

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Darryl C. Carter,

Appellant,

vs.

Meta Platforms Inc. et al.,

Appellees

} Appeal No.:25-2918

} APPELLANT'S MOTION FOR EN
BANC REFERRAL

} Complaint Filed: February 26, 2025

} NOA Filed: May 02, 2025

} Trial Date: N/A

(Appeal No.:25-2918)

APPELLANT'S MOTION FOR EN BANC REFERRAL

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Appellant seeks an ***Order from the court staying the briefing schedule and referral of this matter en banc*** as the matters at issue have extraordinarily serious touch points with respect to Constitutional Rights, *inter alia*: due process, freedom of speech, freedom of religion, and the gamut of tort claims. It is appellees' position that the Communication Decency Act ("CDA") provisions absolute immunity such as to promote criminal-civil digital-verse discourse whereas appellees can create, manage, and/or control a digital-verse which completely displaces said Constitutional Rights, under the ill drawn conclusion that Congress, via the CDA, permitted the creation and evolution of a wild wild west internet and thereby sanctioned private entities to displace Constitutional Rights. Appellees position is misplaced, ill drawn, and entirely frivolous. *Furthermore*, Congress absent one or more Constitutional amendments has no jurisdiction to abrogate Constitution rights nor farm out such abrogation to third party private entities.

This court's *Roommates* opinion: ***Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC, 521 F.3d 1157, 1170-71 (9th Cir. 2008)***, has done little, by way of clarity, as to the correct interpretation of Law *i.e.* the intersection with the CDA and Constitutional Rights. *For example*, Roommates posits that the CDA creates no framework for the creation or allowance of criminal activity in a digital-verse *i.e.* human trafficking, censorship, etc., but in the same breath

Roommates, refused to carve out a *private right of action*, for a plaintiff targeted by such criminal activity. The net effect of such a determination, actually, promotes digital-verse criminal activity in broad daylight, knowing the only recourse a plaintiff possesses is based upon the whimsical criminal discretionary powers of federal-state prosecutors. This problem is, exponentially, increased given the hyper political wayward nature of politics, on a national level, whereas “Democrat” district attorneys have no incentive to prosecute said crimes against “Republican” targets. And the same argument can be raised vice-verse from a Republican district attorney inflection standpoint. *Lastly*, given the fragmented opinions, in this circuit, following *Roommates*, which is entirely based upon the politics of a given three (3) judge panel, such is illustrative, *prima facie*, that this court, *en banc*, must conclusively settle this matter. Absent referral, *en banc*, the politics will rear its ugly head, in this instant action, to favor appellees via “Panel shopping,” accomplished per inordinate delays until the preferred panel is available to rule in appellees favor.

Appellant’s Constitutional Rights are clearly in the line of fire with respect to impending serious irreparable harm, *ante*: “[I]t is the alleged violation of a constitutional right that triggers a finding of irreparable harm...” ***Covino v. Patrissi*, 967 F.2d 73, 77 (2d Cir.1992); *Mitchell v. Cuomo*, 748 F.2d 804, 806 (2d Cir.1984)**. And, “ (“[w]hen an alleged deprivation of a constitutional right is

involved, most courts hold that no further showing of irreparable injury is necessary”). See, *Mary Kane*, Federal Practice and Procedure, § 2948.1 at 161 (2d ed. 1995). See, also, *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 2690, 49 L.Ed.2d 547 (1976).

Appellant seeks the following relief:

1. A prompt order staying the briefing schedule beyond appellees September 15, 2025 responsive pleading deadline, solely, to allow appellees to submit and file their responsive brief as currently due, *ante*.
2. A referral to this court, *en banc*, to determine any and/or all of the matters at issue. Specifically, appellees argue the CDA immunizes them from suit such that appellant’s Constitutional Rights are chilled. Furthermore, appellees argue Congress granted appellees this Right; power Congress does not have to grant absent one or more Constitutional amendment(s).