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July 21, 2016

Hon. Chief Justice Tani Cantil-Sakauye and
Hon. Associate Justices of the California Supreme Court
350 McAllister St.
San Francisco CA 94102-4783

Re: Hassell v. Bird, 247 Cal. App. 4th 1336 (Court of Appeal Case No. A143233)

Dear Hon. Justices,

The R Street Institute, a Washington, D.C.-based think tank with offices in Sacramento, California, respectfully requests the California Supreme Court grant review in the matter of *Hassell v. Bird*. The institute is a nonprofit, nonpartisan, public-policy research organization that engages in policy research and outreach to promote free markets and limited, effective government. It is highly involved in issues related to free speech and the internet economy.

We believe the Court of Appeal's published opinion creates an end-run around constitutional due process, eviscerates the First Amendment rights of publishers to distribute third-party speech and creates a loophole to the immunity granted to online publishers by Section 230 of the federal Communications Decency Act.

The case involves a dispute between attorney Dawn Hassell and her former client Ava Bird, who allegedly posted negative reviews on the website Yelp under a pseudonym. After Bird defaulted, the court awarded Hassell \$500,000 in damages and demanded she "remove each and every defamatory review published or caused to be published by her about plaintiffs."

The case goes far beyond a simple defamation decision and poses a broad threat to internet freedom and the web economy. That's because the defendant obtained a court order demanding that Yelp, which was not a party to the lawsuit and was never given a notice of the judgment hearing, remove reviews from two user accounts and prevent future comments from those accounts. It found that Yelp was not denied due-process rights because the judgment was directed against Bird, rather than against this internet company. This creates a Catch-22. The company is compelled to action because of a court decision in which it had no right to state its case.

The decision does an end-run around constitutional due process because Yelp was forced to remove statements from its website without having the chance to come before the court. Indeed, the company is unlikely even to know that one of its users is involved in a defamation case. The decision deems Yelp

"an administrator of a forum," rather than a publisher. In doing so, it eviscerates the company's free-speech rights to distribute communications as it chooses. The decision undermines the federal Communications Decency Act's Section 230 in that it holds Yelp responsible for third-party content posted on its site, thus dampening online speech.

If the ruling stands, online publishers will find themselves dragged into court and subject to contempt sanctions over third-party disputes in which they have no standing. It also invites abuse. As *Technology & Marketing Law* blogger Eric Goldman explained in a June article, the case provides a devious template for plaintiffs to scrub internet content they don't like by gaining a default judgment (perhaps against an out-of-state user), then using "the coercive effect of contempt to force the UGC (user-generated content) site to remove the content so long as the UGC site is under California's jurisdictional reach – which most UGC sites are."

Because this one local defamation case could have such widespread nationwide impact on the way that internet companies handle third-party comments, we respectfully ask the court to review the matter.

Sincerely,

Steven Greenhut
Western Region Director
R Street Institute

Cameron Smith
General Counsel
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