

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

MUSLIM ADVOCATES V. ZUCKERBERG,
SANDBERG, KAPLAN, MARTIN,
& FACEBOOK, INC.

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: 2021 CA 001114B
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: Judge Anthony C. Epstein
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**MOTION FOR LEAVE FOR CONSUMER REPORTS,
PUBLIC KNOWLEDGE, AND UPTURN TO
FILE A BRIEF AS *AMICI CURIAE***

Consumer Reports, Public Knowledge, and Upturn (“*Proposed Amici*”) respectfully submit this motion for leave to file the attached *amicus* brief in the above-captioned matter.

Consent from the parties was sought prior to this submission and they consented to this filing.

Proposed Amici are nonprofit organizations whose missions encompass consumer protection and advocacy, open internet policy, and civil rights. The proposed brief addresses Facebook’s assertion that because District of Columbia residents use Facebook’s social network “free of charge,” they cannot invoke the D.C. Consumer Protection Procedures Act (“CPPA”). *Proposed Amici* have a particular interest in rebutting Facebook’s assertion because of its profoundly negative implications for consumers and their interactions with “free” digital services. The brief augments the parties’ briefs by showing that Facebook’s assertion reflects a brazen effort to exempt itself, and other online firms that do not charge a cash price for their services, from the standard rules governing merchants engaged in commerce with District residents.

District of Columbia courts require that *Proposed Amici* describe their interest in the case and explain “why an amicus brief is desirable and why the matters asserted are relevant to the

disposition of the case.” D.C. App. R. 29(a)(3). Based on that standard, the Court should grant leave to file the attached amicus brief for two key reasons:

First, *Proposed Amici* have a strong and demonstrable interest in the proper outcome of this fundamental issue. Facebook’s reasoning—that its conduct lies beyond the reach of the CCPA because it offers its products and services for “free”—would, if accepted by the Court, dramatically undermine consumers’ rights. Facebook asks for a categorical exclusion that would deny District residents the benefit of consumer protection law in all of their interactions with the company. But if the CPPA is inapplicable to Facebook’s relationships with users simply because Facebook does not charge a cash price, then the CPPA—and perhaps other consumer protection laws—could be deemed inapplicable to consumer relationships with a broad swath of the most profitable and powerful merchants in the U.S. economy. These other merchants potentially include those who offer insurance and mortgage brokerage services, e-commerce platforms, comparison shopping sites, free gaming sites, and other social media platforms. All these online commercial activities suddenly could be beyond the reach of consumer protection law. Because Facebook’s argument implicates the precise interests that *Proposed Amici* seek to protect (including consumer rights, civil rights, fair marketplaces, and affordable access to technology), they have a strong and demonstrable interest in the proper resolution of this fundamental issue.

Second, *Proposed Amici* provide a perspective on matters relevant to the resolution of this issue that is not merely duplicative of that offered by the parties. The parties necessarily focus on questions of the CPPA’s applicability to, and the standing of, the particular plaintiff and the particular misrepresentations it alleges. By contrast, *Proposed Amici* are focused on the potential of Facebook’s arguments to harm consumers writ large. As *Proposed Amici* show, Facebook has proffered an argument that, if accepted, could allow digital platforms to reap

billions of dollars in annual profit while escaping any legal accountability to consumers for the goods and services they offer (even if defective or harmful) and the methods by which they promote them (even if deceptive or fraudulent).

Proposed Amici have extensive expertise in consumer protection and digital rights that could assist the Court in understanding how, under the CPPA, Facebook users are consumers, Facebook is a merchant, and the requisite merchant-consumer relationship between the parties exists. More broadly, *Proposed Amici*'s perspective on the effort by Facebook (a trillion-dollar company with nearly 200 million U.S. users and hundreds of thousands of users in the District) to exempt itself from the CPPA would illuminate how a ruling in Facebook's favor on this point would grossly undermine consumer protection in the online marketplace.

For the foregoing reasons, Consumer Reports, Public Knowledge, and Upturn respectfully request that the Court grant this motion and order that the proposed *amicus* brief attached hereto is deemed filed.

Dated: December 6, 2021

Respectfully submitted,

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¹ This motion and brief were brief prepared in part by Abby Lemert, Eleanor Runde & Shunhe Wang, students in a Yale Law School clinic, but do not represent the views of the Yale Law School, if any.

CERTIFICATE OF SERVICE

I certify that, on the 6th day of December 2021, a copy of the foregoing Motion for Consumer Reports, National Consumers League, Public Knowledge, and Upturn to File a Brief as *Amici Curiae* and enclosed Memorandum of Consumer Reports, Public Knowledge, and Upturn as to *Amici Curiae* were served via Case File Express on all parties.

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