3P_SurvivorsSurveyExecutiveSummary2017_en.pdf.

1 million images and videos that constitute CSAM.⁹

2 **B. Congress Passed the TVPRA and FOSTA-SESTA to Hold Internet Platforms**
3 **Accountable for Online Sex Trafficking.**

4 Twitter argues that Congress intended to absolve internet companies of any responsibility
5 for maintaining and promoting sex trafficking through a broad grant of immunity under the
6 Communications Decency Act (CDA) §230. In fact, this immunity was abrogated by Congress in
7 direct response to websites deploying §230—as Twitter attempts to here—to facilitate and
8 promote the continued sexual exploitation of minors. In 2018, Congress passed FOSTA-SESTA
9 to unequivocally protect victims of online enterprises that facilitate sex trafficking. What
10 happened to John Doe #1 and John Doe #2 is sex trafficking, and Twitter had knowledge or
11 constructive knowledge that it was profiting from their abuse on its platform. This violates
12 FOSTA-SESTA.

13 Twitter’s claim of immunity under §230 must also fail, as it is inconsistent with
14 Congress’s intent in passing FOSTA-SESTA and the intent of CDA §230 itself. Furthermore, it
15 is inconsistent with legislative enactments over the course of decades that have sought protection,
16 accountability, and justice for victims of sex trafficking. If Twitter’s reasoning is accepted, it
17 would eviscerate laws protecting sex trafficking victims. In particular, it would harm vulnerable
18 children—precisely those intended to benefit from the Trafficking Victims Protection
19 Reauthorization Act of 2008 (TVPRA) and FOSTA-SESTA. The implications of such an
20 interpretation of the law are severe and defy Congress’s clear intent.

21 **1. Congress Has for Decades Evinced an Intent to Make the Internet a**
22 **Safer Place for Children.**

23 Congress passed the Communications Decency Act (CDA) in 1996, when the internet was
24 in its infancy. As the Congressional record makes clear, Congress intended to protect children
25 from salacious content while ensuring the internet could continue to grow without the burden of
26 overregulation. 141 Cong. Rec. H 8460 (Cox). Section 230 was enacted to protect “Good

27 ⁹ National Center for Missing and Exploited Children, *Child Sexual Abuse Material—By the*
28 *Numbers*, available at <https://www.missingkids.org/theissues/csam>.

1 Samaritan” online service providers who take steps to screen indecent and offensive material. *Id.*
2 Applied correctly, it was only ever intended to protect websites from defamation lawsuits simply
3 for *removing* offensive content on their sites—the very opposite of what Twitter did here. *See*
4 H.R. Rep. 104-458 (1996) (“One of the specific purposes of this section is to overrule . . .
5 decisions which have treated such providers and users as publishers or speakers of content that is
6 not their own because they have restricted access to objectionable material.”).

7 Since 1996, the power and scope of the internet has far exceeded any early expectations.
8 And as the internet continues to evolve, it becomes a more and more accessible tool for predators,
9 who use a variety of platforms, including Twitter, to prey on vulnerable children. To counteract
10 the rapid proliferation of online sexual abuse, Congress has continued to weigh in to protect
11 children from trafficking and exploitation and to ensure accountability for those who knowingly
12 benefit from child sexual abuse. This began with the Trafficking Victims Protection Act (TVPA)
13 in 2000, which first criminalized sex trafficking. The law was expanded through the Trafficking
14 Victims Protection Reauthorization Act of 2003 to add new means of curbing trafficking by
15 allowing trafficking victims to bring a civil action against their traffickers in federal district court.
16 P.L. 108-193, § 4(a)(4)(A). The law was expanded again in 2008, to the TVPRA in its current
17 form, and extended liability to third parties who benefit financially from sex trafficking. P.L.
18 110-457, Title II, Subtitle C, § 221(2).

19 When Congress passed the TVPRA, it made clear that the law required all parties,
20 including businesses like Twitter, to comply with the law or face civil liability *even if they are not*
21 *themselves a perpetrator*. Amended Pub. L. No. 110-457, title II, § 221(2) (Dec. 23, 2008).
22 Accordingly, there are two distinct causes of action under the TVPRA: (1) perpetrator claims
23 against a person who directly violates Section 1591; and (2) beneficiary claims against a person
24 or entity who may not be criminally liable as a direct perpetrator, but who “knowingly benefits,
25 financially or by receiving anything of value from participation in a venture which that person
26 knew or should have known has engaged in an act in violation of this chapter.” 18 U.S.C.
27 § 1595(a). Section 1595 specifically expands the scope of liability beyond Section 1591. This
28 expansion was intended to pave the way for civil suits against online platforms that host sex

1 trafficking and CSAM.

2 2. **Congress Passed FOSTA-SESTA in 2018 to Clarify that CDA Section**
3 **230 Immunity Does Not Extend to TVPRA Claims.**

4 Because of the severe overreach by internet providers who platformed traffickers across
5 the internet while claiming immunity under §230, Congress passed FOSTA-SESTA in 2018 to
6 clarify that §230 does not now immunize, and has not ever immunized, website companies from
7 suit for violations of anti-trafficking laws. FOSTA-SESTA’s legislative history makes very clear
8 that Congress was alarmed by the use of §230 as a shield for websites that facilitated or turned a
9 blind eye to trafficking on their websites. Put simply, FOSTA-SESTA was passed to guarantee
10 victims their day in court, and prevent precisely the motion Twitter now makes here.¹⁰

11 The history of FOSTA-SESTA shows why Congress acted with urgency. In 2016, it came
12 to Congress’s attention that websites, such as Backpage, were using §230 to shield themselves
13 from criminal or civil liability for hosting and profiting from sex trafficking content. S. Hrg. 115-
14 6, *Backpage.com’s Knowing Facilitation of Online Sex Trafficking* (Jan. 10, 2017). Congress
15 became so concerned with this misapplication of §230 that it launched an investigation into the
16 problem in 2017. Contemporaneous House and Senate Reports detail that this concern
17 culminated in the passage of FOSTA-SESTA, through which Congress clarified that §230 “does
18 not prohibit the enforcement against providers and users of interactive computer services of
19 Federal and State criminal and civil law relating to sexual exploitation of children or sex
20 trafficking” because it “was *never* intended by Congress to provide legal protection to websites
21 that unlawfully promote and facilitate prostitution and contribute to sex trafficking.” H.R. Rep.
22 No. 115-572 (2018) (emphasis added).

23 As a result, Congress passed FOSTA-SESTA in 2018, confirming that §230 immunity
24 does not apply to trafficking claims. FOSTA-SESTA’s plain language—as enacted—repeatedly
25 confirms this Congressional intent:

26 _____
27 ¹⁰ Twitter argues that “close cases . . . must be resolved in favor of immunity,” basing its
28 argument on §230. ECF No. 48 (Mot.), p. 8. As set forth above, Congress rejected this precise
argument in passing FOSTA-SESTA.

- 1 - FOSTA-SESTA’s enacting clause states its purpose as: “to clarify that section
2 230 . . . does not prohibit the enforcement . . . of Federal and State criminal
3 and civil law relating to sexual exploitation of children or sex trafficking.”
4 Pub. L. No. 115-164 (2018).
- 5 - Section 2 states the “sense of Congress” that §230 “was never intended to
6 provide legal protection to . . . websites that facilitate traffickers in advertising
7 the sale of unlawful sex acts with sex trafficking victims” and that
8 “clarification of such section is warranted to ensure that such section does not
9 provide such protection to such websites.” *Id.*
- 10 - Section 4, which contains the amendments to §230, is titled: “Ensuring ability
11 to enforce federal and state criminal and civil law relating to sex trafficking.”
12 *Id.*

13 The bill makes clear that §230 is not a shield for providers and users of interactive
14 computer services against criminal and civil laws relating to sexual exploitation of children or sex
15 trafficking. H. Rep. No. 115-572, pt. 1, at 1. With FOSTA-SESTA, Congress amended §230 to
16 include an express exemption from claims under the TVPRA: “Nothing in this section . . . shall
17 be construed to impair or limit . . . any claim in a civil action brought under section 1595 of title
18 18, if the conduct underlying the claim constitutes a violation of section 1591 of that title.” 47
19 U.S.C. §230(e)(5)(A). Through this exemption, Congress intended to restore victims’ access to
20 justice and hold tech companies accountable when they negligently or knowingly ignore
21 trafficking on their websites. 164 Cong. Rec. H 1290, 1295 (Feb. 27, 2018) (McMorris Rodgers).

22 Twitter characterizes FOSTA-SESTA as applicable “only in extreme cases (like
23 Backpage).” Mot., p. 5. Although the sale of victims facilitated through the personals section of
24 Backpage was one impetus for Congressional investigation, neither the language of FOSTA-
25 SESTA nor its legislative history limits its immunity exemption to a particular entity. In fact,
26 Congress explicitly rejected the notion that FOSTA-SESTA is so limited, noting that FOSTA-
27 SESTA would allow “vigorous criminal enforcement against all bad-actor websites, not just
28 Backpage.com, through the creation of a new federal law and by explicitly permitting states to
enforce criminal laws that mirror this new federal law and current federal sex trafficking law.” H.
Rep. No. 115-572, pt. 1, at 5. Furthermore, Backpage was shut down before FOSTA-SESTA was
enacted, confirming that Congress saw a broader need for FOSTA-SESTA than targeting

1 Backpage.¹¹ Nothing in the law limited liability to websites that only sell sex.¹²

2 Twitter also argues that FOSTA-SESTA’s immunity exemption applies only to cases
3 where the defendant itself engaged in criminal misconduct. Mot., pp. 4-5. But Congress was
4 undeniably concerned with websites that were not direct, criminal participants in trafficking, but
5 still benefited financially at the expense of victims. Senate debate focused on amendments *that*
6 *were ultimately rejected* because they would “protect websites that identify sex trafficking ads
7 and then leave them up in order to continue profiting from them.” 164 Cong. Rec. S 1827, 1829
8 (Blumenthal). Members of Congress were motivated by the testimony of survivors who
9 described their re-victimization at the hands of websites that refused to remove images taken
10 against their will. 164 Cong. Rec. H 1290, 1292-93 (Feb. 27, 2018) (Jackson Lee). Plaintiffs
11 John Doe #1 and John Doe #2 were re-victimized in just this way.

12 There is simply no indication, as Twitter appears to suggest, that in passing FOSTA-
13 SESTA, Congress intended that a website had to *be a criminal perpetrator* of sex trafficking or
14 else be immune from liability.¹³ Beyond the record, Twitter’s position also fails logic, in that it
15 would effectively carve out all third-party beneficiary liability (*i.e.*, the target of the legislation
16 itself). In fact, the whole purpose of the 2008 amendments to the TVPRA was to add liability for
17 those who benefit from trafficking perpetrated by others. If §230 were read to permit only
18 Section 1595 claims where the defendant’s conduct also violated Section 1591’s criminal
19 provisions, then there would be no such thing as standalone beneficiary liability. Twitter’s logic
20 therefore would defeat the purpose of FOSTA-SESTA and allow Twitter the unrestricted ability
21 to negligently or knowingly profit from the sexual abuse of children. This is not the law.

22 In fact, the Senate recognized and noted the importance of discovery in cases of online sex
23 trafficking when discussing the need for FOSTA-SESTA. Senator McCaskill observed that
24 internet companies believed they “would be able to win again in court and deny us our

25 ¹¹ The Congressional record references “at least 130 websites selling women and children.” 164
26 Cong. Rec. H 1290, 1292 (Feb. 27, 2018) (Jackson Lee).

27 ¹² The Congressional record also references the popular online marketplace Craigslist as a locus
28 of trafficking. 164 Cong. Rec. S1849, at S1850.

¹³ Regardless, and even though not required by law, Plaintiffs here do allege that Twitter
knowingly facilitated sex trafficking, and bring a direct perpetrator claim on that basis.

1 opportunity to look at the documents and to look at the underlying evidence that one should
2 always look at in an investigation.” 164 Cong. Rec S 1827, 1830. This is precisely what Twitter
3 is attempting to do here. Dismissal on such grounds would undermine the intent of Congress that
4 there be a mechanism for investigating when websites are operating as bad actors. To cut off the
5 opportunity even to gather discovery into these practices would obliterate the purpose of FOSTA-
6 SESTA, taking away the victims’ access to justice and denying Plaintiffs here the chance to prove
7 that Twitter facilitated and benefited from their online sex trafficking. It would provide a shield
8 to powerful internet companies with broad reach, while leaving the less technologically
9 sophisticated victims of child sex trafficking powerless and exposed online.

10 Indeed, in light of positions like those taken by Twitter, Justice Clarence Thomas recently
11 bemoaned that §230 is still being used to prevent claims from even proceeding to discovery, and
12 implored courts to stop “reading extra immunity into statutes where it does not belong.”
13 *Malwarebytes, Inc. v. Enigma Software Grp. USA, LLC*, 141 S. Ct. 13, 15 (2020). *See also id.* at
14 18 (“Paring back the sweeping immunity courts have read into §230 would not necessarily render
15 defendants liable for online misconduct. It simply would give plaintiffs a chance to raise their
16 claims in the first place. Plaintiffs still must prove the merits of their cases, and some claims will
17 undoubtedly fail.”).

18 As described above, survivors of sex trafficking are often vulnerable children, and
19 Congress has unequivocally stated its intention that they deserve their day in court. 164 Cong.
20 Rec. S 1827 (Mar. 20, 2018) (Blumenthal). Where plaintiffs have set forth facts indicating that a
21 website company violated the TVPRA as a third-party beneficiary of trafficking, an immunity
22 claim must fail, and victims must at a minimum be granted the opportunity to discover their
23 case.¹⁴ In the present case, Plaintiffs allege facts that clearly place Twitter’s actions in conflict
24 with the law. Plaintiffs allege violations of both the direct and beneficiary provisions of the
25 TVPRA, and both should proceed to discovery.

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¹⁴ *Cf.*, e.g., *J.C. v. Choice Hotels Int’l, Inc.*, No. 20-cv-00155-WHO, at 12 (N.D. Cal. Oct. 28, 2020).

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CONCLUSION

It is critical that this Court reject Twitter’s motion to dismiss, in order to ensure that the TVPRA and FOSTA-SESTA have any meaning. If this case cannot proceed to discovery, children everywhere are unprotected from online sex trafficking and re-victimization. Amici respectfully submit that the Court should deny the motion to prevent this miscarriage of justice.

Dated: June 17, 2021

Respectfully submitted,

By: /s/ Kelly M. Dermody

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CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record who receives CM/ECF notification.

DATED this 17th day of June 2021 By: /s/ Kelly M. Dermody
Kelly M. Dermody