No. _____

In The

Supreme Court of the United States

MEDYTOX SOLUTIONS, INC.,
SEAMUS LAGAN and WILLIAM G. FORHAN,

Petitioners,

vs.

INVESTORSHUB.COM, INC.,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Florida

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Investorshub.com is a website that routinely allows the posting of libelous statements about public companies and their officers. The question presented in this Petition is:

> Whether an action seeking an injunction for the removal of libelous postings from an interactive website is preempted by Section 230 of the Communications Decency Act, 47 U.S.C. § 230.

CORPORATE DISCLOSURE STATEMENT

There is no parent or publicly held corporation owning 10% or more of the stock of Petitioner Medytox Solutions, Inc., which is a public company.

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Medytox Solutions, Inc., Seamus Lagan, and William G. Forhan respectfully petition for a writ of certiorari to review the order of the District Court of Appeal for the Fourth District of Florida, affirming the dismissal of a complaint seeking as its sole remedy an injunction for the removal of libelous postings from Respondent's website.

OPINION BELOW

On February 19, 2013, the Petitioners filed an action against Respondent in the Circuit Court of the Seventeenth Judicial Circuit of Florida, seeking as their sole remedy an injunction for the removal of the libelous statements posted in the Respondent's internet site.

Respondent moved to dismiss, arguing that the action was barred by the Communications Decency Act, 47 U.S.C. § 230. On August 15, 2013, the Circuit Court dismissed the complaint, relying on two Florida cases construing the Communications Decency Act to bar any action against interactive computer service providers for content posted by third-parties – *Doe v. Am. Online, Inc.*, 783 So. 2d 1010 (Fla. 2001) and *Giordano v. Romeo*, 76 So. 3d 1100 (Fla. 3d DCA 2011). A copy of the order of dismissal is included in the Appendix. (App. 11).

Petitioners appealed, and, on December 3, 2014, the Fourth District Court of Appeal of Florida issued an opinion affirming the order of dismissal. A copy of

the order of the Fourth District Court of Appeal of Florida is included in the Appendix. (App. 3).

Petitioners filed a notice to invoke the jurisdiction of the Florida Supreme Court on January 2, 2014. The Florida Supreme Court denied the petition for review on April 10, 2015. A copy of the order of the Florida Supreme Court is included in the Appendix. (App. 1).

STATEMENT OF JURISDICTION

This Court has jurisdiction to review the decision of the Fourth District Court of Appeal of Florida pursuant to 28 U.S.C. § 1257(a), as the Florida Supreme Court has declined to accept jurisdiction over the dispute.

RELEVANT STATUTORY PROVISIONS

Section 230 of the Communications Decency Act, 47 U.S.C. § 230, provides in relevant part:

> (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

[1] So in original. Probably should be "subparagraph (A)."

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.

(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.

47 U.S.C. § 230(c)-(f) (emphasis in original).

STATEMENT OF THE CASE

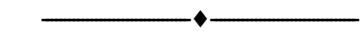
Respondent is the operator of Investorshub.com, an interactive website that routinely allows its users to post libelous statements about public companies and their officers.

Between May 19 and May 20, 2012, Christopher Hawley, a user of Investorshub.com, posted numerous libelous statements about the Petitioners, including statements suggesting that the Petitioners were being investigated by the FBI for fraud and for depleting a company's retirement plan. These statements were all false and were part of a campaign launched by Mr. Hawley, a former business partner of the Petitioners, to tarnish the good standing of the Petitioners in the investment community.

Petitioners sued Mr. Hawley in a separate action, and a jury ultimately found that the statements were

false and had caused Petitioner Seamus Lagan $750,000.00 in damages.[2]

Nonetheless, Respondent has refused to remove from Investorshub.com the false and libelous statements about the Petitioners, perpetuating the irreparable harm to their reputations.



REASONS FOR GRANTING THE WRIT

This case presents the Court with an opportunity to bring certainty to an unsettled area in the world of internet law: the availability of injunctive relief to remove libelous statements from the internet.

The postings at issue were found to be libelous by a jury in a separate action prosecuted against the third-party poster. But Respondent has refused to remove the postings from its website.

The Petitioners would have been able to obtain an injunction ordering the removal of the libelous postings in the Seventh or Ninth Circuits. In those Circuits, claims for equitable relief that do not treat interactive computer service providers as publishers are permissible.

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[2] *See* Final Judgment and Verdict Form (July 2, 2013 – Case No. 12-001873 (07) in the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida).

The Petitioners' claim for injunctive relief, however, was dismissed because Florida courts have erroneously held that Section 230 of the Communications Decency Act, 47 U.S.C. § 230, bars any action against interactive computer service providers, irrespective of whether the exclusive remedy requested is injunctive relief.

The decisions of the Florida courts have in essence condemned Petitioners – and all the victims of libelous postings published in the internet – to perpetual embarrassment and humiliation.

This Court should grant certiorari to resolve this conflict and restore the right to remove libelous postings from the internet in Florida and in the Fourth District Court of Appeal of Florida.

I. Section 230 does not preempt actions for injunctive relief.

Nothing in the text of Section 230 of the Communications Decency Act prohibits an action for injunctive relief seeking the removal of statements that have been found to be defamatory or libelous.

The preemption language of Section 230 is found in sub-section 230(e)(3) and reads as follows:

> 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.

When read in its entirety, it is clear that, far from creating a blanket federal immunity for "any action," Section 230 simply preempts those actions that are inconsistent with its mandate. Therefore, the seminal question in this case is whether a claim for injunctive relief seeking the removal of statements found to be libelous is inconsistent with the Communications Decency Act. The answer to this question is clearly "no."

Florida courts have relied on Section 230(c)(1) to create a conflict between Section 230 and an action for injunctive relief. But this is an artificial conflict that is simply not supported by the statutory language.

Sub-section 230(c)(1) states in relevant part that interactive computer service providers should not be treated as the "publisher" of content provided by other parties. Specifically, Section 230(c)(1) states that:

> 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.

While this provision preempts actions that seek to hold interactive computer service providers liable for the act of publishing the content of third parties, it has no effect on actions for injunctive relief seeking the removal of libelous postings. In such actions, the

interactive computer service provider is being sued not for posting the content of the third-party, but for failing to remove such content. That critical distinction has been recognized by the Ninth and the Seventh Circuits and several federal courts that have allowed equitable actions based on conduct collateral to the publishing of third-party content.

In *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096 (9th Cir. 2009), *as amended* (Sept. 28, 2009), for example, the Ninth Circuit held that Section 230(c)(1) does not bar equitable claims based on conduct collateral to the publishing of third-party content. In *Barnes*, the plaintiff sued Yahoo – an interactive computer service provider – for failing to remove offensive postings uploaded by her ex-boyfriend. *Id*. at 1098-99. The complaint pled a claim for promissory estoppel, which alleged that Yahoo had promised to the plaintiff that it would remove the offensive postings and had failed to do so, and a claim for negligence. *Id*. The trial court dismissed both claims as preempted under Section 230(c)(1). *Id*. The trial court reasoned that both claims treated Yahoo as the publisher of the offensive postings. *Id*.

The Ninth Circuit affirmed the dismissal of the negligence claim but held that the equitable claim for promissory estoppel was not preempted. *Id.* at 1105-09. The Ninth Circuit reasoned that Section 230(c)(1) is not a blanket preemptive clause. *Id*. Instead, this section "only ensures that in certain cases an internet service provider will not be 'treated' as the 'publisher or speaker' of third-party content for the purposes of

another cause of action." *Id.* at 1101 (footnote omitted). Whether a claim is preempted by Section 230(c)(1), the court reasoned, depends on whether the cause of action *"inherently requires the court to treat the defendant as the 'publisher or speaker' of content provided by another. To put it another way, courts must ask whether the duty that the plaintiff alleges the defendant violated derives from the defendant's status or conduct as a 'publisher or speaker.'"* *Id.* at 1102 (emphasis added).

The Ninth Circuit then turned to the elements of the two causes of action alleged by the plaintiff. The court agreed that the negligence claim clearly treated Yahoo as the publisher of the statement:

> In other words, the duty that [Plaintiff] claims Yahoo violated derives from Yahoo's conduct as a publisher – the steps it allegedly took, but later supposedly abandoned, to de-publish the offensive profiles. It is because such conduct is *publishing conduct* that we have insisted that section 230 protects from liability 'any activity that can be boiled down to deciding whether to exclude material that third parties seek to post online.'

Id. at 1103 (emphasis in original) (citation omitted).

The court then contrasted the elements of the negligence claim to the elements of the claim for promissory estoppel. *Id.* at 1106-08. The court noted that the claim for promissory estoppel was not based on a duty arising out of Yahoo's role as the publisher

or disseminator of the offensive statements. *Id.* at 1107. Instead, the claim for promissory estoppel was based on an obligation arising out of Yahoo's role as the maker of the promise to remove the offensive material. *Id.* The court acknowledged that the promise was related to the removal of the material but, reiterating that Section 230(c)(1) does not provide blanket immunity, the court concluded that the claim that Yahoo did not keep its promise did not derive from the conduct of Yahoo as a publisher:

> How does this analysis differ from our discussion of liability for the tort of negligent undertaking? After all, even if Yahoo did make a promise, it promised to take down third-party content from its website, which is quintessential publisher conduct, just as what Yahoo allegedly undertook to do consisted in publishing activity. The difference is that the various torts we referred to above each derive liability from behavior that is identical to publishing or speaking: publishing defamatory material; publishing material that inflicts emotional distress; or indeed attempting to de-publish hurtful material but doing it badly . . . [p]romising is different because it is not synonymous with the performance of the action promised . . . [the act of promising] generates a legal duty distinct from the conduct at hand[.]

Id. (internal citation omitted).

In *City of Chicago, Ill. v. StubHub!, Inc.*, the Seventh Circuit reached the same conclusion as the

Ninth Circuit and held that Section 230(c)(1) only preempts claims that seek to hold an interactive computer service provider liable for its role as the publisher of third-party content. *See City of Chicago, Ill. v. StubHub!, Inc.*, 624 F.3d 363, 366 (7th Cir. 2010). Rather than creating an absolute immunity for interactive computer service providers, the Seventh Circuit explained, Section 230(c)(1) "limits who may be called the publisher of information that appears online. That might matter to liability for defamation, obscenity, or copyright infringement." *Id*. But, Section 230(c)(1) does not have any effect on actions that do not seek to hold the interactive computer service provider liable for third-party content. *Id*.

Consistent with this reasoning, several district courts have held that claims for injunctive and declaratory relief are not preempted by Section 230. *See, e.g., Doe v. Franco Productions*, No. 99 C 7885, 2000 WL 816779 (N.D. Ill. Jun. 22, 2000), *aff'd sub nom. Doe v. GTE Corp.*, 347 F.3d 655 (7th Cir. 2003); *Mainstream Loudon v. Bd. of Trustees of Loudon County Library*, 2 F. Supp. 2d 783, 790 (E.D. Va. 1998) ("[D]efendants cite no authority to suggest that the 'tort-based' immunity to 'civil liability' described by § 230 would bar the instant action, which is for declaratory and injunctive relief.").

The claim for injunctive relief asserted by the Petitioners in this action does not treat Respondent as a publisher. Petitioners are not seeking to hold Respondent liable for a duty that arises out of its role

as the publisher of the statements posted by Mr. Hawley – the third-party poster. Indeed, Petitioners have not sued Respondents for monetary damages. Instead, Petitioners seek, as their only remedy, a permanent injunction ordering the removal of statements that have been found to be libelous by a jury. Thus, this claim is based on Petitioner's refusal to remove the libelous statements, not on the initial publishing of the statements.

An analysis of the elements of the claims asserted by the Petitioners confirms this conclusion. Under Florida law, a claim for a permanent injunction requires proof of: (1) a clear legal right, (2) an inadequate remedy at law, and (3) that irreparable harm will arise absent injunctive relief. *See Liberty Counsel v. Fla. Bar Bd. of Governors*, 12 So. 3d 183, 186 n.7 (Fla. 2009) (citing *K.W. Brown & Co. v. McCutchen*, 819 So. 2d 977, 979 (Fla. 4th DCA 2002)). None of these elements require the court to "treat" Petitioners as a "publisher." The clear legal right at issue here is the right to have statements that have been found libelous expunged from the internet, not the right to be free from the publication or posting of these statements.

As such, Petitioners' claim for injunctive relief would not have been dismissed in the Ninth or the Seventh Circuits.

II. Florida courts have erroneously construed Section 230 to bar any action against interactive computer service providers.

Florida courts have improperly expanded the protections of Section 230 of the Communications Decency Act and have held that Section 230 grants interactive computer service providers a blanket immunity. That interpretation is erroneous.

In the case at issue, the Fourth District Court of Appeal, relying on Section 230(e)(3), concluded that "[a]n action to force a website to remove content on the sole basis that the content is defamatory is necessarily treating the website as a publisher, and is therefore inconsistent with section 230." (App. 10) (footnote omitted).

The Fourth District Court of Appeal cited and summarized the decisions of other courts that have similarly construed the preemptive scope of Section 230(e)(3) as follows:

> *Ben Ezra, Weinstein, & Co. v. Am. Online Inc.,* 206 F.3d 980, 983-86 (10th Cir.2000) (holding that section 230 immunized a computer service provider from a suit for damages and injunctive relief); *Noah v. AOL Time Warner, Inc.,* 261 F.Supp.2d 532, 540 (E.D.Va.2003) ("Indeed, given that the purpose of § 230 is to shield service providers from legal responsibility for the statements of third parties, § 230 should not be read to permit claims that request only injunctive relief."); *Kathleen R. v. City of Livermore,* 87

> Cal.App.4th 684, 104 Cal.Rptr.2d 772 (Cal.Ct.App.2001) (section 230 barred all the plaintiff's state law claims, including those for injunctive relief, arising out of a city library's failure to restrict her minor son's access to sexually explicit Internet materials); *Smith v. Intercosmos Media Grp., Inc.,* 2002 WL 31844907, at *5 (E.D.La. Dec. 17, 2002) (concluding that section 230 provides immunity from claims for injunctive relief).

(App. 8-9).

But these cases ignore that Section 230(e)(3) expressly provides that "nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section." This language is inconsistent with the notion that Section 230 preempts all state law causes of actions.

When Section 230(c)(1) is read *in pari materia* with Section 230(e)(3), the notion that interactive computer service providers are granted absolute immunity crumbles for lack of support.

Indeed, the title of Section 230(c) is "Protection for 'Good Samaritan' blocking and screening of offensive material," which as several courts have noted, this title is inconsistent with the argument that Section 230(c) was created to grant interactive computer service providers blanket immunity to post offensive material. *See Doe v. GTE Corp.*, 347 F.3d 655, 660 (7th Cir. 2003).

III. This case is ideal for settling the preemptive scope of Section 230.

This case presents the ideal opportunity for the resolution of the judicial dispute as to the scope of the preemption provision of Section 230.

In this case, there is no dispute that the postings at issue were libelous. Indeed, on July 2, 2013, a jury found that the statements posted by Mr. Hawley on Investorshub's site were false and had caused Mr. Lagan $750,000.00 in pain and suffering damages. As such, the sole basis for the dismissal of Petitioners' claim was the wrongful construction of Section 230.

Unlike other cases where the court has to make a factual determination about whether the postings are libelous, no such determination is needed here. This case raises a pure legal issue of whether Section 230 of the Communications Decency Act preempts actions for injunctive relief.

The resolution of this conflict is long overdue. This Court should take this opportunity to restore uniformity in such an important area of internet law and relieve the pain of parties who have been condemned to be subjected to perpetual libel based on an erroneous interpretation of Section 230 of the Communications Decency Act.

CONCLUSION

Congress never intended to condemn the victims of internet libel to a sentence of perpetual humiliation and public embarrassment. Nor did Congress intend to establish in the Communications Decency Act an inalienable right for interactive computer service providers to knowingly and willingly maintain libelous and offensive postings in their internet sites without any legal consequence.

The time has come for this Court to correct the wrongful interpretation of Section 230 of the Communications Decency Act which has now expanded through several jurisdictions.

Respectfully submitted,

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**Counsel of Record*

Supreme Court of Florida

FRIDAY, APRIL 10, 2015

CASE NO.: SC15-1
Lower Tribunal No(s).:
4D13-3469;
062013CA004498AXXXCE

MEDYTOX SOLUTIONS, INC., ET AL.	vs.	INVESTORSHUB.COM, INC.
Petitioner(s)		Respondent(s)

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution, and the Court having determined that it should decline to accept jurisdiction, it is ordered that the petition for review is denied.

No motion for rehearing will be entertained by the Court. *See* Fla. R. App. P. 9.330(d)(2).

LABARGA, C.J., and PARIENTE, LEWIS, QUINCE, and PERRY, JJ., concur.

A True Copy
Test:

/s/ [Illegible] [SEAL]
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Clerk, Supreme Court

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DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2014

MEDYTOX SOLUTIONS, INC., SEAMUS LAGAN and **WILLIAM G. FORHAN,**
Appellants,

v.

INVESTORSHUB.COM, INC.,
Appellee.

No. 4D13-3469

[December 3, 2014]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; William W. Haury, Judge; L.T. Case No. 13004498(13).

Michael C. Marsh, Francisco A. Rodriguez and Nairn S. Surgeon of AKERMAN, LLP, Miami, for appellants.

Deanna K. Shullman and Allison S. Lovelady of Thomas & Locicero PL, Fort Lauderdale, for appellee.

TAYLOR, J.

This case concerns efforts by the plaintiffs to force an interactive computer service provider to remove statements from its website made by a third party that allegedly defamed the plaintiffs. We affirm the trial court's dismissal of the complaint for injunctive relief, because the website operator enjoys immunity from such relief under section 230 of the Communications Decency Act, 47 U.S.C. § 230.

The defendant, InvestorsHub.com, operates a website that serves as a forum for investors to discuss financial markets and information about public companies. According to the operative complaint, the website hosts nearly 85 million individual postings on almost 22,000 separate message boards, with new postings added at a rate of 40,000 new messages on each trading day.

In 2012, Christopher Hawley, using the screen name "Seamus outer," posted several allegedly defamatory statements about the plaintiffs, Medytox Solutions, Inc., Seamus Lagan, and William Forhan, on the InvestorsHub website. In a separate action, Medytox Solutions and Mr. Lagan filed a third-party complaint against Hawley for defamation and tortious interference. The plaintiffs' counsel contacted the defendant and its counsel, seeking to have the postings removed from the website. The defendant removed two of Hawley's posts, but declined to remove the remaining two posts.

In February 2013, the plaintiffs brought an action for declaratory relief against the defendant for its failure to remove the allegedly defamatory postings from its website The plaintiffs later filed an amended complaint, adding a separate count for injunctive relief.

The defendant moved to dismiss the amended complaint on the grounds that it was immune as an Internet service provider under the Communications Decency Act, and that equity would not enjoin a libel

under Florida law. After a hearing, the trial court entered an order granting the defendant's motion to dismiss with prejudice, relying on case law from the Florida Supreme Court and the Third District. The trial court later entered a final order of dismissal.

On appeal, the plaintiffs argue that the Communications Decency Act does not preempt an equitable action under Florida law for the removal of libelous postings. They contend that the preemption recognized by the Florida Supreme Court is limited to tort-based claims seeking monetary liability, and that nothing in the Communications Decency Act suggests that Congress intended to preempt equitable claims for injunctive relief.

The defendant responds that the immunity afforded by section 230 of the Communications Decency Act broadly extends to "any action" against a provider of an interactive computer service if the action is premised upon the content of another. The defendant maintains that section 230 immunity applies with equal force in injunction matters as it does in actions seeking money damages.

"A trial court's ruling on a motion to dismiss based on a question of law is subject to de novo review." *Execu-Tech Bus. Sys., Inc. v. New Oji Paper Co.,* 752 So. 2d 582, 584 (Fla. 2000).

Section 230 of the Communications Decency Act states that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another

information content provider." 47 U.S.C. § 230(c)(1). Section 230 further states that "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." 47 U.S.C. § 230(e)(3). Certain causes of action, however, are not barred by section 230, including actions based on federal criminal statutes, intellectual property law, and "any State law that is consistent with this section." 47 U.S.C. § 230(e)(1)-(3).

The plain language of 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 v. Am. Online, Inc.,* 129 F.3d 327, 330 (4th Cir. 1997). Section 230 "precludes courts from entertaining claims that would place a computer service provider in a publisher's role." *Id.* Consequently, "lawsuits seeking to hold a service provider liable for its exercise of a publisher's traditional editorial functions – such as deciding whether to publish, withdraw, postpone or alter content – are barred." *Id.*

In enacting section 230, "Congress wanted to encourage the unfettered and unregulated development of free speech on the Internet, and to promote the development of e-commerce." *Batzel v. Smith,* 333 F.3d 1018, 1027 (9th Cir. 2003). Section 230 was therefore designed, in part, "to maintain the robust nature of Internet communication and, accordingly, to keep government interference in the medium to a minimum." *Zeran,* 129 F.3d at 330.

Another specific purpose of section 230 was to overrule the decision in *Stratton Oakmont, Inc. v. Prodigy Services Co.,* 23 Media L. Rep. 1794, 1995 WL 323710 (N.Y. Sup. Ct. 1995), which held that an Internet Service Provider could be liable for defamatory statements if it exercised sufficient editorial control over its bulletin boards so as to render it a publisher. *See* S. REP. No. 104-230, at 194 (1996) (Conf. Rep.). As the Fourth Circuit explained:

> Congress enacted § 230 to remove the disincentives to selfregulation [sic] created by the *Stratton Oakmont* decision. Under that court's holding, computer service providers who regulated the dissemination of offensive material on their services risked subjecting themselves to liability, because such regulation cast the service provider in the role of a publisher.

Zeran, 129 F.3d at 331.

In *Doe v. America Online, Inc.,* 783 So. 2d 1010, 1013-17 (Fla. 2001), the Florida Supreme Court held that section 230 preempts Florida law as to causes of action based in negligence against an Internet Service Provider as a distributor of information. Our supreme court found the *Zeran* court's reasoning persuasive, adopting the Fourth Circuit's analysis of the history of the Communications Decency Act as a basis for its own reading of section 230. *Id.* at 1013-15. Accordingly, the court explained: "We specifically concur that section 230 expressly bars 'any actions'

and we are compelled to give the language of this preemptive law its plain meaning." *Id.* at 1018.

Although *Doe v. America Online* does not specifically address the availability of injunctive relief, the Third District recently confronted this issue in *Giordano v. Romeo,* 76 So. 3d 1100 (Fla. 3d DCA 2011). In *Giordano,* a user of the website ripoffreport.com posted false and defamatory statements about the plaintiffs. The plaintiffs brought four defamation-based claims against the user, and one claim seeking injunctive relief against the website's operator, Xcentric. Although the plaintiffs initially obtained an injunction prohibiting the posting from remaining on the website, the trial court ultimately entered an order dissolving the injunction and dismissing Xcentric from the suit.

The Third District affirmed the dismissal, concluding that "Xcentric enjoys complete immunity from any action brought against it as a result of the postings of third party users of its website." *Id.* at 1102. Explaining that the Florida Supreme Court unambiguously adopted the *Zeran* court's interpretation of the Communications Decency Act, the Third District reasoned that "section 230 of the CDA '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." *Id.* (quoting *Zeran,* 129 F.3d at 330).

Moreover, other courts have found that the immunity afforded by section 230 encompasses claims

for injunctive relief. *See Ben Ezra, Weinstein, & Co. v. Am. Online Inc.,* 206 F.3d 980, 983-86 (10th Cir. 2000) (holding that section 230 immunized a computer service provider from a suit for damages and injunctive relief); *Noah v. AOL Time Warner, Inc.,* 261 F. Supp. 2d 532, 540 (E.D. Va. 2003) ("Indeed, given that the purpose of § 230 is to shield service providers from legal responsibility for the statements of third parties, § 230 should not be read to permit claims that request only injunctive relief."); *Kathleen R. v. City of Livermore,* 87 Cal.App.4th 684, 104 Cal.Rptr.2d 772 (Cal. Ct. App. 2001) (section 230 barred all the plaintiff's state law claims, including those for injunctive relief, arising out of a city library's failure to restrict her minor son's access to sexually explicit Internet materials); *Smith v. Intercosmos Media Grp., Inc.,* 2002 WL 31844907, at *5 (E.D. La. Dec. 17, 2002) (concluding that section 230 provides immunity from claims for injunctive relief).

We affirm the trial court's dismissal of the plaintiffs' claim for injunctive relief, and in doing so, follow the Third District's reasoning in *Giordano.* The Third District's conclusion is consistent with the language and purpose of the Communications Decency Act. Section 230 states in broad terms that "[n]o cause of action may be brought *and* no liability may be imposed under any State or local law that is inconsistent with this section." 47 U.S.C. § 230(e)(3) (emphasis added). The statute precludes not only "liability," but also causes of action for other forms of relief based upon any State or local law inconsistent

with section 230. An action to force a website to remove content on the sole basis that the content is defamatory is necessarily treating the website as a publisher, and is therefore inconsistent with section 230.[1] Thus, by the plain language of the statute, the immunity afforded by section 230 encompasses the claims for declaratory and injunctive relief sought in this case.

Affirmed.

GROSS and GERBER, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

[1] By contrast, where an action against a provider of an interactive computer service does not derive from the provider's status as a publisher or speaker, section 230 does not preclude the action. *See Barnes v. Yahoo!, Inc.,* 570 F.3d 1096 (9th Cir. 2009) (section 230 barred negligence claim against the internet service provider (ISP), but did not bar a promissory estoppel claim based on the ISP's promise to remove from its website nude photographs of the plaintiff and other indecent materials posted by the plaintiff's ex-boyfriend; the asserted liability for promissory estoppel was not based upon the ISP's status as a publisher, but rather from its status as a promisor who displayed a manifest intention to be legally obligated to do something).

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT IN
AND FOR BROWARD COUNTY, FLORIDA

MEDYTOX SOLUTIONS, INC., a Nevada corporation, SEAMUS LAGAN, individually, and WILLIAM G. FORHAN, individually,

Plaintiffs,

Case No. 13-04498 (Div. 13)

vs.

INVESTORSHUB.COM, INC., a Florida corporation,

Defendant. /

ORDER ON DEFENDANT INVESTORSHUB.COM, INC.'S MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

This matter came before the Court on August 14, 2013 upon Defendant Investorshub.com, Inc.'s Motion to Dismiss the Amended Complaint by Plaintiffs, Medytox Solutions, Inc., Seamus Lagan and William G. Forhan. The Court, having heard counsel, for the reasons stated on the record, and having otherwise considered the premises, it is hereby

ORDERED AND ADJUDGED: Defendant's Motion to Dismiss is granted with prejudice based upon Doe v. America Online, Inc. and Giordano v. Romeo.

DONE AND ORDERED in Broward County, Florida, this 14th day of August, 2013.

Hon. William W. Haury, Jr.
Circuit Court Judge

Copies to:

Francisco A. Rodriguez, Esq., Plaintiffs' Counsel
Deanna K. Shullman, Esq., Defendant's Counsel