Nos. 18-55367, 18-55805, 18-55806

IN THE

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

HOMEAWAY.COM, INC. AND AIRBNB, INC.,
Plaintiffs-Appellants-Petitioners,

v.

CITY OF SANTA MONICA,
Defendant-Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA
OTIS D. WRIGHT II, DISTRICT JUDGE • CASE NOS. 2:16-CV-6641, 2:16-CV-6645

AMICUS CURIAE BRIEF OF CALIFORNIA APARTMENT ASSOCIATION, NATIONAL MULTIFAMILY HOUSING COUNCIL, NATIONAL APARTMENT ASSOCIATION, APARTMENT INVESTMENT AND MANAGEMENT COMPANY, AVALONBAY COMMUNITIES, INC., AND COMMUNITY ASSOCIATIONS INSTITUTE IN OPPOSITION TO PETITION FOR REHEARING AND REHEARING EN BANC

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, disclosure is hereby made by amici curiae of the following corporate interests:

California Apartment Association:

a. Parent companies of the corporation or entity: None.

b. Any publicly held company that owns ten percent or more of the corporation or entity: None.

National Multifamily Housing Council:

a. Parent companies of the corporation or entity: None.

b. Any publicly held company that owns ten percent or more of the corporation or entity: None.

National Apartment Association:

a. Parent companies of the corporation or entity: None.

b. Any publicly held company that owns ten percent or more of the corporation or entity: None.

Apartment Investment and Management Company:

a. Parent companies of the corporation or entity: None.

b. Any publicly held company that owns ten percent or more of the corporation or entity: The Vanguard Group, Inc. and Cohen & Steers Capital Management Inc.

AvalonBay Communities, Inc.:

a. Parent companies of the corporation or entity: None.

b. Any publicly held company that owns ten percent or more of the corporation or entity: The Vanguard Group, Inc. and BlackRock, Inc.

Community Associations Institute:

a. Parent companies of the corporation or entity: None.

b. Any publicly held company that owns ten percent or more of the corporation or entity: None.

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INTEREST OF AMICI CURIAE[1]

Amici represent entities and individuals who, collectively, have bought, built, and managed housing for millions of American families. Amici write to share their concerns about the consequences that reversal of the Panel decision would impose on the nation's residential

[1] All parties have consented to the filing of this brief. No party or party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund the preparation or submission of this brief; and no other person except amici or their counsel, contributed money to fund the preparation or submission of this brief.

communities. While Amici do not necessarily endorse Santa Monica's ordinance, they support the City's right to regulate short-term rentals.

Amici ask this Court to let the Panel's decision stand. That decision enables communities to choose whether, and under what parameters, to permit residents to engage in short-term rentals, and to have a meaningful opportunity to enforce that decision. A number of Amici's members have chosen to take part in the short-term rental market; others have chosen not to. Amici fully support a community's right to allow short-term rentals, as long as they comply with existing laws. But Amici also believe owners must retain the ability to control how and when strangers come onto their properties or into their neighborhoods. The Panel's decision is consistent with this principle of owners' choice, which lies at the heart of fundamental property rights.

The California Apartment Association ("CAA") is the largest statewide rental housing trade association in the country, representing over 50,000 single family and multi-family apartment owners and property managers who are responsible for over two million affordable and market-rate rental units throughout California. CAA represents its members in legislative, regulatory, judicial, and other state and local forums. In that

representation, CAA's mission is to promote fairness and equality in the rental of residential housing and to promote and aid in the availability of high-quality rental housing in California.

The National Multifamily Housing Council ("NMHC") is a national nonprofit association that represents the leadership of the $1.3 trillion per year apartment industry. NMHC's members engage in all aspects of the apartment industry, including ownership, development, management, and finance to provide homes for the thirty-nine million Americans who live in apartments. NMHC advocates on behalf of rental housing and promotes the desirability of apartment living.

The National Apartment Association ("NAA") serves as the leading voice and preeminent resource of the rental housing industry through advocacy, education, and collaboration. As a federation of nearly 160 affiliates, NAA encompasses over 82,000 members that represent more than 9.75 million apartment homes globally.

Apartment Investment and Management Company ("Aimco") is a real estate investment trust that owns apartment communities throughout the United States. Aimco is dedicated to ensuring every aspect of its communities is run professionally with respect for its residents' happiness

and safety. Short-term rentals have caused numerous disturbances in Aimco's communities and generated many complaints from its full-time residents. To address those concerns, Aimco's leases prohibit residents from renting out apartments to third parties. Aimco subsidiaries sued Airbnb in the Central District of California and in the Circuit Court of the Eleventh Judicial District of Florida for, among other things, intentionally interfering with their leases and trespass by brokering prohibited short-term rentals; the parties settled those lawsuits in 2018.

AvalonBay Communities, Inc. owns and manages apartment communities throughout the United States. AvalonBay is committed to providing its customers with comfortable, convenient, and distinctive living experiences. As of January 31, 2019, AvalonBay owned approximately 78,000 apartment homes. AvalonBay has enforced prohibitions on short-term rentals in many of its communities, but unwanted rentals have persisted. Rentals brokered by Petitioners have led to AvalonBay being civilly and criminally cited for not complying with certain safety regulations applicable to transient occupancy buildings.

Community Associations Institute ("CAI") represents the interests of more than seventy million homeowners who live in more than 385,000

community associations in the United States. Its members include homeowners, board members, association managers, community management firms, and other professionals who serve community associations. Short-term rentals often violate covenants governing community associations and cause adverse effects. CAI supports the ability of community associations to self-govern, allowing rules about short-term rentals to be established through a well-documented and homeowner-engaging process that suits the majority of homeowners.

SUMMARY OF THE ARGUMENT

Short-term rentals bring large numbers of travelers into places not designed to accommodate them. Cities, multifamily housing owners, and community associations, as well as their residents, have an interest in setting reasonable short-term rental policies to promote the overall well-being of their communities. Petitioners Airbnb and HomeAway.com seek a regime where they can continue extracting massive profits from their booking services while disclaiming any responsibility for the significant costs and burdens their services impose on the greater community. They claim section 230 of the Communications Decency Act ("CDA") immunizes

them from all liability for brokering short-term rentals, even if local regulations, leases, or agreements expressly prohibit it.

Petitioners are wrong. The CDA was enacted to encourage "Good Samaritan[s]" to address the undesirable third-party content on their websites, 47 U.S.C. § 230(c) (2012), not to give an online business "an all purpose get-out-of-jail-free card," *Doe v. Internet Brands, Inc.*, 824 F.3d 846, 853 (9th Cir. 2016), for all aspects of their business models. The CDA by its terms preempts *only* those claims that "treat" the website operator as the publisher or speaker of information provided by another, § 230(c)(1), not all claims where third-party content is a but-for cause of harm or that might spur a website operator to monitor or remove third-party content, *see Internet Brands*, 824 F.3d at 853.

This Court has recognized the limited scope of the CDA, cautioning that it "must be careful not to exceed the scope of the immunity provided by Congress and thus give online businesses an unfair advantage over their real-world counterparts." *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1164 n.15 (9th Cir. 2008) (en banc). Claims are not preempted unless they "*inherently require*[ ] the court to *treat* the defendant as the 'publisher or speaker' of content

provided by another." *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1102 (9th Cir. 2009) (emphases added).

Petitioners contract to broker short-term rental transactions that are regulated by Santa Monica's ordinance, and provide travel support, guarantees, payment systems, and other related services, which are integral to the transaction's success. For these services, Petitioners collect substantial fees. The Panel properly found that these are not the activities of a publisher, so regulating them is not preempted by the CDA.

ARGUMENT

I. The panel correctly held the CDA does not preempt Santa Monica's ordinance.

A. The CDA bars only laws and claims that inherently treat a website as the publisher of third-party information.

Airbnb and HomeAway argue Santa Monica's ordinance is preempted by 47 U.S.C. § 230(c)(1), which provides that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." Section 230(e)(3) provides 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." This Court has consistently interpreted

section 230 in accordance with its plain meaning, ensuring that online businesses do not get "an unfair advantage over their real-world counterparts." *Roommates.com,* 521 F.3d at 1164 n.15. "Congress could have written the statute more broadly, but it did not." *Internet Brands*, 824 F.3d at 853.

As interpreted by this Court, section 230(c)(1) "only" protects from liability (1) an interactive computer service provider (2) "whom a plaintiff seeks to treat, under a state law . . . , as a publisher or speaker (3) of information provided by another information content provider." *Barnes*, 570 F.3d at 1100-01 (footnote omitted). What matters is whether the regulation or claim "inherently requires the court to treat the defendant as the 'publisher or speaker'" of another's content. *Id.* at 1102. "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.*

In *Barnes*, this Court explained that even where harm originates from third-party content posted on a website, only those claims that treat the operator as a publisher or speaker of that content are preempted. *Id.* at 1107. There, Barnes's ex-boyfriend posted false and inappropriate

profiles of her on a Yahoo website, leading to harassment from strangers. *Id.* at 1098. After Barnes contacted Yahoo, Yahoo promised to remove the unauthorized profiles. *Id.* at 1099. When it failed to do so, Barnes brought claims for negligent undertaking and promissory estoppel. *Id.*

Barnes held the claim based on the failure to remove the indecent profiles treated Yahoo as a publisher because "removing content is something publishers do." *Id.* at 1103. But this Court came out differently on promissory estoppel. That claim was not barred because Barnes sought to hold Yahoo liable for nonpublishing activity "as the counter-party to a contract," even though Yahoo's promise "happen[ed] to be removal of material from publication." *Id.* at 1107.

In *Internet Brands*, this Court again confirmed "the CDA does not provide a general immunity against all claims derived from third-party content." 824 F.3d at 853 (citing *Barnes*, 570 F.3d at 1100). In holding that a claim based on a website's failure to warn its users about a known sexual predator was not preempted, this Court refused to "stretch the CDA beyond its narrow language and its purpose." *Id.* Even though hosting third-party content was a "'but-for' cause" of the plaintiff's injuries, her claims were not barred because they did not seek to hold the website liable

for publishing user content. *Id.* "[B]ut-for" causation cannot be the test, because "[p]ublishing activity is a but-for cause of just about everything [a website operator] is involved in." *Id.* So too with Petitioners.

In *Airbnb, Inc. v. City & County of San Francisco*, 217 F. Supp. 3d 1066, 1069 (N.D. Cal. 2016), like here, a city ordinance made it unlawful "to provide booking services for unregistered rental units." Even though the rental listings on Airbnb and HomeAway's websites originated with third parties, the fact that the ordinance targeted Airbnb's provision of "booking services"—i.e., "reservation and/or payment service[s]" that "facilitate[ ] a short-term rental transaction"—meant the ordinance regulated the websites' "own conduct as Booking Service providers," not their actions as publishers or speakers of information provided by others. *Id.* at 1069, 1071, 1074. Petitioners might "voluntarily choose to screen listings" in response to the ordinance, but that did not mean the ordinance imposed penalties for their publication activities. *Id.* at 1075.

B. The panel correctly held CDA preemption does not apply to the ordinance because liability arises from petitioners' nonpublishing booking services.

Emphasizing that liability under the ordinance "arises only from unlicensed bookings" and not from "the content of the bookings," the Panel

held that Santa Monica's ordinance was not expressly preempted. *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676, 684 (9th Cir. 2019). That conclusion is lock-step with this Court's precedent. The ordinance does not target Petitioners' publishing activities; it "prohibits processing transactions for unregistered properties."[2] *Id.* at 682. Entering into contracts to facilitate illegal short-term occupancies of properties is not the role of a publisher. *See Barnes*, 570 F.3d at 1107-09 (distinguishing nonpublishing acts, such as contracting, from the act of publishing). Nor is providing travel support, guarantees, payment systems, and other rental services. By its plain terms, the CDA does not preempt the ordinance or private causes of action based on the regulated conduct.

Nonetheless, Petitioners argue that the Panel "erred by refusing to give any legal significance to the Ordinance's overriding practical effect." (Pet. for Rehearing 8.) The Panel specifically considered and rejected this argument. *See HomeAway.com*, 918 F.3d at 682-83 (noting some impact on third-party content does not trigger CDA immunity and emphasizing

[2] Petitioners provide services far beyond marketing users' listings; they contract with travelers to facilitate their access to others' property and provide 24/7 travel support, guarantees and insurance coverage, and payment systems. *See generally* Airbnb, https://www.airbnb.com/ (last visited July 3, 2019); HomeAway, https://www.homeaway.com/ (last visited July 3, 2019).

Internet Brand's rejection of a but-for test). Although Petitioners insist that the "practical effect" of the ordinance "compel[s]" them "to remove third-party content" (Pet. for Rehearing 11), they do not argue content removal is the *only* avenue for compliance. Nor could they. Nothing in the ordinance fines them for allowing unregistered listings to remain on their websites. Petitioners would be fined for consummating unlawful rental transactions and providing services to facilitate those transactions. They are free to leave third-party content untouched in the process.

Even if Petitioners *choose* to review and remove third-party listings, that does not mean the ordinance "inherently requires" that Petitioners be "treat[ed]" as a publisher. *Barnes*, 570 F.3d at 1102. The ordinance treats Petitioners as providers of booking services (akin to a vacation rental broker) and holds them responsible for their own conduct in facilitating illegal rentals.

C. The Panel's decision is consistent with the weight of authority interpreting the CDA.

Contrary to Petitioners' assertion (Pet. for Rehearing 14-16), the Panel's decision does not conflict with CDA decisions either within or outside this circuit.

The promissory estoppel claim in *Barnes* may have required Yahoo to remove third-party content, but it was not preempted because the underlying duty was not publishing. 570 F.3d at 1107.

Just last week, the Third Circuit held negligence and strict liability claims against Amazon could proceed based on a product posted and shipped by a third-party vendor. *Oberdorf v. Amazon.com Inc.*, __ F.3d __, 2019 WL 2849153, at *11 (3d Cir. July 3, 2019). The court reasoned that Amazon's "involvement in transactions extends beyond a mere editorial function; it plays a large role in the actual sales process," including "receiving customer shipping information, processing customer payments, relaying funds and information to third-party vendors, and collecting the fees it charges." *Id.* Amazon could be liable for claims that "rely on Amazon's role as an actor in the sales process." *Id.* at *12.

In *City of Chicago v. StubHub!, Inc.*, 624 F.3d 363, 365-66 (7th Cir. 2010), the Seventh Circuit held the CDA did not preempt Chicago's ordinance requiring an online broker of third-party tickets to collect and remit taxes on tickets sold above face value. The court was not swayed by StubHub's argument that "[i]t would be extraordinarily difficult, if not impossible, for StubHub to look behind the sale prices of tickets posted by

persons using its site to determine whether (and by how much) those prices have been marked up." Brief of Defendant-Appellee StubHub!, Inc., *Chicago*, 624 F.3d 363 (No. 09-3432), 2010 WL 3950593, at *46. The ordinance was not preempted because the tax "does not depend on who 'publishes' any information or is a 'speaker.'" *Chicago*, 624 F.3d at 366.

Cases throughout the country have similarly refused to immunize websites for laws and claims that do not inherently treat the website as a publisher. *E.g.*, *Airbnb, Inc. v. City of Boston*, __ F. Supp. 3d __, 2019 WL 1981043, at *5 (D. Mass. May 3, 2019) (holding no preemption "[b]ecause the Penalties provision is aimed at regulating Airbnb's own conduct, and not at punishing it for content provided by a third party"), *appeal filed*, No. 19-1561 (1st Cir. June 6, 2019); *Bay Parc Plaza Apartments, L.P. v. Airbnb, Inc.*, No. 2017-003624-CA-01, 2018 WL 3634014, at *4-5 (Fla. Cir. Ct. July 11, 2018) (holding that Airbnb may be held liable for its own affirmative, nonpublishing acts).[3]

[3] *See also, e.g.*, *McDonald v. LG Elecs. USA, Inc.*, 219 F. Supp. 3d 533, 535, 537-38 (D. Md. 2016); *Nunes v. Twitter, Inc.*, 194 F. Supp. 3d 959, 961 (N.D. Cal. 2016); *Lansing v. Sw. Airlines Co.*, 980 N.E.2d 630, 639-41 (Ill. App. Ct. 2012); *NPS LLC v. StubHub, Inc.*, No. 06-4874-BLS1, 2009 WL 995483, at *1-2, *6, *10, *13 (Mass. Dist. Ct. Jan. 26, 2009).

These cases show that even if the practical effect of the claim or law is that the website may remove or supplement third-party content, change the way an automated system responds to third-party content, or otherwise act in response to third-party content, claims that do not "inherently require[ ] the court to treat the defendant as the 'publisher or speaker' of content provided by another" are not barred by the CDA.[4] *Barnes*, 570 F.3d at 1102.

II. The Panel's decision is consistent with the CDA's purpose to encourage "good samaritans" to remove undesirable third-party content.

The Panel also held that enforcement of the ordinance was not precluded by obstacle preemption. *HomeAway.com*, 918 F.3d at 683-84. Emphasizing "Congress's aim to encourage self-monitoring of third-party content," the Panel rejected Petitioners' argument that the ordinance should not be enforced because it obstructed "the CDA's goal to 'preserve the vibrant and competitive free market that presently exists for the Internet.'" *Id.* (quoting 47 U.S.C. § 230(b)(2)). As the Panel explained, the

[4] Contrary to Petitioners' assertion, the Panel's decision does not conflict with *Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12 (1st Cir. 2016) and its progeny. In *Backpage*, the defendants were not sued for *brokering* the illegal escort transactions, such as by processing payments, taking a percentage, or providing guarantees and customer service. *Id.* at 15-16.

CDA does not "provide internet companies with a one-size-fits-all body of law" that gives them an unfair advantage over brick-and-mortar businesses. *Id.* at 683. The Panel was right. "[I]mposing any tort liability" on a platform "could be said to have a 'chilling effect' on the internet, if only because such liability would make operating an internet business marginally more expensive," but that does not mean the CDA declares a "general immunity from liability." *Internet Brands*, 824 F.3d at 852.

Although Petitioners attack the Panel's analysis as focusing too heavily on Congress's purpose of encouraging self-monitoring of third-party content (Pet. for Rehearing 16-17), that analysis is consistent with the CDA's text and legislative history. Section 230(c) is titled "Protection for 'Good Samaritan' blocking and screening of offensive material," and declares "[n]o provider or user of an interactive computer service shall be held liable" for efforts to self-regulate obscene or offensive material, or "be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1), (2).

Congress passed section 230 in direct response to *Stratton Oakmont, Inc. v. Prodigy Services Co.*, No. 31063194, 1995 WL 323710, at *5 (N.Y. Sup. Ct. May 24, 1995), which held a web service was liable for the

defamatory posts of its users if that service imposed content standards or other means of control. If providers could be liable for their imperfect efforts to control their users, they would be discouraged from self-regulating at all—thereby relegating the internet to a wild-west adults-only zone. *See* 141 Cong. Rec. H8469 (daily ed. Aug. 4, 1995) ("[T]he existing legal system provides a massive disincentive for the people who might best help us control the Internet to do so." (statement of Rep. Cox)). *Stratton Oakmont* thus ran counter to "the important federal policy of empowering parents" to protect their children from obscenity. H.R. Rep. No. 104-458, at 194 (1996) (Conf. Rep.), *reprinted in* 1996 U.S.C.C.A.N. 10, 208; *accord* S. Rep. No. 104-230, at 194 (1996).

The solution was a bipartisan bill drafted by Representatives Christopher Cox and Ronald Wyden, which ultimately became the CDA. *See Roommates.com,* 521 F.3d at 1163 n.12 (overruling *Stratton Oakmont* "seems to be the principal or perhaps the only purpose" of section 230). Representative Cox described the proposed law's narrow focus as Congress "want[ing] to encourage [web providers] to do everything possible for us, the customer, to help us control . . . what our children see" instead of the federal government's taking on that burden for itself. 141 Cong. Rec.

H8470. By protecting the efforts of self-censoring providers, Congress hoped to preserve decency on the internet without imposing a "Federal computer commission" that would assume direct control of the Internet. 141 Cong. Rec. H8471; *accord* 47 U.S.C. § 230(b)(2) (declaring policy goal to preserve "the vibrant and competitive free market" on the Internet). Of the eight legislators who spoke in favor of section 230, seven praised its goal of encouraging self-censorship to safeguard children; none spoke of the sweeping immunity Petitioners seek. *See* 141 Cong. Rec. H8469-72.

Indeed, nothing in the legislative history indicates it was intended to immunize nonpublishing acts. The conference report described the law's purpose as "protect[ing] [providers] from civil liability . . . for actions to restrict or enable restriction of access to objectionable online material." H.R. Rep. No. 104-458, at 194; *accord* S. Rep. No. 104-230, at 194. That understanding comports with the goal of overturning *Stratton Oakmont* by ensuring that those who tried to remove undesirable content and failed would have the same protections as those who never tried at all. 141 Cong. Rec. H8469-70 (statement of Rep. Cox).

In seeking to protect Good Samaritans from liability, Congress recognized that when websites have millions of users and generate

"thousands of pages of information every day," it would be unreasonable to expect them to enforce content standards if doing so would make them liable if an obscene or defamatory post slipped by. 141 Cong. Rec. H8471 (statement of Rep. Goodlatte). Congress sought to encourage providers to assume "the responsibility to edit out information that is . . . coming in to them." *Id.* Section 230 was aimed to "cure that problem." *Id.* The Panel's decision hews closely to this aim.

III. Petitioners' expansive reading would prohibit any regulation of their booking services, harming apartment and homeowner communities.

Petitioners seek an expansive reading of the CDA to immunize them from laws or claims anytime they self-servingly *choose* to respond by removing third-party content. Such an approach would radically expand the CDA and harm residential communities.

Just as Santa Monica is tasked with balancing the interests of various constituencies and promoting the overall welfare of its residents and visitors, Amici are charged with protecting the interests of their residents and providing the living environment they promised. Many multifamily housing owners, including Aimco and AvalonBay, have chosen to offer their prospective residents opportunities to live in communities of

residential apartments, not hotels for unvetted tourists. Those property owners have made the reasoned decision—within their rights—to forbid short-term rentals. Petitioners' booking services interfere with the owners' decisions on how best to manage their properties.

There are a number of reasons why many apartment owners and homeowner communities have made this decision, including that many residents do not want to live in a transient community and landlords or neighbors cannot vet or control travelers coming for vacation stays. Landlords have little ability to enforce reasonable community rules on anonymous vacationers who arrive, create a disturbance, and leave, only to be replaced by different anonymous vacationers the next day. The rentals actively encouraged and facilitated by Petitioners have required Aimco to hire extra security and install expensive technology to control access to some of its residential communities. And they have required AvalonBay to defend and settle civil and criminal citations for not complying with certain safety regulations applicable to transient occupancy buildings.

To be sure, some property owners authorize their residents to rent out their apartments for short-term stays or choose to use Petitioners'

brokerage services to rent out otherwise-unoccupied units. Those owners view short-term rentals as an "amenity" for full-time residents and believe their building characteristics, security procedures, and vetting procedures can accommodate travelers alongside full-time residents. But those owners need to ensure that the short-term rentals are lawful and that they can place reasonable limits so those rentals do not overwhelm the building's resources or impair the interests of full-time residents.

At the core of this decision is who gets to decide the appropriate short-term rental policy for a community: cities and the parties to leases and HOA-governing documents, or Airbnb and HomeAway. Petitioners seek a regime where no effective regulation is possible. Petitioners know the services they provide make enforcing a community's rules difficult or impossible, and would rather have an owner evict breaching residents and deny property access to travelers instead of changing how they operate. Petitioners profit massively from inducing people to break the rules and evade detection, without assuming any responsibility for the social and remunerative costs their services impose on a city's housing affordability or safety policies or tax revenues, or on a multifamily housing owner's business and its residents' quality of life.

Properly read, the CDA does not exempt Petitioners from complying with municipal regulations on their nonpublishing conduct. Nor does it immunize them from having to respond on the merits to lawsuits from property owners, just as a brick-and-mortar brokerage engaged in the same tortious conduct would have to do.

CONCLUSION

The Panel correctly held the CDA does not prohibit Santa Monica from deciding what short-term rental rules balance the interests of travelers and residents. The Panel's decision is consistent with this Court's precedent and the CDA's purpose. The petition should be denied.

July 8, 2019

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CERTIFICATE OF COMPLIANCE

This brief contains 4,195 words (as counted by the word-processing program used to prepare the brief), which is less than the 4,200-word limit established by Circuit Rule 29-2(c)(2). The format of this brief (including its type size and typeface) complies with the pertinent sections of the Fed. R. App. P. 32(a).

July 8, 2019 s/ Eric S. Boorstin