

Council For Children
Gary F. Redenbacher, Chair
Gary Richwald, M.D., M.P.H., Vice-Chair
Bill Bentley
Denise Moreno Ducheny
Anne Fragasso
John M. Goldenring, M.D., M.P.H., J.D.
Hon. Leon S. Kaplan (Ret.)
David Meyers
Thomas A. Papageorge
Gloria Perez Samson
Ann Segal
John Thelan

Emeritus Members
Robert L. Black, M.D.
Birt Harvey, M.D.
Louise Horvitz, M.S.W., Psy.D.
James B. McKenna¹
Paul A. Peterson
Blair L. Sadler
Alan Shumacher, M.D.
Owen Smith

Executive Director
Robert C. Fellmeth *Price Professor of Public Interest Law, USD School of Law*



Children's Advocacy Institute



University of San Diego School of Law
5998 Alcalá Park / San Diego, CA 92110
(619) 260-4806 / (619) 260-4753 (Fax)

2751 Kroy Way
Sacramento, CA 95817 / (916) 844-5646

727 15th Street, NW, 12th Floor
Washington, DC 20005 / (917) 371-5191

Reply to: ☐ San Diego ☐ Sacramento ☐ Washington
info@caichildlaw.org / www.caichildlaw.org

June 16, 2023

The Hon. Nancy Skinner
Senator, District 9
1021 O Street, Suite 8630
Sacramento, CA 95814

Re: SB 680 (SKINNER) – URGENT SUPPORT

Dear Senator Skinner:

The Children's Advocacy Institute at the University of San Diego School of Law is proud to support your SB 680. The urgency of enacting your SB 680 is underscored by recent and blunt comments from U.S. Surgeon General Dr. Vivek Murthy:

"[T]here is mounting evidence suggesting that there are significant and immediate risks involved for youth when using social media for frequent and extended periods of time, and we cannot take a 'wait and see' approach to this issue ... We didn't wait to sound the alarm for other harms to youth, such as vaping, alcohol and drug use, and this should be no different."¹

As the San Mateo County Office of Education has correctly observed, "[p]owerful corporations who wield unmatched, highly concentrated technology in pursuit of profit are knowingly creating this unprecedented mental health crisis.... [The] public can now fairly conclude that the [platforms'] conduct was no accident, but rather that [they] acted knowingly, deliberately, and intentionally."²

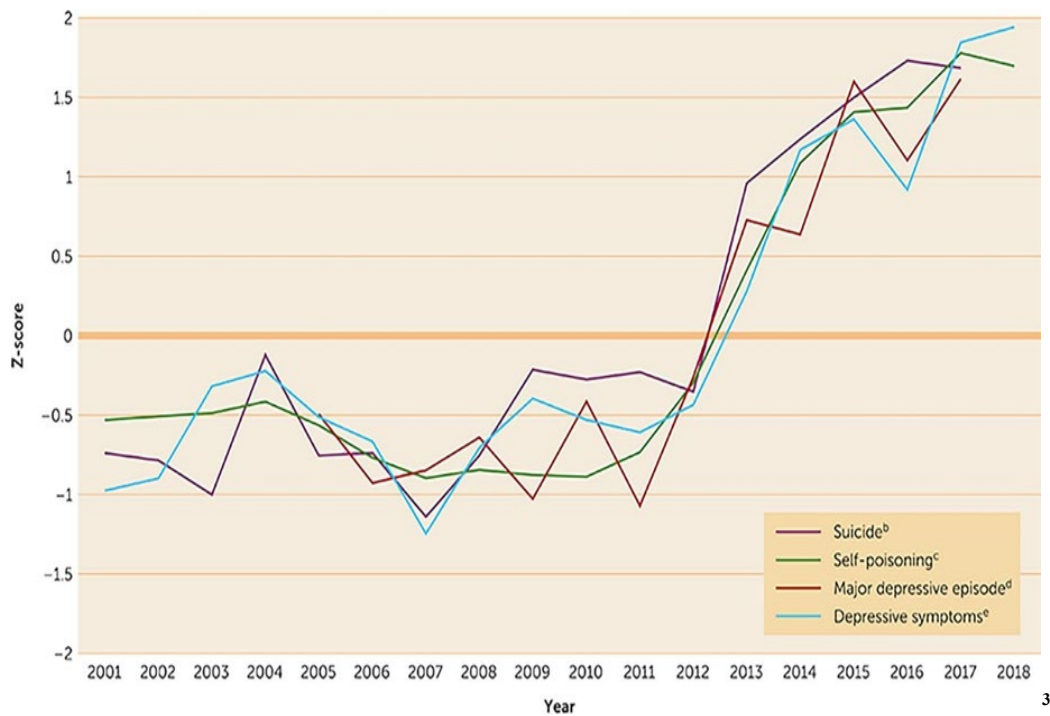
TWO PICTURES SAY IT ALL

Suicides, self-harm, and major depression are spiking in ways never before seen, especially among teen girls, and two graphs show why.

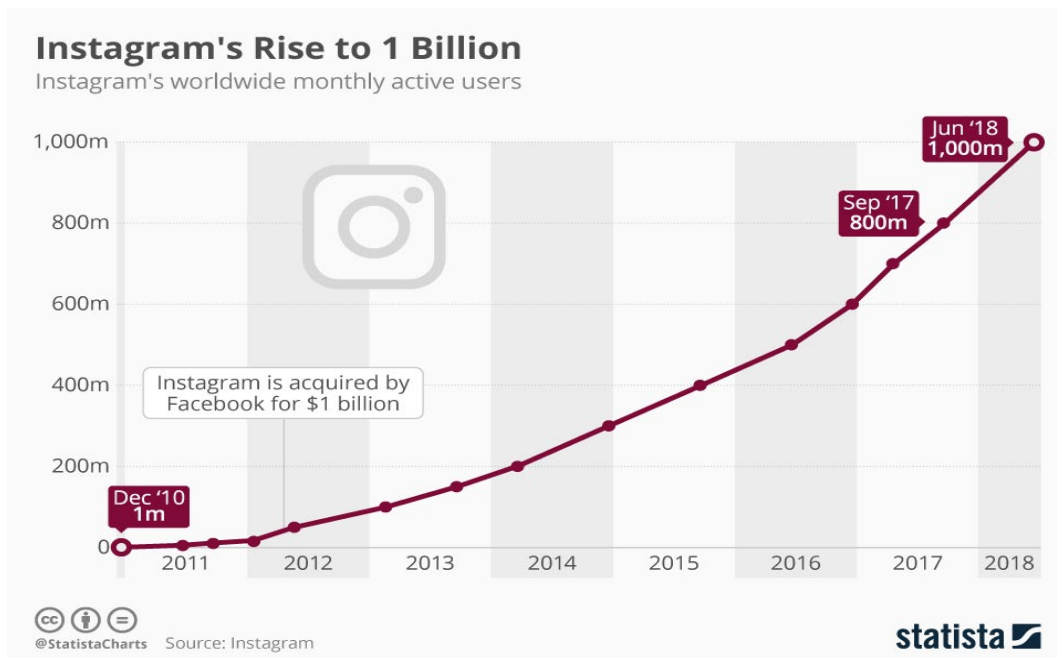
Increases in Depression, Self-Harm, and Suicide Among U.S. Adolescents FIGURE 1. Indicators of poor mental health among U.S. girls and young women, 2001–2018 (note, before COVID)

¹ <https://www.foxnews.com/health/surgeon-generals-advisory-social-media-youth-mental-health-comes-real-time-experiment>

² [https://www.smcoe.org/assets/files/For%20Communities_FIL/Social%20Media%20Lawsuit_FIL/2023-03-13%20\[1\]%20Social%20Media%20Complaint.pdf](https://www.smcoe.org/assets/files/For%20Communities_FIL/Social%20Media%20Lawsuit_FIL/2023-03-13%20[1]%20Social%20Media%20Complaint.pdf)



This never-before-seen spike in suicides among teen girls has occurred during this exact same time frame as the following:



Research affirms the cause-and-effect relationship between these charts. For example, excessive use of digital and social media has a documented connection to increases in suicide-related outcomes in teens and children, such as suicidal ideation, plans, and attempts.⁴ Indeed, during

³ <https://prcp.psychiatryonline.org/doi/full/10.1176/appi.prcp.20190015>.

⁴ Elizabeth J. Ivie et al., *A Meta-Analysis of the Association Between Adolescent Social Media Use and Depressive Symptoms*, 275 J. OF AFFECTIVE DISORDERS 165, 165–174 (2020), <https://tinyurl.com/bdzu6h8h>; Alan Mozes, *As Social Media Time Rises, So Does Teen Girls' Suicide Risk*, U.S. NEWS (Feb. 16, 2021), <https://tinyurl.com/49hzmm9v>.

the rise of social media use among the very young, between 2011 and 2020, there has been a 146% increase in children ages 10 to 14 using firearms to die by their own small hands.⁵

So do the facts in individual cases like that of Molly Russell's. A coroner's inquest is like a trial in the United Kingdom. An inquest there investigated the alleged suicide of 14 year old Molly. Voluminous evidence was taken and many witnesses called, including from Facebook. In a ruling that made headlines throughout Europe, the Coroner ruled the algorithms that curate a social media user's experience had pushed harmful content to Molly that she had not requested."⁶

Thousands of images, videos and other social media material from Molly's accounts were revealed during the investigation, one of the largest public releases of its kind. That provided the sort of detail that researchers studying the mental health effects of social media have long complained that platforms like Meta, which owns Facebook and Instagram, withhold on privacy and ethical grounds.

Molly's social media use included material so upsetting that one courtroom worker stepped out of the room to avoid viewing a series of Instagram videos depicting suicide. A child psychologist who was called as an expert witness said the material was so "disturbing" and "distressing" that it caused him to lose sleep for weeks.⁷

Molly is far from alone in her suffering. Consider these findings from a 2021 U.S. Surgeon General Advisory:

- From 2009 to 2019, the proportion of high school students reporting persistent feelings of sadness or hopelessness increased by 40%;
- the share seriously considering attempting suicide increased by 36%; and
- the share creating a suicide plan increased by 44%.
- Between 2011 and 2015, youth psychiatric visits to emergency departments for depression, anxiety, and behavioral challenges increased by 28%.
- Between 2007 and 2018, suicide rates among youth ages 10–24 in the US increased by 57%.⁸

In explaining the crisis' origins, the Surgeon General noted a "growing concern about the impact of digital technologies, particularly social media, on the mental health and wellbeing of children and young people" and called for greater accountability from social media companies.⁹ Business models are often built around maximizing user engagement as opposed to safeguarding users' health and ensuring that users engage with one another in safe and healthy ways. This translates

⁵ <https://everytownresearch.org/report/the-rise-of-firearm-suicide-among-young-americans/>.

⁶ <https://www.bbc.com/news/uk-england-london-63073489>

⁷ <https://www.nytimes.com/2022/10/01/business/instagram-suicide-ruling-britain.html> (emphasis added)

⁸ U.S. Surgeon General's Advisory: PROTECTING YOUTH MENTAL HEALTH, p. 8 (2021), at <https://www.hhs.gov/sites/default/files/surgeon-general-youth-mental-health-advisory.pdf>

⁹ *Id.* at 25.

to technology companies focusing on maximizing time spent, not time well spent.”¹⁰ Meanwhile, *reducing* social media use has been shown to result in mental health benefits.¹¹

FACEBOOK KNOWS

Facebook Knows It Is Making Addicts of Children

Zuckerberg Was Warned on Social Media Addiction, Filing Says

Employees at Meta Platforms and ByteDance were aware of the harmful effects of their platforms on young children and teenagers but disregarded the information or in some cases sought to undermine it, according to claims in a court filing. ...

“No one wakes up thinking they want to maximize the number of times they open Instagram that day,” one Meta employee wrote in 2021, according to the filing. “But that’s exactly what our product teams are trying to do.”¹²

As Facebook’s first President, Sean Parker, has admitted:

God only knows what it’s doing to our children’s brains.

The thought process that went into building these applications, Facebook being the first of them ...was all about: “How do we consume as much of your time and conscious attention as possible?” And that means that we need to sort of give you a little dopamine hit every once in a while ...you’re exploiting a vulnerability in human psychology. The inventors, creators . . . understood this consciously.

And we did it anyway.¹³

In an internal Facebook document entitled “*The Power of Identities: Why Teens and Young Adults Choose Instagram*,” Facebook staff explain secretly to their executives that: “The teenage brain is usually about 80% mature. The remaining 20% rests in the frontal cortex . . . At this time teens are highly dependent on their temporal lobe where emotions, memory, and learning, and the reward system reign supreme . . . Teens’ decisions and behavior are mainly driven by emotion, the intrigue of novelty and reward[.]”¹⁴

So, they know young brains are vulnerable to their technologies and, paraphrasing Parker, “they did it anyway.” Thus, here is one of the charts leaked by Frances Haugen, the former Facebook

¹⁰ *Id.* (emphasis in original).

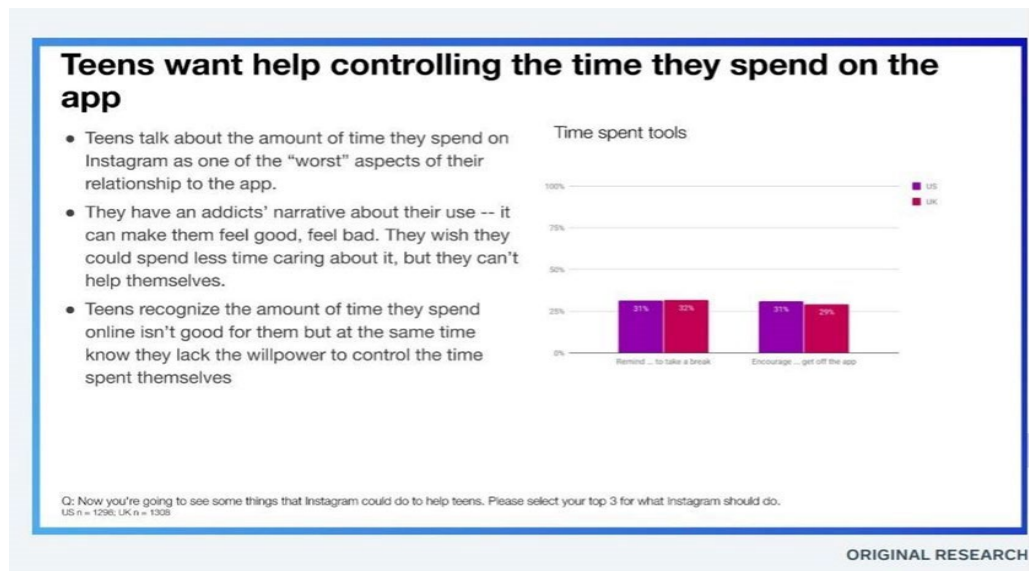
¹¹ Roberto Mosquera et al., *The Economic Effects of Facebook*, 23 EXP. ECON. 575 (Jun. 2020). Melissa G. Hunt et al., *No More FOMO: Limiting Social Media Decreases Loneliness and Depression*, 37 J. SOC. CLINICAL PSYCH. 751 (Guilford Publications Inc. Nov. 2018). Hunt Allcott et al., *The Welfare Effects of Social Media*, 110 AM. EC. REV. 629 (Mar. 2020).

¹² <https://www.latimes.com/business/story/2023-03-13/zuckerberg-was-warned-on-social-media-addiction-filing-says>.

¹³ <https://www.axios.com/2017/12/15/sean-parker-unloads-on-facebook-god-only-knows-what-its-doing-to-our-childrens-brains-1513306792>.

¹⁴ *The Power of Identities: Why Teens and Young Adults Choose Instagram*, p. 30 (internal Facebook documents identifying and explaining that the “4M teens that start using the internet each year” are the only source for “significant [monthly active user] growth in the US.”), <https://s3.documentcloud.org/documents/21090788/why-teens-and-young-adults-choose-insta.pdf> pp. 52-53 (last visited Mar.21, 2023). As New York University professor and social psychologist Adam Alter has explained, product features such as “Likes” give users a dopamine hit similar to drugs and alcohol: “The minute you take a drug, drink alcohol, smoke a cigarette . . . when you get a like on social media, all of those experiences produce dopamine, which is a chemical that’s associated with pleasure. When someone likes an Instagram post or any content that you share, it’s a little bit like taking a drug. As far as your brain is concerned, it’s a very similar experience.” Eames Yates, *What happens to your brain when you get a like on Instagram*, Business Insider (Mar. 25, 2017), <https://www.businessinsider.com/what-happens-to-your-brain-like-instagramdopamine-2017-3>; Zara Abrams, *Why young brains are especially vulnerable to social media*, AM. PSYCH. ASS’N (Aug. 25, 2022), <https://www.apa.org/news/apa/2022/social-media-children-teens>.

executive. Again, this is Facebook’s own researched, secret chart documenting “**an addict’s narrative**” from children about their own product:



As United States Senator Richard Blumenthal, Democrat of Connecticut, has observed:

*Facebook has taken big tobacco’s playbook, it has hidden its own research on addiction and the toxic effects of its products. ... It’s chosen growth over children’s mental health and wellbeing, greed over preventing the suffering of children.*¹⁵

Facebook Knows It Prompts Its Child Users to Consider Suicide.

Another slide leaked by Haugen said: “Among teen users [of Instagram] who reported suicidal thoughts... 6% of American [teen] users **traced the desire to kill themselves to Instagram.**”¹⁶

Facebook Knows It Promotes Pro-Eating Disorder Content to Teen Girls

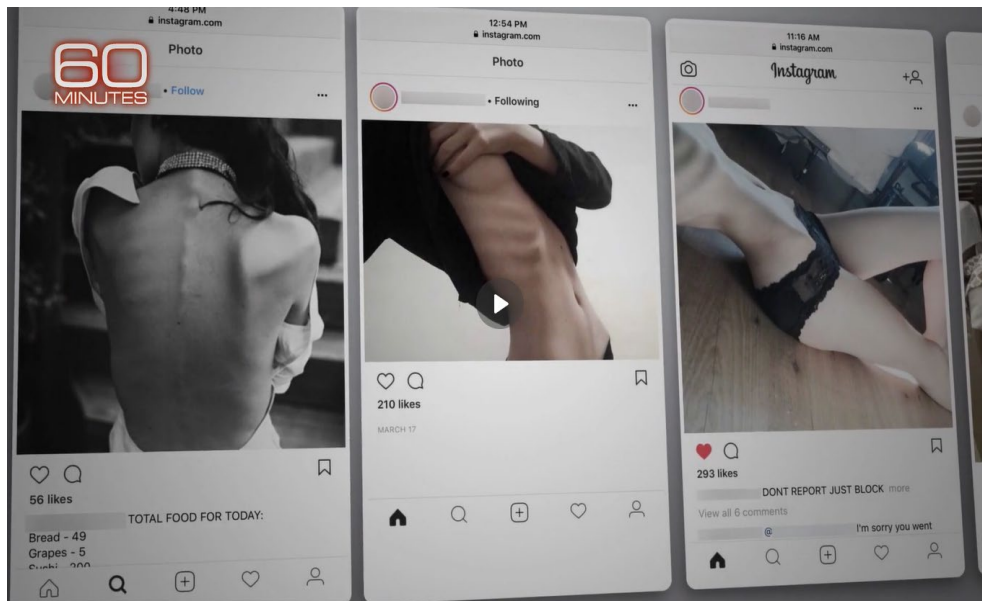
“Facebook knew Instagram was pushing girls to dangerous content: internal document” – CBS News 12.11.22 – In 2021, according to the document, an Instagram employee ran an internal investigation on eating disorders by opening a false account as a 13-year-old girl looking for diet tips. She was led to graphic content and recommendations to follow accounts titled “skinny binge” and “apple core anorexic.”¹⁷

Just a glance at the content pushed to girls under the secret Facebook investigation, ***including to girls who do not search for it***, underscores the urgency of legislative action:

¹⁵ Facebook Head of Safety Testimony on Mental Health Effects: Full Senate Hearing Transcript, REV, <https://www.rev.com/blog/transcripts/facebook-head-of-safety-testimony-on-mental-health-effects-full-senate-hearing-transcript> (Emphasis added).

¹⁶ <https://www.wsj.com/articles/facebook-knows-instagram-is-toxic-for-teen-girls-company-documents-show-11631620739>.

¹⁷ <https://www.cbsnews.com/news/facebook-instagram-dangerous-content-60-minutes-2022-12-11/>.



A March 2020 presentation posted by Facebook researchers to Facebook’s internal message board reported that “66% of teen girls on IG experience negative social comparison (compared to 40% of teen boys)” and that “[a]spects of Instagram exacerbate each other to create a perfect storm.” “We make body image issues worse for one in three teen girls,” said one slide from 2019.

As one expert observed, “Instagram perpetuates the myth that our happiness and ability to be loved are dependent on external things: For girls, it’s appearance[.]”¹⁸ The picture-perfect images on Instagram’s news feeds are so potent that they cement these superficial and harmful values into adolescent brains without them even knowing it.”¹⁹

TIKTOK KNOWS

TikTok Knows It Is Making Addicts of Children

Children on TikTok do not have control over what they see. Like Facebook, TikTok’s powerful machine-learning, AI-powered algorithms select content to feed child users to maximize their engagement with the platform instead of simply responding to searches by child users. TikTok uses “a machine-learning system that analyzes each video and tracks user behavior to serve up a continually refined, never-ending stream of TikToks optimized to hold [users’] attention.”²⁰ As another commentator put it, “**you don’t tell TikTok what you want to see. It tells you.**”²¹

This, TikTok knows, will result in addiction for some child users. An internal document titled “TikTok Algo 101” frankly explains that in the pursuit of the company’s “ultimate goal” of adding daily active users, it has chosen to optimize for two closely related metrics in the stream of videos it serves: “retention”—that is, whether a user comes back—and “time spent.”²²

¹⁸ Jennifer Wallace, *Instagram is Even Worse than We Thought for Kids. What Do We Do about It?*, WASHINGTON POST, <https://www.washingtonpost.com/lifestyle/2021/09/17/instagram-teens-parent-advice/>.

¹⁹ *Id.*

²⁰ Jia Tolentino, *How TikTok Holds Our Attention*, New Yorker (Sept. 30, 2019), <https://www.newyorker.com/magazine/2019/09/30/how-tiktok-holds-our-attention>.

²¹ Drew Harwell, *How TikTok Ate the Internet*, Wash. Post. (Oct. 14, 2022), <https://www.theday.com/business/20221015/how-tiktok-ate-the-internet/>.

²² Ben Smith, *How TikTok Reads Your Mind*, N.Y. TIMES (Dec. 5, 2021), <https://www.nytimes.com/2021/12/05/business/media/tiktok-algorithm.html>.

As the founder of Algo Transparency remarked, “rather than giving [people] what they really want,” TikTok’s “algorithm tries to get people addicted[.]”²³

Indeed, a recent study by TikTok based on brain imaging boasts to potential advertisers that those using TikTok engaged with the product about ten times a minute, twice as often as with peer apps.²⁴ (“Neuro-Insight is a neuroanalytics company that uses unique in-lab, privacy-safe brain imaging technology to measure how the brain responds to communications.”)

Observe: *TikTok is boasting to advertisers that it is using brain imaging to validate its product’s value to advertisers.*

Unsurprisingly, given all this, an estimated 90–95% of the content viewed on TikTok comes from its algorithms as opposed to what a child seeks out.²⁵

The cumulative effect of TikTok’s inventions can be medically and clinically addictive to children. As researchers at the Brown University School of Public Health explained, “the infinite scroll and variable reward pattern of TikTok likely increase the addictive quality of the app as they may induce a flow-like state for users that is characterized by a high degree of focus and productivity at the task at hand.”²⁶ And, as Dr. Julie Albright, a Professor at the University of Southern California, similarly explained, TikTok is so popular because child users will “just be in this pleasurable dopamine state, carried away. It’s almost hypnotic, you’ll keep watching and watching.” Users “keep scrolling,” according to Dr. Albright, “because sometimes you see something you like, and sometimes you don’t. And that differentiation—very similar to a slot machine in Vegas—is key.”²⁷

TikTok Knows It Prompts Its Child Users to Consider Suicide.

The Wall Street Journal programmed bots on TikTok with various interests such as sports, forestry, dance, astrology, and animals. However, *The Journal* did not disclose these interests upon registration with TikTok. Instead, TikTok’s algorithm quickly learned the assigned interests from the “rewatching or pausing on videos” related to the bot’s programmed interest.²⁸

One bot watched an astonishing 224 videos in 26 minutes, lingering over videos with hashtags for “depression” or “sad.” TikTok’s algorithm quickly refined its output. Afterward, 93% of the videos TikTok showed that bot were about depression or sadness. One post implored the bot to: “Just go. Leave. Stop trying. Stop pretending. You know it, and so do they. Do Everyone a favor and leave.”²⁹

Center for Countering Digital Hate researchers set up new accounts in the United States, United

²³ *Id.*

²⁴ TikTok Ads Break Through Better Than Tv and Drive Greater Audience Engagement, TikTok, <https://www.tiktok.com/business/library/TikTokDrivesGreaterAudienceEngagement.pdf>.

²⁵ *Investigation: How TikTok’s Algorithm Figures Out Your Deepest Desires*, WALL ST. J. (Jul. 21, 2021), <https://www.wsj.com/video/series/inside-tiktoks-highly-secretive-algorithm/investigationhow-tiktok-algorithm-figures-out-your-deepest-desires/6C0C2040-FF25-4827-8528-2BD6612E3796>.

²⁶ Sophia Petrillo, *What Makes TikTok So Addictive? An Analysis of the Mechanisms Underlying the World’s Latest Social Media Craze*, BROWN UNDERGRADUATE J. OF PUB. HEALTH (Dec. 13, 2021), <https://sites.brown.edu/publichealthjournal/2021/12/13/tiktok/>.

²⁷ John Koetsier, *Digital Crack Cocaine: The Science Behind TikTok’s Success*, FORBES (Jan. 18, 2020),

<https://www.forbes.com/sites/johnkoetsier/2020/01/18/digital-crack-cocaine-the-science-behind-tiktoks-success/?sh=32fcd4e78be>.

²⁸ *Inside TikTok’s Algorithm: A WSJ Video Investigation*, WALL ST. J. (July 21, 2021), <https://www.wsj.com/articles/tiktok-algorithm-video-investigation-11626877477>.

²⁹ *Inside TikTok’s Algorithm: A WSJ Video Investigation*, Wall St. J. (July 21, 2021), <https://www.wsj.com/articles/tiktok-algorithm-video-investigation-11626877477>.

Kingdom, Canada, and Australia at the minimum age TikTok allows; 13 years old. “These accounts paused briefly on videos about body image and mental health and liked them. What we found was deeply disturbing. Within 2.6 minutes, TikTok recommended suicide content.”³⁰

TikTok Knows It Promotes Pro-Eating Disorder Content to Teen Girls

In another experiment, *The Wall Street Journal* found that once TikTok’s algorithm determined that its bots would watch videos related to weight loss, TikTok “speedily began serving more, until weight-loss and fitness content made up more than half their feeds—even if the bot never sought it out.” Indeed, TikTok’s algorithm recommended ***over 32,000 weight-loss videos over a two-month period, “many promoting fasting, offering tips for quickly burning belly fat and pushing weight-loss detox programs and participation in extreme weight-loss competitions.”***³¹ (Note in the footnote the title of the article: “The Corpse Bride Diet”)

Others confirm *The Journal*’s research. Recently Center for Countering Digital Hate researchers set up new accounts in the United States, United Kingdom, Canada, and Australia at the minimum age TikTok allows; 13 years old. “These accounts paused briefly on videos about body image and mental health and liked them. What we found was deeply disturbing. Within 2.6 minutes, TikTok recommended suicide content. Within 8 minutes, TikTok served content related to eating disorders. Every 39 seconds, TikTok recommended videos about body image and mental health to teens.”³² Indeed, girls were delivered videos advertising breast enhancement oil and weight loss patches—without having followed any other accounts or having searched for terms related to these topics.”³³

Children, mental health providers, families, teachers, and parents must deal with the tragic consequences of TikTok knowingly designing its products in such a way as to barrage body-anxious teen girls with pro-eating disorder content. Alyssa Moukheiber, a treatment center dietitian, explained that TikTok’s algorithm can push children into unhealthy behaviors or trigger a relapse of disordered eating. Teenage girls interviewed by *The Wall Street Journal* reported developing eating disorders or relapsing after being influenced by extreme diet videos TikTok promoted to them. Katie Bell, a co-founder of the Healthy Teen Project, explained that “the majority of her 17 teenage residential patients told her TikTok played a role in their eating disorders.” And Stephanie Zerwas, an Associate Professor of Psychiatry at the University of North Carolina at Chapel Hill, could not even recount how many of her young patients told her that “I’ve started falling down this rabbit hole, or I got really into this or that influencer on TikTok, and then it started to feel like eating-disorder behavior was normal, that everybody was doing that.”³⁴

PLEASE NOTE: It isn’t the simple existence of the pro-eating disorder content lying around somewhere out there among the billions of uploads addressing every possible topic that is the problem. As documented above, the problem is that the undeveloped minds of our daughters are being pounded by autonomously operating AI over and over again with dangerous but teen-riveting content, content that (in the case of TikTok) over 90% of the time the child did not seek

³⁰ Petition for Rulemaking to Prohibit the Use on Children of Design Features that Maximize for Engagement, FED. TRADE COMM’N (Nov. 17, 2022) at 10, <https://tinyurl.com/3mursy95>.

³¹ Tawnell D. Hobbs, ‘*The Corpse Bride Diet*’: How TikTok Inundates Teens With Eating-Disorder Videos, WALL ST. J. (Dec. 17, 2021), https://www.wsj.com/articles/how-tiktok-inundates-teens-with-eating-disorder-videos-11639754848?mod=tech_list_pos3.

³² https://counterhate.com/wp-content/uploads/2022/12/CCDH-Deadly-by-Design_120922.pdf.

³³ Petition for Rulemaking to Prohibit the Use on Children of Design Features that Maximize for Engagement, FED. TRADE COMM’N (Nov. 17, 2022) at 10, <https://tinyurl.com/3mursy95>.

³⁴ Tawnell D. Hobbs, ‘*The Corpse Bride Diet*’: How TikTok Inundates Teens With Eating-Disorder Videos, WALL ST. J. (Dec. 17, 2021), https://www.wsj.com/articles/how-tiktok-inundates-teens-with-eating-disorder-videos-11639754848?mod=tech_list_pos3.

out for themselves.³⁵ It is this documented, relentless, automated, pounding combined with dopamine-firing, addictive interfaces like auto-scroll, that explain the unprecedented numbers of children with severe depression, who are dying by suicide, starving themselves, and who become isolated in this perilous world due to social media addiction.

This relentless pounding is not an inevitable way to deliver content. We use Google search every day, which is organized to deliver relevant content to keep us returning to the platform. Facebook screens out adult pornographic posts effectively, knowing if it did not, it would lose customers. YouTube refuses to post copyrighted songs for fear of being sued. The platforms' decision to use technology and neuroscience to get people—children included—to stay on their products for as long as possible, by any means necessary, no matter how utterly foreseeable the harmful consequences are to children, is a simple business decision of prioritizing profits (the higher the user engagement, the more they can charge for ads) over child safety.

TikTok Knows It Is Facilitating the Sale of Lethal Drugs to Children

One of the bots programmed by *The Wall Street Journal* was programmed to pause on videos referencing drugs and lingered briefly on “a video of a young woman walking through the woods with a caption” referring to “stoner girls.” The next day, the algorithm showed the bot a video about a “marijuana-themed cake.” Then, the “majority of the next thousand videos” that TikTok’s algorithm produced “tout[ed] drugs and drug use,” including marijuana, psychedelics, and prescription drugs.³⁶

The Wall Street Journal concluded, “that through its powerful algorithms, TikTok can quickly drive minors—among the biggest users of the app—into endless spools of content about sex and drugs.”³⁷

When it comes to the epidemic of deaths of children from deadly fentanyl, it isn’t just TikTok. The unprecedented spike of children dying from overdosing on fentanyl has been documented to be the fault of all social media. According to, for example, *The New York Times* article titled **“Fentanyl Tainted Pills Bought on Social Media Cause Youth Drug Deaths to Soar--Teenagers and young adults are turning to Snapchat, TikTok and other social media apps to find Percocet, Xanax and other pills. The vast majority are laced with deadly doses of fentanyl, police say:”**

- “Law enforcement authorities say an alarming portion of [fentanyl overdoses] unfolded ... from counterfeit pills tainted with fentanyl that teenagers and young adults bought over social media.”
- “Social media is almost exclusively the way they get the pills,” said Morgan Gire, District Attorney for Placer County, Calif., where 40 people died from fentanyl poisoning last year.
- “Overdoses are now the leading cause of preventable death among people ages 18 to 45, ahead of suicide, traffic accidents and gun violence, according to federal data.
- **“There are drug sellers on every major social media platform,” one expert is quoted as saying...: As long as your child is on one of those platforms, they’re going to have the potential to be exposed to drug sellers.”**

³⁵ *Investigation: How TikTok’s Algorithm Figures Out Your Deepest Desires*, WALL ST. J. (Jul. 21, 2021), <https://www.wsj.com/video/series/inside-tiktoks-highly-secretive-algorithm/investigationhow-tiktok-algorithm-figures-out-your-deepest-desires/6C0C2040-FF25-4827-8528-2BD6612E3796>.

³⁶ Rob Barry et al., *How TikTok Serves Up Sex and Drug Videos to Minors*, WALL ST. J. (Sept. 8, 2021), <https://www.wsj.com/articles/tiktok-algorithm-sex-drugs-minors-11631052944>.

³⁷ *Ibid.*

SNAP KNOWS

Snapchat only looks small in comparison to Facebook and TikTok. Snapchat has 100 million daily users in North America.³⁸ In 2022, 59% of U.S. teens, 13–17 years of age, used Snapchat, and 15% said they used it “almost constantly.”³⁹

Snap’s executives have admitted that Snapchat’s age verification “is effectively useless in stopping underage users from signing up to the Snapchat app.”⁴⁰ True enough, underage use of Snapchat is rampant. As of 2021, 13% of children ages 8–12 use Snapchat.⁴¹ You can infer how many truly young children use Snap from imagery such as this:



As Sen. Richard Blumenthal, D-Conn, said in a recent U.S. Senate hearing on social media involving TikTok and Snap: “Being different from Facebook is not a defense That bar is in the gutter. It’s not a defense to say that you are different.”⁴²

Snap Knows It Is Making Addicts of Children

Research shows that Snapchat’s daily users are using Snapchat more constantly than other platforms. For example (remembering how young Snapchat’s users are), users are most likely to use Snapchat “right when I wake up,” “before work/school,” “during work/school,” “after work/school,” “on vacations,” and “when I’m with others[.]”⁴³

In a December 2022 statement to advertisers, Snap claimed that “Snapchat delivers on the emotions that Gen Z seeks, and it does so consistently across the platform[.]”⁴⁴ To bolster this claim, Snapchat “used a neuroscience measurement ... to measure reactions to different brand messaging” “through variations in heart rate rhythm collected by smartwatches.”⁴⁵

³⁸ October 2022 Investor Presentation at 5, Snap Inc. (Oct. 20, 2022), <https://investor.snap.com/events-and-presentations/presentations/default.aspx>.

³⁹ Pew Research Center, *Teens, Social Media and Technology* 2022 (Aug. 10, 2022), <https://www.pewresearch.org/internet/2022/08/10/teens-social-media-and-technology-2022/>.

⁴⁰ Isobel Asher Hamilton, *Snapchat Admits Its Age Verification Safeguards are Effectively Useless*, BUS. INSIDER (Mar. 19, 2019), <https://www.businessinsider.com/snapchat-says-its-age-verification-safeguards-are-effectively-useless-2019-3#:~:text=Collins%20admitted%20that%20the%20system,mobile%20app%20is%20more%20popular>.

⁴¹ Victoria Rideout et al., *Common Sense Census: Media Use by Tweens and Teens*, 2021 at 5, Common Sense Media, https://www.commonsensemedia.org/sites/default/files/research/report/8-18-census-integrated-report-final-web_0.pdf.

⁴² Bobby Allyn, *4 Takeaways from the Senate Child Safety Hearing with Youtube, Snapchat and TikTok*, NPR BUSINESS, at <https://www.npr.org/2021/10/26/1049267501/snapchat-tiktok-youtube-congress-child-safety-hearing>.587.

⁴³ Multi-District Litigation Complaint, Snap evidence, SNAP0000103 at 0113.

⁴⁴ Snap for Business, *What Does Gen Z Want From Brands?* (Dec. 15, 2022), <https://forbusiness.snapchat.com/en-US/blog/what-does-gen-z-want>.

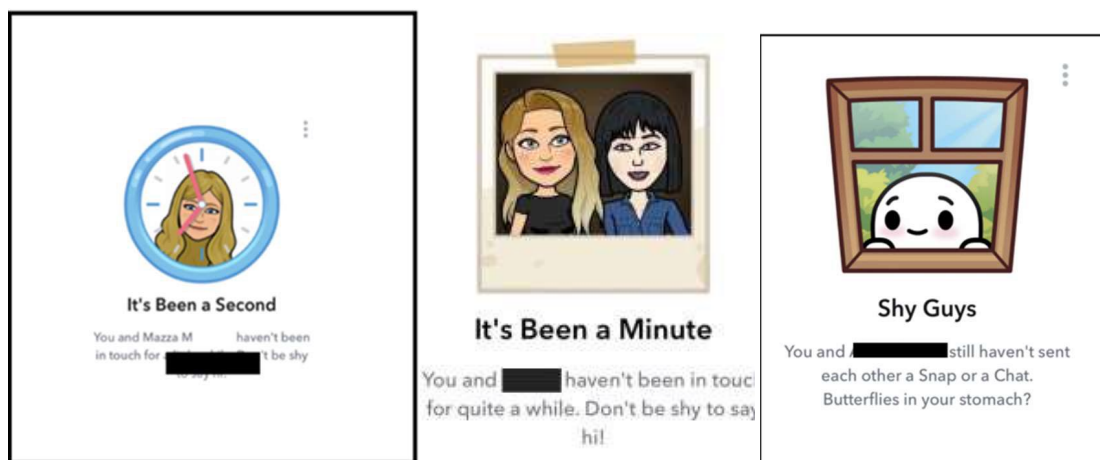
⁴⁵ *Id.*

Snapchat includes a variety of techniques designed psychologically to arm-twist children to stay on the platform; products such as **Snapcores**, **Snapstreaks**, and **Snap Awards** reward users when they engage with Snapchat and punish them when they fail to engage with Snapchat.

Snapscore keeps a running profile score based on a user's Snapchat activity levels, such as the number of Snaps sent.⁴⁶ The sole purpose of Snapscore—again, remember this is mostly a platform used by children and teens—is to increase product use and drive revenue.⁴⁷ Snapscores are especially important to child users because they operate as a form of social validation like an Instagram “Like.” Here is what a Snapscore looks like:



Snap awards include “Charms.” Charms cleverly reward users for achieving certain milestones together to leverage relationships into multiple children being on the platform. For example, if two users exchange frequent Snaps, they may unlock a “BFF (Best Friends Forever)” Charm. Conversely, Charms may be awarded to friends who are infrequently in contact to prompt both to stay on the platform:



Snapstreaks are maybe the most addictive of Snap's offerings to teens, maybe the most addicting for children of all platform inventions.⁴⁸ Two child users achieve a Snapstreak when they exchange

⁴⁶ Snapchat Support, What is a Snapscore? (“Your Snapchat score is determined by a supersecret, special equation...□”)

<https://support.snapchat.com/en-US/a/my-score> (“Your Snapchat score is determined by a super-secret, special equation...□”).

⁴⁷ Brad Barbz, *2020 NEW * How To Increase Snapscore By Up To 1000 Per Minute On IOS And Android - Working 2020, YouTube (Dec. 4, 2019), https://www.youtube.com/watch?v=Mo_tajuofLA.

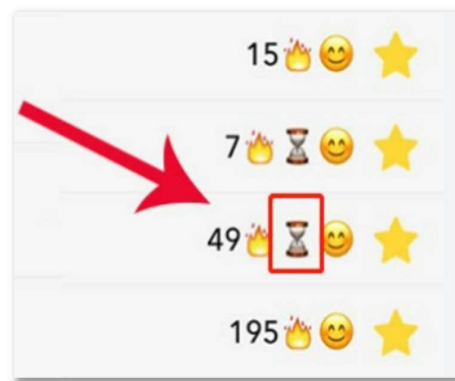
⁴⁸ See Cathy Becker, *Experts Warn Parents How Snapchat Can Hook in Teens with Streaks*, ABC NEWS (July 27, 2017), <https://abcnews.go.com/Lifestyle/experts-warn-parents-snapchat-hook-teens-streaks/story?id=48778296>; Avery Hartmans, *These are the Sneaky Ways Apps Like Instagram, Facebook, Tinder Lure You in and Get You 'Addicted'*, BUS. INSIDER (Feb. 17, 2018), <https://www.businessinsider.com/how-app-developers-keep-us-addicted-to-our-smartphones-2018-1#snapchat-uses-snapstreaks-to-keep-you-hooked-13>; see generally, Virginia Smart & Tyana Grundig, *'We're designing minds': Industry insider reveals secrets of addictive app trade*,

at least one Snap in three consecutive 24-hour periods. When the “Streak” is achieved, users receive a fire emoji next to their profile avatar. For a Streak of 100 days, for example, each child receives a “100” emoji.

No less an authority on social media addiction than Facebook, in internal documents, has acknowledged how addicting Streaks are for teens, observing: “Streaks are a very important way for teens to stay connected. They are usually with your closest friends, and they are addictive.”⁴⁹

Indeed, the peer pressure not to break a Streak can be enormous. Researchers have found that losing a Streak can cause friends to feel betrayed. This is especially true of teen girls who reported “negative” feelings when losing a Streak with one of their friends.⁵⁰ In 2018, Snap conducted its own internal research on Snapstreaks, which found that over a third of users reported it was “extremely” or “very important” to keep a Streak going, and that some users reported that the stress to keep a Streak was “intolerable” or “large.”⁵¹

Snap sends ominous notifications to child users with an hourglass emoji when Streaks are about to expire:



Unsurprisingly, one study of over 2,000 UK residents found 68% of respondents who used Snapchat reported that “the platform prevented them from sleeping.”⁵²

Snap Knows It Promotes “Snapchat Dysmorphia” to Teen Girls

Snap also incorporates numerous custom-designed lenses and filters, which allow users to edit and overlay augmented-reality special effects and sounds on their Snaps. Many of Snapchat’s lenses and filters change users’ appearance and face, creating unrealistic, idealized versions that cause profound body image issues in teenagers, especially girls. For example, in recent years, plastic surgeons have reported an increase in requests for altering surgeries that mimic Snapchat’s filters. This has led researchers to coin the term “Snapchat Dysmorphia,” in which the effect of Snapchat’s filters triggers body dysmorphic disorder.⁵³

CBC (Nov. 3, 2017), <https://www.cbc.ca/news/science/marketplace-phones-1.4384876>; Julian Morgans, *The Secret Ways Social Media is Built for Addiction*, VICE (May 17, 2017), <https://www.vice.com/en/article/vv5jkb/the-secret-ways-social-media-is-built-for-addiction>.

⁴⁹ MultiDistrict Litigation Master Complaint, citing Haugen_00008303 at 8307.

⁵⁰ Hristoya et al., “Why did we lose our snapchat streak?” *Social media gamification and metacommunication*. *Computers in Human Behavior Reports*, 5, 100172 (2022), available at <https://www.sciencedirect.com/science/article/pii/S2451958822000069>.

⁵¹ MultiDistrict Litigation Master Complaint, citing SNAP0000008.

⁵² Frazer Deans, *Curb Your Snapchat Addiction*, <https://www.wholesome.design/advent-2018/2-curb-your-snapchat-addiction/>.

⁵³ Chen et al., Association Between Social Media and Photograph Editing Use, Self-esteem, and Cosmetic Surgery Acceptance, *JAMA Facial Plastic Surgery*, 2019; See also Nathan Smith & Allie Yang, What happens when lines blur between real and virtual beauty through filters? ABC NEWS (May 1, 2021), <https://abcnews.go.com/Technology/lines-blur-real-virtual-beautyfilters/story?id=77427989>.

FACEBOOK, TIKTOK, AND SNAP KNOW THEY ARE FACILITATING THE SALE OF DANGEROUS FENTANYL TO CHILDREN

Fentanyl was the cause of 77.14% of drug deaths among teenagers last year.⁵⁴



The unprecedented spike of children dying from overdosing on fentanyl has been documented to be the fault of social media. According to, for example, *The New York Times* article titled **“Fentanyl Tainted Pills Bought on Social Media Cause Youth Drug Deaths to Soar— Teenagers and young adults are turning to Snapchat, TikTok and other social media apps to find Percocet, Xanax and other pills. The vast majority are laced with deadly doses of fentanyl, police say:”**

- “Law enforcement authorities say an alarming portion of [fentanyl overdoses] unfolded ... from counterfeit pills tainted with fentanyl that teenagers and young adults bought over social media.”
- ““Social media is almost exclusively the way they get the pills,” said Morgan Gire, District Attorney for Placer County, Calif., where 40 people died from fentanyl poisoning last year.
- “Overdoses are now the leading cause of preventable death among people ages 18 to 45, ahead of suicide, traffic accidents and gun violence, according to federal data.
- **“There are drug sellers on every major social media platform,” one expert is quoted as saying.... As long as your child is on one of those platforms, they’re going to have the potential to be exposed to drug sellers.”**

WHAT SB 680 DOESN'T DO

A. The Five Reasons Why SB 680 Doesn't Violate Section 230 of the Communications Decency Act.

First, the bill itself declares as a matter of authorial intent it cannot be interpreted to violate this federal law.

Second, Section 230 protects platforms in certain circumstances from being held liable for harms that are caused when they host content uploaded by third parties. But, the dopamine-hitting techniques that cause child addiction, such as “Likes” and “Streaks” and slot machine-like auto-scrolling, as described above, are not content uploaded by third parties. They are the inventions of the platforms themselves and were, as conceded by their inventors, designed to be addictive all by themselves without reference to third party uploaded content. These are inventions of the platforms

⁵⁴ <https://www.latimes.com/california/story/2022-11-12/more-teenagers-are-dying-from-fentanyl>.

and are independently harmful and actionable apart from any content uploaded by third parties.

Third, as one of the friends of the court briefs filed *on behalf of Google* in the pending Section 230-related Supreme Court case of *Gonzalez v. Google* acknowledged, “**Where, as in a discrimination claim, the alleged basis for liability is the illegality of the platform’s targeting and not the third-party content, immunity does not apply.**”⁵⁵ Exactly. **If Section 230 in a blanket fashion blocked the ability to hold platform’s accountable for “targeting,” then AI programmed in such a way as to offer products to Whites but not people of color would be cloaked by Section 230.** As the Solicitor General has recently observed: “Where a website operator’s conduct in furthering unlawful activities goes well beyond failing to block or remove objectionable third-party content from its platform, holding the operator liable does not ‘treat’ it ‘as the publisher or speaker of’ the third party posts.”⁵⁶

Fourth, even if Section 230 could be successfully pleaded as a defense in a particular lawsuit based on the particular facts of that case, it would simply affect that particular action and not SB 680’s validity overall because the bill itself, as mentioned above, instructs every judge not to interpret overall in such a way as to conflict with Section 230.

Could someone plead a case under SB 680 where the defendant could raise the defense of Section 230? Of course, just as someone could plead a libel case that ends up violating the First Amendment right to speak. But just because some libel lawsuits that are filed might violate the First Amendment doesn’t mean every libel lawsuit violates the First Amendment. The same is true here.

And fifth, in every other context, including where actors have absolute immunity, that veil can be pierced, but not so under Section 230 as the platforms would have it. They argue for the most absolute immunity found anywhere in our legal system. Consider qualified immunity, the most common kind. The doctrine of qualified sovereign immunity protects state and local officials, including law enforcement officers, from individual liability unless a reasonable person in the official’s position would have known their actions were in line with clearly established legal principles.⁵⁷ In absolute immunity, even judges lose immunity when they are acting outside the role of being a judge or outside their jurisdiction as a judge.⁵⁸ Thus, even if “targeting” algorithmic recommendations were entitled to some Section 230 protection, should that extend to recommendations the platforms know are harmful to identifiable children like Molly Russell? ***In no other setting do we provide such immunity for knowing harms caused by a business on full purpose.***

B. The Seven Reasons Why SB 680 Doesn’t Violate the First Amendment.

First, the bill itself declares as a matter of authorial intent it cannot be interpreted to violate the First Amendment.

Second, the AI that is independently and autonomously in real-time writing the algorithms that decide who sees what content is not a 14th Amendment “person” and has no speech rights. “[T]he actual recommendations and their manner of delivery [] are products of autonomous machines. And where that output causes addiction or other harm, as is often the case, it is neither ‘speech’

⁵⁵ https://www.supremecourt.gov/DocketPDF/21/21-1333/252703/20230125100930536_4264_001.pdf at p. 20.

⁵⁶ https://www.supremecourt.gov/DocketPDF/21/21-1333/249441/20221207203557042_21-1333tsacUnitedStates.pdf at p. 19.

⁵⁷ *Harlow v. Fitzgerald* (1982) 457 U.S. 800.

⁵⁸ *Mireles v. Waco* (1991) 502 U.S. 9, 9-11.

nor otherwise exempt from consumer safety regulation.”⁵⁹

But what about the human being/corporation who gives the AI its command? Social media companies direct their AI to go out and do whatever it takes to keep users online for as long as period, consequences be damned. That purely business decision has no expressive intent or content at all. Could such an instruction implicate the First Amendment? Of course. Does every instruction implicate the First Amendment or implicate it equally? Of course not.

Observe that by failing to acknowledge that different kinds of instruction to AI will differently implicate First Amendment values – with some not invoking free speech at all - the **opponents to your bill argue for granting social media AI greater First Amendment rights than enjoyed by us human beings!** In every First Amendment case involving humans, for example, a court looks at the speech and the speaker to determine whether and if so how much First Amendment values are implicated. “[T]he category of speech is an important factor to consider in evaluating Congress’s ability to legislate on a given subject.”⁶⁰ But, Big Tech argues that every possible instruction it gives to its AI enjoys exactly the same First Amendment protection. ***Whereas in the law applicable to humans, political speech is treated different than commercial speech, for example, Big Tech incredibly acknowledges no analogous, differentiating scrutiny for the instructions it gives its AI.***

Third, the algorithmic targeting output from the autonomous AI is functional conduct, not expressive. Thus, in *Wisconsin v. Mitchell*,⁶¹ the Supreme Court upheld as not violating the First Amendment, a criminal penalty enhancement statute that increased the punishment for a variety of crimes where the defendant targeted a victim because of one or more immutable characteristics, including race, religion, or ethnic background. The Court *treated the targeting at the heart of the statute* as a restriction only *on conduct*-- the selection of a victim based on his or her race, religion, or ethnic background—and not on speech.

Indeed, if causing the physical harm of addiction were protected by the First Amendment, every drug dealer would have a First Amendment right to cause drug addiction. So, too, would words that incited a physical fight be protected by the First Amendment, but they aren’t. Words that have “a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed”⁶²—words that are proven to cause physical harm—are not afforded blanket First Amendment protection.⁶³

Fourth, courts have acknowledged that First Amendment rights of adults cannot be used as a rationale for endangering children. This is how child pornography—indisputably speech in the technical sense—is unprotected by the First Amendment.⁶⁴

Fifth, the opposition argues that SB 680 is unconstitutional “on its face”; in every possible aspect or case. But the First Amendment doctrine that permits statutes to be struck down for being so overbroad as to be unenforceable in every aspect “does not apply to commercial speech.”⁶⁵ And, here, even assuming AI’s content delivery decisions are somehow protected speech, and even

⁵⁹ <https://thehill.com/opinion/congress-blog/technology/4035644-social-media-algorithms-are-not-protected-speech/>

⁶⁰ <https://sgp.fas.org/crs/misc/IF11072.pdf>

⁶¹ (1993) 508 U.S. 476.

⁶² *Gooding v. Wilson* (1972) 405 U.S. 518, 524.

⁶³ *Brown v. EMA* (2011) 564 U.S. 768, is thus distinguishable since the law there went after the speech itself and did not depend on the showing of any harm (i.e., conduct). Here, only algorithms that *cause* harmful addiction are proscribed. See *infra*.

⁶⁴ *New York v. Ferber* (1982) 458 U.S. 747, at <https://mtsu.edu/first-amendment/article/404/new-york-v-ferber>.

⁶⁵ *Village of Hoffman Estates v. Flipside*, 455 U.S. 489, 490 (2008).

assuming commercial speech enjoyed the same protection from allegedly overbroad statutes as political speech, the supposed speech being allegedly chilled by the prospect of liability under SB 680 would be speech that in court *has been proven to have physically harmed children in the awful ways addressed by the bill*. In such a case, "there must be a realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court for it to be facially challenged on overbreadth grounds."⁶⁶ Platforms will be hard-pressed to prove this.

Sixth, a “facial” First Amendment challenges to laws like SB 680 pressed outside of a lawsuit where someone is actually suing for an injury are disfavored.⁶⁷

Seventh, SB 680 is a bill that would render a company liable for putting a product on the street that causes harm to children. In the Ninth Circuit’s recent case of *Lemmon v. Snap, Inc.*, 995 F.3d 1085 (9th Cir. 2021), an ideologically diverse panel of the Ninth Circuit permitted a negligent product design lawsuit to proceed against the social media platform Snapchat. Differentiating between expressive content uploaded by third parties and Snapchat’s own inventions, the court ruled that: “The Parents thus allege a cause of action for negligent design—a common products liability tort. This type of claim rests on the premise that manufacturers have a “duty to exercise due care in supplying products that do not present an unreasonable risk of injury or harm to the public.”⁶⁸ As this Committee observed last year: “The reasoning in *Lemmon v. Snap* is instructive, as liability here is not tied to content or speech, but the use of design and features that cause harm, regardless of the content underlying it. In addition, the bill furthers a compelling government interest, protecting children from addiction and emotional harm.”⁶⁹

Again, *could* a case be filed that violates the First Amendment? Sure, just like almost any lawsuit involving speech (libel, slander, hostile work environment, sexual harassment) could. But whether or not one case does or does not will depend on the facts of each case, as the robot example illustrates.

CONCLUSION

Our children are on fire and, with the rapid advance of AI, all of what has been described above will, absent SB 680 becoming law, *get worse* and soon.

Thank you so much for authoring this critical bill.

Sincerely,



Ed Howard

Senior Counsel, Children’s Advocacy Institute

CC: Hon. Nancy Skinner

⁶⁶ *Members of City Council of Los Angeles v. Taxpayers for Vincent* (1984) 466 U.S. 789, 801.

⁶⁷ See, e.g., *Wash. State Grange v. Wash. State Republican Party* (2008) 552 U.S. 442, where the Court noted that facial challenges “often rest on speculation,” and it asserted that invalidating a statute before it takes effect could “short circuit the democratic process.”), at <https://supreme.justia.com/cases/federal/us/552/442/>.

⁶⁸ *Id.* at 1092.

⁶⁹ Sen. Judic. Cmte. Analysis AB 2408 (2022)

file:///C:/Users/eh4/Dropbox/Documents/Howard%20law%20offices%20and%20advocacy/CAI/2023/SKINNER%20BILL/202120220AB2408_Senate%20Judiciary.pdf at p. 17.